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SHAPING VIBRANT INDIA

GST Compendium

A monthly guide

June 2024

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Editor’s Note

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With the president's appointment and notification of the Principal Bench and 31 State Benches, one can expect an operational GSTAT by the latter part of this year, albeit after seven years of GST.

On the legislative front, in a welcome move, after realising excesses of the field formations while initiating recovery under the GST law, the CBIC has issued guidelines that the directions towards the recovery of GST dues within the expiry period can be made only after recording the reasons in writing.

In another development, the SC has held that the penalty cannot be levied for non-fulfillment of export obligation in the absence of a specific penal provision under the relevant statute in this regard. A welcome decision following the principles of article 20 of the Constitution of India

The levy of GST on the transfer of development rights (TDR) has been a contentious issue. In a recent development, the Supreme Court (SC) has issued a notice challenging the Telangana High Court's judgment, wherein the HC had held that the TDR, under a joint development agreement, is a supply of service liable to GST. The SC has refused to stay the impugned judgment and directed that the developer shall continue to pay GST. The matter is listed for hearing on **9 September 2024**.

Besides, the Kerala High Court has held that the government is empowered to extend the time limit to complete proceedings and pass an order under the GST laws in case of a *force majeure* event like the COVID-19 pandemic.

In this edition, our expert has expressed his views on crucial development in the GST framework and industry expectations from GST 2.0.

On the direct tax front, the CBDT has provided relief from the mandatory requirement of furnishing PAN to the payer/seller in some instances where PAN has become inoperative. Further, the due date for filing a form for claiming exemption by a religious or charitable trust or institution in India has been extended to **30 June 2024**. On the judicial front, the SC has dismissed the review petition and waived off interest on the demand raised on telecom companies because the license fee is treated as capital expenditure.

I hope you will find this edition informative.

01

Important amendments/ updates

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

CBIC issues guidelines for initiating recovery proceedings prior to expiry of three months period from service of demand order

Section 78 of the CGST Act provides that the recovery proceedings pursuant to any amount payable by the taxable person shall be initiated after the expiry of three months from the date of service of the demand order, in case the taxpayer fails to pay the tax dues. However, in exceptional cases where it is expedient in the interest of revenue, the proper officer may, for reasons to be recorded in writing, require the taxable person to make the payment of such amount within the period less than three months from such date.

To ensure uniformity, the CBIC has prescribed guidelines that shall be followed for initiating recovery proceedings before the expiry of three months from the service of the demand order, which are as follows:

- For initiating such recovery proceedings, the matter needs to be placed before the jurisdictional Principal Commissioner/Commissioner of Central Tax, along with reasons/justification, by the jurisdictional Deputy/Assistant Commissioner of Central Tax (Proper Officer). Upon satisfaction, such Principal Commissioner/Commissioner shall, after recording reasons in writing, issue directions to such taxable person to make payment of the amount within such specified period.

- The Principal Commissioner/Commissioner should clearly emphasise the peculiarities warranting such early payment. The reasons could include high risk to revenue involved in waiting till the completion of the three-month period due to the closure of business by such taxpayer or possible default due to the declining financial position or impending insolvency or initiation of proceedings under the Insolvency and Bankruptcy Code, etc.
- Such apprehensions should be based on credible evidence, which would also be kept on record to the extent possible.
- Directions for the early payment of confirmed demand should not be issued in a mechanical manner, and due emphasis should be given to financial health, the status of business operations, infrastructure and credibility of such taxable person to strike a balance between the interest of revenue and ease of doing business.
- Where the taxable person fails to pay the amount within the specified time, recovery proceedings can be initiated in consonance with the recovery provisions.

(Instruction No. 01/2024-GST dated 30 May 2024)

GSTN issues advisory on launch of E-Way Bill 2 Portal on 1 June 2024

The GSTN has announced the launch of E-Way Bill 2 Portal (https://ewaybill2.gst.gov.in) by NIC on 1 June 2024. It would run parallel to the main e-way bill portal (https://ewaybillgst.gov.in) and aims to synchronise the details within seconds.

Key highlights:

- The portal can be accessed by taxpayers and logistic operators with the same login credentials as the main portal.
- It can be used during technical glitches in the main portal or any other exigencies. In case the main portal is non-operational due to technical reasons, Part-B of e-way bills generated on the main portal can be updated on Portal 2.
- The criss-cross operation of printing and updating of Part-B of e-way bills can be carried out on these portals, i.e., the Part-B of the e-way bills of the main portal can be done on Portal 2 and vice-versa.

(https://www.gst.gov.in/newsandupdates/read/499)

Delhi government issues instructions for verifying insolvency/liquidation proceedings before sanctioning refunds under DVAT and GST Acts

The Delhi GST authorities observed that the proper officers were sanctioning refunds without verifying the status of any pending insolvency or liquidation proceedings against the registered persons. This oversight posed a risk to the revenue, as the refunds might have been issued without considering any outstanding dues or claims.

To address this issue, the Delhi government has issued an instruction/directive to the proper officers aimed at safeguarding the revenue during the refund process under the DVAT Act and GST Act. The government has issued the following directive to the proper officers:

1. Before sanctioning any refund amount under the DVAT Act or GST Act, the proper officers must confirm whether any insolvency or liquidation proceeding is pending or concluded against the registered persons. The status of such proceedings can be verified through:
    - Registered persons
    - Web portals of the IBBI
    - Web portals of the NCLT or NCLAT
    - Consultation with the law and judicial branch of the department
2. If any insolvency or liquidation proceeding is found to be pending or concluded, it must be reported to the concerned zonal in-charge.
3. The zonal in-charge, in consultation with the law and judicial branch, will further process the refund claim.
4. While sending the file for the ECS under the DVAT Act, the concerned ward in-charge must provide a confirmation that no insolvency/liquidation proceeding is pending/concluded against the dealer.

(Instruction F. No.3(523)/GST/POLICY/2024/1543-51 dated 22 May 2024)

Government of Kerala issues guidelines for refund of Kerala flood cess under the amended Kerala Flood Cess Rules, 2019

Earlier, The Kerala Flood Cess Rules 2019 were amended through a notification (S.R.O No. 1284/2023 dated 28 November 2023) to incorporate provisions for refunds related to the Kerala Flood Cess. To streamline the refund process, the Government of Kerala has issued guidelines in accordance with Rule 3A(13) of the amended Kerala Flood Cess Rules 2019 as under:

- Taxpayers must manually submit the refund application (Form KFC RFD-1), along with the required documents, to the appropriate proper officer in the jurisdictional Taxpayer Services Division.
- If a claim is approved partially or fully, the proper officer will issue and communicate the refund sanction order (Form KFC RFD-6) and refund payment order (Form KFC RFD-5) to the District Joint Commissioner of State Tax, Taxpayer Services, for disbursal.
- For refunds sanctioned by the Central Tax authorities, the orders will be forwarded to the District Joint Commissioner of State Tax, Taxpayer Services, for disbursal.
- The District Joint Commissioner of the Taxpayer Services vertical will present the refund orders to the treasury authorities for payment processing.
- The head of account for the refund of the Kerala Flood Cess will be the same as the head of account in which the excess payment was made, under certain sub-heads specified.
- The payments will be released only through the bank account linked to the GSTIN of the taxpayer and it will be communicated by the Joint Commissioner, Taxpayer Service, to the concerned proper officer of State Tax/Central Tax.
- The District Joint Commissioners of Taxpayer Services must maintain a refund register for the Kerala Flood Cess.
- The proper officers should promptly communicate refund orders to the District Joint Commissioners to allow sufficient time for payment processing within the prescribed time limits.

(Circular No. 09/2024 dated 24 May 2024)

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

DGFT restricts import of all second-hand electronics and IT goods notified under the Electronics and IT Goods (Requirements of Compulsory Registration) Order, 2021

The DGFT has restricted the import of all second-hand electronics and IT goods notified under the Electronics and IT Goods (Requirements of Compulsory Registration) Order, 2021 ('order') effective from 20 May 2024. Accordingly, such notified second-hand electronics and IT goods can be imported against a restricted import authorisation subject to conditions laid down under the order. Further, the import of notified unregistered/non-compliant products is prohibited.

The import policy has been amended to provide that for new as well as second-hand electronics and IT goods refurbished, repaired, or reconditioned or not notified under the order is prohibited unless they are registered with the BIS and comply to 'Labelling Requirements' published by the BIS as amended or on a specific exemption letter from the MeitY.

(DGFT Notification No. 13/2024-25 dated 20 May 2024)

CBIC issues clarifications for acceptance of electronic certificate of origin (e-CoO) under India-Korea CEPA

The CBIC has issued a clarification on the acceptance of e-coo issued by the issuing authority of Korea under the India-Korea CEPA after implementation of India-Korea EODES. The e-CoO shall be considered acceptable for the purpose of claiming preferential benefit under India-Korea CEPA when the following conditions are satisfied:

- It has been issued in the prescribed format and includes all particulars, including QR code.
- It fulfills all other requirements stated in Notification No. 187/2009-Customs (N.T.), dated 31 December 2009 and any further amendments.
- The e-CoO shall continue to be mandatorily uploaded on e-Sanchit by the importer/customs broker.
- Particulars such as reference number and date, originating criteria, etc., shall be entered carefully while filing the BOE.

The e-CoO will hold the same validity and legitimacy as its manually issued paper counterpart. To facilitate the implementation of the EODES, a system has been developed within the ICES to verify the e-CoO details against the data received electronically from the exporting country's Customs authority. This system includes a mechanism to prevent the multiple use of a single CoO. The system automatically deducts the quantity mentioned in the e-CoO from the CoO ledger. Consequently, the physical defacement or marking of the printed copy of the e-CoO will no longer be necessary. Further, Advisory No. 31/2023, dated 22 December 2023 issued by DG (Systems) can also be referred for procedural clarity.

