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SHAPING A VIBRANT INDIA

GST Compendium

A monthly guide

October 2022

Editor’s note

The Central Board of Indirect Tax and Customs (CBIC) has notified that the time limit for availing the input tax credit and reporting of credit notes for a financial year has been extended to 30 November of the following financial year under the Goods and Services Tax (GST) law. Further, taking cognizance of the misuse of provisions related to prosecution by the GST officers, the CBIC has issued guidelines for the initiation of prosecution proceedings under the GST law.

In view of the uncertain geo-political and economic situation, the Government has extended the existing Foreign Trade Policy (FTP) 2015-2020 to 31 March 2023. The industry was eagerly waiting for the new FTP, however, given the current turbulent economic situation, maintaining the *status quo* is quite understandable.

In a landmark ruling, the Apex Court has held that there is no connection between the appellant's manufacturing operations and the transportation services offered to the employees for pick-up and drop to the factory. Such a facility is just for the employees' convenience. Therefore, the Central Value Added Tax (CENVAT) credit for such services, primarily for the employees' personal use or consumption, shall not be available.

In this edition, we have analysed the provisions on charging of interest for non-filing of the returns under the GST, despite having a sufficient balance in electronic ledgers.

On the direct tax front, the Central Board of Direct Taxes (CBDT) has issued additional guidelines on withholding tax on benefits/perquisites under Section 194R of the Income Tax Act, 1961. Further, it has notified the rule and modified return, which is required to be filed pursuant to business reorganisation and amended rules for availing foreign tax credit.

Wish you greetings for the festive season.

Vikas Vasal

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01 Important amendments/updates

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

CBIC notifies certain amendments under GST, effective from 1 October 2022

The Finance Act, 2022 ('the Act') was enacted to bring into effect the CG's recommendations for the FY 2022-23. As per the Act, Sections 100 to 114 will come into force on the date the CG announces in the Official Gazette. Accordingly, the CBIC has notified that the CG has appointed 1 October 2022 as the date on which the above provisions except clause (c) of sections 110 and 111 shall enter into force[1.1]. Further, the CBIC has notified the amended CGST Rules effective from 1 October 2022[1.2].

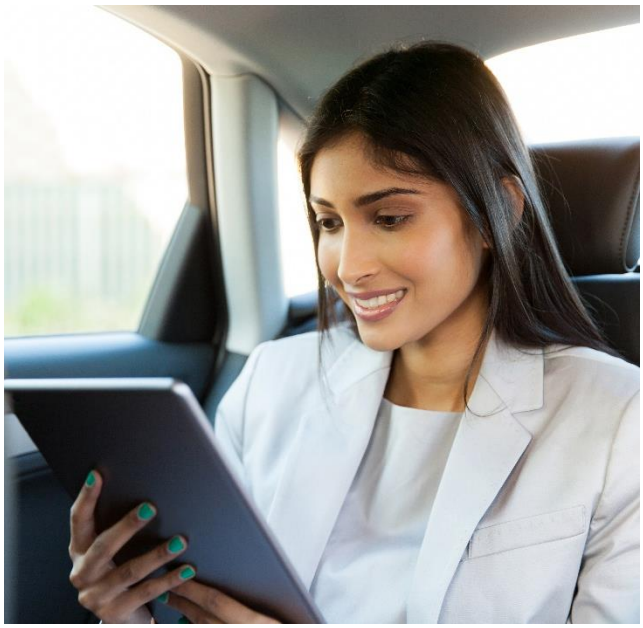
1.1 Notification no. 18/2022–Central Tax dated 28 September 2022
1.2 Notification no. 19/2022–Central Tax dated 28 September 2022

Key amendments

- The time limit to claim ITC of invoices/debit notes pertaining to a certain FY has been extended to 30 November of the following FY. Accordingly, ITC of invoices/debit notes pertaining to an FY can be taken till 30 November of the next FY or furnishing of relevant annual return, whichever comes earlier.
- The time limit to declare the details of the credit note in the return has been extended till 30 November of the following FY. Accordingly, the details of the credit note can be declared till 30 November of next FY or the furnishing of relevant annual return, whichever comes earlier.
- The time limit to rectify the error or omission regarding the details furnished in returns has been extended till 30 November of the following FY. Accordingly, rectification can be done till 30 November of next FY or furnishing of annual return, whichever comes earlier.
- A new condition has been added for availing of ITC, stating that ITC would not be available if it is restricted in the details provided in GSTR-2B.
- The details of outward supplies furnished by the registered persons, and such other prescribed supplies, and an auto-generated statement containing the ITC details shall be made available electronically to the recipients. The auto-generated statement shall consist of details of inward supplies, including whether ITC would be available to the recipient or not.
- The option to furnish GSTR-3B for a tax period will be restricted if GSTR-3B for the previous tax period or GSTR-1 for the said tax period has not been filed. However, the government may exempt a registered person or a class of registered person from such restrictions.
- The concept of a claim of ITC on a 'provisional basis' has been removed. In case the supplier has not paid the tax, the recipient is required to reverse the ITC along with the applicable interest. After that, such credit may be re-availed when the supplier pays such tax.
- The restriction of withholding of refund or adjustment of unpaid tax from the refund due has been extended for all types of refund claims.
- The relevant date for filing a refund in case of zero-rated supply of goods or services or both to a SEZ developer or an SEZ unit shall be the due date for furnishing of return under section 39 in respect of such supplies.
- The proper officer may cancel the registration of the following taxpayers:
  - The person paying tax under the Composition Scheme has not furnished the return for an FY beyond three months from the due date of furnishing the return.
  - Any other registered person who has not furnished returns for such prescribed continuous period.
  - Any registered person who is required to file GSTR-3B on a monthly basis or for each quarter or part thereof, has not furnished returns for a continuous period of six months or continuous period of two tax periods respectively.
- The time limit for filing of refund of tax paid on inward supplies by a specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries or any other person or class of persons has been increased from six months to two years from the last day of the quarter in which such supply was received.

CBIC issues guidelines for launching prosecution under the CGST Act

The CBIC has issued guidelines for launching of prosecution in relation to offences punishable under the CGST Act[1.3]. The CBIC has clarified the procedure for the sanction of prosecution, withdrawal, monitoring of prosecution, maintenance of database of prosecution proceedings, compounding of offences, etc. The CBIC stated that the cases, where the sanction for prosecution is approved after the issue of these instructions shall be dealt with in accordance with the provisions of these instructions irrespective of the date of the offence.

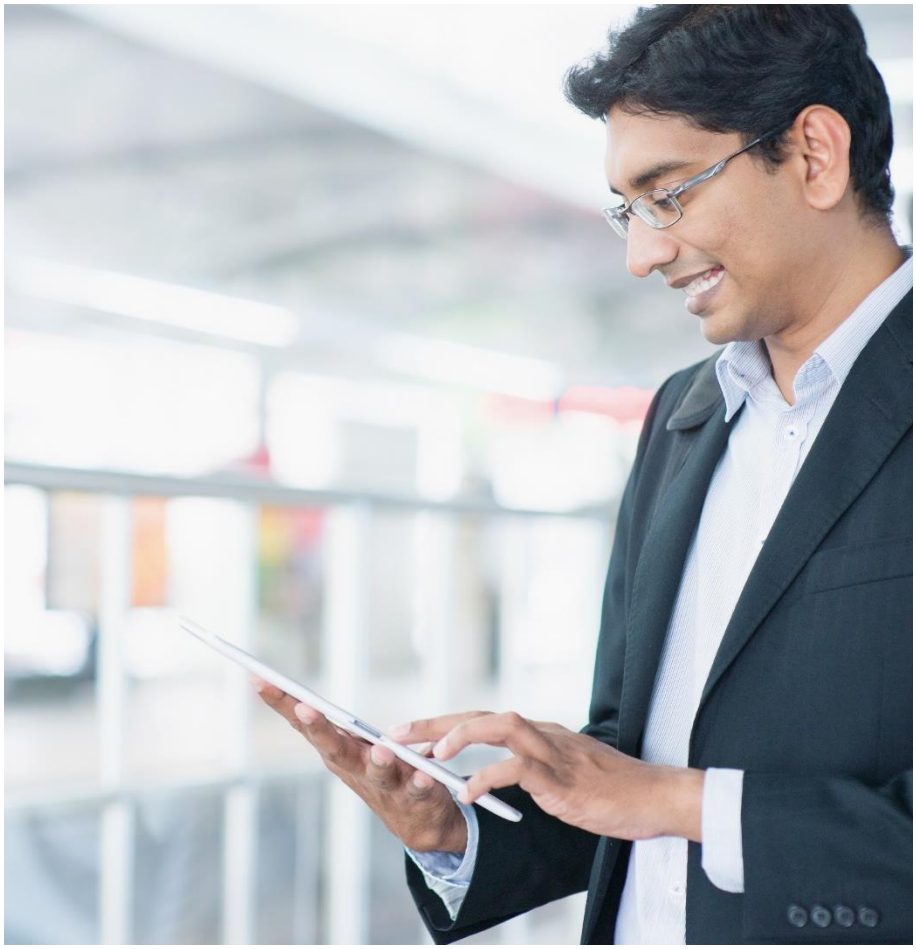


1.3 vide Instruction no. 4 dated 1 September 2022

Particulars	Guidelines
Sanction of prosecution	• The nature and adequacy of evidence should be carefully assessed before prosecution. The standard of proof in a criminal prosecution is higher than that in an adjudication proceeding, therefore, the evidence should be weighed and must meet the criteria of criminal prosecution, even if the demand gets confirmed in the adjudication proceedings. • Prosecution should not be launched in cases of technical nature or additional tax claim due to a difference in the interpretation of law. The evidence should be adequate to establish beyond reasonable doubt that the person has committed offence[1.4]. A prosecution complaint may be filed even before the adjudication of the case[1.5]. In case of an arrest, it can be initiated even before the issuance of an SCN. • In the case of a public limited company, the prosecution can be launched against only such persons who are involved in regular operations and have taken part in committing tax evasion or had connived in it.
Monetary limits	The prosecution can be initiated where the amount of tax/ ITC/ refund in relation to specified offences is more than INR 5 crore. However, in case of habitual evaders and arrest cases, the monetary limit shall not be applicable.
Authority to sanction prosecution	An approval from the Principal Commissioner/Commissioner of CGST is required to file prosecution complaint. However, where the cases are investigated by the DGGI, the sanction of the Principal Additional Director General/Additional Director General, DGGI of the concerned zonal unit/ headquarters is required.
Procedure for the sanction of prosecution	**Arrest[1.6] under GST:** • When an arrest is made during the investigation, and no bail has been granted, then the prosecution complaint should be filed before the court within 60 days of arrest. • The proposal of filing a complaint in the investigation report[1.7] shall be forwarded[1.8] to the Principal Commissioner/ Commissioner, who shall examine the proposal and take a decision[1.9]. A sanction order shall be issued along with an order authorising the investigating officer[1.10] of the case to file the prosecution complaint in the competent court. • Similar procedure shall be followed by the officers of equivalent rank of the DGGI, where an arrest is made in cases of investigation conducted by the DGGI. **Filing of prosecution against legal person, including natural person:** • In case of a company, both the legal person and natural person are liable for prosecution. Similar provisions have been made for partnership firm/ LLP / HUF/Trust. • In case of launching prosecution before adjudication of the case, the competent authority[1.11] shall record the reasons, and forward the proposal to the sanctioning authority. The decision of the sanctioning authority shall be informed to the concerned adjudicating authority. In all other cases, the adjudicating authority, while passing an order, can indicate on an order if the case is relevant for prosecution to obtain the sanction of prosecution. • In cases where an SCN has been issued by the DGGI, the recommendation of the adjudicating authority for the filing of prosecution shall be sent to the designated authorities[1.12]. In case the adjudicating authority does not form any view, file will be resubmitted to them to take a view on prosecution. • The competent authorities[1.13], considering the seriousness of offence, can decide the case for sanction of prosecution, irrespective of whether the adjudicating authority has recommended prosecution or not.

1.4 had guilty mind, knowledge of the offence, or had fraudulent intention or in any manner possessed mens-rea for committing offence
1.5 In view of the SC decision in case of Radheysham Kejriwal [2011 (266) ELT 294 (SC)]
1 .6 section 69 of CGST Act 2017
1.7 Annexure-I i.e., investigation report for launching prosecution
1.8 within 50 days
1.9 section 132 of CGST Act, 2017
1.10 at the level of Superintendent
1.11Additional/Joint Commissioner or Additional/Joint Director, or DGGI
1.12 Pr. Additional Director General/Additional Director General, DGGI of the concerned zonal unit/ Headquarters
1.13 Pr. Commissioner/ Commissioner or Pr. Additional Director General/ Additional Director General of DGGI

Particulars	Guidelines
Procedure for the withdrawal of sanction-order of prosecution	In cases where prosecution has been sanctioned, but the complaint has not been filed, and new evidence available for sanction, the Commissionerate should immediately bring the same to the notice of the sanctioning authority, who may recommend the withdrawal of sanction of prosecution, to the jurisdictional authority[1.14].
Monitoring of prosecution	The concerned authorities shall update all the prosecution entries in the investigation module within 48 hours of the sanction of prosecution. Further, in-charge of supervising prosecution cases shall ensure timely entries in the database.
Compounding of offences	The person being prosecuted should be given an offer for the compounding of offence by the designated authority.



Our comments

The CBIC has emphasised upon the repercussions of prosecution for the person involved, and therefore, the competent authority should make decision on a case-to-case basis. Further, in case of public limited companies, prosecution cannot be initiated indiscriminately against all the directors. It should be restricted to only such persons who are involved in the day-to-day operations of the company and have taken an active part in committing tax evasion or had connived in the same. This is a welcome step by the CBIC and will help in curbing malpractices.

The guidelines prescribe adequate safeguards before the launch of prosecution, which may provide relief to the industry and businesses. The authorities should take these guidelines into consideration, and follow the procedure prescribed therein.

Railway Board issues guidelines for GST implications on recovery of liquidated damages

Recently, in reference to the circular[1.15] issued by the CBIC; the Ministry of Railways has clarified[1.16] that the payment received by Railways in the form of liquidated damages against tolerating non- performance of conditions of a contract such as a delay in the rendering of supply is not liable to GST. Further, in case when liquidated damages has been levied, then the amount payable to the vendor shall be net of liquidated damages without GST thereon.

1.14 Pr. Chief Commissioner/Chief Commissioner
1.15 No. 178/10/2022 dated 3 August 2022
1.16 No. 2017/AC-II/1/6/GST/Main/Vol. III dated 10 August 2022

B. Key updates under the Customs/FTP/SEZ

Validity of FTP 2015-2020 extended up to 31 March 2023

The government has further extended the validity of the existing FTP and the HBP, which was valid till 30 September 2022, for a period of six months, effective from 1 October 2022.

Thus, the existing FTP 2015-2020 and the related HBP shall be valid up to **31 March 2023**[1.17].

CBIC issues clarification/guidelines to be considered for determination of classification of cranes

The CBIC received various representations regarding the classification of the goods referred as Truck Cranes or All Terrain Cranes, which are essentially goods that are used in handling and lifting heavy loads and have mobility. In this regard, the CBIC has issued certain aspects/guidelines to be considered for the correct classification of Cranes Lorries or All Terrain Cranes in consultation with the iCAT and the ARAI[1.18].

Key aspects for consideration

- **Movement under load:** If the mobile machines can move under load, then it will be classified under 8705. However, when the machine does not move under load or when the movement is limited and subsidiary to their main function, it would be classifiable under 8426.
- **Location of propelling and control elements:** When one or more of the propelling or control elements that are features of an automobile chassis are located in the cab of a lifting or handling machine (like crane) mounted on a wheeled chassis, the product is to be included under 8426.
- **Number of engines:** The number of engines in the vehicle does not have any bearing on the classification between chapter hearing 8426 or 8705.
- **Integration of machine with chassis:** If the machine is merely mounted (not integrated mechanically) on the chassis, the goods are classifiable under 8705. When chassis and working machine are specially designed for each other and form an integral mechanical unit and the chassis cannot be used for any other purpose, it will be classifiable under 8426.

1.17 Notification No.37/2015-2020 dated 29 September 2022 and Public Notice No. 26/2015-2020 dated 29 September 2022
1.18 Circular No. 20/2022-Customs 22 September 2022

CBIC implements system generated centralised examination orders for BoE

In coordination with the DG Systems and the NACs, the NCTC (former RMCC) has developed a system generated centralised examination orders for BoE. This functionality is expected to enhance the uniformity in examination, and lower the time taken in the process as well as reduce associated costs. The procedure for Second Check BoE will be implemented for the goods covered under the Assessment Group 4 in all the Customs Stations from 5 September 2022[1.19].

