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SHAPING VIBRANT INDIA

GST Compendium

A monthly guide

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Editor's Note

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The Finance Minister presented the interim budget on 1 February 2024, focusing on the goal of a 'Viksit Bharat', and outlined a road map for attaining unprecedented growth and progress over the next five years. While there are no major announcements on the taxation front, some changes designed to provide clarity and continuity have been introduced to ensure no disruption in the short run.

On the judicial front, long deliberations between the Revenue and taxpayers concluded with the Delhi HC's judgement upholding the constitutional validity of the anti-profiteering provisions. The HC categorically stated that the profiteered amount has to be calculated on a case-to-case basis, considering the peculiarities of each case. The matter has been listed for appropriate directions on 21 February 2024. It would be interesting to watch out if the matter reaches the Apex Court for final resolution.

In another case, the Madras HC has held that interest is not leviable on delayed filing of GSTR-3B when amount of tax is deposited in Electronic Cash Ledger (ECL). The HC held that the tax payment to the government is not contingent on the actual date of filing the monthly GST return and can be made before the return is furnished. The ruling will likely safeguard taxpayers from the interest implications when the amount is deposited within the due timelines but the return filing gets delayed.

Besides, the Mumbai Tribunal has relieved a leading life insurance company against a service tax demand of INR 387 crore. The Revenue claimed the demand was due to a difference in the income tax return and service tax return amounts. The Tribunal noted that service tax is based on the consideration received for services provided, not the difference between income tax and service tax returns, and set aside the demand.

On the customs front, the cabinet has approved the extension of the scheme for Rebate of State and Central Taxes and Levies (RoSCTL) to export apparel/garments and made-ups for a further two years till 31 March 2026. Continuing the RoSCTL will ensure predictability and stability in the policy regime, help remove the burden of taxes and levies, and provide a level playing field on the principle that goods are exported and not domestic taxes.

In this edition, our experts have expressed their views regarding the taxability of royalty transactions under GST and erstwhile laws.

On the direct tax front, the Central Board of Direct Taxes has notified an exemption regarding non-resident income from investment with the IFSC capital market intermediary, subject to fulfilling certain conditions.

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

Interim Union Budget 2024-25: Indirect tax proposals

The interim budget laid emphasis on key achievements with the advent of GST, which led to reduction in the compliance burden, supply chain optimisation, elimination of tax arbitrage and a doubled tax base.

The key announcements made are summarised below:

Widening the scope of ISD: The scope of the definition of ISD is proposed to be widened by including the services on which tax is paid under the RCM within its ambit.

The GST Council had recommended making the ISD procedure mandatory with prospective effect.

Amendments have been proposed to widen the scope and modify the manner of distributing credit to different GSTINs within the same entity.

Introduction of penal provisions in relation to the manufacture of specified goods: An additional penalty provision has been proposed to ensure a stringent compliance of the special procedure notified by the government for registration of machines in relation to specified goods (such as pan masala/other tobacco products and other products as may be notified).

Our comments: Following the recommendation of the GST Council, in its 50th Council meeting, wherein the ISD procedure was mandated with prospective effect, an overhaul of the procedural proposals in context of ISD would result in a streamlined process, thereby resolving the existing issues surrounding ISD credit distribution.

For more budget updates, please view our comprehensive budget analysis report **here**.

GSTN issues advisory on introduction of Table 14 & 15 in Form GSTR-1/IFF for e-commerce operators

The CBIC, vide Notification No. 26/2022-CT dated 26 December 2022, had notified CGST (Amended Rules), which introduced Tables 14 and 15 in Form GSTR-1 and IFF to capture the details of the supplies made through the ECO on which ECOs are liable to collect tax under Section 52 of the CGST Act.

Table 14 and 15 are now live on the GST portal and available in Form GSTR-1/ IFF from the January 2024 tax period.

The salient features of these tables are as under:

A. Table 14

- Details of supplies made through an ECO, on which TCS shall be collected under the CGST Act by such ECO, shall be reported under **Table 14(a) by the supplier.**
- The ECO-GSTIN wise summary of such supplies, which has already been reported in Table 4 to 10 of GSTR-1, shall be reported herein.
- Taxable value/liabilities will not be auto-populated from this table to GSTR-3B.
- Amendments will be reported under 14A(a).
- Details of the supplies made through an ECO, on which tax is payable under u/s 9(5) of the CGST Act by the ECO, shall be reported under **Table 14(b) by the supplier.**
- Summary details of such supplies' net of credit/debit note, shall be reported.
- Such values will be auto-populated to Table 3.1.1(ii) of GSTR-3B.
- Amendments will be reported under 14A(b).

B. Table 15

- Details of the supplies made through an ECO where tax is payable by the ECO under u/s 9(5) of the CGST Act by the ECO shall be under **Table 15 by the ECO.**
  - Such supplies shall not be reported elsewhere in GSTR-1/IFF.
  - **Registered supplier and registered recipient (B2B):** B2B supplies shall be reported at invoice level by an ECO. It will be available in the IFF as well. Debit/credit note (if any) shall be reported in Table 9B.
  - **Registered supplier and unregistered recipient (B2C):** Supplier level details, along with the POS and rate-wise details of the supplies in the nature of B2C, net of debit/credit notes, shall be reported herein. This option will not be available in the IFF.
  - **Unregistered supplier and registered recipient (URP2B):** Document level details of supplies, along with document details and the GSTIN of recipient, in the nature of URP2B, shall be reported herein. It will also be available in the IFF. Debit/credit note (if any) shall be reported in Table 9B.
  - **Unregistered supplier and unregistered recipient (URP2C):** POS and rate-wise details of supplies in the nature of URP2C, in the nature of B2C, net of debit/credit notes shall be reported herein. This option will not be available in the IFF.
  - Values shall be auto-populated in Table 3.1.1(i) of the corresponding GSTR-3B and liabilities shall be paid by an ECO in cash.
  - Amendments will be reported in Table 15A(I) & 15A(II).

C. Table ECO-documents in GSTR-2B

- ECO taxpayers have also been provided with an additional facility to pass the ITC to the registered taxpayers, receiving supplies under u/s9(5) of the CGST Act through such ECO.
  - New ECO-documents table has been added under 'all other ITC' section in GSTR-2B.
  - The registered recipient can access the document details of the supplies received through an ECO on which such ECO has paid tax under u/s9(5) of the CGST Act.
  - Values will be auto-populated under this Table from the B2B and URP2B section of Table 15.
  - To access the table - Navigate to Returns Dashboard > Selection of Period > Auto- drafted ITC Statement for the month GSTR 2B > View.
  - To view the records in the Table – Navigate to Returns Dashboard > Selection of Period > Auto- drafted ITC Statement for the month GSTR 2B > View > ECO Documents.

(https://www.gst.gov.in/newsandupdates/read/621)

Government of Jammu and Kashmir notifies the KAR-SAMADHAN-2024 scheme

The government of Jammu and Kashmir has notified the KAR-SAMADHAN-2024 scheme for the settlement of tax arrears pertaining to the period before the introduction of the GST.

Key features of the scheme:

Validity: The scheme is effective from 15 January 2024 to **30 June 2024.**

Enactments covered:

- Jammu and Kashmir General Sales Tax Act, 1962
- Jammu and Kashmir Value Added Tax Act, 2005
- Central Sales Tax Act, 1956

Benefits:

- Waiver of 100% of penalty and interest payable by the dealer under the following acts:
  - Under the J&K General Sales Tax Act, 1962, and Central Sales Tax Act, 1956, relating to assessment/re-assessment made, including yet to be assessed cases up to 7 July 2017 (for other than liquor dealers) and up to 31 August 2017 (for the liquor dealers).
  - Under the J&K Value Added Tax Act, 2005, and Central Sales Tax Act, 1956, relating to assessment/re-assessment made, including yet to be assessed cases till accounting year 2017-18 (up to 7 July 2017).
- Where the dealer has no arrears of tax but has arrears of penalty and interest only, relating to the assessments or re-assessments already completed and to be completed by or before **30 June 2024**, such arrears of penalty and interest shall be eligible for waiver.

Timeline for payments of principal tax and filing of application:

Month of filing application	No of installments	1st installment along with application	2nd installment	3rd installment	4th installment	5th installment	6th installment
January 2024	06	31 January 2024 (30%)	29 February 2024 (25%)	31 March 2024 (15%)	30 April 2024 (10%)	31 May 2024 (10%)	30 June 2024 (10%)
Februray 2024	05	29 February 2024 (55%)	31 March 2024 (15%)	30 April 2024 (10%)	31 May 2024 (10%)	30 June 2024 (10%)	
March 2024	04	31 March 2024 (70%)	30 April 2024 (10%)	31 May 2024 (10%)	30 June 2024 (10%)		
April 2024	03	30 April 2024 (80%)	31 May 2024 (10%)	30 June 2024 (10%)			
May 2024	02	31 May 2024 (90%)	30 June 2024 (10%)				
June 2024	01	30 June 2024 (100%)					

Note:

- The dealer can also deposit the principal tax in one go at any instant during the currency of the scheme.
- Default in payment of one installment shall be condoned on payment of the default installment, along with the additional amount of 0.5% of the default installment for every day of default and shall be paid before the due date of the next installment.
- The condonation of default shall be allowed only once during the currency of this scheme.

Eligibility:

- Any dealer registered under any relevant Act, who makes the full payment of principal tax, shall be granted a waiver of 100% of arrears of penalty, excluding penalty levied u/s 10 A of the CST Act, 1956, and interest payable.
- The benefit of the scheme shall also be extended to the industrial unit registered under any of the relevant acts.
- Where a dealer has filed an appeal or any application against the order or proceedings before any authority and disposal of such appeal/application is still pending, the dealer shall withdraw such appeal or other application by filing declaration on the portal **https://jkcomtax.gov.in/SROTAXES/.**

The dealer shall not be eligible to avail the benefits of this scheme where:

- The government has filed an appeal before the Jammu & Kashmir Appellate Tribunal;
- The government has filed an appeal or revision or any kind of application before the HC or the SC;
- Any competent authority has initiated suo-moto revision proceedings as up to and on the date of this government order; or
- Any rectification is made after **30 June 2024**.

Procedure for filing and processing of applications:

- The application shall be submitted online on the portal **https://jkcomtax.gov.in/SROTAXES/.** The copy of the application shall be forwarded to the Deputy Commissioner State Taxes (Recovery) of the concerned division of the UT of Jammu and Kashmir within seven days of filing the online application. In addition, the applications shall also be forwarded within seven days from the receipt of applications to the jurisdictional circle officers for scrutiny.
- The officer shall scrutinise the application and inform the dealer about the discrepancies within 20 days from the date of receipt of the application.
- After receipt of information, the applicant dealer shall pay the balance amount of tax to avail the benefits of this scheme within 15 days.
- The balance amount due shall be paid in accordance with the time period mentioned in the discrepancy notice.
- If the applicant-dealer is found eligible, the officer shall pass the order for waiving the balance amount of arrears on account of interest and penalty. The order of waiver shall be passed within 30 days from the date of making the full payment of principal tax.

Other terms and conditions:

In case of any appeal, any amount paid at the time of filing such appeal or during the pendency of appeal shall be eligible for adjustment towards the arrears of tax outstanding for the AY for which the benefit of waiver is claimed.

However, the dealer shall not be eligible for refund of any amount that may become excess as a result of such adjustment.

Any amount, already paid towards penalty or interest imposed/levied under the relevant acts before the issuance of this order, shall neither be refunded nor adjusted in any manner.

Any dealer, feeling aggrieved by the rejection of the amnesty application, will have an opportunity of presenting the case before the concerned officer within a period of 15 days from the date or receipt of communication regarding the rejection.

(Government order no.18 – FD of 2024 dated 15 January 2024)

The Himachal Pradesh Sadhbhawana Legacy Cases Resolution Scheme, 2023, extended till 31 March 2024

The government of Himachal Pradesh had notified the Himachal Pradesh Sadhbhawana Legacy Cases Resolution Scheme, 2023 (3rd Phase), vide Notification No. EXN-F(10)-17/2022 dated 30 September 2023. The scheme was introduced for the disposal of pending assessment cases, as well as pending arrears related to the subsumed enactments under the HPGST Act. The third phase was effective for a period of three months with effect from 1 October 2023 till 31 December 2023.

The government has extended the time limit to avail benefits under the scheme vide Notification No. EXN-T (10)-17/2022 dated 18 January 2024 till **31 March 2024.**

Key features:

Applicability: The scheme shall apply to:-

- Settlement of any additional demand pending for recovery pertaining to a FY or any return period in respect of which the assessment has been made, or

Settlement of the pending assessment and settlement of any demand on account of tax, penalty and interest that may accrue because of the determination of tax liability of such pending assessment under a subsumed enactment.

Settlement:

Status of statutory form under subsumed enactments	Particulars	Settlement fees
No pending statutory forms	All periodical returns filed within the stipulated time, along with the tax due.	No settlement fee.
	Periodical returns filed after the stipulated time and tax dues paid as per such returns.	10% of the tax paid after the due date of filing the return or payment of tax.
	Periodical returns not filed, and taxes dues not paid.	110% of the tax amount applicable on the taxable turnover of such FY or any return period as per the provisions of the subsumed enactment and declared in the declaration under the scheme.
Pending statutory forms	Based on statutory forms produced either at the time of assessment or not filed, along with the declaration under the scheme.	Higher of: 100% of the tax paid against the total turnover pertaining to statutory forms, or 1% of the value of the turnover pertaining to the statutory forms not produced at the time of assessment or not filed, along with the declaration under the scheme.

(Notification no. EXN-F(10)-17/2022 dated 18th January 2024)

The Karnataka Karasamadhana Scheme-V for recovery of excise dues extended till 31 March 2024

- Earlier, the government of Karnataka had notified the Karnataka Karasamadhana Scheme-V vide Notification No. FD 03 PES 2023, dated 5 October 2023. Under this scheme, relief in the form of waiver of interest and penal interest dues were to be granted to the taxpayers who were liable to pay the principal amount in respect of arrack/toddy rentals or other excise dues. The scheme was effective for a period of three months with effect from 5 October 2023 till 2 January 2024.
- The state government has extended the time limit to avail benefits under the scheme vide Notification No. FD 03 PES 2023 dated 20 January 2024 till **31 March 2024.**

Eligibility

- A defaulter who is an individual, a company/group of companies, a firm/firms or a trust that has excise arrears outstanding as on the date of introduction of this scheme.
- The scheme shall also apply to those who do not have arrears towards the principal amount in individual capacity but who might as a partner/trustee/director of the firm/ trust/company have incurred liability.
- Those who have only the interest outstanding and do not have arrears towards the principal amount pertaining to the period prior to 30 June 2007.

