CASC BULLETIN

THE CHARTERED ACCOUNTANTS STUDY CIRCLE

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MEETINGS

Date	Time	Speaker	Topic
15.11.2018 Thursday	06.30 p.m.	CA. Vignesh	Digital Economy Taxation
22.11.2018 Thursday	06.30 p.m.	CA. Santosh Mogalapalli S N M	Reporting of Fraud Under Companies Act, 2013

Preceded with High Tea Half an hour before the scheduled time of meeting.

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EDITORIAL

Ease of Doing Business - a Myth or Reality:

Ease of Doing Business, is the mantra the world economy is looking at, for investments, commencements and survival.

Where are we in the ease of doing business?

Country	India
2018	100
2017	130
2016	130
2015	142
2014	134
2013	132
2012	132
2011	134
2010	133
2009	122
2008	120
2007	134
2006	116

A nation's ranking on the index is based on the average of 10 sub indices:

- Starting a business - Procedures, time, cost and minimum capital to open a new business
- Dealing with construction permits - Procedures, time and cost to build a warehouse
- Getting electricity - procedures, time and cost required for a business to obtain a permanent electricity connection for a newly constructed warehouse
- Registering property - Procedures, time and cost to register commercial real estate
- Getting credit - Strength of legal rights index, depth of credit information index
- Protecting investors - Indices on the extent of disclosure, extent of director liability and ease of shareholder suits
- Paying taxes - Number of taxes paid, hours per year spent preparing tax returns and total tax payable as share of gross profit
- Trading across borders - Number of documents, cost and time necessary to export and import

- Enforcing contracts - Procedures, time and cost to enforce a debt contract
- Resolving insolvency - The time, cost and recovery rate (%) under bankruptcy

(Amount US$ Million)

S. No.	Financial Year (April-March)	FOREIGN DIRECT INVESTMENT (FDI)						Investment by FII's Foreign Institutional Investors Fund (net)
		Equity		Re-invested earnings +	Other capital +	FDI FLOWS INTO INDIA		
		FIPB Route/ RBI's Automatic Route/ Acquisition Route	Equity capital of unincorporated bodies #			Total FDI Flows	%age growth over previous year (in US$ terms)	
FINANCIAL YEARS 2000-01 TO 2018-19								
1.	2000-01	2,339	61	1,350	279	4,029	-	1,847
2.	2001-02	3,904	191	1,645	390	6,130	(+) 52 %	1,505
3.	2002-03	2,574	190	1,833	438	5,035	(-) 18 %	377
4.	2003-04	2,197	32	1,460	633	4,322	(-) 14 %	10,918
5.	2004-05	3,250	528	1,904	369	6,051	(+) 40 %	8,686
6.	2005-06	5,540	435	2,760	226	8,961	(+) 48 %	9,926
7.	2006-07	15,585	896	5,828	517	22,826	(+) 155 %	3,225
8.	2007-08	24,573	2,291	7,679	300	34,843	(+) 53 %	20,328
9.	2008-09	31,364	702	9,030	777	41,873	(+) 20 %	(-) 15,017
10.	2009-10	25,606	1,540	8,668	1,931	37,745	(-) 10 %	29,048
11.	2010-11	21,376	874	11,939	658	34,847	(-) 08 %	29,422
12.	2011-12	34,833	1,022	8,206	2,495	46,556	(+) 34 %	16,812
13.	2012-13	21,825	1,059	9,880	1,534	34,298	(-) 26%	27,582
14	2013-14	24,299	975	8,978	1,794	36,046	(+) 5%	5,009
15.	2014-15	30,933	978	9,988	3,249	45,148	(+) 25%	40,923
16.	2015-16	40,001	1,111	10,413	4,034	55,559	(+) 23%	(-) 4,016
17.	2016-17 (P)	43,478	1,223	12,343	3,176	60,220	(+) 8%	7,735
18.	2017-18 (P)	44,857	816	12,370	3,920	61,963	(+) 3%	22,165
19.	2018-19 (P) (up to June-18)	12,752	155	2,924	1,037	16,868	-	(-) 9,107
CUMULATIVE TOTAL (from April, 2000 to June, 2018)		391,286	15,079	129,198	27,757	563,320	-	207,368

Source: (i) RBI's Bulletin August, 2018 dt.10.08.2018 (Table No. 34 –| FOREIGN INVESTMENT INFLOWS).

Source:

(i) RBI's Bulletin August, 2018 dt.10.08.2018 (Table No. 34 – FOREIGN INVESTMENT INFLOWS).

(ii) Inflows under the acquisition of shares in March, 2011, August, 2011 & October, 2011, include net FDI on account of transfer of participating interest from Reliance Industries Ltd. to BP Exploration (Alpha).

(iii) RBI had included Swap of Shares of US$ 3.1 billion under equity components during December 2006.

(iv) Monthly data on components of FDI as per expended coverage are not available. These data, therefore, are not comparable with FDI data for previous years.

(v) Figures updated by RBI up to June, 2018.

(vi) Data in respect of 'Re-invested earnings' & 'Other capital' are estimated as average of previous two years.

'#' Figures for equity capital of unincorporated bodies are estimates. (P) All figures are provisional

The FDI growth is phenomenal in 2006-2007, where India was UNCTAD's World Investment report states India ranked 4th in receiving FDI. Foreign Direct Investment (FDI) inflows into India reached USD 4.9 billion in the first quarter of the year 2007. The major contributor in this alarming FDI Inflow had been the British Telecom major called Vodafone. It led to FDI Inflow of USD 801 million in India's growing telecom industry. FDI Flow in India during April-June 2007 had been USD 1.7 billion, which is apparently a rise of 185 percent as against in the same period of 2006. During January-June 2007, FDI Inflows in India increased by 216 percent as against USD 3.6 billion in the previous year. Foreign Direct Investment in India has generated maximum employment in the year 2007. Delhi received FDI Inflow of around USD 1.3 billion till May 2007 which accounted for a growth of 36 percent of the total FDI Inflows in India. Mumbai, Bangalore and Chennai have contributed to two-thirds of the total FDI inflows into the country. Matsushita Electric Works of Japan brought in USD 342 million in India in 2007. Mauritius had been the biggest source of Foreign Direct Investment in India in the year 2007. Services, telecom, electrical equipment, real estate and transportation were the five major sectors that received maximum foreign direct investment inflows in India in the year 2007.

FDI & Ease of doing business:

FDI shows an increasing trend in the conducive economic, tax and regulatory atmosphere, Ease of doing business – how is this ranking done in India, what are the parameters for the ranking. Let's understand:

It is done based on the feedback received by DIPP on the suggested discipline, The BRAP includes 372 recommendations for reforms on regulatory processes, policies, practices and procedures spread across 12 reform areas.

Out of the 372 recommendations, 78 action points have been selected for which feedback will be

Solicited from the actual users/ businesses. A list of the selected action points is enclosed as Annex

A. Action points have been excluded from this exercise if they refer to:

- Processes or procedures that may not exist in all states and UTs; or
- Recommendations related to Paying Taxes, since new reform points have been added post implementation of GST; or

- The existence of systems or processes on the Government side, of which users may not be aware of; or
- Legislation or notifications, which requires only a check of the evidence and not feedback from users; or
- Processes or procedures for only a certain type of business, which may or may not exist in all States/ UTs; or
- Processes or procedures which have been newly added in BRAP 2017, since enough users might not have used them to give feedback on these points.

Feedback respondents

DIPP will solicit feedback from the following groups of respondents1:

- **New businesses:** This would comprise large, medium and small scale businesses who had applied for pre-establishment and pre-operations licenses in the past one year.
- **Existing businesses:** This would comprise large, medium and small businesses operational in the last 5 years.
- **Architects:** Architects who are registered with the municipal corporations of the largest city have applied for a building plan approval or occupancy certificate in the past one year.
- **Electrical contractors:** Electrical contractors who have applied for electrical connections for commercial and industrial uses from distribution companies in the past one year. States/

UTs would need to share the contact details of such contractors.

- **Lawyers:** Lawyers sourced from the Indian Bar Council of States/ UTs and Bar Council of India

The 294 recommendations on which the feedback shall not be solicited, will be given one point for an affirmation of the recommendation, and zero otherwise

The 78 recommendation shall be:

The score for each action point in this category will be determined through a combination of both implementation as well as feedback, with equal weights being provided to each. This means that a state receives a score of 0.5 if the reform is approved as Yes, and up to 0.5 additional points based on the feedback, using the formula below:

Score on each action point with feedback = 0.5+ (0.5* Feedback Score)

The Feedback Score on each action point is calculated as follows:

Feedback Score: Total Number of Positive Responses / Total number of feedback

In case, the action point requires feedback on multiple questions, the feedback score will be divided equally amongst all of the questions to arrive at an average.

The feedback again, should be checked for its correctness, we live in a country where even votes are not casted scrupulously, and it boils down to GIGO

The recommendations include all activities right from obtaining an electricity connection, registration of property, registration under other prescribed laws – being pollution, shops and establishment, labour laws, Construction approvals till online court. The recommendation primarily states it should be made online and quick.

The rating is done state –wise, Andhra Pradesh stands first in the list of Top Achievers scoring more than 98.3%, Tamilnadu Stands in the 15th Position with 90.68%.

Tamilnadu held the 4th position after, Maharashtra, NCR and Karnataka, the decline commenced due the not so friendly investment atmosphere.

Tamilnadu has stepped down its position, in terms of political stability, land, infrastructure, economic climate, governance and business perception.

Is there really a nexus between the ease of doing business and the investments the answer is yes, the government has brought in many initiatives to bring in a conducive compliant business climate, liberalized the FIPB permission etc., FDI is improving and the related parameters of economic development, employment etc. are all in par, India being the country with high demographic dividend, it becomes the foremost responsibility of the government to keep the youth handful with enough skill and employment opportunities which cannot be possible without the FDI.

