

**Relevant updates under Commercial Tax laws
Practical Case Studies under the GST law**

Bangalore ICAI 16/6/2021

Kara Samadhana Scheme

Karasamadhana scheme per GO No. FD 49 CSL 2021, Bengaluru dated 29th March 2021

Waiver of Interest and Penalty: The scheme of **waiver of Penalty and Interest** as applicable under different commercial taxes i.e. The Karnataka Sales Tax Act 1957, The Karnataka Value Added Tax Act 2003, The Central Sales Tax Act 1956, The Karnataka Tax on Professions, Trades, Calling and Employments Act 1976, The Karnataka Tax on Luxuries Act 1979, The Karnataka Agriculture Income Tax Act 1957 , The Karnataka Entertainment Act 1958 and The Karnataka Tax on Entry of Goods Act 1979.

Due date for Assessment orders: The scheme grants waiver of 100% Interest and Penalty payable by the dealer under the above Acts relating to the Assessments/Re-Assessments/Rectifications already **completed or to be completed on or before 31.7.2021.**

Payment of tax dues: The Payment of arrears of tax should be made on or before 31.10.2021 and in case there are no arrears of tax and there is arrear of only penalty and interest then such penalty and interest will be waived.

Penalty for non- filing of Returns and VAT 240: Under the Karnataka VAT Act, it also grants waiver of penalty of Section 72(1)(a) or 72(1)(b) and Section 74(4) and consequential Interest subject to that Returns and Form VAT 240 are filed and the taxes are admitted and paid in full.

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No waiver of Penalty: If the penalty is levied under **section 10-A of CST Act 1956**(**Imposition of penalty in lieu of Prosecution**) then such penalty is not eligible for waiver under this scheme.

Withdrawal of Appeal: If any appeal is filed to Appellate Authority or Court, then the **appeal can be withdrawn** before filing the application for waiver of Interest and Penalty in **Annexure-I**. Such appellant should file the declaration as specified in **Annexure-II**. Such application and declaration should be filed separately for each year.

Amount paid at the time of Appeal: Any amount paid at the time of filing the appeal or other applications shall be eligible for **adjustment towards arrears** of tax outstanding for the assessment year for which the benefits are claimed. The dealer will not be eligible for refund of amount that may become excess as a result of adjustments under this scheme.

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Refund of Interest and Penalty already paid before introduction of Karasamadhana scheme: In respect of cases where any appeal or other application is not filed, the dealer is **not eligible for refund** of any penalty or interest already paid either in full or in part under this scheme.

Can dealer file appeal after opting for this Scheme? The dealer shall **not file the appeal** or other applications before any Appellate Authority or Court or shall not seek rectification of orders/proceedings after filing application for availing the benefits of the scheme or after availing the benefits of this scheme.

Not Eligible for this Scheme: Where state has **filed an appeal** before the KAT or the CST Appellate Authority or Where State has filed an appeal or revision or any kind of application before the HC or SC or The Competent Authority has initiated Suo Moto Revision proceedings as on the date of this Government order or Any rectification is made to the Assessment order after 31.7.2021

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Website to file Application: The website to file the application is <http://ctax.kar.nic.in> or <http://gst.kar.nic.in>

Sl. No	Particulars	Form No
1	Applications under KST and CST	Annexure-I
2	Applications under KVAT and CST	Annexure-IA
3	Applications under KTEG Act/KTPTC&E/KTL Act/KAIT Act	Annexure-IB
4	Applications under KET	Annexure-IC
5	Specific Penalties under KVAT Act	Annexure-ID

Kara Samadhana Scheme

Verification and **passing of order** by Concerned Authority

Assessments \ re-assessments done in the case of URDs/ in respect of **Pre-registration** periods under KVAT Act are eligible to avail the benefits

If the Assessment or Re-assessments or Rectification Orders or any other proceedings passed pursuant to **remanding** of the cases by First Appellate Authority or Karnataka Appellate Tribunal or Revisional Authority or High Court or Supreme Court are eligible for availing the benefits under the Scheme

I) Karnataka Tax on Professions, Trades, calling and Employment Act 1976.

(No FD 02 CPT 2021 dated 26.4.2021) (ROD order (01/2021)/(No FD 02 CPT 2021 dated 16.5.2021) (ROD order (02/2021))

Particulars	Actual due date	Extension of time
Monthly statement and Professional tax deducted for employees for the month of April 2021	20 th of following month (May 2021)	20 th June 2021
Payment of Professional tax due as an Employer who enrolled before the commencement of year (up to 31.3.2021)	30 th May 2021 for every financial year	30 th June 2021
Payment of Professional tax due as an Employer who enrolled before the commencement of year (from 01.4.2021 for Financial Year 2021-2022)	Within one month from the date of enrolment	Within one month from the date of enrolment

I) Karnataka Tax on Entry of Goods Act 1979.

