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SHAPING A VIBRANT INDIA

GST Compendium

A monthly guide

February 2023

Editor's Note

The Hon'ble Finance Minister presented the Union Budget 2023 focusing on seven priorities - inclusive development, reaching the last mile, infra and investment, unleashing the potential, green growth, youth power, and the financial sector. The budget lays emphasis on capital expenditure, infrastructure development, and stimulating growth and development.

The relief provided to individual taxpayers, including the reduction in the highest effective tax rate, is a welcome move. For businesses, largely consistency has been maintained on the tax front, with changes being brought in mainly to plug revenue leakages.

In a recent ruling, the Supreme Court has distinguished between modernisation and diversification. It has held that manufacturing goods using advanced technology having the same utility cannot be construed as 'diversification' for claiming exemption under the state industrial policy. The products manufactured post-diversification should be different from the goods manufactured before diversification.

The Gujarat Authority for Advance Ruling has held that food items and beverages not prepared in the restaurant, purchased from the local market, and sold over the counter shall be treated as a 'supply of goods' and not 'restaurant service'. However, the supply of in-house prepared food and beverages shall be qualified as 'restaurant service' and liable to Goods and Services Tax at 5% with no benefit of input tax credit.

The Central Board of Direct Taxes (CBDT) has done away with the threshold for reporting interest income in Statement of Financial Transactions. Furthermore, considering the hardship faced by taxpayers on account of the pandemic, the CBDT has again extended the timeline for undertaking compliances to claim an exemption under sections 54 to 54GB of the Act.

I hope you will find this edition an interesting read.

Vikas Vasal

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01 Important amendments/updates

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

Union Budget 2023-24: Key indirect tax proposals

Goods and Services Tax

- No ITC will be available on the GST paid on expenses incurred towards goods and/or services for CSR activities.
- There is a provision to restrict filing of monthly returns, annual return and reconciliation statement maximum within a period of three years from the due date of filing of the relevant return/statement.
- The following supplies are proposed to be considered outside the purview of GST w.e.f. 1 July 2017:
  - High sea sales
  - Supply of warehoused goods before their home clearance
  - Merchant trade
- Further, no refund will be allowed in respect of the GST already paid on such transactions.
- In case of the supply of services by way of transportation of goods to a place outside India (including by mail or courier), the place of supply shall be:
  - Location of recipient (if the recipient is registered under GST)
  - Location at which such goods are handed over for their transportation (if the recipient is unregistered)
- The value of the supply of warehoused goods before clearance for home consumption will form part of the exempted turnover for the purpose of ITC reversal.
- GST registration will not be required for persons exclusively involved in effecting exempt supplies/non-taxable supplies even if conditions for obtaining registration are applicable (retrospective amendment proposed w.e.f. July 2017).
- The benefit of the composition scheme to persons supplying goods through ECO will be subject to TCS.
- The scope of OIDAR has been widened by omitting the requirement of supply being 'essentially automated' and 'involving minimal human intervention'.
- The definition of 'non-taxable online recipient' has been widened to include 'any unregistered persons receiving OIDAR services located in the taxable territory'.
- Offences such as tampering evidences, failure to supply information, and obstructing GST officials will be decriminalised.
- The threshold for initiating prosecution proceedings will be increased to INR 2 crore from INR 1 crore.
- Penal provisions will be inserted for ECOs for contravention by unregistered persons supplying goods/services through such ECOs.

Customs and Central Excise

- Exceptions to the validity of conditional exemptions (up to 31 March falling immediately after two years from the date of such grant) have been proposed for certain specified cases.
- A time limit has been introduced for passing the order by the Settlement Commission within nine months from the last day of the month in which the application is made. The same may be extended for a further period not exceeding three months for reasons to be recorded in writing.
- Amendments have been made in customs and central excise duty rates, particularly for electronics, chemicals, drugs, precious metals, CNG, automobiles, agricultural and marine products.

Central Sales Tax

- CESTAT will succeed the existing Central Sales Tax Appellate Authority and the AAR.
- All cases pending before the erstwhile authorities will be transferred to CESTAT.

For detailed analysis, refer to our Union Budget comprehensive analysis report here.

CBIC clarifies taxability and applicable rates on various goods and services under GST

Key clarifications

Particulars	Clarification
GST applicability on incentives paid by MeitY to banks	• It is clarified that the incentives paid by the MeitY to the acquiring banks under the incentive scheme for the promotion of RuPay debit cards and low-value BHIM UPI transactions are in the form of a subsidy directly linked to the price of the service. • It would not be included in the taxable value of the transaction, and thus, would not be taxable under GST. • For a transaction using the above-mentioned mode of payments, the consideration is being paid by MeitY to the acquiring banks, instead of being paid by the merchant or the user of the card. • However, it is not a consideration for services provided by the acquiring bank to the CG.
Taxability of accommodation services provided by the Air Force mess	• It is clarified that accommodation services supplied by the Air Force mess and other similar messes to its personnel or any person other than a business entity are exempt under GST, provided such services qualify as services supplied by the CG, state government, union territory or local authority.
'Carbonated beverages of fruit drink' or 'carbonated beverages with fruit juice'	• Based on the 45th GST Council recommendations, a specific entry has been added in the rate notifications w.e.f. 1 October 2021 for items with the description 'carbonated beverages of fruit drink' or 'carbonated beverages with fruit juice'. • The corresponding six-digit HSN code for the goods is HS 220299. • These goods shall attract GST at 28% and a 12% compensation cess. • The aforesaid entries would apply to all carbonated beverages that contain carbon dioxide, irrespective of whether it is added as a preservative, additive, etc. • The above-mentioned goods have been excluded from the entry provided for fruit pulp or fruit-juice-based drinks, taxable at 18%.
SUV	• It has been clarified that a compensation cess of 22% is applicable to motor vehicles falling under heading 8703 which meet all the following four requirements: – Popularly known as SUVs – Engine capacity > 1,500cc – Length > 4,000mm – Ground clearance is 170mm and above • This clarification is confined to and applicable to SUVs only.

Our Comments

Pursuant to the recommendations made by the GST Council in its 48th meeting, the CBIC has issued circulars to clarify the applicability of GST and the classification of various goods and services.

The government pays incentives to banks to encourage the use of the RuPay debit card and BHIM-UPI digital transactions, and to create a digital payment ecosystem. As a result, all population groups would have improved access to the digital payment method.

The GST Council underlined that such an incentive is in the form of a subsidy and would not be taxable under GST. Having the subsidy distinguished from the consideration of a supply is a welcome clarification.

Furthermore, as per the rate notification, motor vehicles with engine capacity exceeding 1500cc, popularly known as SUVs, including utility vehicles, attract a compensation cess at 22%. It should be noted that the parameters for SUV qualification are already specified in the relevant rate entry. However, what constitutes an SUV has been ambiguous. This clarification would demonstrate that the 22% compensation cess would only be applicable if all four conditions are satisfied.

The recent clarifications issued by the CBIC are welcoming and would provide clarity as well as help reduce litigations.

(Circular No. 189/01/2023-GST and 190/02/2023- GST dated 13 January 2023)

Andhra Pradesh government issues instructions on avoidance of undue harassment to taxpayers during investigation, audit and scrutiny

In order to streamline the process of investigations, audits, scrutiny, etc., and to prevent undue harassment of taxpayers, the Andhra Pradesh GST authorities have issued guidelines and instructions as below:

- The PO shall issue a detailed notice calling all the information/documents at once.
- The records and information shall be requested before 45 days in case of inspection and 60 days in case of audits, from the date of initiation of inspection and audit.
- If the taxpayer fails to respond to the notices without adequate reason, the PO may issue a maximum of three reminders within one month of the notice of time expiry.
- In cases where the notice and reminders have not elicited a response from the taxpayer or the person involved, the PO may issue a summon, requesting records and information with the prior consent of the jurisdictional Joint Commissioner.
- The PO is required to maintain records of issuance of notices, reminders and summons chronologically and the details of documents/information provided. The summoned person's attendance/absence shall also be noted in the register, along with their signature.
- The taxpayers shall neither be requested nor summoned to furnish copies or printouts of documents already available on the GSTN portal.
- The officers shall not summon the CFO/CTO/CEO/MD and senior management of the business unless proof indicates their direct involvement in the decision-making process leading to any type of tax evasion.
- The summoned person shall be heard at the scheduled time without being kept waiting for more than two hours. If the PO is unable to hold the hearing or investigation at the scheduled time for reasons to be recorded in writing, the taxpayer shall be notified in advance of the postponement of such hearing or investigation.

These instructions must be strictly followed, and any failure to do so will be taken severely and will result in administrative action against the offending officer.

(Circular No.1/2023/GST audits dated 13 January 2023)

CBIC allows the Additional Assistant Directors to exercise the powers of the Superintendent

Earlier, the CBIC assigned jurisdiction and power to officers of the DGGSTI, DGGST and DGA as are exercisable by the central tax officers.

In addition to the above, the CBIC has now vested the Additional Assistant Director, GST Intelligence or Additional Assistant Director, GST, or Additional Assistant Director, Audit, to exercise the powers of the Superintendent.

(Notification No. 01/2023-Central Tax dated 4 January 2023)

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

CBIC notifies the Customs (Assistance in Value Declaration of Identified Imported Goods) Rules, 2023

As a measure to address the issue of undervaluation in imports, vide Section 89 of the Finance Act, 2022, an amendment was made in Section 14 of the Customs Act to include provisions for rules enabling the board to specify the additional obligations of the importer in respect of a class of imported goods whose value is not being declared correctly.

In this regard, the CBIC has notified the CAVR as a measure to reduce undervaluation of certain imported goods. The provisions of CAVR shall come into effect on 11 February 2023.

Key aspects for consideration

- **Specify identified goods:** The CBIC will specify a class of imported goods as identified goods in case it believes that there is a scope for declaration of inaccurate value.
- **Procedure to be followed by importer of identified goods:** The importer of identified goods shall declare certain aspects while filing the BoE. Under the customs automated system, certain additional obligations and checks, as required, shall be required to be fulfilled by the importer of identified goods to enable and assist in demonstrating the truthfulness and accuracy of the declared value.
- **Proceedings against doubtful cases:** In cases where the PO has a reasonable doubt about the accuracy of the value declared, further proceedings may be initiated in accordance with Rule 12 of the CVR.
- **Constitution of various committees:** The rules prescribe for the constitution of a screening committee and evaluation committee. The confirmation of the screening committee is of utmost importance, as it rectifies deficiencies (if any) before recommending the report to the CBIC. The CBIC, upon satisfaction of the report provided, shall accept and provide a suitable order specifying the identified goods.
- **Electronic application for valuation**: The electronic application is under development by the Directorate General of Valuation and shall be made applicable from the date to be specified by the CBIC once the application is made live. In the interim, any written reference in terms of sub-rule (1) of Rule 6 may be made to the CBIC on the email ID cbic-valuation@gov.in.

