



ECONOMIC
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INDIRECT TAX NEWSLETTER

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Contents

NOTIFICATION/CIRCULARS.....	3
RECENT CASE LAWS	5
All services rendered on behalf of another do not qualify as intermediary services – Basis for alleging intermediary services to be considered.....	5
Interest payable in cases of inordinate delays in refund, even if there is no statutory provision for the same.....	5
Issuance of a vague show cause notice vitiates the entire proceedings, even if such allegation is not taken in appellate stage.....	6
Interest of indigenous manufacturer is a relevant factor to be considered while withdrawing an exemption or concession on customs duty.....	7
RECENT ADVANCE RULINGS	7
Reimbursable expenses to be part of value of consideration under Section 15 of the CGST Act.....	7
Supplier of goods and works contract services under two separate contracts is entitled to exclude the value of the latter for purpose of determining value of supply for benefit under Notification	8

NOTIFICATION/CIRCULARS

S. No	Reference	Particulars
Goods and Services Tax (GST)		
1	Notification No. 05/2023- Central Tax (Rate)	<p>CBIC extends the time limit till 31.05.2023 to opt for forward charge tax liability by Goods Transport Agencies (GTAs) for FY 2023-24.</p> <p>Further, GTA who commences new business or crosses threshold for registration during any financial year, may exercise the option to pay GST on the services supplied by it during that financial year by making a declaration in Annexure V before the expiry of forty-five days from the date of applying for GST registration or one month from the date of obtaining registration, whichever is later.</p>
2	Notification No. 10/2023 – Central Tax	<p>CBIC lowered the threshold limit for e-invoicing mandate to ‘five crores’ from ‘ten crores’, effective from 01.08.2023.</p>
3	Notification Nos. 11 to 13/2023- Central Tax	<p>CBIC extends the due date for furnishing FORM GSTR1, GSTR3B and GSTR7 for April 2023 for taxpayers having principal place of business in Manipur. Also, extends the due date for furnishing FORM GSTR-3B for the month of April 2023, for taxpayers having registered place of business in Manipur till May 31, 2023, effective from May 20, 2023.</p>
4	Instruction No. 02/2023-GST	<p>CBIC introduces a ‘Scrutiny Module’ for online scrutiny of returns on the ACES-GST application. The notification talks about the scrutiny schedule, process, timeline and reporting and monitoring of the process of scrutiny and its reports.</p>
Customs		
5	Circular No. 11/2023-Customs	<p>Implementation of Amnesty Scheme for one time settlement of default in export obligation by Advance and EPCG authorization holders <i>vide</i> Public Notice No 2 dated 01.04.2023 by DGFT. The Notice provides the procedure for regularization of <i>bona fide</i> defaults on payment of applicable Customs duty corresponding to shortfall of export obligation.</p>
6	Circular No. 11/2023-Customs	<p>Implementation of various duty remission / exemption or EPCG Schemes as mentioned in FTP including Advance Authorization (AA), AA for deemed export, AA for Annual Requirement, AA for export of prohibited goods, Duty Free Import Authorization, EPCG Scheme, Special Advance Authorization, RoDTEP and RoSCTL Schemes.</p>
7	Notification No. 34/2023-Customs (N.T.)	<p>The notification amends the tariff value (in US\$ per Metric Ton) for Palm Oil, Palmolein, Soya Bean Oil and Brass Scrap falling under Chapter 1511 10, 1511 90, 1507 10 and 7404 00. It also provides tariff value (in US\$) for Gold and Silver, in any form falling under Chapter 71 or 98. Further, it notifies the tariff value (in US\$ per Metric Ton) for Areca Nuts falling under the Head 080280.</p>
8	Notification No. 37/2023-Customs	<p>Exemption from Customs duty and Agriculture Infrastructure and Development Cess (AIDC), to Crude Soya-bean oil and crude sunflower seed oil falling under the head 1507 10 00 and 1512 11 10 respectively.</p>
9	Notification No. 38/2023-Customs	<p>Exempts all goods falling under tariff item 27011210 and 27011910 from the whole of Basic Custom Duty (BCD) and Agriculture Infrastructure and Development Cess (AIDC), and all goods falling under tariff item 27011290 from the whole of BCD and AIDC in excess of 1.5%. Further, it omits the goods falling under the tariff item 27011200 from exemption to BCD and AIDC.</p>

