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SHAPING A VIBRANT INDIA

GST Compendium

A monthly guide

December 2021

Editor’s note

As per the recommendations of the GST Council related to inverted duty structure, the Central Board of Indirect Taxes and Customs (CBIC) has notified changes in GST rates applicable for the textiles and footwear sector, effective 1 January 2022. However, there are few industries, such as fertilisers, tractors, renewable energy equipment, etc., where the issue persists and needs intervention.

On the judicial front, the Apex Court has held that the outdoor catering services used primarily for personal use or consumption of any employee are excluded from the definition of input service under the erstwhile indirect tax regime. Since similar restrictions exist under the GST regime, the government should consider amending the provisions appropriately to ensure free flow of credit related to such expenditure.

In a recent decision, the Delhi bench of Customs, Excise and Service Tax Appellate Tribunal (CESTAT) held that mere interaction with the local students and making them aware about a foreign university, on behalf of their parent company, is an independent service and is distinct from intermediary services. It is pertinent to note that the definition of intermediary, under the GST regime, is pari-materia with the service tax regime; this decision should act as a good guidance.

On the direct tax front, the Central Board of Direct Taxes (CBDT) has provided clarity concerning eligibility for exemption under Section 10(23FE) of the Income-tax Act, 1961 (Act) and has rolled out a new Annual Information Statement, which covers many financial transactions of the taxpayer. Further, the CBDT has also notified the e-Settlement Scheme, 2021 for the pending settlement applications.

We have also shared our perspective on the Customs Special Valuation Branch (SVB) proceedings and appeal mechanism.

Vikas Vasal
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01 Important amendments/updates

CBIC increases tenure of National Anti-Profiteering Authority by one year

The National Anti-Profiteering Authority (NAA) was initially formulated for a period of two years to ensure that the due benefits have been passed by companies to ultimate consumers. However, this tenure was further extended due to large pendency of complaints till 30 November 2021.The Central Board of Indirect Taxes and Customs (CBIC), 2021 has now further increased the tenure of the NAA from four to five years[1]. Thus, the tenure of the NAA has been extended till 30 November 2022.

CBIC notifies changes in GST rates and withdrawal of certain exemptions

Pursuant to the recommendation of the GST Council, the Central Board of Indirect Taxes and Customs (CBIC) has notified changes in GST rate applicable on certain goods and services and has withdrawn certain exemptions. The revised rates shall be applicable from **1 January 2022.**

Key changes notified[2]

- **Increase in GST rates for textiles and footwear sector:** Pursuant to the recommendation of the GST Council, in order to correct the inverted duty structure in footwear and textiles sector, the CBIC has now increased the rate applicable on woven fabrics, sewing thread of man-made filaments, artificial filament yarn, man-made filament yarn, blankets and travelling rugs, linens, curtains, and other apparels, etc. (falling under Chapters 50 to 63) to 12%. In addition, rate on footwear of sale value not exceeding INR 1,000 per pair (falling under Chapter 64) has also been increased to 12%.

1. Notification No.37/2021 – Central Tax dated 1 December 2021
2. Notification No. 14 to 17/2021- Central Tax (Rate) dated 18 November 2021

- **Withdrawal of exemption:** Exemption on below services has been withdrawn:
  - Services provided to the governmental authority or a government entity
  - Services supplied through an electronic commerce operator
- **GST rate on job work services:** The job work services by way of dyeing or printing of textile and textile products shall be taxable @ 18%.
- **Liability on electronic commerce operator:** GST on the following intra-state supply of services shall be paid by the electronic commerce operator:
  - Transportation of passengers by a radio-taxi, motor cab, maxi cab, motorcycle, omnibus or any other motor vehicle,
  - Restaurant service other than the services supplied by restaurant, eating joints, etc., located at specified premises

CBIC issues clarification regarding applicability of Dynamic Quick Response (QR) Code on B2C invoices

The CBIC had earlier issued clarification in respect of applicability of dynamic QR Code on B2C invoices issued to service recipient located outside India and where place of supply of the service is in India as per IGST Act 2017. In this regard, doubts were raised regarding the availability of the relaxation from dynamic QR code if the supplier receives payments from the recipient located outside India through RBI-approved modes of payment, but not in foreign exchange.

In this regard, the CBIC has now clarified that in cases where an invoice is issued to a recipient located outside India, for supply of services, for which the place of supply is in India and the payment is received by the supplier in convertible foreign exchange or in Indian National Rupee, wherever permitted by the RBI, such invoice may be issued without having a dynamic QR Code, as such dynamic QR code cannot be used by the recipient located outside India for making payment to the supplier[3].

Clarification on certain refund related issues

The CBIC has received various representations seeking clarification in respect of certain issues relating to refund. The board has clarified issues as under[4]:

Type of refund	Issue	Clarification
Refund of excess balance in electronic cash ledger	Whether the time limit for filing refund application i.e., two years from the relevant date is applicable	No, this time limit would not be applicable.
	Whether certificate/declaration under Rule 89(2) of CGST Rules, 2017 is required to be furnished	Certificate/declaration for not passing incidence of tax to any other person shall not be required as unjust enrichment is not applicable in this case.
	Whether refund of TDS/TCS in electronic cash ledger can be refunded	The amount collected/deducted as TDS/TCS that has been credited to electronic cash ledger is equivalent to cash deposited in cash ledger. The registered person is at full liberty to discharge its tax liability either through debit in electronic credit ledger or electronic cash ledger depending upon choice and availability of balance. Any amount remaining unutilised in electronic cash ledger after payment of dues and tax can be refunded to registered person as excess balance in electronic cash ledger.
Refund of tax paid on deemed export	Whether relevant date for supplies regarded as deemed export by recipient is to be determined as per Clause (b) of Explanation (2) under Section 54	This clause is applicable for determination of relevant date for refund of amount of tax paid on supply of goods regarded as deemed export, irrespective of whether refund claim is filed by supplier or by recipient.
	Which date will be relevant for the purpose of determining relevant date - either the date of return filed by the supplier or date of return filed by the recipient	As the tax on the supply of goods regarded as deemed export would be paid by the supplier in his return, therefore, the relevant date for purpose of filing of refund claim for refund of tax paid on such supplies would be the date of filing of return related to such supplies by the supplier.

('specified premises' means premises providing hotel accommodation services having declared tariff of any unit of accommodation above INR 7,500/unit per day or equivalent)

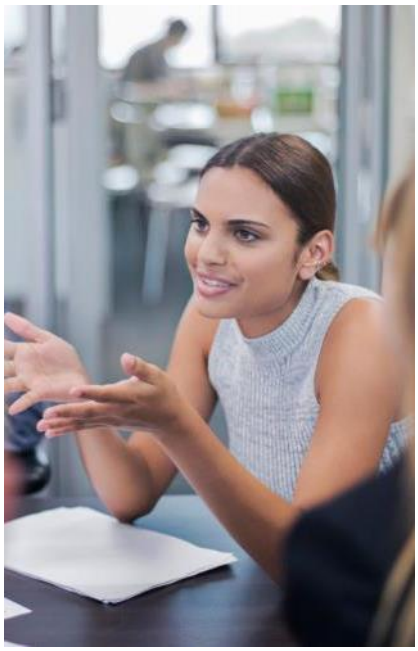
3. Circular No. 165/21/2021-GST dated 17 November 2021
4. Circular No. 166/22/2021-GST dated dated 17 November 2021

Guidelines for disallowing debit of electronic credit ledger under Rule 86A of the CGST Rules, 2017

Rule 86A was introduced to block fraudulently availed ITC. The main purpose behind the introduction of this rule was to block the use of fraudulently availed ITC. As per this Rule, a Commissioner or any officer authorised by him can block the ITC available in the electronic credit ledger of the taxpayer if he has 'reasons to believe' that he has fraudulently availed ITC. In this regard, the CBIC has now issued guidelines for disallowing debit of electronic credit ledger under the said rule [5].

