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GST Compendium

A monthly guide

February 2022

Editor’s note

The finance minister presented the Union Budget FY 2022-23 with a focus on long-term growth. The budget, inter alia, proposed various measures on the tax front intending to promote ease of doing business, check tax evasion and align tax laws. A link to our budget analysis is provided in the compendium.

The finance minister also mentioned revamping the Special Economic Zones (SEZ) regime and a fully IT-driven structure in partnership with ICEGATE for enhanced automation and faceless mechanisms.

On the judicial front, the Supreme Court (SC) upheld the personal cost imposed by the Telangana High Court on the Revenue Authorities for unnecessary litigation and enhanced it. It is one of the rare occasions where costs have been imposed on the Revenue Authorities to send a message, to avoid undue hardship to the taxpayers and curb unnecessary litigation.

In another development, the Maharashtra Appellate Authority for Advance Ruling (AAAR) has held that providing facilitation services by head office (HO) to branch offices/units is to be treated as a supply of services leviable to the Goods and Services Tax (GST). Considering this matter has been an area of extensive litigation, the government could issue some guidance to avoid disputes and litigation.

Considering the hardships faced by taxpayers, the Central Board of Direct Taxes (CBDT) has extended timelines for certain tax compliances. Further, the CBDT has notified the new Faceless Appeal Scheme, 2021, and E-advance ruling Scheme, 2022.

The Apex Court has further extended the period of limitation for all judicial and quasi-judicial proceedings.

Hope you will find this edition an interesting read.

Vikas Vasal

National Managing Partner, Tax

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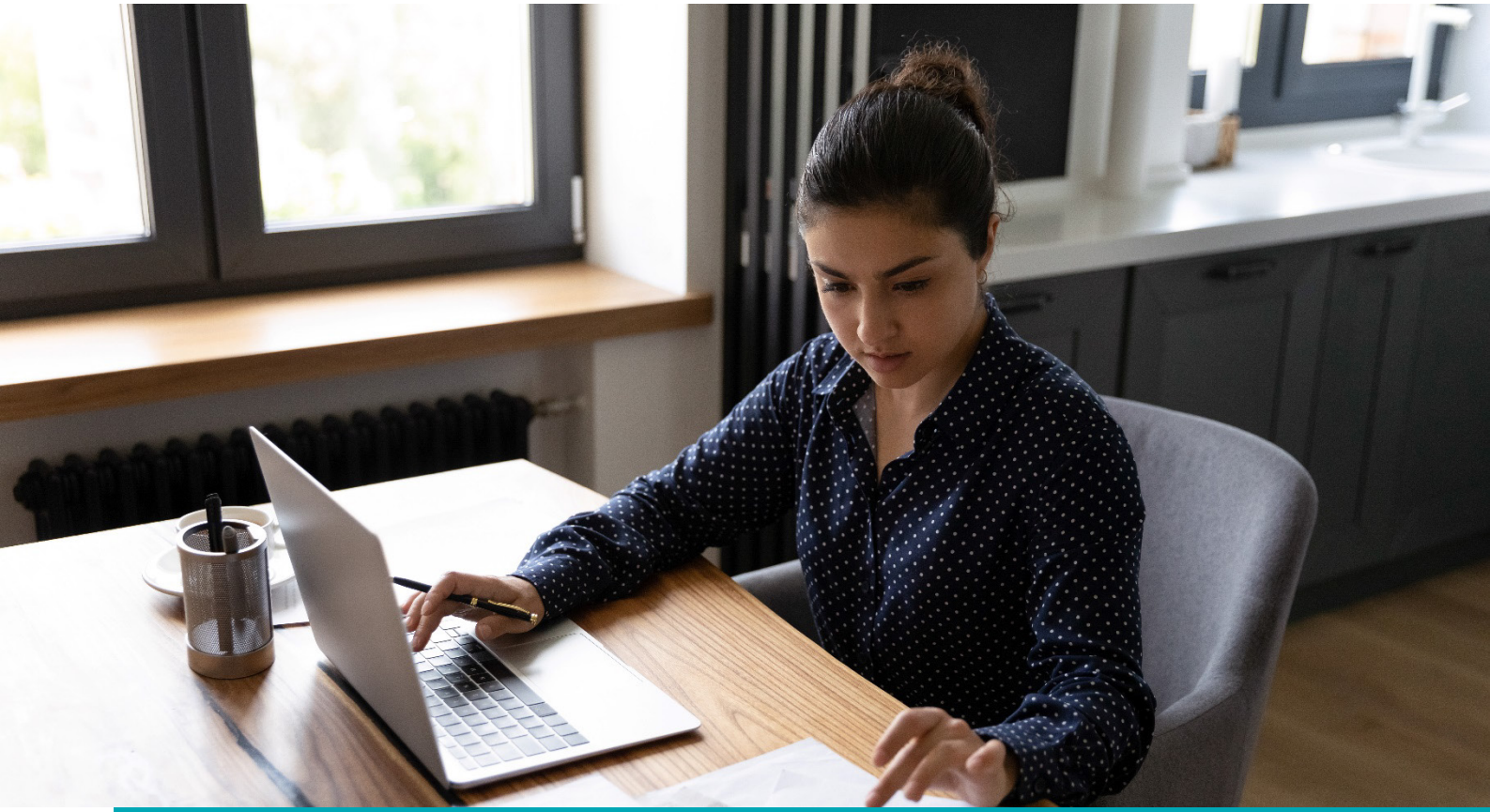


Union Budget 2022-23: Key indirect tax proposals

The Finance Minister rolled out the Union budget 2022-23 on 1 February 2022, proposing significant changes under the GST law with a specific focus towards easier facilitation and better administration. Further, numerous amendments have also been made in the Customs Tariff across sectors, along with certain procedural changes under the Customs laws, primarily with an intent to encourage Make in India, Atmanirbhar Bharat and facilitate ease of doing business.

Goods and Services Tax (GST) (effective from a date to be notified):

- Extension of timeline to avail input tax credit pertaining to a particular financial year till 30 November (earlier it was September) of the subsequent year
- Extension of timeline for issuance of credit notes and rectification of errors in GST returns pertaining to a particular financial year till 30 November (earlier it was September) of the subsequent year
- Scrapping of the two-way communication process of filing GST returns as specified under the GST laws
- Substituting procedure for communication of inward supplies to restrict input tax credit to the extent reflecting in the auto-generated statement
- Enable transferring electronic cash ledger balance of CGST/IGST to another registration within the same Permanent Account Number (PAN)
- Provision to prescribe the maximum proportion of output tax liability which may be discharged through electronic credit ledger
- Retrospective amendment in CGST Act to provide for levy of interest @18% on input tax credit wrongly availed and utilised, with effect from 1 July 2017
- Clarification provided regarding the relevant date for filing refund claim for SEZ supplies, which is the due date of filing statement of outward supplies

Customs

- Scope of Proper Officer under Customs widened to include DRI and other officers appointed by CBIC
- The Board empowered to frame rules for detecting undervaluation of imported goods and for casting additional obligation on importer
- Procedure for claiming the benefit of exemption on imported goods to be simplified and digitized (effective from 1 March 2022)
- Rationalization of Advance Ruling provisions to facilitate filing of online application, withdrawal of application before the pronouncement of ruling, etc.
- Phasing out of concessional rates on capital goods as well as project import scheme
- Withdrawal of more than 350 exemptions, including exemption on certain agricultural produce, chemicals, fabrics, medical devices and drugs and medicines for which sufficient domestic capacity exists
- Simplification of customs rate and tariff structure, particularly for sectors like chemicals, textiles and metals

Special economic zones (SEZ)

- Introduction of new legislation for SEZs in place of the existing SEZ Act, along with the involvement of state governments as partners in the revamp and development process
- Fully IT-driven structure in partnership with the Customs administration provisions through Indian Customs Electronic Commerce/ Electronic Data Interchange (EC/ EDI) Gateway (ICEGATE) portal for enhanced automation and faceless mechanism
- Risk-based verification approach instead of the existing comprehensive checking approach

For detailed analysis, refer to our comprehensive budget publication here.

CBIC issues clarification regarding applicability of Social Welfare Surcharge on goods exempted from basic and other customs duties/cesses

Social Welfare Surcharge (SWS) is levied at the rate of 10% on the aggregate of duties, taxes and cesses, which are levied and collected as a duty of Customs on goods imported into India[1]. The CBIC received representations seeking clarification on the issue of applicability of SWS on goods that are exempted from basic customs duty or taxes or cesses which are levied as a duty of customs.

In this regard, the CBIC has clarified that the amount of SWS payable would be nil in cases where the aggregate of customs duties (which form the base for computation of SWS) is zero even though SWS has not been exempted[2].

