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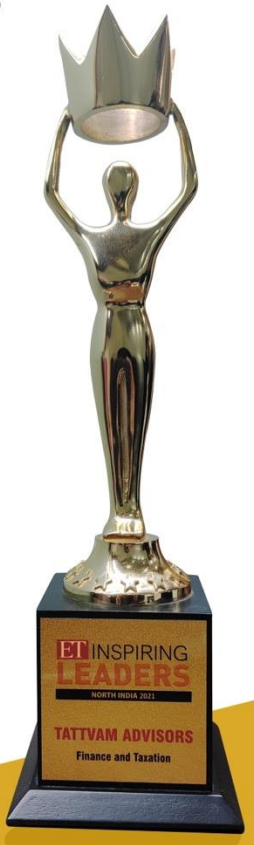

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1. JUDICIAL PRONOUNCEMENTS

a. Taxpayer cannot be detained for indefinite period for alleged tax evasion where investigation is pending

(Paresh Nathala Chauhan V. The State of Gujarat, 2022-VIL-11-SC)

Facts:

The appellant has been in the custody for 25 months out of the total period of years for which he has been sentenced and the investigation is still pending though the complaint has been filed. The Appellant states that the officers are doing so to teach him a lesson for initiating a proceeding which resulted in adverse order against the officer. The Appellant has filed the appeal to seek bail before this Hon'ble Court.

Held:

The Hon'ble Supreme Court held as follows:

- The Appellant cannot be detained in custody indefinitely and he has undergone a period of 25 months of custody which almost 50% of the sentence.
- The proceedings against the conduct of officers in regard to the proceedings against the appellant has been taken out by the family members/ appellant has led to adverse consequences though the same proceedings are still pending.
- The appellant has been granted bail on terms and conditions to the satisfaction of the trial court and advised that the Appellant not to indulge in any similar activities again in future.

Tattvam comments:

This decision of the Hon'ble Supreme Court has emphasized on the fact that the taxpayer should not be detained for such an indefinite period without completion of proceedings and investigation instituted against him. This may protect the taxpayers who are being harassed/threatened of arrest/detention on account of mere allegations of fake invoicing or any other investigation.

b. To determine if service is in the nature of job work eligible for tax exemption, the service agreement has to be read as "composite whole"

(Adiraj Manpower Services Pvt Ltd. V. Commissioner of CE, 2022-VIL-12-SC)

Facts:

The Appellant was registered under service tax regime under the category of 'manpower recruitment or supply agency service'. The Appellant entered into an agreement with Semco Electric Pvt. Ltd. (later known as "Sigma") and was required to provide personnel for activities such as felting, material handling, pouring and supply of material to furnace. A Show cause Notice was issued by the department demanding service tax along with interest and with a proposed penalty alleging that the Appellant had not discharged the service tax liability in respect to Sigma for relevant period relating to the supply of manpower and also the Appellant had suppressed and misrepresented facts by filing incorrect ST-3 returns and thereafter confirmed the demand proposed and interest and held that supply of labour by the appellant to Sigma for doing the subject work on 'piecemeal basis' did not alter the characteristics of the manpower services provided by the appellant. Thereafter, the Appellant preferred an Appeal before the Hon'ble CESTAT, Mumbai which held that the service provided by the appellant to Sigma was not in the nature of job work but it is Contract Labour Agreement executed for the purpose of providing requisite manpower and is not a job work contract. Hence, the Appellant by way of present appeal has raised an issue whether the appellant is a job worker within the meaning of the exemption Notification No. 25/2012-S.T. dated 20.06.2012 or is merely a supplier of contract labour.

Held:

The Hon'ble Supreme Court held as follows:

- The agreement between the parties misses out on crucial contractual terms which would have made it a true job work contract as mentioned in terms of

Para 30(c) of the exemption notification. The Appellant has only supplied manpower to the Sigma in the capacity of a contractor. Further, there has been absence of various important factors such as nature of work; provisions for maintaining quality of work, nature of facilities utilised and infrastructure to generate work; delivery schedule; specifications in regard to work be performed and consequences in the event of breach of contractual obligations.

- The services rendered by the Appellant are not contract job work and the exemption mentioned above shall not be eligible to the Appellant and the Order passed by the Tribunal does not suffer any error of reasoning. The appeal stands dismissed.

Tattvam comments:

In the history of such disputes, there has been well settled proposition that nature of services has to be determined from the contract entered into between the parties. The Apex Court has followed the same principle and found that there was no discussion about any clauses relating to job work in the contract and it merely provided for supply of labour.

c. Any collection being done for the activities under the provisions of law which is not mandatory and statutory functions was leviable to service tax till 30.06.2012

(Krishi Upaj Mandi Samiti V. Commissioner of CE & ST, 2022-VIL-13-SC)

Facts:

The Appellants are the Krishi Upaj Mandi Samiti located in different parts of Rajasthan and established under the provisions of the Rajasthan Agricultural Produce Markets Act, 1961. Such committees were constituted by the state govt. The appellants use to charge "market fees" for issuing license to traders, agents, factory/storage and also rent out the land and shops to traders and collect allotment fee/lease amount for such land/shop. The Revenue was of the view that

the appellants are liable to pay service tax on the services rendered by them by leasing/renting the lands/shops and thereafter, issued a SCN demanding service tax on such services. That after adjudication, it was held that the appellants were not liable to pay service tax on 'market fee' collected by them, however the service tax shall be payable under the category of "renting of immovable property" in respect of renting of land(s)/shop(s) for a consideration. The Appellants preferred appeals before the CESTAT.

The CESTAT upheld the imposition of service tax on the Appellants under the category of "renting of immovable property service" for the period upto 30.06.2012 and the Appellants shall not be liable to pay service tax from 1.07.2012 as per the Negative List Regime. Being aggrieved by the order passed by the CESTAT, the Appellants have preferred the present appeal.

Held:

The Hon'ble Supreme Court held as under:

- As per the ***Circular No.89/7/2006 dated 18.12.2006***, there have been a mention of activities performed by the sovereign / public authorities under the provisions of law being mandatory and statutory functions on which the service tax is not leviable. But, in the present matter, the collection of allotment fee/lease amount for such land/shop is not a mandatory and statutory function as per the Rajasthan Agricultural Produce Markets Act, 1961 and no exemption on the payment of the service tax can be availed by the Appellant.
- Therefore, the Market Committees are/were not exempted from payment of service tax on such activities as per the CBIC circular 2006 and the activities by the Market Committees have been put in the Negative List on and after 01.07.2012 resulting in not applicability of service tax on such act.

Tattvam comments:

Prior to introduction of negative list, any voluntary collection of fee by sovereign/public authorities was chargeable to service tax. It is only when such fee was being collected in lieu of any sovereign functions being performed by sovereign/public authorities as a mandatory function was granted exemption.

d. Once an assessee has executed a bond to the satisfaction of the authority, there is no requirement for giving the Bank Guarantee

(AB Traders V. State of Gujarat, 2022-VIL-79-GUJ)

Facts:

The petitioner is a proprietorship concern having the business place at Karnataka. The petitioner received an order of arecanut from a buyer in New Delhi for which they appointed a transporter for such transportation. The transporter being in a hurry to complete the task assigned and for the reason that goods have already been loaded to the vehicle, commenced movement of goods without waiting for the e-way bill to be generated and provided by the petitioner. Thereafter, the goods were intercepted by the authorities and detained since e-way bill was not available with the driver. The authorities permitted provisional release of goods on payment of tax/penalty and on furnishing Bank Guarantee for the value of goods. The petitioner by way of present petition has challenged the validity of insistence for the Bank Guarantee once the assessee has executed a bond to the satisfaction of the authority and made payment of tax and penalty.