While that's a welcome move, we invite the guests and treat them well, what's the fate of the hosts, the small and medium industries, skill based workers and other traders.

Is ease of doing business and myth for them, While the government encourages regulated business environment, bringing in more Private Limited Companies so that the country's economic growth is measured rightly, and India being a developing country follows the OECD Mantra – Being "Make Compliance easy and make non- compliance very difficult"

We are now witnessing a state where the non-compliance is definitely difficult and the compliance is also equally difficult, starting from the ROC compliances, KYC of Directors, the Name link mismatch, the matters to be applied to NCLT, Strike off of Companies.

In terms of Income tax, the shifting dates and the formats

In GST – the list will be endless commencing from the Forms prescribed in the Rules initially being the GSTR -1, 2 and 3 with the seller buyer match, the Transitional issues, being technical or otherwise, the shifting dates, the technical issues, the tie of the numbers, reconciliation and the practical aspects of gap in the accounts maintenance and the prescribed ones in the law.

We will have to put up with the rain to see the rainbow, we are in a stage of transition, and the stage of maximum turbulence, the entire pressure of compliance is the responsibility of the "Ashtavadhani" Chartered Accountant.

Let's wait for a day where the compliance is easy and the non – compliance is difficult, the proud day we see stability and growth"

Wishes

CASC wishes its` member a happy and prosperous deepavali.

Appeal

Members are requested to attend the programs conducted by CASC and are also requested to send their suggestions and / or value additions to the services provided by CASC including this Bulletin. The same can be sent by hard copy to the office of the CASC or emailed to admin@casconline.org or any of the Members on the Management Committee.

For and on behalf of Editorial Board

CA. Subashini

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ANNOUNCEMENTS

1. The copies of the material used by the speakers and provided to CASC for distribution, for the regular meetings held twice in a month is available on the website and is freely downloadable.
2. Earlier issues of the bulletin are also available on the website in the "News" column.

The soft copy of this bulletin will be hosted on the website shortly.

READER'S ATTENTION

You may please send your Feedback Contributions / Queries on Direct Taxes, Indirect Taxes, Company Law, FEMA, Accounting and Auditing Standards, Allied Laws or any other subject of professional interest to ***admin@casconline.org***

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Opportunity:

The petitioner initially sought time to submit their objections for the proposal notice and subsequently sent the objections by speed post, which were received by the office of the respondent on 12.1.2018 as per the proof of delivery receipt. However, the respondent passed the impugned orders stating that the petitioner has not filed their objections. The glaring error is that the impugned orders were passed on 28.12.2017 - the date, on which, the petitioner received the notice dated 22.12.2017. Therefore, well before the expiry of the 15 days' period, the impugned orders have been passed. The petitioner reasonably apprehends that the impugned orders are ante-dated and received the same only on 20.1.2018. In the light of the above mentioned glaring error, this Court is inclined to remand the matters to the respondent for a fresh consideration after taking note of the objections filed by the petitioner and after affording an opportunity of personal hearing to redo the assessment. **Tvl. ATS Chem Equipments Pvt. Ltd., Vs The Assistant Commissioner (CT), Hosur South, Hosur, Writ Petition Nos.2117 to 2121 of 2018 Dated: 01.2.2018**

Assessment:

The petitioner filed writ petitions challenging the assessment orders for the

CA. V.V. SAMPATHKUMAR

assessment years 2007-2008 to 2010-2011. The Court observed that it may not be necessary for this Court to labour much to test the correctness of the impugned orders as the Court is fully convinced that the impugned orders are classical examples of how assessment orders should not be passed. The impugned orders are devoid of reasons and there is no independent application of mind by the AO. The manner in which the impugned assessment orders have been passed clearly shows that the AO has abdicated his statutory responsibility. The exercise of power by the Assessing Officer in computing tax and penalty is an arbitrary exercise which cannot stand in the scrutiny of law. On a reading of the impugned order, one gets an initial impression that the order is a reasoned order. But, on a closer scrutiny, it is found that the decision of the AO contained only in three lines and the decision arrived at by him is wholly erroneous because the AO proceeds on the

basis that the dealers have admitted the position before the enforcement wing and they have furnished details to the enforcement wing. The next sentence is contrary to the earlier sentence, in as much as the respondent states that the dealers have not furnished the details of sub-contractors with registration numbers. All the above reasons would be more than sufficient to set aside the impugned orders. Stating so, the impugned orders are set aside and the matter is remanded to the respondent for fresh consideration, who shall afford an opportunity of personal hearing to the authorized representative of the petitioner and re-do the assessment in accordance with law. **Almech Engineers (P) Limited, Chennai Vs..The Commercial Tax Officer, Alandur Assessment Circle, W.P.Nos.22080 to 22083 of 2013 DATED: 08.01.2018**

Opportunity:

Aggrieved by an order of assessment dated 28.06.2013 for the assessment year 2011-2012 the assessee petitioner submitted that by stating that as per circular dated 31.10.2011 issued by the Commissioner of Commercial Taxes, the transit pass should have been surrendered at the designated check posts in time by duly entering and acknowledging in the website within 24 hours of its surrender. The petitioner had separately filed a writ petition challenging the circular dated 31.10.2011 in W.P.No.33203 of 2013, which has been disposed of by the Court on 08.01.2018 on the ground that another circular has been issued by the Commissioner bearing Circular No.26/2014 dated 16.06.2014 which would cover the field. On receipt of the revision notice, the petitioner submitted two representations dated 05.07.2013 requesting for an effective opportunity to put forth their case and stating that as per their records, they have not effected any sales attracting transit pass provisions as mentioned by the first respondent and requested the first respondent to provide itemized listing to enable them to verify the records and revert back. These representations are shown to have been served in the office of the respondent as per the endorsement in the letter delivery book dated 05.07.2013.The impugned assessment order has been though dated 28.06.2013, has been served on the petitioner only on 10.07.2013. Therefore, the court is of the view that the stand taken by the petitioner is acceptable that on the date when the order was despatched, the request made by the petitioner for furnishing details was very much available in the file of the first respondent. That apart, on account of the subsequent development, this Court is convinced that the assessment requires to be re-done, i.e. on account of the order passed by the first respondent under the provisions of the CST Act for the very same assessment year 2011-2012 accepting

the majority of the transactions as sales effected outside the State of Tamil Nadu and the Form C declarations filed by the petitioner have been accepted. **M/s.Daikin Air-Conditioning India (P) Ltd.,Vs. The Assistant Commissioner (CT), T.Nagar Assessment Circle, DATED: 08.01.2018 W.P.No.22302 of 2013**

Mismatch:

The petitioner is aggrieved by the impugned notices dated 28.06.2013, by which, the respondent has stated that since the seller has not paid the output tax till the date of the notice, the petitioner is not eligible to avail input tax for the assessment years 2008-2009 to 2013-2014. The petitioner's case is that without even issuing show cause notice where a proposal has been made to reverse the input tax credit availed apart from demanding 50% penalty. The petitioner placed reliance on the decision of this Court in the case of Althaf Shoes (P) Ltd., reported in [(2012) 50 VST 179 (Mad) for the proposition that so long as the purchasing dealer has complied with the requirements as given under Rule 10(2), the claim of the purchasing dealer could not be denied by the Department. The learned Government Advocate has produced the written instructions dated 11.03.2014 given by the respondent to the learned Special Government Pleader wherein it has been mentioned that notice was issued to the petitioner to cause production of connected original bills and proof of payment of tax. The learned counsel for the petitioner submitted that would submit that no such notice was received by the petitioner. The annexures given along with the letter addressed to the learned Special Government Pleader by the respondent dated 11.02.2014 shows that a notice dated 13.09.2013 has been issued to the petitioner, wherein the respondent probably realising the mistake in straight away issuing the demand as per the impugned notice dated 28.06.2013 has modified the notice and requested the respondent to cause production of original invoices of the same, namely, Guru Chemicals, Erode along with proof for payment of bills either by cheque or demand draft so as to enable the Department to take further action against the seller whose profile reveals that there was no such sales during the year. The petitioner was given 15 days' time to produce those records. This notice dated 13.09.2013 was issued after the writ petition was filed and an order of stay was granted on 16.08.2013. Therefore, the petitioner appears to have not acted in furtherance to the amended notice dated 13.09.2013. Since the respondent has himself realized the mistake and issued a modified notice, the impugned notices cannot be enforced. The writ petitions are allowed, the impugned orders are set aside and the respondent is directed to re-issue the notice dated 13.09.2013 giving adequate time to the petitioner to cause production of the records along with their

objections which shall be considered and dealt with in accordance with law after affording an opportunity of personal hearing to the authorized representative of the petitioner. **M/s. Century Processing Mills,Vs..The Assistant Commissioner (CT), Periya Agraharam Assessment Circle, Erode W.P.Nos.22443 to 22447 of 2013 DATED: 08.01.2018**

Penalty:

Section 27 of the TNVAT Act deals with assessment of escaped turnover and wrong availment of input tax credit. Admittedly, the petitioner did not avail any input tax credit. The allegation against the petitioner is not that the turnover escaped assessment to bring it within the fold of Section 27(1)(a) of the State Act. The petitioner's case would fall under Section 27(1)(b) of the said Act where part of the turnover of business of the dealer has been assessed at a rate lower than the rate, at which, it is assessable on the ground that the petitioner has not produced the industrial input certificates. On a reading of Section 27(3) of the State Act, it is clear that penalty is levyable only in circumstances where an assessment is made under Clause (a) of Sub-Section (1) of Section 27 of the State Act. When there is an assessment to lower rate of tax, the question of levying penalty under Section 27(3) read with Section 27(4) of the State Act does not arise. Therefore, levy of penalty is unsustainable and is liable to be set aside. **M/s.CEAT Limited, Vs The Assistant Commissioner (ST), Pammal Assessment Circle, Chennai Writ Petition Nos.2251 to 2253 of 2018 Dated: 02.2.2018**

