

महेन्द्र रंगा

MAHENDRA RANGA

मुख्य आयुक्त

CHIEF COMMISSIONER

12 जून, 2024

D.O. No. GCCO/TECH/MISC/440/2023

प्रिय साहिब,

'संवाद': जून, 2024

राजस्थान इस समय भीषण गर्मी की चपेट में है; तापमान रिकॉर्ड ऊंचाई पर पहुंच गया है। अगले कुछ दिनों और गर्मी की लहर जारी रहने की उम्मीद है। इसलिए हम सभी को जागरूक और सुरक्षित रहना बहुत ज़रूरी है। इस गर्म मौसम में ठंडा और द्रवित रहना हमारे स्वास्थ्य और तंदुरुस्ती के लिए बहुत आवश्यक है। हमें चाहिए कि हम एक-दूसरे का ख्याल रखें और सुरक्षित रहें!

2. अप्रैल की शानदार शुरुआत के बाद, मई 2024 में भी राजस्व में 20% की वृद्धि हुई है। राजस्व के मामले में, मई अक्सर एक धीमा महीना होता है। तथापि, इस वर्ष हम मई में 2000 करोड़ से अधिक का संग्रह करने में सफल रहे हैं, जोकि पिछले वर्ष इसी महीने में 1670 करोड़ रुपये से काफी अधिक है। मई माह तक राजस्व वृद्धि दर 16.74% भी पिछले वर्ष की वृद्धि दर 2.32% की तुलना में उल्लेखनीय है। कर अनुपालन में सुधार और कर नीतियों के कुशल प्रशासन की दिशा में ठोस प्रयास जारी रखने की आवश्यकता है।

3. मई 2024 के दौरान डेटा एनालिटिक्स के द्वारा कुछ अच्छे मामले दर्ज किए गए हैं। सीजीएसटी, अलवर ने मेसर्स बी. के. एंटरप्राइजेज, मेसर्स एस. के. एंटरप्राइजेज और मेसर्स रोहित एंटरप्राइजेज के नाम से पंजीकृत परंतु गैर-मौजूद फर्मों द्वारा 12.50 करोड़ रुपये की फर्जी/अयोग्य आईटीसी का लाभ उठाने और उसे पारित करने का पता लगाया है। मेसर्स रोहित एंटरप्राइजेज के मामले में, मुख्य आयुक्त कार्यालय की सीआईयू शाखा द्वारा 6.99 करोड़ रुपये के अयोग्य आईटीसी से संबंधित इनपुट दिए गए थे। सीजीएसटी उदयपुर ने मेसर्स असाही इंडिया ग्लास लिमिटेड द्वारा अवरुद्ध आईटीसी का गलत लाभ उठाने के मामले का पता लगाने में भी डेटा एनालिटिक्स का इस्तेमाल किया है। अपनी गलती को स्वीकार करते हुए, करदाता ने 9.37 करोड़ रुपये का आईटीसी वापस (रिवर्स) कर दिया है। सीपीजीआरएएम शिकायत के आधार पर

केन्द्रीय राजस्व भवन, स्टेच्यू सर्किल, सी-स्कीम, जयपुर-302005

CENTRAL REVENUE BUILDING, STATUE CIRCLE, C-SCHEME, JAIPUR-302005

Off. : 0141-2385155, Fax : 0141-2385130, e-mail : ccu-cexjpr@nic.in, Twitter Handle : @CGSTJAIPURZONE

सीजीएसटी, जयपुर द्वारा की गई जांच में मेसर्स दिव्य वेबटेक प्राइवेट लिमिटेड द्वारा ऑनलाइन गेमिंग सेवाओं पर कम भुगतान के संबंध में कर अपवंचन का एक मामला सामने आया है। करदाता द्वारा ऑनलाइन गेमिंग सेवाओं के बजाय अन्य सेवाओं का प्रावधान गलत तरीके से घोषित किया था। मामले में अब तक 4.00 करोड़ रुपये की जीएसटी राशि की वसूली की गई है।

4. एक महत्वपूर्ण घटनाक्रम में, सीजीएसटी जोधपुर ने सैनिटरी नैपकिन के डायवर्जन से जुड़े भ्रष्टाचार के मामले का पर्दाफाश किया है। "उड़ान" ब्रांड के ये नैपकिन राजस्थान सरकार की कल्याणकारी योजना के तहत सरकारी स्कूलों और आंगनवाड़ी केंद्रों में लड़कियों और महिलाओं को मुफ्त में वितरित किए जाने थे। ई-वे बिल चेकिंग अभियान के दौरान एक ट्रक की जांच से इस गड़बड़ी का खुलासा हुआ, जिससे जन कल्याणकारी योजनाओं की सुरक्षा में सीजीएसटी अधिकारियों की सतर्कता उजागर हुई। यह मामला जिला कलेक्टर, जोधपुर और डीसीपी (पश्चिम), जोधपुर के संज्ञान में लाया गया है। पता चला है कि इन सैनिटरी नैपकिन पैड के मुफ्त वितरण के लिए जिम्मेदार कुछ अधिकारियों को निलंबित कर दिया गया है और मुख्य अभियुक्त को गिरफ्तार भी कर लिया गया है।

5. ऑडिट, जयपुर ने बिक्री के बाद छूट के संदर्भ में खरीदारों को जारी किए गए क्रेडिट नोट्स के मामले में मेसर्स श्री सीमेंट लिमिटेड से 32.92 करोड़ रुपये वसूले हैं। दूसरे मामले में, दूरसंचार विभाग के बकाया पर दूरसंचार सेवाओं पर आरसीएम के तहत जीएसटी का भुगतान न करने/कम भुगतान करने के लिए मेसर्स भारती हेक्साकॉम लिमिटेड से 8.07 करोड़ रुपये की राशि वसूली गई है। इसी प्रकार, मेसर्स सेंट-गोबेन इंडिया प्राइवेट लिमिटेड के ऑडिट के दौरान, आपूर्ति के गलत वर्गीकरण के कारण 1.0 करोड़ रुपये की राशि वसूल की गई है। मैं ऑडिट, जयपुर के अधिकारियों की उनकी उल्लेखनीय उपलब्धि के लिए सराहना करता हूं और आने वाले महीनों में भी इसी तरह की सफलता की उम्मीद करता हूं।

