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SHAPING A VIBRANT INDIA

GST Compendium

A monthly guide

July 2022

Editor’s note

Recently, the 47th Goods and Services Tax (GST) Council meeting was held and various important recommendations were made on GST rate changes and certain exemptions. The recommendation for levy of GST at 28% on casino, race course and online gaming has been deferred by the GST Council and the Group of Ministers (GoM) has been directed to re-examine the matter. As regards setting up of Tribunal under GST law, the Council has recommended to set up a ministerial panel to make recommendations for appropriate amendments to the Central GST (CGST) Act.

On the judicial front, the Uttarakhand AAR has ruled that the overseas commission agent is covered under the scope of “intermediary services” for facilitating the supply of goods in the international market. The AAR observed that the services are outside the ambit of import of services as the place of supply is not in India, thereby the commission is not liable to GST under reverse charge mechanism (RCM). The view aligns with the view taken by the Uttarakhand AAR in case of Midas Foods Private Limited. This is a welcome ruling and will set precedence in similar matters.

On the direct tax front, the Central Board of Direct Taxes (CBDT) has issued guidelines providing clarity on withholding tax matters on provision of benefits or perquisites. Additionally, the CBDT has notified the Faceless Penalty (Amendment) Scheme, 2022 and updated guidance on Mutual Agreement Procedure. The CBDT has also notified the procedure for filing appeal against the order passed by Board for Advance Ruling.

In this edition, we have analysed and discussed the landmark ruling of the Apex Court on levy of Integrated GST (IGST) on ocean freight under the RCM.

Hope you will find this edition an interesting reading.

Vikas Vasal

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Table of

contents

01 Important amendments/updates

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

47th GST Council meeting: Key recommendations/decisions

The 47th GST Council meeting was convened on 28 and 29 June 2022 wherein various recommendations have been made regarding changes/clarifications in the GST rates on certain goods and services, measures for trade facilitation, streamlining GST compliances, etc[1].

The GST Council has also decided to constitute a GoM to address various concerns raised by the States in relation to the constitution of the GST Appellate Tribunal and make recommendations for appropriate amendments in the CGST Act.

Key recommendations/decisions

Measures for trade facilitation

- **Relaxation to suppliers making supplies through e-commerce operators (ECOs):** The suppliers making supplies through ECOs are not mandatorily required to get registered if their aggregate turnover does not exceed the prescribed turnover and such supplier is not making any inter-State taxable supply. Further, composition taxpayers can make intra-state supply through ECOs subject to certain conditions. The scheme would be tentatively implemented w.e.f. 1 January 2023
- **Amendment in formula to calculate refund of unutilised input tax credit (ITC) on account of Inverted Duty Structure (IDS):** To take into account, the utilisation of ITC of inputs and input services for payment of output tax on inverted rated supplies in the same ratio, in which ITC has been availed on inputs and input services

1. PIB press release dated 29 June 2022

- In case when any exporter is identified as risky exporter, its refund claims in respect of export of goods are suspended/withheld. In order to handle such pending IGST refund claims, amendment in Rule 96 has been recommended to provide for transmission of such claims on the portal in form GST RFD-01 to the jurisdictional GST authorities for processing
- Re-credit of amount in electronic credit ledger (ECrL) to be provided where erroneous refund amount sanctioned to a taxpayer is deposited by him along with interest and penalty. Thus, a new form GST PMT-03A is introduced in order to enable taxpayers to get the re-credit in their ECrL
- Recommendation to the central government (CG) to notify certain provisions of the Finance Act, 2022 at the earliest to give effect to the following:
  - Interest shall be payable on the wrongly availed ITC only when the same is utilised, with retrospective effect
  - Transfer of balance in electronic cash ledger (ECL) of a registered person to ECL of CGST and IGST of a distinct person

  Provide clarity on the rules providing for the manner of calculation of interest under section 50
- **Waiver of late fee for delay in filing form GSTR-4 and extension of due date for filing form GST CMP-08**

Form	Period	Existing timelines	Extended timelines
GSTR-4	FY 2021-22	30 June 2022	28 July 2022
GST CMP-08	1st quarter of FY 2022-23	18 July 2022	31 July 2022

- Exemption from filing annual return in form GSTR-9/9A for financial year (FY) 2021-22 to be provided to taxpayers having Aggregate Annual Turnover up to INR 2 crores
- No requirement of ITC reversal for exempted supply of duty credit scrips by the exporters
- Unified Payments Interface (UPI) and Immediate Payment Service (IMPS) as an additional mode for GST payment to be provided
- Amendment in CGST Rules to provide for refund of unutilised ITC on account of export of electricity
- **Issuance of the circulars on following issues in order to remove ambiguity and legal disputes:**
  - Claiming refund under IDS, where the supplier is supplying goods under some concessional notification
  - Applicability of demand and penalty provisions in respect with transactions involving fake invoices
  - Mandatory furnishing of correct and proper information of inter-state supplies and amount of ineligible/blocked ITC and reversal thereof in return in form GSTR-3B
  - Refund claimed by the recipients of supplies regarded as deemed export
  - Interpretation of provisions of blocked credits under GST
  - Perquisites provided by employer to the employees as per contractual agreement
  - Utilisation of the amounts available in the ECrL and the ECL for payment of tax and other liabilities

Measures for streamlining compliances in GST

- In cases where suspension of registration was done by the system due to continuous non-filing of returns for a specified period, a provision for automatic revocation of suspension of registration shall be added to revoke the suspension once all the pending returns are filed on the portal.
- Time period from 1 March 2020 to 28 February 2022 shall be excluded from calculation of the limitation period for filing refund claim as well as for issuance of demand/ order in respect of erroneous refunds. Further, limitation for FY 2017-18 for issuance of order in respect of other demands linked with due date of annual return to be extended till **30 September 2023.**

Recommendations relating to GST rates on goods and services

- The GST Council has recommended rate changes in respect of certain goods and services. Further, GST rate on certain goods and services shall be rationalised to remove inverted duty structure and the exemption in form of concessional GST rate on certain goods shall also be rationalised.
- GST exemption will be withdrawn on goods like cheques (lose or in book form), maps and hydrographic or similar charts, specified food items, for example, pre-packaged and pre-labelled retail pack, etc.
- GST exemption on certain services are being rationalised, includes the following:
  - Exemption will be withdrawn on services by RBI[2], IRDA[3], SEBI[4], FSSAI[5], GSTN[6], renting of residential dwelling to business entities (registered persons)
  - GST at the rate of 12% shall be applicable on hotel accommodation priced up to INR 1,000 per day

2. Reserve Bank of India
3. Insurance Regulatory and Development Authority
4. Securities and Exchange Board of India
5. Food Safety and Standards Authority of India
6. Goods and Services Tax Network

  - Room rent (excluding Intensive Care Unit (ICU)) exceeding INR 5,000 per day per patient charged by a hospital (to the extent of amount charged for room) shall be taxable at the rate of 5% tax rate, without ITC
  - Exemption restricted on training or coaching services supplied by an individual in recreational activities relating to arts or culture or sports
- Clarification on GST rate on various goods and services has been given, including following:
  - GST at the rate of 5% on supply of ice-cream by ice-cream parlour without ITC shall be regularised to avoid unnecessary litigation
  - The activity of selling of space for advertisement in souvenirs published in the form of books is eligible for concessional GST at the rate of 5%
  - Renting of vehicle with operator for transportation of goods on time basis is classifiable under Heading 9966 and attracts 18% GST. However, GST on such renting where cost of fuel is included in the consideration is prescribed at 12%
  - Allowing choice of location of a plot is part of supply of long-term lease of plot of land and therefore location charge or preferential location charges (PLC) are part of consideration charged and shall get the same treatment under GST
  - Additional fee collected in the form of higher toll charges from vehicles not having Fastag is payment of toll for allowing access to roads or bridges to such vehicles. Hence, similar tax treatment shall be given as given to toll charges
  - Renting of motor vehicles for transport of passengers to a body corporate for a period (time) is taxable in the hands of body corporate under the RCM
  - Concessional GST rate of 5% shall be applicable on electric vehicles, whether or not fitted with a battery pack.
  - Concessional rate on fly ash bricks would be same irrespective of the fly ash content
- The GoM on casino, race course and online gaming has been directed to re-examine the issue based on inputs from the states and submit the report within a short period of time.
- Besides the payment of tax under RCM, the council has provided an option to Goods Transparent Agency (GTA) to pay GST at the rate of 5% or 12% under the forward charge. However, such an option shall be exercised at the beginning of the FY.
- All taxable services of Department of Posts would be subject to forward charge.

The rate changes will be made effective from **18 July 2022.**

The GoM on IT Reforms recommended that the GSTN should put in place the Artificial Intelligence (AI)/Machine Learning (ML) based mechanism. It will verify the antecedents of the registered applicants and an improved risk-based monitoring of their behavior post registration. It will help in identifying non-compliant taxpayers in their infancy and appropriate action be taken so as to minimise risk to exchequer.

CG extends levy of GST Compensation Cess till March 2026

Pursuant to the recommendations of the GST Council, the CG has issued[7] the GST (Period of Levy and Collection of Cess) Rules, 2022, which shall come into effect from **1 July 2022**.

Further, the levy and collection of GST Compensation Cess has been extended up to **31 March 2026**.

Central Board of Indirect Taxes and Customs (CBIC) issues procedures relating to sanction, post-audit and review of refund claims under the GST regime

The CBIC observed that different practices are being followed by the field formations regarding sanction, post-audit and review of refund claims. In certain commissionerate, speaking orders are being issued for all refund claims whereas in others, no speaking orders are passed if full refund is sanction. Thus, the CBIC has issued instructions[8] to ensure uniformity in procedure and to enable effective monitoring for sanction, post-audit and review of refunds.

Sanction of refund

The CBIC has provided detailed guidelines to ensure uniformity in processing of refund claims. Accordingly, the proper officer must follow the principles of natural justice and subsequently, pass a detailed speaking order. Also, the proper officer is required to upload the detailed speaking order along with the sanction order and relevant documents on the Automation of Central Excise and Service Tax (ACES)-GST portal for ready reference of the applicant and post-audit/ reviewing authority.

Further, the CBIC has prescribed a comprehensive list of details required to be mentioned in the speaking order along with the additional details required in case of certain category of refunds.

Post-audit and review of refund

Considering the large number of refund claims under GST, the CBIC has clarified that until further instructions, post-audit may be conducted only for refund claims amounting to **INR 1 lakh or more**.

Guidelines to conduct the post-audit and review of refunds:

- All the refund orders shall be transmitted online on the review module wherein the review and post-audit officers shall have access to all such documents/statements pertaining to refund claims on the ACES-GST portal.

7. Notification No. 1/2022–Compensation Cess dated 24 June 2022
8. Instruction no. 03/2022 -GST dated 14 June 2022

- A Post-Audit Cell must be created under Deputy/Assistant Commissioner along with one or two superintendents and inspectors.
- The post-audit should be concluded within three months from the date of issuance of order and the findings shall be communicated to review branch within three months.
- The review of refund orders shall be completed at least thirty days before the expiry of period of filing appeal.

