



HELPING CLIENTS KEEP MORE OF WHAT THEY EARN

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## **GST, Customs and DGFT Updates**

**From 08.04.2021 to 21.04.2021**

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**GSTiDEA**

Knowledge Portal on Goods & Services Tax

# GST

# Implementation of PMT-03 to re-credit the ITC sanctioned as refund



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- A taxpayer is entitled to refund of tax wrongly paid or paid in excess (other than zero rated supply), in the same mode by which the tax liability was discharged i.e. if the tax paid by partly debiting credit ledger and partly cash ledger the refund shall be sanctioned in same proportion.
- The cash part must be sanctioned and credit to bank account by issuance RFD-05 and credit part re-credited in electronic ledger by PMT-03.
- PMT -03 currently available in online refund module only for re-crediting the rejected amount that has been debited at the time of filling refund application.
- The PMT-03 functionality available at present in the online refund module is only for re-crediting of the rejected amount that has been debited at the time of filing of refunds. In order to enable the operationalisation of re-crediting of ITC sanctioned as refund towards tax wrongly paid or paid in excess by debiting the credit ledger, a new enhanced PMT-03 functionality has been developed and deployed in the system.
- This new functionality is applicable only to the following 4 types of refund as provided in the referred circular
  1. Refund of excess payment of tax
  2. Refund of tax paid on intra state supply which is subsequently held to be inter state supply and vice versa
  3. Refund on account of assessment /provisional assessment/appeal/any other order;
  4. Refund on account of any other ground or reason.

## Auto Generation of Form GSTR-2B, for the QRMP Scheme

- Form GSTR2B contains details of filed IFFs and filed Form GSTR1.
- Form GSTR2B has two sections of ITC i.e. ITC available and not available.
- Taxpayers can view and download their system generated Quarterly GSTR2B for Jan-Mar,2021 quarter, by clicking on Auto-drafted ITC statement for the quarter on 14<sup>th</sup> April, by selecting the last month of the quarter.
- To view Form GSTR2B of a particular month , taxpayer has an option to select appropriate month, from the view drop-down to view that month's data.
- A hyperlink 'view advisory' has also been provided, which on clicking displays the criteria /cut off dates considered as quarterly GSTR2B as a pop-up, with details of supplies from.

## Auto Population of ITC In Form GSTR3B for the QRMP taxpayers



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- Figures of ITC available and ITC to be reversed will now be auto-populated in Table 4 of Form GSTR3B, for the QRMP taxpayers, from their system generated quarterly Form GSTR2B.
- On the GSTR3B dashboard page, an additional button 'System computed GSTR-3B' has also been provided, by clicking which system computed Form GSTR3B can be downloaded in PDF format.
- Taxpayers can edit the auto –drafted values as per their records and save the updated details.
- The system will show a warning message to taxpayers in case ITC available is increased by more than 5% or ITC to be reversed is reduced even partially, by them. However, the system will not stop the filling of Form GSTR3B in such cases.

## Writ Petition: Supreme Court Judgment

### **Order passed by Joint Commissioner on behalf of commissioner cannot be subject to appeal under Section 107 of the CGST Act.**

#### ❑ **Facts:-**

- The appeal arises from judgement of High Court of Himachal Pradesh , Court dismissed the writ challenging order of provisional attachment on the ground that an alternative remedy is available.
- The order states that applicant was found to be involved in fraudulent availment of ITC. The order of provisional attachment and the order passed by the Commissioner delegating his power to third Respondent, were challenged by applicant before HC.
- However when adequate remedy was not available the petitioner moved on to the Supreme Court demanding relief.
- While disposing the writ Court held that the respondent (Commissioner) was clearly misconceived in law in coming into conclusion that he had a discretion on whether or not to grant an opportunity of being heard;
- The Commissioner is duty bound to deal with the objections to the attachment by passing a reasoned order which must be communicated to the taxable person whose property is attached;
- On the above ground the writ was allowed and the order was set aside.