Extension of last date for submitting applications under scrip-based schemes

The government had earlier notified the last date for submitting online applications for various scrip-based schemes under the Foreign Trade Policy 2015-20 as 31 December 2021[3]. The government had extended the last date for submitting applications to 31 January 2022. The last date for submitting applications has been further extended to **28 February 2022**[4]. Further, the revised late cut provisions for the applications submitted up to 28 February 2022 have also been notified as follows:

Scheme	Coverage	Late cut applicable as % of entitlement under the scheme	
Merchandise Exports from India Scheme (MEIS)	Goods export made in period from 1 July 2018 to 31 December 2020	FY 2018-19 (1 July 2018 to 31 March 2019)	10%
		FY 2019-20 and FY 2020-21 up to 31 December 2020	Nil
Services Exported from India Scheme (SEIS)	Service exports rendered in FY 2018-19 and 2019-20	FY 2018-19	5%
		FY 2019-20	Nil
Rebate of State and Central Taxes and Levies (RoSCTL) scheme	Exports made from 7 March 2019 to 31 December 2020	7 March 2019 to 31 December 2020	Nil
Rebate of State Levies on Export of Garments (RoSL) scheme	Exports made up to 6 March 2019 for which claims have not been disbursed under scrip mechanism	Upto 6 March 2019	Nil
2% additional adhoc incentive	Exports made in the period 1 January 2020 to 31 March 2020		NA

1. Vide Section 110 of the Finance Act, 2018
2. Circular No. 3/2022-Customs dated 1 February 2022
3. Notification No. 26/2015-2020 dated 16 September 2021
4. Notification No.53/2015-2020 dated 1 February 2022

Extension of last date of filing of application under the Production Linked Incentive (PLI) scheme for textiles

The Union Cabinet had approved a Production Linked Incentive (PLI) scheme for textiles for man-made fabrics (MMF) apparel, MMF fabrics and 10 segments/products of technical textiles. The scheme will promote production of high-value MMF fabrics, garments and technical textiles in the country. The Ministry of Textiles has extended the timeline for submission of applications under the PLI Scheme for Textiles till **14 February 2022**[5]. Earlier the date of submission of online application under the PLI Scheme for Textiles was 31 January 2022.

Supreme Court further extends period of limitation in respect of all judicial or quasi-judicial proceedings

The SC had taken suo motu cognizance of the challenges faced by litigants due to the COVID-19 pandemic across the country in filing their petitions/applications/suits/ appeals/all other proceedings within the period of limitation prescribed under various laws. Therefore, the SC had ordered that the period of limitation in all proceedings shall stand extended, with effect from 15 March 2020, till further orders, irrespective of the limitation prescribed under any law.

The SC has restored the said order dated 23 March 2020 and its subsequent orders, dated 8 March 2021, 27 April 2021 and 23 September 2021. The SC has directed that the period from 15 March 2020 till 28 February 2022 shall stand excluded for the purposes of limitation, as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.[6]

In addition, the SC has clarified as under:

- **Availability of balance period:** The balance period of limitation remaining as on 3 October 2021, if any, shall become available with effect from 1 March 2022.
- **Limitation period expired from 15 March 2020 to 28 February 2022:** Notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 1 March 2022. In the event, the actual balance period of limitation remaining, with effect from 1 March 2022 is greater than 90 days, that longer period shall apply.
- **Extension of limitation period under other acts:** The period from 15 March 2020 till 28 February 2022 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.

DGFT notifies last date for filing applications for seeking Tariff Rate Quota (TRQ) for imports for the period FY2022-23

The Directorate General of Foreign Trade (DGFT) has notified that the applications for seeking Tariff Rate Quota (TRQ) for imports for the period FY2022-23 are to be submitted online using the 'e-Tariff Rate Quota system by **28 February 2022**[7]. The applicant may navigate to the DGFT Website to apply online as follows: **DGFT Website (https://dgft.gov.in) --> Services --> Import Management System --> Apply for TRQ.**

5. Press Release dated 28 January 2022
6. Vide order dated 10 January 2022
7. Trade Notice No. 33/2021-2022 dated 27 January 2022

CBIC issues guidelines for recovery proceedings in respect of self-assessed tax

Effective from 1 January 2022, an explanation has been added to clarify that self-assessed tax shall include the tax payable in respect of outward supplies, the details of which have been furnished in GSTR-1 but not included in the return furnished in GSTR-3B. The Central Board of Indirect Taxes and Customs (CBIC) received representation from trade and industry regarding modalities for initiation of recovery proceedings in cases covered under the above explanation. In this regard, the CBIC has issued clarifications as under[8]:

- **Opportunity of being heard :** There may be a genuine reason for the difference between the details reported in GSTR-1 and GSTR-3B, such as typographical error or wrong reporting of any detail, or late reporting of the earlier tax period. Such errors or omissions can be rectified by filing a subsequent GSTR-1/GSTR-3B. There can be situations wherein certain supply could not be declared in GSTR-1 of an earlier period though the same was correctly reported in GSTR-3B. The details of such supply may be reported in the current tax period, resulting in a mismatch between GSTR-1 and GSTR-3B. In all such cases, an opportunity needs to be provided to the concerned taxpayer to explain the reason for differences for the same before initiation of recovery proceedings under Section 79.
- **Initiation of proceedings:** In case of short payment or non-payment of self-assessed tax, the proper officer shall send a communication asking the registered person to explain the reasons within a reasonable time. If the person can justify the difference or explain the reasons for the same to the satisfaction of the proper officer, there may not be any requirement to initiate recovery proceedings. Recovery proceedings may be initiated by the proper officer in the below cases:
  - If the person either fails to reply to the proper officer or fails to make the payment of the amount within the prescribed or further permitted time.
  - If the person fails to explain reasons for such differences/short payment to the satisfaction of the proper officer.

GSTN to introduce interest calculator in Form GSTR-3B

The Goods and Services Tax Network (GSTN) has notified that a new functionality of the interest calculator shall be released in Form GSTR-3B shortly. This functionality has a user-friendly interface, which informs the taxpayers regarding the manner of system computation of interest values for each tax head. This functionality also assists the taxpayers in doing the correct computation of interest for the liability of any past period declared in Form GSTR-3B for the current tax period, based on the details furnished by them on the portal[9].

This functionality will arrive at the system computed interest based on the tax liability values declared by the taxpayers. The interest applicable, if any, on the tax liability declared in the GSTR-3B of a particular tax period will be computed after the filing of the said GSTR-3B. These systems computed interest values will be auto-populated in Table-5.1 of the GSTR-3B of the next tax-period. The facility would be same as the collection of late fees for GSTR-3B, filed after the due date, posted in the next period's GSTR-3B.

The GSTN shall intimate the taxpayers when the facility shall be introduced on the portal shortly.

GSTN issues advisory on implementation of restriction in filing return in Form GSTR-1 in certain cases

The GST rules were amended to provide for restriction in the filing of returns in Form GSTR-1 if a registered person has not furnished the return in Form GSTR-3B for the preceding month effective from 1 January 2022[10]. Thus, from 1 January 2022, if a monthly filer has not filed the GSTR-3B for the preceding month, then such taxpayer will not be allowed to file the GSTR-1 for the subsequent month, till the GSTR-3B for the preceding month is filed.

In this regard, the GSTN has informed that the said functionality will be implemented on the Goods and Services Tax (GST) portal shortly, after which the system will check the filing of preceding GSTR-3B before permitting to file GSTR-1 for the subsequent month[11].

8. Instruction No. 01/2022 dated 7 January 2022
9. GSTN advisory dated 8 January 2022
10. Notification No. 35/2021 – Central Tax dated 24th September 2021
11. GSTN advisory dated 3 January 2022

DGFT issues clarifications under Steel Import Monitoring System (SIMS)

The DGFT had earlier amended the import policy of all Harmonised System of Nomenclature (HSN) codes under Chapters 72,73 and 86 of Schedule I (Import Policy) of ITC (HS) from free-to-free subject to compulsory registration under Steel Import Monitoring System (SIMS)[12]. In this regard, the DGFT has received various representations from members of trade and industry seeking clarifications on SIMS. The DGFT has issued certain clarifications as under[13]:

- Re-import of steel for packaging purposes will not be covered under SIMS as it is not primarily meant for value addition rather being re-imported for packaging only.
- No requirement for obtaining SIMS registration in cases where steel/steel item is exported from Domestic Tariff Area (DTA) to Special Economic Zone (SEZ) and then imported from SEZ to DTA with or without value addition.

Alignment of AEO circular providing relaxation in furnishing bank guarantee to MSME with Customs Administration of Rules of Origin Under Trade Agreements Rules, 2020 (CAROTAR)

The CBIC had earlier provided relaxation from the requirement of furnishing bank guarantee to various categories of Authorised Economic Operator (AEO). However, the said relaxation was not applicable in cases where the competent authority orders furnishing of bank guarantee for provisional release of goods under Section 18 of Customs Act, 1962[14].

