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SHAPING A VIBRANT INDIA

GST Compendium

A monthly guide

April 2022

Editor’s note

An Economic Cooperation and Trade Agreement has been signed between India and Australia. This agreement is expected to significantly enhance the bilateral trade in goods and services and create new employment opportunities in the two countries.

The government has further extended the existing Foreign Trade Policy (FTP) 2015-2020 up to 30 September 2022.

To clear the pending litigation under the erstwhile regime, effective from 1 April 2022, the government of Maharashtra has introduced an amnesty scheme for settlement of arrears of tax, interest, penalty or late fee.

On the judicial front, the Apex Court has reiterated that the relationship of service provider and recipient is an important aspect to determine the taxability of transactions in case of revenue sharing agreements. The Apex Court has upheld the order of the Customs, Excise and Service Tax Appellate Tribunal (CESTAT), which had ruled that the act of exhibiting cinematographic films on own account is not a provision of service and thus, not liable to service tax.

In this edition, we have discussed various changes proposed under the Finance Act, 2022 in relation to availment of input tax credits under the GST law.

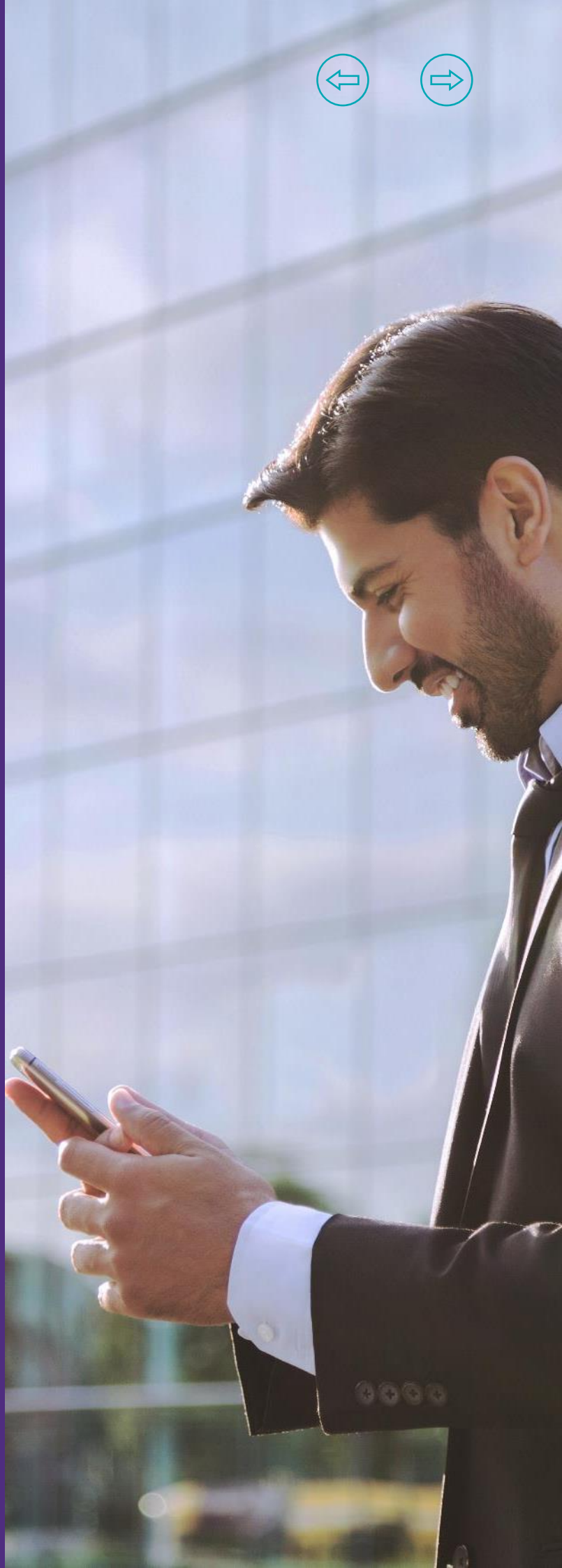
On the direct tax front, the Central Board of Direct Taxes (CBDT) has partially modified the faceless assessment and penalty regime. Further, relaxation has been granted for electronic filing of the requisite form for availing concessional tax rate of 22% for domestic companies.

To assist our readers to meet their tax compliances, we present a tax compliance calendar for Financial Year 2022-23, which should act as a ready reckoner/guide to meet some of their key compliance requirements.

Hope you will find this edition an interesting reading.

Vikas Vasal

National Managing Partner, Tax
Grant Thornton Bharat



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01 Activities/Steps to be undertaken upon commencement of financial year (FY) 2022-23

As the new financial year begins, it is imperative to have a look at various compliances which need to be taken into consideration. We have collated below the general compliances, which need to be adhered to by the registered persons at the beginning of the new financial year.

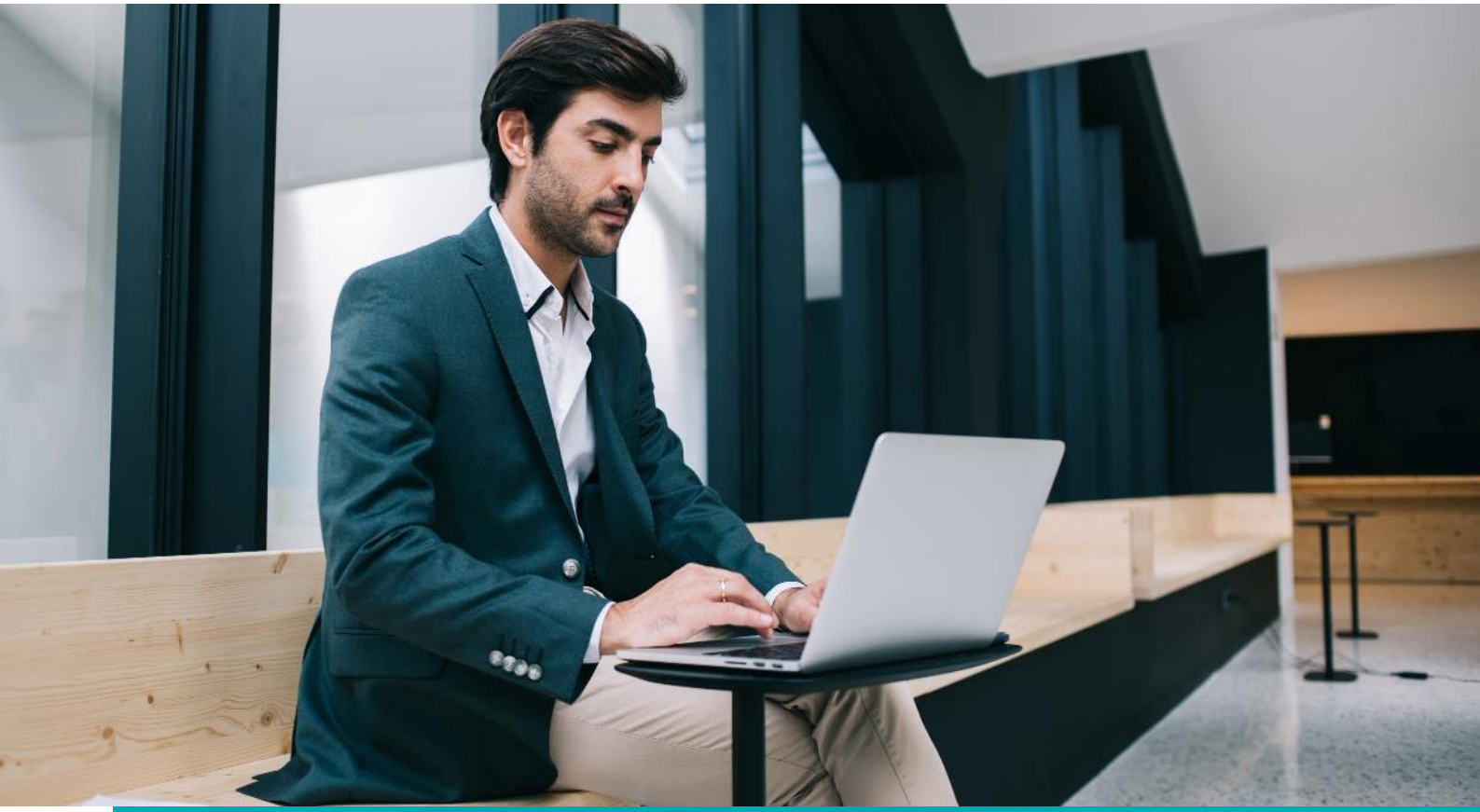
- **Unique invoice series:** New series of sales invoices, credit notes and debit notes needs to be started. Creation of a new/unique invoice series of invoices to be raised from 01 April 2022 should be ensured. The underlying concept is that every invoice needs to be unique and there should not be any duplication or repetition. When the invoice will be entered while filing GSTR 1, the GSTN portal should not flag it as repetitive for the same financial year. This implies that the invoice serial number should not repeat within the same financial year.
- **Mandatory e-invoicing:** The Central Board of Indirect Taxes and Customs (CBIC) has notified those registered businesses, having turnover above INR 20 crore, will have to mandatorily issue e-invoices for business to business (B2B) transactions with effect from 1 April 2022.
- **Submission of Bond along with Letter of Undertaking (LUT):** Every person engaged in making zero-rated supplies (exports) without payment of tax, is required to furnish LUT online through the Goods and Services Tax (GST) portal. LUT is granted for a particular financial year, hence LUT granted for FY 2021-22 has expired on 31 March 2022. Therefore, taxpayers are required to furnish a fresh LUT for year 2022-23, before effecting any such exports.
- **Time limit for opting out of Quarterly Returns Monthly Payment (QRMP) scheme:** The last date to opt-out of the QRMP scheme for taxpayers having turnover below INR 5 crore for the first quarter ending in June 2022, is 30 April 2022 (if opted in for the quarter January to March 2022).

1. Notification No. 1/2022-Central Tax dated 24 February 2022
2. Press release dated 18 February 2022

- **Annual calculation of Input Tax Credit (ITC) reversals:** Every registered person is required to reverse the ITC (availed on inputs and input services) attributable to exempt/non-business supplies on monthly basis. Subsequently, the amount so reversed on monthly basis is required to be recomputed on annual basis. If the amount already reversed falls short of the recomputed amount, then the balance amount is required to be paid along with interest starting from 01 April of the subsequent year till the date of reversal. Hence, to avoid unnecessary interest, the amount should be recomputed and reversed in the month of April itself.
- **Reconciliation activities:**
  - Reconciliation of electronic cash/credit/liability registers with books of accounts
  - Reconciliation of outward supplies, as per GST returns and books of accounts
  - Reconciliation of ITC, as per GST returns and books of accounts
  - Reconciliation of outward supplies, as per GST returns and e-way bill data
- **Reconciliation of ITC as per books and GSTR-2A:** Reconciliation of ITC as per books and Form GSTR-2A for the year 2021-22, so that timely communication can be made to the vendors for getting the discrepancies corrected (if any). However, as per the amendment made through Finance Act 2021, now the taxpayers would get the credit only if the corresponding vendor has uploaded the invoice on the GST portal.
- **Accuracy of disclosure of outward supplies:** Roll out a communication to customers to check if any of the invoices in respect of outward supplies need to be corrected.
- **Miscellaneous points:**
  - Final calculation of the amount to be cross charged to distinct persons
  - Amendments in GST registration certificate to include all the places of business
  - Choosing the frequency of the filing of the returns based on the turnover limit prescribed (number of digits of Harmonised System of Nomenclature code (HSN)to be reported accordingly)
  - Assessing the status of payments made under protest/ pre-deposits/ contingent liabilities
- **Industry /Taxpayer specific timelines: For banking companies, financial institutions and non-banking financial companies (NBFC)[1]:** Banking companies, financial institutions and NBFCs have an option to avail 50% of eligible ITC on inward supplies (instead of following the normal mechanism of proportionate reversal). Such companies can re-evaluate the viability of the option exercised by them, as the option once exercised, cannot be withdrawn for the remaining part of the year.
- **For foreign currency conversion service:** The taxpayers engaged in the conversion of foreign currencies have an option to change the valuation method selected earlier for computation of the value of service supply, in case of foreign currency conversion.[2]

1. Section 17(4) of the CGST Act, 2017
2. Rule 32 of the CGST Rules, 2017

02 Important amendments/updates



The India-Australia Economic Cooperation and Trade Agreement signed on 02 April 2022

The India-Australia Economic Cooperation and Trade Agreement (IndAus ECTA) has been signed on 02 April 2022. The IndAus ECTA, encompassing trade in goods and services, is a balanced and equitable trade agreement. This agreement will significantly enhance the bilateral trade in goods and services, create new employment opportunities, raise living standards and improve the general welfare of the peoples of the two countries.

