



LEGAL NEWS LETTER

DELHI GST PROFESSIONALS GROUP



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LEGAL NEWS LETTER

DELHI GST PROFESSIONALS GROUP

PATRON:

PRAVEEN KHANDELWAL
MP, DELHI

EDITOR:

SUSHIL VERMA

ADVISOR:

RAKESH GARG

SECRETARY

B. B. DEWAN

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Parveen Khandelwal
Gen. Secretary CAIT

FROM THE DESK OF PATRON

It is with great pride and joy that I commend the efforts of the team behind the E-Newsletter for producing one of the finest legal documents I have ever seen. The response to the first edition was nothing short of phenomenal, with overwhelming appreciation pouring in from professionals, the MSME sector, and even shopkeepers across India. I am considering translating it into Hindi to ensure it reaches a wider audience. The encouraging feedback, particularly from suburban areas and the professionals working there, has been truly heart-warming.

I am delighted to announce the release of the second edition of the E-Newsletter, featuring meticulously curated articles and legal news. This edition introduces a new column, “Legal Trivia,” which promises to be both insightful and engaging. I am particularly impressed with the team’s initiative to circulate drafts of appeals on issues that are likely to arise under the GST regime, from the Tribunal level and beyond. This forward-thinking approach is a significant step toward educating professionals, GST stakeholders, and even government authorities. Truly commendable!

I am also pleased to inform all readers that the Delhi GST Professionals’ Group and the Confederation of All

India Traders (CAIT) are jointly organizing a major GST Conference **on 3rd March 2025 at the NDMC Convention Centre, New Delhi.**

Under the leadership of my esteemed friend Sushil Verma, who has been entrusted by me with full authority on behalf of CAIT, this conference is set to be an impactful and insightful event for all stakeholders. The agenda has been thoughtfully designed and personally approved by me to ensure maximum relevance and benefit. Moreover, the event will be streamed live on YouTube, making it accessible to a global audience.

An important highlight of the conference is that there will be no participation fees for professionals—advocates, company secretaries, or chartered accountants. This initiative ensures that the event remains inclusive and beneficial for all.

To the E-Newsletter team, I extend my heartfelt congratulations once again for successfully delivering the second edition. Your dedication and effort have been well-received, both in India and abroad. The impact of your work is truly remarkable, and I wish you continued success.

God bless.

Praveen Khandelwal
Secretary General, CAIT



Adv. Sushil Verma

From the Desk of the Editor

Hi Friends,

How comforting it was to have released the first E NEWSLETTER by Shri Praveen Khandelwal, MP, Delhi and Patron of this Newsletter. (See Photos in Gallery). The team who designed, implemented and executed the plan of this E Newsletter with precision deserve a salute from all of us. **Well done Team!** And this Newsletter has gone to crores of traders and other stake holders who are members of CAIT and its affiliated Associations.

Two key developments happened during the month:

Safari Retreats Judgment of the Supreme Court of India is going to be overturned by amending the law- but litigation will happen notwithstanding the alleged technical drafting error and its correction and we should all keenly look for results of this ensuing litigation. After all something which is basically against the GST seamless ITC policy as announced by the PM in the Parliament must be interpreted by the highest court of the country.

The second development this month was rupee getting thrashed by the dollar dominance – and crossing Rs. 86 plus to USD, albeit all the currencies of the world too got affected. But that is no solace to us Indians. Whether BRICS will happen or not, no idea, but the incoming US President, Donald Trump's ideas are very

aggressive. **Let's wait and watch.** Although the dollar's reserve currency share has decreased the euro and yen have gained popularity, the dollar is still the most widely used reserve currency, followed by the euro, the yen, the pound and the Yuan.

BIG BREAKING: The Group is now going to be the **"Knowledge Partner"** and has been made responsible to design, conceptualize and organize a big international and live on Media conference on GST de-mystification for traders, small scale manufacturers, MSMEs and Exporters in coming days, in collaboration with Confederation of Indian Traders, under the guidance of Shri Praveen Khandelwal Ji. A big and onerous responsibility has been cast on young minds of the Delhi GST Professionals Group. But the electrifying energy, positivism and **"let us do it"** attitude, I am sure, will bring in the results that will surprise many. The younger professionals are full of enthusiasm and are possessing a big quest to rise up the ladder, and why should they not aspire?

The social media accounts of DGST Group are now on – Facebook, X, Instagram and E-Mail. This is tremendous achievement and it was so satisfying with daily posts on these social media by the coordinators of the Group.

All the Members are now moving towards litigation and a number of them are going to write Articles for your Newsletter. Moot Tribunals and role play games are going to be held from next session onwards with a moot tribunal in position and arguing counsels and the

Government Counsel facing each other. Appeal filing and appeal drafting guidance has been given on video to all members and the tips for court craft also updated. Now, let us watch the performance in next session when two Tribunal Members for this moot exercise are also in position. That will be a wonderful moment.

And the Group is going to handover in soft copies, the draft of specimen of appeals on 11 topics where we think GST litigation will be happening in coming months and these appeals **will be available to all the professionals in India – free of charge**. That is what this Group is up to! And these shall also be available in down loadable form on the website of the Group? Isn't a wonderful idea for Education Spread that will persuade professionals – CAs and Advocates – to move into litigation? And that is what exactly this Group is eyeing for.

The group's website is going to be in position by 1st February 2025 and this will be a quantum moment for the Group – where the queries will be answered, articles could be stored from all over the world, and various links shall be provided for the ready reckoning library for the professional members – from Supreme Court, High Courts, and Tribunals etc.

Lastly New Year Celebration event was one of the best so far – many members of the Group were given Gratitude Certificates for their emotional attachment with the group along with a moment by our Patron Shri Praveen Khandelwal Ji and one major reward was given to Adv. Rajmani Jindal who was adjudged Star of the Group for the last two and half years this Group has been in operation. A number of gifts came into her lap and her emotions touched heart on every one present. Fantastic food, par excellence indeed.

Two new Speakers – Rajesh Khurana and Neetika Khanna, Advocates and Harshit Bajaj CA. Wonderful performances on technical subjects of Going Concern concept.

The quest for more is ever growing now and let us keep it up.

@ SV



**Adv. Narender Ahuja, Convenor
CAIT/DGPG Conference**

Dear Esteemed Members,

It is with great pleasure that I extend my heartfelt greetings to all as we are going to release the 2nd edition of our E-Legal Newsletter. This newsletter serves as an important milestone in our ongoing commitment to providing you with valuable insights, updates, and analysis on various legal matters, with a particular focus on developments in the realm of Goods and Services Tax (GST).

Over the past year, our efforts have been centred on keeping you informed of the latest trends, amendments, and clarifications in GST laws. We are successfully hosting the study sessions for the last two and a half years. Now we are coming up with the 2nd edition of our monthly Legal E newsletter. Main focus of this group is to spread knowledge and make the GST simple for each stakeholder.

Through the newsletter we are trying to spread knowledge and provide a comprehensive overview of key GST changes, and highlight noteworthy case studies. As we continue to strive for excellence, we hope that the knowledge shared through these pages will empower you in your professional endeavours.

Following the successful release of the newsletter in January 2025, this group is now looking forward to organize a one day conference in Collaboration with Confederation of All India Trade Association (CAIT), **March 3rd, 2025** at New Delhi. Where we expect

over 500 participants, professionals and other GST stake holders. Our own member and Patron of the newsletter Sh. Praveen Khandelwal Ji is the general secretary of the CAIT. And full authority has been given to our Group Head, Sushil K Verma to take all decisions even on behalf of CAIT. Our group will serve **as the Knowledge Partner** for the event. We have selected and trained some of our members who will deliver their presentations on the hot topics relevant to the tradebodies and all stake holders in their day to day matters. **And the big news is that our Members pay nothing at all.**

SV Sir, our mentor and the Head of the group, is highly dedicated to training the new speakers.

We look forward to your continued engagement and feedback. Together, we can make the legal and tax landscape clearer, more transparent, and more efficient for all

@ Narender

Legal Trivia @ SV

THE post-decisional opportunity of hearing does not sub serve the rules of natural justice. The authority who embarks upon a post-decisional hearing will normally proceed with a closed mind and there is hardly any chance of getting a proper consideration of the representation at such a post-decisional opportunity



@ Adv. Rajmani Jindal

**CONCEPTS OF INTER STATE VS INTRA STATE
SUPPLIES- CGST ACT R/W IGST ACT**

While section 7 of the IGST Act deals with inter-state supply, section 8 thereof deals with intra-state supply. The above provisions lay down when a supply will be considered as inter-state supply in India i.e., supply between two or more states or union territories of India and intra-state supply i.e., supply within one state or within one union territory.

Section 9 is the charging section. It provides for levy and collection of a tax called the central goods and services tax (CGST) on all intra-state supplies of goods or services or both except on the supply of alcoholic liquor for human consumption on the value determined under section 15 of the CGST Act and at such rate as may be notified by the central government on the recommendation of the GST Council and collected in such manner as may be prescribed and paid by the taxable person.

The IGST Act has been enacted to make provision for levy and collection of tax on inter-state supply of goods or services or both by the central government and for matters connected therewith or incidental thereto. As per section 1(2), the IGST Act shall extend to the whole of India.

2. Section 5 of the IGST Act is the charging section. Sub-section (1) says that subject to the provisions of sub-section (2) there shall be levied a tax called the integrated goods and services tax (IGST) on all inter- state supplies of goods or services or both except on the supply of alcoholic liquor for human consumption on the value

determined under section 15 of the CGST Act and at such rate not exceeding 40% as may be notified by the central government on the recommendations of the GST Council and collected in such manner as may be prescribed and shall be paid by the taxable person. Sub-section (2) deals with integrated tax on the supply of petroleum, crude, high speed diesel, motor spirit, natural gas and aviation turbine fuel.

Inter-state supply is dealt with in section 7 of IGST ACT. As per sub-section (3), subject to the provisions of section 12, supply of services where the location of the supplier and the place of supply are in two different states; two different union territories; or in a state and in an union territory, shall be treated as a supply of services in the course of inter- state trade or commerce. Sub-section (4) says that supply of services imported into the territory of India shall be treated to be a supply of services in the course of inter-state trade or commerce. Sub-section (5) says that supply of goods or services or both - (a) when the supplier is located in India and the place of supply is outside India; (b) to or by a special economic zone developer or a special economic zone unit; or (c) in the taxable territory not being an intra-state supply and not covered elsewhere in section 7, shall be treated to be a supply of goods or services or both in the course of inter-state trade or commerce. Thus takeaway from this sub-section particularly from clause (a) is that in the case of supply of goods or services or both when the supplier is located in India and the place of supply is outside India that shall be treated to be a supply of goods or services or both in the course of inter-state trade or commerce; as distinguishable from intra-state supply.

