



ECONOMIC
LAWS
PRACTICE
ADVOCATES & SOLICITORS



INDIRECT TAX NEWSLETTER

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CIRCULARS & NOTIFICATIONS

S. No	Reference	Particulars
Goods and Services Tax ('GST')		
1	Notification No. 52/2023 - Central tax and Circular No. 204/16/2023 - GST	<p>Pursuant to GST Council's 52nd meeting, proviso is inserted in Rule 28 of the CGST Rules, 2017 ('CGST Rules'). The said proviso prescribes a deemed value of corporate guarantee provided to any banking company or financial institution on behalf of a related person, at 1% of the amount of such guarantee offered, or the actual consideration, whichever is higher.</p> <p>Subsequently, a Circular providing the clarification with respect to the above amendment is issued as under:</p> <ul style="list-style-type: none"> ▪ Providing personal guarantee and corporate guarantee qualifies as supply under GST in terms of Schedule I. ▪ The value of the above supplies is to be determined in terms of the proviso to Rule 28 of the CGST Rules. ▪ In cases where no payment can be made to the director for personal guarantee as per the RBI guidelines, in that case, open market value shall be zero and thus, taxable value shall also be zero.
2	Notification No. 12/2023 - Central tax (Rate) and Circular No. 206/17/2023 - GST	<p><i>Vide</i> the said Notification, a condition is inserted that in case supplier of input service in the same line of business charges GST at a rate higher than 2.5%, Input Tax Credit ('ITC') on the input service in the same line of business shall be restricted to 2.5%. The said condition is inserted for the following services:</p> <ul style="list-style-type: none"> ▪ Transport of passengers by any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient. <i>[Passenger Transportation Services]</i> ▪ Renting any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient. <i>[Rental services of transport vehicles with operator]</i> <p>Subsequently, a Circular is issued with respect to the above amendment. It clarifies that 'same line of business' includes transport passenger service (SAC 9964) and renting of motor vehicles with operator (SAC 9966) but does not include leasing of motor vehicles without operators (SAC 9973).</p> <p>Separately, <i>vide</i> the said Notification, GST rate for specified actionable claim which <i>inter alia</i> includes gambling, is notified as 28% with effect from October 1, 2023.</p>
3	Notification No. 15/2023 - Central tax (Rate)	<p>The said Notification specifies that refund of unutilized ITC shall not be allowed under Section 54(3) of the Central Goods and Services Tax Act, 2017 ('CGST Act') in respect of supply of services of construction of a complex, building or a part thereof, intended for sale to a buyer, wholly or partly, where the amount charged from the recipient of service includes the value of land or undivided share of land, as the case may be. However, refund is allowed in cases where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.</p>

