



**SNR** & COMPANY  
CHARTERED  
ACCOUNTANTS



# **GST Bulletin**

## **MARCH 2022**

# JUDICIAL UPDATES

## 1. GST registration cannot be suspended for more than 2 months on the basis of SCN lacking any reason or fact.

Case of: **Shakti Shiva Magnets Private Limited Vs Assistant Commissioner & Ors**

Decision by: **Delhi High Court**

- Shakti Shiva Magnets Private Limited (the Petitioner) has filed this petition against the SCN dated November 11, 2021 (“the impugned SCN”) by Revenue Department (“the Respondent”) due to which the Petitioner’s registration was suspended for more than 2 months with no sufficient explanation or reason or fact.
- The Petitioner contended that as per Rule 21A of the Central Goods and Services Tax Rules, 2017 (“the CGST Rules”) that describes the conditions needed to be fulfilled for suspending a registration and Rule 22(3) of the CGST Rules wherein it is provided that an assessee’s registration can be suspended only for 30 days and the cancellation proceeding has to be concluded within the same period.
- As per Rule 22(3) of the CGST Rules:

*“Where a person who has submitted an application for cancellation of his registration is no longer liable to be registered or his registration is liable to be cancelled, the proper officer shall issue an order in FORM GST REG-19, within a period of 30 days from the date of application submitted under the sub-rule(1) of rule 20, as the case may be.”*
- Petitioner’s registration has been lying suspended for more than two months on the basis of a show cause notice which is bereft of any reason or fact, this Court quashed the impugned show cause notice dated 11<sup>th</sup> November, 2021 and directed the respondents to restore the petitioner’s registration forthwith. However, the respondents are permitted to issue a fresh show-cause notice mentioning all the relevant facts and reasons within a week.
- Further the Court directed the concerned Commissioner to issue a practice direction so that in future, if any show-cause notice for cancellation of GST registration is issued, the same is not bereft of any material particulars or reasons.

Read Full Judgement: [Shakti Shiva Magnets Private Limited](#)

### SNR’s Take:

*The Delhi High Court has appropriately quashed the show cause notice as GST registration cannot be suspended for more than 2 months without Stating Reasons as per GST law. Further it is the onus on department to state specific reasons based on which registration has been suspended and proceed with matter in a time bound manner.*

## 2. HC allows refund of IGST lying in Electronic Credit Ledger

Case of: **IPCA Laboratories Ltd. Vs Commissioner**

Decision by: **Gujarat High Court**

- The applicant was a pharmaceutical company and located in a Special Economic Zone (SEZ). It was engaged in the export of goods under the Letter of Undertaking (LUT) from the SEZ Unit.
- The writ applicant received the aforesaid Input Tax Credit of the integrated tax from its ISD and ITC on inward supplies charged by the suppliers. It is the case of the writ applicant that being a SEZ Unit making Zero Rated Supplies under the GST, the writ applicant has not been utilized the credit and the same is lying unutilized in the Electronic Credit Ledger.
- It filed the refund application in Form GST RFD – 01A and the same was rejected. It preferred an appeal before the appellate authority but appeal was dismissed. The writ applicant could be said to be entitled to claim the refund of the IGST lying in the Electronic Credit Ledger as there is no specific supplier who can claim the refund under the provisions of the CGST Act and the CGST Rules as Input Tax Credit is distributed by the input service distributor.
- Thereafter it filed writ petition against the same.
- The Honorable High Court observed that this Court has already decided in the case of M/s. Britannia Industries Limited vs. Union of India that the assessee situated in SEZ could claim refund with regard to credit of IGST distributed by ISD for services pertaining to SEZ unit as there is no specific supplier who can claim the refund under the provisions of the CGST Act with respect to ITC distributed by the ISD.
- Thus, the present writ application was no longer res integra in view of the aforesaid judgement and therefore, the applicant was also entitled to claim the refund of the IGST lying in the Electronic Credit Ledger.

Read full judgement: [IPCA Laboratories Ltd. Vs Commissioner](#)

### SNR's Take:

*The Hon'ble High Court has allowed the writ following the judgement in Britannia Industries Limited holding that special economic zones (SEZ) are allowed to seek refund of ITC appearing in Electronic Credit Ledger.*

### 3. Officer cannot recover by way of invoking the bank guarantee after issue of Section 129 order

Case of: **National Radio Electronics Corporation Vs State Tax Officer**

Decision by: **Kerala High Court**

- The petitioner has challenged the order issued under section 129 to the extent it invoked the bank guarantee furnished by the petitioner, while obtaining release of the goods detained under Section 129(1) of the said Act.
- The limited relief claimed by the petitioner is that the statute permits him to prefer an appeal within a period of three months and if within the said period of three months, he abides by the terms stipulated in Section 107 of the CGST Act, all proceedings for invocation of the bank guarantee or other proceedings shall stand stayed by virtue of the statutory prescriptions.
- However, even without waiting for the period of three months, the respondents have proceeded to invoke the bank guarantee, which according to him, is due.
- Having regard to the period of three months available to the petitioner to prefer an appeal against the order, it is believed that it is essential in the interests of justice that the bank guarantee is not invoked till the period for filing the appeal expires. The order dated 20.12.2021 produced as Ext.P3 shows that respondent has invoked the bank guarantee along with the order under Section 129 CGST Act, itself.
- Accordingly, this writ petition is disposed of directing the 1st respondent to withhold invocation of the bank guarantee for a period of four months from 20.12.2021 to enable the petitioner to pursue the appellate remedy. It is also directed that the petitioner shall keep alive the bank guarantee for a period of four months from today.

