

Monthly News Letter

December, 2020

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NOTIFICATIONS AND CIRCULARS

1. Notification No. 90/2020 – Central Tax Dated 1st December, 2020

Ministry of Finance, CBIC vide Notification No. 90 of 2020-Central tax dated 01st of December, 2020 has notified the amendment to Notification No. 12/2017-CT dated 28th June, 2017 In the said notification, after the first proviso, a new proviso has been inserted wherein it has been made mandatory on certain chemical names that its HSN shall be mention in eight number of digit in the tax invoice.

2. Notification No. 91/2020 – Central Tax Dated 14th December, 2020

Ministry of Finance, CBIC vide Notification No. 91 of 2020-Central tax dated 14th of December, 2020 has made the following further amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 35/2020-Central Tax, dated the 3rd April, 2020, In the said notification, in the first paragraph, in the proviso to clause (i),

- (i) for the words, figures and letters “29th day of November, 2020”, the words, figures and letters “30th day of March, 2021” shall be substituted.
- (ii) for the words, figures and letters “30th day of November, 2020”, the

words, figures and letters “31st day of March, 2021” shall be substituted

3. This notification shall be deemed to have come into force with effect from 1st day of December, 2020.

3. Notification No. 93/2020 – Central Tax Dated 22nd December, 2020

Ministry of Finance, CBIC vide Notification No. 93 of 2020-Central tax dated 22nd of December, 2020 hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 73/2017- Central Tax, dated the 29th December, 2017, In the said notification, after the third proviso, the following proviso shall be inserted,

namely: –

“Provided also that the late fee payable for delay in furnishing of FORM GSTR-4 for the Financial Year 2019-20 under section 47 of the said Act, from the 1st day of November, 2020 till the 31st day of December, 2020 shall stand waived for the registered person whose principal place of business is in the Union Territory of Ladakh.”.

4. *Notification No. 94/2020 – Central Tax Dated 22nd December, 2020*

The Central Board of Indirect Tax and Custom (CBIC) has released Notification 94/2020-Central Tax dated: 22.12.2020 where the CGST Rules were further amended. These amendments are made to the Rules 21, 36 & 86.

As per Sl. No 4 of the Notification, the Rule 21 was amended and three new clauses were inserted as 21(e); 21(f) & 21(g) which reads as below:

“(e) avails input tax credit in violation of the provisions of section 16 of the Act or the rules made thereunder; or

(f) furnishes the details of outward supplies in FORM GSTR-1 under section 37 for one or more tax periods which is in excess of the outward supplies declared by him in his valid return under section 39 for the said tax periods; or

(g) violates the provision of rule 86B.”

ii. Further the Rule 21A(2) also amended by omitting the words “,after affording the said person a reasonable opportunity of being heard,” which enables the department to suspend the GSTN without giving opportunity for Personal hearing of the Assessee.

iii. A new proviso inserted for the Rule 21A (4) as below:

“Provided that the suspension of registration under this rule may be revoked by the proper officer, anytime during the pendency of the proceedings for cancellation, if he deems fit.”

iv. Second amendment in this

Notification is with regard to Rule 36(4). With this amendment, the tolerance limit was reduced from 10% to 5%. Hence an Assessee can avail ITC only upto 105% of his Suppliers filed data in their respective GSTR1, which is populated as GSTR2A / GSTR2B for the Assessee.

The next amendment in this Notification is the new insertion of Rule 86B which reads as below:

“86B. Restrictions on use of amount available in electronic credit ledger.- Notwithstanding anything contained in these rules, the registered person shall not use the amount available in electronic credit ledger to discharge his liability towards output tax in excess of ninety-nine per cent. of such tax liability, in cases where the value of taxable supply other than exempt supply and zero-rated supply, in a month exceeds fifty lakh rupees”

The above Rule is subject to the following provisions:

“Provided that the said restriction shall not apply where –

(a) the said person or the proprietor or karta or the managing director or any of its two partners, whole-time Directors, Members of Managing Committee of Associations or Board of Trustees, as the case may be, have paid more than one lakh rupees as income tax under the Income-tax Act, 1961(43 of 1961) in each of the last two financial years for which the time limit to file return of income under subsection (1) of section 139 of the said Act has expired; or

(b) the registered person has received a refund amount of more than one lakh rupees in the preceding financial year on account of un-utilized input tax credit under clause (i) of first proviso of sub-

section (3) of section 54; or

(c) the registered person has received a refund amount of more than one lakh rupees in the preceding financial year on account of unutilised input tax credit under clause (ii) of first proviso of sub-section (3) of section 54; or

(d) the registered person has discharged his liability towards output tax through the electronic cash ledger for an amount which is in excess of 1% of the total output tax liability, applied cumulatively, upto the said month in the current financial year; or

(e) the registered person is –

(i) Government Department; or

(ii) a Public Sector Undertaking; or

(iii) a local authority; or

(iv) a statutory body:

Provided further that the Commissioner or an officer authorised by him in this behalf may remove the said restriction after such verifications and such safeguards as he may deem fit.”