Natural Justice:

In this case, the revision notices are based upon the proposal received from the Enforcement Wing. The respondent, while completing the assessment and passing the impugned assessment orders, has vertabim extracted the entire objections given by the petitioner. Having extracted the objections, the respondent was required to afford an opportunity of personal hearing to the dealer, thereafter consider the proposal as well as the objections, discuss the matter and pass a reasoned order. Unfortunately, in a single line, the respondent overruled the petitioner's objections on the ground that no supporting documentary evidence was produced. Such assessment orders have been held to be illegal in several decisions of this Court as well as the Hon'ble Supreme Court. One such decision is Steel Authority of India Ltd. Vs. STO, Rourkela-I Circle [reported in (2008) 16 VST 181 (SC)] wherein it has been held that the reason is the heartbeat of every conclusion and it introduces clarity in an order and without the same, it becomes lifeless. Further, with regard to the role of the Assessing Officer, it was held that an order cannot be passed by the Assistant Commissioner without examining the various issues raised and

without passing a reasoned order. What the respondent has done is exactly what the Hon'ble Supreme Court has held to be unsustainable. The above two reasons are sufficient to hold that the impugned assessment orders are against law, in violation of the principles of natural justice and devoid of reasons and are liable to be set aside. **Tvl.V.D.R.Impex, Vs The Assistant Commissioner (CT), Vellore (South) Assessment Circle, Vellore. Writ Petition Nos.2382 to 2389 of 2018 Dated: 05.2.2018**

Mismatch:

The request made by the petitioner to give them an opportunity to produce details and documents was not furnished by the Assessing Officer. It is submitted by the petitioner that they having produced all sufficient documents to establish the genuineness of the transactions that their transactions cannot be doubted merely because the other end dealer has not filed returns or not paid taxes or for that matter the registration certificate were cancelled. The petitioners also stated that if the respondent has to rely upon any third party statements or documents, they may be allowed to cross-examine the third party, relying the rulings of the Hon'ble Division Bench in the case of M/ s.Jeetendra Agencies Vs. The Commercial Tax Officer, Coonoor in W.P.No.32711 of 2002 dated 28.08.2002, and the view was taken in the case of Althaf Shoes (P) Ltd Vs. Assistant Commissioner (CT), Chennai reported in [2012] 50 VST 179 (Mad). Therefore, in this case I am of the considered view that there has been violation of principles of natural justice. Furthermore the Court held that in the case of Sri Vinayaga Agencies Vs. Assistant Commissioner (CT), Chennai and another reported in [2013] 60 VST 283 (Mad) it was held that Section 19(1) states that input-tax credit can be claimed by a registered dealer, if he establishes that the tax due on such purchase has been paid by him in the manner prescribed and that was accepted at the time when the self-assessment was made. Stating so, the writ petition is allowed, the impugned order is set aside and the matter is remanded for fresh consideration to afford an opportunity of personal hearing to the petitioner and permit them to produce documents and make available the third parties including the selling dealer to enable the petitioner to cross-examine them and after taking note of the decision referred to above, the respondent is directed to redo the assessment in accordance with law. **M/s. C&S. Tools Private Limited, Chennai Vs. The Assistant Commissioner (CT) (FAC) Harbour IV Assessment Circle Writ Petition No.25030 of 2013 DATED: 02.02.2018**

(The author is a Chennai based Chartered Accountant. He can be reached at vvsampat@yahoo.com)

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GST - ADVANCE RULINGS CASE LAWS

1. <u>GST – ADVANCE RULING – BUS BODY BUILDING – COMPOSITE SUPPLY AND PRINCIPAL SUPPLY DEPENDS UPON THE CHARACTER OF BODY BEING BUILT ON CHASSIS</u>

CA. VIJAY ANAND

In RE: Arpijay Fabricators Pvt. Ltd. 2018(16) GSTL 157(A.A.R.-GST), the applicant is engaged in building bodies of various vehicles over the chasis provided by their principal on job work basis and have been contending that the process of body building is job work. Accordingly, an application was filed for advance ruling seeking answers as to the following:-

1. Whether the supply mode undertaken is to be classified as supply of goods or supply of services?

2. What would be the appropriate classification and applicable rate of tax for the above transaction?

The authority observed as under:

1. Circular No.34/08/2018-GST dtd.01.03.2018 has clarified that statute nowhere provides for 'predominant intention' and that the classification in case of a composite supply has to be arrived at on the basis of 'predominant element' of a composite supply, which in turn would be the 'Principal Supply'. The predominant component of the composite supply involved in the activity of Body Building would determine the rate of tax applicable on such composite supply.

2. In case the 'Goods' part is predominant, then the Composite Supply in this case would be governed by Chapter 87 depending upon the nature of body being built by the applicant on the chasis supplied by the principal.

3. In case, the 'Service' part is predominant in the composite supply, then the rate of tax would be applicable as per Heading No.9988.

4. However, due to incomplete information provided by the applicant, the authority is constrained to provide any definitive ruling on this aspect.

Hence, the authority ruled as under:

a. The activity of body building undertaken by the applicant, carried out on the chasis supplied by the principal in the capacity of a job worker, would amount to 'Composite Supply' as define under CGST Act 2017/MPGST Act 2017.

b. The rate of tax on such Composite Supply would be determined by the predominant component involved in such Composite Supply in terms of Section 8(a) of the CGST Act 2017, depending upon the character of the body being built on the chasis, which would eventually be classifiable under Chapter 87 of the Tariff.

c. If the predominant element happens to be the Service part, then the Principal supply would be classified under Heading no.9988.

2. <u>GST – ADVANCE RULING – CONSTRUCTION OF SUB-STATION TRANSMISSION LINE AND FEEDER BAY WORK FOR SOLAR PARK DEVELOPER BY SOLAR PROJECT PARK DEVELOPER – COMPOSITE SUPPLY – WORKS CONTRACT</u>

In RE: Vihan Enterprises (Swati Duvey) 2018(16) GSTL 163(A.A.R.-GST) the applicant is engaged in the construction, erection, commissioning and installation of projects relating to Electrical Transmission Lines, Sub-Stations and Line Shifting. The applicant entered into a contract with M/s Rewa Ultra Mega Solar Limited (hereinafter referred to as RUMS) for the construction of new 33/220 kV Pooling Substation with associated 220 kV DCDS Transmission Line and associated feeder bay work on total Turnkey basis under World Bank Financing wherein the scope of work involves the following:-

An application was filed for advance ruling seeking answers as to the following:

(i) What is HSN in which the service of construction of new 33/220 kV Pooling Substation

(ii) What shall be the applicable rate of CGST and SGST on the supply being made under the contract?

The authority observed as under:

1. A perusal of the contents of the agreement between the applicant and RUMS makes it clear that the work involves both supply of goods and supply of services, which are naturally bundled and, hence, this is a composite supply within the meaning of Section 2 of the CGST Act, 2017.

2. The agreement involves construction of Pooling Sub-station on Turnkey Basis and falls under the definition of a "Works Contract" within the meaning of Section 2 of the CGST Act, 2017.

3. The rate of 5% on activity relating to Solar Power is the rate of GST for supply of Goods. The GST rate of 5% advalorem under Chapter Headings 84 and 85, as given in SI.No. 234 of Schedule I of Notification No. 1/2017 - Central Tax (Rates) is for supply of goods.

4. Notification No.11/2017- Central Tax (Rates) and corresponding notification under MPGST has prescribed 2.5% as CGST, meaning 5% GST on the following works –

a. Under para 3, clause (vii) for Composite supply of works contract as defined in clause of section 2 of the Central Goods & Services Tax Act, 2017, involving predominantly earth work (that is, constituting more than 75% of the value of the works contract) provided to the CG, SG, UT, local authority, a Governmental authority or a Government Entity.

b. Under para 3, clause (x) for Composite supply of works contract as defined in clause (119) of section 2 of the CGST Act, 2017 provided by a sub-contractor to the main contractor providing services specified in item (vii) above to the CG, SG, UT, a local authority, a Governmental Authority or a Government Entity.

c. Under para 3, clause (xi) for Services by way of house-keeping, such as plumbing, carpenting, etc. where the person supplying such service through electronic commerce operator is not liable for registration under sub-section (1) of section 22 of the CGST Act, 2017

5. None of the above activities are contemplated in the scope of work under the agreement entered into by the applicant with RUMS.

6. Under the CGST and SGST Acts, Rules and Notifications issued till the date of making of the application, no provision has been made for carving out an exception in case of supply of service in the nature of a Works Contract for creating infrastructure which is to be exclusively used for Solar Power or in a Solar Park for or by a Solar Project Park Developer.

Hence, the authority held as under:-

a. The HSN Code for the supply of composite service in the nature of Works Contract under the all the three agreements entered into with RUMS, referred to in para 3.3 supra shall be 9954/995423.

b. The rate of CGST on the supply being made under the contract referred to in para 3.3 supra shall be according to Notification No. 11/2017 - Central Tax (Rates).

