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THE
GOODS AND SERVICE TAX REPORTS
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[2020] 80 GSTR 1 (P&H)

[IN THE PUNJAB AND HARYANA HIGH COURT]

AMBA INDUSTRIAL CORPORATION

v.

UNION OF INDIA AND ANOTHER

JASWANT SINGH and SANT PARKASH JJ.

June 18, 2020.

HF ▸ Assessee

GOODS AND SERVICES TAX—INPUT TAX CREDIT—TRANSITIONAL PROVISIONS—REPEATED EXTENSIONS OF LAST DATE TO FILE TRAN-1 IN CASE OF TECHNICAL GLITCHES—DENIAL OF UNUTILISED CREDIT TO DEALERS UNABLE TO FURNISH EVIDENCE OF ATTEMPT TO UPLOAD TRAN-1—VIOLATION OF ARTICLE 14 AND ARTICLE 300A—ASSESSEE WAS ENTITLED TO CARRY FORWARD CENVAT CREDIT—DIRECTION TO DEPARTMENT TO PERMIT ASSESSEE TO UPLOAD TRAN-1 ON OR BEFORE JUNE 30, 2020 AND IF DEPARTMENT FAILS TO DO SO, ASSESSEE AT LIBERTY TO AVAIL OF INPUT TAX CREDIT IN ITS MONTHLY RETURNS FOR JULY 2020—CENTRAL GOODS AND SERVICE TAX ACT (12 of 2017), S. 140—CENTRAL GOODS AND SERVICE TAX RULES, 2017, r. 117(1A).

To carry forward unutilised Cenvat credit, in terms of section 140 of the Central Goods and Service Tax Act, 2017 read with rule 117(1) of the Central Goods and Service Tax Rules, 2017 the assessee-firm was required to upload TRAN-1 on the official portal of Department but failed to upload TRAN-1 by the last date, i. e., December 27, 2017. Under sub-rule (1A) of rule 117 of the Rules, the Commissioner on the recommendation of the Council may extend date for submitting the declaration, in respect of registered persons who could not submit declaration by the due date on account of technical difficulties. The Department in exercise of power conferred by sub-rule (1A) of rule 117 of the Rules, by order dated February 7, 2020, extended date for filing

TRAN-1 till March 31, 2020. On a writ petition challenging the vires of rule 117(1A) of the Rules and seeking direction to the Department to permit the assessee to electronically upload form TRAN-1 or avail of input tax credit in the monthly return :

Held, *that it was not appropriate to declare the rule invalid but the assessee was entitled to carry forward Cenvat credit accrued under the Central Excise Act, 1944. The Department had repeatedly extended the last date to file TRAN-1 where there were technical glitches. Repeated extensions of last date to file TRAN-1 in case of technical glitches as understood by the Department vindicated the claim of the assessee that denial of unutilized credit to those dealers who were unable to furnish evidence of their attempt to upload TRAN-1 would amount to violation of article 14 as well as article 300A of the Constitution of India. The Department were to permit the assessee to upload TRAN-1 on or before June 30, 2020 and if the Department failed to do so, the assessee would be at liberty to avail of the input tax credit in its monthly returns for July 2020. No doubt, the Department would be at liberty to verify genuineness of the claims made by the assessee.*

ADFERT TECHNOLOGIES PVT. LTD. *v.* UNION OF INDIA [2020] 73 GSTR 267 (P&H) *and* BRAND EQUITY TREATIES LIMITED *v.* UNION OF INDIA [2020] 77 GSTR 390 (Delhi) *relied on*.

Cases referred to :

A. B. Pal Electricals Pvt. Ltd. *v.* Union of India [2020] 77 GSTR 382 (Delhi) (para 7)

Adfert Technologies Pvt. Ltd. *v.* Union of India [2020] 73 GSTR 267 (P&H) (paras 3, 5, 7, 9)

Brand Equity Treaties Limited *v.* Union of India [2020] 77 GSTR 390 (Delhi) (paras 3, 4, 5, 7, 9)

SKH Sheet Metals Components *v.* Union of India [2020] 79 GSTR 7 (Delhi) (paras 3, 7)

C. W. P. No. 8213 of 2020 (O&M).

Deepak Gupta for the petitioner.

JUDGMENT

The judgment of the court was delivered by

1 JASWANT SINGH J.—*Hearing conducted through video conferencing*.—The petitioner through instant petition is challenging vires of rule 117(1A) of the Central Goods and Service Tax Act, 2017 (for short, "the Rules") and seeking direction to the respondent to permit petitioner to electronically

upload form TRAN-1 or avail of input tax credit (for short, "ITC") in monthly return GSTR-3B.

The petitioner-a partnership firm, engaged in the business of trading of S. S. flats, is registered with respondent-GST authorities under the Central Goods and Services Tax Act, 2017 (for short, "the CGST Act"). The petitioner prior to July 1, 2017, i. e., date of introduction of GST was registered under the Central Excise Act, 1944 as a dealer/trader. The petitioner purchased S. S. flats and scrap on payment of excise duty amounting to Rs. 10,36,201. The petitioner to carry forward unutilized Cenvat credit, in terms of section 140 of the CGST Act read with rule 117(1) was required to upload TRAN-1 on the official portal of respondent, however petitioner failed to upload TRAN-1 by last date, i. e., December 27, 2017. As per sub-rule (1A) of rule 117 of the Rules, the Commissioner on the recommendation of the Council may extend date for submitting the declaration, in respect of registered persons who could not submit declaration by the due date on account of technical difficulties. The respondents in exercise of power conferred by sub-rule (1A) of rule 117 of the Rules, by order dated February 7, 2020 (annexure P3) has extended date for filing TRAN-1 till March 31, 2020. **2**

Counsel for the petitioner contended that the issue involved is squarely covered by judgment of this court in the case of *Adfert Technologies Pvt. Ltd.* v. *Union of India* [2020] 73 GSTR 267 (P&H) ; [2019] TIOL-2519-HC-P&H-GST. The SLP filed against aforesaid decision stands dismissed. The Delhi High Court in the case of *Brand Equity Treaties Limited* v. *Union of India* [2020] 77 GSTR 390 (Delhi) ; [2020] TIOL-900-HC-Del-GST following decision of this court and various other High Courts has permitted petitioners to file TRAN-1 on or before June 30, 2020. The Delhi High Court has further directed respondents to permit all other similarly situated taxpayers to file TRAN-1 on or before June 30, 2020. The Delhi High Court has further vide order dated June 16, 2020 in *SKH Sheet Metals Components v. Union of India* [2020] 79 GSTR 7 (Delhi) W. P. (C) No. 13151 of 2019 approved its earlier opinion in the case of *Brand Equity* [2020] 77 GSTR 390 (Delhi) ; [2020] TIOL-900-HC-Del-GST and permitted petitioners to file TRAN-1 till June 30, 2020. **3**

Notice of motion. **4**

Mr. Satya Pal Jain, Additional Solicitor General assisted by Mr. Dheeraj Jain, Advocate, accepts notice on behalf of respondent No. 1 while Mr. Sharan Sethi, senior standing counsel, accepts notice for respondent No. 2-Commissioner of Central Goods and Services Tax. They are unable to controvert the fact that the issue in hand is squarely covered by the **5**

judgment of this court in *Adfert Technologies Pvt. Ltd.* [2020] 73 GSTR 267 (P&H) ; [2019] TIOL-2519-HC-P&H-GST and of the Delhi High Court in the case of *Brand Equity* [2020] 77 GSTR 390 (Delhi) ; [2020] TIOL-900-HC-Del-GST.

6 Having heard learned counsel for the parties and perused the cited judgments, we are of the considered opinion that issue involved is squarely covered by judgments of this court as well as of the aforesaid judgments of Delhi High Court.

7 A Division Bench of this court consisting one of us (Jaswant Singh J) vide order dated November 4, 2019 allowed a bunch of petitions which included CWP No. 30949 of 2018 titled as *Adfert Technologies Pvt. Ltd.* v. *Union of India* [2020] 73 GSTR 267 (P&H) ; [2019] TIOL-2519-HC-P&H-GST. The revenue assailing decision of this court filed SLP before honourable Supreme Court which stands dismissed vide order dated February 28, 2020. Following opinion in *Adfert Technologies* [2020] 73 GSTR 267 (P&H) ; [2019] TIOL-2519-HC-P&H-GST a number of writ petitions involving identical question have been disposed of by this court, wherein respondents have been directed to open portal so that assessee may upload TRAN-1 and in case respondent fails to open portal, petitioners have been permitted to take ITC in monthly return GSTR-3B. Division Bench of Delhi High Court in the case of *SKH Sheet Metals Components* v. *Union of India* [2020] 79 GSTR 7 (Delhi) W. P. (C) No. 13151 of 2019, vide order dated June 16, 2020 has permitted petitioner to revise TRAN-1 on or before June 30, 2020. The Delhi High Court while passing the aforesaid order has relied upon its recent decision in *Brand Equity Treaties Limited* v. *Union of India* [2020] 77 GSTR 390 (Delhi) ; [2020] TIOL-900-HC-Del-GST wherein the court had held that Government cannot adopt different yardsticks while evaluating conduct of the taxpayers and its own conduct, acts and omissions. It would be profitable to extract relevant paragraphs of judgment of the Delhi High Court in *Brand Equity* [2020] 77 GSTR 390 (Delhi) ; [2020] TIOL-900-HC-Del-GST (pages 409 to 411 in 77 GSTR) :

> "18. In above noted circumstances, the arbitrary classification, introduced by way of sub-rule (1A), restricting the benefit only to taxpayers whose cases are covered by 'technical difficulties on common portal' subject to recommendations of the GST Council, is arbitrary, vague and unreasonable. What does the phrase 'technical difficulty on the common portal' imply ? There is no definition to this concept and the respondent seems to contend that it should be restricted only to 'technical glitches on the common portal'. We, however, do not concur with this understanding. 'Technical difficulty' is too broad a

term and cannot have a narrow interpretation, or application. Further, technical difficulties cannot be restricted only to a difficulty faced by or on the part of the respondent. It would include within its purview any such technical difficulties faced by the taxpayers as well, which could also be a result of the respondent's follies. After all, a completely new system of accounting; reporting of turnover ; claiming credit of prepaid taxes ; and, payment of taxes was introduced with the implementation of the GST regime. A basket of Central and State taxes were merged into a single tax. New forms were introduced and, as aforesaid, all of them were not even operationalised. Just like the respondents, even the taxpayers required time to adapt to the new systems, which was introduced as a completely online system. Apart from the shortcomings in the system developed by GSTN Ltd., the assessees also faced the challenges posed by low bandwidth and lack of computer knowledge and skill to operate the system. It is very unfair on the part of the respondents, in these circumstances, to expect that the taxpayers should have been fully geared to deal with the new system on day-one, when they themselves were completely ill-prepared, which led to creation of a complete mess. The respondents cannot adopt different standards—one for themselves, and another for the taxpayers. The GST regime heralded the system of seamless input tax credits. The successful migration to the new system was a formidable and unprecedented task. The fractures in the system, after its launch, became visible as taxpayers started logging in closer to the deadline. They encountered trouble filing the returns. Petitioners who are large and mega corporations—despite the aid of experts in the field, could not collate the humongous data required for submission of the statutory forms. Courts cannot be oblivious to the fact that a large population of this country does not have access to the Internet and the filing of TRAN-1 was entirely shifted to electronic means. The nodal officers often reach to the conclusion that there is no technical glitch as per their GST system laws, as there is no information stored/logged that would indicate that the taxpayers attempted to save/submit the filing of Form GST TRAN-1. Thus, the phrase 'technical difficulty' is being given a restrictive meaning which is supplied by the GST system logs. Conscious of the circumstances that are prevailing, we feel that taxpayers cannot be robbed of their valuable rights on an unreasonable and unfounded basis of them not having filed TRAN-1 form within 90 days, when civil rights can be enforced within a period of three years from the date of commencement of limitation under the Limitation Act, 1963.

19. The introduction of sub-rule (1A) in rule 117 is a patchwork solution that does not recognise the entirety of the situation. It sneaks in an exception, without addressing situations taken note of by us. This exception, as worded, is an artificial construction of technical difficulties, limiting it to those existing on the common portal. It is unfair to create this distinction and restrict it to technical snags alone. In our view, there could be various different types of technical difficulties occurring on the common portal which may not be solely on account of the failure to upload the form. The access to the GST portal could be hindered for myriad reasons, sometimes not resulting in the creation of a GST log-in record. Further, the difficulties may also be offline, as a result of several other restrictive factors. It would be an erroneous approach to attach undue importance to the concept of 'technical glitch' only to that which occurs on the GST common portal, as a pre-condition, for an assessee/taxpayer to be granted the benefit of sub-rule (1A) of rule 117. The purpose for which sub-rule (1A) to rule 117 has been introduced has to be understood in the right perspective by focusing on the purpose which it is intended to serve. The purpose was to save and protect the rights of taxpayers to avail of the Cenvat credit lying in their account. That objective should also serve other taxpayers, such as the petitioners. The approach of the Government should be fair and reasonable. It cannot be arbitrary or discriminatory, if it has to pass the muster of article 14 of the Constitution. The Government cannot turn a blind eye, as if there were no errors on the GSTN portal. It cannot adopt different yardsticks while evaluating the conduct of the taxpayers, and its own conduct, acts and omissions. *The extremely narrow interpretation that the respondents seek to advance, of the concept of 'technical difficulties', in order to avail the benefit of sub-rule (1A), is contrary to the statutory mechanism built in the transitory provisions of the CGST Act. The Legislature has recognized such existing rights and has protected the same by allowing migration thereof in the new regime under the aforesaid provision. In order to avail the benefit, no restriction has been put under any provisions of the Act in terms of the time period for transition. The time limit prescribed for availing the input tax credit with respect to the purchase of goods and services made in the pre-GST regime, cannot be discriminatory and unreasonable. There has to be a rationale forthcoming and, in absence thereof, it would be violative of article 14 of the Constitution*. Further, we are also of the view that the Cenvat credit which stood accrued and vested is the property of the

assessee, and is a constitutional right under article 300A of the Constitution. The same cannot be taken away merely by way of delegated legislation by framing rules, without there being any over arching provision in the GST Act. We have, in our judgment in *A.B. Pal Electricals* [2020] 77 GSTR 382 (Delhi) emphasized that the credit standing in favour of the assessee is a vested property right under article 300A of the Constitution and cannot be taken away by prescribing a time-limit for availing the same." (emphasis[1] supplied)

In the above findings, the Delhi High Court though has not declared rule 117(1A) ultra vires the Constitution, nonetheless treated as violative of article 14 of the Constitution of India being arbitrary, discriminatory and unreasonable.

The petitioner has challenged vires of rule 117(1A) of Rules, however we **8**
do not think it appropriate to declare it invalid as we are of the considered opinion that the petitioner is entitled to carry forward Cenvat credit accrued under the Central Excise Act, 1944. The respondents have repeatedly extended date to file TRAN-1 where there was technical glitch as per their understanding. Repeated extensions of last date to file TRAN-1 in case of technical glitches as understood by respondent vindicate claim of the petitioner that denial of unutilized credit to those dealers who are unable to furnish evidence of attempt to upload TRAN-1 would amount to violation of article 14 as well article 300A of the Constitution of India.

In view of decision of this court in the case of *Adfert Technologies Pvt.* **9**
Ltd. [2020] 73 GSTR 267 (P&H) ; [2019] TIOL-2519-HC-P&H-GST and Delhi High Court in the case of *Brand Equity Treaties Limited* v. *Union of India* [2020] 77 GSTR 390 (Delhi) ; [2020] TIOL-900-HC-Del-GST present petition deserves to be allowed and accordingly *allowed*. The respondents are directed to permit the petitioner to upload TRAN-1 on or before June 30, 2020 and in case the respondent fails to do so, the petitioner would be at liberty to avail ITC in question in GSTR-3B of July 2020. No doubt, the respondents would be at liberty to verify genuineness of claim(s) made by the petitioner.

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1. Here italicised.

[2020] 80 GSTR 8 (Mad)

[IN THE MADRAS HIGH COURT]

COMMISSIONER OF COMMERCIAL TAXES, CHENNAI AND ANOTHER

v.

RAMCO CEMENTS LTD.

(W. A. Nos. 3403, 3413 and 3414 of 2019)

———

STATE TAX OFFICER, THIRUVALLIKENI ASSESSMENT CIRCLE, CHENNAI AND ANOTHER

v.

SUNDARAM FASTENERS LIMITED

(W. A. No. 2812 of 2019)

DR. VINEET KOTHARI and **R. SURESH KUMAR** JJ.

March 9, 2020.

HF ▸ Assessee

CENTRAL SALES TAX—REGISTERED DEALERS—CONCESSIONAL RATE OF TAX—DEALER IN PETROLEUM PRODUCTS—SIX SPECIFIED ITEMS LEFT OUT OF PURVIEW OF GOODS AND SERVICES TAX REGIME—RIGHT OF DEALERS IN OTHER GOODS TO PURCHASE THOSE SIX SPECIFIED GOODS UNDER EXISTING REGISTRATION NOT TAKEN AWAY—DEPARTMENT NOT TO RESTRICT USE OF C FORMS FOR INTER-STATE PURCHASES OF SIX COMMODITIES BY DEALERS AT CONCESSIONAL RATE OF TAX—CIRCULAR OF COMMISSIONER DATED MAY 31, 2018 QUASHED—CENTRAL SALES TAX ACT (74 of 1956), ss. 6, 7, 8—TAMIL NADU VALUE ADDED TAX ACT (32 of 2006), s. 48A—TAMIL NADU GOODS AND SERVICES TAX ACT (19 of 2017), s. 174—CENTRAL GOODS AND SERVICES TAX ACT (12 of 2017)—CONSTITUTION OF INDIA, arts. 14, 301, 304(b).

The liability to pay tax under the provisions of the Central Sales Tax Act, 1956 depends upon the liability to pay tax, which arises under section 6 of the Act. Central sales tax fixed on the seller is not a condition precedent or the only contingency for getting himself registered under the provisions of the 1956 Act. Even a person who is only purchasing goods in the inter-State trade or commerce, who may not be liable to pay tax under the provisions of 1956 Act as a seller can secure registration under the provisions of the Act and can continue with it. Even a dealer liable to tax under State sales tax law,

which may include even the new State Goods and Services Tax Act, 2017, can obtain registration under 1956 Act.

The fact that the definition of "goods" in the 1956 Act has been amended with effect from July 1, 2017 to restrict it to six commodities specified in section 2(d) of the Act does not mean that the entire scope of the operation of the 1956 Act has been amended. The rights of purchasing dealers of the goods including the rights to purchase at a concessional rate against declaration in C forms continue unabated under section 8(3)(b) of the 1956 Act which has not been amended in 2017. The scope of the term "goods" as defined in section 2(d) of the Act does not obliterate such seamless flow of the inter-State trade or the operation of the 1956 Act for both selling dealers as well as purchasing dealers throughout the country. The freedom of trade including the right to purchase in the course of inter-State trade or commerce enshrined in article 301 read with article 304(b) is not taken away by the goods and services tax regime laws.

Dealers can continue to either sell or purchase in the course of inter-State trade or commerce the six commodities in terms of the provisions of the 1956 Act. The mere restriction of the operation of the 1956 Act with respect to six commodities with effect from July 1, 2017 does not take away the right of the purchasing dealers to purchase such goods in the course of inter-State trade or commerce under the Act and their registration cannot be said to be either pro tanto cancelled nor they can be cancelled as a matter of right by the Department. The right to deal with in those six goods still continues in the purchasing dealers.

Grant of registration is not an administrative order, but, a quasi-judicial act or order, which confers certain rights on the dealers and also certain obligations under such registration certificates. The provision for the amendment or cancellation of such registration certificates is also specified in the respective enactments and the same can be done only upon an opportunity of hearing granted to the dealers concerned. Therefore, there is no scope of any implied cancellation or repeal of the registration certificates.

The Commissioner of Commercial Taxes issued a circular on May, 31, 2018 prohibiting dealers and manufacturers of cement, etc., from downloading online declaration of form C from the official website of the Department. The assessee filed a writ petition, upon which a single judge quashed the circular. On appeal :

Held, *dismissing the appeals, (i) that the assessee, a cement company, continued to be liable to pay tax under the Tamil Nadu Value Added Tax Act, 2006 if it sold or purchased any of these six goods. The 2006 Act also had not*

been completely repealed but now applied only to these six commodities after July 1, 2017 in terms of section 174 of the Tamil Nadu Goods and Services Tax Act, 2017. Therefore, on a conjoint reading of both sub-sections (1) and (2) of section 7 of the 1956 Act, it was clear that the assessees could continue to have registration under the provisions of the 1956 Act and the contention of the Department that they had lost their entitlement to be registered was not tenable. The Department could not deny the right to sell any of these six goods to the assesses subject to their compliance with licensing requirements.

(ii) That since the purchasing dealers can continue to hold their registration under the provisions of the 1956 Act despite the goods and services tax law coming into force on July 1 2017, their right to purchase at concessional rate by using declaration in C forms under section 8(1) of the Act read with section 8(3)(b) of the Act continued unabated even after July 1, 2017. Section 8(3) of the Act could not be construed to be rendered unworkable because the text of the provision does require liability of the dealer to be discharged by the persons who purchase those six specified goods in the course of inter-State trade or commerce and to provide a seamless, harmonious and smooth operation of the amended 1956 Act. The assessee and other dealers continued to have liability to pay sales tax or value added tax under the local law and therefore, they were entitled to continue their State law registration and equally entitled to registration under the 1956 Act. The fact of the goods manufactured by them being governed by the goods and services tax law was irrelevant for deciding their continued right to purchase diesel, etc., against C forms.

(iii) That section 48A of the 2006 Act does not empower the Commissioner to issue any such circular or for general interpretation of laws for any such dealers to obtain the declaration in C forms and use them for specified purposes under section 8(3)(b) of the 1956 Act. Thus, it was without jurisdiction and any statutory support. The circular dated May 31, 2018 was also in violation of principles of natural justice. There was no justification for creating any invidious classification by creating categories of dealers, arbitrarily, in violation of article 14 of the Constitution as had been done in the circular. Any such circular, which was not in the nature of an administrative order and being a quasi-judicial order and having civil and evil consequences, could not have been passed without affording an opportunity of hearing to the persons concerned.

(iv) That the Department was not to restrict the use of C forms for the inter-State purchases of six commodities by the assessees and other registered dealers at the concessional rate of tax and were to permit online downloading

of such declaration in C forms to such dealers. The circular letter of the Commissioner dated May 31, 2018 was to be quashed along with the consequential notices and proceedings initiated against all the assessees throughout the State of Tamil Nadu.

CARPO POWER LIMITED *v.* STATE OF HARYANA [2018] 53 GSTR 24 (P&H), SHREE RAIPUR CEMENT PLANT *v.* STATE OF CHHATTISGARH [2018] 55 GSTR 306 (Chhattisgarh), STAR CEMENT MEGHALAYA *v.* STATE OF ASSAM [2018] 57 GSTR 369 (Gauhati), HINDUSTAN ZINC LIMITED *v.* STATE OF RAJASTHAN [2019] 64 GSTR 366 (Raj), TATA STEEL LTD. *v.* STATE OF ORISSA [2019] 70 GSTR 99 (Orissa) *and* TATA STEEL LIMITED *v.* STATE OF JHARKHAND [2019] 70 GSTR 364 (Jharkhand) *followed*.

Decision of the single judge in RAMCO CEMENTS LTD. *v.* COMMISSIONER OF COMMERCIAL TAXES [2019] 64 GSTR 374 (Mad) *affirmed*.

Cases referred to :

Carpo Power Limited *v.* State of Haryana [2018] 53 GSTR 24 (P&H) (paras 7, 31, 33, 36, 37, 38)

Commissioner of Sales Tax *v.* Madhya Bharat Papers Ltd. [2000] 117 STC 547 (SC) (para 38)

Hindustan Zinc Limited *v.* State of Rajasthan [2019] 64 GSTR 366 (Raj) (para 33)

Modi Spinning and Weaving Mills Co. Ltd. *v.* Commissioner of Sales Tax [1965] 16 STC 310 (SC) (para 16)

Printers (Mysore) Ltd. *v.* Assistant Commercial Tax Officer [1994] 93 STC 95 (SC) (para 38)

Ramco Cements Ltd. *v.* Commissioner of Commercial Taxes [2019] 64 GSTR 374 (Mad) (paras 1, 36)

Shree Raipur Cement Plant *v.* State of Chhattisgarh [2018] 55 GSTR 306 (Chhattisgarh) (para 34)

Star Cement Meghalaya *v.* State of Assam [2018] 57 GSTR 369 (Gauhati) (para 35)

State of Kerala *v.* Mar Appraem Kuri Co. Ltd. [2012] 174 Comp Cas 339 (SC) (para 16)

Tata Steel Limited *v.* State of Jharkhand [2019] 70 GSTR 364 (Jharkhand) (para 38)

Tata Steel Ltd. *v.* State of Orissa [2019] 70 GSTR 99 (Orissa) (para 37)

W. A. No. 3403, 3413, 3414 and 2812 of 2019 and C. M. P. Nos. 21904, 21951, 21958 and 17970 of 2019.

Mohammed Shaffiq, Special Government Pleader, for the appellants.

R. L. Ramani, Senior Counsel for *B. Ravindran* for the respondent in W. A. Nos. 3403, 3413, 3414 of 2019.

N. Prasad for *Inbarajan* for the respondent in W. A. No. 2812 of 2019.

JUDGMENT

The judgment of the court was delivered by

1 DR. VINEET KOTHARI J.—The Commissioner of Commercial Taxes has filed this intra-court writ appeals aggrieved by the order and judgment of the learned single judge dated *October 26, 2018* (*Ramco Cements Ltd.* v. *Commissioner of Commercial Taxes* [2019] 64 GSTR 374 (Mad)) whereby the learned single judge allowed the writ petitions filed by the assessees, M/s. Ramco Cements Ltd. and another and quashed the impugned communication dated *May 31, 2018* issued by the Commissioner of Commercial Taxes, Chepauk, Chennai and consequential notices issued to the assessees seeking to deny the benefit of purchases of HSD diesel, natural gas in the course of inter-State trade or commerce against the declaration of C forms of the Central Sales Tax Act, 1956 at the concessional rate of two per cent.

2 The Revenue also contends that had such HSD diesel been purchased within the State of Tamil Nadu locally, the rate of tax at 28 per cent. would have been levied and it would not have resulted in a big financial loss to the State of Tamil Nadu.

3 The bone contention of the Revenue in the present writ appeal is that with the enactment of the Constitutional 101st Amendment and consequential GST laws enacted in all the States with effect from *July 1, 2017* and the consequential amendments effected in the Central Sales Tax Act, 1956 also and amendment in the definition of "goods" restricting the operation of the Central Sales Tax Act for only six commodities like petroleum crude, high speed diesel, motor spirit (petrol), aviation turbine fuel, natural gas and liquor, the assessee-company or whoever engaged in the manufacture of cement and other things, which were now covered by the GST laws were not entitled to purchase such diesel, etc., these six specified goods against the declaration form C at the concessional rate on the inter-State purchases of such goods made by them and therefore, the learned single judge has erred in quashing the said circular issued by the Commissioner of Commercial Taxes on *May, 31, 2018* prohibiting these dealers and manufacturers of cement, etc., from downloading online declaration of form C from the official website of the Department was justified.

4 The assessees had approached the learned single judge against the aforesaid stand of the Revenue Department and the said communication

dated May 31, 2018 and they succeeded before the learned single judge and aggrieved by the said judgment and order of the learned single judge, the Revenue has come up before us in these writ appeals.

Various contentions were raised by Mr. Mohammed Shaffiq, learned **5** Special Government Pleader appearing for the Revenue Department, which were equally and vehemently opposed by Mr. R. L. Ramani, learned senior counsel and Mr. N. Prasad appearing on behalf of the assessee-companies.

In brief, the contentions on behalf of the Revenue Department may be **6** summarised thus :

(a) That with the new indirect taxes regime introduced in all the States of the country with effect from *July 1, 2017* in the form of Goods and Services Tax Law (for short, "GST") in pursuance of the Constitutional 101st Amendment Act, 2016 and consequential Amendments in the Central Sales Tax Act, 1956 and the State Sales Tax Act and VAT laws restricted only the six specified goods, the dealers and manufacturers of goods other than six specified commodities to which, the GST law does not extend like petrol, diesel, liquor, etc., the registration of such dealers dealing in other goods was liable to be cancelled and they could not be treated as dealers "liable to pay tax" under section 7 of the Central Sales Tax Act, 1956 after July 1, 2017 and in the absence of such inability of these dealers like the respondent/assessees to get registered under the Central Sales Tax Act, 1956 they would not be entitled to purchase these six commodities at concessional rate against the declaration in form C in terms of section 8(3)(b) of the Central Sales Tax Act, 1956, in the course of inter-State trade or commerce.

(b) That even though the old registration certificates of those dealers under the Central Sales Tax Act were not so far cancelled and they included the diesel, petrol, etc., as commodities to be purchased by them in the manufacture of other goods like cement, etc., but, the registration certificates should be deemed to be, pro tanto, amended by the force of enactment of new laws and in the absence of their eligibility to get registered under the Central Sales Tax Act in terms of section 7(1) of the Act, they could not be permitted under section 8(3)(b) of the Act to avail the benefit of concessional rate of tax on such purchases of petrol, diesel, etc., for use in manufacture by them of other goods like cement, etc., which are administered and subjected to levy of tax under the new GST law and since the GST law does not make any such provision for concessional rate of tax against the declaration of C forms, such dealers like the respondent/assessees cannot be allowed to make use of declaration in form C.

(c) That the learned Commissioner was justified in issuing the impugned communication to all the Joint Commissioners on *May 31, 2018* making the correct interpretation of the position of law after July 1, 2017 allowing the use of declaration form C, by the first four categories of the dealers who dealt with the such six specified commodities only like major oil-companies, viz., IOC BPCL, HPCL, etc., major distilleries like TAS-MAC, Golden Vats, SNJ Distilleries, major hotels like ITC, Crown Plaza, Oriental Hotels, etc., and major clubs and resorts and cultural associations like Presidency Club, Madras Boat Club, etc., who can buy one or more of those six commodities and sell it. However, the excluded category of the dealers like Cement Industries and Spinning Mills, Tamil Nadu Power Company, Mines and Nuclear Power Corporation, etc., for whom the levy of tax is now provided under the new GST law, which was in operation with effect from *July 1, 2017* and they were not so entitled to continue to purchase the aforesaid six commodities at the concessional rate against form C declarations, therefore, the said bifurcation and classification of the dealers by the Commissioner was justified and the proceedings initiated by the Joint Commissioners accordingly against the respondent/assessees and other similarly situated persons were also justified.

7 *Per contra,* the learned counsel for the assessee submitted that :

(a) The controversy was no longer res integra and has been decided in favour of the assessee at least by seven High Courts like Punjab and Haryana High Court, Rajasthan High Court, Jharkhand High Court, etc., and one of the judgments in similar circumstances of Punjab and Haryana High Court in the case of *Carpo Power Limited* v. *State of Haryana* in (C. W. P. No. 29437 of 2017 decided on March 28, 2018) [2018] 53 GSTR 24 (P&H) had already been affirmed by the honourable Supreme Court with the dismissal of the *SLP No. 20572 of 2018 on August 13, 2018* and therefore, there was no merit in the present writ appeals filed by the Revenue and the same deserves to be dismissed.

(b) The learned counsel for the assessee contend that not only the registered certificate granted in favour of the respondent/assessees continue even after July 1, 2017 without any modification thereof and therefore, the Revenue Department was estopped from denying the said benefit of purchase of six commodities at concessional rate against the declaration in C form, but, the contention of the Revenue that the assessees were not entitled to get themselves registered under the Central Sales Tax Act after *July 1, 2017* was wholly erroneous inasmuch as such entitlement of the assessee-companies was available to them under section 7(2) of the Central Sales Tax Act 1956 and irrespective of them being not "liable to pay

tax" under the provisions of section 7(1) of the Central Sales Tax Act, as they were not selling those six commodities in the course of inter-State trade or commerce but, nonetheless their right to hold the registration under the Central Sales Tax Act independently exists and their right to purchase any of those six commodities at concessional rate also equally continues.

(c) The learned counsel urged that if the operatability of the Central Sales Tax Act was restricted only to the specified six commodities inasmuch as the sellers of those six commodities were concerned, the right of purchase in the course of inter-State trade or commerce of any of these six commodities could not be defeated by the Revenue and there is no question of pro tanto amendment of registration certificates of the assessees, as they are entitled to purchase these goods and their right has not been taken away, even by the enactment of GST law with effect from *July 1, 2017*. Consequently, the Revenue Department has taken a wholly misconceived stand in the form of the circular issued to the Joint Commissioners on *May 31, 2018* so as to deny the said benefit to the assessees.

(d) The learned counsel for the assessee reiterated before this court that the impugned circular has been issued by the learned Commissioner of Commercial Taxes on *May 31, 2018* which causes serious prejudice to the assessees like the respondent/assessees, without giving any opportunity of hearing to the assessees and the same is also without jurisdiction as the law under section 48A of the TNVAT Act, 2006 does not confer any such power upon the Commissioner to interpret the law according to his wisdom and enforce the same according to his wishes throughout the State. The said exercise could not have been undertaken by the learned Commissioner and therefore, the impugned circular dated *May 31, 2018* has been rightly set aside by the learned single judge and consequently, the notices issued to the assessees also deserves to be quashed. They emphasised particularly the following impugned part of the circular dated *May 31, 2018* issued by the Commissioner giving different categorisation of the dealers, which is violative of article 14 of the Constitution of India. The said circular dated *May 31, 2018* of the Commissioner is quoted below in extenso :

"COMMERCIAL TAXES DEPARTMENT

From :	To :
Dr. T. V. Somanathan, I. A. S., Commissioner of Commercial Taxes, Chepauk, Chennai 600 005.	All Joint Commissioners (Territorial)

Letter No. CC4/678/2012 dated 31st May 2018

Sir/Madam,

Sub : Commercial Taxes Department—Computerisation—*Generation of C Forms—Certain instructions*—Regarding.

———

Even after implementation of goods and services tax from July 2017, *Tamil Nadu value added tax continues to be administered by the Department in respect of six goods, viz., petroleum crude, high speed diesel, motor spirit (petrol), aviation turbine fuel, natural gas and liquor as these are outside the purview of GST.* The definition clause of goods in section 2(d) of the *Central Sales Tax Act* has been amended suitably incorporating the *above six goods only* and therefore all the *dealers who are not dealing in those goods* are not permitted to make use of benefits provided under the Central Sales Tax Act, 1956. *Accordingly, any dealer who deals in the above goods, i. e., who effect purchase and sales and those who effect purchases of those goods and manufactures those goods are alone eligible to be assessed under the Central Sales Tax Act, 1956* and they are mandated to file returns under the Central Sales Tax Act, 1956 in respect of inter-State transactions *and also under the TNVAT Act, 2006* in respect of intra-State transactions.

From the above, it is thus made clear that *any dealer who deals in those six goods are alone entitled to effect purchases from other State* by availing the concessional rate of tax. In other words, those dealers who are not dealing in those goods are *not eligible to purchase those six goods at the concessional rate* of tax at two per cent. by issue of C form declarations as they are trading or manufacturing those goods that are administered under the GST Act, 2017.

It is learnt from reliable sources that certain dealers who are not dealing in those goods are effecting purchase of those six goods and effecting sales and also using it indirectly for the manufacturing process for which they are not entitled. For example, certain manufacturing units are effecting *purchases of HSD and using it for generation of power out of which they manufacture finished goods* that are administered under the *GST Act, 2017*. In certain cases, the dealers are effecting purchases of petroleum products from other States and effect local sales and are not paying appropriate tax. Perusal of the data relating to generation of C forms pertaining to the quarter

January 2018 to March 2018 revealed the *following categories of dealers involved* :

1. *Major oil companies* that included IOC, BPCL, HPCL, shell, Reliance Industries, ONGC.

2. *Major distilleries* that included Golden Vats, SNJ Distilleries and TASMAC.

3. *Major hotels* that included ITC, Oriental Hotels, Crown Plaza, GRT Hotels, SAS Hotels Enterprises, TAJ GVK Hotels, Hablis Hotels, etc.

4. *Major clubs, resorts, cultural associations* that included Presidency Club, Madras Boat Club, Madras Gymkhana Club, Ootacamund Club, Andhra Social Cultural Association, Ideal Beach Resorts, etc.

5. *Other dealers not related to the above category* being spinning mills, Blue Metal Crusher Unit, ILFS Tamil Nadu Power Company, housing promoters, *cement companies (Ramco Cement), Mines, Nuclear Power Corporation*, etc.

The dealers mentioned in the serial number *1 to 4 are entitled to purchase petroleum products and alcoholic liquors* as they are *dealers* in those six commodities. The dealers mentioned in *serial number 5 are not entitled* to purchase petroleum products *as the goods manufactured are being taxed under GST*. This appears to have resulted in *large loss of revenue* from July 2017 till date *as these dealers should have effected purchases locally by paying higher rate of tax.* The analysis made is only with reference to the transaction period from January 2018 and March 2018. Similar exercise has to be carried out for the previous period and this *should be monitored in future* unless/ until those six goods are brought within the purview of GST. It is also brought to the notice of this office that certain authorized dealers of major oil companies may be effecting purchase of petroleum products by issue of C forms and effect local sales and may not be paying tax on their first sale inside the State of Tamil Nadu as per the rate specified in the Second Schedule to the TNVAT Act, 2006. This may have become more prevalent in the circumstances of rising prices of petroleum products.

In order to *plug the leakage of revenue due to the State in respect of non-GST goods, it becomes essential to ensure that—*

(i) all the registered dealers who have migrated to GST are not misusing the C form declaration for the purpose of effecting purchase

of petroleum products and using it for manufacture of other goods that are administered under the GST Act, 2017, and

(ii) authorised dealers of major oil companies make payment of first sale tax at the rate specified in the Second Schedule to the TNVAT Act, 2006.

Hence, all the Joint Commissioners (Territorial) are requested to issue necessary instructions to all the assessing officers to take necessary action against :

1. Those dealers who use the declaration form C for purchase of those six goods at concessional rate and not paying tax on the sales by making proper assessment under section 22(4) of the TNVAT Act, 2006.

2. *Those dealers who have migrated to GST and not entitled to purchase those six goods as per section 8(2)* and section 2(d) of the Central Sales Tax Act, 1956 by initiating action under section *10A* for the offence committed under section *10A* of the Central Sales Tax Act, 1956.

All the Joint Commissioners (Territorial) are also requested to issue necessary instruction to the assessing officers concerned that wherever approval is required for generation of C forms, they should be approved *after verifying the eligibility of issue of those declaration in order to protect against loss of revenue to the State.* The receipt of this letter has to be acknowledged by all the Joint Commissioners by return of mail.

(Sd.) . . . . . .

31/05/18

For Commissioner of Commercial Taxes."

8 Both the learned counsel relied on the case laws also which would be dealt with by us a while later.

9 Having heard the rival submissions and upon careful reading of the relevant provisions of law and the scheme of the various enactments including the introduction of new GST regime with effect from *July 1, 2017* and the case laws cited at the Bar, we are of the considered opinion that there is no merit in the present writ appeals filed by the State and respectfully agreeing with the view taken by the various other High Courts and affirming the view of the learned single judge, we are inclined to dismiss the present writ appeals filed by the Revenue Department for the following reasons.

10 The first and foremost contention raised on behalf of the appellant/State that since the respondents/assessees have lost their entitlement to be

registered under the provisions of the Central Sales Tax Act 1956 and the consequential changes in the statute, they no longer remain as dealer "liable to pay" tax under the Central Sales Tax Act, as they do not sell any of the six specified commodities like fuel, diesel, etc., is misconceived. The provisions of section 7 of the Central Sales Tax Act are quoted below for ready reference—

"7. *Registration of dealers*.—(1) Every dealer *liable to pay tax under this Act shall*, within such time as may be prescribed for the purpose, make an application for registration under this Act to such authority in the appropriate State as the Central Government may, by general or special order, specify, and every such application shall contain such particulars as may be prescribed.

(2) Any dealer liable to pay tax under the sales tax law of the appropriate State, *or where there is no such law in force in the appropriate State or any part thereof, any dealer having a place of business in that State or part, as the case may be, may, notwithstanding that he is not liable to pay tax under this Act*, apply for registration under this Act to the authority referred to in sub-section (1), and every such application shall contain such particulars as may be prescribed.

Explanation.— For the purposes of this sub-section, *a dealer shall be deemed to be liable to pay tax* under the sales tax law of the appropriate State *notwithstanding that under such law a sale or purchase made by him is exempt from tax or a refund or rebate of tax is admissible in respect thereof*.

(2A) Where it appears necessary to the authority to whom an application is made under sub-section (1) or sub-section (2) so to do for the proper realisation of the tax payable under this Act or for the proper custody and use of the forms referred to in clause (a) of the first proviso to sub-section (2) of section 6 or sub-section (1) of section 6A or sub-section (4) of section 8, he may, by an order in writing and for reasons to be recorded therein, impose as a condition for the issue of a Certificate of Registration a requirement that the dealer shall furnish in the prescribed manner and within such time as may be specified in the order such security as may be so specified, for all or any of the aforesaid purposes.

(3) If the authority to whom an application under sub-section (1) or sub-section (2) is made is satisfied that the application is in conformity with the provisions of this Act and the rules made thereunder and the condition, if any, imposed under sub-section (2A), has been complied with, *he shall register the applicant* and grant to him a

certificate of registration in the prescribed form which shall specify the class or classes of goods for the purposes of sub-section (1) of section 8.

(3A) Where it appears necessary to the authority granting a certificate of registration under this section so to do for the proper realisation of tax payable under this Act or for the proper custody and use of the forms referred to in sub-section (3A), he may, at any time while such certificate is in force, by an order in writing and for reasons to be recorded therein, require the dealer, to whom the certificate has been granted, to furnish within such time as may be specified in the order and in the prescribed manner *such security*, or, if the dealer has already furnished any security in pursuance of an order under this sub-section or sub-section (2A), *such additional security*, as may be specified in the order, for all or any of the aforesaid purposes.