S. No	Reference	Particulars
4	Notification No. 16/2023 – Central tax (Rate)	The said Notification specifies that in case of services by way of transportation of passengers by omnibus, tax on supplies shall be paid by the electronic commerce operator. This is not applicable in cases where the person supplying such service through electronic commerce operator is a company.
5	Notification No. 17/2023 – Central tax (Rate) and Notification No. 18/2023 – Central tax (Rate)	<i>Vide</i> the said Notifications, GST rate for the following goods is amended with effect from October 20, 2023: <ul style="list-style-type: none"> ▪ GST rate for Molasses (<i>HSN 1703</i>) is reduced from 28% to 5%; ▪ GST exemption is provided for food preparation of millet flour, in powder form, containing at least 70% millets by weight (<i>HSN 1901</i>), however, if it is pre-packaged and labelled, then applicable GST rate is 5%; ▪ GST rate for Spirit for industrial use (<i>HSN 2207 10 12</i>) is 18%.
6	Notification No. 20/2023 – Central tax (Rate) and Circular No. 205/17/2023 - GST	<ul style="list-style-type: none"> ▪ Pursuant to GST Council's 52nd meeting, the Circular clarified that imitation zari thread or yarn made from metallised polyester film/ plastic film falling under HS 5605 are covered by Sr. No. 218AA of Schedule I attracting 5% GST. ▪ The GST Council has also recommended that refund will not be allowed for supply of imitation zari thread or yarn made from metallised polyester film /plastic film under inverted duty structure. Requisite changes have been made in the said Notification.
7	Notification No. 05/2023 – Integrated tax	<ul style="list-style-type: none"> ▪ Earlier, Notification No. 01/2023 dated July 1, 2023 specified that all goods or services (except the specified goods) can be exported on payment of integrated tax and the supplier of such goods or services may claim the refund of tax so paid. ▪ <i>Vide</i> the said Notification, the above benefit is extended to all the suppliers making supply to a Developer or a unit in Special Economic Zone ('SEZ') undertaking authorized operations, who may make supply of goods or services (except the specified goods) to such Developer or a unit in SEZ for authorized operations on payment of integrated tax.
8	Notification No. G.S.R. 793(E) - CGST	<ul style="list-style-type: none"> ▪ The Central Government <i>vide</i> the said Notification has notified Goods and Services Tax Appellate Tribunal (Appointment and Conditions of Service of President and Members) Rules, 2023. ▪ The above rules <i>inter-alia</i> lay down the provisions for appointment/ removal of President and Member, salary and allowances and their powers.
9	Circular No. 202/16/2023 - GST	<ul style="list-style-type: none"> ▪ <i>Vide</i> the said Circular, it is clarified that in relation to the export of services, settlement of export consideration in Indian Rupee ('INR') through VOSTRO account shall be considered as fulfilment of the conditions of Section 2(6)(iv) of the Integrated Goods and Services Tax Act, 2017 ('IGST Act').
10	Circular No. 203/16/2023 - GST	Pursuant to GST Council's 52nd meeting, the Circular clarifies the place of supply for the following supplies: <ul style="list-style-type: none"> ▪ Supply of service of transportation of goods, including through mail and courier;

S. No	Reference	Particulars
		<ul style="list-style-type: none"> Supply of services in respect of advertising sector; and Supply of the “co-location services”.
11	Circular No. 206/17/2023 - GST	<p><i>Vide</i> the said Circular, it is clarified as follows:</p> <ul style="list-style-type: none"> GST is applicable on reimbursement of electricity charges received by real estate companies, malls, airport operators etc. from their lessees/occupants in case electricity is being supplied bundled with renting of immovable property and/or maintenance of premises since it forms a part of composite supply. It is taxable at the GST rate applicable to principal supply irrespective of whether such charges are billed separately or not. However, in case the electricity is supplied as a pure agent, it will not form part of the value of their supply. Job work services for processing of “Barley” into “Malted Barley” attracts 5% GST as applicable to “job work in relation to food and food products” irrespective of the end use of “Malt” and not 18% as applicable on “job work in relation to manufacture of alcoholic liquor for human consumption”. District Mineral Foundations Trusts (‘DMFTs’) set up by the State Governments are Governmental Authorities and are eligible for the same exemptions from GST as available to any other Governmental Authority. Pure agent services and composite supplies by way of horticulture/horticulture works (where the value of goods constitutes not more than 25 per cent of the total value of supply) made to CPWD are eligible for exemption from GST
Customs		
12	Notification No. 60/2023 – Customs	<ul style="list-style-type: none"> Pursuant to GST Council’s 52nd meeting, effective rates of customs duty and IGST for goods imported into India <i>via</i> Foreign Going Vessel converted for a coastal run are notified <i>vide</i> the said Notification.
Directorate General of Foreign Trade (DGFT)		
13	Public Notice No. 34/2023 - DGFT	<p><i>Vide</i> the said Public Notice, amendments in Para 4.10(i) of the Handbook of Procedures 2023 have been notified which <i>inter alia</i> provide for availment of ITC of GST paid in case of transfer of duty free imported or indigenously procured material against Advance Authorization Scheme.</p>
14	Notification No. 38/2023 – DGFT	<p><i>Vide</i> this Notification, Policy Condition 4(iv) of Chapter 84 of Schedule-I of ITC(HS) 2022 is amended for exempting the imports from an Import Authorisation as under:</p> <ul style="list-style-type: none"> Import of IT Hardware manufactured in SEZ into DTA Import by private entities on behalf of Central & State Government Entities, for Defence & Security purposes.