Phase 1 - Second check examination:	• The system-generated centralised examination orders are implemented in a phased manner in case of risk-based selection for examination after assessment. • In this system RMS will generate the standardised examination orders populated on the corresponding BoE which are based on a host of risk parameters concerning goods, entities, and countries, relating to that bill. • These orders are visible to AO during the assessment. • The AO will have the option of adding any additional examination instruction/order to the pre-populated RMS-generated examination order, if necessary. • Based on potential risk after processing of BoE data, a consolidated examination order for each selected BoE will be generated.
Standardised examination order format:	Different standardisation will be adopted for the examination of BoE hence, the examination of BoE will depend on the nature of the cargo and mode of packing.
Second check examination:	• **Assessment and examination:** The BoE shall be routed to the shed through a FAG on the generation of examination order by the RMS. The AO has an option to add additional examination instructions in exceptional cases after obtaining approval of the respective DC/AC. • **Examination only:** The BoE will directly flow to a shed/examining officer for necessary examination as per the RMS-generated examination order. • **Assessment only:** The AO can give an examination order only in exceptional cases with the approval of DC/AC.
Instructions to be followed by field officers for examination of goods:	• FAG officers will need to see whether there is already an RMS-generated examination order for a BoE and proceed accordingly. • In exceptional cases, the FAG officers are required to give additional examination order/instruction to complement the RMS generated examination order. • The RMS-generated examination orders need to be followed strictly by the Shed/examining officers and physically examine the selected containers and the relevant selected areas/parts in accordance with the examination order. Further, as per the instructions given by the FAG officers, the Shed/examining officers may also examine any other goods or area/part of the container in appropriate cases or based on the nature, package, and size of cargo. • Prior approval of the Joint Commissioner/Additional Commissioner would be required if there is any deviation from the examination order except in the situations described herein above and such deviation should be recorded in the examination report. To ensure the justification of such deviations, the commissioners need to monitor such cases regularly.

DGFT extends the last date for uploading of e-BRC for shipping bills where RoSCTL scrips have been issued

Under the RoSCTL scheme, the rebate is allowed subject to receipt of export proceeds within the time stipulated under the FEMA. Therefore, the DGFT had earlier requested all the exporting firms that have been issued RoSCTL scrips for exports/shipping bills up to 31 December 2020, to get uploaded the relevant e-BRCs by their AD banks by 15 July 2022.

The DGFT has further extended the last date for uploading of all such e-BRCs till 30 September 2022 and no further extension would be granted[1.20]. In case of failure, action would be initiated by the jurisdictional RAs.

1.19 Circular No.16/2022-Customs dated 29 August 2022
1.20 Trade Notice No. 16/2022-23 dated 6 September 2022

CBIC notifies import of goods at concessional rate of duty or for specified end use rules and related clarifications

The CBIC had earlier introduced significant changes simplifying and automating the procedures in the IGCR. The online functionality has also been made available on the ICEGATE portal. Based on various suggestions received, the CBIC has notified the IGCRS superseding the existing IGCR effective from 10 September 2022[1.21]. These changes have been made to broaden the scope of coverage of IGCR and ensure that useful additional data fields are effectively captured.

Key clarifications

- **Time period for utilisation of goods:** When time period for utilisation is specified in the notifications, the said time period will apply. If not specified, the time period of six months will apply. The jurisdictional Commissioner can further extend such a period of six months by another three months. However, it is clarified that such extension can be given provided the importer furnishes sufficient reason/s for not conforming to the time period so prescribed, which were beyond the importer's control.
- **Specified end use:** Where the import is undertaken for specified end use and no differential duty is involved, the value of the bond shall be equal to the assessable value of the goods. In cases where the intended purpose of import is supply of the goods to an end-use recipient, the importer shall supply these goods under an invoice or wherever applicable, through an e-way bill, as mentioned in the CGST Act, 2017.
- **Bond and bank guarantee:** All importers who are manufacturers or service providers registered under GST and have been filing prescribed GST returns having annual turnover in the preceding year of above INR 1 crore shall give surety for duty foregone. However, where the importer is not able to provide the surety, a bank guarantee/cash security equivalent to not more than 5% of bond debit value* shall be furnished.
- **UAE – CEPA:** The importer (in most cases, the nominated agencies) shall follow IGCRS for import of gold under the UAE – CEPA and supply the gold to end-use recipients who are TRQ holders. The importer, having provided a one-time intimation in Form IGCR-1 at the common portal, can generate an IIN number and undertake multiple imports against the same.
- **New for confirmation of consumption:** A new Form IGCR-3A has been notified for confirmation of consumption for intended purpose at the common portal at any point in time for immediate re-credit of the bond by the jurisdictional AC/DC, without waiting for the filing of monthly statement on the 10th of every month. The details filed in form IGCR-3A shall get auto populated in the monthly statement of the subsequent month, which has to be only confirmed by the importer.

** Bond debit value – Duty foregone in case of concessional rate and assessable value of the goods in other cases.*

CBIC removes liability casted on the transferee in case of recovery of duty credit granted under the RoDTEP and RoSCTL Scheme

The CBIC had earlier notified the manner to issue duty credit for goods exported under the RoDTEP and RoSCTL Schemes. The CBIC has now amended the said procedures to remove the liability casted on the transferee in case of recovery of duty credit[1.22].

Key changes notified:

- **Recovery of duty credit allowed in excess or due to non-realisation of export proceeds:** As per the earlier prescribed mechanism, in case of failure to pay the amount of duty credit demanded along with interest within a period of fifteen days by the exporter, then the proper officer can initiate recovery proceedings against the transferee in a manner as provided in Section 142 of the Customs Act, 1961. The said powers granted to the proper officer of customs to proceed for recovery of duty credit demanded from the transferee has been done away with.
- **Unutilised duty credit with transferee**: During the pendency of any recovery of duty credit, any unutilised duty credit with the transferee shall not be suspended.

1.21 Notification No.74/2022-Customs (N.T.) dated 9 September 2022
1.22 Notification No. 76/2022-Customs (N.T.) and Notification No. 75/2022-Customs (N.T.) dated 14 September 2022

DGFT permits invoicing, payment, and settlement of exports/imports in INR in sync with RBI's recent circular

Under the RBI's circular[1.23] invoicing, payment, and settlement of exports and imports is also permissible in INR. In line with the same, the DGFT has amended para 2.52 of the FTP pertaining to 'Denomination of Export Contracts' to permit invoicing, payment, and settlement of exports and imports in INR in sync with the RBI's recent circular[1.24].

Accordingly, trade transactions in INR can be settled through the Special Rupee Vostro Accounts (opened by AI) banks in India as under:

- **Imports**: The Special Vostro account of the correspondent bank of the partner country shall be credited against the invoices for the supply of goods or services from the overseas supplier on payment made by the Indian importers in INR under this mechanism.
- **Exports:** The export proceeds in INR shall be paid to the Indian exporter under this mechanism from the balances in the designated Special Vostro account of the correspondent bank of the partner country.

CBIC extends the validity of e-scrip issued under the RoDTEP and the RoSCTL Schemes

The CBIC had earlier notified the Electronic Duty Credit Ledger Regulations, 2021 for issuance of duty credit scrips under the RoDTEP and the RoSCTL Schemes[1.25]. Vide the said regulations, the CBIC had notified that the e-scrip shall be valid for a period of one year from the date of its creation and the unutilised duty credit at the end of such period will lapse and shall not be regenerated.

In this regard, the CBIC has now notified the Electronic Duty Credit Ledger Regulations, 2022[1.26] extending the period of validity of e-scrip from one year to **two years** from the date of its creation in the ledger.

1.23 A.P. (DIR Series) Circular No.10 dated 11 July 2022
1.24 Notification No. 33/2015-2020 dated 16 September 2022
1.25 Notification No. 75/2021-Customs (N.T.) dated 23 September 2021
1.26Notification No. 79/2022-Customs (N.T.) dated 15 September 2022

02 Key judicial pronouncements

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

SC allows time extension of four weeks to open GST common portal for filing form GST Tran-1 and GST Tran-2

Earlier, the SC in case of Union of India v/s M/s FTCPL and Anr. (SLP(C)32709-32710 of 2018) had directed the GSTN to open common portal, from 1 September 2022 to 31 October 2022, for filing transitional forms TRAN- 1 and TRAN- 2 for availing credits.

In reference to the above decision, the SC has further allowed time extension of four weeks[2.1] to open the GST common portal. Accordingly, GSTN would open the common portal for filing transitional credit through Form GST Tran-1 and GST Tran-2 effective from 1 October 2022.

The SC further clarified that all questions of law decided by the respective HCs concerning transitional provisions for ITC are kept open.

2.1 Miscellaneous Application Nos.1545-1546/2022 in SLP(C) No. 32709-32710/2018

Pursuant to the SC's order, the CBIC issues guidelines to file/revise transitional forms

The CBIC, in order to ensure uniformity in the implementation of the directions of the SC, has issued guidelines for applicants to file/revise the transitional forms. The CBIC has provided a one-time opportunity to file the transitional forms and hence, applicants should take utmost care and thoroughly check the details before filing the forms. Further, the transitional credits shall be subject to the verification of the proper officer, post which the amount allowed by the proper officer will be reflected in the ECrL of the taxpayer on the GST portal.

Pursuant to the directions of the Hon'ble SC[2.2], the CBIC has issued a clarification that the facility for filing original/revised Form GST TRAN-1/ TRAN-2 (forms) on the common portal will be made available by the GSTN from 1 October 2022 to 30 November 2022. The CBIC stipulates the following guidelines[2.3], to ensure uniformity in implementation of the directions of the SC:

- The option of filing or revising the forms is a one-time chance given to the applicant. Therefore, the applicant should take utmost care and thoroughly check the details before filing the forms online. Once an applicant submits the forms on the GST portal, editing of the details shall not be allowed. Subsequently, the applicant will not be available with any further opportunity either to again file or revise the forms. The GSTN will issue a detailed advisory which will be considered by the applicant for filing the forms on the portal.
- The applicant may file original/ revised forms duly signed or verified through EVC on the GST portal along with a declaration in 'Annexure-A' of the circular.
- A facility to download the forms furnished earlier will be provided on the GST portal.
- A self-certified copy of the forms shall be submitted to the jurisdictional tax officer within seven days of filing on the portal, along with the declaration in Annexure-A and form GST TRAN-3, if applicable.
- The applicant claiming credit[2.4] based on the CTD is required to upload the Form GST TRAN-3 containing the prescribed details[2.5].
- Transitional credit in respect of C-Forms, F-Forms and H/ I-Forms will not be available in form[2.6] if such forms have been issued after 27 December 2017.
- A consolidated Form GST TRAN-2 should be filed instead of filing the forms periodically, and the last month of the consolidated period to be mentioned in the 'tax period' column.
- Where the credit availed earlier in the transitional forms is rejected either wholly or partially by the proper officer, the applicant can either file an appeal or pursue alternate remedies. Further, where the adjudication/ appeal proceeding is pending, same should be pursued. In such cases, filing fresh forms using this option is not the appropriate course of action.
- The declaration filed will be subjected to necessary verification by the tax officers which may require the submission of requisite supporting documents of the claim. The tax officer, after due verification, will pass a suitable order after providing a reasonable opportunity of being heard to the applicant.
- The transitional credit, so allowed by the tax officer, will be reflected in the ECrL of the taxpayer on the GST portal.

Our comments

The Apex Court has recently issued directions to open the GST portal, pursuant to which the facility for filing/revising the transitional forms by an applicant on the GST portal will be made available by the GST network from 1 October 2022 to 30 November 2022. The re-opening of this window will be beneficial for the taxpayers enabling them to transfer their transitional credits into the ECrL on the GST portal.

The present guidelines issued by the CBIC in accordance with the SC's order provide due clarity and much-awaited relief to the aggrieved registered assessees in filing/revising the transitional forms. Further, the directions issued by the CBIC to the taxpayers, to keep ready all the requisite documents for submission to the concerned tax officers for verification, will encourage applicants to ensure the correct filing of the transitional forms to avoid any loss of credit and minimise unwarranted litigations.

This is a welcome step by the CBIC towards mitigating the confusion in the mind of the taxpayers while availing of the transitional credits. Further, the advisory from the GSTN is awaited, which may further ease the process and provide further clarifications in this regard.

2.2 SC order dated 22 July 2022 in SLP(C) No. 32709-32710/2018 and Miscellaneous application No.1545-1546/2022 in SLP(C) No. 32709-32710/2018, SC vide order dated 2 September 2022
2.3 vide Circular No.180/12/2022-GST dated 9 September 2022
2.4 in Table 7A of Form GST TRAN-1 (Details of inputs held in stock or inputs contained in semi-finished and finished goods held in stock where duty paid invoices are available)
2.5 in terms of the Notification No. 21/2017-CE (NT) dated 30 June 2017
2.6 Tables 5(b) and 5(c) of Form GST TRAN-1

Transportation service to the employees cannot be an input service related to manufacture of goods – SC

Summary

The SC has upheld the order passed by the Bombay HC and held that the transportation services provided to the employees for pick up and drop to the factory has no relation with the manufacturing activity of the appellant. Therefore, such services cannot be said to be input services and the CENVAT credit of service tax paid on such services shall not be available. Earlier, the HC had disallowed the CENVAT credit on transportation services availed by the appellant on the ground that such service is provided for personal use or consumption of its employees.

Facts of the case

- The appellant[2.7] is a manufacturer of explosives at its factory located in Nagpur. The said factory was located far from the city.
- The appellant had hired a bus service to provide transportation facility to its employees for pickup from their designated area in Nagpur and drop at factory.
- The appellant availed CENVAT credit of service tax paid on such service. SCNs were issued to the appellant by the AA for the period July 2009 to December 2015 alleging the availability of CENVAT credit of service tax paid on the bus hire services.
- Pursuant to reply filed by the appellant, the AA allowed the CENVAT credit for the period of July 2009 to March 2011. The balance CENVAT credit from April 2011 onwards was disallowed on the ground that after the amendment in the definition of 'input service'[2.8], services used primarily for personal use or consumption of any employee stands excluded from the scope of 'input service' and the same was thus ineligible for CENVAT credit. Therefore, the demand along with interest and penalty was confirmed[2.9].
- The appellant challenged the impugned order before the Commissioner (Appeals) who maintained the disallowance of the CENVAT credit but reduced the penalty.
- On further appeal, the Tribunal maintained the order passed by the Commissioner (Appeals) and set aside the penalty.
- Aggrieved the appellant filed appeal before the Bombay HC[2.10].

Bombay HC observations and ruling[2.11]

- **Rent-a-cab service excluded from definition of input service:** The Tribunal had found that rent-a-cab service had been excluded from the definition of the term 'input service' by virtue of amendment effective from 1 April 2011. Therefore, the Tribunal was justified in disallowing the CENVAT credit.
- **Not a part of manufacturing activity:** The transportation of employees from distance of about 40 kms for reaching factory is not an activity which could be said to be a part of manufacturing activity.
- **Transportation facility is merely for personal convenience:** The transportation facility is merely for personal convenience of the employees to enable them to reach the premises of the factory to thereafter participate in the manufacturing activity. Also, the HC has placed reliance on the SC ruling[2.12] and stated that post the amendment in the scope of input services, the CENVAT credit in respect of services primarily for personal use or consumption of employees could not be availed.
- **Tribunal right in disallowing the CENVAT credit:** The facility of transportation provided by the appellant to its employees was merely in the nature of service for personal use or consumption of its employees. Therefore, the Tribunal did not commit any error in disallowing the CENVAT credit.

SC observations and ruling[2.13]

- **Not related to manufacturing activity:** The transportation service to the employees has no relation with the activity of manufacturing goods. Therefore, it cannot be said to be an 'input service'.
- **Upheld HC's order:** The HC did not commit any error in denying the CENVAT credit and holding that such transportation service is excluded from the definition of input service.

Our comments

Recently, in the case of M/s Toyota Kirloskar Motor Private Limited, the SC had held that the outdoor catering services used primarily for the personal use or consumption of any employee is excluded from the definition of input service.

In line with the above, the SC has further reiterated that as the transportation facility is merely for personal convenience of the employees, the CENVAT credit in respect of such services primarily for personal use or consumption of employees could not be availed post the amendment in the scope of input services.

The ruling will have widespread ramifications since similar restrictions exist even under the GST regime.

2.7 Solar Industries India Limited
2.8 Definition of Input Service in Rule 2(1) of the CENVAT Credit Rules, 2004
2.9 Under Rules 14 and 15 of the CENVAT Credit Rules, 2005
2.10 Central Excise Appeal No.12/2019
2.11 Order dated 22 December 2021
2.12 CEA No.36/2018 with CEA No.7/2019 (Toyota Kirloskar Motor Private Limited)
2.13 Special Leave Petition (Civil) Diary No(s). 22650/2022 dated 26 August 2022

License fee for operating a hotel cannot be taxable under the category of renting of immovable property service – SC

Summary

The SC has affirmed the CESTAT Chennai Bench's view that the license fees received by the appellant for running the hotel is not covered under the scope of renting of immovable property services. Earlier, the CESTAT had observed that the renting of immovable property service, as defined under the service tax law, includes renting, letting, leasing, licensing, or similar arrangements of immovable property. In the present case, however, the agreement was not merely for renting of the hotel or land appurtenant thereto, etc., but was license to run, conduct and operate the hotel together with all the related facilities and business appertaining thereto. The employees and other staff, goodwill and other paraphernalia are also taken into consideration by the two parties involved while framing the license agreement. Further, the appellant was not receiving any fixed rent as is in case of normal renting transaction instead they received license fee based on certain percentage of the turnover. Therefore, the CESTAT had held that the demand of service tax on such license fees under the category of renting of immovable property services along with interest is not tenable in law and hence liable to be set aside.