(3B) No dealer shall be required to furnish any security and sub-section (2A) or any security or additional security under sub-section (3A) unless he has been given an opportunity of being heard.

(3BB) The amount of security which a dealer may be required to furnish under sub-section (2A) or sub-section (3A) or the aggregate of the amount of such security and the amount of additional security which he may be required to furnish under sub-section (3A), by the authority referred to therein shall not exceed,—

(a) in the case of a dealer other than a dealer who has made an application, or who has been registered in pursuance of an application, under sub-section (2), a sum *equal to the tax payable under this Act*, in accordance with the estimate of such authority, on the turnover of such dealer for the year in which such security or, as the case may be, additional security is required to be furnished ; and

(b) in the case of a dealer who has made an application, or who has been registered in pursuance of an application, under sub-section (2), a sum equal to the tax leviable under this Act, in accordance with the estimate of such authority on the sales to such dealer in the course of inter- State trade or commerce in the year in which such security or, as the case may be additional security is required to be furnished, had such dealer been not registered under this Act.

(3C) Where the security furnished by a dealer under sub-section (2A) or sub-section (3A) is in the form of a surety bond and the surety becomes insolvent or dies, the dealer shall, within thirty days of the occurrence of any of the aforesaid events, inform the authority granting the certificate of registration and shall within ninety days of such

occurrence furnish a fresh surety bond or furnish in the prescribed manner other security for the amount of the bond.

(3D) The authority granting the certificate of registration may by order and for good and sufficient cause *forfeit the whole or any part of the security* furnished by a dealer,—

(a) for realising any amount of tax or penalty payable by the dealer ;

(b) if the dealer is found to have *misused any of the forms* referred to in sub-section (2A) to have failed to keep them in proper custody :

Provided that no order shall be passed under this sub-section without giving the dealer an opportunity of being heard.

(3E) Where by reason of an order under sub-section (3D), the security furnished by any dealer is rendered insufficient, he shall make up the deficiency is such manner and within such time as may be prescribed.

(3F) The authority issuing the forms referred to in sub-section (2A) may refuse to issue such forms to a dealer who has failed to comply with an order under that sub-section or sub-section (3A), or with the provisions of sub-section (3C) or sub-section (3E), until the dealer has complied with such order or such provisions, as the case may be.

(3G) The authority granting a certificate of registration may, on application by the dealer to whom it has been granted, order the refund of any amount or part thereof deposited by the dealer by way of security under this section, if it is not required for the purposes of this Act.

(3H) Any person aggrieved by an order passed under sub-section (2A), sub-section (3A), sub-section (3D) or sub-section (3G) may, within thirty days of the service of the order on him, but after furnishing the security, prefer, in such form and manner as may be prescribed, an appeal against such order to such authority (hereinafter this section referred to as the 'appellate authority' as may be prescribed :

Provided that the appellate authority may, for sufficient cause, permit such person to present the appeal,—

(a) after the expiry of the said period of thirty days ; or

(b) without furnishing the whole or any part of such security.

(3I) The procedure to be followed in hearing any appeal under sub-section (3H), and the fees payable in respect of such appeals shall be such as may be prescribed.

(3J) The order passed by the appellate authority in any appeal under sub-section (3H) shall be final.

(4) *A certificate of registration* granted under this section may,—

(a) either on the application of the dealer to whom it has been granted or, where no such application has been made, after due notice to the dealer, *be amended by the authority* granting it if he is satisfied that by reason of the registered dealer *having changed the name, place or nature of his business* or the class or classes of goods, in which he carries on business or for any other reason the certificate of registration granted to him requires to be amended ; or

(b) *be cancelled by the authority* granting it where he is satisfied, after due notice to the dealer to whom it has been granted, that *he has ceased* to carry on business or has ceased to exist or has failed without sufficient cause, to comply with an order under sub-section (3A) or with the provisions of sub-section (3C) or sub-section (3E) or has failed to pay any tax or penalty payable under this Act, or in the case of a dealer registered under sub-section (2) *has ceased to be liable to pay tax under the sales tax law of the appropriate State* or for any other sufficient reason.

(5) A registered dealer may apply in the prescribed manner not later than six months before the end of a year to the authority which granted his certificate of registration for the cancellation of such registration, and the authority shall, *unless the dealer is liable to pay tax under this Act, cancel the registration accordingly*, and where he does so, the cancellation shall take effect from the end of the year."

11 A careful reading of the provisions will make it clear that registration only under section 7(1) of the Central Sales Tax Act depends upon the liability to pay tax, which arises under section 6 of the Act, which is also quoted below for ready reference :

"6. *Liability to tax on inter-State sales*.—(1) Subject to the other provisions contained in this Act, *every dealer* shall, with effect from such date as the Central Government may, by notification in the Official Gazette, appoint, not being earlier than thirty days from the date of such notification, *be liable to pay tax under this Act on all sales of goods other than electrical energy* effected by him in the course of inter-State trade or commerce during any year on and from the date so notified :

Provided that a dealer *shall not be liable to pay tax* under this Act on any sale of goods which, in accordance with the provisions of sub-section (3) of section 5 is a *sale in the course of export* of those goods out of the territory of India.

(1A) A dealer shall be liable to pay tax under this Act on a sale of any goods effected by him in the course of inter-State trade or commerce *notwithstanding that no tax would have been leviable (whether on the seller or the purchaser) under the sales tax law of the appropriate State* if that sale had taken place inside that State.

(2) Notwithstanding anything contained in sub-section (1) or sub-section (1A), where a sale of any goods in the course of inter-State trade or commerce has either occasioned the movement of such goods from one State to another or has been effected by a transfer of documents of title to such goods during their movement from one State to another, *any subsequent sale during such movement effected by a transfer of documents of title to such goods* to a registered dealer, if the goods are of the description referred to in sub-section (3) of section 8, shall be exempt from tax under this Act :

Provided that no such subsequent sale shall be exempt from tax under this sub-section unless the dealer effecting the sale furnishes to the prescribed authority in the prescribed manner and within the prescribed time or within such further time as that authority may, for sufficient cause, permit,—

(a) a certificate duly filled and signed by the registered dealer from whom the goods were purchased containing the prescribed particulars in a prescribed form obtained from the prescribed authority ; and

(b) if the subsequent sale is made to a registered dealer, a declaration referred to in sub-section (4) of section 8 :

Provided further that it shall not be necessary to furnish the declaration referred to in clause (b) of the preceding proviso in respect of a subsequent sale of goods if,—

(a) the sale or purchase of such goods is, under the sales tax law of the appropriate State *exempt from tax generally or is subject to tax generally at a rate which is lower than three per cent*. or such reduced rate as may be notified by the Central Government, by notification in the Official Gazette, under sub-section (1) of section 8 (whether called a tax or fee or by any other name) ; and

(b) the dealer effecting such subsequent sale proves to the satisfaction of the authority referred to in the preceding proviso that such sale is of the nature referred to in this sub-section.

(3) *Notwithstanding anything contained in this Act, no tax under this Act shall be payable by any dealer* in respect of sale of any goods made by such dealer, in the course of inter-State trade or commerce, to any official, personnel, consular or diplomatic agent of—

(i) any foreign diplomatic mission or consulate in India ; or

(ii) the United Nations or any other similar international body, entitled to privileges under any convention or agreement to which India is a party or under any law for the time being in force, if such official, personnel, consular or diplomatic agent, as the case may be, has purchased such goods for himself or for the purposes of such mission, consulate, United Nations or other body.

(4) The provisions of sub-section (3) shall not apply to the sale of goods made in the course of inter-State trade or commerce unless the dealer selling such goods furnishes to the prescribed authority a certificate in the prescribed manner on the prescribed form duly filled and signed by the official, personnel, consular or diplomatic agent, as the case may be."

12 Section 8 of the Central Sales Tax Act, 1956 is also quoted below for ready reference :

"*8. Rates of tax on sales in the course of inter-State trade or commerce.*—(1) Every dealer, who in the course of inter-State trade or commerce, *sells to a registered dealer* goods of the description referred to in sub-section (3), *shall be liable to pay tax under this Act, which shall be three per cent. of his turnover* or at the rate applicable to the sale or purchase of such goods inside the appropriate State under the sales tax law of that State, whichever is lower :

Provided that the Central Government may, by notification in the Official Gazette, reduce the rate of tax under this sub-section.

(2) The tax payable by any dealer on his turnover in so far as the turnover or any part thereof relates to the sale of goods in the course of inter-State trade or commerce not falling within sub-section (1), *shall be at the rate applicable to the sale or purchase of such goods the appropriate State under the sales tax law of that State.*

Explanation.—For the purposes of this sub-section, a dealer shall be deemed to be a dealer liable to pay tax under the sales tax law of

the appropriate State, notwithstanding that he, in fact, may not be so liable under that law.

(3) The goods referred to in sub-section (1), (a) . . .

. . .

(b) . . . *are goods of the class or classes specified in the certificate of registration* of the registered dealer purchasing the goods as being intended for re-sale by him or subject to any rules made by the Central Government in this behalf, for *use by him in the manufacture or processing of goods for sale or in the telecommunications net-work or in mining or in the generation or distribution of electricity* or any other form of power ;

(c) are containers or other materials specified in the certificate of registration of the registered dealer purchasing the goods, being containers or materials intended for being used for the packing of goods for sale ;

(d) are containers or other materials used for the packing of any goods or classes of goods specified in the certificate of registration referred to in clause (b) or for the packing of any containers or other materials specified in the certificate of registration referred to in clause (c).

(4) The provisions of sub-section (1) shall not apply to any sale in the course of inter-State trade or commerce unless the dealer selling the goods furnishes to the prescribed authority in the prescribed manner a declaration duly filled and signed by the registered dealer to whom the goods are sold containing the prescribed particulars in a prescribed form obtained from the prescribed authority :

Provided that the declaration is furnished within the prescribed time or within such further time as that authority may, for sufficient cause, permit.

(5) *Notwithstanding* anything contained in this section, the State Government may on the fulfilment of the requirements laid down in sub-section (4) by the dealer, if it is satisfied that it is necessary so to do in the public interest, by notification in the Official Gazette and subject to such conditions as may be specified therein direct,—

(a) that no tax under this Act shall be payable by any dealer having his place of business in the State in respect of the sales by him, in the course of inter-State trade or commerce, to a registered dealer from any such place of business of any such goods or classes of goods as may be specified in the notification, or that the tax on such sales

shall be calculated at such lower rates than those specified in sub-section (1) as may be mentioned in the notification ;

(b) that in respect of all sales of goods or sales of such classes of goods as may be specified in the notification, which are made, in the course of inter-State trade or commerce, to a registered dealer by any dealer having his place of business in the State or by any class of such dealers as may be specified in the notification to any person or to such class of persons as may be specified in the notification, no tax under this Act shall be payable or the tax on such sales shall be calculated at such lower rates than those specified in sub-section (1) as may be mentioned in the notification.

(6) *Notwithstanding* anything contained in this section, no tax under this Act shall be payable by any dealer in respect of sale of any goods made by such dealer, in the course of inter-State trade or commerce *to a registered dealer for the purpose of setting up*, operation, maintenance, manufacture, trading, production, processing, assembling, *repairing, reconditioning, re-engineering, packaging or for use as packing material* or packing accessories in a unit located in any special economic zone or for development, operation and maintenance of special economic zone by the developer of the special economic zone, if such registered dealer has been authorised to establish such unit or to develop, operate and maintain such special economic zone by the authority specified by the Central Government in this behalf.

(7) The goods referred to in sub-section (6) shall be the goods of such class or classes of goods *as specified in the certificate of registration* of the registered dealer referred to in that sub-section.

(8) The provisions of sub-sections (6) and(7) shall not apply to any sale of goods made in the course of inter-State trade or commerce unless the dealer selling such goods furnishes to the prescribed authority referred to in *sub-section (4) a declaration in the prescribed manner on the prescribed form obtained from* the authority specified by the Central Government under sub-section (6), duly filled in an signed by the registered dealer to whom such goods are sold.

Explanation.—For the purposes of sub-section (6), the expression 'special economic zone' has the meaning assigned to it in clause (iii) to *Explanation 2* to the proviso to section 3 of the Central Excise Act, 1944 (1 of 1944)."

13 It is true that the liability to pay tax arises under the provisions of the Central Sales Tax Act only upon seller who effects the taxable sale in the course of inter-State trade or commerce and only such dealers can initially

obtain the registration under section 7(1) of the Act, but, the liability to pay tax on purchase of goods is an independent liability of purchasing dealer also to pay tax. Section 7(1) only casts an obligation on the seller liable to pay tax as per section 6 and to obtain registration. It does not talk of registration or cancellation there of any purchasing dealer. Section 7(2) provides independent right of any dealer to obtain registration under the provisions of the Central Sales Tax Act. The said provisions of section 7(2) of the Act are in two parts which are joined by the words "or" which means independent clauses. In the first category, the dealer is liable to pay tax under the sales tax law of the appropriate State and in the second category, where there is no such law in force in the appropriate State or any part thereof, any dealer having a place of business in the State or part, as the case may be, may, notwithstanding that he is not liable to pay tax under the Act, apply for registration under the Act. Therefore, the liability to pay tax under the provisions of Central sales tax fixed on the seller is not a condition precedent or the only contingency for getting himself registered under the provisions of the Central Sales Tax Act. Even a person, who is only purchasing goods in the inter-State trade or commerce, who may not be liable to pay tax under the provisions of the Central Sales Tax Act as a seller can also secure registration under the provisions of the said Act and can continue with it. Even a dealer liable to tax under State sales tax law, which may include even new State GST Act, 2017, can obtain registration under the Central Sales Tax Act. In the present case, the assessee, a cement company, continues to be liable to pay tax under local TNVAT Act, 2006 if it sells or purchases any of these six goods also. The TNVAT Act also has not been completely repealed but now applies only to these six commodities after *July 1, 2017* as per section 174 of the TNGST Act, 2017.

Therefore, on a conjoint reading of both sub-sections (1) and (2) of section 7 of the Central Sales Tax Act, it is clear that the respondents/assessees and their likes can continue to have registration under the provisions of the Central Sales Tax Act and the contention raised on behalf of the Revenue that they have lost their entitlement to be so registered is misconceived and liable to be rejected. We, accordingly, reject the same. **14**

The fact that the definition of "goods" has been amended with effect from *July 1, 2017* under the provisions of the Central Sales Tax Act to restrict it to six commodities specified in section 2(d) of the Act does not mean that the entire scope of the operation of the Central Sales Tax Act has been amended. The rights of the purchasing dealers of the goods including the rights to purchase at a concessional rate against declaration in C forms continues unabated under section 8(3)(b) of the Act which has not been **15**

amended in 2017. The scope of the term goods as defined in section 2(d) of the Act does not obliterate such seemless flow of the inter-State trade or the operatability of the Central Sales Tax Act for both selling dealers as well as purchasing dealers throughout the country. The Legislature never intended to do so while restricting the applicability of the Central Sales Tax Act only to six specified commodities and take them out of GST law and taking all other commodities except the six specified items in the GST tax law regime. Such a view on the part of the Revenue is self defeatative and cannot be countenanced by the court.The freedom of trade including the right to purchase in the course of inter-State trade or commerce enshrined in article 301 read with article 304(b) is not taken away by GST regime laws.

16 The contention raised on behalf of the State is that the words in section 7(2) of the Act, viz., "*or where there is no such law in force in the appropriate State or any part thereof*" were introduced by the Central Sales Tax (II Amendment) Act, 1958 (Act 31 of 1958) because there were some States, at least six States/Union Territories, where there was no Sales Tax Act during 1958 when the said amendment was made in the year 1958 and therefore, to entitle the dealers of those States where there was no local sales tax law applicable also to obtain registration under the provisions of the Central Sales Tax Act, those words were added in section 7(2) of the Act. The learned Special Government Pleader for the Revenue, Mr. Mohammed Shaffiq, therefore, submitted that where the proper sales tax law of the State is available right from the beginning like in Tamil Nadu and therefore, the dealers registered under the sales tax law of the Tamil Nadu State cannot per se claim the registration under the Central Sales Tax Act even if they are not liable to pay tax as seller under the Central Sales Tax Act and therefore, the registration certificates already issued to them deserve to be treated as non est and void pro tanto upon such amendment of laws with effect from *July 1, 2017* when the GST laws introduced in the State with the consequential amendments in the Central Sales Tax Act. He relied upon the decision of *Modi Spinning and Weaving Mills Co. Ltd.* [1965] 16 STC 310 (SC) to support this contention of pro tanto amendment. He also relied upon the decision of the honourable Supreme Court in the case of *Mar Appraem Kuri Co. Ltd.* [2012] 174 Comp Cas 339 (SC) ; [2012] 7 SCC 106 wherein the honourable Supreme Court, dealt with the case of (Central) Chit Funds Act, 1982 and also a parallel statute in the case of Kerala State Act (23 of 1975), the court held that the State Act was repugnant to the (Central) Chit Fund Act, 1982 and therefore, it should be deemed to have been impliedly repealed by the Central Chit Funds Act, 1982.

These contentions of the learned Special Government Pleader for the Revenue, though attractive at the first instance, also do not merit acceptance by this court. The reason is that the Central Sales Tax Act deals with both the circumstances of sales or purchase in the course of inter-State trade or commerce. While the inter-State sale or purchase is at the bottom of the bedrock of this enactment, the dealers can either by selling the goods in the course of inter-State trade or commerce or by purchasing the goods in the course of inter-State trade or commerce can continue to do so of course for these six commodities as per the provisions of the Central Sales Tax Act, 1956 as amended now. The mere restriction of the operation of the Central Sales Tax Act with respect to six commodities with effect from July 1, 2017 does not take away the right of the purchasing dealers to purchase such goods in the course of inter-State trade or commerce under the said Act and their registration cannot be said to be either pro tanto cancelled nor they can be cancelled as a matter of right by the Revenue Department. The right to deal with in those six goods still continues to vest in the purchasing dealers and therefore, this contention is misconceived. Can the Revenue deny the right to sell any of these six goods to these assesses subject to their compliance with licensing requirements, if any ? The answer would be no. Then how can they deny their right to purchase. **17**

Sections 4, 5 and other provisions of the Central Sales Tax Act talk of both sale or purchase of goods in the course of inter-State trade or commerce. Therefore, the right to purchase, which is, essentially, apart of freedom of trade under article 301 and 304 of the Constitution, cannot be taken away on the anvil of the argument raised by the learned counsel for the Revenue. Equally, the liability of these dealers to pay tax under local TNVAT Act on these six commodities also continues after July 1, 2017 if sale or purchase is made within the State. Therefore, their right to hold registration under the Central Sales Tax Act, 1956 cannot be denied to them under section 7 of the Act **18**

The next contention of the learned Special Government Pleader for the Revenue is that concessional rate of tax under section 8(1) of the Act has to be read with the conditions specified in section 8(3)(b) of the Act viz., against the declaration in C forms and therefore, such a provision for giving concessional rate of tax should be strictly construed and the said right should be deemed to have been taken away with the amendment in law with the GST regime coming into force. **19**

This is also a contention equally devoid of merit. Even a strict, literal and plain construction of provisions of the Act does not, in the opinion of this court, disentitle the purchasing dealers to purchase these six goods at **20**

concessional rate against C forms in the course of inter-State trade or commerce. Since the first contention of the State that the registration of such purchasing dealer itself is liable to be treated as void is a misconceived contention, this second contention raised for denial of the concessional rate of tax to such purchasing dealers is equally unacceptable. Since the purchasing dealers can continue to hold their registration under the provisions of Central Sales Tax Act despite the GST law coming into force on *July 1 2017*, their right to purchase at concessional rate by using declaration in C forms under section 8(1) of the Act read with sub-section (3)(b) of the Act also continues unabated even after *July 1, 2017* and therefore, there is no merit in the contention raised on behalf of the appellant/Revenue.

21 On the other hand, we find considerable force in the contention raised on behalf of the assessees that the provisions of section 8(3) of the Act have to be construed, *ut res magis valeat quam pareat*, (it is better for a thing to have effect than to be made void) so as to make the provision workable. Section 8(3) of the Act cannot be construed to be rendered unworkable because the text of the said provision does require liability of the dealer to be discharged by the persons who purchase those six specified goods in the course of inter-State trade or commerce and to provide a seemless, harmonious and smooth operation of the amended the Central Sales Tax Act, 1956, the right to purchase the six commodities against C forms has to be continued in the hands of the purchasing dealers.

22 It may also be noted here that the TNVAT Act, 2006, the State sales tax law has also not been completely abolished with the introduction of GST regime with effect from *July 1, 2017*. It has been restricted for those six items in terms of amended entry 54 and to which the GST regime is not extended. Therefore, the sale or purchase of those six items, under the State Sales Tax Act, is even indeed permitted. Therefore, the respondent/assessee and other dealers continued to have liability to pay sales tax or VAT under the local State VAT law and therefore, they are entitled to continue their State law registration and on the anvil of that they are equally entitled to registration under the Central Sales Tax Act, 1956. Therefore, even if the conditions required to be complied under section 7(1) are fulfilled by the respondent/assessee, it is not correct in law to contend that their registration should, either pro tanto, be deemed to be cancelled under GST or it is, otherwise, also liable to be cancelled. The manufactured goods by them being governed by GST law is irrelevant for deciding their continued right to purchase diesel, etc., against C forms. If resale or manufacturing of goods was to be the acid test for use of C forms, it would not have been

allowed for the purposes like power generation, mining or even tele-network communication operations.

Another ground raised by the learned counsel for the Revenue about the **23** validity of the circular issued by the Commissioner on *May 31, 2018* which has been quashed by the learned single judge, is also without any merit. The provisions of the TNVAT Act contained in section 48A of the Act, which is quoted below, does not empower the Commissioner to issue any such circular or for general interpretation of laws for any such dealers to obtain the declaration in C forms and use them for specified purposes under section 8(3)(b) of the Central Sales Tax Act, 1956.

> *"48A. Clarification and Advance Ruling*.—(1) The Government may constitute a State Level Authority for Clarification and Advance Ruling, (hereinafter in this section, referred to as the authority), comprising of the Commissioner of Commercial Taxes and two Additional Commissioners *to clarify, any point concerning the rate of tax*, on an application by a registered dealer :
>
> Provided that no such application shall be entertained unless it is accompanied by proof of payment of such fee, paid in such manner, as may be prescribed.
>
> (2) *No application* shall be entertained where the question raised in the application,—
>
> (i) *is already pending* before any appellate or revising authority of the Department or Appellate Tribunal or any court ; or
>
> (ii) relates to an issue which is designed *apparently for avoidance of tax* :
>
> Provided that no application shall be rejected under this sub-section without giving the applicant *a reasonable opportunity of being heard* and where the application is rejected, reasons for such rejection, shall be recorded in the order.
>
> (3) The order of the authority *shall be binding*,—
>
> (i) *on the applicant* who has sought for the clarification or advance ruling ;
>
> (ii) *in respect of the goods* in relation to which the clarification of advance ruling was sought ; and
>
> (iii) *on all the officers* working under the control of the Commissioner of Commercial Taxes.
>
> (4) The authority shall have *power to review, amend or revoke its clarification or advance ruling at any time* for good and sufficient

cause after giving an opportunity of being heard to the affected parties.

(5) An order giving effect to such review or amendment or revocation shall not be subject to the period of limitation."

24 Section 48A of the TNVAT Act only empowers the Commissioner to issue clarification and advance ruling only with regard to any point concerning the rate of tax applicable on particular transaction or commodities. Sub-section (2) on the other hand restricts the clarifications to be issued where any such issue is pending before any regular authorities in the appeal or revisional forums or any appellate forum or Tribunal or court and also prohibits the assessees to raise such issues and seek clarifications for avoidance of tax. Sub-section (1) is very clear which empowers the Commissioner to issue clarifications and advance rulings on any point concerning rate of tax only. Sub-section (2) is couched in negative to provide when such applications are not maintainable. Sub-section (3) makes such orders binding on the applicants and in respect of goods for which the clarification of advance ruling was sought and it makes such order binding on all the officers working under the control of such Commissioner.

25 Therefore, the scope of section 48A is very limited and does not empower the said Commissioner to issue such general circulars or any guidelines to the lower authorities in the State. Besides thus, being without jurisdiction and any statutory support, the impugned circular dated May 31, 2018 is also passed in violation of principles of natural justice. There is no justification for creating any invidious classification by creating categories of dealers, arbitrarily, in violation of article 14 of the Constitution as has been done in the impugned circular. When the first four categories of dealers are entitled to use C forms, the dealers specified in fifth category like cement industries, etc., who have been denied such benefit, such classification or differentiation has no rational nexus to the object sought to be achieved by the said circular. It undoubtedly causes serious injustice and denial of freedom of dealers specified in the fifth category to purchase specified six commodities at the concessional rate against declaration in C forms and therefore, any such circular, which is not in the nature of an administrative order and being a quasi-judicial order and having civil and evil consequences, could not have been passed without affording an opportunity of hearing to the person(s) concerned and apparently that has not been done and therefore, on both these counts, the impugned circular fails in law and has been rightly quashed by the learned single judge. The mere target to achieve more revenue, as has been mentioned in the impugned circular itself, also cannot be a reason to sustain such circulars

and tax collection, without authority of law is a bane under the Constitutional Scheme and therefore, we are of the opinion that the learned Commissioner has exceeded his jurisdiction to issue such a circular. Such similar circulars have been issued in other States also and some of the judgments, which we are citing below, have quashed those circulars. Thus, the judgment under appeal of the learned single judge deserves to be confirmed on all counts.

26 The contention raised on behalf of the Revenue that registration of the respondent/assessee deserves to be cancelled or should be impliedly deemed to be cancelled pro tanto upon amendment of the law is wrong and also has no reason. Firstly, as we have already observed, the TNVAT does not get completely repealed and therefore, the assessees are liable to pay tax under the TNVAT Act if such purchases are made within the State and therefore, their liability to hold their registration certificate would also equally continue. Secondly, the State GST enacted by the State Legislature is also the sales tax law of the appropriate State under which for other commodities manufactured by the respondent/assessees, the liability to pay tax on sale of such goods continues and therefore, these dealers, who had already obtained their registration under the Central Sales Tax Act, 1956 and have now obtained registration both under new IGST Act and SGST Act, their registration under the old laws like Central Sales Tax Act, 1956 and State VAT law are also bound to continue even after July 1, 2017.

27 Therefore, what has been contended by the learned counsel for the Revenue can be applied equally against the Revenue Department and the registration of the dealers in respect of six commodities deserves to continue under old laws like State VAT Act and Central Sales Tax Act, 1956. We should also note that grant of registration certificate under the old law as well as new law is not an administrative order, but, a quasi-judicial act or order, which confers certain rights on the sealers and also certain obligations under such registration certificates. The provision for the amendment or cancellation of such registration certificates is also specified in the respective enactments and the same can be done only upon an opportunity of hearing granted to the dealers concerned. Therefore, there is no scope of any implied cancellation or repeal of the registration certificates as was contended by the learned counsel for the Revenue. We cannot accept such a flimsy submission only to subserve the interest of more revenue and for which purpose the learned Commissioner has issued the impugned circular dated *May 31, 2018* which we have already indicated above, does not deserve to hold the field and is liable to be quashed. Therefore, viewed from any angle, all the contentions raised by the learned counsel for the

Revenue Mr. Mohammed Shaffiq have no legal basis to be sustained and are, therefore, liable to be rejected. We, accordingly, reject the same.

28 It may be noted here that the decision to keep those six commodities out of GST regime wherein separate laws were enacted by the Parliament and the State Legislatures even by amending entry 54 of the Seventh Schedule was a deliberate political decision and therefore, the GST Council was constituted of all the States for representation and not only separate GST Acts were enacted by the States, but separate Central IGST Act was also enacted by the Parliament akin to the Central Sales Tax Act and the concept of "sale" was substituted by the concept of "supply", comprising of total and broader spectrum of transactions of sale of goods as well as rendering of services was included as a taxable event in the GST law. However, the inter-State trade or commerce or international trade or commerce was kept as a field of taxation reserved for the legislation by Union Government only, in the 101st Amendment of the Constitution of India. The freedom of trade in the course of inter-State trade or commerce is thus a part of basic features of the Constitution of India and such freedom of trade enshrined in the Constitution was liable to be protected, even with the new GST regime. Such freedom to purchase even at the concessional rate of tax continued in the amended and protected Central Sales Tax Act, 1956 and only substance of the amendment in the Central Sales Tax Act was to restrict it to the six specified commodities. The debates for even taking these six commodities in the GST tax regime is still continuing. But, till that happens by enactment of proper statutes or proper Amendment of GST laws, the said six commodities have been kept under the umbrella of Central Sales Tax Act, 1956 by suitably amended definition of "goods" under section 2(i) of the Central Sales Tax Act, 1956.

29 Therefore, the intention of the Legislature, by the series of amendments, cannot be inferred in the manner canvassed by the learned counsel for the Revenue so as to defeat the right of the purchasing dealers to purchase at the concessional rate against declaration in C form even the said six commodities. No law has prohibited any such dealers, who purchase the six commodities to start even selling these six commodities and therefore, the respondent/assessee like M/s. Ramco Cements Ltd. can even sell any of those six commodities, subject to their complying with other licensing requirements, if any. Therefore, their act of purchasing any of these six commodities under the Central Sales Tax Act cannot be adversely affected.

30 Some discussion of the cited case laws now is considered opportune.

31 In *Carpo Power Limited* v. *State of Haryana* [2018] 53 GSTR 24 (P&H), a Division Bench of the Punjab and Haryana High Court held that since

section 8 of the Central Sales Tax Act, rule 12 of the Central Sales Tax (R and T) Rules and declaration form C have not undergone any amendment, the Revenue Department cannot put any restriction on the usage of C forms only in view of the amendment of definition of "goods" in section 2(d) of the Central Sales Tax Act. They also highlighted the additional user of C forms provided for purchase of goods against C form in the telecommunication network which was added in the relevant rule at a subsequent stage. The court even granted refund of the excess tax paid by the assessee for the wrongful refusal to issue C forms to the assessee. The relevant portion of the decision is quoted below for ready reference (paras 26 to 28, pages 42 and 43 in 53 GSTR) :

> "25. The provisions of *section 8 of the Central Sales Tax Act, rule 12 of the Central Sales Tax (R and T) Rules and declaration form C have not undergone any amendment* after the implementation of the GST laws. There cannot be any occasion to restrict the usage of C form only for the purposes of re-sale of the six items mentioned in the amended definition of 'goods' in *section 2*(d) of the *Central Sales Tax Act*. The purchase of the said goods for purposes of re-sale, use in the manufacture or processing of goods for sale, in the telecommunications network or mining or in generation or distribution of electricity or any other form of power would qualify the purchaser for registration under *section 7(2)* of the Central Sales Tax Act. *Section 7(2)* does not stipulate that only a dealer liable to pay tax under the sales tax law of the appropriate State in respect of any particular goods is entitled to apply for registration. Nor does section *7(2)* stipulate that an application for registration can be made or C form can be issued only in respect of the sale of the same goods prescribed in the course of an inter-State sale. *A dealer liable to pay tax under the sales tax law of the appropriate State in respect of any goods would be covered by section 7(2) of the Act.*
>
> 26. There is another aspect of the matter that the *registration certificate given to the petitioner under the Central Sales Tax Act till date has not been cancelled*. As per *section 7(4) of the Central Sales Tax Act*, the registration certificate granted has to be amended or cancelled. The said provisions have not been invoked. In these circumstances, the writ petition is allowed. *It is held that the respondents are liable to issue C forms in respect of the natural gas purchased by the petitioner from the oil companies in Gujarat and used in the generation or distribution of electricity at its power plants in Haryana*. In the event of the petitioner having had to pay the oil companies any

amount on account of the first respondent's wrongful refusal to issue C forms the *petitioner shall be entitled to refund and/or adjustment of the same* from the concerned authorities who collected the excess tax through the oil companies or otherwise. The concerned authorities shall process such a claim within twelve weeks of the same being made by the petitioner in writing and the petitioner furnishing the requisite documents/form."

32 As already noted above, the said judgment has been affirmed by the honourable Supreme Court with the dismissal of *SLP No. 20572 of 2018* (State of Haryana v. *Carpo Power Ltd.*, dated August 13, 2018). The brief order of the honourable Supreme Court dated August 13, 2018 reads as follows :

"Heard the learned counsel for the petitioners and perused the relevant material. *We do not find any legal and valid ground for interference.* The special petition is dismissed."

33 A learned single judge of the Rajasthan High Court in *Hindustan Zinc Limited* v. *State of Rajasthan* [2019] 64 GSTR 366 (Raj) decided on May 18, 2018 followed the decision of the Punjab and Haryana High Court and issued directions to the Revenue Department to issue C forms to purchase high speed diesel, oil for mining purpose in the course of inter-State trade or commerce despite the GST law introduced with effect from July 1, 2017. The relevant portion of the said order is quoted below for ready reference (page 373 in 64 GSTR) :

"16. In the present case too, the Parliament has retained high speed diesel along with petroleum crude, motor spirit, natural gas, aviation turbine fuel and alcoholic liquor for human consumption crude which have been specifically mentioned in section 9 of the GST Act while defining the 'goods'. Besides, the registration under section 7(2) of the Act is still valid and has not been cancelled and can be cancelled only within the parameters of section 4 of the Central Sales Tax Act. Hence, this court finds that it is *obligatory duty of the respondents to issue C form* to the petitioner-company and any failure on the part of the respondents to do so is without any authority of law. *Thus, this court finds nothing to distinguish the case of the petitioners herein* from that of the petitioner in the case of *Carpo Power Limited* v. *State of Haryana* [2018] 53 GSTR 24 (P&H).

17. Accordingly, the present writ petitions are allowed in the same terms as *Carpo Power Limited* v. *State of Haryana* [2018] 53 GSTR 24 (P&H). It is held that the respondents are liable to issue C forms in respect of the high speed diesel procured for mining purposes

through inter-State trade. In the event of the petitioners having had to pay any amount on account of the respondents wrongful refusal to issue C forms the *petitioners shall be entitled to refund and/or adjustment of the same from the concerned authorities who collected the excess tax*. The concerned authorities shall process such a claim within twelve weeks of the same being made by the petitioners in writing and the petitioners furnishing the requisite documents/form."

Another learned single judge of Chhattisgarh High Court in *Shree Raipur Cement Plant* v. *State of Chhattisgarh* reported in [2018] 55 GSTR 306 (Chhattisgarh) ; [2018 (IV) MPJR (SC) 45] explaining the amendment in the law and following the decision of the Division Bench of Punjab and Haryana High Court also concluded that the assessee would be entitled to make inter-State purchase of high speed diesel from other States as before and his registration certificate under the Central Sales Tax Act still holds the field. The relevant portion of the judgment including the Amendment in law as discussed by the learned single judge are quoted below for ready reference. We respectfully agree with the said view of the learned single judge of the Chhattisgarh High Court. The relevant portion of the judgment is quoted below for ready reference (pages 316 to 319 in 55 GSTR) : **34**

"20. This definition of 'goods' contained in *section 2(d)* of the Central Sales Tax Act, 1956 suffered amendment in the *Taxation Laws (Amendment) Act, 2017* published in the Gazette of India on May 5, 2017. The amended definition of 'goods' states as under :

'(d) "Goods" means—

(i) petroleum crude ;

(ii) high speed diesel ;

(iii) motor spirit (commonly known as petrol) ;

(iv) natural gas ;

(v) aviation turbine fuel ; and

(vi) alcoholic liquor for human consumption'.

21. Thus, the amended definition of goods under the *Central Sales Tax Act, 1956* includes high speed diesel and by virtue of the said amendment, the definition of 'goods' given under the Central Sales Tax Act stands amended whereby high speed diesel was kept under the meaning of goods amongst other five items.

22. The Central Goods and Services Tax Act, 2017 was promulgated and brought into force with effect from *July 1, 2017* which is an Act to make a provision for levy and collection of tax on intra-State supply of goods or services or both by the Central Government and

the matters connected therewith or incidental thereto. Likewise, the Chhattisgarh Goods and Services Tax Act, 2017 (for short, 'the Chhattisgarh GST Act, 2017') was promulgated and brought into force with effect from *July 1, 2017* which is also an Act to make a provision for levy and collection of tax on intra-State supply of goods or services or both by the State of Chhattisgarh and the matters connected therewith or incidental thereto. Thus, the CGST Act, 2017 and the Chhattisgarh GST Act, 2017, both have been introduced with effect from *July 1, 2017* by the effect of which the statutes which were imposing indirect taxes were repealed and the only indirect taxes that prevailed are the Central GST and the State GST. The levy of goods and services tax on goods and services is being made by the Central Government under the provisions as promulgated under the CGST Act, 2017 and the State Government levy goods and services tax under the provisions as promulgated under the State GST Act. The objective of the Central GST Act and the Chhattisgarh GST Act is stated as an Act to make a provision for levy and collection of tax on intra-State supply of goods or services or both by the Central Government/State Government and for matters connected therewith or incidental thereto.

23. At this juncture, it would be appropriate to notice the repeal and saving provision of the CGST Act, 2017, i.e., *section 174 of the CGST Act, 2017*, which provides as under :

'*174. Repeal and saving*.—(1) Save as otherwise provided in this Act, on and from the date of commencement of this Act, the *Central Excise Act, 1944* (1 of 1944) (except as respects goods included in entry 84 of the Union List of the Seventh Schedule to the Constitution), the Medicinal and Toilet Preparation (Excise Duties) Act, 1955 (16 of 1955), the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957), the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 (40 of 1978), and the *Central Excise Tariff Act*, 1985 (5 of 1986) (hereafter referred to as the repealed Acts) are hereby repealed.

. . .'

24. The aforesaid provision of the CGST Act, 2017 contains a provision pertaining to repeal and saving. It is pertinent to notice that *section 174 of the CGST Act, 2017 does not include the Central Sales Tax Act, 1956* for the purpose of repealing and as such, *the operation of the Central Sales Tax Act, 1956 is kept intact even after the enactment of the CGST Act, 2017 with effect from July 1, 2017.*

25. Likewise, the Chhattisgarh GST Act, 2017 also makes a provision for repeal and saving. Section 174(1) of the Chhattisgarh GST Act, 2017 provides as under :

'*174. Repeal and saving*.—(1) Save as otherwise provided in this Act, on and from the date of commencement of this Act,—

(a) *the Chhattisgarh Value Added Tax Act, 2005 (2 of 2005) shall apply only in respect of goods included in the Entry 54 of the State List of the Seventh Schedule to the Constitution.*

(b) (i) the Chhattisgarh Sthaniya Kshetra Me Mal Ke Pravesh Par Kar Adhiniyam, 1976 (52 of 1976) ;

(ii) the Chhattisgarh Hotel Tatha Vas Grihon Me Vilas Vastuon Par Kar Adhiniyam, 1988 (13 of 1988) ; and

(iii) the Chhattisgarh Entertainments Duty and Advertisements Tax Act, 1936 (30 of 1936), (hereinafter referred to as the repealed Acts) are hereby repealed.'

26. The aforesaid provision of the *State Act* clearly provides that the Chhattisgarh Value Added Tax Act, 2005 shall apply only in respect of goods included in entry 54 of the State List of the Seventh Schedule to the Constitution. Entry 54 of the State List of the Seventh Schedule to the Constitution of India as amended by the Constitution (One Hundred and First Amendment) Act, 2016, states as under :

'54. *Taxes on the sale of petroleum*, high speed diesel, motor spirit (commonly known as petrol), natural gas, aviation turbine fuel and alcoholic liquor for human consumption, but not including sale in the course of *inter- State trade of commerce* or *sale in the course of inter-National trade or commerce* of such goods.'

27. Thus, from the aforesaid analysis, it is quite vivid that the *Chhattisgarh Value Added Tax Act, 2005 has not been repealed qua the items specified under the amended entry 54 of the State List of the Seventh Schedule to the Constitution*, whereby high speed diesel is included.

28. Section 9(2) of the CGST Act, 2017 provides for levy and collections of GST subject to the provisions of sub-section (2) of section 9 of the CGST Act, 2017. Sub-section (2) of section 9 of the CGST Act, 2017 carves out an exception as under :

'*9. Levy and collection*.—(1) . . .

(2) The central tax on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel shall be levied with effect from such date as may

be notified by the Government on the recommendations of the Council.'

29. Similarly, section 9(2) of the Chhattisgarh GST Act, 2017 provides as under :

'9. *Levy and collection*.—(1) . . .

(2) The State tax on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel, shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council.'

30. Sub-section (2) of section 9 of the CGST Act, 2017 and the Chhattisgarh GST Act, 2017 clearly provide that GST on crude oil, high speed diesel, aviation turbine, motor spirit (petrol) shall be levied with effect from the date as may be notified by the Government on the recommendations of the GST Council. Therefore, the CGST Act, 2017 has kept the aforesaid six goods away from the ambit of the CGST Act, 2017 and no notification has been issued by the Central Government on the recommendation of the GST Council imposing GST on high speed diesel at a prescribed rate.

31. Thus, the net effect of the aforesaid discussion is that after the promulgation of the CGST Act, 2017 and the *State Act*, the items mentioned in the amended entry 54 of the State List of the Seventh Schedule to the Constitution are governed by the *Central Sales Tax Act*, *1956*, as no notification has been issued even under section 9(2) of the CGST Act, 2017 by the Central Government or by the State Government under section 9(2) of the Chhattisgarh GST Act, 2017, on the recommendation of the GST council, therefore, the inter-State trade of high speed diesel would be governed by the *Central Sales Tax Act*, *1956* and the petitioner is entitled to make inter-State purchases of high speed diesel from other States as before and his registration certificate under the *Central Sales Tax Act*, *1956* and the rules made thereunder still holds the field and is valid."

