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SHAPING A VIBRANT INDIA

GST Compendium

A monthly guide

August 2022

Editor’s note

The government has amended the SEZ rules to include the WFH employment model. Accordingly, a unit operating in the SEZ may permit its employees to WFH or any place outside the SEZ as per the prescribed guidelines. The WFH facility can be extended to a maximum 50% of the total employees, including contractual employees, of the unit. However, the DC is empowered to approve a higher number of employees for any bona fide reason to be recorded in writing.

In a landmark judgment, the Apex Court has directed the government to re-open the GST portal for 60 days beginning 1 September 2022, for claiming transitional credits to evaluate the claims pertaining to the pre-GST regime. The decision aligns with the views expressed by various HCs in similar matters and should provide relief to the taxpayers.

In another ruling, the Rajasthan HC has held that the refund of accumulated ITC under an IDS should be allowed even when the supply of goods is at a concessional tax rate. A similar clarification has also been issued by the CBIC recently. This should put to rest the controversy and ongoing litigation on this subject.

In this edition, we have analysed the recommendations on the GST levy on room charges (excluding ICU) charged by hospitals.

On the direct tax front, CBDT has issued the guidelines regarding tax deduction on the transfer of VDAs. Also, against the popular demand of extending the due date of filing the tax returns on 31 July, the government had decided that there were no compelling reasons to extend the due date this year. Accordingly, around 72.47 lakh returns were filed on the last day out of the total 5.83 crore tax returns filed for FY 2021-22.

Hope you will find this edition an interesting reading.

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01 Important amendments/updates

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

CBIC notifies various recommendations of the 47th GST council meeting

Pursuant to the above, the CBIC has issued various notifications[1.1] on 5 July 2022 for giving effect to these recommendations:

- The registered person having aggregate turnover up to INR 2 crore in FY 2021-22 shall be exempted from filing annual return for the said FY.
- The due date of furnishing Form GST CMP-08 for the period April 2022 to June 2022 has been extended till 31 July 2022.
- The late fee for delay in filing Form GSTR-4 for FY 2021-22 shall stand waived till 28 July 2022.
- The suspension of registration due to non-filing of returns for the specified period shall be deemed to be revoked upon furnishing of all pending returns if the registration has not already been cancelled by the proper officer.
- The value of supply of duty credit scrips shall be excluded from the aggregate value of exempt supplies for the purpose of reversal of common credit.
- The specified taxpayers[1.2] having aggregate turnover exceeding INR 20 crore in any preceding FY from 2017-18 onwards, shall be required to provide declaration in the invoices issued by them. The declaration shall be added that though the aggregate turnover exceeds the notified turnover, however, the entity is not required to issue an e-invoice.
- UPI and IMPS are added as additional modes of deposit.
- The registered person shall be allowed to transfer the specified amount available in its ECL as CGST or IGST in the ECL of a distinct person (GST registration obtained basis same PAN), subject to fulfilment of specified conditions.
- The documentary evidence to claim refund on account of export of electricity have been notified to facilitate the exporters.

1.1 From Notification No. 9/2022 - Central Tax dated 5 July 2022 to Notification No. 14/2022- Central Tax dated 5 July 2022
1.2 A government department, a local authority, Special Economic Zone unit, an insurer or a banking company or a financial institution, including a non-banking financial company, supplier of goods transport agency services or passenger transportation service or services by way of admission to exhibition of cinematograph films in multiplex screens

- For the purpose of refund in case of zero-rated supply of goods without payment of tax, the value of goods exported out of India shall be taken as lesser of:
  - The FOB value declared in the shipping bill or bill of export form; or
  - The value declared in the tax invoice or bill of supply.
- The formula for claiming refund on account of IDS has been amended to consider utilisation of ITC on account of inputs as well as input services for payment of output tax on inverted rated supplies in the same ratio in which ITC has been availed.
- Form GSTR-3B has been amended to include reporting of supplies relating to ECO and ITC.
- A new Rule 88B has been inserted w.e.f. 1 July 2017 which prescribes the manner of calculating interest on delayed payment of tax.
- The following provisions have been notified w.e.f. 1 March 2020:
  - The time limit for issuance of order for recovery of tax not paid or short paid or of ITC wrongly availed or utilised, in respect of FY 2017-18, is extended up to **30 September 2023**.
  - The period from 1 March 2020 to 28 February 2022 shall be excluded for computation of the limitation period for issuance of orders for recovery of erroneous refunds and filing of refund applications.
- Rule 95A providing refund of taxes to the retail outlets established in departure area of an international airport beyond immigration counters, has been withdrawn, retrospectively from 1 July 2019.
- Rule 96 has been retrospectively amended from 1 July 2017 that in case if there is any mismatch between the data furnished by the exporter in shipping bill and those furnished in GSTR-1, refund application shall be deemed to have been filed on such date when mismatch in respect of the said shipping bill is rectified by the exporter.
- In accordance with the changes in relevant provisions, various forms have been amended/inserted.

CBIC issues various clarifications pursuant to the 47th GST council meeting recommendations

To remove ambiguity and legal disputes revolving around various issues, the GST council in its recently held 47th meeting, had recommended the issuance of due clarifications on the subject matters.

Pursuant to the said recommendations from the GST council, the CBIC has issued circulars clarifying various important aspects in relation thereto.

Clarification relating to ineligible ITC[1.3]

Issue	Clarification
Applicability of proviso at the end of clause (b) of Section 17(5) to allow ITC when its obligatory for an employer to provide goods or services to its employees	Earlier, the 28th GST council meeting had recommended to widen the scope of ITC to allow credit in respect of goods or services which are obligatory for an employer to provide to its employees and, accordingly, amendment was made in the provisions. Hence, it has been clarified that the proviso is applicable to whole clause (b) of the subject provision and ITC shall be allowed accordingly.
Availability of ITC on input services by way of any type of leasing	It is clarified that availment of ITC is not barred in case of leasing, other than leasing of motor vehicles, vessels and aircrafts.

Clarification in relation to perquisites provided by employer to employee as per contractual agreement[1.4]

Issue	Clarification
Applicability of GST on perquisites provided by employer to employee in terms of contractual agreement	No GST will be applicable on perquisites provided by employer to its employees in terms of contractual agreement in relation to employment.

1.3 Circular No. 172/04/2022-GST dated 6 July 2022
1.4 Circular No. 172/04/2022-GST dated 6 July 2022

Clarification in relation to utilisation of ECrL and ECL ledger for payment of tax and other liabilities[1.5]

Issue	Clarification
Can amount available in ECrL be used to make payments of any tax under GST?	Any payment towards output tax except under the RCM can be made by utilisation of the amount available in ECrL.
Can amount available in ECrL be used to make payments of any liability other than tax under GST?	ECrL cannot be used to make payment of any amount (interest, penalty fees or any other amount including payment of erroneous refund) other than the output tax under CGST Act or IGST Act.
Can ECL be used for making payment of any liability under GST?	The amount available in ECL can be utilised to make any payment under GST law towards tax, interest, penalty, fees or any other amount.

Clarification in relation to refund claimed by the recipients of deemed export supplies[1.6]

Issue	Clarification
Would ITC availed by the recipient for claiming refund of tax paid on deemed exports would subject to provisions of Section 17 of the CGST Act?	The ITC of tax paid on deemed export supplies allowed to the recipients for claiming refund of such tax paid is not ITC in terms of the provisions of Chapter V of the CGST Act, 2017. Therefore, the ITC so availed by the recipient of deemed export supplies would not be subjected to provisions of Section 17 of the CGST Act, 2017.
Would ITC availed by the recipient for claiming refund is to be included in the net ITC for computation of refund of unutilised ITC?	Such ITC is not to be included in the net ITC for computation of refund of unutilised ITC on account of zero-rated supplies.

Clarification in relation of re-credit in ECrL using Form GST PMT-03A[1.7]

Issue	Clarification
Categories of refund	Re-credit of amount in ECrL can be done for following categories of refunds: • Refund of IGST in contravention of provisions • Refund of unutilised ITC: - On account of export of goods/services without payment of tax - Refund of unutilised ITC on account of zero-rated supply of goods/services to SEZ developer/unit without payment of tax - Refund of unutilised ITC due to ITS
Procedure of re-credit	• The taxpayer shall deposit the amount of erroneous refund along with applicable interest and penalty through Form GST DRC-03 by debit of amount from ECL and shall clearly mention the reason of payment. • The taxpayer shall make a written request to the jurisdictional proper officer to re-credit the amount to ECrL. • Upon satisfaction, the proper officer shall re-credit the amount in ECrL, by passing an order in Form GST PMT-03A, preferably within a period of 30 days as prescribed.

1.5 Circular No. 172/04/2022-GST dated 6 July 2022
1.6 Circular No. 172/04/2022-GST dated 6 July 2022
1.7 Circular No. 174/06/2022-GST dated 6 July 2022

Clarification[1.8] in relation to applicability of demand and penalty provisions in respect of transactions involving fake invoices

Issue	Clarification
Applicability of provisions of demand and recovery on supplier in case when tax invoice has been issued without any underlying supply by one registered person to another registered person	In this case, a supplier issues only a tax invoice to a recipient without any supply, therefore such activity does not satisfy the condition of supply. Hence, there is no tax liability on a supplier in respect of such tax invoice. Thus, no demand and recovery along with penal action is required under the provisions of Section 73 or 74. However, such supplier is liable for penal action under Section 122 for issuing invoice without actual supply of goods or services or both.
Applicability of provisions of demand and recovery in case when recipient further issues invoice to his buyers and utilises ITC availed based on tax invoice issued by registered person without any underlying supply	The availment and utilisation of fraudulent ITC without receiving the goods or services or both is in contravention of the provisions. In such case, a recipient shall be liable for demand and recovery along with penal action, under Section 74, along with applicable interest under Section 50. Further, if penal action for fraudulent availment or utilisation of ITC is taken against recipient, then no penalty for the same act can be imposed on him under any other provisions of the CGST Act.
Applicability of demand and recovery provisions where fraudulent ITC was utilised by issuing fake invoice further to registered person	In this case, the ITC availed by the recipient in his ECrL is ineligible. Further, there is no tax liability on such a person who issues a further tax invoice without underlying supply of goods or services or both because it is not a supply. Therefore, in this case, no demand and recovery of wrongly/fraudulently availed ITC or tax liability of outward transaction is required under Section 73 or 74. However, penal actions can be taken against such person under Section 122 for issuing invoices without any actual supply of goods and/or services as well as availing/utilising ITC without actual receipt of goods and/or services.

Clarification[1.9] in relation to refund under IDS where goods are supplied under concessional notification

Issue	Clarification
Refund under IDS, where goods are supplied under concessional rate notification	There may be cases where, though inputs and output goods are same, the output supplies are made under a concessional rate notification. In this scenario, it is clarified that the credit accumulated is admissible for a refund, other than the cases where output supply is either nil-rated or fully exempted. Besides, the supply of such goods or services is not notified by the government for their exclusion from the refund of accumulated ITC.

Clarification in relation to procedure of filing refund of unutilised ITC on account of export of electricity[1.10]

Refund application shall be filed under the category of 'any other' in Form GST RFD-01, wherein 'export of electricity without payment of tax (accumulated ITC)' shall be specified, along with prescribed documents. The relevant date shall be the last date of the month, in which the electricity has been exported as per the monthly regional energy account. The processing of the refund claim by the proper officer shall be done in the manner prescribed.

Further, various clarifications[1.11] in relation to furnishing of information in specified GST returns have been issued.

