



Indirect Tax Newsletter

Indirect tax updates

April 2023

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 January to February 2023. This issue also covers some of the updates from an indirect tax perspective.

Goods and Services Tax



M/s Celon Laboratories India Pvt. Ltd. Vs. Dy. Commissioner 2023-VIL-10-TEL

The petitioner had claimed refund based on an inverted duty structure and was granted refund of Input Tax Credit (ITC) of services procured. Subsequently, the jurisdictional tax authority, initiated recovery proceedings of such refund (along with interest and penalty) in light of Hon'ble Supreme Court decision in the case of UOI v. VKC Footsteps India Pvt. Ltd, wherein the court held that the rule prescribing manner for computation of refund in case of inverted duty structure (which exclude ITC on input services) is not ultra-vires.

The petitioner preferred a writ petition before Telangana High Court (HC) challenging the vires of CGST Rules (Rule 89(5)) and contended that while the recovery of refund granted is justified in view the SC's decision, demand of interest and imposition of penalty is not justified.

The respondent (tax authorities) contended that since the SC had upheld the validity of said CGST Rule, recovery of refund along with applicable interest and penalty is justified.

The HC observed that ITC was availed and refund was claimed by the petitioner under the impression that said CGST Rule was "ultra-vires" as pronounced by the Gujarat High Court. Therefore, the imposition of interest and penalty was set aside.



M/s Vedanta Limited Vs. UOI 2023-VIL-12-ORI (High Court of Orissa)

The petitioner is engaged in manufacturing of aluminum products and had three units in Domestic Tariff Area (DTA) in Odisha under single GST registration number (GSTIN). The petitioner made supply to Special Economic Zone (SEZ) within Odisha and on account of "zero-rated supplies" made to such SEZ, it claimed refund of unutilized ITC, for all DTA units combined. While the refund was allowed by the jurisdictional tax authorities, the quantum of refund issued in respect of all three units combined was much lower than the quantum of refund computed by considering each individual unit separately.

Therefore, the petitioner manually applied for grant of "supplementary refund" on the basis of supplies made by each unit. Such supplementary claim was rejected by the tax authorities on the ground that the governing section as well as the applicable circulars does not allow filing of supplementary refund claim after filing of original refund claim for the same period. Also, that the company had single GSTIN for all the three units and statutory GST returns are also filed on consolidate basis and hence filing of supplementary refund claim unit-wise does not appear to be just and proper. Further, the refund application was filed manually without generation of ARN nos. and hence the supplementary refund application does not appear to be proper.

The petitioner preferred a writ petition before Orissa High Court challenging this refusal of admission of manual refund claims.

The respondent (tax authorities) contended that the petitioner had sought registration under single GSTIN and ITC is available to single GSTIN (allotted to all the three units). The refund claim for each individual unit separately is not permissible where a single GSTIN is allotted.

The HC held that for the purpose of filing refund claims, all these three units are to be treated as "one unit". Therefore, the petitioner had received refund of the three units together and it cannot re-apply by way of additional refund claims by computing the refund amount unit-wise. It was observed that the provisions of the statute do not envisage filing of supplementary refund application and that too taking a different stance that what was taken while furnishing original refund application.



M/s Orient Traders Vs. The Deputy Commissioner of Commercial Taxes 2023-VIL-46-KAR (High Court of Karnataka)

The petitioner is engaged in the supply of machinery, mechanical appliances, parts and also involved in erection, commissioning and installation services. The petitioner submitted GST Returns (Form GST-3B) for the financial Year (FY) 2017-18 (relevant period). In 2021, a notice was issued to the petitioner calling for books of accounts of relevant period in order to conduct a desk audit and the petitioner filed response to the audit observations. Eventually, the petitioner discovered inadvertent errors (claiming credits under wrong columns) in Form GSTR-3B of the relevant period, which resulted into mismatch between Form GSTR-3B and Form GSTR-2A.

The petitioner sought permission to rectify these errors by submitting a revised disclosure for input tax credit. However, the same was rejected by the respondent (tax authorities). Hence, the petitioner preferred writ petition before the Karnataka HC.