(Instruction No. 10/2024-Customs dated 1 May 2024)

CBIC issues instruction regarding additional security feature added to CoO issued by UAE under India-UAE CEPA

The CBIC has issued instructions and informed that the UAE has added an additional security feature to the CoO format, in the form of a password, for verification of the genuineness and authenticity of a CoO issued by the UAE, under the India-UAE CEPA. The following changes have been done for verification of origin:

- The format of the CoO for both the new and old systems will remain identical, with the only difference being the inclusion of a QR code and a specified password in the new system's CoO.
- All the CoOs shall also bear a unique, sequential serial number.

It is pertinent to note that this change aligns with the main provisions of the OCPs, agreed under the India-UAE CEPA.

(Instruction No. 11/2024-Customs dated 1 May 2024)

CBIC notifies procedure for disbursal of drawback amounts into exporters' accounts through PFMS

The CBIC has notified the procedure for disbursal of drawback amounts into the exporters' accounts through the PFMS. Presently, duty drawback claims are processed through the CAS, enumerated in a scroll/CCDA and sent to the authorised bank branch, along with supporting a single cheque of consolidated amount, as per the scroll, for payment of duty drawback amounts into the exporters' accounts.

In pursuant to the above instruction, the following key changes are to be made effective from 5 June 2024:

Discontinuation of the following procedure:

1. The practice of printing the drawback scroll for onward transmission to the authorised bank.
2. The issuance of a cheque for the total amount to be disbursed under a scroll.

New procedure to be adopted is provided below:

1. Authorised officer at each Customs location shall process the duty drawback scroll queue.
2. The scrolls generated at different locations will be automatically processed by the CAS for onward transmission to the central nodal eDDO.
3. The nominated central nodal eDDO shall forward the consolidated all India duty drawback scroll to the nodal ePAO.
4. After approval from the nodal ePAO, the duty drawback amounts shall be credited into the exporters' bank accounts linked with PFMS.

(Instruction No. 15/2024-Customs dated 29 May 2024)

02

Key judicial pronouncements

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

I. Key rulings under the GST laws

SC issues notice in SLP challenging HC's judgement on taxability of TDR; refuses stay

In the case of **Prahitha Constructions Private Limited (SLP (C) No. 11079/2024),** the SC has issued a notice in the SLP challenging the Telangana HC's judgement, wherein it held that the TDR under a JDA is a supply of service liable to GST. The apex court has refused to stay the impugned judgement.

Brief background:

- Initially, the developer had filed a writ petition challenging the constitutional validity of Notification No. 04/2018-CT(R) dated 30 September 2019, which imposed GST on TDR under a JDA.
- It was contended that the TDR of the land by landowners to the developers is equivalent to the 'sale of land', outside the ambit of GST.
- The HC held that a JDA is not a medium of transfer of title in land, as the right, title and ownership does not stand transferred to the developer merely by execution of the JDA. Instead, by such TDR, the landowner permits the developer to undertake construction on the said land, which falls under the ambit of 'service' in exchange of the construction services provided by such developer.
- Considering the above, the HC had dismissed the writ petition.

Observations made by SC:

- Refusing any stay on the application of the HC's judgement, the SC directed that GST shall continue to be paid by the developer.
- The matter is listed for hearing on **9 September 2024.**

Kerala HC upholds constitutional validity of Section 16(2)(c) and Section 16(4); states' retrospective applicability of extended time limit for availing ITC

Summary

The Kerala HC has upheld the validity of Section 16(2)(c) of the CGST Act, which allows credit after payment of tax by the supplier to the government, and Section 16(4) of the CGST Act, which provides the time limit for availing the ITC. The HC emphasised that statutory conditions, restrictions and time limit form the fulcrum for balancing the grant of ITC and tax collection. It held that ITC is a benefit or concession extended under the statutory scheme, which accrues only upon the fulfilment of the attached conditions. Furthermore, the HC opined that the amendment extending the due date till 30 November of the succeeding financial year is procedural in nature and should be given the retrospective effect from FY 17-18 onwards. Consequently, the HC granted the liberty to avail the ITC, taking benefit of the prescribed circulars, within one month of the order.

Facts of the case

- Numerous petitioners, in a batch of writ petitions, have challenged the constitutional vires of Section 16(2)(c) and Section 16(4) of the CGST Act, along with the state GST Act.

Issue before Madras HC:

Whether Section 16(2)(c) and Section 16(4) of the CGST/ SGST Act infringe the constitutional provisions and are unsustainable?

Petitioner's contentions

- The petitioners argued that by application of the impugned provisions, genuine ITC is being denied despite the petitioners having a valid tax invoice, proof of payment of value of goods, along with the GST paid to the respective supplier and receipt of goods.
- The onus of proving the genuineness of the ITC claimed, which rests upon the recipient, stands fulfilled by having possession of the aforementioned documents. Invoking the doctrine of impossibility, the petitioner submitted the requirement to ensure that the supplier has paid the tax is impractical to fulfil, given that there is no such mechanism under the law.
- It was stated that GSTR 2A is an auto-populated statement based on GSTR-1 filed by the supplier and cannot be edited/ modified by the recipient, being merely a read-only document. Accordingly, non-reflection of invoice details due to the failure of the supplier to furnish correct details, resulting in a mismatch, cannot be the basis for denying the ITC of the recipient.
- Furthermore, Section 16(2)(c) of the CGST Act confers unchecked powers to treat bonafide recipients, having proved genuineness, and guilty recipients, who collude with the supplier dealers to claim fraudulent ITC, alike. Accordingly, it violates Article 14 of the Indian Constitution.
- The fact that the ITC, which is a vested right, becomes the property of the recipient and depriving the right of property, would be in violation of Article 300A of the Indian Constitution.
- The petitioners stated that denial or reversal of the eligible credit would affect the business operations of the recipient, which would pertinently be in violation of Article 19(1)(g) of the Indian Constitution.
- Furthermore, denying ITC to the recipient while the government collects the tax from the supplier, results in unjust enrichment, as it leads to double taxation on the same transaction. In the context of the time limit specified for availing the ITC under Section 16(4) of the CGST Act, it was argued that such a procedural provision would not take away the substantive right to claim ITC of the recipient.
- Moreover, the returns once filed with late fees and interest cures the procedural lapse and regularises the right to claim the ITC.

Kerala HC's observations and judgement [WP(C) No. 31559 of 2019, order dated 04 June 2024]

- **The ITC is in the nature of a benefit or concession extended under the statutory scheme:** The HC stated that the ITC is a concession or an entitlement and not an absolute right, which accrued only upon fulfilment of the requisite conditions and restrictions attached.
- **Statutory conditions, restrictions and time limit form the fulcrum on which the grant of ITC and tax collection are balanced:** The HC highlighted that the scheme of GST specifies that only the tax collected and paid to the government would be available as the ITC. In the absence of Section 16(2)(c) of the CGST Act, the originating state government will have to transfer the amount, which has not been received, resulting in revenue loss, thereby rendering the GST law unworkable. Accordingly, such a condition is neither onerous nor unconstitutional. The HC highlighted that the time frame for availing the ITC rules out the uncertainty of tax collection and consequent budgetary allocation. Therefore, considering the above, the HC upheld the constitutional validity of the impugned provisions.
- **Amended time limit for availment of ITC shall have retrospective effect:** The HC observed that owing to the difficulties in the initial stage of GST implementation, the time limit for availing the ITC was extended from 20 October to 30 November. It was opined that such an amendment is procedural in nature to facilitate and ease the difficulties, and should be applicable retrospectively from 1 July 2017. Accordingly, the HC has held that, if a recipient has availed ITC and furnished the return for the month of September till 30 November of the succeeding year for the period from 1 July 2017 to 30 November 2022, such claim should be considered. The HC also granted liberty to the petitioners to claim benefit of Circular Nos. 183/15/2022-GST dated 27 December 2022 and 193/05/2023-GST dated 17 July 2023 for mismatch issues within one month from the date of order.

Our comments

The time limit for availing the ITC was extended via the Finance Act 2022 from the September return of the succeeding year to 30 November of the next year. In a significant judgement, the Kerala HC provided taxpayers an extended window to avail the ITC, where the return for September has been furnished till 30 November, even for the period prior to the enactment of FA 2022. The affected taxpayers can take the benefit of the decision to availing prior ITC claims and potentially challenge any show cause notices issued on a similar matter denying the ITC, taking the benefit of this ruling.

Earlier, on a similar issue, the Patna HC, in the case of Gobinda Construction, the Andhra HC, in the case of Thirumalakonda Plywoods, and the Calcutta HC, in the case of BBA Infrastructure Limited, had also upheld the constitutional validity of the impugned provisions. Notably, the SC has admitted the SLP against the Patna HC order and has issued a notice in the matter.

While the SC's final adjudication on the matter remains pending, it is quite likely that the retrospective application of the extended time limit may also be challenged for further deliberation.

Government is empowered to extend limitation period in case of a *force majeure* – Kerala HC

Summary

The Kerala HC has upheld the validity of GST notifications extending the time limit for passing an order under Section 73 of the CGST Act in the event of a force majeure. Emphasising that the COVID-19 pandemic was a **force majeure** event, which caused large-scale human suffering and paralysed economic activities globally, the HC held that the limitation period was consciously extended in accordance with the recommendations of the GST Council, based on the SC's suo motu order. However, the HC set aside the assessment order confirming the demand for tax, interest, and penalty and directed the department to extend the benefit of Circular 183/15/2022-GST, which prescribed a procedure to deal with the mismatch issue. Accordingly, the matter was remanded for fresh consideration.

Facts of the case:

- Faizal Traders Private Limited (the petitioner) undertakes Southern Railway's IHK service and supplies top up and recharge coupons for BSNL as a franchisee.
- The petitioner had omitted to report the details of inward and outward supplies for July to September 2017 (impugned period). The details were reported directly in the annual return (GSTR 9) for 2017-18 as total 'input credit' and output tax.
- A SCN was issued to the petitioner, seeking payment of GST on the outward supplies for the impugned period, along with interest and penalty.
- In response, it was highlighted that the output tax liability for the impugned period was set off against the ITC for the impugned period, which was omitted to be reported in GSTR 3B, but was reported in its annual returns.
- However, another SCN was issued, seeking tax, interest, and penalty for the impugned period. The petitioner refuted the demand and maintained its response.
- The demand was confirmed against the petitioner vide an OIO dated 21 June 2023.
- The petitioner assailed the OIO in writ proceedings on the grounds of limitation.

