


Indirect tax newsletter

Indirect tax updates

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

Goods and Services Tax




**Arya Cotton Industries and another vs. Union of India and another
2024-VIL-634-GUJ (Gujarat High Court)**

The petitioner was converted from a Limited Liability Partnership (LLP) into a company and claimed transfer of unutilized input tax credit (ITC). Due to technical issues, ITC could not be transferred to the GST registration of the company from the GST registration of LLP.

Without the availability of ITC balance, the petitioner could not file the GST return within the due date. The petitioner deposited some amount in the electronic cash ledger from time to time. When the ITC got transferred, the petitioner filed the returns with payment of tax. Interest on delayed payment of tax was also paid for the period starting from the due date of filing GSTR-3B till the date of deposit of amount in electronic cash ledger (ECL). The petitioner received a show cause notice (SCN) demanding interest from the due date till the actual date of filing of GSTR-3B.

The petitioner filed a writ petition before the Gujarat High Court (HC) against the SCN.

The HC noted that GST paid at the time of deposit into ECL which is adjusted against liability at the time of filing of return is merely in the nature of adjustment. The amount in ECL is nothing but in nature of advance tax which cannot be withdrawn or utilised in any manner by the assessee except for payment of tax liability. Interest on amount which is already deposited and utilised for payment of tax is contrary to the fundamental principle for charging interest which is compensatory in nature. Levying interest on amount deposited in ECL would convert the interest into the nature of penalty. There is no loss to the revenue merely because the amount deposited in the ECL gets adjusted against the actual liability at the later date at the time of filing of return. Thus, the HC held that the interest for delayed payment of tax can be levied only till the date of deposit of amount in the ECL. Consequently, the HC set aside the SCN.



**M. Trade Links vs. Union of India
2024-VIL-559-Ker (Kerala High Court)**

The writ petition was filed before Kerala High Court challenging the constitutional validity of certain provisions of the Central Goods and Service Tax Act, 2017 (CGST Act) which imposes conditions on the availment of ITC viz. Sections 16(2)(c) and 16(4).

Section 16(2)(c) prescribes that ITC can be availed by the recipient if the supplier has actually paid tax to the Government and Section 16(4) prescribes the time limit to avail ITC. The petitioner contended that non-payment of tax by the supplier to the Government or non-reflection of invoice in Form GSTR-2A cannot be a ground to deny ITC claim of the buyer. It also contended that the provision prescribing the time limit for availment of ITC is a procedural requirement. Merely because the return is filed belatedly, substantive right to claim ITC cannot be denied due to a procedural lapse.

The HC noted that in order for a taxing statute to be constitutionally valid, there are three factors that needs to be satisfied. First, it is within the competence of legislature imposing it. Second, it is for the public purpose and third, it does not violate the fundamental rights.

The HC held that ITC is not an absolute right, rather, it is in the nature of a benefit granted to the assessee. While granting such benefit, the Government may impose conditions and restrictions. Accordingly, the HC held that the restrictions imposed under Sections 16(2)(c) and 16(4) of the CGST Act are not violative of the Constitution.

Prior to the amendment by the Finance Act 2022, the date for furnishing the return was 30 September. Considering the difficulties in the initial stage of the implementation of the GST regime, its understanding, and compliance, the Legislature effected the amendment and extended the time for filing the return for September to 30th November in each succeeding financial year.

The HC held that the amendment is only procedural to ease the difficulties initially faced by the dealers /taxpayers. Therefore, where for the period from 1 July 2017 till 30 November 2022, if a dealer has filed the return after 30 September and the claim for ITC was made before 30 November, the claim for ITC of such dealer should also be processed if he is otherwise entitled to claim the ITC.



M/s Nova Publications & Printers Pvt. Ltd. vs. Union of India and others 2024-VIL-624-P&H (Punjab and Haryana High Court)

Search and seizure action was taken against the petitioner pursuant to which provisional attachment was ordered and electronic credit ledger was blocked. Subsequently, no further proceedings were undertaken by the revenue authorities.

The petitioner filed a writ petition before the Punjab and Haryana High Court against the attachment order.

The HC opined that if the proceedings of attachment are initiated, they must be brought to a logical end after by issuing a SCN. Without issuance of such notice, the continuation of attachment was not appropriate. Hence, the HC ordered revocation of attachment order and release of the electronic credit ledger.



