



# The **TAX** POST

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# PREFACE

The Hon'ble Union Finance Minister Ms Nirmla Sitaraman presented the Union Budget 2023-24 against the backdrop of global uncertainties. Barely had the pandemic receded and the war in Ukraine broke out in February 2022. Prices of food, fuel and fertiliser rose sharply. As inflation rates accelerated, central banks of advanced countries scrambled to respond by tightening their monetary policy.

With a focus on widening economic growth, the budgetary announcements ticked all the boxes. It balanced the wider expectations of tax relief to individuals with sufficient resources for various government schemes and gave impetus to key areas like infrastructure, manufacturing, and job creation. Largely appreciated as a progressive budget in contrast to the general populous expectations, this year's budget has defined the country's economic, social and sustainability pathway for the future. India is set for significant growth and stability, benefitting all if executed well.

Customarily, the post-budget edition of 'The Tax Post' focuses on key amendments to tax law, especially the indirect tax law and this year is no deviation. As far as announcements are concerned, they have been subdued given the role played by the GST council and the Government, in the periodic issue of notifications and circulars, under the GST law. While there have been expectations concerning follow-up action on the proposed new SEZ law and the next stage of GST reforms (such as pruning tax slabs, integration of petro products in GST, removal of Cesses, implementation of a Revenue Neutral GST rate with pruning exemption and/or de-populating higher tax slabs, etc.), no major announcement were made. The 'Cover story' of this edition deals with the major indirect tax amendments, which would have a significant impact on businesses.

The last few years have been challenging for the Healthcare sector and it has played a crucial role in the fight against COVID-19, with many private hospitals and clinics converting themselves into COVID care units. However, the pandemic also hurt the sector, with many hospitals and labs experiencing a sharp revenue decline due to the postponement of medical travel and elective procedures. The 'In Tales' segment of this edition discussed the challenges faced by the sector, including difficulties from a fiscal legislation angle.

Growth of the e-commerce sector in India in recent times has witnessed many new avenues to attract new business and businesses have started issuing vouchers to their customers or employees to attract or reward them. The taxability of the issue/sale of vouchers under the indirect tax law has been contentious from the pre-GST era and the 'The Expert Speak' section deals with the recent trends and controversies surrounding this space.

The 'Decoded' segment of this edition dissect an important judgment of the Supreme Court on the availability of alternative remedies and admissibility of the Writ petition. The Hon'ble Supreme Court restated the principle of judicial discipline and emphasised the distinction between 'entertainability' and 'maintainability' of a Writ petition.

We continue to bring the latest news on indirect tax from across the globe in our feature 'Global Trends'. We wish you an interesting read.



**GUNJAN PRABHAKARAN**  
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# COVER STORY

## KEY INDIRECT TAX PROPOSALS IN THE UNION BUDGET 2023

At a time when the country's economy faces challenges from a host of global factors, a steep rise in inflation, and a possible GDP growth slowdown in FY24, the Hon'ble Finance Minister Ms Nirmala Sitharaman presented the last full budget of the Modi 2.0 government, ahead of the next year's parliamentary elections.

With a focus on widening economic growth, the budgetary announcements ticked all the boxes, balancing the wider expectations of tax relief to individuals with sufficient resources for various government schemes, and boosting key areas like infrastructure, manufacturing, and job creation.

Readying to become a USD 5tn economy, Union Budget 2023 is the first budget in Amrit Kaal (25 years in the run-up to 2047 when Independent India turns 100) and builds on the foundation laid by the previous budget, and the blueprint drawn for India at 100. The proposed policies outline 7 priorities of the Budget - Inclusive development, Reaching the last mile, Infrastructure and investment, Unleashing the potential, Green growth, Youth power and the Financial sector.

Largely appreciated as a progressive Budget in contrast to the general populous expectations, this year's Budget has defined the country's economic, social and sustainability pathway for the future. If executed well, India is set for significant growth and stability, with benefits for all.

As far as the amendments to the indirect tax laws are concerned, especially Goods and Services Tax (GST), the announcements have been subdued given the role played by the GST council and the Government, by periodic issuance of notifications and circulars. While there have been expectations with respect to follow-up action on the proposed new SEZ law and the next stage of GST reforms (such as pruning tax slabs, integration of petro products in GST, removal of Cesses, implementation of a Revenue Neutral GST rate with pruning exemption and/or de-populating higher tax slabs, etc.), it is laudable the way the Government has been engaging in public consultations to proactively address the concerns of business at large.

Having said that, it is felt that some of the indirect tax proposals contained in the Union Budget are likely to have a critical impact on business, which is captured in this post-budget edition.



## GOODS & SERVICES TAX (GST)

### ITC restriction on CSR spending:

Seamless flow of Input Tax Credit (ITC) is the cornerstone of a robust Value Added Tax (VAT) architecture. Albeit this spirit forms the backbone of GST, interpretational issues regarding ITC continue to hog the limelight, typified by diverse rulings and incremental tax disputes. Amongst these, ITC eligibility of GST paid on procurements to fulfil the Corporate Social Responsibility (CSR) obligation of businesses is one such issue.

As part of Union Budget 2023, the Union Finance Minister proposed an amendment to the GST laws to restrict ITC on goods or services used for fulfilling the CSR obligations under Section 135 of the Companies Act, 2013. This proposal has been met with increased resistance and dismay from businesses. Given that businesses are expected to incur CSR expenditure legally, it is natural to expect that ITC of GST suffered on such expenditures is allowed, especially when GST as a design requires an expansive credit chain.

The prospective amendment gives rise to doubts as to what would be status of the past cases; it also leaves much room for interpretation as to whether CSR spends beyond the mandatory obligation under the Companies Act, and is not hit by the restrictive nature of the amendment.