Further, the CBIC has clarified that post-audit of refund orders may be done in an offline mode, till the time online functionality is being developed. For this purpose, the refund orders along with relevant documents may be provided to the post-audit cell within seven days from issuance of refund orders.

GSTN added 6% tax rate in GSTR-1 on the GST Portal

Earlier, in order to ensure correct reporting of tax amount in GSTR-1, the taxpayers were required to do reporting of goods at 6% rate by reporting the entries in the 5% heading and then manually increasing the system computed tax amount to 6%.

Now, the GSTN has added the 6% tax rate[9] in the item details section of all the tables of form GSTR-1, except Harmonised System of Nomenclature (HSN) table 12 on the GST Portal.

Accordingly, in case of outward supplies attracting 6% tax rate, taxpayers are required to upload the details against 6% tax rate in the item details section. In respect to HSN table 12 of form GSTR-1, 6% tax rate shall be added shortly. Meanwhile, the HSN details of table 12 supplies attracting 6% tax rate may be reported under tax rate 5% by updating the values/tax amounts as per the actual supplies made.

Haryana Department issues instructions regarding processing of applications for registration in FORM GST REG-01

The Head office of the Haryana Department has noticed that while applying for fresh registration under GST, few proper officers insist personal appearance or extraneous information from the applicant. Therefore, to facilitate the bonafide taxpayers for GST registrations, the Department has issued certain instructions as under[10]:-

- All applications shall be processed in accordance with the provisions[11] and rules.
- The physical appearance or personal statements are not mandatory at the time of registration. However, in case of any doubt, physical verification of business premises may be conducted[12].
- Generally, list of documents to be uploaded are already provided in the Form GST REG-01 so no extraneous information shall be sought by the Proper Officer at the time of processing such applications. However, in case of any doubt, proper officer may call for information as he deems fit, but such information shall be relevant to the application and no other information shall be called for.

Karnataka Department introduces electronic module to revoke cancelled GSTIN beyond 90 days

The Karnataka GST department has observed that certain taxpayers did not apply for revocation of cancellation within 90 days and hence, the GST portal did not allow filing the application. In such cases, taxpayers have to approach the appellate authorities or High Courts (HCs) for redressal of issue. However, there was no electronic module available to revoke cancelled registration after 90 days which was allowed by the concerned appellate authority or HC. Therefore, now the Department has developed a module[13] . With the introduction of such module, the LGSTO's/ STGO's[14] can revoke cancelled GSTINs of the taxpayers who had preferred appeal.

The taxpayer can now apply at GST Pro by raising a Approve Revocation Request and then Revocation after Appeal/High Court order. The proper officer shall select the GSTIN and upload the revocation order along with proceedings drawn to revoke the cancelled GSTIN. All actions have to be done with Digital Signature certificate of the officer.

Government of Tamil Nadu issues instructions for identification and prevention of bill traders from applying for registration

The government of Tamil Nadu observed that many persons have been taking undue advantage of the simplified registration process as a part of ease of doing business. After registration, in a short span of time, the bill traders issue invoices for huge amount without actually supplying such goods and/or services. Therefore, in order to prevent the potential bill traders from applying for registration, the Commercial Tax Department of Tamil Nadu has issued certain instructions[15] as under:

9. GST Portal update https://www.gst.gov.in/newsandupdates/read/543
10. Memo no. 367/GST-2 dated 24 May 2022
11. laid down in Section 25
12. in accordance with Rule 25 of the HGST Rules, 2017.
13. Circular GST NO 01- 2022-23 dated 2 June 2022
14. Local GST offices/Sub GST offices
15. Circular No. 10/2022 (PP2/GST-15/20/2022) dated 7 June 2022

- **Amendment in provisions:** Rule 8 and 9 of Tamil Nadu GST Rules have been amended to include the process of Aadhar authentication for new registration. The rules provide that where the proper officer deems fit, it shall carry out physical verification of place of business and documents and within 30 days of grant of registration.
- **Matching database in case of new registration:** The authorities shall undertake the process of matching the database while verifying any application for new registration. The authorities shall examine whether the six parameters pertaining to cancelled registration are found to have been matched with details of application for new registration. The six parameters include, place of business, permanent account number (PAN), mobile number, e-mail ID, authorised signatory and bank account number. The proper officer having jurisdiction shall undertake pre-verification of business premises so as to identify bill traders at entry itself.

The Insolvency and Bankruptcy Board of India (IBBI) notifies that the operational creditors have to furnish extracts of GSTR-1, GSTR-3B and e-way bills along with application for corporate insolvency resolution process

The IBBI has notified the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2016 (CIRP Regulations) on 14 June 2022.

The Section 9 of Insolvency and Bankruptcy Code, 2016 requires the operational creditor to furnish certain documents while submitting the application. The IBBI has notified[16] that in addition to prescribed documents, the operational creditor shall also furnish extracts of **FORM GSTR-1, GSTR-3B** and **e-way bills** along with the application. These documents can be used as an evidence of transaction with the corporate debtor, debt and default easing the process of admission. These documents shall be submitted to the resolution professional to help in collation of claims.

This regulation shall not be applicable to those operational creditors who do not require registration and to those goods and services which are not covered under any law relating to GST.

CBIC issues instruction for manual processing of declarations filed by the co-noticees under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 (SVLDRS scheme)

Earlier, it was conveyed through a letter dated 9 June 2020 that the Director General (System) shall provide functionality for issuance of Form SVLDRS-4 directly from the stage of Form SVLDRS-2 in cases where co-noticees applications are pending and the main notices has discharged arrears under the SVLDRS scheme. The CBIC noted that in absence of said functionality in the SVLDRS Module, the Designated Committees (DC) are unable to issue discharge certificate in the eligible cases.

The CBIC has been informed[17] that creation of this functionality will incur additional cost, efforts and time which would be disproportionately high. Therefore, in the interest of the declarants for disposal of cases and proper implementation of the scheme, the CBIC has directed manual processing/disposal of eligible cases for the applications filed by co-noticees under the SVLDRS scheme which are pending at Form SVLDRS-2 stage for issuance of discharge certificate. However, the CBIC has directed the DC to ensure fulfillment of all other eligibility conditions as per law, such as payments of dues and issuance of Form SVLDRS-4 to main noticee, etc.

16. Notification No. IBBI/2022-23/GN/REG084 dated 14 June 2022
17. F. No. 267/55/2020-CX.8/Pt-1 dated 30 May 2022

B. Key updates under the Customs/Foreign Trade Policy (FTP)/ Special Economic Zone (SEZ):

Directorate General of Foreign Trade (DGFT) extends the last date for filing annual returns under the Export Promotion Capital Goods (EPCG) scheme for FY 2022-23

The DGFT has notified[18] amendment[19] relating to EPCG in order to reduce compliance burden and enhance the ease of doing business.

The DGFT has extended the last date for filing annual returns for the FY 2022-23 under the EPCG scheme to **30 September 2022**. Further, a late fee of INR 5,000 shall be applicable in case of delay in filing returns due from the FY 2022-23 onwards.

CBIC exempts the deposits in ECL under the Customs Act, 1962

As per section 51A of Customs Act, 1962, every assessee shall maintain ECL on the customs portal. Accordingly, any sum payable towards duty, interest, penalty or fee or any other sum payable under any law for time being in force shall be credited as a deposit in the ECL of taxpayer.

Earlier the CBIC had exempted following deposits from the provisions w.e.f. 1 June 2022[20]:

I. With respect to goods imported or exported in customs stations where customs automated system is not in place;
II. With respect to accompanied baggage;
III. Other than those used for making payment of –
   a) any duty of customs, including cesses and surcharges levied as duties of Customs;
   b) integrated tax;
   c) GST Compensation Cess;
   d) interest, penalty, fees or any other amount payable under the said Act, or the Customs Tariff Act, 1975.

Now, the CBIC has extended the above exemption from 1 June 2022 to **30 November 2022**[21].

Further, the CBIC has notified the exemption from deposits pertaining to all class of persons and all categories of goods under the Customs Act from 1 June 2022 up to **29 November 2022**[22].

Noida SEZ department issues notice regarding payment of customs duty on export of goods procured by SEZ units from Domestic Tariff Area (DTA)

The CBIC had earlier notified /imposed Customs duty on export of certain items w.e.f. 22 May 2022. Further, the Noida SEZ department has issued notice[23] regarding the payment of customs duty on export of goods procured by SEZ from units of DTA. Therefore, in order to assist the SEZ units in the procurement of the dutiable goods covered under Second Schedule to the Customs Tariff Act, 1975 following procedure may be adopted –

a) The unit may file the Bill of Export along with requisite documents and self-assessment of duty on SEZ portal.
b) After processing of the Bill of Export by Assessing Officer, the duty liability shall be discharged.
c) For entry of the goods inside the zone, the unit is required to present a copy of assessed Bill of Export along with proof of duty payment before the gate officer. The Bill of Export may be filed along with applicable duty paid in advance to avoid any delay in the entry of dutiable goods into the zone.

CBIC notifies extension in term of security and time period for furnishing mega power status certificate for availing exemption in imports

The importer of goods for mega power project is required to furnish security in the form of fixed deposit receipt or bank guarantee from any scheduled bank for amount equal to the Customs duty payable for availing exemption. The CBIC has now extended[24] the term for furnishing of the security from 126 months to **162 months**.

In addition, the time period for furnishing the mega power status certificate has been extended from 120 months to **156 months** from the date of importation to avail exemption. If the importer fails to furnish such certificate, the amount of security shall be appropriated towards the payment of Customs duty on imports.

CBIC has introduced changes in Authorised Dealer Code (AD Code) registration to facilitate trade

The CBIC has issued an advisory[25] introducing changes in the customs system in relation to AD Code registration in exports. In response to the demands of trade, the CBIC has done away with the requirement of multiple AD Codes to be registered at every port.

Under the erstwhile process, AD Code was required to be registered at every port, where documents were filed which resulted in multiple AD codes associated with an Importer Exporter Code (IEC). However, as per the new changes, AD code with associated bank account will now be required to be registered in the system at only one port and thereafter, the AD code would be available at all Customs locations. Once an AD code is registered against an IEC at any port, the same can be used for all ports. There is no requirement of separate registration at other ports for filing documents.

18. Public Notice No. 13/2015-2020 dated 9 June 2022
19. in Chapter 5 of Handbook of Procedures (2015-20)
20. Notification No. 19/2022- Customs (N.T.) dated 30 March 2022
21. Notification No. 48/2022-Customs (N.T.) dated 31 May 2022
22. Notification No. 47/2022-Customs (N.T.) dated 31 May 2022
23. Trade Notice No. 01/2022 dated 3 June 2022
24. Notification No. 31/2022-Customs dated 7 June 2022
25. Advisory No: 10/2022 dated 14 June 2022

Moreover, any change in a particular AD code would have to be done at the port chosen for making application for registration. As earlier, there can be multiple AD codes and associated accounts registered against an IEC.

