Tax Talk 110
GST
A Monthly Goods & Services Tax Bulletin
Vol : 10 | Issue No. 2 | 1st May 2021 | Rs. 5/-

Editorial...

Carefulness costs you nothing, Carelessness may cost you your life

We hope everyone is careful and safe. It is a tough time for us, due to the Covid-19 pandemic, with its second wave making the situation even worse. In the ongoing pandemic situation, medical crisis is at its peak. It has become difficult for a common man to cope up with their daily life activity. But together by keeping faith and carefulness, we will overcome it sooner.

Several petitions have been made before the government, requesting for extension of due dates. Consequently, government has acted on those representations and extended the time limit for various compliances and waived/ reduced interest as well as late fees by way of issuing number of notifications covering various other things. Also, all GST taxpayer, who is registered under Companies Act, 2013, can now file their Form GSTR-1 and GSTR-3B with EVC also, apart from using DSC, on GST Portal until 31.5.2021.

Goods and Services Tax (GST) collections have consistently crossed Rs 1 lakh crore mark for the last seven months. Surpassing the previous high in March, GST revenue in the month of April 2021 has set a fresh record of Rs 1.41 lakh crore and is 14 per cent higher, when compared with the collection of previous months.

Meanwhile, it is estimated that business activity has fallen drastically from the pre-COVID levels due to lockdowns imposed by states to contain the spread of the second wave of COVID-19. At the same time, it is also predicted that the falling activity levels will have a muted economic impact and will be able to maintain its growth estimates for the year. It is also to be noted that as lockdowns take effect, mobility has experienced a significant hit and there are signs of the economic pain spreading to the wider economy in facets such as power demand, GST e-way bills, railway freight.

A very beautiful judgment has been delivered by an SC Bench comprising justices DY Chandrachud and MR Shah pointing that "Parliament had aimed to give the GST as a citizen-friendly tax structure", but termed provisional attachment as a "draconian, pre-emptive strike". In the case of **Radha Krishna Industries v State of Himachal Pradesh & Ors.,** where they termed the provision of Sec 83 of Provisional Attachment as draconian and stated that without pendency of proceedings u/s 62,63,64,67,73 or 74(i.e.without issuance of a notice under these sections),provisional attachment cannot be made. Also, it is mandatory for the commissioner to provide a personal hearing. Further once the original order under the proceedings is passed, the provisional attachment shall cease to have effect. It has also been mentioned in the order that the officer is to pass an order based on some tangible material and after disposing off the objections raised by the assessee. Thus, provisional attachment cannot be done at the sweet will of the officers, such orders need to be passed carefully by the officers. This judgement will help good number of taxpayers.

Another important judgement given by the Hon'ble Madras High Court in the case of **D. Y. Beathel Enterprises v. the State Tax Officer** quashed the order passed by the SGST officer demanding the entire tax liability on the purchaser without demanding from the seller, where the payment of tax has been paid by the purchasing dealer to the Seller, but the same has not been remitted to the exchequer by the Seller. Court Held that, the omission on the part of the Seller to remit the tax, case ought to have been initiated against the seller. Hence demanding tax from the buyer without initiating case against the seller is bad in law and hence the demand on the buyer is quashed. It will surely help number of taxpayer facing hardship due to demand of tax or dis-allowance of ITC.

Lastly, we pray to almighty to keep everyone safe in these tough times and give us the courage to fight it out together. We hope this newsletter will add some value to the readers. We highly solicit suggestion/opinions of the readers. Please feel free to convey your view at gst@goyalstax.com. You may refer all earlier issues of Tax Talk on my Facebook Wall.

CA Sushil Kr Goyal

Due dates are provided inside of the issue

Important GST Judgements

Radha Krishna Industries v. State of Himachal Pradesh,
(Supreme Court decided on 20.04.2021)

A very beautiful judgment has been delivered an SC Bench comprising justices D Y Chandrachud and M R Shah pointing that “Parliament had aimed to give the GST as a citizen-friendly tax structure”, but termed provisional attachment as a “draconian, pre-emptive strike”

This is a classic case of abuse of power by the tax authorities where the apex court came to the rescue of the appellant in whose case the Authorities ordered provisional attachment of receivables from its debtors on account of alleged fraudulent input credit on the basis of false invoices issued.

In the present case, the High Court had dismissed the writ petition instituted under Article 226 of the Constitution challenging orders of provisional attachment on the ground that an alternate remedy is available. The appellant challenged the orders issued on 28 October 2020 by the Joint Commissioner of State Taxes and Excise, provisionally attaching the appellant’s receivables from its customers.

Also held, it is mandatory for the commissioner to provide a personal hearing. Further once the original order under the proceedings is passed, the provisional attachment shall cease to have effect. It has also been mentioned in the order that the officer is to pass an order based on some tangible material and after disposing off the objections raised by the assessee.