Under the Customs law, a new Section 28 DA of Customs Act, 1962 has been inserted relating to the procedure regarding the claim of a preferential rate of duty and CAROTAR, 2020 has also been issued. In this regard, the CBIC has clarified that the provisions shall prevail over the dispensation extended vide the relevant circulars and the same shall be suitably aligned to the new provisions under the Customs law[15].

De-activation of non-updated Importer-Exporter Code (IEC)

The IEC holders are required to ensure updation of their IEC details electronically every year, during the April-June period. In this regard, the DGFT had extended the last date till 31 August 2021 for making necessary updation[16].

In this regard, the DGFT has now informed that IECs which are not yet updated after 1 July 2020 shall be de-activated with effect from 1 February 2022[17]. The list of such IECs is available at **Directorate General of Foreign Trade | Ministry of Commerce and Industry | Government of India**

12. Vide Notification No. 33/2015-2020 dated 28 September 2020
13. Policy Circular No. 38/2015-2020 dated 19 January 2022
14. Circular No. 33/2016–Customs dated 22.07.2016 as amended by Circular No. 54/2020- Customs dated 15.12.2020
15. Circular No. 02/2022- Customs dated 19 January 2022
16. Notification No. 16/2015-2020 dated 9 August 2021
17. Trade Notice 31/2021-22 dated 14 January 2022

2a Key judicial pronouncements

Apex court imposed personal cost on errant officials for unnecessary litigation and harassment of assessee

Summary

The Supreme Court (SC) has affirmed the decision of the Telangana High Court (HC) which had held that tax evasion cannot be presumed on delay due to traffic blockage and agitation, which led to the expiry of the e-way bill. The SC affirmed the views of HC that the state alone remains responsible for not providing smooth passage of traffic and penalising assessee for that was arbitrary and illegal. The SC not only upheld the personal cost imposed by the HC on the errant GST officials but significantly increased the same.

Facts of the case

- The petitioner[18] is a trader of all kinds of paper and a sole distributor of paper[19]. It also affects inter-state purchases of papers from Orissa.
- The petitioner had made an intra-state supply of paper through tax invoice and generated an e-way bill for making the delivery to the consignee. The trolley was detained by the Deputy Officer alleging that the validity of the e-way bill had expired and proposed to impose tax and penalty.
- The petitioner alleged that the officer had unloaded the goods at a private premise without tendering any acknowledgement of receipt of detention of the goods and released the auto trolley by unloading the goods. The petitioner contended that such action was arbitrary and illegal and the officer could not have taken physical possession of the goods in such a manner.
- The petitioner also submitted a letter explaining the reasons leading to the expiry of the e-way bill, but the officer did not acknowledge it. Since it did not seem likely that the officer would release the goods, the petitioner made payment of tax and penalty after which the goods were released.

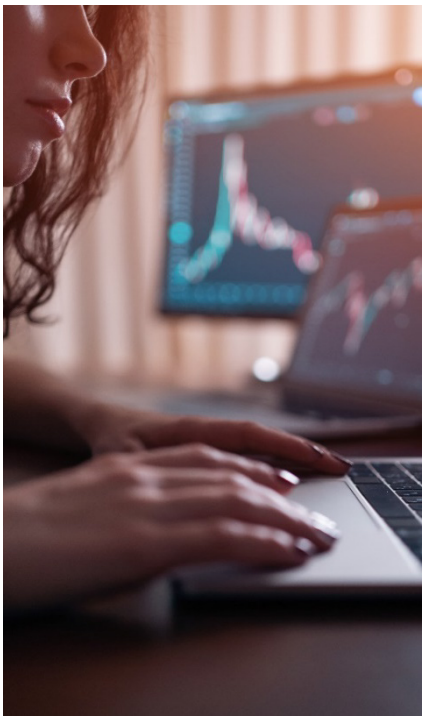
18. Satyam Shivam Papers Pvt. Ltd.
19. M/s. International Papers Limited

Telangana HC observations and ruling[20]

- **Duty of revenue to consider petitioner's representation:** The petitioner gave a letter explaining about obstruction to the movement of the auto trolley on account of a rally conducted in the city preventing the vehicle from reaching its destination on that day. It was the duty of the proper officer to consider the explanation offered by the petitioner and not harp on the fact that the e-way bill was not extended even after the expiry. Such behaviour of the proper officer was untenable.
- **Proper officer's conclusion was plainly arbitrary and illegal:** The proper officer stated in the counter affidavit that the petitioner is evading tax. As per HC, there was no material before the officer to come to such a conclusion and there wasn't any evidence of attempt to sell the goods to somebody else. This was arbitrary and illegal and violates Article 14[21], because there is no denial by the proper officer of the traffic blockage preventing the movement of auto trolleys. Because of the non-extension of the validity of the e-way bill by the petitioner or the auto trolley driver, no presumption can be drawn that there was an intention to evade tax.
- **Blatant use of power by proper officer:** There has been a blatant use of power in collecting the tax and penalty both from the petitioner under GST law. The HC deprecated the conduct of the proper officer in not even adverting to the response[22] given by the petitioner to the detention notice[23] and his deliberate intention to treat the validity of the expiry on the e-way bill as amounting to evasion of tax without any evidence of such evasion.
- **Revenue to pay the cost to petitioner:** The HC directed to refund the amount collected from petitioner within four weeks with interest @6% p.a. Further, the HC directed that the proper officer shall also pay costs of INR 10,000 to the petitioner.

SC observations and ruling[24]

- **Meticulous examination by High Court:** Upon analysis of the observation and reasoning provided by the Telangana HC, the SC noticed that the HC has correctly found that there was no intent to evade tax. The goods could not reach the destination within the time for reasons beyond the control of the petitioner. The state alone remains responsible for not providing smooth passage of traffic.
- **Enhancement of personal penalty imposed on Revenue:** Due to corresponding harassment faced by the writ petitioner there was a need to enhance the amount of costs imposed. Accordingly, a sum of INR 59000/- has been imposed on the Revenue to be paid to the petitioner over and above costs already awarded by the HC.



Our comments

The present ruling by the Apex Court is a landmark judgement and shall act as a deterrent against officials from causing undue hardship to taxpayers.

The judgment should also provide relief in cases where the expiry of the validity of e-way bill has been treated as an intent to evade tax without there being any evidence of such evasion on the part of the assessees and will also help curb unnecessary litigation.

EOU not entitled to claim refund of Terminal Excise Duty on its own – SC

Summary

The SC observed that an Export Oriented Unit (EOU) on its own is not entitled to a refund of the Terminal Excise Duty (TED), as EOU is required to procure or import goods from the Domestic Tariff Area (DTA) supplier without payment of duty in view of the express ab initio exemption. However, despite such express obligation on the EOU, if the EOU has imported goods from the DTA supplier by paying TED, it can only claim the benefit of refund provided to the DTA supplier subject to obtaining disclaimer from DTA supplier in that regard and complying with other formalities and requirements. The SC agreed with the Bombay High Court (HC) that the EOU is not entitled to claim a refund of TED on its own. However, the SC added a caveat that EOU may avail of the entitlements of the DTA supplier on the condition that it will not pass on the benefit back to the DTA supplier.

20. Writ Petition No.9688 of 2020
21. Article 14 of the Constitution of India
22. in Form GST MOV – 09
23. Form GST MOV-07
24. Petition(s) for Special Leave to Appeal (C) No(s). 21132/2021

Facts of the case

- The appellant[25] is a 100% EOU and is engaged in the manufacture of goods falling under Chapter 30 of the Schedule to the Central Excise Tariff Act, 1985. It has another factory in DTA.
- The appellant had applied for refund of TED in respect of excisable goods procured from its unit in DTA and was granted refund from time to time between 2006 and 2012.
- However, the instant refund application was rejected on the ground that supplies made by DTA unit to EOU are ab initio exempted from payment of excise duty.
- The appellant had also challenged the validity and legality of circular[26] which had disallowed the refund of TED as the supplies to EOU were ab initio exempted from payment of excise duty before the Bombay HC.
- The Bombay HC directed the competent authority to consider the refund claim afresh. However, the Development Commissioner rejected the TED refund claim. Aggrieved the appellant had filed writ challenging the said rejection order which was dismissed by the Bombay HC.