The Indian Prime Minister said that the signing of IndAus ECTA in such a short span of time reflects the depth of the mutual confidence between the two countries. He also said, “On the basis of this agreement, together, we will be able to increase the resilience of supply chains, and also contribute to the stability of the Indo-Pacific region.”

The Australian Prime Minister said that the agreement further develops the promise of the relationship. Apart from increased trade and economic cooperation, IndAus ECTA will further deepen the warm and close ties between the people of the two countries by expanding work, study and travel opportunities.

Validity of Foreign Trade Policy (FTP) 2015-2020 further extended up to 30 September 2022

The government has further extended the validity of the existing FTP and the handbook of procedures up to **30 September 2022**, which was earlier extended up to 31 March 2022[3].

The validity of status certificates issued under FTP shall be later than five years from the date of the application filed for recognition or 30 June 2022 (which was earlier read as 31 March 2022).

Further, the validity of the norms ratified in respect of any advance authorisation shall be later than **30 September 2022** (which was earlier read as 31 March 2022) or three years from the date of ratification.

3. Notification No. 64/2015-2020 dated 31 March 2022

Exemption from IGST and compensation cess on imports under advance authorisations further extended

The CBIC has further extended the exemption from levy of IGST and compensation cess on imports under advance authorisations (including advance authorisation scheme for annual requirement, for export of prohibited goods and import of fabrics for manufacture and export of garments) and Export Promotion Capital Goods (EPCG) scheme up to **30 June 2022**[4].

Further, exemption from levy of customs duty and the integrated tax and compensation cess has been extended to specified goods imported on procured by Export Oriented Units (EOU's), Software Technology Parks (STP) Units, EHTP, units, etc. for specified purposes up to **30 June 2022**, subject to the conditions specified[5].

Government extended last date for submitting applications under scrip-based schemes

The Directorate General of Foreign Trade (DGFT) has notified certain amendments regarding extension of last date for submitting applications under scrip-based schemes.

Reward of INR 2 crore had been granted to an IEC holder under Merchandise Exports from India Scheme (MEIS) on exports made during the period 1 September 2020 to 31 December 2020. The government has now removed the ceiling of the total claim under the scheme, which was earlier prescribed as INR 5,000 crore.

Further, the government has extended the last date for submission of online applications for certain scrip-based schemes under the Foreign Trade Policy, which are as below:

Scheme	Coverage	Original last date of application submission	Revised last date of application submission (w.e.f. 07 March 2022)	Applicable late cut as % of entitlement under the scheme
MEIS	Exports made in FY 2020-21 up to 31 December 2020	28 February 2022	30 April 2022	Nil
2% additional ad-hoc incentive	Exports made during the period 01 January 2020 to 31 March 2020	28 February 2022	30 April 2022	Nil
Rebate of State and Central Taxes and Levies (RoSCTL) scheme	Exports made during the period 07 March 2019 to 31 December 2020	28 February 2022	15 March 2022	Nil
Rebate of State Levies on Export of Garments (RoSL) scheme	Exports made up to 06 March 2019 for which claims have not been disbursed under scrip based mechanism	28 February 2022	15 March 2022	Nil

4. Notification No. 18/2022-Customs dated 31 March 2022
5. Notification No. 19/2022-Customs dated 31 March 2022

Re-opening of application window for PLI scheme for white goods (air conditioners and LED lights)

On 7 April 2021, the Union Cabinet had approved the Production Linked Incentive (PLI) scheme for white goods (air conditioners and LED lights). The scheme was introduced for higher growth rates for AC and LED industries, the development of complete component ecosystems in India and the creation of global champions of manufacturing in India.

Online applications were invited for evaluation to select beneficiaries under PLI scheme. Earlier, 42 applications were selected that included 26 air conditioner manufacturing applicants and 16 LED lights manufacturing applicants.

Now, additional applications are invited on the same terms and conditions as stipulated in the scheme guidelines. The incentive shall be available only for the remaining tenure of the scheme.

The online application window shall be open during the period between 10 March 2022 and 25 April 2022**.** It is to be noted that no application shall be accepted after the closure of the application window.

Maharashtra Settlement of Arrears of Tax, Interest, Penalty or Late Fee Act, 2022

Background

The Maharashtra Settlement of Arrears of Tax, Interest, Penalty or Late Fee Act, 2022 shall come into force on 01 April 2022. This act is introduced to provide for the settlement of arrears of tax, interest, penalty or late fees which were levied, payable or imposed, respectively during the period ending on or before 30 June 2017, under various acts administered by the GST department and for the matters connected therewith or incidental thereto.

Eligibility for settlement

Any applicant (whether registered or not under the Relevant Act) is eligible, including an applicant who has availed benefits under any of the Amnesty Schemes. Cases litigated by the state are also eligible for settlement.

Adjustment and determination of arrears of tax, interest, penalty, or late fee, eligible for settlement

Any payment made on or before 31 March 2022 shall be adjusted in the following manner:

- Undisputed tax
- Disputed tax
- Interest
- Penalty and the late fee, sequentially

Post this, the amount remaining outstanding as of 01 April 2022 or any demand raised for the specified period during the period from 01 April 2022 to 30 September 2022, shall be considered for the settlement.

Payment options

- One-time payment option.
- Instalment option in case arrears > INR 50 lakh

Other key aspects

- Any arrears amounting to INR 10,000 or less per financial year as on 01 April 2022 along with post-assessment interest shall be written off.
- Separate application for each class of arrears for each financial year along with proof of payment shall be submitted.
- A delay of up to 30 days may be condoned in case the applicant could not apply within time, however, has already paid the requisite amount.
- The payment made on or before 31 March 2022 shall not be considered as a payment towards the requisite amount.
- The applicant shall not be entitled to any waiver in respect of un-disputed tax.
- In case payment made is less than the requisite amount, the designated authority shall compute the proportionate amount of waiver admissible in proportion to the requisite amount paid by the applicant.

4. Notification No. 18/2022-Customs dated 31 March 2022
5. Notification No. 19/2022-Customs dated 31 March 2022

Relevant timelines

Particulars	Time period
Submission of application	1 April 2022 to 14 October 2022
Duration of the payment	• One-time payment option- 01 April 2022 to 30 September 2022 • Instalment option- Minimum 25% during the period 01 April 2022 to 30 September 2022. The remaining amount in three equal quarterly instalments from the date of the application, failing which, interest at 12% p.a. would apply. All instalments are to be paid within nine months from the date of the application
Passing of order	• One-time Payment option- three months from the date specified for payment • Instalment option - the date specified for payment of the last instalment of the requisite amount
Application for rectification of error	60 days from the receipt date of order
Rectification of error by authorities	Six months from the date of the receipt of the order by the applicant
Appeal	60 days from the order date
Review of order	12 months from the date of service of order
Revocation of order of settlement	Two years from the end of the financial year in which, the order of settlement has been served
Power to remove difficulty	One year from the date of commencement of this Act

Category of arrears	One-time payment option*		Installment option	
	Amount to be paid (remaining waived off) for arrears			
	Up to 31 March 2005	1 April 2005 to 30 June 2017	Up to 31 March 2005	1 April 2005 to 30 June 2017
Disputed tax	30%	50%	34%	56%
Undisputed tax	100%	100%	100%	100%
Interest	10%	15%	10%	15%
Outstanding penalty	5%	5%	5%	5%
Post-assessment interest or penalty - not levied up to the date of application	Nil (100% waiver)	Nil (100% waiver)	Nil (100% waiver)	Nil (100% waiver)
Late fee payable in respect of returns filed on or before 31 March 2022	Not applicable	5%	Not applicable	5%

* Lumpsum payment where arrears involved are up to INR 10 lakh - 20% of the arrears to be paid under one-time payment option

4. Notification No. 18/2022-Customs dated 31 March 2022
5. Notification No. 19/2022-Customs dated 31 March 2022

Comprehensive Economic Partnership Agreement (CEPA) between India and United Arab Emirates (UAE)

Introduction

The India-UAE Comprehensive Economic Partnership Agreement (CEPA) was signed on 18 February 2022. It covers almost all the tariff lines dealt in by India (11,908 tariff lines) and the UAE (7,581 tariff lines), respectively. The agreement is expected to come into force on **01 May 2022.**

The agreement will cover trade in goods, rules of origin, trade in services, trade remedies, technical barriers to trade (TBT), sanitary and phytosanitary (SPS) measures, dispute settlement, movement of natural persons, telecom, Customs procedures, pharmaceutical products, government procurement, intellectual property, investment, digital trade, SMEs (small and medium enterprises, including micro-enterprises) and cooperation in other areas.

Highlights of CEPA

- **Custom Duties:** Elimination of all customs duties applied on goods originating from the other party and no impairment for any of the tax concessions made. India shall eliminate its customs duties in accordance with Annex 2A and UAE in accordance with Annex 2B.
- **Grant of temporary admission:** Granting temporary admission free from customs duties on certain goods imported from other party regardless of their origin. Parties shall not impose any condition on temporary admission.
- **Import licensing:** Ensuring transparent implementation of import procedures in accordance with Import Licensing Agreement. Parties shall notify each other about the existing import licensing procedures and any modification or new procedure made thereafter.
- **Export subsidies:** Parties shall not introduce or maintain export subsidies contrary to their obligations.
- **Non-tariff measures:** Neither of the parties shall adopt or maintain non-tariff measures on the importation or exportation of any goods.
- **Origin criteria:** A product shall be deemed as originating and shall be eligible for preferential treatment if it is wholly obtained or produced in the territory of the party as prescribed or it has undergone sufficient working or production as per the product-specific rules.
- **Proof of origin:** The proof of origin of an exported product shall be provided through any of the following means:
  - A paper Certificate of Origin in electronic or hard copy format issued by a competent authority
  - A fully digitised certificate of origin (e-certificate) issued by a competent authority and exchanged by a mutually developed electronic system
  - An origin declaration made out by an approved exporter
- **Advance ruling:**
  - The party shall provide for the issuance of an advance ruling, prior to the importation of a good into its territory to an importer of the good in its territory or to an exporter or producer of the good in the territory of the other party.
  - Each party shall issue rulings as to whether the good qualifies as an originating good or to assess the good's tariff classification.
  - Each party shall issue its determination regarding the origin or classification of the good within a reasonable, time-bound manner from the date of receipt of a complete application for an advance ruling.
- **Paperless trading:** Make trade administration documents available to the public in digital or electronic form and accept documents submitted electronically as the legal equivalent of the paper version.
- **Bilateral investment treaty:** The parties shall establish a UAE-India technical council on investment and trade promotion and facilitation, with an objective to promote and enhance trade and investment between parties, hold a consultation on specific matters, facilitate investment and trade flows, etc.
- **SMEs:** The parties shall cooperate to enhance commercial opportunities for SMEs such as collaborating with other parties to promote SMEs owned by women and youths, start-ups, etc. Additionally, an SME committee may be set up on SME issues. The committee may collaborate with experts to carry out its programs and activities.
- **Economic cooperation:** The parties shall focus on promoting economic cooperation in order to facilitate trade between parties and foster economic growth.
- **Dispute settlement:** Parties shall make attempt to cooperate and arrive at a mutually satisfactory resolution. But in case of dispute, parties shall seek consultations in good faith to arrive at a mutually agreed solution.
- **Duration:** The agreement shall be valid for an indefinite period and any of the parties can terminate it through written notification to the other party.

CBIC issues standard operating procedure (SOP) for scrutiny of returns for FY 2017-18 and 2018-19

The CBIC as an interim measure has issued instructions for scrutiny of returns in the form of standard operating procedure (SOP) to ensure uniformity in the selection/identification of returns for scrutiny, methodology of returns and other related procedures. This SOP has been prescribed to conduct scrutiny of returns with minimal interaction with registered persons[6].

