

June, 2022

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Amrit Mahotsav

TAX Bulletin

★ ★ VOLUME - 113 ★ ★



THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

Statutory Body under an Act of Parliament

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1. Preparation of Suggestions and Analysis of various Tax matters for best Management Practices and for the professional development of the members of the Institute in the field of Taxation.
2. Conducting webinars, seminars and conferences etc. on various taxation related matters as per relevance to the profession and use by various stakeholders.
3. Submit representations to the Ministry from time to time for the betterment and financial inclusion of the Economy.
4. Evaluating opportunities for CMAs to make way for further development and sustenance of the opportunities.
5. Conducting and monitoring of Certificate Courses on Direct and Indirect Tax for members, practitioners and stake holders and also Crash Courses on GST for Colleges and Universities.

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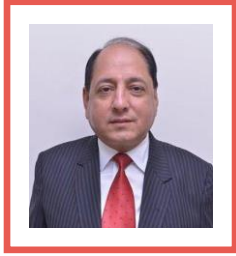
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CMA Rakesh Bhalla
Chairman, Direct Taxation Committee



CMA Chittaranjan Chattopadhyay
Chairman, Indirect Taxation Committee

FROM THE DESK OF CHAIRMAN

Dear Friends and Professional Colleagues,

Greetings from the Tax Research Department...!!!

At the very beginning we would like to highlight our esteemed readers that CBDT has notified Faceless Penalty (Amendment) Scheme, 2022 vide Notification No. 54/2022 dated 27th May, 2022. In addition to that, CBDT vide F.No. 225/81/2022/ITA-II dated June 03, 2022 has issued new guidelines for compulsory selection of returns for Complete scrutiny during the Financial Year 2022-23 and procedure for compulsory selection in such cases.

Beside this late fee payable for delay in furnishing of FORM GSTR-4 (For Composite Dealers) for the Financial Year 2021-22 shall stand waived for the period from the 1st May, 2022 till the 30th June, 2022. We would also like to inform that NIC has released 'E-Invoice System User Manual V.1.02' for Tax Payers and that can be accessed from the link - https://einvoice1.gst.gov.in/Documents/EINVOICE_UserManual_Web.pdf

Even DGFT also vide **Notification No. 12/2015-2020 dated June 01, 2022** has notified a new Refund of Duties and Taxes on Exported Products ("RoDTEP") schedule Appendix 4R consequent to certain changes in the Customs Tariff Schedule vide Finance Act, 2022 ("Finance Act") for implementation w.e.f. May 01, 2022.

GST course for colleges and universities was completed at Taradevi Harakhchand Kankaria Jain College, with exam being held on 24th May, 2022 and all the students appeared in the examination have successfully passed also. This course has been highly appreciated by that college also.

The ensuing batches of all the Taxation Courses have commenced and classes are going on in full swing. Recently Tax Research Department has conducted a 7 days' workshop on Profit & Gains from Business and Profession and another 5 days' workshop on Input Tax Credit _ An Insight will also be conducted very recently. Recently we have submitted a representation has been submitted to the Government of NCT of Delhi, Department of Trade and Taxes for inclusion of Cost Accountants for providing various professional services in GST."

All the activities of the department are being carried on seamlessly as usual. We seek any further suggestions/observations from the esteemed readers and urge one and all to stay safe.

Jai Hind.

Warm Regards



(Rakesh Bhalla)

CMA Rakesh Bhalla
8th June 2022



CMA Chittaranjan Chattopadhyay
8th June 2022

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Articles on the Topics of Direct and Indirect Taxation are invited from readers and authors. Along with the article please share a recent passport-sized photograph, a brief profile and the contact details. The articles should be the author's own original.

Please send the articles to

trd@icmai.in /trd.ad1@icmai.in



CMA Vishwanath Bhat
Practicing Cost Accountant

APPLICABILITY OF GST ON OCEAN FREIGHT

What is ocean freight?

Ocean freight is a method of transport by which goods and cargo is transported by ships via shipping lines. Over 90% of all the world's trade is carried by sea – and even more in some countries.

GST Implications.

The CGST Act requires the importers to pay IGST at 5% on ocean freight under the Reverse Charge Mechanism (RCM).

Section 5(3) of the IGST Act:-This section notifies the supplies which are taxable to GST under the reverse charge mechanism. Under the reverse charge mechanism, a recipient of goods/service is liable to pay GST instead of the supplier.

Under Section 2(93) of CGST Act Recipient of supply of goods and/or services means-

- (a) Where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration,
- (b) Where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available, and
- (c) Where no consideration is payable for the supply

of a service, the person to whom the service is rendered, and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied.

Notification No. 10/2017 -Integrated tax (Rate) dated 28th June 2017.

This notification stated the categories of supplies that are liable to GST under the reverse charge mechanism. The Government has included the term importer in this category.

The freight expense in case of import of goods can be categorised into two types based on transaction value:

- 1) Based on CIF (Cash, Insurance and Freight) value.
- 2) Based on FOB (Free on board) value.

Based on CIF (Cash, Insurance and Freight) value.

While importing goods, if no separate transportation charges are imposed on the importer by the supplier for bringing goods into India, then the value charged on the goods is called CIF value.

In the case of a CIF transaction, the importer is not the recipient of the service of transportation of goods as per section 2(93) of the CGST Act. The supplier has contacted the shipping line and made the payment as well, and thus the supplier is the recipient of service. Thus, the importer is not liable to tax.

Based on FOB (Free on board) value.

Now, the other situation is where the importer has hired the ocean freight service provider, and he makes the payment for the import of goods. So, here the importer can be clearly defined as a recipient as per section 2(93) above. Also, as per the above notification, the importer is included in the category of supplies liable to the reverse charge mechanism.

Thus, if the shipping line is located in a non-taxable territory, then GST is payable by the importer, i.e. the recipient of service. If the shipping line is located in India, then the shipping line itself will have to pay GST on a forward charge.

However, in the case of imports, customs duty is applicable on assessable value, and the assessable value includes freight amount. IGST is payable on the freight element by including it in the assessable value of goods. So, the applicability of GST on an RCM basis will lead to double taxation.

Analysis

With reference to the above we have observed that audit authority has levied tax to an assessee on ocean freight on CIF value in so many cases. If you go through the erstwhile service tax honorable Supreme Court and high court said levying service tax on CIF value is unconstitutional. This is because already the assessee used to discharge the custom duty on valuation including freight charges, insurance etc. The concept of service and nature of business is not changed even in GST law.

In 2017, the Ministry of Finance had imposed service tax on a reverse charge basis on ocean freight incurred by an importer. This tax was payable even if the importer did not directly pay the ocean freight charges to the shipping company/freight forwarder. This proposition has been continued into the GST regime as well.

The GST law specifically provides that the importers are required to discharge IGST at 5% on ocean freight charges under the reverse charge mechanism. However, at the same time, customs duty on the CIF value (which includes the freight component as well) of the goods imported

into India is also paid by the importer. As a result, there is double taxation on the ocean freight under GST law, which is an impediment and has bloated the cost of imports.

Recently, in a landmark ruling, the Gujarat High Court in the case of Mohit Minerals Pvt. Ltd. & Ors. Vs. Union of India & Ors. [TS-29-HC-2020(GUJ)-NT], has held that no tax is leviable on the ocean freight for services provided by a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India.

In this case, the taxpayer was engaged in the business of importing coal from various countries. It discharges the customs duty at the time of import on the assessable value as determined under Section 14 of the Customs Act, 1962. The value also includes ocean freight.

In addition to the levy of customs duty and IGST at the time of import, the taxpayer (as an importer) was also required to pay IGST on ocean freight, leading to double taxation on the ocean freight amount.

The taxpayers, being aggrieved by the fact that ocean freight is being taxed twice, had filed various writ petitions before the Gujarat High Court seeking quashing of the notifications mentioned above, by declaring that the same is ultra-vires the IGST Act, 2017.

The taxpayers challenged the levy before the Gujarat High Court by inter-alia arguing that there was:

The provisions contained in the IGST Act apply only for supplies made within the taxable territory. In the case of ocean freight, since both the service providers (i.e., shipping company and exporter) are located outside India, IGST cannot be levied.

Since IGST was paid at the time of import on total assessable value (which includes ocean freight), the notifications requiring the importer to once again pay IGST on the same component tantamount to double taxation and thus it is unconstitutional.

