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SHAPING VIBRANT INDIA

GST Compendium

A monthly guide

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Contents

Editors' Note

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The GST Council held its first meeting after the formation of the new government. Some key recommendations include conditional waivers of interest and penalties for past demand notices, reduction in pre-deposit amounts for filing appeals, non-applicability of interest on the balance in electronic cash ledger, etc. In addition, several clarifications have been issued addressing concerns about the import of services between related entities, the ITC eligibility under the RCM, the ITC reversals for post-supply discounts, taxability of ESOPs, taxability of loans between associated parties along with sector-specific clarifications.

On the judicial front, the Bombay High Court ruled that splitting the consideration for a slump sale into intellectual property rights and other assets does not constitute an 'itemised sale.' The principles established in this judgment can be relied upon to differentiate between an 'itemised sale' and a 'slump sale' under the GST law.

On the customs front, the CBIC has issued instructions clarifying that the transfer of goods from one MOOWR unit to another is permitted, subject to compliance with the provisions of the MOOWR and Customs law.

In addition, the CBIC has clarified that the Specified Officer, as well as the Development Commissioner, are required to provide a certificate confirming that the Developer has refunded the duty benefits while applying for demarcation of 'non-processing area' from IT/ITES SEZ to allow non-SEZ IT/ITES units to operate from this area.

In this edition, our experts have discussed some of the key recommendations and clarifications from the 53rd GST Council meeting, their likely impact, and areas where further action could have been beneficial.

On the direct tax front, the CBDT notified the Cost Inflation Index for FY 2024-25 and provided that a higher rate of TDS/TCS in case of non-filers of ITR would not apply to payments made to/received from RBI. Further, the Telangana HC has upheld the application of GAAR over SAAR in the case of a bonus-stripping transaction.

I hope you will find this edition informative.

01

Important amendments/ updates

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

53rd GST Council meeting: Key recommendations and decisions

The GST Council held its 53rd meeting on 22 June 2024, wherein the Council inter-alia proposed various tax-friendly measures, including an extension of the ITC timeline, conditional waiver of interest and penalty, reduction in the pre-deposit amount, sunset clause for anti-profiteering provisions, changes in the GST rates on goods and services, etc.

Clarifications on certain key issues, including import of services between related parties, taxability of corporate guarantee, and ITC eligibility under the RCM, aim to reduce litigation and simplify tax compliances.

The recommendations of the GST Council shall be given effect through notifications and/or circulars and/or amendments in the law.

Key recommendations/decisions made by the GST Council:

A. Proposed legislative changes:

Relaxation in the time limit for availing ITC	The time limit for availing ITC from FY 2017-18 to FY 2020-21 is proposed to be extended to 30 November 2021.
Conditional waiver of interest or penalty	There will be a waiver of the amount of interest or penalty or both for demand notices issued under Section 73 for FY 2017-18, 2018-19, and 2019-20, where the total amount of tax is paid up to **31 March 2025.**

Reduction in pre-deposit for filing an appeal under GST	There will be a reduction in the amount for filing an appeal before: • Appellate authority: Reduced to INR 20 crore for both CGST and SGST. • GSTAT: Reduced from 20% to 10% with a maximum cap of INR 20 crore for both CGST and SGST.
Time limit for filing appeals before GSTAT	The three-month time period for filing an appeal before the GSTAT will commence from a date that will be notified by the government.
Interest applicability on delayed filing of return	Exclusion of the amount available in the ECL for the purpose of interest computation in the case of delayed return filing.
Sunset clause for anti-profiteering applications	The addition of a sunset clause for anti-profiteering cases and shifting the hearing panel to the principal bench of GSTAT. 1 April 2025 has been proposed as the sunset date for the new application.
ENA taxation	An amendment to be made in the CGST Act will exclude ENA from GST when used to manufacture alcoholic liquor for human consumption.
Reduction in rate of TCS collected by ECOs	A reduction in the TCS rate to 0.5% (0.25% CGST + 0.25 % SGST) has been proposed to ease the financial burden on the suppliers making supplies through an ECO.
Refund of additional IGST on upward price revision	A mechanism will be prescribed for claiming a refund of additional IGST paid owing to an upward price revision after the export of goods.
Insertion of Section 11A	Section 11A will be inserted to regularise non-levy or short-levy of GST where tax was short-paid or unpaid due to standard trade practices.
ISD transitional provisions	A retrospective amendment w.e.f. 1 July 2017 proposed to allow transitional credit for invoices pertaining to services provided before the appointed date and where invoices were received by the ISD before the appointed date.
Common time limit for demand notice and order	• Introduction of Section 74A of the CGST Act will prescribe a common time limit for the issuance of demand notices and orders from FY 2024-25 onwards. • The time limit for availing the benefit of reduced penalty is to be increased from 30 to 60 days.
Refund restrictions	The refund benefit would not be available where goods are subject to export duty, irrespective of whether the goods are exported with/without payment of IGST, including SEZ supplies.

B. GST compliance and functionalities changes:

Introduction of Form GSTR-1A	An optional facility by way of Form GSTR-1A will be introduced to enable taxpayers to amend the details in Form GSTR-1 for a tax period and/or declare additional information before filing GSTR-3B for the said tax period.
Bio-metric-based Aadhaar authentication	Biometric-based Aadhaar authentication of registered applicants on a pan-India basis will be implemented in a phased manner.
Exemption from filing annual return for small taxpayers	Taxpayers with an aggregate annual turnover of up to INR 2 crore rupees are to be exempted from filing the annual return in Form GSTR-9/9A for FY 2023-24.

Reporting of B2C supplies in GSTR-1	The threshold for reporting B2C inter-state supplies invoice-wise in Table 5 of Form GSTR-1 is to be reduced from INR 2.5 lakh to INR 1 lakh.
Mechanism for adjustment of amount paid towards demand as pre-deposit	A mechanism will be prescribed to adjust an amount paid in respect of demand via GST DRC-03 against the pre-deposit for appeal filing.
Mandatory filing of Form GSTR-7 by ECO	• GSTR-7 is to be filed every month by the registered persons who are required to deduct tax at source under Section 51, regardless of whether any tax has been deducted during that month. • No late fee is applicable for the delayed filing of a nil GSTR-7 return. • Invoice-wise details are to be furnished in Form GSTR-7.
Extension in the filing of GSTR-4	From FY 2024-25 onwards, the due date for filing the GSTR-4 return for composition taxpayers has been extended from 30 April to 30 June, following the end of the FY.

C. Rate changes related to goods and services:

C.1 In respect of goods

Rate changes	
Milk cans (steel, iron, and aluminium)	All milk cans (of steel, iron, and aluminium) will attract 12% GST, irrespective of use.
Cartons, boxes, and cases	Reduction on cartons, boxes, and cases (corrugated, non-corrugated paper, or paper-board) from 18% to 1%
Solar cookers	12% GST rate on all solar cookers (single or dual energy source).
Fire sprinklers	All types of sprinklers, including fire water sprinklers, will attract a uniform rate of 12%.

Rate exemption	
Imports of specified items for defence forces	Exemption on imports of specified items for the defence forces extended till **30 June 2029.**
Imports of research equipment/buoys imported under the RAMA programme	Exemption on imports of research equipment/buoys under the RAMA programme will be extended, subject to specified conditions.

Rate clarification	
Parts, components, testing equipment, tools, and toolkits of aircraft	Import of parts, components, testing equipment, tools, and toolkits of aircraft, irrespective of their HS classification, to boost MRO activities, subject to specified conditions liable to 5% IGST.
Poultry-keeping machinery	Poultry-keeping machinery, including 'parts of poultry-keeping machinery,' will attract 12% GST.

C.2 In respect of services

Rate exemption	
Services provided by Indian Railways	Exemption on services by the Indian Railways w.r.t the sale of platform tickets, facility of retiring rooms/waiting rooms, cloak room services, battery-operated car services, and intra-railway transactions.
Accommodation service	Accommodation services with a value of up to INR 20,000 per month per person will be exempted, provided the service is supplied continuously for a minimum period of 90 days.
Services by RERA	Statutory collections made by RERA fall within the function entrusted to the municipality, exempted under GST.

C.3 Other recommendations

Compensation cess exemption	
Import by SEZ unit/developer	Exemption on compensation cess on the imports by the SEZ unit/developers in SEZ for authorised operations w.e.f. 1 July 2017.
Aerated beverages to canteens under MoD	Exemption on compensation cess on the supply of aerated beverages and energy drinks to authorised customers by unit-run canteens under the MoD.

Our comments

The much-anticipated GST Council meeting, convened after nearly eight months, and following the formation of the new government, has introduced essential reforms such as GST exemption on hostels, ITC relaxation, introduction of GSTR-1A, no interest on electronic cash balance, etc., in order to streamline compliance, ease cash flow requirements, and reduce litigation, while providing clarifications conducive to the taxpayers.

The recommendations put forth by the GST Council not only lay down the groundwork for the upcoming budget but emphasise the objective of further enhancing the ease of doing business through effective and business-friendly tax measures.

While discussions on the taxation of online gaming and rate rationalisation were deferred in light of the ongoing budget preparations, the upcoming council meeting scheduled for August 2024 is expected to discuss these pivotal issues, including the potential inclusion of petroleum products.

CBIC issues clarifications pursuant to 53rd GST Council meeting recommendations

In light of the recommendations made by the GST Council during the 53rd meeting, the CBIC has issued a series of circulars aimed at providing clarity on various tax-related matters, simplifying operational issues and to reduce litigation. These circulars specifically address the concerns related to the import of services between related entities, the ITC eligibility under the RCM, ITC reversal mechanism in the case of post-supply discounts, monetary limit for filing a department appeal, the taxability of loans between related parties, warranted/extended warranty services, etc. Key issues pertaining to the ToS and PoS relevant for insurance and banking companies have been addressed, along with sector-specific clarifications.

Key clarifications:

1. Valuation of supply of import of services by a related person where the recipient is eligible to avail full ITC

Where a foreign affiliate provides services to a related domestic entity that is eligible for full ITC, the value of supply would be as under:

- Invoice issued by the domestic entity: The value declared in the domestic entity's invoice may be deemed the OMV in terms of the second proviso to Rule 28(1) of the CGST Rules.
- No invoice issued by domestic entity: The value of such services may be deemed as nil and considered as the OMV.

(Circular No. 210/4/2024-GST dated 26 June 2024)

Analysis

Circular No. 199/11/2023, dated 17 July 2023, addressed the valuation issues between distinct persons. Since the GST provisions are consistent for transactions between distinct persons and related persons, this circular extends the same rationale to related party transactions, which had been subject to litigation, particularly the import of services.

Additionally, the circular also clarifies the applicability of proviso to Rule 28(1) of the CGST Rules in case of reverse charge transactions. In cases where the taxpayers have not paid any consideration for service and, consequently, no invoice has been issued by the Indian company, the value may be deemed as nil, thereby not attracting GST liability. This clarification is expected to provide relief on issues related to the use of brand name/logo, corporate guarantee, secondment of employees, etc.

