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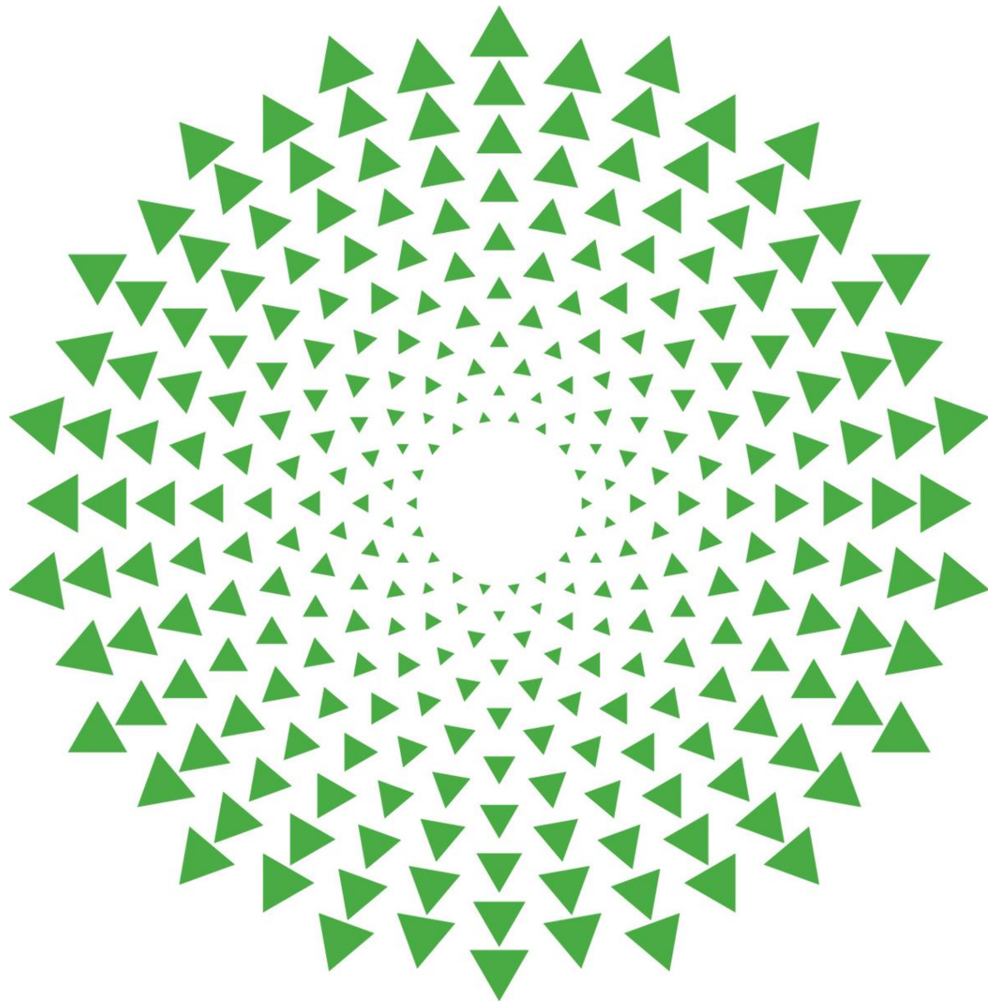

Indirect tax newsletter

Indirect tax updates

October 2024

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 July to August 2024. This issue also covers some updates from the indirect tax perspective.

Goods and Services Tax

M/s Anil Rice Mill vs. State of UP and others 2024-VIL-861-ALH (Allahabad High Court)

The petitioner was issued a Show Cause Notice (SCN) alleging that the Input Tax Credit (ITC) was availed based on forged invoices. An adjudication order was passed confirming the demand proposed in the SCN. Against the said order, the petitioner preferred an appeal, which was dismissed.

The petitioner filed a writ petition before the Allahabad High Court challenging order-in-appeal.

The petitioner submitted that he availed ITC after the due purchase of goods through proper tax invoices. The tax payment has been made through the banking channel. He further submitted that the selling dealer did not show the said purchases in its returns or deposited the tax; therefore, the action could not be taken against the petitioner. However, the respondent contended that to avail of ITC; the petitioner must prove beyond reasonable doubt that the actual transaction occurred and that merely furnishing details of tax invoices, e-way bills and GR is insufficient.