Further, the details of port of registration for each registered AD code against an IEC would be available on the Indian Customs Electronic Gateway (ICEGATE) login ID under the bank account management option.

DGFT provides relaxation in provision of submission of Bill of Export for supplies made to SEZ units in case of Advance Authorisation (AA)

The requirement of submitting Bill of Export for supplies made to SEZ as prescribed under the FTP has been challenged by various exporters on the ground of non-availability of such provision in earlier FTP. Accordingly, in the most cases, the HCs have granted relief to the AA holders.

Therefore, the DGFT[26] has decided to provide certain relaxations in the provision for submission of Bill of Export as evidence of export obligation discharge made to units of SEZ under AA for all supplies made before 1 April 2015. Accordingly, the exporters can submit following corroborative evidence in lieu of Bill of Export:

a) ARE-I form duly attested by jurisdictional authorities of AA holder
b) Evidence of receipt of the supplies
c) Evidence of payment made by the SEZ unit

DGFT amends guidelines for applicants to simplify the procedure and reduce the compliance burden for applying Export Obligation Discharge Certificate (EODC) in case of deemed exports

The DGFT has notified certain amendments[27] in the guidelines for applicants under ANF-4F with a view to simplify the procedure and reduce the compliance burden for applying EODC in case of deemed exports. The following relaxation has been provided:

- A duly signed copy of invoice or statement of invoices by the unit receiving material along with the certification in relation to item of supply, quantity, value and date of supply.
- In case of supply of non-excisable items or supply of excisable items to such units producing non-excisable products, a Project Authority Certificate (PAC) certifying quantity, value and date of supply would be acceptable in lieu of excise/GST certification.
- A copy of duly signed CT-3/ARE-3 in respect of supplies to EOU/EHTP/ STP/ BTP certifying the item of supply, its quantity, value and date of supply can be furnished in lieu of the excise/GST attested invoice or statement of invoices.
- A copy of the shipping bill with the name of domestic supplier as intermediate supplier endorsed on it along with the file number/authorisation number of the ultimate exporter and the intermediate supplier in case of supply of the product by the Intermediate supplier to the port directly for export by the ultimate exporter.

Guidance from SEEPZ[28] in relation to Work from Home (WFH) facility

As per the earlier communication[29] issued by the Development Commissioner of SEEPZ SEZ, units/developers were instructed to start work from office in a phased manner from 1 July 2022.

However, after consideration of the representation received from trade association and individuals, the Development Commissioner has now issued a Communication[30] informing that the earlier Communication to be kept in abeyance till further instructions. Further, the Development Commissioner SEEPZ informed that the policy for WFH is under active consideration in Ministry of Commerce and Industry and likely to be issued very soon.

Guidance from MEPZ[31] in relation to WFH facility

As per the circular[32] issued by the Development Commissioner of MEPZ, the WFH facility has been further extended up to **31 December 2022** or as per the directives of Department of Commerce, whichever is earlier. However, the Development Commissioner has suggested units to increase physical presence of their employees in the SEZ premises.

Department of Telecommunications (DoT) launches design-led manufacturing (DLM) under Production Linked Incentive (PLI) scheme for telecom and networking products

The DoT had notified the PLI Scheme on 24 February 2021 wherein 31 companies were given approval on 14 October 2021. In order to build a strong ecosystem for 5G, the DoT has introduced DLM with additional incentives rates under the PLI scheme.

The DoT has decided[33] to extend the existing PLI Scheme by one year. The existing PLI beneficiaries will be given an option to choose FY 2021-22 or FY 2022-23 as the first year of incentive. The DoT has also approved addition of 11 new telecom and networking products to the existing list.

DLM is aimed to support efforts for designing telecom products and encourage research and development driven manufacturing in the country.

Key features:

- The PLI scheme for five years shall commence from 1 April 2022.
- The scheme is open to both Micro, Small and Medium Enterprises (MSME) and non-MSME companies, including domestic and global companies.

26. Policy Circular No. 39/2015-20 dated 7 June 2022
27. Public Notice No. 11/2015-20 dated 7 June 2022
28. Santacruz Electronic Export Processing Zone
29. SEEPZ-SEZ/Admin/GI/588//2020-21/Vol-II/04269 dated 22 March 2022
30. SEEPZ-SEZ/Admin/GI/588//2020-21/Vol-II/09522 dated 15 June 2022
31. Madras Export Processing Zone
32. Circular dated 17 June 2022
33. Press release dated 20 June 2022

- While shortlisting, priority would be given to the applications from design-led manufacturers.
- The applicant satisfying the minimum global revenue criteria would be eligible under the scheme.
- The company may decide to invest for single or multiple eligible products.
- The scheme stipulates a minimum investment threshold of INR 10 crore for MSME and INR 100 crore for non MSME applicants.
- Eligibility shall be subject to incremental sales of manufactured goods (covered under the scheme target segments) over the base year (FY2019-20).
- The application window for registration under the scheme shall be open for a period of 30 days starting from 21 June 2022.

CG approves new guidelines of Central Sector Scheme promoting MSMEs in the north-eastern region (NER) and Sikkim

The CG has approved new guidelines[34] of Central Sector Scheme- Promotion of MSMEs in NER and Sikkim. The scheme is envisaged to provide financial support to enhance the productivity and competitiveness as well as capacity building of MSMEs in the NER and Sikkim. This scheme will be implemented during 15th Finance Commission Cycle (2021-22 to 2025-26). The scheme has following components:

1. **Setting up of new and modernisation of existing mini technology centres:** The scheme envisages financial assistance to the state governments (SG) for setting up of new and modernisation of existing mini technology centres, with the financial assistance of CG, which shall be 90%. The scheme prioritises projects creating common facilities to supplement manufacturing, testing, packaging, research and development, product and process innovations and training for natural resources, such as fruits, spices, agriculture, forestry, sericulture and bamboo, etc. available in NER and Sikkim. The projects having project cost more than INR 15 crore shall also be considered however maximum assistance shall be limited to INR 13.50 crore.
2. **Development of new and existing industrial estates:** As per the scheme, maximum financial assistance of 90% would be provided for development of new and existing industrial estates, flatted factory complexes.

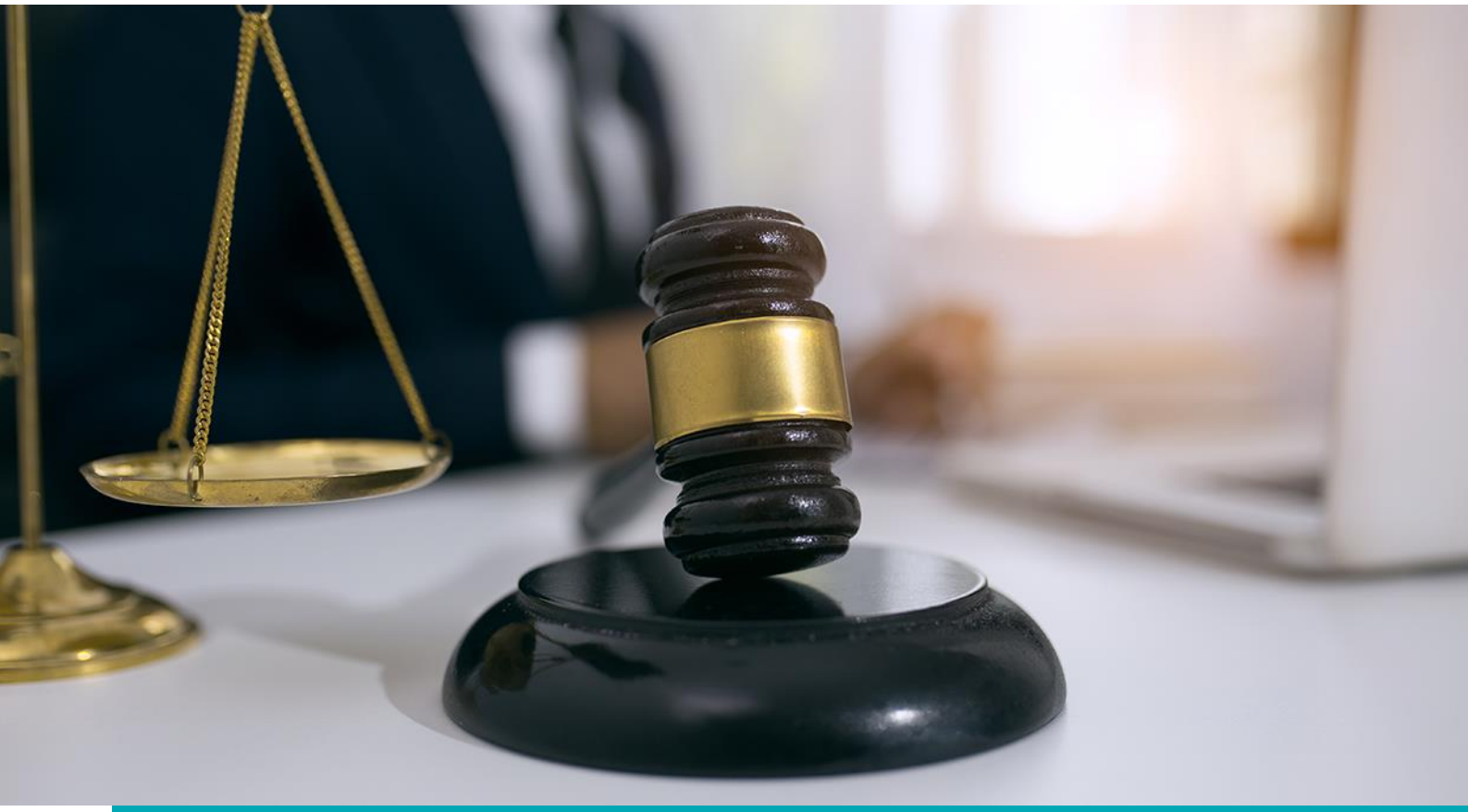
Development of estate	Maximum project cost	Maximum financial assistance
New industrial estate	INR 15 crore	INR 13.50 crore
Existing industrial estate	INR 10 crore	INR 9 crore

The projects with total project cost more than INR 10-15 crore will also be considered but maximum assistance shall be limited to INR 9-13.50 crores as the case may be.

3. **Development of tourism sector:** This scheme covers projects for creation of common services such as kitchen, bakery, laundry and dry cleaning, refrigeration and cold storage, Information Technology (IT) infra, potable water, display centre for local products, centre for cultural activities, etc. in a cluster of home stays. In such cases, the financial assistance of CG will be 90% for projects with maximum assistance limited to INR 4.50 crore.

