

INDIRECT TAX

Weekly Digest

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GOODS & SERVICES TAX

LEGISLATIVE UPDATES

NOTIFICATION

Appointment of common adjudicating authority for adjudicating the Show Cause Notices (SCN) issued by The Directorate General of Goods and Services Tax Intelligence (DGGI) under GST

The Additional Commissioner or Joint Commissioner of central tax as the case may be, subordinate to the Principal Commissioners of central tax or the Commissioners of Central Tax, as specified in the notification vested with the powers as specified in sections 67, 73, 74, 76, 122, 125, 127, 129 and 130 of CGST Act, 2017.

The designated officers shall have powers exercisable throughout the territory of India.

- The Central Tax Officers ('CTO') of audit Commissionerate's and DGGI shall exercise the powers only to issue SCN;
- A SCN issued by DGGI needs to be adjudicated by the competent CTO of the executive Commissionerate in whose jurisdiction the noticee is registered when such cases pertain to jurisdiction of one executive Commissionerate of central tax only;
- In respect of SCN issued by officers of DGGI, there may be cases where the principal place of business of noticees fall under the jurisdiction of multiple central tax Commissionerate's or where multiple show cause notices are issued on the same issue to different noticees, including the persons having the same PAN but different GSTINs, having principal place of business falling under jurisdiction of multiple central tax Commissionerate's. For the purpose of adjudication of such SCN, Additional/Joint Commissioners of central tax of specified Commissionerate's have been empowered with all India jurisdiction vide this notification;

- Such show cause notices may be adjudicated, irrespective of the amount involved in the SCN, by one of the Additional/Joint Commissioners of central tax empowered with all India jurisdiction vide this. Principal Commissioners/ Commissioners of the central tax Commissionerate's specified in the said notification will allocate charge of adjudication (DGGI cases) to one of the Additional Commissioners/ Joint Commissioners posted in their Commissionerate's;
- Where the location of principal place of business of the noticee, having the highest amount of demand of tax in the said SCN falls under the jurisdiction of a central tax zone mentioned in table of the circular, the SCN may be adjudicated by the Additional Commissioner/ Joint Commissioner of Central Tax, holding the charge of adjudication (DGGI cases), of the central tax Commissionerate mentioned in table of the circular;
- In respect of a SCN issued by the CTO of audit Commissionerate, where the principal place of business of noticees fall under the jurisdiction of multiple central tax Commissionerate's, a proposal for appointment of common adjudicating authority may be sent to the CBIC;
- In respect of SCN issued by the officers of DGGI prior to issuance of this notification, involving cases where no adjudication order has been issued till date, the same may be made answerable to the Additional/Joint Commissioners of central tax, having all India jurisdiction, in accordance with the criteria mentioned in this notification, by issuing corrigendum to such show cause notices.

[Notification no:02/2022 dated 11 March 2022 & Circular no:169/01/2022 dated 12 March 2022]

JUDICIAL UPDATES

WRIT PETITION

Writ before a High Court is maintainable only after exhausting the statutory appeal route

Facts of the Case

- M/s. Nico Tiles (“Taxpayer”) was assessed under section 62 of CGST Act, 2017. Aggrieved by the assessment order passed by the adjudicating authority, the taxpayer preferred an appeal before the appellate authority under section 107 of the CGST Act; and
- Seeking reliance upon subsequent events the taxpayer also filed a Writ petition before the Hon’ble High Court of Kerala (“High Court”).

Question under consideration

Whether a Writ petition is maintainable before a High Court even if the statutory appeal route is not exhausted?

Contention of the taxpayer

The taxpayer contended that the assessment orders issued under section 62 of CGST Act are illegitimate and requested the High Court to intervene and take necessary action against the said assessment orders.

