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NOTIFICATIONS



CBIC makes E-Invoicing mandatory for Taxpayers having a turnover of more than INR. 100 Cr

CBIC vide Notification No-88/2020 of Central Tax, have decided to make E-Invoicing mandatory for taxpayers having turnover above INR.100Cr.

Source: Notification No. 88/2020-Integrated Tax, dated November 10, 2020.

CBIC notifies waiver of penalty for non-compliance by any taxpayer under Section 125 of the CGST Act 2017

CBIC vide Notification 89/2020 of the Central Tax, has waived penalty for non-compliance of provisions of the Notification No-14/2020 of Central Tax Dated 21st March 2020, where a taxpayer having turnover of more than INR. 500 Cr. has to be mention QR code on invoices issued to unregistered purchasers(B2C).

Source: Notification No.89/2020-Central Tax(Rate), dated November 29, 2020.

CBIC notified the list of Chemical Goods for which 8-digit HSN code is mandatory to be mentioned in a tax invoices issued by taxpayers

CBIC has issued notification for certain chemical goods for which mandatory 8-digit HSN code is compulsory to be mentioned in a Tax Invoice.

Source: Notification No. 90/2020-Central Tax, dated December 1, 2020

ADVANCE RULING



No GST if entire sales consideration is received after obtaining Occupancy Certificate by applicant of his share in property under JDA

Issue: Whether the total amounts received by the owner towards the advances or sale consideration of the flats fallen to his share of 40% in terms of the Joint Development Agreement dated 19.05.2016 and the subsequent Area Sharing Agreement dated 03.01.2018, are not amenable for payment of GST

Facts: The amounts received by the applicant, either by himself or through his agents, towards sale of their share of flats are not exigible to GST, if and only if the entire consideration related to such sale of flats is received after the issuance of Completion Certificate dated 26.08.2019, as the said activities are treated neither supply of goods nor supply of service in terms of schedule III of the CGST Act 2017 subject to Clause 5(b) of the Schedule-II of the CGST Act, 2017.

Source: AR No.GST-KARARDG55/2020 dated November 7, 2020

JUDGEMENTS



Delhi HC orders that power to conduct Service Tax Audit is saved under GST

Facts: A challenge was laid to the jurisdiction, authority and legality of the action of the Respondents initiated in terms of Rule 5A of the Service Tax Rules, 1994,

read with Section 174(2)(e) of the Central Goods and Services Tax Act, 2017 [hereinafter referred to as the “CGST Act”, for conducting audit/verification of documents and records at the business premises of the Petitioner for the period of F.Y. 2014-15 to 2016-17 (up to June 2017) or for the period since last audited [hereinafter referred to as “the disputed period”].The petitioner is a company engaged in the business of construction of residential complexes since its incorporation on 25.05.2013. The petitioner claims to be a regular and timely taxpayer under both the Service Tax and GST regime. It has never been subjected to any general or special audit by either the Service Tax or the GST authorities. Petitioner’s books of accounts and business were subjected to, among other things, statutory audit in terms of the Companies Act, 2013 and the Income Tax Act, 1961. On 21.01.2020, officers of CGST, Audit-II visited the business premises of the Petitioner, directed the production of certain documents and sought information in relation to the disputed period.

Aggrieved with the aforesaid action, the Petitioner had challenged, inter alia the letter dated 01.11.2019 by virtue whereof the respondents have commenced the audit/verification, on the ground that the same is void ab initio, being wholly without jurisdiction as well as without any statutory or legal authority.

Decision of the Hon’ble High Court of Delhi

GST Authorities have power under Section 174(2)(e) of the CGST Act, 2017 to institute any investigation, inquiry, verification, assessment proceedings, adjudication, etc. under Rule 5A of the Service Tax Rules.

Source: Vianaar Homes Private Limited Vs Assistant Commissioner CGST (Delhi High Court) dated November 3, 2020

Kolkata CESTAT orders liability of RCM on commission paid to whole time director

Facts

Schedule II of the CGST Act, 2017 provides “agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act” as a supply of service. Section 15 of the CGST Act, the value of supply shall include “interest or late fee or penalty for delayed payment of any consideration for any supply”. The question before the CESTAT was whether collection on interest for delayed payment of consideration whether to be treated as a separate transaction or needs to be considered as additional consideration?