Petitioner's contentions:

- It was stated that Section 73(10) of the CGST Act mandates the completion of any proceeding with regard to the determination of tax, interest, and penalty within three years from the last date of filing the annual return for the relevant FY.
- Since the last date of filing the FY 2017-18 annual return was 7 February 2020, the proceedings should have been completed within three years, i.e., by 7 February 2023. Accordingly, the OIO dated 21 June 2023 and the demand order (DRC 07) dated 14 July 2023 would be barred by limitation.
- The petitioner also challenged Notification No. 13/2022-CT dated 5 July 2022 and Notification No. 09/2023-CT dated 31 March 2023, which had extended the time limit for issuance of the order to 30 September 2023 and 31 December 2023, respectively. It was contended that the impugned notifications are beyond the powers conferred on the department.
- It was argued that the extension of time limit for completing the proceedings can only be notified where such actions could not be completed due to a force majeure.
- Since there was no force majeure event at the time of extending the time limit for completion of proceedings, the impugned notifications are ultra vires the provisions of the CGST Act, and the impugned order is barred by limitation.

Kerela HC's observations and judgement [WP (C) No. 24810/2023; Order dated 7 February 2024]:

- **The government is empowered to extend the limitation period in case of a force majeure:** The HC highlighted that Section 168A of the CGST Act empowers the government to extend the limitation period for completion of proceedings that could not be completed or complied with due to a force majeure. It emphasised that the COVID-19 pandemic was a force majeure event that caused a large-scale human tragedy and suffering worldwide and paralysed economic activities.

- **Extension of the limitation period was a conscious policy decision:** The impugned notifications extending the limitation period were issued on the recommendations of the GST Council based on the SC's suo moto order considering the pandemic. The HC emphasised that the central and state governments operated with reduced staff during the pandemic and, as a conscious policy decision, refrained from taking enforcement actions in the initial period of the GST implementation. Accordingly, the enforcement actions and proceedings could not be completed within the prescribed time owing to the force majeure event, which extended the limitation period. On this premise, the HC dismissed the challenge to the impugned notifications.
- **Benefit of circular prescribing procedure in case of mismatch cannot be denied:** Circular No. 183/15/2022-GST detailed the procedure to be followed to deal with the difference in the ITC availed in GSTR 3B as against reflecting in GSTR 2A. Setting aside the OIO, the HC held that the benefit of the circular shall be extended to the petitioner and remanded the matter back to the assessing authority.

Our comments

The HC's decision to uphold the validity of notifications, extending the time limit for completion of proceedings under GST, will have significant impact on the aggrieved taxpayers.

However, the validity of the original and subsequent extension notifications has been challenged in various HCs, wherein interim relief has been granted to the taxpayers.

It will be interesting to see whether this ruling will set a precedent in all similar cases or whether the courts will take a contrary view, considering that the COVID-19 restrictions were lifted in 2022, and the GST authorities have had sufficient time to complete the proceedings.

Allahabad HC affirms validity of notification that extended limitation period for FY 2017-18

In the case of **M/s. Graziano Trasmissioni (Writ Tax No. 1256/2023),** the Allahabad HC has dismissed a batch of writ petitions challenging the validity of **Notification No. 09/2023-CT dated 31 March 2023** issued in exercise of powers under Section 168A of the CGST Act, to extend the limitation period for passing adjudication orders for FY 2017-18.

Background:

- The petitioners had not only challenged the validity of the impugned notification along with respective state notification pertaining to FY 2017-18, but also a similar notification issued for FY 2018-19, vires of Section 168A of the CGST Act. However, the HC pertinently confined the discussion to the impugned notification, along with the respective state notification pertaining to FY 2017-18.
- The following contentions were raised by the petitioners:
  - As on the date of issuing the impugned notifications, there did not exist any force majeure or COVID-19 circumstance, as the government and non-government offices stood regularised with existing restrictions discontinued.
  - The Suo Motu limitation period as per the SC's order would not be applicable to actions pertaining w.r.t. the scrutiny of returns, issuance of summons, search enquiry or investigations and consequential arrests under GST.
  - Accordingly, the failure to perform those functions cannot be protected through extension of the limitation period. Moreover, merely because there may have existed certain difficulties, they cannot be cited as impossibilities.
  - The government is not bound by the recommendations of the GST Council and cannot, without due application of mind, offer blind compliance to the opinion of the Council. The impugned notification was therefore issued mechanically without independent assessment.

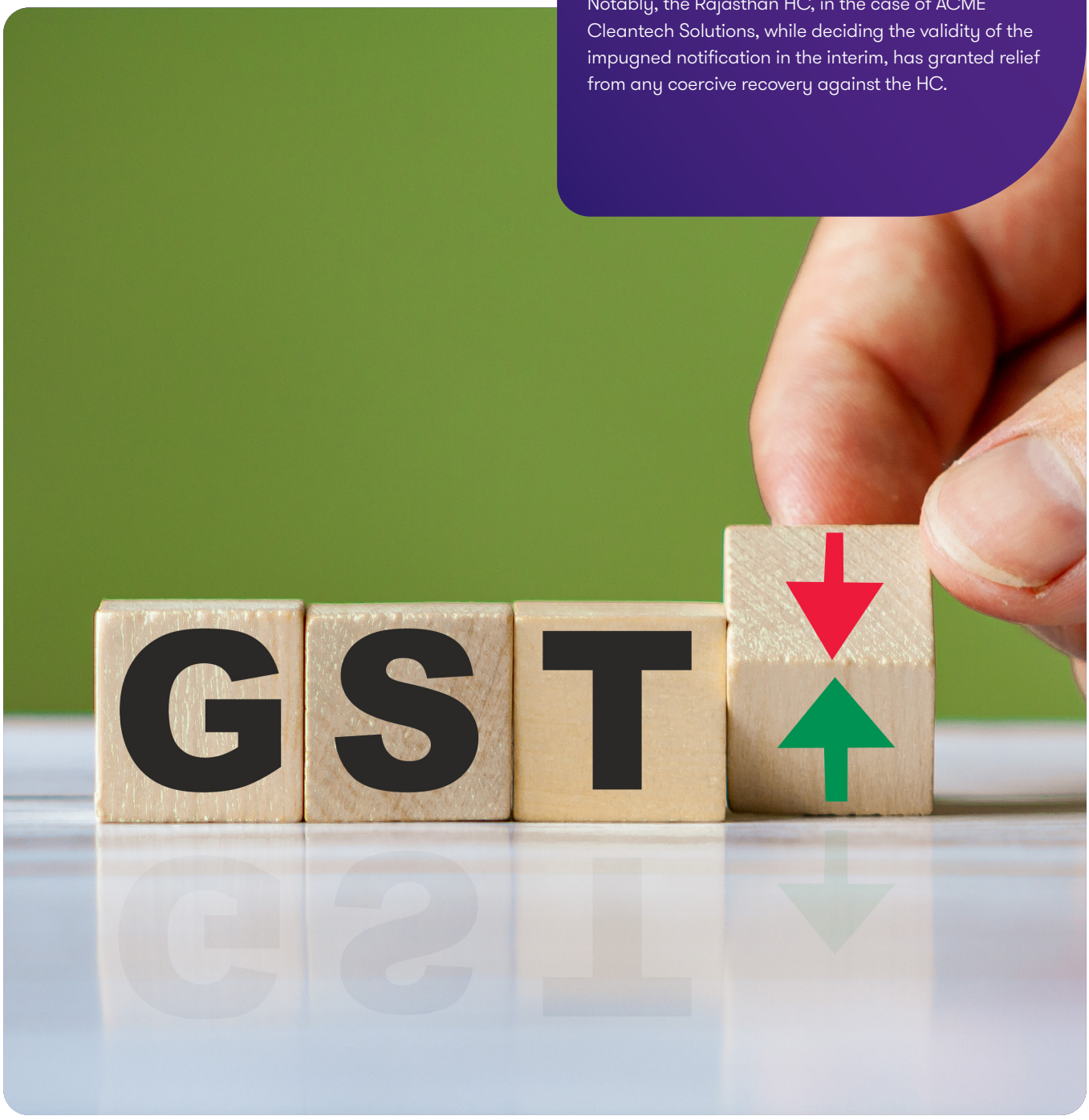
Observation of Allahabad HC:

- Issuance of the time extension application was a legislative function owing to disruption caused by the COVID-19 pandemic.
- Accordingly, for the issuance of the notification occurrence of force majeure, i.e., the pandemic, is undisputed.
- The government acted in consonance with the conditions and stipulations of the principal legislation, considering the disruption caused by the pandemic. Accordingly, the conditions for invoking powers under Section 168A of the CGST Act stood fulfilled.

- Basis the above, the HC rejected the challenge on the impugned notification, stating that the circumstance was neither a mere difficulty nor a temporary or transient impairment caused to their functioning.
- The HC directed that the taxpayers shall have 45 days to file an appeal where adjudication orders have been passed and recovery has been stayed by the court.

Our comments

Pertinently, the HC has only affirmed the validity of Notification No. 09/2023-CT, which extended the time limit to 31 December 2023. The validity of Notification No. 56/2023 dated 28 December 2023, which extended the time limit for FYs 2018-19 and 2019-20 and vires of Section 168A of the CGST, is still pending deliberation. Notably, the Rajasthan HC, in the case of ACME Cleantech Solutions, while deciding the validity of the impugned notification in the interim, has granted relief from any coercive recovery against the HC.