Jalajoga vs. State of West Bengal 2024-VIL-476-CAL (Calcutta High Court)

The petitioner had filed an appeal before the appellate authority. As the appeal was filed beyond the limitation period, it was accompanied by an application for condonation of delay with sufficient cause under section 5 of the Limitation Act, 1963 which provides for admission of appeal or any application after the prescribed period if the appellant or applicant has sufficient cause of doing so.

The appellate authority however, rejected the application of condonation of delay on the ground that the authority does not have the power to condone the delay beyond the period of one month from the prescribed period of ninety days and dismissed the appeal.

Aggrieved by the dismissal of appeal owing to non-condonation of delay, the petitioner filed a writ petition before the Calcutta HC. The petitioner contended that the Limitation Act, 1963 is applicable in the present case and as per the provisions of the said Act, the appellate authority is empowered to condone the delay in filing the appeal.

The departmental authorities contended that the provisions of the GST law specifically prescribe for a time limit for filing appeals implicitly exclude the provisions of the Limitation Act.

The HC placed reliance on the earlier judgments and held that in the absence of specific exclusion of provisions of Limitation Act, it would be improper to read implied exclusion thereof. Appellate Authority has failed to exercise its jurisdiction in refusing to entertain the application for condonation of delay.

Accordingly, the order passed by the appellate authority refusing to condone the delay was set aside and the appeal was restored. The appellate authority was directed to hear out and dispose the appeal on merits.



Acme Cleantech Solutions Pvt. Ltd. vs. Union of India 2024-VIL-448-P&H (Punjab and Haryana High Court)

The Central Board of Indirect taxes and Customs (CBIC) issued circular no. 204/16/2023-GST dated 27 October 2023 providing for taxability and valuation of corporate guarantee extended by a director or by a holding company for sanction of credit facilities to its subsidiary company.

The circular inter alia clarified that the corporate guarantee provided by one company to a bank/financial institution for providing credit facilities to another company, where both the companies are related, shall be treated as a supply under GST, even if it is made without a consideration and the value of such supply shall be determined as per prescribed valuation mechanism, irrespective whether the recipient is entitled to full ITC or not.

The petitioner filed a writ petition before the Punjab and Haryana HC challenging the above stated part of the circular on the grounds that it seeks to take away the adjudicatory power of the assessing authority as well as appellate authority by clarifying provisions in the nature of adjudication.

The court imposed a stay on effect and operation of the stated part of the circular and directed that appellate authority shall be free to decide the case of the petitioner without being influenced by the subject circular.



Lokenath Construction (P.) Ltd. Vs. Tax/Revenue Government of West Bengal 2024-VIL-432-CAL (Calcutta High Court)

The Revenue issued a SCN to the petitioner alleging that the ITC was claimed without the proof that the suppliers had paid the GST to the Government. The petitioner submitted certificates from Chartered Accountants confirming that the suppliers had discharged their tax liabilities in their GSTR-3B. However, the Revenue rejected these certificates, claiming that they did not match with the data on GST portal and passed the adjudication order confirming the demand raised in the SCN.

Aggrieved by the adjudication order, the petitioner filed a writ petition before Calcutta HC.

The Court noted that the Revenue ignored the tax invoices and Chartered Accountants' certificates provided by the petitioner which was erroneous. The HC held that if GST was not remitted to the State exchequer, the Revenue should have investigated the supplier instead of penalizing the petitioner. Consequently, the adjudication order was set aside with a direction to the revenue authorities to first proceed against the supplier and only under exceptional circumstances as clarified in the press release issued by the CBIC, proceedings can be initiated against the petitioner.



Faizal Traders (P.) Ltd. Vs. Deputy Commissioner, Central Tax and Central Excise 2024-VIL-527-KER (Kerala High Court)

For the period of July 2017 to September 2017, the petitioner filed GSTR-1 and GSTR-3B, however, the details of outward supplies and ITC claimed were omitted from the said forms.

A SCN was issued to the petitioner proposing demand towards the output GST liability. The petitioner contended that details of outward supplies and ITC were reported in the annual return. The output tax liability was adjusted against the ITC claimed in the annual return and hence, no GST is payable. The GST authority rejected petitioner's contention and passed the assessment order confirming the demand.

The petitioner filed a writ petition before the Kerala HC challenging the assessment order on the ground that it is barred by limitation. The petitioner submitted that notifications extending time limit to issue the assessment order due to COVID-19 are ultra vires the provisions of the CGST Act. Under the CGST Act, government is empowered to extend time limits notified in the Act for actions which cannot be completed or complied with due to force majeure. The petitioner submitted that there was an absence of force majeure and hence the extension notifications are bad in law.