Chapter (iv) of the IGST Act, 2017 provides for determination of the nature of supply. Under Section 8 of the IGST Act, 2017 when the location of supplier and the place of supply happens to be in the same State, such supplies are deemed to be inter-State supply subject to levy of both CGST and SGST.

Section 8 deals with intra-state supply. As per sub-section (2), subject to the provisions of section 12, supply of services where the location of the supplier and the place of supply of services are in the same state or in the same union territory shall be treated as intra-state supply. As per the proviso, intra-state supply of services shall not include supply of services to or by a special economic zone developer or a special economic zone unit. Explanation 1, clarifies that where a person has an establishment in India and any other establishment outside India; an establishment in a state or union territory and any other establishment outside that state or union territory; or an establishment in a state or union territory and any other establishment in a state or union territory and any other establishment being a business vertical registered within that state or union territory then such establishment shall be treated as establishments of distinct persons. As per Explanation 2, a person carrying on a business through a branch or an agency or a representational office in any territory shall be treated as having an establishment in that territory.

Section 7 and Section 8 of IGST Act. Section 8 of IGST Act pertains to intra-State supplies. Sub-section (1) of Section 8 of IGST Act deals with intra-State supply of goods. The said section provides that “*subject to provisions of section 10, supply of goods where the location of the supplier and place of supply of goods are in the same State or same Union territory shall be treated as intra-State supply*”, the proviso to above section excludes three supplies from being treated as intra-State supply even if the location of supplier and place of supply are in same State or Union territory, these are:

- (i) supply to or by an SEZ developer or unit;
- (ii) goods imported into India and;
- (iii) supplies made to tourist referred in Section 15

From the analysis of the above legal matrix it is apparent that section 9 of the CGST Act cannot be invoked to levy tax on cross-border transactions i.e., export of services. Likewise from the scheme of the IGST Act it is evident that the same provides for levy of IGST on inter-state supplies. Import and export of services have been treated as inter-state supplies in terms of section 7(1) and section 7(5) of the IGST Act. On the other hand sub-section (2) of section 8 of the IGST Act provides that where location of the supplier and place of supply of service is in the same state or union territory, the said supply shall be treated as intra-state supply.

3. Supply of goods in the course of inter-State trade and commerce means any supply where the location of the supplier and the place of supply are in different States. Thus, in a marked departure from the principle laid down under Section 3 of the CST Act, 1956 which places emphasis on inter-State movement of goods occasioned by sale for deeming a sale to be in the course of inter-State trade and commerce, under the Model IGST Act determination of inter-State sale / supply hinges on dual factors i.e. location of the supplier and the place of supply.

Two principles which are most relevant for the present analysis are contained in Section 10 of the IGST Act. As per Section 10(1) *if the supply involves movement of goods, whether by the supplier or the recipient or by any other person, the place of supply of goods shall be the location of the goods at the time at which the movement terminates for delivery to the recipient*. Section 10(1)(c) provides that where the supply does not involve movement of goods, whether by the supplier or the recipient, the place of supply shall be the location of such goods at the time of delivery to the recipient.

Supply involving movement of goods

The first question can only be answered on a case to case basis. As regards time of delivery, in the absence of any definition of the terms ‘delivery’ or ‘time of delivery’ under the GST legislations, the definition provided in the Sale of Goods Act, 1930 (‘Act’) becomes relevant. Section 2(2) of the Act defines delivery as *voluntary transfer of possession from one*

person to another. Pollock and Wright on Possession points out that 'in all cases the essence of delivery is that the deliverer, by some apt and manifest act, puts the deliverer in the same position of control over the thing, either directly or through a custodian, which he held himself immediately before the act.'

An obvious example of a transaction where the supply involves movement of goods is a transaction which is known as FOR destination sale. That is a transaction where as per the terms of the supply contract, the supplier is bound to move the goods up-to the place of the recipient which is where the supply gets completed upon delivery of goods by the supplier to the recipient. **As the goods would be located at the recipient's premises at the time of termination of movement of goods for delivery to the recipient, the place of supply would be the place of the recipient.**

Supply not involving movement of goods

where the manufacturer/supplier of goods develops moulds and jigs required for the manufacture of goods, sells the moulds and jigs to the recipient before using them for manufacture of goods, but does not move the same and uses the moulds for manufacture of goods for sale to the recipient. By application of Section 10(1)© of the model IGST Act the place of supply of such moulds and jigs will be the factory of the supplier.

CASE STUDY:

Ex-factory or ex-works sale – Can it be treated as intra-State supply?

Where contractually the goods are to be delivered ex-factory at the factory gate of the supplier, it can undoubtedly be said that the delivery takes place at the factory of the supplier. Now by application of the above legal provisions the place of supply of goods would be the factory site of the supplier. Interestingly, for the purposes of Section 10(1)(a) of the IGST Act, termination of movement for delivery would also be the factory gate of the supplier resulting in the place of supply again being the factory site of the supplier. **Thus, irrespective of the provision applied, in case of an ex-factory**

transaction the place of supply would be the supplier's factory, which being the same as the location of the supplier will make the transaction an intra-State supply of goods. In my view it is difficult to take a different view. where the movement of goods will eventually terminate after making necessary modifications in the agreement curtailing the buyer's right of diversion. If the address of the recipient is outside the supplier's State, then the transaction will be deemed to be an inter-State supply irrespective of the terms of supply.

Through the above illustration it is clear that if the buyer is taking the goods to a place outside the supplier's State, then input tax credit will not be available to him. To help such cases of confusion or double interpretation the legislature has enacted a provision under section 10(1)(b) to provide for bill to ship to model.

4. Sub-section (2) to Section 8 deals with intra-State supply of services and it provides that "Subject to the provisions of Section 12, supply of services where the location of the supplier and the place of supply of services are in the same State or same Union territory shall be treated as intra-state supply". The proviso to Section 8(2) provides that the intra-State supply of services shall not include supply of services to or by a Special Economic Zone developer or Special Economic Zone Unit.

A plain reading of the above provisions makes it clear that whereas Section 8(1) is subject to provisions of Section 10, Section 8(2) is subject to provisions of Section 12. In other words, these provisions shall not be applicable in case of export/import of goods which are covered by the provisions of Section 11 of IGST Act, as well as cases where the place of supply of services is determined as per the provisions of Section 13, i.e., in case where either the supplier or the recipient of services is located outside India.

To determine the appropriate tax leviable on the supplies mentioned above, let us analyse the provisions of Section 7 of IGST Act which deals with Inter-State supplies. The said section does not specifically provide the kind of supplies satisfying the conditions as mentioned above shall be treated as inter-State supplies. However, Section 7(5)(c) provides that "Supply of goods or

services or both in the taxable territory, not being an intra-state supply and not covered elsewhere in this section, shall be treated to be supply of goods or services or both in the course of inter-state trade or commerce". Through these provisions one may conclude that the supplies of above nature made to a person outside India shall be treated as inter-State supplies. But, the same appears to be conflicting, for the reason that supplies are made to a recipient outside India and not in a taxable territory and therefore different views may be possible giving rise to litigation in the near future. Use of the words 'Supply....in the taxable territory' seems to point to major elements of supply being present in the taxable territory and when the location of recipient is not in India, it is possible to argue that subsection (5) of Section 7 will not come into play at all.

Incorrect determination of nature of supply as inter-State or intra-State will lead to payment of incorrect type of tax as well i.e. instead of CGST and SGST, the tax payer may pay IGST and vice versa. Section 77(2) of CGST Act, provides that *"A registered person who has paid integrated tax on a transaction considered by him to be an inter-state supply, but which is subsequently held to be an intra-state supply, shall not be required to pay any interest on the amount of central tax and state tax, or as the case may be, the central tax and the union territory tax payable."* As per this provision, if the type of tax is wrong, an assessee shall be liable to make the payment of appropriate tax but interest shall not be payable on the same. Section 55 contains provisions for refunding the tax paid wrongly, but the same will lead to blockage of working capital from the time of payment of tax till the time refund is processed by the department.

Section 7(2) of IGST Act: "Supply of goods imported into the territory of India, till they cross the customs frontiers of India, shall be treated to be a supply of goods in the course of interState trade or commerce" → Proviso to Section 5(1) of IGST Act: "...tax on goods imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 on the value as determined under the said Act at the point when duties of customs are levied on the said goods under section 12 of the Customs Act,

1962" → Basis above, imports would be liable to basic customs duty (BCD) + IGST at the time of clearance of goods for home consumption. IGST to apply on the value of goods + BCD → 'Place of supply' of goods imported into India – location of the importer → Therefore, even if the customs clearance is done at the port of unloading of goods, the subsequent transport of goods to the importer's factory/office address shall not qualify as a separate supply. Thus, if the 'importer' is for example of Delhi location there is only one place of supply apropos the subject imported goods – Delhi) → As per subsection (8) added to Section 3 of Customs Tariff Act vide the 'Taxation Laws (Amendment) Act, 2017: IGST to apply on the value of goods + BCD.

Under India's Goods and Services Tax (GST) regime, understanding the distinction between intra-state and inter-state supplies is crucial, as it determines the type of tax applicable to transactions involving goods and services.

5. Section 7(2) of the IGST Act– "Supply of goods imported into the territory of India, till they cross the customs frontiers of India, shall be treated to be a supply of goods in the course of inter-State trade or commerce" → Proviso to Section 5(1) of IGST Act: "...tax on goods imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 on the value as determined under the said Act at the point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962" → Does it mean that all supplies of goods till the goods cross the customs frontiers of India are supply of goods in the course of inter-state trade? → Clarification on 'High Sea Sales' - only the last supply which results in the goods crossing the customs frontier will be taxable under Proviso to Section 5(1) of IGST Act read with Section 3 of the Customs Tariff Act.

CONCLUDING THEREFORE, Key Characteristics of Inter-State Supply

- **Location-Based Classification:** If the supplier and recipient are in different states or union territories, the transaction qualifies as inter-state supply.