Under Section 5(3) of the IGST Act, the liability to pay tax can be shifted from the provider of supply to the recipient on a reverse charge basis. However, as per Entry 10 of Notification No. 10 / 2017, the liability has been shifted on the importer and not on the recipient, and thus entry is ultra-vires to Section 5(3).

After considering the various provisions/rule of GST law, the High Court observed as under:



Section 5(3) by the IGST Act, which deals with the discharge of tax by the recipient under reverse charge on supplies, does not include a person who is not the recipient of the supply. The taxpayer (as the importer), when not being the recipient of ocean freight services, cannot be made liable to pay tax under the IGST Act.

Ocean freight services provided by a person in non-taxable territory to another person in a non-taxable territory are neither an inter-state supply nor an intra-state supply. Such service is not covered under the scope of the IGST Act, and therefore, cannot be taxed without the authority of law.

A supply where both suppliers and recipients are outside India can be made leviable to tax only under Section 7(5) (c) of the IGST Act provided that the supply is in the taxable territory.

The entire supply has taken place outside the taxable territory, i.e., outside India, as both the service provider and service recipient are located outside India. The IGST Act does not sanction extraterritorial jurisdiction, and the mere fact that the transportation of goods terminates in India does not mean that the supply has taken place in India.

IGST cannot be imposed on the same freight amount by treating it as a supply of service since freight also suffers IGST as a part of the assessable value of imported goods. This is necessary to avoid the vice of double taxation.

The notifications mentioned above, being subordinate legislation, which acts as to deem the importer to be

liable to pay tax under reverse charge, are ultra-vires the provisions of the IGST Act. Consequently, the imposition of IGST on ocean freight and deeming the importer as the person liable to pay tax are unconstitutional, given that there is no statutory sanction for levy and collection of such tax.

Based on the above, the High Court held that no tax is leviable under the IGST Act on ocean freight for the services provided by a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India. Moreover, the notifications mentioned above are declared ultra-vires the IGST Act, as they lack legislative competency. Hence, both the notifications are hereby declared to be unconstitutional.

Finally as on 19/05/2022 supreme court upheld the decision of the Gujarat High Court in the case of Mohit Minerals Pvt. Ltd. & Ors. Vs. Union of India & Ors. [TS-29-HC-2020(GUJ)-NT],

Thus, having paid the IGST on the amount of freight which is included in the value of the imported goods, the impugned notifications levying tax again as a supply of service, without any express sanction by the statute, are illegal and liable to be struck down.”

We are in agreement with the High Court to the extent that a tax on the supply of a service, which has already been included by the legislation as a tax on the composite supply of goods, cannot be allowed.

TD



CMA Dipankar Biswas
Cost Accountant

TAX LIABILITY ON COMPOSITE AND MIXED SUPPLY

Brief of the Case:

As per Sub Section 1,2 and 3 of Section 100 of “The West Bengal Goods and Services Tax Act, 2017”(Act 28 of 2017) and “The Central GST Act,2017 (Act 12 of 2017),”(hereinafter collectively referred to as “the GST Act”), M/s Sarj Educational Centre (hereinafter referred to as “the Appellant”) has filed an Appeal to West Bengal Appellate Authority For Advance Ruling (WBAAAR) on 29.03.2019 against Advance Ruling Order No. 42/WBAAR/2018-19 dated 26.02.2019 given by the West Bengal Authority for Advance Ruling.

The Appellant is the owner of a private boarding house and is providing the services of lodging and food to the students of St. Michael’s School, a secondary school run by a Charitable Society known as the Sunshine Educational Society. M/s Sarj Educational Centre has filed an Advance Ruling under Section 97 of the West Bengal Goods and Services Tax Act, 2017 and the Central Goods and Services Tax Act, 2017 (hereinafter collectively referred to as “the GST Act”) on the following queries:

- (1) Whether the services provided by the Appellant to the students of lodging and supply of food is a composite supply or not within the meaning of Section 2(30) of the GST Act.
- (2) If the aforesaid services mentioned in (1) do not fall under the concept of “Composite Supply,” confirm the applicable rate of GST
- (3) Whether the supply of such service is eligible for exemption under Sl. No. 14 of Notification No. 12/2017-CentralTax (Rate) dated 28/06/2017 (hereinafter referred to as the ‘Exemption Notification’).

Advance Ruling Order No. 42/WBAAR/2018-19 dated 26.02.2019 has been passed by The West Bengal Authority for Advance Ruling (hereinafter referred to as the ‘WBAAR’), stating that the services of lodging and supply of food both are not naturally bundled of services and hence, the said services are not treated as a composite supply under Section 2(30) of the GST Act but are mixed supplies within

the meaning of Section 2(74) of the GST Act and the Rate of GST will be applicable under Section 8(b) of the GST Act, 2017.

Remarks raised by the Appellant before the WBAAR:

The Appellant has filed an Appeal to the WBAAR against Advance Ruling Order No.42/WBAAR/2018-19 dated 26.02.2019 with a prayer to set aside the Order passed by the WBAAR on the following grounds:

- (1) The Appellant is an educational institution within the meaning of clause 2(y) of the Exemption Notification as it is providing primary and secondary education through remedial classes to the boarding students **(the WBAAR has not agreed to accept the remark).**
- (2) The Appellant has demanded that they have all the infrastructure of an educational institution, and hence, the aforesaid services fall under the "Heading 9992" against sl. No. 66 of the Exemption Notification.

(The WBAAR has not agreed to accept the remark).

- (3) "Boarding Fees" and "Lodging Fees- the natures of these two different services are unique in character and so cannot be treated at par. Hence, the same is treated as Composite Supply by the Appellant. **(the WBAAR has not agreed to accept the remark).**

Note-The WBAAR has stated that "Boarding denotes" food along with other amenities such as accommodation, and on the other hand, Lodging denotes only accommodation.

- (4) The principal activity of the Appellant is to provide Boarding Service and also Lodging Service, and in each case, the charge is less than Rs.1000/- per day. As the charge is less than Rs.1000/- per day, it is eligible for exemption under Sl. No.14 of Notification No. 12/2017-CentralTax **(Rate)** dated 28/06/2017.

The Appellant has also stated the Order of the Authority For Advance Rulings, Chhattisgarh, in the case of Ramnath Bhimsen Charitable Trust, wherein it has been found that the applicant is running a girl's hostel and provides accommodation against a charge of Rs.6,000/Rs.7,000 per month per head with other facilities such as parking facility, hot water facility etc. The same is selected to fall under Heading No. 9963, and the same is exempted from

payment of GST.

- (5) The Authority for Advance Ruling, Kerala, in the case of M/s. Ernakulam Medical Centre Pvt. Ltd vide Advance Ruling No.KER/16/2018, dated 19.09.2018, stated that the supply of medicines and allied items like food supplied to the in-patients, as advised by the doctor, is a part of the composite supply and not separately taxable.

Note-The Appellant has submitted an appeal before the WBAAR on two aspects and such matters are stated as below –

- (a) the Appellant is an educational institution, and the same falls within the meaning of clause 2(y) of the Exemption Notification and the same is exempted from GST.
- (b) the services provided by the Appellant is demanded as "Composite Supply" under Section 2(30) of the GST Act.

Remarks raised by the WBAAR(Appeal Case No. O5/WBAAAR/APPEAL/2019 dated 29.03.2019):

- (1) The Appellant **(M/s Sarj Educational Centre)** is not affiliated to any board/university and does not provide any kind of such activities in terms of the meaning of clause 2(y) of the exemption Notification.
- (2) Regarding 2nd issue, the **WBAAR** has stated its views, and the supporting details are also presented

Composite Supply-

The concept of "Composite Supply" under GST is similar to bundled services under Service Tax Regime. Composite Supply means a supply comprising two or more goods/ services.

This supply is also known as the bundled supply of goods/ services because in which one is a principal supply, and the supply of goods/services cannot be supplied separately.

Conditions for Composite Supply-

The following conditions are to be satisfied for being a Composite Supply-

- (1) There should be a supply of 2 or more goods/ services together and
- (2) It is a natural bundle, i.e., goods or services cannot

be supplied separately

Example- Mr. A is booking a Rajdhani train ticket which fare includes a meal. So, it is a bundle of services, and it cannot be booked or supplied separately. Here, Mr.A cannot buy only a train ticket or meal separately. So, here, the transportation of passengers is the principal supply of services.