The provisions of CAVR seek to assist both the PO doing the assessment and the importer in demonstrating the truthfulness or accuracy of the declared value of the identified goods. However, these rules do not by themselves provide a method for determination of value.

(Notification No. 03/2023-Customs (N.T.) dated 11 January 2023)

DGFT provides one-time relaxation from average EO maintenance for sectors affected due to COVID-19 pandemic

The DGFT has notified a one-time relaxation from maintaining the average EO under the EPCG scheme for certain sectors affected due to the COVID-19 pandemic.

Key relaxations notified

For hotel, healthcare and educational sectors:

- There will be no requirement to maintain the average EO for the years 2020-21 and 2021-22.
- The EO period has been extended from the date of expiry for the duration equivalent to the number of days the EO period falls between 1 February 2020 and 31 March 2022.
- The extension shall be granted without payment of any composition fees.
- In case the extension has already been obtained on payment of composition fees, refunding such fees may not be permitted.

For EPCG authorisations other than hotel, healthcare and educational sectors:

- The EO period has been extended from the date of expiry for the duration equivalent to the number of days the EO period falls between 1 February 2020 and 31 July 2021.
- The extension may be granted without the payment of the composition fees, but it will be subject to a 5% additional EO on the balance EO as on 31 March 2022.
- The option to avail an EO extension upon the payment of composition fees would remain open, and such fee, once submitted, shall be non-refundable.

(Public Notice No. 53/2015-2020 dated 20 January 2023)

DGFT notifies revised Appendix 4R on account of recommendations of the RoDTEP committee

The RoDTEP scheme, implemented from 1 January 2021, is based on the global principle that taxes and duties levied on exported products shall be either exempted or remitted to exporters. The rebate under the said scheme is provided by way of a transferable electronic scrip. The list of export items eligible under the scheme is provided under Appendix 4R, along with rates and per unit value caps.

Pursuant to the recommendations of the RoDTEP Committee in relation to apparent errors or anomalies noticed in the earlier notified rates/caps, the DGFT has notified revisions in 432 HS codes under Appendix 4R.

The revised Appendix 4R will be applicable for exports made from **16 January 2023** to **30 September 2023.**

(Notification No. 53/2015-2020 dated 09 January 2023)

DGFT simplifies process of levying composition fee in case of extension of EOP under advance authorisation scheme

With a vision to automate the EO process with minimal human intervention, the DGFT has notified an amendment in the rules for calculation of the composition fee vide Para 4.42 of HBP. The authorities observed that the previous formula for computing the composition fee was quite tedious and cumbersome for exporters. The DGFT has simplified the formula to reduce the risk of errors and misconceptions, thereby improving efficiency. Furthermore, this will catalyse the 'ease of doing business' objective by reducing complexity and making the process straightforward for exporters.

The composition fee in case of the extension of EOP under Para 4.42 of the HBP would be as under:

CIF value of AA licenses issued	Composition fee to be levied (INR) for initial extension	Composition fee to be levied (INR) for further 6 months extension
Up to INR 2 crore	5,000	10,000
More than INR 2 crore up to INR 10 crore	10,000	20,000
Above INR 10 crore	15,000	30,000

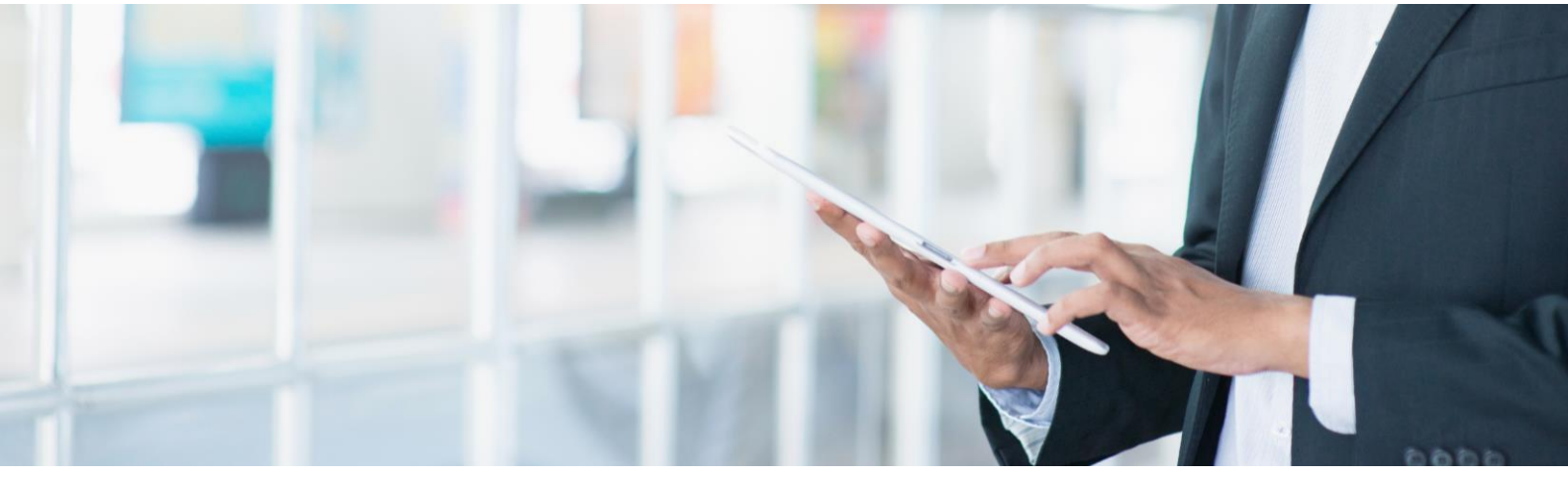
The revised composition fee for an EOP extension will only be applicable for the requests made on or after 19 January 2023. However, existing/pending applications shall be governed by the earlier relevant provision of HBP.

(Public Notice No. 52/2015-2020 dated 18 January 2023)

Exemption from customs duty on COVID-19 vaccine

The Ministry of Finance has notified exemption from payment of customs duty on importation of COVID-19 vaccine in India by the central government or state governments. Furthermore, the exemption shall remain in force up to 31 March 2023.

(Notification No. 01 /2023–Customs dated 13 January 2023)



DGFT notifies revision of applicable export policy under stock and sale policy of SCOMET items

The DGFT has notified an amendment in the applicability of the policy for exports from the Indian subsidiary of a foreign company to a foreign parent/another subsidiary of the foreign parent company to allow repetition of order authorisation under the stock and sale policy of SCOMET items.

Key points for consideration

- The exporter shall make an application in the prescribed proforma ANF-20, along with certain documents from the stockist, including end-use/end-user certificate, proof of corporate relationship between the exporter and stockist, list of countries for making export, purchase order, etc.
- Upon assessment of application, the stockist would be granted authorisation for export. Furthermore, re-export to countries approved by IMWG would be subject to export control regulations of the stockist's country.
- For sale/transfer by the stockist within the same country, the exporter shall submit the details of all such transfers to the SCOMET division of the DGFT within three months of every such transfer.
- In case of re-export/re-transfer of items in an unapproved country outside the country of the stockist, the Indian exporter shall make an application for re-export/re-transfer in the SCOMET division of the DGFT, along with documents, namely, end-use/end-user certificate, purchase order/invoice or a document in lieu thereof and technical specifications of the products to be transferred.
- The exporter shall furnish a statement of exports made from India to the stockist and transfers made by the stockist to final end users, along with the details of inventory, by 31 January of the following year.

(DGFT Public Notice No. 51/2015-20 dated 17 January 2023)

DGFT withdraws EODC online monitoring system for advance/EPCG authorisations

A system for monitoring the progress of EODC applications of advance/EPCG authorisations was available earlier, wherein all RAs were directed to input the data related to the applications submitted by exporters.

Post the implementation of the revamped DGFT IT system, the EODC details in respect of advance/EPCG authorisations, including details such as IEC details, status of license, redemption applied or approved, etc., can be accessed on the DGFT website under **Services > Info for Customs Authorities.**

In addition, the exporters are provided an alternative wherein they can confirm the status of past authorisations of the DGFT. Where the status of authorisation is incorrectly reflected, the exporters shall upload the copy of the closure/redemption letter against the authorisation that would be verified by RAs for updation on the DGFT website under **Services > AA/DFIA/EPCG > Manual EODC Update.**

Therefore, the DGFT has notified that the EODC online monitoring system has been withdrawn.

(Trade Notice No. 24/2022-23 dated 12 January 2023)

Faceless assessment – implementation of standard examination orders through RMS across various assessment groups

In coordination with the DG Systems and the NAC, the NCTC has developed system-generated centralised examination orders for BoE. This functionality is expected to enhance the uniformity in examination and lower the time taken in the process, as well as reduce associated costs. These RMS-generated SEOs are available to the assessing officers alongside any additional examination if required. A consolidated SEO for each selected BoE is generated, stating potential risks.

Earlier, the SEO through the RMS was implemented to the goods under Assessment Group 4 from 5 September 2022 and Assessment Group 5 from 15 November 2022.

In this regard, considering the feedback received from the NCTC, the board has sought to implement the SEOs through RMS across various other assessment groups from 20 January 2023.

(Circular No. 02/2023 dated 11 January 2023)

DGFT includes MEDEPC for issuing RCMC for prescribed list of items, including mobile phones, smart watches, televisions and parts thereof

The DGFT has notified the inclusion of MEDEPC in Appendix 2T, i.e., the list of export promotion councils/commodity boards/export development authorities of FTP.

The DGFT has also prescribed the details of products falling in their jurisdiction, including smartphones, smart watches, monitors, projectors, televisions and other such final products.

Furthermore, it shall also include parts/components of such products including sub-parts, namely, vibrator motor, static converters, parts of televisions and other products.

Effectively, the RCMC can be issued by the MEDEPC for the prescribed items.

