



A2Z TAXCORP LLP

Tax and Law Practitioners

Weekly GST Communique

October
2022
Week 5



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Recorded GST Course: Scrutiny Notices, Assessment, Audit, Inspection, Search, Seizure & Arrest under GST (September, 2022)

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Assessment, Audit,
Inspection, Search,
Seizure and Arrest
Under GST**



By
CA Bimal Jain
(GST Expert)



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GST

Important Notifications, Circulars of the week



CBIC: Instructions on Pre-deposit payment method for cases pertaining to Central Excise and Service Tax

The CBIC vide **CBIC-240137/14/2022-SERVICE TAX SECTION-CBEC dated October 28, 2022** has issued Instructions on the pre-deposit payment method for cases pertaining to Central Excise and Service Tax.

It has been brought to the notice of the Board that appeals have been rejected by some Commissioner (Appeals) for non-compliance of pre-deposit requirements as mandated under section 35F of the Central Excise Act, 1944 (CEA) and Section 83 of the Finance Act, 1994 read with section 35F of the CEA, where such payments have been made through Form GST DRC-03 on common GST portal, by holding that it is not a prescribed method of payment of such pre deposit. The issue has also been referred to the Board by the Hon'ble High Court of Mumbai in writ petition No. 6220 of 2022 in the matter of Sodexo India Services Pvt. Ltd Vs Union of India and Ors., with directions to examine and issue suitable instructions in this regard.

The matter has been examined. It may be seen that Form GST DRC -03 is prescribed for payment of tax, interest, penalty under sub-sections (5) and (8) of both sections 73 and 74, and section 129 (1) of the CGST Act, 2017 or any other payment due in accordance with the provisions of the CGST Act, 2017 as specified in rule 142 (2) and 142 (3) of the CGST Rules, 2017. Further, in GST regime, in connection with the appeal mechanism under section 107 of the CGST Act, 2017, Rule 108 (1) of the CGST Rules, 2017 provides Form GST APL-01 for filing an appeal with the option of payment of admitted amount and pre-deposit through electronic cash/credit ledger. Thus, under GST Act also, Form GST DRC-03 is not a prescribed mode for payment of pre-deposit.

Attention is invited to Miscellaneous transitional provisions sub-section (6)(b), sub section (7)(a) and sub-section (8)(a) of section 142 of the CGST Act, 2017, which, inter alia, provides that any credit, tax, interest, fine or penalty recoverable from the person before, on or after July 01, 2017 under the existing law (Central Excise



Act and Chapter-V of Finance Act, 1994) shall be recovered as an arrear of tax under CGST Act. It is, however, settled that pre deposit as a requirement for exercising the right to appeal neither is in the nature of duty nor can be treated as arrears under the existing law and hence cannot be said to be covered under transitional provisions of CGST Act.

In view of above, it is clarified that payments through DRC-03 under CGST regime is not a valid mode of payment for making pre-deposits under section 35F of the Central Excise Act, 1944 and Section 83 of Finance Act, 1994 read with section 35F of the CEA. There exists a dedicated CBIC-GST Integrated portal, <https://cbic-gst.gov.in> (Board's Circular No. 1070/3/2019-CX dated June 24, 2019 refers in this regard), which should only be utilized for making pre- deposits under the Central Excise Act, 1944 and the Finance Act, 1994.

For complete Instruction [Click Here](#)

CBIC: Instructions on acceptance of Electronic Certificate of Origin issued under the India-UAE CEPA

The CBIC vide **Instruction No. 28/2022- Customs dated October 27, 2022** regarding the Acceptance of an Electronic Certificate of Origin (“e-CoO”) issued under India-UAE CEPA.

Representations have been received in the Board with regard to the India-United Arab Emirates Comprehensive Economic Partnership Agreement (India-UAE CEPA) stating, inter alia, that the importers are facing difficulties in availing preferential tariff benefit on the basis of e-CoO issued by the Issuing Authority of UAE, although the said agreement specifically provisions for the same.

In this regard, it is hereby clarified that an e-CoO, issued electronically by the Issuing Authority of UAE, is a valid document for the purpose of claiming preferential benefit under India-UAE CEPA, provided that the e-CoO has been issued in the prescribed format, bears electronically printed seal and signatures of the authorized signatory of the Issuing Authority, and fulfills all other requirements stated in notification No. 39/2022-Customs (N.T.) dated April 30, 2022.

The specimen seals and signatures, circulated in advance, shall continue to be used to verify the genuineness/authenticity of e-CoO. In case of doubt, the matter shall be referred to the FTA Cell (under the Directorate of International Customs) for initiating the verification process with the issuing authority of exporting country.

The e-CoO shall be mandatorily uploaded on e-Sanchit by the importer/Customs Broker for availing preferential benefit, and the e-CoO particulars such as unique reference number and date, originating criteria etc. shall be carefully entered while filing the bill of entry.

For defacement of CoO during Out of Charge, a printed copy of e-CoO shall be presented to the Customs officer, who shall cross-check the unique reference number and other particulars entered in the bill of entry with the printed copy of e-CoO. This will be in lieu of defacing the original hard copy of a certificate of origin.