## Writ Petition: Supreme Court Judgment

### ❑ Held:-

- The power to order a provisional attachment of the property of the taxable person include a bank account is draconian in nature and the condition which are prescribed by the statute for a valid exercise of the power must be strictly fulfilled.
- The power of ordering a provisional attachment must be preceded by the formation of an opinion by the Commissioner that it is necessary to do for the purpose of protecting the interest of government revenue.
- The expression “necessary so to do for protecting government revenue ” implicates that the interest of the government revenue cannot be protected without ordering a provisional attachment ;
- In the fact of the case, there was a clear non-application of mind by the Joint Commissioner to the provisions of Section 83, rendering the provisional attachment illegal.
- There has been breach of Rule 159(5) and the Commissioner was clearly misconceived in law . The Commissioner is duty bound to deal with the objection to the attachment by passing a reasoned order which must be communicated to the taxable person whose property is attached.
- The appeal allowed by setting aside the impugned judgement and order of the High Court.

## **Whether input services should be considered as a part of refund calculation for IDS refund**

### **□ Facts:-**

- Revenue is in appeal against Gujarat High Court wherein it is held that Explanation (a) to Rule 89(5) of the CGST rules 2017 is ultra vires. However the contrary view has been taken by the High Court of Madras.
- The word “Input tax credit” is defined in Section 2(63) means the credit of input tax. The word “input tax” is defined in Section 2(62), whereas the word “input” is defined in Section 2(59) means any goods other than capital goods.
- Input service” as per Section 2(60) means any service used or intended to be used by a supplier. Whereas “input tax” as defined in section 2(62) means the tax charged on any supply of goods or services or both made to any registered person.
- Thus “input” and “input service” are both part of the “input tax” and “input tax credit”. Therefore, as per provision of sub-section 3 of Section 54 of the CGST Act, 2017, the legislature has provided that registered person may claim refund of “any unutilised input tax”.
- Therefore, by way of Rule 89(5) of the CGST Rules, 2017, such claim of the refund cannot be restricted only to “input” excluding the “input services” from the purview of “input tax credit”.



## Writ Petition: Supreme Court Judgment

### □ Held:-

- Since a large number of petitions are pending in the High Courts on the same issue. It is appropriate that Bench lists the present batch of cases at a early date.
- Post all the cases before final hearing which will held on 28<sup>th</sup> April 2021.

# Writ Petition: Punjab and Haryana High Court Judgment



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## **Issuance of bogus bills for passing ITC - Matter already stands investigated – No useful purpose would be served by keeping the petitioners behind the bars - bail granted.**

### **□ Facts:-**

- Allegation is that the petitioners had issued bogus bills showing false Input Tax Credit through bogus firms created by them and petitioners pray for grant of regular bail.
- They have been accused of causing a loss to the Government by way of tax evasion by creating a chain of firms and showing sales and purchase without there being any actual and physical transactions.
- Petitioners claim that they have falsely been implicated and they have been in custody for the last more than 08 months and they are now not required for any investigation purposes because the case is based on documentary evidence and that no useful purpose would be served by keeping them in custody.

### **□ Held:-**

- In the above case matter already stand investigated and petitioners have been in custody since June 2020 it takes time to conclude, without going into the merits of the case bench finds that no useful purpose would be served to keep the petitioners behind the bars.
- All the petitions are allowed and the petitioners are directed to be released on regular bail on executions of surety/personal bonds amounting to Rs 10 lakhs each the satisfaction of trial court/duty magistrate concerned.

# TRANSITIONAL CREDIT

## Writ Petition: Madras High Court Judgment

### **GST - Transitional credit - No question of assesses missing the bus - Respondent department directed to facilitate the uploading of Form TRAN-1.**

#### **❑ Facts-**

- Petitioners said due to technical glitches the petitioners could not file the said form TRAN-1. Petitioners claims that they have approached the office of second respondent in person at least two occasions to present the form TRAN-1 manually and submitted a representation.
- But because of no response the present petition counsel for the revenue submitted that petitioner had already missed the bus and therefore no relief can be granted in thus writ proceedings.
- Form TRAN-1 is to be filed by registered persons under GST , may be registered or unregistered under old regime was required be filed by December 27,2017 to carry forward the input tax credit.