Key aspects for consideration

- **Reasons to believe:** The authorities must have reasons to believe that credit of input tax available in the electronic credit ledger (ECL) is either ineligible or has been fraudulently availed, before disallowing the debit of amount from ECL under Rule 86A. The reasons for such belief must be based only on one or more of the following grounds:
  - The credit is availed by the registered person on the invoices or debit notes issued by a supplier, who is found to be non-existent or is found not to be conducting any business from the place declared in registration.
  - The credit is availed by the registered person on invoices or debit notes, without receiving any goods or services or both.
  - The credit is availed by the registered person on invoices or debit notes, the tax in respect of which has not been paid to the government.
  - The registered person claiming the credit is found to be non-existent or is found not to be conducting, any business from the place declared in registration.
  - The credit is availed by the registered person without having any invoice or debit note or any other valid document for it.
- **Formation of opinion after proper verification:** The officer must form an opinion for disallowing debit of an amount from ECL, only after proper application of mind considering all the facts of the case including:
  - the nature of prima facie fraudulently availed or ineligible ITC and whether the same is covered under the grounds mentioned in Rule 86A (1);
  - the amount of input tax credit involved; and
  - whether disallowing such debit of ECL of a person is necessary for restricting him from utilising/ passing on fraudulently availed or ineligible ITC to protect the interests of revenue.
- **Exercise of power cautiously:** The power of disallowing debit must not be exercised in a mechanical manner. Careful examination of all the facts of the case is important to determine case(s) fit for exercising power under rule 86A. The remedy of disallowing debit being, by its very nature, extraordinary, must be resorted to with utmost circumspection and with maximum care and caution.
- **Procedure for disallowing debit of electronic credit ledger/blocking credit under Rule 86(A):**
  - The officer should apply his mind as to whether there are reasons to believe for disallowing ITC to protect the interests of revenue. Such 'reasons to believe' shall be duly recorded by the concerned officer in writing on file before he proceeds to disallow such debit.
  - The amount disallowed for debit from ECL should not be more than the amount of ITC which is believed to have been fraudulently availed or is ineligible.
  - The action to disallow debit from ECL of a registered person, is informed on the portal to the concerned registered person, along with the details of the officer who has disallowed such debit.
- **Allowing debit of disallowed/restricted credit under Rule 86A(2):** The commissioner or the authorised officer, as the case may be, either on his own or based on the submissions made by the taxpayer with material evidence thereof, may examine the matter afresh and on being satisfied that ITC, initially considered to be fraudulently availed or ineligible as per conditions of Rule 86A(1), is no more ineligible or wrongly availed, either partially or fully, may allow the use of the credit so disallowed/restricted, up to the extent of eligibility, as per powers granted under rule 86A(2). Reasons for allowing the debit of ECL, which had been earlier disallowed, shall be duly recorded on file in writing, before allowing such debit of ECL. The restriction imposed as per rule 86A (1) shall cease to have effect after the expiry of a period of one year from the date of imposing such restriction.



5. Circular No. CBEC-20/16/05/2021-GST/1552 dated 2 November 2021

Procedure for physical hearing of appeals by CESTAT Delhi

The Customs, Excise, and Service Tax Appellate Tribunal (CESTAT), Delhi Bench has prescribed the procedure for physical hearing of appeals by CESTAT w.e.f. 29 November 2021[6]. The President, CESTAT, considered shifting to physical hearing on individual request in phased manner, keeping e-hearing as the norm. Any party desirous of getting an appeal heard physically may send a request to the Registry by email. Request forms received from Monday to Thursday will be listed for hearing as per roster in the following week in order of seniority, subject to a maximum of six matters a day. The system of physical hearing of Appeals for the Division Bench matters will take place on Mondays and Fridays for now and the other appeals on Tuesdays, Wednesdays and Thursdays and is applicable to Principal Bench at Delhi only. On the remaining days, matters would be heard by virtual hearing mode as is now being done.

The procedure for physical hearing of appeals by CESTAT is as below:

Particulars	Procedure
Listing	• Any party desirous of getting an appeal heard physically may send a request as prescribed in Annexure II, to the Registry by email. • The appeal should be ripe for hearing in its normal turn or early hearing as granted or as per the direction of higher courts. • The cause list to be issued by the Assistant Registrar will contain cases in order of seniority and shall be uploaded every Thursday evening on the website of the Tribunal. • The parties called for physical hearing may file following in separate files – Brief synopsis stating the facts – Written submissions with reference to paper book already submitted – Compilation of relevant provisions of statute and case laws • The above documents shall be filed at least two days before the date of hearing with copy to other side by email. All documents should be typed legibly on double space on A4 size paper, arranged in separate paragraphs and consecutively page numbered. • The parties may file written submissions after the hearing is concluded, as may be permitted by the Bench. • The Court Master may be informed for mention of cases one hour before the Bench sits. • The parties may avoid seeking adjournment/pass over as far as possible. • The Registry will maintain a physical hearing register containing details of the appeal, names of counsel and the authorised representative, the Coram and the nature of order passed. The Court Master shall maintain the court proceedings register as usual.
Protocol	• The counsel/party in person alone will be permitted to participate in hearing on the scheduled date and time. Each Counsel may be assisted by not more than two counsel during the hearing. • The counsel/party in person needs to proceed to the court hall on intimation from the court staff or after their item is displayed on telescreen. • The files shall mandatorily pass-through UV sanitisation box before entering the court room. • Any paper book/document is to be submitted to the Bench at least one day in advance to Registry and no paper/document will be allowed to be filed before the Bench at the time of hearing. • All the documents, along with original files, will be kept on dais after sanitisation one day prior to the date of hearing. • The Counsel should submit double vaccination certificate/RTPCR test result not less than 72 hours to the Bar Association and same shall be declared in Annexure II from requesting for physical hearing. • The Counsel/authorised representative shall maintain prescribed dress code during the hearing. • The Counsel may enter the Tribunal premise in staggered manner as per their item in cause list and shall wear face mask, undergo thermal scanning and keep social distancing.

6. Public Notice No.1/2021 dated 15 November 2021

Clarification regarding pre-show cause notice consultation

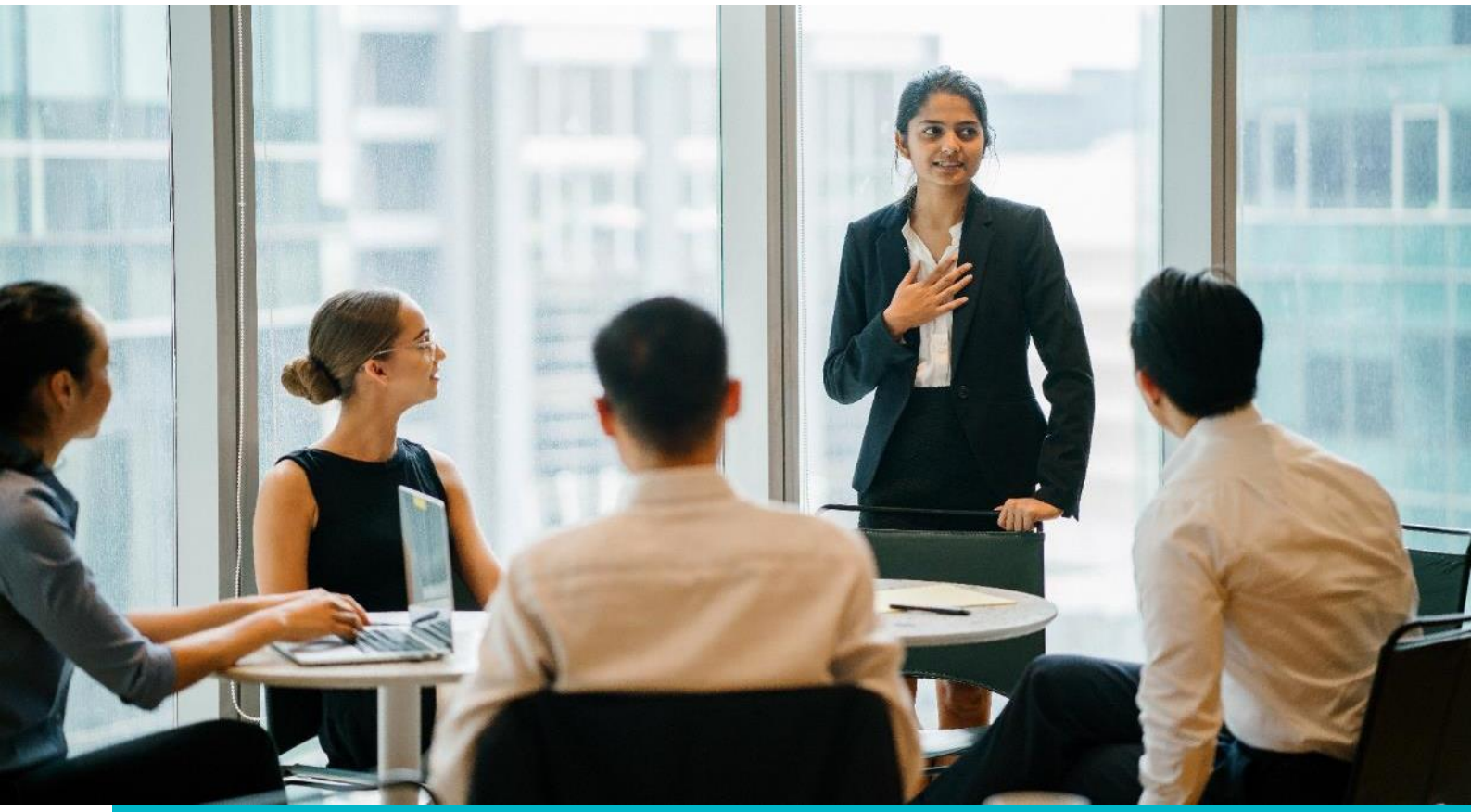
It was earlier clarified that pre-show cause notice consultation with assessee is mandatory and shall be done by the show cause notice issuing authority prior to issuance of SCN in case of demand of duty is above INR 50 lakh (except for preventive/offence related SCNs)[7].

