S & A Law Offices

INDIRECT TAXES NEWSLETTER

AUGUST 2022

INDIRECT TAX

Goods and Services Tax (GST)

(a) The Supreme Court has directed the Goods and Service Tax Network (GSTN) to open GST portal for filing Tran-1/Tran-2 from September 1, 2022 to October 31, 2022. The benefit can be claimed by all assesses whether or not they had filed writ petition, or case has been decided by Information Technology Grievance Redressal Committee (ITGRC). Further, it has been held that GSTN is required to ensure that there are no technical glitches during this time period. Also, concerned officers are required to verify transitional credit within 90 days, and thereafter pass appropriate order by granting opportunity of being heard to the assesses. Such transitional credit shall be reflected in electronic credit ledger of the assessee. Further, GST Council can issue appropriate guidelines to field formations in scrutinizing claims in this regard.

Takeaway: GST portal to be kept open from September 1, 2022 to October 31, 2022 for registered person to claim transitional credit in Form Tran-1 and Form Tran-2

[UOI Vs M/s Filco Trade Centre Private Limited, SLP No. 32709-32718/2018, Order dated July 22, 2022]

(b) The Petitioner is engaged in providing international inbound roaming services (IIR) and international long distance (ILD) services to foreign telecom operators (FTOs). The Petitioner filed application for refund of Integrated Goods and Services Tax (IGST) on export of services in Form RFD-01A in accordance with provisions of Section 54 of the Central Goods and Services Tax Act, 2017 (the CGST Act). The adjudicating authority rejected refund of IGST on ground that place of supply of services provided by the Petitioner was in India in terms of Section 13(3)(b) of the Integrated Goods and Services Tax Act, 2017 (the IGST Act) and therefore, cannot be considered as export of services. Being aggrieved by the said order, the Petitioner filed appeal before the Appellate Authority, which was allowed. However, the same was not implemented and thus, refund was not remitted to the Petitioner.

The Petitioner sought WP for implementation of such order and grant of refund. Simultaneously, the department filed WP for setting aside the said order passed by the Appellate Authority. The Petitioner argued that the services are rendered by it to FTOs and not to an individual (subscriber of FTOs). The customer of the Petitioner are the FTOs and the subscribers of FTOs are the customers of FTOs. Accordingly, the recipient of service is FTOs, which is located outside India and therefore, the place of supply is outside India. The Department contended that the subscriber and FTOs are acting on behalf of each other, accordingly the place of supply of such transaction would be governed by Section 13(3)(b) of IGST Act.

The Hon'ble High Court held that the Petitioner has provided services to FTOs and not individual subscribers of FTOs and observed that there is no evidence to substantiate that the FTOs have authorised its subscriber to be its representative. Accordingly, place of supply of telecom service rendered by the Applicant is the location of recipient of the service, i.e., location of the FTOs, which is outside India and therefore, Section 13(2) of the IGST Act shall be applicable. Thus, WP filed by department is dismissed and WP filed by the Petitioner is allowed.

Takeaway: Place of Supply for the telecom services provided to FTOs would be outside India.

[Vodafone Idea Limited Vs UOI, WP No. 3221 of 2021, Order dated July 04, 2022 (High Court, Bombay)]

(c) The Petitioners are concessionaires assigned the work of construction of roads by the Karnataka Road Development Corporation. The Petitioners were paid annuities as a consideration for construction and maintenance of roads.

The Government of India vide Notification 32/2017- CT(R) and Notification No. 33/2017-IT(R), both dated October 13, 2017 (collectively referred as the Notifications) exempted services by way of access to roads or a bridge on payment of annuity. Subsequently, the Central Board of Indirect Taxes and Customs (CBIC) vide Circular 150/06/2021- GST dated June 17, 2021 (the Circular dated June 17, 2021) clarified that the Notifications cover only 'support services in transport' under heading 9967 and does not cover 'construction services' under heading 9954. Therefore, construction of roads in lieu of annuities was made taxable vide the Circular dated June 17, 2021.

The Petitioner filed a writ petition challenging validity of the Circular dated June 17, 2021.
The High Court held that by reading the recommendation of the GST Council in its 22nd meeting on October 6, 2017 and the Notifications, it is clear that the Government has treated annuity being paid to the concessionaries at par with toll charges which the concessionaries are permitted to collect from road users, and both were exempt from GST. The deliberation of GST Council and the Notifications pursuant thereto clearly exempts the entire annuity being paid to the Petitioners towards construction and maintenance of roads. Thus, the Circular dated June 17, 2021 has the effect of overriding the Notifications and therefore, the same should be set aside.

Takeaway: Annuities for Construction of roads is exempt from payment of GST

[DPJ Bidar-Chincholi (Annuity) Road Project Private Limited Vs UOI, WP No. 22250 of 2021, Order dated July 11, 2022 (High Court, Karnataka)]

(d) The Applicant owned an e-commerce portal and is engaged in business of selling of fashion and lifestyle products. The Applicant has provided advertisement space to a foreign customer on its web portal (www.myntra.com).

The Applicant sought advanced ruling regarding (i) classification of the services provided to its customers and further, and (ii) rate of GST for providing space on its web portal for advertisements?

The AAR held that the Applicant has provided advertising space to its customers on lease and therefore, there is no control of the Applicant over the manner in which its customer uses the platform. Accordingly, it has been held that the Applicant has provided 'Sale of internet Advertising Space (except on commission)' to its customers. Therefore, such services shall be classifiable under Heading 9983 (Other professional, technical and business services) and hence, liable to GST @18% in terms of Serial No. 21 of Notification No. 11/2017- CT (R) dated June 28, 2017. As regards the issue of place of supply of such services under the present facts, the AAR has not given any comments on the same.