1.8 Circular No. 171/03/2022-GST dated 6 July 2022
1.9 Circular No. 173/05/2022-GST dated 6 July 2022
1.10 Circular No. 175/07/2022-GST dated 6 July 2022
1.11 Circular No. 170/02/2022-GST dated 6 July 2022

Clarifications on the applicability of GST on pre-packaged and labelled goods

Pursuant to the recommendations from the GST council in its 47th meeting, the changes relating to GST rates came into effect from 18 July 2022, which includes imposition of GST on pre-packaged and labelled goods. In this respect, various issues are clarified[1.12] in the form of FAQs as below:

Issue	Clarification
What change has been made w.r.t. packaged and labelled commodity w.e.f. 18 July 2022?	Prior to 18 July 2022, GST was applied on specified goods when they were put up in a unit container and bore a registered brand name/were bearing brand name in respect of which an actionable claim or enforceable right in a court of law is available. However, w.e.f. 18 July 2022, GST has been made applicable on supply of pre-packaged and labelled commodities attracting the provisions of the LMA, 2009. Thus, there is a change in modalities of imposition of GST on branded specified goods to pre-packaged and labelled specified goods.
What is the scope of pre-packaged and labelled for the purpose of GST levy on food items like pulses, cereals and flour?	The expression pre-packaged and labelled defined in LMA is to be referred for the purpose of GST. Thus, the supply of specified commodity having below two attributes would attract GST: • It is pre-packaged. • It is required to bear the declarations under the provisions of the LMA. However, if such specified commodities are supplied in a package that does not require declaration(s)/compliance(s) under LMA, the same would not be treated as pre-packaged and labelled for the purpose of levy of GST. In the context of food items (such as pulses and cereals like rice, wheat, flour, etc.), the supply of specified pre-packaged food articles would fall within the purview of the definition of the pre-packaged commodity if such pre-packaged and labelled packages contained a quantity up to 25 kg/litres, subject to other exclusions.
What is the scope of various exclusion(s) provided under the LMA and the rules made thereunder?	For such commodities, a single package of items containing a quantity of more than 25 kg/litres shall not fall in the category of pre-packaged and labelled commodity. Hence, GST shall not apply.
Would GST apply to a package that contains multiple retail packages?	Yes, GST shall be applicable on several packages which are intended for retail sale to the ultimate consumer. Such packages may be sold by a manufacturer through a distributor. However, a package containing more than 25 kg in one individual package would not be considered a pre-packaged and labelled commodity for the purposes of GST levy even though declarations on such wholesale packages are mandatory under the rule.
Would GST apply on specified goods sold by manufacturer/producer to a wholesale dealer who subsequently sells it to a retailer?	GST would be applicable whenever a supply of such specified goods is made by any person. Further, the manufacturer/wholesaler/retailer would be entitled to an ITC on GST charged by his supplier in accordance with the ITC provisions. Further, a supplier availing threshold exemption or composition scheme would be entitled to exemption or composition rate.
Is the retailer liable to pay tax if goods are purchased in packages upto 25 kg/litres but sells it in loose quantity?	GST applies when goods are sold in pre-packages and labelled packs. Therefore, GST would apply when pre-packaged and labelled package is sold by a distributor/ manufacturer to such retailer. However, if retailer supplies the item in loose quantity from such package, such supply by a retailer is not a supply of packaged commodity for the purpose of GST levy.
Would GST apply if packaged commodities are supplied for consumption by industrial consumers or institutional consumers?	As per the rules, the supply of packaged commodity for consumption by industrial consumers or institutional consumers is excluded from the purview of LMA. Therefore, GST shall not be applicable.
If packages containing 20kg are sold without making the required declaration, will it be considered as pre-packaged and labelled, liable to GST?	Such packages would be considered as pre-packaged and labelled commodity for the purposes of GST as it requires making a declaration. Hence, GST would apply on the supply of such package(s).
Would GST apply on supply attracting exclusion or exemption under LMA?	If supply is made in the prescribed manner to attract exclusion or exemption under LMA, the item shall not be treated as pre-packaged commodities for the purpose of GST levy.

1.12 FAQs dated 17 July 2022

Delhi GST department issues order for disposal of refunds within the stipulated time framework and payment of interest on delayed refunds

Earlier, the Delhi GST department had issued various instructions/orders/circulars for disposal of refund applications in a time bound manner as it is an integral part of the mechanism. It becomes imperative upon the concerned refund sanctioning authority/proper officer that all the refund applications are processed and decided within the prescribed time frame to avoid undue interest liability on the department.

The department has directed[1.13] all the officers[1.14] to adhere the departmental guidelines for timely disposal of all types of refund within stipulated time period.

GSTN informs the taxpayers w.r.t. the changes in form GSTR-3B

The government has notified[1.15] changes in Table 4 of Form GSTR-3B which requires the taxpayers to report information on ITC correctly availed, reversal thereof and declaring ineligible ITC in Table 4 of GSTR-3B. The notified changes are being implemented on the GST portal and will be available shortly.

In this respect, the GSTN has issued advisory[1.16] to inform the taxpayers that until these changes are implemented on the GST portal, they are advised to continue to report their ITC availment, reversal of ITC and ineligible ITC as per the current practice.

SEBI has clarified the levy of GST on the fees payable

The GST Council in its 47th meeting recommended to withdraw the exemption granted to services by the SEBI, which has been notified[1.17] on 13 July 2022. Accordingly, SEBI has issued circular to all the market infrastructure institutions, companies who have listed/are intending to list their securities, other intermediaries and persons who are dealing in the securities market, informing that the fees and other charges payable to SEBI shall be subject to GST at the rate of 18% w.e.f. 18 July 2022.

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

SEZ rules amended to include the procedure for WFH permission to SEZ units

- A unit in SEZ may permit[1.18] WFH or from any place outside the SEZ, to its employees, covered in the below category:
  - Employees of IT/ITeS SEZ units
  - Employees who are temporarily incapacitated
  - Employees who are travelling
  - Employees who are working offsite
- The unit shall submit its proposal for WFH to the DC through email or physical application, which shall contain the terms and conditions of WFH, including the date from which the permission for WFH shall be utilised and the details of the employees to be covered.
- The DC, if satisfied, may grant permission to the proposal of the unit which shall be valid for one year from the date of such permission, which may further be extended for one year at a time.
- The proposal for permission of WFH or an application for extension of such permission shall be submitted at least fifteen days in advance to the DC, except in the case of the employees who are temporarily incapacitated or travelling.
- The proposal for WFH shall cover a maximum of 50% of total employees, including contractual employees of the unit. The unit shall maintain an accurate attendance record for the entire period of permission of WFH and shall submit it to the DC.
- There is flexibility granted to the DC of SEZs to approve a higher number of employees (more than 50%) for any bona fide reason, to be recorded in writing.
- The SEZ units whose employees are doing WFH or any place outside the SEZ on the date of commencement of the rules, shall submit their proposal within 90 days to seek approval.
- The work to be performed by employees permitted to WFH must be as per the services approved and should relate to the project of the unit.
- The unit shall ensure that export revenue of the resultant products/ services must be accounted for by the unit to which the employee is tagged.
- Employees are to be untagged from the unit after they cease to be a part of the project, and ID cards are to be surrendered.
- SEZ unit may provide the equipment and secured connectivity to employees with the prior permission of the SO for temporary removal of goods without payment of duty/IGST subject to the procedure prescribed in terms of issuance of certificate and maintenance of records, etc.
- The SO may approve the removal of goods, required by an employee, which shall be valid up to the period for which WFH permission is valid.

1.13 Order No. F.3(433)/GST/Policy/2022/1407-13 dated 20 July 2022
1.14 Ward Incharges/ Proper Officers/ Zonal Incharges
1.15 Notification No. 14/2022 – Central Tax dated 5 July 2022
1.16 Advisory dated 22 July 2022, https://www.gst.gov.in/newsandupdates/read/550
1.17 vide Notification No.4/2022 dated 13 July 2022
1.18 Notification dated 14 July 2022

CBIC authorises the DGARM to withhold the IGST refund for verification purposes

The CBIC has authorised[1.19] the Principal Director General/DGARM to withhold the refund[1.20] of IGST paid on goods or services exported out of India. The claim for refund shall be withheld when such officers, on the basis of data analysis and risk parameters, are of the opinion that verification of credentials of the exporter, including the availment of ITC by the exporter, is considered essential before grant of refund, in order to safeguard the interest of revenue.

CBIC assigns certain officers as the proper officer to have power to undertake controlled delivery of any consignment of goods

The CBIC has made amendment[1.21] in its earlier issued notification[1.22] wherein it assigned certain officers as the proper officers, in relation to the various functions specified under the Customs Act, 1962. Now, the Deputy DRI or Assistant DRI is assigned as the proper officer to have power[1.23] to undertake controlled delivery of any consignment of goods.

Exemption from IGST and Compensation cess on goods imported under AA, EPCG and EOU schemes to be continued

The CG has notified that the exemption from levy of IGST and the GST Compensation cess on goods imported under AA scheme, EPCG scheme, procured by EOU, STP units, electronics hardware technology park units, etc., for specified purposes shall be continued.

Earlier, the exemption from levy of IGST and Compensation cess was extended till 30 June 2022.

DGFT extends last date for submitting applications under MEIS till 31 August 2022

The DGFT has extended the last date of submission of online application under MEIS for exports made during the period 1 September 2020 to 31 December 2020 till **31 August 2022**[1.24]

Further, it provides that no further MEIS applications shall be allowed to be submitted after the prescribed last date and such applications would become time-barred. Besides, no late cut provisions would be available for submitting claims thereafter.

Centre approves continuation of the RoSCTL scheme for export of apparel/garments with the same rates

With a view to boost exports and job creation in the textile sector, the government has approved[1.25] the continuation of the scheme for RoSCTL, with the same rates as notified by the Ministry of Textiles for exports of apparel/garments and made ups, till **31 March 2024**.

Inapplicability of MOOWR 2019[1.26] on warehousing of solar power generating units/items for power plants with resulting goods 'electricity'

The CBIC has noticed that certain jurisdictional Commissioners have granted permission to solar power generating units for warehousing of imported solar panels/solar modules and related accessories, etc. declared as capital goods to generate electricity as resulting/resultant goods for home consumption.

Regulation 15 of MOOWR 2019 requires affixing a one-time-lock to the load compartment of the means of transport in which goods are removed from the warehouse. As the identical goods may also be cleared for home consumption, the provision for removal for export shows that those goods fall squarely outside the scope of MOOWR 2019. Since electricity is of the nature to which it is incapable to affix one-time-lock to the load compartment of the means of transport, it is outside the scope of MOOWR 2019 due to inability to satisfy the essence of the prescribed condition.

Further, as per Regulation 20, the CBIC, having regard to the nature of goods, their manner of transport or storage, may exempt a class of goods from any of the provisions of the MOOWR 2019. However, neither this power has been exercised by the CBIC to exempt the goods in nature of electricity nor CBIC issues separate regulations relating to removal of electricity.

Accordingly, the permission granted to solar power generating units is not in accordance with MOOWR 2019 provisions or principles. Therefore, the CBIC has instructed[1.27] that such permissions need to be immediately reviewed and necessary follow-up action shall be taken. Also, no further permission shall be granted in such cases.

1.19 Order No. 01/2022-GST dated 21 July 2022
1.20 under Rule 96(4)(c) of the CGST Rules, 2017
1.21 vide Notification No. 61/2022-Customs (N.T.) dated 13 July 2022
1.22 Notification No. 26/2022-Customs (N.T.) dated 31 March 2022
1.23 under Section 109A
1.24 Notification no. 15/2015-2020 dated 1 July 2022
1.25 Press release dated 14 July 2022
1.26 Manufacture and Other Operations in Warehouse (no.2) Regulations, 2019
1.27 Instruction no. 13/2022 Customs dated 9 July 2022

CBIC issues advisory for AE mechanism under faceless assessment

The CBIC has provided AE mechanism for ICEGATE[1.28] registered users to submit their grievance for delay in bill of entry clearance under faceless assessment. The delay in clearance would subsequently be escalated to the concerned Faceless Assessment Officers. The ICEGATE registered users are required to contact helpdesk team to avail the functionality of AE mechanism. The users can log their grievance for delayed clearance after 24 hours of filing the bill of entry. The grievance shall be submitted by the helpdesk agent and a grievance number shall be provided to the user. The users can track the status of grievances submitted by them by providing their ICEGATE ID or providing either the details of bill of entry or the grievance number.

DGFT introduces a new IT platform to migrate the existing e-BRC portal/website

Earlier, the DGFT had introduced[1.29] the e-BRC platform[1.30] in 2012 to enable capturing the details of the realisation of export proceeds from banks directly through secured electronic mode and facilitated the implementation of various export promotion schemes in an IT environment.

Now, the existing module of the e-BRC platform is being upgraded to a new IT platform[1.31] and proposed to be discontinued from end of July 2022. The existing users of e-BRC will be required to migrate to the new platform to avoid any impact in the services to the exporting community.