Subsequently, Directorate General of Anti-Evasion (DGGI) wants clarification whether DGGI formations fall under the exception/exclusion category of the CBIC's instruction dated 21 December 2015 or otherwise. The CBIC clarified that exclusion from pre-show cause notice consultation is case-specific and not formation specific.

The CBIC reiterated that pre-show cause notice consultation shall not be mandatory for those cases booked under the Central Excise Act, 1944 (CEA,1944) or Chapter V of the Finance Act, 1994(Finance Act) for recovery of duties or taxes not levied or paid or short levied or short paid or erroneously refunded by reason of (a) fraud, (b) collusion, (c) wilful mis-statement, (d) suppression of facts or (e) contravention of any of the provision of the CEA, 1944 or Finance Act or the rules made there under with the intent to evade payment of duties or taxes[8].

7. Circular No.1076/02/2020-CX dated 19 November 2020 read with Para 5.0 of the Master Circular No. 1053/02/2017-CX dated 10 March 2017
8. Circular No.1079/03/2021-CX dated 11 November 2021

2a Key judicial pronouncements



Outdoor catering services for personal use or consumption of employees is excluded from definition of input service – SC

Summary

The Supreme Court (SC) has dismissed the Special Leave Petition (SLP) filed by the petitioner and affirmed that the outdoor catering services used primarily for personal use or consumption of any employee is excluded from the definition of input service. The SC further held that it cannot be said that the High Court (HC) has committed any error in denying the input tax credit and holding that such service is excluded from the definition of input service.

Facts of the case

- The petitioner[9] is engaged in manufacturing of multi-utility vehicle/passenger cars and parts thereof and had availed Central Value Added Tax (CENVAT) credit[10] of duty paid on input service/inputs and capital goods used in or in relation to the manufacture of their final products.
- The petitioner had availed and utilised input service tax credit (ITC)[11] relating to outdoor catering service.
- Considering that the outdoor catering services have been excluded from the definition of input service[12], a SCN was issued proposing to demand and recover the ITC availed on outdoor catering services. The adjudicating authority confirmed the demand with interest and penalty[13].
- Thereafter, the appellant preferred appeal before the CESTAT which was also dismissed.

9. Toyota Kirloskar Motor Private Limited
10. under the provisions of the CENVAT Credit Rules (CCR), 2004
11. during the period from April 2013 to September 2013
12. in terms of Rule 2(1)(ii)(c) of CCR, 2004 w.e.f. 1 April 2011
13. u/s 11AC r/w Rule 15(1) of the Cenvat Credit Rules, 2004

Karnataka HC observations and ruling[14]

- **Order of CESTAT upheld:** The HC held that the Tribunal was justified in dismissing the appeal preferred by the appellant and opined that outdoor catering services prior to 1 April 2011 have been held to be covered by the definition of input service. However, after the amendment came into force in the light of specific exclusion clause, outdoor catering service is not at all covered under the definition of input service.
- **Interpretation of statutory provision:** The HC held that this Court has to look squarely at the words of the statute and interpret them. There is no ambiguity in the statute and therefore, as it is a taxing statue, this Court cannot add or substitute words in the statutory provisions while interpreting the statutory provision. A Taxing Statute has to be strictly construed and in Taxing Statue one has to look merely at what is clearly said.

SC observations and ruling[15]

- **Express exclusion under the definition of input service:** The SC observed that the outdoor catering services used primarily for personal use or consumption of any employee have been expressly excluded from the definition of input service.
- **Order of HC upheld:** Therefore, the SC stated that it cannot be said that the High Court has committed any error in denying the ITC and holding that such a service is excluded from input service.

Our comments

The SC has upheld the ruling of the Karnataka HC and, thereby, affirmed that the outdoor catering services used primarily for personal use or consumption of any employee is excluded from the definition of input service. Though the issue has been settled by the SC decision, it is pertinent to note that as provision of such facilities to the employees is obligatory for the businesses under statutory laws it involves huge amount of expenditure and such kind of restrictions shall add on to the costs rather than ensuring free flow of credits.

Since similar restrictions exist even under the GST regime, the government may consider amending the provisions appropriately to ease the availability of ITC in respect of these services.

Exemption is a substantive right which cannot be done away by issuing clarificatory circular – Madras HC

Summary

The Madras High Court (HC) observed that the exemption provided by the Central Government is a substantive right provided to the stakeholders by giving such exemption. Therefore, such kind of exemption cannot be taken away or done away by issuing clarificatory circular by the Board. Merely because the finished product of fish meal produced by the petitioner is being utilised for the purpose of further manufacturing of animal feed or poultry feed, it cannot be stated that it is only a raw material and not a finished product. Therefore, the HC held that the impugned clarificatory circular cannot override the exemption and is unsustainable.

Facts of the case

- The petitioner[16] is a manufacturer of fish meal that comes in powder form. The fish meal is a finished product used as a feed in aqua farm and as a raw material for further manufacture of feed for cattle or poultry.
- The petitioner contended that the fish meal is a finished product despite of its usage and is exempted from GST as covered by the notification[17].
- A circular[18] was issued clarifying that fish meal and other raw material used for making cattle/poultry/aquatic feed cannot be said to be exempted. Thereafter, the Revenue had taken a stand that, since the petitioner's product i.e., fish meal is also to be used as a raw material for the purpose of making cattle/poultry/aquatic feed, which is not exempted, therefore, it should be taxed at the rate of 5%.
- An inspection was carried out at the petitioner's premises and a summons was issued by the DGGI for initiating enquiry proceedings. Therefore, the petitioner filed present writ[19] praying to quash the impugned circular.

14. CEA NO.36/2018 C/W CEA NO.7/2019 dated 21 April 2021
15. Petition(s) for Special Leave to Appeal (C) No(s). 17903-17904/2021 dated 18 November 2021
16. Jenefa India
17. Sl.No.102 of the Exemption Notification 2/2017-CT(R) dated 28 June 2017
18. Circular No.80/54/2018-GST dated 31 December 2018
19. W.P.(MD)No.16770/2019 and W.M.P.(MD)Nos.13372 to 13376 of 2019

Madras HC observations and ruling[20]

- **Further usage cannot change the nature of the product:** The fish meal sold as a raw material for further manufacture of feed for cattle or poultry cannot be separated from the finished product fish meal used for feeding fish and aqua. Merely because finished product is also being sold for further processing, it cannot be stated that, it is only a raw material and not a finished product.
- **Exemptions are substantive right:** The exemption provided by the Central Government is a substantive right provided to the stakeholders by giving such exemption. Therefore, such kind of exemption cannot be taken away or done away by issuing clarificatory circular by the Board.
- **Clarificatory circular cannot override exemption:** The clarificatory circular cannot override the exemption provided under the notification. If anything is to be taken away from the purview of exemption, the central government needs to issue a fresh amendment, but no such action has been taken so far.
- **Circular is to be set aside:** No attempt has been made by parliament or central government by exercising powers under provisions[21] of the act, as only on exercising such powers this kind of amendment can be made. Therefore, the impugned circular would not stand in the legal scrutiny and is unsustainable.

Our comments

This is a welcome judgment by the Madras HC and is in line with the well-settled principle that departmental circular cannot override the statutory provisions.

Earlier in a similar judgment, the Madras HC[22] had held that the circulars cannot prevail over the statute. Circulars are issued only to clarify the statutory provision and it cannot alter or prevail over the statutory provision.

Recently, the Allahabad HC[23] had also held that circular prescribing the online mode for refund applications cannot override or negate the effect of the statutory provisions arising until it is included in the law.

