



ECONOMIC
LAWS
PRACTICE
ADVOCATES & SOLICITORS



INDIRECT TAX NEWSLETTER

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NOTIFICATION/CIRCULARS

S. No	Reference	Particulars
Goods and Services Tax (GST)		
1	Notification No. 09/2023- Central Tax dated 31.03.2023	<ul style="list-style-type: none"> ▪ Time limit specified under Section 73(10) of the Central Goods and Services Tax Act, 2017 (CGST Act) for issuance of order for recovery of tax or input tax credit wrongly availed or utilized, has been extended as specified below: <ul style="list-style-type: none"> – for financial year 2017-18, up to 31.12. 2023; – for financial year 2018-19, up to 31.03.2024; – for financial year 2019-20, up to 30.06.2024.
2	Notification No. 08/2023- Central Tax dated 31.03.2023	<ul style="list-style-type: none"> ▪ Late fee referred to in Section 47 of the CGST Act (in excess of five hundred rupees, waived) for registered persons who fail to furnish the final return in FORM GSTR-10 by the due date. However, it is essential to furnish the said return between the period 01.04.2023 to 30.06.2023.
3	Notification No. 1/2023- Compensation Cess (Rate) dated 28.02.2023	<ul style="list-style-type: none"> ▪ Extension of the benefit of Nil rate of GST compensation cess on coal rejects supplied to a coal washery or by a coal washery, on which compensation cess has been paid and input tax credit not availed. ▪ Prior to the said amendment, benefit of Nil rate was available only to coal rejects supplied by a coal washery arising out of coal on which compensation cess has been paid and input tax credit not availed.
Amnesty Scheme		
4	Maharashtra Amnesty Scheme	<p>The State Government of Maharashtra vide Maharashtra State Budget 2023-24 proposes to introduce an amnesty scheme called 'Maharashtra Settlement of Arrears of Tax, Interest, Penalty or Late Fee Act, 2023' in respect of State Tax laws in force prior to the implementation of the Goods and Services Tax Act. The said scheme will come in force from 01.05.2023 to 31.10.2023 and will be applicable for the arrears pending as on 01.05.2023. Key features of the scheme, are as follows:</p> <ul style="list-style-type: none"> ▪ Complete waiver of arrears, where the arrear for any year is up to INR 2 lakhs as per statutory order. ▪ 80% waiver of arrears, where the arrears are up to INR 50 lacs as per statutory order and the dealer pays 20 % of arrears.
Customs Act		
5	Notification No. 16/2023-Customs dated 03.03.2023	<ul style="list-style-type: none"> ▪ Exemption from payment of Basic Customs Duty (BCD) and Integrated Goods and services Tax Act (IGST) has been extended to Legume – 'Tur whole'. However, "Tur (other than Tur Whole)" will be subject to BCD at the rate of 10%.
6	Notification No. 15/2023-Customs dated 03.03.2023	<ul style="list-style-type: none"> ▪ Notification No. 30/2022 dated 24.05.2022 which provides exemption from BCD and Agriculture Infrastructure and Development Cess to import of crude soya bean oil and crude sunflower seed oil up to the prescribed quota quantity in a financial year. The said Notification has now been amended to restrict availment of said exemption only up to 31.03.2023.
7	Notification No. 14/2023-Customs dated 28.02.2023	<ul style="list-style-type: none"> ▪ Notification No. 104/94- Customs Tariff (dated 16.03.1994 as amended vide Notification No. 101/ 95) provided exemption from paying BCD and IGST to import of containers which are durable in nature, subject to furnishing a

S. No	Reference	Particulars
		bond in the prescribed manner. A new explanation has been inserted in the said Notification to include tag, tracking device or data logger already affixed on the container at the time of import.
8	<u>Instruction No. 08/2023-Customs dated 03.03.23</u>	<ul style="list-style-type: none"> ▪ Vide Instruction No. 18/2022-Customs dated 12.08.2022, the requirement of health certificate issued by a competent authority of the exporting country to accompany the import of milk, milk products, pork, products, fish and fish products has been deferred until further orders in view of the FSSAI Order dated 03.08.2022.