Rate of Tax- Under GST, the rate of Tax on the composite supply of goods/services is imposed based on the principal supply of goods/services. For the above example, the rate of GST will be charged based on the transportation of passengers (principal supply of services), not based on the meal.

Mixed Supply- The concept of “Mixed Supply” is another concept. Here, there will be a supply of 2 or more goods/ services together, but that is not a natural bundle of supply. That means items can be supplied separately.

Conditions for Mixed Supply-

- (1) There should be a supply of 2 or more goods/ services together and
- (2) It is not a natural bundle, i.e., the supply of goods/ services can be made separately.

Example- There is a Diwali gift packet consisting of sweets, chocolates, cake, dry fruits and candles. It satisfies both conditions, and hence, it is a mixed supply.

Rate of tax Under GST, the rate of Tax on Mixed Supply is on the basis of good/service having the highest rate of tax. Say, in a gift packet, there are three items, i.e., A(GST@5%), B(GST@12%) and C(GST@18%). So, for the mixed supply, the tax rate for all the items, i.e., A, B and C, will be @18%.

Note- Section 8(b) of “The West Bengal Goods and Services Tax Act, 2017”(Act 28 of 2017) and “The Central GST Act,2017 (Act 12 of 2017)” (hereinafter collectively referred to as “the GST Act”) is applicable for the imposition of GST Rate in the case of M/s Sarj Educational Centre.

Conclusion:

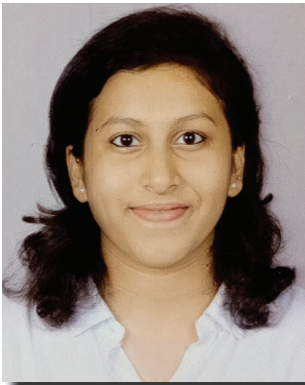
For any question or query stated as per Section 97(2) of the GST Act, 2017, the GST registered person can file an application to the Authority for Advance Ruling under Section 97 of the GST Act,2017 and, being aggrieved, the Appellant can file an appeal to the Appellate Authority For Advance Ruling under Section 100(1), 100(2) and 100(3) of the GST Act,2017.

Section 2(30) and 2(74) of the GST Act,2017 are to be followed in order to segregate the supply as “Composite Supply” or “Mixed Supply” and Section 8(a) and 8(b) of the GST Act,2017 are to be followed to ascertain the tax liability in respect of the Composite Supply and Mixed Supply respectively.

TB



CMA (Dr) Ashish Prakash Thatte
Cost Accountant



Ms Vijayalakshmi Pattar
co-author

GST- ON BEAT, OFF-BEAT AND BACK BEAT

Notices under GST Article 4: FORM GST DRC-03

This is the fourth article in the series of Notices under GST. This article covers about Form GST DRC- 03.

To understand Form DRC-03, we have to go through CGST Rule 142(2) and (3).

Background and Legal Provision:

Rule 142(2) and (3) of CGST Rules 2017: -

Rule 142(2) :

Where, before the service of notice or statement, the person chargeable with tax makes payment of the tax and interest in accordance with the provisions of sub-section (5) of section 73 or, as the case may be, tax, interest and penalty in accordance with the provisions of sub-section (5) of section 74,

or where any person makes payment of tax, interest, penalty or any other amount due in accordance with the provisions of the Act 4 whether on his own ascertainment or, as communicated by the proper officer under sub-rule (1A), he shall inform the proper officer of such payment in FORM GST DRC-03.

Rule 142(3) :

Where the person chargeable with tax makes payment of tax and interest under subsection (8) of section 73 or, as the case may be, tax, interest and penalty under sub-section (8) of section 74 within thirty days of the service of a notice under sub-rule (1), or where the person concerned makes payment of the amount referred to in sub-section (1) of section 129 within fourteen days of detention or seizure of



the goods and conveyance, he shall intimate the proper officer of such payment in FORM GST DRC-03

Form GST DRC-03:

- ✿ DRC-03 is a voluntary tax payment form in which a taxpayer can pay the tax by raising its liability voluntarily or in response to the show-cause notice (SCN) raised by the GST department.
- ✿ Form DRC-03 is filed for making a voluntary

payment of outstanding liabilities under Sections 73 and 74 of the CGST Act.

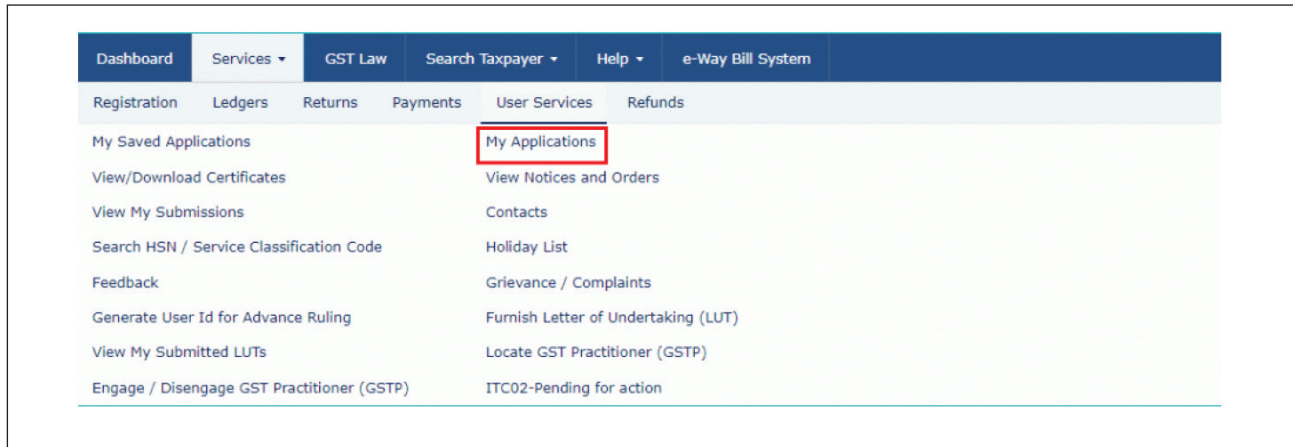
- Section 73 – deals with cases where there is non-payment/under-payment of tax without any intention or invocation of fraud.
- Section 74 – deals with cases where there is non-payment/under-payment of tax with intention or invocation of fraud.

Form DRC-03:

FORM GST DRC- 03											
<i>[See rule 142(2) & 142 (3)]</i>											
Intimation of payment made voluntarily or made against the show cause notice (SCN) or statement											
1.	GSTIN										
2.	Name										
3.	Cause of payment					<< drop down>> Audit, investigation, voluntary, SCN, others (specify)					
4.	Section under which voluntary payment is made					<< drop down>>					
5.	Details of show cause notice, if payment is made within 30 days of its issue					Reference No.			Date of issue		
6.	Financial Year										
7.	Details of payment made including interest and penalty, if applicable (Amount in Rs.)										
Sr. No.	Tax Period	Act	Place of supply (POS)	Tax/ Cess	Interest	Penalty, if applicable	Total	Ledger utilised (Cash / Credit)	Debit entry no.	Date of debit entry	
1	2	3	4	5	6	7	8	9	10	11	
8. Reasons, if any - << Text box>>											
9. Verification-											
I hereby solemnly affirm and declare that the information given hereinabove is true and correct to the best of my knowledge and belief and nothing has been concealed therefrom.											
Signature of Authorized Signatory											
Name _____											
Designation / Status -----											
Date -											

Steps to file DRC-03 on GST Portal: -

Step 1: Login to GST Portal and go to ‘My Applications’ under ‘User Services’.



Step 2: Assuming a taxpayer has not made any payment and does not have a Payment Reference Number (PRN).