Facts of the case

- The appellant[2.14] was engaged in the business of running hotels. The appellant was transferred one hotel by way of demerger.
- The appellant started receiving license fees in respect of such hotel which were based on a certain percentage of the income from the operations of the hotel.
- A SCN was issued to the appellant alleging to pay service tax under the category of renting of immovable property service on the license fees received along with interest and penalty[2.15].
- The aggrieved appellant filed an appeal before the CESTAT.

Chennai CESTAT observations and ruling[2.16]

- **Scope of renting of immovable property**: The renting of immovable property, as defined under the service tax law[2.17], includes renting, letting, leasing, licensing, or similar arrangements of immovable property. To fall under the said definition the immovable property rented out should be the genre exemplified in the definition.
- **Agreement to run the hotel business:** In the instant case, the agreement was not merely for renting of hotel but was for license to run, conduct and operate the transferred hotel together with all the related facilities and business appertaining thereto. In addition to the immovable property portion of the hotel, the employees and other staff, goodwill and other paraphernalia have also taken into consideration by the two parties involved while framing the license agreement.
- **License fees based on turnover of the hotel**: The amount of rent is not fixed like all other rented agreements instead the appellant has received license fees equivalent to some percentage of the annual sales from operation of the hotel. The license fees accruing to the appellants therefore have an umbilical card relation with the turnover and profits of the hotel business.
- **Not regular renting of immovable property transaction:** The transaction is not one of renting of immovable property but a business transaction between the two, where the consideration is not like a regular rent but is dependent on the annual performance and profits of the hotel.
- **Proceedings hit by limitation:** Since the verifications were initiated in 2005 and although all clarifications were submitted, the revenue did not issue the SCN till 2014. Therefore, the proceedings were clearly hit by limitation.
- **Appeal allowed:** The CESTAT stated renting of a building for a hotel, i.e., buildings used for purpose of accommodation including hotels is covered by exclusion clause and does not fall within ambit of taxable service namely 'renting of immovable property'. Therefore, the demand of service tax on license fees under the category of renting of immovable property is not tenable in law.

SC observations and ruling[2.18]

- **Upheld the CESTAT order:** The SC upheld the CESTAT's order and stated that based on the reasoning given by the CESTAT no interference is required and dismissed the appeal.

Our comments

The SC has affirmed the CESTAT Chennai Bench's order and held that the renting of a building for a hotel, is not liable to service tax under the 'renting of immovable property' services.

Similar ruling was pronounced by the Delhi Bench of the CESTAT[2.19], wherein it had held that the renting of a building for a hotel, i.e., buildings used for purpose of accommodation, including hotels, is covered by the exclusion clause and does not fall within the ambit of taxable service namely 'Renting of immovable property service'.

This is a welcome judgment and an analogy can also be drawn under the GST regime in similar matters. However, the nature of the transaction determines the taxability, therefore, it is imperative to evaluate the agreements and transaction on a case-to-case basis.

2.14 Grand Royale Enterprises Ltd
2.15 U/s 76,77 and 78 of the Finance Act, 1994
2.16 Order No. - 42539/2018 dated 01 October 2018
2.17 Section 65 (90a) of the Finance Act, 1994
2.18 Civil Appeal No. 7326/2019 dated 01 August 2022
2.19 M/s Jai Mahal Hotels Pvt Ltd

Service tax not leviable on indivisible works contract for the period prior to the introduction of the Finance Act, 2007 - SC

Summary

The SC has held that service tax is not leviable on the indivisible works contract for the period prior to the introduction of specific taxable entry, i.e., Section 65(105) (zzzza) pertaining to works contracts vide the Finance Act, 2007. The SC stated that the judgment in the case of Larsen and Toubro Limited (L&T) has been correctly decided and does not call for a reconsideration insofar as the period prior to 1 June 2007 is concerned and has stood the test of time and has never been doubted earlier.

The Revenue had argued that even prior to the Finance Act, 2007, there was an elaborate mechanism for segregating the value of the goods component and the service component in a works contract. It cannot be said that there was no machinery provision to charge the service component in a composite works contracts to make it exigible to service tax. Therefore, the Revenue stated that the decision in the case of L&T was fundamentally erroneous.

Facts of the case

- The petitioner[2.20] had filed the present appeal challenging the impugned order levying service tax on composite works contract for the period prior to Finance Act, 2007.
- The revenue had submitted the present appeal with the prayer to reconsider the already passed decision of this court in the case of L&T.
- In case of L&T, this court has specifically observed and held that on indivisible works contract, for the period prior to introduction of Finance Act, 2007, service tax was not leviable under the Finance Act, 1994.
- The revenue submitted that the decision of court in L&T is fundamentally erroneous and hence it should be revisited.
- Further, the Revenue submitted that even prior to Finance Act, 2007, there was an elaborate mechanism for segregating the value of the goods component and the service component in a works contract. Therefore, it cannot be said that there was no provision to charge service tax on the service component of Composite Works Contracts.
- However, the appellant assessee submitted that in the case of L&T, it is specifically observed that a taxable service under the Finance Act, 1994 covers service contracts simpliciter and not the Composite Works Contracts.
- Further, the appellant submitted that various courts and Tribunals have based their decision on the judgment in case of L&T. So, upon revising this judgment it would upset the decisions already taken.
- The appellant contended that the Composite Work Contract was covered in the ambit of service tax for the first time post the amendment of Finance Act, 2007.

SC observations and ruling[2.21]

- **Principle of *stare decisis*:** The SC relied on various judgments and noted that the previous decisions can be revised only when they are proceeded upon a mistaken assumption or is contrary to a decision of another court, which the court is bound to follow. The decisions rendered by a coordinate bench is binding on the subsequent benches of equal or lesser strength and a coordinate bench of the same strength cannot take a contrary view than what has been held by another coordinate bench. Therefore, based on the principle of *stare decisis*, the SC held that the judgment in case of L&T neither needs to be revisited nor referred to a larger bench.
- **Doctrine of precedent:** The SC relied on judgment of K. Ajit Babu, which held that according to the doctrine of precedent, emphasis should be placed on consistency, certainty, and uniformity in field of judicial decisions. One of the basic principles of the administration of justice is that identical cases should be decided alike. There should not be any dilemma in minds of public to obey or not obey such laws.
- **Service tax was not applicable for the prior to amendment in the Finance Act, 2007:** The SC held on all aforesaid submissions, that there lies no liability of service tax on indivisible /composite works contract for the period prior to the amendment in June 2007. Therefore, all such orders are quashed and set aside.

Our comments

The issue of applicability of service tax on the composite works contract is no longer *res integra* in view of the SC's ruling in the case of L&T. The SC had held that the indivisible works contracts were not leviable to service tax for the period prior to the introduction of the Finance Act, 2007. It specifically observed and held that the works contracts on which service tax was levied under the Finance Act, 1994 is distinct from contracts of service.

This is a significant ruling and a classic example of the principle of *stare decisis* which means that when a court faces a legal argument, if a previous court has ruled on the same or a closely related issue, then the court will make their decision in alignment with the previous court's decision. Further, the ruling has reiterated that the service tax was levied on the composite works contracts for the first time pursuant to the amendment of the Finance Act, 1994 vide the Finance Act, 2007.

2.20 M/S Total Environment, M/s GD Builders, and others
2.21 Civil Appeal Nos. 6792 of 2010, 8673-8684 of 2013, 4547-4548, 6523, 6525, 6526 of 2014, 2666, 2667, 2668 of 2022 vide order dated 2 August 2022

Classification of a product adopted at the supplier's end shall be final and cannot be changed/questioned - SC

Summary

The SC has upheld the demand against the MODVAT credit availed by the appellant on the 'Guide Car' used for purpose of transportation of hot coke coming out of COB as same cannot be said to be a 'component' or 'part' of COB. The SC stated that as per the settled position of law, the classification of a product done at the consignor's end shoud be final and that cannot be changed/questioned at the consignee's end. The SC observed that the 'Guide Car' is being used for transporting hot coke after it is processed in the COB and can be said to be an equipment distinct from COB. Hence, it cannot be said that without the 'Guide Car', the COB shall not be functional. Therefore, the SC stated that the Adjudicating Authority and the Tribunal have rightly denied the MODVAT credit availed by the appellant on 'Guide Cars'. However, the appellant had a bonafide belief that the goods would fall under the Chapter sub-heading 8428.90 or that the 'Guide Car' can be said to be a 'component' of the COB. Therefore, the SC set aside the penalty upheld by the Tribunal.

Facts of the case

- An SCN was issued to the appellant[2.22], seeking to deny the MODVAT credit availed by the appellant on capital goods, i.e., 'Guide Car' since it was classifiable under Chapter subheading 8603.00 of the Central Excise Tariff Act, 1985.
- The Adjudicating Authority believed the appellant should not be entitled to the MODVAT credit on Guide Car considering[2.23] and thus, disallowed the credit wrongly availed by the appellant during the month of March 2000 which included the MODVAT credit availed by the appellant on the 'Guide Car' and imposed the penalty[2.24] .
- According to the appellant, the 'Guide Car' is classifiable under Chapter subheading 8428.90, as was being done by the supplier of the same to the appellant and there was no reason for classifying the same under chapter subheading 8603.00.
- The CESTAT upheld the demand alongwith penalty. Therefore, the appellant preferred present appeal[2.25] before the SC.

SC observations and ruling[2.26]

- **The classification adopted by the consignor cannot be changed:** As per the settled position of law, the classification of a product done at the consignor's end shall be final which cannot be changed/ questioned at the consignee's end. In the case of the supplier, 'Guide Car' was classified under Chapter sub-heading 8603.00. Therefore, 'Guide Car' should be classifiable under Chapter sub-heading 8603.00 of the tariff.
- **'Guide Car' cannot be said to be a component of COB:** Considering the expression 'component' as discussed in the case of Saraswati Sugar Mills, the SC stated that the test would be whether the 'Guide Car' can be said to be an integral part necessary to the constitution of the whole article, namely, COB and whether without it, the COB shall not be complete? Considering the process and the way and/or for the purpose for which the 'Guide Car' is used, it cannot be said to be a 'component' of COB. It cannot be said that without the 'Guide Car' the COB shall not be functional**.**
- **Guide Car is a distinct equipment:** The 'Guide Car' is used to transport the hot coke after it is processed in the COB. Therefore, 'Guide Car' can be said to be different equipment distinct from the COB and cannot be a part of the COB.
- **MODVAT credit not available:** The appellant shall not be entitled to the MODVAT credit on 'Guide Car' as 'component' and/or part of COB as claimed by the appellant. The AA and the learned Tribunal have rightly denied the MODVAT credit availed by the appellant on 'Guide Cars'.
- **Penalty set aside:** The appellant genuinely believed that the goods would fall under Chapter sub-heading 8428.90 or that the 'Guide Car' can be said to be a 'component' of the COB. Therefore, the penalty imposed by the Tribunal is required to be quashed and set aside.
- **Duty levied on approved classification:** The present case was of an approved classification list sought to be corrected subsequently. In this regard, the SC observed that the levy of excise duty based on an approved classification list is the correct levy, at least until the correctness of the approval is questioned by the issuance of a SCN to the assessee**.**

Our comments

The present ruling is in line with the well-settled position of law that the classification of a product done at the supplier's/consignor's end shall be final and that it cannot be changed/questioned at the recipient's/consignee's end. Recently, in the case of Sarvesh Refractories (P) Ltd. the SC had held that the classification of product cannot be changed by the recipient from one declared by the manufacturer-supplier to avail credit.

Even under the GST law, recently the SC has held that it is the responsibility of the bidder to quote the correct HSN code and the corresponding GST rate. Thus, the SC has once again reiterated the settled principle of law that the appropriate classification of goods and services and payment of GST liability is the sole responsibility of the supplier (except in the case of the RCM).

2.22 Steel Authority of India Ltd.
2.23 Rule 57Q of the Central Excise Rules, 1944
2.24 under Rule 173Q of the Rules 1944
2.25 Civil Appeal no. 7269 OF 2009
2.26 vide order dated 16 September 2022

Interest liability, disputed by taxpayer, cannot be raised without initiating adjudication proceedings -Jharkhand HC

Summary

The Jharkhand HC relied on its judgment in the case of Mahadeo Construction Co., wherein it had been held that if any assessee disputes the interest liability, then the Revenue will have to follow the procedure specified for adjudication proceedings. In the present case, the Revenue negated the objections filed by the petitioner towards the liability of interest and adjusted the interest amount from the refund sanctioned to the petitioner. However, the respondents have not followed the specified procedure for the realisation of interest. Therefore, the HC quashed the impugned order and directed the officer to initiate fresh proceedings.

Facts of the case

- The petitioner[2.27] filed Form GST TRAN-1 to claim transitional credit of ITC and inadvertently claimed the same amount in Form GSTR-3B filed for July 2017 due to inadequate knowledge of the GST laws. The petitioner submitted that the credit availed in Form GSTR-3B was unutilised. The error was subsequently rectified by reversing the credit of SGST in the return filed for July 2018.
- The department sought clarification for reversal of credit and asked for payment of interest thereon.
- The petitioner, in the meantime, had applied for a refund of the excess amount lying in the ECL. The authority allowed the refund after adjustment of the amount including the interest liability. The petitioner had filed an appeal against the adjustment of refund, which was dismissed.
- The petitioner had filed a detailed objection to the impugned letter of the respondent. The respondent did not accept the request of the petitioner and asked to pay the remaining amount of interest after adjustment of the refund amount.
- The petitioner submitted that interest could not be levied if the ITC had not been availed twice. Further, the respondent should have followed the procedure prescribed for the realisation of interest.
- The Revenue contended that it is an established law, and that ignorance of the law cannot be an excuse for non-compliance with legal provisions. The petitioner tried to put their failure on the online portal, which is not correct and tenable. Therefore, the authority has correctly issued the letter to deposit the interest on the wrong availment of ITC.
- Accordingly, the issue before the HC is whether interest[2.28] can be imposed without initiating any adjudication proceeding[2.29] towards the liability of interest.

Jharkhand HC observations and ruling[2.30]

- **Interest liability, disputed by the taxpayer, cannot be raised without initiating adjudication proceedings:** The HC relied on its judgment in the case of Mahadeo Construction Co. and noted that if any assessee disputes the liability of interest[2.31], then the revenue will have to follow the specified procedure. However, in the present case, the respondents have not followed the procedure. Thus, the HC quashed the impugned order wherein the objection filed by the petitioner was negated. Further, the matter is remitted back to initiate fresh proceedings towards interest and issue of fresh refund order in accordance with law.

Our comments

Earlier in case of Mahadeo Construction Co.[2.32], the Jharkhand HC had held that interest liability is not automatic and same is required to be calculated and intimated to the assessee. If an assessee disputes the interest liability, the assessing officer needs to initiate proceedings for adjudication of interest liability. Similarly, in case of LC Infra Projects Private Limited[2.33], the Karnataka HC had held that SCN is required to be issued to the assessee before recovery of interest. However, both these decisions have been challenged before the Apex Court[2.34] and the matter is listed for hearing on 23 September 2022.

A similar view has been taken in the case of R K Transport Private Limited[2.35] and in the case of M/s Narsingh Ispat Limited[2.36]. Similarly, in the case of M/s Daejung Moparts Private Limited[2.37], the Madras HC had held that quantification of interest liability could not be done unilaterally, especially where assessee disputes the period or quantum of tax demand. Further, the quantification of liability shall have to be made by doing the arithmetic exercise after considering the assessee's objections.

The present ruling is also in line with the above rulings and shall set precedence in similar matters. However, the Apex Court's decision needs to be considered.

2.27 Bluestar Malleable Private Limited
2.28 under Section 50 of the JGST Act
2.29 either under Section 73 or 74 of the JGST Act
2.30 WP(T) No. 2043 of 2020 with W.P.(T) No. 2051 of 2020, Order dated 18 August 2022
2.31 under Section 50 of the JGST Act
2.32 W. P. (T) No. 3517 of 2019
2.33 Writ Appeal No. 188 of 2020 (T-RES)
2.34 SLP(C) No. 6977 of 2021 and 8370 of 2021
2.35 W.P.(T) No. 1404 of 2020, Order dated 16 Feb 2022
2.36 W.P (T) No. 177 of 2021 with W.P (T) No. 1261 of 2020 with W.P (T) No. 161 of 2021
2.37 W.A.No.2171 of 2019

Relying upon the SC decision, Bombay HC directed taxpayers to use the transitional window for transfer of ISD credit as well

Summary

The Bombay HC disposed of a batch of the petitions filed w.r.t. the procedural difficulties and objections raised concerning ISD credit of service tax/excise duty. The HC adopted the approach of the SC in the case of FTCPL and accordingly issued the directions to the petitioners, the CBIC and the concerned officers. Accordingly, the petitioners can file/revise their Form GST Tran-1 between 1 September 2022 to 31 October 2022. Further, the HC directed the CBIC to issue a clarification in relation to the distribution/reporting of ISD credit, preferably within 21 days from the upload date of the order.