RECENT CASE LAWS

Levy of penalty for movement of goods in a vehicle, different than the one whose details are mentioned on the E-way bill

Asian Switchgear Pvt. Ltd. v. STO, 2023 (3) TMI 290 – Cal. HC (03.03.2023-SB)

FACTS OF THE CASE

- The assessee was transporting electric switch gears which were manufactured as per requirement of the State of Arunachal Pradesh and there was no scope for selling the said goods in the open market. An E-way bill was generated on 10.06.2022 and the said E-way bill was valid up to 21.06.2022. The vehicle number against which the e-way bill was generated suffered a break down in the course of journey, and accordingly, the person in charge had to arrange for a different conveyance for transporting the said goods. However, the said vehicle number was not mentioned in the E-way bill. The goods were intercepted on 19.06.2022 and the person in charge failed to produce any document in support of the said goods being transported by a different conveyance.
- A penalty under Section 129 of the CGST Act was imposed by the adjudicating authority and upheld by the Appellate Authority. Being aggrieved, the assessee filed a Writ Petition before the Hon'ble High Court.

JUDGMENT

- The Hon'ble High Court upheld the levy of penalty by observing that apart from the taxation perspective, the E-way bill is generated to identify the goods that are being transported, the place from where it is being transported, the final destination and the vehicle number by which the goods will be transported. The Hon'ble Court observed that if the goods are transferred from one vehicle to the other, without obtaining a proper E-way bill, it will be practically impossible for the authority to keep track of the goods that are being transported and also to track whether the statutory charges have been paid for such transportation.
- The Hon'ble Court inter alia held that the moment the goods are unloaded from the vehicle for which E-way bill was generated and loaded in a different vehicle without any E-way bill - a statutory breach is committed. This is liable to be dealt with in accordance with the statute. The petition was accordingly dismissed.

Revenue cannot withhold refund arising out of an order, in absence of any stay

Brij Mohan Mangla v. Uol & Ors., 2023 (3) TMI 327 – Del. HC (23.02.23-DB)

FACTS OF THE CASE

- The assessee had applied for refund of unutilized input tax credit for the period May 2019 to December 2019. These claims were rejected by the adjudicating authority, however, subsequently allowed by the Appellate Authority. The order of the Appellate Authority is reviewed by the concerned GST authority which has directed that the appeal be filed before the GST Appellate Tribunal against the order passed by the Appellate Authority. However, no appeal has been filed till date due to non-constitution of a GST Tribunal.
- Despite having succeeded before the Appellate Authority, the Petitioner's claim for refunds were not processed and refund not disbursed. Being aggrieved, the petitioner approached the Hon'ble High Court.

JUDGMENT

- The Hon'ble Court relying on the decision given in a similar case in W.P.(C) 5462/2022 decided on 16.02.2023, directed the Respondent to process the Petitioner's claim for refunds including interest, notwithstanding its decision to file an appeal. The Hon'ble Court further observed that this would not preclude the Respondents (the tax authorities) from availing their remedies against the orders passed by the Appellate Authority in accordance with law. In the event the Respondents succeed in upsetting the appellate orders, it would be entitled to take consequential action for recovery of any amount that may have been disbursed, albeit, in accordance with applicable law.