### Retrospective amendment to Schedule III of CGST Act

Schedule III to CGST Act contains activities or transactions which shall be treated neither as a supply of goods nor a supply of services. Thus, no GST shall be payable in respect of the activities/transactions specified in Schedule III. The said Schedule was modified prospectively w.e.f. 1 February 2019 by inserting:

- Supply of goods from a non-taxable territory to another non-taxable territory without such goods entering India, commonly known as ‘merchant trade’
- Supply of goods from customs bonded warehouse before its clearance for home consumption, commonly known as ‘in-bond sale’
- Sale of goods on ‘high seas sale’ basis.

The CGST (Amendment) Act, 2018 had earlier inserted the above transactions in Schedule III to the CGST Act w.e.f. 1 February 2019 to put an end to the ambiguity and provide respite to the industry. A simultaneous amendment was also incorporated in Section 17(3) of the CGST Act to provide that these transactions would not be liable to reversal of Input Tax Credit (ITC) by treating them as ‘exempt’ supplies. The 2018 amendment clarified the positions prospectively w.e.f. February 2019 leaving doubts about possible double taxation for past periods from 1 July 2017 to 31 January 2019. CBIC circular no:3/1/2018-IGST dated 25 May 2018 clarified that the ‘high seas sale’ transaction and ‘in-bond sale’ transaction is not ‘supply’ and therefore no GST is leviable. However, tax authorities continue to

support the position that even though these transactions are non-taxable supply, they constitute an ‘exempt’ supply, warranting reversal of corresponding, common ITC.

To put an end to the above anomaly for the past period, the Finance Bill 2023 proposes to give a retrospective effect (from July 2017) to the impugned transactions. However, the remedy came with a rider that taxpayers, who have already paid tax on such transactions during the period 1 July 2017 to 31 January 2019 are not entitled to a refund of taxes paid if any. Thus, any law-abiding taxpayers who have remitted the tax in respect of past transactions would be in an adverse position as no refund would be available. Further, the Finance Bill 2023 also proposes to include the supply of ‘in-bond sale’, within the scope and amplitude of the term ‘exempt’ supply, warranting reversal of the corresponding common ITC.

### Widening of tax net for Online Services

Another key amendment seeks to expand the scope of digital services by amending the definition of ‘Online Information & Database Access or Retrieval Service’ (OIDAR) to remove the condition of ‘essentially automated and involving minimal human intervention’ in respect of OIDAR. This means that OIDAR supplied by overseas entities to Indian unregistered persons will be taxable in India, regardless of the degree of automation and human intervention. The proposal appears to accept the recommendation of the GST council to settle the ongoing interpretational disputes with regard to the emphasis on phraseology ‘essentially automated and involving minimum human intervention’. There were no clear directives under the law regarding the scope and amplitude of these phrases which lead to interpretation challenges. In the past, suppliers laid emphasis on these expressions to defy tax demands. The proposed amendment can significantly affect the taxability of digital services offered by foreign service providers, post its enactment.

With these changes in the GST law, the government aims to broaden the tax base, while creating a level playing field for domestic service providers. However, it would continue to be challenging for the government to monitor and regulate OIDAR service providers who do not have a physical presence in India.

## CUSTOMS LAW

### Retrospective amendment to Trade Remedial provisions

Another major change which can significantly affect the domestic industry, especially those who are adversely affected by dumping from other jurisdictions or price advantage due to subsidies, is the amendment to Sections 9 and 9A of the Customs Tariff Act, 1975, retrospectively from January 1995. This amendment has been introduced to legislate that the Central Government has been vested with discretionary power to accept (or not) the finding in the review conducted by the Designated Authority (Directorate General of Trade Remedies - DGTR) for the imposition of



Safeguard duty/Anti-Dumping Duty and that the Central Government shall only ascertain the amount of subsidy/margin of dumping as determined by DGTR after necessary inquiry and is not bound to provide any reasoning for acceptance or rejection of the recommendations of DGTR.

The proposed amendments will validate the decision of the Central Government to reject the recommendation of DGTR to impose Countervailing duty/Anti-Dumping duty and such rejection shall not be appealable. It would now be very interesting to see the impact of the proposed amendment on the past decisions of various forums. While this amendment vests discretionary powers to the Ministry of Finance, it will deprive the domestic businesses of a suitable appeal mechanism against the decision of the Ministry of Finance for non-imposition of safeguard/anti-dumping duty.

#### **Timeline for closure of Customs Matters before the Settlement Commission:**

One of the important amendments proposed in the Budget is Section 127C of the Customs Act, 1962 which provides the mechanism for closure of cases under the 'Settlement Commission', post receipt of an application of taxpayers for settlement of cases. Amendment mandate settlement of cases by the Commission within a period of nine months, with an option for further extension of three months for reasons to be recorded in writing. In case the prescribed timelines are not adhered-to, the settlement proceedings shall stand 'abated', and the adjudicating authority will have to adjudicate the case as if no such settlement application was ever made.

While the above amendment provides definitive timelines and brings respite from delays, the proposal to 'abate' the proceedings on the expiry of the prescribed timelines, would not just take the sheen out of the purported facilitative amendment but can pinch the taxpayers very badly. In the event of the 'abatement', as per the amendment, the case shall be disposed-off off by the adjudicating authority before whom the matter is originally pending, in accordance with the provisions of the law.

It will be interesting to see how the Settlement Commission prioritises the pending matters and disposes them of within nine months, plus an additional three months. The applicants, after the expiry of the prescribed timeline, will be left with no option but to follow the entire process of adjudication again, which will discourage the industries to opt for the settlement of cases. Further, the representations made by the taxpayer before the Settlement Commissioner can be relied upon by the adjudicating authorities in the disposal of the cases before him.