RECENT CASE LAWS

Amendment to Rule 89(4)(C) of the CGST Rules restricting refund by capping export turnover value is to be applied prospectively

Indian Herbal Store Private Limited Vs Uoi [TS-504-HC(DEL)-2023-GST]

FACTS OF THE CASE

The Petitioner has filed refund of accumulated unutilised ITC on export of goods for the period October 2018 to September 2019. The Petitioner has filed separate applications for 4 quarters comprising of the period October 2018 to September 2019. The Petitioner's refund claim was rejected *vide* the Adjudication Order on two basis i.e., (i) non-submission of the relevant Foreign Inward Remittance Certificates ('FIRCs') and its co-relation with the exports made and (ii) computation of the eligible export turnover was not in compliance with amended Rule 89(4)(C) of the CGST Rules. Being aggrieved, the Petitioner has challenged the said Order before the Appellate Authority. The Appellate Authority allowed the appeal to the extent of non-submission of FIRC but has rejected the refund claim on the ground that eligible export turnover was not in compliance with amended Rule 89(4)(C) of the CGST Rules. Being aggrieved with the Order passed by the Appellate Authority, the Petitioner has filed the Writ Petition before the Delhi High Court on the following grounds (i) Rule 89(4)(C) of the CGST Rules which was substituted by the Central Goods and Services Tax Act (Third Amendment) Rules, 2020 *w.e.f.* March 23, 2020, has no application for refund in respect of exports made prior to the said date and (ii) Rule 89(4)(C) of the CGST Rules is *ultra vires* the provisions of Section 54 of the CGST Act, Section 16 of the IGST Act and Article 14 of the Constitution of India. Therefore, Rule 89(4)(C) is liable to be struck down.

JUDGMENT

The Delhi High Court held that the right for refund of the accumulated ITC stands crystallised on the date when the goods are exported. Further, the High Court has emphasised on the meaning of the term 'turnover' as understood in ordinary sense which means the gross value of exports on a historical basis. Reference in this regard was also made to the ruling of Supreme Court in *Secy., Ministry of Chemicals & Fertilizers, GOI vs Cipla Ltd., [(2003) 7 SCC]* wherein the Supreme Court emphasised on the meaning of the term 'turnover'. On this basis, the High Court has concluded that turnover has to be read in reference to the period to which it relates and thus, ITC pertaining to the turnover of a period must be ascertained in terms of the Rules as was in existence during the said period. Basis this, it was held that the Appellate Authority has erred in applying amended Rule 89(4)(C) of the CGST Rules to the present case. Additionally, the High Court has also held that the amendment of Rule 89(4)(C) of the CGST Rules has been struck down by the Karnataka High Court in W.P.(C) No.13185/2020 in *M/s Tonbo Imaging India Private Ltd. vs. UOI*. Accordingly, the High Court has set aside the Order passed by the Appellate Authority and directed the Respondents to process the refund claim along with interest.

Permission granted to the Respondents to utilize the amount deposited in Electronic Cash Ledger towards pre-deposit

Batra Brothers Private Limited vs Union Territory of Ladakh & Anr [TS-542-HC(J&K)-2023-GST]

FACTS OF THE CASE

The Petitioner has filed an appeal before the Appellate Authority. The Petitioner has deposited the pre-deposit amount in Electronic Cash Ledger instead of depositing the said amount with the Respondents. However, the Appellate Authority rejected the appeal filed by the Petitioner on the ground of non-payment of 25% pre-deposit of the penalty amount as mandated under proviso to Section 107(6) of the CGST Act read with Section 21 of the Union Territory Goods and Service Tax Act, 2017 ('UTGST Act'). Being aggrieved with the Order passed by the Appellate Authority, the Petitioner has filed the Writ Petition before the Jammu & Kashmir High Court.

JUDGMENT

The Jammu and Kashmir High Court placed reliance upon Section 49(3) of the CGST Act and held that amount available in the Electronic Cash Ledger can be used by the Petitioner for making any payment towards tax, interest, penalty, fees or any other amount payable. In the instant case, as the Petitioner has deposited the requisite amount in the Electronic Cash Ledger, the High Court permitted the Respondents to take out the pre-deposit amount from the Electronic Cash Ledger and utilize the pre-deposit amount. Accordingly, the High Court allowed the Writ Petition filed by the Petitioner.