In this regard, it may be recalled that a check has already been introduced in the System to disallow the use of the same CoO reference number in more than one bill of entry.

It is requested that the above procedure for accepting e-CoO may be suitably implemented in Customs formations under your jurisdiction.

For complete Instruction [Click Here](#)

CBIC issued procedure for identification of parboiled rice varieties during exports

The CBIC vide **Instruction No. 29/2022-Customs dated October 28, 2022** has issued a procedure for the identification of parboiled rice varieties during exports.

The undersigned is directed to say that there is presently a levy of export duty on rice falling under CTH 1006.30.90 vide Notification No. 49/2022-Customs dated September 08, 2022 with effect from September 09, 2022. The current classification structure is as follows:

1006 30 - Semi milled or wholly milled rice, whether or not polished or glazed

1006 30 10 --- Rice, Parboiled

1006 30 20 --- Basmati rice

10063090 ---Other

References have been received of variation in procedure followed for identification of parboiled rice variety of CTH 1006.30.10 (which attracts nil rate of duty) at the time of export so as to distinguish it from other varieties of rice under the CTH 1006.30.90 which are dutiable. It has also been reported that when provisional assessment is resorted, bank guarantee is insisted in some field formations (and not in others) leading to uncertainty/delay in export as well as a financial burden on the exporter in such cases.

The matter has been examined. The issue here is only the adoption, in normal course, of least burdensome procedure to merely rule out the export of dutiable rice variety declared as non-dutiable parboiled rice variety. The Department of Food and Public Distribution (DFPD) has informed that there is no direct method, other than by testing, found in the literature, to identify parboiled rice variety with certainty vis a vis other. It is relevant that the DGFT prescribed export policy condition is 'Free' for the above classification structure.

Accordingly, in the above context, it is guided that the following procedure for confirming the correctness of declaration in respect of goods declared as parboiled rice under CTH 1006.30.10 may be adopted in normal course –



- a. Representative samples be drawn at the time of export and sent for test to CRCL, and consignments allowed for export on a provisional basis with a bond only.
- b. However, drawl of sample for test and provisional basis with bond only may not be applied to export consignment of a Tier-2 or Tier-3 Authorized Economic Operator (AEO) which may be allowed for export basis the declaration/self-assessment, except when RMS specifies that sample for test is required to be drawn.

The above procedure shall not be applicable in a case where intervention is required based on a specific intelligence; or where for reasons recorded in writing deviation from the above procedure is necessary.

For complete Instruction [Click Here](#)

DGFT extends ban on sugar export till October 31, 2023

The DGFT vide **Notification No. 40/2015-20 dated October 28, 2022** extends the date for restrictions on the export of Sugar (Raw, Refined and White sugar) beyond October 31, 2022 till October 31, 2023.

In the exercise of powers conferred by Section 3 read with Section 5 of the Foreign Trade (Development & Regulation) Act, 1992 (No. 22 of 1992), as amended, read with Para 1.02 and 2.01 of the Foreign Trade Policy, 2015-20, in partial modification of Notification No.10/2015 2020 dated May 24, 2022, the Central Government hereby extends the date of 'Restriction' on the export of Sugar (Raw Sugar, Refined Sugar, and White Sugar) under HS Codes 1701 14 90 and 1701 99 90 beyond October 31, 2022 till October 31, 2023, or until further orders, whichever is earlier.

This restriction is not applicable to Sugar being exported to EU and USA under CXL and TRQ quota as per prescribed procedure in the respective Public Notices.

Effect of this Notification:

Restriction on the export of Sugar (Raw, Refined and White sugar) is extended beyond October 31, 2022 till October 31, 2023, or until further orders, whichever is earlier. Other conditions will remain unchanged.

For complete Notification [Click Here](#)

DGFT has withdrawn a public notice regarding an amendment to Appendix 2T of the FTP 2015-2020

The DGFT has issued **Public Notice No. 33/2015-2020 dated October 25, 2022** has withdrawn a *Public Notice No. 06/2015-2020 dated June 14, 2021*, regarding the amendment in Appendix 2T of Foreign Trade Policy 2015-2020 ("FTP").



In exercise of powers conferred under paragraph 2.04 of the Foreign Trade Policy, 2015-2020, as amended from time to time, the Director General of Foreign Trade hereby specifies the procedure to implement the provisions of FT (D&R) Act as follows:

The Public Notice No. 6/2015-2020 dated June 14, 2021 is withdrawn.