2. Time limit for availing ITC in respect of RCM supplies received from unregistered persons

- For supplies received from unregistered suppliers where the recipient pays tax under the RCM, the recipient is required to issue an invoice in terms of Section 31(3)(f) of the CGST Act.
- The relevant FY for calculating the time limit for availing ITC under Section 16(4) of the CGST Act is the FY in which the recipient issues the invoice.
- In cases where tax payment and invoice are issued after the ToS, the recipient is required to pay interest on the delayed payment of tax.
- Delayed issuance of invoice by the recipient may attract a penalty under Section 122 of the CGST Act.

(Circular No. 211/5/2024-GST dated 26 June 2024)

Analysis

The DGGI had initiated several inquiries demanding tax on reverse charge transactions, pursuant to which, the taxpayers voluntarily paid the GST tax liability and simultaneously availed ITC. Such ITC claims were further disputed for being in contravention of the ITC timelines specified in Section 16(4) of the CGST Act. There were many such cases awaiting interpretation before the courts.

This is a much-needed clarification and is expected to end ongoing disputes between the taxpayers and the department.

3. Monetary limits for filing appeals or applications by the department before GSTAT, HC, and SC

Fixing monetary limits for filing of appeals by Central Tax officers	• GSTAT: INR 20 lakh • HC: INR 1 crore • SC: INR 2 crores
Principles for determination of monetary limits	Principles for determining whether a case falls within the above monetary limits • **Demand of tax:** Aggregate amount of tax in dispute (including CGST, SGST/UTGST, IGST, and compensation cess) considered for applying the monetary limit for tax-related disputes. • **Demand pertains to only interest/penalty and/or late fee (excluding tax amount):** Aggregate of interest, penalty, or late fee for respective disputes. • **Erroneous refund:** Aggregate of refund amount in dispute • **Composite orders:** Aggregate demand amount for composite orders involving multiple appeals or demand notices instead of individual appeals
Exclusions to the monetary limits for filing appeals	The limits mentioned above do not apply to the following cases where: • Provisions of the GST laws (CGST Act or related Acts and Rules) are held to be ultra vires to the Constitution. • Orders, notifications, instructions, or circulars issued are held to be ultra vires to the GST laws. • The matter relates to the valuation of goods or services, classification of goods or services, refunds, the PoS, recurring issues, or interpretation of provisions. • Adverse comments passed, and costs imposed against the government/department. • Any other cases deemed necessary to contest by the Board.
Cases where no appeal is filed due to monetary limits	• Such cases will not have any precedent value. • Specific recording to be made by the reviewing authorities that an appeal was not filed due to monetary limits. • Departmental representatives will inform courts that non-filing of appeals is due to monetary limits and does not imply acceptance of the decision by the department.

(Circular No. 207/1/2024-GST dated 26 June 2024)

Analysis

Emphasising the importance of prudent litigation practices, the Council recommended fixing thresholds for filing appeals in revenue matters. This is a welcome move that aligns with the objective of reducing unnecessary litigation and providing certainty to taxpayers on their tax assessment while making a decision regarding filing an appeal. It will also help curb filing appeals in cases where established precedents from tribunals and HCs have settled the matter and have not been contested in the SC.

4. Mechanism to prove ITC reversal by the recipient in case of post-supply discount

- Section 15(3)(b)(ii) of the CGST Act requires reversal of the ITC by the recipient attributable to discounts effected post-supply for exclusion from taxable value.
- Currently, there is no functionality on the common portal for suppliers or tax officers to verify the recipients' compliance with ITC reversal for such discounts.
- Accordingly, until a system functionality is available, the following mechanism may be adopted for substantiating ITC reversal by the recipient:
  - Suppliers can procure a certificate from the recipient of the supply, issued by a CA or CMA, certifying the proportionate ITC reversal.
  - The CA/CMA certificate should include details of credit notes, relevant invoice numbers, ITC reversal amounts, and details of FORM GST DRC-03/return/other relevant documents and UDIN, which can be verified on the respective professional body's website.
  - For cases where the tax involved in the discount does not exceed INR 5 lakh in a FY, an undertaking/certificate from the recipient is sufficient instead of a CA/CMA certificate.
  - These certificates or undertakings will be treated as admissible evidence for reversals of the ITC by the recipient[1] and should be produced during any tax proceedings.
  - Suppliers can also provide such certificates or undertakings to tax authorities for past periods as evidence of the ITC reversal.

(Circular No. 207/1/2024-GST dated 26 June 2024)

Analysis

The absence of a facility on the common portal to verify reversal of the ITC attributable to the post-sale discount by the recipient was creating disputes between the taxpayers and the authorities. The validity of the said section was challenged in the case of ***Hindustan Unilever Limited***[2] before the Rajasthan HC, which, although acknowledged that the impugned provision was harsh, upheld the validity of the provision. This is a welcome, much-awaited clarification that simplifies operational issues and reduces disputes.

5. Taxability of ESOP/ESPP/RSU provided by a company to its employees through its overseas holding company

- The ESOP/ESPP/RSU form part of the employee remuneration, and in terms of Entry 1 of Schedule III of the CGST Act, services by an employee to the employer in the course of employment are neither supply of goods nor supply of services.
- The transfer of securities/shares, which is neither in nature of goods nor services, cannot be treated as import of services by the domestic subsidiary company from the foreign holding company.
- The reimbursement of the cost of shares by the Indian subsidiary to the foreign holding company on a cost-to-cost basis is not liable to GST.
- If the foreign holding company charges any additional fee, markup, or commission for issuing shares, this will be considered as a supply of services of facilitating/arranging the transaction in securities/shares by the foreign holding company to the Indian subsidiary company, and GST will be levied on the additional amount, payable under RCM by the Indian subsidiary.

(Circular No.213/07/2024-GST dated 26 June 2024)

Analysis

It is a common practice of Indian companies to provide their employees with the option of allotting securities/shares of their foreign holding company as part of the compensation package as per the terms of the employment contract. On exercising the option by the employees of the Indian subsidiary company, the securities/shares of the foreign holding company are allotted directly by the holding company to the concerned employees of the Indian subsidiary company, and the cost of such securities/shares is generally reimbursed by the subsidiary company to the holding company. However, as shares are outside the purview of GST, doubts were raised regarding the taxability of such reimbursement. This clarification aims to settle all such disputes on the ESOP taxability.

1 Compliance with Section 15(3)(b)(ii) of the CGST Act
2 D.B.CWP No. 13617/2023)

6. Taxability of loan provided by an overseas affiliate to its Indian affiliate or by a person to a related person

A. Taxability of loan transactions between related entities

- Granting loans/credit/advances by an entity to its related entity, even without consideration, is a 'supply of service' under GST.
- The activity of providing loans by an overseas affiliate to its Indian affiliate or by a person to a related person, where the consideration is represented only by way of interest or discount, is an exempt supply under GST.

B. Clarification on processing and other charges

- Charges other than 'interest or discount', such as processing fee/service fee or charges of any other nature, are generally charged for undertaking proper due diligence before providing a loan and qualifies as consideration for providing facilitation/processing/administration services for the loan.
- Such due diligence would not be required for related parties or may be waived off depending on the relationship between the lender and borrower.
- Accordingly, there will be no supply of services between the related entities by way of processing/facilitating/administering the loan, where such loan or credit is provided without charging consideration other than 'interest or discount'.
- No GST liability can be imposed in such cases by applying OMV for valuation.
- In case any fee in the nature of processing fee/administrative charges/service fee/loan granting charges, etc., is charged in excess of the amount charged by way of interest or discount, GST liability would arise on such supply of services.

(Circular No. 218/12/2024-GST dated 26 June 2024)

Analysis

Given that the transactions between related entities are deemed to be supplies even without consideration, the authorities often attempt to determine the OMV for all such transactions, even when there is no underlying rationale or intention between the entities. This circular aims to address the issue of the notional principal value. While interest and discounts are specifically exempt from GST, there have been issues related to the applicability of GST on processing fees, which has been clarified.

7. GST liability and ITC availability in cases involving warranty/extended warranty, in furtherance to Circular No. 195/07/2023-GST

A. Replacement of 'goods' as such or parts under warranty

- In Circular No. 195/07/2023-GST dated 17 July 2023, it was clarified that:
  - Replacement of parts during the warranty period by the manufacturer or distributor on behalf of the manufacturer would be liable to GST only if additional consideration is charged.
  - Replacement of parts during the warranty period are not exempt supplies, and reversal of the ITC is not required.
  - GST would be payable if distributors use parts in their stock or purchase from a third party to provide a replacement under warranty and charge consideration to the manufacturer by issuing a tax invoice.
  - GST would not be payable on the replacement of parts by the manufacturer where the manufacturer provides such parts to the distributor for replacement to the customer during the warranty period without separately charging any consideration at the time of such replacement. Further, no reversal of the ITC is required to be made by the manufacturer in such a case.
  - If the manufacturer issues a credit note to the distributor for using parts already provided by the manufacturer for replacement, the tax liability may be adjusted by the manufacturer, subject to the condition that the said distributor has reversed the ITC availed against the parts so replaced.
- All the above clarifications would also be applicable where the 'goods' as such are replaced under warranty.

B. Replacement by the distributor out of his stock under warranty, on behalf of the manufacturer, and subsequent replenishment of the said parts/goods from the manufacturer

- No GST is payable on replacing goods or their parts under warranty where the distributor replaces such goods or their parts using his stock. Then, the goods or parts are replenished based on a requisition raised to the manufacturer.
- The manufacturer provides the said goods or their parts through a delivery challan without any separate consideration being charged.
- The manufacturer would not be required to reverse the ITC in such cases.

C. Nature of supply of extended warranty

- In Circular No. 195/07/2023-GST dated 17 July 2023, it was clarified that:
  - Where an extended warranty is taken at the time of the original supply, the same construes as a composite supply with the principal supply being the supply of goods, and GST would be payable accordingly.
- In furtherance to the above circular, it has now been clarified that:
  - When the agreement for an extended warranty is made at the time of the original supply of goods and the extended warranty supplier is different (OEM/third party) from the original supplier of goods (dealer), such supply cannot be treated as composite supply. It will be an independent supply from the original supply of goods.
  - If the extended warranty is made after the original supply of goods or is an independent supply provided by the OEM/third party, the supply would be a supply of services independent of the original supply of goods. The liability to pay GST would be on the extended warranty supplier.

(Circular No. 216/10/2024-GST dated 26 June 2024)

Analysis

This clarification aims to standardise GST treatment where the goods are replaced under warranty vis-à-vis part replacement. Further, there were issues relating to the classification of such services, the rate of tax as a composite supply specifically, as multiple parties may be involved. This clarification aims to address all such inconsistencies and promote compliance in tax practices.

Clarifications pertaining to place of supply

8. PoS for custodial services provided by banks to FPI

- The SEBI regulation[3] specifies that 'custodial services' in relation to securities means the safekeeping of securities of a client and providing services incidental thereto, including maintaining accounts of securities, collecting the benefits or rights accruing in respect of the securities, etc. Accordingly, banks enter into custodial agreements with FPIs to provide such custodial services mainly for maintaining accounts of the securities held by the FPI.

3 Securities and Exchange Board of India (Custodian of Securities) Regulations, 1996

- Under the erstwhile service tax regime, the custodial services were covered under the purview of services, which are not provided to the account holder. Consequently, the PoS of services that do not qualify as services provided to an account holder was determined as per the default rule of the place of provision rules under service tax.
- Accordingly, considering the similarities in provisions, the PoS of custodial services under GST would also be determined as per the default rule under Section 13(2) of the IGST Act, which specifies the POS to be the location of the recipient of services where the address details are available with the supplier.