II. Key rulings under the erstwhile indirect tax laws

Refund cannot be adjusted against any tax liabilities that arise after refund became due and payable to taxpayer – SC

In the case of **FEMC Pratibha Joint Venture [CIVIL APPEAL NO. 3940 OF 2024],** the SC has upheld the Delhi HC's judgement quashing the adjustment order to adjust the refund claims against subsequent default notice dues. The SC affirmed that Section 38(3) of the DVAT Act mandates adhering to the timelines for processing refunds. The SC held that the department cannot retain and adjust the refund against dues crystallising after the refund became due.

Facts of the case:

- TThe issue before the SC was whether the timeline for refund under Section 38(3) of the DVAT Act must be mandatorily followed while recovering dues under the Act by adjusting them against the refund amount.
- FEMC Pratibha Joint Venture (the respondent) is a joint venture engaged in executing works contracts for the Delhi Metro Rail Corporation.
- The respondent applied for refunds of excess tax credit by filing a revised return for the fourth quarter of 2015-16 and by filing a return for the first quarter of 2017-18.
- Later, an adjustment order was passed by the officer to adjust the respondent's claims for refund against dues under default.
- Thereafter, a writ petition was filed before the Delhi HC.
- The HC quashed the adjustment order and directed to refund the claimed amounts, along with interest under Section 42 of the DVAT Act till the date of realisation.
- The HC placed reliance on the decision in the case of Flipkart India Private Limited and emphasised that the department must strictly adhere to the timelines for processing and issuing refunds under Section 38 of the DVAT Act.
- The HC ruled refunds can only be adjusted against enforceable demands pending at the time. The department has no legal right to retain refunds beyond the stipulated period.

Observations made by SC:

- The SC noted that the language of Section 38(3)(a)(ii) of the DVAT Act is mandatory, and the department must adhere to the timeline stipulated therein to ensure that the refunds are processed and issued in a timely manner.
- The SC observed that in the present case, as per Section 38(3)(a)(ii) of the DVAT Act, the refund should have been processed within two months from when the returns were filed.
- The SC categorically noted that the default notices were issued after the period within which the refund should have been processed.
- Therefore, the SC held that at the time when the refund should have been processed as per the provisions of the Act, the dues under the default notices had not crystallised and the respondent was not liable to pay the same.
- The SC also rejected the appellant's contention that the purpose of the timeline provided under Sub-Section (3) is only for the calculation of interest under Section 42 of the DVAT Act, as it would defeat the object of the provision.
- The SC dismissed the appeal and affirmed the impugned judgement directing the refund of amounts, along with interest as provided under Section 42 of the DVAT Act.

Labelling/relabelling activities amounts to 'manufacture' – SC

In the case of **Jindal Drugs Ltd. [CIVIL APPEAL NO. 1121 of 2016],** the SC has upheld the CESTAT order holding that the labelling/relabelling activities undertaken by the respondent on goods received from Jammu. and imported cocoa products, amounts to 'manufacture' under the amended Chapter Note 3 to Chapter 18 of the Central Excise Tariff Act, entitling it to CENVAT credit and rebate.

Facts of the case:

- Jindal Drugs Ltd. (the respondent) is engaged in export, and has a factory in Jammu, where products such as cocoa powder are manufactured.
- The respondent has another unit in Taloja, which receives the manufactured goods and imported goods.
- At the receiving unit, the respondent affixes two additional labels on the packages and repacks/relabels these goods, and then exports them. Thereafter, a rebate is claimed on these goods.
- Furthermore, the respondent has also claimed the CENVAT credit paid on the goods at the time of clearance from Jammu.
- The department initiated the proceedings to deny the CENVAT credit and rebate claims by contending that additional labels affixed by the respondent did not amount to manufacture since affixing of an additional label did not enhance the marketability of the goods, which were already marketable.
- A SCN was issued, and later, the demand was confirmed by the AA, holding that no repackaging activity was undertaken on the goods received, and the goods already had a label on them.
- Reliance was placed on Rule 3 of the CENVAT Credit Rules, which allows CENVAT credit only in the case where the process undertaken amounts to manufacture.
- The appellant further held that there was suppression of material fact with the intent to avail irregular credit. Therefore, a penalty was levied.
- Aggrieved by the above order, the respondent filed an appeal before the CESTAT.

Observations made by the CESTAT:

- The judicial member analysed Note 3 to Chapter 18 of the Central Excise Tariff Act and held that the activities of labelling or re-labelling of containers without enhancing marketability amounted to manufacture.
- However, the technical member held that no manufacture had been taken by the respondent.
- The matter was placed before the third member due to difference of opinion between the Judicial Member and the Technical Member.
- The third member held that activities of labelling or re-labelling amounted to manufacture and noted that the respondent had repacked the imported goods in new cartons and exported them after labelling.
- The third member further held that the credit and the rebate were rightly availed of by the respondent.
- Therefore, the appeal filed by the respondent was allowed.
- Later, the SC had issued a notice and an appeal was admitted.

Observations made by the SC:

- The SC analysed the term 'manufacture of Central Excise Act' and 'Note 3 to Chapter 18 of the Central Excise Tariff Act' and held that the composite activity of labelling or re-labelling of containers and repacking from bulk packs to retail packs has been split up into two activities, i.e., labelling or re-labelling of containers is one and the other is repacking from bulk packs to retail packs.
- The other activity of adopting any other treatment to render the product marketable to the consumers remains the same.
- Therefore, post amendment, Note 3 contemplates three different processes; if either of the three processes are satisfied, the same would amount to manufacture.
- The three processes are: (i) labelling or re-labelling of containers; or (ii) repacking from bulk packs to retail packs; or (iii) the adoption of any other treatment to render the product marketable to the consumer.
- Considering the above interpretation of the amended Note 3, the SC held that the CESTAT was correct in concluding that the labelling/relabeling activities undertaken by the respondent at Taloja amounted to 'manufacture', entitling it to the CENVAT credit and rebate, and dismissed the Revenue's appeal.

SC issues notice in SLP challenging HC's judgement holding that crane services do not constitute a transfer of right to use goods

Earlier, the Rajasthan HC, in the case of **M/s Aditya Break Down Service [S.B. Sales Tax Revision / Reference No. 68/2020]**, dismissed the petition in favour of the respondent-assessee, holding that crane services provided by them do not constitute a transfer of the right to use goods under Section 2(35)(iv) of the RVAT Act.

Aggrieved by the above, the Revenue had filed a SLP before the SC **[SPECIAL LEAVE PETITION (CIVIL) Diary No(s). 49845/2023]**. The SC has issued a notice in the SLP, and the matter is listed for further hearing on **8 July 2024.**

Facts of the case:

- M/s Aditya Break Down Service (the respondent/the assessee) is engaged in providing crane services to various customers.
- The assessing officer conducted a survey at the premises of the assessee, and it was observed that the respondent was transferring the right to use the crane to its customers, constituting a sale in terms of Section 2(35)(iv) of the RVAT Act.
- Therefore, the officer imposed tax, interest, and penalty upon the assessee.
- Aggrieved by the above order, the assessee preferred an appeal before the appellate authority, which upheld the levy of tax regarding the transport department (the customer), remanding back other cases.
- Thereafter, the assessment officer passed an order in favour of the Revenue.
- Further aggrieved by the above order, the assessee preferred an appeal before the appellate authority and the same was decided in favour of the assessee.
- Aggrieved by the said order, the Revenue filed an appeal before the Rajasthan Tax Board, which was dismissed in favour of the assessee. Further aggrieved, the Revenue has filed this appeal.

Observations made by HC:

- The HC observed that the Rajasthan Tax Board had analysed the contract between the assessee and the transport department, and concluded that it was a service contract, not a sale.
- In addition, the HC analysed that no specifications were incorporated in the contract to highlight the exclusive control of the consumer-transport department over the said cranes.
- Furthermore, it was mentioned in the contract that the assessee is required to provide a driver and helper, along with the crane.
- It was also mentioned in the contract that the responsibility of maintenance of the crane and control over its operations is with the assessee only, indicating no transfer of the right to use the cranes to the transport department.
- Therefore, the HC held that the crane services provided by the assessee do not constitute sale as provided under Section 2(35)(iv) of the RVAT Act.
- The HC relied upon the SC's judgement in the case of Bharat Sanchar Nigam Ltd., which discussed the 'dominant nature test' for determining the substance of the contract.
- It was further observed that, to constitute a 'transfer of the right to use goods' (deemed as sale), in terms of the said test, certain attributes outlined in the case of Great Eastern Shipping Company Ltd. must be present, one of them being the transferee's legal right to use the goods.
- However, in the present case, the contract was a contract of service and not sale, as the consumer does not have the exclusive right to use the crane.
- Therefore, the HC dismissed the writ petition in favour of the assessee, holding that the crane services did not constitute a 'sale' under Section 2(35)(iv) of the RVAT Act.

Service tax not leviable on expenditure incurred towards exploration and development operations without production and supply of gas/oil - CESTAT

The CESTAT, in the case **of M/s B.G. Shirke Construction Technology Pvt Ltd [Service Tax Appeal No. 30866 of 2018],** has set aside the impugned order imposing service tax and held that appellant is not liable to pay service tax on the expenditure incurred towards exploration and development operations during the relevant period, as they had not reached the milestone of producing and supplying oil/gas to ONGC.

