



Dhadda & Co.
CHARTERED ACCOUNTANTS

DCo Digest

March 2025
Edition



Newsletter



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The landscape of Goods and Services Tax (GST) in India continues to evolve with constant legislative, procedural, and jurisprudential developments. This compilation is an endeavour to bring together recent updates, judicial interpretations, and procedural advancements in GST to serve as a comprehensive reference for our readers.

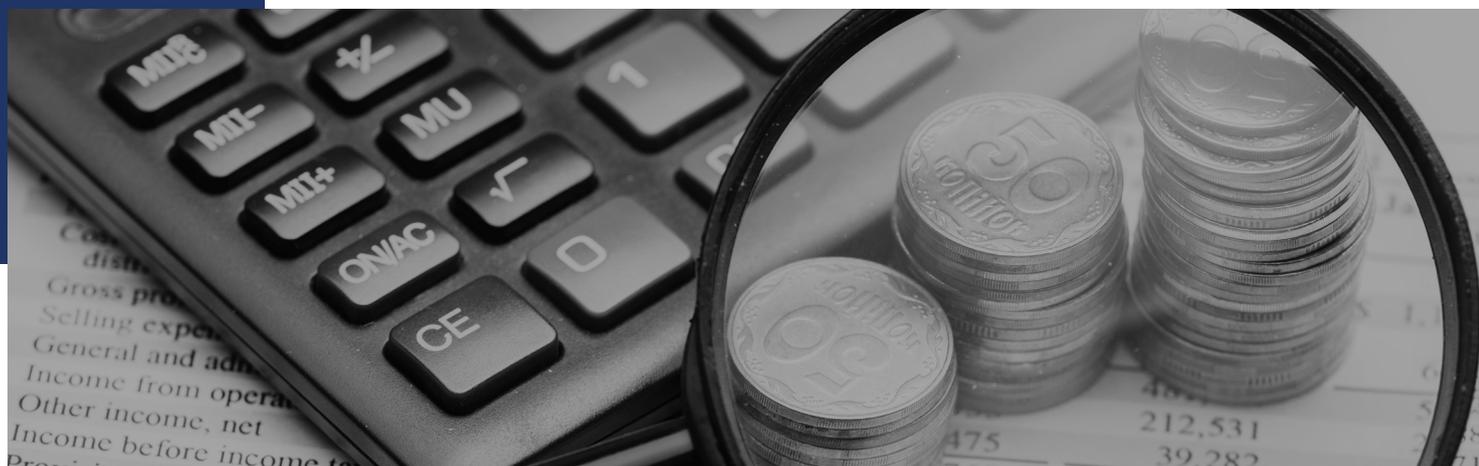
This edition covers a range of pertinent topics. We have analysed the current notifications and circulars along with key judicial rulings that shape GST interpretation and enforcement. We have also compiled the recent updates on the GST portal to help improving compliance efficiency.

We are also honoured to announce that an article authored by one of our valued team members, on “Waiver of interest for delayed filing”, has been featured in Taxmann, a leading publication in the field of taxation.

We trust that this publication will serve as a reliable resource for professionals engaged in GST compliance, litigation, and advisory services. We welcome feedback and suggestions to further enrich the content and make future editions even more relevant and insightful.

Insightful Reading!!

Preface



Updated Guidelines on Arrest and Bail under GST

Instruction No. 01/2025-GST dated 13-01-2025)

The CBIC has issued Instruction No. 01/2025-GST (dated January 13, 2025), amending earlier guidelines on arrest and bail under the GST framework. This update follows the judgment of the Delhi High Court in *Kshitij Ghildiyal vs. Director General of GST Intelligence* (W.P. (CRL) No. 3770/2024), which emphasized the need for arrest grounds to be communicated in writing.

The Supreme Court, in *Prabir Purkayastha vs. State* (NCT of Delhi) (Judgment dated May 15, 2024), distinguished between “reasons for arrest” (formal parameters) and “grounds of arrest” (specific details justifying an individual’s arrest). Arrested individuals must be provided written grounds of arrest along with the Arrest Memo, ensuring transparency and legal compliance.

Amendment to Existing GST Instructions:

Para 4.2.1 of Instruction No. 02/2022-23 (dated August 17, 2022) has been revised to mandate that arrest grounds be explicitly communicated and documented in writing. The arrested person must acknowledge receipt of the written grounds at the time of service. This update reinforces due process and safeguards the rights of individuals under the GST framework.

GST Clarification on Co-Insurance and Reinsurance Transactions

Circular No. 244/01/2025-GST dated 28-01-2025

Following the 53rd GST Council meeting on June 22, 2024, the activities listed below have been added to Schedule III of the CGST Act, 2017, and will be treated as neither a supply of goods nor services w.e.f. 1-11-2024:

- **Co-Insurance Premium Apportionment:** The apportionment of insurance premium by the lead insurer to co-insurers **will not be considered a supply** under GST, provided that the lead insurer pays GST on the full premium received from the insured.

- **Reinsurance Commission:** The deduction of ceding/reinsurance commission from the reinsurance premium **will not be treated as a taxable supply**, as long as the reinsurer pays GST on the **gross reinsurance premium** (inclusive of the commission).

This clarification provides much-needed certainty to the insurance sector, ensuring consistent GST treatment of co-insurance and reinsurance transactions.