S. No	Reference	Particulars
10	Instruction No. 15/2023-Customs	The Electronic Certificate of Origin (e-CoO) issued by the Sri-Lanka issuing authority is a valid document for the purpose of claiming benefit under the India-Sri Lanka FTA if it has been issued in the prescribed format, bears seal and signatures of the authorized signatory and fulfills all the other requirements as provided in Notification No. 19/2000-Customs (N.T.) dated 01.03.2000.
11	Instruction No. 16/2023-Customs	CPCB has entered into an interim agreement with the Customs authorities to release the import consignments of producers of 85 EEEs items held due to non-compliance under the E-waste (Management) Rules 2022, on submission of undertaking in the prescribed format.
12	Instruction No. 17/2023-Customs	EPR registration certificate from CPCB is required in accordance with Battery Waste Management Rules, 2022 for import of battery as well as equipment containing battery.
13	Instruction No. 18/2023-Customs	DHA Algal oil falls in the category of microbial fats and oils, and will be classified under the heading 1515, 1516, 1517 or 1518 by application of General Rules of Interpretation (GIR) of Harmonized System.
14	Notification No. 1/2023-Customs (CVD)	Imposition of definitive countervailing duty ranging from 3 to 30 per cent of the CIF value on imports of "Saturated Fatty Alcohol of Carbon chain length C10 to C18 and their blends" falling under sub-headings 2905 17, 2905 19 and 3823 70 originating in or exported from Indonesia, Malaysia, and Thailand into India.
Central Excise		
15	Notification No. 22 /2023-Central Excise	Exemption from payment of Excise Duty has been extended to 'Petroleum Crude' falling under the Chapter or heading or sub-heading or tariff item 2709.
DGFT		
16	Trade Notice No. 05/2023-24	Extension of Interest Equalisation Scheme (IES) up to 31.03.2024.
17	Trade Notice No. 06/2023-24	The online facility of requesting appointment for virtual meeting / personal hearing to the exporters from the offices of DGFT has been introduced w.e.f. 01.06.2023 with an objective of trade facilitation and to extend proactive handholding and support to the exporting community.

RECENT CASE LAWS

All services rendered on behalf of another do not qualify as intermediary services – Basis for alleging intermediary services to be considered

McDonald's India Pvt. Ltd vs Additional Commissioner, CGST Appeals– II [TS-203-HC(DEL)-2023-GST]

FACTS OF THE CASE

The Petitioner entered into a Service Agreement with McDonald's USA to render certain services including consumer research, marketing, and advertising strategy, etc. against consideration on cost plus 10% mark-up basis.

The Petitioner filed an application for refund of GST paid on inputs used for these services for being zero rated supplies.

The Department rejected the Petitioner's claim for refund of ITC *vide* the Order-in-Original and held that the services rendered by the Petitioner could not be considered as export of services and in fact were in the nature of intermediary services whose place of supply is in India.

Thereafter, the Commissioner (Appeals) upheld the decision of the Revenue and stated that the supply of such services was located in India as it required the personal presence of the recipient of services or the person acting on its behalf and the place of supply of services under Section 13 of the IGST Act was in taxable territory and it did not qualify as exports under 2(6).

JUDGMENT

The court observed that the Show Cause Notice served to the Petitioner did not specify any grounds for denial of refund of ITC. It merely stated that the place of provision appears to be in India and ITC availed appears to be not admissible as per the CGST Act.

Rendering of services on behalf of another does not amount to intermediary services as held in ***Ernst and Young Limited v. Additional Commissioner, CGST Appeals-II, Delhi & Anr WP (C) 8600/2022*** and ***Ohmi Industries Asia Private Limited v. Assistant Commissioner, CGST WP (C) 6838/2022***.

The Appellate Authority has not considered that the Master License Agreement, which entitles the petitioner to enter into sub-license to franchisees, is separate to the Services Agreement. Further, the Appellate Authority did not have any basis to conclude that the Petitioner acted as a mediator between joint ventures / franchisees and McDonald's USA.