35 Similarly, another learned single judge of the Gauhati High Court in the case of *Star Cement Meghalaya* v. *State of Assam* reported in [2018] 57 GSTR 369 (Gauhati) relied upon the provisions of section 7(2) read with section 8(3)(b) of the Central Sales Tax Act and held that the assessee is entitled to make such purchase despite the amendment of GST law with effect from July 1, 2017. The relevant portion of the said decision is quoted below for ready reference (pages 378, 381 and 382 in 57 GSTR) :

"16. Section 7(2) of the Central Sales Tax Act of 1956 entitles a dealer to get himself registered under the Act, *even if, he is not liable*

to pay sales tax under the Central Sales Tax Act of 1956, but on the other hand, is liable to pay sales tax under the AVAT Act of 2003. If the analogy projected in clause 9 of the circular dated September 5, 2017 that the registration under section 7(2) of the Central Sales Tax Act of 1956 ceases to exist as the dealer is no longer liable to tax under the AVAT Act of 2003 is correct, the withdrawal of the registration under section 7(2) of the Central Sales Tax Act of 1956 would be acceptable. In other words, if it is the conclusion of the authorities in the Government of Assam in the Taxation and Finance Department that from July 1, 2017 the petitioners are not liable to pay taxes under the AVAT Act of 2003, in such event, their registration under section 7(2) of the Central Sales Tax Act of 1956 would also not be sustainable inasmuch as, under section 7(2) of the Act any dealer liable to pay tax under the sales tax law of the State, may, notwithstanding that he is not liable to pay tax under the Act, apply for registration. The pre-requisite of being entitled for a registration *under section 7(2) of the Central Sales Tax Act of 1956 is that the dealer so registered is liable to pay tax under the sales tax law of the State, which in the present case would be AVAT Act of 2003*. Therefore, if according to the authorities in the State of Assam in the Taxation and Finance Department the petitioners are not liable to pay any tax under the AVAT Act of 2003, from *July 1, 2017* onwards, the authorities may withdraw the registration under section 7(2) of the Central Sales Tax Act of 1956, inasmuch as, the prerequisite of section 7(2) of being liable to pay tax under the State sales tax law ceases to exist.

. . .

29. But the question that would arise would be if the petitioners continue to remain leviable for a tax under AVAT Act of 2003, which admittedly is a State law, they would also continue to remain entitled to have their registration under section 7(2) of the Central Sales Tax Act of 1956 inasmuch as, if a dealer is leviable under the State law, he would also be entitled to be registered as a dealer under section 7(2) of the Act. From the said point of view *the cessation of their registration under section 7(2) of the Act as provided in the circular dated September 5, 2017 would be unsustainable.*

30. For a clarification we have to refer to the provisions of *clause 9 of the circular dated September 5, 2017* which inter alia provides that a dealer who is making inter-State purchase of high speed diesel against form C for use in the manufacture or processing of a goods,

other than the aforesaid six goods retained under section 2(d), Central Sales Tax Act of 1956 would cease to be a dealer under section 7(2) of the Act with effect from *July 1, 2017* as their liability to pay tax under the AVAT Act of 2003 had ceased to exist from *July 1, 2017*.

31. The circular dated *September 5, 2017* providing for the withdrawal of the registration under section 7(2) of the Central Sales Tax Act of 1956 is based on the reason that such dealers involved in inter-State purchase of the six goods and using them for a manufacturing of a goods other than the six goods, are no longer leviable to a tax under the AVAT Act of 2003 from *July 1, 2017*. But as already discussed hereinabove section *174(1) of the AGST Act of 2017 clearly provides that the AVAT Act of 2003 continues to remain in force in respect of the six goods retained under section 2(d) of the Central Sales Tax Act of 1956* and also included in the entry 54 of the State list of the Seventh Schedule of the Constitution of India.

32. From the aforesaid provisions of section 174(1) of the AGST Act of 2017 and also in view of there being no date notified either by the Central Government and the State Government under section 9(2) of the CGST Act of 2017 and AGST Act of 2017, respectively and there being no date recommended by the Goods and Services Tax Council, as required under section 12(5) of the Constitution (One Hundred and First Amendment) Act, 2016 and also there being no such provision in the AVAT Act of 2003 that in the event any of the six retained goods are used for manufacture of a goods other than the six goods, then no tax is leviable under the AVAT Act of 2003, *the provisions in the circular dated September 5, 2017* that from *July 1, 2017* onwards, the dealers dealing inter-State purchase of high speed diesel and using it for manufacture of a goods other than the six goods are no longer liable to pay a tax under the AVAT Act of 2003 is *incorrect and unacceptable."*

36 The learned single judge of this court in the case of the assessee itself in the present judgment under appeal also gave similar reasoning, which we affirm by this judgment, also quashed the circular dated *May 31, 2018* issued by the learned Commissioner of Commercial Taxes on the ground of breach of principles of natural justice as the same was issued by the learned Commissioner without giving an opportunity of hearing to the assessees. The relevant reasons given by the learned single judge (*Ramco Cements Ltd.* v. *Commissioner of Commercial Taxes* [2019] 64 GSTR 374 (Mad))

which we affirm are also quoted below for ready reference (pages 401 to 403 in 64 GSTR) :

"38. . . .

'39. On the basis of aforesaid analysis, it is held that the petitioner is a registered dealer under the provisions of the Central Sales Tax Act, 1956 read with the Rules of 1957 and his registration certificate under the Central Sales Tax Act, 1956 read with the Rules of 1957 *continues to be valid for the purpose of inter-State sale and purchase of high speed diesel despite the petitioner having been migrated to the GST regime with effect from July 1, 2017* as the definition of goods as defined in *section 2(d)* of the Central Sales Tax Act, 1956 has been amended prior to coming into force of the CGST Act, 2017 from *July 1, 2017* which includes high speed diesel. Further, under section 9(2) of the CGST Act, 2017, the GST Council has not made any recommendation for bringing high speed diesel within the ambit of the Central Goods and Services Tax Act, 2017 and therefore the Central Government has not notified high speed diesel to be within the ambit and sweep of the Central Goods and Services Tax Act, 2017. Thus, the petitioner's registration certificate under the *Central Sales Tax Act, 1956* is still valid for the goods defined in *section 2(d)* of the Central Sales Tax Act, 1956, including high speed diesel, and the petitioner is entitled for issuance of C form for inter-State purchase/sale of high speed diesel against the said C form. *Accordingly, the respondents shall be liable and are directed to issue C form to the petitioner in respect of high speed diesel to be purchased by the petitioner and used in the course of manufacture of cement* and for that, it is further directed to *rectify and remove the error on their official website and entertain the petitioner's application submitted on-line on the official website* seeking issuance of C form to the petitioner for said goods.'

39. The above decisions of various High Courts, more particularly, the order passed by Punjab and Haryana High Court made in *Carpo Power Limited's* case [2018] 53 GSTR 24 (P&H), *confirmed by the honourable Supreme Court*, would show that the respondents herein are not entitled to take a different stand, especially, when the facts and circumstances in all these cases before this court as well as before the other High Courts, as extracted supra, are one and the same. In other words, the issue involved in these cases as well as the cases before the other High Courts is one and the same, out of which, one decision was confirmed by the apex court as well. Therefore, I find that the impugned communications, apart from being without juris-

diction, are not sustainable also on the reasons and findings rendered by the Punjab and Haryana High Court on the same issue, confirmed by the apex court.

40. In fact, though this court has raised specific query to the learned Additional Advocate General as to how the above decisions rendered by the various High Courts are not applicable to the present facts and circumstances, especially when the issue is one and the same, she is not in a position to convince this court in any manner and make any distinction on the facts and circumstances of the present case before this court and the cases dealt with by other courts.

41. The learned Additional Advocate General contended that these writ petitions are not maintainable as against the internal communication. I have already found that the *letter dated May 31, 2018 cannot be brushed aside as a simple internal communication*, as the finding/conclusion made therein by the Commissioner of Commercial Taxes directly affects the rights of the petitioners conferred under section 8(3)(b) of the Central Sales Tax Act. Therefore, the petitioners are entitled to question the said communication dated *May 31, 2018*. Even otherwise, it is to be seen that *such communication was issued by the Commissioner of Commercial Taxes without hearing the petitioners. Therefore, the unilateral decision arrived by the Commissioner of Commercial Taxes undoubtedly violates the principles of natural justice*. Likewise, the other two communications are also in violation of the principles of natural justice and therefore, the petitioners are entitled to challenge those communications as well. No doubt, under normal circumstances, this court would remit the matter back to the respondents for reconsidering the issue after hearing the petitioners. I do not think that such remand is required in these cases under the facts and circumstances as discussed supra, more particularly, *when the fact remains that section 8(3)(b) has not been amended* and based on which, the petitioners are entitled to avail the benefit under the said provision, while they purchase the petroleum products by way of inter-State sale against C declaration forms."

37 A Division Bench of the Orissa High Court headed by the honourable Chief Justice in the case of *Tata Steel Ltd.* v. *State of Orissa* [2019] 70 GSTR 99 (Orissa), after quoting the aforesaid decisions of various High Courts and reiterating the same legal position, has concluded that the circular issued by the Government of India, Ministry of Finance dated *November 1, 2018* addressed to the Commissioner of Commercial Tax of all States/

Union Territories to give effect to the decision of the Division Bench of the Punjab and Haryana High Court in *Carpo Power Limited* case [2018] 53 GSTR 24 (P&H) as the same stood affirmed by the honourable Supreme Court with the dismissal of the SLP on *August 13, 2018*. The relevant portion of the above judgment is also quoted below for ready reference (pages 101, 102 and 104 in 70 GSTR) :

"3. The aforesaid decision of Punjab and Haryana High Court was the subject-matter of S. L. P. to Appeal (C) No. *20572 of 2018* before the honourable Supreme Court, which came to be dismissed on *August 13, 2018* after which the Central Government has come out with the clarification by their letter dated *November 1, 2018*, which reads as under :

'F-No. S-29012/64/2018-ST-II-DoR
Government of India, Ministry of Finance,
Department of Revenue, State Taxes Section.

. . .

Room No. 275,
North Block, New Delhi.
Dated the *1st November, 2018*.

To :
The Commissioner of Commercial Tax of all
States/Union Territories.

Subject : Regarding definition of goods in sub-section (3)(b) of section 8 of the Central Sales Tax Act, 1956 and issuance of Form C.

Sir/Madam,

I am directed to refer to *OM dated November 7, 2017* (copy enclosed) regarding clarification of definition of goods in sub-section (3)(b) of section 8 of the Central Sales Tax Act, 1956 and to say that Honourable Punjab and Haryana High Court has considered the issue of C forms in respect of Natural Gas purchased by the petitioner in one State and used in another State vide judgment dated *March 28, 2018* in C. W. P. No. 29437/2017 filed by Carpo Powers Ltd. which has been upheld by the honourable Supreme Court *vide* its order dated August 13, 2018 in SLP No. 20572/2018 in this matter.

2. *This matter has been examined in Department of Revenue* and it has been decided to forward copy of aforesaid judgment dated March 28, 2018 (copy enclosed) of honourable High Court of Punjab

and Haryana and order dated August 13, 2018 (copy enclosed) of honourable Supreme Court *for compliance in the respective States.*

End : As above.

Yours faithfully,
(Sd.) (MAHENDRA NATH),
Under Secretary (Sales Tax Section II).
Tele : 23092419.'

. . .

5. Taking into consideration, we are of the opinion that the circular dated August 17, 2017, which is partially quashed by the Punjab and Haryana High Court and has been approved by the honourable Supreme Court. Other High Courts also have taken a similar view. In that view of the matter, it will not be appropriate to now enforce the circular dated August 17, 2017 and the *circular of November 1, 2018 will prevail along with the judgments which are referred herein above*, the authorities are bound to implement all decisions referred to above and we are approving the ratio laid bound those decisions and we direct the State Government to follow and act in accordance with the ratio of those decisions.

6. With the aforesaid observation and direction, this writ petition stands disposed of."

38 The Division Bench of the Jharkhand High Court in *Tata Steel Limited* v. *State of Jharkhand* [2019] 70 GSTR 364 (Jharkhand) decided on 23/28th August 2019 reiterated the same position. The relevant portion of the headnote of the law reports is quoted below for ready reference :

"The petitioners engaged in manufacturing process, or mining activities or engaged in power generation were bulk purchasers of 'high speed diesel' which they required for their manufacturing process/mining activities/generation of power, as the case might be, which was used in manufacturing, mining, or generation of the goods, which were their end-products available for sale. For implementation of the GST regime necessary amendment in entry 54 of the State List of the Seventh Schedule to the Constitution of India was made. Necessary amendment was also made in Central Sales Tax Act in the definition of 'goods' as defined under section 2(d) of the Central Sales Tax Act. The said definition which was earlier having very wide scope was given a very restricted meaning including only six items. Admittedly, the petitioners' end-products did not come within the definition of 'goods' as defined under section 2(d) of the Central

Sales Tax Act, whereas 'high speed diesel', which they required in their manufacturing process, came within the definition of 'goods' as defined under the Central Sales Tax Act. A circular dated *October 11, 2017* was issued by the State of Jharkhand, in its Commercial Taxes Department, denying the issuance of form C for all the items included in definition of 'goods' given under section 2(d) of the Central Sales Tax Act, including 'high speed diesel'. The circular had been issued on the pretext that after coming into force of the goods and services tax regime in the State with effect from *July 1, 2017*, all the six items which had been excluded in Jharkhand Goods and Services Tax Act, 2017, i.e., alcoholic liquor for human consumption, which is exempted under section 9(1) of the State GST Act, and petroleum crude, high speed diesel, motor spirit, natural gas and aviation turbine fuel on which, the liability to pay tax under the State GST Act was deferred till the notification issued under section 9(2) of the said Act, were still governed by the Jharkhand Value Added Tax Act. The dealers dealing in the goods except the aforementioned six items, were no more liable to pay tax under the Jharkhand Value Added Tax Act, and as such, the registration under the Jharkhand Value Added Tax Act had come to an automatic end with effect from *July 1, 2017*. It was further stated in the said circular that some of the dealers who were not liable to pay tax under the Central Sales Tax Act, were still registered under section 7(1) of the Central Sales Tax Act, as they were liable to pay tax under the Jharkhand Value Added Tax Act. Since such dealers were not selling the aforesaid six goods, they were no more liable to pay tax under the Jharkhand Value Added Tax Act, and as such, their registrations under section 7(2) of the Central Sales Tax Act as well, had become invalid with effect from *July 1, 2017*. As such, those dealers would not be entitled to inter-State purchase of the aforesaid six items, on the concessional rates of tax under the provisions of the Central Sales Tax Act, on the basis of form C. It was the stand of the State Government that *since the end-products of the petitioners after their manufacturing process, mining process, or power generation process, were not covered by the definition of 'goods'* given under section 2(d) of the Central Sales Tax Act, *their registration under section 7(2) of the Central Sales Tax Act came to an automatic end and hence they were not entitled for issuance of form C for claiming lesser rate of tax* on the inter-State purchase of 'high speed diesel' made by them for their manufacturing, mining/power generation activities. Accordingly, the State Government decided not issue form C to such dealers for inter-

State purchase of the aforesaid six goods. *An office memorandum dated November 7, 2017 was also issued by the Union of India* and its Ministry of Finance, Department of Revenue, State Tax Division, clarifying that the term 'goods' referred to in section 8(3)(b) of the Central Sales Tax Act, would have the same meaning as defined and amended under section 2(d) of the Central Sales Tax Act, vide the Tax Laws Amendment Act, 2017. Pursuant to the decision in *Carpo Power Limited* v. *State of Haryana* [2018] 53 GSTR 24 (P&H) (C. W. P. No. 29437 of 2017, decided on March 28, 2018), and the subsequent dismissal of the special leave appeal preferred against the judgment passed by the Punjab and Haryana High Court the Central Government in its Ministry of Finance, Department of Revenue, New Delhi, issued letter dated *November 1, 2018*, addressed to Commissioners of Commercial Taxes of all the States/Union Territories on the subject regarding issuance of form C, and making further clarification to its earlier *on dated November 7, 2017*, stating that in view of the judgment passed by the Punjab and Haryana High Court in *Carpo Power Limited*'s case [2018] 53 GSTR 24 (P&H), which was upheld by the Supreme Court by its order dated *August 13, 2018 in SLP No. 20572 of 2018, the Central Government issued letter dated November 1, 2018, addressed to Commissioners of all the States/Union Territories on the subject regarding issuance of form C, making further clarification to its earlier on dated November 7, 2017* to the effect that the issue in *question had been set at rest in view* of the decision of the Punjab and Haryana High Court, in *Carpo Power Limited*'s case [2018] 53 GSTR 24 (P&H), as affirmed by the honourable Supreme Court. Thereafter, a supplementary counter-affidavit had been filed on behalf of the respondent-State, in which, after considering the letter dated *November 1, 2018* issued by the Ministry of Finance, Government of India, the State Government had stuck to its earlier stand as taken in the circular dated *October 11, 2017*, denying the issuance of form C to the dealers, with respect to the six items, covered under section 2(d) of the Central Sales Tax Act. The petitioners filed writ petition submitting that the notification dated *October 11, 2017* was absolutely illegal. The State Government had taken the stand through its letter dated *August 21, 2019*, addressed to the learned Senior Standing Counsel Jharkhand High Court that those dealers who had migrated to GST regime and who are not selling the aforesaid six goods covered under section 2(d) of the Central Sales

Tax Act, were not covered under section 7(1) of the Central Sales Tax Act as well :

Held, allowing the petitions, that the use of the expression 'goods' referred to in the first half of section 8(3)(b), i.e., on first three occasions could be understood in the sense as was defined in section 2(d) of the Central Sales Tax Act, whereas the expression 'goods' in the second half of the clause, i. e., on the fourth occasion could not be understood in the sense as defined in section 2(d) of the Central Sales Tax Act as it referred to the manufactured goods. *In the case of the writ petitioners, their end-products need not be 'goods' within the meaning of section 2(d) of the Central Sales Tax Act*. Also the registration of dealer under section 7(2) of the Central Sales Tax Act is not subject to any liability of the dealer to pay the tax or not, the dealers are entitled to continue to be registered under Section 7(2) of the Act, *irrespective of the fact whether they are liable to pay any tax to State or not*. There was no merit in the submission of the State that since the dealers were no more liable to pay tax under the Jharkhand Value Added Tax Act, in view of the fact that the word 'goods' used in section 2(i) of the Central Sales Tax Act defining the 'sales tax law' would mean only those six goods as defined under section 2(d) of the Central Sales Tax Act and that their registration under section 7(2) of the Act would come to an automatic end. That being the position, the very reasoning for issuance of the circular dated October 11, 2017 had no legs to stand in the eyes of law and could not be sustained. Accordingly, the circular dated October 11, 2017 issued by the State Government in its Commercial Taxes Department, which had been challenged in all these writ applications, was to be quashed.

Printers (Mysore) Ltd. v. *Assistant Commercial Tax Officer* [1994] 93 STC 95 (SC), *Commissioner of Sales Tax* v. *Madhya Bharat Papers Ltd.* [2000] 117 STC 547 (SC) and *Carpo Power Limited* v. *State of Haryana* [2018] 53 GSTR 24 (P&H) *followed*."

Therefore, if a dealer has a right to sell as well the restricted six items **39**
under the Central Sales Tax Act, one fails to understand as to how their right to purchase those goods at present time under the existing registration certificates can be taken away merely because they are not selling those goods. If sale of the goods was the only criteria of registration under the Central Sales Tax Act, the consequent amendments would not have allowed concessional rate of tax for purchase of those six commodities for user in activities like mining or telecommunication networks, where no such resale or use in manufacturing is involved. Therefore, such a right is

equally available to other industries like cement industries and the same cannot be denied to them. That would result in an invidious classification in violation of article 14 of the Constitution of India, which is neither envisaged nor is called for. Therefore, the contentions raised on behalf of the Revenue are not sustainable at all.

40 Consequently, we are of the opinion that the writ appeals filed by the Revenue have no merits and deserve to be dismissed and respectfully agreeing with the views expressed by other High Courts and confirming the view of the learned single judge in the impugned judgment in appeal before us we dismiss the present writ appeals filed by the State. No order as to costs. Consequently, the connected miscellaneous petitions are also dismissed.

41 The appellant-State and the Revenue authorities are directed not to restrict the use of C forms for the inter-State purchases of six commodities by the respondent/assessees and other registered dealers at concessional rate of tax and they are further directed to permit online downloading of such declaration in C forms to such dealers. The circular letter of the Commissioner dated *May 31, 2018* stands quashed and set aside along with the consequential notices and proceedings initiated against all the assessees throughout the State of Tamil Nadu.

[2020] 80 GSTR 50 (Ker)

[IN THE KERALA HIGH COURT]

KALPAKA DISTRIBUTORS PVT. LTD.

v.

UNION OF INDIA AND OTHERS

A. K. JAYASANKARAN NAMBIAR J.

December 20, 2019.

HF ▶ Assessee

GOODS AND SERVICES TAX—INPUT TAX CREDIT—TRANSITIONAL PROVISIONS—ASSESSEE'S ATTEMPT TO LOG INTO SYSTEM NOT IN DISPUTE—FAILURE TO ESTABLISH THAT INABILITY TO UPLOAD FORM TRAN-1 WAS ON ACCOUNT OF SYSTEM ERROR—NOT REASON TO DENY ASSESSEE SUBSTANTIVE BENEFIT OF CARRYING FORWARD INPUT TAX CREDIT EARNED UNDER ERSTWHILE REGIME—DEPARTMENT TO PERMIT ASSESSEE TO FILE FORM TRAN-1 EITHER ELECTRONICALLY OR MANUALLY ON OR BEFORE DECEMBER 31, 2019.

The assessee, consequent to migration to the goods and services tax regime, was entitled to carry forward the tax paid on purchase of goods during the value added tax regime and to avail of the credit under the latter regime. As part of the procedure for the transfer of credit, the assessee had to file a declaration in form TRAN-1 on or before December 27, 2017 for the purposes of successfully migrating the credit to the goods and services tax regime. While the assessee attempted to upload the necessary details in the web portal of the Goods and Services Tax Network, it encountered a technical glitch in the system, and requests to the authorities were unsuccessful. The authorities took the stand that since the assessee had not complied with the procedural requirements before the cut-off date, it could not carry forward the credit, that had accrued to it under the erstwhile regime and issued communications denying it the facility of transfer of accrued credit. On a writ petition :

Held, *allowing the petition, that since it was not in dispute that the assessee did attempt to upload the necessary details in the system and that based on a perusal of the system log, the assessee did attempt to log into the system, the mere fact that the assessee could not establish that the inability to upload the required details was on account of a system error occasioned by the respondents, could not be a reason to deny it the substantive benefit of carrying forward the credit earned by it under the erstwhile regime. The communications in question were to be quashed, and the respondents directed to permit the assessee to file forms TRAN-1 either electronically or manually on or before December 31, 2019. The respondents were at liberty to verify the genuineness of the claim of the assessee and the claim should not be denied only on the ground that it was not filed before December 27, 2017.*

BLUE BIRD PURE PVT. LTD. *v.* UNION OF INDIA [2019] 68 GSTR 340 (Delhi) *and* JAY BEE INDUSTRIES *v.* UNION OF INDIA [2020] 74 GSTR 295 (HP) *followed*.

BLUE BIRD PURE PVT. LTD. *v.* UNION OF INDIA [2019] 68 GSTR 340 (Delhi) (para 4) *and* JAY BEE INDUSTRIES *v.* UNION OF INDIA [2020] 74 GSTR 295 (HP) (para 4) *referred to.*

W. P. (C). No. 34771 of 2019(V).

Sherry Samuel Oommen, Sukumar Nainan Oommen, Aaditya Nair, Smt. Lakshmi Seetharaman and *Smt. Anu Balakrishnan Nambiar* for the petitioner.

P. Vijayakumar, Additional Solicitor General of India, for respondent Nos. 1-3.

P. R. Sreejith for respondent No. 2.

Sreelal Warrier, SC, for the respondent.

JUDGMENT

1 A. K. JAYASANKARAN NAMBIAR J.—The petitioner in this writ petition is an assessee under the Kerala Value Added Tax Act, 2003, who migrated to the GST regime pursuant to the enactment of the Central Goods and Service Tax/State Goods and Service Tax (CGST/SGST) Act, 2017. The petitioner, consequent to their migration to the GST regime, was 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. 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 this writ petition, the grievance of the petitioner is essentially that, while he attempted to upload the necessary details in the web portal of the GSTN, he was not able to do so because of a technical glitch that was encountered in the system. The request made by him before the respondent-authorities under the GST Act also did not meet with any success, and the stand of the respondents was that since the petitioners had not complied with the procedural requirements before the cut-off date prescribed, they could not carry forward the credit, that had accrued to them under the erstwhile regime, into the GST regime. In this writ petition, the communications issued to him by the respondents denying him the facility of transfer of accrued credit are impugned, inter alia, on the contention that the substantial rights available to him under the GST Act cannot be deprived solely on account of a technical lapse that was occasioned at the instance of the respondents.

2 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 him 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 reveals that the petitioner had in fact made an attempt to log into the system before December 27, 2017, his case would be covered by category B2,

in the categorization drawn up by the respondents. It is stated that in the case of such assessees, while their attempt at logging in would be recorded by the system, it would have to be established that the inability to upload the details was on account of any system error occasioned at the instance of the respondents. In particular, the case of the petitioner herein is stated as follows :

> "It is respectfully submitted that so far as the above writ petition (GSTIN 32AAECK2911P1ZI) is concerned, the same has already been forwarded by GSTN as per CBIC's circular dated April 3, 2018 to ITGRC. The case of the petitioner was not approved in 4th ITGRC meeting under category B-2. *As per GST system logs, the petition saved record in TRAN-1 on 30th August 2017 at 11:57:47 a.m. No technical error or technical issues has been observed in GST logs. Further, the petitioner has successfully saved TRAN-1 only once and did not attempt saving or filing of TRAN-1 subsequently*. The current status of TRAN-1 is NOT FILED."

I have heard the learned counsel appearing for the petitioner and the learned standing counsel appearing for the respondents. 3

On a consideration of the facts and circumstances of the case and the submissions made across the Bar, I find that since it is not in dispute that the petitioner herein did attempt to upload the necessary details in the system maintained by the respondents, and it cannot be disputed, based on a perusal of the system log, that the petitioner did attempt to log into the system, the mere fact that the petitioner cannot establish that the inability to upload the required details was on account of a system error that was occasioned by the respondents, cannot be a reason for denying him the substantive benefit of carrying forward the credit earned by him under the erstwhile regime. I also take note of the decision of the Delhi High Court in *Blue Bird Pure Pvt. Ltd.* v. *Union of India* [2019] 68 GSTR 340 (Delhi), and the decision of the Himachal Pradesh High Court dated November 16, 2019 in CWP No. 2169 of 2018 (*Jay Bee Industries* v. *Union of India* [2020] 74 GSTR 295 (HP)), which take the view that accrued tax credits cannot be denied or varied on account of procedural defects cited by the respondents. In particular, it was noticed in those judgments that the GST system was still in a trial and error phase as far as its implementation was concerned, and there were a large number of dealers approaching the High Court expressing difficulties in filing return, claiming input-tax credit, etc., through the GST portal. In the said cases, the writ petitions were allowed and a direction was issued to the respondents to permit the petitioners therein to file the TRAN-1 form, either electronically or manually 4

on or before December 31, 2019 without prejudice to the right of the respondent-statutory authorities to verify the genuineness of the claim of the petitioners. Taking cue from the said judgment, and finding that in the instant cases also there is no dispute with regard to the attempt made by the petitioner to log into the system on or before December 27, 2017, I allow this writ petition by quashing the impugned communications, and directing the respondents to permit the petitioner to file their TRAN-1 Forms either electronically or 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.

5 This writ petition is allowed on the above lines.

[2020] 80 GSTR 54 (Mad)

[IN THE MADRAS HIGH COURT]

BRIGHT MARKETING COMPANY

v.

COMMISSIONER OF CENTRAL EXCISE AND SERVICE TAX, COIMBATORE COMMISSIONERATE, COIMBATORE

DR. VINEET KOTHARI and **R. SURESH KUMAR** JJ.

February 3, 2020.

HF ▶ Assessee

SERVICE TAX—PENALTY—TAX SHORT-LEVIED FOR PERIOD APRIL 2012 TO DECEMBER 2012 PAID ALONG WITH RETURNS BY ASSESSEE IN YEAR 2013 WITH INTEREST ON BASIS OF AUDIT OBJECTION PRIOR TO ISSUANCE OF SHOW-CAUSE NOTICE—AUDIT OBJECTION RAISED BY AUDIT OFFICER ALSO ASCERTAINMENT OF TAX BY CENTRAL EXCISE OFFICER—PENALTY NOT ATTRACTED—FINANCE ACT (32 of 1994), ss. 73(1), (3), (4), 78.

Where the appellant failed to pay appropriate service tax for the period April 2012 to December 2012 by due date but filed the returns and paid the short-levied service tax in the year 2013 itself with interest on the basis of the audit objection, i.e., prior to issuance of show-cause notice issued under section 73(1) on October 15, 2014, the adjudicating authority levied penalty

under section 78 of the Finance Act, 1994, at the reduced rate of 25 per cent. and the Tribunal upheld it and on appeal :

Held, *allowing the appeal, that section 78 of the Act applied only when there was a failure on the part of the assessee to pay service tax for reasons of fraud, etc., as enumerated in section 73(4) of the Act. The penalty under section 78 of the Act was not attracted, in case the assessee fell within the four corners of section 73(3) of the Act. Sub-section (3) clearly provided for a remedy to the assessee to correct his error of short-levy of service tax in two ways (i) either suo motu or (ii) on the basis of tax ascertained by a Central Excise Officer before service of notice under section 73(1) of the Act, which was the impugned show-cause notice in the present case issued only on October 15, 2014. There was no dispute that the assessee filed the returns and paid the short-levied service tax in the year 2013 itself with interest and that was definitely prior to issuance of show-cause notice issued on October 15, 2014. Therefore the assessee had complied with the terms of section 73(3) of the Act and would not fall within the mischief of section 73(4) of the Act, thereby obviously the assessee would not attract the imposition to penalty under section 78 of the Act, which was applicable only if the assessee fell within the mischief to section 73(4) of the Act, viz., fraud, collusion, suppression of facts, wilful mis-statement. The audit objection raised by the audit officer was also ascertainment of tax by a Central Excise Officer within the meaning of section 73(3) of the Act and there was no dispute that an auditor of the Department was also a Central Excise Officer. Therefore, payment of the service tax with interest by the assessee in the year 2013 itself, of course, not on his own or suo motu but on the basis of the audit objection, viz., on the basis of the determination by an auditor of the Department would not take out the case of the assessee from the ambit and scope of section 73(3) of the Act. Therefore, , the question of imposition of penalty under section 78 of the Act on the assessee would not arise in the present case. Unless the penalty under section 78 of the Act itself was leviable on the assessee, there was no question of any reduction of the quantum of penalty to 25 per cent. thereof by the Tribunal in its discretion. What was not at all leviable, could not be reduced. Therefore the penalty order of original adjudicating authority as well as that of the Tribunal upholding the imposition of penalty under section 78 of the Act to the extent of 25 per cent. were to be set aside.*

Order of the Customs, Excise and Service Tax Appellate Tribunal set aside.

Final Order No. 41619/2017 in Appeal No. ST/40971/2017-SM decided on June 5, 2018—CESTAT (para 1)

C. M. A. No. 3379 of 2019 and C. M. P. No. 19726 of 2019.

N. Viswanathan for the appellant.

Mrs. R. Hemalatha, Senior Standing Counsel, for the respondent.

JUDGMENT

The judgment of the court was delivered by

1 DR. VINEET KOTHARI J.—The assessee, M/s. Bright Marketing Company, is aggrieved by the order passed by the learned Customs, Excise and Service Tax Appellate Tribunal (CESTAT) on June 5, 2018 upholding the imposition of penalty at the reduced rate of 25 per cent. amounting to Rs. 8,84,648 by the original impugned order dated August 10, 2017. The relevant portions of the impugned order of the learned Tribunal dated August 10, 2017 are quoted below for ready reference :

> "11. Similarly, the appellant's claim to reduce the penalty to 25 per cent. in terms of the proviso to section 78 can also not to be appreciated in as much as, the benefit of reduced penalty can be extended only if the entire service tax along with interest and along with 25 per cent. penalty is deposited within 30 days of the passing of the order of determination of service tax. Learned advocate fairly agreed that such penalty to the extent of 25 per cent. has not been deposited by them. In such a scenario, benefit cannot be extended.
>
> 12.The original adjudicating authority, while confirming the demand and interest and imposing penalty had already granted the benefit of reduced penalty of 25 per cent., provided the appellant deposits the entire service, tax, interest along with 25 per cent. penalty within a period of 30 days from the date of receipt of the order. The appellants have chosen not to exercise the option given by the Assistant Commissioner, which case, the penalty cannot be reduced at the appellate stage."

2 The learned counsel for the assessee Mr. N. Viswanathan submitted that the assessee in the present case had already paid the service tax which was short-paid by him along with interest in the year 2013 before the issuance of the impugned show-cause notice under section 73(1) of the Act which was issued on October 15, 2014. He drew our attention to the extract of audit note on the basis of which, the short-levy of service taxes was pointed out in the case of the assessee, in which, the payment of service tax of Rs. 8,32,490 along with education cess and interest of Rs. 72,690 as on March 18, 2013 is admitted in the audit objection raised by the Department itself. He submitted that the learned Commissioner of Appeals also noted

these facts duly in his order dated January 19, 2017. In para 12 of his order is also quoted below for ready reference :

> "12. Thus it is clear that the appellant had realized the charges for the period from April 2012 to December 2012 but has failed to pay the service tax by due date. This cannot be claimed as default in payment as there is failure to file the ST 3 returns as well. In this regard it is seen that the ST 3 return for the quarter April to June 2012 was filed on March 26, 2013 (due dated November 25, 2012) ; the ST 3 return for the quarter July to September was filed on March 26, 2013 (due date April 15, 2013) and the ST 3 return for the half year October 2012 to March 2013 was filed on November 1, 2013 (due date September 10, 2013). Therefore the arguments of the appellant that the failure to pay appropriate service tax for the period April 2012 to December 2012 has to be considered as default in payment cannot be accepted as the said amounts have not been declared in the relevant ST 3 returns."

He therefore submitted that as per section 73(3) of the Finance Act, 1994 (in short, "the Act"), the assessee had rightly paid the short-levied service tax and the penalty imposed under section 78 of the Act was impermissible on the assessee and even the reduction of the penalty to the extent of 25 per cent. ordered by the Tribunal was not justified. 3

Per contra, the learned counsel for the Revenue Mrs. R. Hemalatha submitted that the assessee paid the said short-levied service tax only upon the audit objection raised in the matter and the same communicated to him, therefore, it should be construed that the assessee had paid the said service tax, had suppressed the liability to pay the service tax initially, which only upon the audit objection raised, he has paid. She further submitted that the service tax was not initially paid along with interest, but the interest was only paid later on. She further urged that the Tribunal in its discretion has already reduced the penalty to 25 per cent., for which even there was an agreement from the side of the assessee's counsel, which has been recorded by the learned Tribunal in para 11 of the order dated August 10, 2017, noted above. 4

We have heard the learned counsels for the parties. 5

Section 73(3) and sub-section (4) of the Act are quoted below for ready reference. 6

> "73. *Recovery of service tax not levied or paid or short-levied or short-paid or erroneously refunded*.—(1) and (2) . . .
>
> (3) Where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, the person

chargeable with the service tax, or the person to whom such tax refund has erroneously been made, may pay the amount of such service tax, chargeable or erroneously refunded, on the basis of his own ascertainment thereof, or *on the basis of tax ascertained by a Central Excise Officer before service of notice* on him under sub-section (1) in respect of such service tax, and inform the (Central Excise Officer) of such payment in writing, who, on receipt of such information shall not serve any notice under sub-section (1) in respect of the amount so paid :

Provided that the (Central Excise Officer) may determine the amount of short payment of service tax or erroneously refunded service tax, if any, which in his opinion has not been paid by such person and, then, the (Central Excise Officer) shall proceed to recover such amount in the manner specified in this section, and the period of (thirty months) referred to in sub-section (1) shall be counted from the date of receipt of such information of payment.

Explanation. 1 : For the removal of doubts, it is hereby declared that the interest under section 75 shall be payable on the amount paid by the person under this sub-section and also on the amount of short payment of service tax or erroneously refunded service tax, if any, as may be determined by the Central Excise Officer, but for this sub-section.

Explanation 2 : For the removal of doubts, it is hereby declared that no penalty under any of the provisions of this Act or the rules made thereunder shall be imposed in respect of payment of service tax under this sub-section and interest thereon.

(4) *Nothing contained in sub-section (3) shall apply to a case where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of—*

(a) fraud ; or

(b) collusion ; or

(c) wilful mis-statement ; or

(d) suppression of facts ; or

(e) contravention of any of the provisions of this Chapter or of the rules made thereunder with intent to evade payment of service tax."

7 Section 78 of the said Act is also quoted below for ready reference.

"78. *Penalty for failure to pay service tax for reasons of fraud, etc.*— (1) Where any service tax has not been levied or paid, or has been

short-levied or short-paid, or erroneously refunded, by reason of fraud or collusion or wilful mis-statement or suppression of facts or contravention of any of the provisions of this Chapter or of the rules made thereunder with the intent to evade payment of service tax, the person who has been served notice under the proviso to sub-section (1) of section 73 shall, in addition to the service tax and interest specified in the notice, be also liable to pay a penalty which shall be equal to hundred per cent. of the amount of such service tax :"

8 Section 78 of the Act applies only when there is a failure on the part of the assessee to pay service tax for reasons of fraud, etc., as enumerated in section 73(4) of the Act quoted above. The penalty under section 78 of the Act is not attracted, in case the assessee falls within the four corners of section 73(3) of the Act. Sub-section (4) of section 73 is non obstante to section 73(3) of the Act. It begins with the terms "Nothing contained in sub-section (3) shall apply to a case where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of—

(a) fraud ; or (b) collusion ; or (c) wilful mis-statement ; or (d) suppression of facts, the assessee has failed to pay the service tax.

9 Sub-section (3) clearly provides for a remedy to the assessee to correct his error of short-levy of service tax in two ways (i) either suo motu, or (ii) on the basis of tax ascertained by a Central Excise Officer before service of notice under section 73(1) of the Act, which is the impugned show-cause notice in that present case issued only on October 15, 2014. There is no dispute before us that the assessee filed the returns and paid the short-levied service tax in the year 2013 itself with interest as noted above and that was definitely prior to issuance of show-cause notice issued on October 15, 2014. Therefore, in our opinion, the assessee had complied with the terms of section 73(3) of the Act and would not fall within the mischief of section 73(4) of the Act, thereby obviously the assessee would not attract the imposition to penalty under section 78 of the Act, which is applicable only if the assessee falls within the mischief to section 73(4) of the Act, viz., fraud, collusion, suppression of facts, wilful mis-statement.

10 The audit objection raised by the audit officer is also ascertainment of tax by a Central Excise Officer within the meaning of section 73(3) of the Act and there is no dispute that an auditor of the Department is also a Central Excise Officer. Therefore, payment of the service tax with interest by the assessee in the year 2013 itself, of course, not on his own or suo motu but on the basis of the audit objection, viz., on the basis of the determination by an auditor of the Department would not take out the case of the

assessee from the ambit and scope of section 73(3) of the Act. Therefore, in our opinion, the question of imposition of penalty under section 78 of the Act on the assessee would not arise in the present case.

11 Unless the penalty under section 78 of the Act itself is leviable on the assessee, there is no question of any reduction of the quantum of penalty to 25 per cent. thereof by the learned Tribunal in its discretion. What is not at all leviable, cannot be reduced.

12 Therefore, the assessee is entitled to get the relief in the present case and the appeal filed by the assessee deserves to be allowed. The same is accordingly allowed and the penalty order of original adjudicating authority as well as that of the learned Tribunal upholding the imposition of penalty under section 78 of the Act to the extent of 25 per cent. both deserve to be set aside. We hereby do so.

13 The civil miscellaneous appeal is allowed accordingly. There shall be no order as to costs.

[2020] 80 GSTR 60 (All)

[IN THE ALLAHABAD HIGH COURT]

HUNDAI ENGINEERING AND CONSTRUCTION LTD.

v.

COMMISSIONER OF TRADE TAX, U. P., LUCKNOW

SAUMITRA DAYAL SINGH J.

September 16, 2019.

HF ▶ Department

ENTRY TAX—CHANGE OF LAW—ASSESSMENT—GOODS BROUGHT INTO LOCAL AREA FROM OUTSIDE COUNTRY—MACHINERY BROUGHT INTO LOCAL AREA, ALLAHABAD FROM OUTSIDE COUNTRY IN YEAR 2000-01 FOR EXECUTING CONTRACT FOR CONSTRUCTION OF STAY WIRED BRIDGE OVER RIVER YAMUNA—SUBSEQUENTLY, SOLD IN COURSE OF EXPORT TO PURCHASER IN SOUTH KOREA IN YEAR 2004-05 AFTER SUCCESSFUL COMPLETION OF CONTRACT—LEVY OF ENTRY TAX ON THE GOODS IMPORTED FROM ANY PLACE OUTSIDE INDIA INTO A LOCAL AREA NOT EXCLUDED—PENDING REVISION AGAINST ORDER OF TRIBUNAL AFFIRMING ASSESSMENT AND DEMAND, ACT 2007 PROVIDING FOR NON-LEVY OF GOODS "SUBSEQUENTLY SOLD OR RESOLD IN COURSE OF EXPORT OUT OF TERRITORY OF INDIA" WITH FULL RETROSPECTIVE EFFECT—EACH ASSESSMENT YEAR A SEPARATE AND INDEPENDENT UNIT OF ASSESSMENT OF ENTRY TAX LIABILITY—

SUBSEQUENT EVENT OF EXPORT OF MACHINERY DURING ASSESSMENT YEAR 2004-05 NOT HAVING ANY BEARING ON TAXING EVENT THAT AROSE IN YEAR 2000-01—TAX LEVIABLE—UTTAR PRADESH TAX ON ENTRY OF GOODS INTO LOCAL AREAS ACT (30 of 2007), s. 4(1), (3), (6)(i), (ii)—UTTAR PRADESH TAX ON ENTRY OF GOODS ACT, 2001.

