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GST Compendium

A monthly guide

March 2023

Editor's Note

The Goods and Services Tax Council (GST Council), in its 49th meeting, approved the Group of Ministers' report on the GST Appellate Tribunal and the capacity-based taxation of special commodities such as *pan masala*, *gutkha* and chewing tobacco. The GST Council has also recommended trade facilitation measures such as an amnesty scheme for past cases, and rationalisation of late fee for filing annual returns for financial year 2022-23 onwards for specified taxpayers.

In a recent ruling, the Supreme Court (SC) affirmed the view of the Bombay High Court (HC) that the Revenue is not empowered to adjudicate a show-cause notice after inordinate delay. The SC has reiterated that any legal action taken against the assessee must be concluded in time. Therefore, the Revenue could not keep such cases pending indefinitely. It is pertinent to note that the long period of time for which issues remain open and continue to be litigated is one of the key concerns of the industry and global investors. Although a number of steps have been taken by the government in the recent past, this issue needs to addressed at multiple levels.

In another ruling, the Karnataka HC has held that the vouchers are mere instruments accepted as consideration for the supply of goods or services. Consequently, the vouchers do not have an intrinsic value of their own. Hence, the vouchers are neither goods nor services and cannot be taxed.

In another ruling, the Customs Excise and Service Tax Appellate Tribunal has held that services such as marketing, promotion, engineering support, and accounting and management reporting provided on its own account to the overseas holding company would not qualify as intermediary services. These services would qualify as exports and be eligible for export benefits. Although this decision is under the service tax regime, after clarification by the Punjab and Haryana HC that laws related to intermediaries have not changed in the GST regime, this will be relevant in GST cases as well.

In this edition, we have analysed the special schemes, i.e., the Manufacturing and Other Operations in Warehouse Regulations, 2019 scheme and the Authorised Economic Operator programme under the customs law.

On the direct tax front, the Central Board of Direct Taxes (CBDT) has notified income tax return forms for AY 2023-24 and new forms (audit report) for charitable or religious trusts, education institutions and universities. The CBDT has also notified the Centralised Processing of Equalisation Levy Statement Scheme, 2023 to process the equalisation levy statement.

I hope you will find this edition an interesting read.

Vikas Vasal

National Managing Partner, Tax
Grant Thornton Bharat

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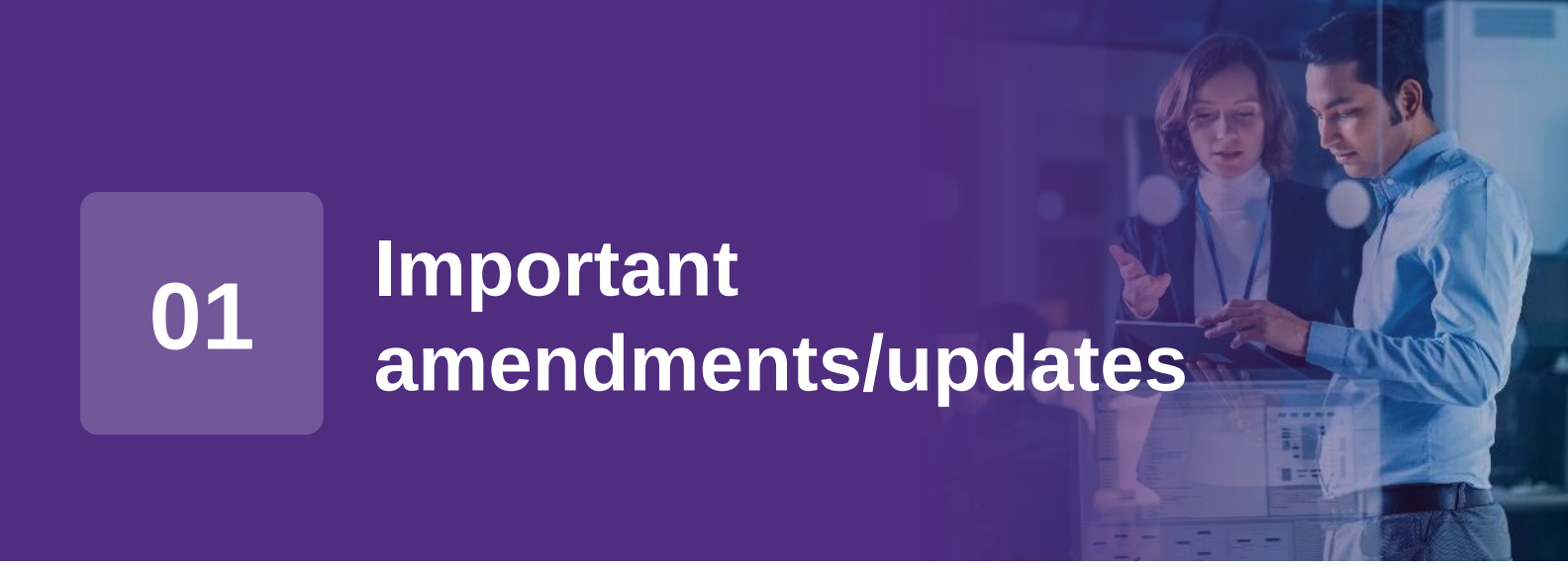


01 Important amendments/updates

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

49th GST Council meeting: Key recommendations and decisions

Particulars	Recommendations
GST Appellate Tribunal	• The GST Council adopted the GoM report to constitute the tribunal with certain modifications. • The final draft amendments to the GST laws shall be circulated to the members for their comments.
Measures for facilitation of trade	I. Rationalisation of late fee for GSTR-9 from FY 2022-23 onwards • If the AT is up to INR 5 crore, the late fees shall be INR 50 per day, subject to a maximum of 0.04% of turnover in the state/ UT. • In case the AT is more than INR 5 crore and up to 20 crore, it shall be INR 100 per day, subject to a maximum of 0.04% of turnover in the state/UT. • There shall be no change in the late fees if the AT exceeds INR 20 crore. II. Revocation of cancellation of registration • The time limit for applying for the revocation of cancellation of registration is to be increased from 30 days to 90 days (further extendable by 180 days). • There will be amnesty for past cases where registration has been cancelled on account of non-filing of the returns but the application could not be filed within the prescribed time, by allowing such persons to file such an application by a specified date. III. Assessment of non-filers of returns • The period for filing of return for enabling deemed withdrawal of best judgement assessment order is to be increased from 30 days to 60 days (extendable by another 60 days). • Amnesty is to be provided for past cases where the return could not be filed within the prescribed time but has been filed, along with due interest and late fee, irrespective of whether an appeal has been filed or not against the assessment order or whether the said appeal has been decided or not. IV. Amnesty scheme for pending returns • There will be conditional waiver/reduction of late fee for pending composition scheme return, annual return and the final return. V. Place of supply of services of transportation of goods • In cases where the location of the supplier of services or the location of the recipient of services is outside India, the place of supply of services of transportation of goods shall be the location of the recipient of services.
GST rates on goods and services	• Taxable services provided by the courts and tribunals shall be taxable under the RCM. • Exemption to any authority, board or body set up by the CG or state government, including the National Testing Agency for the conduct of entrance examination for admission to educational institutions shall be extended. • The GST rate on rab is to be reduced from 18% to 5% if sold packaged and labelled, and nil if sold otherwise. Past periods are to be regularised on an 'as is basis' on account of genuine doubts. • The GST rate for pencil sharpeners shall be reduced from 18% to 12%.

Particulars	Clarification
Approval of the GoM report on capacity-based taxation and special composition scheme in certain sectors on GST	• To plug leakages and improve revenue collection from commodities, such as *pan masala*, *gutkha* and chewing tobacco, the GST Council approved the GoM's recommendations, including inter-alia: – Capacity-based levy is not to be prescribed – Implementation of compliance and tracking measures – Exports only against a LUT – Levy of compensation cess to be changed from ad valorem to specific tax based
GST compensation to states	• The GOI has decided to release the pending balance of GST compensation of INR 16,982 crore among 23 states for June 2022 from its own resources, which will be recouped through future compensation cess collection. • In addition, the centre would clear the admissible final GST compensation to those states that have provided the revenue data certified by the Accountant General of the states, amounting to INR 16,524 crore.

Our Comments

The key expectations from the Union Budget for 2023–24 included, inter-alia, the setting up of a GST Appellate Tribunal and the introduction of an amnesty scheme, but these expectations were not met. Positively, the GST Council has taken up both these matters in its 49th meeting.

The proposed amnesty scheme aims to provide relaxation to the taxpayers and foster improved compliances. The delay in setting up the GST Tribunal has led to ongoing litigation and ambiguous legal positions. In this respect, the acceptance of the GoM report with certain modifications indicates that the GST Tribunal shall be hopefully constituted with some amendments under the law. The constitution of the GST Tribunal shall help in resolving prolonged litigations and reducing the burden on HCs.

The recommendations made by the GST Council would facilitate ease of doing business and provide relief to taxpayers.

Nevertheless, the actual impact would only be assessed post issuance of the relevant circulars/notifications/law amendments to give effect to these recommendations.

Furthermore, the GoM report on online gaming could not be taken up at this meeting and is expected to be discussed in the next GST Council meeting.

