



Indirect tax newsletter

Indirect tax updates

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 the public domain from May–June 2022. This issue also covers some of the updates from the indirect tax perspective.

Goods and Services Tax



Union of India vs. Mohit Minerals Pvt. Ltd. 2022-TIOL-49-SC-GST-LB

The Supreme Court (SC) has pronounced that as the Indian importer is liable to pay IGST on the composite supply, comprising supply of goods and services of transportation, insurance, etc., in a CIF contract, a separate levy on the Indian importer for the 'supply of services' by the shipping line would be in violation of the GST law.

The SC observed that the recommendations of the GST Council only have a persuasive value and are not binding on the centre and state governments.

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



M/s Ayana Pharma Ltd. Vs. UOI
2022-TIOL-715-HC-AHM-GST

The petitioner is a Jerusalem-based company engaged in the business of manufacturing/buying and selling pharmaceutical products. The petitioner outsourced clinical research and testing services to Indian Clinical Research Organization (CRO). Towards the services exported to petitioners, Indian CRO wrongly levied, collected, and deposited the IGST with the government. However, the Indian CRO did not file/claim refund of such IGST. Instead, the petitioner filed a manual refund application to claim the IGST charged by Indian CRO. Revenue authorities rejected the refund claim primarily on two grounds: (a) the petitioner is outside India and cannot file refund electronically and (b) only supplier of services (Indian CRO) who has discharged tax can file refund application.

The High Court (HC) opined that the petitioner is a “service recipient” who lives outside India, but falls within the definition of “persons”, who can file a refund application. Further, reliance was placed on Rule 97A of GST law, where a “non-obstante” clause is employed that clarifies that notwithstanding anything contained in CGST Rules, any reference to the electronic filing of an application would include manual filing of the said application. The HC quashed the refund rejection order and directed the jurisdictional authority to treat manual application as a valid refund application and process the refund.



Sanchita Kundu vs. The Assistant Commissioner of State Tax
2022-TIOL-724-HC-KOL-GST

The petitioner made purchases from a supplier after verifying genuineness and identity of the supplier as a registered taxable person. At the time of procurement, the petitioner verified that the GST registration of such supplier is valid and existing from the government portal. Subsequently, Input Tax Credit (ITC) was denied by the GST authorities on purchase of goods from such supplier on the ground that the registration of that supplier has been cancelled with retrospective effect covering the transaction period in question.

The HC held that revenue authorities should allow ITC to the petitioner after verifying that the purchases are genuine. This ought to be supported by valid documents with respect to purchases made before the cancellation of registration of such supplier. The petitioner must show that he has complied with the statutory obligation while verifying suppliers’ identity as a registered taxable person.



M/s Gulati Enterprises vs. CBIC and Ors.
2022-TIOL-750-HC-DEL-GST

The applicant filed a writ petition against the Show Cause Notice (SCN) issued by the revenue authorities, alleging that they have not adhered to the mandatory requirement of issuing a pre-show cause notice per the CGST Rules. The revenue authorities claimed that on account of a voluntary statement made by the applicant, the requirement of a pre-show cause notice was satisfied during the time of recording statement of the applicant. Revenue authorities also contended that the form for issuing pre-show cause notice was not activated on the GST portal and therefore, it could not be issued.

The HC held that a voluntary statement cannot substitute a statutory notice and according to the CGST Rules, the proper officer should have issued a pre-show cause notice before the service of SCN. Hence, the impugned SCN was set aside.



Rajnandini Metal Limited vs. UOI & Ors.
2022-TIOL-810-HC-P&H-GST

The petitioner is a manufacturing entity with ITC balance in its electronic credit ledger. A communication was made by Delhi North Commissionerate to the jurisdictional authorities that one of petitioner's suppliers was found to be non-existing, due to an impending proceeding and suspension of registration. Thereafter, an order was passed by the respondent to block the ITC in the electronic credit ledger. A representation to unblock the ITC ledger was filed by the petitioner, which was rejected by the department. In the meanwhile, proceedings against such supplier were concluded and suspension of registration was revoked.