The provisional attachment was ordered while invoking Section 83 of the Himachal Pradesh Goods and Service Tax Act, 2017 and Rule 159 of Himachal Pradesh Goods and Service Tax Rules, 2017 .

Finally, the court agreed with the appellant that when the Joint commissioner as a delegate passed the order, the same could not be said to be appealable under the law and as such there was no alternative remedy. Lastly, the court reproducing the order sheet of attachment, held the attachment of be ultra vires Section 83 of the Act.

This judgement is a landmark judgement which will be helpful in several ways in dealing with the plea of alternative remedy, the way the power is to be exercised by the Commissioner and other issues. Justice Chandrachud further asked officers to strike a balance between protecting government revenue and allowing genuine businesses to operate. “In order to make the GST Act workable, the message must percolate to the actual authorities...”

Justice Chandrachud during the hearing also orally observed that the taxman should not see all “businesses as being fraudulent”, and said the country need to come out of such mindset. “Even when `12-crore tax has been paid (by Radha Krishna Industries), just because some tax is still due, you can’t start attaching property. If there is any alienation of assets or the assessee is winding up or going into liquidation, it is understandable… but just because you have the account numbers, you can’t start attaching and even block the receivables,” the judge said.

D. Y. Beathel Enterprises v. the State Tax Officer,
(Madras High Court decided on 24.02.2021)

Fact of the case, all the 17 petitioners are dealers, registered with department, the issue in all these writ petitions is virtually one and the same. Petitioners are traders. According to them, they had purchased goods from one Charles and his wife Shanthi. The specific case of the petitioners is that a substantial portion of the sale consideration was paid through banks. The payments made by the petitioners to the said Charles and his wife, included the tax. Charles and his wife are also said to be dealers registered with the department. Based on the returns filed by the sellers, the petitioners availed input tax credit. Later it came to light that the respondent, did not pay any tax to the Government. That necessitated initiation of the impugned proceedings. The petitioners submitted their replies to show cause notice issued to them specifically taking the stand that all the amounts payable by them had been paid to the said Charles and his wife Shanthi. Unfortunately, without involving the said Charles and his wife Shanthi, the impugned orders came to be passed levying the entire liability on the petitioners herein.

According to the respondent, there was no movement of the goods. Hence, examination of Charles and his wife has become all the more necessary and when the petitioners have insisted on this, I do not understand as to why the respondent did not ensure the presence of Charles and his wife Shanthi, in the enquiry.

Thus, the impugned orders suffer from certain fundamental flaws. It has to be quashed for more reasons than one.

a) Non-examination of Charles in the enquiry
b) Non-initiation of recovery action against Charles in the first place

At this stage, the learned counsel brought to my notice that the press release issued by the Central Board of GST council on 4.5.2018. In the said press release, it has been mentioned that there shall not be any automatic reversal of input tax credit from the buyer on non-payment of tax by the seller. In case of default in payment of tax by the seller, recovery shall be made from the seller. However, reversal of credit from buyer shall also be an option available with the revenue authorities to address exceptional situations like missing dealer, closure of business by the supplier or the supplier not having adequate assets etc.

The stage upto the reception of reply from the petitioners herein will hold good. Enquiry alone will have to be held afresh. In the said enquiry, Charles and his wife Shanthi will have to be examined as witnesses. Parallelly, the respondent will also initiate recovery action against Charles and his wife Shanthi.

The Hon’ble Madras High Court quashed the order passed by the State GST officer, which demanded the entire tax liability on the purchaser without demanding from the seller, where the payment of tax has been paid by the purchasing dealer to the Seller, but the same has not been remitted to the exchequer by the Seller. High Court also held that, the omission on the part of the Seller to remit the tax, case ought to have been initiated against the seller. Hence demanding tax from the buyer without initiating case against the seller is bad in law and hence the demand on the buyer is quashed.

GST Due Dates

GSTR 1 Due Dates

Month	Due Date	New Date	Remark
Mar'2021	11.4.2021	11.4.2021	Normal (No Extension)
Apr'2021	11.5.2021	26.5.2021	Credit Available to recipient
QRMP	**Due Date**	**No late fee up to**	**Remark**
Jan-Mar'21	13.4.2021	13.4.2021	Normal (No Extension)
Apr (IFF)	13.5.2021	28.5.2021	Last date for filing IFF

GSTR 3B (turnover > 5 crore)

Month	Due Date	Int @9% Upto + No Late Fees	Int @18% + Late Fee* From
Mar'2021	20.4.2021	5.5.2021	6.5.2021
Apr'2021	20.5.2021	4.6.2021	5.6.2021

GSTR 3B/PMT 06 (turnover ≤ 5 crore)

QRMP	Due Date (State wise)	No Interest + No Late Fee Up to	Int 9% Up to + No Late Fee	Int 18% + Late Fee From
Jan-Mar'2021	22/24.4.2021	7/9.5.2021	22/24.5.2021	23/25.5.2021
Apr'2021 (PMT-06)	25.5.2021	9.6.2021	24.6.2021	25.6.2021*