The High Court noted that the petitioner has only brought the tax invoices, e-way bills and payments through the banking channel on record. Still, no details regarding payment of freight charges, acknowledgement of delivery of goods, toll receipts, or payment thereof have been provided. The High Court held that in the absence of these documents, the actual physical movement of goods and the genuineness of the transaction could not be established. The High Court also relied on the judgement rendered by the Supreme Court in the matter of State of Karnataka v. Ecom Gill Coffee Trading Pvt. Ltd., wherein the Supreme Court held that the primary burden of proof for claiming the ITC is upon the dealer to furnish the requisite details to establish the actual physical movement of goods. Accordingly, the writ petition was dismissed.

Jatinder Singh v. Union Territory of Jammu and Kashmir and others 2024-VIL-850-J&K (Jammu & Kashmir and Ladakh High Court)

The petitioner preferred an appeal before the First appellate authority, which was rejected due to delay in submission. Per the provisions of the Central Goods and Services Tax Act (CGST), 2017, an appeal before the First appellate authority must be submitted within three months from the date the order sought to be appealed against is communicated. The said period can be

extended by a further one month if the Appellate authority is satisfied that the assessee was prevented by sufficient cause from submitting the appeal within the original period of three months.

Feeling aggrieved by the rejection of the appeal, the petitioner filed a writ petition before the Jammu & Kashmir and Ladakh High Court.

Departmental authorities contended that the provisions of GST law specifically prescribe the period of delay, which the appellate authority can condone. The appellate authority cannot condone the delay beyond the prescribed period. However, the petitioner contended that the Limitation Act, 1963, is applicable in the present case. Per the provisions of the said Act, the appellate authority is empowered to condone the delay in filing the appeal.

The High Court held that the GST provision providing a time limit to file the appeal is a complete code. As there exists a separate provision in GST law for condoning delay, the provisions of the Limitation Act, 1963, have no applicability. The appellate authority is not competent to condone the delay in filing an appeal beyond one month after the expiry of the three-month period prescribed for filing the appeal.

It was also held that though GST law provides for condoning delay only till a specified period, the High Court is empowered to condone the delay even beyond that period. Such power may be exercised by the Court having regard to specific facts of the case. The Court analysed the facts of the petitioner's case and held that it does not fall under the exceptional circumstances which warrant exercise of extraordinary writ jurisdiction by the Court to condone the delay.

Indian Medical Association v. Union of India
2024-VIL-744-KER (Kerela High Court)

The petitioner is an association with qualified modern medical practitioners as its members. A writ petition was filed by the petitioner challenging the constitutional validity of section 2(17)(e) and section 7(1)(aa) of the CGST Act. Per section 7(1)(aa), “any activity or transaction, by a person, other than an individual, to its members or constituents or vice-versa” is treated as supply when made for consideration. Further, section 2(17)(e) of the CGST Act states that business includes provision by a club, association, society or any such body (for a subscription or any other consideration) of the facilities or benefits to its members. Section 7(1)(aa) was introduced vide the Finance Act, 2021. The section was given retrospective effect from 01 July 2017.

Two main contentions raised by the petitioner were that it was the well-established provision of law that there is an identity between the club/association and its members under the principle of mutuality, and there can be no sale/service by the club to its members. The second contention was that for the purpose of GST, the supply of goods and services means supply by one person to another and unless the Constitution provides for taxing the supply of goods or

services where the principle of mutuality exists by amending the legislation on the subject, the principle of mutuality could not have been done away with.

The court held that the tax is on activities, i.e., the supply of goods and services or both. The Constitution of India does not restrict the definition of a “person” for the levy of GST. Hence, Parliament and State legislatures are well within their powers to impose a tax on the supply of goods or services irrespective of the person/individuals involved. Therefore, the supply of goods or services by an association to its members is subject to GST, and the principle of mutuality will not come in the way of Parliament or state legislatures in levying tax on the said supplies. The Court further held that Section 7(1)(aa) of the CGST Act should not be given retrospective operation as the principle of mutuality was a well-established principle of taxation prior to such amendment.

Power Grid Corporation of India Ltd v. State of Rajasthan
2024-VIL-725-RAJ (Rajasthan High Court)

The petitioner is engaged in the transmission of electricity and avails of services related to the transportation of goods. The petitioner applied an advance ruling to ascertain whether the transportation services availed by it fall under the purview of an exemption notification. The Authority for Advance Ruling (AAR) held that such an application was not maintainable as the petitioner is not a supplier of the transportation services. The petitioner submitted that in case of non-applicability of exemption notification, the petitioner shall be liable to pay tax on a reverse charge basis. Hence, it can apply for an advance ruling.