Held:

The Hon'ble High Court held as follows:

- Section 67(6) of the GST Act provides for two options for the taxable person for securing provisional release, first is execution of bond and furnishing security and other, payment of applicable tax, interest and penalty.

- In the present case, once the writ applicant executes a bond to the satisfaction of the authority, the authority concerned cannot insist for the Bank Guarantee.
- The second option of furnishing the security for tax, interest and penalty, there will be no requirement for giving the bond in a case where a person has already made payment of tax, penalty and interest.
- Therefore, the authorities are directed to release the goods and conveyance since the bond has already been furnished under the Rule 140 of the CGST Rules, 2017.

Tattvam comments

The Courts have allowed provisional release of goods on furnishing of either bond or bank guarantee. Dual requirement of bond and bank guarantee is nowhere contemplated under the law. Hence, the assessees can choose which option to exercise in case of provisional release of detained goods.

e. Shipping bills are deemed to be application of refund of integrated goods and services tax paid on the export of goods and withholding the same is not permissible

(Jal Engineering V. UOI, 2022-VIL-84-GUJ)

Facts:

The Petitioner is engaged in the business of manufacture, export and supply of premium quality array of Gate Valve, Globe Valve etc. During September 2017, it exported certain goods and hence effected zero rated supply under Section 16 of the IGST Act of finished goods. Further, the petitioner claimed refund of IGST paid in regard to export goods. Thereafter, the Authority has withheld the refund by stating that drawback being claimed at a higher rate of refund cannot be sanctioned under Section 54 of CGST Act read with Section 16 of IGST Act. Hence,

the petitioner has filed this petition seeking direction for immediate sanction of refund of IGST paid in regard to goods exported.

Held:

The Hon'ble High Court held as follows:

- A perusal of Section 54 of CGST Act read with Section 16 of IGST make it clear that after the goods are exported, shipping bills are treated as application of refund of IGST paid in respect of exported goods
- The shipping bills filed by the exporter are deemed to be an application of refund of Integrated tax paid on the exports of goods and withholding of the same is not permissible
- Therefore, the Authorities are directed to sanction refund towards IGST paid in respect to goods exported i.e. 'Zero Rated Supplies' made *vide* Shipping Bills alongwith applicable interest

f. Detention of goods of recipient merely on the pretext of non-payment of GST by the supplier not tenable

(M/s Shiv Enterprises V. State of Punjab, 2022-VIL-93-P&H)

Facts:

The petitioner sold copper scrap to M/s Mittal Engineering Industries. Further, the authorities detained the vehicle containing the said goods during transit inspite of production of requisite documents on the pretext that the genuineness of the tendered documents needs verification from regular bills of A/c. Thereafter, the department issued a Show cause notice under Section 130 of the CGST Act, 2017 to petitioner on ground of wrongful claim of input tax credit. The case of the department was that on verification it was found that inward supply to sellers/suppliers of the petitioner is from a supplier who is not having inward supply and is only engaged in outward supply without paying any tax. Hence, the petitioner has filed the present case to challenge the validity of confiscation proceedings initiated against assessee for alleged contravention by any other

person in the supply chain and whether action of authorities in initiating proceedings under Section 130 of the Act is sustainable.

Held:

The Hon'ble High Court held as under:

- Even if goods have been detained for contravention of provision of the Act under Section 129, if competent authority finds during investigation that provisions of the Act have been contravened with intent to evade payment of tax, law empowers authority to act under Section 130 of the Act
- Further, alleged 'intent to evade tax' must have a direct nexus with activity of trader and assessee cannot be held liable under Section 130 of the CGST Act for contravention of the provision of law by other person in the supply chain
- As per legal principle embedded in the legal maxim "*LEX NON COGIT AD IMPOSSIBILIA*", it is virtually impossible for a trader to ascertain as to whether input tax has been paid by his predecessors or not
- Once a person cannot be compelled to do something not possible, definitely he cannot be penalized for not doing so.
- Wrongful claim of input tax credit may be result of a bonafide claim as well and does not necessarily involve intent to evade payment of tax and also is not of the conditions enumerated under Section 130(1) of the CGST Act that could entail confiscation of the goods
- In the instant case, there is no allegation to effect that petitioner has contravened any provision of the Act with intent to evade payment of tax and therefore, actions of authorities initiating proceedings under Section 130 of the Act cannot be sustained.
- Hence, notice issued under Section 130 of the Act is set aside and authorities are directed to release conveyance and goods

Tattvam comments

It has been observed that the authorities have been detaining and confiscating the goods on various frivolous grounds such as wrong valuation, non-filing of return, travelling in a different direction than the direction of destination, etc. The present judgment has set another example of granting relief to the taxpayers in case of illegitimate confiscation of goods on the grounds of wrongful availment of input tax credit due to non-payment of tax by the supplier.

g. GST registration cannot be cancelled for more than 2 months on the basis of Show cause notice lacking any reason or fact

(Shakti Shiva Magnets Pvt Ltd. V. Assistant Commissioner, 2022-VIL-100-DEL)

Facts:

The Petitioner has filed the present petition against the show cause notice issued by Revenue Department due to which the Petitioner's registration was suspended was suspended for more than two months with no sufficient explanation or fact. The petitioner contented that as per Rule 21A as well as Rule 22(3) of the CGST Rules, 2017, provides that an assessee's registration can be suspended only for 30 days and the cancelling proceeding has to be concluded within the same period.

Held:

The Hon'ble High Court held as follows:

- That the impugned show cause notice contains no fact or reasons and is not supported by any document based on which the Petitioner's registration could not be suspended.
- Therefore, the Court quashed the show cause notice and directed the department to restore the Petitioner's GST registration and also allowed the department to issue a fresh show cause notice mentioning all the relevant facts and reasons within a week.
- Further, directed the department to issue a practice direction so that in future, if any show cause notice for cancellation of registration is issued, the same is not berefit of any material particulars or reasons.

Tattvam comments:

The High Court have once again applied the principle of natural justice providing for incorporation of reason behind issuance of a SCN. Any SCN without stating the reason or fact for issuance of the same shall be null and void.

h. In respect of search and seizure, the Authority has to adhere to the procedure provided under Section 74 of the CGST Act, 2017

(M/s Dhariwal Products V. UOI, 2022-VIL-103-RAJ)

Facts:

The Authority conducted a search and seizure on the premises of the Petitioner and the during the course of search and seizure the petitioner made to deposit a huge amount of Rs.11.5 crores under coercion. The petitioner filed a Writ Petition challenging the search and seizure along with the amount deposited under protest.

Held:

The Hon'ble High Court held as follows:

- The GST Authority with its action has not adhere to the procedure under Section 74 of the CGST Act, 2017.
- The amount deposited during the search and seizure has not been a voluntary deposit as the petitioner disputes the liability.
- When the procedure under Section 74 of the CGST Act is adopted, the authorities would be required to refund the amount collected under protest as the same was collected by naming it as a voluntary deposit.
- The court has ordered that no coercive steps shall be taken against the petitioner or its representatives in respect of the search and seizure.
- The petitioner shall not be forced to deposit any amount towards GST without adhering to the procedure laid under Section 74 of the CGST Act 2017.