The court held that COVID-19 was a force majeure and hence, it was well within the powers of Government to extend the time limit for passing the assessment order. The court also held that the amount of time which was required to be extended was at the discretion of the government. Accordingly, the court held that the impugned extension notifications are not ultra vires the provisions of the GST law. The writ petition was dismissed to this extent. The HC also set aside the assessment order for re-verification of the certificates provided by petitioner and remanded the matter to the adjudicating authority.



M/s Center for International Admission and Visas (CIAV) 2024-VIL-69-AAR (Telangana Authority of Advance Ruling)

The applicant entered into agreement with foreign colleges to provide referral services. The applicant is responsible to prepare a case for aspiring students who wish to study abroad and refer it to concerned colleges as per the requirement of students and their fitment into the particular college considering the merits of the application. The college retains complete discretion about whether to accept a particular applicant or not. The applicant receives referral commission from the foreign colleges on the basis of successful admissions made on the basis of referral. No commission is charged by the applicant from students.

The applicant filed an application to seek advance ruling to ascertain whether the services provided by it to foreign colleges are in the nature of 'intermediary' and whether they would qualify as 'export of services'.

The Authority for Advance Ruling (AAR) analysed the terms of agreement entered into between the applicant and foreign colleges and noted that the applicant is under principal-to-principal contractual relationship with the foreign colleges and it is not working as agent of the foreign colleges. The applicant is providing independent services of marketing and referral to the foreign colleges. The AAR further held that the necessary conditions for qualifying as 'intermediary' i.e., presence of three parties and provision of main service with ancillary service by the facilitator acting as an agent or broker are not fulfilled by the applicant. Accordingly, the AAR held that the applicant does not qualify as 'intermediary' and the services supplied by it qualify as 'export of service'.



M/s Balat Enterprises Private Limited
2024-VIL-74-AAR (Tamil Nadu Authority for Advanced Ruling)

The applicant is engaged in providing a mobile based digital platform where the service providers and end customers connect with each other for availing variety of services. The service providers and end customers enter into a contract for supply of services. Role of the applicant is limited to provision of platform. It is not engaged in supply of service or collection of consideration. The consideration was paid by the end customers directly to the service providers. The applicant charged a user fee from the service provider towards usage of its platform on which GST liability was duly discharged.

The applicant filed an advance ruling application to ascertain whether the applicant falls under the definition of 'electronic commerce operator' and whether it is liable to pay GST in respect of the services supplied by the service providers to the end customers.

The AAR held that the applicant owns and manages the digital platform and hence, it is an 'electronic commerce operator'. AAR noted that owing to their platform and technology, the applicant facilitates the service providers to render their services to the end customers and the said service is monitored through the app till the completion of service by getting the feedback from service provider as well as end customer. Accordingly, it was held that the applicant is liable to pay GST on the services supplied by the service providers as such services are supplied through the platform maintained by the applicant. AAR also held that the fact that the applicant is not receiving the consideration from end customers does not have any impact as for the subject services, the applicant, being the electronic commerce operator is deemed to be the supplier of service in GST law.



M/s India Optel Limited
2024-VIL-69-AAR (Telangana Authority of Advance Ruling)

The applicant has entered into agreement with various vendors for supply of goods. A clause has been mentioned in the agreement which provides that if the supplier fails to deliver the goods within the specified period, the applicant may recover liquidated damages.

The applicant filed an application for advance ruling to ascertain the taxability of liquidated damages recovered from the suppliers.

The AAR noted that the quantum of liquidated damages to be recovered has been pre-determined in the agreement itself. However, in order to qualify as damage, there must be an element of surprise. Quantification of liquidated damages indicate that the amount recovered is neither ad-hoc nor at the discretion of the applicant and its vendors. Referring the circular issued on taxability of liquidated damages, the AAR held that the case of the applicant is not covered by the circular. The AAR held that the amount received in the name of liquidated damages is actually a consideration for tolerating the act of not supplying goods by supplier within the prescribed time and hence, the applicant is liable to pay GST on the same.

Service Tax

GRP Ltd. vs. CCE and ST 2024-VIL-602-CESTAT-AHM-ST

The appellant received sale proceeds from the foreign buyer against export made. While remitting the payment to Indian bank, the foreign bank deducted some charges. These bank charges were recorded in the books of accounts of the appellant. The appellant was issued a SCN demanding service tax under reverse charge on the foreign bank charges. The demand was confirmed in the assessment order against which the appellant filed an appeal before the Commissioner (Appeals) which was rejected.