Facts of the case

- A batch of petitions[2.38] have been filed w.r.t. the procedural difficulties/objections raised regarding distribution and/or utilisation and/or eligibility of ISD credit of service tax/excise duty[2.39].
- The respondent contended that the ISD credit could not be transitioned directly into the ECL under the GST regime. Instead, the transferee units should have filed Form GST Tran-1 for the transition of ISD credit.
- The petitioners submitted that they could not distribute and report the credit from ISD to their units due to procedural and functional difficulties in relation to GST forms and the portal.

Bombay HC observations and ruling[2.40]

- **Directions issued by HC in view of the SC order:** The HC intended to adopt the approach of the SC in the case of FTCPL[2.41], wherein the SC directed the GST network to open the common portal for two months[2.42] for filing/rectifying the transitional forms. Accordingly, the HC issued the following directions and disposed of the petitions.
  - All petitioners, through their respective units/offices[2.43], can avail of the window and file/revise Form GST Tran-1 between 1 September 2022 to 31 October 2022, in terms of SC's order.
  - The basis of Form GST Tran-1 will be the manual ISD invoices issued/to be issued. Further, the aggregate credit should not exceed the ISD credit available with the ISD petitioner.
  - The CBIC will consider the problem faced by the parties and issue a clarification w.r.t. the distribution/ reporting of ISD credit within 21 days from the date of uploading the order. The petitioners may approach the CBIC in this regard.
  - The concerned officers, within 90 days, can verify the accuracy of the transitional credit and accordingly, pass appropriate orders on merits, after giving reasonable opportunity.

2.38 Unichem Laboratories Limited vs Union of India & Ors.
2.39 u/s 140 of the CGST Act 2017
2.40 Final Order No. 50022/2020 dated 9 January 2020
2.41 SCA No. 18433/2017 05-09-2018 dated 29 August 2022
2.42 1 September 2022 to 31 October 2022
2.43 Registered under CGST Act and/or State Acts
2.44 Miscellaneous Application Nos.1545-1546/2022 in SLP(C) No. 32709-32710/2018

Our comments

Earlier, the SC directed the government to open the GST common portal from 1 September 2022 to 31 October 2022 to claim the transitional credits. However, while hearing an application from GSTN, the SC[2.44], in its decision dated 2 September 2022, has allowed a time extension of four weeks to open the GST common portal. Accordingly, GSTN would open the common portal for filing transitional credit through form GST Tran-1 and GST Tran-2 effective from 1 October 2022.

In view of the Apex Court ruling, the Bombay HC has issued directions to use such a window for the transition of ISD credits as well. Accordingly, the time period for the transition of ISD credit should also be considered effective from 1 October 2022 in terms of SC's order.

This is a welcome move and will likely benefit numerous taxpayers who earlier could not transition their ISD credit through their respective units/offices into the GST regime.

However, since the transitional credits/claims are subject to the concerned officers' verification, the taxpayers should be attentive and have sufficient documentary evidence to avoid unnecessary litigations/disputes.

Nevertheless, the re-opening of the two months window is a golden chance for all taxpayers to avail their lawful pre-GST credit. Therefore, the businesses which were unable to transition credit from the erstwhile indirect tax regime, should re-assess their credits and avail benefit of this facility.

Suo motu extension orders passed by SC not applicable on interest on delayed refund under GST– Delhi HC

Summary

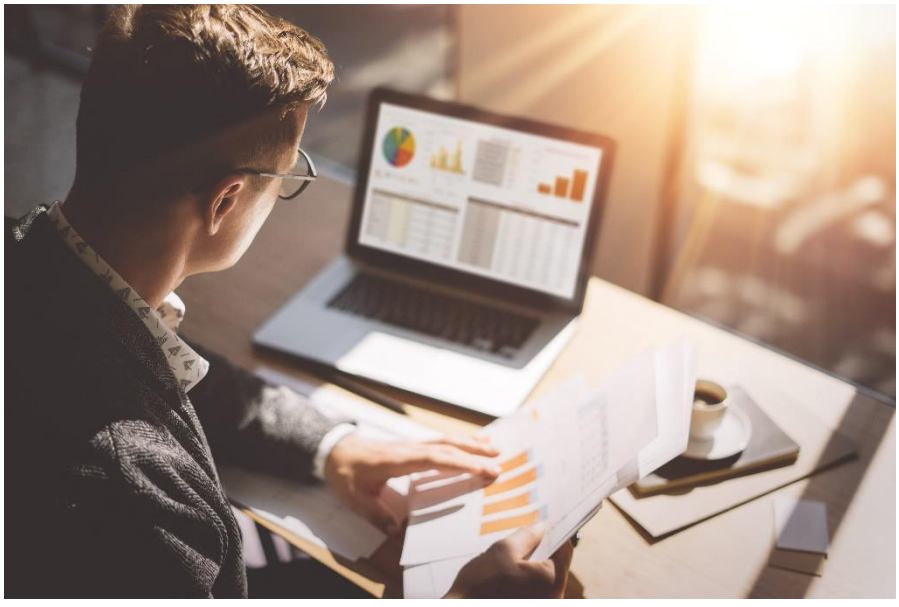
The Delhi HC noted that statutory interest gets triggered after the expiry of 60 days from the receipt date of the refund application. Further, the HC ruled that the *suo motu* extensions order passed by the SC does not deal with the issue of grant of interest on refund withheld beyond the prescribed period. The HC stated that statutory interest is compensation for the use of money and the department has no right to retain such money beyond the stipulated time. Therefore, the HC held that the petitioner is entitled to the interest.

Facts of the case

- The petitioner[2.45] filed a refund application[2.46] and received the principal amount of the refund[2.47] in two tranches. However, statutory interest has not been granted to the petitioner.
- The petitioner contended that the department should pay a refund of statutory interest in accordance with the laws[2.48].
- The respondent submitted that due to COVID-19, there was a delay in refund processing and denied the grant of interest to the petitioner. Further, the period for processing of refund was extended by virtue of orders passed by the SC[2.49] . However, the petitioner submitted that this order would not be applicable in the present case.

Delhi HC observations and ruling[2.50]

- **Rulings referred by Revenue are not applicable:** The HC stated that the orders passed by the SC for extension of limitation and the judgment of Madras HC[2.51] do not deal with the issue of grant of interest on refund withheld beyond the prescribed period.
- **Interest is compensation for the use of money:** The HC held that the statutory interest is compensation for the use of money. The Revenue authorities cannot retain the money beyond the prescribed period. Thus, the petitioner is entitled to the interest.



Our comments

In the present ruling, the Revenue authorities had considered the judgment of Madras HC in the case of GNC Infra LLP[2.52] in support of his submission regarding the extended period for processing refund. The Madras HC had held that the benefit of SC order is available w.r.t. filing the refund application. Thus, the Delhi HC stated that the Madras HC had not discussed the issue related to the grant of interest on the refund withheld beyond the prescribed period in this ruling.

Recently, the CBIC issued a notification[2.53] wherein the time limit for computation of limitation period for filing refund application[2.54] has been extended and not for grant of interest on delayed refunds.

The present ruling is welcoming and will aid the assessee in getting interest on a refund processed after the expiry of 60 days from the receipt date of refund application.

2.45 M/s Ankush Auto Deals
2.46 on 20 July 2021
2.47 in month of January 2021 and March 2021
2.48 Section 56 of the Central Goods and Services Tax Act, 2017
2.49 In Suo Motu W.P (C.) 3/2020
2.50 W.P.(C) 12233/2021 & CM APPL.4315/2022
2.51 W.P (C) 18165/2021, M/s GNC Infra LLP v. Assistant Commissioner (circle)
2.52 W.P.No.18165 & 18168 of 2021 and WMP.Nos.19386 & 19389 of 2021
2.53 Notification No. 13/2022-Central Tax dated 5 July 2022
2.54 under section 54 or section 55

No violation of the principles of natural justice if the taxpayer is aware of the transaction under scanner – Madhya Pradesh HC

Summary

The authorities served SCN upon the petitioner for alleged ITC, however, they had not disclosed the details of the transaction. The Madhya Pradesh HC found the reply submitted by the petitioner unequivocal, which shows that the petitioner was aware of the transactions under the scanner. In this respect, the HC upheld the order passed by the Revenue authorities wherein the tax liability was imposed on the petitioner on the ground that the petitioner knew the alleged transaction. The HC opined that the petition filed by the petitioner is baseless and the grounds raised are ill-founded. The HC did not find any substance in the writ petition and, therefore, dismissed the same.

Facts of the case

- The petitioner[2.55], registered under GST, is engaged in the ferrous waste and scrap business.
- The petitioner was served with an SCN[2.56] dated 13 March 2019, against which an order was passed confirming the tax and penalty. The petitioner preferred an appeal, against such order, before the AA, which was dismissed. Therefore, the aggrieved petitioner filed the present writ petition.
- While issuing notice, the authorities alleged ITC availed by the petitioner; however, has not disclosed the transactions on which the petitioner availed of the benefit. The authorities submitted that the petitioner had availed the benefit of some ineligible ITC on inward supply from the supplier. Accordingly, the value of goods and the ITC amount were mentioned in the SCN dated 11 March 2019.
- The petitioner contended that this is a violation of the principle of natural justice. Moreover, the petitioner could not defend himself due to a lack of clarity in the description of the transaction. Thus, the petitioner submitted that the impugned order had been passed in a mechanical manner and should be set aside.

Madras HC observations and ruling[2.57]

- **Petitioner was aware of the transaction:** The HC noted that the petitioner was aware of the details of the transaction[2.58] for which the liability has been created on the petitioner. The petitioner had submitted the reply and disclosed the transaction dealing with V.K. Enterprise along with documents relevant to the transactions. The reply submitted by the petitioner is unequivocal and apparently shows that the petitioner was aware of the transactions under the scanner.
- **Ill-founded grounds of the petitioner:** The HC noticed that the petitioner had made a futile attempt and raised ground of no information of transactions. The act of the petitioner was questionable and doubtful in the eyes of authorities. The HC stated the grounds of the petitioner as ill-founded. The HC did not find any substance in the petition and, therefore, dismissed the appeal.

Our comments

SCN is the foundation for the recovery of tax, penalty and interest. If a particular allegation is not raised in the SCN, it cannot be raised later. The SCN should not be issued on assumptions and the allegation raised in the SCN should be supported by documentary evidence. Further, the principle of natural justice is an essential part of the administration of justice and the same must be followed to make a fair order.

Earlier, the Jharkhand HC, in the case of M/s NKAS Services Private Limited[2.59], had held that proceedings initiated for evasion of tax with malafide intention have a serious connotation due to punitive consequences. In the case where SCN lacks clear charges/allegations, the person alleged would be denied proper opportunity to defend himself. This violates the principles of natural justice, and thus, the SCN is held to be invalid.

However, contrary to the above ruling, in the present case, the HC held that since the taxpayer was already aware of the transaction which attracted the proceedings[2.60], thus, absence of detail of transaction in the notice, on which the assessee availed ITC, is not a violation of natural justice.

2.55 M/s Dhara Enterprises
2.56 Section 74(1) of the CGST Act 2017
2.57 Writ Petition No.27676 of 2019'
2.58 Reference to notice dated 13 March 2019
2.59 W.P.(T) No. 2444 of 2021
2.60 Section 74 of CGST Act 2017

Amount in electronic ledger does not protect the taxpayer from levy of interest in case of delayed tax payment– Madras HC

Summary

The Madras HC denied insulating the petitioner from levy of interest for belated remittances of GST. The HC ruled that until the assessee files a return and debits the respective registers, the authorities cannot be expected to presume that the available credits will be used to offset the tax due. The HC further stated that, in accordance with the interest provisions, an assessee would be protected from levy of interest only after passing the debit entry. Therefore, mere availability of credit cannot protect the petitioner from levy of interest on belated tax payments.

Facts of the case

- The petitioner[2.61], a Tamil Nadu-based GST-registered business, had filed GSTR 3B for July 2017, wherein it had noticed an inadvertent error i.e., the data pertaining to its plant at Faridabad was included instead of data pertaining to the Chennai plant. The error had resulted in a short disclosure of liability for the period July 2017 to October 2017, leading to the levy of interest.
- The petitioner had filed a grievance petition seeking modification of the return filed for July 2017 that had not been immediately disposed/ addressed by the authorities. The petitioner had admittedly not filed its monthly returns from August 2017 to October 2017, assuming that the resolution of its grievance petition would be necessary for the accurate determination of tax liabilities.
- The respondent passed the order, directing the petitioner to pay interest of INR 5 crore for belated remittance of GST from July 2017 to October 2017.
- The petitioner contended that there was sufficient balance in its ECrL and ECL. Therefore, no loss happened to the revenue, and thus, the levy of interest was not justified.
- The respondent considered the amended provisions of interest[2.62], and accordingly, recomputed the interest liability by considering the cash payments made by the petitioner. The petitioner argued that the GST authorities should accept a similar line of reasoning to the extent of cash payments in the context of credit balance as well.
- The issue before the HC is w.r.t. levy of interest in case of non-filing of returns for a particular period, resulting in belated remittance of taxes.

Madras HC observations and ruling[2.63]

- **Language of interest provisions:** As per the provisions, there will be no levy of interest if remittance is affected by debit entry. Further, mere availability of credit cannot protect the petitioner from levy of interest.
- **Mere availability of credit does not insulate the petitioner against interest:** There may be a situation when credit have been availed mistakenly or erroneously. The Revenue believes that mere availability of such credit cannot be assumed as utilisation. Therefore, the petitioner is required to file its return and debit its registers, otherwise the authorities cannot assume such credits to be set off against output liability. However, in the instant case, the petitioner had not filed its returns, resulting in belated remittance of taxes. As a result, the HC ruled against the petitioner on the matter.

Our comments

As per the amended provisions of levying interest on delayed payment of tax, the tax liability, net of ITC, which is payable in cash by debiting the ECL is taken into consideration for computing the interest liability and not the gross liability.

Interest will, therefore, be charged on the amount of tax that is paid by debiting the ECL, or the tax liability less the amount that is available in the ECrL.

Even, the CBIC has also clarified that interest can be recovered only on the net cash tax liability.

In the present ruling, the terms ‘cash credit’ and ‘credit balance’ appear to be swapped and the judicial authorities did not consider the amended provision of interest while delivering the judgment. Even the reasoning provided in the ruling to levy interest is unclear which may create unnecessary confusion in the mind of the taxpayers.

2.61 India Yamaha Motor Private Limited
2.62 Section 50 of the CGST Act
2.63 WP 19044 of 2019 and WP 18404 of 2019, Order dated 29 August 2022

Online gaming company challenges intimation notice and SCN issued by the DGGI demanding INR 21,000 crore before the Karnataka HC

M/s Gameskraft Technologies Private Limited (the petitioner), a Karnataka-based company, is involved in hosting of skill-based online games on its platform as an intermediary. It has filed a writ petition no. 18304/2022 before the Karnataka HC, challenging the intimation notice and SCN issued by the DGGI demanding a GST of around INR 21,000 crore.

The petitioner contended that the intimation, alleging the petitioner is involved in supply of an actionable claim, is without jurisdiction or authority of law. Further, it claimed that the Division Bench of this Court in case of All India Gaming Federation and others vs. State of Karnataka and others, to which the petitioner was a party, had already held that the games being played on the petitioner's platform are games of skill and not games of chance. Further, even in the petitions filed before the Apex Court challenging the said judgment, there is no order of stay or any other interim order. As a result, the present petitioner as well as the other writ petitioners continue to benefit from the stated HC ruling. Thus, the impugned intimation deserves to be quashed.

The petitioner further argued that the impugned notice is contrary to the proceedings of the respondent who had previously asked the GST Council to decide the taxability of online gaming but had yet to do so.

In this respect, the HC stayed the notice until further orders, observing that the present petition raises several contentious concerns and disputed matters that would have to be adjudicated necessarily at the time of the final disposal. Additionally, the question of the legality, legitimacy and accuracy of the intimation would have to be resolved at the time of the petition's final disposal.

Furnishing detail of shipping bill is not required to claim a refund of unutilised ITC in case of export of electricity - Andhra Pradesh HC

Summary

The Andhra Pradesh HC held that the amendment to Rule 89 viz. refund of unutilised ITC on electricity export is 'retrospective'. The HC, with respect to the maintainability of writ petitions, ruled that the availability of an alternative remedy does not preclude the writ petitions from being maintained. The HC further observed that the submission of shipping bills as proof of export cannot be made applicable for the refund of electricity, as it is a customs document. Since the Custom Law does not refer to electricity, it is impossible to produce the shipping bills. Further, the amendment in the rule clarified that obtaining data from RPCS or REA regarding electrical energy generation and transmission across the border can be used as a base to show the number of electricity transmitted and supplied across the border. Thus, the HC stated that the rule, along with the amendment, cannot curtail the ITC benefit. Besides, the HC relied on CBIC's clarification on the procedure for filing and processing refund of unutilised ITC on electricity export and ruled that the amended rule is only clarificatory in nature.

