



ECONOMIC
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INDIRECT TAX NEWSLETTER



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NOTIFICATION/CIRCULARS

S. No	Reference	Particulars
GST		
1	<u>Notification No. 25/2022- Central Tax dated 13.12.2022</u>	The due date for furnishing Form GSTR-1 for the month of November 2022 was extended to December 13, 2022 for registered persons whose principal business are in certain specified districts of Tamil Nadu.
2	<u>Notification No. 26/2022- Central Tax dated 26.12.2022</u>	<p>Pursuant to the 48th GST Council Meeting, certain amendments have been made in the Central Goods and Services Tax Rules, 2017 ("CGST Rules"). Some of the important amendments are:</p> <ul style="list-style-type: none"> ▪ Rule 9 has been amended to provide that the application for registration will be approved only after physical verification of the premises (even after Aadhar authentication) if the said person is identified on the common portal based on data analysis and risk parameters. ▪ Rule 12 has been amended to provide that a registered person can <i>suo motu</i> cancel TDS / TCS registration. ▪ Rule 37 has been amended to provide that recipient needs to reverse Input Tax Credit ("ITC") only proportionate to the amount not paid to the supplier. ▪ Rule 37A has been inserted to provide for reversal of ITC by the recipient by November 30, 2022 of the following year if Form GSTR 3B has not been furnished by the supplier by September 30, 2022 of the following year. If ITC is not reversed by November 30, 2022 the amount will be payable alongwith interest. When the supplier subsequently furnishes Form GSTR 3B, credit may be re-availed. ▪ Rule 88C has been inserted to specify procedure for recovery of tax in case of difference in Form GSTR 1 and Form GSTR 3B, by such amount and such percentage as may be recommended by the GST Council. Where any amount remains unpaid after seven days of intimation or no explanation is furnished or the explanation is found to be acceptable, such amount shall be recoverable under section 79. ▪ Rule 59 has been amended to provide that a person to whom an intimation is issued under Rule 88C would be subsequently barred from filing Form GSTR 1 for subsequent periods, unless he has furnished a reply explaining reasons for the difference or deposited the unpaid tax. ▪ Rule 89 has been amended to specify the procedure for unregistered persons to claim GST refund. ▪ Rule 108 has been amended to exclude the requirement of furnishing a certified copy of the order in case of filing of appeal when the order is uploaded in the GST portal. In case the order is not uploaded on the GST portal, a self-certified copy of the order may be furnished within a period of 7 days of filing the appeal. <p>Rule 109C has been inserted to permit withdrawal of appeals at any time before issuance of show cause notice by appellate authority or before issuance of order, whichever is earlier.</p>
3	<u>Notification No. 27/2022- Central Tax dated 26.12.2022</u>	Rule 8(4A) was inserted <i>vide</i> Notification 26/2022 and provides for biometric-based Aadhaar authentication and other procedures in filing Form GSTR-1 . This Notification states that that the provisions of Rule 8(4A) of the CGST Rules shall only apply to the State of Gujarat.