(Notification No. FD 03 PES 2023 dated 20th January 2024)

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

Functionality for online uploading of authorisation/Licences under advance authorisation and Export Promotion Capital Goods (EPCG) scheme

Pursuant to the NEEV, the Commissioner of Customs NS-II JNCH has introduced a functionality named X-MAS, i.e., Export promotion Monitoring & Analysis System, for the online uploading of licence details and other documents related to the advance authorisation and EPCG schemes.

In this regard, **Public Notice No. 02/2024 dated 11 January 2024** has been issued, outlining the procedure to be followed for uploading of licence details, installation certificate, first block export obligation and EODC details and documents on X-MAS. The functionality can be accessed using the link- **https://epsmmeclicenses.jnch.in/LicenseRegistration** and can be used for:

- Register licences;
- Submit installation certificate and completion of first block export obligation (for EPCG licenses);
- Submit EODC and documents for cancellation of licenses; and
- Check the status of licenses registered at JNCH.

The authorisation holders are advised to get their email ids and mobile numbers updated in order to use this facility appropriately. For updation, an email needs to be sent to the email id **epsmmc-jnch@gov.in** from the company email id.

(PUBLIC NOTICE NO, 02/2024 dated 11 January 2024)

DGFT issues clarification regarding import restrictions on IT hardware under HSN 8471

With effect from 3 August 2023, the DGFT has amended the import policy relating to Chapter 84 of the Schedule I (Import Policy) of ITC (HS) 2022 by restricting the import of laptops, tablets, all-in-one personal computers, ultra small computers, etc., covered under the specified sub-headings of HSN 8471, i.e., their imports will henceforth require a license. However, based on representation from trade, the applicability of such restriction was extended till 31 October 2023. Accordingly, with effect from 1 November 2023, a valid licence for restricted imports shall be required.

In this regard, the DGFT has issued a clarification that the import restriction is not applicable to any other category of goods such as desktop computers, etc., under the tariff head 8471.

The import of laptops, tablets, all-in-one personal computers, ultra small form factor computers and servers are 'Restricted' and their import should be allowed against a valid Import authorisation only.

(Policy Circular No. 09/2023-24 dated 12 January 2024)

Clarification regarding requirement of bond for movement from port to port under Export Transhipment (ETP)

Under the ETP module for movement of export cargo from one customs location to a gateway custom location when ETP is filed at the first customs location, a transhipment bond is mandatory for the transhipment of cargo. In this regard, it has been clarified that as per Regulation 9 (c) of SCMT Regulations 2018, no such bond is required for the transhipment of goods directly between two seaports through the sea route.

Further, necessary changes have been made in the system, and a transhipment bond is no longer mandatory for the etranshipment of goods directly between two seaports through the sea route.

(Public Notice No. 40/2024 dated 1 January 2024 read with ICES Advisory No. 33/2023 dated 26 December 2023)

CBIC extends custom duty exemption on import of hearable and wearable goods

Earlier, the CBIC vide Notification No. 11/2022-Customs, dated 1 February 2022, introduced the changes w.r.t. the customs duty regulations on wearable goods and hearable goods. This notification granted customs duty exemption on the import of both categories of goods that met the specified description outlined in the notification, provided they adhered to the conditions mentioned therein.

Rule 2(a) of the interpretative rules of the first schedule to the CTA, inter alia, provides for the assessment of articles presented in an unassembled or disassembled condition as complete articles.

Subsequently, an amendment was introduced vide Notification No. 33/2023-Customs, dated 27 April 2023, through which a proviso was inserted specifying that the exemption shall apply even when such goods are presented together in a manner to attract the provision of Rule 2(a) of the general rules of interpretation of the first schedule of the CTA.

In respect to this, the Central Government recently clarified that the exemption on wearable and hearable goods would also be provided during the period from **1 February 2022 to 27 April 2023**, when imported in a manner to attract the provision of Rule 2(a) of the general rules of interpretation.

(Notification No. 7/2024 – Customs (N.T.) dated 24 January 2024 and Notification No. 8/2024 – Customs (N.T.) dated 24 January 2024)

Scheme for Rebate of State and Central Taxes and Levies (RoSCTL) for export of apparel/garments and made-ups extended up to 31 March 2026

The scheme for RoSCTL for the export of apparel/garments and made-ups was introduced with an objective to compensate for the state and central taxes and levies, in addition to the duty drawback scheme on the export of apparel/garments and made-ups by way of rebate. It is based on an internationally acceptable principle that taxes and duties should not be exported, in order to enable a level playing field in the international market for exports. Hence, not only indirect taxes on inputs are to be rebated or reimbursed but also other un-refunded state and central taxes and levies are to be rebated. It makes apparel/garments and made-ups products cost-competitive and adopt the principle of zero-rated exports.

The Union Cabinet had given approval for the scheme up to 31 March 2020, and further approval was given for continuation till **31 March 2024**. The Union Cabinet has now approved the continuation of the scheme up to **31 March 2026.**

The continuation of this scheme for the proposed duration of two years will provide a stable policy regime, which is essential for long-term trade planning, more so in the textiles sector where orders can be placed in advance for long-term delivery. The continuation of the RoSCTL will ensure predictability and stability in policy regime, help remove the burden of taxes and levies, and provide a level playing field on the principle that goods are exported and not domestic taxes.

(Press release dated 1 February 2024)

02

Key judicial pronouncements

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

I. Key rulings under the GST laws

Anti-profiteering provisions are constitutionally valid - Delhi HC

Summary

The Delhi HC has upheld the validity of the anti-profiteering provisions contained under the CGST Act, read with CGST Rules (referred together as GST). The HC held that the anti-profiteering provisions under GST (impugned provisions) are in the nature of consumer welfare and not a price-control or a price-fixing mechanism. The HC categorically stated that a uniform formula or methodology could not be prescribed as 'no one size fits all,' and the profiteered amount has to be calculated on a case-to-case basis, considering the peculiarities of each case. Additionally, the benefit of a reduced tax rate or ITC can only be passed on by way of a commensurate reduction of price and not indirectly by increasing the grammage or festival discounts, etc.

Facts of the case

- Numerous companies engaged in diverse business sectors, such as hospitality, FMCG, real estate, etc. (the petitioners), had challenged the constitutional validity of the impugned provisions.
- The petitioners had also assailed the notices seeking to impose penalty and orders of the NAA confirming the penalty pursuant to the impugned provisions.
- The petitioners vide final orders of the NAA were directed to pass on the commensurate benefit of reduction in the tax rate or ITC to the consumers, along with interest.

Submissions of petitioners

- The petitioners emphasised that a financial exaction, as construed under the impugned provisions, was not valid in the absence of empowering provisions in the parent statute.
- Further, the impugned provisions were in the nature of excessive delegation upon the government, violating Article 14 of the Indian Constitution.

- It was highlighted that the absence of the definition of the term 'commensurate' and an explicit methodology, which is essential for determining and computing 'profiteering', gave an unfettered discretion to the NAA, leading to inconsistent interpretation of the impugned provisions.
- Emphasis was also drawn to the antiprofiteering provisions of Australia and Malaysia, where a clear procedure was laid down for determining profiteering.
- The impugned provisions neither prescribed a time frame during which the benefit of reduced price was to be maintained nor considered any other methodology for passing the commensurate benefit other than price reduction.
- Lastly, drawing reliance from the Sale of Goods Act, it was submitted that in a contract made post-reduction of the tax rate, the parties are free to agree on any price.

Submissions of Revenue

- Emphasising that 'anti-profiteering' is a mechanism of safeguarding consumers by ensuring that the benefit of ITC and reduction in tax rates accrues to the end customers and not appropriated by the suppliers, it was refuted that impugned provisions were in the nature of taxing provisions.
- It was stated that the impugned provisions were formulated pursuant to the goals of redistributive justice contained under DPSP.
- Highlighting the limited scope of judicial review in a fiscal statute, it was contended that the impugned provisions were 'with respect to' GST and did not violate the Indian Constitution.
- Contesting the issue of an excessive delegation to the NAA, it was emphasised that impugned provisions stipulated a 'commensurate' or an 'equivalent' reduction in price on account of the reduced tax rate or benefit of ITC availed by the supplier to extend such a benefit to the recipient of goods or services. Accordingly, the trivial aspects, such as procedure and methodology, can be determined by the NAA by subordinate legislation.
- It was highlighted that there could not be a uniform methodology for the computation of commensurate reduction in prices vis-à-vis profiteering, it being a purely mathematical exercise and would be different for each case.
- Refuting that the impugned provisions were in the nature of the price-fixing provision, it was highlighted that the antiprofiteering provisions of Australia and Malaysia, similar to the object of the impugned provisions, were aimed at prohibiting 'price exploitation' and 'making unreasonably high profits'.
- It was stated that the mere absence of a time frame up to which the reduced prices are to be maintained or the absence of a judicial member in the NAA would not render the impugned provisions unconstitutional. Further, the right to appeal is a statutory right and cannot be inferred or assumed absent the explicit provisions.
- Lastly, it was submitted that the timelines for passing the order by the NAA were directory in nature, and considering the wide ambit of impugned provisions, there was no limit to the scope of the examination. Further, the NAA has been vested with the power to impose penalty, and there is no retrospective application of penalty provisions.

Delhi HC's observations and judgement [W.P. (C) 7743/2019; Order dated 29 January 2024]

- **Impugned provisions are not a price control measure but rather a safeguard for consumers:** Highlighting the paradigm shift brought by the introduction of GST, the HC emphasised that the impugned provisions were brought to ensure that the benefit of reduced tax rates or ITC is passed on to the recipient by way of commensurate reduction in price. Drawing a correlation between the term 'commensurate' with the object of GST, the HC asserted that by reducing the tax rates, the government was foregoing the amount in favour of the recipient, which cannot be appropriated by the supplier, as it would be tantamount to unjust enrichment and would be against the object of the impugned provisions.

- **Formulation of impugned provisions within the legislative competence of the parliament:** The HC expounded the wide ambit of the expression 'with respect to', which includes all ancillary, incidental, and necessary matters, and asserted that the parliament and legislature are empowered under Article 246A of the Indian Constitution to formulate laws with respect to GST. Accordingly, the impugned provisions fall within the purview of the law-making power of the parliament.

- **Impugned provisions lay down a clear legislative policy rather than delegating any essential legislative function:** Apart from stipulating a commensurate reduction in price on account of tax reduction or benefit

of ITC, the impugned provisions specify the function, duty, responsibility, and powers to be exercised by the NAA, which would enable it to determine whether the benefit has actually been passed on or not. Accordingly, the impugned provisions neither assume excessive delegation nor suffer from the vice of ambiguity or arbitrariness. Therefore, they do not violate Article 14 of the Indian Constitution.

- **Impugned provisions are not a price-fixing mechanism:** Agreeing with the submissions of the respondent and the Ld. Amicus, the HC reiterated that the impugned provisions do not necessitate a price reduction but rather forbid the appropriation of tax foregone by the government in favour of the recipient by the supplier. The HC clarified that on the basis of a valid reason, the supplier should be permitted to offset the price reduction. The HC highlighted that the anti-profiteering provisions of Australia and Malaysia sought to regulate price, as against the impugned provisions, which only required passing off the benefit received to the end customer. Accordingly, the impugned provisions do not infringe upon the petitioners' fundamental right to trade.
- **Uniform methodology to determine profiteering not possible:** The HC opined that the 'no one size fits all' formula cannot be prescribed for determining the profiteered amount. The profiteered amount shall be computed using the appropriate methodology basis the peculiarities of the facts of each case. The HC invoked the trite principle that where the power to prescribe a procedure has not been exercised, the authority can adopt a fair and reasonable procedure at its own discretion to categorically affirm that where the procedure determined by the NAA is fair and reasonable, it cannot be probed for being not prescribed.
- **Substitution of benefit by an indirect method would not translate into passing on the benefit:** The HC emphasised that the manner of passing the benefit through reducing price is built into the impugned provisions and cannot be bypassed by substituting the benefit in the form of an increase in volume or weight, or by the supply of additional or free material or festival discount or cross subsidisation. Consequently, the HC held that the benefit should reach the recipient in the form of 'cash in hand' by way of a reduction in prices.
- **Specific time period for operation of reduced price is not feasible:** The HC opined that the operation of the reduced price should continue till the time there is a direct correlation between the benefit of the reduced tax rate or ITC with the consequently reduced price and there is no other factor countering it. Therefore, prescribing a specific time frame towards the operation of the reduced price would not be in consonance with the scheme or intent of GST.
- **Right to appeal is a creature of the statute and not a vested right:** Emphasising that the impugned provisions prescribe a comprehensive mechanism for initiation and conduct of proceedings, the HC held that the examination of facts at different levels signifies the presence of appropriate precaution and redressal measures. Moreover, there is no judicial oversight over the decisions of the NAA, as remedies have been sought against such decisions in writ proceedings under Article 226 of the Indian Constitution.

- **Presence of judicial member not mandated in NAA:** The HC asserted that the NAA is a fact-finding authority that investigates whether the benefit has been rightly passed on to the recipient or not and does not function as a judicial body. Highlighting that similar statutory bodies, such as the TRAI, Medical Council of India, and the ICAI, also perform quasi-judicial functions without having judicial members, the HC held that the NAA could perform its functions without a judicial member.
- **Imposition of interest and penalty has been read into the impugned provisions:** The HC held that the ambit of impugned provisions was wide and empowered the government to levy interest and penalty. The impugned provisions prescribed interest at the rate of 18% from the date of collection of the higher amount till the date of return and a prospective penalty as a deterrent against profiteering by the supplier. In addition to the interest and penalty, the additional GST collected on a higher amount shall also be part and parcel of the profiteered amount.
- **Beneficial legislation shall be given liberal interpretation:** Underscoring the principle that beneficial legislation has to be construed liberally, the HC reiterated that the impugned provisions were for consumer welfare. On the basis of this, it was held that the timeline prescribed for furnishing the report by the DGAP was directory and not mandatory. Further, the HC held that the jurisdiction of the DGAP under the impugned provisions is wider and cannot be limited to the examination of goods and services in respect of which complaint is received. Accordingly, the expansion of investigation beyond the scope of the complaint is not ultra vires. Basis the above, the HC upheld the constitutional validity of the impugned provisions.

Our comments

A long spell of deliberations between the department and the taxpayers concluded with this judgement, wherein the HC upheld the constitutional validity of the anti-profiteering provisions.

The silver lining is that the HC admitted that there may be arbitrary exercise of power under the impugned provisions by expanding the scope of proceedings or failure to consider genuine variations in factors such as input costs, skewed ITC, etc., which may be set aside on a merit. Accordingly, the unfavourable orders may be assailed considering the above factors.