Tattvam comments:

The Courts have consistently held that the deposits made by the assessee during investigation cannot be named as "voluntary deposit" and no amount can be collected from the taxpayer during the investigation without adherence to the provisions of Section 74 of CGST Act. The current judgment has reiterated the said proposition. However, its high time that the CBIC should issue specific guidelines to regulate recovery proceedings as directed by Hon'ble Gujarat High Court in the case of Bhumi Associates

i. Technical glitches cannot be ground for non-execution of the order passed by the Appellant Authority

(M/s Wardwizard Innovations and Mobility Ltd Vs. Comms, SGST, 2022-VIL-111-GUJ)

Facts:

The Petitioner filed an appeal before the Commissioner (Appeals) against the rejection of the application for the new registration and the order was passed in the favour of the Petitioner and the department has not given effect to the order passed by the Appellate Authority for processing the GST registration application and issuing the registration certificate to the applicant. The authorities expressed an apprehension that it may not be possible to give effect to the order passed by the appellate authority due to technical glitches and solicits the help of GSTN. Hence, the petitioner filed the present Writ Petition.

Held:

The Hon'ble High Court held as under:

- The technical glitches are within the control of GSTN and a registered dealer after succeeding before the appellate authority shall not be denied of the execution of the such order passed by the appellate authority.
- The technical glitches must be attended at the earliest and the order passed in the appeal must be given effect in proper time.

Tattvam comments;

The authorities are bound to give effect to the orders of Appellate authority even if there are technical glitches prevailing on the common portal. The technical glitches have to be attended at the earliest

j. An order passed under Rule 86A of the CGST Rules, 2017 cannot be treated as the order amounting to the provisional attachment of property under Section 83 of the CGST Act and the blocking of ECL would be treated bad in law if the requirements of "having reasons to believe" and " recording of reasons" are not followed

(Dee Vee Projects Ltd Vs. The Govt. of Maharashtra, Department of GST, 2022-VIL-113-BOM)

Facts:

The Petitioner is a public limited company and is engaged in infrastructure development. The petitioner changed its registered address and sought amendment to the registration certificate as regards 'change of address' which was granted. Further, the authorities initiated some action in the nature of registration of a criminal case against the petition which is still pending and thereafter blocked the Electronic Credit Ledger (ECL) of the petitioner. The petitioner by way of present petition has challenged the blocking of ECL by the tax officers on the ground that petitioner was not operating its business from any place mentioned in the registration certificate and also raised an issue whether blocking of ECL under Rule 86A of the CGST Rules, 2017 amounts to attachment of the property of the petitioner under Section 83 of the CGST Act, 2017 and whether Rule 86A of CGST Rules permits blocking of the ECL and to what extent.

Held:

The Hon'ble High Court held as under:

- In case of blocking of Electronic Credit Ledger under rule 86A, the custody of the property remains with the taxpayer but disability is created on his capacity to utilise it or receive the refund of unutilised credit whereas the power of provisional attachment of the property under Section 83 of the CGST Act can be exercised only after initiation of any proceeding under Chapters XII, XIV and XV.
- That an exercise of power under Rule 86A is distinct from the power under section 83 and, therefore, any order passed under rule 86-A cannot be treated as the order amounting to the provisional attachment of property under section 83 of CGST Act.
- Also, the provisions made in Rule 86A would require the Competent Authority to first satisfy itself, on the basis of objective material, that there are reasons to believe that credit of input tax available in ECL has been fraudulently or wrongly utilised and secondly to record these reasons in writing before the blocking the Electronic Credit Ledger.
- Therefore, in the instant case when the first requirement of Rule 86A of "having reasons to believe" has manifestly not followed, the impugned order have to be treated as bad in law as the second requirement regarding recording of reasons in writing was also breached.
- Rule 86-A of CGST Rules, 2017 does permit disallowance of debit of an amount to the electronic credit ledger only to the extent of fraudulent or wrong availment of credit in the ECL and such disallowance can be done through blocking of the Electronic Credit Ledger to the extent of the amount fraudulently or wrongly shown as lying in credit in the ECL.
- The powers exercised under Rule 86A has civil consequences though for a limited period not exceeding one year and has an element of urgency which perhaps explains why the rule does not expressly speak of any show cause notice or opportunity of hearing before the ECL is blocked.
- In any case no authority can be a revisional authority against his own order, though he can be a reviewing authority against his own order, if power of review is expressly conferred upon him.

- Further, as per Rule 86A, the powers can be exercised not only by the Commissioner but also by an officer authorised by him in this behalf and only restriction is that the delegate of the Commissioner cannot be an officer who is below the rank of an Assistant Commissioner.
- Finally, the petitioner has also sought issuance of direction to the Union of India for coming out with appropriate guidelines for exercise of the power available under rule 86-A.

Tattvam comments; -

This judgment has clearly created a distinction between the blocking of ITC under Rule 86A and the provisional attachment under Section 83. Further, the taxpayers may get relief on occasions where the ITC are blocked without any reason for such actions being taken by the tax authorities.

k. Refund of wrongly availed Cenvat Credit will not be allowed under the transitional provisions of GST law

(M/s Rungta Mines Ltd. V. The Commissioner of CGST & CE, 2022-VIL-123-JHR)

Facts:

The Petitioner was registered under Central Excise Act, 1994 for manufacture of excisable goods in which inputs Iron Ore, Cola etc. are used. The petitioner used to procure input i.e., coal, domestically as well as from outside the territory of India and for importing such coal, the petitioner availed input services such as 'port services'. Further, the Petitioner took inadmissible Cenvat credit of service tax paid on port services in ST-3 return and thereafter claimed refund of the same by relying on section 142(3) of CGST, Act read with Section 174(2)(c) of the CGST Act and Section 11B(2)(c) of the Central Excise Act, 1944. The department denied the refund of service tax paid on "input service" relating to "port service" with the view that that the petitioner has failed to declare the same in time in ER-1 return and also in TRAN-1 after enactment of CGST Act. Being aggrieved by the decision, the assessee has filed instant petition.

Held:

The Hon'ble High Court held as follows:

- That Section 11B of the Central Excise Act, 1944 as it stood immediately before the appointed date, does not sanction any refund where the assessee has failed to claim Cenvat Credit as per CCR, 2004.
- Section 142(3) neither revives any right which stood extinguished in terms of the existing law nor does it create a new right by virtue of coming into force of CGST, Act.
- The petitioner on the one hand illegally took credit of service tax on "port services" in their ST-3 return which they were not entitled as they were assessee under service tax only on reverse charge mechanism and on the other hand filed application for refund of the same amount under section 142(3) of the CGST, Act which is certainly not permissible in law.
- The late receipt of the original invoice which has been cited as the reason for failure to claim CENVAT Credit under the existing law and transitional credit under section 140(1) of the CGST, Act was wholly attributable to acts and omissions of the petitioner and its service provider of the "port services" and the respondent authorities had no role to play.
- Section 140(5) of the CGST Act applies under the circumstances where input services are received after the appointed day but the tax has been paid by the supplier under the existing law within the time and in the manner prescribed with a further condition that the invoice etc. are recorded in the books of account of the such person within a period of 30 days from the appointed day and in the instant case section 140(5) has no applicability.
- The petitioner had no existing right on the date of coming into force of CGST Act to avail credit of the service tax paid on "port services" as CENVAT Credit and accordingly, the provision of Section 140(3) of the CGST Act cannot be construed to have conferred such a right which never existed on the date of coming into force of CGST Act.

Tattvam comments:

The High Court has clarified that the refund of Cenvat credit cannot be claimed under the guise of transitional credit provisions under GST if such Cenvat credit was not availed in accordance with Cenvat credit Rules, 2004 in erstwhile indirect tax regime.