6. उत्पादकता, कार्यकुशलता और नौकरी की संतुष्टि बढ़ाने के लिए सुविधाजनक कार्य वातावरण आवश्यक है। जोन में कई बुनियादी ढांचा परियोजनाओं को पुनर्जीवित किया गया है और अनुमोदन के लिए प्रस्ताव भेजे गए हैं। इन परियोजनाओं में सीजीएसटी जोधपुर, अपील जोधपुर, ऑडिट जोधपुर और ऑडिट जयपुर द्वारा बीएसएनएल भवनों को और अपील जयपुर द्वारा प्रसार भारती भवन को किराए पर लेना; चित्तौड़गढ़ और अलवर में कार्यालय भवनों का निर्माण; उदयपुर, अजमेर, भिवाड़ी, भरतपुर और चित्तौड़गढ़ में सरकारी आवासों का पुनर्विकास, नवीनीकरण और मरम्मत शामिल है। संबंधित मामलों में बोर्ड से स्वीकृति मिलते ही, निर्माण कार्य तेजी से शुरू हो जाएगा, जिससे कर्मचारियों और अधिकारियों के लिए आधुनिक और बेहतर कार्यस्थल और रहने के लिए सरकारी आवास का रास्ता साफ हो जाएगा। मैं आप सभी से आग्रह करता हूं कि प्राइवेट आवास में रहने के बजाय उपलब्ध सरकारी आवासों में रहने का आनंद लें।

7. जीएसटी नेटवर्क (जीएसटीएन) बैंक ऑफिस (बीओ) में गमन हमारी गतिविधियों के प्रबंधन और प्रसंस्करण के तरीके में एक महत्वपूर्ण बदलाव है। डिजिटल हस्ताक्षर प्रमाणपत्र (डीएससी) की खरीद, लंबित एआरएन का निपटान और अधिकारियों के लिए प्रशिक्षण महत्वपूर्ण कार्य थे जिन्हें इस संदर्भ में समयबद्ध तरीके से पूरा करने की आवश्यकता थी। पंजीकरण और रिफंड से संबंधित एआरएन का निपटान

इस प्रक्रिया की आधारशिला रहा है। बोर्ड द्वारा दैनिक निगरानी और क्षेत्रीय संरचनाओं के अथक प्रयासों ने इस मील के पत्थर को हासिल करने में महत्वपूर्ण भूमिका निभाई है। हमारे जोन ने एआरएन निपटान में सराहनीय प्रदर्शन किया है, जो इसमें शामिल अधिकारियों के समर्पण और कड़ी मेहनत को दर्शाता है। जीएसटीएन बीओ के सफल कार्यान्वयन के लिए ऐसे समन्वित प्रयास महत्वपूर्ण हैं, जिसका उद्देश्य कर प्रशासन की दक्षता और प्रभावशीलता को बढ़ाना है। मैं इस अवसर पर आगे आने और सुचारू माइग्रेशन में योगदान देने के लिए सभी सम्बंधित अधिकारियों/ कर्मचारियों के प्रयासों की सराहना करता हूं।

8. बोर्ड द्वारा हाल ही में असाधारण मामलों में मांग आदेश की तामील की तारीख से तीन महीने पूर्व वसूली कार्यवाही शुरू करने के संबंध में निर्देश संख्या 01/2024-जीएसटी दिनांक 30.05.2024 जारी किया गया है। उचित अधिकारी करदाता को आदेश की तामील की तारीख से तीन माह के अंदर भुगतान करने की मांग कर सकता है। इस मांग को कारण दर्शाते हुए लिखित रूप में प्रस्तुत किया जाना चाहिए। ऐसी परिस्थितियों को रेखांकित किया जाना चाहिए, जो इस तरह की कार्रवाई की आवश्यकता दर्शाती है, जैसे राजस्व के लिए उच्च जोखिम, वित्तीय स्थिति में गिरावट, आसन्न दिवालियापन या दिवाला और दिवालियापन अधिनियम के तहत कार्यवाही की संभावना। ये कारण विश्वसनीय साक्ष्य पर आधारित होने चाहिए, जिनका रिकॉर्ड रखा जाना चाहिए। उचित अधिकारी को कर योग्य व्यक्ति की वित्तीय स्थिति, व्यावसायिक संचालन की स्थिति, बुनियादी ढांचे और विश्वसनीयता पर उचित रूप से विचार करना चाहिए और राजस्व हित और कारोबार में सुगमता के मध्य संतुलन बनाना चाहिए। इन दिशानिर्देशों का पालन करके, निष्पक्ष और संतुलित दृष्टिकोण बनाए रखते हुए राजस्व के हितों की रक्षा की जा सकती है। सभी आयुक्त इस पर ध्यान दें।

9. राजस्थान राज्य में नए जिलों के सृजन के परिणामस्वरूप, जयपुर/अलवर आयुक्तालयों के क्षेत्राधिकार में बदलाव किया गया है। नवगठित कोटपुतली-बहरोड़ जिला अब पूर्ण रूप से अलवर आयुक्तालय के अधीन कर दिया गया है। इस प्रकार, कोटपुतली तहसील, जो पूर्व में जयपुर आयुक्तालय का हिस्सा थी, अब अलवर आयुक्तालय के क्षेत्राधिकार में है। ये बदलाव कर प्रशासन को सुव्यवस्थित करने के लिए चल रहे प्रयासों का हिस्सा हैं।

10. डीजीपीएम, नई दिल्ली द्वारा "ई-फाइल डेटाबेस के परिशोधन, फ़ाइल/ ई-डाक लंबितता प्रबंधन और सेवानिवृत्त/ स्थानांतरित अधिकारियों की फ़ाइलों का स्थानांतरण सम्बंधी" विषय पर एक एसओपी जारी की गई है, जिसे क्षेत्रीय संरचनाओं को परिचालित किया जा चुका है। सभी उपयोगकर्ता एसओपी के अनुसार डेटाबेस के परिशोधन के लिए कार्रवाई कर सकते हैं। इसके अलावा, सभी ईएमडी प्रबंधकों को निर्देश दिया जा सकता है कि जिन अधिकारियों का तबादला हो गया है या सेवानिवृत्त हो गए हैं, उनकी ई-फाइलें/ ई-डाक तुरंत नए अधिकारियों को स्थानांतरित की जानी चाहिए।