The pertinent question that can be a cause of confusion for the taxpayers is the different computation methods adopted by the NAA for the same industry players. The HC struck down the indirect benefit passed to the consumer in the form of an increase in the volume or free supply not being in the nature of 'cash in hand'. Accordingly, a clarification in this regard is expected, as the matter has been listed for appropriate directions on 8 February 2024.

Given the significant stakes involved, it would be interesting to watch out if the matter reaches before the apex court for the final resolution. In the meantime, the taxpayers should be mindful of the principles established by the Delhi HC.

Gift voucher is an actionable claim, taxable at the time of issuance only in case of specified and identified goods - Madras HC

Summary

The Madras HC has upheld that a voucher itself does not qualify as either a good or a service under Schedule III of the CGST Act, and consequently, gift vouchers, in their essence, are not subject to tax under the GST regime. However, modifying the AAAR's decision with respect to the time of supply, the HC emphasised that the supply associated with the voucher is classifiable according to the nature of goods or services supplied in exchange for the voucher issued to the customer. Accordingly, the timing of tax liability is contingent upon whether the gift voucher/card are issued for specified goods or for merchandise of a particular value. It clarified that in instances where the gift voucher pertains to identified goods, tax liability would arise at the time of issuance of the gift voucher, whereas in all other cases, the date of redemption of such voucher would be construed in terms of GST provisions.

Facts of the case

- M/s Kalyan Jewellers India Limited (the petitioner) is engaged in the business of manufacturing and trading ornaments. As a part of sales promotion, it had introduced a facility of PPIs called as gift vouchers/gift cards.
- The petitioner sought an advance ruling before the Tamil Nadu authority to understand the tax implications and time of supply provisions in case of issuance of PPIs to the customers.
- The Tamil Nadu AAR had held that PPIs are supply of goods and the time of supply of such gift vouchers shall be the date of issue if the vouchers are issued specific to any particular good; otherwise, it shall be at the date of redemption.
- Aggrieved by the above ruling, the appellant had filed an appeal before the Tamil Nadu AAAR.
- The AAAR modified the AAR ruling and held that a voucher is a means for advance payment of consideration, and it is neither a good nor a service under the GST law.
- However, the AAAR held that the time of supply of the gift vouchers by the applicant to the customers shall be the date of issuance of such vouchers.
- Subsequently, aggrieved by the above ruling, the petitioner filed the present writ petition before the HC.

Petitioner's contentions

- The gift vouchers or PPIs are governed by the Payment and Settlement Act, 2007, and the Master Directions issued by the RBI.
- The petitioner submitted that the transaction can be taxed only at the time of the actual sale of the goods, i.e., at the time of redemption of the gift vouchers by a customer. Accordingly, tax liability should not arise at the time of issuance of such vouchers.
- Alternatively, it was contended that gift vouchers are in the nature of actionable claims, and by virtue of Schedule III of the CGST Act, these are not liable to tax.

Madras HC's observations and judgement [Writ Petition No. 5130 of 2022; Order dated 27 November 2023]

- **Gift voucher is in nature of PPIs:** The HC analysed the nature of vouchers issued by the petitioner and noted that the vouchers are valid for a particular period and are refundable at the time of expiry. However, one of the vouchers issued is non-refundable. The HC held that if the amount paid is non-refundable, the gift voucher will not fulfil the requirement of the Master Direction.
- **Interpretation of the terms 'actionable claim,' 'vouchers', and 'debt':** The HC referred to the judgement of the SC in the case of Sunrise Associates, wherein it was observed that the definition of goods specifically excludes the actionable claim under the erstwhile laws. However, the HC perused the definition of goods as prescribed under the CGST Act, which clarifies that the actionable claims are included in the definition of goods. The HC referred to the different enactments and educational guide that was issued by the CBIC to further analyse the definition of 'voucher', 'debt', 'instrument' and 'actionable claim'.
- **Gift voucher is a debt instrument:** After the exhaustive interpretation, the HC acknowledges that gift vouchers are in the nature of a debt instrument, which can be redeemed on a future date on their presentation towards sales consideration for the purchase of merchandise from any of the petitioner's retail outlets.

- **Customer has a right to approach the civil court to enforce the rights:** The HC noted that there is an obligation on the petitioner to accept the amount specified in the gift voucher, and if the amount paid is not credited into the account of the customer after the expiry period, the customer would have a right to recover the amount as per the RBI's Master Direction. Therefore, a right to approach a civil court to recover the amount can be exercised by the customers.
- **Gift voucher qualifies as an actionable claim:** The HC emphasised that a gift voucher is a DC. It is like a frozen cash received in advance and thaws on its presentation at the retail outlet for being set off against the amount payable by a customer for the purchase of merchandise sold by the petitioner. Therefore, it is an actionable claim, and by the virtue of Schedule III of the CGST Act, such vouchers are not liable to be taxed. The HC noted that only the underlying transactions are taxable and noted that the impugned order passed by the AAAR, stating that it was irrelevant to analyse the voucher as an actionable claim, was not correct.
- **Determination of time of supply:** The HC held that the time of supply of gift vouchers shall be the date of issue if the vouchers are issued for a certain item of jewellery of specified value because there is transfer/supply under GST. Pertinently, these would be taxable irrespective of the fact that sale consideration is either paid in advance or paid over a period of time or later. However, if the vouchers are redeemable against any unspecified goods, the time of supply shall be the date of redemption.

Our comments

The taxability of gift vouchers has been a longstanding source of legal contention under the GST, as well as the erstwhile regime.

Under the pre-GST era, the apex court, in the case of Sodexo SVC India Limited, held that food vouchers are not goods but means of payment instruments that become taxable only when they are redeemed.

Earlier, the Karnataka HC, in the case of M/s. Premier Sales Promotion Pvt. Ltd., held that the issuance of vouchers is similar to pre-deposit and not supply of goods or services. Therefore, the vouchers are neither goods nor services and are not taxable.

The present ruling is on similar lines and will help in providing the required clarity on the taxability of vouchers.

Single SCN spanning multiple FYs cannot be issued by GST authorities – Madras HC

Summary

The Madras HC has held that while carrying out the adjudication proceedings for more than one FY simultaneously, the department shall issue the SCNs separately for each of the FY. The HC rendered the judgement by stating that Section 73(10) of the CGST Act has prescribed the timelines within which a SCN can be issued. Where the timelines for the issuance of a SCN has already been prescribed, the department is bound to adhere to the same. Where the timelines for any FY has already expired, the department cannot issue a SCN for such period by consolidating it with the subsequent FYs.

Facts of the case

- Titan Company Limited (the petitioner) was issued a single SCN for five consecutive FYs, i.e., for the period 2017-18 to 2021-22.
- The petitioner filed a representation before the GST authority to split the SCN and issue the same separately for each FY, which was not considered by the said authority.
- On the non-consideration of such representation made before the GST authority, the petitioner filed the present petition before the Madras HC.

Issue before the HC

- Whether a single SCN can be issued by the GST authority spanning multiple FYs?

Petitioner's contentions

- The petitioner argued that a single SCN for more than one FY cannot be issued, as in the terms of Section 73(10) of CGST Act, a SCN shall be issued within three years from the due date of furnishing of the annual return for that FY. Therefore, the time limit to issue a SCN for each FY is different.
- The petitioner also argued that if a single SCN will be issued by the GST authorities for multiple FYs, then such act will allow the said authorities to extend the period of limitation by combing the SCN for the FY whose time limit has expired with that of subsequent FYs.
- Similar observations were also made by the GST Council in its 49th meeting, wherein it was stated that it is not desirable to extend the timelines for the issuance of a SCN in such a manner that it may lead to bunching of the last date of issuance of the SCN for multiple FYs. In view of the same, the time limits for the issuance of a SCN for a different FY were extended differently.

Madras HC's observations and judgement [W.P.No.33164 of 2023 and W.M.P.No.32855 of 2023, order dated 18 December 2023]

- **SCN shall be issued by following the timelines prescribed under CGST Act:** The HC relied on the submissions made by the petitioner that in terms of Section 73(10) of CGST Act, SCNs shall be issued within a period of three years from the due date of furnishing of Annual Return for the said FY. Therefore, limitation period of three years shall be separately applicable for each FY.

- **Department is acting beyond what is provided under the GST law:** The HC held that by disregarding the timelines provided under Section 73(10) of CGST Act, the department has acted beyond what is prescribed under the GST law. The department is bound to follow the timelines for the issuance of SCN and act accordingly. On the basis of such findings, the HC disposed of the present writ petition in favour of the petitioner.

Our comments

In terms of Section 73(10) of the CGST Act, the time limit for the issuance of a SCN is three years from the due date of filling of the annual return for that FY. Therefore, the time limit for the issuance of a SCN for each FY is different with the different due dates for furnishing the annual return.

Amid the current scenario, this is a welcome ruling by the HC, wherein the HC has stated that SCNs for different FYs shall be issued separately. Such ruling can be used by the taxpayers where they are issued a single SCN for multiple FYs to secure a favourable order from the courts by challenging the action of the department.

Interest liability does not arise where tax is deposited in the electronic cash ledger within the due date, but the return is filed belatedly – Madras HC

Summary

- The Madras HC has held that interest implications do not arise where tax is paid in the ECL within the stipulated deadline of filing Form GSTR-3B, even though there is a delay in filing the actual return. The HC emphasised that the payment of the tax to the government is not contingent on the actual date of filing GSTR-3B and can be made before the return is furnished. It clarified that GSTR-3B serves as a mechanism to ascertain that the registered person has discharged all tax liabilities, and the tax payment occurs when the amount is transferred to the government account maintained with the RBI.

Facts of the case

- M/s. Eicher Motors Limited (the petitioner) is engaged in the business of manufacturing motorcycles.
- Due to some technical glitches on the GST common portal, the CENVAT credit claimed by the petitioner by way of GST Tran-1 was not available as ITC in the electronic credit ledger.
- Consequently, the furnishing of Form GSTR-3B was delayed for the period of July 2017.
- However, the petitioner had deposited the tax dues for the respective period in the ECL within the due date of furnishing of GSTR-3B.
- Pursuant to the delay in filing, the petitioner was not able to file GSTR-3B for the subsequent months also, i.e., till December 2017.
- Subsequently, a Recovery Notice was issued to the petitioner for the nonpayment of interest on GST liability pursuant to the delay in filing GSTR-3B.
- Aggrieved by the above notice, the petitioner filed the present writ petition before the HC.

Issue before the HC

- Whether interest implications get attracted where GSTR-3B is filed after the due date of furnishing of such return, however tax dues are deposited in the ECL within the due date of filing such return?

Appellant's contentions

- The petitioner contended that the tax amount deposited in the ECL by way of challan amounts to payment of tax to the government, as such amount is remitted to the account maintained by the government with RBI.
- The petitioner also stated that the amount deposited in the ECL could not be withdrawn at the discretion of the taxpayer, and a refund application is required to be made for claiming a refund of the excess balance in ECL in terms of Section 54 of CGST Act.

Madras HC's observations and judgement [W.P.Nos.16866 and 22013 of 2023 and W.M.P.No.32200 of 2023, order dated 23 January 2024]

- **The tax amount can be paid to the government before furnishing the Form GSTR-3B:** The HC stated that in terms of Section 39(1) of the CGST Act, a registered person is required to pay the tax amount prior to filing GSTR-3B as payment details form part of said return. Further, the beneficiary bank is RBI, where the tax dues are required to be deposited by way of challans. Therefore, payment of tax dues by way of challans amounts to payment of tax to the government as the said amount is remitted to RBI.

- **Actual date of filing GSTR-3B is immaterial for the payment of tax to the government:** The HC disregarded the judgement rendered by the Jharkhand HC in the case of RSB Transmission and stated that payment of tax can be made before filing of GSTR3B. As per the provisions under the CGST Act, the last date for the payment of tax to the government is the due date of furnishing of GSTR-3B, and the actual date of furnishing of such return is not relevant. In the instant case, as the tax has been deposited by the petitioner within the due timelines of GSTR-3B, interest liability will not arise.

- **Proviso cannot go beyond the scope of the main provision of the CGST Act:** The HC emphasised that the proviso to Section 50, which prescribes that interest shall be levied where the GSTR-3B is furnished beyond the due date, cannot override the main provisions of the CGST Act, i.e., Section 39(7) which relates to the due date of payment of tax to the government. Therefore, a levy of interest can arise only when there is a delay in payment of tax beyond the last date of furnishing of return.
- **Interest paid on refund of excess amount lying in ECL implies that the amount has been deposited to the government:** The HC noted that interest on delayed payment of refund for excess balance lying in ECL is paid by the government. This implies that such an amount is lying with the government, due to which interest is paid to the registered person. On similar grounds, the HC has allowed the present writ petition and held that no interest is required to be paid where the tax amount is deposited in the ECL but there is a delay in furnishing of GSTR-3B.

Our comments

This is a welcome judgement rendered by the Hon'ble Madras HC and is likely to safeguard the taxpayers from the interest implications where payment has been made in ECL within the due timelines of the monthly GSTR-3B return.

Earlier, the Gujarat HC, in the case of Vishnu Aroma Pouching Private Limited, had held that interest would not be applicable when the GST liability was deposited in the cash ledger, even if the return could not be filed owing to technical challenges in the GST portal. This ruling has been affirmed by the SC. Even under the erstwhile regime, the apex court in the case of Modipon Limited had taken a similar stance.

However, Jharkhand HC, in the case of RSB Transmissions, held a contrary stand and held that a mere deposit of the amount in the ECL on any date prior to the filing of GSTR-3B return does not amount to payment of tax due to the government. Telangana HC, in the case of Megha Engineering and Infrastructure Private Limited, took a similar view.

In the midst of these uncertainties, clarification from the GST Council would help resolve unwarranted litigation. Meanwhile, the taxpayers who faced difficulty in filing GST returns but ensured timely payment of tax may place reliance on this ruling.

Orrisa HC grants interim relief on the chargeability of higher GST rate on mining lease basis CBIC circular

The Orissa HC, in the case of **M/s. Tarini Minerals Private Limited [W.P.(C) No. 1709/2024]**, has granted an ad-interim relief on demand, alleging short payment of tax by the petitioner, on account of lower GST rate paid on 'licensing services for the right to use minerals'.

Brief facts

- The petitioner, having iron ore mines, paid GST under RCM on royalty at the rate of 5% for the period between 1 July 2017 till 31 December 2018 (prior period).
- Basis the Circular No. 164 /20 /2021-GST dated 6 October 2021 issued by the CBIC, it was clarified that service by way of grant of mining rights are liable to tax at the rate of 18% for the prior period. Accordingly, a show cause notice was issued to the petitioner alleging short payment of GST.
- The Notification No. 11/2017-CT(Rate) dated 28 June 2017 (Service Rate Notification), amended w.e.f. 1 January 2019, to specifically tax such services at the rate of 18%.