GST Clarifications on certain services

Circular No. 245/02/2025-GST dated 28th January 2025

The CBIC has provided clarifications on key GST-related matters based on recommendations from the 55th GST Council meeting held on 21st December 2024 in Jaisalmer. Below are the key clarifications:

1. GST Applicability on Penal Charges by Regulated Entities

The Reserve Bank of India (RBI) directed banks and non-banking financial companies (NBFCs) to replace penal interest with penal charges for non-compliance with loan terms, effective from 1st January 2024. These charges aim to enforce credit discipline rather than serve as a consideration for tolerating non-compliance.

As per the previous clarification in Circular No. 178/10/2022-GST, payments such as liquidated damages do not constitute consideration for tolerating an act. Similarly, penal charges levied by Regulated Entities (REs) are considered charges for breach of contract rather than taxable consideration. Thus, no GST is applicable on such penal charges.

2. GST Exemption for Payment Aggregators on Small Transactions

A clarification was sought on whether Payment Aggregators (PAs) qualify for GST exemption under Sl. No. 34 of Notification No. 12/2017-CTR, applicable to transactions up to Rs. 2,000 in a single transaction via credit, debit, or charge cards. The exemption is granted to acquiring banks, which are defined as entities making payments to merchants accepting such cards.

As per RBI guidelines, PAs facilitate payments by receiving funds from customers and transferring them to merchants. Since PAs fulfill the role of an acquiring bank in this context, they qualify for the exemption under Sl. No. 34. However, Payment Gateway (PG) services are not covered under this exemption.

3. Regularization of GST on Research & Development Services by Government Entities

Notification No. 8/2024-CT (Rate) exempted Research and Development services provided by Government Entities, research associations, universities, and other institutions notified under clause (ii) or (iii) of sub-section (1) of section 35 of the Income-tax Act, 1961, against government grants, effective from 10-10-2024.

For the period between 1st July 2017 and 9th October 2024, GST on such services will be **regularized on an 'as is where is' basis** as per the 55th GST Council's recommendation.

4. GST Regularization for Skilling Services by NSDC Training Partners

Skilling services provided by Training Partners approved by the National Skill Development Corporation (NSDC) were exempt under Notification No. 12/2017-CTR. However, the exemption was withdrawn post-10th October 2024.

Recognizing its impact on the skilling ecosystem, the GST Council reinstated the exemption via Notification No. 6/2025-CT (Rate), effective 16th January 2025. For the period 10th October 2024 to 15th January 2025, GST paid on these services will be regularized on an 'as is where is' basis.

5. GST Applicability on Facility Management Services for MCD Headquarters

The Municipal Corporation of Delhi (MCD) sought clarity on the GST exemption for facility management services, including housekeeping and maintenance, at its headquarters.

As these services are not related to functions entrusted to a Municipality under Article 243W of the Constitution, they do not qualify for exemption under Sr. No. 3A of Notification No. 12/2017-CTR. GST is applicable at the prescribed rates.

6. Delhi Development Authority (DDA) Not Classified as a Local Authority

DDA sought confirmation on its status as a 'local authority' under section 2(69) of the CGST Act, 2017 for the purpose of assessing taxability under entry at Sr. No. 5 of RCM Notification No. 13/2017-CTR, dated 28-6-2017, i.e. services supplied by local authority to a business entity are taxable on Reverse Charge (RCM) basis. As DDA does not meet the criteria of an elected self-governing municipal body with control over local funds, it cannot be classified as a local authority for GST purposes.

7. Regularization of GST on Commercial Property Rentals Under Reverse Charge

From 10th October 2024, renting commercial property by unregistered persons to registered persons was brought under the RCM.

However, taxpayers under the composition levy were later excluded from this provision via Notification No. 7/2025-CT (Rate), effective 16th January 2025. GST payments made under RCM for the period 10th October 2024 to 15th January 2025 are now regularized **on an 'as is where is' basis.**

8. Regularization of GST on Ancillary Electricity Transmission & Distribution Services

The GST Council had proposed several key changes regarding the exemption of certain services related to electricity transmission and distribution. In its 54th meeting, the Council recommended exempting services such as renting metering equipment, testing meters, releasing electricity connections, shifting meters and service lines, and issuing duplicate bills, all of which are incidental or ancillary to the supply of electricity. This exemption was introduced through the insertion of Entry 25A in Notification No. 12/2017-CTR via Notification No. 8/2024-CTR, effective from 10th October 2024.

In its 55th meeting, the GST Council recommended aligning Entry 25 and Entry 25A, ensuring consistency in the exemptions. This was implemented on 16th January 2025 through Notification No. 6/2025-CTR. Additionally, the Council decided to regularize the GST treatment for the period between 10th October 2024 and 15th January 2025 on an 'as is where is' basis.

Clarification on Late Fee Applicability for Delay in Furnishing Form GSTR-9C

Circular No. 246/03/2025-GST dated 30-01-2025

The CBIC has received several representations seeking clarification on the applicability of late fees for delays in furnishing the reconciliation statement in Form GSTR-9C. Specifically, queries have been raised regarding whether a late fee under Section 47 of the CGST Act is applicable when Form GSTR-9C is filed after the due date of the annual return in Form GSTR-9.