In pursuance of Gazette Notification No. S.O. 3515 (E) dated July 29, 2022 regarding addition of 'cashew nuts and its products' to the First Schedule to the Agricultural and Processed Food Products Export Development Authority Act, 1985 (2 of 1986), the Director General of Foreign Trade hereby makes the following changes in Appendix - 2T of Foreign Trade Policy, 2015-2020:

| S. No. | Name of Export Promotion Councils/ Commodity Boards | Details of products falling with their jurisdiction | Revised details of products falling with their jurisdiction |
|--------|---|--|---|
| 4 | Cashew Export Promotion Council of India | Cashew Kernels Cashewnut Shell Liquid Kardanol | -- |
| 35 | Agricultural and Processed Food Products Export Development Authority (APEDA) | <ol style="list-style-type: none"> 1. Fruits, Vegetable and their products 2. Meat and meat products 3. Poultry and poultry products 4. Dairy products 5. Confectionary, biscuits and bakery products 6. Honey, jaggery and sugar products 7. Cocoa and its products, chocolates of all kinds 8. Alcoholic and non-alcoholic beverages 9. Cereals and cereals products 10. Groundnuts, peanuts and walnut 11. Pickles, chutneys and papads 12. Guar Gum 13. Floriculture and floriculture products 14. Herbal and medicinal plants | <ol style="list-style-type: none"> 1. Fruits, Vegetable and their products 2. Meat and meat products 3. Poultry and poultry products 4. Dairy products 5. Confectionary, biscuits and bakery products 6. Honey, jaggery and sugar products 7. Cocoa and its products, chocolates of all kinds 8. Alcoholic and non-alcoholic beverages 9. Cereals and cereals products 10. Groundnuts, peanuts and walnut 11. Pickles, chutneys and papads 12. Guar Gum 13. Floriculture and floriculture products 14. Herbal and medicinal plants 15. Cashew Kernels 16. Cashewnut Shell Liquid 17. Kardanol |



Effect of the Public Notice: DGFT Public Notice No. 6/2015-2020 dated June 14, 2021 is withdrawn. In pursuance of Gazette Notification No. S.O. 3515 (E) dated July 29, 2022 regarding addition of cashew nuts and its products' to the First Schedule to the APEDA Act, 1985 (2 of 1986), APEDA is designated as the agency authorized to issue RCMCs for Cashew Kernels, Cashewnut Shell Liquid and Kardanol, with immediate effect.

This issues with the approval of the Competent Authority.

For complete Public Notice [Click Here](#)



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Important Press Releases of the week



CCI imposes a monetary penalty of Rs. 936.44 cr on Google for anti-competitive practices in relation to its Play Store policies

The Competition Commission of India (CCI) on October 25, 2022 imposed a penalty of Rs. 936.44 crore on Google for abusing its dominant position with respect to its Play Store policies, apart from issuing a cease-and-desist order. The Commission also directed Google to modify its conduct within a defined timeline.

For app developers, app stores have become a necessary medium for distribution of their apps to the end users and the availability of app store(s) is directly dependent on OS installed on a smart device. An appreciation of the market dynamics in licensable mobile operating system in India makes it evident that Google's Android OS has successfully reaped the indirect network effects. Google's Play Store constitutes the main distribution channel for app developers in the Android mobile ecosystem, which allows its owners to capitalize on the apps brought to market.

Based on its assessment, the CCI found Google to be dominant in the markets for licensable OS for smart mobile devices & market for app stores for Android smart mobile OS, in India.

Selling of in-app digital goods constitutes an important means for app developers to monetize their creations/innovations. However, for in-app digital goods to be distributed to purchasing users, developers must configure their apps so that all purchases of the digital goods go through Google's payment system, which processes the transactions.

Google's Play Store policies require the App developers to exclusively and mandatorily use Google Play's Billing System (GPBS) not only for receiving payments for Apps (and other digital products like audio, video, games) distributed/sold through the Google Play Store but also for certain in-app purchases *i.e.* purchases made by



users of Apps after they have downloaded/ purchased the App from the Play Store. Further, app developers cannot, within an app, provide users with a direct link to a webpage containing an alternative payment method or use language that encourages a user to purchase the digital item outside of the app (anti-steering provisions).

If the app developers do not comply with Google's policy of using GPBS, they are not permitted to list their apps on the Play Store and thus, would lose out the vast pool of potential customers in the form of Android users. Making access to the Play Store dependent on mandatory usage of GPBS for paid apps and in-app purchases is one sided and arbitrary and devoid of any legitimate business interest. The app developers are left bereft of the inherent choice to use payment processor of their liking from the open market.

The CCI has also examined the allegations of exclusion of rival UPI apps as effective payment options on Play Store. It was found that Google Pay has been integrated with intent flow methodology whereas other UPI apps can be used through collect flow methodology. It was noted that the intent flow technology is superior and user friendly than collect flow technology, with intent flow offering significant advantages to both customers and merchants and the success rate with the intent flow methodology being higher due to lower latency. Google has informed the CCI that it has recently changed its policy and has allowed rival UPI apps to be integrated with intent flow.