34. Ministry of Micro, Small & Medium Enterprises press release dated 2 June 2022

02 Key judicial pronouncements



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

Doctrine of unjust enrichment not applicable in exports – Bombay HC

Summary

The Bombay HC noticed that the only contention of the authorities was that the petitioner has passed on the incidence of tax to the recipient and thus, the petitioner is not entitled to claim refund. The court held that when services are rendered abroad, then CGST will not apply. The HC ruled that the petitioner is entitled to refund of input tax as the output service qualifies as an export of service. The Bombay HC opined that as the value of supply excludes the amount of GST, it is evident that there is no passing of incidence of tax. Thus, the HC held that the authorities had committed an error in rejecting the GST refund, which is unsustainable.

Facts of the case

- The petitioner[35] had entered into an agreement with ASCL[36], London to provide production services. As per a clause[37] of the agreement, the refund of tax received by the petitioner shall be reduced from the production expenses while computing the consideration towards such production services.
- The petitioner had received certain inputs/input services on which the tax has been paid as charged by vendors. The petitioner had filed refund application of such tax paid.
- A Show Cause Notice (SCN) was issued to the petitioner and the refund application was rejected on the ground that incidence of tax has been passed onto ASCL, resulting in unjust enrichment of the petitioner.
- The aggrieved petitioner filed appeal before the Appellate Authority, which was also rejected[38] on the ground that the burden of tax has been shifted on the service recipient and thus, any refund to petitioner would amount to unjust enrichment.
- The petitioner submitted that principle of unjust enrichment does not apply to export of services as it being a zero-rated supply.

35. Jar Productions Private Limited
36. A Suitable Company Limited
37. Clause 4.10
38. placed reliance on the SC decision in Mafatlal Industries vs Union of India (2002-TIOL-54-SC-CX-CB)

Bombay HC observations and ruling[39]

- **Services rendered are covered under export:** The HC noted that ASCL is located outside India, whereas the petitioner is in India. Further, the production services are rendered in London. Thus, it is clear that the services provided by the petitioner qualify as export of services.
- **Incidence of tax has not been passed on the recipient:** The HC stated that the petitioner is entitled to the refund of the amount if the incidence of tax has not been passed on to the recipient of the services. It is evident from the agreement that no incidence of tax has been passed. Further, the authorities could not establish that the incidence of tax has been passed on to the recipient located abroad.
- **CGST does not apply to services rendered abroad:** The HC stated that when the services are rendered abroad, CGST will not apply. In the present case, the petitioner has rendered services to the ASCL abroad which amount to export of services. Thus, the Adjudicating Authority and the Appellate Authority committed an error in rejecting the refund of GST of the petitioner.

Our comments

Under the erstwhile regime, the Hon'ble Bombay HC in case of Indo-Nippon Chemical Company Limited[40] had held that there was no question of passing the burden of excise duty to the transferee, i.e., foreign buyer since it is undisputed position that credit was taken on inputs used in manufacture of goods for export. Later, the Apex Court dismissed the Special Leave Petition filed by the Union of India against the said decision.

The Mumbai CESTAT[41] while passing its decision in case of Sai Creation[42] had inferred from the above ruling and held that the provisions of unjust enrichment does not apply if the refund pertains to credit of duty on excisable goods used as inputs in the manufacture of exported goods.

Though, the Bombay HC has passed the ruling in line with the pre-GST era however, despite the clarification by the Board, the HC has unnecessarily examined the event of passing of incidence of tax.

Similarly, the Mumbai CESTAT in case of Motilal Oswal Securities Limited[43] had held that since the services are rendered abroad, the principle of unjust enrichment does not apply in case of export of service.

Even under the GST regime, the CBIC has clarified through its FAQ[44] that the doctrine of unjust enrichment would not apply to refund claims arising on account of zero-rated supply and the proper officer need not satisfy himself, whether the incidence of tax has been passed on to any other person. Thereafter, the CBIC made amendment[45] in section 54(8) of the CGST Act, 2017 in respect of supplies to SEZs, so as to validate the applicability of the principle of unjust enrichment. Thus, the principle of unjust enrichment will be applicable in case of refunds against supplies to SEZs, even though such supplies are zero rated.

Hence, in case of exports, at the first place itself, the authorities are not required to enquire whether the incidence of tax has been passed or not.

Associate companies registered in different countries are independent entities in the eyes of law – CESTAT Ahmedabad

Summary

The CESTAT Ahmedabad has held that since both the companies are registered in different countries under their respective law, they shall be treated as independent and distinct entities. The CESTAT opined that the legal position of the entities does not change merely because the balance sheet provides that the entities are associates. The companies shall be treated as separate entities under the eyes of law. Thus, the CESTAT concluded that supply of IT services to foreign distinct entity would qualify as an export of service.

Facts of the case

- The appellant[46] is providing IT service to its associate company[47] located abroad. The appellant submitted that the transaction amounts to export of service[48].
- The adjudicating authority had issued an order demanding service tax on the ground that the supply of service does not amount to export as both the appellant and associate entity are not distinct persons. Further, the appellant failed to prove that it had received the export proceeds in convertible foreign exchange.
- The appellant contended that both are different entities and are separately registered as independent company in respective countries. Even the shareholders are different, thus, both are distinct .
- Further, the appellant submitted that merely because a note was given in the balance sheet that the recipient's company is an associate company of the appellant, it does not alter the legal status of independent entity of both the companies.
- The aggrieved appellant filed the appeal before the Commissioner (Appeals). From the order of the Commissioner (Appeals), the only issue left was that the appellant have not fulfilled the condition of Clause(f)[49]. Accordingly, the demand was upheld. Therefore, the appellant filed the present appeal.

39. Writ petition No. 1143 of 2021 dated 9 June 2022
40. 2005 (185) E.L.T. 19 (Guj.) dated 22 February 2002
41. Customs, Excise and Service Tax Appellate Tribunal
42. 2013 (294) E.L.T. 637 (Tri. - Mumbai), 2017 (49) S.T.R. 32 (Tri. - Mumbai) dated 23 August 2012
43. Appeal No.ST/189/2011 dated 16 November 2016
44. FAQs on GST, 3rd Edition dated 15 December 2018
45. vide CGST (Amendment) Act, 2018
46. Celtic Systems Private Limited
47. Celtic Cross Holding Inc. USA
48. Rule 6A(1) of Service Tax Rules, 1994
49. of Rules 6A(1) of Service Tax Rules, 1994 i.e. the provider of service and recipient of service are not merely establishments of a distinct person in accordance with item (b) of 2 of clause (44) of section 65B of the Act

CESTAT Ahmedabad observations and ruling[50]

- **Both the companies have independent identity:** The CESTAT observed that the appellant is registered with the registrar of companies in India whereas, the recipient company is registered in its respective country. Except the two directors, all the other directors of both the companies are different. Even if there is a note in the balance sheet that the companies are associates, both the companies are independent entities in the eyes of law**.**
- **Supply of service qualifies as an export:** The CESTAT noted that in a similar case[51], the Gujarat HC had held that even though the company is a 100% subsidiary of foreign entity, both are different entities. In the present case, the appellant is not 100% subsidiary of its associate company. Accordingly, both the appellant and service recipient are distinct persons and the service provided hereby clearly falls under export of service.

Our comments

Earlier, the Gujarat HC in the case of Linde Engineering India Private Limited[52] had held that even though the company is a 100% subsidiary of foreign company, both would be considered as separate and distinct entities.

The present ruling is in line with the decision of Gujarat HC. An analogy can also be drawn under the GST regime wherein the impugned services would qualify as export of services subject to fulfilment of other prescribed conditions[53].

50. Service Tax Appeal No. 10912 of 2021; Order No. - A/10560/2022 dated 6 June 2022
51. Linde Engineering India Pvt. Ltd. Versus Union Of India
52. R/Special Civil Application No. 12626 of 2018, Dated 16 January 2020
53. Section 2(6) of the Integrated Goods and Services Tax Act, 2017

Nature of services should make no difference to the taxability of reimbursements when provision under which tax demanded itself has been declared *ultra vires*- Delhi CESTAT

Summary

The Delhi CESTAT has held that when the provision demanding tax has been held *ultra vires*, the demand of service tax cannot be sustained. The CESTAT observed that the appellant hired third-party service providers for providing event management services as approved by the client. The CESTAT ruled that the appellant has not entered into a turnkey contract for the entire service. In such arrangement, the appellant would have been entitled to avail CENVAT credit of the service tax paid, considering services provided by sub-contractors as its input services. The CESTAT further opined that the nature of service should make no difference to the taxability of reimbursements, when Rule 5 under which the tax was demanded itself has been *ultra vires* by the Supreme Court(SC)[54]. Hence, the CESTAT quashed service tax demand on expenses reimbursed by the client, incurred by the appellant for hiring third-party vendors.

Facts of the case

- The appellant[55] is engaged in providing event management services[56]. The ICCR[57] has hired the appellant for managing its various events.
- As a part of event management, the appellant engaged third-party service providers on the request of client and as per the budget allocation and instructions given by its client. Accordingly, the appellant made payments to such service providers and claimed reimbursements from the client along with utilisation certificates.
- During audit, it was observed that the appellant had short paid the service tax. Hence, SCNs were issued proposing to recover the short-paid service tax along with penalties.
- The appellant contended that it was acting as a pure agent in relation to amount received as reimbursement of expenses paid to third parties for their services.

Delhi CESTAT observations and ruling[58]

- **Reimbursement to be claimed upon appropriate utilisation:** The appellant has not entered into a turnkey contract for the entire service. The appellant is receiving payment for its services along with reimbursement of expenses incurred in hiring other service providers. The amount so incurred by the appellant is reimbursed upon submission of appropriate utilisation certificates.
- **Rule held *ultra vires* by the Apex Court:** The rule[59] specifically provides that upon satisfaction of certain conditions, the expenditure incurred by appellant as pure agent would be excluded from the value of taxable service. Accordingly, service tax was levied on the appellant as he did not qualify as a pure agent. However, the rule has been held *ultra vires* by the Apex Court in a decision passed in case of Intercontinental Consultants and Technocrats Private Limited[60].
- **Nature of service does not make difference:** The CESTAT held that when the rule has been held *ultra vires*, the nature of service should not make a difference in relation to taxability of reimbursements received from clients. Hence, the service tax demand cannot be sustained.

Our comments

Earlier, the Apex Court in case of Intercontinental Consultants and Technocrats Private Limited[61] had held that valuation of tax service cannot be anything more or less than the consideration paid as quid pro qua for rendering such a service.

Relying on the decision of Apex Court, the CESTAT Delhi has disregarded the tax liability when the relating provision itself has been held *ultra vires*.

The concept of pure agent exists in GST regime also, wherein it is mentioned that the expenditure or costs incurred by a supplier as a pure agent of the recipient of supply shall be excluded from the value of supply subject to the fulfilment of conditions.