The place of supply of services under Section 13(3)(b) and 13(5) was not a matter of controversy, and no such allegation was mentioned in the Show Cause Notice and therefore, could not be raised *suo moto* by the Appellate Authority.

In any case, the supply of services by the Petitioner does not require the physical presence of McDonald's USA and thus, Section 13(3)(b) of the IGST Act is not applicable. Section 13(5) of the IGST Act contemplates supply of services by way of admission to, or organisation of different kinds of events. The services supplied by the Petitioner does not have any connection with the services under Section 13(5) of the IGST Act.

The High Court set aside the order of the Adjudicating Authority and remanded the matter to the Adjudicating Authority for fresh consideration.

Interest payable in cases of inordinate delays in refund, even if there is no statutory provision for the same.

Sesame Workshop Initiatives (India) Pvt. Ltd. vs. UOI & Ors. [TS-200-HC(DEL)-2023-GST]

FACTS OF THE CASE

The petitioner filed the petition claiming interest on the amount of refund sanctioned to the Petitioner.

The refund amount was INR 1,12,98,201/- that comprised INR 44,60,713/- on account of SGST and CGST each, and INR 23,76,775/- on account of IGST. The refund of sanctioned amount of INR 44,60,713/- for SGST was processed and disbursed on 09.03.2022. However, the refund of CGST and IGST was due despite a favourable order in this regard.

The present writ petition was confined to interest payable on the due amount. There were two components to this claim: one for the interest prior to order dated 04.10.2021 that has already been disputed before the concerned

authority and the same is pending, and second, for the delayed payment of INR 68,37,488/- after the refund sanction order was passed.

JUDGMENT

There has been an inordinate delay in disbursing the refund for the period commencing 04.10.2021, and interest is therefore payable.

The court relied on the observations of the Supreme Court in the cases of **Union of India v. Tata Chemicals Ltd. [(2014) 6 SCC 335]**, and **Sandvik Asia Limited v. Commissioner of Income Tax I, Pune [(2006) 2 SCC 508]** where it was held that the interest would be payable even in cases where there was no statutory provision for payment of interest.

Thus, petitioner is entitled to interest on the sum of INR 68,37,488/- from 01.11.2021, after considering the allowance period, till the date of payment i.e., 27.04.2023. As regards, the rate of interest, the Hon'ble High Court observed that the rate ought to be 'compensatory' and not necessarily pegged at 6%. However, since the counsel for the Petitioner did not press for a higher rate than the statutory 6%, the Hon'ble High Court deigned that it need not examine the question further.

Issuance of a vague show cause notice vitiates the entire proceedings, even if such allegation is not taken in appellate stage

Durge Metals thr. Proprietor v. Appellate Authority and Joint Commissioner State Tax thr. Sagar Division (Madhya Pradesh) [2023-VIL-294-MP]

FACTS OF THE CASE

- Writ petition filed challenging the show cause notice issued under Section 74(1) of GST Act for being vague and thus not satisfying the requirements of the said provision r/w Rule 142 of GST Rules. The Petitioner alleged that it did not communicate relevant information and material thereby disabling the petitioner to respond to the same. Thus, the consequent proceedings and orders were bad in law.
- The petitioner also contended that the notice neither contained the material and information nor the statement containing details of ITC transaction under consideration in the subject show cause notice.
- Reliance was placed on the decision of **Sidhi Vinayak Enterprises Vs. The State of Jharkhand & Ors. 2022 VIL 702 JHR** where a similar show cause notice under the same provisions was held to be vague and cryptic.
- The Respondent alleged that this argument was not raised in the reply to the appellate proceedings.

JUDGMENT

- The Hon'ble Madhya Pradesh High Court observed that though the petitioner had not specifically raised the ground on vagueness of show cause notice before the appellate authority, mandatory provisions of Section 74 of GST Act make it incumbent upon the Revenue to ensure the show cause notice be speaking enough to enable the assessee to respond to the same.
- Further, the Statute itself prescribes for affording reasonable opportunity. Any deficiency in that regard vitiates the end result.
- Reliance was placed on the **Sidhi Vinayak decision (supra)** wherein it was held that a vague show cause notice amounts to violation of principles of natural justice and thus liable to be quashed. Thus, the proceedings were held to be vitiated for being vague.
- The above judgment held that Section 75 of GST Act prescribes for various stages or determination of wrongful utilization of ITC subject to affording of reasonable opportunity of being heard to the assessee. Where the Statute itself prescribes for affording reasonable opportunity, it is mandatory that the Revenue provide a reasonable opportunity for the same to the assessee.