(Circular No. 220/14/2024-GST dated 26 June 2024)

Analysis

The department had issued demand notices to several SEBI-registered custodian banks on the taxability of custodial services provided to FPIs on the premise that such services do not qualify as export, considering the POS in Section 13(8) of the IGST Act. The banks treated such services as exports because services were being rendered to FPIs outside India in exchange for fees in foreign currency. This clarification brings a huge respite to banks providing custodial services to FPIs, as such services would now qualify as 'export' of services.

9. PoS of goods to unregistered persons in case of supply made through an ecommerce operator

- The PoS of goods supplied through an e-commerce platform to unregistered persons, where the billing address is different from the delivery address, shall be the address of delivery of goods recorded on the invoice.
- The supplier may record the delivery address as the recipient's address on the invoice to determine the PoS.

(Circular No.209/3/2024-GST dated 26 June 2024)

Analysis

The clause (ca) was inserted in Section 10(1) of the IGST Act effective from 1 October 2023, which provides that where the supply of goods is made to an unregistered person, the PoS would be the location as per the address of the said person recorded in the invoice and the location of the supplier where the address of the said person is not recorded in the invoice. It further provides that recording the person's name and state shall be deemed to be the recording of the person's address. However, taxpayers received representations seeking clarity in the case of the supply of goods made to an unregistered person where the billing address is different from the address of delivery of goods, especially in the context of the supply being made through e-commerce platforms. Thus, this clarification should address the concerns raised specifically in the case of the goods supplied through e-commerce platforms.

Clarifications pertaining to time of supply

10. ToS in case of construction of road and maintenance of NHAI in HAM

- The HAM contract is covered under the term 'continuous supply of service.'
- The ToS shall be earlier than the date of issue of invoice or receipt of payment, provided the invoice is issued on or before the specified date or event completion date specified in the contract.
- In any other case, the ToS is the earlier than the date of provision of service or the receipt of payment.
- For continuous supply, the date of service provision may be deemed the due date of payment as per the contract.
- The interest component included in the annuity/installment payments shall also be included in the taxable value.

(Circular No.-221/15/2024-GST dated 26 June 2024)

11. ToS in case of allotment of spectrum to telecom companies when payment of the licence fee and spectrum usage charges are made in installments

- The date of payment to be made by the telecom operator to the Department of Telecommunication is clearly ascertainable from the notice inviting applications read with the frequency assignment letter. Accordingly, a tax invoice would be required to be issued with respect to the said supply of services on or before such due date of payment as per the option exercised by the telecom operator.
- For full upfront payment, the ToS will be earlier than the date of payment of the said upfront amount or its due date.
- For deferred payment, the ToS will be earlier than the date of payment of specified installments or their due date.
- Similar ToS treatment applies to other cases of natural resource allocations where payments are made either upfront or in deferred periodic installments.

(Circular No.-222/15/2024-GST dated 26 June 2024)

Analysis

Under the HAM model of NHAI, the concessionaire is required to construct the new road and provide operation and maintenance, which is generally over 15-17 years, and the payment for the same is spread over the years. Even in the case of spectrum allocation to telecom companies, the payment of the licence fee and spectrum usage charges are made in installments spread over multiple years by the telecom companies to the government. GST authorities demand tax liability as soon as the services are completed, irrespective of payments. However, the taxpayers argue that as these services are in the nature of a continuous supply of services, GST should be payable when the installment is paid.

This clarification seeks to eliminate operational issues and prevent litigation by addressing certain industry-specific challenges.

Clarifications pertaining to insurance companies

12. Taxability of salvage/wreckage value in the hands of the insurance company earmarked in the claim assessment of the damage caused to a motor vehicle

A. Where the salvage/wreck value is deducted from the claim amount

- In such cases, the insurance company settles the insurance claim by deducting the salvage value/wreck value from the IDV as per the mutually agreed terms of the insurance policy, and the salvage remains the insured's property.
- The insurance company may provide support in terms of sourcing competitive quotes or dispose the damaged car to the buyer. However, the ownership of such salvage/wreckage remains with the insured and not with the insurance company.
- Accordingly, the deduction on account of salvage/wreck value cannot be construed as consideration for any supply by the insurance company, and no GST liability would arise from such a deduction.

B. Where the salvage/wreck value is not deducted from the claim amount

- In such cases, the insurance company settles the insurance claim on full IDV without deducting any amount towards the salvage/wreck value.
- The salvage becomes the property of the insurance company, which is obligated to deal/dispose of the same.
- Accordingly, the insurance company would be liable to pay GST on such disposal/sale of the salvage.

(Circular No. 215/9/2024-GST dated 26 June 2024)

Analysis

The matter was subject to litigation in the absence of clarity from the ownership aspect. This clarification aims to address as to when the salvage becomes the property of the insurance company. Pertinently, the GST implications would be contingent on mutually agreed terms and conditions between the insured and the insurance company.

13. ITC entitlement by insurance companies on expenses incurred for repair of motor vehicles in case of reimbursement mode of insurance claim settlement

A. Where the salvage/wreck value is deducted from the claim amount

- In such cases, the insurance company settles the insurance claim by deducting the salvage value/wreck value from the IDV as per the mutually agreed terms of the insurance policy, and the salvage remains the insured's property.
- The insurance company may provide support in terms of sourcing competitive quotes or dispose the damaged car to the buyer. However, the ownership of such salvage/wreckage remains with the insured and not with the insurance company.
- Accordingly, the deduction on account of salvage/wreck value cannot be construed as consideration for any supply by the insurance company, and no GST liability would arise from such a deduction.

(Circular No. 217/11/2024-GST dated 26 June 2024)

Issue	Clarification
ITC entitlement by the insurance company on repair expenses	• Under the reimbursement mode, the insured pays for the repair services from non-network garages. • The garage issues the invoice in the name of the insurance company, and the cost of the approved repair services is reimbursed to the insured. • The insurance company is liable to bear the approved cost towards the repair services and is the recipient to that extent. • The ITC of such approved cost for repair services on account of the supply of insurance services would be available to the insurance company and not be blocked under Section 17(5).
ITC entitlement basis the invoice where the insurer's liability is only to the extent of approved claim cost	• **Two separate invoices issued by the garage bifurcating the approved and excess cost:** The ITC of the invoice specifying the approved cost in the insurance company's name would be allowed, subject to the reimbursement of the amount to the insured. • **Single invoice with the total amount in the insurance company's name:** The insurance company will be entitled to the ITC to the extent of reimbursement of the approved claim cost and not the total amount.
ITC entitlement where the invoice is not the name of the insurance company	• The ITC will not be available to the insurance company for non-fulfilment of conditions specified under Section 16(2) for entitlement of the ITC.

Analysis

The ITC eligibility in the reimbursement mode has been a subject of litigation, primarily on the grounds that the supply is made to the insured individual rather than the insurance company. The recent circular clarifies that irrespective of the reimbursement mode, the insurance company is responsible for reimbursing the cost and is the actual recipient of such repair services. This clarifications aims to provide guidelines for the ITC eligibility and invoice documentation.

14. Reversal of ITC in respect of the portion of the premium for life insurance policies that is not included in taxable value

- The premium amount for taxable life insurance policies, which is not included in the taxable value[4], cannot be considered as pertaining to a non-taxable or exempt supply.
- Therefore, there is no requirement for reversal of the ITC[5] with respect to the said amount.

(Circular No.214/8/2024-GST dated 26 June 2024)

Analysis

This clarification aims to reduce litigation while streamlining operational concerns by addressing challenges unique to the insurance industry.

4 As determined under Rule 32(4) of CGST Rules

5 As per provisions of Rule 42 or Rule 43 of CGST Rules, read with Section 17(1) and (2) of the CGST Act

15. ITC eligibility on ducts and manholes used in the network of OFC in terms of Section 17(5) of the CGST Act

- Ducts and manholes are used as part of the OFC network for making an outward supply of transmission of telecommunication signals from one point to another.
- Such ducts and manholes are not explicitly excluded from the purview of 'plant and machinery' as defined under the explanation in Section 17 of the CGST Act.
- Accordingly, it qualifies as 'plant and machinery,' and the ITC on such ducts and manholes would be available and cannot be restricted under Section 17(5)(c) and (d) of the CGST Act.

(Circular No. 219/13/2024-GST dated 26 June 2024)

Analysis

The ITC on the construction of immovable property is restricted under Section 17(5)(c) and (d) of the CGST Act. The explanation in the section excludes the ITC restrictions on plant and machinery. The issue relates to whether ducts and manholes are a part or parcel of immovable property or a structure that is used for making the outward supply, construing plant and machinery. The clarification would benefit telecom and internet provider companies but also help in understanding the scope and coverage of what constitutes plant and machinery.

16. Issues pertaining to the special procedure are to be followed by the manufacturers of pan masala, tobacco, and related products:

- In cases where the make of the machine is not available, the year of purchase of the machine is to be declared as the make number.
- The machine number is mandatory; if it is not available, the manufacturer may assign any numeric number.
- The special procedure is not applicable to manufacturing units in SEZs.
- The special procedure shall not be applicable to manual processes using an electric-operated heat sealer and seamer for packing operations.
- The special procedure applies to all persons involved in the manufacturing process, including job workers/contract manufacturers.

Circular No.208/2/2024-GST dated 26 June 2024)

Analysis

On recommendations of the 50th GST Council meeting, the CBIC, vide Notification No. 04/2024–CT, dated 5 January 2024, had notified a revised procedure to be followed by the manufacturers of pan masala, tobacco, and related products. However, representations were received from various trade associations seeking clarity on some issues pertaining to the said special procedure, namely the unavailability of the make, the model number, the number of packing machines used, the declaration of electricity consumption, etc. The CBIC has issued these clarifications to address these issues, which should address all the concerns and help ensure uniformity in implementing the provisions.

Our comments

The recent circulars issued by the CBIC further resolve ambiguities and provide clarity on various issues under GST. Prominently, in respect of the RCM supplies received from unregistered persons, the relevant FY for computing the ITC time limit will be the FY in which the self-invoice is generated. In the case of a related party transaction, the reimbursement of the cost of shares by the Indian subsidiary to its foreign counterpart on a cost-to-cost basis is not liable to GST. Further, under loan transactions between related persons, there is no requirement to determine the processing fee or other charges where no consideration is charged.

Addressing some other key concerns, such as classification of extended warranty services and streamlining the ITC reversal mechanism, provided much-needed relief to the taxpayers. By clarifying the timing of the GST liability in cases of continuous supply services and establishing clear guidelines for departmental appeals, the CBIC has aimed to reduce litigation and simplify compliance for businesses.

Overall, these measures are expected to enhance operational efficiency and promote a more transparent tax environment.

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

CBIC issues instructions in relation to transfer of goods from one warehouse to another under MOOWR scheme

The CBIC received representations seeking clarity on the payment of deferred duties and other procedural requirements when goods deposited in warehouse under the MOOWR scheme are transferred to another warehouse. It was reported that the industry was facing challenges in moving such goods for use or further processing within the supply chain. To address these challenges, the CBIC has issued instructions clarifying the procedures and ensure uniform implementation of Section 65 of the Customs Act and MOOWR provisions.

