
KEY UPDATES

MAY, 2019



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SIGNIFICANT NOTIFICATIONS

Sr. No	Notification No.	Key Update
1.	23/2019 - Central Tax, Dt-11-05-2019	<p>➤ <u>Extension of time limit for furnishing GSTR1 for the month of April, 2019 in certain cases.</u></p> <p>The details of outward supply of goods or services or both in FORM GSTR-1 for the month of April, 2019 for registered persons whose principal place of business is in the districts of Angul, Balasore, Bhadrak, Cuttack, Dhenkanal, Ganjam, Jagatsinghpur, Jajpur, Kendrapara, Keonjhar, Khordha, Mayurbhanj, Nayagarh and Puri in the State of Odisha shall be furnished electronically through the common portal, on or before 10th June, 2019.</p>
2.	24/2019 - Central Tax, Dt-11-05-2019	<p>➤ <u>Extension of time limit for furnishing GSTR-3B for the month of April, 2019 in certain cases.</u></p> <p>The return in FORM GSTR-3B of the said rules for the month of April, 2019 for registered persons whose principal place of business is in the districts of Angul, Balasore, Bhadrak, Cuttack, Dhenkanal, Ganjam, Jagatsinghpur, Jajpur, Kendrapara, Keonjhar, Khordha, Mayurbhanj, Nayagarh and Puri in the State of Odisha shall be furnished electronically through the common portal, on or before the 20th June, 2019.</p>
3.	10/2019 - Central Tax (Rate), Dt-10-05-2019; 9/2019- Integrated Tax (Rate), Dt-10-05-2019; 10/2019 - Union Territory Tax (Rate), Dt-10-05-2019 and	<p>➤ <u>Extension of the last date for exercising the option by promoters to pay tax at the old rates of 12%/ 8% with ITC.</u></p> <p>The date for exercising the option for residential real estate project to either stay at old GST rate (8% or 12% with ITC) or to avail new GST rate (1% or 5% without ITC) is being extended to 20.05.2019 from 10.05.2019.</p>

	10/2019, State Tax (Rate), Dt- 10-05-2019	
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For detailed Notifications kindly follow below link-
<http://www.cbic.gov.in/htdocs-cbec/gst/central-tax-notfns-2017>

SIGNIFICANT CIRCULARS AND ORDERS

Sr. No.	Circular/ Order No.	Key Update
1.	21T of 2019, MGST Act, Dt- 15-05-2019	Extension of due date for submission of Form for One Time option to pay tax for construction of apartments in a project by the promoter in respect of ongoing project from 10th May, 2019 to 20th May, 2019 .
2.	22T of 2019, MGST Act, Dt- 17-05-2019	Levy of GST on Priority sector lending certificates(PSLCs) The GST Implementation committee of the GST Council clarified that GST on trading of PSLCs for the period 1.7.2017 to 27.05.2018 will be paid by the seller bank on forward charge basis and GST rate of 12% will be applicable on the supply.
For detailed Notifications kindly follow below link- http://www.cbic.gov.in/htdocs-cbec/gst/central-tax-notfns-2017		

RECENT CASE LAWS

1. When Input credit is taken based on fake invoices, penalty will be levied as per the provisions of the Act and no writ petition will be entertained.

Applicant	Bharat Raj Punj
Journal of Publication	S.B. Criminal Writ No.76 of 2019
Date of Ruling	12 th March, 2019
Ruling Authority	HIGH COURT OF RAJASTHAN