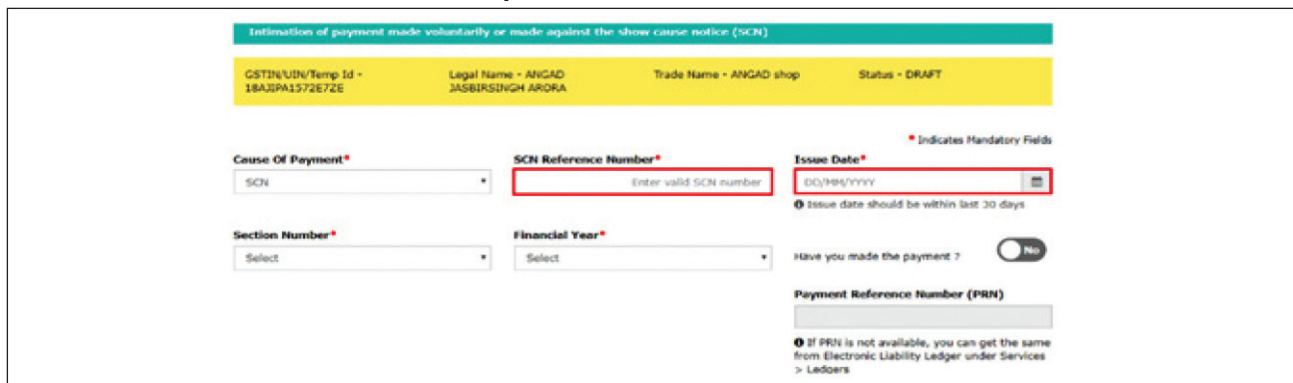
- Select the Application Type as ‘Intimation of Voluntary Payment – DRC-03’ and then click ‘New Application.’



Step 3: A taxpayer will get two options whether payment is made voluntarily or against SCN:

- Voluntary payment: The payment date will be auto-populated without an option to edit.
- Payment against SCN: A taxpayer has to manually enter the SCN Number and select the issue date which must be within 30 days of making payment.

Step 4: Select the Section under which payment is being made, the Financial Year and then select the from date and to date of the overall tax period.





Step 5: Provide details of payment including interest and penalty. A taxpayer can provide additional details by clicking on 'Add'. Then, click 'Proceed to Pay'.

Details of payment made including interest and penalty, if applicable

Tax Period				ACT TYPES	Place of Supply (Name of State)
From	To				
Select	Select	Select	Select	Select Tax Act Type	Select Place of Supply

0

ADD

SAVE PROCEED TO PAY PREVIEW FILE

Step 6: Voluntary payment page will be displayed which will be divided into 3 sections:

(1) Liability Details: Liabilities are displayed in this table.

Voluntary Payment

Description	Liability (₹)				
	Integrated Tax	Central Tax	State/UT Tax	Cess	
Tax	₹1,000	₹0	₹0	₹0	
Interest	₹0	₹0	₹0	₹0	
Penalty	₹0	₹0	₹0	₹0	
Fees	₹0	₹0	₹0	₹0	
Others	₹0	₹0	₹0	₹0	

(2) Cash Ledger balance: The cash balance available on a particular date is reflected in this table. The taxpayer has to enter the value of cash to be paid from the available balance against outstanding liabilities.

Description	Cash Ledger Balance (₹)					Description	Integral
	Integrated Tax	Central Tax	State/UT Tax	Cess			
Tax	₹0	₹07	₹00	₹0		Tax	
Interest	₹09	₹02	₹00	₹10		Interest	
Penalty	₹00	₹02	₹00	₹35		Penalty	
Fees	₹1,000	₹00	₹00	₹00		Fees	
Others	₹198	₹09	₹00	₹00		Others	

0

(3) Credit Ledger balance: ITC available as on date is reflected in this table.

The taxpayer has to enter the value of the liability to be paid through ITC and click Set-Off.

Credit Ledger Balance (₹)				
Description	Available	Provisional	Matched	Unmatched
Integrated Tax	₹2,46,89,133	₹9,80,000	₹0	₹0
Central Tax	₹1,53,447	₹9,99,000	₹0	₹0
State/UT Tax	₹1,53,937	₹9,99,000	₹0	₹0
Cash	₹0	₹0	₹0	₹0

A confirmation message will pop up stating the cash and ITC balance being used up for making payment. On clicking ‘Ok’, a PRN will be generated along with a successful payment message.

➤ Note: If PRN is not available, it can be extracted from the ‘Electronic Liability Register’ under Services>Ledgers>Electronic Liability Register.

Step 7: To view the draft DRC-03, Click the ‘Preview’ button on the page- ‘Intimation of payment made voluntarily or against SCN’.

Provide reasons if any, in the field provided. Choose a file in the attachments section to upload. Click on the verification checkbox and then select the ‘Authorised Signatory’ and enter the ‘Place’.

Step 8: Click on ‘File’. Two options will be available (Refer the image of Step 7)

- File with DSC: Browse the certificate and click on the button ‘sign’.
- File with EVC: An OTP will be sent to the registered mobile number and email ID.

On validation of OTP, a success message will be received along with ARN.

FAQs-

When can one pay tax voluntarily under GST?

- A taxpayer can make a voluntary payment of tax before the issue of notice under Sections 73 or 74 of the CGST Act, 2017 or
- Within thirty days of issue of show cause notice (SCN) under the said sections.



- Taxpayer cannot make voluntary payment after thirty days of the issue of SCN.

Can a taxpayer settle payments from the credit available in their Cash/Credit Ledgers?

- Yes, all the payments need to be made either from input tax credit available in electronic credit ledger or cash balance available in the electronic cash ledger.
- But, in case of interest and penalties ITC utilization is not available. It has to be compulsorily paid in cash.

What happens after the DRC-03 form is filed on the GST portal?

- All the three ledgers viz. Electronic Liability Ledger, Electronic Cash Ledger and Electronic Credit Ledger shall get updated after the filing of form DRC-03, i.e., respective debit and credit entries will be passed and PRN (Payment Reference Number) gets generated.

Can a Taxpayer save the application for intimation of voluntary payment??

- Application for intimating voluntary payment in DRC-03 can be saved at any stage for a maximum period of fifteen days.
- If the same is not filed within that time, the saved draft will be removed from the GST database.
- To view the saved application, go to ‘Services’ > click on ‘User Services’ > option called ‘My Saved Applications’.

What should a taxpayer do if there is no sufficient balance in the cash ledger to make voluntary payment in DRC-03 against a liability raised in an SCN?

- Firstly, deposit the amount in Electronic Cash Ledger by using the “Create Challan” facility which is available on the voluntary payment screen.
- Upon clicking the “Create Challan” button, it

will be redirected to a screen in the Payment section.

- On the “Create Challan” page, amounts get auto-populated in the challan based on the additional cash needed after considering the tax liabilities and others.

Rights of the Registered Person/Tax Payer:

- The taxpayer must conduct reconciliation for the entire year before proceeding to prepare and file annual returns.
- During such reconciliation, there can be a fresh discovery of any short payment of taxes, interest or penalties due to non-reporting or under-reporting of taxable supplies.
- Taxpayers are given an option to pay such tax differences in cash and report it by filing DRC-03.
- A taxpayer can self-ascertain the tax before issuance of SCN or within 30 days of SCN determination to avoid the hassles of demand and recovery provisions.

Duties of the Registered Person/Tax Payer:

- Where the assessee has for any financial year, discovered any case of short payment of tax, interest or penalties or excess claim of the input tax credit, and the time limit to report the same in GST returns is expired, the taxpayer must make voluntary payment in DRC-03 and report it in GSTR-9..
- If the tax authorities have sent notice for differences, being shortfall of tax liability in GSTR-3B when compared to GSTR-1, then the taxpayer must make the payment in DRC-03 or reply by justifying the reasons.
- If the taxpayer has claimed excess ITC i.e., more than allowed under the prescribed CGST Rule [Rule 36(4)] in GSTR-3B when compared to GSTR-2B, the taxpayer must use this form while depositing the excess claims of ITC.

- Voluntary payment should be made either:
 - Before the issuance of show cause notice or
 - 30 days of issue of SCN.

Common Advice to all the Taxpayers:

- Taxpayers are always advised to keep track of the details posted on the GST portal as a good practice and timely response to the notice.

- If any irregularity or error is found, the taxpayer should, if possible, attempt to correct the same in the latest return.
- Taxpayers should also reconcile all returns with each other, such as the turnover recorded in GSTR 1 with GSTR 3B and the generated e-way bills.
- Also, ITC reconciliation with GSTR 2A or GSTR 2B was used in GSTR 3B. TB

TAX UPDATES NOTIFICATIONS AND CIRCULARS

INDIRECT TAX

GOODS AND SERVICES TAX NOTIFICATION

Notification No. 07/2022 –Central Tax

Date – 26th May 2022

Seeks to waive off late fee under section 47 for the period from 01.05.2022 till 30.06.2022 for delay in filing FORM GSTR-4 for FY 2021-22

CBIC has made amendments in the notification no. 73/2017–Central Tax, dated the 29th December, 2017.

