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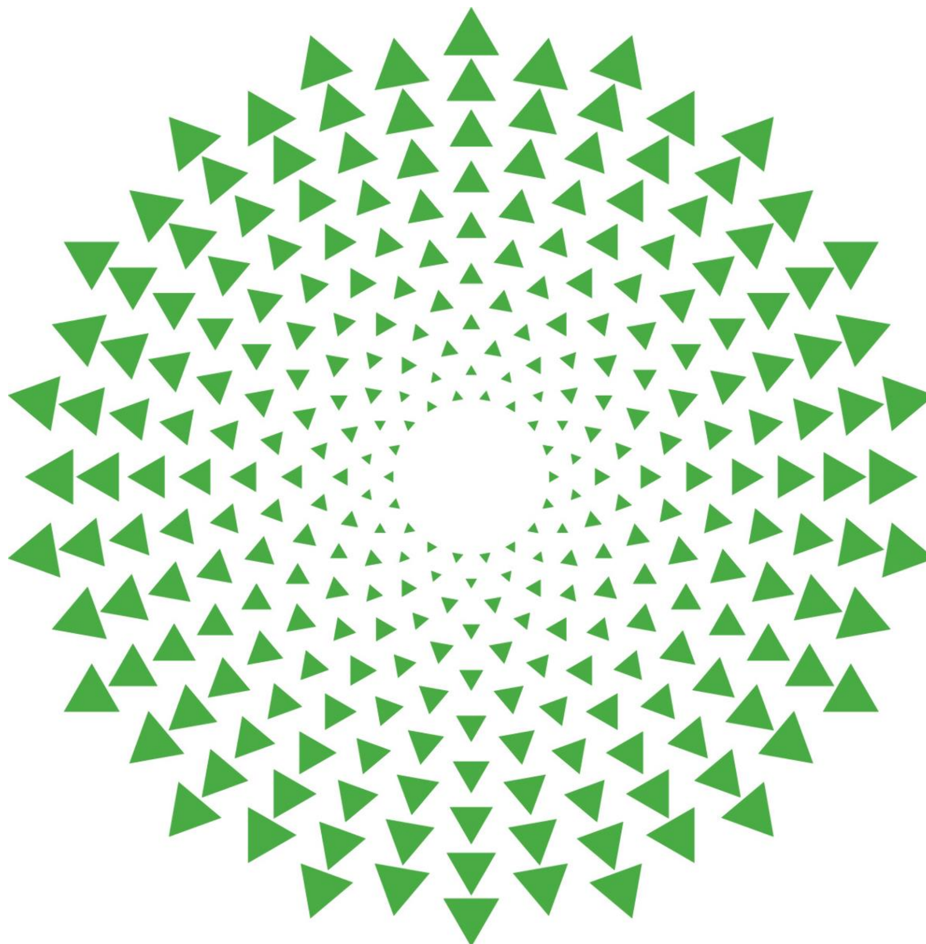

Indirect tax newsletter

Indirect tax updates
April 2024

This newsletter captures a few important judgments/advance rulings passed under Goods and Services Tax (GST), Customs, Central Excise, and Service Tax available in the public domain from January to April 2024. It also covers some of the updates from an indirect tax perspective.

Goods and services tax

Vodafone Idea Ltd. vs. Union of India
(2024) 17 Centax 485 (Allahabad High Court)

The issue in the present case pertained to the refund of Integrated Goods & Service Tax (IGST) on international roaming services supplied to Foreign Telecom Operators (FTO). The Bombay HC has previously held that the place of supply of the services would be the location of (FTO), i.e., outside India and hence, export under GST. The Allahabad HC applied the doctrine of comity, i.e., recognition of judgments rendered in other jurisdictions and held that the High Courts have territorial jurisdiction. If they declare something under a central legislation, it has a pan-India application. The Allahabad HC held that the Bombay HC order, being on central legislation, would apply in Uttar Pradesh as well. Accordingly, the Allahabad HC quashed the orders.

Radiant Cash Management Services Ltd. vs. The Assistant Commissioner (ST), Chennai
2024 (3) TMI 961 (Madras High Court)

The petitioner was issued a notice for discrepancies in GST returns filed for the financial year 2017–18 in Form GST ASMT-10. The petitioner filed the reply to the said notice that was accepted by the Department and proceedings were dropped in Form GST ASMT-12. However, a Show Cause Notice (SCN) was issued before the order in Form GST ASMT-12 and later, an assessment order was issued where the demand on the same subject matter was confirmed by the department.