Based on its assessment, the CCI concluded that,

- making access to the Play Store, for app developers, dependent on mandatory usage of GPBS for paid apps and in-app purchases constitutes an imposition of unfair condition on app developers. Thus, Google is found to be in violation of the provisions of Section 4(2)(a)(i) of the Act.
- Google is found to be following discriminatory practices by not using GPBS for its own applications *i.e.*, YouTube. This also amount to imposition of discriminatory conditions as well as pricing as YouTube is not paying the service fee as being imposed on other apps covered in the GPBS requirements. Thus, Google is found to be in violation of Section 4(2)(a)(i) and 4(2)(a)(ii) of the Act.
- mandatory imposition of GPBS disturbs innovation incentives and the ability of both the payment processors as well as app developers to undertake technical development and innovate and thus, tantamount to limiting technical development in the market for in-app payment processing services. in violation of the provisions of the Act. Thus, Google is found to be in violation of the provisions of Section 4(2)(b)(ii) of the Act.
- mandatory imposition of GPBS by Google, also results in denial of market access for payment aggregators as well as app developers, in violation of the provisions of Section 4(2)(c) of the Act.
- the practices followed by Google results in leveraging its dominance in market for licensable mobile OS and app stores for Android OS, to protect its position in the downstream markets, in violation of the provisions of Section 4(2)(e) of the Act.



- different methodologies used by Google to integrate, its own UPI app *vis-à-vis* other rival UPI apps, with the Play Store results in violation of Sections 4(2)(a)(ii), 4(2)(c) and 4(2)(e) of the Act.

Accordingly, in terms of the provisions of Section 27 of the Act, the CCI hereby directs Google to cease and desist from indulging in anti-competitive practices that have been found to be in contravention of the provisions of Section 4 of the Act, as detailed in this order. Some of the measures, in this regard, are indicated below:

- Google shall allow, and not restrict app developers from using any third-party billing/ payment processing services, either for in-app purchases or for purchasing apps. Google shall also not discriminate or otherwise take any adverse measures against such apps using third party billing/ payment processing services, in any manner.
- Google shall not impose any Anti-steering Provisions on app developers and shall not restrict them from communicating with their users to promote their apps and offerings, in any manner.
- Google shall not restrict end users, in any manner, to access and use within apps, the features and services offered by app developers.
- Google shall set out a clear and transparent policy on data that is collected on its platform, use of such data by the platform and also the potential and actual sharing of such data with app developers or other entities, including related entities.
- The competitively relevant transaction/ consumer data of apps generated and acquired through GPBS, shall not be leveraged by Google to further its competitive advantage. Google shall also provide access to the app developer of the data that has been generated through the concerned app, subject to adequate safeguards, as highlighted in this order.
- Google shall not impose any condition (including price related condition) on app developers, which is unfair, unreasonable, discriminatory or disproportionate to the services provided to the app developers.
- Google shall ensure complete transparency in communicating to app developers, services provided, and corresponding fee charged. Google shall also publish in an unambiguous manner the payment policy and criteria for applicability of the fee(s).
- Google shall not discriminate against other apps facilitating payment through UPI in India *vis-à-vis* its own UPI app, in any manner.

In relation to computation of penalty, the CCI noted that there were glaring inconsistencies and wide disclaimers in presenting various revenue data points by Google. However, in the interest of justice and with an intent of ensuring necessary market correction at the earliest, the CCI quantified the provisional monetary penalties on the basis of the data presented by Google. Accordingly, the CCI imposed a penalty @ 7% of its average relevant turnover amounting to Rs. 936.44 crore upon Google on provisional basis, for violating Section 4 of the Act. Google has been given a time of 30 days to provide the requisite financial details and supporting documents.

For complete Press Release [Click Here](#)

Important Updates of the week



GSTN issued Advisory on Filing TRAN forms for Taxpayers from Daman and Diu & Ladakh

The Goods and Services Tax Network ("GSTN") has issued an **Advisory dated October 25, 2022** on Filing TRAN forms for Taxpayers from Daman and Diu & Ladakh.

Due to reorganization of the state of Jammu & Kashmir and merger of the Union territories of Dadra and Nagar Haveli and Daman and Diu, the taxpayers of Ladakh and earlier 'Daman and Diu' region have been allotted new GSTINs. There is therefore a doubt as to how to file the TRAN-1 and whether it would be linked with the old TRAN-1 or not.

*The aggrieved taxpayers of both the above-mentioned regions are hereby informed that they can **file** or **revise** their TRAN-1 or TRAN-2 Forms only through their newly allotted GSTINs. Kindly do not use the old GSTIN for filing of TRAN forms.*

The respective tax administrations of both the regions are also advised to accordingly facilitate the taxpayers and keep the above information in mind while processing the TRAN claims under the new GSTINs by linking both the old and revised TRAN-1 forms filed by such taxpayers.

To know more [Click Here](#)

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Our Articles of the week



Recovery under GST without issuance of SCN is not permissible

There was amendment in sec 75(12) of the Central Goods and Services Tax Act, 2017 (“the **CGST Act**”), which were introduced vide the Finance Act, 2021 but brought into effect only from January 1, 2022 through Notification no. 39/2021-central tax dated December 21, 2021.

“Section 75 General provisions relating to determination of tax.

(12) Notwithstanding anything contained in section 73 or section 74, where any amount of self-assessed tax in accordance with a return furnished under section 39 remains unpaid, either wholly or partly, or any amount of interest payable on such tax remains unpaid, the same shall be recovered under the provisions of section 79.