3. GST – ADVANCE RULING – PROJECT DEVELOPMENT AND MANAGEMENT CONSULTANCY SERVICES PROVIDED TO URBAN ADMINISRATION & DEVELOPMENT DEPT. OF STATE GOVT. UNDER A CONTRACT FOR IMPLEMENTATION OF AMOUNT AND PMAY SCHEME REFERRED TO IN ARTICLES 243W AND 243G – EXEMPT UNDER SL.NO.3 OF NOTIFICATION NO.12/2017 C.T.(RATE) – GOODS USED IN PROVIDING CONSULTANCY SERVICES UNDER THE SCHEMES ARE ALSO EXEMPTED – HOWEVER TAX IS LIABLE ON DISPOSAL THEREOF

In RE: EGIS India Consulting Engineers P. Ltd. 2018(16) GSTL 171(A.A.R.-GST), the applicant engaged in providing engineering, project structuring and operations services in various sectors like transport, urban development, building, industry, water, environment and energy. The Ministry of Urban Development, Government of India has rolled out the Atal Mission for Rejuvenation and Urban Transformation ('AMRUT') for transforming urban India. The Applicant has been appointed as Project Development and Management Consultant ('PDMC') to provide necessary services to the State/ULBs to ensure implementation of the AMRUT Scheme. The scope of work in respect of the AMRUT is as follows:

i. Project management
ii. Project planning
iii. Survey, studies and investigation
iv. Feasibility study
v. Detailed design
vi. Bidding process and contract award
vii. Construction supervision and contract management

Further, the Ministry of Housing and Urban Poverty Alleviation, Government of India has launched the Pradhan Mantri Awas Yojana -Housing for All (Urban) ('PMAY') to improve civic infrastructure and increase the supply of affordable housing to target segments. The applicant has been appointed as Project Management Consultant ('PMC') for the PMAY Scheme. The scope of work for PMAY is as under:

- Review of HFPoA and Details Project Report
- Bid Process Management
- Project and Contract Management
- Supervision and Quality Control

An application was filed for advance ruling seeking answers as to the following:

a. Whether the Project Development and Management Consultancy services ('PDMC') provided by Applicant to

recipient under the Contract for AMRUT; and the Project Management Consultancy services ('PMC') under the Contract for PMAY would qualify as an activity in relation to function entrusted to Panchayat or Municipality under Article 243G or Article 243W respectively, of the Constitution of India?

b. If answer to the above is in affirmative, would such services provided by the applicant qualify as "Pure services (excluding works contract service or other composite supplies involving supply of any goods)" as provided in serial number 3 of Notification No. 12/2017- Central Tax (Rate) dated 28 June, 2017 [Notification No. FA -3-42/201711/v (53) dated 30 June 2017, as amended by Notification No. 2/2018- Central Tax (Rate) dated 25 January, 2018 issued under Central Goods and Services Tax Act, 2017 ('CGST') and corresponding notifications issued under Madhya Pradesh Goods and Services Tax Act, 2017 ('MPGST Act'), where the Project cost includes the cost of service rendered along with reimbursement of cost of procurement of goods for rendering such service, and, thus, be eligible for exemption from levy of CGST and MPGST, respectively.

The authority observed as under:

1. As per website of the Ministry of Housing and Urban Affairs, the Government of India has launched the Atal Mission for Rejuvenation and Urban Transformation (AMRUT) with the aim of providing basic civic amenities like water supply, sewerage, urban transport, parks as to improve the quality of life for all especially the poor and the disadvantaged. The purpose of "AMRUT" mission is to (i) ensure that every household has access to a tap with assured supply of water and a sewerage connection (ii) increase the amenity value of cities by developing greenery and well maintained open spaces e.g. parks and (iii) reduce pollution by switching to public transport or constructing facilities for non-motorized transport e.g. walking and cycling. The major components of the AMRUT Scheme are Water Supply system, Sewerage, Septage, Storm Water Drainage, Urban Transport, Green Space and Parks, Reforms management and support, Capacity building, etc.

2. As per website of Pradhan Mantri Awas Yojana-Housing for All (Urban), Ministry of Housing and Urban Affairs, the PMAY is a Scheme to provide central assistance to Urban Local Bodies (ULBs) and other implementing agencies through

States/UTs for Rehabilitation of existing slum dwellers using their land as a resource through private participation, and Affordable Housing in Partnership.

3. Thus, the various objectives of both the above Schemes are covered in more than one clauses of the Eleventh and Twelfth Schedule referred in Articles 243G and 243W of the Constitution, including Housing, drinking water, sanitation, Park, etc.

4. Accordingly, the Consultancy services rendered by the applicant under the Agreement with Urban Administration & Development, Government of Madhya Pradesh, Bhopal for implementation of AMRUT and PMAY are in relation to functions entrusted to Municipalities under Article 243-W and to Panchayats under Article 243-G of the Constitution of India.

5. The contract awarded to the applicant for "Project Development and Management Consultant (PDMC) for AMRUT including Project Management of other Notified Schemes in Project Area" is a Pure Service Contract. It is not covered in exclusion clause pertaining to "works contract service" or "composite supplies involving supply of any goods". It is evidently in relation to the functions entrusted to Municipalities under Article 243W and to Panchayats under Article 243G of the Constitution, and therefore, it is exempt from tax being covered in Sr. No. 3 of Notification No. 12/2017-Central Tax (Rate), dated 28th June, 2017.

6. The contract further obligates the applicant to purchase Office Equipment, Furniture, etc. with the approval of the Employer, and shall get reimbursement of actual cost of these equipment, etc. from the employer, these Equipment, Furniture, etc. shall be property of the Employer, and shall be disposed of by the applicant as per instruction of the Employer after their use for the contract.

7. These items are not naturally bundled into the service being provided by the applicant. Further, such items have to be disposed off by the applicant after completion of contract as directed by the principal, and the cost of such items would be over and above the contract price.

8. Therefore, such purchases of equipment, furniture, etc. would neither make the said contract of consultancy as a works contract nor a composite contract and therefore, due to purchase of Equipment, Furniture, etc. by the applicant and getting reimbursement of their costs, will not

affect eligibility of the applicant for NIL rate of tax in Sr. No. 3 of Notification No. 12/2017-Central Tax (Rate), dated 28th June, 2017.

9. However, the question about liability of tax on disposal of Equipment, Furniture, etc. purchased by the applicant under the contract in question has not been applied for by the applicant, and therefore, the Authority is neither obliged nor required to venture into that subject. Though it may not be out of place to mention that disposal of such goods shall be governed by the provisions of CGST Act, 2017/MPGST Act, 2017/ IGST Act, 2017, as the case may be.

Hence, the authority observed as under:

a. The PDMC provided by applicant to recipient under the Contract for AMRUT; and the PMC under the Contract for PMAY would qualify as an activity in relation to function entrusted to Panchayat or Municipality under Article 243G or Article 243W respectively, of the Constitution of India.

b. Such services provided by the Applicant would qualify as "Pure services (excluding works contract service or other composite supplies involving supply of any goods)" as provided in serial number 3 of Notification No.12/2017- Central Tax (Rate) dated 28 June, 2017 as amended in respect of the cost of service rendered along with reimbursement of cost of procurement of goods for rendering such service, and, thus, be eligible for exemption from levy of CGST and MPGST respectively.

c. However, the disposal of tangible goods at the end of contract shall be subject to GST depending upon the circumstances and manner of disposal of such tangible goods.

4. <u>GST – ADVANCE RULING – CONSTRUCTION OF AFFORDABLE HOUSING PROJECTS – ATLEAST 50% OF THE FLOOR AREA RATIO (FAR)/FLOOR SPACE INDEX (FSI) FOR DWELLING UNITS WITH CARPET AREA OF NOT MORE THAN 60 SQM- AFFORDABLE HOUSING UNDER GOI NOTIFICATION F.NO.13/6/2009-INF – GST OF 12% UNDER 9954(v)(da)</u>

In RE: Prajapati Developers 2018(16) GSTL 320(A.A.R.-GST), the applicant is undertaking development of residential apartments and has discharged Service Tax on the consideration received from the flat owners till 30.06.2017 at the applicate rate of service tax and later GST is being discharged at the effective rate of 12% after availing the 1/3rd

deduction towards the land portion as provided in explanation to Notification No. 11/2017- Central Tax (Rate) issued under the provisions of Central Goods and Service Tax Act, 2017. An application was filed seeking advance ruling as to whether rate of 12% under S.No. 3 of Notification 11/2017 central Tax (Rate) dated 28/6/2017 as amended by Notification 01/2018- CT (Rate) dated 28.06.2017.

The authority observed as under:-

1. The issue is with respect to the housing project called "Prajapati Magnum" in Dronagiri, Navi Mumbai which has been undertaken by the applicant wherein the following are submitted:-

a. The said project was started in December 2013 and is expected to be completed in December 2022.

b. The total FSI consumed in the said project is 18,099.50 sq.mtrs out of which 13,145.26 sq mtrs. Of FSI are consumed for flats having carpet area below 60 sq mtrs. For which Architect's Certificate in support that their housing project is using around 73% of the total Floor Area Ratio (FAR)/Floor Space Index

c. Arising out of the above, the project falls under the definition of "Affordable Housing" as mentioned in notification issued by Government of India, Ministry of Finance, Department of Economic Affairs vide F. No. 13/6/2009-1NF, dated the 30th March, 2017.

2. S.No. 3 sub-item (da) of item (v) of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 levies the rate of central tax to be levied on Intra State supply of services on "low-cost houses up to a carpet area of 60 square meters per house in an affordable housing project which has been given infrastructure status vide notification of Government of India in Ministry of Finance, Department of Economic Affairs vide F. No. 13/6/2009-INF, dated the 30th March, 2017 would attract a tax rate of 12%. This clause will be applicable to the applicant if the project undertaken by them is an affordable housing project which has been given infrastructure status vide Government of India notification mentioned above.

3. Department of Economic Affairs' notification issued vide F. No. 13/6/2009-INF, dated the 30th March,2017 has included Affordable Housing under the column "Infrastructure sub sector" against the category of Social and Commercial Infrastructure and has further defined "Affordable Housing" as a housing project using at least 50% of the Floor Area Ratio (FAR)/Floor Space Index (FSI) for dwelling units with carpet area of not more than

60 square meters and "Carpet Area" shall have the same meaning as assigned to it in clause (k) of section 2 of the Real Estate (Regulation and Development) Act, 2016.

4. One of the recommendations made by the GST Council in its 25th meeting held on 18th January 2018 at Delhi was to extend the concessional rate of 12% (8% GST after deducting value of land) to services by way of construction of low cost houses up to a carpet area of 60 sqm in a housing project which has been given infrastructure status under notification No. 13/06/2009 dated 30th March, 2009.