Detention of goods for not carrying e-way bill unsustainable in absence of e-way bill system – Allahabad HC

Summary

The Allahabad High Court (HC) observed that in the present case there was no system of e-way bill in place under the GST law. It was an inter-state transportation of goods, therefore, the State GST Act 2017 did not apply and by virtue of Section 20(15) of the Integrated Goods and Services Act, 2017 it was the Central Goods and Services Tax Act, 2017 which would apply in respect of matters of inspection, search, seizure and arrest. In the present case, the inter-state transfer of goods took place along with tax invoice and other documents and it cannot be considered as a fraudulent transaction. Therefore, the HC held that the insistence by the State authorities that the petitioner's vehicle was not carrying the State e-way bill is without any factual and legal basis.

Facts of the case

- The petitioner[24] challenged the order of the Assistant Commissioner and Additional Commissioner, wherein GST @18% on the value of goods seized during interception and an equivalent penalty was also imposed .
- Both the authorities had held that the petitioner was not carrying the UP e-way bill on the date of interception of goods.
- The petitioner contended that at that time there was no provision of e-way bill in place and it had carried all other relevant documents, including tax invoice.

20. CEA NO.36/2018 C/W CEA NO.7/2019 dated 21 April 2021
21. Petition(s) for Special Leave to Appeal (C) No(s). 17903-17904/2021 dated 18 November 2021
22. Jenefa India
23. Sl.No.102 of the Exemption Notification 2/2017-CT(R) dated 28 June 2017
24. Circular No.80/54/2018-GST dated 31 December 2018

Allahabad HC observations and ruling[25]

- **Absence of e-way bill system:** In the instant case, goods being transported were intercepted when there was no system of e-way bill in place under the GST law.
- **State GST act inapplicable:** It was an inter-state transportation of goods, therefore, the State GST Act 2017 did not apply and by virtue of Section 20(15) of the said Integrated Goods and Services Act, 2017 it was the Central Goods and Services Tax Act, 2017 which would apply in respect of matters of inspection, search, seizure and arrest.
- **No requirement to carry State e-way bill:** It being an inter-state transfer of goods, there was no requirement of carrying the UP state e-way bill. Therefore, the insistence by the State authorities that the petitioner's vehicle was not carrying the UP e-way bill is without any factual and legal basis.
- **Not a fraudulent transaction:** The petitioner had also paid applicable IGST @18% and the goods were transported along with the tax invoice and other documents. Therefore, it was not a fraudulent transaction and there was nothing on record to show otherwise.
- **Writ allowed:** Thus, the HC allowed the writ and directed the Revenue to refund the amount deposited by the petitioner as tax and penalty within two months.

Our comments

On a similar issue, earlier, the Allahabad HC[26] had held that in an inter-state transfer of goods, there was no requirement of carrying the UP State e-way bill. In another case the HC[27] had held that till 31 December 2018, it was not mandatory to download e-way bill from the official portal and, therefore, it had held that the goods were genuinely dispatched and were illegally and arbitrarily detained by the Revenue.

The present ruling by the Allahabad HC is in line with its earlier pronouncements and shall provide required relief to the businesses as also set precedence in similar matters.

Compensation amount received on cancellation of allocation of coal blocks not leviable to service tax - CESTAT

Summary

The Customs Excise Service Tax Appellate Tribunal (CESTAT), Kolkata bench has set aside the demand of service tax, interest and penalty on compensation received by the appellant pursuant to cancellation of allocation of coal blocks. The CESTAT observed that the act of cancellation of the coal blocks and consequent receipt of compensation was as per the law pronounced by the Supreme Court and the subsequent Coal Mines (Special Provisions) Act, 2015 and Coal Mines (Special Provisions) Rules, 2015 (CMSPA) passed by the Parliament. The appellant had no choice but to accept the cancellation of allocation. The receipt of compensation is a consequence of the operation of a statute and not the result of any agreement. Therefore, the CESTAT held that service tax cannot be levied on the compensation amount received by the appellant.

Facts of the case

- The appellant[28] is engaged in mining and selling coal. It was allocated certain coal blocks; however, the allocation was cancelled pursuant to a judgement of the Supreme Court.
- The appellant had invested in mining of these blocks. Therefore, to make up for the financial loss due to cancellation, CMSPA was enacted which provided for compensation to be paid to allottees whose allocation was cancelled.
- The Revenue alleged that the appellant had tolerated the act of cancellation of coal blocks by the Ministry of Coal and received a compensation in lieu of the cancellation. Therefore, this activity of the appellant appears to be a declared service[29].
- Thereafter, the demand was confirmed along with interest and penalty. Hence, aggrieved by the said order, the appellant filed present appeal[30] before the CESTAT.

25. Dated 16 November 2021
26. Satyendra Goods Transport Corp.
27. M/s Shaurya Enterprises
28. MNH Shakti Ltd
29. Section 65B (44) read with 65B (22) and Section 66E (e) of the Finance Act, 1994
30. SERVICE TAX APPEAL NO. 75218 OF 2020

CESTAT Kolkata observations and ruling[31]

- **No choice but to tolerate cancellation:** The appellant had no choice for tolerating cancellation and it had to accept the same. The cancellation was in pursuance of the order of the Supreme Court and not because of a contract to tolerate cancellation.
- **Cancellation due to operation of law:** There was no consideration for tolerating the cancellation, only a compensation provided by the statue for the investment made in the mines by the appellant. The cancellation of allocation of coal blocks and receipt of compensation, both are by operation of law and not pursuant to some contract.
- **Compensation cannot be equated with consideration:** Consideration is a result of execution of contract whereas damages are a result of frustration of the contract. Even in cases where any amount is received under a contract as a compensation or liquidated or unliquidated damages, it cannot be termed 'consideration'.
- **Service tax cannot be levied:** The receipt of compensation by applicant is like the receipt of a compensation when one's land is acquired by the government in public interest. It is completely incorrect to say that landowner has tolerated the acquisition of his land as per an agreement and charge service tax on the compensation. Therefore, service tax cannot be levied on amounts received by appellant as compensation.

Our comments

Even under the GST law, where certain activities or transactions constitute a 'supply', they shall be treated either as supply of goods or supply of services as referred to in Schedule II. However, if there is absence of element of supply of service, as in the present case, Schedule II may not be required to be referred as the primary condition to qualify as supply under Section 7(1) is not getting fulfilled. In this regard, it is pertinent to note that, the Bombay HC[32] had earlier held that GST is not payable on damages/compensation paid for a legal injury. The HC observed that such payment does not have the necessary quality of reciprocity to make it a 'supply' and, therefore, GST is not payable on such amount.

Supply of student recruitment services to parent company is in nature of sub-contracting and not an intermediary service – CESTAT

Summary

The Delhi Customs, Excise and Service Tax Appellate Tribunal (CESTAT) observed that there was nothing on record to show that the appellant had direct contract with foreign universities. Further, there was nothing on record to show that the appellant was liasoning or acting as an intermediary between the foreign universities and the parent company. The appellant was providing services that were sub-contracted by its overseas parent company. Therefore, the CESTAT set aside the order demanding service tax on commission received by the appellant from its overseas parent company for providing student recruitment services in India.

Facts of the case

- The appellant[33] is a subsidiary of M/s IDP Australia (parent company). The Australian universities/institutions have entered into an agreement with the parent company for recruitment of high-quality students and they pay a percentage of the tuition fee which they receive from the students to the parent company for its services.
- The parent company in turn has entered into a Student Recruitment Services Agreement with the appellant wherein the appellant helps to recruit students from India for Australian universities/institutions.
- The appellant provides information and advice to students, help students in their application process, provide pre-departure student assistance with respect to Visa, health insurance, and various student assistance services. The appellant receives commission @ 77% of the application processing fee received by the parent company from the universities.
- A show cause notice was issued to the appellant demanding service tax on this commission, which was subsequently dropped holding the services as export of services. Thereafter, a notice was issued by Directorate General of Central Excise Intelligence (DGCEI) contending that the student recruitment service is misnomer, and the appellant was acting as an 'intermediary' between the foreign service providers, the parent company, and the students in India.
- The Additional Director General confirmed the demand only for the normal period of limitation along with interest and imposed penalty of INR 50 lakh[34]. Therefore, the appellant filed present appeal[35] before the Delhi CESTAT.