Facts of the case

- The identical arguments were raised in seven writ petitions, of which three[2.64] were filed against the order-in-appeal and four[2.65] against the decision of the Deputy Commissioner of Central Tax.
- The writ petition filed against the order in appeal[2.66] upholding the order rejecting refund was taken as a lead petition.
- A MOU existed between India and Bangladesh for electricity supply. After winning the BPDB[2.67] procurement, the petitioner[2.68] engaged in PPAs with the BPDB to supply electricity/electrical energy as per the provisions[2.69].
- As per the regulations, the participating entity needs to obtain the approval of the designated authority appointed by the CEA . Accordingly, the petitioner had obtained the necessary approvals. Further, the REA[2.70] report[2.71] indicates the electricity units transmitted by each electricity supplier to a particular recipient and the destination where the electricity is supplied.
- The petitioner had filed a refund of unutilised ITC[2.72] on account of the export of electricity[2.73].The authorities requested the petitioner to submit documents, including a declaration that included the number and date of shipping bills/bills of export. The petitioner provided all the required documents except for the shipping bill, for which it provided a letter stating that the shipping bill would not be available, and that the customs law did not require the filing of a shipping bill or any other document showing the export of electrical energy.
- After that, the petitioner received an SCN wherein the refund was partially rejected because the delivery of electricity could not be deemed as an 'export of goods' since the petitioner had not included a shipping bill and an export general manifest with the refund application. Further, the petitioner filed an appeal. However, the refund was rejected on the grounds that there is no legal provision that exempts the submission of a shipping bill in connection with the export of electricity and that the adjudicating authority cannot be expected to overlook the lack of a shipping bill.
- Thus, the present writ petitions were filed by the aggrieved petitioners.
- The petitioner argued that the shipping bill is a custom document, and the same cannot be made applicable to show electricity supply. Further, the petitioner submitted that the amendment[2.74] should take a retrospective effect as it is beneficial legislation.
- The respondent submitted that the current writ petitions were unmaintainable due to the direct approach before this court[2.75], some of which were filed against the orders-in-original and others brought against orders-in-appeal. In this respect, the petitioner submitted that there was no effective alternative remedy in the absence of the GST Tribunal, and the direct filing of writ petitions before this court cannot be said as improper.

2.64 W.P.Nos.11194, 11206 & 11263 of 2021
2.65 W.P.Nos.11198, 17275, 28836 & 30292 of 2021
2.66 No.GUN-GST-000-APP-001-20-21 GST
2.67 Bangladesh Power Development Board
2.68 Sembcorp Energy India Ltd
2.69 Indian Electricity Act, 2003 and the Rules and Regulations made thereunder
2.70 Regional Energy Account
2.71monthly report issued by the Southern Regional Power Committee, which is a unit of Central Electricity Authority of Government of India,
2.72 Section 54 of CGST Act 2017
2.73 Section 16 of IGST Act 2017
2.74 Rule 89(2) of CGST Rules,2017
2.75 under Article 226 of the Indian Constitution

Andhra Pradesh HC observations and ruling[2.76]

- **Writ petitions are maintainable:** The HC stated that the availability of an alternative remedy does not preclude the writ petitions from being maintained. Further, in the present case, the writ petitions can be entertained since the GST Tribunal has not yet been established by the GST Council, and the petitioner has no other effective option but to file a writ in this court.
- **Energy transmission across the border is verifiable**: The HC noted that out of seven writ petitions, three were ultimately dismissed due to the non-submission of the shipping bill and insufficient evidence to demonstrate that the petitioner has not exported power to Bangladesh. However, the other four writ petitions were rejected for the sole reason, i.e., the petitioner failed to submit the shipping bills. It is evident from the rejection orders[2.77] that the authorities have acknowledged their error in insisting on material production and energy export to Bangladesh. Thus, the respondent's claim that the petitioner never carried electricity across thme border cannot be accepted as it can now be verified.
- **Provisions cannot curtail the ITC benefit**: The HC stated that rule 89 outlines a procedure for claiming a refund. However, as electricity is not included in the Customs Law and shipping bills are Customs documents, the need for shipping bills as proof of export cannot be applied to electricity. Further, the amendment in the rule clarified that the details can be used as the base to show the number of electricity transmitted and supplied across the border and that it is possible to obtain data from RPCS[2.78] or REA regarding electrical energy generation and transmission across the border. Thus, the HC stated that the rule and the amendment could not curtail the ITC benefit.
- **Amendment in the rule is only clarificatory:** The HC noted that circular[2.79] established that rule[2.80] was amended to clarify the anomaly about the production of material evidencing export of electricity, because of which the taxpayers were facing difficulty in filing refunds. The amount of energy transmitted cannot be shown in the shipping bills. Therefore, the amendment cannot be said as declaratory; instead, it can only be described as correcting the flaw by clarifying how the transmission of electrical energy may be proved.
- **Clarification is retrospective in nature**: The HC stated that a proviso that is added to make the provision workable, a proviso that fills in an apparent omission in the provision, or to be read into the provision to give the provision a reasonable interpretation, must be treated retrospectively to give a reasonable interpretation to the section as a whole. The HC relied on the SC judgments[2.81] and stated that any benefit conferred by law cannot be limited, especially when it is clarifying in nature. As a result, it must be implemented retrospectively. Even the department has implemented the notification for refund claims submitted for the period prior to 4 July 2022, which made it clear that the amendment has a retrospective effect.

Our comments

Earlier, Rule 89 of CGST Rules, 2017 stipulated furnishing details of shipping bill/ bill of export in respect of a refund of unutilised ITC in respect of export of goods. However, in the absence of the same, the power-generating units were facing difficulty in refund claims.

As a result, the CBIC issued a notification dated 5 July 2022, revising Rule 89 to clarify that shipping bills are not necessary to be submitted while claiming the refund on account of the export of electricity. Rather, a statement containing specific details such as the detail of export invoices, energy exported, statement of scheduled energy for exported electricity, etc. will be separately submitted in the case where a refund is on account of electricity. Further, the CBIC has also issued a circular to prescribe the manner of filing a refund of ITC on account of the export of electricity.

The HC, in the present ruling, has relied on the circular, notification, and relevant amendments in the rule, based on which it has been held that the amendment in the rule is only clarificatory in nature and shall have a retrospective effect. This decision is welcome and in keeping with the recent clarifications provided by the CBIC. Further, it will establish a precedent in similar cases since it will benefit taxpayers who are involved in transactions of a similar nature.

2.76 Leading Writ Petition No.11194 of 2021 dated 26 August 2022 (all Writ Petition Nos.11194, 11198, 11206, 11263, 17275, 28836 & 30292 of 2021)
2.77 Subsequent notices for the period June 2019 to September 2021
2.78 Regional Power Committee Secretariat
2.79 Circular No.175/07/2022-GST dated 6 July 2022
2.80 Rule 89 of the CGST (Amendment) Rules, 2022
2.81 JH Gotla, Vatika Township Private Limited

Data appearing on the IT portal cannot be a basis for levying a penalty due to fraud or suppression under the service tax law – CESTAT Kolkata

Summary

The Kolkata Bench of the CESTAT has held that the data appearing on the IT portal cannot be a basis for levying a penalty on the account of fraud or suppression under the service tax law. It observed that the Revenue had confirmed the demand for service tax along with interest and penalty based on the higher value of taxable services as appearing on the IT portal and the profit loss account. However, no dispute in this regard was raised by the Revenue at the time of audit for the relevant year. Therefore, the CESTAT opined that since the records have been duly audited by the Revenue, the demand cannot be raised for the same period on account of a change in the opinion. Further, the CESTAT stated that the Revenue could not find or prove any ingredient of fraud or suppression with an intent to evade payment of tax on the part of the appellant. Therefore, the CESTAT set aside the impugned demand of service tax, interest, and penalty against the appellant.

Facts of the case

- The appellant[2.82] was registered under the category of Clearing and Forwarding Agents (C & F Agents) under the service tax law.
- An SCN was issued to the appellant based on the comparison made between the data available on the IT portal and the service tax returns filed by the appellant and the data appearing in the profit and loss account of the appellant.
- The appellant submitted that no dispute was raised in this regard at the time of the audit conducted for FY 2013-14 by the Revenue. Further, the appellant submitted that service tax registration has been surrendered since they had ceased to provide any taxable service.
- The appellant also submitted that the demand was raised primarily on trading operations on which applicable VAT has been paid and the Revenue has confirmed the demand without appreciating the fact that income appearing on the IT portal and profit and loss account also includes the trading transactions.
- The appellant also submitted that a reconciliation statement duly supported by a CA certificate has also been submitted and the demand for FY 2014-15 is completely barred by limitation since there is no element of fraud or suppression.
- Aggrieved by the impugned order, the appellant filed an appeal[2.83] before the CESTAT.

Kolkata CESTAT observations and ruling[2.84]

- **Demand cannot be raised for the same period on change of opinion:** The CESTAT observed that the Revenue had not raised any dispute in this regard during the time of audit. Therefore, as the records of the appellant have been duly audited by the authorities, the demand cannot be raised for the same period on account of a change in opinion.
- **Demand cannot be raised merely based on IT data:** The CESTAT stated that where the demand is merely based on the data appearing on the IT portal, there cannot be said to be any fraud or suppression to justify the invocation of an extended period of limitation.
- **Limitation period cannot be invoked:** The CESTAT further stated that no ingredient of fraud or suppression with an intent to evade payment of tax has been found in the present case. Therefore, the demand for the period up to March 2015 is time-barred.
- **Demand set aside**: Therefore, the CESTAT allowed the appeal and set aside the demand of service tax, interest, and penalty.

Our comments

In the case of Pappu Crane Services, the Allahabad bench of the CESTAT had held that where the demand is merely based on the data appearing in the IT portal, there cannot be said to be any fraud or suppression to justify invocation of the extended period of limitation.

Further, in the case of M/s Numal Saikia, the Kolkata Bench of the CESTAT had held that the onus to prove that the appellant is liable to pay service tax is on the department and it is a settled principle of law that unless and until the clear analysis of the activity done by the assessee is carried out, the demand of service tax cannot be confirmed.

The present ruling is in line with the above rulings and reiterates that the authorities cannot raise demand against the taxpayers based on the data appearing on the IT portal without proving any default on the part of the taxpayers. This is a welcome judgment and an analogy can also be drawn under the GST regime in similar matters.

2.82 M/s Balajee Machinery
2.83 Service Tax Appeal number 77214 of 2019
2.84 vide order dated 16 August 2022

Balance under the ECrL cannot be utilised for mandatory pre-deposit under the erstwhile regime – CESTAT Allahabad

Summary

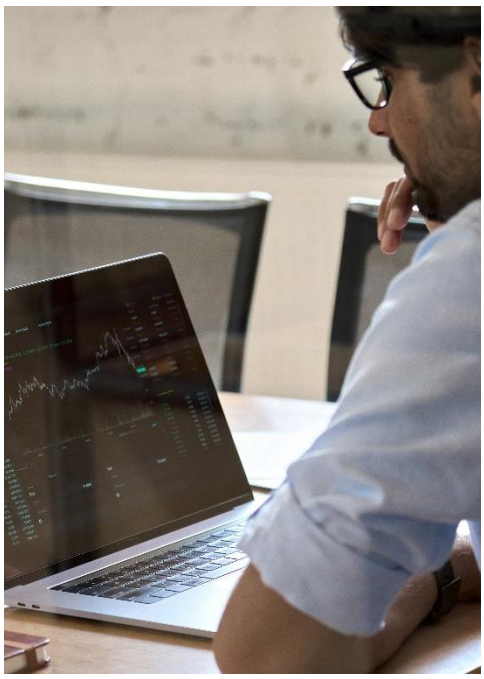
The CESTAT Allahabad bench has held that the payment of mandatory pre-deposit for filing an appeal under the erstwhile Excise Law cannot be made by utilising the balance under the ECrL maintained under the GST regime. The Commissioner (Appeals) rejected the appeal filed by the appellant on the grounds that the appellant had made the mandatory pre-deposit under the erstwhile Excise Law by way of reversal of the CGST credit appearing in its Form GSTR-3B. The CESTAT stated that the GST law provides that the balance under the ECrL can only be utilised for payment of self-assessed output tax liability.

Facts of the case

- The appellant[2.85] had filed an appeal under the Central Excise Act, 1944 (erstwhile Excise Law) before the Commissioner (Appeals). Accordingly, it made a pre-deposit of 7.5% of the disputed amount by way of reversal of ITC under CGST, 2017 in its GSTR-3B.
- The Commissioner (Appeals) rejected the appeal on the ground that the pre-deposit had not been made in accordance with the erstwhile Excise Law[2.86].
- The Registry had pointed out two defects in the appeal, out of which one has been cured and for the other, the appellant submitted that there is no defect as the part amount has been paid by way of reversal of credit in GSTR-3B and partly in cash.
- Aggrieved by the rejection of the appeal, the appellant filed an appeal[2.87] before the CESTAT, Allahabad by depositing an additional 2.5% of the impugned amount vide DRC-03 challan.

Allahabad CESTAT observations and ruling[2.88]

- **ECrL can be utilised only for self-assessed output tax:** As per the GST law[2.89], the credit lying in ECRL can be utilised only for the payment of self-assessed output tax. The output tax liability cannot be equated to the mandatory pre-deposit required to be made under the GST law[2.90]. Further, it cannot be debited for making payment of pre-deposit at the time of filing of the appeal[2.91].
- **Order of HC is binding on the Tribunal:** The Tribunal had held that the mandatory pre-deposit can be made through the CGST credit, but such order was an interim order[2.92]. Further, in another case, the HC has held that under the GST law there is no provision for utilisation of CENVAT credit, other than for payment of self-assessed output tax. Further, the decision of the HC is binding on the Tribunal and the appellant has not produced any judgment of any other HC which supports its contention**.**
- **Pre-deposit cannot be made from ECrL:** The CESTAT held that the mandatory pre-deposit cannot be made by way of debit in the ECrL maintained under the GST law.



Our comments

In the case of M/s Jyoti Construction, the Orissa HC had held that the payment of mandatory pre-deposit cannot be made out from balance of the ECrL. The GST law has no provision for the utilisation of CENVAT credit, other than for payment of self-assessed output tax.

However, in the case of M/s Dell International Services India Pvt Ltd, the Bangalore bench of the CESTAT had held that the mandatory pre-deposit can be made by way of debit to the balance of ECrL.

Recently, the CBIC[2.93] had clarified that the GST ITC can be utilised for self-assessed liability or the amount payable as a consequence of any proceeding instituted under the GST law. Further, it is pertinent to note that there is no explicit bar in utilising the credit available in the ECrL for making the pre-deposit for filing an appeal under the GST Act.

Therefore, the government should consider issuing a suitable clarification on the issue to avoid unnecessary litigations.

2.85 M/s Johnson Mathey Chemical India Pvt Ltd
2.86 Section 35F of Central Excise Act, 1944
2.87 Defect Diary No.701942022
2.88 dated 23 August 2022
2.89 Section 41 of CGST Act, 2017
2.90 Jyoti Construction – Orissa HC
2.91Section 107 (6) of the CGST Act, 2017
2.92 Dell International Services India Pvt. Ltd
2.93 vide Circular number 172/04/2022 6 July 2022

CENVAT credit cannot be denied by the authorities once duty is paid by treating the activity as manufacture of goods – CESTAT Kolkata

Summary

The CESTAT, Kolkata bench has held that once duty is paid by the appellant treating the activity as manufacturing activity by the Department, then the availability of the CENVAT credit cannot be disputed. The CESTAT noted that the Revenue had disallowed the CENVAT credit availed by the appellant of duty paid on certain inputs on the grounds that the activities undertaken by the appellant did not amount to manufacture. Therefore, the Revenue demanded that such credit be reversed along with interest and penalty. The CESTAT stated that if the activity of the appellant does not amount to manufacture there can be no question of levying duty, and if duty is levied then the credit cannot be denied by holding that there is no manufacture.

Facts of the case

- The appellant[2.94] was engaged in the manufacture and sale of petroleum products, which were manufactured in various refineries situated in multiple countries.
- The appellant used CRM for mixing with bitumen to produce CRMB after obtaining permission from the Jurisdictional Central Excise authorities. CRMB was cleared from the refinery upon the payment of duty after availing CENVAT credit on handling services used during the production of CRMB.
- The Revenue disallowed the CENVAT credit availed on the CRM and handling service used within the refinery. Thus, the CENVAT credit disallowed was determined as payable by the appellant along with interest and penalty.
- Being aggrieved, the appellant filed the present appeal[2.95] before the CESTAT.

Kolkata CESTAT observations and ruling[2.96]

- **Availment of CENVAT credit allowed even if activity undertaken does not amount to manufacturing:** When the CENVAT credit availed on the inputs stands utilised for payment of duty on the final product, there would be no requirement of reversal of the said credit even if the activity undertaken by the appellant does not amount to manufacture[2.97].
- **CENVAT credit of bona fide duty is allowed:** It is a settled position that if the appellant has paid duty on a product, then availing of CENVAT credit of duty paid inputs used for the manufacture of such products cannot be denied even if the appellant did not manufacture the goods.
- **CENVAT credit cannot be denied if duty is levied on the final product:** If the activity of the appellant does not amount to manufacture, there can be no question of levying duty, and if duty is levied, then the CENVAT credit cannot be denied by holding that there is no manufacture. Therefore, the CESTAT held that the impugned order disallowing the CENVAT credit availed by the appellant was not sustainable and is liable to be set aside.

