

# INDIRECT TAX WEEKLY DIGEST

14 February 2023  
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## GOODS & SERVICES TAX

### JUDICIAL UPDATES WRIT PETITION

#### COMMISSIONER IS EMPOWERED TO GRANT AN EXTENSION IN FILING FORM GST ITC-01

##### Facts of the case

- M/s Deepsons Auto Centre (Taxpayer) was a registered dealer opting to pay GST under the composition scheme under Section 10 of the Central Goods and Services Tax, 2017 (CGST Act). However, recently, the Taxpayer intended to switch over from the Composition Scheme to Normal Taxpayer Scheme.
- Accordingly, the Taxpayer attempted to submit FORM GST ITC-01 in terms of section 18(1) of the CGST Act read with rule 40(1)(b) of the Central Goods and Services Tax Rules, 2017 (CGST Rules). However, the Taxpayer was unable to submit the same on the GSTN portal due to technical errors on the due date of submission of Form GST ITC-01.
- In this regard, the Taxpayer raised complaints after the due date of submission. In response, the GSTN portal submitted that there were no technical glitches on the GSTN portal during the relevant period. Further, the complaint received from the Taxpayer was also resolved by GSTN.
- In the absence of the facility to carry forward ITC, the Taxpayer would lose INR 0.5mn. Consequently, the Taxpayer filed the writ petition before the Hon'ble Jharkhand High Court seeking appropriate relief and directing the Tax authority to allow submission the Form GST ITC-01 after the due date.

##### Contentions by the Taxpayer

- The Taxpayer could not submit FORM GST ITC-01 on the due date viz. 12 August 2018 due to technical glitches and errors on the GSTN portal. Therefore, filed a complaint on the GSTN portal on 13 and 14 August 2018.
- The State Tax Authority also acknowledged the technical glitches complained of by the Taxpayer and made a request to the GSTN to open the GSTN portal to enable the Taxpayer to file FORM GST ITC-01.
- Since the proviso to rule 40 of CGST Rules permits extension of the time limit by the Commissioner of State Tax, it was submitted that the Taxpayer is allowed to submit Form GST ITC-01 by directing the Commissioner of State Tax to exercise the powers conferred under the said provisions.

##### Contentions by the Tax Authority

- It is submitted that since there were no technical glitches at the GSTN's end, powers under rule 40(1)(b) cannot be exercised in the individual case as that of the petitioner as no extenuating circumstances have been shown.
- Reference was made to a notification issued by the Principal Secretary-cum-Commissioner, Commercial Taxes Department, whereby an extension of the time limit for making a declaration in FORM GST ITC-01 was granted to

registered persons who became eligible during July 2017 to September 2017 to enable them to avail ITC under section 18(1) of CGST Act.

#### Observations and ruling by the Honorable High Court

- The Tax Authority has interpreted the proviso as being a power conferred upon the Commissioner of State Tax for extension of time in a class of cases and not in general, and not confined to an individual Taxpayer. However, no such restriction is apparently made out in enabling provisions.
- Accordingly, the Taxpayer should approach the Commissioner of State Taxes requesting for an extension of the time limit for submission of FORM GST ITC-01, which may be considered in accordance with law. If the extension is granted by the State Tax Authorities, the Taxpayer shall avail of the liberty by filing FORM GST ITC-01 to switch over from the Composition Scheme to Normal Taxpayer Scheme.

[High Court of Jharkhand - Deepsons Auto Centre Vs. Union of India & Ors., Writ Petition no: 4249 of 2020 dated, 18 January 2023]

### STATUTORY RECOVERY OF TAX DUES CANNOT BE MADE POST-APPROVAL OF THE CORPORATE INSOLVENCY RESOLUTION PLAN BY NCLT

#### Facts of the case

- M/s. EMC Limited (Taxpayer) is a sick company and it had initiated Corporate Insolvency Resolution Plan (CIRP) under the Insolvency and Bankruptcy Code, 2016 (IBC) which was approved by National Company Law Tribunal (NCLT).
- Pursuant to the above, the Taxpayer received a Show Cause Notice (SCN) alleging that the Taxpayer did not reverse the Input Tax Credit (ITC) FY 2017-18 & FY 2018-19.
- In response to the SCN, the Taxpayer contended that once the CIRP has been approved, all tax dues stand settled and the Tax Authority cannot initiate any proceedings for recovery for the prior period. However, the Tax Authority issued an order seeking a reversal of ITC.
- Aggrieved by the above, the Taxpayer filed the Writ petition before the Hon'ble Rajasthan High Court.