11. मुझे यह बताते हुए खुशी हो रही है कि NACIN, पालासमुद्रम में आयोजित मानव संसाधन सम्मेलन के दौरान वर्ष 2022-23 के लिए स्वच्छता पुरस्कार प्रदान किए गए हैं। मुख्य आयुक्त के नाते मुझे दो श्रेणियों के तहत, प्रथम - सीजीएसटी, जोधपुर द्वारा किए गए उत्कृष्ट कार्य (खुले में शौच मुक्त क्षेत्र - विभिन्न स्कूलों में 90 शौचालयों का निर्माण) के लिए और द्वितीय - सीजीएसटी, अलवर द्वारा किए गए

सराहनीय कार्य (विभिन्न स्कूलों में 48 RO वाटर प्यूरीफायर लगवाना) के लिए पुरस्कार प्राप्त करके गर्व महसूस हुआ। जयपुर एकमात्र ऐसा जोन रहा जिसे दो पुरस्कार प्राप्त हुए।

12. स्वच्छता निधि हमारे लिए कर प्रशासन से परे अन्य क्षेत्रों में भी अपनी पहचान बनाने का एक अनूठा अवसर है। हमें इसका भरपूर उपयोग करने का प्रयास करना चाहिए, विशेषकर पारिस्थितिकी को बेहतर बनाने के लिए।

13. मुझे यह जानकर खुशी हुई कि वर्ष 2024 के लिए अधीक्षक ग्रेड में पदोन्नति के लिए पैनल कुछ अधिकारियों द्वारा वीआरएस लेने और एक अधीक्षक के असामयिक निधन के कारण पहले ही समाप्त हो चुका है। मुझे यह बताते हुए प्रसन्नता है कि समय पर पदोन्नति सुनिश्चित करने के लिए पैनल वर्ष 2024 की शेष अवधि में संभावित रिक्तियों के लिए पूरक डीपीसी भी आयोजित कर ली गई है।

14. 46 निरीक्षकों के एक बैच ने NACIN में अपना इंडक्शन कोर्स पूर्ण कर लिया है और वे 3 जून से क्षेत्रीय संरचनाओं में कार्य सम्भाल लेंगे। मैं विभाग की सक्रिय दुनिया में उनका स्वागत करता हूँ और उन्हें शुभकामनाएँ प्रेषित करता हूँ।

15. माचिस के रैपर का संग्रह एक अनूठा और आकर्षक शौक है। हमारे एक सहकर्मी, श्री अरविंद कुमार शर्मा, अधीक्षक, जयपुर ने अपने लगभग 1,250 रैपर के प्रभावशाली संग्रह के साथ न केवल इस शौक को अपनाया है, बल्कि लघु कला और इतिहास का एक उल्लेखनीय संग्रह भी बनाया है। उनके संग्रह का प्रत्येक रैपर एक कहानी कहता है, जिसमें उस युग का सार, संस्कृति जिसका वह प्रतिनिधित्व करता है, और उस समय की कलात्मक प्रवृत्तियाँ शामिल हैं। अरविंद जैसे संग्रहकर्ता इतिहास के महत्वपूर्ण टुकड़ों को भावी पीढ़ी के लिए संरक्षित करने में योगदान देते हैं। 1980 से उनका यह प्रयास वास्तव में सराहनीय है और दूसरों के लिए सांसारिक सुंदरता और संग्रह की समृद्धि की सराहना करने के लिए प्रेरणा का काम करता है। उनका यह शौक प्रशंसनीय है।

16. मुझे यह बताते हुए बेहद खुशी हो रही है कि भारत की टीम ने श्री जगदीश तंवर, अधीक्षक की कप्तानी में मैक्सिको में आयोजित WTMT - फ्रेड कप (M50), ITF मास्टर्स वर्ल्ड टीम चैंपियनशिप 2024 में रजत पदक जीता है। श्री जगदीश तंवर और उनकी टीम को उनकी शानदार उपलब्धि के लिए बधाई। श्री महिपाल सिंह, अपर आयुक्त और श्री प्रदीप कुमार, निरीक्षक को जोधपुर में आयोजित दूसरे सद्भावना क्रिकेट कप टूर्नामेंट में क्रमशः प्लेयर ऑफ द टूर्नामेंट और बेस्ट बॉलर घोषित किया गया है। यह टूर्नामेंट सरकारी विभागों की छह टीमों के बीच खेला गया था, जिसमें सीजीएसटी और कस्टम्स, जोधपुर की टीम भी शामिल थी। दोनों अधिकारियों को मेरी शुभकामनाएं।

17. श्री चमन सिंह मीना, अधीक्षक का निधन जीवन की नश्वरता की याद दिलाता है। मैं श्री चमन सिंह मीना की असामयिक मृत्यु पर अपनी हार्दिक संवेदना व्यक्त करता हूँ। दुख की इस घड़ी में मेरी संवेदनाएँ उनके परिवार के साथ हैं। ईश्वर उनकी आत्मा को शांति प्रदान करे तथा शोक संतप्त लोगों को उनकी यादों में सांत्वना मिले।

18. इस महीने के "ज्ञान संग्रह" संस्करण में निम्नलिखित तीन लेख शामिल होंगे:-
- (क) कारण बताओ नोटिस का मसौदा तैयार करना – लेखक: श्री देवी दत्त शर्मा, अधीक्षक, सीजीएसटी एवम के.उ.शु., अलवर;
- (ख) सीजीएसटी अधिनियम, 2017 की धारा 73 और 74 के तहत उचित अधिकारी और मौद्रिक सीमाएँ - लेखक: श्री देवी दत्त शर्मा, अधीक्षक, सीजीएसटी एवम के.उ.शु., अलवर; और
- (ग) सीओआईएन, न्यूयॉर्क को दी गई सटीक खुफिया जानकारी: मेरी डीआरआई डायरी के पन्ने - लेखक: श्री मुकेश बिहारी पाठक, अधीक्षक, सीजीएसटी एवम के.उ.शु., जयपुर।

मैं उक्त अधिकारियों को अपनी विशेषज्ञता हमारे साथ साझा करने के लिए आभार व्यक्त करता हूँ।