(Press release dated 18 February 2023)

GSTN issues advisory on opting for payment of tax under the forward charge mechanism by a GTA

In accordance with Notification No. 03/2022 – Central Tax (Rate) dated 13 July 2022, the GSTN has provided an option on the GST online portal to all the existing taxpayers providing goods transport agencies services who choose to pay tax under the forward charge method.

The GTA needs to submit an option in Annexure V Form every year, before the commencement of the FY.

Once filed, the option cannot be withdrawn during the year. The deadline for filing the Annexure V Form is 15 March of the preceding FY.

The option for FY 2023-24 has been made available on the portal, which is valid until 15 March 2023.

(GSTN advisory dated 25 February 2023)

GSTN issues advisory on geocoding of address of principal place of business

The GSTN has made available the functionality for geocoding the principal place of business address (i.e., the process of converting an address or description of a location into geographic coordinates) on the GST portal.

This feature is introduced to ensure the accuracy of address details in GSTN records, and to streamline the address location and verification process.

This functionality can be accessed under the Services/Registration tab in the FO portal. The system-generated geocoded address will be displayed, and taxpayers can either accept it or update it as required.

If the system-generated geocoded address is unavailable, a blank will be displayed, and taxpayers can directly update the geocoded address.

Once the taxpayer has submitted the geocoding details, the geocoding link will no longer be displayed on the portal. This is a one-time activity, and once submitted, revision in the address is not allowed. The functionality will not be visible to the taxpayers who have already geocoded their address through new registration or core amendment.

This functionality is available now for normal, composition, SEZ units, SEZ developers, ISD and casual taxpayers who are active, cancelled, and suspended.

Currently, this functionality is being made available for taxpayers registered in the state of Delhi and Haryana only, and it will gradually be opened for taxpayers from other states and UTs.

(GSTN advisory dated 24 February 2023)

GSTN introduces reporting of negative values in ITC table of Form GSTR-3B

The government, vide the Notification No. 14/2022 – Central Tax dated 5 July 2022, notified a few changes in Table 4 of Form GSTR-3B for reporting of correct information regarding ITC availed, ITC reversal and ineligible ITC in Form GSTR-3B. Accordingly, the net ITC is to be reported in Table 4(A) and ITC reversal in Table 4(B) of GSTR-3B. In view of the same, the impact of credit notes is also to be accounted on net off basis in Table 4(A) of Form GSTR-3B only.

Therefore, following changes have been made in the GST portal, which shall be applicable from the tax period - January 2023 onwards:

- The impact of credit notes and their amendments will now be auto-populated in Table 4(A) instead of Table 4(B) of GSTR-3B.
- In case the value of credit notes becomes higher than the sum of invoices and debit notes, the net ITC would then become negative, and the taxpayers will be allowed to report negative values in Table-4A.
- In addition, the taxpayers can now enter negative values in Table 4D(2) of GSTR-3B.

(GSTN update dated 17 February 2023)

Delhi GST department issues SOP for attachment/detachment of bank account of errant dealers

The Delhi Department of Trade and Taxes has observed that there have been pending demands under both the VAT and the GST law against which neither any objection/appeal has been made nor any dues have been paid off by erroneous dealers. Post issuance of notices to such dealers for the recovery of tax, interest, penalty and other dues, the ward/PO attaches the bank accounts.

In this respect, the department had earlier issued an SOP to instruct sending letters to the bank managers manually for attachment/detachment of the bank account. In order to streamline this process, the department has issued an SOP to be followed by the ward/PO:

- Mandatory approval of the Commissioner, Trade and Taxes, before attachment/detachment of bank accounts of erring dealers
- Issuance of a digitally signed letter by the concerned ward/PO to the bank manager for attachment/detachment of the bank account, along with a copy to the nodal officer
- Issuance of the letter in the prescribed format indicating the name, e-mail and mobile number of the concerned ward/PO
- An e-mail from the official email ID of such ward/PO to the bank manager
- Specific mention in the detachment letter issued by the ward officer that in case of any clarification, the bank can connect with the nodal officer

(No. F. 3(417)/GST/Policy/2021-22/253-60)

CBIC issues instructions pursuant to Performance Audit Report of the CAG regarding the SVLDRS, 2019

The SVLDRS, 2019 is an amnesty-cum-dispute settlement scheme that provides a one-time opportunity to the taxpayer to settle tax dispute and avail tax relief. It broadly covers four categories of cases, namely, litigation, arrears, investigation and voluntary disclosure. Pursuantly, an audit was conducted wherein the Performance Audit Report of the SVLDRS, 2019 has pointed out that some designated committees have irregularly processed declarations under 'voluntary disclosure', there was incorrect consideration of tax dues and there were inconsistencies in dealing with similar matters.

In this regard, the audit report has made certain recommendations as under:

- Protection of interest of revenue for declarations filed in cases under 'voluntary disclosure' without discharging any liability
- Creation of the list of non-SVLDRS challans linked to ARNs, thereby prevention from being used in the future
- Removal of settled cases from the pendency list of legal forums
- Rectification of errors where a discharge certificate has not been issued owing to technical reasons despite all requisitions being made

In view of the recommendations of the audit report, the CBIC had issued the following directions:

- Initiation of appropriate action in cases where declarations are filed under 'voluntary disclosure' but the declarant did not make payment of their own declared liability. Similar necessary action to safeguard the interest of the Revenue shall be taken in all other cases also where a discharge certificate was not issued due to non-payment of the estimated payable amount
- Regular monitoring of taxpayers who have availed reliefs under either VCES, 2013 or SVLDRS and should be kept in the tax net
- Identification and updation of cases where discharge certificates have been issued but the status shows as pending with CESTAT or Commissioner (Appeals)
- Withdrawal of appeals in SC or HC in case where discharge certificates have been issued and the expedition of processing of declarations where discharge certificates are yet to be issued
- Proper verification of non-SVLDRS challans linked with SVLDRS ARNs to prevent them from being reused in the future
- Resolution of all cases where discharge certificates could not be issued due to technical reasons despite fulfilment of all requisites and payments in time

(CBIC-6/1/2021-CX-VI Section-CBEC dated 6 February 2023)

CBIC clarifies on services of 'Agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act'

The CBIC has issued a circular on the leviability of service tax on the declared service, 'Agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act', under Clause (e) of Section 66E of the Finance Act, 1994.

The said expression has three limbs: (i) agreeing to the obligation to refrain from an act; (ii) agreeing to the obligation to tolerate an act or a situation; and (iii) agreeing to the obligation to do an act. The service of agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act, is nothing but a contractual agreement. A contract to do something or to abstain from doing something cannot be said to have taken place unless there are two parties, one of which expressly or impliedly agrees to do or abstain from doing something and the other agrees to pay consideration to the first party for doing or abstaining from such an act. Such contractual arrangement must be an independent arrangement in its own right. There must be a necessary and sufficient nexus between the supply (i.e., agreement to do or to abstain from doing something) and the consideration.

The CBIC has clarified that the activities contemplated under Section 66E(e), i.e., when one party agrees to refrain from an act, or to tolerate an act or a situation, or to do an act, are the activities where the agreement specifically refers to such an activity and there is a flow of consideration for this activity. Therefore, it has advised the authorities that while the taxability in each case shall depend on the facts of the case, the guidelines discussed above and jurisprudence that has evolved over time may be followed in determining whether service tax on an activity or transaction needs to be levied treating it as service by way of agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act. Furthermore, Circular No. 178/10/2022-GST dated 03 August 2022 issued under the GST may also be referred to in this regard.

(Circular No. 214/1/2023-Service Tax dated 28 February 2023)

Karnataka Budget 2023 proposes 'Karasamadhana Scheme' to waive off interest and penalty

The Karnataka government had first introduced the Karasamadhana Scheme 2021 to reduce the arrears arising out of the enactments administered by the Commercial Tax Department that existed before the introduction of GST. Earlier, the Karnataka government extended the time for payment of tax to avail the benefits under the Karasamadhana Scheme, 2021 up to 31 January 2022.

Aiming to resolve the pre-GST legacy tax disputes and for prompt collection of arrears without litigation, the Karnataka Budget 2023 has proposed the Karasamadhana Scheme to waive off interest and penalty payable by a dealer on making full payment of tax arrears on or before **30 October 2023.**

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

Government announces Vivad Se Vishwas-I scheme to provide relief to MSMEs

In order to provide relief and support to the MSMEs for difficulties faced by them during the COVID-19 pandemic, the government has announced the Vivad Se Vishwas-I scheme.

The scheme will provide relief in all contracts for procurement of goods and services entered into by any ministry/department/attached or subordinate office/autonomous body/CPSE/public sector financial institution, etc. with MSMEs.

Under the scheme, 95% of the amounts forfeited for non-fulfilment of the contract between 19 February 2020 and 31 March 2022 shall be refunded. However, no interest shall be granted on the amounts refunded.

Contractors/suppliers registered as MSMEs as on 31 March 2022 shall be eligible under the scheme for cases where the original delivery period/completion period was between 19 February 2020 and 31 March 2022.

The date of commencement of the scheme shall be notified separately.

(Office Memorandum No. F.1/1/2023-PPD dated 6 February 2023)

DGFT issues circular for processing of pending MEIS/SEIS applications at RAs

Representations were received by the DGFT to expeditiously dispose of the MEIS/SEIS applications pending due to filing at the wrong jurisdiction. In this regard, the DGFT has clarified that the MEIS and SEIS schemes have now been discontinued w.e.f. 01 January 2021 and 01 April 2020 respectively and are on the verge of final closure. Therefore, the transfer/migration of files from one RA to another is not possible.