SEEPZ SEZ issues procedure for seeking WFH permission

The SEEPZ SEZ department has issued[1.32] below procedure for seeking WFH permission:

- The units would submit new applications for WFH, at least 15 days in advance, preferably by e-mail, through the registered e-mail ID of the unit, to the concerned SO[1.33]. However, in case, a physical copy is being submitted, a soft copy should also be provided through email. The application should contain a covering note signed by the authorised signatory of the unit mentioning the:
  - Date of permission
  - Total number of employees
  - Number of employees for whom WFH is being sought
  - Duration for which permission for WFH is required
- The attachment with the covering note should be an excel sheet containing the following columns:
  - Name and designation of employee availing WFH facility
  - ID Card number of the employee
  - Validity/expiry date of the SEZ ID card
  - Duration for which the permission for WFH is required (in case it is different from the general duration for which permission is sought)
- The units would also give an undertaking on their letter head through authorised signatory that they would follow all the conditions and stipulations laid down[1.34].
- A unit, where its employees are working from home or from any place outside the SEZ on the date of commencement of the Rules[1.35], shall submit its proposal for permission to the DC within 90 days[1.36] from 14 July 2022.
- In view of insertion of new SEZ rule, the circular[1.37] stands withdrawn with immediate effect.

Noida SEZ issues procedure for seeking WFH permission

The Noida SEZ Department has issued[1.38] below procedure for seeking WFH permission:

- The units would submit new applications for WFH, at least 15 days in advance, preferably by email, through the registered email ID of the unit, to the concerned DDC[1.39] with a copy to the concerned SO. However, in case a physical copy is being submitted, a soft copy should also be provided through email. The application should contain a covering note signed by the authorised signatory of the unit mentioning the:
  - Date of permission
  - Total number of employees
  - Number of employees for whom WFH is being sought
  - Duration for which permission for WFH is required
- The attachment with the covering note should be an Excel sheet containing the following columns:
  - Name and designation of employee availing WFH facility
  - SEZ ID card number of the employee
  - Validity/expiry date of the SEZ ID card
  - Duration for which the permission for WFH is required (in case it is different from the general duration for which permission is sought)
- The units would also give an undertaking on their letter head through authorised signatory that they would follow all the conditions and stipulations laid down[1.40].
- A unit, where its employees are working from home or from any place outside the SEZ on the date of commencement of the Rules[1.41] shall submit its proposal for permission to the DC within 90 days from 14 July 2022.
- In view of insertion of new SEZ Rule, the circular[1.42] stands withdrawn with immediate effect.

1.28 Indian Customs Electronic Gateway
1.29 through public notice no. 2 (RE-2012) / 2009-14
1.30 (http://dgftebrc.nic.in)
1.31 (https://dgft.gov.in)
1.32 vide Circular 59/2022 dated 20 July 2022
1.33 with a copy to the DC office
1.34 in the new Rule 43A of SEZ Rules, 2006.
1.35 Special Economic Zones (Third Amendment) Rules, 2022
1.36 Up to 11 October 2022
1.37 dated 22 March 2022
1.38 vide Circular F. No. DC/NSEZ/2022/WFH/ 5936 dated 19 July 2022
1.39 (ddc1@nsez.gov.in or ddc2@nsez.gov.in or ddc3@nsez.gov.in)
1.40 in the new Rule 43A of SEZ Rules, 2006.
1.41 Special Economic Zones (Third Amendment) Rules, 2022
1.42 No. 10/311/2010-SEZ/4299 dated 27 May 2022

CBIC extends the customs clearances beyond normal working hours in ICD

The CBIC[1.43] is enabling the facility of 24x7 customs clearance across numerous seaports and air cargo complexes across the country, which is presently available at 20 seaports and 17 airports. It has advised the officers[1.44] to consider having the ICDs within their jurisdictions designated with extended facility of customs clearance in any of the following ways:

- The facility may be made available on a 24x7 basis, similar to the current guidelines for seaports and air cargos/airports;
- The facility may be extended on all seven days of the week (including holidays), with stipulated timings[1.45];
- The facility may be extended beyond normal working hours for specified days in a week and with specified timings.

The decision to designate an ICD in any of the abovementioned manner, based on location requirement and resources availability, could be for specified imports[1.46], or specified exports[1.47] or goods exported under free shipping bills only, or for all the three categories mentioned.

The zone must ensure adequate resources to provide the extended facility, once a decision is made.

DGFT provides relaxation in submission of 'Bill of export' to SEZ units in case of EPCG authorisation

The DGFT has decided[1.48] to relax the condition of requirement of submission of 'Bill of Export' in case of exports made to SEZ units under EPCG authorisation. For the purpose of discharge of export obligation under EPCG authorisations, in case of supplies made to SEZ units prior to 1 April 2015, the exporters can submit corroborative evidence in lieu of 'Bill of Exports' such as:

- Form ARE-I, duly attested by jurisdictional Central Excise authorities of EPCG authorisation holder
- Evidence of receipt of the supplies by the recipient in the SEZ
- Evidence of payment made by the SEZ unit to the EPCG authorisation holder.

1.43 Circular No. 11/2022-Customs dated 29 July 2022
1.44 Principal Chief/ Chief Commissioners having jurisdiction over the ICDs
1.45 (say from 9 :30 AM to 6 :00 PM)
1.45 viz. goods covered by 'facilitated' Bills of Entry only
1.47 viz. reefer containers with perishable/temperature sensitive export goods sealed in the presence of Customs officials only
1.48 Policy Circular No. 43/2015-20 dated 27 July 2022

02 Key judicial pronouncements

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

Haj organisers are not eligible for exemption from GST/service tax as they do not conduct religious ceremony – SC

Summary

The SC has held that the HGOs and PTOs are not eligible for exemption from GST/service tax for the services provided to haj pilgrims. The SC stated in strict terms that the notification clearly prescribes the services rendered by the specified organisations in respect of a religious pilgrimage facilitated by the Ministry of External Affairs of the government of India under a bilateral arrangement. There is a rational basis for classifying the specified organisation as a class and keeping out the HGOs/PTOs from the exemption benefit. Further, the SC has rejected the plea of HGOs citing that the Haj committee is a statutory body that operates under the directions of the government and is a separate class in itself. The SC emphasised that such rational classification has a nexus with the objective sought behind the exemption. Besides, the Haj committees are not profit-driven whereas the HGOs derive profit out of the service rendered to Haj pilgrims. The SC viewed that the notification makes clear distinction between service provided in respect of religious pilgrimage and service provided by way of conduct of a religious ceremony. As a result, the comprehensive amount charged by the HGOs cannot be dissected for the purpose of partially exempting and partially levying service tax on the same. The SC also opined that in the matter of grant of exemptions in tax matters, latitude must be given to decision-making as it is also a matter of policy.

Facts of the case

- A bilateral treaty is executed every year between India and the Kingdom of Saudi Arabia, basis which the Haj pilgrimage can be undertaken from India through the Haj Committee or HGOs only.
- Under the erstwhile service tax regime, a mega exemption[2.1] was notified which provided the exemption on services provided by a person by way of conduct of any religious ceremony. Further, it also provided the exemption[2.2] to services by specified organisations[2.3] in respect of a religious pilgrimage facilitated by the Ministry of External Affairs of the GOI, under bilateral arrangement.
- Later, post introduction of the GST regime, an identical exemption notification was issued on 28 June 2017 under the IGST Act and CGST Act.
- In this respect, certain HGOs and PTOs had filed petition before the SC to challenge the levy of service tax on the services in relation to Haj pilgrimage. The SC directed the petitioners to make a representation to the GOI for a grant of exemption from service tax. However, the GST council rejected[2.4] the representation on the basis of the recommendation of the Fitment Committee and the decision was communicated by the GOI[2.5].
- The petitioner[2.6] submitted that wrong interpretation has been sought by the Revenue due to which the burden of service tax passes on to the pilgrims. Thus, the purpose of granting exemption gets defeated.
- The petitioner submitted that the exemption notification would apply for conducting the Haj ceremony except for air travel and foreign exchange services. Thus, the provision of granting exemption from service tax/GST only to Haj pilgrimage organised by the Haj Committees is in violation of Article 14 of the COI.
- Further, the action of the GOI to charge service tax and GST on HGOs, amounts to a violation of rights guaranteed under Article 25 of the COI.

2.1 Mega Exemption Notification no.25 of 2012–ST dated 20 June 2012
2.2 Paragraph 5A
2.3 Kumaon Mandal Vikas Nigam Limited, a Government of Uttarakhand Undertaking and the Committee or State Committee as defined in Section 2 of the Haj Committee Act, 2002
2.4 Order dated 14 March 2020
2.5 Letter dated 5 May 2020
2.6 All India Haj Umrah Tour Organizer Association Mumbai

SC observations and ruling[2.7]

- **Location of service provider and service recipient:** As per the provisions[2.8], the location of HGO will be the premises for which registration has been granted to HGO which is in India. Thus, the location of service provider is in India. Further, the service recipients are Indian residents with their residence in India. The rule[2.9] provides that where both the service provider and service recipient are located in taxable territory, the place of provision of service shall be the location of recipient, which is India.
- **Applicability of exemption notification:** The exemption notifications under the GST laws, in respect of the Haj pilgrimage, are pari materia with the mega exemption notification issued under the erstwhile service tax. The notification is specifically applicable to services by specified organisations in respect of a religious pilgrimage facilitated by the Ministry of External Affairs of the GOI under the bilateral arrangement. The notification clearly prescribes the exemption to person by way of conduct of religious ceremony and does not mean to include the service provided to enable the recipient to perform religious ceremony.
- **Distinction between 'religious ceremony' and 'religious pilgrimage':** The mega exemption notification makes a clear distinction between 'religious ceremony' and 'religious pilgrimage'. Further, the notification clearly covers two types of organisations, one of them being the Haj committee. The exemption is not applicable to HGOs as the HGOs are not the specified organisations. If the intent was to exempt services provided by HGOs, then the notification would have specifically provided so. Accordingly, exemption has not been provided to any other service provider rendering service in respect of a religious pilgrimage.
- **HGOs only facilitate religious ceremony:** The services provided by HGOs to Haj pilgrims is to facilitate them to reach at the destination to perform rituals/religious ceremonies. The HGOs themselves do not conduct any religious ceremony, rather the religious ceremony is conducted by Haj pilgrims or by someone else in Saudi Arabia.
- **Mega exemption cannot be invoked by HGOs:** The HGOs offer a comprehensive package of services relating to Haj pilgrimage and charge a lumpsum amount from the pilgrims. Thus, one amount is charged for all the services and a part of the package cannot be picked up for invoking exemption. A service rendered cannot be dissected into parts for the purpose of levy of tax. Therefore, the mega exemption cannot be invoked in the present case.
- **Haj committee constitutes a class in itself:** The Haj committee is a statutory body working under the control and supervision of the GOI. It facilitates Haj pilgrims for undertaking Haj pilgrimage and operates without any profit motive. The HGOs on the other hand, render services to pilgrims by way of purchasing flight tickets, arranging accommodation at a place near Kabah, arranging food during stay in Saudi Arabia, etc. Thus, the Haj committee is a separate class as distinguished from the HGOs. Further, the government has no direct control over HGOs except for the stringent conditions for the registration.

Our comments

The SC has dismissed a batch of petitions filed by numerous private tour operators seeking tax exemption on services offered to Haj pilgrims. It emphasised that the ground of discrimination has no substance as the HGOs and PTOs are not at par with the Haj Committee. Thus, the private tour operators and Haj group organisers providing such services shall be liable to pay tax.

Besides, out of the specified quota of Haj pilgrims, generally, 30% is allotted to the approved HGOs and remaining is allotted to the Haj committee. In light of the SC decision, the services provided by HGOs would result in increased prices for the Haj pilgrims.

SC directs GSTN to open common portal for two months for availing transitional credits

The SC in case of **Union of India v/s M/s Filco Trade Centre Private Limited and Anr.**[2.10] has issued the following directions[2.11]:

- The SC has directed the GSTN to open the common portal, from **1 September 2022 to 31 October 2022**, for filing transitional forms TRAN-1 and TRAN-2 for availing credits.
- The benefit has been extended to all aggrieved registered assessee to file the relevant form or revise the already filed form, irrespective of whether the taxpayer has filed writ petition before the HC or whether the case has been decided by ITGRC.
- GSTN needs to ensure that there are no technical glitches during the said time.
- The concerned officers are given a time of 90 days to verify the veracity of the claim/transitional credit and pass appropriate order on merits, after granting reasonable opportunities.
- The allowed transitional credit shall be reflected in the ECrL over the GST portal.
- The GST council may also issue appropriate guidelines to the field formations in scrutinising the claims.