While the above proposal would become law only after the enactment of the Finance Bill, it is imperative that the implication of these amendments is studied, followed by suitable representations to the Government, wherever warranted. As regards the GST law amendments, it may take a while before they become operational, as the legislative exercise has to be undertaken by the States (and Union Territories) also.



# THE EXPERT SPEAK



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## GST ON VOUCHERS - DOES THE CONFUSION END?

In recent years, India has been experiencing a tremendous boom in the online trading business. The Government of India has also recognised the contribution of the online trading industry to the economy as a whole, especially in times like the recent pandemic period when mobility was severely curtailed and has announced various initiatives to encourage this model.

With the growth of the e-commerce sector in India, businesses started issuing vouchers to their customers to reward them and attract more customers. Often, vouchers are also issued by organisations to their employees as a perquisite. Such vouchers may be of different kinds such as 'gift vouchers', 'cashback vouchers', 'open vouchers, etc.', which are redeemable at specified merchant outlets. Further, many players are also engaged in trading such vouchers.

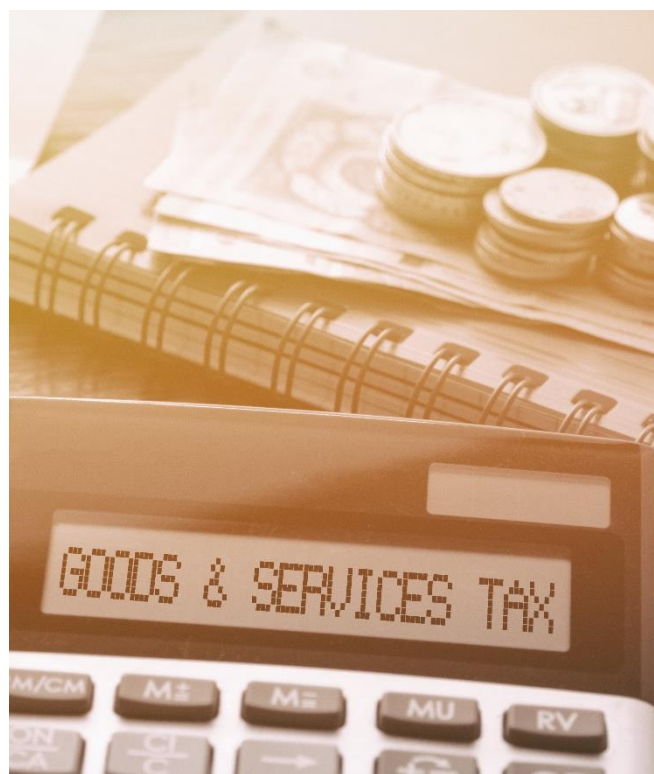
As per the RBI's master directions, the voucher may fall under the definition of Prepaid Payment Instruments (PPIs). PPIs are used for the purchase of goods and services against the value stored on such instruments. Further, the RBI has classified such PPIs into three categories - closed-system PPIs, semi-closed-system PPIs and open-system PPIs.

A closed system PPI can be issued by any entity for making the supply of goods or services, exclusively from the said entity. Such a closed system cannot be used for cash payments/settlements or withdrawals and hence RBI approval is not mandated for the same. Semi-closed PPIs can be used for the purchase of goods and services and cannot be used for cash withdrawal, like a closed system PPI. However, a semi-closed PPI can be used for settlements unlike a closed PPI and hence require RBI approval. An open-system PPI can be issued only by a Bank. They can be used for both cash settlements/payments and withdrawals.

The taxability of the issue/sale of vouchers under the indirect tax law has been contentious from the pre-GST era. Under the VAT regime, the dispute of Sodexo Svc India Private Limited Vs State of Maharashtra & Others (2015 (12) TMI 1041) reached the Hon. Supreme Court, which held that coupons should not be considered as 'goods' and thereby stands outside the purview of VAT and Local Body tax.

Under the GST law, the term voucher is defined and the taxability of the same arises on the issuance of the vouchers in case the supply of goods or services is identifiable, else on redemption of the said voucher. Various Advance Rulings have been passed under the GST regime with different views on different types of PPIs.

In one such Advance Ruling in the case of Kalyan Jewellers India Ltd. (2021 (4) TMI 885), Tamil Nadu Appellate Authority for Advance Ruling ('AAAR') held that closed PPIs



# THE EXPERT SPEAK

issued in the form of gold vouchers are instruments used as consideration to redeem gold and hence is a type of money recognised by the RBI. Accordingly, the Tamil Nadu AAAR held that gold vouchers are not 'goods' and hence are not liable to GST.

Further, in the case of Premier Sales Promotion Private Limited (2021 (12) TMI 1299), the Appellant was engaged in the trading of vouchers. The Karnataka AAAR in the said case observed that the vouchers have both value and ownership and the ownership gets transferred from the person who first purchases the voucher from the issuer to the ultimate beneficiary who redeems the voucher. Therefore, the Karnataka AAAR held that the vouchers qualify to be considered as movable property and hence 'goods'. Aggrieved by the said order, the taxpayer filed a Writ petition before the Karnataka High Court.

The Hon'ble Karnataka High Court (HC) in the said case (i.e., M/S Premier Sales Promotion Pvt Limited Versus The Union Of India Ministry Of Finance Department Of Revenue & Ors, 2023 (2) TMI 130), set aside and quashed the order passed by Karnataka AAAR. The Karnataka HC observed that the transaction between the Taxpayer and his clients is for procurement of vouchers which are nothing but printed forms (which are like currency) and their onward delivery. Further, the value printed on the form can be transacted only at the time of redemption of the vouchers and not at the time of its delivery. Therefore, the issuance of vouchers is similar to a pre-deposit and not for the supply of 'goods' or 'services'. Hence, vouchers can be covered under the purview of the term 'money' which are neither 'goods' nor 'services' and cannot be leviable to GST.

