





SMT Kaniska Matta Vs UOI & others - Authorized Officer has power to seize cash/money under section 67(2) of CGST Act,2017.

2020-TIOL-1445-HC-MP-GST

Madhya Pradesh HC:

GST - Goods comprising of Pan Masala, Tobacco, Mouth Freshener, Confectionery, etc. valued at Rs.2.59 Crores were seized under Section 67(2) of the CGST Act read with Section 129 of the CGST Act and Section 130 of CGST Act from six godowns operated by Shri Sanjay Matta and his brother Shri Sandeep Matta as no bills / invoices could be produced by them - Unaccounted cash of Rs.66,43,130/- was also seized from the residential premises of Shri Sanjay Matta –Petitioner, wife of Sanjay Matta, seeks issuance of an appropriate writ, order or direction directing the respondent No.4 - Assistant Director, DGGSTI, Indore and respondent No.5 - Senior Intelligence Officer, DGGSTI, Indore to release the cash amounting to Rs.66,43,130/- seized from the petitioner vide Panchnama dated 30/05/2020 from the residential premises of the petitioner and her husband - petitioner has vehemently argued that the respondent No.5 has got no power vested u/s 67(2) of the CGST Act, 2017 to effect seizure of cash amount from the petitioner nor from her husband; that the cash cannot be treated as "Document, Book or Things" as per the definition under the definition clause of the CGST Act, 2017 and, therefore, the respondents be directed to release the cash, which they have seized.

Held - Core issue before this Court is that whether expression "things" covers within its meaning the cash or not — In the considered opinion of this Court, the CGST Act, 2017 has to be seen as a whole and the definition clauses are the keys to unlock the intent and purpose of the various sections and expressions used therein, where the said provisions are put to implementation - Section 2(17) defines "business" and Section 2(31) defines "coasideration" Contd...

In the considered opinion of this Court a conjoint reading of Section 2(17), 2(31), 2(75) and 67(2) makes it clear that "money" can also be seized by authorized officer - The word "things" appears in Section 67(2) of the CGST Act, 2017 is to be given wide meaning and as per Black's Law Dictionary, 10th Edition, any subject matter of ownership within the sphere of proprietary or valuable right, would come under the definition of "thing" (page No.1707) -Similarly, Wharton's Law Lexicon at page No.1869 and 1870, the word "thing" has been defined and it includes "money" - It is a cardinal principle of interpretation of statute that unreasonable and inconvenient results are to be avoided, artificially and anomaly to be avoided and most importantly a statute is to be given interpretation which suppresses the mischief and advances the remedy (Interpretation of statute by Maxwel, 12th Edition, page No.199 to 205) - keeping in view the aforesaid interpretation of the word "thing", 'money' has to be included and it cannot be excluded as prayed by the petitioner from Section 67(2) ground raised in the present petition that the husband of the petitioner retracted the confessional statement does not help the petitioner nor her husband in any manner in view of the settled apex court decision in Surject Singh Chhabra - 2002-TIOL-158-SC-CUS and the decision of the Division Bench of this Court in R. S. Company - keeping in view the totality of the circumstances of the case, the material available in the case diary and also keeping in view Section 67(2) of the CGST Act, 2017, this Court is of the opinion that the authorities have rightly seized the amount from the husband of the petitioner and unless and until the investigation is carried out and the matter is finally adjudicated, the question of releasing the amount does not arise.

SKKA Comments: "Statue is to be given interpretation which suppresses the mischief and advances the remedy". Thus, this judgment highlights that statue shall not be interpreted as per the convenience of either of the party but in a manner which suppresses the mischief and advances the remedy. HC in the judgment has concluded that in exercise of power granted by section 67 of the said act, authorized officer has rightly seized cash of the petitioner since the word "things" used in sec 67(2) shall be given wide meaning and will therefore include money.

