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SHAPING A VIBRANT INDIA

GST Compendium

A monthly guide

November 2022

Editor’s note

In a landmark judgment, the Supreme Court of India (SC) has held that the classification of any part would be determined based on its end use and not based on the independent character of that part.

The Central Board of Indirect Taxes and Customs (CBIC) clarified that the decision of the SC is limited to a particular chapter heading and should not be considered a general rule. The CBIC also explained that the current practice would continue in all other cases as they have preferred a review petition against the SC order. As the review petition against the order of the SC got dismissed, the CBIC reiterated that its instruction issued post the original decision by the SC would remain valid even after the dismissal of the review petition.

Recently, renting a residential dwelling to a registered person has been brought under the Goods and Services Tax (GST) by the reverse charge mechanism. However, the Delhi High Court (HC) has held that renting a residential dwelling by a registered proprietor in his personal capacity for his own residence is exempt from GST. For example, a shopkeeper registered under GST would not be liable to pay GST for his rented residential property.

In this edition, we have analysed the Production Linked Incentive (PLI) schemes in India and how they are likely to boost manufacturing in India.

On the direct tax front, the Central Board of Direct Taxes (CBDT) has extended the due date for filing the income tax return for certain assessees. The CBDT has provided a mechanism for filing applications for the recomputation of income in case of withdrawal of the claim for deduction of surcharge and cess. In addition, the tax department has issued guidance for e-filing of the form, which is to be filed in a case where tax is not required to be collected.

Hope you will find this edition an interesting read.

Vikas Vasal

National Managing Partner, Tax
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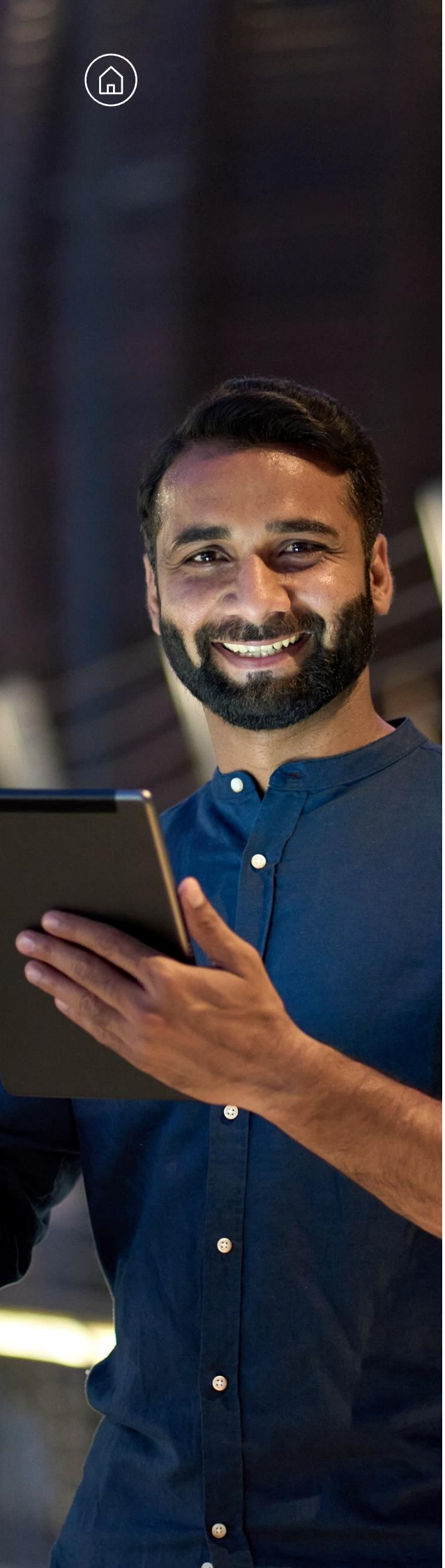

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01 Important amendments/updates

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

Clarification in relation to the time limit for certain compliances pursuant to the issuance of notification no. 18/2022-Central Tax

The CBIC vide notification no. 18/2022–Central Tax dated 28 September 2022 has notified that the CG has appointed 1 October 2022 as the date on which the provisions of Sections 100 to 114, except Clause © of Section 110 and Section 111, of the Finance Act, 2022, shall come into force. As a result, the deadline for the following compliances in respect of a certain FY has been extended to 30 November of the following FY, or the furnishing of the relevant annual return, whichever is earlier.

Corresponding provision of the CGST Act, 2017	Corresponding compliance requirements
Section 16(4)	Availment of ITC in respect of any invoice or debit note in the return
Section 34(2)	Declaration of the details of credit notes in the return
Proviso to Section 37(3)	Rectification of particulars in details of outward supplies
Proviso to Section 39(9)	Rectification of particulars furnished in a return
Proviso to Section 52(6)	Rectification of particulars in the statement furnished by a TCS operator

In respect to the above, there were certain doubts, which have been clarified as under:

S. no.	Doubts	Clarification
1	Whether the extended timelines are applicable in respect of compliances for FY 2022-23 onwards, or also applicable to the compliances for FY 2021-22?	The extended timelines are applicable to the compliances for FY 2021-22 onwards.
2	Whether the timelines for the compliances are extended to the date of filing/ furnishing of the return/ statement for November 2022, or the said compliances can be carried out in the return, or the statement filed/ furnished up to 30 November 2022?	The compliances, in respect of an FY, can be carried out in the relevant return or the statement filed/ furnished up to 30 November of the next FY, or the date of furnishing the annual return for the said FY, whichever is earlier.
3	Whether the deadline for filing the monthly return for October 2022 or the quarterly return ending for September 2022 has been extended?	No such extension has been made vide the amendments made in the CGST Act, 2017.

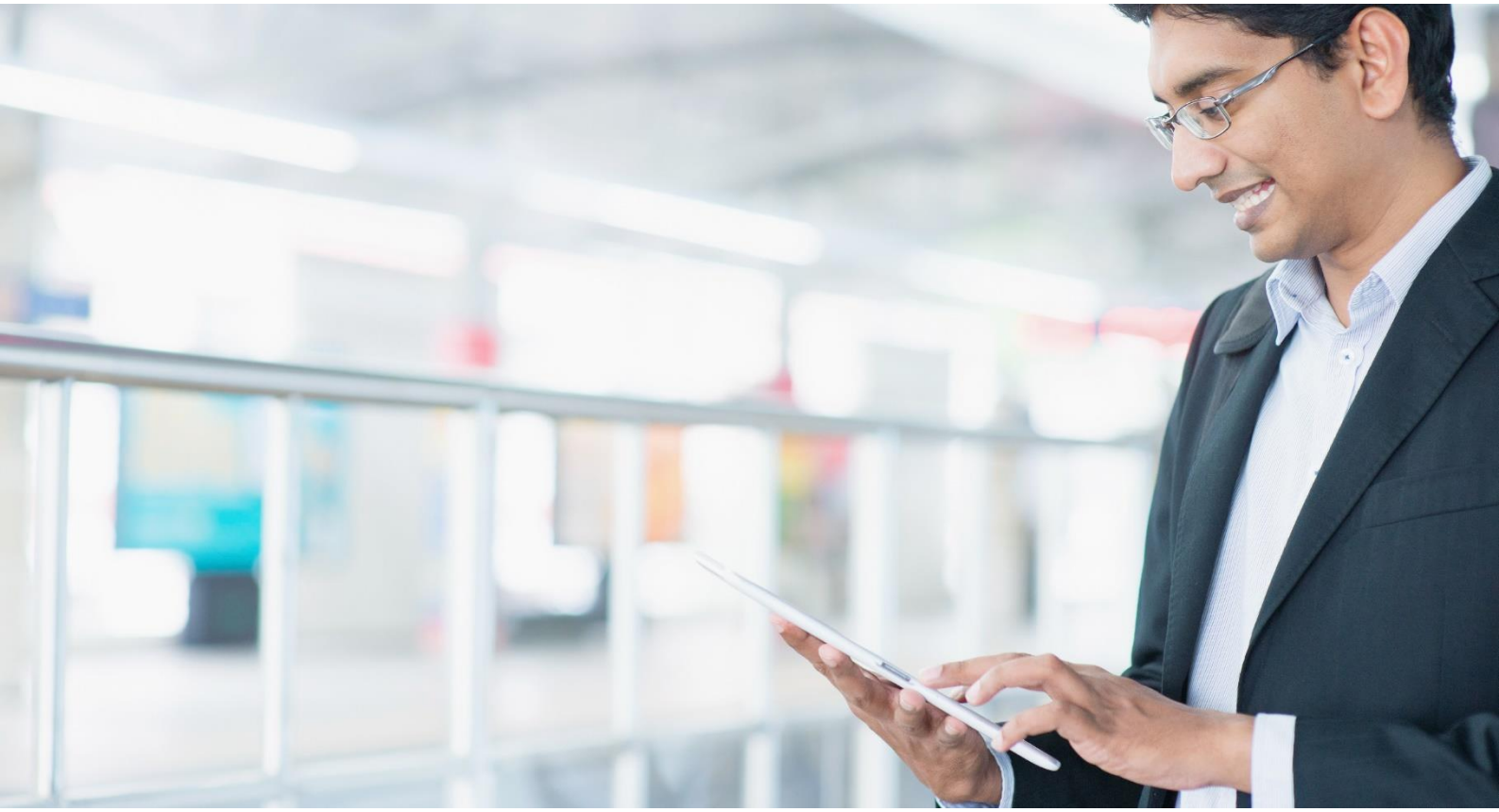
(Press release dated 4 October 2022)

GSTN advises on the sequential filing of GSTR-1 and filing of GSTR-1 before GSTR-3B on the GST portal

W.e.f. 1 October 2022, the CG has amended Sections 37 and 39 of the CGST Act, 2017. According to the amended provisions, if a taxpayer's previous GSTR-1 has not been filed, the taxpayer will not be permitted to file GSTR-1 for the current tax period. In addition, a taxpayer is not permitted to file GSTR-3B if GSTR-1 for the same tax period has not been filed.