(Public Notice No. 49/2015-20 dated 9 January 2023)

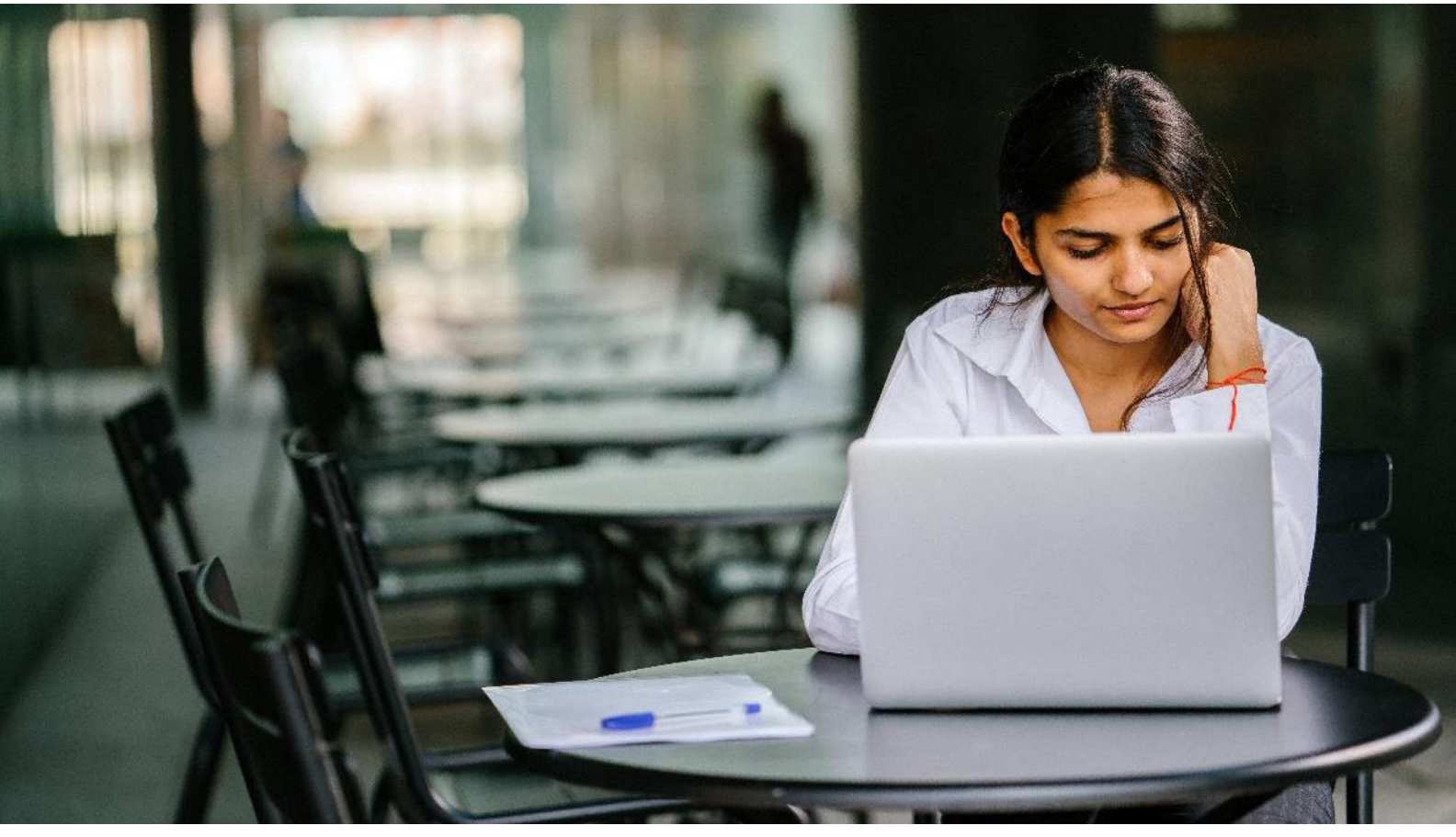
India-USA Trade Policy Forum meet on 11 January 2023 to forge bilateral trade between the countries

India and the USA held the 13th ministerial-level meeting on 11 January 2023 to enhance the bilateral economic relationship to benefit working people in both countries. The countries have expressed their mutual desire to enhance engagement to increase and diversify bilateral trade. In the meeting, ministers highlighted specific trade issues enumerated in the 2021 TPF joint statement. The United States welcomed India's participation in the IPEF.

Key bilateral trade issues discussed

- The United States appreciated India's initial public consultation on the draft of the Drugs, Medical Devices, and Cosmetics Act. India noted that the comments and suggestions on the draft bill are being examined as per standard procedures for introduction in the parliament.
- New quality control orders will ensure that the measures shall not be more trade restrictive than necessary in line with the WTO's TBT agreement.
- In order to reduce the compliance burden and facilitate ease of doing business, the countries have sought to streamline regulation on certain electronic devices under MTCTE and CRO.
- The promotion of innovation and investment in IP-intensive industries will be done for protection and enforcement of IP.
- Access to affordable medical devices through TMR will be provided during the COVID-19 pandemic.
- Inspections of new facilities by the US FDA will be resumed.
- There will be an exchange of views on potential targeted tariff reductions.
- The countries will augment the processing of visa applications to facilitate the movement of professionals, skilled workers, experts and scientific personnel, which will contribute immensely to enhance the bilateral economic and technological partnership between the nations.
- Movement of professional and skilled workers, students, investors, and business travellers between countries is expected to enhance the bilateral economic and technological partnership between the countries.
- There will be greater cooperation in the fintech sector, with importance on electronic payment services.
- There will be enhancement of trade in professional services between the countries and the recognition of qualifications with a discussion between professional bodies.

(Press release dated 12 January 2023)



02 Key judicial pronouncements

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

Allahabad HC grants interim stay on demand raised in case of One 97 Communications Limited in relation to the nature of tax payable

The Allahabad HC has granted an interim stay on demand in case of One 97 Communications Limited (the petitioner) w.r.t. the nature of tax that should have been paid.

The petitioner is engaged in the supply of mobile recharge coupons and DTH recharge vouchers to recipients located in different states. The petitioner deposited the tax on these transactions by classifying them as 'inter-state supply'. However, the department raised the demand by considering it as an intra-state supply.

The petitioner contended that the tax amount wrongly paid can be adjusted, and therefore, no interest is payable. The petitioner represented the matter before the CBIC, which is still pending.

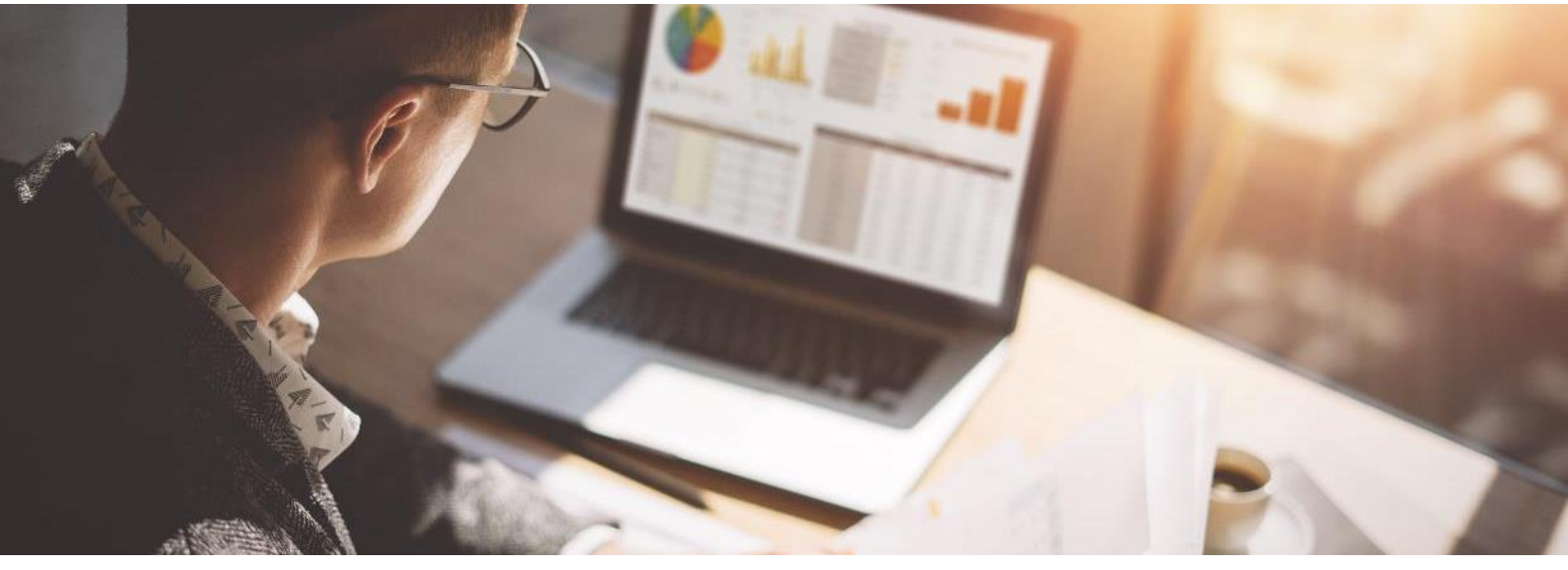
The key issue before the HC was whether the transaction should be treated as an inter-state or intra-state supply. The HC held that since the tax has already been paid, the demand shall remain stayed till the next date of hearing, i.e., **27 April 2023.**

Orissa HC allows rectification of GSTR-1 after the lapse of time specified for such rectification

In a recent case involving M/s Shiva Jyoti Constructions (the petitioner), the Orissa HC allowed the petitioner to rectify an error in GSTR-1 pertaining to September 2017 and March 2018, where the error was discovered after the due date allowed for such rectification. In its GSTR-1, the petitioner had inadvertently declared B2B transactions as B2C. Since the tax had been duly paid, the HC noted that the transaction is revenue-neutral. Furthermore, there is no tax escapement, and the correction will give its major contractor an ITC benefit.

Thus, the HC instructed the department to manually accept the rectified return and facilitate the uploading of such details to the portal.

This is a welcome ruling, as it provides the taxpayer an opportunity to rectify such errors and allow the beneficial recipient to avail the ITC benefit subject to the fulfilment of conditions prescribed under Section 16 of the CGST Act.



