



## Indirect Tax Newsletter

# Updates: Indirect tax judgments

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 March to April 2022. This issue also covers some of the updates from indirect tax perspective as well.

### Goods and Services Tax



**M/s Shivaco Associates & Another vs. Joint Commissioner of State Tax, Directorate of Commercial Taxes & Ors.**  
**2022-VIL-209-CAL**

The petitioner was engaged in the business of purchasing LPG gas in bulk through a tanker (taxable at 18 percent) and thereafter, filling it in bottles/cylinders for supplying to customers at applicable GST rates. As the rate of output tax on domestic LPG was 5 percent, the petitioner filed a refund claim on account of inverted duty structure. The refund was rejected by the revenue authorities on the ground that a circular issued in March 2020 prescribed that taxpayers cannot claim refund on account of the inverted duty structure where input and output supplies remain unchanged. The Calcutta High Court observed that the GST law provides that refund is permissible in respect of all classes where the input tax is higher than the output tax. By way of the circular, the said benefit is being curtailed and making refund permissible only if input and output supplies are different. A circular is issued only for the purpose of bringing uniformity in the implementation of the law. As the wordings of the law are clear and unambiguous, refund under the inverted duty structure would be allowed in all cases where the input tax is more than the output tax. Therefore, the order rejecting the refund was set aside.



**Gamma Gaana Ltd. vs. Union of India and 3 Others**  
**2022-TIOL-361-HC-ALL-GST**

The petitioner had filed a refund application for a tax period from April–December 2018 on 31 March 2021. The application was rejected by the adjudicating authority on the ground of delay. The petitioner approached the Allahabad High Court assailing the rejection order citing that in terms of an order of the Supreme Court, the period between 15 March 2020 and 28 February 2022 was excluded for the purposes of limitation as prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings. Accordingly, the instant refund application was filed within the extended period of limitation granted by the Supreme Court. The Court, while allowing the writ petition, observed that the refund application of the petitioner could not have been rejected by the adjudicating authority merely on the ground of delay, ignoring the order of the Supreme Court.



**M/s New Nalbandh Traders vs. State of Gujarat and 2 Other(s)**  
**2022-TIOL-360-HC-AHM-GST**

The revenue authorities blocked the Electronic Credit Ledger (ECL) of the petitioner without providing any reason. Thereafter, the petitioner was informed that the ECL was blocked due to the purchases made from a suspicious taxpayer. The petitioner submitted that the Input Tax Credit (ITC) on the supplies from the suspicious taxpayer were duly reflected in the Form GSTR - 3B, Form GSTR - 2A, and Form GSTR - 2B, respectively. Further, as no reason was provided for blocking the ECL. The prescribed procedure was not followed, deeming the proceedings illegal. While relying on various precedents, the Gujarat High Court observed that where the selling dealer has failed to deposit tax, the remedy for the authorities is to proceed against the defaulting selling dealer to recover such tax and not to deny the purchasing dealer his input tax credit. Further, in the instant case, the ECL was blocked without providing any cogent reasons to the petitioner and accordingly, the proceedings were quashed.



**R K Transport Pvt. Ltd. vs. The Union of India & Others**  
**TS-96-HC(JHAR)-2022-GST**

The petitioner approached the Jharkhand High Court against a demand raised by revenue authorities for recovery of interest due to a delay in furnishing Form GSTR-3B. The petitioner submitted that the said demand was raised without initiating any adjudication proceedings under the relevant provisions of GST law. While relying on the decision of the same Court in the case of Mahadeo Construction Co., the High Court observed that the amount of interest is not calculated automatically. It has to be informed to the taxpayer upon calculation. If the taxpayer disputes the liability of interest (either the calculation or the levy of interest), the assessing officer should initiate proceedings under the relevant provisions of GST law for adjudication of the liability of interest. As it was not done in the instant case, the demand notice was quashed.



**M/s BMW India Pvt. Ltd.**  
**2022-VIL-17-AAAR**

The appellant approached the Haryana Appellate Authority for Advance Ruling (AAAR) against the order of the Haryana Authority for Advance Ruling (AAR) where it was held that as ITC on motor vehicles has been specifically restricted under the GST law, the appellant was not entitled to avail ITC on demo cars. In appeal, the appellant submitted that ITC should be admissible on these vehicles as 'capital goods' since these are being capitalised in the books of accounts. In addition, as demo cars are sold after a specified period, they are used for further supply. Hence, ITC is eligible on them. The AAAR observed that the said cars are first put to a different use (demonstration) before selling. Therefore, it cannot be said that the motor vehicles were to be used for further supply. Hence, ITC on demo cars would not be available to the appellant.