Takeaway: GST @18% is applicable on leasing of advertisement space

[M/S Myntra Designs Private Limited, Advance Ruling No. KAR ADRG 19/2022, Dated July 01, 2022 (AAR, Karnataka)]

(e) The Petitioner has challenged the summary of Show Cause Notice (SCN) and Summary of order contained in Form GST DRC-07, which seeks to impose 100% penalty under Section 73 of the CGST Act, on the grounds of violation of principles of natural justice.

The High Court held that department has issued notices under section 73(1) of the CGST Act in standard format, and no particulars have been struck off nor specific contravention have been indicated to enable the Petitioners to furnish a proper reply to defend themselves. Thus, SCN issued by department is vague as it does not fulfil the ingredients of a proper SCN and amounts to violation of principles of natural justice. The High Court has further held that levy of 100% penalty shows absolute non-application of mind since while passing an adjudication order, the Proper Officer can levy penalty upto 10% of tax dues only. Accordingly, summary of SCN in Form GST DRC-01 and summary of order in Form DRC-07 are quashed. Hence, WP was allowed.

Takeaway: SCN issued without allegations results in violation of principle of natural justice

[Pawan Kumar Singh & Ors. Vs Commissioner of State Tax and Anr., W.P. (T) No. 1239 of 2022, Dated July 11, 2022 (High Court, Jharkhand)]

(f) The Appellant is engaged in manufacture and supply of various goods such as power/electric cable, house wire cables, Solar DC cables, etc. The Appellant received purchase orders for supply of 'Solar DC Cables' for use as parts in manufacture of 'Solar Power Generating System'.

The Appellant sought advance ruling regarding applicable rate of GST on supply of solar DC cables in terms of Notification No. 1/2017 - IT(R) dated June 28, 2017 (Notification No. 1/2017). The AAR held that DC Cables are covered under Chapter Heading 8544 of the Customs Tariff Act, 1975. Further, Solar DC Cables form an integral part of Solar Power Generating System as without these interconnecting cables, the components like Solar Panels and others cannot generate usable power. However, as regards the applicability of concessional rate of tax under Entry No. 234 of Notification No. 01/2017, the Appellant was required to provide requisite document from the buyer such as supply contract order from the concerned authorities before supplying goods claiming concessional rate, against which the Appellant only presented two purchase orders. Accordingly, the AAR refrained to give any ruling as to whether such cables are indeed used as part of solar power generating system due to non-submission of supply contracts or orders by the Appellant. Aggrieved against the order passed by AAR, the Appellant filed an appeal before the Appellate AAR.

The Appellate AAR held that Solar DC Cables is an integral part of the Solar Power Generating System and components such as solar panels cannot generate usable power without interconnecting cables. It further observed that the services are inbuilt and naturally bundled with principal supply of goods, and there is no services involved, and hence, there is no element of 'works contract service' performed by Appellant as sub-contractor. Hence, the Appellant is liable to pay GST on supply of solar DC Cables in terms of entry no. 234 to Schedule-I of Notification No. 01/2017 upto September 30, 2021, and under entry no. 201A to Schedule-II of Notification No. 01/2017 and accordingly, liable to GST @ 12% w.e.f. October 1, 2021.

Takeaway: Supply of Solar DC Cables forms an integral part of 'Solar Power Generating System' and therefore, shall not be classifiable under 'Works Contract Services'

[M/s Apar Industries Limited, Advance Ruling (Appeal No.) GUJ/GAAAR/APPEAL/2022/14, Order dated July 12, 2022 (Appellate AAR, Gujarat)]

SERVICE TAX

(a) The Appellant, a wholly owned subsidiary of the Government of Madhya Pradesh was engaged in distribution of electricity, which was exempt from service tax under the Negative list. The Appellant collected meter charges, late payment charges and supervision charges from the consumers.

The Department alleged that levy of late payment charges and meter rental charges are covered under 'declared service' under Section 66E of Chapter V of the Finance Act, 1994 and no specific exemption was provided for the same. Department also alleged supervision charges received from consumers as taxable service.

The Appellant contended in appeal filed before the Tribunal that these services should be treated as a single service for providing the services of transmission and distribution of electricity.

The Tribunal placed reliance upon the decision passed by Gujarat High Court wherein it had held that activities which are essential to the transmission and distribution of electricity were exempted from the service tax. Thus, the appeal filed by the authorities were dismissed and the services of late payment charges, meter rentals and supervision charges were held as exempted.

Takeaway: Late payment charges, meter charges and supervision charges charged by electricity distribution companies are covered under main service of transmission and distribution of electricity and thus exempt.

[The Commissioner, CGST, Central Excise & Service Tax Vs. M/s Madhya Pradesh Poorva Kshetra Vidyut Vitran Co. Ltd. (M.P.P.L.V.V.C.L.) dated July 13, 2022, Service Tax Appeal No. 50826 OF 2020 before CESTAT, Delhi]

(b) The Appellant was engaged in the business of development of IT Parks and other industrial and commercial spaces which are subsequently given on rent. Service Tax demand was raised against the Appellant on security deposits, reimbursement expenses, termination charges, Cenvat Credit on input services used for output services of construction of immovable property and event management services.

The Tribunal with respect to the aforesaid issues, held as under:

(i) **Refundable security deposits:** These amounts are not received for renting of immovable property but are returned to the customers at the end of the lease period. Therefore, it has been held that amount of security deposits received are not taxable since there is no underlying provision of services involved.

(ii) **Reimbursement expenses:** It was held that expenses towards water, electricity and diesel charges are reimbursements for actual cost incurred and there is no profit element involved, thus not taxable.

