



Indirect tax newsletter

Indirect tax updates (Sep – Oct 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 September to October 2022. This issue also covers some of the updates from indirect tax perspective.

Goods and Services Tax



M/s Hero Motocorp Ltd vs. Union of India 2022-TIOL-84-SC-GST

The petitioner had established a new unit for manufacture of motorcycles in Uttarakhand. The petitioner was entitled to 100% exemption of excise duty for 10 years from the date of commencement of commercial production (i.e., 07 April 2008). The petitioner availed exemption until 01 July 2017 i.e., before GST law came into force. Post implementation of GST, the excise exemption notifications were rescinded. Under GST regime, as per the recommendations made by the GST Council, on 05 October 2017, the Central Government notified the Budgetary Support Scheme providing reimbursements of Central Government's share of the cash component of CGST i.e., 58% of CGST, in lieu of exemption provided under the exemption notification.

The petitioner filed a writ petition before the Uttarakhand High Court (HC) which was dismissed, and benefit of promissory estoppel was not allowed.

The petitioner challenged the HC's order before the Supreme Court (SC) which held that plea of promissory estoppel is not available. Also, the SC confirmed that promissory estoppel is not available in case where exemption is withdrawn by government on account of change of policy. The SC permitted the petitioner to make representation before the state government as well as GST council and requested them to consider such representation.



M/s Pradeep Goyal vs. Union of India and Ors.
2022-TIOL-66-SC-GST

The petitioner by way of public interest litigation (PIL) before the SC has prayed for an appropriate order to respective states and GST council to take necessary steps to implement digital generation of a document identification number (DIN) for all communications sent by state tax officers to taxpayers.

The SC held that usage of DIN for all communications by state tax officer to taxpayers would be in public interest to enhance good governance, transparency and accountability in indirect tax administration. Also, the SC directed GST council to issue advisory to respective states for implementation of DIN.



M/s Durga Raman Patnaik vs Additional Commissioner of GST (Appeals), Bhubaneswar
2022-VIL-700-ORI

GST registration of the petitioner was cancelled on the ground of not furnishing returns for six consecutive tax periods. Instead of seeking revocation of cancellation of registration before the jurisdictional officer, the petitioner filed an appeal before Additional Commissioner GST (Appeals). However, such appeal was rejected on the ground of limitation. Therefore, the petitioner could not raise tax invoices and discharge their tax liability.

The petitioner filed a writ petition before the Orissa HC which held that when the petitioner has an option to file an application for cancellation of revocation of registration, refusal to adjudicate such appeal on the ground of limitation will be counterproductive and is not in favor of revenue. The HC allowed the petitioner to file an application for revocation of cancellation of registration upon the payment of tax, interest, penalty, late fees and furnishing of returns.



Oasis Reality and ors. vs. Union of India and ors.
2022-TIOL-1287-HC-MUM-GST

The petitioner is required to pay 10% of tax as pre-deposit for filing an appeal before the first appellate authority. It made the payment through Electronic Credit Ledger (ECRL). The appeal of the petitioner was rejected by the first appellate authority on the ground that there is non-compliance of a precondition which requires making pre-deposit before filing the appeal, through Electronic Cash ledger (ECL) only.

Against such rejection order, the petitioner filed a writ petition before Bombay HC contending that balance available in electronic credit ledger (ECRL) can be used to make pre-deposit while filing the appeal. The contention of revenue was that the amount of pre-deposit cannot be done by debiting ECRL.

The HC referred to a circular wherein it was clarified that the balance available in ECRL can be used for making payment of self-assessed output tax liability or amount determined under any proceedings initiated under the GST law. The HC held that the amounts payable are towards output tax and allowed utilisation of balance in ECRL for pre-deposit.



M/s Ramani Suchit Malushte vs. Union of India and ors.
2022-VIL-658-Bom

An appeal was filed by the petitioner against an order of cancellation of registration. Such appeal was dismissed by Appellate authority on the ground that the appeal was not filed within limitation period of three months from the date of receipt of such cancellation order.