Submissions of the petitioner

- Assailing the impugned SCN and the above circular, the petitioner-contended liability to pay 18% GST retrospectively is onerous, irrational and in violation of the established principles.
- The petitioner asserted that the services of 'licensing services for the right to use minerals' classifiable under SAC 997337, are liable to GST at the rate of 5% as prescribed under the residuary entry vide Entry No. 17 of the service rate notification.
- The residuary entry prescribes that the 'same rate of central tax as applicable on supply of like goods involving transfer of title to goods', i.e., 5% in terms of Notification No. 1/2017-CT(Rate) dated 28 June 2017 (Goods Rate Notification), which is applicable on such services.
- Emphasising the trite principle that notification is effective from the date of publication in the official gazette, the petitioner stated that the amended rate of 18% shall be applicable prospectively and not retrospectively.

Observations of the court

- Noting that there was no specific rate prescribed for the above services in the prior period, the HC highlighted the established principle of law that substantive right cannot be put in jeopardy by bringing into operation fiscal law with retrospective effect.
- The HC admitted the writ petitioner stating that the petitioner successfully made a prima facie case demonstrating that the above services are liable to GST at the rate of 5% under residuary Entry Vide No. 17 of the services rate notification during the prior period.
- Underlining the requirement to evaluate the issue of retrospective application of 18% rate on such services, the HC directed the department to not pursue any coercive recovery till the next date of hearing.

The matter has been tagged along with Arvind Steels [WP(C) No. 3181/2022], wherein the same issue has been challenged.

Gauhati HC grants interim relief on GST demand arising on annuity paid for road construction

The Gauhati High Court, in the case of M/s. Dhola Infra Projects Limited [WP(C)/488/2024], has granted an ad-interim stay on the adjudication of a demand-cum-show cause notice issued to the concessionaire (the petitioner), seeking to demand tax, along with interest and equivalent penalty by levying GST on consideration paid in annuity for the construction of roads.

Brief facts

- The petitioner was awarded a construction contract of 12.9 m wide bridge, along with 2 lane connecting roads on built, operate and transfer (BOT) annuity basis.
- A concession agreement between the petitioner and the Ministry of Road Transport and Highways (MoRTH) for the execution of work project covered both the composite services of construction of bridge and roads and post-completion operation and maintenance of the bridge and roads for the concession period of 17 years and 6 months, against an annuity payable during the concession period.

Submissions of petitioner

- In the 22nd GST Council meeting, it was deliberated that 'toll' is a payment made by the users of roads to concessionaires for usage of roads, and 'annuity' is an amount that is paid by the National Highway Authority of India (NHAI) to concessionaires for the construction of a road. Accordingly, it was suggested in the GST Council meeting that such annuity, being a consideration against services of concessionaires to the NHAI, be exempted.
- Drawing reference from the above, the petitioner submitted that pursuant to the GST Council meeting, Entry No. 23A was inserted in Notification No. 12/2017-CT(Rate) dated 28 June 2017 (Exemption Notification), hereby granting exemption to 'services by way of access to a road or a bridge on payment of annuity', thereby crystallising the suggestion. On account of the above exemption, the petitioner was obtaining exemption.
- Assailing Agenda No.6 of the 43rd GST Council meeting and the consequent CBIC Circular No. 150/06/2021-GST dated 17 June 2021, which clarified that GST shall be applicable on the construction of a road against consideration in the form of deferred payment, i.e., annuity, and which is the premise of the impugned demand notice, the petitioner submitted that the scope or applicability of the exemption notification can be clarified only by the central government by issuing an explanation to the notification within a period of one year.
- Additionally, the Karnataka HC, in the case of DPJ Bidar-Chincholi (Annuity) Road Project Private Limited, had quashed the CBIC circular and held that annuity is payable to concessionaires in lieu of toll charges.
- The above exemption entry was omitted w.e.f. 1 January 2023, pursuant to which the petitioner paid necessary dues.

Observations of Gauhati HC

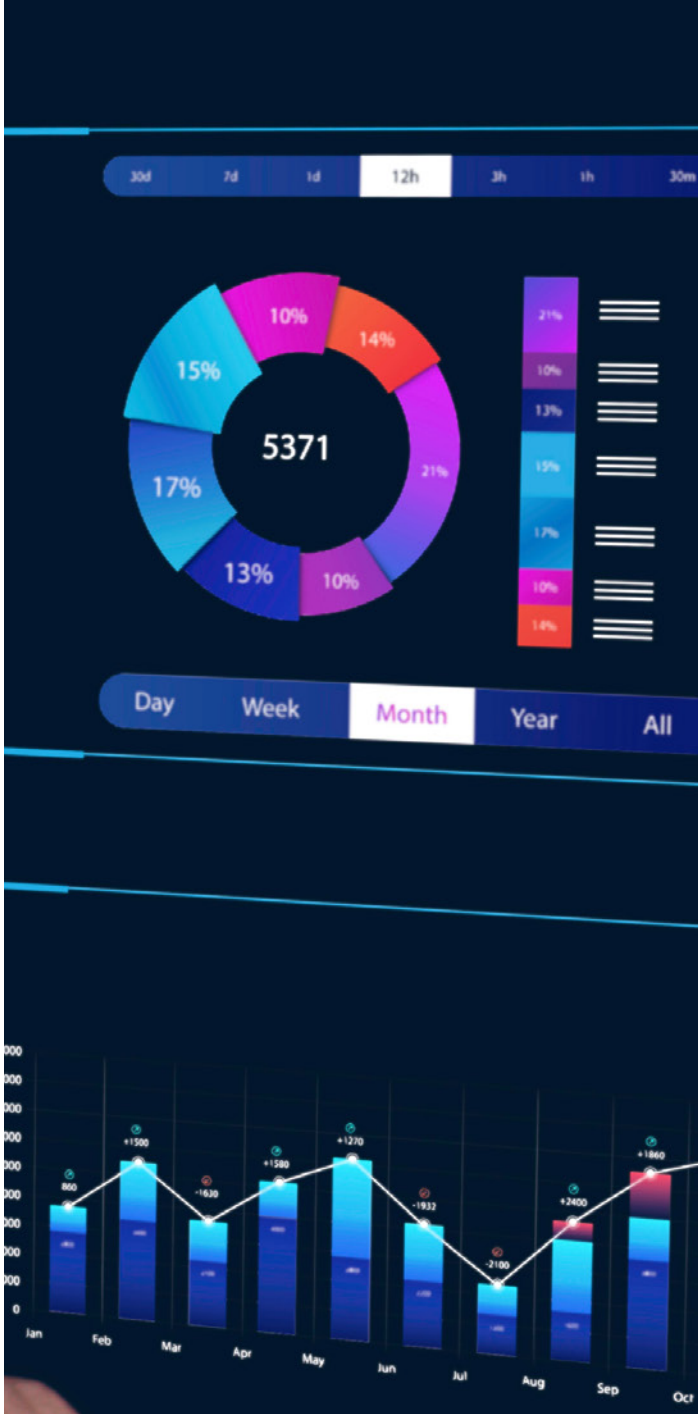
- Considering the submissions of the petitioner, the HC granted an ad-interim relief and kept the impugned demand-cum-show cause notice in abeyance.

The matter is listed on 6 March 2024 for subsequent hearing

Our comments

The dispute arose on account of divergent rulings by the AAR and AAAR on this issue. The Haryana AAR, in the case of M/s. Pioneer Partners, and Chandigarh AAR, in the case of M/s. NMDC, had ruled that the service of grant of mining lease is classifiable under SAC 997337 and liable to GST at the rate of 5% in terms of the residuary entry in Entry No.17 of the service rate notification, for the prior period. While the Orissa AAAR, in the case of M/s. Penguin Trading and Agencies, held that such services, although classifiable under the same SAC, are liable to GST at the rate of 18% on the premise that mining lease by the government, not being a lease of any goods, cannot attract the rate applicable to the sale of like goods.

The issue was evaluated in the 45th GST Council meeting, wherein it was recommended that the service shall be liable to 18% basis the principle laid in the 14th GST Council meeting to tax residuary services at 18%. On the basis of the recommendation, the impugned circular was issued.



II. Key rulings under the erstwhile indirect tax laws

SC issues notice against CESTAT's order holding that service tax is not leviable on royalty paid to the government for grant of petroleum mining lease rights.

In the case of M/s Reliance Industries Limited (the appellant), the CESTAT, Mumbai **[Service Tax Appeal No. 85441 of 2021]**, had set aside the order rejecting refund of the service tax paid on the royalty paid by the appellant to the government of India for the grant of petroleum mining lease.

Facts of the case

- The appellant is engaged in the business of developing, exploring, and producing crude oil and natural gas. The government took a policy decision to enter into public-private partnerships with private parties, with a view to optimise the production of natural resources. In pursuance to the above, the government entered into a PSC with the appellants, along with the other PIO. The contract determines the participating interest of each of the holders.
- The Revenue contended that the appellant had not paid tax on royalty paid to the government against the petroleum mining lease provided to the appellant. It submitted that the services provided by the government were taxable by virtue of S.No. 6 of Notification No.30/2012-ST dated 20 June 2012.
- Reliance is drawn on Circular No.192/02/2016-ST dated 13 April 2016, wherein it was clarified that any activity undertaken by the government or local authority against a consideration constitutes a service.
- In this regard, the appellant paid tax under protest, but later filed a refund application that was rejected.
- Aggrieved by the same, the appellant had filed an appeal before the first appellate authority. Subsequently, the authority noted that service tax would be leviable on the activity of leasing of mining rights vide Entry No.61 of Notification No. 25/2012-ST dated 20 June 2012, and rejected the appeal.
- Thereafter, the appellant filed an appeal before the CESTAT and submitted that the PSC is a joint venture, where the coventurers, i.e., the government and the other PI holders, have come together for the common cause of exploring and exploiting natural resources. The costs incurred by the appellants for the conduct of the joint operations is the appellant's share of capital contribution to the joint venture, and consequently, there was no basis to hold that the appellant was rendering services to the government or any un-incorporated joint venture of the PI holders. A similar view was taken in the case of B.G. Exploration & Production India Ltd.

CESTAT's observations and ruling

- The CESTAT observed that in the PSC, each of the coventurers contributes to the success of the venture in their own way and work towards enhancing the benefits flowing therefrom.
- The CESTAT analysed Circular No.32/06/2018-GST dated 12 February 2018, wherein it was clarified that the payment of royalty for the mining of petroleum or natural gas to the government of India is not a consideration, and thus, not taxable. Relying on the same, it was noted that the impugned order is not sustainable.
- The CESTAT noted that on a similar issue, the decision in the case of B.G. Exploration & Production India Ltd was already held in favour of the appellant by holding that 'cost petroleum', which includes the payment of royalty, is not a consideration for service to the government of India, and thus, not taxable per se.
- It also opined that in another case of the appellant on a similar issue, the decision **[Final Order No. A/85552/2023]** has been granted in favour of the appellant.
- Therefore, considering the above analysis, the CESTAT set aside the impugned order and allowed an appeal in favour of the assessee.
- The Revenue had filed an SLP challenging the CESTAT's order quashing service tax levy on royalty paid by the appellant.

Status as on date

The SC [Civil Appeal Diary No(s). 49905/2023] has issued a notice pursuant to the Revenue's SLP and listed the matter for further hearing on **27 February 2024.**

SC upholds the HC order – granting of interest payment on the refund amount

In the case of **M/s Kirloskar Brothers Limited [W.P.(T) No. 3944 of 2022]**, the Jharkhand HC had set aside the rejection of the refund order, along with the interest payment. Aggrieved by the same, the Revenue had filed a SLP challenging the HC's order **[SLP (CIVIL) Diary No(s). 43335/2023].** However, the SC has upheld the payment of interest to be made to the taxpayer on the refund amount.

Issue

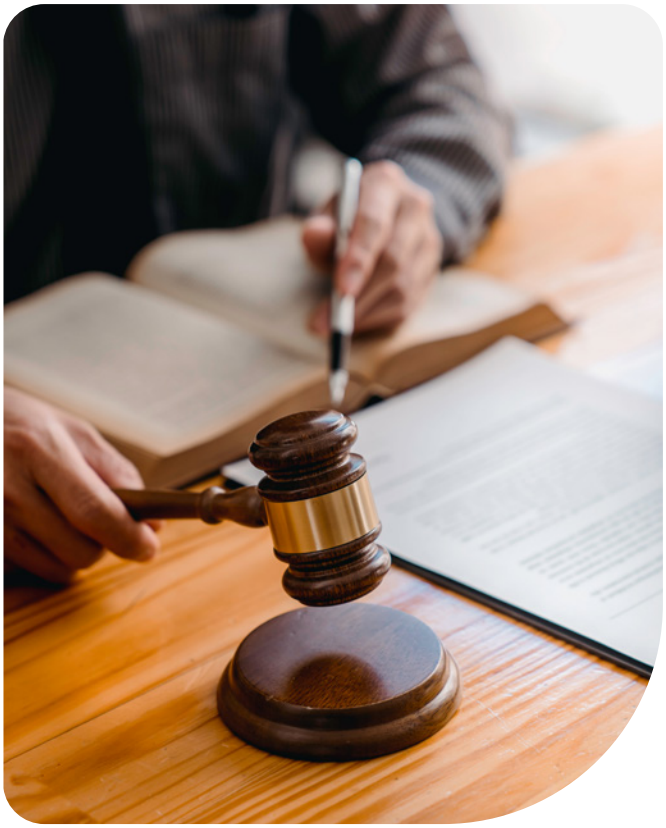
Whether interest payment is to be paid to the appellant as per the period prescribed in the Act in case of a delay in filing the refund application.

HC's observations and ruling

- In the instant case, the refund application was pending for a substantial period and was later rejected by the authorities on two substantial grounds.
- Firstly, there was a delay in filing the refund application, and secondly, on account of outstanding dues. According to the Revenue, there were outstanding tax dues of the taxpayer.
- Aggrieved by the same, the petitioner filed a writ petition before the HC.
- The HC placed reliance on the decision in the case of **Bharat Barrel and Drum Mfg. Co. Ltd.** and highlighted that where the legislature intends to provide the period of limitation, it specifically provides for the same in the main act. In absence of the same in the present case, the first ground of rejection of refund is not maintainable under law.
- The HC opined that the Act does not envisage denial of the refund application on the ground of existing dues.
- Later, the HC also highlighted the fact that dues that were outstanding were not liable to be paid was upheld by the apex court.
- Therefore, the HC held that a refund application cannot be rejected on the ground of limitation.
- The taxpayer placed reliance on Section 55 of the JVAT, 2005, stating that the interest on the refund amount should be paid for the period commencing 90 days after the application for a refund has been made.
- However, the Revenue filed a SLP before the SC, challenging the HC's order.