2.7 Writ Petition (C) No. 755 of 2020 dated 26 July 2022
2.8 Sub-clause (a) of clause (h) of Rule 2 of Service Tax Rules, 1994
2.9 Rule 8 of Service Tax Rules, 1994
2.10 SLP(C)32709-32710 of 2018
2.11 SC order dated 22 July 2022

Refund of accumulated ITC under IDS is allowed even when the supply of goods made at a concessional tax rate – Rajasthan HC

Summary

The GST authorities had rejected the refund in view of the circular[2.12] stipulating that the refund under the IDS[2.13] would not be available where the input and output supplies are the same. In this respect, the Rajasthan HC stated that the refund provision under the IDS is unambiguous and does not carve out any exception. Further, the provision does not indicate that ITC would be admissible only if the goods supplied had been subjected to some process. The court opined that the circular, being subordinate legislation, is repugnant and conflicting with the parent legislation. Hence, the same cannot be applied to oust the legitimate claim for accumulated ITC refund filed by the petitioner.

Facts of the case

- The petitioner[2.14] entered into a contract with Vedanta Limited (hereinafter referred to as 'company') to supply the essential goods required to carry out petroleum operations by the company. The petitioner procured goods from authorised vendors at GST rates varying between 5% to 28% and supplied the same to company at concessional GST rate of 5% under the notification[2.15].
- The petitioner claimed that a significant percentage of ITC is accumulated on account of the difference in the rate of tax which was much higher than the rate of output tax. Thus, it filed a refund claim under IDS.
- Based on the circular[2.16], the Revenue rejected the refund claim stating that refund of accumulated ITC under IDS would not be available when the input and output supplies are the same.
- The petitioner contended that a statutory circular cannot supersede or override the parent legislation[2.17], hence refund cannot be rejected.

Rajasthan HC observations and ruling[2.18]

- **No exception on refund claim under IDS:** The HC stated that the refund provision[2.19] of IDS is absolutely unambiguous, and it does not impose any exception on refund claim. Further, the provision allows refund of credit accumulated on account of supplies and does not mention that ITC would be admissible only if there is a value addition/enhancement in goods supplied.
- **Refund claim filed for a period prior to issuance of circular:** The CBIC has clarified[2.20] that the supplier who supplies goods at a concessional rate to companies involved in specified projects is also eligible for refund on account of IDS. Further, the circular denying refund, being a subordinate legislation, is repugnant and conflicting with the parent legislation. Hence, the same cannot be applied to oust the legitimate claim for accumulated ITC refund filed by the petitioner. Furthermore, the refund claim filed was for a prior period from the circular date. Therefore, the petitioner is eligible for a refund of accumulated ITC as per its entitlement.

Our comments

Earlier, the Calcutta HC, in case of M/s. Shivaco Associates[2.21] had held that curtailing of benefit by way of circular amounts to overreaching the provisions laid down in the Act, which is impermissible. Similarly, the Gauhati HC in case of BMG Informatics Private Limited[2.22] had held[2.23] that rejection of refund claim of accumulated ITC under IDS on the basis of the circular would be unsustainable under the law. The present ruling is also in line with the above rulings.

Further, to mitigate the ambiguities/litigations on this issue and pursuant to the recommendation of the 47th GST council meeting, the CBIC has recently clarified[2.24] that the intention of the earlier circular was not to cover those cases where the input and output goods are the same and the output supplies are made under concessional rate notification.

This is a welcome and much-awaited clarification that shall hopefully put an end to litigation on the subject matter.

2.12 Para 3.2 of the circular No.135/05/2020-GST dated 31 March 2020
2.13 in terms of Section 54(3)(ii) of the CGST/RGST Act
2.14 Baker Hughes Asia Pacific Limited operating in state of Rajasthan
2.15 Notification No.3/2017- CGST dated 28 June 2017
2.16 Circular No.135/05/2020 – GST dated 31 March 2020
2.17 B.M.G. Informatics Pvt. Ltd. Vs. Union of India & Ors, M/s. Shivaco Associates & Anr. vs. Joint Commissioner of State Tax, Directorate of Commercial Taxes & Ors
2.18 D.B. Civil Writ Petition No. 5714/2021 dated 30 June 2022
2.19 Section 54(3)(ii) of the CGST Act, 2017
2.20 Para 59 of the Circular No.125/44/2019-GST – CBEC-20/16/04/18-GST
2.21 WPA No. 54 of 2022
2.22 WP(C)/3878/2021, WP(C)/3675/2021,WP(C)/3880/2021, WP(C)/4120/2021
2.23 By the Calcutta HC and Gauhati HC, respectively
2.24 Circular No. 173/05/2022-GST dated 6 July 2022

Mismatch in ITC can be communicated by way of issue of an SCN to recipient – Madras HC

Summary

The Madras HC has stated that the rectification of a mismatch could have been done by the petitioner at the time of the receipt of the SCN. Further, if the petitioner wanted to rectify the mismatch, it should have submitted the supporting documents to substantiate that the supplier has paid the outward tax at its end. Therefore, the HC held that the SCN issued to the petitioner itself can be treated as a communication intimating mismatch between the supplier and the recipient.

Facts of the case

- The petitioner[2.25] is a dealer under the GST regime and has availed the ITC for the FY 2017-18 and 2018-19.
- The Revenue has issued the SCN requiring the petitioner to explain the mismatch in ITC. The petitioner has replied to such SCN. The Revenue passed an impugned order considering such reply.
- The petitioner contended that as per the provision[2.26], the Revenue authorities have obligation to first communicate[2.27] the mismatch to both the supplier and recipient. After such communication, there must be a procedure to be followed. Thus, SCN cannot be issued as a first communication.
- The Revenue submitted that SCN issued to the petitioner is itself a communication and reply could have been given with substantiated documents to show that the supplier has paid tax.

Madras HC observations and ruling[2.28]

- **SCN can be treated as a communication:** The HC stated that the Revenue's submission is right, and the petitioner would have done the rectification at the time of receipt of SCN. If the petitioner wanted to rectify the mismatch, it should have submitted the reply and the supporting documents to substantiate that the supplier has paid the outward tax at its end. However, the petitioner has failed to do so. Therefore, the HC has held that SCN can be treated as a communication intimating the mismatch between the supplier and the petitioner.

Our comments

As per the GST provisions, in case ITC claimed by the recipient is in excess of the tax declared by supplier, the discrepancy shall be communicated electronically in Form GST MIS-1 to the recipient and GST MIS-2 to the supplier, respectively. The objective behind introduction of Section 42 and 43 was to ensure that the supplier reports its correct tax liability and make appropriate payment of taxes to the exchequer.

However, in the present case, the Madras HC has held that a SCN issued to the recipient can be treated as a communication intimating mismatch of ITC under Section 42(3) of the CGST Act, 2017. Thus, it seems that the above ruling is not in consonance with the provisions and arbitrary. Since the discrepancy should be communicated to both the supplier and the recipient in the prescribed manner, direct issuance of the SCN only to the recipient in the present case does not hold good.

Further, it is relevant to note that the invoice matching mechanism[2.29] was expected to be accomplished by the introduction of return process, wherein GSTR-2 and GSTR-3 were to be activated. However, since these forms were not made active, the matching process is also not operational. Furthermore, the government vide Finance Act, 2022 has omitted these sections[2.30] so as to do away with the two-way communication process in return filing.

2.25 M/s. Mahendra Feeds and Foods
2.26 Section 42(3) of CGST Act, 2017, Now omitted
2.27 as per Section 42(3)
2.28 Writ Petition No.11191 of 2022 and W.M.P.No.10767 of 2022
2.29 contemplated under Sections 42 and 43
2.30 Yet to be notified

B. Key rulings under Customs/FTP/SEZ:

Any violation relating to foreign exchange is covered under the FEMA, 1999 and not under the Customs Act - Ahmedabad CESTAT

Summary

The appellant exported rice to Iran which was delivered to the UAE and received remittance in Indian rupees from Iran, instead of freely convertible foreign exchange. The allegations were made against the appellant merely on the ground of statements of persons which were not cross-examined. In this respect, the Ahmedabad CESTAT held that the rejection of cross-examination of statements of persons is a violation of principles of natural justice. The CESTAT stated that the SCN was issued under the Customs Act, however the provisions were invoked by only alleging violation of provisions of FTP[2.31] and FEMA,1999[2.32]. The CESTAT found that the violations relate to post-export conditions. Thus, the CESTAT opined that any violation relating to foreign exchange is covered under the FEMA, 1999 and not under the Customs Act.

Therefore, the CESTAT held that since the case pertains to an alleged violation of the provisions of FTDR[2.33] as well as that of FEMA, hence, the Customs authorities did not have jurisdiction to issue the SCN for said violation.

Facts of the case

- The appellant[2.34] had filed the shipping bills/export documents for export of rice to Iran, but the goods were delivered at UAE. In respect to this, the appellant received remittance in Indian rupees from Iran instead of free convertible foreign currency, which appeared as a mis-declaration on part of appellant.
- A SCN was issued to the appellant, in respect of which the adjudicating authority had held that the goods are liable for confiscation and imposed the penalties. The aggrieved appellant had filed appeal before the Commissioner (Appeals) who dismissed the appeals. Thus, the aggrieved appellant filed appeals before the CESTAT.
- The appellant submitted that the allegations are based on statements of persons and letters from shipping line. The appellant further contended that the goods became the property of the foreign buyer once the goods were shipped, and the bill of lading was issued. Hence, the Indian exporter cannot be held liable for any change in the port of discharge of goods after the goods were out of charge. Further, the Customs authorities do not have jurisdiction to issue SCN in this case.

2.31 Para 2.53 of the Foreign Trade Policy
2.32 Section 8 of the Foreign Exchange Management Act, 1999
2.33 Foreign Trade (Development & Regulation Act) and rules made there under
2.34 DRRK Foods Private Limited

Ahmedabad CESTAT observations and ruling[2.35]

- **Statements are not admissible as evidence:** The CESTAT stated that person needs to be examined as a witness to rely upon the statement and if evidence is admissible then such witness should be offered for cross-examination as per Act[2.36]. In the instant case, there is an absence of compliance with provision, hence, the statements are not admissible as evidence.
- **Export documents were not amended:** The CESTAT stated that there was no record to show that the export documents were amended to permit import of goods at the UAE. Therefore, there was no scope for clearance of goods in the UAE and its subsequent sale once the documents were made in the name of Iranian buyer.
- **Phytosanitary Certificates were produced:** The CESTAT noticed that the Phytosanitary Certificate[2.37] was required with each consignment in case of food products. In the present case, the CESTAT noticed that there is no allegation or any evidence that the said certificates were amended at any stage in order to get the goods cleared in a country other than Iran.
- **Ownership lost once the LEO is issued:** The appellant lost its ownership of goods once the LEO was issued by the Custom authorities. Hence, the appellant cannot be held responsible if the importer had given instructions to change the port as it was the owner of goods.
- **No violation of the Customs Act:** The CESTAT observed that the goods were actually exported to the UAE according to the Customs, thus, the payments should have been received in convertible foreign exchange. Further, there is no doubt that any violation relating to foreign exchange is covered under FEMA, 1999 and not under the Customs Act. Therefore, the CESTAT held that since it was only a case of alleged violation of the provisions of FTDR as well as that of FEMA, the Customs authorities did not have jurisdiction to issue the SCN for said violation.

Our comments

The present case revolves around irregularities in respect of receipt of currency w.r.t. to the exported goods.

As per the statutory provision[2.38] of FTP, the export proceeds realised in Indian rupees against exports to Iran are permitted to avail export benefits/incentives, at par with exports realised in freely convertible currency. However, in the present ruling, the Custom authorities are of a view that the goods were actually exported to the UAE, thus payment should have been realised in convertible foreign currency.

The CESTAT relied on various rulings[2.39], wherein it had been held that if there is violation of FEMA and related regulations, suitable action lies with the enforcement authorities and the RBI. Further, in case of violations of EXIM policy, adjudication can only be done by notified authorities. Hence, the Customs authorities did not have jurisdiction to issue the SCN for violation related to post export condition.

The present ruling is a welcoming ruling and is likely to set precedence in similar matters.

Refund cannot be considered as time-barred if filed within prescribed time even before a wrong forum – Chennai CESTAT

Summary

The appellant had filed the refund claim within the statutory time limit before the wrong forum, which was rejected by the correct forum as the application was hit by limitation of time. The Chennai CESTAT opined that it is the settled legal position that when a refund claim is filed before a wrong forum within the statutory time limit, the original date of filing refund claim shall be considered as the date of filing the refund claim. Hence, the CESTAT opined that the rejection of refund on the ground of time-bar cannot be justified.

