

GST updates for the month of May'2023

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Today's Coverage

1. Guidelines for special all India drive against fake GST registrations
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**Guidelines for
special all India
drive against
fake GST
registrations**

What is special all India drive against fake GST registrations?

- Instruction No. 01/2023 dt. 04.05.2023
- **Period** : 16-05-2023 to 15-07-2023.
- **Backdrop: Require to detect fake/suspicious registrations**
 - Misuse of the **identity** of other persons to obtain **fake/ bogus registration**
 - Such fake/ non-genuine registrations are being used to **fraudulently pass on ITC**
 - **Forged documents** used to take registration
 - PAN and Aadhaar of persons from economically weaker sections **without their knowledge**
- Detailed **data analytics and risk parameters**,
- **GSTN** will identify such fraudulent GSTINs and share the details of such identified suspicious GSTINs, jurisdiction wise,
- Supplemented by officers by other analytics

What is special all India drive against fake GST registrations?

Action to be taken:

- Immediately initiate action for **suspension and cancellation** of the registration
- Blocking of ITC as per **rule 86A**
- Demand and recovery of **ITC from recipient** – GSTR-1 source
- Attach property/bank a/c.,
- Identify masterminds.

Rule 86A

a. ITC availed on tax invoices/debit notes or any other document prescribed-

- Supplier **found non-existent or not to be conducting any business** from any place for which registration has been obtained; or
- **without receipt** of goods or services or both; or

b. ITC availed on, **tax not** paid to the Government; or

c. Person availing ITC found **non-existent or not to be conducting any business** from any place for which registration has been obtained; or

d. Person availing ITC **not in possession** of a tax invoice or debit note or any other document prescribed under rule 36.

What is special all India drive against fake GST registrations?

- Report – weekly basis
- Identify any novel modus-operandi
- **AIM**

Fake- Registration/ Fraudulent Registration; Suspicious

Avoid revenue leakage

Fake Billers

Fictitious taxpayer / Non-existent taxpayer

Fraudulent ITC

Master mind/ beneficiaries behind such fake GSTINs.

ACTION

Update registration information on portal,
Ensure premises which is registered, business is operated from there,
Cooperate with the Department

Latest news

- Noida police have arrested a gang of **8 people** for unscrupulously misusing PAN cards of **635,000 people** for over 5 years to create **2,660 shell companies** to evade GST worth multiple crores, had also created and registered **800 more shell companies** that had not yet been sold.

<https://www.hindustantimes.com/cities/noida-news/gang-of-8-arrested-for-pan-card-fraud-created-2-660-shell-companies-to-evade-gst-worth-crores-800-more-to-be-sold-101685730495693.html>

- The chargesheet by police investigators had mentioned that the accused had changed mobile number linked to aadhaar cards of several persons promising them financial assistance under government schemes. These cards were later used to obtain PAN and then GST registrations. With use of these documents, **fake invoices of more than Rs 1,102 crore involving evasion of GST of Rs 122 crore** was allegedly carried out. The accused had made **461 bogus firms** for these transactions.

<https://timesofindia.indiatimes.com/city/ahmedabad/gst-fraud-case-ed-searches-at-25-locations/articleshow/100715654.cms?from=mdr>



**Standard
Operating
Procedure (SOP)
for scrutiny of
returns for F.Y.
2019-20**

SOP for scrutiny of returns

- Instruction No. 02/2023-GST dt. 26.05.2023
- **Period:** SOP w.r.t scrutiny of returns for **F.Y. 2019-20** in CBIC ACES-GST.
- The department has introduced the **automated return scrutiny module** from returns filed in FY 2019-20 onwards based on data analytics and risk parameters.
- **Following are the key features:**
 - Ensures minimal manual intervention in the adjudication process
 - Making it more transparent
 - Efficient and bridges any gaps leading to tax evasion.
 - GSTINs selected by system and made available to officer

SOP for scrutiny of returns (contd.)