Supreme Court's observations and ruling

- The Revenue highlighted that on a similar issue earlier, the apex court **[SLP (C) Diary No. 41193/2023]** did not allow the payment of interest.
- The SC noted that there has been a continuing lapse on the part of the department on granting the refund amount, along with the interest payment.
- The SC held that 'the interest of justice would be sub-served, if the interest amount is directed to be paid w.e.f. 26 April 2023 (Date of the HC's judgement) till the date of realisation'.
- Considering the same, the SC has ordered to pay the refund amount within a period of four weeks.
- Therefore, the SC has disposed of the SLP in favour of taxpayers.



Royalty, being a tax in nature, not leviable to service tax – CESTAT

Summary

The CESTAT Chennai bench has held that service tax cannot be levied on the amount of royalty paid by the appellant to the state government for the assignment of the right to use for exploration and production of crude oil and natural gas. The CESTAT held that the royalty paid is in the nature of tax, not the consideration for services. It further held that royalty includes the element of both regulatory fees and compensatory fees. Therefore, in the absence of any mechanism to levy service tax on the amount that has the aspect of both regulatory fees and compensatory fees under the Finance Act 1994 (Finance Act), service tax cannot be levied, as royalty has a dominant element of regulatory fees.

Facts of the case

- M/s. Oil and Natural Gas Corporation (the appellant) is engaged in the exploration and production of crude oil and natural gas.
- A SCN was issued to the appellant for the non-payment of service tax under the RCM on the amount of consideration paid to the state government in the form of royalty for the assignment of right to use for exploration and production of crude oil and natural gas.
- An order was passed by the AA confirming the demand of service tax on the amount paid as royalty.
- Aggrieved by the order, the appellant filed the present appeal before the CESTAT Chennai bench.

Issue before the CESTAT

Whether service tax is payable on the consideration paid to the state government in the form of royalty for the assignment of right to use for the exploration and production of crude oil and natural gas?

Appellant's contentions

- The appellant relied on the judgement of the apex court in the case of Sri Lakshmindra Thirtha Swamiar and argued that the royalty charged under the ORD Act squarely falls under the ambit of tax and is not a consideration for services, as such royalty amount is a: i) Special impost under the ORD Act; ii) compulsory extraction from the licensee and; iii) fulfils the essential components of taxation under the ORD Act.
- The mining lease is granted by the state government pursuant to the powers provided to it by way of Entry 23 of List II of Schedule VII of the Constitution of India, which provides for the regulation of mines and minerals development. Therefore, the grant of mining lease is a regulatory function of the state government, and the amount of royalty paid is a regulatory fee.
- The appellant further argued that even if it is assumed that there is a service element in addition to the regulatory function performed by the state government, then also there is no machinery provision in the Finance Act that provides a mechanism for making a bifurcation between the regulatory fees and compensatory fees on which service tax is payable. Therefore, in the absence of any machinery provision, no service tax can be imposed.
- The appellant argued that the grant of mining lease by the state government cannot be an assignment of right to use natural resources, as the right in the land is never fully transferred by the government to qualify as an assignment. The government remains the owner of oil and natural gas that is extracted and has the right to regulate the distribution of such natural resources.
- Even if it is assumed that the grant of mining lease is a service of assignment of right to use natural resources, the taxable event for such service is a one-time event that takes place at the time of the assignment of right to use natural resources. In the instant case, the taxable event had already been occurred before such services came under the purview of service tax.
- The power to levy tax on mineral rights is provided in Entry 50 of List II, and therefore, only the state government has the power to levy taxes on mineral rights.

CESTAT Chennai's observations and judgement [Service Tax Appeal No. 41666 of 2018, order dated 9 January 2023]

- **Royalty is in nature of tax and not consideration for services:** The CESTAT relied on the SC's judgement in the case of India Cements Corporation Ltd and held that royalty is a tax and not a consideration for services.
- **Payment of royalty is hybrid in nature:** Royalty is in the nature of regulatory fees, as it is paid as per the provisions contained in the ORD Act and not on the basis of an agreement between the appellant and the state government. It can also be said to be a license fees for the right to extract the crude oil and natural gas. Therefore, royalty includes the element of both regulatory fees and license fees.
- **No mechanism to levy service tax on amounts with both elements:** The mechanism to levy service tax on the amounts that have the element of both regulatory fees and compensatory fees has not been provided in the Finance Act. The CESTAT held that royalty is dominantly in the nature

of regulatory fees, as the payment of royalty is a regulation of checking the overexploitation of resources. Therefore, the payment of royalty cannot be considered as service for the levy of service tax.

- **Exemption notification is not a charging provision and cannot create a duty liability:** The CESTAT relied on the judgement in the case of Kiran Spinning Mills, wherein it was held that the exemption notification is not a charging provision and cannot create a duty liability. Therefore, the CESTAT kept aside the mega-exemption notification and held that in terms of Section 65B (44) of the Finance Act, the given activity will fall under the ambit of 'renting of immovable property services.' Further, the CESTAT held that the department does not have a case that the activity of right to use natural resources falls within the ambit of 'lease', and amount paid as royalty is a 'rent.' Therefore, the CESTAT held that service tax cannot be levied under the RCM on the amount of royalty paid to the state government and allowed the appeal by setting aside the impugned order.

Our comments

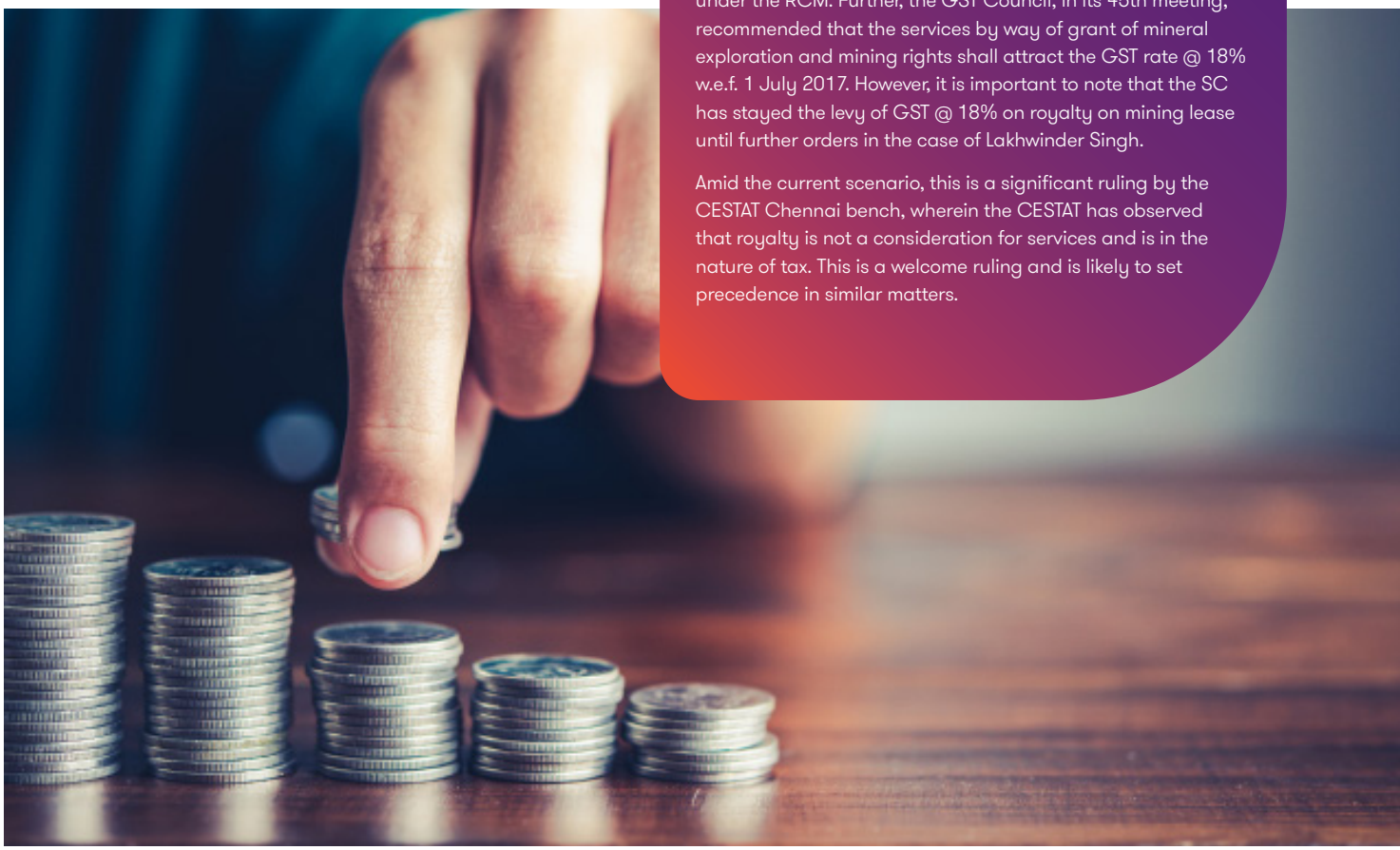
Taxability of royalty has been one of the contentious issues in the erstwhile service tax regime and the same situation continued even in the GST regime.

Earlier, the Rajasthan HC, in the case of the Udaipur Chamber of Commerce and Industry, had held that the royalty is nothing but a 'consideration' to have mining operations in the leased area on execution of a mining lease. However, it is pertinent to note that the SC has stayed the HC's judgement until further orders.

Post the above-mentioned stay by the SC, various HCs have granted an interim stay on the order for the levy/collection of service tax on royalty.

Even under the GST regime, the Board, through FAQs issued on levy of GST on royalty, has clarified that the activity of granting rights to use natural resources is treated as supply of services and the licensee is required to pay tax on the amount of consideration paid in the form of royalty or any other form under the RCM. Further, the GST Council, in its 45th meeting, recommended that the services by way of grant of mineral exploration and mining rights shall attract the GST rate @ 18% w.e.f. 1 July 2017. However, it is important to note that the SC has stayed the levy of GST @ 18% on royalty on mining lease until further orders in the case of Lakhwinder Singh.

Amid the current scenario, this is a significant ruling by the CESTAT Chennai bench, wherein the CESTAT has observed that royalty is not a consideration for services and is in the nature of tax. This is a welcome ruling and is likely to set precedence in similar matters.



CESTAT affirms Commissioner's order holding that department solely cannot place reliance on difference in turnover in income tax return and service tax return

The CESTAT Mumbai, in the case of M/s SBI Life Insurance Company Ltd (the respondent) **[Service Tax Appeal No. 86351 of 2021]**, had upheld the order passed by the department in favour of the taxpayers, holding that the department solely cannot place reliance on the difference in turnover in the income tax return and service tax return.

Summary

The Delhi HC has issued a notice to the Revenue in a matter concerning furnishing of a provisional duty bond for clearing capital goods imported by Acme Heergarh Powertech Private Limited (petitioner) [W.P.(C) 12386/2022], under the MOOWR. The petitioner has challenged the Instruction No. 13/2022-Customs dated 9 July 2022 issued by the CBIC.

Facts of the case

- M/s SBI Life Insurance Company Ltd. (the respondent) is engaged in providing different type of insurance services.
- On verification of the returns submitted by the respondent, the department observed that there has been a shortage on the payment of service tax on account of difference in the turnover as reported in service tax return and in Form 26(AS).
- The department noted that there was short reporting of turnover in service tax returns.
- In respect to this, the department issued a SCN.
- However, on adjudication of the above SCN, the Commissioner dismissed the demand.
- Aggrieved by the above order, the department filed an appeal before the CESTAT.

CESTAT's observations and ruling

- The CESTAT placed reliance on the decision of Rajashree Polyfil and noted that the certificate issued by the chartered accountant is alone a valid piece of evidence without corroboration.
- Furthermore, the CESTAT noted that there was a discrepancy in the demand order issued, as the figures of ITR of the year 2012-13 were compared with Service Tax-3 Return of the subsequent year 2013-14.
- Further, it was pointed out that three different percentages of service taxes were leviable against the services rendered by the respondent for different insurance categories, but the SCN contains a calculation of demand based on its calculations at the higher rate only.
- Basis these grounds, the CESTAT noted that the SCN issued was not free from discrepancies.
- It also placed reliance on the decision of the Mumbai CESTAT in the case of M/s Umesh Tilak Yadav, wherein it was noted that the service tax is leviable on the consideration received by the appellant on the service provided and the department solely cannot place reliance on the difference in turnover.
- Therefore, the CESTAT held that the SCN is not sustainable under law and upheld the order passed earlier by the Commissioner.

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

SC upholds Delhi HC's order holding that service provider is not required to hold a valid IEC at time of rendering services

Earlier, the Delhi HC, in the case of **Hyatt India Consultancy Private Limited** and Uber India Systems Private Limited (the petitioner) **[WP(C) 7144/2022]**, had dismissed the writ petitions in favour of taxpayers, holding that a service provider is not required to hold a valid IEC at the time of rendering the services, for which benefit under the SEIS is claimed.

The revenue had filed a SLP challenging the HC's order. The SC has dismissed the SLP and upheld the HC's order [Special Leave Petition (Civil) Diary No. 2305/2024].

Facts of the case

- The petitioner is engaged in providing export services, i.e., accounting and book-keeping services. The petitioner earned a NFE of USD 2,957,322.83 in FY 17-18 and was eligible for claiming benefit under the duty credit scrips under the SEIS scheme as introduced under the FTP.
- The Foreign Trade (Development and Regulation) Amendment Act, 2010, was introduced to amend Section 7 of the FTDR, which provided that in the case of export or import of services or technology, the IEC shall be necessary only when the service or technology provider is availing benefit under the FTP or is dealing with specified services or specified technology.
- Accordingly, the petitioner applied for an IEC as required under the relevant statutory provisions, on 6 February 2022, in the prescribed Form ANF-3B.
- However, under the Clause 3.08(f) of the FTP, a condition was imposed of having an active IEC number at the time of rendering services for claiming a reward.
- Subsequently, a deficiency memo was issued by the department, wherein it was categorically stated that for FY 17-18, the petitioner would not be entitled to be benefitted under the SEIS scheme, as the petitioner has obtained the same on 6 February 2022.
- The petitioner submitted a response to the same, stating that the requirement to obtain an IEC is only a procedural requirement.
- Being unsatisfied with the reply order of the petitioner, the department again issued a deficiency memo rejecting the benefit of the SEIS scheme.
- The petitioner submitted that as per the mandate of Section 7 of the FTDR, it is compulsory for the importer to have an IEC for such imports or exports. However, the tribunals and authorities under the Customs Act have taken a view that the absence of an IEC is only a tactical approach, which can be condoned.
- The petitioner submitted that the actions of the department has violated their fundamental rights under Articles 14, 19(1)(g), as well as the rights under Article 300A of the Constitution.
- The petitioner placed reliance on the decision of the Mumbai HC in the case of Smarte Solutions Pvt. Ltd, wherein it was held that a service provider is not required to hold a valid IEC at the time of rendering the services, for which the benefit under the SEIS is claimed.
- Aggrieved by the above, the petitioner filed an appeal before the Delhi HC.