SC observations and ruling[27]

- **Supply of goods to EOU is deemed exports:** As per the provisions[28], the entities need to comply with a twin condition for availing entitlement under the Foreign Trade Policy (FTP). The conditions are that the entity shall utilise the goods imported from DTA with actual user condition and the same to be utilised for export production. The scheme of Chapter 6 makes it clear that imports by EOU from DTA supplier are to be treated as deemed exports subject to twin conditions and EOU can import without payment of duty as it has been exempted in FTP. On its own, EOU is not eligible for any other entitlement.
- **Refund of TED dependent upon entitlement of CENVAT credit:** Provisions of FTP are quite clear and unambiguous in stating that supply of goods will be eligible for TED refund only if the Central Value Added Tax (CENVAT) credit/rebate has not been availed on such goods. The scheme of FTP is not silent in respect of the benefits and entitlements of concerned entities. Similarly, DTA suppliers would be eligible for deemed export drawback on central excise paid on inputs provided CENVAT credit has not been availed.
- **EOU not entitled to claim refund on its own:** The EOU is to procure goods from DTA supplier without payment of duty. If EOU has had procured goods from DTA by paying TED, it can only claim benefit of refund provided to DTA supplier by obtaining disclaimer from supplier and complying with formalities and requirements.
- **Entitlements to EOU:** EOU entities that had procured specified goods from DTA supplier, shall be exempted void initio from payment of duty against such import being deemed exports. EOU is additionally entitled to avail of the entitlements of DTA supplier upon production of suitable disclaimer from DTA supplier and subject to compliance of necessary formalities.
- **Agreement with decision of Bombay HC:** The SC agreed with the conclusion reached by the Bombay High Court that EOU is not entitled to claim refund of TED on its own. However, the SC added a caveat that EOU may avail of the entitlements of DTA supplier on the condition that it will not pass on the benefit back to DTA supplier. The SC clarified that refund claim needs to be processed by keeping in mind the procedure underlying the refund of CENVAT credit/rebate of excise duty obligations. The DTA supplier of goods to EOU shall be entitled for refund of TED which ought to be in form of reversal of commensurate amount in CENVAT credit account of DTA supplier in case it had utilised credit in respect of goods supplied to EOU. If it had paid the amount in cash, then the DTA supplier would be entitled for a refund with simple interest @6%.
- **Relevant authority for refund claim:** Entitlement of exemption and refund of TED flows from provisions of FTP and not as per provisions of the 1944 Act. It's the obligation of the authority responsible to implement subject FTP to deal with refund claims of entities. Therefore, it's a refund case under FTP and not under the 1944 Act.

Our comments

The Karnataka HC[29] and the Delhi HC[24] had earlier held that the DTA supplier of goods to EOU would be entitled for a refund of TED.

The Apex Court has dismissed the Special Leave Petition (SLP) filed by Revenue against the aforesaid decisions and held that EOU on its own is not entitled for a refund of TED. However, if the EOU has imported goods from DTA supplier by paying TED, it can only claim the benefit of refund provided to DTA supplier subject to obtaining disclaimer from DTA supplier in that regard and complying with other formalities and requirements. The SC has also highlighted the difference between the expression benefit and entitlement. While benefit is an advantage, help or aid, entitlement, on the other hand, is the right to have something. Thus, this is a landmark judgement and will set precedence in similar cases.

25. Circular No.16 (RE-¬2012/2009-¬14) dated 15.03.2013
26. Civil Appeal NO. 3358 of 2020 dated 4 January 2022
27. Para 6.2 of the FTP
28. M/s Acer India Pvt. Ltd.
29. Motherson Sumi Electric Wires

SC order extending period of limitation applicable to refund application under GST law – Bombay HC

Summary

The Bombay High Court (HC) observed that the limitation period of two years for filing a refund claim application under the GST law fell between 15 March 2020 and 2 October 2021. The aforesaid period has been excluded by the Supreme Court in all such proceedings, irrespective of the limitation prescribed under the general law or special law, whether condonable or not till, further order is passed by the SC in those proceedings. The Revenue is also bound by the said SC order and, therefore, the limitation period falling between the aforementioned period needs to be excluded. Therefore, the HC held that the refund application filed by the petitioner thus was within the period of limitation prescribed under the GST law and was restored.

Facts of the case

- The refund claim filed by the petitioner[30] under the GST law was rejected on the ground that the same was time barred as it was filed after expiry of two years.
- The revenue contended that the refund application was required to be filed within the period of two years under the GST law[31]. In the present case, the application was submitted admittedly filed after expiry of two years.
- The petitioner contended that the extension granted as per the SC[32] by exercising powers under Article 142 read with 141 declaring that the said order was binding order within the meaning of Article 141 on all Courts/Tribunals and Authorities. Therefore, the revenue could not have rejected the refund application on the ground of limitation.
- Therefore, the petitioner has filed an appeal before the Bombay HC for restoration of the said refund application and for various other reliefs.

Bombay HC observations and ruling[33]

- **Limitation period excluded by the SC:** The limitation period falling between 15 March 2020 and 2 October 2021 was excluded by the SC irrespective of the limitation prescribed under the general law or special law whether condonable or not till further order is passed by the SC in those proceedings.
- **Limitation period prescribed under circular to be excluded:** The Revenue is bound by the order of the SC and is required to exclude the period of limitation falling during the said period. Since the period of limitation for filing the refund application fell between the said period 15 March 2020 and 2 October 2021, the said period stood excluded. The refund application filed by the petitioner, thus, was within the period of limitation prescribed under the said circular.
- **Refund application within the period of limitation:** The order of rejection passed by the Revenue is contrary to the order passed by the SC and is, accordingly, set aside. Further, the refund application filed by the petitioner was restored and the Revenue was directed to consider the same on its merits.

Our comments

On a similar issue, recently, the Madras High Court in the case of M/s. GNC Infra LLP had held that the SC decision extending the period of limitation shall be applicable to refund claim applications under GST law. Accordingly, the HC had set aside the refund rejection order and directed the Revenue to examine the refund on its merits.

Thus, the present ruling should provide relief to other businesses wherein refund claims have been rejected due to expiry of limitation period.

Recently, the SC has restored the said order, dated 23 March 2020 and its subsequent orders, dated 8 March 2021, 27 April 2021 and 23 September 2021. The SC has directed that the period from 15 March 2020 till 28 February 2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.

30. SAIHER SUPPLY CHAIN CONSULTING PVT. LTD.
31. Circular No. 20/16/04/18- GST dated 18 November 2019 read with under Section 54(1) of the Central Goods and Services Tax Act, 2017
32. Re: Cognizance for Extension of Limitation (Order dated 23rd March 2020), reported in 2020 SCC Online SC 343, in Suo Motu Writ Petition (Civil) No. 3 of 2020
33. WRIT PETITION (L.) NO. 1275 OF 2021

CENVAT credit can be utilised for payment of service tax under the reverse charge mechanism – Karnataka HC

Summary

The Karnataka HC has held that the assessee is eligible to utilise CENVAT credit available with it for discharging service tax liability under the reverse charge mechanism (RCM) for the period prior to 1 July 2012. The HC referred to rulings pronounced by its coordinate bench earlier in similar issues, wherein it was observed that when the service provider was located outside the country, the service recipient is treated as a service provider. Further, the liability to pay tax was vested on such assessee who has received the service. Therefore, the HC had held that the assessee was entitled to utilise CENVAT credit for discharge of service tax liability under the RCM. The HC further clarified that the explanation clarifying that CENVAT credit cannot be used for payment of tax when person liable to pay tax is the recipient was inserted effective from 1 July 2012. However, as the period of dispute in the present case is April to August 2006, the said explanation cannot be applied.

Facts of the case

- The assessee[34] is a manufacturer of multiutility vehicles (MUV) for passenger cars and parts thereof falling under Chapter 87 under the Central Excise Tariff.
- It had received intellectual property services, commissioning and installation services and repair and maintenance services from its parent company situated abroad. It had also availed Goods Transport Agency (GTA) services from a local service provider.
- The assessee had utilised the CENVAT credit availed on inputs, input services and capital goods for discharging service tax on such services under the RCM being a recipient of services.
- A Show Cause Notice (SCN) was issued asking the assessee to explain as to why the CENVAT credit utilised for payment of service tax under the RCM is not irregular and recovery, along with interest and penalty, should not be ordered[35].
- The Commissioner of Central Excise and Service, Bengaluru rejected the contentions of the assessee and passed an order confirming the demand as per the SCN.
- The assessee preferred an appeal against the said order before the Customs, Excise, Service Tax Appellate Tribunal (CESTAT), which was allowed. Being aggrieved by the CESTAT's ruling, the Revenue filed present appeal before the Karnataka HC[36].

Karnataka HC observations and ruling[37]

- **Explanation not applicable:** An explanation was added to the relevant rules[38] effective from 1 July 2012, wherein it was clarified that CENVAT credit cannot be used for payment of tax when the person liable to pay tax is the recipient. However, as the period of dispute in the present case is April to August 2006, the said explanation cannot be applied.
- **HC judgements on similar issues earlier:** The Coordinate Bench of the HC[39] had held that when the service provider was located outside the country, the service recipient is treated as a service provider and liability to pay tax was foisted on such assessee who has received the service. Therefore, the HC had held that the assessee was entitled to utilise credit for payment of tax liability in such a case. In another case[40], the HC had observed that in view of specific reference to service tax and the benefit allowed to a service provider no fault can be found with the assessee in utilising the CENVAT credit available with him.
- **Assessee entitled to use credit available with it:** The HC had agreed with the decision taken by it in the earlier cases which has been applied by the CESTAT in the present case. Accordingly, the HC held that the assessee is eligible to utilise the CENVAT credit available with it for discharging service tax liability under the RCM.

