



INDIRECT TAX WEEKLY DIGEST

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GOODS & SERVICES TAX

LEGISLATIVE UPDATES

PRESS RELEASE

RECOMMENDATIONS OF THE 51ST GST COUNCIL MEETING

The 51st GST Council meeting was held on 2 August 2023, during which various recommendations concerning amendments in the provisions of the Central Goods and Service Tax Act, 2017 (CGST Act) and Central Goods and Service Rules, 2017 (CGST Rules) were proposed to clarify the taxation of 'Online Gaming', 'Casinos', and 'Horse Racing'¹.

[Press Release dated 2 August 2023]

NOTIFICATIONS

SPECIAL MANNER TO FILE AN APPEAL AGAINST THE ORDER PASSED BY PROPER OFFICER IN RESPECT OF TRANSITIONAL CREDIT

The CBIC has notified a special procedure to be followed in cases where a taxpayer or an officer notified under Section 107(2) of the CGST Act intends to file an appeal before the Appellate Authority against an order passed in accordance with the Circular no:182/14/2022-GST dated 10 November 2022, pursuant to the directions of the Hon'ble Supreme Court in Union of India Vs. Filco Trade Centre Pvt. Ltd. **[TS-369-SC-2022-GST]** under Section 73 / 74 of the CGST Act. The special procedure is set out hereunder:

- The appeal shall be filed manually in duplicate in the prescribed form before the Appellate Authority within the prescribed period (under Section 107 of the CGST Act). Any such appeal filed prior to the issuance of this Notification shall be deemed to be filed in accordance with this Notification;

- The Appellant shall not be required to deposit any amount, as a pre-condition for filing an appeal, as mandated under Section 107(6) of the CGST Act;
- An appeal filed under this Notification shall be accompanied with relevant documents, including a self-certified copy of the order and such appeal and relevant documents shall be signed by the authorised person under Rule 26(2) of the CGST Rules;
- The Appellate Authority (or an officer authorised by him in this behalf) shall manually issue an acknowledgement in Form GST APL-02 indicating the appeal number. The appeal shall be treated as filed only when the acknowledgement (as above) is issued.
- The Appellate Authority shall also issue a summary of the order, passed in the prescribed form along with the order passed.

[Notification no:29/2023 - Central Tax dated 31 July 2023]

SPECIAL PROCEDURE FOR TAXPAYERS ENGAGED IN THE MANUFACTURE OF SPECIFIED GOODS

Pursuant to the recommendations of the GST Council in its 50th Meeting, the CBIC has notified a special procedure to be followed by registered persons engaged in the manufacture of specified goods (viz., pan masala and tobacco products).

[Notification no:30/2023-Central Tax dated 31 July 2023]

EXTENSION OF BIOMETRIC AADHAAR AUTHENTICATION TO THE UNION TERRITORY OF PUDUCHERRY

Notification no:27/2022-Central Tax dated 26 December 2022 has been amended to extend the applicability of biometric

¹ Our summary of the press release can be accessed [here](#).

Aadhaar Authentication during the process of GST registration under Form GST REG-01 to the Union Territory of Puducherry.

[Notification no:31/2023-Central Tax dated 31 July 2023]

ACCOUNT AGGREGATOR FOR INFORMATION SHARING UNDER THE CGST ACT

Effective 1 October 2023, the “Account Aggregator” has been notified as the system with which information may be shared by the common portal based on consent under Section 158A of the CGST Act. It has been clarified that the term “Account Aggregator” refers to a non-banking financial company that operates in accordance with the Reserve Bank of India's (RBI) directions under Section 45JA of the RBI Act, 1934, and is defined as such in the Non-Banking Financial Company - Account Aggregator (Reserve Bank) Directions, 2016.

[Notification no:33/2023-Central Tax dated 31 July 2023]

EXEMPTION TO SPECIFIED TAXPAYERS FROM FILLING ANNUAL RETURN

CBIC has notified that the taxpayers whose aggregate turnover in FY 2022-23 is up to INR 20mn will be exempted from filling annual return in Form GSTR-9 for the said FY.