S. No	Reference	Particulars
4	<p><u>Notification No. 12/2022-Central Tax (Rate) dated 30.12.2022</u></p> <p><u>Notification No. 13/2022-Central Tax (Rate) dated 30.12.2022</u></p>	<p>The following rate changes have been made with effect from January 1, 2023:</p> <ul style="list-style-type: none"> ▪ Exemption has been granted to husk of pulses, along with chilka and concentrates, chuni or churi, and khanda used as “cattle feed”. ▪ GST Rate reduced from 18% to 5% in respect of Ethyl Alcohol that is sold to oil marketing companies or refineries to blend it with motor spirit or petrol. ▪ GST rate of 12% would not be available for carbonated beverages of fruit drink or carbonated beverages with fruit juice. These products would be taxable at 28% (excl. compensation cess). <p>GST rate increased from 12% to 18% for pencil sharpeners.</p>
5	<p><u>Notification No. 14/2022- Central Tax (Rate) dated 30.12.2022</u></p>	<p>Sale of Mentha arvenis by an unregistered person to a registered person would be subject to reverse charge (similar to Mentha oil). Therefore, GST would be payable by the recipient.</p>
6	<p><u>Notification No. 15/2022- Central Tax (Rate) dated 30.12.2022</u></p>	<ul style="list-style-type: none"> ▪ By way of Explanation, it has been clarified that GST exemption would be available if residential dwelling is rented to a GST-registered person in their “personal capacity” for their own use/account as a residence and not for business. ▪ GST exemption has been withdrawn in respect of service by way of access to a road or a bridge on payment of annuity.
7	<p><u>Circular No. 183/15/2022-GST dated 27.12.2022</u></p>	<p>The Circular clarifies the procedure to be followed in case of difference in ITC availed in Form GSTR-3B as compared to that reflected in Form GSTR-2A for FY 2017-18 and 2018-19:</p> <ul style="list-style-type: none"> ▪ A detailed procedure to be followed in the following specified scenarios which may have caused the mismatch: <ul style="list-style-type: none"> – Where supplier has not filed Form GSTR 1 but filed Form GSTR 3B. – Where supplier has filed Form GSTR 1 and Form GSTR 3B but has failed to disclose the particular supply. – Where supplier has wrongly reported B2B supply as B2C supply in Form GSTR 1. – Where wrong GSTIN of the recipient has been reflected in Form GSTR 1 [in this case, the jurisdictional tax authority of registered person whose GSTIN was mentioned wrongly would be intimated that ITC is to be disallowed]. ▪ It has been stipulated that: <ul style="list-style-type: none"> – Where the difference between ITC claimed in Form GSTR 3B and reflected in Form GSTR 2A in respect of a supplier exceeds INR 5 lacs: The registered person must produce a certificate for the concerned supplier from CA/CMA certifying that: (a) supplies have been actually made by the supplier to the registered person and (b) tax has been paid by the supplier in his return in Form GSTR 3B. Certificate issued by the CA/CMA shall contain UDIN which can be verified from the respective institute’s website. – Where difference does not exceed INR 5 lacs: A certificate must be produced from the concerned supplier certifying that: (a) supplies have been made by the supplier to the registered person and (b) tax has been paid by the supplier in his return in Form GSTR

S. No	Reference	Particulars
		<p>3B. No CA/CMA certificate is required.</p> <p>It has been clarified that these instructions will only apply to ongoing proceedings in scrutiny/ audit/ investigation etc. and not to completed proceedings. These instructions will also apply in those cases where adjudication or appeal proceedings are still pending.</p>
8	Circular No. 184/16/2022-GST dated 27.12.2022	<ul style="list-style-type: none"> ▪ Where the transportation of goods is outside India and the supplier and recipient are in India, the place of supply is the destination of goods as per Section 12(8) of the IGST Act. With respect to such transactions, it has been clarified that: <ul style="list-style-type: none"> – ITC of IGST paid would be available to the recipient. – The GST provisions do not restrict availment of ITC by the recipient located in India if the place of supply of the said input service is outside India. <p>The supplier must report the place of supply by selecting State Code “96 – Foreign Country” in Form GSTR 1.</p>
9	Circular No. 185/17/2022-GST dated 27.12.2022	<ul style="list-style-type: none"> ▪ Section 75(2) of the CGST Act provides that where allegations of fraud, suppression are held by the Appellate Authority/Tribunal as not sustainable, then the officer must redetermine the duty in terms of Section 73(1). In relation to such situations, it has been clarified that: <ul style="list-style-type: none"> – The proper officer is required to issue an order for re-determination of tax within 2 years from the date of communication of the Appellate Authority’s order. This re-determination order will be passed under Section 75(3). – As the normal time limit for issuance of show cause notice under Section 73 is 2 years and 9 months, re-determination would cover only those periods which are covered within the normal limitation period. <p>The proceedings for the period not covered within the aforesaid time limit would be dropped.</p>
10	Circular No. 186/18/2022-GST dated 27.12.2022	<p>The Circular has clarified the following issues:</p> <ul style="list-style-type: none"> ▪ No-claim bonus (“NCB”): Qua NCB, it has been clarified that: <ul style="list-style-type: none"> – There is no supply provided by the insured to the insurance company in not lodging an insurance claim. NCB cannot be treated as consideration for supply provided by the insured to the insurance company. – NCB amount is pre-disclosed in the policy document and therefore fulfils the conditions of Section 15(3) of the CGST Act. Therefore, clarified that NCB is an admissible deduction under Section 15(3) for the purpose of deduction from the value of insurance services. <p>E-invoicing: It has been clarified that exemption from e-invoices is applicable for the whole entity and not restricted to the nature of supply.</p>
11	Circular No. 187/19/2022-GST dated 27.12.2022	<p>GST dues are considered “operational debt” and the claim is required to be filed before the Resolution Professional under IBC. It has been clarified that in cases where demand for recovery has been issued in Form GST DRC 07/07A and where proceedings have been finalized against the corporate debtor under IBC reducing the amount of statutory dues, the jurisdictional Commissioner will</p>

