



RECENT DEVELOPMENTS UNDER GST LEGAL AND JUDICIAL

SPEAKER: CA SUMIT JHUNJHUNWALA

GUIDELINES FOR SPECIAL ALL-INDIA DRIVE AGAINST FAKE REGISTRATIONS

- Various modus operandi of obtaining such fake registrations have been detected by Central and State Tax administrations. In some cases, forged documents, such as forged electricity bills, property tax receipts, rent agreements, etc. are being used as proof of principal place of business to obtain GST registration.
- In one of such recent cases detected by Gujarat State Tax authorities, it has been found that a few fraudsters have obtained fake GST registrations on the basis of PAN and Aadhaar number of persons from economically weaker sections without their knowledge.
- It was revealed that phone number on the Aadhaar cards of these persons were got fraudulently modified at the nearest Aadhaar Seva Centre, by taking these persons to the said Aadhaar Seva Centre by giving a nominal cash amount under guise of a government scheme and getting their Aadhaar Cards linked to a dummy mobile number by using their thumb impression.

IDENTIFICATION OF FRAUDULENT GSTINS

- Based on detailed data analytics and risk parameters, GSTN will identify such fraudulent GSTINs for State and Central Tax authorities.
- GSTN will share the details of such identified suspicious GSTINs, jurisdiction wise, with the concerned State/ Central Tax administration (through DGARM in case of Central Tax authorities) for initiating verification drive and conducting necessary action subsequently.
- Besides, field formations may also supplement this list by data analysis at their own end using various available analytical tools, **as well as through human intelligence, Aadhar database, other local learnings** and the experience gained through the past detections and modus operandi alerts.
- GSTN may separately provide a note to the field formations, regarding the tools available which may be useful during this drive

ACTION TO BE TAKEN BY FIELD FORMATIONS

- If, after detailed verification, it is found that the taxpayer is **non-existent and fictitious**, then the tax officer may immediately initiate action for suspension and cancellation of the registration
- Blocking of input tax credit in Electronic Credit Ledger as per the provisions of Rule 86A.
- Additionally, the details of the recipients to whom the input tax credit has been passed by such non-existing taxpayer may be identified through the details furnished in FORM GSTR-I by the said taxpayer.
- Action may also be taken to identify the masterminds/ beneficiaries behind such fake GSTIN for further action, where ever required, and also for recovery of Government dues and/ or provisional attachment of property/ bank accounts, etc. as per provisions of section 83 of CGST Act.
- Further, during the investigation/ verification, if any linked suspicious GSTIN is detected, similar action may be taken/ initiated in respect of the same

WHAT SHOULD GENUINE TAXPAYERS DO?

- Ensure Name Board and GSTIN is displayed clearly outside POB, Reg Certificate Displayed inside Prominent place in POB.
- Regular Books of Accounts (including Digital copies) are maintained regularly at POB
- Basic proofs for Business such as Rent Agreements, Tax Receipts, Copy of PAN, Aadhar, etc kept in office – for presenting during verification.
- Check credentials of Visiting officer to alleviate doubts of Fraudsters/Scammers
- Genuine Taxpayers need not panic if faced with harassment during Verification. Preserve Evidence of having shown documents to the Officer.

E INVOICING UNDER GST

- W.e.f. 1st August 2023, mandatory for taxpayers with annual aggregate turnover above ₹5 crores in any F.Y. from 2017-18 onwards, to comply with E-Invoice procedure and requirements
- E Invoicing for Tax Invoices, CN and DN in respect of B2B Supplies, Supplies to SEZ Units (with LUT / without LUT), Exports (with LUT / without LUT).
- E – Invoice is NOT required to be issued in case of B2C Supplies, or Exempt Supplies and also not required to be issued by;
 - SEZ units
 - Insurance Companies
 - Banking company or a financial institution, including a NBFC
 - Goods transport agency (GTA) supplying services in relation to transportation of goods by road in a goods carriage
 - Suppliers of passenger transportation service (Railways, Airlines, Buses, Cruise, etc)
 - Movie Theatre, Multiplexes for Movie tickets
- Time limit of 7 days to report Document on E Invoice Portal w.e.f. August 2023