In the said notification, after the fifth proviso, the following proviso shall be inserted, namely: –

Late fee payable for delay in furnishing of FORM GSTR-4 (For Composite Dealers) for the Financial Year 2021-22 shall stand waived for the period from the 1st May, 2022 till the 30th June, 2022.

CUSTOMS (TARIFF) NOTIFICATION

Notification No.25/2022 –Customs

Date – 21st May 2022

Seeks to amend Notification No. 18/2019-Customs reducing Road and Infrastructure Cess (RIC) on Petrol and Diesel.

CBIC has made amendments in the notification No.18/2019-Customs, dated the 6th July, 2019.

In the said notification, in the Table-

- (i) against Sl.No.1, for the entry in column (4), the entry “Rs.5 per litre” shall be substituted
- (ii) against Sl.No.2, for the entry in column (4), the entry “Rs.2 per litre” shall be substituted.

This notification has come into force with effect from the 22nd May, 2022

Notification No.26/2022 – Customs

Date – 21st May 2022

Seeks to further amend notification No. 50/2017- Customs dated 30th June, 2017.

CBIC has made amendments in the notification no. 50/2017-Customs, dated the 30th June, 2017.

In the said notification, - I.in the Table, -

- (i) after S. No. 141 and the entries relating thereto, the following S. No.s and entries shall be inserted, namely: -

(1)	(2)	(3)	(4)	(5)	(6)
141A	2701	(a)Anthracite/Pulverized coal injection (PCI) coal; (b) Coking coal	Nil	-	-
141B	2704	Coke and semi-coke of coal, of lignite or of peat, whether or not agglomerated	Nil	-	-
141C	2710	Naphtha	1%	-	-

For more details , please follow -

<https://taxinformation.cbic.gov.in/view-pdf/1009309/ENG/Notifications>

Notification No.27/2022 – Customs

Date – 21st May 2022

Seeks to further amend notification No. 11/2021- Customs dated 1st February, 2021 to reduce duty on Anthracite/ Coking Coal

CBIC has made amendments in the notification no. 11/2021-Customs, dated the 1st February, 2021.

In the said notification, in the Table, against S. No. 10 and the entries relating thereto, the following S. No. and entries shall be inserted, namely: -

1	2	3	4
"10A	2701	(a)Anthracite/Pulverized Coal Injection (PCI) coal (b)Coking coal	Nil"

For more details, please follow -

<https://taxinformation.cbic.gov.in/view-pdf/1009310/ENG/Notifications>

Notification No.28/2022 – Customs

Date – 21st May 2022

Seeks to amend Second Schedule of the Customs Tariff Act, 1975 to increase and levy Export duty.

Whereas, the Central Government is satisfied that export duty should be levied or increased on certain articles and that circumstances exist which render it necessary to take immediate action.

Now, therefore CBIC has directed that the Second Schedule to the Customs Tariff Act shall be amended in the following manner, namely: -

In the Second Schedule to the Customs Tariff Act, -

- (1) against Sl. No. 21, for the entry in column (4), the entry "50%" shall be substituted;
- (2) against Sl. No. 22, for the entry in column (4), the entry "50%" shall be substituted;
- (3) against Sl. No. 43, for the entry in column (3), the entry "Flat rolled products of iron or non-alloy steel, clad, plated or coated" shall be substituted;
- (4) after Sl. No. 48 and the entries relating thereto, the following Sl. Nos. and entries relating thereto shall be inserted, namely: -

For more details , please follow

- <https://taxinformation.cbic.gov.in/view-pdf/1009311/ENG/Notifications>

Notification No.29/2022 – Customs

Date – 21st May 2022

Seeks to amend notification No. 27/2011 dated 1st March, 2011 to increase export duty on certain goods.

CBIC has made further amendments in the notification no. 27/2011- Customs dated the 1st March, 2011.

In the said notification, in the Table,

- (i) S. No. 20A and the entries relating thereto shall be omitted;
- (ii) against S. No. 23, in column (4), for the entry, the entry "45%" shall be substituted;
- (iii) against S. No. 48, in column (4), for the entry, the entry "15%" shall be substituted;
- (iv) against S. No. 54, in column (4), for the entry, the entry "15%" shall be substituted;

For more details , please follow -

<https://taxinformation.cbic.gov.in/view-pdf/1009312/ENG/Notifications>

Notification No.30/2022 – Customs

Date – 24st May 2022

Seeks to provide global Tariff Rate Quota (TRQ) of 20 LMT per FY to Crude Sunflower Oil and Crude Soyabean Oil for 2 years exempting from whole of BCD and AIDC

CBIC has exempted the goods of the description specified in column (3) of the Table below, falling under the sub-heading or tariff item of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) as specified in the corresponding entry in column (2) of the said Table, in such quantity of total imports of such goods in a financial year, as specified in column (4) below (herein after referred to as the 'Tariff Rate Quota (TRQ) quantity'), when imported into India, from the whole of the customs duty leviable thereon under the First Schedule to the Customs Tariff Act and from the whole of the Agriculture Infrastructure and Development Cess leviable thereon under the said section of the Finance Act, 2021, subject to the condition specified in the Annexure to this notification, namely: -

For more details , please follow -

<https://taxinformation.cbic.gov.in/view-pdf/1009316/ENG/Notifications>

**CUSTOMS (NON-TARIFF)
NOTIFICATION**

Notification No.42/2022 - Customs (N.T.)

Date – 18th May 2022

Exchange rate Notification No.42/2022-Cus (NT) dated 18.05.2022

CBIC has made amendments in Notification No.40/2022-



CUSTOMS (N.T.), dated 5th May, 2022 with effect from 19th May, 2022.

In the SCHEDULE-I of the said Notification, for serial No.18 and the entries relating thereto, the following shall be substituted, namely:

Sl.No.	Foreign Currency	Rate of exchange of one unit of foreign currency equivalent to Indian rupees	
		(For Imported Goods)	(For Export Goods)
18.	Turkish Lira	5.00	4.70

Notification No.43/2022 - Customs (N.T.)

Date – 19th May 2022

Exchange rate Notification No.43/2022-Cus (NT) dated 19.05.2022

In exercise of the powers conferred by section 14 of the Customs Act, 1962 (52 of 1962), and in supersession of the Notification No.40/2022-Customs(N.T.), dated 5th May, 2022 except as respects things done or omitted to be done before such supersession, CBIC has determined that the rate of exchange of conversion of each of the foreign currencies specified in column (2) of each of Schedule I and Schedule II annexed hereto, into Indian currency or vice versa, and it has been effective from 20th May, 2022, relating to imported and export goods

For more details , please follow

- <https://taxinformation.cbic.gov.in/view-pdf/1009305/ENG/Notifications>

Notification No.44/2022 - Customs (N.T.)

Date – 20th May 2022

Customs Tariff (Determination of Origin of Goods under the Comprehensive Economic Partnership Agreement between the Republic of India and Japan) Amendment Rules, 2022

G.S.R. _____ (E). - In exercise of the powers conferred by sub-section (1) of section 5 of the Customs Tariff Act, 1975 (51 of 1975), the Central Government hereby makes the following rules to further amend the Customs Tariff

(Determination of Origin of Goods under the Comprehensive Economic Partnership Agreement between the Republic of India and Japan) Rules, 2011, namely: -

- Short title and commencement. - (1) These rules may be called the Customs Tariff (Determination of Origin of Goods under the Comprehensive Economic Partnership Agreement between the Republic of India and Japan) Amendment Rules, 2022.
(2) They shall come into force on the date of their publication in the Official Gazette.
- In the Customs Tariff (Determination of Origin of Goods under the Comprehensive Economic Partnership Agreement between the Republic of India and Japan) Rules, 2011, in Annexure-1, in Part 2, in Section I, in Chapter 3, for the figures and words “03.01-03.07 Manufacture in which all the materials used are wholly obtained.”, the following shall be substituted, namely: -

For more details , please follow

- <https://taxinformation.cbic.gov.in/view-pdf/1009307/ENG/Notifications>

Notification No.45/2022 - Customs (N.T.)

Date – 24th May 2022

Amendment in the notification Â No. 12/97-Customs (N.T.) dated the 2ndÂ April, 1997

CBIC has made amendment in the notification no. 12/97-Customs(N.T.) dated the 2nd April, 1997.