Relevant points in the instruction

- Month-wise schedule
- Atleast 4 GSTINs pm scrutiny of returns – 1 FY scrutiny per GSTIN
- Minimal interface with assessee
- Normally not seek documents/ records for issuing ASMT-10
- Consider payment in DRC-03
- Not be vague and general
- Indicate tax, interest and penalty
- Single notice for a year
- To be completed in a timely manner

Scrutiny of returns – Sec 61 of CGST Act, 2017

Proper Officer **scrutinizes the returns & related particulars to verify the correctness**

Inform discrepancies in Form ASMT-10

Seeks explanation in ASMT-11 ≤ 30 days

Taxable person offers satisfactory explanation ≤ 30 days* - ASMT-12 issued by dept.

No further action

- Taxable person offers **NO satisfactory** explanation ≤ 30 days, **or**
- After accepting discrepancies, **fails to take corrective measures** in time

Proper Officer may

- Initiate appropriate action including those u/s 65 or 66 or 67, or
- Proceed to determine tax u/s 73 or 74

*30 days of being informed by Proper Officer or such further period as may be permitted by him

Timelines – in SOP for FY 17-18 & 18-19

S. no.	Process/Event	Timeline/ Frequency
(i)	Reply by the registered person in FORM GST ASMT-11	Within a period of 30 days of being informed by the proper officer in FORM GST ASMT-10 or such further period as may be permitted by the proper officer
(ii)	Issuance of order in FORM GST ASMT- 12 for acceptance of reply furnished by the registered person, where applicable	Within 30 days from receipt of reply from the registered person in FORM GST ASMT-11
(iii)	Initiation of appropriate action for determination of the tax and other dues under section 73 or section 74, in cases where no reply is furnished by the registered person	Within a period of 15 days after completion of the period of 30 days of issuance of notice in FORM GST ASMT-10 or such further period as permitted by the proper officer
(iv)	Initiation of appropriate action for determination of the tax and other dues under section 73 or section 74, in cases where reply is furnished by the registered person, but the same is not found acceptable by the proper officer	Within 30 days from receipt of reply from the registered person in FORM GST ASMT-11
(v)	Reference , if any, to the Commissioner for decision regarding appropriate action under section 65 or section 66 or section 67	Within 30 days from receipt of reply from the registered person in FORM GST ASMT-11 or within a period of 45 days of issuance of FORM GST ASMT-10 , in case no explanation is furnished by the registered person.

CBIC –SOP for scrutiny of GST returns- 17-18 & 18-19

CBIC has issued interim SOPs for scrutiny of returns(u/s 61 of CGST Act) for **FY 2017-18 and 2018-19** since the scrutiny module is currently not available.

- Selection of return based on robust risk parameters
 - i. DGARM to Select the GSTINs registered with Central Tax Authorities for scrutiny.
 - ii. DGRAM to share selected GSTINs to the nodal officer of the respective Commissionerate.
 - iii. DGRAM to share other relevant data indicating the revenue implications.

- Proper officer for scrutiny of returns – **Superintendent** of Central Tax Vide Circular 3/3/2017 – GST dated 05.07.2017.
- Scrutiny Schedule –
 - i. Month-wise scrutiny schedule to prepare for each GSTIN with the approval of AC/DC.
 - ii. GSTINs having a high revenue impact to prioritize in scrutiny.
 - iii. Schedule to be shared with DGGST in the specified format.
 - iv. All returns of a Financial Year shall be scrutinized by the proper officer for at least 3 GSTINs per month.

CBIC –SOP for scrutiny of GST returns

Indicative Risk Parameters: -

➤ Parameters for **output tax** liability: -

- a. Comparison of tax liability shown in GSTR-1 vis a vis GSTR-3B
- b. Comparison of RCM tax liability with RCM ITC availed in GSTR-3B, RCM transactions appearing in GSTR-2A, tax paid in cash in GSTR-3B.
- c. Comparison of turnover declared in GSTR-3B based on the details of TDS/TCS appearing in GSTR-2A
- d. Comparison of tax liability with e-way bill details

➤ Parameters to check excess avaiement **of ITC** -

- a. Comparison of All other ITC, ISD credit, ITC for import of goods etc. between GSTR-3B vis a vis GSTR-2A
- b. Procurement of supplies from suppliers whose registration has been retrospectively cancelled
- c. Non-filing of GSTR-3B by the supplier
- d. Filing of GSTR-3B after expiration of time limit u/s 16(4)
- e. Reversals made under Rule 42/43