- **Exports and Imports:** India treats the export of goods or services and imports as inter-state supplies.
- **Special Economic Zones (SEZs):** Supplies to or from SEZ units are classified as inter-state supplies.
- **Exclusive Economic Zones (EEZs):** Transactions involving goods or services in EEZs also fall under inter-state supply.

Points to Remember for Intra-State Supply

- **Intra-state supply applies when both the supplier and recipient are in the same state or union territory.**
- **Taxes are shared between the Central and State Governments.**
- **Both CGST and SGST are collected on the same invoice.**

Compliance Under GST for Businesses

- **Registration:** Businesses engaged in inter-state supply must register under GST, irrespective of their turnover.
- **Invoice Details:** Accurate details of the supplier's and recipient's locations are essential for correctly classifying the supply.
- **Tax Filing:** In GST returns, taxpayers report IGST separately for inter-state transactions and CGST and SGST for intra-state transactions.
- **Input Tax Credit (ITC):** You can claim ITC on tax paid for inter-state and intra-state supplies, provided you meet all compliance requirements.

LEGAL TRIVIA @ SV

No one can be a judge of his own cause” is a Latin phrase that means nemoiudex in suacausa. It is a fundamental principle of natural justice that states that a person cannot judge a case in which they have a personal interest.

@ RAJMANI INDAL



CA CHANDRESH GUPTA, DELHI

RAMIFICATIIONS OF SECTION 74A? DEMYSTIFIED

To redefine India's tax landscape, the Finance Minister's Budget 2024 presentation in Parliament shows a game-changing addition to the GST framework. The updated **section 74A changes GST compliance** and enforcement in the country.

The Goods and Services Tax (GST) framework in India was introduced in 2017. Since then, various changes have been made to improve its compliance and effectiveness in terms of revenue generation. In 2024 Union Budget, Section 74A has been introduced to further standardize the GST structure from the perspective of litigation.

As Section 74A has been introduced as part of the Union Budget 2024 with the intention to address tax-related issues including non-payment, short payment, erroneous refunds, or inaccurate input tax credits relevant to Financial Year 2024-25 and subsequent years. The primary objective of Section 74A is to standardize the timeframe for issuance of show cause notices and orders across all cases—regardless of whether fraudulent activity is involved or not. Notably, existing regulations under Sections 73 or 74 will continue to apply for tax matters concerning periods up to FY 2023-24; however, provisions outlined in Section 74A will be implemented beginning with FY 2024-25.

Section 74A has 12 sub sections and we need to read and appreciate the import of all these sub sections as all have a bearing on the ultimate interpretation of law.

It is noteworthy that GST officers are allowed approximately five years from the conclusion of the relevant financial year to issue orders. Should this timeframe be fully utilized, taxpayers may face significant increases in interest liabilities subject to obtaining orders near the limitation date of issuance of order. Additionally, ongoing litigation concerning penalty recovery—regardless of whether it stems from fraudulent or non-fraudulent activities—is expected to remain a pertinent issue under these new provisions as well.

What is GST Section 74A?

Section 74A is made to address various tax discrepancies from unpaid or short-paid taxes to false refunds and wrongly availed GST input tax credits.

Time Limits for SCN Issuance

The issuance of an SCN under Section 74A is bound by the following timelines:

1. **42 months** from the due date for furnishing the annual return for the relevant financial year.
2. **42 months** from the date of the erroneous refund, in cases involving refunded amounts.

Where a notice has been issued for any period under this

section proper officer may serve a statement for subsequent year containing the details of tax not paid or short paid or erroneously refunded or ITC wrongly availed or utilized for such periods other than those covered under sub-section (1). Service of statement to be deemed to be service of SCN if grounds relied upon are same as mentioned in earlier SCN

Penalty Provisions in Section 74A

Penalties under Section 74A vary based on whether the tax discrepancy involves fraud or other reasons:

1. Non-Fraudulent Cases:

A penalty amounting to 10% of the tax due or Rs. 10,000, whichever is higher, will be imposed.

2. Fraudulent Cases:

The penalty equals the total tax due from the taxpayer.

Issuance of GST Orders

After reviewing the taxpayer's response to the SCN, the proper officer is required to issue a final order. The timeline for issuing such an order is as follows:

1. Within **12 months** of the SCN's issuance.
2. An **extension of up to 6 months** may be granted under certain conditions. Such an extension requires the approval of the Commissioner or an authorized senior officer, provided reasons for the delay are recorded.

Encouraging Voluntary Compliance

Section 74A encourages taxpayers to voluntarily rectify non-compliance

before the issuance of an SCN. This provision aims to promote timely tax payments and reduce litigation.

The voluntary payment differ based on whether the case involves fraud or other reasons:

1. Non-Fraudulent Cases:-

- Taxpayers can settle their liabilities by paying the tax amount along with interest under Section 50. This payment can be based on self-assessment or the proper officer's determination.
- If the payment is made before the SCN's issuance, no penalty applies, and proceedings are deemed concluded.
- If a SCN has already been issued, the taxpayer must pay the tax and interest within 60 days of receiving the notice to avoid penalties.

2. Fraudulent Cases:

- Taxpayers must pay the tax amount, interest, and a penalty equal to 15% of the tax before the SCN's issuance.
- After the SCN issuance, taxpayers must pay the tax, interest, and a penalty equal to 25% of the tax within 60 days to conclude proceedings.
- If an order has been issued, taxpayers must pay the tax, interest, and a penalty equal to 50% of the tax within 60 days of receiving the order.

Addressing Non-Payment of Self-Assessed Tax

Under Section 74A, a penalty will be imposed if the taxpayer fails to pay self-assessed tax within 30 days from the due date. This provision underscores the importance of timely compliance with self-assessed tax obligations.

For traders, manufacturers and other corporate stake holders the implications are significant. Companies will be required to update their compliance systems to ensure accurate tax calculations and on-time payments. It is essential to train finance teams on these new provisions to avoid unintentional non-compliance.

All the stake holders now ought to be prepared for more stringent scrutiny, particularly in matters that have ITC claims- resulting in more show cause notices, audits, special audits, scrutiny of returns, leading to inflated adjudication orders; more so when now time from 42 months to 60 month may be involved.

"LEGAL TRIVIA" @ SV

PRINCIPLE OF RESJUDICATA

Res judicata is a legal doctrine that prevents a court from re-examining a case that has already been decided. It's based on the principle that no person should be tried twice for the same cause



@CA (Ms) RENU SHARMA

RECOVERY FROM DIRECTORS OF PRIVATE LIMITED COMPANY OR PUBLIC LIMITED COMPANY UNDER THE CGST ACT 2017 - SOME DOMINANT ISSUES.

The tax authorities have historically had difficulty in collecting arrears of taxes from defaulters. If the company files for bankruptcy, loses its ability to pay or becomes untraceable, the recovery process becomes even more challenging. When it comes to GST, it's important to keep in mind that the money owed by the Company, which is due to the Government, may already be collected from the final customer. As a result, there should not be any exemption from punishment for any gross neglect or misfeasance in relation to the affairs of the company.

As per normal understanding, the directors are not liable for any dues of the company. Limited companies are basically formed to limit the financial liabilities to the extent of the assets of the company. However, in spite of such a legal position, an attempt is made by the authorities to cast liability on the directors. Normally, directors of a public limited company are not covered for personal recovery even by any specific provision.

Section 89 of the CGST Act speaks of joint and several and personal liabilities of Directors in a "Private Limited Company". What does it mean? It means if the corporate entity or its assets etc cannot pay the tax etc levied under GST, which is not stayed by a competent Court or where appeal is not filed or where all actions have become time-barred, then the revenue can look

towards directors unless they prove that "they were not responsible for the company's tax defaults"

Section 89 of the CGST Act is a dangerously couched provision in GST law and it also includes a non-obstante clause, which means that its regulations override any provisions in the Companies Act. Consequently, in the context of GST recovery, the concept of a corporation as a distinct legal entity, as outlined in the Companies Act, is significantly diminished.

We can of course argue that if revenue takes action against the Directors and assign to them the liability of taxes etc imposed on the Company, such a concept may violate the spirit and law contained in Constitution of India, numerous judgments of various High Courts and the Supreme Court, where it has been consistently held that Directors cannot be held accountable for a company's statutory dues in the absence of an explicit statutory provision and have underscored the principle of a company's distinct legal existence. But we all know the theory of lifting of "Corporate Veil". On this theory there are a number of Supreme Court Judgments that the Courts or the statutory authorities can disregard the principle of corporate entity versus directors and make the Directors or other principal officers accountable when there are cases where input tax credit is taken fraudulently or goods are supplied without invoices etc. Can we say with confidence that here the Directors are not responsible? Perhaps the answer would be an emphatic NO.

Seeing in the above context can we explore the possibility to highlight that Section 132 of the CGST Act dealing with prosecution and penalties for various offences under GST can and does open a door to the revenue to potentially hold

Directors accountable for the sins or defaults or offences or misdeeds committed by the Company through them? Absolutely yes that is why Section 89 contains a non-obstante clause. And if Directors are not guilty or they are not directly or indirectly or even remotely connected with what Company has done, then they have the recourse to the Courts to seek relief by proving their non-involvement.

A similar sentiment was echoed by various High Courts that have held that before taking any action of recovery against the directors of the company, a subjective satisfaction is required to be achieved by the concerned officer in regard to whether a person concerned against whom recovery is sought to be made was a director of a Private Limited Company for the concerned period. Hence, the satisfaction is the foundation for moving against the Directors. And this provides a leverage to the Directors to prove they are not guilty.

Suppose a Director proves he was not the Director during the periods to which the tax demands or other issues relate with GST authorities, then straight away he cannot be implicated in GST Law. Section 89 stipulates that recovery proceedings against directors can only be initiated if they were indeed serving as directors during the period for which GST liabilities remain outstanding.

Further when we rely on Section 79 of the CGST Act we can emphasise the necessity of establishing a director's liability through a thorough examination of factual circumstances. It noted that recovery proceedings against individuals, especially former directors, must be founded on concrete evidence of their involvement during the relevant period.