Facts of the case

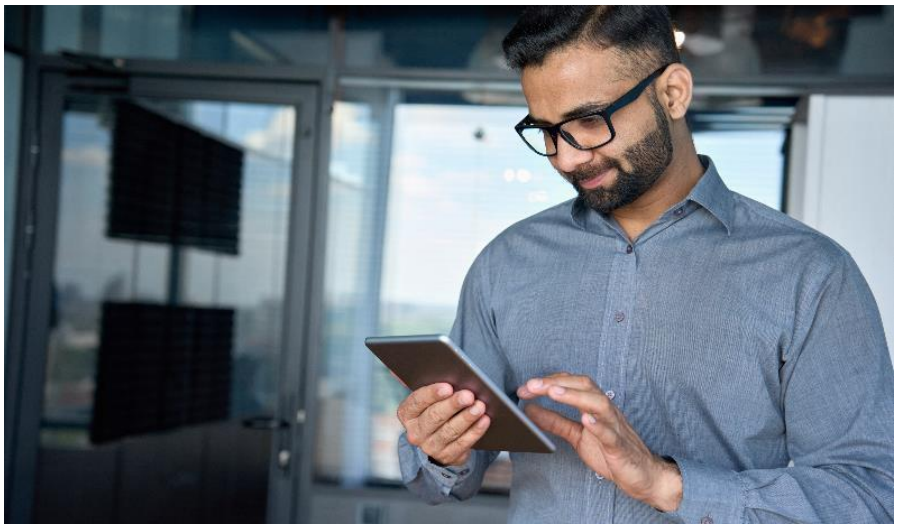
- The appellant[2.40] imported computer and accessories through the air cargo complex during the period November 2007 to April 2008 and paid appropriate Custom duty.
- The appellant filed application to claim refund of SAD in October 2008 which was to be submitted before the Assistant Commissioner of Customs, Refund (AIR) air cargo unit. However, it was wrongly filed before Refund (Sea) Custom House, from where the appellant obtained acknowledgment evidencing the proof of receipt of the refund claim.
- The appellant realised its mistake and requested through letters to transfer the refund application to the AIR Chennai, which was transferred in December 2012. The air cargo unit rejected the refund claim on the ground of being time-barred without issuing a SCN.
- The appellant contended that the refund claim has been rejected without issuing SCN or without granting an opportunity of being heard, which violates the principle of natural justice. Further, the refund application was filed within a statutory time limit of one year from the payment date of duty[2.41].

2.35 Order No. - A/10785-10787/2022 dated 7 July 2022
2.36 Section138B of Customs Act
2.37 issued by the Ministry of Agriculture and Farmer Welfare, Government of India

2.38 2.53 - Export to Iran – Realisations in Indian Rupees to be eligible for FTP benefits/incentives of FTP 2015-2020
2.39 Chinku Exports Vs. Commissioner of Customs, Calcutta, Order no. A/505/99-NB dated 23 June 1999, Bank of Nova Scotia Vs. Commissioner of C.Ex (Adj), Bangalore, Order no. 748 and 749/2008 dated 3 July 2008
2.40 M/s HCL Infosystems Limited
2.41 Notification No. 102/2007-Customs dated 14 September 2007 as amended vide Notification No. 93/2008 dated 01 August 2008

Chennai CESTAT observations and ruling[2.42]

- **Original date of filing refund shall be considered if an application filed before wrong forum is within time:** The CESTAT stated that it is the settled position of law that when a refund claim is filed before a wrong forum, within the statutory time limit, the original date of filing claim has to be taken as the date of filing of the refund claim. Therefore, the refund claim cannot be rejected on the ground of time-barred even if it has been filed before the wrong forum.
- **Rejection of refund not justified:** Basis the facts and the decisions[2.43] cited by the appellant, the CESTAT opined that the rejection of refund cannot be justified on the ground of time-bar. Hence, the impugned order rejecting the refund claim is set aside.



Our comments

Earlier, the Delhi HC in case of M/s Sun Pharmaceutical Industries Limited[2.44] had held that any refund application made within prescribed time before the wrong authority and, subsequently, filed before the correct authority, cannot be considered as time barred.

Recently, the Chennai CESTAT, in case of Hivelm Industries[2.45], has held that immediate filing of refund before a wrong forum, itself proves the bona fides of the appellant. Hence, it establishes the fact that the refund application was within the prescribed limitation period, though before the wrong forum.

The present ruling is likely to set precedence in similar matters.

An analogy can be drawn under GST regime as well for the refund claims.

Refund benefit available to an SEZ unit cannot be denied merely due to certain discrepancies in documents - Kolkata CESTAT

Summary

The appellant claimed the refunds of service tax paid in respect of services received in a SEZ unit. However, the refunds were rejected on the grounds that the documents submitted by the appellant were not admissible. The Kolkata CESTAT observed that the appellant is maintaining a proper account of receipt and use of specified services. Further, the CESTAT held that the discrepancy pointed out is a technical discrepancy and the same cannot be the grounds to deny substantive benefit of refund available to the SEZ unit. The CESTAT further held that there are no adverse findings in the present case, therefore, the appellant is eligible for a refund of service tax.

Facts of the case

- The appellant[2.46] was an SEZ unit, engaged in the manufacture of aluminium products.
- The appellant availed the 'Banking and Other Financial Services'[2.47] and bore the service tax paid thereon by the service providers. Subsequently, the appellant filed refund claim of such service tax paid.
- The SCNs issued to the appellant, were adjudicated and the refund claims were rejected, on the ground that the document submitted by the appellant is not admissible in terms of the notifications[2.48].
- The aggrieved appellant challenged the orders before the Commissioner (Appeals) who rejected the appeal and passed ex parte orders. Thus, the appellant has preferred the present appeal.

2.42 Customs Appeal No. 40034 of 2014, decision dated 24 June 2022
2.43 M/s. Sun Pharmaceutical Industries Limited. (2016-TIOL-3273-HC-DEL-CUS), M/s. Indian Farmers Fertilizers Co-op Limited. (2019-TIOL-3314-CESTAT-ALL)
2.44 WP (C) 7120/2001 dated 22 August 2016
2.45 Final Order No. 40173 / 2022 dated 9 May 2022
2.46 M/s Vedanta Limited (SEZ Unit)
2.47 from M/s ICICI Bank, Axis Bank, State Bank of India and Bank of Baroda
2.48 Notification No.12/2013-ST dated 1 July 2013, Notification No. 17/2011-ST dated 1 March 2011 and Notification No.40/2012-ST dated 20 June 2012

Kolkata CESTAT observations and ruling[2.49]

- **Benefit of notifications available:** The CESTAT observed that the benefit of notifications can be availed in either way. The service provider may either make no tax payment or the service recipient being an SEZ can claim refund.
- **Proper records maintained:** The appellant has furnished declaration[2.50] duly verified by the Specified Officer to claim exemption. Further, it submitted declaration also, to the effect that CENVAT[2.51] credit of service tax paid has not taken on the specified services used for the authorised operations in SEZ. Thus, it is viewed that the appellant is maintaining proper account of receipt and use of the specified services on which exemption is claimed.
- **Denial of refund not sustainable:** The CESTAT opined that mere technical discrepancy in the invoices cannot be the ground to deny substantive benefit of refund available to the SEZ unit. It is the policy of the government to exempt or refund the input tax incurred by the SEZ unit. Hence, the denial[2.52] of refund claim is not sustainable.

Our comments

It is a settled law that the substantive benefit cannot be denied on technical reasons. It had earlier been held by the SC of India in case of Mangalore Chemical & Fertilizers Limited[2.53] also.

Earlier, the Kolkata CESTAT[2.54] in case of the appellant had held that mere technical discrepancy in the invoices cannot be the grounds for denying the substantive benefit of refund available to an SEZ unit when it is the policy of the government to exempt or refund the input tax incurred by the SEZ unit.

The CESTAT Kolkata, in this case, has also held the same view. Thus, the present ruling is likely to set precedence in similar matters.

2.49 Service Tax Appeal No. 78733 of 2018, decision dated 8 June 2022
2.50 In form A-1
2.51 Central Value Added Tax
2.52 Keeping the policy of the Government in mind and specifically in the light of section 7 and section 51 of the SEZ Act, 2005
2.53 Civil Appeal No. 3235 of 1991 dated 2 August 1991
2.54 Service Tax Appeal No.78799 of 2018, decision dated 4 February 2020

03 Decoding advance ruling

Providing free tickets not ‘supply’ unless provided to related or distinct person - Punjab AAAR

Summary

The applicant intended to distribute complimentary IPL match tickets for promotion of business. In this respect, the Punjab AAAR held that, sans consideration, the activity of providing free or complimentary tickets is not “supply” as per the GST law. Further, such activity is an exempt supply; therefore, there shall be no availment of ITC. However, the provision of such complimentary tickets to a related or distinct person shall fall within the ambit of ‘supply’.

Facts of the case

- The applicant[3.1] has entered into a franchise agreement with the BCCI to establish and operate a cricket team in the IPL under the title of Punjab Kings. Furthermore, it intends to distribute match tickets to local governmental authorities/officials, consultants, etc., to promote business, without any consideration.
- The applicant approached the Punjab AAR to seek clarity on the applicability of GST on the supply of complimentary tickets on courtesy/promotion of business/public relationships. The AAR had held[3.2] that the activity of providing complimentary tickets without any consideration would be considered a supply of services[3.3], and the applicant would be eligible for ITC thereon. Further, the monetary value shall be the amount of money charged from the person paying for the tickets to avail of the same service.
- The applicant, aggrieved of the decision, has therefore filed an appeal before the AAAR.

Punjab AAAR observations and ruling[3.4]

- **Key elements of supply:** The AAAR stated that two key elements required for any activity or transaction to fall within the ambit of supply are 'consideration' and 'furtherance of business'. In the instant case, although the supply of complimentary tickets satisfies the latter element for the furtherance of business, the element of consideration is missing.
- **Non-monetary consideration:** The AAAR relied on aspect of non-monetary consideration clarified by various authorities[3.5] and defined in the Finance Act, 1994. There should be sufficient nexus between the supply and the non-monetary payment as consideration, to identify non-monetary consideration. The AAAR stated that even for the consideration in the form of payment in kind, it should not be vague or illusory. Further, there should be an element of reciprocity in it.
- **Activity is 'supply' or not:** Since consideration is absent in instant case, the provision of free or complimentary tickets is not supply. However, in case such complimentary tickets are provided to related person or to distinct person, it shall fall within the ambit of supply, even if there is no consideration.
- **Availability of ITC:** The availment of ITC directly flows with the taxability of the outward supply. The GST Act does not provide for availment of ITC where the output supply is either non-taxable, exempt, or has been used or deployed for non-business purpose. Further, the activity of providing complimentary ticket is an exempt supply, therefore, no ITC can be availed in relation[3.6] to the same.

Our comments

The Punjab AAAR has modified the ruling of AAR and discussed GST implications on providing free tickets both to related person and unrelated persons. The AAAR held that activity of providing complimentary/free IPL tickets is not supply, due to absence of consideration, and thus, will be out of the ambit of GST. However, if such tickets are provided to related person or distinct person, without consideration, then it shall be covered under the net of supply and shall attract GST.

In the present era, business entities provide complimentary tickets for various events to its employees as part of team-building exercise. The present ruling may have widespread ramification and due evaluation shall be required by the entities on taxability for such activities under GST.

Even though the advance ruling is applicable to the applicant and the jurisdictional officer, the authorities may apply the ratio in other cases with similar facts. Hence, the entities planning such activities for its related or distinct persons may foresee such tax implications and revisit their transactions accordingly.

Advance ruling restricted only to tax levied under the CGST law, not to the tax/cess levied under any other statutory law – UP AAAR

Summary

The respondent had launched a scheme to supply extra packs of cigarettes along with regular supply, however, without charging consideration for the additional supply. The UP AAR[3.7] had held that such extra packs are not liable to GST. However, the department filed appeal against the decision of the AAR. In this respect, the UP AAAR has held that if any commodity attracts tax/cess under any other statutory act/rules, then the scope of advance ruling will be limited to tax levied under the CGST Act, 2017 only. Further, the AAAR opined that the circular[3.8] does not bar any commodity, rather it elaborates the scheme. Besides, the application cannot be rejected on the basis that the department has issued alerts on other issues against the applicant.