Prasanna Kr Bisnoi Vs UOI - HC: Drop interest-recovery proceedings in view of decision taken at 39th GST Council meeting

[TS-677-HC-2020(ORI)-NT]

Odisha HC:

HC disposes writ challenging interest liability for delayed payment of GST u/s 50 of the CGST Act to the tune of Rs.2 Lakhs (Approx.) on **the ground that demand of interest is payable on Input Tax Credit (ITC) set off in GSTR-3B**; Directs Superintendent CGST to dispose of the representation filed by the petitioner for not charging the interest on the availed ITC; Further, taking note of decision taken in the 39th meeting of GST Council held on March 14, 2020 that interest for delay in payment of GST is to be charged on the Net Cash Tax Liability w.e.f. July 01, 2017 retrospectively but not on the ITC; Directs Revenue to drop the proceeding within 8 weeks from date of receipt of the order

SKKA Comments: Above Judgment has sighted decision of GST council to make retrospective amendment in section 50 of CGST Act w.r.t. charging interest on net tax liability and therefore asked proper officer to drop interest recovery proceedings. It is important to note that vide notification 63/2020 (CT) dated 25/08/2020, above amendment has been made effective from 01/09/2020 and not retrospectively. Aforesaid notification was followed by a clarificatory press release dated 26/08/2020 wherein CBIC has assured that above amendment has been made prospectively due to technical limitation but, no recoveries for the past period on gross liability shall be made by the department. Thus, said press release and above judgment comes as a relief to the taxpayers at large and interest, if any, shall be paid on net tax liability.

Bharat Oman Refineries Vs UOI & Ors - HC: Directs Revenue to refund IGST already paid on ocean freight by Assessee, matter no longer res integra.

[TS-675-HC-2020(GUJ)-NT] Gujarat HC

HC allows Assessee's petition, directs Revenue to sanction the refund and pay the requisite amount of IGST already paid by the Assessee pursuant to the Entry No.10 of Notification No.10/2017-IGST dated 28th June 2017 declared to be ultra vires by this Court; Notes that application is in respect of levy of tax under IGST Act, 2017, on the Ocean freight for the services provided by a person located in a non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs stations of clearance in India and the levy of collection of tax of such Ocean freight under the Notification No.10/2017- IGST dated 28th June 2017; Observes that the matter is no longer res integra as the same is covered by the decision of this Court in the case of Mohit Minerals Pvt. Ltd.; Directs Revenue to undertake the process of refunding the requisite amount of IGST at the earliest and see to it that the same is paid to the Assessee within a period of six weeks

SKKA Comments: GST on ocean freight has remained a matter of dispute since GST on RCM basis has been imposed on the same vide notification 10/2017-IGST wherein Importer is made liable to pay tax on RCM basis even where he is not the recipient of service, i.e., Importer was deemed as recipient of service vide above notification. Above judgment directs department to refund tax paid by petitioner on ocean freight as entry 10 of above notification has been declared ultra vires by Gujarat HC in the case of Mohit Minerals Pvt Ltd in the month of January this year. This judgment comes as a relief for the tax payers who undertakes import transactions. It is necessary that the law makers to engage with the trade businesses and deal with the concern of the stake holders to prevent any further litigation on the matter.

Om Logistic Limited Vs Commissioner Delhi GST - assessee is entitled to benefit of cenvat credit under Rule 2 (I) of Cenvat Credit Rules on the Keyman Insurance

2020-TIOL-1266-CESTAT-DEL CESTAT Delhi

The issue arises is, whether the cenvat credit taken by assessee on the "Term Insurance Policy" on the life of Managing Director-Shri Ajay Singhal, is rightly taken, and for determining whether these policies are taken by assessee, which is the Policy Holder in the policy in question, and whether the policy was taken in respect of 'Keyman-person' - It is clearly mentioned in the policy documents, that the benefit under the policy in question is payable to the policy holder – assessee - Nomination is generally required to get benefit of the policy - Where the policy holder is a company under the Company Act, in such cases, no nomination is required - Thus, the Court below was in error in imposing demand along with interest under Section 75 ibid and holding that the assessee is not the beneficiary in the policy - Accordingly, assessee is entitled to benefit of cenvat credit under Rule 2 (I) of Cenvat Credit Rules on the Keyman Insurance - The impugned order is accordingly modified.

SKKA Comments:

The judgment brings out the concept of vested rights relating to Cenavt credit which has been matter of huge debate for transition credit in GST regime. The judgment would benefit many taxpayers who have not transitoned the ITC to the cessess to the GST regime as the refund route is being made applicable.