Our comments

On a similar issue, earlier, the Apex Court[41] had affirmed the judgement by the Rajasthan HC, wherein it had held that the assessee shall be treated as an output service provider.

In addition, it is pertinent to note that recently, the Apex Court[42] had held that the provisions of a taxing statute must be construed as they stand, adopting the plain and grammatical meaning of the words used.

In the present case, there was no express provision under the erstwhile indirect laws restricting the usage of CENVAT credit for payment of service tax liability under the RCM until 1 July 2012. Therefore, the HC has held that the assessee was entitled to utilise the CENVAT credit for payment of service tax liability under the reverse charge mechanism.

34. Toyota Kirloskar Motors
35. Section 73 of Finance Act, 1994
36. C.E.A No. 59/2019
37. Order dated 16 December 2021
38. Rule 3(4)(e) of CENVAT Credit Rules, 2004
39. Aravind Fashions Ltd. supra
40. Godavari Sugar Mills Ltd.
41. Kansara Modlers Ltd.
42. VVF (India) Limited

Supply of right to use equipment, even with the operator, qualifies as a sale under VAT – Service tax not payable– Allahabad CESTAT

Summary

The CESTAT, Allahabad, has held that the supply of diesel generator sets to customers would not amount to Supply of Tangible goods for Use (STGU) service[43] or a declared service,[44] merely because the operator is also provided, along with the equipment. The CESTAT observed that the operators provided by the Appellant were working entirely under the direction and control of the customer and the Appellant had no control over them. Thus, so long as the effective control over the diesel generator sets remained with the customers, providing operators to customers would not mean that the transaction was not that of sale. Hence, the transaction between the Appellant and the customers would qualify as a transfer of right to use goods with the control and possession over the diesel generator sets.

The CESTAT further observed that once the control and possession of the diesel generator sets were transferred to the customers, mere repair and maintenance work will also not change the nature of the transaction. The transportation and installation of diesel generator sets at the site of the customers as per the requirement of agreement cannot lead to a conclusion that the Appellant was rendering an STGU service.

Facts of the case

- The appellant[45] supplies diesel generators to customers on hire basis. In the present case, it had entered into contracts of arranging specified equipment for specified duration on hire. The appellant received a fixed amount on monthly basis, along with overtime charges, in case the equipment was operated beyond the maximum working hours per month.
- The appellant submitted that during the period of hire, it does not have any control over the equipment, rather the effective control vests with the customer. The operator provided by the appellant acts as per directions provided by the customer. Further, the working hours of equipment are entirely at the discretion of the customer. The fuel and lubricant required to run the diesel set are provided by the customer.
- The appellant contended that the supply of diesel generator sets to customers does not amount to STGU service as the legal right to use the sets was only with customers. Therefore, service tax could not be levied on the transaction.

43. From 01.04.2011 to 30.06.2012
44. From 01.07.2012 to 2014-15.
45. Express Engineers & Spares Private Limited

Allahabad CESTAT observations and ruling[46]

- **Provision regarding nature of transaction:** The provision[47] of the Finance Act provides for three conditions to be satisfied in order to recognise a transaction as a taxable service. The appellant satisfies the first two conditions i.e., transfer/supply of goods and such transfer must be by way of hire or lease or licence for using goods. The third condition regarding the right of possession and effective control is of main dispute.
- **Transaction qualifies as transfer of right to use:** As per the terms of the contract, the operator is provided by the appellant to the customer along with the equipment. The customer drew plans and issued instructions to the operator for operating diesel sets. The duration of use of equipment was entirely at the discretion of the customer. Also, the equipment did not leave/enter the premises of the customer without a pass issued by the customer. Thus, the transaction would qualify as a right to use with control and possession over equipment passed on to the customer.
- **Transaction treated as sale of goods:** The operators were working entirely under the direction and control of the customers. The Appellant had no control over them. The effective control over the diesel generator sets remained with the customer and the operators were also under the direction and control of the customer, which would mean that the transaction was of sale. This view finds support from the judgments of the Gauhati High Court[48] and of the Andhra Pradesh High Court[49]. Once the control and possession of the diesel generator sets was transferred to the customer, mere repair and maintenance work will also not change the nature of the transaction. This is clear from the decisions of the Gauhati High Court and of the Tribunal[50].
- **Payment of VAT indicates transaction is a sale of goods:** Payment of VAT on supply of goods is also a factor to determine whether the transaction is that of sale. The circular[51] clarifies that payment of VAT/Sales Tax on a transaction indicates that the transaction is treated as sales of goods. Further, the circular[52] clarifies that transfer of right to use any goods is leviable to VAT as deemed sales of goods and such transfer involves both possession and control of goods. Therefore, service tax cannot be levied on transactions treated as sale of goods.

Our comments

Earlier, the Apex Court, in its landmark decision in the case of Rashtriya Ispat Nigam Ltd.[53] has held that in case limited rights has been given to the customers, it cannot be said as a transfer of the right to use any goods as long as the possession and effective control over the goods lies with the owner. Thus, such transactions are not liable to state VAT.

It is a settled law that where the right of possession of the goods, together, with effective control over such goods is transferred, it would be tantamount to a deemed sale, which would be beyond the purview of service tax.

In the present case, the CESTAT, Allahabad has held that since the effective control over the diesel generator sets along with the operators remained with the customers, the transaction would qualify as a transfer of right to use goods with the control and possession over the diesel generator sets and hence, not liable to service tax.

The present ruling shall provide required relief to businesses and will set precedence in similar matters.

CENVAT credit not required to be reversed on amounts written off as bad debts – CESTAT

Summary

The CESTAT, Chandigarh has set aside the order demanding reversal of CENVAT credit on amounts written off as bad debts. The CESTAT clarified that there is no requirement, under the erstwhile service tax law, providing for reversal of CENVAT credit in respect of services provided for which no consideration is received. Therefore, it held that the appellant has correctly availed the CENVAT credit on input services although the amount of non-recoverable taxable service has been written off by the appellant for the period prior to 1 April 2011. The CESTAT observed that the appellant has admitted that they have paid service tax on all the taxable services provided by them after 1 April 2011 at the time of provision of service. Therefore, the appellant cannot be liable for the reversal of CENVAT credit for the services provided after 1 April 2011 on which the appellant has paid service tax.

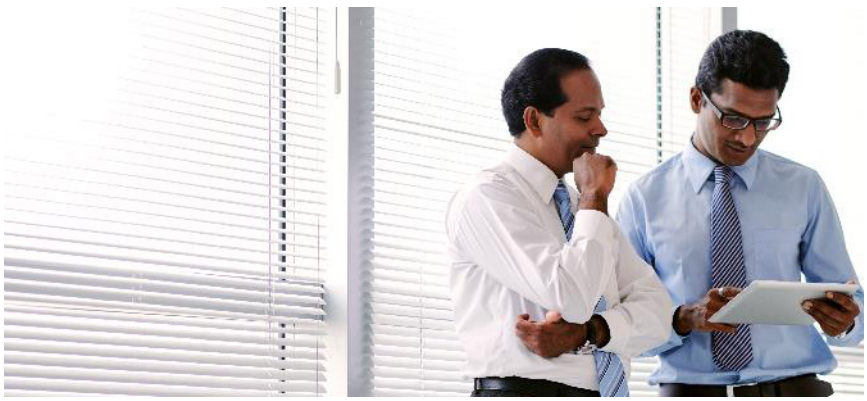
46. Service Tax Appeal No. 70537 of 2018 and Service Tax Appeal No. 70592 of 2018 and Final Order No. 70004-70005/2022 dated 11 Jan 2022
47. Section 66E(f) of the Finance Act,1994
48. in Dipak Nath
49. in G.S. Lamba
50. in Petronet LNG Ltd.
51. Circular dated 23.08.2007
52. D.O. F. No.334/1/2008-TRU dated 29.02.2008
53. Civil Appeal No. 31 of 1991 dated 6 March 2002

Facts of the case

- The appellant[54] is engaged in providing banking and other financial services, credit card, debit card, etc. and availed credit for various input services received for providing the output services. In some cases, the appellant could not recover certain payments from their customers and wrote them off as bad debts in their financial records.
- The appellant had entered into an agreement with IRCTC to launch a co-brand credit card. The appellant paid fixed charges to IRCTC on every subscription of the card and, in turn, IRCTC agreed to promote the credit card by modifying its website, through press advertisements and related collaterals.
- The IRCTC raised invoices on the appellant for the above and the appellant availed CENVAT credit of service tax paid thereon.
- SCNs were issued to the appellant for reversal of CENVAT credit availed on input services attributable to the amount written off as irrecoverable dues; reversal of CENVAT credit where service tax was paid under reverse charge basis; reversal of CENVAT credit availed on the advertisement, catering and event management services.
- The demands were confirmed holding that the appellant was not entitled to avail CENVAT credit of input services attributable to the amounts written off and denial of CENVAT credit on input services received from IRCTC by classifying them as catering services. Aggrieved by the said order, the appellant filed present appeal before the CESTAT[55].