Kerala HC rules that time limit for issuance of SCN for FY17-18 has been automatically extended till 30 June 2023

Recently, the Kerala HC in the case of Pappachan Chakkiath (the petitioner) held that when the time limit for the issuance of an order under Section 73(10) of the CGST Act for FY 2017-18 has been extended up to 30 September 2023, the SCN u/s 73(2) can also be issued with reference to the date 30 September 2023 and not with reference to any other date. Accordingly, the HC ruled that the time limit for the issuance of SCN for FY17-18 has been automatically extended till 30 June 2023.

Facts of the case

- The petitioner was served with an order u/s 73 of the CGST Act, demanding tax payable for the period of July 2017 to March 2018.
- The petitioner contended that the entire proceedings were without jurisdiction, as the time limit for the completion of proceedings as per Section 73(10) of the CGST Act pertaining to FY 2017-18 is over.
- The petitioner further contended that as per the notification issued under Section 168A of the CGST Act, only the time limit for the issuance of order pertaining to FY 2017-18 has been extended.
- Furthermore, in case the SCN is not issued within the stipulated time as per Section 73(2) of the CGST Act, the entire proceedings will be without jurisdiction.
- The Revenue contended that because of the extension of the deadline for the issuance of orders under Section 73(10) of the CGST Act, the time for the issuance of SCNs under Section 73(2) also stands extended.

Kerala HC observations and ruling [WP(C) No. 816 of 2023 dated 11 January 2023]

- The Kerala HC held that there is no ambiguity that as per Section 73 of the CGST Act, SCN must be issued at least three months before the time specified for the issuance of order under Section 73(10) of the CGST Act.
- Additionally, following the notification of extension for the issuance of orders for FY 2017–18 until 30 September 2023, it could be interpreted that the time of issuance of SCN is automatically extended. Therefore, the time limit for the issuance of SCN for FY 17-18 is extended up to 30 June 2023.
- Thus, the Kerala HC noted that the impugned order is not without jurisdiction.

Delhi HC rules that GST officers have no power to seize cash during search operations

Recently, the Delhi HC, in the case of Arvind Goyal (the petitioner), held that cash cannot be considered as 'things' liable for seizure under Section 67 of the CGST Act.

Facts of the case

- The Revenue conducted search operations at the residential premises of the petitioner based on an enquiry, which revealed that no business of the concern owned by the petitioner was operating at the registered address.
- During the search proceedings, the Revenue seized cash, along with laptops, mobiles and documents. However, no search memo was drawn in respect of such cash.
- The petitioner contended that the search operations were unlawful, as no reason existed to believe that goods liable for confiscation were lying in the premises. The Revenue subsequently returned the laptop and mobiles. However, cash was deposited in FD in the name of the President of India.
- The petitioner also contended that currency is excluded from the definition of goods, thus the same cannot be seized under Section 67(2) of the CGST Act.
- The Revenue contended that the cash was not seized, but it was 'resumed'. Thus, no seizure memo was prepared.

Delhi HC observation and ruling [W.P.(C) 12499/2021 dated 19 January 2023]

- The HC observed that upon plain reading of Section 67(2) of the CGST Act, it can be understood that the seizure can be of goods liable for confiscation, or any documents, books or things relevant for proceedings. Currency cannot be classified as 'things'.
- The Revenue has not been given the power to 'resume' assets under any provisions of the GST law. Thus, the Revenue coercively took over the possession of money from the petitioner.
- Thus, the HC held that taking away of currency was illegal and hence directed the Revenue to release the money, along with interest.
- The HC issued a notice to the concerned officers and has listed the matter for further hearing on **20 February 2023.**

Rajasthan HC grants interim relief against SCN issued classifying online rummy as an actionable claim

Recently, the Rajasthan HC granted an interim relief to MyTeam 11 Fantasy Sports Private Limited against the notice issued that classified online rummy as an actionable claim. The HC further restrained the Revenue from taking any coercive action for recovery of the amount demanded in the notice until further orders.

Facts of the case

- MyTeam 11 Fantasy Sports Private Limited (the petitioner) is engaged in providing online gaming services, such as rummy, poker, fantasy sports and casual games .
- A SCN under Section 74(1) of the CGST Act was issued to the petitioner alleging that the petitioner has avoided tax by misclassifying their supply of services as actionable claims and by undertaking activities in the form of betting.
- The petitioner contended that the issue of whether the gaming services provided by them is in the nature of services or actionable games is no longer res integra in the light of catena decisions where it has been held that the said games are ‘game of skill ‘and not ‘game of chance’.
- The petitioner further contended that once the controversy regarding the classification of the products is settled by the decision of the court, the Revenue has no jurisdiction to issue any SCN taking a different opinion in the matter. In case any such notice is issued, it would be without jurisdiction.

The Revenue argued that the present writ is not maintainable, as the petitioner had an option to file a reply to the SCN issued. The SCN was not final in nature, and it only tentatively determined tax liability, subject to confirmation upon consideration of reply of the petitioner. Furthermore, the petitioner is engaged in betting, and the gaming service provided by the petitioner is not skill-based but pure gambling and betting.

Rajasthan HC observation and ruling [D.B. civil writ petition No. 1100/2023 dated 18 January 2023]

- The Rajasthan HC observed that in the case of Chandresh Sankhla, it was held that similar gaming services provided were not in nature of betting or gambling. Further, such judgment has obtained finality.
- Furthermore, a similar view was adopted in the case of Ravindra Singh by the division bench of the Rajasthan HC, which was subsequently approved by the Apex court.
- Thus, the HC held that some games of similar nature, as those provided by the petitioner, have been held to be ‘game of skill’ and not betting or gambling. Therefore, as the matter has been settled by various courts, the issuance of the impugned SCN was abuse of law.
- Accordingly, the HC called upon the Revenue to file a counter-affidavit to the writ petition within a period of one month and directed the matter to be listed for admission/final disposal immediately thereafter.

Mismatch in GSTIN is a bonafide error; benefit of circular dealing with ITC difference in GST returns is available – Karnataka HC

Summary

In the present case, Wipro India Ltd (the petitioner) mentioned the wrong GSTIN number in invoices and returns w.r.t. one of its recipients. The Karnataka HC observed that this error was due to bonafide reasons, unavoidable circumstances and sufficient cause. Therefore, the HC held that the circular dated 27 December 2022, which stipulates the rectification of bonafide and inadvertent errors, would be applicable in the present case. The HC noted that this circular only applies to FY 2017-18 and 2018-19. However, using a justice-oriented perspective, the HC decided that the petitioner would be entitled to the circular's benefits for FY 2019-20 as well.

Facts of the case

- The petitioner made supplies to its customer M/s ABB Global Industries and Services Private Limited (the recipient). However, the petitioner mentioned the incorrect GSTIN of the party 'ABB India Limited' in the invoices.
- The petitioner submitted that both the petitioner and the recipient can take the benefit of the directions issued in the Circular No. 183/15/2022-GST dated 27 December 2022 w.r.t. the errors committed in the invoices and relevant forms of the petitioner and the recipient. However, the Revenue contended that the said circular is not applicable.
- The petitioner filed the writ petition to get access to the GST portal to rectify GSTR-1 uploaded between FY 2017-18 and 2018-19 in relation to the invoices issued to the recipient, allowing the recipient to avail credit despite the maximum time restriction imposed to avail ITC.

Karnataka HC observations and ruling [W.P No. 16175 of 2022(T-RES) dated 6 January 2023]

- **Bonafide error, hence circular applicable:** The HC noted that the entity whose GSTIN appears on the invoices is a separate and distinct juristic and legal entity. Furthermore, the circular contemplates rectification of the bonafide/inadvertent mistakes committed by the persons at the time of filing of forms and submitting returns. The HC stated that the mistake made by the petitioner in the present case is clearly a bonafide error, which occurred due to bonafide reasons and unavoidable circumstances. Therefore, the circular is squarely applicable.
- **Applicability of circular to FY 2019-20:** The HC noted that the circular only applies to FY 2017-18 and 2018-19. The HC observed that the petitioner had made the same mistakes in FY 2019-20 as well. In this context, the HC, using a justice-oriented perspective, decided that the petitioner would be entitled to the circular's benefits for FY 2019-20 as well. The HC, therefore, directed the Revenue to follow the procedure prescribed in the circular and apply it for FY 2017-18, 2018-19 and 2019-20.

Our Comments

Recently, the CBIC issued Circular No. 183/15/2022- GST to provide clarification to deal with the difference in ITC availed in Form GSTR-3B as compared to the figures reflected in GSTR-2A for FY 2017-18 and 2018-19. The circular covers four scenarios, including where the supplier has filed both Form GSTR-1 and GSTR-3B but declared the supply with the wrong GSTIN of the recipient in Form GSTR-1.

The instant case is covered under the circular; therefore, the HC directed the Revenue to follow the procedure prescribed in the circular.

Furthermore, the benefit of the circular is restricted to FY 2017-18 and 2018-19. However, the HC, in the present case, has directed the revenue, the GST Council and the Union of India to take necessary steps in relation to FY 2019-20 as well.

This is a favourable and welcoming judgement, which may set precedence in similar matters.

Manufacturing of goods using advanced technology having same use/utility cannot be construed as ‘diversification’ for claiming exemption – SC

Summary

The SC has held that the replacement of old machinery with new machinery for improvement in quality/quantity of product, aided by new technology, falls in the category of 'modernisation', not 'diversification’. Therefore, the SC has upheld the decision of the HC denying exemption under Section 4A of the UP Trade Tax Act to the appellant. The SC has observed that the products manufactured post diversification shall be different in nature from the goods manufactured before diversification. However, in the instant case, the products manufactured by the appellant before and after are being used for the same purpose, i.e., sealing glass bottles. Therefore, the same cannot be said to be the manufacturing of different goods. Accordingly, the SC has ruled that the exemption provisions shall be construed in the literal sense and the use of different techniques cannot be said to be a different commercial activity.

