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THE INDIRECT TAX NEWSLETTER

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Recent Case Laws

Goods and Services Tax (GST)

1. ***Circular denying refund of the unutilized input tax credit where the input and output supplies remain the same is beyond the scope of the GST Act.***

Shivaco Associates & ANR v. Joint Commissioner of State Tax [W.P.A No(s). 54 of 2022 (Hon'ble Calcutta High Court), decided on March 11, 2022].

Facts of the case:

- (a) The Petitioners are engaged in the business of purchasing LPG gas in bulk through tanker and then bottling the same in bottles / cylinders. W.e.f. January 25, 2018, the rate of output tax on domestic LPG procured by the Petitioner was reduced from 18% to 5%, which led to accumulation of input tax credit ('ITC') in its hands. The Petitioners filed a refund claim of such unutilised ITC accumulated on account of inverted tax structure for the relevant period in terms of Section 54 of the Central Goods and Services Tax Act, 2017 ("**CGST Act**"). The departmental authorities denied the refund relying on the Circular No. 135/2020-GST dated March 31, 2020 which provides that the tax-payers cannot claim refund under Section 54(3)(ii) of the CGST Act in case the input and output supplies remain the same.
- (b) Being aggrieved by the rejection of the refund claim in terms of the restriction imposed by the Circular, the Petitioners filed the Writ Petition seeking adequate relief.

Judgment:

- (a) The Hon'ble High Court observed that in terms of Section 54 of the CGST Act, refund of any unutilized ITC may be claimed where credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies. The Circular dated March 31, 2020 issued in this regard restricts refund on inverted tax where the input and output supplies are the same. However, no such restriction has been contemplated vide the GST Act.
- (b) In light of the above, the Hon'ble High Court held that any Circular issued under the CGST Act is only for the purpose of bringing uniformity in the implementation of the Act. In the absence of any restriction provided in the Act for refund where input and output supplies are the same, the Circular cannot implant any provision on its own.
- (c) Therefore, the Circular was overreaching the provisions of the CGST Act, which was unsustainable. Accordingly, the Writ Petition was allowed and the denial of refund claim by the departmental authorities was set aside by the Hon'ble High Court.

Argus Comments:

The Hon'ble High Court has rightly pointed out that a Circular cannot over-ride the provisions of the GST Law. This ruling may also provide a sigh of relief to assesseees where the refund claim of ITC is being denied due to restrictions imposed vide Circulars which are issued in contrary to the provisions of the GST laws.

2. ***Demand as well as recovery of interest cannot be made in the absence of adjudication proceedings under the GST Law.***

Narsingh Ispat Limited v. Union of India [W.P. No. 177/2021 (Hon'ble Jharkhand High Court), decided on March 22, 2022].

Facts of the case:

The Petitioner has challenged the action of the departmental authorities, who have passed an adjudication order, without issuance of a Show Cause Notice, and confirmed demand of interest under Section 73/74 of the CGST Act on the taxes already paid. The Petitioner also challenged the recovery notice issued pursuant to the adjudication order passed by the authorities.

Judgment:

- a. The Hon'ble High Court held that whenever an assessee disputes the liability of interest i.e., either disputes its calculation or even its leviability, the authorities are required to initiate proceedings under Section 73/74 the CGST Act for adjudication of the interest liability. In the present case, the Petitioner duly disputes the interest liability. In such a scenario, the authorities have failed to follow the principles of natural justice and issue a Show Cause Notice as prescribed under the GST Law.
 - b. Therefore, the adjudication Order as well as the recovery notice issued by the departmental authorities were held unsustainable by the Hon'ble High Court. Consequently, the matter was remanded to the authorities with the liberty to issue a proper Show Cause Notice in the matter.
3. ***As the mis-match in actual quantity of goods physically verified and the quantity shown in Tax Invoice and E-way bill is less than 1%, no intention to evade taxes is established.***

Messers Raghav Metals v. State of Haryana and Others [CWP No.25057 of 2021 (Hon'ble Punjab & Haryana High Court), decided on March 14, 2022].

Facts of the case:

- (a) A vehicle carrying the consigned goods of the Petitioner was intercepted during movement. On interception, it was found that the quantity of consigned goods as per the E-Invoice and E-Way bill was 10430.7 kgs, whereas as per the physical verification it was 10520 kgs. In view thereof, the authorities initiated proceedings under Section 129 of the CGST Act and detained such goods being carried by the vehicle on the ground of alleged evasion of taxes.
- (b) Aggrieved by the action of the authorities, the Petitioner filed a Writ Petition before the Hon'ble High Court.