Under the GST laws, the recovery of taxes is contemplated on the person who makes a taxable supply. Therefore, such liability should ideally be fastened on the Company as a whole and not on a person by virtue of his fiduciary position as a Director, unless proven other-wise. I read Section 79 and Section 89 (not being quoted for the sake of brevity of the article) and I was about to bring about a cumulative effect that the principal liability is not on the taxes etc is and cannot be on the Director who is an

individual and is not a registered person within the meaning of Section 79(1). Further Section 89 clearly provides that before taking any action of recovery against the directors of the company, a subjective satisfaction is required to be achieved by the concerned officer in regard to whether a person concerned against whom recovery is sought to be made was a director of a Private Limited Company for the concerned period. It is only after such satisfaction to the effect that such person was the director of the company, the liability could be fastened against such director.

Therefore once a Director proves that he was not director at the relevant time in terms of Companies Act provisions, there is no question of holding him responsible for defaults committed by the Company. If the revenue goes forward and holds such a Director responsible for the defaults of the Company It is certainly in breach of the rights guaranteed to the petitioner under Article 14, read with Article 300A, of the Constitution.

The non obstante clause of Section 89 restricts the action of the revenue to recover from Director only of a PRIVATE LIMITED COMPANY AND NOT FROM A PUBLIC LIMITED COMPANY.

Hence, it is interesting to note that there is no other provision that fixes liability on a Director with respect to the tax dues of a public company. In the absence of a provision to this effect, can it be said that no liability can be automatically fastened on a Director to recover the dues of the public company under the GST laws? It can safely be argued that any proceeding initiated by the Department fastening liability on a Director to recover dues of a public company would be violative of the Constitution of India. There are a plethora of judgements which have stated that no liability can be fastened on a Director of a company w.r.t. statutory dues of the Company in the absence of an enabling statutory provision.

However, as already stated herein above, in certain exceptional scenarios, the above principle of the separate legal existence of a Company can be made redundant by the application of the fiction that the veil of the

Company be lifted in certain tax cases involving evasions/fraud as has been held by the Courts from time to time. The common law doctrine of lifting the corporate veil can be applied in cases where tax obligations under a statute are sought to be evaded by the Company. **The Hon'ble Supreme Court has observed that the Courts have the power to disregard the corporate entity if it is used for tax evasion or to circumvent tax obligation.**

Uttarakhand High Court in the case of *Jagteshwar Prasad Bansal & others vs. State of Uttarakhand & others (59 GSTR 491) (Uttarakhand)*. In this case, the sales tax department tried to recover dues from the directors of the company, although in the relevant Uttarakhand Value Added Tax Act there was no specific provision for recovery from a director. However, the department wanted to lift the corporate veil. The High Court rejected the action of the sales tax authorities. It held that unless there is any fraud or he / she is guilty of misrepresentation, the corporate veil cannot be lifted.

Section 89 of the CGST Act makes the directors of a private limited company liable for payment of tax in case such amount cannot be recovered from such company. It provides that where any tax, interest or penalty due from a private company remains unrecovered for any period then any person who was a director during **such** period shall, jointly and severally, be liable for the payment of such unpaid amount. The provision specifically renders a Director jointly and severally liable for tax dues assessed against private companies unless he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

In the case of *Pepsico India Holdings Private Limited v. Food Inspector [(2011) 1 SCC 176]*, the Apex Court has held that mere bald statement that a person was a Director of the Company is alleged to have committed **the offence is not sufficient unless a specific allegation regarding his role in the management is made clear.**

Imagine a private company getting converted into a public limited company? Would the Directors be liable for the period when it was a private limited company? My view is NO.

Look at Section 88 – also dealing with liability of the Directors. Section 88(3) of the CGST Act introduces the concept of **vicarious liability for Directors** of the debtor company. It stipulates that if a private company undergoes liquidation and any tax, interest, or penalty remains unpaid as per this Act, the Directors of said debtor company are jointly and severally responsible for paying these dues.

A Single Bench of Madras High Court, noted that if the company in liquidation lacks funds, making it impossible to recover the sales tax dues from the company itself, a new legal basis emerges to seek these dues from the former Directors of the company in liquidation. (case of Smt.K.Malathi)

Recovery of Arrear in case of Initiation of Insolvency or Bankruptcy proceedings before NCLT under Insolvency and Bankruptcy Code, 2016 (IBC, 2016)

There could also be cases where proceedings have been initiated by financial or operational creditors against the taxpayer or defaulter person from whom GST arrears are also due for recovery, in case of companies before National Company Law Tribunal or in case of individual or partnership firms before Debt recovery Tribunal (DRT) under Insolvency and Bankruptcy Code, 2016.

As soon as the case is admitted before NCLT/DRT, the provision of IBC Code, 2016 becomes applicable. The provision of Insolvency and Bankruptcy Code has overriding effect over the provision of GST Laws. In case of conflict between the provision of Insolvency and Bankruptcy Code and CGST Act, 2017, the provision of former will prevail. Therefore, any action for recovery, where the proceedings have already been initiated by financial /operational creditors against the defaulter before NCLT, has to be considered in the light of provision of IBC, 2016.

In this regard, CBIC has also issued two Circulars bearing No. 134/04/2020- GST dated 23rd March, 2020 and Circular No. 187/19/2022-GST, dated 27.12.2022. For clarity, these Circulars may also be carefully studied.

Vide Circular No.134/04/2020-GST dated 23rd March, 2020, it has been clarified that no coercive action can be taken against the corporate debtor with respect to the dues of the period prior to the commencement of Corporate Insolvency Resolution Process (CIRP). Such dues will be treated as 'operational debt' and the claims may be filed by the proper officer before the NCLT in accordance with the provisions of the IBC.

The CBIC also examined the issue of the modalities for implementation of the order of the adjudicating authority under Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "IBC") with respect to demand for recovery against such corporate debtor under Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act") as well under the existing laws and the treatment of such statutory dues under CGST Act and existing laws, after finalization of the proceedings under IBC. While clarifying this question, the CBIC vide Circular No. 187/19/2022-GST, dated 27.12.2022 clarified as under:-

As per Section 84 of CGST Act, if the government dues against any person under CGST Act are reduced as a result of any appeal, revision or other proceedings in respect of such government dues, then an intimation for such reduction of government dues has to be given by the Commissioner to such person and to the appropriate authority with whom the recovery proceedings are pending. Further, recovery proceedings can be continued in relation to such reduced amount of government dues.

The word 'other proceedings' is not defined in CGST Act. It is to be mentioned that the adjudicating authorities and appellate authorities under IBC are quasi-judicial authorities constituted to deal with civil disputes pertaining to insolvency and bankruptcy. For instance, under IBC, NCLT serves as an adjudicating authority for insolvency proceedings which are initiated on application from any stakeholder of the entity like the firm, creditors, debtors, employees etc. and passes an order approving the resolution plan. As the proceedings conducted under IBC also adjudicate the government dues pending under the CGST Act or under existing laws

against the corporate debtor, the same appear to be covered under the term 'other proceedings' in Section 84 of CGST Act.

Rule 161 of Central Goods and Services Tax Rules, 2017 prescribes **FORM GST DRC-25** for issuing intimation for such reduction of demand specified under section 84 of CGST Act. Accordingly, in cases where a confirmed demand for recovery has been issued by the tax authorities for which a summary has been issued in **FORM GST DRC-07/DRC 07A** against the corporate debtor, and where the proceedings have been finalised against the corporate debtor under IBC reducing the amount of statutory dues payable by the corporate debtor to the government under CGST Act or under existing laws, the jurisdictional Commissioner shall issue an intimation in FORM GST DRC-25 reducing such demand, to the taxable person or any other person as well as the appropriate authority with whom recovery proceedings are pending.

Take Away:

While dealing with such cases a lot of research needs to be done and the provision of the Companies Act or the Income Tax Act or other such Acts may not impact the litigation under GST. And litigation is going to happen big times on this issue.

Please post your comments on our website

Queries welcome on our Website.

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PRINCIPLE OF CAUSA PROXIMA

Causa proxima is a Latin phrase that means "the immediate cause" or "the proximate cause". **It's a key principle in insurance law and tort law that's used to determine the cause of an event that led to a loss or harm.**



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EDITOR'S PICK – 10 LATEST JUDGMENTS

(1) STATE OF PUNJAB & ORS. Vs JAGSEER SINGH(SC)

HC Released goods and vehicles confiscated subject to deposit of 25 percent by way of an ex-parte interim order without calling for bank guarantee for the balance. State filed an appeal. Held THE HIGH COURT fell in error in passing the orders without hearing the respondent. The SC observed that in the absence of a proper bank guarantee the revenue of the State shall be at risk, should the petitioner be unsuccessful. Matter remanded for a fresh consideration for the interim relief, since goods and vehicles were not released based on legal provisions. Very Important Judgment for section 129 of the CGST Act.

(2) COMMISSIONER OF CGST Vs ANSHUL JAIN. (SC)

Whether cash is a "thing" as per Section 67(2). This controversy reignited by the SC by admitting the SLP filed by the State to consider whether the GST

Officers can seize cash and whether the term "things" should be read ejusdem generis with goods, documents or books! Important judgment awaited as most of the High Courts and the SC had settled the controversy holding cash cannot be seized. SC to consider this matter. Let us wait.

(3) SHARDA CONSTRUCTION Vs THE STATE OF BIHAR & ORS.(SC)

Consequently, the appeal filed by the appellant herein before the Appellate Commissioner was dismissed both for non- prosecution as well as on

merits. Being aggrieved by the said orders, the appellant has preferred this appeal.

The appellant here did not appear before the first AA five consecutive times and the First AA dismissed the appeal for non-prosecution by hearing the DR only. HC too accepted this order and dismissed the case. But SC observed that non-prosecution is one matter but passing the orders dismissing the appeal on merits without hearing the petitioner – this aspect was not noticed by the High Court. SC observed this is violation of natural justice. While imposing a cost of Rs. 25000/- on the Petitioner for non-prosecuting the appeal five times, the SC set aside orders of the lower authorities including that of the HC and restored the appeal before the first AA to rehear the matter after granting opportunity to the Petitioner. **Indeed a very important judgment for the professionals.**

(4) RHC GLOBAL EXPORTS PRIVATE LIMITED & ORS. Vs UNION OF INDIA & ORS.

Whether the bank account can be reattached by renewal of the earlier attachment order even after period mentioned in Section 83 of the CGST Act has expired. The Supreme Court said no, it cannot be done and directed the revenue to lift the attachment made second time of the same account.