Hence, all such pending applications due to filing at wrong jurisdiction shall be reponed by the RAs and examined again on merits/additional documents submitted by the firm as per the extant policy and procedural conditions. Furthermore, the RAs shall also grant a personal hearing to the applicants before rejecting their case. Further, all requests for transfer shall be remanded back to the RA for necessary action..

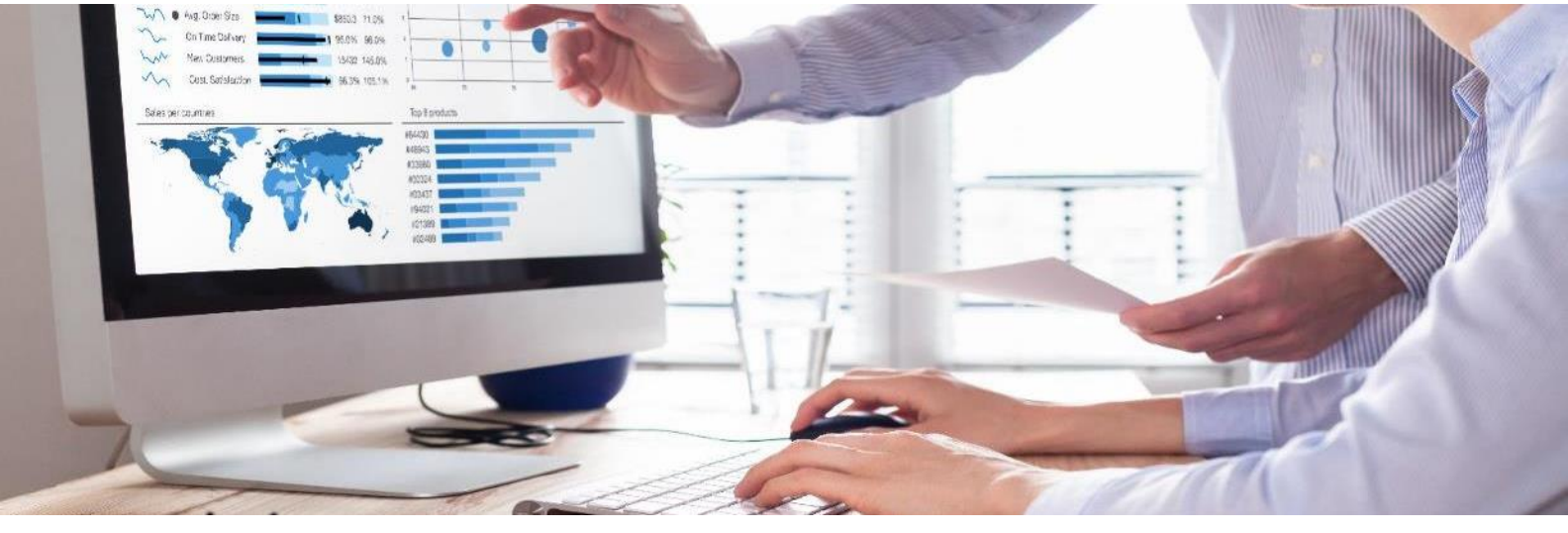
(Circular No. 46/2015-2020 dated 20 February 2023)

CBIC issues clarification for time-bound verification of applications for public warehousing licensing

The CBIC noticed that unreasonable delays are happening for verification of applications for public warehousing licensing. The CAG Report of India has also observed implementation aspects relating to the non-capturing of certain details in the application for warehousing license, annual renewal of solvency certificate, annual renewal of the risk insurance policy and irregular storage of goods in public/private bonded warehouses.

In this regard, to ensure time-bound completion of the verification, the CBIC has amended the relevant circular and prescribed that the antecedent verification must be completed within 45 days of receipt of the application.

(Circular No. 05/2023-Customs dated 21 February 2023)



DGFT provides one-time relaxation in submission of additional fee to cover excess duty utilised in EPCG authorisations

The DGFT has provided a one-time relaxation in procedure in respect of acceptance of fee for excess duty utilisation under the EPCG scheme.

Earlier, a Public Notice No. 03 dated 13 April 2022 was issued to allow the EPCG authorisation holder to furnish additional fee, to cover excess duty utilised, to the RA concerned at the time of filing an application for EODC.

To facilitate the ease of doing business, it has been decided to permit the RAs to allow the authorisation holder to furnish additional fee to cover the excess duty utilised for the EPCG authorisations issued under the FTP 2009-14 (extended up to 31 March 2015) also at the time of application for EODC, subject to the condition that the excess duty utilised was not more than 10% of the duty saved value of the authorisation.

(Public Notice No. 58/2015-2020 dated 24 February 2023)

DGFT prescribed the levy of composition fee in case of extension of EOP under AA scheme

To integrate a uniform and transparent system for implementation of all PRC decisions, including previous decisions involving the process of levying composition fee in case of extension of EOP and/or regularisation of exports already made under the AA scheme, the DGFT has notified the prescribed levy of composition fee in case of an extension of EOP under the AA scheme. This will help in ease of doing business and reduction of the transaction cost.

CIF value of AA licenses issued	Composition fee to be levied
Up to INR 2 crore	INR 25,000
More than INR 2 crore to INR 10 crore	INR 50,000
Above INR 10 crore	INR 1 lakh

(Public Notice No. 59/2015-2020 dated 28 February 2023)

02 Key judicial pronouncements

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

Vouchers are neither goods nor services and are mere instruments accepted as consideration for supply of goods or services – Karnataka HC

Summary

The Karnataka HC has overturned the order passed by both the Karnataka AAAR and AAR, thereby ruling that the supply of vouchers do not come under the purview of goods and services for the purpose of levying GST. The HC has held that the gift vouchers, cashback vouchers and e-vouchers are like currency where the value printed on these can be transacted only at the time of redemption of the voucher. Hence, the issuance of vouchers is like pre-deposit instruments, which have no inherent value of their own. The HC has observed that the vouchers are payment instruments that do not disclose the goods and services at the time of issuance. The HC has concluded that the vouchers do not fall under the category of supply of goods and services, and, in turn, are exempted from the levy of GST.

Facts of the case

- M/s Premier Sales Promotion Private Limited (hereinafter referred to as 'the petitioner') is a registered company engaged in procuring PPIs of gift vouchers, cashback vouchers and e-vouchers from the issuers and supplies them to its clients for specified face value. Such vouchers are in turn issued to the client's employees in the form of an incentive and to other beneficiaries under promotional schemes for purchase of goods and/or services as specified. The petitioner receives orders for supply of e-vouchers for sourcing them to the clients.
- The petitioner submitted an application before the Karnataka AAR regarding the taxability of PPI or vouchers. The AAR ruled that the supply of vouchers is taxable as the supply of goods and the GST rate shall be as per Entry No. 453 of Schedule III of Notification No. 01/2017 Central Tax (Rate) dated 28 June 2017.
- Subsequently, the petitioner approached the Karnataka AAAR challenging the order of the AAR. The AAAR affirmed the order passed by the AAR. Therefore, the petitioner filed the present writ petition.
- The petitioner contended that the prepaid instruments in the instant case do not disclose the goods and services at the time of issuance, but rather remain as an instrument until utilised to discharge obligation towards the supply of goods or services.
- The petitioner claims that the order passed by the AAAR is contrary to the law. Furthermore, the actual supply of goods or services occurs only when they are presented for redemption. Until it is redeemed, the voucher remains an instrument.
- The petitioner submits that vouchers can be considered as an actionable claim. Furthermore, such an actionable claim is neither goods or services as per Schedule III of the CGST Act. In order to substantiate its claim, the petitioner has reiterated the judgements in case of Sodexo SVC India Private Limited (2016 (331) ELT 23 (SC) and M/s. Kalyan Jewellers India (AAAR/11/2021).

Karnataka HC observations and ruling (Writ petition No. 5569 of 2022 dated 16 January 2023)

- **Vouchers do not have any intrinsic value:** The HC perused the definition of vouchers as prescribed under the CGST Act, which clarifies that the vouchers are mere instruments accepted as consideration for the supply of goods or services. These vouchers have no inherent value of their own. Since the vouchers are considered as instruments, they would come under the definition of 'money' under the CGST Act .
- **Issuance of vouchers is similar to a pre-deposit:** The HC has observed that the vouchers involved in the instant case are semi-closed prepaid instruments wherein the goods or services to be redeemed are unidentifiable at the time of issuance. Furthermore, the HC has viewed that the transaction between the petitioner and his clients amounts to the procurement of printed forms where such forms are like currency. The value of the voucher can be transacted only at the time of redemption of the voucher and not at the time of delivery of the voucher. Hence, the issuance of vouchers is like a pre-deposit. Accordingly, the HC held that the vouchers are neither goods nor services, and therefore cannot be taxed under the GST law.

Our Comments

Giving vouchers as gifts to employees or other beneficiaries as a part of promotional activities is now a common practice used by the industry. However, the classification and taxability of vouchers has been a subject matter of litigation even under the GST regime. There has been a lack of clarity regarding the nature of the vouchers, i.e., whether these vouchers are goods or services. In such an ambiguous scenario, various authorities have taken contrary views on this matter.