54. in the case of Intercontinental Consultants and Technocrats Pvt. Ltd.
55. M/s Seher
56. taxable under Section 65 (105) (zu) of the Finance Act, 1994
57. Indian Council for Cultural Relations, under Ministry of External Affairs
58. Service Tax Appeal No. 52708 of 2016 dated 13 June 2022
59. Sub-rule (2) of Rule 5 of Service Tax (Determination of Value) Rules, 2006
60. Civil Appeal No. 2013 of 2014 dated 7 March 2018
61. Civil Appeal No. 2013 of 2014

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

Unit located in SEZ shall be treated as a distinct entity - CESTAT Ahmedabad

Summary

The Ahmedabad CESTAT has held that as per SEZ rules, the DTA unit and SEZ unit of an entity shall be treated as two distinct entities with separate books of accounts. Hence, a refund claim cannot be denied merely on the ground that both units are one entity. The CESTAT found that Business Support Service is clearly included in the list approved by the approval committee. However, the CESTAT opined that even if it is assumed that the service falls under marketing service and is not included in the approval list, even then the refund cannot be denied merely due to procedural lapse.

Facts of the case

- The appellant[62]'s service provider is a DTA unit located in Kolkata whereas, the appellant's unit is located in SEZ.
- The Learned Commissioner (Appeals) has upheld the rejection of the refund claim and passed the order on the ground that marketing service is not covered under the approved list[63]. Secondly, it held that the appellant and service provider are one entity, hence, it cannot be said that the appellant has received the services from the service provider
- The aggrieved appellant filed an appeal against such order and submitted that marketing services are received from its DTA unit in order to expand business outside India and same is covered under the scope of definition of Support Services of Business and Commerce[64].
- Placing reliance on the provisions[65], the appellant submitted that units of an entity located in SEZ and DTA are treated as two separate identities with separate books of accounts.

CESTAT Ahmedabad observations and ruling[66]

- **Service is included in the approved list:** The CESTAT found that the invoice issued by the service provider is clearly in respect of the business support service. Further, the business support service is included in the list approved by the approved committee. Thus, the refund cannot be denied merely due to a procedural lapse.
- **The unit in SEZ and DTA both have separate identities:** Basis the provisions of SEZ rules[67], the CESTAT stated that an enterprise that operates its business both from the DTA unit, as well as SEZ unit, shall have two distinct identities with separate books of accounts. However, it is not necessary for an SEZ unit to be a separate legal entity. Thus, even though the appellant is not a separate legal entity but the unit being located in SEZ shall be treated as a distinct identity. Hence, the refund claim cannot be denied on this ground.

Our comments

In the present case, the CESTAT Ahmedabad has relied upon various judgements cited by the appellant and has held that the refund cannot be denied merely for the reason that the service is not included in the approved list.

Further, it is a settled legal position that approval from the Unit Approval Committee is only a procedural requirement and not a mandatory condition as per the SEZ Act, which has an overriding effect over other laws.

As per the SEZ provisions, if any enterprise operates both as a DTA unit as well as SEZ unit, both are treated as two distinct entities. Thus, the CESTAT has rightly allowed the refund benefit to SEZ unit in view of intention of the government in the creation of SEZs.

62. TEGA Industries Limited
63. Approved list of the approval committee for the SEZ
64. operational assistance for marketing
65. SEZ Rules, 2006
66. Service Tax Appeal No.11359 of 2019
67. Sub Rule (7) of Rule 19 of the Special Economic Zone Rules, 2006

SCNs cannot be stifled to legitimise evasion of Customs duty on technical grounds that the Officers from Directorate of Revenue Intelligence (DRI) were incompetent to issue notices– Madras HC

Summary

The Madras HC pronounced that what was implicit in the provisions of the Customs Act, 1962 has been made explicit in the amendment to the Customs Act, 1962 vide Finance Act, 2022. Therefore, these writ petitions are liable to be dismissed by giving liberty to the petitioners to work out their remedy before the alternate forum. The court elucidated that the officers of the DRI are not any other officers of the CG or the SG or the local authority to be entrusted with the function of the board and the Customs officers. Therefore, there are no merits in these writ petitions filed by the respective petitioners challenging the SCNs issued by the officers under DRI. Further, the consequential orders passed[68] and other provisions of the Customs Act also cannot be assailed.

Facts of the case

- The petitioner[69] is alleged for misdeclaration of the value of apples imported from the United States of America in respect of ten different Bills of Entry, cleared by claiming and availing the benefit of Customs[70] and utilising Credit Certificates issued under the VKGUY[71] scheme. Further, it had also filed forged invoice/purchase and thereby suppressed the value and evaded tax.
- Aggrieved petitioner filed the petition challenging the impugned Order in Original passed by the respondent, Commissioner of Customs.
- The petitioner contended that the Additional Director General of DRI was incompetent to issue said SCN as he was not a Proper Officer for the purpose of Customs[72], within the meaning[73] specified under Customs Act.

Madras HC observations and rulings[74]

- **DRI Officers are the Proper Officers:** Under the Act, the CG by a notification can also entrust the function of the customs officers on any other officers from other departments including officers from the SG and the local body. Sweeping changes have been brought to the Customs Act, 1962 by Finance Act, 2022 leaving no scope for any doubt as to status of the officers including the officers from the DRI as officers of Customs.
- **Writ petitions liable to be dismissed:** The HC held that these writ petitions are liable to be dismissed on the ground that the officers of the DRI have indeed the power to issue SCN. The defense that they are incompetent is no longer available to these petitioners.
- **Petitioners are at liberty to file the reply:** The respective petitioners are at liberty to file their reply and written submission within a period of 30 days from the date of receipt of a copy of this order. In case the petitioner(s) fail(s) to file their reply within such time or within such extended time as may be allowed by the jurisdictional adjudicating authority, order shall be passed based on the available records and materials.

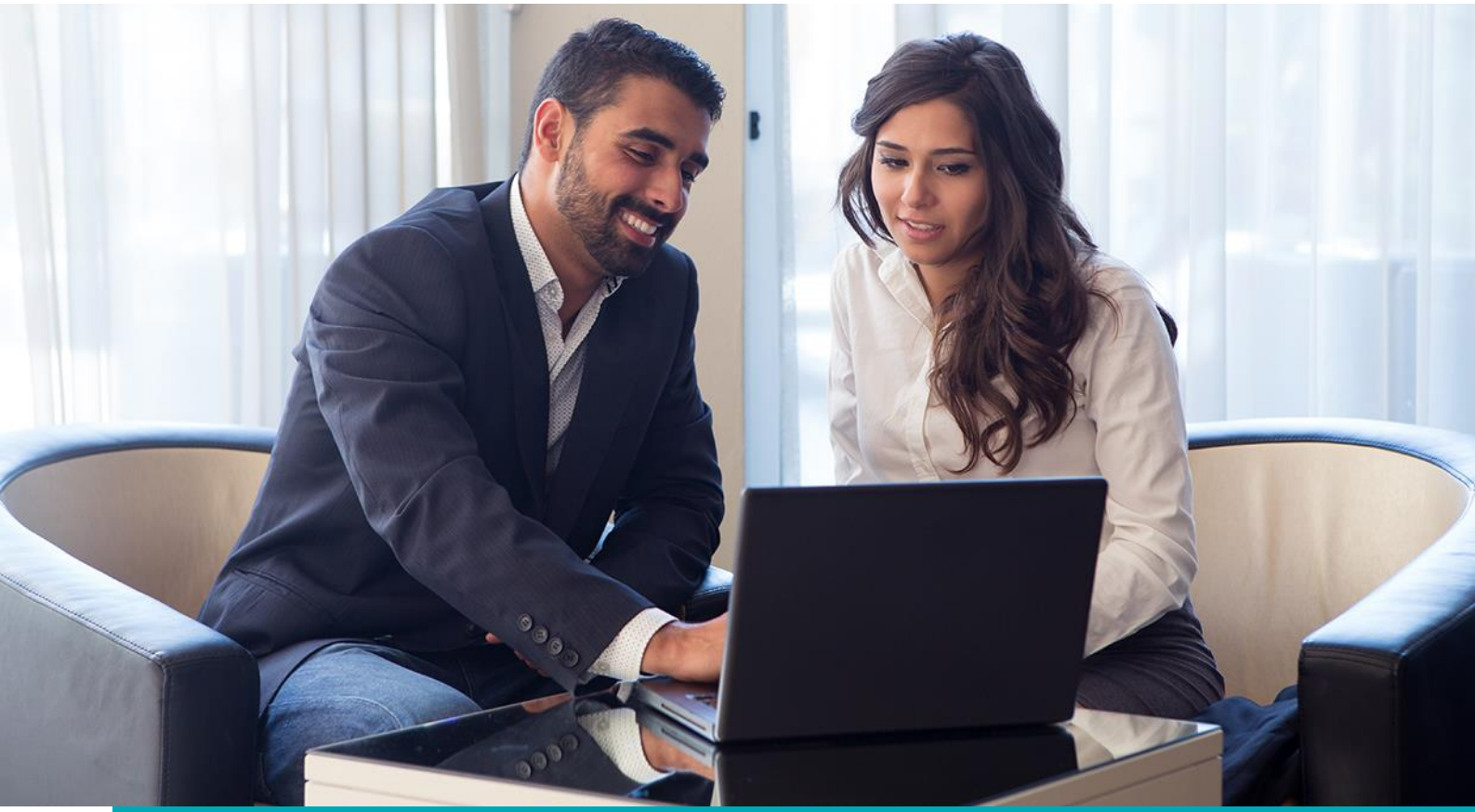
Our comments

In the present case, the Hon'ble Madras HC held that the officers of the DRI are already officers of the Customs by virtue of the Finance Act, 2022. This comes in contradiction to the landmark judgment of the Hon'ble SC in case of M/s Canon India, wherein it had been held that the DRI officers have no power to issue the SCNs under the customs law.

This is a welcome judgment and shall set precedence in similar matters.

68. Section 28 or Section 124 of the Customs Act,1962
69. M/S N.C. Alexender
70. Notification No.41/2005-Cus dated 9 May 2005
71. Vishesh Krishi & Gram Udyog Yojana
72. Section 28 and Section 124 of the Customs Act, 1962
73. Section 2(34) of the Customs Act, 1962
74. W.P.Nos.33099 of 2015, 18918 of 2016, 27344 of 2017 8242, 9306, 9405, 9407, 9434, 9484,11156,11268, 11271,11274, 12929, 12933, 26200 & 27009 of 2021, dated 9 June 2022

03 Decoding advance ruling



Occupational health check-up (OHC) service provided by the clinical establishment to business entity is a healthcare service exempt from GST – Gujarat Appellate Authority of Advance Ruling (AAAR)

Summary

The Gujarat AAAR has held that the supply of occupation health check-up service by a hospital by way of providing staff[75] to different corporates for providing health check-up services, ambulance facility and allied medical services to their employees and the camps conducted for health check-up outside the hospitals are to be treated as a healthcare service. Further, such healthcare services are exempted under GST[76]. The AAAR stated that the Gujarat Authority of Advance Ruling (Gujarat AAR) has failed to appreciate that the definition of healthcare service is similar in GST regime as compared to the Finance Act, 1994 under which the service was exempted[77].The Gujarat AAAR further stated that the AAR has failed to examine that the services provided by the appellant are covered[78] in the exemption notification. The Gujarat AAAR also ruled that there is no disparity when healthcare services are provided by a clinical establishment to a patient inside the clinical establishment or outside the said establishment.