FACTS
<ul style="list-style-type: none"> The Petitioner is the Managing Director of M/s Leel Electricals Limited.
ISSUE
<ul style="list-style-type: none"> Whether writ petition is entertained in case when input credit is taken based on fake invoices?
HELD
<ul style="list-style-type: none"> The CGST Department conducted a raid on 17.01.2019, at the premises of the Petitioners' Company at Bhiwadi, Rajasthan. After recording of the statements of Officials of Company, they were arrested. As per the case of the Department, the Company had fraudulently availed input tax credit of Rs.40.53 crores by issuance of fictitious sale invoices and sister concerns of company and Petitioner-Company had fraudulently availed input tax credit of Rs.328 crores. The High Court inter alia held the case set up by the Department is that the Petitioner has claimed input tax credit on fake invoices, which fact is not controverted by the Petitioner. Hence, Department has all rights to take any action permissible by law. The contention that the tax is to be first determined under Section 73 & 74 of the Act does not have any force for the very reason that in an offence committed under Section 132 of the Act determination of tax is not required and the Department can proceed straight away by issuing summons or if reasonable grounds are available by arresting the offender. Since offence under Section 132 is made out and Senior Officials of Company are behind bars, Petitioner being Managing Director is responsible and Department has the right to proceed under Section 69 and 70 of the Act. The HC did not find any merit in Writ Petition and hence dismissed it with cost of Rs.1,00,000/- only.

2. No benefit of regular bail shall be granted if petitioner is involved in offence involving evasion of tax.

Applicant	Vikas Goel
Journal of Publication	CRM No M-45649 of 2018
Date of Ruling	13 th December, 2018
Ruling Authority	HIGH COURT OF PUNJAB AND HARYANA

FACTS
<ul style="list-style-type: none">• Mr. Vikas Goel was heading Mica industries and floated two entities namely Galaxy Metal Products, Delhi and Sri Ram Industries, Delhi for issuing fake invoices.• They were involved in issuing fake bills/invoices to each other in a Circular manner without any concomitant movement of goods or payments for such transactions thereby wrongful availing and utilizing fake ITC. On verification of corroborated documentary evidences and statements of various persons, it was established that there was no movement of goods against the invoices raised.
ISSUE
<ul style="list-style-type: none">• Whether benefit of regular bail should be given to the petitioners arrested under section 69 of CGST Act despite of the fact that serious punishable offence involving evasion of tax and complaint has been filed against the petitioners?
HELD
<ul style="list-style-type: none">• Mr. Vikas Goel and Mr. Raju Singh (“the Petitioners”) have filed a writ petition for grant of regular bail in arrest made by Director General of Goods and Services Tax Intelligence, Gurugram Zonal Unit under the provisions of Section 69 of CGST Act, 2017.• An application for judicial remand dated September 14, 2018 was been filed before Chief Judicial Magistrate, Gurugram.• Further, the competent authority contended that the petitioner has made bogus billing and adjusted the amount without any transportation of the goods or sale of goods etc. Only paper transactions were done, and amounts have been adjusted and wrongly claimed relief of more than Rs. 80 crores.• The Hon’ble High Court of Punjab and Haryana vide CRM No. M-45649 of 2018 (O&M) dated December 13, 2019 stated that the nature and gravity of the offence and in view of the fact there were justifiable grounds to arrest the petitioner under section 69 and further the case involves evasion of more than Rs. 80 crores of tax and offence is punishable with imprisonment for a period of five years and complaint is stated to have already been filed, there is no ground to grant benefit of regular bail to the petitioner. Therefore, the bail petition deserved to be dismissed.

3. Applicant can pay consideration for inward supplies by way of setting off book debt.

Applicant	Senco Gold Ltd
Journal of Publication	02/WBAAR/2019-20
Date of Ruling	8th May, 2019
Ruling Authority	AAR West Bengal

FACTS
<ul style="list-style-type: none">• Applicant engaged in manufacturing and retailing of jewellery and articles made of gold, silver, platinum, diamonds and other precious stones, apart from his own retail stores, also maintains a network of franchisee-operated stores.• He grants such a franchisee the right and license to operate a showroom and to use, in connection therewith, certain Proprietary Marks and System in accordance with a Franchise Agreement.• The applicant raises tax invoices on the Franchisee for supply of jewellery and other articles and also for Franchise Support Services in terms of Agreement periodically.• Franchisee also raises tax invoices on applicant for supply of old gold, silver etc., received from customers.• The applicant intends to settle the mutual debts through book adjustments.
ISSUE
<ul style="list-style-type: none">• Whether input tax credit is admissible when he settles through book adjustment, debt created on inward supplies from the Franchisee?
HELD
<ul style="list-style-type: none">• Unless law specifically restricts recipient from claiming input tax credit when consideration is paid through book adjustment, credit of input tax cannot be denied on this ground alone.• The Applicant can pay the consideration for inward supplies by way of setting off book debt.• The GST Act and rules made there under does not restrict the recipient from claiming the input tax credit when consideration is paid through book adjustment, subject to the conditions and restrictions as may be prescribed and in the manner specified in Sections 16 and 49 of the GST Act.