Judgment:

- (a) After observing the aforesaid facts, the Hon'ble High Court held that where the difference in weight is merely 90.7 kgs, which accounts for less than 1% weight of the goods, it cannot be said that the Petitioner had any intent to evade the tax or that the mismatch in the quantities is of such nature which shall entail proceedings under Section 129 of the Act.

(b) In light of the above, the Hon'ble High Court allowed the Writ Petition and quashed the proceedings against the Petitioner under Section 129 of the CGST Act.

4. ***ITC of inputs/input services procured for sales promotion scheme providing gold voucher, television, air cooler etc. is inadmissible under Section 17(5)(g) of the CGST Act.***

In Re: GRB Dairy Foods Private Limited [Order No. AAAR/04/2022 (AR) (Appellate Authority for Advance Ruling, Tamil Nadu), decided on February 22, 2022]

Facts of the case:

- (a) The Applicant had floated an optional "Buy N Fly Scheme" to its retailers who achieve the pre-set sales target. High performing retailers would be provided a gold voucher, Television, air cooler etc. The Applicant sought an advance ruling from the Advance Ruling Authority ("AAR") on the issue whether the credit of inputs/input services procured to implement the promotional/ reward scheme was admissible thereto or not.
- (b) The AAR held that the ITC in the aforesaid case was inadmissible in terms of Section 17(5)(g) of the CGST Act since the promotional scheme was meant for personal consumption of the retailers. Aggrieved by the said Order, the Applicant has approached the Appellate Authority for Advance Ruling ("AAAR").

Judgment:

- (a) The AAAR observed that in terms of Section 17(5) of the CGST Act, the gifts or rewards given without consideration, even though for sales promotion, do not qualify as inputs / input services for the purposes of credit, since no GST is paid on its disposal. Further, as per sub-clause (g) of the said Section, the goods, or services or both used for personal consumption by the Applicant or its retailers would make the related ITC unavailable. In the present case, since the retailers of the Applicant ultimately consumed the goods and services provided under reward scheme, the ITC was barred in its hands in terms of Section 17(5)(g) of the CGST Act.
- (b) Accordingly, the AAAR held that the ITC of inputs/input services used in the "Buy N Fly Scheme" was inadmissible in terms of Section 17(5)(g) of the CGST Act.
5. ***In case of a mixed supply, ITC cannot be denied merely on the ground that one of the constituent services of the mixed supply independently attracts nil rate of tax.***

In Re: Shree Arbuda Transport [Appeal No. GUJ/GAAAR/APPEAL/2022/04 (Appellate Authority for Advance Ruling, Gujarat), decided on February 22, 2022]

Facts of the case:

- (a) The Applicant proposed to provide certain services, such as transportation and logistics, clearing and forwarding and other allied services for import and export of cargo at a consolidated price. One of the services in the aforesaid category was exempted, if provided independently. In light of the aforesaid facts, the Applicant sought an advance ruling from the AAR on the issue whether such supply would be a mixed supply or composite supply, the GST rate applicable thereon and admissibility of ITC.

- (b) The AAR held that no ruling could be provided to the Applicant in the absence of a signed agreement between the proposed parties. Aggrieved by the said Order, the Applicant has approached the AAAR.

Judgment:

The AAAR observed that the services provided in the present case were not naturally bundled in the ordinary course of business and merit classification as a 'mixed supply'. The supply attracts the highest tax rate in the bundle of services, viz. 18% GST under SAC 996719 with description as "other cargo and baggage handling services". The AAAR further held that since the single price on the mixed supply attracts the highest rate of 18%, there could not be any question of denial of ITC on the premise that one of the constituent services of mixed supply attracts nil rate of taxes, if provided separately.

Service Tax

6. *Credit of warranty services provided free of cost is admissible under the CENVAT Credit Rules, 2004 ("CCR").*

Hitachi Home and Life Solutions India Limited v. Commissioner of Service Tax, Ahmedabad – III [Final Order No. A/10299-10300/2022 (CESTAT, Ahmedabad), decided on March 31, 2022].