Earlier, in the case of Kalyan Jewellers India Limited, the Tamil Nadu AAAR had ruled that vouchers per se are neither goods nor services but are a method of payment for consideration. Even under the erstwhile regime, the Apex court in the case of Sodexo SVC India Private Limited had held that the transaction of trading in vouchers does not constitute the supply of goods because vouchers are payment instruments for the supply of goods or services at a future date.

In case of the present petitioner, earlier, the Karnataka AAR had ruled that the petitioner is involved in the trading of vouchers, and thus it amounts to supply under GST. Further, the transaction of sale of vouchers involves transfer of title, and hence would be treated as supply of goods. Successively, the Karnataka AAAR had upheld the view taken by the AAR. However, this view has been modified by the HC, adding much-needed clarity.

SC quashes CESTAT's order which held that the activity of packing/labelling of spare parts of earth-moving equipment amounts to manufacture and remands matter to CESTAT larger bench

The levy of excise duty on packaging and labelling of spare parts of earth-moving equipment has been a matter of long-drawn litigation for industries engaged in the manufacture of earth-moving equipment. Earlier, the CESTAT Mumbai, in the case of JCB India Limited, had held that the activity of packing/labelling of spare parts of earth-moving equipment amounts to manufacture under Section 2(f)(iii) of the Central Excise Act, 1956. The decision by the CESTAT Mumbai was further questioned by the CESTAT Chandigarh in the case of Action Construction Equipment Limited. The Chandigarh Bench expressed its disagreement with the decision of the Mumbai Bench and placed the matter before the President with a request to constitute a larger bench.

The SC has now set aside the order of CESTAT Mumbai, which held that such activity amounts to manufacture. Furthermore, considering the conflict between the Mumbai and Chandigarh Bench of the Tribunal, the SC has remanded the matter to the larger bench of the Tribunal and directed the President of the Tribunal to constitute a larger bench for quick disposal of the matter. The SC has directed to constitute the bench within four weeks and to give hearing preferably within six weeks.

SC dismisses Revenue's appeal against CESTAT's ruling which held that printing and selling of photos as photo books is exempt from service tax

Earlier, the CESTAT Chandigarh, in the case of Venus Albums Co. Private Limited, had held that the activity of printing photographs on plain printing paper and thereafter binding them and selling them as photo books amounts to manufacture and is exempt from service tax. The CESTAT had observed that the assessee cannot format, edit or alter the photographs but only prints them as photo books, which is a complete change in the identity and nature of the photographs when printed from soft form to hard bound form as a photo book.

This activity amounts to manufacture and is classifiable under HS Code 4911. Therefore, no service tax is payable by them and is exempt from service tax.

The Revenue had filed an appeal against the Chandigarh CESTAT's order before the SC.

The SC has now set aside the Revenue's appeal and stated that there is no substantial question of the law requiring consideration by this court in these appeals.

SC affirms Bombay HC's view that Revenue is not empowered to adjudicate SCN after inordinate delay

Summary

The SC has upheld the Bombay HC order disallowing the adjudication of SCNs pending for over 11 years. The HC had observed that the Revenue had decided to transfer the SCNs in a call book without intimating the said decision to the petitioner. The petitioner was completely unaware of such transfer of SCNs, and only on seeking a closure report was he informed that the cases had been transferred to a call book. Accordingly, the HC was of the view that the Revenue is entirely responsible for the gross delay in adjudicating the SCNs. The HC has opined that the SCNs being pending for such a long time despite the submission of a reply is unwarranted. Hence, the Revenue authorities are not empowered to adjudicate the impugned SCNs on the ground of inordinate delay. The SC has affirmed the findings of the Bombay HC and does not intend to interfere in the judgement pronouncement by the HC.

Facts of the case

- ATA Freight Line (I) Private Limited (the petitioner) is engaged in the buying and selling of space in vessel. The petitioner charges to its clients in exchange of facilities of cargo handling/freight services used for export/import of goods.
- The petitioner was served five SCNs for the payment of service tax on freight difference, against which it had filed a reply refuting all the allegations levelled in the impugned SCNs. However, the petitioner did not receive any communication or confirmation from the Revenue in acknowledgement of the responses filed for the SCNs.
- The petitioner understood that the submissions made by it have been accepted. Successively, in February 2021, the petitioner addressed a letter to the authorities requesting a copy of closure report, but the petitioner was informed that the impugned SCNs have been put in a call book.
- The petitioner submitted that it was unaware of the department's decision of transferring the SCNs to a call book. Furthermore, the transfer of SCNs pending since 2011, 2012, 2013, 2014 and 2016 was intimated to the petitioner on 12 April 2021, but not before that.
- The petitioner contended that the decision of transferring SCNs to a call book was never communicated and the terms and conditions of the circular dated 10 March 2017 were also not justified.
- The petitioner further submitted that it is not responsible for any delay in adjudication of the SCNs for the past several years. The entire action of the department of transferring the notices is contrary to the principles of law.

Bombay HC observations and ruling (Writ petition No. 3671 of 2021 dated 24 March 2022)

- **No intimation prior to letter seeking closure report:** The HC observed that the only information provided to the petitioner was that the SCNs were transferred to a call book as per the circular dated 26 April 2016, which dealt with various eventualities where the file can be transferred to a call book. Neither the affidavit-in-reply nor the arguments advanced by the department indicate that the petitioner was informed about the transfer of the file to a call book.
- **Adjudication of SCNs to be done within a reasonable period of time:** The HC opined that it is the Revenue's duty to adjudicate the SCNs and take it to a logical conclusion. The petitioner cannot be made to suffer for gross delay on the part of the department. Hence, the Revenue is responsible for keeping in abeyance without communication to the petitioner for more than 7 to 11 years.
- **Not allowed to proceed with adjudication at a belated stage:** The HC has observed that no order was passed by the Revenue against the impugned SCNs. Therefore, the petitioner could not file an appeal against the same. Considering the facts of the case, the HC has held that the Revenue would not be allowed to proceed with the adjudication of SCNs at such a belated stage.

SC observations and ruling (Special Leave Petition (Civil) No. 828 of 2023 dated 10 February 2023)

- **No interference with the HC ruling:** The SC has considered the facts of the case. Accordingly, it has held that it does not find any ground to interfere with the HC judgement. Hence, the SC dismissed the SLP filed by the Revenue.

Our Comments

It has become a common practice for the department to issue an SCN to safeguard revenue but keep the same pending for years. This results in uncertainty for the business. The higher judicial forums are coming heavily against such tactics from the department. In the case of Citedal Fine Pharmaceuticals, the SC held that every authority should exercise the power within a reasonable period. The SC opined that in cases where an inordinate delay in the issuance of a notice or demand for recovery is raised, it would be open to the assessee to contend that it is bad on the ground of delay.

In the present case, the SC has reiterated that any legal actions taken against the assessee must be concluded on time. The SC held that the Revenue could not keep such cases pending indefinitely. The decision of the SC is in line with its earlier stand and should bring relief to other assessees dealing with a similar situation.

DGGSTI officers are competent authorities to issue SCN post introduction of GST on erstwhile notification – Madras HC

Summary

The Madras HC has dismissed a batch of writ petitions and held that the DGGSTI is competent to issue an SCN post-GST based on erstwhile exemption notification. The petitioners argued that the aforesaid notification, under which the officials of the DGGSTI have assumed jurisdiction, have not been expressly saved under Section 174(2) of the CGST Act, and hence the impugned orders/notice are without jurisdiction. The HC stated that the duality in the adjudicatory process continues, and practice and procedure, both pre- and post-GST, are consistent and involve participation of the officer of the DGGSTI in issuance of SCNs. Thus, the HC has concluded that until the provision specifically carves out an exception in the context of an exemption notification, the same shall continue even under GST. Therefore, the assumption of jurisdiction by the officials of the DGGSTI is valid.

Facts of the case

- A.R. Rahman (hereinafter referred to as petitioner), the petitioner, is a renowned music composer, composing songs and background score for films. The DGGI had issued an SCN proposing to levy service tax on the transfer of copyright in musical work for the period April 2013 to June 2017 on the ground that the petitioner was not the owner of the musical work composed, and hence no copyright as contemplated under Section 13(1)(a) of the Copyright Act, 1957 vested in him.
- The SCN proposed to impose service tax under Section 66E(c) for temporary transfer, permitting use, or enjoyment of copyright in a musical work. The petitioner had claimed exemption in respect of receipts from temporary transfer or permitting to the use or enjoyment of a copyright in terms of Clause (15) of Notification No. 25 of 2012.
- The petitioner submitted that although the SCN is issued from January 2013 to June 2017, it has been issued post the GST implementation. The petitioner viewed that the proceedings are without jurisdiction, as DGGSTI does not have legitimate power to issue SCN.
- The petitioner contended that he is the sole and absolute owner of a copyright that subsists in the musical works composed by him. The petitioner assigns the copyrights to the film producers under an agreement executed between them.
- In a previous petition filed by the petitioner, the Madras HC granted an interim stay on the order demanding that service tax on copyright is a respect of musical work.
- The petitioner contended that the SCN issued by the DGGSTI officials under the Finance Act, 1994, is unsustainable.

