



ASC

GST TIMES





Compliance Calendar

S. No.	Due Date	Forms	Period	Description
1.	10 th Aug 2021	GSTR-7	July, 2021	Return for Tax Deducted at source to be filed by Tax Deductor
2.	10 th Aug 2021	GSTR-8	July, 2021	E-Commerce operator registered under GST liable to TCS
3.	11 th Aug 2021	GSTR-1	July, 2021	Taxpayers having an aggregate turnover of more than INR 5 crores or opted to file monthly return
4.	13 th Aug 2021	GSTR-1	July, 2021	Taxpayers who have opted for Quarterly Return Monthly Payment ("QRMP") Scheme
5.	13 th Aug 2021	GSTR-6	July, 2021	Every Input Service Distributor (ISD)
6.	14 th Aug 2021	GSTR-2B	July, 2021	Auto generated ITC statement
7.	20 th Aug 2021	GSTR-5 & 5A	July, 2021	Non-resident taxable person and OIDAR services provider file Monthly GST Return
8.	20 th Aug 2021	GSTR-3B	July, 2021	Taxpayers having an aggregate turnover of less than INR 5 crore (Not opting for QRMP Scheme)
9.	20 th Aug 2021	GSTR-3B	July, 2021	Taxpayers having an aggregate turnover of more than INR 5 crore (Not opting for QRMP Scheme)
10.	25 th Aug 2021	PMT-06	July, 2021	Taxpayers who has opted to file return under QRMP scheme



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GOODS AND SERVICES TAX (GST)



Important changes related to QRMP Scheme on GST Portal

The CBIC on 6th July, 2021 has issued important changes related to QRMP scheme on GST portal which are as follows:

A. Auto population of GSTR-3B liability from IFF and Form GSTR 1: A taxpayer under QRMP Scheme can declare their liability through optional IFF for Month 1 and Month 2 of a quarter & Form GSTR-1 for Month 3 of that quarter. Declaration of liability in these forms would now be auto-populated in their Form GSTR-3B (Quarterly) for that quarter, based on their filed Form GSTR-1 and IFF. These fields are editable and in case their values are revised upwards or downwards, the edited field(s) would be highlighted in red colour and a warning message will be displayed to the taxpayer. However, the system would not prevent taxpayer from filing of Form GSTR-3B with edited values.

B. Nil filing of Form GSTR-1 (Quarterly) through SMS: Nil filing of Form GSTR-1 (Qtrly) through SMS has been enabled for taxpayers under QRMP Scheme. They can now file it by sending a message in specified format to 14409. The format of the message is < Nil > space < Return Type (R1) > space < GSTIN > space < Return Period (mmyyyy) >.

Example: NIL R1 07XXXXX1234H8Z6 062020 (where return period must be last month of the quarter)

However, NIL filing through SMS can't be done in following scenarios:

- If IFF for Month 1 or 2 of a quarter is in Submitted stage, but not filed.
- If invoices are Saved in IFF for Month 1 or 2 of a quarter, which was not submitted or filed by due date.

C. Impact of cancellation of registration on liability to file Form GSTR-1: In case registration of a taxpayer under QRMP Scheme is cancelled, with effective date of cancellation being any date after 1st day of Month 1 of a quarter, they would be required to file Form GSTR-1 for the complete quarter, as the last applicable return. For example if the taxpayer's registration is cancelled w.e.f. 1st of April, he/she is not required to file Form GSTR-1 for Apr-June quarter and Form GSTR-1 for Jan-Mar Quarter shall become the last applicable return. However, if the registration is cancelled on a later date during the quarter, the taxpayer would be required to file Form GSTR-1 for Apr-June quarter. In such cases the filing will become open on 1st of month following the month with cancellation date i.e. if cancellation has taken place on 20th May, Form GSTR-1 for Quarter Apr-June can be filed anytime on or after 1st of June.

Upcoming Functionalities to be deployed on GST Portal

The CBIC recently deployed/ would be deployed shortly, on the GST portal following changes to provide a smooth and hassle free experience to the taxpayers and simplify the process of meeting GST compliances:

Sl. No	Module	Form/ Functionality	Functionality released/ to be released for Taxpayers	Current status of deployment
1.	Registration	Timelines for filing of Application for Revocation of Cancellation of Registration in Form GST REG-21	<p>a.) In view of the spread of pandemic COVID-19 across many parts of India, vide Notification No 14/2021-CT, dated 1st May, 2021, read with vide Notification No 24/2021-CT, dated 1st June, 2021, the Government had extended the date for filing of various applications falling during the period from the 15th April, 2021 to 29th June, 2021, till 30th June, 2021.</p> <p>b.) In addition to this, timeline for filing of Application for Revocation of Cancellation of Registration, which were due on 15th of April 2021, had also been extended till 30th June 2021 on the GST Portal.</p> <p>c.) Accordingly, these extensions have now ceased to be effective w.e.f. 1st July, 2021, and timelines for filing of application for revocation of cancellation is now changed to 90 days (as was earlier) on the GST Portal, from date of Order of Cancellation of Registration in Form GST REG-19.</p>	Deployed on 1st July, 2021
2.	Returns	Information regarding late fee payable provided in Form GSTR-10	<p>a.) Taxpayers whose registration is cancelled, at the time of filing of last return in Form GSTR-10, will now be provided with details of late fee payable by them, for the delayed filing of any of the previous returns/ statements in a table, for their assistance in filing of said return by them.</p> <p>b.) This information can be viewed by clicking on a hyperlink provided under the column "Late Fee Payable" in the online Form GSTR- 10.</p>	--
3.	Returns	Auto-population of data in Form GSTR-11 on basis of Forms GSTR-1 / 5 filed by their suppliers	<p>a.) The UIN holders file details of their inward supplies in Form GSTR-11 on a quarterly basis. They can subsequently file for refund (if required) in Form GST RFD- 10, for the quarter, in which summary of the documents is auto-populated from their Form GSTR-11, in an editable mode</p> <p>b.) Form GSTR-11 of the UIN holder would be generated with details of their inward supplies, on basis of Forms GSTR-1 / 5 filed by their suppliers, which will subsequently help them in filing their refund claims</p>	--



