

DCoD

DCo Digest

July 2021 Edition



Dhadda & Co.
CHARTERED ACCOUNTANTS



Newsletter



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We are thrilled to tell our readers that we are just a month away from completing 1 year of our newsletter Dco Digest. We are overwhelmed with the constant love and support that we have received from our readers.

In this Edition, we have once again come up with some more relevant updates from Indirect Taxes and the new features that have been deployed or, are expected to be deployed on GST Portal and landmark judgments. This time our experts chose to express their views on the recently filed Writ Petition before the Hon'ble High Court of Madhya Pradesh in the case of M/s Shri Shyam Baba Edible Oils. We hope you all find this useful.

Enjoy Reading!

Preface



FOREIGN TRADE POLICY, 2015 – 2020

Extension of foreign Trade Policy, 2015 – 2020 w.e.f. from March 31, 2021 till September 30, 2021.

The DGFT vide Notification No. 60/2015-2020, dated March 31, 2021, till has issued the amendments in which exemption from Integrated Goods and Service Tax and Compensation Cess up to September 30, 2021, has been given to the following:

Imports against Advance Authorisations

Capital goods imported under Export Promotion Capital Goods Authorisation for physical exports.

Imports and/ or procurement by an Export Oriented Unit (“EOU”), Electronics Hardware Technology Park (“EHTP”), Software Technology Park (“STP”) or Bio Technology Park (“BTP”) from bonded warehouse in Domestic Tariff Area (“DTA”) or from the international exhibition held in India.

Updates

Applications under MEIS, SEIS, ROSL, ROSCTL in the DGFT it modules on hold for temporary period

The DGFT issued Trade Notice 08/2021-22 dated July 08, 2021 w.r.t. acceptance, processing, and issuance of claims under MEIS, SEIS, ROSL, ROSCTL in the DGFT IT modules are on hold for a temporary period due to a change in allocation procedure.

Issuance of benefits/scrips under MEIS, SEIS, ROSL, and ROSCTL Schemes would be on hold for a temporary period due to changes in the allocation procedure. During this period, no fresh applications would be allowed to be submitted at the online IT module of DGFT for these schemes and all submitted applications pending for issuance of scrips would also be on hold. Trade would be suitably informed, once the issuance of scrips is opened again.

Filing of Annual returns by composition taxpayers. - Negative Liability in GSTR-4

Filing of Annual returns by composition taxpayers. - Negative Liability in GSTR-4 Instances have come to notice where taxpayers are reporting negative liability appearing in their GSTR-4

Background: Since FY 2019-20, composition taxpayers have to pay the liability through Form GST CMP-08 on quarterly while GSTR-4 Return is required to be filed on annual basis after the end of a financial year.

Reason for Negative Liability in GSTR4: The liability of the complete year is required to be declared in GSTR-4 under applicable tax rates. Taxpayers should fill up table 6 of GSTR-4 mandatorily. In case, there is no liability, the said table may be filled up with a '0' value. If no liability is declared in table 6, it is presumed that no liability is required to be paid, even though, the taxpayer may have paid the liability through Form GST CMP-08. In such cases, liability paid through GST CMP-08 becomes excess tax paid and moves to Negative Liability Statement for utilization of same for subsequent tax period's liability.



CBIC issued clarification on extension of limitation under GST in terms of Hon'ble Supreme Court's Order dated 27.04.2021

The extension of timelines granted by Hon'ble Supreme Court vide its Order dated April 27, 2021, is applicable in respect of any appeal which is required to be filed before Joint/ Additional Commissioner (Appeals), Commissioner (Appeals), Appellate Authority for Advance Ruling, Tribunal, and various courts against any quasi-judicial order or were proceeding for revision or rectification of any order is required to be undertaken, and does not apply to any other proceedings under GST Laws.

Compiled by Priyanshi Gupta

Updates



Judicial Pronouncements

Judgement 1

ABDUL MANNAN KHAN Vs THE GOODS AND SERVICES TAX COUNCIL ORS [HIGH COURT OF CALCUTTA] 2021-TIOL-1197-HC-KOL-GST

Issue:

Whether GSTR-1 can be rectified by a registered person after the expiration of the rectification period at the end of September following the relevant year?