41ST GST COUNCIL MEETING UPDATES

GST Council 41st meeting concludes, 2 options proposed to States to meet 'Revenue' shortfall- PRESS RELEASE

41st GST Council meeting held on 27/08/2020 to deliberate on issue of compensating states for revenue shortfall concludes; Finance Minister chairing meeting through video conferencing examined the revenue crunch faced by both Centre and states due to COVID -19 pandemic; Council deliberated on 2-options as laid down by Rev. Secry. to meet the compensation gap of Rs. 2.35 lacs crores i.e.

- (i) impact due to COVID-19 worked out at Rs. 97000 crores could be given to states with reasonable rate of interest in consultation with RBI
 - (ii) entire Gap can be met by borrowing facilitated by RBI;

After discussing the expectation of States in detail, Council assured to facilitate States by talking to RBI to ensure they get bi-monthly compensation & yields are not hard;

States have asked to put options in detailed note and give them 7 working days after which they will come back, accordingly, another GST council meeting may be anticipated soon; Clarifies that this option is only available for current year and shall be reviewed early next year.

AUTO-DRAFTED ITC STATEMENT IN GSTR-2B INTRODUCED FOR JULY, 2020 ON TRIAL BASIS

Auto-drafted ITC statement in GSTR-2B introduced for July, 2020 on trial basis

Pursuant to 39th GST Council Meeting's recommendation, Finance Ministry introduces GSTR-2B for the month of July 2020, an auto-drafted input tax credit (ITC) statement which would aid in assisting/determining the input tax credit that is available for every taxpayer; Clarifies that it is a static statement and will be made available for each month, on the 12 day of the succeeding month; Discussing key features of GSTR-2B, while explaining that it is expected that GSTR-2B will help in reduction in time taken for preparing return, minimising errors, assist reconciliation & simplify compliance relating to filing of returns; Advises the taxpayers that (i) this is the first time that the statement is being introduced and it should be referred to only for feedback purposes & (ii) to view the detailed advisory relating to GSTR-2B on the common portal before using the statement: CBIC

Key features:

- 1. GSTR-2B is an **auto-drafted Input Tax Credit (ITC) statement** generated for every recipient, on the basis of the information furnished by their suppliers, in their respective **Form GSTR-1 & 5 and Form GSTR-6 filed by ISD.**
- 2. Taxpayers can now reconcile data generated in Form GSTR-2B, with their own records and books of accounts. Using this reconciliation, they can now file their Form GSTR 3B and they can ensure that
 - o no credit is taken twice,
 - o credit is reversed as per law, & tax on reverse charge basis is paid

AUTO-DRAFTED ITC STATEMENT IN GSTR-2B INTRODUCED FOR JULY, 2020 ON TRIAL BASIS

- 3. Generated Form GSTR-2B consists of:
 - A summary of ITC available as on the date of its generation and is divided into credit that can be availed and credit that is to be reversed (Table 3)
 - A summary of ITC not available and is divided into ITC not available and ITC reversal (Table 4)
- 4. It is a static statement, generated once on 12th of following month.
 - It consists of all documents filed by suppliers/ISD in their Form GSTR-1, 5 & 6, between 00:00 hours on 12th day of preceding month to 23:59 hours, on 11th day of current month. Thus, statement generated on 12th of August will contain data from 00:00 hours of 12th July to 23:59 hours of 11th August
 - The details filed in GSTR-1 & 5 (by supplier) & GSTR-6 (by ISD) would reflect in the next open GSTR-2B of the recipient irrespective of supplier's/ISD's date of filing. For e.g, if a supplier files a document INV-1 dt. 15.07.2020 on 11th August, it will get reflected in GSTR-2B of July (generated on 12th August). If the document is filed on 12th August, 2020 the document will be reflected in GSTR-2B of August (generated on 12th September).
- 5. It also contains information on **imports of goods from the ICEGATE system including data on imports from Special Economic Zones Units / Developers. (This will be made available in GSTR-2B from 12th September 2020 <u>onwards</u>). Reverse charge credit on import of services is not part of this statement and need to be entered by taxpayers in Table 4(A) (2) of FORM GSTR-3B.**