Observation and Ruling by the High Court

- The High Court observed that the taxpayer has already preferred an appeal before the appellate authority and ruled that taxpayer cannot file a Writ petition before the High Court until all statutory remedy available is exhausted. The High Court also observed that such practice of filing Writ petition before utilizing the statutory remedy would leave the provisions of the law redundant;
- Accordingly, the High Court dismissed the Writ petition and directed to go through the appellate remedy provided under CGST Act.

[High Court of Kerala, M/s. Nico Tiles Madhavam, Writ Petition no:26301 of 2021 dated 15 February 2022]

ORDERS BY AUTHORITY FOR ADVANCE RULING (AAR)

ITC shall not be availed on GST charged by the medical/health insurance company in respect of insurance for employees

Facts of the Case

- M/s RSWM Limited (“Taxpayer”) is engaged in the business of supply of textile products;
- The taxpayer has provided medical/health insurance services to its employees based on clarification issued by MHA on 16th April 2020 where under clause no:5 of annexure-II, the government mandates medical insurance for workers.

Questions before the AAR

Whether the taxpayer can claim ITC of GST charged by the medical/health insurance company in respect of insurance done for employees?

Contention of the taxpayer

- The taxpayer has submitted that ITC on health insurance services can be availed if it is obligatory to provide such insurance under any law and to prevent the spread of COVID-19 disease at workplace. Ministry of Home Affairs (MHA) vide its order no:40-3/2020-DM-1 (A) dated 15 April 2020 made it obligatory for organizations to provide medical insurance cover to its employees;
- Taxpayer also referred to the clarification issued by MHA vide ref: IRDAVHLT/CIR/MISC/ 093/04/2020 dated 16 April 2020 where it stipulated all the industries, commercial establishments, workplaces, offices, etc. to plan for the implementation of Standard Operating Procedure (SOP) and make medical insurance mandatory for the workers, before start functioning.

Observations & Ruling by the AAR

- Proviso to section 17(5)(b) says, “where it allows ITC on goods or services will be available where its obligatory for an employer to provide the same to its employee under any law for the time being force” referring to the above proviso the taxpayer is of opinion that they can avail the ITC on the medical insurance taken on all its employees;
- However, AAR observed restriction of ITC on health insurance services as per section 17(5)(b) is subject to certain conditions that outward supply is of same category and inward supply should be a component of taxable composite or mixed supply;
- As the taxpayer is neither a supplier related to health insurance service, nor this service has an element of supply of textile. The AAR held that the taxpayer cannot claim ITC of GST charged by the medical/health insurance company in respect of insurance done for employees, as given under section 17(5)(b) of the CGST Act, 2017.

[AAR-Rajasthan, M/s. RSWM Limited, Advance Ruling no:RAJ/AAR/2021-22/14 dated 08 September 2021]

GST payable on reimbursement received towards stipend paid to trainees and cost of medical and accident insurance obtained for the benefit of trainees

Facts of the Case

- M/s. Teamlease Education Foundation (“Taxpayer”), registered under section 25 of the Companies Act, 1956 and section 12AA of the Income Tax Act, 1961, is engaged in charitable activities with an objective to promote and sponsor educational institutions including universities dedicated to inculcation of domain specific, workplace relevant and life related skills and competences for enhancing employability, work culture, enhanced productivity, economic development, social harmony and social life through offer of technology supported, industry relevant and low-cost academic programs with employment at the heart of academic offerings;
- The taxpayer has entered into training agreements with various companies (industry partners) for imparting practical training. As per the training agreement, the taxpayer is entrusted with the following responsibilities:

- To execute an agreement with each trainee, prior to deploying the trainees to the industry partner for the training in accordance with National Employability Enhancement Mission Regulations, 2017 (NEEM Regulations);
 - Furnish appropriate data to the industry partner in relation to the trainees;
 - Undertake administrative tasks as may be required from time to time;
 - Implementation of Digit Workforce Solution (DWS) for attendance and leave management of trainees;
 - Assistance in enrolment of trainees under various courses like Bachelor of Management Studies (BMS), etc.
 - Payment of premium towards medical and accident Insurance obtained for trainees for their benefit;
 - Payment of stipend to the trainees engaged by industry partner at par with the prescribed minimum wages payable for unskilled category under the Shops & Establishment Act / Factories Act as applicable.
- For the above activities, the taxpayer is charging the below amounts:
- 'Administration fee' per trainee per month for assisting the industry partner with the administrative tasks for deployment of trainees for the training;
 - 'Sourcing fee' as one-time charge towards sourcing of trainees;
 - 'Enrolment fee' per trainee towards enrolment of trainees for various courses;
 - Reimbursement of monthly 'stipend' paid to trainees on behalf of industry partner and in accordance with NEEM Regulations;
 - Reimbursement of cost of medical and accident insurance obtained for welfare of trainees as agreed with the industry partner.

Questions before the AAR

- Whether the taxpayer is acting as a pure agent of the industry partner to the extent of reimbursement received towards stipend paid to trainees on behalf of industry partner as part of training agreement and therefore the said reimbursement is not chargeable to GST?
- Whether the taxpayer is acting as a pure agent of the industry partner to the extent of reimbursement received against cost of medical and accident insurance obtained for the benefit of trainees by the taxpayer and reimbursed by the industry partner as per the training agreement and therefore the said reimbursement is not chargeable to GST?

Contention of the Taxpayer

- The taxpayer submitted the provisions of section 15 of the CGST Act, 2017 and rule 33 of the CGST Rules, 2017. Further, the taxpayer has submitted the structure of fees charged by it to the industry partner as below:

Fees	Nature of income	Remarks
Administration fee	For assisting the industry partner with the administrative tasks for deployment of Trainees for the Training	Towards services provided by taxpayer on its own
Sourcing fee	One-time charge towards sourcing of Trainees	Towards services provided by taxpayer on its own
Enrolment fee	Fee towards enrolment of Trainees for various courses	Towards services provided by taxpayer on its own
Stipend	Paid to Trainees on behalf of Industry partner in accordance with NEEM Regulations	Payment made on behalf of Industry partner
Cost of medical and accident insurance	Insurance obtained for the benefit of trainees and reimbursed by Industry partner	Payment made on behalf of Industry partner

- In addition to above, the taxpayer has submitted various references of training agreement substantiating the fulfilment of conditions of pure agent;
- With regards to payment of stipend, the taxpayer neither retains any amount from the reimbursement received nor receives any separate consideration from trainees. It merely acts as an intermediary between trainees (supplier of service) and industry partner (recipient of service) for processing of stipend as specified under NEEM Regulations. Thus, the taxpayer is merely a conduit for the payment of stipend and the actual service is supplied by the trainees to the trainer companies (Industry partner) against which such stipend is payable;
- Further, with regards to cost of medical and accident insurance, the taxpayer has incurred such expenditure for the benefit of the trainees as agreed with the industry partner. The insurance company is the supplier of service, the taxpayer is the service recipient, and the trainees are beneficiary in such transaction.

Further, the taxpayer has obtained such insurance for the benefit of trainees as per pre-agreed terms and conditions with the industry partner. The industry partner is under the obligation to reimburse the taxpayer towards cost of such insurance. Hence, the taxpayer is acting as an agent of the industry partner for incurring the expenditure towards the insurance and subsequently reimbursed by the partner to the extent of insurance premium;

- Hence, the taxpayer acts as a pure agent of the industry partner to the extent of payment of stipend and cost of medical and accident insurance and therefore the reimbursement received from industry partner towards this expenditure shall be excluded from the value of supply in accordance with rule 33 of the KGST Act, 2017;
- The taxpayer has considered the ruling pronounced by AAR of Maharashtra in similar case of *M/s. Yashaswi Academy for Skills (2021 (8) TMI 1018)*, where the AAR has held that the reimbursement by industry partner to the taxpayer, of the stipend paid to the trainees, does not attract tax under the GST Acts;
- The taxpayer has also considered the ruling pronounced by AAR of Maharashtra in case of *M/s. CAD Maxx Solution Education Trust (KAR ADRG 85/2019 dated 25 September 2019)*, where the AAR has held that the reimbursement of the stipend paid to the trainees and reimbursement of group insurance and workmen compensation premium by the trainer company does not attract tax under the GST Acts.