Decision of the Hon’ble CESTAT

The Honorable CESTAT observed that the whole-time Director is essentially an employee of the company and accordingly, whatever remuneration is being paid in conformity with the provisions of the Companies Act, and is pursuant to employer-employee relationship and the mere fact that the whole-time Director is compensated by way of variable pay will not in any manner alter or dilute the position of employer-employee status between the company assessee and the whole-time Director. We are thoroughly convinced that when the very provisions of the Companies Act make whole-time director (as also in capacity of key managerial personnel) responsible for any default/offences, it leads to the conclusion that those directors are employees of the assessee company.

Source: M/s Bengal Beverages Pvt. Ltd. Vs CGST & Excise, Howrah (CESTAT Kolkata) Excise Appeal No.77570 of 2018 dt. October 9, 2020

High Court of Bombay states that input tax credit denial merely on technical grounds is not justified

Facts: This is a case, where admittedly petitioner could not file GST TRAN-1 on or before 27.12.2017 but had manually applied for GST TRAN-1 on 7.5.2018 as per Circular dated 03.04.2018 within the timeline as per the date extended by this Court. Also, admittedly the respondents have found the petitioner to be eligible for credit amounting to Rs. 78,62,466/-. But the credit for the same has been denied as the ITGRC found that the petitioner has not tried to save or submit or file TRAN-1 before 27.12.2017. Court was informed by the learned counsel for the petitioner which is not controverted by the learned sr. counsel for the respondents that this information of rejection of the petitioner's application for manual GST TRAN-1 has not been communicated to the petitioner despite several reminders/communications from the petitioner and it is only by way of the affidavit in reply filed to this petition that the petitioner has become aware of the rejection.

Decision of the Hon'ble High Court of Bombay

In view of our above discussion, as admittedly in this case the respondents have found the petitioner to be eligible for input credit amounting to Rs. 78,62,466/-, in our view the finding of the ITGRC would in the face of the admission by the respondents to the amount of credit, would be a mere technicality which cannot come in the way of substantial justice.

Accordingly, Hon'ble High Court directs the respondents to accept the TRAN-1 filed by the petitioner and to give the due of input tax credit of Rs. 78,62,466/- in the electronic credit ledger/input tax credit of the Petitioner within two weeks from the date of this order.

Source: Heritage Lifestyles and Developers And Pvt. Ltd. Vs. Union of India (Bombay High Court) Writ Petition (ST.). No. 3705 of 2020 dated November 5, 2020

CUSTOMS



CBIC introduced clarification on export of gems and jewellery through courier mode

- The CBIC vide **Circular No. 52/2020 – Customs dated November 27, 2020**, issued clarification on export of Gems and Jewellery through courier mode:
- The issue has been examined. It appears that the doubt has arisen as Regulation 2(2)(a)(iv) of the Courier Imports and Exports (Electronic Declaration and Processing) Regulations, 2010 places a restriction on imports of precious and semi-precious stones, gold or silver in any form, through courier. The Regulation 2(2) (a) (iv) reads as "These regulations shall not apply to the following imported goods requiring testing of samples thereof or reference to the relevant statutory authorities or to experts before their clearance, namely precious and semi-precious stones, gold or silver in any form".
- Thus, the restriction imposed by Regulation 2(2)(a)(iv) on gems and jewellery is applicable only on their imports.

- Similarly, the Courier Imports and Exports (Clearance) Regulations, 1998 place a restriction on imports of precious and semi-precious stones, gold or silver in any form and not on their exports.
- In view of the above, it is clarified that the extant Courier Imports and Exports (Electronic Declaration and Processing) Regulations, 2010 and the Courier Imports and Exports (Clearance) Regulations, 1998, do not restrict exports of gems and jewellery through the courier

Source: Circular No. 52/2020 - Customs dated November 27, 2020

GST REVENUE COLLECTION

The gross GST revenue collected in the month of November, 2020 is ₹ 1,04,963 crore of which CGST is ₹ 19,189 crore, SGST is ₹ 25,540 crore, IGST is ₹ 51,992 crore (including ₹ 22,078 crore collected on import of goods) and Cess is ₹ 8,242 crore (including ₹ 809 crore collected on import of goods). The total number of GSTR-3B Returns filed for the month of November up to 30th November 2020 is 82 lakhs.

The government has settled ₹ 22,293 crore to CGST and ₹ 16,286 crore to SGST from IGST as regular settlement. The total revenue earned by Central Government and the State Governments after regular settlement in the month of November 2020 is ₹ 41,482 crore for CGST and ₹ 41,826 crore for the SGST

Source: pib.gov.in

LET'S TALK

For a deeper discussion of how these issues might affect your business, please contact our Indirect Taxation Team.

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