Further, in the case of Myntra Designs Private Limited (2023 (3) TMI 107), the Karnataka AAR relied on the Karnataka HC judgement and held that Input Tax Credit cannot be taken on vouchers since the same is neither 'goods' nor 'services'.

## Key observations on HC Judgment and advance rulings:

It is observed that industries have taken divergent views on the taxability of vouchers. While some have paid GST on the purchase and sale of vouchers, some have opted not to pay GST considering that vouchers are 'actionable claims' and should be considered outside the purview of GST.

While the recent Judgment of the Hon'ble Karnataka High Court states that vouchers are neither 'goods' nor 'services', one may have to closely monitor the development on the issue and decide the future course of action that may be taken by the revenue authorities. Businesses that have been availing GST credit on the purchase of vouchers and charging tax on the sale, may have to carefully reconsider their tax position and the next steps for past and future transactions.





# IN-TALES

## GST ON HEALTH CARE INDUSTRY: CHALLENGES AND OPPORTUNITIES

### Global Outlook

The healthcare industry has been experiencing strong and consistent growth in recent years due to a combination of factors, led by the COVID-19 pandemic and including the increase in the world's population, longevity of the population, urbanisation, and rising demand for the treatment of chronic diseases and comorbidities caused by the growth in lifestyle diseases. Further, advancements in medical science and technologies, and rising awareness about healthcare among the population have also contributed to the growth of the healthcare industry globally.

According to the World Health Organisation (WHO), global healthcare expenditure reached USD 9tn i.e., around 10.80% of the world's Gross Domestic Product (GDP) in 2020, indicating significant investment in the healthcare industry<sup>1</sup>. This trend is expected to continue in the coming years, with the global healthcare market projected to reach a value of USD 10tn by 2022. The global healthcare industry is estimated to be worth USD 11.9tn by 2022<sup>2</sup>.

The COVID-19 pandemic has significantly impacted healthcare spending worldwide. It is important to note that healthcare expenditure growth rates vary significantly by region and country, with some areas experiencing much higher rates than others. Additionally, factors such as government policies, population demographics and technological advancements can also influence healthcare spending trends.

### The Healthcare Industry in India:

The healthcare industry in India has witnessed significant growth over the past few years, and it has emerged as one of the largest sectors in terms of revenue and employment, with new corporate healthcare chains coming up. The sector is primarily driven by factors such as increasing disposable income, increasing prevalence of chronic and lifestyle diseases and growing awareness about healthcare.

The Indian government has also been actively involved in promoting the growth of the healthcare sector by increasing public expenditure on healthcare, launching various health insurance schemes, and encouraging private sector participation in healthcare. In addition, India's robust pharmaceutical industry and skilled healthcare workforce have further contributed to the growth of the healthcare sector in India.

The Indian healthcare sector is expected to continue its growth trajectory in the coming years and is projected to reach a market size of USD 372bn by 2022 (from USD 110bn in 2016), growing at a CAGR of 22%. Further, it is also estimated that by FY22, the Indian healthcare infrastructure is expected to reach USD 349.1bn, which includes investments in hospitals, medical devices, pharmaceuticals, and other healthcare-related infrastructure<sup>3</sup>. India's budgeted expenditure on healthcare touched 2.1% of GDP in FY23 (BE), and 2.2% in FY22 (RE) as against 1.6% in FY21<sup>4</sup>.

### Impact of COVID-19:

The private healthcare sector in India has played a crucial role in the fight against COVID-19, with many private hospitals and clinics converting themselves into COVID care units to treat patients. However, the pandemic also had an adverse impact on the sector, with many hospitals and labs experiencing a sharp decline in revenue due to the postponement of medical tourism and elective procedures. The closure of outpatient departments, as per the government's advisory, also had an impact on the sector. Overall, the pandemic has had a significant impact on the healthcare sector in India, both positively and negatively.

Further, the pandemic also highlighted the need for strengthening India's healthcare infrastructure, both in the public and private sectors. Despite the significant contribution of private healthcare players in the pandemic response, the accessibility and affordability of healthcare services remain a major challenge in India.

While the industry continues to grow, it is also faced with some indirect tax issues. Some of the key indirect tax positions and issues are summarised below:



<sup>1</sup> <https://apps.who.int/iris/bitstream/handle/10665/365133/9789240064911-eng.pdf>

<sup>2</sup> [https://www.hidglobal.com/doclib/files/resource\\_files/eat-global-healthcare-market-ig-en.pdf](https://www.hidglobal.com/doclib/files/resource_files/eat-global-healthcare-market-ig-en.pdf)

<sup>3</sup> [https://www.ibef.org/download/1673947637\\_Healthcare-Nov2022.pdf](https://www.ibef.org/download/1673947637_Healthcare-Nov2022.pdf)

<sup>4</sup> <https://pib.gov.in/PressReleasePage.aspx?PRID=1894902#:~:text=in%20keeping%20with%20this%20objective,1.6%20per%20cent%20in%20FY21.&text=The%20ratios%20to%20GDP%20at,12%20base%20til%202021%2022>

## Key GST issues relating to the healthcare industry

### ▪ ITC eligibility qua pharmacy:

- GST implications on supplies made to in-patients and out-patients are as tabulated hereunder:

Transaction	Nature of services	Taxability
In-patient	The patient is under the continuous monitoring (including administration and dosage of medicines) of the doctors and nursing staff. Thus, a single invoice is issued for providing all facilities /services including room rent, doctors & nursing care, laboratory consumables, medicines, food supplied to patients, etc.	Such supply must be treated as a composite supply of 'health care services' -Exempt from the levy of GST
Out-patient	The patient has the option to decide whether to follow the doctor's advice or not. The doctor merely prescribes the medication and the charges for the doctor's consultation are billed separately. Further, the patient is at liberty to either buy medicines from the hospital-run pharmacy (which is billed separately) or another store. In certain cases, food is also supplied to patients (not admitted), attendants and visitors of patients (whether admitted or not).	Such supply is not a composite supply - To be treated as distinct and independent supplies of: <ul style="list-style-type: none"> <li>▪ 'Health care services' - by doctors</li> <li>▪ 'Medicines' - by the pharmacy</li> <li>▪ Food - by hospital canteens.</li> </ul>

(See Ernakulam Medical Centre (P) Ltd. [2019 (103) taxmann.com 182 (AAAR-Kerala)] and Circular No. 32/06/2018-GST dated 12 February 2018)

Considering the above, the eligibility to claim ITC on medicines supplied by a pharmacy are as follows:

- Medicines supplied to in-patients: ITC is not available as the same is used for supplying exempt health care services.
- Medicines supplied to out-patient: ITC is available if the medicines supplied to the patient are taxable.
- Considering the above, the pharmacy would be required to maintain separate books of accounts to ensure that full ITC is availed in respect of medicines supplied to out-patients and proportionate ITC is availed on common procurements used for supplying both taxable and exempt goods.

### GST implications on stents and implants:

- In Re: CMC Vellore Association [2020 (113) taxmann.com 55 (AAR - Tamil Nadu)], it was held that -
  - 'In-patient services' means services provided by hospitals to in-patients under the direction of medical doctors aimed at curing, restoring and/or maintaining the health of a patient and the services comprise medical, pharmaceutical and paramedical services, rehabilitation services, nursing services and laboratory and technical services.
  - Supply of medicines, drugs, stents, consumables and implants used in the course of providing 'health care services' to in-patients admitted to the hospital for diagnosis or medical treatment or procedures is a composite supply of 'in-patient health care services'.

- A similar position has been adopted in a few other advance rulings as well.
- **Miscellaneous issues:** In addition to the above, the healthcare industry also faces the following challenges:
  - Vide notification no:3 & 4/2022-Central Tax (Rate) dated 13 July 2022, effective 18 July 2022, GST exemption on the following services have been withdrawn and the same has been made taxable attracting GST @ 5%, without the benefit of ITC:
 

“Services provided by a clinical establishment by way of providing room [other than Intensive Care Unit (ICU)/Critical Care Unit (CCU)/Intensive Cardiac Care Unit (ICCU)/Neonatal Intensive Care Unit (NICU)] having room charges exceeding Rs. 5000 per day to a person receiving health care services”.

This has also led to various practical issues relating to the taxability of various charges and other services and the industry would hope for clarification on the same.
  - Lastly, the taxability of the activities undertaken by the employees at the corporate office in the course of or in relation to employment such as accounting, other administrative and IT system maintenance for the distinct persons (different GSTIN under the same PAN), i.e., applicability of intra-entity cross charge.

## Conclusion

India has become a hub for medical tourism, with patients from around the world coming to India for medical treatments and procedures at a fraction of the cost they would normally incur in their home countries. The emergence of telemedicine and the adoption of digital technologies have also helped in improving access to healthcare services in remote and rural areas of the country. Overall, the Indian healthcare sector is poised for continued growth in the coming years, and it presents significant opportunities for investors, healthcare providers, and other stakeholders.

While the healthcare industry in India has come a long way, the same can further be strengthened by undertaking various steps such as increasing investment in healthcare infrastructure, using technology to improve the efficiency of healthcare delivery, shifting focus to preventive healthcare, Public-Private Partnerships, increase in health insurance coverage and skilled manpower.





# DECODED

## Alternate remedy not a bar to admissibility of Writ petitions - Supreme Court

### Introduction

In an important judgement, the Hon'ble Supreme Court<sup>5</sup> reiterated the settled legal principle that the availability of alternative remedies may not act as an absolute bar to the admissibility of a Writ petition. The Hon'ble Supreme Court restated the principle of judicial discipline and also emphasised the distinction between 'entertainability' and 'maintainability' of a Writ petition.