These changes are being made prospectively and will be operational on the GST portal w.e.f. 1 November 2022. As a result, beginning with the tax period October 2022, the filing of GSTR-1 is necessary before the filing of GSTR-3B for the same tax period, and the filing of GSTR-1 for a previous tax period is required before the GSTR-1 filing for the current tax period.

(https://www.gst.gov.in/newsandupdates/read/559)



GST Council clarifies authority in relation to the issuance of SCN and actions taken by authorities

The GST Council has addressed the issues related to authority for action resulting from the issuance of an SCN and for issuing a recurring SCN if the central authorities initiate enforcement action against a taxpayer assigned to the state and vice versa.

In certain cases, the authority that initiates the investigation also issues a recurring SCN. However, in other cases, the relevant jurisdictional tax authority that administers the taxpayer is responsible for issuing repeated SCNs. It causes confusion and may result in neither of the authorities issuing the repeated SCNs in a timely way. The GST Council discussed the subject in its 47th council meeting, and suggested the following clarifications -

- Both the authorities at the centre and state level can take enforcement action against a taxpayer located within the state. As a result, any further action pertaining to the case, including, but not limited to, appeal, review, adjudication, rectification, and revision will rest with the authority that initiated the enforcement action. However, refunds may be provided only by the jurisdictional tax authorities that administer the taxpayer.
- Since recurring SCNs do not require any new investigation, issuance of such SCNs may be preferred by the actual jurisdictional authorities responsible for return assessment, as they will be able to access the taxpayers' records, determine the existence of the grounds of SCN, and decide whether to issue SCNs. Even if the same authority that took enforcement-based action is required to issue a recurring SCN, it will put an undue burden on the tax authority conducting the investigation to monitor the taxpayer's subsequent actions and to collect information and records required for issuing a recurring SCN. As a result, the repeating SCNs may be issued by the relevant jurisdictional tax authorities that administrate the taxpayer.

(OM dated 19 October 2022, F. no. 757/ Follow-up/GSTC/2018/8198- 19/10/22)

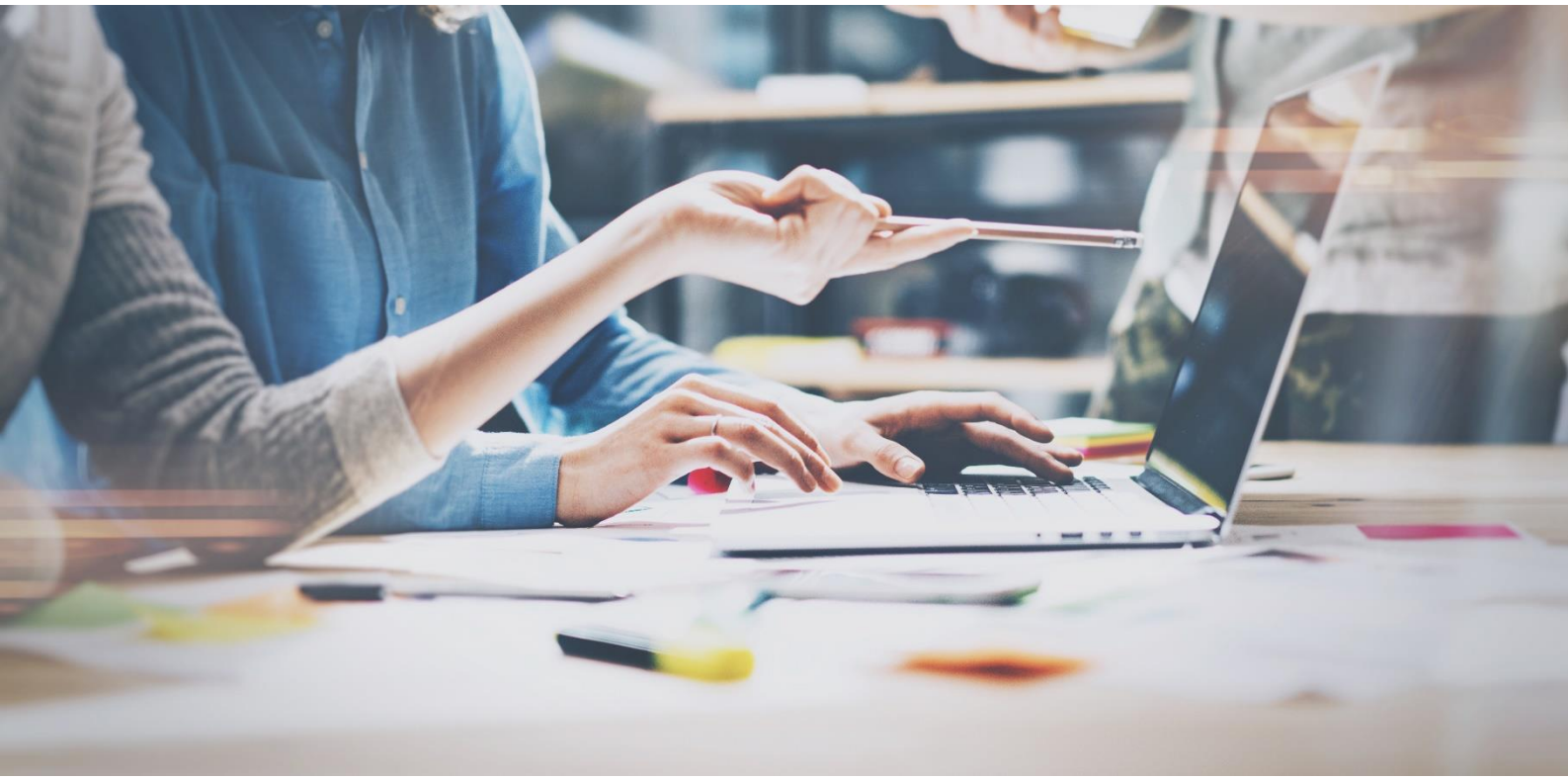
CBIC issues clarification regarding the SC's decision on the classification of 'relay'

The SC, in the case of M/s Westinghouse Saxby Farmer Ltd., had held that 'relays' are classifiable as parts of 'railway signalling equipment' under Heading 8608. The SC noted that those parts suitable for use solely or principally with an article in Chapter 86 could not be taken to a different chapter, as the same would negate the very object of group classification. Therefore, parts suitable for use solely or primarily with an article in Chapter 86 cannot be classified under a different heading.

According to the above, the CBIC issued instructions dated 5 January 2022 to address divergent practices adopted in 'auto parts' classification/assessment.

Since the review petition filed against the SC ruling has been dismissed, the CBIC has now clarified that the instruction issued earlier, and the SC ruling would apply only to the goods in that case and shall not apply to all goods. Further, the earlier instructions would be valid and do not require any changes.

(Instruction No. 25/2022-Customs dated 3 October 2022)



CBIC clarifies that Form GST DRC-03 is not a valid mode for the payment of pre-deposit for filing appeals under the erstwhile excise and service tax law

The CBIC noticed that the appeals filed under the erstwhile excise and service tax law by making pre-deposit payment through Form GST DRC-03 had been rejected on the ground that Form DRC-03 is not a prescribed method of payment of pre-deposit under the erstwhile laws. In the case of Sodexo India Services Pvt. Ltd., the Bombay HC directed the CBIC to issue immediate guidelines regarding pre-deposit through Form GST DRC-03 for service tax and excise matters due to a lack of provision in the GST law.

In this regard, the CBIC has clarified that payment made through Form DRC-03 is not a valid mode of payment for making a pre-deposit under the erstwhile central excise and service tax law. Pre-deposit for filing appeals under the erstwhile excise and service tax law should be made through the dedicated CBIC-GST Integrated portal only.

Form GST DRC-03 is prescribed for paying tax, interest, and penalty under the GST law. Further, Form GST APL-01 is prescribed for filing an appeal with the option of payment of admitted amount and pre-deposit through electronic cash/credit ledger under the GST law. Thus, Form GST DRC-03 is not a prescribed mode for pre-deposit payment even under the GST regime.

(CBIC-240137/14/2022-SERVICE TAX SECTION-CBEC dated 28 October 2022)

Declarant eligible for 'interest-waiver' where tax-arrears paid before filing SVLDRS application

The Madhya Pradesh HC, in the case of Sigma Construction, directed the CBIC to dwell upon the issue of interest waiver under the SVLDRS and issue a clarificatory circular/instruction, so that ambiguity prevailing in the field can be removed.