#### **❑ Held:-**

- Board places the onus upon the assessed to establish a demonstrable glitch in the portal. The requirement for an assesses to establish technical difficulty as expressed in circular.
- It is therefore satisfied that the petitioner has made out a clear case for grant of relief. The uploading should be allowed and the exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order. The Writ Petition is allowed accordingly.

# Writ Petition: Madras High Court Judgment



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## **GST - Petitioners are entitled to transition TDS under the TNVAT Act in terms of Section 140 of the TNGST 2017:**

### **□ Facts:-**

- Petitioners challenged the notice issued by the responded Commercial Tax Authorities proposing denial of transition of credit of tax deducted at source in terms of section 13 of Tamil Nadu value added tax act,2006 in 10 cases and order confirming the proposals.
- But in 13 cases Factual position is that all petitioners, in the era of TNVAT, have accumulated credit of TDS and have also been permitted to carry forward the same from year to year .
- The petitioners wants their accumulated TDS to be used for setoff against output GST tax liabilities but same has been denied.

### **□ Held:-**

- As per Article 265 no amount is collected except by the authority of law . Whenever the payer deducts any amount payable to a payee/ contractee , it is with the full authority of the law.
- The purpose of such deduction is to facilitate advance payment of tax. It is clear from the fact that whatever is deducted is immediately credited to the account of deductee and is automatically reflected as tax credit.
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- As per Section 140 it is clear that if the amount collected/deducted has been captured in the returns of turnover filed under previous law then such amount included for the purpose of transition.

# CENTRAL SALES TAX

## Writ Petition: Madras High Court Judgment

### CST Act, 1956 - Benefit of concessional rate is available to both selling and purchasing dealers by way of inter-state sales.

#### ❑ Facts:-

- Assesses filed present writ petition for issuance of "C" forms under the CST Act for purchase of High Speed Diesel from suppliers in other States.
- Assessee expressed difficulty in obtaining 'C' forms under provisions of CST Act in order to avail concessional benefit of tax for purchase of High Speed Diesel from suppliers in other States.
- **C form** is a certificate issued by the registered purchaser of the goods of any state to the registered seller of other state. In '**C forms**' the value of purchases is declared by the purchaser. The lesser amount of Central **Sales Tax** is charged on central **sale** if the purchaser issues the '**C form**'.

#### ❑ Held:-

- High Court allowed that the benefit of concessional rate is available to both selling and purchasing dealers by way of inter state sales as per CST Act,1956 but as per sub-sections (1) and (2) of section 7 of the CST act the assessee should have registration under CST Act.

## Writ Petition: Madras High Court Judgment

### **CST Act, 1956 - Benefit of concessional rate is available to both selling and purchasing dealers by way of inter-state sales.**

#### ❑ **Held:-**

- The benefit of concessional rate was available to dealers who purchased High Speed Diesel from neighbouring States by way of inter-state sales.
- The definition of goods under CST Act restrict it to six commodities specified under Sec2(d) did not mean that entire CST act is amended. As per section 2(d) definition of goods is it includes all materials, articles, commodities and all other kinds of movable property, but does not include actionable claims, stocks, shares and securities.
- High Court allowed that the benefit of concessional rate is available to both selling and purchasing dealers by way of inter state sales as per CST Act,1956 but as per sub-sections (1) and (2) of section 7 of the CST act the assessee should have registration under CST Act.



# ADVANCE RULINGS

## Appellate Authority of Advance Rulings : AAAR

### Liability to pay GST on RCM if amount is paid as interest on late payment of invoice of imported goods

#### ❑ Facts:-

- Applicant engaged in the business of manufacturing and supplying transformer components.
- They importing goods from their holding company located at Turkey for which the payment terms is 120 days from the date of invoice for import of goods and if the company at India does not pay amount in due date holding company charged interest on late payment.
- Whether liability to pay GST on Reverse charge arises if amount is paid as interest on late payment of invoices of imported goods?
- Whether liability to pay GST on Reverse charge arises if amount is paid for reimbursement of Stamp tax paid as a pure agent by M/s Enpay, Turkey on our behalf?

