



For departmental use only

भारत सरकार
वित्त मंत्रालय
मुख्य आयुक्त कार्यालय
सीजीएसटी एवं केन्द्रीय उत्पाद शुल्क
जयपुर

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
OFFICE OF THE CHIEF COMMISSIONER
CGST & CENTRAL EXCISE
Jaipur

महेन्द्र रंगा
MAHENDRA RANGA
मुख्य आयुक्त
CHIEF COMMISSIONER

07th June, 2024
D.O. No. GCCO/TECH/MISC/440/2023

Dear *Colleagues,*

'SAMVAAD' : June, 2024

Rajasthan is currently experiencing a severe heat wave, with temperatures soaring to record highs. With the heat wave expected to persist for the next few days, it is crucial to stay informed and protected. Staying cool and hydrated is key to our health and well-being during these hot times. Let's look out for each other and stay safe!

2. Following the flying start of April, revenue in May 2024 also grew @20%. In terms of revenue, May is often a slow month. However, this year we were able to collect more than 2000 Crores in May, compared to Rs. 1670 Crores in corresponding month of last year. The up-to-the-month growth rate of 16.74% is also noteworthy when compared to the previous year's growth rate of 2.32%. Concerted efforts towards improving tax compliance and the efficient administration of tax policies need to be sustained.

3. Some good cases have been detected during May 2024 through data analytics. CGST, Alwar have unearthed availment and passing on of fake/ ineligible ITC amounting to Rs. 12.5 Crores by non-existent firms by the name of M/s B. K. Enterprises, M/s S. K. Enterprises and M/s Rohit Enterprises. In the case of M/s Rohit Enterprises, inputs were provided by CIU of CCO, involving ineligible ITC of Rs. 6.99 Crores. CGST Udaipur have also used data analytics in detecting a case of wrong availment of blocked ITC by M/s Aashi India Glass Ltd. Conceding the mistake, the taxpayer has reversed ITC of Rs. 9.37 Crores. Investigation conducted by CGST, Jaipur on the basis of CPGRAM complaint have led to detection of an evasion case by M/s Divy Webtech Private Ltd about short payment on Online Gaming services. The taxpayer has mis-declared provision of other services instead of Online Gaming services. A recovery of GST amounting to Rs 4.00 Crores has been made so far.

4. In a significant development, CGST Jodhpur has uncovered a corruption case involving the diversion of sanitary napkins. These napkins, branded "Udan" were intended for free distribution to girls and women at government schools and Anganwadi Centers as part of a welfare scheme by the Government of Rajasthan. The interception of a truck during an E-way bill checking drive led to the exposure of this malpractice, highlighting the vigilance of the CGST officers in safeguarding public welfare schemes.

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

The matter was brought to the notice of the District Collector, Jodhpur and the DCP (West), Jodhpur. It has been learnt that some officers responsible for the free distribution of these sanitary napkin pads have been suspended and the person involved has been arrested.

5. Audit, Jaipur have recovered Rs. 32.92 Crores from M/s Shree Cement Limited on account of credit notes issued to buyers for post sale discounts. In another case, an amount of Rs. 8.07 Crores has been recovered from M/s Bharti Hexacom Ltd. for non/short-payment of GST under RCM on telecommunication services on dues of Department of Telecommunication. Similarly, during audit of M/s Saint - Gobain India Private Limited, an amount of Rs.1.0 Cr. was recovered on account of mis-classification of supplies. I appreciate the officers of Audit, Jaipur for their remarkable achievement and expect to continue in coming months.

6. A comfortable working environment is essential for enhancing productivity, efficiency and job satisfaction. A number of infrastructure projects in the Zone have been revived and proposals have been sent for approval. These projects include the hiring of BSNL buildings by CGST Jodhpur, Appeals & Audit Jodhpur and Audit Jaipur, and Prasar Bharti Building by Appeals Jaipur; the construction of office buildings at Chittorgarh and Alwar; and the redevelopment, renovation, and repair of residential quarters at Udaipur, Ajmer, Bhiwadi, Bharatpur, and Chittorgarh. Once approvals are obtained from the concerned authorities, construction work will begin in earnest, paving the way for modern and improved workspaces and living quarters for the employees and officers. I urge all of you to enjoy graceful living in available government quarters instead of living in private accommodation.

7. The transition to the GST Network (GSTN) Back Office (BO) represents a significant shift in the way tax-related activities are managed and processed. The procurement of Digital Signature Certificates (DSCs), liquidation of pending Application Reference Numbers (ARNs), and training for staff were critical tasks that needed to be completed in time bound manner to ensure a seamless transition. The diligent disposal of ARNs, pertaining to registration and refunds, has been a cornerstone of this process. Daily monitoring by the Board and the relentless efforts of the field formations have been instrumental in achieving this milestone. Our Zone has displayed commendable performance in ARN disposal, reflecting the dedication and hard work of the teams involved. Such coordinated efforts are crucial for the successful implementation of the GSTN BO, which aims to enhance the efficiency and effectiveness of tax administration in India. I commend the efforts of field formations for rising to the occasion and contribute to smooth migration.