The department's plea was that the amount of demand raised in Form GST ASMT-10 as confirmed in the order was different. The HC noted that the confirmation of demand relates to the same assessment period and the same amounts towards SGST, CGST, and IGST. The only difference is that interest and penalty have been imposed thereon to arrive at the aggregate sum indicated therein. The HC set aside the assessment order and held that where the proceedings have been dropped by issuing ASMT-12, it cannot be revived by issuing SCN and passing the impugned order on the same cause of action.

TVL Vardhan Infrastructure vs. Special Secretary, Head of the GST Council Secretariat
(2024) 16 Centax 509 (Madras High Court)

The petitioner challenged parallel proceedings initiated by the central or state GST authorities on the ground that these are without jurisdiction as proceedings have already been initiated by the state or central GST authorities respectively.

The petitioner submitted that in the absence of a proper notification under GST law for cross-empowerment, the impugned proceedings by the respective counterparts were without jurisdiction.

The HC, while accepting the submission of the petitioner, held that in case an assessee has been assigned administratively with the central authorities, the state authorities have no jurisdiction to interfere with the assessment proceedings in the absence of a corresponding notification under Section 6 of the respective GST enactments. Similarly, for an assessee assigned administratively with state authorities, the central authorities have no jurisdiction to interfere with the assessment proceedings. The GST laws have been framed in such a manner that there is no cross-interference by the counterparts viz., central and state authorities, except per specified provision of the GST law. This empowers the government to issue a notification on the recommendation of the GST council for cross-empowerment. Thus, in the absence of any such notification, the initiation of proceedings by the central as well as the state authority is incorrect.

Agarwal Coal Corporation (P.) Ltd. vs. Assistant Commissioner of State Tax (2024) 17 Centax 343 (Bombay High Court)

In the present case, the issue was regarding the payment of IGST on ocean freight. The department was of the view that the decision of the Apex Court in the case of Mohit Minerals is only applicable to contracts on a CIF basis and not on FOB contracts. The Bombay HC held that the interpretation adopted by the department was incorrect. It was held that the Supreme Court (SC) has declared the notification imposing GST on ocean freight as ultra vires. Hence, the nature of the contract is irrelevant and no GST is payable on ocean freight in the case of FOB contract as well.

Raghav Ventures vs. Commissioner of Delhi Goods & Services Tax 2024 (3) TMI 118 (Delhi High Court)

The petitioner exported mobile phones on payment of IGST and claimed a refund of IGST for December 2022, February 2023, March 2023 and May 2023.

IGST refund for the said period was sanctioned but without interest on delayed refund on 4 December 2023 (after the expiry of 60 days from the date of application). The petitioner applied for a grant of interest @6 percent from the date of filing the refund application until 3 December 2023. The department objected to the grant of interest arguing that the petitioner only claimed the IGST and not interest in the refund application.

The HC observed that under GST law, interest on delayed refund becomes payable if a refund is not sanctioned within 60 days from the date of receipt of the application for refund. Further, payment of interest, being statutory in nature, is automatically payable without any claim. Based on the above observation, the HC allowed interest to the petitioner even though the same was not claimed in the refund application.

Jupiter Comtex Pvt. Ltd. vs. Union of India (2024) 16 Centax 68 (Gujarat High Court)

The petitioner had made payment of tax, along with interest and penalty on IGST, on ocean freight under protest . Under the decision of the Apex Court in the case of Mohit Minerals, where it was held that IGST is not payable on ocean freight, the petitioner filed for a refund of tax, along with interest and penalty.
The department rejected the said refund claim on the ground that a refund as a result of levy being held unconstitutional can be claimed only by way of suit or writ petition and the same cannot be granted under the provisions of GST law.

The High Court held that the rejection of the refund on the said ground is incorrect and unsustainable. Accordingly, it was held that when the notification for levy of IGST on ocean freight is held to be unconstitutional, the petitioner is entitled to the refund of such IGST on ocean freight paid under protest.

Prahitha Constructions Private Limited vs. Union of India
2024 (2) TMI 902 (Telangana High Court)

The petitioner is engaged in the business of conceptualising, planning, constructing, and developing commercial real estate projects. The petitioner entered into a Joint Development Agreement (JDA) with land owners for developing land in the first phase by constructing towers with common facilities.