For the purposes of executing the contract, to construct a stay wired bridge over the river Yamuna, at Allahabad the assessee, an engineering concern, imported into the country and the local area, machineries of value Rs. 1,30,30,000, during the assessment year 2000-01. The assessee deposited entry tax on such machinery under the U. P. Tax on Entry of Goods Act, 2001 and after successful completion of the contract, sold those machineries in the course of export trade to a purchaser at South Korea in the year 2004-05. The assessee claimed that the entry of that machinery into the local area Allahabad during the assessment year 2000-01 was non-taxable, since the machineries had not been brought into the local area, Allahabad from within the country but from outside the country. That claim was rejected. The Tribunal dismissed the appeal filed by the assessee and affirmed the assessment and demand of entry tax on machinery imported by the assessee during the assessment year 2000-01. The assessee filed the revision petition during the pendency of which the U. P. Tax On Entry of Goods Into Local Areas Act, 2007 was enforced (with full retrospective effect). The assessee had relied on the provisions of section 4(6)(ii) of the new Act to contend that in any case, upon export of the disputed machinery, no tax liability survived as sub-section (6) of section 4 overrides the charging provisions under section 4(1) and 4(3) of the new Act and that no time-limit is prescribed under sub-clause (ii) of sub section (6) of section 4 of the New Act :

Held *that (i) the U. P. Entry Tax Act did not exclude levy of entry tax on the goods imported from any place outside territories of India into a local area for consumption, use or sale.*

STATE OF KERALA *v.* FR. WILLIAM FERNANDEZ [2018] 57 GSTR 6 (SC) *applied.*

(ii) That in the context of the new Act, each assessment year was a separate and independent unit of assessment of entry tax liability. Thus tax liability might arise in each unit/assessment year only with respect to taxable event/transaction completed therein. The same had to be assessed for that assessment year. Also, it had to be discharged or recovered, as the case might be, with reference to that assessment year only. Of its own, neither that taxable event nor the tax liability arising thereon continued, cascaded or escaped or telescoped into the following year. Unless specifically provided by the

Legislature or necessarily implied, subsequent facts or events arising in preceding or succeeding assessment years, had no bearing on either the taxable event or the consequent tax liability that might arise during any assessment unit/year. Such Legislature intent and necessary intendment did not exist. For that reason, the subsequent event of export of machinery during the assessment year 2004-05 (after it had been made use of during assessment year 2000-01), would not have any bearing on the taxing event that arose in the year 2000-01 and stood completed in that year itself. Moreover, the scheme of the new Act was very clear. Provisions granting reversal of entry tax liability and exemption from entry tax liability were separately provided for under the new Act. Thus, for any liability that might have arisen and which the statute intended to reverse had been specifically provided for by means of section 5 of the new Act. At present such claim/s did not exist. Such claim/s, if any, having not been raised before the Tribunal, were not being dealt with here.

MOHAMMED MEERAKHAN (P. M.) *v.* COMMISSIONER OF INCOME-TAX [1969] 73 ITR 735 (SC) *relied on.*

(iii) That in so far as sub-section 4(6) of the Act was concerned, it was true that the Legislature provided separate conditions under section 4(6)(i) and (ii) for the levy of tax in different circumstances. Further, it was also true that the condition of "non-use" of the goods was not a statutory pre-condition under sub-clause (ii) of sub-section (6) of section 4 of the Act. Yet, that difference in legislative intent would remain extraneous and therefore irrelevant to the claim made by the assessee, in this case. It was so, because here the taxing event (entry of machinery into the local area Allahabad), took place and stood completed and concluded during the assessment year 2000-01 itself .The subsequent event of sale or re-sale of the machinery by way of export sale was unconnected to that taxing event. In any case, it took place much after close of the assessment year 2000-01. Therefore, that separate event/transaction had no bearing on the taxable event that stood irreversibly concluded. Therefore, the consequent tax liability remained unaffected by the subsequent export of the machinery.Thus the revision lacked merit.

Cases referred to :

Brown *v.* State of Maryland [1827] 25 US (12 Wheat) 419, [1827] 6 L. Ed. 678 (para 11)

Director of Entry Tax *v.* Mahindra and Mahindra J.T. 2001 (5) SC 544 (para 8)

Mohammed Meerakhan (P. M.) *v.* Commissioner of Income-tax [1969] 73 ITR 735 (SC) (para 13)

Polestar Electronic (Pvt.) Ltd. *v.* Additional Commissioner, Sales Tax [1978] 41 STC 409 (SC) (para 6)

State of Kerala *v.* Fr. William Fernandez [2018] 57 GSTR 6 (SC) (para 11)

Sales/Trade Tax Revision No. 236 of 2006.

K. N. Kumar for the revisionist.

B. K. Pandey for the State-respondent.

JUDGMENT

SAUMITRA DAYAL SINGH J.—Heard Sri K. N. Kumar and Sri Vishnu Kesarwani, learned counsel for the assessee-revisionist and Sri B. K. Pandey, learned counsel for the State-respondent. 1

The present revision filed by the assessee arises from the order passed by the Trade Tax Tribunal, Allahabad, dated December 7, 2005 in Second Appeal No. 192 of 2003 for assessment year 2000-01 (entry tax). By that order, the Tribunal dismissed the appeal filed by the assessee and affirmed the assessment and demand of entry tax on machinery imported by the assessee during the assessment year 2000-01, but exported outside the country in the year 2004-05. 2

Undisputed facts of the case are that the assessee is an engineering concern. It was awarded contract to construct a stay wired bridge over the river Yamuna, at Allahabad. For the purposes of executing that contract, the assessee imported into the country and the local area, Allahabad, machineries of value Rs. 1,30,30,000, during the assessment year 2000-01. The machinery thus imported were amenable to levy on entry tax under the U. P. Tax on Entry of Goods Act 2001 (hereinafter referred to as "the old Act"). The assessee, at the relevant time, also deposited entry tax on such machinery. Undisputedly, it made use of those machinery in execution of the aforesaid contract awarded to it. After its successful completion, the assessee sold those machineries in the course of export trade to a purchaser at South Korea. 3

Though the revision was admitted without reference to any question of law, however, at the time of hearing the following questions of law have been pressed : 4

> "(i) Whether, under the facts and circumstances mentioned above, the learned Trade Tax Tribunal Bench, Allahabad, was correct in applying section 4, and read with the *Explanation* appended thereto (added by amending Act 10 of 2005) ?

(ii) Whether machinery imported from outside India during assessment year 2000-2001 are covered by section 4 of the old Act, as amended by the Act No. 10 of 2005 ?

(iii) Whether under the facts and circumstances mentioned above, the revisionist is not liable to pay entry tax under section 4(6)(ii) of the Entry Tax Act, 2007, since it resold the goods in the course of export out of the territory of India ?"

5 In such facts, the assessee claimed that the entry of that machinery into the local area Allahabad during the assessment year 2000-01 was non-taxable, since the machineries had not been brought into the local area, Allahabad from within the country but from outside the country. That claim was rejected. During the pendency of the present revision, the U. P. Tax on Entry of Goods Into Local Areas Act, 2007 (hereinafter referred to as a New Act) was enforced. The assessee has thus relied on the provisions of section 4(6)(ii) of the new Act to contend that in any case, upon export of the disputed machinery, no tax liability survived as sub-section (6) of section 4 overrides the charging provisions under section 4(1) and 4(3) of the new Act.

6 Also, it has been submitted, for the purposes of export of machinery, no time-limit is prescribed under sub-clause (ii) of sub-section (6) of section 4 of the new Act. Therefore, the fact that the assessee exported the machinery later, i. e., during the assessment year 2004-05, was inconsequential to the claim made by the assessee. Reliance has been placed on a decision of a Supreme Court in the case of *Polestar Electronic (Pvt.) Ltd.* v. *Additional Commissioner, Sales Tax* [1978] 41 STC 409 (SC) ; [1978] 1 SCC 636 to submit that in view of the clear language of the statute, effect must be given to it to declare the intention of the law giver. Plain and natural meaning must be given to the words used in section 4(6) of the new Act and no other or further meaning is to be discovered. Further, it is not permissible to speculate as to what the Legislature may have intended. Nor it is permissible to twist or bend the language of the statute to bring the subject to tax. In other words, it has been submitted, for the charge of tax to arise the transaction must naturally fall within the four corners of the charging section. No other submission was advanced.

7 Opposing the revision, learned standing counsel would submit, whether the case is examined, in the context of the language of the old Act or in the context of the language under the new Act, (that has been enforced with full retrospective effect), the claim made by the assessee is wholly unfounded. With reference to the old Act, it has been submitted, it was the clear scheme of the old Act to impose entry tax upon entry being caused of

taxable goods, into any local area, for their consumption, use or sale therein. There was neither any exemption granted to goods that had been imported from outside the country and thereafter brought into the local areas for such purpose, nor there was any scheme to grant remission from tax paid on such goods. In the admitted facts of the case, the assessee brought into the local area Allahabad, machinery that fell within the description of taxable goods under the Schedule of the old Act, for its own use. The requirements, for the charge of tax to arise, were thus fulfilled. Tax had been rightly imposed.

In the context of the new Act, learned standing counsel would submit **8** though under that Act, sub-section (6) of section 4, overrides section 4(1) and section 4(3), yet clearly, tax liability would continue to exist on such goods as may have been consumed, used or sold within the local area where such goods may have been brought from outside. Alternatively, in any case, once the assessee brought inside the local area Allahabad, machinery for use and it actually put to use such machinery during the assessment year 2000-01, the tax liability got crystallized at that point or in time. The fact that the machineries were exported outside the country after close of that assessment year, would have no bearing on the tax liability for the assessment year 2000-01. He has relied on the decision of the Supreme Court in the case of *Director of Entry Tax* v. *Mahindra and Mahindra* J. T. 2001 (5) SC 544.

Having heard learned counsel for the parties and having perused the **9** record, in the first place, under the old Act, the charging section was contained in section 4. It read as below :

> "4. *Levy of tax*.—(1) There shall be levied and collected a tax on entry of any goods specified in the Schedule into a local area from any place outside that local area including a place outside the U. P./Uttaranchal for consumption, use or sale therein, at such rates not exceeding five per cent of the value of the goods as may be specified by the State Government by notification and different rates may be specified in respect of different goods or different classes of goods :
>
> Provided that the State Government may by notification amend the schedule and upon issue of any such notification, the schedule shall, subject to the provisions of sub-section (6), be deemed to be amended accordingly.
>
> (2) The tax levied under sub-section (1) shall be payable by a dealer who brings or causes to be brought into the local area such goods, whether on his account or on the account of his principal or

takes delivery or is entitled to take delivery of such goods on its entry into a local area.

Explanation.—Where the goods are taken delivery of on its entry into a local area or brought into a local area by a person other than a dealer, the dealer who takes delivery of the goods from such person shall be deemed to have brought or caused to have brought the goods into the local area.

(3) No dealer who brings or causes to be brought any goods into a local area shall be liable to tax, if during the assessment year the aggregate value of such goods is less than one lakh rupees in the case of manufacturers and one lakh fifty thousand rupees in case of other dealers or such larger amount as the State Government may be notification, specie in that behalf either in respect of all dealers in any goods or in respect of a particular class of such dealers:

Provided that provisions of this sub-section shall not apply in respect of value of the goods brought into a local area from outside Uttar Pradesh/Uttaranchal.

(4) Notwithstanding anything contained in sub-section (1) or sub-section (2), no tax shall be levied on and collected from a dealer who brings or causes to be brought into a local area any goods in respect of which tax has been paid any other local area under the said sub-sections.

(5) No benefit under sub-section (4) shall be given to a dealer unless he furnishes, to the satisfaction of the assessing authority, such declaration or certificate obtained from the selling dealer in such form and manner and within such period as may be prescribed.

(6) Every notification made under this section shall, as soon as may be after it is made, be laid before each house of the Stat Legislature/Assembly, while it is in session, for a total period of not less than fourteen days, extending in its one, session or more than one successive sessions and shall unless some later late is appointed take effect from the date of its publication in Gazette subject to such modifications or annulments as the two Houses of the Legislature/Assembly may during the said period agree to make, so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done thereunder except that any imposition, assessment, levy or collection of tax or penalty shall be subject to the said modification or annulments."

Also, under the Schedule to that Act, machinery valuing more than 10 lakhs was clearly under taxable. Thus, the levy of tax on entry of machinery (valued at more than 10 lacs) arose, no sooner the assessee caused the entry of those goods into the local area Allahabad from outside that local area for use. Under the old Act, the subsequent Act of export of the machinery out of the country, was wholly irrelevant and had no bearing on the tax liability that had otherwise arisen and got finally attached to the transaction upon causing entry of such machinery inside the local area, for use. For the purposes of clarity, it has to be stated that no provision of the nature contained in section 4(6) of the Act (new Act) existed under the old Act. **10**

In so far as it has been contended that no liability of entry tax arose, since the machinery had been imported from outside the country, that question stands squarely decided against the assessee, by the Supreme Court in Civil Appeal Nos. 3381-3400 of 1998, *State of Kerala* v. *Fr. William Fernandez* [2018] 57 GSTR 6 (SC) decided on October 9, 2017, laying down the following rule (pages 77 and 78 in 57 GSTR) : **11**

> "144. In view of foregoing discussion, we arrive at the following *Conclusions* :
>
> (i) The Orissa Entry Tax Act, 1999, the Kerala Tax Act, 1994 and the Bihar Tax on Entry of Goods in Local Areas for Consumption, Use or Sale Therein Act, 1993 (before its amendment by Bihar Act, 2003 and 2006) do not exclude levy of entry tax on the goods imported from any place outside territories of India into a local area for consumption, use or sale.
>
> (ii) All the entry tax legislations questioned in these appeals are legislations which are within the legislative competence of the State Legislatures and do not intrude the legislative domain of Parliament as reserved in entry 41 and entry 83 of List I.
>
> (iii) The import of goods from any territory outside India comes to an end when the goods enter into the custom frontiers of India and are released for home consumption.
>
> (iv) After import of goods comes to an end the State Legislature has full legislative competence to levy entry tax under entry 52 List II.
>
> (v) The original package theory as developed by the American Supreme Court in case of *Brown* v. *State of Maryland* [1827] 25 U. S. (12 Wheat) 419, [1827] 6 L.Ed. 678 is not applicable in this country and the imported goods are not exempted from entry tax till it reaches to the factory premises/destination of its consumption, use or sale.

(vi) Non-inclusion of custom duty in the definition of purchase value in the statute of entry tax is not an indicator of the fact that Legislature never intended to levy entry tax on imported goods.

(vii) Entry tax legislation are fully covered by entry 52, List II and the submission that essence of entry 52 is octroi which can be levied only by local authorities and State has no legislative competence to impose entry tax under entry 52, List II is fallacious.

(viii) A plant imported in knocked out condition is fully covered with the definition of machinery and equipment under Part II of Schedule of the Orissa Act, 1999."

12 In so far as, the new Act is concerned, section 4(1), (3) and (6) of that Act read as below :

"4. *Levy of tax*.—(1) For the purpose of development of trade, commerce and industry in the State, there shall be levied and collected a tax on entry of goods specified in the Schedule into a local area for consumption, use or sale therein, from any place outside that local area, at such rate not exceeding five percent of the value of the goods as may be specified by the State Government by notification and different rates may be specified in respect of different goods or different classes of goods :

Provided that the State Government may by notification amend the schedule and upon issue of any such notification, the Schedule shall, subject to the provisions of sub-section (10), be deemed to be amended accordingly.

(3) The tax levied under sub-section (1) shall be payable by a dealer who brings or causes to be brought into the local area such goods, whether on his account or on the account of his principal or takes delivery or is entitled to take delivery of such goods on its entry into a local area :

Provided that the State Government, may by notification, permit any Power Project Industrial Unit engaged in generation, transmission and distribution, having aggregate capital investment of Rs.1,000 crore or more to own the liability of payment of tax of other dealers on the entry of such goods into a local area from any place outside that local area as are used and consumed by the said unit subject to such conditions as may be specified in the notification.

(4) and (5) . . .

(6) Notwithstanding anything contained in sub-section (1) or subsection (3), no tax shall be levied on and collected from a dealer,

who brings or causes to be brought into a local area any goods which are,—

(i) consigned without using them in the local area to any place outside the State ; or

(ii) sold or resold either in the course of inter-State trade or commerce or in the course of export out of the territory of India ;

Explanation.—Section 3, section 5 and section 6A of the Central Sales Tax Act, 1956 shall apply for the purpose of determining whether or not any goods has been sold by a dealer in the course of inter-State trade or commerce or in the course of export out of the territory of India :

Provided that where at the time of entry of goods into a local area, the quantity or value of goods to be sold within such local area for the purpose of being taken outside the State without consumption, use or sale in such local area, is not ascertainable, the dealer shall pay the amount of tax on the value of total quantity of goods and after the goods are consigned or sold outside or in the course of, export, the dealer may claim refund or adjustment of the amount so paid as tax in the month in which such goods are transferred outside the State or sold in the course of inter-State trade or commerce or the course of export, in respect of such goods, in the manner provided in section 5 of this Act."

13 In the context of the new Act, it is seen, each assessment year is a separate and independent unit of assessment of entry tax liability. As principle applicable to taxing statutes it was recognised in the context of the Income-tax Act in *P. M. Mohammed Meerakhan* v. *Commissioner of Income-tax* [1969] 73 ITR 735 (SC) ; [1969] 2 SCC 25, wherein it was held (page 743 in 73 ITR) :

"8. . . . Under the Income-tax Act for the purpose of assessment each year is a self-contained unit and in the case of a trading adventure the profits have to be computed in the manner provided by the statute. . ."

14 Same principle is applicable in this case as well. Thus tax liability may arise in each unit/assessment year only with respect to taxable event/transaction completed therein. The same has to be assessed for that assessment year. Also, it has to be discharged or recovered, as the case may be, with reference to that assessment year only.

15 Of its own, neither that taxable event nor the tax liability arising thereon continue, cascade or escape or telescope into the following year. Unless

specifically provided by the Legislature or necessarily implied, subsequent facts or events arising in preceding or succeeding assessment years, have no bearing on either the taxable event or the consequent tax liability that may arise during any assessment unit/year. Such Legislature intent and necessary intendment do not exist. For that reason, the subsequent event of export of machinery during the assessment year 2004-05 (after it had been made use of during assessment year 2000-01), would not have any bearing on the taxing event that arose in the year 2000-01 and stood completed in that year itself.

16 Moreover, the scheme of the new Act is very clear. Provisions granting reversal of entry tax liability and exemption from entry tax liability are separately provided for under the new Act. Thus, for any liability that may have arisen and which the statute intended to reverse has been specifically provided for by means of section 5 of the new Act. At present such claim/s do not exist. Such claim/s, if any, having not been raised before the Tribunal, are not being dealt with here.

17 In so far as sub-section 4 (6) of the Act are concerned, it is true that the Legislature provided separate conditions under section 4(6)(i) and (ii) for the levy of tax in different circumstances. Further, it is also true that the condition of "non-use" of the goods was not a statutory pre-condition under sub-clause (2) of sub-section 6 of section 4 of the Act. Yet, that difference in legislative intent would remain extraneous and therefore irrelevant to the claim made by the assessee, in this case. It is so, because here the taxing event (entry of machinery into the local area Allahabad), took place and stood completed and concluded during the assessment year 2000-01 itself.

18 The subsequent event of sale or re-sale of the machinery by way of export sale was unconnected to that taxing event. In any case, it took place much after close of the assessment year 2000-01. Therefore, that separate event/transaction had no bearing on the taxable event that stood irreversibly concluded. Therefore, the consequent tax liability remained unaffected by the subsequent export of the machinery.

19 Thus, the legal basis of the claim raised by the assessee is found non-existent. There is nothing to doubt the existence of the tax liability and its crystallization at the end of the assessment year 2000-01. It also did not get diluted or wiped out upon occurrence of export of the machinery, in subsequent assessment year.

20 In view of the above, questions of law raised by the assessee are answered thus : the factual and legal basis of the claim raised by the assessee having arisen more than three years after the close of the assessment year

2000-01, the same is wholly unfounded. The taxable event occurred in and tax liability arose upon the assessee having caused the entry of machinery for use in the local area Allahabad, during the assessment year 2000-01. It got crystallized on 31st March, 2001. The event of subsequent export of machinery outside the country during the assessment year 2004-05, had no bearing on the unit of assessment being the assessment year 2000-01.

In view of the above, there is no merit in the revision. It is accordingly, **21** *dismissed*. Costs easy.

[2020] 80 GSTR 71 (MP)

[IN THE MADHYA PRADESH HIGH COURT — GWALIOR BENCH]

MANNULAL GYANICHAND, SHIVPURI

v.

STATE OF M. P. AND OTHERS

SANJAY YADAV and VIVEK AGARWAL JJ.

August 8, 2019.

HF ▶ Assessee

SALES TAX—REASSESSMENT—CONDITIONS PRECEDENT—DEALER MUST BE AFFORDED REASONABLE OPPORTUNITY OF HEARING—NO MATERIAL BROUGHT BY DEPARTMENT TO SHOW THAT OPPORTUNITY OF HEARING AFFORDED TO DEALER AND THAT MATERIAL COLLECTED BEFORE ISSUING NOTICE WAS DISCLOSED TO DEALER—ORDER OF REASSESSMENT NOT BE SUSTAINABLE—MADHYA PRADESH COMMERCIAL TAX ACT, 1994 (5 of 1995), ss. 28(1), 29.

The assessment of the petitioner-dealer under the Madhya Pradesh Commercial Tax Act, 1994 for the financial years 1997-98, 1998-99, 2000-01 was reopened by the Assistant Commissioner under section 28 of the Act on the ground that dealers in Madurai, Tamil Nadu had allegedly sold coconuts worth Rs. 1,93,114, Rs. 2,88,842, Rs. 2,29,488, Rs. 7,19,545 and Rs. 78,839. The dealer on receiving the notice filed a reply denying any transaction as alleged. By order dated August 19, 2004, the Assistant Commissioner held the dealer liable for additional tax and imposed penalty. The revision preferred by the dealer was dismissed. On a writ petition :

Held, *allowing the petition, that the information said to have been received from the headquarters had not been shared with the dealer. It was only when the dealer preferred a revision, that the revisional authority dwelt upon the material collected by the team of commercial tax officers which was sent to*

Madurai and the burden was shifted on the dealer to producing certificates from the respective traders. Under sub-section (1) of section 28 of the Act it is imperative for the authority to afford the dealer a reasonable opportunity of hearing and after making enquiry, as it considers necessary, pass the order. In the case at hand no material was brought by the Department to show that any opportunity of hearing was afforded to the dealer and that material collected before issuing notice or even along with the notice was ever disclosed to the dealer. The authorities had failed to discharge the duties cast on them under the provisions of the Act in as much as the order of reassessment had been passed without affording reasonable opportunity of hearing to the dealer, and could not be sustained in the eyes of law.

STATE OF KERALA *v.* K. T. SHADULI YUSUFF [1977] 39 STC 478 (SC) *relied on*.

STATE OF KERALA *v.* K. T. SHADULI YUSUFF [1977] 39 STC 478 (SC) (paras 8, 9) *referred to*.

Writ Petition No. 5256 of 2006.

K. N. Gupta, Senior Counsel with *R. S. Dhakad* for the petitioner.

Pratip Visoriya, Government Advocate, for respondent/State.

ORDER

The order of the court was made by

1 SANJAY YADAV J.—This petition preferred under article 226/227 of the Constitution of India is directed against the order dated August 19, 2004 and January 24, 2006 passed by the Assistant Commissioner, Commercial Tax and Additional Commissioner, Commercial Tax, Gwalior ; whereby, the petitioner has been subjected to reassessment under section 28(1) read with section 29 of the M. P. Commercial Tax Act, 1994 (for brevity "the Act").

2 The petitioner is a proprietorship concern and is in the business of vanaspati ghee and coconut (nariyal) within the State of Madhya Pradesh. It is a registered dealer under the provisions of the Act. The original assessment of financial year 1997-98, 1998-99, 2000-01 was completed as per the provisions under section 27 of the Act and also under the Entry Tax Act, 1976 (for short, "the 1976 Act") on July 31, 2000, August 31, 2001 and December 29, 2001, respectively.

3 The Assistant Commissioner, Commercial Tax, Gwalior (M. P.) in purported exercise of powers under section 28 of the Act issued notices to the petitioner as to escape assessment and sale and purchase of goods of the financial year 1997-98, 1998-99 and 2000-01, respectively qua dealers

M/s. Deepakraj Traders, DSP Nagar Madurai Tamil Nadu, M/s. Shri Mahalaxmi Coconut Traders Dindigul, Tamil Nadu and M/s. Abhinath Coconut Trading Company, Madurai, who have allegedly sold coconut were Rs. 1,93,114, 2,88,842, 2,29,488, 7,19,545 and 78,839. The petitioner on receiving the notice filed the reply whereby, he denied any transaction, as alleged. An affidavit was also filed by the assessee to that effect on August 15, 2004. By order passed on August 19, 2004, the Assistant Commissioner held the assessee liable for additional tax and imposed the penalty thereon for the years under consideration. On revision under section 62 of the Act being preferred by the assessee against the impugned order, the revisional authority by the impugned order dated January 24, 2006 dismissed it. Aggrieved, the petitioner has preferred this petition.

Solitary issue raised on behalf of the petitioner is that the Assistant **4**
Commissioner (assessing officer) passed the order without affording an opportunity of hearing and without disclosing the material collected while forming an opinion for reopening the matter. It is urged that by cryptic order, the Assistant Commissioner, Commercial Tax, held the petitioner liable for the tax. It is further contended that the fact that there were certain material available with the authority concerned could be borne out only when the revisional authority dwelt upon the same in its order passed on April 21, 2006 that a team of sales tax officers was sent to Tamil Nadu from where they collected certain information from the traders, i.e., M/s. Deepakraj Traders, DSP Nagar, Madurai, Tamil Nadu, M/s. Shri Mahalaxmi Coconut Traders Dindigul, Tamil Nadu and M/s. Abhinath Coconut Trading Company, Madurai. It is urged that the Assistant Commissioner, Commercial Tax, did not afford any opportunity to the assessee and on the basis of the information collected behind its back passed the order of reassessment, whereas no such transaction as was collected by the team at Tamil Nadu was entered into by the petitioner. On these contentions, the petitioner seeks quashment of the reassessment and its affirmation by the revisional authority.

The respondents, on their turn, have supported the orders on the **5**
contention that there was material evidence on record to justify the order of reassessment and its affirmation in the revision ; however, when called upon to establish as to whether an opportunity of hearing to the extent of cross-examination of the traders from whom the Department has collected the information before issuing the notice under section 28(1) of the Act was afforded to the petitioner, learned Government Advocate, however, is unable to commend at any cogent material which establishes that opportunity of hearing was given to the petitioner.

6 The order passed by the Assistant Commissioner, as is evident therefrom, does not analyse any fact. It only states **"मुख्यालय से प्राप्त जानकारी अनुसार"**. The information said to have been received from the headquarters has not been shared with the petitioner as the order is silent to that effect. It is only when the petitioner prefers a revision, the revisional authority dwells upon the material collected by the team of commercial tax officers which was sent to the Madurai and the burden is shifted on the assessee that it did not discharge the same by producing certificate from the respective traders.

7 Sub-section (1) of section 28 of the Act contemplates that where an assessment has been made under this Act or the Act repealed by this Act and if for any reason any sale or purchase of goods chargeable to tax under this Act or the Act repealed by this Act during any period has been under-assessed or has escaped assessment or assessed at a lower rate or any deduction has been wrongly made therefrom or a set off has been wrongly allowed, the Commissioner may, at any time within five calendar years from the date of order of assessment after giving the dealer a reasonable opportunity of being heard and after making such enquiry as he considers necessary, proceed in such manner as may be prescribed to reassess within a period of two calendar years from the commencement of such proceedings the tax payable by such dealer and the Commissioner may, where the omission leading to such reassessment is attributable to the dealer, direct that the dealer shall pay by way of penalty in addition to the amount of tax so assessed, a sum not exceeding that amount. Thus, imperative it is for the authority concerned to afford the assessee, a reasonable opportunity of hearing and after making enquiry, as it considers necessary, pass the order. In the case at hand no material is commended at by the respondent/ State as to any opportunity of hearing was afforded to the petitioner and that material collected by them before issuing notice or even along with the notice was ever disclosed to the petitioner.

8 In this context, reference can be had of the decision in "(*State of Kerala* v. *K. T. Shaduli Yusuff* [1977] 39 STC 478 (SC) ; AIR 1977 SC 1627)" ; wherein, it is held that tax authorities entrusted with the power to make assessment of tax discharge quasi-judicial function and they are bound to observe principles of natural justice in reaching their conclusions. It is observed that one of the rules which constitutes a part of the principles of natural justice is the rule of audi alterem partem which requires that no man should be condemned unheard. It is indeed a requirement of the duty to act fairly which lies on all quasi judicial authorities and this duty has been extended also to the authorities holding administrative enquiries involving civil consequences or affecting rights of parties. It was held (pages 484 and 485 in 39 STC) :

"5. The usual mode recognised by law for proving a fact is by production of evidence and evidence includes oral evidence of witnesses. The opportunity to prove the correctness or completeness of the return would, therefore, necessarily carry with it the right to examine witnesses and that would include equally the right to cross-examine witnesses examined by the Sales Tax Officer. Here, in the present case, the return filed by the assessee appeared to the Sales Tax Officer to be incorrect or incomplete because certain sales appearing in the books of Haji Usmankutty and other wholesale dealers were not shown in the book's of account of the assessee. The Sales Tax Officer relied on the evidence furnished by the entries in the books of account of Haji Usmankutty and other wholesale dealers for the purpose of coming to the conclusion that the return filed by the assessee was incorrect or incomplete. Placed in these circumstances, the assessee could prove the correctness and completeness of his return only by showing that the entries in the books of account of Haii Usmankutty and other wholesale dealers were false, bogus or manipulated and that the return submitted by the assessee should not be disbelieved on the basis of such entries, and this obviously, the assessee could not do, unless he was given an opportunity of cross-examining Haji Usmankutty and other wholesale dealers with reference to their accounts. Since the evidentiary material procured from or produced by Haji Usmankutty and other wholesale dealers was sought to be relied upon for showing that the return submitted by the assessee was incorrect and incomplete, the assessee was entitled to have Haji Usmankutty and other wholesale dealers summoned as witnesses for cross-examination. It can hardly be disputed that cross-examination is one of the most efficacious methods of establishing truth and exposing falsehood. Here, it was not disputed on behalf of the Revenue that the assessee in both cases applied to the Sales Tax Officer for summoning Haji Usmankutty and other wholesale dealers for cross-examination, but his application was turned down by the Sales Tax Officer. This act of the Sales Tax Officer in refusing to summon Haji Usmankutty and other wholesale dealers for cross-examination by the assessee clearly constituted infraction of the right conferred on the assessee by the second part of the proviso and that vitiated the orders of assessment made against the assessee."

When the case at hand is adjudged on the anvil of law laid down in **9**
K. T. Shaduli Yusuff [1977] 39 STC 478 (SC) ; AIR 1977 SC 1627, we are of the considered opinion that the authorities concerned failed to discharge

the duties cast on them under the provisions of the Act as much as without affording reasonable opportunity of hearing to the petitioner, the order of reassessment has been passed which cannot be sustained in the eyes of law.

10 Consequently, impugned orders are quashed. The petitioner shall be entitled to all consequential benefits. No costs.

[2020] 80 GSTR 76 (MP)

[IN THE MADHYA PRADESH HIGH COURT — GWALIOR BENCH]

MUNESH ENTERPRISES

v.

STATE OF M. P. AND ANOTHER

SHEEL NAGU and **RAJEEV KUMAR SHRIVASTAVA** JJ.

May 11, 2020.

HF ▶ Assessee

SALES TAX—ASSESSMENT—REASSESSMENT—NATURAL JUSTICE—"REASONABLE OPPORTUNITY" TO BE HEARD—GRANT OF OPPORTUNITY TO CROSS-EXAMINE—EX PARTE REASSESSMENTS MADE ON BASIS OF INFORMATION FROM KRISHI UPAJ MANDI SAMITI AS REGARDS PURCHASE MADE BY DEALER—MATTER REMANDED BY STATE FOR AFFORDING DEALER OPPORTUNITY OF CROSS-EXAMINATION IN RESPECT OF DOCUMENTS OF SAMITI—APPELLATE AUTHORITY DENYING OPPORTUNITY OF CROSS-EXAMINATION PRESUMING THAT RECORDS BEING 17 YEARS OLD MAY NOT BE AVAILABLE WITH SAMITI—PRESUMPTION WITHOUT BASIS—ORDER LIABLE TO BE SET ASIDE—DIRECTION TO CONDUCT REASSESSMENT PROCEEDINGS AFRESH AFTER GRANTING REASONABLE OPPORTUNITY TO DEALER OF CROSS-EXAMINATION IN RESPECT OF DOCUMENTS OF KRISHI UPAJ MANDI SAMITI—MADHYA PRADESH COMMERCIAL TAX ACT, 1994 (5 OF 1995).

The original sales tax assessments of the petitioner-dealer for the periods 1993-94 and 1994-95 were reopened by the Assistant Commissioner under the directions of the Deputy Divisional Commissioner on the basis of information received from Krishi Upaj Mandi Samiti as regards purchase made by the dealer, and ex parte reassessment orders were passed levying additional tax under the Central Sales Tax Act, 1956 and penalty under section 28 of the Madhya Pradesh Commercial Tax Act, 1994 separately for the two periods. The dealer came to know of these orders of reassessment when demands for the additional amounts were raised. The dealer preferred a revi-

sion petition which the revisional authority allowed remanding the matter for fresh assessment. On remand the dealer filed written submissions expressly seeking opportunity of cross-examination qua the record received from Krishi Upaj Mandi Samiti which was the foundation of the reassessment proceedings. The Assistant Commissioner, however, turned down the request for cross-examination and passed fresh orders of reassessment. The dealer preferred an application before the State Government which remanded the matter to the Additional Commissioner. The Additional Commissioner initiated proceedings under section 62(2) of the 1994 Act and passed final orders dismissing the revision petition recording the finding that since the assessment was for 1994-95 the possibility of records being available with the Krishi Upaj Mandi Samiti was remote and therefore affording of opportunity for cross-examination would be an exercise in futility. On a writ petition :

Held, *allowing the petition, that grant of an opportunity to cross-examine is a concomitant of the expression "reasonable opportunity". The matter was remanded by the State only because opportunity of cross-examination in respect of the documents of the Krishi Upaj Mandi Samiti should be afforded. However, when the matter was taken up on remand, the appellate authority brushed aside the prayer for cross-examination presuming without any basis that the records being 17 years old might not be available with the Samiti. The least that was required of the appellate authority was to afford an opportunity to the dealer to produce those records or to summon those records directly from the Samiti and if the attempt had failed then the appellate authority would have well within its powers to proceed in accordance with law, but not otherwise. Since the appellate authority had passed the order assigning reasons which did not stand the test of reasonableness the order dated January 31, 2012 passed by the Additional Commissioner was liable to be set aside, the orders of the Assistant Commissioner quashed and the respondents directed to conduct reassessment proceedings granting reasonable opportunity to the dealer of cross-examination in respect of the documents pertaining to the Krishi Upaj Mandi Samiti. However, if the dealer failed to produce the documents after grant of reasonable opportunity and if the assessing authority in exercise of its powers was unable to procure the documents the dealer might be allowed to cross-examine any witness in the know of the documents.*

Cases referred to :

Mannulal Gyanichand *v.* State of M. P. [2020] 80 GSTR 71 (MP) (para 5)

Commissioner of Sales Tax *v.* Suresh Chand Jain [1988] 70 STC 45 (SC) (para 5)

Govind Trading Company *v.* State of M. P. (W. P. 442 of 2004 decided on July 20, 2010—Madhya Pradesh High Court) (para 5)

State of Kerala *v.* Shaduli Yusuff (K. T.) [1977] 39 STC 478 (SC) (para 5)

W. P. No. 7965 of 2015.

Pawan Kumar Dwivedi for the petitioner.

Ankur Mody, Additional Advocate General, for the respondent/ State.

JUDGMENT

1 This petition filed by a proprietorship firm under article 226 of the Constitution of India assails annexure P-14 dated January 31, 2012 by which the revision of petitioner has been dismissed by upholding the reassessment of tax under the Central Sales Tax Act and corresponding penalty under the M. P. Commercial Tax Act in respect of the periods from April 1, 1993 to March 31, 1994 and from April 1, 1994 to March 31, 1995.

2 The learned counsel for the rival parties are heard on the question of admission.

3 The skeletal facts necessary for adjudication are that the business of the petitioner-firm which is a registered dealer under the M. P. General Sales Tax Act, M. P. Commercial Tax Act and Central Sales Tax Act allegedly came to a standstill and was closed from the year of 1999 due to heavy losses. It is further alleged by the petitioner that the Commercial Tax Officer vide orders dated December 27, 1997 and March 20, 1998 had completed the assessment under the M. P. CT, CST and Entry Tax Act for the said periods on the basis of books of accounts after due verification and enquiry. Respondent No. 2, it is alleged, reopened the original assessments of the said periods as aforesaid, under the directions of the Deputy Divisional Commissioner of Commercial Tax, Gwalior, on the basis of some information received from Krishi Upaj Mandi Samiti, Guna (M. P.) as regards purchase made by the petitioner. It is alleged that no opportunity during the reopening and reassessment proceedings was afforded to the petitioner and the same were conducted ex parte by passing appropriate orders on December 3, 2001 vide annexure P1, P2, P3, P4, P5 and P6. It is submitted that consequently additional tax under the Central Sales Tax Act separately for the said two periods and penalty under section 28 of the M. P. C. T. Act separately for the two periods were levied. It is further alleged that the petitioner came to know of these impugned orders of reassessment when the Revenue raised demand for the additional amount. It is submitted that consequently the petitioner on March 29, 2004 preferred a

revision vide annexure P7. It is submitted that the revisional authority by order dated March 31, 2004 vide annexure P10 allowed the revision and remanded the matter for fresh assessment. Respondent No. 2 on receipt of the matter on remand initiated proceedings for reassessment afresh. It is submitted that the parties were heard and the petitioner filed written submissions expressly seeking opportunity of cross-examination qua the record received from Krishi Upaj Mandi Samiti, Guna (M. P.), which was the foundation of the reassessment proceedings. It is submitted that the assessing authority, however, turned down the said request for cross-examination. Accordingly, respondent No. 2 passed fresh orders of reassessment on December 7, 2006 vide annexure P-11A to annexure P-11F. It is submitted that before passing the order respondent No. 2 did not care to even call for the records of Krishi Upaj Mandi Samiti, Guna (M. P.) and also did not afford any opportunity of cross-examination. It is submitted that petitioner being aggrieved preferred an application under section 39/62 of the M. P. GST/MPCT Act before the State Government vide annexure P12. The State Government vide annexure P-13 remanded the matter to the Additional Commissioner, Commercial Tax, Gwalior (M. P.), vide order dated October 3, 2011. Thereafter, it is submitted that the Additional Commissioner, Commercial Tax, Gwalior (M. P.), initiated proceedings under section 62(2) of the M. P. C. T. Act and passed final order on January 31, 2012 vide annexure P14 dismissing the revision petition and while doing so recorded the finding that since the period of assessment is of 1994-95 vintage which is about 17 years' old, the possibility of records being available with the Krishi Upaj Mandi Samiti, Guna (M. P.), is remote and therefore affording of opportunity for cross-examination will be an exercise in futility.

Accordingly, this petition has been filed challenging annexure P14 dated January 31, 2012 passed by the Additional Commissioner, Commercial Tax, Gwalior (M. P.)/appellate authority. 4

The learned counsel for the petitioner by relying upon *State of Kerala* v. *K. T. Shaduli Yusuff* [1977] 39 STC 478 (SC) ; [1977] 2 SCC 777, *Commissioner of Sales Tax, U. P., Lucknow* v. *Suresh Chand Jain, Tendu Leaves Dealer, Lalitpur* [1988] 70 STC 45 (SC) ; [1988] (Supp.) SCC 421 and two orders of the Division Bench of this court rendered on July 20, 2010 in W. P. 442 of 2004 (*Govind Trading Company* v. *State of M. P.*) and the other rendered on August 8, 2019 in W. P. No. 5256 of 2006 (*Mannulal Gyanichand, Shivpuri* v. *State of M. P.* [2020] 80 GSTR 71 (MP)) submits that the requirement of reasonable opportunity inherently involves the opportunity to cross-examine. Relevant para 4 and 5 of the judgment in the case of *K. T. Shaduli Yusuff* [1977] 39 STC 478 (SC) ; [1977] 2 SCC 777 5

which has been followed in all the subsequent decisions cited by learned counsel for the petitioner are reproduced below for ready reference and convenience (pages 482 to 485 in 39 STC) :

"4. Now, in the present case, we are not concerned with a situation where the rule of audi alterem partem has to be read into the statutory provision empowering the taxing authorities to assess the tax. Section 17, sub-section (3), under which the assessment to sales tax has been made on the assessee provides as follows :

'If no return is submitted by the dealer under sub-section (1) within the prescribed period, or if the return submitted by him appears to the assessing authority to be incorrect or incomplete, the assessing authority shall, after making such enquiry as it may consider necessary and after taking into account all relevant materials gathered by it, assess the dealer to the best of its judgment :

Provided that before taking action under this sub-section the dealer shall be given a reasonable opportunity of being heard and, where a return has been submitted, to prove the correctness or completeness of such return.'