The HC held that errors made by the petitioner are entirely bona fide and inadvertent, thus, a lenient view is required to be taken. Accordingly, the petitioner was allowed to make necessary changes in Form GSTR-3B for the relevant period.



Subhash Singh Choudhary Vs. The State of Jharkhand 2023-VIL-36-JHR (High Court of Jharkhand)

The petitioner is engaged in the business of supplying of machinery, providing engineering, commissioning and operational support services. In the erstwhile indirect tax regime, petitioner was registered under Jharkhand Value Added Tax Act, 2005 (JVAT Act). After the introduction of GST regime, the petitioner transitioned the unadjusted tax deducted at source (TDS) as “credit of value added tax” on the GSTN portal. Such transitional claim was rejected by state GST authorities and aggrieved by such rejection the petitioner preferred a writ petition before the HC of Jharkhand. The petitioner contended that TDS is a form of Value Added Tax (VAT) deducted in advance from the petitioner, while the respondent (tax authorities) contended TDS amount is in the nature of output tax, it is not admissible as ITC under the CGST Act.

The HC held that the intention behind enacting the transitional provision was to ensure that migration of unadjusted “tax paid” under the erstwhile regime is allowed to be carried forward for adjustment against the output tax liability in the GST regime. Also, under JVAT Act, TDS amount was available for adjustment against output tax liability and the legislature in its wisdom by using the words ‘credit of amount of value added tax’ intended to allow migration of TDS amount under the GST Regime as otherwise the said unadjusted TDS amount would have become refundable to the assessee immediately after the repeal of the JVAT Act. The HC also laid emphasis on interpretation of transitional provisions, that, if the credit pertains to the transactions, which are expressly inadmissible under CGST Act, shall not be allowed to be transitioned. However, TDS under VAT law was not specifically inadmissible to be transitioned. Accordingly, the order denying migration of TDS amount was set aside.



M/s Wipro Limited India Vs. The Asst. Commissioner of Central Taxes 2023-VIL-22-KAR (High Court of Karnataka)

The petitioner made a bonafide error in furnishing incorrect GSTIN details (of customer) in outward supplies and sought rectification of Form GSTR-1 in light of recent circular (183/15/2022-GST dated 27 December 2022). The petitioner requested the tax authorities to allow the rectification Form GSTR-1 uploaded between FY 2017-18 and 2018-19 (relevant period) with respect to certain invoices issued to the recipient, so that such recipient is able to claim the ITC within the prescribed timelines as per CGST Act. The said request was rejected, hence the petitioner preferred a writ before the Karnataka HC.

The respondent (tax authorities) contended that the petitioner is not entitled the benefit of direction prescribed in the said circular and cannot be allowed to access the GSTN portal to rectify Form GSTR-1 for the relevant period.

The HC held that on the perusal of invoices and returns it emerges that a mistake was made by the petitioner due to bonafide reasons. The circular in question contemplates rectification of the bonafide inadvertent mistakes committed by a taxpayer at the time of filing of forms and submitting returns. Therefore, the said circular would be directly and squarely applicable to the facts of the instant case. Since there are identical errors committed in FY 2019-20, this relief shall be extended to the petitioner for FY 2019-20 also



Easwaran Brothers India Pvt. Ltd. Vs. The Asst. Commissioner 2022-VIL-864-MAD (Madras High Court)

The petitioner is a registered dealer under erstwhile Tamil Nadu Value Added Tax Act, 2006 (TNVAT ACT). Upon introduction of GST, in respect of the unutilized ITC, the petitioner had options to either seek refund or carry forward such ITC into GST regime. The petitioner opted to file a refund and the tax authorities passed a provisional refund order quantifying that the petitioner is entitled for refund, however, a notice was issued directing the petitioner to opt for carrying forward the ITC to GST regime instead of refund. Against such notice, the petitioner preferred a writ before the Madras HC.

The HC held that the petitioner has two options, i.e., either refund or carry forward the ITC to GST regime., The common portal for availing transitional credit gives option to the dealer for choosing from the two options. Thus, the respondent (tax department) cannot compel availment by the Petitioner of one of the two options. Accordingly, the notice directing the petitioner to opt for carry forward of ITC was set aside.