To ensure uniformity in implementation, the Board, under Section 168(1) of the CGST Act, issues the following clarification:

1. Background and Legal Framework

- **Before August 1, 2021:** Section 44(2) of the CGST Act required registered persons, whose accounts were subject to audit under Section 35(5), to submit the annual return (Form GSTR-9) along with audited financial statements and a reconciliation statement (Form GSTR-9C).
- **After August 1, 2021:** With the removal of the audit requirement under Section 35(5), Section 44(1) of the CGST Act now requires a registered person to furnish an annual return, which may include a self-certified reconciliation statement (Form GSTR-9C) reconciling the value of supplies declared in returns with audited financial statements.
- **Threshold for Filing Form GSTR-9C:**
- **Before August 1, 2021:** Required for taxpayers with an aggregate turnover exceeding INR 2 crore.
- **After August 1, 2021:** Required for taxpayers with an aggregate turnover exceeding INR 5 crore.

2. Late Fee Applicability under Section 47(2) of CGST Act

- **Definition of Annual Return:** The annual return under Section 44 includes both Form GSTR-9 and Form GSTR-9C, where applicable. If Form GSTR-9C is not furnished along with Form GSTR-9, the annual return is considered incomplete.
- **Levy of Late Fee:**
- If Form GSTR-9C is required but not filed with Form GSTR-9, the return is deemed incomplete, attracting a late fee under Section 47(2).
- The late fee applies from the due date of the annual return until the date when both Form GSTR-9 and Form GSTR-9C are furnished.
- The fee is not separately applicable for Form GSTR-9 and Form GSTR-9C; rather, it is calculated based on the complete filing date.

3. Waiver of Late Fee for Past Financial Years

As per Notification No. 08/2025-CT dated 23-01-2025, the excess late fee for delayed filing of the complete annual return (GSTR-9 + GSTR-9C) for financial years up to FY 2022-23 has been waived if Form GSTR-9C is filed on or before March 31, 2025.

- If a taxpayer files Form GSTR-9C before March 31, 2025, no additional late fee will be levied beyond what was payable up to the date of furnishing Form GSTR-9.
- No refunds will be issued for any late fees already paid for delayed submission of Form GSTR-9C for past years.

Clarification on Waiver of Interest and Penalty under Section 128A of the CGST Act

Instruction No. 2/2025-GST dated February 7, 2025

The CBIC has issued Instruction No. 2/2025-GST dated 7-02-2025, addressing the waiver of interest and penalty under Section 128A of the CGST Act. This applies to demands raised under Section 73 for the financial years 2017-18, 2018-19, and 2019-20, subject to specified conditions.

The instruction clarifies that taxpayers who have fully paid their tax dues but face departmental appeals concerning interest or penalty calculations remain eligible for relief under Section 128A. It further reiterates that the intent of the provision is to reduce litigation, ensuring that eligible taxpayers are not denied benefits due to technicalities.

Accordingly, the proper officer may withdraw appeals in such cases or accept decisions under review. Any implementation challenges should be reported to the Board.

Key Clarifications on Goods Classification and GST Rates

Circular NO. 247/04/2025-GST DATED 14-2-2025

The GST Council in its 55th meeting held on 21-12-2024, at Jaisalmer, made several important recommendations regarding the classification of goods and applicable GST rates. Based on these recommendations, the CBIC has issued Circular No. 247/04/2025-GST, dated 14-02-2025, to ensure uniform implementation as following:

GST on Pepper – It is clarified that pepper of the genus Piper, whether green (fresh), white, or black, falls under HS Code 0904. This category attracts a 5% GST as per S.No. 38 of Schedule I of Notification No. 1/2017-Central Tax (Rate), dated 28th June 2017. Regarding the supply of dried pepper by agriculturists, it is clarified that under Section 23(1)(b) of the CGST Act, agriculturists are not required to register for GST if the supply is from the produce of land cultivation. Therefore, an agriculturist supplying dried pepper is exempt from GST and does not need to be registered under the Act.

Exemption for Raisins Suppliers – Agriculturists supplying raisins are also exempt from GST and registration requirements.

GST on Ready-to-Eat Popcorn –

- **Salted & Spiced Popcorn:** 5% GST (if not pre-packaged and labeled), 12% GST (if packaged and labeled) under HSN 2106 90 99.
- **Caramel Popcorn:** 18% GST, classified as sugar confectionery

under HS 1704. Additionally, past transactions related to salted/spiced popcorn have been regularized on an “as is where is” basis.

AAC Blocks with Fly Ash Content – Autoclaved aerated concrete (AAC) blocks with over 50% fly ash content will be classified under HS 6815 and attract 12% GST.

Clarification on SUV Compensation Cess – The amendment regarding compensation cess on SUVs (engine capacity >1500cc, length >4000mm, ground clearance ≥170mm) is effective from July 26, 2023.

These clarifications aim to streamline GST compliance and ensure consistency across industries. For further details, refer to the official circular.