Facts of the case:

- M/s B.G. Shirke Construction Technology Pvt Ltd is a multi-locational service provider entered into a service contract with ONGC for the development of the Manepalli Field of KG onshore.
- Later, the contract was transferred to the fully owned subsidiary (the appellant company) through a business transfer agreement, along with the necessary tax registrations.
- Under the contract, the appellant shall render the services of exploration, development, production of gas/oil and thereafter supply it to ONGC.
- Furthermore, the appellant is not entitled to receive any remuneration/consideration until and unless it achieves the milestone, i.e., production and supply of gas/oil to ONGC.
- A query letter was issued by the Revenue, in response to which the appellant submitted that under the said contract, the 'effective date' means the date on which the contract was awarded by ONGC, i.e., 4 April 2007, or the date on which the field was handed over to them, whichever was later. The field was handed over to the appellant on 19 September 2007, which is the 'effective date'.
- According to the Revenue, the appellant was required to discharge service tax liability on the expenditure as per Section 67(1)(iii) of the Finance Act, read with Rule 3(b) of Service Tax (determination of value) Rules 2006.
- The Revenue contended that the actual consideration was not ascertainable. Therefore, the Revenue determined the taxable value based on the cost of expenditure incurred by the appellant, plus 10% notional profit.
- The Revenue issued a SCN to the appellant, demanding service tax on the grounds that the exploration and development operations being performed were in relation to the main service, i.e., mining of mineral, oil or gas service, which was a taxable service.
- Another SCN was issued by the Revenue for the period 2015–16 till June 2017.
- The above SCNs were adjudicated, and the demands were confirmed. Aggrieved by the same, the appellant has filed the present appeal before the Tribunal.
- The appellant contended that the services provided are continuous supply of service, and accordingly, the provision of service will be made on completion of an event (supply of oil/gas to ONGC), which has not occurred during the period under dispute. Also, the calculation of value of the taxable turnover is erroneous.
- The appellant submitted that the activities undertaken during the period of dispute are merely intermediate services. Therefore, it was submitted that part performance of service is not a service.
- The appellant submitted that it was not entitled to receive any remuneration/consideration until and unless it achieved the milestone, i.e., production of gas/oil and supply of the same to ONGC.

Observations made by CESTAT:

- The Tribunal held that the appellant has not reached the stipulated event of supplying crude oil/gas to ONGC during the disputed periods, which was required for raising an invoice under the contract.
- The Tribunal noted that the appellant has neither received any consideration nor was entitled to receive any consideration during the period under dispute in absence of achieving the stipulated milestone.
- Furthermore, the Tribunal held that the determination of taxable turnover under the provisions of Section 67, read with the Service Tax (Determination of Value) Rules, is erroneous.
- The determination of the taxable turnover by the Revenue is erroneous and the addition of notional value towards profit @ 10% was not valid under law.
- The Tribunal stated that the extended period of limitation was not invokable and set aside the impugned orders.

Service tax leviable under RCM on expenses reimbursed to foreign distributors - CESTAT

The CESTAT Chandigarh, in the case of **M/s Maruti Suzuki India Ltd. [Service Tax Appeal No. 581 Of 2011]**, held that the services rendered by the overseas dealers/distributors were classifiable as 'BAS' under Section 65(19) of the Finance Act.

Facts of the case:

- M/s Maruti Suzuki India Ltd. (the appellant) is engaged in the manufacture of motor vehicles and its parts. The appellant exports these vehicles to distributors/dealers in various countries under distributorship agreements.
- These agreements authorise the distributors to sell and distribute vehicles manufactured by MSIL, including providing after-sales services and honoring warranty claims during the warranty period.
- The MSIL reimburses various expenses incurred by the distributors, such as export warranty, product recall charges, and goodwill warranty, as per the terms of the agreements.
- The department initiated proceedings against MSIL, demanding service tax under 'BAS' on account of the expenses reimbursed to the foreign distributors under the RCM.
- The AA passed the order confirming the demand of service tax, along with interest and penalties, by invoking the extended period of limitation.
- The authority held that the services rendered by the foreign distributors qualify as 'BAS' under Section 65(19) of the Finance Act.

Appellant's contentions:

- The appellant contended that the relationship between them and the overseas distributors/dealers is one of principal-to-principal basis.
- The distributors are authorised service stations, and hence, cannot be said to have rendered any BAS.
- The appellant relied on the decision in the case of M/S. **Rohan Motors Limited** and contended that the services rendered by the foreign distributors/dealers, etc., cannot be said to be in nature of promotion or marketing of goods of the appellant. Therefore, such services are not covered by Sub-Clause (1) of the definition of BAS.
- The AA wrongly held that the foreign dealers are rendering BAS by maintaining an efficient and reliable sale network in relation to the sale of the goods produced or provided by the appellant. Therefore, the second clause is not applicable.
- Further, Circular No. 699/15/2003-CX, dated 5 March 2003, clarified that the activity of a sales dealer is distinct from that of an authorised service centre.
- The foreign dealers are not providing any services to the customers on behalf of the appellant.
- In earlier cases, such as that of **Maruti Suzuki India Ltd 2008 (232) ELT 566 (Tri. Del.) and Maruti Udyog Limited 2004 (170) E.E.T. 245 (Tri. Del.),** it was held that the distributors are the dealers of the appellant and are not acting on behalf of the appellant.
- The appellant submitted that the services provided by the foreign distributors are more specifically covered under the authorised service station. Therefore, the demand cannot be confirmed under a general category, i.e., under BAS.
- Moreover, the appellant relied on the decision in the case of **M/s John Energy Limited [Appeal No. ST/280/2009-DB] and Sarovar Hotels Pvt Ltd. [2018 (10) G.S.T.L. 72 (Tri. - Mumbai)]** and submitted that the entire activity is Revenue-neutral.
- Further, the appellant relied on the decision in the case **of Intercontinental Consultants & Technocrats Pvt Ltd. [2013 (29) STR 9 (Del.)]** and submitted that the reimbursement of the expenses does not form part of the consideration for the purposes of valuation of the taxable service under Section 67 of the Act, read with Rule 5 of the ST Rules. Therefore, the same is not liable to service tax.
- The appellant further contended that the extended period of limitation cannot be invoked, as there was no willful suppression of facts.

Observations made by CESTAT:

- The Tribunal noted that that the relationship between the appellant and the overseas dealers is not on a principal-to-principal basis because the dealer/distributor is performing work on behalf of or as an agent of the (manufacturer) appellants.
- The Tribunal relied upon the decision in the case of **Hyundai Motor India Pvt Ltd. Vs CCE& ST, LTU, Chenai 2019 (29) G.S.T.L. 452 (Tri. - Chennai)** (Affirmed by SC in 2020 (32) GSTL J154, wherein it was held that the services rendered by overseas dealers/distributors in handling warranty claims, monitoring repair and maintenance services, and establishing a network of authorised repairers, were classifiable under BAS.
- The Tribunal held that the gross value of the taxable service for the purpose of computation of service tax shall be the gross amount paid by the recipient of such service because the exemption under Notification No.12/2003-ST is admissible only when goods are sold during the course of provision of service, there is documentary evidence in relation to the sale of the said goods and if the appellants have not availed the CENVAT credit.
- Further, the Tribunal held that the extended period could not be invoked, and the demand could be sustained only for the normal period, relying on the case of Sunshine steel Industries.
- Consequently, the Tribunal modified the impugned order to confirm the demand for the normal period and set aside the penalties imposed.

CESTAT denies refund claim of unutilised central excise credit of pre-GST regime

The CESTAT, in the case of **Aragen Life Sciences Ltd [Excise Appeal No. 30307 of 2021]**, has upheld the order passed by the Commissioner (Appeals), rejecting the refund in cash of the central excise credit to the appellant.

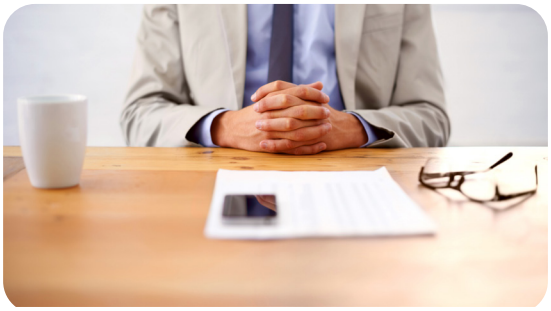
Facts of the case:

- Aragen Life Sciences Ltd (the appellant) is engaged in the manufacture of pharmaceutical products and was availing CENVAT credit on inputs in the pre-GST regime.
- Upon transitioning from Central Excise to GST, the appellant did not carry forward the credit balance in TRAN-1 under Section 140 of the CGST Act.
- Therefore, the appellant filed for a cash refund consisting of two components viz. the Central Excise input credit and the Service Tax credit component.
- The appellant disclosed the credit in the revised service tax return and sought a refund under Section 142(9)(b) of the CGST Act.
- The department rejected the refund of Central Excise credit on the ground that the appellant did not file a revised ER-1 return and the service tax credit, as it did not fit into the provisions under Section 142(9)(b) of the CGST Act, and further considering it to be time-barred and hit by unjust enrichment.
- On adjudication, the original authority also rejected the refund of Central Excise credit under Section 142(3) of the CGST Act, holding that there were no provisions under the Central Excise Act or related rules that allowed for such a refund, and upheld the rejection of the Service Tax credit refund by the department on the grounds that the revised ST-3 return was not genuine.
- Aggrieved by the above, the appellant filed an appeal before the Commissioner (Appeals).
- Thereafter, the Commissioner (Appeals) upheld the rejection of the Central Excise credit refund by the original authority.
- However, it was ordered that the appellant is entitled to the refund of the Service Tax credit, holding that the time limit specified under Section 11B (1) of the Central Excise Act did not apply to the refunds under Section 142(3) and Section 142(9)(b) of the CGST Act.
- Aggrieved by the order rejecting the refund claim of the Central Excise credit, the appellant has filed the present appeal.

Observations made by CESTAT:

- The Tribunal highlighted that the core issue in the present case is the entitlement to a refund of input credit not transitioned to the GST regime via TRAN-1, nor reflected in the revised ER-1 returns.
- The Tribunal, on analysis of Section 142(3) of the CGST Act, observed that it is to be examined that whether the refund could be granted in accordance with the provisions of existing law or otherwise, and if the refund is eligible, it would be admissible irrespective of any other provisions contrary to this provision.
- The Tribunal noted that in the present case, there is no provision under the Central Excise Act allowing cash refund of the said credit to the appellant.

- In absence of any such provision, Section 142(3) of the CGST Act, per se, cannot make it an eligible refund merely because the appellant was not able to transfer the credit through TRAN-1 or by filing the revised return.
- The Tribunal noted that the reliance placed by the appellant on cases such as Adfert Technologies Pvt Ltd and Jagdamba Polymers Ltd, pertained to the eligibility of the transitional credit being a vested right and the legitimacy of impugned credit, which were not the subject matter of this case.