75. i.e. nursing staff, Doctors, Paramedical staff on hospital's payroll
76. n terms of Entry at Sr.No.74 of NotificationNo.12/2017-Central Tax (Rate) dated 28.06.2017 and Notification No. 12/2017-State Tax (Rate) dated 30.06.2017, as amended.
77 Vide Notification No. 30/2011-ST dated 25.04.2011
78 Sr. No. 74

Facts of the case

- The appellant[79] is running three multi- specialty hospitals under the brand name Sunshine Global Hospitals.
- The appellant provides OHC service which are provided by any clinical establishment to the business entities and camps conducted for health check-up outside the hospitals. The appellant filed an advance ruling[80] before the Gujarat AAR that supply of these services shall be treated as healthcare service and not taxable under GST.
- The Gujarat AAR held that such services provided by the appellant are not covered under the ambit of healthcare service and shall be covered under human health and social care services and therefore taxable at the rate of 18% under GST.
- The aggrieved appellant filed an appeal before the AAAR and submitted that such services are not in the nature of social services but are health care services.
- The appellant has placed reliance on the judgment[81] delivered by the European court of Justice wherein it had been held that conducting medical examinations or taking medical samples of individuals for employers or insurance companies or certification of medical fitness are exempt, if such services are principally intended to protect health of person concerned.
- The appellant contended that as per the notifications[82] under service tax and GST, the OHC service is fully exempt.

Gujarat AAAR observations and ruling[83]

- **Services under health care services:** The AAAR referred to the definition[84] of health care services and stated that any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India is covered under the definition of healthcare service.
- **Healthcare services include OHC services:** The definition of diagnosis is broad enough to include OHC within the meaning. The Gujarat AAAR stated that OHC provide preventive care, which falls in the scope of the word care. Further, as per the definition of healthcare services, there is no disparity when such services are provided by a clinical establishment to a patient inside or outside the clinical establishment. However, AAR erred in holding that healthcare services do not include the services of OHC or preventive care.
- **Exempt service under the service tax and GST:** The OHC services were exempted by the government under the service tax regime. Further, the definition of healthcare service is similar in GST regime when compared to the Finance Act, 1994. The appellant has classified its service under heading 9993 which is squarely covered in the description of service as mentioned in exemption notification.

Our comments

The Gujarat AAAR has rightly modified the ruling pronounced by the Gujarat AAR to hold that the supply of OHC services provided by the hospital to the employees of business entities are covered under healthcare services. These services are exempt under GST irrespective of the place wherever these services are provided.

Further, the AAAR has elucidated that health care services are not limited to specified or particular conditions, diseases or anatomical reasons. These services can be provided in general practitioner's practices and also delivered by outpatient clinics, at home, in firms, schools, etc. or by phone, internet or other means. It means that there is a broad scope to cover services under healthcare services to provide exemption benefits under GST.

At present, the healthcare services are important and therefore as a facility, many business entities make arrangements with hospitals to provide regular services to their employees. This is a welcome ruling for all such business entities as there shall be no GST implications. Further, the ruling is likely to set precedence in similar matters.

79. M/s Baroda Medicare Private Limited
80. Advance Ruling No. GUJ/GAAR/R/106/2020 dated 30.12.2020
81. Peter d'Ambrumenil, Dispute Resolution Services Ltd. Vs. CCE [2012] 36 STT 537 (ECJ)
82. Notification No. 30/2011-Service Tax dated 25.04.2011, Sr. No. 2 of Notification No. 25/2012-ST dated 20.06.2012 was similar to Entry No. 74 of Notification No. 12/2017-Central Tax (Rate)
83. Advance Ruling No GUJ/GAAAR/APPEAL/2022/09
84. Para 2 of the Notification No. 12/2017-Central Tax (Rate)

Dispute resolving services provided by a forum to the aggrieved persons shall be deemed as a supply of service liable to GST – Maharashtra AAR

Summary

The Maharashtra AAR held that the definition of the term supply is an inclusive definition and must be understood as encompassing a wide range of activities. In the instant case, the applicant entertains complaints made by any person or persons against an insurer and decides on such complaints. Hence, it may be understood that services have been rendered to the said persons and therefore can be considered as supply as defined under the GST provisions. The Maharashtra AAR further opined that although the applicant does not receive any fees from the complainants, the funds received by applicant from life insurance and general insurance councils (Councils) are covered under the definition of consideration[85]. Additionally, the AAR held that the activity undertaken by the applicant, whether or not for pecuniary benefit, shall be termed as a business. Hence, the impugned activity undertaken by the applicant is a supply of services and the amounts received by the applicant from the Councils are not exempt from GST.

Facts of the case

- The applicant[86] is a Quasi-Judicial authority[87] formed with a specific objective. It is an administrative body set up to facilitate the functioning of offices of Insurance Ombudsmen in India.
- The applicant resolves the complaints filed by aggrieved persons who have grievances against the insurance companies. As per rules[88], the Councils receives funds from the insurer and remit them to the applicant to meet its day-to-day expenses, including salaries and other administrative expenses.
- The applicant contended that it renders services on a **No profit and No Loss** basis and there is no commercial aspect in the activities conducted. Thus, the funds received from insurance companies cannot be termed as consideration for a service. Therefore, the applicant sought an advance ruling on the applicability of GST on services provided by the applicant and whether the payment received by the applicant from the Councils would be exempt from GST.

Our comments

In the given case, Executive Council of Insurers (ECOI) receives funds from the Councils/insurer however as such, there is no direct agreement/arrangement between the ECOI and the aggrieved complainants for providing any service. Hence, it may be understood that the amount received from the Councils/insurer has no direct nexus with the grievances resolved by ECOI. Further, since ECOI does not charge any fee from the complainants, then considering the amounts received from the Councils against the activity (being considered as service provided to the Complainants) does not hold good.

Apparently, it seems that Maharashtra AAR has not provided clarity that services provided to whom (services by ECOI to Councils/insurer or services provided by ECOI to complainants) are taxable under GST.

In our understanding, since the complainant and the ECOI are not related persons, hence, any activity between them without consideration should not qualify as supply per se.

Maharashtra AAR observations and ruling[89]

- **Decision on complaints amounts to the rendering of service:** The applicant entertains complaints filed by persons who have grievances against the insurer and resolves such disputes with the insurer. Thus, it can be termed as the provisioning of service to the customers. Similarly, the insurance companies, being a party to such disputes are interested in resolving the relevant issues. Hence, even the insurers are availing the services of the applicant. Accordingly, the impugned activity amounts to the supply of service.
- **Funds from Councils can be termed as consideration:** The applicant does not charge any fee from the aggrieved person for resolving their complaints. However, the applicant receives funds from the Councils/insurer to manage their salaries and other administrative expenses. Thus, the funds received by the applicant can be considered as consideration for the supply of services. In the instant case, the payment is not done by the recipient of service but rather by any other person, i.e., Councils.
- **Activities of resolving disputes are liable to GST:** The activity undertaken by the applicant, whether or not for pecuniary benefit, is covered under the definition of business[90]. Further, the services provided by the applicant are not specifically mentioned in the exemption notification[91]. Hence, the activities of the applicant are not exempt. Additionally, amounts received from the Councils are also not exempt from the levy of GST.

85. paid for the supply of services as they come under the scope of 'by any other person'.
86. Executive Council of Insurers (ECOI)
87. Established under Redressed of Public Grievances Rules 1998 & Ombudsman Rules, 2017.
88. Rule 12(3) of Insurance Ombudsman Rules, 2017
89. No.GST-ARA-77/2020-21/B-73 dated 31 May 2022
90. Section 2 (17) of CGST Act 2017.
91. Notification No. 12/2017-CTR dated 28.06.2017

Eligibility of exemption under GST depends on the nature of the property and usage by the end user and not upon the status of recipient - Maharashtra AAR

Summary

The Maharashtra AAR has held that exemption under GST is provided by the nature and purpose of end usage and not by the status of recipient. The AAR opined that if a residential property is either being used or let out for commercial purposes, then only it would be classified as a service which will attract GST however property let out for residential purposes will be exempt from GST. Further, the AAR observed that the officer has not given any logical reasoning to show that Life Insurance Corporation of India (LIC) is making profits by making expenses towards leasing of residential quarters for its staff. The AAR ruled that the applicant shall be eligible for exemption from GST as the property is being used for residence by the staff members of LIC. Thus, the AAR concluded that the amount received under lease rental services for residential purpose would lie outside the purview of GST.

Facts of the case

- The applicant[92] is the owner of properties containing residential apartments. The applicant proposes to let out the property on leave and licence basis to LIC for residential purpose of its staff members. As per the agreement[93], the property would only be used for residential purpose. There is a specific restriction on using the property for commercial purpose.
- The applicant contented that just because the property was taken by LIC for residential usage of their staff, it cannot be treated as usage for commercial purpose. Accordingly, it is eligible for exemption[94] as the nature of property is residential. The applicant further stated that the exemption is not given by the status of the recipient but by the nature and usage of property.
- The Revenue on the other side, contented that LIC is not a natural person and it is a profit-making company. Therefore, in order to increase profit, the facility of accommodation is given to employee which is a commercial use.

Maharashtra AAR observations and ruling[95]

- **Exemption decided by the nature and purpose of the end use of property:** The AAR found that the supply of service by the applicant pertains to real estate sector covered under heading 9972. The heading 9972 is covered under the exemption notification, which prescribes that the residential property must be given on rent for residential usage. It is a fact that property is used for residence by staff members of LIC. Thus, the activity is eligible for exemption.
- **Taxability is decided by the purpose of usage:** The AAR stated that if a residential property is either let out or used for commercial purpose, only then it would be classified as a service provided and would be liable to GST. However, the property let out only for residential purposes is exempt from the ambit of GST. Therefore, the GST applicability is decided not by the nature of property, but by the nature of end use that will determine whether it is commercial or residential.
- **Jurisdictional officer defies all logic:** The jurisdictional officer has failed to explain as to how allotment of residential quarters makes an employee to sit late in office, especially when there are fixed office hours. Further, the officer has also not given any proper reasoning that LIC is making profit by making expenses towards leasing of residential quarters for its staff. Hence, the submissions of the officer cannot be accepted.

Our comments

This is an important ruling pronounced by the Maharashtra AAR wherein it has been correctly held that GST exemption is provided by the nature of the property and its usage and not by the status of the recipient.

The authority has precisely emphasised on the end use of the transaction rather than status of the recipient. Hence, the exemption benefit has nothing to do with the status of user/recipient.

It is to be noted here that the exemption is available only if the property being let out is a residential dwelling and used solely for residential purpose. In case if it is used for commercial purposes, the exemption benefit shall not be available under GST[96].