Key aspects for consideration

- The scrutiny of returns begins with the selection of returns on robust risk parameters, informing the registered person about discrepancies (if any) noticed in such returns and requesting an explanation.
- Proceedings are concluded if the person accepts the discrepancy and pays the required tax and interest. But if he does not provide a suitable explanation or does not pay tax or interest after accepting the discrepancy, then appropriate action may be initiated against him.
- The Directorate General of Analytics and Risk Management (DGARM) has been assigned to select the GST Identification Number (GSTINs) for scrutinisation of their returns. The DGARM further communicates the data to the field formations which may change at the time of scrutiny by the proper officer due to subsequent compliances by the taxpayer or his supplier.
- The scrutiny of returns of the registered taxpayer may be conducted by Superintendent of Central Tax (assigned as proper officer) in-charge of jurisdictional range of taxpayer.
- The proper officer shall finalise the scrutiny schedule with approval from divisional assistant/deputy commissioner. The GSTINs that appear risky on likely revenue implication may be prioritised. The scrutiny schedules shall be reported to Directorate General of Goods and Services Tax (DGGST) in the manner prescribed. Also, a minimum of three GSTINs per month shall be scrutinised, wherein all returns pertaining to the GSTIN are identified.
- The proper officer shall scrutinise the returns through details available on various sources like DGARM, GSTN, e-way bill portal, etc. For the purposes of scrutiny, the proper officer shall ensure minimum interface with the taxpayer.
- A notice in Form GST ASMT-10 shall be issued to the taxpayer informing him of the discrepancies noticed and seeking a suitable explanation. All returns of the registered person shall be compiled for this purpose.
- The person on accepting the discrepancy shall pay the tax, interest and any other amount through GST DRC-03. They shall furnish the explanation for the discrepancy in FORM GST ASMT-11.
- When the proper officer is satisfied with the explanation provided, then he may conclude the proceedings through FORM GST ASMT-12.
- If no suitable explanation is received within a period of 30 days from GST ASMT-10 or any period prescribed by the proper officer or the taxpayer fails to pay the tax, interest, and any other amount after accepting the discrepancy, then the proper officer shall initiate action for demand of such tax.
- The scrutiny of returns is to be conducted in a time bound manner so that necessary actions to safeguard the revenue department may be taken on timely basis. A list of the process along with timelines have been prescribed by the board.
- A scrutiny register shall be maintained, and a scrutiny progress report shall be prepared by the proper officer at the end of every month. The monthly reports shall be compiled and sent to DGGST by the 10th of the succeeding month. Further, DGGST shall present the report to the board by the 20th of the corresponding month.
- For the purpose of scrutiny, communication with taxpayers may be done through DIN (Director Identification Number) till the time the scrutiny module is made available.

CBIC issues the Customs (Electronic Cash Ledger) Regulations, 2022

The CBIC has notified the Customs (Electronic Cash Ledger) Regulations, 2022 which shall come into force w.e.f. **1 June 2022**[7].

Manner of maintaining Electronic Cash Ledger (ECL)

- The ECL shall be maintained in Form ECL-1 on the common portal for each person in respect of every deposit towards tax, interest, penalty, fee or any other amount as prescribed under the Customs laws. Such deposit shall be made by generating a deposit challan in Form ECL-2 having a validity of 15 days.
- No interest shall be accrued on deposits made in the ECL.
- A unique identification number shall be generated for each entry, which shall be indicated in the relevant customs declaration.
- Authorised modes of deposit are
  - Internet banking through an authorised bank
  - National electronic fund transfer (NEFT) or real-time gross settlement (RTGS) from any bank
  - Over the counter payment (not more than INR 10,000 per day) through an authorised bank

Note: Commission payable to bank in respect of payments shall be borne by the person making such deposit.

6. Instruction No. 02/2022-GST dated 22 March 2022
7. Notification No. 20/2022-CUSTOMS (N.T.) dated 30 March 2022

- In case of deposits made through an authorized mode other than internet banking, a mandate form shall be generated along with a deposit challan which shall be deposited to the bank. Such mandate form shall be valid for 15 days from the generation date of the deposit challan.
- Upon successful credit of deposit, a Challan Identification Number (CIN) is generated by the collecting bank and shall be indicated in the deposit challan. Upon receipt of such a number, the amount shall be credited in the ECL.
- In case where no CIN is generated or generated but not communicated, the person may represent electronically through the common portal to the bank or electronic payment gateway.

Manner of payment from ECL

- A person may make payment through payment challan in Form ECL-3 generated by the customs automated system or by the person on his own ascertainment of duty.
- The amount as indicated in the payment challan shall be automatically debited from ECL by the customs automated system in case the person has given consent for auto-debit and a sufficient amount is available in the ECL for payment.
- The successful debit shall be visible on the electronic cash ledger and the credit shall be shown in the electronic duty payment ledger (cash) maintained in Form ECL-4.

Refund

- Refund may be applied for the balance amount lying in the ECL after payment under the Customs law on the portal in Form ECL-5.
- Once the application for refund has been filed, the amount cannot be used by the person and the refund shall be decided within 30 days from the date of application.
- In case of any discrepancy in the ECL, the person shall communicate it on the common portal.

Government of Kerala decides to extend Kerala Amnesty Scheme for 2022

Background

The government of Kerala has decided to continue the amnesty scheme introduced in 2020 by implementing all the existing conditions prescribed under the scheme.

The government has notified **31 August 2022** as the last date to file an option to settle arrears under the scheme **and 31 December 2022** as the last date for completing payment of arrears[8].

Key features of the Amnesty scheme, 2022

- **Eligibility:** All pending tax arrears (except those under the Kerala General Sales Tax Act (KGST) from 2005 onwards) are eligible. In case of such arrears under KGST Act, the principal amount, along with interest, shall be paid and there shall be a full waiver of penalty. The scheme shall also be available for those taxpayers also who had failed to settle their arrears under the previous amnesty scheme.
- **Waiver of arrears:**

Demand	Waiver
Penalty and interest	100%
Outstanding dues paid in lump sum	40% of balance tax arrears
Outstanding dues paid in instalments	30% of balance tax arrears

- **Payment of arrears in instalments:**

First instalment	Not less than 20% of the amount determined
Balance	To be paid in instalments, subject to a maximum of four instalments

- **Demands newly generated after 31 August 2022:** Option shall be exercised within 30 days from receipt of order and final payment shall be made on or before **31 December 2022.**
- **Arrears under revenue recovery process:** The assessing officer shall withdraw all revenue recovery proceedings against the assessee if he opts for the amnesty scheme and makes full payment of his dues under the scheme. Further, the assessee shall specify whether payment had been made in lump sum or instalments.

8. Circular No. 5/2022 dated 25 March 2022

Procedure for availing the scheme

- For the assessee having outstanding arrears, details of arrear demand can be viewed year-wise on www.keralataxes.gov.in by generating one time user ID and password.
- In case of willingness, consent for the opting scheme shall be made electronically along with specifying the manner of payment.
- The authorities, within seven days, shall verify and approve the option. Post this, e-payment shall be made.
- The assessee can submit their representation along with documents in case of discrepancies regarding outstanding dues and payments. Authorities shall examine the case within two days.

Note:

- Assessee opting for this scheme shall withdraw all cases pending before any appellate or revisional authority, tribunal, or courts.
- No manual filing of options or payment is permissible.
- Assessee who fails to make payment in instalments shall be deemed to be skipped out of this scheme.

Other key features

- The assessee can settle arrears relating to a particular year provided that all such arrears have opted.
- The credit of part payment for unsettled cases of 2020-21 shall be given manually or through the collection/remission module.
- In case of non-utilisation of penalty, demand can be settled upon payment of applicable tax pertaining to the unutilised penalty.

Government issues advisory on e-scrip account creation to avail export incentive schemes

The Indian Customs Electronic Gateway (ICEGATE) has developed an e-scrip module to provide a digital service to exporters to avail of benefits defined under various incentive schemes like RoDTEP (Remission of Duties and Taxes on Exported Products) and RoSCTL (Rebate of State and Central Taxes and Levies). The scheme provides for rebates of the central, state and local duties/taxes/ levies, which are not refunded under any other duty remission schemes.

In this regard, the Directorate General of Systems and Data Management (DG Systems) has issued an advisory detailing a step-by-step guide for the user to create an e-scrip account, generate scrips and transfer the scrips to any other IEC to avail the benefit of the scheme[9].

Further, the DG Systems has informed that for Chapters 61, 62 and 63, RoSCTL would continue to be given beyond 31 December 2020 and till 31 December 2024, instead of RoDTEP. Implementation of RoSCTL scheme in Custom Automated System has also been developed. The detailed advisory can be viewed here.

DGFT clarifies on operationalisation of new IT Module for Interest Equalisation Scheme

The DGFT has operationalised a new online module for filing of electronic registration for the Interest Equalisation Scheme, effective from 01 April 2022. In this regard, it has informed that all exporters seeking benefit under the Scheme need to apply online by navigating to the DGFT website > Services > Interest Equalisation Scheme. A Unique IES Identification Number (UIN) will get generated automatically, which is required to be submitted to the concerned bank when availing Interest Equalisation against their pre and post-shipment rupee export credit applications. An SMS and email intimation of the UIN generated will be sent to the registered email account and mobile number of the exporter. The charges for generating UIN shall be INR 200 and is to be paid online. In case of any correction / amendment, new UIN needs to be generated.

The UIN generated shall have a validity of one year from the date of registration, during which an application for availing benefit of IES can be submitted to the concerned bank. The auto-generated Acknowledgement containing UIN number needs to be submitted to the concerned bank along with the prescribed application by the bank, for availing benefit under IES. It will be mandatory for an exporter to submit UIN acknowledgement to the concerned bank for all applications made on or after 01 April 2022[10].

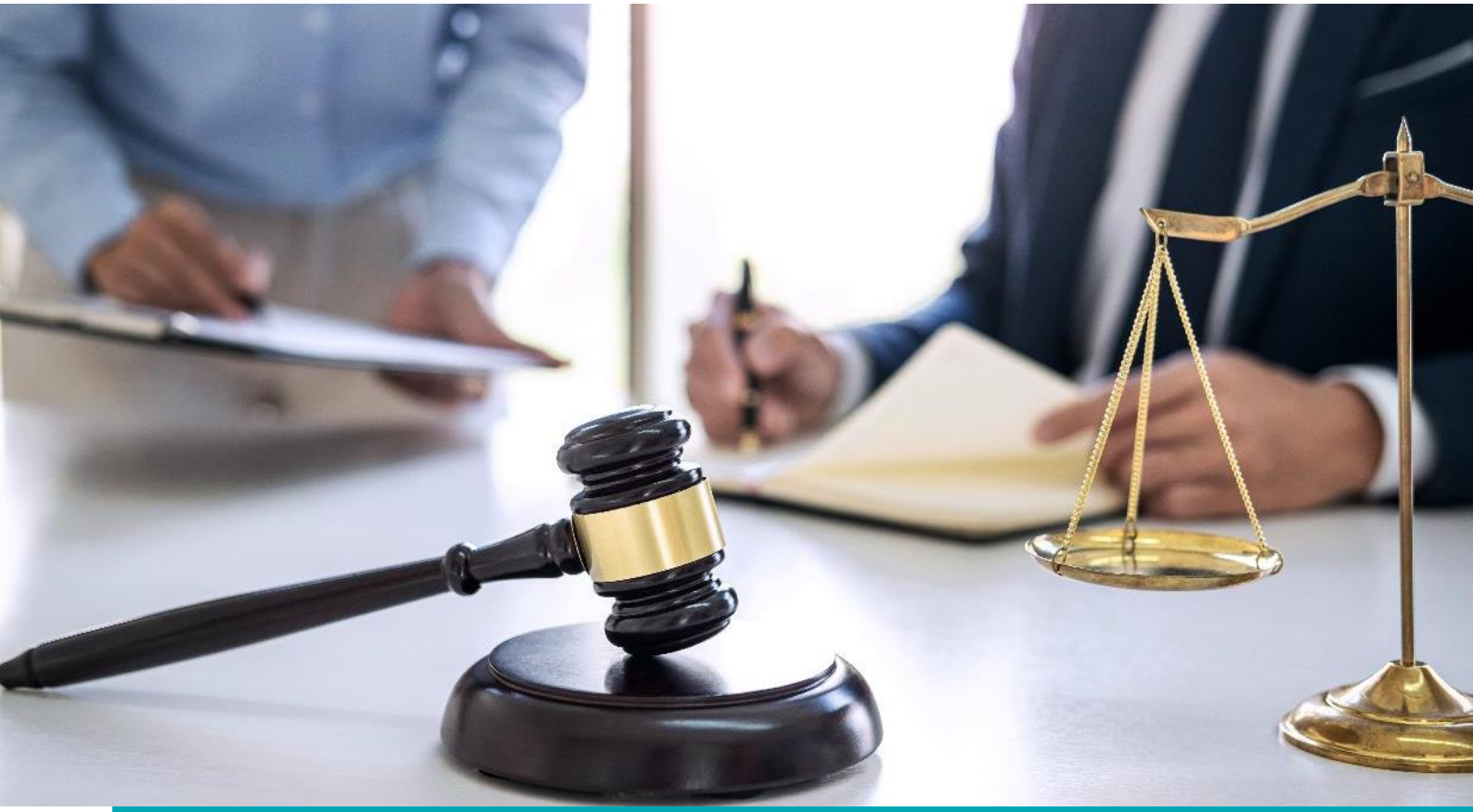
Due date for filing annual Kerala Flood Cess return extended

The Government of Kerala had earlier implemented the Kerala Flood Cess with effect from 01 August 2019. Further, it had also notified an annual return and reconciliation statement for Kerala Flood Cess.