Chandigarh CESTAT observations and ruling[56]

- **Appellant entitled for availing CENVAT credit:** Under the erstwhile service tax law[57] a provider of output service shall be allowed to take credit of any input service received by it on or after 10 September 2004. Admittedly, the services on which the appellant has taken CENVAT credit are 'input services'[58] and is a provider of output service. Therefore, the appellant is entitled to avail CENVAT credit on the input services in question.
- **No provision for reversal of CENVAT credit:** There is no provision for reversal of CENVAT credit for services provided for which no consideration is received by the assessee. The appellant has, therefore, correctly availed the amount of credit although the amount of non-recoverable taxable service has been written off prior to 1 April 2011.
- **Appellant not liable to reverse credit:** The appellant admitted that it paid service tax on all taxable services provided by it after 1 April 2011. Therefore, the appellant cannot be held liable for the reversal of CENVAT credit for services on which it had paid service tax.
- **Appellant entitled for CENAVT credit on advertisement services:** The description of service provided by IRCTC is SBI co-brand registered as SBI and it did not prescribe that IRCTC has provided any catering service to the appellant. Therefore, the lower authority has erred in holding that IRCTC is providing only catering service and the denial of credit is only based on assumption and presumption.



Our comments

On a similar issue, earlier, the CESTAT Ahmedabad[59] had held that CENVAT credit is not required to be reversed where the assessee provided taxable service but did not discharge service tax due to non-recovery of consideration. The Tribunal observed that the bad debt was accumulated over a period and, therefore, it is not possible to identify this bad debt with any invoice/invoices on which the recovery was pending. There was no one-to-one connection in availing and utilisation of the credit in taxable output services and, therefore, there was no merit in the allegation that the input credit has been wrongly utilised.

The present ruling shall provide required relief to businesses and will set precedence in similar matters.

54. SBI Cards and Payments Services Pvt Ltd.
55. WRIT PETITION (L.) NO. 1275 OF 2021
56. FINAL ORDER NO. 60011-60012/2022 Dated 4 January 2021
57. Rule 3 of the CENVAT Credit Rules, 2004
58. in terms of Rule 2(l) of the CENVAT Credit Rules, 2004
59. Krishna Communication

2b Decoding advance rulings

Allocation of salary of HO employees to its Branch offices exigible to GST - Maharashtra AAAR

Summary

The Maharashtra Appellate Authority for Advance Ruling (Maharashtra AAAR) has held that the activities of providing facilitation services by head office (HO) to their branch offices/units would be treated as 'supply of services' by HO to its branch offices/units. Further, the HO is using all its human resources to facilitate the operational requirement of branch offices, thereby providing the facilitation services. Therefore, the allocation and recovery of any amount including its employee's salary cost from the branch office/units will be subject to GST.

The AAAR opined that the value declared in the invoice shall be deemed to be the open market value of the services for the valuation purpose. Further, the head office is not entitled to avail and utilise the credit of tax paid for the common input services received by it on behalf of its branch offices/units.

Besides, the AAAR stated that the input service distributor, which intends to distribute the credit of the tax paid on the common input services has to mandatorily register itself as an input service distributor (ISD). Therefore, if the head office intends to distribute the credit of tax paid on account of the availment of common input services on behalf of the branch offices/units, registration is required as an ISD apart from the normal supplier's registration.

Facts of the case

- The Appellant[60] is engaged in the manufacture and sale of a variety of diesel engines, parts thereof and related services and undertake all day-to-day activities.
- The Appellant has its presence across various states in India through its manufacturing/service/sales units.
- The costs incurred by HO/units for procurement of common input services are allocated and recovered proportionately from each of the recipient units.
- The Appellant filed an application, wherein the Maharashtra AAR[61] ruled that availment of ITC on common input supplies on behalf of other units qualifies as supply and attracts GST. The assessable value shall be arrived in terms of Rule 30[62]. Further, the appellant is required to obtain registration as ISD.
- The Appellant had filed a present appeal in relation to the necessity of obtaining registration as an ISD, determination of assessable value for facilitation of common input services.

AAAR observations and ruling[63]

- **GST law provides a very wide connotation for services:** In view of the scope and coverage of the term 'services', the facilitation services by way of availment of the common input services by HO on behalf of its branch offices/units would be covered under services. Hence, it would be treated as supply under GST.
- **Common input services are being used or consumed by the branch office/units:** In the instant case, the common input services received by the HO are being used or consumed by the branch office/units and not by the HO. Therefore, HO is not entitled to avail and utilise ITC on the common input services received by it on behalf of the branch office/units.
- Mandatory registration as an ISD: The contention of the appellant that HO itself will be availing and utilising the credit of tax paid by it on the said common input services for selling off its own GST liability does not hold water and,, hence not tenable. ISD is the only option available to pass on the credit of tax paid by the HO on the availment of the common input services on behalf of their branch offices/units.
- **Contention that head office is bound to operate with the dual registrations is erroneous and specious:** By way of exercising the ISD option available, HO will be very much in a position to recover the GST amount paid by it to the third-party vendors. Hence, the contention of the appellant that HO is bound to operate with the dual registrations is erroneous and specious.
- **Passing on only credit procured by head office on behalf of the branch offices/units:** Under the mechanism of ISD, the HO is eligible to pass on only such credit of tax paid which it has procured from third-party vendors on behalf of the branch offices/units. It does not cover the credit of tax pertaining to such input services which have been exclusively used by the HO to provide the impugned facilitation services to the Branch Offices/Units.
- **Value of tax invoice as the open market value of the services:** The assessable value of the services provided by the HO to the branch offices/units can be determined as per Rule 28[64] which provides that the value of the tax invoice will be deemed as the 'open market value' of the services.
- **Allocation and recovery of any amount, including its employee's salary cost from the branch offices/units will be subject to GST:** The employees of the HO are working at the behest of the HO and not at the behest of the branch offices/units. The HO is using all its human resources to facilitate the operational requirements of the branch offices/units by way of procuring common input services on behalf of the branch offices/units. Therefore, facilitation services by way of allocation and recovery of any amount, including its employee's salary cost from the branch offices/units will be subject to GST. The facilitation services are not affected between the employees and the employer, but between the HO and branch offices/units which are distinct units[65] and the same is clearly taxable under GST.

Our comments

The matter has been subject to extensive litigation under GST since inception. After Karnataka AAAR[66] ruling in case of M/s. Columbia Asia Hospitals Pvt. Ltd., this is another important ruling on the subject matter providing similar view. Even the Haryana AAR[67], in case of Tupperware India Pvt. Ltd. had held that the services supplied by HO to its other units by way of performing activities shall be leviable to GST.

While the Karnataka AAAR had not discussed the valuation aspect, the present ruling has affirmed the open market value of the services for the valuation purpose

Also, it is highly expected from the government to provide suitable clarification in this matter to avoid creating unnecessary chaos or hue and cry for the taxpayers.

60. M/s. Cummins India Ltd
61. GST-ARA-66/2018-19/B-162 dated 19 Dec 2018
62. of the CGST Rules, 2017
63. MAH/AAAR/AM-RM/01/2021-22 dated 21 Dec 2021
64. in terms of Section 25(4) of the CGST Act, 2017
65. KAR/AAAR/05/2018-19 dated 12 Dec 2018
66. AAR No. HAR/HAAR/R/2018-19/59 dated 28 August 2020
67. AAR No. HAR/HAAR/R/2018-19/59 dated 28 August 2020

No reversal of ITC on cash discount/incentive scheme determined post sale – Madhya Pradesh AAR

Summary

The authority has held that the applicant can avail full ITC of the GST charged on invoice and no reversal of ITC is required in respect of commercial credit issued on cash discount. Such secondary or post-sales discount is provided without adjustment of GST, as it is determined and settled post sale. AAR also viewed that the amount in the form of credit note is a discount and not a supply by the applicant, hence no GST is leviable by supplier.

Facts of the case

- The applicant[68] is a dealer of rice and receives goods from supplier of India Gate Basmati Rice.
- The supplier offers incentive in the form of cash discount for early payment of invoice for which it receives receipt cum Credit Note (CN) of cash discount without GST.
- The applicant submits that as per the circular[69] where conditions[70] for issuance of CN are not satisfied, then CN in the form of financial/commercial credit notes can be issued.
- In the present case, the applicant has submitted that discount arrangement is not part of purchase contract or invoices.
- The applicant has sought advance ruling regarding the availment of ITC of GST paid on invoices of the supply or reversal of ITC in case of post purchase cash discount.
- Further the applicant has raised question on applicability of GST on cash discount and incentive schemes provided through credit note without adjustment of GST by supplier.

