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GST Compendium

A monthly guide

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Editor's Note

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This month has brought some reprieve to taxpayers where high courts have granted stay on some contentious and tremendous GST demands, e.g., a stay on various recovery proceedings related to GST demand on the gaming industry. In many cases, a similar stay is granted related to secondment where the GST department issues notices demanding GST on payment of the salary/reimbursements related to seconded overseas employees.

In another development, prominent food delivery apps have received GST demand notices worth more than INR 750 crore, alleging non-payment of GST on consumer delivery fees. Currently, food delivery platforms pay 5% GST on food orders. However, the GST authorities contend that, as food delivery is a service, Zomato and Swiggy are liable to pay 18% GST. The GST Council is expected to take this up and provide clarifications to address the ongoing controversy surrounding the taxation of delivery charges.

In a much awaited development, the Government has permitted the non-SEZ units engaged only in IT/ITeS businesses to operate from demarcated non-processing areas of IT/ITeS SEZ. This is a welcome move and will help increase the occupancy levels of SEZs. It will also provide flexibility as well as access to SEZ's infrastructure to such non-SEZ IT/ITeS businesses.

The SC has held that by-products or waste products emerging during manufacturing cannot be treated as exempted goods to restrict ITC. This is a welcome ruling by the SC, and an analogy can also be drawn under the GST regime, since a mere generation of by-products or waste should not lead to the reversal of ITC.

On the customs front, the Kerala HC has held that the customs officer is empowered to assess exemption from IGST claims on import of goods. The Kerala HC's ruling is contrary to the judicial precedence so far on the matter and is likely to be challenged further.

In this edition, our experts have delved into the issues revolving around valuations under customs law and judicial precedence.

On the direct tax front, the Central Board of Direct Taxes (CBDT) has notified changes in ITR 7 to implement taxation of certain incomes of a charitable institution at a specified rate. It has issued instructions for withholding a refund in case of pending proceedings.

I hope you will find this edition an interesting read.

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Important amendments/ updates

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

CBIC notifies amnesty scheme for filling appeals against GST demand orders to give effect to recommendations made in the 52nd GST Council meeting

The GST Council, in its 52nd GST meeting, had recommended an amnesty scheme for those taxpayers who were unable to file appeals to the AA against the order issued u/s 73 or 74 of the CGST Act on or before 31 March 2023 or whose appeals were rejected on the ground of being time barred. In furtherance to the said recommendation, the CBIC, vide Notification No. 53/2023 – CT dated 2 November 2023, has notified the special procedure to be followed by such persons for filing appeals as under:

- An appeal in FORM GST APL-01 has to be filed **on or before 31 January 2024.**
- The following conditions needs to be satisfied to avail benefit under the scheme:
  - The amount of tax, interest, fine, fee and penalty admitted by the taxpayer has to be paid in full.
  - The taxpayers will have to make a pre-deposit of 12.5% of the tax under dispute, maximum of INR 25 crore, out of which at least 20% should have been paid by debiting from the electronic cash ledger.
- No refund shall be allowed in relation to any amount paid by the taxpayer prior to the date of this notification either on their own or on the directions of any authority (or) court that is in excess of the amount specified above.
- No appeal shall be admissible in respect of a demand order that does not involve tax.
- An appeal filed under this notification will be subject to the provisions of Chapter XIII of the CGST Rules.
- Further, it is to be noted that if an appeal meets the requirements listed above and is already pending before the AA, it will be considered to have been submitted in compliance with this notification.

(Notification No. 53/2023– Central Tax dated 2 November 2023)

GSTN issues advisory related to filing appeal under Amnesty Scheme

GSTN has issued the following procedures vide an advisory dated 28 November 2023:

- Appeal filed pursuant to the notification shall be entertained by the appellate officer if it is accompanied with the requisite amount as prescribed in the Notification i.e.,
  - Full payment of admitted liability; and
  - 12.5% of disputed tax, subject to Max 25 crores out of which 20% should be paid by debiting credit ledger.
- GSTN portal allows taxpayers to select appropriate method of payment which should be accurately selected by taxpayers.
- Appellate Authority shall check the correctness of such payment before entertaining the appeal. Improprieties, if any, shall be dealt as per legal provisions.
- For appeals filed prior to the Notification, the benefit of such Amnesty Scheme can be availed by opting to make differential payment of prescribed amount, navigable as follows:
- **Login > Services > Ledgers > Payment towards Demand**
- Time barred appeals which were rejected earlier in GST APL-02 can be refiled. Any grievance while re-filing such appeal can be communicated by raising ticket on the redressal portal https://selfservice.gstsystem.in, under category 'Amnesty Scheme' and sub-category 'Amnesty Scheme – Issue in appeal filing'
- In cases where rejection order has been issued in GST APL-04, taxpayers should approach the respective Appellate Authority Office for timely compliance in terms of Notification. Upon satisfaction of eligibility, the Appellate Authority will forward the case to GSTN through State Nodal Officer (SNO).
- **Important Note:** Taxpayers are not permitted to directly represent cases before GSTN wherein rejection order in APL 04 have been issued. The same shall only be entertained by GSTN if they are forwarded by SNO.
- GSTN will then enable the taxpayers to file appeal.

CBIC issues circulars to clarify taxability aspects

In continuation to the series of notifications and circulars issued by the CBIC pursuant to the recommendations made in the 52nd GST Council meeting, the following circulars have been issued to clarify the taxability aspects as follows:

Particulars	Clarification	Our comments
'Same line of business' for passenger transport service and renting of motor vehicles	• Passenger transport service (SAC 9964) and renting of motor vehicle with operator for undertaking passenger transport (SAC 9966), where fuel cost is included in the consideration charged, is leviable to GST at 5%, with ITC of services in the same line of business only. • It has been clarified that input services in the same line of business is in reference to passenger transport service and renting of motor vehicle with operator for undertaking passenger transport service and would not include leasing of motor vehicle without the operator (SAC 9973).	The phrase 'same line of business' has been defined in Notification No. 11/2017-CT(Rate) (Services Rate Notification) as the 'service procured from another service provider of transporting passengers in a motor vehicle or renting of a motor vehicle'. Therefore, leasing of motor vehicles without an operator is considered at par with the supply (sale) of motor vehicles, and therefore, by way of the above clarification, the ITC on the same has been restricted.
Applicability of GST on electricity charges reimbursed to real estate companies, malls, airport operators, etc., by the lessee/occupants	• **Supply of electricity is bundled with renting of immovable property** – It is clarified that the supply of electricity is an ancillary supply bundled with the principal supply of renting of immovable property and/or maintenance of premises, therefore forming a composite supply, even if electricity is billed separately. Accordingly, the GST rate applicable to the principal supply of renting of immovable property and/or maintenance of the premise would be applicable on the whole transaction. • **Electricity supplied on actuals or as pure agent** – Electricity supplied by real estate owners/ developers, RWAs, etc., as a pure agent will not be included in their value of supply. They shall deem to be acting as a pure agent even if they are merely collecting and discharging the actual amount due to the state electricity boards or DISCOMs.	The recovery of electricity charges has been a contentious issue, with GST authorities taxing the actual recovery by including in the value of supply. The clarification would prevent further litigation. Taxpayers may revisit their tax position accordingly and evaluate seeking refund w.r.t. past payments made on a similar account.

Particulars	Clarification	Our comments
GST rate on job work for processing of barley into malted barley	It has been clarified that the job work for processing of barley into malted barley qualifies as 'job work in relation to all food and food products', taxable at the rate of 5%.	The end usage of 'malt', which can either be consumed directly or can be used in preparation of alcoholic liquor for human consumption, led to the classification confusion of taxing at 5% or at 18%. Accordingly, the same stands resolved by way of the above clarification.
Eligibility of DMFTs for GST exemptions	• The DMFT undertakes activities that are entrusted upon the Panchayats and municipalities under the 11th and 12th Schedule of the Constitution of India free of cost. • It has been clarified that the DMFT set up by the state government are governmental authorities and shall be eligible for the same exemptions from GST as available to other governmental authorities.	The DMFT functions as governmental authorities, and accordingly, have been granted the status as such.
GST exemption on horticulture/horticulture works made to the CPWD	• The CPWD is responsible to develop and maintain public parks in government residential colonies, government offices and other public areas. • It is clarified pure services and composite supplies by way of horticulture/horticulture works (where the value of goods is not more than 25% of the total value of supply) to the CPWD are eligible for exemption from GST under Sl. No.3 and 3A of the Notification No.12/2017-CT(Rate) (Exemption Notification).	Such services have been granted exemption in order to extend support to the Horticulture industry.
GST rate on imitation zari thread or yarn	• It has been clarified that a metal coated plastic film converted to metallised yarn and twisted with nylon, cotton, polyester or any other yarn to make imitation zari thread, is taxable at the rate of 5%. • Further, it has also been clarified that a refund on account of inverted rate structure on polyester film (metallised)/plastic film shall not be available.	In view of the recommendations of the 50th GST Council meeting, the GST rate on imitation zari thread or yarn known by any name in trade parlance was reduced from 12% to 5% by inserting Sl. No. 218AA in Schedule I of the Rate Notification. The clarification is in line with the above to further aid the textile industry.

(Circular No. 206/18/2023-GST and Circular No. 205/17/2023-GST dated 31 October 2023

Automated intimation under GST DRC-01C pertaining to ITC mismatch

The CBIC vide Notification No. 38/2023-CT dated 4 August 2023 introduced Rule 88D of the CGST Rules, in order to prescribe the manner of dealing the difference in Form GSTR-3B and GSTR-2B on account of ITC mismatch by issuing an intimation under Form **GST DRC-01C** electronically on the GST portal.

Pursuant to the above, the GSTN has developed a functionality to generate the automated intimation in Form GST DRC-01C. The online intimation will have the following features:

- The difference in ITC declared in GSTR 3B/3BQ and GSTR-2B/2BQ, over and above the prescribed limit or the percentage difference exceeding the configurable threshold, will be intimated in Part A of the intimation.
- A response providing either details of the payment made to settle such difference using DRC 03 or explaining the reason of such difference, must be filed by the assessee in Part B of the intimation.
- Failure to file the above response will disable the filing of GSTR-1/IFF for the subsequent period for such taxpayers.

(www.gst.gov.in/newsandupdates/read/614 dated 14 November 2023)

GSTN issues advisory on ITC reversal in terms of Rule 37A for FY 2022-23

In terms of Rule 37A of the CGST Rules, the taxpayers are required to reverse the ITC availed in Form GSTR-3B, in case of non-payment of tax by the supplier, by 30 November, following the end of the FY to which such invoices pertain.

As a measure of convenience, the GSTN has computed the amount of ITC pertaining to FY 2022-23, which is to be reversed pursuant to the above rule and has communicated such details to the taxpayers on their registered email address. Accordingly, the taxpayers are required to adhere to same and reverse such ITC in Table 4(B)(2) of GSTR-3B by 30 November 2023.

(www.gst.gov.in/newsandupdates/read/613 dated 14 November 2023)

Punjab government notifies one time settlement scheme for recovery of outstanding pre-GST dues

The government of Punjab has notified the 'Punjab One Time Settlement Scheme for Recovery of Outstanding Dues, 2023' (Scheme). This scheme aims to address unpaid tax liabilities, promoting compliance and transparency.

Key features of the scheme:

- The scheme is effective from 15 November 2023 and
- pertains to cases where assessments were completed by 31 March 2023 with outstanding dues up to INR 1 crore as of 31 March 2023.
- The application window for settling dues under this scheme shall be open till **15 March 2024.**

Relevant acts:

- The Punjab General Sales Tax Act, 1948;
- The Central Sales Tax Act, 1956;
- The Punjab Infrastructure (Development and Regulation) Act, 2002;
- The Punjab VAT Act, 2005

Total demand:

- Additional demand as on 31 March 2023 as per the AO passed till 31 March 2023; and
- Interest calculated up to 31 March 2023 on the tax due amount or penalty, which is a part of the additional demand as per the AO.

Total benefit:

Total demand (in INR)	Waiver
Up to 1 lakh	**100% of tax, interest, and penalty**
Up to 1 lakh	**100% of tax, interest, and penalty**
Up to 1 crore	**50% of tax** **100% of interest and penalty**

(Notification No. G.S.R.85/P.A.8/2005/S.29A/C.A.74/1956/S.9/ P.A.8/2002/S.25/ P.A.5/2017/S.174/2023.- dated 10 November 2023)

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

Government amends SEZ Rules for allowing demarcation of 'non-processing area' from SEZ area for setting up and operation of non SEZ businesses engaged in IT/ITeS

The Ministry of Commerce and Industry has amended the SEZ Rules for allowing demarcation of non-processing areas in the IT or ITeS SEZs for businesses engaged in the IT/ITeS effective 6 December 2023 (New Rule 11B has been inserted). Thus, the Government has now permitted the non-SEZ units engaged only in IT/ITeS businesses to operate from demarcated non-processing areas of IT/ITeS SEZ.

