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GST Compendium

A monthly guide

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Editor's Note

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The Goods and Services Tax (GST) Council, in its 50th meeting, recommended various legislative and procedural changes. One of the significant recommendations was to levy GST @28% on the total face value of the bets placed in online gaming, casinos, and horse racing. In this regard, in its 51st meeting, the GST Council has suggested amendments in GST law to clarify w.r.t. taxation and valuation of supply in online gaming, casinos, and horse racing. The Finance Minister has stated that the decision will be reviewed after a period of six months from its implementation.

In addition, the Central Board of Indirect Taxes (CBIC) has issued much-awaited clarifications on various important tax-related matters, including cross charges, warranty transactions, etc.

On the judicial front, the Supreme Court (SC) has upheld the Bombay High Court's (HC) decision, holding that interest and penalty cannot be levied on short/delayed payment of customs surcharge, additional duty of customs, and special additional duty in the absence of statutory provisions. This is an important development and should help taxpayers obtain refunds of interest and penalties paid earlier.

Besides, the SC has revived a show cause notice quashed by Punjab and Haryana HC, allowing the Revenue to continue proceedings after a 10-year gap. The SC held that non-adjudication would cause prejudice to the Revenue.

In another ruling, the Andhra Pradesh HC has upheld the constitutional validity of GST provisions, prescribing a time limit for availing the ITC. The HC recognised the ITC as a concession provided by the legislature and allowed the legislature to impose conditions.

In this edition, we have analysed the taxability of intellectual property rights under the pre-GST regime, GST and Customs laws.

On the direct tax front, the Central Board of Direct Taxes (CBDT) has extended the timeline for filing TDS/TCS statements for the first quarter of FY 2023-24. Further, the Ministry of Finance has clarified various aspects of the changes in TCS rates for remittances under the LRS.

I hope you will find this edition an interesting read.

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Important amendments/ updates

A. Key updates under the GST and erstwhile indirect tax laws

50th GST Council meeting: Key recommendations and decisions

The 50th GST Council meeting was convened in New Delhi on 11 July 2023 wherein the Council has proposed several recommendations inter alia changes in the GST rates on certain goods and services, issue clarifications on certain issues, measures for trade facilitation, streamlining GST compliances, etc.

In light of the recommendations made by the GST Council during the 50th meeting, the CBIC has issued a series of circulars aimed at providing clarity on various tax-related matters. These circulars specifically address the concerns related to the taxation of services between offices located in different states, the tax implications on shares held in subsidiary companies by the holding company, the TCS, the guidance on rectifying discrepancies in the ITC availed, and the aspects concerning refund procedures.

Key clarifications

Clarification on the taxability of services provided by an office of an organisation in one state to the office of that organisation in another state, both being distinct persons:

Issue	Clarification
ISD registration for the HO for distribution of common input services procured from a third party but attributable to both the HO and BO	• The common input services procured by the HO from a third party but attributable to both HO and BO or exclusively to one or more BOs: – The HO can either opt to distribute such ITC by following an ISD; or – The HO can issue tax invoice u/s. 31 to the concerned BO for such common services attributable to the BO, and accordingly, the BO can avail ITC subject to Sections 16 and 17. – Therefore, an ISD is not mandatory. • If the HO opts for the ISD mechanism, then the HO is mandatorily required to take registration as an ISD. • Pertinently, only such ITC can be distributed by way of an ISD, which is attributable to the said BO, i.e., the input services have been received by such BO. Similarly, tax invoices can be issued to the BO only if such services have been provided to the concerned BO.
Valuation methodology to be adopted by the HO for issuance of invoice to BOs where it is eligible for the full ITC	• The value of the supply of services declared in the invoice shall be deemed as OMV where the recipient BO is eligible for full ITC, irrespective of whether the cost of any particular component of such services, such as employee cost, etc., has been included or not in the value of the services in the invoice. • Where the HO has not issued a tax invoice to the BO in respect of any service rendered by the HO and full ITC is eligible to the BO, the value of such services may be deemed to be declared as nil by the HO to the BO and may be taken as the OMV.

Issue	Clarification
Inclusion of employee cost while the issuance of invoice by the HO to BOs where it is not eligible for the full ITC	• In cases where the ITC is not available, the cost of the salary of employees of the HO involved in providing the said services to the BOs is not mandatorily required to be included while computing the taxable value of the said supply of services.

(Circular No. 199/11/2023-GST dated 17 July 2023)

Clarification on the calculation of interest u/s 50(3) in cases of wrong availment of IGST credit and reversal thereof:

- Since the ITC available under any of the heads, i.e., IGST, CGST, SGST in ECrL, can be utilised to pay IGST liability, such total ITC has to be considered to calculate interest.
- The total ITC available in all heads must be considered to determine if and to what extent the balance in ECrL has fallen below the amount of wrongly availed IGST credit.
- If the total balance of ITC under all the heads taken together is less than the wrongly availed amount of IGST credit, it amounts to the utilisation of such wrongly availed IGST credit. The extent of utilisation will be the extent to which the total balance falls below such amount of wrongly availed IGST credit and will attract interest.
- The credit of compensation cess can only be used to pay the compensation cess leviable on the supply of goods and services; therefore, it cannot be considered while determining the ECrL balance to calculate interest.

(Circular No. 192/04/2023-GST dated 17 July 2023)

Clarification on refund-related issues:

- Clarification on the restriction on refund of accumulated ITC based on availability in Form GSTR-2B:
  - Since the availment of the ITC has been linked with Form GSTR-2B w.e.f. 1 January 2022, the availability of refund of the accumulated ITC under Section 54(3) of the CGST Act for a tax period shall be restricted to ITC as per those invoices that are reflected in Form GSTR-2B for the said tax period or for any of the previous tax periods and on which the ITC is available to the applicant.
  - The said restriction shall be applicable for the refund claims for the tax period of January 2022 onwards.
  - This restriction shall not impact the refund claims filed for a tax period from January 2022 onwards, which have already been disposed of by the proper officer before the issuance of this circular, in accordance with the extant guidelines in force.
- Clarification w.r.t. undertaking required in Form RFD-01:
  - Earlier, the applicant was required to file an undertaking electronically, along with a refund claim that it will pay back the refund amount in case of non-compliance with the requirements of Section 16(c)(2) read with Section 42(2) of the CGST Act.
  - Due to the omission of Section 42 w.e.f. 1 October 2022, Section 41, along with Form GSTR-2 and GSTR-3, have also been omitted. Hence, the reference to such provisions and forms is being deleted from the undertaking as well as the relevant circular.
- Clarification on the manner of calculation of adjusted total turnover:
  - Consequent to an amendment in the definition of the 'turnover of zero-rated supply of goods', it had been clarified vide a circular that the same value of zero-rated/export supply of goods - as calculated as per the amended definition - should be considered while calculating the 'turnover in a state or a union territory', and in the 'adjusted total turnover' for the purpose of Rule 89(4).
  - Similarly, consequent to the explanation inserted in Rule 89(4) of the CGST Rules, the value of the goods exported out of India should be included while calculating the 'adjusted total turnover', which will be the same as the value determined as per the explanation.
- Clarification on refund where an exporter applies for a refund after complying with the provisions of Rule 96A(1) of the CGST Rules:
  - The benefit of zero-rated supplies cannot be denied to the concerned exporters as long as the goods are actually exported or the payment is realised in the case of the export of services, even if it is beyond the prescribed time limit. Therefore, exporters would be entitled to the refund of unutilised ITC on the actual export of the goods or on the realisation of payment in the case of the export of services.
  - The said exporters would be eligible to claim a refund of the IGST tax paid earlier on account of goods not being exported, or as the case might be, the payment not being realised for the export of services.
  - The refund application of the IGST paid may be made under the category 'Excess payment of tax'. However, due to the non-availability of this facility on the portal, the applicant may file the refund application under the category 'Any Other.'
  - No refund of the interest paid shall be admissible.

(Circular No. 197/09/2023- GST dated 17 July 2023)

Clarification on the taxability of share capital held by the parent company in the subsidiary company:

The activity of holding shares of a subsidiary company by the holding company does not qualify as the supply of services and, therefore, cannot be taxed under GST due to the following reasons:

- Securities include shares, which do not qualify as goods or services;
- The purchase or sale of shares or securities in itself is neither a supply of goods nor a supply of services;
- Solely because there is a SAC entry 997171 in the scheme of classification of services wherein it is provided that the 'services provided by holding companies', i.e., holding securities of (or other equity interest in) companies to own a controlling interest, cannot mean that there is a supply of services under Section 7 of the CGST Act.

(Circular No. 196/08/2023-GST dated 17 July 2023)

Clarification on ITC availability in respect of warranty replacement of parts and repair services during the warranty period:

Issue	Clarification
GST on free replacement and/or repair service during warranty by the manufacturer to the customer	• GST is not chargeable on replacing parts and/or the repair service during the warranty period without consideration. • If additional consideration is charged for the replacement or service, then GST will be payable on such additional consideration.
Reversal of ITC on free replacement and/or repair service during warranty	• Reversal of ITC is not required in respect of the replacement of parts, or the repair services provided during the warranty period, as these are not exempt supplies.
GST on free replacement and/or repair service during the warranty by the distributor to the customer	• No GST will be payable in case of free replacement or repair service provided to the customer without consideration by the distributor on behalf of the manufacturer. However, GST will be payable if the additional consideration is charged. • GST would be payable if distributors use parts in their stock or purchase from a third party for providing replacement under warranty and charge consideration for this to the manufacturer by issuing a tax invoice. • No GST is payable on such replacement of parts by the manufacturer where the manufacturer provides such parts to the distributor for replacement to the customer during the warranty period, without separately charging any consideration at the time of such replacement. Further, no reversal of ITC is required to be made by the manufacturer in such a case. • If the manufacturer issues a credit note to the distributor for using parts already provided by the manufacturer for replacement, the tax liability may be adjusted by the manufacturer, subject to the condition that the said distributor has reversed the ITC availed against the parts so replaced.
GST on additional repair service provided by the distributor without consideration to the customer but charged for the same to the manufacturer	• GST would be payable on such provision of service by the distributor to the manufacturer, and the manufacturer would be entitled to avail the ITC of the same, subject to other conditions.
GST on extended warranty	• If an extended warranty is taken at the time of the original supply, then the price is included in the original supply, which is a composite supply, the principal supply being the supply of goods, and GST would be payable accordingly. • If an extended warranty is taken after the original supply, then the same is a separate contract, and GST would be payable by the service provider (i.e., either manufacturer or distributor or any third party).

(Circular No. 195/07/2023-GST dated 17 July 2023)

Clarification on the manner of dealing with difference in ITC availed in Form GSTR-3B in comparison to Form GSTR-2A for the period 1 April 2019 to 31 December 2021:

Rule 36(4) regarding the restriction of ITC availability came into effect from 9 October 2019, and Circular No. 183/15/2022-GST dated 27 December 2022 was issued for dealing with the difference in ITC availed in Form GSTR-3B as compared to that detailed in Form GSTR-2A for FY 2017-18 and 2018-19. The benefit of Circular No. 183/15/2022-GST has been extended from 1 April 2019 to 31 December 2021 in the following manner:

Period	Applicability of Rule 36(4) and Circular No. 183/15/2022-GST
1 April 2019 to 8 October 2019	The rule is not applicable to this period; the circular is to be applied for additional credit availability, i.e., not reflected in GSTR-1.
9 October 2019 to 31 December 2019	The ITC in respect of invoices or debit notes, the details of which have not been furnished by the suppliers under Form GSTR-1, shall not exceed 20% of the eligible credit available in respect of invoices or debit notes, the details of which have been furnished by the suppliers, and to this extent, the circular is to be applied.
1 January 2020 to 31 December 2020	Allowed additional credit to the tune of 10% in excess of that reported by the suppliers in their Form GSTR-1 or IFF and to the extent of additional credit circular to be applied.
1 January 2021 to 31 December 2021	Allowed additional credit to the tune of 5% in excess of that reported by the suppliers in their Form GSTR-1 or IFF and to the extent of additional credit circular to be applied.
From 1 January 2022 onwards	No ITC shall be allowed for the period 1 January 2022 onwards in respect of a supply unless the same is reported by suppliers in their Form GSTR-1 or using IFF and is communicated to the said registered person in Form GSTR-2B.

The instructions mentioned above will apply only to the ongoing proceedings in scrutiny/audit/investigation, etc., for the period 1 April 2019 to 31 December 2021 and in those cases where any adjudication or appeal proceedings are still pending.

(Circular No. 193/05/2023-GST dated 17 July 2023)

Clarification on the applicability of e-invoice w.r.t. supplies made to registered government undertakings:

Government departments or establishments/government agencies/local authorities/PSUs, which are required to deduct tax at source as per the provisions of Section 51 of the CGST, are liable for compulsory registration under GST and treated as registered persons as per Section 2(94) of the CGST Act.

An e-invoice is applicable to the supplies made by the registered persons whose turnover exceeds the prescribed threshold for e-invoicing generation to such government undertakings in terms of Rule 48(4) of the CGST Rules.

(Circular No. 198/10/2023-GST dated 17 July 2023)

Clarification on TCS liability of TCS and compliance obligations in the ONDC and similar arrangements under Section 52 of the CGST Act:

Scenario	Clarification
Where multiple ECOs are involved in a single transaction of supply of goods or services or both through the ECO platform and where the supplier-side ECO itself is not the supplier in the said supply.	The supplier-side ECO finally releases the payment to the supplier for a particular supply made by the said supplier through it. Therefore, the compliances and collection of the TCS is to be done by the supplier-side ECO that finally releases the payment to the supplier for a particular supply made by the said supplier through it.
Where multiple ECOs are involved in a single transaction of the supply of goods or services or both through the ECO platform and the supplier-side ECO is itself the supplier of the said supply.	The buyer-side ECO collects payment from the buyer, deducts its fees, and remits the balance to the supplier (which is itself an ECO). Therefore, the compliances and collection of the TCS are to be done by the buyer-side ECO.

(Circular No. 194/06/2023-GST dated 17 July 2023)

Services supplied by a director of a company or body corporate in his private or personal capacity

Services such as supply by way of renting of immoveable property to the company/body corporate by a director would not be taxable under the RCM. Only those services that are supplied in the capacity of a director shall be taxable under the RCM, i.e., in the hands of the company/body corporate in terms of Notification No. 13/2017-CT(R) [Sl. No. 6].

Supply of food or beverages in a cinema hall

Such services would qualify as restaurant service only if the food items or beverages are supplied as part of a service and are independent of the cinema exhibition service. If such supply of food and beverages are clubbed together with the sale of the cinema ticket, subject to the test of composite supply, the entire supply will attract GST at the rate applicable to the cinema exhibition service.

(Circular No. 201/13/2023-GST dated 01 August 2023)

Clarifications w.r.t. GST levy in respect of the following goods:

- Supply of un-cooked/un-fried extruded snack pellets, by whatever name called, attract GST @5% as against extruded snack pellets in ready-to-eat form, which is chargeable @18%.
- GST rate on fish soluble paste reduced to 5% w.e.f. 27 July 2023.
- Supply of raw cotton, including kala cotton, from agriculturists to cooperatives, chargeable to GST @5% on the RCM.
- The GST rate on imitation zari thread or yarn, by whatever name called, reduced from 12% to 5% w.e.f. 27 July 2023.
- Goods falling under HSN heading 9021 such as trauma, spine and anthroplasty implants attract GST @5%.
- In view of the above, all the prevailing issues have been regularised on 'as is' basis.
- No refund will be granted where GST is already paid or paid at a higher rate in respect of the above goods.