4. Form GST TRAN-2 can be revised in order to rectify mistakes but provided original form GST TRAN-2 was filed within time.

Applicant	M/S Optival Health Solutions (P.) Ltd.
Journal of Publication	W.P. (C) NO. 18879 (W) OF 2018
Date of Ruling:	7 th February, 2019
Ruling Authority	HIGH COURT OF CALCUTTA

FACTS
<ul style="list-style-type: none">• The assessee had filed Form GST TRAN-2 within time. However, there were certain mistakes in the said Form.• It filed a writ petition seeking relief in this regard.
ISSUE
<ul style="list-style-type: none">• Whether Form GST TRAN-2 can be revised in order to rectify mistakes?
HELD
<ul style="list-style-type: none">• The assessee contends that there are mistakes in Form GST TRAN-2 requiring revision. The Form GST TRAN-2, at best, is an admission of the person filing the same with regard to the contents of the document. Admission is a strong evidence against the person making it. However, law contemplates that the person making such admission has the opportunity to explain the same.• The Form GST TRAN-2, at best, can be an admission allowing the authorities to inform the state of affairs of the assessee in relation to the subject matter governed by such form.• However, neither the Central Goods and Services Tax Act, 2017 nor the Central Goods and Services Tax Rules, 2017 can be read to mean that the same excludes the right of a person making an admission to forfeit the opportunity to explain it. Neither the Act nor the Rules forfeits the right of a person making an admission to substantiate that such admission was made by mistake or was untrue.• A person filing a Form GST TRAN-2, therefore, should be afforded an opportunity to explain the Form GST TRAN-2 in the event such person chooses to do so. Moreover, Form GST TRAN-2 will be taken into consideration for the purpose of assessment.• The authorities may retain the original Form GST TRAN-2 for their assessment purpose and can confront the person seeking to revise the GST TRAN-2 with the Form GST TRAN-2 as originally filed and require explanation from the person filing a revised Form GST TRAN-2 as to why such revision was required and whether such revisions are justified or not. Such an enquiry can be held in the assessment proceedings.• There is no ground as to why a person filing Form GST TRAN-2 should not be allowed to revise Form GST TRAN-2 after its initial filing.• In view of the aforesaid, the authorities are directed to allow the assessee to file a revised Form GST TRAN-2, either electronically or manually.

5. Competent Authority has to release goods as well as vehicle on payment of appropriate penalty by defaulting assessee.

Applicant	M/s R K Motors
Journal of Publication	W.M.P. (MD) NO. 1098 OF 2019
Date of Ruling	24 th January 2019
Ruling Authority	HIGH COURT OF MADRAS