#### Contentions by the Taxpayer

- The Taxpayer contended that all dues pertaining to the period prior to the CIRP approval stands extinguished/waived/settled. Hence, no proceedings can be initiated against the Taxpayer.
- Further, as per Sections 31 and 238 of IBC, the approved CIRP is inter alia binding on the Central Government and State Government, to whom a debt in respect of payment of dues arising under any law, is owed.

- Taxpayer placed reliance on the following judicial precedents:

- *Committee of Creditors of Essar Steel India Ltd. Through Authorised Signatory Vs. Satish Kumar Gupta & Ors.* [2019 (16) SCALE 319];
- *Ultra Tech Nathdwara Cement Ltd. Vs. Union of India & Ors.* [2020-VIL-169-RAJ].

#### Observations and ruling by the Honorable High Court

- The Hon'ble High Court held that the Tax Authorities have failed to consider the reply filed by the Taxpayer and acted with sheer non-application of mind.
- It was also observed that with the approval of CIRP by NCLT, all tax dues stand extinguished, and no demand can be raised for the period prior to such approval.
- In view of the above, the Hon'ble High Court held that the impugned order and the demand notices issued by the Tax Authorities are invalid and hence, quashed.

[High Court of Rajasthan, M/s. EMC Limited, WP(C) No. 6048/2020, dated 18 January 2023]

## EXCISE/ SERVICE TAX

### JUDICIAL UPDATES

#### DISCHARGING EXCISE DUTY UNDER PROTEST WOULD NOT DISENTITLE A UNIT FROM CLAIMING THE BENEFIT UNDER THE BUDGETARY SUPPORT SCHEME

##### Facts of the case

- M/s. Special Cables Private Limited (Taxpayer) has a unit located at Rudrapur, Uttarakhand in respect of which, it had complied with notification no:50/2003-CE dated 10 June 2003 (Notification) and also filed a letter with the Tax Authority intimating that the Taxpayer was entitled to claim Excise duty exemption available to newly established manufacturing units.
- The Taxpayer commenced commercial production on 27 March 2010 and intimated the same to the Tax Authorities. However, the Tax Authority contending non-receipt of such intimation, denied the Taxpayer's claim of Excise Duty exemption.
- In respect of the Taxpayer's eligibility to claim exemption, it is pertinent to note that -
  - The eligibility to claim exemption was a subject matter of dispute with the Central Excise authorities. Pending such dispute, the Taxpayer had obtained Central Excise registration and paid applicable Excise duty under protest;
  - The eligibility to claim exemption was finally decided in favor of the Taxpayer and consequently, the show cause notices issued by the Tax Authorities were dropped;
  - In respect of the Excise duty paid under protest, the Taxpayer had filed a refund application which was partly allowed and the same is the subject matter of litigation which is not connected with the present matter.
- With the introduction of GST law in India (w.e.f. 1 July 2017), the aforesaid Area-Based exemption was withdrawn. Consequently, a budgetary support scheme (i.e. 'Scheme of Budgetary Support under GST Regime to units located in State of Jammu & Kashmir, Uttarakhand, Himachal Pradesh and North-Eastern States including Sikkim') was notified.
- The benefits under the Scheme were available to the Eligible Units which was defined to mean "... a unit which was eligible before 1st day of July 2017 to avail the benefit of ab-initio exemption or exemption by way of refund from payment of central excise duty under notifications, as the case may be issued in this regard, listed in para 2 above and was availing the said exemption immediately before 1st day of July 2017".

- While the Taxpayer sought to obtain benefits under the aforesaid Scheme, the same was denied on the ground that the Taxpayer did not fulfil the criteria pertaining to an 'Eligible unit' as it was not availing the Area Based Exemption under the Notification immediately before 1 July 2017.
- Aggrieved by the above, the Taxpayer filed the Writ Petition before the Hon'ble Delhi High Court.