Facts of the case:

- (a) The Appellant is engaged in providing maintenance and repair services free of charge to its customers under the warranty period through its authorized dealers/franchises. The authorized dealers/franchises issues invoice on the Appellant and discharges appropriate Service tax on the services provided to the customers of the Appellant. The Appellant has availed CENVAT credit of service tax charged on such invoice.
- (b) The department has disputed the CENVAT Credit availed by the Appellant for both the pre and post negative list regime on the ground that the warranty service provided free of cost to the customers is not an 'input service' under Rule 2(l) of the CCR. Being aggrieved by the Order of the authorities, the Appellant filed an appeal before the Hon'ble Customs Excise and Service Tax Appellate Tribunal ("**CESTAT**").

Judgment:

- (a) The CESTAT relied upon the decision of *Messers Case New Holland Construction Equipment (I) Pvt Limited - 2021 (8) TMI 963- CESTAT New Delhi* wherein it has been held that the repair and maintenance services provided to the customers during the warranty period is linked to the sale of the products. Therefore, such services are used indirectly in relation to the manufacture of final products and qualify as an 'input service' under Rule 2(l) of the CCR.
- (b) In view of the aforesaid principle, the CESTAT held that the credit on warranty service provided free of cost by the Appellant during the warranty period through third parties was duly admissible thereto and set aside the Order of the departmental authorities.

Customs

- 7. Assessable value under Customs can be determined basis price of the imported goods on the date of transaction and not on any other value, as may be prevalent on a previous or subsequent date.**

Messers Viraj Impex Private Limited v. Commissioner of Customs (I), Mumbai [Customs Appeal No. 87787 of 2013 (CESTAT, Mumbai), decided on March 1, 2022].

Facts of the case:

The Appellant imported Cold Rolled Steel Sheets in Coils from Hong Kong and filed Bills of Entry for clearance through Customs. However, the Appraising Group enhanced assessable value by adopting the value of goods in May 2012 as against declared value of the imported goods shipped in March 2012. In order to save demurrage, the Appellants cleared the goods for home consumption after paying appropriate duty on enhanced value as assessed by Department, under protest. Being aggrieved by the value loaded by the authorities, an appeal was filed before the Commissioner (Appeals), which was rejected. Consequently, an appeal was filed before the CESTAT for determining whether the impugned order rejecting transaction value declared by Appellant was sustainable or not.

Judgment:

- (a) The Hon'ble CESTAT held that the transaction value as declared by the importer should normally be accepted and should be rejected only if the revenue has evidence to show that the transaction value does not reflect the actual transaction price in the course of international trade. In the present case, the revenue has no evidence to support its claim. It was further held that it is a settled position under commercial arrangements that the prices of the transacted goods can be determined only on the date of transaction and not on any other date whether previous or subsequent.
- (b) In view of the aforesaid findings, the CESTAT set aside the Order adopting the price of May 2012 for loading of the assessable value of the imported goods and allowed the appeal.

Central Excise, Sales Tax, VAT

- 8. CENVAT Credit of inputs not brought into the factory but sent to the customers' site directly is admissible to the assessee.**

Minebea Intec India Private Limited v. Union of India [Writ Petition No. 8649/2020 (T-RES) (Hon'ble Karnataka High Court), decided on February 16, 2022].

Facts of the case:

The Petitioner engaged in business of manufacture of electronic weigh bridges, procured MS Platforms, which is a part of weigh bridge, from independent fabricators. After payment of duty on MS Platforms, the independent fabricators supplied the same to Petitioner at customers' site to manufacture duty paid final products. The departmental authorities raised a demand by refusing benefit of CENVAT credit to Petitioner on ground that MS Platforms were not received in Petitioner's factory. The proceedings culminated into a Petition before the Hon'ble High Court on the question whether the Petitioner could claim CENVAT credit for supply of MS Platform at customers' site or not.

Judgment:

- (a) The Hon'ble High Court held that inputs not received directly in factory but received at site are also inputs and credit thereon cannot be denied on the ground of not being brought into the factory. It was further held that in the absence of any dispute that the goods were utilised in the final product on which duty has been paid, the credit of the goods sent directly at site cannot be denied.
- (b) In view thereof, the Hon'ble High Court set aside the demand and allowed the credit of the MS Platforms used in the manufacture of weigh bridges.