Explanation.—*For the purposes of this sub-section, the expression “self-assessed tax” shall include the tax payable in respect of details of outward supplies furnished under section 37, but not included in the return furnished under section 39.”*

The above amendment has been made to clarify that “self-assessed tax” shall include the tax payable in respect of outward supplies which have been furnished in Form GSTR-1 under sec 37 of the CGST Act, **but not included in the return furnished in Form GSTR-3B under sec 39 of the CGST Act.**

Hence, recovery under GST may be initiated straightaway under sec 79 of the CGST Act (i.e. through various modes like detaining/selling goods belonging to defaulter which are under control of the department, garnishee proceedings, distaining and selling of movable or immovable property belonging to the defaulting person, etc.)



without even resorting to issuance of SCN under sec 73 (Non-Fraud Cases) or sec 74 (Fraud Cases) of the CGST Act.

The stated move was aimed at curbing the menace of fake billing whereby sellers was showing higher sales in GSTR-1 to enable a purchaser to claim an input tax credit (“ITC”) but report suppressed sales in GSTR-3B to lower GST liability.

In this context, various doubts are being raised by the trade and the field formations regarding modalities for initiation of the recovery proceedings and in the interest of ease of doing business, the Central Board of Indirect Taxes and Customs (“CBIC”) issued guidelines vide *Instruction No. 01/2022-GST dated January 7, 2022* **stating that an opportunity needs to be provided to the concerned businesses for short payment or non-payment of the amount of self-assessed tax liability.**

It is to be noted that in some cases, there may be a genuine reason for the differences between the details of outward supplies declared in GSTR-1 and those declared in GSTR-3B.

For example, if a taxpayer has wrongly furnished its outward supply in GSTR-1 as Rs 10,00,000 whereas it should have been only Rs 1,00,000 and has paid GST in GSTR-3B on Rs 1,00,000. Consequently, there would be a difference between outward supply shown in GSTR-1 vs. GSTR-3B of the relevant period.

Another example, the registered person may have a omissions in the GSTR-1 or GSTR-3B of a particular month.

So, now question arises whether any recovery proceedings can be initiated without issuance of SCN u/s 73 or 74 of the CGST Act:

In our submission as reproduced below, recovery should not be initiated without issuance of SCN.

1. Any errors or omissions can be rectified by the registered person in a subsequent GSTR-1 or GSTR-3B as per the sec 37(3) or sec 39(9) of the CGST Act as the case maybe .
2. Any initiation of recovery proceedings under sec 78 of the CGST Act is permissible for failure of payment any amount payable by a taxable person in pursuance of an order passed under the CGST Act within a period of three months from the date of service of such order.

Provided that where the proper officer considers it expedient in the interest of revenue, he may, for reasons to be recorded in writing, require the said taxable person to make such payment within such period less than a period of three months as may be specified by him.

Therefore, if the registered person either fails to reply to the communication, or fails to make the payment of such amount short paid or not paid, within the time prescribed as per the CGST Act, then the tax officer may proceed for recovery.



Legal Jurisprudence:

The Bombay High Court in the case of *“Sheetal Dilip Jain v. the State of Maharashtra & Ors. [Writ petition (L) no.17591 of 2022 dated September 20, 2022]”* has struck down the recovery proceedings without issuance of SCN and held that the order is erroneous because in the SCN only 7 days was given to reply to the SCN and on the 8th day the order came to be passed. Therefore, the question of not paying within 30 days of the issue of the notice will not arise.

Relevant extract of the judgment is reproduced hereunder:

“5. These acts/omissions of Respondents’ officers is adding to the already overburdened dockets of the Court. Valuable judicial time is wasted because such unacceptable orders are being passed by Respondents’ officers. The officers do not seem to understand or appreciate the hardship that is caused to the general public. In this case, Petitioner could afford (we have assumed) to spend on a lawyer and approach this Court but for every Petitioner, we would hazard a guess, atleast ten would not be able to afford a lawyer and approach the Court and their registrations may get cancelled by the very same officers who have passed such patently illegal orders. Cost of Rs. 10000/- imposed on GST officer.”

Similar Judgments in this regard are as under:

- Karnataka High Court in the case of *M/s. LC Infra Projects Pvt. Ltd v. the UOI [WRIT PETITION No.28876 of 2019 (T-RES) dated July 22, 2019]* has held that the issuance of SCN is sine qua non to proceed with the recovery of interest payable thereon under sec 50 of the CGST Act and penalty leviable under the provisions of the Act or the Rules made thereunder. Determination of the interest payable under sec 50 of the CGST Act without issuing SCN is in breach of principles of natural justice and therefore, it cannot be sustained. Sec 75(12) does not empower the authorities to proceed with the recovery without issuing SCN.

Further, the above order was also upheld by the Karnataka HC [Division Bench] in *UOI v. LC Infra Projects Pvt Ltd [W.A No. 188 (T-RES) of 2020 dated March 3, 2020]* Relevant extract of the judgment is reproduced hereunder:

“13. Therefore, the Learned Single Judge rightly held in Paragraph 6 of the impugned judgment that issuance of show cause notice is sine qua non to proceed with the recovery of interest payable in accordance with sub-section (1) of Section 50 of the GST Act.