(No FD 02 CET 2021 dated 31.5.2021) (ROD order (01/2021))

Particulars	Actual due date	Extension of time
Assessment under section 5-D and section 6 of the Act	Five years after the end of prescribed tax period	Five years and three months after the end of prescribed tax period
Assessment due to section 7(2) and section 21(2) of the Act	Eight years after the end of prescribed tax period	Eight years and three months after the end of prescribed tax period
Time limit to file appeal to commissioner (Appeal) for the orders dated between 1.10.2020 to 31.12.2020	Thirty days from date of receipt of order with further extension of 180 days	Thirty days from date of receipt of order with further extension of 270 days

Time limit to file appeal to Appellate Tribunal for the orders dated between 1.10.2020 to 31.12.2020	Sixty days from date of receipt of order with further extension of 180 days	Sixty days from date of receipt of order with further extension of 270 days
Revision of order by Joint Commissioner/Additional Commissioner/Commissioner	Four years from the date of order	Four years and three months from the date of order
Rectification of mistakes apparent on record	Five years from date of passing of order	Five years and three months from date of passing of order

I) Karnataka Value Added Tax Act 2003

(No FD 54 CSL 2021 dated 31.5.2021) (ROD order (01/2021))

Particulars	Actual due date	Extension of time
Assessment under section 38 (Assessment) and section 39 (Re-assessment) of the Act	Five years after the end of prescribed tax period	Five years and three months after the end of prescribed tax period
Assessment due to section 40 and section 79 of the Act	Eight years after the end of prescribed tax period	Eight years and three months after the end of prescribed tax period
Time limit to file appeal to commissioner (Appeal) for the orders dated between 1.10.2020 to 31.12.2020	Thirty days from date of receipt of order with further extension of 180 days	Thirty days from date of receipt of order with further extension of 270 days
Time limit to file appeal to Appellate Tribunal for the orders dated between 1.10.2020 to 31.12.2020	Sixty days from date of receipt of order with further extension of 180 days	Sixty days from date of receipt of order with further extension of 270 days

Revision of order by Joint Commissioner Time limit to pass order from the date of initiation or proceedings (relating to tax periods up to 31.3.2017)	Four years from the date of order One Year to pass order	Four years and three months from the date of order. One Year and three months to pass order
Revision of order by Additional Commissioner or Commissioner	Four years from the date of order	Four years and three months from the date of order
Rectification of mistakes apparent on record	Five years from date of passing of order	Five years and three months from date of passing of order

Case Study 1

Krishna Limited is a company incorporated under the Companies Act, 2013. As per Companies Act, 2013, it has to spend specific amount of profits towards Corporate Social Responsibility (“CSR”) activities. Accordingly, in furtherance of its CSR obligations, it incurred expenses worth INR 2 Crores in relation to training to semi skilled trainees enrolled with NGO. These expenses were towards providing proper uniforms and equipment tools to the trainees for skill development training etc.

Whether Krishna Limited is eligible to avail and utilize ITC towards expenses incurred expenses incurred in the course or furtherance of business?

CSR Agreement-

Statutory obligations

Business definition

Section 16 – expenses incurred in the course of business

Section 17(1) and section 17(5)

Case Study 2

Radha & Associates has the Rented the property for commercial use to XYZ limited. They have collected 5 lakh as rent per month and has paid property taxes of Rs. 5000/- per month. They have also collected the security deposit of 50 lakhs from the recipient. Whether interest on the security deposits are liable to tax and whether deduction for property tax can be availed by the Radha & Associates?

Midcon Polymers Pvt Ltd (KAR AAAR 01/2021 dated 11/01/2021)

Security deposits are higher than market standards

Price Is the sole consideration

Case Study 3

- *Prestige Wooden Residential Welfare Association is collecting the sinking fund/corpus fund from its resident members in addition to the maintenance charges from the residents to meet future supply of services. Can it be called as advance or deposits and whether any implication of GST on such transactions?*
- Prestige South Ridge Apartment owners Association (KAR ADRG 42/2019, dated 17-9-2019)
- Olety Landmark Apartment Owner's Association (KAR ADRG 12/2021 dated 10/03/2021)
- C.B.I. & C. Circular No. 109/28/2019-GST, dated 22-7-2019

Case Study 4

The Propetier firm is licensed commission agent and is registered under the GST Act. He is complying with the law by filing returns and payment of taxes. He has uploaded the GSTR 1 and filed GSTR 3B but there is mismatch between the GSTR1 ad GSTR 3B.