The CBIC has clarified that the transfer of resultant goods from a Section 65 unit to another warehouse/Section 65 unit is permitted, subject to compliance with the MOOWR and Chapter IX of the Customs Act as under:

- Deferred customs duty on warehoused goods becomes payable only when resultant goods are cleared for home consumption upon filing of the ex-bond BOE under Section 68 of the Customs Act.
- The transfer of goods is permitted, subject to verifying intactness of the one-time-lock, reconciling quantity of received goods, completing the prescribed form for the transfer of goods under MOOWR. The form needs to be endorsed by the licensee/warehouse keeper of both dispatching and receiving warehouses. Further, the complete description of resultant goods and corresponding warehoused goods needs to be captured in the form.
- The transfer needs to be intimated to the bond officer on the said form.
- Debiting triple duty bond of transferee and recrediting bond of the supplier.
- Maintaining transit risk insurance policy to cover the customs duty involved in the goods moved.
- Prior **permission from the proper officer is not required for removing warehoused goods** in resultant goods.
- Licensees must maintain digital records and file accurate and timely monthly returns.
- Maintain proper records of the goods dispatched and received in the warehouse.

(Instruction No. 16/2024 dated 25 June 2024)

Clarification regarding demarcation of 'non-processing area' from IT/ITES SEZ to allow set up of non-SEZ IT/ITES units

The Ministry of Commerce and Industry had amended the SEZ Rules, for allowing the demarcation of non-processing areas in the IT or ITeS SEZs for setting up businesses engaged in the IT/ITeS by introducing a new Rule 11B effective from 6 December 2023. Further, the Ministry had issued Instruction No. 115. dated 9 April 2024, clarifying various queries received from stakeholders in implementation of the said rule.

Demarcation of a non-processing area can be permitted only after the repayment of the benefits availed and the receipt of a NOC from the specified officer. In this regard, the Ministry has informed that both the specified officer and the Development Commissioner are required to provide a certificate (as per the format prescribed) confirming that the developer has refunded the duty as per Rule 11B and Instruction No. 115 while forwarding the application for demarcation to the board of approval.

(Circular No. K-43014(16)/9/2021-SEZ dated 27 June 2024)

CBIC issues additional clarification regarding applicability of customs duty on display assembly of cellular mobile phones

In order to promote the manufacturing of cellular mobile phones in India, an exemption or a concessional customs duty benefit is provided to parts or components of cellular mobile phones, including sub-parts and inputs used in the manufacturing of such parts and components, subject to compliance with the conditions vide Notification No. 57/2017-Customs dated 30 June 2017. However, considering the instances of misdeclaration or incorrect claim of exemption, the CBIC had issued clarifications, along with the MEITY's guidance vide Circular No 14/2022-Customs dated 18 August 2022.

Citing the issue of ambiguity in the interpretations of the clarification issued in August 2022, the MEITY requested the Department of Revenue to examine the interpretation by considering a revised list of items that are now included or excluded from the display assembly of a cellular mobile phone. In connection with the same, the CBIC has modified its earlier clarifications for recommending the principle for interpreting and determining a display assembly for the purpose of a concessional BCD benefit under the notification as under:

- The display assembly of a cellular mobile phone consists of a combination of these parts or components: Touch panel, cover glass, brightness enhancement film, indicator light, reflector, LED backlight, polarizers, mounted OLED/LCD driver IC, FPCs/FPCAs embedded/attached, LCM/LCD module, OLED module, and integral sensors such as fingerprint, touch sensors embedded in the display.
- The display assembly of a cellular mobile phone imported with the following items/components fabricated, embedded, fitted or attached with the assembly, shall attract a concessional BCD:
  - Frame/support structure, including front, back, or side - any form/material). The support frame may include hooks, fangs, and integrated sockets.
  - Receiver mesh, speaker net
  - Foam, sticker, protective film, mylar, conductive cloth
  - SIM socket
  - SIM tray
  - Antenna pin
  - Side keys such as power key, slider switch, and volume button.

However, if the items/components listed in (a) to (g) above are imported individually, they shall attract the regular BCD rate as applicable.

- The display assembly of a cellular mobile phone imported with the following items/components fabricated, embedded, fitted or attached with the assembly shall be treated as a general part of a cellular mobile phone attracting BCD rate as applicable and not eligible for concessional BCD:
  - The PCBA of mobile phone [except mounted OLED/LCD driver IC for display & FPCs/FPCAs for the purpose of display]
  - Main lens for feature phones
  - Housing of a mobile phone (excluding frame/support structure, including front, back, or side - any form/material for display assembly)
  - Speakers
  - Charger/adapter
  - Battery pack
  - Wired headset
  - Microphone and receiver
  - Camera module
  - Vibrator motor/ringer
  - Keypad of feature phone
  - USB cable

(Circular No. 6/2024-Customs dated 7 June 2024)

DGFT provides relaxation in requirement of submission of bill of export as an evidence for discharge of export obligation

The exporters registered under the AA and DFIA schemes are required to file the EP copy of the shipping bills containing details of the shipment effected or the 'Bill of export' for exports to SEZ units/developers/co-developers as per SEZ rules. However, exporters have reported difficulties in complying with such requirements, and in response to the same, the DGFT has provided relaxation in the requirement of submission of the 'Bill of export' for fulfilling the EO for supplies made to SEZ units under the AA and DFIA schemes, specifically for supplies made prior to 1 July 2017.

As a part of this relaxation, the exporter may submit the following evidence in lieu of the 'Bill of exports':

- ARE-1 (showing the AA No./DFIA file No. and) duly attested by the jurisdictional Central Excise/GST authorities of AA holder/DFIA exporter.
- Evidence of receipt of supplies by the recipient of SEZ.
- Evidence of payment made by the SEZ unit to the AA/DIFA exporter as per Para 4.21 of FTP.

(Circular No.04/2024 dated 3 June 2024)

DGFT simplifies procedure and reduce compliance burden for applying EODC in case of deemed exports

In order to simplify the procedure and reduce the compliance burden for applying EODC in case of deemed exports, the DGFT has amended Para 2 (b) of the 'Guidelines For Applicants' under ANF-4F of the Handbook of Procedures 2023 (Application for Closure of AA). Accordingly, an application for the closure of AA shall be accompanied with the following documents in case of deemed exports:

- Copies of system-generated GST e-invoices and corresponding e-way bills. (However, where system-generated e-invoices and corresponding e-way bills cannot be provided for reasons to be stated, copy of invoices or a statement of invoices, duly certified by the GST authorities of supplier/recipient, may be furnished.)
- In case of supply of the product by the intermediate supplier to the port directly for export by the ultimate exporter (holder of AA or DFIA) in terms of Paragraph 4.30 of HBP, a copy of the shipping bill, with the name of the domestic supplier as the intermediate supplier endorsed on it, along with the file no./authorisation no. of the ultimate exporter and the intermediate supplier, shall be required to be furnished.
- e-BRCs

- Statement of supplies/exports and imports made and actual consumption of inputs in the items exported towards discharge of the EO prepared and duly certified by an independent CA.

(Public Notice No. 09/2024 dated 6 June 2024)

No restriction on re-import of unused/ unsold jewellery exported for purpose of exhibition

The import policy of items under ITC (HS) codes 71131912, 71131913, 71131914, 71131915 and 71131960 has been amended from 'Free' to 'Restricted' category effective from 11 June 2024. Pursuant to this, the directorate received representations from the trade and industry, seeking clarification regarding the applicability of the above import restriction on subsequent re-import of items exported for the purpose of exhibition.

In this regard, the DGFT clarified that there would be no restriction on the re-import of unused/unsold jewellery that was previously exported for exhibition purposes, and such re-imports will be allowed clearance by customs without the need for import licenses, subject to compliance with applicable customs regulations.

(Policy Circular No. 5/2024-25 dated 13 June 2024)

Restriction on import of gold and diamond jewellery not applicable to SEZ units

The DGFT, vide Notification No. 17/2024-25, dated 11 June 2024, had revised the import policy of gold and diamond jewellery to 'restricted'. Furthermore, this restriction was not applicable to import under the India UAE CEPA TRQ. In this regard, the DGFT received representations seeking clarity whether this restriction would be applicable to the imports made by SEZ units.

Therefore, the DGFT has clarified that the imports made by SEZ units (other than FTWZ units) under ITC (HS) codes 71131912, 71131913, 71131914, 71131915 and 71131960 are outside the purview of the restriction.

(Policy Circular No. 6/2024-25 dated 19 June 2024)

Temporary issuance of RCMC for medical devices by EEPC INDIA and other EPCs

Vide Public Notice No. 18/2023 dated 23 June 2023, the DGFT had informed that the RCMC for specific items shall be issued by the EPC for medical devices.

However, it was noticed that the EPC for medical devices has not yet started regular operations and is not onboarded on the DGFT common digital platform for RCMC issuance. Due to this, the industry is facing difficulties in obtaining the RCMC, which is a pre-requisite for availing benefits under the RoDTEP scheme for medical devices and for customs clearance.

As a temporary measure, the DGFT has informed that till such time that the EPC for medical devices starts proper functioning, the RCMC may be issued by the EEPC INDIA and any other concerned EPC for medical devices. Further, the customs authorities are requested to accept the RCMC for medical devices issued by EEPC INDIA and any other concerned EPC till further orders.

(Trade Notice No. 5/2024-25 dated 12 June 2024)

Guidelines for verification of country-of-origin certificates (COO) under CAROTAR 2020

Section 28DA of the Customs Act, read with Rules 4, 5 and 6 of the CAROTAR 2020, empowers the proper officer to seek information and supporting documents from the importer claiming preferential rate of duty, if the proper officer has reason to believe that the origin criteria prescribed in the respective rules of origin have not been met.

The officials of TSK are responsible for the verification of relevant documents uploaded in the e-Sanchit module of ICES and the defacing of original documents, including the country-of-origin certificate issued under the Preferential Trade Agreements (hereinafter referred to as FTA-COO). However, it was noticed that the TSK officials were facing the following difficulties in the verification and defacing of FTA-COO in the case of third country invoicing:

- Missing FOB value in the COO.
- Discrepancies in FOB values between the COO and third country invoices.
- More items listed on the invoice than in the COO.
- Different CTH between the COO and invoice.

To address these difficulties, the office of the Commissioner of Customs (NS-III) at Turant Suvidha Kendra has issued revised guidelines for the verification of the COO under the CAROTAR 2020, focusing on imports claiming preferential duty rates under FTAs as under:

- The importer needs to submit COO with FOB value, third-country invoice details, and disclosure of freight and insurance costs.
- Provide explanations for identical FOB values in COO and third-country invoices.
- Submit freight certificates if the freight is prepaid by a third party.
- Ensure consistency in the currency values between the COO and third-country invoices.
- Note that FTA benefits apply only to items listed in the COO; additional items are assessed at the merit rate.
- Self-declare the preferred CTH if discrepancies exist between the COO and third-country invoices.
- Importers have the option for early clearance against a bond and bank guarantee if more time is needed for document submission.
- The proper officer shall submit a specific questionnaire to the DIC for further verification after obtaining necessary details from the importer.