5. In response to a request for clarification to enable availing 8% GST on Affordable Housing made by the builders association namely, CREDAI vide their letter no. CREDAI/MoF/2018/14 dated 19th March, 2018, the Government vide F. No. 354/52/2018 -TRU, Government of India Ministry of Finance Department of Revenue (TRU) dated 7th May, 2018 has clarified that "Low cost houses up to a carpet area of 60 .square meters per house in an affordable housing project, which has been given infrastructure status under notification F. No. 13/6/2009-1NF, dated the 30th March, 2017 of MOF (DEA), attract concessional GST of 8% (the value of the undivided share of land is included in the price of the house). whether the housing project qualifies as affordable housing project or not, shall be determined by the builder/developer as per the definition of affordable housing given in the above mentioned notification (i.e., affordable housing has been defined as a housing project using at least 50% of FAR/FSI for dwelling units with carpet area of not more than 60 SQM). No certificate from any authority is required.

6. From a reading of the above clarification, notification and the clause (da) of item (v) of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 and facts on record, it is evident that the applicant's case is covered under the tax rate of 12%. The benefit of reduced rate would be available to them only in the cases of supply effected after 25.01.2018 i.e. the date on which Notification 1/2018-Central Tax (Rate) was issued and the benefit of this reduced rate would be applicable in case of only those flats which are of carpet area up to 60 sq mtrs. In this scheme which is covered in the category of affordable housing.

7. In case of other flats which have carpet area more than 60 sq.mtrs. The applicant would be required to pay GST at normal applicable rate.

Hence, the authority held that the construction services provided by the

applicant under the project "Prajapati Magnum" qualifies for the reduced CGST rate of 12%.

5. <u>GST – ADVANCE RULING – EPC – CONSTRUCTION OF SOLAR POWER PLANT AS A WHOLE CONTRACTOR TO PERFORM ALL ACTIVITIES FROM ENGINEERING, DESIGN TO PROCUREMENT AND COMMISSIONING AND COVERED UNDER WORKS CONTRACT</u>

In RE: RFE Solar Pvt. Ltd. 2018(16) GSTL 623(A.A.R.-GST), the applicant is engaged in business of developing power projects in India & also undertakes development, design, engineering, supply, installation, testing and commissioning to establish solar power plant at various states in India. IN particular, the applicant is rendering the following activities for effecting Supply of Solar Power Plants.-

- Consulting in Procurement of Land on which Solar Power Generation System shall be installed.
- Procurement and Supply of components of Solar Power Generation System (these materials are mostly imported by assessee on the basis of order received from its clients).
- Installation of Components which have been supplied by the applicant.
- The said installation can be roof mounted or land mounted depending upon the location as pre decided between the parties for establishing Solar Power Generating System.
- Engaging in Construction of support civil Inverter Room.
- Handing over of Solar Power Plant~

An application was filed seeking advance ruling as to the following:-

a. Classification of goods or services or both; and

b. Determination of the liability to pay tax on any goods or services or both.

The authority observed as under:-

1. Solar Power Plant (SPP) has two blocks namely Solar Block and Power Block which has various components. The essential ingredients of Solar Power Plant and it's blocks are PV Modules, Panels, Cables, Module Mounting Structures; Fuse Connectors, Inventors and Transformers to be installed by assessee on any piece of land.

2. An SPP is affixed to land or roof (depending upon the nature of the Solar Power Plant). For the same some civil work is undertaken to affix the SPP for its efficient functioning. However almost all ingredients of the SPP (except some civil work) can be

effectively shifted from one location to another in case it is required to do so. No substantial damage shall be caused to any of the components of the SPP.

3. Thus the SPP is effectively movable and can be reinstalled on any other piece of land.

4. A perusal of the terms of the contract and the conditions indicate that the given work can be classified as composite supply only since the contract is in relation to the SPP, they are bundled in ordinary course of business.

5. To further decide whether the principal supply is of goods or service, the concept of works contract can be explored first. Works contract in itself is a composite supply in which construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning etc. are involved along with transfer of property in goods.

6. In GST, as per definition of works contracts service if construction, fabrication completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning is for immovable property only, then it will classify as works contract only, aforesaid activities if they are undertaken for a movable property then it will not be works contract service.

7. That the contract between the client and the assessee covers not only supply of material but extends to erection and commissioning of the plant as well. That the assessee is required to undertake all the activities necessary for beginning the operations of the Solar Power Plant and then handover the same to the client. However, the consideration involved in the contract pre-dominantly consists of the value of material. The value of supply of material is almost 90%.

8. Hence it can be deduced that under the given supplies, if the supply cannot be classified as works contract service then the principal supply shall be of goods.

9. Under the General Clauses Act 1897 the term immovable property has been defined under Section 3(26) as "immovable property" shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth.

10. As per the above definition, the term permanently fastened or attached to earth can be treated as immovable property. Any attachment with earth which is temporary in nature or can be

shifted from part of earth to another without causing substantial damage to it cannot be treated as immovable property.

11. In Municipal Corporation of Greater Bombay &Ors. v. Indian Oil Corporation Ltd. [1991 Suppl. (2) SCC 18], for a question as to whether whether a petrol tank, resting on earth on its own weight without being fixed with nuts and bolt could be considered as having erected permanently without being shifted from place to place. The Supreme Court observed that the test was one of permanency and if the chattel was movable to another place of use in the same position or liable to be dismantled and re-erected at the later place, then it must be a movable property but if the answer is otherwise, then it would be treated a permanently attached to the earth.

12. An SPP is affixed to land or roof (depending upon the nature of the Solar Power Plant). For the same some civil work is undertaken to affix the Solar Power Plant for its efficient functioning. However it is pertinent to note that almost all ingredients of the Solar Power Plant (except some civil work) can be effectively shifted from one location to another in case it is required to do so. No substantial damage shall be caused to any of the components of the Solar Power Plant. The damage shall be only of some cables and civil structure. Same does not hold more than even 10% of the total cost of the plant. Thus the plant is effectively movable and can be reinstalled on any other piece of land.

13. Hence, the given composite supply cannot be treated as supply of works contract service since the property coming into existence shall not result into immovable property and will remain a movable property only.

14. The next point for consideration is if it is supply of goods, then what shall be principal supplies. It is important to note that various items from panels, batteries, cables, transformer etc are supplied for the solar power plant. Whether it can be treated as supply of individual items or supply of solar power plant as a whole remains a question.

15. In Shree Venkateswara Engg. Corporation v. CCE, Coimbatore 2016 (335) E.L.T. 62 (Tri. -Chennai), it was held that if the ultimate intention of parties is also to supply the Solar Power Plant and not the individual components, the given supply should be treated as supply of SPP alone.

16. Further under Notification No 01/ 2017-CT (Rate) dated 28.06.2017, at S.No. 234, under HSN Classification

84, 85 and 94, the rate of CGST has been mentioned as 2.5%. In given case also, it has been specified that intention of parties was to supply solar power plant only. Hence, the correct classification of given supply should be Chapter 84: Solar Power Generating System at the rate of 5%.

Hence, the authority observed as under:

a) The applicant has entered into a composite EPC contract for setting up of Solar Power Plant where the contractor has to, design, engineer, procure, transport, deliver, develop, erect, install, test and commission the project.

b) The contract is to set up a Solar Power Plant and related interconnection facilities.

c) The contract includes civil work such as development of site, structure foundation, Structure for 110kv transmission , building cable trenches, civil work relating to invertors and control buildings, store rooms , canopies and such other civil structure and related activities as set out in Scope of work and the Technical Specifications.

d) The intention of the owner and the contractor is not to procure goods of solar power generating system but to procure a completely functional solar power plant as a whole wherein applicant undertakes end to end responsibility of supply of equipments of solar power plant including designing, engineering, supplies, installation to technical specification, testing and commissioning of a functional solar power plant as well as laying of transmission lines for transmission of the electricity generated up to storage or the grid.

e) All risk and liabilities accruing in relation of works (temporary or permanent), and of all equipments, machinery, materials, shall be with contractor until occurrence of the Final Acceptance.

f) The contractor has to undertake works of installation, testing and commissioning of Solar Power Plant as per specific demands of owner. So it is not something sold out of shelf.

g) There is a single lump sum price for the entire contract.

h) The applicant has laid claim under notification No 01/2017-CT (Rate) dated 28.06.2017, at S.No. 234, under HSN Classification 84, 85 and 94, for description.

i) If the transaction is supply of goods then the applicable Schedules would have to be seen but the intent of parties is always for supply of Solar Power Generating System as a whole which includes supply, installation,

testing and commissioning and it is not chattel sold as chattel.

j) As per the terms and conditions laid in EPC Contract, the contractor i.e. the applicant has to undertake activities from engineering, design, to procurement of the material and has also to test and commission a functional plant before Final Acceptance. In contracts of such a nature, the liability of the contractor doesn't end with the procuring of materials but it extends till the successful testing and commissioning of the system. The transaction is a 'work contract' but it is for us to decide whether it is a 'work contract' in terms of GST Act. So, we come to the crux of the issue, which is as to whether the transaction results into any immovable property. The term 'immovable property' has not been defined under the GST Act. However, there are a plethora of judgments of the Hon. Supreme Court and the Hon. High Courts which have helped understand the term 'immovable property'.

k) In Official Liquidator v. Sri Krishna Deo and Ors. [AIR 1959 All. 247], the Court held that a machinery fixed to their bases with bolts and nuts although easily removable are not movable property when they have been set up with definite object of running an oil mill and not with intention of being removed after a temporary use.