(iii) **Termination charges:** The amounts are paid by the lessee for premature termination of lease agreement. It was held that there is no service element involved in lieu of payment of termination charges. It is rather in the nature of compensation or liquidated damages to the lessor for repudiating the contract, and hence, not liable to service tax.

(iv) **Cenvat credit availed on input services used for construction of immovable property:** Relying on the decision rendered by CESTAT[1] , the Tribunal has held that the services of renting of immovable property cannot be provided without the construction of building. Therefore, construction related services satisfy the definition of 'input services' under Rule 2(l) of Cenvat Credit Rules, 2004 (the CCR), and accordingly, Cenvat credit of input services used for construction of immovable property which was further let out to the customers is allowed.

(v) **Cenvat credit on event management services:** It has been held that Cenvat credit on event management services is allowed since Rule 2(l) of the CCR does not exclude any such services, and these expenses are incurred in the course of furtherance of business.

Key Takeaway: No Service Tax is payable on refundable security deposits, reimbursement expenses of water, electricity and diesel charges incurred on actual cost basis and Termination charges of lease agreement. Further, Cenvat Credit is allowed on input services used for construction where such property is used for further letting out, and also on event management services used for promotion of business.

[M/s VITP Pvt. Ltd. Vs Commissioner of Central Tax, Hyderabad-IV dated July 8, 2022, ST Appeal No.27964 of 2013 before CESTAT, Hyderabad]

[1]Regency Park Property Management Services P. Ltd. Vs Commr. of S.T., Delhi [2020 (41) G.S.T.L. 372 (Tri. - Del.)

(c) The Appellant was engaged in construction of fabrication work for flyover/bridge, airports, metro rail and monorails. Relying on the annual reports of the Company, show cause notice was issued to the appellant demanding Service Tax under the category 'Erection, Commissioning or Installation service'.

The Appellant contented that said services are not liable to Service Tax on the ground that bridges and flyovers can by no stretch of imagination, be construed to be plant, machinery or equipment, and therefore, construction of the same cannot be classified under 'Erection, Commissioning or Installation services of Plant, Machinery and Equipment'. It was further argued that activity of fabrication cannot be construed as construction of Civil structure. Further fabrication of beams, struts is an integral part of construction of Bridges and Railways and thus qualifies as civil construction and is not taxable since it has been specifically excluded from the definition of 'Commercial or Industrial Construction Service'.

The Tribunal set aside the demand of service tax and held that fabrication of beams etc. is a part of Civil construction and falls under "Commercial or Industrial Construction services" which excludes services of roads, bridges, airport, railways, trams and dams, thus not taxable. It was also held that even if the activity of job work amounts to rendering of service, the same would be classified as Business Auxiliary Service [covered under Section 65 (19) (v) of Finance Act 1994 (the Finance Act)] which is exempt in terms of Notification 8/2005-ST [which deals with exemption of taxable service of production of goods on behalf of the client referred in sub-clause (v) of clause (19) of section 65 of the Finance Act]. Since the demand was not raised under Business Auxiliary Service, the demand is not tenable and accordingly set aside.

Takeaway: Fabrication work of structures is an integral part of construction work for roads, bridges and airports and thus, classifiable under Commercial or Industrial Construction services]

[Heena Enterprises Vs. Commissioner of Central Excise & St, Service Tax Appeal No. 11656 of 2014-DB dated July 26, 2022 before CESTAT, Ahmedabad]

CENTRAL EXCISE

(a) The Appellant was engaged in manufacture of MS pipes which is supplied to its customer for use in a project. The goods supplied by the Appellant were exempt vide Notification No. 3/2004- CE dated January 8, 2004. Since the goods were exempt, the Appellant adopted reversal under Rule 6(3) of CCR. In terms of the agreement, the customer was supposed to pay 7% as Central Excise Duty reversal for the reversal done under Rule 6(3) of CCR.
Department sought to raise demand on three counts: recovery of Central Excise Duty reversal received from the customers under Section 11D of the Central Excise Act, 1944 (the Excise Act); Cenvat Credit on rent-a-cab services; and Central Excise Duty on freight charges of goods sold.

With respect to Central Excise Duty reversal amount recovered by the Appellant, the Tribunal held that the buyer was not paying the amount as Excise Duty, but as mere reimbursement of the reversal carried out under Rule 6(3)(1) of CCR. Therefore, the same could not be recovered under Section 11D of the Excise Act as Central Excise Duty.

With respect to denial of Cenvat credit on rent-a-cab services, the Tribunal held that rent-a-cab services when used by the employees of the assessee qualifies as 'input services' and Cenvat Credit was available on the same.

In relation to Central Excise Duty on freight charges for goods sold on FOR basis, the Tribunal relied on decision in the case of **CCE Vs Ispat Industries Ltd 2015 (324) ELT 670 (SC)**[2] to point out that irrespective of sale being contemplated at the buyer's premises, the place of removal shall be the place relatable to the seller and not be the buyer's premises. Therefore, value of freight cannot be included in the assessable value of goods.

In view of the above, the demand of Central Excise Duty was set aside.

Takeaway: Amounts collected as reversal under Rule 6(3) of CENVAT Credit Rules, 2004 do not qualify as collection of Central excise duty and thus cannot be recovered under Section 11D of CEA, 1944. Rent-a-cab services used for employees qualify as input services on which Cenvat Credit is allowed. Place of removal is the place relatable to the seller's premises and not the buyer's premises.

[M/S Jindal Tubular (India) Limited Vs. Principal Commissioner, CGST & CE Excise Appeal No. 51725 of 2019 dated July 26, 2022 before CESTAT, Delhi]

[2] 2015 (324) ELT 670 (SC)

CUSTOMS

(a) The Applicant is a private undertaking engaged in setting up of solar power plants and generation of electricity for sale. The applicant sought advance ruling on whether the applicant, being a private undertaking and engaged in setting up of solar power plants, it is eligible to import goods at concessional rate of duty under sub-heading 98010013 of the Customs Tariff Act, 1975 ('the Customs Tariff Act') and import benefits thereon.