It is clear on a plain natural construction of the language of this provision that it empowers the Sales Tax Officer to make a best judgment assessment only where one of two conditions is satisfied : either no return is submitted by the assessee or the return submitted by him appears to the Sales Tax Officer to be incorrect or incomplete. It is only on the existence of one of these two conditions that the Sales Tax Officer gets the jurisdiction to make a best judgment assessment. The fulfilment of one of these two prerequisites is, therefore, a condition precedent to the assumption of jurisdiction by the Sales Tax Officer to make assessment to the best of his judgment. Now, where no return has been submitted by the assessee, one of the two conditions necessary for the applicability of section 17, sub-section (3) being satisfied, the Sales Tax Officer can, after making such inquiry as he may consider necessary and after taking into account all relevant materials gathered by him, proceed to make the best judgment assessment and in such a case, he would be bound under the proviso to give a reasonable opportunity of being heard to the assessee. But in the other case, where a return has been submitted by the assessee, the Sales Tax Officer would first have to satisfy himself that the return is incorrect or incomplete before he can proceed to make the best judgment assessment. The decision making process in such a case would really be in two stages, though the inquiry may be continuous

and uninterrupted the first stage would be the reaching of satisfaction by the Sales Tax Officer that the return is incorrect or incomplete and the second stage would be the making of the best judgment assessment. The first part of the proviso which requires that before taking action under sub-section (3) of section 17, the assessee should be given a reasonable opportunity of being heard would obviously apply not only at the second stage but also at the first stage of the inquiry, because the best judgment assessment, which is the action under section 17, sub-section (3) follows upon the inquiry and the 'reasonable opportunity of being heard' must extend to the whole of the inquiry, including both stages. The requirement of the first part of the proviso that the assessee should be given a 'reasonable opportunity of being heard' before making best judgment assessment merely embodies the audi alterem partem rule and what is the content of this opportunity would depend, as pointed out above, to a great extent on the facts and circumstances of each case. The question debated before us was whether this opportunity of being heard granted under the first part of the proviso included an opportunity to cross-examine Haji Usmankutty and other wholesale dealers on the basis of whose books of account the Sales Tax Officer disbelieved the account of the assessee and came to the finding that the returns submitted by the assessee were incorrect and incomplete. But it is not necessary for the purpose of the present appeals to decide this question since we find that in any event the assessee was entitled to this opportunity under the second part of the proviso.

5. The second part of the proviso lays down that where a return has been submitted, the assessee should be given a reasonable opportunity to prove the correctness or completeness of such return. This requirement obviously applies at the first stage of the enquiry before the Sales Tax Officer comes to the conclusion that the return submitted by the assessee is incorrect or incomplete so as to warrant the making of a best judgment assessment. The question is what is the content of this provision which imposes an obligation on the Sales Tax Officer to give and confers a corresponding right on the assessee to be afforded, a reasonable opportunity 'to prove the correctness or completeness of such return'. Now, obviously 'to prove' means to establish the correctness or completeness of the return by any mode permissible under law. The usual mode recognised by law for proving a fact is by production of evidence and evidence includes oral evidence of witnesses. The opportunity to prove the correctness

or completeness of the return would, therefore, necessarily carry with it the right to examine witnesses and that would include equally the right to cross-examine witnesses examined by the Sales Tax Officer. Here, in the present case, the return filed by the assessee appeared to the Sales Tax Officer to be incorrect or in-complete because certain sales appearing in the books of Haji Usmankutty and other wholesale dealers were not shown in the book's of account of the assessee. The Sales Tax Officer relied on the evidence furnished by the entries in the books of account of Haji Usmankutty and other wholesale dealers for the purpose of coming to the conclusion that the return filed by the assessee was incorrect or incomplete. Placed in these circumstances, the assessee could prove the correctness and completeness of his return only by showing that the entries in the books of account of Haji Usmankutty and other wholesale dealers were false, bogus or manipulated and that the return submitted by the assessee should not be disbelieved on the basis of such entries, and this obviously the assessee could not do, unless he was given an opportunity of cross-examining Haji Usmankutty and other wholesale dealers with reference to their accounts. Since the evidentiary material procured from or produced by Haji Usmankutty and other wholesale dealers was sought to be relied upon for showing that the return submitted by the assessee was incorrect and incomplete, the assessee was entitled to have Haji Usmankutty and other wholesale dealers summoned as witnesses for cross-examination. It can hardly be disputed that cross-examination is one of the most efficacious methods of establishing truth and exposing falsehood. Here, it was not disputed on behalf of the Revenue that the assessee in both cases applied to the Sales Tax Officer for summoning Haji Usmankutty and other wholesale dealers for cross-examination, but his application was turned down by the Sales Tax Officer. This act of the Sales Tax Officer in refusing to summon Haji Usmankutty and other wholesale dealers for cross-examination by the assessee clearly constituted infraction of the right conferred on the assessee by the second part of the proviso and that vitiated the orders of assessment made against the assessee."

6 From the aforesaid, it appears that grant of an opportunity to cross-examine is a concomitant of the expression "reasonable opportunity". In the instant case, the matter was remanded by the State only for the purpose that opportunity of cross-examination which was not afforded to the petitioner in respect of the documents of the Krishi Upaj Mandi Samiti, Guna (M. P.) should now be afforded. However, when the matter was

taken up after receipt on remand, the appellate authority seems to have brushed aside the prayer for cross-examination by presuming without any basis that the records being 17 years old may not be available with the Krishi Upaj Mandi Samiti, Guna (M. P.). The least that was required of the appellate authority was to afford an opportunity to the petitioner to produce those records or to summon those records directly from the Krishi Upaj Mandi Samiti, Guna (M. P.), as the case may be and if the attempt would have failed then the appellate authority/assessing authority was well within its powers to proceed in accordance with law, but not otherwise.

Since the appellate authority has passed the impugned order by assigning reasons which cannot stand the test of reasonableness as authority fails to even address the issue in its right perspective, this court is of the considered view that the power of judicial review deserves to be exercised under article 226 of Constitution in favour of the petitioner. **7**

Consequently, the petition stands allowed to the extent indicated below: **8**

(i) The impugned order, annexure P14 dated January 31, 2012, passed by the Additional Commissioner, Commercial Tax, Gwalior (M. P.) is hereby set aside.

(ii) The orders dated December 7, 2006 (annexure P11A to annexure P11F) are further quashed.

(iii) The respondents are now directed to conduct reassessment proceedings by granting reasonable opportunity to the petitioner of cross-examination in respect of the documents pertaining to the Krishi Upaj Mandi Samiti, Guna (M. P.).

(iv) However, it is made clear that in case the petitioner fails to produce the documents after grant of reasonable opportunity and if the assessing authority in exercise of its powers under the relevant Act is unable to procure the said documents then the petitioner may be allowed to cross-examine any witness in the know of the said documents.

The petition accordingly stands allowed to the extent indicated above with no cost. **9**

[2020] 80 GSTR 84 (Cal)

[IN THE CALCUTTA HIGH COURT]

ARVIND KUMAR MUNKA

v.

UNION OF INDIA

SHIVAKANT PRASAD J.

December 24, 2019.

HF ▶ Department

GOODS AND SERVICES TAX—OFFENCES AND PROSECUTION—ARREST AND DETENTION—BAIL—CHARTERED ACCOUNTANT—ALLEGATION THAT PETITIONER IN CONNIVANCE WITH OTHERS ISSUED GOODS AND SERVICES TAX INVOICES WITHOUT SUPPLY OF GOODS TO BUYERS ON COMMISSION BASIS CAUSING LOSS OF MORE THAN RS. 98 CRORES—DOCUMENTARY EVIDENCE SHOWING GRAVITY OF ECONOMIC OFFENCE—PETITIONER NOT ENTITLED TO BE ENLARGED ON BAIL—CENTRAL GOODS AND SERVICES TAX ACT (12 of 2017), ss. 69, 132(1)—CODE OF CRIMINAL PROCEDURE, 1973 (2 of 1974), s. 439.

The petitioner, a chartered accountant, was arraigned as an accused with other accused persons in a case under sections 69 read with section 132(1) of the Central Goods and Services Tax Act, 2017 on the allegation that the petitioner in connivance with the other accused persons, namely, and with other persons had allegedly issued goods and services tax invoices without any supply of the goods to the buyers on commission basis causing loss of more than Rs. 98 crores approximately. The final report revealed that N in connivance with the petitioner was operating several trading units and the petitioner was also operating two companies in connivance with B and R. Pursuant to the voluntary statement of N, the business premises of the petitioner were searched and various incriminating documents were recovered including permanent account number cards of numerous people, bank cheque books of different banks, banks statements, digital signature keys, stamp, seal, pen drives, mobile handset, ATM cards of various banks, invoices, mobile SIM cards with the names of various firms, laptops, kaccha bills, etc. Investigation also revealed that another person, P had issued bills to various parties from two companies and filed the goods and services tax returns on the direction of the petitioner. The petitioner on May 29, 2019 appeared in terms of summons under section 70 of the Central Goods and Services Tax Act, 2017 and tendered his statement. He admitted that audit file, permanent account number cards, digital signatures for filing documents, cheque books of

parties, goods and services tax invoices of the parties were kept in his office and that he had issued bills to various parties from two companies. In these two companies goods and services tax bills for input tax credit had been given from various firms. He admitted that he did not register any parties as mentioned in the charge sheet and invoices were issued for goods and service but there was no movement or supply of goods or services in cases of bills issued by him without movement of goods or service. The payment against invoices was by RTGS and against the RTGS they received cash which was returned to parties after deducting the commission. They kept about one per cent. of the commission because they had made arrangements of the parties to take bills from the two companies. The trial court refused to grant the petitioner bail. On an application for bail under section 439 of the Code of Criminal Procedure, 1973 contending that he had been falsely arraigned :

Held, *dismissing the petition, that in the present case the question of violation of article 21 of the Constitution did not arise as the petitioner had lost his default right of bail on August 6, 2019 as on the same date the prosecution had filed the charge sheet and the court considering the merits of the case had rejected the bail. Prima facie on the basis of the documentary evidence the petitioner with other persons had caused a huge loss to the Government exchequer amounting to Rs. 141,76,46,639. The Commissioner had reason to believe that the petitioner had committed offence under section 132 of the 2017 Act and authorised the concerned officer to arrest the petitioner under section 69 of the 2017 Act. In consideration of the gravity of the economic offence and bearing in mind the principle laid down in case of* P. V. Ramana Reddy *v.* Union of India [2019] 26 GSTL J (175) (SC),[1] *the petitioner was not entitled to be enlarged on bail. However, the petitioner was at liberty to approach the authority for compounding of the offence under section 138 of the 2017 Act.*

RAMANA REDDY (P. V.) *v.* UNION OF INDIA [2019] 66 GSTR 33 (Telangana) [SLP against which dismissed by SC] *applied.*

Cases referred to :

Arnesh Kumar *v.* State of Bihar [2014] 8 SCC 273 (paras 4, 6, 13, 14)

Hussainara Khatoon *v.* Home Secretary, State of Bihar [1980] 1 SCC 108 (para 9)

Pragyna Singh Thakur *v.* State of Maharashtra [2011] 10 SCC 445 ; [2012] 1 SCC (Cri) 311 (para 11)

Rajnikant Jivanlal *v.* Intelligence Officer, Narcotic Control Bureau, New Delhi [1989] 3 SCC 532 (para 10)

1. High Court decision reported in [2019] 66 GSTR 33 (Telangana).

Ramana Reddy (P. V.) *v.* Union of India [2019] 26 GSTL J (175) (SC) (paras 17, 21, 32)

Rini Johar *v.* State of Madhya Pradesh [2016] 11 SCC 703 (paras 4, 6, 14, 21)

Sanjay Dutt *v.* State through C. B. I. Bombay-II [1994] AIR (SCW) 3857 (para 12)

Sanjay Kumar Bhuwalka *v.* Union of India [2018] 57 GSTR 149 (Cal) (paras 30, 31)

Sayed Mohd. Ahmad Kazmi *v.* State (Government of NCT of Delhi) [2012] 12 SCC 1 (para 11)

Siddharam Satlingappa Mhetre *v.* State of Maharashtra [2011] 1 SCC 694 (para 15)

Uday Mohanlal Acharya *v.* State of Maharashtra [2001] 5 SCC 453 ; [2001] AIR (SCW) 1500 (paras 11, 12, 24)

Union of India *v.* Arviva Industries India Limited [2014] 3 SCC 159 (para 13)

Union of India *v.* Nirala Yadav @ Raja Ram Yadav alias Deepak Yadav [2014] AIR 2014 SC 3036 (para 9)

Vikas Goel *v.* Deputy Director, Directorate General of GST Intelligence [2019] 28 GSTL 590 (P&H) (para 28)

Cr. M. No. 10075 of 2019.

Sekhar Basu, Rajdeep Mazumder and *Mayukh Mukherjee* for the petitioner.

K. K. Maiti for the U. O. I.

JUDGMENT

1 SHIVAKANT PRASAD J.—This is an application for bail under section 439 of the Code of Criminal Procedure, 1973 on behalf of the petitioner who has prayed for his enlargement on bail on any conditions. The petitioner has been arraigned as an accused along with other accused persons in connection with the Case No. C 3179 of 2019 arising out of V(12) 75/AE/CGST/GR-VII/KOL-NORTH/2019 under sections 69 read with section 132(1) of the Central Goods and Services Tax Act, 2017, now pending before the learned Chief Judicial Magistrate, Alipore.

2 The petitioner's case is that he is a chartered accountant and his office is situated at Room 2H, 56 Metcalfe Street, Kolkata-700012 and is no way connected with the instant case and has been falsely arraigned as an accused on the allegation that the petitioner in connivance with the other accused persons, namely, Sanjay Kumar Pandit, Nagendra Kumar Dubey alias Sandip Dubey and Mr. Vijay Rajpuriya along with other persons had allegedly

issued GST invoices without any supply of the goods to the buyers on commission basis causing loss of more than 98 crores approximately.

It is submitted that the petitioner was arrested and produced on June 6, 3
2019 before the learned Chief Judicial Magistrate, Alipore, who vide order dated June 6, 2019 rejected his prayer for bail remanding him to judicial custody, although, he was rendering his cooperation with the investigating agency prior to his arrest. Then the petitioner moved an application under section 439, Code of Criminal Procedure for his release on bail before learned sessions judge, Alipore, but by order dated August 20, 2019 the bail prayer was rejected on considering the nature and magnanimity of unlawful act done by the accused persons including the petitioner as revealed from the final report of the investigating agency and on consideration that there shall have every possibility to influence the witness to destroy the evidence or evade the process of further investigation and trial.

Being aggrieved by the order of rejection of application under section 4
439, Code of Criminal Procedure, the petitioner has prayed for enlarging him on bail on the grounds, inter alia, that the learned courts below have committed an error by not granting bail on 61st day in terms of section 167 of the Criminal Procedure Code ; the learned Chief Judicial Magistrate has recorded order of detention of the petitioner without adhering to the directives of the honourable Supreme Court in the case of *Arnesh Kumar* v. *State of Bihar* reported in [2014] 8 SCC 273 as well as the observation in the case of *Rini Johar* v. *State of Madhya Pradesh* reported in [2016] 11 SCC 703 ; that the offence under section 132 of the CGST Act, 2017 is bailable ; and that without previous sanction by the Commissioner for filing charge sheet the proceeding as a whole is rendered otiose.

Mr. Sekhar Basu learned senior advocate appearing for the petitioner, 5
submitted that the purpose of arrest, when the petitioner was cooperating, poses a question regarding the malicious intent of the prosecuting authority because while rendering his co-operation, the petitioner was coerced into signing several blank documents by the investigating agency. It is pointed out that offences under section 132(1)(a), (b) and (c) of the CGST Act, 2017 provides for a maximum punishment for five years and is triable by the learned magistrate of first class. The petitioner is in custody since August 6, 2019 and no further detention is warranted. He is not a responsible person either as a proprietor or a person responsible for the running of any proprietary concern and no notice was issued under section 73 of the CGST Act, 2017 and has been falsely entangled in this case.

Mr. Basu further submitted that the instant prosecution has been lodged 6
without the sanction of the Commissioner contrary to mandate provided

under section 134 of the CGST Act. The Commissioner has only authorized the investigating officer to arrest under section 69 read with section 132(1) of the CGST Act but has not granted sanction under section 134 of the CGST Act and as such the instant prosecution is not maintainable and precisely raised the following points germane to the application for bail :

(1) Whether the learned trial court has committed an error by not granting bail on 61st day in terms of section 167 of the Criminal Procedure Code ?

(2) Whether the direction made in the case of *Arnesh Kumar* v. *State of Bihar* reported in [2014] 8 SCC 273 as well as the observation in the case of *Rini Johar* v. *State of Madhya Pradesh* reported in [2016] 11 SCC 703 is required to be complied with ?

(3) Whether the offences mentioned under section 132 of the CGST Act, 2017 is bailable ?

(4) Whether the Commissioner can issue the order for arrest on the basis of commitment of offence by the petitioner ?

(5) Whether any previous sanction has been issued by the Commissioner for filing charge sheet has not been disclosed ?

7 On the point No. 1, it is argued that the learned magistrate has failed to comprehend the significance and purport of section 167(2) of the Code of Criminal Procedure, thereby acting in a manner which annuls the rudimentary requirements stipulated in section 167(2) of the Code of Criminal Procedure which provides that the magistrate to whom an accused is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such magistrate thinks fit, for a term not exceeding fifteen days in the whole ; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a magistrate having such jurisdiction.

8 Plain reading of the provision allows that a person may be held in custody of the police for a period of 15 days on the orders of a magistrate and the learned magistrate is empowered to authorize detention of the accused in custody pending investigation for an aggregate period of 90 days in cases where the investigation relate to offence punishable with death, imprisonment for life or imprisonment for not less than ten years or more and in other cases the period of 60 days has been kept.

9 Mr. Basu relied on a decision in case of *Hussainara Khatoon* reported in [1980] 1 SCC 108 to argue that in the landmark judgement Supreme Court has cast a bounden duty upon the magistrate to point out to an under trial

about his indefeasible right being accrued, provided the investigation is not concluded within the stipulated period and that an accused is entitled of being released on bail if he is ready to furnish the bail. Reliance to observation in para 21 of a decision in case of *Union of India through C. B. I.* v. *Nirala Yadav @ Raja Ram* reported in AIR 2014 SC 3036 has been placed to submit that the accused acquires statutory right of his release on bail in default of submission of charge sheet by the investigating officer on 60 days of judicial custody. It has been precisely held that if the charge-sheet is filed subsequent to the availing of the indefeasible right by the accused, then that right would not stand frustrated or extinguished and, therefore, if an accused is entitled to be released on bail by application of the proviso to sub-section (2) of section 167, Code of Criminal Procedure, makes the application before the magistrate, but the magistrate erroneously refuses the same and rejects the application and then the accused moves the higher forum and while the matter remains pending before the higher forum for consideration a charge sheet is filed, the so-called indefeasible right of the accused would not stand extinguished thereby, and on the other hand, the accused has to be released on bail.

In case of *Rajnikant Jivanlal* v. *Intelligence Officer, Narcotic Control Bureau, New Delhi* reported in [1989] 3 SCC 532 it has been observed that the right to bail under section 167(2), proviso (a) is absolute. It is a legislative command and not court's discretion. If the investing agency fails to file charge sheet before the expiry of 90/60 days, as the case may be, the accused in custody should be released on bail. At that stage, merits of the case are not to be examined. In fact, the magistrate has no power to remand a person beyond the stipulated period of 90/60 days. He must pass an order of bail and communicate the same to the accused to furnish the requisite bail bonds. **10**

A Full Bench decision in case of *Uday Mohanlal Acharya* v. *State of Maharashtra* reported in [2001] 5 SCC 453 has been referred and reliance is placed on majority view of the honourable apex to urge that the accused is entitled to statutory bail and as long as the majority view occupies the field it is a binding precedent. That apart, it has been followed by a three-Judge Bench in *Sayed Mohd. Ahmad Kazmi* case [2012] 12 SCC 1 which is based on three-Judge Bench decision in *Uday Mohanlal Acharya* case [2001] 5 SCC 453 ; [2001] SCC (Cri) 760 and contended that the principle laid in case of *Pragyna Singh Thakur* case [2011] 10 SCC 445 ; [2012] 1 SCC (Cri) 311 does not state the correct principle of law. **11**

In rebuttal Mr. K. K. Maity submitted that the right of an accused to be released on bail after expiry of the maximum period of detention is **12**

provided under section 167 of the Code of Criminal Procedure. Section 167 deals with power of the police to investigate in criminal offence which starts with lodging of information in cognizable cases under section 154 of the Code of Criminal Procedure and ultimately culminate in submission of report on completion of investigation under section 173 of the Code of Criminal Procedure. The learned magistrate is empowered to take cognizance of the offence on the basis of final report/charge sheet filed before the magistrate but when final report is submitted, the custody of the accused is no longer required to be dealt with under section 167 of the Code of Criminal Procedure. It is argued that the dispute regarding default bail has been dealt with by the honourable Supreme Court in the case of *Uday Mohanlal Acharya* v. *State of Maharashtra* reported in [2001] AIR (SCW) 1500 wherein the case of *Sanjay Dutt* reported in [1994] AIR (SCW) 3857 was considered and it was observed that the indefeasible right for grant of bail on the expiry of the initial period of 180 days for completing the investigation or the extended period prescribed by section 20(4)(bb) of the TADA as held in *Hitendra Vishnu Thakur* is a right of the accused which is enforceable only up to the filing of the challan and does not survive for enforcement on the challan being filed in the court against him. In this context it is submitted that admittedly the petitioner was arrested on June 6, 2019 and on the same date the petitioner was produced before the learned chief judicial magistrate but after considering the gravity of the case, remanded the petitioner to judicial custody. On 61st day from the date of arrest a bail application was moved on August 6, 2019 and the very date the prosecution had filed the charge sheet. So the learned CJM by its order dated August 6, 2019 rejected prayer for bail holding that the default bail does not arise and an application under section 439 of the Code was also rejected by the learned session judge by the impugned order.

13 In respect of point No. 2, Mr. Basu relied in case of *Union of India* v. *Arviva Industries India Limited* reported in [2014] 3 SCC 159 to contend that the petitioner should not be deprived of his liberty and be released on bail on any condition in drawing my attention to the observation that arrest involves deprivation of liberty of a person arrested and therefore infringes the basic human right of liberty. Personal liberty is one of the cherished objects of the Indian Constitution and deprivation of the same can be in accordance with law and in conformity with the provisions thereof, as stipulated under article 21 of the Constitution and further submitted that in the instant case, even though the offence stipulates a maximum term of imprisonment up to five years, yet, none of directions enshrined in para 11 of the decision in case of *Arnesh Kumar* v. *State of Bihar* [2014] 8 SCC 273 has been adhered thereto which reads thus :

"Our endeavour in this judgment is to ensure that police officers do not arrest accused unnecessarily and magistrate do not authorise detention casually and mechanically. In order to ensure what we have observed above, we give the following directions :

All the State Governments to instruct its police officers not to automatically arrest when a case under section 498A of the IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from section 41, Code of Criminal Procedure ;

All police officers be provided with a check list containing specified sub-clauses under section 41(1)(b)(ii) ;

The police officer shall forward the check list duty filed and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the magistrate for further detention ;

The magistrate while authorising detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the magistrate will authorise detention ;

The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the magistrate which may be extended by the Superintendent of Police of the district for the reasons to be recorded in writing ;

Notice of appearance in terms of section 41A of the Code of Criminal Procedure be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the district for the reasons to be recorded in writing ;

Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before the High Court having territorial jurisdiction.

Authorising detention without recording reasons as aforesaid by the judicial magistrate concerned shall be liable for departmental action by the appropriate High Court."

Thus it is contended that the petitioner was neither served with a notice **14** under section 41A of the Code nor did the learned magistrate record his satisfaction with regard to the arrest while remanding the petitioner to custody which is evident from the order dated June 6, 2019 and further

placed reliance in case of *Rini Johar* [2016] 11 SCC 703 to submit that the honourable apex court has taken a stern view with regard to non-compliance to the directions in case of *Arnesh Kumar* [2014] 8 SCC 273.

15 It is pointed out that on the scrutiny of the complaint, it would be apparent that the petitioner on the 29th of May, 2019, had joined the investigation, and cooperated with the investigating agency, which is why after his interrogation, the petitioner was allowed to leave. However, once again the investigating agency summoned the petitioner and accordingly the petitioner went to the investigating officer on June 6, 2019 on which date he was arrested in a mechanical manner, without having any regard to the law laid down by the honourable apex court. It is further submitted that in spite of the petitioner joining the investigation, and rendering his co-operation to the investigating agency yet he was arrested and such conduct manifest the malicious determination of the investigating agency. A reference to a decision in case of *Siddharam Satlingappa Mhetre* v. *State of Maharashtra* reported in [2011] 1 SCC 694 has been relied on to argue that the conduct of the investigating officer speaks a volume so far as the malicious intention of the investigating agency. It has been held that in cases where the court is of the considered view that the accused has joined investigation and he is fully cooperating with investigating agency and is not likely to abscond, in that event, custodial interrogation should be avoided. In the said judgment the direction has been laid down to the following effects :

> "In case, the State consider the following suggestions in proper perspective then perhaps it may not be necessary to curtail the personal liberty of the accused in a routine manner. These suggestions are only illustrative and not exhaustive :
>
> (1) Direct the accused to join the investigation and only when the accused does not co-operate with the investigating agency, then only the accused be arrested.
>
> (2) Seize either the passport or such other related documents, such as, the title deeds of properties or the fixed deposit receipts/ share certificates of the accused.
>
> (3) Direct the accused to execute bonds.
>
> (4) The accused may be directed to furnish sureties of number of persons which according to the prosecution are necessary in view of the facts of the particular case.
>
> (5) The accused be directed to furnish undertaking that he would not visit the place where the witnesses reside so that the possibility of

tampering of evidence or otherwise influencing the course of justice can be avoided.

(6) Bank accounts be frozen for small duration during investigation."

Thus, it is argued that the honourable apex court has loathed the arrest of the person when he has joined the investigation. **16**

Contradicting the submission/the said contention, Mr. Maity referred to a decision of the honourable Supreme Court in the case of *P. V. Ramana Reddy* v. *Union of India* reported in [2019] 26 GSTL J (175) (SC)[1] wherein it has been categorically held that though section 69(1) of the CGST Act, 2017 which confers power upon the Commissioner to order arrest of a person for cognizable and non-bailable offence does not contain safeguard incorporated in sections 41 and 41A of the Code of Criminal Procedure, 1973 in view of provision of section 70(1) of the said Act same must be kept in mind before arresting a person. However, section 41A(3) of the Code of Criminal Procedure does not provide an absolute irrevocable guarantee against arrest. **17**

The High Court held that the enquiry by the GST Commissioner under the Central Goods and Services Tax Act, 2017 is a judicial proceedings and not a criminal proceedings. It was held that if the reasons to believe that a person committed any offence under clauses (a), (b), (c) or (d) of section 132(1) of the CGST Act, 2017 warranting his arrest thought found in the file but not disclosed in the order authorising the arrest, the same is enough and is not required to be recorded in order of authorisation. **18**

Accordingly Mr. Maity contended that sections 41 and 41A of the Code of Criminal Procedure, 1973 has been complied with by obtaining statements from the petitioner on May 22, 2019, May 30, 2019 and May 31, 2019 in terms of said provision of the CGST Act which is axiomatic from the charge sheet. The arguments of the petitioner is that section 70 is not pari materia with section 41A of the Code of Criminal Procedure but pari materia with section 91 of the Code of Criminal Procedure. The provision of section 91 of the Code of Criminal Procedure provides for summons to produce document or other thing whereas section 70 of the CGST Act provides power to summon persons to give evidence and produce documents. Therefore, the said section 70 of the CGST Act, 2017 is not pari materia with section 91 of the Code of Criminal Procedure. **19**

In reply Mr. Basu invited my attention to term pari materia as per *Blacks Law Dictionary 6th edition* which means, of the same matter, on the same **20**

1. High Court decision reported in [2019] 66 GSTR 33 (Telangana).

subject ; as laws pari materia must be construed with reference to each other and argued that on a reading of the aforesaid definition of pari materia it becomes evident that section 41A of the Code of Criminal Procedure can by no stretch of imagination be treated as pari materia to section 70 of the CGST Act and further submitted that on a bare reading of the aforesaid sections it would become absolutely clear that the subject-matter envisaged in the respective sections are not the same and the structural edifice of the aforesaid sections are completely different from one another. Instead section 70 of the CGST Act is pari materia to section 91 of the Code of Criminal Procedure as the subject-matter in section 70 of the CGST Act and section 90 of the Code of Criminal Procedure are the same.

21 I am of the view that Mr. Basu reply as to pari materia provision has been answered in case of *P. V. Ramana Reddy* [2019] 26 GSTL J (175) (SC)[1]. Moreover, the case of *Rini Jhoar* [2016] 11 SCC 703 is in point of violation of article 21 of the Constitution of India. In the present case violation of article 21 does not and cannot arise as the petitioner has lost his default right of bail on August 6, 2019 as on the same date the prosecution had filed the charge sheet and the learned court considering the merits of the case rejected the bail.

22 Mr. Maity, learned advocate appearing for Union of India, submitted inviting my attention to the final report which reveals that Shri Sandip Dubey @ Nagendra Kumar Dubey in connivance with the petitioner is operating several trading units and the petitioner is also operating two companies under the name and style M/s. Alvina Suppliers Pvt. Ltd., and M/s. Vaidika Impex Pvt. Ltd. in connivance with Shri Bijay Kumar Agarwal and Shri Ramesh Giri. In the voluntary statement Shri Nagendra Dubey informed that he has provided assistance of various business persons under the GST laws and provided their registration details to the petitioner and the petitioner used to pay the persons for the same. He also stated that the petitioner was engaged in issuing bills or invoices in the name of the business concerns or persons and payment against invoices are being taken care of by the petitioner. This work related to movement of goods is supervised by the petitioner and one Sanjay Pandit and as per Nagendra Dubey's knowledge there was no movement of goods against the invoice issued and the petitioner filed the GST returns of the firms. Pursuant to his statement, the business premises of the petitioner was searched and on search various incriminating documents were recovered including PAN cards of numerous people, bank cheque books of different banks, banks statements, digital signature keys, stamp, seal, pen drives, mobile handset,

1. High Court decision reported in [2019] 66 GSTR 33 (Telangana).

ATM cards of various banks, invoices, mobile SIM cards with the names of various firms, laptops, kaccha bills, etc. It also revealed on investigation that another person, namely, Sanjay Kumar Pandit, has issued bills to various parties from M/s. Alvina Suppliers Pvt. Ltd., and M/s. Vaidika Impex Pvt. Ltd. and filed the GST returns on the direction of the petitioner. He also admitted that there was no supply of goods or service in cases of bills issued by him and he just printed the bills and placed the stamp of the parties and signed and issued the bills and also admitted about receipt of huge cash related to fake invoice transaction and they used cash counting machine to count the cash. The cash is paid after deducting the commission by the petitioner to various parties.

23 The petitioner on May 29, 2019 appeared in terms of summons under section 70 of the CGST Act, and tendered his statement. He admitted that audit file, PAN card, digital signature for filing documents, cheque books of parties, GST invoices of the parties are kept in his office and that he had issued bills to various parties from M/s. Alvina and M/s. Vaidika. In this two companies GST bills for ITC (input tax credit) has been given from various firm. He also admitted that he did not register any parties as mentioned in the charge sheet and invoices were issued for goods and service but there was no movement/supply of goods or services in cases of bills issued by him without movement of goods or service. The manner of payment against invoices is RTGS. RTGS given by parties goes to another account and against RTGS they received cash which was returned to parties after deducting the commission. They kept about one per cent. of the commission because they had made arrangements of the parties to take bills from M/s. Alvina and M/s. Vaidika. Therefore, prima facie on the basis of documentary evidence the petitioner along with other persons have caused a huge loss to the Government Exchequer amounting to Rs. 141,76,46,639. So obviously, the Commissioner has reason to believe that the petitioner has committed offence under section 132 of the CGST Act, 2017 and as such authorized the concerned officer to arrest the petitioner under section 69 of the CGST Act.

24 I have respectfully gone through the Full Bench decision in case of *Uday Mohanlal Acharya* [2001] 5 SCC 453 in respect of indefeasible right for being released on bail in default in filing challan/final report/charge sheet within prescribed time. In the cited decision, the accused was remanded to judicial custody by order of the magistrate on June 17, 2000 in a case instituted against him under sections 406 and 420 of the Indian Penal Code read with MPID Act. So the period of 60 days for filing of charge sheet was completed on August 16, 2000. On the next day on August 17, 2000, an

application for being released on bail was filed alleging that non-filing of challan within 60 days entitles the accused to be released on bail under proviso to section 167(2) of the Code of Criminal Procedure but the Magistrate had rejected the bail concluding that the said provision was not applicable to cases pertaining to MPID Act. In the cited case the charge-sheet was filed on August 30, 2000.

25 In my humble opinion, ratio of decision is not well nigh within the facts and circumstances of the instant case as the accused petitioner was remanded in custody after his arrest on June 6, 2019 and bail application was filed on August 6, 20019, i. e., on the same day of submission of final report, ergo, indefeasible right under proviso to section 167(2) of the Code of Criminal Procedure for release of the petitioner in default in filing challan within prescribed time does arise in view of the Constitution Bench decision of the honourable Supreme Court to the effect that the indefeasible right accruing to the accused in such a situation is enforceable only prior to the filing of the challan and does not survive or remain enforceable on the challan being filed, if already not availed of.

26 As regards point Nos. 3, 4 and 5, Mr. Basu adverted to the provision of section 132 of the CGST Act, 2017 contending that offence alleged is bailable in nature for the reason that prima facie there is allegation of attempt to issue fake invoices without the supply of goods or services as the petitioner is by profession a chartered accountant who only works for the companies as his clients. It is pointed out that preceding the application of section 134 of the CGST Act, is the provisions of law contained in section 132(6) of the Act, which enjoins that a person shall not be prosecuted for any offence under this section except with the previous sanction of the Commissioner.

27 The legislative intent as stemming from the aforesaid section is clear, distinct and leaves nothing to supposition except that the authority who is empowered to interfere with the liberty of a person by issuing an order of arrest on reasonable belief about necessity of arrest under section 69(1) of the CGST Act, is also statutory obligated to decide, albeit on logical assessment of facts, that the person concerned is to be "prosecuted". Such requirement of "sanction" must be evident from the records and as the indispensable procedure of law mandates, must be backed by reasons which are prima facie intelligently acceptable. Thus, it is contended that no document reflecting compliance with section 132(6) and section 134 of the CGST Act has been placed before this honourable court to show the sanction of the Commissioner to prosecute the petitioner. So the learned Magistrate Court is barred from taking cognizance of the offence in a case

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(STATUTES)

Class of registered persons who shall follow certain special procedure for furnishing details of outward supply of goods or services or both (Gujarat)

Notification No. 27/2020-State Tax, dated 27th March, 2020

No.(GHN-25)GST-2020/S.148(28)TH.—In exercise of the powers conferred by section 148 of the Gujarat Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said Act), the Gujarat Government, on the recommendations of the Council, hereby notifies the registered persons having aggregate turnover of up to 1.5 crore rupees in the preceding financial year or the current financial year, as the class of registered persons who shall follow the special procedure as mentioned below for furnishing the details of outward supply of goods or services or both.

2. The said registered persons shall furnish the details of outward supply of goods or services or both in Form GSTR-1 under the Gujarat Goods and Services Tax Rules, 2017, effected during the quarter as specified in column (2) of the Table below till the time period as specified in the corresponding entry in column (3) of the said Table, namely :—

TABLE

Sl. No.	*Quarter for which details in Form GSTR-1 are furnished*	*Time period for furnishing details in Form GSTR-1*
(1)	*(2)*	*(3)*
1	April, 2020 to June, 2020	31st July, 2020
2	July, 2020 to September, 2020	31st October, 2020

3. The time-limit for furnishing the details or return, as the case may be, under sub-section (2) of section 38 of the said Act, for the months of April, 2020 to September, 2020 shall be subsequently notified in the Official Gazette.

Furnishing of e-return in Form GSTR-3B through common portal (Gujarat)

Notification No. 29/2020-State Tax, dated 27th March, 2020

No. GSL/GST/S.168/B.34.—In exercise of the powers conferred by section 168 of the Gujarat Goods and Services Tax Act, 2017 (Guj. 25 of 2017) (hereafter in this notification referred to as the said Act), read with sub-rule (5) of rule 61 of the Gujarat Goods and Services Tax Rules, 2017 (hereafter in this notification referred to as "the said Rules"), the Chief Commissioner of State tax, on the recommendations of the Council, hereby specifies that the return in Form GSTR-3B of the said rules for each of the months from April, 2020 to September, 2020 shall be furnished electronically through the common portal, on or before the twentieth day of the month succeeding such month :

Provided that, for taxpayers having an aggregate turnover of up to rupees five crore rupees in the previous financial year, whose principal place of business is in the States of Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh, the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands or Lakshadweep, the return in Form GSTR-3B of the said rules for the months of April, 2020 to September, 2020 shall be furnished electronically through the common portal, on or before the twenty-second day of the month succeeding such month :

Provided further that, for taxpayers having an aggregate turnover of up to rupees five crore rupees in the previous financial year, whose principal place of business is in the States of Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha, the Union territories of Jammu and Kashmir, Ladakh, Chandigarh or Delhi, the return in Form GSTR-3B of the said rules for the months of April, 2020 to September, 2020 shall be furnished electronically through the common portal, on or before the twenty-fourth day of the month succeeding such month.

2. *Payment of taxes for discharge of tax liability as per Form GSTR-3B*. —Every registered person furnishing the return in *Form GSTR-3B* of the said rules shall, subject to the provisions of section 49 of the said Act, discharge his liability towards tax by debiting the electronic cash ledger or electronic credit ledger, as the case may be and his liability towards interest, penalty, fees or any other amount payable under the said Act by debi-

ting the electronic cash ledger, not later than the last date, as specified in the first paragraph, on which he is required to furnish the said return.

THE GUJARAT GOODS AND SERVICES TAX (FOURTH AMENDMENT) RULES, 2020

Notification No. 30/2020-State Tax, dated 9th April, 2020

No. (GHN-38)GSTR-2020/S.164(55)TH.—In exercise of the powers conferred by section 164 of the Gujarat Goods and Services Tax Act, 2017 (Guj. 25 of 2017), the State Government, on the recommendations of the Council, hereby makes the following rules further to amend the Gujarat Goods and Services Tax Rules, 2017, namely :—

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

(2) Save as otherwise provided, they shall be deemed to have come into force with effect from the 3rd April, 2020.

2. In the Gujarat Goods and Services Tax Rules, 2017 (hereinafter referred to as "the said Rules"), with effect from the 31st March, 2020, in sub-rule (3) of rule 3, the following proviso shall be *inserted*, namely :—

"Provided that any registered person who opts to pay tax under section 10 for the financial year 2020-21 shall electronically file an intimation in *Form GST CMP-02*, duly signed or verified through electronic verification code, on the common portal, either directly or through a Facilitation Centre notified by the Commissioner, on or before 30th day of June, 2020 and shall furnish the statement in *Form GST ITC-03* in accordance with the provisions of sub-rule (4) of rule 44 up to the 31st day of July, 2020.".

3. In the said Rules, in sub-rule (4) of rule 36, the following proviso shall be *inserted*, namely :—

"Provided that the said condition shall apply cumulatively for the period February, March, April, May, June, July and August, 2020 and the return in *Form GSTR-3B* for the tax period September, 2020 shall be furnished with the cumulative adjustment of input tax credit for the said months in accordance with the condition above.".

Rate of interest for specified purposes—Amendment (Gujarat)

Notification No. 31/2020-State Tax, dated 9th April, 2020

No. (GHN-33)GST-2020/S.50(2)TH.—In exercise of the powers conferred by sub-section (1) of section 50 of the Gujarat Goods and Services Tax Act, 2017 (Guj. 25 of 2017) (hereafter in this notification referred to as "the

said Act"), read with section 148 of the said Act, the State Government, on the recommendations of the Council, hereby makes the following amendment in notification of the Government of Gujarat, Finance Department No. (GHN-30)GST-2017/S.50, 54 and 56(1)-TH dated the 30th June, 2017, Notification No. 13/2017-State Tax, namely :—

In the said notification, in the first paragraph, the following provisos shall be *inserted*, namely :—

"Provided that, the rate of interest per annum shall be as specified in column (3) of the Table given below, for the class of registered persons, mentioned in the corresponding entry in column (2) of the said Table, who are required to furnish the returns in *Form GSTR-3B*, but fail to furnish the said return along with payment of tax for the months mentioned in the corresponding entry in column (4) of the said table by the due date, but furnish the said return according to the condition mentioned in the corresponding entry in column (5) of the said Table, namely :—

TABLE

Sl. No.	*Class of registered persons*	*Rate of interest*	*Tax period*	*Condition*
(1)	*(2)*	*(3)*	*(4)*	*(5)*
1.	Taxpayers having an aggregate turnover of more than rupees 5 crores in the preceding financial year	Nil for first 15 days from the due date, and 9 per cent thereafter	February, 2020, March 2020, April, 2020	If return in *FORM GSTR-3B* is furnished on or before the 24th day of June, 2020
2	Taxpayers having an aggregate turnover of more than rupees 1.5 crores and up to rupees five crores in the preceding financial year	Nil	February, 2020, March, 2020	If return in *FORM GSTR-3B* is furnished on or before the 29th day of June, 2020
			April, 2020	If return in *FORM GSTR-3B* is furnished on or before the 30th day of June, 2020
3.	Taxpayers having an aggregate turnover of up to rupees 1.5 crores in the preceding financial year	Nil	February, 2020	If return in *FORM GSTR-3B* is furnished on or before the 30th day of June, 2020
			March, 2020	If return in *FORM GSTR-3B* is furnished on or before the 3rd day of July, 2020

(1)	(2)	(3)	(4)	(5)
			April, 2020	If return in *FORM GSTR-3B* is furnished on or before the 6th day of July, 2020.".

2. This notification shall be deemed to have come into force with effect from the 20th day of March, 2020.

Waiver of late fee for filing of Form GSTR-3B—Amendment (Gujarat)

Notification No. 32/2020-State Tax, dated 9th April, 2020

No. (GHN-34)GST-2020/S.128(19)TH.—In exercise of the powers conferred by section 128 of the Gujarat Goods and Services Tax Act, 2017 (Guj. 25 of 2017) (hereafter in this notification referred to as "the said Act"), read with section 148 of the said Act, the Government, on the recommendations of the Council, hereby makes the following amendment in the notification of the Government Gujarat, Finance Department No. (GHN-134)GST-2018/S.128(13)-TH dated 31st December, 2018, Notification No. 76/2018-State Tax, namely :—

In the said notification, after the second proviso, the following proviso shall be inserted, namely :—

"Provided also that the amount of late fee payable under section 47 shall stand waived for the tax period as specified in column (3) of the table given below, for the class of registered persons mentioned in the corresponding entry in column (2) of the said Table, who fail to furnish the returns in *Form GSTR-3B* by the due date, but furnishes the said return according to the condition mentioned in the corresponding entry in column (4) of the said table, namely :—

TABLE

Sl. No.	Class of registered persons	Tax period	Condition
(1)	(2)	(3)	(4)
1.	Taxpayers having an aggregate turnover of more than rupees 5 crores in the preceding financial year	February, 2020, March, 2020 and April, 2020	If return in *Form GSTR-3B* is furnished on or before the 24th day of June, 2020
2	Taxpayers having an aggregate turnover of more than rupees 1.5 crores and up to	February, 2020 and March, 2020	If return in *Form GSTR-3B* is furnished on or before the 29th day of June, 2020

(1)	(2)	(3)	(4)
	rupees five crores in the preceding financial year	April, 2020	If return in *Form GSTR-3B* is furnished on or before the 30th day of June, 2020
3.	Taxpayers having an aggregate turnover of up to rupees 1.5 crores in the preceding financial year	February, 2020	If return in *Form GSTR-3B* is furnished on or before the 30th day of June, 2020
		March, 2020	If return in *Form GSTR-3B* is furnished on or before the 3rd day of July, 2020
		April, 2020	If return in *Form GSTR-3B* is furnished on or before the 6th day of July, 2020.".