In this regard, the CBIC has clarified that the declarant under the SVLDRS is eligible to avail benefit of interest waiver where the ST-3 return is filed on or before 30 June 2019 and tax dues have been paid in full before filing the application, including the cases where the interest has been demanded by an SCN/OiO.

(Instruction No. CBIC-110267/75/2022-CX-VIII SECTION-CBEC dated 6 October 2022

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

Last date for filing annual returns under the EPCG scheme was extended till 31 December 2022

Pursuant to the extension of the existing FTP 2015-2020 and the related HBP, the DGFT has extended the last date for filing of annual returns under the EPCG scheme from 30 September 2022 till 31 December 2022.

(Public Notice No. 27/2015-2020 dated 29 September 2022)

CBIC issues instructions on acceptance of e-CoO issued under the India-UAE CEPA

Representations were received regarding the India-UAE CEPA, stating, among other things, that the importers are facing difficulties in availing of preferential tariff benefits based on the e-CoO issued by the UAE issuing authority, even though the said agreement expressly provides for it. In this regard, the CBIC has issued certain instructions with respect to the acceptance of the e-CoO as under:

- An e-CoO issued electronically by the UAE issuing authority is a valid document for the purpose of claiming preferential benefit under the India-UAE CEPA, provided it is issued in the prescribed format, bears the electronically printed seal and signatures of the issuing authority's authorised signatory, and meets all other requirements.
- The previously circulated specimen seals and signatures will continue to be used to verify the genuineness/authenticity of an e-CoO. If there is any doubt, the matter will be referred to the FTA cell (under the Directorate of International Customs) for verification with the issuing authority of the exporting country.
- For preferential benefit, the importer/customs broker must upload the e-CoO on e-Sanchit, and the e-CoO particulars, such as unique reference number and date, originating criteria, etc., must be carefully entered while filing the bill of entry.
- In the case of CoO defacement during out-of-charge, a printed copy of the e-CoO must be presented to the customs officer, who must cross-check the unique reference number and other particulars entered in the bill of entry with the printed copy of the e-CoO. This will be done instead of defacing the original hard copy of an origin certificate.

(Instruction No. 28/2022- Customs dated 27 October 2022)

MNRE issues clarification on increase in GST rate on renewable energy devices and cells and modules

W.e.f. 1 April 2022, a BCD @ 25% has been imposed on the import of solar PV cells, while 40% has been imposed on the import of solar PV modules. Further, the GST rate for specified renewable energy devices and parts for their manufacture have increased from 5% to 12%, effective from 1 October 2021.

In this regard, the MNRE has clarified that the above increase in the rate of GST on renewable energy devices and imposition of BCD on cells and modules would be treated as a change-in-law. In addition, it has also clarified as under:

- **BCD on solar PV / solar PV-wind hybrid power projects:** In cases where the last date of bid submission was on or before the announcement regarding the imposition of BCD and where the SCD was on or after 1 April 2022, REIAS may consider such change under 'change-in-law' unless the same is disallowed by specific provisions in the tender documents/ contracts.
- **Increase in GST on renewable energy power projects:** In case where the last date of bid submission was on or before the issuance of notification regarding an increase in the GST rate and wherein the SCD was on or after 1 October 2021, REIAS may consider this hike in GST rate under 'change-in-law' unless the same is disallowed by specific provisions in the tender documents/ contracts.

(Circular vide F. No. 283/3/2018-GRID SOLAR-PART(4) dated 27 September 2022)

DGFT issues procedure for general authorisation for export after repair (GAER) in India

The DGFT has amended the FTP and related HBP to include authorisation for the export of the same imported SCOMET items to the same entity abroad under the GAER. Key aspects to be considered are as under:

- **One-time general authorisation:** Export of imported SCOMET items to the same entity abroad after repair in India will be allowed on the basis of a one-time GAER, subject to the following conditions:
  - SCOMET items were imported to a designated/authorised repair facility in India for the purpose of repair under a contract agreement/ MSA/SOW;
  - The items are to be exported to the same entity and location abroad from which the item(s) has/have been imported;
  - The exporter is required to provide a bill of entry for the imported item while applying for GAER for the first shipment;
  - No details of 'end use' and 'end use certificate' would be required;
  - The GAER issued for a specific item and specific entity (buyer/end-user) shall not be applicable in case the re-export is of a different imported item or to a different entity or the authorised OEM.
- **Documentation:**
  - **Proof of import–export** license, self-declaration, bill of entry
  - **Proof of obligation for the repair of defective/damaged items –** contract agreement/ MSA/SOW
  - **Undertaking from Indian exporter –** Details of imported items to be exported after repair, along with their SCOMET category /sub-category number(s), quantity, item description and ECCN of the foreign country
  - **Post shipment details**
- **Validity:** The GAER issued for the export of imported SCOMET items after repair shall be valid for a period of one year from the date of issue of the GAER, subject to subsequent post reporting(s) within 30 days from such export.

(Public Notice No. 31/2015-20 dated 14 October 2022)

ICEGATE helpdesk for redressal of RODTEP-related grievances

The DGFT has informed that for resolution/examination of exporter grievances related to the scroll out of shipping bills, generation of e-scrips and transfer of e-scrips under the RoDTEP scheme, the mechanism of 'ICEGATE helpdesk' is now available to the exporters 24 hours on all days. The exporters can lodge a grievance either by voice interaction or by calling toll-free no. 1800-3010-1000 or by emailing at icegatehelpdesk@icegate.gov.in. Thereafter, a unique ticket/incident number is generated, which the exporter receives for record/follow-up. In case the RoDTEP grievance continues, the exporter may approach the higher authority at email: jsdbk-rev@nic.in.

(Trade Notice No. 20/2022-23 dated 31 October 2022)

02 Key judicial pronouncements

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

Doctrine of promissory estoppel would not apply against the exercise of legislative powers of the state – SC

Summary

The appellant challenged the budgetary support tax incentive scheme, wherein the benefits equal to a restricted share of 58% of tax revenues were provided. The petitioner believed that despite the new GST regime, the Union of India should have provided 100% budgetary support in line with the OM. In this respect, the SC cited many rulings that consistently held that promissory estoppel would not extend to the state's exercise of its legislative authority. The SC held that when an exemption benefit granted earlier is withdrawn by a subsequent notification due to a change in policy, the doctrine of promissory estoppel cannot be invoked. The apex court further ruled that it is settled law that the court cannot intervene in governmental policy decisions unless they are demonstrably arbitrary and unreasonable. Further, the SC stated that the appellant's claims did not deem 'wholly without substance' and required 'due consideration'. The SC considered the GST Council's power to make recommendations, and as a result, asked the GST Council to consider making recommendations to the states in this respect.

Facts of the case

- Hero MotoCorp Limited ('the appellant') had set up an industrial unit for manufacturing motorcycles at Haridwar, Uttarakhand.
- In 2002, incentives were announced to promote industrial development in the state of Uttarakhand. In pursuance thereto, an OM was issued. The incentive included a 100% exemption of central excise duty to new industrial units for 10 years. The appellant commenced its production in 2008 and availed the exemption benefit till 1 July 2017. However, post the introduction of GST, the benefit was subsequently reduced to 58% through a budgetary support policy.
- After the GST implementation, the GOI issued a notification no. 21/2017-CE dated 18 July 2017 under Section 174(2)(c) of the CGST Act 2017, which rescinded all the earlier issued exemption notifications through which incentives against the investment were granted. Resultantly, the tax exemption granted ceased to continue w.e.f. 1 July 2017.
- Further, as recommended by the GST Council, the CG notified the budgetary support scheme providing refund or reimbursement of central share at 58% of CGST and 29% of IGST to the affected eligible industrial units for the residual period in the north-eastern and the Himalayan states.
- The appellant, aggrieved by the decision of the CG, filed the WP before the Delhi HC, which was dismissed. Therefore, the aggrieved appellant has filed the present petition before the SC.