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

Non-fulfilment of export obligation - No penalty sans relevant provisions under the FTDR Act – SC

Summary

The SC has set aside a penalty under the FTDR Act on account of non-fulfilment of the EO under a license granted to the assessee. The SC observed that there was no attempt by the assessee to contravene any provisions under the FTDR Act or the FTP. Therefore, the SC has held that the penalty, being a strict liability under the penal provision, is deemed unsustainable. Based on the examination of the sanctioned rehabilitation scheme under the SICA, the SC noticed that the waiver of payment of specific amounts was for the customs duty and not for the failure to meet the EO under the license granted.

Facts of the case:

- Karnataka Malladi Biotics Limited (the assessee) obtained an export promotion license to import capital goods at a concessional customs duty rate, subject to the condition of exporting finished goods and earning equivalent foreign currency within five years.
- In 1999, the BIFR declared the assessee a sick unit under the SICA.
- Consequently, the assessee submitted a rehabilitation proposal to the operating agency.
- The commissioner issued a demand notice to demand the differential duty from the assessee because they had enjoyed the benefit of concessional duty.
- However, as the assessee could not pay the duty, the department recovered the amount by enforcing the bank guarantee.
- In 2003, the BIFR sanctioned a rehabilitation scheme for the assessee.
- Subsequently, a penalty was imposed on the assessee for non-fulfilment of the export obligation under the license.
- Aggrieved by the above penalty order, the assessee filed a writ petition before the HC.
- In 2009, the assessee was amalgamated with Emmellen Biotech Pharmaceuticals Limited.
- Consequently, the respondents challenged the writ petition by filing a writ appeal.
- The HC disposed of the appeal by granting permission to withdraw the writ petition with the liberty to file a fresh petition.
- The assessee (post-amalgamation entity) filed a writ petition before the HC, which was dismissed on the ground that the assessee had withdrawn the earlier petition without reserving any liberty to reagitate the same issue.

Assessee's contentions:

- The assessee contended that due to non-fulfilment of the EO, the rehabilitation scheme was sanctioned by the BIFR, which provided for a waiver of the custom duty and the interest accrued on it. Therefore, a penalty is not leviable in the present case.

- The assessee submitted that the Single Judge and the Division Bench ignored the fact that the assessee was granted the liberty to file a fresh writ petition after withdrawing the earlier.
- The assessee contended that non-fulfilment of the EO under the license is not grounds for imposing a penalty under Section 11(2) of the FTDR Act. Therefore, the order passed was not valid under the law

Respondent's contentions:

- The respondent contended that the rehabilitation scheme did not include any clause granting a waiver of the penalty that could be imposed for non-fulfilment of the EO under the license.
- The respondent further contended that there was a contravention of the license terms.
- The respondent submitted that they acted within their legal authority by imposing the penalty, as there was a violation of the license terms.

SC's observations and judgement [Civil Appeal No. 6394 of 2024; Order dated 13 May 2024]

- **SC upheld the validity of the writ petition filed by the assessee before the HC:** The SC observed that the HC's Division Bench had explicitly granted the assessee the liberty to file a fresh writ petition on the same cause of action. Therefore, the Division Bench and the Single Judge erred in finding that the first writ petition was withdrawn without seeking permission to file a new one.
- **Penalty imposed is not sustainable:** The SC analysed Section 11(2) of the FTDR Act and observed that it is applicable when any import or export is made or is attempted to be made in violation of the provisions of the FTDR Act, rules, orders, or FTP. However, in the present case, the assessee's predecessor had not made or attempted to make any export or import in contravention of the FTDR Act, rules, orders, or FTP. The allegation was about the failure to fulfil the obligation to export the finished goods within the stipulated period of five years under the license. Since Section 11(2) of the FTDR Act is a penal provision and needs to be interpreted strictly, the demand for imposing penalty could not be sustained, as the alleged violation did not fall within the purview of this section.
- **Appeal allowed:** The SC allowed the appeal in favour of the assessee and set aside the impugned order imposing penalty on the assessee.

Our comments

This significant decision will provide much-needed relief to businesses facing financial challenges and undergoing rehabilitation. It highlights the necessity of exercising compassion and flexibility when enforcing trade obligations.

Earlier, the Delhi HC, in the case of Dencap Electronics Private Limited, had held that a penalty cannot be imposed under Section 11(2) of the FTDR Act in the circumstances where non-fulfilment of the EO was attributable to the factors beyond the control of the assessee and where there is no violation of the provisions of this Act at the time of importation.

CESTAT interprets 'shall be liable to' provided under the Customs Act and upholds discretion in penalty imposition

The CESTAT Delhi, in the case of **N and N Traders [Final Order No. 55617 of 2024],** interpreted the phrase 'shall be liable to' in Sections 111 and 112 of the Customs Act and noted that this phrase confers discretion on the AA to decide whether to confiscate the goods or impose a penalty after considering the specific circumstances of each case.

Facts of the case:

- The respondent had imported areca nuts (betel nuts) and described them as 'unflavoured boiled supari (betel nuts product)' in the BOE and classified them under CTI 2106 90 30, which covers supari and attracts 50% BCD and IGST of 18%.
- Later, the department examined these goods and observed that the goods were mis-declared. Therefore, these goods were sent to CRCL for testing.
- The CRCL report stated that the sample is other than the betel nut product, known as supari, as mentioned in supplementary notes - Note 2 of the Customs Tariff Chapter 21.
- The department contended that the import of raw areca nuts, which falls under CTI 0802 80 10, is prohibited unless the CIF value exceeds INR 251/kg under the FTP.
- A SCN was issued, alleging mis-declaration of the nature of goods, and misclassification under CTI 2106 90 30, to evade the import prohibition.
- The respondent relied on an advance ruling in the case of **Oliya Steel Private Ltd. [Ruling No. AAR/44/Cus/03/2017]**, wherein it was categorically held that CTH 0802 covers only fresh and dried areca nuts and supari cannot fall under CTH 0802.
- However, the department confiscated the goods and imposed a penalty on the respondent.
- Later, the commissioner (Appeals) allowed the redemption of confiscated goods on payment of INR 8 lakh redemption fine for re-export and reduced the penalty to INR 2 lakh u/s 112 of the Customs Act.
- Aggrieved by the above order, the Revenue filed the present appeal to contest the reduction of the penalty amount to just INR 2 lakh (~2.5% of goods value).

Observations made by CESTAT:

- The Tribunal noted that Section 112 of the Customs Act provides a penalty not exceeding the value of the goods, but it does not prescribe any minimum penalty amount.
- The Tribunal interpreted the term 'shall be liable to' as provided under Sections 111 and 112 of the Customs Act and noted that the AA can exercise its discretion to confiscate the goods or to impose penalty or not.
- The Tribunal relied on the decision in the case of **Jain Exports Pvt. Ltd. [(29) E.L.T. 753 (Del.)],** which was upheld by the SC in the case of **[1992 (61) E.L.T. 173 (S.C.)] and Sha Rikabdoss [2000 (125) E.L.T. 65 (Mad.)]**, wherein it was held that the phrase does not mandate confiscation of goods or imposition of penalty. It only means that the goods are 'likely to be' confiscated and the person is 'likely to be' penalised.
- Applying these principles, the Tribunal upheld the order of the reduction of the penalty amount, as there was a reasonable cause for the respondent to classify the goods under the claimed tariff item, and the allegation of mis-declaration was not very serious due to the ambiguity in the test report.

Amendment in BOE for changing classification allowed even after post-clearance of goods – CESTAT

The CESTAT, Chennai, in the case of **M/s. Valeo India Pvt. Ltd [Customs Appeal No.40233 of 2023]**, has upheld the appellant's request for amendment to the BOE under Section 149 of the Customs Act, which provides machinery for altering the assessment. The Tribunal has set aside the impugned order of rejecting the amendment to the BOE and remanded the matter for reassessment under Section 149, directing adherence to the principles of natural justice.

Facts of the case:

- M/s. Valeo India Pvt. Ltd. (the appellant) imported various parts and components of lighting equipment by incorrectly classifying the goods under CTH 8512 2010 and 8512 2020 as 'lighting equipment', instead of CTH 8512 9000 as 'parts of lighting equipment'.
- Therefore, the appellant requested an amendment to the BoE under Section 149 of the Customs Act, in order to correct the classification and to seek a refund for the excess duty paid.
- The AA, after due process of law, rejected the request.
- Later, the Commissioner (Appeals) also upheld the same.
- Aggrieved by the above, the appellant filed an appeal before the Tribunal.
- The appellant submitted that Section 149 allows for amendments to the BoE based on existing documentary evidence at the time of goods clearance.
- The appellant cited several judgements to support their position that amendments could be made post-clearance, leading to reassessment and refund.
- The Revenue submitted that only the amendment in documents accompanying the BOE should be allowed as per Section 149 and not the amendment of assessment, which includes determination of dutiability, valuation, tariff classification, origin, exemption issues, etc.
- The Revenue contended that an amendment altering the CTH of the BOEs, which have already been cleared from the Customs control, cannot be done.
- First, the Revenue submitted that reclassifying the goods by changing the CTH amounts to modifying the assessment as defined in Section 2 of the Customs Act. Such a reassessment is not permissible under Section 149 of the Customs Act.
- Second, the Revenue submitted that as the goods are not available for verification, examination or testing, as embodied in Section Section 17(4) of the Customs Act, the reassessment cannot be permitted.