With this new Rule 86B, an assessee should pay 1% of his liability mandatorily through CASH ledger even if he has adequate ITC in his CREDIT ledger.

The utilization of ITC matrix already left with accumulation of SGST Tax, and this new amendment will further accumulate the ITC for 1% of the total liability every month into the Credit Ledger.

CIRCULAR

➤ **Circular No. 144/14/2020- GST dated 15.12.2020**

Vide Circular No.63/37/2018-GST dated 14th September, 2018 & corrigendum to the said circular dated 6th September 2019, waiver from recording of UIN on the invoices issued by retailers/other suppliers were given to UIN entities till March,2020.

By way of this circular, non-recording of UINs has continued even after 31st March, 2020. Therefore, it has been decided to give waiver from recording of UIN on the invoices issued by the retailers/suppliers, pertaining to the refund claims from April 2020 to March 2021, subject to the condition that the copies of such invoices are attested by the authorized representative of the UIN entity and the same is submitted to the jurisdictional officer.

PRESS RELEASE

EXTENSION OF TIME LIMITS-30th December, 2020

Considering the problems being faced by the taxpayers, it has been decided to provide further time to the taxpayers for furnishing of Income Tax Returns, tax audit reports and declaration under Vivad Se Vishwas Scheme. Further, in order to provide more time to taxpayers to comply under various ongoing proceedings, the dates of completion of proceedings under various Direct Taxes & Benami Acts have also been extended. These extensions are as under:

a. The due date for furnishing of Income Tax Returns for the Assessment Year 2020-21 for the taxpayers (including their partners) who are required to get their accounts audited and companies [for whom the due date, as per the provisions of section 139(1) of the Income-tax Act,1961, was 31st

October, 2020 and which was extended to 30th November, 2020 and then to 31st January, 2021] has been further extended to 15th February, 2021.

b. The due date for furnishing of Income Tax Returns for the Assessment Year 2020-21 for the taxpayers who are required to furnish report in respect of international/specified domestic transactions [for whom the due date, as per the provisions of section 139(1) of the Income tax Act,1961, was 30th November, 2020 and which was extended to 31st January, 2021] has been further extended to 15th February, 2021.

c. The due date for furnishing of Income Tax Returns for the Assessment Year 2020-21 for the other taxpayers [for whom the due date, as per the provisions of section 139(1) of the Incometax Act, 1961, was 31st July, 2020 and which was extended to 30th November, 2020 and then to 31st December, 2020] has been further extended to 10th January, 2021.

d. The date for furnishing of various audit reports under the Act including tax audit report and report in respect of international/specified domestic transaction for the Assessment Year 2020-21 has been further extended to 15th January, 2021.

e. The last date for making a declaration under Vivad Se Vishwas Scheme has been extended to 31st January, 2021 from 31st December, 2020.

f. The date for passing of orders under Vivad Se Vishwas Scheme, which are required to be passed by 30th January, 2021 has been extended to 31st January, 2021.

g. The date for passing of order or issuance of notice by the authorities under the Direct Taxes & Benami Acts which are required to be passed/ issued/ made by 30th March, 2021 has also been extended to 31st March, 2021.

Further, in order to provide relief for the third time to small and middle class taxpayers in the matter of payment of self-assessment tax, the due date for payment of self-assessment tax date is hereby again being extended. Accordingly, the due date for payment of self-assessment tax for taxpayers whose self-assessment tax liability is up to Rs. 1 lakh has been extended to 15th February, 2021 for the taxpayers mentioned in para 4(a) and para 4(b) and to 10th January, 2021 for the taxpayers mentioned in para 4(c).

The Government has also extended the due date of furnishing of annual return under section 44 of the Central Goods and Services Tax Act, 2017 for the financial year 2019-20 from 31st December, 2020 to 28th February, 2021.