SC observations and ruling {(Civil Appeal No. 7405 of 2022 (Arising out of SLP (Civil) No. 12397 of 2020)}:

- **Benefit was rescinded in view of the notification**: The SC noted that even though the first part of clause (c) of Section 174(2) would protect any right, privilege, obligation, etc., under the amended act or repealed acts, the proviso thereto provides that any tax exemption granted shall not continue as a privilege if the said notification is revoked on or after the designated day. Undoubtedly, various area-based exemption notifications have been revoked by notification no. 21/2017. Thus, it is evident that the 2003 notification's benefit has been revoked, considering the notification made according to the proviso to clause (c) of Section 174(2) of the CGST Act.
- **There can be no promissory estoppel against the legislature in the exercise of its legislative functions**: The SC cited various judgments and stated that all the judgments consistently held that the legislature cannot be subject to estoppel when performing its legislative functions. The only exception situation w.r.t. applicability of the doctrine of estoppel is where it is necessary to prevent fraud or manifest injustice. Thus, it is a consistent view of this court, reiterated again in Godfrey Philips India Limited, that there can be no promissory estoppel against the legislature in the exercise of its legislative functions.
- **The claim of the appellant on estoppel is without merit**: According to the SC, the withdrawal of the exemption notifications was made in accordance with the legislative requirement set out in Section 174(2)(c) of the CGST Act. Further, the proviso was included with the intention that if the notification is revoked, the tax exemption given as an incentive for investment would no longer be a privilege. Also, the acceptance of the appellant's argument would enforce a representation that is in violation of the legislative incorporation in the proviso to Section 174(2)(c). Therefore, the claim of the appellants is without merit, and hence, should be rejected. The SC further stated that when an exemption granted earlier is withdrawn by a subsequent notification based on a change in policy, even in such cases, the doctrine of promissory estoppel cannot be invoked.
- **Issue of writ of Mandamus**: The SC relied on various rulings and stated that a writ of Mandamus could not be issued unless the appellants can demonstrate that the respondent is under any legal obligation to provide them with a 100% refund. In addition, a writ of Mandamus may be issued if the authority failed to exercise its judgment, did so maliciously, or based its decision on an irrelevant factor. However, in the present case, there exists no such duty on the respondent to grant a 100% refund of CGST to the appellant. Thus, the relief cannot be granted.
- **Exercise of power by CG only on the recommendations of the GST Council**: The SC found under Section 11 that discretion is vested in the CG, which is to be exercised on the recommendations of the GST Council. The issue of policy must be addressed by the union/state. It is well established that this court cannot intervene in governmental policy matters unless they are demonstrably arbitrary and unreasonable. Thus, the SC did not believe that the claim raised by the appellant in reliance on Section 11 of the CGST Act has any merit. However, this is not a situation where it is possible to say that the appellants' claim is completely without merit.
- **Reimbursements by the states to the industrial units**: The GST Council has noted that the CG and the SGs had given various incentives of central excise and VAT and CST to encourage investment. However, such incentives could not continue forever, as tax needs to be paid on supplies to permit the flow of tax to the destination state. The recommended solution was to establish budgetary apportionment in the state and central budgets for the reimbursement of the tax paid to those units that enjoyed tax exemption up to a predetermined period. The GST Council considered that the states also have to compensate the industrial units who were eligible to an exemption under any existing incentive plan in a similar amount out of the 42% share of income collected through devolution.
- **GST Council should make recommendations to the states**: The SC opined that since lakhs of people are employed in industries like those of the appellant in the Himalayan and north-eastern states, thus it would be appropriate for those states to consider compensating those units in a similar manner from the share of revenue they receive through a devolution from the CG. Further, it advised that the GST Council should recommend the states in this respect. The SC also gave the appellants permission to address the respective SGs and the GST Council with their concerns.

Our comments

The doctrine of promissory estoppel is a doctrine evolved by equity to prevent injustice. Generally, the doctrine of promissory estoppel is applied against the government. However, if the government can demonstrate that it would be inequitable to hold the government to the promise made, the court will not create equity in favour of the promisee and enforce the promise against the government. Further, the principles of promissory estoppel cannot be used in cases where the public interest so requires. In the interest of the public, the government may alter the policy. However, it is well settled that the government or public authority cannot be compelled to do something that is not allowed by law. This doctrine cannot be invoked for enforcement of a promise made contrary to law.

Earlier, in the case of K.M. Refineries and Infraspace Private Limited, the benefit of an incentive plan was eventually decreased with the implementation of GST. The Bombay HC adopted the doctrine of promissory estoppel and determined that withholding such benefits midway is not in the best interests of taxpayers because it would undoubtedly harm industrial units. Further, such a reduction in the name of a new policy of GST is clearly not permissible. Thus, the HC quashed and set aside the impugned order passed by the commissioner, directing to specify the effective date without curtailing the validity period in terms of the provisions under the incentive scheme. Thus, taking away or reducing the benefits during the exemption period is against the doctrine.

However, in the case of V.V.F. Limited, the apex court had ruled that if there is a supervening public interest that compels the benefit to be removed or the scheme to be modified, such supervening public interest would take precedence over any promissory estoppel. Similarly, in the case of unicorn industries, the SC concluded that the withdrawal of the exemption to pan masala with tobacco and pan masala sans tobacco is in the larger public interest, and therefore, the doctrine of promissory estoppel could not have been invoked. Even in the present case, the apex court has upheld the rulings of the Delhi HC and Sikkim HC and rejected the plea of the appellant on the ground of promissory estoppel.

Renting of a residential dwelling by a proprietor for his personal use and who does so on his own account is exempt from GST – Delhi HC

Summary

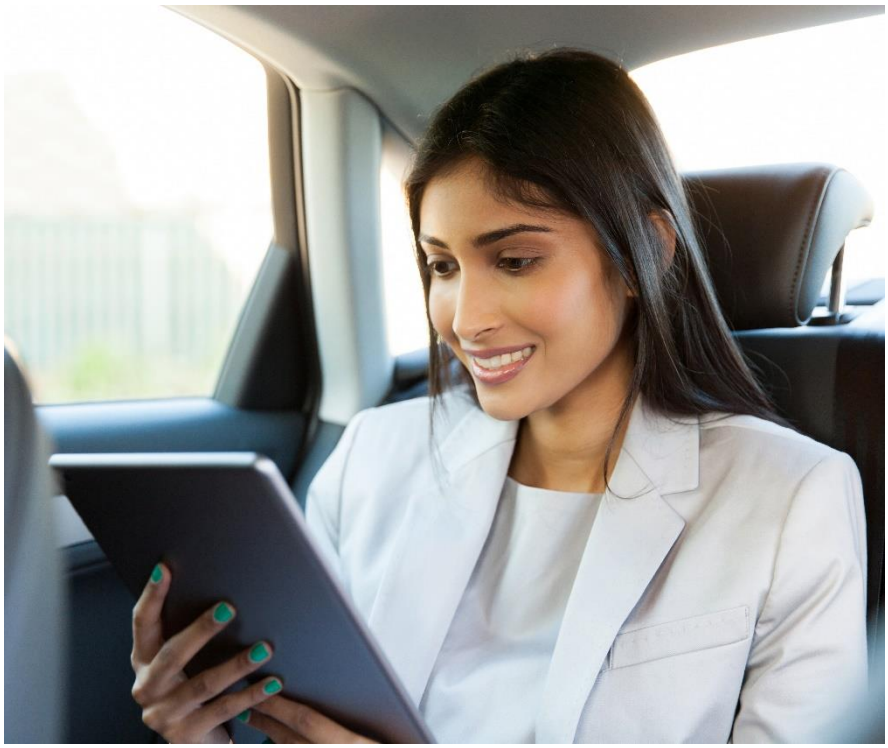
The petitioner has filed the present WP before the Delhi HC to challenge the notification withdrawing the exemption benefit in the case where the residential dwelling is rented to a registered person. In this regard, the respondents submitted that the renting of a residential dwelling by a registered proprietorship firm owner shall be exempt from GST if he rents it in his personal capacity for use as his own residence, and such renting is on his own account. Further, the rented property should not be used in the course or furtherance of the business of the proprietorship firm. The Delhi HC acknowledged the respondents' explanation and deemed it to be binding on all respondents.

Facts of the case

- Seema Gupta ('the petitioner') has filed the present WP to challenge Clause (A)(b) of notification no. 04/2022-Central Tax (Rate) dated 13 July 2022 ('the impugned notification') withdrawing the exemption benefit in the case where the residential dwelling is rented to a registered person. The petitioner held the notification as unconstitutional and beyond the scope of the GST Act's authority.
- The petitioner submitted that the impugned notification has taken away the exemption benefit from the registered tenants under GST. The denial of exemption based only on the fact that the tenants are registered is not supported by any discernible distinction. Further, the differentiation in question has no connection to the objective that is being achieved.
- The respondent argued that an individual person is eligible for the exemption benefit when a residential property is rented out personally for residential purposes in the name of the individual (such as a proprietor or partner) and not on the account of a business entity.
- The respondents further submitted that it is not specified in the impugned notification that GST would be applicable only in cases where the registered person has taken the residential dwelling on rent in the course or furtherance of business. Therefore, a proposal to amend the impugned notification to clarify the taxability of the registered person is being considered for submission to the GST Council. The revenue further reiterated that a registered proprietorship firm owner who rents a residential property for his personal use, rather than in the course or furtherance of the business, and who does so on his own account, is exempt from GST.

Delhi HC observations and ruling (W.P.(C) 10986/2022 & CM APPL. 32131/2022 dated 27 September 2022)

- **Renting of a residential dwelling by a proprietor for his personal use on his own account is exempt:** The HC accepted the clarification submitted by the respondents and declared the same is binding on all the respondents.



Our comments

The GST Council, in its 47th meeting, recommended adding an exception to the exemption entry 'services by way of renting of a residential home for use as a residence' to exclude business entities (registered person) from the exemption benefit. To implement this recommendation, the government vide notification no. 4/2022-Central Tax (Rate) dated 13 July 2022, imposed tax in the case of renting a residential dwelling to a registered person. Further, the government has amended notification no. 13/2017-Central Tax (Rate) dated 28 June 2017 to include 'services by way of renting of a residential dwelling to a registered person' under the RCM. As per the press release, the recommendation was to withdraw the exemption on the service of renting residential dwellings to business entities (registered persons). However, the amendment made in the exemption entry is not in line with the above.