[Notification no:32/2023-Central Tax dated 31 July 2023]

EXPORT OF GOODS/ SERVICES ON INTEGRATED TAX PAYMENT AND REFUND OF ITC

CBIC has notified that effective 1 October 2023, all goods, or services, except the following goods may be exported on payment of IGST, and on which, the supplier may claim the refund of IGST so paid:

HSN Code	Description of goods
2106 90 20	Pan Masala
2401	Unmanufactured tobacco (without lime tube) - bearing a brand name
2401	Unmanufactured tobacco (with lime tube) - bearing a brand name
2401 3000	Tobacco refuse, bearing a brand name
2403 11 10	‘Hookah’ or ‘gudaku’ tobacco bearing a brand name
2403 11 10	Tobacco used for smoking 'hookah' or 'chilam' commonly known as 'hookah' tobacco or 'gudaku', not bearing a brand name
2403 11 90	Other water pipe smoking tobacco, not bearing a brand name
2403 19 10	Smoking mixtures for pipes and cigarettes
2403 19 90	Other smoking tobacco bearing a brand name
2403 19 90	Other smoking tobacco, not bearing a brand name
2403 91 00	‘Homogenised’ or ‘reconstituted’ tobacco, bearing a brand name
2403 99 10	Chewing tobacco (without lime tube)
2403 99 10	Chewing tobacco (with lime tube)
2403 99 10	Filter khaini
2403 99 20	Preparations containing chewing tobacco
2403 99 30	Jarda scented tobacco
2403 99 40	Snuff

HSN Code	Description of goods
2403 99 50	Preparations containing snuff
2403 99 60	Tobacco extracts and essence, bearing a brand name
2403 99 60	Tobacco extracts and essence, not bearing a brand name
2403 99 70	Cut tobacco
2403 99 90	Pan masala containing tobacco 'Gutkha'
2403 99 90	All goods, other than pan masala containing tobacco 'gutkha', bearing a brand name
2403 99 90	All goods, other than pan masala containing tobacco 'gutkha', not bearing a brand name
3301 24 00,3301 25 10, 3301 25 20, 3301 25 30, 3301 25 40, 3301 25 90	Essential oils other than those of citrus fruit namely: <ul style="list-style-type: none"> Of peppermint (<i>Mentha piperita</i>) Of other mints: Spearmint oil (<i>ex-mentha spicata</i>), water mint-oil (<i>ex-mentha aquatic</i>), Horsemint oil (<i>ex-mentha sylvestries</i>), Bergament oil (<i>ex-mentha citrate</i>), <i>Mentha arvensis</i>.

[Notification no:01/2023-Integrated Tax dated 31 July 2023]

CIRCULARS

CLARIFICATION IN RESPECT OF APPLICABLE GST RATES AND CLASSIFICATION OF CERTAIN GOODS.

- CBIC has clarified that the GST rates in respect of the following goods have been regularised on 'as-is basis' for the specified period as tabulated hereunder:

Sl. No.	Description of goods	Regularisation period
1.	Supply of uncooked/ Un-fried extruded snack pellets, by whatever name called, manufactured through process of extrusion [HSN 1905 90 30]	Till 27 July 2023
1.	Fish Soluble Paste [HSN 2309]	Till 27 July 2023
1.	Dessicated Coconut [HSN 0801]	Till 27 July 2023
1.	Biomass briquettes [Any Chapter]	Till 12 October 2017
1.	Supply of raw cotton by agriculturist to co-operatives	Till 31 July 2023
1.	Imitation zari thread or yarn, known by any name [HSN 5605]	Till 27 July 2023
1.	Plates, cups made from Areca leaves	Prior to 1 October 2019
1.	Trauma, spine, and arthroplasty implants [HSN 9021]	Prior to 18 July 2022

- Subsequent notifications² for change in rates have also been notified with effect from 27 July 2023.

[Circular no:200/12/2023-GST dated 1 August 2023]

² Notification no:09/2023 - Central Tax (Rate), 09/2023 - Integrated Tax (Rate) & 09/2023 - Union Territory Tax (Rate) dated 26 July 2023

CLARIFICATION REGARDING APPLICABILITY OF GST ON CERTAIN SERVICES

- The CBIC has issued the following clarifications:
 - Services supplied by a director of a company/ body corporate in his private/ personal capacity, such as renting of immovable property to the company/ body corporate, are not taxable under the Reverse Charge Mechanism (RCM). Only those services supplied by director of company or body corporate, which are supplied by him as or in his capacity of director of that company or body corporate shall be taxable under RCM in the hands of the company or body corporate under Notification no:13/2017-Central Tax (Rate) (Sl. No. 6) dated 28 June 2017.
 - In respect of supply of food and beverages in a cinema hall:
 - Food or beverages supplied in a cinema hall are taxable as ‘restaurant services’ if they are supplied by way of or as part of a service and are supplied independent of the cinema exhibition service.
 - However, where the sale of cinema ticket and supply of food and beverages are clubbed together, and such bundled supply satisfies the test of composite supply, the entire supply will attract GST at the rate applicable to service of exhibition of cinema i.e., the principal supply.