The petitioner filed a writ petition declaring that the transfer of development rights of the landowner to the petitioner by way of JDA should be treated as the sale of land by the landowners and hence, the execution of JDA should not be subject to levy of GST. The petitioner also prayed for declaring the imposition of GST on the transfer of development rights of land by the landowners under JDA by way of notification as ultra vires to the Constitution of India. The petitioner contended that the execution of JDA is almost like the sale of the land developed by the petitioner.

The HC noted that there is no automatic transfer of ownership to the petitioner at the time of execution of JDA. The petitioner gets the right on the developed property only after the completion of the project and issuance of the completion certificate the petitioner derives the right to sell the area of the property, which is allotted to him for the realisation of the amount of money invested in the course of executing JDA.

The HC perused the JDA and observed the two sets of transactions. One is an agreement between the landowner and the petitioner, and another is the supply of construction services by the petitioner to the landowners and only thereafter, the sale of the constructed area to third-party buyers takes place . Both transactions were held to be supplied under GST and taxable as construction services. The transaction cannot be termed as the sale of land under GST. The HC held that the challenge to the notification is also devoid of merits as the grounds raised by the petitioner are not sustainable. Hence, the writ petition was dismissed.

M/s Eicher Motors Limited vs. Superintendent of GST and Central Excise
2024 (14) CENTAX 323 (Madras High Court)

The petitioner transitioned CENVAT credit to the GST regime through Form GST TRAN-1 in October 2017. However, due to certain technical issues, credit did not appear in the electronic credit ledger of the petitioner. Due to this issue, the petitioner could not use the credit towards the outward GST liability for July 2017. Therefore, the petitioner did not file the GST return for July 2017 and the subsequent period (until December 2017) as they were unable to use the transitional credit.

However, the petitioner deposited the applicable GST liability in the electronic cash ledger within the due date for each respective month. The petitioner then filed a revised Form GST TRAN-1 in December 2017, after which the CENVAT credit appeared in the electronic credit ledger. Later, the petitioner filed the GST returns for July 2017 and the subsequent months.

The petitioner received a recovery notice (without issuance of a show cause notice) from the authorities seeking interest on delayed payment of GST for July 2017 to December 2017. Despite the petitioner’s detailed response, the department did not withdraw the recovery proceedings. The petitioner approached the Madras High Court, where it was held that once the amount is paid by generating GST PMT-06, the said amount will be initially credited to the account of the government immediately upon deposit. At this point, the tax liability of a registered person will be discharged to the extent of the deposit made to the government. Thereafter, to account only, it will be deemed to be credited to the electronic credit ledger. Any default in GST payment occurring after the due date for filing monthly returns, i.e., on or before the 20th of each subsequent month, will result in the registered person being liable to pay interest solely for the delayed period.

M/s Yonex India Private Limited vs. Union of India
2024 (2) TMI 59 (Karnataka High Court)

The petitioner is a subsidiary company of M/s Yonex Co., Japan, and has sought to quash the order issued by the respondent where holding of shares by the holding company in the subsidiary company has been classified as "supply of service". The petitioner submitted that the mere holding of shares in the subsidiary company by the holding company cannot be construed as a "supply of service" based on the clarification provided in the circular dated 17 July 2023 after the impugned order.

The HC quashed the impugned order considering the said circular clarifying that holding of shares by Yonex Co., Japan in its subsidiary cannot be treated as a "supply of service".

Anvita Associates vs. Union of India & Ors.
2024 (1) TMI 1104 (Bombay High Court)

The petitioner made supplies during FY2017–18 that remained short-paid since the petitioner had inadvertently not disclosed 14 sales invoices in GSTR-1 filed for the said period. Consequently, such invoices did not reflect in the GSTR-2A of the recipient because of which Input Tax Credit (ITC) against such invoices was denied to the recipient.

The petitioner filed a writ petition seeking direction to the department not to deny credit to the recipient. The HC, while relying on precedents on this issue, emphasized the need for recognising inadvertent errors and permitting rectification when there is no loss of revenue to the government.

The HC directed the petitioner to file a rectification application for GSTR-1, either online or manually.

TVL. Kalyan Jewellers India Ltd. vs. Union of India
2024 (1) TMI 920 (Madras High Court)

The petitioner, engaged in the manufacturing and sale of ornaments, issues different types of Prepaid Payment Instruments (PPIs, [gift vouchers]) to its customers. The petitioner sought an advance ruling on whether the issuance of PPIs would be considered as a supply of goods/services and time of supply for the same. The Authority for Advance Ruling (AAR) classified PPIs issued by the petitioner as supply of goods. Further, it was pronounced that the time of supply of such vouchers shall be the date of issuance of vouchers if goods are specified against such voucher or else the date of redemption of such vouchers.