CASE LAWS AND ADVANCE RULINGS

Awadkrupa Plastomech Pvt. Ltd. vs. UOI-TS-1129-HC-2020(GUJ)-NT

Gujarat HC directs Revenue to “immediately sanction” IGST refund on export of Rope Making Machine [HSN Code 84794000] i.e. for ‘zero rated supplies’ made vide shipping bills; Accordingly, instructs that “...interest would start accumulating at the rate of 9% and the amount shall be paid accordingly.” in case the principal amount is not sanctioned and paid to assessee within 6 weeks; As IGST refunds were stuck due to mismatch of invoice and shipping bill, assessee in

pursuance of CBIC notification granting exporters an opportunity to rectify errors submitted a concordance table mapping between the GST invoices and Shipping Bill; However, Revenue denied refund of IGST paid by invoking Circular No. 37/2018-Customs dated October 09, 2018 (Circular); HC observes that “Circular is not applicable to the facts of the present case” relying on the decision of Amit Cotton Industries; Explains that the Circular is applicable in a scenario where higher duty drawback option has been availed instead of IGST refund, and points out that in instant case assessee did not avail the said option; Thus holds that the assessee “has claimed drawback of the customs component only for...exports and there arises no question of denying the refund of IGST.....as the Central Excise and Service Tax has been subsumed in the GST....the drawback rates being the same, it represents only the Customs elements, which did not get subsumed in the GST and thus, the assessee cannot be said to have availed double benefit i.e. of the IGST refund and higher duty drawback.”

Bharat Forge Ltd.

Allahabad HC holds that “the mentioning of HSN Code in the tender document itself shall resolve all disputes relating to fairness and transparency in the process of selection of bidder, by providing ‘level playing field’ to all

bidders/tenderers"; Directs (i) Railways and Diesel Locomotive Works (DLW), Varanasi to mention GST rate & HSN in the NIT (Notice Inviting Tender)/bid document for

procurement of 'Turbo Wheel Impeller Balance Assembly' critical to the locomotive run by the Railway and (ii) General Manager, DLW "...to clarify the issue, if any, with the GST authorities relating to the applicability of correct HSN Code of the procurement product" and mention the same in the NIT, "so as to ensure uniform bidding from all participants and to provide all tenderers/bidders a 'Level Playing Field'"; Notes that (i) Petitioner is aggrieved by the fact that after opening of the financial bids, the ranking of bidders was done on the total price (all inclusive price), which was arrived at by adding base price and GST rate and (ii) Top ranking bidders L-1, L-2 and L-3 have classified product under CTH 86 with GST @ 5% whereas the Petitioner due to mentioning of CTH 84 chargeable at 18% ranked at L-4 which has resulted in increase in the margin of purchase preference for more than 20%; Remarks "The fair competition or 'level playing field', would, therefore, be denied to each bidder as someone may bag the tender by quoting lesser rate of GST (lesser GST value), which may result in substantial difference in the total price offered by bidders/tenderers"; Takes a view that "the Courts can certainly examine whether "decision making process" was reasonable, rational, non-arbitrary and violative of Article 14", applies principles of

"non-discrimination" as well as "Level playing field" embodied in Article 14

and Article 19 (1) (g) of the Constitution as well as justified by a line of SC judgments on the scope of judicial review; Debunks Railway's stand that it is not concerned with mis-classification or GST rate by perusing the 'Statutory Variation clause' as a 'disclaimer clause' mentioned in the tender which stipulates mentioning of correct rate of tax in the tender documents; Finds the explanation by Railways as "not satisfactory" as no clarification regarding correct HSN Code or GST rate of the product is given in counter affidavit, deems that Railways "is trying to shift its responsibility...", in as much as, "selection of bidder is made by inclusion of GST value in the base price"; Noting how the classification of HSN Code is integral to the tendering process having an impact on the selection of tenderers or the choice of tenderers while ranking them after opening the financial bids, pulls-up the General Manager, DLW for a response in view of the admission of Railways in the counter affidavit that the offers have to be evaluated based on the GST rates as quoted by each bidder and same will be used to determine the inter-se ranking

Vinod Kumar Murlidhar Chechani
Proprietor of M/s Chechani Trading Co.
vs. State of Gujarat & Ors.- [TS-1113-HC-2020\(GUJ\)-NT](#)