PAYMENT OF GST UNDER FORWARD CHARGE BY GTA

- Normally, GTA required to file Annexure V by 15th March, Prior to commencement of F.Y. for opting to pay GST under forward charge on all its taxable supplies
- For F.Y. 2023-23, extension given upto 31st May 2023 to file Annexure V

AMNESTY UNDER GST

Noti No.	Subject	Period	Relief Given	Remarks/Conditions
02/2023	Amnesty to GSTR-4 non-filers	Quarterly GSTR 4 from July, 2017 to March 2019, Annual GSTR 4 for F.Y. 2019-20 to 2021-22	Reduced Late fee to Rs. 500/- No Late Fee if GST payable in GSTR 4 is Nil	To be filed between 1 st April, 2023 and 30th June, 2023
03/2023	Revocation of cancelled GSTIN	Order for Reg. Cancel before 31 st Dec 2022	Person can now apply for revocation of cancellation of such registration before 30 th June 2023	Appl. To be filed only after Filing Pending returns and after payment of tax, interest, penalty and late fee
06/2023	Deemed withdrawal of assessment orders issued under Section 62	Assessment order issued on or before 28 February, 2023	Assessment order shall be deemed to have been withdrawn	Furnish the said return on or before 30th June 2023 with Interest and Late Fee

AMNESTY UNDER GST

Noti No.	Subject	Period	Relief Given	Remarks/Conditions
07/2023	Amnesty to GSTR-9 non-filers	F.Y. 2017-18 to 2021-22	Reduced Max. Late fee to Rs. 20,000/-	To be filed between 1 st April, 2023 and 30th June, 2023
07/2023	Reduction of Late Fee for belated GSTR 9	2022-23 onwards	If T/o below Rs. 5 Cr, Late Fee of Rs. 50 per day If T/o more than 5 Cr but less than Rs. 25 Cr, Late Fee of Rs. 100 per day	Late Fee subject to maximum of 0.02% of turnover in the State.
08/2023	Amnesty to GSTR-10 non-filers	--	Reduced Max. Late fee to Rs. 1,000/-	To be filed between 1 st April, 2023 and 30th June, 2023

AMNESTY UNDER GST

Noti No.	Subject	Period	Relief Given	Remarks/Conditions
09/2023	Time Extension for Passing Order u/s 73	2017-18 to 2019-20	Order under Section 73(9) can now be passed upto following dates; 17-18: 31.12.23 18-19: 31.03.24 19-20: 30.06.24	Relief given by Government to its own officers by extending Time Limits for passing Orders u/s 73(9) i.e. cases not involving Evasion of tax.

REFUND TO UNREGISTERED PERSONS

- Unregistered buyers entered into an agreement/ contract with a builder for supply of services of construction of flats/ building, etc. and had paid the consideration with applicable tax, had to get the said contract/ agreement cancelled subsequently.
- The period for issuance of CN on account of such cancellation of service under the provisions of section 34 may already have got expired by that time. In such cases, the supplier may refund the amount to the buyer, after deducting the amount of tax collected by him from the buyer.
- Long-term insurance policies where premium for the entire period of term of policy is paid upfront along with applicable GST and the policy is subsequently required to be terminated prematurely due to some reasons. The time period for issuing CN may have already expired and therefore, the insurance companies may refund only the proportionate premium net off GST
- In order to enable such unregistered person to file application for refund under sub-section (1) of section 54, in cases where the contract/agreement for supply of services of construction of flat/ building has been cancelled or where long-term insurance policy has been terminated, a new functionality has been made available on the common portal which allows unregistered persons to take a temporary registration and apply for refund under the category 'Refund for Unregistered person

PROCEDURE FOR REGISTRATION

The screenshot shows the GST portal interface. The browser address bar displays <https://www.gst.gov.in>. The main header includes the GST logo and the text "Goods and Services Tax". A navigation menu contains "Home", "Services", "GST Law", "Downloads", "Search Taxpayer", "Help and Taxpayer Facilities", and "e-Invoice". The "Services" dropdown menu is open, showing options like "Registration", "Payments", "User Services", "Refunds", "e-Way Bill System", and "Track Application Status". The "User Services" option is circled in red, and its sub-menu is also visible, with "Generate User ID for Unregistered Applicant" circled in red. A banner at the bottom of the page reads: "9.05.2023, Option for Filing declaration in Annexure V Form by GTA taxpayers for the FY 2023-24 has now been extended till 31-05-2023 and is made available on the portal." Below the banner, there are sections for "News|Updates", "Advisories", and "Popular help topics".