Facts:

The case of the petitioner is that a particular sale made to a registered person pertaining to the period from Jan 2018 to Mar 2018 was inadvertently uploaded as an unregistered sale. Subsequently, in September 2019, that is, after 1½ years of the period concerned, the recipient informed the petitioner that they were not getting credit of the Input Tax Credit due to an inadvertent mistake of the petitioner. The petitioner thereafter made an application seeking rectification of the GSTR-1 Form for the period of January 2018 to March 2018.

This application was rejected on the ground that the period for making such an application expired at the end of September 2018 as per Section 37 of the West Bengal Goods and Services Tax Act, 2017. The petitioner filed the writ petition concerning the rejection of his claim to rectify the accounts of the period January 2018 to March 2018.

Analysis

The Court referred to Section 37 of the Act which provides that no rectification of error or omission in respect of the details furnished 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.

The Court noted that the Act does not provide any provision for appeal. Furthermore, there is no provision for acceptance of such delay.

It was observed that Court has no reason to interfere as the statute has provided a period of limitation for seeking rectification. The writ court cannot, by itself, condone such a limitation period. Condoning such delay would make the provision otiose and open the floodgates for similar cases.

DCO Excerpts:

It is an important judgment wherein the period of limitation for rectification of errors and omissions in GSTR-1 laid down under Section 37 has been read strictly and it has been held that even writ courts cannot condone such a delay as this would make the provision of law redundant.

Hence the taxpayers must note that delay in rectification of errors like reporting of B2B sales as B2C sales or omission to report any document in GSTR-1 cannot be condoned even by Courts beyond September following the end of relevant Financial Year.

Hence matching of actual records with filed records must be done before September and rectifications should be made before the due date of filing of GSTR-3B for the month of September.

(Compiled by Aayushi Jain and CA Shuchi Sethi)



Judgement 2

Avon Udhyog Vs State of Rajasthan (Rajasthan High Court) [2021] 128 taxmann.com 122 (Rajasthan)

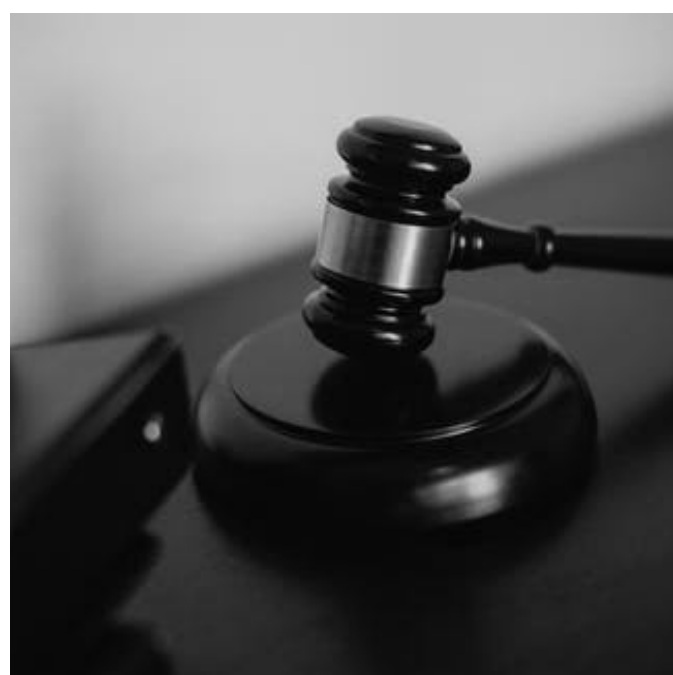
Issue:

Suspension of registration certificate after expiry of 30 days from the date of order of suspension of registration.

Facts:

A search was conducted on premises of the Petitioner on 03.02.2021 and in furtherance to it, a notice was issued on 04-2-2021, proposing to cancel petitioner's registration certificate. Simultaneous with the notice proposing to cancel the registration, the tax officer kept his registration certificate under suspension with immediate effect.