[Circular no:201/13/2023-GST dated 1 August 2023]

MAHARASHTRA: EXTENSION OF TIME LIMIT FOR FURNISHING DECLARATION FOR FILING AN APPEAL AGAINST THE ORDER PASSED BY THE FIRST APPELLATE AUTHORITY

The Maharashtra Goods and Services Tax Department had issued Trade Circular no:9T of 2020 dated 26 May 2020 (Trade Circular 9T of 2020) inter alia clarifying that where any demand is confirmed or an additional demand is created by the First Appellate Authority, then in such cases, the Taxpayer shall submit a declaration (in Annexure-I) that he intends to file an appeal under Section 112(1) of the CGST Act or Maharashtra Goods and Services Tax Act, 2017 (MGST Act) before the jurisdictional Tax Officer within 15 days from the date of communication of order (passed by the First Appellate Authority), failing which, it shall be presumed that the Taxpayer does not intend to file an appeal and subsequently, recovery proceedings may be initiated by the Tax Authorities.

Pursuant to the directions of the Hon’ble Bombay High Court in *Gulf Oil Lubricants India Ltd. Vs. Commissioner of State Tax [TS-51-HC(BOM)-2023-GST]*³, it has been clarified that the orders passed by the First Appellate Authority would inter alia include the reference to the following clarifications provided by Trade Circular 9T of 2020:

- Time limit to file an appeal before the Appellate Tribunal under Section 112 of the CGST/ MGST Act will be counted from the date on which the President or State President, as the case may be, enters office.

- Taxpayers intending to file an appeal against the order passed by the First Appellate Authority may file a declaration in Annexure-I within 15 days from the date of communication of such order.

Taxpayers who have not filed the aforesaid declaration within the stipulated period of 15 days are now provided an additional period of 15 days from the date of issuance of this Trade Circular to file the aforesaid declaration. The aforesaid declaration filed within such extended period shall be presumed to be filed as provided in the aforesaid Trade Circular 9T of 2020.

[Circular no:20T of 2023 dated 31 July 2023]

JUDICIAL UPDATES

ITC CANNOT BE DENIED TO A RECIPIENT UNLESS THE TAX AUTHORITIES INITIATE ACTION AGAINST THE DEFAULTING SUPPLIER

Facts of the case:

- During FY 2017-18, M/s. Suncraft Energy Pvt. Ltd. (Taxpayer) had inter alia availed ITC on procurements made from its vendors.
- In respect of procurements made from one of its vendors, the vendor had not reported the details of the supplies made to the Taxpayer in its periodical GST returns. Consequently, the details of such supplies did not appear in Taxpayer’s Form GSTR-2A.
- However, at the time of such procurements, the Taxpayer had made payment to the vendor towards consideration for such supplies along with GST thereon.
- Subsequently, the Tax Authorities conducted scrutiny of the returns filed by the Taxpayer, post which, the Tax Authorities issued a notice identifying certain discrepancies which was duly responded to by the Taxpayer.
- Subsequently, the Tax Authorities issued a Show Cause Notice (SCN) seeking reversal of ITC availed by the Taxpayer in respect of the procurements made from the aforesaid vendor based on the difference in the amount of ITC as per Form GSTR-3B vis-à-vis Form GSTR-2A.
- Against this, the Taxpayer submitted a detailed response inter alia highlighting that the Taxpayer has duly paid the consideration (along with GST thereon) to the vendor and thereafter, the Taxpayer had claimed ITC in respect of such procurements.
- Pursuant to the above, the SCN was confirmed vide Order-in-Original against which the Taxpayer filed a Writ Petition before the Hon’ble Calcutta High Court. The Single Bench of the Hon’ble High Court disposed the Writ Petition directing the Taxpayer to prefer statutory appeal before the Appellate Authority and the Appellate Authority was directed to dispose the said appeal without rejecting the same as being time barred.
- Aggrieved by the above, the Taxpayer filed an intra-court appeal before the Division Bench of the Hon’ble High Court.

³ Our summary of the judgement, can be accessed [here](#).