2. This notification shall be deemed to have come into force with effect from the 20th day of March, 2020.

Failure to furnish return in Form GSTR-1—Waiver of late fee—Amendment (Gujarat)

Notification No. 33/2020-State Tax, dated 9th April, 2020

No. (GHN-35)GST-2020/S.128(20)TH.—In exercise of the powers conferred by section 128 of the Gujarat Goods and Services Tax Act, 2017 (Guj. 25 of 2017), the Government, on the recommendations of the Council, hereby makes the following further amendment in the notification of the Government of Gujarat, Finance Department No. (GHN-8)GST-2018/S.128(5)-TH dated the 23rd January, 2018, Notification No. 4/2018-State Tax, namely :—

In the said notification, after the third proviso, the following proviso shall be *inserted*, namely :—

"Provided also that the amount of late fee payable under section 47 of the said Act shall stand waived for the months of March, 2020, April, 2020 and May, 2020, and for the quarter ending 31st March, 2020, for the registered persons who fail to furnish the details of outward supplies for the said periods in *Form GSTR-1* by the due date, but furnishes the said details in *Form GSTR-1*, on or before the 30th day of June, 2020.".

Class of registered persons who should follow the special procedure for furnishing of return and payment of tax—Amendments (Gujarat)

Notification No. 34/2020-State Tax, dated 9th April, 2020

No. (GHN-36)GST-2020/S.148(29)TH.—In exercise of the powers conferred by section 148 of the Gujarat Goods and Services Tax Act, 2017 (Guj. 25 of 2017), the Government, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of Gujarat, Finance Department No. (GHN-43)GST-2019/S.148(15)TH dated the 24th April 2019, Notification No. 21/2019-State Tax, namely :—

In the said notification,—

(i) in the second paragraph, the following proviso shall be *inserted*, namely :—

"Provided that the said persons shall furnish a statement, containing the details of payment of self-assessed tax in *Form GST CMP-08* of the Gujarat Goods and Services Tax Rules, 2017, for the quarter ending 31st March, 2020, till the 7th day of July, 2020." ;

(ii) in the third paragraph, the following proviso shall be *inserted*, namely :—

"Provided that the said persons shall furnish the return in *Form GSTR-4* of the Gujarat Goods and Services Tax Rules, 2017, for the financial year ending 31st March, 2020, till the 15th day of July, 2020.".

Extension of time-limit for completion or compliance of any action by any authority (Gujarat)

Notification No. 35/2020-State Tax, dated 9th April, 2020

No. (GHN-37)GST-2020/S.168A(1)TH.—In exercise of the powers conferred by section 168A of the Gujarat Goods and Services Tax Act, 2017 (Guj. 25 of 2017) (hereafter in this notification referred to as the said Act), in view of the spread of pandemic COVID-19 across many countries of the world including India, the Government of Gujarat, on the recommendations of the Council, hereby notifies, as under,—

(i) where, any time-limit for completion or compliance of any action, by any authority or by any person, has been specified in, or prescribed or notified under the said Act, which falls during the period from the 20th day of March, 2020 to the 29th day of June, 2020, and where completion or compliance of such action has not been made within such time, then, the

time-limit for completion or compliance of such action, shall be extended up to the 30th day of June, 2020, including for the purposes of,—

(a) completion of any proceeding or passing of any order or issuance of any notice, intimation, notification, sanction or approval or such other action, by whatever name called, by any authority, commission or Tribunal, by whatever name called, under the provisions of the Acts stated above ; or

(b) filing of any appeal, reply or application or furnishing of any report, document, return, statement or such other record, by whatever name called, under the provisions of the Acts stated above ;

but, such extension of time shall not be applicable for the compliances of the provisions of the said Act, as mentioned below :

(a) Chapter IV ;

(b) sub-section (3) of section 10, sections 25, 27, 31, 37, 47, 50, 69, 90, 122, 129 ;

(c) section 39, except sub-sections (3), (4) and (5) ;

(d) section 68, in so far as e-way bill is concerned ; and

(e) rules made under the provisions specified at clauses (a) to (d) above ;

(ii) where an e-way bill has been generated under rule 138 of the Gujarat Goods and Services Tax Rules, 2017 and its period of validity expires during the period 20th day of March, 2020 to 15th day of April, 2020, the validity period of such e-way bill shall be deemed to have been extended till the 30th day of April, 2020.

2. This notification shall come into force with effect from the 20th day of March, 2020.

Furnishing of e-return in Form GSTR-3B through common portal—Amendments (Gujarat)

Notification No. 36/2020-State Tax, dated 9th April, 2020

No. GSL/GST/S.168/B.35.—In exercise of the powers conferred by section 168 of the Gujarat Goods and Services Tax Act, 2017 (12 of 2017), read with sub-rule (5) of rule 61 of the Gujarat Goods and Services Tax Rules, 2017 (hereafter in this notification referred to as "the said Rules"), the Chief Commissioner of State Tax, on the recommendations of the Council, here-by makes the following amendments in the Notification No. GSL/GST/S.168/B.34, dated 27th March 2020, Notification No. 29/2020-State Tax[1], namely :—

1. See page 2 *supra*.

In the said notification, in the first paragraph, after the second proviso, the following provisos shall be *inserted*, namely :—

"Provided also that, for taxpayers having an aggregate turnover of more than rupees 5 crore in the previous financial year, the return in *Form GSTR-3B* of the said rules for the month of May, 2020 shall be furnished electronically through the common portal, on or before the 27th June, 2020 :

Provided also that, for taxpayers having an aggregate turnover of up to rupees five crore rupees in the previous financial year, whose principal place of business is in the States of Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh, the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands or Lakshadweep, the return in *Form GSTR-3B* of the said rules for the month of May, 2020 shall be furnished electronically through the common portal, on or before the 12th day of July, 2020 :

Provided also that, for taxpayers having an aggregate turnover of up to rupees five crore in the previous financial year, whose principal place of business is in the States of Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha, the Union territories of Jammu and Kashmir, Ladakh, Chandigarh or Delhi, the return in *Form GSTR-3B* of the said Rules for the month of May, 2020 shall be furnished electronically through the common portal, on or before the 14th day of July, 2020.".

Date of coming into force on Gujarat Goods and Services Tax (Fourth Amendment) Rules, 2019

Notification No. 37/2020-State Tax, dated 1st May, 2020

No. (GHN-41)GSTR-2020/S.164(56)TH.—In exercise of the powers conferred by section 164 of the Gujarat Goods and Services Tax Act, 2017 (Guj. 25 of 2017) read with clause (c) of rule 9 and rule 25 of the Gujarat Goods and Services Tax (Fourth Amendment) Rules, 2019 (hereinafter referred to as "the said Rules"), made vide Government Notification, Finance Department No. (GHN-58)GSTR-2019/S.164(43)-TH, dated 28th June, 2019, Notification No. 31/2019-State Tax, the Government, hereby appoints the 21st day of April, 2020, as the date from which the said provisions of the rules, shall come into force.

THE GUJARAT GOODS AND SERVICES TAX (FIFTH AMENDMENT) RULES, 2020

Notification No. 38/2020-State Tax, dated 7th May, 2020

No. (GHN-42)GSTR-2020/S.164(57)TH.—In exercise of the powers conferred by section 164 of the Gujarat Goods and Services Tax Act, 2017 (Guj. 25 of 2017), the State Government, on the recommendations of the Council, hereby makes the following rules further to amend the Gujarat Goods and Services Tax Rules, 2017, namely :—

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

(2) Save as otherwise provided, they shall be deemed to have come into force with effect from the 5th day of May, 2020.

2. In the Gujarat Goods and Services Tax Rules, 2017 (hereinafter referred to as the said Rules), with effect from the 21st April, 2020, in rule 26 in sub-rule (1), after the proviso, following proviso shall be *inserted*, namely :—

"Provided further that a registered person registered under the provisions of the Companies Act, 2013 (18 of 2013) shall, during the period from the 21st day of April, 2020 to the 30th day of June, 2020, also be allowed to furnish the return under section 39 in *FORM GSTR-3B* verified through Electronic Verification Code (EVC).".

3. In the said rules, after rule 67, with effect from a date to be notified later, the following rule shall be *inserted*, namely :—

"67A. *Manner of furnishing of return by short messaging service facility*.—Notwithstanding anything contained in this Chapter, for a registered person who is required to furnish a Nil return under section 39 in *Form GSTR-3B* for a tax period, any reference to electronic furnishing shall include furnishing of the said return through a short messaging service using the registered mobile number and the said return shall be verified by a registered mobile number based One Time Password facility.

Explanation.—For the purpose of this rule, a Nil return shall mean a return under section 39 for a tax period that has nil or no entry in all the tables in *Form GSTR-3B*.".

Corporate debtors undergoing corporate insolvency resolution process—Special procedure—Amendments (Gujarat)

Notification No. 39/2020-State Tax, dated 7th May, 2020

No. (GHN-43)GST-2020/S.148(30)TH.—In exercise of the powers conferred by section 148 of the Gujarat Goods and Services Tax Act, 2017 (Guj.

25 of 2017), the Government, on the recommendations of the Council, hereby makes the following amendments in the notification of the Government of Gujarat, Finance Department No. (GHN-23)GST-2020/S.148(26)-TH, dated March 27, 2020, Notification No. 11/2020-State Tax[1], namely :—

In the said notification,—

(i) in the first paragraph, the following proviso shall be *inserted*, namely :—

"Provided that the said class of persons shall not include those corporate debtors who have furnished the statements under section 37 and the returns under section 39 of the said Act for all the tax periods prior to the appointment of IRP/RP." ;

(ii) for the paragraph 2, with effect from the 21st March, 2020, the following paragraph shall be *substituted*, namely :—

"2. *Registration*.—The said class of persons shall, with effect from the date of appointment of IRP/RP, be treated as a distinct person of the corporate debtor, and shall be liable to take a new registration (hereinafter referred to as the new registration) in each of the States or Union territories where the corporate debtor was registered earlier, within thirty days of the appointment of the IRP/RP or by 30th June, 2020, whichever is later.".

2. Save as otherwise provided, this notification shall be deemed to have come into force with effect from the 5th day of May, 2020.

Extension of time-limit for completion or compliance of any action by any authority—Amendments (Gujarat)

Notification No. 40/2020-State Tax, dated 7th May, 2020

No. (GHN-44)GST-2020/S.168A(2)TH.—In exercise of the powers conferred by section 168A of the Gujarat Goods and Services Tax Act, 2017 (Guj. 25 of 2017) (hereafter in this notification referred to as the said Act), the Gujarat Government, on the recommendations of the Council, hereby makes the following amendment in the notification of the Government of Gujarat, Finance Department No.(GHN-37)GST-2020/S.168A(1)-TH dated the 9th April, 2020, Notification No. 35/2020-State Tax[2], namely :—

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

"Provided that where an e-way bill has been generated under rule 138 of the Gujarat Goods and Services Tax Rules, 2017 on or before the

1. See [2020] 79 GSTR (St.) 359.
2. See page 7 *supra*.

24th day of March, 2020 and its period of validity expires during the period 20th day of March, 2020 to the 15th day of April, 2020, the validity period of such e-way bill shall be deemed to have been extended till the 31st day of May, 2020.".

Date of coming into force on Gujarat Goods and Services Tax (Fifth Amendment) Rules, 2020

Notification No. 44/2020-State Tax, dated 10th June, 2020

No. (GHN-49)GSTR-2020/S.164(58)TH.—In exercise of the powers conferred by section 164 of the Gujarat Goods and Services Tax Act, 2017 (Guj. 25 of 2017) read with rule 3 of the Gujarat Goods and Services Tax (Fifth Amendment) Rules, 2020 (hereinafter referred to as the said Rules), made vide Government Notification, Finance Department No. (GHN-42)GSTR-2020/S.164(57)-TH, dated 7th May, 2020, Notification No. 38/2020-State Tax[1], the Government, hereby appoints the 8th day of June, 2020, as the date from which the said provisions of the rules shall come into force.

Notice has been issued for rejection of refund claim, in full or in part and where the time-limit for issuance of order in terms of the provisions (Gujarat)

Notification No. 46/2020-State Tax, dated 12th June, 2020

No. (GHN-50)GST-2020/S.168A(3)TH.—In exercise of the powers conferred by section 168A of the Gujarat Goods and Services Tax Act, 2017 (Guj. 25 of 2017) (hereafter in this notification referred to as "the said Act"), in view of the spread of pandemic COVID-19 across many countries of the world including India, the Government, on the recommendations of the Council, hereby notifies that in cases where a notice has been issued for rejection of refund claim, in full or in part and where the time limit for issuance of order in terms of the provisions of sub-section (5), read with sub-section (7) of section 54 of the said Act falls during the period from the 20th day of March, 2020 to the 29th day of June, 2020, in such cases the time limit for issuance of the said order shall be extended to fifteen days after the receipt of reply to the notice from the registered person or the 30th day of June, 2020, whichever is later.

2. This notification shall come into force with effect from the 20th day of March, 2020.

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1. See page 10 *supra*.

Extension of time-limit for completion or compliance of any action by any authority—Amendment (Gujarat)

Notification No. 47/2020-State Tax, dated 12th June, 2020

No. (GHN-51)GST-2020/S.168A(4)TH.—In exercise of the powers conferred by section 168A of the Gujarat Goods and Services Tax Act, 2017 (Guj. 25 of 2017) (hereafter in this notification referred to as the said Act), the Government, on the recommendations of the Council, hereby makes the following further amendment in the notification of the Government of Gujarat, Finance Department No. (GHN-37) GST-2020/S. 168A (1)-TH, dated 9th April, 2020, Notification No. 35/2020-State Tax[1], namely :—

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

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

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

THE GUJARAT GOODS AND SERVICES TAX (SIXTH AMENDMENT) RULES, 2020

Notification No. 48/2020-State Tax, dated 23rd June, 2020

No. (GHN-53)GSTR-2020/S.164(59)TH.—In exercise of the powers conferred by section 164 of the Gujarat Goods and Services Tax Act, 2017 (Guj. 25 of 2017), the State Government, on the recommendations of the Council, hereby makes the following rules further to amend the Gujarat Goods and Services Tax Rules, 2017, namely :—

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

(2) They shall come into force on 27th day of May, 2020.

2. In the Gujarat Goods and Services Tax Rules, 2017 (hereinafter referred to as "the said Rules"), in rule 26 in sub-rule (1), for the second proviso, following provisos shall be *substituted*, namely :—

"Provided further that a registered person registered under the provisions of the Companies Act, 2013 (18 of 2013) shall, during the period

1. See page 7 *supra*.

from the 21st day of April, 2020 to the 30th day of September, 2020, also be allowed to furnish the return under section 39 in *Form GSTR-3B* verified through Electronic Verification Code (EVC) :

Provided also that a registered person registered under the provisions of the Companies Act, 2013 (18 of 2013) shall, during the period from the 27th day of May, 2020 to the 30th day of September, 2020, also be allowed to furnish the details of outward supplies under section 37 in *Form GSTR-1* verified through Electronic Verification Code (EVC).".

THE GUJARAT GOODS AND SERVICES TAX (SEVENTH AMENDMENT) RULES, 2020

Notification No. 50/2020-State Tax, dated 29th June, 2020

No. (GHN-58)GSTR-2020/S.164(60)TH.—In exercise of the powers conferred by section 164 of the Gujarat Goods and Services Tax Act, 2017 (Guj. 25 of 2017), the State Government, on the recommendations of the Council, hereby makes the following rules further to amend the Gujarat Goods and Services Tax Rules, 2017, namely :—

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

(2) They shall come into force with effect from the 01st day of April, 2020.

2. In the Gujarat Goods and Services Tax Rules, 2017, in rule 7, for the Table, the following Table shall be *substituted*, namely :—

"TABLE

Sl. No.	*Section under which composition levy is opted*	*Category of registered persons*	*Rate of tax*
(1)	*(1A)*	*(2)*	*(3)*
1.	Sub-sections (1) and (2) of section 10	Manufacturers, other than manufacturers of such goods as may be notified by the Government	half per cent. of the turnover in the State
2.	Sub-sections (1) and (2) of section 10	Suppliers making supplies referred to in clause (b) of paragraph 6 of Schedule II	two and a half per cent. of the turnover in the State
3.	Sub-sections (1) and (2) of section 10	Any other supplier eligible for composition levy under sub-sections (1) and (2) of section 10	half per cent. of the turnover of taxable supplies of goods and services in the State

(1)	(1A)	(2)	(3)
4.	Sub-section (2A) of section 10	Registered persons not eligible under the composition levy under sub-sections (1) and (2), but eligible to opt to pay tax under sub-section (2A) of section 10	three per cent. of the turnover of taxable supplies of goods and services in the State.".

Rate of interest for specified purposes—Amendment (Gujarat)

Notification No. 51/2020-State Tax, dated 29th June, 2020

No. (GHN-55)GST-2020/S.50(1)(1)TH.—In exercise of the powers conferred by sub-section (1) of section 50 of the Gujarat Goods and Services Tax Act, 2017 (Guj. 25 of 2017) read with section 148 of the said Act, the State Government, on the recommendations of the Council, hereby makes the following further amendment in the notification of the Government of Gujarat, Finance Department No. (GHN-30)GST-2017/S. 50, 54 and 56(1)-TH dated 30th June, 2017, Notification No. 13/2017-State Tax, namely :—

In the said notification, in the first paragraph, for the first proviso, the following proviso shall be *substituted*, namely :—

"Provided that the rate of interest per annum shall be as specified in column (3) of the Table given below for the period mentioned therein, for the class of registered persons mentioned in the corresponding entry in column (2) of the said Table, who are required to furnish the returns in *Form GSTR-3B*, but fail to furnish the said return along with payment of tax for the months mentioned in the corresponding entry in column (4) of the said Table by the due date, namely :—

TABLE

Sl. No.	*Class of registered persons*	*Rate of interest*	*Tax period*
(1)	(2)	(3)	(4)
1.	Taxpayers having an aggregate turnover of more than Rs. 5 crores in the preceding financial year	Nil for first 15 days from the due date, and 9 per cent. thereafter till 24th day of June, 2020	February, 2020, March 2020, April, 2020
2.	Taxpayers having an aggregate turnover of up to Rs. 5 crores in the preceding financial year, whose principal place of business is in the States of Chhattisgarh,	Nil till the 30th day of June, 2020, and 9 per cent. thereafter till the 30th day of September, 2020	February, 2020

(1)	(2)	(3)	(4)
	Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana or Andhra Pradesh or the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands and Lakshadweep	Nil till the 3rd day of July, 2020, and 9 per cent. thereafter till the 30th day of September, 2020	March, 2020
		Nil till the 6th day of July, 2020, and 9 per cent. thereafter till the 30th day of September, 2020	April, 2020
		Nil till the 12th day of September, 2020, and 9% thereafter till the 30th day of September, 2020	May, 2020
		Nil till the 23rd day of September, 2020, and 9% thereafter till the 30th day of September, 2020	June, 2020
		Nil till the 27th day of September, 2020, and 9% thereafter till the 30th day of September, 2020	July, 2020
3.	Taxpayers having an aggregate turnover of up to rupees 5 crores in the preceding financial year, whose principal place of business is in the States of Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha or the Union territories of Jammu and Kashmir, Ladakh, Chandigarh and Delhi	Nil till the 30th day of June, 2020, and 9 per cent. thereafter till the 30th day of September, 2020	February, 2020
		Nil till the 5th day of July, 2020, and 9 per cent. thereafter till the 30th day of September, 2020	March, 2020
		Nil till the 9th day of July, 2020, and 9 per cent. thereafter till the 30th day of September, 2020	April, 2020
		Nil till the 15th day of September, 2020, and 9 per cent. thereafter till the 30th day of September, 2020	May, 2020
		Nil till the 25th day of September, 2020, and 9 per cent. thereafter till the 30th day of September, 2020	June, 2020

(1)	(2)	(3)	(4)
		Nil till the 29th day of September, 2020, and 9 per cent. thereafter till the 30th day of September, 2020	July, 2020.".

2. This notification shall be deemed to have come into force with effect from the 24th day of June, 2020.

Waiver of late fee for filing of Form GSTR-3B— Amendments (Gujarat)

Notification No. 52/2020-State Tax, dated 29th June, 2020

No. (GHN-56)GST-2020/S.128(21)TH.—In exercise of the powers conferred by section 128 of the Gujarat Goods and Services Tax Act, 2017 (Guj. 25 of 2017) (hereafter in this notification referred to as "the said Act"), read with section 148 of the said Act, the Government, on the recommendations of the Council, hereby makes the following further amendment in the notification of the Government of Gujarat, Finance Department No. (GHN-134)GST-2018/S.128(13)TH, dated 31st December, 2018, Notification No. 76/2018-State Tax, namely :—

In the said notification,—

(i) in the third proviso, for the Table, the following Table shall be *substituted*, namely :—

"TABLE

Sl. No.	*Class of registered persons*	*Tax period*	*Condition*
(1)	(2)	(3)	(4)
1.	Taxpayers having an aggregate turnover of more than rupees 5 crores in the preceding financial year	February, 2020, March, 2020 and April, 2020	If return in *Form GSTR-3B* is furnished on or before the 24th day of June, 2020
2.	Taxpayers having an aggregate turnover of up to rupees 5 crores in the preceding financial year, whose principal place of business is in the States of Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana or Andhra	February, 2020	If return in *Form GSTR-3B* is furnished on or before the 30th day of June, 2020
		March, 2020	If return in *Form GSTR-3B* is furnished on or before the 3rd day of July, 2020
		April, 2020	If return in *Form GSTR-3B* is furnished on or before the 6th day of July, 2020

(1)	(2)	(3)	(4)
	Pradesh or the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands and Lakshadweep	May, 2020	If return in *Form GSTR-3B* is furnished on or before the 12th day of September, 2020
		June, 2020	If return in *Form GSTR-3B* is furnished on or before the 23rd day of September, 2020
		July, 2020	If return in *Form GSTR-3B* is furnished on or before the 27th day of September, 2020
3.	Taxpayers having an aggregate turnover of up to rupees 5 crores in the preceding financial year, whose principal place of business is in the States of Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha or the Union territories of Jammu and Kashmir, Ladakh, Chandigarh and Delhi	February, 2020	If return in *Form GSTR-3B* is furnished on or before the 30th day of June, 2020
		March, 2020	If return in *Form GSTR-3B* is furnished on or before the 5th day of July, 2020
		April, 2020	If return in *Form GSTR-3B* is furnished on or before the 9th day of July, 2020
		May, 2020	If return in *Form GSTR-3B* is furnished on or before the 15th day of September, 2020
		June, 2020	If return in *Form GSTR-3B* is furnished on or before the 25th day of September, 2020
		July, 2020	If return in *Form GSTR-3B* is furnished on or before the 29th day of September, 2020

(ii) after the third proviso, the following provisos shall be *inserted*, namely :—

"Provided also that the total amount of late fee payable for a tax period, under section 47 of the said Act shall stand waived which is in excess of an amount of two hundred and fifty rupees for the registered person who failed to furnish the return in *Form GSTR-3B* for the months of July, 2017 to January, 2020, by the due date but furnishes the said return between the period from 1st day of July, 2020 to 30th day of September, 2020 :

Provided also that where the total amount of State tax payable in the said return is nil, the total amount of late fee payable for a tax period, under

section 47 of the said Act shall stand waived for the registered person who failed to furnish the return in *Form GSTR-3B* for the months of July, 2017 to January, 2020, by the due date but furnishes the said return between the period from 1st day of July, 2020 to 30th day of September, 2020.".

2. This notification shall be deemed to have come into force with effect from the 24th day of June, 2020.

Failure to furnish return in Form GSTR-1—Waiver of late fee—Amendment (Gujarat)

Notification No. 53/2020-State Tax, dated 29th June, 2020

No. (GHN-57)GST-2020/S.128(22)TH.—In exercise of the powers conferred by section 128 of the Gujarat Goods and Services Tax Act, 2017 (Guj. 25 of 2017), the Government, on the recommendations of the Council, hereby makes the following further amendment in the notification of the Government of Gujarat, Finance Department No. (GHN-8)/GST-2018/S.128(5)TH dated the 23rd January, 2018, Notification No. 4/2018-State Tax, namely :—

In the said notification, for the third proviso, the following proviso shall be *substituted*, namely :—

"Provided also that the amount of late fee payable under section 47 of the said Act shall stand waived for the registered persons who fail to furnish the details of outward supplies for the months or quarter mentioned in column (2) of the Table below in *Form GSTR-1* by the due date, but furnishes the said details on or before the dates mentioned in column (3) of the said Table :—

TABLE

Sl. No.	*Month/Quarter*	*Dates*
(1)	*(2)*	*(3)*
1.	March, 2020	10th day of July, 2020
2.	April, 2020	24th day of July, 2020
3.	May, 2020	28th day of July, 2020
4.	June, 2020	5th day of August, 2020
5.	January to March, 2020	17th day of July, 2020
6.	April to June, 2020	3rd day of August, 2020.".

2. This notification shall be deemed to have come into force with effect from the 24th day of June, 2020.

Furnishing of e-return in Form GSTR-3B through common portal—Amendments (Gujarat)

Notification No. 54/2020-State Tax, dated 30th June, 2020

No. GSL/GST/S. 168/B. 36.—In exercise of the powers conferred by section 168 of the Gujarat Goods and Services Tax Act, 2017 (Guj. 25 of 2017), read with sub-rule (5) of rule 61 of the Gujarat Goods and Services Tax Rules, 2017 (hereafter in this notification referred to as "the said Rules"), the Chief Commissioner of State Tax, on the recommendations of the Council, hereby makes the following further amendments in Notification No. 29/2020-State Tax, dated the 27th March, 2020[1], issued vide this office Notification No. No. GSL/GST/S. 168/B. 34, namely :—

In the said notification, in the first paragraph, after the fifth proviso, the following provisos shall be *inserted*, namely :—

"Provided also that, for taxpayers having an aggregate turnover of up to rupees five crore rupees in the previous financial year, whose principal place of business is in the States of Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh, the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands or Lakshadweep, the return in *Form GSTR-3B* of the said rules for the month of August, 2020 shall be furnished electronically through the common portal, on or before the 1st day of October, 2020 :

Provided also that, for taxpayers having an aggregate turnover of up to rupees five crore rupees in the previous financial year, whose principal place of business is in the States of Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha, the Union territories of Jammu and Kashmir, Ladakh, Chandigarh or Delhi, the return in *Form GSTR-3B* of the said rules for the month of August, 2020 shall be furnished electronically through the common portal, on or before the 3rd day of October, 2020.".

Extension of time-limit for completion or compliance of any action by any authority—Amendment (Gujarat)

Notification No. 55/2020-State Tax, dated 29th June, 2020

No. (GHN-60)GST-2020/S. 168A(6)TH.—In exercise of the powers conferred by section 168A of the Gujarat Goods and Services Tax Act, 2017

1. See page 2 *supra*.

(Guj. 25 of 2017), the Government, on the recommendations of the Council, hereby makes the following further amendment in the notification of the Government of Gujarat, Finance Department No. (GHN-37)GST-2020/S.168A(1)-TH, dated 9th April, 2020, Notification No. 35/2020-State Tax[1], namely :—

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

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

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

Notice has been issued for rejection of refund claim, in full or in part and where the time-limit for issuance of order in terms of the provisions—Amendment (Gujarat)

Notification No. 56/2020-State Tax, dated 29th June, 2020

No. (GHN-59)GST-2020/S.168A(5)TH.—In exercise of the powers conferred by section 168A of the Gujarat Goods and Services Tax Act, 2017 (Guj. 25 of 2017), the Government, on the recommendations of the Council, hereby makes the following amendment in the notification of the Government of Gujarat, Finance Department No. (GHN-50)GST-2020/S.168A(3)-TH, dated 12th June, 2020[2], Notification No. 46/2020-State Tax, namely :—

In the said notification, in the first paragraph,—

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

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

Waiver of late fee for filing of Form GSTR-3B—Amendments (Gujarat)

Notification No. 57/2020-State Tax, dated 3rd July, 2020

No. (GHN-65)GST-2020/S.128(23)TH.—In exercise of the powers conferred by section 128 of the Gujarat Goods and Services Tax Act, 2017 (Guj. 25 of 2017) (hereafter in this notification referred to as "the said Act"), read with section 148 of the said Act, the Government, on the recommendations

1. See page 7 supra.
2. See page 12 supra.

of the Council, hereby makes the following further amendments in the notification of the Government of Gujarat, Finance Department No. (GHN-134)GST-2018/S.128(13)TH, dated 31st December, 2018, Notification No. 76/2018-State Tax, namely :—

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

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

Provided also that for the taxpayers having an aggregate turnover of more than rupees 5 crores in the preceding financial year, who fail to furnish the return in *Form GSTR-3B* for the months of May, 2020 to July, 2020, by the due date but furnish the said return till the 30th day of September, 2020, the total amount of late fee under section 47 of the said Act, shall stand waived which is in excess of two hundred and fifty rupees and shall stand fully waived for those taxpayers where the total amount of State tax payable in the said return is Nil.".

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

THE GUJARAT GOODS AND SERVICES TAX (EIGHTH AMENDMENT) RULES, 2020

Notification No. 58/2020-State Tax, dated 3rd July, 2020

No. (GHN-66)GSTR-2020/S.164(61)TH.—In exercise of the powers conferred by section 164 of the Gujarat Goods and Services Tax Act, 2017 (Guj. 25 of 2017), the State Government, on the recommendations of the Council, hereby makes the following rules further to amend the Gujarat Goods and Services Tax Rules, 2017, namely :—

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

(2) They shall come into force from 1st July, 2020.

2. In the Gujarat Goods and Services Tax Rules, 2017 (hereinafter referred to as "the said Rules"), for the rule 67A, the following rule shall be *substituted*, namely :—

"67A. *Manner of furnishing of return or details of outward supplies by short messaging service facility*.—Notwithstanding anything contained in this Chapter, for a registered person who is required to furnish a Nil return under section 39 in *Form GSTR-3B* or a Nil details of outward supplies under section 37 in *Form GSTR-1* for a tax period, any reference to electronic furnishing shall include furnishing of the said return or the details of outward supplies through a short messaging service using the registered mobile number and the said return or the details of outward supplies shall be verified by a registered mobile number based one time password facility.

Explanation.—For the purpose of this rule, a Nil return or Nil details of outward supplies shall mean a return under section 39 or details of outward supplies under section 37, for a tax period that has Nil or no entry in all the Tables in *Form GSTR-3B* or *Form GSTR-1*, as the case may be.".

Failure to furnish return in Form GSTR-1— Waiver of late fee—Amendment (Gujarat)

Notification No. 59/2020-State Tax, dated 15th July, 2020

No. (GHN-67)GST-2020/S.148(31)TH.—In exercise of the powers conferred by section 148 of the Gujarat Goods and Services Tax Act, 2017 (Guj. 25 of 2017), the Government, on the recommendations of the Council, hereby makes the following further amendment in the notification of the Government of Gujarat, Finance Department No. (GHN-43)GST-2019/S.148(15)TH dated the 24th April, 2019, Notification No. 21/2019-State Tax, namely :—

In the said notification, in the third paragraph, in the first proviso, for the figures, letters and words "15th day of July, 2020", the figures, letters and words "31st day of August, 2020" shall be *substituted*.

THE GUJARAT GOODS AND SERVICES TAX (NINTH AMENDMENT) RULES, 2020

Notification No. 60/2020-State Tax, dated 6th August, 2020

No. (GHN-74)GSTR-2020/S.164(62)TH.—In exercise of the powers conferred by section 164 of the Gujarat Goods and Services Tax Act, 2017 (Guj. 25 of 2017), the State Government, on the recommendations of the

Council, hereby makes the following rules further to amend the Gujarat Goods and Services Tax Rules, 2017, namely :—

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

(2) They shall come into force with effect from the 30th day of July, 2020.

2. In the Gujarat 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*.

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.inWebappl/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_Reference	0..1	Receipt advice reference	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_Reference	0..1	Tender or lot reference	Optional	String (max length : 20)	TENDERJAN2020	This reference is kept for mentioning number or details of lot or

							tender, if supplies are made under such Lot or tender.
3.2.4	Contract_Reference	0..1	Contract reference	Optional	String (max length : 20)	CONT23072019	This reference is kept for mentioning contract number, if supplies are made under any specific contract
3.2.5	External_Reference	0..1	External reference	Optional	String (max length : 20)	EXT23222	An additional field for provision of any additional/external reference number for the supply.
3.2.6	Project_Reference	0..1	Project reference	Optional	String (Max length : 20)	PJTCODE01	This reference is kept for mentioning project number, if supplies are made under any specific project
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)	29AADFV7589C1ZX	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	Recipient_Pincode	0..1	Recipient 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	Enumerated 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.icegate.gov.in/Webappl/COUNTRY_ENQ*
5.11	Recipient_Phone	0..1	Recipient phone	Optional	String (max length : 12)	08022233 23	Contact number of the recipient

5.12	Recipient_email_ID	0..1	Recipient e-mail ID	Optional	String (max length : 100)	*billing@xyz.com*	e-mail ID of the recipient, as per REGEX (regular expressions) pattern
6.	*Payee information*	*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)	386850174726 2	Bank account number of payee
6.3	Mode_of_Payment	0..1	Mode of payment	Optional	String (max length : 18)	Direct transfer	Mode of payment : Cash/ credit/direct transfer, etc.
6.4	Bank_Branch_Code	0..1	Bank branch code	Optional	String (max length : 11)	SBIN0876543	Indian Financial System Code (IFSC) of Payee's Bank Branch
6.5	Payment_Terms	0..1	Payment terms	Optional	String (max length : 100)	Text	Terms of payment, if any, with the recipient can be provided.
6.6	Payment_Instruction	0..1	Payment instruction	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_ Information*	*0..1*		*Optional*			*Header for delivery information*
7.1	Ship_ To_ Details	0..1	Ship to details	Optional	Refer A 1.0		Details of location to which the supply has to be delivered.
7.2	Dispatch _From_ Details	0..1	Dispatch from details	Optional	Refer A 1.1		Details of location from where Supply has to be dispatched.
8.	*Invoice item details*	*1..n*		*Mandatory*			*Header for invoice item details*
8.1	Item_- List	1..n	Item list	Mandatory	Refer A 1.2		Provides information about the goods and services 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.icegate.gov.in/Webappl/location_enq* Non-EDI port codes : *https://www.icegate.gov.in/Webappl/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)	29ABCCR1832C1CX	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)	KA12KA 1234 or KA12K1 234 or KA12345 6 or KAR 1234	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)	36AABC T2223L1 ZF	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, KakatiyaApartments, 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, KakatiyaApartments, 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	Mandatory	Number (max length : 12,2)	5000	This is the value on which tax is computed. Value cannot be negative.
A.1.2.15	GST_Rate	1..1	GST Rate	Mandatory	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 taxable 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_valo rem	0..1	Com-pensa-tion Cess Rate, ad_valo-rem	Optional	Number (max length : 3,3)	2.5%	*Ad valorem* Rate of GST Compen-sation Cess, applicable, if any
A1. 2.20	Comp_ Cess_ Amt_ Ad_Valo rem	0..1	Com-pensa-tion cess amount, ad valo-rem	Optional	Number (max length : 12,2)	56.00	GST compensa-tion cess amount, ad valorem (rounded off to 2 decimals) (*based on value of the item*)
A1. 2.21	Comp_ Cess_ Amt_ Non_ Ad_Valo rem	0..1	Com-pensa-tion cess amount, non ad valorem	Optional	Number (max length : 12,2)	23.00	GST Compensa-tion 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.".

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—Amendments (Gujarat)

Notification No. 61/2020-State Tax, dated 6th August, 2020

No. (GHN-73)GST-2020/R.48(4)(3)TH.—In exercise of the powers conferred by sub-rule (4) of rule 48 of the Gujarat Goods and Services Tax Rules, 2017, the Government, on the recommendations of the Council, hereby makes the following amendments in notification of the Government of Gujarat, Finance Department No. (GHN-22)GST-2020/R.48(4)(2) TH, dated March 27, 2020[1], Notification No. 13/2020-State Tax, 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*.

THE GUJARAT GOODS AND SERVICES TAX (TENTH AMENDMENT) RULES, 2020

Notification No. 62/2020-State Tax, dated 25th August, 2020

No. (GHN-78)GSTR-2020/S.164(63)TH.—In exercise of the powers conferred by section 164 of the Gujarat Goods and Services Tax Act, 2017 (Guj. 25 of 2017), the State Government, on the recommendations of the Council, hereby makes the following rules further to amend the Gujarat Goods and Services Tax Rules, 2017, namely :—

1. **Short Title and commencement.**—(1) These rules may be called the **Gujarat Goods and Services Tax (Tenth Amendment) Rules, 2020**.

(2) Save as otherwise provided, they be deemed to have come into force with effect from the 20th day of August, 2020.

2. In the Gujarat Goods and Services Tax Rules, 2017 (hereinafter referred to as the said rules), in rule 8, for sub-rule (4A), the following sub-rule shall be *substituted* with effect from 1st April, 2020, namely :—

"(4A) Where an applicant, other than a person notified under sub-section (6D) of section 25, opts for authentication of Aadhaar number, he shall, while submitting the application under sub-rule (4), with effect from 21st August, 2020, undergo authentication of Aadhaar number and the date of submission of the application in such cases shall be the date of

1. See [2020] 79 GSTR (St.) 361.

authentication of the Aadhaar number, or fifteen days from the submission of the application in *Part B* of *Form GST REG-01* under sub-rule (4), whichever is earlier.".

3. In the said rules, in rule 9, with effect from 21st August, 2020,—

(i) in sub-rule (1), for the proviso, the following provisos shall be *substituted*, namely :—

"Provided that where a person, other than a person notified under sub-section (6D) of section 25, fails to undergo authentication of Aadhaar number as specified in sub-rule (4A) of rule 8 or does not opt for authentication of Aadhaar number, the registration shall be granted only after physical verification of the place of business in the presence of the said person, in the manner provided under rule 25 :

Provided further that the proper officer may, for reasons to be recorded in writing and with the approval of an officer not below the rank of Joint Commissioner, in lieu of the physical verification of the place of business, carry out the verification of such documents as he may deem fit." ;

(ii) in sub-rule (2), before the *Explanation*, the following proviso shall be *inserted*, namely :—

"Provided that where a person, other than a person notified under sub-section (6D) of section 25, fails to undergo authentication of Aadhaar number as specified in sub-rule (4A) of rule 8 or does not opt for authentication of Aadhaar number, the notice in *Form GST REG-03* may be issued not later than twenty one days from the date of submission of the application." ;

(iii) in sub-rule (4), for the word, "shall", the word "may" shall be *substituted* ;

(iv) for sub-rule (5), the following sub-rule shall be *substituted*, namely :—

"(5) If the proper officer fails to take any action,—

(a) within a period of three working days from the date of submission of the application in cases where a person successfully undergoes authentication of Aadhaar number or is notified under sub-section (6D) of section 25 ; or

(b) within the time period prescribed under the proviso to sub-rule (2), in cases where a person, other than a person notified under sub-section (6D) of section 25, fails to undergo authentication of Aadhaar number as specified in sub-rule (4A) of rule 8 ; or

(c) within a period of twenty one days from the date of submission of the application in cases where a person does not opt for authentication of Aadhaar number ; or

(d) within a period of seven working days from the date of the receipt of the clarification, information or documents furnished by the applicant under sub-rule (2),

the application for grant of registration shall be deemed to have been approved.".

4. In the said rules, in rule 25, with effect from 21st August, 2020, after the words "failure of Aadhaar authentication", the words "or due to not opting for Aadhaar authentication" shall be *inserted*.

Date of coming into force of certain provisions of Gujarat Goods and Services Tax (Amendment) Act, 2019 (Gujarat)

Notification No. 63/2020-State Tax, dated 31st August, 2020

No. (GHN-81)GST-2020/S.1(11)TH.—In exercise of the powers conferred by sub-section (2) of section 1 of the Gujarat Goods and Services Tax (Amendment) Act, 2019 (Guj. 29 of 2019), the State Government hereby appoints the 1st day of September, 2020, as the date on which the provisions of section 10 of the Gujarat Goods and Services Tax (Amendment) Act, 2019 (Guj. 29 of 2019), shall come into force.

Date of coming into force of certain provisions of Finance (No. 2) Act, 2019 (Central)

Notification No. 63/2020-Central Tax, dated the 25th August, 2020[1]

G. S. R. 527(E).—In exercise of the powers conferred by sub-section (2) of section 1 of the Finance (No. 2) Act, 2019 (23 of 2019), the Central Government hereby appoints the 1st day of September, 2020, as the date on which the provisions of section 100 of the Finance (No. 2) Act, 2019 (23 of 2019)[2], shall come into force.

[F. No. 20/06/09/2019-GST]

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1. Gazette of India, Extry. No. 421, Part II, sec. 3(i), dated 25-8-2020, page 2.
2. See [2019] 67 GSTR (St.) 57.