As per the literal interpretation of the exemption entry, any residential property rented by a GST-registered person would be subject to GST, irrespective of whether it was rented for personal use or in the course or furtherance of business. This amendment has raised multiple questions in the minds of taxpayers because it does not specify that GST would be charged only where the registered person has taken the residential dwelling on rent in the course or furtherance of business. As a result, a proposal to clarify the taxability of registered people in the notification is being considered for presentation to the GST Council. Thus, to prevent tax burdens on private transactions, the GST Council is likely to provide the necessary clarity.

Parallel proceedings by other wings of the department cannot be initiated if audit proceedings have already been initiated for the same tax period – Calcutta HC

Summary

The petitioner was subject to an audit by the audit authority u/s 65 of the CGST Act for the FY 2017-2018 to 2019-2020 (tax period). Meanwhile, the other two wings of the department, viz. the anti-evasion wing and the range office, have also issued the notice for the same period. In this respect, the Calcutta HC expressed confusion over how three wings of the same department could run parallel proceedings for the same period in the present era of the availability of electronic communications in the department. The HC observed that the audit proceedings have already commenced for the period. Therefore, the same should be taken to their logical conclusion. Further, the HC restrained the other two wings of the department from taking any action against the petitioner for the same period.

Facts of the case

- R.P. Buildcon Private Limited & Anr. ('the petitioner') was subject to an audit by the audit authority u/s 65 of the CGST Act for the tax period. Following said audit, SCNs were issued by the other two wings of the department, viz. the anti-evasion wing and the range office.
- In this respect, the petitioner had filed a WP no. 20025 of 2022, requesting to quash the notices issued by the anti-evasion department and the range office. The petitioner submitted that the notices issued by the above authorities were pertaining to the same tax period for which an audit was carried out. In addition, the petitioner asked to declare that it is not possible to conduct a scrutiny of returns under Section 61 of the same tax period after the department has undertaken an audit.
- However, the WP was rejected on the ground that the proceedings are in the form of an SCN. Therefore, the petitioner has filed the present WP.
- The respondents argued that the three departments acted against the petitioner since neither the range office, nor the anti-evasion department were aware of the actions taken by the audit commissionerate.

Calcutta HC observations and ruling [M.A.T. No.1595 of 2022 with I.A. No. CAN 1 of 2022]

- **Proceedings initiated by three wings of the department for the same tax period:** The HC noted that three wings of the same department are proceeding against the petitioner for the very same period. The audit commissionerate was the first department that had issued a notice in accordance with Section 65. In this respect, the petitioner had furnished the details as called for in the said notice and responded to the intimation for conducting the GST audit. The petitioner submitted that out of the four issues identified for the relevant period, two were accepted by the petitioner and the necessary tax and interest were paid. However, the remaining two issues were addressed in the petitioner's response to the notice and were not pursued to their logical conclusion. In the meantime, the other two wings of the department, viz. the anti-evasion wing and the range office have also proceeded against the petitioner by issuing notices for the same period.
- **Parallel proceedings for the same period cannot continue:** The HC expressed confusion over how three wings of the same department could run parallel proceedings for the same period in the present days of electronic communications available in the department. According to the HC, since the audit proceedings have already initiated, the same should be taken to their logical conclusion. However, the anti-evasion and the range office's proceedings initiated for the same period will not continue. Further, this direction is confined only to the FY 2017-2018 to 2019-2020, and it will be acceptable for both the wings to notify the petitioner if they need any information for a different assessment period.

Our comments

In the present ruling, the Calcutta HC has set aside the proceedings initiated by the anti-evasion wing and the range office for the period already covered under the audit proceedings.

Similarly, in the case of Raj Metal Industries, the Calcutta HC had held that when a proper officer under the CGST Act has started any proceedings on a subject matter, the appropriate officer under the West Bengal GST Act cannot start any proceedings on the same subject.

However, in case of Kaushal Kumar Mishra, the Punjab & Haryana HC had held that Section 6(2)(b) of the CGST Act does not apply when different officers are appointed to independently investigate entirely separate matters involving violations of prima facie cognisable and punishable offences. Further, the Allahabad HC, in case of G.K. Trading Company, had dismissed the petition filed for prohibiting another proper officer to initiate merely an inquiry under Section 70 of the CGST Act. The court observed and held that there was no proceeding initiated by a proper officer against the assessee on the same subject-matter referable to Section 6(2)(b) of the CGST Act, as it was merely an inquiry by a proper officer under Section 70 of the CGST Act.

The present ruling may aid in curbing the multiple proceedings being initiated against the assessee by the different wings of the department for the same tax period. Thus, it is a welcome ruling and shall set precedence in similar matters.

Pre-deposit for filing an appeal under GST can be made by utilising electronic credit ledger – Bombay HC

Summary

The issue before the Bombay HC is whether an appellant can utilise the ITC balance lying in the ECrL to pay the pre-deposit for filing an appeal before the AA. In this regard, the HC noted that Section 49(4) of the MGST Act allows payment of tax through the ITC balance in the ECrL. As a result, the pre-deposit for filing an appeal can be done by debiting the ITC balance in the ECrL. Further, the CBIC clarified vide the circular 172/04/2022-GST dated 6 July 2022 (the circular) that output tax payable as a result of proceedings instituted under the GST laws can be paid by utilising the ITC balance in the ECrL.

Facts of the case

- M/s Oasis Reality (the petitioner) has a view that the pre-deposit of disputed tax as required under Section 107(6) of the MGST Act can be paid using the amount available in ECrL. The revenue, on the other hand, has a contrary view that the petitioner can use only the balance available in an ECL. According to the revenue, Section 49(4) limits the use of the amount available in the ECrL to pay output tax under MGST or IGST. It cannot be used to make payment of tax as a pre-deposit before filing an appeal.
- The issue before the HC is whether an appellant can utilize the ITC balance available in the ECrL to pay the pre-deposit for filing the appeal before the AA.

Bombay HC observations and ruling [WP (ST) No. 23507 of 2022, Order dated 16 September 2022]

- **Pre-deposit amount can be paid through ECrL:** The HC noted the word used in Section 107(6) of the MGST Act i.e., paid rather than deposited. Further, pre-deposit of tax in dispute is a precondition for filing an appeal where tax can be integrated tax, central tax, state tax, or union territory tax. The HC further noted that according to Section 49(4), the amount available in the ECrL may be utilized to make any payment towards output tax under the MGST Act or the Integrated GST Act, subject to the prescribed restrictions or conditions. As a result, the HC held that the petitioner can certainly utilize the amount available in ECrL for the pre-deposit of tax in dispute.
- **Clarification provided by the CBIC:** The HC, relying on the circular, differentiated the Orissa HC's decision in Jyoti Construction. The HC further noted that the CBIC has itself clarified that any amount payable towards output tax, as a result of any proceeding instituted under the provisions of GST laws, can be paid by utilising the amount available in ECrL. However, ECrL cannot be used to pay any tax

Our comments

The mode of payment of the mandatory pre-deposit before filing an appeal under the GST regime has been a litigated issue.

Earlier, in the case of Jyoti Construction, the Orissa HC had held that for the purpose of filing an appeal under Section 107, the mandatory pre-deposit can be paid by way of debiting the ECL and not the ECrL.

In contrast to the above, the CBIC recently issued a favourable circular, clarifying that payment towards output tax, whether self-assessed in the return or payable as a result of any proceeding, can be made by utilising the amount available in a registered person's ECrL.

Even in the matter of M/s Tulsi Ram and Company, the Allahabad HC relied on this circular and ruled that the AA cannot not compel the business to make a pre-deposit through the ECL. The present ruling is likewise consistent with the circular and may help in the reduction of disputes/litigations on similar matters.

CIC suggests the CBIC to consider the viability of issuing/ updating the FAQs section on the website

Summary

Recently, in the case of Anil Khanna ('the appellant'), the CIC has advised the CBIC to consider the viability of issuing/ updating the FAQs section on the website. It will free up the public authority from the burden of RTI requests that are made just for clarification and not for the purpose of requesting a specific document.

Facts of the case

- The CPIO, GST Council transferred the application to the CPIO, CBIC, North Block for providing the relevant information directly to the appellant. The CPIO provided a specific hyperlink to the website from where the GST notification can be accessed. Further, the CPIO said that all the GST rules and notifications are already available to the public and are self-explanatory. The CPIO further clarified that if the appellant has any questions about the matter involving an incentive or consideration, he should go to the relevant adjudicating body of GST, which has been set up to handle such matters. On the commission's request, he further highlighted that there is no concept of an incentive under GST, rather the concept of 'consideration' is in place. The CPIO agreed to give the appellant a copy of the pertinent extract of the notification, which may contain all the information needed.