Goods & Services Tax (GST) | Home

https://www.gst.gov.in

Skip to Main Content | A+ A-

Incognito

Goods and Services Tax

Login

Home Services GST Law Downloads Search Taxpayer Help and Taxpayer Facilities e-Invoice

Registration Payments **User Services** Refunds e-Way Bill System Track Application Status

Search HSN Code Holiday List

Generate User ID for Unregistered Applicant Locate GST Practitioner (GSTP)

Cause List Search Advance Ruling

Verify RFN

9.05.2023, Option for Filing declaration in Annexure V Form by GTA taxpayers for the FY 2023-24 has now been extended till 31-05-2023 and is made available on the portal.

News|Updates Advisories Popular help topics

06/05/2023
Advisory: Deferment of Implementation of Time Limit on Reporting Old e-Invoices

04/05/2023
Advisory for Timely Filing of GST Returns

28/04/2023
New facility to verify document Reference Number (RFN) issued on offline communications issued by State

How can I Opt for Composition?
How can I use the Returns Offline tool?
How do I apply for refund?

How do I file intimation about voluntary payment?
How to file an appeal?
How do I register with GST?

OUT AND OUT SALES

Transactions of Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India (Out and Out Sale), Supply of warehoused goods to any person before clearance for home consumption (Bonded Warehouse Sale) and Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption. (High Sea Sale) were excluded from the ambit of GST w.e.f. 1st February 2019.

While no GST was principally leviable on such transaction even before 1st February 2019 also, to allay the fear of disputes Government has proposed to exclude the above transactions from the ambit of GST with retrospective effect from 1st July 2017.

BUDGET 2023 however provided that if no refund of taxes already paid on above transactions shall be permitted.

REFUND OF GST PAID ON OUT AND OUT SALES

- Goods purchased by Mr. A on 2nd July 2017 for Rs. 1 Crore from Supplier in Germany
- Before Dispatch of goods from Germany, Mr. A received an order for supply of such goods to a Customer in Indonesia
- Based on instruction of Mr. A, the German Supplier raised invoice on Mr. A and dispatched the goods directly to Indonesia to the customer of Mr.A
- Mr.A was advised in July 2017 that his Sales to Customer in Indonesia amounted to Inter-State Supply and IGST was payable on this transaction
 - Section 7(5) Supply of goods or services or both,—
 - (a) when the supplier is located in India and the place of supply is outside India;
 -
 - shall be treated to be a supply of goods or services or both in the course of inter-State trade or commerce.
- This view was affirmed by Dept Clarification Circular No. 46/2017-Customs issued in case of Bond Transfer Sales
- However, Mr.A was confused on issuance of subsequent Clarification of Circular No. 3/1/2018-IGST
- Upon insertion of Entry 7 in Schedule III with prospective effect, Mr.A assumed that such transaction was rightfully taxed till 31.01.2019
- However, upon retrospective effect given to Entry 7 in Schedule III, Mr.A wants to know whether IGST was leviable on such Out and Out sale ab initio or not?
- If not, then whether Mr.A is eligible for refund of IGST borne and paid by it.

RETROSPECTIVE EXEMPTION TO CERTAIN ACTIVITIES AND TRANSACTIONS IN SCHEDULE III

- 159.(1) In Schedule III to the Central Goods and Services Tax Act, paragraphs 7 and 8 and the Explanation 2 thereof (as inserted vide section 32 of Act 31 of 2018) shall be deemed to have been inserted therein with effect from the 1st day of July, 2017.
- (2) No refund shall be made of all the tax which has been collected, but which would not have been so collected, had sub-section (1) been in force at all material times.