Hence, the authority ruled as under:

1. The scope of work in respect of "Turnkey EPC Contract" includes civil works, procurement of goods and erection and commissioning. Accordingly, "Turnkey EPC Contract" are not getting covered under supply of 'Solar Power Generating System' under Entry 234 of Schedule I of the Notification no.1/2017 - Integrated Tax (Rate), Entry 234 of Schedule I of the Notification no. 1/2017 - Central Tax (Rate) both dated 28 June, 2017 and Entry 234 of Schedule I of the Notification no 1/2017 - State Tax (Rate) dated 29 June, 2017. EPC Contract for Solar Power plant comes under the purview of Works Contract as per Section 2(119) of GST Act.

2. The contract for Erection, Procurement and Commissioning of Solar Power Plant falls under the ambit " Works Contract Services" (SAC 9954) of Notification no. 11/2017 Central Tax (Rate) dated 28 June, 2017 and attracts 18% rate of tax under IGST Act, or 9% each under the CGST and SGST Acts, aggregating to 18%.

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TAX DEDUCTION AT SOURCE AND RELATED COMPLIANCES - GST

CA. DEBASIS NAYAK

Background

The Government has introduced the Goods and Services Tax by demonstrating it as Goods and Simple Tax. The various features have been explained at the time of implementation like Tax Compliance easy, simplified tax structure and much more. Now it is the right time to look at the back and answer as question whether the GST in reality is 'Goods and Simple Tax'.

Every aspect has some pro and cons, similarly as now the GST is one and half year baby and despite of the various teething problem during its journey one point that we can conclude that the government has become more proactive, receptive, interactive and user friendly. The changes are very frequent whenever taxpayer faces any difficulty and hurdles as compared to the erstwhile law where the changes are one in a while or a once in a blue moon.

Recently the government has notified the Section 51 and 52 of the Central Goods and Services Tax Act, 2017 with respect to Tax deduction at source and Tax collection at source respectively via **notification number 50/2018-Central tax dated 13th October 2018**, which was kept in abeyance since inception of GST because of the initial glitches and lack of clarity and knowledge about the provisions on one of the biggest tax reform. To put it in a simple term, the intention behind its deferment is nothing but they did not want to overload the honest taxpayer with this additional compliance. The majority of the states have also notified the said provisions under their respective State Goods and Services Tax Act, 2017.

The main rationale behind this to made functionality of these provisions is to ensure inclusion of a wider taxpayer base under the GST regime, which was untouched in the erstwhile law. This will also give a pace on faster collection of taxes, larger control on the high value transaction, curb tax evasion for fraudulent invoices and many more. In the present indirect tax scenario, which is a destination based tax passes through several contours. Under the upcoming scenario of TDS in GST, the tax will be deducted at the source at the time of making payment to supplier or vendor itself. This will increase in more transparency and accountability in the economy.

To have an ease of undertaking about the provisions of tax deducted at source we have summarised the key aspects as below

1. What is the Concept of Tax deduction at source under Goods and Services Tax?

It is not defined under the GST law but as per the common parlance or trade parlance it is tax required to be deducted by the recipient of the goods or services or both on the payment made or credited to the vendor.

2. Who is the eligible person to deduct the TDS

GST law mandates tax deduction at source vide Section 51 of the CGST/SGST Act 2017 read with notification no 50/2017-Central Tax dated 13th September 2018. Following recipients are required to deduct tax at source:

TDS deductor	**Example**
a) a department or establishment of the Central Government or State Government; or	Various department of govt like health, Education, space, consumer affairs
b) local authority; or	Panchayat, Municipality, Municipal Committee, Zilla Parishad, Cantonment Board etc.
c) Governmental agencies; or	Various ministries of the government
d) an authority or a board or any other body,- *i. set up by an Act of Parliament or a State Legislature; or* *ii. established by any Government* *with fifty-one per cent or more participation by way of equity or control, to carry out any function; or*	Institute of Chartered Account of India, Company Secretary Institute and Cost Accountant Institute, IIM (Set up by an act of parliament)
e) a society established by the Central Government or the State Government or a Local Authority under the Societies Registration Act, 1860 (21 of 1860); or	
f) public sector undertakings	NTPC, ONGC, SAIL, BHEL, IOCL and others

3. Rate of tax deduction at source

Category of supply	Rate of deduction
Intra State Supply	CGST – 1% and SGST – 1%
Interstate Supply	IGST - 1% Exception: For interstate supply, where the location of the supplier and place of supply is in a state, which is different from the location of the recipient.

4. When the TDS is required to be deducted?

Tax is required to be deducted from the payment made or credited to a supplier, if the total value of supply under a contract, exceed two lakh and fifty thousand rupees in respect of supply of taxable goods and services or both.

TDS is not required to be deducted in case of exempted supply and where the supply includes both taxable as well as exempted supply then TDS is required to be deducted only on taxable component.

5. What is the value on which tax is required to be deducted?

For the purpose of deduction of tax specified above, the value of supply shall be taken as the amount excluding the central tax, State tax, Union territory tax, integrated tax and cess indicated in the invoice.

6. When Tax deduction is not required to be made under GST?

The below mentioned is the situations were tax is not required to be deducted:

a) Total value of taxable supply d" Rs. 2.5 Lakh under a contract.

b) Contract value > Rs. 2.5 Lakh for both taxable supply and exempted supply, but the value of taxable supply under the said contract d" Rs. 2.5 Lakh.

c) Receipt of services which are exempted. For example services exempted under notification No. 12/2017 – Central Tax (Rate) dated 28.06.2017 as amended from time to time.

d) Receipt of goods which are exempted. For example goods exempted under notification No. 2/2017 – Central Tax (Rate) dated 28.06.2017 as amended from time to time.

e) Goods on which GST is not leviable. For example petrol, diesel, petroleum crude, natural gas, aviation turbine fuel (ATF) and alcohol for human consumption.

f) Where a supplier had issued an invoice for any sale of goods in respect of which tax was required to be deducted at source under the VAT Law before 01.07.2017, but where payment for such sale is made on or after 01.07.2017 [Section 142(13) refers].

g) Where the location of the supplier and place of supply is in a State(s)/UT(s) which is different from the State / UT where the deductor is registered.

h) All activities or transactions specified in Schedule III of the CGST/SGST Acts 2017, irrespective of the value.

i) Where the payment relates to a tax invoice that has been issued before 01.10.2018.

j) Where any amount was paid in advance prior to 01.10.2018 and the tax invoice has been issued on or after 01.10.18, to the extent of advance payment made before 01.10.2018.

k) Where the tax is to be paid on reverse charge by the recipient i.e. the deductee.

l) Where the payment is made to an unregistered supplier.

m) Where the payment relates to "Cess" component

7. Mechanism of flow of TDS

- Deductor would deduct the tax and pay on or before 10th of the subsequent month of deduction in GSTR-7 and

- Deductor will issue TDS certificate in Form GSTR -7A to the deductee within 5 days from the date of filing of the return.

- Once deduction is made and return is filed by deductor, the amount deducted would appear in the electronic cash ledger of the deductee and can be used for payment of tax liability.

- Penalty will be levied for delay in furnishing of TDS certificate amounting to Rs. 100 per day subject to maximum of Rs. 5000

8. Whether the Input Tax Credit can be used for payment of TDS liability?

No. The Liability arising on account of deduction of tax by the deductor can only be settled by way of payment in cash.

(The authors is Chennai based Chartered Accountant. They can be reached at cadebasis@gmail.com)

ROLE OF NATIONAL COMPANY LAW TRIBUNAL UNDER INSOLVENCY AND BANKRUPTCY CODE, 2016

CA. C.S. DHANAPAL

Under the Insolvency and Bankruptcy Code, 2016, National Company Law Tribunal (NCLT) has been recognized as the Adjudicating Authority for Part II of the Code, i.e. with matters relating to Corporate Insolvency Resolution Process (CIRP) and Liquidation of Corporate Persons (Companies and LLPs).

The adjudicating authority for insolvency resolution and liquidation of corporate persons, corporate debtors, corporate guarantors (a corporate person who is the surety in a contract of guarantee to a corporate debtor) and personal guarantors (surety in a contract of guarantee to a corporate debtor) shall be the National Company Law Tribunal (the "NCLT") having territorial jurisdiction over the place where the registered office of the corporate person is located.

In exercise of the powers conferred under section 408 of the Companies Act, 2013, NCLT was constituted on June 1, 2016 by the Central Government with a principal bench in New Delhi.

A. Role of NCLT under Corporate Insolvency Resolution Process

a) Admission /Rejection/Withdrawal of application CIRP
b) Declaration of Moratorium and appointment of IRP
c) Appointment/change of Resolution Professional
d) Directions for providing co-operations to IRP
e) Extensions of time of CIRP by 90 days
f) Approval/rejection of resolution plan
g) Order for liquidation
h) Adjudicating Authority for personal and Corporate Guarantors of Corporate Debtor.
i) Adjudicating Authority for any other application being filed under the Code

Adjudicating Authority for Personal & Corporate Guarantors of Corporate Debtor

As per Section 60 of the Code, the Adjudicating Authority, in relation to insolvency resolution and liquidation for corporate persons including corporate debtors and personal guarantors thereof shall be the NCLT having territorial jurisdiction over the place where the registered office of the corporate person is located.

It also contains that where a corporate insolvency resolution process or liquidation proceeding of a corporate debtor is pending before a NCLT, an application relating to the insolvency resolution or liquidation or bankruptcy of a corporate guarantor or personal guarantor, as the case may be, of such corporate debtor shall be filed before such NCLT.

Further, an insolvency resolution process or liquidation or bankruptcy proceeding of a corporate guarantor or personal guarantor, as the case may be, of the corporate debtor pending in any court or tribunal shall stand transferred to the NCLT dealing with insolvency resolution process or liquidation proceeding of such corporate debtor.

For this purpose, the NCLT shall be vested with all the powers of the Debt Recovery Tribunal as contemplated under Part III of the Code.

The NCLT shall have jurisdiction to entertain or dispose of—

a) any application or proceeding by or against the corporate debtor or corporate person;
b) any claim made by or against the corporate debtor or corporate person, including claims by or against any of its subsidiaries situated in India; and
c) any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under the Code.