31. Final Order No.75689/2021 dated 10 November 2021
32. Bai Mamubai Trust, Vithaldas Laxmidas Bhatia, Smt. Indu Vithaldas Bhatia vs. Suchitra
33. IDP Education India Pvt Ltd
34. under Section 76 and INR 10,000 under Section 77 of the Finance Act, 1994
35. Appeal No. 52540 OF 2016

CESTAT Delhi observations and ruling[36]

- **No remuneration received from Australian universities by the appellant:** The appellant recruits or facilitates students in India but does not get any remuneration from Australian universities. When the students recommended by appellant are recruited, Australian universities pay commission to the parent company which in turn pays a part of it to the appellant.
- **No direct contract between appellant and foreign universities:** The scheme of arrangement clearly shows that the parent company was providing services to the foreign universities and received consideration for the same. The parent company had created the appellant as a fully owned subsidiary and had sub-contracted the work of recruitment of students in India to the appellant. There was nothing on record in the show cause notice or in the order to show that the appellant had a direct contract with the foreign universities.
- **Appellant not acting as intermediary:** It was evident that appellant was providing services which have been sub-contracted to it by the parent company and received commission for the same. There was nothing on record to show that the appellant was liasoning or acting as an intermediary between the foreign universities and the parent company. As a sub-contractor, the appellant was receiving commission from the main contractor i.e., the parent company, which in turn, was receiving commission from the foreign universities.
- **DGCEI's view and notice is unsustainable:** The DGCEI had investigated an issue that had been settled earlier and issued notice taking a different view. If the DGCEI was aggrieved by the earlier order which was passed, the right course could have been for it to appeal to a higher judicial forum. A show cause notice issued on the same issue which has already been settled, simply because DGCEI holds a different view is not sustainable. Therefore, the impugned order was set aside.

Our comments

In the present ruling, the Delhi bench of CESTAT has held that mere interaction with the local students and making them aware about a foreign university, on behalf of their parent company, is an independent service and is distinct from intermediary services. It is pertinent to note that as the definition of intermediary under the GST regime is pari - materia with the service tax regime, this decision should act as a good guidance.

36. Final Order No. 51901/2021 dated 28 October 2021

Interest on refund of pre-deposit is permitted irrespective of mode of payment of pre-deposit – CESTAT

Summary

The Customs, Excise and Service Tax Appellate Tribunal (CESTAT) Delhi observed that the provisions pertaining to grant of interest on refund of pre deposit do not distinguish between the mode of payment of pre-deposit. The law only provides that interest should be paid on refund of pre-deposit on successful appeal. Thus, the CESTAT observed that interest on refund of pre deposit should be permitted irrespective of the mode of making the said deposit. Accordingly, it held that the commissioner's view that interest on refund of pre-deposit is permissible only when pre-deposit is paid in cash is erroneous.

Facts of the case

- The appellant[37] was engaged in provision of Scientific or Technical Consultancy Services, Technical Inspection and Certification Services, Intellectual Property Services other than Copyright, etc.
- The appellant had filed an appeal before the Tribunal and had deposited an amount as pre-deposit at the time of filing the appeal.
- The appeal filed by the appellant was decided in favour of the appellant by the Tribunal. Therefore, as the appeal was decided in favour of the appellant, it filed for refund of amount of pre-deposit along with interest[38].
- The prayer for interest on pre-deposit amount was rejected on the ground that the pre deposit was paid through debit of CENVAT credit, and as such interest on the refund of pre-deposit is permissible only when the pre-deposit amount was paid in cash.
- Being aggrieved by the said order, the appellant filed the present appeal before the Delhi CESTAT.

CESTAT Delhi observations and ruling[39]

- **Provision does not differentiate between the mode of payment of pre-deposit:** The law provides that interest shall be payable to appellant on amount of pre-deposit to be refunded on being successful in appeal. It does not make a distinction between pre-deposit made by way of cash/PLA or by way of CENVAT credit account.
- **Interest cannot be denied:** In the present case, the order of commissioner is erroneous to the extent it states that interest on the refund of pre-deposit is permissible only when the pre-deposit amount was paid in cash and needs to be modified to the extent of denial of interest. Further, the CESTAT directed the adjudicating authority to disburse interest @ 12% from date of deposit till date of allowance of refund.

Our comments

Earlier, the Gujarat High Court[40] had held that pre-deposit made by the petitioners by availing CENVAT credit shall be accepted. Further, the Kolkata CESTAT[41] had held that there is no bar under the law, that the deposit must be made in cash only and not from CENVAT credit account.

In the present case, also the Delhi Tribunal has observed that the law does not make a distinction between pre-deposit made by way of cash/PLA or by way of CENVAT credit account. Therefore, it held that interest on refund of pre deposit should be permitted irrespective of the mode of making the said deposit. Thus, this is a welcome decision by the CESTAT Delhi and will set a precedence in similar cases.

37. PANACEA BIOTEC LTD
38. under Section 35FF
39. Excise Appeal No. 50319 of 2021-SM
40. in the case of Cadila Health Care Pvt. Ltd.
41. in the case of M/s Manaksia Ltd.

2b Decoding advance rulings

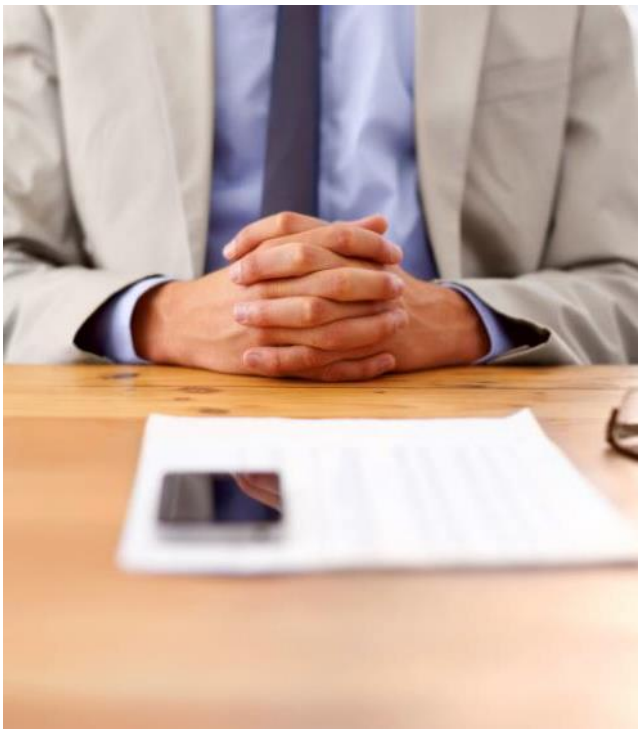
Principle of ‘ejusdem generis’ not applicable to the definition of intermediary – Karnataka AAAR

Summary

The Karnataka Appellate Authority for Advance Ruling (AAAR) clarified that the definition of intermediary does not limit its coverage to a ‘broker’ and ‘agent’ which are fundamentally different. Although in common parlance the terms Broker, Agent and Intermediary may seem to be in a proximity, they do not form any category or class, nor do they constitute a genus under the legal provisions of the GST Act. Thus, the said phrase cannot draw its colour from the preceding words which are altogether different and is to be interpreted to include persons who are not necessarily similar to ‘broker’ or ‘agent’. It observed that the appellant is only arranging for and facilitating the main supply of goods between the principal i.e., Airbus France and the Indian suppliers without undertaking the same on its own account. Therefore, the AAAR upheld the order of the Karnataka Authority for Advance Ruling (AAR) and held that the services supplied by the appellant to its holding company i.e., Airbus France, is in the nature of ‘intermediary services’.

Facts of the case

- The appellant[42] has entered into an Intra-Group Services Agreement with its overseas holding company[43]. The appellant broadly performs two functions i.e., procurement operations and procurement transformation and central services. For provision of the aforesaid services, the appellant shall be paid a service fee computed on 'cost plus mark-up basis'.
- The appellant had sought an advance ruling before the Karnataka AAR to understand whether the activities carried out by it in India would constitute a supply of 'Other Support Services' or as intermediary services. Another question that arises is whether the services would qualify as export of services[44]
- The AAR[45] held that the activities carried out in India by the appellant would constitute a supply of intermediary services classifiable under SAC 998599. The services do not qualify as export of services and are taxable @ 18%.
- Hence, aggrieved by the said ruling, the appellant filed present appeal before the Karnataka AAAR.



Karnataka AAAR observations and ruling[46]

- **Ejusdem generis cannot be made applicable:** The principle of ejusdem generis is inapplicable in the present case as making it applicable would limit the scope of term 'intermediary'. It is inapplicable in interpreting the phrase 'any other person' used in the definition of intermediary.
- **Arranging or facilitation of supply between two or more persons:** An intermediary can be a broker or agent or any other person whose role is limited to arranging or facilitating the supply of goods or services or both between two or more persons. The act of arranging or facilitating envisages two distinct supplies i.e., main supply between two principals and ancillary supply is the supply of intermediary service.
- **Inputs from appellant assist principal to finalise Indian supplier:** The appellant shall provide complete information about the potential Indian suppliers who will supply the aircraft parts to the principal. Based on the inputs provided by the appellant, the principal shall decide which Indian supplier to enter a contract with. This is a facilitation rendered by the appellant to principal whereby the Indian suppliers are supported to comply with Airbus standards and processes.
- **Not supplying on own account:** The appellant's role is nothing but arranging or facilitating a supply between the principal and the Indian suppliers. It is only arranging the contact between the principal and the Indian supplier and the actual supply of the goods is done by the Indian supplier directly to the principal. The service of facilitating the main supply is provided by the appellant. The appellant is not supplying such goods on his own account.
- **Services supplied by appellant qualify as an intermediary:** As the services provided by the appellant does not fall within the ambit of exclusion contained in intermediary, appellant is playing the role of intermediary[47] for the holding company. The services of appellant acting as an intermediary would be classified under 'other support service'[48].