Whether the department can recover the tax and interest as per section 75(12) of CGST Act .

- *Submitted and not filed*

Notwithstanding anything contained in section 73 or section 74, where any amount of self-assessed tax in accordance with a return furnished under section 39 remains unpaid, either wholly or partly, or any amount of interest payable on such tax remains unpaid, the same shall be recovered under the provisions of section 79.

- *No recovery before Amendment/Recovery after amendment*
- *In section 75 (12) Explanation has been inserted that the expression “self-assessed tax” shall include the tax payable in respect of details of outward supplies furnished under section 37, but not included in the return furnished under section 39.*
- *The Union of India V/s M/s L C Infra Projects Pvt Ltd*

Case Study 4

Amendment in section 83- Provisional attachment to protect the revenue in certain cases

(1) Where during the **pendency of any proceedings** under section 62 or section 63 or section 64 or section 67 or section 73 or section 74, the **Commissioner is of the opinion** that for the purpose of protecting the interest of the Government revenue, it is necessary so to do, he may, by order in writing attach provisionally any property, including bank account, belonging to the taxable person in such manner as may be prescribed.

After Amendment

“(1) Where, after the **initiation of any proceeding** under Chapter XII, Chapter XIV or Chapter XV, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue it is necessary so to do, he may, by order in writing, attach provisionally, any property, including bank account, belonging to the taxable person or any person specified in sub-section (1A) of section 122, in such manner as may be prescribed.”.

Piyush Shamjibhai Vasoya Vs Union of India through the Secretary and 2 others [Civil Application No. 16437 of 2020 dated 27.01.2021], High Court of Gujarat

Bhavesh Kiritbhai Kalant Vs Union of India (Gujarat High Court)

Jay Ambey Filament Pvt. Ltd Vs Union of India (Gujarat High Court) and M/s Bhumi Associate Vs Union of India through the secretary dated Feb 16-2021- guidelines by way of instructions/guidelines-

- **Case Study 5**

- *A has purchased the goods from B Company for Rs. 5 lakh plus tax at rate of 5% (25000). A has sold the goods to B of Rs. 1 lakh plus 5% tax (5000). The issue is whether A can avail the input tax credit of 25000/- or he can avail only 20000/- as there is only book adjustment of settled amount and has paid 4 lakh plus 20000/- to B company. Whether Proviso of 16(2) will allow such book adjustments Adjust the principal amount and not taxes – to avoid litigation*
- M/s Senco Gold Limited (2019 (24) GSTL 688 (AAR GST)
- It is held that where the payee owes the payer a debt and accepts reduction in such debt liability as a valid form of payment such reduction in debt liability should be regarded as a valid consideration. The issue is whether input tax credit would be admissible when the settlement of dues are done by way of book adjustments
- M/s MRF Limited (2019 (27) GSTL (AAR GST) –
- It is held that input tax credit can be availed only to the extent of payments made by the recipient to the supplier. Therefore, ITC attributable to post supply discounts cannot be availed irrespective of the fact that supplier has discharged tax on full value of supply.
- *Post supply discount is not affect on taxes and having effect only on valuation.*
- *Two buckets' valuations under section 15 and ITC provisions separately.*
- *Discharge of entire liability.*

- Case Study 6

- *Whether any impact of 16(2)(c) - Tax to be paid by supplier for availing credit ?*

“The tax charged in respect of such supply has been actually paid to the Government either in cash or through utilisation of input tax credit admissible in respect of said supply”

- What if my supplier has filed GSTR 1 and not filed GSTR 3B and I have Tax Invoice (Section 16(2))
- What if I have Tax Invoice and my supplier has filed GSTR 3B and has not reflected my GSTIN in GSTR 1 Rule 36(4), 43A not notified and 162AA)
- What if I have Tax Invoice and my supplier has neither filed GSTR 3B and not filed GSTR 1 (Section 16(2) ©)
- Mismatch in ITC claimed and reflected in GSTR-2A due to error of supplier – Relevant discussion- declaration and screens shots

Commissioner of Trade and Taxes Delhi Vs Arise India Limited and Others (Delhi HC)-

In the event where selling dealer fails to deposit tax collected by him from purchasing dealer the remedy for the department should be against the selling dealer for recovery of such taxes

Section 16(2)(aa)- yet to be notified

- *“(aa) the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37;”.*
- Not a Retrospective Amendment – whether GSTR 2A/2B reconciliation to be done for prior to the effective date of this amendment
- Rule 36(4) of CGST Rules 2017
- ITC to be claimed only to extent of ITC appearing in GSTR 2A/GSTR 2B- notified