B. Role of NCLT during Liquidation Proceedings (Liquidation by order of NCLT)

On failure of the CIRP process, the NCLT shall order for liquidation of the Corporate Debtor. During liquidation, NCLT has role during the following:

a) Order directing commencement of liquidation proceedings
b) Permission for Institution of Suits / legal proceedings during liquidation
c) Replacement of resolution professional to act as the liquidator
d) Appeal against order of Liquidator
e) Avoidance of preferential transactions
f) Avoidance of undervalued transactions
g) Avoidance of Extortionate Credit Transactions
h) Submission of reports, distribution of assets and early dissolution
i) Extension of time for Liquidation
j) Cooperation from the Personnel of Corporate debtor
k) Dissolution order of the Corporate Debtor

C. Role of NCLT in VOLUNTARY Liquidation u/s 59

A corporate person who intends to liquidate itself voluntarily and has not committed any default may initiate voluntary liquidation proceedings under the provisions of Chapter V of Part II of the Code. The directors / partners of the Corporate Person are required to make a declaration of solvency in order to commence the voluntary liquidation proceedings. Within 4 weeks of the declaration, members' consent by means of special resolution is required to be obtained for voluntary dissolution of the corporate person.

Subject to approval of the creditors under sub-section (3) of Section 59, the voluntary liquidation proceedings in respect of a company shall be deemed to have commenced from the date of passing of the special resolution of the members.

The provisions of Sections 35 to 53 of Chapter III and Chapter VII shall apply to voluntary liquidation proceedings for corporate persons with such modifications as may be necessary.

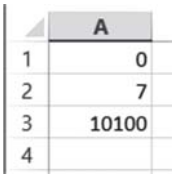
Where the affairs of the corporate person have been completely wound up, and its assets completely liquidated, the liquidator shall make an application to the NCLT for the dissolution of such corporate person. The NCLT shall on an application filed by the liquidator under sub-section (7), pass an order that the corporate debtor shall be dissolved from the date of that order and the corporate debtor shall be dissolved accordingly.

(The author is a Chennai based Company Secretary. He can be reached at csdhanapal@gmail.com)

EXCEL TIPS

Match Function

The MATCH Function looks up a value you designate within a group of values and returns the position of that value within the group. In other words, it searches for a specified item in a range of cells, and then returns the relative position of that item in the range.



	A
1	0
2	7
3	10100
4	

For example, if the range A1:A3 contains the values 0, 7, and 10100, then the formula =MATCH(7,A1:A3,0) returns the number 2, because 7 is the second item in the range.

Syntax

MATCH(lookup_value, lookup_array, [match_type])

The MATCH function syntax has the following arguments:

- lookup_value

  The value that we want to match in lookup_array. For example, when we look up someone's number in a telephone directory, we are using the person's name as the lookup value, but the telephone number is the value we want.

  The lookup_value argument can be a value (number, text, or logical value) or a cell reference to a number, text, or logical value.

- lookup_array

  The range of cells being searched.

- match_type

  This parameter is Optional. The number -1, 0, or 1. The match_type argument specifies how Excel matches lookup_value with values in lookup_array. The default value for this argument is 1.

  However it is advised not to default this value because many a time, we are searching for a specific value for which the parameter to be used is 0 or we might end up with the wrong match.

Match_type Behavior :

1 or omitted	MATCH finds the largest value that is less than or equal to lookup_value. The values in the lookup_array argument must be placed in ascending order, for example: ...-2, -1, 0, 1, 2, ..., A-Z, FALSE, TRUE.
0	MATCH finds the first value that is exactly equal to lookup_value. The values in the lookup_array argument can be in any order.
-1	MATCH finds the smallest value that is greater than or equal tolookup_value. The values in the lookup_array argument must be placed in descending order, for example: TRUE, FALSE, Z-A, ...2, 1, 0, -1, -2, ..., and so on.

When typing the MATCH function in a worksheet cell formula, you need to replace the argument list with arguments separating each one with a comma (,). Some typical arguments you can use are:

Cell Formula	**Example Explanation**
=MATCH("Srilanka",A1:A5,0)	Find Srilanka in A1:A5 then returns position 1 through 5 depending on what cell contains it
=MATCH("*lan*",J9:J15,0)	Find the piece of text LAN inside the cell value text in J9 to J15 then return position 1 through 7 depending on what cell contains it
=MATCH("*" & B1 & "*",G1:G5,0)	Find the piece of text from the B1 cell value inside the text in G1 to G5 then return position 1 through 5 depending on what cell contains it
=MATCH(16,A1:G1,0)	Find the number 16 in A1 to G1 then return position 1 through 7 depending on what cell contains it
=MATCH(B1,Prices,0)	Find the B1 cell value in range name Prices then return position *

** It is possible to name a cell or group of cells on a worksheet and use that name in place of a range reference or cell reference.*

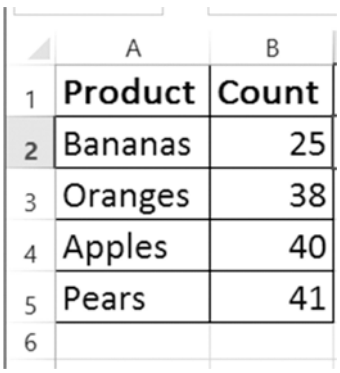
- **MATCH** returns the position of the matched value within ***lookup_array***, not the value itself. For example, **MATCH("b",{"a","b","c"},0)** returns 2, which is the relative position of "b" within the array {"a","b","c"}.

- **MATCH** does not distinguish between uppercase and lowercase letters when matching text values.

- If **MATCH** is unsuccessful in finding a match, it returns the #N/A error value.

- If ***match_type*** is 0 and ***lookup_value*** is a text string, you can use the wildcard characters — the question mark (**?**) and asterisk (*) — in the ***lookup_value*** argument. A question mark matches any single character; an asterisk matches any sequence of characters. If you want to find an actual question mark or asterisk, type a tilde (~) before the character.

Illustration :



	A	B
1	Product	Count
2	Bananas	25
3	Oranges	38
4	Apples	40
5	Pears	41
6		

Formula	Description	Result
=MATCH(39,B2:B5,1)	Because there is not an exact match, the position of the next lowest value (38) in the range B2:B5 is returned.	2
=MATCH(41,B2:B5,0)	The position of the value 41 in the range B2:B5.	4
=MATCH(40,B2:B5,-1)	Returns an error because the values in the range B2:B5 are not in descending order.	#N/A

CIRCULAR No.69

Circular No. 69/43/2018-GST

F. No. CBEC/20/16/04/2017-GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing

New Delhi, Dated the 26th October, 2018

To,

The Principal Chief Commissioners/Chief Commissioners/Principal Commissioners/ Commissioners of Central Tax (All)

The Principal Directors General/Directors General (All)

Madam/Sir,

Subject: Processing of Applications for Cancellation of Registration submitted in FORM GST REG-16 - Reg.

The Board is in receipt of representations seeking clarifications on various issues in relation to processing of the applications for cancellation of registration filed by taxpayers in **FORM GST REG-16**. In order to clarify these issues and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the "CGST Act"), hereby clarifies the issues as detailed hereunder:

2. Section 29 of the CGST Act, read with rule 20 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the "CGST Rules") provides that a taxpayer can apply for cancellation of registration in **FORM GST REG-16** in the following circumstances:

a. Discontinuance of business or closure of business;

b. Transfer of business on account of amalgamation, merger, de-merger, sale, lease or otherwise;

c. Change in constitution of business leading to change in PAN;

d. Taxable person (including those who have taken voluntary registration) is no longer liable to be registered under GST;

e. Death of sole proprietor;

f. Any other reason (*to be specified in the application*).

3. Rule 20 of the CGST Rules provides that the taxpayer applying for cancellation of registration shall submit the application in **FORM GST REG-16** on the common portal within a period of 30 days of the '*occurrence of the event warranting the cancellation*'. It might be difficult in some cases to exactly identify or pinpoint the day on which such an event occurs. For instance, a business may be transferred/disposed over a period of time in a piece meal fashion. In such cases, the 30-day deadline may be liberally interpreted and the taxpayers' application for cancellation of registration may not be rejected because of the possible violation of the deadline.

4. While initiating the application for cancellation of registration in **FORM GST REG-16,** the Common portal captures the following information which has to be mandatorily filled in by the applicant:

a) Address for future correspondence with mobile number and email address;

b) Reason for cancellation;

c) Date from which cancellation is sought;

d) Details of the value and the input tax/tax payable on the stock of inputs, inputs contained in semi-finished goods, inputs contained in finished goods, stock of capital goods/plant and machinery;

e) In case of transfer, merger of business, etc., particulars of registration of the entity in which the existing unit has been merged, amalgamated, or transferred (including the copy of the order of the High Court / transfer deed);

f) Details of the last return filed by the taxpayer along with the ARN of such return filed.

On successful submission of the cancellation application, the same appears on the dashboard of the jurisdictional officer.

5. Since the cancellation of registration has no effect on the liability of the taxpayer for any acts of commission/omission committed before or after the date of cancellation, the

proper officer should accept all such applications within a period of 30 days from the date of filing the application, except in the following circumstances:

a) The application in **FORM GST REG-16** is incomplete, i.e. where all the relevant particulars, as detailed in para 4 above, have not been entered;

b) In case of transfer, merger or amalgamation of business, the new entity in which the applicant proposes to amalgamate or merge has not got registered with the tax authority before submission of the application for cancellation.

In all cases other than those listed at (a) and (b) above, the application for cancellation of registration should be immediately accepted by the proper officer and the order for cancellation should be issued in **FORM GST REG-19** with the effective date of cancellation being the same as the date from which the applicant has sought cancellation in **FORM GST REG-16.** In any case the effective date cannot be a date earlier to the date of application for the same.