INTRODUCTIO N OF TABLES IN GSTR-2A FOR DISPLAYING DETAILS OF IMPORT/SEZ SUPPLIES GSTN launches new functionality in GSTR-2A by inserting two new tables for displaying details of import of goods from overseas and inward supplies made from SEZ units/SEZ developers; Clarifies that taxpayers can now view their bill of entries data which is received by GSTN from ICEGATE System (Customs) whereas currently, the system is displaying data up to August 6, 2020;

Notes that system currently does not contain import information for bill of entries filed at non-computerized ports (non-EDI ports) and imports made through courier services/post office; Specifies that import information for bill of entries filled at non-computerized ports (non-EDI ports) and through courier services/post-service along-with amendment information made in the details of bill of entries will be made available shortly: GSTN



Notification No. 62/2020 Dated 20th August, 2020

The CBIC notifies GST registration for new taxpayers/applicants based on Aadhar authentication wef. 21st August, 2020.

Applicant may opt for Aadhar verification or not.

If he opts

Registration will be granted within 3 days.

If he does not opt

Registration will be granted only after physical verification of the place of business or documentary verification which may take 21 days or more.

Notification No. 62/2020 Dated 20th August, 2020

How it works

At the time of applying GST registration, an option is given to select if he/she wishes to authenticate Aadhar.

If he selects "Yes" an authentication link will be shared on GST registered mobile No.and email Ids of all the promoters/ partners and authorised signatories.

Upon clicking the authentication link, a screen will come with a declaration where the applicant needs to enter an Aadhar No. and click on "Validate".

On successful matching of the details an OTP will be sent on the email Id and mobile registered with the Aadhar that has been entered by the applicant.

By entering the OTP, a message of successful e-KYC authentication will be shown.

Notification No. 62/2020 Dated 20th August, 2020

If the applicant opts "No" for Aadhar authentication, then registration will be granted only after physical verification of premises or document verification.

Deemed approval of application

• If no action taken by concerned tax authority within 3 days/21 days of submission of application, then registration application will be deemed approved.

Aadhar authentication link is valid for a period of 15 days. If Aadhar authentication link is used once for authentication, then it cannot be accessed again.

Notification No. 63/2020 Dated 25th August, 2020

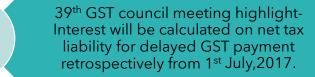
`The CBIC hereby appoints 1st September, 2020 as the date on which the provisions of Section 100 of Finance(No.2) Act 2019 (23 of 2019) shall come into force.

Section 100 of the Finance Act ,2019 inserted a provision to Section 50 of the GST Act to clarify that the interest will be levied on net basis.



"Provided that interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date according to Section 39 shall be levied on that portion of the tax that is paid by debiting electronic cash ledger.

CBIC clarifies that no recoveries shall be made for the past period in accordance with the decision taken in 39th GST council meeting.





ACTION POINTS FOR SEP 2020

1. Amendment in GSTR-1 for FY 2019-20

As per first proviso to Section 37(3) of the <u>CGST Act</u>, <u>2017</u>, no rectification of error or omission in respect of the details furnished under sub-section (1) shall be allowed after furnishing of the return under section 39 for the month of September following the end of the financial year to which such details pertain, or furnishing of the relevant annual return, whichever is earlier.

Correspondingly the customers/clients may also be informed about the time limit for amendment in GSTR-1 so that in case any entry need to be amended in GSTR-1 basis the reconciliation undertaken for FY 2019-20, the same can be done while filing GSTR-1 of September 2020. No Amendment in GSTR-1 for the relevant period is allowed after the due date of filing of GSTR-1 of September 2020.

2. GSTR-2A Reconciliation for FY 2019-20

GST law has affixed the time limit for availment of Input tax credit for the financial year under section 16(4) of the CGST Act, 2017.

Thus, in order to avail complete ITC for FY 2019-20, it is imperative that all the registered person may complete their GSTR-2A reconciliation for FY 2019-20, so that;

- All the missed out credit may be availed subject to GSTR-2A.
- Credits appearing in GSTR 2A but not availed in purchase register/ GSTR-3B: Eligibility
 of such credits should be identified and availed on or before filing the return for the
 month of September 2020. Any left out ITC for the period of 2019-20 may be loss to the
 registered person if not claimed within the due date of filing GSTR-3B
- In case, the taxpayer has claimed ITC for the inward supply in books of accounts and also GSTR-3B but the credit of the same is not reflected in GSTR-2A, follow up may be undertaken so that it is reflected in GSTR-2A till the filing of GSTR-3B of September 2020.