14. The impugned demand has been set aside only on the ground of the breach of the principles of natural justice by granting liberty to the respondents to initiate action in accordance with law obviously for recovery of interest.



15. *Though a perusal of Paragraph 4 of the impugned order shows that the same is based on concession made by the Learned Counsel for the appellant, in Paragraph 6 the Learned Single Judge has laid down the law.*

16. *For the reasons which we have recorded earlier, we concur with the ultimate view taken by the Learned Single Judge that before recovery interest payable in accordance with Section 50 of the GST Act, a show cause notice is required to be issued to the assessee. Hence, no case for interference is made out. The appeal is accordingly dismissed. Interim applications do not survive.*

17. *Further, we make it clear that as far as Annexure-K is concerned, as the main demand for interest has been set aside, Annexure-K, which is the order of attachment, also will have to be set aside. We make it clear that we have not gone into the question whether the principles of natural justice are required to be complied with before taking action in accordance with Rule 145 of the Rules framed under the GST Act.”*

Note: Notice has been issued [2021 (53) GSTL J10 (Supreme Court) on the issue that whether demand of interest without issuing any show cause notice amounts to violation of principles of natural justice.

- The Jharkhand HC in the case of *Mahadeo Construction Company. v. UOI [W.P. (T) No. 3517 of 2019 dated April 4, 2020]* has held that liability of interest was required to be adjudicated in event an assessee disputed computation or very leviability of same, Thus, without initiation of any adjudication proceedings, no recovery proceedings under sec 79 of the CGST Act could be initiated for recovery of interest amount.

Relevant extract of the judgment is reproduced hereunder:

“22. *The next issue for adjudication in the instant writ application is as to whether garnishee proceedings under Section 79 of the CGST Act can be initiated for recovery of interest without adjudicating the liability of interest, when the same is admittedly disputed by the assessee. Section 79 of the CGST Act empowers the authorities to initiate garnishee proceedings for recovery of tax where “any amount payable by a person to the Government under any of the provisions of the Act and Rules made thereunder is not paid”. Since in the preceding paragraphs of our Judgment, we have already held that though the liability of interest is automatic, but the same is required to be adjudicated in the event an assessee disputes the computation or very leviability of interest, by initiation of adjudication proceedings under Section 73 or 74 of the CGST Act, in our opinion, till such adjudication is completed by the Proper Officer, the amount of interest cannot be termed as an amount payable under the Act or the Rules. Thus, without initiation of any adjudication proceedings, no recovery proceeding under Section 79 of the Act can be initiated for recovery of the interest amount.*

23. *Accordingly, the impugned order dated 8-3-2019 issued by Respondent No. 3 (Superintendent, Daltonganj Range) (as contained in Annexure-7) is hereby quashed/set aside and, further, garnishee notice contained in the Order dated 22-5-2019 (Annexure-10 of the Supplementary Affidavit) issued under Section 79 of the CGST Act to the Banker of the petitioner for recovery of interest amount of Rs. 19,59,721/- is also, hereby, quashed/set aside.”*



Note: Notice has been issued in the above matter [2021 (52) GSTL J120) Supreme Court].

Conclusion: Any recovery proceedings can be initiated only after issuance of SCN, followed by adjudication proceedings u/s 73 or 74 of the CGST Act in terms of Sec 78 read with Sec 79 of the CGST Act.

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GST Poll

GST Poll of the week



Q 1. Can GST Credit of Current Tax Period be used for paying GST Liability of Past Tax Period ??

Option A – Yes

Option B – No

Ans. No, We can't use GST Credit of Current Tax Period for paying GST Liability of Past Tax Period...

To know more [Click Here](#)

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Income Tax

Important Judgments, Rulings of the week



Charitable institution, society or trust should 'solely' engage itself in educational activities and not in any activity of profit to enjoy tax exemption

The Hon'ble Supreme Court in *M/s. New Noble Educational Society, v. The Chief Commissioner of Income Tax 1 [Civil appeal no. 3795 of 2014 dated October 19, 2022]* has held that for tax exemption, the charitable institution, society or trust should 'solely' engage itself in educational activities and not in any activity of profit.

For complete case summary [Click Here](#)

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Important Notifications, Circulars of the week



CBDT extends the due date for furnishing Income Tax Return for AY 2022-23 to Nov 07, 2022

The CBDT vide **Circular No. 20/2022 dated October 26, 2022** extends the due date for furnishing Income Tax Return for the Assessment Year ("AY") 2022-23 to November 07, 2022 for certain categories of assessee in consequence of the extension of due dates for filing various reports of the audit.

In consequence to extension of due date for various reports of audit in the case of assessee referred in clause (a) of Explanation 2 to sub-section (1) of section 139 of the Act to October 07, 2022 by Circular No.19/2022 dated September 30, 2022, Central Board of Direct Taxes (CBDT), in exercise of its powers under Section 119 of the Income-tax Act, 1961 (Act), extends the due date of furnishing of Return of Income under sub-section (1) of section 139 of the Act for the Assessment Year 2022-23, which is October 31, 2022 in the case of assessee referred in clause (a) of Explanation 2 to sub-section (1) of section 139 of the Act, to November 07, 2022.

