

1. CIRCULARS

- **No. 89/08/2019-GST dated February 18, 2019**
 - It has been brought to the notice of the Board that a number of registered persons have not reported the details of inter-State supplies made to unregistered persons in Table 3.2 of FORM GSTR-3B. However, the said details have been mentioned in Table 7B of FORM GSTR-1.
 - It is instructed that the registered persons making inter-State supplies to unregistered persons shall report the details of such supplies along with the place of supply in Table 3.2 of FORM GSTR-3B and Table 7B of FORM GSTR-1 as mandated by the law.
 - Contravention of any of the provisions of the Act or Rules would attract penal action under the provisions of Section 125 of the CGST Act, 2017 as amended.
- **No. 90/09/2019-GST dated February 18, 2019**
 - It has been brought to the notice of the Board that a number of registered persons (especially in the banking, insurance and telecom sectors, etc.) are not mentioning the place of supply along with the name of the State in case of a supply made in the course of inter-State trade or commerce.
 - It is instructed that all registered persons making supply of goods or services or both in the course of inter-state trade or commerce shall specify the place of supply along with the name of the State in the tax invoice.
 - Contravention of any of the provisions of the Act or Rules would attract penal action under the provisions of Section 122 or 125 of the CGST Act, 2017 as amended.
- **No. 91/10/2019-GST dated February 18, 2019**
 - Supply of warehoused goods while being deposited in a customs bonded warehouse during the period July, 2017 to March, 2018 was exigible to IGST. Due to non-availability of the facility on the common portal to report payment of IGST, such supplies were reported as intra-state supplies in GSTR 1 and accordingly Central GST ('CGST') and State GST ('SGST') was paid on such supplies.
 - It is therefore clarified that suppliers shall be deemed to have complied with the provisions of law as long the amount of CGST and SGST is equal to the amount of IGST due on such supplies.

2. JUDICIAL PRONOUNCEMENTS

- **S.L.P No. 15184 of 2018 - Yasho Industries Limited Vs Union of India**

Gujarat High Court has struck down the 'pre-import' condition imposed under Sr. No. 2(c) of Notification No. 79/2017 – Customs and paragraph 1 of DGFT Notification No. 33/2015-20, both dated October 13, 2017, in respect of imports made under Advance Authorization and has held that the said condition is arbitrary, ultra vires and violative of the Constitution of India.
- **W.P. No. 18879 (W) of 2018 - Optival Health Solutions Private Limited & Anr Vs Union of India & Ors**

Kolkata High Court directs the authorities to allow the petitioner to file a revised FORM TRAN 2 either electronically or manually while observing that when a person, is seeking to correct Form GST TRAN 2 on its own, an opportunity should be afforded to such person.
- **W.P. No. 3159/2019 (T - RES) - M/s Pragati Automotion Pvt. Ltd.**
 - Karnataka High Court directs Nodal officer to consider complaint/representation of petitioner to revise GST TRAN-1 to correct bonafide error which had crept in while filing GST TRAN-1 form because of which the petitioner was deprived of transitional credit of an amount of Rs.9.74 crores.
 - Observed that petitioner's complaints before Nodal officer were not considered. Accordingly, instructs Nodal officer to consider same and take decision in accordance with law in an expedite manner.

▪ **C.W.P No. 2970 of 2018 - Scott Edil Pharmacia Limited Vs Assistant Commissioner, State Taxes and Excise & Others**

Facts

- Petitioner guilty of suppressing Gross Turnover and consequently subjected to liability of SGST and penalty vide Order passed by Assistant Commissioner, State Taxes and Excise. Though the Order is appealable, no appellate forum is notified by the State. Accordingly, petitioner denied right of appeal resulting in filing of writ petition.

Ruling

- Himachal Pradesh High Court held that Petitioner cannot be left remediless merely because the State has not notified the appellate forum. Disposes off the writ petition and directs competent authority, to notify the appellate forum.