The Applicant argued that they fulfil all the conditions prescribed to be eligible for benefit of concessional rate under item "Power Project" in heading 9801 of the Customs Tariff which doesn't place any restriction on the party setting up the project (PSU, government entity or private sector undertaking). With respect to whether the solar power project falls under the ambit of project imports, the applicant argued that the term "power plant" has not been defined under the Customs Act, 1962 ('the Customs Act'). As per the Applicant, solar power plant is based on the conversion of sunlight into electricity and thus, solar power plant would be squarely fall under the purview of power plant which is eligible for benefits under project imports.

The Hon'ble Customs Authority of Advance Rulings held:

- Since the law does not impose restriction on who can set up projects and avail benefit of project imports, the Applicant being a private undertaking would not disentitle it from the statutory benefit.

- Further, the law doesn't restrict the concessional rate of import duty to any specific power plant. All the sources like hydro-electric, thermal, nuclear, wind, solar, etc. from where electrical power can be obtained would come under the item "Power Plant".

- Therefore, the Applicant being a private undertaking engaged in setting up of solar power plant is eligible to import goods at concessional rate under project imports regulations.

Takeaway: The law places no restriction on either who should set up power plant or what kind of power plant is eligible for concessional rate of duty.

[M/s Aquila Solar Power Pvt. Ltd, Ruling No. CAAR/Mum/ARC/21/2022, dated July 6, 2022]

(b) The Appellant is a dealer of iron and steel products. It was alleged that the Appellant was receiving pipes from M/s New Tech Pipe Ltd. (NTPL) on which no customs duty was discharged by NTPL being SEZ unit removing goods in DTA. According to the revenue, since the Appellant was involved in dealing of goods on which the customs duty was not paid, the goods/ pipes found in the premises of the Appellant were liable for confiscation.

The Appellant contested that the goods found and seized from his premises have been purchased from the open market on which payment was made through banking channels, evidence in the form of purchase invoices and ledger account in support of stock in hand was found at time of search. It was further argued that the commissioner has erred in relying on the statements of witnesses, which have been given under coercion and thus, are not reliable.

The question before the Hon'ble CESTAT was that whether the Appellant is involved in clandestine receipt of goods from NTPL.

The Hon'ble CESTAT held that:

- In the case of seizure, the onus lies on the Revenue to prove that the goods/ pipes lying in the premises of the Appellant have been received by him in a clandestine manner from the SEZ unit, on which Customs Duty has not been paid.

- The General Rule is that the goods which are available in the open market, are presumed to have suffered the duty. If it is alleged by the Revenue that the goods lying in the premises of the Appellant is not duty paid, it is the onus on Revenue to establish such allegation.

- When the transaction is through banking channels there is prima facie proof of genuineness of the transaction. The purchase invoices are supported with Road permit.

- Further, the SCN issued by the officer of DGCEI is without jurisdiction as only the officer who was authorized to assess the goods cleared from SEZ could be 'proper officer' as per provisions of the Customs Act.

- The Appeal is allowed, and the confiscated goods are released by the way of consequential relief.

[M/s Fakhri Steels and Iron Vs Commissioner of Customs, Indore, (M.P.), Customs Appeal No. 50111 of 2020-SM, The CESTAT, New Delhi]

(c) The Petitioner is a Public Sector Undertaking (PSU) engaged in import and export of goods and services. The Petitioner was awarded a contract by Gas Authority of India Limited (GAIL) for the purpose of laying a pipeline for a project. For undertaking this project, the Petitioner imported various capital goods on lease after availing the benefit of exemption on temporary import of leased machinery provided under Notification No. 27/02-Cus dated March 01, 2002 ('the Exemption Notification').

Upon completion of the project, the Petitioner re-exported the capital goods and claimed the benefit of drawback under Section 74(2) of the Customs Act. The drawback claimed was the customs duty that the Petitioner had paid on importation of the capital goods.

The question before the Hon'ble High Court was whether the Petitioner was entitled to any drawback on the customs duty under Section 74(2) of the Customs Act keeping in view that the Petitioner has claimed the benefit of the Exemption Notification.

The Hon'ble High Court held that:

Section 74 of the Customs Act deals with drawback allowed on re-export of duty paid goods, i.e., duty that has been paid on import. If 100% duty had been paid at the time of import of the capital goods and within six months of its import or between six months and one year, the goods have been re-exported, then the importer would be entitled to claim drawback of either 85% or 70% of the duty so paid. Duty drawback arises only where the party has paid the entire 100% duty. Further exemption from paying 100% duty is provided under the Exemption Notification only in cases where the party, had imported with an intention of re-export. Thus, the duty exemption provided by the Exemption Notification is for those who import machinery for execution of a contract and re-export the same within the prescribed period. Such conclusions are not prescribed under Section 74(2) of the Customs Act.

The Petitioner would have been entitled to a drawback of either 85% or 70% depending on when the goods were re-exported if they had paid 100% customs duty and not filed declarations under Exemption Notification.

Since the Petitioner has not paid 100% duty on import and had availed concession as per the Exemption Notification, the Petitioner is not entitled to any drawback. By paying customs duty at concessional rate at the time of import, the Petitioner has already availed the benefit of Exemption Notification and hence, Petitioner is not entitled to claim drawback under Section 74(2) of the Customs Act.

