



ECONOMIC
LAWS
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ADVOCATES & SOLICITORS



INDIRECT TAX NEWSLETTER

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NOTIFICATION/CIRCULARS

S. No	Reference	Particulars
Goods and Services Tax (GST)		
1	Notification Nos. 14, 15, 16/2023 – Central Tax	The CBIC has extended the due dates for filing of GSTR-1, GSTR-3B and GSTR-7 for the months of Apr'23 and May'23 to 30.06.2023 for taxpayers registered in Manipur.
2	Notification Nos. 17/2023 – Central Tax	The due date for filing of GSTR-3B for the month of May'23 for taxpayers registered in districts of Kutch, Jamnagar, Morbi, Patan and Banaskantha in Gujarat has been extended to 30.06.2023.
3	Instruction No. 03/2023 -GST	The CBIC has issued guidelines to the tax officers for processing applications for registration. The detailed guidelines aim to strengthen the verification process by the tax officers.
Customs		
4	Notification No. 39/2023-Customs	The Basic Customs Duty on refined soyabean oil and refined sunflower oil has been reduced from 17.5% to 12.5%.
5	Notification No. 45/2023-Customs (N.T.)	The amended tariff value for Palm Oil, Palmolein, Soya Bean Oil, and Brass Scrap falling under Chapters 1511 10, 1511 90, 1507 10, and 7404 00 has been notified. In addition, the revised tariff value for gold and silver, in any form falling under Chapter 71 or 98 has also been notified.
6	Circular No. 15/2023-Customs	<p>Mandatory additional qualifiers are to be submitted along with the import and export declarations for specified goods.</p> <p><u>Upon Import:</u></p> <p>Declaration of IUPAC name and CAS number of the constituent chemicals, for imports under the chapters 28, 29, 32, 38, and 39 of the Customs Tariff Act, 1975.</p> <p><u>Upon Export:</u></p> <ul style="list-style-type: none"> ▪ the declaration of the name of medicinal plant, for exports of parts of plants under chapter 12; ▪ the declaration of the name of the formulation, for exports of formulations of different streams of medicine under chapter 30; ▪ the declaration of the surface material that comes into contact with the chemical, for exports of various products under Chapter 84. <p>The additional qualifiers will be applicable to Bill of Entry/Shipping Bill filed on or after 01.07.2023.</p>
7	Circular No. 16/2023-Customs	<p>The circular outlines the procedure for the taxpayers to claim Input Tax Credit (ITC) or refund of the Integrated Goods and Services Tax (IGST) to be paid in cases involving violation of pre-import condition under Advance Authorization scheme. The Circular has been issued pursuant to the direction of the Supreme Court in a recent judgment. The procedure prescribed is as follows:</p> <p>(a) Importers should approach the concerned assessment group (jurisdiction port authority) with relevant details for purposes of payment of the IGST along with applicable interest.</p>

S. No	Reference	Particulars
		<p>(b) the assessment group will cancel the Out-of-Charge (OOC) and will indicate the reason in remarks. The bill of entry (BE) will be assessed again to charge the IGST.</p> <p>(c) the payment of IGST along with applicable interest is required to be made through the electronic challan generated in the Customs EDI System.</p> <p>(d) With the completion of the above payment, the assessment group will make a notional OOC to enable the transmission of details to the GST portal for ITC.</p>
8	Notification No. 43/2023-Customs (N.T.) and Circular No. 17/2023-Customs	The procedure for e-commerce exports of jewellery through courier mode has been further simplified in cases where exporters do not intend to re-import. While filing the Courier Shipping Bill (CSB) the requirement to upload photos of the export item, outer covering, and image of the listing on the e-commerce platform has been dispensed with. Further, item-level specifications will no longer be required to be filled and a declaration by the exporter will be sufficient.
Foreign Trade Policy		
9	Notification No. 11/2023 (DGFT)	The import policy of Copra falling under HS 12030000 is revised to restricted. Earlier the import of Copra was allowed by State Trading Enterprises.
10	Notification No. 12/2023 (DGFT)	In addition to SCOMET items falling under categories/sub-categories 1C, 1D, 1E, 3D001, and 3D004 (excluding software and technology), certain chemicals specified in Appendix 10(N) to certain specified countries mentioned under aforesaid Appendix 10(N) can also be exported/re-exported under the General Authorization for Export of Chemicals (GAEC).
11	Notification No. 13/2023 (DGFT)	The export policy of chrome ore falling under HS 2610 has been restricted and export will be permitted only after obtaining the requisite authorization.
12	Notification No. 14/2023 (DGFT)	The Category 5B of the SCOMET List under ITC-HS, that controlled the export of drones/UAVs is amended to simplify and liberalize the SCOMET policy. The export of Drones/UAVs specified at 5B(a)(ii), and not covered under Category 5B(a)(i) & 5(b), 6A010, 8A912, and capable of a range equal to or less than 25 km and delivering a payload of not more than 25 kgs (excluding the software and technology of these items), will now be subject to General authorization for Export of Drones (GAED) for 3 years with quarterly reporting.
13	Notification No. 15/2023 (DGFT)	The import policy of pocket cigarette lighters falling under HS 96131000 and 96132000 has been prohibited. However, the same are freely importable if the CIF value is INR 20/- or above per lighter.