The petitioner filed a writ petition before the Bombay HC and contented that time limit is to be computed from the date when digitally signed order is communicated to the taxpayer. In the instant case, the order in original was not digitally signed, and the relevant rule mandates officers to issue digitally notice/certificate/orders.

The HC while restoring the appeal filed by the petitioner before the appellate authority and quashed the order passed by the appellate authority on the ground that the time to file an appeal would commence from the date on which the order was digitally signed by the issuing authority.



India Yamaha Motors Pvt Ltd vs. Assistant Commissioner and ors.
2022-TIOL-1186-HC-MAD-GST

The petitioner challenged the order imposing interest on tax liability for the period July 2017 to October 2017 which was remitted belatedly. The petitioner contended that balance in ECRL and ECL was always available to dispose of the tax liability, therefore, interest should not be imposed and relied upon various jurisprudence wherein it was held that interest can be imposed only on the cash portion used for discharging tax liability.

The Madras HC held that where the petitioner has not actually filed returns and affected the debit entry from ECRL/ECL to extent of tax payable, therefore, credit available in ECRL cannot be equated with cash remittances. Further, the HC clarified that taxpayer will be protected from levy of interest only if remittance has been affected by way of debit entry. The order imposing interest was upheld by the HC as there was no such debit entry found for discharging tax liability.



R.P. Buildcon Private Limited vs. Superintendent, CGST & CX
2022-TIOL-1305-HC-KOL-GST

Audit proceedings were initiated against the appellant and notice was issued by audit commissioner as per the provisions of CGST Act. The appellant submitted its response to the observations, but the matter was not concluded. In the meantime, two other wings of the department (anti evasion as well as the jurisdictional range officer) initiated parallel proceedings for the same period (Financial Year (FY) 2017-2018 to 2019-2020).

The petitioner filed a writ petition before the Calcutta HC contending that the scrutiny of returns cannot be done where audit proceedings have not been concluded. The revenue submitted that the range officer was not aware of proceeding initiated by the anti evasion and audit commissioner.

The HC held that the proceedings initiated by anti evasion wing and range office of revenue authorities for very same period shall not be proceeded any further as parallel proceedings for the same period are not permissible.



M/s Axis Bank Ltd. Vs. Union of India
Writ Petition No. 11424 of 2021 – Andhra Pradesh High Court

The petitioner had paid IGST instead of CGST and SGST. After paying CGST and SGST, petitioner filed an application for refund of IGST, which was rejected by the department holding it to be time barred. Appeal was filed before appellate authority which was also dismissed on the ground of limitation.

The petitioner filed writ petition before the Andhra Pradesh HC, wherein petitioner relied upon a circular which clarifies the time limits prescribed for refund of taxes paid under the wrong head. The HC noted that the circular had relaxed time limit for claiming refund in case of correct payment made before the circular was issued. The HC quashed the order rejecting refund and remanded the matter to the jurisdictional authorities while restoring the refund application.



M/s Myntra Designs Pvt Ltd
2022-TIOL-111-AAR-GST

The applicant is an e-commerce company and is engaged in the business of selling fashion and lifestyle products through its portal. Multiple sellers supplying products register on such portal and customers access the portal for purchasing products. While customers purchase products from the portal, they are allotted loyalty points which can further be redeemed against vouchers or coupons. Such vouchers or coupons are procured by the applicant from third party and GST is paid on the same.

The applicant sought an advance ruling on the availability of input tax credit (ITC) on such vouchers or coupons. The applicant submitted that ITC should be available as vendors have supplied the vouchers or coupons as “services” and accordingly GST has been charged. Further, the applicant has supplied such vouchers or coupons under contractual obligations to its customers.

The Authority of Advance Ruling held that no ITC shall be available to the applicant on vouchers or coupons, as it is classifiable as “goods” irrespective of tangibility and have been disposed off as “gift” without consideration.