I. Refund of unutilised input tax credit is to be claimed under Rule 89(4B) of the CGST Act

(Messers Filatex India Ltd V. UOI, 2022-VIL-133-GUJ)

Facts:

The writ applicant is a company engaged into the business of manufacturing of textile yarns. The applicant is engaged in domestic supplies as well as export supplies and claimed refund of accumulated refund tax attributable to export under Rule 89(4) of the CGST Rules. The department rejected the refund of claim on the ground that the applicant was required to file a claim for refund of the unutilized credit under Rule 89(4B) of the CGST Rules instead of on the basis of formula under Rule 89(4) of the CGST Rules as Rule 89(4B) lays down that refund of unutilized ITC availed on all inputs other than the inputs procured under Notification No. 40/2017, 41/2017, 78/2018 or 79/2017, would be available. Hence, the applicant by way of present writ application has raised an issue whether the applicant is entitled to claim the refund in accordance with the formula as provided under Rule 89(4) of the CGST Rules or whether it is Rule 89(4B) of the CGST Rules which should be made applicable for the purpose of determining the refund claim.

Held:

The Hon'ble High Court observed as follows:

- According to Rule 89(4B) of CGST Rules, the refund of input credit availed in respect of inputs received under the said notifications for export of goods and

the input tax credit availed in respect of other inputs or input services to the extent used in making such export of goods, shall be granted and therefore the refund is applicable on the accumulated ITC that have gone into the making of export of goods.

- Since the department is not in possession of all the records and details of ITC credit availed and related matters the case is remanded back to the adjudicating authority with the mandate of considering the claim of refund of the ITC by the appellant afresh under Rule 89(4B) of the CGST Rules.
- The Principal Commissioner has stated that each and every manufacturer / exporter is believed to be aware of the input / output ratio of the inputs / raw materials used in such manufacturing of the exported goods and the ITC availed against such input supplies received.
- The Assistant Commissioner shall proceed in accordance with the remand directions issued by the Appellate Authority and adjudicate the claim of the applicants in accordance with Sub-Rule (4B) of Rule 89 of the CGST Rules, but keeping in mind the formula of input/ output ratio of the inputs/ raw material used in the manufacturing of the exported goods.

Tattvam comments:

Claiming refund under wrong provisions can be one of the reasons for rejection of refund by the tax authorities. Hence, the taxpayers should consider all the procedural aspects correctly in case of apply refund.

m. Recovery proceedings under Section 79 of the CGST Act cannot be initiated for recovery of interest under Section 50 of the Act without initiation and completion of the adjudication proceedings under the Act

(R.K. Transport Pvt Ltd. V. UOI, 2022-VIL-142-JHR)

Facts:

The petitioner was served with the impugned order for levying of interest on the alleged ground of delay in furnishing GSTR-3B return. Thereafter, the petitioner

has challenged the same on the specific ground that since the liability has been disputed by the petitioner, the same could not have been levied without any adjudication proceeding under section 73 or 74 of the CGST Act which has not been done in the present case.

Held:

The Hon'ble High Court held as follows:

- In the present case, no proceeding under section 73 or 74 of the CGST Act has been initiated, though the liability has been disputed by the petitioner by way of a reply to the notice of recovery under section 79 of the CGST Act.
- Though the liability of interest under section 50 is automatic, quantification of such liability shall have to be made by doing the arithmetic exercise, after considering the objections of the assessee. Therefore, without initiating any adjudication proceedings under Section 73 or 74 of the CGST Act, 2017, the amount of interest cannot be termed as an amount payable under the Act or the Rules and no recovery proceeding under Section 79 of the Act can be initiated for recovery of the interest amount.

Tattvam comments

This judgment ruled that the interest cannot be recovered without initiation and completion of adjudication proceedings.

n. The authority may serve the notice of assessment and communications through registered post or speed post or courier with acknowledgment till the technical glitches will be resolved

(Pushpam Reality V. State Tax Officer, 2022-VIL-146-MAD)

Facts:

By way of present Writ Petition, the petitioner has challenged the impugned assessments orders and the impugned recovery proceedings issued consequent to the assessment orders on the ground that assessments orders have been passed either without proper service of Show cause notices or without giving adequate opportunity to reply to the Show cause notice. On the other hand, the department contends that the notices were uploaded in the web portal of the State Government and same are auto populated in the GST portal.

Held:

The Hon'ble High Court held as follows:

- The GST portal has faced problems on several occasions and steps were taken for correcting the technical glitches and even as on date, there are problems arising out of inter-communication between the State GST and Central GST web portal which has to be resolved. Till all problems are resolved on the technical side, the authority may simultaneously serve the notice of assessment and communications under the Act and Rules both through registered post or speed post or courier with acknowledgment as is contemplated Section 169(1)(b) of the CGST Act and through web portal.
- Further, once all technical problems are resolved, the practice of sending physical copy through registered post or speed post or courier with acknowledgment may be dispensed with.
- Therefore, the impugned assessment orders are set aside and the petitioners are directed to file a reply to the respected Show cause notice.

Tattvam comments

At times, the taxpayers do not get sufficient intimation over the portal or through emails which may result in delay in replying to such notices within prescribed timeline and hence adverse orders. Hence, this judgment provides relief to taxpayers where the assessment notice and communications are not served through speed post or courier with acknowledgment and just uploaded on GST portal.

o. **Rejection of refund application merely for the reason that the same has been filed manually and not electronically is beyond the provisions of law**

(C.P Ravindranath Menon V. UOI, 2022-VIL-150-BOM)

Facts:

The Petitioner entered into a registered Agreement for sale with Godrej Redevelopers (Mumbai) Pvt. Ltd. and an invoice was raised to the Petitioner but the loan applied was not sanctioned to the petitioner resulting into termination of the said agreement. The Petitioner filed a refund application manually before the department but the same was rejected for not complying with the Circular No. 125/44/2019-GST dated 18th November 2019 issued by the Government of India, Ministry of Finance, Department of Revenue, Central Board of Indirect Taxes and Customs, GST Policy Wing which was made mandatory with effect from 26th September 2019. Hence, the petitioner has filed this petition seeking direction for immediate sanction of refund of GST paid.

Held:

The Hon'ble High Court held as follows:

- The Petitioner filed the refund application before the department and the same was filed as per the provisions of Rule 97A of the CGST Rules which allows any person to file a refund application manually and electronically.
- Reference has been made to the decision of Laxmi Organic Industries Ltd (Supra) wherein it was held that the plain and simple constructive of Rule 97A is that despite Rule 89 providing for electronic filing of applications for refund shall include manual filing of the said application.
- In the instant case, the petitioner even otherwise could not have filed application electronically, not having registered under the CGST Act.

- Further, the Hon'ble High court quashed and set aside the impugned order dated 18.02.2021 wherein the department rejected the refund application on the basis of the applicability of the Circular No. 125/44/2019-GST dated 18th November 2019 and directed the department to consider the refund application on merits and decide on the same within 8 weeks form the date of order.