Madras HC observations and ruling (Writ petition No. 12291 of 2019 dated 2 February 2023)

- **Assignment of adjudication of SCNs under erstwhile laws:** The HC viewed that under the erstwhile service tax regime, the jurisdiction for issuing SCN and passing orders is dealt by Notification No. 22/2014 where the board has appointed the Directorate General of Central Excise Intelligence and Directorate General of Service Tax as central excise officers. As per Notification No. 2/2015-ST, the board has specified that the Principal Director General of the Central Excise Intelligence shall have the power to assign SCN issued by the Directorate General of Central Excise Intelligence.
- **Section 174 saved all rights, privileges and obligations under erstwhile laws:** Section 174 of the CGST Act unequivocally saved all rights, obligations, privileges and liabilities that were available under the old laws, which would continue in the new regime. While interpreting the effect of repeal and savings clauses, it needs to be ensured that there is smooth continuity rather than one that disrupts the flow of the levy itself. The court also needs to consider if the new enactment specifically militates against such continuance.
- **Consistency in procedure for adjudication:** The HC observed that indirect tax departments follow the practice of issuance of SCN by one authority and its adjudication by another. The dual procedure has been preferred by the department to be in the interest of administrative feasibility. The HC has propounded that the court is guided by consistency in procedure adopted by the authorities and there is a need to examine the procedure, including adjudication, and the issuance of SCN post the introduction of GST.
- **Jurisdiction of DGGSTI officials is valid:** The HC referred to Circular No.169/01/2022- GST, wherein it can be drawn that practice and procedure, both pre-GST and post-GST, are consistent and involve the participation of the DGGSTI officer in issuance of SCN. Accordingly, the HC dismissed the petition and concluded that the assumption of jurisdiction by the DGGSTI officials is valid under law.

Our Comments

Earlier, in the case of Redington (India) Limited, the Madras HC had ruled that the officers of the DGGSTI are Central Excise officers and can issue SCN and adjudicate service tax demand. In the present case also, the Madras HC has stated that there was no necessity for the DGGSTI to invoke the General Clauses Act since Chapter-V of the Finance Act, 1994, which had been omitted by virtue of Section 173 of the CGST Act, had been saved by the operation of Section 174(2).

Thus, the present ruling is likely to open a Pandora's box for many other assessees and will have widespread ramifications, as more assessees are likely to come under the DGGSTI's scanner.

Marketing/promotion services, engineering support services and accounting and management reporting services provided on own account to overseas holding company would not qualify as intermediary service – CESTAT Mumbai

Summary

CESTAT Mumbai held that the appellants, engaged in providing marketing and promotion services, engineering support services to the distributors/customers and accounting and management reporting services to its overseas holding company, cannot be regarded as an intermediary under the erstwhile service tax law. The CESTAT further observed that there is no tripartite agreement, and such services are provided on a principal-to-principal basis and consideration is also decided on the cost-plus markup basis. Therefore, the CESTAT held that the appellants are independent contractors and not agents or representatives or intermediaries. Accordingly, it held that the services provided by the appellants to their overseas holding company qualify as export of service and it is eligible for refund.

Facts of the case

- M/s Idex India Private Limited (the appellants) provide business support services to its overseas holding company M/s Idex Corporation, USA, and its subsidiaries such as Idex Japan, etc.
- The appellants aid the selling activities of various business units of the overseas holding company by rendering the services, viz., marketing and promotion services, engineering support services to the distributors/customers and accounting and management reporting services.
- The appellants had filed five refund claims under Notification No. 27/2012-CE(NT) dated 18 June 2012 read with Rule 5 of the CCR for unutilised accumulated CENVAT credit.
- The adjudicating authority rejected all the five refund claims filed by the appellant on the ground that the services provided by the appellants to their clients cannot be treated as export of service as provided under Rule 6A of the STR, and so, they are not eligible for refund of the CENVAT credit lying under Rule 5. The authority stated that the services provided by the appellants are covered under Rule 4(a) of PPOS and the place of provision of service is the location of the service provider, which is in India.
- The learned Commissioner (Appeals) upheld the orders passed by the adjudicating authority.

CESTAT Mumbai observations and ruling (Service Tax Appeal No. 86812 of 2019 order dated 9 February 2023)

- **Appellant cannot be termed as an intermediary:** An activity between two parties cannot be considered as an intermediary. The intermediary does not include the person who supplies such goods or services or both on his own account. Therefore, there is no doubt that in cases wherein the person supplies the main supply either fully or partly, on a principal-to-principal basis, the said supply cannot come within the ambit of 'intermediary'. Therefore, in view of the facts involved herein, the appellant cannot be termed as an intermediary.
- **No proceedings initiated for recovering service tax:** If the Revenue is not in agreement with the claims of the appellants, and if, according to the Revenue the services in issue do not fall within the ambit of 'export of service', then the Revenue ought to have initiated the proceedings against the appellants for demanding the service tax in respect of a taxable service provided by the appellants. However, no such proceedings have been initiated by the Revenue. Therefore, in a way, the Revenue itself has allowed this taxable service provided by the appellants as 'export of service'. So, the Revenue cannot deny a refund by treating the service provided not to be export of service.
- **No proceeding for denial of CENVAT credit available:** Rule 5 is very specific and lays down how to determine the quantum of admissible refund from the accumulated CENVAT credit. It cannot be a proceeding for denial of the CENVAT credit available in the account of the claimant, and therefore, even if the refund is denied, then also the amount continues to remain in the CENVAT account of the claimant.
- **Appellant is an independent contractor:** Based on the agreement, the CESTAT observed that the appellant is providing the service of marketing and market research to the overseas recipient of service. The services are provided on a principal-to-principal basis and consideration is also decided as the cost-plus mark up. Therefore, there is no doubt that the appellants are independent contractors and not agents or representatives, or to be more precise, intermediaries.
- **Services provided by appellant qualify as export:** The CESTAT stated that the services provided by the appellant, namely, accounting and management reporting, after-sales support, and marketing and promotion, do not require the physical presence of the goods or the data. Therefore, the place of provision has to be determined in terms of Rule 3 of POPS Rules and is not covered under Rule 4(a) of POPS. Therefore, the services provided by the appellants to their overseas entities clearly qualify to be export and they are eligible for refund.

Our Comments

The taxability of 'intermediary services' has been a matter of extensive litigation under the GST law. However, the issue is expected to be settled post the verdict of the Punjab and Haryana HC in the case of M/s Genpact India Ltd. The HC has ruled that the petitioner, engaged in providing various BPO services, i.e., vendor data management, supply chain management, data analysis, technical IT support, developing, licensing, maintaining software, etc., to an overseas entity, cannot be regarded as an intermediary under the GST law.

Moreover, while pronouncing the above ruling, the HC also stated that there has been no change in the definition of the term 'intermediary' under the GST regime vis-a-vis the service tax regime. Thus, it implies that all of the previous regime's decisions and clarifications would be squarely applicable under the GST regime as well.

The present ruling by the CESTAT is a welcome ruling and should also help clear working capital blockages due to the pendency of huge refund claims for businesses in a similar industry.

Supply of food and beverages to hostel students cannot be treated as sale of goods – Andhra Pradesh HC

Summary

The Andhra Pradesh HC has held that the sale of food and beverages to hostel students by the petitioner, which is an educational institution, cannot be treated as sale of goods. The HC stated that the principal function of the petitioner is to impart education with a non-commercial motive and running of the hostel is incidental to the main activity. The petitioner, in its hostel, supplies food to the students, but the said activity is not done in the course of the business of running a restaurant, eating house or a hotel. Therefore, although the petitioner charges subsidised prices from the students for the supply of the food items and beverages, it cannot be treated as a sale of goods to bring under the purview of the AP VAT Act. Hence, the inclusion of the petitioner's institution in the category of dealer for the purpose of the AP VAT Act and assessing the same to tax is incorrect.

Facts of the case

- The Bhartiya Vidya Bhavan's residential public school ('the Petitioner) is a school established by the society's philanthropist with an object to provide education on a non-profit basis. The petitioner is one of the schools sponsored by the Bhartiya Vidya Bhavan in the state of Andhra Pradesh.
- The petitioner's school receives donations from the society and institutions that are eligible for exemption under Section 80(g) of the Income Tax Act, 1962. The petitioner remits surplus (if any) to the Bhartiya Vidya Bhavan Society.
- The petitioner has been directed to obtain registration under the AP VAT Act. Subsequently, it has been issued an assessment order proposing to levy VAT on the ground that the petitioner sells food items in the course of the business of running a restaurant/hotel.
- The petitioner has contended that it is engaged in providing education to children, and this activity will not qualify as an activity connected with trade, commerce or manufacture. In addition, the supply of food to the students is not being made in the course of business and running a restaurant.