Delhi HC's observations and ruling

- The HC noted that Notification No.24/2015-2020 dated 8 August 2018 was issued, notifying that for services exports, the IEC shall be necessary as per the provisions in Chapter 3 only when the service provider is taking benefits under the FTP.
- The HC opined that under the FTP, the condition is of having an active IEC number at the time of rendering services for claiming a reward. The FTP being a delegated legislation, it should be in conformity with the principal statute.
- The HC placed reliance on the decision of the Mumbai HC in the case of Smarte Solutions Pvt. Ltd and noted that the FTP has imposed additional restrictions on having an IEC number at the time of rendering services, which was not the intent or purport of the statute.
- The HC held that the said condition is against the principal legislation, and consequently, it cannot be termed of a mandatory nature for availing benefits under the scheme.
- Therefore, the HC allowed the writ petitions.

SC dismisses Revenue's review application against CESTAT's order holding that transaction value of import of power plant cannot be rejected

The CESTAT Mumbai, in the case of Adani Power Maharashtra Ltd. (the respondent/APML) **[Final Order No. A/85641/2022],** had upheld the order passed by the adjudicating authority holding that the over-valuation was not done in respect of the goods imported by APML and APRL for setting up power projects in the states of Maharashtra and Rajasthan.

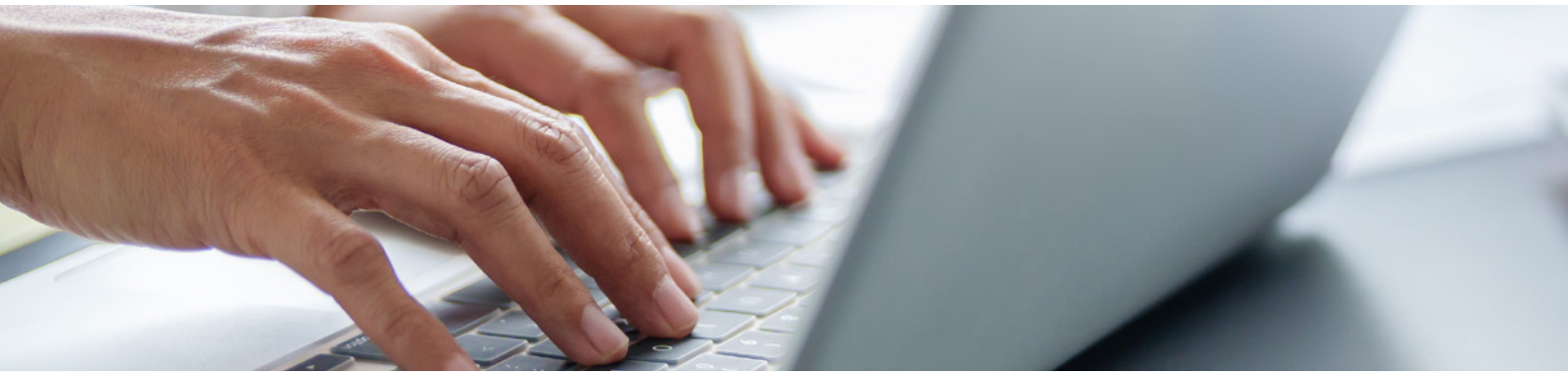
Recently, a review application was filed before the SC **[Review Petition (Civil) Diary No. 38868 of 2023]**, which has been dismissed.

Facts of the case

- The respondents are 100% subsidiaries of Adani Power Limited, engaged in operating thermal power plants.
- They are being engaged in a project to set up power-generating stations in the states of Maharashtra and Rajasthan.
- In respect to this, they had imported goods and services under a turnkey EPC contract.
- The contract was awarded to a foreign-based export company through an ICB at a lump sum value.
- Subsequently, the foreign export company was taken over by a company owned and controlled by a promoter/shareholder holding more than 8% shares in the importer's parent company. This resulted into creating a related party relationship.
- Consequently, the department issued a SCN alleging that the goods imported by the respondent were overvalued on the ground that the invoices issued by the OEMs to exporters were issued at a lower value than the invoices issued by such exporters to respondents.
- The department submitted that this was done to siphon off foreign exchange abroad for the benefit of their related entities.
- Thereafter, the AA ordered that even if a relationship was found to be established between the respondent and the exporter, the same had not influenced the price of the imported goods. As a result, the proceedings were dropped off.
- Aggrieved by the above order, the department filed an appeal before the CESTAT.

CESTAT's observations and ruling

- The tribunal noted that the foreign exporter had entered into a separate contract with the OEM for merely supplying goods to the respondent/importer. This contract cannot be compared to another contract between importers and exporters, terms and conditions of which were more stringent that led to an escalation in the price.
- The tribunal noted that the EPC contract was awarded to the exporter (being the lowest bidder) and after following the ICB process.
- The tribunal noted that the allegations were raised on the invoices issued by the OEM to the exporter and opined that such invoices were not admissible as evidence under Section 138C (2) of the Customs Act.
- The tribunal has also upheld the finding of the AA that the entire contract registered under the PIR has to be assessed as a whole and the department was not permitted to look into the assessment of an individual consignment, as this would be contrary to the provisions of Chapter 98.01 of the CTA.
- Therefore, the CESTAT upheld the order passed by the AA.



SC upholds CESTAT's order holding that appellant is not acting as an intermediary w.r.t to sales promotion and other sales support services provided to overseas associate company

The CESTAT Mumbai, in the case of M/s Chevron Philips Chemicals India (the appellant) **[Service Tax Appeal No. 85491 of 2020]**, had allowed the appeal in favour of the taxpayers, holding that the appellant is not acting as an intermediary to the overseas entity and its customers.

The Revenue had filed a SLP before the SC challenging the said order **[CIVIL APPEAL Diary No(s). 51950/2023]**. The SC has dismissed the Revenue's SLP and upheld the CESTAT's order, which held that the appellant is not acting as an intermediary.

Facts of the case

- M/s Chevron Philips Chemicals India (the appellant) is engaged in providing sales promotion and other sales support services classified as 'Business auxiliary service' to its associate company, M/s Chevron Philips Chemicals Global, which is located outside India.
- Therefore, the appellant filed a refund application for claiming the refund of accumulated balance of unutilised Cenvat credit.
- However, on scrutiny of the refund application, a SCN was issued, alleging that the appellant had provided services as an agent of M/s CPC Global, and therefore, these should be considered as an intermediary.
- Subsequently, a demand order was issued confirming the above allegation, and the appellant was ordered to pay the requisite service tax amount.
- Aggrieved by the same, the appellant had filed an appeal before the CESTAT.
- Further to this, the appellant submitted that the relationship between the appellant and the overseas entity is not that of a principal-agent or broker-principal, and therefore, this cannot be termed as intermediary.

The appellant also submitted that the issue involved in the present case has already been settled in the Final Order No. A/87373- 87378/2019 passed by this tribunal in its own case.

CESTAT's observations and ruling

- The tribunal, on analysing the contract between the appellant and M/s CPC Global, noted that the relationship between the parties, as per the contract, is that of the independent contractor-contractee and not that as agents.
- Therefore, the appellant has not acted as an intermediary.
- The tribunal further noted that the services provided by the appellant to the overseas entity would qualify as export because the service fee charged by the appellant to its overseas group entities for provision of service has no direct nexus with the supply of goods by the overseas group entities to its customers in India.
- The similar view was taken by the tribunal in the case of Lubrizol Advance Materials and R.S. Granite Machine.
- Therefore, the tribunal allowed the appeal in favour of taxpayers.

Until the license/scrips has been cancelled by DGFT, custom authorities cannot initiate recovery proceedings – Madras HC

Summary

The Madras HC has held that recovery proceedings cannot be initiated by the customs authorities on the ground that any license or duty benefit instrument have been obtained by way of misrepresentation until such license or duty benefit instrument are cancelled by the issuing authority. The HC stated that the licencing authority is the only appropriate authority to determine whether duty benefit instrument has been obtained by way of misrepresentation, and where no action is taken by the licencing authority, customs authorities do not have jurisdiction to deny duty benefits on the ground that the instrument providing the duty benefit has been obtained by way of misrepresentation.

Facts of the case

- Jeena and Company (the petitioner) is in the possession of SEIS scrips pursuant to the license issued by the DGFT u/s 9 of the FTDR.
- The DRI issued a SCN alleging that such scrips were obtained by the petitioner from the DGFT by way of wilful misstatement and suppression of facts.
- Prior to the issuance of such SCN by the DRI, the DGFT had also issued multiple SCNs to the petitioner for the cancellation of SEIS scrips.
- However, the DGFT subsequently issued a letter to the petitioner, withdrawing all the SCNs issued earlier.
- The petitioner filed the present petition before the Madras HC, contending that the DRI does not have jurisdiction to deny duty benefit on the ground that SEIS scrips have been obtained by way of misrepresentation.

Issue before Madras HC

Whether customs authorities have the jurisdiction to initiate recovery proceedings on the ground that the duty benefit instrument has been obtained by way of misrepresentation where no action is taken by the licencing authority for the cancellation of such instrument?

Madras HC's observations and judgement [W.P.No.4005 of 2022 and W.M.P.Nos.4150 and 4152 of 2022 dated 29 November 2023]

- **Recovery proceedings cannot be initiated until the duty benefit instrument is cancelled by the DGFT:** The HC held that in terms of the circular, recovery proceedings may be initiated by the customs authorities u/s 28AAA of the Customs Act once the DGFT has initiated the proceedings for the cancellation of the instrument. However, such recovery proceedings can be finalised only after the instrument has been actually cancelled. Therefore, the DRI cannot recover any amount from the petitioner by way of issuance of the SCN where SEIS scrips are not cancelled by the DGFT.
- **Only the licencing authority has jurisdiction to challenge that licence issued:** The HC relied on the judgement of the apex court in the case of Titan Medical Systems (P) LTD, and held that the DGFT, which has issued license and SEIS scrips to the petitioner, is the only appropriate authority to conclude that the SEIS scrips are obtained by way of misrepresentation. Therefore, the customs authority cannot initiate recovery proceedings until the SEIS scrips issued to the petitioner are cancelled by the DGFT.
- **Petition allowed:** In pursuant to above, the HC allowed the present writ petition and ordered for a refund of the amount paid by the petitioner, during investigation and otherwise, along with an appropriate interest, within eight weeks from the date of the order.

Our comments

Section 28AAA of the Customs Act grant power to the customs authorities to recover the duty benefit availed where the instruments providing such duty benefit are obtained by way of willful misstatement or suppression of facts. Pursuant to the insertion of such provision in the Customs Act, a circular was issued providing that such recovery proceedings can be finalised only when the instrument providing duty benefits is cancelled by the DGFT.

However, even in cases where such duty benefit instruments are not cancelled by the DGFT, customs authorities have been initiating the action for the recovery of the duty benefit availed on the ground that the instrument has been obtained by way of misrepresentation.

Therefore, this is a welcome ruling by the Madras HC and can be used by taxpayers where they are denied duty benefits on the ground that the duty benefit instrument has been obtained by way of misrepresentation but where such instrument is not cancelled by the licensing authority.

SEZ unit not entitled to exemption from payment of compensation cess on import of goods – Andhra Pradesh HC

Summary

The Andhra Pradesh HC has held that GST compensation cess is not exempt in the case of import of goods by SEZ units. The HC stated that exemptions from the payment of tax, duty or cess are specifically provided in Sections 7, 26 and 50 of the SEZ Act. Thus, exemption from the payment of such tax, duty or cess shall be available only when covered in terms of such sections and not otherwise. The key requirement for Section 7 to apply is that the law that imposes the tax, duty, or cess must be referenced in the first schedule of the SEZ Act. The Goods and Services Tax (Compensation to States) Act, 2017, is not mentioned in the first schedule. The HC also held that cess is different from tax, and consequently, when the word 'cess' is not specifically used, exemption from the payment of cess cannot be availed in terms of Section 26 of the SEZ Act.

Facts of the case

- Maithan Alloys Ltd (the petitioner) is a SEZ unit engaged in the business of manufacturing ferro alloys.
- In terms of Section 26 of the SEZ Act, the petitioner is exempt from the payment of duty, tax or cess leviable under the Customs Act, or the CTA.
- The petitioner had imported coal from outside India and sought clarification from the Director (SEZ) on exemption of cess payable under the GST Compensation Act.
- The Director (SEZ) clarified that in terms of Section 26(1)(a) of the SEZ Act, only the customs duty leviable under the Customs Act or CTA are exempt. Furthermore, in terms of Notification No. 64/2017-Customs, only the IGST leviable under the CTA is exempt and no such exemption has been provided to compensation cess. Therefore, the petitioner was directed to submit a bond, along with a bank guarantee.
- Aggrieved by such order, the present writ petition was filed by the petitioner before the Andhra HC.

Issue before the HC

Whether exemption from the payment of compensation cess under GST is available on the import of goods by SEZ units?

Andhra Pradesh High Court's observations and judgement [W.P.No.1009 of 2019 and W.P.Nos.2631 & 6216 of 2021 dated 21 November 2023]

- **Sections 7, 26 and 50 of the SEZ Act are the three main provisions that provide exemption to SEZ units:** The HC relied on the judgement of GMR Aerospace Engineering Limited V. Union of India and held that the SEZ Act is a self-contained act, wherein different exemptions are provided on the import and export of goods. Therefore, such exemptions shall be looked from the provisions of such act only and not from elsewhere.
- **Cess is different from tax or duty:** The HC relied on the judgement of the apex court in the case of Union of India V. Hind Energy and Coal Benefication (India) Ltd, wherein a distinction was made between tax/duty and cess. It was held that tax is generally levied to raise the revenue of the state and can be used for any public purpose. On the other hand, cess is a special kind of tax levied for a specific purpose. On the basis of the said distinction, it was held by the HC that under Section 26 of the SEZ Act, only the word 'Duty' has been used and not the word 'Cess'. Therefore, only the duties levied under the Customs Act, or the CTA, are exempt and not compensation cess.
- **Tax, duty or cess shall be specifically mentioned in the first schedule to avail exemption in terms of Section 7 of the SEZ Act:** The HC held that compensation cess is not mentioned in the first schedule and the words 'tax', 'duty' or 'cess' are mentioned differently. Therefore, compensation cess needs to be specifically mentioned in the first schedule to avail the exemption in terms of Section 7. Therefore, the HC held that the petitioner is not entitled to exemption from the payment of compensation cess and dismissed the writ.

