



## Notifications

### A. Time limit to comply with anti-profiteering provisions under section 171 of the Central Goods and Service tax Act, 2017 (CGST Act) extended till 31 March 2021

As a relief measure, **Notification No. 91/2020 – Central Tax dated 14 December 2020** has been notified for a further extension to the time limit for the completion and compliance for anti-profiteering proceedings under Section 171 of the CGST Act, which fall during the period from 20 March 2020 to 30 March 2021 till March 31, 2021.

### B. Sections 119, 120, 121, 122, 123, 124, 126, 127 and 131 of the Finance Act, 2020 notified to become effective from 1 January 2021

**Notification No. 92/2020-Central Tax dated 22 December 2020** has been issued to notify the aforementioned sections as effective from 1 January 2021

- Section 16 of the CGST Act has been amended to provide that the time limit to take ITC in relation to debit notes is from the date of such debit note and not the date of invoice to which such debit note pertains. The words “invoice relating to such debit note” in the Section have been omitted.
- Section 29 of the CGST Act has been amended to provide that a taxpayer who has obtained voluntary registration is also entitled to opt out of GST

registration.

- Section 30 of the CGST Act has been amended to provide that a registered person is eligible to file for revocation of cancellation beyond the initial period of 30 days from the cancellation order till a maximum additional period of 60 days after the expiry of the initial 30 days provided in the Section.
- Section 31 of the CGST Act has been amended to specify the categories of services or supplies for which a tax invoice shall be issued, within such time and in such manner as may be prescribed. It also specifies the categories of services for which any other document issued in relation to the supply shall be deemed to be a tax invoice; or where a tax invoice may not be issued.
- Section 51 of the CGST Act has been amended to prescribe a new format of the TDS certificate. The late fee for non-furnishing of TDS certificate within five days has been removed.
- Section 122 and 132 of the CGST Act have been amended to impose penalty on persons who cause to commit/ persons who retain the benefit of a transaction in addition to the persons committing the offence.
- Schedule II of the CGST Act has been amended to consider ‘transfer of business assets’, as supply of goods/ services, only when it is made for consideration, with effect from 1 July, 2017.

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- Time limit to comply with anti-profiteering provisions under section 171 of the Central Goods and Service tax Act, 2017 (CGST Act) extended till 31 March 2021
- Sections 119, 120, 121, 122, 123, 124, 126, 127 and 131 of the Finance Act, 2020 notified to become effective from 1 January 2021
- Central Goods and Services Tax (Fourteenth Amendment) Rules, 2020 notified
- Due date for filing all GSTR-9 returns extended from 31 December 2020 to 28 February 2021

### CASE LAWS

- In re: Amogh Ramesh Bhatwadekar. [Authority for Advance Ruling, Maharashtra (AAR)]: [TS-1095-AAR-2020-NT]
- Skill Lotto Solutions Pvt. Ltd. vs. Union of India & Others: [Supreme Court] [TS-1042-SC-2020-ST]
- S.S. Industries vs. UOI [Gujarat High Court] [2020 (12) TMI 1120]
- South Eastern Coal Fields Ltd. Vs. C.C.E. [TS-1120-CESTAT-2020-ST]
- S.C. Johnson Products (P) Ltd. vs. UOI: Delhi High Court [TS-1119-HC-2020(DEL)-NT]



## C. Central Goods and Services Tax (Fourteenth Amendment) Rules, 2020 notified

**Notification No. 94/2020-Central Tax dated 22 December 2020** has been issued to notify the CGST (Fourteenth Amendment) Rules [CGST Rules] 2020. Key changes introduced by these Rules are:

- Amendment to Rule 21 A of the CGST Rules to provide for cancellation of GST registration, at the discretion of the tax officer in certain cases, without providing a reasonable opportunity of being heard
- Restriction on availment of Input Tax Credit (ITC) as per Rule 36(4) of the CGST Rules, from 1st January 2021, to allow recipients to claim provisional ITC in GSTR-3B to the extent of 5% instead of earlier 10% of the total ITC available in GSTR-2B for the month.
- New Rule 86B inserted to restrict utilisation of available balance in the Electronic Credit Ledger in excess of 99 percent for discharge of output liability, wherein the taxable turnover (other than exempt supply and zero-rated supply) exceeds INR 50 lakhs in a given tax period.
- Rule 138 and 138E have been amended to give effect to change in distance for validity of E-way bill and furnishing information in Part-A of Form GST EWB-01
- Rule 59(5) has been amended to provide that no GSTR 1 can be filed in case Last Period's GSTR 3B has not been filed by a taxpayer
- Aadhar based authentication to be introduced from a date to be notified

## D. Due date for filing all GSTR-9 returns extended from 31 December 2020 to 28 February 2021

**Notification 95/2020- Central Tax dated 30 December 2020** has been issued to extend the time limit for furnishing of the annual return specified under section 44 of CGST Act, for the financial year 2019-20, to 28 February 2021.

## Case Laws

### A. In re: Amogh Ramesh Bhatwadekar. [Authority for Advance Ruling, Maharashtra (AAR)]: [TS-1095-AAR-2020-NT]

The Maharashtra AAR has held that e-goods/digital goods in the nature of 'online gaming' will be covered GST laws as services, classifiable under SAC 998439. Such services will attract a GST rate of 18%.