Tattvam comments

The Court rightly held as rule 97A specifically provides option of manual filing and contains non-obstante clause overriding Rules 89 to 97 of the CGST Act. Moreover, in case of unregistered applicant such electronic filing is anyways not possible. So, it's a welcome decision for all the manually filed refund applications.

p. Best judgment order being conducted without serving notice suffers from serious infirmities for non-compliance of principles of natural justice and procedural requirement prescribed under the GST Act The requirement of notice before proceeding to pass assessment order

(M/s Vinman Construction Ltd. V. The State of Jharkhand, 2022-VIL-157-JHR)

Facts:

The petitioner is a company engaged in construction work. During the relevant period, since no work was undertaken nor any sale or purchase was done, nor any supply of goods or services was done, petitioner did not file its return due to ignorance of law within the time limit prescribed under Section 39 of CGST Act, 2017. Thereafter, the petitioner received Summary of Order under DRC-07, which indicated Best Judgement assessment under Section 62 of the CGST Act, raising demand of tax, interest and penalty and denial of input tax credit. Being aggrieved, the petitioner challenged the impugned assessment order as well as DRC-07 and seeking direction to authorities to allow input tax credit reflecting in the GSTR-2A.

Held:

The Hon'ble High Court held as follows:

- The legislature has provided a mechanism for issuance of prior notice to return defaulter under section 46 of the Act if a registered person fails to furnish return under section 39 or section 44 or 45 of the Act.
- The requirement of notice before proceeding to pass assessment order under section 62 has been consciously laid down in the scheme of GST regime so that defaulter may have an opportunity to file return with late fee in case return has not been filed within the time prescribed so that penal consequences arising therefrom can be avoided.
- In the instant case, the respondent had not brought on record any document to show that the assessment order was served upon the petitioner before issuance of DRC-07 or that a notice under Section 46 was served upon the petitioner before passing the assessment order under Section 62 of the Act and therefore the impugned assessment order passed under section 62 of the Act suffers from a serious lacuna due to non-issuance of notice under section 46 of the Act.
- The impugned action has led to serious penal consequences which cannot be sustained in view of serious infirmities in the procedure adopted by the Assessing Officer.
- Hence, the impugned assessment along with Summary Order in DRC-07 set aside and ITC of the petitioner reflecting in GSTR-2A shall be unblocked.

Tattvam comments

The judgment clearly lays down that there is salutary purpose for service of notice under section 46 before the proper officer proceeds to pass Best Judgment Assessment order under section 62 of the CGST Act.

q. Sale or clearance of capital goods as scrap by an output service provider not liable for reversal under Rule 3(5A) of the Cenvat Credit Rules, 2004

(M/s Bharti Infratel Limited V. Additional Director General, 2022-VIL-76-CESTAT-DEL-CE)

Facts:

The Appellant is engaged in the provision of telecom infrastructural support services to various telecom companies and discharges service tax on the same under the category of 'support service of business or commerce [BSS]. For providing the output service of BSS, the appellant bought various capital assets and availed CENVAT and the same was utilized in discharging the output service tax liability. The appellant neither reversed credit nor paid any amount at the time of removal as the appellant believed there was no requirement of payment/reversal by an output service provider under Rule 3(5A) of the CENVAT Credit Rules, 2004 (The Credit Rules) during the relevant period for clearance of capital goods as scrap. However, proceedings were initiated by the department and alleged that the appellant did not reverse the credit on capital goods sold as scrap as per the provisions of rule 3(5A) of the Credit Rules and passed an order against the appellant confirming a demand of Rs. 19,65,03,88/- for the period from 27.09.2013 to 31.03.2015 with interest and penalty.

Held:

The Hon'ble CESTAT observed as under:

- That the appellant sold/ cleared certain used capital goods as it is or after the repairs the amount was payable under the Rule 3(5A) of the Credit Rules were deposited by the appellant
- Certain capital goods were sold by the appellant as scraps as they could not be further used and they were considered as scraps only when such goods can neither be sold as it is nor can be repaired and cannot be further used
- The term 'scrap' has been used in the Income Tax in the sense of a waste by-product generated during the manufacturing, but the Credit Rules envisage clearance of capital goods in the form of 'scrap' when the same can no longer be used

- Further, the capital goods cleared as scrap and the appellant being an output service provider was not required to pay any amount in terms of Rule 3(5A) of the Credit Rules and the order passed by the department is unsustainable and is set aside

Tattvam comments

This judgment lays down the correct proposition of the law that service providers are not required to pay any amount under Rule 3(5A) of Cenvat Credit Rules when the capital goods are cleared as scrap.

r. VAT and Service Tax are mutually exclusive and cannot be applied simultaneously

(M/s Cooper Elevators India Pvt Ltd V. Commissioner of GST & CE, 2022-VIL-96-CESTAT-CHE-ST)

Facts:

The Appellant are engaged in the supply, erection, commissioning and maintenance and repairs of the lifts, elevators. As per the agreement, prices per unit for the lift provisions were quotes under 2 heads one being the price for design, supply, installation and commissioning of the lift which is inclusive of VAT and the other being prices for installation and commissioning of the lift inclusive of the Service Tax. The Appellant filed its VAT returns declaring its activities as Works Contracts Services and paid VAT on 85% of the contract value as per the CBEC issued letter [F.No.B1/16/2007-TRU) dated 22.5.2007 and the balance 15% was paid as Service Tax as per the provisions of the Rule 8(5)(d) of the Tamil Nadu VAT Rues, 2007 under the category of 'Erection, Commissioning and Installation Services'. The department has a different view that the appellant opted to pay Vat on the notional value and not the actual value and the service being in the nature of a work contract service for original works, service tax is liable to be paid on 40% of the contract value. SCN was issued demanding the short paid service tax and

the same was confirmed by passing the order. The Commissioner (Appeals) upheld the demand resulting in filing an appeal before this Hon'ble Tribunal.

Held:

The Hon'ble CESTAT observed as under:

- The Appellant supply both material and rendering of services leading to a composite supply, the Tamil Nadu VAT Act provides for arriving at a notional value for payment of VAT.
- The contention of levying 40% Service Tax on the entire contract value is invalid as this means that SCN proposes to levy of service tax on the amounts on which VAT has already been paid by the Appellant.
- It is a settled position that the VAT and Service Tax are mutually exclusive and cannot be simultaneously levied. So, the Hon'ble CESTAT has set aside the impugned order allowing the consequential relief if available as per the law.

Tattvam comments

The judgment has reiterated the proposition that the VAT and service tax cannot be levied simultaneously and both are mutually exclusive.

***s.* Any CENVAT Credit availed without any actual movement of goods is considered as credit taken on fake invoices and credit would be denied**

(The Commissioner, CE & CGST V. M/s Prem Jain Ispat Udyog Pvt Ltd. 2022-VIL-128-CESTAT-DEL-CE)

Facts:

The Respondent is engaged in the manufacture of M.S. Ingot and Bars and availed CENVAT credit claiming that the inputs were used for manufacture of the final products. A SCN was issued to the respondent alleging the availment of the CENVAT credit in respect of the inputs used by them through fake invoices without

actual receiving the goods. The whole deed was done by various suppliers along with certain transporters.

The Additional Commissioner by order dated 23.08.2017 disallowed the credit availed by the respondent due to the non-existence of the manufacturers and found the suppliers to of respondents to be bogus and fake and were only issuing invoice to pass on CENVAT Credit.

The respondent then preferred an appeal before the Commissioner (Appeals) where the order passed by the Additional Commissioner was set aside vide order dated 16.10.2018.

Further, the Appellant preferred an appeal before this Hon'ble CESTAT challenging the order dated 16.10.2018 passed by the Commissioner (Appeals).