The taxpayers were facing technical issues on the electronic system for filing returns for the period 2019-20 and 2020-21. Therefore, the state government has further extended the due date for filing the annual Kerala Flood Cess return in Form KFC-A1 for the year 2019-20 and 2020-21 from 15 March 2022 to **30 April 2022**[11].

9. Advisory No. 06/2021 dated 21 March 2022
10. Trade Notice No. 38/2021-22 dated 15 March 2022
11. Notification No. 2/2022-State Tax dated 17 March 2022

03 Key judicial pronouncements



Appeal is maintainable before High Court since the issue pertains to exemption and not the rate of duty – SC

Summary

The Supreme Court (SC) has opined that a dispute regarding exemption cannot be equated with a dispute in relation to the rate of duty. These are distinct and mutually exclusive. The SC has upheld the view of Kerala High Court (HC) that the principal issue in a given case is determining whether the vessel is a foreign going vessel (FGV) or not and it is not in relation to the rate of duty. The SC observed that the appeal is maintainable before the HC since it pertains to the availability of exemption and hence, agreed with the view taken by the HC.

Facts of the case

- The petitioner[12] operates CS Asean Explorer (vessel AE) for laying, repairs and maintenance of submarine cables which is stationed at Kochi. For this purpose, it had entered into agreement with various telecommunication companies.
- A show cause notice (SCN) was issued to the petitioner wherein the department alleged that the vessel cannot be considered as an FGV. Hence, the exemption for ship stores, spares, bunkers, etc. cannot be availed.
- The petitioner contended that the activities undertaken by vessels are in terms of SEAICOMA[13]. Further, only one cable recovery took place within the territorial waters of India out of all the operations.
- The petitioner submitted that the vessel was all time engaged in operations outside India and thus, qualifies as an FGV under the provisions[14] of the Act. Therefore, the petitioner is exempted from payment of any duty. Thus, no assessment is required for the determination of the amount payable.

12. M/s. Asean Cableship Pvt. Ltd
13. South East Asia and Indian Ocean Cable Maintenance Agreement ("SEAICOMA" / "Agreement")
14. Section 2(21) and Section 87 of the Customs Act, 1962

CESTAT Bangalore observations and ruling[15]

- **ASEAN explorer is an FGV:** On perusal of inclusive definition[16], it was observed that the vessel was an FGV with no specific time period as prescribed in the definition. The status of the vessel cannot be decided on a piecemeal basis since the contractual terms require a continuous and long drawn engagement.
- **Status of FGV determined by terms of agreement:** The status of any FGV does not change just because only one or two engagements were undertaken in territorial waters of India. Rather, it is determined by terms of SEAICOMA, irrespective of the fact that the vessel was docked at Cochin Port for a majority of the time and for once, it undertook work in the territorial waters.
- **Eligible for exemption:** As per the provisions[17], till the time the vessel holds the status of FGV, it is entitled to the exemption from payment of duty.
- **Extended period not invocable:** The extended period cannot be invoked in the present case as in the past also, the customs officers have boarded the vessel berthed at Cochin Port for supervision and have even undertaken their routine formalities. However, the petitioner is liable to pay duty on stores consumed while performing in India.

Kerala HC observations and ruling[18]

- **Maintainability of appeal:** The significant question was regarding whether the vessel is an FGV or not and not about the determination of rate of duty. The question of payment of duty or rate of duty will depend only on the question first posed. The case's jurisdictional fact holds it eligible for maintaining an appeal before High Court. Further, it is not covered under the exceptions provided under the provision[19].

SC observations and ruling[20]

- **Disputes are distinct:** The issue related to exemption entitlement and determination of the rate of duty is different. The submissions of the petitioner regarding the applicable rate of duty have no substance. Hence, the disputes regarding exemption cannot be equated with a dispute in relation to the rate of duty.
- **Appeal maintainable before HC:** The HC is correct in observing the main question which is not in relation to the rate of duty. The SC affirmed the view taken by the HC. In a similar judgement[21], it was held that the appeal filed w.r.t. availment of exemption is maintainable before the HC and not the Apex Court.

Our comments

The question relating to the rate of duty is specifically excluded for preferring appeal at High Court under the Customs law.

Earlier, the Apex Court in the case of Motorola India Limited and Madras High Court[22] in the case of BMW India Private Limited[23] had held that appeals having questions related to the rate of duty or value of goods for the purpose of assessment would only lie before the Supreme Court and rest all cases shall lie before High Court.

The present ruling is also in line with the above rulings and is likely to set precedence in a similar matter. The ruling clearly states that the availability of an exemption is different from determining the rate of duty. Hence the appeal is maintainable under High Court.

However, it is interesting to note that such an exception related to the filing of appeal in relation to the rate of duty or value of goods before the High Court is not provided under the GST regime.

15. Customs Appeal No. 27102 of 2013, 27115 of 2013; Final Order No. 20218-20219/2020 dated 18 February 2020
16. (ii) of Section 2(21) of the Customs Act, 1962
17. Section 87 of the Customs Act, 1962
18. Cus. Appeal No. 1 of 2021, Order dated 17 Dec 2021
19. Section 130 of the Customs Act, 1962
20. Special Leave Petition (C) No.2208 of 2022, Order dated 15 March 2022
21. Commissioner of Customs vs. Motorola (India) Ltd., (2019) 9 SCC 563.
22. 2019 (9) TMI 229 - Supreme Court
23. Civil Miscellaneous Appeal No.2043 of 2019

Agreement has to be read in toto; mere consideration on piece rate basis wouldn't make it a job work contract – SC

Summary

The SC has held that for granting the exemption based on the nature of the agreement, the said agreement should be read as a composite whole. The SC viewed that just because the agreement contained a provision for payment on a rate basis, it would not make it a job work agreement and mentioned that crucial elements of a job work agreement were missing in the said agreement. Accordingly, opined that the contract is a pure and simple contract for the provision of contract labour and an attempt has been made to camouflage it as a contract for job work.

Facts of the case

- The appellant[24] had obtained Service Tax registration under the category of 'Manpower Recruitment or Supply Agency Service'. The appellant entered into an agreement with a party[25] for providing personnel for activities, such as felting, material handling, pouring and supply of material to the furnace.
- A show cause notice[26] (SCN) was issued demanding service tax along with interest and with a proposed penalty[27]. The SCN alleged that the appellant failed to assess and discharge the service tax liability on or before the due date and had suppressed the facts and made misrepresentation by filing incorrect returns[28].
- Placing reliance on certain judgements[29] the appellant argued that when the invoices were raised on the basis of work done on piece rate, the nature of work would be considered as job work and not manpower supply. Accordingly, it is eligible to avail exemption.

Mumbai CESTAT observations and ruling[30]

- **Appellant is a 'contractor':** The agreement provides for payment of wages to workman/employees by the appellant along with the mode of payment. It also provides for payment of statutory dues with proper records of the same and provides for recovery of such payment from him in case the company faces a financial burden. On a perusal of the terms and conditions of the contract, it is abundantly clear that the appellant qualifies as a contractor[31].
- **Not liable for exemption as per notification:** The agreement entered into by the appellant is not a job work contract, but a contract labour agreement executed for the purpose of providing required manpower. Hence, the services provided do not qualify for exemption as per notification[32].
- **Extended period of limitation and imposition of penalty:** The non-payment of service tax by treating the agreement as a job work agreement was not brought to the knowledge of the department, hence extended period of limitation can be invoked. Further, a penalty for delayed payment of tax can be imposed even if the appellant has no malafide intention or claims no means.

SC observations and ruling[33]

- **Whether appellant is a job worker:** The definition of 'contractor' in the first part comprehends a person who undertakes to produce results for an establishment and the latter covers the supply of contract labour for any work of the establishment.
- **Reading the agreement as a whole:** The agreement contains a provision for payment on a rate basis. Upon reading of the agreement, it appears as a pure and simple contract for the provision of contract labour. Thus, a complete reading of the agreement is required to determine the nature of the contract.
- **Attempt to camouflage the contract as a job work contract:** The agreement deals with the regulation of manpower supplied by the appellant in their capacity as a contractor. There is an absence of certain terms such as nature of the process of job work, delivery schedule, specifications of work to be performed, etc. in the agreement which disqualifies the appellant from being a job worker. Therefore, there has been an attempted to camouflage the contract as a job work contract to avail the benefit of exemption from payment of service tax.

Our comments

In the contract for the supply of manpower, the supplier deploys manpower that works under the effective control of the service recipient for the period of the contract. On the other hand, in the case of job work service, the service recipient is assigned a particular job.

In the case in hand, the Apex Court has reiterated the importance of the agreement to substantiate any transaction. It has assigned a significant amount of importance to the nature and terms of the job work agreement such as the nature of the process of work, delivery schedule, provisions for maintaining the quality of work, etc.

For such reasons the Apex Court has held that in order to decide the eligibility of exemption, the agreement should be read as a composite whole.

24. Adiraj Manpower Services Pvt. Ltd.
25. Semco Electric Pvt. Ltd. (later known as Sigma Electric Manufacturing Corporation Pvt. Ltd.
26. "Sigma")
27. On 26 September 2014
28. ₹ 10,50,23,672 under Section 76
29. ST-3 returns
30. Om Enterprises v. Commissioner of Central Excise, Pune-I,2018 (17) G.S.T.L. 260; Bhagyashree Enterprises v. Commissioner 2017 (3) G.S.T.L.515 Dhanashree Enterprises v. Commissioner 2017 (5) G.S.T.L., & S. Balasubramani v. Commissioner2019 SCC OnLine CESTAT 480
31. Service Tax Appeal No. 86153/2015; Order No. - A/86237/2019 dated 15 July 2019
32. Under Section 2(c) the Contract Labour (regulation and Abolition) Act, 1970.
33. Sl No 30 of exemption Notification No 25/2012-ST
34. Civil Appeal No. 313 of 2021 dated 18 February 2022

No service tax applicable on exhibiting films on revenue sharing basis - SC

Summary

The SC has affirmed the findings of the CESTAT or Tribunal that the act of exhibiting cinematographic films on its own account is not a provision of service and thus, not leviable to service tax. The CESTAT had opined that a revenue-sharing arrangement does not necessarily mean provisioning of service unless a service provider and service recipient relationship is established. The CESTAT observed that the agreement was on a principal-to-principal basis and the appellant was not providing any service to the producer/distributor.

Facts of the case

- The appellant[34] is engaged in the business of exhibiting cinematographic films across India in theatres. The appellant acquires a license to exhibit films for which consideration is paid as a percentage of box office collection.
- The department issued two SCNs to the appellant demanding service tax on the ground that it was providing infrastructure support services which is a taxable service under BSS[35].
- Placing reliance on certain decisions[36], the appellant contended that revenue sharing arrangement does not necessarily imply the provision of service until the establishment of a relationship as a service provider and recipient.
- Further, the appellant alleged that the service tax demand shall be set aside as there is no provision of any service to the distributor/producer[37].