(Public Notice No. 55/2024 dated 24 June 2024)

Exemption from mandatory quality control orders for imports by AA holders, EOUs and SEZs

The DGFT has notified enabling provisions for exempting inputs imported by advance authorisation holders, EOU and SEZ, from mandatory QCOs. Also, the EO period for the products of the Ministry of Textiles and the DCPC is restricted to 180 days from the date of clearance of import consignments in respect of QCO exemption.

(Notification No. 16/2024-25 dated 6 June 2024)

Interest Equalisation scheme extended till 31 August 2024 for MSME exporters

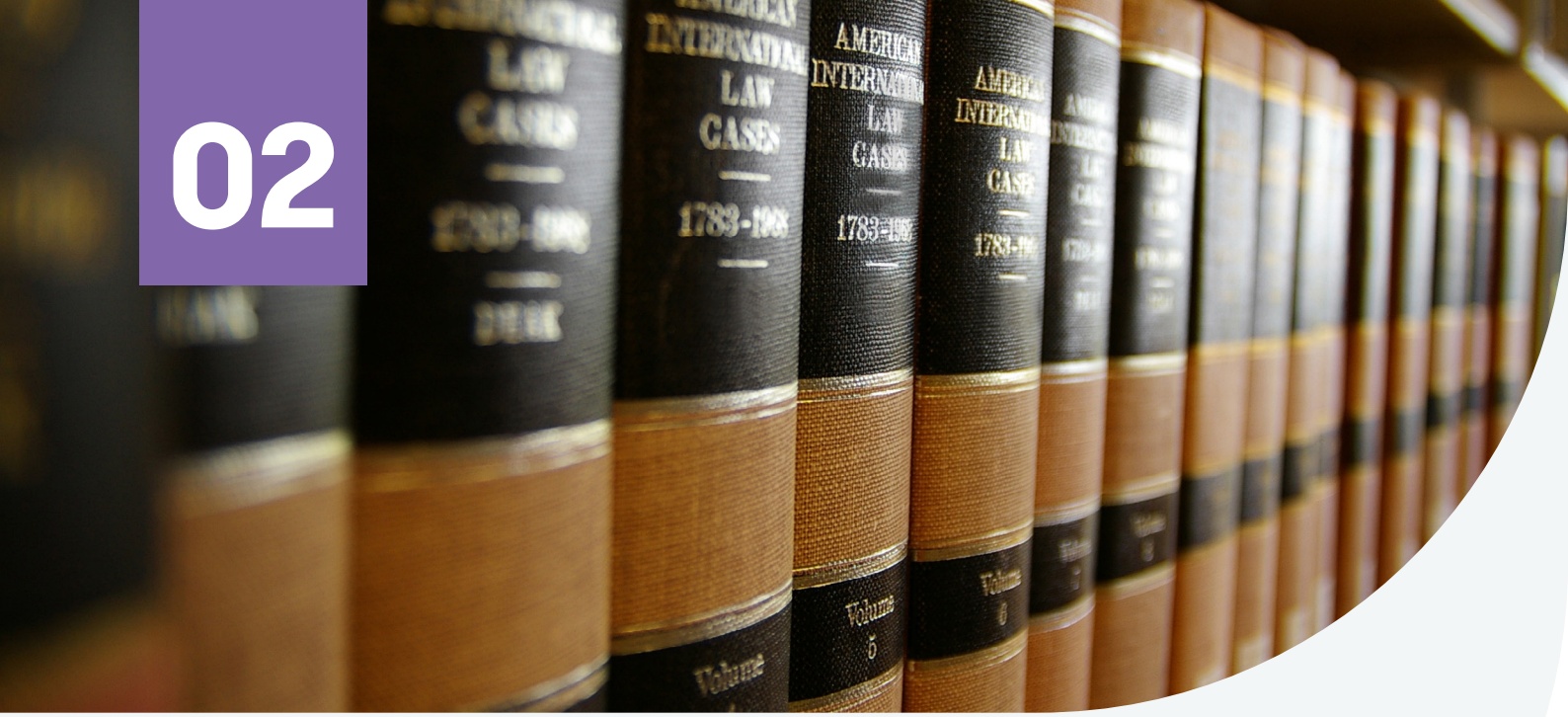
The Interest Equalisation scheme has been formulated to give the benefit in the interest rates being charged by the banks to the exporters on their pre- and post-shipment rupee export credits. The scheme was launched effective from 1 April 2015 for a period of 5 years and later extended till 30 June 2024.

The broad objective of the scheme is to provide exporters a cheaper source of rupee credit for pre-shipment and post-shipment activities. Every exporter eligible under the scheme can opt to avail the upfront benefit of interest subvention from the bank. Thereafter, the amount given as subvention in the interest rate to the exporters is reimbursed to the RBI by the Department of Commerce for its onward release

to the concerned scheduled commercial banks and urban cooperative banks. The revised rates of 3% subvention is applicable to MSME manufacture exporters and 2% is applicable to merchant and other manufacturer exporters exporting along the 410 HS lines.

The scheme for pre- and post-shipment rupee export credit has been extended for two months – from 30 June 2024 up to 31 August 2024 – exclusively for MSME exporters. However, the claims of non-MSME exporters will not be entertained beyond 30 June 2024.

(Trade Notice No. 07/2024 dated 28 June 2024)



02

Key judicial pronouncements

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

Ancillary services provided with distribution of electricity are composite supply and will be exempt from GST – Calcutta HC

Summary

The Calcutta HC granted an ad-interim stay against a SCN seeking to levy tax on ancillary services in relation to the supply of generation, transmission, and distribution of electricity. The HC held that the circular dated 1 March 2018 is an independent document and not a clarification of the notification exempting GST on the intra-state supply of electricity. The HC further provided that the ancillary services provided along with the distribution of electricity are naturally bundled with the principal supply of electricity and cannot be construed as a mixed supply of services.

Facts of the case

- The West Bengal State Electricity Distribution Co. Ltd. (the petitioner) provided the services of generation, transmission, and distribution of electricity in the state of West Bengal.
- The supply of electricity is exempted under GST. Subsequently, a SCN was issued to the petitioner under Section 74 of the CGST Act, treating the supply of electricity services as a mixed supply as per Circular No. 34/8/2018-GST, hence leviable under GST.
- The petitioner challenged the SCN, arguing the validity of the circular levying GST upon the ancillary services provided by DISCOMS to consumers.

Issue before Calcutta HC

Whether ancillary services provided along with the distribution of electricity are considered composite supply and exempt under GST?

Calcutta HC's observations and judgement [W.P.No.12613 of 2024, order dated 11 June 2024]

- **Ancillary services provided with distribution of electricity are considered composite supply:** The HC upheld that ancillary services are naturally bundled with the principal supply of electricity, hence they will be classified as 'composite supply' and cannot be construed as a mixed supply of services.
- **Circular issued not a clarification of the exemption notification:** The HC clarified that since the circular was not issued in conformity with Section 11(3) of the CGST Act, it cannot clarify or alter the scope of the exemption notification. Further provided, the circular had already been declared ultra vires by the various HCs, highlighting that it contradicted Section 8 of the CGST Act and the exemption notification.
- **Ad-interim relief granted:** The HC granted an ad-interim relief to the petitioner, with the court retaining oversight over the final decision.

Our comments

The Gujarat HC, in the case of Torrent Power Limited, had struck down the impugned circular to the extent of clarification that ancillary services are taxable on the premise that such ancillary services are naturally bundled and are therefore composite supply, where the principal supply is the supply of electricity, which is exempt. Accordingly, the entire transaction will be exempted from GST. Similar judgements have been passed by the Delhi HC and Rajasthan HC.

Mere bifurcation of consideration cannot change a slump sale transaction to an 'itemised sale' – Bombay HC

Summary

The Bombay HC has held that the mere bifurcation of consideration for a slump sale towards IPR and other assets cannot be construed as 'itemised sale' by vivisecting the BTA. The HC observed that the values were assigned to intangible properties only for the purpose of determining stamp duty, thereby emphasising that the underlying commercial scheme can be discerned only by reading the BTA in its entirety. A holistic reading of the BTA signified the true intention of the transfer of the entire business in 'lock, stock and barrel', which constitutes a 'transfer of business' and is not eligible for VAT. The HC emphasised that an artificial vivisection of the BTA to construe an intention contrary to the true intention cannot be permitted. Accordingly, the HC set aside the impugned order and demand notice of approximately INR 2,600 crores for violating the established principles of natural justice and bad in law.

Facts of the case

- Piramal Enterprises Limited (the petitioner) entered a BTA with M/s. Abbott Healthcare Private Limited (AHPL) to sell its 'Base Domestic Formulations' business as a 'going concern' for a total cash consideration of INR equivalent of USD 3.80 billion.
- A bifurcation of the part consideration towards tangible, intangible, movable and immovable property was specified in the BTA for the limited purpose of determining the stamp duty.
- After due assessment for FY 2010- 11, the assessment order was passed, holding that the 'slump sale' of business as contemplated vide the BTA would not be liable to VAT under the MVAT Act.
- However, a SCN was issued subsequently, proposing a review of the assessment order premised on the fact that the itemised breakup of consideration towards tangible, intangible, movable and immovable property has been incorrectly allowed as transfer of business on a 'slump sale' basis, due to which VAT could not be levied.
- Consequently, the demand was confirmed vide a review order (impugned order) on the premise that there has been a transfer of 'right to use' of IPR, namely the trade name, logo, goodwill, etc., for the fixed time period that falls under the ambit of 'sale', which is the taxable event under the MVAT Act. Accordingly, a demand notice seeking to recover INR 2,606.79 crores as tax and interest was also issued.
- The aggrieved petitioner has challenged the impugned order and has assailed the demand notice by way of the writ petition before the Bombay HC.

Petitioner's submissions

- It was submitted that the department had, vide the impugned order, sought to artificially vivisect a business transfer that is impermissible under law, thereby exceeding jurisdiction.
- Furthermore, the transfer of the entire business in 'lock, stock and barrel', whereby the seller had completely divested his business and the buyer is completely vested with the business, cannot be construed to be undertaken in the course of business. Accordingly, the transfer of business should not be exigible to VAT.
- Since the petitioner had not conducted such business as a consequence of transferring the business, there cannot be a levy of VAT on such a transaction.

- It was contended that the mere bifurcation of part-consideration, solely for the purpose of stamp duty, cannot be construed as itemised sale, when the intention is to transfer the business as a going concern.
- It was explained that the transfer of goodwill and brands (patent and trademark) is an essential ingredient of transfer of business as a going concern, without which, the buyer would not be able to operate the business.
- Furthermore, permitting the temporary use of the corporate name and logo for a defined period was only meant to ensure continuity and enable successful transition of the business without prejudicing the public minds, considering the pharmaceutical nature of the products. Accordingly, the same cannot be construed to alter the underlying intention of transfer of business.
- Emphasising that taxes are imposed on the true nature of the transaction, it was stated that a composite and integrated contract cannot be vivisected to fasten tax liability.
- It was highlighted that the review was premised on the fact that the bifurcation of part-consideration has been wrongly treated as a slump sale, while the impugned order was passed, holding that the IPR has not been transferred permanently. The petitioner argued that the impugned order is in violation of the principles of natural justice, and therefore, stands vitiated.
- The petitioner also highlighted that the allegations raised were copied verbatim from the service tax demand notice issued to the petitioner. Considering that the taxability aspects under service tax is different from VAT, the impugned order was passed without application of mind, and was therefore, bad in law.