CONSTITUTION OF INDIA

265. Taxes not to be imposed save by authority of law.—No tax shall be levied or collected except by authority of law.

269A. Levy and collection of goods and services tax in course of inter-State trade or commerce.—

- (1) Goods and services tax on supplies **in the course of inter-State trade or commerce** shall be levied and collected by the Government of India and such tax shall be apportioned between the Union and the States in the manner as may be provided by Parliament by law on the recommendations of the Goods and Services Tax Council.
- Explanation.—For the purposes of this clause, supply of goods, or of services, or both in the course of import into the territory of India shall be deemed to be supply of goods, or of services, or both in the course of inter State trade or commerce
- **(5) Parliament may, by law, formulate the principles for determining the place of supply, and when a supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.]**

LEVY AND COLLECTION OF IGST

- 5. (1) Subject to the provisions of sub-section (2), there shall be levied a tax called the integrated goods and services tax **on all inter-State supplies of goods** or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 of the Central Goods and Services Tax Act and at such rates, not exceeding forty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person:
- Provided that the integrated tax on **goods imported into India** shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 on the value as determined under the said Act at the point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962

BONDED WAREHOUSE SALE – ITC REVERSAL

- Bonded Warehouse Sale is an activity specified in Schedule III of CGST Act and as such does not attract levy of GST.
- BUDGET 2023 proposed to include the value of such transactions (Bonded Warehouse Sale) in the value of exempt supply so as to attract Reversal of ITC under Rule 42 and Rule 43 of CGST Rules.

BONDED WAREHOUSE SALE – ITC REVERSAL

- Mr. A is engaged in Import of goods in India from German Supplier.
- Mr.A sells such goods to Indian Customer Bonded Warehouse Sale (Bond Transfer)
- Recent amendment in Section 17 of CGST Act has disturbed Mr. A w.r.t. ITC availability of GST Paid on Ocean Freight, CHA Charges, Office Admin Expenses for its Bonded Warehouse Sale.
- Mr.A seeks your view whether he is eligible to claim ITC on above expenses w.r.t. Bonded warehouse sales

EXEMPT SUPPLY

- (47) “exempt supply” means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under section 11, or under section 6 of the Integrated Goods and Services Tax Act, and includes non-taxable supply
- (78) “non-taxable supply” means a supply of goods or services or both which is not leviable to tax under this Act or under the Integrated Goods and Services Tax Act;

SECTION 17(3)

BEFORE AMENDMENT

- (3) The value of exempt supply under sub-section (2) shall be such as may be prescribed, and **shall include** supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, **sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.**
- Explanation.-For the purposes of this sub-section, the expression “value of exempt supply” **shall not include** the value of activities or transactions specified in Schedule III, except those specified in paragraph 5 of the said Schedule.

AFTER AMENDMENT

- (3) The value of exempt supply under sub-section (2) shall be such as may be prescribed, and **shall include** supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.
- Explanation.-For the purposes of this sub-section, the expression “value of exempt supply” **shall not include** the value of activities or transactions specified in Schedule III, **except,—**
 - (i) the value of activities or transactions specified in paragraph 5 of the said Schedule; and
 - (ii) the value of such activities or transactions as may be prescribed in respect of clause (a) of paragraph 8 of the said Schedule.”;

RECENT JUDICIAL DEVELOPMENTS



E COMM GILL COFFEE - INPUT TAX CREDIT

9. While considering the aforesaid issue/question, Section 70 of the Karnataka Value Added Tax Act, 2003 is required to be referred to, which reads as under:

- “70. Burden of proof.- (1) For the purposes of payment or assessment of tax or any claim to input tax under this Act, the burden of proving that any transaction of a dealer is not liable to tax, or any claim to deduction of input tax is correct, shall lie on such dealer.

11. In the present case, the respective purchasing dealer/s has/have produced either the invoices or payment by cheques to claim ITC. The Assessing Officer has doubted the genuineness of the transactions by giving cogent reasons on the basis of the evidence and material on record. In some of the cases, the registration of the selling dealers have been cancelled or even the sale by the concerned dealers has been disputed and/or denied by the concerned dealer. In none of the cases, the concerned purchasing dealers have produced any further supporting material, such as, furnishing the name and address of the selling dealer, details of the vehicle which has delivered the goods, payment of freight charges, acknowledgement of taking delivery of goods, tax invoices and payment particulars etc. and therefore it can be said that the concerned purchasing dealers failed to discharge the burden cast upon them under Section 70 of the KVAT Act, 2003. At the cost of repetition, it is observed and held that unless and until the purchasing dealer discharges the burden cast under Section 70 of the KVAT Act, 2003 and proves the genuineness of the transaction/purchase and sale by producing the aforesaid materials, such purchasing dealer shall not be entitled to Input Tax Credit.