M/s DY Beather Enterprises Vs State Tax officer- Madras HC-2021-TIOL-890-HC-MAD-GST

Where the seller has collected the taxes from the purchasing dealer, the omission on the part of the seller to remit the taxes and action should be initiated against him

Case Study 7

- *Whether supply of goods and services by Club/Association to its members is liable to GST?*
- *Collecting membership fees- no supply of goods or services- capital contribution as member of AOP/society- litigation*
- *Yearly subscription- amenities- supply of services*
- *Supply of food to members- services*
- *Swimming dress, sports items- sale of goods*
- section 7.
- “(aa) the activities or transactions, by a person, other than an individual, to its members or constituents or *vice-versa*, for cash, deferred payment or other valuable consideration.
- *Explanation.*--For the purposes of this clause, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions *inter se* shall be deemed to take place from one such person to another;”.

- *Whether supply of goods and services by Club/Association to its members is liable to GST?*
- Amendment in section 7 retrospectively with effect from 01.7.2017
- “Activities or transactions” between member and association to be supply
- Explanation added to override any other law or judgement or decree or order of court or tribunal or authority
- State of West Bengal v. Calcutta Club Limited
- Cash or Deferred payment or other valuable consideration
- “in the course or furtherance of business” is missing
- Free supply of goods / services will not be taxable- by members to club or club to members
- Schedule II amended to delete reference to Para 7 – Classification of supply by Association to Members
- Impact on Clubs, RWA etc who have not paid taxes on the “principles of mutuality’
- Extended period of limitations cannot be invoked

- Case study.

- *Whether Race clubs are liable to pay GST on the betting amount or on commission amount?*
- Value of supply in case of lottery, betting, gambling and horse racing (Rule 31A(3) of CGST Rules)
- The value of supply of actionable claim in the form of chance to win in betting, gambling or horse racing in a race club shall be 100% of the face value of the bet or the amount paid into the totalisator
- Bangalore Turf Club Limited and ors. Vs. State of Karnataka (Karnataka High Court)
- Petitioner hold the amount as fiduciary capacity
- No distinction made between bookmakers and totalisator
- Horse race clubs liable to pay GST only on commission and not entire bet amount;
- Compared with Travel agent or stock broker
- Rule 31A(3) of CGST Rules ultra vires

Case Study 8

ABC Company is the manufacturer of Agarbati product liable to tax at 5%. ABC company has availed the input tax credit on inputs, input services and has applied for the refund of unutilised credit of input and input services and the department has rejected the refund of input tax credit on input services based on amended Rule 89(5) of CGST Rules 2017

Rule 89(5) prescribes the formula for determining the refund on account of inverted duty structure

Section 54(3)(ii)

Gujrat HC VKC Foot steps dated 24.7.2020 (7)TMI 726 - Denial of refund of Input Services accumulated on account of inverted duty structure is ultravires

Madras HC in **TVL Vs Union of India** dated 21.9.2020 reported in 2020(9) TMI 931- Rule 89(5) is in conformity with section 54(3)(ii). Therefore Net ITC will not include input services (Pending before Supreme Court)

Circular on inverted duty structure

Case Study 9

ABC Enterprises have not filed the return under the GST law and they have received notice for cancellation of registration. ABC Enterprises have applied for revocation of cancellation and have filed the return under the GST law. The department has rejected the revocation on the ground that tax dues are not paid correctly.

No assessment or adjudication at the time of revocation

Case Study 10

XYZ Enterprises have not filed the return under the GST law and they have received notice for cancellation of registration. ABC Enterprises have not applied for revocation of cancellation within specified time of 90 days. They could not file the Appeal as three months plus one month time has been elapsed. How they can proceed in this scenerio

Time limit of filing

Should he go for new Registration

Supreme Court Suo moto order- extension limitation period

Original order effective- extended until further order

- Case 11.
- Whether interest under section 50(1) is payable on gross basis or net basis in case of additional turnover declared in subsequent months based on proviso to section 50(1) of CGST Act 2017?
- Proviso “Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, shall be payable on that portion of the tax which is paid by debiting the electronic cash ledger.”
- Press release dated Dt. 26.08.2020
- Administrative circular . No. CBEC- 20/01/08/2019-GST dt. 18.09.2020
- Interest on missed turnover-gross basis
- Interest is payable on net basis (i.e., only on tax paid via e-cash ledger)

- **Case 12.**
- Whether there is levy of penalty under section 129 and 130 during Audit under section 65 under the CGST Act 2017 for E -way bill noncompliance under GST law ?
- Section 122 (1)(xiv)
- Section 129/130
- Section 129- Detention, seizure and release of goods and conveyances in transit
- Section 130- Confiscation of goods or conveyance and levy of penalty

- **Case 13.**

- ABC Company has supplied the hand sanitizers and oximeters to SEZ under LUT. The SEZ has used such items to comply with the Covid protocols? Whether ABC company can claim the refund of input tax credit against the sale of such goods?