(Circular No. 200/13/2023-GST dated 01 August 2023)

Notifications issued pursuant to 50th GST Council Meeting

- The amnesty scheme for Form GSTR-4 and GSTR-9 non-filers has been extended from 30 June 2023 till **31 August 2023**. The non-filers can furnish Form GSTR-4 and GSTR-9 till the extended date in order to become eligible for late fee waiver.
- The time limit to apply for the revocation of cancellation of registration has been extended from 30 June 2023 till **31 August 2023** for those assessees whose registration has been cancelled before 31 December 2022 or those who have not filed for revocation within the stipulated time u/s 30 of the CGST Act.
- Registered persons who failed to furnish a valid return within a period of 30 days from the service of the assessment order issued on or before 28 February 2023 have been given time till **31 August 2023** to furnish return in order to be eligible for the deemed withdrawal of assessment orders issued u/s 62.
- The time to furnish the final return in Form GSTR-10 has been extended till **31 August 2023** from 30 June 2023 for registered persons who failed to furnish Form GSTR-10 within the due date. Accordingly, the amount of late fee in terms of Section 47 in excess of INR 500 shall stand waived off for such registered persons who furnish GSTR-1 within 1 April 2023 till **31 August 2023**.
- The due date for furnishing GSTR-1, GSTR-3B, GSTR-7 for the months of April, May and June 2023, and GSTR-3B for the quarter ending June 2023 has been extended till 31 July 2023 for the registered persons whose principal place of business is in Manipur.

  (Notification Nos. 18/2023-Central Tax dated 17 July 2023 to 26/2023-Central Tax dated 17 July 2023)

- The last date for exercising the option for paying GST under the forward charge shall be 31 March of the preceding FY instead of 15 March, and the start date shall be 1 January of the preceding FY.
- A relaxation has been provided to the GTAs from filing a declaration every year for paying GST under the forward charge. They shall be deemed to have exercised it for the next and future financial years unless they file a declaration that they want to revert to the RCM by filing a declaration vide Annexure-V within the prescribed timelines.
- Services by way of fumigation in a warehouse of agricultural produce shall not be considered as a support service to agriculture, forestry, fishing, and animal husbandry.
- For encouraging start-ups, GST exemption on satellite launch services has been extended to private organisations, which was earlier limited to ISRO, Antrix Corporation Limited and New Space India Limited (NSIL).

  (Notification No. 06/2023- Central Tax (Rate) dated 26 July 2023 and 07/2023- Central Tax (Rate) dated 26 July 2023)

- Compensation cess @ 22% shall be leviable on all utility vehicles (not limited to SUVs), provided they meet the parameters of length exceeding 4,000 mm, engine capacity exceeding 1,500 cc and having ground clearance of 170 mm.

  (Notification No. 3/2023-Compensation Cess (Rate) dated 26 July 2023)

- The special procedure has been notified for the manufacturer of *pan masala*, tobacco goods, etc., with respect to packing machines, additional records to be maintained, and a special monthly statement to be submitted on the GST portal.
- Biometric-based Aadhaar authentication for GST registration in Puducherry has been mandated.
- Exemption has been provided to the registered persons having an aggregate turnover up to INR 2 crore for FY 2022-23 from filing the annual return (Form GSTR-9).

- Effective **1 October 2023**, 'Account Aggregator'* shall be designated as the system for sharing information with the common portal on consent in terms of Section 158A of the CGST Act.

  'Account Aggregator' means a non-financial banking company that undertakes the business of an account aggregator in accordance with the policy directions issued by the Reserve Bank of India under Section 45JA of the Reserve Bank of India Act, 1934 (2 of 1934) and defined as such in the Non-Banking Financial Company - Account Aggregator (Reserve Bank) Directions, 2016.

- Effective **1 October 2023**, exemption shall be provided to the persons making supplies through an e-commerce operator from obtaining GST registration, subject to the following conditions that such persons undertake:
  - No inter-state supply of goods;
  - No supply of goods through the ECO in more than one state/UT;
  - Valid PAN;
  - Declare PAN, address of their place of business and the state/UT details on the common portal prior to making any supply of goods through the ECO;
  - Successful validation of PAN on the common portal;
  - Not more than one enrollment number in a state/UT;
  - No supply of goods if the enrollment number has not been granted.
- Appointment of the adjudicating authorities under the CGST Act and the IGST Act for the adjudication of notices issued to particular notices.
- The special procedure for filing an appeal against the order rejecting transitional credit pursuant to the SC's directions in UOI v/s Filco Trade Centre Pvt. Ltd. has been notified.

  (Notification Nos. 27/2023-Central Tax dated 31 July 2023 to 35/2023-Central Tax dated 31 July 2023)

- Effective **1 October 2023**, it has been notified that all goods and services as the class of goods or services that may be exported on payment of the IGST on which the supplier can claim a refund except the following notified goods:
  - *Pan masala*
  - Unmanufactured tobacco (with or without lime tube) bearing
    the brand name
  - Tobacco refuse bearing brand name, related goods, etc.

  This is in line with Notification No. 27/2023- Central Tax dated 31 July 2023, wherein the statutory provision has been made effective.

  (Notification Nos. 01/2023-Integrated Tax dated 31 July 2023)

GST rate rationalisation for goods

Description of goods	Old rate	New rate
Imitation zari thread or yarn known by any name in trade parlance	12%	5%
Linz-Donawitz (LD) Slag	18%	5%
Fish soluble paste	18%	5%
Un-fried or un-cooked snack pellets, by whatever name called, manufactured through the process of extrusion	18%	5%

(Notification No. 09/2023- Central Tax (Rate) dated 26 July 2023)

CBIC notifies changes introduced vide Finance Acts

- The provisions related to zero-rated supply shall be amended w.e.f. **1 October 2023** to notify the class of goods or services that may be exported on the payment of IGST and refund thereof.
- Effective **1 October 2023**, Sections 137 to 162 of the Finance Act, 2023 (except Sections 149 to 154 that are notified from 1 August 2023) shall be implemented.

Other recommendations/decisions made by the GST Council yet to be notified:

Taxability of online gaming, casinos, and horse racing	• Schedule III of the CGST Act shall be amended to include online gaming, casinos, and horse racing under taxable actionable claims. • Casino, horse racing and online gaming to be taxed @28% on the full-face value of chips purchased/ bets placed.
Place of supply of goods supplied to URP	• Specific provision of place of supply in respect of the supply of goods to URP to be notified.

CBIC notifies the special procedure to be followed by an ECO

W.r.t the supply of goods by composition dealer

W.e.f. **1 October 2023**, the composition dealer shall be permitted to supply goods through an ECO, who is required to collect TCS under Section 52. In this respect, an ECO shall follow the special procedure mentioned below:

- The ECO shall not allow any inter-state supply of goods through it;
- The ECO shall collect tax at source in respect of the supply of goods made through it and pay to the government;
- The ECO shall furnish the details of the supplies of goods made through it in Form GSTR-8 electronically.

W.r.t the supply of goods by persons exempted from registration

Earlier, the CBIC vide Notification No. 34/2023- Central Tax dated 31 July 2023, notified a category of persons exempted from registration under Section 23(2) of the CGST Act, subject to certain conditions.

W.e.f. **1 October 2023**, in respect to such persons, the ECO who is required to collect TCS u/s 52 of the CGST Act shall follow the special procedure mentioned below for the supply of goods made through it:

- The ECO shall permit the supply of goods by such persons only if the enrollment number has been allotted to the said person;
- The ECO shall not allow inter-state supply of goods through it;
- The ECO shall not collect the TCS in terms of Section 52(1) for such supply of goods made through it;
- The ECO shall furnish the details of outward supply through it by such dealer in Form GSTR-8 electronically.

(Notification No. 36/2023- Central Tax and 37/2023- Central Tax dated 4 August 2023)

CBIC notifies the Central Goods and Services Tax (Second Amendment) Rules, 2023

Manner of dealing with difference in ITC available in Form GSTR-2A and that availed in GSTR-3B

- A new Rule 88D has been added, prescribing the manner of dealing with differences in the ITC available in Form GSTR-2A and availed in Form GSTR-3B.
- In cases where the difference exceeds the prescribed amount and percentage, such difference shall be electronically intimated to the taxpayer in Part A of Form GST DRC-01C, along with the copy on email.
- The taxpayer shall be required to pay the amount equal to the excess ITC availed in GSTR-3B, along with the interest, through Form GST DRC-03 or furnish a reply in Part B of Form GST DRC-01C within seven days on the common portal.

Intimation in Form GST DRC-01D for recovery of amount of tax or interest u/s 79 of the CGST Act

- A new Rule 142B has been inserted, prescribing an intimation in Form GST DRC-01D for the recovery of the unpaid amount of tax or interest u/s 79 intimated u/r 88C.
- The person in default shall be required to pay the said amount, along with applicable interest, or, as the case maybe, the amount of interest, within seven days of the date of the said intimation, and the said amount shall be posted in Part-II of the Electronic Liability Register in Form GST PMT-01.
- The intimation shall be treated as the notice for recovery.

Restriction on furnishing of Form GSTR-1/IFF

Furnishing of Form GSTR-1 or IFF shall not be allowed in the following cases:

- If the registered person has not paid the amount equal to the excess ITC as specified in the intimation issued under Rule 88D or has not furnished a reply explaining the reasons in respect of the unpaid amount of the excess ITC;
- If the registered person has not furnished the details of the bank account as required under Rule 10A.

Scope of exempt supply

- For the purpose of calculation of the ITC reversals under Rule 42 and 43, the aggregate value of the exempt supplies shall exclude the value of the supply of services by way of transportation of goods by a vessel from the Customs station of clearance in India to a place outside India.
- W.e.f. **1 October 2023**, w.r.t the supply of warehoused goods to any person before clearance for home consumption, the value of the exempt supplies shall include the value of supply of goods from duty free shops at the arrival terminal in international airports to the incoming passengers.

Procedure for filing appeal/application to appellate authority

- All appeals/applications before the appellate authority shall be filed electronically.
- Appeals/application can be filed manually only if:
- The Commissioner has notified; or
- In cases where the decision or order to be appealed against is not available on the common portal.

Registration provisions

- For the purpose of physical verification of the place of business by the proper officer for granting registration, the presence of the registered person shall no longer be required.
- The registered persons shall be required to furnish details of their bank accounts within 30 days from the date of grant of registration or before filing Form GSTR-1/IFF, whichever is earlier.
- The scope of suspension of registration has been widened by including contravention of Rule 10A by the registered person.
- The system-based suspension of registration shall be revoked upon compliance with the provisions of Rule 10A.
- In light of the GST Council's recommendation made in its 49th meeting, w.e.f. **1 October 2023,** the time limit for applying for the revocation of the cancellation of GST registration has been extended from 30 days to 90 days (further extendable by 180 days).
- The proper officer can verify a person's place of business after granting the registration, and shall upload the verification report, along with other documents, including photographs, in Form GST REG-30 on the common portal within 15 working days.
- In specified cases where physical verification is required before granting registration, the proper officer shall complete the verification. Further, the proper officer shall upload the verification report, along with other documents, including photographs, in Form GST REG-30 on the common portal at least five working days prior to the completion of the specified period, i.e., 30 days of submission of the application.

E-way bill in case of intra-state movement of gold, precious stones, etc.

A new Rule 138F has been inserted, prescribing that in cases where a commissioner of state/UT mandates furnishing of information w.r.t the intra-state movement of gold, precious stones, etc., and the consignment value of such goods exceeds INR 2 lakhs, the registered person shall be required to furnish Part A of Form GST EWB-01 electronically.

Requirement of particulars on tax invoice issued to unregistered recipient

- In case where any taxable service is supplied by or through an ECO or by an OIDAR supplier to an unregistered recipient, a tax invoice shall contain the name of the state of the recipient and the same shall be deemed to be the address on record of the recipient.
- Earlier, there was a requirement to mention the name and address of the recipient, along with its PIN code, and the name of the state and the said address shall be deemed to be the address on record of the recipient.

Procedure for compounding of offences

- W.e.f. **1 October 2023**, the commissioner, on being satisfied that the applicant has made full and true disclosure of facts, may allow the benefit of compounding and immunity from prosecution.
- The commissioner shall determine the compounding amount depending upon the type of offence.
- However, in case where the offence committed by the person falls under more than one specified category, the compounding amount shall be the amount determined for the offence for which the higher compounding amount has been prescribed.

Consent-based sharing of information

W.e.f. **1 October 2023**, in consonance with Section 158A, a new rule has been inserted, providing the manner and conditions for consent-based sharing information of the registered person, available on the common portal with the requesting systems.

(Notification No. 38/2023- Central Tax dated 4 August 2023)

51st GST Council meeting: Key recommendations and decisions

The GST Council, in its 51st meeting held on 2 August 2023, made various recommendations to provide clarity on the taxation of supplies in casinos, horse racing, and online gaming, including amendment in the Act for overseas gaming platforms, while also addressing the valuation aspects. The Council urged for swift completion of these amendments and their implementation, scheduled to take effect from **1 October 2023**.

The recommendations of the GST Council shall be given effect through notifications and/or circulars and/or amendments in the law.

Key recommendations/decisions:

Amendment in GST laws:
Amendment to the CGST Act and the IGST Act including Schedule III of the CGST Act, to provide clarity on the taxability of supplies in casinos, horse racing, and online gaming.

Specific provision in case of supplier located outside India:

- Specific provision to be made in the IGST Act, prescribing liability to pay GST on the supply of online money gaming by a supplier located outside India to a person in India.
- A simplified registration scheme for obtaining a single registration for such a supplier shall also be introduced.
- Additionally, provisions will be inserted in the IGST Act to block access of information generated, transmitted, received, or hosted in any computer resource used for supplying such online money gaming to the public in case of failure to comply with the provisions pertaining to registration or payment of tax.

Valuation of supply of online gaming and casinos:

- The valuation of the supply of online gaming and actionable claims in casinos may be based on the amount paid or payable to or deposited with the supplier by or on behalf of the player (excluding the amount entered into games/bets out of winnings of previous games/bets) instead of the total value of each bet placed.
- The CGST Rules may be amended to insert specific provisions with respect to valuation of supply of online gaming and supply of actionable claims in casinos.

Our comments

In its 50th meeting held on 11 July 2023, the GST Council put forward a proposal to impose a 28% tax on the full face value for casinos, horse racing, and online gaming, irrespective of whether these activities are considered games of skill or games of chance. Due to the representations filed by the gaming industries, there was anticipation surrounding a possible reconsideration of this decision. However, the Finance Minister stated that the decision will be reviewed after a period of 6 months from its implementation.

Inclusion of GSTN under PMLA

The Ministry of Finance, vide notification dated 7 July 2023, included the GSTN within the ambit of the PMLA for information-sharing with the ED and the Financial Intelligence Unit.

The amendment has been made in Section 66 of the PMLA, which deals with the disclosure of information. The inclusion of the GSTN will enable the mutual sharing of information between the ED and GSTN, particularly in the cases where there are suspicions of violation of the GST law.

Section 158 of the CGST Act already empowers the disclosure of information related to any prosecution under the IPC and even under any other law for the time being in force. However, there was no corresponding provision under the PMLA to disclose information to the GSTN unless it was notified under Section 66 of the PMLA. With the recent notification, this procedural anomaly has been removed.

(Notification by Ministry of Finance dated 17 July 2023)

Functionality for geocoding the principal place of business address activated on GST portal

The functionality for geocoding the principal place of business address is now live for all states and union territories. This feature converts an address or description of a location into geographic coordinates.

