

Indirect Tax Newsletter October 2022

Implementation of mandatory mentioning of HSN codes in GSTR-1

As per Notification No. 78/2020 – Central Tax dated 15th October, 2020, it is mandatory for the taxpayers to report minimum 4 digit or 6 digit of HSN Code in table-12 of GSTR-1 on the basis of their Aggregate Annual Turnover (AATO) in the preceding Financial Year. To facilitate the taxpayers, these changes are being implemented in a phase-wise manner on GST Portal. From 01st November, 2022, Phase-2 would be implemented on GST Portal and the taxpayers with up to Rs 5 crore turnover would be required to report 4-digit HSN codes in their GSTR-1.



Changes in time limit for filing Refund application in Form GST RFD-01

- The GST portal was configured to allow tax payers to file an application for refund or up to previous 60 months.
- To enable tax payers to apply for refund for any period beginning July, 2017, on account of a court order/amnesty scheme, the period beginning from July, 2017, onwards has been made available for selection by tax payers.

Time limit to issue credit note

Notification No. 18/2022-Central Tax dated 28.09.2022

The government has notified an amendment to the Central Goods and services tax Act to extend time for claiming input tax credit, issuance of credit notes, rectification of errors and extending the from September 30,2022 to November 30,2022.



CASE LAWS (INDIRECT TAX)

CASE LAW : 1

Case Name : Hero Motocorp Ltd. Vs Union of India

Case Number : SLP (Civil) No. 12397 of 2020]

Case Date : 17/10/2022

• Where Centre had granted 100% Central Excise Duty Exemption granted to units in UKD/HP by Notification in 2003 in pre-GST era and rescinded that exemption notification by issuing Notification No.21/2017-CE dated 18th July.2017 after coming into force of GST w.e.f. 1-7-2017 by invoking its powers under the proviso to section 174(2)(c) in order to ensure seamless flow of GST ITC credit to buyers and substituted the 100% tax exemption/refunds with budgetary support for 58% of tax (its share of CGST collected with balance 42% going to states), no direction can be given to Central Govt to continue the old 100% tax exemption since Central Govt is exercising its delegated legislative functions under Proviso to section 174(2)(c) of the CGST Act,2017 and doctrine of promissory estoppel does not apply to Central Govt in exercise of its legislative functions.

• However, in the deliberations of the GST Council itself, it was observed that the States also need to correspondingly reimburse the industrial units which were entitled to exemption under any existing incentive scheme, out of the share of revenue received through devolution, which, as per the Finance Commission, stands at 42%. As a matter of fact, the State of



Jammu & Kashmir has issued a notification dated 21st December 2017 thereby resolving to reimburse the remaining 42% of the CGST of the Union. This is limited until the period the Union Scheme is valid.

- The GST Council is a constitutional body. It has powers to make recommendations on wide-ranging issues concerning GST, including grant of exemptions from the GST. It also has power to make recommendations with regard to special provisions governing North Eastern and Himalayan States. Taking into consideration that the units like the appellants have been established in the Himalayan and North-Eastern States based on the said O.M. of 2003 and that lakhs of persons are employed in such industries, it will be appropriate that such States should also consider to correspondingly reimburse such units out of the share of revenue received by them through devolution from the Central Government. It will also be appropriate that the GST Council considers making appropriate recommendations to the States in that regard.

- The Court, therefore, permits the appellants to make representations to the respective State Governments as well as to the GST Council. The Court also requests the State Governments and the GST Council to consider such representations, if made, in accordance with what has been observed herein above in an expeditious manner.

- In the result, the appeals are dismissed

- Circular and Notification No.21/2017-CE, dated 18-7-2017

CASE LAW : 2

Case Name : Ghodawat Packers LLP v. Union of India

Case Number: W.P. NO. 145107, 101969, 123492 AND 146879 OF 2020 AND 101375 & 101916 OF 2021

Case Date: 21.09.2022

Levy of tax - Tobacco and tobacco products – Assessee-petitioners were involved in manufacture and business of Tobacco – Assessee contended that by virtue of Notification No 11/2017-Central Excise dated 30-6-2017, excise duty was not levied on tobacco and tobacco products from 1-7-2017 till Notification No 3/2019 dated 30-6-2019 was passed and National Calamity Contingent Duty (NCCD) being surcharge of excise duty could not have been levied – **HELD :** CGST Act,2017 contemplates levy of Excise duty in respect of goods included in entry 84 of Union list of Seventh Schedule of Constitution of India – Levy of excise duty on tobacco and tobacco products is a matter of public policy and instant Court in exercise of writ jurisdiction would not interfere with same – CGST Act itself contemplates levy of excise duty upon tobacco and tobacco products apart from them being taxed under provisions of CGST

Thus, respondents-revenue are entitled to levy CGST as well as excise duty on tobacco and tobacco products [Section 9 read with section 174 of Central Goods and Services Tax Act, 2017/Karnataka Goods and Services Tax Act, 2017][Paras 11 and 13][In favour of Revenue].

National Calamity Contingent Duty - (NCCD) - Levy of - Assessee-petitioners were involved in manufacture and business of Tobacco - Whether when excise duty is exempted, can NCCD be leviable under provisions of Section 136 of finance Act - Assessee contended that Central Excise Tariff Act having been repealed, no effect could have been given to seventh Schedule of Finance Act, 2001 and NCCD being surcharge of excise duty could not have been levied - **HELD:** NCCD is a surcharge and a type of excise duty which can be levied independently of excise duty as contemplated under provisions of fourth schedule to Central Excise Act 1944 - Said contention of assessee could not be accepted as finance act sought to levy NCCD on goods as described under Seventh Schedule - NCCD is a surcharge and a type of excise duty which can be levied independently of excise duty as contemplated under provisions of fourth schedule to Central Excise Act 1944 - Thus, levy of NCCD in absence of levy of excise duty could not be considered as bad in law [Section 9 read with section 174 of Central Goods and Services Tax Act, 2017/Karnataka Goods and Services Tax Act, 2017 - Section 136 of Finance Act, 2001]Paras 19 and 20][In favour of Revenue].

Circulars and Notifications: Notification No 11/2017-Central Excise dated, 30-6-2017