Clarification Regarding Extension of Limitation Under GST in Terms of Supreme Court's Order Dt. 27.04.2021

The CBIC vide Circular No. 157/13/2021-GST dated 20th July, 2021 clarifies extension of limitation under GST law in terms of Hon'ble Supreme Court's Order dated 27.04.2021.

1. The Government has issued notifications under Section 168A of the CGST Act, 2017, wherein the time limit for completion of various actions, by any authority or by any person, under the CGST Act, which falls during the specified period, has been extended up to a specific date, subject to some exceptions as specified in the said notifications. In this context, various representations have been received seeking clarification regarding the cognizance for extension of limitation in terms of Hon'ble Supreme Court Order dated 27.04.2021 in Miscellaneous Application No. 665/2021 in SMW(C) No. 3/2020 under the GST law.

2. The extract of the Hon'ble Supreme order dated 27th April 2021 is reproduced below for reference:

"We, therefore, restore the order dated 23rd March, 2020 and in continuation of the order dated 8th March, 2021 direct that the period(s) of limitation, as prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings, whether condonable or not, shall stand extended till further orders. It is further clarified that the period from 14th March, 2021 till further orders shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.

We have passed this order in exercise of our powers under Article 142 read with Article 141 of the Constitution of India. Hence it shall be a binding order within the meaning of Article 141 on all Courts/Tribunals and Authorities."

3. Legal opinion was solicited regarding applicability of the order of the Hon'ble Supreme Court to the limitations of time lines under GST Law. The following is observed as per the legal opinion:-

a) The extension granted by Hon'ble Supreme Court order applies only to quasi-judicial and judicial matters relating to petitions/ applications/ suits/ appeals/ all other proceedings. All other proceedings should be understood in the nature of the earlier used expressions but can be quasi-judicial proceedings. For the purpose of counting the period(s) of limitation for filing of appeals before any appellate authority under the GST Law, the limitation stands extended till further orders as ordered by the Hon'ble Supreme Court.

b) Various Orders and extensions passed by the Hon'ble Supreme Court would apply only to acts and actions which are in nature of judicial, including quasi-judicial exercise of power and discretion. Even under this category, Hon'ble Supreme Court Order, applies only to this which needs to be pursued within a time frame fixed by the respective statutes.



c) Wherever proceedings are pending, judicial or quasi-judicial which requires to be heard and disposed off, cannot come to a standstill by virtue of these extension orders. Those cases need to be adjudicated or disposed off either physically or through the virtual mode based on the prevailing policies and practices besides instructions if any.

d) The following actions such as scrutiny of returns, issuance of summons, search, enquiry, issuance of show cause notice, granting time for replies and passing orders, or investigations and even consequential arrest in accordance with GST law would not be covered by the judgment of the Hon'ble Supreme Court as the same has only been made applicable to matters relating to petitions/applications/suits, etc.

4. it is hereby clarified that various actions/compliances under GST can be broadly categorised as follows:

a) Proceedings that need to be initiated or compliances that need to be done by the taxpayers:-

These actions would continue to be governed only by the statutory mechanism and time limit provided/ extensions granted under the statute itself.

b) Quasi-Judicial proceedings by tax authorities:-

The tax authorities can continue to hear and dispose off proceedings in respect of disposal of application for refund, application for revocation of cancellation of registration, adjudication proceedings of demand notices, appeals which are filed and are pending, where they are performing the functions as quasi-judicial authority and the same will be governed by those extensions of time granted by the statutes or notifications, if any.

c) Appeals by taxpayers/ tax authorities against any quasi- judicial order:

An appeal filed before Joint/ Additional Commissioner (Appeals), Commissioner (Appeals), Appellate Authority for Advance Ruling, Tribunal and various courts against any quasi-judicial order or where a proceeding for revision or rectification is undertaken, the time line for the same would stand extended as per the Hon'ble Supreme Court's order.