8. The Board has recently issued Instruction No. 01/2024-GST dated 30.05.2024 regarding the initiation of recovery proceedings before three months from the date of service of a demand order in exceptional cases. The proper officer may require the taxable person to make payment within a period less than three months from the date of service of the order. This requirement must be recorded in writing, along with the reasons for doing so. These reasons should outline the circumstances prompting such early action, such as high risk to revenue, declining financial conditions, impending insolvency, or the likelihood of proceedings under the Insolvency and Bankruptcy Act. These reasons should be based on credible evidence, which should be kept on record. The proper officer must duly consider the financial health, status of business operations, infrastructure, and credibility of the taxable person, and strike a balance between the interest of the revenue and ease of doing business. By adhering to these guidelines, the interest of revenue can be safeguarded while maintaining a fair and balanced approach. All the Commissioners may take note of it.

9. Consequent upon creation of new districts in the state of Rajasthan, we have affected a change in the jurisdiction of Jaipur/ Alwar Commissionerates. Newly formed Kotputli-Behror District has been fully assigned to Alwar Commissionerate. Thus, Kotputli Tehsil, which was earlier part of Jaipur Commissionerate, has now been assigned to Alwar Commissionerate. These changes are part of ongoing efforts to streamline tax administration.

10. DGPM, New Delhi has issued an SOP on "Cleaning up eFile Database, Managing File/ Receipt Pendency & Transferring Files of Retired/ Transferred Users", which has already been circulated to field formations. All users may take action for cleaning of the database as per the SOP. Further, all EMD Managers may be directed that eFiles/eReceipts from the officers who have been transferred out or retired must be assigned to the new incumbent officers immediately.

11. I am glad to inform that during HR Conference held at NACIN, Palasamudram, Swachhta Awards for FY 2022-23 have been awarded. I felt honoured in receiving awards under two categories, one for outstanding work (Open Defecation Free Field – Construction of 90 toilets in various schools) done by CGST, Jodhpur and other for appreciable work (Distribution of 48 RO water purifiers to various schools) done by CGST, Alwar. Jaipur was the only Zone to have received two awards.

12. Swachhta funds are a unique opportunity for us to make our mark in fields beyond tax administration. We should strive to make full use of it especially to improve ecology.

13. I am glad to note that the panel drawn for promotion to the grade of Superintendent for the year 2024 has already got exhausted due to VRS taken by some of officers and sudden demise of one Superintendent. I am delighted to share that we have conducted supplementary DPC anticipating vacancies in remaining period of panel year 2024 so as to ensure timely promotion.

14. A batch of 46 inspectors has completed their induction course at NACIN. They will be in the field w.e.f. 3rd of June. I welcome them to the world of action and wish them all the best.

15. Collection of matchbox wrappers is a unique and fascinating hobby. One of our colleagues, Shri Arvind Kumar Sharma, Superintendent, Jaipur with his impressive collection of around 1,250 wrappers, has not only embraced this hobby but has also created a remarkable archive of miniature art and history. Each wrapper in his collection tells a story, capturing the essence of the era it comes from, the culture it represents, and the artistic trends of the time. Collectors like Arvind contribute to preserving significant pieces of history for posterity. His pursuit since 1980 is indeed commendable and serves as an inspiration for others to appreciate the beauty in the mundane and the richness of collecting. His passion is praiseworthy.

16. I am extremely happy to inform that Team India, under the captaincy of Shri Jagdish Tanwar, Superintendent secured the silver medal at the WTMT - Fred Cup (M50), ITF Masters World Team Championship 2024 in Mexico. Congratulations to Shri Jagdish Tanwar and his team for their stupendous achievement. Shri Mahipal Singh, Additional Commissioner and Shri Pradeep Kumar, Inspector have been declared Player of the Tournament and Best Bowler of the tournament respectively in 2nd Sadbhavna Cricket Cup tournament organized at Jodhpur between six teams of Govt. Departments including team of CGST & Customs, Jodhpur. My best wishes to both the officers.

17. The passing of Shri Chaman Singh Meena, Superintendent is a solemn reminder of life's impermanence. I express my heartfelt condolences on the untimely death of Shri Chaman Singh Meena. In this time of sadness, my thoughts are with his family. May his soul rest in peace, and may those grieving find comfort in their memories.

18. This month's edition of "**Gyan Sangrah**" will feature following three articles:-


- (a) *Drafting a Show Cause Notice* – by Shri Devi Dutt Sharma, Superintendent, CGST & CX, Alwar;
- (b) *Proper Officer and Monetary Limits under Section 73 & 74 of the CGST Act, 2017* – by Shri Devi Dutt Sharma, Superintendent, CGST & CX, Alwar; and
- (c) *Accurate Intelligence passed on to COIN, New York : Pages from my DRI diary* – by Shri Mukesh Bihari Pathak, Superintendent, CGST & CX, Jaipur

I extend my gratitude to the officers for sharing their expertise with us.

19. I would like to extend our best wishes to Shri Mangal Chand Meena, Superintendent; Shri Chandra Dutt Sharma, Administrative Officer, Shri Goverdhan Meena, Head Havaldar and Shri Jagdish Singh, Head Havaldar on their superannuation. Shri Manoj Kumar Bhasin, Assistant Commissioner and Mrs. Ritu Agrawal, Superintendent have also taken voluntary retirement from service in May, 2024. Our best wishes for their next innings.

Till next month,

Yours

Sincerely

07.06.2024

(Mahendra Ranga)
Chief Commissioner

To:- Team Jaipur Zone.

Copy for information to:-

- (i) OSD to the Chairman, CBIC, New Delhi.
- (ii) PS to the Member (GST/CE/ST & Zonal Incharge), CBIC, New Delhi.
- (iii) Chief Commissioner, State Tax, Rajasthan, Jaipur
- (iv) Pr. ADG, NACIN/ DGGI, Jaipur.

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.