19. मैं श्री मंगल चंद मीना, अधीक्षक; श्री चंद्र दत्त शर्मा, प्रशासनिक अधिकारी, श्री गोवर्धन मीना, हेड हवलदार और श्री जगदीश सिंह, हेड हवलदार को उनकी सेवानिवृत्ति पर हार्दिक शुभकामनाएं देता हूँ। श्री मनोज कुमार भसीन, सहायक आयुक्त और श्रीमती रितु अग्रवाल, अधीक्षक ने मई, 2024 में सेवा से स्वैच्छिक सेवानिवृत्ति ले ली है। उनकी अगली पारी के लिए हमारी शुभकामनाएं।

अगले माह तक,

आपका शुभेच्छु



(महेंद्र रंगा)
मुख्य आयुक्त

सेवा में:- टीम जयपुर जोन।

प्रतिलिपि सूचनार्थ :-

- (i) ओएसडी, अध्यक्ष, सीबीआईसी, नई दिल्ली।
- (ii) निजी सचिव, सदस्य (जीएसटी/सीई/एसटी एवं क्षेत्रीय प्रभारी), सीबीआईसी, नई दिल्ली।
- (iii) मुख्य आयुक्त, राज्य कर, राजस्थान, जयपुर
- (iv) प्रधान एडीजी, नासिन /डीजीजीआई, जयपुर

ज्ञान संग्रह

जून, 2024

GYAN SANGRAH

JUNE, 2024

Drafting A Show Cause Notice

By – Devi Dutt Sharma, Superintendent,
CGST & CX, Alwar

Raising a demand based on the Charging Section under Service Tax Regime [Royalty Case] and Raising a demand of ITC wrongly availed based on Section 16 of the CGST Act

A show cause notice, whether in GST or in the earlier regime of central excise or service tax, is issued for seeking explanation of the taxable person regarding the proposal to demand the tax not paid or short paid or ITC wrongly availed. Tax is levied by the statute which includes the governing Act and Notification issued thereunder. A clear picture of the charge of tax sometimes also depends upon the attendant rules and circulars on the subject issue. Finally, if there is an exemption from the levy of tax by way of an exemption notification no tax can be levied upto that extent.

A. Charging Section vis-à-vis Exemption Notification

2. Sometimes there may be situations where it may be somewhat difficult to bring out the provisions of the taxing statute sequentially while the provisions of the exemption notification may be so obvious that it may seem to be easier to describe the charge of tax by saying that the same is out of the scope of exemption. There lies the trap where a show cause notice may be held by the higher judicial for a as not being based on the provisions governing taxability. One such case noticed recently is the case involving charge of service tax on royalty for the period commencing from 01.04.2016 which has been decided against the department by the Hon'ble CESTAT, South Zonal Bench, Chennai vide **Final Order dated 09.01.2024 in Service Tax Appeal No. 41666 of 2018 filed by M/s Oil and Natural Gas Corporation Limited against the Commissioner of GST and Central Excise, Puducherry.**

B. CESTAT's Observations in Royalty Case

3. The subject of this article "**Raising a demand based on the Charging Section under Service Tax Regime**" is inspired from some observations in the said Final Order which read thus:

Para-9: "Again, at this juncture, the argument put forward by the Ld. Counsel that the **department has sought to create a charge of tax on the basis of a delegated legislation, (i.e. on the basis of the Mega Exemption Notification 25/2012, as amended by notification 22/2016 dt.13.4.2016) acquires significance.**

XXXX Though it is contended by department that the activity of 'grant of lease' for mining right falls within the definition of service under Section 65B (44), the **demand is raised alleging that it falls within Sl.No.61 (introduced w.e.f 13.4.2016) and that the activity is an assignment of right to use natural resources."**

Para-10: "The larger Bench of the Tribunal analysed the issue as to **whether an exemption notification can create duty liability.** The Tribunal held that an exemption notification clearly is not a charging provision and it cannot be

interpreted so as to create a duty liability where none existed under the tariff entry."

Para-11: **"The demand raised is indeed on the basis of Sl.No.61 of the exemption notification.** Para 15 of the SCN also would show that the demand has been raised on the basis that the royalty which is paid periodically is not exempted from service tax. **The argument put forward by the Ld. Counsel that the liability is derived on the basis of an exemption notification and not charging provision is not without substance."**

(Emphasis supplied)

C. CESTAT's Judgment in Royalty Case

4. The demand of service tax on royalty in the above said case of **M/s Oil and Natural Gas Corporation Limited** has been set aside by the Hon'ble Tribunal mainly on the following two grounds:-

(i) As held by Hon'ble Supreme Court in the case of **India Cement Limited [1990 AIR 85]**, that royalty is a tax and not consideration for services, we find that the demand of service tax on royalty is not sustainable.

(ii) The demand raised is indeed on the basis of Sl. No. 61 of the exemption notification and an exemption notification clearly is not a charging provision and it cannot be interpreted so as to create a duty liability where none existed under the tariff entry.

D. Historical Context

5. In the instant case the first argument that "royalty is a tax" is presently under consideration (review) before Hon'ble Supreme Court by way of a reference made to a Nine-Judge Bench in the case of **Mineral Area Development [(2011) 4 SCC 450]** vide decision dated **30.03.2011** wherein it was observed that a Five- Judge Bench by its judgment dated **15.01.2004** in the case of **State of West Bengal vs. Kesoram Industries Limited and Others [AIR 2005 SC 1646]** held that royalty is not a tax but the said judgment dated **15.01.2004** was in conflict with the judgment dated **25.10.1989** of a Seven-Judge Bench in the case of **India Cement Limited vs. State of Tamil Nadu [1990 AIR 85]** wherein it was held that royalty is a tax. The five-judge Bench of Hon'ble Supreme Court in **Kesoram Industries** attributed the finding of Hon'ble Supreme Court in **India Cements Limited** qua royalty being in the nature of tax to a "typographical error" and "stenographer's devil" and accordingly proceeded to depart from the law laid down by the Seven-Judge Bench in **India Cement Limited**.