5. in other words, the extension of timelines granted by Hon'ble Supreme Court vide its Order dated 27.04.2021 is applicable in respect of any appeal which is required to be filed before Joint/ Additional Commissioner (Appeals), Commissioner (Appeals), Appellate Authority for Advance Ruling, Tribunal and various courts against any quasi-judicial order or where proceeding for revision or rectification of any order is required to be undertaken, and is not applicable to any other proceedings under GST Laws.



Haryana GST Dept. issued press release on mismatch of ITC in GSTR-2A vis-a-vis GSTR-3B

On data analysis, it was found that there were considerable gaps in the input tax credit available in GSTR-2A as compared with actual tax credit available in GSTR-3B of M/s Shri Krishna Enterprises (Prop. Krishan Deep Garg), Gurgaon. It was also observed that there was a large accumulation of input tax credit of CESS for the said taxpayer.

On inspection/search, it was found that the taxpayer had under-reported Cess liability of approx. Rs. 15 Crores. Accepting the underreporting, the taxpayer deposited Rs. 12.82 Crore on the spot through cash and credit. Further, the investigation is under progress.

In another case, an infrastructure start-up company paid Rs. 1.51 Crore plus applicable interest for taking excess input tax credit in their FORM GSTR-3B as compared with the input tax credit available in GSTR-2A.

Taxpayers are requested to please ensure that there are no gaps/mismatch in:

- a) Liability declared in FORM GSTR-1 and liability paid in FORM GSTR-3B'
- b) input tax credit available in FORM GSTR-3B as compared with tax credit available in FORM GSTR-2A / GSTR-2B.
- c) Liability as per E-Way Bills and that declared in FORM GSTR-3B.

It has also been noticed that certain taxpayers are discharging their liabilities through input tax credit from fraudulent taxpayers. Such taxpayers are also being extensively investigated as per GST Act and rules.

Kerala Government: No Flood Cess from August 1, 2021

- The Kerala Government has announced that the flood cess would be applicable till 31-07-2021.
- In a press release issued on 23-07-2021 by the Government in which they have directed the businesses to make necessary changes in their billing software accordingly.
- The flood cess was implemented from 01-08-2019 with the aim of collecting INR 2,000 crore in two years to help with the recovery from the devastation caused by floods. By July, a total cess revenue will touch INR 2,000 crore.

Scrapping of GST Audit by professionals and moving to Self-Certification

The CBIC vide Notification No. 29/2021 – Central Tax dated 30th July, 2021 implement provisions of Section 110 and Section 111 of Finance Act, 2021.

Section 110 and 111 of the Finance Act, 2021 amended Section 35 and 44 of the CGST Act, 2017 respectively, so as to remove the mandatory requirement of getting annual accounts audited by a Chartered Accountant or a Cost Accountant and furnishing of audited reconciliation statement in Form GSTR-9C. Now, annual return in Form GSTR-9C is to be provided on self-certified basis with reconciliation statement.

This notification shall come into force from 1st August, 2021.



Exemption of taxpayers from filing Annual Return

The CBIC vide Notification No. 31/2021- Central Tax dated July 30, 2021 exempted the registered person whose aggregate turnover in the FY 2020-21 is upto INR 2 crores, from filing annual return for the said FY. This notification shall come into force from the August 1, 2021.

DETENTION OF GOODS DUE TO EXPIRY OF E-WAY BILL

THE HIGH COURT OF KERALA AT ERNAKULAM vide WP(C) NO. 14210 OF 2021 Dated: 16.07.2021 in case of KISHORE TRANSPORT SERVICE PVT LTD Vs. STATE OF KERALA, TAXES DEPARTMENT held that for whatever reasons, the goods, at the time of inspection, were found to be without valid documents as required by the GST law under Section 129 of the CGST Act, the proper officer has no discretion to condone the procedural lapse or relax its rigour in particular cases where the goods have been transported in contravention of the rules.

In this case petitioner submits that during the journey, the vehicle met with breakdown and the E-way bill had expired. The petitioner could not renew the E-way bill because of intervening Saturday and Sunday, within the time limit prescribed by the statute. He, therefore, submits that the impugned notice Form GST Mov-02 is totally illegal because the goods were being transported with E-way bill, which unfortunately expired as the vehicle could not travel within the prescribed time because of break-down.

The learned Government Pleader submits that the petition is not maintainable, because Section 129 of the Central Goods and Service Tax Act provides for the remedy and in the matter of M/s. Podaran Foods India Private Limited v. State of Kerala this court had already concluded the issue against the petitioner.

On consideration of Section 129 of the Act, if a proper officer who is entrusted with the task of detaining goods, finds that they have been transported in contravention of the rules, he does not have the discretion to condone the procedural lapse or relax its rigour in particular cases. He must interpret the Rule strictly keeping in mind the statutory scheme that aims to curb tax evasion. In as much as the adjudication that is expected of him is a summary one, he can do no more than determine whether or not on a literal reading of the statutory provisions, together with the circulars issued from time to time, there has been a breach occasioned thereof. Any person aggrieved by the order of the proper officer must necessarily approach the appellate authority before which an appeal against the adjudication order under Section 129 (3) of the Act is maintainable. In the instant case too, the remedy for the petitioner is to approach the appellate authority under the Act against the finding of the proper officer.

