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पत्रांक: आई0टी0-ITGRC/2020-21/

676

/वाणिज्य कर

कार्यालय- कमिश्नर, वाणिज्य कर,
उत्तर प्रदेश।

(आई0टी0)

लखनऊ: दिनांक: 05 नवम्बर, 2020

समस्त जोनल एडीशनल कमिश्नर,
वाणिज्य कर, उत्तर प्रदेश।

विषय:- मा0 उच्च न्यायालय/मा0 सर्वोच्च न्यायालय द्वारा पारित निर्णयों के अनुपालन में TRAN-1/TRAN-2 से सम्बन्धित मामले GSTN को संदर्भित किये जाने की प्रक्रिया के सम्बन्ध में।

कृपया उक्त विषयक जी.एस.टी. काउंसिल सचिवालय के कार्यालय ज्ञाप (O.M.) संख्या- F.No. 266/11th ITGRC/GSTC/2020(Part-1)/2909 दिनांक 17.06.2020, ITGRC की 11वीं बैठक दिनांक 18 मार्च, 2020 के कार्यवृत्त तथा GSTN के विधि प्रकोष्ठ की ई-मेल दिनांक 01 अक्टूबर, 2020 (प्रतियाँ संलग्न) का सन्दर्भ ग्रहण करने का कष्ट करें, जिसके द्वारा मा0 उच्च न्यायालय/मा0 सर्वोच्च न्यायालय द्वारा पारित निर्णयों के अनुपालन में TRAN-1/TRAN-2 से सम्बन्धित प्रकरण GSTN को संदर्भित किये जाने की प्रक्रिया संसूचित की गयी है।

2. ITGRC की 11वीं बैठक में लिये गए निर्णय निम्नवत् हैं-

(i) Cases shall not be referred to ITGRC wherever an appeal against the order of Court at appropriate judicial forum is decided to be filed.

(ii) If the order of High Court to allow filing of TRAN-1/2 etc has been accepted by the jurisdictional Competent Authority of the Centre/State Tax, then such cases shall not be referred to ITGRC.

ITGRC की 11वीं बैठक में लिये गए निर्णय तथा जी.एस.टी. काउंसिल सचिवालय के O.M. दिनांक 17.06.2020 से संसूचित प्रक्रिया के क्रम में निम्न निर्देश दिये जाते हैं-

2.1 ऐसे सभी मामलों, जिनमें मा0 उच्च न्यायालय/मा0 सर्वोच्च न्यायालय द्वारा TRAN-1/2 स्वीकार किये जाने के आदेश दिये गए हैं, का परीक्षण तथ्यों एवं विधिक प्राविधानों के आलोक में सम्बन्धित खण्ड के डिप्टी कमिश्नर/असिस्टेंट कमिश्नर द्वारा किया जाएगा तथा ऐसे न्यायिक निर्णयों के विरुद्ध Appropriate Judicial Forum के समक्ष अपील दायर किये जाने अथवा ऐसे न्यायिक निर्णयों को स्वीकार किये जाने के सम्बन्ध में अपने ज्वाइन्ट कमिश्नर (कार्यपालक) के माध्यम से एडीशनल कमिश्नर ग्रेड-1 के समक्ष तथ्यों सहित टिप्पणी प्रस्तुत की जाएगी। ज्वाइन्ट कमिश्नर (कारपोरेट सर्किल) द्वारा अपने अधिक्षेत्र से सम्बन्धित प्रकरण परीक्षण के उपरान्त टिप्पणी सहित सीधे जोनल एडीशनल कमिश्नर के समक्ष प्रस्तुत किये जाएंगे। जोनल एडीशनल कमिश्नर द्वारा सम्बन्धित न्यायिक निर्णय के विरुद्ध Appropriate Judicial

Forum के समक्ष अपील दायर करने अथवा न्यायिक निर्णय को स्वीकार किये जाने के सम्बन्ध में निर्णय लिया जाएगा।

2.2 जिन मामलों में जोनल एडीशनल कमिश्नर द्वारा Appropriate Judicial Forum के समक्ष अपील का निर्णय लिया जाएगा, उन सभी मामलों में निर्धारित विभागीय प्रक्रिया का अनुपालन करते हुए अपील दायर की जाएगी तथा प्रभावी पैरवी सुनिश्चित की जाएगी।

2.3 जिन मामलों में जोनल एडीशनल कमिश्नर द्वारा न्यायिक निर्णय को स्वीकार करने का निर्णय लिया जाएगा, उन मामलों में जोनल एडीशनल कमिश्नर द्वारा अपनी सुस्पष्ट संस्तुति सहित निम्न प्रारूप में सूचना आई0टी0 अनुभाग, मुख्यालय को Excel File में ई-मेल आई.डी. ctithqju-up@nic.in पर दिनांक 10.11.2020 तक उपलब्ध करायी जाएगी -


S.No.	Title of Case	WP No. and Date	Issue in Brief	Directions of Hon'ble High Court	Error Committed by the taxpayer	Recommendation of Officer of the State/Centre

विभिन्न जोन से प्राप्त उक्त श्रेणी के मामलों को आई0टी0 अनुभाग द्वारा अधोहस्ताक्षरी के अनुमोदन के उपरान्त निर्धारित प्रारूप में GSTN को अनुपालन हेतु प्रेषित किया जाएगा।

2.4 Technical Glitches से सम्बन्धित ऐसे मामलों, जो दिनांक 31 मार्च, 2020 तक प्राप्त हो चुके थे, को GSTN की SOP दिनांक 12.04.2018 के अनुरूप पूर्ववत् ITGRC के समक्ष प्रस्तुत करने हेतु GSTN को अग्रसारित किया जाएगा।