Pursuant to the notice of cancellation of registration, petitioner has furnished his detailed reply on 20-3-2021, yet the respondents have not passed any final order regarding petitioner's registration, due to which petitioner's right to trade has been kept in suspended animation.



Analysis

The petitioner submitted that although as per the provisions of section 29 of the RGST Act, 2017, amended vide Finance Act, 2020 and Rules framed thereunder, the suspension of registration certificate does not provide a grant of opportunity of hearing in express terms, but the principles of natural justice warrants that before suspending a license, a reasonable opportunity of hearing must be granted to an assessee.

He also submitted that the Assessing Authority is required to take a final decision pursuant to notice of cancellation of registration at the earliest, so that a businessman's fundamental rights enshrined and guaranteed under Article 19(1) (g) of the Constitution of India is not kept in abeyance on account of suspension of registration.

Referring to provisions of Rule 22(3) CGST Act, 2017, the petitioner submitted that the order of suspension of registration certificate automatically comes to an end on expiry of 30 days, since the rule mandates an order of cancellation to be passed within 30 days.

The department in reply submitted that the petitioner was required to file a reply to the notice within a period of 7 days and it has failed to file reply within the stipulated time.

The Court paid regard to the facts and observed as that suspension of registration of an assessee has its own consequences - it brings the entire business of an assessee to a standstill. In a way it is worse than cancellation. Against cancellation, an assessee can take legal remedies but against suspension pending an inquiry, even if the assessee chooses to take remedies, the authorities or the Court(s) would normally show reluctance.

Conclusion:

The Court held that in its opinion the proceedings of cancellation of registration cannot be kept hanging fire on any pretext, including that assessee, failed to file reply within the time allowed. Authority issuing the notice is statutorily bound to pass an order in terms of Rule 22(3) of the Rules.

DCO Excerpts:

Suspension of GST registration cannot be extended for more than 30 days after notice of cancellation. It is mandatory for the proper officer to pass an order of cancellation of registration within 30 days.

It has been laid down that suspension beyond such statutory time limit hampers the business efficiency and it is constitutionally invalid. It is even graver because there is no order for suspension against which an assessee can reach to Court and it becomes even more challenging to ease of doing business as against cancellation.

Hence a taxpayer must object to arbitrary exercise of powers of suspension.

(Compiled by Aayushi Jain and CA Shuchi Sethi)



Expert's Insight



Service of Notices & Orders on “Common Portal” - But where is the “Common Portal?”

Recently in Writ Petition filed before the Hon'ble High Court of Madhya Pradesh in the case of M/s Shri Shyam Baba Edible Oils vs The Chief Commissioner and another (W.P. No. 16131/2020) grievance was placed by the Petitioner that a Show Cause Notice for proceedings under Section 74 of the CGST Act 2017 (hereinafter referred to as “Act”) was not communicated to them at all and thus the question of natural justice and violation of provisions of Rule 142 of the CGST Rules 2017 was raised.

Interestingly, the court was appraised by the revenue (CGST department) that Show Cause Notice was in fact, duly communicated to the petitioner's registered email id and in spite of the same, no reply to the SCN was given. However after bare perusal of the provisions of Rule 142(1) of the CGST Rules 2017 which specifies that “summary of SCN” is required to be served in the specified format (i.e. DRC-01) “electronically”, the Court concluded that the only mode prescribed for communicating the show-cause notice/order is by way of uploading the same on “website of the revenue”.

Hence, on the basis of the above reasoning, it was concluded in a given case that procedure laid down in Rule 142 of the Rules has not been followed and thus the SCN issued was struck down.

Though the given judgment brought a sigh of relief for the taxpayer, it however did not answer a very critical question that “which website should be treated as website of revenue?”. On the face of it, this question may appear to be straightforward with only one common answer i.e. common portal as specified under Section 146 of the Act. Further it may also give an impression that the common portal for the given purpose i.e. service of SCN and Orders for proceedings under Section 73, 74, or even 129 is www.gst.gov.in. But when one makes an endeavour to read certain sections along with the notifications issued in this regard, the obvious question throws up “not too obvious answers”, which are confusing.