Amendment GST rate for certain goods

Notification No. 1/2025 dated 16-01-2025

The CBIC has issued N. No. 1/2025-Central Tax (R) dated 16-01-2025, introducing amendments to Notification No. 1/2017-Central Tax (Rate), originally issued on June 28, 2017 w.e.f. 16-01-2025 as following:

- Fortified Rice Kernel (FRK) is now taxable at 5% GST rate at Sl. No. 98B.
- The description for Sl. No. 15 in Schedule III (9% GST rate) now explicitly includes Fortified Rice Kernel (FRK) along with other items like “Murki.”
- Clarification on ‘pre-packaged and labelled’ goods: The term now applies to retail commodities of up to 25 kg or 25 litres, requiring mandatory declarations under the Legal Metrology Act, 2009.

Exemption in Goods

Notification No. 2/2025 dated 16-01-2025

The CBIC has issued N. No. 2/2025-Central Tax (R) dated 16-01-2025, introducing amendments to Notification No. 2/2017-Central Tax (Rate), originally issued on June 28, 2017 w.e.f. 16-01-2025 as following

- Gene Therapy (HSN Code: 30) has been added to the list of CGST-exempt (NIL-rated) goods under Sl. No. 105A.
- Clarification on ‘pre-packaged and labelled’ goods: The term now applies to retail commodities of up to 25 kg or 25 litres, requiring mandatory declarations under the Legal Metrology Act, 2009.

Uniform tax rate of 18% of sale of used cars

Notification No. 4/2025 dated 16-01-2025

A uniform rate of 18% GST on all used vehicles, simplifying the tax structure that previously ranged from 5% to 28% w.e.f. 16-01-2025. GST is charged only on the difference between the purchase price and the sale price of the used car. This means the tax applies only to the profit margin (difference) and not to the entire sale price of the car.

Amendment in definition of “Specified premises”

Notification No. 5/2025 dated 16-01-2025

The CBIC has updated definition of “Specified Premises” to link the classification of a hotel as a specified premises to the actual value of supply of any accommodation unit provided by the hotel, rather than the declared tariff. Additionally, the applicable GST rate on restaurant services provided within such hotels will now be determined based on the value of accommodation supplied in the preceding financial year. This change is applicable from 01-04-2025.

“Specified premises”, for a financial year, means,-

- (a) a premises from where the supplier has provided in the preceding financial year, ‘hotel accommodation’ service having the value of supply of any unit of accommodation above seven thousand five hundred rupees per unit per day or equivalent; or
- (b) a premises for which a registered person supplying ‘hotel accommodation’ service has filed a declaration, on or after the 1st of January and not later than 31st of March of the preceding financial year, declaring the said premises to be a specified premises; or
- (c) a premises for which a person applying for registration has filed a declaration, within fifteen days of obtaining acknowledgement for the registration application, declaring the said premises to be a specified premises.

Exemption in Services

Notification No. 6/2025 dated 16-01-2025

The CBIC has issued N. No. 6/2025-Central Tax (R) dated 16-01-2025, amending Notification No. 12/2017-Central Tax (Rate), originally issued on June 28, 2017.

Insurance services: Insurance services provided by the Motor Vehicle Accident Fund (constituted under Section 164B of the Motor Vehicles Act, 1988) against contributions made by insurers for third-party motor vehicle insurance are now exempt vide entry 36B.

Addition in Exemption to Skill Development Training: Entry 69 of the exemption notification has been amended to add to the scope of exemption w.e.f. 16-01-2025:

(f) Services to be by a training partner approved by the National Skill Development Corporation (NSDC) in relation to:

- (i) the National Skill Development Programme or any other scheme implemented by the National Skill Development Corporation; or
- (ii) a vocational skill development course under the National Skill Certification and Monetary Reward Scheme; or
- (iii) any National Skill Qualification Framework aligned qualification or skill in respect of which the National Council for Vocational Education and Training has approved a qualification package.

Reverse Charge Mechanism

Notification No. 7/2025 dated 16-01-2025

The CBIC has issued N. No. 7/2025-Central Tax (R) 16-01-2025, amending RCM Notification No. 13/2017-Central Tax (R) dated 28-06-2017.

Sponsorship Services: With effect from 16-01-2025 sponsorship services supplied by body corporates are now subject to tax under Forward Charge Mechanism. Thus, the supplier if a body corporate shall be responsible for collecting and depositing GST. Sponsorship services provided by non-body corporates will continue under RCM. Earlier, sponsorship services provided to body corporate or partnership firms were liable to tax under RCM.

Exclusion for composition taxpayers: Renting of any property other than a residential dwelling is now a taxable service. If an immovable property is rented out by an unregistered person to a registered person, the registered person receiving the property on rent must pay the tax under the RCM. The same is applicable from October 10, 2024. The entry has been 5AB has been amended to exclude composition taxpayers from liability under RCM.

Amendments to GST Rules

Notification No. 7/2025 dated 23-01-2025

Grant of temporary identification number- Rule 16A has been introduced to provide a temporary identification number (TIN) for persons not liable for GST registration but required to make payments under the Act. The rule reads as under:

Where a person is not liable to registration under the Act but is required to make any payment under the provisions of the Act, the proper officer may grant the said person a temporary identification number and issue an order in Part B of FORM GST REG-12.”.

The rule is yet to be notified.