Observations and Ruling by the AAR

- The AAR noted that to qualify as pure agent, the taxpayer would have to enter into a contractual agreement with the recipient of supply to act as recipient's pure agent to incur expenditure or costs, in the course of supply of goods or services or both. Further, the AAR has stated that the taxpayer is required to comply with other conditions as specified in rule 33 of the CGST Rules, 2017;
- From the submission made by the taxpayer, the AAR has observed the following:
 - The taxpayer is raising invoice for stipend and insurance cost and distributes the same to the trainees on receipt of the said amount;
 - The taxpayer has not furnished any contractual agreement to incur expenditure first and to claim the said amounts later.
- As per the contractual agreement with LG Electronics India Private Limited, the AAR has observed the following:
 - Clause 3 clearly specifies that the industry partner shall deposit the amount towards stipend to the trainees and also towards the medical and accident insurance of the trainees on or before 2nd day of each calendar month;
 - From the above, it is clearly evident that the taxpayer is not incurring the said amount initially and latter claiming the said amount by raising an invoice.
- Further, the taxpayer has not furnished any documentary evidence wherein the industry partner has authorised the taxpayer to make the payment to third party and later to claim the actual amounts;

- Additionally, the AAR has sought for agreement with trainee where it was noted from the course registration letters, the taxpayer receives the stipend amount from the industry partner by 2nd of the month and distributes the same by 10th of the month to the trainees;
- As per rule 33 (iii) of the CGST Rules, 2017, the taxpayer must procure certain supplies from the third party, as a pure agent of the recipient of supply, which are in addition to the services he supplies on his own account. In the instant case, the taxpayer has not furnished any information with regard to procurement of supplies from the third party i.e., trainees. Thus, the taxpayer is not fulfilling the required condition;
- Based on the above observations, the AAR has concluded that the taxpayer does not qualify to be a pure agent of the industry partner to the extent of reimbursement received towards stipend paid to trainees on behalf of industry partner and reimbursement received against cost of medical and accident insurance obtained for the benefit of trainees by the taxpayer and reimbursed by the industry partner as per the training agreement.

[AAR-Karnataka, M/s. Teamlease Education Foundation Ruling No: KAR ADRG 07/2022, dated 08 March 2022]

FOREIGN TRADE POLICY (FTP)

PUBLIC NOTICE

Enlistment of agency under appendix 2E of FTP, 2015-2020 to issue Certificate of Origin (Non-Preferential)

Mewar Chamber of Commerce & industry, Rajasthan is enlisted under appendix 2E of FTP, 2015-2020 for issuing Certificate of Origin (Non- Preferential)

[Public notice no:49/2015-20 dated 14 March 2022]

Amendments in guidelines of ANF-4F of Handbook of Procedures 2015 2020

Guidelines of ANF-4F of Handbook of Procedures, 2015 2020 has been amended to allow submission of Foreign Inward Remittance Certificate (FIRC) in case of exports made to Office of Foreign Assets Control (OFAC) listed countries under Advance Authorization.

[Public notice no:50/2015-20 dated 17 March 2022]

TRADE NOTICE

Operationalisation of new online IT Module for Interest Equalisation Scheme w.e.f. 01 April 2022

The Interest Equalisation Scheme (IES) was extended up to 31 March 2024 by RBI vide Circular no:DOR.STR.REC.93/04.02.001/2021-22 dated 08 March 2022. In order to capture granular data about the beneficiaries of the scheme and its effective monitoring, it has been decided to operationalise a new online module for filing of electronic registration for IES w.e.f. 01 April 2022.