Aggrieved by the order-in-appeal, the appellant filed the appeal before CESTAT.

CESTAT noted that no documents have been produced showing that the foreign bank has charged any amount from the appellant directly. It was the Indian bank who had paid the subject charges to the foreign bank. Therefore, the appellant cannot be treated as recipient in respect of the impugned foreign bank charges and hence, no service tax is payable by him in respect thereof.

Notifications/Circulars/Instructions

Recommendations made in GST council meeting

53rd meeting of GST council was held on 22 June 2024 where various recommendations were made for changes in GST rates of certain goods and services, conditional waiver of interest and penalty on demands raised for specified periods, reduction in quantum of pre-deposit required to be paid for filing of appeals, issuance of clarifications on various subjects such as valuation of corporate guarantees between related parties, time limit for availment of ITC on self-invoices raised for GST paid under reverse charge, etc.

CBIC issues various circulars

Pursuant to the recommendations made in the 53rd GST council meeting, CBIC has issued various circulars in respect of the following matters:

Circular number	Clarification
207/1/2024-GST dated 26 June 2024	Fixation of monetary limits for filing appeals or applications by the Department before GSTAT, High Courts and Supreme Court
208/2/2024-GST dated 26 June 2024	Clarifications on issues pertaining to special procedure for the manufacturers of Tobacco and pan masala products
209/3/2024 dated 26 June 2024	Place of supply of goods supplied to unregistered persons
210/4/2024 dated 26 June 2024	Valuation of supply of import of services by a related person where recipient is eligible to avail full ITC
211/5/2024 dated 26 June 2024	Time limit to avail ITC in respect of reverse charge supplies received from unregistered persons
212/6/2024 dated 26 June 2024	Mechanism for providing evidence for claiming GST adjustment towards post-sale discount
213/7/2024 dated 26 June 2024	Taxability of ESOP/ESPP/RSU provided by a company to its employees through its overseas holding company
214/8/2024 dated 26 June 2024	Requirement of reversal of ITC in respect of portion of life insurance policy premium, not included in taxable value
215/9/2024 dated 26 June 2024	Taxability of salvage/wreck value earmarked in the claim assessment of the damage caused to the motor vehicle
216/10/2024 dated 26 June 2024	GST liability and ITC availability in cases involving warranty/extended warranty
217/11/2024 dated 26 June 2024	Entitlement of ITC by the insurance companies on the expenses incurred for repair of motor vehicles in case of reimbursement mode of insurance claim settlement
218/12/2024 dated 26 June 2024	Taxability of provision of loan by an overseas affiliate to its Indian affiliate or by a person to a related person-
219/13/2024 dated 26 June 2024	Availability of ITC on ducts and manholes used in network of optical fiber cables
220/14/2024 dated 26 June 2024	Place of supply applicable for custodial services provided by banks to Foreign Portfolio Investors
221/15/2024-GST dated 26 June 2024	Time of supply in respect of supply of services of construction of road and maintenance thereof of National Highway Projects of NHAI in Hybrid Annuity Mode (HAM) model
222/16/2024 dated 26 June 2024	Time of supply of services of spectrum usage and other similar services

Guidelines for initiation of recovery proceedings before three months from the date of service of demand order

The CBIC has issued guidelines for initiation of recovery proceedings before three months from the date of service of demand order. The said guidelines highlight the need of matter being placed by the jurisdictional Deputy or Assistant Commissioner of Central Tax before jurisdictional Principal Commissioner/ Commissioner of Central Tax along with relevant reasons/justifications for the same.

Pursuant to which the Principal Commissioner/ Commissioner will examine the reasons/justifications and record reasons prompting such early action.

(Instruction No. 01/2024-GST dated 30 May 2024)

Launch of exchange rate module

At present, CBIC issues notification on fortnight basis for publishing the exchange rates. With effect from 4 July 2024, there would be an automated system where the exchange rates will be published online on ICEGATE portal. Upon launch of the automated system, the existing system of notifying exchange rates through a notification would be dispensed with. A link shall be provided on the CBIC website which will take the user to the ICEGATE website, where the published rates will be available for viewing.

(Circular no. 07/2024-Customs dated 25 June 2024)

CBIC invites comments on draft 'Central Excise Bill, 2024'

CBIC has released a draft of 'Central Excise Bill, 2024' and invited stakeholders' comments on the same. Once enacted, the Bill shall replace the Central Excise Act, 1944. The Bill aims to enact a comprehensive modern central excise law with an emphasis on promoting ease of doing business and repealing old and redundant provisions.

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