Held:

The Hon'ble CESTAT observed as under:

- As per the investigation conducted, it was found that the respondent along with the suppliers and the transporters were indulging in the availing and utilizing the CENVAT credit through invoices without actual movement of the goods.
- There was no movement of the transport which were stated to be carrying the goods to the respondent from various suppliers and they were only on the papers.
- As per the Rule 4(1) of the Credit Rules, CENVAT credit of inputs to be used in the manufacture of final product is allowable to the manufacturer and as per the Rule 4(5) of the Credit Rules, the burden of proof regarding the admissibility of the CENVAT Credit is on the manufacturer availing such credit and the respondent failed to comply with such provisions and the availment of CENVAT credit amounting to Rs. 86,38,805/- on the strength of invoices which were not genuine.

- The order dated 16.10.2018 passed by the Commissioner (Appeals) wherein the Appellant was allowed to avail the credit as the invoices were issued fraudulently but was not considered to be bogus or fake by the Commissioner (Appeals), therefore, cannot be sustained and is set aside.

Tattvam comments

Availing input tax credits on fake invoices was not allowed even under pre-GST regime as well. In this case, the department had investigated that there was involvement of bogus invoicing between the parties and on this basis, the CENVAT credit availed on such bogus invoices was disallowed.

Any plea by the taxpayer without giving sufficient evidence on the fulfilment of requirement of law will tantamount to denial of input credits to the recipient.

Hence, the receivers should be wary of the status of their suppliers and should not indulge in availing any fake credits.

2. AAAR/AAR

t. GST payable on membership/subscription fee received from members of a club

(M/s The Poona Club Limited, 2022-VIL-24-AAR)

Facts:

The applicant is an association with non-profit motive. It provides life time membership wherein the members are exempted from annual payment charges and annual subscription based membership. Further, the applicant charges annual games fee which is payable by both the above membership holders. The appellant approached the Authority for Advance Ruling (AAR) to determine:

a. Whether membership fee collected from members at the time of giving membership is liable to tax under CGST/SGST Act?

b. Whether the annual subscription and annual games fee collected from members of club is liable to tax under CGST/SGST Act?

Held:

The Authority for Advance Ruling held as follows:

- The applicant has two objectives one being the administration and maintenance of club and the second being providing facilities and services to members for which members are charged as when they use it
- The applicant stated that the member and the club have same entity because of the principle of mutuality by citing the decision of the ***Hon'ble Supreme Court in State of West Bengal v Calcutta Club [(2019) 19 SCC 107 - 2019-VIL-34-SC-ST]***
- Earlier the membership fees received by the applicant did not qualify as supply but after the amendment in CGST Act which was proposed in budget 2021 vide clause 99, in sub- section (1) of section 7, after clause (a), the clause (aa) was to be inserted and deemed to be inserted w.e.f. 1st day of July, 2017 which got assent from the president in 28th March, 2021 and clearly specifies that the membership fees from the members to the clubs is a 'Supply'
- Further the services and the facilities provided by the applicant falls under the definition of business as per Section 2(17) irrespective of the intent of the applicant to earn profit or not
- Thus, the membership fee collected from members at the time of giving membership, the annual subscription and annual games fee collected from members of club is liable to GST

Tattvam comments

After a series of advance ruling on taxability of services provided by club to its members followed by the retrospective amendment in GST statute, the principle of mutuality in the context of subject services has become a history and the decision of Apex Court in case of Calcutta Club is no more applicable in GST regime. Hence, in the GST regime, any supply of goods or services by club to its members have become taxable.

u. Input tax credit allowed on leasing, renting or hiring of the motor vehicles having seating capacity of more than 13 persons for the transportation purpose w.e.f. 01.02.2019

(M/s Maanicare System India Private Limited, 2022-VIL-26-AAR)

Facts:

The applicant is engaged in the business of manpower supply and had hired bus services for the commutation of its employees. For such services the applicant has been paying GST on reverse charge basis as per the Notification No. 22/2019-Central Tax (Rate) dated 30.09.2019 w.e.f. 01.10.2019. The applicant approached the Authority for Advance Ruling (AAR) to determine whether the applicant is eligible to take input tax credit on GST paid under Reverse Charge Mechanism @ 5% for hiring of buses for transportation of employees.

Held:

The Authority for Advance Ruling held as follows:

- As per the Notification no. 29/2019-Central Tax (Rate) dated 31.12.2019 the applicant, being the service recipient is liable to discharge GST under Reverse Charge Mechanism
- With effect from 01.02.2019, Input Tax Credit has been allowed on leasing, renting or hiring of motor vehicles, for transportation of persons, having approved seating capacity of more than thirteen persons
- In the instant case, the bus service availed by the applicant is more than 13 seaters, accordingly, the same is not falling under the block credit as provided under section 17(5) of CGST Act
- Since the applicant is utilizing the services of renting of motor vehicle for business or furtherance of business, the input tax credit is not restricted to the applicant under the referred Section 17(5) of CGST Act

Tattvam comments

The ruling lays down the correct proposition of amended provisions of Section 17(5) of CGST Act which has allowed the input tax credit in respect of hiring of motor vehicles having approved capacity of more than 13 persons w.e.f. 01.02.2019.

v. GST shall be applicable on the amount received as liquidated damages from a person which would be considered to be a toleration on Act as per the entry in 5(e) of Schedule II to the CGST Act, 2017

(M/s Achampet Solar Pvt Ltd, 2022-VIL-34-AAR)

Facts:

The applicant is engaged in production and distribution of electricity obtained from solar energy. The Appellant has engaged M/s. Belectric India (P) Ltd for construction of solar power project and has mentioned clauses with respect to the recovery of the liquidated damages. First being the delay in delivery and other being non-performance of the plant. The applicant approached the Authority for Advance Ruling (AAR) to determine:

- Whether liquidated damages recoverable by the applicant from M/s. Belectric India on account of delay in commissioning, qualify as a 'supply' under the GST law, thereby attracting the levy of GST?
- What would be the time of supply if the if GST is applicable or leviable?

Held:

The Authority for Advance Ruling (AAR) observed as under:

- The Appellant demanded the liquidated damages from the contractor due to the delay n commissioning of the project and the postponement in taking over the date beyond the milestones form completion of the project.
- As per the provisions 1 and 3 of the Section 55 of the Indian Contract Act, 1872 discuss that the failure to perform an act as per the contract makes it

voidable at the option of the opposite party and can recover compensation for such a loss for non-performance.

- Hence, the recovery of liquidated damages by the applicant from the contractor due to the delay in commissioning of the project would amount to toleration of an act as a contractual obligation as per the entry in 5(e) of Schedule II to the CGST Act, 2017 and further, read with the Section 2(31)(b) of the CGST Act, 2017.
- Further, the consideration received for such an act would be taxable under the CGST and SGST @9% each under the chapter head 9997 at serial no. 35 of Notification No.11/2017- Central/State tax rate.
- And the date on which the liquidated damages shall be determined as per the clause 6 of the contract between the respective parties.

Tattvam comments:

Another advance ruling in series which has decided that the liquidated damages are taxable under GST. Even after observing the fact that such recovery is to compensate the loss incurred by the recipient due to non-performance, the above ruling has not treated the above charges as penalty in light of specific provisions of Indian Contract Act.

The contrary rulings given by the tax authorities (pre and post GST) on the same issue is only going to add to the confusion for the taxpayers.