➤ Check on **aspects** such as interest liability has been discharged or not, payment of Late Fees , etc

Issues/ Common Errors –Scrutiny

- Time limit for Scrutiny of returns?
- Can the Scrutiny be made based on the GSTR 2A report available with him? – As the section says, the scrutiny can be carried on the basis of details and other particulars furnished by the assessee.
- Department Audit already completed, again returns scrutiny for the same period?
- **ASMT 11 filed but no response received – are the proceedings closed?** - Rule 99(3) requires the proper officer to issue form ASMT-12 where he finds that the explanation furnished by the registered person in form ASMT-11 to be acceptable
- **Can demand be created under this section itself?** - No 'order of demand' arising out of section 61 itself. Yes, scrutiny can give rise to a show cause notice under section 73 or 74.


**Extension of due
date for exercising
option by GTA to
pay GST under
FCM**

GST on GTA services

- GTA services liable under RCM.
- Upto 18-07-2022- the following options are available-
 - 5%- RCM- without ITC, or
 - 12%- FCM- with ITC
- From 18-07-2022- granted an option to pay GST under FCM.
 - 5% - RCM- without ITC, or
 - 5% - FCM- without ITC, or
 - 12% -FCM- with ITC.
- GTA - file a declaration in form Annexure V by 15th March of the preceding year.
- File on GST portal by GTA
- Option cannot be withdrawn during entire FY;
- If Annexure V declaration not furnished – RCM opted.
- For availing option for FY 2023-24, GTA needs to furnish Annexure V on or before 15-03-2023

Amendment-Notification no.05/2023-CT(R) dt.09-05-2023

- The cut-off date for exercising the option for the **FY 2023-2024** has been extended till 31-05-2023.
- GTA who **commences new business** or **crosses threshold** for registration during any FY, file Annexure V, by later of the following dates-
 - before 45 days from the date of applying for GST registration, or
 - one month from the date of obtaining registration.
- GTA suppliers - under FCM - make declaration in every tax invoice that GTA has exercised the option to pay tax on services under FCM during the FY.



**E-invoicing
applicability limit
has been reduced
w.e.f. 01.08.2023**

Summary of changes

Sno.	Notification no.	Aggregate Annual Turnover exceeds in any FY since 17-18	Effective Date
1	61/2020 – Central Tax dt. 30.07.2020 and 70/2020 – Central Tax dt. 30.09.2020	500 Cr	01/10/2020
2	88/2020 – Central Tax dt. 10.11.2020	100 Cr	01/01/2021
3	5/2021 – Central Tax dt. 08.03.2021	50 Cr	01/04/2021
4	1/2022 – Central Tax dt. 24.02.2022	20 Cr	01/04/2022
5	17/2022 – Central Tax	10 Cr	01/10/2022
6	10/2023 - Central Tax	5 Cr	01/08/2023

Turnover to be seen **for all of the previous FYs**
If Threshold crossed this FY, e-invoice from next FY.

What to consider under Aggregate Turnover ?

- Aggregate Turnover means the aggregate value of all
 - taxable supplies,
 - exempt supplies,
 - exports of goods or services or both and
 - **inter-State supplies** affected by the taxpayers having the same Permanent Account Number (PAN), i.e., it includes all the GSTINs associated with a single PAN across India.
- Aggregate turnover excludes the value of inward supplies on which reverse charge is applicable.

Exemption from applicability of E-Invoice

E-invoice shall not be applicable on following types of registered person as notified by CBIC by Notification no. 13/2020 - Central tax amended time to time.


- Insurance Company
- Banking Company or a financial Institutions
- SEZ Units
- Government Department and Local Authorities
- Goods Transport Agency.

How to know the applicability of e-invoice of supplier?

- One can **search the status of enablement** of a GSTIN on e-invoice portal:
<https://einvoice1.gst.gov.in/> > **Search > e-invoice status of taxpayer**
- List of GSTINs generating IRN can be accessed (updated from time to time):
[GSTINsGeneratingIRN - nic.einvoice.web](https://www.nic.einvoice.gov.in/GSTINsGeneratingIRN)
- This listing of GSTINs is solely based on the turnover of GSTR-3B as reported to GST
- Further, the **turnover slab of taxpayer** can also be ascertained through “**Search Taxpayer**” / “**Know Your Supplier**” Sections on GST portal also.
- In case any registered person, is required to prepare invoice in terms of Rule 48(4) but not enabled on the portal, he/she may **request for enablement** on portal:
‘Registration - > e-Invoice Enablement’.

