



## Indirect Tax Newsletter

# Indirect tax updates (Jul – Aug 2022)

We are delighted to share a few important judgments/advance rulings passed under the Goods and Services Tax (GST), Customs, Central Excise, and Service Tax available in public domain from July to August 2022. This issue also covers some of the updates from indirect tax perspective as well.

### Goods and Services Tax



#### Union of India Vs. Filco Trade Centre Pvt. Ltd. 2022-TIOL-57-SC-GST

The Supreme Court (SC) has directed the Goods and Service Tax Network (GSTN) to open the common portal for filing of forms for availing transitional credit through TRAN-1 and TRAN-2 for two months i.e., w.e.f. 1 September to 31 October 2022. GSTN has to ensure that there are no technical glitches during the said period. The concerned officers have been given 90 days' time thereafter to verify the veracity of the claim/transitional credit and pass appropriate orders. Thereafter, the allowed transitional credit is to be reflected in the Electronic Credit Ledger (ECL) of the assessee.

For detailed analysis, please refer to our Tax [Alert](#).



**Union of India Vs. Bharat Forge Ltd and Ors.**  
**2022-TIOL-67-SC-GST**

The respondent was one of the bidders (supplier) for a global tender for procurement of turbo wheel impeller balance assembly floated by the Railway Board (purchaser) in 2019.

The respondent approached the Allahabad High Court (HC) praying for issue of Writ of Mandamus assailing that neither the notice inviting tender nor the bid document mentioned the relevant harmonized system of nomenclature (HSN Code) so as to identify the GST rates of each product and services. While the respondent quoted GST at the rate 18%, other bidder quoted GST at the rate of 5%, due to which the bid of the petitioner was not selected. The Allahabad HC held that in case the bid quotation is inclusive of GST value, it is the duty of the party issuing tender to provide the details of applicable GST rates and HSN code in the bid document.

The SC observed that Writ of Mandamus can only be issued in cases where the authority having discretion fails to exercise the same and acts under the 'dictation of another authority'. Further, it reversed the HC's decision and held that appropriate classification of goods/services and payment of GST liability is the sole responsibility of the supplier (bidder) (except in case of reverse charge mechanism) and held that there was no public duty upon the purchaser to indicate the HSN Code so as to ensure that the successful bidder pays the appropriate tax. The SC further ordered that in all cases, where a contract is awarded by the Railways, a copy of the document, by which, the contract is awarded containing all material details shall be immediately forwarded to the concerned jurisdictional officer.



**Vodafone Idea Ltd Vs. Union of India**  
**2022-TIOL-997-HC-MUM-GST**

The petitioner is engaged in providing telecom services including international inbound roaming services and international long-distance services to foreign telecom operators (FTOs). The petitioner classified such services as "export of services" in terms of IGST Act and filed for a refund application of the IGST paid on such export of services. The refund applications were rejected on the ground that the customer of FTOs makes calls within the territory of Maharashtra and also the roaming services which were provided to customers (visiting India from abroad) were consumed within India. Therefore, the place of supply of service is within Maharashtra and not outside India. Thus, the services provided by the petitioner does not qualify as "export of service".

The HC observed that in the present case the petitioner is the "supplier of services" and the FTOs are the "recipient of the service". The petitioner had issued invoices to FTOs and not to any individual, which substantiates that those services were provided to FTOs and not to an individual. Thus, the HC held that the place of supply of service supplied by petitioner is the "location of recipient of the service", i.e., location of FTOs, which is outside India. Also, the relationship between the FTO and the subscriber is on principal to principal basis and not on principal to agent basis. In this case, if the subscriber notices any discrepancy in service, he cannot talk directly to the petitioner as representative of FTO. Thus, the subscriber is not representative or agent of FTO.



### Basanta Kumar Shaw Proprietor of M/s N.M.D. Engineering Works Vs. The Asst. Commissioner of Revenue 2022-VIL-529-CAL

The petitioner was issued a show cause notice (SCN) alleging that there is a mismatch between the petitioner's input tax credit (ITC) in Form GSTR-2A (auto-populated details of receipt of goods or services) versus the details of outward supplies furnished by the suppliers in their GSTR-1 and GSTR-3B for tax periods from April 2018 to March 2021 and such mismatched credit was inadmissible. The petitioner did not file a reply to the SCN, therefore, authorities passed the order to initiate recovery proceedings and blocked ITC lying in the ECL of the petitioner. A writ petition was filed against the impugned order and the petitioner contended that on the date when the proper officer invoked blocking of ECL, it should have a positive balance. In cases where the credit is nil, this rule cannot be invoked.