For complete Circular [Click Here](#)

CBDT extends due date for filing of TDS statement in Form 26Q for the second quarter of FY 2022-23

The CBDT vide **Circular No. 21/2022 dated October 27, 2022** extends the due date for filing of TDS statement in Form 26Q for the second quarter of the Financial Year 2022-23.

On consideration of difficulties arising in timely filing of TDS statement in Form 26Q on account of revision of its format and consequent updation required for its filing, the Central Board of Direct Taxes, in exercise of its powers under section 119 of the Income Tax Act, 1961, hereby extends the due date of filing of Form 26Q for the second quarter of the financial year 2022-23 from October 31, 2022 to November 30, 2022.

For complete Circular [Click Here](#)

Important Updates of the week



Income Tax Department issued FAQs regarding the filing of Form 3CEB

The Income Tax Department has issued *Frequently Asked Questions ("FAQs")* dated **October 27, 2022** regarding the filing of Form 3CEB on the Income Tax e-filing portal.

Question 1: What are the prerequisites for filing of Form 3CEB?

Resolution: The following are the prerequisites for filing of Form 3CEB:

- Taxpayer and CA are registered on the e-Filing portal with valid user ID and password
- Status of PAN of taxpayer and CA is active
- Taxpayer has assigned CA for form 3CEB
- CA and Taxpayer have a valid and active Digital Signature Certificate. Question

2: What is the process to submit Form 3CEB?

Resolution: Following are the steps to file form 3CEB:

Step 1: Taxpayer needs to add Chartered Accountant to whom he/she wants to assign the form. Taxpayer may add CA by navigating through Authorised Partners → My Chartered Accountant → Add CA. Alternatively, taxpayer may navigate through e-File → Income Tax Forms → File Income Tax Forms → Form 3CEB.



Step 2: After successfully adding CA, taxpayer needs to assign Form 3CEB. Taxpayer is requested to navigate to e-File → Income Tax Forms → File Income Tax Forms and select Form 3CEB. Form can be assigned to CA by selecting CA Name, AY and Filing Type. If CA is not added, you can navigate to Authorised Partners → My Chartered Accountant to add CA.

Step 3: After successfully assignment of form to CA, form shall be available in the CA's worklist → For Your Action. CA can either reject or accept the assignment. In case CA rejects the assignment, form need to reassign from the taxpayer end.

Step 4: In case CA accepts the assignment, CA is required to fill all the necessary details in online form or offline utility

Online Form

CA navigates to Worklist → For Your Action → Pending for Upload and fill all the necessary details and submits the form using DSC

Offline utility

CA generates JSON/XML and upload the JSON/XML under Worklist → For Your Action → Pending for Upload and verify the same using DSC. (XML should be uploaded in .zip zipped folder)

Steps 5: Form uploaded by CA shall be available under Taxpayer's worklist → For Your Action → Pending for Acceptance. Taxpayer may either approve or reject the form. Form submission will be completed after taxpayer's approval.

Question 3: How can I assign Form 3CEB to CA?

Resolution: FAQ's for Form 3CEB

- Taxpayer is requested to navigate to e-File → Income Tax Forms → File Income Tax Forms and select Form 3CEB. Form can be assigned to CA by selecting CA Name, AY and Filing Type. If CA is not added, you can navigate to Authorised Partners → My Chartered Accountant to add CA.

Question 4: What is the procedure to approve Form 3CEB?

Resolution: Form uploaded by CA shall be available under "For your action" tab in Taxpayer's Worklist. Taxpayer may either approve or reject form 3CEB. Once taxpayer approve the form and verify the same, filing of form is considered as Completed.



Question 5: How can I generate UDIN and update the same for form 3CEB?

Resolution: Practicing chartered accountant can generate UDIN through udin.icaai.org website. After logging with valid credentials on Income tax portal, user must click 'View/Update UDIN details' under "e-file → Income tax Forms" tab to update UDIN

Question 6: What should be done while getting error "INVALID UDIN" at time of updating the UDIN?

Resolution: Before updating the UDIN, CA must ensure:

- UDIN must be valid as per UDIN portal
- UDIN should belong to given MRN
- UDIN must not be revoked at UDIN portal
- UDIN should be generated for the same AY for which form is filed
- UDIN must be generated for form 3CEB

Question 7: While filing form 3CEB, I am getting an error message "SOMETHING WENT WRONG PLEASE TRY AFTER SOME TIME" or "SUBMISSION FAILED NO RESPONSE RECEIVED FROM SERVER" How to resolve the issue?

Resolution: Taxpayer and CA must ensure :

- Profile of CA and Taxpayer should be complete and updated.
- Status of CA is "Active" under Taxpayer Login → Authorised Partners → My Chartered Accountant
- CA and Taxpayer should have a valid DSC and be registered on portal.

Question 8: I am unable to upload Form 3CEB due to the error "INVALID DSC". What should I do?