[M/s Expotec International Ltd Vs the Union of India, Writ Petition No. 7772 of 2006, The High Court of Bombay]

Foreign Trade

(a) Exemption from Integrated Tax and Compensation Cess on goods imported under Advance Authorisation, Export Promotion Capital Goods Scheme and Export Oriented Unit notified to be continued. [Notification No. 16/2015-2020 dated July 1, 2022]

(b) Import of potatoes from Bhutan has been permitted without Import License up to June 30, 2023. [Notification No. 17/2015-2020 dated July 4, 2022]

(c) Clarification provided with respect to applicability of Paper Import Monitoring System at the time of import at SEZ/FTWZ/EOU and further import into DTA. [Policy Circular No. 41/2015-2020 dated July 5, 2022]

(d) Export Policy of wheat flour (atta) remains 'Free', but the same will be subject to recommendation of Inter-Ministerial Committee (IMC) w.e.f. July 12, 2022. [Notification No. 18/2015-2020 dated July 6, 2022]

(e) The requirement of advance registration i.e., minimum 15 days advance from the expected date of arrival of import consignment, under Steel Import Monitoring System, abolished. [Notification No. 19/2015-2020 dated July 7, 2022]

(f) Procedure for submission of requests for seeking IMC's approval for export of Wheat Flour (atta) has been laid down. [Trade Notice No.14/2015-2020 dated July 18, 2022]

(g) Online Procedures for each fiscal year during the period 2022-2026 for import under the Memorandum of Understandings between India; and (i) Myanmar; (ii) Malawi; (iii) Mozambique, for import of Urad, Tur and Pigeon Peas, has been laid down. [Public Notice No. 17/2015-20 dated July 18, 2022]

(h) Import of Human Embryo under ITC (HS) 05119999 is "Prohibited" in accordance with the Assisted Reproductive Technology (Regulation) Act, 2021 and the Surrogacy (Regulation) Act, 2021. [Notification No. 22/2015-2020 dated July 20, 2022]

The Directorate General of Trade Remedies, Ministry Of Commerce & Industry

a. Initiation of investigation regarding Anti-Circumvention of anti-dumping duty imposed on import of:

Product	Country of export	Notification No. and date
High Tenacity Polyester Yarn	China PR	F No. 7/9/2022-DGTR dated July 27, 2022

b. Final Findings issued in investigation concerning Anti-Circumvention of Countervailing Duty on import of:

Product	Country of export	Notification No. and date
Saccharin	China PR and Thailand	F No. 07/05/2022-DGTR dated July 26, 2022

c. Final Findings issued in Sunset Review investigation on Anti-Dumping Duty on import of:

Product	Country of export	Notification No. and date	Extension period
Styrene Butadiene Rubber	European Union, Korea RP and Thailand	F No. 07/05/2022-DGTR dated July 26, 2022	3 years

d. Final Findings issued in Anti-Dumping Investigation on import of:

Product	Country of export	Notification No. and date
Electrogalvanized Steel	Korea RP, Japan and Singapore	F No. 6/7/2021-DGTR dated July 27, 2022

Ministry of Finance

(a) Amendment made in specified table containing details regarding levy of Anti-Dumping Duty on import of Saturated Fatty Alcohols from respective country of origin, country of export, producer, exporter etc. **[Notification No. 23/2022-Cus (ADD) dated July 12, 2022]**

a. Registered person is allowed to transfer any amount of tax, interest or penalty, fee or any other amount from its electronic cash ledger to the electronic cash ledger of distinct person provided there is no unpaid liability in the electronic liability register. Further, appropriate interest shall be levied on input tax credit (ITC) wrongly availed and utilized, which would be calculated from the date of utilization of ITC till the date of its reversal. [Notification No. 09/2022-CT dated July 5, 2022]

b. Taxpayers having Annual Aggregate Turnover upto INR 2 crores exempt from filing annual return in Form GSTR-9 for Financial Year (FY) 2021-22. [Notification No. 10/2022-CT dated July 5, 2022]

c. Due date for filing Form GST CMP-08 (statement for payment of self-assessed Tax) for first quarter of FY 2022-23 extended from July 18 to July 31, 2022. [Notification No. 11/2022-CT dated July 5, 2022]

d. Due date for filing Form GSTR-4 (return of registered person opted for composition Scheme) for FY 2021-22 extended from June 30, 2022 to July 28, 2022. [Notification No. 12/2022-CT dated July 5, 2022]

e. Time limit for passing order under Section 73 of the CGST Act for recovery of tax not paid or short paid or ITC wrongly availed or utilized for FY 2017-18 extended till September 30, 2023. Further, time period from March 01, 2020 to February 28, 2022 to be excluded for computation of limitation period for filing refund Application under Section 54 and 55 of the CGST Act, as well as for issuance of demand/ order by proper officer for erroneous refunds under Section 73 of CGST Act. [Notification No. 13/2022-CT dated July 5, 2022]

f. Various amendments made in the CGST Rules, details of which are as under:

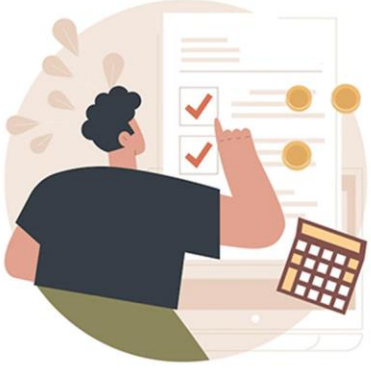
Amended provision in the CGST Rules	Amendment
Proviso to Rule 21 A(4)	Registration suspended but not cancelled to be automatically revoked on furnishing of all pending returns
Explanation 1 to Rule 43(d)	Value of exempt supply shall exclude supply of Duty Credit Scrips. Thus, no requirement of reversal of ITC
Rule 46(s)	Taxpayers to provide declaration on invoice that they are not required to issue electronic invoice.
Rule 86(4B)	Proper officer shall re-credit amount of erroneous refund deposited by the registered person by passing order in Form GST PMT-03A (Order for re-credit of amount to electronic credit ledger).