The HC relied on Allahabad HC decision in case of M/s R M Dairy Products LLP, wherein it was held that "the word "available" occurring in Rule 86A(1) cannot be read in isolation. It has to be read along with the remaining words "in the electronic credit ledger has been fraudulently availed or is ineligible". The words "has been fraudulently availed" clearly denote a situation which has occurred in the past. The HC opined that, to state that Rule 86A can be invoked only if there is a positive balance available in the credit ledger would tantamount to making the rule redundant and defeating the very purpose of enacting such a rule. The HC refused to interfere with the impugned order.



### Baker Hughes Vs. Union of India and Ors. 2022-VIL-449-RAJ

The petitioner procures specified goods, material and/or equipment from India as well as overseas for onward dispatch to its customer situated in India, for carrying out petroleum exploration and production operations. It procured goods by paying GST from 5% to 28% (input Tax) and supplied the same to the customer at the concessional GST rate of 5% (output Tax). Accordingly, it claimed refund of the unutilized accumulated ITC arising from the inverted duty structure. The jurisdictional authorities issued a SCN challenging the refund claim quoting a CBIC circular which stipulated that refund under the inverted duty structure is not available where the input and output supplies are the same. Rejecting the submission made by the petitioner, the refund rejection order was passed, against which the writ petition was filed.

Admitting the writ, the HC observed that the applicable provision under CGST Act is unambiguous and does not carve out any exception that refund of ITC under the inverted duty structure would not be available where the input and the output goods are the same. Further, the HC opined that the circular quoted by authorities, being a subordinate legislation, is repugnant and conflicting to the parent legislation, and directed the respondent to grant the refund.



### KPH Dream Cricket Pvt. Ltd. 2022-TIOL-28-AAAR-GST

The appellant operates a cricket team in the Indian Premier League (IPL) and has entered into a franchise agreement with the Board of Control for Cricket in India. The appellant also distributes IPL tickets free of cost to local Governmental authorities/officials, consultants, etc. to promote business and goodwill. The appellant approached Authority of Advance Ruling (AAR) on whether distribution of free complimentary tickets falls within the ambit of "supply".

The AAR held that the distribution of free complimentary tickets falls within the ambit of "supply" and the appellant shall be eligible to claim ITC in relation to such activity.

Aggrieved by the decision of AAR, the appellant filed an appeal before the Appellate Authority for Advance Ruling (AAAR), which held that the activity of providing free complimentary tickets does not fall within the definition of "supply" as it does not have the element of consideration. Further, it held that where such complimentary tickets are being provided by the appellant to a "related person" or a "distinct person", the same shall fall within the ambit of "supply" on account of Schedule I of the CGST Act and the appellant would be entitled to avail ITC attributable in respect of such supply.



**M/s Medha Servo Drives Pvt. Ltd.**  
**2022-VIL-64-AAAR**

The appellant is involved in the supply of 'design, development, manufacture, supply, testing and commissioning of micro-processors sets as per specification to India Railways. The price is agreed between the appellant and its client for each set separately. The appellant approached the AAR to determine the nature of supply.

The AAR held that the supplies by the appellant qualify as "mixed supply" because such items are supplied at individually designated separate prices with individually designated separate HSN code and GST rates. The appellant challenged AAR's ruling and appealed before AAAR.

Upholding AAR's decision, AAAR opined that price breakup of individual items does not necessarily imply that other items are being separately supplied for separate prices. Further, the purchase order specified that one single payment was to be made for the complete set. Therefore, it was held that the instant supply would qualify as a "mixed supply" and not as a "composite supply" as supplies are not naturally bundled and no individual item qualified as principal supply.