Facts of the case

- M/s AMD Industries Limited (hereinafter referred to as Appellant) manufactures ‘Spun Line Crown Cork’ that is used for packing materials of glass bottles. The appellant has acquired a modern technology for manufacturing a new product, namely, ‘Double Lip Dry Blend Crowns’.
- The appellant applied for a grant of eligibility certificate under the ‘diversification’ scheme. However, it was granted eligibility certificate under ‘modernisation’. Effectively, the appellant has been denied exemption under Section 4A(5) of the UP Trade Tax Act.
- The appellant preferred appeals before the Tribunal, stating that the process of manufacture and machineries used for both the products and major raw materials are different. The appeals were dismissed by the Tribunal stating that the nature of goods produced under modern technology is not different from that produced earlier. Furthermore, the application before the HC was also dismissed on the similar ground.
- The appellant has submitted that the process of manufacturing both products is different. Hence, it is eligible to claim an exemption under ‘diversification’, as the ultimate use of the product is not relevant for the purpose of exemption.
- Additionally, the appellant has submitted that an exemption is to be interpreted in the literal sense. The criteria of the use of goods is nowhere provided in the provision or notification.

SC observations and ruling (Civil Appeal No. 108 of 2013 dated 09 January 2023)

- **Different or distinct goods in nature:** The goods manufactured on ‘diversification’ must be ‘different’, ‘distinct’ and ‘separate’ goods in nature. In the present case, both the initial product, namely, ‘Spun Line Crown Cork’, and the present product, namely, ‘Double Lip Dry Blend Crowns’, are used for the same purpose, i.e., for sealing glass bottles. Therefore, the same cannot be said to be the manufacturing of goods different from manufacturing before such diversification.
- **Meaning of ‘diversification’:** The SC has gone through the relevant provisions of Section 4A and has inferred that in case of ‘diversification,’ the new manufactured goods shall be different from goods manufactured before such diversification. The effect of diversification shall not be a product manufactured by use of modern technology but shall be a change in quality and quantity of the products, resulting in goods of different nature.
- **Provisions of exemption are clear and unambiguous:** The provisions of the Act unequivocally provide that the ‘diversification’ can be considered only in a case where ‘goods of different nature’ are produced, and only then shall the exemption be available. In the present case, the use of new/modern technology cannot be said to be a different commercial activity. When diversification is not leading to a change in the ultimate use of the product, it cannot be said to be the manufacture of different products for claiming exemption.
- **Exemption notification to be construed literally:** As per the settled proposition of law, the statute, and more particularly, the exemption provisions, are to be read as they are and to be construed literally and should be given a literal meaning. Giving the literal meaning to the exemption provision, namely, Section 4A, it cannot be said that the appellant is entitled to the exemption as claimed.
- **No error in HC findings:** The HC has not committed any error in refusing to grant exemption to the appellant. Therefore, the SC has agreed with the findings of HC and held that the appellant is not eligible for the exemption.

Our Comments

This is a significant ruling wherein the SC has distinguished between the terms ‘modernisation’ vis-à-vis diversification. Further, the ruling is in line with the well-settled principles that exemption notifications are to be given a literal interpretation.

Though the trade tax acts are no longer valid, it is pertinent to note that the above-mentioned analogy can be squarely applicable while claiming benefits/exemptions under the various state-specific industrial policies.

Fees received by cricket players from IPL franchisee do not amount to 'business support service', thereby not leviable to service tax – CESTAT Ahmedabad

Summary

The CESTAT Ahmedabad has set aside the order demanding service tax on the fees paid to cricketers by the IPL (franchisee). The Tribunal has held that the fees received by the cricket players from the franchisee, whereby they were employed to play for the respective teams in terms of the contract with IPL seasons, would not come under the purview of 'business support services'. Further, the tribunal held that playing cricket is the primary reason for which the IPL was formed, and promotional activities are ancillary to the main purpose of playing cricket. The Tribunal held that there exists an employer-employee relationship between the franchisee and players for which the players are paid remuneration, and as such, the players are not providing any service to franchisee that is liable to be brought under the tax net.

Facts of the case

- Yusuf Khan M Pathan and Irfan Khan Pathan (hereinafter referred to as appellants) entered into contracts with the franchisee to play cricket for IPL seasons for which remuneration/fees was paid to them. The appellants wore team clothing that bore the brands/marks of various sponsors.
- SCNs were issued to the appellants alleging that the fees received by them are liable to service tax under the category of BSS. Further, the demand was confirmed by the Commissioner (Appeals), along with interest and penalties.
- The appellants submitted that they granted the franchisee all rights to use the identity of the appellants, including films and TV appearances and photographs. The appellants did not claim endorsement of any goods or services of any sponsors in their own name, but it was the franchisee that did so.
- The appellants submitted that as per the agreement, they were obliged to undertake any promotional activities and granted the franchisee all rights to use the appellants' identities. The main activities of the appellants were to play cricket and other rights, i.e., film, television, photography, press conference to their franchisee to make it commercially viable.
- The appellants viewed that they were employed by the respective franchisees and were not independent service providers. Accordingly, the service provided by an employee for activities undertaken by an employer cannot be termed as service provided by the employee.

CESTAT Ahmedabad Observations and ruling (Service Tax Appeal No.127 and 128 of 2012 dated 20 January 2023)

- **Services not provided as an independent individual:** The appellants were not promoting any brand or product or service and were not taking part in any business activity. The appellants must wear the apparel, as it is a team clothing that bears the brand/marks of various sponsors. Accordingly, it can be inferred that the appellants were not providing any service as independent individuals.
- **Existence of an employer-employee relationship:** On perusal of the relevant clauses of the agreement, the Tribunal observed that the appellants have been prohibited from commercial usage of the team clothing. Furthermore, the agreement makes it clearer that the franchisee is engaging players as professional cricketers who shall be employed by the franchisee. Accordingly, there exists an employer-employee relationship between the franchisee and the players.
- **Fees received not covered under BSS:** The entry for BSS envisages taxing activities that are needed for doing business activities almost in the nature of outsourcing of activities connected with business. The activities provided by the appellants are not specifically covered under BSS.

Our Comments

On a similar issue, earlier, the Chennai Tribunal had granted relief to various players of the Chennai Super Kings (CSK) team by holding that these players are not liable to pay service tax on the amount received from the franchisee. The Tribunal had held that there exists an employer-employee relationship between the franchisee and players for which the players are paid remuneration, and therefore, there is no service that is liable to be brought under the tax net.

Even the Calcutta High Court, in the case of former Indian cricketer Sourav Ganguly, had held that the petitioner was not providing any service as an independent individual worker and there was an employer-employee relationship rather than an independent worker or contractor or consultant. Therefore, it cannot be said that the petitioner was rendering any service that could be classified as a 'business support service'.

In the case of the KPH Dream Cricket Pvt. Ltd,. the Chandigarh Tribunal had held that the fee paid by a cricket team to overseas players for playing cricket and also participating in promotional events of the IPL is not liable to service tax under business support service, as such promotional activities are ancillary in nature to the main activity of playing cricket. Furthermore, the SC has issued a notice against an appeal filed by the Revenue against the said order and the final verdict is awaited.

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

SC upholds classification of 'all-in-one PC' rules that weight cannot be the sole factor to determine the factum of 'portability'

Summary

The SC has set aside the Tribunal's order classifying the ADP, popularly known as 'All in One Integrated Desktop Computer', under the CTH 84713010 and upheld the classification as declared by the appellant under CTH 84715000. The SC stated that weight cannot be the sole factor to determine the factum of 'portability' and dismissed the Tribunal's view that PCs are a 'portable device' and hence ought to be classified under the latter CTH.

Facts of the case

- M/s Hewlett Packard India Sales Private Limited and Lenovo (India) Private Limited (hereinafter referred to as appellants) imported certain goods and classified them under 'Tariff Item 8471 5000'. Upon subsequent examination by the customs authorities, the goods were classified under 'Tariff Item 84713010', which was confirmed by the Assistant Commissioner and Commissioner (Appeals).
- The rate of duty under both the tariff items was same. However, the difference was in the method of computation. The goods under 'Tariff Item 84713010' were valued basis the percentage of retail sale price, whereas valuation was based on price mechanism under 'Tariff Item 84715000'. This resulted in a difference in duty liability, which, in turn, led to the present dispute.
- The Tribunal Mumbai bench observed that the goods weigh less than 10 kg and can be easily carried from one place to another. Therefore, upon perusal of the dictionary meaning of the word 'portable', the Tribunal classified the concerned goods under 'Tariff Item 84713010'. Furthermore, the fact that goods were not foldable did not impact the element of portability.
- The appellant disputed the aspect of portability of the concerned goods. The appellant contended that the 'Tariff Item 84713010' involves an element of 'functionality', which cannot be applied to the concerned goods, as these cannot function without an external source of power.
- Furthermore, the appellant submitted that only the weight being less than 10 kg cannot be the sole consideration in order to decide whether any good is 'portable' or not.
- In order to substantiate its claim, the appellant highlighted that the concerned goods are not considered as 'portable' by the European Commission and are not covered under 'Tariff Item 84713010' as per the WCO.

SC Observations and ruling (Civil Appeal No. 5373 of 2019 dated 17 January 2023)

- **No element of 'functionality' is being contemplated for classification under 'Tariff Item 84713010':** The SC has viewed that the HSN is normally taken as a safe guide for classification, as it is based on internationally recognised 'harmonised nomenclature'. The SC has gone through the explanatory note applicable to subheading 847130. It clearly contemplates that there is no mandatory condition for the goods for being operable without any external source of power.

  Therefore, the appellant's contention that only ADPs with a built-in power source is necessarily required to be classified under 'Tariff Item 84713010' does not hold good in the instant case.
- **Weight is not sole factor to determine portability:** The SC observed that interpretation of the word 'portable' on aspect of weight is an erroneous approach. Instead, there are two conditions to establish whether an ADP is 'portable': The first being the ability to be carried around easily; the other being the suitability for daily transit of the consumer, which includes durability. So, weight cannot be the sole factor for determining the factum of mobility.
- **Technological advancement has led to reduction in weight:** The SC has opined that during the traditional period, weight was an important criterion for deciding portability. However, scientific progress has reduced the weight associated with high performance in the context of ADPs. Accordingly, keeping in view the understanding of the element of 'portable' used in common parlance, the SC ruled that the concerned goods are not 'portable'.
- **Self-assessment procedure submitted by appellant must be adopted:** The SC held that the concerned goods are not 'portable' as the diagonal dimension of the concerned goods is 18.5 inches, and they need to be transported along with the power cable and the applicable stand. Also, there is no protective case designed for daily transport of the concerned goods, as a result of which they cannot be carried around easily during transit. Therefore, the concerned goods are not 'portable'. Hence, the prevalent self-assessment procedure adopted by the appellant may be accepted.