RECENT CASE LAWS

Tax authorities to refund amount recovered through DRC-03 when no SCN issued

M/s Samyak Metals Pvt. Ltd. vs. Union of India & Ors. [2023 (6) TMI 183- P&H HC]

FACTS OF THE CASE

- The Petitioner is engaged in the business of manufacturing aluminium ingots. The premises of the Petitioner was searched by the tax authorities and in its course, the Petitioner was forced to deposit tax through DRC-03 on account of ITC which was alleged to have been wrongly availed.
- The Petitioner contended that amount has been recovered without issuing any adjudicating order or following the due process for issuance of Show Cause Notice (**SCN**) under Sections 73 or 74 of the CGST Act. Hence, the amount illegally recovered from the Petitioner was liable to be refunded.

JUDGMENT

- The Court observed that as per CBIC's *Instruction No. 01/2022-23* dated 25.05.2022 no recovery of tax should be made during search, inspection, or investigation unless it is voluntary payment. Further, if the payment of tax were voluntary, an acknowledgement accepting the payment in DRC-04 must be issued to the taxpayer as per Rule 142(2) of the CGST Rules.
- In the instant case, the amount was deposited under Section 74(5) of CGST Act, but neither has GST DRC-04 been issued nor any SCN under Section 74(1) of the CGST Act. Accordingly, the Respondent was directed to refund the amount illegally recovered, along with interest.

Prescribed time period from a specific date would exclude the first day in the series and expire on the date corresponding to the date upon which the time period commences

Arcelor Mittal Projects India Limited vs. Commissioner of Customs, Mundra [2023 (6) TMI 1013 - CESTAT Ahmedabad]

FACTS OF THE CASE

- The Appellant imported steel products after payment of customs duties including the Special Additional Duty (**SAD**). The duties were paid on 26.08.2011 and 25.08.2011. In terms of *Notification No.102/2007-Cus* dated 14.09.2007, two refund claims of the SAD component, were filed on 27.08.2012. However, the claims were rejected on account of being time barred, owing to a delay of one day and two days.
- The Petitioner stated that the limitation period for the refund must be calculated in accordance with Section 9 and 10 of the General Clauses Act, 1897. Accordingly, the first day is to be excluded from the computation, and if the last day falls on a weekend, the claim can be filed on the following working day.

JUDGMENT

- The Tribunal observed that in terms of Section 9 of the General Clauses Act, 1897, when the word 'from' is used, the first day in a series of days or any other period of time is to be excluded. The date of deposit on 26.08.2011 and 25.08.2011 meant that the time limit commenced on 27.08.2011 and 26.08.2011 respectively. Accordingly, the one year shall be completed on 27.08.2012 and 26.08.2012.
- The first refund claim filed on 27.08.2012 fell within the time limit and as regards the second refund claim, technically the one year ended on 26.08.2012. However, as it was a Sunday, the filing of the refund of Monday (i.e. 27.08.2012) was deemed to be within the prescribed time limit as per Section 10 of the General Clauses Act, 1897.

Salary component paid to secondees in India liable to service tax

Renault Nissan Automotive India Pvt. Ltd. vs. The Commissioner of GST and Central Excise [Service Tax Appeal No. 41736 of 2019- CESTAT Chennai]

FACTS OF THE CASE

- The Appellant entered into a secondment agreement with its foreign affiliate for obtaining secondees. The Appellant also entered into separate employment contracts with these secondees and paid them salary in India.

But the component of social security was paid by the foreign affiliate which was later reimbursed by the Appellant. The Appellant discharged service tax under RCM on such reimbursement.

- The department contended that the supply of secondees by the foreign affiliate is a “manpower recruitment or supply agency” service under Section 65(68) of the Finance Act, 1994. The activity qualifies as an import of services, and the Appellant is liable to pay service tax under RCM. Therefore, the salary and other benefits given to the secondees must be includible as part of the assessable value within the meaning of Section 67 of the Finance Act. The Appellant argued that the secondees have been treated as its own employees on their payroll, and there was no service provider-service recipient relationship with their foreign affiliate. Further, no consideration was charged for such services by the foreign affiliate.
- The question posed before the Tribunal was whether the salary and other benefits provided to the secondees by the appellant are includible as part of the assessable value within the meaning of Section 67 of the Finance Act, 1994?