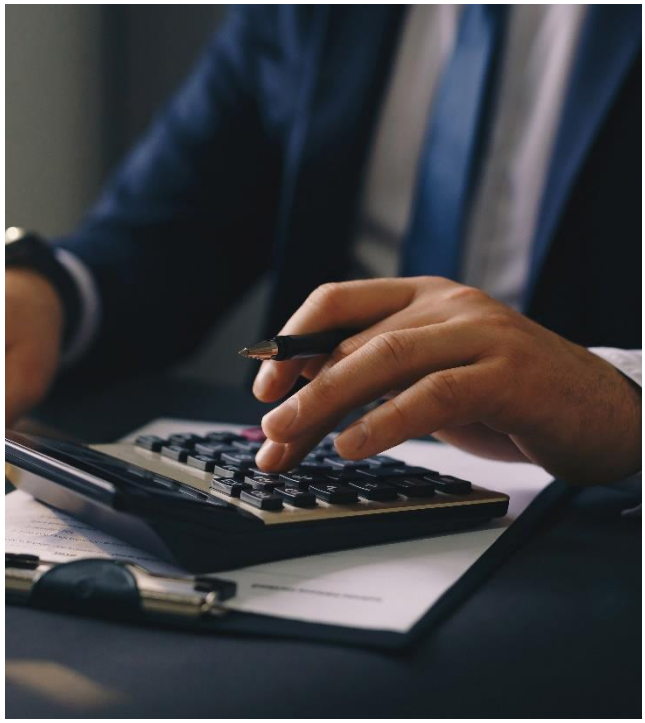
CIC observations and ruling [CIC/DGSTCX/A/2021/12935]

- **CPIO is not responsible for the interpretation of information:** The CIC stated that stretching the interpretation of 'information' under the RTI Act to include deductions and inferences to be drawn by the CPIO is unwarranted. This is because it places pressure on the CPIOs to ensure that they provide the correct deduction/inference to avoid being subject to penal provisions under the RTI Act. The CIC cited the SC's ruling in the matter of Aditya Bandopadhyay, wherein it had been held that the RTI Act gives access to all publicly available material. However, it is not the job of public authorities to assess such data and draw conclusions. In addition, the CIC instructed the CPIO to provide an extract of a copy of relevant rules/notifications pertaining to 'consideration', which will suffice the information sought by the appellant.
- **Creating/ updating FAQs section:** The CIC stated that it will be in the respondent public authority's best interest to consider the viability of creating/ updating a FAQs section on their website, wherein the most frequently asked issues/clarifications, and/or pertinent orders/ circulars/ jurisdictions, and powers and roles can be quickly identified, and relevant information can be made available to the public. In addition, it will free up the public authority from the burden of RTI requests that are made just for clarification and not for the purpose of requesting a specific document.

Proceedings for the recovery of penalty cannot be initiated by the department without issue of SCN – Andhra Pradesh HC

Summary

The assessee disputed the penalty imposed under Section 122(2)(a) of the CGST Act and stated that the assessment order was issued before passing of the stipulated 15 days following the issuance of the notice in Form GSTR-3A. The Andhra Pradesh HC set aside the revenue's decision imposing penalty for failing to follow the law's prescribed procedure, citing a breach of natural justice principles. The HC stated that the procedure under Section 73 of the CGST Act must be followed to demand recovery to impose a penalty. In this regard, the proper officer shall issue a notice. However, it was not issued before the passing of the impugned order in the present case. The HC relied upon its own decision in a similar case, and accordingly, dismissed the petition and further remanded the case to the concerned authority to follow the legal procedure and pass appropriate orders.



Facts of the case

- Nandi PVC Products Private Limited ('the petitioner'), a manufacturer of lateral pipes and drippers, is registered under the CGST Act. It is filing monthly returns and discharging its liability since 2017.
- The petitioner submitted that an assessment order was issued against him without waiting the required 15 days following the issuance of the notice in GSTR-3A, demanding tax as well as interest and penalty. The petitioner further stated that the procedure outlined in Sections 73 and 74 of the CGST Act 2017 should be followed to initiate the recovery proceedings for penalties, for which an SCN needs to be issued.
- The petitioner submitted that the entire proceedings have violated the rules established by law. Therefore, the petitioner filed the present WP requesting to set aside the impugned order.
- According to the respondent, the petitioner failed to timely file its GSTR-3B and pay its taxes, which prevented the transfer of revenue to the government. Further, basis the filing of GSTR-1, the recipient was able to claim ITC, resulting in a twofold loss of income for the government. Therefore, the department initiated action against the petitioner.
- According to the respondent, since the petitioner did not reply to the notice, an assessment order was issued. Further, the assessment order was an appealable order. However, since the petitioner had neither filed an appeal against the order nor obtained orders, the department initiated the recovery. Further, there is no bar under Section 62 of the CGST Act, from the imposition of penalty for contraventions made by the petitioner.

Andhra Pradesh HC observations and ruling [W.P. No. 7138 of 2021 and W.P. No. 7192 of 2021]

- **Penalty can be imposed by following the procedure under Section 73:** The HC stated that the procedure under Section 73 of the CGST Act must be followed to demand recovery to impose a penalty. In this case, the proper officer shall issue a notice within three months before the time specified in sub-Section 10 of Section 73. However, it was not issued prior to the passing of the impugned order.
- **Infringement of legal procedure results in violation of principles of natural justice:** The HC relied on its rulings, wherein the impugned order was set aside, as the procedure established by law was not followed, resulting in the violation of the principles of natural justice**.**
- **Order imposing penalty set aside:** The HC has set aside the order imposing the penalty and remanded the matter to the authority to follow the procedure and pass appropriate orders after hearing the petitioner, in accordance with the law. In view of the above directions, the HC disposed of the petition.

Our comments

Earlier, in the case of S.P.Y. Agro Industries Limited, an assessment order was issued in accordance with Section 62 of the CGST Act without waiting for the stipulated period. The HC dismissed the WP on the ground that the order had been made in violation of the natural justice principles.

In addition, it should be emphasised that the demand for recovery must be made in accordance with the process specified in Section 73 of the CGST Act to impose a penalty under Section 122(2)(a) of the CGST Act. In this case, the proper officer must issue a notice within the stipulated time. In case such a notice was not issued prior to the passing of the impugned order, it amounts to the violation of the principles of natural justice. The present ruling is in line with the above, and therefore, the HC has set aside the impugned order.

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

Liability to pay customs duty invocable when DEPB license is fake or forged – SC

Summary

The SC ruled that since the appellant had obtained the exemption benefit using forged/fake DEPB licenses, such licenses/scrips are *void ab initio*, and the department correctly invoked the extended period of limitation. The DEPB licenses on which the appellant relied for the exemption were found to be forged, hence the exemption was no longer valid, resulting in duty liability. The SC also stated that whether the buyer was aware of the fraud or the forged/fake DEPB licenses/scrips and whether the appellant took the necessary precautions to determine the genuineness of the DEPB licenses/scrips that they purchased, would affect the imposition of the penalty but have no bearing on the duty liability. As a result, the SC directed the adjudicating authority to complete the penalty proceedings on remand as soon as possible, within six months from the date of the order.

Facts of the case

- Munjal Showa Ltd (hereinafter referred to as appellant) imported consignments through ICD using TRA issued by the Bombay Custom House.
- Since the Revenue discovered that the TRAs issued against the DEPB licensees/scrips were forged, the appellant was required to deposit the duty with interest in lieu of the DEPB benefit.
- The adjudicating authority confirmed the duty demand, along with interest and penalty, holding that the DEPB scrips were forged and thus *void ab initio*. As a result, the appellant's exemption was inadmissible, and the goods were subject to confiscation.
- The Tribunal rejected the appellant's plea on the issue of duty liability but remanded the case to the original authority on the issue of penalty.
- The appellant argued before the HC that the Revenue could not have invoked the extended period of limitation because there were no ingredients of 'fraud' and 'intent to evade payment of duty'. However, the HC upheld the order passed by the Tribunal and held that as fraud vitiates everything, therefore, the department was justified in invoking the extended period of limitation.

SC observations and ruling (Civil Appeal No. 2576 Of 2010 And Civil Appeal No. 5608 Of 2011 dated 23 September 2022):

- **Exemption inadmissible:** The department discovered that the DEPB licenses/scrips on which the appellant (as buyers of the forged/fake DEPB licenses/scrips) relied for the exemption benefit were forged and that the DEPB licenses/scrips were never issued. As a result, the exemption benefit obtained based on such forged/fake DEPB licenses/scrips would be invalid.
- **Forged DEPB licenses are *void ab initio*:** Based on the principle that fraud vitiates everything, the SC ruled that such forged/fake DEPB licenses/scrips are *void ab initio*.
- **Extended period of limitation invocable:** When the appellant learned about the fake DEPB licenses, they immediately paid the customs duty under protest. However, the fact remains that the DEPB licenses/scrips on which the appellant relied for the exemption were discovered to be forged, and thus there will be duty liability, as correctly confirmed by the department.
- **Penalty remanded to adjudicating authority:** The buyer's knowledge of the fraud or the forged/fake DEPB licenses/scrips, as well as whether the appellant took the necessary precautions to determine the genuineness of the DEPB licenses/scrips that they purchased, would affect the imposition of the penalty but have no bearing on the duty liability. As a result, the SC ordered that the penalty proceedings on remand be completed as soon as possible, within six months of the order's date.

Our comments

The SC has, on many occasions, upheld the principle of *caveat emptor*, which states that the buyer is solely responsible for checking or making all necessary inquiries and ascertaining all facts relating to the property/goods/documents to be purchased before committing in any way.