Contentions by the Taxpayer

- The Taxpayer has fulfilled all the conditions to avail ITC under Section 16(2) of the CGST Act and has also made payment of consideration (including GST thereon) to the vendor.
- Despite the above, the Tax Authorities have erred in passing the Order-in-Original directing the Taxpayer to reverse the ITC in respect of the aforesaid procurements which are not appearing in Form GSTR-2A.
- Reliance in this regard could be placed on the following:
 - **Union of India Vs. Bharti Airtel Ltd. and Ors. [2022 (4) SCC 328]** wherein it was held that Form GSTR-2A is only a facilitator to take a confirm decision of availing ITC at the time of self-assessment i.e., while filing Form GSTR-3B.
 - Press Release dated 4 May 2018 had inter alia clarified that there shall not be automatic reversal of ITC from the buyer on non-payment of tax by the supplier. In case of default in payment of tax by the seller, recovery thereof shall be made from the seller. However, reversal of ITC availed by the buyer shall also be an option available with the Tax Authorities to address exceptional situations like missing dealer, closure of business by supplier or supplier not having adequate assets, etc.
 - Press Release dated 18 October 2018 which had inter alia stipulated that furnishing of outward supplies in Form GSTR-1 by the corresponding suppliers and the facility to view the same in Form GSTR-2A (of the recipient) is to facilitate the taxpayers and does not impact the taxpayer's ability to claim ITC.
 - **Arise India Ltd. & Ors. Vs. Commissioner of Trade and Taxes, Delhi & Ors. [MANU/DE/3361/2017] (affirmed by the Hon'ble Supreme Court in MANU/SCOR/01183/2018)** wherein identical provisions under the Delhi Value Added Tax Act, 2004 were examined and it was held that ITC cannot be denied to a bonafide purchaser on account of the seller's default in depositing taxes.

Observations and Ruling of the Hon'ble High Court

- It is undisputed that the Taxpayer received the goods or services or both and that the payment for the same has been made to the vendor. The mere reason for denying ITC by the Tax Authorities is on the ground that the details of such procurements were not reported by the vendor in its Form GSTR-1 (and hence, were not appearing in the Taxpayer's Form GSTR-2A).
- Despite the clarification provided by the Press Release dated 4 May 2018, the Tax Authorities have not conducted any enquiry on the vendor concerning non-reporting of such supplies in its periodical GST returns.
- Without resorting to the above, the Tax Authorities have arbitrarily ignored the invoices and bank statement produced by the Taxpayer substantiating that they have made payment of consideration along with GST thereon to the vendor.

- Before directing the Taxpayer to reverse ITC, the Tax Authorities ought to have initiated actions against the supplier and unless and until the Tax Authorities are able to bring out an exceptional case (that there has been collusion between the Taxpayer and the vendor or where the vendor is missing or the vendor has closed down its business or the vendor does not have any assets and such other contingencies), the Taxpayer cannot be directed to reverse ITC.
- In view of the above, the Order-in-Original passed by the Tax Authorities is set aside with a direction to the Tax Authorities to first proceed against the vendor and only under the exceptional circumstance (as clarified in the Press Release dated 4 May 2018) proceedings can be initiated against the Taxpayer.

[M/s. Suncraft Energy Pvt. Ltd. Vs. The Assistant Commissioner, State Tax, Ballygunge Charge [TS-367-HC(CAL)-2023-GST], dated 2 August 2023]

APPROVAL OF RESOLUTION-PLAN BY NATIONAL COMPANY LAW TRIBUNAL (NCLT) EXTINGUISHES PAST CREDIT AND LIABILITIES

Facts of the case

- M/s. ESL Steel Ltd. (Taxpayer) had claimed transitional credit of INR 51.02mn in FY 2017-18.
- Subsequently, State Bank of India (SBI), being a major financial institution of the Taxpayer, filed a Petition before NCLT under the provisions of Insolvency and Bankruptcy Code, 2016 (IBC) for initiating Corporate Insolvency Resolution Process (CIRP), which was admitted.
- During the course of its proceedings, the Insolvency Resolution Professional (IRP) filed a Resolution Plan submitted by M/s. Vedanta Ltd. for approval by the NCLT which was duly approved by the Committee of Creditors (CoC). Pursuant to the above, the NCLT, vide Order dated 17 April 2018, approved the Resolution Plan.
- Prior to such approval, the Taxpayer's earlier Management had filed the application transitional credit in Form GST TRAN-1 on 27 September 2017. While filling the said form, the GST Portal did not allow the Taxpayer to disclose and transition CENVAT Credit on the Capital Goods received during July and August 2017 of INR 9.21mn and hence, the same could not be transitioned by the Taxpayer to the GST regime.
- Subsequently, the Taxpayer requested the Tax Authorities to allow them to file a revised Form GST TRAN-1 by enabling the option on the GST Portal.
- The Form GST TRAN-1 issue was quite a bit of extenuating issues pertaining to system glitches, technical errors, inability to re-adjust the credit once the one-time revision is done and inability to take the credit that got accumulated beyond the implementation date. As a result, the Hon'ble Supreme Court, *in Union of India Vs. Filco Trade Centre Pvt. Ltd. [2022-VIL-63-SC]*, had put these issues to rest by ordering the Tax Authorities to re-open the portal for filing Form GST TRAN-1.