Bombay HC's observations and judgement [Writ Petition No. 2836/2021; order dated 11 June 2024]

- **Underlying intention of the agreement is to transfer the business as a going concern on slump sale basis:** The HC emphasised that the commercial scheme of the BTA, along with the lump sum consideration received for the transfer of business, categorically indicated that the underlying intention was to transfer the business as a going concern on a slump sale basis.
- **Business cannot be construed as goods:** Upon a detailed examination of the provisions of the MVAT Act, the HC observed that the 'business' would not qualify as 'goods'. Accordingly, the sale of business cannot be categorised equivalent to the sale of goods.
- **'Pick and choose' approach to vivisect agreement impermissible under law:** The HC opined that dissecting the agreement merely on account of itemised price bifurcation as against the clear purport of a slump sale under BTA is fundamentally incorrect and against the object of law. The HC emphasised that the intention of the parties and the purpose of the agreement can only be discerned when the agreement is read in its entirety. It was highlighted that the commercial efficacy, as well as the underlying intention, would not change merely by assigning values to tangible and intangible assets. Accordingly, the HC held that the authority has exceeded its jurisdiction.
- **Impugned order fails to follow basic tenets, resulting in prejudice to the parties in violation of principles of natural justice:** The HC observed that on one hand, the SCN recognised the sale under BTA as a 'slump sale', and on the other hand, the reviewing authority has held the itemised sale as a 'sale of goods' liable to VAT. That HC opined that such an approach of the authority is against the established principles of natural justice, thereby vitiating the order.
- **No bar on itemised sale in the context of sale of business as a going concern:** The HC asserted that the values of intangible assets were provided merely for the purpose of determining the stamp duty, which is also recognised as per the provisions of the Income Tax Act. Accordingly, basis the above and the undisputed lump sum consideration, the HC held that the taxability does not get triggered under the MVAT Act.
- **Parameters of proceedings of levy of service tax is different from VAT and cannot be borrowed:** The HC agreed that the impugned order was bad in law, being passed without the application of mind since the findings and reasons were copied from the service tax demand notice issued to the petitioner. The HC held that the parameters of the proceedings of levy of service tax under the Finance Act is different from VAT and cannot be borrowed to be made applicable for the levy of VAT under the MVAT Act.

Our comments

This is an important judgement, which has pertinently emphasised that an itemised breakup of total consideration, purely for the purpose of determining stamp duty, does not take away the true intention of the transfer of business as a going concern on a slump sale basis.

The ruling may have a significant impact under GST since the transfer of business as a going concern is exempted, whereas an itemised sale of assets is treated as supply of goods liable to GST. Accordingly, the principles established by the HC in this judgement can be relied upon to differentiate between an 'itemised sale' and a 'slump sale'.

Providing VFX, post-production services to overseas media houses, with remote limited access, to be considered export of service - CESTAT

The CESTAT ruled that providing VFX and post-production services to international film production and media houses, with restricted electronic access, where the film stays with the overseas recipient, qualifies as export of service and not liable to service tax.

Facts of the case

- Future Works Media Limited (the appellant) is engaged in the business of providing post-production and VFX services to various film production and media houses located in India and outside India.
- For services to overseas clients, all material is stored abroad in their servers and the appellant is given user ID and password-protected access to work upon them, after which, they are restored to the servers.
- During an audit for the period from July 2012 to June 2017, the department interpreted that the appellants had incorrectly applied the POPS Rules and failed to pay service tax on the services provided to overseas clients, which were treated as export of services.
- The department contended that the appellant provided post-production services on products received from clients, and therefore, the services fell within the scope of Rule 4(a) of the POPS Rules, making the place of provision the location where the services were actually performed, which was the premises of the appellants in the current case.
- Consequently, the department issued a SCN dated 18 April 2018, proposing to recover service tax for the said period, along with interest and penalties.
- The SCN was adjudicated by the Commissioner, who confirmed the demands through the impugned order-in-original dated 27 February 2021, against which, the appellant filed an appeal before the Tribunal.

CESTAT's observations [Service Tax Appeal No. 85927 of 2021]

- The Tribunal noted that as per Rule 4 of the POPS Rules, 2012, the place of provision would be the location where the services were actually performed if the goods were physically available with them. However, if access was provided remotely through electronic means, it would be where the goods were situated.
- Relying on the CBIC circular dated 4 May 2018, the Tribunal held that since the appellants only had limited access through the user ID and password to work on film clippings stored on servers abroad, the place of provision was the location of the overseas recipients.
- The Tribunal referred to the case of Prime Focus Ltd., where the SC had upheld that similar VFX services provided to overseas clients were export of services, not chargeable to service tax.
- Based on the facts, legal provisions, and judicial precedents, the Tribunal concluded that the services provided by the appellants to overseas clients qualified as export of services under Sections 66B, 66C of the Finance Act, read with Rule 6A of the ST Rules, and the first proviso to Rule 4 of the POPS Rules, 2012.

Services rendered and utilised outside India did not qualify as exports for the purpose of refund - CESTAT

The CESTAT Bangalore bench has ruled that the part of services provided directly by appellant's subsidiary - Infosys Australia, to customers located outside India, did not qualify as exports from India since such services were rendered and utilised outside India. Accordingly, the CESTAT rejected the refund claims filed by the appellant under the CENVAT Rules.

Facts of the case

- Infosys Technologies Limited (the appellant) is an IT company operating as a 100% EOU within a SEZ, engaged in a variety of IT services, including software development, implementation, consultancy, and support, primarily to foreign clients from India.
- They had filed three refund claims under Rule 5 of CENVAT Rules for the service tax paid on input services used in the services that were exported.
- These refund claims were rejected on the ground that output services were not exported in accordance with the Export of Services Rules, 2005, and on the ground that the nexus between the input and output services was not established.
- Aggrieved by the rejection, the appellant filed an appeal before the CESTAT Bangalore, stating that the appellant enters into various agreements with foreign customers, including banks and financial institutions, for the purpose of providing information technology software services and various other services in relation to 'information technology software'.
- These services are rendered predominantly from the business premises situated in India by the appellant's employees, software experts, technicians, engineers, etc.
- For global agreements with their overseas customers, services are rendered from their 'offshore development centres' (i.e., from various business premises situated in India) and partly 'onsite' viz. through the appellant's branches.
- For the above-mentioned activities (both offshore and onsite), the appellant raises invoices/bills on the foreign customers, who also make remittance/payments to the appellant, i.e., the export proceeds realisation.
- The global agreements entered by the appellant are sub-contracted to the appellant's subsidiary companies located outside India.
- For the sub-contracted activities, the appellant's overseas subsidiaries raise invoices on the appellant, and the appellant makes payment to them.
- Since this is in nature of import of services, the appellant pays service tax under the RCM and avails the CENVAT credit of the tax paid as being input services for providing export services.

CESTAT's observations [Service Tax Appeal No. 875 of 2012 dated 16 June 2024]

- The CESTAT held that if a service is rendered and utilised abroad (such as by a branch office or subsidiary in a foreign country) and paid for out of the foreign exchange earned abroad, the service tax is not payable unless proved that the service was received, or the benefit was enjoyed in India.
- This principle is based on the interpretation that mere documentation or the existence of an agreement between an Indian company and a foreign client does not automatically classify the service as being provided from India if it is executed and used abroad.
- The CESTAT underscored that Infosys India and Infosys Australia are independent entities. Therefore, services rendered by one cannot be considered as services provided by another.
- The Tribunal rejected the notion that services rendered by a subsidiary are equivalent to the services rendered by the parent company just because of contractual arrangements.
- The Tribunal denied the appellant's refund claims, citing that foreign remittances were considered diverted, effectively reducing foreign exchange earnings.
- Additionally, the Tribunal emphasised that merely documenting or certifying services as exported is insufficient if the services are provided and consumed outside India, stressing upon the fact that the actual place of service provision and consumption must be considered over contractual documentation.
- The Tribunal referred to the Board's circular, which allowed self-certification for the correlation between inputs/input services and exports. However, it found that since the services rendered could not be considered exports (as they were performed outside India), the question of correlating inputs to outputs was irrelevant.

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

Recovery of duty not justified without action on previous demand notice - Bombay HC

The Bombay HC has quashed the recovery actions initiated by the Customs authorities, holding that the demand notices and alert had become unenforceable and redundant due to the authorities' inaction and failure to act within the prescribed limitation periods under the Customs Act and the Limitation Act.

Facts of the case

- Anu Products Ltd. (petitioner) had filed four warehouse BOEs from 2005 to 2010, out of which, some goods were partially cleared and warehoused.
- In August 2013, the respondent Customs authorities issued demand notices under Section 72(1) of the Customs Act for recovery of duty and interest on the partially cleared goods.
- However, for almost five years after issuing the demand notices, no concrete measures were taken by the respondents to enforce the recovery.
- In March 2018, the respondents inserted an alert, stating that the petitioner's warehousing bond was pending closure due to non-payment of duty or furnishing of a bank guarantee.
- The petitioner contended that the 2013 demand notices and the warehousing bond had become unenforceable and redundant, as the bond had expired by the limitation of time, and the authorities had failed to act upon the demand notices for several years.
- Despite this, in December 2023, the respondents issued a fresh demand notice under Section 72(2) of the Customs Act for the same recovery.

High Court's observation [Writ Petition No. 1580 of 2024]

- The court held that once the initial demand notices of 2013 issued under Section 72(1)(b) became redundant due to inaction, the fresh demand notice of December 2023 and the impugned alert could not be enforced against the petitioner.
- The court noted that the Customs authorities had failed to execute the warehousing bond within the limitation period of three years from its execution date, rendering it unenforceable by operation of law.
- Therefore, any attempt by the respondents to recover the amounts through the impugned alert and subsequent communication was illegal and invalid.
- Consequently, the petition was allowed, and the rule was made absolute, quashing and setting aside the impugned demand notices, notices under Section 72(2) of the Customs Act, and the alert issued by the Customs authorities.

Customs duty cannot be demanded on goods lost by fire in a SEZ – CESTAT

The CESTAT Ahmedabad has held that customs duty cannot be demanded on goods lost by fire in a SEZ.

Facts of the case

- PI Industries Limited (appellant) is a unit located in the SEZ and is engaged in the manufacture of agrochemicals.
- On 5 June 2018, a fire broke out in the factory of the appellant, resulting in the damage of certain goods, including raw materials imported duty-free and semi-finished goods.
- The appellant informed the specified authority, along with the details of the total stock in the factory at the time of the fire and the value of material destroyed.
- An investigation was conducted, pursuant to which a SCN was issued, demanding customs duty on the entire stock present at the time of the fire, disregarding the actual loss reported by the company.
- The said demand was confirmed by the Principal Commissioner vide an order dated 3 March 2021.
- Aggrieved by the said order, the appellant has filed this appeal.