Key aspects for consideration:

- Upon request of a Developer of an IT/ITeS SEZ, the BOA may permit demarcation of a portion of the built-up area of an IT/ITeS SEZ as a non-processing area.
- A non-processing area may be used to set up and operate businesses engaged in IT or ITeS as per conditions specified by the Board of Approval.
- The non-processing area will consist of complete floor and part of a floor will not be demarcated as a non-processing area.
- Appropriate access control mechanisms will be provided in non-processing area of an IT/ITeS SEZ, to ensure adequate screening of movement of persons and goods in and out of the premises.
- Permission for demarcation of a non-processing area in an IT or ITeS SEZ for business engaged in IT/ITeS will be granted by the BOA only after repayment of tax benefits without interest by the Developer as under:
  - Tax benefits attributable to the non-processing area, calculated as the benefits provided for the processing area of the SEZ, in proportion to the built-up area of the non-processing area to the total built up area of the processing area of the IT/ITeS SEZ;
  - Tax benefits already availed for creation of social or commercial infrastructure and other facilities if proposed to be used by both the IT/ITeS SEZ and business engaged in IT/ITeS in non-processing area.
  - amount to be repaid by developer will be based on a certificate issued by a Chartered Engineer.
- The demarcation of a non-processing area will not be allowed if it results in decreasing the processing area to less than 50% of the total area or less than the area specified.
- The businesses engaged in IT/ITeS in a non-processing area will not avail any rights or facilities available to SEZ units such as tax benefits on operation and maintenance of common infrastructure and facilities.
- The businesses engaged in IT/ITeS in a non-processing area will be subject to provisions of all Central Acts and rules and orders made thereunder, as are applicable to any other entity operating in domestic tariff area.

Our comments

Representations were made by the industry and SEZ developers to permit non SEZ businesses engaged in IT/ITeS to operate from SEZ area. Thus, this is a much awaited and welcome move from the Government and will help increase the occupancy levels of SEZs. It will also provide flexibility as well as access to SEZ's infrastructure to such non-SEZ IT/ITeS businesses.

(Notification No. G.S.R. 881(E). dated 6 December 2023)

Permission granted to SEZ units for allowing its employees to work from any place outside the SEZ to be applicable up to 31 December 2024

The Ministry of Commerce had amended the SEZ Rules, to provide the process, conditions, compliances, etc., to be followed by the SEZ units for permitting its employees to WFH or from any place outside the SEZ. In addition, to ensure the harmonised implementation of these rules, the Ministry of Commerce had also notified the SOPs to be followed by the offices of the DC.

In this regard, the Ministry has further amended the said rule, i.e., Rule 43A, to substitute WFH with hybrid working effective from 7 November 2023. The expression 'hybrid working' refers to a flexible work model whereby an employer may permit its employees to work from office or from any location outside the employer's office from time to time. SEZ units permitting hybrid working shall intimate the same to the DC by email on or before the date on which the facility for hybrid work is permitted.

The permission to work from any place outside the SEZ shall be applicable till **31 December 2024**.

(Notification- F. No. K-43013(12)/1/2021-SEZ dated 7 November 2023)

CBIC introduces centralised video conference facility as a trade facilitation measure

To enhance trade facilitation and provide an efficient grievance redressal mechanism, the DGFT has decided to introduce a centralised VC service at its HQ every Wednesday from 10 am to 12 noon starting from 8 November 2023. Senior officers from the DGFT HQs shall remain present during these VCs to address the matters that could not be resolved by various DGFT RAs. The facility can be availed by registering on the DGFT portal at www.dgft.gov.in and selecting the 'Centralised VC with HQs' option under 'services'.

The existing daily online VC facility for all RAs, as well as individual appointments with the concerned officers of RAs, will continue as usual.

Further, the DGFT has requested the trade and industry to bring forward suggestions for improvements and raise concerns pertaining to the DGFT systems and procedures.

(Trade Notice No, 32/2023-24 dated 6 November 2023)

CBIC revises monetary limits for filing appeal in customs matters for reducing litigation

As a measure of reducing government litigation under the Customs Act, the CBIC, vide instruction bearing **F No. 390/Misc/30/2023-JC dated 2 November 2023**, has modified the monetary limits for filing appeals by the department as follows:

Appellate forum	Monetary limit (INR) (revised)	Monetary limit (INR) (before revision)
SC	**2 crores**	**25 lakhs**
HC	**1 crore**	**10 lakhs**
CESTAT	**50 lakhs**	**5 lakhs**

Accordingly, the withdrawal process of pending matters in view of the revised limits shall be in concurrence with the practice of withdrawal in the above forums. It has been clarified that adverse judgements on the following aspects shall be appealed irrespective of the amount involved:

- Constitutional validity of provisions of an act or rules;
- Notification/instruction/order/circular held illegal or ultra vires;
- Classification and refund issues that are legal and/or recurring nature.

(F. No. 390/Misc/30/2023-JC dated 2 November 2023)

Date for accepting applications under the PLI scheme for textiles extended till 31 December 2023

The Ministry of Textiles had notified the PLI scheme for textiles for promotion of MMF apparel, MMF fabrics and products of technical textiles effective from 24 September 2021. Incentives under the scheme will be available for a period of five years, i.e., during FY 2025-26 to FY 2029-30 on incremental turnover achieved during FY 2024-25 to FY 2028-29, with a budgetary outlay of INR 10,683 crores.

The Ministry of Textiles had reopened the portal till 31 October 2023 (earlier till 31 August 2023) and had invited applications from companies interested in investing in MMF apparel, MMF fabrics, and technical textile sectors.

In view of requests from the industry, the Ministry of Textiles has re-opened the window for accepting applications under the PLI scheme for MMF apparel, MMF fabrics and products of technical textiles up to **31 December 2023**.

(Press release dated 1 November 2023)

DGFT notifies pilot launch of revamped Electronic Bank Realisation Certificate (eBRC) system

The DGFT has implemented an enhanced e-BRC system. It is a more streamlined process that is based on electronic IRMs to be transmitted directly by banks to the DGFT. Based on the IRMs received, the exporters shall self-certify their e-BRCs. A soft launch of the revamped e-BRC system is proposed with effect from 15 November 2023.

Effective from 15 November 2023, each bank will set its cut-off date based on their readiness after completing UAT. IRMs dated on or after this bank-specific cut-off date will be sent to the DGFT for exporters' self-certification. For IRMs generated before this date, banks will generate e-BRCs and submit them to the DGFT, as per the legacy e-BRC process.

The new e-BRC system will work as under:

- Banks receiving export remittances will push the IRM message to the DGFT IT system electronically. Banks shall push the IRMs pertaining to the trade account only and not the IRMs pertaining to the capital account, etc., i.e., remittances pertaining to goods or services exports.
- IRM details will be accessible to the relevant IEC holder upon logging onto the DGFT website (https://dgft.gov.in).
- The exporter will create e-BRCs by matching IRM with relevant shipping bills, SOFTEX, or invoice details. Multiple IRMs may be grouped under one e-BRC, or one IRM can be split among several e-BRCs.
- The RBI purpose code and other fields mentioned in the IRM shall be used to validate the e-BRC fields being certified by the exporter.
- Banks would have the option to flag any e-BRC for further examination or request input from the exporter concerned

(Trade Notice 33/2023-24 dated 10 November 2023)

Advisory regarding amendment of GSTIN in bill of entry after out of charge

Various references were received by the DGFT regarding non-availability of the option of GSTIN amendment in the BoE after OOC.

In this regard, the DGFT has issued an advisory stating that the customs officer can now amend GSTIN for a BoE. Key points for consideration are as under:

- The system will allow change of GSTIN, provided the PAN remains the same.
- Amendment in GSTIN can be carried out only once. If the same is being done more than once, the system will flash the message "GSTIN ID has already been amended once. No amendment in GSTIN ID is possible now".
- If GSTIN in a BoE has been amended, the system will not allow any other amendment on the same day.
- If an amendment (other than GSTIN amendment) has been carried out in a BoE, the GSTIN amendment would not be allowed on the same day. If the same is being done, the system will flash the message "An amendment has been carried out and OOC is not given, the amendment of GSTIN is not possible today". Further, the officer will have to give the OOC for pushing the amended data to GSTN.

(Advisory No: 27/2023 Dated 07 November 2023)

DGFT issues notice regarding resolving of Export Obligation Defaults under Advance Authorisation (AA) and Export Promotion Capital Goods (EPCG) Scheme

The Directorate General of Foreign Trade (DGFT), vide Public Notice No. 02/2023 dated 1 April 2023, had notified the 'Amnesty scheme for one-time settlement of default in export obligation by AA and EPCG authorisation holders.' Further, vide Public Notice No. 20/2023 dated 30 June 2023, the DGFT had extended the last date to apply under the Amnesty Scheme for EO default till 31 December 2023. Also, the last date for payment of customs duty, along with interest, has been extended till 31 March 2024.

In this regard, the DGFT has issued Trade Notice No. 35/2023-24 dated 5 December 2023, for closure of cases of default in EO under the AA and EPCG Schemes where applications have been filed with Policy Relaxation Committee (PRC)/EPCG Committee for relaxation in policy/procedure on grounds of genuine hardship/adverse impact on trade. The DGFT has advised that the PRC/EPCG Committees consider each application based on individual facts and circumstances on a case-to-case basis. Since Policy relaxation is not a matter of right, all such authorisation holders are advised to not wait till their requests are decided by the PRC/EPCG Committees and submit their applications for closure of default in EO under the Amnesty Scheme by 31 December 2023. Pendency of any application for relaxation/clarification would not form a ground for relief/extension of permissible period for filing of applications under the Amnesty Scheme beyond the prescribed date.

02

Key judicial pronouncements

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

I. Key rulings under the GST laws

Issuance of pre-SCN intimation mandatory when the SCN relates to the period prior to amendment in CGST Rules – Andhra Pradesh HC

Summary

The Andhra Pradesh HC has held that intimation under GST DRC 01A should mandatorily be issued before issuing a SCN when the tax period pertinently covers the period during which it was a mandatory requirement. Initially, in terms of Rule 142(1A) of the CGST Rules (impugned provision), it was mandatory to communicate the details of the tax penalty as ascertained by the PO in GST DRC 01A. The requirement was made discretionary w.e.f. 15 October 2020 by amendment in the impugned provision. Owing to the above, the HC set aside the impugned order, holding that in case of any ambiguity in the provisions, the benefit shall be given to the taxpayer.

Facts of the case

- M/s. New Morning Star Travels (the petitioner) has challenged the combined AO for the period from 1 July 2017 to 31 March 2021, levying tax, interest and penalty on the ground that the details of the above demand were not communicated to the petitioner in GST DRC 01A before issuing the SCN was required in terms of Rule 142(1A) of the CGST Rules.
- The petitioner stated that prior to the amendment in the impugned provision w.e.f. 15 October 2020, it was mandatory to issue GST DRC 01A to intimate the details of the tax, interest and penalty as ascertained by the PO.
- The petitioner contended that the major part of the tax demand pertained to the pre-amendment period, and accordingly, the intimation should have been issued by the department in accordance with the unamended provision.
- Further, owing to such a violation of the department, the petitioner was deprived of the valuable opportunity to make submissions before the issuance of the SCN. In view of the above, the petitioner submitted that the impugned order would not be sustainable in law.
- The department (respondents), on the contrary, contended that initially, intimation was issued by the AC; however, no action was taken thereafter in pursuance of the same.

Subsequently, upon transfer, the Deputy Commissioner directly issued the SCN under GST DRC 01 without issuing GST DRC 01A. Again, no action was taken by the Deputy Commissioner in pursuance of the SCN till the passing of the impugned order.

- The department argued that some part of the period pertained to post-amendment, and upon amendment of the impugned provision, the issuance of GST DRC 01A was a discretionary measure and no longer a mandate. In view of the above, the order cannot be invalidated.

Andhra Pradesh HC's observations and judgement [Writ Petition No. 12850/2022; Order dated 12 October 2023]

- **GST DRC 01A was a mandatory requirement prior to amendment:** The HC observed that prior to amendment in the impugned provision, it was mandatory for the PO to intimate the details of tax, interest and penalty ascertained in Part A of the FORM GST DRC 01A. Further, the Grant Thornton Bharat Tax Alert SCN can be issued only if there is no response from the taxpayer. However, after the amendment, the requirement to issue DRC 01A was made discretionary.
- **Tax demand covers both pre- and post-amendment periods:** The HC emphasised that the SCN pertained to the tax period from 1 July 2017 to 31 March 2021, and thereby, covered both the pre-amendment period, as well as the post-amendment period. Pertinently, most of the tax period is related to the pre-amendment period. In view of the above, the HC held that since no action was taken by the AC after initially issuing DRC 01A, it was obligatory upon the Deputy Commissioner to ensure that GST DRC 01A was issued prior to proceeding with the SCN. The HC opined that in case of an ambiguity with respect to any provision, the benefit should be given to the taxpayer. Therefore, the HC set aside the impugned order and directed the Deputy Commissioner to issue a fresh intimation under DRC 01A.

Our comments

This has been a burning issue for a long time. Post amendment in the impugned provision, the mandatory requirement of issuing intimation under GST DRC 01A was made discretionary upon the assessing authority. However, the present judgement makes the requirement mandatory if the tax demand pertains to most of the pre-amendment period, thereby upholding the intention of such mandate.

Earlier, the Allahabad HC, in the case of Nanhey Mal Munna Lal, had categorically clarified that GST DRC 01A is a 'SCN' intimation that is issued with the intention of providing the opportunity to the assessee to resolve the dispute either by depositing the amount demanded or in case of disagreement, by going through the adjudication proceedings. It, therefore, takes into account the principles of natural justice at the pre-SCN stage. Further, the HC asserted that such an opportunity at a pre-SCN stage is not only beneficial to both the assessee and the department but also reduces litigation.