## **Liability to pay GST on RCM if amount is paid as interest on late payment of invoice of imported goods**

### **□ Held:-**

- As per Section 15 , value of supply includes ‘interest or late fee or penalty for delayed payment’ , it is therefore concluded that payment of interest by applicant will be covered under the supply of service and is liable to GST.
- It can only be exempted when the transaction is treated as pure agent.
- On the basis of documents submitted it was held that since there was no copy of agreement and the amount was not separately reflected in invoice, thus it couldn't form part of pure agent and should be chargeable to GST.
- Therefore applicant is liable to pay GST on RCM for amount paid as interest on late payment of invoice in respect of import goods and the rate of GST will be same as the IGST rate.
- Applicant is liable to pay GST on RCM on amount paid for reimbursement of stamp tax paid by the supplier M/s Enpay Turkey on behalf of applicant

## GST on supply of goods and service for setting up solar project

### ❑ Facts:-

- Applicant engaged in the business of manufacturing of Electronics & Telecom and Power & Distribution Transformers . Applicant seeks an advance ruling as to whether Aluminium Foil winding inverted duty transformer and parts of transformer for setting up solar project liable to GST at the rate of 5% .
- Applicant also state as services are also included for which recipient of service issued separate service order for supervision of erection, testing and commissioning of transformer supplied by applicant and applicant chare 18% GST on such service.
- Applicant want to know whether two different rate should be charged for this ?

### ❑ Held:-

- The applicant is liable to pay GST on the total value of both the purchase order i.e. supply of goods and service in terms of Entry No. 01/2017 –CT (Rate) dated 28.06.2017.
- As per the explanation of Notification dated 31.12.2018 states that out of the gross value of supply ,70% shall be deemed to be on account of goods and 30% deemed to be on account of service – Accordingly the effective rate come to 8.9%.

## **Sub-contractor of a sub-contractor is not eligible for concessional GST rate of 12%**

### **□ Facts:-**

- Applicant is a proprietary concern registered under GST and engaged in the business of execution of works contract.
- The applicant has sought to advance ruling in respect of the following question:-whether concessional rate of GST shall apply to the sub-contractor who is sub-contracted from a sub-contractor of main contractor, the main contractor being provider of works contract to government entity?
- The applicant states that he has been allocated by the first sub-contractor which in turn is sub-contracted by main contractor who had been awarded the contract by Govt. entity.
- The applicant is of the opinion that the services provided by him falls under clause (ix) to serial number of 3 of Notification 11/2017-Central Tax (Rate) dated 28.06.2017 and the concessional rate of tax @12% shall apply to him.

## **Sub-contractor of a sub-contractor is not eligible for concessional GST rate of 12%**

### □ **Held:-**

- In the instant case, it is seen that there is no privity of contract between the applicant and the contractee.
- The original contract provided by contractee to main contractor. Hence as per the notification, any sub-contractor providing services to main contractor by executing the works mentioned in the serial number 3 of clause (iii) and clause(vi) which is exclusively covered under the clause (ix) of serial no.3 of Notification No.11/2017-Central Tax (Rate) dated 28.06.2017 will be exempted from payment of GST to contractee
- As there is no privity of contract between applicant and main contractor and the contract is between applicant and sub contractor, the services provided by the applicant is not covered under the said entry.
- The composite supply undertaken by applicant under question is not covered under entry no. 3(iii) or 3(vi) or 3(ix) of the Notification No.11/2017 and hence applicant is not eligible to charge GST at a rate of 12%.
- The applicant has to discharge tax rate 18% under the provision of GST Act.

# Customs

## Anti-dumping Duty (ADD)

Tariff Head	Subject Goods/Country	Then	Now
2905 13 00	<b>Normal Butanol or N-Butyl Alcohol</b> originating in or exported from <b>European Union, Malaysia, Singapore, South Africa and United States of America</b> <sup>1</sup>	-	Anti Dumping Duty will be leviable from 12.04.2021 till 5 years unless revoked or superseded earlier.
2836 60 00	<b>Barium Carbonate</b> originated in or exported from China PR .	Anti dumping duty was leviable up to 21.04.2021 for the mentioned product.	Anti Dumping Duty on the subject goods now being extended up to 20.10.2021.