The petitioner is relegated to his alternate remedy of preferring appeals against the said adjudication orders before the appellate authority under the Act. All contentions, legal and factual, are left open to be agitated by the petitioner before the appellate authority. To enable the petitioner to do so, I direct that the stay granted by this court, against invocation of the bank guarantee furnished by the petitioner, shall continue to remain in force for a period of two months from the date of receipt of a copy of this judgment."

Applying the same ratio, this Writ Petition deserves to be dismissed and accordingly, it is dismissed.



Scope of term 'business', Supply of goods at lower rate, Liability to register

THE HIGH COURT OF GUJARAT AT AHMEDABAD vide R/SPECIAL CIVIL APPLICATION NO. 7822 of 2021 dated: 09.07.2021 in case of NAGRI EYE RESEARCH FOUNDATION Vs UNION OF INDIA held that every supplier who falls within ambit of Section 22(1) of the CGST Act has to get himself registered under the Act.

The petitioner is a registered charitable Trust set up with various objectives basically and essentially of undertaking eye and research activities to be carried out by C.H. Nagri Municipal Hospital as well as procurement and management of funds for the purpose of education and charitable activities in eye research and prevention of blindness. Further the petitioner trust is also running a medical store where the medicines to the indoor and outdoor patients of the petitioner Hospital are sold at a lower rate. Whatever marginal / little difference in terms of excess of income over expenditure is earned, the same is used only for the purpose of mitigating any unforeseen eventualities and/or administrative expenses.

The petitioner Trust had filed an application before the GAAR under Section 97 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the CGST Act) seeking advance ruling on the following questions:-

- "(i) GST Registration is required for medical store run by Charitable Trust? And
- (ii) Medical store providing medicines at a lower rate is it amounts to supply of goods?"

Both The Gujarat Authority for Advance Ruling, (hereinafter referred to as 'GAAR') and the Gujarat Appellate Authority for Advance Ruling (hereinafter referred to as 'GAAAR') came to the conclusion that the petitioner Trust was required to obtain GST Registration for the medical store run by the Trust irrespective of the fact that the medical store providing medicines at a lower rate.

The learned Advocate Mr. Uday M. Joshi appearing on behalf of the petitioner submitted that both the authorities have failed to appreciate the fact that the activities carried on by the petitioner Trust by running a medical store could not be said to be a "business" within the meaning of Section 2(17) of the CGST Act, inasmuch such activities can neither be said to be a trade or commerce nor for any pecuniary benefit.

In order to appreciate the contention raised by learned Advocate Mr. Joshi, it would be beneficial to reproduce the relevant portion pertaining to the "scope of supply" and "business" as contained in Section 7(1) and 2(17) respectively of the CGST Act. The relevant part is reproduced as under:-

Section 7(1) "supply" includes -

- (a) All forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance



of business;

- (b) import of services for a consideration whether or not in the course or furtherance of business, [and]
- (c) The activities specified in Schedule I, made or agreed to be made without a consideration."

Section 2(17) "business" includes -

- (a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;"

Section 22(1) of the CGST Act mandates that every supplier is liable to be registered under the Act in the State or Union territory, other than special category States, from where he makes a taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds twenty lakh rupees, provided that where such person makes taxable supplies of goods or services or both from any of the special category States, he shall be liable to be registered if his aggregate turnover in a financial year exceeds ten lakh rupees.

Having regard to the afore stated provisions contained in the said Act, there remains no doubt that every supplier who falls within ambit of Section 22(1) of the Act has to get himself registered under the Act. Having regards to the definition of 'supply' as per Section 7(1) of the Act, it is not disputed that the petitioners are selling the medicines, may be at a cheaper rate but for consideration in the course of their business. The submission of Mr. Joshi that such a sale could not said to be a "business" in view of the definition contained in Section 2(17) of the said Act cannot be accepted. As per the said definition, the 'Business' means any trade or commerce any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit. From the bare reading of the said definition, it clearly emerges that any trade or commerce whether or not for a pecuniary benefit, would be included in the term 'business' as defined under Section 2(17) of the said Act

Both the authorities have in detail considered the submissions and the issues raised by the petitioner Trust and held that the Medical Store run by the Charitable Trust would require GST Registration, and that the Medical Store providing medicines even if supplied at lower rate would amount to supply of goods. The Court does not find any illegality or infirmity in the said orders passed by the authorities.

In that view of the matter, the petition being devoid of merits is dismissed in limine.

TELANGANA AAR - CLASSIFICATION OF WASTES

The TELANGANA STATE AUTHORITY FOR ADVANCE RULING vide TSAAR Order No. 04/2021 dated: 19.07.2021 on an application filed by M/s JEEVAKA INDUSTRIES PRIVATE LIMITED passed its advance ruling after considering the issues involved, on which advance rulings are sought by the applicant, relevant facts and interpretation of law.