E. Reference to 9-Judge Bench

6. The reference to 9 Judge Bench concerns the conflict between 7 Judge Bench and 5 Judge Bench with regard to the finding as to whether "royalty is a tax" or otherwise. The reference made in the year 2011 is pending at the stage of final decision by Hon'ble Supreme Court as the 9-Judge Bench has completed the hearings in the month of March 2024 and judgment has been reserved on the question as to **"whether the royalty payable on minerals is a tax under the Mines and Minerals (development and Regulation) Act, 1957, and if only the Centre is vested with the power to levy such extraction or States also have the authority to impose levies on mineral bearing land in their territory"**.

F. The Problem- Taxability based on charging section

7. If the Nine-Judge Bench holds that royalty is not a tax, the first issue shall stand settled in favour of the department but still the second issue may still pose difficulties because a demand has to be certainly based on charging section and not derived on the basis of an exemption entry.

G. Taxability of royalty as consideration for services provided or to be provided

8.1. In the negative list regime of taxation of services effective from 01.07.2012, every service is taxable unless included in the negative list of services. However, service has been defined as an "activity" carried out "by a person" "for another" "for consideration". So far as "assignment of right to use natural resources" is concerned the same is an activity carried out by the Government for the persons whom the rights are assigned and royalty is charged from them as consideration.

8.2. The said activity had always been a service since 01.07.2012 but the same was not taxable until 01.04.2016 because the negative list of services included in section 66D(a) of the Finance Act, 1994 an entry titled "services provided by Government" with an exception carved out as "support services provided to business entities". Thus, except "support services provided to business entities" all other services provided by Government to business entities were out of the purview of taxation because of their coverage by negative list of services and assignment of right to use natural resources was one such service.

8.3. The situation changed with effect from 01.04.2016 with substitution of the words "any service" for the words "support services" in the exception carved out in the negative last entry in clause (a) of section 66D. Thus, all services provided by Government to business entities became taxable by virtue of their exclusion from the negative list of services.

8.4. However, since the exception was redrafted with effect from 01.04.2016 tax could not have been logically imposed upon the services provided before that date. If any assignment of right had already been made before 01.04.2016, the One-Time Charge payable, in full upfront or in installments for such assignment was the consideration against the services which stood provided before 01.04.2016. Thus, in order not to levy service tax on such one time charge received after 01.04.2016 for the assignment already made before 01.04.2016, exemption entry 61 was inserted in Notification No. 25/2012-Service Tax, dated 20.06.2012.

H. Perfect Narration of Taxability in the SCN

9. Logically it is only the One-Time Charge for assignment done from 01.04.2016 onwards or the periodical charges for the period starting from 01.04.2016 which are taxable. However, such taxability cannot be deduced from the exemption entry rather it has to flow from the charging sections as explained in the table below:-

Sections	Explanation
Definition of Service- Section 65B(44): Any activity carried out by a person for another for consideration is a service	Assignment of right to use natural resources is such an activity.

Definition of Taxable Service: Ay service on which service tax is leviable under Section 66B	All services are liable to tax unless covered by negative list.
Levy of Tax- Section 66B: There shall be levied a tax on all services except those mentioned in negative list [Section 66D].	Assignment of right to use natural resources was not covered in the exception of Negative List until 01.04.2016 when 'support services provided to business entity' were covered in the exception. Thus, the service was covered in the negative list until 01.04.2016.
Negative List of Services: Section 66D Negative List of Services covers "All services provided by Government" except "any service provided to business entity" [w.e.f. 01.04.2016]	'Any service provided to business entity' includes 'assignment of right to use natural resources' and when the same was covered under the exception to the negative list, the same became taxable since 01.04.2016.
Consideration as Royalty: One-Time Charges Received after 01.04.2016 for the services provided before 01.04.2016	Since the service was not taxable until 01.04.2016 no tax was leviable on One Time Charges payable for the assignment done before 01.04.2016.
Exemption Entry 61 of N/No. 25/2012-ST: One-Time Charges paid after 01.04.2016, whether in full upfront or in installments, for the assignment done before 01.04.2016	Since the service was not taxable until 01.04.2016, One Time Charges received for the service provided [assignment made] before 01.04.2016 can not be taxed even if received after 01.04.2016. Thus, the same have been exempted vide the said Entry Sl. No. 61.

I. Taxability of Royalty

10. Thus, the taxability of royalty paid as consideration against the activity of "assignment of right to use natural resources" flows from its coverage under the definition of a service under Section 65B(44) and taxable service under Section 65B (51) and also because of the activity being out of Negative List under section 66D by virtue of its coverage under the exception to clause (a) of the Negative List in Section 66D. Accordingly, the assignment made after 01.04.2016 or the periodical services provided after 01.04.2016 are taxable in view of these provisions and the exemption provided by entry 61 as aforesaid has nothing to do with such taxability. Narration of the taxability of service in the manner aforesaid brings home the point and the possibility of the demand being set aside by the Courts on the ground of lack of taxability can be ruled out.

I. Applying the principle to GST- Cases of ITC availed wrongly

11.1. Under the GST regime there are cases of wrong availment of Input Tax Credit where demands are being raised on the basis of difference between the amount of ITC availed as per GSTR-3B returns and the amount of ITC auto-drafted in GSTR-2A statement. Normally the allegation in such cases in the show cause notices is that since the amount of ITC availed in GSTR-3B is in excess of that available in their GSTR-2A the taxable person has availed the ITC wrongly. However, the taxable persons have challenged such allegations on the ground that the law, until amendment w.e.f. 01.01.2022, does not require that the ITC availed should be available in their GSTR-2A. It has been also argued that there are only four conditions

mentioned in sub-section (2) of section 16 of the CGST Act, 2017 and none of them provides that ITC should be available in GSTR-2A statement.

11.2. Thus, where the ITC is not available as per the GSTR-2A, the allegation in the show cause notice or the finding in the order-in-original needs to be drafted in a manner which is consistent with the conditions as provided under section 16 of the CGST Act, 2017.

K. Conditions under section 16 of the CGST Act, 2017

12. There are found conditions as prescribed under sub-section (2) of section 16 of the CGST Act, 2017 which have to be satisfied for availing ITC of the tax paid by the supplier on the inward supplies to the taxable person. These conditions are as follows:-

- (A) Section 16(2)(a): He is in possession of a tax invoice;
- (B) Section 16(2)(b): He has received the goods or services;
- (C) Section 16(2)(c): The tax charged in respect of such supply has been actually paid to the Government; and
- (D) Section 16(2)(d): He has furnished the return under section 38.