Failure to furnish return in Form GSTR-1—Waiver of late fee—Amendment (Central)

Notification No. 64/2020-Central Tax, dated the 31st August, 2020[1]

G. S. R. 539(E).—In exercise of the powers conferred by section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017)[2], the Government, on the recommendations of the Council, hereby makes the following further amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 21/2019-Central Tax, dated the 23rd April, 2019[3], published in the Gazette of India, Extraordinary, Part II, section 3, sub-section (i) vide No. G. S. R. 322(E), dated the 23rd April, 2019, namely :—

In the said notification, in the third paragraph, in the first proviso, for the figures, letters and words "31st day of August, 2020", the figures, letters and words "31st day of October, 2020" shall be substituted.

[F. No. CBEC-20/06/07/2019-GST]

Note : The principal Notification No. 21/2019-Central Tax, dated the 23rd April, 2019, published in the Gazette of India, Extraordinary, vide No. G. S. R. 322(E), dated the 23rd April, 2019 and last amended by Notification No. 59/2020-Central Tax, dated the 13th July, 2020[4], published in the Gazette of India, Extraordinary, vide No. G. S. R. 443(E), dated the 13th July, 2020.

Extension of time-limit for completion or compliance of any action by any authority—Amendment (Central)

Notification No. 65/2020-Central Tax, dated the 1st September, 2020[5]

G. S. R. 542(E).—In exercise of the powers conferred by section 168A of the Central Goods and Services Tax Act, 2017 (12 of 2017), read with section 20 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), and section 21 of the Union Territory Goods and Services Tax Act, 2017 (14 of 2017), the Government, on the recommendations of the Council, hereby makes the following further amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 35/2020-Central Tax, dated the 3rd April, 2020[6], published in the Gazette of India, Extraordinary, Part II, section 3, sub-section (i), vide No. G. S. R. 235(E), dated the 3rd April, 2020, namely :—

1. Gazette of India, Extry. No. 433, Part II, sec. 3(i), dated 31-8-2020, page 2.
2. See [2017] 44 GSTR (St.) 249 ; [2017] 100 VST (St.) 1.
3. See [2019] 65 GSTR (St.) 38 .
4. See [2020] 77 GSTR (St.) 19.
5. Gazette of India, Extry. No. 436, Part II, sec. 3(i), dated 1-9-2020, page 2.
6. See [2020] 75 GSTR (St.) 108.

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

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

[F. No. CBEC-20/06/07/2019-GST]

Note : The principal Notification No. 35/2020-Central Tax, dated the 3rd April, 2020 was published in the Gazette of India, Extraordinary, Part II, section 3, sub-section (i) vide No. G. S. R. 235(E), dated the 3rd April, 2020 and was last amended by Notification No. 55/2020.Central Tax, dated the 27th June, 2020[1], published in the Gazette of India, Extraordinary vide No. G. S. R. 416(E), dated the 27th June, 2020.

CIRCULARS (Gujarat)

Circular No. 76/2018-GST, dated 1st January, 2019.

Subject : **Clarification on certain issues (sale by Government Departments to unregistered person ; leviability of penalty under section 73(11) of the GGST Act ; rate of tax in case of debit notes/credit notes issued under section 142(2) of the GGST Act ; applicability of Notification No. 50/2018-State Tax ; valuation methodology in case of TCS under Income-tax Act and definition of owner of goods) related to GST—Reg.**

Various representations have been received seeking clarification on certain issues under the GST laws. In order to clarify these issues and to ensure uniformity of implementation across field formations, the Chief Commissioner of State Tax, in exercise of its powers conferred under section 168(1) of the Gujarat Goods and Services Tax Act, 2017 (hereinafter referred to as the "GGST Act") hereby clarifies the issues as below :

Sl. No	*Issue*	*Clarification*
1.	Whether the supply of used vehicles, seized and confiscated goods, old and used goods, waste and scrap by Government Departments are taxable under GST ?	1. It may be noted that intra-State and inter-State supply of used vehicles, seized and confiscated goods, old and used goods, waste and scrap made by the Central Government, State Government,

1. See [2020] 77 GSTR (St.) 16.

Sl. No	*Issue*	*Clarification*
		Union territory or a local authority is a taxable supply under GST. 2. Vide Notification No. 36/2017-State Tax (Rate)[1] and Notification No. 37/2017-Integrated Tax (Rate) both dated October 13, 2017[2], it has been notified that intra-State and inter-State supply respectively of used vehicles, seized and confiscated goods, old and used goods, waste and scrap by the Central Government, State Government, Union territory or a local authority to any *registered person*, would be subject to GST on reverse charge basis as per which tax is payable by the recipient of such supplies. 3. A doubt has arisen about taxability of intra-State and inter-State supply of used vehicles, seized and confiscated goods, old and used goods, waste and scrap made by the Central Government, State Government, Union territory or a local authority to an *unregistered person*. 4. It was noted that such supply to an unregistered person is also a taxable supply under GST but is not covered under notification No. 36/2017-State Tax (Rate), and Notification No. 37/2017-Integrated Tax (Rate), both dated October 13, 2017. 5. In this regard, it is clarified that the respective Government Departments (i.e., Central Government, State Government, Union territory or a local authority) shall be liable to get registered and pay GST on intra-State and inter-State supply of used vehicles, seized and confiscated goods, old and used goods, waste and scrap made by them to an *unregistered person* subject to the provisions of sections 22 and 24 of the GGST Act.

Sl. No	*Issue*	*Clarification*
2.	Whether penalty in accordance with section 73(11) of the GGST Act should be levied in cases where the return in *FORM GSTR-3B* has been filed after the due date of filing such return ?	1. As per the provisions of section 73(11) of the GGST Act, penalty is payable in case self-assessed tax or any amount collected as tax has not been paid within a period of thirty days from the due date of payment of such tax. 2. It may be noted that a show-cause notice (SCN, for short) is required to be issued to a person where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input-tax credit has been wrongly availed or utilised for any reason under the provisions of section 73(1) of the GGST Act. The provisions of section 73(11) of the GGST Act can be invoked only when the provisions of section 73 are invoked. 3. The provisions of section 73 of the GGST Act are generally not invoked in case of delayed filing of the return in *FORM GSTR-3B* because tax along with applicable interest has already been paid but after the due date for payment of such tax. It is accordingly, clarified that penalty under the provisions of section 73(11) of the GGST Act is not payable in such cases. It is further clarified that since the tax has been paid late in contravention of the provisions of the GGST Act, a general penalty under section 125 of the GGST Act may be imposed after following the due process of law.
3.	In case a debit note is to be issued under section 142(2)(a) of the GGST Act or a credit note under section 142(2)(b) of the GGST Act, what will be the tax rate applicable—the rate in the pre-GST regime or the rate applicable under GST ?	1. It may be noted that as per the provisions of section 142(2) of the GGST Act, in case of revision of prices of any goods or services or both on or after the appointed day (i.e., July 1, 2017), a supplementary invoice or debit/credit note may be issued which shall be deemed to have been issued in respect of an outward supply made under the GGST Act.

Sl. No	*Issue*	*Clarification*
		2. It is accordingly clarified that in case of revision of prices, after the appointed date, of any goods or services supplied before the appointed day thereby requiring issuance of any supplementary invoice, debit note or credit note, the rate as per the provisions of the GST Acts (both GGST and SGST or IGST) would be applicable.
4.	Applicability of the provisions of section 51 of the GGST Act (TDS) in the context of Notification No. 50/2018-State Tax, dated September 13, 2018.	1. A doubt has arisen about the applicability of long line mentioned in clause (a) of Notification No. 50/2018-State Tax, dated September 13, 2018. 2. It is clarified that the long line written in clause (a) in Notification No. 50/2018-State Tax, dated September 13, 2018 is applicable to both the items (i) and (ii) of clause (a) of the said notification. Thus, an authority or a board or any other body whether set up by an Act of Parliament or a State Legislature or established by any Government with fifty-one per cent. or more participation by way of equity or control, to carry out any function would only be liable to deduct tax at source. 3. In other words, the provisions of section 51 of the GGST Act are applicable only to such authority or a board or any other body set up by an Act of parliament or a State legislature or established by any Government in which fifty one per cent. or more participation by way of equity or control is with the Government.
5.	What is the correct valuation methodology for ascertainment of GST on tax collected at source (TCS) under the provisions of the Income-tax Act, 1961 ?	1. Section 15(2) of the GGST Act specifies that the value of supply shall include "any taxes, duties cesses, fees and charges levied under any law for the time being in force other than this Act, the SGST Act, the UTGST Act and the GST (Compensation to States) Act, if charged separately by the supplier."

Sl. No	*Issue*	*Clarification*
		2. It is clarified that as per the above provisions, taxable value for the purposes of GST shall include the TCS amount collected under the provisions of the Income-tax Act since the value to be paid to the supplier by the buyer is inclusive of the said TCS.
6.	Who will be considered as the "owner of the goods" for the purposes of section 129(1) of the GGST Act ?	It is hereby clarified that if the invoice or any other specified document is accompanying the consignment of goods, then either the consignor or the consignee should be deemed to be the owner. If the invoice or any other specified document is not accompanying the consignment of goods, then in such cases, the proper officer should determine who should be declared as the owner of the goods.

1. See [2018] 48 GSTR (St.) 149.
2. See [2017] 47 GSTR (St.) 501.

2. Difficulty if any, in the implementation of this circular may be brought to the notice of the Chief Commissioner.

3. This circular shall be deemed to have been issued on the 31st December, 2018.

CHIEF COMMISSIONER OF STATE TAX
[No. GSL/GST/B. 17]

Circular No. 77/2018-GST, dated 1st January, 2019

Subject: **Denial of composition option by tax authorities and effective date thereof—Reg.**

Rule 6 of the Gujarat Goods and Services Tax Rules, 2017 (hereinafter referred to as the "GGST Rules") deals with the validity of the composition levy. As per the said rule, the option exercised by a registered person to pay tax under the composition scheme shall remain valid so long as he satisfies the conditions mentioned in section 10 of the Gujarat Goods and Services Tax Act, 2017 (hereinafter referred to as the "GGST Act") and the GGST Rules. The rule lays down the procedure for withdrawal from the composition scheme by a taxpayer who intends to withdraw from the said scheme and also the procedure for denial of option to the taxpayer to pay tax under the said scheme where he has contravened the provisions of the GGST Act or the GGST Rules.

2. In this connection, doubts have been raised as to the date from which withdrawal from the composition scheme shall take effect in a case where the composition taxpayer has exercised such option to withdraw. Doubts have also been raised regarding the effective date of denial of the option to pay tax under the composition scheme where action has been initiated by the tax authorities to deny such option to the composition taxpayer. Further, clarification has been sought regarding the follow up action to be taken by the tax authorities when the composition option is denied to the taxpayer retrospectively. In order to clarify these issues and to ensure uniformity in the implementation of the provisions of the law across field formations, the Board, in exercise of its powers conferred by section 168(1) of the GGST Act, hereby clarifies the issues raised as below.

3. Sub-rule (2) of rule 6 of the GGST Rules provides that the composition taxpayer shall pay tax under sub-section (1) of section 9 of the GGST Act as a normal taxpayer from the day he ceases to satisfy any of the conditions of the composition scheme and shall issue tax invoice for every taxable supply made thereafter. Sub-rule (3) of rule 6 of the GGST Rules provides that the registered person who intends to withdraw from the composition scheme shall, before the date of such withdrawal, file an application in *FORM GST CMP-04* on the common portal. He shall file intimation for withdrawal from the scheme in *FORM GST CMP-04* within seven days of the occurrence of such event.

4. As per sub-rule (4) of rule 6 of the GGST Rules, where the proper officer has reasons to believe that the registered person was not eligible to pay tax under section 10 of the GGST Act or has contravened the provisions of the GGST Act or the GGST Rules, he may issue a notice to such person in *FORM GST CMP-05* to show cause as to why the option to pay tax under section 10 of the GGST Act shall not be denied. Upon receipt of the reply to the show-cause notice from the registered person in *FORM GST CMP-06*, the proper officer shall, in accordance with the provisions of sub-rule (5) of rule 6 of the GGST Rules, issue an order in *FORM GST CMP-07* within a period of thirty days of the receipt of such reply, either accepting the reply, or denying the option to pay tax under section 10 of the GGST Act from the date of the option or from the date of the event concerning such contravention, as the case may be.

5. It is clarified that in a case where the taxpayer has sought withdrawal from the Composition Scheme, the effective date shall be the date indicated by him in his intimation/application filed in *FORM GST CMP-04* but such date may not be prior to the commencement of the financial year in which such intimation/application for withdrawal is being filed. If at any

stage it is found that he has contravened any of the provisions of the GGST Act or the GGST Rules, action may be initiated for recovery of tax, interest and penalty. In case of denial of option by the tax authorities, the effective date of such denial shall be from a date, including any retrospective date as may be determined by tax authorities, but shall not be prior to the date of contravention of the provisions of the GGST Act or the GGST Rules. In such cases, as provided under sub-section (5) of section 10 of the GGST Act, the proceedings would have to be initiated under the provisions of section 73 or section 74 of the GGST Act for determination of tax, interest and penalty for the period starting from the date of contravention of provisions till the date of issue of order in *FORM GST CMP-07*. It is also clarified that the registered person shall be liable to pay tax under section 9 of the GGST Act from the date of issue of the order in *FORM GST CMP-07*. Provisions of section 18(1)(c) of the GGST Act shall apply for claiming credit on inputs held in stock, inputs contained in semi-finished or finished goods held in stock and on capital goods on the date immediately preceding the date of issue of the order.

6. Difficulty if any, in the implementation of this circular may be brought to the notice of the Chief Commissioner.

7. This circular shall be deemed to have come into effect from 31st December, 2018.

CHIEF COMMISSIONER OF STATE TAX
[No. GSL/GST/B. 18]

Circular No. 78/2018-GST, dated 1st January, 2019.

Subject : **Clarification on export of services under GST—Reg.**

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

Sl. No.	*Issue*	*Clarification*
1.	In case an exporter of services out sources a portion of the services contract to another person located outside India, what would be the tax treatment of the said portion of the contract at the hands of the exporter ? There may be instances where the full consideration for the out sourced services is not received by the exporter in India.	1. Where an exporter of services located in India is supplying certain services to a recipient located outside India, either wholly or partly through any other supplier of services located outside India, the following two supplies are taking place : (i) Supply of services from the exporter of services located in India to the recipient of services located outside India for the full contract value ;

Sl. No.	*Issue*	*Clarification*
		(ii) Import of services by the exporter of services located in India from the supplier of services located outside India with respect to the out sourced portion of the contract. Thus, the total value of services as agreed to in the contract between the exporter of services located in India and the recipient of services located outside India will be considered as export of services if all the conditions laid down in section 2(6) of the Integrated Goods and Services Tax Act, 2017 (IGST Act, for short) read with section 13(2) of the IGST Act are satisfied. 2. It is clarified that the supplier of services located in India would be liable to pay integrated tax on reverse charge basis on the import of services on that portion of services which has been provided by the supplier located outside India to the recipient of services located outside India. Furthermore, the said supplier of services located in India would be eligible for taking input tax credit of the integrated tax so paid. 3. Thus, even if the full consideration for the services as per the contract value is not received in convertible foreign exchange in India due to the fact that the recipient of services located outside India has directly paid to the supplier of services located outside India (for the out sourced part of the services), that portion of the consideration shall also be treated as receipt of consideration for export of services in terms of section 2(6)(iv) of the IGST Act, provided the : (i) integrated tax has been paid by the supplier located in India for import of services on that portion of the services which has been directly provided by the supplier located outside India to the recipient of services located outside India ; and

Sl. No.	*Issue*	*Clarification*
		(ii) RBI by general instruction or by specific approval has allowed that a part of the consideration for such exports can be retained outside India. *Illustration* : ABC Ltd. India has received an order for supply of services amounting to $ 5,00,000 to a US based client. ABC Ltd. India is unable to supply the entire services from India and asks XYZ Ltd. Mexico (who is not merely an establishment of a distinct person, viz., ABC Ltd. India, in accordance with the *Explanation* 1 in section 8 of the IGST Act) to supply a part of the services (say 40 per cent. of the total contract value). ABC Ltd. India shall be the exporter of services for the entire value if the invoice for the entire amount is raised by ABC Ltd. India. The services provided by XYZ Ltd. Mexico to the US based client shall be import of services by ABC Ltd. India and it would be liable to pay integrated tax on the same under reverse charge and also be eligible to take input tax credit of the integrated tax so paid. Further, if the provisions contained in section 2(6) of the IGST Act are not fulfilled with respect to the realization of convertible foreign exchange, say only 60% of the consideration is received in India and the remaining amount is directly paid by the US based client to XYZ Ltd. Mexico, even in such a scenario, 100 per cent. of the total contract value shall be taken as consideration for the export of services by ABC Ltd. India provided integrated tax on import of services has been paid on the part of the services provided by XYZ Ltd. Mexico directly to the US based client and RBI (by general instruction or by specific approval) has allowed that a part of the consideration for such exports can be retained outside India. In other words, in such cases, the export benefit will be available for the total realization of convertible foreign exchange by ABC Ltd. India and XYZ Ltd. Mexico.

2. Difficulty if any, in the implementation of this circular may be brought to the notice of the Chief Commissioner.

7. This circular shall be deemed to have been issued on the 31st December, 2018.

CHIEF COMMISSIONER OF STATE TAX
[No. GSL/GST/B. 19]

Circular No. 79/2018-GST, dated 1st January, 2019.

Subject: **Clarification on refund related issues—Reg.**

Various representations have been received seeking clarification on various issues relating to refund. In order to clarify these issues and to ensure uniformity in the implementation of the provisions of law across field formations, the Chief Commissioner of State Tax, in exercise of its powers conferred by section 168(1) of the Gujarat Goods and Services Tax Act, 2017 (hereinafter referred to as "the GGST Act"), hereby clarifies the issues detailed hereunder :

Physical submission of refund claims with jurisdictional proper officer :

2. Due to the non-availability of the complete electronic refund module, a work around was prescribed vide Circular No. 17/2017-GST, dated November 15, 2017[1] and Circular No. 24/2017-GST, dated December 21, 2017, wherein a taxpayer was required to file *FORM GST RFD-01A* on the common portal, generate the application reference number (ARN), take print-outs of the same, and submit it physically in the office of the jurisdictional proper officer, along with all the supporting documents. It has been learnt that this requirement of physical submission of documents in the jurisdictional tax office is causing undue hardship to the taxpayers. Therefore, in order to further simplify the refund process, the following instructions, in partial modification of the aforesaid circulars, are issued :

(a) All documents/undertaking/statements to be submitted along with the claim for refund in *Form GST RFD-01A* shall be uploaded on the common portal at the time of filing of the refund application. Circular No. 59/2018-GST, dated September 4, 2018 specified that instead of providing copies of all invoices, a statement of invoices needs to be submitted in a prescribed format and copies of only those invoices need to be submitted the details of which are not found in *Form GSTR-2A* for the relevant period. It is now clarified that the said statement and these invoices, instead of being submitted physically, shall be electronically uploaded on

1. See [2018] 55 GSTR (St.) 170.

the common portal at the time of filing the claim of refund in *FORM GST RFD-01A*. Neither the application in *Form GST RFD-01A*, nor any of the supporting documents, shall be required to be submitted physically in the office of the jurisdictional proper officer.

(b) However, the taxpayer will still have the option to physically submit the refund application to the jurisdictional proper officer in *FORM GST RFD-01A*, along with supporting documents, if he so chooses. A taxpayer who still remains unallocated to the Central or State tax authority will necessarily have to submit the refund application physically. They can choose to do so before the jurisdictional proper officer of either the State or the Central tax authority, as was earlier clarified vide Circular No. 17/2017-GST, dated November 15, 2017[1].

(c) The ARN will be generated only after the claimant has completed the process of filing the refund application in *Form GST RFD-01A*, and has completed uploading of all the supporting documents/undertaking/statements/invoices and, where required, the amount has been debited from the electronic credit/cash ledger.

(d) As soon as the ARN is generated, the refund application along with all the supporting documents shall be transferred electronically to the jurisdictional proper officer who shall be able to view it on the system. The application shall be deemed to have been filed under rule 90(2) of the Gujarat Goods and Services Tax Rules, 2017 (hereinafter referred to as "the GGST Rules") on the date of generation of the said ARN and the time limit of 15 days to issue an acknowledgement shall be counted from that date. This will obviate the need for a claimant to visit the jurisdictional tax office for the submission of the refund application. Accordingly, the acknowledgement for the complete application or deficiency memo, as the case may be, would be issued by the jurisdictional tax officer based on the documents so received electronically from the common portal. However, the said acknowledgement or deficiency memo shall continue to be issued manually for the time being.

(e) If a refund application is electronically transferred to the wrong jurisdictional officer, he/she shall reassign it to the correct jurisdictional officer electronically within a period of three days. In such cases, the application shall be deemed to have been filed under rule 90(2) of the GGST Rules only after it has been so reassigned. Deficiency memos shall not be issued in such cases merely on the ground that the applications were received electronically in the wrong jurisdiction. Where the facility of elect-

1. See [2018] 55 GSTR (St.) 170.

ronic reassignment is not available, the present arrangement shall continue.

(f) It has already been clarified vide Circular No. 70/2018-GST, dated October 26, 2018 that after the issuance of a deficiency memo, taxpayers would be required to submit the rectified refund application under the earlier application reference number (ARN) only. It is further clarified that the rectified application, which is to be treated as a fresh refund application, will be submitted manually in the office of the jurisdictional proper officer.

3. It may be noted that the documents/statements/undertakings/invoices to be submitted along with the refund application in *FORM GST RFD-01A* are the same as have been prescribed under the GGST Rules and various Circulars issued on the subject from time to time. Only the method of submission of these documents/statements/undertakings/invoices is being changed from the physical mode to the electronic mode. It may also be noted that the other stages of processing of a refund claim submitted in *FORM GST RFD-01A* by the jurisdictional tax officer shall continue to be carried out manually for the time being, as is being presently done.

Calculation of refund amount for claims of refund of accumulated input tax credit (ITC) on account of inverted duty structure :

4. Representations have been received stating that while processing the refund of unutilized ITC on account of inverted tax structure, the departmental officers are denying the refund of ITC of GST paid on those inputs which are procured at equal or lower rate of GST than the rate of GST on outward supply, by not including the amount of such ITC while calculating the maximum refund amount as specified in rule 89(5) of the GGST Rules. The matter has been examined and the following issues are clarified :

(a) Refund of unutilized ITC in case of inverted tax structure, as provided in section 54(3) of the GGST Act, is available where ITC remains unutilized even after setting off of available ITC for the payment of output tax liability. Where there are multiple inputs attracting different rates of tax, in the formula provided in rule 89(5) of the GGST Rules, the term "Net ITC" covers the ITC availed on all inputs in the relevant period, irrespective of their rate of tax.

(b) The calculation of refund of accumulated ITC on account of inverted tax structure, in cases where several inputs are used in supplying the final product/output, can be clearly understood with help of the following example :

(i) Suppose a manufacturing process involves the use of an input A (attracting five per cent. GST) and input B (attracting 18 per cent. GST) to manufacture output Y (attracting 12 per cent. GST).

(ii) The refund of accumulated ITC in the situation at (i) above, will be available under section 54(3) of the GGST Act read with rule 89(5) of the GGST Rules, which prescribes the formula for the maximum refund amount permissible in such situations.

(iii) Further assume that the claimant supplies the output Y having value of Rs. 3,000 during the relevant period for which the refund is being claimed. Therefore, the turnover of inverted rated supply of goods and services will be Rs. 3,000. Since the claimant has no other outward supplies, his adjusted total turnover will also be Rs. 3,000.

(iv) If we assume that Input A, having value of Rs. 500 and Input B, having value of Rs. 2,000, have been purchased in the relevant period for the manufacture of Y, then Net ITC shall be equal to Rs. 385 (Rs. 25 and Rs. 360 on Input A and Input B respectively).

(v) Therefore, multiplying net ITC by the ratio of turnover of inverted rated supply of goods and services to the adjusted total turnover will give the figure of Rs. 385.

(vi) From this, if we deduct the tax payable on such inverted rated supply of goods or services, which is Rs. 360, we get the maximum refund amount, as per rule 89(5) of the GGST Rules which is Rs. 25.

Disbursal of refund amounts after sanction :

5. Section 56 of the GGST Act clearly states that if any tax ordered to be refunded is not refunded within 60 days of the date of receipt of application, interest at the rate of six per cent. (notified vide Notification No. 13/2017-State Tax, dated June 30, 2017) on the refund amount starting from the date immediately after the expiry of sixty days from the date of receipt of application (ARN) till the date of refund of such tax shall have to be paid to the claimant. It may be noted that any tax shall be considered to have been refunded only when the amount has been credited to the bank account of the claimant. Therefore, interest will be calculated starting from the date immediately after the expiry of sixty days from the date of receipt of the application till the date on which the amount is credited to the bank account of the claimant. Accordingly, all tax authorities are advised to issue the final sanction orders in Form GST RFD-06 within 45 days of the date of generation of ARN, so that the disbursement is completed within 60 days by both Central and State Tax Authorities for CGST/IGST/UTGST/Compensation Cess and GGST respectively.

Refund applications that have been generated on the portal but not physically received in the jurisdictional tax offices :

6. There are a large number of applications for refund in *FORM GST RFD-01A* which have been generated on the common portal but have not yet been physically received in the jurisdictional tax offices. With the implementation of electronic submission of refund application, as detailed in para 2 above, this problem is expected to reduce. However, for the applications (except those relating to refund of excess balance in the electronic cash ledger) which have been generated on the common portal before the issuance of this circular and which have not yet been physically received in the jurisdictional offices (list of all applications pertaining to a particular jurisdictional office which have been generated on the common portal, if not already available, may be obtained from DG-Systems), the following guidelines are laid down :

(a) All refund applications in which the amount claimed is less than the statutory limit of Rs. 1,000 should be rejected and the amount re-credited to the electronic credit ledger of the applicant through the issuance of *FORM GST RFD-01B*.

(b) For all applications wherein an amount greater than Rs. 1,000 has been claimed, a list of applications which have not been received in the jurisdictional tax office within a period of 60 days starting from the date of generation of ARN may be compiled. A communication may be sent to all such claimants on their registered email ids, informing that the application needs to be physical submitted to the jurisdictional tax office within 15 days of the date of the email. The contact details and the address of the jurisdictional officer may also be provided in the said communication. The claimant may be further informed that if he/she fails to physically submit the application within 15 days of the date of the email, the application shall be summarily rejected and the debited amount, if any, shall be re-credited to the electronic credit ledger.

7. For the applications generated on the common portal before the issuance of this circular in relation to refund of excess balance from the electronic cash ledger which have not yet been received in the jurisdictional office, the amount debited in the electronic cash ledger in such applications may be re-credited through *Form GST RFD-01B* provided that there are no liabilities in the electronic liability register. The said amount shall be re-credited even though the return in *Form GSTR-3B*, as the case may be for the relevant period has not been filed.

8. For the refund applications generated on the common portal after the issuance of this circular, and for the refund applications generated on the common portal before the issuance of this circular and which have been physically received in the jurisdictional tax offices before the issuance of

this circular, the existing guidelines, as modified by this circular may be followed.

Issues related to refund of accumulated input tax credit of compensation cess :

9. Several representations have been received requesting clarifications on certain issues related to refund of accumulated input tax credit of compensation cess on account of zero-rated supplies made under bond/letter of undertaking. These issues have been examined and are clarified as below :

(a) *Issue* : A registered person uses inputs on which compensation cess is leviable (e.g., coal) to export goods on which there is no levy of compensation cess (e.g., aluminium). For the period July, 2017 to May, 2018, no ITC is availed of the compensation cess paid on the inputs received during this period. ITC is only availed of the CGST, GGST/UTGST or IGST charged on the invoices for these inputs. This ITC is utilized for payment of IGST on export of goods. Vide Circular No. 45/2018-GST, dated May 30, 2018, it was clarified that refund of accumulated ITC of compensation cess on account of zero-rated supplies made under bond/letter of undertaking is available even if the exported product is not subject to levy of cess. After the issuance of this circular, the registered person decides to start exporting under bond/LUT without payment of tax. He also decides to avail (through the return in *Form GSTR-3B*) the ITC of compensation cess, paid on the inputs used in the months of July, 2017 to May, 2018, in the month of July, 2018. The registered person then goes on to file a refund claim for ITC accumulated on account of exports for the month of July, 2018 and includes the said accumulated ITC for the month of July, 2018. How should the amount of compensation cess to be refunded be calculated ?

Clarification : In the instant case, refund on account of compensation cess is to be recomputed as if the same was available in the respective months in which the refund of unutilized credit of CGST/GGST/UTGST/ IGST was claimed on account of exports made under LUT/Bond. If the aggregate of these recomputed amounts of refund of compensation cess is less than or equal to the eligible refund of compensation cess calculated in respect of the month in which the same has actually been claimed, then the aggregate of the recomputed refund of compensation cess of the respective months would be admissible. Further, the recomputed amount of eligible refund (of compensation cess) in respect of past periods, as aforesaid, would not be admissible in respect of consignments exported on pay-

ment of IGST. This process would be applicable for application for refund of compensation cess (not claimed earlier) in respect of the past period.

(b) *Issue* : A registered person uses coal for the captive generation of electricity which is further used for the manufacture of goods (say aluminium) which are exported under bond/letter of undertaking without payment of duty. Refund claim is filed for accumulated input tax credit of compensation cess paid on coal. Can the said refund claim be rejected on the ground that coal is used for the generation of electricity which is an intermediate product and not the final product which is exported and since electricity is exempt from GST, the ITC of the tax paid on coal for generation of electricity is not available ?

Clarification : There is no distinction between intermediate goods or services and final goods or services under GST. Inputs have been clearly defined to include any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business. Since coal is an input used in the production of aluminium, albeit indirectly through the captive generation of electricity, which is directly connected with the business of the registered person, input tax credit in relation to the same cannot be denied.

(c) *Issue* : A registered person avails ITC of compensation cess (say, of Rs. 100) paid on purchases of coal every month. At the same time, he reverses a certain proportion (say, half, i.e., Rs. 50) of the ITC of compensation cess so availed on purchases of coal which are used in making zero rated outward supplies. Both these details are entered in the *FORM GSTR-3B* filed for the month as a result of which an amount of Rs. 50 only is credited in the electronic credit ledger. The reversed amount (Rs. 50) is then shown as a "cost" in the books of accounts of the registered person. However, the registered person declares Rs. 100 as "Net ITC" and uses the same in calculating the maximum refund amount which works out to be Rs. 50 (assuming that export turnover is half of total turnover). Since both the balance in the electronic credit ledger at the end of the tax period for which the claim of refund is being filed and the balance in the electronic credit ledger at the time of filing the refund claim is Rs. 50 (assuming that no other debits/credits have happened), the system will proceed to debit Rs. 50 from the ledger as the claimed refund amount. The question is whether the proper officer should sanction Rs. 50 as the refund amount or Rs. 25 (i.e., half of the ITC availed after adjusting for reversals) ?

Clarification : ITC which is reversed cannot be held to have been "availed" in the relevant period. Therefore, the same cannot be part of refund of unutilized ITC on account of zero-rated supplies. Moreover, the

reversed ITC has been accounted as a cost which would have reduced the income-tax liability of the claimant. Therefore, the same amount cannot, at the same time, be refunded to him/her in the ratio of export turnover to total turnover. However, if the said reversed amount is again availed in a later tax period, subject to the restriction under section 16(4) of the GGST Act, it can be refunded in the ratio of export turnover to total turnover in that tax period in the same manner as detailed in para 9(a) above. This is subject to the restriction that the accounting entry showing the said ITC as cost is also reversed.

Non-consideration of ITC of GST paid on invoices of earlier tax period availed in subsequent tax period :

10. Presently, ITC is reflected in the electronic credit ledger on the basis of the amount of the ITC availed on self declaration basis in *FORM GSTR-3B* for a particular tax period. It may happen that the goods purchased against a particular tax invoice issued in a particular month, say August 2017, may be declared in the *FORM GSTR-3B* filed for a subsequent month, say September, 2017. This is inevitable in cases where the supplier raises an invoice, say in August, 2017, and the goods reach the recipient's premises in September, 2017. Since GST law mandates that ITC can be availed only after the goods are received, the recipient can only avail the ITC on such goods in the *FORM GSTR-3B* filed for the month of September, 2017. However, it has been observed that field officers are excluding such invoices from the calculation of refund of unutilized ITC filed for the month of September, 2017.

11. In this regard, it is clarified that "Net ITC" as defined in rule 89(4) of the GGST Rules means input tax credit availed on inputs and input services during the relevant period. Relevant period means the period for which the refund claim has been filed. Input tax credit can be said to have been "availed" when it is entered into the electronic credit ledger of the registered person. Under the current dispensation, this happens when the said taxable person files his/her monthly return in *FORM GSTR-3B*. Further, section 16(4) of the GGST Act stipulates that ITC may be claimed on or before the due date of filing of the return for the month of September following the financial year to which the invoice pertains or the date of filing of annual return, whichever is earlier. Therefore, the input tax credit of invoices issued in August, 2017, "availed" in September, 2017 cannot be excluded from the calculation of the refund amount for the month of September, 2017.

Misinterpretation of the meaning of the term "inputs" :

12. It has been represented that on certain occasions, Departmental Officers do not consider ITC on stores and spares, packing materials, materials purchased for machinery repairs, printing and stationery items, as part of Net ITC on the grounds that these are not directly consumed in the manufacturing process and therefore, do not qualify as input. There are also instances where stores and spares charged to revenue are considered as capital goods and therefore the ITC availed on them is not included in Net ITC, even though the value of these goods has not been capitalized in his books of account by the claimant.

13. In relation to the above, it is clarified that the input tax credit of the GST paid on inputs shall be available to a registered person as long as he/she uses or intends to use such inputs for the purposes of his/her business and there is no specific restriction on the availment of such ITC anywhere else in the GST Act. The GST paid on inward supplies of stores and spares, packing materials, etc., shall be available as ITC as long as these inputs are used for the purpose of the business and/or for effecting taxable supplies, including zero-rated supplies, and the ITC for such inputs is not restricted under section 17(5) of the GGST Act. Further, capital goods have been clearly defined in section 2(19) of the GGST Act as goods whose value has been capitalized in the books of account and which are used or intended to be used in the course or furtherance of business. Stores and spares, the expenditure on which has been charged as a revenue expense in the books of account, cannot be held to be capital goods.

Refund of accumulated ITC of input services and capital goods arising on account of inverted duty structure :

14. Section 54(3) of the GGST Act provides that refund of any unutilized ITC may be claimed 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). Further, section 2(59) of the GGST Act defines *inputs* as any *goods other than capital goods* used or intended to be used by a supplier in the course or furtherance of business. Thus, inputs do not include services or capital goods. Therefore, clearly, the intent of the law is not to allow refund of tax paid on input services or capital goods as part of refund of unutilized input tax credit. Accordingly, in order to align the GGST Rules with the GGST Act, Notification No. 26/2018-State Tax, dated June 13, 2018 was issued wherein it was stated that the term Net ITC, as used in the formula for calculating the maximum refund amount under rule 89(5) of the GGST Rules, shall mean input tax credit availed on *inputs* during the relevant period other than the input tax credit availed for

which refund is claimed under sub-rules (4A) or (4B) or both. In view of the above, it is clarified that both the law and the related rules clearly prevent the refund of tax paid on input services and capital goods as part of refund of input tax credit accumulated on account of inverted duty structure.

15. All previous circulars/instructions issued on the subject stand modified accordingly.

16. Difficulty if any, in the implementation of this circular may be brought to the notice of the Chief Commissioner.

17. This circular shall be deemed to have been issued on the 31st December, 2018.

CHIEF COMMISSIONER OF STATE TAX

[No. GSL/GST/B. 20]

Circular No. 80/2018-GST, dated 1st January, 2019.

Subject: **Clarification regarding GST rates and classification (goods)—Reg.**

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

(i) Chhatua or sattu.

(ii) Fish meal and other raw materials used for making cattle/poultry/aquatic feed.

(iii) Animal feed supplements/feed additives from drugs.

(iv) Liquefied petroleum gas for domestic use.

(v) Polypropylene woven and non-woven bags and PP woven and non-woven bags laminated with BOPP.

(vi) Wood logs for pulping.

(vii) Bagasse based laminated particle board.

(viii) Embroidered fabric sold in three pieces cloth for lady suits.

(ix) Waste to energy plant-scope of entry No. 234 of Schedule I.

(x) Turbo charger for railways.

(xi) Rigs, tools and spares moving inter-State for provision of service.

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

3. Applicability of GST on Chhatua or Sattu :

3.1 Doubts have been raised regarding applicability of GST on Chhatua (known as "Sattu" in Hindi Belt).

3.2 Chhatua or sattu is a mixture of flour of ground pulses and cereals. HSN Code 1106 includes the flour, meal and powder made from peas, beans or lentils (dried leguminous vegetables falling under 0713). Such flour improved by the addition of very small amounts of additives continues to be classified under HSN Code 1106. If unbranded, it attracts *Nil* GST (S. No. 78 of Notification No. 2/2017-State Tax, dated June 30, 2017) and if branded and packed it attracts five per cent. GST (Sl. No. 59 of Schedule I of Notification No. 1/2017-State Tax (Rate), dated June 30, 2017[1]).

4. Applicable GST rate on Fish meal and other raw materials used for making cattle/poultry/aquatic feed :

4.1. Representations have been received seeking clarification regarding GST rate applicable on the other raw materials/inputs used for making cattle/poultry/aquatic feed. The classification dispute here is between the following two entries in the two notifications. The details are as under :

Notification	*Tariff line*	*Description*	*Rate*
Sl. No. 102 of Notification No. 2/2017-State Tax (Rate), dated June 30, 2017[1]	2301, 2302, 2308, 2309	*Aquatic feed* including shrimp feed and prawn feed, *poultry feed and cattle feed*, including grass, hay and straw, supplement and husk of pulses, concentrates and additives, wheat bran and de-oiled cake	Nil
Sl. No. 103 of Notification No. 1/2017-State Tax (Rate), dated June 30, 2017[2]	2301	Flours, *meals* and pellets, of meat or meat offal, *of fish* or of crustaceans, molluscs or other aquatic invertebrates, *unfit for human consumption* ; greaves	5%

1. See [2018] 48 GSTR (St.) 9.
2. See [2017] 106 VST (St.) 338.

4.2 A number of raw materials such as fish meal falling under heading 2301, meat and bone meal also falling under heading 2301, oil cakes of various oil seeds, soya seeds, bran, sharps, residue of starch and all other goods falling under Headings 2302, 2303, 2304, etc., are used to manufacture/formulation of, aquatic feed, animal feed, cattle feed, poultry feed, etc. These raw materials/inputs cannot be directly used for feeding animal and cattle. The Larger Bench of the honourable Supreme Court in the *Commissioner of Customs, (Import), Mumbai v. Dilip Kumar and Co.* [2018] 6 GSTR-OL 46 (SC) ; [2018] 361 ELT 577 (SC) has laid down that inputs for

1. See [2017] 106 VST (St.) 338.

animal feed are different from the animal feed. Said Sl. No. 102 covers the prepared aquatic/poultry/cattle feed falling under headings 2309 and 2301. This entry does not apply to raw material/inputs like fish meals or meat cum bone meal (MBM) falling under heading 2301.

4.3 It is accordingly clarified that fish meals, meat cum bone meal (MBM) etc., attract five per cent. GST under Sl. No. 103 in Notification No. 1/2017-State Tax (Rate), dated June 30, 2017[1].

5. Applicable GST rate on animal feed supplements/feed additives from drugs :

5.1. Representations have been received seeking clarification regarding GST rate applicable on animal feed supplements/feed additives from drugs. The dispute is in classification of animal feed supplements/feed additives from drugs between tariff heading 2309 and 2936.

5.2 As per the HSN, 2309, inter alia, covers reading vitamins and provitamins which improve digestion and, more generally, ensure that the animal makes good use of the feeds and safeguard its health. On the other hand, HS Code 2936 covers vitamins and provitamins which are medicinal in nature and have much higher concentration of active substance.

5.4 Thus while deciding the classification of the products claimed to be animal feed supplements, it may be necessary to ensure that the said animal feed supplements are ordinarily or commonly known to the trade as products for a specific use in animal feeding.

5.5 A product deserves classification Chapter 29 (equally applicable to heading 2936), if it is an item of general use, e.g., if a product is of specific use, say dietary supplement for human being product particularly suitable for a specific use rather than for general use. Vitamins and provitamins are normally covered under Code Heading 2936, but if they are prepared as food supplements in the form of tablets, etc., they would not be classifiable under this heading as the way they are presented, they are suitable for a specific use. Heading 2309 would cover items like feed supplements for animals that contain vitamins and other ingredients—such as cereals and proteins. These are covered in Chapter 23 under Heading Code 2309, or antibiotic preparations used in animal feeding—for example a dried antibiotic mass on a carrier like cereal middling. The antibiotic content in these items is usually between eight per cent. and 16 per cent. Thus, HS Code 2309 would cover only such product, which in the form supplied, are capable of specific use as food supplement for animals and not capable of any general use. If the vitamins, provitamins are supplied in a form in which

1. See [2017] 106 VST (St.) 338.

they are capable of general use, i.e., in the form in which it could be used as inputs or raw materials for further processing, instead of being ready to use, then these would be classifiable under Heading 2936.

6. Applicability of GST on supply of liquefied petroleum gas for domestic use :

6.1 Representations have been received seeking clarification regarding applicability of GST rate at five per cent. on LPG supplied by refiners/fractionators (like GAIL/ONGC) to Oil Marketing Companies (OMC) for ultimate supply to household domestic consumers in terms of the Ministry of Petroleum and Natural Gas (MoPNG) letter No. P 20023/2/2011-PP, dated July 23, 2013. The references point to the fact that refiners/fractionators like GAIL and ONGC are supplying LPG for domestic use to OMCs and this supply is not being treated as a supply for domestic use by field formations.

6.2 The issue seems to have arisen in the context of addition of Sl. No. 165A to Notification No. 1/2017-State Tax (Rate), dated June 30, 2017[1], vide Notification No. 6/2018-State Tax, dated January 25, 2018. This entry was added on the recommendations of the GST Council in its 25th meeting, extending five per cent. GST rate for supply of LPG to household domestic consumers.

6.3 It is observed that the LPG stream for domestic LPG is differentially priced and packed differently from commercial LPG. The usage of LPG for domestic supply is known at the time of supply being made by refiner/fractionators to OMCs.