The HC held that power under CGST Rules is exercised where the prescribed officer has reasons to believe that ITC has been fraudulently availed or the assessee is ineligible. In the present case, merely by recording that some investigation is going on, such adverse action cannot be sustained. The order blocking the ITC is devoid of any material or 'reason to believe' that the petitioner is guilty of fraudulent transaction or ineligible ITC. Therefore, such order is set aside.



Electrosteel Castings Ltd. vs. The Asst. Commissioner, CGST & CX, Kolkata North Division
2022-TIOL-846-HC-KOL-GST

The petitioner is engaged in the manufacturing of ductile iron spun pipes and fittings. It uses coal (which is subject to compensation cess) as an input for manufacturing finished goods and availed ITC of such cess. The petitioner exported the finished goods and filed a refund claim of unused cess. In the refund application, the petitioner excluded domestic turnover (not subject to cess) from Adjusted Total Turnover (ATT). However, adjudicating authority passed the refund order after adding domestic turnover not subject to cess in the ATT, resulting in proportionate rejection of refund.

The HC commented that "cess" is a levy that partakes the character of all the levies, which are now subsumed in GST. Therefore, cess is akin to the components of GST. The provisions of CGST, SGST, and IGST Acts relating to refund are applicable on compensation cess as well. The HC held that domestic turnover of finished goods, which are not liable to compensation cess, are construed to be "exempt supplies" for calculation of refund, and hence, excluded from the adjusted total turnover.



Harish Chand Modi- Rajasthan AAAR
2022-VIL-44-AAAR

The appellant had rented different floors or offices of its building. The appellant did not provide a separate electric meter to the lessees but installed sub-meters. The appellant made payment to the electricity company after collecting such charges from the lessees.

Upholding the order of Rajasthan Advance Ruling Authority (AAR), the AA held that there is lack of authorisation by lessees to lessor for payment of electricity charges to third party (electricity company) on behalf of lessees. Moreover, reimbursement of electricity charges is not made on actual basis by the lessees to lessor. Therefore, the appellant does not qualify as "pure agent" and GST is payable on electricity charges recovered by the lessor.



M/s Amogh R. Bhatwadekar
2022-VIL-21-AAAR

The appellant is a proprietor supplying digital goods i.e., 'online games'. It contacts suppliers of digital goods located outside India via email or message services. Such digital goods are sent to the appellant via email and are stored/accessed on cloud servers for dispatching to customers of the appellant. End customers purchase digital goods from the appellant's website and such digital goods are accessed through the cloud server.

The AA upheld decision of AAR that the appellant is in receipt of online information and database access or retrieval services. Hence, the place of supply will be the location of recipient i.e., the appellant. Therefore, the transaction qualifies as "import of service" on which appellant will be liable to pay IGST under reverse charge. Further, the AA held that in case of supply of digital goods to Indian customers, the place of supply will be India and the appellant will be liable to pay GST.



B P Sangle Constructions (P.) Ltd.
2022-TIOL-41-AAR-GST

During the pre-GST period, the applicant was awarded a road construction contract by National Highway Authority of India, but the contract was executed after the introduction of GST. There was an escalation clause in the contract value. The applicant sought clarification as to whether GST is to be paid on the enhanced value.

The AAR held that the supply was not made during the pre-GST period. Thus, GST shall be applicable on the transactional value, including escalated value recovered from NHAI.

Customs

Ericsson India Private Limited vs. Commissioner of Customs, New Delhi **2022-VIL-324-CESTAT-DEL-CU**

The appellant paid the custom duty twice on the same Bill of Entry due to a glitch in the Indian customs EDI system portal. A refund application was filed after identifying duplicate payment. The original adjudicating authority rejected the refund on the ground of limitation that refund application was not filed within one year of payment of duty. Further, Commissioner (Appeals) confirmed the decision.

The Delhi Tribunal held that in terms of section 17 of the Limitation Act, whenever there is an application for a relief from the consequences of a mistake, the period of limitation would not begin to run until the mistake is discovered by the applicant. Moreover, custom duty paid for the second time does not qualify as 'duty' and time limit for claiming refund shall not apply. The tax department cannot retain duty paid twice by taxpayers. According to Article 265 of the Constitution of India, no tax can be collected without the authority of law.