L. Concept of ITC

13. Theoretically these conditions do not prescribe that the ITC availed should be auto-populated in the GSTR-2A statement of the taxable person. However, there is a condition to the effect that the tax charged in respect of such supply has been paid to the Government. The said condition is also sometimes challenged as being unconstitutional on the ground that a taxable person is not in a position to ascertain as to whether the supplier has paid tax. However, the following analysis would explain the logic for the said condition:-

- (A) Input tax credit is basically the amount of tax that has already been paid to the Government by the supplier at the time of inward supply to the taxable person;
- (B) If the taxable person utilises the said inward supply for making another outward supply by way of trading or after manufacture it is only the outward supply by such taxable person which goes into consumption by the consumer and the inward supply to the taxable person stands merged in such outward supply;
- (C) Thus, tax paid on the inward supply needs to be adjusted (set off) at the time of making payment of tax by the taxable person so that the consumer has to pay the consumption tax only on the ultimate value of supply consumed by him;
- (D) That is the concept of ITC and, thus, for the purpose of allowing ITC it is necessary that the tax involved in the inward supply has been paid to the Government otherwise there will be no amount of tax available with the Government for allowing ITC; and
- (E) The aforesaid logic also addresses the argument concerning constitutional validity of the said condition to the effect that tax has been paid to the Government.

M. Flow of Credit

14. In the matter of availment of input tax credit, following is the sequence of flow of credit:-

- (A) The supplier of goods or services to the taxable person is required to furnish the details of outward supplies of goods or services or both made during a tax period electronically through the common portal in FORM GSTR-1 to be filed by the prescribed date in terms of the provisions of Section 37 of the CGST Act, 2017 read with Rule 59 of the

CGST Rules, 2017 and such a filing created the liability to pay tax which is paid in GSTR-3B return;

(B) Such details of outward supplies made by the supplier of goods or services to the taxable person and shown in the supplier's return in FORM GSTR-1 are shown as auto-populated details of inward supplies and input tax credit in FORM GSTR-2A and made available to the taxable person electronically through the common portal in terms of Section 38 of the CGST Act, 2017 read with Rule 60 of the CGST Rules, 2017;

(C) Hence, the auto-drafted details of inward supplies and input tax credit in FORM GSTR-2A of the taxable person shows the details of inward supplies on which the supplier has accepted liability and has paid tax; and

(D) Based on the information available in the return in FORM GSTR-2A, it can be ascertained that the tax charged in respect of such supply has been actually paid to the Government and absence of such details leads to the conclusion that tax has not been paid to the Government and, thus, the allegation.

N. Non-fulfillment of relevant condition

15. Thus, in a case where the amount of ITC availed in GSTR-3B is more than the ITC available in GSTR-2A it logically follows that the tax has not been paid by the supplier to the Government and the taxable person has failed to fulfill the condition provided under clause (c) of sub-section (2) of section 16 of the CGST Act, 2017 and accordingly, the availment of ITC would be irregular.

O. Outer limitation of time for taking ITC

16. The outer limitation of availing ITC for a given financial year is the due date of filing GSTR-3B return for the tax period September following the end of the financial year. Thus, it follows that the conditions as prescribed under sub-section (2) of section 16 of the CGST Act, 2017 should also be satisfied before the said outer limitation of time. Merely taking the credit before the outer limitation of time would not be sufficient until all the prescribed conditions are satisfied before the said limitation. Hence, if a supplier pays tax after the said date or files his GSTR-1 return after the said date resulting in auto-population of the ITC in the GSTR-2A of the taxable person after expiry of the said limitation period, the condition of tax payment has not been satisfied before the outer limitation of time and accordingly, ITC would not be available in such cases owing to non-fulfillment of the relevant conditions for taking ITC within the prescribed period of time.

P. Conclusion

17. Thus, it can be concluded that while drafting a show cause notice or order-in-original, the logical reasoning as discussed above should be carefully incorporated with the narration of facts so as to bring home the charges perfectly.

(The write-up is simply intended to share the personal experience of the writer with the colleagues and the views expressed therein may not necessarily represent the stand taken by him on the provisions of law in his official capacity.)

Proper Officer and Monetary Limits Under Section 73 & 74 of the CGST Act, 2017

*By – Devi Dutt Sharma, Superintendent,
CGST & CX, Alwar*

(Whether the monetary limit of Rs. 20 Lakh for IGST or CGST & IGST taken together would also include demand of SGST or the demand of SGST can be over and above the monetary limit of Rs. 20 Lakh)

Circular No. 31/5/2018- GST, dated 09.02.2018 issued by the CBIC prescribing the monetary limits for different levels of officers prescribes the monetary limits for raising demand of IGST, CGST or IGST and CGST taken together but the same does not prescribe monetary limit for raising demand of SGST, whether alone or in combination with CGST alone or both CGST and IGST.

2. The question that arises, therefore, is as to whether the demand of SGST which is normally equal to the amount of demand of CGST would be over and above the monetary limit of Rs. 20 Lakh/ Rs. 2 Crore or the demand of SGST will also be counted against the upper limit of Rs. 20 Lakh/ Rs. 2 Crore prescribed for IGST and CGST taken together. The relevant provisions are being discussed hereinafter.

A. Demand of tax or ITC

3. Sections 73 and 74 of the CGST Act, 2017 require issuance of a show cause notice by the “PROPER OFFICER” to the person chargeable with tax seeking his explanation as to why he should not pay the amount of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized as specified in the notice.

B. Definition of Proper Officer

4. Section 2 of the CGST Act, 2017, in clause (91), provides that “Proper Officer” in relation to any function to be performed under this Act, means the Commissioner or the officer of the Central Tax who is assigned that function by the Commissioner in the Board.

C. Assignment of functions

5.1. In exercise of the powers conferred by clause (91) of section 2 of the CGST Act, 2017 read with Section 20 of the IGST Act and subject to sub-section (2) of section 5 of the CGST Act, 2017, the Board, vide Circular No. 3/3/2017- GST, dated 05.07.2017, has assigned the officers of different classes, the functions as the proper officers in relation to various sections of the CGST Act, 2017 or the rules made thereunder.

