



## RECENT CASE LAWS

M.S. Steel and Pipes vs. Assistant State Tax Officer - HC directs release of goods detained for Non mention of tax details in E-Way Bill.

TS-641-HC-2020(KER)-NT

Kerala HC disposes of the petition, directing the Respondents to release the goods detained u/s 129 of CGST Act on the allegation that there was a discrepancy in the e-way bill that accompanied the transportation of the goods where there was no mention of tax separately in the e-way bill; Rejecting Respondent's contentions, explains that detention u/s 129 is to be exercised only in cases where a transportation of goods is seen to be in contravention of the provisions of the Act and Rules and not simply because a document relevant for assessment does not contain details of tax payment; Perusing Rule 138(A) of GST Rules, clarifies that said Rule clearly indicates that the e-way bill has to be in FORM GST EWB-01 format which does not require the transporter to indicate the tax amount payable in respect of the goods transported; Thus, holds that if the statutorily prescribed form itself does not contain a field for entering the details of the tax payable in the e-way bill, then the non-mentioning of the tax amount cannot be seen as an act in contravention of the rules; Directs the petitioner to furnish a copy of this judgment before the Respondents, who thereafter shall enable clearance of the goods and the vehicle.

SKKA Comments: Above judgement by the HC is once again an eye opener for the department and brings relief to the taxpayers who suffer due to incorrect actions taken by the officials of the department. The judgment highlights that not mentioning tax amount in e-way bill can't be considered as valid basis for detention of goods as there is no contravention of act and rule in such case. Department should look into such issues arising to the taxpayers as these steps of officials hinders the overall motive of government to ease business environment in the country.

8/17/2020
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## RECENT CASE LAWS

Shiv Kishor Construction Private Limited vs. Union of India & Ors. - HC quashes Revenue's order which was preponed without notice to Assessee.

#### TS-638-HC-2020(PAT)-NT

Patna HC quashes and sets aside Revenue's order of alleged tax evasion by Assessee, remands back the same to authorities for fresh consideration; Notes that the Petition is filed to set aside the Revenue's order dated 31.01.2020 in exercise of jurisdiction u/s 74(1) of the BGST Act, 2017, on a finding that the GSTR-B and TDS Return GSTR 2A were not in consonance, therefore, Assessee evaded/concealed supply and a penalty was imposed; considers Assessee's contention that the order is completely without jurisdiction as same was issued without complying the mandatory provision, i.e., Section 61 of the CGST/BGST Act, 2017 and must be remanded back to authorities; Observes that the matter was preponed without notice to the Assessee for unexplained reasons and circumstances, without any prior intimation or knowledge, thereby denying Petitioner the right of hearing; Remarks "The order does entail civil and pecuniary consequences, causing prejudice to the petitioner. On all fours, principles of natural justice stand violated"

**SKKA Comments:** This judgement by HC brings a check on department issuing impugned ex parte order which deny the taxpayers right of being heard. Issuing order before the last date for replying as mentioned in SCN isn't an acceptable act on the part of department. HC has rightly highlighted that the act of department violates the principle of natural justice thus, bringing relief to the taxpayers. Department should therefore refrain from passing such adverse orders.



Shree M. Revathi Printers vs. The Deputy Commissioner Ministry of Finance & Ors - HC: Grants 6 months for balance tax-payment considering

TS-621-HC-2020(MAD)-NT

loss of income due to COVID-19

Madras HC directs Revenue to defreeze Assessee's account viewing that some indulgence can be shown to the Assessee in the wake of COVID-19, so that it can have a breathe by dealing with its account, more particularly, when it has given an undertaking; Notes that the petition is against the attachment of Bank Account of the Assessee for realizing tax dues to the tune of Rs. 83,58,962 and that it is not in a position to run the business as before due to COVID-19, therefore, cannot settle the dues immediately; Observes Assessee's submission that it is not disputing the pending liability but only seeks time for its payment and asserts with its prayer to pay the dues within 6 months; Recording that Revenue has already deducted an amount of Rs. 12,45,662 from Assessee's bank account, states that if the Assessee fails to make balance payment within the 6 months stipulated period, it is open to the Revenue to resort to the remedy available under law to recover the said amount.

**SKKA Comments:** Above is a welcome judgment by the HC which brings tremendous relief to the taxpayer amid the crisis caused by COVID-19 pandemic.