### Facts:

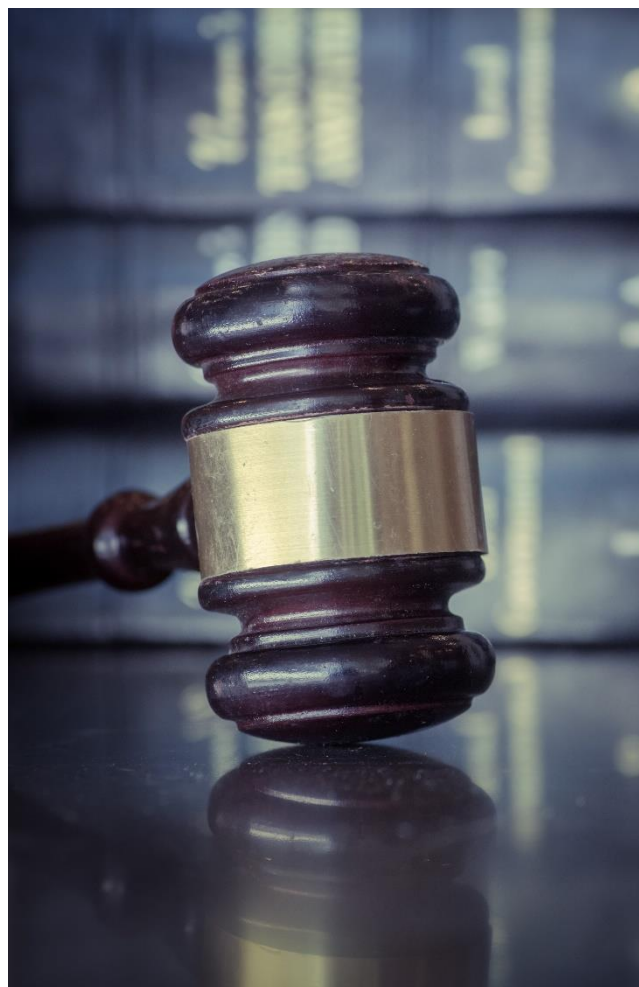
- Godrej Sara Lee Ltd. (Taxpayer) is engaged in manufacturing, marketing, and selling of mosquito coils, mats, refills, aerosols, baits and chinks under the brand names "Good Knight" and "Hit"
- The Taxpayer was registered under the Haryana Value Added Tax Act, 2003 (HVAT Act). During 2003-04 and 2004-05, the Taxpayer sold mosquito repellents discharging VAT @ 4%, which was accepted by the Assessing Authority in the assessment orders
- These orders were re-opened by the Revisional Authority on the ground that the Assessing Authority erred in levying VAT on mosquito repellents @ 4%, instead of 10%
- Aggrieved by the above, the Taxpayer preferred a Writ petition before the Hon'ble Punjab & Haryana High Court (Hon'ble High Court) challenging the jurisdiction of the Revisional Authority to pass final orders and also contended that such orders suffer from illegality and impropriety.

### Ruling by the Hon'ble High Court

- The Hon'ble High Court held that it would not be permissible to entertain the Writ Petition, without exhausting the remedy of appeal.
- Accordingly, the Hon'ble High Court dismissed the Writ petition filed by the Taxpayer and relegated the Taxpayer to the remedy of appeal provided under section 33 of the HVAT Act.
- Aggrieved, the Taxpayer filed an appeal before the Hon'ble Supreme Court.

### Contentions of the Taxpayer

- The Taxpayer made the following submissions
  - While the Hon'ble Supreme Court in Sonic Electrochem [1998 (6) SCC 397] held that mosquito repellent was not insecticide/pesticide, the same was factually distinguished by the Tribunal and the decision of the Tribunal had attained finality. Consequently, the revisional authority could not have assumed jurisdiction to Suo motu issue the impugned SCN and pass a revision order.



- Since the aforesaid Tribunal decision has attained finality, in terms of the settled principle of judicial discipline, it is required that the orders of the higher appellate authorities are followed unreservedly by the subordinate authorities. In this regard, the Taxpayer relied on the decision in Union of India and Ors. Vs. Kamlakshi Finance Corporation Ltd. [1992 SUPP (1) SCC 443].

### Contentions of the Tax Authorities

Justifying the Revisional Order passed by the Revisional Authority, it was argued that

- The Revisional Authority did not exceed its jurisdiction in exercising Suo motu powers under section 34 of the HVAT Act in light of the decision in Sonic Electrochem (supra).

<sup>5</sup> Godrej Sara Lee Ltd. Vs. The Excise and Taxation officer-cum-Assessing authority [2023-TIOL-11-SC-VAT]

- The Revisional orders do not merit interference and the appeal ought to be dismissed.

### Judgment

#### ▪ Distinction between ‘entertainability’ and ‘maintainability’ of a Writ petition

- ‘Entertainability’ and ‘maintainability’ of a Writ petition are distinct concepts.
- The objection as to ‘maintainability’ goes to the root of the matter, and if such objection were found to be of substance, the courts would be rendered incapable of even receiving the lis for adjudication. The question of ‘entertainability’ is entirely within the realm of the discretion of High Courts.
- Accordingly, it was held that the dismissal of a Writ petition on the ground that the alternative remedy has not been availed without examining whether there exists an exceptional case for the entertainment of a writ petition is not proper.

#### ▪ Principle concerning maintainability of a Writ petition

- Relying on the decision in *Whirlpool Corporation Vs. Registrar of Trademarks, Mumbai and Ors.* [1998 (8) SCC 1] and *Assistant Commissioner of State Tax Vs. M/s. Commercial Steel Ltd.* [2021 SCC OnLine SC 884], the Hon’ble Supreme Court reiterated the following exceptions whereby a High Court would be justified in entertaining a Writ petition despite the existence of an alternate remedy
  - Where the writ petition seeks enforcement of any of the fundamental rights.
  - Where there is a violation of the principles of natural justice.
  - Where the order or the proceedings are wholly without jurisdiction.
  - Where the vires of an Act is challenged.
- The Hon’ble Supreme Court observed that the Taxpayer had contended before the Hon’ble High Court that the Revisional Orders were passed wholly without jurisdiction. This, being a pure question of law, the Hon’ble Supreme Court observed that the Writ petition deserved a consideration on merits instead of being thrown out at the threshold.
- Accordingly, it was held that the Hon’ble High Court had committed a manifest error of law by dismissing the Writ petition, which is unsustainable and hence, set aside.

#### ▪ Principle of Judicial Discipline

- It was observed that the decision of the Tribunal (*supra*) had attained finality. Once an issue stands finally concluded, the decision binds the State, a fortiori, the Revisional Authority. While the Tribunal decision may not be acceptable to the Revisional Authority, but that cannot furnish any ground to perceive that it is not bound by the said order or that such order need not be followed.

- Till the Tribunal’s decision is not disputed, the said decision continues to remain operative as long as the framework of classification of products/tax liability which was then existing continues to remain operative. Accordingly, in such a scenario, the Revisional Authority would be bound by the Tribunal’s decision without any reservation.
- In view of the above, it was concluded that the Revisional Orders are in breach of the principle of judicial discipline.