Recent Notifications and Circulars

No.	Reference	Particulars
1.	Notification No. 1/2022-Central Tax (Rate) dated March 31, 2022	<p>Seeks to provide for a GST rate of 12% on the following:</p> <ul style="list-style-type: none"> - Fly ash bricks or fly ash aggregate with 90 per cent or more fly ash content; Fly ash blocks, falling under Chapter heading 6815. - Bricks of fossil meals or similar siliceous earths, falling under Chapter heading 6901 0010. - Building bricks, falling under Chapter heading 6904 1000. - Earthen or roofing tiles, falling under Chapter heading 6905 1000. <p>The aforesaid amendment has come in force with effect from April 1, 2022.</p>
2.	Notification No. 2/2022-Central Tax (Rate) dated March 31, 2022	<p>Seeks to provide GST Rate of 6% on the goods specified in Sl. 1 above, subject to the following conditions:</p> <ul style="list-style-type: none"> a. ITC on goods or services used exclusively in supplying such goods has not been taken; and b. ITC on goods or services used partly for supplying such goods and partly for effecting other supplies eligible for ITC, is reversed as if supply of such goods is an exempt supply and attracts provisions of Section 17(2) of the CGST Act. <p>The aforesaid amendment has come in force with effect from April 1, 2022.</p>
3.	Notification No. 03/2022-Central Tax dated March 31, 2022	<p>Seeks to provide that the persons engaged in exclusive supply of goods specified in Sl. 1 are required to obtain compulsorily registration under GST even though the turnover is within the threshold limit of Rs. 40 Lakhs.</p> <p>The aforesaid amendment has come in force with effect from April 1, 2022.</p>
4.	Notification No. 04/2022-Central	<p>Seeks to exclude manufacturer of goods specified in Sl. 1 above from the purview of composition scheme under GST.</p>

	Tax dated March 31, 2022	The aforesaid amendment has come in force with effect from April 1, 2022.
5.	Notification No. 18/2022-Customs dated March 31, 2022	Seeks to amend Notification No. 52/2003-Customs dated March 31, 2003 and extends exemption from IGST and Compensation Cess on imports by Export Oriented Units till June 30, 2022.
6.	Notification No. 19/2022-Customs dated March 31, 2022	Seeks to extend the exemption from Integrated Tax and Compensation Cess by three months i.e., up to June 30, 2022 on goods imported against Advance Authorisation/Export Promotion Capital Goods authorizations under: <ul style="list-style-type: none"> - Notification No. 16/2015-Customs dated April 1, 2015 - Notification No. 18/2015-Customs dated April 1, 2015 - Notification No. 20/2015-Customs dated April 1, 2015 - Notification No. 22/2015-Customs dated April 1, 2015 - Notification No. 45/2016-Customs dated August 13, 2016.
7.	Notification No. 64/2015-20 dated March 31, 2022	Seeks to extend the validity of the existing Foreign Trade Policy 2015-2020 up to 30th September, 2022.
8.	Notification No. S.O. 1511(E) dated March 30, 2022	Seeks to provide that the provisions under Chapter VIIA (Sections 51A & 51B) of the Customs Act, dealing with payments through electronic cash ledger and electronic credit ledger will be applicable with effect from June 1, 2022.
9.	Notification No. 19/2022-Customs (N.T.) dated March 30, 2022	Seeks to exempt deposits in electronic cash ledger - <ol style="list-style-type: none"> I. with respect to goods imported or exported in customs stations where customs automated system is not in place. II. with respect to accompanied baggage. III. other than those used for making payment of,- <ol style="list-style-type: none"> (a) any duty of customs, including cesses and surcharges levied as duties of customs. (b) Integrated tax. (c) GST Compensation Cess. (d) Interest, penalty, fees, or any other amount payable under the Customs Act, or the Customs Tariff Act, 1975, <p>from all of the provisions of Section 51A of the said Act, w.e.f. June 1, 2022.</p>
10.	Circular No. 7/2022-Customs dated March 31, 2022	Seeks to provide clarifications with respect to changes in the Customs Act vide Sections 86, 87, 88 and 94 of the Finance Act, 2022 (enacted on March 30, 2022) and notifications related thereto with reference to appointment of officers of customs and assignment of functions. It has been clarified that <i>inter-alia</i> :

Sl.	Notification No. and date	Purpose in brief	Clarification
1.	21/2022 Cus. (NT) dated March 31, 2022	To appoint officers at the level of Commissioner of Customs and below till AC/DC for respective area of jurisdiction.	There is no change in the area of jurisdiction.
2.	22/2022 Cus (NT) dated March 31, 2022	To appoint officers at the level of Commissioner of Customs and below till AC/DC for the purposes of carrying out Audit under Section 99A of Customs Act.	Commissioner shall assign functions in terms of Section 5(1B).
3.	23/2022 Cus. (NT) dated March 31, 2022	To appoint Commissioner (Adjudication), Delhi and Mumbai for the purposes of adjudicating cases assigned to them by the Board, including as proper officers for exercise of functions under sections 28, 28AAA and Chapter X of the Customs Act.	The posts of Additional Director General (Adjudication), Directorate of Revenue Intelligence in Delhi and Mumbai are being re-designated and officers being placed in the area of jurisdiction of Chief Commissioner of Customs, Delhi, and Mumbai, respectively.
4.	24/2022 Cus. (NT) dated March 31, 2022	To appoint officers at the level of Chief Commissioner of Customs for the areas falling within the	There is no change in the area of jurisdiction except as specified in Sl.3 above.