Appeal can be filed by the transporter challenging the Order passed against him even though the tax & penalty is paid by the owner of the goods to release the goods

M/s Stanship Logistics Private Limited vs State of Maharashtra & Others [2023 (10) TMI 97 – Bombay High Court]

FACTS OF THE CASE

The Petitioner is engaged in the transportation of goods. One of the Petitioner's customer, M/s. Blue Star Ltd., imported a consignment of split air conditioners and filed a bill of entry for clearance. During the course of transportation of goods, E-way bill was generated, but it was updated with a new vehicle number due to a breakdown of one of the trucks. Thereafter, the GST authorities intercepted the truck and, after physical verification, ordered for detention under Section 129(1) of the CGST Act, citing the "validity of E-way bill expired." The Adjudicating Authority *vide* the Adjudication Order has confirmed the IGST demand and imposed penalty upon the Petitioner under Section 129 of the CGST Act. However, in order to secure the release of goods, M/s Blue Star deposited the said amount on behalf of the Petitioner. Being aggrieved with the Adjudication Order, the Petitioner filed an appeal before the Appellate Authority. The Appellate Authority refused to take an appeal on record by making a note on the covering letter that payment of tax and penalty under Section 129(1) of the CGST Act is paid by M/s Blue Star Ltd. i.e., owner of the goods and the Petitioner being a transporter cannot file an appeal. Being aggrieved with the said action, the Petitioner has filed the Writ Petition before the Bombay High Court.

JUDGMENT

The Bombay High Court held that the fact that the goods were released to M/s. Blue Star Ltd. by making the payment of tax and penalty on behalf of the Petitioner does not indicate that the appeal has to be filed by M/s. Blue Star Ltd. Further, the payment made by M/s. Blue Star Ltd. was also deducted from the Petitioner's account by M/s. Blue Star Ltd. Additionally, the Appellate Authority has failed to bring on record any specific provision under the CGST Act that would prevent a person against whom the Adjudication Order is passed, but the tax and penalty has been paid on their behalf by someone else, from filing an appeal challenging the Adjudication Order before the Appellate Authority. Given this, the High Court held that the Appellate Authority was not justified in refusing to accept the appeal on record. Accordingly, the High Court quashed the Order passed by the Appellate Authority and directed the Petitioner to file the appeal manually.

Power of the Central Goods and Service Tax auditors under the GST regime to conduct audit under Section 72A of the Finance Act, 1994 was challenged

M/s Woodland Works(I) Private Limited vs UOI & Others [2023 (10) TMI 889 – Gauhati High Court]

FACTS OF THE CASE

The Petitioner was registered under the provisions of Finance Act, 1994. The Petitioner received a notice for conduct of audit under Section 72A of the Finance Act for the period April 2015 to June 2017. The said audit notice was issued after the enactment of GST Laws. The Appellant has replied to the audit notice, and based on the audit observations, the Petitioner was issued a Show cause Notice ("SCN"). Being aggrieved with the said action, the Petitioner filed the Writ Petition challenging the said SCN before the Gauhati High Court on the ground that entire show cause proceedings has been initiated on the basis of the audit report and the audit report has been issued in violation of Section 174 of the CGST Act. i.e., after implementation of GST Laws, as per the saving clause, the adjudicating authorities are only empowered to recover the unpaid tax for the pending proceeding. Power to conduct audit are not saved by virtue of Section 174 of the CGST Act. Thus, the instant show cause proceedings are totally without jurisdiction.

JUDGMENT

The Gauhati High Court held that in terms of Section 174(2)(e) of the CGST Act, powers which were vested upon the authorities in respect to the period prior to 01.07.2017 pertaining to inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication or other legal proceedings etc. were saved by virtue of saving clause. However, the procedure in which the power of audit is to be exercised which is Section 72(A) of the Finance Act, 1994 is not saved. Under such circumstances, the High Court, relied on the settled principal of law rendered by Supreme Court in **Vivek Narayan Sharma and Others vs. UOI & Others** wherein it was held that Court should interpret the statute in such manner as the statute becomes workable. Accordingly, the High Court held that if any audit is required to be carried out for the purpose of verification or investigation, the same has to be done in accordance with Chapter- XIII of the CGST Act i.e., Section 65 of the CGST Act (which relates to audit by Tax Authorities) and Section 66 of the CGST Act (which relates to Special audit). Therefore, the High Court concluded that the audit which was carried out by the

Respondent cannot be said to be without jurisdiction and consequently, the issuance of SCN cannot also said to be without jurisdiction.