Taxpayers can take benefit of this judgement to contest the validity of a SCN issued on similar grounds.

Registration cannot be cancelled on the premise that place of business is not conducive for business - Andhra Pradesh HC

Summary

The Andhra Pradesh HC has held that the parent company and its related parties can operate from the same premise and that the commonality of location should not automatically imply that the registration was obtained through fraudulent means, willful misstatement, and suppression of facts. The HC cited a thorough verification with the books of accounts; other relevant records are critical before the cancellation order. Further, the SCN should state the appropriate reasoning justifying the fraudulent intention, which otherwise would lead to a violation of the principle of natural justice.

Facts of the case

- M/s Sakthi Steel Industries India Private Limited (the petitioner) is engaged in the business of trading TMT bars and billets, and importing iron scrap from foreign countries.
- The petitioner purchases TMT bars from its parent company (Sakthi Ferroy Alloys (India) Private Limited). The imported scrap iron is majorly supplied to its parent company.
- The petitioner obtained vacant land on lease from its parent company, from where the parent company also carries its business.
- Subsequent to a visit by the department officials, a field report was submitted, stating that the petitioner had obtained registration without an independent place of business and had falsely claimed to be conducting business at the leased premises.
- Thereafter, a SCN was issued, alleging that the registration had been obtained by means of fraud, willful misstatement, or suppression of facts. Accordingly, the petitioner's registration was suspended.
- Without considering the petitioner's contentions, the order for the cancellation of GST registration was passed.
- Aggrieved by the cancellation order, the petitioner filed an appeal before the commissioner, which was later dismissed.
- Thereafter, the petitioner filed a writ petition before the HC.

Andhra Pradesh HC's observations and judgement [Writ Petition No. 17500 of 2023 dated 20 September 2023]

- **SCN is vague and dubious:** The HC observed that the SCN was improper, as it lacked requisite particulars constituting the alleged fraud, willful statement, and suppression of facts. It held that the SCN deliberately violated the principles of natural justice, as the premises taken on lease were deemed unsuitable for the business without delving into relevant facts.
- **Cancellation order lacks suitable justification:** The HC opined that the cancellation order is based on the fact that the petitioner and the parent company share the same premise without thoroughly verifying relevant records, such as account books, e-way bills, transportation details, etc. The HC observed that the department's action was without due scrutiny, and therefore, the order was not sustainable in the eye of the law.
- **No problem in commonality of location:** The HC held that the mere commonality of location between the petitioner and the parent company is not sufficient to hold the fraudulent intent of the petitioner. Accordingly, the HC dismissed the impugned order.

Our comments

Generally, affiliated companies operate from the same location and issue invoices to their related entities, potentially falling under the GST lens due to suspected fraudulent intentions. This recent judgement is a positive development, as it addresses key issues.

First, the SCN should clearly outline the specific details related to fraud, misrepresentation, or the omission of facts. Issuing an SCN without stating the formal grounds of accusation goes against the principles of natural justice.

Moreover, the commonality of location should not be the sole basis for concluding fraud or intentional misrepresentation. A thorough review process and a well-justified decision are crucial in such cases.

Madras HC allows writ on 'flavoured milk' classification dispute, holding GST Council cannot determine classification

Summary

The Madras HC has held that 'flavoured milk,' which is made from dairy milk extracted from milch cattle/dairy animals, shall be classified under Heading 0402, which explicitly covers 'dairy produce' taxed at the rate of 5%. Invoking the principle of 'Noscitur a sociss,' the HC held that the same cannot be classified under Heading 2202, specifically under the sub-heading 'beverages containing milk' because its ambit is restricted only to such beverages containing plant/seed-based milk having specified alcoholic content. Accordingly, it was clarified that the GST Council had wrongly classified flavoured milk under Heading 2202. It was further highlighted that the provisions do not permit the GST Council to determine classification and that the decisions of the GST Council are merely recommendatory in nature and do not have a binding effect on the government.

Facts of the case

- M/s. Parle Agro Private Limited (the petitioner) assailed the decision of the GST Council to classify 'flavoured milk' under HS Code 2202 instead of HS Code 0402 for being against the set decision of the SC in the case of Amrit Food and violative of the Constitution of India.
- Further, the petitioner also challenged the ruling of the Tamil Nadu AAAR in the case of Britannia Industries, which affirmed the AAR ruling to classify 'flavoured milk' under HS Code 2202 in accordance with the above decision of the GST Council.
- Pertinently, the tax rate applicable under HS Code 2202 is 12% as against the 5% under HS Code 0402.

Petitioner's contentions

- The petitioner asserted that the GST Council can only recommend the rate of goods or services and is not empowered to determine the classification of goods or services.
- Further, the petitioner brought on record the settled jurisprudence under the CEA to assert that 'flavoured milk' was naturally classified under Heading 0402.
- Moreover, for licencing purposes, the FSS, also classified the same under 'dairy products,' which falls categorically under the ambit of Heading 0402.

Respondent's arguments

- The department (respondents) pointed out that the decisions, including in the case of Amrit Food, which have been rendered in the context of the CEA, do not have a precedential value under GST. Accordingly, the same cannot be applied to determine classification under GST.
- Further, it was contended that the determination of classification, which comprises the rate of duty and valuation, is a power vested upon the authorities under tax enactments, the Tribunal and SCs. Accordingly, being a constitutional body, the powers vested in the GST Council cannot be diluted merely to benefit the petitioner.
- Further, it was pointed out that mandamus, as sought by the petitioner, can only be issued to enforce the performance of the statutory obligation or in matters pertaining to policy decisions.

Madras HC's observations and judgement [WP Nos. 16608 & 16613/2020; Order dated 31 October 2023]

- **Function of GST Council is not to determine classification:** The HC explicitly highlighted the trite position that the decisions of the GST Council are in the nature of recommendations and do not have a binding effect on the government.
- **No standalone enactment to govern classification under GST:** The HC observed that, unlike the erstwhile regime, the classification of goods and services is not governed by a standalone enactment under GST. Instead, the applicable tax rates have specifically been notified under the respective goods and services rate notifications, and due reference has been drawn to the classification as per the CTA, specifying the adoption of the same to classify goods and services under GST.
- **'Flavoured milk' was classified as 'flavoured milk of animal origin' under HSN classification:** W.e.f. 28 February 2005, the scheme of classification as applicable in the CEA underwent a transition when an 8-digit code system was introduced, in consonance with the HSN. Prior to such an amendment, flavoured milk was classified under Chapter Heading 0404 of the CEA, which covered 'dairy produce' such as buttermilk, cream, yoghurt, etc., as also decided by the SC in the case of Amrit Food. Upon amendment, flavoured milk was categorised under Chapter 2202 of the CEA, which covered 'flavoured milk of animal origin.' Accordingly, the HC opined that the SC's decision in the case of Amrit Food and similar decisions that decided classification based on the prevailing and unamended scheme of classification under the CEA would not be relevant or applicable under GST.
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- **'Flavoured milk' made out of dairy milk cannot be classified under 'beverages containing milk':** The HC clarified that flavoured milk that is prepared from milk extracted from milch cattle/dairy animals shall be classified under Tariff Heading 0402 of the CTA that explicitly covers 'dairy produce.' Further, the same cannot be classified under Heading 2202, which covers within its ambit non-alcoholic beverages having specified alcohol content, specifically under subheading 2202 90 - 'beverages containing milk'. The HC applied the principle of Noscitur a Sociss, i.e., the words must take colour from associated words, and held that the sub-heading would cover only beverages containing plant/seed-based milk with specified alcoholic content. The HC also relied upon the provisions under the FSS, which categorically grouped and classified dairy products together. Basis the above, the HC stated that the GST Council had wrongly recommended the classification of flavoured milk under Heading 2202.

Our comments

The issues pertaining to determining classification had consistently cropped up and deliberated in the erstwhile regime and the same have been persistent under GST as well.

Although the authorities under tax statutes are empowered to determine classification, the apex court, in the case of Mohit Minerals, had conclusively clarified that the recommendations of GST Council do not bind the government.

It is pertinent to note that the GST Council, pursuant to their decision, had classified 'flavoured and coated ilaichi' under Chapter 21, thereby leviable to 18% GST. The same has been challenged before the Allahabad HC in the case of M/s. Dharampal Satyapal Limted, wherein the HC has affirmed that the matter requires deliberation.

Interest entitlement cannot be diluted merely on account of the pendency of appellate proceedings – Delhi HC

Summary

The Delhi HC, while extensively deliberating on interest entitlement to taxpayers, highlighted that GST envisages the culmination of refund proceedings within 60 days, pursuant to which interest at the rate of 6% becomes payable for the subsequent period of delay. In a scenario where a refund application is rejected but subsequently allowed by a higher forum, interest accrues from the date of the original application. The HC held that a refund arising on account of an order of the appellate authority, appellate tribunal or the court, which is not paid within 60 days of the refund application filed consequent to such order, is liable to enhanced interest at the rate of 9%. Pertinently, the subsequent application filed consequent to the appellate order would not be tantamount to a fresh refund application, and accordingly, interest entitlement will not lapse.

Facts of the case

- Bansal International (the petitioner) is engaged in the business of export of goods. Pursuant to such exports, the petitioner filed an application for claiming a refund of accumulated ITC, which was rejected by the AA for being wrongful.
- In appeal, the appellate authority decided the matter in favour of the petitioner and set aside the refund rejection order of the adjudicating authority.
- Thereafter, the petitioner filed the application to claim a refund of the accumulated ITC, along with interest, for the delayed payment. The AA allowed a refund, but the interest claim was denied.
- The petitioner's subsequent refund application for claiming enhanced interest at the rate of 9% p.a. was also outrightly rejected.
- In the writ proceedings before the HC, the petitioner had assailed the above orders of the AA, not allowing and outrightly rejecting the enhanced interest, and sought clarification on interest on the delayed refund.

Delhi HC's observations and judgement [W.P.(C) No. 11629/2023; Order dated 21 November 2023]

- **Interest at the rate of 6% arises from the date of expiry of 60 days from filing the refund application:** After a detailed evaluation of the refund provisions, the HC highlighted that under GST, it is envisaged that refund proceedings shall be completed within 60 days from filing the application. Accordingly, in case the refund proceedings are not completed within the defined period, the applicant is entitled to interest at the rate of 6% p.a. from the date of expiry of 60 days from filing such refund application.

- **Interest entitlement does not lapse merely on account of an incorrect order of AA:** The HC invoked and affirmed the principle that appellate proceedings are in continuation of the original proceedings, and an order by the appellate authority subsumes the order passed by the AA. On the basis of this assertion, the HC stated that the interest entitlement arises once the refund claim is ordered, irrespective of whether it is ordered subsequently by the appellate authority, appellate tribunal or the court. It was further clarified that a subsequent refund application filed pursuant to the order passed by the appellate authority, appellate tribunal or the court, would not be equivalent to a fresh refund application. Accordingly, interest entitlement does not lapse merely on account of pendency in the appellate forum, as interest is a measure to compensate a person for the denial of legitimately due funds.
- **Enhanced interest of 9% becomes payable from the date of expiry of 60 days from the subsequent application:** The HC stated that the applicant would be entitled to receive 'enhanced interest' when the department fails to complete the refund proceedings within 60 days from the subsequent refund application filed pursuant to favourable order of the appellate authority. The HC explained that the subsequent refund application does not require any fresh adjudication and is merely a 'nudge' to disburse the refund claim as approved by the appellate authority. Accordingly, interest at a higher rate of 9% p.a. shall be applicable from the date immediately after the expiry of 60 days from the filing of such subsequent application. The HC summarised that the interest at the rate of 6% p.a. should be payable from the date immediately after the expiry of 60 days from the first refund application, and such interest would get enhanced to 9% p.a., which shall be applicable from the date immediately after the expiry of 60 days from the subsequent application.

Our comments

This issue was prominently deliberated before the SC in the case of Willowood Chemicals Private Limited and Saraf Natural Stone, wherein, by a common order, the SC had explicitly clarified that interest at the rate of 6% would be payable after the expiry of 60 days from the receipt of application for refund, while an enhanced interest of 9% would be applicable if the refund claim arises pursuant to the order of the appellate authority, appellate tribunal or court, and if it is not refunded within 60 days from the date of the refund application filed consequent to such order.

The Punjab and Haryana HC, in the case of SBI Cards and Payments Services Limited, had also decided on the issue in a similar manner.

The taxpayers whose refund applications were initially rejected may take advantage of the said ruling for interest entitlement in the event of a subsequent favourable order.

Penalty in cases where tax collected is not deposited within specified time cannot exceed INR 10,000 –Allahabad HC

Summary

The Allahabad (HC) has held that the maximum amount of penalty cannot exceed INR 10,000, in cases where tax is collected but not paid within the specified time period. The HC highlighted that the general descriplines of penalty dictate that penalty should be commensurate with degree and severety of violation. Accordingly, in the absence any allegation or evidence in respect of evasion, the HC emphasised that the penalty amount could be even lower than INR 10,000.