#### ▪ Jurisdiction of the Revisional Authority

- The Hon’ble Supreme Court observed that the first proviso to section 34(1) of the HVAT Act inter alia stipulates that the suo motu power of revision cannot be exercised if the issue involved is pending before or has been settled by an appellate authority/High Court/Supreme Court
- Given that the issue involved in the present case has attained finality by the Tribunal (being an appellate authority), it was held that the Revisional Orders are not only unjustified but also demonstrate a thorough lack of understanding of the principle regulating the exercise of Suo motu revisional power by a quasi-judicial authority
- In view of the above, the Revisional Orders passed by the Revisional Authority were set aside.

### Comments

This is an important judgment reiterating the well-established principles which can be referred to and relied upon in various tax disputes. Another notable aspect of this case is that despite the option available to remand the matter, the Hon’ble Supreme Court, in the interest of justice, opted to hear the parties on merits.

It is a settled principle that the existence of alternate remedies cannot be a bar to entertaining a Writ petition and this judgement also reiterates the said principle and one may hope that this decision would help put such disputes to an end. Considering that the GST Appellate Tribunal is yet to be set up and there are many cases, where even the first appellate authorities have disposed-off the first appeals, the taxpayers can consider approaching the High Courts, for the next step in the appellate process to obtain certainty of the tax position, given that GST law and jurisprudence are still at a nascent stage of evolution and this judgment is a timely reminder to the taxpayers about the option available with them to approach High Courts.

# GLOBAL TRENDS

## VAT/GST News:

### International

#### Online editions are not newspapers in tax terms, UK top court rules

The British government removed VAT charge on digital publishing altogether in April 2020 to boost online readership of newspapers and e-books during the COVID-19 pandemic. Britain's top court ruled on 22 February 2023 that digital editions cannot be treated as "newspapers" for tax purposes.

(Source: <https://www.reuters.com/world/uk/online-editions-are-not-newspapers-tax-terms-uk-top-court-rules-2023-02-22/>)



#### Netherlands: Extension of VAT exemption for specific taxable individuals

The European Union official gazette published decision no:2022/2542, which permits the Netherlands to extend the expiration date and the threshold of a VAT exemption for specific taxable persons. This decision allows the application of the VAT exemption for taxable individuals with annual turnovers of no more than 25,000 EUR. This is to lighten the regulatory burden of small businesses and prevent internal market competition distortions.

(Source: <https://www.globalvatcompliance.com/globalvatnews/netherlands-vat-exemption-2/>)



#### France: Consultation on new rules for import VAT payment and declaration

French General Directorate sets a consultation regarding new rules for the declaration and payment of import VAT. Starting from 1 January 2022, the declaration, collection, and control of VAT applied to imports will be under the Directorate of Public Finance (DGFIP).

(Source: <https://www.globalvatcompliance.com/globalvatnews/france-vat-import/>)



#### Poland: MOF unveils draft Bill amendments to enforce a VAT e-invoicing system

Poland's MOF introduced modifications to the draft bill aimed at enforcing a nationwide e-invoicing system as a standard billing system for VAT called Krajowy System e-Faktur (KSeF). The updates were introduced as a result of observations made by the public during consultations and are intended to streamline the invoicing process for businesses, making it easier and more efficient for them to manage their VAT obligations.

(Source: <https://www.globalvatcompliance.com/globalvatnews/poland-einvoicing-2/>)



#### Andorra: Law regulating the taxation of digital assets

The Andorran government passed a new law regarding the taxation of digital assets, which was published in the Andorran Official Gazette. This law, known as Law no:42/2022, sets out various measures to ensure that the digital economy in Andorra continues to flourish while also collecting appropriate taxes.

(Source: <https://www.globalvatcompliance.com/globalvatnews/andorra-taxation-digital-assets/>)



#### Tanzania: New online tax filing system for non-resident digital service providers

The Tanzanian Revenue Authority (TRA) has announced that non-resident digital service providers must use the new online simplified return filing and payment portal. These taxpayers must file monthly for digital service tax (DST) starting July 2022 and for VAT starting with February 2023 returns with due dates on or before 7 March 2023. Non-compliance with the electronic filing requirements may result in penalties and interest charges. This move is part of Tanzania's efforts to improve the efficiency and effectiveness of its tax collection system.

(Source: <https://www.globalvatcompliance.com/globalvatnews/tanzania-new-filing-system/>)



## India

### India's February Goods and Services Tax (GST) collections rises 12% Y-o-Y to INR 1.50tn

The gross GST revenue collection in the month of February 2023 stood at INR 1.49tn, up around 12% on an annual basis. With this, the monthly GST revenues remained over INR 1.40tn crore for 12 straight months in a row.

(Source:

<https://economictimes.indiatimes.com/news/economy/indicators/indias-february-gst-collections-rises-12-yoy-to-rs-1-50-lakh-cr/videoshow/98341069.cms> )

### Ice cream to draw 5% or 18% GST rate: Authority for Advance Rulings

Gujarat Authority for Advance Ruling held that tax would be lower for ice cream ordered with food. However, higher GST will be applicable on sales over the counter. The sale of ice cream would draw 5 per cent or 18 per cent GST, depending on how it is sold.

(Source: [https://www.business-standard.com/article/economy-policy/ice-cream-to-draw-5-or-18-gst-depending-on-how-it-s-sold-gujarat-aar-123030700712\\_1.html](https://www.business-standard.com/article/economy-policy/ice-cream-to-draw-5-or-18-gst-depending-on-how-it-s-sold-gujarat-aar-123030700712_1.html))

### Merchandise exporters to pay 18% GST on shipping costs: Govt.

Merchandise exporters have to pay 18% GST on the services of transportation of goods. This follows a recommendation of the GST Council that the place of supply of transportation of goods must be determined by the location of the service receiver, rather than based on the destination of goods.