Tax invoices, e-way bills, GR and payment through banking channel not conclusive evidence of actual movement of goods. ITC not admissible.

M/s Malik Traders vs State of UP & Others [2023-TIOL-1347-HC-ALL-GST]

FACTS OF THE CASE

The Petitioner has purchased waste materials, plastic scrap, paper scrap and metal scrap through various suppliers. The Petitioner has availed ITC on such purchases. The said goods were transported through trucks along with bilties and payments were made through cheques or RTGS / NEFT. Thereafter, a SCN was issued to the Petitioner under Section 74 of Uttar Pradesh Goods and Service Tax Act, 2017 ('UPGST Act') on the ground of wrong availment of ITC due to non-submission of adequate documents. The Petitioner filed detailed reply to the SCN. However, the Adjudicating Authority has confirmed the entire demand raised in SCN. Being aggrieved *vide* the Adjudication Order, the Petitioner filed an appeal before the Appellate Authority. However, the Appellate Authority rejected the appeal filed by the Petitioner. Being aggrieved, the Petitioner filed the Writ Petition before the Allahabad High Court.

JUDGMENT

The Allahabad High Court held that the benefit of ITC can be availed only on fulfilment of certain conditions or restrictions as stipulated under Section 16 of the CGST Act. In the present case, the Petitioner has only brought on record the tax invoices, e-way bills, goods receipt and payment through banking channel, however, no such details other details such as payment of freight charges, acknowledgement of taking delivery of goods, toll receipts and payment thereof has been provided. Given this, in the absence of these documents, the actual physical movement of goods and genuineness of transportation as well as transaction cannot be established. Additionally, no proof of filing of Form GSTR-2A has been brought on record. Thus, the proceedings have been rightly initiated against the Petitioner. Accordingly, the High Court dismissed the Writ Petition filed by the Petitioner.

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:

Adarsh Somani, Partner, Email – adarshsomani@elp-in.com

Sahil Kothari, Associate Partner, Email – sahilkothari@elp-in.com

Pragya Koolwal, Senior Associate, Email – pragyakoolwal@elp-in.com

Akanksha Sonaghela, Associate, Email – akankshasonaghela@elp-in.com

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**ECONOMIC
LAWS
PRACTICE**
ADVOCATES & SOLICITORS

MUMBAI

9th Floor, Mafatlal Centre
Vidhan Bhavan Marg
Nariman Point, Mumbai 400 021
T: +91 22 6636 7000

DELHI NCR

NEW DELHI

DR Gopal Das Bhawan, 16th Floor,
28, Barakhamba Road,
New Delhi – 110 001.
T: +91 11 41528400

NOIDA

9th Floor, Berger Tower, Sector 16 B,
Noida, Uttar Pradesh - 201301.
T: +91 120 6984 300

AHMEDABAD

C-507/508, 5th Floor, Titanium Square
Thaltej Cross Roads, SG Highway,
Ahmedabad - 380054
T: +91 79460 04854

PUNE

202, 2nd Floor, Vascon Eco Tower
Baner Pashan Road
Pune 411 045
T: +91 20 4912 7400

BENGALURU

6th Floor, Rockline Centre
54, Richmond Road
Bengaluru 560 025
T: +91 80 4168 5530/1

CHENNAI

No 18, BBC Homes, Flat-7 Block A
South Boag Road
Chennai 600 017
T: +91 44 4210 4863

GIFT CITY

GIFT CITY Unit No. 605,
Signature, 6th Floor Block 13B,
Zone – I GIFT SEZ, Gandhinagar 382355

 elplaw.in

 insights@elp-in.com

 [/elplaw.in](https://www.facebook.com/elplaw.in)

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