The applicant was engaged in procuring online games from foreign suppliers and providing the same to customers from a cloud server. The AAR held that where online games are bought from a foreign supplier by the applicant and supplied through a cloud server to any customer, the applicant has to discharge the GST under reverse charge mechanism.

The AAR held that there was a supply of Online Information Database Access and Retrieval Services to the applicant from the suppliers based abroad and analysed several scenarios. The AAR clarified that if the customer was located in India, but was paying the consideration in foreign currency or in Indian Rupees, and taking the delivery through a cloud server, then since both customer and the applicant were in India, GST would be liable under reverse charge and not be an export of service.

### B. Skill Lotto Solutions Pvt. Ltd. vs. Union of India & Others: [Supreme Court] [TS-1042-SC-2020-ST]

The Supreme Court has upheld the GST imposed on lottery tickets as an 'actionable claim' and has held that the prize money has to be included in the taxable value of supply.

In a writ petition filed by the Petitioner, the Supreme Court opined that "*inclusion of actionable claim in [the] definition [of] 'goods' as given in Section 2(52) of Central Goods and Services Tax Act, 2017 is not contrary to the legal meaning of goods, and is neither illegal nor unconstitutional*".

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The Supreme Court further observed that when there are specific statutory provisions enumerating inclusions in the value of the taxable supply and non-inclusions in the said value of taxable supplies, a submission that prize money is to be abated for determining the value of taxable supply cannot be accepted.

## C. S.S. Industries vs. UOI [Gujarat High Court] [2020 (12) TMI 1120]

The petitioner, Surat Mercantile Association filed a petition challenging the constitutional validity and vires of Rule 86A of the CGST Rules, before the Gujarat High Court. Rule 86A of the CGST Rules gives power to a GST officer to block ITC in an electronic credit ledger maintained on the GSTN portal without giving any notice or intimation to the taxpayer, if the concerned GST officer has reason to believe that ITC available in the electronic credit has been fraudulently availed or is ineligible.

The Gujarat High Court held that in view of the the Supreme Court categorically considering the aspect of availing ITC and utilization of ITC as two different stages, only the utilization of the accrued credit is a vested right. There is no vested right which accrues before taking input credit. The High Court also held that as “Rule 86A casts an obligation upon the authority concerned to form an opinion but is silent with regard to passing of any specific order assigning prima facie reasons for invoking Rule 86A, the Government needs to look into the matter and issue appropriate guidelines and also lay down some procedure to be followed for the exercise of power under Rule 86A of the Rule.”

## D. South Eastern Coal Fields Ltd. Vs. C.C.E. [TS-1120-CESTAT-2020-ST]

The assessee is a subsidiary of Coal India

Ltd. and worked on the basis of commercial contracts entered with various parties. The issue in dispute pertained to the service tax liability on the amount collected by the assessee under the following heads:

1. Penalty from coal buyers on the short-lifted/un-lifted quantity of coal and non-compliance with terms of the Coal supply agreement, including forfeiture of earnest money deposit/security deposit.
2. Compensation from the contractors for breach of service contracts.
3. Liquidated damages from the suppliers of materials for breach of suppliers contract

Basis the landmark rulings in Bhayana Builders [2018 (10) G.S.T.L. 118(S.C.)] and Intercontinental Consultants [2018 (10) G.S.T.L. 401(S.C.)], the Tribunal clarified that, “*consideration must flow from the service recipient to the service provider and should accrue to the benefit of the service provider and that the amount charged has necessarily to be a consideration for the taxable service provided under the Finance Act*”. It was further observed on reading agreement as whole, the intention of the assessee and other parties was for supply of coal and for availing various types of service but not to impose any penalty upon the other party. The agreements did not specify what obligation has been cast upon the assessee to refrain from an act or tolerate an act or a situation as per Section 66E (e) of the erstwhile service tax act. The Tribunal held that there is a marked distinction between ‘conditions to a contract’ and ‘considerations for a contract’ and therefore, no service-tax may be levied on liquidated damages, earnest money, deposit & penalty for contract breach.

## E. S.C. Johnson Products (P) Ltd. vs. UOI: Delhi High Court [TS-1119-HC-2020(DEL)-NT]

The Petitioner had filed a writ before the Delhi High Court challenging the

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enlargement of scope of investigation by National Anti-Profiteering Authority, which had ordered the investigation of all the products and supply chain of the petitioner, when a complaint was tendered against a specific product.

Directorate General of Anti Profiteering (DGAP) had earlier investigated whether the GST rate applicable to the item “Shoe Polish” was reduced w.e.f. 15 November 2017, after reduction in GST rate, and if so, whether the benefit of such reduction in the rate of tax was passed on to customers. The DGAP found that the base price was increased by the petitioner immediately after the tax rate reduction. By increasing the base price of the goods and charging

GST at the lower rate of 18% on increased base price, the respondent had not passed on the benefit of the tax rate reduction to his recipients. However, the Anti-Profiteering Authority observed the need for investigation of the entire supply chain from the manufacturer to the distributor and from the distributor to the retailer from the perspective of the provisions of Section 171 of the CGST Act and accordingly ordered re-investigation into the matter in terms of Rule 133(4) of CGST Rules.

The High Court issued notice and stayed the investigation into the entire supply chain of the petitioner and further restricted the investigation only to the product ‘Shoe Polish’ till further orders.

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