Andhra Pradesh HC Observations and ruling (Writ petition No. 7417 of 2006 dated 30 January 2023)

- **Principal function is imparting education:** The fundamental or principal activity of the petitioner's educational institution is not that of buying, selling, supplying or distribution of the goods. Its function is to impart education, and that too on a non-profit motive. The petitioner, in its hostel, supplies food to the students, but the said activity is not done in the course of the business of running a restaurant, eating house or a hotel.
- **Supply of food items and beverages to hostel student cannot be treated as sale of goods:** The principal function of the petitioner is to impart education with a non-commercial motive, and running of the hostel is incidental to the main activity. Therefore, although the petitioner charges subsidised prices from the students for the supply of the food items and beverages, it cannot be treated as a sale of goods to bring under the purview of the AP VAT Act.
- **Categorisation of petitioner as a dealer under VAT is incorrect:** Section 2(10) (d) of the AP VAT Act specifically refers to only a restaurant or eating house or a hotel, but the word 'hostel' is not specifically included therein. Therefore, the HC has held that categorising the petitioner as a dealer under VAT and assessing tax liability thereon is incorrect.
- **Maintainability of writ petition as order passed without jurisdiction:** The HC observed that the impugned assessment order passed by the authorities is wholly without jurisdiction, as the petitioner does not come under the purview of 'dealer' as per the provisions of the AP VAT Act. Thus, it has held that the present writ petition is maintainable before the HC. Accordingly, the petition is allowed, and the order of the authorities is held as illegal, arbitrary and contrary to the provisions of the AP VAT Act.

Our Comments

On a similar issue earlier, even the Allahabad HC, in the case of the Indian Institute of Technology, had ruled that the provision of food is a minor, ancillary and incidental aspect of the main activity, which was imparting education. As a result, the petitioner cannot be categorised as a dealer under the Allahabad VAT Act.

The service provided by an educational institution to its students, members and staff, including the supply of food and beverages, has been exempted even under the GST law. The Board, vide its Circular No. 85/04/2019-GST dated 01 January 2019, has clarified that the supply of food and beverages by an educational institution to its students, faculty and staff, where such supply is made by the educational institution itself, is exempt since the inception of GST. However, such supply of food and beverages by any person other than the educational institutions based on a contractual arrangement with such institution is leviable to GST at 5%.

03 Decoding advance rulings under GST

ITC reversals required w.r.t. sale of alcoholic liquor for human consumption covered under 'exempt supplies' – West Bengal AAR

Summary

The West Bengal AAR has observed that the sale of alcoholic liquor for human consumption would be treated as a 'non-taxable supply', and accordingly, the same falls under 'exempt supply' under the GST Act. The AAR held that the input tax is totally different and distinct from outward supply. Thus, the reversal of tax charged on inward supplies, which are altogether different from outward exempted supplies of alcoholic liquor for human consumption, would not result in discharging GST liability on outward supplies. The AAR clarified that the activities of selling of alcoholic liquor for human consumption qualify as 'supply' under the GST Act. However, the same is not taxable, which is in line with Article 366(12A) of the Constitution of India. Therefore, the AAR has ruled that the applicant is required to reverse the ITC attributable to the exempt supply, i.e., alcoholic liquor for human consumption.

Facts of the case

- Karnani FNB Specialities LLP ('the applicant') is engaged in providing restaurant, catering and banquet hall services. Along with the aforesaid supplies or on a standalone basis, the applicant is also engaged in the selling/serving of alcoholic liquor for human consumption to its customers.
- The applicant approached the AAR to understand whether the applicant is required to undertake the ITC reversal to the extent of a turnover that relates to the sale of alcoholic liquor for human consumption.
- The applicant submitted that the Article 366(12A) of the Constitution specifically defines the term 'tax on goods and services' and specifically excludes the supply of liquor/alcohol for human consumption.
- The applicant submitted that the scope of 'non-taxable supply' is limited to those activities that would ordinarily attract the levy of GST but which have deliberately been kept outside the purview thereof and not those supplies for which the legislature lacks the necessary constitutional mandate. Furthermore, due to the lack of legislative competence, the CGST Act or any other state GST legislation cannot charge GST on the sale of alcoholic liquor fit for human consumption.
- The applicant relied upon maxim *Quando aliquid prohibetur fieri, prohibetur ex directo et per obliquum,* i.e., the settled position of law that whenever a thing is prohibited, it is prohibited, whether done directly or indirectly. Basis the same, the applicant pleaded that the sale of alcoholic liquor cannot be brought to tax indirectly by way of ITC reversal, as it would be construed as paying GST on output supply of alcoholic liquor by way of ITC reversals.
- The applicant also contended that since the scope of the GST, as set out in the Constitution, excludes alcoholic liquor, it is not open for the Act to legislate on it. Therefore, the applicant is of the firm view that the sale of alcohol, being outside the ambit of GST, is not liable for ITC reversals.

West Bengal AAR observations and ruling [22/WBAAR/2022-23 dated 09 February 2023]

- **Alcoholic liquor for human consumption qualifies as goods:** The AAR noted that the definition of goods provided under Section 2(52) of the CGST Act excludes only money and securities. In the absence of any explicit exclusion for alcoholic liquor for human consumption, being a movable property, the same qualifies as 'goods' and squarely gets covered under the purview of 'supply' under the CGST Act.
- **Alcoholic liquor for human consumption qualifies as exempt supplies:** The AAR further stated that Article 366(12A) provides specific exclusion towards GST chargeability on the supply of alcoholic liquor for human consumption. However, it does not provide exclusion of the same from the scope of 'supply' itself. The AAR concluded that the sale of alcoholic liquor for human consumption is a supply not leviable to tax under the CGST Act; therefore, the same would be covered under 'non-taxable supply' and would be treated as 'exempt supply'. Thus, the applicant is required to reverse the ITC attributable to such exempt supply.
- **Input tax and outward supply are distinct:** The AAR stated that since tax is not leviable on the supply of alcoholic liquor for human consumption under the GST Act, there cannot be any inward supply to the applicant of the said item on which tax is to be charged by its supplier or the applicant is liable to pay tax under the RCM. Thus, the ITC reversal of tax charged on inward supplies, which are altogether different from outward exempted supplies of alcoholic liquor for human consumption, would not result in the discharge of GST liability on outward supply.

Our Comments

Article 366(12A) of the Constitution defines GST as a tax on the supply of goods or services or both, except taxes on the supply of alcoholic liquor for human consumption. Accordingly, as per the charging section under the GST law, the supplies of goods or services or both are liable to GST, except on the supply of alcoholic liquor for human consumption. Since the supply of alcoholic liquor for human consumption is not leviable to GST, it is therefore covered under the definition of non-taxable supply and squarely under the exempt supply. Hence, as per the ITC reversal provisions, the taxpayer shall be liable to reverse the ITC attributable to the supply of alcoholic liquor for human consumption.

The present ruling announced by the West Bengal AAR is on similar lines and shall set precedence in analogous matters.

Also, this ruling shall impact the businesses that have offset the ITC in respect of supply of alcoholic liquor for human consumption.

04 Expert's column

Special schemes under customs law – MOOWR scheme and AEO programme

Contributed by

P S Krishnan
Partner, Tax
Grant Thornton Bharat

What is the significance of introducing the MOOWR scheme under the customs?

MOOWR has been an industry-friendly initiative, which can significantly benefit manufacturers/processors of goods in India. This scheme was first introduced by the government in 1966 under the customs law to encourage local manufacturing in India. This scheme has been given a momentum by liberalising certain key compliance requirements that were revised in the MOOWR scheme, notified on 01 October 2019 to align with the 'Atmanirbhar Bharat' initiative of the government. The revised scheme has captured the attention of many corporates, which cater not only to international markets, but also to domestic markets in India. MOOWR is aimed at transforming India into a competitive manufacturing location and an attractive investment destination.

MOOWR allows the manufacturer of goods to execute manufacturing processes or other operations in a private warehouse subject to specific conditions, such as 'duty deferment or waiver of duty on the import of raw materials or capital goods by the licensee'.

Some of the features of the MOOWR scheme are as follows:

- Duty deferment
  - For the purpose of manufacturing the goods, a manufacturer is required to invest its capital to procure certain capital goods. Most of such industries involved in the imports of capital goods for the purposes of manufacturing and exporting goods are benefited, as the scheme provides duty deferment until cleared for home consumption. In a case where the capital goods are being exported after the manufacturing process, the import duty shall be waived off. In short, the exporter enjoys the benefit of deferment or waiver of duties, as it plays a key role in strengthening the Indian export market.
  - Similarly, where raw materials are imported and used for the manufacture of export products, customs duty is waived if the finished goods are exported.
- There is no time limit for the storage of imported goods/DTA sourced materials subject to use in the process of manufacture or other operations
- Any existing business or new facility can be converted to a bonded premise with no specific eligibility criteria (product, investment)
- There is no export obligation in case of a bonded warehouse, unlike other schemes, such as AA, SEZ, EOU and EPCG.
- Another key feature of the scheme is the permit for job work. In a case where the manufacturer requires movement of the raw materials to the job worker, the scheme allows movement on a duty-free basis.

To be precise, this scheme is paving way towards the government's core vision of 'Make in India'.

Who can be the beneficiaries from the scheme? What are the compliance procedures to be followed?

Any business can be a beneficiary under the scheme, as it allows manufacture, job work and the trading of goods. The scheme comes with unique features and conditions to comply with the customs provisions. On the compliance front, a single application-cum-approval form to the Principal Commissioner of Customs must be submitted with relevant documentation.

In addition, a digital record of the process of receipt, storage, operations and removal of goods in the warehouse must be maintained, along with a compliance of filing such details on a monthly basis.

The appointment of a warehouse keeper would be required to ensure the warehoused goods are cleared with appropriate approvals.

The record of goods cleared to the DTA upon payment of duties would also be required to be maintained.

How does the scheme treat the waste generated during the manufacture and the capital goods removed for home consumption?