Observations made by CESTAT:

- The Tribunal noted that amending the CTH in a BOE after the assessment amounts to modifying the assessment itself.
- The Tribunal relied on the decision of the SC in the case of Flock India (P) Ltd, wherein it was held that it is not open to the party to question the correctness of the order of the AA subsequently by filing a claim for refund on the ground that the AA had committed an error in passing the order.
- The Tribunal held that the request for changing the CTH, and consequently modifying the final assessment, can only be made before a superior authority through an appeal.
- However, the Tribunal observed that the jurisdictional HC of Madras, along with other HCs, has held that Section 149 and 154 of the Customs Act, provide the machinery for altering the assessment, and these are two of the three methods available under the Customs Act, the third being Section 128 of the Customs Act.
- The Tribunal set aside the impugned order and remanded the matter to the proper officer to process the appellant's request for the amendment of the BOE under Section 149 of the Customs Act.

03

Expert's column

GST 2.0: The future of GST

The GST in India is about to celebrate its 7th anniversary since its implementation on 1 July 2017. Over the past seven years, taxpayers and the government have significantly contributed to the development and evolution of GST in India. This landmark tax reform has experienced a journey filled with challenges and achievements, proving immensely worthwhile.

In a world characterised by volatility, uncertainty, complexity, and ambiguity (VUCA), coupled with constant advancements in information technology, the future of taxation is being redefined. As we stand on the cusp of a technological revolution, this exploration delves into how integrating blockchain, artificial intelligence, and advanced analytics is reshaping the Goods and Services Tax framework. GST 2.0 promises to enhance efficiency, ensure transparency, address emerging challenges, and create a seamless tax experience for all stakeholders.

To gain expert insights on this crucial development in the GST framework and understand industry expectations from GST 2.0, we engaged in a dialogue with **Karan Kakkar, Partner – Indirect Tax, Grant Thornton Bharat.**

With GST completing its seven years, what do you believe are the key elements and conditions that were crucial for the successful implementation and adoption of GST?

With GST completing its seven years, several key elements and conditions have been crucial for its successful implementation and adoption:

1. **Political will and consensus:** Cooperative federalism played a crucial role in ensuring that the interests of both the center and the states were balanced.
2. **Robust technological infrastructure:** Establishing the GSTN was fundamental in creating a seamless and efficient tax filing and compliance system. Continuous efforts in training and educating taxpayers and government officials on the technological aspects of GST ensured smooth adoption and minimised disruptions.

3. **Comprehensive stakeholder engagement:** Regular consultations with industry bodies, trade associations, and businesses helped address concerns, incorporate feedback, and refine GST provisions.

4. **Simplification and rationalisation of tax rates:** GST replaced multiple indirect taxes with a unified tax structure, simplifying the tax landscape and reducing the cascading effect of taxes. This simplification was crucial for businesses to adapt to the new regime.

How has the journey of GST been till now basis your practical experience?

Based on practical experience, the journey of GST in India over the past seven years can be described as a transformative yet challenging endeavour. The collaborative efforts of the government, businesses, and tax professionals have been pivotal in shaping the GST framework into a more streamlined and efficient tax system. Here are some key observations from this journey:

1. **Initial challenges and transition:** The initial phase saw several challenges, including technical glitches with the GSTN portal, confusion over compliance requirements, and resistance from some business sectors. Businesses, especially small and medium enterprises (SMEs), faced difficulties understanding and complying with the new tax regime. Training sessions and government support were crucial in helping them adapt.

2. **Continuous improvements and adaptations:** The government has made numerous policy adjustments to address the teething issues over the years. Regular updates and amendments to the GST law have been critical in refining the system based on practical feedback and evolving business needs. The GSTN portal has continuously improved to enhance user experience and streamline processes.

3. **Impact on business operations:** GST has simplified the indirect tax structure by consolidating various taxes into one, reducing the complexity and cascading effect of taxes. This has led to a more transparent and efficient tax system. The seamless input tax credit mechanism under GST has benefited businesses, allowing them to claim credits for the taxes paid on inputs and reducing the overall tax burden.

4. **Economic implications:** GST has contributed to the formalisation of the Indian economy by bringing more businesses into the tax net. This has increased the government's tax base and revenue collection. Different sectors have experienced varying impacts. While some industries, such as logistics and manufacturing, have benefited from the streamlined tax structure, others (like the service sector) have faced challenges adapting to the new compliance requirements.

The initial phase of GST implementation is challenging for both departments and taxpayers. Departments must ensure a smooth transition through robust infrastructure, training, and clear communication, while taxpayers must adapt to new compliance requirements, manage costs, and understand the new system.

What does GST 2.0 look like to you? Do you think upcoming technological advancements could enhance the efficiency and effectiveness of the GST system?

To me, GST 2.0 represents an evolution of the Goods and Services Tax system, incorporating advanced technological advancements to further enhance its efficiency, transparency, and effectiveness. By embracing upcoming technological advancements and fostering greater collaboration between stakeholders, GST 2.0 has the potential to drive economic growth, promote compliance, and enhance the overall tax ecosystem.

Here are some ways in which technology could revolutionise GST:

1. **Fraud detection:** AI (Artificial Intelligence) and ML (Machine Learning) can analyse large data sets to identify patterns of tax evasion and fraud more effectively than traditional methods.

2. **Predictive analytics:** These technologies can predict potential compliance issues and revenue trends, allowing authorities to take proactive measures.

3. **Enhanced transparency:** Blockchain can provide a transparent and immutable ledger for all GST transactions, reducing the potential for fraud and errors.

4. **Internet of Things (IoT):**

- **Real-time tracking:** IoT devices can track the movement of goods in real time, ensuring accurate GST reporting and reducing tax evasion through better supply chain visibility.
- **Automated inventory management:** IoT can facilitate automated inventory updates and reporting, simplifying GST compliance for businesses.

What are the key requirements of the industry from GST 2.0?

Industry stakeholders have several key asks from GST 2.0, aiming to streamline processes, enhance compliance, and improve the overall tax ecosystem:

1. **No denial of ITC on default of supplier:** The industry seeks resolution to denial of the ITC on default of the supplier even after taxpayers take careful due diligence to ensure dealing with legitimate businesses. The option to view the supplier's tax payment status is to be made available to the receiver to enable them to ensure conditions prescribed under the law are met.

2. **Dispute resolution and legal clarity:** The industry emphasises the need for a robust dispute resolution mechanism and greater legal clarity on GST provisions. Timely resolution of disputes and precise interpretation of tax laws are essential to provide businesses with certainty and confidence in compliance.

3. **Simplification of returns and option to rectify returns:** The industry advocates for simplifying GST return filing processes and implementing ANX-1 (outward supplies) and ANX-2 (inward supplies) to simplify return filing. Additionally, introducing a mechanism to amend GSTR-3B will help prevent inadvertent errors and facilitate accurate reporting of tax liabilities.

4. **Introduction of faceless assessments under GST:** In response to the surge of notices inundating taxpayers and the issuance of seemingly arbitrary orders by tax authorities, the industry is vocally advocating for heightened transparency, consistency, fairness, and a conducive environment for conducting business operations. Embracing the concept of faceless assessments, akin to those implemented under Income Tax laws, holds tremendous promise for the industry.

5. **Rationalisation of rates:** The industry urges the rationalisation of GST rates across various goods and services. A simplified and uniform tax structure will reduce complexities, minimise classification disputes, and promote ease of doing business.

6. **Centralisation of AAR:** Centralising the Authority for Advance Rulings under GST can ensure consistency and uniformity in tax interpretations across states. Having a centralised AAR mechanism will provide businesses with clarity on complex tax matters and reduce compliance uncertainties.

7. **Expansion of GST scope to include alcohol and petroleum:** The industry suggests expanding the scope of GST to include products such as alcohol and petroleum. Bringing these sectors under the GST ambit will eliminate cascading taxes, improve input tax credit utilisation, and promote a more cohesive tax framework.

8. **Integration of portals:** Seamless integration of various GST portals, including GSTN, e-way bill portal, and e-invoice, is essential to enhance operational efficiency and facilitate smooth data exchange between taxpayers and tax authorities.

04

Issues on your mind

What is the purpose of the new forms GST SRM-I and GST SRM-II introduced through Notification No. 04/2024 – Central Tax dated 5 January 2024? What information do they seek from taxpayers?

The government has introduced two new forms, GST SRM-I and GST SRM-II, through Notification No. 04/2024 – Central Tax – dated 5 January 2024. These forms aim to collect information from taxpayers dealing in certain specified goods. The purpose and information sought through these forms are as follows:

1. **Form GST SRM-I:** This form pertains to the registration and disposal of machines. Taxpayers dealing in the specified goods mentioned in the notification are required to provide information about the machines they use for manufacturing or processing these goods, such as details of the machines, their registration, and their disposal.
2. **Form GST SRM-II:** This form seeks information on inputs and outputs during a month. Taxpayers will be required to furnish details about the inputs (raw materials, consumables, etc.) used and the outputs (finished goods) produced during a specific month for the specified goods covered under the notification.

The GST portal has already made the facility available for taxpayers to file Form GST SRM-I, and the facility to file Form GST SRM-II will be made available shortly.

How does one get to know the status of enablement of GSTIN for e-invoicing system and generation of IRN?

On the fulfillment of the prescribed conditions, the obligation to prepare and issue invoice in terms of Rule 48(4) of the CGST Rules lies with the concerned taxpayer. However, as a facilitation measure, the taxpayers who had crossed the prescribed turnover (as per data available in the GST system) were enabled on the portal to report invoices. Taxpayers can search those GSTINs at: https://einvoice1.gst.gov.in/ **Search > e-invoice status of taxpayer.**

This information will be eventually made available through the 'Search Taxpayer' and 'Know Your Supplier' sections on the GST portal also.

For taxpayers who have the requirement to do e-invoicing but are not enabled on the e-invoice portal, a facility is provided whereby they can make an online declaration regarding the turnover and request for enabling on the portal, for the required GSTIN. For taxpayers who do not have the requirement to do e-invoicing but still their GSTIN appears as 'enabled' on the e-invoice portal, they can write to **support.einv.api@gov.in**.

What clarification has DGFT provided regarding the applicability of Notification No. 71/2023 dated 11 March 2024?

The DGFT introduced Notification No. 71/2023 on 11 March 2024, which has provided exemption on inputs imported by the holders of advance authorisations , EOUs, and SEZs from mandatory QCOs.