FACTS
<ul style="list-style-type: none"> The assessee, an authorized dealer for Bajaj Auto Limited, had placed order with the principal for delivery of certain two wheelers at Virudhunagar. The goods were moved from Pune on 23-12-2018. The vehicle transporting two wheelers instead of halting at Virudhunagar had moved towards Sivakasi. When the vehicle was on route to Sivakasi and 7 km away from Virudhunagar, the Competent Authority intercepted the vehicle and detained the goods as well as the vehicle and also levied the penalty upon the assessee.
ISSUE
<ul style="list-style-type: none"> Whether competent Authority has to release goods as well as vehicle on payment of appropriate penalty by defaulting assessee?
HELD
<ul style="list-style-type: none"> When the assessee is a registered dealer, when the tax in respect of the goods has already been remitted and when the transportation of goods is duly covered by proper documentation, the Competent Authority ought to have taken a sympathetic and indulgent view of the lapse committed by the driver of the vehicle. The detention order and the penalty order suffer from vice of gross unreasonableness and disproportionality. When a power is conferred on a statutory authority, it should be exercised in a reasonable manner. As rightly pointed out by the assessee, the goods in question are two wheelers. They cannot be sold without proper registration with the Motor Vehicle Authorities. That would require proper documentation. Therefore, in a case of this nature, the assessee could not have evaded its statutory obligations in any manner. This aspect of the matter ought to have been taken note by the Competent Authority. The assessee submits that it would pay a sum of Rs. 5000 as fine to the Competent Authority. By directing the assessee to pay a sum of Rs. 5000 towards fine to the Competent Authority, the orders impugned in the writ petition stand quashed. The Competent Authority shall forthwith release the vehicle as well as the goods in question.

6. In case of sweet shop cum restaurant, services from restaurant is a principal supply which provides a bundled supply of preparation and sale of food and serving same and, therefore, it constitutes a composite supply

Applicant	M/S. Kundan Misthan Bhandar
Journal of Publication	9/2018-19
Date of Ruling	22 nd October, 2018
Ruling Authority	AAR Uttarakhand

FACTS
<ul style="list-style-type: none"> The applicant has a sweet shop in the ground floor and a restaurant in the first floor of the same building. It is observed that if one looks at the market strategy, it will be noticed very often, two or more goods, or a combination of goods and services, are supplied together. <p>This could be due to either of the following reasons:</p> <ul style="list-style-type: none"> (i) A sales-strategy - to attract more customers. (ii) The nature or type of goods or services, which requires them to be bundled or supplied together. <ul style="list-style-type: none"> It is also sought advance ruling about the nature and rate of tax applicable to the items supplied from ground floor of a sweet shop in which restaurant is also located on the first floor and whether the applicant is entitled to claim benefit of input tax credit with respect to the same.
ISSUE
<ul style="list-style-type: none"> Whether supply of pure food items such as sweets, namkeens, cold drink and other edible items from a sweet shop which also runs a restaurant is a transaction of supply of goods or a supply of service?
HELD
<ul style="list-style-type: none"> In order to identify if the particular supply is a Mixed Supply, the first requisite is to rule out that the supply is a composite supply. A supply can be a mixed supply only if it is not a composite supply. The applicant has therefore raised a question whether the GST paid on these cars provided to different to customers will be available for Input Tax Credit in terms of section 17(5) of CGST Act, 2017. In the case of sweet shop cum restaurant, the services from the restaurant is a principal supply which provides a bundled supply of preparation & sale of food and serving the same and, therefore, it constitutes a composite supply. It further satisfied the following conditions of a composite supply, <ul style="list-style-type: none"> (i) Supply of two or more goods or services or both together,

(ii) Goods or services or both are usually provided together in the normal course of business.

- In the instant case the nature of restaurant services is such that it may be treated as the main supply and the other supplies combined with such main supply are in the nature of incidental or ancillary services.
- Since the activity of the applicant come under the purview of 'restaurant services', the same falls under Heading 9963 of GST rates on services under Notification No. 11/2017 - Central Rate (Tax) dated 28-6-2017 (as amended time to time). The rate of GST on aforesaid activity shall be 5 per cent as on date.
- All the items including takeaway items from the said premises shall attract GST of 5 per cent as on date subject to the condition of non availment of credit of input tax charged on goods and services used in supplying the said service.