6.4 Therefore, it is being clarified that LPG supplied in bulk, whether by a refiner/fractionator to an OMC or by one OMC to another for bottling and further supply for domestic use will fall under the Sl. No. 165A of the Notification No. 1/2017-State Tax (Rate), dated June 28, 2017 and shall, accordingly, attract a GST rate of five per cent., with effect from January 25, 2018.

7. Applicability of GST on supply of polypropylene woven and non-woven bags and PP woven and non-woven bags laminated with BOPP :

7.1 Representations have been received seeking the classification and GST rates on polypropylene woven and non-woven bags and polypropylene woven and non-woven bags laminated with BOPP.

7.2 As per the explanatory notes to the HSN to HS Code 39.23, the heading covers all articles of plastics commonly used for the packing or conveyance of all kinds of products and includes boxes, crates, cases, sacks and bags.

1. See [2017] 106 VST (St.) 338.

7.3 Further as per the Chapter Note to Chapter 39, the expression "plastics" means those materials of Headings 39.01 to 39.14 which are or have been capable, either at the moment of polymerization or at some subsequent stage, of being formed under external influence (usually heat and pressure, if necessary with a solvent or plasticizer) by moulding, casting, extruding, rolling or other process into shapes which are retained on the removal of the external influence.

7.4 Thus it is clarified that polypropylene woven and non-woven bags and PP Woven and non-woven bags laminated with BOPP would be classified as plastic bags under HS Code 3923 and would attract 18 per cent. GST.

8. Applicability of GST on supply of wood logs for pulping :

8.1. Representation has been received seeking clarification on applicability of GST rate on wood log for pulping. Wood in the rough (whether or not stripped of bark or sapwood, or roughly squared) is classified under Heading 4403 and attracts 18 per cent. GST.

8.2 As per HSN, Heading 4403 also covers.

"Timber for sawing ; poles for telephone, telegraph or electrical power transmission lines ; unpointed and unsplit piles, pickets, stakes, poles and props ; round pit-props ; *logs, whether or not quarter-split, for pulping* ; round logs for the manufacture of veneer sheets, etc. ; logs for the manufacture of match sticks, wood ware, etc.".

8.3 Thus, it is clarified that wood logs or any kind of wood in the rough/timber, including the wood in rough/log/timber used for pulping falls under heading 4403 and attract GST at the rate of 18 per cent.

9. Applicability of GST on supply of Bagasse based laminated particle board :

9.1 Representation has been received seeking clarification on applicability of GST rate on bagasse based laminated particle board. In this context, it is stated that the bagasse board has specific entry at Sl. No. 92 in Schedule II to the Notification No. 1/2017-State Tax (Rate)[1]. Accordingly, the said entry covers bagasse boards falling under 44 or any other Chapter and 12 per cent. GST. Further, it is also stated the description "bagasse board" in the said entry also covers bagasse board (whether plain or laminated).

9.2 Thus, it is clarified bagasse board (whether plain or laminated) falling under Chapter 44 will attract concessional GST rate of 12 per cent.

1. See [2017] 106 VST (St.) 338.

10. Applicability of GST on supply of embroidered fabric sold in three piece for lady suits :

10.1. Representations have been received seeking clarification regarding GST rate applicable on supply of embroidered fabric sold in three pieces fabric pack/set for lady suits (fabric for suit, salwar and dupatta). It has been informed that before becoming ready made articles or an apparel, the fabric is cut from bundles or thans and sold in that unstitched state with certain embellishment like gota, etc. The consumers buy these sets or pieces and get it tailored which entails cutting of fabric in shape and stitching thereof. Doubts have arisen as regards applicable rates on such three fabric pieces in sets/packs.

10.2 Fabrics are classifiable under Chapters 50 to 55 and 60 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. Garments and made up articles of textiles under Chapters 61, 62 and 63 attract GST at the rate of five per cent. when value is up to Rs. 1,000 per piece and 12 per cent. when the value exceeds Rs. 1,000 per piece.

10.3 Earlier, vide Circular No. 13/2017-GST, dated October 27, 2017, it has been clarified that mere packing of fabrics into pieces of different lengths 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. This clarification would equally apply to three pieces of fabrics sold in a pack as ladies salwar suit. Any embroidery on a fabric piece or certain embellishment thereon does not change the basic nature of their being a fabric. The Chapter 63 covers garment, including the unstitched garments which may or may not be sufficiently completed to be identifiable as garments or parts of garments. However, heading 6307 would not cover a fabric pieces or a set of pre-packed fabric pieces, even if embroidered or embellished. Such set of fabric pieces would attract GST at the rate of five per cent.

11. Applicability of GST on supply of waste to energy plant :

11.1. Representations have been received regarding applicable GST rate on the goods used in the setting up of waste to energy plants (WTEP) in term of Sl. No. 234 of Schedule I of Notification No. 1/2017-State Tax (Rates), dated June 28, 2017[1]. The said entry 234 prescribes five per cent. rate on the following renewable energy devices and parts for their manufacture :

(a) Bio-gas plant.

1. See [2017] 106 VST (St.) 338.

(b) Solar power based devices.

(c) Solar power generating system.

(d) Wind mills, Wind Operated Electricity Generator (WOEG).

(e) Waste to energy plants/devices.

(f) Solar lantern/solar lamp.

(g) Ocean waves/tidal waves energy devices/plant.

(h) Photo voltaic cells, whether or not assembled in modules or made up into panels.

11.2 The notification specifically applies only the goods falling under Chapters 84, 85 and 94 of the Tariff. Therefore, this concession would be available only to such machinery, equipment, etc., which fall under Chapters 84, 85 and 94 and used in the initial setting up of renewable energy plants and devices including WTEP. This entry does not cover goods falling under other chapters, say a transport vehicle falling under Chapter 87 that may be used for movement of waste to WTEP.

11.3 Another related doubt raised is as to how would a supplier satisfy himself that goods falling under Chapters 84, 85 and 94, say a turbine or a boiler, required in a WTEP, would be used in the WTEP. In this context it is clarified that GST is to be self-assessed by a taxpayer. Therefore, he needs to satisfy himself with the requisite document from a buyer such as supply contracts/order for WTEP from the concerned authorities before supplying goods claiming concession under said entry 234.

12. Applicability of GST on supply of turbo charger for railways :

12.1. Representations have been received seeking clarification regarding classification and applicable GST rate on turbo chargers supplied to railways. It is stated that some of the supplier are classifying turbo charges supplied to railways under Chapter 86 and paying GST at the rate of five per cent.

12.2 The turbo-charger is a turbine-driven forced induction device that increases an internal combustion engine's efficiency and power output by forcing extra compressed air into the combustion chamber. It has the compressor powered by a turbine. The turbine is driven by the exhaust gas from the engine.

12.3 Turbo charger is specifically classified under Chapter HS Code 8414 80 30. It continues to remain classified under this code irrespective of its use by railways. Therefore, it is clarified that the turbo charger is classified under Heading 8414 and attracts 18 per cent. GST.

13. Applicability of GST on supply of cranes, rigs, tools and spares and other machinery when moved from one State to another by a person on his account for there use for supply of service

13.1 As per Circular No. 21/2017-GST, dated November 22, 2017, it was clarified that no IGST would be applicable on such inter-State movements of rigs, tools and spares and all goods on wheels. Doubts have been raised regarding applicability of GST on inter-State movement of machinery like tower cranes, rigs, batching plants, concrete pumps and mixers which are not mounted on wheels, but require regular means of conveyance (used by companies in Infrastructure business).

13.2 Any inter-State movement of goods for provision of service on own account by a service provider, where no transfer of title in such goods or transfer of goods to the distinct person by way of stock transfer is not involved, does not constitute a supply of such goods. Hence, it is clarified that any such movement on own account (not involving distinct person in terms of section 25), where such movement is not intended for further supply of such goods does not constitute a supply and would not be liable to GST.

6. Difficulty if any, in the implementation of this circular may be brought to the notice of the Chief Commissioner.

7. This circular shall be deemed to have been issued on the 31st December, 2018.

CHIEF COMMISSIONER OF STATE TAX
[No. GSL/GST/B. 21]

Circular No. 81/2018-GST, dated 1st January, 2019.

Subject: **Clarification regarding GST tax rate for Sprinkler and Drip Irrigation System including laterals—Reg.**

Representations have been received seeking clarification as regards the scope and coverage of entry No. 195B of the Schedule II to Notification No. 1/2017-State Tax (Rate), dated June 30, 2017[1]. The entry No. 195B was inserted vide Notification No. 6/2018-State Tax (Rate), dated January 25, 2018[2] and reads as below :

Sl. No.	*Chapter Heading/ Sub-heading/Tariff Item*	*Description of goods*	*CGST rate*
195B	8424	Sprinklers ; drip irrigation system including laterals ;	6%

1. See [2017] 106 VST (St.) 338.
2. See [2019] 66 GSTR (St.) 19.

2. Doubts have arisen as in certain cases a view has been taken in the field that this entry would not cover "laterals of sprinklers" and "sprinklers irrigation system", while laterals of drip irrigations are covered by this entry.

3. The matter has been examined. Initially, with effect from July 1, 2017, all goods falling under HS 8424, namely, mechanical appliances (whether or not hand-operated) for projecting, dispersing or spraying liquids or powders ; spray guns and similar appliances ; steam or sand blasting machines and similar jet projecting machines (other than fire extinguishers, whether or not charged), were placed under 18 per cent. slab. Subsequently, on the recommendation of the GST Council, the item, namely, "Nozzles for drip irrigation equipment or nozzles for sprinkler was placed under 12 per cent. GST slab (Entry No. 195A with effect from September 22, 2017). Upon revisiting the issue of GST rate on micro irrigation including drip irrigation system, including laterals the GST Council recommended 12 per cent. GST rate on micro irrigation system, namely, sprinklers, drip irrigation system, including laterals. Accordingly, the said entry 195B was inserted in Notification No. 1/2017-State Tax (Rate).

3.1 The micro irrigation, sometimes called "localised irrigation", "low volume irrigation", or "trickle irrigation" is a system where water is distributed under low pressure through piped network, in a pre-determined pattern, and applied as a small discharge to each plant or adjacent to it. The traditional drip irrigation using individual emmitters, subsurfaces drip irrigations (SDI), micro-spray or micro-sprinkler irrigation, and mini bubbler irrigation all belong to the category of micro irrigation method.

4. Therefore, the term "sprinklers", in the said entry 195B, covers sprinkler irrigation system. Accordingly, sprinkler system consisting of nozzles, lateral and other components would attract 12% GST rate.

5. Difficulty if any, in the implementation of this circular may be brought to the notice of the Chief Commissioner.

6. This circular shall be deemed to have been issued on the 31st December, 2018.

CHIEF COMMISSIONER OF STATE TAX

[No. GSL/GST/B. 22]

Circular No. 82/1/2019-GST, dated 7th January, 2019.

Subject: **Applicability of GST on various programmes conducted by the Indian Institutes of Managements (IIMs)—Reg.**

I am directed to invite your attention to the Indian Institutes of Management Act, 2018 which came into force on 31st January, 2018. According to provisions of the IIM Act, all the IIMs listed in the schedule to the IIM Act are "institutions of national importance". They are empowered to (i) grant degrees, diplomas, and other academic distinctions or titles, (ii) specify the criteria and process for admission to courses or programmes of study, and (iii) specify the academic content of programmes. Therefore, with effect from 31st January, 2018, all the IIMs are "educational institutions" as defined under Notification No. 12/2017-State Tax (Rate), dated June 30, 2017[1] as they provide education as a part of a curriculum for obtaining a qualification recognised by law for the time being in force.

2. At present, Indian Institutes of Managements are providing various long duration programs (one year or more) for which they award diploma/ degree certificate duly recommended by Board of Governors as per the power vested in them under the IIM Act, 2017. Therefore, it is clarified that services provided by Indian Institutes of Managements to their students in all such long duration programs (one year or more) are exempt from levy of GST. As per information received from IIM, Ahmedabad, annexure 1 to this circular provides a sample list of programmes which are of long duration (one year or more), recognized by law and are exempt from GST.

3. For the period from 1st July, 2017 to 30th January, 2018, IIMs were not covered by the definition of educational institutions as given in Notification No. 12/2017-State Tax (Rate), dated June 30, 2017[1]. Thus, they were not entitled to exemption under Sl. No. 66 of the said notification. However, there was specific exemption to following three programs of IIMs under Sl. No. 67 of Notification No. 12/2017-State Tax (Rate)[1] :

(i) two-year full time post graduate programmes in management for the post graduate diploma in management, to which admissions are made on the basis of Common Admission Test (CAT) conducted by the Indian Institute of Management ;

(ii) fellow programme in management ;

(iii) five year integrated programme in management.

Therefore, for the period from 1st July, 2017 to 30th January, 2018, GST exemption would be available only to three long duration programs specified above.

1. See [2018] 48 GSTR (St.) 77.

4. It is further, clarified that with effect from 31st January, 2018, all IIMs have become eligible for exemption benefit under Sl. No. 66 of Notification No. 12/2017-State Tax (Rate), dated June 30, 2017[1]. As such, specific exemption granted to IIMs vide Sl. No. 67 has become redundant. The same has been deleted vide Notification No. 28/2018-State Tax (Rate) dated, 31st December, 2019[2] with effect from January 1, 2019.

5. For the period from 31st January, 2018 to 31st December, 2018, two exemptions, i. e., under Sl. No. 66 and under Sl. No. 67 of Notification No. 12/2017-State Tax (Rate), dated June 30, 2017 are available to the IIMs. The legal position in such situation has been clarified by the honourable Supreme Court in many cases that if there are two or more exemption notifications available to an assessee, the assessee can claim the one that is more beneficial to him. Therefore, from 31st January, 2018 to 31st December, 2018, IIMs can avail exemption either under Sl. No. 66 or Sl. No. 67 of the said notification for the eligible programmes. In this regard following case laws may be referred :

(i) *H. C. L. Limited* v. *Collector of Customs* [2001] 130 ELT 405 (SC).

(ii) *Collector of Central Excise, Baroda* v. *Indian Petro Chemicals* [1997] 92 ELT 13 (SC).

(iii) *Share Medical Care* v. *Union of India* reported at [2007] 209 ELT 321 (SC).

(iv) *CCE* v. *Maruthi Foam (P) Ltd.* [1996] 85 RLT 157 (Trib.) as affirmed by the honourable Supreme Court vide *Collector of Central Excise* v. *Maruti Foam P. Ltd.* [2006] 144 STC 161 (SC) ; [2004] 164 ELT 394 (SC).

6. Indian Institutes of Managements also provide various short duration/ short term programs for which they award participation certificate to the executives/professionals as they are considered as "participants" of the said programmes. These participation certificates are not any qualification recognized by law. Such participants are also not considered as students of Indian Institutes of Management. Services provided by IIMs as an educational institution to such participants is not exempt from GST. Such short duration executive programs attract standard rate of GST at 18 per cent. (CGST 9% + GGST 9%). As per information received from IIM, Ahmedabad, annexure 2 to this circular provides a sample list of programmes which are short duration executive development programs, available for participants other than students and are not exempt from GST.

1. See [2018] 48 GSTR (St.) 77.
2. See [2019] 66 GSTR (St.) 56.

7. Following summary Table may be referred to while determining eligibility of various programs conducted by Indian Institutes of Managements for exemption from GST :

Sl. No.	*Periods*	*Programmes offered by Indian Institutes of Management*	*Whether exempt from GST*
(1)	*(2)*	*(3)*	*(4)*
1.	1st July, 2017 to 30th January, 2018	(i) Two-year full time post graduate programmes in management for the post graduate diploma in management, to which admissions are made on the basis of common admission test (CAT) conducted by the Indian Institute of Management, (ii) fellow programme in Management, (iii) five years integrated programme in management.	Exempt from GST
		(i) One-year post graduate programs for executives, (ii) Any programs other than those mentioned at Sl. No. 67 of Notification No. 12/2017-State Tax (Rate), dated June 30, 2017[1]. (iii) All short duration executive development programs or need based specially designed programs (less than one year).	Not exempt from GST
2.	31st January, 2018 onwards	All long duration programs (one year or more) conferring degree/diploma as recommended by Board of Governors as per the power vested in them under the IIM Act, 2017 including one-year post graduate programs for executives.	Exempt from GST
		All short duration executive development programs or need based specially designed programs (less than one year) which are not a qualification recognized by law.	Not exempt from GST

1. See [2018] 48 GSTR (St.) 77.

8. This clarification applies, mutatis mutandis, to corresponding entries of respective IGST and CGST exemption notifications.

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

10. This circular shall be deemed to have been issued on the 1st January, 2019.

CHIEF COMMISSIONER OF STATE TAX

[No. GSL/GST/B. 23]

Annexure 1 : (Programmes exempt under GST Law)

The IIM-Ahmedabad refers such persons as their students who attend long duration programmes offered by the Institute for which diplomas/ degrees are awarded by the Institute. These programmes are awarded based on the recommendation by the Board of Governors as per the power vested in them under the IIM Act, 2017. Such programmes are :

1. Post-Graduate Programme (PGP)—2-year program.

2. Post-Graduate Programme in Food and Agri-Business Management (PGP-FABM)—2-year program.

3. Fellow Programme in Management (FPM)—4 to 5-year program

4. Post-Graduate Programme in Management for Executives (PGPX) —12 months (1 year) full time program.

5. e-Post-Graduate Programme (ePGP)–2-year online program.

This list is an example of long duration programs recognised under the IIM Act, 2017 offered by IIM Ahmedabad. Similar programs offered by other IIMs of India may kindly be referred by IIMs and tax authorities during assessment.

Annexure 2 : Programmes not exempt under GST Law

The executives/professionals doing short term courses (less than one year) are considered as "participants" of the programmes of the IIM, Ahmedabad :

1. Armed Forces Programme.

2. Faculty Development Programme.

3. Executive Education—

(a) Customized Executive Programmes,

(b) Open Enrolment Programme.

This list is an example of short duration executive development programs offered by IIM, Ahmedabad which are available to participants. Similar programs offered by other IIMs of India may kindly be referred by IIMs and tax authorities during assessment.

Circular No. 83/2/2019-GST, dated 7th January, 2019.

Subject: **Applicability of GST on Asian Development Bank (ADB) and International Finance Corporation (IFC)—Reg.**

Representations have been received seeking clarification regarding applicability of GST on Asian Development Bank (ADB) and International Finance Corporation (IFC). The matter has been examined.

2. The ADB Act, 1966 provides that notwithstanding anything to the contrary contained in any other law, the bank, its assets, properties, income and its operations and transactions shall be exempt from all the taxation and from all customs duties. The bank shall also be exempt from any obligation for payment, withholding or collection of any tax or duty (section 5(1) of the ADB Act, 1966 read with article 56(1) of the Schedule thereto refers). DEA has already conveyed vide letter No. 1/28/2002-ADB, dated January 22, 2004 addressed to ADB that taxable services provided by ADB are exempted from service tax.

2.1 Similarly, the IFC Act, 1958 also provides that notwithstanding anything to the contrary contained in any other law, the Corporation, its assets, properties, income and its operations and transactions authorised by the agreement, shall be immune from all taxation and from all customs duties. The Corporation shall also be immune from liability for the collection or payment of any tax or duty (section 3(1) of the IFC Act, 1958 read with article VI, section 9(a) of the Schedule thereto refers).

3. CESTAT Mumbai vide final order dated October 17, 2016 in the case of *Coastal Gujarat Power Ltd.* has held that when the enactments that honour international agreements specifically immunize the operations of the service provider from taxability, a law contrary to that in the form of section 66A of the Finance Act, 1994 will not prevail. With the provider being not only immune from taxation but also absolved of any obligation to collect and deposit any tax, there is no scope for subjecting the recipient to tax. There is no need for a separate exemption and existing laws enacted by the sovereign Legislature of the Union suffice for the purpose of giving effect to agreements.

4. Accordingly, it is clarified that the services provided by IFC and ADB are exempt from GST in terms of provisions of IFC Act, 1958 and ADB Act. The exemption will be available only to the services provided by ADB and IFC and not to any entity appointed by or working on behalf of ADB or IFC.

5. Difficulty if any, in the implementation of this circular may be brought to the notice of the Chief Commissioner.

6. This circular shall be deemed to have been issued on the 1st January, 2019.

CHIEF COMMISSIONER OF STATE TAX
[No. GSL/GST/B. 24]

Circular No. 84/3/2019-GST, dated 7th January, 2019.

Subject: **Clarification on issue of classification of service of printing of pictures covered under 998386—Reg.**

It has been brought to the notice of the Board that the service of "printing of pictures" correctly covered under Service Code 998386—"Photographic and video graphic processing services" is being classified by trade under Service Code 998912—"Printing and reproduction services of recorded media, on a fee or contract basis". The two service codes attract different GST rate of 18 per cent. and 12 per cent., respectively and therefore wrong classification may lead to short payment of GST.

2. The matter has been examined. According to explanatory notes to the scheme of classification of services, the Service Code *998386—Photographic and video graphic processing services*, includes,—

"developing of negatives and the printing of pictures for others according to customer specifications such as enlargement of negatives or slides, black and white processing ; colour printing of images from film or digital media *; slide and negative duplicates, reprints, etc. ; developing of film for both amateur photographers and commercial clients ; preparing of photographic slides ; copying of films ; converting of photographs and films to other media."*

3. Further, according to explanatory notes, the Service Code 998912 "*Printing and reproduction services of recorded media, on a fee or contract basis" clearly excludes,—*

—colour printing of images from film or digital media, cf. 998386,

—audio and video production services, cf. 999613".

4. In view of the above, it is clarified that service of "printing of pictures" falls under Service Code "*998386 : Photographic and video graphic processing services*" and not under "*998912 : Printing and reproduction services of recorded media, on a fee or contract basis*" of the scheme of classification of service annexed to Notification No. 11/2017-State Tax (Rate), dated June 30, 2018. The service of printing of pictures attracts GST at 18 per cent. falling under item (ii), against serial number 21 of the Table in Notification No. 11/2017-State Tax (Rate), dated June 30, 2018[1].

1. See [2018] 48 GSTR (St.) 30.

5. Difficulty if any, in the implementation of this circular may be brought to the notice of the Chief Commissioner.

6. This circular shall be deemed to have been issued on the 1st January, 2019.

CHIEF COMMISSIONER OF STATE TAX

[No. GSL/GST/B. 25]

Circular No. 85/4/2019-GST, dated 7th January, 2019.

Subject: **Clarification on GST rate applicable on supply of food and beverage services by educational institution—Reg.**

Representations have been received seeking clarification as to the rate of GST applicable on supply of food and beverages services by educational institution to its students. It has been stated that the words "school, college" appearing in *Explanation 1* to entry 7(i) of Notification No. 11/2017-State Tax (Rate), dated June 30, 2017[1] give rise to doubt whether supply of food and drinks by an educational institution to its students is eligible for exemption under Notification No. 12/2017-State Tax (Rate), dated June 30, 2017[2], Sl. No. 66, which exempts services provided by an educational institution to its students, faculty and staff.

2. The matter has been examined. Notification No. 11/2017-State Tax (Rate), dated June 30, 2017[1], Sl. No. 7(i) prescribes GST rate of five per cent. on supply of food and beverages services. *Explanation 1* to the said entry states that such supply can take place at canteen, mess, cafeteria of an institution such as school, college, hospitals, etc. On the other hand, Notification No. 12/2017-State Tax (Rate), dated June 30, 2017[2], Sl. No. 66(a) exempts services provided by an educational institution to its students, faculty and staff. There is no conflict between the two entries. Entries in Notification No. 11/2017-State Tax (Rate) dated June 30, 2017[1] prescribing GST rates on service have to be read together with entries in exemption Notification No. 12/2017-State Tax (Rate), dated June 30, 2017[2]. A supply which is specifically covered by any entry of Notification No. 12/2017-State Tax (Rate), dated June 30, 2017[2] is exempt from GST notwithstanding the fact that GST rate has been prescribed for the same under Notification No. 11/2017-State Tax (Rate), dated June 30, 2017[1].

2.1 Supply of all services by an educational institution to its students, faculty and staff is exempt under Notification No. 12/2017-State Tax (Rate),

1. See [2018] 48 GSTR (St.) 30.
2. See [2018] 48 GSTR (St.) 77.

dated June 30, 2017[1], Sl. No. 66. Such services include supply of food and beverages by an educational institution to its students, faculty and staff. As stated in *Explanation 3(ii)* to Notification No. 12/2017-State Tax (Rate), dated June 30, 2017 Chapter, Section, Heading, Group or Service Codes mentioned in column (2) of the Table in Notification No. 12/2017-State Tax (Rate), dated June 30, 2017 are only indicative. A supply is eligible for exemption under an entry of the said notification where the description given in column (3) of the Table leaves no room for any doubt. Accordingly, it is clarified that supply of food and beverages by an educational institution to its students, faculty and staff, where such supply is made by the educational institution itself, is exempt under Notification No. 12/2017-State Tax (Rate), dated June 30, 2017, vide Sl. No. 66 with effect from July 1, 2017 itself. However, such supply of food and beverages by any person other than the educational institutions based on a contractual arrangement with such institution is leviable to GST at 5 per cent.

3. In order to remove any doubts on the issue, *Explanation 1* to entry 7(i) of Notification No. 11/2017-State Tax (Rate), dated June 30, 2017[2] has been amended vide Notification No. 27/2018-State Tax (Rate), dated December 31, 2018[3] to omit from it the words "school, college". Further, heading 9963 has been added in column (2) against entry at Sl. No. 66 of Notification No. 12/2017-State Tax (Rate), dated June 30, 2017, vide Notification No. 28/2018-State Tax (Rate), dated December 31, 2018[4].

4. Difficulty, if any, in implementation of this circular may be brought to the notice of the Chief Commissioner.

5. This circular shall be deemed to have been issued on the 1st January, 2019.

CHIEF COMMISSIONER OF STATE TAX
[No. GSL/GST/B. 26]

Circular No. 86/5/2019-GST, dated 7th January, 2019.

Subject: **GST on services of Business Facilitator (BF) or a Business Correspondent (BC) to banking company—Reg.**

Representations have been received seeking clarification on following two issues :

1. See [2018] 48 GSTR (St.) 77.
2. See [2018] 48 GSTR (St.) 30.
3. See [2019] 66 GSTR (St.) 54.
4. See [2019] 66 GSTR (St.) 56.

(i) What is the value to be adopted for the purpose of computing GST on services provided by BF/BC to a banking company ?

(ii) What is the scope of services provided by BF/BC to a banking company with respect to accounts in its rural area branch that are eligible for existing GST exemption ?

2. The matter has been examined. The issues involved are clarified as follows :

2.1 *Issue 1 : Clarification on value of services by BF/BC to a banking company* :

As per RBI's Circular No. DBOD.No.BL.BC. 58/22.01.001/2005-2006, dated January 25, 2006 and subsequent instructions on the issue (referred to as "guidelines" hereinafter), banks may pay reasonable commission/fee to the BC, the rate and quantum of which may be reviewed periodically. The agreement of banks with the BC specifically prohibits them from directly charging any fee to the customers for services rendered by them on behalf of the bank. On the other hand, banks (and not BCs) are permitted to collect reasonable service charges from the customers for such service in a transparent manner. The arrangements of banks with the business correspondents specify the requirement that the transactions are accounted for and reflected in the bank's books by end of the day or the next working day, and all agreements/contracts with the customer shall clearly specify that the bank is responsible to the customer for acts of omission and commission of the business facilitator/correspondent.

2.3 Hence, banking company is the service provider in the business facilitator model or the business correspondent model operated by a banking company as per RBI guidelines. The banking company is liable to pay GST on the entire value of service charge or fee charged to customers whether or not received via business facilitator or the business correspondent.

3. *Issue 2 : Clarification on the scope of services by BF/BC to a banking company with respect to accounts in rural areas* :

It has also been requested that the scope of exemption to services provided in relation to "accounts in its rural area branch" vide Sl. No. 39 of Notification No. 12/2017-State Tax (Rate), dated June 30, 2017[1] be clarified. This clarification has been requested as the exemption from tax on services provided by BF/BC is dependent on the meaning of the expression "accounts in its rural area branch".

1. See [2018] 48 GSTR (St.) 77.

3.1 It is clarified that for the purpose of availing exemption from GST under Sl. No. 39 of said notification, the conditions flowing from the language of the notification should be satisfied. These conditions are that the services provided by a BF/BC to a banking company in their respective individual capacities should fall under the Heading 9971 and that such services should be with respect to accounts in a branch located in the rural area of the banking company. The procedure for classification of branch of a bank as located in rural area and the services which can be provided by BF/BC, is governed by the RBI guidelines. Therefore, classification adopted by the bank in terms of RBI guidelines in this regard should be accepted.

5. Difficulty if any, in the implementation of this circular may be brought to the notice of the Chief Commissioner.

6. This circular shall be deemed to have been issued on the 1st January, 2019.

CHIEF COMMISSIONER OF STATE TAX
[No. GSL/GST/B. 27]

Circular No. 88/07/2019-GST, dated 2nd February, 2019.

Subject: **Changes in circulars issued earlier under the GGST Act, 2017—Reg.**

The CGST (Amendment) Act, 2018[1], the GGST Amendment Act, 2018, the IGST (Amendment) Act, 2018[2], the UTGST (Amendment) Act, 2018[3] and the GST (Compensation to States) (Amendment) Act, 2018[4] (hereafter referred to as "the GST Amendment Acts") have been brought in force with effect from February 1, 2019.

2. Consequent to the GST Amendment Acts, the following circulars issued earlier under the GGST Act, 2017 are hereby amended with effect from February 1, 2019, to the extent detailed in the succeeding paragraphs.

3. *Circular No. 8/8/2017, dated October 4, 2017*[5] :

The circular is revised in view of the amendment carried out in section 2(6) of the IGST Act, 2017 vide section 2 of the IGST (Amendment) Act, 2018 allowing realization of export proceeds in INR, wherever allowed by the RBI. Accordingly, the original and the amended relevant para of the circular are detailed hereunder.

1. See [2018] 58 GSTR (St.) 237.
2. See [2018] 58 GSTR (St.) 248.
3. See [2018] 58 GSTR (St.) 249.
4. See [2018] 58 GSTR (St.) 251.
5. See [2017] 47 GSTR (St.) 585.

3.1 *Original para 2(k) :*

Realization of export proceeds in Indian rupee : Attention is invited to para A(v), Part-I of RBI Master Circular No. 14/2015-16, dated July 1, 2015 (updated as on November 5, 2015), which states that "*there is no restriction on invoicing of export contracts in Indian rupees in terms of the Rules, Regulations, Notifications and Directions framed under the Foreign Exchange Management Act, 1999. Further, in terms of para 2.52 of the Foreign Trade Policy (2015-2020)*[1]*, all export contracts and invoices shall be denominated either in freely convertible currency or Indian rupees but export proceeds shall be realized in freely convertible currency. However, export proceeds against specific exports may also be realized in rupees, provided it is through a freely convertible Vostro account of a non-resident bank situated in any country other than a member country of Asian Clearing Union (ACU) or Nepal or Bhutan*".

Accordingly, it is clarified that the acceptance of LUT for supplies of goods to countries outside India Nepal or Bhutan or SEZ developer or SEZ unit will be permissible irrespective of whether the payments are made in Indian currency or convertible foreign exchange as long as they are in accordance with the applicable RBI guidelines. It may also be noted that the supply of services to SEZ developer or SEZ unit under LUT will also be permissible on the same lines. The supply of services, however, to Nepal or Bhutan will be deemed to be export of services only if the payment for such services is received by the supplier in convertible foreign exchange.

3.2 *Amended para 2(k) :*

Realization of export proceeds in Indian rupee : Attention is invited to para A(v), Part-I of RBI Master Circular No. 14/2015-16, dated July 1, 2015 (updated as on November 5, 2015), which states that "*there is no restriction on invoicing of export contracts in Indian rupees in terms of the Rules, Regulations, Notifications and Directions framed under the Foreign Exchange Management Act, 1999. Further, in terms of para 2.52 of the Foreign Trade Policy (2015-2020), all export contracts and invoices shall be denominated either in freely convertible currency or Indian rupees but export proceeds shall be realized in freely convertible currency. However, export proceeds against specific exports may also be realized in rupees, provided it is through a freely convertible Vostro account of a non-resident bank situated in any country other than a member country of Asian Clearing Union (ACU) or Nepal or Bhutan*". Further, attention is invited to the amendment to section 2(6) of the IGST Act, 2017 which allows realization of export proceeds of services in INR, wherever allowed by the RBI.

1. See [2015] 32 GSTR (St.) 17.

Accordingly, it is clarified that the acceptance of LUT for supplies of goods or services to countries outside India or SEZ developer or SEZ unit will be permissible irrespective of whether the payments are made in Indian currency or convertible foreign exchange as long as they are in accordance with the applicable RBI guidelines.

4. *Circular No. 38/12/2018, dated March 26, 2018*[1] :

This circular is revised in view of the amendment carried out in section 143 of the GGST Act, 2017 vide section 29 of the GGST (Amendment) Act, 2018 empowering the Commissioner to extend the period for return of inputs and capital goods from the job worker. Further on account of amendment carried out in section 9(4) of the GGST Act, 2017 vide section 4 of the GGST (Amendment) Act, 2018 done in relation to reverse charge, certain amendments to the circular are required. Accordingly, the original and the amended relevant para of the circular are detailed hereunder.

4.1 *Original para 2* :

As per clause (68) of section 2 of the GGST Act, 2017 . . . Subsequently, on completion of the job work (by the last job worker), the principal shall either bring back the goods to his place of business or supply (including export) the same directly from the place of business/premises of the job worker within one year in case of inputs or within three years in case of capital goods (except moulds and dies, jigs and fixtures or tools).

4.2 *Amended para 2* :

As per clause (68) of section 2 of the GGST Act, 2017, "job work" means any treatment or process undertaken by a person on goods belonging to another registered person and the expression "job worker" shall be construed accordingly. The registered person on whose goods (inputs or capital goods) job work is performed is called the "Principal" for the purposes of section 143 of the GGST Act. The said section which encapsulates the provisions related to job work, provides that the registered principal may, without payment of tax, send inputs or capital goods to a job worker for job work and, if required, from there subsequently to another job worker and so on. Subsequently, on completion of the job work (by the last job worker), the principal shall either bring back the goods to his place of business or supply (including export) the same directly from the place of business/premises of the job worker within the time specified under section 143.

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

4.3 *Original para 3* :

It may be noted . . . Moreover, if the time frame of one year/three years for bringing back or further supplying the inputs/capital goods is not adhered to, the activity of sending the goods for job work shall be deemed to be a supply by the principal on the day when the said inputs/capital goods were sent out by him. Thus, essentially, sending goods for job work is not a supply as such, but it acquires the character of supply only when the inputs/capital goods sent for job work are neither received back by the principal nor supplied further by the principal from the place of business/ premises of the job worker within one/three years of being sent out . . . . cast on the principal.

4.4 *Amended para 3* :

It may be noted that the responsibility of keeping proper accounts of the inputs and capital goods sent for job work lies with the principal. Moreover, if the time frame specified under section 143 for bringing back or further supplying the inputs/capital goods is not adhered to, the activity of sending the goods for job work shall be deemed to be a supply by the principal on the day when the said inputs/capital goods were sent out by him. Thus, essentially, sending goods for job work is not a supply as such, but it acquires the character of supply only when the inputs/capital goods sent for job work are neither received back by the principal nor supplied further by the principal from the place of business/premises of the job worker within the specified time period (under section 143) of being sent out. It may be noted that the responsibility for sending the goods for job work as well as bringing them back or supplying them has been cast on the principal.

4.5 *Original para 6.1 :*

Doubts have been raised . . . . . It may be noted that the job worker is required to obtain registration only if his aggregate turnover, to be computed on all India basis, in a financial year exceeds the specified threshold limit (i.e., Rs. 20 lakhs or Rs. 10 lakhs in case of special category States except Jammu and Kashmir) in case both the principal and the job worker are located in the same State. . . . . However, exemption from registration has been granted in case the aggregate turnover of the inter-State supply of taxable services does not exceed Rs. 20 lakhs or Rs. 10 lakhs in case of special category States except Jammu and Kashmir in a financial year vide Notification No. 10/2017–Integrated Tax, dated October 13, 2017[1]. Therefore, ... States.

1. See [2017] 47 GSTR (St.) 562.

4.6 *Amended para 6.1 :*

Doubts have been raised about the requirement of obtaining registration by job workers when they are located in the same State where the principal is located or when they are located in a State different from that of the principal. It may be noted that the job worker is required to obtain registration only if his aggregate turnover, to be computed on all India basis, in a financial year exceeds the specified threshold limit as specified in sub-section (1) of section 22 of the said Act, read with clause (iii) of the *Explanation* to the said section in case both the principal and the job worker are located in the same State. Where the principal and the job worker are located in different States, the requirement for registration flows from clause (i) of section 24 of the GGST Act which provides for compulsory registration of suppliers making any inter-State supply of services. However, exemption from registration has been granted in case the aggregate turnover of the inter-State supply of taxable services does not exceed the specified threshold limit as specified in sub-section (1) of section 22 of the said Act, read with clause (iii) of the *Explanation* to the said section in a financial year vide Notification No. 10/2017-Integrated Tax, dated October 13, 2017[1] as amended vide Notification No. 3/2019-Integrated Tax, dated January 29, 2019[2]. Therefore, it is clarified that a job worker is required to obtain registration only in cases where his aggregate turnover, to be computed on all India basis, in a financial year exceeds the threshold limit regardless of whether the principal and the job worker are located in the same State or in different States.

4.7 *Original para 9.4(i) :*

(i) *Supply of job work services* : The job worker, ... not been included in the price for such supply. Accordingly, it is clarified that the value of such moulds and dies, jigs and fixtures or tools may not be included in the value of job work services provided its value has been factored in the price for the supply of such services by the job worker. It may be noted that if the job worker is not registered, GST would be payable by the principal on reverse charge basis in terms of the provisions contained in section 9(4) of the GGST Act. However, the said provision has been kept in abeyance for the time being.

4.8 *Amended para 9.4(i) :*

(i) *Supply of job work services* : The job worker, as a supplier of services, is liable to pay GST if he is liable to be registered. He shall issue an invoice at the time of supply of the services as determined in terms of

1. See [2017] 47 GSTR (St.) 562.
2. See [2019] 62 GSTR (St.) 132.

section 13 read with section 31 of the GGST Act. The value of services would be determined in terms of section 15 of the GGST Act and would include not only the service charges but also the value of any goods or services used by him for supplying the job work services, if recovered from the principal. Doubts have been raised whether the value of moulds and dies, jigs and fixtures or tools which have been provided by the principal to the job worker and have been used by the latter for providing job work services would be included in the value of job work services. In this regard, attention is invited to section 15 of the GGST Act which lays down the principles for determining the value of any supply under GST. Importantly, clause (b) of sub-section (2) of section 15 of the GGST Act provides that any amount that the supplier is liable to pay in relation to the supply but which has been incurred by the recipient will form part of the valuation for that particular supply, provided it has not been included in the price for such supply. Accordingly, it is clarified that the value of such moulds and dies, jigs and fixtures or tools may not be included in the value of job work services provided its value has been factored in the price for the supply of such services by the job worker.

4.9 *Original para 9.6 :*

Thus, if the . . . . . If such goods are returned by the job worker after the stipulated time period, the same would be treated as a supply by the job worker to the principal and the job worker would be liable to pay GST if he is liable for registration in accordance with the provisions contained in the GGST Act read with the rules made thereunder. It may be noted that if the job worker is not registered, GST would be payable by the principal on reverse charge basis in terms of the provisions contained in section 9(4) of the GGST Act. However, the said provision has been kept in abeyance for the time being. Further, there is no requirement of either returning back or supplying the goods from the job worker's place of business/premises as far as moulds and dies, jigs and fixtures, or tools are concerned.

4.10 *Amended para 9.6 :*

Thus, if the inputs or capital goods are neither returned nor supplied from the job worker's place of business/premises within the specified time period, the principal would issue an invoice for the same and declare such supplies in his return for that particular month in which the time period of one year/three years has expired. The date of supply shall be the date on which such inputs or capital goods were initially sent to the job worker and interest for the intervening period shall also be payable on the tax. If such goods are returned by the job worker after the stipulated time period, the

same would be treated as a supply by the job worker to the principal and the job worker would be liable to pay GST if he is liable for registration in accordance with the provisions contained in the GGST Act read with the rules made thereunder. Further, there is no requirement of either returning back or supplying the goods from the job worker's place of business/premises as far as moulds and dies, jigs and fixtures, or tools are concerned.

5. *Circular No. 41/2018, dated April 13, 2018* :

This circular is revised in view of the amendment carried out in section 129 of the GGST Act, 2017 vide section 27 of the GGST (Amendment) Act, 2018 allowing 14 days for owner/transporter to pay tax/penalty for seized goods. Accordingly, the original and the amended relevant para of the circular are detailed hereunder.

5.1 *Original para 2(k) :*

In case the proposed tax and penalty are not paid within seven days from the date of the issue of the order of detention in *FORM GST MOV-06*, the action under section 130 of the GGST Act shall be initiated by serving a notice in *FORM GST MOV-10*, proposing confiscation of the goods and conveyance and imposition of penalty.

5.2 *Amended para 2(k) :*

In case the proposed tax and penalty are not paid within fourteen days from the date of the issue of the order of detention in *FORM GST MOV-06*, the action under section 130 of the GGST Act shall be initiated by serving a notice in *FORM GST MOV-10*, proposing confiscation of the goods and conveyance and imposition of penalty.

5.3 Further, *Form GST MOV-08* and *Form GST MOV-09*, annexed to the circular are revised as below :

Form GST MOV-08 (para 4) :

And if all taxes, interest, penalty, fine and other lawful charges demanded by the proper officer are duly paid within fourteen days of the date of detention being made in writing by the said proper officer, this obligation shall be void.

Form GST MOV-09 (para 10) :

You are hereby directed to make the payment forthwith/not later than fourteen days from the date of the issue of the order of detention in *Form GST MOV-06*, failing which action under section 130 of the Central/State Goods and Services Tax Act/section 21 of the Union Territory Goods and Services Tax Act or section 20 of the Integrated Goods and Services Tax Act shall be initiated.