Our Comments

The SC has once again reiterated that when the customs authorities want to classify the goods differently, the burden of proof to showcase the same is on them. When they fail to discharge the same, as per the prevalent self-assessment procedure, the classification submitted by the appellants must be accepted.

On several occasions, the SC has upheld the classification adopted by the assessee in line with the above principle. Earlier, the SC, in the case of the M/s Acer India Pvt. Ltd., had dismissed the classification adopted by the Revenue and held that a laptop or a notebook being an integrated item cannot be said to be a set of a CPU with monitor, mouse and keyboard, and accordingly held that the appellant was not liable to pay additional duty. Even in the case of Westinghouse Saxby Farmer Ltd., the SC had upheld the classification for relays adopted by the appellant and dismissed the Revenue's contentions.

Valuation methodology using TPuS method is in harmony with the Customs Act read with CVR – Customs AAR

Summary

The Customs AAR has held that the proposed valuation method, i.e., the TPuS method for determination of transaction value under Section 14 of the Customs Act, is consistent with the CVR. The AAR observed that while Rule 7 is recognised under CVR, the TPuS methods is not formally recognised. Both the methods are based on deductive computations from the same benchmark having similar price elements, making it consistent with the CVR. The AAR viewed that the transaction value, in case of related-party transactions, shall be accepted if circumstances indicate that the price of goods is not influenced by the relationship between the parties. The SVB undertakes the role of monitoring the import of goods from related parties. Accordingly, on thorough perusal of provisions and method adopted by the applicant, the AAR has ruled that such valuation methodology is consistent with Section 14 of the Customs Act read with CVR.

Facts of the case

- M/s Sick India Private Limited (hereinafter referred to as the applicant) is engaged in the import, marketing and selling of sensors and lasers on list price minus the discount method, which are manufactured by the overseas related company. The Commissioner of Customs (Import), Mumbai, held that imported goods are sold to unrelated buyers at a higher price and the customs value adopted by the applicant cannot be accepted.
- The overseas company, being a related party, has standardised its transfer pricing across the globe by adopting TPuS based on computation of CAR at entity level.
- The applicant expects that the CAR value at the time of import would not be significantly deviated from the CAR value computed during the year-end review. Therefore, the proposed transaction value, which is based on the recovery of all costs and profit from the applicant, shall be considered as transaction value in terms of Rule 3 of CVR.
- The applicant submitted that most of the goods imported by it are customised as per the customer's needs, and, in turn, enjoy a distinct brand value. Furthermore, pursuant to the adoption of TPuS, the overseas company will export the products only to the applicant and no other importer in India.
- The applicant stipulated that the transaction value under Rule 7 of CVR is like the value calculated under TPuS and is not influenced by the relationship between the applicant and the overseas company.
- The applicant contended that the process for arriving at the valuation of imports is in line with Section 14 of the Customs Act and the value arrived shall be acceptable as customs value that can be considered for SVB investigations.

Customs AAR and ruling (Ruling No. CAAR/Mum/ARC/47/2022 in Application No. CAAR/CUS/APPL/69/2022 dated 27 December 2022)

- **Imported goods being customised are incomparable with other identical goods:** The Customs AAR has gone through the provisions of Rule 4 and Rule 5 of CVR to understand their applicability in the instant case. Upon evaluation, the Customs AAR has agreed with the applicant's submission that goods imported are customised as per the customer's needs and the overseas company will export such goods only to the applicant and no other importer in India. Furthermore, as the imported goods enjoy a distinct brand value, they cannot be compared with any other products being similar in nature. Therefore, it is not feasible to apply Rule 4 and Rule 5.
- **TPuS method is consistent with Rule 7 of CVR:** The Rule 7, i.e., the deductive value method, is a part of CVR. However, the TPuS method is not officially recognised under the provisions of CVR. The Customs AAR observed that both the methods are based on deductive computations and the TPuS method is consistent with Rule 7 in accounting terms. Therefore, the Customs AAR has held that there is no need to evaluate the applicability of Rule 8.
- **TPuS method is acceptable under Section 14 of the Customs Act:** The Customs AAR observed that the proposed transaction value arrived at using the TPuS method is the sum of manufacturing costs, administrative expenses, other expenses and profit represented by CAR. Therefore, there is no financial flows in the form of royalty, license fees, etc. Thus, considering the facts of the case, the Customs AAR ruled that the proposed valuation method, i.e., the TPuS method, to be adopted from 1 May 2023 to determine the transaction value under Section 14 of the Customs Act for goods imported from related parties, is compliant with the procedure for investigation of related-party import cases by SVB. Accordingly, it should be consistent with the CVR.

Our Comments

Businesses have consistently demanded that the transfer pricing and the customs law valuation methodology should be consistent. The current decision is in line with this and is a welcome decision that raises new hopes for the convergence of the two laws' valuations.

Although the advance rulings only apply to the applicant, they are still compelling in circumstances that are comparable. Therefore, it is crucial for the businesses to properly evaluate their transactions and agreements.

03 Decoding advance rulings under GST

Administration of COVID-19 vaccine does not qualify as healthcare service – Andhra Pradesh AAAR

Summary (Order/AAAR/AP/ 07(GST) / 2022 dated 19 December 2022)

The appellant is a multi-speciality hospital, rendering healthcare services. The appellant has been permitted to monitor COVID-19 vaccines. In this respect, the appellant approached the AAAR to clarify whether administering of a vaccine is a supply of good or supply of service, its coverage under healthcare services, and exemption notification. The AAAR observed that the applicant qualifies to be a clinical establishment, but the supply is predominantly of sale of goods and not the service component of healthcare. Furthermore, the dominant intention of the recipient is the receipt of the vaccine, followed by its administration. Hence, the principal supply is the supply of vaccine. The AAAR took reference of the clarification issued by the Ministry of Health & Family Welfare and held that there are two different supplies, wherein the vaccine is the goods component, accompanied by administration of the vaccine as the service component. Moreover, the term 'vaccination' provides protection against disease and is administered before the advent of disease. Therefore, it does not fit in the definition of a healthcare service.

Analysis

It should be emphasised that the goal of the vaccination process is to seek the vaccination rather than to purchase the vaccine. The beneficiaries visit the hospital to get the vaccination injected into their body by an authorised medical practitioner as a part of process. The usage of vaccine as a part of such vaccination process should not be considered as in the nature of the sale of goods. Furthermore, considering the nature of vaccines and the specific requirements, it is not possible to move or market particular doses of the vaccines and even no hoarding of the vaccine could be done.

In the recent ruling, the AAAR affirmed that the administration of a vaccine is an auxiliary supply to the composite supply. However, another point of view is that the administration of a vaccine should be considered as a principal supply. Besides, the purpose of vaccination is to develop immunity against the illness. Hence, it may be considered as 'care for illness', and accordingly, may be covered under healthcare services.

However, a detailed analysis and deliberation on this matter has not been provided by the authorities. The issue is quite ambiguous and has opened a pandora's box.

Readily available food/beverages sold over the counter by a restaurant qualifies as a supply of goods, liable to applicable GST rate – Gujarat AAR

Summary

The Gujarat AAR has held that the food items and beverages, not prepared in the restaurant, purchased from local market and sold OTC shall be treated as a supply of goods and not 'restaurant service', taxable at the applicable rate of GST on such item. However, the supply of in-house prepared food and beverages shall be qualified as 'restaurant service' liable to GST at 5% with no benefit of ITC.

Facts of the case

- M/s Ridhi Enterprise (the applicant) is engaged in the restaurant business wherein it supplies foods and beverages prepared at the restaurant as well as readily purchased food and beverages sold OTC.
- The applicant has submitted that for both the supplies, the customer uses the restaurant infrastructure to consume such products. The infrastructure facility at the restaurant is uniformly offered to all the customers.
- The applicant further submitted that there is a common staff, common billing counter, software and books of accounts for all the orders, irrespective of whether the goods have been prepared or for readily available food/beverages.
- The applicant has opined that the supply of the food prepared and supplied to the customer, as well as the readily available food and beverages, qualify as 'restaurant service' liable to GST at 5% with no ITC.

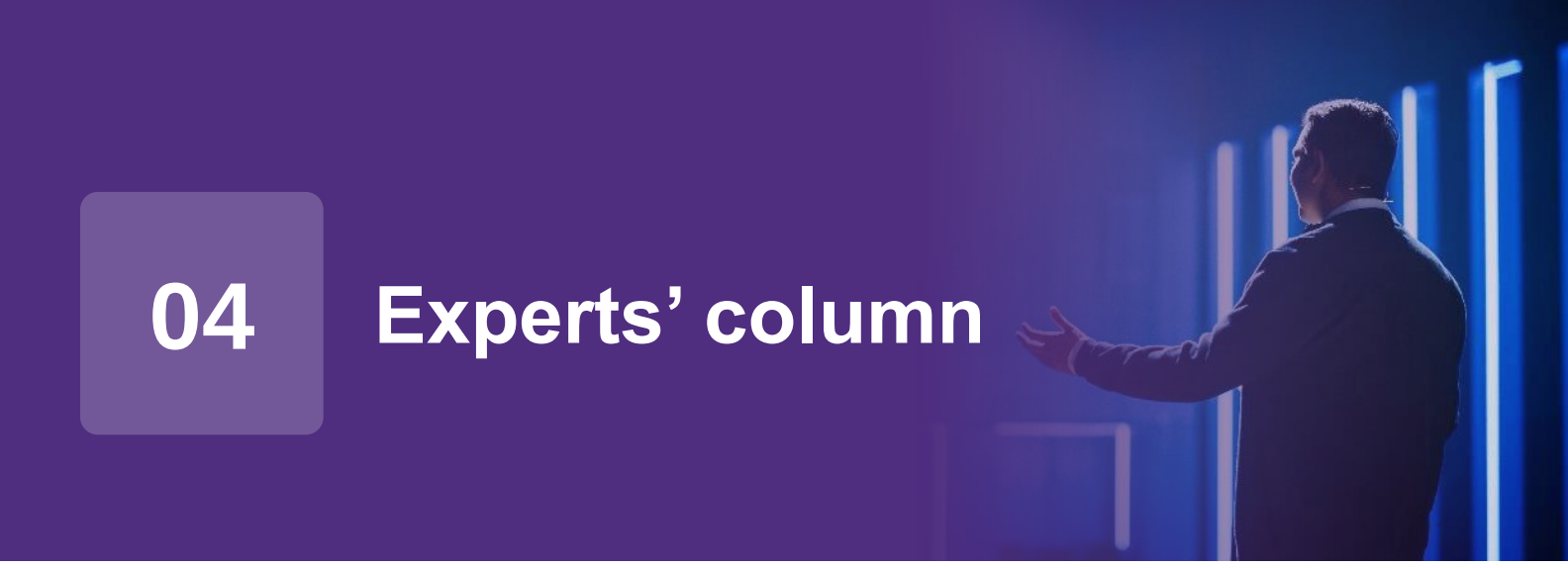
Gujarat AAR observations and ruling (GUJ/GAAR/R/2022/51 dated 30 December 2022)