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		issue an intimation in Form GST DRC-25 reducing the amount of demand. No fresh notice of demand is required to be issued. Corresponding amendments are being made in the GST Rules.
12	Circular No. 188/20/2022-GST dated 27.12.2022	Unregistered customers have been provided a facility for claiming GST refund under Section 54 in case of cancellation of contracts where the time limit for issuance of credit note has expired. The mechanism for claiming refund has been clarified in the Circular and the corresponding amendments have been made in the GST Rules.
CUSTOMS		
13	Notification No. 62/2022-Customs dated 26.12.2022	Effectuates the first tranche of tariff concessions under India Australia Economic Cooperation and Trade Agreement.
14	Notification No. 63/2022-Customs dated 27.12.2022	Effectuates the fourteenth and final tranche of tariff concessions under India ASEAN Trade in Goods Agreement which provides deeper tariff concessions in respect of specified goods when imported from ASEAN under the India-ASEAN Free Trade Agreement.
15	Notification No. 64/2022-Customs dated 29.12.2022	Effectuates the second tranche of tariff concessions under India Australia Economic Cooperation and Trade Agreement.
16	Notification No. 65/2022-Customs dated 29.12.2022	Amends Notification Nos. 48/2021-Customs dated 13.10.2021 and 49/2021 – Customs dated 13.10.2021 to extend the existing concessional import duties on specified edible oils and lentils upto 31.03.2024.
17	Notification No. 103/2022- Customs (N.T.) dated 09.12.2022	Effectuates Exports by Post (Amendment) Regulations, 2022 wherein the appended forms Postal Bill of Exports (“PBE”) PBE-I and PBE-II were substituted with a new format. The Notification also expanded the scope of the Regulations to e-commerce conducted through various electronic means.
18	Notification No. 104/2022- Customs (N.T.) dated 09.12.2022	Provides for the Postal Export (Electronic Declaration and Processing) Regulations, 2022 under which any person holding a valid Import-Export Code could export goods in furtherance of business through a foreign post office appointed by the Board under Section 7(1)(e) of the Customs Act, 1962. Further, the Regulations provide for filing of Forms PBE-III and PBE-IV for export of goods through e-commerce.
19	Notification No. 111/2022- Customs (N.T.) dated 20.12.2022	Amends Notification No. 58/2021-Customs (N.T.), dated the 01.07.2021 to notify Agreement or Arrangement on Cooperation and Mutual Administrative Assistance (CMAA) in Customs Matter between India and Japan through an insertion at Sr. No. 9A and between India and Philippines at Sr. No. 19A.
20	Notification No. 112/2022- Customs (N.T.) dated 22.12.2022	Customs Tariff (Determination of Origin of Goods under the India-Australia Economic Cooperation and Trade Agreement) Rules, 2022 were notified which provides for rules on determination of origination of various types of goods, calculation of qualifying value content etc.
21	Notification No. 113/2022- Customs (N.T.) dated 30.12.2022	The tariff value of edible oils, brass scrap, areca nut, gold and silver were fixed <i>vide</i> substituting the tables in the original Notification No. 6/2001-Customs (N.T.), dated 03.08.2001.

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22	Circular No. 25/2022-Customs dated 09.12.2022	Clarifies the procedure and implementation of Postal Bill of Exports (PBE) Automated System which contains provisions to facilitate the processing of commercial post exports by automating the entire procedure and seamlessly connecting the postal network to the notified foreign post offices. This enables Micro, Small and Medium Enterprises to export to global markets using e-commerce or other regular channels.
23	Instruction No. 34/2022-Customs dated 30.12.2022	Provides for the strict import regulation of certain animal feed additives/premix/supplements and antibiotics to be used in animal feed. The manufacturer is also required to label the final pack regarding its ingredients and the mandatory requirement of respective withdrawal period, if any, indicated against a particular item.
CENTRAL EXCISE		
24	Notification No. 04/2022 - Central Excise (N.T) dated 01.12.2022	Appoints the Commissioner of Central Excise and Service Tax (Appeals) as Central Excise officer for the entire territorial jurisdiction of the Principal Chief Commissioner/Chief Commissioner of Central Excise and Service Tax for the purpose of passing Orders-in-Appeal for Central Excise and Service Tax for the appeals filed after 30.06.2017.