The main purpose of the scheme is to allow the import of raw materials or capital goods on a duty-deferment basis for the manufacture of goods. In cases where the capital goods are cleared for home consumption, appropriate duties on such capital goods imports have to be paid. There are different views on the valuation to be adopted. While for BCD, it has to be the value on the date of import, for IGST, it has to be the transaction value or book value, whichever is higher.

For any waste resulting from the manufacturing process, the duty on such waste shall be paid.

Having known the significance of the MOOWR scheme, is there any other scheme introduced for ease of compliances to the exporters and importers?

Another such scheme is AEO, which is a programme under the guidance of the SAFE Framework adopted by the WCO.

An AEO is a business entity involved in the international movement of goods requiring compliance with provisions of the customs law. This scheme has been divided into three tiers – Tiers 1, 2 and 3. All three tiers provide for varying and incrementally increasing level of facilitation to the status holder. This scheme has also been extended to logistics service providers, custodians or terminal operators, customs brokers, and warehouse operators.

This certification enables customs administration to identify the safe and compliant business entity and provide them a higher degree of assured facilitation. This segmentation method enables customs resources to focus on less non-compliant or risky businesses for control.

Thus, the AEO certification intends to secure the international supply chain by permitting recognition to trustworthy operators and encouraging best practices at all levels in the international supply chain. Through this programme, the customs shares its responsibility with the businesses, while at the same time rewarding them with numerous additional benefits.

What are the benefits of the referred AEO programme?

The AEO scheme provides the benefit of a status holder. As a status holder, the customs authorities provide them with various benefits and ease in conducting the business, such as remission of complete or partial bank guarantee requirements, waiver of merchant overtime fees, deferred payment of duties, direct port delivery of their imports, and promoting timely refunds and settlements.

Unlike the normal importers who may face demurrage due to a delay in clearances, the certificate holder enjoys a major benefit of clearing the imports or exports on a fast-track clearing process.

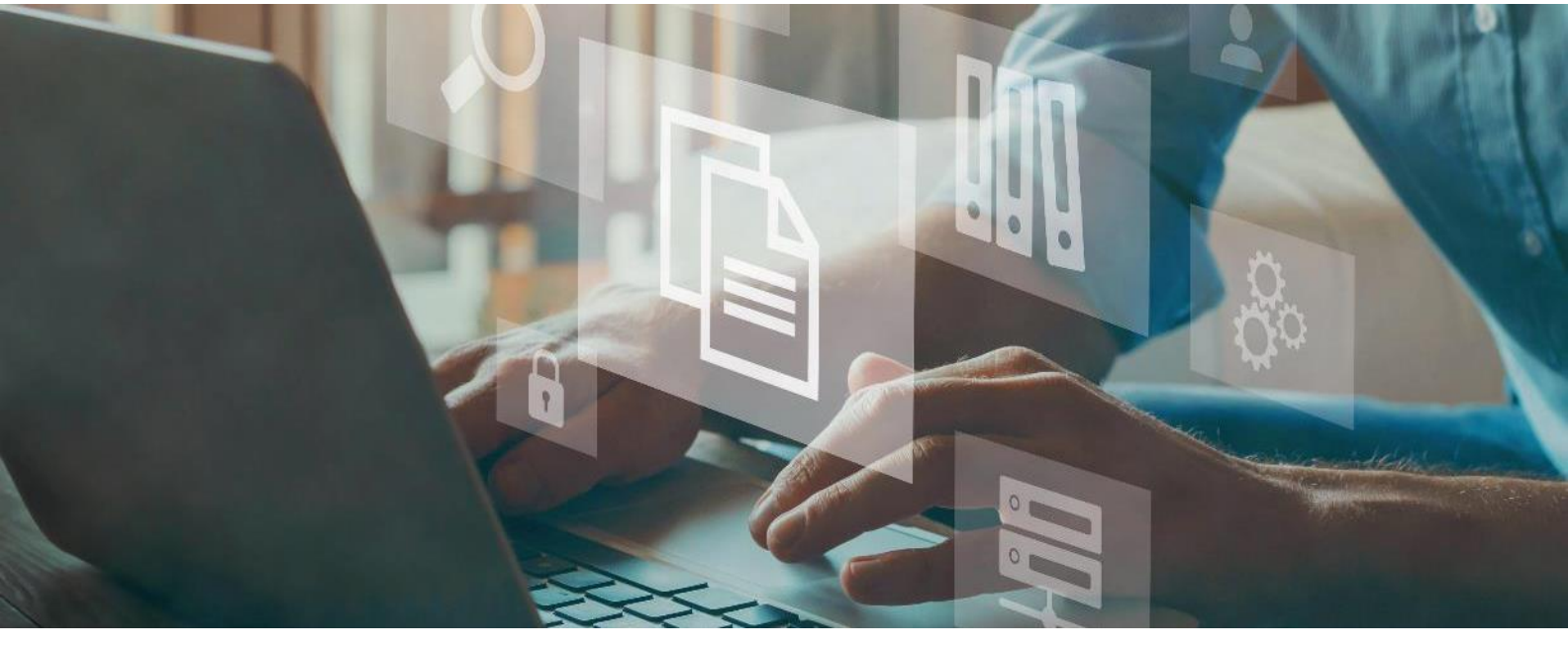
The AEO certificate holders are recognised worldwide as safe, secure and compliant business partners in international trade and get trade facilitation by a foreign customs administration with whom India enters into a mutual recognition agreement/arrangement.

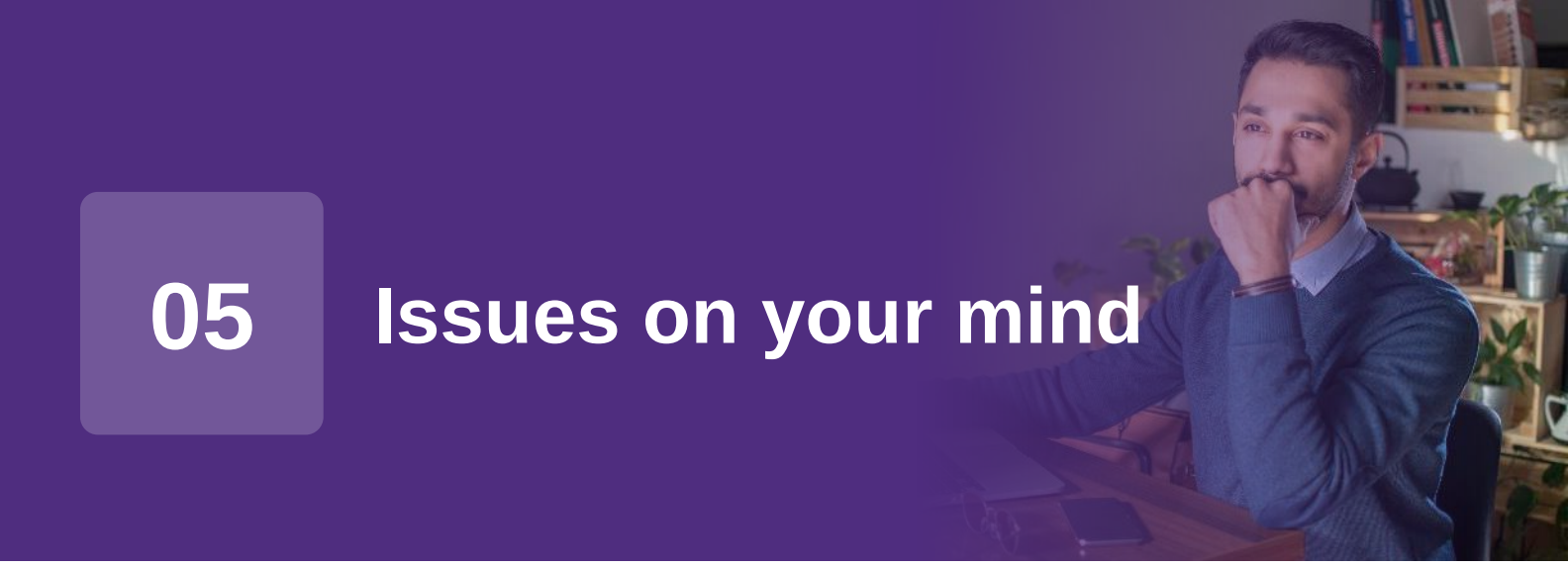
In addition, exemption from permission on a case-to-case basis in case of the transit of goods, waiver of bank guarantee in case of trans-shipment of goods imported, faster approval for new warehouses in case of warehouse operators, etc., are some other benefits provided to an AEO certificate holder.

What are the key requirements for an exporter/importer to ensure that the benefit of an AEO programme can be availed by them?

The requirements under the scheme are not complex. An importer/exporter must have some business activity in the last three FYs and should be a part of the international supply chain. In order to substantiate the same, a minimum of 25 documents (shipping bills or BOE) pertaining to the last FY should be submitted. The nodal officer can also consider accordingly the AEO Tier 1 or Tier 2 status to new businesses on a case-by-case basis.

The SOP for safety and security plans and the process map for the movement of goods in international trade must be ensured.





05 Issues on your mind

1. Why has the facility of geocoding of the principal place of business been introduced under GST?

This facility has been introduced for the taxpayers, so that they can map geographic coordinates (latitude and longitude) of their address of the principal place of business on maps. This will ensure that the correct geocoded address is added to the system.