- **Supply of food prepared at the restaurant:** The AAR observed that the applicant serves the food prepared in the kitchen situated at restaurant premises to the customers as per their choice either at the restaurant or as takeaway. Furthermore, the applicant also delivers such food and beverages to the customers at their home. Thus, all such activities are covered under the restaurant services, and this view is supported by the CBIC's circular. The AAAR further held that the restaurant service is leviable to GST at 5% with no ITC as per Sr. No. 7(ii) of Notification No. 11/2017-Central Tax (Rate) dated 28 June 2017.
- **Supply of readily available food and beverages can be considered as supply of goods:** The AAR opined that the supply of already cooked/readily available food items sold over the counter to the customers does not qualify as a restaurant service, irrespective of whether consumed at restaurant premises or supplied by way of takeaway. The AAR held that such supply qualifies as supply of goods, liable to the applicable rate of GST.

Our Comments

The taxability of supplies by a restaurant has been a contentious matter since the pre-GST regime. Under the erstwhile regime, both VAT and service tax were charged on the restaurant bill. However, under GST, the supply of restaurant services is defined as a composite supply, which would be treated as a supply of services. Accordingly, GST at 5% is payable on the same without any benefit of credit.

In the present ruling, the Gujarat AAR has distinguished the classification of in-house prepared food and readily available goods sold over the counter under the restaurant services. Earlier, the restaurants that were considering both the in-house prepared and readily available food under the restaurant services were not claiming any ITC benefit. Such restaurants would now be eligible to claim credit of tax charged on inward supplies procured in relation to the supply of such readily available products, as well as a proportionate credit of common expenses, such as rent and advertisements. Therefore, the taxpayers engaged in restaurant services should re-evaluate their business models in terms of a cost-benefit analysis.



04 Experts' column

Decrypting Union Budget 2023 – Key indirect tax proposals

The Finance Minister presented the Union Budget for 2023-24 on 1 February 2023. As this was the current government's last full-fledged budget before the 2024 general elections, the expectations were very high. Accordingly, the budget focused on seven priorities, i.e., inclusive development, reaching the last mile, infra and investment, unleashing the potential, green growth, youth power and the financial sector. In line with the above, the budget was accompanied by various tax pronouncements to promote exports, boost domestic manufacturing, enhance domestic value addition, and encourage green energy and mobility. Apart from the above, proposals related to indirect tax also aimed to provide a more straightforward tax structure with fewer tax rates to reduce the compliance burden and improve tax administration and clarity.

To further encourage the Make in India initiative, the customs duty framework has been changed:

- Reduction in the number of customs duty rates from 21 to 13. However, rates on textile and agriculture products remain unchanged.
- Customs duty exemptions on the import of capital goods machinery required for lithium-ion batteries, a key input to electrical appliances, including electric vehicles.
- Concessional duty on lithium-ion cells for batteries also extended by one more year.
- Reduction of customs duty on key inputs for domestic manufacture of shrimp feed.
- Reduction of customs duty on the part of open cell of TV panels to 2.5%.
- Reduction in customs duty on certain other inputs, such as a camera lens and parts of a mobile phone.
- A 2.5 times increase in the customs duty on compounded rubber.
- Basic customs duty on articles made from gold bars, silver dore, bars, and articles to align with the duty on gold and platinum.
- An increase in the import duty of chimneys from 7.5% to 15%.
- Increase/rationalisation in the customs duty rates on import of automobile parts in SKD condition, as well as CBU by 2-4%.

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On the legislative front, to obtain a time-bound and faster resolution, a period of nine months is proposed for the Settlement Commission to pass orders, which can be further extended by three months. In case of failure to pass an order within the said period, the settlement proceedings will stand abated, and the adjudicating authority shall dispose of the matter.

Further, in the 2021 budget, the Finance Minister announced that all conditional exemptions related to the customs duty would be withdrawn in a phased manner, i.e., within two years. In this respect, a few exceptions have been proposed for which the sunset clause would not apply. This, inter alia, would cover the exemptions granted under FTAs, export incentive schemes under FTP, central government schemes, etc. These exceptions are in line with foreign trade and other long-term commitments by the government.

Provisions related to the imposition of CVD, safeguard duty and ADD have been amended, retrospectively with effect from 1 January 1995, to clarify that determination and review refers to the 'determination and review' as prescribed under the rules. A similar amendment was made in the provision dealing with their appeals.

As can be observed, the amendments are to simplify, rationalise and facilitate Indian manufacturers to make in and/or export from India.

On the GST front, as a welcome move, it is proposed that the person exclusively involved in effecting exempt/non-taxable supplies would not be liable to take GST registration. The amended provision shall have an overriding effect retrospectively.

Further, many other amendments have been proposed in the law to implement the recommendations made by the GST Council in its 48th GST Council meeting. For example, it is proposed to amend the CGST Act for decriminalising a few offences, viz., obstructing officers, tampering evidence, and failure to supply information, raising the bar for launching prosecution and rationalising the compounding amount. The industry would appreciate these amendments, given the numerous current probes and inquiries.

Remarkably, a person supplying goods through an ECO liable to TCS shall be eligible to opt for a composition scheme. This could lead to an increase in the e-commerce market by incentivising small suppliers to choose a composition scheme and sell goods on the e-commerce platform. However, the persons supplying services through ECOs are still restricted from opting for a composition scheme. On the other hand, the budget proposed penal provisions applicable to ECOs in case of contravention of provisions relating to supplies of goods made through them by unregistered persons or composition taxpayers.

It is also convivial to consider high seas sales, merchant trade transactions, and the supply of warehoused goods as outside the GST ambit, retrospectively w.e.f. 1 July 2017. However, it will have an adverse impact due to the non-availability of an input tax credit against such supplies. Furthermore, it will hit the taxpayers who have already paid tax on past transactions, as a refund of taxes paid on such transactions would not be available.

The interpretation issues and litigation on taxation of OIDAR services appear to be settled by omitting the conditions of 'essentially automated' and 'involving minimal human intervention.' The scope of OIDAR services is expanded to cover all unregistered persons. These proposals would widen the scope of OIDAR services, which is an effort to plug means of escape, wherein earlier, the recipients used these exceptions as justifications for not remitting taxes. It might also lead to a rise in GST registrations by overseas companies offering various electronic services in India.

The chaos over ITC eligibility on expenditure towards CSR activities has been settled down by the proposal to deny such ITC. This proposal warrants detailed deliberation, as it might significantly impact the industries. On the one hand, the Companies Act requires companies to spend money on CSR, but on the other, denying tax credits for such activities would be harsh punishment for such corporates and go against the spirit of the law. The credit claimed on past transactions may be exposed to litigations. However, the taxpayers can take a plea that a specific prospective restriction would mean that ITC was available for the period before the amendment.

On the GST-compliance front, a three-year time restriction cap is recommended for filing GST returns (GSTR 1, GSTR 3B, annual returns and TCS returns) to curtail excessive delay. There used to be no such deadline. Thus, a taxpayer could submit late returns along with interest and late fees. Furthermore, a detailed procedure is proposed to be prescribed for computing the period of delay for the calculation of interest on delayed refunds.

An amendment with respect to the value of exempt supply is also proposed to include the supply of warehoused goods before clearance for home consumption. This will lead to a restriction on ITC for a person making the supply of warehoused goods. Further, it is proposed that the benefit of ITC would be available only upon payment of consideration directly to the supplier.

On the erstwhile indirect tax laws front, the budget proposed an amendment in the CST law for providing that the matters pertaining to the settlement of interstate disputes shall be filed before the CESTAT. This would result in speedy disposal of the cases pending for a long period.

In addition, a single-window IT system for registration approval for SEZ units across all tax and regulatory authorities, viz., GSTN, SEZ and SEBI, has been proposed. Other operational measures proposed for SEZ units include acquisition financing, trade refinancing, arbitration, recognition of offshore derivatives, etc. Besides, the exemption from additional duty of customs to goods cleared from an SEZ and brought to any other place in India has been extended up to 31 March 2024.

The budget was silent on several crucial issues that the sector had been eagerly anticipating deliberation on, including the DESH Bill, the constitution of a GST appellate tribunal, and clarity on the taxation of online gaming and cryptocurrency. Even plans for further rationalisation of GST rates have yet to be made public. Hopefully, the GST Council will take this up in its next meeting.

05 Issues on your mind

1. Is it possible to revoke the suspension of GST registration after filing pending returns using the GST portal?

The GST portal recently added a feature ‘Automated Drop Proceedings’ for GSTINs that have been suspended due to non-filing of returns. This feature is available to taxpayers who have filed their pending returns, i.e., six monthly or two quarterly return. If such taxpayers have filed all their pending returns, the system will automatically drop the proceedings and lift the suspension. However, if the GSTIN status does not automatically change to 'ACTIVE’, taxpayers should withdraw the suspension by clicking on 'Initiate Drop Proceeding' once the required returns have been filed, by following the steps mentioned below after logging in on the GST portal.

Services>User Services>View Notice and Orders>Initiate Drop Proceedings.

This functionality is applicable to the taxpayers whose GSTINs have been suspended after 1 December 2022.

2. Can unregistered persons file an advance ruling?

Earlier, unregistered persons were allowed to submit fee for filing advance ruling application in offline mode. Now, the GST portal allows the unregistered persons to file an application for advance ruling on the portal. Such application can be submitted pursuant to the creation of a Temp ID on the GST portal.

3. Can taxpayers check duplicate entries in Form GSTR-2B?

W.e.f. September 2021, taxpayers were provided with an option to pull the BoE details in Form GSTR-2B, wherein such details are not automatically populated from ICEGATE, using the ‘Fetch Bill of Entry’ functionality. However, in the absence of a check, in some cases, the BoE details were getting populated twice. Therefore, to avoid duplicate uploading of BoE details in the taxpayer’s Form GSTR-2B, the authorities have now implemented a validation system.

