



**SNR** & COMPANY  
CHARTERED  
ACCOUNTANTS



# **GST Bulletin**

## **FEBURARY 2022**

# JUDICIAL UPDATES

## 1. GST Authority cannot block the bank accounts or ECL beyond a year if assessee is cooperating

Case of: **M/S Krishna Fashion**

Decision by: **Delhi High Court**

- M/s Krishna Fashion (“the Petitioner”) filed petition before the Delhi High Court challenging the order dated March 16, 2020 passed by the Revenue Department (“the Respondents”) stating that the Respondents have attached the Petitioner’s bank account maintained in Union Bank of India and blocked the Electronic Credit Ledger (ECL).
- The Petitioner contented that as per the Rule 86A(3) of the CGST Rules’ 2017 stated as follows:

*“Such restriction shall cease to have effect after the expiry of a period of one year from the date of imposing such restriction.”*

The ECL was supposed to be unblocked on February 05, 2021 upon completion of one year from the date of imposing such restrictions. However, it continued to remain blocked.

- Also, as per the Section 83(2) of the CGST Act stated as follows:

*“Every such provisional attachment shall cease to have effect after the expiry of a period of one year from the date of the order made under sub-section.”*

The Impugned order will stand invalid upon completion of one year from the date of passing such order.

- The Hon’ble Delhi High observed that the Petitioner has cooperated with the investigating agencies.
- Directed the Respondents to de-freeze the bank account of the Petitioner maintained with M/s Union Bank of India as well as unblock the ECL within three working days of uploading the present order.

Read Full Judgement: [M/s Krishna Fashion](#)

### SNR’s Take:

*The Hon’ble Delhi High Court has appropriately held in M/s Krishna Fashion that once the assessee is cooperating and has submitted the relevant documents to the Revenue Department then the bank accounts and Electronic Credit Ledger (ECL) of such assessee to be unblocked upon the expiry of one year from the date of imposing such restrictions.*

## 2. Salary cost to be included in valuation for cross charge for supply of services between head office and branch office or vice versa

Case of: **M/S Cummins India Limited**

Decision by: **AAAR Maharashtra**

- M/s. Cummins India Limited (“the Appellant”) is engaged in manufacture and sale of a variety of diesel engines, parts thereof, and related services, and undertake all day-to-day activities required therefore. The branch office/units as well as the head office of the Appellant, receives certain common input supplies on behalf of multiple/all of its units registered distinctly under GST and are procured on payment of GST and credit thereof is availed by receiving unit/head office.
- The Appellant sought the advance ruling on the issues w.r.t. classification of engine manufactured by the Appellant and Levy of GST on facilitation of common input services, necessity of registering as an ‘Input Service Distributor’ (“ISD”) and determination of assessable value.
- GST Law has provided a very wide connotation for services, which covers any activity other than those involving goods, money and securities and it is adequately evident that the activities of providing facilitation services to their branch offices/units by way of availment of the common input services by the Appellant on behalf of its branch offices/units would be covered under services, and hence, supply in terms of Section 7(1) (a) of the Central Goods and Services Tax Act, 2017 (“the CGST Act”) being provided for a consideration in the course of its business.
- Modified the ruling of the AAR and held that, availment of common input supplies from the third-party service vendors/suppliers on behalf of the branch offices/units, will qualify as supply of services.
- Furthermore, noted that it is evident that the employees of the Appellant’s head office are working at behest of the head office, and not at behest of the branch offices/units. Further, since the head office is using all its human resources to facilitate the operational requirements of the branch offices/units by way of procuring common input services on behalf of the branch offices/units. thereby, providing the facilitation services, therefore, allocation and recovery of any amount including its employee’s salary cost from the branch offices/units will be subject to GST.

Read Full Judgement: [M/s Cummins-India-Limited](#)

### SNR’s Take:

*This is a very litigative subject matter as during pre-GST regime, any supply of service between head office and branch office or vice versa was not taxable thus, it has been a contentious issue since inception of GST, whether any supply of service between head office and branch office or vice versa is chargeable to GST or not. The employees of a company work for entire organization and not only for HO, however this AAAR ruling has unsettled this presumption, making the liability to discharge GST on all costs including salary costs. It is high time that GST Council should take cognizance of this burning issue and provide clarity for taxpayers.*