Pandemic has led to liquidity crisis due to which many taxpayers has are unable to run their business smoothly thus, HC by above judgment has backed the taxpayers by directing department to defreeze the bank account of taxpayer and allowing taxpayer 6 month period to settle its liability.

6 month

### RECENT CASE LAWS

Trivedi Ventures LLP vs. Union of India & Ors - HC grants liberty to petitioners to make an application before GST Council to avail Transitional credit

TS-612-HC-2020(RAJ)-NT

Rajasthan HC disposes a batch of writ petitions requesting for filing of GST TRAN-1 to avail transitional credit; Follows decision rendered by its Co-ordinate Bench in Obelisk Composite Technology LLP; Grants liberty to Petitioners to make an application before GST Council through Standing Counsel, who is further requested to hand over the same to a jurisdictional officer for forwarding the same to GST Council to issue requisite certificate of recommendation a/w requisite particulars, evidence and copy of order instantly; Further states that if the Petitioners' assertion is found to be correct, the GST Council shall issue necessary recommendation to the Commissioner to enable them to get the benefit of CENVAT credit within the stipulated time of Union of India

**SKKA Comments:** HC has disposed a batch of similar petitions requesting for filing of transitional forms to avail transitional credits and has given taxpayers the liberty to make application to GST council who shall allow petitioner's to avail CENVAT credit if their assertions is found to be correct. Thus GST council shall come forward and make address the issue of large number of taxpayers.

Also, all eyes are on case pending with Apex Court in Brand Equity case and judgment of the same is awaited.



Downloading document-wise details of Table 8A of Form GSTR-9

The GSTN has issued an advisory for downloading the Table 8A of Form GSTR 9. The sailinet features are as below:

- Table 8A of Form GSTR 9 is populated on basis of documents in filed Form GSTR-1 or Form GSTR-5 of the supplier. Thus, all documents which are present in GSTR-2A (Table 3 & 5), will not be available here, as documents which are in uploaded or submitted stage in Form GSTR 1 or 5, are not accounted for credit in table 8A of Form GSTR 9.
- The excel download will address issues like:
  - ☐ Figures of Input Tax Credit (ITC), as pre-populated in table 8A of GSTR-9, not matching with the figures, as appearing in their Form GSTR-2A;
  - ☐ To view details of documents that are auto-populated from GSTR-2A, to table 8A of Form GSTR-9
- Steps to Download: To download, navigate to Services > Returns >
   Annual Return > Form GSTR-9 (PREPARE ONLINE) > DOWNLOAD TABLE
   8A DOCUMENT DETAILS option.

#### Downloaded excel file will contain:

- GSTIN, Trade Name or Legal Name of the supplier
- The period (month) in which the document featured in GSTR-2A of the recipient
- Document wise details of B2B (invoices), B2BA (amended invoices), CDNR (credit and debit notes) and CDNRA (credit and debit notes amended), filed by supplier in their Form GSTR-1/GSTR-5, in separate Excel sheets
- Details from only Form GSTR-1/GSTR-5, which are filed till 31st October of subsequent year
- In case of amendments, only latest value will be accounted for
- Field showing "ITC available for Table 8A" "Yes" or "No"
- If ITC is not available, a column named 'Reason for Non-accounting' with reasons for non-accounting in Table 8A

#### **Some other Important Points:**

- Excel download option will be available once GSTR-9 tab for filing is enabled
- Generated excel will be downloaded as a zip file, if number of documents are less
- Generated excel can be downloaded in multiple parts, if number of documents are large
- Data saved/submitted in Form GSTR-1/5 will be shown in Form GSTR-2A,
   but will not be shown in downloaded excel file of Table 8A of Form GSTR-9

### **Introduction to GSTR 2B form**

GSTR-2B is a <b>new static auto-drafted statement for regular taxpayers to be introduced on the GST portal.</b> Currently, the return is available on the developer portal using API.
GSTR-2B provides <b>eligible and ineligible Input Tax Credit</b> (ITC) (ON the basis of POS of supply and not block credits) for each month, similar to GSTR 2A <b>but remains constant for a period.</b>
ITC information will be covered from the filing date of GSTR-1 for the preceding month (M-1) up to the filing date of GSTR-1 for the current month (M). For instance, GSTR-2B generated for July 2020 will contain documents filed by their suppliers from 12 a.m. on 12th July 2020 up to 11:59 p.m. on 11th August 2020.
The contents of GSTR-2B is as follows:  ☐ Summary statement showing ITC available and non-available for every section.  ☐ Advisory for every section that clarifies the kind of action that taxpayers must take.  ☐ Document-wise details such as invoices, credit notes, debit notes, etc. to view and download.  ☐ Cut-off dates and advisory for generating and using GSTR-2B.  ☐ Import of goods and import from SEZ units/developers (available from GSTR 2B of August 2020 onwards).