Arvind Goyal Vs. UOI 2023-VIL-62-DEL (High Court of Delhi)

A search operation was conducted at the residence of the petitioner by state GST officers. During the course of the search, officers took possession of cash. While no seizure memo was issued for the same, a “panchnama” was drawn which indicated that the concerned officers took possession of certain items including cash.

To challenge the said search operation as unlawful, the petitioner preferred writ petition before the Delhi HC.

The petitioner contended that concerned officers had no power to confiscate cash and the said action is “without authority of law”.

The respondent filed a counter affidavit that Delhi Commissionerate received information from Bhopal Commissionerate, pursuant to which the search operation was conducted. It was contended that the officers had merely ‘resumed’ cash as noted in the panchnama and therefore, the same cannot be considered as seizure.

The HC analyzed the applicable GST provision and opined that the seizure is limited to “goods” liable for confiscation or any documents, books or things, which may be “useful for or relevant to any proceedings under this Act” and cash does not fall within the definition of “goods”. And that it is difficult to accept that cash could be termed as a ‘thing’ useful or relevant for proceedings under the GST Act. The court also observed that the powers of search and seizure are draconian powers and must be exercised strictly in terms of the statute and only if the necessary conditions are satisfied. Accordingly, it was held that the action of the department was without authority of law and the department was directed to return the cash so dispossessed from the petitioner along with appropriate interest.



M/s Premier Sales Promotion Private Limited Vs. UOI & Ors. 2023-VIL-67-KAR (High Court of Karnataka)

The petitioner is engaged in procuring pre-paid payment instruments (PPIs) such as gift vouchers, cash back vouchers and e-vouchers from issuers and supply them to its clients for specified face value for further issuance to the client’s employees. Such vouchers can be used as ‘consideration’ for purchase of goods/services, as specified.

The petitioner sought advance ruling from Karnataka Authority for Advance Ruling (AAR) as to whether supply of voucher is taxable or not. The AAR had held that supply of “vouchers” is taxable as supply of “goods”, which was further affirmed by Karnataka Appellate Authority for Advance ruling (AAAR).

Aggrieved by the decision of AAAR, the petitioner preferred a writ petition before the Karnataka High Court.

The HC held that vouchers are mere instruments accepted as “consideration” for supply of goods or services. They have no inherent value of their own. Since, vouchers are considered as instruments, they would fall under the definition of ‘money’, as per GST provisions. It is not in dispute that the vouchers involved are semi-closed PPIs in which the goods or services to be redeemed are not identified at the time of issuance. These PPIs do not permit cash withdrawal, irrespective of whether they are issued by banks or non-banking companies, and they can be issued only with the prior approval of RBI. The court also observed that the value printed on the form can be transacted only at the time of redemption of the voucher and not at the time of delivery of vouchers. Therefore, the issuance of vouchers is neither supply of goods nor supply of services and cannot be taxed under GST law.



**M/s LM Wind Power Blades (India) Pvt. Ltd. Vs. UOI
2023-VIL-99-KAR (High Court of Karnataka)**

The petitioner furnished several bank guarantees (BG) as a security for release of goods. Subsequently, aggrieved by the orders passed by the GST authorities, petitioner filed statutory appeals and deposited various amounts along with pre-deposit. The GST authorities illegally encashed the BGs of the petitioner. Aggrieved by this, petitioner had preferred a writ petition before Bombay HC. The Bombay HC had held that encashment of the BGs by the GST authorities was illegal and directed the authorities to refund the amount encashed under BGs along with applicable statutory interest. Thereafter, the department refunded the amount encashed but did not pay the interest, on the ground that GST provisions does not provide for payment of interest on encashment of BGs.

The petitioner had hence preferred a writ petition before Karnataka HC in this case. The HC observed that as per Bombay HC order directions were issued to authorities to pay applicable statutory interest. Even in absence of any statutory provision, the petitioner would be entitled to interest at a reasonable rate. The petitioner was wrongly and without any fault been deprived of use, utilization and benefit of such amount. The HC held that the GST authorities illegally encashed petitioner's BGs and applying principles of restitution directed to grant interest as compensation.