In the said notification, in the Table, against serial number 8 relating to the State of Madhya Pradesh, in column (3),after the entry at item (ix)and corresponding entry in column (4),the following item and entries shall be inserted, namely:—

3	4
“(x) Village Kheda, Pithampur	Unloading of imported goods and loading of export goods”

For more details , please follow

- <https://taxinformation.cbic.gov.in/view-pdf/1009320/ENG/Notifications>

CUSTOMS (ANTI DUMPING DUTY) NOTIFICATION

Notification No. 14/2022 (ADD)

Date – 20th May 2022

Seeks to impose ADD on PU Leather originating in or exported from China PR

Whereas in the matter of “Polyurethane Leather which includes any kind of textile coated one sided or both sided with Polyurethane” falling under tariff item 5603 94 90 or 5903 20 90 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) originating in, or exported from People’s Republic of China and imported into India, the designated authority in its final findings vide notification number 6/55/2020-DGTR, dated the 21st February, 2022, has come to the conclusion that the,-

- (i) dumping margin for the subject goods from the subject country is positive and significant;
- (ii) domestic industry has suffered material injury;
- (iii) material injury to the domestic industry has been caused by the dumped imports from the subject country,

and has recommended imposition of an anti-dumping duty on the imports of subject goods, originating in, or exported from the subject country and imported into India, in order to remove injury to the domestic industry

For more details , please follow

- <https://taxinformation.cbic.gov.in/view-pdf/1009306/ENG/Notifications>

Notification No. 15/2022 (ADD)

Date – 20th May 2022

Seeks to amend notification no. 77/2021-Customs(ADD) dated 27th December, 2021

Whereas in the matter of ‘Décor Paper’ falling under tariff item 4805 91 00 or 4802 20 90 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) originating in, or exported from People’s Republic of China and imported into India, the designated authority in its final findings, vide, notification number F.No. 6/38/2020-DGTR, dated the 28th September, 2021, has recommended imposition of an anti-dumping duty on the imports of subject goods, originating in, or exported from the subject country and imported into India.

For more details , please follow

- <https://taxinformation.cbic.gov.in/view-pdf/1009314/ENG/Notifications>

Notification No. 16/2022 (ADD)

Date – 24th May 2022

Seeks to levy anti-dumping duty on imports of ‘Ceramic Tableware and kitchenware, excluding knives and toilet items’ originating in or exported from China PR for a period of five years.

Whereas, in the matter of “Ceramic Tableware and Kitchenware, excluding knives and toilet items” falling under headings 6911 and 6912 of the First Schedule to the Customs Tariff Act, 1975 originating in, or exported from the People’s Republic of China and imported into India, the designated authority in its final findings vide notification No. 14/05/2016-DGAD, dated the 8th December, 2017, had recommended imposition of definitive anti-dumping duty on the imports of subject goods, originating in, or exported from the subject country

For more details , please follow

- <https://taxinformation.cbic.gov.in/view-pdf/1009315/ENG/Notifications>

DIRECT TAX

Notification No. 54/2022

Date – 27th May 2022

Faceless Penalty (Amendment) Scheme, 2022

In exercise of the powers conferred by sub-section (2A) of section 274 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby makes the following Scheme to amend the Faceless Penalty Scheme, 2021, namely: —

1. Short title and commencement. —

(1) This Scheme may be called the Faceless Penalty (Amendment) Scheme, 2022.

(2) It shall come into force on the date of its publication in the Official Gazette.

2. In the Faceless Penalty Scheme, 2021, —

(i) in paragraph 4, — (A) in sub-paragraph (1), —

(I) in clause (i), the words –and vest it with the



jurisdiction to impose penalty in accordance with the provisions of this Scheme shall be omitted;

(II) clause (ii) shall be omitted;

(III) in clause (iii), for the words –as may be required for the purposes of imposing penalty, the words – as may be required for the purposes of imposing penalty and the term –penalty unit, wherever used in this Scheme, shall refer to an Assessing Officer having powers so assigned by the Board shall be substituted;

(IV) in clause (iv), for the words –and such other functions as may be required for the purposes of review, and specify their respective jurisdiction, the words –and such other functions as may be required for the purposes of review and the term –penalty review unit, wherever used in this Scheme, shall refer to an Assessing Officer having powers so assigned by the Board shall be substituted;

(B) in sub-paragraph (4), the words –the Regional Faceless Penalty Centres, –Regional Faceless Assessment Centre, and –Regional Faceless Penalty Centre, shall be omitted.

For more details, please follow

- https://incometaxindia.gov.in/communications/notification/notification_no_54_2022.pdf

[Notification No. 55/2022](#)

[Date – 27th May 2022](#)

[Notification No. 55/2022 \[F. No. 370142/51/2020-TPL\(Part III\)\] / SO 2426\(E\)](#)

In exercise of the powers conferred by sub-section (2B)

of section 274 of the Income-tax Act, 1961 (43 of 1961) (hereinafter referred to as –the Act) and in consequence to the amendments made in section 144B of the Act vide the Finance Act, 2022, for the purposes of giving effect to the Faceless Penalty (Amendment) Scheme, 2022 made under sub-section (2A) of section 274 of the Act, the Central Government hereby makes the following amendments in the notification of the Government of India, Ministry of Finance (Department of Revenue), Central Board of Direct Taxes published in the Gazette of India, Extraordinary vide number S.O. 118(E), dated the 12th January, 2021, namely.

For more details , please follow -

https://incometaxindia.gov.in/communications/notification/notification_no_55_2022.pdf

[Notification No. 56/2022](#)

[Date – 28th May 2022](#)

[Notification No. 56/2022 \[F.No. 225/91/2022/ITA-II\]](#)

In exercise of powers conferred under sub-section (2) of section 143 of Income tax Act, 1961 (43 of 1961) (the Act) read with Rule 12E of the Income-tax Rules, 1962, and in supersession of Notification No. 25/2021F. NO. 187/312020-ITA-I dated 31.03.2021 , the Central Board of Direct Taxes hereby authorises the Assistant Commissioner of income Tax Deputy Commissioner of Income Tax (International Taxation), Circle -1(1)(1), Delhi to act as the ‘ Prescribed Income-tax Authority’ for the purpose of issuance of notice under subsection (2) of section 143 of the Act

For more details , please follow

- <https://incometaxindia.gov.in/communications/notification/notification-56-2022.pdf>



INDIRECT TAX JUDGEMENT

School canteen, bus services not under GST purview **MAHARSHTRA AAR**

FACT OF THE CASE :-

- ✿ In India, school fees are exempt from GST.
- ✿ The question under review was whether the services provided by schools such as transportation and canteen facilities would be liable to GST.

DECISION OF THE CASE :-

- ✿ As per the GST framework, there is no tax on school fees. "Nil rate of tax on the supply of pre-school education services to its students against a fee, supply of goods, supply of transportation service to pre-school students and faculty/staff without any consideration as well as with some consideration, as well as on the supply of canteen service to its faculty and staff for some consideration," the May 25 ruling said.
- ✿ Canteen and transportation services provided by schools are outside the purview of Goods and Services Tax (GST), the Maharashtra authority for advance ruling (AAR) has said in a ruling that will offer relief to many schools across India.

Sale of Second Hand 'Paintings' attracts 12% GST **MAHARSHTRA AAR**

FACT OF THE CASE :-

- ✿ The applicant, M/s. Saffron Art Private Limited, is in the business of procuring paintings on an approval basis from unregistered and registered persons and selling them by auction to the highest bidder.
- ✿ The applicant displays the paintings on its website and conducts a sale by way of an online auction to the highest bidder.
- ✿ The assumption of the applicant is that its suppliers have brought the second hand or used paintings and then offered them for sale to the applicant.

- ✿ The applicant has sought an advance ruling in respect of the

1. classification of second-hand or used paintings.
2. whether for determination of the liability to pay tax on the sale of second-hand or used 'paintings', the applicant can apply Rule 32(5) of the CGST & MGST Rules, 2017.

DECISION OF THE CASE :-

- ✿ The AAR observed that the second-hand paintings are classifiable under Heading 9701 of the GST Tariff.
- ✿ The provisions of Rule 32(5) of the CGST Rules will be applicable to the applicant in respect of second hand, i.e., used paintings which are purchased by them and then sold.
- ✿ 12% GST is payable on the sale of second-hand paintings.