Customs/FTP

Smarte Solutions (P.) Ltd. Vs. Union of India [2022] 141 taxmann.com 60 (Bombay)

The petitioner is engaged in providing high quality data services which are eligible for services export from India scheme (SEIS) benefits under the Foreign Trade Policy (FTP) 2015-2020. While the petitioner was providing services, it did not hold an importer exporter code (IEC).

The petitioner tried filing SEIS application for FY 2015-16 and FY 2016-17 on the online portal. The online portal did not accept the SEIS application displaying an error "Not a valid IEC". The petitioner filed an offline application, however, DGFT authorities did not entertain such offline application against which the petitioner reached out to policy relaxation committee which rejected petitioner's application.

The petitioner filed a writ petition before Bombay HC citing an exception carved out in Foreign Trade (Development and Regulation) Act (FTDR Act). As per the provision, if the applicant wishes to avail SEIS benefit, holding IEC is not mandatory, in case of import or export of services. Further, the petitioner contended that FTP requiring exporter to have IEC at the time of rendition of service is beyond the permissibility of provisions of FTDR Act.

The HC considered various jurisprudence and held that IEC shall be necessary only when the service provider takes benefit under FTP, and it is not necessary to hold at the time of rendering the services. The HC directed the appropriate authority to consider the application of the petitioner in accordance with the provisions of FTDR Act and FTP.

M/s Hindustan Unilever Ltd. Vs. Union of India and Ors. 2022-VIL-695-BOM-CUS

The petitioner erroneously put incorrect GSTIN in bills of entry. Once petitioner identified such error it applied for amendment of bills of entry, however, such amendment was rejected by the authorities. The petitioner approached the Bombay HC which remanded the matter to the adjudicating authority and was directed to consider the amendment. The adjudicating authority again rejected the amendment on the ground that GST law does not permit such amendment post clearance from customs.

The petitioner again filed a writ petition before the HC, which held that where goods have been cleared for home consumption, the proper officer must consider the documentary evidence existing at the time of clearance of goods. Since the petitioner has submitted all documentary evidence, its request for amending the bills of entry cannot be denied. Thus, HC permitted the petitioner to amend bills of entry as per applicable provisions.

Central Excise

M/s Sodexo India Services Pvt Ltd vs. Union of India and ors. 2022-VIL-686-BOM-CE

The petitioner had made the pre-deposit for filing appeal under Central Excise Act (CEA) by way of Form DRC 03. The revenue rejected the appeal on the ground that payment of pre-deposit for filing such appeal pertaining to pre-GST regime cannot be made by way of Form DRC 03.

A writ petition was filed before the Bombay HC which observed that confusion persists amongst the taxpayers as there is no proper legal provision to accept pre-deposit made in respect of appeals filed pertaining to pre-GST period through Form DRC 03. Considering that many taxpayers have made payment of pre-deposit under central excise by way of Form DRC 03, it is to be resolved by CBIC. While directing CBIC to resolve this issue, the HC quashed the order and directed the appellate authority to dispose of the appeal (filed under central excise) on merits.

M/s Monochem Graphics Pvt Ltd vs. Commissioner of Central Excise & CGST, New Delhi **2022-VIL-760-CESTAT-DEL-CE**

The appellant had balance of unutilised cenvat credit and was unable to file Form TRAN-1 within the prescribed due date. Therefore, the appellant filed a refund claim application of such unutilised cenvat credit under CEA. The commissioner rejected the refund claim application on the ground that the CEA provisions cannot be invoked for claiming refund.

The Tribunal held that after the introduction of GST, if the appellant could not transfer excess unutilised cenvat credit through TRAN 1, the only option available with appellant is to claim refund under CEA. With onset of GST regime, the claim of CENVAT credit eligible under CEA was allowed to be refunded in cash. Accordingly, the Tribunal set aside the order rejecting refund claim and held that change in tax regime should not affect the vested right of already availed credit in accordance with law.