3.1 K.P.H. Dream Cricket Private Limited
3.2 AAR/GST/PB/002 dated 20 August 2018
3.3 Clause (e) of Schedule II of the CGST Act, 2017

3.4 01/AAAR/CGST/KPH/2022 dated 1 June 2022
3.5 European Court of Justice, Australian Tax office, UK HMRC
3.6 In accordance with subsection (2) of section 17 of the CGST Act,2017
3.7 UP ADRG 84/2021 dated 18 October 2021
3.8 Circular no. 92/11/2019-GST dated 7 March 2019

Facts of the case

- The respondent[3.9] is engaged in the business of manufacturing, marketing and distribution of cigarettes. The respondent manufactures goods outside the state, which were later transferred on stock transfer basis[3.10]. The respondent has launched a new sale scheme to supply extra packs of cigarettes along with regular supply quantity, without charging any consideration for additional supply.
- The respondent had approached the AAR to seek clarity on tax liability on the additional quantity of cigarettes. The AAR had held that the extra packs are not liable to GST and will not be considered as exempt supplies or free samples, hence the provisions[3.11] will not be applicable.
- The aggrieved authorities filed the present appeal. It submitted that apart from ad-valorem taxation, cigarette is subjected to specific taxation of quantity-based system. Therefore, any ruling passed without considering all the aspect is bad in law. Further, the AAR does not have authority to discuss about other laws[3.12].

UP AAAR observations and ruling[3.13]

- **Scope of AAR:** The AAAR opined that advance ruling can be sought on the specified questions[3.14] and there is no bar on any specific commodity/ entity. The AAR can decide the case, on the questions which are in reference to the tax levied under the GST Act. Further, if any commodity attracts tax/cess levied under any other statutory act/rules, then the advance ruling will be restricted to the tax portion levied under the CGST Act only.
- **Circular does not bar any commodity:** The AAAR observed that the circular does not bar any particular commodity, rather, it elaborates the scheme[3.15]. It may appear that one item is being supplied free of cost, without any consideration. However, it is not an individual supply of free goods, but a case of two or more individual supplies, where a single price is being charged for the entire supply. Thus, it can be considered as supply of two goods for the price of one. In view of the above, the AAAR observed that the contention of the appellant[3.16] is not tenable.
- **Application can be rejected if similar issue pending or decided:** The application for advance ruling can be rejected only if the issue raised in the application is pending or has been decided in any proceedings in the case of applicant under any of the provisions of the Act. In the instant case, the department issued several alerts against the respondent for indulging in refund claim of accumulated ITC obtained through fraudulent means. However, it has been nowhere objected by the appellant that the questions raised in the advance ruling application of the respondent is already pending or decided in any proceedings. Accordingly, the AAR has rightly admitted and decided the application filed by the respondent.

Our comments

Earlier, the Maharashtra AAR in case of Golden Tobacco Limited[3.17] had held that the extra packs of cigarettes will not be leviable to GST and the circular is clearly applicable to the facts of subject application.

In the present ruling, the AAAR has upheld the order issued by the UP AAR and emphasised that the advance ruling is restricted to the tax portion levied under the GST law only. The AAAR has also clarified the applicability of the circular and shall set precedence in the similar matters.

3.9 Golden Tobie Private Limited
3.10 after payment of 28% GST and compensation cess
3.11 Section 17(2) read with Rule 42 or clause (h) of Section 17(5)
3.12 Central Excise Act, 1944, IGST Act, 2017 and GST (Compensation to State) Act, 2017
3.13 UP/AAAR/01/2022 dated 23 May 2022
3.14 specified under sub-section (2) of the Section 97 of the Act
3.15 "Buy one get one free offer"
3.16 Deputy Commissioner, CGST & C.Ex. Division II, Agra Commissionerate
3.17 GST-ARA-121/2018-19/B-52 dated 4 May 2019

Activities performed by the liaison office on behalf of its overseas HO are liable to GST – Maharashtra AAAR

Summary

The Maharashtra AAAR held that the FEMA and the GST Act are entirely different acts having their own objectives and purposes. Further, the appellant does not get exemption from GST payment just because the liaison office is set up to attain some specific objectives in India, unless such body is specifically exempted from GST. Hence, the AAAR held that the applicant is required to obtain GST registration and pay IGST on the entire amount received from the overseas entity as the same shall qualify as mixed supply of support services.

Facts of the case

- The applicant[3.18] is a liaison office of its overseas HO[3.19](DCCI). It undertakes promotion of business by acting as a link between Indian business firms with the potential Dubai business partners. It is charging a consolidated amount from DCCI as reimbursement of monthly expenses incurred.
- The applicant is required to comply with the conditions prescribed by the RBI to carry out its activities.
- The applicant had approached the Maharashtra AAR to understand GST implications on activities performed by the applicant.
- The Maharashtra AAR noted that the applicant acts as a conduit between Indian business partners and Dubai business partners to connect them. Hence, as per the provision[3.20], the activities performed by the applicant are covered under the scope of an intermediary. Therefore, the AAR had held that the activities would be treated as supply and liable to GST.
- The aggrieved applicant approached the AAAR and submitted that the AAR had wrongly concluded that the activities performed by the applicant are intermediary services.
- The applicant contended that it is involved only in liaison activities and prohibited from undertaking any commercial or business activity directly or indirectly as per regulation[3.21]. Besides, the activities undertaken would not constitute supply as the applicant and DCCI are one and the same person.

3.18 M/S. Dubai Chamber Of Commerce And Industry
3.19 Dubai Chamber of Commerce & Industry. Dubai
3.20 Section 2(13) of IGST Act, 2017
3.21 Regulation 2(e) of the Foreign Exchange Management Regulations, 2016

Maharashtra AAAR observations and ruling[3.22]

- **Applicant is not intermediary:** The AAAR observed that the applicant is not arranging or facilitating the actual supply of any goods and/or services or securities between the Indian businesses and Dubai businesses. Thus, merely acting as a communication link will not render the applicant as an intermediary. Further, the applicant is not receiving any fee or consideration from any of them, which means that neither the Indian businesses nor the Dubai businesses are recipient of its services.
- **Concept of mixed supply applicable:** The AAAR noticed that the activities undertaken by the applicant may be construed as an individual independent supply in itself, if undertaken separately. Based on the provision[3.23], the AAAR stated that the applicant has undertaken a mixed supply of taxable services as well as non-taxable services. In present case, the event-based support services attract highest rate of tax. Accordingly, the applicant will be liable to pay IGST on the entire amount received from Dubai HO. Thus, the applicant is required to obtain GST registration and pay IGST for providing mixed supply of support services.
- **No GST exemption unless the entity is specifically exempted:** The AAAR opined that the entity does not get GST exemption even if it is set up under the law to attain some specific objectives, unless such entity is specifically exempted from GST. Further, the FEMA and the GST Act both are entirely different acts having their own objectives and purposes. Besides, the amount received by the applicant in the form of monthly reimbursement of expenses from its HO will definitely be construed as consideration.
- **Host of activities can be construed as vocation:** The AAAR stated that the host of activities undertaken by the applicant on behalf of its HO can aptly be construed as vocation. Further, the term 'vocation' has been included in the definition of business[3.24] under GST law. Therefore, the bunch of activities undertaken by the applicant will be construed as business.
- **Applicant is an artificial judicial person:** Upon perusal of the definition of the term 'person', the AAAR stated that the applicant is a person, as it has been incorporated under the laws of a country outside India. Further, it is also manifests that every artificial juridical person, is also a person. Thus, the AAAR concluded that the applicant, who is bound to comply with various statutory obligations in India, can definitely be considered as an artificial juridical person.

Our comments

In the present ruling, the Maharashtra AAAR concluded that the HO and its liaison office are two different persons as per the GST law. Hence, the host of activities performed by the liaison office at the behest of its HO comes under the ambit of supply.

In contrary to the above, the Karnataka AAAR, in case of Fraunhofer-Gessellschaft Zur Forderung[3.25], had set aside the AAR ruling[3.26] and held that the activities of liaison office to carry out activities permitted by RBI do not amount to supply of service. However, the Maharashtra AAAR distinguished the above ruling on the ground that the facts are different.

Similarly, the Rajasthan AAR, in case of Habufa Meubelen B.V.[3.27], had held that the liaison activities undertaken by the applicant in line with the condition specified by RBI permission letter do not constitute supply. Even the ruling passed by Tamil Nadu AAR, in case of Takko Holding GMBH[3.28], was in line with the order passed by Rajasthan AAR. However, the Maharashtra AAAR held that these AAR rulings are not binding.

The present ruling has created confusion amongst the taxpayers which may give rise to further litigation. The taxpayers entering similar kinds of transactions need to be cautious from the GST perspective. Further, considering divergent views on this issue, a clarification from the government will surely be helpful in preventing unnecessary litigation.

3.22 MAH/AAAR/AM-RM/08/2022-23 dated 23 June 2022
3.23 Section 13(5) of and Section 13(2) of IGST Act,2017
3.24 Section 2(17) of CGST Act, 2017
3.25 TS-73-AAAR(KAR)-2021-GST
3.26 TS-895-AAR-2020-NT
3.27 TS-297-AAR-2018-NT
3.28 TS-581-AAR-2018-NT

Two or more individual supplies, supplied in conjunction with each other, for a single price is mixed supply – Telangana AAAR

Summary

The Telangana AAAR held that a price break up does not necessarily imply that the items are being supplied separately for separate prices. Though the supplies are capable of being made individually, the essential concomitant of the present agreement is that they should be supplied in conjunction with each other to function as one complete rake set. The AAAR opined that the supply cannot be termed as a 'composite supply' since the supplies involved are not naturally bundled and only one of the supplies cannot be determined as a principal supply. Hence, in this case there are two or more individual supplies, supplied in conjunction with each other by a taxable person for a single price, which does not constitute a composite supply. Thereby, the supply satisfies all the pre-requisites to be termed as a 'mixed supply'.

Facts of the case

- The applicant[3.29] is a manufacturer of electronics equipments for locomotives and coaches for Indian Railways and Metro Railways. ICF Chennai issued purchase orders to the applicant for the supply of multiple items. Some of these items are manufactured by the applicant and some of them are procured for supply to the coach factory.
- As per the applicant, a majority of the items are taxable at the rate of 18%. The applicant had approached AAR[3.30] to ascertain whether supplies for the above purchase order made amounts to composite supply or mixed supply.
- The applicant also entered into a contract for design, manufacturing, supply, installation, operation and maintenance and GIS-based automation, etc. The applicant sought clarity from the AAR as to whether the scope of work can be treated as supply of goods or works contract services.
- The AAR had held the supplies against the purchase order of ICF as mixed supply. The aggrieved applicant filed the present appeal before the AAAR.
- The applicant contended that its supplies are neither a composite supply nor mixed supply but separate individual/segregated supplies with applicable HSN code and GST rate to each item individually.

Telangana AAAR observations and ruling[3.31]

- **Supply of goods made in conjunction:** The AAAR stated that a price break up doesn't necessarily imply that the items are being supplied separately for separate prices. In the present case, though the supplies are capable of being made individually, the essential concomitant of the present agreement is that they should be supplied in conjunction with each other to function as one complete rake set. The schedule of delivery mentions that the entire set is to be delivered at once but not the individual items separately. According to payment terms, it is done for the entire set and not individual items, implying the supply is being made for a single price per unit.
- **Supply does not constitute a composite supply:** The supplies involved are not naturally-bundled and only one of the supplies cannot be determined as a principal supply. In this case, there are two or more individual supplies, supplied in conjunction with each other by a taxable person for a single price, which does not constitute a composite supply. The supply satisfies all the pre-requisites to be termed as a 'mixed supply'.

Our comments

The AAAR in the present ruling has emphasised that though the supplies can be made individually, but if it is essential to make supplies in conjunction with each other to function as one complete set, then such supply shall be considered as mixed supply.

The decision of Rajasthan Advance Ruling Authority, in case of Sandvik Asia Private Limited, may act as a guideline for distinguishing composite supply and mixed supply and determining the applicable GST rate for similar situations.

Even though the advance rulings are applicable only to the applicant, an inference can be drawn in similar cases.

3.29 Medha Servo Drives Private Limited
3.30 TSAAR Order No.17/2021 A.R.Com/50/2018 dated 4 September 2021
3.31 AAAR.COM/04/2021, Order-in-Appeal No. AAAR/02/2022 dated 21 June 2022

ITC allowed on demo cars purchased with an intent of further supply - West Bengal AAR

Summary

The West Bengal AAR noted that the applicant capitalises demo cars and intends to avail ITC of tax paid on inward supplies of such demo cars. The AAR opined that merely providing a test drive facility or demonstrating the features of a vehicle to prospective buyers cannot be regarded as imparting training on driving the vehicle. Further, ITC on purchase of demo vehicles cannot be denied merely on the ground of capitalisation of the vehicles in the books of accounts. The AAR stated that the purchase of demo vehicles and further supply of the same satisfies the condition[3.32] and hence, the AAR concluded that the applicant is eligible to avail ITC on purchases of demo vehicles.