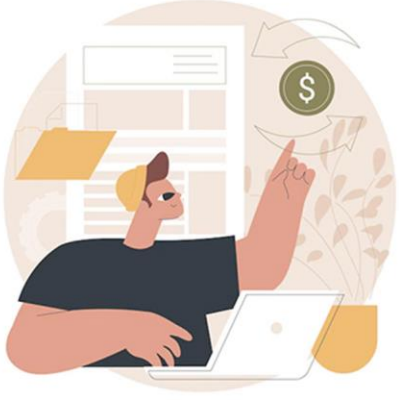
Rule 87 (3) &(5)	Unified Payment Interface (UPI) & Immediate Payment Services (IMPS) to be provided as an additional mode for payment of GST to taxpayers.
Rule 87(14)	Registered person can transfer any amount of Tax, interest, penalty, fee or any other amount available in the electronic cash ledger to Electronic cash ledger of distinct person in Form GST PMT-09 subject to condition that such registered person has no unpaid liability in its electronic liability register.
Rule 88B (w.e.f. July 1, 2017)	In case of payment of Tax due to belated filing of return, interest would be leviable on such amount of Tax paid by debiting electronic cash ledger. In all other cases, interest would be leviable on tax which remains unpaid from the date when such Tax was due till the date such Tax is paid. Further, in case of ITC wrongly availed and utilized, interest would be calculated from the date of utilization of ITC till the date of its reversal.
Explanation to Rule 89 (1)	The term 'specified officer' related to refunds pertaining to supplies to Special Economic Zones Developer/Unit shall have same meaning as 'specified officer' or 'authorized officer' as defined under the SEZ Rules, 2006
Rule 89(2) (b) &(ba)	Refund of unutilized ITC available on account of export of electricity
Explanation to Rule 89(4)	Value of goods exported out of India shall be taken as the Free on Board (FOB) value declared in the Shipping Bill/ Bill of Export or the value declared in tax invoice or bill of supply, whichever is less.
Rule 89(5)	Refund of unutilized ITC available on input services on account of inverted duty structure.
Rule 95A (Omitted w.e.f. July 1, 2019)	Separate procedure for refund of taxes to retail outlets established in departure area of an international Airport beyond immigration making tax free supply to an outgoing international tourist deleted.

Rule 96 (w.e.f. July 1, 2017)	Applicant must furnish a valid return in Form GSTR-3B for claiming refund of IGST paid on goods exported out of India. Further, in case there is any mismatch between the data furnished by exporter of goods in Shipping Bill and those furnished in statement of outward supplies in Form GSTR-1, such application for refund of IGST paid on the goods exported out of India shall be deemed to have been filed on such date when such mismatch in respect of such shipping bill is rectified by exporter.
Rule 96(4)(b) & (c)	Tax officers can withhold refund in case it is of the opinion that verification of exporter is important to consider before grant of refund.
Rule 96 (5A), 5(B) & (5C)	Procedure amended with respect to withholding of refund by tax officers.

Form GSTR-3B (Return for details of outward and inward supplies), Instructions to Form GSTR-9 (Annual Return), Instructions to Form GSTR-9C (Reconciliation Statement), Form GST PMT-06 (Challan for deposit of GST), Form GST PMT-07 (Application for intimating discrepancy relating to payment), Form PMT-09 (Transfer of amount from one account head to another in electronic cash ledger) and Form GST RFD-01 (Application for Refund) amended; Form GST PMT-03A (Order for re-credit of amount to electronic credit ledger) and Form GST RFD-10B (Application for refund by Duty free Shops) omitted.

[Notification No. 14/2022-CT dated July 05, 2022]





g. Change in rate of GST on supply of the specified goods w.e.f. July 18, 2022. [Notification No. 06/2022-CT(R), IT(R) & UT(R) dated July 13, 2022]

h. Exemption from payment of GST withdrawn on specified goods w.e.f. July 18, 2022. [Notification No. 07/2022-CT(R), IT(R) & UT(R) dated July 13, 2022]

i. Rate of Tax on supplies of goods in connection with petroleum and coal methane operations undertaken under specified polices has been increased from 5% to 12% w.e.f. July 18, 2022. [Notification No. 08/2022-CT(R) IT(R) & UT(R)dated July 13, 2022]

j. Change in rate of GST on supply of the specified goods w.e.f. July 18, 2022. [Notification No. 06/2022-CT(R), IT(R) & UT(R) dated July 13, 2022]

k. Exemption from payment of GST withdrawn on specified goods w.e.f. July 18, 2022. [Notification No. 07/2022-CT(R), IT(R) & UT(R) dated July 13, 2022]

l. Rate of Tax on supplies of goods in connection with petroleum and coal methane operations undertaken under specified polices has been increased from 5% to 12% w.e.f. July 18, 2022. [Notification No. 08/2022-CT(R) IT(R) & UT(R)dated July 13, 2022]

m. No refund of unutilised ITC on account of inverted duty structure is available in relation to supply of specified goods including edible oils, coal, lignite, peat etc. [Notification No. 09/2022-CT(R), IT(R) & UT(R) dated July 13, 2022]

n. Supply of fly ash bricks irrespective of fly ash content leviable to concessional rate of GST @6% without ITC. [Notification No. 10/2022-CT(R), IT(R) & UT(R) dated July 13, 2022]

o. Concessional rate of GST @ 5% on supply of scientific and technical equipments to public funded research institutions has been withdrawn. [Notification No. 11/2022-CT(R), IT(R) & UT(R) dated July 13, 2022]