Service Tax

Commissioner of Service Tax vs. M/s Grand Royale Enterprises Ltd **2019-TIOL-426-SC-ST**

The respondent is engaged in the business of running hotels and had granted license to a company to “run, conduct and operate” one of its hotels. It was charging a license fee which was a percentage of annual turnover of the hotel. The revenue contended that the respondent has “rented” out an immovable property and hence liable to pay service tax under “renting of immovable property” service.

The Tribunal held that the transaction between respondent and the company (to whom the license was granted) was not taxable under “renting of immovable property” service as the consideration is not similar to a regular fixed rental. The revenue contested the order passed by the Tribunal before the SC.

The SC did not interfere with the Tribunal’s judgement and confirmed that transaction between respondent and the company was not subject to service tax and set aside the demand. The SC commented that as there was a license which was granted to run on a fee equivalent to percentage of turnover, thus, such license fees cannot be equated with “rent” as consideration was dependent on performance of hotel.

M/s Tamil Nadu Trade Promotion Organisation vs. The Commissioner of GST and Central Excise, Chennai **2022-VIL-758-CESTAT-CHE-ST**

The appellant had received advances in the pre-GST regime on which they discharged service tax. Also, after the introduction of GST, they discharged GST on such advances. Therefore, the appellant filed a refund claim application of the service tax paid on advances received during pre-GST regime.

SCN was issued proposing rejection of refund of service tax on the ground that the prescribed conditions under CEA were not fulfilled and no evidence was furnished to substantiate that the duty burden has not been passed. The appellant responded to SCN with detailed submissions and CA certificate that burden of service tax has not been passed. The adjudicating authority passed a non-speaking rejection order overlooking the submissions made by the appellant.

The Tribunal held that order of adjudicating authority is not in accordance with the provisions prescribed under pre-GST regime and the service tax paid partook character of amount paid under protest or paid by mistake. The Tribunal observed that the appellant had paid tax twice, and therefore entitled for the refund.

Updates

CBIC has notified following provision of Finance Act 2022 extending the due dates under various provisions

Vide Finance Act, 2022, time limit for taking ITC, issuing credit note, amending Form GSTR 1 and Form GSTR 3B had been extended from the due date of filing of Form GSTR-3B for September to 30 November of following financial year to which statement, return or invoice relates. This amendment will be effective from 1 October 2022.

(Notification No. 18/2022- Central Tax dated 28 September 2022)

Press release issued for clarifying the applicability of extended time limit for rectification of Form GSTR 1 and Form GSTR 3B and issuing credit note

Certain doubts were expressed as to whether the time limit extended by way of amendment through Finance Act, 2022 for rectifying Form GSTR 1, Form GSTR 3B and availing the ITC is applicable from FY 2022-2023 onwards or is it applicable for FY 2021-2022 as well. By way of the press release it has been clarified that extended time limit is applicable for FY2021-22 onwards. *(Press release id 1865179 dated 4 October 2022)*

Notification extending time limit for applying refund by Unique Identification Number (UIN) entities rescinded

CBIC has rescinded a notification which prescribed the time limit for filing refund claims by UIN entities within eighteen months from the last date of the quarter, in which supply is received.

The Finance Act, 2022 has amended the time-limit and incorporated a provision in the CGST Act that refund claim can be filed till the expiry of two years from the last day of quarter in which such supply was received. Therefore, this notification had become irrelevant due to amendment introduced by Finance Act, 2022. *(Notification No. 20/2022 – Central Tax dated 28 September 2022)*

Export freight taxable with effect from 1 October 2022

S. No. 19A of the Notification No. 12/2017 – Central Tax, dated 28 June 2017 (as amended time to time) provided for exemption from payment of GST for the services of transportation of goods by vessel or aircraft, from any Indian Port / Airport to a foreign Port / Airport.