6. In situations referred to in (a) or (b) in para 5 above, the proper officer shall inform the applicant in writing about the nature of the discrepancy and give a time period of seven working days to the taxpayer, from the date of receipt of the said letter, to reply. If no reply is received within the specified period of seven working days, the proper officer may reject the application on the system, after giving the applicant an opportunity to be heard, recording reasons for rejection in the dialog box that opens once the „Reject button is chosen. If reply to the query is received and the same on examination is found satisfactory, the Proper Officer may approve the application for cancellation and proceed to cancel the registration by issuing an order in **FORM GST REG-19**. If reply to the query is found to be not satisfactory, the Proper Officer may reject the application for cancellation on the system, after giving the applicant an opportunity to be heard. The Proper Officer must also record his reasons for rejection of the application in the dialog box that opens when the „Reject button is chosen.

7. Section 45 of the CGST Act requires every registered person (other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52) whose registration has been cancelled, to file a final return in **FORM GSTR-10**, within three months of the effective date of cancellation or the date of order of cancellation, whichever is later. The purpose of the final return is to ensure that the taxpayer discharges any liability that he/she may have incurred under sub-section (5) of the section 29 of the CGST Act. It may be noted that the last date for furnishing of **FORM GSTR-10** by those taxpayers whose registration has been cancelled on

or before 30.09.2018 has been extended till 31.12.2018 *vide* notification No. 58/2018 – Central Tax dated the 26th October, 2018.

8. Further, sub-section (5) of section 29 of the CGST Act, read with rule 20 of the CGST Rules states that the taxpayer seeking cancellation of registration shall have to pay, by way of debiting either the electronic credit or cash ledger, the input tax contained in the stock of inputs, semi-finished goods, finished goods and capital goods or the output tax payable on such goods, whichever is higher. For the purpose of this calculation, the stock of inputs, semi-finished goods, finished goods and capital goods shall be taken as on the day immediately preceding the date with effect from which the cancellation has been ordered by the proper officer i.e. the date of cancellation of registration. However, it is clarified that this requirement to debit the electronic credit and/or cash ledger by suitable amounts should not be a prerequisite for applying for cancellation of registration. This can also be done at the time of submission of final return in **FORM GSTR-10.** In any case, once the taxpayer submits the application for cancellation of his/her registration from a specified date, he/she will not be able to utilize any remaining balances in his/her electronic credit/cash ledgers from the said date except for discharging liabilities under GST Act upto the date of filing of final return in **FORM GSTR-10**. Therefore, the requirement to reverse the balance in the electronic credit ledger is automatically met. In case it is later determined that the output tax liability of the taxpayer, as determined under sub-section (5) of section 29 of the CGST Act, was greater than the amount of input tax credit available, then the difference shall be paid by him/her in cash. It is reiterated that, as stated in sub-section (3) of section 29 of the CGST Act, the cancellation of registration does not, in any way, affect the liability of the taxpayer to pay any dues under the GST law, irrespective of whether such dues have been determined before or after the date of cancellation.

9. In case the final return in **FORM GSTR-10** is not filed within the stipulated date, then notice in **FORM GSTR-3A** has to be issued to the taxpayer. If the taxpayer still fails to file the final return within 15 days of the receipt of notice in **FORM GSTR-3A**, then an assessment order in **FORM GST ASMT-13** under section 62 of the CGST Act read with rule 100 of the CGST Rules shall have to be issued to determine the liability of the taxpayer under sub-section (5) of section 29 on the basis of information available with the proper officer. If the taxpayer files the final return within 30 days of the date of service of the order in **FORM GST ASMT-13**, then the said order shall be deemed to have been withdrawn. However, the liability for payment of interest and late fee shall continue.

10. Rule 68 of the CGST Rules requires issuance of notices to registered persons who fail to furnish returns under section 39 (**FORM GSTR-1, FORM GSTR-3B and FORM GSTR-4**), section 44 (Annual Return – **FORM GSTR-9 / FORM GSTR-9A / FORM GSTR-9C**), section 45 (Final Return – **FORM GSTR-10**) or section 52 (TCS Return – **FORM GSTR-6**). It is clarified that issuance of notice would not be required for registered persons who have not made any taxable supplies during the intervening period (i.e. from the date of registration to the date of application for cancellation of registration) and has furnished an undertaking to this effect.

11. It is pertinent to mention here that section 29 of the CGST Act has been amended by the CGST (Amendment) Act, 2018 to provide for *"Suspension"* of registration. The intent of the said amendment is to ensure that a taxpayer is freed from the routine compliances, including filing returns, under GST Act during the pendency of the proceedings related to cancellation. Although the provisions of CGST (Amendment) Act, 2018 have not yet been brought into force, it will be prudent for the field formations not to issue notices for non-filing of return for taxpayers who have already filed an application for cancellation of registration under section 29 of the CGST Act. However, the requirement of filing a final return, as under section 45 of the CGST Act, remains unchanged.

12**.** It may be noted that the information in table in **FORM GST REG-19** shall be taken from the liability ledger and the difference between the amounts in Table 10 and Table 11 of **FORM GST REG-16**.

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

14. Difficulty, if any, in implementation of the above instructions may please be brought to the notice of the Board. Hindi version would follow.

(Upender Gupta)
Commissioner (GST)

CIRCULAR No.70

Circular No. 70/44/2018 -GST

F. No. CBEC/20/16/04/2017-GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing

New Delhi, Dated the 26th October, 2018

To,

The Principal Chief Commissioners/ Chief Commissioners / Principal Commissioners / Commissioners of Central Tax (All)/

The Principal Directors General / Directors General (All)

The Principal CCA, CBIC

Madam/Sir,

Subject: Clarification on certain issues related to refund – Reg.

The Board is in receipt of representations seeking clarification on certain issues relating to refund. In order to clarify these issues and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the "CGST Act"), hereby clarifies the issues as detailed hereunder:

2. **Status of refund claim after issuance of deficiency memo and re-credit of electronic credit ledger:**

2.1 Para 7.1 of circular No. 59/33/2018-GST dated the 4th September, 2018 clarifies the intent of law in cases where a deficiency memo is issued in respect of a refund claim. In para 7.2 of the said circular, the practise being followed in the field formations was elaborated and it was clarified that show cause notices are not required to be issued (and consequently no orders are required to be issued in **FORM GST RFD-04/06**) in cases where refund application is not re-submitted after the issuance of a deficiency memo (in **FORM GST RFD-03**). It was also clarified that once a deficiency memo has been issued against an application for refund, the

amount of Input Tax Credit debited under sub-rule (3) of rule 89 of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the "CGST Rules") is required to be re-credited to the electronic credit ledger of the applicant by using **FORM GST RFD-01B** and the taxpayer is expected to file a fresh application for refund.

2.2 The issue has been re-examined and it has been observed that presently the common portal does not allow a taxpayer to file a fresh application for refund once a deficiency memo has been issued against an earlier refund application for the same period. Therefore, it is clarified that till the time such facility is developed, taxpayers would be required to submit the rectified refund application under the earlier Application Reference Number (ARN) only. Thus, it is reiterated that when a deficiency memo in **FORM GST RFD-03** is issued to taxpayers, re-credit in the electronic credit ledger (using **FORM GST RFD-01B**) is not required to be carried out and the rectified refund application would be accepted by the jurisdictional tax authorities with the earlier ARN itself. It is further clarified that a suitable clarification would be issued separately for cases in which such re-credit has already been carried out.

3. **Allowing exporters who have received capital goods under EPCG to claim refund of IGST paid on exports:**

3.1 Sub-rule (10) of Rule 96 of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as "said sub-rule"), restricts exporters from availing the facility of claiming refund of IGST paid on exports in certain scenarios. It was intended that exporters availing benefit of certain notifications would not be eligible to avail the facility of such refund. However, representations have been received requesting that exporters who have received capital goods under the Export Promotion Capital Goods Scheme (hereinafter referred to as "EPCG Scheme"), should be allowed to avail the facility of claiming refund of the IGST paid on exports. GST Council, in its 30th meeting held in New Delhi on 28th September, 2018, had accorded approval to the proposal of suitably amending the said sub-rule along with sub-rule (4B) of rule 89 of the CGST Rules prospectively in order to enable such exporters to avail the said facility notification No. 54/2018 – Central Tax dated the 9th October, 2018 has been issued to carry out the changes recommended by the GST Council. Alongside the amendment carried out in the said sub-rule through the notification No. 39/2018- Central Tax dated 4th September, 2018 has been rescinded vide notification No. 53/2018 – Central Tax dated the 9th October, 2018.

3.2 For removal of doubts, it is clarified that the net effect of these changes would be that any exporter who himself/herself imported any inputs/capital goods in terms of notification Nos. 78/2017-Customs and 79/2017-Customs both dated 13th October, 2017 shall be eligible to claim refund of the IGST paid on exports till the date of the issuance of the notification No. 54/2018 – Central Tax dated the 9th October, 2018 referred to above.

3.3 Further, after the issuance of notification No. 54/2018 – Central Tax dated the 9th October, 2018 , exporters who are importing goods in terms of notification Nos. 78/2017-Customs and 79/2017-Customs both dated 13th October, 2017 would not be eligible for refund of IGST paid on exports as provided in the said sub-rule. However, exporters who are receiving capital goods under the EPCG scheme, either through import in terms of notification No. 79/2017-Customs dated 13th October, 2017 or through domestic procurement in terms of notification No. 48/2017-Central Tax, dated 18th October, 2017, shall continue to be eligible to claim refund of IGST paid on exports and would not be hit by the restrictions provided in the said sub-rule. All clarifications issued in this regard vide any Circular issued earlier are hereby superseded.

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

5. Difficulty, if any, in implementation of this Circular may please be brought to the notice of the Board. Hindi version would follow.

(Upender Gupta)
Commissioner (GST)

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