Hyderabad CESTAT observations and ruling[38]

- **Agreement is on a principal-to-principal basis:** Under the agreement, the producer has granted non-exclusive rights to the appellant to exploit the theatrical rights of films. Whereas the ownership rights, copyrights and other intellectual property rights stand vested with the producer. Thus, the agreement is on a principal-to-principal basis as it does not constitute a partnership or agency between parties. Each party is entitled to conduct its business at its absolute and sole discretion.
- **No provision of service:** In a similar case[39], the tribunal had observed that the appellant did not provide any service to the distributors. Further, the distributors did not make any payment to the appellant as consideration for the alleged service. If the appellant was providing any service, then it would have received payment for the same. But contrary to this, the appellant is paying consideration for granting a license.
- **Service tax cannot be levied:** Placing reliance on circular[40],, it was clarified that the exhibition of movies provided by distributors is not a support or assistance activity but is an activity of its own accord. Thus, no service tax can be levied on the appellant under BSS.
- **The Commissioner cannot act beyond the scope of SCN:** The demand order was confirmed on the basis that the appellant was providing infrastructure support service. Whereas in the SCN, it was alleged that the appellant was providing 'operational and administrative assistance. Hence, the act of going beyond the scope of SCN by the Commissioner is not sustainable.

SC Observations and ruling[41]

- **Affirmation of CESTAT observations:** It was held that the CESTAT has taken absolutely correct view and there is no reason to interfere with the order passed by the tribunal.

Our comments

Earlier it had been held by the CESTAT Allahabad in the case of PVS Multiplex India Private Limited[42] that service tax was not required to be paid on payments made to distributors for screening the films on revenue sharing basis.

Even it was also held by the CESTAT Mumbai in case of Mormugao Port Trust[43] that a contractor-contractee relationship is an essential element of any taxable service that was absent in the relationship among the partners or co-venturers or between the co-venturers and joint venture.

The present SC ruling is in line with the above rulings and upheld that the relationship between the service provider and the recipient is an important aspect to determine the taxability of transactions in revenue sharing agreements.

This principle may be relevant under the GST regime also. It appears that in case the agreements entered are not on a principal-to-principal basis, such transactions would be taxable under GST.

The nature of the transaction determines the taxability hence each case is required to look into, and decisions be taken on a case-to-case basis.

34. Inox Leisure Limited
35. Business Support Services defined in sub-section 104(c) of section 65 of the Finance Act
36. Mormugao Port Trust vs. Commissioner of Customs, Central Excise & Service Tax, Goa (Vice-Versa); M/s. Old World Hospitality Limited vs. CST, New Delhi; Delhi International Airport P. Ltd. vs. Union of India & Ors.
37. SPE Films
38. Service Tax Appeal No. 30488 of 2016 and Service Tax Appeal No. 30489 of 2016; Final Order No. 30338-30339/2021 dated 20 Oct 2021
39. Division Bench of the Tribunal in Moti Talkies
40. Circular dated 23.02.2009 issued by the Central Board of Excise and Customs
41. Civil Appeal No.1335 of 2022, Order dated 28 Feb 2022
42. Appeal No. ST/70563/2016-CU[DB]
43. Appeal No. ST/86337, 86592/15

Doctrine of Necessity invoked for availment of transitional credit - Madras HC

Summary

The Madras High Court (HC) allowed credit of service tax paid under RCM (after the Goods and Services Tax introduction), which could not be availed as transitional credit. The HC ruled that chance of seeking refund or credit cannot be denied merely because transitional provision has come into effect and credit could not be claimed under Section 140(1). The HC observed that the taxpayer should not be rendered remediless and, hence, invoked the doctrine of necessity as HC felt it a dire necessity for the legislation to address such situations. The HC noted that if the GST regime had not come into effect, the petitioner would have been eligible to claim CENVAT credit of all the amounts paid. Thus, the HC suggested the Revenue to carry forward the credit in the electronic credit ledger of the petitioner.

Facts of the case

- The petitioner[44] is engaged in providing various construction services to the government/private parties. During the CERA audit, it was pointed out that the petitioner is liable to pay service tax under RCM on services rendered at quarries for which royalty was paid to the government.
- Such service tax was paid in December 2017 and, therefore, the petitioner could not file application under form GST TRAN-1 for transfer of credit under GST as the due date had elapsed.
- The petitioner had filed refund application of the said amount which had been rejected by the Revenue on the ground that there is no provision available in the new regime to allow such credit.
- Aggrieved petitioner filed the present writ petition[45] seeking cash refund or ITC under GST laws.

Madras HC observations and ruling[46]

- **Eligibility to avail transitional credits:** The HC observed that the petitioner is eligible to avail the credit of service tax paid by him on the input services. However, since the payment of tax was done post due date, the credit was not available. Therefore, the petitioner could not file GST TRAN-1 and failed to carry forward the credit into the GST regime. The HC examined that if the new regime had not come into effect, the petitioner would have availed such credit. Hence, there is no dispute regarding the eligibility of petitioner.
- **Refund claim is not tenable:** The provision (Section 142(3) of the CGST Act, 2017) provides for refund claims by way of cash. Based on such provision, the petitioner had filed a refund application. However, in the erstwhile law, the petitioner's eligibility was only confined to taking credit and there is no provision in the new regime to allow refund as input tax credit in GST/credit in electronic cash ledger/payment in cash. Thus, the relief cannot be stretched upon to a claim refund.
- **CENVAT credit is a concession:** It was observed that the facility of credit of service tax paid under RCM is a concession. It shall only be availed in the manner prescribed by law. However, the HC was of the view that refund application could have been considered for taking credit and carrying forward in the electronic ledger.
- **Dire necessity to invoke 'doctrine of necessity':** There exists transitional provision for the purpose of claiming ITC under the GST regime. However, the said provision (Section 140 (1) of the CGST Act, 2017) is not applicable to the present case. Considering the peculiar nature of the present case, the HC invoked the 'doctrine of necessity' and allowed the petitioners credit of service tax paid, which could not be availed as transitional credit under GST provisions.

Our comments

This is one of the important rulings pronounced by the Madras High Court w.r.t. transitional credits under the GST regime, wherein it is held that though the refund of payment of taxes related to earlier regime is not available, but credit is permitted in the electronic credit ledger.

Contrary to the present ruling, the CESTAT Delhi, in the case of Flexi Caps and Polymers Pvt Ltd.,[47] held that credit eligible under erstwhile regime is available as refund under the GST regime and any amount eventually accruing shall be paid in cash. Similarly, in case of Terex India Pvt. Ltd.[48], the CESTAT, Chennai had held that the claim is only for refund and not proceedings for assessment or adjudication. Thus, transitional credit of taxes paid under the erstwhile law is available under Section 142(3) of the CGST Act. Even, in case of Bharat Heavy Electricals Ltd.[49], the CESTAT Delhi allowed cash refund of the credit admissible under erstwhile laws in terms of provisions of the GST laws.

There are many other judgments pronounced by judicial authorities wherein transitional credit from erstwhile regime and its refund by way of cash or credit has been dealt with.

The present ruling is of welcoming nature, which will provide relief to taxpayers who had to pay taxes under the erstwhile regime post 1 July 2017, with bright spot to have ITC permissible under the GST regime.

44. SRC Projects Private Limited
45. W.P.No.1092 of 2019
46. Order dated 22 Feb 2022
47. Excise Appeal No. 50114 of 2020
48. Service Tax Appeal No. 40095/2021- SM
49. Final Order No. 51849/2019 dated 26 April 2019

Grounds of SCN is a must – Jharkhand High Court

Summary

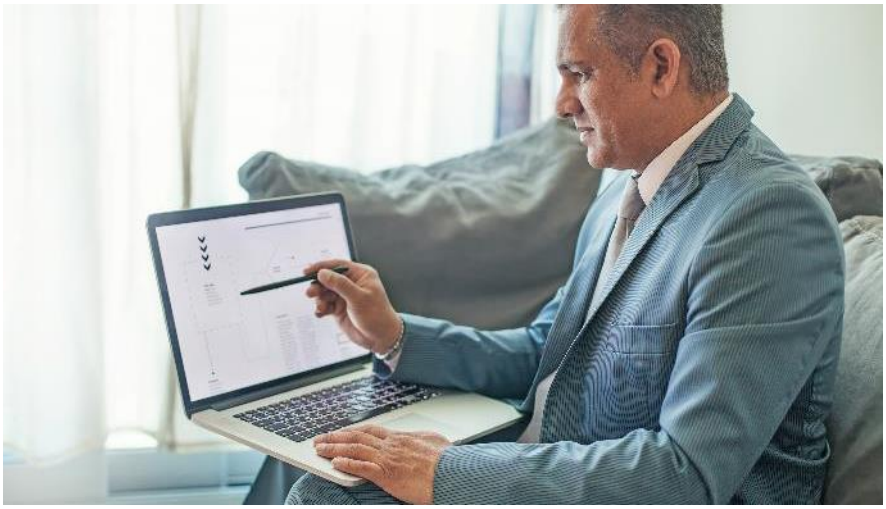
The Jharkhand High Court (HC) has held that the SCN does not fulfil the ingredients of a proper SCN and amounts to a violation of principles of natural justice. The HC observed that the impugned SCN was completely silent on the contraventions made by the petitioner which infringed the petitioner's right to defend himself. Therefore, the SCN is unsustainable. The HC stated that a summary of SCN cannot substitute the SCN as it fails to describe the necessary facts which could give an inkling as to the contravention done by the petitioner.

Facts of the case

- A SCN along with a summary of such SCN was issued to the petitioner[50]. The SCN stated that the liability reflected in GST returns is less than the sum received from the government treasury against the work contract. Further, penalty and interest were levied on the same.
- It was contended by the petitioner that SCN[51] is vague as it does not specify the contravention committed. The authorities submitted that since the SCN has to be issued in a format on the GSTN portal, hence details, facts and charges cannot be uploaded or inserted by them.
- The petitioner contended that the authorities have disbelieved that the ingredients of an SCN have been replaced by a summary of such SCN.
- The aggrieved petitioner filed the writ petition[52] requesting to quash the SCN.

Jharkhand High Court observations and ruling[53]

- **Ingredients of a proper SCN:** It was observed that the SCN was issued without format and it did not detail the contraventions committed by the petitioner. Even the summary of SCN did not disclose the information of works contract service against which the liability is not paid/disclosed.
- **Summary of SCN cannot substitute SCN:** The grounds for issuance of SCN needs to be specifically mentioned in the notice. Further, the connection between the facts and the contravention shall also be established. In the instant case, the summary of SCN did not disclose the information received from the headquarters/government treasury. Therefore, a summary of SCN cannot replace the SCN itself.
- **Violation of principles of natural justice:** As per GST provisions[54], no tax, interest or penalty can be imposed if an SCN does not specify grounds. As the SCN is completely silent on the alleged contravention or violation, this entails a violation of principles of natural justice which cannot be entertained.



Our comments

Recently, the Department of Trade and Taxes (Delhi) had issued indicative guidelines for the issuance of SCN which are strictly to be adhered to by the proper officers to avoid violation of provisions. Similar guidelines may be issued by other state authorities to avoid equivocal notices.

It can be observed that the authorities are contemplating the principle of natural justice by issuing circulars and rulings for nullifying vague notices and redundant adjudication processes.

On a similar front, the Madras HC had also provided a ruling beyond the GST rules and facilitated issuance of SCN via both registered post and web portal, till the technical glitches of the portal are encountered.

Further to streamline the adjudication process, recently, the Jharkhand HC also held that recovery of interest cannot be initiated without initiating the adjudication proceedings.

50. Nkas Services Private Limited
51. Section 73 of JGST Act, 2017
52. W.P.(T) No. 2659 of 2021
53. Order Dated 9 February 2022
54. Section 75(7) of the JGST Act, 2017

Electronic filing of refund application would also include manual filing – Bombay HC

Summary

The Bombay HC has set aside the order rejecting the refund application on the ground that it was not filed electronically on the common portal. The HC has held that as per the GST rules, any reference to electronic filing of refund applications would include manual filing of the same. Further, the HC held that the circular would be applicable to all refund applications filed electronically but not on applications filed manually.

Bombay HC observations and ruling[59]

- **Ground for rejection of refund application:** The application has been rejected on the ground that the said application has not been filed electronically and in accordance with the circular. The application has not been rejected on the petitioner's entitlement to claim a refund.
- **Electronic filing would include manual filing:** From a reading of the GST rules, it can be inferred that any reference to electronic filing of an application on the common portal shall include manual filing of the said application. The rule cannot be interpreted in a manner so as to defeat the intent of the legislation.
- **Applicability of circular:** The circular would not be applicable to refund applications filed manually but rather only to the ones filed electronically on the common portal. Therefore, the circular does not bar the petitioner from manually filing the refund application.

The impugned circular cannot affect or control statutory provisions.