**M/s Toplink Motorcar Pvt. Ltd.**  
**2022-VIL-176-AAR**

The applicant is an authorized dealer of Hyundai Motor India Limited and purchases vehicles to be used as demo cars. These vehicles are purchased against tax invoices which are reflected in its books of accounts as "capital assets" and ITC is availed on the same. The demo cars are sold after a certain period of time. The applicant sought an advance ruling as to whether outward GST liability payment on sale of vehicle could be discharged by utilizing the ITC availed at the time of purchasing the demo vehicle and on other related expenses like repairs & maintenance, insurance etc.

The AAR commented that the demo vehicles are not used for transportation of passengers by the applicant. It held that the purchase of demo car is for further supply, hence the applicant is entitled to take ITC on demo vehicles (subject to satisfaction of provisions and conditions under CGST Act) and can set it off against output tax payable under GST.

## Customs

**M/s. Divine Chemtee Limited Vs. Principal Commissioner of Customs, Vishakhapatnam**  
**2022-TIOL-745-HC-AP-CUS**

The petitioner is a unit within the Visakhapatnam Special Economic Zone (SEZ). The petitioner has been undertaking authorized operations i.e., manufacture and export of bio diesel and also trading of the said goods from outside the SEZ area namely in a bonded warehouse as permitted under a license. The petitioner imported four consignments into their unit and undertook certain operations on such imported consignments and exported the same. The petitioner thereafter filed a shipping bill with VSEZ for export of the consignment of Bio Diesel.

The Directorate of Revenue Intelligence (DRI) officials visited the bonded warehouse and took samples of the said exported material on the allegation that the petitioner was attempting to export without undertaking any process and without even bringing the material to factory premises of SEZ. Accordingly, the DRI officials alleged undervaluation of imports and detained the said export material under the Customs Act, which was subsequently converted into a seizure. The petitioner filed a writ petition before the Andhra Pradesh HC against this order imposing penalty and seizure of goods under the Customs Act.

The HC observed that the DRI officials have no power or jurisdiction to inspect or seize goods in respect of units situated in a SEZ area. The HC held that the power to investigate offence in SEZ area is conferred through SEZ Act and considering the non-obstante clause in SEZ Act, the SEZ Act would prevail over the Customs Act.

## Central Excise

### **M/s Reliance Jio Infocomm Ltd. Vs. Assistant Commissioner, CGST & Central Excise, Belapur 2022-VIL-287-CESTAT-MUM-CE**

The appellant is a telecom operator and installed telecom towers to offer LTE 4G wireless telecommunication services. It was alleged by adjudicating authorities that telecom towers on which CENVAT credit of excise duty has been claimed did not qualify either as 'capital good' or 'input' under the applicable Credit Rules, since they are attached to earth and are "immovable structure" fixed to ground.

The Tribunal admitted submissions of the appellant that 4G towers are more mobile as compared to traditional towers used for 3G/2G telecom services. The Tribunal observed that in case the towers are immovable property, they would not have qualified as excisable goods. The Tribunal has further held that the towers were merely attached to foundations above the ground using nuts and bolts and held that such towers are not embedded in earth, hence they are not "immovable" structure.

### **M/s Neel Metal Products Ltd. Vs. Commissioner of CGST, Dehradun 2022-TIOL-686-CESTAT-DEL**

The appellant is a manufacturer of automotive parts and supplies the finished goods to its customer (Hero Motor Corp Ltd). The customer amended the purchase order with retrospective effect, modifying the prices downwards and issued debit notes to the appellant. Due to the debit note issuance, the appellant paid excess excise duty and hence filed for refund claim for the refund of excess excise duty.

The refund claim was rejected by the adjudicating authority as well as Commissioner (Appeals) on the ground that it was hit by unjust enrichment. Thus, the appellant preferred an appeal before the Tribunal.

The Tribunal observed that appellant have reconciled the said debit note and its breakup with the invoices. Thus, there is no reason to doubt the transaction between the appellant and their buyer. Further, buyer (Hero Motor Corp Ltd) of the goods is operating under 'Area Based exemption' during the relevant period it could not have availed the Cenvat credit and utilized the same. Adequate entries have been made by the appellant in its books of accounts and the amount of refund claim have been shown as duty recoverable from the revenue in the financial statements as well. Hence, the appellant is entitled to refund of the excess excise duty.