Interest of indigenous manufacturer is a relevant factor to be considered while withdrawing an exemption or concession on customs duty

Union of India and Ors. V. A.B.P. Pvt. Ltd. (2023-VIL-55-SC-CU)

FACTS OF THE CASE

- A.B.P Pvt Ltd imported specific printing machines along with necessary parts and accessories. Under Notification No. 86/2003-Cus dated 28.05.2003, printing machines including the category of machines imported by the assessee were liable to a concessional rate of 5%. However, the said notification was amended on the ground of 'public interest' whereby the said category of printing machines became liable to duty at 39.2%.
- The assessee consequently became liable to 29.2% customs duty for a subsequent import.
- The Petitioner filed a writ petition challenging the amended notification as *ultra vires* Section 25(1) of the Customs Act, 1962.
- The single and division bench of the High Court ruled in favour of the Petitioner as there was no *intelligible differentia* for granting the concession to one category of printing machine and not the other category, and thus directing that the concession be granted to the imported machine.
- The Department argued that in terms of Section 21 of the General Clauses Act, 1897, the Union's power to issue a notification includes the power to withdraw the same. Further, there was sufficient representation from the domestic industry seeking the amendment.

JUDGMENT

- The Hon'ble High Court has erred in judging the reasons which led the executive to issue the amended notification. In other words, the observation that the indigenous manufacturer's angle and the adverse impact caused on them by grant of an exemption to a similar class of imported goods, is not to be considered germane or irrelevant.
- In this case, the grant of concession would impact indigenous newspaper publishers which would directly affect freedom of speech.
- The impugned judgment of the High Court was set aside on the basis that the amendment was not in public interest and the appeal was allowed.

RECENT ADVANCE RULINGS

Reimbursable expenses to be part of value of consideration under Section 15 of the CGST Act

In the matter of Uttarakhand Public Financial Strengthening Project [TS-201-AAR (UTT)-2023-GST]

FACTS OF THE CASE

The applicant entered into agreements with two services providers supplying motor vehicles: Baba Tour & Travel and Rajeshwari Travel.

The terms of the agreement provided for a rate list for the service and stated that fuel charges and GST would be reimbursed separately. Further, it provided that the service provider shall arrange for fuel and maintenance of vehicles deployed in favour of the recipient.

On submitting the claims for a particular month, it was observed that both the service providers followed two different methodologies to calculate the leviable tax, where Baba Tour & Travel Services was charging @ 5% GST on the whole bill amount (monthly rent + night charges + fuel on mileage basis) whereas Rajeshwari Travel was charging 5% GST on monthly rent component of bill and no GST on fuel charges.

The Applicant approached the AAR for clarification on the appropriate methodology to determine the leviable tax on the subject supplies.

RULING

The Uttarakhand AAR ruled that the suppliers must charge GST on whole amount of bill which includes monthly rental plus night charges plus fuel on mileage basis and not merely on the monthly rental (excluding night charges and fuel on mileage basis).

It was further ruled that the reimbursement of expenses for providing the above services are additional consideration for the provision of motor vehicle hire services and shall form part of value of supply and attracts GST on the total value.

The AAR held that the *expression 'supplier is liable to pay in relation to such supply'* occurring Section 15 of the CGST Act leaves no iota of doubt that value of supply includes *"any amount that the supplier is liable to pay" but has been incurred by the recipient and "not included in the price actually paid or payable for the goods or services or both"*.

Reliance was placed on the contract between the Applicant and service provider, where the liability to arrange fuel on mileage basis and maintenance of vehicle lies with the service provider. The fuel cost and additional expenses are thereafter reimbursed by the Applicant. Hence, the AAR held that as per Section 15 the reimbursement of expenses for providing the said services is an additional consideration for the provision of said services and thus GST would be attracted on the total value of supply including the reimbursable expenses incurred by the supplier.