Mere transfer of export consignment to FTWZ for warehousing before actual export, does not disentitle the exporter from claiming benefit under MEIS

Horizon Aerospace (India) Pvt. Ltd., 2023 (2) TMI 1101 – Del. HC (22.02.2023-SB)

FACTS OF THE CASE

- The assessee received a purchase order from a foreign entity namely M/s. Dedienn Aerospace, France for supply of certain goods against consideration in foreign currency. These goods were transferred by the Petitioner to M/s Siddhartha Logistics Co. Pvt. Ltd., an FTWZ logistics Company located in Andhra Pradesh for exporting the same to Dedienn Aerospace. A shipping bill was raised, reflecting the assessee as the “Exporter” and Dedienn Aerospace as the “Client” and it also reflected that M/s. Siddhartha Logistics was accepting the consignment on behalf the Dedienn Aerospace.
- Qua the said supplies, the assessee applied for Duty Credit Scrips under the Merchandise Exports from India Scheme. The said were granted but subsequently cancelled vide order issued by Additional Directorate General of Foreign Trade (CLA) on the suspicion that the transaction/ supply is from DTA to a SEZ/FTWZ. The Order also directed the assessee to pay duty credit amount, penalty of INR 1 lac and placed the name of the assessee and its directors in the Denied Entity List. Being aggrieved, the assessee filed the present writ petition.

JUDGMENT

- The Hon’ble Court observed that FTWZ logistics Company was neither involved in the manufacture of the products nor the entire sale transaction but was merely providing logistical support to enable the movement of the shipment within India and ultimately to the French customer. The Hon’ble Court also observed that M/s Siddhartha Logistics i.e., FTWZ logistics Company had already issued its no objection giving consent to the assessee to claim the drawback benefits. The Hon’ble Court held that under such circumstances, though the shipping bills describe M/s Siddhartha Logistics FTWZ logistics Company as an exporter or as the client, the actual exporter is the Petitioner and any mis-description in the shipping bill does not change the actual factum.
- The Hon’ble Court, relying on the case of *Hon’ble Madras High Court in WP(C) No. 28777/2019 titled Jindal Drugs Pvt. Ltd. v. Union of India & Others, inter alia* set aside the order cancelling the MEIS scrips and directed the Respondent to revalidate the MEIS scrips which were granted to the Petitioner so as to enable the Petitioner to encash the same in its usual course of business.

HC allows rectification of return after due-date to enable availment of ITC-benefit to the recipient

Shiva Jyoti Construction vs Chairperson, CBEC & ors. [TS-79-HC(ORI)-2023-GST]

FACTS OF THE CASE

- The assessee had wrongly declared certain invoices under B2C as against B2B in its Form GSTR 1 returns filed for September 2017 and March 2018. The assessee approached the Tax Authorities for rectification of Form GSTR -1 for September 2017 and March 2018 after expiry of due date to carry out rectification in Form GSTR 1. The assessee submitted that the error came to be noticed only after its principal contractor held up its legitimate running bill amount by informing it about the above error on 21.01.2020.
- The Authorities rejected the assessee’s plea on the grounds that once the deadline for rectification of the returns has elapsed, no further indulgence could be granted to the assessee. Being aggrieved, the assessee filed the Writ petition.

JUDGMENT

- The Hon’ble Court observed that permitting the assessee to rectify the above error would not cause any loss whatsoever to the Authorities. It also observed that if such a rectification is not permitted, then the assessee would unnecessarily be prejudiced. The Hon’ble High Court also observed that in similar circumstances, the Madras High Court in its order dated 06.10.2020 in Writ Petition No.29676 of 2019 (*M/s. SUN DYE CHEM v. The Assistant Commissioner ST*) accepted the plea of the petitioner therein and directed that the petitioner in that case be permitted to file the corrected form.

- In view of the above, the Hon'ble High Court permitted the assessee to resubmit the corrected Form GSTR-1 for the aforementioned periods September, 2017 and March, 2018 and directed the Authorities to enable the assessee to receive the corrected Form manually. The Court also held that once the corrected Forms are received manually, the Department would facilitate the uploading of those details in the web portal. The Hon'ble Court ordered that the directions be carried out within a period of four weeks.