Rule 142(1) has been issued under Chapter 18 of the CGST Rules 2017 titled "Demand and Recovery". Further, the power to make rules flows from Section 164 of the Act with basic intention to carry out the provisions of the law. Thus in order to carry out the provisions of Chapter 15 of the Act titled as "Demand and Recovery" only, the given rule has been framed. The provisions regarding the issuance of SCN and Order in Rule 142 is read as under

RULE 142. Notice and order for demand of amounts payable under the Act. –

(1) The proper officer shall serve, along with the notice issued under section 52 or section 73 or section 74 or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130, a summary thereof electronically in FORM GST DRC-01,

(5) A summary of the order issued under section 52 or section 62 or section 63 or section 64 or section 73 or section 74 or section 75 or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130 shall be uploaded electronically in FORM GST DRC-07*, specifying therein the amount of tax, interest and penalty payable by the person chargeable with tax.

On a closer reading of sub-rule (1) and sub-rule (5) it can be noted that for service of summary of SCN the rule uses the words "shall serve electronically" whereas for service of summary of Order it uses the words "shall be uploaded electronically". Hence the different usage of words for different documents i.e. "serve" and "uploaded" indicate differences in scope of the manner in which summary of SCN and/or order can be communicated to the assessee. Further the methods of communication of notices or orders have actually been given in the law itself under Section 169 of the Act. The said section has not been discussed at all in the judgment but holds greater relevance for the question which has been raised by the authors.

The said Section 169 under clause (1)(c) and 1(d) brings out two methods on the basis of which the electronic delivery of the notices or orders etc has been specified. The relevant extracts are as under

SECTION 169. Service of notice in certain circumstances. –

(1) Any decision, order, summons, notice or other communication under this Act or the rules made thereunder shall be served by any one of the following methods, namely :—

(c) by sending a communication to his e-mail address provided at the time of registration or as amended from time to time; or

(d) by making it available on the common portal; or

The given provision is applicable for all types of decisions, orders, summons, notices, and other communications to be made under the Act to the assessee. Now, in this context, it appears that the answer to the question i.e. "website of revenue" as specified by the Hon'ble Court in its order (supra) is common portal. In fact otherwise also, with the advent of GST, the common portal has been treated as the backbone for the successful implementation for the provisions of the Act and rules made there under. It has served as a single interface for all GST related compliances. Hence at this point, it would be safe to agree that if the SCN, Orders etc are uploaded on the common portal then it should be treated as valid compliance of the provisions of Rule 142 read with Section 169(1)(d) above.

Interestingly, the term common portal has been defined under Section 2(26) of the Act which is read as under

(26) "common portal" means the common goods and services tax electronic portal referred to in section 146;

Hence in light of the above, the provisions of Section 146 of the Act hold greater relevance to understand the inclusions, exclusions, and usage of common portal as envisaged in the law.

The provisions of Section 146 of the Act are read as under

SECTION 146. Common Portal. – The Government may, on the recommendations of the Council, notify the Common Goods and Services Tax Electronic Portal for facilitating registration, payment of tax, furnishing of returns, computation, and settlement of integrated tax, electronic way bill and for carrying out such other functions and for such purposes as may be prescribed.

On minute reading of the provisions of Section 146 of the Act, it comes out that the common portal needs to be notified by issuing a notification and the same can be done for facilitating specific functions of

Registration,

Payment of tax,

Furnishing of returns,

Computation and settlement of integrated tax,

Electronic way bill

Such other functions and purposes as may be prescribed

Taking power from Section 146, up till now, relevant notification issued under said section are:

Notification No	Purpose	Website Address
04/2017-CT, dt. 19-06-2017 read with 9/2018-CT dt. 23-1-2018	For facilitating registration, payment of tax, furnishing of returns and computation and settlement of integrated tax	www.gst.gov.in
9/2018-CT dt. 23-1-2018	Furnishing electronic way bill.	www.ewaybillgst.gov.in
69/2019-CT dt. 13-12-2019	Preparation of the invoice in terms of sub-rule(4) of rule 48	(i) www.einvoice1.gst.gov.in; (i) www.einvoice1.gst.gov.in; (ii) www.einvoice2.gst.gov.in; (iii) www.einvoice3.gst.gov.in; (iv) www.einvoice4.gst.gov.in; (v) www.einvoice5.gst.gov.in; (vi) www.einvoice6.gst.gov.in; (vii) www.einvoice7.gst.gov.in; (viii) www.einvoice8.gst.gov.in; (ix) www.einvoice9.gst.gov.in; (x) www.einvoice10.gst.gov.in.

No other notification has been issued under Section 146 of the Act till now. It means that service of notice, order, summon, or any other communication under Section 169(1)(d) cannot be done on “GSTN” or “www.gst.gov.in” until same is notified under Section 146 for the purpose of carrying out provisions of Section 169(1)(d).

In fact, as it stands today, the assessee has more than 1 common portal (supra) to its access with different login credentials for different purposes. But none of them are notified for the purpose of service of documents as specified under Section 169 of the Act.

Hence even in the background of the aforesaid judgment delivered by the Hon’ble MP High Court, the revenue has been asked to follow the procedure as given under Rule 142 of the Act and issue a fresh SCN. If in a given case, the revenue assumes that www.gst.gov.in is the “website of the revenue” (as mentioned by the Hon’ble Court) in its judgment or treats it as a common portal for purpose of Section 169 read with Rule 142, then also, the petitioner can come forward and argue that procedure laid down under Rule 142 has not been followed because www.gst.gov.in is neither the common portal for given purpose nor it is the website of revenue for uploading of notices.

In fact until the time a notification with retrospective effect is not issued under Section 146 of the Act for the given purpose, all the proceedings up till now undertaken by the revenue across India under various sections of demand and recovery or even for interception of the vehicle during movement are incorrect and violative of the procedure and manner laid down through the Act. In the light of given High Court judgement and also due to lethargic approach of the Government, a sharper, heavier and a legally-backed argument to quash all the proceedings are available in the armoury with the assessee.

Further, whether a common portal can be notified with retrospective effect is another question which appears to settle in assessee’s favour if something of that sought is tried by the Government.

However to the government’s favour if retrospective amendment is not brought then still the proceedings initiated up till the issuance of the notification may not be invalid in all those cases where the assessee has acted upon the notices or orders uploaded on the website www.gst.gov.in due to operation of Section 160(2). The said section is read as under

SECTION 160. Assessment proceedings, etc., not to be invalid on certain grounds

(2) The service of any notice, order or communication shall not be called in question if the notice, order, or communication, as the case may be, has already been acted upon by the person to whom it is issued or where such service has not been called in question at or in the earlier proceedings commenced, continued, or finalised pursuant to such notice, order, or communication.

But, this obvious miss of notifying common portal by the Government would come to the rescue in all those cases where the time limits have passed and the assessee have neither replied to the SCN or any other notice nor has filed an appeal. Clearly, in all those cases the mystery of the common portal opens up a ray of hope to get an opportunity to undo such confirmed demands and get a fresh chance.

But the aforesaid chaos can settle only when a notification in this regard is issued under Section 146 of the Act. Up till then, the Hon’ble High Court(s) may have to entertain a lot more writ petitions on given question.

Written by CA Yash Dhadda & CA Shuchi Sethi

New on GST Portal

Upcoming Functionalities to be deployed on GST Portal in The Month Of July, 2021

Module	Form/ Functionality	Functionality released/ to be released for Taxpayers	Current status of deployment
Registration	Timelines for filing of Application for Revocation of Cancellation of Registration in Form GST REG-21	<ul style="list-style-type: none"> In view of the spread of pandemic COVID-19 across many parts of India, vide Notification No 14/2021-CT, dated 1st May, 2021, read with vide Notification No 24/2021-CT, dated 1st June, 2021, the Government had extended the date for filing of various applications falling during the period from the 15th April, 2021 to 29th June, 2021, till 30th June, 2021. In addition to this, timeline for filing of Application for Revocation of Cancellation of Registration, which were due on 15th of April 2021, had also been extended till 30th June 2021 on the GST Portal. Accordingly, these extensions have now ceased to be effective w.e.f. 1st July, 2021, and timelines for filing of application for revocation of cancellation is now changed to 90 days (as was earlier) on the GST Portal, from date of Order of Cancellation of Registration in Form GST REG-19. 	Deployed on 1st July, 2021