Facts:

M/s. Jeevaka Industries Private Limited are manufacturers of taxable goods i.e., sponge iron using coal based manufacturing process. This process involves controlled burning of coal. At the end of the process, certain portion of the coal remains half-burnt and comes along with the finished product i.e. Sponge iron. This half-burnt portion of coal, technically called "Cinder Half-burnt Coal" / "Char-Dolachar" has negligible fuel content. The product-mix so obtained, is passed through a Cooler, where the temperature of the product mix is brought down to a portable temperature. The cooled product-mix is then passed through a magnetic separator, during which Sponge iron, which is now pure metal, is separated using the magnet. The non-metallic part i.e. non-burnt coal and other wastage from the process are left aside. The non-burnt coal so generated is sold, usually to brick producers for use in their manufacturing process. The dust particles generated during the process are collected in Bag Filters and through ESP (Electro Static Precipitator). This is also sold to manufacturers of bricks for mixing with sand, cement etc.

Issues:

1. Under which HSN Code should the following goods be classified: The wastes, namely,
 - a.) Cinder Half-burnt Coal / Char Doiachar and
 - b.) ESP / Bag Filter Dust generated during the process of manufacturing Sponge iron under DRI process?
2. Would the GST Compensation Cess @ Rs.400/- per tonne be applicable on sale of waste, i.e. Cinder Half-burnt coal, generated during the said process?

Interpretation of Law:-

These commodities are classifiable under tariff item 2619 00 90 (Slag, Drass (other than granulated slag), scaling and other waste from the manufacture of iron or steel - others). Alternatively, it may be classified under tariff item 2621 90 00 (Other slag and ash, including seaweed ash (kelp); Ash and Residues from the Incineration of Municipal Waste - Others).

Half-burnt Coal is a residue left from coal used as fuel in the process of manufacturing of sponge iron. The said product has very low caloric value and has no capacity to produce flame. Therefore, the said product is classifiable under Tariff Item 2619 00 90. Alternatively, it may be classified under Tariff Item 2621 90 00. ESP / Bag Filter Dust is classifiable under Tariff Item 2619 00 90.

Further, Hon'ble CESTAT in the case of Commissioner, Central Excise and Service Tax, Hyderabad ii Vs Reactive Metals of India Pvt. Ltd held that by -Product Char - Dolochar emerging during manufacture of Sponge iron is classifiable under CETH 2619 00 90. Similar stand has been taken by Hon'ble CESTAT in the case Bellary Stee & Alloys Ltd v. CCE with respect to ESP bog/filter dust, we hold that they are also classifiable under 2619 00 90.

In view of the above, both half-burnt coal and dust falls under entry 28 of Schedule Iii of Notification No.01/2017 and attracts 18% tax under IGST and 9% under CGST/SGST Acts.



Held:-

1. Held that both the products nameiy Cinder Half-burnt Coal / Char Dolachar and ESP / Bag Fiiter Dust generated during the process of manufacturing Sponge iron under DRi process will fall under HSN Code "261900 90"
2. No the GST Compensation Cess @ Rs.400/- per tonne will not be applicable on saie of waste, i.e. Cinder Half-burnt coai, generated during the said process

TELANGANA AAR - CLASSIFICATION OF WASTES

The TELANGANA STATE AUTHORITY FOR ADVANCE RULING vide e TSAAR Order No.03/2021 dated: 19.07.2021 on an appiication field by M/s VAJRA INFRACORP INDIA PRIVATE LIMITED passed its advance ruiing after considering the issues invoived, on which advance rulings are sought by the appiicant, reievant facts and interpretation of iaw.

Facts:-

M/s. Vajra Infracorp india Private Limited are providers of taxable services of construction of residential complexes. They have entered into a supplementary agreement with iand owner on 15.05.2017 duly fixing the total number of flats to be shared with the iand owner. This was prior to the introduction of GST. The construction was expected to be completed by October/November 2018 i.e., after the introduction of GST.

The applicant has relied on CBE&C circular no. 151/2/2012-ST, where in it is stipulated that the iand owners share of flats are liable to service tax, but the date of possession or right in the property of said flats are transferred to the land owner by entering into the conveyance deed or any other instrument such as allotment letter. They also placed their reliance on Notification No.4/2018 - Central Tax (Rate) also but stated as 'Constructed complex', where in the above stipulation of service tax was adopted in toto.

Issues:-

- a.) Time of supply and point of taxation with respect to flats allotted to iand owner by the builder by way of supplementary agreement on 15.05.2017 (i.e., before GST regime) whereas the construction wiii be completed during GST regime.
- b.) Is this date to be conciuuded as the date of allotment for payment of service tax in respect of construction services provided to iandiord ignoring the fact that the construction was continued subsequently from May, 2017 to November, 2018.
- c.) Wiii it be sufficient and adequate compiiance, if the appeilant compiiies law and remit entire service tax on the entire area earmarked to landlord?
- d.) In the event the service tax is remitted based on the date of above supplementary agreement, wiii the appellant not required to compiy with GST on the said value of service to iand owner.
- e.) Wiii this view in transitionai period have any impact on the future projects to be explored by the applicant company?

Interpretation of Law:-

The applicant is engaged in construction of residential complexes. He has entered into an agreement for sharing of constructed flats with the land owner on 15.05.2017.

According to the Notification No.4/2018 the liability to pay central tax on supply of development rights to a developer, builder, construction company shall arise at the time when the said builder, developer, construction company or any other person as the case may be, transfers possession or the right in the constructed complex, building or civil structure to the person supplying development rights by entering into a conveyance deed or similar instrument (for example allotment letter).