Facts of the case

- The applicant[3.33] is an authorised dealer of Hyundai Motor India Limited for supply of different ranges of motor vehicles and carries on business activities as an authorised service station.
- The applicant purchases vehicles against tax invoices which are reflected in his books of accounts as capital assets and are used as demo cars for providing trial runs to the customers to make them understand the features of the vehicles. The demo vehicles are kept only for a limited period and then the applicant supplies them when the mandatory usage time of the test drive gets over.
- The applicant has approached the AAR seeking clarity on the admissibility of ITC on purchases of demo vehicles.

West Bengal AAR observations and ruling[3.34]

- **ITC cannot be denied merely on ground of capitalisation of the vehicles:** The business model of the applicant delineates that the demo vehicles are initially kept by the applicant for a certain period as mandated by the car manufacturing company for providing a test drive facility to the prospective buyers. The applicant, after receipt of the demo vehicles, capitalises the same in his books of accounts in lieu of booking the same as stock-in-trade. The GST provisions do not restrict to avail ITC to the extent of capitalisation[3.35]. Thus, the AAR stated that ITC on purchase of demo vehicles cannot be denied merely on the ground of capitalisation of the vehicles in the books of accounts.
- **No time limit prescribed under GST law to make further supplies of motor vehicles:** The applicant maintains the stock of the demo vehicles for a specified period and thereafter supplies the same, maybe at a price lower than the purchase value of the said vehicle. However, the GST provisions nowhere specifies that ITC shall not be available in respect of any outward supplies which is made at a price lower than its procurement value. The restriction imposed for further supply of such motor vehicles should not be applied on the ground that the supplies have been made after ascertaining period since there is no time limit prescribed in this regard for making such further supplies.
- **ITC available on demo cars:** The intention of the law, as it appears from the expression 'for further supply of such vehicles' is to allow ITC in respect of taxpayers dealing with motor vehicles as they are engaged in further supply of such motor vehicles. The demo vehicles are purchased all along for further supply and put up for sale after the demonstration/test drive period. Thus, purchase of demo vehicles and further supply of the same satisfies the condition. Hence, the applicant is eligible to avail ITC on purchases of demo vehicles which can be set off against output tax payable under GST.

Our comments

Earlier, even the Maharashtra AAR, in case of Chowgule Industries Private Limited[3.36] and the Kerala AAR, in case of A.M. Motors[3.37] had allowed ITC on motor vehicles used for demo purposes.

However, contrary to the above, the Haryana AAAR in case of BMW India Private Limited[3.38] had disallowed ITC of tax paid on demo cars by contending that the demo car loses the character of new motor vehicles in its very first demonstration and is akin to second-hand goods, which is different from new vehicle. Similarly, the Madhya Pradesh AAR in case of Khatwani Sales and Services LLP[3.39] and the Haryana AAR, in case of Platinum MotoCorp LLP[3.40] had disallowed the ITC on demo vehicles.

Divergent rulings from different state AARs create unnecessary confusion and do not serve the objective pursued. Since this matter is extensively litigated, a due clarification from the government on this issue will surely be helpful in mitigating the ambiguity.

3.32 laid down in section 17(5)(a)(A) of the GST Act
3.33 M/s Toplink Motorcar Private Limited
3.34 Order Number 03/WBAAR/2022-23, dated 30 June 2022
3.35 sans clauses (c) and (d) of section 17(5) of the Act
3.36 Order No. GST-ARA-18/2019-20/B-121 dated 26 December 2019
3.37 AAR No. KER/10/2018, dated 26 September 2018
3.38 HAR/AAAR/2019-20/02 dated 28 June 2021
3.39 Case No. 02/2020 Order No. 13/2020 dated 23 July 2020
3.40 HAR/HAAR/R/2018-19/40, dated 1 March 2019

Administration of COVID-19 vaccine by hospitals does not qualify as healthcare services and is not exempt under GST - Andhra Pradesh AAR

Summary

The Andhra Pradesh AAR has held that administration of vaccine involves two activities. The 'sale of vaccine' is the main supply and service of 'administering of vaccine' by the technically qualified personnel, is the ancillary supply. Therefore, the AAR stated that the administration of vaccination by hospitals is a 'composite supply' wherein the principal supply is the 'sale of vaccine' and the total transaction is taxable at the rate of principal supply i.e., 5%. Further, the AAR opined that though the applicant qualifies as a clinical establishment, but its supply transaction is predominantly 'sale of vaccine' and not the service component of healthcare. The receipt of vaccine cannot be considered as inpatient services provided by the hospitals. Accordingly, the AAR held that the administration of COVID-19 vaccine by hospitals does not qualify as health care services and hence, is not exempt under GST.

Facts of the case

- The applicant[3.41] is a multi-speciality hospital engaged in providing healthcare services and claiming exemption[3.42] on the same. The applicant also makes pharmacy supplies to outpatients, which is taxable. Further, the applicant has been permitted to monitor COVID-19 vaccine as per the prescribed process. As per the NEGVAC[3.43] constituted by government, healthcare providers are responsible for handling and administration of the vaccine, which may be done by a medical professional only.
- The applicant has approached the AAR seeking clarification on applicability of GST on administration of COVID-19 vaccine by the hospital.
- The applicant submitted that vaccination involves a combination of supply of goods and services wherein various components of supplies are interdependent on one another, and the supply cannot be performed without the other components.
- Further, the vaccination is for care of people as a preventive measure against the chronic illness. Thus, it is to be considered as a healthcare service, exempt under GST.

Andhra Pradesh AAR observations and ruling[3.44]

- **Administering of vaccine is a composite supply:** The AAR stated that administration of vaccines involves a combination of two supplies namely the 'supply of vaccine' and the 'service component' followed by way of administration. Both the supplies are inherently allied to each other and viewed as a single package by the recipient. Further, the primary requirement of a recipient is receipt of vaccine, which is the principal supply. The administration of vaccine by technically qualified personnel becomes the ancillary supply, which involves service charge. Hence, in this case, the administration of vaccination is a composite supply and the taxability shall be based on the tax rate of sale of vaccines i.e., 5%.
- **Administration of vaccine is not healthcare services:** The AAR observed that the applicant qualifies as a clinical establishment. However, the main supply in the present case is sale of goods and not the service component of healthcare. Further, the receipt of vaccine cannot be considered as inpatient services rendered by the hospitals. Hence, the exemption is not allowed to the applicant under 'healthcare services' provided by the clinical establishment.

Our comments

In the present case, the AAR has held that even the administration of vaccine by the clinical establishment cannot be considered as healthcare services, thereby not eligible to exemption.

Even though the advance rulings are applicable only to the applicant, it is imperative that the clinical establishments/hospitals revisit their stance in light of this ruling to avoid any dispute/future litigations.

Undoubtedly, the ruling will have widespread impact and is likely to get challenged in higher forum.

3.41 Krishna Institute of Medical Sciences Limited
3.42 Vide notification no. 12/2017 CT(R)
3.43 National Expert Group on Vaccine Administration for COVID-19
3.44 AAR No. 04/AP/GST/2022 dated 21 March 2022

04 Experts' column

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Non-ICU rooms to be carved out from healthcare services under GST

The GST Council, in its 47th meeting, had recommended to bring healthcare sector under the ambit of GST by proposing levy of GST on room charges (excluding ICU) exceeding INR 5,000 per day per patient charged by a hospital. The proposal was to levy GST at the rate of 5% without ITC and the same has been recently notified by the Ministry of Finance. Imposition of said levy will directly increase the cost of healthcare services for public. Applicability of GST on healthcare sector may also complicate the internal processes being followed by clinical establishments for GST compliances. Furthermore, there are many open issues which have grappled the industry after the said levy. Before discussing other aspects, let us first understand current position on healthcare services under GST.

Current position under GST for healthcare services

Under GST, taxable event for levy of GST is 'supply' of either goods or services or both. Once an event qualifies to be supply as per Section 7 of the CGST Act, 2017, then GST is charged at applicable rates as notified by the government. The rate at which GST needs to be charged, depends upon the classification of goods and services as per relevant HSN codes.

The process of determining GST rate is fairly uncomplicated as long as there is an individual supply of either goods or services and the nature of such supply is explicitly available. However, complications arise when there is a combination of supply of two or more goods or services or both.

In this regard, separate provisions defining composite supply and mixed supply are prescribed under GST law for ascertaining the rate of tax to be levied in case of such combinations.

As per Section 2(30) of the CGST Act, 2017, a *"Composite supply means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply"*. Moreover, *"principal supply is defined as the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary."*

Therefore, in order to qualify any combination of supplies as a composite supply, it must have following characteristics:

- There must be supply of two or more taxable supplies of goods or services.
- These supplies must be naturally bundled and supplied in conjunction with each other in the ordinary course of business.
- Out of the two or more supplies, one must be a supply which constitutes the predominant element.

On the other hand, *"mixed supply means two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply;"*

Healthcare services comprise various elements, which are naturally bundled and supplied in conjunction with each other wherein healthcare service is the predominant supply. Notably, charges for medicines consumed, room charges, food provided to patients are also included in the invoice/bill of supply generally raised by clinical establishments for providing healthcare services.

As per Section 8 of the CGST Act, 2017, composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply. Considering that healthcare service is principal supply, taxability of only said service is relevant for clinical establishments.

Under GST, exemption has been provided to healthcare services provided by a clinical establishment, an authorised medical practitioner or paramedics. Accordingly, no GST is being charged by the clinical establishments on healthcare services apart from certain cosmetic or plastic surgery.

Relevant advance rulings

There are certain advance rulings which are also aligned with the similar view of composite supply.

The Gujarat AAR in case of M/s Baroda Medicare Private Limited had held that medicines, surgical items, implants, consumables and other allied items provided by the hospital through their in-house pharmacy along with the supply of food, room on rent to in-patients admitted to the hospital for diagnosis or medical treatment or procedures, is a composite supply of in-patient healthcare service. The supply of inpatient health care services by the applicant hospital as defined in Para 2(zg) of the Notification No.12/2017-Central Tax (Rate) dated 28.06.2017, as amended, is exempted from CGST as per Sl. No. 74 of the above notification.

Furthermore, the Kerala AAAR, in case of M/s Ernakulam Medical Centre Private Limited, held that the supply of medicines and allied items provided by the hospital through the pharmacy to the in-patients is part of composite supply of healthcare treatment and, hence, not separately taxable.

While the advance rulings are applicable only to the concerned applicants, an inference can always be drawn from the advance rulings. Accordingly, the principle of composite supply on room charges should be squarely applicable considering the above advance rulings. Qualifying room charges collected by the hospitals as an independent supply may be fundamentally inappropriate since such supply is naturally bundled and is supplied in conjunction with the healthcare services which is a principal supply. The same can be understood as follows.

- **Customer perception:** Most of the patients who come to the hospital for treatment usually expect that a room will be available to them for healthcare services.
- **Business practice:** Majority of service providers in this industry provide healthcare service along with room charges as bundled services.
- **Predominant supply:** One of the conditions to qualify any combination of goods or services supplied as composite supply is that there must be a predominant supply. Customer only pays room charges in a hospital for availing healthcare services and therefore, provision of healthcare services may be regarded as predominant supply.
- **Integral part of predominant supply:** Room charges collected from patients are an integral part for provision of healthcare services.

Levy of GST on room charges exceeding INR 5,000

While rationalising various exemptions, the government of India has notified levy of GST on room charges exceeding INR 5,000. A proviso has been inserted in the exemption entry applicable to healthcare services. As per the proviso, exemption entry shall not be applicable to 'services provided by a clinical establishment by way of providing room [other than ICU/critical care unit/intensive cardiac care unit /neo natal ICU] having room charges exceeding INR 5,000 per day to a person receiving health care services.

On the similar issue, circular no. 27/01/2018-GST amply clarified that room rent in hospitals is exempt. Relevant extract from the circular is reproduced under for ease of reference:

Question: Is rent on rooms provided to in-patients exempted? If liable to tax, mention the entry of CGST Notification 11/2017-C.T. (Rate).

Clarification: Room rent in hospitals is exempt.

The government appears to have taken a step back as it may lead to overriding effect on various clarifications provided earlier.