Facts of the case

- The petitioner[55] entered into an agreement of sale and accordingly paid GST as per the invoice. But since the loan was not sanctioned in the petitioner's favour, the agreement for sale was terminated.
- The petitioner filed for a refund of such GST paid which was rejected on the ground that the refund application was not filed electronically and not in compliance with circular[56].
- Aggrieved by the order rejecting the refund, the petitioner filed the present writ petition.
- The petitioner submitted that as per provisions[57] he is entitled to apply for a refund. Further, as per the rules[58] electronic filing of refund applications includes manual filing also.

Our comments

The ruling provides more weightage to the grounds for rejection of a refund application (as per GST provisions) than to the mode of filing (manual or electronic). It also demonstrates that although the GST circular provides for a process of electronic filing of the refund application, the overriding rule to include manual filing under electronic filing supersedes. However, on a practical basis, it is often observed that the authorities do not accept the physical submission and direct online filing of the refund application.

Payment under investigation may not always amount to admission of liability and hence eligible for refund – Karnataka High Court

Summary

The Karnataka HC held that the assessee is entitled to refund of INR 27.5 crore of GST which was collected unconstitutionally during pendency of an investigation. HC observed that the payment made by the company was not an admission of liability but only amount deposited for investigation proceedings. Hence such tax collection by the revenue cannot be treated within the authority of law and would amount to violation of right to property. Accordingly, the company was liable to refund of the amount deposited.

55. C.P. RAVINDRANATH MENON
56. Circular dated 18th November 2019.
57. Section 54 of the said CGST Act
58. Rule 97A of CGST Rules, 2017
59. WRIT PETITION NO. 2157 OF 2021

Facts of the case

- The Respondent[60] is a company operating the e-commerce platform named Swiggy providing food delivery service to customers from their nearby restaurants. They had entered into an agreement with a third party[61] as their temporary delivery executive (Temp DE) to provide delivery service during the rush hours.
- The department initiated an investigation against the assessee alleging that the third party is a non-existing entity and thus, the Input Tax Credit (ITC) availed by the assessee is fraudulent.
- The assessee submitted that the amount collected during the investigation was under threat and coercion without following the procedures prescribed.
- Further, the assessee contended that he is entitled to avail the refund of the amount deposited by him as it was not paid against the liability but only under threat and coercion.
- In the previous writ petition filed before the Karnataka HC, it was held that amount paid during the investigation was involuntary.
- The present writ petition[62] is filed by the revenue department praying that it was a voluntary act done on the part of the assessee.

Karnataka HC observations and ruling[63]

- **Involuntary payment of tax:** It was observed that neither there was any material on record to indicate that the amounts were paid on the admission of liability by the company nor did the company communicate to the proper officer regarding ascertainment of liability. The provision requires written communication about either ascertainment or admission which were absent in the instant case.
- **Reservation of right to refund:** It is evident that payments have not been made admitting the liability. Therefore, the assessee reserved its right to seek refund at appropriate time. Assessee clarified that the payments shall be treated as deposits and shall not be regarded as an admission of liability.
- **Extension of threat is a question of fact:** Court placed reliance on decisions[65] of HC where it was held that amount paid during an investigation is liable to be refunded. The company was regular in paying tax and filing returns, thus, nothing indicated that any amount was due to the department. Therefore, though the amounts were paid involuntarily nothing indicated extension of threat of arrest to officers of company.
- **Manner of conducting an investigation:** The provisions[66] relating to inspection, search and seizure were invoked by the officers and summons[67] were issued demanding evidence from company. The company has neither attributed any specific role to officers nor impleaded them in the petition. Thus, the contention that during investigation the officers acted in a high handed and arbitrary manner is also a question of fact.
- **No delay or laches in filing a petition:** As per provisions[68], an application seeking a refund of any tax and interest shall be filed within a period of two years. The company had filed the claim as well as a writ petition within two years. Therefore, the refund claim was made well within time with no delay or laches in filing an appeal.
- **Infringement of Right to Property:** The Indian Constitution[69] mandates collection of tax by authority of law. When such is collected without authority of law, then it amounts to depriving a person of his property and cause infringement of his Right to Property[70]. In the present case, it is evident that the amount has been collected in violation of the constitution. Accordingly, the company is liable to claim the refund of tax paid.

Our comments

The HC has directed refund of amount deposited during investigation proceedings on the ground that such payment was not made on a voluntary basis.

This ruling is in line with an earlier decision of Bombay High Court in the case of Vodafone Essar South wherein it was held that assessee cannot be forced to pay tax during investigation and without adjudication of his liability.

It would be interesting to see how the other taxpayers whose huge sum would have been deposited involuntarily during investigations would also consider filing of refund applications.

60. Bundl Technologies Pvt. Ltd
61. Green Finch Team Management Ltd.
62. W.A.No. 4467 of 2021 (T-RES)
63. Order dated 3 March 2022
64. Section 74(5) of CGST Act, 2017
65. Vodafone Essar south vs Union of India; Makemytrip India Pvt Ltd vs Union of India; Century Knitters India Ltd vs Union of India; Concepts Global Impex vs Union of India
66. Section 67(1)
67. Under section 70
68. Section 54
69. Article 265
70. Article 300A

Ratio of Cannon India decision valid even after proposed retrospective amendment in the customs Act - CESTAT

Summary

The CESTAT Kolkata has held that under the customs law, an SCN can be issued only by a proper officer who has done the assessment in the first place. The CESTAT observed that under the Customs Law, customs officers, and officers of the Directorate of Revenue Intelligence (DRI) have been treated as distinct and separate. The CESTAT further ruled that in view of the proposed amendments as per the Finance Bill 2022, the customs officers, and officers of DRI will be at par, however it does not propose to amend the power to issue SCN by the proper officer. Therefore, the SCN issued in this case by the DRI officers cannot sustain because DRI officers have not been entrusted the functions under the Customs law and such SCN was not issued by 'the proper officer'.

Facts of the case

- The appellant[71] had imported LDPE (low-density polyethene) re-processed granules through three different customs ports which were assessed and cleared for home consumption.
- The DRI conducted search operations and held that the appellant had undervalued imported goods. Later, an SCN was issued proposing recovery of differential duty[72] along with interest and penalties.
- The appellant submitted that the DRI officers are not 'proper officers'[73] to issue an SCN and this needs to be set aside as the order lacks jurisdiction.
- The department contended that any customs officer appointed prior to 06 July 2011 is a proper officer[74].

CESTAT Kolkata observations and ruling[75]

- **DRI officers are an intelligence and security organisation:** The officers of DRI are not the customs officers[76]. The customs law does not mention DRI and its powers anywhere. These officers were treated as distinct and separate by the legislature. As per the Right to Information (RTI) Act[77], the DRI officers are treated as an intelligence and security organisation that has been granted immunity. Such immunity was not given to the customs officers.
- **Power of the Proper officer to issue SCN:** In the case of Canon India[78], the Apex Court had held that the officers of DRI can exercise functions of the customs officers only in case they are entrusted with such functions by the government. Also, the SCN can be issued only by the proper officers who had done the assessment in the first place and not any other officer. In case if there is more than one proper officer, the SCN/demand can be raised by the proper officer who has assessed the bills of entry in the first place[79]. In the instant case, the bills of entries have not been assessed by officers of DRI. Hence, the SCN issued, and functions performed by DRI are without authority and thus, cannot be sustained.
- **Meaning of the article 'the':** When the legislature uses the word 'the', it refers to a particular thing or person. If the Parliament intended that any proper officer could exercise the power, then the word 'any' could have been used. Thus, the Parliament has used 'the' with an intention to designate the proper officer who had assessed the goods at the time of clearance.
- **Provisions of the Finance Bill 2022:** If the Finance Bill becomes an Act, the DRI officers will be at par with customs officers. However, there is no proposal to amend the authority to issue SCN and accordingly, SCN can be issued only by the proper officer who has done an assessment in the first place.
- **SCN issued by DRI cannot be sustained:** The SCN[80] was not issued by the proper officer and DRI officers have not been entrusted the functions under the Customs. Thus, the order emanating from SCN issued by DRI cannot be sustained.

Our comments

In a landmark judgment by the Supreme Court in case of Canon India, it had been held that the DRI officers have no power to issue SCNs under the customs law. Further, only the proper officer could issue such a notice as the Parliament has employed the article 'the' before the words proper officer not accidentally but with the intention to designate the proper officer who had assessed the goods at the time of clearance.

However, the Finance Bill, 2022 has proposed to widen the scope of the term 'proper officer' under customs law to include DRI and other officials appointed by the Central Board of Indirect Taxes and Customs (CBIC) with retrospective effect.

Interestingly, the CESTAT Kolkata has emphasised that there is no proposal to amend the provisions relating to power for the issuance of SCN under the customs law. Therefore, it seems that the SC's verdict in the case of Canon India shall remain valid even after widening of the scope of the term proper officer and thus the DRI officers may not be authorised to issue SCNs under the Customs law.

71. Beriwala Impex Pvt. Ltd.
72. Under section 28 of Customs Act
73. Section 2(34)
74. Both under section 17 and under section 28 of the Customs Act, 1961
75. Customs Appeal No.75015 of 2015, Final Order No.75125/2022 dated 23 February 2022
76. Section 3
77. Right to Information Act, 2005
78. Civil Appeal No.1827 of 2018, Judgment dated 9 March 2021
79. or his successor in office
80. section 28(11) of the Customs Act

State Legislature has no power to deal with Entry Tax related matters after Constitution (101st Amendment) Act 2016- West Bengal Taxation Tribunal

Summary

The West Bengal Taxation Tribunal (Tribunal) held that the State Legislature is denuded of its plenary power to deal with Entry Tax related matters since the Constitution (101st Amendment) Act 2016 came into effect. The Tribunal ruled that Section 5 and Section 6 of the West Bengal Finance Act, 2017 are ultra vires and unconstitutional. The Tribunal clarified that Section 19 has conferred limited legislative power within a prescribed period to amend certain entries of the State list to make it in tune with the cherished goal of GST. It has not conferred any power to amend the Principal Act. The Tribunal further held that the State Legislature cannot be said to have legislative competence to bring in the impugned amendment and validation of the Act.

Facts of the case

- The petitioners have challenged the vires of West Bengal Finance Act 2017 (Amending Act 2017) on various grounds including lack of legislative competency, discrimination, the impossibility of its successful implementation, etc.
- The petitioner[82] contended that Entry Tax Act was enacted under Entry 52[83] which has been deleted[84]. Hence, the State legislature has lost its legislative competence which cannot be revived or revalidated.
- The petitioner further contended that a transitional provision[85] cannot be used as a source of power to enact the Amending Act. Further, after the 101st amendment, the Legislature lost its plenary power to legislate Entry 52 with reference to Article 246.
- The petitioner submitted that section 6 is prospective whereas section 5 is retrospective in nature. Thus, both the sections are not compatible with each other, and section 6 fails to achieve its ostensible purpose.
- The petitioner further submitted that the section has limited legislative power to amend only those provisions on which Legislature has the competency to enact.
- The petitioner described the act as manifestly arbitrary, creating hostile discrimination offending the equality clause and violative of Article 14 of the Constitution.

81. on and from 16 September 2016
82. M/s. Tata Steel Ltd. & Ors.
83. of list II of the 7th Schedule of the Constitution
84. in 101st Constitution Amendment Act 2016 w.e.f 16.09.16
85. section 19 of the 101st Constitution Amendment Act,2016

West Bengal Taxation Tribunal observations and ruling[86]

- **Quashing of order and stay the operation of an order is clearly different:** Quashing results in the restoration of the position as on the date of the passing of the order. However, the stay of operation of order only means that the order which has been stayed would not be operative from the date of the passing of the stay order. The stay of the order does not mean that the said order has been wiped out from existence.
- **Amendment is premature and smacks of misadventure:** A stay order does not erase the effect of the original order. Entry Tax Act cannot be revived by way of the amendment during the period of appeal until the verdict is reversed. Once a provision has been declared ultra vires, the State cannot invoke that the said ultra vires proceedings against the citizen of the country, just because interim order has been passed in an appeal. Hence, despite the fact that the interim order was granted with some conditions, the amendment is premature.
- **'inconsistent' used for entries needed amendment:** The word 'inconsistent' denotes only those provisions which were not entirely deleted like Entry 52 but were deleted partially or kept in an altered/ truncated version. For the existence of inconsistency, there ought to be an apparent conflict or contrary position. In the present case, Entry 52 has been deleted entirely and nothing is left comparable with the term 'inconsistent'. Though Entry 52 was not consistent with the purpose of Act[87] the word 'inconsistent' has lost significance when Entry 52 was dropped entirely.
- **'Amended' or 'repealed' are to be read disjunctively but distributively:** The word 'amended' is meant for those entries which are partially deleted and/or substituted. However, the word 'repealed' is meant for entirely deleted entries. In the given case, the State Legislature has no option but to repeal the entry tax. Thus, Act[88] has accordingly repealed the Entry Tax Act. But since the section has not conferred any right to amend the entry tax laws, thus provisions[89] dealing in Entry Tax matters are unconstitutional.
- **Section 19 does not confer any new or additional power:** The section has conferred limited legislative power within a prescribed period to amend certain entries of the State list to make it in tune with the cherished goal of GST. And it has not conferred any power to amend the Principal Act. After deletion of Entry 52, the term 'amended' used in section 19 is no longer includes any matter relating to Entry Tax.
- **State Legislature has no power to legislate or amend the Entry tax laws:** State Legislature has exclusive power to make laws with respect to any matters enumerated in List II of the 7th schedule. Since Entry 52 has been permanently deleted, hence the State Legislature has no power to legislate or amend the law in Entry tax now. Thus, sections 5 and 6 are declared ultra vires and unconstitutional.
- **Applicability of judgement:** The judgement is applicable to all other applications which are not mentioned in this Judgement but are pending before the Tribunal challenging the provisions. However, it will not cover those pending applications where the entry tax act has been challenged.