Facts of the case

- Clear Secured Services Private Limited (the petitioner) is engaged in providing manpower supply services.
- A show cause notice (SCN) was issued alleging that the petitioner had failed to deposit the tax within the specified time period, despite collecting the same. Accordingly, the petitioner was liable to pay penalty on account of the above alleged violation.
- The petitioner was unable to respond to the SCN owing to the ongoing COVID-19 pandemic, which resulted in an ex-parte order imposing penalty amounting to INR 56 lacs (approx) on the petitioner.
- In appeal, the petitioner apprised the appellate authority that failure to deposit the said amount within specified time was only due to not having received it on a timely basis due to the pandemic. Further, it was stated that the said amounts was deposited along with late fees after expiry of three months, and penalty should not be imposed. However, the appellate authority upheld the penalty imposed and dismissed the appeal.
- The petitioner has challenged the above orders by way of the writ petition.

Allahabad HC observations and judgement [Writ Tax No. 1 & 5/2023; Order dated 23 November 2023]

- **Penalty cannot exceed INR 10,000 when tax as been collected but not paid:** The HC observed that the amount of tax collected was not paid within the prescribed time period, but was paid by the petitioner belatedly. The HC evaluated the penalty provisions and stated that in such a scenarios, the provisions prescribe that the maximum amount of penalty which can be imposed would be either INR 10,000 or amount of tax evaded by the petitioner. Accordingly, in the absence of any allegation or evidence in respect of evasion, the maximum amount of penalty cannot exceed INR 10,000.
- **Penalty could be lower than INR 10,000 considering 'general disciplines' under the Act:** The HC emphasised on the Government notification vide which the late fees for filing returns was waived off on account of the pandemic, to highlight the general discipline of penalty as enumerated under GST explicitly specifies that penalty should be 'commensurate with degree and severity of breach'. Considering the above, the HC noted that the penalty could be lower than INR 10,000. However, the petitioner had accepted the penalty of INR 10,000 in order to conclude the proceedings. In view of the above, the impugned orders were set aside by the HC.

Our comments

This is a favourable judgement for the taxpayers which not only clarifies the quantum of penalty imposable in a scenario where tax collected has not been deposited within the specified time, but also highlights the aspects to be considered while determining 'penalty'. Pertinently, the HC has emphasised that the general disciplines related to penalty shall be given due consideration while computing penalty.

Accordingly, penalty imposed without taking into consideration the general disciplines may be considered arbitrary and in violation of the penalty provisions.

It is pertinent to point out that the Madras HC in the case of Global Plasto Wares had categorically clarified that penalty shall be imposed in cases where tax collected has not been deposited within the specified time and depositing the same within 30 days from issuance of SCN would not absolve the taxpayer from penalty.

Accordingly, the imposition of such penalty although, cannot exceed INR 10,000.

Gujarat HC stays adjudication proceedings against online gaming companies Vision 11 & NxGn Sports

Background

This is in continuation to the ongoing adjudication proceedings against numerous online gaming companies. The Gujarat HC, in the case of **NXGN Sports Interactive Private Limited [R/SCA No. 19183/2023] & Vision 11 Gaming Private Limited [R/SCA No. 19243/2023]**, has granted an ad-interim stay on the adjudication of the SCNs issued to these online gaming companies, alleging that they are providing services in the nature of betting and gambling.

Petitioner's submissions

- The petitioners relied on the favourable judgements of the Punjab & Haryana HC in the case of **Varun Gumber** and Rajasthan HC in the case of **Chandresh Sankhla** and assailed the above SCNs on the ground that their platform is used for skill-based gaming that does not fall within the ambit of actionable claims amounting to betting and gambling.
- Further, the petitioners cited the Bombay HC's stay order in the case of **Delta Corp [WP No.715-717/2023]**, while challenging the constitutional validity of Rule 31A of the CGST Act, which prescribes the computation of value of the supply of lottery, betting, gambling and horse racing.

HC's order

- The HC issued a notice in the above-mentioned matters, observing that whether the services of online gaming undertaken by the petitioners would be tantamount to betting/gambling would require deliberation.
- In the interim, the HC restrained the department from continuing adjudication of the respective SCNs.

P&H HC stays adjudication proceedings levying GST on salary paid to seconded employees

The issue w.r.t GST implications in case of the secondment of employees has gained attention, pursuant to the SC's judgment in the case of Northern Operating Systems. The DGGI authorities initiated investigations, which resultantly led to numerous writ petitions filed by the taxpayers.

Earlier, the Karnataka HC, in the case of **M/s Alstom Transport India Ltd [WP-23915-2023]** granted an ad-interim stay on the adjudication proceedings seeking the levy of IGST on the salaries paid directly to expatriates.

In furtherance to it, the Punjab and Haryana HC, in the case of **M/S Mitsubishi Electric India Pvt. Ltd. [CWP-25351-2023]**, has granted stay on the adjudication of the SCNs issued, alleging that tax liability has not been discharged on the salary component paid in INR.

The Punjab and Haryana HC has also granted an ad-interim stay on the recovery proceedings until the final verdict in the case of **M/s. BMW India Pvt. Ltd.[CWP No. 27034 and 27036 -2023]**. The petitioner has challenged the tax levy on the amount of salary paid in INR.

Facts of the case

- The petitioner employed expatriates from its Japanese parent company Mitsubishi Electric Corporation and paid salaries to them in INR, as well as some component is paid in Japanese Yen, which is remitted outside India.
- The SC, in the case of M/s. Northern Operating Systems Private Limited [CA No. 2289-2293/2021] (NOS), had held that the secondment of employees by the overseas entity qualifies as 'manpower supply services' provided to the Indian entity, and therefore, the salaries and other expenses recovered from the Indian entity is exigible to service tax on a reverse charge basis.
- In view of the ongoing investigation, the petitioner suo moto deposited tax, along with interest, on the amount paid by it to its parent company.
- Thereafter, an SCN was issued under Section 73(7) of the CGST Act alleging short payment of the tax, along with the interest made by the petitioner.
- The petitioner also relied on the Karnataka HC's interim stay order on similar issue.

HC's order

- The HC has granted an ad-interim stay on the SCN seeking additional amount of tax on the salaries paid directly to expatriates by the petitioner.
- The matter is listed on **13 February 2024** for final arguments and disposal.

Constitutional validity of new valuation provisions prescribed in case of online gaming challenged before Allahabad HC

The constitutional validity and legality of Rule 31B of the amended CGST Rules, which prescribes the valuation provisions in case of online gaming, including online money gaming, has been challenged before the Allahabad HC in the case of **Kamal Mishra and Associates Private Ltd.** [WRIT TAX No. - 1257 of 2023].

In addition to it, the petitioner has also challenged the constitutional validity of the CGST (Amendment) Act, 2023, notified on 18 August 2023 and Section 15(5) of the CGST Act, which gives power to the government to notify valuation provisions.

The HC, in the interim, has issued a notice and granted 6 weeks' time to file a counter affidavit. The matter has been listed on **11 January 2024** for final arguments and disposal.

Madras HC stays coercive action on parallel proceedings initiated by both central and state GST authorities

In the case of **M/s. Sapphire Foods India Limited** [WP No. 31734/2023], the Madras HC has stayed adjudication proceedings and instructed the GST authorities to not pursue any coercive action on the petitioner on account of parallel proceedings initiated by both centre and state authorities.

The petitioner had assailed the simultaneous SCNs issued by both CGST and SGST authorities on the same cause of action, on the ground that the provisions do not permit parallel proceedings on the same issue. Accordingly, the SCN should be issued only by one authority.

Allahabad HC restrains department from passing final order due to challenge to second time-period extension for issuing SCN/ orders under Section 73 of the CGST Act

The CBIC, vide Notification No. 09/2023-CT dated 31 March 2023, had extended the time limit required by a proper officer to pass an order for the recovery of tax or ineligible ITC for a certain tax period under Section 73 of the CGST Act.

The second extension of the time period for issuing a SCN and passing orders under Section 73 of the CGST Act for FY 2017-18 till 31 December 2023, as provided under the said notification, has been assailed in the case of **M/s. Graziano Transmissioni [Writ Tax No. 1256/2023]** before the Allahabad HC for being arbitrary and in violation of Article 14 of the Constitution of India.

Earlier, the SC had extended the limitation period in filing all judicial proceedings, irrespective of the period of limitation prescribed under the general or special laws, in view of the COVID-19 pandemic.

In due consideration of the petitioner's contentions that the COVID-19 restrictions had been uplifted long time back in 2022 and the department had sufficient time to complete the scrutiny and audit process. The HC has directed the department not to pass the final order in the case of adjudication of the SCN issued. However, no stay on the proceedings under the SCN has been granted.

Orissa HC remands time-barred appeals back to adjudicating authority for fresh consideration, disposes off 200 writs in one go

CBIC had notified an amnesty scheme vide Notification No. 53/2023-CT dated 2 November 2023 for those taxpayers who were unable to file appeals to the AA against the order issued u/s 73 or 74 of the CGST Act on or before 31 March 2023 or whose appeals were rejected for being time-barred.

In this regard, the Orissa HC, in the case of **Pravat Kumar Choudhury [TS-575-HC(ORI)-2023-GST]**, has disposed off a batch of matters consisting of 200 writs challenging the respective orders wherein the appeal filed by the petitioners were dismissed on account of the time bar issue.

The HC set aside the impugned orders and remanded the matters back for consideration in accordance with law without considering the time bar pursuant to the aforementioned amnesty scheme.

Through a caveat, the HC clarified that the refund of the entire amount of tax deposited by the petitioners either pursuant to the interim order of the court or on their own, shall be subject to the merit and outcome of the appeal.

SC issues notice in SLP against Jharkhand HC's order rejecting claim for transitional credit made after successful initiation of insolvency proceedings under IBC

Background

In the case of M/s ESL Steel Ltd., earlier, the Jharkhand HC had held that the assessee against whom RP has been approved by the NCLT under provisions of the IBC can neither take ITC of the period prior to the date on which RP was approved nor liability of the earlier management can be shifted to the current management. Thus, it held that the credit available to the earlier management cannot be available to the current management, as the current management was not a taxpayer during the period of procurement of inputs or capital goods as availed in the TRAN-1.

The matter is before the Division Bench of the SC, wherein it has issued a notice pursuant to a SLP filed by ESL Steel against the HC order.

Facts of the case

- The assessee claimed transitional credit of INR 5,10,21,204 during the period 2017-18 and the same was allowed.
- Thereafter, the SBI initiated CIRP against the assessee. During the pendency of CIRP, the erstwhile management of the assessee (before being overtaken by Vedanta) claimed the balance of transitional credit during the period 2017-18, which was not claimed earlier by filing new TRAN-1 in light of the order passed by the SC in the case of Filco Trade Centre Pvt. Ltd.
- The Additional Commissioner issued a demand-cum-notice requiring the assessee to reply within five days. In the meantime, the committee of creditors approved the RP and the same was approved by the NCLT.
- Thereafter, the demand was confirmed vide the original order directing the recovery of the whole of transitional credit that was taken before the approval of RP by the NCLT.
- The assessee contended that the issue of the SCN was arbitrary as no recovery and or proceeding can be continued against it, for any alleged dues prior to the date on which the NCLT has approved the RP.
- The assessee relied upon the SC's decision in Ghanshyam Mishra and Sons Pvt Ltd. Vs Edelweiss Asset Reconstruction Company Ltd.
- It was further contended that the order was passed without considering the assessee's reply to the SCN.

Jharkhand HC's observations and ruling

- The contention of the assessee that there is nothing in the SC's judgement in Ghanshyam Mishra and Sons Pvt Ltd. Vs Edelweiss Asset Reconstruction Company Ltd., which says that the past credit due to the company gets expunged, is misconceived.
- As a matter of fact, the liability of the earlier management may not be shifted to the current management, but at the same time, the credit available to the earlier management will also not be available to the current management, as the current management was not a taxpayer during the period of procurement of inputs or capital goods as availed in the TRAN-1.

- The Revenue has illegally and arbitrarily confirmed the demand of INR 6,02,34,616/- u/s 74(9) of the CGST Act and imposed interest and penalty, on the ground of irregular availment of transitional credit during the period 2017-18. Therefore, the HC quashed the order-in-original and partly allowed the assessee's petition.
- However, the HC held that the assessee is not entitled to the claim of INR 92,13,412/, which has been claimed as transitional credit by filing the new TRAN-1 considering the order passed by the SC in the case of Filco Trade Centre Pvt. Ltd., i.e., any dues prior to 17 April 2018, i.e., the date on which the NCLT has approved the RP of the assessee.

II. Key rulings under the erstwhile indirect tax laws

Amendment to Telangana VAT Act for extending period of limitation and permission to re-open assessments post enactment of GST is unconstitutional – SC

Summary

The SC has upheld the Telangana HC's decision and affirmed that an amendment to the Telangana VAT Act for extending the period of limitation and permission to re-open assessments post the enactment of GST is unconstitutional. The SC found that after the 101st Constitution Amendment Act came into force in 2016, the state legislature did not have the competence to legislate the VAT Amendment Act. It was thus concluded that once the VAT Act stood repealed, except in the case of limited categories, the question of amending it would not arise.

Facts of the case

- The Telangana local VAT Act was amended by introducing an ordinance. It was brought into force on 17 June 2017, i.e., 13 days before the time granted by the 101st Amendment Act, i.e., one year.
- The amendment came into force on 16 September 2016. The ordinance sought to extend the limitation period and permitted re-opening assessments. This ordinance continued till the state legislature enacted it.
- The governor then assented to the law, and it came into force on 2 December 2017.
- Feeling aggrieved, many traders and VAT payers approached the Telangana HC, challenging the amendments to the local VAT Act.
- The Telangana HC accepted the challenge and struck it down on various counts, including that the state had limited scope to amend its VAT Act, which, in terms of Section 19 of the amendment, could have done only to bring it in conformity with the amended Constitution.
- Other reasons included that the ordinance could not have been confirmed, as the state was denuded of legislative competence after 1 July 2017.