RECENT CASE LAWS

Whether oxygen is a raw material for the purpose of manufacturing steel?

State of Jharkhand & others v. Linde India Ltd. & another
[Civil Appeal Nos. 8061-8064 of 2022 – Supreme Court]

FACTS OF THE CASE

- The rate of tax on raw materials used in the manufacture or processing of goods for sale was 2%. The Respondent (i.e., Linde India Limited) was a manufacturer of pure oxygen. Pure oxygen was sold to Tata Steel, who used it in the capacity of “raw material” in production of steel through basic oxygen steelmaking.
- The Respondent contended that it was therefore eligible for concessional rate of 2%.
- The Hon’ble High Court held that as the function of the oxygen is to convert pig iron into steel by reducing the percentage of carbon dioxide by converting it to carbon monoxide which is necessary for the purpose of manufacture of the end product – steel. Therefore the oxygen can be said to be a “raw material” and therefore LIL is entitled to concessional rate of tax at 2%.
- The Department filed an appeal before the Supreme Court.

JUDGMENT

- The Hon’ble Supreme Court applied the law laid down in ***Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam v. M/s Thomas Stephen & Co. Ltd. [(1988) 2 SCC 264]***. In the said case, the issue was whether cashew shells used as fuel in the kiln could be considered as “raw material”. The Supreme Court *inter alia* held cashew shells have been used only as an aid in the manufacturing process and do not tend to the making of the end product. Goods used for ancillary purposes like fuel cannot be said to be used as “raw material”.
- The Hon’ble Supreme Court relied on the findings of an expert committee to come to a conclusion that oxygen gas is used as a “refining agent” as its main function is to reduce the carbon content as per requirement. Therefore, oxygen gas cannot be said to be a “raw material” used in the manufacture of the end product – steel.
- Separately, it was also *inter alia* held that the High Court in exercise of powers under Article 226 of the Constitution of India is not sitting as an appellate court against the findings recorded on appreciation of facts and the evidence

on record. The High Court lacks the expertise on deciding the disputed questions and more particularly the technical aspect which could have been left to the Committee consisting of experts.

Whether meritorious findings by AAR / AAAR can be considered in writ jurisdiction?

Jotun India Pvt. Ltd. v. Union of India & others

[Writ Petition No. 12691 of 2019 – Bombay High Court]

FACTS OF THE CASE

- The Petitioner sought an Advance Ruling on the question whether marine paint supplied by it could be classified as “part of the ship/vessel” and eligible for concessional rate of tax at 5%. The Maharashtra Authority for Advance Rulings (“AAR”) held that anti-fouling paints are not a part of the ship *albeit* they are mandatory under section 356R Merchant Shipping Act.
- The Appellate Authority for Advance Rulings (“AAAR”) confirmed the AAR order on the grounds that the marine paint is a standalone commodity with independent existence perceived as an independent product rather than a part of the ship and therefore cannot be classified in that manner.

JUDGMENT

- The Bombay High Court refused to interfere with the orders of the AAR/AAAR. The enquiry carried out by the AAR and AAAR cannot be converted into a question of an appellate enquiry in a Writ jurisdiction.
- By virtue of both the authorities reaching the same conclusion and accordingly the proceedings were also concluded following the provisions of the CGST Act. To that extent, there is no indication of breach of principles of natural justice.
- Relying on *JSW Energy Ltd. v. Union of India [Writ Petition No. 5 of 2019]*, it was *inter alia* held that as per the legislative scheme under GST, the scope of Advance Ruling scheme is distinct from that of an Appeal / Revision. The Advance Ruling is binding in a limited sense. Where the appropriate authorities have dealt with issues in an extensive manner, the Court ought not to interfere in such cases.

Whether non-payment to supplier can leading to blocking of ITC?