Aggrieved by AAR’s rejection of its application, the petitioner filed the present writ petition.

The Court held that a registered person or a person desirous of obtaining registration under GST is considered an ‘applicant’ eligible to apply an advance ruling. Further, a person liable to pay tax under reverse charge basis is required to obtain GST registration mandatorily. Under GST Law, a recipient liable to pay tax under reverse charge is given a deeming fiction of supplier for tax payment. Accordingly, the Court held that there is no embargo that a person liable to pay tax under reverse charge basis cannot apply the advance ruling. The Court set aside the order rejecting the application for an advance ruling and remitted the matter back to AAR for reconsideration of the application.

Moon Labels v. The Government of India and others
2024-VIL-604-MAD (Madras High Court)

As of 30 June 2017, the petitioner had unutilized ITC under the provisions of the Tamil Nadu VAT Act, 2006. Instead of filing Form GST Tran-1 to transfer such transitional ITC, the petitioner reflected the same in Form GSTR-3B and adjusted it against payment of its output GST liability. Disallowing such adjustment and claim of transitional ITC through Form GSTR-3B, an adjudication order was passed.

Aggrieved by the adjudication order, a writ petition was filed before the High Court of Madras.

The Court held that the petitioner cannot be made to suffer if the ITC was validly availed. The Court remanded back the case to the adjudicating authority to pass fresh orders after thorough verification as to whether the petitioner had validly availed ITC under the provisions of the Tamil Nadu VAT Act, 2006 and whether the petitioner was entitled to transition such ITC to GST regime. The Court held that if the petitioner was entitled to transition such amounts, such credit may be allowed to be set off against the tax liability as a procedural infraction in transitioning the credit should not be denied.

Bangalore Golf Club vs AC
2024-VIL-1023-KAR (Karnataka High Court)

The petitioner filed a writ petition before the Karnataka High Court challenging the SCN issued to it under Section 73 of the CGST Act for multiple years. The petitioner contended that one consolidated notice for multiple years cannot be issued.

The High Court noted that GST law requires that particular actions must be completed within a designated year, and such actions should be executed in accordance with the legal provisions. The Court held that issuing a single, consolidated SCN for multiple assessment years contravenes the provisions of the CGST Act and established legal precedents. Accordingly, the Court quashed the SCN. However, the Court did not preclude the respondents to issue separate SCNs for each assessment year.

Faiveley Transport Rail Technologies India Private Limited
2024-VIL-27-AAAR (Appellate Authority for Advance Ruling)

The applicant had proposed to provide a car facility to its employees wherein the applicant would pay the car lease premium directly to the lessor, and the overall salary cost of the related employees would get reduced to the extent of the cost incurred by the company in relation to the car facility provided to the employees. Such a facility was to be considered as a perquisite for income tax.

The Applicant sought an advance ruling with regard to the applicability of GST on car facilities extended to its employees. The Authority for Advance Ruling (AAR) ruled that the applicant must discharge GST liability on the car facility provided to the employees. Being aggrieved by such an order, the applicant filed the appeal before the Appellate Authority for Advance Ruling (AAAR).

The AAAR analysed that the applicant would own the car during the lease period, and lease payments shall be adjusted from the employees’ remuneration. It held that merely extending a facility does not qualify as a perquisite. Only the value in monetary terms to the extent of benefit extended, concession offered or expense borne by the employer is to be treated as perquisite and not the sum recovered from the employees. As the entire lease premium was recovered from the employees, AAAR held that the car facility could not be treated as perquisite. Ownership of the car by the applicant and resultant provisioning of services by the applicant on its account amounts to a “supply” of services. Accordingly, it was held that the applicant is liable to pay GST regarding such facility.

M/s Roppen Transportation Services Pvt. Ltd.
2024-VIL-126-AAR (Karnataka Authority for Advance Ruling)

The applicant operated a digital platform (app) and proposed to introduce such a platform to four- wheeler cab service providers on a subscription basis to enable them to connect with potential passengers. Consideration charged from the passenger was to be collected directly by the driver. The applicant was not responsible to passengers in case of any deficiency in the service provided by the drivers.