Even in the case of Aafloat Textiles India Private Limited, the SC ruled that the buyer must demonstrate that an inquiry about the authenticity of the documents was made before purchasing them and the necessary precautions were taken; otherwise, consequences must follow. When there is fraud involved, such documents do not exist in the eyes of law, and this is sufficient to extend the period of limitation.

In line with the preceding discussion, the SC has ruled that once it is established that fraud was involved, the appellant cannot avoid duty liability regardless of whether it had knowledge of the fraud or the forged/fake DEPB licenses/scrips and whether the necessary precautions to determine the genuineness of such licenses were taken.

03 Decoding advance rulings under GST

GST registration is required in the particular state to execute works contract services – Odisha AAR

Summary

The Odisha AAR held that in the present case, the location of the supplier seems to be at the project site, which is different from the place of business. Further, the nature of supply makes it impractical to obtain it from the state of Maharashtra. Thus, an establishment is required in the state of Odisha from where the work is being carried out. The AAR further noted that to provide services in line with the terms and conditions of the work order, the applicant needs to maintain adequate permanent structures, both in terms of human and technical resources, at the ECoR sites. The applicant is required to provide the services at the site from the establishment as described in Section 2(7) of the IGST Act. As a result, the supplier's location should be in Odisha. Thus, the AAR concluded that the applicant is required to obtain registration in Odisha to provide works contract services.

Facts of the case

- M/s Konkan Railway Corporation Limited (the applicant), a government company, is registered under GST in the state of Maharashtra. The applicant is engaged in providing works contract services, transportation service of goods and passengers by railways and project services to zonal railways and other agencies.
- The applicant has received a LOA for the execution of construction of major bridges, supply of vehicles, site facilities and other allied works in the state of Odisha. These tasks must be completed within 24 months of the date of issue of the LOA.
- The applicant has no permanent/ fixed establishment in the state of Odisha. Further, the applicant contended that in the absence of a fixed establishment from where the supply is made, the 'location of supplier of service' is the location of the usual place of the supplier. In the instant case, the location of the applicant (works contractor) will be the state where its principal place of business is registered, i.e., Maharashtra.
- The applicant submitted that in the event of works contract services, the place of supply shall be the location of the immovable property (building site). Since the place of supply is Odisha and the supplier's location is Maharashtra, IGST must be levied. Thus, the applicant is not needed to hold a separate GST registration in the state of Odisha.
- The applicant further submitted that a substantial value of contract is sub-contracted to a contractor located in Odisha, except for the supply of cement and steel, which will be bought and directly supplied to the site for consumption in Odisha, and invoicing will be based on bill to ship to model. The sub-contractor will charge IGST from the applicant. Further, the applicant would raise an invoice to ECoR charging IGST thereon. As a result, the state of Odisha suffers no income loss.
- The applicant also submitted that a site office is required to be constructed, which will be used by the project-in-charge and other site engineers of ECoR. Further, a very few site engineers of the applicant will be deployed in Odisha for supervision on the job at site, who will arrange their own stay near to the site. In view of the above submissions, the applicant has filed the present advance ruling to seek exemption for GST registration in Odisha.

AAR observations and ruling [02/ODISHA-AAR/2022-23 dated 20 September 2022]

- **An establishment is necessary:** The AAR held that it is not practical to obtain the supply from the state of Maharashtra due to the nature of the supply. Therefore, in the state of Odisha, where the job is being done, an establishment is necessary. Further, the instant project is a long-term contract, followed by a defects liability period. Accordingly, the AAR stated that the scope and nature of the works contract make it clear that the applicant must deploy an adequate number of site engineers and technical staff, as well as ancillary equipment, to comply with the contract's terms and conditions. This is necessary for the project work to be completed satisfactorily, which is not feasible without having a permanent site office of sufficient capacity.
- **Registration requirement in the state of Odisha:** The AAR observed that the applicant needs to ensure the performance of works contract services throughout the duration of the contract, showing a suitable level of permanence for the technical and human resources onsite. As a result, the applicant is required to provide the services at the site from the establishment as defined in Section 2(7) of the IGST Act. Accordingly, the applicant is required to be registered under the Odisha GST Act.

Our comments

Earlier, the Karnataka AAR, in the case of M/s GEW (India) Private Limited, observed that the applicant has only one principal place of business in Noida for which registration has been obtained. Further, the applicant does not intend to have any other fixed establishment other than the principal place of business. In this respect, the AAR had ruled that the applicant may raise an invoice from its principal place of business without obtaining a separate registration in Karnataka.

Similarly, the Karnataka AAR, in the case of T & D Electricals, held that the company is not required to obtain a separate registration in the state to execute the project. However, the company is at liberty to obtain the same if it intends to have a fixed establishment at the project site in Karnataka. Even in the instant case, the applicant has cited the above decision. However, the Odisha AAR distinguished the above case since there is no fixed establishment other than the principal place of business of M/s T & D Electricals.

Also, in the case of M/s Pragati Engineers, the Delhi HC passed a contrary ruling and held that since the petitioner was registered in Delhi but provided services in Hyderabad, it satisfies the definition of a casual taxable person. Thus, the applicant is required to obtain registration in Hyderabad as well.

In the present ruling, the AAR has emphasised that although GST is a destination-based tax, for the purposes of obtaining registration, it is important to identify the 'origin of supply'. Thus, the AAR has held that when the applicant is required to maintain a suitable structure in terms of human and technical resources with a sufficient degree of permanence in the state where the project is executed, the applicant is required to obtain registration in such state. Even if the advance ruling is applicable only to the applicant and the jurisdictional officer, the authorities may apply the ratio in other cases with similar facts.

04 Expert's column

PLI scheme: Boosting the manufacturing sector in India

Contributed by

Karan Kakkar
Partner, Tax

The PLI scheme has been the buzzword in recent times. The PLI is one of the government's key endeavours to propel manufacturing in the country and thereby make India a hub of production. Multiple PLI schemes have been implemented and executed by various ministries. To have a summarised understanding of the subject, we had a dialogue with subject matter expert Karan Kakkar, Partner, Tax.

It has been discussed that the PLI scheme is significant for the Prime Minister's *Atmanirbhar Bharat* campaign, what is the reason behind it?

I would be glad to answer this since the PLI scheme has been the cornerstone of the CG's efforts for achieving *Atmanirbhar Bharat*. The PLI scheme was announced by the CG of India, with the objective of boosting competitive manufacturing, augmenting investments across sectors and reducing import bills. The PLI scheme also aims capacity-building in the local supply chain, introducing downstream operations and promoting exports from India. It has been envisaged that these objectives will thrust manufacturing in India by an estimated production of 30 lakh crore during the next five years and create 60 lakh new job opportunities in the country. Hence, the objectives and estimated results make the PLI significant for the 'Make in India' motto promoted by our Prime Minister, along with *Atmanirbhar Bharat*.

What is the ambit of the PLI scheme and who implements it?

The PLI scheme was first introduced in March 2020 for three sectors - mobile manufacturing and specified electronics, critical key starting materials/drug intermediaries and active pharmaceutical ingredients and medical devices. Later, in November 2020, the coverage of the scheme was widened to include 10 more sectors to the likes of key sectors, such as automobiles and auto components, advanced chemistry cell batteries, pharmaceuticals drugs, telecom and networking products, textile, food, and so on. Later, there was the addition of drone and drone components. The total outlay of more than INR 2 lakh crore was sanctioned for all these sectors, combined with the highest share by auto and auto components, followed by mobile manufacturing and specified electronic components, respectively. The scheme is implemented by the respective departments under various ministries, supported by the appointed PMA.

For simplicity of the understanding of the readers, can you tell us how the PLI scheme works?

The PLI scheme predominantly relies on the simple rule of the 'accomplish more, get more' principle. The guidelines provide for a certain threshold of investments and turnover to be achieved over a span of five years. And if achieved, the applicant would be incentivised by a fixed percentage of the incremental turnovers. The percentage typically ranges from 2% to 10% of the turnover, with the capping of a fixed amount. The incentive is also subject to fulfilment of other conditions varying in various PLI schemes in different sectors. Any applicant is required to get the approval first, and then, once targets are achieved, the applicant can apply for the disbursement of the incentives in cash.

Overall, how was the industry's response to the PLI scheme in various sectors?

The response to the PLI scheme across sectors has been robust. The industry has welcomed such a scheme, motivating them to invest more and generate more turnover, thus contributing to the growth story of *Atmanirbhar Bharat*. It is visible in the number of applications received by the various departments. The example of a PLI for automobile and auto components is worth quoting, wherein 115 companies applied for having a potential investment of INR 74,000 crore against the target estimate of investment of INR 42,000 crore over a period of five years. The success is also evident in sunrise sectors such as ACC batteries. The said sector is attracting new technology under programme agreements. Further, looking at the success of the PLI for mobile phones, the government approved the PLI for IT hardware products, such as laptops, tablets, computers, etc. In addition, there are a few sectors, such as medical devices, where the response was not as expected, owing to stringent investment and turnover conditions. However, the government was prompt in rectifying it and re-opened schemes, with easing down the investment and turnover criteria.

Is the government planning for extending the coverage of the PLI schemes?