1. Notification No. 21/2021 -Customs (ADD) dated 12.04.2021  
 2. Notification No. 22/2021 -Customs (ADD) dated 15.04.2021



## 1. Exemptions for Remdesivir Vaccine and its Raw Materials

CBIC vide Notification No. 27/2021–Customs dated 20.04.21 issued to exempt all the duties levy on import of the Remdesivir injections and its ingredients falling under chapter 29 and 30 of Customs Tariff Act up to **31.10.2021**.

## Writ Petition: High Court Judgement

### **Show Cause Notice Challenged in writ issued by Directorate of Revenue Intelligence as per Hon'ble Supreme Court landmark decision in case of M/s Canon India Private Limited.**

#### **❑ Facts**

- Petitioner challenges the Show Cause Notice dated 26th September, 2019 issued subsequent to the arrest, search and seizure dated 24/25 April, 2019 and also seeks setting aside of the proceedings under Sections 104, 100, 102, 105, 110 and 124 of the Customs Act and the proceedings emanating therefrom, in view of the decision of the Supreme Court rendered in M/s Canon India Private Limited (2021-TIOL-123-SC-CUS-LB)

#### **❑ Held**

- Notices were issued to the respondent and petition to be listed on 26.07.2021.

# DGFT

## MEIS Late Cut for F.Y 2019-2020

DGFT vide Public Notice No. 53/2015-2020 dated 09.04.2021 had extended relaxation for the MEIS scheme for Shipping Bills having Let Export Order date from 01.04.2019 to 31.03.2020.

Now MEIS application can be submitted without any late cut till 30.09.2021. If MEIS application cannot be submitted by **30.09.2021** then the normal provisions of late cut will be apply.

## Miscellaneous Updates

1. Export of **Remdesivir injections and its ingredients** falling under Customs Tariff chapter 29 and 30 has been prohibited from 11.04.2021.

## Writ Petition: High Court Judgement

### Import Validity of Pigeon Peas beyond F.Y.2017-2018 wherein DGFT issued license for quota of F.Y 2017-2018<sup>1</sup>

#### ❑ Facts

- Petitioner were being issued Registration Certificate for import of Pigeon Peas under quota system for F.Y 2017-2018.
- Import under the license were being taken effect in 2020 as per contractual limitations however the same could not be done for Covid pandemic and it is imported in Sep 2020. Petitioner also submitted that the import validity has been extended till 31.03.2021 and the imports were effected before 31.03.2021.
- However, Customs authority were not clear on the validity of import license and were not allowed the import for home consumption accordingly petitioner warehoused the goods and cleared some portion of goods.
- DGFT had in response to the petition has replied that the imports if allowed under license then it will be against the spirit of FTP and license issued only for F.Y 2017-18 were it can cleared its imports as per quota allowed.

#### ❑ Held

- Hon'ble Bombay High Court held that Para 1.07 of Chapter 1 of the FTP 2015- 2020 states that DGFT has a commitment to function as a facilitator of exports and imports.

## Writ Petition: High Court Judgement

- Focus is on good governance, which depends on efficient, transparent and accountable delivery systems. is required to act as a facilitator which is however not seen in the present case. It further states that in order to facilitate international trade, DGFT consults various Export Promotion Councils as well as Trade and Industry bodies from time to time. Thus the DGFT is required to act as a facilitator which is however not seen in the present case as it has very delayed response.
- Further Hon'ble Court mentioned that "Paragraph No.9.43 defines 'quota' to mean the quantity of goods of a Specific kind that is permitted to be imported without restriction or imposition of additional duties. Therefore the objection raised by respondent Nos.4 to 6 that the notification dated 05.08.2017 and the two trade notices dated 11.08.2017 and 31.08.2017 would restrict the import of Pigeon Peas only upto 31.03.2018 stands squarely rejected".
- In conclusion Hon'ble High Court allowed the petition of and issued order for clearance of goods.

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