(5) ASSISTANT COMMISSIONER STATE TAX, DURGAPORE RANGEVsASHOK KUMAR SUREKA

Whether the State could file appeal before the apex court in violation of its own circular ([Circular No.207/1/2024-GST](#)) that prescribes the minimum amounts for which revenue could

file appeals. Where the demand for penalty was just of Rs.3.25 lakhs, notwithstanding the order of the High Court the SC held appeals not maintainable and the order of the High Court will not act as a precedent.

(6)STERLING AND WILSON PRIVATE LIMITED VsTHE JOINT COMMISSIONER AND OTHERS

Classification of supply of the Solar generating Power Station - Composite supply or Works Contract – Whether it is a works contract or a composite supply ? - Respondents rejected the petitioner's refund claim and initiated an assessment proceeding treating the transactions as a "Works Contract" attracting tax @18% GST rate. AP High Court held the distinction between 'works contract' and a 'composite supply' would be whether the end product handed over to the contractee, is moveable or immoveable property - The property, which is attached to a structure embedded in the earth, would also become immoveable property only when such attachment is for the permanent beneficial enjoyment of the structure, which is embedded in the earth. In this case, the civil foundation is embedded in the earth. However, the solar modules and the Solar Power Generating System have not been attached to the civil structure for the purpose of better enjoyment or beneficial enjoyment of the civil foundation. On the contrary, the civil foundation has been embedded on earth for better permanent and beneficial enjoyment of the Solar Power Generating Station - Applying the principles laid down by the Supreme Court in CCE, Ahmedabad v. Solid and Correct Engineering Works, it is held that the solar modules and the Solar Power Generating System are not attached to the civil foundation for the purpose of better enjoyment or beneficial enjoyment of the civil foundation. Rather, the civil foundation has been embedded on earth for better permanent and beneficial enjoyment of the Solar Power Generating Station. Therefore, the transaction should be treated as a "Composite Supply" and not a "Works Contract" - The Solar Power Generating System supplied by the petitioner cannot be considered as "immovable property" and would not fall under the definition of "Works Contract" under Section 2(119) of the CGST Act - the supply of the Solar generating Power Station is a

Composite supply under 2(30) of the CGST Act - the impugned order is set aside and the petition is allowed. **New TEST OF PERMANENT BENEFICIAL ENJOYMENT OF THE STRUCTURE.**

(7) INFODESK INDIA PVT. LIMITED Vs THE UNION OF INDIA & ORS.

Petitioner filed a refund claim for unutilised input tax credit claiming that the services provided to its parent company are in the nature of 'export of services' under Section 2(6) of the IGST Act – Rejection of refund claim on the ground that the services provided by the petitioner are in the nature of 'intermediary services' under Section 2(13) of the IGST Act and not 'export of services' and that the refund claim was time-barred. The Guj High Court held that in terms of the service agreement between the petitioner and its parent company clearly indicate that the petitioner is providing services to its parent company *on its own account and not as an agent, broker or any other person who arranges or facilitates the supply of services between two or more persons* - on conjoint reading of the scope of services to be provided by the petitioner, it cannot be said that the petitioner is only to work as an agent or a broker between parent company and its customers without supplying any goods or services on its own account.

Moreover, as per the terms of payment, payment is to be received by the petitioner from its parent company on monthly basis and fee equal to cost incurred by the petitioner plus mark up on costs. Meaning thereby, the petitioner is also earning the profit of 8% on the cost incurred by it in providing services to its parent company - The High Court relied on the decisions in Genpact India Pvt. Ltd. vs. Union of India and M/s. Ernst and Young Limited vs. Additional Commissioner and held that the services provided by the petitioner to its parent company fall within the definition of 'export of services' under Section 2(6) of the IGST Act, and not 'intermediary services' under Section 2(13) of the IGST Act –Allowed the Petition.

(8) GUJARAT CHAMBER OF COMMERCE AND INDUSTRY & ORS VS UNION OF INDIA & ORS

The leasehold rights are nothing but a "benefit arising out of land" which is an immovable

property as per the definition under various statutes like the General Clauses Act, 1897, the Transfer of Property Act, 1882 and the Registration Act, 1908- In such circumstances, provisions of section 7(1)(a) of the CGST Act providing for scope of supply read with clause 5(b) of Schedule II and Clause 5 of Schedule III would not be applicable to such transaction of assignment of leasehold rights of land and building and same would not be subject to levy of GST as provided under section 9 of the CGST Act - the assignment of leasehold rights by the lessee-assignor in favour of the third party-assignee would not be subject to levy of GST under the provisions of the CGST Act – The petitions are allowed.

(9) ROSIDA SULTANA VS THE STATE OF ASSAM AND 2 ORS(GAU)

Where show cause notice etc was not signed or authenticated by the proper officer, it was held that adjudication orders under section 73 were not valid as the same was done without issuance of a valid and proper show cause notice that required to be signed as per modes under rule 26(3) of the CGST Rules. Further adjudication without personal hearing when requested violates the principle of natural justice and hence consequence orders cannot be sustained in law. The orders were quashed.

(10) M/s CREAMLINE DAIRY PRODUCTS LIMITED vs THE STATE TAX OFFICER, ADJUDICATION, INTELLIGENCE-I, CHENNAI

A 200 % penalty imposed where the additional place of business was not registered under the law and the revenue seized and detailed goods and vehicles at that place.

Giving relief to the Petitioner the Court held that the failure to obtain registration for the additional place of business was a procedural irregularity and did not amount to an intention to evade tax - The circulars issued by the CBIC and the Commissioner of Commercial Taxes has clarified that no penalty is leviable in cases of minor mistakes or omissions in documentation without any fraudulent intent - Further, the goods were accompanied by an e-way bill and invoice and there was no variance between the quantity in the invoice and the actual seizure. Therefore, the imposition of penalty under Section

129(3) of the CGST Act is held to be harsh under the given facts and circumstances of the case - the impugned order is quashed and the writ petition is allowed

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Special Leave Petitions (SLP) has been provided as a residual power in the hands of Supreme Court of India to be exercised only in cases when any substantial question of law is involved, or gross injustice has been done. It provides the aggrieved party a special permission to be heard in apex court in appeal against any judgment or order of any court/tribunal in the territory of India, except military tribunal and court martial. ARTICLE 136 OF CONSTITUTION OF INDIA.



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10 CHOSEN QUERIES AND SUGGESTED ANSWERS.

Q. A dealer is engaged in sale of taxable goods but his turnover as per balance sheet is below RS. 10 lakhs and he has branches in entire NCR. Based on advice he did not register himself in any of the five States but he was making off and on interstate sale. Now he has received notice to pay tax on entire turnover involved by DGGI on the ground he liability to register accrued on the date when he made interstate sale just from one State? Any way out on this Sir.

CA from Faridabad

A. No, he has no way out. GST Registration is pan-based and aggregate turnover definition in Section 2 does include turnover of Rs 40 lakhs (taxable quantum) all over India. Hence, the dealer was liable to register if the aggregate turnover (all India) is more than 20 lacs or if he is engaged in inter-State supplies. No way out. He should pay tax as per law with interest before any notice is issued to him – perhaps he can escape penalty under Section 122 but penalty for not registering may be imposed and payable.

Q. My client is proposing two SEZs in West Bengal and the same are under construction. He has been advised that he would require two separate registrations in the State of West Bengal? I shall be grateful for your observations in the matter.

Advocate from Kolkata

A. If SEZs are being constructed under the same PAN and in the same State, then only one registration shall be required and not two; and these shall be independent of registrations for other non-SEZ related businesses. This is what is mandated in law as per Rule 8(1) of GGST Rules.

Q. We are a firm registered in Haryana with a turnover of less than 40 lakhs dealing in goods. We are getting

supplies from an unregistered dealer from UP for Rs 2 lakhs. We are advised to pay RCM and also get registration in UP. Is this the correct opinion? CA from Delhi

A: Strange question. No you do not have to take registration in UP at all. ITC will not be available to you in either State because the supplier is unregistered. It is the supplier in UP who must get register as he is making an interstate supply and his case can be covered under Section 24. Hope you are clear. RCM is not payable.

Q. We are an event management firm doing small events. We are registered in Delhi. We just signed a contract in Mumbai to hold one event. Do we need to register ourselves in Mumbai?

From Delhi.

Yes only if you provide any supply from Mumbai that you need to take registration therein. Else, registration at Delhi is sufficient (and pay IGST on supplies made from Delhi to Mumbai)

Q. My client is a start-up and intends to engage in import of electronic goods. What duties are levied on import of goods?-

Advocate from Lucknow

Customs duty and cess as applicable + IGST+ GST compensation cess. IGST and GST compensation cess shall be paid after adding all customs duty and customs cess to the value of imports .

Q We are an infra company engaged in construction of projects. We frequently move goods from one location to another. We are always advised to issue delivery Challans and we do and report in appropriate returns. Is this procedure correct so that we are safe in future? Another question is how we take credit of RCM – we take credit simply when we pay tax.

CA from Delhi.

The law is settled if the goods are **meant to be supplied in the course of construction an invoice is necessary**. If the goods are tools which are to be used for construction then delivery challan should be issued. Stock transfers are allowed. You can move the machinery or other construction equipment against a delivery challan interstate subject to payment of appropriate GST. Reg credit of RCM your procedure is incorrect. You must raise a tax invoice on SELF which is the precondition under Section 16(1) of the CGST Act without which your ITC can be questioned though it is procedural in nature.

Q. Sir, we sell high quality chemicals that go under our own metal drum packing and price of such packing is not a part of supply consideration as the customer has to return the drums to us after unloading the chemicals into his plant. Whether GST will be leviable in case of returnable packing material like drums supplied with finished goods?

CFO FROM PUNE

A. In my opinion GST will be levied on the value charged for the supply only. Returnable drums are a part of the supply contract, though implied and hence you will have to maintain proper accounts and documents to substantiate that the metal drums did come back to you. Exchange of documents is essential to get away from the GST liability.

Q. We are an online ware house and we provide bus service, meal coupon, telephone at residence, give vehicles for official and personal use, uniform and shoes, any GST?

Since this may not be a part of employment contractual terms it will be deemed to be a gift from employer to employees. And the law is that where the value of such supplies is in the nature of gifts, **no GST will apply till value of such gifts exceeds Rs. 50000/-in a financial year. You may take your call accordingly.**

Q. We are a new STARTUP engaged in importing goods for OEMs in the electronic battery manufacturing. Normally the customers want us to do high seas sales. We would like to know whether we pay IGST twice- first when we import and then when we make high seas sales. We are not clear. Please guide us and also let us know Telephone number of a good professional near HISSAR.