Regarding the applicability of this notification, the DGFT has issued Trade Notice No. 3/2024, clarifying the following:

1. The provisions of the notification are not applicable retrospectively. Advance authorisations issued before 11 March 2024 will continue to be governed by the provisions that were in effect at the time of their issuance.

2. The option to amend the existing advance authorisations issued before 11 March 2024 to incorporate the exemption is not available.

3. Clubbing (combining) advance authorisations issued under the new notification with those issued before 11 March 2024 is not permitted.

What is the hub and spoke model initiative launched by the CBIC?

The CBIC and the DoP have launched a scheme – the hub and spoke model – an initiative aimed at promoting India's exports through the postal route. This scheme harnesses the extensive postal network of 1.54 lakh post offices using digital technology and apps, and eliminates the intermediaries for seamless exports via postal services. This model utilises 28 FPOs as hubs and 1.54 lakh post offices as the spoke network. Exporters can file export documents electronically at the convenience of their home or office and deposit parcels at their nearest post office. The exporters can file the export documents, i.e., the postal bill of export, electronically, using the link – https://dnk.cept.gov.in/customers.web. This link will direct the user to the login page of 'Dak Ghar Niryat Kendra – Customer Portal'.

05

Important developments under direct taxes

CBDT provides relief from applicability of Section 206AA/206CC of the IT Act for certain cases where PAN has become inoperative

In March 2023, the CBDT provided the consequences of the PAN being inoperative (on account of failure to link it with Aadhaar). These consequences were effective from 1 July 2023 and continued until the PAN became operative again.

In relation to inoperative PANs, taxpayers received demand notices for the default of "short deduction/collection of TDS/TCS" since they had not deducted/collected tax as per Section 206AA/ 206CC of the IT Act for such cases. On account of such demand notices, taxpayers raised grievances with the CBDT. In order to address such grievances, the CBDT provided the following clarification for transactions entered up to 31 March 2024:

1. There will be no liability for the deductor/collector to deduct/collect tax under Section 206AA/206CC of the IT Act, if the PAN became inoperative on or before 31 May 2024.
2. However, the deduction/collection as per other provisions of Chapter XVIIB/XVIIBB of the Act, would be applicable.

(Circular No. 3 of 2023 and Notification No. 15 of 2023 dated 28 March 2023, Circular No. 6 of 2024 dated 23 April 2024)

CBDT releases new functionality in AIS to track status of information confirmation based on taxpayers' feedback

The AIS provides comprehensive details of financial transactions undertaken by the taxpayers having tax implications. Taxpayers can furnish feedback on every transaction listed in the AIS. This enables taxpayers to comment on the accuracy of the AIS information. The option for confirmation of information is available for the information furnished by tax deductors/collectors and reporting entities.

In order to increase transparency, the CBDT has recently introduced a new functionality in the AIS, which provides the status of action taken by the reporting source (i.e., tax deductors, tax collectors, reporting entities) on taxpayers' feedback. Taxpayers will now be able to check whether the feedback provided by them has been fully/partially accepted or rejected.

The new functionality has the following attributes:

- **Feedback confirmation status:** It indicates whether the feedback has been shared with the reporting source.
- **Feedback shared on:** It provides the date on which the feedback was shared with the reporting source.
- **Source responded on:** Date on which the reporting source responded to the taxpayers' feedback is provided.
- **Source response:** Details of response by the reporting source (if corrections are required or not) are reflected

(Press release dated 13 May 2024)

CBDT further extends the due date of filing Form No. 10A and 10AB to 30 June 2024

In May 2023, in order to address the difficulties faced by the charitable/religious trust, institution or fund in filing Form No. 10A and 10AB, the CBDT had extended the due date for filing Form No. 10A and 10AB to **30 September 2023**.

Considering the request for extension of the due date and in order to mitigate the hardships faced by the taxpayers, the CBDT further extended the due date for filing the aforesaid forms to 30 June 2024.

Further, regarding Form No. 10AB, the CBDT has provided the following clarification:

- **Extension of due date for pending applications:** If the trust/institution filed an application on or before the date of issuing this circular (i.e., 25 April 2024) and the Pr. Commissioner or Commissioner has not passed an order till 25 April 2024, such pending application may be regarded as a valid application.
- **If the application was rejected on account of it being furnished after the due date or under the wrong section code:** In such cases, a fresh application can be furnished within the extended due date (i.e., **30 June 2024**).

Further, it was clarified that if an existing trust/institution/ fund failed to file Form No. 10A for AY 2022-23 up to 30 September 2023, and subsequently, applied for provisional registration as a new trust/institution/fund and received Form No. 10-AC, then it can:

- Avail an option to surrender Form No. 10-AC; and
- Apply for registration for AY 2022-23 as an existing trust/ institution/fund in Form No. 10A within the further extended due date (i.e., **30 June 2024**).

(Circular No. 6 of 2023 dated 24 May 2023, Circular No. 7 of 2024 dated 25 April 2024)

SC dismisses review petition against its ruling on software taxation in the case of GE India Technology Centre Private Limited

The three judge bench of the SC has dismissed the review petition filed by the Revenue against the SC ruling in the case of ***GE India Technology Centre Private Limited Etc*** (this case was part of the Engineering Analysis batch of appeals) on merits and taking into consideration that the Revenue could not substantiate the delay in filing the review petition.

(GE India Technology Centre Private Limited Etc TS-276-SC-2024)

Traders' federation withdraws writ petition challenging constitutionality of Section 43B(h) of the Act

In April 2024, the Federation of ***All India Vyapar Mandal*** had filed a writ petition before the SC, challenging the constitutionality of Section 43B(h) of the IT Act, which was inserted vide the Finance Act, 2023 (w.e.f. 1 April 2024).

This writ petition has now been withdrawn by the Traders' federation.

(Writ Petition No.276/2024, Order dated 6 May 2024)

SC waives off interest on demand raised on telecom companies on account of treating variable license fee as capital in nature

In October 2023, the SC, in the case of ***Bharti Hexacom Limited***, held that the variable license fee paid by telecom companies is a capital expenditure and should be amortised over the remaining license period. Telecom companies had claimed such expenditure as revenue in nature, and consequentially, demands were raised on such companies on account of the aforesaid SC order (on account of recomputation of the expenditure claim from AY 2000-01 onwards).

A MA was filed by the telecom companies for the waiver of interest on the aforesaid demands raised on them. The SC has waived the payment of interest in relation to tax demands recomputed for AY 2000-01 onwards.

(Order dated 17 May 2024, Miscellaneous Application No.218 / 2024 in Civil Appeal No.11128 of 2016)

Glossary

AA	Adjudicating Authority
AIS	Annual Information Statement
AY	Assessment Year
BAS	Business Auxiliary Services
BCD	Basic Customs Duty
BIFR	Board for Industrial Finance and Reconstruction
BIS	Bureau of Indian Standards
BOE	Bill of Entry
CAS	CAS-Customs Automated System
CBDT	Central Board of Direct Taxes
CBIC	Central Board of Indirect Taxes and Customs
CCDA	CCDA-Computerised Customs Drawback Advice
Central Excise Act	Central Excise Act, 1944
Central Excise Tariff Act	Central Excise Tariff Act, 1985
CENVAT	Central Value Added Tax
Cenvat Credit Rules	Cenvat Credit Rules, 2004
CEPA	Comprehensive Economic Partnership Agreement
CESTAT	The Customs Excise and Service Tax Appellate Tribunal
CGST Act	Central Goods and Services Tax Act, 2017
CIF	Cost, Insurance and Freight
CoO	Certificate of Origin
CRCL	Central Revenue Control Laboratory
CTH	Customs Tariff Heading
CTI	Customs Tariff Items
Customs Act	Customs Act, 1962
DG(Systems)	Directorate General of systems
DGFT	Directorate General of Foreign Trade
DoP	Department of Post
DVAT Act	Delhi Value Added Tax Act, 2004
E-coo	Electronic Certificate of Origin
ECS	Electronic Clearing Service
eDDO	eDDO-Electronic Drawing and Disbursing Officer
EO	Export Obligation
EODES	Electronic Origin Data Exchange System
EOU	Export Oriented Unit
ePAO	ePAO-Electronic Pay and Account Offices
Finance Act	Finance Act, 1994
FPO	Farmer Producer Organization
FTDR Act	Foreign Trade (Development and Regulation) Act, 1992
FTP	Foreign Trade Policy
FY	Financial Year
GST	Goods and Services Tax
GST Act	Goods and Services Tax Act, 2017
GSTAT	Goods and Services Tax Appellate Tribunal
GSTIN	Goods and Services Tax Identification Number
GSTN	Goods and Services Tax Network
HC	High Court
IBBI	Insolvency and Bankruptcy Board of India
ICES	Indian Customs EDI System
IGST	Integrated Goods and Service Tax
INR	Indian Rupee
IRN	Invoice Reference Number
IT	Information Technology
IT Act	**Income-tax Act, 1961**
IT Rules	Income-tax Rules, 1962
ITC	Input Tax Credit
JDA	Joint Development Agreement
MA	Miscellaneous Application
MeitY	Ministry of Electronics and Information Technology
NCLAT	National Company Law Appellate Tribunal
NCLT	National Company Law Tribunal
NIC	National Informatics centre
OCP	Operational Certificate Procedure
OIO	Order In Original
PAN	Permanent Account Number
PFMS	PFMS- Public Finance Management System
QCO	Quality Control Orders
QR	Quick Response
RCM	Reverse charge mechanism
RVAT Act	Rajasthan Value Added Tax Act, 2003
SC	Supreme Court
SCN	Show cause notice
SEZ	**Special Economic Zone**
SICA	Sick Industrial Companies (Special Provisions) Act, 1985
SLP	Special leave Petition
ST Rules	Service Tax (Determination of Value) Rules, 2006
TCS	Tax Collected at source
TDR	Transfer Of Development Rights
TDS	Tax deducted at source
UAE	United Arab Emirates

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