p. Taxpayer dealing in supply of fly ash bricks, fly ash aggregates and fly ash blocks is required to obtain GST registration even if its turnover is less than INR 40 lakhs. [Notification No. 15/2022-CT dated July 13, 2022]

q. Manufacturer of fly ash bricks irrespective of fly ash content not eligible to claim benefit under concessional rate of GST. [Notification No. 16/2022-CT dated July 13, 2022]

r. Principal Director General/Director General of Directorate General of Analytics and Risk Management (DGARM) empowered to withhold refund of IGST on goods or services exported out of India under Rule 96(4)(c) of the CGST Rules throughout territory of India. [Order No. 01/2022-GST dated July 21, 2022]

s. Mandatory furnishing of correct and proper information of inter-State supplies and amount of ineligible/blocked ITC and reversal thereof in return in Form GSTR-3B and statement in Form GSTR-1

- Registered persons are required to furnish information under appropriate tables in Form GSTR-3B and Form GSTR-1, such as report Inter-state supply made to unregistered persons in Table 3.2 of Form GSTR-3B with correct place of supply.

- Amendments, if any made in Form GSTR-1 are to be incorporated appropriately in Table 3.2 of Form GSTR-3B.

- Any reversal of ITC or any ITC which is ineligible should not be part of Net ITC available in Table 4(C) of Form GSTR-3B and accordingly, should not get credited into the Electronic Credit Ledger of the registered person.

- Reversal of ITC of ineligible ITC under section 17(5) or any other provisions is required to be made under Table 4(B) [ITC Reversed] and not under Table 4(D) [Ineligible ITC] of Form GSTR-3B.

[Circular No. 170/02/2022-GST dated July 6, 2022]

t. Applicability of demand and penalty provisions under the CGST Act in respect of transactions involving fake invoices

- Registered person shall be liable for penal action under Section 122 (1)(ii) of the CGST Act for issuing tax invoices without actual supply of goods or services or both only. No demand of Tax, interest or penalty can be levied under Section 73/Section 74 of the CGST Act upon such supplier.

- Registered person who has availed and utilized fraudulent ITC on tax invoices shall be liable for demand and recovery under Section 74 of the CGST Act along with interest and penalty for not receiving actual goods/services. Further, no penalty can be imposed for similar offence under any other provisions of the CGST Act including under Section 122 of the CGST Act.

- Registered person issuing tax invoice without actual supply of goods or services and availing and utilizing fraudulent ITC shall be liable to penalty under Section 122(1)(ii) and Section 122(1)(vii) of the CGST Act.

- Punishment under Section 132 of the CGST Act can be invokable in case of wrongful/ fraudulent availment or utilization of ITC or in cases of issuance of invoices without supply of goods or services or both.

[Circular No. 171/03/2022-GST dated July 6, 2022]

u. Clarification on various issues pertaining to GST

- Such ITC availed by the recipient of deemed export supply for claiming refund of Tax paid on supplies regarded as 'deemed exports' is not ITC in terms of the provisions of Chapter V of the CGST Act and further, not to be included in 'Net ITC' for computation of refund of unutilised ITC on account of 'zero-rated supplies' under Rule 89(4) of the CGST Rules or inverted duty structure under Rule 89(5) of the CGST Rules.

- ITC available in respect of goods or services or both shall be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force shall be applicable on whole clause (b) of Section 17 of the CGST Act and not just to sub-clause (iii).

- Restriction on availment of ITC is applicable on leasing of motor vehicles, vessels and aircrafts only, and not on leasing of any other item.

- Perquisites provided by the employer to the employee in terms of contractual agreement shall not be subjected to GST in terms of Schedule III of the CGST Act.

- Electronic credit ledger can only be used for making payment of output Tax only and cannot be used for making payment of any interest, penalty, fees or other amount such as payment of erroneous refund sanctioned to the taxpayer where such refund was sanctioned in cash. Further, such balance on electronic credit ledger cannot be used for making payment of Tax payable under RCM.

- Any payment made towards output Tax, whether self-assessed in the return or payable as a consequence of any proceeding instituted under the provisions of GST Laws can be made by utilization of amount available in electronic credit ledger of a registered person.

[Circular No. 172/04/2022-GST dated July 6, 2022]

v. Issue of claiming refund under inverted duty structure in case supplier has supplied goods under concessional notification issued by Government of India

- Refund of accumulated ITC on account of inverted duty structure shall be allowed in case rate of Tax on outward supply is lower (due to concessional notification issued by the Government) than rate of Tax on input goods.

[Circular No. 173/05/2022-GST dated July 6, 2022]

w. Manner of re-credit in electronic credit ledger using Form GST PMT-03A (Order for re-credit of amount to electronic credit ledger)

- Proper officer shall re-credit amount of erroneous refund deposited by the registered person in electronic credit ledger by passing order in Form GST PMT-03A in the following cases:

  i. Refund of IGST obtained in contravention of Rule 96(10) of the CGST Rules.
  ii. Refund of unutilised ITC on account of export of goods/services without payment of Tax.
  iii. Refund of unutilised ITC on account of zero-rated supply of goods/services to Special Economic Zones (SEZ) developer/unit without payment of Tax.
  iv. Refund of unutilised ITC due to inverted duty structure.

- Taxpayer shall deposit the amount of erroneous refund along with applicable interest and penalty, wherever applicable in Form GST DRC-03 by debiting of amount from electronic cash ledger. While making the payment in Form GST DRC-03, the taxpayer shall clearly mention the reason for making payment in the text box as the deposit of erroneous refund of unutilised ITC, or the deposit of erroneous refund of IGST obtained in contravention of Rule 96(10) of the CGST Rules.