Time limit for reporting invoices on the IRP portal

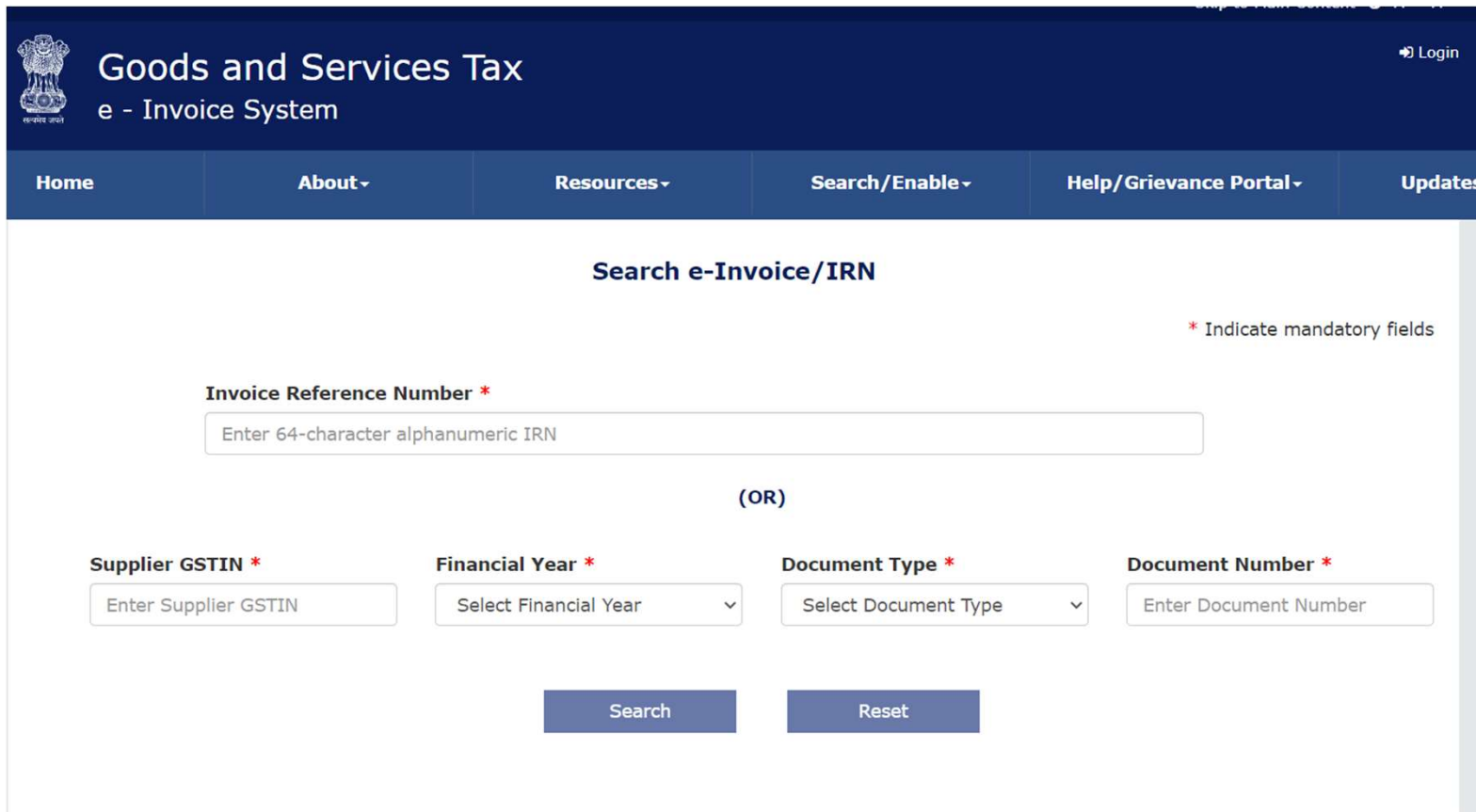
- Taxpayers with AATO \geq Rs. 100 crores – the time limit of 7 days on reporting old invoices on the e-invoice IRP portals has been **deferred** and date of implementation is yet to be shared.
- Applicable for invoice, DN and CN
- Not made effective till date.