Our comments

Section 7 of the SEZ Act provides exemption to SEZ units from any tax, duty or cess payable on the import of goods by specifying the same in the first schedule. Exemption from the payment of the customs duty leviable under the Customs Act or CTA is also provided by way of of the SEZ Act. Further, in terms of Section 50, power is granted to the SG to exempt any state tax, levy, or duty. Based on the said provisions, the HC held that compensation cess is neither covered in the first schedule nor exempted by way of Section 26, as the word 'cess' has not been used in the said provision or by way of notification. Therefore, compensation cess is not exempted on the import of goods by SEZ units.

The decision is likely to have a significant impact on the import of goods by SEZ units. The taxpayers may consider filing a representation to the government for seeking a retrospective exemption from the payment of GST compensation cess in the case of import of goods by a SEZ to align cess with other custom duties, including IGST.

CESTAT affirms lower authority's decision, holding that interest is to be levied on delayed payment of CVD

Summary

The CESTAT, Kolkata has upheld the order of the lower authority holding that the interest on short/delayed payment shall be levied on the CVD. Further, the CESTAT held that the power under the customs law to impose interest or penalty can also be equally applicable on the CVD duty. The CESTAT analysed the provisions of the CTA, and noted that these does not provide provisions relating to interest and penalties, however the same is included under Section 28AB of the Customs Act. Accordingly, it opined that that the same can be borrowed under the CTA. Furthermore, the CESTAT had distinguished the term 'interest' and 'penalty' and clarified that the penalty means a legal punishment whereas interest can be considered as a compensation fixed by the authority of law therefore, the decisions relied on by the appellant regarding the non-imposition of penalties cannot be outrightly applied in the context of interest.

Facts of the case

- M/s. Texmaco Rail Engineering Limited (the appellant) is dealing in manufacturing railway wagons.
- The appellant had imported certain equipment, such as coupler set, graft gear and air brake equipment by paying CVD @ 6%.
- The Revenue alleged that the self-assessed duty paid by the appellant was not in accordance with law, as the rate of 12% was applicable on the above-mentioned equipment, and there was short payment of duty.
- Subsequently, a SCN was issued, alleging recovery of the differential duty, along with the applicable interest under the Customs Act.
- The said demand was confirmed.
- Aggrieved, the appellant filed the present appeal before the CESTAT.

Appellant's contentions

- The appellant placed reliance on the decision of the SC in the case of Hyderabad Industries Limited, wherein it was held that the 'CVD that is levied under Section 3(1) of the CTA is independent of the customs duty that is levied under Section 12 of the Customs Act'.
- The appellant submitted that there is no substantive provision under Section 3 or Section 3A of the CTA or Section 90 of the Finance Act, 2000, requiring interest on delayed payment of CVD or SAD.
- The appellant submitted 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.
- The appellant placed reliance on the decision of the SC in the case of Khemka and Co. (Agencies) Pvt Ltd, wherein it was held that 'a penalty or interest is in addition to the tax and statutory liability, hence, there must be a specific provision to levy a penalty.'
- Further, the appellant referred to various HC and apex court judgments and submitted that the statue must provide 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.
- The appellant also placed reliance on the decision of the Bombay HC in the case of Mahindra and Mahindra Ltd., wherein it was held that no interest and penalty can be levied on the portion of payment pertaining to surcharge, CVD and SAD.
- Accordingly, the appellant contended that the department cannot levy interest since there are no substantive provisions regarding the charging of interest on the delayed payment of differential duty.
- The appellant placed reliance on the decision of SC in the case of Orient Fabrics Pvt. Ltd. and submitted that the charging sections for imposition of CVD and SAD does not provides a clear authority of law for imposition of interest. Therefore, the provisions provided under the Customs Act cannot be borrowed or treated at par to be applicable for interest under the Tariff Act.
- The appellant submitted 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. Therefore, Section 28AB cannot be borrowed for imposing interest on surcharge, CVD or SAD.
- The appellant also placed reliance on the decision of the SC in the case of J.K. Synthetics Ltd., wherein it was held 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.
- Concludingly, the appellant stated that the authorities cannot demand interest amount on the ground that the appellant has derived financial benefits by not paying the correct rate of duty when it was due.

CESTAT's observations and judgement [Customs Appeal No. 75921 of 2014; Order dated 12 January 2024]

- **Interpretation of the provisions relating to interest:** The CESTAT analysed the provisions of interest under the Customs Act and noted that interest is inexorably linked with demand of duty not paid. The interest provisions start with a non-obstante clause that provides primacy, prevalence, and supreme importance to its applicability.
- **Analysis of the term 'including' used in Section 3(8) of the CTA:** The CESTAT placed reliance on various decisions of the SC and noted that the term 'include' is used in interpretation clauses to enlarge the meaning of words or phrases in the statute, and the word 'include' must be construed as comprehending not only such things as they signify according to their nature and impact but also those things that the interpretation clause declares they shall include. Basis the above interpretation, the CESTAT, in the present case, noted that the provisions of the Customs Act and the rules and regulations thereunder is equally applicable to the duty leviable under Section 3 of the CTA, and the reference to drawbacks, refunds and exemption from duties used in Section 3(8) of the CTA will not only be limited to these terms only. These are merely illustrative and cannot be deemed to restrict the applicability of rest of the provisions of the customs laws.
- **Appellant is liable to pay interest on the short levied CVD:** The CESTAT placed reliance on the decision of the Bombay HC in the case of Valecha Engineering Limited, wherein it was held that 'once it is held that duty is due, interest on the unpaid amount of duty becomes payable by operation of law u/s 28AB of the Customs Act', and categorically noted that various other courts have upheld the enforceability and the applicability of the interest element with respect to a refund claim or a demand matter with reference to the additional duty of customs leviable under Section 3 of the CTA.
- **Interpretation of the terms 'interest' and 'penalty':** The CESTAT had distinguished the terms 'interest' and 'penalty' and clarified that the penalty means a legal punishment, whereas interest can be considered as a compensation fixed by the authority of law for use or detention of money. It held that it is not valid under law to claim that the word interest should be interpreted to mean penalty. Therefore, the various decisions relied on by the appellant regarding the non-imposition of penalties cannot be outrightly applied for non-imposition of interest.
- **Decisions relied on by the appellant are not applicable to the facts of the present case:** The CESTAT also explained that when an observation under a ruling can be relied on. For this, the CESTAT emphasised that foremost, it has to be shown as to how the facts of the cited case fit into the factual position of the given issue. After analysing the cases relied on by the appellant, the CESTAT noted that none of the case relied by the appellant are applicable to the present factual matrix of the issue. Therefore, the appeal filed by the appellant was dismissed.

Our comments

In the present case, the tribunal has held that a special additional duty leviable under the CTA is to be construed as customs duty. Therefore, the provisions pertaining to interest under the customs can be borrowed in the context of CTA.

Contrary to the above, the Bombay HC, in the case of Mahindra and Mahindra Limited, had held that the interest and penalty on short/delayed payment cannot be levied on customs surcharge, CVD and SAD, as there was no power under the customs law to impose interest or penalty on the said duties. Recently, the SC dismissed the SLP filed by the Revenue against the Bombay HC's order and affirmed that interest and penalty cannot be levied on the delayed payment of customs surcharge, CVD and SAD in the absence of statutory provisions.

However, on the applicability of interest, it is to be noted that the SC, in the case of M/s. Kanhoo Ram Thekedar, has held that interest liability accrues automatically. Also, in the case of M/s. Kamat Printers Pvt. Ltd., the Bombay HC had held that once duty is ascertained, then by operation of law, such person, in addition, shall be liable to pay interest at such rate as applicable.

03

Experts' Column

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Taxability of mining rights – The legal saga continues!

Introduction

The tax treatment of royalty paid to the government for mining rights has remained a long-standing dispute point in India, starting from the erstwhile service tax regime and marking its presence in the current GST regime. The DGGI authorities allegedly have issued notices to multiple taxpayers holding royalty is in the nature of consideration for the grant of mining rights and hence exigible to GST. In this article, we delve into the jurisprudence relating to the levy of service tax on royalty and continued litigation under the GST law.

Whether royalty is a 'Tax' or 'Consideration for services from government.'

Prima facie royalty is governed by the **Mines and Minerals (Development and Regulation) Act**[1] , 1957, which requires the holder of a mining lease to pay royalty on any mineral removed or consumed from the leased area at a specified rate. Accordingly, the holder or the lessee must remit royalty to the government for minerals extracted from the demarcated leasehold area as per the terms of the agreement.

By way of an amendment effective 1 April 2016, services provided by the government by way of the assignment of the right to use natural resources were made liable to service tax under the reverse charge mechanism (RCM). Post the amendment, the department issued show cause notices (SCN) to the mining right holders, demanding service tax on the royalties remitted to the government, which itself resulted in a series of litigation between the taxpayers and the department.

After the amendment, Revenue started issuing Show Cause Notices (SCN) to the mining right holders demanding service tax on the royalties remitted to the Government.

1. Notification No. 25/2012-Service Tax dated 20 June 2012 amended vide Notification No. 22/2016-Service Tax dated 13 April 2016

Jurisprudence under the erstwhile service tax regime:

A. Matters pending before the Supreme Court (SC):

The legal saga began as a consequence of the judgement rendered by a seven-member bench of the SC in the case of **India Cements Limited** [2] wherein the court held that royalty is akin to tax and is separate and distinct from land revenue. It was determined that royalty is payable on the proportion of the minerals extracted. Accordingly, it may be viewed as a kind of tax linked either directly or indirectly to the intrinsic economic value of a mineral realised through sale by the lessee.

Subsequent litigations unfolded when a five-member bench of the SC reviewed the issue in the case of **Kesoram Industries Limited**[3]. At this stage, a paradigm shift occurred in the ongoing litigations when the court observed that there was a drafting error in the judgement rendered in the case of India Cements Limited, as the intention of the court, in that case, was to conclude that the cess on royalty is a tax and not that royalty per se is a tax.

The court had further held that royalty is paid to the owner of the land, who may be even a private person and may not necessarily be the state. A private person owing the land is entitled to charge royalty but not tax. The lessor receives royalty as his income, and for the lessee, the royalty paid is an expenditure incurred. Therefore, the court held that royalty cannot be taxed.

Under the above contradictory ruling, the matter came up before a three-judge bench in the Mineral Area Development Authority case, wherein the matter was further referred to the nine-judge bench of the SC. As of now, the matter is still pending before the nine-judge bench of the SC.

B. Service tax on royalty stayed by the SC:

The dispute about whether royalty is a 'consideration' was addressed by the Rajasthan HC in the case of **Udaipur Chambers of Commerce**[4]. The HC, in the said case, affirmed that royalty is a consideration for the assignment of the right to use natural resources. However, it is interesting to note that the SC[5] has stayed the matter until further orders.

Similar stays have been granted by the SC on the demand of service tax on royalty until further orders in the case of Tamanna Begum v. UOI[6] and in the case of Barwala Royalty Co. & others v. The State of Haryana[7].

C. Service tax on royalty stayed by the various High Courts:

Pursuant to the stay by the SC, various high courts have also issued interim stay orders for the levy/collection of service tax on royalty in the following cases:

- M/s Goa Mining Association and Anr v. Union of India – Bombay HC[8] (SLP filed by Revenue against the HC order has been disposed off by the SC[9])
- M/s Gujmin Industry Association v. Union of India – Gujarat HC[10]
- M/s Zeenath Transport Company v. Principal Addl. Director DGGI – Karnataka HC[11]
- Sunita Ganguly, wife of Shri Ardhendu Ganguly v. Principal Commissioner, GST - Jharkhand HC[12].

D. Recent favorable judgement by Chennai Tribunal:

Recently, the said matter was examined by the Chennai Bench of CESTAT in the case of **Oil and Natural Gas Corporation Limited (ONGC)**[13]. The CESTAT ruled that the service tax is not payable on royalty, the rationale behind such judgment being such payments are in the nature of tax and not consideration for services. It further held that royalty encompasses both

2. 1989 (10) TMI 53 - SC
3. 2004 (1) TMI 71 - SC
4. 2011 (3) TMI 1554 - SC
5. 2017 (10) TMI 975 - Rajasthan High Court
6. 2018 (8) TMI 287 - SC
7. Special Leave to Appeal (c) Nos. 3150-3155/2018
8. in Writ Petition (C) No.1119/2021
9. 2017 (8) TMI 1632 - Bombay High Court
10. 2019 (7) TMI 1759 - SC
11. 2018 (9) TMI 1522 – Gujarat High Court
12. 2021 (1) TMI 1252 - Karnataka High Court
13. 2021 (3) TMI 601 - Jharkhand High Court

regulatory fees and compensatory fees. Therefore, in the absence of any mechanism to levy service tax on the amount that has regulatory fees and compensatory fees under the Finance Act 1994, service tax cannot be levied, as royalty has a dominant element of regulatory fees.

Continuing disputes under GST regime:

The provisions under the GST laws are more or less similar to the erstwhile service tax regime with the 'supply of goods or service' being the taxable event. The scope of the term 'supply' is wide to encompass all goods or services. While royalty in itself is questionable, FAQs issued by the CBIC specified that the royalty paid to the government attracts GST under RCM. However, this is not the only dispute.

There have been another set of litigation surrounding the applicable GST rate, i.e., 5% or 18%. This initiated due to divergent rulings by advance ruling authorities. The Haryana AAR, in the case of **M/s. Pioneer Partners**[14] and Chandigarh AAR in the case of **M/s. NMDC**[15] had ruled that the service of granting mining lease is classifiable under SAC 997337 and liable to GST at the rate of 5% in terms of the residuary entry . However, the Orissa AAAR, in the case of **M/s. Penguin Trading and Agencies**[16] held that such services, although classifiable under the same SAC, are liable to GST at the rate of 18% on the premise that a mining lease by the government, not being a lease of any goods, cannot attract the rate applicable to the sale of like goods.

Thereafter, the issue was deliberated in the 45th GST Council meeting, wherein it was recommended that such services should be liable to 18% based on the principle laid out in the 14th GST Council meeting to tax residuary services at 18%. Based on the recommendation, the Board issued Circular No. 164 /20 /2021-GST dated 6 October 2021, which clarified that service by way of grant of mining rights is liable to tax at the rate of 18% for the prior period. Further, Notification No.