Key points for consideration

- GST at the rate of 5% has been levied on room charges with a condition that ITC on goods and services used in supplying the service has not been taken. Non-availment of ITC may become a cause for inflationary cost of healthcare services. Under the UAE VAT law, primary and preventive healthcare services provided to patients comes under zero-rated supply. Similarly, few basic healthcare services are zero-rated in Australian GST law as well as in VAT laws of Bahrain. Taking a reference from its foreign counterparts, the Indian tax authorities may consider taking some steps towards zero rating of healthcare services.
- Another key point to look at is the relevance of circular issued by the government with respect to room rent in hospitals. With this levy, a contradiction is prima facie visible between the circular and recent notification. A clarification is clearly warranted in this case.
- Till now, the industry was under the impression that charges collected for rooms were part of composite supply of healthcare services and, therefore, these charges are not leviable to GST. However, tax position on the same may require to be revisited.
- Where the healthcare services are being offered as a package to the patients, aspects related to mixed supply may require deliberation. Further, in this case, whether invoice for room charges should be raised on the basis of actual occupancy of room by the patient or as per the details mentioned in package is still a matter of doubt.
- In case of co-payments by insurance company and patient, clarity may be required with respect to the invoicing of room charges. Service recipient needs to be identified and if both of them are considered as service recipients to the extent of payment made by them, position with respect to bifurcation of room charges between them will have to be finalised by the clinical establishments.
- The levy of GST on room charges has been brought into effect in a short span of time. The industry may require some time to analyse the impact and to make relevant changes in ERP[4.1]/IT systems.

Conclusion

Considering the importance of the healthcare sector in the country and in order to keep the cost of healthcare services low, the government had kept the healthcare sector outside the ambit of indirect taxes. Healthcare services were exempt under the service tax law as well. Some of the industry experts are equating this levy with the luxury tax made applicable by few states during pre-GST regime on certain room charges above the threshold. However, it is important to understand that the intent of the patient is never to enjoy the services of room provided by hospitals and, accordingly, same cannot be taxed, treating it to be a premium facility.

A levy of GST on room charges has already resulted in hiccups for the healthcare sector. The industry players have written to the finance ministry mentioning that such a levy will be contrary to the spirit and policy of the government of India to provide healthcare to all. Further, room charges should not be seen in isolation since these charges form an integral part of healthcare services.

Sensing wide implications, the government may come up with some clarifications on the mechanics of taxing room charges in hospitals. This will help the industry players to attain clarity with respect to their questions around this levy.

4.1 Enterprise Resource Planning

05 Issues on your mind

What changes will take place in reporting of HSN in GSTR-1 on the GST portal w.e.f. 1 August 2022?

The CBIC had notified[5.1] the mandatory requirement for taxpayers to report minimum four-digit or six-digit HSN code in form GSTR-1 on the basis of AATO.

Earlier, the GSTN had implemented the Part-I of Phase-I to report two-digit[5.2] or four-digit[5.3] HSN codes for goods and services from 1 April 2022.

Now, the GSTN has issued advisory[5.4] regarding the implementation of Part-II of Phase I in relation to mandatory requirement for the taxpayers with AATO more than INR 5 crore, to report six-digit HSN code in Table-12 of GSTR-1 from 1 August 2022.

How would the supplies made by/ through ECOs be reported in form GSTR-3B?

Recently, the CBIC has notified the addition[5.5] of a new Table 3.1.1 in GSTR-3B where both ECOs and registered persons can report supplies made under Section 9(5) of CGST Act, 2017.

An ECO will be required to report supplies made u/s 9(5) in Table 3.1.1(i) of GSTR-3B instead of Table 3.1(a) of GSTR-3B.

Further, a registered person who is making supplies of such services as specified under Section 9(5) through an ECO, shall report such supplies in Table 3.1.1(ii) and shall not include such supplies in Table 3.1(a) of GSTR-3B. The registered person is not required to pay tax on such supplies as the ECO is liable to pay tax on such supplies.

Whether ECO can make payment of tax by way of utilisation of ITC?

As per Section 9(5) of CGST Act, ECO is required to pay tax on supply of services, such as passenger transport service, accommodation services, housekeeping services and restaurant services, if such services are supplied through ECO.

The tax on such supplies reported in Table 3.1.1 shall be paid by ECO in cash only and not by way of utilisation of ITC.

5.1 Notification No. 78/2020 – Central Tax dated 15 October 2020
5.2 Taxpayers with AATO of up-to 5 crore
5.3 Taxpayers with AATO of more than 5 crore
5.4 GSTN Advisory dated 20 July 2022
5.5 GSTN Advisory dated 20 July 2022

06 Important developments in direct taxes

CBDT issues guidelines regarding TDS[6.1] on transfer of VDA[6.2]

Finance Act, 2022 introduced a new provision[6.3] whereby a specified person[6.4] is required to deduct tax at the rate of 1% at the time of payment/credit to a resident for transfer of a VDA if the consideration exceeds the prescribed threshold[6.5]. CBDT has issued the following guidelines for removing the difficulties in respect of these provisions.

In respect of transactions taking place on or through an Exchange[6.6]

- **VDA being transferred is owned by a person other than the Exchange:**
  - TDS may be deducted only by the Exchange, which is crediting or making payment to the seller.
  - In a case broker is the owner of the VDA, then the Exchange would deduct TDS on consideration paid / credited to the broker.
  - If the payment/credit between Exchange and the seller is through a broker (who is not the seller), then broker may deduct the TDS if there is a written agreement between the Exchange and the broker. The Exchange is required to furnish a quarterly statement[6.7] for all such transactions.
- **VDA being transferred is owned by such Exchange:**
  - The Exchange may enter into a written agreement with the buyer or his broker, that the Exchange would pay tax on such transaction on or before the due date for that quarter. The Exchange is required to furnish a quarterly statement[6.7] for all such transactions. A buyer/his broker would not be regarded as assessee in default[6.8] if these conditions are complied with by the Exchange.

6.1 Tax deducted at source
6.2 Virtual Digital Asset
6.3 Section 194S of the Income-tax Act, 1961 (the Act)
6.4 Specified person means a person being an individual or Hindu Undivided Family (HUF), whose total sales/ gross receipts/ turnover from the business/profession does not exceed INR 1 crore in case of business or INR 50 lakh in case of profession or who does not have any income from business/profession
6.5 INR 10,000 (INR 50,000 in case consideration is payable by a specified person)
6.6 Circular no. 13 of 2022 dated 22 June 2022
6.7 Form no. 26QF (notified by Notification no. 73 of 2022 dated 30 June 2022)
6.8 Section 201 of the Act

- **If consideration is in kind or in exchange of another VDA:** Considering the practical difficulties for both parties in implementing the TDS provisions, TDS may be deducted by the Exchange on both legs of transaction based on a written contractual agreement with the buyers/sellers.

  If the tax amount deducted is also in kind, it needs to be converted into cash before it can be deposited with the Government as per prescribed mechanism. It has been clarified that in such case there would be no TDS on conversion.
- **Interplay with other provisions of the Act:** If tax is deducted as per Section 194S of the Act, then it is not required to be deducted under any other provisions[6.9] of the Act.
- **TDS on net of GST/commission amount**: Tax is to be deducted on the net amount after GST/commission is excluded.
- **Payment through payment gateways:** Payment gateway will not be required to deduct tax if the tax has been deducted by the person required to deduct tax[6.10].
- **Threshold:** Transaction from 1 April 2022 would be considered for determining if the threshold[6.11] is met. However, there will be no TDS on transactions done prior to 1 July 2022.

In respect to transactions other than those taking place on or through an Exchange[6.12]

- **Where the consideration is other than in kind:** The buyer is required to deduct tax and is required to furnish a quarterly statement[6.13]. TDS would be applicable on amount excluding GST.
- **Where the consideration is in kind or in exchange of VDA:** If the consideration is in kind, buyer will release the consideration in kind after seller provides proof of payment of such tax (e.g., challan details, etc.).
  If there is exchange of VDAs, both parties need to pay tax with respect to transfer of VDA and show the evidence to the other. These details are to be reported in TDS statement[6.14] by both the parties.

CBDT excludes certain items from the definition of VDA

CBDT has notified[6.15] that the following shall be excluded from the definition of VDA:

- Gift cards or vouchers used to purchase goods or services or for discount on goods or services.
- Mileage points, reward points or loyalty cards given without direct monetary consideration[6.16].
- Subscription to websites or platform or application.

Further, CBDT also notified[6.17] that VDA shall exclude NFT[6.18], if ownership of an underlying tangible asset is transferred and such transfer is legally enforceable.

CBDT notifies forms and timelines for TDS compliance

CBDT has amended[6.19] the rules[6.20] specifying forms and timelines for the purpose of TDS compliance under various sections of the Act. The amendments are as under:

Particulars	Change notified[6.21]
For TDS on transfer of VDA	Form no. 26QE notified. TDS is to be deposited[6.22] within 30 days from the end of the month, in which such tax is deducted
TDS certificate[6.23] for tax deducted on transfer of VDA	To be issued within 15 days of the due date of furnishing form no. 26QE

Further, amendments have been made in rules[6.24] and Form[6.25] for furnishing particulars of amounts deposited with respect to certain provisions[6.26].

6.9 Section 194Q of the Act
6.10 Section 194S of the Income-tax Act, 1961 (the Act)
6.11 INR 10,000 (INR 50,000 in case consideration is payable by a specified person)
6.12 Circular no. 14 of 2022 dated 28 June 2022
6.13 Form no. 26Q
6.14 Form no. 26Q (Form no. 26QE in case specified person)
6.15 Notification no. 74 of 2022
6.16 under an award, reward, benefit, loyalty, incentive, rebate or promotional program that may be used or redeemed for purchase of goods or services or a discount on goods or services.
6.17 Notification no. 75 of 2022 dated 30 June 2022
6.18 Non-Fungible Token
6.19 Notification no. 67 of 2022 dated 21 June 2022
6.20 Rule 30, 31 and 31A of Income-tax Rules, 1962 (the Rules)
6.21 Effective from 1 July 2022
6.22 electronically to Reserve Bank of India/State Bank of India /authorised bank
6.23 in Form no. 16E
6.24 Rule 31A of the Rules
6.25 Form no. 26Q
6.26 If amount/consideration is wholly or partly in kind in case of winnings from lottery or crossword puzzles (proviso to section 194B of the Act), benefit/perquisite provided (first proviso to Section 194R of the Act), transfer of VDA (first proviso to section 194S of the Act)

07 Glossary

AA	Advance Authorisation
AAAR	Appellate Authority of Advance Ruling
AAR	Authority of Advance Ruling
AATO	Aggregate Annual Turnover
AE	Anonymised Escalation
BCCI	Board of Control for Cricket in India
COI	Constitution of India
CBIC	Central Board of Indirect Taxes and Customs
CBDT	Central Board of Direct Taxes
CESTAT	Customs, Excise, Service Tax Appellate Tribunal
CG	Central Government
CGST	Central GST
DC	Development Commissioner
DDC	Deputy Development Commissioner
DG/ARM	Directorate General of Analytics and Risk Management
DGFT	Directorate General of Foreign Trade
DRI	Director of Revenue Intelligence
E-BRC	Electronic Bank Realisation Certificate
ECL	Electronic Cash Ledger
Ecrl	Electronic Credit Ledger
ECO	E-commerce Operator
EPCG	Export Promotion Capital Goods
EOU	Export Oriented Unit
EXIM	Export Import
FAQ	Frequently Asked Questions
FEMA	Foreign Exchange Management Act
FOB	Free on Board
FTP	Foreign Trade Policy
FY	Financial year
GOI	Government of India
GIS	Geographic Information System
GST	Goods and Services Tax
GSTN	GST Network
HC	High Court
HGO	Haj Group Organisers
HO	Head office
HSN	Harmonised System of Nomenclature
ICD	Inland Container Depots
ICF	Integrated Coach Factory
ICU	Intensive Care Unit
IDS	Inverted Duty Structure
IGST	Integrated GST
IMPS	Immediate Payment Service
IPL	Indian Premier League
IT	Information Technology
ITC	Input Tax Credit
ITeS	IT Enabled Services
ITGRC	Information technology Grievance Redressal Committee
ITS	Inverted tax structure
LEO	Let Export Order
LMA	Legal Metrology Act
MEIS	Merchandise Exports from India Scheme
PAN	Permanent Account Number
PTO	Private Tour Operators
RBI	Reserve Bank of India
RCM	Reverse Charge Mechanism
RoSCTL	Rebate of State and Central Taxes and Levies
SAD	Special Additional Duty
SC	Supreme Court
SCN	Show Cause Notice
SEBI	Securities and Exchange Board of India
SEEPZ	Santacruz Electronic Export Processing Zone
SEZ	Special Economic Zone
SO	Specified Officer
STP	Software Technology Parks
UP	Uttar Pradesh
UPI	Unified Payments Interface
VAT	Value Added Tax
VDA	Virtual Digital Asset
WFH	Work From Home

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