It further relied on the decision No. KAR ADRG 44/2021 dated 30.07.2021 of the AAR, Karnataka in Re: Goodwill Auto's, Hubballi, Dharwad wherein it was held that the cost of diesel incurred for running a DG Set in course of providing DG Rental Service is additional consideration for the supply of DG Set on rent as per Section 15 of the GST Act.

Supplier of goods and works contract services under two separate contracts is entitled to exclude the value of the latter for purpose of determining value of supply for benefit under Notification

In the matter of PES Engineers Pvt. Ltd. [TS-202-AAR(TEL)-2023-GST]

FACTS OF THE CASE

The Applicant contracted with Singareni Collieries Company Limited for *"Design, Manufacture, Test, Deliver, Install, Complete & Commission and to conduct guarantee test of certain facilities viz., Fuel Gas de-sulphurisation (FGD) system package"*.

The Applicant was before the Authority of Advance Ruling seeking clarity on whether it was eligible to the benefit prescribed under Notification No. 66/2017-CT dated 15.11.2017 wherein a registered supplier is not required to pay tax on advance received on supply of goods. Therefore, the issue before the Authority of Advance Ruling was whether it is required to pay GST on "initial advance" of 5% and "interim" advance of 7.5% on value of goods supplied under the First Contract Agreement.

Two separate contracts had been signed, one for supply of goods on ex-works basis and the second for *"Inland Transportation of the main equipment, inland transit insurance, unloading at site, storage, erection, civil works, Safety aspects / Compliance to Safety Rules and other services insurance covers other than inland transit insurance, testing, commission and conducting guarantee tests"*.

The applicant had received advance payment of 5 percent of the total ex-works price component as initial advance payment and 7.5 percent of the total ex-works price component as Interim Advance Payment under the First Contract Agreement.

As a corollary, the applicant sought clarification on whether the two contracts shall constitute a 'composite supply' where the principal supply is the second contract i.e. the 'works contract service' or both the contracts have to be treated as separate transactions for which the 'time of supply' and 'rate of tax' to be levied would differ as per the provisions of the CGST Act, 2017. In case of the former, the applicant would be disentitled to the benefit of Notification No. 66/2017 (supra).

In furtherance of the above question, the applicant submitted that each contract ought to be assessed individually for the purpose of GST since the sums of advance money had been given under the First contract for supply of goods only. Thus, it is entitled to benefit under Notification No. 66/2017- Central Tax on the value thereof without inclusion of the supply under the second contract.

It was further contended by the Applicant that his responsibility under the first contract completes with making goods (ex-works) available and loading them on to the mode of transport. It is supply of goods under First contract if the recipient holds the title of goods before the Second contract is initiated which involves inland transportation for delivery at site, inland transit insurance etc. in respect of all the plants and equipment supplied under the 'First Contract'. This has been further substantiated and can be relied on as per Clause 31 of the General Conditions of the said Contract.

RULING

The Hon'ble AAR observed that multiple supplies of both goods and services were being undertaken as part of two separate contracts, where the First Contract is a supply of goods. The supply under second contract is primarily a service of Transportation, Insurance, Unloading at Site, Storage, Erection, etc of the items/goods supplied under First Contract. The scope of work undertaken under the individual contracts are independent of and are not associated with each other.

It was by opined by the Hon'ble AAR that *"the supply under second contract commences only on completion of all the milestone activities of first contract"* since the responsibility of the Applicant under the first contract ends with the dispatch of goods after which the second contract which is for 'Works Contract' commences.

It was held that for a supply to be considered a 'Composite Supply', its constituent supplies should be so integrated with each other that one cannot be supplied in the ordinary course of business without or independent of the other i.e., they should be naturally bundled.

It was also observed that since transfer of property in the goods supplied under the first contract is not taking place during the execution of the 'Works Contract' under second contract, the value thereof cannot be included in the 'Works Contract' and thus not a 'composite supply'.

Thereby, it was held that where the milestone payments were paid in advance was solely towards the first contract for supply of goods. Accordingly, the applicant is eligible to claim the benefit under Notification No. 66/2017- Central Tax to pay GST on advance payment on supply of goods under the first contract without inclusion of the value of the second contract therein.

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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