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

92. M/s. Kasturi & Sons Ltd
93. Clause 4.1
94. Sl. No 12 of the Notification No.12/2017, dated 28 June 2017.
95. No.GST-ARA-67/2020-21/B-72 dated 31 May 2022
96. Sl. No. 12 of Notification No. 12/2017-CT (Rate) dated 28/06/2017

Intermediary services provided by overseas commission agent do not qualify as import of services under GST– Uttarakhand AAR

Summary

The Uttarakhand AAR has ruled that the overseas commission agent is covered under the scope of Intermediary, as it facilitates the supply of goods to the applicant in the international market. The Uttarakhand AAR further observed that the services are out of the ambit of import of services as the place of supply of service is not in India. Thus, the Uttarakhand AAR concluded that the applicant is not required to pay GST on RCM on commission paid to the agent.

Facts of the case

- The applicant[97] is engaged in manufacturing and supplying seasonings, spices, premixes, and similar food products to its customers within and outside India
- The applicant had engaged third-party intermediaries or business facilitators to reach out to customers outside India and connect them with the applicant. As a result, the applicant entered into an MOU[98] cum agreement with an intermediary[99] to facilitate exports by arranging purchase orders from customers in foreign territory and was paid consideration for such services
- The applicant has approached the AAR seeking clarity concerning GST liability on commission paid to the overseas commission agent

Our comments

In the present ruling, the agent is providing intermediary services by way of supply of services of searching and finding customers outside India and connect them with the applicant. However, place of supply of such services is not in India. Accordingly, the Uttarakhand AAR has rightly held that the intermediary service is out of the ambit of import of services and therefore, GST is not payable thereon under RCM.

Earlier, a similar ruling was pronounced by the Uttarakhand AAR in case of M/s Midas Foods Private Limited[104] wherein similar view was adopted and had held that GST is not payable on intermediary services under RCM as it is outside the ambit of import.

The present ruling is in line with the above ruling. Further, this is a welcome ruling which will provide the required clarity on this aspect and will set precedence in the similar matters.

In addition, in case where the agent located in India is providing intermediary services to the recipient located outside India, the place of supply of such services shall be in India as per the Section 13(8)(b) of the IGST Act, 2017. Accordingly, it is to be noted here that such services would qualify as intermediary services and not the export of services under GST.

Uttarakhand AAR observations and ruling[100]

- **Overseas commission agent is an intermediary:** The AAR found that the agent is providing intermediary services in the international market and the applicant is utilising his expertise to get confirmed purchase orders. The applicant is paying commission per the agreement's terms for his services. Thus, the overseas agent falls within the definition of intermediary.
- **Services do not qualify as an import of service:** As per the provisions[101], the first two conditions of import of service stand satisfied in the present case, i.e., the agent being the supplier of service is located outside India and the applicant is the recipient in India. Further, the place of supply in the case of intermediary services is the location of the supplier[102]. Thus, the third condition, i.e., the place of supply in India is not satisfied as the supplier is located abroad. Therefore, the AAR observed that the services are out of the ambit of import of services.
- **No GST liability under RCM:** As per the provisions[103], import of services is treated as an inter-state supply of services chargeable to IGST under the reverse charge basis. Since the transaction in the instant case lies outside the scope of import of services, the same shall not be leviable to IGST under RCM.

97. Dry Blend Foods Pvt Ltd.
98. Memorandum of Understanding
99. Shri Bobby Kapoor
100. Ruling No. 01/2022-23 dated 1 April 2022
101. Section 2(11) of IGST Act, 2017
102. Section 13(8)(b)
103. Section 7(4)
104. Advance Ruling 10/2020-21 In Application No 05/2020-21

Gratuitous payment received from the outgoing member is consideration and therefore liable to GST - Maharashtra AAR

Summary

The Maharashtra AAR has held that the gratuitous payment received from outgoing members shall be treated as a consideration against services rendered by society during their stay as a member in society. Referring to the Model Bye-Laws of Co-operative Housing Societies, the AAR observed that the society cannot recover additional amount towards donation/contribution from the transferor/transferee and cannot collect amounts as voluntary payment above premium. Therefore, the AAR opined that the amounts received by the society from the outgoing members cannot be considered voluntary donations. The AAR further stated that consideration includes any payment made in money and since the payment is made towards major repair funds of the society, it is clear that the said payment is for the inducement of the supply of goods or services or both. The AAR concluded that though the collection of charges of society might be illegal under some other law, but since it is covered by the scope of supply and other ingredients of GST levy, it is taxable.

Facts of the case

- The applicant[105] is a registered[106] cooperative housing society which charges maintenance charges per flat for the maintenance and upkeep of premises.
- In case of transfer of a flat, the outgoing member makes gratuitous and voluntary payment to the applicant. The applicant contended that such payment made by outgoing members is not a consideration in lieu of services provided.
- The applicant submitted a letter of no-objection certificate (NOC) by the society to an outgoing member stating that the member has duly paid Share Transfer Fee, as per the Act[107] and there are no outstanding dues of the said member, post which a voluntary contribution was made by the outgoing member. Further, the applicant submitted an affidavit by the outgoing member stating that the payment is solely made out of his own discretion and not in lieu of NOC or any other service. He further submitted an affidavit by the treasurer, which stated that the voluntary contribution is not taken in lieu of NOC provided to the member and it is solely on the discretion of the member to make such voluntary contribution.
- The applicant sought an advance ruling regarding the taxability of GST on receipt of gratuitous payments from outgoing members.

Maharashtra AAR observations and ruling[108]

- **Model Bye-Laws:** The AAR placed reliance on Model Bye-Laws[109] and stated that the society cannot accept voluntary donations from a transferor or transferee above premium. Therefore, the amounts received by the society from the transferor cannot be considered as voluntary donations.
- **Society enjoys a dominant position:** The AAR placed reliance on the decision[110] and stated that all flat purchasers want smooth transaction and transfer of the share in its name. In such case, society enjoys a dominant position and demands payment of exorbitant amounts from the flat purchaser, under the garb of voluntary donations.
- **Gratuitous payment is consideration:** The AAR held that outgoing members make voluntary payments towards services they received from the society when they had resided. Hence, this payment should be treated as consideration under GST, which is taxable.

Our comments

In the present ruling, the Maharashtra AAR held that gratuitous payment received by the society from an outgoing member shall be treated as a consideration against services provided by the society and hence, it is liable to GST.

The AAR relied on the decision of the HC in the case of M/s MP Finance Group CC[111] wherein it was explained that income received by a taxpayer from illegal gains would be taxable in the hands of the taxpayer. Thus, though the collection of charges by society might be illegal under some other law, since it is covered by the scope of supply and other ingredients of the GST levy, it is taxable.

The AAR viewed that there is a compulsion for an outgoing member to show gratitude to the applicant by way of making gratuitous/voluntary payments to the society. Further, the authority noticed that the society has tried to give a colour of voluntary and gratuitous amount, which will be used for major repairs in future. Hence, the AAR has resultantly established the nexus of gratuitous contribution with a future supply in this ruling.

Though the advance rulings are only applicable on applicant, however since they have persuasive value, the department may refer this ruling to set precedence in similar matter.

105. M/s. Monalisa Co-Operative Housing Society Limited
106. Under Maharashtra Co-operative Housing Society Act (MCHS Act)
107. Maharashtra Cooperative Societies Act
108. GST-ARA-30/2021-21/B-71 dated 31 May 2022
109. Model Bye-laws No. 7 (e) & 38 (e) (ix) of the Co-operative Housing Societies
110. Bombay HC in the case of Alankar Sahkari Griha Rachana Sanstha Maryadit vs Atul Mahadev and another
111. M/s MP Finance Group CC (In Liquidation) v C SARS reported in 69 SATC141

04 Experts' column

SC strikes down levy on ocean freight- clarified or confusion persists?

Contributed by

Krishan Arora
Partner (Tax)

What are your views on judgement pronounced by the SC in the case of Mohit Minerals Private Limited[112] and relief provided therein?

In the recent judgement of M/s Mohit minerals, the Apex court of India has provided a long impending relief to the importers who have been in a conundrum since 2017, on the issue of applicability of RCM on ocean freight in the case of cost, insurance and freight (CIF) contracts by striking down the requirement to discharge GST in such cases.

The Apex Court has pronounced that in a CIF contract, even though the importer would be considered as 'recipient' as per provisions[113] under GST laws, IGST on ocean freight would not be payable under reverse charge on importation of freight services. The SC, in its order, has rightly held that supply under consideration is to be treated as composite supply comprising of supply of goods, i.e., goods imported as well as supply of services, such as transportation, insurance, etc. Since the importer has already discharged GST at the time of importation on entire value of consideration, hence no GST liability should arise on ocean freight separately and thus, relieved the importer from incidence of double taxation.

112. Civil Appeal No. 1390 / 2022, order dated 19 May 2022
113. Section 2(93) of the CGST Act, 2017 and section 13(9) of the IGST Act, 2017

What are you views on the SC's opinion highlighting role and responsibilities of GST Council and its recommendations?

Post issuance of judgement, a fresh issue came into being as to whether the recommendations made by the GST Council are binding on the Union and States. The inception of said issue lies in the decision which stated that the role of GST Council is of a recommendatory body aiding the government in enacting legislation on GST and cannot be said to have a binding power on the Union and States. The conclusion was arrived on the reasoning that the provisions of Article 246A does not contain force, which would convert the recommendations of GST Council into legislation. The court further stated that neither Article 279A begin with a non-obstante clause nor does Article 246A provide that the legislative power is 'subject to' Article 279A. In absence of such a language, the argument canvassed by the Union of India that recommendations of GST Council are binding on Union and States may not hold true. The court also stated that repugnancy provision that was contained as in Article 254, which was not present in Article 246A, further indicates that recommendations of the GST Council cannot be said to be binding. The Court stated that it is in the context of simultaneous legislative power conferred on Parliament and State legislatures, the role of GST Council has to be understood as a constitutional and recommendatory body and cannot be said the recommendations are binding on the Union and States.