**Verification of
IRN details in
GST portal**

New add on feature in GST portal

- <https://einvoice.gst.gov.in/einvoice/search-irn>



The screenshot shows the 'Goods and Services Tax e - Invoice System' portal. The header includes the GST logo, the text 'Goods and Services Tax e - Invoice System', and a 'Login' link. A navigation bar contains links for 'Home', 'About', 'Resources', 'Search/Enable', 'Help/Grievance Portal', and 'Updates'. The main content area is titled 'Search e-Invoice/IRN' and includes a search form with the following fields:

- Invoice Reference Number ***: A text input field with the placeholder 'Enter 64-character alphanumeric IRN'.
- (OR)**: A separator indicating alternative search criteria.
- Supplier GSTIN ***: A text input field with the placeholder 'Enter Supplier GSTIN'.
- Financial Year ***: A dropdown menu with the placeholder 'Select Financial Year'.
- Document Type ***: A dropdown menu with the placeholder 'Select Document Type'.
- Document Number ***: A text input field with the placeholder 'Enter Document Number'.

Below the input fields are two buttons: 'Search' and 'Reset'. A note '* Indicate mandatory fields' is located in the top right of the search area.



**GSTR-9/9C
enabled on the
GST Portal for the
FY. 2022-23**



**Amnesty scheme
to Non-filers of
GST R 10**

What is GSTR 10 return?

- **GSTR 10** is a final return to be filed by both regular & composition scheme taxpayers whose registration is cancelled or suspended.
- This refers to the declaration of **statement of stocks** held by such taxpayer on day immediately preceding the date from which cancellation is made effective and any liabilities or credits associated with it.
- **Due date** : Every such taxpayer shall file this return **within three months** from the date of cancellation or date of cancellation order whichever is later.
- **Payment of liability**: The taxpayer needs to pay any outstanding tax liability as calculated in the GSTR-10 form. This liability includes any tax, interest, or penalty payable.
- Once GSTR 10 is filed, it cannot be amended.
- **Late fee** - Rs. 200 per day of delay, subject to a maximum of Rs. 10,000.

Amnesty - GSTR 10 return

Notification No.08/2023–Central Tax.

- **Waiver of late fees** > Rs. 1,000/- (Rs.500/- CGST & Rs.500/- SGST) for taxpayers who failed to furnish GSTR 10 within due date.
- **Condition** : Furnish GSTR 10 between 01-04-2023 to 30-06-2023



Recent decisions

Prefabricated building is sale of goods, and it is done by way of manufacturing by using fabrication-Allahabad HC

Radiant Enterprises P. Ltd. v. Joint Commissioner, Central Goods and Services Tax & Central Excise (Appeal I [[2023] 150 taxmann.com 225 (Calcutta)[20-12-2022]]

Facts

- Agreement entered - **purchasing a building** from Eveready Industries Ltd., who charged and collected GST at rate of 18 % on sale of such building.
- The purchased building is a prefabricated building which consists of **factory-made components or units that are transported and assembled on-site to** form the complete building.
- Pursuant to the clearance of invoice including tax payment thereof, now the appellant claims that the sale of building as covered in **Schedule III**, wherein it is held that it is neither to be treated as supply of goods nor a supply of services.
- In connection to the above, the appellant desires to apply for refund of tax payment discharged on the above transaction.

Prefabricated building is sale of goods, and it is done by way of manufacturing by using fabrication-Allahabad HC

Issues

- Whether the recipients of services or goods can apply for refund claim for excess payment of Tax?
- Whether the building purchased by the petitioners from its purchaser, namely M/s. Eveready Industries Limited is taxable under the CGST Act or not?