			jurisdiction of specified Commissioners.		
		5.	25/2022 Cus. (NT) dated March 31, 2022	To appoint officers at the level of Principal Director General and below till AD/DD of Revenue Intelligence.	The jurisdiction is all over India.
		6.	26/2022 Cus. (NT) dated March 31, 2022	To assign functions under various sections of Customs Act to various officers of customs.	Commissioner level officer shall assign function in terms of Section 5(1B).
		7.	27/2022 Cus. (NT) dated March 31, 2022	To appoint officers and assign functions relating to Faceless Assessment.	Circular / Instruction issued relating to Faceless Assessment continue.
		8.	28/2022 Cus. (NT) dated March 31, 2022	For assigning proper officer in case of multiple jurisdictions in terms of section 110AA of Customs Act.	Such proper officers have been invested with enabling powers including issuing the notice and, unless otherwise specified, adjudication including confiscation.
		9.	29/2022 Cus. (NT) dated March 31, 2022	To specify and assign adjudication functions for disposal of pending notices.	This has been specified in light of Section 97 of the Finance Act, 2022.
		10.	30/2022 Cus. (NT) dated March 31, 2022	To provide for Section 124 functions to be performed by certain officers	A limitation / condition has been specified. Where entry under the Act and assessment is already made, but case

				in relation to particular types of cases.	falls outside the purview of Section 110AA by virtue of there being no differential duty involved, after causing inquiry or investigation the report along with documents would be transferred to the officer specified in the notification for further required action, for the purposes of Section 124 of the Customs Act.
11.	Public Notice No. 53/2015-20 dated March 31, 2022	Seeks to extend the validity of the existing Hand Book of Procedures, 2015-20 up to 30th September, 2022.			
12.	Instruction No. 02/2022-GST dated March 22, 2022.	<p>Seeks to issue Standard Operating Procedure for scrutiny of returns for FY 2017-18 and FY 2018-19 as an interim measure until a Scrutiny Module for online scrutiny of returns is made available on the CBIC-GST application.</p> <p>Vide the Instruction, it has been clarified that the return selection for scrutiny would be based on specific risk parameters. The Directorate General of Analytics and Risk Management (DGARM) would select the GSTINs whose returns are to be scrutinized and communicate the same to the field formations from time to time. Thereafter, the scrutiny would be done by the proper officers based on information available with them in various returns and statements furnished by an assessee and the data/details made available through various sources like Director General of Analytics and Risk management -DGARM, Advanced Analytics in Indirect Taxation-ADVAIT, GSTN, E-Way Bill Portal, etc.</p> <p>Discrepancies, if any, would be communicated to the assessee providing for the amount payable and seeking the explanation for such discrepancy. If the discrepancy is accepted, proceedings would be concluded after payment of the amount provided for in the communication. If not, appropriate action including that under section 65 or section 66 or section 67, or determination of tax and other dues under section 73 or section 74 of the CGST Act would be undertaken.</p> <p>Some of the parameters for scrutiny for the specified period are:</p> <ul style="list-style-type: none"> - Mapping taxable supplies, advance payments, tax payments under GSTR 3B vs. GSTR 1 - Mapping reverse charge mechanism supplies, Input service distributor supplies under GSTR 3B vs GSTR 2A 			

	<ul style="list-style-type: none">- Mapping TDS & TCS Supplies in Form GSTR-7/8 vs GSTR 2A.- Mapping liability declared in E-Way bills with Form GSTR-3B.- Identifying claim of ITC in respect of supplies whose taxpayer registrations have been cancelled retrospectively.- Identifying ineligible ITC availed in respect of debit notes/ invoice issued by the suppliers who did not file their GSTR-3B returns.- Examining claim of ITC has been done within the time prescribed under Section 16(4) of the CGST Act.- Examining whether interest on any delayed payment of tax has been made or not.
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Contributed by the Indirect Tax team

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