Gujarat HC quashes provisional attachment order concerning

assessee's cash credit account maintained with the Bank; Takes notes that 3 orders of provisional attachment order were made u/s 83 of CGST Act regarding, (i) one Cash Credit account, (ii) one Current Account and, (iii) one Savings Bank; Agrees with assessee's contention that Cash Credit Account cannot be ordered to be attached as such account only enables the assessee to borrow money from the bank for business purposes; Agrees with assessee that, therefore any money given by bank is in the nature of loan or cash credit facility; Finds conformity with HC view in similar circumstances that bank and assessee will not have the debtor-creditor relationship; Accordingly, passes interim order in assessee's favour and lifts provisional attachment order, directs Bank to permit the assessee to operate the Cash Credit Account

Bhawani Textile Thro Proprietor Jayesh Soni vs Asst. Commissioner-[TS-1110-HC-2020\(GUJ\)-NT](#)

Gujarat HC directs Department to pass prompt order in request for the revocation of cancellation of registration under section 30 lying dormant with Revenue; Notes that writ applicant inadvertently applied for cancellation in Form REG-16 and before writ-applicant could rectify, the Department has cancelled the registration and reversed the balance available in the electronic credit ledger through GSTR 3B; Further notes that, no decision has been taken by the authority till date due to which writ-applicant has not been able to avail the credit which was reversed; Directs Commercial Tax Officer, GST to immediately look into the two applications filed u/s 30 and pass appropriate order within 8 days after giving a hearing opportunity to the writ applicant

In the matter of Tokyo Electric Power Co.-[TS-1106-AAR-2020-NT](#)

Odisha AAR holds that consultancy services

rendered to Odisha Power Transmission Corporation Ltd. (OPTCL) by Applicant (a Japan based company) is not import of service, therefore liable to GST; Perusing the contract, notes that OPTCL has provided an office to the consultant, the maintenance cost of which is borne by OPTCL and the scope of services includes technology transfer for the outdoor GIS O&M and GIS operation Manual preparation through experts/sub-station Engineers of the Applicant; Notes that experts maintain suitable structures in terms of human and technical resources at the sites of OPTCL which are fixed establishments indicating sufficient degree of permanence as per section 2 (7), and thus, concludes that 'location of supplier' in terms of section 2(15) should be India; Hence, debunks Applicant's contention that services supplied would be covered under Entry 1 of Notification No. 10/2017- Integrated Tax (Rate) dated June 28, 2017 and OPTCL shall be liable to tax under reverse charge mechanism and therefore applicant is exempted from obtaining registration; Observes that consultancy services to OPTCL is not import of service under section 2(11) of the IGST Act whereby the Engineer/expert belonging to the Applicant is to be treated as supplier located in India and made liable to pay GST, and obtain registration under OGST Act and CGST Act

In the matter of Prettle Automotive Pvt Ltd-[TS-1096-AAR-2020-NT](#)

Maharashtra AAR holds that activity of imparting training to students, unskilled workers etc. by an Indian Subsidiary pursuant to financial-aid received under Germany's economic programme for developing countries is supply of service classifiable under SAC 999792 under Notification-11/2017 - Central Tax (Rate) dated June 28, 2017; Notes that applicant has entered into Service contract with its German holding company (Prettl GmbH) to receive financial assistance under a

sustainable economic development programme called “development programme” by virtue of which applicant is to build training centers for imparting technical training and provide training to apprentices, students and

unskilled workers to become mechanics, electricians, technicians, etc.; Remarks “applicant is rendering supply of services for which it is receiving consideration in form of “financial assistance””, while inferring that applicant is not involved in education since element of normal schooling is absent; Peruses that activities undertaken by Applicant are to promote the investments of German companies in India and are

undertaken on directions of Holding Company and rejects Applicant's plea that financial assistance to be received is a mere 'transaction in money' and not against supply of service; Observes that, since the applicant is considered as 'service provider' in the agreement itself, hence applicant has “an agreement to do an act” as per clause 5 of Schedule II of the GST Act and is rendering supply of services, further holds that applicant's supply is to be considered under SAC heading 999792 which pertains to ‘Agreeing to do an Act’”;

While deriving question of “place of supply of service” under section 2(6)(iii) of the IGST Act, cites Kerala HC ruling in Sutherland Mortgage Services Inc vs. Pr. Commissioner and answers, that though the transaction satisfies condition specified u/s 2(6)(i)(ii)(iv) and (v) but not clause (iii) of section 2(6) as the place of supply of applicant is within India and thus subject transaction cannot be considered as ‘export of services’ under the GST laws

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