SC's observations and ruling [Civil Appeal No(s). 1628 OF 2023, order dated 20 October 2023]

- **Authority to legislate flows from the Constitution:** The authority to legislate has been located primarily in Articles 245 and 246. The courts have consistently recognised that the lists in the Seventh Schedule to the Constitution merely delineate the fields of legislation; they are not considered as sources of power. The reorganisation of those legislative fields, particularly Entry 84 of the first list and Entry 54 of the second list and the conformant of larger powers, upon both the legislative entities, i.e., the parliament and the state legislatures, meant that both authorities will legislate upon all subject matters that are comprehended within the description of 'goods and services' for the purpose of indirect taxation under Article 246 A. Yet, the operationalisation of this provision required the formulation of the principles by the GST Council, which occurred later.
- **Authority to legislate is expressed through Section 19, read with Article 246A:** Section 19 is to be construed as part of the Constitution for the limited duration it operated and was effective. The authority to legislate is expressed through Section 19, read with 'Article Grant Thornton Bharat Tax Alert 246A'. In other words, in the absence of the principles formulated by the GST Council, the authority, so to say, reserved by Section 19 and Article 246A to amend or repeal the law, which is the subject matter as understood initially, stood obliterated from the Constitution.
- **Amendment act could not have been given effect post the enactment of the GST regime:** The ordinance's validity and effect might not have been suspect on the date of its promulgation. However, on the date when it was approved and given shape as an amendment, the state legislature had ceased to possess the power. By then, the SGST and the CGST Acts had come into force (on 1 December 2017). Therefore, Section 19 ceased to be effective. The original entry (Entry 54 of the state list) ceased to exist.

- **No limitations on power to amend:** Section 19 of the Constitution (101st Amendment) Act, 2016, and Article 246A enacted in the exercise of constituent power, formed a part of the transitional arrangement for the limited duration of its operation, and had the effect of continuing the operation of inconsistent laws for the period(s) specified by it and, by virtue of its operation, allowed state legislatures and the parliament to amend or repeal such existing laws. Since the other provisions of the said amendment act had the effect of deleting the heads of legislation from List I and List II (of the Seventh Schedule to the Constitution of India), both Section 19 and Article 246A reflected the constituent expression that existing laws would continue and could be amended. The source or fields of legislation, to the extent they were deleted from the two lists, for a brief while, were contained in Section 19. As a result, there were no limitations on the power to amend.

Our comments

This is a welcome ruling by the SC and will provide huge relief to the taxpayers, as the amended act gave an undue advantage to the assessing authorities by empowering them to reassess the returns that had been assessed previously – additionally for a period of two years, i.e., in six years, which was four years earlier. The lengthening of the period by two more years meant that the dealers whose assessments had either escaped notice and who had mis-declared or withheld information could now be exposed to the possibility of reassessment for a further period of two years.

The ruling concurs that the state government cannot make laws contrary to the spirit of the central acts. It is pertinent to note that the Gujarat and Kerala HCs have already struck down similar laws made by the state governments.

By-products or waste products emerging during the manufacturing process cannot be treated as exempted goods to restrict ITC – SC

Summary

The SC has held that if, during the manufacture of any taxable goods, any exempt goods are produced as by-products or waste products, it shall be deemed that the purchased goods have been used in the manufacture of taxable goods. The SC stated that the definition of 'goods' under the UP VAT Act does not differentiate between exempt and taxable goods. The plain reading of the aforesaid definition would indicate that the legislative intent was never to limit or circumscribe the scope of 'goods' as outlined in the UP VAT Act to only 'taxable goods.' Accordingly, the SC has held that the assessee is eligible for full ITC on the purchase of rice bran under relevant provisions of the said Act.

Facts of the case

- M/s Modi Naturals Ltd. (the assessee) is a company engaged in the business of manufacture and sale of RBO and physical refined RBO. The assessee is a registered dealer under the UP VAT Act, and the RBO manufactured by the assessee falls within the ambit of 'taxable goods' under the UP VAT Act.
- For the purpose of manufacturing RBO, the assessee procures rice bran (inputs/purchased goods) and follows the solvent extraction process.
- During the manufacturing process of RBO, a by-product in the form of DORB is also produced. DORB falls within the category of exempted goods under S. No. 4 of Schedule – I of the UP VAT Act.
- The assessee claimed full ITC of the tax paid on the purchase of rice bran.
- The Deputy Commissioner took the view that in terms of Section 13(1)(f) of the UP VAT Act, the assessee could have availed the ITC on the inputs only vis-à-vis the taxable sales, as the sale price of the final goods was lesser than the manufacturing cost of the purchased goods and rejected the ITC claimed by the assessee.
- The Additional Commissioner accepted the case put up by the assessee that the word 'goods' in Section 13(1)(f) of the UP VAT Act could not be restricted to only 'taxable goods' and held that the assessee was entitled to claim full ITC for AY 2015-16 that was also upheld by the Commercial Tax Tribunal.
- However, for AY 2013-14, the Additional Commissioner proceeded to remand the matter to the Tax Fixation Officer for passing the re-tax fixation order.

- The Revenue approached the Allahabad HC for revision of the orders passed by the Commercial Tax Tribunal. The HC allowed both the revision applications filed by the Revenue and held that in terms of Section 13(1)(f) of the UP VAT Act, the assessee is not entitled to claim full ITC on the inputs.
- Aggrieved, the assessee approached the SC.

Issues before the SC

- Whether the assessee is entitled to claim the full amount of tax paid towards the purchase of raw rice bran as ITC on the basis of the provisions of Section 13(1)(a) read with S. No. 2(ii) of the Table appended thereto and Section 13(3)(b) read with Explanation (iii) of Section 13 of the UP VAT Act?
- Whether the scope of the word 'goods' as defined under Section 2(m) of the UP VAT Act as outlined in Section 13(1)(f) of the UP VAT Act should be limited to only 'taxable goods'?
- Whether the decision of the court in the case of M.K. Agro Tech had any application to the case on hand?

SC's observations and ruling [Civil Appeal No (S). 5822-5823 of 2023, Order dated 6 November 2023]

- **Intent of legislative amendment:** The plain reading of the relevant provisions would indicate that the legislative intent was never to limit or circumscribe the scope of 'goods' as outlined in Section 13(1)(f) to only 'taxable goods.' In cases where the goods (including taxable, exempt goods, by-products or waste products) manufactured were being sold at a price lower than the cost price, the extent of permissible or allowable ITC would be limited to the tax payable on the sale value of the goods or manufactured goods.
- **Definition of 'goods' under UP VAT Act:** The definition of 'goods' u/s 2(m) of the UP VAT Act referred to the above does not differentiate between exempt and taxable goods, and equally, the word 'goods' u/s 13(1)(f) of the UP VAT Act has also not been qualified by the word 'taxable'. The goods, which are manufactured/ produced by using or utilising the purchased goods and the wholesale price that is being considered for applying Section 13(1)(f) of the UP VAT Act, ought to be taxable goods.
- **Scope and ambit of goods under the UP VAT Act:** Wherever the legislative intent was to qualify 'goods' with the word 'taxable', it has been so done by the legislature in Section 13 of the UP VAT Act itself. If the legislative intent of the 2010 amendment was to limit the scope and ambit of 'goods' u/s 13(1)(f) solely to 'taxable goods,' there was nothing that could have prevented the legislature from expressly using the phrase 'taxable goods' in Section 13(1)(f) of the UP VAT Act.
- **General principles for interpretation of taxing statutes:** It is well accepted that a statute must be construed in accordance with the intention of the legislature, and the courts should act upon the true intention of the legislation while applying the law and while interpreting the law.
- **Assessee entitled to full ITC:** A bare perusal of the scheme under Section 13(1)(a)] of the UP VAT Act makes it abundantly clear that in cases where the purchased goods (in the present case, rice bran) are used in the manufacture of taxable goods (in the present case, RBO and physically refined RBO) except the non-VAT goods, and where such manufactured goods are sold within the state or in the course of inter-state trade and commerce, the registered dealers (like the assessee herein) are entitled to claim ITC of the full amount. Therefore, the charging section of the UP VAT Act entitles the assessee to claim the full amount of tax paid on the purchases as ITC.
- **ITC in cases where the manufacture results in the production of byproducts or waste products:** Explanation (iii) to Section 13 provides that if during the manufacture of any taxable goods, any exempt goods are produced as by-products or waste products, it shall be deemed that the purchased goods have been used in the manufacture of taxable goods. Explanation (iii) to Section 13, therefore, forbids the assessing authority, as well as the assessee, from raising any dispute in regard to the allowability of the ITC in cases where exempted goods are being produced as a by-product or waste product during the process of manufacture.
- **SC's decision in case of M.K. Agro Tech not applicable:** The decision in the case of M.K. Agro Tech is not applicable to the case on hand, as the provisions under the Karnataka VAT Act are quite different compared to that of the UP VAT Act in regard to the scheme of ITC.

Our comments

In the case of Hindustan Zinc Limited, the SC had held that when a by-product emerges as a technical necessity, it cannot be said that any inputs have been used for the manufacture of the by-product, thereby requiring ITC reversal.

Several tribunals, including the Mumbai Tribunal in the case of M/s JSW Steel Ltd., have observed that the credit for that quantity of raw materials shall be allowed which is required for the manufacture of the intended quantity of final products, irrespective of the fact that certain by-products emerge as technical necessity.

This is a welcome ruling by the SC and shall provide relief to the manufacturing sector and will set precedence in similar matters. Further, an analogy can also be drawn under the GST regime since a mere generation of by-products or waste should not lead to the reversal of ITC.

SC admits appeal filed by Revenue against CESTAT's order setting aside service tax levy on commission charged for providing corporate guarantee

Background

Earlier, the CESTAT, Mumbai, in the case of M/s Infrastructure Leasing & Financial Services Ltd (the appellant), had set aside the order imposing service tax on the commission charged for providing corporate guarantee under banking and other financial services.

The SC has admitted an appeal filed by the Revenue against the CESTAT order.

Facts of the case

- The appellant is engaged in the business of providing financial services.
- SCNs were issued by the department alleging that the appellant had not paid tax on the 'commission' charged for providing 'corporate guarantee' to their customers. The department contended that the commission charged was taxable by virtue of specific inclusion in Section 65(12)(ix) that defined 'banking and other financial services' for the purpose of levy u/s 65(105)(zm) of FA.
- Aggrieved by the same, the appellant had filed an appeal before the CESTAT.
- The appellant placed reliance on the decision of the Tribunal in the case of Olam Agro India Ltd., wherein it was observed that liability under the FA devolves only as the provider of 'business auxiliary service'.
- It was further contended by the appellant that the tax liability could not be fastened without certainty of the 'taxable service' in application of mind by the authority issuing the SCN.

CESTAT's observations and ruling

- The Tribunal observed that the decision in the case of Olam Agro India Ltd. had established the fact that the commission earned by providing 'corporate guarantee' is taxable as 'business auxiliary service' under Section 65(105)(zzb) of FA.
- The decisions of the Tribunal, in the case of Bank of Baroda and in Radiowani, had reinforced the imperative of certainty of tax, as reflected in the classification of service proposed by tax authorities in the SCN, and as the pivot for the fulcrum of adjudicatory competence.
- The Tribunal observed that a different 'taxable service' was invoked for initiating recovery proceedings and there was a patent lack of certainty of tax in the mind of the SCN-issuing authority.
- The Tribunal also opined that the commission earned by providing a 'corporate guarantee' is taxable as 'business auxiliary service' u/s 65(105)(zzb) of FA and the impugned order had not determined the congruity of that facilitation of non-payment of tax on the 'bank guarantee' issued by the assessee's bank to the customer against its limits within the definition of 'taxable service' u/s 65(105)(zm) of FA.
- Therefore, the Tribunal set aside the impugned order.

SC issues notice to Revenue in matter challenging service tax levy on salary, bonus and allowances paid to employees seconded from foreign entity

Earlier, in the case of **Renault Nissan Automotive India Pvt. Ltd.**, the CESTAT Chennai bench had upheld the service tax liability on the salary paid to expatriate employees seconded from a foreign entity on the ground that it constitutes consideration for the manpower services received from the foreign entity. The CESTAT observed that the appellant had to pay the salary, bonus, allowances, etc., to the secondees working for it in India.

Therefore, the salary, bonus, allowances, etc., paid by the appellant were the cost of such manpower services received by it and shall be treated as 'consideration' for the purpose of levying service tax under the RCM.

The assessee had challenged the demand of service tax on such payments made to the employees seconded from a foreign entity before the SC. The SC has issued notice to the Revenue and listed the matter on **5 January 2024** for final arguments and disposal.

SC dismisses Revenue's appeal against CESTAT's order holding that service tax is not leviable on reimbursement of expenses to seconded employees

Background

Earlier, the CESTAT, Delhi in the case of M/s Boeing India Defense Pvt. Ltd. (the appellant), had set aside the order imposing service tax on reimbursement of expenses claimed by seconded employees and had clarified that reimbursements are not leviable under service tax and any other amount which is not used for providing taxable service cannot be the part of the taxable value. The Revenue had filed an appeal against the CESTAT's order dropping service tax demand.