ADVOCATE FROM. HISSAR

A. High Seas sales do not attract any tax. You do not have to pay any tax. After you have placed your firm order on the exporter, enter into a high seas sales agreement (your CHA will guide you) and once you receive bill of lading from the exporter from outside

India, you simply endorse this bill of lading in favour of the OEM manufacturer. Till now the goods are deemed to be on high seas and are not supposed to have entered into Indian territory. The OEM manufacturer shall file bill of entry and pay the custom duty as per law. Hence, if you follow this procedure your liability to pay any tax is ZERO. **Reg telephone number of a good professionals, sorry dear, we do not provide such numbers on this platform.**

Q.What is the difference between a zero-rated supply and an exempt supply? What is the significance of these terms from the point of view of input tax credit claims or refunds?

Differentiating between zero-rated and exempt supplies helps businesses accurately determine their tax implications . In GST, a zero-rated supply refers to the goods or services that are taxable but have a GST rate of 0%. **The government does not levy any GST on such supplies, but businesses can claim ITC on inputs they use for zero-rated supplies.** (Section 16 of IGST ACT)

An exempt supply refers to the supply of goods or services that are entirely exempt from GST, meaning the government does not charge any GST, and businesses cannot claim ITC on inputs they use for these supplies.(Section 17(1) and Section 17(2) may be referred to)

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HEYDON'S RULE – IMP TOOL FOR INTERPRETATION OF LAW

Haydon's Rule, also known as the Mischief Rule, is a rule of statutory interpretation that helps judges determine the intent of a law. It was established in England in 1584 in the landmark case Haydon's Case.



**DGST UPDATE-
BY CA RENU SHARMA, DELHI.**

**REVENUE NOTIFICATIONS/CIRCULARS/ADVISORIES/PRESS RELEASES
December 2024**

| Date | Notification No | Matter |
|------------|---------------------|---|
| 10.12.2024 | 30/2024-Central Tax | Seeks to extend the due date for furnishing FORM GSTR-3B for the month of October, 2024 for registered persons whose principal place of business is in the district of Murshidabad in the state of West Bengal. |
| 13.12.2024 | 31/2024-Central Tax | Seeks to appoint common adjudicating authority for Show cause notices issued by officers of DGGI |

January 2025

| Date | Notification no | Matter |
|------------|---------------------|---|
| 10.01.2025 | 01/2025-Central Tax | Seeks to extend the due date for furnishing FORM GSTR-1 for the month of December, 2024 and the quarter of October to December, 2024, as the case may be |
| 10.01.2025 | 02/2025-Central Tax | Seeks to extend the due date for furnishing FORM GSTR-3B for the month of December, 2024 and the quarter of October to December, 2024, as the case may be |
| 10.01.2025 | 03/2025-Central Tax | Seeks to extend the due date for furnishing FORM GSTR-5 for the month of December, 2024 |
| 10.01.2025 | 04/2025-Central Tax | Seeks to extend the due date for furnishing FORM GSTR-6 for the month of December, 2024 |
| 10.01.2025 | 05/2025-Central Tax | Seeks to extend the due date for furnishing FORM GSTR-7 for the month of December, 2024 |
| 10.01.2025 | 06/2025-Central Tax | Seeks to extend the due date for furnishing FORM GSTR-8 for the month of December, 2024 |

Circulars from 01.12.2024 to 15.01.2025

| Date | Circular no. | Matter |
|------------|------------------|---|
| 04.12.2024 | 239/33/2024--GST | Amendment to Circular No. 31/05/2018-GST, dated 9th February, 2018 on 'Proper officer under sections 73 and 74 of the Central Goods and Services Tax Act, 2017 and under the Integrated Goods and Services Tax Act, 2017'-reg. |
| 31.12.2024 | 240/34/2024-GST | Clarification in respect of input tax credit availed by electronic commerce operators where services specified under Section 9(5) of Central Goods and Services Tax Act, 2017 are supplied through their platform |
| 31.12.2024 | 241/35/2024-GST | Clarification on availability of input tax credit as per clause (b) of sub-section (2) of section 16 of the Central Goods and Services Tax Act, 2017 in respect of goods which have been delivered by the supplier at his place of business under Ex-Works Contract |
| 31.12.2024 | 242/36/2024-GST | Clarification on place of supply of Online Services supplied by the suppliers of services to unregistered recipients |
| 31.12.2024 | 243/37/2024-GST | Clarification on various issues pertaining to GST treatment of vouchers |

Instruction from 01.12.2024 to 15.01.2025

| Date | Instruction No. | Matter |
|------------|-----------------------------|---|
| 13.01.2025 | Instruction No. 01/2025-GST | GUIDELINES FOR ARREST AND BAIL IN RELATION TO OFFENCES PUNISHABLE UNDER THE CGST ACT, 2017 - REG. |

**Advisories Issued by GSTN from 01.12.2024 to 15.01.2025--
December 2024**

| Serial no. | Date | Advisory Details |
|------------|------------|--|
| 1 | 01.12.2024 | Gross and Net GST revenue collections for the month of Nov, 2024 |
| 2 | 04.12.2024 | Advisory on mandatory Sequential Filing of GSTR-7 Returns as per Notification No. 17/2024 |
| 3 | 08.12.2024 | Advisory for Biometric-Based Aadhaar Authentication and Document |
| 4 | 09.12.2024 | Advisory on difference in value of Table 8A and 8C of Annual Returns FY 23-24 |
| 5 | 15.12.2024 | Advisory for Biometric-Based Aadhaar Authentication and Document Verification for GST Registration Applicants of Chhattisgarh, Goa and Mizoram |
| 6 | 17.12.2024 | Advisory on Updates to E-Way Bill and E-Invoice Systems |
| 7 | 18.12.2024 | Advisory for Entry of RR No./eT-RRs in EWB system Post EWB-FOIS Integration |
| 8 | 23.12.2024 | Advisory for Entry of Receipt Numbers Pertaining to Leased Wagons in the E-Way Bill System |
| 9 | 29.12.2024 | Advisory for Waiver Scheme under Section 128A |
| 10 | 31.12.2024 | Advisory for Biometric-Based Aadhaar Authentication and Document Verification for GST Registration Applicants of Arunachal Pradesh |

Press Release- from 01.12.2024 to 15.01.2024

Advisory Dated 02nd December, 2024

Advisory for Entry of RR No./eT-RRs in EWB system Post EWB-FOIS Integration
Subject: Guidance for Accurate Entry of RR No./eT-RRs following the Integration of E-Way Bill (EWB) with Freight Operation Information System (FOIS) system of Indian Railways.

Advisory Dated 04th December, 2024

Advisory on mandatory Sequential Filing of GSTR-7 Returns as per Notification No.17/2024

Advisory Dated 08th December, 2024

Advisory for Biometric-Based Aadhaar Authentication and Document Verification for GST Registration Applicants of Haryana, Manipur, Meghalaya and Tripur

Advisory Dated 15th December, 2024

Advisory for Biometric-Based Aadhaar Authentication and Document Verification for GST Registration Applicants of Chhattisgarh, Goa and Mizoram

Advisory Dated 18th December, 2024

Advisory for Entry of RR No./eT-RRs in EWB system Post EWB-FOIS Integration

Recommendations of the 55th Meeting of the GST Council

Advisory Dated 23rd December, 2024

Advisory for Entry of Receipt Numbers Pertaining to Leased Wagons in the E-Way Bill System

Advisory Dated 29th December, 2024

Advisory for Waiver Scheme under Section 128A

Advisory Dated 31st December, 2024

Advisory for Biometric-Based Aadhaar Authentication and Document Verification for GST Registration Applicants of Arunachal Pradesh

Advisory Dated 1st January, 2025

Advisory to Taxpayers on Extension of E-Way Bills Expired on 31st December, 2024

Advisory Dated 7th January, 2025

Sub: Enabling filing of Application for Rectification as per Notn. 22/2024-CT, dt. 08/10/24, 2024

Advisory Dated 8th January, 2025

Advisory for Biometric-Based Aadhaar Authentication and Document Verification for GST Registration Applicants of Rajasthan

Advisory Dated 10th January, 2025

Advisory on Extension of Due Date w.r.t GSTR 1 and GSTR 3B

Advisory Dated 14th January, 2025

Advisory for Waiver Scheme under Section 128A

Advisory Dated 14th January, 2025

Generation Date for Draft GSTR 2B for December 2024

GALLERY; RAJMANI JINDAL STAR OF THE GROUP AWARD BY PRAVEEN KHANDELWAL JI AND RELEASE OF FIRST E-NEWSLETTER OF THE GROUP BY THE E-NEWSLETTER TEAM MEMBERS,



FOR ALL THE PROFESSIONALS/GST STAKE HOLDERS IN INDIA:

FROM DGST GROUP - SPECIMEN OF DRAFT OF APPEALS ON GROUNDS OF CANCELLATION OF REGISTRATION CERTIFICATE UNDER SECTION 29(2) OF THE STATE GST ACT READ WITH CGST ACT.

APPEAL TO BE FILED IN FORM APL 05

THE APPEAL FILING FEE IS IN TERMS OF RULE 1112(5)- MINIMUM 5000 AND MAXIMUM 25000

**BEFORE THE HON'BLE GST TRIBUNAL, DELHI BENCH, DELHI
Appeal No.....of 2025)**

IN THE MATTER OF:

**XVZ LIMITED s
GSTIN. No.**

APPELLANT

VERUS

**(1)COMMISSIONER, SGST,
ADDRESS.**

RESPONDENTS

**(2)PROPER OFFICER
SGST
NAME AND ADDRESS.**

APPEAL UNDER SECTION 112 READ WITH RULE 110 READ WITH SECTION 29(2) OF THE DGST ACT 2017 AND DGST RULES 2017 AND FURTHER READ WITH CGST ACT 2017 – ALLEGING ITC CLAIMED FROM BOGUS FIRM AND CANCELLING THE REGISTRATION CERTIFICATE RETROSPECTIVELY OR NON-FUNCTIONING AT THE GIVEN ADDRESS OR FOR NOT FILING THE RETURNS.