##### Observations and Ruling by the CAAR

- It was observed that to qualify for the Scheme, the following conditions should be satisfied:
  - The unit must be eligible to avail the benefit of ab initio exemption or exemption by way of refund; and
  - The unit was availing of such exemption immediately before 1 July 2017.
- Based on the orders issued in the Taxpayer's case, it is undisputed that the Taxpayer was eligible for claiming ab initio exemption under the Notification.
- The Taxpayer's act of obtaining registration and discharging Excise Duty (under protest) cannot infer that it was not availing ab initio exemption immediately prior to 01 July 2017.
- The aforesaid condition is to merely distinguish those units which have elected not to avail area-based exemption notification or where the tenure for availing such exemption has expired.
- In view of the above, the Tax Authority is directed to:
  - Release the budgetary support amount as assessed to the Taxpayer as per the aforesaid Scheme in a time bound manner; and
  - Grant registration to the Taxpayer to enable it to file online claims.

*[High Court of Delhi, M/s. Special Cables Private Limited, 2023/DHC/000671 dated 31 January 2023]*

## CUSTOMS

### CIRCULARS

#### CBIC ALLOWS THE TRANSHIPMENT OF BANGLADESH EXPORT CARGO TO THIRD COUNTRIES THROUGH DELHI AIR CARGO

- Circular no:29/2020-Customs dated 22 June 2020 is amended to allow transshipment of Bangladesh export cargo to third countries through Delhi Air Cargo.
- Transshipment of goods by road from LCS Petrapole to Air Cargo Complex, Delhi is allowed w.e.f. 15 Feb 2023 by following the prescribed procedure, until further direction from CBIC.

[Circular no:03/2023 dated 07 February 2023]

### INSTRUCTIONS

#### IMPORT OF HIGH-RISK FOOD PRODUCTS AT SPECIFIC PORTS

- CBIC instruction no:31/2022 dated 14 Nov prescribes the restriction on entry of food items only through specific ports, based on FSSAI order dated 17 Oct 2022 w.e.f. 1 Feb 2023.

- Further, vide order dated 11 January 2023 and subsequent clarification, FSSAI has modified the aforesaid order permitting the import of specified high-risk products only through designated 79 ports, to be implemented from 1 March 2023. The list of specified high-risk food products is reproduced below:

- Milk and Milk Products
- Egg powder
- Meat and Meat Products including Poultry, Fish and their products
- Food for Infant nutrition / Infant Foods
- Nutraceuticals, Health supplements, Food for Dietary uses, Probiotic and prebiotic foods and Foods for Special Medical Purposes.

[Instruction no:05/2023 dated 08 February 2023]

## FOREIGN TRADE POLICY (FTP)

### NOTIFICATION

#### ALIGNMENT OF RODTEP SCHEDULE FOR CHAPTERS 28, 29, 30 & 73

Additional export sectors/items in chapters 28, 29, 30 & 73 are being added in Appendix 4R under RoDTEP for exports made from 15 Dec 2022 & shall be applicable till 30 Sept 2023.

[Notification no:55/2015-20 dated 7 February 2023]

## NEWS FLASH

#### “GST on reallocation of GIDC land not legal”

<https://timesofindia.indiatimes.com/city/ahmedabad/gst-on-reallocation-of-gidc-land-not-legal/articleshow/97566732.cms>  
[Source: Times of India, 3 February 2023]

#### “India will not merge GST tax rates in 2023/24, government official says”

<https://economictimes.indiatimes.com/news/economy/finance/india-will-not-merge-gst-tax-rates-in-2023/24-government-official-says/articleshow/97646879.cms>  
[Source: The Economic Times, 6 February 2023]

#### “EXCLUSIVE: GST Council meeting delayed; likely to be held Feb-end”

<https://www.businesstoday.in/personal-finance/news/story/exclusive-gst-council-meeting-delayed-369353-2023-02-07>  
[Source: Business Today, 10 February 2023]

#### “Furnace industry wants reduced GST on scrap”

<https://timesofindia.indiatimes.com/city/ludhiana/furnace-industry-wants-reduced-gst-on-scrap/articleshow/97674231.cms>  
[Source: Times of India, 7 February 2023]

#### “GST on digital services: Budget 2023-24 broadens scope of OIDAR”

<https://economictimes.indiatimes.com/small-biz/gst/gst-on-digital-services-budget-2023-24-broadens-scope-of-oidar/articleshow/97678307.cms>  
[Source: The Economic Times, 8 February 2023]

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