Yes, considering the success of the PLI in initial rounds, the government is not only planning to extend the scope of the PLI coverage in new sectors, but have also re-opened the applications in a few existing sectors. For example, applications are being invited for the medical devices sector, wherein certain conditions of investment and turnover are eased with the larger scope of products eligible under the scheme. Talking about the new sectors, the government is considering to introduce the PLI scheme for seven new sectors, such as footwear and leather, bicycle, some vaccine materials, footwear, toys, chemicals, and shipping containers with an overall outlay of INR 35,000 crore.

The MSME sector is the backbone of the economy. Is the PLI supporting the MSME sector?

Absolutely! The MSME sector is the backbone of our economy, having a multi-dimensional impact. The PLI's support to the MSME sector is twofold. First is the direct share in the budget allocation reserved for the MSME sector. The financial allocation of INR 1000 crores is reserved for the MSME sector, and it has received good responses from the applicants. In addition, to support MSMEs, stringent requirements of investments and turnover have been reduced in a few PLIs, such as medical devices. Second is the spillover benefits of the large sector. Any large sector will need the ecosystem of such MSMEs for manufacturing, resulting in the creation of anchor units in every sector that will need a new supplier base across the entire value chain, thereby making the MSMEs the beneficiaries of the PLI scheme.

Any practical experiences you would want to share?

Yes, while working on PLI applications from multiple sectors, there have been substantial learnings. I will share our key learnings. First and foremost, learning is to be precise in your investment and turnover estimates. This will help to rightly assess the eligibility of incentives and the manufacturing plans can be carved out accordingly. Next is to be thorough in your preparations from an application-filing perspective. Collate and be ready with all the details, and certificates beforehand to avoid any last-minute rush. And last is to be prompt in your responses/communication with the department or PMA post the filing of the application.

05 Issues on your mind

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

The CBIC had earlier notified the mandatory requirement for taxpayers to report a minimum four-digit or six-digit HSN code in Form GSTR-1 based on AATO. In this regard, phase 2 would be implemented on the GST portal w.e.f. 1 November 2022, wherein the taxpayers would be required to mandatorily report the four-digit HSN code. Further, a manual user entry would be allowed for entering the HSN or description. A warning or alert message will be displayed if the HSN is reported incorrectly. However, taxpayers will still be able to file GSTR-1 since it is not a mandatory validation for filing GSTR-1.

What is the change in the time limit for filing the refund application in Form GST RFD-01?

The GST portal was configured to allow taxpayers to file an application for a refund for up to the previous 60 months. To enable taxpayers to apply for a refund for any period beginning July 2017, on account of a court order/amnesty scheme, the period beginning from July 2017 onwards has been made available for selection by taxpayers.

Is there any edit facility available for undertaking in Form GST PMT-03?

In cases where the refund amount claimed by a taxpayer is partially/fully rejected by the tax officer, the tax officer shall re-credit such amount to the respective ledger in Form GST PMT – 03. This amount is re-credited only after the taxpayer submits an undertaking for not filing an appeal for the entire/part of the inadmissible amount. Taxpayers now can change the amount stated in their undertaking if they make a mistake while entering the amount previously.

06 Important developments in direct taxes

CBDT extends the time limit for furnishing modified return in specified cases

The CBDT had notified Form ITR-A for filing the modified return that is required to be furnished by successor companies in case of a business reorganisation (within six months from the end of the month in which the HC's or tribunal's or adjudicating authority's order is issued).

In order to provide adequate time for furnishing such returns, where the order of the aforesaid authority was issued during the period 1 April 2022 to 30 September 2022, the CBDT has extended the timeline for furnishing the modified return to 31 March 2023.

(Order under section 119 of the Income-tax Act, 1961 (the Act) dated 26 September 2022)

CBDT provides a mechanism for the application to be filed on withdrawal of the claim for deduction of surcharge and cess

As per Section 155(18) of the Act, wherein the deduction for surcharge and cess was claimed and allowed in any FY, such claim is considered as under-reporting of income for levying penalty under Section 270A of the Act. However, such a claim is not regarded as under-reporting of income, if an application has been made to the AO (in a prescribed format within a specified timeline), requesting for re-computation of the total income without allowing such claim and resultant tax is paid (within the specified timeline).

In this regard, the CBDT has notified Rule 132 of the rules (effective from 1 October 2022), which provides the manner in which such an application is to be made and the manner in which it is to be processed. As per the said rule:

- Application needs to be furnished electronically by the taxpayer in Form No.69 with the prescribed authority (i.e., PDGIT/DGIT or person authorised by them) on or before 31 March 2023.

- Prescribed authority will forward the application to AO.
- AO will recompute the total income by amending the relevant order and issue the notice under Section 156 of the Act specifying the time limit for paying the tax amount if any.
- Post the payment of tax, the details thereof, are to be furnished (in Form No.70) to AO within 30 days from the date of making the said payment.

(Notification No. 111 dated 28 September 2022)

Tax department issues guidance for the e-filing of Form No. 27C, which is to be filed in specified cases where tax is not required to be collected

The seller of the specified goods is required to collect TCS at the rate specified under Section 206C(1) of the Act. However, as per section 206C(1A) of the Act, TCS is not required to be collected if the resident buyer furnishes a declaration that such goods are to be utilized for manufacturing/processing/producing articles or things/for generation of power and not for trading purposes. The tax department has issued guidance (in the form of FAQs) with regard to the filing of such form. The key clarifications issued through the FAQs are as follows:

- Such form is required to be filed by the seller on the e-filing portal.
- Seller should have TAN and it should be active and registered on the e-filing portal.
- Seller is required to file such form on or before the seventh day of the month following the month in which declaration is furnished by the buyer.
- Buyer is required to furnish part-I of this form to the seller.
- List of details/documents required to file this form has been provided.
- Detailed process to file this form on the e-filing portal is also provided.

CBDT extends the due date of filing original return of income for certain assessees

The CBDT has extended the due date of furnishing the original return of income under Section 139(1) of the Act, from 31 October 2022 to 7 November 2022 for AY 2022-2023 in case of certain assesses (i.e., who are liable to file their return of income by 31 October 2022).

(Circular No. 20 dated 26 October 2022)

CBDT extends the due date of furnishing TDS statement for payments other than salary to residents

Considering the difficulties being faced by taxpayers in the filing of the TDS statement in the revised and updated Form No. 26Q for payments other than salary to residents, the CBDT has extended the due date for filing the TDS statement for the second quarter of FY 2022-23. The due date for filing such a form has been extended from 31 October 2022 to **30 November 2022**.

(Circular No. 21 dated 27 October 2022)

07 Glossary

AA	Appellate Authority
AAR	Authority for Advance Ruling
AATO	Annual Aggregate Turnover
ACC	Advanced Chemistry Cell
AO	Assessing Officer
BCD	Basic Custom Duty
CBDT	Central Board of Direct Taxes
CBIC	Central Board of Indirect Taxes and Customs
CEPA	Comprehensive Economic Partnership Agreement
CG	Central Government
CGST	Central Goods and Service Tax
CIC	Central Information Commission
CoO	Change of Origin
CPIO	Central Public Information Officer
CST	Central Sales Tax
DEPB	Duty Entitlement Passbook
DGFT	Directorate General of Foreign Trade
DGIT	Director General of Income Tax (Systems)
ECCN	Export Control Classification Number
ECL	Electronic Cash Ledger
ECoO	Electronic Certificate of Origin
ECoR	East Coast Railway Odisha
ECrL	Electronic Credit Ledger
EPCG	Export Promotion Capital Goods
FAQ	Frequently Asked Questions
FTA	Free Trade Agreement
FTP	Foreign Trade Policy
FY	Financial Year
GAER	General Authorisation for Export after Repair in India
GOI	Government of India
GST	Goods and Service Tax
GSTN	Goods and Service Tax Network
HBP	Handbook of Procedures
HC	High Court
HSN	Harmonised System of Nomenclature
ICD	Inland Container Depots
ICEGATE	Indian Customs Electronic Gateway
IGST	Integrated Goods and Services Tax
IT	Information Technology
ITC	Input Tax Credit
LOA	Letter of Acceptance
MNRE	Ministry of New & Renewable Energy
MGST	Maharashtra Goods and Service Tax
MSA	Master Service Agreement
MSME	Micro, Small and Medium Enterprise
OEM	Original Equipment Manufacturer
OIO	Order in Original
OM	Office Memorandum
PDGIT	Principal Director General of Income-tax (Systems)
PLI	Production Linked Incentive
PMA	Project Management Agencies
PV	Photo Voltaic
RCM	Reverse Charge Mechanism
REIAS	Renewable Energy Implementing Agencies
RoDTEP	Remission of Duties and Taxes on Export Products
RTI	Right to Information
SC	Supreme Court
SCD	Special Custom Duty
SCOMET	Special Chemicals, Organisms, Materials, Equipment and Technologies
SCN	Show Cause Notice
SEZ	Special Economic zone
SGs	State Government
SOW	Statement of Work/Scope of Work
SVLDRS	Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019
TAN	Tax Collection Account Number
TCS	Tax Collected at source
TDS	Tax Deducted at Source
TRA	Transfer release advice
UAE	United Arab Emirates
VAT	Value Added Tax
WP	Writ Petition

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