The applicant filed an application for an advance ruling to ascertain whether it falls under the definition of an e-commerce operator and whether GST liability is required to be discharged on the services provided by the drivers on its digital platform.

The AAR held that since the applicant owns a digital platform for the supply of services, it fits into the definition of an e-commerce operator. It further noted that in the case of passenger transportation services through motor cab, etc., supplied through an e-commerce operator, the provisions of the CGST Act apply to the e-commerce operator as if he is the supplier liable to pay tax on the said services. The AAR noted that on finalisation of the ride, the location of the passenger and pick-up point, along with the details regarding the start and end of the ride along with the route taken, is captured by the app. Hence, the AAR held that the services are being supplied through the platform operated by the applicant, and hence, it shall be liable to pay tax on services supplied by drivers to passengers on the app.

The AAR further held that the services extended by the applicant to passengers to ensure their safety shall fall under SAC 9985—Security Consulting Services and shall attract a GST rate of 18 percent on monitoring fees charged for the same.

The AAR further held that three-wheeler is covered under the definition of “motor cab” and two-wheeler is covered under the definition of “motor cycle”. Therefore, the applicant is liable to pay tax on the supply of services provided by the independent three/two-wheeler cab service provider (person who has subscribed to the app) to the passengers on the applicant’s app platform.

M/s P Achuthan Nair and company
2024-VIL-120-AAR (Kerela Authority for Advance Ruling)

The applicant is a retail dealer of petroleum products of a petroleum company and is entitled to a differential dealer margin provided by such company. The differential dealer margin is inversely proportionate to the value of sales affected by the applicant.

The applicant applied an advance ruling to ascertain whether the differential dealer margin it received is taxable under GST. The applicant contended that since the margin is inversely proportionate to the value of sales, this reveals that such a margin was not provided to achieve any target. Therefore, the margin cannot be considered as a consideration for agreeing to do any act. He further submitted that per the conditions in the contract, the original price for petroleum products varies subsequently on account of achieving certain targets or conditions. Such discounts/incentives reduce the original price payable by the dealers on fulfilling certain conditions in the contract. They cannot be treated as a consideration against any supply of services. Additionally, the applicant contended that since petroleum products do not fall under the purview of GST, the differential margin received on the supply of these products cannot be treated as supply.

The AAR noted that the differential dealer margin is provided to the applicant if the sales volume decreases below a mutually agreed level so that the applicant does not close down his petrol pump due to such loss. It held that the margin is in the nature of consideration in return for the applicant agreeing to run the dealership despite low sales.

Therefore, it shall be construed as consideration received by the applicant for agreeing to the obligation to refrain from an act which is a taxable supply of service. It also held that though the consideration for this supply is linked to the sales volume of petrol, there is no discount on the supply of petrol. AAR further held that even though the supply of petrol is not taxable under GST, the supply in the present case is the service of agreeing to an obligation to refrain from an act. Hence, GST is leviable on the differential dealer margin received by the applicant. The applicable tax rate is 18 percent.

M/s Payline Technology Private Limited
2024-VIL-118-AAR (Uttar Pradesh Authority of Advance Ruling)

The applicant purchased gift cards, vouchers, and pre-paid vouchers at a discount and sold them to end customers at a profit. The end customer could redeem the voucher for its actual price.

The applicant applied for an advance ruling to ascertain whether vouchers, either by themselves or by supplying them, are taxable under GST and at what stage. If they are taxable, the advance ruling was sought on the rate of GST applicable and the value of supply at which they would be taxable.

The AAR observed that the vouchers have both value and ownership, which the issuer transfers to the applicant and then to the ultimate beneficiary, who redeems the voucher. No element of service is involved between the issuer of vouchers and the applicant and also between the applicant and the ultimate beneficiary. Additionally, since the applicant does not use these vouchers to settle any obligation, it cannot be termed as “money” in the hands of the applicant under GST law's provisions. The voucher could be termed as "money" only when it is redeemed by the beneficiary at the time of purchase of goods and/or services. Also, these vouchers are in the claimant’s possession at the time of the claim and do not fall under the definition of “actionable claims” provided under the GST law. Therefore, such vouchers are movable property and qualify as “goods”. It further held that trading such vouchers for consideration in the course or furtherance of business shall imply transfer of title in goods which is a supply under GST. The value of supply shall be the transaction value, which is the price paid or payable on the supply of such vouchers and the applicable rate of GST shall be 18 percent.