## Service Tax

### **Commissioner of Service Tax Delhi Vs. Quick Heal Technologies Ltd. 2022-TIOL-65-SC-ST**

The respondent is engaged in the development of antivirus software which is supplied along with a code either online or on a CDs/DVDs to end-customers in India. An inquiry was raised against the respondent pursuant to which Directorate General of Central Excise Intelligence (DGCEI) adjudicated that the respondent failed to pay service tax on the transaction with the end-customer to supply the code. Such demand was set aside by the Tribunal and an appeal was filed by revenue before the SC.

The SC has upheld Tribunal's order and referred to the ratio in the case of BSNL (supra) that a contract cannot be split into two. Once a lumpsum has been charged for the sale of CD and sales tax has been paid thereon, the revenue thereafter cannot levy service tax on the entire sale consideration once again on the ground that updates are being provided. In essence, it is one transaction of "sale of software" and once it is accepted that the software put on CD is "goods", then there cannot be any separate service element in the transaction. Even otherwise, the user is put in possession or full control of the software. The subject transaction amounts to "deemed sale" which would not attract service tax.

### **M/s Anglo Eastern Maritime Services Pvt. Ltd. Vs. Commissioner of CGST, Mumbai East 2022-TIOL-586-CESTAT-MUM**

The appellant had provided independent services of recruitment of ship crew members to its associated overseas company based in Hong Kong. The foreign associate was undertaking whole management of ship of different ship owners. The appellant treated these services as export of service and filed a refund claim for unutilized accumulated CENVAT credit. The refund claim was rejected by the adjudicating authority as well as the Commissioner on the ground that the exporter is an intermediary and the place of provision of service is in India.

The Tribunal observed that the agreement copy clearly contains a provision that it is an agreement on principal-to-principal basis. The Tribunal held that the appellant is not an intermediary, since it provided trained manpower to its overseas customer who recruited them and engaged them in the ship owned by others through a separate ship management agreement.

The Tribunal further held that it is erroneous to hold that the foreign associate had outsourced crew management service to the Appellant whereas in reality, it picked up trained crew members from the Appellant selected at its instance and recruited them in its own company for providing crew management service to ship owners.

The Tribunal concurred with the stand taken by the appellant that in view of the decision in the case of Eastern Pacific Shipping India Pvt. Ltd. that had set the ratio on the issue that seafarer's recruitment service provider, who processes the entire selection, medical test, insurance, transportation, training etc. to the overseas client and received convertible foreign exchange, is not an intermediary.

## Updates

### **47th GST council meeting held on 28-29 June 2022**

In the 47th GST Council meeting held on 28-29 June 2022 which coincided with the fifth anniversary of GST implementation, discussions of the GST Council were focussed on the reports tabled by various Group of Ministers on GST rate rationalisation, fixation of GST rate on online gaming, and IT reforms. Key recommendations of the GST Council were directed towards pruning exemptions and providing a slew of measures for trade facilitation.

For detailed analysis, please refer to our [Alert](#).

### **Extension of period for levy and collection of Compensation Cess up to the 31 March 2026**

The Central Government on the recommendations of the GST Council has invoked the Goods and Services Tax (Period of Levy and Collection of Cess) Rules, 2022 and issued a notification to extend the period for levy and collection of Compensation Cess up to the 31 March 2026. (*Notification No. 1/2022-Compensation Cess dated 24 June 2022*)

### **Exemption on renting of residential dwelling withdrawn**

With effect from 18 July 2022, exemption on renting of residential dwelling to registered persons has been withdrawn and the tax on the same shall be payable under reverse charge mechanism. In other words, renting of residential dwellings up to 17 July 2022 was exempt regardless of the status of the tenant i.e. whether the service provider or service recipient is registered or unregistered. However, w.e.f. 18 July 2022, a tenant who is GST-registered will become liable to GST on renting for residential purposes under the reverse charge mechanism. (*Notification no. 5/2022 -Central Tax (rate) dated 13 July 2022*)

### **CBIC issues circulars clarifying various GST related issues**

On 6 July 2022, in furtherance to the recommendations made at 47th GST Council Meeting, the CBIC had issued various clarificatory circulars on:

- (a) changes in furnishing of information in Form GSTR-3B (*Circular no. 170/02/2022-GST*);
- (b) applicability of demand and penalty provisions in respect of transactions entailing issuance of tax invoices without actual supply of goods or services or both (*Circular no. 171/03/2022-GST*);
- (c) clarifications in respect of ITC availed by deemed exporter, blocked credit in terms of section 17(5) of CGST Act, taxability of perquisites provided by employer to employee etc. and directions regarding utilization of amounts available in electronic cash and credit ledger (*Circular no. 172/04/2022-GST*);
- (d) restriction for inverted duty structure refunds in case of traded goods (*Circular no. 173/05/2022-GST dated 6 July 2022*).