ACTION POINTS FOR SEP 2020

3. GSTR-2A Reconciliation from Feb 2020 to Sep 2020 in GSTR-3B of Sep 2020

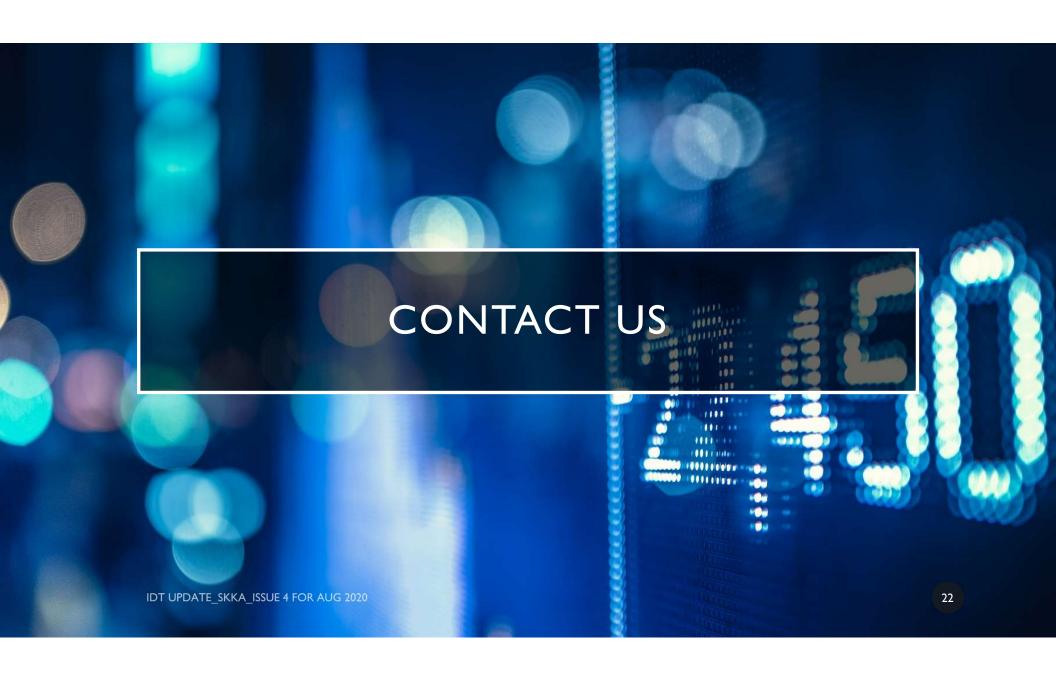
As per the proviso to Rule 36(4) inserted vide Notification No. 30/2020—Central Tax dated 03-04-2020; "the said condition [Rule 36(4)] shall apply cumulatively for the period February, March, April, May, June, July and August, 2020 and the return in FORM GSTR-3B for the tax period September, 2020 shall be furnished with the cumulative adjustment of input tax credit for the said months in accordance with the condition above"

GSTR-2A reconciliation for the period Feb 2020 to Sep 2020 has to be undertaken cumulatively and total ITC availed in the GSTR-3B from February 2020 to September 2020 cannot exceed more than 10% of eligible credit.

4. Reconciliation of Outward Supply between Books of Accounts& Returns for FY 2019-20

The registered person may also undertake reconciliation between books and return for FY 2019-20 so that all the missed out Outward supply may be reported till Sep 2020

- Reconcile Outward Supply as declared in Books vs declared in GSTR-1 Return.
 Any rectification/ modification need to be undertaken till filing of GSTR-1 of Sep 2020
- Adjustment in GSTR 3B: Any adjustment (except debit notes) for the last financial year should be made before filing GSTR-3B for month of September. The amendments cannot be made post the due date for the month of September i.e. 20 October 2020. Therefore, it is imperative to file the return on or before the due date.
- Issuance of credit notes: As per Section 34(2) of CGST Act, Credit notes pertaining to GST invoices issued in the last financial year cannot be reported under GSTR-1 post filing the return for the month of September 2020 or filing of annual return of relevant FY whichever is earlier. Therefore, any credit notes for FY 2019-20 should be issued by the month of September 2020.





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