Our comments

The taxability of 'intermediary services' has always been a matter of extensive litigation. Recently, the CBIC had issued clarification which addressed various key aspects on the taxability of 'intermediary services'. However, the clarification did not give exhaustive definition for the term 'intermediary' neither it covered all the scenarios/business models to determine the 'intermediary services'.

The present ruling by the Karnataka AAAR seems to be in line with the CBIC's clarification. However, even though an advance ruling is applicable only to the applicant, such rulings may prompt companies undertaking similar activities for overseas entities to evaluate their service contracts and revisit their tax positions.

42. M/s Airbus Group India Pvt Ltd
43. Airbus Invest SAS, France
44. Section 6(2) of the IGST Act, 2017
45. Vide order No. KAR ADRG No.31/2021 dated 1 July 2021
46. Order No. KAR/AAAR/09/2021-22 dated 9 November 2021
47. Section 2(13) of the IGST Act, 2017
48. Heading 998599

Separate registration not required for executing works contract in another state - Karnataka AAR

Summary

The Karnataka Authority for Advance Ruling (AAR) observed that the applicant has only one principal place of business in Noida for which registration has been obtained. Further, the applicant does not intend to have any other fixed establishment other than the principal place of business. Therefore, the AAR held that the location of the supplier itself is the principal place of business. Thus, it held that the applicant is not required to obtain separate registration in Karnataka for execution of works contract and can raise invoice from its principal place of business by charging Integrated Goods and Service Tax (IGST).

Facts of the case

- The applicant[49] is a sub-contractor and has received a work order[50] for erection and installation of steel structure which is to be casted and bolted on the ground in the civil foundation.
- The applicant engaged and utilised the services of registered dealers in Karnataka for installation of steel fabricators.
- It sought advance ruling before the Karnataka AAR to understand the following aspects:
  - the Harmonised System of Nomenclature (HSN) or Service Accounting Codes (SAC) that needs to be mentioned while transporting the steel structures fabricated at Noida to the work site in Karnataka
  - whether it is required to be registered in the state of Karnataka for execution of the works contract
  - whether it is required to obtain input service distributor (ISD) registration to avail ITC of tax paid on services procured from the suppliers in Karnataka and distribute the same to their principal place of business in Noida

Karnataka AAR observations and ruling[51]

- **Does not seek classification of goods/service:** The applicant neither seeks classification of goods nor services but only wants to understand whether HSN/SAC needs to be mentioned. As this question is not covered under the issues[52] requiring an advance ruling under the GST law, it was not within the jurisdiction to answer this question.
- **No requirement to obtain separate registration:** In the present case, the place of supply of service is the location at which the immovable property is located i.e., Karnataka. Further, the applicant has only one principal place of business in Noida for which registration has been obtained and it does not/intend to have any other fixed establishment other than the principal place of business. Therefore, the location of the supplier itself is the principal place of business. Thus, the applicant is not required to obtain separate registration in Karnataka for execution of works contract and can raise invoice from its principal place of business by charging IGST.
- **Cannot obtain ISD registration:** The GST law clearly provides that an ISD issues document for purpose of distributing ITC and it is required to obtain ISD registration for the premises where it intends to distribute credit. But, as the applicant is neither having nor intending to have any establishment in Karnataka, it cannot obtain ISD registration for the service delivery site.

Our comments

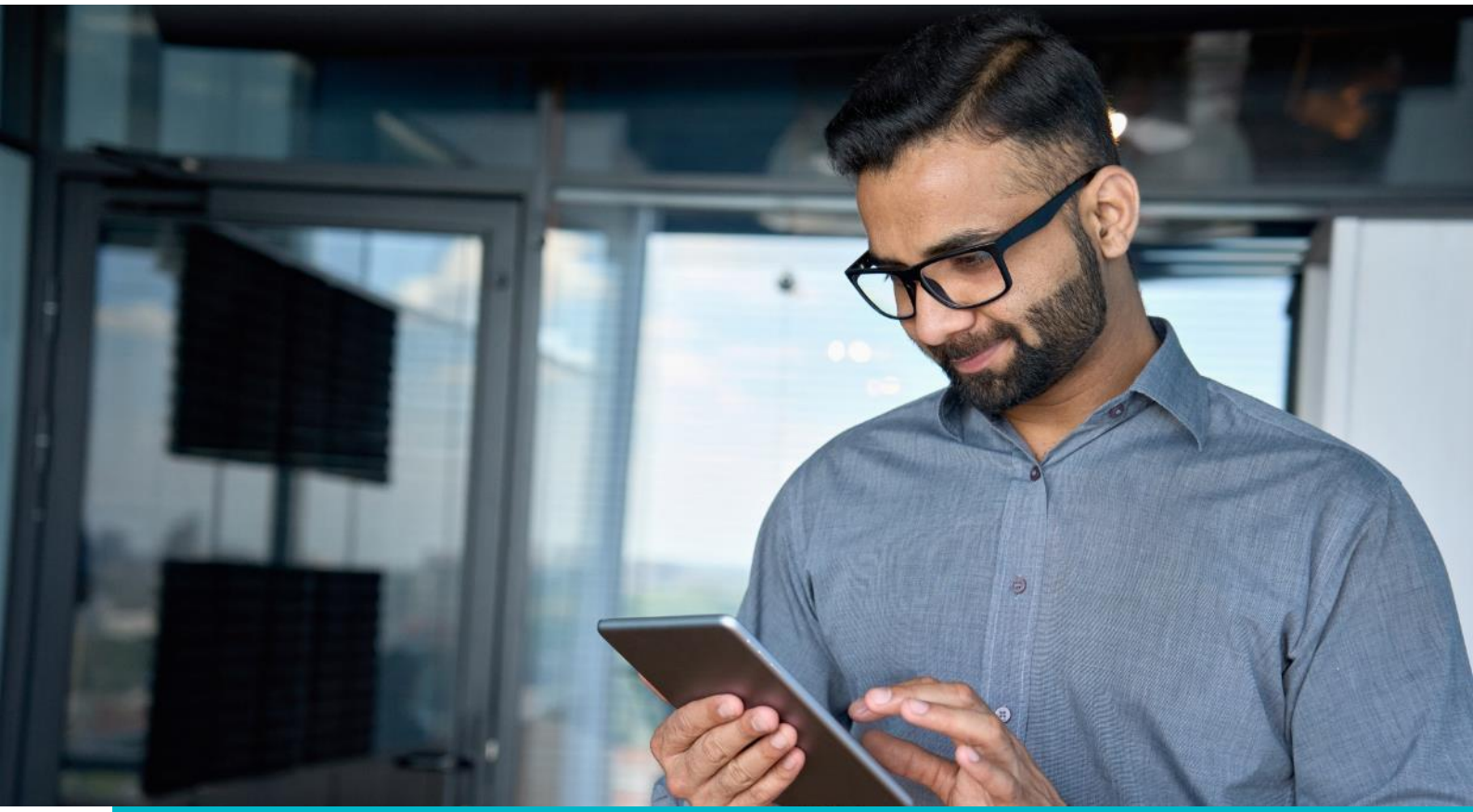
Under the GST law, fixed establishment has been defined to mean a place which is characterised by a sufficient degree of permanence and suitable structure in terms of human and technical resources to supply services, or to receive and use services for its own needs. However, the term 'sufficient degree of permanence' has not been defined under the law and is a matter of interpretation. In the present case, as the applicant was able to supply as well as receive and use services in the State of Karnataka, it may be said that the condition prescribed to qualify as a fixed establishment is getting fulfilled.

In this regard, it is pertinent to note that recently, the Delhi HC[53] has pronounced a contradictory ruling on a similar issue. The HC has observed that as per Section 24 of the CGST Act, a casual taxable person making taxable supplies is required to be registered. Therefore, it held that even if the petitioner was registered in Delhi but as it will be required to make supplies and render services in Hyderabad, the petitioner is sufficiently covered under the definition of casual taxable person.

Thus, considering the above, the present advance ruling by the Karnataka AAR seems to be contrary to the intention of the law.