HON'BLE PRESIDENT AND HIS COMPANION MEMBERS OF THE HON'BLE GST TRIBUNAL- BENCH

The appellant respectfully submits for kind consideration of this Hon'ble Tribunal as under:

ALL CONDITIONS PRECEDENT FOR FILING OF THE APPEAL HAVE BEEN SATISFIED AS UNDER:

- The appellant is a registered dealer of the Delhi GST Department with the above GSTIN No.. The appellant is engaged in the business of trading/manufacturing/providing services for the last ... years.
- The appeal is filed within the limit period as the order under appeal was received by the appellant on.... And the appeal has been filed on.....
- The amount in dispute is above Rs. 50000/-
- The required conditions for filing the appeal have been satisfied.
- The requisite fee for filing of the appeal has also been deposited.

- The order is appealable as per law.
- A copy of the Board Resolution (in case the appellant. Is a company) authorising Mr..... to file the appeal and also appointing advocate Shri..... To present and argue the matter before this Hon'ble Tribunal.
- All copies annexed as per index are true copies of the originals.
- Requisite fee for filing the appeal as per Rule 112(5) has been deposited.
- Since there is no disputed demand hence there is no mandatory pre-deposit required.

The Factual Matrix.

THE APPELLANT IS AGGRIEVED BY THE ACTIONS TAKEN BY THE LOWER AUTHORITIES INCLUDING THE ADJUDICATION OFFER AND THE FIRST APPELLATE AUTHORITY.

The registration of the appellant has been cancelled under Section 29(2) of the DGST Act read with CGST Act on the ground that the appellant is dealing with the bogus firms and claiming input tax credit and *simultaneous proceedings of dealing with bogus firms as well as recovery under Section 74 of the CGST Act are being carried out against the appellant (Copy of the impugned order dated.....and the proceedings notice under section 74 also annexed as Annexure A to this appeal.*

THE appellant says and submits that M/s..... is proprietor ship/partnership/LLP or a Company registered with the Department onand the appellant continues to work from the business address given at the time of registration.

(Or if you changed the address that write that an amendment application was moved by the appellant on..... which was approved or accepted by the Department on.... (Copy annexed as Annexure ...B)

2. On.....the Department conducted a survey at the earlier place of business and found that the firm does not exist at the registered place, even though the amended address was duly approved by the Department as per annexure B to this appeal petition.

3. The proper officer has also alleged that the appellant has been buying goods from bogus firms and claiming or availing input tax credit which is not legally permissible. This ground too has been taken to cancel the registration certificate of the appellant. OR

3A. The proper officer has cancelled the registration certificate of the appellant retrospectively on the ground that the appellant has not filed the returns for consecutive six tax periods – which allegation is not correct as per evidence being annexed with this appeal petition.

SHOW CAUSE NOTICE AND REPLY FILED.

4. An SCN dated was issued by the proper officer alleging cancellation of GST registration certificate on the ground that the firm did not exist. And also the SCN has alleged that the appellant has been receiving supplies from bogus firms and availing the input tax credit which is not legally permissible under the law. The appellant filed reply online on A copy of which is annexed as Annexure C to this appeal petition along with show cause notice issued . In the reply the appellant has substantiated with evidence put on record that the appellant was a genuine buyer of goods from the alleged bogus firms and there is not even iota of evidence or allegation proved in the show cause notice except some vague allegations – and this can at best be a suspicion and cannot take the place of proof to be used against the appellant. In the show cause notice the appellant also made an application to the proper officer to call those suppliers for cross examination by the appellant but the proper officer failed to deal with this application judiciously and as per law. Further the appellant produced all books of accounts, sales and purchase documents, return copies, lorry receipts duly acknowledged, the proof of receipt of goods and

the name of the person who delivered the goods and accounting of the same goods in the books of accounts of the appellant and further the utilisation of those goods by way of consumption in the manufacture or supply by way of trading on which the due tax as per law has duly been paid.

The appellant had categorically stated in his reply that there is no such ground available to cancel the registration certificate of the dealer under Section 29(2) especially when no inquiry or investigation has been done and just based on some suspicion, without questioning the activities of the appellant, the proper officer has made allegations that have no legs to stand.

OR:

4A. The proper officer has cancelled the registration certificate on the ground that the appellant has not filed the returns for a consecutive period of six months. In the reply filed the appellant had explained to the proper officer that this allegation is incorrect as on the date of cancellation of registration certificate returns for only two months were pending and hence this ground was not available to him to cancel the registration certificate of the appellant under section 29(2)(c) of the DGST Act.

OR

The proper officer has issued a show cause notice relying upon section 29(2)(d) and has alleged that the appellant was not found functioning from this address; the appellant replied in his show cause notice that there is no such ground in sub-clause(d) of Section 29(2) that deals with power of the proper officer to cancel the registration certificate only if has not commenced business within six months from the date of registration.

4. The proper officer has now cancelled the GST registration on and also initiated proceedings under Section 74 for recovery of input tax credit. The proper officer has failed to give any cogent reasons in the cancellation order except that he is not satisfied with the replies filed by the appellant and further that suppliers' activities as per internal reports are suspicious. There is no allegation against the appellant regarding non receipt of goods or non -payment of tax on the use of such goods.

The appellant thereafter moved an application under Section 30 of the Central Goods and Services Tax Act, 2017 before the Assistant Commissioner, Commercial Tax, seeking revocation of cancellation of the registration. He has rejected the application *vide* order dated

The Petitioner preferred an appeal before the Additional Commissioner, Commercial Tax, which was also dismissed *vide* order dated.... (Copy of Revocation rejection order and the appellate order are collectively enclosed as Annexure D.)

Feeling aggrieved against the orders passed by the lower authorities, the appellant has filed the appeal before this Hon'ble Tribunal challenging the actions and orders dated 17.05.2021 (Rejection order along with Revocation Rejection Order) and 14.09.2021 passed by the first appellate authority.

THEN FRAME QUESTIONS OF LAW BASED ON WHAT ADJUDICATION ORDER YOU RECEIVED BASED ON THE ABOVE GROUNDS : THE SUGGESTED QUESTIONS COULD BE

The two questions before this Hon'ble Tribunal are

1. *Whether the allegation of being a bogus firm is a ground for cancellation of GST registration?*
2. *Whether simultaneous proceedings of being a bogus firm as well as recovery under Section 74 of the CGST Act can be carried out against the Petitioner?*
3. *Whether the lower authorities were justified in cancelling the registration order retrospectively on the ground of non-functioning of the dealer at the premises when the appellant had intimated the change in address and change in address was duly approved for which documents have been annexed with this appeal as per Annexure.....*
4. *Whether the show cause notice as given to the appellant is a show cause notice or a virtual adjudication order where the decision was pre-meditated by the proper officer and hence principles of natural justice grossly violated by the proper officer.*

GROUND OF APPEAL

1. THAT THE APPELLANT SAYS AND SUBMITS THAT that the GST registration can only be cancelled when the conditions of Section 29(2) of the CGST Act are fulfilled. Nothing substantial has been found against the appellant as per show cause notice or in the orders of the lower authorities and the show cause notice was just simply issued for recovery of input tax credit that is allegedly wrongly availed and utilised by the appellant as per the proper officer.

2) The appellant says and submits that cancellation of registration certificate on the ground that ITC is claimed from a bogus firm is not a ground under Section 29(2), a copy of which is annexed as Annexure E to this appeal petition. IT IS NOW A SETTLED LAW THAT conditions mentioned in section 29(2) OF THE CGST ACT ARE MANDATORY FOR CANCELLATION OF GST REGISTRATION .

The appellant says and submits that the transactions in question are genuine and valid and relying upon all the supporting relevant documents required under law, the petitioner with due diligence verified the genuineness and identity of the supplier and name of the supplier as registered taxable person was available at the Government Portal showing its registration as valid and existing at the time of transaction - Admittedly at the time of transaction, the name of the supplier as registered taxable person was already available with the Government record and the petitioner has paid the amount of purchased articles as well as tax on the same through bank and not in cash. Hence, it would be wrong on the part of the proper officer to say that the suppliers were bogus firms.

3) THE appellant further says and submits that two simultaneous proceedings one for alleging the suppliers as bogus firm and another for recovery of wrongful input tax credit under Section 74 of the CGST Act and also rejection of revocation application under Section 30 are wrongful exercise of power by the proper officer.

4) THE appellant further says and submits that the show cause notice dated.... was not based on any factual base and was virtually an order passed as it left no reasonable opportunity of being heard to the appellant – it simply stated why the registration order be not cancelled w.e.f.without setting out the factual matrix of the case against The appellant.

5) The appellant further says and submits that two simultaneous proceedings one for alleging a bogus firm and another for recovery under Section 74 of CGST Act cannot be initiated.

6) The show cause notice as issued hardly satisfies the requirements of a valid show cause notice as per law settled by the Courts.

The notice must provide specific factual details about the alleged breach to invoke Section 29(2)(e) of the GST legislation. Without this information, the appellant would be unable to respond effectively, making the notice incomplete and invalid.

In the *Canara Bank vs. Debasis Das and Rajesh Kumar vs. CIT* to the Supreme Court., the Supreme Court noted that **'Notice is the first limb of this principle. It should be unambiguous. It must inform the party determinatively of the case he has to meet.'**

Further, in the other case i.e., *Rajesh Kumar vs. CIT*, the Supreme Court mentioned that "The notice issued may only contain briefly the issues which the assessing officer thinks to be necessary. The reasons assigned therefore need not be detailed ones."

The appellant therefore says and submits that as the SCN dated.....did not meet the required standards for detailing the factual breaches, this Hon'ble Tribunal should invalidate it along with the subsequent orders.

(7)The appellant further says and submits SCN should comprise the information on fraud, wilful misstatement, or suppression of facts for cancelling the GST registration as under Section 29(2)(e) of CGST Act, 2017.

(8) The appellant says and submits that the appellant be made entitled to lodge its claim for availing input tax credit in respect of the period fromwhen the registration was cancelled till the period the registration is restored, should this Hon'ble Tribunal consider this appeal fit for granting relief to the appellant.

(9) The appellant prays that at the time of arguments he be allowed to file a paper book of the documents that the appellant relies

PRAYERS

- 1) In view of the above factual and legal matrix the appellant respectfully prays that the registration certificate of the appellant be restored to its original number;
- 2) And the directions be issued to allow the appellant to claim input tax credit for the period between cancellation and restoration in the interest of justice.
- 3) Pending disposal of this appeal the proceedings under section 74 may kindly be directed to be deferred;
- 4) Any other order as this Hon'ble Tribunal may find fit and proper be also allowed in favour of the appellant

APPELLANT

VERIFICATION.