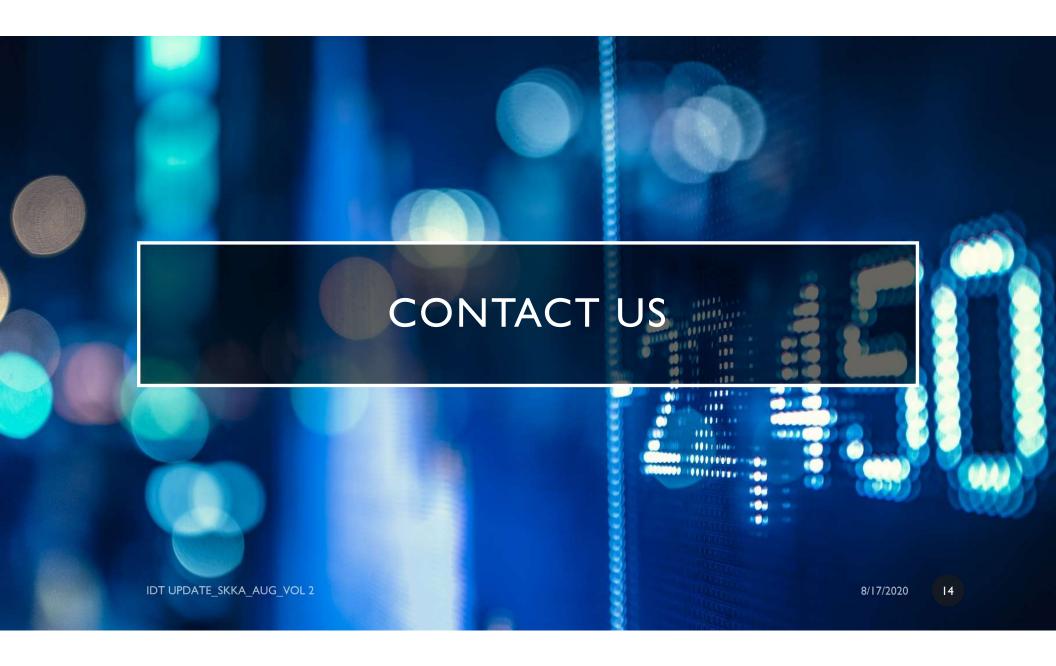
### **Introduction to GSTR 2B form**

☐ The following are the steps to access GSTR 2B:
<ul> <li>□ Step 1: Log in to the GST portal.</li> <li>□ Step 2: Navigate to the 'Returns Dashboard'.</li> <li>□ Step 3: Select the relevant tax period.</li> <li>□ Select the month and year.</li> <li>□ Step 4: Click on the 'GSTR-2B' tab.</li> <li>□ Step 5: Click on the 'Download' button to save the statement on your system.</li> </ul>
Importance and benefits of GSTR 2B  ☐ The data in GSTR-2B is reported in a manner that allows taxpayers to conveniently reconcile ITC with their own books of accounts and records. It will help them in easier identification of documents to ensure the following:
<ul> <li>□ The tax credit is reversed as per the GST law in their GSTR-3B, wherever required.</li> <li>□ GST is correctly paid on a reverse charge basis for the applicable documents, including import of services.</li> <li>□ Compliance of Rule 36(4) of the CGST Rules, 2017 correctly and timely.</li> </ul>

### **Introduction to GSTR 2B form**

### ☐ Comparison of GSTR-2A with GSTR-2B

Points of Comparison	GSTR-2A	GSTR-2B
Nature of Statement	Dynamic, as it changes from day to day, as and when the supplier uploads the documents.	Remains static or constant, as the GSTR-2B for one month cannot change based on future actions of the supplier.
Frequency of Availability	Monthly	Monthly
Source of Information	GSTR-1, GSTR-5, GSTR-6, GSTR-7, GSTR-8	GSTR-1, GSTR-5, GSTR-6, ICEGATE system
ITC on Import of Goods	Does not contain these details	Contains ITC on import of goods as obtained from ICEGATE system (available from GSTR-2B of August 2020 onwards)





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