- Supplies for other than "authorized operations" –
- vendors would be required to charge IGST on such supplies;
- Authorized Operations has been defined under SEZ Act to mean "setting up, operation, maintenance and expansion of Unit" - Any procurements not related to such activities will be treated as procurements not for authorized operations;
- For Services, default list of services (67 services) which are treated as used for authorized operations has been issued
- The default list of services includes general insurance but not life insurance, includes accommodation services but not restaurant services, includes rent a cab services but not leasing of cars –
- Section 17(5) does not allow credit as well on these services which are not covered under the default list
- Government to Notify cases where exports / SEZ supplies can be made on payment of tax

- **Case 14.**

- *ABC pharmaceutical manufacturer sells certain covid related items like pulse oximeter, testing kits, at MRP wherein the rate of taxes are reduced to 5% from 18% with effect from 14.6.2021. Whether such pharmaceutical company can claim the refund of differential taxes?*
- MRP basis
- Notification No. 05/2021-Central Tax (Rate)
- *Circular 135 CBEC-20/01/06/2019-GST- Trading*
- *Section 54(3)*
- Refund of accumulated ITC in terms clause (ii) of sub-section (3) of section 54 of the CGST Act is available where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies.

Case Study 15

Whether intermediary services are treated as export of services or liable to tax under IGST Act?

Section 13(8) (b)

Material Recycling Association of India- liable to tax

Dharmendra M Jani Vs UoI (Dated: June 09, 2021)

ATE Enterprises Private Limited Vs Union of India (WP) 639 of 2020

Ultravires and unconstitutional

Case Study 16

In case of Joint Development agreement whether landlord would be allowed to utilize the credit of the tax charged by the Developer prior to the completion certificate or first possession which ever is earlier

- Notification 03/2021- Central Tax (Rate) dated 02/06/2021
- Notification 06/2019 – Central Tax (Rate) dated 29/03/2019
- Amendment - Landowner can utilize such credit charged by the Developer to discharge his liability against construction services arising out of sale of his share of apartments
- To enable the Developer to pass on the credit to the Landowner before the completion of project, amendments have been introduced to allow Developer to pay tax and raise invoice on Landowner on or before date of issuance of Completion Certificate.

Case Study 17

ABC company has not filed the GST Returns from April 2019 till date due to conflicts in the management. They have decided to file the returns in June 2021. Whether such company can avail the input tax credits in their returns from April 2019?

Section 16(4)

Not entitled to take credit after the due date of furnishing the return for month of September following the financial year or annual return whichever is earlier

Case Study 18

ABC company has exported the goods to USA in April 2020 . ABC company has applied for refund under section 54(3) of unutilised input tax credit and Refund has been sanctioned. Such company has not realised the export proceeds from USA outside India. Is any there any implications

Rule 96B- Recovery of refunded unutilized ITC/ IGST where export proceeds not realized

Amendment in Section 16(4) of IGST –

- Provided that the registered person making zero rated supply of goods shall, in case of non-realisation of sale proceeds, be liable to deposit the refund so received under this sub-section along with the applicable interest under section 50 of the Central Goods and Services Tax Act within thirty days after the expiry of the time limit prescribed under the Foreign Exchange Management Act, 1999 for receipt of foreign exchange remittances, in such manner as may be prescribed.

Case Study 19

ABC company is exporter and have filed the returns for 2019-2020 and 2020-2021. ABC Company had input tax credit in FY 2019-2020 and there is no export turnover in 2019-2020. They have declared exports in the FY 2020-2021. Whether ABC company can apply for refund ?

Circular 135 CBEC-20/01/06/2019-GST- combined application

Case Study 20

MNO company has consigned the goods from bangalore to Hyderabad and the transporter has carried all the required documents including E way bill, Invoice. The Check post officer has detained the goods stating that the E way bill is expired. Also they have raised the contention that HSN of goods is not correct .

Satyam Shivam Papers Pvt Ltd Vs Assistant Commissioner. ST & Others (TS-260-HC(TEL)-2021-GST)

Tax evasion-

Can they adjudicate on classification or valuation issues?



- CA. Annapurna Kabra
- 9972077441



Q&A