4. What is the process of amendment in BoE before assessment?

An amendment request by the importer can be filed directly either through the ICEGATE portal or through a service centre at the port of import, which will be routed to the concerned FAG for approval/rejection. No prior approval of PAG is required in these cases.

5. What is ICETRAK and ICEDASH under the Turant Customs?

ICETRAK is a mobile app that enables the trade stakeholders to live-track the BE/SB status, duty and GSTN enquiry and validate the gate pass/BE/SB copies with QR code scanning functionality.

ICEDASH is an EoDB monitoring dashboard of the Indian Customs. It is a tool for performance measurement where the public can monitor efficiency of the clearance process on a dashboard of the Indian customs at various formations. Businesses can accordingly compare clearance times across ports and plan their logistics.

06 Important developments in direct taxes

CBDT revises the criteria for reporting interest income in SFT

Specified persons are required to furnish SFT containing prescribed particulars, as per provisions of Section 285BA of the IT Act read with Rule 114E of the IT rules.

The format, procedure and guidelines for preparation and submission of SFT regarding interest income were prescribed vide Notification No. 2 of 2021 dated 20 April 2021.

Furthermore, as per the said guidelines, information of account / deposit holder is to be reported in SFT if the cumulative interest exceeds INR 5,000 per person in an FY.

Recently, the CBDT deleted the aforesaid threshold and prescribed that the information of interest income is to be reported for all account/deposit holders, excluding Jan Dhan accounts.

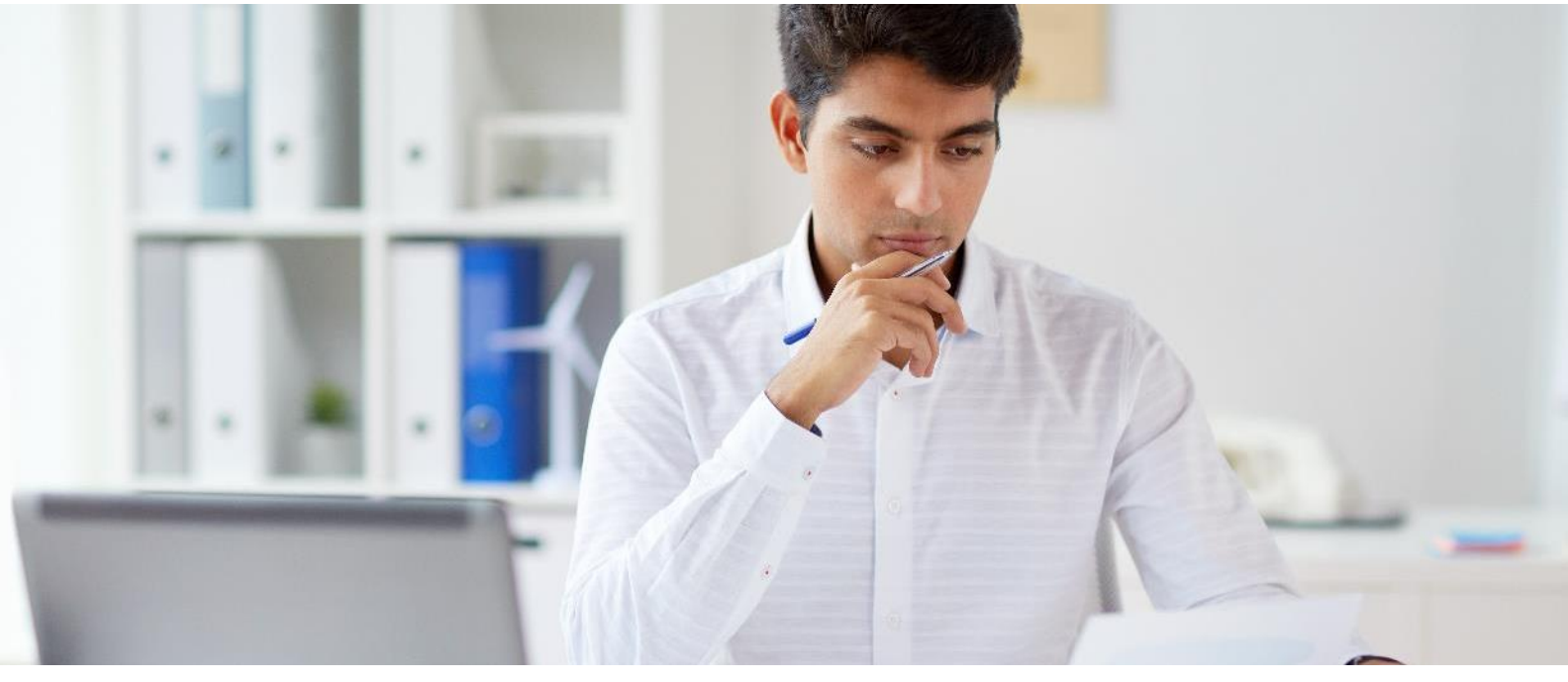
(Notification No. 1 of 2023 dated 5 January 2023)

Extension of timeline for undertaking compliances to claim exemption under Section 54 to 54GB of the Act

Exemption from capital gains tax can be claimed under Section 54 to 54GB of the IT Act subject to fulfillment of conditions specified therein. Earlier, the CBDT had vide Circular No. 12 of 2021 inter alia extended the timeline for undertaking compliances to claim exemption under these provisions till 30 September 2021 (for compliances to be made during the period 1 April 2021 to 29 September 2021).

Considering the hardships faced by taxpayers due to pandemic-related restrictions, the CBDT has again extended the timeline for undertaking such compliances. Such compliances can be undertaken till **31 March 2023** if they were required to be undertaken during the period 1 April 2021 to **28 February 2022.**

(Circular No. 1 of 2023 dated 6 January 2023)



07 Glossary

AA	Advance Authorisation
AAR	Authority for Advance Ruling
AAAR	Appellate Authority for Advance Ruling
ADD	Anti dumping duty
ADP	Automatic Data Processing
BoE/BE	Bill of Entry
B2B	Business to Business
B2C	Business to Customer
BSS	Business Support Services
CAR	Commercial Adjustment Rate
CBU	Completely Built Up
CVD	Countervailing duty
CAVR	Customs (Assistance in Value Declaration of Identified Imported Goods) Rules, 2023
CBDT	Central Board of Direct Taxes
CBIC	Central Board of Indirect Taxes and Customs
CEO	Chief Executive Officer
CESTAT	Customs, Excise and Services Tax Appellate Tribunal
CFO	Chief Financial Officer
CG	Central Government
CGST	Central Goods and Service Tax
CGST Act	Central Goods and Service Tax Act, 2017
CGST Rules	Central Goods and Service Tax Rules, 2017
CIF	Cost, insurance, freight
CNG	Compressed Natural Gas
CPU	Central Processing Unit
CRO	Compulsory Registration Order
CSR	Corporate Social Responsibility
CST	Central Sales Tax Act, 1956
CTH	Customs Tariff Heading
CTO	Chief Technology Officer
Customs Act	The Customs Act, 1962
CVR	Customs Valuation (Determination of Value of Imported Goods) Rules, 2007
DESH Bill	The Development of Enterprises and Services Hub Bill, 2022
DFIA	Duty Free Import Authorisation
DGA	Directorate General of Audit
DG System	Directorate General of Systems & Data Management
DGFT	Directorate General of Foreign Trade
DGGST	Directorate General of Goods and Services Tax
DGGSTI	Directorate General of Goods and Services Tax Intelligence
DTH	Direct To Home
ECO	Ecommerce Operator
EO	Export Obligation
EODB	Ease of Doing Business
EODC	Export Obligation Discharge Certificate
EOP	Export Obligation Period
EPCG	Export Promotion Capital Goods
FAG	Faceless Assessment Groups
FD	Fixed Deposit
FTA	Free Trade Agreements
FTP	Foreign Trade Policy 2015-2020
FY	Financial Year
FDA	Food and Drug Administration
GST	Goods and Service Tax
GSTN	Goods and Service Tax Network
GSTIN	Goods and Services Tax Identification Number
HBP	Handbook of Procedures
HS	Harmonised System
HC	High Court
HSN	Harmonised System of Nomenclature
ICEDASH	Indian Customs EODB Dashboard
ICEGATE	Indian Customs Electronic Data Interchange Gateway
ICETRAK	Indian Customs Enquiry for Trade Assistance and Knowledge
INR	Indian Rupee
IP	Intellectual Property
IPEF	Indo-Pacific Economic Framework for Prosperity
IPL	Indian Premiere League
IT Act	Income Tax Act, 1961
IT Rules	Income Tax Rules, 1962

ITC	Input Tax Credit
MD	Managing Director
MEDEPC	Mobile and Electronic Devices Export Promotion Council
MeitY	Ministry of Electronics and Information Technology
MTCTE	Mandatory Testing and Certification of Telecommunication Equipment
NAC	National Assessment Centre
NCTC	National Customs Targeting Centre
OIDAR	Online information and database access and retrieval
OTC	Over the counter
PAG	Port Assessment Group
PO	Proper Officer
RA	Regional Authorities
RCMC	Registration-Cum-Membership Certificate
RMS	Risk Management System
RoDTEP	Remission of Duties and Taxes on Exported Products
QR code	Quick Response code
SB	Shipping Bill
SCN	Show Cause Notice
SC	Supreme Court
SCOMET	Special Chemicals, Organisms, Materials, Equipment and Technologies
SEBI	Securities and Exchange Board of India
SEO	Standard Examination Orders
SEZ	Special Economic Zone
SFT	Statement of Financial Transactions
SKD	Semi Knocked Down
SUV	Sports Utility Vehicle
SVB	Special Valuation Branch
TBT	Technical Barriers to Trade
TCS	Tax Collected at Source
TMR	Trade Margin Rationalisation
TNVAT Act	Tamil Nadu Value Added Tax Act, 2006
TPF	Trade Policy Forum
TPuS	Transfer Pricing System and Steering Concept
UP Trade Tax Act	Uttar Pradesh Trade Tax Act, 1948
USA	United States of America
VAT	Value Added Tax
WCO	World Customs Organisation
WTO	World Trade Organisation

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