7. GST is leviable on Supply of Goods and Services to Duty Free Shops at International Airports in India

Applicant	M/S Vasu clothing private limited
Journal of Publication	Writ petition No. 17999/2018
Date of Ruling:	22 nd January 2019
Ruling Authority	High Court of Madhya Pradesh

FACTS
<ul style="list-style-type: none"> The petitioner, a manufacturer, and exporter of garments in India and specializes in the manufacturing of high-quality products for children with the customer base in the Middle East, South Africa, and the USA, intends to supply goods to Duty-Free Shops (DFSs) situated in the duty-free area at international airports.
ISSUE
<ul style="list-style-type: none"> Whether GST is leviable on Supply of Goods and Services to Duty Free Shops at International Airports in India?
HELD
<ul style="list-style-type: none"> The petitioner claimed that the benefit available to him under the erstwhile central excise regime of removing goods from his factory to DFS located in the international airports without payment of duty is not available to him under the GST regime. The bench comprising Justices SC Sharma and Virender Singh observed that under the IGST Act, 2017 a Duty-Free Shop situated at the airport cannot be treated as territory out of India. The petitioner is not exporting the goods out of India. He is selling to a supplier, who is within India and the point of sale is also at Indore as the petitioner is receiving the price of goods at Indore. The bench noted that for the purpose of CGST Act, India extends up to the Exclusive Economic Zone up to 200 nautical miles from the baseline. The location of the DFS, whether within customs frontier or beyond, shall be within India as long as it is not beyond EEZ (200 nautical miles). Therefore, DFS cannot be said to be located outside India. Instead, the DFS is located within India. As the supply to a DFS by an Indian supplier is not to 'a place outside India', therefore, such supplies do not qualify as 'export of goods' under GST. Consequently, such supplies cannot be made without payment of duty by furnishing a bond/letter of undertaking (LUT) under rule 96-A of the CGST Rules, 2017. Also, he cannot claim the refund of an unutilized input tax credit (ITC) under Section 54 of the CGST Act, 2017. The petitioner cannot escape the liability to pay GST. He is manufacturing certain goods and supplying to a person, who is having a Duty Free Shop. It is true that we cannot export

our taxes but the facts remain that it is not the petitioner, who is exporting the goods or taking goods out of India.

- In light of the aforesaid, GST is leviable on Supply of Goods and Services to Duty Free Shops at International Airports in India.

8. Bus body fabrication is to be considered as job work if chassis is supplied by the customer.

Applicant	M/s PARAS MOTOR INDUSTRIES
Journal of Publication	HAR/HAAR/R/2018-19/8
Date of Ruling	26th April 2018
Ruling Authority	AAR – HARYANA

FACTS
<ul style="list-style-type: none">• The applicant is engaged in the business of fabricating & fitting out bus bodies on the chassis. Chassis are supplied by its customers (Principal).• Major part of this process is supply of bus bodies and fabrication/fitting of bus bodies is an associated work along with supply.
ISSUE
<ul style="list-style-type: none">• Whether bus body fabrication is to be considered as job work or supply if chassis is supplied by the customer?
HELD
<ul style="list-style-type: none">• With reference to the circular no. 34/8/2018-GST dated 03.03.2018 as per the clarification issued by CBIC the determination of bus body activity as goods or services varies from case to case basis.• No treatment or process is undertaken by the applicant on the chassis itself, except fitment/mounting of bus body on the same.• Bus body building involves use of raw materials/inputs etc., for manufacture/fabrication of bus body.• Such cost of inputs forms part of the value charged to customers.• Agreement states customer is providing only chassis. All inputs/materials required for fabrication of bus body, has to be used by the applicant from its own account.• Under such situation it is the bus-body which is being fabricated and also being mounted on the chassis provided by the customer. Therefore, it is not merely job-work but rather it is supply of bus body and an activity of fitting/mounting of bus body on chassis is an ancillary activity to the principal activity of supply of bus-body.