A plain reading of the Notification makes it clear that there shall be a constructed complex or a building or a civil structure in existence, the possession or right in the above shall be transferred and such transfer of possession or right shall be affected by way of a conveyance deed or a similar instrument like an allotment letter. Further, after the phrase 'Constructed complex' the words building or civil structure is used to convey the intention in the notification i.e., a constructed complex.

The Hon'ble Apex court in the case of Chandavarkar S R Rao Vs Ashalata S Gautam held that, when the grammatical construction is clear and manifest without doubt, that construction must prevail unless there are strong and obvious reasons to the contrary.

The Hon'ble Apex Court of India in the case of - Godfrey Philips India Vs State of India held that when two or more words are susceptible of analogous meaning are clubbed together, they are understood to be used in their cognate sense. They take, as it were, their colour from and are qualified by each other, the meaning of the general word being restricted to a sense analogous to that of the less general. The phrase 'Constructed complex' is understood in its natural, ordinary and popular sense to mean a building.

From the above understanding of the phrase 'Constructed complex' it follows that such a complex, building or civil structure should first be in place so that its possession or the rights in it may be transferred by the developer to the person supplying development rights. And such transfer of possession or transfer of right in the building shall be accomplished by a conveyance deed or similar instrument such as allotment letter.

It follows from the above that as per Notification No.4/2018 the time of supply to determine liability to pay tax on development rights by a land owner to a developer is the date on which the building or the rights in an existing building are handed over to the land owner by way of a conveyance deed or an allotment letter.

If the applicant has handed over the building after inception of CGST & SGST, then the liability to pay tax will arise under CGST & SGST.



Heid:-

- a.) As per Notification No.4/2018 Dt:25.01.2018 the date of transfer of possession of the building or the right in it to the person supplying development rights will be the time of supply and the liability to pay tax on the said services shall arise on that day. The time of supply shall not be at any other time.
- b.) The applicant has to pay tax as per the time of supply indicated at Point 1 above.
- c.) The applicant has to pay tax as per the time of supply indicated at Point 1 above.
- d.) This question in itself is irrelevant that in the event the service tax is remitted based on the date of above supplementary agreement, will the appellant not required to comply with GST on the said value of service to land owner.
- e.) This question in itself is irrelevant that will this view in transitional period have any impact on the future projects to be explored by the applicant company.
- f.) 'Constructed complex' refers to a building or a completed structure.

Maharashtra AAR - Classification of online tendering / e-tendering and offline tendering

The MAHARASHTRA AUTHORITY FOR ADVANCE RULING vide NO.GST-ARA-125/2019-20/B-30 Dated: 13.07.2021 on an application filed by M/s MAHARASHTRA STATE DENTAL COUNCIL passed its advance ruling after considering the issues involved, on which advance rulings are sought by the applicant, relevant facts and interpretation of law.

FACTS:-

Applicant is not a profit making institution and the income earned by way of fees is used for the maintenance of this council and the income and expenditure is audited by the office of Chief Auditor, Local Fund Account, Maharashtra State. The first and foremost function of the applicant is to give registration to Dental graduates. Preserving and pursuing Code of Ethics at all levels is also an important function of the applicant.

The Maharashtra State Dental Council is constituted by an act of parliament "The Dentists Act, 1948' (XVI

Issues:-

M/s. Maharashtra State Dental Council the applicant, seeking an advance ruling in respect of the following questions.

- Q-1 Whether online tendering to be considered as Supply of Goods or Supply of Service?
- Q-2 Whether offline tendering to be considered as Supply of Goods or Supply of Services.
- Q-3 Under which tariff head the Online Tendering should get taxed.
- Q-4 Under which tariff head the Offline Tendering should get taxed.
- Q-5 if tendering is service then whether it will be considered as administrative services or specific Service.
- Q-6 Whether the activities conducted by the Maharashtra State Dental Council are the "Registration Activities and their related activities laid down in the Act" exempted under the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 as amended and consequently, the receipt of the Registering Fees paid under Rule 73 of the Bombay Dentists Rules, 1951 by the Prospective Dental Practitioners to the Council is exempted from the levy of Goods and Services tax.

Interpretation of Law:-

The first five questions raised by the applicant are in respect of online/offline tendering process. The applicant has not provided any details of the tendering process and as to how and why tendering is resorted to, etc. However in view of the limited submissions made by the applicant, we take up each any every question raised by them, as under:-

It appears that in the subject case, in respect of online tendering, requirement for procurement of goods or services will be raised online. Probably, the entire process related to tendering (application, payment of fees, submission of technical & financial bid, etc.) will be done online (using computer & internet). As per the Business Dictionary, online tendering is "an internet based process wherein the complete tendering process; from advertising to receiving and submitting tender-related information are done online. This enables firms to be more efficient as paper-based transactions are reduced or eliminated, facilitating for a more speedy exchange of information. In common parlance also it is understood to be a process to procure goods or services where the entire process is online.

Goods are defined under Section 2(56) of the CGST Act, 2017 and as per the said section "'goods' means every kind of movable properly other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply."