I, ABC, AGED, S/O, DO HEREBY SOLEMNLY AFFIRM AND DECLARE THAT THE ABOVE APPEAL HAS BEEN DRAFTED UNDER MY INSTRUCTIONS, I AM FULLY AWARE OF THE FACTS AND NOTHING HAS BEEN CONCEALED THEREFROM.

APPELLANT

BEFORE THE HON'BLE GST TRIBUNAL, DELHI BENCH, DELHI
Appeal No.....of 2025)

IN THE MATTER OF:

XVZ LIMITED s
GSTIN. No.

APPELLANT

VERUS

COMMISSIONER, SGST,
ADDRESS.

RESPONDENT

PROPER OFFICER
SGST
NAME AND ADDRESS.

INITIAL ISSUES TO BE TAKEN FROM THE FIRST DRAFT APPEAL.

APPEAL AGAINST OIO OF THE FIRST AA DATED.... UNDER SECTION 112 READ WITH RULE 110 SECTION 29(2) ON THE GROUND THAT RETURNS NOT FILED FOR A CONSECUTIVE PERIOD OF SIX MONTHS.

1. The registration of the appellant has been cancelled under Section 29(2) of the DGST Act read with CGST Act on the ground that the appellant has not filed returns consecutively for a period of six months (under Section 29(2)(d) of the CGST Act).
2. A show cause notice was issued to the appellant on..... And the registration certificate was cancelled on..... Admittedly at the time of issuance of show cause notice dated.....the appellant had not filed the returns for a period ofto.....due to extremely adverse circumstances the appellant faced at that time on financial and organizational front. However, after the show cause notice was issued, the appellant managed to file returns for four months as per acknowledgments annexed during discharging the tax liabilities as per law.
3. The appellant informed the proper officer on.... Annexing copies of the returns.
4. The proper officer, notwithstanding the fact that returns for the above periods were filed, albeit after the issuance of the show cause notice, still cancelled the registration certificate suo moto based on show cause notice and completely ignored the returns filed after the show cause notice dated.....
5. The revocation applicable filed as per law under Section 30 has also been rejected without considering the submissions made
6. Feeling aggrieved the appellant filed appeal before the first appellate authority who also vide his order dated....has rejected the appeal ignoring the law and the facts applicable to the case.

7. Feeling aggrieved the appellant is not approaching this Hon'ble Tribunal to seek justice and fair play and to restore his business and registration certificate to the original date.
8. The appellant is approaching this Hon'ble Court, inter-alia, on the following grounds:

GROOUNDS OF APPEAL

- A. The appellant says and submits that the lower authorities have failed to appreciate that the condition mentioned in Section 29(2) has not been satisfied at all – the condition for rejecting the registration from the date as the proper officer might think is based on the fact that returns for 6 consecutive six months were not available at the time of issuance of the show cause notice and at the time of suo moto cancellation of registration certificate.
- B. The appellant says and submits that if a taxpayer files the pending returns before the final cancellation order is issued, these returns must be considered as “available records,” which can prevent cancellation. In this case the appellant filed its pending return for the periods....before the cancellation order was passed on.....And the copies of these returns were duly given to the proper officer in original proceedings as well as in revocation proceedings and also in appeal proceedings which were ignored by the lower authorities forcing the appellant to approach this Hon'ble Tribunal. If this be the legal proposition the appellant says and submits that the condition of the six-month non-filing of returns was not fulfilled, making the cancellation invalid.**
- C. The appellant further says and submits that Section 39(1) mandates the filing of returns for every month or part thereof. The issue arises when a taxpayer files returns for five months and misses filing for only one month. A literal interpretation of Section 29(2)(c) suggests that if a taxpayer has not failed to file returns for six consecutive months, registration cancellation cannot be justified for missing a single or two returns and for such a small lapse the business of the appellant should not be ordered to be closed.
- D. The appellant says and submits that according to Section 29(2), the proper officer has the discretion to cancel a registration with retrospective effect, but this discretion must be exercised judiciously and not arbitrarily. Retrospective cancellation can lead to the denial of Input Tax Credit (ITC) for other taxpayers, and thus, courts have consistently held that registration should not be cancelled retrospectively without valid reasons.

For the information of this Hon'ble Tribunal Delhi High Court, including Ashish Garg Proprietor Shri Radhey Traders v. Commr. (SGST) and Roxy Enterprises v. Union of India, the courts emphasized that cancellation of registration with retrospective effect must be based on objective criteria. Merely failing to file returns for six months does not justify cancelling registration with retrospective effect for periods during which the taxpayer was compliant. Courts have also made it clear that taxpayers cannot be denied ITC for the period prior to the issuance of a show-cause notice for cancellation. Retrospective cancellation of registration must only apply from the date of business closure or any other objective reason that warrants such action.

- E. The Proper Officer is empowered to cancel GST Registration with retrospective effect only when the criteria outlined in Section 29(2) of the CGST Act are met.

It is crucial for the Proper Officer to independently reach the satisfaction set out in subsection (1) or (2) of Section 29 of the CGST Act.

In the judgment of Union of India & Ors. v. Bharat Forge Ltd. & Anr. [(1970) 1 SCC 795] and Kritika Agarwal v. Union of India & Ors., [W.P. (C) 9424/2023 dated July 18, 2023] further noted that, the Proper Officer has to act independently and cannot act mechanically on the instructions of another authority.

- F. The appellant says and submits that the proper officer has nowhere recorded his satisfaction that he was satisfied with any of the conditions mentioned in Section 29(2) of the CGST Act and hence his orders are without authority of law. IN conditional jurisdiction cases the preconditions must be satisfied before any order adverse to the tax payer is passed.

In the present case along with the application for revocation and before the appellate authority, the appellant had filed a statement to the effect that all the requisite returns for the period from.....to..... have been filed and the dues are cleared and thus it was incumbent upon the Department to have verified the correctness of averments made in the application and then pass a legitimate and fair order. But both the authorities below have failed to follow the due process of law.

PRAYERS

IN VIEW OF THE ABOVE FACTUAL AND LEGAL MATRIX THE APPELLANT RESPECTFULLY PRAYS AS UNDER:

- a) **The appellant having filed the returns for the periods.... Tothe condition of consecutive six months non filing is not satisfied at the time of cancellation of registration certificate and hence the orders of the proper officer including the revocation rejection order and that of the appellant authority are contrary to law and are arbitrary. Hence, these orders need to be invalidated and set aside and registration certificate of the appellant retrospectively be directed to be restored from the original date.**
- b) **And the directions be issued to allow the appellant to claim input tax credit for the period between cancellation and restoration in the interest of justice.**
- c) **Any other order of direction in favour of the appellant be also issued as this Hon'ble tribunal may deem fit and proper under the circumstances of the case.**

APPELLANT

THROUGH COUNSEL

VERIFICATION

I, ABC, AGED, S/O, DO HEREBY SOMENLY AFFIRM AND DECLARE THAT THE ABOVE APPEAL HAS BEEN DRAFTED UNDER MY INSTRUCTIONS, I AM FULLY AWARE OF THE FACTS AND NOTHING HAS BEEN CONCEALED THEREFROM.

APPELLANT.

MY TAKE COLUMN OF SV



What is Writ?

Writs are a written order from the Supreme Court or High Court that commands constitutional remedies for Indian Citizens against the violation of their fundamental rights. Article 32 in the Indian Constitution deals with constitutional remedies that an Indian citizen can seek from the Supreme Court of India and High Court against the violation of his/her fundamental rights. The same article gives the Supreme Court power to issue writs for the enforcement of rights whereas the High Court has the same power under Article 226.

TYPES OF WRIT

The Supreme Court of India is the defender of the fundamental rights of the citizens. For that, it has original and wide powers.

It can issue five kinds of writs for enforcing the fundamental rights of the citizens. The five types of writs are:

- 1. Habeas Corpus: This writ is used to enforce the fundamental right of individual liberty against unlawful detention. Through Habeas Corpus, Supreme Court/High Court orders one person who has arrested another person to bring the body of the latter before the court.**
- 2. Mandamus: This writ is used by the court to order the public official who has failed to perform his duty or refused to do his duty, to resume his work. Besides public officials, Mandamus can be issued against any public body, a corporation, an inferior court, a tribunal, or government for the same purpose.**
- 3. Prohibition: A court that is higher in position issues a Prohibition writ against a court that is lower in position to prevent the latter from exceeding its jurisdiction or usurping a jurisdiction that it does not possess. It directs inactivity.**
- 4. Certiorari: This writ is issued by a court higher in authority to a lower court or tribunal ordering them either to transfer a case pending with them to itself or quash their order in a case. It is issued on the grounds of an excess of jurisdiction or lack of jurisdiction or error of**

law. It not only prevents but also cures for the mistakes in the judiciary.

5. **Quo-Warranto: Supreme Court or High Court issue this writ to prevent illegal usurpation of a public office by a person. Through this writ, the court enquires into the legality of a claim of a person to a public office**

Can a writ be issued against a private person?

Issuing a writ is a public law remedy and is generally available only against public bodies and bodies that are discharging public duties. However, a writ of habeas corpus can be issued against a private body also. Indian Courts have also entertained writ petitions against private persons, when such a private person is imposed by a public duty.

What is the time limit to file a writ petition?

Under the Indian legal system, there is no time limit prescribed to file a writ petition before the relevant courts. However, it must be noted that in various judgements, the courts have observed that the aggrieved party should move the courts within a reasonable time. The courts in various judgements have also noted that, if there is a delay in filing a writ petition, then the party filing the petition should have a satisfactory explanation for such delay.

Who can file a writ petition?

In India, an individual whose rights have been violated by the action or the inaction of a public body or a body carrying out state functions can file a writ petition. Apart from the aggrieved individual, writ petitions can also be filed by public spirited citizens. This expansion regarding who has the power to file a writ petition is to ensure that the ends of justice are not overlooked or ignored due to technicalities.

Writ jurisdiction symbolizes the judiciary's commitment to preserving the rule of law in India. The power to issue writs, granted to the Supreme Court and High Courts, **ensures a robust mechanism to prevent violations of fundamental rights and reinforcing the Constitution's spirit.**