Our comments

The Apex Court has upheld the view taken by the Gujarat HC that if the activity of the assessee does not amount to manufacture, there can be no question of levying duty, and if duty is levied, MODVAT credit can't be denied by holding that there is no manufacture[2.98].

In the case of Ajinkya Enterprises the Bombay HC had held that once the duty on final products has been accepted by the department, the CENVAT credit availed need not be reversed even if the activity does not amount to manufacture.

The Karnataka HC has also held that there is no requirement for reversal of CENVAT credit once the final product is treated as dutiable and the assessee has paid the duty[2.99].

The present ruling is in line with the well-settled principles and reiterates that if the bona fide duty has been paid on the final product and accepted by the department then the availment of CENVAT credit cannot be disputed.

2.94Indian Oil Corporation Limited
2.95 Excise Appeal number 75721 of 2021
2.96 23 August 2022
2.97 Vishal Precision Steel Tubes & Strips Pvt. Ltd. and Creative Enterprises
2.98 Creative Enterprises
2.99 M/s Vishal Precision Steel Tubes and Strips Pvt Ltd

NAA confirms profiteering by DTH service provider for not passing on ITC benefit

Summary

The NAA confirmed profiteering in relation to DTH services provided by the respondent for failing to pass the appropriate ITC benefit, which was previously unavailable to service providers in the pre-GST regime but is now available post-GST. The DGAP examined the ITC available under the pre-GST and post-GST regimes and computed additional ITC that the respondent was obligated to pass on to the eligible recipients. The NAA emphasised that neither this authority nor the DGAP had acted as price controllers or regulators as they did not have such a mandate. The NAA further stated that any notice or report issued under the rules is legally valid and constitutional and by no stretch of the imagination can it be held to be *ultra vires*. The NAA further explained that the term 'profiteering' has been clearly defined under the provisions, as inserted vide the Finance Act, 2019 w.e.f. 1 January 2020. The NAA concurred with the DGAP's claim and found no reason to disagree with the methodology used or the detailed estimate of profiteered amount in the report. The NAA then instructed the respondent to deposit the profiteered money along with 18% interest in the CWF.

Facts of the case

- Applicant no.1[2.100] had alleged profiteering concerning the DTH service supplied by the respondent[2.101]. It had submitted that the respondent had not passed the commensurate benefit of ITC available to the respondent at the time of GST implementation[2.102].The DGAP (applicant no.2) has filed the report basis the application received from applicant number 1 for alleged profiteering[2.103].
- The SSC received the application for review. The SSC forwarded it further to the standing committee and stated that it appears prima facie that the benefit of higher ITC has to be passed on by the service provider in the form of reduced subscription charges. The standing committee investigated it further, and the DGAP then obtained the minutes, basis which the DGAP gave the respondent a notice.
- With respect to the DGAP's notice, the respondent submitted the reply which was preferred for investigation of non-passing of ITC benefit of VAT / SAD / entry tax/ CST / purchase tax, etc. It was observed that the benefit of credit accrued consequent to GST introduction should have been passed on to the customers. The respondent was not eligible to avail of CENVAT credit of VAT/ CST/ purchase tax/ entry tax, etc. paid on the inputs or capital goods purchased indigenously and the credit of SAD paid on imported goods in as much as the respondent was not engaged in the sale of goods. Further, post-GST, the respondent could avail the ITC of GST paid on all the inputs and capital goods, including the VAT/SAD/CST/ purchase tax, etc. which got subsumed in GST.
- The DGAP observed that post GST, the eligible applicants can claim the benefit of additional ITC[2.104] accrued to the respondent. Hence, it appeared that the respondent had contravened the provision. Thus, the DGAP proposed to deposit the profiteered amount in the CWF[2.105].
- After considering the DGAP report, the NAA issued a notice to the respondent and directed them to file written submissions[2.106], which were then sent to the DGAP for the supplementary report.
- The respondent submitted that applicant number 1 is not the affected party and had not even submitted the evidence of profiteering. Hence, the NAA's notice is *void-ab-initio*. Further, per the provisions, the recipient can only file a written complaint against an assessee. However, since applicant number 1 was not the subscriber, she did not have *locus standi* to file the present complaint. In this respect, the DGAP submitted that since the standing committee forwarded the application to the DGAP, it was under obligation to complete the investigation.
- The respondent further submitted that applicant number 1 had not submitted the supporting evidence. In this respect, the DGAP clarified that upon examination of the requisite documents, it observed that the respondent was not eligible to avail of CENVAT credit; however, the respondent could avail ITC of all taxes which got subsumed in GST.
- The respondent said that it had adopted competitive prices that were not based on cost or tax computation. Hence, there was no impact of taxes on his pricing to the subscribers and, thereby, no relevance of input of VAT/CST/entry tax/SAD on subscribers' prices. In this respect, the DGAP made it clear that it was agreed that the pricing was dependent on market conditions, and the respondent was free to decide on pricing. Accordingly, to comply with the provisions, the respondent had to pass the benefit of additional ITC.

2.100 Sweety Agarwal
2.101 M/s TATA Play Limited (formerly known as Tata Sky Limited)
2.102 Section 171 of the CGST Act, 2017
2.103 From 1 July 2017 to 31 January 2019
2.104 to the tune of 4.19%
2.105 Rule 133(3)(e) of the CGST Rules, 2017
2.106 On 12 June 2022 and 11 July 2022

- The respondent submitted that the computation in the DGAP's report is on an ad-hoc basis. It had charged service tax on MRP value, however, under GST, the tax is paid on the transaction value. Thus, the comparison base is incorrect. However, the DGAP clarified that there was a correlation between the turnover and the CENVAT credit of service tax/ ITC. Further, the contention of the respondent to pay service tax on MRP was not tenable.
- Regarding the DGAP's supplementary report, the respondent further argued that the DGAP had ignored the malafide intention of applicant number 1. Further, the clarification by the DGAP[2.107] that any other person could be considered as an interested party and file a complaint against an assessee, was erroneous. Besides, the exercise of jurisdiction at the level of SSC and the standing committee was erroneous and against the rule[2.108]. Further, the investigation was extended beyond the service availed by applicant number 1. Hence, the proceedings were unsustainable and bad in law as they had transgressed the ambit of the complaint.

NAA's observations and ruling[2.109]

- **Compliant of applicant number 1 is maintainable**: The NAA said that the information provided by applicant no.1 was adequate to demonstrate that she was the person using the connection. However, the subscription was not in her name. Further, the respondent had not refused to accept the consideration from her, and even allowed her to modify the contact details. Thus, her complaint is maintainable. The NAA held that applicant number 1 has locus standi, the SSC and standing committee have rightly taken cognisance of the matter, and the DGAP has correctly investigated the case and submitted its report.
- **The additional benefit of ITC in the post-GST period**: The NAA observed that there was an additional benefit of ITC in the post-GST period compared to the pre-GST period. Further, the profiteered amount due to the seamless credit facility made available under the post-GST regime was calculated by contrasting the ITC to turnover ratio during the pre-GST and post-GST periods.
- **Notice or report issued is not *ultra vires***: The NAA claimed that the Parliament, as well as all the state and UT legislatures, had passed the provisions and that the central government had been given the responsibility of prescribing the authority's powers and functions based on which the regulations had been created. Therefore, any notice or report made in accordance with the rules is legally binding, and constitutional, and cannot in any way be outside of its authority.
- **Benefit of additional ITC to be passed on**: The NAA noted that although pricing was determined by market conditions and the respondent had complete control over subscription package rates, under the terms of the provision, the respondent had to pass on the benefit of the additional ITC accrued post GST by way of reduction in prices. Therefore, the allegation of the respondent is not correct.
- **Method of computation adopted by the DGAP**: The NAA found the correlation between the turnover and CENVAT credit of service tax/ ITC as the respondent was discharging its output liability out of the credit available based on turnover. Accordingly, the pre-and post-GST turnover had been taken from the data submitted by the respondent and compared with the ITC data.
- **NAA and DGAP have not acted as a price controller**: Neither the NAA nor the DGAP has ever controlled or regulated prices. The NAA further noted that the restrictions do not hinder the respondent's freedom to operate his own business or profession or to set his own price and margin. The role of the provision is to protect the welfare of the consumer who is ultimately bearing the burden of indirect tax. Further, the NAA needs to ensure that both the benefits of tax reduction and ITC are passed on to the general public[2.110].
- **The benefit to be passed on at the level of each supply**: The NAA found that the procedure and methodology to pass on the benefit of reduction in the rate of tax or benefit of ITC is enshrined in the provisions. A reduction in the rate of tax on goods or services does not necessarily mean that the reduction in the tax rate is to be taken up at an entity, group, or company level for all of the supplies made by it. As a result, the advantage of the reduced tax must be distributed to each buyer of each unit at the level of supply.

2.107 post introduction of N/N 14/2018-CT dated 23 March 2018
2.108 Rule 128 of the CGST Rules, 2017
2.109 Case number 63/2022, Order dated 29 August 2022
2.110 as per provisions of Section 171 of CGST Act 2017 read with Rule 127 and Rule 133 of CGST Rules 2017

- **No fixed mathematical methodology to determine the benefit**: The word 'commensurate'[2.111] describes the amount of benefit to be passed on by way of reduction in the prices which must be computed in respect of each product based on tax reduction or availability of additional ITC as well in addition to the existing base price of the product. The computation of reduction in prices is purely a mathematical exercise that varies from product to product. Hence, a fixed methodology cannot be prescribed to determine the amount of benefit or the profiteered amount.
- **Acceptance of the DGAP's report and deposit of profiteered amount in CWF**: The NAA agreed with the view of the DGAP. Therefore, it directed the respondent to deposit the profiteered amount of that applicant along with all other eligible subscribers for a particular period[2.112] in the CWF[2.113] within three months from the date of receipt of the order.
- **Imposition of penalty**: The respondent is liable for a penalty, however, since these provisions came into effect w.e.f. 1 January 2020, therefore, the penalty cannot be imposed retrospectively.

Our comments

The anti-profiteering measures are included in the GST law to prevent businesses from taking unfair advantage of the decreased GST rates or increased ITC. According to the provisions, any benefit from a lower tax rate or a higher ITC must be passed on to the customers by lowering the cost of the relevant goods and services. The NAA must decide if an appropriate price decrease in the products and/or services has resulted from the benefit of greater ITC or a lower tax rate. However, it is to be noted that the methodology and process used to spot instances of profiteering may change based on the specifics of each case and the type of goods or services provided. In the present ruling also, the NAA held that while choosing a 'methodology' and 'procedure', one formula cannot be used to match all situations.

Additionally, effective 1 January 2020, the GST law added penal measures for the imposition of penalties in case of infringement of the anti-profiteering requirements. The NAA has correctly ruled that the penalty provision cannot be applied retroactively in reliance on the same. Therefore, the NAA has withdrawn the penalty since the penalty provisions were not in existence during the period of the dispute.

2.111 mentioned in Section 171 (1) of CGST Act 2017

2.112 from the date the said amounts were profiteered till the date of deposit in CWF
2.113 In 50:50 ratio (Central and state government CWF)

B. Key rulings under Customs/FTP/SEZ

Modification of the original SCN after expiry of six years by issuing a corrigendum is not permissible under the law – Orissa HC

Summary

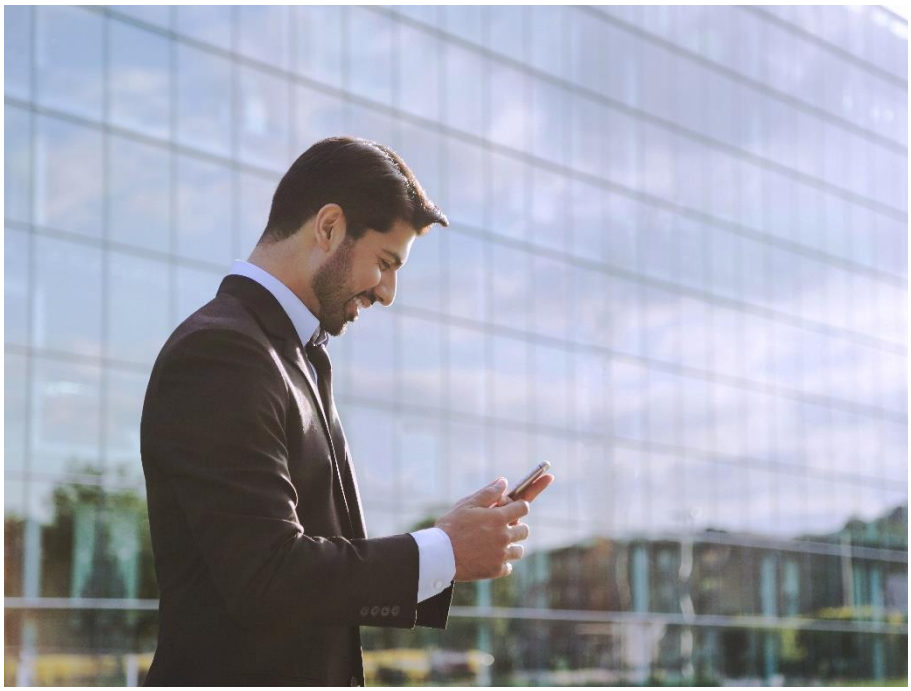
The Orissa HC has held that a corrigendum could not be issued after expiration of six years from the issue of the original SCN on matters not included therein. Since the corrigendum has materially changed both the content and the grounds of the original SCN, it constitutes a fresh SCN. The HC concluded that the impugned determination of short levy of duty was not saved by limitation under the Customs Act and therefore set aside the order.

Facts of the case

- A SCN was issued to the appellant[2.114] alleging to recover the customs duty which was short-paid as per the department.
- After the expiry of six years from the issue of the original SCN, the department issued a corrigendum to the original SCN and enhanced the demand of customs duty as well as adverted to matters not mentioned in the original SCN.
- The appellant replied to the SCN stating that the demand of duty through corrigendum is not legally tenable and is time-barred.
- The appellant filed an appeal before the CEGAT, which confirmed the demand on the ground that the original assessments were provisional.
- Therefore, an appeal was filed before the Orissa HC to consider whether the determination of impugned short levy of duty is saved by limitation under the Customs Act.

Orissa HC observations and ruling[2.115]

- **Corrigendum altering the original SCN would be treated as fresh SCN:** The corrigendum should be treated as fresh SCN since it altered the original SCN materially, both in terms of the demand raised as well as the grounds on which the demand was raised.
- **Impugned order for collection of short levy set aside:** The HC held that the determination of impugned short levy of duty is not saved by limitation under the Customs Act. Therefore, the impugned orders confirming the demand for a short levy of customs duty from the appellant needs to be set aside.



Our comments

In the case of Gas Authority of India Limited, the Apex Court had held that SCN is the foundation of the demand, and an addendum cannot seek to bring into purview new matters which were not mentioned in the original SCN. A similar view was taken by the Apex Court in the case of Nizam Sugar Factory, wherein it had held that an addendum to an original SCN making material changes was equivalent to a fresh SCN and cannot be treated as merely an extension of the original SCN.

Further, as per the master circular[2.116] on SCN, Adjudication, and Recovery, it has been clarified that a corrigendum cannot alter the original SCN because it may be issued only when there is a change in adjudicating authority or to correct minor clerical mistakes.

After issuing an adjudication order, the adjudicating authority becomes *functus officio*, which means that his mandate comes to an end as he has accomplished the task of adjudicating the case. As a concept, *functus officio* is bound by the doctrine of *res judicata*, which prevents the reopening of a matter before the same court or authority.

The present ruling is in line with the Apex Court's verdicts and should provide relief to businesses on similar matters.

2.114 M/s Hope Cardamom Estate Limited
2.115 CUSREF No.01 of 2002 dated 16 August 2022
2.116 F.NO 96/1/2017-CX.1 dated 19 January 2017.

Claims for customs dues not forming part of CIRP shall stand extinguished – Delhi HC

Summary

The Delhi HC has held that the Revenue cannot raise the claim for customs duty after the completion of CIRP under the IBC 2016 if such a claim was not raised at the time of invitation of the claim of creditors. The HC observed that the Revenue did not lodge their claim even though the demand for the FY 2013-14 was issued before the public notice was floated inviting claims of creditors and before the CIRP was triggered. The petitioner's resolution plan was approved by the NCLAT in February 2020 and the demand was raised after the said approval in July 2020. Therefore, the HC quashed the order passed by the DG (Adjudication) DRI demanding customs duty along with interest and penalty after the completion of the CIRP.

Facts of the case

- The CIRP was initiated against the petitioner[2.117] and for inviting claims of creditors, a public notice was issued in July 2017.
- The Revenue had issued an SCN to the petitioner for demanding custom duty along with interest and penalty for the financial year 2013-14 in June 2016. However, the Revenue did not file a claim for their dues pertaining to 2013-14 when the public notice was issued in July 2017 for inviting claims from creditors of the petitioner.
- The NCLT had approved the CIRP plan in September 2019 without making a concession in respect of the SCN and the SCN was adjudicated by confirming the demand of the pre-CIRP dues. Further, the appeal was filed before NCLAT which affirmed the resolution plan in February 2020.
- Thereafter, the impugned order confirming the demand of customs dues against the petitioner was issued in July 2020.
- Being aggrieved, the petitioner has filed the present writ petition [2.118] before the Delhi HC.