### 3. GST on supply of defense machinery design establishment for use in warship building of Indian navy

Case of: **Radiant Corporation Pvt. Ltd**

Decision by: **AAR Tamil Nadu**

- M/s. Radiant Corporation private Limited are supplying pressure tight cables and non-pressure tight cables and special cables for use in the S4 submarine by the Defense Machinery Design Establishment (DMDE), Ministry of Defense, Government of India. The applicant is desirous to clarify the goods supplied by them are eligible for a concessional rate of tax under SI.No.252 read with SI.No.250 of Schedule I in Notification No. 01/2017 dated 28.06.2017.
- The goods supplied by the applicant are electrical cables used for electronic communication. which are specifically enumerated initially at SI.No.161 of the Schedule IV of Notification No. 01/2017 as item 8544. These goods are taxable initially at the rate of 28% and later at a reduced rate of 18%.
- According to the explanation the Entry 252 of the Schedule I of Notification 01/2017, dated. 28-06-2017 as amended i.e., “parts of goods of headings 8901, 8902, 8904, 8905, 8906 & 8907” falling under any chapter are made eligible for a concessional rate of tax of 5% under CGST & SGST.
- Therefore the supplies made by the applicant to Defence Machinery Design Establishment (DMD) for the purpose of use in warship building of Indian Navy will qualify for the concessional rate of tax of 5% under CGST & SGST.

Read Full Judgement: [Radiant Corporation Pvt Ltd](#)

#### SNR's Take:

*The AAR has correctly held that the goods will fall under the category of concessional rate of GST and accordingly lower rate shall get applicable.*

#### 4. Service Tax refund cannot be denied merely on account of procedural lapse of filing TRAN-1.

Case of: **Bharat Heavy Electricals Ltd.**

Decision by: **CESTAT, Chennai Bench**

- M/s. Bharat Heavy Electricals Ltd. (“**the Appellant**”) is engaged in manufacture of boiler auxiliaries namely electrostatic precipitator, air pre-heaters, fans etc. and are registered with the Central Excise Department. They also have Service Tax registration as they are service providers as well as recipient of service. After introduction of GST, they migrated to GST and obtained necessary registration.
- The Appellant sought refund of Cenvat credit which was not claimed till 30<sup>th</sup> June 2017 and was thus not appearing in ER-1 returns. However, the aforesaid claim was rejected by department and thus Appellant has approached CESTAT with the contention that whether right to claim Cenvat refund can be denied for procedural requirement of filing TRAN-1 before December 27, 2017.
- As per Rule 117 of CGST Rules, every registered person entitled to take credit of input tax under section 140 shall, within ninety days of the appointed day, submit a declaration electronically in FORM GST TRAN-1.
- In the above case, it was held that, the said right cannot be frustrated by pressing on the procedural requirement of filing TRAN-1 before December 27, 2017. The accounting practice adopted by the Appellant allows to avail credit only after making payments to the vendors which has made it impossible to carry forward the credit as set out in the GST law. When the credit is eligible, the same cannot be denied by stating procedural requirements.
- The Court relied on the case Adfert Technologies Pvt. Ltd. v. Union of India [2020 (32) GSTL 726 (P&H)] in which it was held that transitional credit being vested right cannot be taken away on procedural or technical ground. This decision was upheld by the Hon’ble Supreme Court as reported in [2020 (34) GSTL J138 (SC)]. Hence, it is a settled legal position that substantive credit cannot be denied on procedural grounds. The rejection of the refund claim was held to be not justified and the impugned order was set aside.

Read Full Judgement: [Bharat Heavy Electricals](#)

#### SNR’s Take:

*It is a welcome decision by the Chennai Bench of Customs, Excise and Service Tax Appellate Tribunal (CESTAT) where it is held that, right to claim Service Tax refund cannot be denied merely on account of procedural lapse of filing TRAN-1 before December 27, 2017, as this was the genuine hardship faced by the taxpayers.*