Module	Form/ Functionality	Functionality released/ to be released for Taxpayers	Current status of deployment
Returns	Information regarding late fee payable provided in Form GSTR-10	<ul style="list-style-type: none"> • Taxpayers whose registration is cancelled, at the time of filing of last return in Form GSTR-10, will now be provided with details of late fee payable by them, for the delayed filing of any of the previous returns/ statements in a table, for their assistance in filing of said return by them. • This information can be viewed by clicking on a hyperlink provided under the column "Late Fee Payable" in the online Form GSTR- 10. 	
Returns	Auto-population of data in Form GSTR-11 on basis of Forms GSTR-1 / 5 filed by their suppliers	<ul style="list-style-type: none"> • The UIN holders file details of their inward supplies in Form GSTR-11 on a quarterly basis. They can subsequently file for refund (if required) in Form GST RFD- 10, for the quarter, in which summary of the documents is auto-populated from their Form GSTR-11, in an editable mode • Form GSTR-11 of the UIN holder would be generated with details of their inward supplies, on basis of Forms GSTR-1 / 5 filed by their suppliers, which will subsequently help them in filing their refund claims 	



Important changes w.r.t. QRMP Scheme implemented on the GST Portal

Auto population of GSTR-3B liability from IFF and Form GSTR 1:

A taxpayer under QRMP Scheme can declare their liability through optional IFF for Month 1 and Month 2 of a quarter & Form GSTR-1 for Month 3 of that quarter. Declaration of liability in these forms would now be auto-populated in their Form GSTR-3B (Quarterly) for that quarter, based on their filed Form GSTR-1 and IFF. These fields are editable and in case their values are revised upwards or downwards, the edited field(s) would be highlighted in red colour and a warning message will be displayed to the taxpayer. However, the system would not prevent taxpayer from the filing of Form GSTR-3B with edited values.

Nil filing of Form GSTR-1 (Quarterly) through SMS:
Nil filing of Form GSTR-1 (Quarterly) through SMS has been enabled for taxpayers under QRMP Scheme. They can now file it by sending a message in specified format to 14409. The format of the message is < NIL > space < Return Type (R1) > space < GSTIN > space < Return Period (mmyyyy) >.

However, NIL filing through SMS can't be done in following scenarios:

If IFF for Month 1 or 2 of a quarter is in Submitted stage, but not filed.

If invoices are saved in IFF for Month 1 or 2 of a quarter, which was not submitted or filed by due date.

Impact of cancellation of registration on liability to file Form GSTR-1 :

In case registration of a taxpayer under QRMP Scheme is cancelled, with the effective date of cancellation being any date after 1st day of Month 1 of a quarter, they would be required to file Form GSTR-1 for the complete quarter, as the last applicable return. For example, if the taxpayer's registration is cancelled w.e.f. 1st of April, he/she is not required to file Form GSTR-1 for Apr-June quarter and Form GSTR-1 for Jan-Mar Quarter shall become the last applicable return. However, if the registration is cancelled on a later date during the quarter, the taxpayer would be required to file Form GSTR-1 for Apr-June quarter. In such cases the filing will become open on 1st of the month following the month with cancellation date i.e. if cancellation has taken place on 20th May, Form GSTR-1 for Quarter Apr-June can be filed anytime on or after 1st of June.

List of GSTINs required to generate IRN

National Informatics Centre (NIC) has issued a list of GSTINs from time to time generating IRN i.e. taxpayers who are mandatorily required to follow E-Invoicing provisions. The List of GSTINs can be accessed at: <https://einvoice1.gst.gov.in/Others/GSTINsGeneratingIRN>

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