The ratio of favourable rulings given under pre-GST regime can be equally applied in the GST regime.

w. 18% GST on reimbursement of basic salary, ESIC, EPF, bonus

(M/s Broadcast Engineering Consultants India Ltd., 2022-VIL-42-AAR)

Facts:

The Applicant is a Central Public Sector Enterprise with 100% equity share capital held by Government of India. The applicant was awarded a contract from Madhya

Pradesh Paschim Keshetra Vidyut Vitaran Company (Govt. Entity) for providing "skilled, semi-skilled and unskilled" manpower. As per the Applicant their primary work is the distribution of electricity in the rural areas for which manpower is provided and the above activity falls under the article of 243G of the Constitution of India which a NIL rated supply. As a result, the applicant only charged GST on consultancy part and is not required to charge any GST on taking reimbursement of expenses i.e. Basic salary, ESIC, EPF and Bonus due to the same is considered as Nil rated supply

The applicant approached the Authority for Advance Ruling (AAR) to determine:

- Whether the Appellant should charge GST @18% on reimbursement of expenses like Basic Salary, ESIC, EPF, Bonus with service charge only on service charge for providing pure service by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution?
- Whether taking reimbursement of expenses for the manpower deployed is a NIL rated supply under GST?

Held:

The Authority for Advance Ruling (AAR) observed as under:

- The Applicant has been raising the invoices wherein it has mentioned cost of employees and the commission and there is no mention of EPF/ESIC/WC contribution on the invoice.
- The rural electrification includes distribution of electricity is covered in function entrusted to a Panchayat but the invoices issued to the Executive Engineer, MPPKVVCL or GM, MPMKVVCL by the applicant with description of supply of manpower (Rural) is not a sufficient document to conclude that the manpower will be actually used for distribution of electricity in rural area

as a sub-station supplying electricity covers large area which include rural as well as urban area.

- The Applicant is not entitled for the exemption contained in the Sl. No. 3 of the Notification No. 12/2017-CT (Rate) dated 28.06.2017 as the service recipients were not Govt. or its Entity and the services were not in the nature under article 243G of the Constitution.
- The section 2(31) of CGST Act, 2017 defines 'consideration' to include any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government.
- In the present matter, the entire payment received by the Applicant against the manpower supply the GST shall be payable on the entire amount collected which would include the salary amount/wages to be paid to the labours as well as the reimbursement of EPF and ESI contribution.
- Hence, the GST is liable to be paid @18% (IGST) on the reimbursement of expenses i.e. Basic salary, ESIC, EPF, Bonus with service charge.

Tattvam comments:

AAR lays down the correct position of law according to which GST is applicable @18% on total amount received towards the provision of manpower supply services which includes components such as Basic salary, ESIC, EPF, Bonus with service charge.

x. Exemption of nil rate of tax is applicable only on supply of online educational journals or periodicals which does not cover supply of e-books, newspapers, directories and non-educational journals or periodicals

(M/s Manupatra Information Solutions Pvt Ltd, 2022-VIL-43-AAR)

Facts:

The Applicant is engaged in providing on-line text based information such as online books, newspapers, periodicals, directories etc. (judgements/Notifications/Bare Acts/Rules/E books/News/Articles) through their website www.manupatra.com to law firms, lawyers, companies, government, judiciary, law schools wherein the SAC code is code 997331 and the applicable rate of GST is 18%. The applicant approached the Authority for Advance Ruling (AAR) to determine:

- Whether the Appellant can avail exemption as per notification no. 12/2017-Central Tax (Rate) dated 28th June 2017 further amended by notification no. 02/2018-Central Tax (Rate) dated 25th January 2018, against Serial number 66

Held:

The Authority for Advance Ruling held as follows:

- The Applicant has been providing services of online text based information such as online books, newspapers, periodicals, directories etc. (judgements/Notifications/Bare Acts/Rules/E books/News/Articles) through their website www.manupatra.com to law firms, lawyers, companies, government, judiciary, law schools.
- The Applicant has been charging fee in the form of Annual Subscription Online Database' for providing services of accessing the database.
- The database and the journals/ periodicals are different and the nil rate of tax is only applicable on the supply of online educational journal or periodicals which does not cover supply of E-books, Newspapers, directories and non-educational journals or periodicals. Hence, the exemption is not available in the matter at hand.

Tattvam comments:

The exemptions are specifically given for educational material and hence all e-books will not be covered under the exemption unless the same are for educational purpose.

y. Activities along with sale of food in respect of central kitchen/eating joints by way of dine-in, take away and delivery is covered under supply of 'restaurant service' which attracts 5% GST without ITC

(M/s Shrivika Foodcraft, 2022-VIL-50-AAR)

Facts:

The Applicant is setting up restaurants in the form of central kitchen/eating joints for sale of food items along with various modes of services like Dine In, Take Away and Delivery. The applicant approached the Authority for Advance Ruling (AAR) to determine:

- Whether supply of food and beverages by eating joints by way of Dine In, Take Away and Delivery should be treated as supply of goods or supply of services
- Whether the Applicant can avail the ITC.

Held:

The Authority for Advance Ruling held as follows:

- The Applicant supply supply of food and beverages by eating joints by way of Dine In, Take Away and Delivery should be treated as supply of goods or supply of services would be covered under 'restaurant service' as per Section 7 of the Act and liable to tax as per Section 9 of the Act as clarified in Circular No.164/20/2021.
- The supply made by the Applicant is classifiable under Heading 9963 under Sl.No.7(ii) of Notification No.11/2017-CT (Rate) dated 28-6-2017 and attract 5% GST but the Applicant is not entitled to take ITC as per the conditions of the said notifications.

Tattvam comments

The above issue was discussed in the 45th GST Council meeting and thereafter a clarification was issued vide department Circular dated 6th October, 2021.

3. RECENT UPDATES

z. Clarification regarding applicability of Social Welfare Surcharge on goods exempted from basic and other customs duties/ cesses

(Circular No. 03/2022 Cus dated 01/02/2022)

Vide above circular, it has been clarified that Social Welfare Surcharge (SWS) shall be zero on goods which are exempted from payment of Basic Custom Duty (BCD) or taxes or cess. The authorities have stated the following reasons for arriving at such conclusion, in spite of no exemption provided to SWS under any provision.

- SWS applied at the rate of 10% of the aggregate of customs duties payable on **import of goods** and **not on the value of imported goods**.
- If aggregate customs duty payable is 'zero' on account of an exemption, the SWS shall be computed as 10% of value equal to 'Nil'.
- Law does not require computation of SWS on a notional customs duty calculated at tariff rate where applicable aggregate of duties of customs is zero

aa. Relaxation on late date with respect to MEIS Applications for exports made in FY 2019-20

(DGFT Public Notice 53/2015-20 dated 01/02/2022)

The Director General of Foreign Trade (DGFT) has extended the last date of submitting applications for scrip-based FTP schemes till 28.02.2022.

Late cut applicable for submissions made till 28.02.2022 are as follows:

Scheme	Export Period	Late cut (%)

MEIS	FY 2018-19 (01.07.2018-31.03.2019)	10
MEIS	FY 2019-20 (upto 31.12.2020)	Nil
SEIS	FY 2018-19	5
SEIS	FY 2019-20	Nil
ROSCTL	07.03.2019-31.12.2020	Nil
ROSL	Upto 06.03.2019	Nil

bb. Guidelines issued w.r.t. issuance of Show Cause Notice by Department of Trade and Taxes Delhi

(F.No.1(2)/DTT/L&J/Misc./2019-20/77-79 dated Feb 01,2022)

Vide the Circular dated 01.02.2022 the Department of Trade & Taxes NCT Delhi has issued indicative guidelines on issuance of Show Cause Notices (SCN).

