

## **GST UPDATES**

### **I. Notification Updates**

#### **1. Filing of Nil GSTR-3B returns and Nil GSTR 1 statement of outward supply through SMS– Notification No 58/2020-CT dated 01<sup>st</sup> July, 2020**

Vide above notification, Rule 67A has been amended to provide that in case of tax payers who is required to file nil GSTR 3B or GSTR 1 he may file the same by Short Messaging Service using his registered mobile number based on One Time Password facility.

For the above purpose, Nil return or Nil details of outward supplies shall mean a return under section 39 (GSTR 3B) or details of outward supplies under section 37 (GSTR 1), for a tax period that has nil or no entry in all the Tables in FORM GSTR-3B or FORM GSTR-1.

#### **2. Extension of due date for filing GSTR – 4 in case of composition taxable person for the FY 2019-20 – Notification No 59/2020-CT dated 13<sup>th</sup> July, 2020**

Vide above notification the due date for filing GSTR – 4 in case of composite taxable person has been extended to 31<sup>st</sup> August, 2020.

## II. High Court rulings in GST

1. **Right of issuing Deficiency memo is lost to proper officer if it is not issued within the time line given – Direction given to department to pay the refund along with interest** - *Jian International Versus Commissioner Of Delhi Goods And Services Tax - 2020 (7) TMI 611 - DELHI HIGH COURT - W.P. (C) 4205/2020 – dated 22.07.2020*

- **Facts**

- The petitioner has filed refund application for the month of August 2019 in the month of Nov 2019.
- In accordance with Section 54(6) of DGST Act read with Rule 91(2) of Delhi Goods and Services Tax Rules, 2017 proper officer is required to refund at least 90% per cent of the refund claimed on account of zero-rated supply of goods or services or both made by registered persons within a period of seven days from the date of acknowledgment issued under sub-rule (1) or sub-rule (2) of Rule 90 of DGST Rules.
- Despite the period of fifteen days from the date of filing of the refund application having expired on 19th November, 2019, the respondent has till date neither pointed out any deficiency/discrepancy in FORM GST RFD-03 nor it has issued any acknowledgement in FORM GST RFD-02.

- **Learned counsel on behalf of respondent admits that there has been laxity on the part of the respondent in processing the petitioner's application.** He, however, states that a formal deficiency memo will have to be issued as certain documents though annexed with the writ petition had not been uploaded by the petitioner along with its refund application.
- **Rulings and Observations by the Court –**
  - Rules 90 and 91 of CGST/DGST Rules provide a complete code with regard to acknowledgement, scrutiny and grant of refund.
  - The said Rules also provide a strict time line for carrying out the aforesaid activities. For instance, Rules 90(2) and (3) of the DGST Rules states that within fifteen days from the date of filing of the refund application, the respondent has to either point out discrepancy/deficiency in FORM GST RFD-03 or acknowledge the refund application in FORM GST RFD-02.
  - In the event of default or inaction to carry out the said activities within the stipulated period, consequences like payment of interest are stipulated in Section 56 of CGST/DGST Act.
  - Admittedly, till date the petitioner's refund application dated 4th November, 2019 has not been processed. **As neither any acknowledgment in FORM GST RFD-02 has been issued nor any deficiency memo has been issued in RFD-03 within time line of fifteen days, the refund application would be presumed to be**

**complete in all respects in accordance with sub-rule (2), (3) and (4) of Rule 89 of CGST/DGST Rules.**

- To allow the respondent to issue a deficiency memo today would amount to enabling the Respondent to process the refund application beyond the statutory timelines as provided under Rule 90 of the CGST Rules, referred above
- The respondent's prayer to raise a deficiency memo is a hyper-technical plea as admittedly, all the relevant documents have been annexed with the present writ petition and the respondent is satisfied about their authenticity.
- Consequently, this Court is of the view that **the respondent has lost the right to point out any deficiency**, in the petitioner's refund application, at this belated stage. Accordingly, this Court **directs the respondent to pay to the petitioner the refund along with interest in accordance with law within two weeks.**

**2. Impact of covid 19 lock down considered by HC – Direction given to the department to de-freeze the attached bank account – Assessee is given 6 months time to settle the GST dues – If not settled department can resort to the remedy available under law**

*M/s. Shree M. Revathi Printers Vs The Deputy Commissioner – 2020 (7) TMI – 579 – Madras High Court - W.P.No.7811 of 2020 and W.M.P.Nos.9215 & 9216 of 2020 – 22<sup>nd</sup> July, 2020*

## **Facts**

- Department resorted to provisional attachment of bank account to recover the arrear dues of Rs. 83.59 lakhs on 28.02.2020. An amount of Rs. 12.45 lakhs has already been deducted against the dues. The writ petition is filed challenging the proceedings of the department.
- Learned counsel for the petitioner submitted that the petitioner is not disputing their liability to pay the amount due, but only seeking further time for making payment. Since bank account is attached, the petitioner is
  - Not in a position to run the day to day life even to pay salary to the employees
  - Not in a position to run the business and therefore, they are not in a position to settle the dues immediately.
- The petitioner filed an affidavit dated 20<sup>th</sup> July, 2020, giving an undertaking that if 6 months time is granted, the petitioner will be in a position to settle the dues to the department.
- **Observation and Ruling –**
  - **Considering the present COVID-2019 pandemic situation and the continuous lock down and that the loss of business is not only to the petitioner but to various people, this Court is of the view that some indulgence can be shown to the petitioner** so that they can have a

breathe by dealing with their account, more particularly, when they have given an undertaking to settle the dues within a period of 6 months.

○ Directions given:

- a) The petitioner shall pay the balance due amount within 6 months from today to the first respondent.
- b) If the petitioner fails to make full payment within the above stipulated period, it is open to the first respondent to resort to the remedy available under law to recover the said amount.
- c) In view of the undertaking given by the petitioner as stated supra, the first respondent is directed to de-freeze the bank account maintained by the petitioner in the second respondent bank forthwith.
- d) Insofar as the interest claim if any, it is open to the first respondent to issue fresh proceedings to the petitioner and if any such proceedings is issued, it is open to the petitioner to agitate against the same in the manner known to law.

3. **Principal of Natural justice not followed - Adjudication orders squashed since separate personal hearing notice was not issued by the department** - *M/S. M.R. Hitech Engineers (p) ltd. versus the State Tax Officer, office of the deputy commissioner (st) (intelligence) , Madurai -*

W.P.(MD)Nos.7589, 7590 and 7591 of 2020 And W.M.P.(MD)Nos.7079, 7080, 7081, 7082, 7083 and 7084 of 2020 – 15<sup>th</sup> July, 2020

**Facts:**

- Adjudication orders for three assessment years were passed without issuing specific opportunity of personal hearing by mentioning the date.

**Ruling and observation**

- Section 75(4) of the Act reads as *“An opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person”*
- It is not in dispute that individual and separate personal hearing notice was not issued to the petitioner. On the ground of violation of statutory mandate under Section 75(4) of Tamil Nadu Goods and Service Tax Act, 2017, the impugned orders have to be necessarily quashed. They are accordingly quashed. The matters are remitted to the file of the respondent to pass orders afresh in accordance with law. I make it clear that I have not gone into the merits of the matter.