CESTAT's observation [Customs Appeal No. 10631 of 2021]

- The Tribunal has acknowledged the occurrence of the fire and the resultant loss of goods.
- Rule 8 of the SEZ Rules provides that if duty-free goods are used for unauthorised operations or are not accounted for, duty is payable as if the goods were cleared for home consumption.
- A reference has been made to the decision in the case of Satguru Polyfab Pvt. Ltd., wherein the Tribunal held that the goods destroyed by fire in a SEZ were not subject to customs duty on the ground that Rule 8 of the SEZ Rules 2003 only applies to deliberate misuse or failure to account for goods. However, in the relevant case, the fire was accidental; it was informed to the customs authority, and the stock verification did not indicate any malicious intent.
- The Tribunal noted that the SEZ Act is a separate legislation and does not specifically incorporate Sections 58 and 60 of the Customs Act. Therefore, these sections are not applicable in the context of SEZs and cannot be seen as a reason to reject the application of Section 23 for remission of duty.
- The Tribunal found no evidence to support the demand for customs duty on the entire stock of goods, as the insurance authorities had already estimated and compensated the loss.
- The Tribunal held that since the loss of goods by fire is not considered a contravention under the SEZ rules, the fiction of the SEZ being a foreign territory applies, which implies that the goods were destroyed in a deemed foreign territory, and set aside the demand order.

Royalty payment not linked to import nor a pre-condition for import not includible in transaction value of imported raw material - CESTAT

The CESTAT Chennai has held that royalty, which is not linked to the import of raw materials for manufacturing the final product, i.e., 'clutch facings', nor is a pre-condition for the sale/import of raw materials, is not includible in the transaction value of imported raw materials to demand any differential customs duty.

Facts of the case

- M/s. Valeo Friction Materials India Ltd. (appellant) is engaged in the manufacture and clearance of clutch facings.
- It has entered into a technology license agreement with M/s. Valeo Materriaux De Friction, France, through which it imports raw material from related foreign suppliers being the group and associate companies of Valeo, France, and pays royalty @ 3.75% on the net sale value of finished goods.
- Initially, the appellant, vide an order-in-original dated 14 December 2000, was ordered for acceptance of the transaction value under Rule 4 of the CVR, 1988, holding that royalty shall not be includible in the transaction value of the goods imported.
- This order was upheld by subsequent orders-in-original dated 28 September 2004, 23 November 2007 and 10 December 2010.
- In 2012, the appellant's auditor pointed out that the appellant was making an error in the computation of royalty by not including the value of imported raw materials in the net sales value. However, the shortfall towards royalty payment made until 2012 was waived off by Valeo, France.
- In October 2013, the appellant sought for a renewal of the initial order, but the adjudicating authority, vide an order dated 17 January 2014, ordered for the addition of royalty on imported goods in terms of Rule 10(1)(c) of CVR, 2007, and invoked Section 28(4) of the Customs Act to demand differential duty for the period 2001 to 2013, along with applicable interest.
- The penal provisions under Section 114A for the suppression of facts/willful misstatement were also invoked.
- Aggrieved by the above, the appellant filed an appeal before the Commissioner of Customs (Appeals).
- During the appeal's pendency, the department held the appellant's imported consignments, leading to the appellant paying INR 54,65,113/- under protest and requesting a speaking order.
- Consequently, the Commissioner (Appeals) upheld the order-in-original, aggrieved by which, the appellant has filed the present appeal.

CESTAT's observation [Customs Appeal No. 42211 of 2014]

- On analysis of Rule 10(1)(c) of CVR, 2007, the Tribunal found that royalty should be included in the transaction value of goods imported only when the royalty is paid as a condition of sale of the imported goods.
- The Tribunal noted that the royalty payment covers various aspects other than the import of raw material, such as provision of technical assistance, documentation, transfer of technology, training of the personnel of the appellant, both in India and abroad, and permission to use the trademark 'VALEO' on the products manufactured by the appellant.
- Further, there is no condition in the agreement which provides that royalty payment is a pre-condition for the sale/import of raw materials. Therefore, the Tribunal held that the payment of royalty is not completely relatable to the import of raw materials.
- The Tribunal also found that the method used by the adjudicating authority for computing the differential duty demand was against the prescribed procedures and rules, as it assumed that the entire royalty payment is related to the import of raw materials.
- Therefore, the Tribunal held that the royalty payment is not includible in the transaction value of imported raw materials.
- The Tribunal also highlighted the issue of an extended period – from 2000-2012, the department was of the view that the royalty payments were not includible in the transaction value as held in the initial orders-in-original, which were never appealed against by the department.
- Having not done so, the department cannot invoke the extended period at a later date.
- Therefore, the Tribunal has set aside the differential duty demand.

03

Experts' column

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Breaking down 53rd GST Council: Key decisions and its impact

The highly anticipated 53rd GST Council meeting, held on 22 June 2024 under the leadership of Finance Minister Nirmala Sitharaman in the Modi 3.0 government, has been the center of attention ever since its announcement. The industry had high hopes from the government to address long-standing issues and provide much-needed relief. Indeed, the GST Council has taken several commendable steps in the right direction. The overarching GST Council theme focused on streamlining compliance processes, reducing litigation, and extending amnesty to taxpayers. The Council also resolved sector-specific issues and related party issues at large.

This article will explore some key recommendations and clarifications from the meeting, their likely impact, and areas where further action could have been beneficial.

Amnesty scheme

- The GST Council has recommended the insertion of Section 128A in the Central Goods and Service Tax Act to provide for a conditional waiver of interest and penalty or both, for demands raised under Section 73 for the FYs 2017-18, 2018-19 and 2019-20, subject to full payment of the tax amount on or before 31 March 2025. This is a huge respite

for the taxpayers who faced difficulties in interpreting the law and technical glitches during the initial years of GST implementation.

- While it is likely that this amendment will be introduced in the upcoming Finance Bill 2024, it remains to be seen how the specifics of these benefits are implemented. The adjudications for these financial years have already been concluded in most cases, with matters either settled or pending before the appellate authorities.
- An important consideration for compliant taxpayers who have already paid interest and penalties is whether any refund benefit will be extended. Currently, the provisions do not allow for such refunds, which could conflict with the principle of equality enshrined in the Constitution of India. This could potentially lead to new litigation instead of resolving existing issues.
- Additionally, there may be cases involving multiple issues within a single SCN, where part of the demand has been accepted and paid by taxpayers while the remaining demand is under litigation. It is crucial to determine whether the 'full payment of tax' will be interpreted on an issue-by-issue basis or an SCN-wise basis, as this distinction will have a wide-ranging impact on taxpayers.
- All these aspects need to be carefully evaluated to ensure a fair and effective implementation of the amnesty scheme.

ITC relaxation

- On the ITC front, the GST Council has proposed a retrospective amendment in Section 16(4) of the CGST Act to extend the timeline for availing ITC for FY 17-18 to FY 20-21 till 30 November 2021. This has been a contentious issue, with taxpayers facing significant demand from the GST authorities. The validity of the said section has been challenged before various HCs. While most of the HCs upheld the validity of the matter, it is pending before the SC for final deliberation.
- While this extension provides relief for taxpayers, several questions remain unanswered. For instance, if taxpayers have already reversed the ITC on their own or after receiving an SCN, along with interest, will they be allowed to re-claim the ITC along with a refund? Given the retrospective nature of the amendment, this is a crucial aspect that needs to be addressed in the final print.
- The Council has also clarified the time limit for availing the ITC on supplies from unregistered persons that attract tax under the RCM. It has been clarified that in such cases, the recipient must issue a self-invoice, and the time limit for availing the ITC is the financial year in which the self-invoice is issued rather than the year in which the supply was received. This clarification resolves numerous SCNs that disallowed ITC against RCM liabilities paid for the prior years.
- However, the circular only addresses scenarios involving supplies from unregistered persons. There are instances where the RCM gets attracted even when procuring from a registered person. Since the ITC under the RCM is eligible on a payment basis, it would have been beneficial if the clarification also addressed cases involving registered persons and extended the same analogy to put rest to all these issues at once.

Valuation between related entities

- The GST Council has provided clarifications regarding related party transactions, including the import of services, the taxability of ESOP/ESPP, and loans between related entities. In July 2023, there was a clarification on valuation between distinct persons, allowing the value declared in the invoice to be deemed as the open market value when the full ITC is eligible to the recipients and a nil value if no invoice is issued. This principle has been extended to the import of services between related entities. Since imports are taxed under the RCM, where the recipient issues a self-invoice, the value declared in the invoice may be considered the open market value and nil if no self-invoice is issued.
- While this clarification should help resolve disputes regarding the valuation of imported services for the usage of software, IPR, brand royalty, secondment, and other free services in favour of the taxpayer, some issues remain. For instance, if there is a book settlement between group companies but no self-invoice is issued by the recipient, whether a similar analogy can be applied for non-payment of the RCM liability is yet to be tested and may lead to litigation.
- Such disclosures are apparent from related party schedules in financial statements or under direct tax/transfer pricing regulations. Whether the treatment under GST would conflict with other laws is something that will unfold in the coming days.

ITC reversal mechanism in case of post-supply discount

- Another issue the GST Council has addressed is related to the proof of the ITC reversal by the recipient in case of a post-supply discount. While deliberating the issue, the courts instructed the GST Council to prescribe the manner or functionality to substantiate that the recipient's ITC reversal condition has been satisfied.
- Accordingly, it has been clarified that until the functionality is provided on the common portal, as a temporary measure, the supplier can procure a CA/CMA certificate from such recipient, certifying such proportionate reversal, where the reversal exceeds five lakhs or a self-certificate in other cases.
- While this measure benefits the supplier, it adds a documentation burden for both the supplier and the recipient, as authorities could demand such certificates for all relevant cases. Furthermore, whether a single certificate will suffice for multiple tax periods, if separate certificates will be required, or if audits may be reopened based on this requirement, is unclear.

Monetary limit for filing an appeal by department

- In a move to reduce litigation, monetary limits have been set for filing appeals by the department before the GSTAT, HCs, and the SC. This measure encourages revenue authorities to focus on more significant matters of interest.
- However, there are concerns regarding the clarity and scope of the principles and exclusions specified. The phrase 'Any other case' allows for appeals deemed necessary by the board in the interest of revenue, but its interpretation may undermine the intended purpose of reducing litigation. While this initiative is intended to streamline and prioritise appeals, the vague language could lead to disputes over what constitutes a case in the interest of revenue.

Apart from the above, the government has taken commendable steps in addressing insurance sector issues, place of supply and time of supply in case of continuous supply of service, clarification on warranty and extended warranty, and introducing new functionalities and compliance facilities to ease processes and streamline the compliances.

04

Issues on your mind

What are the features of e-Invoice QR Code Verifier mobile app?

The e-Invoice QR Code Verifier mobile app aims to simplify and streamline the verification process of e-invoice QR codes. It allows users to authenticate the embedded value within QR codes for enhanced compliance and convenience.

Key features of the app include:

1. QR code verification: The app allows users to scan the QR code on an e-invoice and authenticate the embedded value within the code. This ensures the accuracy and authenticity of the e-invoice.

2. User-friendly interface: The app provides a user-friendly interface with intuitive navigation, making it easy for users to navigate through the app's features and functionalities.

3. Comprehensive coverage: The app supports the verification of e-invoices reported across all six IRPs, ensuring comprehensive coverage and convenience.

4. Non-login based: The app operates on a non-login basis, meaning that users are not required to create an account or provide login credentials to access its functionalities. This simplifies the user experience and makes it more convenient for users.

How can a taxpayer file the e-invoice exemption declaration form?