The petitioner challenged the above ruling before the Appellate Authority for Advance Ruling (AAAR), which held that the gift voucher issued was neither a supply of goods nor a supply of service. At the same time, the AAAR concluded that where the voucher identifies goods or services that can be received on redeeming; the voucher would be taxable at the time of its issuance. Aggrieved by the said conclusion, the petitioner filed a petition before the Madras HC.

The Madras HC analysed the conditions of the issuance of PPIs by the petitioner and observed that the gift voucher issued by the petitioner is a "PPI" within the meaning of master direction issued by the RBI and the petitioner is bound to either allow its redemption against purchase or refund if it is not used before expiry. A gift voucher is a debt instrument that can be redeemed on a future date on its presentation for purchase. Therefore, the gift voucher is an actionable claim within the meaning of GST law. Thus, it was held that a voucher, being an actionable claim, is neither a good nor a service. However, the underlying transactions are taxable under GST.

It was also held that if the gift voucher is issued for a specified and identified good of a particular value, tax is payable on such identified good at the time of issuance of the voucher, as there is the supply of an identified good. If the voucher was issued for any unspecified goods to be purchased on a future date from a whole range of products/goods/merchandise offered for sale by the petitioner, tax is payable on such "goods" or "merchandise" only at the time of sale, i.e., at the time of redemption.

Waree Energies Ltd.
GUJ/GAAR/R/2024/09 – Authority for Advance Ruling, Gujarat

The applicant is a unit in the Special Economic Zone (SEZ) and procured services, such as bus hire, legal services, and security services from suppliers in the domestic tariff area. GST on certain services is payable under reverse charge. The applicant approached the Gujarat AAR seeking a ruling as to whether GST under reverse charge is payable by an SEZ unit.

On a conjoint reading of the provisions of SEZ law and the GST law, the AAR held that the applicant, an SEZ unit, can procure the services mentioned supra, for use in authorised operations without payment of IGST, provided the applicant furnishes a letter of undertaking or bond per GST law.

Customs/Foreign Trade Policy

South Gujarat Warp Knitters Association vs. Union of India
2023 (12) TMI 1158 (Gujarat High Court)

The petitioner avails the benefit of the EPCG scheme under the Foreign Trade Policy 2015–20 (FTP). Para 5.10 of the Handbook of Procedures (HBP) provides conditions for the fulfilment of export obligations for the EPCG scheme. The FTP and HBP were revised w.e.f. 5 December 2017. The effect of the revision was that, before 5 December 2017, the full realised value of the shipping bill was to be taken into consideration for the fulfilment of export obligation. However, after the amendment, only the actual payment received by the authorisation holder from the third-party exporter through a normal banking channel is to be taken into consideration for the fulfilment of an export obligation.

It is the case of the petitioner that the amendment made in Paragraph 5.10(c) of the revised HBP ought to have been applied only to the authorisation issued under the EPCG scheme on or after 5 December 2017. However, vide Policy Circular dated 29 March 2019, it was clarified that all the shipments made from 5 December 2017 will be counted towards export obligation only for the actual payment realised. Therefore, the petitioner was aggrieved by the action of applying Paragraph 5.10(c) of the revised HBP even to the authorisation issued before 5 December 2017.

The HC observed that under the guise of amendment in HBP with said policy circular, the respondents have in effect amended the FTP with retrospective effect to the EPCG authorisation issued before 5 December 2017 under the guise of mere procedural changes for third-party exports. Accordingly, it was held that the amendment would be effective on a prospective basis only to EPCG authorisation issued after 5 December 2017.

Service tax

The Commissioner, Central Excise & Service Tax, Delhi vs. M/s Pharmax Corporation Ltd.
2024 (3) TMI 1179 (CESTAT New Delhi)

The respondent company provided a corporate guarantee on behalf of its sister concerns to lenders but did not charge any commission for the same. The revenue contends that even though the respondent did not receive any consideration for the corporate guarantee, a notional value equivalent to the amount that banks could have charged for similar service should be taken into consideration and service tax should be charged on such notional value.