Sunny Jain v. Union of India & others

[Writ Petition (C) 6444/2022 – Delhi High Court]

FACTS OF THE CASE

- The Petitioner is in the business and supply of mobile and mobile parts.
- Rule 86A of the CGST Rules entitles the Commissioner or any officer authorized by him in this behalf, not below the rank of Assistant Commissioner, to not permit debit (utilization) of the ITC lying to the credit in the Electronic Credit Ledger (“ECL”) of a taxpayer in certain circumstances.
- In the said case, the ITC lying in ECR was blocked on allegation that the Petitioner had not paid the consideration for supplies received from D.G. Impex (i.e. supplier) within the period of 180 days and therefore not fulfilled the conditions of section 16(2)(d).
- The Petitioner challenged the blocking on the grounds that the only reason for blocking the ITC is that he is ineligible to avail the same in view of Section 16(2). Moreover, his ITC was blocked for more than 18 months against the provisions of Rule 86A.

JUDGMENT

- The High Court *inter alia* held that a plain reading of Rule 86A of the CGST Rules indicates that the restriction, as contemplated therein can be imposed only where the ITC available in the ECR has been “fraudulently availed” or is “ineligible. There is no allegation that the Petitioner has “fraudulently availed” the ITC.
- Such a drastic measure and must be exercised limited. The provisions of Rule 86A ought to be strictly construed.
- The Revenue was directed to unblock the ITC as the action was carried without the authority of law. In any case, such action cannot extend beyond one year.

RECENT ADVANCE RULINGS

Whether equipment leasing between distinct persons constitutes “supply of services”?

In re: Chep India Pvt. Ltd.

[2022 (12) TMI 512 (Maharashtra AAR)]

FACTS OF THE CASE

- The Applicant is a part of a global organisation dealing with renting of reusable equipments for shared use amongst industrial and retail sectors throughout the supply chain.
- The Applicant was considering a business model wherein the ownership of all equipments will lie with its unit in the State of Maharashtra. The Maharashtra registration would be entering into arrangements with its other GST registrations / units across other States (viz. distinct persons) for leasing the equipment to them at agreed leasing or hiring charges. The other units would thereafter be issuing the equipment to its customers based on their business requirement.
- The Applicant accordingly sought an Advance Ruling on whether such a transaction with its other units would be a “lease transaction” and therefore a taxable supply. If yes, what is the value on which GST has to be charged (i.e. lease charges or value of equipment)

RULING

- The Maharashtra AAR observed that: (i) definition of supply is wide and includes lease within its ambit and (ii) in terms of Entry 5(f) of Schedule II, “transfer of right to use goods...” is a deemed service.
- A conjoint reading of Section 25 of the CGST Act and Schedule I creates a deeming provision wherein two registrations of the same company are considered as “distinct persons” and such “supply” is taxable under the GST even if carried out without consideration.
- On the issue of valuation, it was held that when the movement from one state to another happens on account of an order from the customer, the value as offered by the ultimate customer for the said services may be considered for adopting the value of branch transfer.
- The Maharashtra AAR refused to entertain question on the taxability of goods moving from Karnataka to Tamil Nadu on the instructions of the head office. It was *inter alia* held that if the situs of transaction is not within the state, the Maharashtra AAR cannot acquire jurisdiction qua the questions raised.

Whether ITC is available on canteen services provided to employees?

In re: Tata Motors Ltd.

[2022 (12) TMI 1363 – Gujarat AAAR]

FACTS OF THE CASE

- The Appellant is maintaining canteen facilities for their employees at their factory premises as per the mandate under the Factories Act, 1948. The Appellant is recovering nominal amount from employees and expenditure incurred towards canteen facility borne by them.
- The ruling sought is on (a) whether ITC is available to the Appellant on GST charged by the service provider on the canteen facility provided to employees working in the factory and (b) if yes, whether it will be restricted to the extent of cost borne by the Appellant.

RULING

- It was held that ITC will be available to the Appellant in respect of food and beverages as canteen facility is obligatorily to be provided under the Factories Act, 1948. **Circular No. 172/04/2022-GST dated 06.07.2022** to clarify the proviso, after Section 17(5)(b)(iii) of CGST Act, is applicable to whole clause (b) of Section 17(5). According to the provision, therefore, ITC will be available on obligations of an employer towards its employee.

- However, the Hon'ble AAAR also clarified that ITC on the above is restricted to the extent of cost borne by the Appellant for providing canteen services to its employees. The credit will not be available to the extent the same is embedded in the cost of food recovered from such employees. The AAAR relied on the judgment of the Hon'ble Bombay High Court in the case of **CCE Vs Ultratech Cement [2010 (260) ELT 369 (Bom)]**.

We hope you have enjoyed reading this update. For further information please write to us at insights@elp-in.com or connect with our authors:

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