Judgement

- Upon due consideration of all the facts and circumstances involved in the case, Ld. High Court has inclined **not to interfere** with the impugned order and held that this is not a case where the impugned order is without jurisdiction or there is violation of principle of natural justice or there is any procedural irregularity in the matter and/or Constitutional validity of any provisions of law is involved even though no alternative remedy is available.

Prefabricated building is sale of goods, and it is done by way of manufacturing by using fabrication-Allahabad HC

- The Appellate Authority held as below:*

*Now, on going through their submitted purchase invoice, I find that the appellant has **purchased a Prefabricated Building classifiable under GST HSN Code 9406** from M/s. Eveready Industries Ltd. Now a prefabricated building, informally a prefab, is a building that is **manufactured and constructed using prefabrication**. It consists of factory-made components or units that are transported and assembled on-site to form the complete building. Thus, it is evident from the invoice issued by M/s. Eveready Industries Ltd that they have **supplied goods classifiable under GST HSN Code 9406** to the appellant which is not specified in Section 7(2)(a) of CGST Act, 2017 and probably used logistic services such as warehousing, flexi-storage by the appellant. Thus, it is evident that M/s. Eveready Industries Ltd **have not provided any Construction services of commercial buildings** classifiable under GST service code number 99414.*

Amount deposited – no notice or DRC-04 issued – refund with interest

Samyak Metals Pvt Ltd v. UOI – [2023-TIOL-626-HC-P&H-GST]

Facts

- The petitioner is engaged in the business of manufacturing of aluminium ingots.
- During the course of search, respondent examined the purchase ledger and asked about the purchases made by the petitioner from one M/s D.G. Enterprises
- No document was resumed during the course of the search.
- After analyzing the ledger of M/s D.G. Enterprises, petitioner was **forced to deposit tax in lieu of the Input Tax Credit claimed by it on the purchases made from M/s D.G. Enterprises** to the tune of Rs. 35,73,147/- each under the Central GST Act/State GST Act, including interest amounting to Rs. 1,82,255/- and penalty amounting to Rs. 4,42,291/- vide **Form GST DRC-03** dated 26.02.2021.

Samyak Metals Pvt Ltd v. UOI – [2023-TIOL-626-HC-P&H-GST]

Issues

- The petitioner is seeking a direction to the respondent to refund the amount which was allegedly illegally recovered from the petitioner vide form GST DRC-03 **without issuing any SCN or passing any order u/s 74 of the Act, 2017.**

Held

- Department has relied upon the case of Gujarat High Court in Bhumi Associate vs. Union of India and instruction dated 25-05-2022 relating to GST investigation.
- **No recovery of tax** should be made during search, inspection or investigation unless, it is voluntary.
- In order to avoid harassment to the person, whose premises has been conducted, the voluntary payment in prescribed form i.e. GST DRC-03 can be made after the day of the search.
- The above instructions have been issued to avoid unnecessary harassment caused to the assessee.

Samyak Metals Pvt Ltd v. UOI – [2023-TIOL-626-HC-P&H-GST]

- In the present case, as per these instructions, the petitioner has deposited the amount of Rs. 35,73,147/-, but the officer has not issued DRC-04.
- Neither the department has followed the provisions of Rule 142 (2) of the CGST Rules nor has issued any notice under Section 74 (1) of the CGST Act.
- The respondents are directed to return the amount in question to the **petitioner along with simple interest at the rate of 6% per annum** from the date of deposit till the payment is made.

No RCM on rent paid to director

M/S Cords Cable Industries Limited V/S Commissioner, TMI 441 - CESTAT NEW DELHI

Facts

- The appellant is engaged in the manufacture of instrumentation/power cable.
- During July 2012 to August 2014, appellant paid an amount of Rs. 2,73,01,852/- towards rent to Naveen Sawhney and D.K. Prashar for **the premises let out by them** to the appellant.
- The premises were used by the appellant for its Registered Office/Corporate Office.
- Naveen Sawhney and D.K. Prashar also happen to be the **Directors** of the appellant.
- In the invoices raised by the landlords to the appellant in respect of the properties let out, service tax aggregating to Rs.27,14,665/- was also charged and deposited as and when it fell due.