This exemption was extended from time to time, but no such extension has been made after 30 September 2022. Therefore, transportation of export consignments (CIF contracts) by Vessel / Aircraft become liable to GST from 01 October 2022.

Guidelines for filing or revising TRAN-1/TRAN-2

A circular has been issued providing guidelines for furnishing Form TRAN 1/ TRAN 2 in pursuance of the SC ruling in the case of Filco Trade Centre Pvt. Ltd. The guidelines provide that it is the last opportunity for all taxpayers who have missed filing transitional forms or revising such forms. If assessee had filed Form TRAN-1/TRAN 2 earlier and during scrutiny their claim was rejected in whole or in part, then such assessee will not be allowed to avail this opportunity. *(Circular No. 180/12/2022-GST dated 9 September 2022)*

Instructions on Pre-deposit payment method for cases pertaining to Central Excise and Service Tax

A clarificatory instruction has been issued by CBIC on the pre-deposit payment method for the cases pertaining to Central Excise and Service Tax in pursuance of the Bombay HC ruling in the case of Sodexo India Services Pvt Ltd. It has been clarified that making payments through Form GST DRC 03 under the GST regime is not a valid mode for making pre-deposits for service tax or excise matters. Therefore, the pre-deposit required for filing Service Tax/Excise appeals should be made through the portal "cbic-gst.gov.in". *(Instruction no- CBIC-240137/14/2022-SERVICE TAX SECTION-CBEC dated October 28, 2022)*

Guidelines for launching of prosecution under CGST Act 2017 issued by CBIC

Guidelines have been issued by CBIC for launching of prosecution against the offender. Such guidelines provide the nature of evidence to be collected, circumstances in which prosecution should be launched, sanction of principal commissioner or commissioner to be obtained before launching the prosecution etc. *(Instruction No. 04/2022-23 GST Inv dated 1 September 2022)*

Extension of filing of annual return for FY 2022-23 under Export Promotion Capital Goods (EPCG) scheme

Last date for filing annual returns under EPCG Scheme for FY 2022-23 has been extended from 30 September 2022 to 31 December 2022. *(Public Notice No.27/2015-2020 dated 29 September 2022)*

Foreign Trade Policy extended for six months

FTP 2015-20 which was valid till 30 September 2022 has been extended for six months with effect from 1 October 2022 (till 31 March 2023). *(Press release id 1862335 dated 26 September 2022)*

For more information, please connect with:

[Mahesh Jaising](#)

Deloitte Touche Tohmatsu India LLP

[Saloni Roy](#)

Deloitte Touche Tohmatsu India LLP

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee (“DTTL”), its network of member firms, and their related entities. DTTL and each of its member firms are legally separate and independent entities. DTTL (also referred to as “Deloitte Global”) does not provide services to clients. Please see www.deloitte.com/about for a more detailed description of DTTL and its member firms.

This material is prepared by Deloitte Touche Tohmatsu India LLP (DTTILLP). This material (including any information contained in it) is intended to provide general information on a particular subject(s) and is not an exhaustive treatment of such subject(s) or a substitute to obtaining professional services or advice. This material may contain information sourced from publicly available information or other third party sources.

DTTILLP does not independently verify any such sources and is not responsible for any loss whatsoever caused due to reliance placed on information sourced from such sources. None of DTTILLP, Deloitte Touche Tohmatsu Limited, its member firms, or their related entities (collectively, the “Deloitte Network”) is, by means of this material, rendering any kind of investment, legal or other professional advice or services. You should seek specific advice of the relevant professional(s) for these kind of services. This material or information is not intended to be relied upon as the sole basis for any decision which may affect you or your business. Before making any decision or taking any action that might affect your personal finances or business, you should consult a qualified professional adviser.

No entity in the Deloitte Network shall be responsible for any loss whatsoever sustained by any person or entity by reason of access to, use of or reliance on, this material. By using this material or any information contained in it, the user accepts this entire notice and terms of use.