JUDGMENT

- The Tribunal observed that there was no dispute as to the provision of manpower supply service, for which the Appellant had paid service tax under RCM. As per the terms of the secondment agreement, it is the Appellant who provides salary and other benefits to the secondees. Therefore, the money paid to the secondees is towards the cost incurred for making available the service which the Appellant has received. Such amount is constituted as ‘consideration’ under section 67 of the Finance Act, 1994 as it includes any amount payable for the taxable services provided or to be provided.
- However, it was held that there was no suppression of facts involved as it was within the knowledge of the Respondents. Therefore, service tax liability is only liable during the normal period.

ELP comments

It is relevant to note that the question of whether salary paid on secondment of employees is a taxable service under the Finance Act, 1994 is pending before the Supreme Court in *CCE v. Komatsu India Pvt. Ltd. (Civil Appeal Diary No. 24354/2022)*.

This is an important decision in light of numerous tax investigations which are currently underway on taxability of secondment transactions basis the judgment of the Apex Court in *Norther Operating [2022 (61) GSTL 129 (SC)]*. It is important that the assessee undertake a thread-bare analysis of their facts to distinguish them from the facts noted in *Northern Operating (supra)*.

Retrospective cancellation of supplier’s registration will not impact the ITC claim of the buyer

Gargo Traders vs. Joint Commissioner, Commercial Taxes (State Tax) & Ors. [2023 VIL 360 CAL]

FACTS OF THE CASE

- The Petitioner claimed ITC on purchase of goods from a supplier which the tax authorities sought to deny on the allegation that the supplier in question is a non-existing entity and the registration of the supplier stands cancelled with retrospective effect i.e. from the date prior to the transaction date with the Petitioner.
- The Petitioner contested its ITC eligibility on the basis that the transaction was genuine and duly supported by a valid tax invoice, debit note, e-way bill and bank account statements reflecting the payment.

JUDGMENT

- Considering the documents relied by the Petitioner, the Court observed that, it cannot be said that there was any failure on the part of the Petitioner in compliance with any statutory obligation before entering into the transactions. It also observed that at the time of the transaction, the supplier was a registered taxable person as per Government records, and the amount was paid through bank and not in cash.

- Thus, the Court allowed the writ petition and held that ITC cannot be denied solely on the ground that there has been a retrospective cancellation of the registration of the supplier.

RECENT ADVANCE RULINGS

Treatment of Substance use disorder (SUD) is not covered under healthcare services

In the matter Sanjeevani Psychiatric Clinic [2023-TIOL-82-AAR-GST]

FACTS OF THE CASE

- The Applicant is a clinical establishment that deals in providing treatment facility to persons suffering from substance use disorder (SUD) (addiction of drugs). The Applicant carry out the treatment of patients as 'outpatients' i.e. where the patient is not admitted.
- The Applicant filed an application seeking an advance ruling on whether the supply of services by treatment of patients suffering from SUD as outpatient is exempt under entry 74(a) of *Notification no. 12/2017-CGST Rate* dated 28.06.2017 that provides exemption on health care services by a clinical establishment.

RULING

- The AAR ruled that SUD treatment is not covered under the definition of health care services and therefore, supply of services by treatment of patients suffering from SUD as out-patient is not exempt under entry 74(a) of *Notification no. 12/2017-CGST Rate* dated 28.06.2017.
- The AAR noted that the as per scientific evidence there is a traditional separation between SUD treatment and mental health services in mainstream health care. Thus, denying the exemption, the AAR observed that services for the prevention and treatment of SUD have traditionally been delivered separately from other mental health and general health care services, as SUD is seen as a social/criminal problem.

ITC is not required to be reversed upon issuance of commercial credit-note for post-sale discounts

In the matter of Vedmutha Electricals India Pvt. Ltd. [TS-265-AAR(AP)-2023-GST]

FACTS OF THE CASE

- The Applicant is a distributor of electronic goods and receives post-sale discount from its supplier under various marketing schemes. For the discount, the supplier issues commercial credit notes to the Applicant. The supplier does not reduce its output tax liability in respect of the commercial credit notes.
- The Applicant sought an advance ruling as to whether it is eligible to avail full ITC of the tax charged in the tax invoice issued by the supplier after the issuance of the commercial credit note.

RULING

- The AAR observed that in terms of Section 15(3)(b), the benefit of lessening the post-sale discount from the transaction value is not allowed and therefore, amount received by the Applicant in the form of post supply discount will not affect transaction value between the supplier and the Applicant.
- Considering the above, the AAR ruled that as there is no corresponding reduction of outward liability at the end of the supplier, the reduction in ITC is not warranted. Thus, the Applicant would be eligible for full ITC charged by the supplier in the tax invoices.

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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