**Beumer India Pvt Ltd**  
**TS-1265-AAAR(HAR)-2020-GST**

The appellant hired motor vehicles on a contract basis to provide transportation facilities to employees in line with their HR policy at either a nominal cost where vehicles are air conditioned or free of cost otherwise. The Haryana AAR had held that transportation facilities are services provided by employers and not by employees; it is in the furtherance of his business. Hence, GST is applicable on the recoveries made from employees. In appeal, the Haryana AAAR observed that the optional transport facility is optional for employees. Further, providing transport facility by the Appellant is exclusive of the contractual obligation of the employer in the course of employment. Hence, the recovery made from the employees for such facility is liable to GST.



**Dhingra Trucking Pvt. Ltd**  
**TS-1268-AAAR(HAR)-2020-GST**

The appellant approached the Haryana AAAR against the order of the Haryana AAR holding that the appellant was not entitled to avail ITC in respect of inputs/capital goods used or intended to be used for creation of covered logistics facility to be rented out for storage purposes. While relying on the decision of the Orissa High Court in the case of Safari Retreats, the appellant submitted that ITC is eligible on inputs/capital goods used for construction of premises intended to be leased out. While upholding the order of the AAR, the Haryana AAAR observed that the decision of the Orissa High Court has been challenged before the Supreme Court. As the matter has not attained finality, the decision of the Orissa High Court is not binding and ITC would not be available to the appellant.



**Precision Camshafts Ltd.**  
**TS-132-AAR(MAH)-2022-GST**

The applicant was engaged in the business of manufacturing camshafts for OEMs located outside India. For manufacturing such camshafts, the applicant needs tools and patterns according to the specifications of OEMs. For operational efficiency, the applicant assists overseas OEMs in designing and process planning the manufacturing of tools. On instructions from OEMs, the applicant identifies and engages a third-party Indian manufacturer to manufacture the pattern and tools that are then delivered to the applicant on behalf of overseas OEMs. The applicant approached the Maharashtra AAR on the question as to whether the activity of design and development of patterns used for manufacturing camshafts is a composite supply (the principal supply being supply of services). The AAR observed that in the instant case, the applicant is located in India and represents its overseas OEMs. The applicant was effectively connecting third-party vendors in India with the OEM for supplying patterns and tools to the applicant on behalf of OEMs. Hence, the conditions for intermediary service are being fulfilled and the activity of design and development of patterns for manufacturing camshafts was held to be intermediary service.

## Customs

**M/s Carboline India Pvt. Ltd. vs. Commissioner of Customs**  
**2022-TIOL-168-CESTAT-MAD**

The appellant had exported certain goods against which an advance authorisation licence was obtained. However, at the time of export, shipping bills were not generated as advance authorisation shipping bills. The request for conversion of free shipping bills was rejected by the Commissioner of Customs. The CESTAT Chennai observed that the relevant provisions of the Customs law do not stipulate any time period to seek amendment of a shipping bill. Further, the relevant provisions of the law do not require physical examination of goods before export as a pre-condition to amend shipping bills. Accordingly, the request for conversion of free shipping bills to advance authorisation scheme shipping bills was allowed.

## Central Excise

### **Nu Vista Limited<sup>1</sup> (formerly Emami Cement Limited) vs. Commissioner (Appeals), CGST, Central Excise, Raipur** **2022-TIOL-280-CESTAT-DEL**

The appellant filed refund of accumulated balance of credit on Education Cess (EC) and Secondary and Higher Education Cess (SHEC,) which was exempted from 1 March 2015 but carried forward in the central excise returns of the appellant until the introduction of GST. The refund application was rejected on the ground that as cesses were phased out and no new liability to pay such cesses arose, no vested right can be said to exist in relation to the accumulated credit of the past. While relying on various precedents, the CESTAT Delhi observed that change of law cannot be a ground to divest an assessee from this valuable right. The CESTAT allowed the appeal and held that the appellant is entitled to refund accumulated balance of credit on EC and SHEC.