As per the guidelines a SCN should comprise the following, subject to some variance from case to case.

a) It should be issued only after proper inquiry/investigation i.e., when the facts used are ascertained and allegations are prima fade made out.

b) It should be strictly in the format & manner prescribed under the GST Act and Rules made thereunder.

c) It should be clear on facts and legal provisions. Alleged violation of the provisions of law and other anomalies should be clearly brought out in the Show Cause Notice;

d) Copies of the documents to be submitted or compliance to be made by the noticee should be specifically mentioned in the SCN;

e) Possibility of additional evidence being needed or additional anomalies being detected should be kept open during the pendency of the proceeding and should also be mentioned in the notice itself;

f) Copies of the details giving reasons for SCN should be attached with the SCN and Proper Officer should not depend only on the dropdown menus on the GSTIN portal;

g) The *prima facie* amount due, if any needs to be quantified and should be manifestly specified in the notice itself. Possibility of raising additional demand should be kept and mentioned in notice itself.

h) It should be clearly mentioned that whether the noticee(s) wishes to be heard in person, apart from filing a written representation, in the matter.

i) The authority to which the SCN is answerable should be specifically stated along with Ward, designation, e-mail Id etc.

j) All SCNs should be disposed off within statutory timelines.

cc. The threshold limit for E-Invoicing reduced from Rs. 50 Cr to 20 Cr. w.e.f. 01.04.2022

(Notification No. 01/2022-Central Tax dated 24.02.2022)

CBIC *vide* above Notification dated 24.02.2022 has notified that every registered person has to mandatory implement the e-invoicing whose aggregate turnover exceeds Rs. 20Cr. This threshold was earlier at Rs. 50 Cr. The above notification has been brought into effect from 01.04.2022.

From the above Notification, the registered persons whose aggregate turnover had exceeded Rs. 20 Cr in any of the preceding financial years w.e.f. June 2017 will be required to mandatorily implement e-invoicing in their billing system w.e.f. 1st April 2022.

dd. Mandatory for filing/ issuance of Registration Cum Membership Certificate (RCMC)/ Registration Certificate (RC) through the DGFT common digital platform from 01.04.2022

(Trade Notice No. 35/2021-2022 dated 24.02.2022)

From 1st April 2022, it will be mandatory for the exporters to file RCMC/ RC applications (for issue/ renewal/ amendment) through the common portal of e-commerce platform.

The prevailing procedure of submitting applications directly to the designated Registering Authorities will continue only till 31.03.2022.

ee. Key proposals in Rajasthan State Budget 2022-23

(Press Note dated Feb 23, 2022 by Finance Department, Govt. of Rajasthan)

1. Tour and Hospitality sector accorded by Industry status.
2. Rural tourism scheme proposed with 100% exemption from stamp duty, 100% reimbursement of SGST for 10 years and 9% interest subsidy for loans up to 25 lakhs.
3. Reimbursement of 50% SGST to hotel and tour operators for the period of January 2022 to March 2022.
4. Exemption limit from E-Waybill for transportation of goods within the city increased from 1 Lakh to 2 lakhs.
5. Provisions for capital subsidy to units not getting benefit of SGST reimbursement.

Introduction of Amnesty Scheme 2022 for taxes and other Govt. dues.

ff. Beneficial circular issued by the government laying down the guidelines with respect to legal issues pertaining to return scrutiny for tax periods 2017-18 and 2018-19

(Internal Circular No. 02A of 2022 dated 25/02/2022)

The guidelines with respect to technical issues pertaining to return scrutiny have been issued by Maharashtra GST Department. It has been noted in the above circular that issues have cropped up due to bonafide errors committed by the taxpayers which are primarily due to a lack of understanding of the provisions of law and issues of the GSTN in the initial stage (FY 17-18 and 18-19) of implementation of GST.

In order to clarify the above doubts, following guidelines have been issued:

1. Issues arising from incorrect reporting of GSTR-1:

Issue description	**Clarification**
In GSTR-1, the taxpayer under scrutiny has mistakenly reported B2B outward supply transactions in the Table 7 as a B2C transactions. Upon request from their recipients, said taxpayer has re-reported such B2C transactions as B2B transactions in later period GSTR-1. However, while re-reporting they have not reduced B2C supply. These mistakes led to excess liability in GSTR-1 as compared to GSTR-3B	The proper officers may obtain the transaction wise details of outward supplies from taxpayer for the period under scrutiny and reconcile it with category wise outward supplies reported in GSTR-1 of the corresponding year. Identify the transactions reported in B to B and B to C category. Figure out the transactions which have been shifted to B2B from its original B2C. Take on record the details of GSTR-1 in which such shifting had been done.

Some of the taxpayers while furnishing details of outward supplies had committed typographical errors in reporting details of outward supplies in Table 4, 5, 6, 7 or 11. The figures reported are in excess of actual supply figures. These errors led to excess liability in GSTR-1 as compared to GSTR-3b	The proper officer may obtain the transaction wise details of outward supplies from taxpayer for period under scrutiny and reconcile it with category wise outward supplies reported in GSTR-1 of the corresponding period. Identify the category of difference e.g. B2B, B2C, Exports or adjustment to advances. In case of B2B transactions, take undertaking of recipient that he had not availed excess ITC on account of said errors committed by the supplier In case of export, verify it with turnover of export considered while granting the refund

2. Issues arising from ITC claim

The proper officer may in cases where the difference in ITC claim (CGST + SGST or IGST) per supplier is 2.5 lakh or more, ask the claimant to obtain certification from the Chartered accountant of the said supplier certifying the output transactions and tax paid thereon so as to comply with the provisions of section 16.

In cases where the difference in ITC claim (CGST+SGST+IGST) per supplier is below 2.5 lakh, ask the claimant to obtain ledger confirmation of the concerned supplier along with his/her certification.

Difference in ITC may be allowed on the basis of the above

gg. Department extended the due date for filing annual Kerala Flood return in Form KFC-A1 for the year 2019-20 and 2020-21 to the 15th of March, 2022

(Kerala State GST Department Notification No. 1/2022-State Tax)

The taxpayers were facing some technical issues as a result whereof, the annual Kerala Flood Cess Return for the period 2019-20 and 2020-21 could not be furnished. The electronic system for the filing of Kerala Flood Cess return has now been developed and is made available for the public.

In the circumstances stated above, in the exercise of the powers conferred by the second proviso to rule 6 of the Kerala Flood Cess Rules, 2019, the Commissioner of State Tax extended the due date for filing annual Kerala Flood Cess return in Form KFC-A1 for the year 2019-20 and 2020-21 to the 15th March, 2022.

hh. Upcoming GSTR-1/IFF improvements & enhancements on GST Portal

The following enhancements are being done in this phase of the GSTR-1/IFF improvement:

I. ***Removal of 'Submit' button before filing:*** The upcoming 'File Statement' button will replace the present two-step filing process and will provide taxpayers with the flexibility to add or modify records till the filing is completed by pressing the 'File Statement' button.

II. ***Consolidated Summary***: Taxpayers will now be shown a table-wise consolidated summary before actual filing of GSTR-1/IFF. This consolidated summary will have a detailed & table-wise summary of the records added by the taxpayers.

III. ***Recipient wise summary***: The consolidated summary page will also provide recipient-wise summary, containing the total value of the supplies & the total tax involved in such supplies for each recipient.

Further, the recipient-wise summary will be made available with respect to the following tables of GSTR-1/IFF.

Table No.	Description
4A	B2B Supplies
4B	Supplies attracting reverse charge
6B	SEZ supplies
6C	Deemed Export
9B	Credit/Debit Notes

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