- Till the time an automated functionality for handling such cases is developed on the portal, the taxpayer shall make a written request in specified format to jurisdictional proper officer to re-credit the amount equivalent to the amount of refund in electronic credit ledger.

- The proper officer, on being satisfied that the full amount of erroneous refund along with applicable interest has been paid by the said registered person in Form GST DRC-03 by way of debit in electronic cash ledger, he shall re-credit such amount in electronic credit ledger by passing an order in Form GST PMT-03A within 30 days from the date of receipt of such request.

[Circular No. 174/06/2022-GST dated July 6, 2022]

x. Manner of filing refund of unutilized ITC on account of export of electricity

- The Applicant is required to file refund application in Form GST RFD-01 under 'Any Other' category electronically and enter 'Export of electricity-without payment of Tax (accumulated ITC)' in remark column of the Form. During such stage, the Applicant is not required to make any debit from Electronic credit ledger.

- The Applicant is required to furnish/upload the details contained in Statement-3B instead of Statement-3, containing the number and date of the export invoices, details of energy exported, tariff per unit for export of electricity as per agreement.

- The Applicant is required to upload the copy of statement of scheduled energy for electricity exported by the Generation Plants in specified format and copy of the relevant agreements detailing the tariff per unit for the electricity exported.

- The Applicant to give details of calculation of the refund amount in Statement-3A along with refund application.

- Refund of unutilised ITC on account of export of electricity shall be calculated using the formula specified for zero-rated supplies under Rule 89(4) of the CGST Rules.

- Since electrical energy is continuously exported, relevant date from where time period of 2 years to be computed shall be the last date of the month, in which the electricity has been exported as per the monthly regional energy account.

- While calculating refund, debit from electronic credit ledger shall be made through Form DRC-03, upon receiving written request from the refund sanctioning authority.

[Circular No. 175/07/2022-GST dated July 6, 2022]

y. Withdrawal of Circular No. 106/25/2019-GST dated June 29, 2019 (Circular dated June 29, 2019) related to refund of taxes to retail outlets established in departure area of an international airport beyond immigration making tax free supply to an outgoing international tourist

- Separate procedure of refund of taxes to retail outlets established in departure area of an international airport beyond immigration making tax free supply to an outgoing international tourist rescinded vide Notification No. 14/2022-CT dated July 5, 2022.

- Accordingly, Circular dated June 29, 2019 issued by CBIC clarifying refund of taxes to retail outlets established in departure area of an international airport beyond immigration making tax free supply to an outgoing international tourist has been withdrawn ab-initio.

[Circular No. 176/08/2022-GST dated July 6, 2022]

Conundrum around availability of ITC of GST paid on renting of residential property

Under GST regime, service by way of renting of residential dwelling for use as residence was not taxable until recently. W.e.f. 18thJuly, 2022, residential dwellings rented or leased out to registered persons, have been brought to tax.[3] With the introduction of taxability, comes the question of availability of Input Tax Credit (ITC) of the same.

Taxability of renting of residential property flows from the rate Notification No. 04/2022[4], wherein the exemption on **renting of residential dwelling for use as residence except where it is rented to a registered person** has been withdrawn. Corresponding amendment has also been brought vide Notification No. 5/2022[5], by virtue of which services by way of **renting of residential dwelling by any person to a registered person** has been made exigible to GST under the reverse charge mechanism (RCM). Consequently, in case a residential dwelling is rented to a registered person, he would be liable to pay GST under RCM. In order to address the confusion, the Government vide Tweet, clarified that renting of residential unit is taxable only when it is rented to a business entity; no GST is leviable when it is rented to private person for personal use; and no GST is leviable if proprietor or partner or firm rents residence for personal use.

With this amendment in place, business entities, which are renting residential dwellings for their employees, expats etc. are liable to pay GST under RCM. Now, the point of discussion that arises is whether such business entities would be eligible to claim ITC of such GST. Under the GST law, the conditions for eligibility of ITC have been enlisted under Section 16 of CGST Act[6], one which being that input services should be used in the course or furtherance of business. In this respect, there is an apprehension that the ITC of tax paid on renting of residential dwelling might be disallowed by the Department on the pretext that residential property rented by registered persons, say for use by its employees as residence, is for personal consumption of employees and so, is not in furtherance of business. Similarly, where a proprietor has rented a residential unit, and it uses it partly for business and partly for residence, a concern arises as to whether proportionate ITC would be available to the proprietor.

Another issue that might crop up is in relation to availability of ITC in the state in which such residential property is situated in case the Companies do not have GST registration in the state of renting the property. In case of renting of immovable property, the place of supply falls wherein the immovable property is located. There are instances where Companies rent residential units as guesthouses in different states for their employees for occasional visits, however, it is not necessary that they would be having GST registration in all those states. In such cases, there is a possibility of loss of ITC in case where the company does not have GST registration in such state. In such cases, GST paid under RCM on renting of residential dwelling will become cost to the company.

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[3]Vide Notification No. 05/2022-Central Tax (R) dated July 13, 2022
[4]Notification No. 04/2022-Central Tax (R) dated July 13, 2022
[5]Vide Notification No. 05/2022-Central Tax (R) dated July 13, 2022
[6]Central Goods and Services Tax Act, 2017

ITC eligibility has always been litigative under GST, with these Notifications in place, the government has added to another issue by bringing an exempt service under the taxability umbrella. Also, this amendment has increased the compliance burden on the taxpayers along with additional tax liability on business entities. Furthermore, it appears that due to reasons spelt above specifically unavailability of ITC, renting cost might surge for companies. So, time would tell if the amendment has added to another issue under GST regime where settled issue has been unsettled.

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