5.2. Initially, vide the said circular dated 05.07.2017, Deputy/ Assistant Commissioner of Central Tax were assigned the functions under sub-sections (1), (2), (3), (5), (6), (7), (9) and (10) of section 74 whereas the function under sub-sections (1), (2), (3), (5), (6), (7), (9) and (10) of section 73 were assigned to Superintendent of Central Tax. However, through a subsequent circular No. 31/5/2018- GST, dated 09.02.2018, it was decided by the Board that

Superintendents of Central Tax shall also be empowered to issue show cause notices and orders under section 74 of the CGST Act. Accordingly, a new entry was added to the item at Sl. No. 4 of the Table on page number 3 of Circular No. 3/3/2017-GST dated 05.07.2017 by which the functions under section 74 earlier assigned to the Deputy/ Assistant Commissioner were transferred to the Superintendent of Central Tax.

5.3. Since all the functions under section 73 and 74 have been assigned through the said circular to Superintendent of Central Tax alone, it has been further provided in the said circular dated 09.02.2018 that in light of sub-section (2) of section 5 of the CGST Act, an officer of central tax may exercise the powers and discharge the duties conferred or imposed under the CGST Act on any other officer of central tax who is subordinate to him and accordingly, all officers up to the rank of Additional/Joint Commissioner of Central Tax are assigned as the proper officer for issuance of show cause notices and orders under sub-sections (1), (2), (3), (5), (6), (7), (9) and (10) of sections 73 and 74 of the CGST Act. Further, they have been so assigned under the IGST Act, 2017 as well, as per section 3 read with section 20 of the said (IGST) Act.

D. Monetary Limits Prescribed- IGST & CGST

6. The said circular dated 09.02.2018 further provides that for optimal distribution of work relating to the issuance of show cause notices and orders under sections 73 and 74 of the CGST Act and also under the IGST Act, monetary limits for different levels of officers of central tax are prescribed by the Board, in pursuance of clause (91) of section 2 of the CGST Act read with section 20 of the IGST Act, as follows:-

Tax Type/ Level of Officer	Superintendent of CGST	AC/ DC of CGST	ADC/ JC of CGST
Demand of IGST alone	Upto Rs. 20 Lakh	More than Rs. 20 Lakh and upto Rs. 2 Crore	More than Rs. 2 Crore
Demand of CGST alone	Upto Rs. 10 Lakh	More than Rs. 10 Lakh and upto Rs. 1 Crore	More than Rs. 1 Crore
Demand of IGST alongwith demand of CGST	Upto Rs. 20 Lakh	More than Rs. 20 Lakh and upto Rs. 2 Crore	More than Rs. 2 Crore

7. The said circular does not prescribe the monetary limit for demand of SGST. Ideally in pursuance of clause (91) of section 2 of the CGST Act read with section 20 of the IGST Act, the Board is empowered to specify proper officer or prescribe monetary limit for the matters relating to CGST and IGST only. However, section 6 of the CGST Act, 2017 covers the situation by empowering officers of CGST to issue orders under the SGST Act.

E. Provisions concerning SGST in the CGST Act

8.1. Section 6 of the CGST Act, 2017 provides in clause (a) of sub-section (2) that where any proper officer issues an order under this Act, he shall also issue an order under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as authorised by the State Goods and Services Tax Act or the Union Territory Goods and

Services Tax Act, as the case may be, under intimation to the jurisdictional officer of State tax or Union territory tax.

8.2. Section 6 of the Rajasthan GST Act, 2017 provides in sub-section (1) that the officers appointed under the Central Goods and Services Tax Act are authorised to be the proper officers for the purposes of this Act, subject to such conditions as the Government shall, on the recommendations of the Council, by notification, specify.

8.3. Thus, by operation of the said sections 6 of both the CGST Act and the SGST Act, the proper officers declared under the CGST Act, 2017 vide CBIC's Circular No.31/5/2018- GST, dated 09.02.2018 have the powers to raise demands and pass orders in respect of State Tax as well.

F.1. Analysis- Monetary limit of demand of CGST and SGST only

9.1. As can be seen, monetary limit for demand of IGST is the highest amount of demand that an officer is empowered to adjudicate. Thus, a Superintendent is empowered to adjudicate demand of not more than Rs.20 Lakh. Similarly, an AC/ DC is empowered to adjudicate demand of upto Rs. 2 Crore.

9.2. One more point worth noting is that IGST in itself is not an independent tax rather it is the aggregate of CGST and SGST where the destination State of supply is other than the Origin State of supply. Thus, factually the monetary limit of IGST of Rs. 20 Lakh/ Rs. 2 Crores composed of CGST of Rs. 10 Lakh/ Rs. 1 Crore and SGST of Rs. 10 Lakh/ Rs. 1 Crore.

9.3. Further, since in terms of section 6(2)(a) of the CGST Act, the proper officer under the CGST Act has also to pass orders under the SGST Act it follows that demand of SGST equal to CGST will also have to be adjudicated while adjudicating the demand of CGST.

9.4. It is perhaps for this reason that the monetary limit for demand of CGST alone has been kept at Rs. 10 Lakh/ Rs. 1 Crore only so that by addition of the demand of equal amount of SGST the aggregate of CGST and SGST does not cross the upper limit of Rs. 20 Lakh/ Rs. 2 Crore prescribed for demand of IGST. Thus, monetary limit of demand of SGST, whether alone or in combination with CGST, would be Rs. 10 Lakh/ Rs. 1 Crore.

F.2. Analysis- Monetary limit of composite demand of IGST, CGST and SGST

10.1. There are three factors worth noting in this regard as follows:-

(i) Monetary limit of adjudication of demand of IGST alone is Rs. 20 Lakh/ Rs.2 Crore;

(ii) Monetary limit of demand of CGST alone is Rs. 10 Lakh/ Rs. 1 Crore; and

(iii) Monetary limit of demand of CGST and IGST taken together is Rs. 20 Lakh/ Rs. 2 Crore which is equal to the upper limit in case of demand of IGST alone.