As per section 2(102) of the CGST Act, 2017, "services", means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged.

From the above it is clear that Online Tendering does not satisfy the definition of 'goods'. Further we find that the IGST Act has defined Online information and Data Access or Retrieval Services to include different services, for the sake of better understanding we may now refer to Online information and Data Access Services mentioned in Section 2(17) of the iGST Act which is reproduced as under:-

"online information and database access or retrieval services" means services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply essentially automated and involving minimal human intervention and impossible to ensure in the absence of information technology and includes electronic services such as,-

- (i) Advertising on the internet;
- (ii) Providing cloud services;
- (iii) Provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet;
- (iv) Providing data or information, retrievable or otherwise, to any person in electronic form through a computer network;



- (v) Online supplies of digital content (movies, television shows, music and the like);
- (vi) Digital data storage; and
- (vii) Online gaming

in the present case at hand, we find that the provisions of e-tender, which is intangible has to be delivered through telecommunication network or internet. Thus, the intention of the legislature is very clear, to treat such activities as supply of services.

in the case of offline tendering, the requirement for procurement of goods or services will be raised by manual process i.e. manual tender. Generally the process is that, firstly the applicant who wishes to supply the goods or services or both, may need to purchase Tender from the office of the applicant. Thereafter all the process related to tendering like, application, payment of fees, submission of technical & financial bid. etc., are generally done by manually by way of submission of hard copies. We find that the difference between online and offline tendering is only that in the case of the former, the tender forms are sold online and in the case of the latter, the tender forms are sold as printed matter. The definition of the term 'service' as per the CGST Act as stated above, is an inclusive definition and is wide. It is clear that Offline Tendering does not satisfy the definition of 'goods', in its entirety. Hence offline tendering, in our opinion will also be considered as rendering of services.

The GST Tariff for services comprises of Chapter 99, Headings 9954 to 9999. It is seen that online tendering is not specifically mentioned in any of the Headings and therefore it is felt that the Appropriate Heading in this case would be Heading 9997 since the said heading covers other services (washing, cleaning; and other miscellaneous services including services nowhere else specified). Since Online Tendering as a service is not specified anywhere, the same should get taxed under Service Heading 9997.

As per the discussions made in respect of Q. No. 2 above, we have already found that the process of offline tendering is also a supply of services same as online tendering. Since Offline tendering as a service is not specified anywhere, the same should get taxed under Service Heading 9997.

Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 exempts the intra-State supply of services of description as mentioned therein from payment of GST. The services, mentioned in the subject application, as rendered by the applicant does not specifically find mention in the said notification. Hence in our view the activities of the applicant are not exempted under the said notification and consequently, the receipt of the Registering Fees by the applicant is not exempted from the levy of Goods and Service tax.



Held:-

For reasons as discussed in the body of the order, the questions are answered thus -

- Online tendering will be considered as Supply of Services.
- Offline tendering in its entirety involving sale of form, payment of tender fees and submission of bids etc. will be considered as Supply of Services.
- Online Tendering should get taxed under services heading 9997.
- Offline Tendering should get taxed under services heading 9997.
- In view of the discussions made above tendering will be considered as 'miscellaneous services including services nowhere else specified'.
- No the activities conducted by the Maharashtra State Dental Council are not "Registration Activities and their related activities. And the same is not exempted under the Notification No. 12/2017-Central Tax (Rate) from the levy of Goods and Services Tax.

Classification of brush holder assembly and parts

The MAHARASHTRA AUTHORITY FOR ADVANCE RULING NO.GST-ARA-61/2020-21/B-31 Dated: 13.07.2021 on an application filed by M/s ARCO ELECTRO TECHNOLOGIES PVT LTD passed its advance ruling after considering the issues involved, on which advance rulings are sought by the applicant, relevant facts and interpretation of law.

Facts:-

The applicant is manufacturing and supplying Brush Holder Assembly and Parts, Lead Wires and Insulating Rods for locomotives. The application is with regard to classification of these items and applicable GST rate thereon. Subject goods are supplied to Indian Railways (IR) and other customers who ultimately supply to Indian Railways after assembly in their products.

The subject goods are manufactured as per specification and drawings of Indian Railways. Currently, Brush Holder Assembly (made of non-ferrous castings and are assembled with springs, axles etc.) and Lead Wires with fittings (made of specialized Fluonix Cables designed for Rolling stock and fitted with Terminal Lugs, Tubes.) are being classified under HSN Heading 8503 and 8544 respectively and Brush Holder Support Pin / Terminal Support / Brush Holder Arm for Locomotives (Glass Bonded Mica Insulators with steel inserts &

Issue:-

Railway parts such as Brush Holder Assembly and parts, Lead Wires for locomotives and Insulating Rods Locomotives manufactured as per the specification and drawings of Indian Railways. These should be classified under HSN Heading 8503, 8544 and 8547 @ 18% or under HSN Heading 8607 @12%

Interpretation of Law:-

CHAPTER 85: "Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles".