Compiled by CA Shreyansh Jain

Judicial Pronouncements

Case 1: Cotton Corporation of India vs. Assistant Commissioner (ST) (Audit) (FAC) (Writ Petition No.1463 of 2025 dated 5th February 2025) – ANDHRA PRADESH HIGH COURT

Facts:

The petitioner is registered under the GST Act, 2017 and received a show cause notice dated 30.11.2024, in relation to the Financial Year 2020-2021, calling upon the petitioner to show cause as to why an assessment should not be carried out in relation to short payment of tax etc. Further, the said Notice was issued under Section 73(1) read with Rule 142 of the GST Rules. Being aggrieved by the Impugned notice, the Petitioner filed a writ before the Hon'ble Andhra Pradesh High Court.

Submissions of the parties

The petitioner contended that the time limit prescribed under Section 73(2) of the CGST Act mandates that notices under Section 73(1) must be issued at least three months before the deadline under Section 73(10) of the CGST Act, 2017. As in the instant case notice is issued for FY 2020-21 by invoking Section 73 of the CGST Act, 2017, the same can be issued only upto 28.11.2024.

Further, it is contended by Revenue that the term “months” should be interpreted as calendar months and provisions of Section 73(2) can at best be treated as a directory requirement and not a mandatory requirement whose violation would render the proceedings non est.

Analysis:

It is held by court that the time limit set out under 73(2) of the CGST Act is mandatory and any violation of that time period cannot be condoned and would render the SCN otiose.

It is noted by Court that SCN for the assessment year 2020-2021 was issued on 30.11.2024 under Section 73(1) read with Rule 142 of the GST Rules

by alleging short payment of tax and the petitioner challenged the impugned notice on the ground that it was issued beyond the time limit prescribed under Section 73(2) of the GST Act. As per Section 73(10), the final assessment order must be issued within three years from the due date for filing the annual return, and as per Section 73(2), the notice initiating the assessment must be issued at least three months before this deadline. Since the due date for filing the annual return for FY 2020-21 was 28.02.2022, the last date for issuing a SCN was 28.11.2024. The notice was, however, issued on 30.11.2024, leading the petitioner argument valid.

Further, with respect to contention of respondent regarding that a “month” should be construed as a calendar month, the court relied on decision passed by Supreme Court in cases of *Himachal Pradesh v. Himachal Techno Engineers (2010) 12 SCC 210 and Dodds v. Walker (1981) 2 WLR 609 (HL)*, wherein it is established that when a period is prescribed in months, it must be computed based on the corresponding date in the final month.

By relying on these judgments, it was held by Court that as the deadline for issuing a notice was 28.11.2024 and same was issued on 30.11.2024, thus the same is invalid and unenforceable.

Further, the Court also emphasized that time limits under GST law are meant to protect taxpayers and same cannot be diluted, as it would defeat the purpose of statutory safeguards. Accordingly, the Writ petition is allowed quashing the SCN.

DCO Experts

-The ruling rightly reinforces the principle of strict adherence to statutory timelines, preventing arbitrary extensions that could erode taxpayer protections.

-It will be interest to see how the Revenue will address

this issue moving forward and the Revenue's stance when this issue comes up before different High Courts across the country.

Compiled by CA Divya Gupta

Case 2: M/s Aculife Health Care (P.) Ltd. vs. Union of India (Special Civil Application No. 17800 of 2023 dated 9th January 2025) – GUJARAT HIGH COURT

Facts:

The M/s Aculife Healthcare Pvt. Ltd. (herein after called "the Petitioner") is a Private Limited Company engaged in the business of manufacture of chemicals and pharmaceuticals and duly registered under GST Act, 2017.

During July, 2017 to July, 2022, the Petitioner-Company has deposited a total sum of Rs.45,14,300/- as tax on notice pay recovery, in lieu of various employees who left the employment. This amount of tax has been deposited by the Petitioner from its own pockets and the GST on the amount of notice pay recovery was deposited by the Petitioner as and when such recovery was made.

The Union Government vide its Circular No.178/10/2022-GST dated 03.08.2022 clarified that the forfeiture of salary from employees at time of leaving of employment is not taxable.

In view of this clarification, as the Petitioner company borne the entire tax burden, therefore, on 05.11.2022 filed a refund claim for Rs.13,91,114/- deposited as GST for the period of July 2017 to August 2018 and, on 07.11.2022, filed another refund claim of Rs.31,23,186/- deposited as GST during the period of September 2018 to July 2022.

After that, notices proposing to reject the claims were issued by the Respondent, wherein it rejected the first claim of Rs.13,91,114/- entirely as time-barred, but allowed the second claim to the extent of Rs.29,24,012/- and rejected the remaining claim of Rs.1,99,174/- as time-barred.

The Petitioner filed two appeals before the Appellate

Authority, but the Appellate Authority has rejected both the appeals by alleging that the claims were barred by limitation of two years as provided under Section 54 of the CGST Act, 2017. Being aggrieved by the Impugned order, the Petitioner filed a writ before the Hon'ble High Court.

Submissions of the parties

The Petitioner contended that after Circular, it is now a settled position that they were not liable to pay any tax on recoveries made from employees and therefore, tax retained by the Departmental Authority is in violation of Article 265 of the Constitution of India.

It is further contended by Petitioner that as the said issue clarified by the Government through its Circular No.178/10/2022-GST dated 03/08/2022, therefore as a matter of fact, it is inconceivable how any refund application could be filed before 03.08.2022. Hence, the limitation in respect of such refund applications could only be calculated from 03.08.2022 only.