Delhi HC observations and ruling[2.119]

- **Availability of alternate remedy by way of an appeal:** The HC relied on the judgment[2.120] of the SC and held that preliminary objection taken by the Revenue, with regard to the maintainability of the writ cannot be sustained. It is well established that relegating a party to an alternate remedy is a limitation that the court imposes upon itself, it does not fetter the powers of the court under the Article 226 of the Constitution.
- **Existence of demand on the date of issue of public notice:** The demand was subsisting on the date when the public notice had been issued in newspapers and on the website inviting claims of the creditors.
- **Claims not forming part of CIRP cannot be raised subsequently**: The HC noted that the Revenue did not lodge their claim at the time of inviting claims through a public notice which has been issued in newspapers and on the website. The claims not forming part of the resolution plan cannot be raised subsequently after the completion of CIRP.
- **Writ allowed**: If the resolution plan is reprised, it would result in burdening the petitioner with unexpected claims and thus derail it from its path to recovery. Therefore, the HC allowed the writ and held that the demand stands extinguished once a CIRP is approved by the NCLT.

Our comments

In the case of Ghanashyam Mishra v. Edelweiss Asset Reconstruction Company Ltd., the Apex Court had held that on the date of approval of the resolution plan by the adjudicating authority, all such claims, which are not a part of the resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan.

Recently, in the case of Sundaresh Bhatt, (Liquidator of ABG Shipyard), the Apex Court has held that once the moratorium is declared after the initiation of CIRP under the IBC, no authority has the power to initiate the proceedings during the period of moratorium.

2.117 Bhushan Power & Steel Ltd
2.118 W.P.(C) 7248/2020 and CM APPL. 24458/2020
2.119 Order dated 21 July 2022
2.120 Whirlpool Corporation and ABL International Ltd.

03 Decoding advance rulings

Amount recovered from the employees towards third-party canteen services is not liable to GST, however, it is liable to GST if recovered from the contractual workers - Gujarat AAR

Summary

The applicant arranges a canteen facility for its employees and contractual workers, which is run by a CSP. In the case of employees, the applicant collects a part of canteen charges from its employees and pays to the CSP. However, in the case of contractual workers, the workers directly pay a portion of the amount to the CSP. In this respect, the Gujarat AAR has held that GST is not payable on the amount recovered from the employees towards the canteen facility however, the same is payable in the case of the contractual workers. The AAR has placed reliance on circular no.172/04/2022-GST dated 6 July 2022 and stated that the amount collected from the employees in terms of the contractual agreement is not liable to GST. Further, in the case of the contractual workers, the contractor pays the salary to the contractual workers and such workers are not employees of the applicant. Hence, the supply of food to the contractual workers is a 'supply of service' wherein the cost recovered from the contractual workers is 'consideration' which is liable to GST. In respect to the admissibility of ITC, the AAR has ruled that since it is mandatory for the applicant to provide a canteen facility to its employees, therefore, ITC of GST paid on the canteen facility is admissible on food supplied to the employees, subject to the condition that the employees have not borne the GST burden. However, in the case of the contractual workers, since it is not mandatory for the applicant to provide the canteen facility to them, therefore, ITC is not eligible for food supplied to the contractual workers.

Facts of the case

- The applicant[3.1] provides canteen facilities to its employees and contractual workers as required under the Factories Act, 1948[3.2].
- The applicant arranges food through CSP, who prepares and supplies the food directly to the employees and the contractual workers. The applicant provides the canteen facility at a subsidised rate of 50% to its employees and contractual workers.
- The CSP issues an invoice for the full amount on the applicant against the food supplied to the employees. The applicant recovers 50% amount from the employee's salary and pays the full invoice value to the supplier. However, in the case of workers, the invoice is issued to the applicant only for half the value as the workers pay the balance amount directly to the CSP.
- The applicant contended that it is not the business of the applicant to provide canteen services, and the recovery for providing canteen service is not covered under the ambit of 'supply'. Further, it has no direct nexus with its pharmaceutical business, therefore, it is not ancillary or incidental to the central business. Hence, GST cannot be levied on the canteen facility provided to employees and the contractual workers and recovery of employee share to pay CSP.
- The applicant further submitted that partial recovery of the food bill is not a consideration in the hands of the applicant. The applicant is providing this facility only as a facilitator, and no profit element is involved. Besides, the applicant contended that it is eligible to claim ITC on food bills per provision[3.3] of the CGST Act.
- The applicant has sought an advance ruling to clarify the taxability of the recovery amount as well as the entitlement of ITC.

AAR observations and ruling[3.4]

- **No GST on recovery from employees towards canteen charges:** The AAR relied on the circular clarifying that the perquisites provided by an employer to employees in terms of the contractual agreement are not liable to GST. Accordingly, the amount recovered from the employees towards canteen charges in terms of the contractual agreement is not liable to GST.
- **Taxability of recovery from contractual workers:** The AAR stated that the contractual workers are not the employees of the applicant; instead, they are working through a contract. The AAR relied on the SC's judgment[3.5] wherein the test for establishing the employer-employee relationship has been laid down, which does not pass in the instant case. Further, the supply of food by the applicant to the contractual workers covers under the definition of business[3.6] as a transaction incidental or ancillary to the main business. Further, even if the applicant does not claim a profit on the supply of food, it covers under the definition of 'supplier', and since the applicant recovers the cost of food, it will be treated as consideration which is liable to GST.
- **Admissibility of ITC of GST paid on food supplied to employees:** The AAR relied on the circular and held that ITC is available to the applicant on the food supplied to the employees as it is mandatory to provide such facility as per the provisions of Factories Act, 1948.
- **Non-admissibility of ITC of GST paid on food supplied to contractual workers**: The AAR stated that as per the provisions of the CLRA[3.7], the contractor should provide the canteen facility to the labour employed by the contractor. Thus, the applicant doesn't need to provide canteen facilities to the contractual workers. Therefore, the applicant is not eligible for ITC on the food supplied to the contractual worker and, is blocked credit[3.8].

Our comments

The taxability of the amount recovered for the canteen facility from employees has been a litigation matter since the introduction of GST. Recently, the CBIC has provided much-awaited clarity through a circular which clarified that the employer's perquisites to employees in terms of the employment contract would not attract GST. Further, the circular also clarified the issue related to the interpretation of provisions of blocked credit[3.9]. Accordingly, it may be understood that wherever the employer must provide a canteen facility to its employees, ITC would be eligible. In the present ruling, the employer has recovered a partial amount from its employees. The Gujarat AAR stated that such recovery is not liable to GST. However, the circular provides that only the perquisites (not recovery) will not be subject to GST if provided by the employer to its employees in terms of a contractual agreement.

Further, in the present ruling, the AAR has differentiated the taxability of the amount recovered from the employees and the contractual workers. The AAR has emphasised the employer-employee relationship, which is not present in the case of the applicant and the contractual workers. However, in the case of Musashi Auto Parts India Private Limited, the applicant provides canteen facilities to its employees, including contract-based employees also. In this respect, the Haryana AAAR[3.10] found that the services are uniformly available to all employees and are not restricted to any class of employees. Accordingly, the AAAR held that such a canteen facility for employees is not a taxable activity.

3.1 M/s Troikaa Pharmaceuticals Private Limited
3.2 Section 46
3.3 Section 16 read with section 17(5) of CGST Act 2017
3.4 GUJ/GAAR/R/20220/38 dated 10 August 2022
3.5 in case of Balwant Rai Saluja
3.6 under clause (D) of Section 2(17)
3.7 Contract Labour (Regulation and Abolition) Act 1970
3.8 Section 17(5) of CGST Act 2017
3.9 proviso after sub-clause (iii) of clause (b) of section 17(5) of the CGST Act is applicable to the whole of clause (b)
3.10 HAAAR/2020-21/06 dated 25 Sept 2020

ITC admissible on upfront lease premium paid for renting of immovable property - Tamil Nadu AAR

Summary

The Tamil Nadu AAR held that credit of tax paid on upfront lease premium for services of renting of immovable property for business purposes is admissible under the GST Act. The AAR stated that the upfront lease premium paid for the extended corporate office is in the course of business and has no relation to the construction activity of the covered space. Therefore, the provisions of blocked credit[3.11] are not applicable and thus, the credit of tax paid on upfront lease premium by the applicant is available, subject to fulfilment of prescribed conditions[3.12].

Facts of the case

- The applicant[3.13] has paid an upfront premium for the long-term lease of covered space, intended to be used by the applicant as an extended corporate office.
- The applicant submitted that it is a simple lease contract and does not construe to be a construction activity. Hence, ITC should be available[3.14].
- The applicant has approached the AAR to seek clarity on eligibility to claim ITC of tax paid on the upfront lease premium.

Tamil Nadu AAR observations and ruling[3.15]

- **Expense is in course of business:** The AAR stated that the upfront lease premium paid for the extended corporate office is in the course of business. Thus, the credit of tax paid on the upfront lease premium by the applicant is available subject to the fulfilment of prescribed conditions.
- **Provisions of blocked credit are not applicable:** The AAR stated that credit of tax paid for the construction of plant and machinery is available. Further, the lease allotment letter does not talk about the lease of construction activity on space leased for business purposes and the upfront premium paid is not related to construction activity. The upfront premium paid is only for the service of renting immovable property for business purposes. Hence, the provisions of blocked credit are not applicable in the instant case.

Our comments

Earlier, the Telangana AAR in the case of M/s Daicel Chiral Technologies (India) Private Limited[3.16] had held that the one-time lease premium paid is about the construction of immovable property on their account, and, therefore, ITC is blocked.

Similarly, the Tamil Nadu AAAR[3.17] upheld the ruling of AAR[3.18] in the case of Inox Air Products Private Limited. It held that the lawmaker intends to restrict the ITC on services related to land received for construction. The benefits received by the applicant are for the construction of immovable property; therefore, the tax paid is blocked credit under GST.

However, in the present ruling, due emphasis has been given to the nature of the input service to determine the eligibility of ITC. Accordingly, the AAR held that the upfront premium paid is not about the construction activity; instead, it is for the services of renting immovable property. Hence, the ITC is admissible under GST.

This is a welcome and essential ruling and shall be helpful for taxpayers engaged in similar business transactions.

3.11 Section 17(5) of the CGST Act 2017
3.12 Section 16 of the CGST Act 2017
3.13 M/s Kamarajar Port Limited
3.14 Section 16 of the CGST Act 2017
3.15 TN/32/ARA/2022, Order dated 29 July 2022
3.16 TSAAR Order No.05/2020 A.R.Com/26/2018 dated 24 June 2020
3.17 A.R. Appeal number 12/2021/AAAR, Order- in- appeal number AAAR/22/2021(AR) dated 2 Dec 2021
3.18 TN/25/AAR/2021

Recovery of common area electricity charges by an RWA from the apartment residents are liable to GST- Haryana AAR

Summary

The Haryana AAR held that GST is leviable on the CAE charges collected by the RWA from the residents of the apartments/ complexes. The AAR relied on the ruling passed by the Karnataka AAR wherein it had been held that the value of electricity charges separately shown in the invoices is to be added towards consideration shown towards the upkeep and maintenance service, and accordingly, is liable to GST. The Haryana AAR held that GST is applicable on the charges collected, irrespective of on an actual basis or with a margin.

Facts of the case

- The applicant[3.19], an RWA registered under GST, is engaged in providing maintenance services and other services to its members, including managing facilities in apartments/ complexes, organising events, and safeguarding the rights of residents of the RWA.
- The applicant has received a sanction for the single-point supply connection for the distribution of electricity to society members, as per the electricity regulations[3.20].
- The applicant submitted that the CEM for the entire complex is in the applicant's name. It has installed separate sub-meters for individual flat owners for units consumed towards the CAE. The electricity distribution within the apartment complex is owned and managed by the applicant. The electricity board issues the invoice in the name of the applicant, who raises invoices in the name of individual flat owners. The applicant contended that GST would not apply to the CAE charges recovered by the applicant on an actual basis from the individual users.
- The applicant believes that it is an entity entrusted with the function of electricity distribution through the scheme of the Haryana state government. Therefore, it qualifies as an electricity transmission or distribution utility and is exempt from GST. Further, the applicant relied on the circular clarifying that no GST would be levied on electricity charges collected under other statutes from individual flat owners.
- Therefore, the applicant has sought an advance ruling to seek clarity on the applicability of GST on the CAE, on an actual basis or with a margin, from the residents of the apartment complex.

Haryana AAR observations and ruling[3.21]

- **Applicability of GST on common charges recovered:** The AAR relied on the ruling passed by the Karnataka AAR[3.22] wherein it had been held that the value of electricity charges separately shown in the invoices is to be added towards consideration shown towards the upkeep and maintenance service, and accordingly, is liable to GST. The views of the Haryana AAR are like the above AAR, and accordingly, it is concluded that an amount recovered by the applicant from its members is liable to GST at the rate of 18%.

Our comments

In the case of the Prestige South Ridge Apartment Owners' Association, the Karnataka AAR had held that the applicant is not involved in the supply of electrical energy but is involved in providing the service of upkeep and maintenance of the common utilities of the apartments. Further, even if the electricity bill is distributed to all the members, it is not the consideration for the supply of electrical energy to the members. Still, the value is a part of the consideration for the supply of services to its members and hence is liable to tax at appropriate rates.

Similarly, the Uttarakhand AAR, in the case of M/s Antara Purukul Senior Living Limited[3.23], had held that the electricity charges paid to the electricity supply authority for the power consumed towards the common area and recovered from residents on an actual cost basis are liable to GST. Further, electricity is an input to provide the services of maintenance and facilities to the community. Hence the electricity is used by the applicant to further his interest. Therefore, it does not qualify as a pure agent. The present ruling is also in line with the above rulings.

Even the Maharashtra AAR[3.24] upheld the GST liability on the licensor collecting amount of electricity charges from the tenants on an actual basis, refusing to accept them as pure agents. At the same time, the Gujarat AAR[3.25] had accepted the landlord's status as a pure agent and held that no GST was payable.

However, the logic that electricity is outside the purview of GST would counter these advanced rulings. A due clarification from the government is awaited to avoid unwarranted litigation on this issue.

3.19 M/s The Close North Apartment Owner's Association
3..20 Haryana Electricity Regulatory Commission (Single point supply to Employer's Colonies Group Housing Societies and Residential or Commercial cum Residential Complex of Developers) Regulations 2013("hereinafter referred to as Electricity Regulation 2013")

3.21 HR/ARL/20/2021-22 dated 31 August 2022
3.22 in case of Prestige South Ridge Apartment Owner's Association, KAR/ADRG 42/2019 dated 17 September 2019
3.23 UK-AAR-06/2021-22 dated 12 November 2021
3.24 Indiana Engineering Works (Bombay) Private Limited
3.25 Gujarat Narmada Valley Fertilizers & Chemicals Limited

04 Expert's column

Levy of interest on delayed filing of returns despite sufficient balance in cash/credit ledgers - an analysis

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It is a well-established legal principle that interest is compensatory in nature. On many occasions, various judicial forums including the Apex Court have held that interest is a compensatory payment made by an assessee who has withheld payment of tax when it is due and payable. The amount of interest levied is proportional to the amount of tax withheld and the length of the delay in paying the tax on the due date. It is essentially compensatory, as opposed to a penalty, which is penal in nature[3.1].

Thus, the levy of interest under the taxation laws emanates from compensating the revenue for loss caused due to the delay in payment of taxes by the taxpayers. On a similar issue, the Apex Court[3.2] has held that if there is a sufficient credit balance, interest cannot be levied on wrongly availed credit if such credit has not been utilised. Even under the GST regime, the Madras HC[3.3], has held that the interest is to be attracted only where credit is availed and utilised for discharging tax liabilities. In line with the above understanding, a retrospective amendment was made by the Finance Act, 2022, in Section 50(3) of the CGST Act 2017 to provide for the levy of interest only in cases where ITC has been wrongly availed and utilised.

Contrary to the above, the Madras HC[3.4] has recently ruled that the authorities cannot be expected to assume that the available credits will be used to offset the tax due until the assessee files a return and debits the respective registers. Consequently, the mere availability of credit cannot protect the petitioner from the imposition of interest on late tax payments.

3.1 Pratibha Processors
3.2 Ind-Swift Laboratories Ltd.
3.3 Aathi Hotel
3.4 India Yamaha Motor Private Limited

However, in another case, the Madras HC[3.5] ruled that the proviso should be applied retroactively. Thus, in a case where an assessee had sufficient cash credit, there is no question of the department requiring compensation because funds were available to that assessee.

The above developments resulted in an obvious question for the taxpayers as to why to pay interest on delayed filing of returns in Form GSTR-3B when there are sufficient balances in the ECL and ECrL before the due date of filing the returns.

Therefore, it is imperative to evaluate two points:

- Whether the decision of the Madras HC is contrary to the settled legal principles that the interest would be levied as a measure of compensation if the answer is no
- The rationale behind the decision of the Madras HC

Let us evaluate whether the decision of the Madras HC is contrary to the settled legal principles that the interest would be levied as a measure of compensation.