The GSTN has successfully geocoded more than 1.8 crore addresses of principal places of business. Additionally, all new addresses registered after March 2022 are geocoded at the time of registration itself, ensuring the accuracy and standardisation of address data from the outset.

Below are the key features of the functionality:

- This functionality is accessible under the Services/ Registration tab.
- The system-generated geocoded address will be displayed, which can either be accepted or updated. In case the system-generated geocoded address is unavailable, the geocoded address can be directly updated.
- The geocoded address details will be saved separately under the 'Place of Business' tab on the portal and will not change the existing addresses.
- Once the geocoding details are uploaded, the geocoding link will no longer be displayed on the portal. Further, the revision in the address will not be allowed.
- Taxpayers who have already geocoded their addresses through new registration or core amendment will not be able to see the functionality.
- This geocoding functionality will not impact the previously saved address record.
- This functionality is available for normal, composition, SEZ units/developers, ISD, and casual taxpayers who are active, cancelled, and suspended.

GSTN introduces e-invoice exemption declaration functionality on e-invoice portal

The GSTN has introduced an e-invoice exemption declaration functionality on the e-invoice portal. This functionality is specifically designed for taxpayers who are by default enabled for e-invoicing but are exempted from implementing it under the GST law.

The e-invoice exemption declaration functionality is voluntary and can be accessed at the e-invoice portal: www.einvoice.gst.gov.in

Any declaration made using this functionality will not change the e-invoice enablement status of the taxpayer.

Government of Karnataka notifies the Karnataka Karasamadhana Scheme, 2023

In the budget speech for the year 2023-24 made on 17 February 2023, the Government of Karnataka announced that a 'Karasamadhana Scheme, 2023' would be introduced in order to resolve pre-GST legacy tax disputes expeditiously and to collect arrears promptly without litigation. Pursuant to this, the Government of Karnataka has notified the 'Karnataka Karasamadhana Scheme, 2023' for the waiver of penalty and interest under the provisions of the following pre-GST legacy acts:

- The Karnataka Sales Tax Act, 1957,
- The Karnataka Value Added Tax Act, 2003 (KVAT Act),
- The Central Sales Tax Act, 1956 (CST Act),
- The Karnataka Tax on Professions, Trades, Callings and Employments Act, 1976 (Profession Tax Act),
- The Karnataka Tax on Luxuries Act, 1979) (Luxuries Tax Act),
- The Karnataka Agricultural Income Tax Act, 1957 (Agricultural IT Act),
- The Karnataka Entertainment Tax Act, 1958 (Entertainment Tax Act),
- The Karnataka Tax on Entry of Goods Act, 1979 (Entry Tax Act).

Key features of the scheme:

Benefits:

- The waiver of 100% of arrears of penalty and interest under the aforementioned legacy tax acts relating to the assessments/re-assessments/rectification/revision/appeal orders already completed and to be completed on or before **31 October 2023**.
- 100% waiver of arrears of interest and penalty, excluding those specifically mentioned, relating to:
  - Revision orders already concluded; or
  - Revision proceedings initiated before the date of issuance of this government order and revision orders are to be completed on or before **31 October 2023** in respect of the aforementioned acts.
- The waiver of penalty levied under Section 72 relating to the returns and assessments under the KVAT Act and consequential interest subject to the condition that the amount of tax, as admitted in the return or assessed, is paid in full.
- Waiver of penalty levied under Section 74(4) for failure to submit a copy of the audited statement of accounts in Form VAT 240 under the KVAT Act and consequential interest subject to the condition that admitted tax liability, if any, as per Form VAT 240, is paid in full.

Eligibility criteria and conditions:

- Any person who makes the full payment of tax arrears on or before **31 December 2023** shall be granted a waiver of 100% of arrears of penalty and interest payable.
- Only arrears of penalty and interest relating to the assessments/re-assessments/rectification/revision/appeal orders already completed and to be completed, on or before **31 October 2023**, shall also be eligible for waiver.
- The applicant shall withdraw any pending appeal or other application before availing the benefit of waiver of arrears of penalty and interest under this scheme.
- Penalty and interest paid at the time of filing an appeal or other application shall be adjusted towards arrears of tax outstanding for the assessment year for which the benefit of waiver is claimed.
- Under this scheme, there is no refund of any penalty or interest already paid, either in full or partially.

Procedure:

- A separate application needs to be filed for each year relating to the assessment and each assessment/ reassessment order relating to the tax periods for the years commencing from 1 April 2005, which have already been completed and are to be completed up to **31 October 2023** electronically through the website http://ctax.kar.nic.in or http://gst.kar.nic.in on or before **31 December 2023**.

[Order No. FD 07 CSL 2023, Bengaluru, Dated 18 July 2023]

B. Key updates under the Customs/FTP/SEZ laws

DGFT extends last date to apply for one-time settlement of default in export obligation under amnesty scheme for advance and EPCG authorisation holders

The DGFT, vide Public Notice No. 02/2023 dated 1 April 2023, had notified the 'Amnesty scheme for one-time settlement of default in export obligation by advance and EPCG authorisation holders.'

The defaulters interested in availing the scheme were required to file an online application by 30 June 2023. Further, the payment of exempted customs duties and interest is required to be made by **30 September 2023** for availing the scheme.

Vide Public Notice No. 20/2023 dated 30 June 2023, the DGFT has extended the last date to apply under the amnesty scheme for EO default till **31 December 2023**. Further, the last date for the payment of customs duty, along with interest, has also been extended till **31 March 2024**.

[Public Notice No. 20/2023 dated 30 June 2023]

DGFT provides relaxation for delay in submission of installation certificate under EPCG scheme

Under the EPCG scheme, the authorisation holders are required to submit the installation certificate confirming installation of the capital goods to the RA within the prescribed time period. The DGFT has received a number of requests from authorisation holders for the condonation of delay in submission of the installation certificate to the RA beyond the prescribed time limit.

To condone the delay in the submission of the installation certificate under the EPCG scheme to promote ease of doing business, the DGFT has instructed that the RAs concerned may accept such installation certificates up to **31 December 2023** for regularisation purpose on payment of late fee of INR 10,000/- per authorisation (in addition to composition fee, wherever applicable), subject to the following:

- Authorisations have been issued under FTP, 2009-14 and FTP, 2015-20 (extended up to 31 March 2023).
- Installation certificate was obtained within the prescribed period but the same could not be submitted to the RA within time.
- The authorisation holder has given bonafide reasons for the delay in submission of the installation certificate to the RA, subject EPCG authorisation is not under investigation/ adjudicated by RA/Customs authority/any other investigating agency.

[Public Notice No. 20/2023 dated 30 June 2023]

Ministry of Commerce and Industry reduces compliance burden in case of SOFTEX forms for SEZ units

The SOFTEX form is a declaration of software exports through which the RBI ensures the collection of data on exports for statistical and monitoring purposes. In the case of SEZ units, the SOFTEX form is required to be submitted online through the SEZ online portal by the services units. Thereafter, based on the approval of the office of DC, the form is further submitted to the RBI.

The Ministry noticed instances wherein SEZ units were submitting the physical copies of invoices, and in some cases, even physical copies of SOFTEX forms for verification to the DC office, despite the same being filed online digitally. It is also noted that in the case of the units in STPI, the practice of submitting physical copies of SOFTEX and invoices has been dispensed away.

Accordingly, as a measure of enhancing the ease of doing business, the Ministry has done away with the practice of submitting physical copies of SOFTEX and invoices by SEZ units. For verification, any document, including relevant invoices, may be obtained electronically from the units with the approval of the DC.

In exceptional cases, where there is a need for more detailed verification, the DC may permit seeking sample copies of relevant invoices in physical mode, on a case-to-case basis.

[Instruction No. 113 dated 14 July 2023]

Date for accepting applications under PLI Scheme 2.0 for IT Hardware extended till 30 August 2023

With the objective to provide a financial incentive to boost domestic manufacturing and attract large investments in the value chain, the Union Cabinet, chaired by Prime Minister Narendra Modi, gave the approval to introduce the PLI Scheme 2.0 for IT Hardware for Enhancing India's Manufacturing Capabilities and Enhancing Exports – Atmanirbhar Bharat – on 17 May 2023. Pursuant to this, the Ministry of Electronics and Information Technology notified the PLI Scheme 2.0 for IT Hardware on 29 May 2023.

The Ministry of Electronics and Information Technology has extended the application window for receiving applications under the scheme till **30 August 2023.** This can be accessed at: https://pliithw.com.

Further, the operational guidelines of the scheme have also been finalised and can be accessed at: https://www.meity.gov.in/esdm/production-linked-incentive-scheme-pli-20-it-hardware.

[Press Release dated 31 July 2023]

Government imposes import restrictions on certain gold jewellery, articles

The DGFT has amended the import policy and policy condition of specific items under Chapter 71 of Schedule-I (Import Policy) – ITC (HS), 2022 71131911, 71131919, 71141910 effective from 12 July 2023. Consequently, such items will be restricted from being imported until further changes. However, import under HS code 71131911 shall be permitted freely without any import license under a valid India-UAE CEPA TRQ.

In addition, the DGFT has clarified that above restriction on the import of the items under the aforementioned HS codes is not applicable on the imports made by SEZ units.

[Notification No. 19/2023 dated 12 July 2023 and Policy Circular Np. 03/2023-24 dated 14 July 2023]

Imports under India-Japan CEPA

The India-Japan CEPA was negotiated based on HS 2007, where it is stated that as per the operational certification procedures, the CoO should include the six-digit tariff classification based on HS 2007.

However, vide Notification No: 69/2011-Customs dated 29 July 2011, the tariff preference under India-Japan CEPA has been extended, as amended on account of the transition to the existing HS code, i.e., HS 2022.

Further, for the purpose of the Customs clearance, it is clarified that it is necessary to correlate the HS code (2007 version) mentioned in the CoO issued under the India-Japan CEPA with the HS code (2022 version) mentioned in the BoE at the time of the Customs clearance.

This facility can be used by exporters under the following circumstances –

- Where data of authorisation/license is not available in the online database of the EODC module,
- There is a persistent problem in filing the online application.

[Instruction no:19/2023-Customs dated 4 July 2023]

India and UAE agree on UPI integration to facilitate cross-border transactions

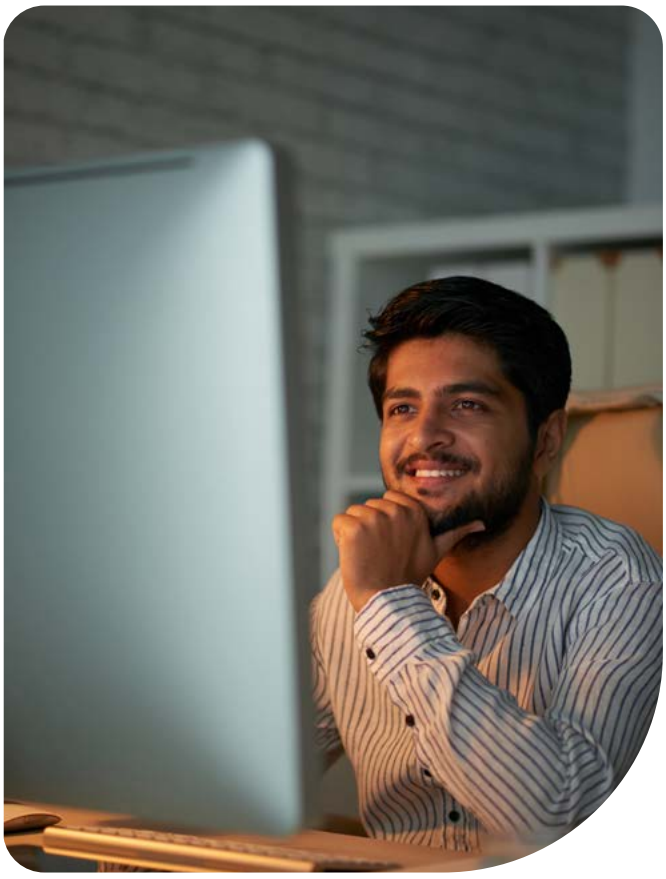
India became the first country with which the UAE signed a CEPA. The bilateral trade has increased by around 15% since the CEPA came into force on 1 May 2022.

Recently, the RBI and the CBUAE signed two MoUs on 15 July 2023 in Abu Dhabi to establish a framework for promoting the use of local currencies for cross-border transactions and cooperation for interlinking their payment and messaging systems.

The MoU aims to establish a local currency settlement system for promoting the use of INR and AED bilaterally. Also, India and the UAE agreed on UPI integration to facilitate cross-border transactions. Such cooperation will also include the mutual acceptance of domestic card schemes by interlinking national card switches. Integration between these systems will enhance the access to payment services for the benefit of the citizens and residents of the two countries.

The ADIA will also set up a presence in the GIFT City, a financial free zone in Gujarat, in the next few months. This will further facilitate investment opportunities for the UAE in India.

[Press release dated 15 July 2023]



02

Key judicial pronouncements

A. Key rulings under the GST and erstwhile indirect tax laws

I. Key rulings under the erstwhile indirect tax laws

A subsequent change in opinion cannot have a bearing on past decisions that had attained finality – SC

Summary

The division bench of the SC has rendered a split verdict on the question of an appellant being entitled to a sales tax exemption pursuant to an amendment to the WBST Act, which withdrew the exemption. Justice M.R. Shah held that it is a settled position of law that no one can claim the exemption as a matter of right. Contrary to this, Justice Murari stated that the law cannot take away anything conferred by it in an arbitrary manner. Further, the amendment introduced in law in the present case did not demonstrate that it was for the advancement of public interest. He further stated that the mere claim of change of policy is not sufficient to discharge the burden of proof vested in the government. Therefore, the SC held that the benefit of exemption should be available to the appellant for the period promised by the Revenue.

Facts of the case

- The government of India, in order to encourage commercial activity in industrially backward areas, decided to grant tax exemptions to newly manufacturing units set up in J&K, wherein those units were entitled to 100% exemption from the excise duty for a period of 10 years from the date of the commencement of production.
- The manufacturers were entitled to a refund of 100% duty paid in cash or balance of duty paid in cash, i.e., other than by utilising the CENVAT credit. Such levy of excise duty was accompanied with the EC and SHEC at the rates of 2% and 1%, respectively, calculated on the aggregate of all excise duties.
- In this context, an issue arose as to whether the EC and SHEC collected under the Finance Act, along with the excise duty levied and collected under the CEA, are also to be refunded in view of the exemption.
- This issue was heard by the SC in the matter of SRD Nutrients (P) Limited, wherein it had been held that the EC and SHEC levied on excise duty partakes the character of excise duty. Further, the government vide circulars also clarified that where the entire excise duty is exempted, the EC and SHEC would not be payable. Accordingly, the CESTAT had held that manufacturers are entitled to a refund of the EC and SHEC.

- Subsequently, the SC, in the case of Unicorn Industries, overruled its judgement passed in SRD Nutrients (P) Limited. The department ('appellants') preferred an appeal before the HC to establish whether the assessee ('respondents') would be liable to refund the EC and SHEC owing to the change in the SC's position.