Service Tax

**M/s Haldiram Marketing Pvt. Ltd. Vs. Commissioner, CGST, Delhi East Commissionerate
2023-VIL-124-CESTAT-DEL-ST**

The appellant is engaged in running food outlets selling packaged foods like sweets/namkeen or avail restaurant dining facilities. The appellant also provides the facility of "take-away" of food items. An audit was conducted, pursuant to which a SCN was issued proposing service tax demand (along with interest and penalty) on two issues – (a) the activity of "take-away" of food items; and (b) on portion of rent received from the associated enterprise (M/s Haldiram Snacks). From its premises taken on lease, the appellant sold its own goods as well as goods manufactured by the associated enterprise, which were purchased by it. The submissions made against the SCN were dismissed and the Commissioner confirmed the demand on both issues.

Aggrieved by the order passed by Commissioner, the appellant filed appeal before the Tribunal.

The appellant contended on first issue that "take-away" of food items is a transaction involving supply of goods on take-away basis and is a pure sale transaction and does not entail any "service" element, thus, it is excluded from the definition of "service", as per the Finance Act. The appellant contended on second issue that no service tax should be applicable as certain portion of rent was received merely for sharing of expenses (cost) as the associated enterprise is also economically benefitting from the space taken on rent and it is not for any service.

The department contended on the first issue that the appellant is providing restaurant services whereby food and other articles for human consumption and drinks are supplied by take-away services. There is a service portion involved of preparation, packing and delivery of food. On the second issue the department's contention was that the appellant had sub-let some portion of the premises to its associated enterprise and the same would be taxable under "renting of immovable property" service.

On the first issue, the Tribunal held that no service tax can be levied on the activity of "take-away" of food items as it would amount to sale and would not involve any element of service. It was observed that in case if take-away of food, services such as dining facility, washing area, clearing of the tables after the food has been eaten there are not involved. The activities of preparation of food and packing thereof in case of take-away items are conditions of sale of such food, wherein the intention of the customer is to merely buy such packaged product and not to avail any restaurant services. On the second issue, the Tribunal observed that from the property taken on lease by the appellant, it sells its own goods as well as goods of the associated enterprise, towards which, it receives certain portion of the rent from such associated enterprise. Thus, it was held that it does not amount to "renting of immovable property" and would be considered as "sharing of expenses" and cannot be treated as service rendered by one to another.

Central Excise

Commissioner of Central Excise Ahmedabad-I Vs Mother Dairy 2023-VIL-05-SC-CE

The respondent is a unit of Gujarat Co-operative Milk Marketing Federation Ltd. (GCMMF) and is engaged in the manufacture of printed plastic film (PPF). It clears PPF to various District Co-operative Milk Producers Union (DCMPUs) and associated members (referred as Dairies) affiliated to GCMMF.

The jurisdictional tax authorities alleged that price at which the PPF is sold to dairies is not the “sole” consideration for sale and the respondent and dairies are related parties in terms of Central Excise Act. Accordingly, differential central excise duty was demanded.

Setting aside the demand, the Tribunal held that there is no evidence to suggest that the appellant had any control over the dairies or interest in each other or vice-versa and hence the appellant and the dairies are not related parties in terms of the Central Excise Act. The order of the tribunal was upheld by the Supreme Court and the appeal by the revenue authorities was dismissed.

Notifications/ Circulars/ Instructions

Central Board of Indirect Taxes and Customs (CBIC) has issued notifications and circulars in pursuance of 48th GST council meeting held on 17th December 2022

- In pursuance of GST Council’s recommendations, CBIC has issued the following notifications/clarification : Introduced biometric-based Aadhaar authentication and risk- based physical verification of registration applicants, to be introduced in State of Gujarat (and shall not apply in other States and Union territories) (Notification No. 27/2022-Central Tax dated 26 December 2022)
- Modified exemption notification, with effect from 01 January 2023, that no GST is payable where the residential dwelling is rented to a registered person who is a proprietor of a proprietorship concern, if it is rented in personal capacity for own residential use and not on account of his business (Notification No. 15/2022-Central Tax (Rate) dated December 30, 2022)
- Provided clarification about the procedure for verification of ITC by tax authorities for FY 2017-18 and FY 2018-19 wherein inward invoices do not appear in Form GSTR-2A-. In the prescribed scenarios where ITC not appearing in Form GSTR-2A in respect of a particular supplier exceed INR 5 lacs, a CA certificate, as prescribed, would be required to be submitted, otherwise a certificate from supplier, as prescribed, can be submitted (Circular No. 183/15/2022-GST dated December 27, 2022)