*Interest only applicable as no late fees for late payment

GSTR 3B (turnover ≤ 5 crore)

Monthly	Due Date (All State)	No Interest + No Late Fee Up to	Int @9% Up to + No Late Fee	Int 18% + Late Fee* from
Mar'2021	20.4.2021	5.5.2021	20.5.2021	21.5.2021
Apr'2021	20.5.2021	4.6.2021	19.6.2021	20.6.2021

Composition Taxpayer

Payment	Due Date	Nil Interest up to	Int @9% up to	Int @18% from
Jan-Mar'2021 (CMP-08)	18.4.2021	3.5.2021	18.5.2021	19.5.2021
Return	**Purpose**		**Due Date**	**Extended**
Apr-Mar'2021 (GSTR – 4)	Annual Return		30.4.2021	31.5.2021

Due Date Extension for other Returns

Return	Purpose	Due Date	Extended
ITC - 04	Job Work (Jan-Mar)	25th Apr	31st May 2021*
GSTR - 5	NRTP (Mar/Apr)	20th Apr/20th May	31st May 2021**
GSTR - 6	ISD (Apr)	13th May	31st May 2021**
GSTR - 7	TDS (Apr)	10th May	31st May 2021**
GSTR - 8	TCS (Apr)	10th May	31st May 2021**

*Extended by Notification No.11/2021
**Extended by Notification No.14/2021

No restriction (5%) for taking credit as per Rule 36 (4) in April'2021...

Apply cumulative (April & May) restriction in May'2021 return...

[Notification No. 13/2021 dt 01.05.2021]

Companies can file IFF/ GSTR-1 and GSTR-3B...

Using EVC (Commonly known as OTP) instead of DSC upto 31.5.2021...

[Notification No. 07/2021 dt 27.04.2021]

GST Other Due Dates

In view of the spread of pandemic COVID-19 across many parts of India, the government has announced relaxation of time limit for making various compliances under GST law. Time limit for completion or compliance of any action, by any authority or by any person, which falls during the period from the 15th April, 2021 to the 30th May, 2021 is extended up to 31st May, 2021.

By Authority

The time limit for completion of any proceeding or passing of any order or issuance of any notice, intimation, notification, sanction or approval or such other action, by whatever name called by any authority, commission or tribunal, which falls during the period is extended by this notification.

By Taxpayers

The time limit for filing of any appeal, reply or application or furnishing of any report, document, return, statement or such other record, by whatever name called, which falls during the period is extended by this notification.

Application for fresh GST registration and approval thereof

The time limit for verification of application for fresh GST registration and approval/ grant of GST registration under rule 9 of CGST Rules, which falls during the period from the 1st May, 2021 to the 31st May, 2021 is extended up to 15th June, 2021.

Time limit for passing order of GST Refund u/s 54(5):

Where a notice has been issued for rejection of refund claim and where the time limit for issuance of order u/s 54(5) read with sec 54(7) falls during the period from 15th April, 2021 to the 30th May, 2021, in such cases the time limit for issuance of the said order is extended to 15 days after the receipt of reply to the notice from the registered person or the 31st day of May, 2021, whichever is later.

Non-applicability of above extensions :

However the aforesaid extensions of time shall not be applicable in following cases:

a) For withdrawal from composition scheme where turnover exceeds threshold limits as prescribed under section-10(3);
b) For determination of "Time & Value of Supply" as envisaged in Chapter IV of CGST Act, 2017;
c) For application for New Registration u/s 25
d) Registration of casual taxable person u/s 27
e) For issuance of Tax Invoice u/s 31
f) For filing of GSTR-1 u/s 37 (separate notification)
g) Filing of return u/s 39 except sec 39(3), 39(4) & 39(5)
h) Levy of Late Fees u/s 47 or
i) Levy of Interest for delayed filing of returns u/s 50 (separate notification)
j) For compliance of E-way bill related provision u/s 68
k) Power of arrest u/s 69;
l) Liability of partners of firm to pay tax as per sec 90.
m) Levy of Penalty for certain offenses u/s 122
n) Detention, seizure and release of goods and conveyances in transit u/s 129.

(Notification No. 14/2021-Central Tax)

Published from :

Tax Talk

Stephen House
Room No. 64, 4th Floor, 4, B.B.D. Bag (East) Kolkata - 700 001

Owner: M/s. Goyal Tax Services Pvt. Ltd., Printer & Publisher: Mrs. Reena Goyal Published from Stephen House, Room No. 64, 4 B. B. D. Bag (East), 4th Floor, Kolkata-700 001 and Printed from M/s. CDC Printers Pvt. Ltd., Tangra Industrial Estate-II (Bengal Pottery), 45, Radhanath Chowdhury Road, Kolkata - 700 015. Editor: □A □us□il □u□ □r □o□□l.

Registration under RNI No. WBENG/2013/55099 Postal Registration No. KOL RMS/465/2021-2023 Date of Publication : 1st May 2021