2. Is it mandatory for the taxpayers to geocode their principal place of business under GST?

No, it is not mandatory for taxpayers to geocode their address.

3. Is geocoding of address applicable for all business addresses?

No, geocoding of address is only applicable for the principal place of business and not for additional places of business.

4. What is GSTIN integration automation and the process to be followed?

GSTIN integration service allows trade to integrate their GSTIN with customs. To integrate GSTIN with customs, the following process needs to be followed:

Step 1: The GSTN integration functionality is available under ICEGATE services on the ICEGATE home page. Click on **Services >> Registration >> For Integrating GSTN to Integrate GSTIN with Custom.**

Step 2: Enter the GSTIN number and captcha and click on the ‘Submit’ button.

Step 3: On successful submission of GSTIN number and captcha, GSTIN will register with customs and reflect on customs after 24 hours.

5. What is IES and what are its benefits?

The IES for pre- and post-shipment rupee export credit is formulated to provide credit to the exporters at competitive rates. It is a tool for reducing the high cost of credit incurred by Indian exporters viz-a-viz their foreign counterparts. The scheme provides for specified interest rate subvention to all MSME exporters exporting any HS line and to merchant and large exporters exporting along the specified lines. All the MSME manufacturer exporters and other merchant manufacturer exporters exporting along the 410 HS lines can apply for the IES.

6. What is SWIFT under contactless customs and ICETAB?

SWIFT enables electronic communication between customs and other PGAs. The single submission of declaration, integrated risk management and the online NOC module have enabled efficient implementation of allied acts in the border.

A smart mobile app installed in ICETABs enables officers working in the examination section in customs formations who are on the move and require connectivity in the shed area to access the ICES, enter their comments, download e-Sanchit documents and carry out related tasks. These are secure tablets that are exclusively used by officers in the examination area.

06 Important developments under direct taxes

CBDT notifies ITR forms for AY 2023-24

CBDT has notified ITR forms (i.e., ITR-1 SAHAJ, ITR-2, ITR-3, ITR-4 SUGAM, ITR-5, ITR-6 and ITR-7) for AY 2023-24. The CBDT has also notified the format for ITR-V (i.e., ITR verification form) and ITR-Acknowledgement.

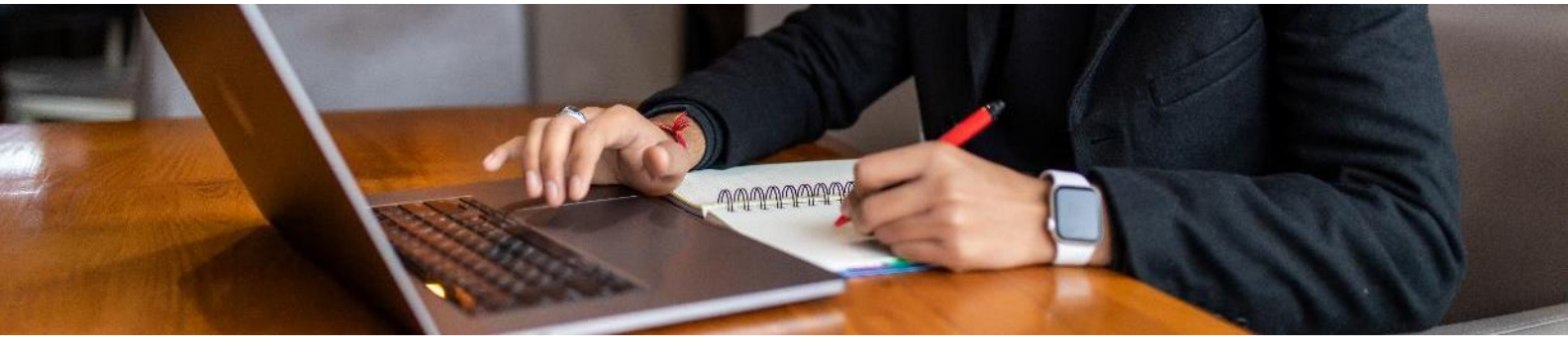
(Notification No. 4 of 2023 dated 10 February 2023 and notification No. 5 of 2023 dated 14 February 2023)

CBDT notifies new forms for charitable or religious trusts, education institutions, universities, etc.

The CBDT has notified the new Form No. 10B and 10BB (audit reports) for charitable or religious trusts, education institutions, universities, etc., by amending Rule 16CC and 17B of the IT rules. These forms are applicable from 01 April 2023. The applicability of the said forms is as under:

Form no.	Taxpayer	Conditions for applicability
10B (Rule 16CC)	Fund or institution or trust or any university or other educational institution or any hospital or other medical institution as referred under Clause (b) of the tenth proviso to Section 10(23C) of the IT Act	• The total income, without giving effect to the provisions of the sub-clauses (iv), (v), (vi) and (via) of Section 10(23C) of the IT Act, exceeds INR 5 crore during the previous year; or • Received any foreign contribution during the previous year; or • Applied any part of its income outside India during the previous year
10B (Rule 17B)	Charitable or religious trust under Section 12A(1)(b)(ii) of the IT Act	• The total income, without giving effect to the provisions of Sections 11 and 12 of the IT Act, exceeds INR 5 crore during the previous year; or • Received any foreign contribution during the previous year; or • Applied any part of its income outside India during the previous year.
10BB (Rule 16CC and 17B)	All other cases	

(Notification No. 7 of 2023 dated 21 February 2023)



CBDT prescribes the Centralised Processing of Equalisation Levy Statement Scheme, 2023

The CBDT has prescribed the Centralised Processing of Equalisation Levy Statement Scheme, 2023 (applicable with effect from 7 February 2023), for processing the Equalisation Levy Statement as per Section 167 of the Finance Act, 2016. Key features of the aforesaid scheme are as under:

- **Manner of processing:** It provides the manner in which the statement will be processed.
- **Invalid statement:** It specifies the cases where the Commissioner of Income Tax, CPC, can declare the statement as invalid.
- **Electronic communication:** Any notice/communication under the scheme is to be sent electronically via e-mail or reflected on registered electronic account on the designated portal or other modes specified under Section 282(1) of the IT Act.
- **No personal hearing:** It also provides that the assessee or the e-commerce operator is not required to appear personally or through authorised representative before the CPC in connection with any proceedings.
- **Amendment of intimation:** The application for amendment of intimation can be made within one year from the end of the FY in which such intimation was issued.

(Notification No. 3 of 2023 dated 7 February 2023)

07 Glossary

AA	Advance Authorisation
AAAR	Appellate Authority for Advance Ruling
AAR	Authority for Advance Ruling
AEO	Authorised Economic Operator
AP VAT Act	Andhra Pradesh Value Added Tax Act, 2005
ARN	Application Reference Number
AT	Aggregate Turnover
AY	Assessment Year
BCD	Basic Customs Duty
BoE/BE	Bill of Entry
BPO	Business Process Outsourcing
BSS	Business Support Services
CAG	Comptroller and Auditor General of India
CBDT	Central Board of Direct Taxes
CBIC	Central Board of Indirect Taxes and Customs
CCR	CENVAT Credit Rules, 2004
CESTAT	Customs Excise and Services Tax Appellate Tribunal
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
CPC	Centralised Processing Centre
CPSE	Central Public Sector Enterprises
Customs Act	The Customs Act, 1962
DGFT	Directorate General of Foreign Trade
DGGSTI	Director General of GST Intelligence
DTA	Domestic Tariff Area
EOP	Export Obligation Performance
EODC	Export Obligation Discharge Certificate
EOU	Export Oriented Undertaking
EPCG	Export Promotion Capital Goods Scheme
FAG	Faceless Assessment Groups
FTP	Foreign Trade Policy
FY	Financial Year
GOI	Government of India
GoM	Group of Ministers
GST	Goods and Services Tax
GSTIN	Goods and Services Tax Identification Number
GTA	Goods Transport Agency
HC	High Court
HS	Harmonised System
ICETAB	Indian Customs Tablet
IES	Interest Equalisation Scheme
IGST	Integrated Goods and Services Tax
INR	Indian Rupee
IT Act	Income Tax Act, 1961
IT Rules	Income Tax Rules, 1962
ITC	Input Tax Credit
ITR	Income Tax Return
LUT	Letter of Undertaking
MEIS	Merchandise Exports from India Scheme
MOOWR	Manufacturing and Other Operations in Warehouse Regulations, 2019
MSMEs	Medium, Small and Micro Enterprises
PGAs	Partner Government Agencies
PO	Proper Officer
POPs	Place of Provision of Service Rules, 2012
PPIs	Prepaid Payment Instruments
PRC	Policy Relaxation Committee
RA	Regional Authorities
RCM	Reverse Charge Mechanism
SAFE Framework	SAFE Framework of Standards to Secure and Facilitate Global Trade
SB	Shipping Bill
SC	Supreme Court
SCN	Show Cause Notice
SEIS	Services Exported from India Scheme
SEZ	Special Economic Zone
SLP	Special Leave Petition
SOP	Standard Operating Procedure
STR	Service Tax Rules, 1994
SVLDRS	Sabka Vikas (Legacy Dispute Resolution) Scheme
SWIFT	Single Window Interface for Facilitating Trade
TCS	Tax Collected at Source
USA	United State of America
UT	Union Territory
VAT	Value Added Tax
WCO	World Customs Organisation

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