The first moot question is what we mean by having balance in the ECrL. If we talk about ITC, the amount gets credited/debited based on the declaration made in the periodical returns, i.e., GSTR-3B. It means that the balance available in the ECrL is declared, and the government (the GST department) is fully aware and has the option to scrutinise such a balance.

However, as far as new credits are concerned, as discussed above, the amount of ITC is said to be availed only when the return in Form GSTR-3B is filed. In this regard, it is pertinent to note that the Telangana HC[3.6] had held that ''until a return is filed as self-assessed, no entitlement to credit and no actual entry of credit in the ECrL takes place. Only after a claim is made in the return that the same gets credited in the ECrL and only after the credit is entered in the ECrL ledger that a payment can be made even though the payment is only by paper entries''.

The HC further held that "the tax already paid on the inputs of supplies of goods and services available somewhere in the air should be tapped and brought in the form of credit entry in the ECrL, and payment has to be made from out of the same if no payment is made, the mere availability of the same will not tantamount to actual payment as the payment of the tax liability. Only when the payment is made the government gets a right over the money available in the ECrL".

In similar lines, in the case of ECL, there is no confusion as the amount is based on the actual deposit challans and, therefore, always available with the exchequer.

From the above discussions, it becomes abundantly clear that the new credit would be available only by return. Therefore, unless the return is filed, the taxpayer cannot claim to have such a balance in his ECrL. To this extent, the Madras HC's decision doesn't seem contradictory to the settled judicial principles.

However, the decision is silent on the closing balance available in the ECrL and ECL. Further, the Madras HC has not distinguished between the ECrL and ECL and has treated both at par. Going by the settled legal principles, there shouldn't be any interest liability to the extent of the actual balance available in the ECrL and ECL, as the same has already been reported in return/based on the actual deposit, which the department would have been aware of.

In this regard, it should be kept in mind that, unlike the previous regime, the GST portal is designed so that the system will not accept tax payments other than the declaration in return in Form GSTR-3B. The tax payment is required to be done simultaneously while filing the returns on the GST portal. Consequently, when a registered person chooses to set off balances available in ECrL or ECL against the tax liability when filing the return, a debit entry is required in the ECrL or ECL for the return period. Therefore, even if a taxpayer has a sufficient balance in his ECL or ECrL on the due date for filing returns but is unable to debit the said amount towards the payments by setting off tax liability against credit balances at that time due to technical difficulties with the portal or otherwise, he would be regarded as a defaulter.

It is pertinent to note that the balance already available in the ECrL pertains to taxpayer returns filed in the past. Such credit is not in the air and is already appearing in his ECrL as reflected on the GST portal. In addition, as soon as taxes are paid, a CIN is generated, and the tax amount is transferred to the government account maintained by the collecting bank. Thus, the CIN is not generated until the tax payment has been received and deposited into the appropriate government account. The procedure for offsetting against the liability when the GSTR-3B return is filed is pending at the taxpayers' end. Therefore, when there is sufficient balance in the ECrL and ECL, the delay in action of offsetting against liabilities due to the late filing of returns and consequential interest is irrational. Even the Madras HC, in the case of Reflex Industries, has held that in a case where an assessee had sufficient cash credit, there is no question of the Department requiring compensation because funds were available to that assessee. As a result, in cases of late or delayed GSTR-3B filing, one could argue that interest under Section 50(1) cannot be imposed on tax deposited before the due date for filing a return.

However, another school of thought holds that the amount deposited in the electronic ledgers is the taxpayer's property. It does not become the Revenue's property unless and until it is appropriated towards tax payment when filing returns in Form GSTR-3B via debit entry. It is only after a debit entry has been appropriated that it is transferred to the Government Exchequer.

3.5 Refex Industries Limited
3.6 M/s. Megha Engineering & Infrastructures Ltd

A similar view has been taken by various Tribunals under the erstwhile excise regime. It has been held that the amount deposited in the PLA account cannot become duty or tax unless it is appropriated. There is a distinction between the amount appropriated for duty and the amount deposited for duty payment. In the former case, a duty levied and paid becomes the government's property, and no one is entitled to it unless a law allows that person to recover the duty already appropriated from the state or the government. However, in the latter case, when an amount has been deposited to the PLA account to be appropriated towards duty that may become due in the future, and there is no appropriation, the property in money does not exist[3.7].

In this regard, it must be noted that even in the sectoral FAQs issued by the Board, it has been clarified that the balance in the PLA will not be subject to GST transition because it has not been appropriated to the government account, which will be determined after the pending assessment is completed. Under the Central Excise Law, the same can be claimed as a refund.

Therefore, based on the above discussions, one could argue that the amount in the ECrL and ECL, although deposited with and appearing on the government's portal, is still the taxpayer's property. Only when the taxpayer the returns does it become the Revenue's property. Therefore, even if the taxpayer has deposited sufficient cash balance in his ECL, however, if the appropriation by way of debit entry is not made on or before the due date for filing the return in Form GSTR-3B, interest would be triggered on the net liability paid through debiting the ECL.

In this regard, it is pertinent to note that the Madras HC, in the case of India Yamaha Motor Private Ltd, has held that the assessee would be liable to pay interest on the entire tax liability even if sufficient balances in both the electronic ledgers. However, it is pertinent to note that Section 50(1) provides explicitly that interest shall be levied on that portion of liability discharged through a debit from the cash ledger. Therefore, to this extent, the ruling seems to be contrary to the settled legal principles that the interest would be levied as a measure of compensation.

As discussed, though, it can be argued both ways; if we go by the doctrine of compensatory, the Madras HCs' decision is not in line. Even otherwise, it would be double jeopardy considering that non-filing or late filing of return is liable to prescribed penalties apart from levy of interest. It would be appropriate on the part of the government to take this up and remove the anomaly to ensure the interest is levied only in the actual cases of non-payment of taxes.

3.7 WMW Metal Fabrics Limited

05 Issues on your mind

How can users search and view the advance ruling orders on the GST portal?

Under the menu Advance Ruling, in both the pre-login and post-login stages, users will be able to search advance ruling orders, using the following search parameters. The same can be viewed/downloaded and would include the orders passed by the Authorities of Model 1 states:

- GSTIN/ID of the applicant
- Legal name of the applicant
- Order date
- Order number
- State/Union territory
- Nature of activity for which advance ruling is issued
- Issue related
- Description of the issue

Can FOB value be declared while filing the refund of unutilised ITC on account of exports of goods?

The taxpayers are required to upload the details of invoices in Statement-3 while filing the refund under the category 'Refund of unutilised ITC on account of Exports (Without payment of Tax)'. According to the circular [5.1], the lesser of the two values would be considered for processing of refund if the export value reported on the shipping bill differs from the value declared in the tax invoice. Therefore, a column 'FOB value' has been added in Statement-3 for the taxpayers to declare the value while filing the refund.

Whether the importer is required to file monthly returns under the IGCR if there is no utilisation of imported goods in that month?

Utilisation for every month can be declared till the 10th of the subsequent month in the IGCR module. If there is no utilisation of imported goods in the current month, then the users are advised to fill NIL return in next month. Users can click on the 'Click to File NIL return' button on the monthly return screen to submit NIL return[5.2].

How can the generation of challan in OTC mode be validated?

At the time of the creation of the challan, the user would not be able to enter any amount more than INR 10,000/- and will get an alert message[5.3]. Further, in case the user tries to generate more than one challan, the system will restrict it beyond INR 10,000/- for a tax period, based on the return filing frequency of the user and will display a message[5.4].

5.1 Para 47 of Circular number 125/44/2019-GST dated 18 November 2019
5.2 As per FAQs on Import of Goods at Concessional Rate of Duty (IGCR) issued by ICEGATE
5.3 "This payment mode is not available for Challans exceeding INR 10,000/. Please make payment using other payment modes."
5.4 "The limit for payment in OTC mode is exceeded. Please make payment using other payment modes."

06 Important developments in direct taxes

CBDT issues additional guidelines on withholding tax on benefit/perquisite

A person responsible for providing to a resident, any benefit or perquisite arising from business or profession, is required to deduct tax at the rate of 10%[6.1]. The CBDT has, in the recent past issued guidelines[6.2] to remove difficulties faced by taxpayers while complying with these TDS provisions. Based on stakeholders' representations, the CBDT has now issued the following additional guidelines[6.3]:

- **One-time loan settlement/waiver of loan**: One-time settlement/waiver of loan by certain financial institutions[6.4] would not be subjected to TDS[6.1]. However, this relaxation would not impact tax treatment in the hands of the person who has benefitted from such waiver/settlement.
- **Reimbursement of expenses to the service provider**: Under the terms of the agreement where expense incurred by the service provider is the cost of the service recipient, which is reimbursed to the service provider, the same will not be subject to TDS[6.1], provided the service provider satisfies the condition of being a 'pure agent'[6.5] of the service recipient and the expenses are reimbursed by the service recipient.
- **Interplay with other provisions of the Act[6.6]**: Where service fee and out-of-pocket expense both are part of the consideration in the bill and TDS is deducted[6.7] on the entire consideration (service fees as well as out-of-pocket expense), tax is not required to be deducted[6.1] on such out-of-pocket expenses as benefit/perquisite.

6.1 Under section 194R of the Income-tax Act,1961 (the Act)
6.2 Vide Circular number 12 of 2022 dated 16 June 2022
6.3 Vide Circular number 18 of 2022 dated 13 September 2022
6.4 (i) Public financial institution as defined in section 2(72) of the Companies Act, 2013
(ii) Scheduled bank as defined in clause (ii) of Explanation to 36(1) (viia) of the Act
(iii) Co-operative bank (other than a primary agricultural credit society) and Primary co-operative Agricultural and Rural Development Bank as defined in Explanation to Section 80P(4) of the Act
(iv) State Financial Corporation or institution being a financial corporation established under section 3 or 3A of the State Financial Corporation Act,1951
(v) State Industrial Investment Corporation, engaged in the business of providing long-term finance for industrial projects
(vi) Deposit taking Non-banking financial company and Systemically Important Non-deposit taking Non-banking financial company
(vii) Public company engaged in providing long-term finance for construction or purchase of houses in India for residential purpose
(viii) Asset Reconstruction Companies.
6.5 As defined in GST Valuation Rules, 2017
6.6 Section 194C/194J of the Act
6.7 Section 194C/194J of the Act as per Circular number 715 dated 8 August 1995

- **Dealer conference**: With respect to dealer conferences to educate dealers about the product of a company, it has been clarified that:
  - It is not necessary that all dealers are required to be invited for the expenses to not be regarded as benefit/perquisite.
  - Expenditure incurred for overstay would be considered as benefit/perquisite. However, a day immediately prior to the actual start date of the conference and a day immediately following the actual end date of the conference would not be considered an overstay.
  - In the case where it is difficult to allocate the benefit/perquisite (using a reasonable allocation key) to each participant due to the fact that there is a group activity, then the provider of benefit/perquisite may opt to not claim such benefit/perquisite as a deductible expenditure while computing his taxable income. In such cases, there will be no requirement to deduct TDS[6.1].

- **Depreciation on a car gifted to the dealer**: Where a company has gifted a car to its dealer on which tax has been deducted[6.1] and the dealer has also included the same in his return of income, then the dealer can claim the depreciation on such car by considering the income offered in return as 'actual cost' of the car.
- **Relaxation to certain organisations**: Tax is not required to be deducted on benefit/perquisite provided by the organisation in the scope of the United Nations (Privileges and Immunity Act), 1947, International organisation[6.8], an embassy, a High Commission, legation, commission, consulate and the trade representation of a foreign state.
- **Bonus/rights shares**: Tax is not required to be deducted[6.1] on the issuance of bonus or right shares by a company in which the public is substantially interested[6.9], where bonus shares or right shares are offered to all shareholders by such a company.

CBDT amends the rules for availing of foreign tax credit

CBDT has notified[6.10] the due date for furnishing the electronic statement of income in prescribed form[6.11] for claiming foreign tax credit of the amount of any foreign tax paid by the taxpayer in a country or a territory outside India. The due date for filing the said form would be the due date for filing the original[6.12]/ belated[6.13]/ updated return[6.14], as the case may be. This is effective from FY 2022-2023 onwards.

CBDT notifies rule[6.15] and form[6.16] for filing modified returns pursuant to business reorganisation

In case of business reorganisation, the successor entity is required to file a modified return[6.17] within the prescribed timelines[6.18]. In order to give effect to the aforementioned provision, the CBDT has notified the applicable rule and form for filing a modified return which shall be furnished electronically under digital signature.

The aforesaid rule clarifies that where the assessment/reassessment is ongoing or finalised, the AO shall recompute the total income in accordance with the order of the business reorganisation and the modified return filed.

6.8 Organisation whose income is exempt under specific Act of Parliament (such as the Asian Development Bank Act, 1966)
6.9 As per section 2(18) of the Act
6.10 Notification number 100 of 2022 dated 18 August 2022
6.11 Form no.67
6.12 As per section 139(1) of the Act
6.13 As per section 139(4) of the Act
6.14 As per section 139(8A) of the Act
6.15 Rule 12AD of the Income-tax Rules, 1962 (the Rules)
6.16 Form number ITR-A
6.17 As per section 170A of the Act
6.18 Within 6 months from the end of the month in which the High Court's or Tribunal's or Adjudicating Authority's order is issued.

07 Glossary

AA	Appellate Authority
AAAR	Appellate Authority of Advance Ruling
AAR	Authority of Advance Ruling
AC	Assistant Commissioner
AD	Authorised Dealer
ADG	Additional Director General
AI	Artificial Intelligence
AO	Assessing Officer
ARAI	Automotive Research Association of India
BOE	Bill of Entry
BRC	Banks Realisation Certificate
CA	Chartered Accountant
CAE	Common Electricity Area
CBDT	Central Board of Direct Taxes
CBIC	Central Board of Indirect Taxes & Customs
CEGAT	Customs, Excise & and Gold (Control) Appellate Tribunal
CEM	Common Electric meter
CENVAT	Central Value Added Tax
CEPA	Comprehensive Economic Partnership Agreement
CESTAT	Customs Excise and Service Tax Appellate Tribunal
CG	Central Government
CGST	Central Goods and Service Tax
CIRP	Corporate Insolvency Resolution Process
CIN	Challan Identification Number
COB	Coke Oven Battery
CRM	Crumb Rubber Modifier
CRMB	Crumb rubber modified bitumen
CSP	Canteen service provider
CST	Central Sales Tax
CTD	Credit Transfer Document
CWF	Customer Welfare Fund
DC	Deputy Commissioner
DGAP	Directorate General of Anti-Profiteering
DGFT	Directorate General of Foreign Trade
DGGI	Directorate General of GST Intelligence
DG System	Directorate General of Systems & Data Management
DRI	Directorate of Revenue Intelligence
DTH	Direct To Home
e-BRCs	Electronic Bank Realisation Certificates
ECL	Electronic cash ledger
ECrL	Electronic credit ledger
EVC	Electronic Verification Code
FAG	Faceless Assessment Group
FAQ	Frequently Asked Questions
FEMA	Foreign Exchange Management Act
FOB	Free on Board
FPCs	Flexible Printed Circuits
FTCPL	Filco Trade Centre Private Limited
FTP	Foreign Trade Policy
FY	Financial Year
GST	Goods and Service Tax
GSTIN	Goods and Service Tax Identification Number
GSTN	Goods and Services Tax Network
HBP	Handbook of Procedures
HC	High Court
HSN	Harmonised System of Nomenclature
HUF	Hindu Undivided Family
IBC	Insolvency Bankruptcy Code, 2016
ICEGATE	Indian Customs Electronic Gateway
iCAT	International Centre for Automotive Technology
IGCR	Customs (Import of Goods at Concessional Rate of Duty), Rules 2017
IGCRS	Customs (Import of Goods at Concessional Rate of Duty or for Specified End Use) Rules, 2022
IIN	IGCR Identification Number

INR	Indian Rupee
ISD	Input Service Distributor
IT	Income Tax
ITC	Input Tax Credit
LLP	Limited Liability Partnership
MODVAT	Modified Value Added Tax
MOU	Memorandum of Understanding
NAA	National Anti Profiteering Authority
NAC	National Assessment Centers
NCLAT	National Company Law Appellate Tribunal
NCLT	National Company Law Tribunal
NCTC	National Customs Targeting Centre
OTC	Over The Counter
PPA	Power Purchase Agreements
PLA	Personal Ledger Account
RA	Regional Authority
RBI	Reserve Bank of India
RCM	Reverse Charge Mechanism
RMCC	Risk Management Centre of Customs
RMS	Risk Management System
RoDTEP	Remission of Duties and Taxes on Exported Products
RoSCTL	Rebate of State and Central Taxes and Levies
RWA	Resident Welfare Association
SAD	Special Additional Duty
SC	Supreme Court
SCN	Show Cause Notice
SEZ	Special Economic Zone
SLP	Special Leave Petition
SSC	State Screening Committee
TDS	Tax Deducted at Source
TCS	Tax Collected at Source
TRQ	Tariff Rate Quota
UAE	United Arab Emirates
VAT	Value Added Tax

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