12.over and above the invoices and the particulars of payment, the purchasing dealer has to produce further material like the name and address of the selling dealer, details of the vehicle which has delivered the goods, payment of freight charges, acknowledgement of taking delivery of goods including actual physical movement of the goods, alleged to have been purchased from the concerned dealers.

- **GST Section 155. Where any person claims that he is eligible for input tax credit under this Act, the burden of proving such claim shall lie on such person**

DHARMENDRA M. JANI - INTERMEDIARY SERVICES

- Justice Ujjal Bhuyan: have no hesitation in holding that section 13(8)(b) of the Integrated Goods and Services Tax Act, 2017 is ultra vires the said Act besides being unconstitutional
- Justice Abhay Ahuja: neither Section 13(8)(b) nor Section 8 (2) of the IGST Act are unconstitutional. Also neither Section 13 (8) (b) nor Section 8 (2) of the IGST Act are ultra vires the IGST Act. Section 13 (8) (b) is also not ultra vires Section 9 of the CGST Act, 2017 or the MGST Act, 2017. Section 13(8)(b) as well as Section 8(2) of the IGST Act are constitutionally valid and operative for all purposes.

Matter referred to Third Judge for Opinion:

- The provisions of Section 13(8)(b) and Section 8(2) of the IGST Act are legal, valid and constitutional, **provided that the provisions of Section 13(8)(b) and Section 8(2) are confined in their operation to the provisions of IGST Act only** and the same cannot be made applicable for levy of tax on services under the CGST and MGST Acts

EDELWEISS FINANCIAL SERVICES LTD. - CORPORATE GUARANTEE'S

- 5. “the consideration can be of two types viz., monetary consideration and non monetary consideration. In the present case, the Assessee has argued that they have not received any consideration. In such case it’s for the department to prove that the Assessee’s claim is wrong. It is observed that nowhere in the Show Cause Notice, attempt has been made to prove that the Assessee received either monetary or non-monetary consideration in any form. It is not alleged or proved in the Show Cause Notice as to how the Assessee got any benefit from their subsidiaries in monetary or non-monetary terms for the Corporate Guarantees issued. Missing this vital point, valuation of the consideration using provisions of Section 67(1) of the Finance Act, 1994 become a futile exercise.”
- 7. The above would suggest that this was a case where the assessee had not received any consideration while providing corporate guarantee to its group companies. No effort was made on behalf of the Revenue to assail the above finding or to demonstrate that issuance of corporate guarantee to group companies without consideration would be a taxable service. In these circumstances, in view of such conclusive finding of both forums, we see no reason to admit this case basing upon the pending Civil Appeal No. 428 @ Diary No.42703/2019, particularly when it has not been demonstrated that the factual matrix of the pending case is identical to the present one.

GAMESKRAFT TECHNOLOGIES PRIVATE LIMITED

2023 (5) TMI 926 - KARNATAKA HIGH COURT

- There is a distinct difference between games of skill and games of chance; games such as rummy, etc. as was discussed in several decisions above and particularized in the Division Bench decision of this Court in All India Gaming Federation's case supra, whether played online or physical, with or without stakes would be games of skill and test of predominance would apply; the said judgment is a total and complete answer not only to the various contentions urged by the respondents but also covers the issues / questions that arise for consideration in the instant petitions.
- The meaning of the terms “lottery, betting and gambling” as contemplated in Entry 6 of Schedule III of the CGST Act should be construed nomen juris in the light of the decisions of the Hon'ble Supreme Court, this Court and other High Courts supra which do not include games of skill.
- A game of chance whether played with stakes is gambling;
- A game of skill whether played with stakes or without stakes is not gambling;
- **A game of mixed chance and skill is gambling, if it is substantially and preponderantly a game of chance and not of skill;**
- **A game of mixed chance and skill is not gambling, if it is substantially and preponderantly a game of skill and not of chance;**
- Rummy is substantially and preponderantly a game of skill and not of chance;



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