J&K HC observations and order [CEA 10/2020, Order dated 23 May 2022]

- **No appeal can be filed before the HC if the amount involved is less than INR 1 crore:** The HC observed that in terms of the National Litigation Policy, an appeal is not maintainable before the HC where the amount involved is less than INR one crore. The circular categorically clarified that the department cannot file any appeal if the amount involved is less than INR one crore. Additionally, since the cause of action in each appeal is distinct, the monetary limit specified in the circular is in the context of a single appeal, and the cumulative amount cannot be taken together. Therefore, the appeal was not maintainable.
- **Appeal lies to HC since issue pertains to refund of cess:** The HC affirmed that the appeal against the CESTAT order was rightly preferred before the HC, as the question involves the refund of cess and not determination of the rate of excise duty or value of goods for assessment.
- **Subsequent change of law is not a sufficient cause for condoning delay in filing appeal:** The HC rejected the appellants' contention that the appeal was filed in view of the SC's change of position. The HC noted that the appellants did not file an appeal within 180 days of service of orders and rather proceeded to refund in concordance with the SC's decision in the case of SRD Nutrients (P) Limited. Further, the HC agreed with the respondent's position that where limitation is provided in special legislation, the Limitation Act cannot be invoked to calculate delay. Hence, the HC found it imprudent and unjustifiable to condone the delay based on the settled precedents.
- **Final and conclusive decision cannot be reopened:** The HC stated that where the limitation period has expired long back, the case is not liable to be revived solely because of a subsequent change in opinion, as this would lead to no finality to any decision.
- **Bonafide benefit/refund cannot be recovered:** The HC concluded that where a refund/benefit has been lawfully obtained or the party has not been unjustly enriched, it could not be recovered owing to a subsequent change in opinion. Therefore, the HC denied the recovery of legitimate benefit of refund.

SC observations and order [SLP (C) No. 18051/2023, Order dated 04 July 2023]

- **Second review of same judgement is not permissible in law:** The SC cited Order XLVII Rule 1 of the CPC and stated that filing an appeal by the Revenue for seeking a second review of the judgement is impermissible in law.
- **Subsequent change in law cannot reopen overruled judgement:** The SC stated that a subsequent change in opinion due to the overruling of the judgement, cannot result in reopening the said overruled judgement. The SC agreed with the HC that there should be a finality in litigation. The SC further held that a person cannot be vexed twice for the same cause and there must be an end to the litigation, otherwise the rights of the person would be in endless confusion, and justice would suffer. Hence, the SC confirmed the HC's decision and dismissed the petition.

Our comments

In the present case, the SC has applied the doctrine of prospective overruling. The term 'overruling' refers to the act of overturning a legal precedent, whereas 'prospective' refers to the changes taking effect in the future. Under this doctrine, the court's decision applies to the cases arising in future only and has no effect on past cases that had attained finality, otherwise it would not be in the interest of justice.

This doctrine has evolved over the years and has been employed both in favour of taxpayers as well as the department. Earlier, in the case of Mafatlal Industries Limited, the Apex Court had held that a manufacturer who paid excise duty however failed to claim the refund before the adjudicating authorities or the appellate authorities, and did not file an appeal against the order, cannot claim the refund of duty on the basis of a subsequent decision of the court taking a contrary view. A similar position was taken in the case of Indian Cement Limited, wherein the SC had held that the state is not liable to refund the amount collected under the provisions of an act that has been declared as unconstitutional.

The present ruling is in favour of the taxpayers and shall set precedence in similar matters.

SC revives notice quashed by Punjab and Haryana HC and allows Revenue to continue proceedings after gap of 10 years

Summary

The Punjab and Haryana HC had earlier held that allowing the Revenue to continue proceedings after a gap of 10 years post the issuance of a SCN without a proper explanation was unlawful and arbitrary. Therefore, the HC had allowed the petition and had quashed the SCN. However, the SC has set aside the order passed by the HC and allowed the Revenue to adjudicate a decade old SCN and has remanded the matter back to the authorities. The SC stated that if adjudication is not allowed, it would cause prejudice to the Revenue, as the demands made by them would remain unpaid by the taxpayer.

Facts of the case

- M/s. Swati Menthol & Allied Chemicals Limited (the petitioner) was engaged in the manufacture of menthol crystal/powder/solution and de-mentholised oil, peppermint oil, terpines, etc.
- Investigation was done at the petitioner's unit by the officer of Central Excise during 2008-2010, pursuant to which a SCN was issued to the petitioner, alleging that the petitioner had availed CENVAT credit against fake invoices issued by the J&K and Northeast-based units.
- The petitioner filed a reply against the SCN, but no proceedings were conducted.
- A number of correspondences were exchanged between the Office of the Principal Commissioner, GST & Central Excise Commissionerate, Chandigarh, fixing various dates of hearing, but the hearing never materialised.
- Aggrieved by the same, the petitioner filed a writ petition before the Punjab and Haryana HC.

Petitioner's contentions:

- The petitioner contended that a SCN was issued on 2 March 2010 and 6 May 2010, and a period of more than 10 years has elapsed, still it has not been adjudicated upon without any fault on its part.
- The petitioner mentioned that the proceedings should be concluded within a period of six months, whereas in the case of fraud, collusion, etc., the period prescribed is that of one year.
- Therefore, the petitioner requested the HC to quash the aforementioned SCN.

Revenue's contentions:

- The Revenue submitted that due to genuine reasons, the proceedings could not be concluded, as a similar matter was pending before the J&K HC.
- The Revenue submitted that it would be prejudiced, as the demands made by it would be stifled on account of the impugned order passed by the HC.

Punjab and Haryana HC observations and ruling (CWP-9340-2021, dated 17 May 2021):

- **Proceedings pursuant to SCN after a long gap are unlawful and arbitrary:** The HC analysed the judgements in the case of M/s Siddhi Vinayak Syntex Private Limited and in the case of M/s GPI Textiles Limited. The HC held that the proceedings pursuant to the SCN after a long gap without proper explanation are unlawful and arbitrary.
- **Call book concept is not suitable in present case:** The HC noted that the law provides that the adjudicating authority is required to determine the duty within the time frame specified by the legislature as far as possible. The HC held that the concept of a call book is contrary to the provisions of the Central Excise Act and noted that transferring pending cases to the call book is contrary to the statutory mandate. Therefore, the HC quashed the SCN and held that these are not sustainable in law.

SC observations and ruling [Civil Appeal No. 4320 of 2023, dated 10 July 2023]

- **Demand will remain unpaid:** If the order of the HC is upheld, then the Revenue would be prejudiced inasmuch as the demands made by the department would be stifled on account of the impugned order passed by the HC. Therefore, the SC stated that the proceedings need to be concluded within the time frame fixed by this court.
- **SC set aside the order passed by the HC:** The SC set aside the HC's order and remanded the matter to the adjudicating authority with a direction to conclude the proceedings within a period of eight weeks from 10 August 2023.

Our comments

It has become a common practice for the department to issue a SCN to safeguard revenue but keep the same pending for years without any reasons. This results in uncertainty for the business.

However, on a similar issue recently, the SC, in the case of ATA Freight Line (I) Private Limited, had affirmed the Bombay HC's view that the Revenue is not empowered to adjudicate a SCN after inordinate delay. The HC had observed that the Revenue was entirely responsible for the gross delay in adjudicating the SCNs. The SC reiterated that any legal actions taken against the assessee must be concluded on time and the Revenue cannot keep such cases pending indefinitely.

Even in the case of Citedal Fine Pharmaceuticals, the SC held that every authority should exercise the power within a reasonable period. The SC opined that in cases where an inordinate delay in the issuance of a notice or demand for recovery is raised, it would be open to the assessee to contend that it is bad on the ground of delay.

The present decision by the SC is a deviation from its earlier views, which may have an impact for taxpayers.

II. Key rulings under the GST law

SC affirms the Allahabad HC order that detention of goods and a vehicle is bad in law in the absence of intention to evade tax

Summary

The SC upheld the Allahabad HC's order quashing the demand for the release of detained goods and a vehicle. The Allahabad HC had observed that the goods were accompanied with a valid e-way bill and tax invoice, and there was no violation of any provisions of the GST Act and rules thereunder. The HC had further concluded that unnecessary litigation should be avoided in the absence of the intention to evade tax. Accordingly, the SC dismissed the petition, stating that there is no infirmity in the HC order.

Facts of the case

- M/s. Sleevco Traders ('the petitioner') is engaged in the business of purchase and sale of PVC resin. The petitioner placed an order with Safe Climber ('the supplier') for honouring a purchase order received from K.R. Industries ('the recipient').
- As per the directions of the petitioner, the supplier consigned the goods in the name of the recipient through an invoice issued in the name of the petitioner. Additionally, a valid e-way bill duly mentioning the name of the buyer, i.e., the petitioner and recipient of goods, along with bill builty accompanied the goods.
- During transit, the goods were intercepted and detained along with the vehicle. Upon detention, the invoice and accompanying e-way bill and builty mentioning the names of the respective parties were duly presented.
- However, the authorities issued a SCN demanding tax and penalty for the release of the goods and a vehicle. The authorities, without considering the reply submitted by the petitioner, passed an order demanding tax and penalty, which was deposited by the petitioner, and thereafter, preferred an appeal that was dismissed.
- Thereafter, the petitioner filed a petition before the HC, wherein the demand order was quashed. Therefore, the department preferred an appeal before the SC.

Allahabad HC observations and order (Writ Tax No. 464/2021, Order dated 17 May 2022)

- **No contravention of GST provisions:** The HC observed that the e-way bill correctly mentioned the petitioner as the buyer of goods and the ultimate point of departure, i.e., the recipient's address, where the goods were to be delivered. Additionally, the tax invoice duly reflected the IGST levied on such supply. The HC noted that there was no violation of provisions under the CGST Act and rules thereunder. Accordingly, the HC opined that upon producing valid documents accompanying the goods, the detention of goods and a vehicle by the authorities was unlawful and the authorities should have released the vehicle.
- **Litigation should be avoided in the absence of the intention to evade tax:** The HC observed that in the present case, there is neither any intention to evade tax nor any contravention of the provision of law. Therefore, the HC dismissed the proceedings initiated against the petitioner, quashed the demand order, and asserted that the petitioner ought not to have dragged in unnecessary litigation.

SC's observations and ruling (SLP No. 20769/2023, Order dated 5 July 2023)

- The SC upheld the HC's view, finding no infirmity with the impugned order.

Our comments

Earlier, the SC, in the landmark case of Satyam Shivam Papers Private Limited, had upheld the Telangana HC order, wherein the expiry of the e-way bill owing to traffic was treated as an evasion of tax. The SC had deprecated the department from equating the expiry of the e-way bill as GST evasion.

Even in the present case, the SC has emphasised and commended the HC's assertion and condemned the department's approach of engaging in unnecessary litigation in the absence of intention to evade tax. Such action results in undue hardship to the petitioner, which is unconstitutional. In view of the above, the SC has defended the genuine taxpayers who should not be burdened unnecessarily.

This is a welcome ruling, which shall be beneficial for the bonafide taxpayers and shall set precedence in similar matters.

Recipient cannot be asked to reverse ITC in case of mismatch in returns without investigation on the supplier – Calcutta HC

Summary

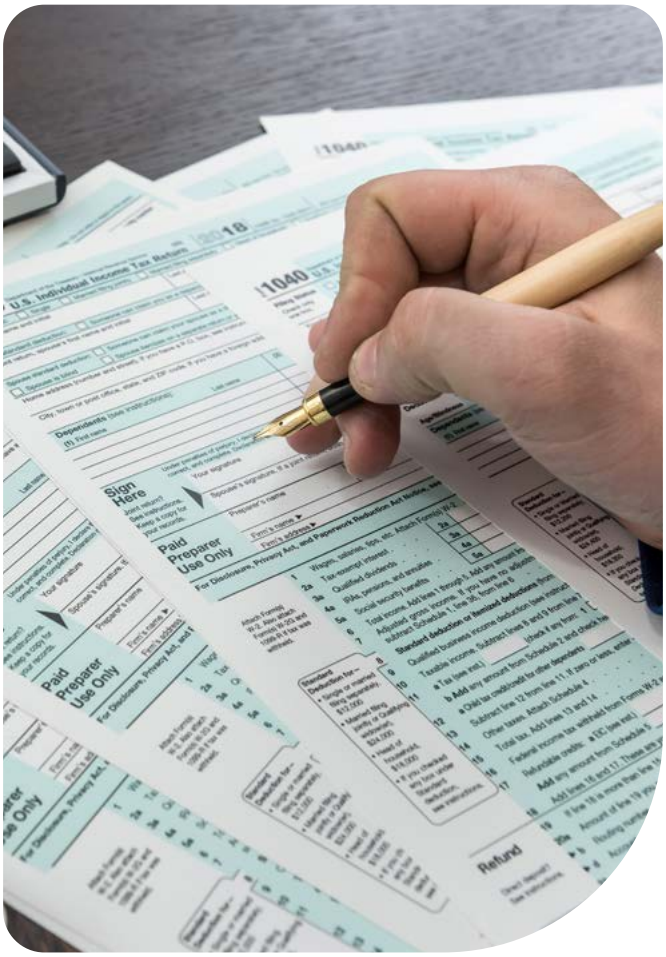
The Calcutta HC has held that the notice issued for demanding the reversal of the ITC to the recipient in case of a mismatch of the ITC in returns without investigating on the supplier was arbitrary and not sustainable. The HC observed that the authorities did not take any action against the supplier and ignored the tax invoices and bank statement produced by the appellant evidencing payment to the supplier. The HC emphasised on the need for the authorities to act against the selling dealer before directing the buyer to reverse the ITC and set aside the order passed by the authorities. The HC further directed the authorities to proceed against such supplier, and only in exceptional circumstances, as clarified by the Board, proceedings can be initiated against the appellant (i.e., the recipient).

Facts of the case

- Suncraft Energy Private Limited ('the appellant/recipient') had taken installation and commission services from the supplier and made tax payments to them.
- During scrutiny of the returns filed by the appellant u/s 61 of the CGST Act, the authorities found that the appellant had availed credit of invoices that were not reflected in the GSTR 2A.
- Therefore, a SCN was issued to the appellant, proposing a demand as to the excess ITC claimed by the appellant for Financial Year 2017-18 on the basis of the difference of the amount of the ITC in Form GSTR-2A and Form GSTR-3B with respect to the purchase transaction made by the appellant with the supplier.
- The SCN was adjudicated the demand for payment of tax, along with applicable interest and penalty confirmed u/s 73(10) of the CGST Act.
- Aggrieved by the order, the appellant filed a writ petition before the Calcutta HC, which was disposed off by the single bench of the HC and directed the appellant to file the statutory appeal before the appellate authority.
- Aggrieved by the order of the single bench, the appellant filed an appeal before the division bench of the Calcutta HC.

Appellant's contentions

- The appellant contended that it had fulfilled all the conditions for the availment of the ITC as enumerated u/s 16(2) of the CGST Act, and it is in possession of the tax invoice and had made payment to the supplier.
- The appellant placed reliance on the decision of the SC in the case of Bharti Airtel Ltd, wherein, it was held that Form GSTR 2A is a facilitator for self-assessment and it should not impact ITC availed.
- The appellant also referred to the press release issued for taxpayer facilitation by the Board, wherein, it was clarified that the ITC can be availed based on self-assessment in GSTR 3B, and reversal of the ITC from buyers is an option in exceptional cases, such as missing dealers, supplier closure or the supplier not having adequate assets but not a default action.