Our comments

In the present ruling, the West Bengal Taxation Tribunal has emphasised that the state of West Bengal had no legislative competency to introduce Sections 5 and 6 of the West Bengal Finance Act, 2017. Hence, the said provisions are ultra vires and unconstitutional.

This ruling applies to all the applications which are pending before the Tribunal challenging the above provisions. Thus, it is an important and welcoming decision for the taxpayers which shall bring required relief and set precedents in similar pending matters.

86. Case No. RN-08 of 2018, Order dated 25 March 2022
87. Constitution Amendment Act 2016
88. Section 173 of W.B GST Act, 2017
89. section 5 and 6 of the West Bengal Finance Act 2017, enacted on 06.03.17

04 Decoding advance rulings

GST applicable under reverse charge mechanism on procurement of e-goods from foreign suppliers- Maharashtra AAAR

Summary

The Maharashtra Appellate Authority for Advance Ruling (AAAR) has upheld the order of AAR levying GST under reverse charge mechanism (RCM) on Online Information and Database Access or Retrieval (OIDAR) services since the place of supply of OIDAR is the location of the recipient of services. The transaction qualifies as an import of service even though e-goods, after being purchased by the appellant, are stored on cloud servers located outside India and the same are not downloaded by the appellant in India. The MAAR concurred with the view of AAR that the place of supply of OIDAR cannot be ascertained in absence of the details of the customers.

Facts of the case

- The appellant[90] is a proprietor operating the e-commerce platform supplying online gaming/digital goods to the customer from its website. The appellant did not raise an invoice for delivering digital goods.
- The appellant submitted that digital goods are not necessarily goods but can be called ‘services’.
- The appellant also submitted that the e-goods are stored on the cloud, located outside India and this cannot be considered as an import in India. Further, the supply is an export of service as the customers pay in dollars and thus, it is outside the purview of GST.
- The appellant approached the Maharashtra AAR seeking clarification regarding the applicability of GST on the impugned transaction.
- Being aggrieved by the AAR ruling, the appellant filed the present appeal before the Maharashtra AAAR.

90. Amogh Ramesh Bhatawadekar

Maharashtra AAR observations and ruling[91]

- **Supply of e-goods is not exempted from GST:** The supply of e-goods by the appellant is a supply of service under the act. The transaction of online gaming services is classified under SAC 998439, attracting GST[92] at 18%.
- **Payment of tax under RCM:** The place of supply in the case of OIDAR services is the location of the recipient. Thus, the transaction of procurement of e-goods from foreign vendors/suppliers will be leviable to IGST under RCM.
- **GST liability upon consideration paid in dollars:** If the customer paying consideration in dollars is from India, then the transaction would attract GST. However, in case if such a customer is from the outside taxable territory, then there would be no GST.
- **Not an export of service:** The appellant did not provide the details of customers/buyers for ascertainment of the location of customers. Since both the supplier and recipient are in India, hence, the services will not be considered as an export of service and the appellant will be liable to pay GST on OIDAR services.

Maharashtra AAAR observations and ruling[93]

- **Agreement with observations of AAR:** The AAAR approbated the ruling of AAR wherein it has been held that supply of e-goods to the Indian buyers will attract GST and it will not qualify as out and out transaction. The AAR also ruled that the place of supply of OIDAR cannot be ascertained in absence of the details of the customers. This view of AAR has been concurred by MAAR and ruled that this question shall be decided by the jurisdictional officer based on the facts of the transaction under evaluation.
- **Import of service:** The Appellant is the recipient of the OIDAR services procured from their foreign suppliers. This transaction qualifies as an import of service even though e-goods, after being purchased by the appellant, are stored on cloud servers located outside India and the same are not downloaded by the appellant in India. Accordingly, the appellant will be liable to pay IGST under RCM on the purchase of the e-goods from their foreign suppliers.

Our comments

In the present ruling, the Maharashtra AAAR has approbated the ruling of AAR confirming GST liability under RCM on e-goods procured from foreign suppliers.

It is pertinent to mention here that though AAAR's decision is applicable only to the applicant, however, there is the possibility that the department may refer to this ruling in other similar cases as well.

Thus, the taxpayers entering similar kinds of transactions should be cautious of tax implications.

91. GST-ARA-06/2019-20/B-58 dated 15 December 2020
92. Section 2(17) of IGST Act, 2017
93. MAH/AAAR/RS-SK/34/2020-21

05 Experts' column

Budget 2022: A deep dive into the proposed changes in ITC availment under GST

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From the inception of GST legislation, one of the areas where the government has put utmost emphasis is the input tax credit (ITC). Proactive steps have been taken towards the same to curb the tax evasion and wrongful ITC availment using a fully IT-driven system. Further, various measures were implemented such as e-invoicing, strict e-way bill compliances, use of business intelligence and fraud analytics tool, etc. with an intent to maintain the right balance between facilitation and enforcement, which resulted in significantly better compliance. The same intent continued in the Union Budget 2022 proposals as well.

On the GST front, law changes or amendments were not a part of the Finance Minister's budget speech. However, several tax proposals have been made in the Finance Bill, 2022, which are yet to be notified. It has brought about some welcome changes, such as the extension of the timeline for availing of the ITC and issuance of credit notes, transfer of cash ledger balance to another registration within the same PAN, etc. On the other hand, it has also introduced certain additional conditions for availing of the ITC, which need to be satisfied by the supplier.

The ensuing paragraph covers the gist of the additional conditions proposed for ITC availment, which will require stringent compliance with the GST legislation.

The various amendments proposed in the Central Goods and Services Tax Act, 2017 in this regard are as follows:

- Section 16, which deals with the eligibility and conditions for availing ITC, has been proposed to be amended to insert a new clause (ba) in Sub-section (2). The said new clause stipulates that a registered person can avail of the ITC only if the same is not restricted as per Section 38.
- Section 38 has been proposed to be substituted to remove provisions relating to erstwhile GSTR-2 return (details of inward supplies), which was not operational since the inception of GST. It further introduces provisions to make an auto-generated statement (likely to be Form GSTR-2B, however, clarity is awaited until the amendment is carried out in CGST Rules, 2017). This would be made available to the recipient for the purpose of availing ITC basis the details reported by the suppliers in GSTR-1 and such other supplies as may be prescribed. This statement would also provide a bifurcation between the ITC available and ITC restricted.
- The proposed amendment in Sub-section (2) to Section 41 states the recipient would have to reverse the ITC availed along with applicable interest in relation to supplies on which, tax has not been paid by the supplier. However, the ITC reversed can be re-availed once the supplier makes the necessary payments.
- Section 42, 43, 43A dealing with matching, reversal and reclaim of ITC are omitted to do away with the two-way communication process in return filing.
- Changes proposed in the ITC availment have been detailed below:

Evolution of conditions for ITC availment

Section 16(2)(aa), which became effective on 01 January 2022, was inserted by the Finance Act, 2021 to restrict the ITC availment only to the extent of invoices or debit notes furnished by the supplier in the return and reflected in recipient's Form GSTR-2B.

Now, the Finance Bill, 2022 has proposed to introduce Section 16(2)(ba) to further restrict the availment of wrongful ITC by providing that a registered person would be able to avail ITC in accordance with Section 16, only if the same is not restricted as per proposed Section 38 (discussed below).

ITC restricted basis auto-generated statement

- The proposed Section 38 (entirely substituted) prescribes that the outward details furnished by the registered persons would be made available to the recipients in an auto-generated form (likely to be Form GSTR-2B, however clarity is awaited until the amendment is carried out in rules). The said form would bifurcate the transactions on basis of credit eligibility, i.e. transactions for which 'credit may be availed' and 'credit cannot be availed'.
- The details of supplies in respect of which credit cannot be availed will comprise the details of the supplies made by (Proposed Section 38(2)(b)) –
- Any registered person within the period prescribed from taking registration
- A registered person who has defaulted in payment of tax for a continuous period as prescribed
- A registered person, who for a prescribed period, has paid lower tax in GSTR-3B than the tax payable as per the details furnished in GSTR-1
- A registered person who has availed excess ITC as per the limit prescribed in proposed Section 38(2)(a) of CGST Act (i.e. the ITC available as per auto-generated statement)
- A registered person who has not paid the tax liability in accordance with proposed Section 49(12) of CGST Act (this section provides for the maximum proportion of output tax liability which may be discharged through the electronic credit ledger)
- Such other class of persons as may be prescribed

Currently, GSTR-2B provides classification into 'ITC available' and 'ITC not available'. 'ITC not available' is either for transactions reported after the prescribed ITC availment period or transactions wherein the PoS and the recipient GSTIN is in a different state

In this context, the following aspects merit consideration and would be interesting to see how they are taken into consideration in the GST rules to be prescribed –

- On whom the onus will be placed to determine the restricted ITC: Whether the ITC would be restricted automatically as it is currently being restricted in Form GSTR-2B on the two grounds stated or would the onus be placed on the taxpayers to determine the restricted ITC.
- If the onus is placed on the taxpayers, it would pose various practical challenges since, the taxpayers won't have the necessary means to determine whether the supplier is complying with the various conditions prescribed in the section, e.g. the taxpayer cannot check whether the supplier has availed ITC in excess of the prescribed limit.
- If automation is done on the GSTN portal, further checks need to be added in GSTR-2B to automatically restrict the ITC.
- Further, directly flagging all the supplies on grounds, such as tax paid being lower than the tax liability as per GSTR-1 or excess availment of ITC with regards to section 38(2)(a) can cause undue hardship to genuine taxpayers. As there might be some genuine cases wherein there is a difference in the tax liability as per GSTR-3B vis-a-vis GSTR-1 on account of certain past period adjustments, negative value adjustments, etc.
- Additionally, certain clauses prescribed in Section 38 of the CGST Act get triggered only when the conditions are fulfilled over a period of time. It would become very crucial to see the period which would be prescribed by the government for determining whether a supplier is covered in Section 38 of CGST Act.

Disallowance of ITC to the recipient due to non-compliance by a supplier

Moving to Section 41 of the CGST Act, its Sub-section (1) is being substituted so as to do away with the concept of a claim of an eligible input tax credit on a 'provisional' basis, thus, the ITC claimed by the recipient would be considered to be the actual ITC available.

Further, the proposed amendment under Sub-section (2) of Section 41 stipulates that wherein a supplier has not paid the tax, the recipient who has availed ITC has to reverse the same along with applicable interest. However, the proposed amendment varies from the decision given by The Hon'ble Supreme Court in the case of Commissioner of Trade and Taxes Delhi versus Arise India Limited [2018 (1) TMI 555]. The SC had held that where the selling dealer fails to deposit the tax collected by him from the purchasing dealer, the remedy for the department would be to proceed against the selling dealer for recovery of such tax. The department is precluded from denying ITC to a purchasing dealer who has bona fide entered a purchase transaction with a registered selling dealer.

The proposed amendment also states that the ITC so reversed can be re-availed once the supplier makes the tax payment. A couple of key points open to ponder upon and for which clarity is awaited are as follows:

- Firstly, whether the recipient can re-avail the ITC reversed by disregarding the time limit prescribed in Section 16, for availing the ITC, i.e. 30 November following the year to which the ITC pertains.
- Secondly, on the interest payable by the recipient, it needs to be seen whether the recipient can take the shelter of Section 50(3), which says that interest shall be payable only on the ITC which has been wrongly availed and utilised. The same might get answered once suitable amendments are made to rules.