The Respondent contended that the petitioners ought to have submitted the claim of refund within two years from the date of payment of the Tax as per Section 54 of CGST Act, 2017, whereas both the claims filed by the petitioners beyond the period of two years and therefore, both the refund claims are time barred and rightly rejected.

Analysis:

It is held by court that since the aforesaid Circular came out on 03.08.2022, therefore, the period of two years, for filing a claim, within the meaning of Section 54 of the CGST Act has to be computed from the date of the Circular i.e. from 03.08.2022.

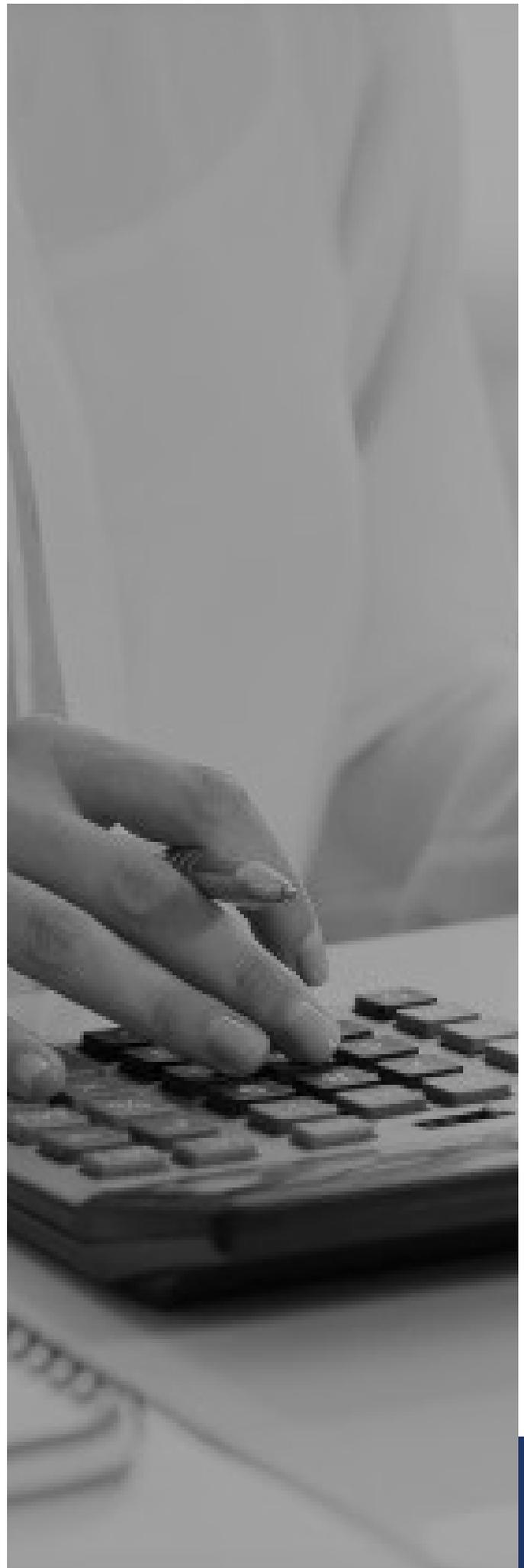
Further, the Court relied on the decision of **Joshi Technologies International – 2016 (339) E.L.T. 21 (Guj.) and Gujarat State Police Housing Corporation Ltd. – SCA No. 11221 of 2022** and held just as citizens have to diligently pay tax which are legally due to the State, equally, as a corollary of the aforesaid statement, the state is not entitled to unjustly enrich itself with amounts collected from citizens which are not sanctioned as "Tax" within

the meaning of Article 265 of the Constitution of India. Thereby allowed the writ petition filed by the Petitioner.

DCO Experts

- This judgment provides significant relief for taxpayers who had paid GST on notice pay recoveries before the issuance of Circular No. 178/10/2022-GST.
- The ruling reinforces the fundamental principle that no tax can be levied or retained without the authority of law, as enshrined in Article 265 of the Constitution of India.

Compiled by CA Divya Gupta



Expert's Insight



Is Waiver under S. 128A applicable for interest on delayed filing of returns?

Circular No. 238/32/2024-GST dated 15th October, 2024 has been issued for Clarification of various doubts related to Section 128A of the CGST Act, 2017. In the said Circular, there is a clarification regarding applicability of Section 128A to cases where the tax due has already been paid and the notice or orders under Section 73 only pertains to interest and/or penalty.

The clarification *per se* may not be, but the reasoning behind the clarification is an interesting read, hence reproduced below:

Sr No	Issue	Clarification
4	Whether the benefit provided under Section 128A will be applicable in cases, where the tax due has already been paid and the notice or demand orders under Section 73 only pertains to interest and/or penalty involved?	<p>Where the tax due has already been paid and the notice or demand orders under Section 73 only pertains to interest and/or penalty involved, the same shall be considered for availing the benefit of section 128A.</p> <p>However, the benefit of waiver of interest and penalty shall not be applicable in the cases where the interest has been demanded on account of delayed filing of returns, or delayed reporting of any supply in the return, as such interest is related to demand of interest on self-assessed liability and does not pertain to any demand of tax dues and is directly recoverable under sub-section (12) of section 75.</p>

Now, Section 73 must be read for context here:

CHAPTER XV

DEMANDS AND RECOVERY

SECTION 73. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any willful-misstatement or suppression of facts. – (1)

Where it appears to the proper officer that **any tax has not been paid or short paid** or erroneously refunded, or where input tax credit has been wrongly availed or utilized for any reason, other than the reason of fraud or any wilful misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty leviable under the provisions of this Act or the rules made thereunder.