Calcutta HC observations and order (MAT 1218 of 2023 dated 2 August 2023)

- **GSTR-2A acts as a facilitation for self-assessment of ITC, does not impact credit claim:** The HC stated that in terms of the aforesaid mentioned press release and case law (supra), Form GSTR-2A is just a facilitator for self-assessment of the ITC and does not impact the taxpayer's ability to claim the credit, and the buyer's ITC should not be automatically reversed due to the seller's non-payment of tax.
- **All conditions fulfilled by appellant:** The notice does not allege that the appellant was not in possession of a tax invoice issued by the supplier registered under the Act. There is no denial of the fact that the appellant has received the goods or services or both. Further, the appellant had also made payment to the supplier, which was substantiated by producing the tax invoice and the bank statement.
- **No enquiry conducted on supplier:** The HC observed that the authorities had not conducted any enquiry on the supplier inspite of specific clarification that Form GSTR-2A is in the nature of taxpayer facilitation and does not impact the ITC availability on self-assessment basis. The authorities did not take any action against the supplier and also ignored the tax invoices and bank statement produced by the appellant. Therefore, the notice issued by the authorities was arbitrary.
- **Investigation on supplier mandatory:** The HC emphasised on the need for the authorities to act against the selling dealer before directing the buyer to reverse the ITC. Unless the authority is able to bring out an exceptional case where there has been collusion between the appellant and the supplier, or where the supplier is missing or has closed down its business or does not have any assets and such other contingencies, the authorities cannot straight away demand reversal of the ITC availed by the appellant. Therefore, the SCN issued on the recipient of a service due to a mismatch in GSTR 2A and GSTR 3B cannot be sustained without conducting an investigation on the supplier.
- **Impugned order set aside:** The HC allowed the appeal and set aside the final order with a direction to the authorities to first proceed against the supplier. Only under exceptional circumstance, as clarified in the press release (supra) issued by the Board, proceedings can be initiated against the appellant.

Our comments

On a similar issue, under the erstwhile VAT regime, the Delhi HC, in the case of Arise India Limited, had held that the remedy for the department would be to proceed against a defaulting selling dealer to recover such tax and not denying the ITC to the purchasing dealer. The decision of the Delhi HC was further upheld by the SC.

Even under the GST regime earlier, the Madras HC, in the case of D. Y. Beathel Enterprises, had held that the purchaser/buyer cannot be asked to reverse the ITC availed when there is a default on the part of the seller to discharge his tax liability to the government. The HC stated that strict action should have been taken against the seller and recovery proceedings should be initiated by the Revenue before asking the purchaser to reverse the ITC.

Even the Karnataka HC, in the case of Simplex Infrastructures Ltd., had held that the ITC cannot be denied in the hands of the purchasing dealer merely on the ground that the selling dealer has not discharged his/her VAT liability.

The present ruling by the Calcutta HC is in line with the above rulings and will provide a big relief to taxpayers to corroborate the availment of the ITC in cases of mismatch in the ITC in GSTR-3B vis-a-vis GSTR-2A basis documentary evidence.

Andhra Pradesh HC upholds constitutional validity of GST provisions prescribing time limit for claiming ITC

Summary

The Andhra Pradesh HC has upheld the constitutional validity of provisions under GST law prescribing a time limit for availing the ITC. The HC observed that the ITC is a concession provided by the legislature and not a right, and the legislature has the authority to impose conditions, including a time limit, for claiming ITC. It has also stated that filing the return with a late fee does not extend the time limit for claiming the ITC beyond what is prescribed in the GST law.

Facts of the case

- Tirumalakonda Plywoods ('the petitioner') is a sole proprietor operating in the hardware and plywood business.
- The petitioner filed return for the m/o March 2020 post the prescribed time limit in the m/o November 2020, along with the applicable interest and penalty.
- A SCN was issued u/s 74(1) of the CGST Act, denying the eligibility of the ITC claimed in the belated GSTR 3B return.
- Subsequently, the petitioner received an order confirming the demand for irregular ITC, along with interest and penalty.

Petitioner's contentions

- The petitioner contended that the ITC is a statutory right and imposing a time limit under Section 16(4) of the CGST Act violates Articles 14, 19(1)(g), and 300A of the Constitution.
- The petitioner contended that Section 16(2) of the CGST Act, which contains a non-obstante clause, should prevail over Section 16(4), and when the return is accepted with a late fee, the ITC will be eligible without reference to the time limit u/s 16(4).
- The petitioner cannot be deprived of the right of the ITC on the sole ground that the claim was made beyond the period prescribed u/s 16(4) of the CGST Act.

Revenue's contentions

- The Revenue contended that it is incorrect to treat the claim for ITC as an unrestricted legal right. Instead, it is a statutory rebate or concession given to GST taxpayers, as established in previous judgements.
- The Revenue further submitted that the legislature has the authority to impose conditions, including a time limit, for claiming ITC under Sections 16(2) and 16(4) of the CGST Act. Therefore, these conditions cannot be deemed illegal or unconstitutional.
- The legislature can impose a time limit on claiming the ITC, even though it is a legal right, as demonstrated in the case of Willowood Chemicals Pvt Ltd. v. Union of India. Further, the imposition of late fees for delayed filing is specific to that issue and does not affect other actions prescribed under different GST statutes.

Issues before the Andhra Pradesh HC

- Whether by virtue of imposition of time limit for claiming ITC, Section 16(4) of the CGST Act violated Article 14, 19(1)(g) and 300A of the Constitution, and thereby, is liable to be struck down?
- Whether Section 16(2) of the CGST Act, would prevail over 16(4) of the CGST Act, and thereby, if the conditions laid down in Section 16(2) of the CGST Act are fulfilled, the time limit prescribed under Section 16(4) of the CGST Act for claiming the ITC will pale into insignificance?
- Whether the acceptance of late returns in Form GSTR-3B with a late fee will exonerate the delay in claiming the ITC beyond the period specified under Section 16(4) of the CGST Act.

HC observations and ruling [Writ Petition No. 24235 of 2022, Final Order dated 18 July 2023]

- **Principal of interpretation should be followed:** The HC, referring to the earlier ruling of the SC, emphasised that the interpretation of statutes should consider both the text and context. The statute must be read as a whole, and each provision must fit into the scheme of the entire act. The HC stated that the non-obstante clause in Section 16(2) does not necessarily limit or override the operation of other provisions. The HC noted that Section 16(4) is non-contradictory and capable of clear interpretation, and hence, it is not overridden by the non-obstante provision in Section 16(2).
- **ITC is a concession, not a right:** The HC reiterated that the ITC is a concession or benefit provided by the legislature and not a statutory or constitutional right. Therefore, imposing conditions and time limitations for claiming the ITC is permissible and not a violation of constitutional provisions.
- **Section 16(2) does not override Section 16(4):** The HC emphasised that Sections 16(2) and (4) are two different provisions, each having its specific purpose. Section 16(2) restricts eligibility, while Section 16(4) imposes a time limitation. Both provisions operate independently and are not contradictory.
- **Section 16(4) is constitutionally valid:** The HC upheld the constitutional validity of the time limit prescribed under Section 16(4). The HC emphasised the distinction between the operative spheres of Article 14, 19(1)(g), and 300A of the Constitution of India and Section 16(4) of the CGST Act.
- **Late filing with fee does not extend ITC claim:** The collection of late fee exclusively relates to the issue of belated filing of return. It would not preclude the action prescribed under Section 61 to 74 of the CGST Act r/w Section 20 of IGST Act. Thus, the HC clarified that filing the return with a late fee does not extend the time limit for claiming the ITC beyond what is prescribed in Section 16(4).

Our comments

Earlier, in the case of Jayam and Co., the SC had observed that the ITC is a form of concession provided by the legislature. It is trite law that whenever a concession is given by statute or notification, etc., the conditions thereof are to be strictly complied with in order to avail such concession. Thus, it is not the right of the assessee to get the benefit of the ITC, but it is a concession granted by the legislature.

The present ruling is in line with earlier jurisprudence and is likely to set precedence in similar matters.

It is pertinent to note that there are many petitions pending before various HCs challenging the constitutional validity of Section 16(4) of the CGST Act. Recently, the Calcutta HC directed M/s Jyote Motors Bengal Pvt. Ltd. to deposit 10% of the disputed tax amount and listed the matter for August 2023. A similar issue is pending before the Bombay HC in the case of Meta Tiles Pvt. Ltd. and Gujarat HC in the case of M/s Surat Mercantile Association and others.

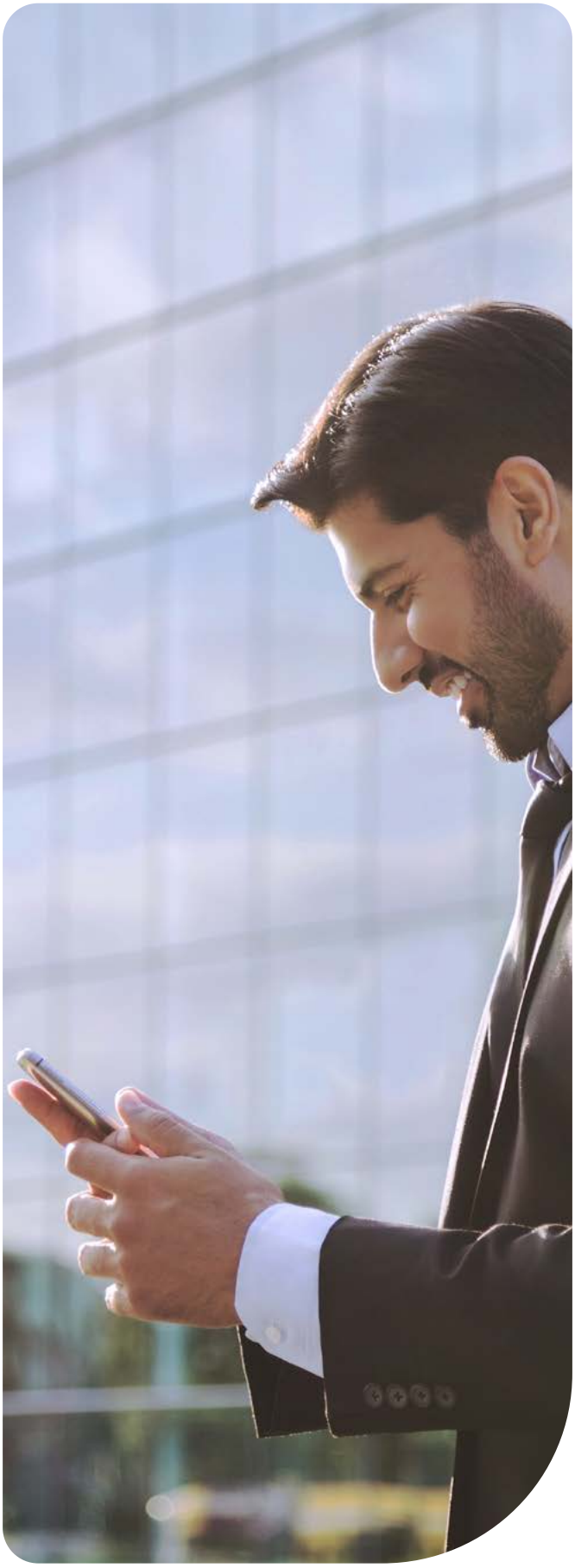
Proper officer cannot issue deficiency memo against the refund application filed basis the favourable appellate refund orders – Delhi HC

Summary

The Delhi HC observed that the petitioner's refund of ITC on account of exports was rejected by the adjudicating authority, which was subsequently allowed by the appellate authority. Despite the fact that the petitioner succeeded before the appellate authority, the respondent neglected to process the refund claim, and issued a deficiency memo against the fresh refund application filed by the petitioner. In this respect, the HC held that since the petitioner prevailed before the appellate authority, the respondents cannot raise deficiency memos, and the petitioner is not required to make repeated applications for refunds. Further, since appellate proceedings are a continuation of the petitioner's refund application, the OIAs were required to be implemented. Accordingly, the HC directed the respondent to sanction the refund claim to the extent as accepted by the appellate authority, along with the applicable interest in accordance with the provisions of the CGST Act.

Facts of the case

- Advance Systems ('the petitioner') exported goods under LUT during the period January 2021 to September 2021.
- In this respect, the petitioner had filed a refund claim of the ITC, which was acknowledged by the respondent. However, neither the acknowledgement was uploaded online, nor the application was processed within the stipulated period.
- Subsequently, the respondent issued a SCN proposing denial of the refund claim. The petitioner requested additional time to respond to the notice. However, the respondent issued a rejection order.
- The aggrieved petitioner filed an appeal against the said orders before the appellate authority, which partly allowed the refund claim in OIAs.
- Despite the fact that the petitioner had prevailed before the appellate authority, the respondent neglected to process the refund claim.



Respondent's contentions:

- Relying on Circular No. 111/30/2019 – GST dated 3 October 2019, the respondent stated that the petitioner prevailing in its refund claim in appeal is required to file a fresh online refund application, along with all relevant documents, including an undertaking and declaration.
- The respondent contended that the petitioner's latest refund application was deficient, as it was not accompanied by an undertaking.

Delhi HC observations and ruling [Final Order No. 28227/2023 dated 07 July 2023]

- **No repeated applications after successful appellate proceedings:** The HC noticed that after prevailing before the appellate authority, the petitioner had provided the copy of OIAs at the time of filing a fresh refund application. Further, there was no requirement to furnish any further documents to substantiate the claim. Therefore, in respect to the deficiency issued by the respondent, the HC held that the petitioner was not required to make repeated refund applications, and such refund claim needs to be processed in accordance with the law.
- **Respondent cannot raise deficiency memo once taxpayer prevailed in appeal:** The HC stated that if a taxpayer succeeds before the appellate authority and files a fresh online application to initiate the processing of its refund, the respondents cannot raise further deficiency memos regarding the same. Further, the respondent cannot desist from the processing of the claim on any technical grounds. The HC also held that the petitioner's refund could not be withheld solely because the respondent intended to review the OIAs.

Our comments

The CBIC, vide a circular dated 3 October 2019, prescribed the procedure for claiming refund subsequent to a favourable order in an appeal or any other forum. It is clarified that the registered person would file a fresh refund application under the category 'Refund on account of assessment/ provisional assessment/ appeal/ any other order', along with a copy of the order against which an appeal has been preferred and the detail of the appeal order. Thereafter, the proper officer would sanction the refund amount as allowed in appeal and would issue an order in Form GST RFD-06 and payment order in Form GST RFD-05 accordingly.

This circular nowhere mentions that the proper officer can issue a deficiency memo against the refund application filed by the petitioner after prevailing in the appeal proceedings.

Further, it is also relevant to note that the respondents cannot withhold the implementation of the appellate authority orders solely because they intend to appeal against such orders, and therefore, are required to process the petitioner's refund claims, including interest. This matter has been upheld by the Delhi HC in the case of Brij Mohan Mangla, as well as in the case of G.S. Industries.

Even in the present case, the Delhi HC has held that once a taxpayer had succeeded in its appellate proceedings, the proper officer cannot issue a deficiency memo or ask to furnish any documents that had already been submitted at the initial stage. This ruling is a welcome ruling and offers relief to the taxpayers who have faced similar issues while claiming refunds subsequent to the favourable appeal orders. Further, this ruling shall help in reducing litigation and ensuring smooth and quick processing of refund claims.

The department cannot issue fresh SCN on issue that has already attained finality in appellate order – Jharkhand HC

Summary

The Jharkhand HC held that issuing fresh SCNs is wholly without jurisdiction, without authority of law, and in violation of the principle of res judicata. The HC noted that the Revenue has not appealed against the first AAO, and therefore, lacks the authority to issue new SCNs, and such action bypasses the embargo of law.