CBIC notifies Customs Tariff (Determination of Origin of Goods under the India-Australia Economic Cooperation and Trade Agreement) Rules, 2022 (Ind-Aus ECTA)

CBIC has notified ‘The Customs Tariff (Determination of Origin of Goods under the India-Australia Economic Cooperation and Trade Agreement) Rules, 2022’ under Ind-Aus ECTA, effective from 29 December 2022. To this effect, a notification has been issued to lay down the rules and procedures in respect of originating goods, wholly/not wholly obtained or produced goods, accumulation, calculation of qualifying value content, treatment of packaging materials and containers for retail sale/ transportation and shipment accessories, certificate/application of origin certification procedures, etc. (Notification No. 112/2022-Customs (N.T.) dated 22 December 2022).

Further, to facilitate issuance of Preferential Certificates of Origin (“certificates”) for exports to Australia under Ind-Aus ECTA, the Directorate General of Foreign Trade (DGFT) has also issued a trade notice regarding the electronic filing and issuance of such certificates (Trade Notice No. 23/2022-23 dated 22 December 22, 2022)

CBIC notifies Customs (Assistance in Value Declaration of Identified Imported Goods Rules, 2023) (CAVR, 2023)

Customs Act has been amended to empower CBIC to cast additional obligations on importer in respect of specified "class of imported goods" in order to address the issue of systematic under-valuation of imports. To this effect, a notification has been issued to lay down procedures related to constitution of screening and evaluation committee, identification of imported goods, additional procedures to be followed by importers in respect of such identified goods. (Notification no. 3/2023-Customs (N.T) dated 11 January 2023)

Delhi GST department issues standard operating procedure (SOP) for the attachment/detachment of bank account

The policy branch of Department of Trade and Taxes, Delhi has issued SOP regarding the attachment or detachment of bank account in case demands are pending under the DVAT as well as GST against which neither any objection/ appeal has been filed nor the dues are being paid by the dealer(s). The SOP contains guidelines/ procedures to be followed by proper officers, to streamline the recovery process. (No. F.3(417)/GST/Policy/2021-22/253-60 dated 06 February 2023)

Advisory regarding introduction of negative value in Table 4 of Form GSTR-3B

In pursuance of the notification issued by CBIC in July 2022 regarding changes in Table 4 of Form GSTR-3B, to enable the taxpayers to correctly disclose ITC availed, reversed and ineligible ITC, the Goods and Services Tax Network has issued an advisory that changes have been made in GST portal from January 2023 that will allow negative values in Table 4 of GSTR-3B. (Advisory issued on 17 February 2023)

Recommendations made in 49th GST Council meeting held on 18th of February 2023

Various recommendations have been made by the GST Council in its meeting with respect to GST compensation, GST Appellate Tribunal, approval of the report of Group of Ministers (GoM) on capacity-based taxation and special composition scheme in certain sectors, change in GST rate on goods and services and measures for trade facilitation by extending the time to apply for revocation of cancellation of registration and streamlining fees on late filing of returns.

For detailed analysis, refer to our tax [alert](#).

DGFT issues circular directing regional authorities (RAs) for disposal of pending Merchandise Exports from India Scheme ("MEIS") / Service Exports from India Scheme ("SEIS") applications

Several representations have been received by DGFT from MEIS/SEIS applicant firms and also from the RAs, in respect applications which are pending for disposal due to filing of applications at wrong jurisdiction. It has been decided that such cases shall be re-opened by the RAs and must be examined again on merits/ additional documents submitted by the firm as per procedural conditions. RAs are advised to provide an opportunity of personal hearing to the applicants, before rejecting any case. (Policy Circular No. 46/2015-20 dated 20 February 2023)

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