The SC has dismissed Revenue's appeal and upheld the CESTAT's order.

Facts of the case

- M/s. Boeing India Defense Pvt. Ltd. (the appellant) had entered into an agreement with its holding company M/s. Boeing company for providing services on a cost-plus mark-up basis. Further, to provide the above-mentioned services the appellant employed expatriates from its overseas holding company and entered into a salary reimbursement agreement and agreed to pay salaries in their home country.
- A service tax audit was conducted by the department and a notice was issued alleging service tax on reimbursement of hotel stay expenses and school tuition fees to the seconded employees by considering reimbursements as consideration for import of manpower services for the period of April 2015 to June 2017.
- The employees were on the payroll of the appellant, and the salary along with other perquisites were paid after deduction of income tax, EPF. The appellant also issued Form-16 to the seconded employees.
- The salary was paid by the holding company to the seconded employees and later issued a debit note on its subsidiary Indian company.
- Thereafter, the appellant challenged the impugned order confirming service tax demand for the disputed period along with interest and penalty.
- Further, the department also filed an appeal challenging the dropping of demand by the adjudicating authority.

CESTAT's observations and ruling

- The Tribunal opined that the SC, in the case of M/s. Northern Operating Systems Private Limited had held that the secondment of employees by the overseas entity qualifies as 'manpower supply services' provided to the Indian entity, and therefore, the salaries and other expenses recovered from the Indian entity is exigible to service tax on a reverse charge basis.
- The Tribunal observed that the issue w.r.t, whether reimbursable expenses are includible in the gross value of service tax is no longer res integra and has been settled in the case of Intercontinental Consultants & Technocrats Pvt Ltd wherein the Delhi HC and the SC has held that reimbursements of amount are not leviable under service tax.
- Any other amount which is not used for providing taxable service cannot be the part of the taxable value. Accordingly, the Tribunal allowed the appellant's appeal and dismissed the revenue's appeal.

Form 26AS is proof that payments were made for services rendered in absence of clarification from assessee - CESTAT

Summary

The CESTAT Delhi has held that Form 26AS downloaded from the income tax portal is proof to conclude that the payments were made for services rendered in the absence of any specific explanation from the asseesee. In addition, the CESTAT has held that the authorities can do best judgement assessment suo motu and not at the request of the assessee. The CESTAT further stated that in case of short payment of tax, the relevant date from which the limitation is to be reckoned is the date on which the return is filed. However, if no return is filed, the last date for filing such return is to be reckoned. Accordingly, the CESTAT dismissed the appeal filed by the Revenue and partly allowed the appeal filed by the assessee upholding the demand of service tax with interest for the normal period of limitation.

Facts of the case

- The M/s Right Resource Management Service (the assessee) is registered with the service tax department for providing 'manpower supply service' and it has been paying service tax and filing ST-3 returns.
- The DGCEI conducted a search on the assessee's premises on 30 March 2015, and after completing investigations, issued a SCN proposing the recovery of service tax of INR 2.81 crores for the period 2010-11 to 2014-15 u/s 78 of the FA invoking an extended period of limitation, along with interest u/s 75 of the FA. The SCN also proposed to impose penalties upon the assessee u/s 77 and 78 of the FA and late fee u/s 70 of the FA.
- Part of the demand in the SCN was beyond even the extended period of limitation of five years, which the Commissioner dropped in the impugned order. And for part of the demand, giving the benefit of reckoning the amounts received as cum tax values, the Commissioner confirmed the demand of only INR 99 lakhs and dropped the rest of the demand.
- The assessee filed an appeal before the CESTAT, assailing the confirmation of the part of the demand and imposition of penalties. The Revenue also filed an appeal assailing dropping of the part of the demand and sought confirmation of the interest on that part of the demand and consequent enhancement of the penalty-imposed u/s 78 of the FA.

CESTAT Delhi's observations and judgement [Service Tax Appeal No. 50834 of 2018, Service Tax Appeal No. 51364 of 2018, order dated 30 October 2023]

- **Best judgement assessment is suo moto:** The CESTAT observed that nothing in the section suggests that best judgement assessment has to be done at the request of the assessee or at the behest of anyone. The Central Excise officer, evidently, can do this on his own, in other words, suo moto.
- **All conditions fulfilled for invoking best judgement assessment:** Best judgement assessment is meant for such cases where the assessee either fails to file the return or fails to assess the tax correctly. The only requirement is that it should be done in writing which requirement is met in this case because it is done through the impugned order, and that the assessee must be given an opportunity of being heard, which is also met since the SCN was issued.
- **Form 26AS is proof that service has been rendered:** Anyone can log into the income tax website and download one's own Form 26AS for any year. Therefore, the assertion of the learned counsel that Form 26AS can be provided only by the Income Tax department to the Central Excise officers is incorrect. The assessee himself could have provided this form to the Central Excise department as well. In the absence of any specific explanation and the evidence that amounts were paid to the assessee by its clients after deducting tax and the tax so deducted has been credited to the assessee's accounts, it is obvious that the payments were for the services rendered.
- **Relevant date for reckoning the limitation period u/s 73 of the FA:** In case of short payment of tax, the relevant date from which the limitation is to be reckoned is the date on which the return is filed. However, if no return is filed, the last date for filing such return is to be reckoned. Evidently, if the return is filed, the clock starts ticking from that date, and if no return is filed, the clock starts ticking from the due date. There is nothing in the law according to which the relevant date will change, and a new relevant date will emerge.

- **Normal period of limitation:** The SC, in the case of Uttam Steel, had held that limitation being a procedural law will have retrospective effect, but any case that has already lapsed on the date the amendment came into force will not revive. The amendment will not put life into dead cases but those that are still live on the date of the amendment will be governed by the new limitation. In the present case, the normal period of limitation ended for the period up to September 2014 and for the period from October 2014, the new limit of 30 months applies.
- **Extended period of limitation could not be invoked:** While it is true that the DGCEI discovered that some tax had escaped assessment and that the assessee does not dispute it on merits, it is equally true that the entire demand is based on the records of the assessee, some of which it produced and the other records that the DGCEI could obtain through the Income Tax department. The department has not made out a case to invoke an extended period of limitation in the matter. Therefore, the demand, only in respect of the normal period of limitation, can be sustained, and accordingly, a penalty was set aside.
- **Assessee's appeal partly allowed:** The appeal filed by the Revenue was dismissed and the appeal filed by the assessee was partly allowed, upholding the demand of service tax with interest for the normal period of limitation, the late fee imposed u/s 70 of the FA and the penalty u/s 77(1)(c) of the FA. However, the demand of service tax for the extended period of limitation and the penalties imposed u/s 77(2) and 78 of the FA were set aside.

Our comments

Several Tribunal benches have previously ruled that it is not possible to demand service tax on a differential amount without first examining the cause of the difference between the turnover reported in ST-3 returns and the Form 26AS statement, and without demonstrating that the difference was caused by the provision of taxable services.

Even recently, the Kolkata Bench of the Tribunal, in the case of M/s Balajee Machinery, had held that the data appearing on the income tax portal cannot be the basis for levying a penalty on the account of fraud or suppression under the service tax law. It is pertinent to note that earlier in the case of Shresth Leasing & Finance Ltd., the CESTAT Ahmedabad Bench had held that the demand of service tax based on TDS/26AS statements/3CD Statements are not sustainable.

However, the present ruling by CESTAT Delhi is contradictory to the precedents set forth above and is likely to open a pandora's box for taxpayers under the GST regime in similar matters.

Refund claim under service tax is maintainable in absence of any challenge to assessment or self-assessment - CESTAT

Summary

The Larger Bench of CESTAT Chandigarh has held that the refund of service tax is maintainable in the absence of any challenge to assessment or self-assessment in appeal. The Tribunal noted that the provisions regarding assessment, refund and appeals are not pari-materia in the customs law and the service tax law. The Tribunal has also held that the returns filed by an assessee as per their own assessment cannot be equated to an 'order of assessment' against which an appeal can be filed. Thus, the Tribunal, while holding the issue in favour of the assessee, also opined that the department cannot take a different stand on the issue when it has accepted the same in the case of Cadila Healthcare.

Facts of the case

- The M/s Shree Balaji Warehouse (the Appellant) had filed a refund application for erroneously paid service tax on account of 'export of services'.
- The Commissioner rejected the refund application.
- Aggrieved by the same, the appellant filed an appeal before the Tribunal.
- The Tribunal relied on the judgement in the case of Karanja Terminal & Logistics Pvt. Ltd., wherein it was held that the 'refund of service tax is not maintainable in the absence of any challenge to the order of assessment, including self-assessment' and also referred to the contrary judgement in the case of M/s. Cadila Healthcare Ltd.
- The Tribunal noted that these contrary views were on account of the applicability of the judgement of the SC in the case of ITC Limited, wherein it was held that 'refund claim cannot be filed unless the order of assessment or self-assessment is modified'. However, the said judgement was delivered in the context of the Customs Act.
- Thereafter, The Tribunal referred the matter to the Larger Bench.

Issue before the Larger Bench

Whether the refund claim of service tax is maintainable in absence of any challenge to assessment or self-assessment in appeal or not and that whether the judgement of SC in the case of ITC Limited is applicable to the refund of service tax.

CESTAT Chandigarh's observations and judgement [Order No. Interim/9-12/2023, order dated 29 September 2023]

Discussion and findings by the member Binu Tamta (Minority no. of members):

- The member examined the judgement of the SC in the case of ITC Limited (supra) and provisions of FA.
- The member analysed the 'concept of assessment', 'procedure of assessment' and 'scope of appeal' under both the laws, i.e., the customs and service tax laws. It also referred to the Circular No. 113/07/2009-ST dated 23.04.2009 and Circular No. 185/4/2015-ST dated 30.06.2015 and concluded that the provisions related to the assessment and appeals are similar under both the laws.
- Consequently, the member also held that the observations made by the SC in ITC Limited (supra) would squarely be applicable in the present case.
- Further, the member opined that the concept of self-assessment has been introduced in all the three spheres of indirect taxation, i.e., central excise, service tax and customs and the provisions for the self-assessment have been similarly provided.
- The member noted that the Revenue had accepted the issue of maintainability of the refund claim of service tax in the case of M/s Cadila Healthcare (supra). However, the member noted that there is no estoppel in taxation matters and there is no bar in challenging the same issue subsequently just because the department had not challenged it earlier.

Discussion and findings by the members S.S. Garg and P. Anjani Kumar (Majority no. of members):

- The Larger Bench analysed the provisions under customs and service tax and held that the provisions under both the laws regarding assessment, refund and appeal are not pari-materia.
- Further, the members noted that in service tax, an appeal can be filed only against an order of adjudicating authority and the taxpayer cannot be treated as an adjudicating authority to pass any order.
- The returns filed by an assessee as per the self-assessment mechanism cannot be equated to an 'order of assessment' against which an appeal can be filed.
- The Larger Bench noted that the Revenue, in the case of M/s Cadila Healthcare (supra), had accepted the issue of maintainability of the refund claim of service tax. Further, the Tribunal opined that the department cannot take a different stand on the disputed issue against the appellant when it has accepted the same.
- The Larger Bench relied on the decision of the SC and several other decisions of the HC's, wherein it was held that 'an issue that is accepted by the Revenue for one assessee cannot be raised against another assessee since the Revenue is not allowed to pick and choose'.
- Therefore, the larger bench ruled in favour of the assessee in majority of 2:1 and the matter were referred back to the division bench, and opined that the decision in the case of ITC Limited (supra) would not be applicable to the refunds filed under the service tax.

Our comments

In the case of ITC Limited, the SC had held that the refund claim cannot be entertained unless the order of assessment or self-assessment is modified (appealed against). However, this judgement was delivered in the context of customs law.

Further, in the case of Alnoori Tobacco Products the SC had held that the observations of the court should not be applied out of the context and must be read in the context in which they appear to have been stated.

Thus, in line with above, the CESTAT, in the present case, has held that the judgement of ITC Limited (supra), which was delivered in the context of the Customs Act, cannot be applied to the refunds filed under the service tax as the provisions of the Customs Act regarding the assessment, refund and appeal are not pari-materia with the provisions of the service tax law.

The Tribunal has also held that the returns filed by an assessee as per their own assessment cannot be equated to an 'order of assessment' against which an appeal can be filed. It will hit the principal of natural justice that no one should be a judge in his own case.

This is a positive decision and is likely to bring relief to other assesses with similar matters. Although the decision pertains to the erstwhile regime, an analogy can also be drawn under the GST regime in similar matters.

B. Key judicial pronouncements under Customs/FTP/ SEZ laws

Customs officer is empowered to assess IGST exemption on import of goods - Kerala HC

Summary

The Kerala HC has held that the customs officer is empowered to assess exemption from IGST claimed on the import of goods. The HC observed that the customs law defines duty to not only mean basic customs duty but covers all duties that may be applicable on imported item/goods.

Furthermore, the Customs Act empowers the assessing authority to determine the dutiability of any goods and the amount of duty/tax, cess or any sum so payable under the Customs Act with reference to exemption or concession consequent upon the issuance of any notification. Therefore, the HC held that the competent authority is empowered to make an assessment regarding the claim of exemption from the IGST u/s 28 of the Act and dismissed the writ.