3. AUTHORITY FOR ADVANCE RULING

▪ **Tewari Warehousing Company Pvt Ltd [TS-71-AAR-2019-NT]**

Facts

- Applicant is constructing a warehouse on leasehold land using pre-fabricated technology.
- Warehouse can be dismantled and reconstructed at a different location.

Question

- Whether the input tax credit ('ITC') is admissible on the inward supplies for construction of the said warehouse?

Ruling

- Observes that intention of the Applicant is beneficial enjoyment of the warehouse for more than two decades and thereby intended to be used as a permanent structure subject to usual business uncertainties.
- Holds that the warehouse cannot be conceived without beneficial enjoyment of the civil structure embedded on earth.
- Holds that the warehouse constructed by the Applicant constitutes immovable property, denies ITC on inward supplies used for construction of the said warehouse in view of provisions of section 17(5)(d) of the CGST Act.

▪ **M/s YKK India Private Limited [TS-888-AAR-2018-NT]**

Facts

- Applicant has engaged contractors for hiring of buses and cars for the purpose of transportation of employees to factory.

Question

- Whether ITC can be claimed on GST charged by the Contractor for hiring of buses/cars for transportation of employees?

Ruling

- Observed that in absence of the definition of the term 'rent-a-cab', recourse to be made to their common or trade understanding or according to their popular meaning. Relying on the information available on Wikipedia, Oxford Dictionary, Merriam - Webster, Cambridge Dictionary, it is held that 'cab' refers to vehicle taken on hire/rent along with driver.
- Contention of Applicant that hiring of buses would not qualify under 'rent-a-cab' is therefore found untenable.
- Holds that Applicant is therefore not eligible to take ITC on GST charged by the Contractor for hiring of buses/cars for transportation of employees in view of restriction contained u/s 17(5)(b)(iii) of CGST Act, 2017.

▪ **M/s B.M. Industries [TS-886-AAR-2018-NT]**

Facts

- Applicant is a proprietorship firm engaged in manufacturing and sale of aluminium profiles, owning fixed assets, current assets, long term and current liabilities.
- Applicant proposes to merge with a Private Limited Company as a going concern. Post merger, the proprietorship firm would cease to exist and all its present and future assets, liabilities, rights, claims, businesses etc, shall be taken over by the Private Limited Company.

Question

- a. Whether the Applicant is liable to pay tax under CGST/SGST Act on merger of his proprietorship firm as a going concern with a Private Limited Company on the fixed assets and current assets including stocks of raw material, semi-finished

and finished goods.

- b. Whether the ITC available in the credit ledger account or cash ledger account of proprietorship firm shall be transferred to the respective credit ledger and cash ledger account of the Private Limited Company, consequent upon merger.

Ruling

- a. Holds that in terms of Para 4(c) of Schedule II to CGST Act 2017, transfer of business as a 'going concern' is not treated as 'supply', thus the same stands excluded from the scope of supply of goods. The Applicant on merger of its proprietorship firm as a going concern with a Private Limited Company is therefore not liable to pay tax on the fixed/current asset including stocks of raw material, semi-finished and finished goods.
- b. Holds that ITC available in the credit ledger account of proprietorship firm shall be transferred to the respective credit ledger account of Private Limited Company consequent upon merger subject to provisions of Section 18(3) of CGST Act 2017 and Rule 41 of CGST Rules. Further, states that said provisions are applicable to transfer of unutilised ITC and are not applicable to unutilized balance lying in electronic cash ledger.

▪ **M/s IMF Cognitive Technology Private Limited [TS-56-AAR-2019-NT]**

Facts

- Applicant is registered in Rajasthan under GST. Applicant has paid CGST and Haryana SGST in relation to procurement of hotel services in Haryana. The said services are used for business purposes.

Question

- Whether the ITC of Central Tax paid in Haryana be available to the Applicant who is registered in Rajasthan?

Ruling

- Clarifies that SGST and CGST charged for services provided and availed in a State would be eligible for ITC within that particular State where such services were provided and consumed.
- Holds that since supplier of service and place of supply both are outside Rajasthan, credit of Central tax paid in Haryana is not available to the Applicant.

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