10.2. From the said three factors, the following conclusions can be drawn:-

(i) Monetary limit of demand of SGST alone or in combination with CGST will be equal to CGST i.e. Rs. 10 Lakh/ Rs. 1 Crore only; and

(ii) Monetary limit of all the three taxes taken together can not exceed the upper limit of Rs. 20 Lakh/ Rs. 2 Crore.

10.3. Thus, the amount of demand of SGST will also have to be counted against the upper limit of Rs.20 Lakh or Rs.2 Crore, as the case may be. Accordingly, in case of demand involving IGST, CGST and SGST, the upper limit of aggregate of the three taxes would be Rs. 20 Lakh or Rs. 2 Crore but the demand of CGST alone or SGST alone can not exceed the limit of Rs.10 Lakh in each case. Consequently the portion of demand of IGST would be the amount remaining after counting the demand of CGST and SGST taken together.

G. Demand of SGST amounting to Rs. 10 Lakh in addition to Rs. 20 Lakh

11.1. Thus, it would be incorrect to infer that since a Superintendent is empowered to raise aggregate demand of Rs. 20 Lakh of IGST and CGST taken together which can include demand of Rs. 10 Lakh of CGST, he is also empowered to raise demand of SGST amounting to Rs. 10 Lakh equal to the demand of CGST in addition to the upper limit of Rs. 20 Lakh for IGST and CGST taken together.

11.2. As per the circular dated 09.02.2018, the upper limit of adjudication for a Superintendent is Rs. 20 Lakh only as has been prescribed for cases involving IGST only and, therefore, the upper limit of Rs.20 Lakh for IGST and CGST taken together would also have to be construed as the upper limit for cases involving IGST, CGST and SGST taken together.

(The write-up is simply intended to share the personal experience of the writer with the colleagues and the views expressed therein may not necessarily represent the stand taken by him on the provisions of law in his official capacity.)

Accurate Intelligence Passed On to COIN, New York - Pages from my DRI diary

*By – Mukesh Bihari Pathak, Superintendent,
CGST & CX, Jaipur*

An intelligence was received on 12.10.2010 that a consignment of prohibited drug namely 'Ketamine' was being attempted to be exported to Canada based consignee. The consignment of drug had been concealed in miscellaneous goods by a Delhi based exporter, named M/s Rizwan Exports, Delhi against Shipping Bill No.1653146 dated 11.10.2010 through ICD - Tughkalabad, New Delhi (in short - ICD - TKD).

2. It was confirmed that the said consignment had arrived at ICD - Tughkalabad. Accordingly, a team of DRI Officers including myself reached ICD, Tughkalabad. We collected all the relevant papers of FCL Cargo pertaining to said Shipping Bill including invoice and packing list. From the papers, it revealed that the said consignment consisted of various items like Agarbatti, Gangajal, Mehit Masala, Ladies Saree, Pooja Shawl, Chunari, Chandan Powder, Kapoor, Dhoop etc and the said consignment was being exported to M/s Madvi Musical & Pooja Centre, Ontario, Canada. The total declared cost of consignment was approx. Rs. 14 lakh. We asked Customs Officers posted at ICD - TKD to examine the said consignment in presence of DRI officers. Shri Rizwan Ahmad, Proprietor of the said exporting firm was called upon to present at ICD-TKD for examination of the said export consignment. During the course examination, each packet was opened & examined in presence of Shri Rizwan Ahmad and nothing offending was found till packet Sl. No.89 but in Package Sl. No.90 to 96, white colour powder in white colour polythene found concealed in Sarees & old used clothes. All the remaining packets from Sl. No. 97 to 263 were also opened & examined but they were found contained the declared items. The gross weight of white colour powder/granules was 101.4 Kgs. Shri Rizwan Ahmad stated that the said white colour powder/granules was 'Ketamine'.

3. On being asked about permission to export the said consignment of 'Ketamine' as required under DGFT Notification No.67 (RE-2007)/2004-2009 dated 27.12.2007 issued under the provisions of Foreign Trade (Development & Regulation) Act, 1992, Shri Rizwan stated that he did not have any such permission to export the said consignment of 'Ketamine'.

4. The said consignment of Ketamine weighing 101.4 Kg was found liable to confiscation under proviso to Section 113 (d) (e) (f) and Section 118(b) and 119 of the Customs Act, 1962. Accordingly, the said consignment was seized alongwith packing materials by the DRI Officers under proper Panchnama Proceedings.

5. Further, it was gathered that another consignment of 100 Kgs. of 'Ketamine' had already been exported from Ludhiana to Toronto (Canada) by the same group. The intelligence was shared with senior officers of DRI-DZU, New Delhi who actively passed on the intelligence to COIN, New York. The officer posted at COIN, New York immediately conveyed the intelligence to Canada Border Services Agency (CBSA). The officers of CBSA hold the consignment exported by Calcutta Music House, Jalandhar consigned to Madhvi Musical & Puja Cener, Ontario (Canada) and found approx 100 Kgs of 'Ketamine'. The said dedicated work was appreciated by DGRI. Further, Mr M Subramanyam, Consul (Trade), Consulate General of India, New York through fax message dated 15.10.2010 had commended in following manner:

"All the available details were immediately passed on to the officials of CBSA. Further, we kept feeding the Agency with fresh details as and when they were received. A little more

delay in passing on intelligence would have entailed the importer taking delivery of the container. **I was also informed by CBSA Officials that the said container had been X-rayed at Montreal before it reached Toronto by rail and they found no discrepancies. However, on examination of the container today, they found about 100 Kgs. Of Ketamine in four bags of 25 Kgs. Each amidst musical instruments.**

CBSA Officials have appreciated the intelligence passed on to them and further conveyed that this case underscores the importance of effective international cooperation in controlling drug smuggling.”

6. My little efforts had achieved the goal with the help of team of DRI, the officers posted at ICD-TKD, my senior officers who had immediately passed on the intelligence to COIN- New York and the officer posted at COIN further conveyed the same to CBSA without lapse of moments. Each and every officer in the chain put their all out efforts in seizure of a huge consignment of ‘Ketamine’ which might have been released if there was any weak link of the chain.

Message: Try to gather additional inputs during the course of processing and developing intelligence that can give additional laurels to our department. We must put all out efforts with optimist view that we can hold/seize the consignment even that have left our jurisdictional territory. Yours such kind of efforts would be recognized by the department and may be appreciated by the international agencies.