(Source: <https://economictimes.indiatimes.com/news/economy/foreign-trade/merchandise-exporters-to-pay-18-gst-on-shipping-costs/articleshow/98103956.cms>)

### Decriminalisation of GST Act: Why it can be a big reprieve for small businesses in India

To promote ease of doing business for small businesses and clearly distinguish between minor offences and wilful evasion of duty, the government is initiating one of the major overhauls of the GST provisions after 5 years. The initiative is likely to raise the threshold limit for launching criminal proceedings and also revisit the current compounding provisions as well.

(Source: <https://economictimes.indiatimes.com/small-biz/gst/decriminalisation-of-gst-act-why-it-can-be-a-big-reprieve-for-small-businesses-in-india/articleshow/95992517.cms>)

## Customs News

### International



#### Africa: World Customs Organization (WCO) publishes Guide on African Continental Free Trade Area (AfCFTA) Rules of Origin

The WCO has published a Guide for Rules of Origin under the AfCFTA agreement. The main objectives of the AfCFTA agreement are to create a single continental market for goods and services with free movement of business persons and investments, and thus to pave the way to accelerate the establishment of a customs union in the future.

(Source:

[https://www.globalcompliance.com/2023/03/01/https-insightplus-bakermckenzie-com-bm-international-commercial-trade-africa-world-customs-organization-publishes-guide-on-afcfta-rules-of-origin\\_02212023/](https://www.globalcompliance.com/2023/03/01/https-insightplus-bakermckenzie-com-bm-international-commercial-trade-africa-world-customs-organization-publishes-guide-on-afcfta-rules-of-origin_02212023/))



#### Venezuela: Customs Tariff Schedule updated

the National Executive issued Decree no:4,758, which adopts the legal regime of goods and the Common Customs Tariff Schedule of the States Parties of MERCOSUR (NCM) ('Tariff').

(Source:

[https://www.globalcompliance.com/2023/02/06/https-insightplus-bakermckenzie-com-bm-international-commercial-trade-venezuela-customs-tariff-schedule-updated\\_02022023/](https://www.globalcompliance.com/2023/02/06/https-insightplus-bakermckenzie-com-bm-international-commercial-trade-venezuela-customs-tariff-schedule-updated_02022023/))



#### Argentina: Customs continues to focus on customs valuation and transfer pricing issues

The Argentina Customs Director announced in a November press conference that Customs will continue focusing on customs valuations and transfer pricing issues.

In the case of foreign multinationals, Customs is paying attention to those transactions between related parties that involve the presence of a related-party intermediary between the Argentine importer and the (related) foreign manufacturer of the goods.

(Source:

[https://www.globalcompliance.com/2023/01/27/https-www-internationaltradeupdate-com-2023-01-25-argentina-customs-continues-to-focus-on-customs-valuation-and-transfer-pricing-issues\\_01252023/](https://www.globalcompliance.com/2023/01/27/https-www-internationaltradeupdate-com-2023-01-25-argentina-customs-continues-to-focus-on-customs-valuation-and-transfer-pricing-issues_01252023/))

## India

### Government removes 252% customs duty on cars imported for testing in India: Details

A Customs duty of 252% is currently levied on cars that are bought to the country for testing purposes. Car manufacturers will not have to pay customs duty on cars being imported to India by notified testing agencies.

(Source:

<https://timesofindia.indiatimes.com/auto/news/govt-removes-252-customs-duty-on-cars-imported-for-testing-in-india-details/articleshow/97635008.cms>)

### Budget 2023: Government reduces customs duty on number of products for marine sector

The government has reduced import duty on several raw materials such as fish lipid oil, krill meal and algal prime used in the marine sector, to promote domestic production and exports from the segment. The duty on fish lipid oil and algal prime (flour), used in the manufacture of aquatic feed, has been reduced to 15 per cent from 30 per cent.

(Source:

<https://economictimes.indiatimes.com/news/economy/for-eign-trade/budget-2023-govt-reduces-customs-duty-on-number-of-products-for-marine-sector/articleshow/97620592.cms>)

### Centre Exempts Imports of Covid Vaccines from Customs Duty till March 31

The government has exempted customs duty on imports of Covid-19 vaccines till 31 March 2023, in a bid to ensure domestic availability amid fears of a surge in coronavirus infections.

(Source: <https://www.ndtv.com/business/imports-of-covid-19-vaccines-exempted-from-customs-duty-till-march-31-3696538>)

### Budget 2023: Boost to electronics manufacturing as customs duty cut on key parts

The industry welcomed the move to remove customs duties on certain parts and components for mobile phones and televisions, stating that it will deepen the value chain in India, and make manufacturing more competitive.

(Source:

<https://telecom.economictimes.indiatimes.com/news/budget-2023-boost-to-electronics-manufacturing-as-customs-duty-cut-on-key-parts/97517947>)

### Freeze import duties for next five years; cut customs levy slabs to 5: Global Trade Research Initiative (GTRI) to Government

The GTRI also suggested retaining import duty on components; removal of inverted duty issues; and reduction of customs duty slabs to 5 from 25 at present to avoid confusion and minimise litigation. These suggestions will prepare India adequately to meet the challenging global economic environment.

(Source:

<https://economictimes.indiatimes.com/news/economy/for-eign-trade/freeze-import-duties-for-next-five-years-cut-customs-levy-slabs-to-5-gtri-to-govt/articleshow/97311926.cms> )



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