GST not leviable on Services by Security Manager located outside India for subscription to secured notes **GUJARAT AAR**

FACT OF THE CASE :-

- ✿ The applicant, M/s. Adani Green Energy Ltd. (AGEL), submitted that it requires substantial working capital to undertake its supplies.
- ✿ The applicant has raised USD 750 million by issuing Senior Secured Notes (Notes) carrying an interest coupon of 4.375% due for redemption in 2024 in terms of a Subscription Agreement entered into with Axis Bank Limited, Singapore and others to act as Managers.
- ✿ All the managers do not have any establishments in India and undertake business from their establishments outside India.
- ✿ The applicant has sought an advance ruling on the issue of whether the applicant is liable to discharge GST under the reverse charge mechanism in respect

of the services of arranging for subscription supplied to the applicant by the managers located in the non-taxable territory.

DECISION OF THE CASE :-

- ✿ Gujarat AAR ruled that GST is not leviable on services by security managers located outside India for subscription to secured notes placed in the USA.

Air circulation fans supplied to poultry house for providing ventilation to Live-stock attracts 18% GST

GUJARAT AAR

FACT OF THE CASE :-

- ✿ The applicant, M/s. Star Enterprise is in the business of supplying air circulation fans mainly to poultry houses for the purpose of providing ventilation to livestock, and few fans are supplied to industry.
- ✿ The applicant has sought the advance ruling on the GST rate applicable on fans (HSN-84145930) used in poultry houses for the purpose of air circulation.

DECISION OF THE CASE :-

- ✿ Gujarat AAR ruled that 18% GST is payable on air circulation fans supplied to poultry houses for the purpose of providing ventilation to livestock.

LNG Jetties is not in the nature of 'Plant and Machinery', ITC not eligible

GUJARAT AAR

FACT OF THE CASE :-

- ✿ The appellant has entered into a concession

agreement with the Gujarat Maritime Board and the Government of Gujarat.

- ✿ The appellant undertook the development, construction, operation, and maintenance of a Liquefied Natural Gas (LNG) port with a Floating Storage and Regasification Unit (FSRU) facility near Jafrabad, Gujarat, on a Build, Own, Operate, and Transfer basis.
- ✿ As a part of developing the LNG Port and FSRU facility, the appellant is developing an import terminal for FSRU near the village of Bhankodar, near Jafrabad, Gujarat.
- ✿ After the development of the Import Terminal, the appellant intends to provide LNG re-gasification service to prospective customers.
- ✿ The appellant sought the advance ruling on the issue whether the LNG jetties proposed to be built by the applicant can be to be covered within expression 'plant and machinery' as foundation to equipment, apparatus, machinery to be installed on it.

DECISION OF THE CASE :-

- ✿ Gujarat AAR ruled that LNG jetties are not in the nature of "plant and machinery," but rather serve as the foundation for the installation of re-gasification equipment, apparatus, and machinery. The input tax credit on inputs, input services, and capital goods for the purpose of building these LNG jetties is not admissible.

DIRECT TAX JUDGEMENT

Settlement Commission does not have power to reduce or waive interest statutorily payable under S.234A, 234B and 234C of the Act – Matter remanded to Settlement Commission.

FACT OF THE CASE :-

1. Settlement Commission while passing the order u/s. 245D(4) made certain addition and also waived the interest levied u/s. 234A, 234B and 234C of the Act.
2. On a rectification application filed by the revenue the Settlement Commission partly allowed the application.
3. Being aggrieved by the order of Settlement Commission the assessee filed two writ petitions before the High Court.
4. High Court set aside the rectification order passed by the Settlement Commission.
5. Revenue aggrieved by the order of Settlement Commission filed two petitions before the High Court.
6. High Court reversed the waiver of interest in terms of Settlement Commission 's direction contained in its order dt 11-10-2002.

DECISION OF THE CASE :-

1. On appeal the Court held that, when Settlement Commission passed first order disposing of assessee's application, issue with regard to powers of Commission was not settled by any decision of Apex Court.
2. Decisions in CIT v. Anjum M.H. Ghaswala (1997) 252 ITR 1 (SC) and Brij Lal v. CIT (2010) 328 ITR 477 (SC), were rendered after Settlement Commission passed order in present case.
3. Therefore, Commission had no occasion to examine issue in question in the context of law laid down by this Court in those two decisions. High Court instead of going into merits of issue, should have set aside original order passed by Commission and remanded case to Commission for deciding issue relating to

waiver of interest payable under S. 234A, 234B, and 234C afresh.

4. High Court failed to see that order of Commission was already set aside by High Court itself in first round in light of law laid down by in case of Brijlal wherein, it was laid down that Commission had no power to pass orders u/s. 154.
5. Order passed by Settlement Commission to extent it decided issue in relation to waiver of interest was set aside and case was remanded to Commission to decide issue afresh.
6. Settlement Commission in exercise of its power under S. 2 45D(4) and (6) does not have the power to reduce or waive interest statutorily payable under S. 234A, 234B and 234C, except to the extent of granting relief under the circulars issued by the Board under S. 119 of the Act.
7. Matter remanded to settlement Commission.

Sajid Salimbhai Saiyed v. UOI (2019) 265 Taxman 191 (Guj.)(HC) [SECTION 281 OF INCOME TAX ACT,1961- Certain transfers to be void]

FACT OF THE CASE :-

1. Where, during the pendency of any proceeding under this Act or after the completion thereof, but before the service of notice under rule 2 of the Second Schedule, any assessee creates a charge on, or parts with the possession (by way of sale, mortgage, gift, exchange or any other mode of transfer whatsoever) of, any of his assets in favour of any other person, such charge or transfer shall be void as against any claim in respect of any tax or any other sum payable by the assessee as a result of the completion of the said proceeding or otherwise. Despite of notice of attachment the property was sold by the owner in favour of the petitioner.
2. The Tax Recovery Officer issued on the assessee a notice dated 27-3-2019 and directed him to handover vacant and peaceful possession of the property to the department.

3. The assessee filed a writ petition challenging the notice dated 27-3-2019.
4. He stated that he was the bona fide purchaser of the property for value without notice. He had no idea about any such notice being issued by the department to Shri Aziz Ahmed Shaikh and he had also no idea that the property was already attached by the department. He placed reliance on the provisions of section 281.

DECISION OF THE CASE :-

1. The assessee on being asked by the Court pointed out that he has not so far responded in any manner to the notice dated 27-3-2019. Provided that such charge or transfer shall not be void if it is made-
 - (i) for adequate consideration and without notice of the pendency of such proceeding or, as the case may be, without notice of such tax or other sum payable by the assessee ; or
 - (ii) with the previous permission of the Assessing Officer.
 - (iii) This section applies to cases where the amount of tax or other sum payable or likely to be payable exceeds five thousand rupees and the assets charged or transferred exceed ten thousand rupees in value.
2. If the assessee is seeking to rely upon the proviso (i) to Section 281, he needs to point out to the authority concerned that the purchase of the attached property was for adequate consideration and without notice of the pendency of any proceedings against the defaulter Shri Aziz Ahmed Shaikh and that too the transfer was before the service of notice under rule 2 of the Second Schedule to the Income tax Act.
3. The assessee shall appear before the Tax Recovery Officer at the earliest and adduce necessary evidence and also make good his case for discharging the notice dated 27-3-2019.
4. The authority concerned shall hear the assessee and pass appropriate order in accordance with law.
5. It is expected by the authority concerned not to take any coercive steps against the assessee till the completion of this exercise as directed by the Court.

Anidhi Impex Pvt. Ltd. v. ITO (2019) 73 ITR 379 (Mum.)(Trib.) - SECTION 143(2)

FACT OF THE CASE :-

1. Where a return has been furnished under Section 139, or in response to a notice under sub-section (1) of section 142, the Assessing Officer or the prescribed income-tax authority, as the case may be, if, considers it necessary or expedient to ensure that the assessee has not understated the income or has not computed excessive loss or has not under-paid the tax in any manner, shall serve on the assessee a notice requiring him, on a date to be specified therein, either to attend the office of the Assessing Officer or to produce, or cause to be produced before the Assessing Officer any evidence on which the assessee may rely in support of the return:
2. Provided that no notice under this sub-section shall be served on the assessee after the expiry of six months from the end of the financial year in which the return is furnished.
3. The AO had served notice u/s 143(2) on 27 August 2013 upon a certain person who was in part time employee of the assessee till 31 March 2011. Subsequently, the AO had again issued notice u/s 143(2) on the directors beyond the time limit for the said notice.