Read Full Judgement: [National Radio Electronics Corporation Vs State Tax Officer](#)

#### SNR's Take:

*The officer cannot invoke bank guarantee till the prescribed period for filing appeal is expired and thus should not act in haste.*

#### 4. GST authority should follow procedure under section 70 of CGST Act.

Case of: **Dhariwal Products Vs Union of India**

Decision by: **Rajasthan High Court**

- By way of the instant writ petition, the petitioner seeks to assail the action of the respondent GST Department and its officials in conducting search and seizure of the petitioner's premises, coercing the petitioner to deposit a huge sum of Rs.11.5 crores during search operations held on 5<sup>th</sup> & 6<sup>th</sup> January 2022 as being in gross contravention of the mandatory requirement of Section 74 of the CGST Act.
- The petitioner was forced to deposit a sum of Rs.11.5 crores towards alleged GST evasion even though there is no evidence of such short payment/evasion. As the statement has been retracted, the respondents are required to adopt the mandatory procedure provided under Section 74 of the CGST Act, but rather than adhering to the said procedure, repeated notices are being issued to the petitioner's representative under Section 70 of the CGST Act.
- The petitioner further submits that the liability of the petitioner towards non-payment/evasion of GST has not been determined and without doing so, the respondents are pressurizing the petitioner to voluntarily deposit the amount or to face the consequence of arrest. Petitioner urges that the impugned notices are grossly illegal and amount to an abuse of power by the GST officials.
- As the petitioner's representative claims to have retracted from the confession, the voluntary nature of deposit of GST pursuant to the search proceedings dated 5<sup>th</sup> & 6<sup>th</sup> January 2022 is seriously disputed. There is merit in the petitioner's contention that the procedure provided under Section 74 of the CGST Act would have to be followed. Once this procedure is adopted, the respondent authorities would not be able to procure allegedly short paid GST amounts by branding it to be a voluntary deposit and that is why a dubious procedure of issuing summons to petitioner under Section 70 of the CGST Act is being adopted even though the petitioner's/representative's statement had already been recorded on the date of inspection/search itself.

Read Full Judgement: [Dhariwal Products Vs Union of India](#)

#### SNR's Take:

*The Rajasthan High court has appropriately ruled that the GST officials should not adopt tactics to force the assessee to deposit the GST without determining the quantum as per laid down procedure under Section 74 of the CGST Act.*

## 5. GST payable on liquidated damages for delay in delivery

Case of: **Achampet Solar Private Limited**

Decision by: **AAR Telangana**

- M/s. Achampet Solar Private Limited is engaged in production and distribution of electricity obtained from solar energy. They have engaged M/s. Belectric India (P) Ltd for construction of solar power project. The agreement has clauses for recovery of liquidated damages on two counts, one for delay in delivering of the contract and the second for non-performance of the plant. The applicant is desirous of ascertaining exigibility of liquidated damages to GST on account of delay in commissioning and its time of supply.
- Section 2(31)(b) of the CGST Act mentions that consideration in relation to the supply of goods or services or both includes the monetary value of an act of forbearance. Therefore, such a toleration of an act or a situation under an agreement constitutes supply of service and the consideration or monetary value of such toleration is exigible to tax.
- The clause (6) of the co-ordination agreement filed by the applicant specifies different liquidated damages to be paid for different periods of delay on the commissioning. This clause also specifies that the amount shall be paid within (3) days after the actual commissioning date as per the prescribed formula. The formula consists of various periods of delay i.e., delay upto one month, delay between one month to three months and more than three months.
- The Consideration received for such forbearance is taxable under CGST and SGST @9% each under the chapter head 9997 at serial no. 35 of Notification No.11/2017-Central/State tax rate.

Read Full Judgement: [Achampet Solar Private Limited](#)

### SNR's Take:

*Telangana AAR has correctly held that liquidated damages recoverable by the applicant from Belectric India on account of delay in commissioning would constitute a 'supply' under GST and therefore, attracts GST at 18%*

# CIRCULARS/NOTIFICATIONS

## 1. Seeks to implement e-invoicing for the taxpayers having aggregate turnover exceeding Rs. 20 Cr from 01st April 2022.

As per notification No 01/2022-Central Tax dated 24th February' 2022, E-invoicing is made applicable for registered taxpayers under the GST regime with an aggregate turnover exceeding Rs. 20 crores with effect from 1st April' 2022. Earlier, the limit was Rs. 50 crores. Hence, all the registered taxpayers needs to ensure that they have enabled the e-invoicing generation on or before 1st April' 2022.

**Read Full Notification: [N/N.01/2022-Central Tax](#)**

## GST CALENDAR – MARCH 2022

Date	Particulars
10-03-2022	Due Date of filing GSTR-7 & 8 for the month of February 2022
11-03-2022	Due Date of filing GSTR-1 for the month of February 2022
13-03-2022	Due Date of filing GSTR-6 for the month of January 2022 and IFF for the month of February 2022
20-03-2022	Due Date of filing GSTR-3B, 5 and 5A for the month of February 2022
25-03-2022	Due Date of QRMP tax Payment for February 2022
31-03-2022	Due date of filing of form CMP-02 for payment of tax under composition scheme for FY 2022-23
31-03-2022	Application for Letter of Undertaking for FY 2022-23 in RFD-11.

**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)

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