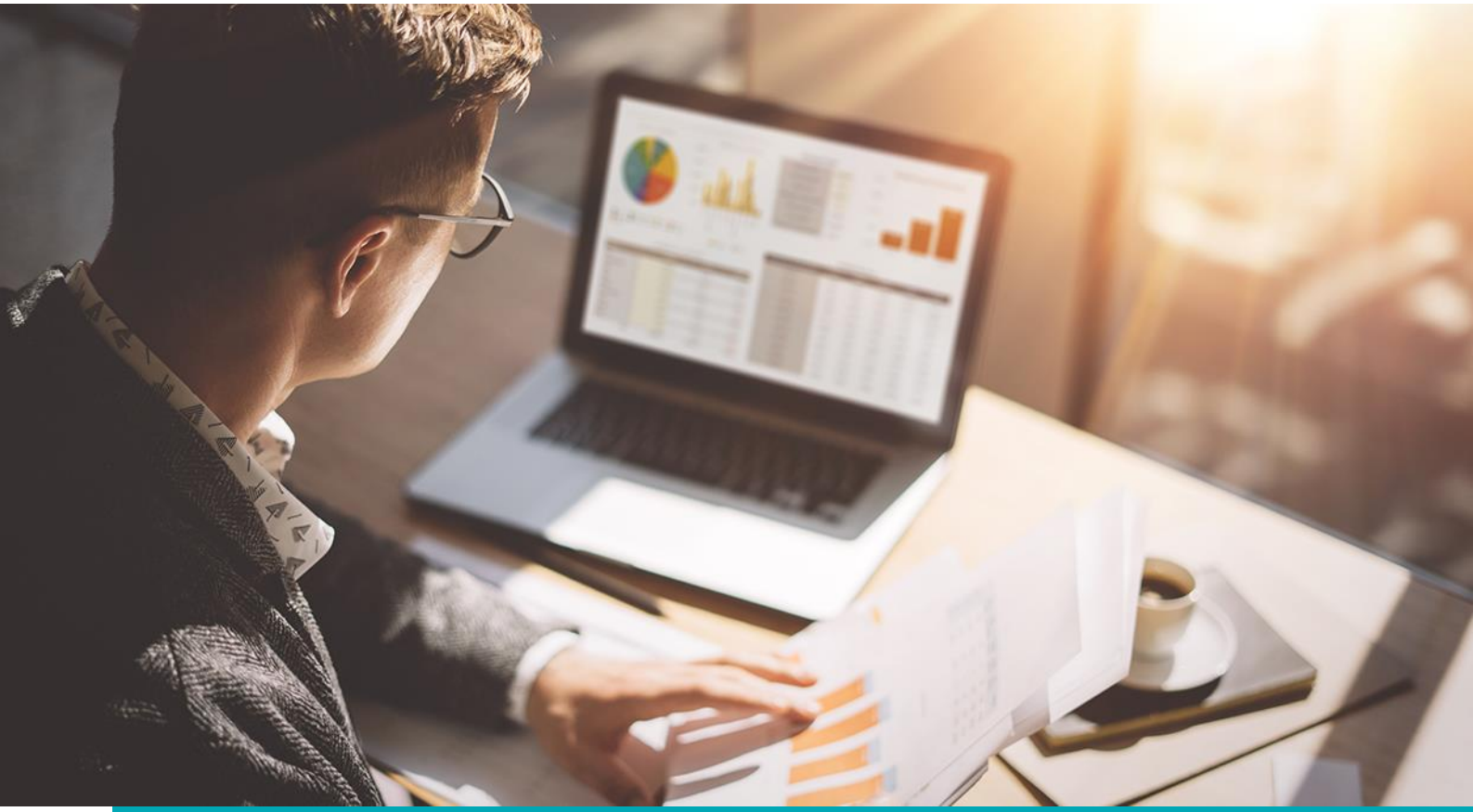
As a consequence of such opinions shared by the Apex court, it has led to the birth of plethora of questions and views from industry as well as subject matter experts.

After such a comprehensive decision delivered by the SC, what are the issues you feel still require clarification from union government?

While Hon'ble SC has provided much required relief in relation to the impending issue, however, there are plethora of questions which still remain unanswered such as:

- Eligibility to claim refund: Since the levy of RCM on ocean freight has been declared in violation of Section 8 of the CGST Act and the overall scheme of GST legislation, would importers be eligible to claim refund of IGST already paid, provided they have not availed input tax credit of the same.
- Further, can refund be available on GST paid for ocean freight services under CIF contracts in case the outward supplies are exempt from tax (example: supply of electricity), subject to principle of unjust enrichment.
- Whether the judgement of composite supply would be equally applicable in case of goods imported on CIF basis through Indian freight forwarder.
- Whether any retrospective notification/ amendment would be issued by the government in order to bring into force this judgement of the Apex Court.
- Whether similar position can be adopted in case of issues which are on similar lines as ocean freight such as royalty and licence fees, etc. paid in relation to import of goods.
- These are some grey areas wherein the job is undone and may be left to another bench when it comes again in another proceeding. Till then, we have to live with this judgment until further clarification.

05 Issues on your mind



Is there any facility available for unregistered persons to claim refund on the GST portal?

The unregistered persons can apply for temporary user ID on the GST portal by selecting reason for registration as 'To claim refund'. While applying, they would be allowed to add their details, such as address and bank account details. Subsequently, such temporary ID holders can file for refund on the portal using their temporary ID credentials.

Is e-invoice applicable to notified registered persons having only the zero-rated supplies?

If the annual turnover[114] exceeds more than INR 20 crore in any preceding FY from 2017-18, an e-invoice has to be generated for zero rated supplies also.

Whether e-way bill (EWB) is required separately when an e-invoice is issued through the prescribed procedure?

The generation of an e-invoice and an e-way bill are mandatory statutory requirements, as applicable under different relevant statutory provisions. The generation of e-invoice is for the notified registered persons with turnover exceeding INR 20 crore during any FY since 2017-18. The e-way bill generation is based on a different threshold limit, irrespective of the fact whether the person is liable to issue e-invoice or not. Secondly, an e-way bill can be generated either by the supplier or by the recipient or by the transporter, while e-invoice shall be issued by the notified registered persons.

Whether ITC can be availed if the recipient has an e-invoice and received the goods?

An e-invoice alone is not enough to avail ITC, since availment of ITC requires fulfilling the conditions stipulated under Section 16(2) of the CGST Act, 2017. Further, as per Rule 36(4) of CGST Rules, 2017, no ITC shall be availed by a registered person in respect of invoices, unless the details of such invoices have been communicated to the registered person in Form GSTR 2B.

114. as per Sec. 2(6) of the CGST Act, 2017

06 Important developments in direct taxes

CBDT issues guidelines regarding TDS[115] on benefits or perquisites

Finance Act, 2022 introduced a new TDS provision[116] which requires any person responsible for providing to a resident, any benefits or perquisites arising from business or the exercise of a profession exceeding INR 20,000 during a FY, to deduct tax at source at the rate of 10%. These provisions are applicable from 1 July 2022.

CBDT has issued the following guidelines[117] for removing difficulties in respect of these provisions:

- Tax is required to be deducted by benefit/perquisite provider irrespective of whether the amount is taxable in the hands of the recipient or the section under which it is taxed.
- Tax is required to be deducted, whether the benefit/perquisite is in cash or in kind or partly in cash and partly in kind.
- These provisions would apply irrespective of the nature of benefit/perquisite (even if the benefit/perquisite is a capital asset).
- TDS is applicable even if the benefit/perquisite is used by the owner/director/employee of the recipient entity or their relatives.
- Tax is not required to be deducted on sales discount, cash discount, rebates provided to customers. This relaxation would not be extended to other benefits provided by the seller in connection with the sale[118]
- These provisions are not applicable on benefit/perquisite provided to a government entity not carrying on business or profession.
- In case of benefit/perquisite provided to certain professionals (for example, doctors) associated with an entity (for example, hospital), the original benefit / perquisite provider may:
  - Deduct tax on such benefits/perquisites provided to the professional (employee) in the name of the entity, the entity would in turn deduct tax on benefits/perquisites provided to the employee[119];

115. Tax deducted at source
116. Section 194R of the Income-tax Act, 1961 (the Act)
117. Circular No. 12 of 2022 dated 16 June 2022
118. eg. free samples, event tickets, car, television, gold coin, etc.
119. Under section 192 of the Act

  - In case the benefit is provided to the professional, who is associated as a consultant with an entity, the original benefits/perquisites provider has an option to directly deduct taxes in the name of the professional (consultant).

  For the purpose of computing TDS, the fair market value[120] of the benefit/perquisite is to be considered. While computing the value of benefit/perquisite, the amount of GST is to be excluded.
- In case the products[121] received by social media influencers are retained, then these provisions would apply.
- Expenses for dealer conference would not be considered as benefit/perquisite, where the prime objective of the conference is to educate the dealers about the products of the company. However, the objective of such conference should not be to provide incentives for achieving particular targets. The following cases would be covered within the ambit of withholding tax provisions:
  - Leisure trips/leisure component incidental to such conferences
  - Accompaniment of family members in such conferences
  - Expenditure incurred for extended stay (pre or post conference)
- In case where the benefit is in kind/partly in kind and the cash is not sufficient to meet the TDS requirement, tax on benefit/perquisite can be paid by the recipient as the advance tax. Alternatively, the provider of benefit/perquisite should deposit the tax.
- For the purposes of calculation of threshold of INR 20,000 for FY 2022-23, the value of benefit/perquisite paid up to 30 June 2022 will also be considered.
- Expenses incurred by service provider, which are reimbursed, will not be considered as benefit/perquisite, if invoice is in the name of service recipient.

CBDT notifies the Faceless Penalty (Amendment) Scheme, 2022

The CBDT has notified[122] the Faceless Penalty (Amendment) Scheme, 2022 amending the Faceless Penalty Scheme, 2021. The key amendments are as folllows:

- RFPC[123] has been omitted.
- Penalty imposition proposal will be issued instead of a draft order.
- Provisions for rectification of mistake apparent from record have been deleted.
- Requirement for authentication of records has been extended to penalty unit, penalty review unit, technical unit and verification unit, as the case may be.
- Personal hearing to be allowed through NFPC[124].
- The manner in which penalty order needs to be passed, has been prescribed.

CBDT has also amended the procedure for imposing penalty[125] in accordance with the amended scheme.

CBDT notifies the updated guidance on MAP[126]

CBDT had issued guidance dated 7 August 2020 on MAP for the benefit of taxpayers, tax practitioners, tax authorities and the CAs[127] of India and the treaty partners. CBDT has now issued an updated guidance[128] on MAP, which deals with interplay between MAP and VsV[129] scheme, the disclosure requirements by applicants and updates to be provided to CAs on all material changes in the information or documentation.

CBDT notifies procedure for filing an appeal against BAR[130] ruling

As per the provisions of the Act[131], appeal can be filed before the HC against the order passed by BAR.

In this regard, the CBDT has notified[132] rules[133] prescribing that the form and manner of filing appeal before the HC by the taxpayer or the tax officer, is required to be as per the applicable procedure laid down by the jurisdictional HC.

120. However, where the provider has purchased the benefit/perquisite, the purchase price will be the value and where the provider has manufactured the benefit/perquisite, the sale price will be the valueie. the case falls under section 149(1)(a) of the Act
121. such as car, mobile, outfit, etc.
122. Notification No. 54 of 2022 dated 27 May 2022
123. Regional Faceless Penalty Centre
124. National Faceless Penalty Centre
125. Notification No. 55 of 2022 dated 27 May 2022
126. Mutual Agreement Procedure
127. Competent authorities
128. F. No. 500/09/2016-APA-I dated 10 June 2022
129. Vivad se Vishwas scheme
130. Board for Advance Ruling
131. Section 245W(1) of the Act
132. Notification No. 57 of 2022 dated 31 May 2022
133. Rule 44FA of the Income-tax Rules, 1962

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