9. [Inspecting Squad Officer is not entitled to detain goods or vehicles where there is a bona fide dispute as regards eligibility of tax or rate of tax](#)

Applicant	M/S Jeyyam Global Foods (P.) Ltd.
Journal of Publication	WP (MD) NO. 937 OF 2019
Date of Ruling	23 rd January, 2019
Ruling Authority	HIGH COURT OF MADRAS

FACTS
<ul style="list-style-type: none"> • The assessee had transported the dried chick peas from Salem to Dindigul. It had not filed any E-Way bill on the plea that the goods were classifiable under Heading No. 0713 and were exempted from payment of GST. • The Squad Officer seized the above goods and also detained the vehicle on the ground that what was transported by the assessee was classifiable under Heading No. 2106. • He issued on the assessee a detention notice and levied tax with equal penalty.
ISSUE
<ul style="list-style-type: none"> • The assessee filed a writ petition contending that when a bona fide dispute as to classification had arisen, it was only the jurisdictional Assessing Officer who could have ruled on the classification and it was not open to the Squad Officer
HELD
<ul style="list-style-type: none"> • The stand of the Squad Officer is that he is entitled under section 68 read with section 129 to call upon the person in charge of the conveyance to produce the documents in question for verification. In the instant case, there is no dispute as to the goods that were actually transported. But then, according to the assessee, they would qualify only as dried chick peas. But, according to the Squad Officer, they would have to be classified as roasted grams. • A similar issue came up for consideration before the Kerala High Court in the case of N.V.K. Mohammed Sulthan Rawther & Sons and Willson v. Union of India [2019] 101 taxmann.com 24. The High Court held that in such cases at best the Inspecting Authority can alert the Assessing Officer to initiate the proceedings 'for assessment of any alleged sale, at which the assessee will have all his opportunities to put forward his pleas on law and on fact'. The process of detention of the goods cannot be resorted to when the dispute is bona fide, especially, concerning the exigibility of tax and, more particularly, the rate of tax. • The Squad Officer can intercept the goods, detain them for the purpose of preparing the relevant papers for effective transmission to the jurisdictional Assessing Officer. It is not open to the Squad Officer to detain the goods beyond a reasonable period. The process can at best take a few hours. Of course, the person who is in-charge of transportation will have to necessarily co-operate with the Squad Officer for preparing the relevant papers. The final call will have to be taken only by the jurisdictional Assessing Officer.

10. Warehouses are not exempted from tax under GST on their outward supplies made to ocean going merchant vessels on foreign run, Indian Naval ships and Indian Coast Guard Ships.

Applicant	M/S Fairmacs Ship Stores (P.) Ltd.,
Journal of Publication	APPLICATION NO. AAR/ 01 (GST)/2017
Date of Ruling	25 th January, 2018
Ruling Authority	AAR Andhra Pradesh

FACTS
<ul style="list-style-type: none"> The applicant is a warehouse for storage of duty free ship stores imported without payment of duty for supply to Indian Naval/Coast Guard Ships and Ocean going merchant ships.
ISSUE
<ul style="list-style-type: none"> Applicant is seeking advance ruling on questions as to whether they are exempted from tax under GST on their outward supplies made to ocean going merchant vessels on foreign run, Indian Naval Ships and Indian Coast Guard Ships and if at all they are liable for GST on their outward supplies whether they can collect the GST from the recipient for the goods namely ocean going merchant vessel is on foreign run, Indian Naval ships and Indian Coast Guard Ships or from their authorized agents.
HELD
<ul style="list-style-type: none"> It is observed that the goods which are received by the applicant are within the Customs area as defined under section 2(11) of the Customs Act, 1962. Accordingly, goods cleared/supplied by the applicant is to be treated as supply of goods in the course of inter-State trade. Furthermore, the goods supplied by the applicant are also not an exempt supply as per the definition under section 2(47) as it is neither nil rated or being exempt by any Notification. It is observed that, at best, some of the supplies of applicant may fall under the definition of 'exports' which is considered a zero rated supply. However, the same is not within the prerogative of instant application. Thus, applicants are not exempted from tax under GST on their outward supplies made to ocean going merchant vessels on foreign run, Indian Naval Ships and Indian Coast Guard Ships. The applicants can collect applicable GST from their customers, in case it is not exports. However, in case of exports option lies with applicant based on manner of exports i.e. whether they intend to export under bond or on payment of tax.