Facts of the case

- M/s Ajwa Dry Fruit Impex (the petitioner) had imported items declared as 'wet dates' (processed dates) and classified them under CTH 08041020 and paid 20% BCD plus 10% SWS. The petitioner also claimed exemption from IGST under Sr. No. 51 of the Notification No.02/2017-Integrated tax (Rate) dated 28 June 2017.
- On post clearance audit of the BoE by CRA, it was observed that the IGST exemption claimed was applicable to 'fresh dates' under Chapter 0804 and wet/processed dates attracted 12% IGST against Sr. No.16 of Schedule II of Notification No.01/2017- Integrated Tax (Rate) dated 28 June 2017.
- Therefore, a SCN was issued to the petitioner asking to show cause as to why the duty short levied due to exemption should not be demanded u/s 28(1) of the Customs Act, along with interest u/s 28AA of the Customs Act.
- Thereafter, the demand was confirmed, along with interest.
- Aggrieved, the petitioner filed a writ before the Kerala HC.

Petitioner's contentions

- The petitioner contended that when he did not claim wrong exemption from the payment of the IGST, the assessing authority u/s 28 of the Customs Act is not empowered to assess the IGST and it is the authority under the IGST Act that could have proceeded with the matter.
- Therefore, the impugned order is without jurisdiction in as much as it has been passed by an authority, which is not empowered to assess the tax/duty under the provisions of the IGST Act.
- Under the definition u/s 15(2) of the Customs Act duty means the custom duty and it does not include the IGST tax/duty.

Revenue's contentions

- If the definition of AO is considered u/s 2(2) of the Customs Act, it is not confined only to the Customs duty, but it is in respect of every duty, cess or tax that is applicable on imported goods.
- Therefore, the contentions raised by the petitioner that the AO-passed u/s 28 of the Customs Act is without jurisdiction has no substance.
- The Revenue also placed reliance on the case of Canon India Private Limited in support of its contention to say that the assessing authority under the provisions of Section 28 is empowered to assess evasion/non-payment of not only the Customs duty but, any other tax, cess levied or duty on which imported goods attract.
- This was a question of classification of the goods, and therefore, instead of filing the writ petition, the petitioner ought to have been approached the AA against the said order.

Issue before the Kerala HC

Whether the assessing officer under the Customs Act is empowered to make an assessment regarding the claim of exemption of the IGST on import of goods u/s 28 of the Customs Act?

HC's observations and ruling [CIVIL APPEAL NO(S). 5822-5823 OF 2023, order dated 6 November 2023]

- **Duty means all duties applicable on imported goods:** Section 2(15) of the Customs Act defines the duty to mean customs duty. Section 28 of the Customs Act empowers the assessing authority to assess and recover the duties not levied, not paid, short-levied or short-paid or erroneously refunded. Therefore, Section 28 of the Customs Act is not only in respect of duty that means customs duty but, it is in respect of duties which may be applicable on imported item/goods.
- **Powers of assessing authority:** The AO-defined u/s 2(2) of the Customs Act empowers the assessing authority to determine the dutiability of any goods and the amount of duty/tax, cess or any sum so payable under the Customs Act or CTA or under any other law for the time being in force, with reference to exemption or concession of duty, tax, cess or any other sum, consequent upon any notification issued.
- **Competent authority empowered to make assessment:** The petitioner has claimed exemption from the payment of IGST under Notification No. 02/2017- Integrated tax (Rate) dated 28 June 2017. Therefore, the competent authority is empowered to make an assessment regarding the claim of exemption from the IGST u/s 28 of the Customs Act. Therefore, the writ was dismissed.

Our comments

Earlier, the Delhi Tribunal, in the case of Interglobe Aviation Limited, had observed that the word 'duty', mentioned in the Customs notification, refers only to basic customs duty and does not include IGST on the import of goods. Presently, this case is pending before the SC.

Even the SC, in the case of Prestige Engineering (India) Limited, observed that the expression 'duty of customs' appearing in the exemption notification means the 'duty' leviable under the Customs Act and any other duty or tax that is not levied under the Customs Act, but levied under other enactments cannot be treated as a 'duty of customs' for the purpose of the customs notification.

It is relevant to note that the Bombay HC has issued a notice in a writ petition, challenging the levy of IGST on import of goods under the provisions of Section 3(7) of CTA and Section 5 & 7(2) of IGST Act in the case of Sanathan Textile Private Limited. The petitioner has contended that in the absence of the charging provision under the Customs Act or under the CTA specifically referring to a charge of duty of customs, the charge for levying the IGST is likely to fail.

However, the present ruling by the Kerala HC is contrary to the above precedence and is likely to be challenged further.

Challenge to levy of interest on IGST payable pursuant to circular issued post SC's decision in Cosmos Films Ltd

In the case of Cosmos Films Limited, the SC upheld the requirement of the 'pre-import condition' incorporated in the FTP of 2015-2020 and HBP 2015-2020 to claim exemption of IGST and Compensation Cess on inputs imported for the manufacture of export goods, based on the advance authorisation scheme. Further, the SC directed the Revenue to permit a claim of refund or input credit (whichever was applicable and/or wherever the customs duty was paid). The SC further directed that the Revenue shall issue a circular regarding the appropriate procedure to be followed.

Pursuant to the above, the CBIC issued a Circular No. 16/2023-Cus dated 7 June 2023, highlighting the procedures that can be adopted for the imports, which could not meet the pre-import condition and required payment of IGST and Compensation Cess to that extent at the POI.

Essem Tecnopinz Pvt Ltd. (petitioner) has challenged the levy of interest on the IGST payable as per the above circular before the Bombay HC as being violative and beyond the provisions of the Customs Act. The petitioner has relied upon the decision of the Bombay HC in the case of Mahindra & Mahindra Ltd. and submitted that the interest cannot be levied.

The Bombay HC has granted the interim prayers of the petitioner and directed it to deposit the IGST amount subject to the issue of levy of interest and validity of the circular being kept open. Furthermore, the Bombay HC directed the Revenue to file an affidavit, if any, by 1 December 2023, and listed the matter for **19 December 2023**.

03

Experts' column

Transaction valuation under customs: A never-ending tussle

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Valuation and classification of imported goods have been the most contentious issue for ages. While the issue of classification was controlled to some extent, with the rationalisation of tax rates, the issue related to valuation persists and is a reason for most litigation under customs laws.

In this article, we tried to briefly discuss issues revolving around valuations under customs law and judicial precedence.

Genesis of customs valuation mechanism:

Provisions of GATT were codified and binding (for the countries) post-signing and ratifying the WTO agreement by member countries. Article VII of the GATT provides that the value of imports for customs purposes should be calculated using the actual value of the goods on which duties are imposed or comparable goods. The new Customs Act was implemented based on Article VII. In 2007, Section 14 of the Customs Act was amended to adopt the transaction value and Valuation Rules were implemented.

It is important to mention here that, irrespective of the binding nature of the WTO agreement, in case of disputes, the law of the land would prevail over the WTO provisions.

Position as per provisions under customs law:

Section 12 of the Customs Act is a charging section that provides for the levy of customs duty. The duty prescribed u/s 12 of the Customs Act is to be computed on the "value" of the transacted goods being imported or exported. The term value is defined[1] as determined based on the provisions under the Customs Act[2] . This makes it necessary to ascertain the value following the Customs Act.

As per Section 14(1) of the Customs Act, the value of the imported goods should be the transaction value of such goods, i.e., the price paid or payable for the sale of the goods between unrelated parties. In short, the transaction value is the basis for payment of customs duties on imported goods, and the price actually paid or payable for the goods sold is the transaction value.

The transaction value of imported goods includes commissions and brokerage, engineering, design work, royalties, license fees, transportation costs to the place of importation, insurance, loading, unloading, and handling charges as specified in the Valuation Rules[3] .

[1] u/s 2(41) of Customs Act
[2] Section 14(1) or (2) of Customs Act
[3] 10(1)(a) of Customs Valuation Rules

As per Rule 3 of the Valuation Rules, the value of imported goods will be the transaction value subject to adjustment of certain costs stated above. Furthermore, the value will also be subject to Rule 12, which says that if the proper officer has reason to doubt the truth or accuracy of the declared value, he may seek documents or information, and the importer has to demonstrate the accuracy of declared value. Rule 12 of the Customs Valuation Rules also empowers the proper officer to reject the transaction value based on reasonable grounds to suspect that the value disclosed is not accurate or truthful.

In practice, the proper officer thoroughly investigates the claimed value in cases where identical or similar goods were assessed at significantly higher value at the same time under a comparable circumstance; special or abnormal discount or abnormal reduction in price; misdeclaration of description, quality, quantity, country of origin, year of manufacture or production; non-declaration of brand, grade, specifications that have relevance to value; or the documents are fraudulent or manipulated.

In the cases mentioned above, the proper officer may ask the importer to furnish additional information, including documents or other evidence. If, after receiving such further information or in the absence of a response from the importer, the proper officer still doubts the truth or accuracy of the value so declared, it will be deemed that the transaction value of such imported goods cannot be determined.

Therefore, while the proper officers have been given powers to reject transaction value based on the above-listed reasons, it is to be exercised occasionally and only in cases where there is genuine doubt related to the authenticity of the declared value. This has been affirmed by the SC in the case of Century Metal Recycling Pvt. Ltd. [4] and Bayer Corp. Science Ltd.,[5] wherein it was held that the transaction value cannot be rejected except for the grounds laid under the Valuation Rules.

Even recently, the Tribunal Ahmedabad bench in Kunj Bihari Textiles[6] has held that the transaction value declared by the importer should form the basis of assessment unless the same is rejected, for reasons set out in Customs Valuation Rules.

Thus, the law clearly mandates that the transaction value, i.e., invoice price, will be the primary basis to determine customs duty payable. If the proper officer is still in doubt after examining the information furnished by the importer, only in such cases can the proper officer determine value as per Rules 4 to 9 of the Customs Valuation Rules.

Nevertheless, in spite of a clear mandate under the Customs law, even now the authorities are rejecting the declared values, leading to unwanted litigation. However, the courts are firm on their stand and consistently safeguard the assessees. It will be relevant to note here that, recently, the SC in the case of Ganapati Overseas[7] has held that undervaluation needs to be proved by valid evidence by the Revenue, in the absence of which, benefit of doubt must be given to the importer, and the invoice price, as declared, shall be accepted. The SC has upheld the order of the Tribunal Mumbai bench, wherein it was held that unattested and unverified export declarations were not valid evidence for rejecting invoice value. The SC opined that the invoice price could not be rejected without any cogent reason. The transaction value (the price actually paid or payable for the goods) should be the primary basis for customs valuation, and other valuation methods should be invoked sequentially only when there is evidence to doubt the correctness of the declared transaction value.

Key takeaways from SC ruling in Ganpati Overseas

The SC has made significant observations in the recent ruling, which may be relevant for consideration as follows:

- Revenue needs to conduct proper investigations and should have convincing reasons for rejecting the invoice value declared by the assessee.
- Revenue cannot rely on statements, which have been taken under coercion, as evidence.
- Unattested photocopies of export declarations cannot be considered as valid evidences.
- The allegations of undervaluation should be bolstered by valid evidence or the price of contemporary imports of comparable goods.
- In the absence of the above, benefit of doubt must be given to the importer, and the invoice price as declared should be accepted.

[4] 2019 (367) E.L.T. 3 (S.C.)
[5] 2015 (324) E.L.T. 17 (S.C.)
[6] 2023 (6) TMI 710 - CESTAT AHMEDABAD
[7] TS-509-SC-2023-CUST

Other judicial precedence

In the context of Rule 4(1) of the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 [which is same as Rule 3(1) of the Customs Valuation Rules in existence now], the SC in the case of M/s. Eicher Tractors Limited[8] had held that if the transaction value can be determined under Rule 4(1) and does not fall under any of the exceptions in Rule 4(2) [now Rule 3(2)], there is no question of determining the value under subsequent rules. The SC also followed the above ruling in other cases, namely Mahalaxmi Gems[9] and Motor Industries Co. Ltd.[10]

Moreover, in the case of South India Television (P) Ltd. [11] , the SC has held that the burden lies upon the department to prove undervaluation by evidence or information about comparable imports. If the charge of undervaluation is not supported by such evidence or information, benefit of doubt must be given to the importer.

Recently, in the case of M/s Aggarwal Industries Ltd. [12], the SC has ruled that the Customs Department cannot reject the authenticity of the invoice produced by the importers based on mere suspicion. Any doubt about the value of such an invoice must be based on some material evidence and not on a mere suspicion or speculation of the authorities.

Even the Tribunal Ahmedabad has recently, in the case of Sedna Impex India P Ltd.,[13] held that the Customs law makes it obvious that the transaction value should be the basis to determine the assessable value. The requirement for re-determination of the value is triggered only when the transaction value is rejected for cogent reasons prescribed in the Customs Valuation Rules.

Conclusion

The customs legislation explicitly mandates accepting transaction value in cases where the buyer and seller are unrelated, and the price is the only factor considered, as demonstrated by the provisions and jurisprudence. The authorities have the discretion to reject such a value if they have conducted a thorough examination and have compelling arguments and reliable evidence that there is undervaluation. Furthermore, the authorities bear the burden of demonstrating undervaluation to reject the importer's declared value.

Nevertheless, the present judgment by the SC is a welcome ruling and is expected to provide relief and safeguard taxpayers from undue hardship caused by the authorities in similar cases. However, considering that despite favorable rulings by various judicial forums, the authorities are misusing their powers and causing unnecessary litigation and harassment to genuine importers, it is a need of the hour that the Government should consider issuing suitable clarification or instructions on the matter.