Facts of the case

- M/s Ambey Mining Private Limited ('the petitioner') filed delayed monthly GSTR-3B returns for a few months pertaining to FY 2019-20, on which interest is demanded.
- In the first round of litigation, the Deputy Commissioner of State Tax (Respondent No.1) passed the order confirming interest demand without issuing any SCN under Section 73.
- The petitioner challenged this order before the first appellate authority that allowed the appeal and determined NIL interest and held that the respondent should have started proceedings in accordance with provisions of Section 73 before creating the interest demand.
- After more than 20 months, the petitioner was again served with two SCNs for the same period for the self-same cause of action (except March 2020) issued by two different authorities, i.e., the Deputy Commissioner of State Tax and the Assistant Commissioner of State Tax, wherein additional interest was demanded. Both the impugned SCNs (except to the extent of March 2020) attempted to start a fresh adjudication proceeding in respect of the self- same cause of action, which has already attained finality by the first appellate authority.

Petitioner's contentions:

- The petitioner argued that the re-initiation of proceedings for the same cause of action, which was already adjudicated and finalised, is without jurisdiction and against the principles of *res judicata*.
- The petitioner contended that the interest demand with respect to m/o March 2020 is erroneous and contrary to the relevant notifications whereby interest rates were reduced due to COVID-19 and the impugned SCNs deserve to be quashed.

Jharkhand HC observations and ruling (Writ Petition No. 361 of 2023, Final Order dated 17 July 2023]

- **Finality of appellate order:** The HC noted that the department has accepted the AAO and has not filed any appeal, therefore, the AAO has attained finality. Further, the same cause of action cannot be re-agitated in a fresh proceeding. The HC referred relevant provisions of the GST law and stated that the first AAO shall be final unless subjected to revision, appeal to Tribunal/HC/SC. Since in the present case, the first AAO was not subjected to any of these provisions, it had attained finality.
- **Issuance of second SCN on same cause of action is impermissible:** The HC cited the SC's rulings in case of Prince Gutkha Ltd (2015), wherein it had been held that issuing a second SCN on the same cause of action is not permissible. And in the case of Gujarat State Fertilisers and Chem. Ltd. (2008), it had been held that an appeal on the same issue is not maintainable once the order attained finality.
- **First appellate authority has no power to remand back the matter:** The HC stated that as per Section 107(11) of the GST Act, the first appellate authority has no power to remand the matter back to the assessing authority to initiate a *denovo* proceeding. Accordingly, the assessing authority is not vested with the power to issue impugned SCNs. Hence, the HC held that the actions of the assessing authority are bad in law, without jurisdiction, and barred by the principles of res judicata.
- **Erroneous interest liability:** The HC held that the demand of interest for March 2020 is erroneous and contrary to GST notifications. The petitioner is liable to pay interest in accordance with the extension of limitation for filing GSTR-3B and a reduced rate of interest within two weeks from the date of the order copy.

Our comments

The principle of res judicata ensures certainty and finality in legal proceedings. In the instant case, in light of the doctrine of res judicata, the HC has denounced the department's approach of re-opening an issue that has already attained finality. The concept of res judicata forbids re-litigating the same matter once a cause of action has been decided on the merits. The Apex Court had unequivocally affirmed this position in the case of Prince Gutkha Limited. Even in the case of Gujarat State Fertilisers and Chem. Limited, the Apex Court had held that an appeal on the same issue is not maintainable once the order of the Tribunal has attained finality due to the non-filing of the appeal by the department.

This is a welcome ruling for taxpayers and safeguards their interests against arbitrary and biased actions of the departmental authorities.

Loan granted to credit card holder should be treated as loan simpliciter and not 'credit card services' – Calcutta HC

Summary

The Calcutta HC overturned the single bench's decision and held that a loan offered, granted on the basis of being a credit card holder, is to be treated as a loan simpliciter and cannot be equated with a credit card, and therefore, a loan transaction with the bank could not be termed as a credit card service. The HC held that the primary distinction between a loan and a credit card is that the former is granted as a necessity and is a welfare scheme, and the latter is a facility granted to customers to get goods and services on credit, and hence, loan and credit card services cannot be equated. The HC further stated that the appellant's payment of interest to the bank could not be subject to the IGST and directed the Revenue to immediately refund the IGST on credit card loan transaction.

Facts of the case

- Ramesh Kumar Patodia ('the appellant'), being a Citi Bank credit card holder, was granted a loan of INR 6,50,000 with interest @13% p.a. payable in 12 EMI.
- In respect of the appellant's credit card, monthly statements were issued where the loan and the EMI payable thereon were indicated. Further, the bank received a letter from the appellant challenging the levy of IGST on interest amount. The entire amount of loan has been repaid to the bank, along with interest and the IGST.
- Subsequently, the appellant by the present writ petition sought a refund of the IGST liability so discharged since the loan transaction with the bank was exempt from IGST levy in terms of Notification No. 9/2017-Integrated Tax (Rate) (exemption notification).
- The question in the present petition was whether the tax charged by the bank on each installment of interest, together with the loan amount paid by the appellant, was exigible to IGST.

Appellant's submissions

- The appellant stated that being a credit card holder of the bank merely entitled him for the loan and the advancement of the loan, which was by way of a cheque, was independent of the credit card or the services that the bank rendered in relation to it. Further, the interest charged on such loan was distinct from the interest charged on account of use of a credit card, and accordingly should not be exigible to the IGST.
- The appellant stated that each installment amount was reflected in the credit card statement only for the purpose of the EMI payment. Basis the loan reference number, the bank had treated the interest as credit card service charge and levied GST.
- Additionally, the issuer bank could also provide an advance loan to a card holder by use of the card against an annual fee or interest for deferred payment recovered from the holder, which would qualify as card services, and accordingly, exigible to GST. Since the appellant had not availed such card services and the loan was advanced without the use of the card, the IGST should not be levied on the same.

Calcutta HC observations and ruling [APO 10/2023 with WPO 547/2019, Order dated 25 July 2023]

- **Interest on loan is exempt from GST:** The HC noted that loan, along with interest charged by the lender bank situated in one state to the borrower situated in another state, is a service that is exempted from tax. However, the interest involved in credit card services has been kept outside the purview of such exemption.
- **Service should have some relationship between the issuer bank and credit card holder to merit as 'credit card services':** The HC relied on the definition of 'credit card services' under the amended Finance Act, 2006, and opined that only those services that are between the card issuer and credit card holder and have a nexus with the holding, the operation or use of the credit card would qualify as 'credit card services.' In the present case, if the loan had been granted through the use of credit card, then it would have been a credit card service. In the present case, the loan transaction was an independent transaction and had no relationship between the appellant and the bank arising out of issue, holding or operation of the credit card. Hence, the appellant's transaction with the bank cannot be termed as a credit card service and not exigible to the IGST. Therefore, the HC directed refund of the IGST so collected.
- **Acceptance of a condition prohibited by law does not make said condition enforceable in law:** The HC did not agree with the contention of the bank that since the appellant agreed upon the condition of the GST payment at the time of the acceptance of loan, the same cannot be retreated subsequently. Accordingly, the HC held that mere acceptance of a condition prohibited by law does not make this condition enforceable in law.
- **Loan and credit card facility is distinct and cannot be equated:** Expounding the distinction between loan and credit cards, the HC stated that loan is a welfare scheme and a necessity. However, a credit card is merely a facility granted to a customer wherein goods and services could be procured on credit. Therefore, it would be against Articles 14 and 21 of the Constitution of India to make an exception in cases where the GST is exempt on loans merely because the loan is given to a credit card holder.

Our comments

Under the erstwhile regime, 'credit card services' were defined under the Finance Act 1994 u/s. 65(33A) as amended by the Finance Act 2006, which included the services provided by a banking company or a financial institution or an NBFC or such institution issuing a card to a card holder or settling any amount transacted through such card. In the absence of the definition of a credit card service under GST, the HC has relied on the definition given under the service tax law and held that the loan transaction cannot be termed as a credit card service.

The HC has emphasised that granting of a loan is a welfare scheme, and therefore, a rigid view causing hardship to the borrower should not be adopted unless it is expressly provided by statute.

This judgement shall benefit all such credit card holders who have availed loan from credit card companies and have been charged GST.

Refund of GST cannot be denied on exports even if duty drawback is availed – Bombay HC

Summary

The Bombay HC has held that the refund of GST paid on exports cannot be denied merely because the petitioner has claimed a duty drawback under the provisions of the Customs and Central Excise Duties and Service Tax Drawback Rules, 2017. The HC observed that such conclusion was unsubstantiated, as well as contrary to the records. The HC also observed that the petitioner was entitled to duty drawback at 2% irrespective of the fact that whether the petitioner has availed ITC under the GST laws.

Facts of the case

- Sunlight Cable Industries ('the petitioner') had exported insulated cables in Myanmar.
- The petitioner contended that it had filed Form GSTR-1 for August 2017, inadvertently mentioning the wrong tax invoice number and port code in respect of the export transaction and the corresponding shipping bill.
- Upon discovering the inadvertence, the petitioner filed an amended return for January 2018 with the correct particulars. Additionally, requisite information in the prescribed format was duly submitted in compliance with the department's circulars.
- The department denied the refund claim of the IGST paid on the aforesaid zero-rated supply.
- The petitioner contended that despite all complaints, there was no response from the department. Therefore, the petitioner filed a grievance with the CPGRAMS and was intimated that the refund had been rejected because the petitioner had received a higher duty drawback on exports, which would lead to double benefit.
- Therefore, the petitioner has approached the HC, requesting for the grant of refund.

Bombay HC observations and ruling [Writ Petitioner No. 284/2021, order dated 27 June 2023]

- **Exports are zero-rated supply and eligible for refund:** The HC observed that it is undisputed that the petitioner's case is of zero-rated supply under Section 16(3) of the IGST Act. Further, Rule 96 of the CGST Rules, which provides a refund of IGST on goods or services exported out of India, had become applicable in this case.
- **Unsubstantiated claim for duty drawback at higher rate than refund:** The department had rejected the legitimate claim of refund on the grounds that the duty drawback at the higher rate of the IGST refund was claimed by the petitioner. The HC observed that such conclusion not only lacks factual foundation but is contrary to the record. The HC relied upon the notification dated 31 October 2016, wherein a common duty at the rate of 2% has been prescribed.
- **Petitioner is entitled to refund when double benefit has not been availed:** The HC relied on the judgement of the Gujarat HC in the case of Awadkrupa Plastomech, wherein it was stated that a refund should be disallowed only in cases where the exporters had availed a duty drawback at a higher rate as against the IGST refund, on their own volition. However, where the option has not been exercised, a refund cannot be denied. In view of the above, the HC allowed the refund of the IGST, along with 7% simple interest, from the date of filing the amended return.

Our comments

On a similar issue recently, the Madras HC, in the case of Numinous Impex (I) Pvt. Ltd., held that the refund of the ITC cannot be denied even if the taxpayer has claimed a duty drawback. Even the Gujarat HC, in the case of Awadkrupa Plastomech Pvt. Ltd., had held that duty drawback rates are applied only to the customs element. The HC affirmed that such claim does not result in a 'double benefit', and therefore, IGST refund could not be denied.

In the case of Amit Cotton Industries, the Gujarat HC has held that claiming a higher rate of duty drawback cannot be a valid reason to withhold refund. Even the Kerala HC, in the case of G NXT Power Corp, allowed the refund of the differential amount of the IGST adjusted against the higher rate of duty drawback.

Further, the CBIC, in its own Circular No. 37/2018-Cus, clarified that exporters availing a higher duty drawback - at their own volition - are not eligible for refund of the IGST on exports.

This a welcome ruling and should help exporters facing similar issues. However, considering that in spite of favourable rulings by various courts, the authorities are causing unnecessary litigation at the lower level, the government should issue a suitable clarification on the matter.

B. Key judicial pronouncements under Customs/FTP/SEZ laws

SC affirms Bombay HC's decision, holding that interest and penalty cannot be levied on delayed payment of customs surcharge, CVD and SAD in absence of statutory provisions

Summary

The SC has dismissed the SLP filed by the Revenue against the order of the Bombay HC, which had held that the interest and penalty on short/delayed payment cannot be levied on CVD and SAD, as there was no power under the customs law to impose interest or penalty on the said duties. The HC analysed that the provisions of the CTA, does not provide for or include interest and penalties, and the same is included under Section 28AB of the Customs Act. Accordingly, the HC opined that merely because there is a mechanism for assessment and collection of tax and penalty under the Customs Act, it does not mean the same can be borrowed even under the CTA. Further, the HC clarified that when penalty is an additional tax, the Constitution requires a clear authority of law for imposition thereof. Therefore, the HC had quashed the order of the Settlement Commission after concluding that it violated legal provisions.

Facts of the case:

- Mahindra and Mahindra Limited (hereinafter referred to as the 'petitioner') filed four applications before the Settlement Commission.
- SCNs were issued by the Settlement Commission, alleging that the petitioner had not declared the entire amount in relation to import with an intent to evade payment of customs duty.
- Subsequently, the Settlement Commission held that the duty demanded is payable along with interest at 10% of the customs duty but has partially waived the penalty.
- The petitioner submits that interest shall be charged on the delayed payment of tax only when the statute levying the tax contains a substantive provision regarding the same.
- Accordingly, the petitioner is of the view that the Settlement Commission cannot levy interest and penalty since there are no substantive provisions regarding the delayed payment of differential duty.
- Aggrieved by the order of the Settlement Commission, the petitioner has filed the present writ petition before the HC.

Bombay HC observations and ruling (Writ Petition No.1848 of 2009 dated 15 September 2022. Order dated 4 October 2022):

- **Penalty partakes the character of additional tax:** The HC observed that when a statute levies a tax, it does so by inserting a charging section and then proceeds to provide the machinery to make the liability effective. Subsequently, the statue provides the mechanism for recovery and collection of tax, including penal provisions meant to deal with defaulters. Therefore, penalty is not a continuation of assessment proceedings and there must be a charging section to create liability.
- **Constitution requires clear authority of law for imposition of penalty:** The HC observed that the charging sections for

imposition of surcharge, CVD and SAD are Section 90(1) of the Finance Act, 2000, Section 3(1) and Section 3A(1) of the CTA, respectively. Irrespective of the fact that the Customs Act, provides for penalty and interest, the same cannot be treated as applicable for interest or penalty under the CTA. Accordingly, there is no room for presumption in cases of referential legislation.

- **Legislature does not intend to include interest and penalties on CVD and SAD:** The HC viewed that the intention of the legislature is clear with respect to the inclusion of interest and penalty only with regard to the anti-dumping duty and not for CVD and SAD. There is no substantive provision under Section 3 or Section 3A of the CTA, or Section 90 of the Finance Act, 2000, requiring payment of penalty or interest.
- **Provisions under Customs Act, cannot be borrowed:** The HC observed that Section 28 of the Customs Act, provides for recovery of dues and Section 28AB provide for interest on delayed payment of duty. The authorities cannot levy interest beyond the provisions of the Customs Act. Thus, Section 28AB cannot be borrowed for imposing interest on surcharge, CVD or SAD.
- **Settlement Commission's order quashed and set aside:** The HC stated that the authorities cannot include interest in the settlement arrived at by it on the ground that the petitioner has derived financial benefits by not paying the correct rate of duty when it was due. Therefore, the HC held that the order of the Commission to the extent of requiring the petitioner to pay interest at the rate of 10% against the four SCNs and penalty is liable to be quashed and set aside.

SC observations and ruling [SLP (Civil) Diary No(s). 18824/2023 order dated 28 July 2023]:

- The SC has dismissed the SLP filed by the Revenue and upheld the Bombay HC's order.