Central Excise

Commissioner of Central Excise Haldia Commissionerate vs. M/s TATA Steel Ltd. **2022-TIOL-559-HC-KOL-CX**

The respondent was first issued a SCN covering a particular period. Subsequently, another SCN was issued with same allegations as in the case of previous SCN. The period of dispute partly overlapped between earlier SCN and subsequent SCN.

The HC held that principles of consistency should apply and the order-in-original passed adjudicating the earlier SCN binds the department, as the transaction is identical. Once the previous period's SCN is adjudicated and proceedings were dropped, such order attains finality. There is no additional evidence available with the Commissioner justifying the issuance of the second SCN. It was also held that on the same subject matter, for different periods, the tax department cannot bring a case of willful suppression and invoke an extended period of limitation.

Service Tax

Commissioner of Custom Central Excise & Service Tax, Bangalore vs. Northern Operating Systems Pvt Ltd **2022-TIOL-48-SC-ST-LB**

The respondent requests its overseas group companies for managerial and technical people who are to work in accordance with its instructions and directions. Employees continue to be on the payroll of the overseas group companies. However, for the period of secondment, they were to be treated as employees of the respondent. Salary and other expenses were to be paid by overseas group companies and the same would be reimbursed by the respondent through a debit note.

The SC observed that the respondent had 'operational or functional' control over seconded employees. The SC held that the respondent received taxable supply of service from a foreign entity (overseas group companies) and is liable to pay service tax thereon on the said reimbursements on a reverse charge basis.

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

Union of India vs. M/s Star Delta Exim (P.) Ltd. & ors. **2022-VIL-27-SC**

The respondent was issued two SCNs related to denial and recovery of CENVAT credit, based on common evidence by two separate adjudicating authorities (one by Directorate General of Central Excise Intelligence (DGCEI), Delhi Zonal unit, and another was issued by Commissioner, CGST Commissionerate, Alwar).

The SC upheld the decision of Rajasthan HC wherein it was opined that to avoid divergent views on the same subject matter by two different adjudicating authorities, SCN should be adjudicated by the competent authority (in terms of prescribed CBIC circular). The SC directed that the SCN will be adjudicated by only one authority i.e., DGCEI or equivalent authority.

M/s Jindal Steel and Power Ltd. vs. Principal Commissioner of CGST and Central Excise, Ranchi Commissionerate 2022-TIOL-408-CESTAT-KOL

The appellant is a company engaged in the business of manufacturing steel. The coal block mining rights in Jharkhand were allocated to the appellant. Subsequently, the coal block mining was cancelled by the SC's order and per Coal Mines (Special Provisions) Act, 2015, compensation was provided to the allottees. The appellant was issued a SCN alleging that it had "tolerated the act of cancellation" and received compensation, on which it was liable to discharge service tax.

The Kolkata Tribunal held that the appellant had no "choice" but to tolerate the cancellation. This was a mandatory cancellation in pursuance of the SC's order and not a contract to tolerate cancellation. The compensation is provided for the investment made by the appellant; no service tax should be levied on the amount received by the appellant.

Updates

Clarification by Kerela government regarding extension of limitation in terms of SC's order

In pursuance of the SC's order for extension of limitation period under the GST law, considering the representations filed, Commissioner of State Tax clarifies that:

- Extension would not apply to proceedings that need to be initiated or compliances that need to be done on part of taxpayers.
- Time limit to file appeals by taxpayers/tax authorities against any quasi-judicial order stands extended.
- Tax authorities (functioning as quasi-judicial authority) can hear and dispose off proceedings, appeals, etc., per the extension. (*Circular no. 8/2022 dated 23 April 2022*)

Department of Trade and Taxes Policy Branch, Delhi issues grievance redressal mechanism to ease processing of pending VAT refunds

The department has prescribed the process of VAT refund application disposal. Dealers/taxpayers can file their grievances with the department through the DVAT portal (using the Refund Grievances Redressal form). Such grievances received shall be managed per the prescribed process. (*Circular no. F-3(433)/GST/Policy/2021/1268-77 dated 13 May 2022*)