In cases where registered persons are not required to prepare an invoice but are still enabled on the e-invoice portal, they can submit the e-invoice exemption declaration form available on the e-invoice portal (https://einvoice.gst.gov.in). By utilising the e-invoice exemption declaration functionality, eligible taxpayers can comply with the exemption provisions and manage their invoicing processes effectively within the e-invoice system.

A taxpayer can file the e-invoice exemption declaration form by the following steps:

1. Go to the GST portal and click on the e-invoice tab or visit: **https://einvoice.gst.gov.in.**
2. Log in using the GST portal credentials.
3. Select the 'Dashboard' tile under the 'Quick Actions' tab.
4. Click on the 'e-Invoice Exemption Declaration' tab.
5. Select the 'Exemption' category from the drop-down list.
6. Tick the declaration and submission checkbox, select the name of the authorised signatory, and click 'Submit'.
7. Choose 'Submit with DSC' or 'Submit with EVC' to file the form.
8. A successful filing message with ARN will be displayed; click the 'OK' button.

What is Form GST DRC-01? What is the new feature introduced by GSTN in relation to the said form?

Form GST DRC-01, short for 'Demand and Recovery Certificate-01,' is a form utilised by GST officers to provide a concise overview of a SCN to a taxpayer. This form includes specific details concerning the notice, outlining the allegations made against the taxpayer.

Its primary aim is to communicate the reasons behind requesting payment, encompassing taxes, interest, penalties, and additional outstanding amounts.

The GSTN has enabled a new feature allowing taxpayers to select 'Yes' or 'No' for a personal hearing while replying to GST DRC-01 on the GST portal. Previously, the portal automatically selected the 'No' option for a personal hearing in GST DRC-01.

What is the exchange rate automation module?

Currently, the exchange rates are notified by the CBIC manually basis the rates obtained from SBI. The notified rates are then manually incorporated in the ICES by an officer designated for this purpose. To automate the aforesaid process of notifying exchange rates, the CBIC has announced the launch of the ERAM effective from 4 July 2024 (first Thursday of July).

Key features:

- The exchange rate data will be forwarded by SBI to ICEGATE through message exchange. The exchange rates received from SBI shall be adjusted to the nearest five paise and integrated with the ICES.
- These exchange rates shall be published on the ICEGATE website at 6:00 pm as per the existing frequency and shall be accessible for public viewing on the ICEGATE website.
- The online published rates shall come into effect from midnight of the following day and shall remain in force till the next revision.
- The published exchange rates will be stored and shall remain accessible on ICEGATE for future reference to enable a user to check the exchange rates for a previous date.

Once the new system is effective from 4 July 2024, the existing system of notifying exchange rates through a notification would be discontinued. A link shall be provided on the CBIC website, which will direct the user to the ICEGATE website, where the published rates will be available for viewing.

05

Important developments under direct taxes

CBDT notifies Cost Inflation Index for FY 2024-25

The CBDT has notified the Cost Inflation Index for FY 2024-25 as 363, which will be effective from 1 April 2025 and will apply to AY 2025-26 and the subsequent AYs.

[Notification no. 44 of 2024 dated 24 May 2024]

CBDT excludes RBI from definition of specified persons for the purpose of higher TDS / TCS rate

Sections 206AB and 206CCA of the IT Act provides that tax is required to be deducted/collected at a higher rate on payments made to/received from a specified person in the case of non-filing of ITR by such person. Proviso to Sections 206AB(3) and 206CCA(3) of the IT Act states that these provisions will not include a person who is not required to furnish the ITR for the AY and is notified by the central government.

The CBDT has now excluded the RBI from the definition of 'specified person' provided in Section 206AB and Section 206CCA of the IT Act for the purpose of higher rate of TDS/TCS in the case of non-filers of the ITR.

These notifications are effective from 27 May 2024.

[Notification No. 45 and 46 of 2024 dated 27 May 2024]

Telangana HC upholds application of GAAR over SAAR in case of bonus-stripping transaction

In this recent decision, the Telangana HC dismissed the writ petitions filed by the taxpayer against the invocation of GAAR provisions under the IT Act. The HC also disregarded the taxpayers' contention that the transaction is covered under the ambit of SAAR, i.e., Section 94(8) of the IT Act, and hence, GAAR should not apply.

The HC held that the arrangement in the instant case was an impermissible avoidance arrangement, as it lacked commercial substance. Also, both GAAR and SAAR provisions could be applied, depending on the facts of each case.

Brief facts of case

- The taxpayer held shares of a private limited company (Ramky Estate and Farms Limited) in relation to which bonus shares were issued at 5:1 ratio. This led to a reduction in the original face value of these shares to 1/6th of its value.
- Thereafter, the taxpayer sold the above-mentioned shares at the reduced face value, and incurred a short-term capital loss, which was set off against long-term capital gains made from another sale of shares.
- During the assessment proceedings, the AO sought to treat the transactions as 'impermissible avoidance arrangements', as per GAAR.
- Subsequently, the taxpayer filed writ petitions before the Telangana HC, challenging the applicability of GAAR provisions.

Key observations of HC

SAAR vs. GAAR

- In this case, the special provision [provisions for bonus-stripping, i.e., Section 94(8) of the IT Act] was already existing in the IT Act and the general provision was subsequently enacted by way of an amendment. Generally, the special provision is subsequently enacted, and, in such cases, courts have in the past held that the special provision would take precedence over the general provision.
- Since GAAR provisions under the IT Act begin with a non-obstante clause, these provisions would override the other existing provisions of the IT Act.
- The Finance Minister had also reiterated that the applicability of either GAAR or SAAR would be determined on a case-by-case basis. Further, the CBDT, vide Circular No. 7 of 2017, dated 27 January 2017, had also clarified that both SAAR and GAAR would be applied, depending on the specifics of each case.

Lack of commercial substance

- The SAAR provisions [provisions for bonus-stripping, i.e., Section 94(8) of the IT Act] might apply to a simple case of issuing bonus shares with underlying commercial substance. However, the issuance of bonus shares in this case was clearly an artificial avoidance arrangement and is deliberately misusing the IT Act's provisions.
- Furthermore, this arrangement creates extraordinary rights and obligations, which appear to lack good faith, and these unusual terms do not align with fair dealing principles.
- Tax planning may be legitimate, provided it is within the framework of law. However, colourable devices cannot be a part of tax planning. It is the obligation of every citizen to pay the taxes honestly without resorting to subterfuges.

[Ayodhya Rami Reddy Alla (Writ Petition Nos. 46510 and 46467 of 2022)]

Glossary

AA	Advance authorisation
AO	Assessing officer
AY	Assessment year
B2C	Business to consumer
BCD	Basic customs duty
BOE	Bill of entry
BTA	Business transfer agreement
CA	Chartered accountant
CAROTAR 2020	Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020
CBDT	Central Board of Direct Taxes
CBIC	Central Board of Indirect Taxes and Customs
CENVAT Rules	CENVAT Credit Rules, 2004
CEPA	Comprehensive Economic Partnership Agreement
CESTAT	Customs Excise and Service Tax Appellate Tribunal
CGST	Central Goods and Services Tax
CGST Act	The Central Goods and Services Tax Act, 2017
CGST Rules	The Central Goods and Services Tax Rules, 2017
CMA	Cost accountant
CoO	Country-of-origin certificate
CTH	Customs tariff heading
Customs Act	The Customs Act, 1962
CVR, 1998	Customs (Determination of Price of Imported Goods) Rules, 1988
CVR, 2007	Customs Valuation (Determination of Value of Imported Goods) Rules, 2007
DCPC	Department of Chemicals & Petro-chemicals
DFIA	Duty-free import authorisation
DGFT	Directorate General of Foreign Trade
DGGI	Directorate General of Goods and Services Tax Intelligence
DIC	Directorate of International Customs
DSC	Digital signature certificate
e-BRCs	Electronic bank realisation certificate
ECL	Electronic cash ledger
ECO	Electronic commerce operator
EEPC INDIA	Engineering Export Promotion Council of India
ENA	Extra neutral alcohol
EO	Export obligation
EODC	Export obligation discharge certificate
EOU	Export oriented unit
EPC	Export Promotion Council
ERAM	Exchange rate automation module
ESOP	Employee stock option
ESPP	Employee stock purchase plan
EVC	Electronic verification code
FA 2022	Finance Act, 2022
Finance Act	Finance Act, 1994
FOB	Free on board
FPC	Flexible printer circuit
FPCA	Flexible printed circuit assembly
FPI	Foreign portfolio investors
FTA	Free trade agreement
FTWZ	Free trade warehousing zone
FY	Financial year
GAAR	General anti-avoidance rules
GST	Goods and Services Tax
GSTAT	GST Appellate Tribunal
GSTN	Goods and Services Tax Network
HAM	Hybrid annuity mode
HBP	Hand Book of Procedures
HC	High Court
HS	Harmonised system
IC	Integrated circuit
ICEGATE	Indian Customs Electronic Gateway
ICES	Indian Customs EDI System
ID	Identification
IDV	Insured's declared value
IGST	Integrated Goods and Service Tax
IGST Act	The Integrated Goods and Service Tax Act, 2017
INR	Indian Rupee
IPR	Intellectual Property Right
IRP	Invoice registration portal
ISD	Input service distributor
IT Act	Income-tax Act, 1961
ITC	Input tax credit
ITC (HS)	Indian trade clarification based on harmonised system
IT/ITES	Information Technology or Information Technology Enabled Services
ITR	Income tax return
LCD	Liquid-crystal display
LCM	Liquid crystal module
LED	Light-emitting diodes
Limitation Act	Limitation Act 1963
MeitY	Ministry of Electronics and Information Technology
MoD	Ministry of Defence

Glossary

MOOWR	Manufacture and Other Operations in Warehouse Regulations, 2019
MRO	Maintenance, repair, and overhaul
MVAT Act	Maharashtra Value Added Tax Act 2002
NHAI	National Highways Authority of India
OEM	Original equipment manufacturer
OFC	Optical fibre cables
OLED	Organic light-emitting diodes
OMV	Open market value
PCBA	Printed circuit board assembly
POPS Rules	Place of Provision of Services Rules, 2012
PoS	Place of supply
QCO	Quality control orders
QR Code	Quick response code
RAMA	Research Moored Array for African-Asian-Australian Monsoon Analysis and Prediction
RCM	Reverse charge mechanism
RCMC	Registration cum membership certificates
RERA	Real Estate Regulatory Authority
RoDTEP	Remission of Duties and Taxes on Export Products
RSU	Restricted stock unit
SAAR	Specific Anti-Avoidance Rules
SBI	State Bank of india
SC	Supreme Court
SCN	Show cause notice
SEBI	Securities and Exchange Board of India
SEZ	Special economic zone
SEZ Act	The Special Economic Zone Act, 2005
SEZ Rules	The Special Economic Zones Rules, 2006
SGST	State Goods and Service Tax
SIM	Subscriber identity module
SLP	Special leave petition
ST Rules	Service Tax Rules, 1994
TCS	Tax collected at source
TDS	Tax deducted at source
ToS	Time of supply
TRQ	Tariff rate quota
TSK	Turant Suvidha Kendra
UAE	United Arab Emirates
UDIN	Unique document identification number
USB	Universal serial bus
USD	United States dollar
UTGST	Union Territory Goods and Service Tax
VAT	Value Added Tax
VFX	Visual effects

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