## 5. GST not leviable on cash discount/incentives offered by suppliers

Case of: **Rajesh Kumar Gupta of M/s Mahveer Prasad Mohanlal**

Decision by: **AAR Madhya Pradesh**

- The Applicant is having the dealership of famous rice brand name of India known as “India Gate Basmati Rice” since last 15 years. (Supplier)
- The Applicant makes the payment as per his convenience and availability of funds. Thus, the scheme/incentive of cash discount in case of early payment from the due date is optional for applicant. On the basis of time taken for payment of invoices by the applicant to the supplier, the supplier issues the Receipt cum credit note of cash discount without considering GST on such cash discount.
- The advance ruling has been sought on **whether the applicant can avail the Input Tax Credit of the full GST charged on invoice of the supply or a proportionate reversal of the same is required in case of post purchase - Cash discount for early payment of supply invoices given by the supplier of goods to the applicant without adjustment of the GST?**
- It is clarified that if the post-sale discount is given by the supplier of goods to the dealer without any further obligation or action required at the dealer’s end, then the post sales discount given by the said supplier will be related to the original supply of goods and it would not be included in the value of supply, in the hands of supplier of goods, subject to the fulfilment of provisions of sub-section (3) of section 15 of the CGST Act.
- However, if the additional discount given by the supplier of goods to the dealer is the post-sale incentive requiring the dealer to do some act like undertaking special sales drive, advertisement campaign, exhibition etc, then such transaction would be a separate transaction and the additional discount will be the consideration for undertaking such activity and therefore would be in relation to supply of service by dealer to the supplier of goods.
- The applicant can avail the ITC of the full GST charged on the invoice of the supply and no proportionate reversal of ITC is required in respect of commercial credit note issued by supplier for Cash discount for early payment of supply invoices provided without adjustment of GST, if the said discount is not covered under Section 15(3)(b) and discounts is not in terms of prior agreement

Read Full Judgement: [Rajesh Kumar Gupta of M/s Mahveer Prasad Mohanlal](#)

### SNR’s Take:

*Incentive for early cash payment by the dealer will not attract GST as technically, it comes under the category of secondary or post-sales discount which has been given through commercial/ financial credit notes. Further there would not be any liability to reverse proportionate ITC as held by Tamil Nadu AAAR in the matter of MRF Limited earlier as well.*

## **KEY HIGHLIGHTS OF GST PROPOSALS IN FINANCE BILL, 2022**

- ITC can be claimed only if the same has not been restricted in GSTR-2B.
- ITC can be availed upto 30th November of subsequent F.Y. instead of 20th October.
- ITC shall not be allowed any more on provisional basis. ITC shall be only available if the same is eligible as per GSTR-2B generated by the GSTN Portal.
- Rate of Interest for reversal of excess claimed Input Tax Credit has been notified @18%. No interest shall be levied if amount of excess claimed Input tax credit not utilized.
- Rectification of invoices and credit notes in GSTR-1 can be done till November 30<sup>th</sup> of the subsequent F.Y.
- Matching concept in GST returns has been done away under GST. No matching of GSTR-1,2 & 3 for claiming of ITC.
- Sequential filing of GSTR-1 has been proposed.
- Non-resident taxable person shall furnish return by 13<sup>th</sup> of the subsequent month.
- Late fee has been prescribed for late filing of TCS returns under GST.
- Registration of composite taxpayer can be cancelled if GST return not filed within 3 months of the end of the F.Y.
- Earlier registration of regular taxpayer was to be cancelled if GSTR-3B has not been filed for continuous period of six months. Now period of six months has been omitted and new periods shall be notified.
- Refund of any balance in electronic cash ledger to be made availed as per form and manner prescribed.
- Extension of scope of withholding of or recovery from refunds in respect of all types of refunds.
- Section 49 has to be amended in respect of:
  - a. To restrict the use of amount lying in electronic credit ledger.
  - b. To allow transfer of amount in electronic cash ledger to some other GST registration.
  - c. To prescribe the maximum amount of liability that can be used to discharge liability through electronic credit ledger.

## GST CALENDAR – FEBRUARY 2022

Date	Particulars
10-02-2022	Due Date of filing GSTR-7 & 8 for the month of January 2021
11-02-2022	Due Date of filing GSTR-1 for the month of January 2021
13-02-2022	Due Date of filing GSTR-6 for the month of January 2021 and IFF for the month of January 2021
20-02-2022	Due Date of filing GSTR-3B, 5 and 5A for the month of January 2021
25-02-2022	Due Date of QRMP tax Payment for January 2021
28-02-2022	Due date of filing of form GSTR-9 & 9C of the FY 2020-21.

**Note:**

Form/ Return	Particulars of the Form
<b>GSTR-1</b>	All taxable persons (except composition Dealer) having turnover exceeding Rs. 5 crores or Taxable person with aggregate TO less than Rs. 5 Crores opted to file monthly return.
<b>IFF</b>	Details of outward supplies of goods or services - All taxable persons opted for quarterly return for registered person with aggregate turnover upto Rs. 5 crores.
<b>GSTR-3B</b>	All taxable persons except for who have opted for QRMP.
<b>GSTR-5</b>	Non-resident taxpayers.
<b>GSTR-6</b>	Input Service Distributors
<b>GSTR-7</b>	Tax Deductors at source (TDS)
<b>GSTR-8</b>	Tax Collectors at source (TCS)
<b>GSTR-9</b>	GST Annual Return
<b>GSTR-9C</b>	Statement of Reconciliation under GST



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