## Service Tax

### **Infosys BPO Ltd. vs. Commissioner of Central Excise and Commissioner, Service Tax** **2022-TIOL-272-CESTAT-BANG**

Being a 100 percent software export oriented unit, the appellant filed refund claims under the service tax laws. During the scrutiny of refund claims, certain services were held to be ineligible and refund on them was disallowed by the revenue authorities. The CESTAT Bangalore observed that as the revenue authorities had not objected to the availment of credit on input services, refunds on the ground of ineligibility cannot be denied. The CESTAT, accordingly, allowed the appeal.

### **Excelpoint Systems India Pvt. Ltd. vs. Commissioner of Service Tax** **2022-TIOL-303-CESTAT-BANG**

The appellant was providing management and technical support services to the recipient located outside India on a cost-plus markup basis for which remittance was received in foreign currency. The appellant considered this arrangement as export of services and filed refund claims before the adjudicating authority. The refunds were rejected on the ground that the services of the appellant were intermediary. The CESTAT Bangalore observed that per the agreement of the appellant with the recipient of services, the appellant was neither involved in sale/purchase of goods nor collection of sale proceeds from customers of the recipient. As no third party was involved, the CESTAT held that services of the appellant were not intermediary services.

### **Fun Multiplex Pvt. Ltd. vs. Commissioner of Central Excise, Thane-II** **2022-VIL-238-CESTAT-MUM-ST**

The appellant was engaged in the business of exhibiting cinematographic films in theatres owned by it or taken on rent. The appellant acquired a licence to exhibit films at theatres from distributors by entering into agreements and paid consideration per agreed percentage of box office collection. The revenue authorities raised a demand for recovery of service tax on the ground that the appellant was providing infrastructure support services to producers/distributors of films under "support services of business or commerce". The CESTAT Mumbai observed that under the agreement, the appellant was merely screening films on a revenue sharing basis. This does not necessarily imply provision of services, unless relationship of service provider and service recipient is established. The demand notice was accordingly set aside.

## Updates

### [Instruction No. 02/2022-GST dated 22 March 2022](#)

CBIC has issued a Standard Operating Procedure (SOP) for the scrutiny of GST returns pertaining to FY 2017-18 and 2018-19. SOPs provide the selection criteria, preparation of a scrutiny schedule, process, and timelines for scrutiny. These also provide for an indicative list of parameters on which the authorities conduct a scrutiny.

### [Delhi GST guidelines dated 8 March 2022](#)

The Delhi GST department has issued guidelines to proper officers in respect of blocked credit ledgers wherein the proper officers have been directed to take steps to finalise the investigation/proceedings of cases where taxpayers' ITC would have been blocked by the proper officers on account of some mismatches/investigation/non-existence or receipt of alert notices, etc.

### [Maharashtra GST Internal Circular dated 25 February 2022](#)

The Maharashtra State Tax Department issued an internal circular providing various clarifications to field officers for bonafide compliance-related errors committed by taxpayers in FY 2017-18 and 2018-19.

### [Maharashtra Amnesty Scheme](#)

Amnesty Scheme is introduced vide 'Maharashtra Settlement of Arrears of Tax, Interest, Penalty or Late fee Act 2022'. This scheme provides settlement options for pending dues under various tax laws levied by the state of Maharashtra. These include central sales tax, Maharashtra VAT and others, before introduction of GST, i.e., pre-GST era.

### [Rajasthan Amnesty Scheme](#)

Amnesty Scheme is providing for settlement options for pending dues under various tax laws levied by the state of Rajasthan. These include Central Sales Tax, Rajasthan VAT, and others for goods, whether subsumed under GST or not.

### [Constitution of advisory council for developing a Federal Fiscal Model on revenue and tax \(including GST\) legislations in Tamil Nadu](#)

In the budget for FY 2021-22, the government of Tamil Nadu had announced setting up an advisory council to develop a federal fiscal model. A six-member council has been set up in this regard, which will be headed by Arvind P. Datar, a senior advocate at the Supreme Court. It will comprise experts on legislation involving revenue and taxation (including GST).

### [NASSCOM report for creating a conducive environment under GST for MSMEs selling online](#)

In March 2022, NASSCOM released a report providing recommendations for creating an all-inclusive ecosystem, along with an e-commerce marketplace under GST for MSMEs. The recommendations include allowing composition dealers to operate through e-commerce platforms, allowing registration of warehouses of e-commerce operators on the basis of a single permanent place of business in home state of the seller, permitting a virtual place of business to streamline GST compliances, etc.

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