Our comments

In the case of J.K. Synthetics Ltd., the SC ruled that interest can be levied and charged on late tax payments only if the statute that levies and charges the tax makes a substantive provision in this regard. In the absence of a substantive provision requiring the payment of interest, the authorities may not charge interest on tax for the purpose of collecting and enforcing payment.

Even in the case of Khemka and Co. (Agencies) Pvt Ltd, the SC held that a penalty is in addition to the tax and statutory liability. Hence, there must be a specific provision to levy a penalty.

The Bombay HC's ruling was consistent with the preceding rulings and should be beneficial to importers facing similar challenges. Furthermore, taxpayers who previously paid interest and penalties on CVD, SAD, and surcharge may be eligible for a refund considering that the SC has upheld the Bombay HC's order.

03

Decoding advance rulings under GST

ITC is admissible when consideration is paid through book adjustment under GST – Kerala AAR

Summary

The Kerala AAR has ruled that the settlement of the mutual debts through book adjustment is a valid mode of payment of consideration for the receipt of goods and/or services, and it satisfies the requirement of claiming the ITC. In this respect, the AAR analysed the term 'consideration', ITC provisions w.r.t. requirement of payment to supplier within the prescribed time, and provisions of the time of supply under the CGST Act. The AAR noted that the definition of 'consideration' is an inclusive definition that covers in its ambit any form of payment. Therefore, if the payee owes the payer a debt and accepts a reduction in such a debt liability as a valid form of payment, that should also be regarded as a valid 'consideration' for a supply.

Facts of the case

- M/s. Paragon Polymer Products Private Limited ('the applicant') is engaged in the business of manufacturing and trading of footwear.
- The applicant outsources some activities to outside vendors in the course of manufacturing footwear. In a few cases, the applicant sells raw materials to these vendors by raising a taxable sales invoice. The vendors manufacture footwear/ parts of footwear as per the applicant's requirement and return to the applicant. This transaction is also made as sale by the vendor to the applicant.
- The applicant intends to settle these mutual debts through book adjustments and settle the net dues only through bank transfer. In this respect, the applicant referred to the second proviso to Section 16(2) of the CGST Act and submitted that this proviso does not prescribe or restrict the mode in which the payment has to be made. Further, the term 'consideration' under the CGST Act is an inclusive definition that covers in its ambit all forms of payment.
- The applicant sought an advance ruling that whether the ITC is admissible in respect of goods purchased from vendors, when payment is settled through book adjustment, against the debt created on outward supplies to these vendors.

Kerala AAR observations and ruling [KER/03/2023 dated 2 March 2023]

- **Book adjustment is a valid mode of payment of consideration under GST:** The AAR stated that the second proviso to Section 16(2) of the CGST Act clearly limits the recipients' entitlement to the ITC only to transactions where they have paid the consideration for the supply received, along with tax payable thereon. Further, the AAR stated that the definition of 'consideration' is an inclusive definition that covers in its ambit any form of payment. Therefore, if the payee owes the payer a debt and accepts a reduction in such a debt liability as a valid form of payment, that should also be regarded as a valid 'consideration' for supply. Further, referring to the provisions of the time of supply, the AAR held that the entry in the books of accounts of the supplier/recipient is recognised as a mode of payment under the GST law. Upon a conjoint reading of these provisions, the AAR ruled that the settlement of the mutual debts through book adjustment by the applicant is a valid mode of payment of consideration for the receipt of goods and/or services, and the ITC is admissible when consideration is paid through book adjustment.

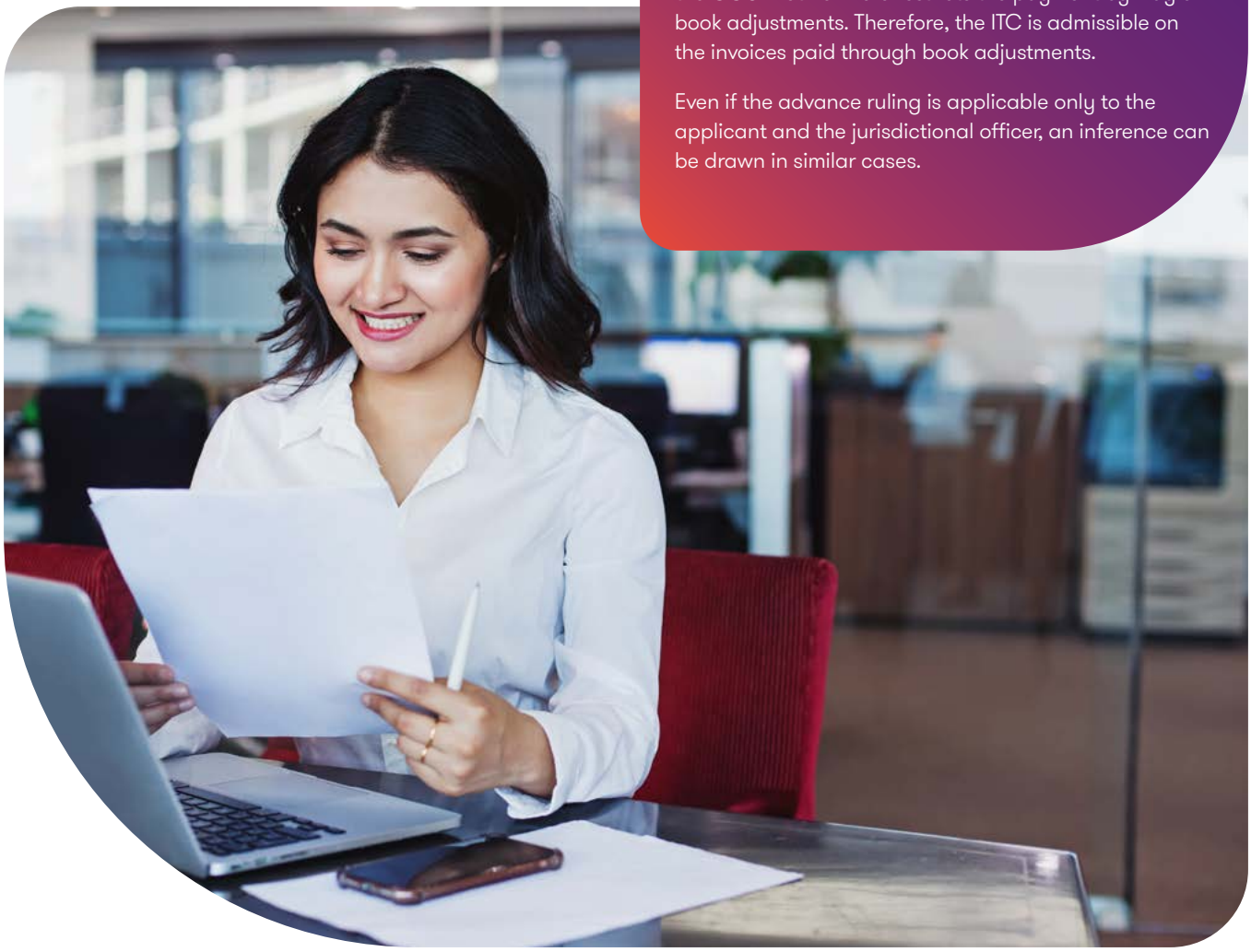
Our comments

Earlier, the West Bengal AAR, in the case of M/s. Senco Gold Limited, had held that the applicant can pay the consideration for inward supplies by way of setting off book debt. Further, if the payee owes the payer a debt, and accepts a reduction in such a debt liability as a valid form of payment, such reduction should be regarded as a valid consideration for supply.

Recently, the Kerala AAR, in the case of M/s. Malabar Gold Private Limited, has held that the settlement of the mutual debts through book adjustment by netting off receivables of one GSTIN by another GSTIN of the same company or net off receivables with payables of the supplier of goods/service is a valid mode of payment of consideration for the receipt of goods and/or services, and it satisfies the requirement of the second proviso to Section 16(2) of the CGST Act.

Similarly, the Kerala AAR, in the present ruling, has affirmed that the second proviso to Section 16(2) of the CGST Act nowhere restricts the payment by way of book adjustments. Therefore, the ITC is admissible on the invoices paid through book adjustments.

Even if the advance ruling is applicable only to the applicant and the jurisdictional officer, an inference can be drawn in similar cases.



Paying guest/hostel facility is not a 'residential dwelling'; not eligible for exemption from GST – Karnataka AAR

Summary

The Karnataka AAR has ruled that PG and hostel accommodations are not in nature of residential dwellings, therefore, rent paid for such facilities is liable to GST @12%. The AAR observed that a residential dwelling is a residential accommodation meant for permanent stay and does not include hotel, motel, inn, guest house, camp-site, lodge, houseboat, or similar places meant for a temporary stay. Accordingly, the PG/hostel services, which is akin to guest houses, would not qualify as residential dwellings. The AAR found that in the present case, the accommodation is a room shared by unrelated people and invoices are raised per bed on a monthly basis. These are not characteristics of a residential dwelling. Further, the absence of a kitchen facility and cooking of food being disallowed further reflects the absence in the essential characteristic of a permanent stay. Therefore, the accommodation does not qualify as a residential dwelling and is not eligible for exemption.

Facts of the case

- M/s. Sri Sai Luxurious Stay LLP ('the applicant') is engaged in the business of developing, running, subletting and managing PG accommodation, service apartments, and flats to its customers.
- The applicant also provides ancillary services, along with boarding and lodging such as meals, house-keeping, a washing machine, parking, etc., for an all-inclusive monthly tariff that ranges between INR 6,900 to INR 12,500.
- The tariff range depends on the size of the room, the number of people sharing the room, etc.
- The applicant primarily sought clarification on whether the PG/hostel would qualify as a residential dwelling, and accordingly, rent paid by the inhabitants would qualify for exemption. Additionally, whether the additional services provided would be considered as bundled services, along with the service of providing PG/hostel and whether RCM would be applicable on the rental to be paid to landowners.

Karnataka AAR observations and ruling [Advance Ruling No. Kar ADRG 25/2023, Ruling dated 13 July 2023]

- **Residential dwelling is meant for permanent stay:** The AAR opined that a residential dwelling would constitute a residential accommodation, which is meant for permanent stay, and would not include a hotel, motel, inn, guest house, camp-site, lodge, houseboat and similar place meant for a temporary stay. It was observed that the mere arrangement of cots in a partitioned room, which is shared by unrelated inhabitants, against monthly rent, would not qualify as a 'residential dwelling'. Accordingly, the benefit of exemption cannot be extended to such temporary accommodation.
- **Availability of kitchen facility signifies permanent stay, which is an essential characteristic:** The AAR observed that an individual kitchen facility was not available for each inhabitant and cooking food by inhabitants was also not allowed, which is essential for a permanent stay. This further fortified the observation that the accommodation would not qualify as a residential dwelling, and accordingly, not eligible for exemption.
- **Ancillary services bundled with accommodation optional in nature:** The AAR observed that the ancillary services that are provided by the applicant are optional for the inhabitants and cannot be termed as 'naturally bundled'. The AAR opined that since such ancillary facilities did not affect the main service, they would be separately taxable.
- **PG/hostel taxable under RCM:** The AAR stated that the services of a PG/hostel accommodation would fall within the ambit of the RCM, and accordingly, the applicant would be liable to obtain GST registration and discharge tax on the same.

Our comments

Contrary to this, earlier, the Karnataka HC, in the case of Taghar Vasudeva Ambrish, had overturned the ruling of the Karnataka AAAR and opined that the hostel premises rented to students and working professionals would be covered within the ambit of a residential dwelling, and accordingly, would be eligible for the exemption benefit. The HC had observed that the accommodation was classified under the 'residential category' in the Revised Master Plan 2015 of Bangalore City.

Even the Andhra Pradesh AAAR, in the case of Aluri Krishna Prasad, had ruled that a student's hostel cannot be equated to a 'residential dwelling', as the same is constructed with an intention to provide a sociable accommodation and not a residential accommodation. Also, in the case of Peeyush Kumar, the AAAR had ruled that the benefit of exemption is available only where a residential dwelling is used as a residence. Since the lessee was involved in the business of sub-leasing of property and had no intention to use the property as residence, the exemption was not available.

Considering the divergent opinions by various judicial forums, it will be interesting to wait and watch the further developments in this regard.

04

Expert's column

Taxability of intellectual property rights - legal conundrum

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Introduction

Applying intellect research and required statutory recognition results in an intellectual property right. Additionally, geographical indication and integrated circuits are considered the IPR subject to statutory recognition. The taxability of IPR transfer has been a topic of debate and contradictory interpretation under indirect tax laws. Under the pre-GST regime, there was confusion about whether the transfer of IPR for tax liability would be treated as 'goods' or 'services' under different statutes, i.e., service tax and VAT.

Generally, an IPR can be monetised in two ways, i.e.,

1 By transfer of use of such IPR temporarily;
2 Permanent transfer or outright sale without retaining any rights.

This article discusses the taxability of IPR under the pre-GST regime and GST and Customs laws.

Taxability under the pre-GST era

Under the pre-GST regime, there was a clear-cut bifurcation of powers between the centre and the states regarding the levy of taxes. Under Article 246 of the Constitution of India, Entry 54 of List II in the Seventh Schedule empowered the states to levy tax on goods. Entry 97 of List I in the Seventh Schedule gives power to the centre to levy tax on services. As per the bifurcation of the powers, the states, inter alia, were empowered to levy tax on the sale/purchase of goods, whereas the central government was empowered to levy tax on manufacturing, imports, exports, and the provision of specific services.

There were conflicts regarding the taxability of temporary transfers of the right to use the IPR before the GST regime. However, there have never been disputes regarding permanent transfers since it was made clear that such transfers are subject to VAT. This led to double taxation on temporary transfers, as industries adopted a conservative approach, paying both VAT and service tax to avoid legal consequences.

Implications under service tax and VAT

The Finance Act 1994 defined the term 'Service' under Section 65B(44) as any activity carried out by a person for another for consideration, including a declared service. Effective 1 July 2012, temporary transfer or permitting the use or enjoyment of any intellectual property right had been declared as services under Section 66E(c) of the Finance Act. However, the definition of 'service' excluded the transfer of title in any goods by way of sale or deemed sale of goods under Article 366(29A) of the Constitution, which includes a tax on the transfer of the right to use any goods for any purpose for cash, deferred payment or other valuable consideration.

On the other hand, in the case of Tata Consultancy Services, the Supreme Court held that the term 'goods' is very wide and includes all types of movable properties, whether tangible or intangible. The Indian law does not distinguish between tangible property and intangible property. It would become goods, provided it has attributes thereof having regard to: (a) its utility; (b) capable of being bought and sold; and (c) capable of transmitted, transferred, delivered, stored, and possessed. The same will be goods if customised or non-customised software satisfies these attributes. Hence, there is no doubt that intangibles are goods; therefore, the sale or transfer of the right to use intangibles would be a subject matter of VAT.

To understand the concept of 'right to use', we can refer to the Apex Court's ruling in the case of Rashtriya Ispat Nigam Ltd., wherein it had been held that **to constitute a transaction as a transfer of right to use, effective control over the goods is required to be transferred**. Accordingly, if the exclusive right to use goods is not transferred, it is only a case of temporary transfer. Such transactions attract service tax and are outside the scope of VAT/sales tax.

Taxability under GST

Due to interpretational issues, the pre-GST era's challenge of double taxation on the transfer of intangibles was expected to end with the introduction of GST, wherein both the Union and state governments allowed to levy taxes simultaneously on the same transaction.

Under the GST laws, the goods and services have been defined categorically. Further, the specific transactions to be treated as a supply of goods or services have been mentioned in Schedule II of the CGST Act, 2017. In the instant case, the relevant issue is whether the sale of the IPR is treated as a supply of goods or a supply of services.