SCN was issued to the respondent demanding service tax along with interest and penalty and was confirmed by the adjudicating authorities. Aggrieved, the respondent appealed to the Commissioner (Appeals) who set aside the demand. The revenue filed an instant appeal against the order of the Commissioner (Appeals).

The CESTAT observed that when a respondent provides a corporate guarantee on behalf of its sister concern without receiving any consideration and the tax demand is based only on the amount calculated based on the prevailing market rate for bank guarantees, service tax is not payable on such a corporate guarantee. In the instant case, no consideration was received at all. Therefore, the appeal filed by the revenue was dismissed.

Balaji Multi-Flex Pvt. Ltd. vs. Commissioner of Central Excise & ST, Rajkot
2024 (3) TMI 340 (CESTAT Ahmedabad)

The appellant imported machinery vide bill of entry dated 12 March 2012. Per the agreement entered between the appellant and the overseas supplier of the machinery, charges for installation and commissioning provided by the supplier's technician (located in India), are included in the value of the imported machine.

The department contended that the appellant has received "erection, commissioning, and installation service" of the imported machinery, and accordingly, the appellant is liable to pay service tax on the value of such service procured. The adjudicating authority confirmed the demand along with interest and penalty. The appeal before the Commissioner (Appeals) was also rejected and the demand was upheld.

The appellant filed the instant appeal because there is no contract for service by a foreign supplier. The CESTAT held that the sale and installation of machinery is a composite contract of sale by the foreign supplier and the total value represented the sale value and the value of erection, commissioner, and installation services. Therefore, the total value is a sale value and in the case of a sale-purchase transaction, no service tax under reverse charge can be demanded.

Value Added Tax

SM/s K.P. Mozika vs. Oil and Natural Gas Corporation Ltd. & Ors. 2024 (1) TMI 443 (Supreme Court)

Under a contract, different categories of motor vehicles, such as trucks, trailers, tankers, buses, scrapping winch chassis, and cranes were provided to the Oil and Natural Gas Corporation Limited (ONGC). K.P. Mozika (appellant) provided services of truck-mounted hydraulic cranes with the crew, etc., to ONGC for carrying out its various operations. The appellant approached the Gauhati High Court after facing a threat from ONGC to deduct tax at source under the VAT Act for these services provided by the appellant. Several other petitions were filed, raising a similar issue. The HC dismissed the petitions holding that the contract was for the transfer of the right to use the goods and therefore, there was a liability under the VAT Act and the Assam Goods & Services Tax Act.

The issue revolves around whether the engagement of these motor vehicles/cranes constitutes a transfer of the right to use goods. If such a transfer occurs, it would qualify as a sale under Clause 29A(d) of Article 366 of the Constitution of India, i.e., tax on the sale or purchase of goods.

The SC has clarified that the hiring of motor vehicles and cranes by ONGC from contractors is deemed a service and exempt from Sales Tax or Value Added Tax (VAT). The SC emphasized that substantial control over the goods must lie with the user for it to qualify as a transfer of the right to use. If control remains with the contractor during the hiring period, it is rendering of service, and only service tax can be imposed.

The Apex Court also held that essentially, the transfer of the right to use will involve not only possession, which may be granted at some stage (after execution of the contract) but also the control of the goods by the user. When substantial control remains with the contractor and is not handed over to the user, there is no transfer of the right to use the vehicles, cranes, tankers, etc. Whenever there is no such control on the goods vested in the person to whom the supply is made, the transaction will be that of rendering service under service tax law.

Notifications/Instructions

Guidelines related to investigations under GST

- Guidelines to be followed in the CGST zones while engaging in the investigation have been issued. The instructions inter-alia prescribe that prior written approval of the zonal principal chief commissioner shall be required for initiating investigation for specified cases. Further, if the issue involved is a matter of interpretation of GST law and a taxpayer is following a prevalent trade practice based on a particular interpretation of that issue in the sector/industry, the zonal principal chief commissioner should refer that event to the relevant policy wing of the CBIC. (Instruction No. 01/2023-24-GST (Inv.) dated 30 March 2024)

"Public Tech Platform for Frictionless Credit" u/s 158A of the Central Goods & Services Tax Act, 2017 (The CGST Act, 2017)

- The government has notified the "public tech platform for frictionless credit" as the system with which information, such as particulars furnished in the application for registration, and details of outward supplies may be shared by the GST common portal based on the consent of the taxpayer with other notified systems. (Notification no. 06/2024-Central Tax dated 22 February 2024)

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