Thus, the initiation of proceedings under Section 73 must be back by a reasoned understanding of the proper officer that any **tax has not been paid or short paid**. If proper officer has made any observation from which it appears that **any non-payment or short payment of tax exists on a given date**, then (and only then) Demand and Recovery proceedings can be initiated by issue of a Show Cause Notice under Section 73.

Hence, where proper officer makes some observation in which non-payment or short payment of tax does not exist on given date, issue of Show Cause Notice by invocation of Section 73 or 74 is unauthorised.

The Circular has laid out a view of the Board that demand of interest on account of delayed filing of returns, or delayed reporting of any supply in the return is related to demand of interest on self-assessed liability and does not pertain to any demand of tax dues and is directly recoverable under Section 75(12). On such reasoning, the Circular has clarified that the benefit of waiver of interest and penalty shall not be applicable in such cases because in the light of this view, Section 73 is not applicable and interest is directly recoverable by an order for recovery under Section 75(12). Even the GST portal has an option issue DRC-07 u/s 75(12). Board has not indicated any restriction in Section 128A for such notices or orders specifically but has rather highlighted non-applicability of Section 73 itself in such cases for demand and recovery.

Thus, if such interest does not relate to any demand of tax dues, can it be recovered by issue of Show Cause Notice under Section 73? The answer clearly appears to be a **No**. Hence, issue of a Show Cause Notice under Section 73 for demand of interest on delayed filing of returns or delayed reporting of invoices in return is illegal and must be quashed.

However, if proper officers have issued a Show Cause Notice under Section 73 for demand of interest on delayed filing of return or delayed reporting of invoices in returns, is there a scope of benefit of waiver of interest and penalty? Now for that, let's read the governing provision for the waiver under Section 128A.

Notwithstanding anything to the contrary contained in this Act, where any amount of tax is payable by a person chargeable with tax in accordance with,

- a. **a notice** issued under sub-section (1) of section 73 or a statement issued under sub-section (3) of section 73, and where no order under sub-section (9) of section 73 has been issued; or
- b. **an order** passed under sub-section (9) of section 73, and where no order under sub-section (11) of section 107 or sub-section (1) of section 108 has been passed; or

c. **an order** passed under sub-section (11) of section 107 or sub-section (1) of section 108, and where no order under sub-section (1) of section 113 has been passed,

pertaining to the period from 1st July, 2017 to 31st March, 2020, or a part thereof, and the said person pays the full amount of tax payable as per the notice or statement or the order referred to in clause (a), clause (b) or clause (c), as the case may be, on or before the date, as may be notified by the Government on the recommendations of the Council, **no interest under section 50 and penalty under this Act, shall be payable and all the proceedings in respect of the said notice or order or statement, as the case may be, shall be deemed to be concluded, subject to such conditions as may be prescribed:**

If by literal interpretation of the above provision, there is an ambiguity regarding notices or orders where no tax is demanded, the Board has made a clarification that **where the tax due has already been paid and the notice or demand orders under Section 73 only pertains to interest and/or penalty involved, the same shall be considered for availing the benefit of section 128A.** Thus, there remains no ambiguity in interpretation of Section 128A, and it is clear that notices or orders for interest and/or penalty only can also be covered for the benefit of waiver.

Thus, if proper officers, in their wisdom, have chosen to issue a Show Cause Notice and Order under Section 73 (and not an Order under S. 75(12) directly) for demand of interest on account of delayed filing of return or delayed reporting of invoices in returns, and the registered person intends to opt, there cannot be any restriction on benefit of waiver of interest and penalty under Section 128A, because due to issuance of such notices or orders under Section 73, all the conditions of benefit of waiver under Section 128A stand complied.

Written by CA Shuchi Sethi



Issue in filing applications (SPL 01/SPL 02) under waiver scheme

Grievances are raised by taxpayers regarding difficulties faced while filing the waiver applications. Following grievances faced by taxpayers have come to the notice of GSTN and team is working to resolve the issues at the earliest.

- a) Order number is not available in dropdown for selection in SPL 02.
- b) Order details are not getting auto populated after selection of a particular order in SPL 02.
- c) Payment details are not getting auto populated in Table 4 of SPL 02.
- d) After filing the SPL 02 for a demand order, the taxpayer is not able to make payment using "Payment towards Demand" for that order. Also, taxpayer is not able to adjust the amount paid through DRC 03, against the same demand order, using DRC 03A.
- e) Not able to withdraw the Appeal applications (APL 01) filed before First Appellate authority against a particular order.