[8] 2000 (122) ELT 321
[9] 2008 (231) ELT 198 (SC)
[10] 2009 (244) ELT 4 (SC)
[11] 2007 (7) TMI 9 SC
[12] 2011 (272) ELT 641 (SC)
[13] 2023 (3) TMI 1080 - CESTAT AHMEDABAD

04

Issues on your mind

What is the latest update in relation to the mandatory 2-factor authentication for e-way bill/e-invoice system?

Earlier, 2-factor authentication was made mandatory for taxpayers with an AATO exceeding INR 100 crores effective from 21 August 2023. Further, the limit was again amended by reducing the AATO limit and extending the due date, with an effect to make the authentication to be mandatory for all taxpayers with an AATO above INR 20 crore w.e.f. 1 November 2023. As per the latest NIC update, the authentication will be mandatory for all taxpayers with an AATO of INR 20 crore and above, effective from 20 November 2023.

What are the recent measures taken by Customs for grievance redressal?

Effective from 16 November 2023, the Customs department has started a new initiative wherein the ICEGATE users can meet the CBIC officers every Tuesday and Thursday between 11 am to 1 pm to address their grievances and find solutions.

To avail this facility, the ICEGATE users need to email to the helpdesk on icegatehelpdesk@icegate.gov.in, providing contact details of the authorised person representing the user, with the subject containing the reference IM number. Thereafter, the ICEGATE team will respond on the email, confirming the appointment.

What is Anonymised Escalation Mechanism (AEM)?

The AEM is a measure to enhance the Customs faceless assessment in terms of promptness, anonymity and uniformity. The AEM is operationalised for registered users on ICEGATE to better address the trade grievances relating to delays in assessment.

The AEM empowers importers/customs brokers to directly register their requirement of expeditious clearance of a delayed BoE, which may be pending for assessment or examination. The delay in clearance would subsequently be escalated to the concerned assessment officers. The anonymised escalation is meant to maintain the anonymity of the officer and location where the BoE is pending for assessment.

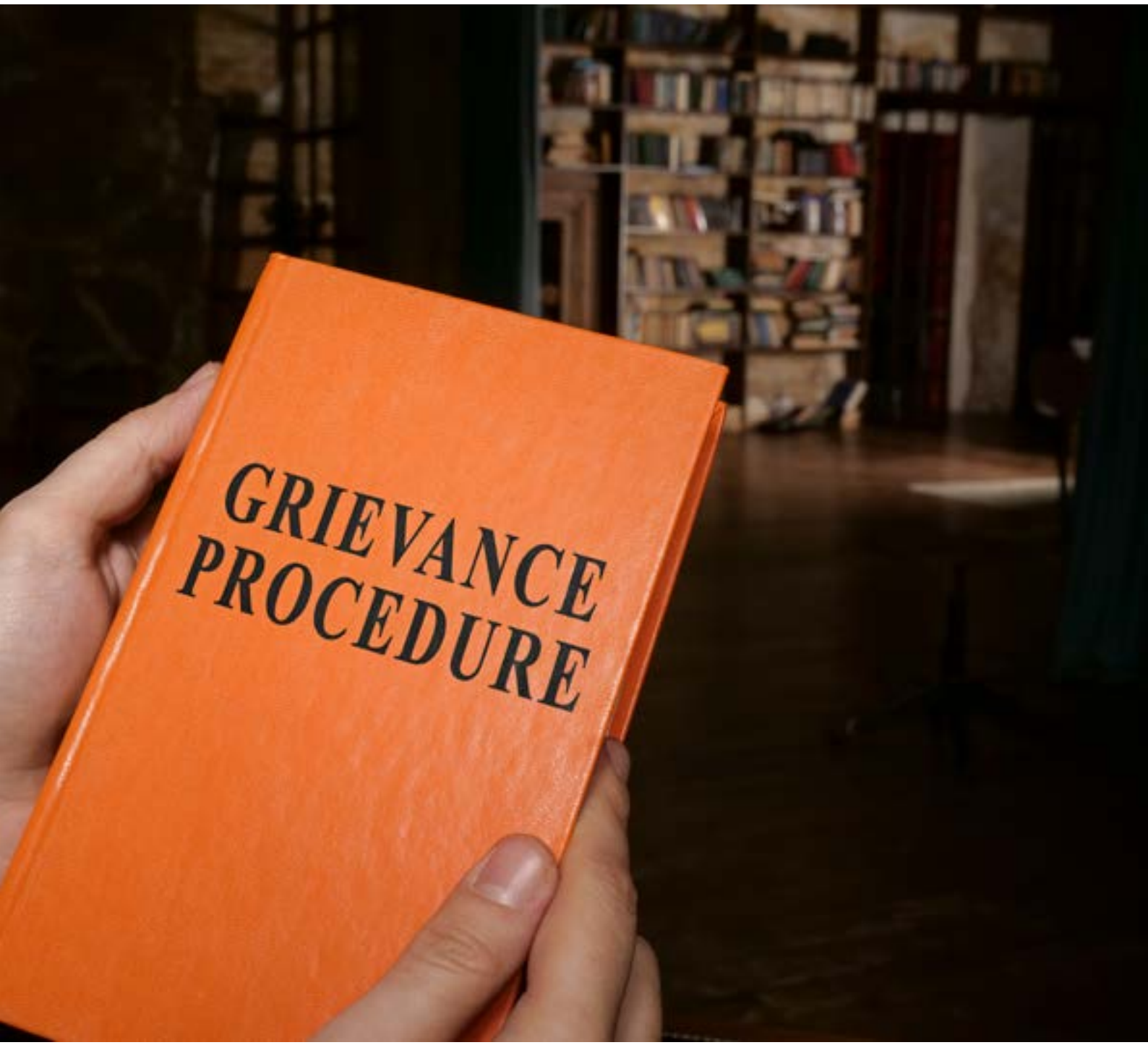
Features of AEM:

- The importer/Customs broker can initiate the AEM through ICEGATE or approach TSK in case of delay of more than one working day.
- The AEM automatically routes the grievance to the concerned FAG/import shed.
- Prompt disposal of a grievance by the concerned FAG is ensured and monitored by the concerned Additional/Joint Commissioner of Customs of the concerned FAG/ import shed.

Live status update of the disposal available on the dashboard of ICEGATE, TSK, and FAG.

How to lodge a grievance:

- Login through the ICEGATE user portal and select 'Taxpayer's Grievance Application' and then click on 'Register BoE Grievance'.
- Enter BoE details and click on the 'Submit' button to create a grievance.
- If the details match the specified criteria for grievance creation, a new grievance will be created, and a grievance number shall be provided for tracking purpose, or else, an appropriate error message will be generated.



05

Important developments under direct taxes

CBDT notifies changes in ITR-7 for AY 2023-24

The Finance Act, 2022, inserted Section 115BBI under the IT Act for taxing certain income of a charitable institution at a specified rate. In order to give effect to the provisions of the aforesaid section, the CBDT **with effect from 1 April 2023 (i.e., for AY 2023-24),** notified the following changes in **PART- B of ITR -7** for AY 2023-24.

S. No.	Sub-part of PART B of ITR - 7	Changes notified
1	**Part B1 of Part B-TI** **[Applicable if exemption is being claimed under Sections 11 and 12 or 10(23C)(iv) / 10(23C)(v) / 10(23C)(vi) / 10(23C)(via) and where Part B3 is not applicable]**	Serial number 16 and entries relating thereto is substituted with the following: *"16. Specified income chargeable u/s 115BBI, included in 13, to be taxed @ 30% (Sl. No. 7 of Schedule 115BBI)* *17. Aggregate income to be taxed at normal rates (13-14-15-16) (including income other than specified income under section 115BBI)"*
2	**Part B-TTI**	Pursuant to the above change, in Part B-TTI, serial number 1(a) and entries relating thereto is substituted with the following: *"Tax at normal rates on [Sl. No. 17 of Part B1 of Part B-TI] OR [Sl. No. (13-14) of Part B2 of Part B-TI] OR [Sl. No. 13 of Part B3 of Part B-TI]"*

(Notification No. 94 of 2023 dated 31 October 2023)

CBDT issues instruction to prescribe process, monetary limits and time limits for withholding refund under Section 245 of the IT Act

As per Section 245(2) of the IT Act, if the refund becomes due to a person and the AO is of the opinion that the grant of refund is likely to adversely affect the revenue (considering pending proceedings), then the AO can withhold the refund till the completion of the said proceedings. For this purpose, the AO may record the reasons in writing, and take necessary approvals.

In this regard, the CBDT has provided the following monetary limit, process and time limit for the purpose of withholding such refund:

- The **monetary limit** for applying provisions of Section 245(2) of the Act will be refund of **INR 10 lakhs or more.**
- **Process prescribed:**
  - On receipt of information from the CPC, the faceless AO will intimate the JAO regarding the demand likely to be raised in the pending assessment.

Thereafter, the JAO will analyse the factual matrix of the case [which inter *alia includes* (i) assessee's financial condition, (ii) past demands, (iii) pendency of appeals], and is required to record reasons (which are not cursory and should reflect factual analysis) in writing.

  - Thereafter, the JAO is required to seek approval of the jurisdictional PCIT. Post this, the JAO needs to communicate the final decision regarding withholding/ release of refund to the CPC.

- The **time limit** for completing the above process is:
  - For faceless assessment unit: 20 days
  - For JAO: 30 days

(Instruction No. 2 of 2023 dated 10 November 2023)

Glossary

AAAR	Appellate Authority for Advance Ruling
AAR	Authority for Advance Ruling
AATO	Annual Aggregate Turnover
AC	Assistant Commissioner
AEM	Anonymised Escalation Mechanism
AO	Assessing Officer
AO	Assessment Officer
AY	Assessment Year
BCD	Basic Custom Duty
BOA	Board of aaproval
BoE	Bill of Entry
CBDT	Central Board of Direct Taxes
CBIC	Central Board of Indirect Taxes and Customs
CEA	The Central Excise Act, 1956
CESTAT	Customs Excise and Service Tax Appellate Tribunal
CGST Act	The Central Goods and Services Tax Act, 2017
CGST Rules	The Central Goods and Services Tax Rules, 2017
CGST	Central Goods and Service Tax
CIRP	Corporate Insolvency Resolution Process
CPC	Central Processing Centre
CPWD	Central Public Works Department
CRA	Customs Receipt Audit
CTA	The Customs Tariff Act, 1975
CT	Central Tax
CTH	Change in Tariff Heading
Customs Act	The Customs Act, 1962
Customs Valuation Rule	Customs Valuation (Determination of Value of Imported Goods) Rules, 2007
DC	Development Commissioner
DGCEI	Directorate General of Central Excise Intelligence
DGFT	Directorate General of Foreign Trade
DGGI	Directorate General of GST Intelligence
DISCOM	Distribution Company
DMFT	District Mineral Foundations Trusts
DORB	Deoiled Rice Bran
DRC	Demand and Recovery Form

e-BRC	Electronic Bank Realisation Certificate
e-invoice	Electronic Invoice
FA	The Finance Act,1994
FAG	Faceless Assessment Groups
FSS	Food Safety and Standards Act, 2006
FTP 2015-2020	Foreign Trade Policy 2015-2020
FTP	Foreign Trade Policy ,2023
FY	Financial Year
GATT	General Agreement on Tariff and Trade
GST	Goods and Services Tax
GSTIN	Goods and Services Tax Identification Number
GSTN	Goods and Services Tax Network
HBP	Handbook of procedures
HC	High Court
HQ	Headquarters
HS Code	Harmonised System Codes
HSN	Harmonised System of Nomenclature
IBC	The Insolvency Bankruptcy Code, 2016
ICEGATE	Indian Customs Electronic Gateway
IEC-Importer	Exporter Code
IGST Act	The Integrated Goods and Services Tax Act, 2017
IGST	Integrated goods and services tax
INR	Indian Rupee
IRM	Inward Remittance Messages
IT Act	The Income-tax Act, 1961
ITC	Input Tax credit
IT	Information Technology
ITeS	Information Technology enabled Services
ITR	Income-tax Return
JAO	Jurisdictional Assessing Officer
MMF	Man-Made Fibres
NCLT	National Company law Tribunal
NIC	National Informatics Centre
OOC	Out of Charge
PAN	Permanent Account Number
PCIT	Principal Chief Commissioner of Income-taxAA- Assessment Order
PLI	Production Linked Incentive
PO	Proper Officer
POI	Port Of Import

RA	Regional Authority
RBI	Reserve Bank of India
RBO	Rice Bran Oil
RCM	Reverse charge mechanism
RP	Resolution Plan
RWA	Resident Welfare Associations
SAC	Servicing Accounting Code
SBI	State Bank of India
SC	Supreme Court
SCN	Show cause notice
SEZ Rules	Special Economic Zone Rules, 2006
SEZ	Special Economic Zone
SGST	The State Goods and Services Tax
SLP	Special Leave Petition
SOP	Standard Operating Procedures
SWS	Social Welfare Surcharge
TDS	Tax Deducted on Source
TSK	Turant Suvidha Kendra
UAT	User Acceptance Testing
UP VAT Act	Uttar Pradesh Value Added Tax Act, 2008
VAT	Value Added Tax
VC	Video Conference
WFH	Work From Home
WTO	World Trade Organisation

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