49. GEW (India) Pvt. Ltd.
50. From Larsen and Toubro, Karnataka
51. KAR ADRG 63/2021 dated 8 November 2021
52. Section 97(2) of the CGST Act, 2017
53. M/s Pragati Engineers

03 Experts' column



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Special Valuation Branch – An overview

Until the early 1990s, India was almost a closed economy with various trade barriers, i.e., higher tariffs and various licensing requirements. The liberalisation began in the 1980s which, due to the conditions to lend money by the International Monetary Fund, accelerated in the early 1990s.

Today the Indian economy, by and large, is driven by market dynamics. These measures helped a phenomenal increase in India's international trade and coupled with the availability of a huge market, prompted multinational companies (MNCs) to set up their subsidiaries in the country.

Importance of Customs Valuation

India, being one of the founder members and signatory to the World Trade Organisation (WTO), is bound by its guiding principles and therefore adopted its customs valuation mechanism from Article VII of the General Agreement on Tariffs and Trade (GATT), 1994. As per the WTO guidelines, the workable option available to protect the domestic industry from trade mischief is mainly in the form of selected tariff barriers only. The justification of the tariff rate would lie based on the valuation of imported/exported goods.

Further, the government collects tax in the form of duties of customs on import/selective exports of goods and apart from earning revenue, the endeavour is to protect domestic industries as well. Further, the WTO method of customs valuation, barring exceptional circumstances, warrants a levy of customs duty on an ad-Valorem basis, and hence valuation plays a significant role in international trade.

The valuation provisions prescribed under the Indian customs law, except for a few cases, mandate a levy of customs duty on transaction value and allow some adjustments.

However, the transaction value is applicable only for sale between unrelated parties. In all other cases, the valuation must be based on the customs valuation Rules.[54]

Related Party Transactions and Special Valuation Branch (SVB)

Many MNCs have set up their subsidiaries/joint ventures (JVs) in India that import inputs (mostly semi-assembled conditioned) and sell/re-export after processing in India. Further, due to the availability of a huge market, many companies have set up marketing companies in India who would import from its holding companies and sell in India. This has resulted in a multi-fold increase in related-party transactions.

As the valuation of the transactions between the related parties is prone to get influenced, a special wing in the name of Special Valuation Branch (SVB) under the customs department has been formed. The sole objective of the SVP is to scrutinise the transactions involving special relationships between the buyer and seller.

Requirement of submission of details/declaration by the importer

The importer is required to file a Bill of Entry (BOE) for clearing the imported goods from the port. While filing such BOE, every importer is required to make a declaration about whether the transaction is between 'related persons' or not. In case of such related party transactions, the importers are advised to file a prior BOE preferably 15 days before the import. Besides, the importer is required to provide information in the prescribed annexure[55]. The annexure inter alia includes the details related to the importer, seller, goods, and other payments.

The proper officer at the custom station of import, with the help of advance filed BOE, declaration and details in the prescribed annexure, scrutinise and submits his findings to the commissioner, for a decision on whether the case is fit for SVB investigation.

The evaluation for referring the case for SVB investigation is done within three days by assessing the 'circumstances surrounding the sale' based on following parameters:

- the transfer price of the goods,
- valuation methodology adopted,
- nature of relationship,
- involvement of additional payment,
- nature of payment if it is a condition of sale, etc.

The commissioner after due consideration of the preliminary findings, decides as to the matter to be referred to SVB for further investigations or finalising the assessment basis of enquiries conducted by the proper officer as per Custom Valuation Rules[56] or by acceptance of TV of the imported goods.

The cases referred for SVB investigation would be cleared after provisional assessment[57] and obtaining of surety or bond.

Role of SVB

To facilitate speedy inquiries by SVB, the proper officer may also call for further information, in addition to normal documents, from the importer in the prescribed format.

The importers are advised to furnish the documents and a duly indexed reply to the questionnaire to the jurisdictional SVB within 60 days. Such documents broadly include BOE filed, provisionally assessed documents, Annual Reports, Balance Sheets, Transfer Pricing report, details of goods imported, pricing pattern of the goods terms and conditions of sale, etc.

The SVB commences its inquiries once it receives information in the prescribed format[58] and may call for further documents or information as required and provides suitable opportunity of being heard. The failure to submit documents and information related to SVB inquiries within 60 days of such requisition, would attract security deposits at 5% of the declared value.

54. Customs Valuation (determination of value of Imported Goods) Rules,2007
55. Annexure A of the Circular number 5 /2016-Customs dated 9 February 2016
56. Rules 4 to 9 of the Customs Valuation Rules, 2007
57. Section 18 of the Customs Act, 1962
58. Annexure B of the Circular number 5 /2016-Customs dated 9 February 2016

The process of valuing imported goods, where TV is not accepted, is a time-consuming activity involving judgement. Generally, the value of goods sold to unrelated person is taken as a base for valuation of goods with related party. In case of unavailability of such prices, the authorities adopt the price of similar or identical goods based on the availability of the information. However, identifying such similar or identical goods is a meticulous process as every good is different from other in form, marketability, brand value, appearance, etc. However, the valuation of goods is done keeping in mind the principles laid down in Custom Valuation Rules.[59]

Cases out of purview of SVB

The cases only with significant revenue implication are to be considered for SVB. Thus, following cases are explicitly out of the purview of SVB:

- Import of samples and prototypes from related sellers
- Imports from related sellers where duty chargeable (including additional duty of customs, etc.) is unconditionally fully exempted or nil.
- Any transaction where the value of imported goods is less than INR 1 lakh but cumulatively these transactions do not exceed INR 25 lakh in any financial year.

The SVB submits its findings to the Principal Commissioner (PC)/Commissioner which quantifies the extent of influence on the transaction value due to the relationship. On approval by PC/Commissioner, an Investigating Report (IR) is prepared based on documents relied. In case the IR provides that the investigation findings are found conforming the TV, then finalisation of provisional assessment is made otherwise, the proper officer issues SCN to the importer within 15 days of the receipt of IR. In case of imports cleared through multiple customs locations, the adjudicating authority appointed by the Board, passes an order quantifying the extent of influence on the declared transaction value.

The SVB's shall complete its investigations within two months from the date of receipt of additional information[57] otherwise approval of jurisdictional Commissioner is required. Further, if the cases are not completed within four months, the matter is submitted before the Chief Commissioner for extension of period as is deemed fit.

Jurisdiction of SVB

The jurisdiction of the SVBs is functioning at Custom Houses (CH) from Bengaluru, Chennai, Kolkata, Delhi, and Mumbai. The jurisdiction of SVBs is selected based upon the principal location of the corporate office of the importer. In case of CHs of Mumbai/Delhi/Chennai/Kolkata/ Bangalore, the importer will be free to select the SVB of the Customs House of import or the Customs House most approximate to the corporate office, as convenient to the importer.