DECISION OF THE CASE :-

1. The Tribunal noted that the assessee had submitted affidavit from the part time employee wherein the said person had refused to accept the notice (as he was no longer associated with the assessee), and he could not send the notice to the company due to the change in address. Further, the directors also filed affidavits reconfirming the facts.
2. The Tribunal after analyzing the provisions of S. 282 of the Act and the provisions of the Civil Procedure Code, 1908 considered that the notice was not served upon a person who was authorised to receive it and thus lead to invalid service/ non-service of notice and the assessment order u/s 143(3) was to be quashed.



Himalayan Cooperative Group Housing Society v. Balwan Singh (2015) 7 SCC 373 - SECTION 143(2)

FACT OF THE CASE :-

1. Where a return has been furnished under Section 139, or in response to a notice under sub-section (1) of section 142, the Assessing Officer or the prescribed income-tax authority, as the case may be, if, considers it necessary or expedient to ensure that the assessee has not understated the income or has not computed excessive loss or has not under-paid the tax in any manner, shall serve on the assessee a notice requiring him, on a date to be specified therein, either to attend the office of the Assessing Officer or to produce, or cause to be produced before the Assessing Officer any evidence on which the assessee may rely in support of the return:
2. The Authorised representative contended before the Tribunal that the notice u/s.143(2) was not served on the partners of the assessee firm as is the requirement under the law.
3. He submitted that the service of notice on Shri Harish C. Pawar, Manager of the assessee did not tantamount to a valid service and hence the assessment be quashed.
4. Departmental representative placed on record a copy of order sheet of the assessment proceedings.
5. The Tribunal noticed that entry dated 13-08-2012 of the assessment proceedings notes that Shri D. P. Lunawat, Advocate attended on behalf of the assessee.
6. This order sheet entry further records that office copy of notice u/s. 143(2) was shown to Shri D. P. Lunawat, duly signed by the assessee firm and received by Shri Harish C. Pawar, Manager.
7. It goes on to state that the Id. AR was asked if he still had any objection to the service of notice, to which Shri Harish C. Pawar stated that 'he has no objection.'

DECISION OF THE CASE :-

1. Accordingly, the Tribunal held that if the assessee objects to the AO's jurisdiction, but his Authorized Representative later conveys no-objection, it means that the assessee has withdrawn his objection.

2. Submission that the AR had no authority to convey no-objection and cannot bind the assessee is not acceptable.
3. Once the assessee empowers his Authorised representative to appear before authorities, all of the Authorised representative concessions are binding on the assessee. 10. Accordingly Challenge to the assessment on the basis that there was valid service is held to be not valid.

Husband entitled Capital Gain Exemption for asset bought in the name of the Wife

FACT OF THE CASE :-

1. The assessee, Kaushlendra Singh, sold immovable property for a consideration of Rs.14,75,000. The value of which was evaluated at Rs. 14,79,960 by the Stamp Duty Authority.
2. Out of sale consideration, the assessee made an investment in the purchase of a new residential house property in the name of his wife within the prescribed time limit as prescribed under the provisions of section 54F of the Income Tax Act.
3. The assessee claimed exemption under section 54F of the Income Tax Act.
4. Consequently, no capital gain was chargeable under the head "Long-term capital gain on the sale of immovable property."
5. The AO, while completing the assessment, disallowed the exemption claimed under section 54F. The AO added the amount to the total income of the assessee as a long-term capital gain.

DECISION OF THE CASE :-

1. The AO held that since the assessee made an investment in immovable property in the name of his wife and the assessee and his wife are different persons as well as separate assessees, the deduction claimed under section 54F was not allowable to the assessee.
2. Being aggrieved by the assessment order, the assessee preferred an appeal before the CIT (A). The CIT (A) rejected the arguments and submissions made by the assessee.
3. The Jaipur Bench of the Income Tax Appellate Tribunal (ITAT) held that the husband was entitled to a capital gain exemption for assets bought in the name of the wife.



DIRECT TAX CALENDER – MAY, 2022

**30th May
2022**

1. Submission of a statement (in Form No. 49C) by non-resident having a liaison office in India for the financial year 2021-22
2. Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA in the month of April, 2022
3. Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194M in the month of April, 2022
4. Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IB in the month of April, 2022
5. Issue of TCS certificates for the 4th Quarter of the Financial Year 2021-22

**31st May
2022**

1. Quarterly statement of TDS deposited for the quarter ending March 31, 2022
2. Return of tax deduction from contributions paid by the trustees of an approved superannuation fund
3. Due date for furnishing of statement of financial transaction (in Form No. 61A) as required to be furnished under sub-section (1) of section 285BA of the Act respect for financial year 2021-22
4. Due date for e-filing of annual statement of reportable accounts as required to be furnished under section 285BA(1)(k) (in Form No. 61B) for calendar year 2021 by reporting financial institutions
5. Application for allotment of PAN in case of non-individual resident person, which enters into a financial transaction of Rs. 2,50,000 or more during FY 2021-22 and hasn't been allotted any PAN
6. Application for allotment of PAN in case of person being managing director, director, partner, trustee, author, founder, karta, chief executive officer, principal officer or office bearer of the person referred to in Rule 114(3)(v) or any person competent to act on behalf of the person referred to in Rule 114(3)(v) and who hasn't allotted any PAN

INDIRECT TAX CALENDAR – MAY 2022

Due Dates	GSTR Return/Form	Period
10.5.2022	GSTR - 7 (TDS)	April 2022
10.5.2022	2 GSTR - 8 (TCS)	April 2022
11.5.2022	GSTR - 1 Whose Turnover > Rs 5 Crore or have opted to file monthly return.	April 2022
13.5.2022	Who has opted for Invoice Furnishing Facility (IFF) under QRMP Scheme	April 2022
13.5.2022	GSTR - 6 (ISD)	April 2022
20.5.2022	GSTR - 5 Return for Non-Resident taxable Person	April 2022
20.5.2022	GSTR - 5A Return for NRI, providing online information and database access or retrieval services to non-taxable person in India.	April 2022
20.5.2022	GSTR - 3B Whose Turnover > Rs 5 Crore or have opted to file monthly return.	April 2022
25.5.2022	PMT - 06 Who has opted to file return under QRMP Scheme.	April 2022
28.5.2022	GSTR - 11 Statement of inward supplies received by persons having Unique Identification Number (UIN)	April 2022

E-PUBLICATIONS OF TAX RESEARCH DEPARTMENT

Impact of GST on Real Estate	Handbook on GST on Service Sector
Insight into Customs - Procedure & Practice	Handbook on Works Contract
Input Tax Credit & In depth Discussion	Handbook on Impact of GST on MSME Sector
Exemptions under the Income Tax Act, 1961	Insight into Assessment including E-Assessment
Taxation on Co-operative Sector	Impact on GST on Education Sector
Guidance Note on GST Annual Return & Audit	Addendum_Guidance Note on GST Annual Return & Audit
Sabka Vishwas-Legacy Dispute Resolution Scheme 2019	An insight to the Direct Tax- Vivad se Vishwas Scheme 2020
Guidance Note on Anti Profiteering	International Taxation and Transfer Pricing
Advance Rulings in GST	Handbook on E-Way Bill
Handbook on Special Economic Zone and Export Oriented Units	Taxation on Works Contract

For E-Publications, Please visit Taxation Portal -
<https://icmai.in/TaxationPortal/>

TAXATION COMMITTEES - PLAN OF ACTION

Proposed Action Plan:

1. Successfully conduct all Taxation Courses.
2. Publication and Circulation of Tax bulletin (both in electronic and printed formats) for the awareness and knowledge updation of stakeholders, members, traders, Chambers of Commerce, Universities.
3. Publication of Handbooks on Taxation related topics helping stakeholders in their job deliberations.
4. Carry out webinars for the Capacity building of Members - Trainers in the locality to facilitate the traders/ registered dealers.
5. Conducting Seminars and workshops on industry specific issues, in association with the Trade associations/ Traders/ Chamber of commerce in different location on practical issues/aspects associated with GST.
6. Tendering representation to the Government on practical difficulties faced by the stakeholders in Taxation related matters.
7. Updating Government about the steps taken by the Institute in removing the practical difficulties in implementing various Tax Laws including GST.
8. Facilitating general public other than members through GST Help-Desk opened at Head quarter of the Institute and other places of country.
9. Introducing advance level courses for the professionals on GST and Income Tax.
10. Extending Crash Courses on Taxation to Corporates, Universities, Trade Associations etc.

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