14. 2024 (1) TMI 640 - CESTAT Chennai
15. 2018 (9) TMI 1477 – Haryana AAR
16. 2019-VIL-121- Chhattisgarh AAR
17. 2019-VIL-75-Odisha AAAR

11/2017-CT(Rate) dated 28 June 2017 was amended w.e.f. 1 January 2019, to specifically tax such services at the rate of 18%. Accordingly, litigation revolves on the rate of tax for the period 1 July 2017 to 31 December 2018.

Recently, the Orissa HC granted an ad-interim relief in the case of **M/s. Tarini Minerals Private Limited**[17] on-demand, alleging short tax payment by the petitioner, on account of lower GST rate paid on 'licensing services for the right to use minerals'.

However, it is imperative to note that under the GST regime, the SC has already intervened by staying the GST levy @ 18% on royalty on mining leases until further orders, as in the case of **Lakhwinder Singh**[19] .

Parting thoughts:

Taxability of royalty payments made to the Government for the acquisition of mining rights is at the stage of legal uncertainty, awaiting a very crucial verdict from the SC. If such payments are concluded to be in the nature of tax, then GST or service tax levy will not arise. Similarly, whether the taxability of royalty on account of mining operations is 'goods' or 'services' is also a matter of conflicting views of the Authority of Advance Rulings.

Amid the current scenario, the ruling by the CESTAT Chennai bench is a significant and welcome ruling which seems to provide some breather in similar matters. However, it will be interesting to see if the Revenue challenges this ruling before the higher courts.

(Also contributed by Kriti Singal, Consultant - Tax, Grant Thornton Bharat)

18. 2022 (10) TMI 43 - Rajasthan High Court
19. 2021 (11) TMI 336 - SC
20. W.P.(C) No. 1709/2024

04

Issues on your mind

What are the new ways using which the registered taxpayers can pay GST liability electronically?

The government has introduced two new facilities of payment under e-payment, in addition to net banking. These methods are cards and UPI. Cards facility includes CC and DC, namely, Mastercard, Visa, RuPay, and Diners (CC only), issued by any Indian bank.

Payment through CC/DC/UPI can be made through Kotak Mahindra Bank irrespective of CC/DC issued by any Indian bank. Other banks are in the process of integration. At present, the facility is available in 10 states.

The process to be followed has been reproduced below:

i. 1. Login to www.gst.gov.in.
ii. 2. Create challan and select e-payment.
iii. 3. Choose from multiple payment options, such as CC/DC or UPI.
iv. 4. Select 'Kotak Mahindra Bank' and click on 'Make payment'.
v. 5. Enter CC/DC or UPI details of any bank of your choice.
vi. 6. Complete the transaction.

What are the consequences w.r.t. the failure of furnishing bank account details as prescribed under Rule 10A of the CGST Rules, and how can taxpayers resolve the same?

All registered taxpayers are required to furnish details of their bank account/s within 30 days of the grant of registration or before the due date of filing GSTR-1/IFF, whichever is earlier.

Failure to furnish the bank account in the stipulated time would result in the following:

a) Taxpayer registration would be suspended after 30 days and intimation in FORM REG-31 will be issued to the taxpayer.
b) The taxpayer would be debarred from filing GSTR-1/IFF returns/facility.

If the bank account details are not updated even after 30 days of issuance of FORM REG-31, the GST registration can be cancelled by the officer.

However, if the taxpayers update their bank account details in response to the intimation in FORM REG-31, the suspension will be automatically revoked.

When can an importer avail the facility of direct port delivery (DPD)?

The following conditions are required to be fulfilled by an importer to avail the facility of DPD for the FCL containers under BoE:

i. The BoE should be 'fully facilitated' by RMS.
ii. The importer/CB desirous of availing such DPD facility shall file advance/prior BoE.
iii. The BoE for commodities that does not require drawl of samples by PGAs for NOC.
iv. The BoE for commodities that does not have any NCTC alert.
v. The BoE that is not on hold by investigating agencies.
vi. For such BoE that is fully facilitated by RMS, the importer(s) shall discharge custom duty and all other dues to the relevant stakeholders in advance.
vii. Importer/custom broker availing this DPD facility shall give advance intimation to the port authority/terminal on their registered email IDs and similarly the respective shipping lines, through their registered email IDs, any time before granting 'Entry inward' to the vessel carrying the relevant container(s). A copy of the said advance intimation shall be endorsed by the terminal through an auto email to the customs/custom broker/shipping line.

05

Important developments under direct taxes

SC's decision: Re-assessment of amalgamating company post amalgamation is invalid

Brief facts of the case

- Elitecore Technologies Private Limited (Elitecore) amalgamated with Sterlite Technologies Limited (Sterlite) and the appointed date was 29 September 2015. The Gujarat HC approved the scheme of amalgamation vide an order dated 21 March 2016 and the Bombay HC approved it vide an order dated 7 April 2016. The AO was informed about the amalgamation vide communication dated 6 June 2016.
- On 30 March 2021, the AO issued a notice under Section 148 of the IT Act, to Elitecore for AY 2013-14. In response thereto, the taxpayer informed the AO about the amalgamation and claimed that the notice issued was non est and void ab initio since Elitecore was a non-existing entity.
- Subsequently, the AO passed a re-assessment order under Section 147 read with 144B of the IT Act and issued a penalty notice under Section 274 read with 271(1)(c) of the IT Act. The taxpayer challenged the impugned re-assessment notice and order (along with the penalty notice) before the Bombay HC for AY 2013-14 and 2014-15 (since facts of the case were similar).
- The Bombay HC observed that Elitecore was amalgamated with Sterlite w.e.f. 29 September 2015 and the AO was also informed about such amalgamation.
- The Bombay HC placed reliance on the SC's decisions in the case of **Saraswati Industrial Syndicate Ltd. v/s CIT (1990) (186 ITR 278), PCIT, New Delhi v/s Maruti Suzuki India Ltd (2019) (107 taxmann.com 375) and Spice Entertainment Ltd. V/s. CST (2012) (280 ELT 43)**, wherein it was held that once the amalgamation is brought to the notice of the AO, an order passed in the name of the non-existing company would be void.
- Accordingly, the Bombay HC set aside the re-assessment notice, re-assessment order for AY 2013-14 and 2014-15, the penalty notice and other connected proceedings.

[Sterlite Technologies Limited (TS-10-SC-2024), order dated 8 January 2024]

SC's conclusion

The SC dismissed the Revenue's SLP and declined to interfere with the decision of the Bombay HC.

[Sterlite Technologies Limited (TS-10-SC-2024), order dated 8 January 2024]

CBDT notifies NR investment with IFSC capital market intermediary for the purpose of Section 10(4G) of the IT Act

Section 10(4G) of the IT Act exempts income received by a NR in an account maintained with an offshore banking unit in any IFSC [referred to in Section 80LA(1) of the IT Act] from:

- Portfolio of securities/financial products/funds, managed or administered by any portfolio manager on behalf of NR or,
- From **such activity carried out by such person as notified** by the central government.

To the extent such income accrues or arises outside India and is not deemed to accrue or arise in India.

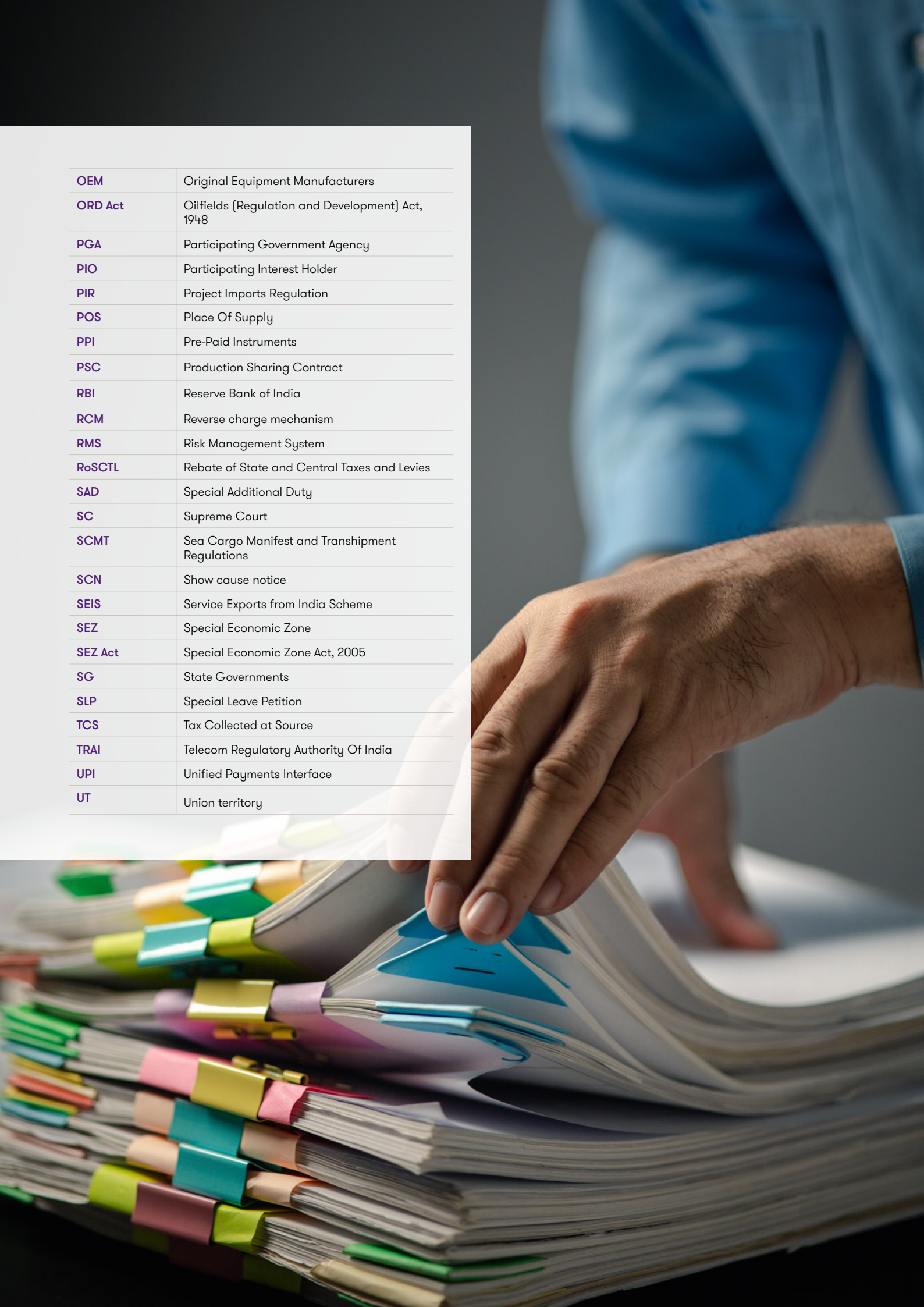
In this regard, the CBDT has notified that this exemption would be applicable for income from **"investment in a financial product by NR [as per its contract with capital market intermediary (being an IFSC unit)], where income from such investment is received in NR's account maintained with the offshore banking unit of such IFSC (as referred in Section 80LA(1A) of the IT Act".**

[Notification no. 4 of 2024 dated 4 January 2024]

Glossary

AA	Adjudicating Authority
AAR	Authority for Advance Ruling
AAAR	Appellate Authority for Advance Ruling
AO	Assessment Officer
AY	Assessment Year
B2B	Business - to - Business
B2C	Business - to - Consumer
BoE	Bill of Entry
CB	Customs Broker
CBDT	Central Board of Direct Taxation
CBIC	Central Board of Indirect Taxes and Customs
CC	Credit Card
CENVAT	Central Value Added Tax
CESTAT	The Customs Excise and Service Tax Appellate Tribunal
CGST	The Central Goods and Service Tax
CGST Act	The Central Goods and Services Tax Act, 2017
CGST Rules	The Central Goods and Services Tax Rules, 2017
CGST (Amended Rules)	CGST (Fifth Amendment) Rules 2022
CTA	Customs Tariff Act, 1975
Customs Act	The Customs Act, 1962
CVD	Countervailing Duty
DC	Debit card
DGAP	Directorate General of Anti-Profiteering
DGFT	Directorate General of Foreign Trade
DPD	Direct Port Delivery
DPSP	Directive Principles of State Policy
DRI	Directorate of Revenue Intelligence
ECL	Electronic Cash Ledger
ECO	E-commerce operators
EODC	Export Obligation Discharge Certificate
EPC	Engineering, Procurement, And Construction
EPCG	Export Promotion Capital Goods
ETP	Export Transhipment
FCL	Full Container Load
FMCG	Fast-Moving Consumer Goods
FTDR	Foreign Trade Development and Regulation Act, 1992
FTP	Foreign Trade Policy
FY	FY - Financial Year
GST	GST - Goods and Services Tax
GST Compensation Act	Goods and Services Tax (Compensation to States) Act, 2017
GSTN	Goods and Services Tax Network
GSTIN	Goods and Services Tax Identification Number
HC	High Court
HPGST Act	Himachal Pradesh Goods and Services Tax Act, 2017
HSN	Harmonized System of Nomenclature
ICAI	Institute Of Chartered Accountants Of India
ICB	International Competitive Bidding process
ID	Identification
IEC	Importer Exporter Code
IFF	Invoice Furnishing Facility
IFSC	International Financial Services Centres
IGST	The Integrated goods and services tax
ISD	Input Service Distributor
IT	Information Technology
IT Act	Income Tax Act, 1961
ITC	Input Tax credit
ITC (HS)	Indian Trade Classification based on Harmonized system of coding
ITR	Income Tax Return
JNCH	Jawaharlal Nehru Custom House
JVAT, 2005	Jharkhand Value Added Tax Act, 2005
NAA	National Anti-Profiteering Authority
NCTC	National Customs Targeting Centre
NEEV	Nhava Sheva Export Encouragement Vision
NFE	Net Foreign Exchange
NOC	No-objection Certificate
NR	Non-Resident

OEM	Original Equipment Manufacturers
ORD Act	Oilfields (Regulation and Development) Act, 1948
PGA	Participating Government Agency
PIO	Participating Interest Holder
PIR	Project Imports Regulation
POS	Place Of Supply
PPI	Pre-Paid Instruments
PSC	Production Sharing Contract
RBI	Reserve Bank of India
RCM	Reverse charge mechanism
RMS	Risk Management System
RoSCTL	Rebate of State and Central Taxes and Levies
SAD	Special Additional Duty
SC	Supreme Court
SCMT	Sea Cargo Manifest and Transhipment Regulations
SCN	Show cause notice
SEIS	Service Exports from India Scheme
SEZ	Special Economic Zone
SEZ Act	Special Economic Zone Act, 2005
SG	State Governments
SLP	Special Leave Petition
TCS	Tax Collected at Source
TRAI	Telecom Regulatory Authority Of India
UPI	Unified Payments Interface
UT	Union territory



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