Key Points to Note:

1. It is raised that there is a misconception among the trade that the last date to file waiver application is 31.03.2025. In this regard, it may be noted that the last date to file waiver applications is not 31.03.2025. As per Rule 164(6) of CGST Rules, 2017, the taxpayers must file waiver applications within a period of three months from the notified date. Therefore, the taxpayers can file waiver applications in SPL 01/02 till 30.06.2025.
2. In case any difficulty is faced in using the said functionality, then the taxpayers are advised to make a Voluntary Payment using Form DRC-03 under category 'Others'. After completing the payment, they can submit the Form DRC-03A to link the payment made in DRC-03 with the relevant demand order.
3. If Payment details are not auto populated in Table 4 of SPL 02, it is advised to verify the same in electronic liability ledger on GST portal. Then the taxpayer can proceed for filing waiver application. The navigation path to access the electronic liability ledger is Login>> Services>> Ledgers>> Electronic Liability Register
4. Thus, Taxpayers are advised to make the payment on or before 31.03.2025 and file the waiver application on or before 30.06.2025. For any other issues faced, the taxpayers are advised to raise grievance ticket immediately so that issue can be resolved.

Enhancements in Biometric Functionality - Allowing Directors to opt for Biometric Authentication in their Home State

Under this enhancement, such Promoters/Directors can now choose any available GSK within their Home State in India (as per REG-01) for Biometric Authentication.

Procedure to be followed:

1. If a new registration application is selected for Biometric Authentication, an intimation email will be sent to the applicant. Eligible Promoters/Directors will be given the option to select any GSK in their Home State through this email.
2. To avail of this option, such Promoter/Director must follow the instructions provided in the intimation email and select a GSK within their home state.
3. The selection of a GSK in the Home State is a one-time facility and cannot be changed once selected. Promoters/Directors are advised to choose their GSK carefully.
4. This facility is currently available in 33 States/UTs where Biometric Authentication has been enabled. It will soon be extended to the remaining three states: Uttar Pradesh, Assam, and Sikkim. Such Promoters/Directors whose Home State is other than Uttar Pradesh, Assam, or Sikkim can opt for any GSK in their Home State.
5. Upon selection of a Home-State GSK, the Promoter/Director will receive an email confirmation, along with a new slot booking link.
6. Using the provided link, the Promoter/Director can book a slot at their convenience, subject to availability at the chosen GSK.
7. The required photo capture and Biometric Authentication process will be completed at the selected GSK in the Home State.
8. If a Promoter/Director has already completed the biometric process, they will not be required to undergo it again.
9. If the Promoter/Director and the Primary Authorized Signatory (PAS) are the same person, the Home-State GSK selection option will not be available. The PAS must visit the designated jurisdictional GSK for the required process, including document verification.
10. To ensure a smooth process, it is advised that the Promoter/Director completes Biometric Authentication before the Primary Authorized Signatory visits the GSK.
11. Opting for Biometric Authentication at a GSK in the home state is not mandatory. Promoters/Directors can visit their designated jurisdictional GSK if preferred.

Introduction of Form ENR-03 for Enrolment of Unregistered Dealers/ Persons in e-Way Bill Portal for generating e-way Bill

A new feature has been introduced in the E-Way Bill (EWB) system to facilitate the enrolment of unregistered dealers supplying goods, with effect from 11.02.2025. In accordance with Notification No. 12/2024 dated 10th July 2024, Form ENR-03 has been introduced for the enrolment of unregistered dealers.

That Unregistered dealers engaged in the movement or transportation of goods can now generate e-Way Bills by enrolling themselves on the EWB portal and obtaining a unique Enrolment ID. This ID will serve as an alternative to the Supplier GSTIN or Recipient GSTIN for generating e-Way Bills.

Clarification on E-Way Bill Requirement for Goods under Chapter 71

Under Rule 138(14) of the CGST Rules, 2017, goods classified under Chapter 71 (such as natural or cultured pearls, precious stones, precious metals, and jewellery, excluding imitation jewellery under HSN 7117) are exempt from the mandatory requirement of generating an E-Way Bill (EWB).

Although the NIC had temporarily enabled EWB generation for these goods (excluding HSN 7117) under the "EWB for Gold" category, this feature has now been withdrawn. Consequently, taxpayers and transporters are advised that EWBs are not required for the movement of goods under Chapter 71 (except 7117), and they should comply with the updated regulatory guidance.

Hard Locking of auto-populated liability in GSTR-3B

An advisory dated October 17, 2024, was issued regarding the restriction on editing auto-populated liabilities in GSTR-3B, effective from the January 2025 tax period. However, in response to multiple requests from trade and industry stakeholders seeking additional time, the implementation of this restriction has been deferred. As a result, auto-populated liabilities in GSTR-3B will remain editable for now on the GST Portal.

It is important to note that this change will be introduced soon, and stakeholders will be duly informed in advance. Taxpayers are advised to begin preparing for this upcoming modification.

Advisory for Waiver Scheme under Section 128A

It is to inform that both Forms GST SPL 01 and GST SPL 02 are available in the GST portal and the taxpayers are advised to file applications under waiver scheme subject to the following conditions:

To withdraw the appeal applications filed against the demand order/notice/statement for which waiver application is to be submitted. In this regard, it is to inform that for the appeal applications (APL 01) filed before First Appellate authority, withdrawal option is already available in the GST portal. However, for the appeal applications (APL 01) filed before 21.03.2023, withdrawal option is not available in GST portal. For such cases, the taxpayers are advised to submit their request for withdrawal of appeal applications to the concerned Appellate Authority. The Appellate authority will forward such requests to GSTN through State Nodal officer for withdrawal of such appeal applications (i.e. filed before 21.03.2023 and not disposed off) from backend.

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