M/S CORDS CABLE INDUSTRIES LIMITED V/S COMMISSIONER, CENTRAL EXCISE, JAIPUR (RAJASTHAN) TMI 441 - CESTAT NEW DELHI

Issues

- Whether the appellant is required to pay Service tax under RCM basis?

Held

- The premises which were let out to the appellant are owned by Naveen Sawhney and D.K. Prashar **in their individual capacity** and whereas in case of **department, assumed** that the properties were **owned by them as Directors of the appellant**.
- In such a situation, rent was collected by them in their individual capacity and merely because they also happen to be the Directors of the appellant **would not mean that they had collected rent as Directors of the appellant**.
- No RCM liability. What needs to be further noticed is that service tax had been deposited on the rent received by Naveen Sawhney and D.K. Prashar from the appellant.

Dharmendra M. Jani vs The Union Of India And 3 Others on 18 April, 2023 - Intermediary

Facts

- The petition was put forth by Mr. Dharmendra M Jani, who runs a proprietorship **giving marketing and promotion services to foreign clients.**
- The Petitioner is engaged in **soliciting purchase orders on behalf of overseas customers** who manufacture and sell goods. The Indian purchaser, who imports the goods, directly places orders with the overseas customer.
- The sale invoice is issued in the name of the Indian purchaser, and the payment is made directly to the overseas customer.
- The **overseas customer pays a commission to the Petitioner** for their services, and this payment is received by the Petitioner in India in convertible foreign exchange.
- The Petitioner stated that the transaction undertaken by the Petitioner is an export of service within the meaning of Section 2(6) of IGST Act. Further, the Petitioner is also an intermediary as per Section 2(13) of IGST Act.
- A deeming fiction has been created for the intermediary, where the location of recipient is outside of India, the place of supply shall be location of supplier which is in India.

Dharmendra M. Jani vs The Union Of India And 3 Others on 18 April, 2023

- Due to this the export of service by the Petitioner being an intermediary will amount to intra-State supply of service and the Petitioner will be liable to pay CGST and SGST.
- The present writ petition has been filed to challenge the constitutional validity of Section 13(8)(b) read with Section 8(2) of the IGST Act.

Issues

- Whether Section 13(8)(b) read with Section 8(2) of the IGST Act is constitutionally valid?

Held

- Article 245 of the Indian Constitution grants Parliament the authority to enact laws for the entire country, while State legislatures can make laws for specific States
- Article 246A(2) Parliament has exclusive power to make laws with respect to goods and services tax where the supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.

Dharmendra M. Jani vs The Union Of India And 3 Others on 18 April, 2023

- Article 286 - **No law of a State shall impose**, or authorize the imposition of, a tax on the supply of goods or of services or both, where such supply takes place
- outside the State
- in the course of the import of the goods or services or both into, or **export of the goods or services or both out of, the territory of India.**

Further held:

it is not understood as to how such a **transaction of export of service, is being categorized as an intermediary services and can amount to an intra-State sale**, so as to be liable for levy of GST under the CGST Act and the MGST Act. In regard to such transaction, there **is no basis or any hypothesis to conclude that the beneficiary of the services provided by the intermediary, becomes an Indian party** so as to apply the destination principle and that too at the hands of the exporter of service.

It would be too far-fetched to hold that the intention of [Section 13\(8\)\(b\)](#) read with Section 8(2) of the IGST Act is to reach out to such foreign transactions so as to tax them as an intra- State trade and commerce,

Dharmendra M. Jani vs The Union Of India And 3 Others on 18 April, 2023

- Hence, by a **legal fiction**, although the location of the recipient of services is outside India i.e. the **transaction itself is consumed outside India**, by such fiction, it has been provided that for the purpose of IGST Act, the place of supply shall be the location of the supplier of the intermediary services
- such a transaction is clearly a transaction of "export of services" as defined under [Section 2\(6\)](#), however, for the purposes of the IGST Act, it would amount to an 'intra-State supply'.
- *The provisions of Section 13(8)(b) and Section 8(2) of the IGST Act are legal, valid and constitutional, provided that the provisions of Section 13(8)(b) and Section 8(2) are confined in their operation to the provisions of IGST Act only and the same cannot be made applicable for levy of tax on services under the CGST and MGST Act*

Any Queries???

*For any clarification
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THANK YOU!