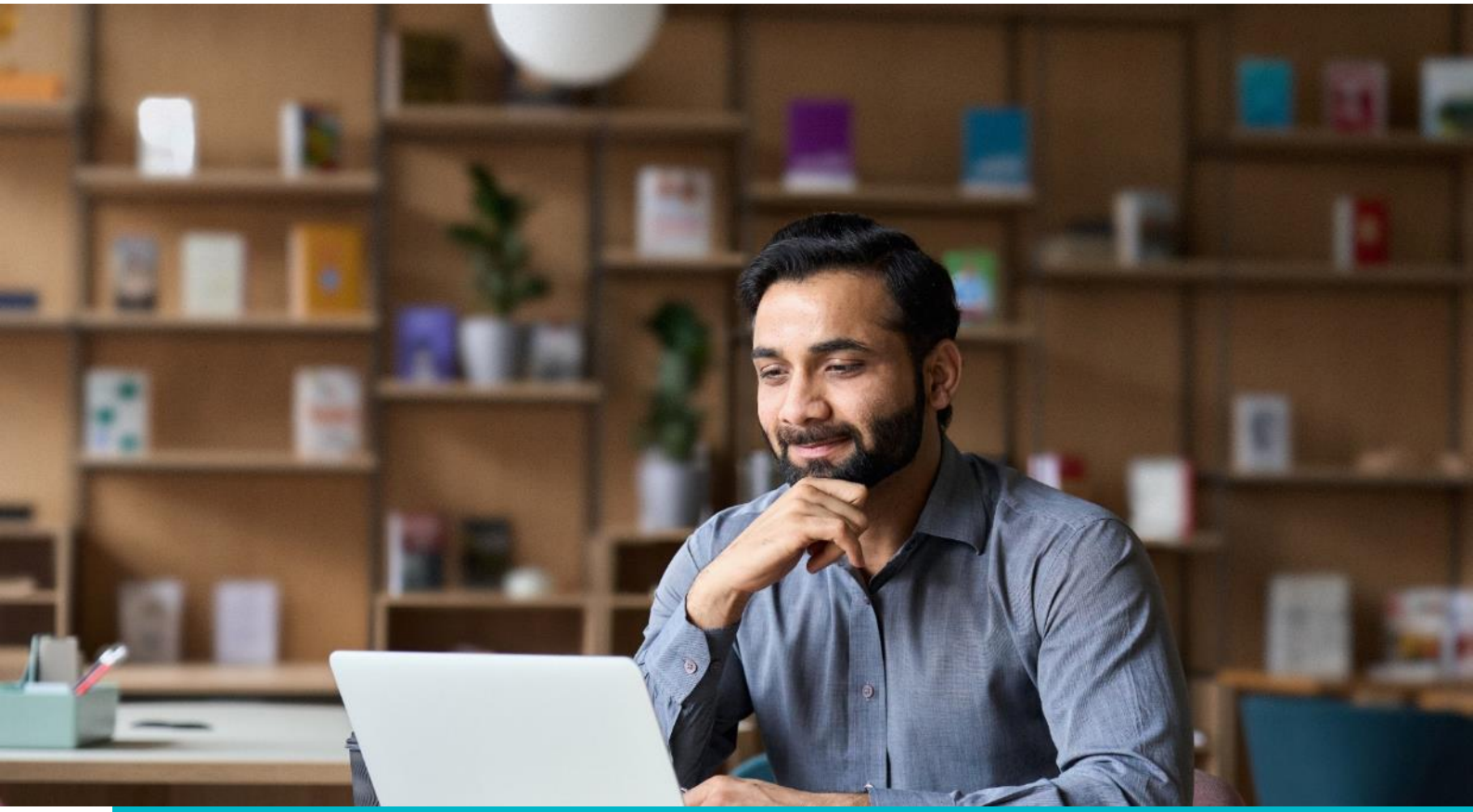
Appeal

Any person aggrieved by order passed by the adjudicating authority by an officer of customs lower in rank than a PC or Commissioner of Customs may appeal to the Commissioner (Appeals) within sixty days from the date of the communication to him of such decision or order. The further appeal for orders passed by PC or Commissioner or Commissioner (Appeals) can be made to Appellant Tribunal within three months of date of communication of order.

The SVB investigations requires both availability of adequate documents/agreement by the importer and mindful judgement by the officer. It is always recommended to foresee the future requirement of documents/ explanations before actual import of goods. Such advance preparation would be helpful in avoiding litigation during further investigations.

59. Rules 4 to 9 of the Customs Valuation Rules, 2007

04 Issues on your mind



How to verify an invoice is duly reported to IRP?

The authenticity or correctness of e-invoice can be verified by uploading the signed JSON file or Signed QR Code (string) into e-invoice system: einvoice1.gst.gov.in> Search> 'Verify Signed Invoice'. Alternatively, the authenticity can also be verified by using the 'Verify QR Code' mobile app which may be downloaded from einvoice1.gst.gov.in > Help > Tools >Verify QR Code App.

What is SB-EDPMS enquiry system on ICEGATE?

The ICEGATE has launched a Shipping Bill – RBI Export Date Processing and Monitoring System (SB-EDPMS). Using this facility, the users can check the status of the shipping bill and related LEO status at RBI EDPMS System. They can also use this functionality to raise request related to rectification of SB EDPMS status and check the amount realised by RBI EDPMS system.

What are the features of Compliance Information Portal (CIP)?

The CBIC has launched an Indian Customs Compliance Information Portal (CIP) to provide a free, easy and quick access to information on all Customs procedures and regulatory compliance for nearly 12,000 Customs Tariff Items. This portal gives information on Customs procedures and compliance requirements for imports and exports, contact details and web links of the Regulatory Agencies involved for each commodity, Customs Tariff Item wise. It also gives information on applicable Duties and Taxes on each commodity. The portal can be accessed using the URL https://cip.icegate.gov.in/CIP.

05 Important developments in direct taxes

Important amendments/updates

CBDT issues guidelines on eligibility for exemption under Section 10(23FE) of the Act

Section 10(23FE) of the Act exempts dividend, interest and long-term capital gains income earned by SWF[60] and PF[61] from investment in infrastructure in India made between 1 April 2020 to 31 March 2024[62]. It also provides that in case the SWF/PF has loans or borrowings, directly or indirectly, for the purposes of making investment in India, such fund will be deemed to be, not eligible for this tax exemption. To clarify certain issues being faced by taxpayers, the CBDT has recently issued[63] the following clarifications:

- **Specific borrowings:** If the loans and borrowings have been taken by the SWF/PF or any of its group concern, specifically for the purposes of making investment in India, such fund shall not be eligible for the aforesaid exemption.
- **Non-specific borrowings:** If the loans and borrowings have been taken by the SWF/PF or any of its group concern, not specifically for the purposes of making investment in India, there will be no presumption and it will be eligible for exemption[64].

60. Sovereign wealth funds
61. Pension funds
62. Subject to fulfilment of certain prescribed conditions
63. Circular no. 19 of 2021 dated 26 October 2021
64. Subject to the fulfilment of all other prescribed conditions, provided that the source of the investment in India is not from such loans and borrowings

CBDT rolls out new Annual Information Statement

CBDT has rolled out a new AIS[65,66] on the Compliance Portal which provides a comprehensive view of taxpayer's information. The new AIS can be accessed by clicking on the link 'Annual Information Statement' under the 'Services' tab on the new Income tax e-filing portal[67]. Form No. 26AS on TRACES[68] portal will be available until complete operationalisation of new AIS.

Features of the new AIS:

- It includes additional information relating to interest, dividend, securities transactions, mutual fund transactions, foreign remittance information, etc.[69]
- In case the taxpayer finds the information to be either incorrect or requires modification, feedback can be submitted (online or offline).
- For ease of filing return, a simplified TIS[70] has also been generated which shows aggregated value.
- If the taxpayer submits feedback on AIS, the derived information in TIS will be automatically updated in real time and will be used for pre-filling of return which will be implemented in a phased manner.

Requests to taxpayers by the CBDT:

- Taxpayers have been advised to check all related information and report complete and accurate information in the income tax return.
- In case there is any variation of information relating to TDS[71]/TCS[72] and/or details of tax paid reflected on TRACES portal vis-à-vis information as per AIS, taxpayer may rely on the information displayed on TRACES portal for the purpose of filing of income tax return and other tax compliance purposes.

E-Settlement Scheme, 2021 for pending settlement applications

CBDT has notified[73] a scheme[74] which is applicable to pending settlement applications where the applicant has not exercised the option to withdraw its settlement application[75] and which has been allotted or transferred by CBDT to the Interim Board[76].

Some of the key highlights of the scheme are as follows:

- Under the Scheme, an 'interim board' will settle the pending applications electronically[77]. All communications between the Interim Board and the applicant or the Principal Commissioner/Commissioner will be exchanged by electronic mode[78].
- The proceedings before the Interim Board will not be open to public and no person[79] will remain present during the proceedings without the permission of Interim Board[80], even on video conferencing or video telephony.
- There will be no personal appearance in connection with any proceedings under this Scheme before the Interim Board.
- The Interim Board, at its discretion, may direct the publication of orders or portions of its rulings with modifications as it may deem fit.
- The procedure for settlement of applications allotted or transferred to an Interim Board has also been laid down.

65. Press release dated 1 November 2021
66. Annual Information Statement
67. https://www.incometax.gov.in
68. TDS Reconciliation Analysis and Correction Enabling System
69. Taxpayer can download AIS information in PDF, JSON, CSV formats
70. Taxpayer Information Summary
71. Tax Deducted at source
72. Tax Collected at source
73. Vide notification no 129/2021 dated 1 November 2021 (F. No. 370142/52/2021)
74. E-Settlement Scheme, 2021
75. Under Section 245M(1) of the Act
76. Interim Board shall have such income-tax authority, ministerial staff, executive or consultant to assist the members of the Interim Board, as considered necessary by the CBDT.
77. Random allocation or transfer of cases to interim board shall be devised by the Principal Director General of Income-tax (Systems) or the Director General of Income tax (Systems) with the approval of CBDT
78. Interim Board shall communicate with the applicant via e-mail and the applicant shall file response to such notice or order or any other electronic communication through his registered email address.
79. Other than the applicant, his employee, the concerned officers of the Interim Board or the Income-tax authority or the authorised representatives
80. Authorised income-tax authority will provide the link and password to the applicant and concerned parties for attending the proceedings

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Sahar Road, Andheri East,
Mumbai - 400069

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