Madhya Pradesh AAR observations and ruling[71]

- **Secondary discounts not excluded from value of supply:** As per the provisions[72] of the act, post-supply discounts established in a prior agreement or before the supply, shall be included in the value of taxable supply. The AAR also relied on the circular2 stating that secondary discounts not known at the time of supply shall be excluded while determining value of supply.
- **Not required to reverse ITC:** The AAR was of the view that as the discount is not in terms of a prior agreement, the supplier is not eligible to reduce output tax liability. Hence, proportionate reversal of ITC is not required.
- **No GST leviable on cash discount:** The amount received by the applicant is in the form of an incentive provided by the supplier as post-sale and does not affect the sale price of the goods already sold. Hence, there is no liability to charge GST on the discount received by the supplier.

Our comments

The post-supply discounts have always been a matter of contention between authorities and taxpayers under the erstwhile regime. The above ruling is a welcoming ruling issued in line with the GST provision. It clearly highlighted that ITC reversal is not required if the discount is not offered at or before the time of supply.

Such view is subject to the conditions that the GST paid for the said goods/service is not reversed or reimbursed/re-credited by the supplier to the applicant in any manner.

However, each case needs to be independently evaluated depending upon the availability of a prior agreement and terms of supply.

68. Shri Rajesh Gupta, proprietor of M/s Mahaveer Prasad Mohanlal
69. Circular No 92/11/2019-GST
70. Section 15(3)(b) read with Section 34(1) of CGST Act
71. Case Number 07/2021 and Order Number 01/2022
72. Section 15(3)(b) of CGST Act

03 Experts' column

Union Budget 2022 decoded: An Indirect tax perspective

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The Union budget 2022 presented by the Finance Minister Nirmala Sitharaman has set the right tone with a host of measures proposed to boost the economy along with various sectors specific reforms.

After the success of already existing Production Linked Incentive schemes for 14 sectors, a scheme for design-led manufacturing has also been proposed to be launched to build a strong ecosystem for 5G equipment.

With an aim to ease doing business by Special Economic Zone (SEZs), the budget has proposed that various reforms shall be undertaken in SEZs.

Further, alongside reforms shall also be undertaken in the Customs Administration of SEZs and it shall be fully IT driven. It will function on the Customs National Portal with a focus on higher facilitation and with only risk-based checks. These reforms shall be implemented by 30th September 2022. The proposed revamping of the SEZ laws is expected to provide a boost to existing SEZ infrastructure and help ease operational challenges faced by SEZ developers/units.

Since the last two budgets, the government has rationalised several Customs exemptions. Similarly, even this year, the budget proposes to gradually phase out more than 350 exemption entries. These entries interalia include exemption on certain agricultural produce, chemicals, fabrics, medical devices, drugs, and medicines. The removal of exemption on items which are or can be manufactured in India, is a step forward in achieving the objective of Make in India and Atmanirbhar Bharat.

The article encapsulates the key Indirect taxes takeaways from the Budget 2022.

Customs law

- **Withdrawal of exemptions:** Pursuant to a comprehensive review of existing Customs duty exemptions, it has been proposed to phase out around 350 exemption entries, including exemption on certain agricultural produce, chemicals, fabrics, medical devices and drugs and medicines for which sufficient domestic capacity exists. Further, more than 40 exemptions on capital goods and project imports have been proposed to be phased out.
- **Widening the scope of the Proper Officer:** The definition of a proper officer[73] has been modified and the officers of DRI, audit and preventive formation have been specifically included in the class of officers of Customs[74]. Further, explicit provisions have been made conferring powers for assignment of function to officers of Customs by the Board and concurrent jurisdiction is being provided in certain circumstances[75].
- **Rationalisation of procedures with respect to Advance Ruling:**
  - Provision for prescribing appropriate fees by Board relating to application for advance Ruling and flexibility to the applicant to withdraw his application at any time before a ruling is pronounced
  - Advance ruling shall be valid for a period of three years or till there is a change in law or facts based on which the advance ruling has been pronounced, whichever is earlier.
- **Protection from unauthorised publication of data:** To protect the import and export data submitted to Customs by importers or exporters in their declarations, a new section has been inserted providing that the publishing of such information unless provided by the law shall be an offence under Customs Act[76].
- **Measure to address undervaluation:** As a measure to address issue of undervaluation in imports, the Board has been empowered to frame rules for detecting undervaluation of imported goods and for casting additional obligation on importer.
- **Amendment in import of goods at concessional rate of duty Rules, 2017 (IGCR Rules, 2017):** Revised Customs IGCR Rules, 2017 have been notified to make the entire process digital and transparent. Major changes include standardisation of various forms, option for voluntary payment of duties and interest through portal and discontinuation of the need for any transaction-based permissions and intimations.

Goods and Services Tax (GST)

- **Input tax credit provisions:** The budget has proposed to provide extended time for availment of input tax credit in respect of any invoice/debit note pertaining to a financial year up to 30 November of the following financial year. Further, extension has been proposed in timeline for issuance of credit notes and rectification of errors in GST returns pertaining to a particular financial year till 30 November (earlier it was September) of the subsequent year.
- **Auto-generated statement:** The two-way communication process in filing GST returns has been replaced by an auto-generated statement. Based on such process, the ITC can be claimed by recipient based on an auto generated statement which provides for details of inward supplies and details of supplies in respect of which such credit cannot be availed, whether wholly or partly in certain prescribed situations.
- **Levy of interest on wrongly availed and utilized ITC:** The budget has proposed retrospective amendment in GST law to provide for levy of interest @18% on input tax credit wrongly availed and utilised, with effect from 1 July 2017.
- **Transfer of e-cash ledger:** The budget has allowed transfer of amount available in electronic cash ledger of a registered person to its other registration with same PAN.
- **Changes in refund provisions:** Time limit for refund of taxes paid on procurements by specified persons has been proposed to be extended from six months to two years from end of relevant quarter. Further, clarification has been provided regarding the relevant date for filing refund claim for SEZ supplies, which is the due date of filing statement of outward supplies.

Even though the budget has attempted to address various recommendations from trade and industry, there are plethora of issues which remains unanswered. The highly anticipated/recommended amnesty scheme for resolving various indirect tax litigations has not been announced neither the formation of GSTAT was discussed. While the changes proposed under GST front are moving towards digitizing compliances and the Customs are bringing clarity on practical front, there is a long way to address issues promoting seamless credit and one nation-one tax.

73. Section 2(34) of the Customs Act, 1962
74. Section 3 of the Customs Act, 1962
75. Subsections (1A) and (1B) have been inserted in Section 5 of the Customs Act, 1962
76. New Section 135AA of the Customs Act, 1962 has been inserted

04 Issues on your mind

What data is embedded in QR code of an e-invoice?

The QR code consists of key particulars of e-invoice, such as GSTIN of supplier, GSTIN of recipient, invoice number as given by the supplier, date of generation of invoice, invoice value (taxable value and gross tax), number of line items, HSN code of main item (line item having highest taxable value), unique IRN (Invoice Reference Number/hash) and IRN generation date.

What are the features of revamped search HSN code functionality on the GSTN portal?

The Search HSN Code functionality has been enhanced, where the taxpayers can search the HSN code and the applicable technical description through common parlance/trade description of the goods/services as they are known in the trade. It helps the taxpayers to search HSN Code by providing a description/ part of a description. The facility is available at both pre-login and post-login. Taxpayers/users can access the same by the following navigation: **Home>Services>User services>Search HSN Code[77].**

Taxpayers can search HSN/ description using either of the two options provided as radio buttons: (i) HSN and (ii) Description; either of which can be selected as per the requirement.

Steps to search description based on HSN:

- Taxpayers can search for any HSN code pertaining to any goods and/or services.
- Only numbers can be entered in the search box if the search is based on HSN.
- On entering the HSN in the search box, five nearest possible descriptions would be shown in the auto-suggested dropdown relating to the said HSN.
- Taxpayers can then select the suggestion that may be most relevant to their case.

Steps to search HSN based on trade/ commercial/ technical description:

- Taxpayer can search by way of entering both technical and/or trade descriptions of the requisite goods or services in the search box.
- Once taxpayers select the Description option, they are then required to select whether they want to search for goods or services.
- On entering of description in the search box, five nearest possible HSN codes with descriptions will be shown in the auto-suggested dropdown relating to the said description.
- The taxpayer can then select the relevant HSN and description pair.

77. GSTN advisory dated 6 January 2022

How to enter suspended GSTINs as recipients in Form GSTR-1/IFF?