कृपया अधीनस्थ अधिकारियों को तदनुरूप अवगत कराते हुए शत प्रतिशत अनुपालन सुनिश्चित कराने का कष्ट करें।

संलग्नक- उपरोक्तानुसार।


(अमृता सोनी)
कमिश्नर, वाणिज्य कर,
उत्तर प्रदेश।

Email

mail

ctithqlu-up@nic.in

Regarding Tran-1 issue of M/s Swati Enterprises GSTIN 09AKJPK7573P1Z6 WIRT TAX NO. 356 OF 2020- Allahabad High Court

From : gstn legal <gstn.legal@gstn.org.in>

Thu, Oct 01, 2020 12:21 PM

Subject : Regarding Tran-1 issue of M/s Swati Enterprises GSTIN 09AKJPK7573P1Z6 WIRT TAX NO. 356 OF 2020- Allahabad High Court

7 attachments

To : Joint Commissioner CT UP <ctithqlu-up@nic.in>, cbr3gz-up@nic.in

Cc : mohammad shadaab <mohammad.shadaab@gstn.org.in>, srishti saxena <srishti.saxena@gstn.org.in>, legal assistant <legal.assistant@gstn.org.in>, akshay lal <akshay.lal@gstn.org.in>, jitendra singh <jitendra.singh@gstn.org.in>

Dear Sir,

This is in reference to letter dated 16.09.2020 (**enclosed**) addressed to Joint Commissioner, Commr. Tax, IT Div., Commr. Tax HQ and same was forwarded to GSTN vide e-mail dated 24.09.2020 along with representation of Petitioner and High Court's order dated 06.07.2020 for needful. In this regard this is to inform you that in 7th ITGRC meeting (**copy attached**) it was decided that in all such cases where Court had directed to allow the filing of TRAN-1 manually or electronically, without giving any consideration to the fact whether technical glitches were there or not, jurisdictional tax authorities shall take legal opinion of Government Counsel to file appeal/review petitions as deem fit and proceed legally as per CGST/SGST/UTGST Act, law and rules. It was decided that the Commissionerate/States may either file an appeal against the above-mentioned order or, if it was found to be a fit case in terms of 32nd GST Council decision regarding extended scope of ITGRC for non-technical issues also, then the case might be recommended by the Commissioner following the prescribed procedure.

Further, vide 8th ITGRC (**copy attached**) it was decided that the **Jurisdictional Commissioners of the State/Centre** should get the claim of the taxpayers checked including verification of the credit and ascertain the amount of credit that was claimed in the various tables of GST TRAN-1 & TRAN-2. Wherever required a certificate from counterpart tax authority may be obtained regarding genuineness of claim. After being satisfied about the genuineness of the claim, the details should be sent to GSTN with proper recommendation and specific HC order copy as per 32nd GSTC meeting to enable filing of TRAN-1/TRAN-2.

GSTC Secretariat had prescribed the following format to be followed by the jurisdictional tax authority while forwarding cases in terms of the decision of 32nd GSTC vide OM dated 19.2.2019 (**copy attached**) read with CBIC's letter dated 01.08.2019 (**copy attached**):-

S.No	Title of Case	WP No. and Date	Issue in Brief	Directions of Hon'ble High Court	Error Committed by the taxpayer	Recommendation of Officer of the State/Centre

Again in the 11th ITGRC (**copy attached**) meeting it was decided that once the order has been accepted by the jurisdictional authority and has attained finality, it needs to be communicated in writing to GSTN with the **approval of the competent authority** of Centre/ State Tax to implement that order. On this aspect, it was discussed that a final decision regarding filing writ appeal/ review petition/ SLP against any court order or acceptance of the concerned court order in a time bound manner has to be taken by the jurisdictional Central Tax/ State Tax authorities as per prescribed guidelines. In cases pertaining to Central Tax taxpayers, **if it is decided by the jurisdictional Central Tax Commissionerate with the approval of the Chief Commissioner concerned to accept the said order of Hon'ble High Court/ Hon'ble Supreme Court as per prescribed procedure, then the same needs to be communicated in writing to GSTN by the concerned Central Tax Commissionerate with the approval of the Chief Commissionerate for implementation of the order of the Hon'ble Court.**

Similarly, in case of State Tax taxpayers, if the jurisdictional State Tax authorities decide to accept the said order of Hon'ble Court, then it needs to be communicated in writing to GSTN by the jurisdictional State Tax authorities with the approval of State Tax Commissioner for compliance of the order of Hon'ble Court. On receiving of the communication from the jurisdictional field formation with the approval of the Chief Commissioner of Central Tax or Commissioner of State Tax, as the case may be, GSTN will take action for compliance of Court order for opening of the portal for the said taxpayer. However, the jurisdictional tax authority needs to verify the correctness and eligibility of the said transitional credit claimed by the taxpayers as per provisions of CGST Act 2017 and the rules thereof and to take appropriate remedial action, if required. The said decision was communicated vide OM no. 266/11th ITGRC/GSTC/2020(Part-1)/2909 dated 17.06.2020 (**copy attached**).

In view of the above, since the 11th ITGRC meeting is later in time therefore, the procedure as prescribed in the 11th ITGRC read with OM no. 266/11th ITGRC/GSTC/2020(Part-1)/2909 dated 17.06.2020 may be followed in this case and accordingly the case may be processed.

Submitted for your information and necessary action.

Regards

GSTN-Legal


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11/5/2020


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