Resolution: Taxpayer's and CA's must ensure:

- DSC should be valid and not expired.
- DSC management utility (emBridge) should be updated to generate signature file.
- DSC should be registered on income tax portal in personal login of the user



Question 9: While assigning form to CA, I am getting an error “PLEASE SELECT CORRECT FILING TYPE”. What should I do?

Resolution: Taxpayers to ensure that they choose correct Filing Type (Original/Revised) and Assessment year combination. Please note that only one original is allowed for a particular PAN and AY combination

Question 10: Which Special characters are allowed in JSON/XML while filing form 3CEB?

Resolution: Only following special characters are allowed in Forms.

Hyphen (-); Single quote ('); Space (); Comma (,); Semi Colon (;); Forward slash (/); And (&); Round bracket (); Dot/Full Stop (.); Underscore (_).

Don't use other special characters such as (~, @, #, \$, %, ^, *, ", ë, ã) and double spaces.

Question 11: While accepting form 3CEB, Taxpayer is getting an error message “Form Submission Failed!” How to resolve the issue?

Resolution: If Form 3CEB is already submitted by CA but assessee is not able to accept the form with “Form Submission Failed!” error, following steps should be taken by Assessee and CA:

- Assessee should Reject the form filed by CA but pending for acceptance. Reassign the Form to CA.
- CA should Accept Form request, fill the Form without using special characters not allowed or remove such special characters from already filled Form.
- Upload Form 3CEB with updated JSON/XML
- Assessee should Accept the Form submitted by CA

To know more [Click Here](#)

Income Tax Dept clarifies due date is extended only for filing of TDS Statement in Form 26Q, Other Forms Shall be filed by Oct 31, 2022

The Income Tax Department clarifies due date is extended only for the filing of TDS Statement in Form 26Q, Other Forms Shall be filed by October 31, 2022.

"Attention TDS Filers: Date of filing of Form 26Q for the quarter July-September, 2022 only stands extended from October 31, 2022 to November 30, 2022. The due date for filing of other TDS Forms for the quarter July-September, 2022 remains unchanged as October 31, 2022."



To know more [Click Here](#)

ICAI releases a revised Guidance note on Report u/s 92E of the IT Act (Transfer Pricing)

The Institute of Chartered Accountants of India ("ICAI") has issued a revised Guidance Note on Report Under Section 92E of the Income-Tax Act, 1961 ("**the IT Act**") (Transfer Pricing).

[Based on the law as amended by the Finance Act, 2022]

To know more [Click Here](#)



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News Flash

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GST slabs rejig unlikely before 2024 general elections

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Exemption-free tax regime option may be scrapped

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Exporters to get incentives and duty rebates for settling trades in rupees

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| Abbreviations | | |
|----------------------|-------------|---|
| 1. | GST | Goods and Services Tax |
| 2. | CGST | Central Goods and Services Tax |
| 3. | IGST | Integrated Goods and Services Tax |
| 4. | CGST Act | Central Goods and Services Tax Act, 2017 |
| 5. | CGST Rules | Central Goods and Services Tax Rules, 2017 |
| 6. | IGST Act | Integrated Goods and Services Tax Act, 2017 |
| 7. | IGST Rules | Integrated Goods and Services Tax Rules, 2017 |
| 8. | ITC | Input Tax Credit |
| 9. | RCM | Reverse Charge Mechanism |
| 10. | Customs Act | Customs Act, 1956 |
| 11. | IT Act | Income Tax Act, 1961 |
| 12. | IT Rules | Income Tax Rules, 1962 |
| 13. | CBIC | Central Board of Indirect Taxes |
| 14. | CBDT | Central Board of Direct Taxes |



Thank You

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About us:

A2Z Taxcorp LLP is a boutique Indirect Tax firm having its offices at New Delhi and Guwahati specializing in GST, Central Excise, Custom, Service Tax, VAT, DGFT, Foreign Trade Policy, SEZ, EOU, Export – Import Laws, Free Trade Policy, etc. It is a professionally managed firm having a team of experienced and distinguished Chartered Accountants, Company Secretary, Lawyers, Corporate Financial Advisors and Tax consultants to provide various services like litigation and representation, transaction advisory, diagnostic reviews/ health checks, audit defense & protection, retainership & compliance, configuration of tax efficient business model etc. Its clientele consists mainly of Foreign MNC, large/mid-sized Indian companies which includes exporters, FMCG, consumer durables, automobiles, aerated beverages, ceramic tiles, real-estate, hospitality, etc.

Thanks & Best Regards,

Bimal Jain

FCA, FCS, LLB, B. Com (Hons)

[Author of a book on Goods and Services Tax, titled, “GST Law and Commentary \(with Analyses and Procedures\)”](#)

[\[7th Edition\]](#)

Email: bimaljain@a2ztaxcorp.com

Connect With Us:



Our Address:

A2Z TAXCORP LLP

Tax and Law Practitioners

Flat No. 34B,

Ground Floor, Pocket – 1,

Mayur Vihar Phase-1

Delhi – 110091 (India)

Tel: +91 11 42427056

Web: www.a2ztaxcorp.com

2C, 2nd Floor, City Trade Centre,

A.T. Road, Guwahati - 781001

Email: info@a2ztaxcorp.com

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