The system used to return an error message if a supplier entered GSTIN of a suspended taxpayer in the B2B, B2BA, CDNR and CDNRA tables of Form GSTR-1/IFF. This validation has now been removed and taxpayer would be able to enter a suspended GSTIN as a recipient of taxable supplies in respective tables of Form GSTR-1/IFF.

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

The CBIC has launched an Indian Customs Compliance Information Portal (CIP) to provide free, easy and quick access to information on all Customs procedures and regulatory compliance for nearly 12,000 Customs tariff items. The portal can be accessed using the URL **https://cip.icegate.gov.in/CIP.**

CIP provides comprehensive information on the step-by-step Customs clearance procedures, applicable duties of Customs and regulatory compliance requirements of Partner Government Agencies (PGAs). Some of the features are as under:

- Easy to search HS codes
- Customised, step-by-step details for all import/export processes
- Three step-by-step stages
- Different process flows based on Customs facilitation levels
- Customs duty rates at the click of a button
- Compliance requirements of PGAs

05 Important developments in direct taxes

Important amendments/updates

CBDT extends timelines for certain tax compliances

Due to the hardships faced by the taxpayers, on account of the pandemic and in electronic filing of various audit reports, CBDT[78] has further extended the timelines for certain tax compliances.

Particulars	Existing due date	New due date
Due date for filing income tax return for Assessment Year 2021-22		
Return of income in case of TP[79] audit	28 February 2022	15 March 2022
Return of income in case of • Company • Person (other than a company) whose accounts are required to be audited • Partner of a firm whose accounts are required to be audited	15 February 2022	15 March 2022
Due date for furnishing various reports for Financial Year 2020-21		
Accountant's report[80] in Form 3CEB	31 January 2022	15 February 2022
Tax audit report - where the taxpayer is also required to furnish Form 3CEB	31 October 2021	15 February 2022
Tax audit report - in other cases	15 January 2022	15 February 2022

78. Circular No. 1/2022 dated 11 January 2022
79. Transfer pricing
80. under Section 92E of the Income tax Act, 1961 ("the Act")

Further, it has been clarified that:

- If shortfall in tax payable exceeds INR 1,00,000, interest for delay in furnishing of tax return would apply
- If resident individual is of sixty years or more at any time during the year, any self-assessment tax paid till the original due date will be treated as 'advance tax' for computing interest.

Government prescribes the manner of computing exempt income for the purpose of Section 10(23FF) of the Act

Section 10(23FF) of the Act provides tax exemption to capital gains, earned by non-resident taxpayers or a specified fund on transfer of Indian company's shares, on account of relocation of fund[81].

The exemption is available for gains attributable to units held by non-resident (not being a permanent establishment of a non-resident in India). The manner of computing the exempt income[82] for the specified fund has been notified[83]. A specified fund is required to electronically furnish the annual statement[84] of exempt income[85], which needs to be certified by an accountant. This certificate[86] is required to be electronically furnished by the accountant[87].

New Faceless Appeal Scheme, 2021 notified

CBDT has notified[88] the new Faceless Appeal Scheme, 2021 which replaces/supersedes Faceless Appeal Scheme, 2020 with effect from 28 December 2021. All appeals pending or instituted on or after 29 December 2021[89] will be covered by the new Scheme.

Few notable changes as compared to the Faceless Appeal Scheme 2020 are:

- Personal hearing[90] has been made mandatory in all cases where it is requested by the taxpayer.
- Regional Faceless Appeal Centre has been abolished.
- The entire process of issue and review of draft appellate order has been removed and the order passed by Commissioner (Appeals) would be the final order.
- Earlier, the Appeal Units were required to make a recommendation to the NFAC[91] for initiation of penalty proceedings. Now, penalty proceedings can be initiated by the Commissioner (Appeals).

Supreme Court further extends the period of limitation in respect of all judicial or quasi-judicial proceedings

The SC[92] after taking into consideration the hardships faced by litigants due to the COVID-19 pandemic passed an order[93] extending the period of limitation in case of all judicial and quasi-judicial proceedings. It has been directed that the period from 15 March 2020 till 28 February 2022 will be excluded for computation of the limitation period[94].

Further, it has been clarified that:

- Balance period of limitation remaining as on 3 October 2021, if any, will be available with effect from 1 March 2022.

  Where the limitation period expires between 15 March 2020 and 28 February 2022, it will be extended by a period of 90 days from 1 March 2022.In case the actual balance period of limitation remaining as on 1 March 2022 is greater than 90 days, then such longer period will be applicable.

CBDT notifies E-advance ruling Scheme,2022

- The CBDT has notified[95] the e-advance ruling scheme, 2022 which will be applicable to the applications of advance rulings[96] made/transferred to BAR[97]. Some of the key aspects of the scheme are as follows:
- Allocation/transfer of applications to BAR will be through an automated allocation system.
- The Scheme provides procedure for filing an application and for next steps on receipt of application. It also provides powers of the BAR and the Secretary[98].
- All communications under the scheme will be through an electronic mode.
- Applicant is not required to attend the hearing personally or through an authorised representative.
- Appeal can be filed before the High Court Order against the order passed by BAR.

81. Provided capital gains on such shares would not be chargeable to tax if that relocation had not taken place
82. Rule 2DD of the Income tax Rules, 1962
83. Notification No 138 of 2021 dated 27 December 2021
84. In Form No.10-II
85. On or before the due date of furnishing return of income
86. Form No.10-IJ
87. One month prior to the due date of furnishing return of income
88. Notification No. 139/2021 dated 28 December 2021
89. other than those in central charges and international charges
90. Through video conferencing or video telephony
91. National Faceless Appeal Centre
92. Supreme Court
93. dated 10 January 2021 (earlier orders were issued on 23 March 2020, 8 March 2021, 27 April 2021 and 23 September 2021)
94. Prescribed under any general or special laws
95. Vide Notification dated 18 January 2022
96. Under section 245Q of the Act.
97. Board for Advance Ruling
98. Secretary shall mean a Commissioner appointed by Central Board of Direct Taxes as Secretary of BAR

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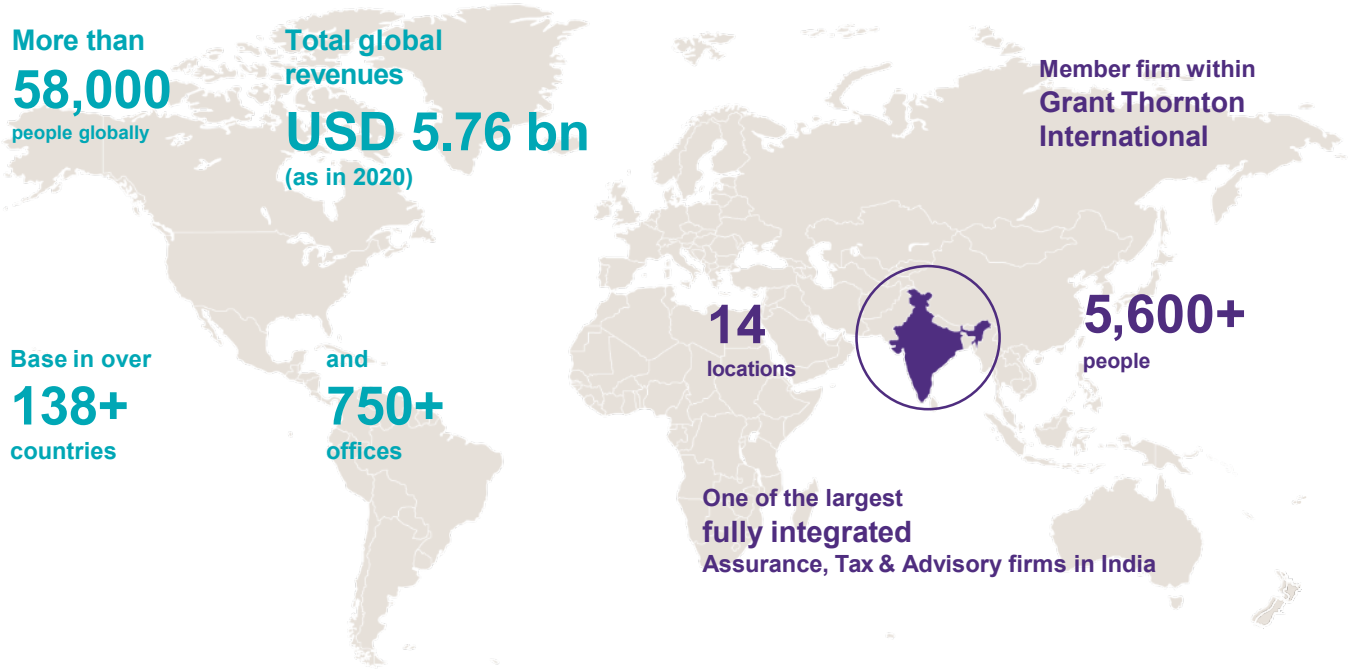

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