Service Tax

Dunac Automobiles Pvt. Ltd. v. Commissioner of CGST
2024-VIL-857-CESTAT-DEL-ST

The assessee was an authorised dealer of an automobile company and received discounts/incentives from them upon achieving the specified targets. An SCN was issued to the assessee demanding service tax on the discounts/incentives on the ground that in lieu of receiving such discounts/incentives, the assessee provided a service to achieve the target.

An adjudication order was passed confirming the demand proposed in the SCN, against which the assessee preferred an appeal before CESTAT.

CESTAT referred to the earlier judgements pronounced on a similar issue and held that the amount received for achieving the targets is not towards rendering business auxiliary services and is in the form of a trade discount. This is an incentive given to encourage the dealer to buy and sell a larger number of vehicles. It is not a payment for any service rendered to the manufacturer. CESTAT held that the adjudicating authority's findings contradict the earlier decisions on the same issue. Accordingly, it set aside the adjudication order and allowed the appeal.

Notifications/Circulars/Instructions

CBIC issues various circulars

CBIC has issued various circulars in respect of the following matters:

Circular number	Clarification
223/17/2024-GST dated 10 July 2024	Amendment in Circular No. 1/1/2017-CT dated 26 June 2017 regarding functions of the proper officer for provisions regarding registration and composition levy under the CGST Act,2017
224/18/2024-GST dated 11 July 2024	Guidelines for recovery of outstanding dues, in case the first appeal has been disposed of, till the Appellate Tribunal comes into operation
225/19/2024 dated 11 July 2024	Taxability and valuation of supply in case of provision of corporate guarantee between related persons
226/20/2024 dated 11 July 2024	Mechanism for refund of additional IGST paid on account of upward revision in price of goods subsequent to exports
227/21/2024 dated 11 July 2024	Processing of refund applications filed by canteen stores department
228/22/2024 dated 15 July 2024	Applicability of GST on certain services based on the recommendations of the 53rd GST Council Meeting
229/23/2024 dated 15 July 2024	Clarification regarding GST rates and classification of certain goods based on recommendations of the 53rd GST Council Meeting

CBIC issues notifications regarding changes in the rate of TCS under the GST

On the recommendations of the GST council, the rate of TCS to be collected by every e-commerce operator has been amended from 1 percent to 0.5 percent with respect to inter-state/intra-state and intra-union territory taxable supplies by amending corresponding notifications issued earlier under the CGST Act, SGST Act and UTGST Act.

(Notification No. 15/2024 - Central Tax dated 10 July 2024)

Amendments have been made to various rules

The CBIC issued the CGST (Amendment) Rules, 2024 to further amend Rule 8, 21, 21A, 28, 36, 37A, 39, 40, 48, 59, 60, 62, 78, 88B, 88C, 89, 95, 96, 96A, 110, 111, 138, 142, 163, Form GSTR-1, Form GSTR-2A, Form GSTR-2B, Form GSTR-3B, Form GSTR-4A, Form GSTR-5, Form GSTR-6A, Form GSTR-7, Form GSTR-8, Form GSTR-9, Form GSTR-9C, Form RFD-01, Form GST DRC-01A, Form GST DRC-01B, Form GST DRC-03 & Form GST DRC-04; Insertion of Rule 113A, Form GST ENR-03, Form GSTR-1A, Form GST RFD-10A, Form GST APL-05/07 W & Form GST DRC-03A.

(Notification No. 12/2024 - Central Tax dated 10 July 2024)

Exemption from filing annual returns for specified registered persons

According to the recommendations of the Council, CBIC exempts registered persons with aggregate turnover of up to INR2 crore in the financial year 2023-24 from filing annual returns for the said financial year.

(Notification No. 14/2024 - Central Tax dated 10 July 2024)

CBIC issues circular regarding revised monetary limits for adjudication of SCNs in Central Excise in case of tobacco and tobacco products

The monetary limits for issuing SCNs demanding central excise/CENVAT credit and passing adjudication orders thereon for commodities under Chapter 24 of Schedule IV of the Central Excise Act, 1944 (i.e., tobacco and tobacco products) with respect to the designation of central excise officer as suggested in circulars issued earlier have been amended.

(Circular No. 1086/01/2024-CX dated 3 July 2024)

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