All exporters seeking benefit under the IES need to apply online by navigating to the DGFT website (<https://dgft.gov.in>) → Services → Interest Equalisation Scheme. A Unique IES Identification Number (UIN) will get generated automatically

which is required to be submitted to the concerned bank when availing interest equalisation against their pre and post-shipment rupee export credit applications.

For generating UIN the following steps need to be followed by all concerned exporters:

- Any exporter seeking to apply under IES, need to register on the DGFT Website (if not already registered). It may be ensured that applicant's IEC is linked to its online account, the IEC (ANF-2A) and the exporter-importer profile (ANF-1) is updated to reflect correct and up-to-date details;
- Thereafter, exporter need to login with its registered credentials → navigate to Services Interest Equalisation Scheme → Apply for IES and fill in the required details. Basic data about the applicant's IEC would get auto-populated;
- An acknowledgement containing UIN would be auto-generated when duly completed application is submitted online;
- An SMS and email intimation of the UIN generated will be sent to the registered email account and mobile number of the exporter;
- After generation of the UIN no changes will be allowed. In case of any correction/amendment exporter may generate new UIN.

The UIN generated shall have a validity of 1 year from the date of registration, during which an application for availing benefit of IES can be submitted to the concerned bank. The auto generated acknowledgement containing UIN need to be submitted to the concerned bank along with the prescribed application by the bank, if any, for availing benefit under IES.

It will be mandatory for exporter to submit UIN acknowledgment to concerned banks for all applications made on or after 01 April 2022.

Banks will continue to scrutinize and issue benefits as per their own internal process. The guidelines for the bank for validation of submission made by the exporter are being issued separately through RBI.

For any help and guidance on this new process, the help manual & FAQs may be accessed on DGFT website (<https://dgft.gov.in>) → Learn → Application Help & FAQs. For any further assistance, any of the following channels may be accessed:-

- Raise a service request ticket through DGFT Helpdesk service under Services → 'DGFT Helpdesk Service'.
- Call the DGFT toll-free-helpline number.
- Send an email to the Helpdesk on dgftedi@gov.in

[Trade notice no:38/2021-22 dated 15 March 2022]



NEWS FLASH

1. "GST Has Helped In Reducing Transaction Cost, Tax Incidence: PHDCCI"
<https://www.outlookindia.com/national/gst-has-helped-in-reducing-transaction-cost-tax-incidence-phdcci-news-187406>
[Source: Outlook India, 17 March 2022]
2. "Rs 53,600 Crore GST Compensation Yet To Be Released To States This Fiscal: FM"
<https://www.outlookindia.com/business/rs-53-600-crore-gst-compensation-yet-to-be-released-to-states-this-fiscal-fm-news-186960>
[Source: Outlook India, 15 March 2022]
3. "States panel may propose a single 15% GST levy by merging 12% and 18% slabs"
<https://economictimes.indiatimes.com/news/economy/finance/states-panel-may-propose-a-single-15-gst-levy-by-merging-12-and-18-slabs/articleshow/90342687.cms>
[Source: The Economic Times, 21 March 2022]
4. "FHRAI seeks reduced GST rates for revival of hospitality industry"
https://www.business-standard.com/article/economy-policy/fhrai-seeks-reduced-gst-rates-for-revival-of-hospitality-industry-122031700673_1.html
[Source: The Financial Express, 17 March 2022]
5. "GST rates overhaul may be delayed by a few months"
<https://www.financialexpress.com/economy/gst-rates-overhaul-may-be-delayed-by-a-few-months/2464537/#:~:text=A%20much%2Dawaited%20restructuring%20of,firms%20and%20brought%20the%20Reserve>
[Source: The Financial Express, 18 March 2022]

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