Instruction issued by Haryana GST department in respect to processing of applications for registration in FORM GST REG 01

The Haryana GST department has instructed that applications for registration are to be processed in accordance with provisions of law. The proper officer should not ask for any mandatory physical appearance/personal statement or ask for extraneous information/documents while processing such applications unless in case of doubt or suspicion. (*Memo no. 367/GST-2 dated May 24, 2022*)

Instruction issued by CBIC to monitor conduct of tax officers

The GST investigation wing has issued instruction on code of conduct by tax officials during the course of search, inspection or investigation. According to the instruction, strict disciplinary action shall be taken against officers for using force and coercion to make recovery during such search or inspection or investigation (*Instruction no. 01/2022-23 dated 25 May 2022-GST-Investigation*)

Work From Home (WFH) facility extended for SEZ units

In continuation to the previous circular issued in December 2021, considering the existing incidence of COVID-19 and with a view to facilitate transition of units, Noida SEZ and MEPZ SEZ have issued a circular extending the WFH facility up to 31 December 2022 or until further notice (*Circular no. 10/311/2010-SEZ/4299 dated 27 May 2022*).

SEEPZ SEZ has issued instruction that the SEZ units should work from office with at least 50 percent capacity with its employee vaccinated with double dose and ensuring the COVID-19 protocol (*F.No.SEEPZ-SEZ/ADMIN/GI/588/2020-21/VOL-II/09522 dated 15 June 2022*).

DGFT relaxes requirement of Bill of Export (BO) as evidence of Export Obligation (EO)

In case of supply made to SEZ units under Advance Authorisation (AA), exporters were required to submit BO to evidence fulfilment of their EO. Considering the representations filed, it has been decided to relax this condition in case of exports made before 01.04.2015 to SEZ units under AA. The policy circular also prescribes a list of corroborative evidence that an exporter can submit in lieu of BO. (*Circular no. 39/2015-20 DGFT dated 07 June 2022*)

CBIC prescribes procedure relating to sanction, post-audit, and review of refund claims

The board has issued instructions after receiving reports of different practices followed regarding sanction, review, and post audit of refunds. The instructions cover the following two key aspects:

- (a) Issuance of mandatory detailed speaking order: The proper officer should upload a detailed speaking order, along with a refund sanction order containing prescribed information.
- (b) Post audit and review internal guidelines: These are issued to examine legality and propriety of refund orders and post-audit/review activities. (*Instruction no. 03/2022-GST dated 14 June 2022*)

Excise and Taxation Department, Haryana issues GST return scrutiny manual

To standardise and streamline the procedural aspects regarding scrutiny of returns by proper officers, a GST returns scrutiny manual has been issued covering the aspects such as jurisdiction, frequency of scrutiny, an inductive list of parameters for selection of taxpayers, and procedure for initiating demand and recovery.

Moratorium on import of Electronic Transmission (ET) extended to 31 December 2023

The moratorium on customs duties on ET was first agreed to be imposed on 20 May 1998, under the WTO agreements and is still in effect. According to United Nations Conference on Trade and Development, potential tariff revenue loss for developing countries every year due to this moratorium is US\$10 billion. Although there is no classification of ET in WTO, the WTO Appellate Body recognises that intangible goods are not "services". Developing countries, such as India and South Africa, had been making representations at WTO General Council Meeting to regulate import of ET and achieve industrial digitalisation. However, during the 12th Ministerial discussion (held on 16 June 2022) on the moratorium of custom duties on import of ET, it has been decided to extend the moratorium to 31 December 2023.

SEZ 2.0: The shift from SEZ to DESH

The commerce ministry is in process of drafting new legislation to replace the SEZ Act. Development of Enterprise and Service Hubs (DESH), Bill-2022, is expected to be tabled in the parliament's monsoon session. It aims to set up 'development hubs' to promote economic activities, attract investment, enhance export competitiveness, and build robust infrastructure facilities. According to the proposed bill, DESH will be permitted to produce for both the domestic and international markets and undertake contract manufacture outside these hubs.

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