Entry 5(c) of Schedule II specifies a temporary transfer, while Entry 1(a) covers permanent transfer of the IPR, which is covered under the transfer of title in goods. Further, separate rate notifications are applicable for the supply of goods and services under the GST law. Notification No. 11/2017-Central Tax (Rate) specifies the rate for services wherein Entry 17 states that a permanent transfer of the IPR is taxable as a service. The confusion arises as Schedule II clearly specifies temporary transfer as a service, whereas the service rate notification also provides a rate for permanent transfer of the IPR. It is well settled that the notification cannot override the Act, and even the explanatory notes for Heading 9973 only provide a temporary transfer of the IPR rights, not a permanent transfer. Hence, it can safely be argued that a permanent transfer cannot be taxed under a notification specifying a rate of tax on services.

Taxability of permanent transfer of IPR as 'Goods'

To obviate the dispute and litigation, the GST Council, in its 23rd meeting, proposed that irrespective of whether the permanent transfer of intellectual property is a supply of goods or service, the permanent transfer of intellectual property, other than information technology software, attracts GST at the rate of 12%; and in respect of IT software attracts GST @18%. Subsequently, amendments were made to the relevant notifications[1].

Notably, these amendments were not retrospective and were read so that permanent transfer of the IPR would be taxed as supply of goods w.e.f. 15 November 2017. However, there was no mechanism for taxing a permanent transfer of the IPR as a supply of goods from 1 July 2017 to 14 November 2017. It is also worth noting that despite adding specific entries to the goods rate notification, no corresponding deletion was made in the service rate notification. Hence, even after the amendments, the notifications do not clarify the tax on permanent transfer of the IPR. However, the government appears to intend to treat the permanent transfer of the IPR as a supply of goods. Considering this scenario, the taxpayer may argue that the permanent transfer of the IPR would not be subject to GST.

Further, the GST Council, in its 45th meeting, recommended that the rate on 'Licensing services/the right to broadcast and show original films, sound recordings, radio and television programmes' would be increased from 12% to 18% to bring parity between distribution and licencing services. However, pursuant to the above recommendation, a wider amendment was made under the service rate notification wherein the rate of tax on the services of temporary or permanent transfer or permitting the use or enjoyment of the IPR was increased from 12% to 18%[2]. Further, to avoid any confusion, an amendment was made under the goods rate notification as well, providing a GST rate of @18% on the supply of goods[3]. Resultantly, the permanent transfer of goods and services is now taxable at par under GST @18%. However, the phrase 'permanent transfer' has still not been deleted from the service rate notification. Thus, the problem remains unresolved as of date.

Taxability under the Customs laws

If a view is taken that permanent transfer of the IPR will be treated as a supply of goods, we need to understand the implications under the Customs law simultaneously. One of the primary conditions to be fulfilled to impose Customs duty on any transaction is that the goods should cross the Customs frontiers of India. As computer software is usually procured over the internet, there is no need/mechanism to file a BoE.

It is a well-settled principle of taxation that in the absence of a mechanism to levy and collect duty under the Customs Act, Customs duties would not be payable on the import of the IPRs.

From the discussion, supra, it is abundantly clear that permanent transfer of the IPR, being downloaded electronically, sans mechanism, would not be liable to customs duty. Further, the transaction, being the import of goods, would have no GST under the reverse charge, which is leviable on the import of services.

As a reaction from the department on such a transaction is yet to be seen, a clarification from the CBIC would settle the issue forever.

1. Notification No.1/2017-Central Tax (Rate) vide notification no. 41/2017 dated 14 November 2017 effective from 15 November 2017 by adding Sl. no. 243 under schedule II (applicable tax rate @12%) and Sl.no. 452P under schedule III (applicable tax rate @18%) respectively
2. vide Notification No. 06/2021 – Central Tax (Rate) dated 30 September 2021
3. vide the Notification No. 13/2021-Central Tax (Rate) dated 27 October 2021

05

Issues on your mind

How to file Form DRC-01B PART B (Reply to the intimation of difference in liability reported in statement of outward supplies and that reported in return)?

Below are the steps to be followed while filing Form DRC-01B PART B:

1 Access the GST portal www.gst.gov.in and log in using your valid credentials.
2 Navigate to **Services > Returns > Return Compliance**, or alternatively, click the **Return Compliance link** on the dashboard.
3 Click on the **VIEW** button in the Liability Mismatch (DRC-01B) tile.
4 On the Liability Mismatch (DRC-01B) page, click the **Reference Number** hyperlink for the pending records.
5 The Liability Mismatch (DRC-01B) details page, which contains **PART-A** and **PART-B** sections, will be displayed.
6 In PART-B, there are two sub-parts. In part 1, the ARN of the payment can be provided, which is made via DRC-03 for the period for which DRC-01B has been issued. The payment can also be made for the **Difference in Liability Reported** by clicking the **CLICK HERE FOR DRC-03** button. In part 2, the 'Reason for the Difference in Liability Reported' can be selected and further explanations in the text box can be provided.
7 In **PART-B**, enter the ARN of DRC-03 through which payment towards the discrepancy communicated in DRC-01B PART A was made and click the **VALIDATE** button.
8 The summary of the payment details that has been paid towards the difference amount through DRC-03 will be displayed.
9 Select and explain the reason for the difference in the liability, in the space provided.
10 Select the declaration checkbox. Select the 'Name of Authorised Signatory' from the dropdown list and enter the place. Click the SAVE button and then click the FILE GST DRC-01B button.
11 Upon successful filing, Click the **DOWNLOAD DRC-01B** button to download the final PDF of Form DRC-01B.

What are the features of the newly launched searchable database for ad-hoc norms fixed under the AA scheme under the FTP?

The DGFT has implemented a user-friendly and searchable database of ad-hoc norms fixed under Para 4.07 of HBP. These norms can be applied in accordance with the existing FTP/HBP provisions without the need for an approval by the Norms Committee.

The database can be accessed on the DGFT website by navigating to **Services → Advance Authorisation/DFIA → Ad-hoc norms**. It allows for searches based on the following criteria:

- Export item description/Technical characteristics
- ITC(HS) code of the export Item(s)
- Import Item description/Technical characteristics
- ITC(HS) code of the import Item(s)

If an ad-hoc norm is found to be suitable in terms of item description, specified wastages, and is valid as per the HBP provisions, applicants have the option to apply for an advance authorisation under the 'No-Norm Repeat' basis. In such cases, ratification by the Norms Committee will not be required, subject to other provisions of FTP/HBP as applicable.

What is the process for fixation/review of norms under AA by the Norms Committee (NC-7) from the new online norms fixation IT module?

The DGFT has notified that the process of norms fixation/ review of norms has been shifted to an electronic mode from the physical mode. All applicants seeking norms fixation/review of norms from NC-7 may apply only through the online module by navigating to the **DGFT website CP Portal > Services under Norms Fixation > Initiate Review.**

No hard copy/email application from NC-7 shall be accepted w.e.f. 22 June 2023.

06

Important developments under direct taxes

CBDT extends timeline for filing TDS/TCS statement for first quarter of FY 2023-24 to 30 September 2023

The CBDT has extended the timeline for submission of the TDS and TCS quarterly statement for the first quarter of FY 2023-24. The revised timeline is as under:

Form No.	Earlier timeline	Extended timeline
26Q [Quarterly statement of TDS (other than salary)]	31 July 2023	**30 September 2023**
27Q [Quarterly statement of TDS (other than salary) for payments to non-residents]	31 July 2023	**30 September 2023**
27EQ [Quarterly statement of TCS]	15 July 2023	**30 September 2023**

(Circular no. 9 of 2023 dated 28 June 2023)

Change in TCS rates for remittances under LRS and clarifications issued

The rates of TCS on LRS were revised vide Finance Act, 2023, w.e.f. 1 July 2023. Based on the inputs received from various stakeholders, the following changes have been made:

- TCS rates have been revised, which will be applicable from **1 October 2023** instead of 1 July 2023 announced earlier. The summary of TCS rates is as under:

Particulars	TCS rate till 30 September 2023	TCS rate w.e.f. 1 October 2023
Education, where the source of funds is through a loan obtained from a specified financial institution	0.5% if the aggregate remittance exceeds INR 7 lakhs	0.5% if the aggregate remittance exceeds INR 7 lakhs
Education (not being covered above) or medical treatment	5% if the aggregate remittance exceeds INR 7 lakhs	5% if the aggregate remittance exceeds INR 7 lakhs
Other remittances	5% if the aggregate remittance exceeds INR 7 lakhs	20% if the aggregate remittance exceeds INR 7 lakhs
Overseas tour package	5% without any threshold limit	5% for remittance till INR 7 lakhs and 20% thereafter

- Levy of TCS on LRS spends through international credit cards while being overseas has been postponed. Accordingly, TCS will not be applicable on such payments until further communication from the government.
- The threshold of INR 7 lakhs for the applicability of TCS has been extended to all modes of payment, including direct payments from bank accounts and forex cards for any purpose, except payments for overseas tour packages (refer slab rates above).

Further, in order to remove the difficulties in the implementation of changes relating to the TCS on LRS, the Ministry of Finance has released FAQs. The key highlights are as under:

- Payments made through overseas credit cards while travelling overseas would not be counted within LRS limits.
- The threshold of INR 7 lakhs in a FY is a consolidated threshold for all purposes – education, health treatment and other purposes for an individual (other than the overseas tour package). For this purpose, all remittances made in FY 2022-23 will be considered. For such LRS remittances, there will be no TCS on the first INR 7 lakhs. Thereafter, the applicable TCS rates would apply.
- The threshold of INR 7 lakhs is applicable for each remitter irrespective of the fact that it may be made though different AD banks. Remitters are required to provide an undertaking to the AD bank, furnishing the details of prior remittances. A similar undertaking is to be obtained by the sellers of overseas tour packages. In case of incorrect declarations, appropriate action would be taken on the remitter.
- It has been clarified that the remittances for medical treatment include:
  - Purchase of tickets for the person to be treated and his attendant.
  - Medical expenses.
  - Other day-to-day expenses.
- It has been clarified that remittances for education purposes include:
  - Remittance for purchase of tickets for a person undertaking studies overseas.
  - Tuition fees and other fees to be paid to the educational institute.
  - Other day-to-day expenses.
- Other clarifications provided with respect to remittance for overseas tour package:
  - The overseas tour programme package has been defined as: Any tour package that offers a visit to a country or countries or territory or territories outside India and includes expenses for travel or hotel stay or boarding or lodging, or any other expenditure of a similar nature, or in relation thereto.
  - An overseas tour programme package should include at least two of the following:
    - International travel ticket
    - Hotel accommodation (with or without food/boarding/lodging)
    - Any other expenditure of a similar nature

(Press release dated 28 June 2023; Circular no. 10 of 2023 dated 30 June 2023)

CBDT excludes shares/units/interest received on relocation of funds from the purview of income from other sources

Rule 11UAC of the IT Rules prescribes the class of persons to which provisions of Section 56(2)(x) of the IT Act will not apply.

In this regard, the CBDT has expanded the scope of Rule 11UAC of the IT Rules. As a result, any movable property (being shares or units or interest) received by the fund management entity in the resultant fund, in lieu of shares/units/interest held by the investment manager entity in the original fund, will not be regarded as income from other sources. This exemption will be subject to the fulfillment of the following twin conditions:

- At least 90% shares/units/interest in the fund management entity of the resultant fund are held by the same entity/entities/person(s) in the same proportion as held by them in the investment manager entity of the original fund; and
- At least 90% of the aggregate of shares/units/interest in the investment manager entity of the original fund was held by such entity/entities/person(s).

(Notification no. 51 of 2023 dated 18 July 2023)

Glossary

AA	Advance Authorisation
AAAR	Appellate Authority for Advance Ruling
AAO	Appellate Authority Order
AAR	Authority for Advance Ruling
AATO	Annual Aggregate Turnover
AD Banks	Authorised Dealer Banks
ADIA	Abu Dhabi Investment Authority
AED	United Arab Emirates dirham
ARN	Application Reference Number
BO	Branch Office
BoE	Bill of Entry
CBDT	Central Board of Direct Taxes
CBIC	Central Board of Indirect Taxes and Customs
CBUAE	Central Bank of United Arab Emirates
CEA	Central Excise Act, 1956
CENVAT	Central value added tax
CEPA	Comprehensive Economic Partnership Agreement
CESTAT	Customs Excise and Service Tax Appellate Tribunal
CGST	Central Goods and Services Tax Act
CGST Act	Central Goods and Services Tax Act, 2017
CGST Rules	Central Goods and Services Tax Rules, 2017
CoO	Certificate of Origin
CPC	Code of Civil Procedure, 1859
CPGRAMS	Central Grievance Redressal and Monitoring Systems
CTA	The Customs Tariff Act, 1975
Customs Act	The Customs Act, 1962
CVD	Countervailing Duty
DC	Development Commissioner
DFIA	Duty free import authorisation
DGFT	Directorate General of Foreign Trade
EC	Education Cess
ECO	E-commerce Operators
ECrL	Electronic credit ledger
ED	Enforcement Directorate
E-Invoice	Electronic Invoice
EMI	Equated monthly installments
EO	Export Obligation
EODC	Export Obligation Discharge Certificate
EPCG	Export Promotion Capital Goods Scheme
FAQs	Frequently Asked Questions
FTP	Foreign Trade Policy
FY	Financial Year
GIFT	Gujarat International Finance Tec-City
GST	Goods and Services Tax
GSTIN	Goods and Services identification number
GSTN	Goods and Service Tax Network
GSTR	Goods and Services Tax Return
GTA	Goods Transport Agency
HBP	Handbook of procedures
HC	High Court
HO	Head Office
HS	Harmonised system
HSN	Harmonised System of Nomenclature
IFF	Invoice Furnishing Facility
IGST	Integrated Goods and Services Tax
IGST Act	Integrated Goods and Services Tax, 2017
INR	Indian National Rupees
IPC	Indian Penal Code
IPR	Intellectual Property Rights
ISD	Input Service Distributor
ISRO	Indian Space Research Organisation
IT	Information Technology
IT Act	Income Tax Act, 1961
IT Rules	Income Tax Rules, 1962
ITC	Input Tax Credit
J&K	Jammu and Kashmir

KVAT	Karnataka Value Added Tax
LLP	Limited Liability Partnership
LRS	Liberalised Remittance Scheme
LUT	Letter of Undertaking
MoU	Memorandum of Understanding
NBFC	Non-Banking Financial Company
OIA	Order-in-Appeals
OIDAR	Online Information Database Access and Retrieval services
OMV	Open Market Value
ONDC	Open Network for Digital Commerce
PAN	Permanent Account Number
PG	Paying Guest
PLI	Production-Linked Incentive
PMLA	Prevention of Money Laundering Act
PSU	Public Sector Undertakings
RA	Regional Authority
RBI	Reserve Bank of India
RCM	Reverse Charge Mechanism
SAC	Services Accounting Code
SAD	Special Additional Duty
SC	Supreme Court
SCN	Show Cause Notice
SEZ	Special Economic Zones
SGST	State Goods and Service Tax
SHEC	Secondary and Higher Education Cess
SLP	Special Leave Petition
STPI	Software Technology Parks of India
SUV	Special Utility Vehicles
TCS	Tax Collected at Source
TDS	Tax Deducted at Source
UAE	United Arab Emirates
UPI	Unified Payments Interface
URP	Unregistered Person
UT	Union Territory
VAT	Value Added Tax
WBST	West Bengal Sales Tax

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