1) 8503- Parts suitable for use solely or principally with the machines of heading 8501 or 8502

- 8501- Electric motors and generator (excluding generating sets)
- 8502- Electric generating sets and rotary converters

2) 8544- Insulated (included enameled or anodised) wire, cable (including co-axial cables) and other insulated electric conductors whether or not fitted with connectors: optical fibre cables, made up of individually sheathed fibres, whether or not assembled with electric conductors or fitted with connectors

3) 8547- Insulating fitting for electrical machines, appliances or equipment's, being fittings wholly of insulation material apart from any minor components of metal (for example, threaded sockets) incorporated during moulding solely for the purposes of assembly, other than insulators of heading 8546; electrical conduit tubing and joints therefore, of base metal lined with insulating material

- 8546- Electrical insulators of any material.

CHAPTER 86: Railway or Tramway Locomotives, rolling stock and parts thereof; railway or tramway track fixtures and fittings and parts thereof; mechanical (including electro-mechanical) traffic signalling equipment of all kinds.

8607- Parts of railway or tramway locomotive or rolling-stock

The goods in question are Brush Holder Assembly and parts, Lead Wires and Insulating Rods which as per the applicant's submissions are manufactured as per the specification and drawings of Indian Railways. Further, the applicant has submitted that if the said items are not sold to Indian Railways, then the said goods will be scrapped.

The applicant has submitted that, the impugned goods i.e. Brush Holder Assembly and part, lead Wires and Insulating Rods are parts of traction motors and are used in traction motors which are further required by the Indian Railways for use in the manufacture of Locomotives and since the said products are finally used in locomotives of the Indian Railways, they are therefore required to be classified under heading 8607 of the GST Tariff.

Chapter heading 86.07 covers parts of railway or tramway locomotives or rolling stock. This heading covers parts of railway or tramway locomotives or rolling stock, provided the parts fulfil both the following conditions as under:



- (1) They must be identifiable as being suitable for use solely or principally with the above mentioned vehicles;
- (2) They must not be excluded by the provisions of the Notes to Section XVII.

We find that out of all the section notes of Section XVII, only Note 2 and Note 3 can be considered to be relevant in the subject matter. Thus it is to be seen whether or not, the said Notes 2 and/or 3 excludes/includes the subject goods.

As per Note 2 to Section XVII. The expressions "parts" and "parts and accessories" do not apply to the following articles, whether or not they are identifiable as for the goods of this Section:

- (a) Joints, washers or the like of any material
- (b) Parts of general use, as defined in Note 2 to Section XV, of base metal (Section XV), or similar goods of plastics (Chapter 39);
- (c) Articles of Chapter 82 (tools);
- (d) Articles of heading 8306;
- (e) Machines or apparatus of headings 8401 to 8479, or parts thereof; articles of heading 8481 or 8482 or, provided they constitute integral parts of engines or motors, articles of heading 8483;
- (f) Electrical machinery or equipment (Chapter 85);
- (g) Articles of Chapter 90;
- (h) Articles of Chapter 91;
- (i) Arms (Chapter 93);
- (k) Lamps or lighting fittings of heading 9405; or
- (l) Brushes of a kind used as parts of vehicles (heading 9603).

As per Note 3 to Section XVII, references in Chapters 86 to 88 to "parts" or "accessories" do not apply to parts or accessories which are not suitable for use solely or principally with the articles of those Chapters. A part or accessory which answers to a description in two or more of the headings of those Chapters is to be classified under that heading which corresponds to the principal use of that part of accessory.

The applicant has submitted that the subject goods, designed and produced specially for use in locomotives, cannot be used anywhere else and therefore if they are not able to sell them to the Indian Railways, then these items will have to be scrapped. Thus, the first condition of Chapter 86.07 is satisfied in the subject case, as per the applicant's submissions, in as much as the impugned goods are identifiable as being suitable for use solely or principally with Locomotives manufactured by the Indian Railways.

Further, it is seen that the subject goods do not find mention in the list of articles mentioned in the said Note 2 and therefore it can be concluded that the subject goods are excluded by the provisions of Note 2 to Section XVII, thus satisfying the second condition of Chapter 86.07.



Note 3 to Section XVII mentions that references in Chapters 86 to 88 to "parts" or "accessories" do not apply to parts or accessories which are not suitable for use solely or principally with the articles of those Chapters. A part or accessory which answers to a description in two or more of the headings of those Chapters is to be classified under that heading which corresponds to the principal use of that part or accessory.

In the instant case, as per the applicant's submissions, we find that the impugned goods are suitable for use solely or principally with Railway Locomotives falling under Chapter 86 and therefore Note 3 does not exclude the subject products, rather the said Note 3 includes the impugned products. Thus the second condition of Chapter 86.07 is also fulfilled in the subject case.

In view of the discussions, we hold that the impugned goods i.e. Brush Holder Assembly and parts, Lead Wires for locomotives and Insulating Rods Locomotives manufactured by the applicant as per the specification and drawings of Indian Railways are classifiable under heading 86.07.

Held:-

The products Brush Holder Assembly and parts, Lead Wires and Insulating Rods are to be classified under heading 86.07 only when they are manufactured as per the drawings and specifications given to the applicant by the Indian Railways and only when the said goods are used in traction motors meant for Railway Locomotives.



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