RECENT ADVANCE RULINGS

ITC cannot be availed on tax paid on vouchers, held neither goods nor services

Myntra M/s. Designs Private Ltd. [2023 (3) TMI 107 - AAAR, KARNATAKA]

- The applicant is an e-commerce platform which floated a loyalty programme wherein loyalty points were awarded to customers subject to such customers meeting pre-defined eligibility criteria. The customers who have accumulated a certain pre-determined number of loyalty points were eligible to get electronic vouchers which can be redeemed on applicable websites/applications/platforms. The applicant purchases the vouchers and subscription packages in the form of coupon codes from third party vendors who supply these vouchers as subscription packages on payment of GST. The Appellant issues the coupon codes electronically to the eligible customers, without charging any consideration from the customers for the same. The coupon codes are redeemed by the customers on applicable websites/applications/platforms within the validity period.
- The question posed before the AAR was as under:
Whether the applicant would be eligible to avail the input tax credit, in terms of Section 16 of the CGST Act, 2017 on the vouchers and subscription packages procured by the applicant from third party vendors that are made available to the eligible customers participating in the loyalty program against the loyalty points earned/accumulated by the said customers?"
- The Karnataka AAR vide Advance Ruling order No. KAR ADRG 33/2022 dated 14.09.2022 *inter alia* held that *vouchers and subscription packages* supplied by the applicant constitute "goods" and held that *the applicant is not eligible to avail input tax credit on the vouchers and subscription packages procured by the applicant from third party vendors that are supplied to the eligible customers free of cost in terms of Section 17 (5) (h) of the CGST Act, 2017.*
- Being aggrieved, the applicant filed an appeal before Hon'ble Appellate Authority for Advance Ruling, Karnataka.

AAAR RULING

- The Appellant Authority upheld the ruling given by the lower Authority that input tax credit is not available on the vouchers received by the appellant, however, modified findings to arrive at the said conclusion.
- The Appellate Authority relying on the case Premier Sales Promotion Pvt Ltd., 2023 (2) TMI 130 - KT HC (16-1-2023) *inter alia* held that vouchers neither qualify as goods nor services. It held that the primary condition for eligibility to input tax credit is that there should be an inward supply of either goods or services or both on which tax is charged by the supplier. In this case, as held by the Karnataka High Court in the decision cited supra, the vouchers are held to be neither goods nor services and cannot be taxed to GST. Therefore, when the vouchers intended to be procured by the appellant are neither goods nor service, the question of eligibility of input tax credit does not arise.

Whether GST is applicable under RCM on residential premises used as 'guest-house' for company employees

Indian Metals and Ferro Alloys Ltd. [TS-88-AAAR(OD)-2023-GST]

FACTS OF THE CASE

- The applicant has taken certain premises on rent at New Delhi and Orissa. These premises were being used to provide food and accommodation for the employees of the company who visit New Delhi for official purpose and also for employees who visit their mining office at Jaipur. One of these premises was taken on rent from an unregistered person and both these premises are being used as guest house for its employees.

- Notification No. 05/2022 – Central tax (rate) dated 13.07.2022 was issued to amend Notification No. 13/2017 – Central tax (rate) dated 28.06.2017 inter alia to cast an obligation on the registered person receiving service by way of renting of residential dwelling, to pay GST under reverse charge mechanism.
- The applicant sought for an advance ruling on the following question:
Whether Service received by a registered person by way of renting of residential premise used as guest house of the registered person is subject to GST under forward charge mechanism or reverse charge mechanism.
- The main contention raised by the applicant was that the term residential dwelling is not defined anywhere in the GST Act or in the erstwhile service tax regime. The applicant referred to Education guide dated 20.06.2012 issued by CBIC to contend that residential dwelling does not include within its ambit hotel, motel, inn, guest house and therefore, no GST is applicable under reverse charge mechanism qua the premises taken on rent and used as guest house.

AAR RULING

- The AAR perused the contentions made by both sides as well as the rent agreements and observed that the nature of rented premises under discussion appear to be residential premises which is being used for commercial purposes. The AAR held that irrespective of the purpose of use, if any residential dwelling is rented to a registered person under GST, the tenant has to discharge GST liability under RCM as per Notification No. 05/2022 – Central Tax (Rate) dated 13.07.2022.

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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