### **GST Council seeks representation from stakeholders on comprehensive changes in Form GSTR-3B**

As deliberated in the 47th GST council meeting, a proposal has been placed in public domain seeking inputs and suggestion from stakeholders on the concept paper formulated on comprehensive changes in GSTR-3B. The stakeholders are requested to furnish the views/comments/suggestions by 15 September 2022 (at email address [gstpolicywing-cbic@gov.in](mailto:gstpolicywing-cbic@gov.in)) to facilitate the finalization process.

### **Introduction of GST on pre-packaged and labelled commodities**

With effect from 18 July 2022, GST shall apply on supply of such "pre-packaged and labelled" commodities attracting the provisions of Legal Metrology Act (LMA), with conditions that such goods must be packed in a package of pre-determined quantity whether sealed or not and the package must bear declarations as required under LMA Act and Rules. (*Notification No. 06/2022 –Central Tax (Rate) dated 13 July 2022*).

Further, a clarificatory circular has been issued by CBIC on the applicability of GST on pre-packaged and labelled commodities clarifying on aspects such as stage at which GST is payable, scope of goods, exclusions, weight threshold, etc. (*Circular No- F. No. 190354/172/2022-TRU dated 17 July 2022*)

### **Introduction of new Rule in relation to Work from home provision in Special Economic Zones**

The Department of Commerce has issued notification to amend Rule 43 and insert a new Rule 43A in SEZ Rules, 2006, laying down the provisions to be followed by SEZ units to permit maximum 50% of total employees (including contractual employees) to work from home. (*Notification no. F. No. K-43013(12)/1/2021-SEZ dated 14 July 2022*).

Further, a clarificatory circular has been issued prescribing the procedure for seeking permission for work from home (Circular no. F. No. DC/NSEZ/2022/WFH/5936 dated 19 July 2022), followed by issuance of standard operating procedure for harmonized implementation of new rule by SEZ units and Development Commissioners (*Instruction No. 110- F. No. K-43013(12)/1/2021-SEZ dated 12 August 2022*).

### **CBIC issues circulars clarifying applicability of GST on liquidated damages, compensation, and Penalty**

The CBIC has issued clarificatory circular to ensure uniformity on applicability of provisions related to GST on payments in the nature of liquidated damages, compensation, penalty, cancellation charges, late payment surcharge etc. *(Circular no. 178/10/2022-GST dated 03 August 2022)*

For detailed analysis, please refer to our [Alert](#).

### **Reduction in the turnover threshold for generation of e-invoice under GST**

An amendment has been made to notification No. 13/2020-Central Tax dated 21 March 2020 to implement e-invoicing for the taxpayers having aggregate turnover exceeding INR 10 Crores with effect from 01 October 2022. *(Notification no. 17/2022-Central Tax dated 1 August 2022)*

### **CBIC issues guidelines for arrest and bail**

The CBIC has issued an instruction providing guidelines for arrest and bail in relation to punishable offences under CGST Act. This instruction discusses the conditions under which the approval to arrest can be granted, procedure for arrest, post arrest formalities and that the arrest report to be sent to member (Compliance Management) & Zonal Member within 24 hours of the arrest. *(Instruction No. 2/2022-23-[GST-INV] dated 17 August 2022)*

### **CBIC issues circular on customs duty applicable on display assembly of a cellular mobile phone**

Vide a circular, the CBIC has clarified that import of display assembly of cellular mobile phone along with back support frame of metal/plastic shall be eligible for concessional rate of customs duty (Basic Customs Duty (BCD)) at the rate of 10% as per Sr. no 5D of exemption notification no. 57/2017-Customs dated 30th June 2017. However, for other items such as antenna pin, power key etc. that are fitted along with a Display Assembly with or without a back support frame of metal, plastic, BCD at normal rate of 15% shall apply. *(Circular No. 14/2022-Customs dated 18 August 2022)*

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