Our view

The government's inclination towards meticulous compliance with legislations is clearly visible in the tax proposals presented. With the introduction of various measures to restrict recipient's ITC due to non-compliant supplier, the recipients need to be watchful about their supplier's tax compliance status now and ensure proper due diligence of vendors. Further, to have a recourse in case of supplier's default, existing vendor agreements may also be revisited by the recipients for insertion of an indemnity clause. Also, for maintaining various reconciliation required as per the law, a robust IT system needs to be in place.

From the government's end, one may expect that they may come up with a GST compliance rating as envisaged in Section 149. This would help taxpayers to be aware of the supplier's GST credibility. Further, the success of the proposed changes would largely depend upon the infrastructure the government puts in place to carry out the required activities. It would be interesting to see how this will make the compliances under GST easier for the taxpayers.

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06 Issues on your mind

Whether e-invoice will not be auto-populated in any subsequent GSTR-1, if the taxpayer reports the document (invoice, debit note, credit note) on the IRP after filing GSTR-1?

If the taxpayer reports the document (invoice, debit note, credit note) on the IRP after filing GSTR-1 for that period, then the e-invoice will not be auto-populated in any subsequent GSTR-1. The excel file containing the e-invoice details can still be downloaded from the GSTR-1 dashboard for the tax period to which the document (invoice, debit note, credit note) pertains.

Illustration: Taxpayer reports Invoice No. A-253 dated 30 November 2021 on the IRP on 24 December 2021. The GSTR-1 for November 2021 was already filed on 10 December 2021. Consequently, invoice no. A253 will not be auto-populated in GSTR-1 and would be available for download in excel format appearing on the GSTR-1 dashboard for November 2021.

What are the pre-requisites for applying for Interest Equalisation Scheme on the DGFT portal?

To apply for Interest Equalisation Scheme on the DGFT portal you would require:

- Valid login credentials to DGFT portal (after registering on DGFT portal).
- User should have an active IEC.
- User should have an active DSC or Aadhaar e-sign of the firm's member for submission.
- Firm's bank account with active and validated details for generating the UIN.
- IEC DEL status should be N

What are the key features of the Import of Goods at Concessional Rate of Duty (IGCR) module developed by ICEGATE?

The ICEGATE has developed the IGCR module to provide a digital service to importers to avail of benefits under the Import of Goods at Concessional Rate of Duty, Rules (IGCR).

- **Key features are as under:**
- Prior intimation requests (IIN): Includes details of goods intended to be imported, manufactured, and job worker details.
- Bond requests (fresh/amendment): Submit continuity bond requests, create a fresh bond, or top up the existing bond.
- Short/non-receipt of goods: Submit declaration in case of short or non-receipt of imported goods
- Monthly return statements: Automated monthly return statements by the 10th of the following month online.

07 Important developments in direct taxes

A. Important amendments/updates

Guidance on issuance of nil/lower withholding tax certificate

A taxpayer is required to file an application[94] for obtaining a nil/lower withholding[95] tax certificate for the sum payable to a non–resident. In order to facilitate timely issuance of the nil/lower withholding tax certificate, the CPC (TDS)[96] has issued instruction[97] indicating the cut-off date for filing such application:

- **Start date:** 28 February of the immediately preceding FY[98] (e.g., for obtaining the certificate for FY 2022-23, the application can be filed on or after 28 February 2022).
- **End date:** 15 March of the current FY (e.g., no application for a certificate for FY 2021-22 shall be allowed after 15 March 2022).

Government partially modifies the Faceless Penalty Scheme, 2021

CBDT[99] has made further modifications[100] in the Faceless Penalty Scheme[101] relating to the list of penalty cases that will be excluded from such scheme.

It has been clarified penalty proceedings, in cases where pendency could not be created on the ITBA[102] because of technical reasons or cases not having a PAN[103] would be outside the purview of this scheme.

94. Form 15E
95. Under section 195(2) and 195(7) of the Income-tax Act, 1961 (the Act)
96. Centralised Processing Cell (Tax deduction at source)
97. Instruction No. 1 of 2022 dated 2 March 2022
98. Financial Year
99. Central Board of Direct Taxes
100. Order dated 10 March 2022 (F. No. 187/4/2021 – ITA - I)
101. Faceless Penalty Scheme, 2021 (The Scheme)
102. Income Tax Business Application
103. Permanent Account Number

CBDT grants relaxation for electronic filing of application for claiming deduction for scientific research

Considering the hardships being faced by the taxpayers in electronic filling of the form[104], CBDT[105] has allowed physical filing of the aforesaid form from 16 March 2022 till:

I. 30 September 2022; or

II. Date of availability of the said form on the e-filing website, whichever is earlier.

CBDT condones delay in filing of form by domestic companies opting for concessional tax rate of 22%[106]

From AY[107] 2020-21 onwards, the aforesaid concessional tax rate can be availed by domestic companies, subject to fulfilment of certain prescribed conditions. One of the conditions to avail of the concessional tax rate is that the company is required[108] to submit a form[109] electronically, on or before the due date of filing its return of income[110].

In view of the hardships faced by the domestic companies, CBDT has directed to condone the delay in filing of such form[111] subject to fulfilment of the following conditions:

- The return of income for AY 2020-21 has been filed before the due date[17].
- The eligible domestic company has opted for taxation under section 115BAA in 'Filing Status' in 'Part A-GEN' of Form ITR-6.
- Form 10-IC is filed electronically on or before 30 June 2022 or three months from the end of the month in which this circular is issued, whichever is later.

CBDT partially modifies list of cases not covered under the faceless assessment regime

CBDT has partially modified its earlier order[112] regarding cases which are not covered under the faceless assessment regime[113]. In addition to the exceptions provided earlier, CBDT[114] has now excluded from the purview of the faceless assessment regime, cases wherein the time limit for completion of assessment is 31 March 2022 but are pending with jurisdictional assessing officer[115] and cannot be completed[116] due to technical/procedural constraints in the given period of limitation.

104. Form 3CF as stipulated in Rule 5C (1A) and Rule 5F(2)(aa) of the Income-tax Rules,1962 ("the Rules")
105. Vide Circular no. 5 of 2022 dated 16 March 2022 (F.No. 225/54/2022/ITA-II)
106. Plus surcharge of 10% and cess of 4% as per Section 115BBA of the Act
107. Assessment Year
108. Under section 115BBA(5) of the Act read with Rule 21AE of the Rules
109. Form 10-IC
110. As per section 139(1) of the Act
111. Vide Circular no. 6/2022 dated 17 March 2022
112. Order dated 31 March 2021 (F. No. 187/3/2020- ITA- I) as amended by orders dated 6 September 2021, 22 September 2021and 16 December 2021
113. Under Section 144B of the Act
114. Vide order dated 17 March 2022 (F.No. 187/3/2020-ITA-1)
115. as on 15 March 2022 or thereafter
116. as per the procedure laid down under section 144B of the Act

08 Compliance calendar for FY 2022-23

A. Direct tax compliance calendar

Frequency	Form name	Description	Due date
TDS/TCS			
Monthly		Payment of TDS/TCS	7th of the succeeding month in which tax was deducted/collected.[1]
Quarterly	Form No. 24Q/26Q/27Q	Statement of deduction of tax	31st of the succeeding month from the end of relevant quarter[2]
Quarterly	Form No. 27EQ	Statement of collection of tax	15 days from the end of the relevant quarter[3]
Annually	Form 16	Certificate of deduction of tax at source for salary or pension/interest income of specified senior citizen.	15 days from the due date for furnishing the statement of tax deducted at source for the quarter ending January-March
Quarterly	Form 16A	Certificate of deduction of tax at source for deduction other than salary	15 days from the due date for furnishing the statement of tax deducted at source
Quarterly	Form No. 27D	Certificate of collection of tax at source	15 days from the due date for furnishing the statement of tax collected at source

Frequency	Form name	Description	Due date
TDS/TCS			
Monthly	Form 26QB/Form 26QC/Form 26QD	Furnishing of challan-cum-statement in respect of tax deducted under section 194-IA / 194-IB / 194M	30 days from the end of the month in which the deduction is made
Monthly	Form 16B/Form 16C/Form 16D	Issue of TDS certificate for tax deducted under section 194-IA / 194-IB / 194M	15 days from the due date for furnishing the challan-cum-statement.
Income-tax return			
Annually		Companies which are not required to furnish TP study report	31 October of following year.
Annually		Assessees other than companies, which are required to get their accounts audited	31 October of following year.
Annually		Assessees which are required to furnish TP study report	30 November of following year
Annually		Assessees other than covered above	31 July of following year
Advance tax			
Quarterly		First quarter (15% of the tax amount)	Up to 15 June
Quarterly		Second quarter (45% of the tax amount)	Up to 15th September
Quarterly		Third quarter (75% of the tax amount)	Up to 15 December
Quarterly		Fourth quarter (100% of the tax amount)	Up to 15 March
Others			
Annually	Form 3CA/3CB-3CD	Furnishing of tax audit report	30 September of following year
Annually	Form 3CEB	Furnishing of information for international transaction and specified domestic transactions.	31 October of following year
Annually	Form No. 49C	Submission of a statement to be filed by Non-residents having Liaison office(s) in India	60 days from the end of the Relevant financial year
Annually	Form No. 61B	E-filing of annual statement of reportable accounts in pursuance to S. 285BA	31 May of the following year

[1] For the month of March, the due date for payment for TDS is 30 April
[2] For the quarter ending Jan-Mar, the due date is 31 May.
[3] For the quarter ending Jan-Mar, the due date is 15 May.

B. GST compliance calendar

Frequency	Return Type	Description on return	Due date
Normal Taxpayer			
Monthly	GSTR 1	Details of outward supplies of taxable goods and/or services affected.	11th of month succeeding the tax period
Monthly	GSTR 3B	Summary of outward supplies and input tax credit along with payment of tax	20th of the month succeeding the tax period
QRMP having aggregate turnover of up to INR 5 crore in the preceding financial year			
Quarterly	GSTR-1	Details of outward supplies of taxable goods and/or services affected.	13th of the month succeeding such quarter
Monthly	GST challan	Payment of liability in case of shortfall of ITC vide challan	25th of month succeeding the tax period
Monthly	IFF (optional)	IFF (invoice furnishing facility) where quarterly filers can choose to upload their business-to-business (B2B) invoices every month	13th of the month succeeding the tax period
Composition dealers			
Quarterly	CMP 08	Statement-cum-challan to make a tax payment by a taxpayer registered under the composition scheme under Section 10 of the CGST Act	18th of the month succeeding such quarter
Others			
Monthly	GSTR 5	Non-resident tax payer	20th of the month succeeding the tax period
Monthly	GSTR 5A	Summary return for reporting the outward taxable supplies and tax payable by OIDAR	20th of the month succeeding the tax period
Monthly	GSTR 6	Return for input service distributor	13th of the month succeeding tax period
Monthly	GSTR 7	Return for tax deducted at source	10th of month succeeding the tax period
Monthly	GSTR 8	Return for tax collected at source	10th of month succeeding the tax period
Annual	GSTR 9	Annual return for FY 2021-22 for notified persons under GST	31 December 2022
Annual	GSTR 9A	Annual return for FY 2020-21 for composition dealers under GST	31 December 2022
Annual	GSTR 9B	Annual Return for FY 2020-21 for e-commerce operators under GST	31 December 2022
Quarterly	ITC 04	Details of goods/capital goods sent to job worker and received back	25th of month succeeding such quarter

About Grant Thornton

More than
62,000
people globally

Total global revenues
USD 6.60 bn
(as in 2021)

Member firm within
Grant Thornton International

Base in over
140+
countries

and
750+
offices

15
locations

6,500+
people

One of the largest
fully integrated
Assurance, Tax & Advisory firms in India

Presence in **13 major cities** of India – Ahmedabad, Bengaluru, Chandigarh, Chennai, Delhi, Dehradun, Gurgaon, Hyderabad, Kochi, Kolkata, Mumbai, Noida and Pune

6 compelling reasons to consider Grant Thornton

01 A truly global organisation

02 Proven global credentials

03 A single global audit approach

04 A different way of doing business

05 Deep expertise in non-audit services

06 Strong local expertise

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