- Pursuant to the above, the Taxpayer filed revised Form GST TRAN-1 to claim ITC amounting to INR 60.23mn (including INR 9.21mn on Capital Goods not availed previously), and accordingly, informed the Tax Authorities and also provided a declaration pertaining thereto.
- Instead of allowing the aforesaid transitional credits, the Tax Authorities issued an SCN to the Taxpayer to impose a tax demand of INR 60.23mn along with interest and penalty. The Taxpayer furnished a reply to the SCN seeking additional time to furnish a detailed response. However, the Tax Authorities, on the same day, issued a notice for personal hearing in the immediate next week.
- Pursuant to the above, the Taxpayer filed a detailed response explaining the facts of the matter and requested the Tax Authorities to allow ITC as part of the Electronic Credit Ledger.
- Subsequently, the Tax Authorities had confirmed the demand alleged in the SCN (Impugned Order) under Section 74(9) of the CGST Act on the ground of irregular availment of transitional credit during FY 2017-18 as under:
 - Transitional credit availed prior to 17 April 2018 - INR 51.02mn; and
 - Transitional credit availed by filing new Form GST TRAN-1 - INR 9.21mn.
- Aggrieved by the above, the Taxpayer filed a Writ Petition before the Hon'ble Jharkhand High Court.

Contentions by the Taxpayer

- The Impugned Order does not consider the detailed reply to SCN filed by the Taxpayer and the ratio laid down by the Hon'ble Supreme Court in *Ghanshyam Mishra and Sons Pvt. Ltd. Vs. Edelweiss Asset Reconstruction Company Ltd. [2021 (9) SCC 657]* basis which, no recovery/proceeding can be initiated against the Taxpayer for any alleged dues prior to 17 April 2018 i.e., the date on which the NCLT had approved the Resolution Plan.
- The issue pertaining to transitional credits in Form GST TRAN-1 was on account of system glitches, technical errors, inability to re-adjust credit after one-time revision, and inability to take the credit that got accumulated beyond the implementation date. In view of the above, the Hon'ble Supreme Court, in *Filco Trade Centre Pvt. Ltd. (supra)*, directed the Tax Authorities to re-open the GST portal for filing Form GST TRAN-1.
- The judgment of the Hon'ble Supreme Court in *Ghanshyam Mishra and Sons Pvt. Ltd. (supra)* cannot be convoluted by the Tax Authorities to contend that 'liabilities go parallel with the assets' for the purpose of recovery of liabilities post-IBC proceedings. The ratio laid down in the aforesaid decision clarifies that only the past obligation of the past period gets extinguished once the new management has taken over the Company as part of the Resolution Plan and there is nothing in the aforesaid decision which stipulates that past credit due to the Company gets expunged.

Contentions by the Tax Authorities

- The Impugned Order has been rightly passed after considering the reply to SCN filed by the Taxpayer and the ratio laid down in *Ghanshyam Mishra and Sons Pvt. Ltd. (supra)*.
- The violation of the GST law is based on denial of transitional credit and the same is categorically explained in the Impugned Order. These violations were never denied by the Taxpayer in its reply to the SCN which implies that the alleged violations are correct, and ITC is not available to the Taxpayer as per the GST law.
- The Impugned Order is not an exception to the ratio laid down in *Ghanshyam Mishra and Sons Pvt. Ltd. (supra)* judgement but intends to recover the ineligible ITC availed by the Taxpayer under the provisions of the CGST Act.

Observations and Ruling of the Hon'ble High Court

- As per the decision in *Ghanshyam Mishra and Sons Pvt. Ltd. (supra)*, no recovery or proceeding can be continued against the Taxpayer for any dues prior to 17 April 2018 i.e., the date on which NCLT has approved the Resolution Plan. Accordingly, only the past obligations get extinguished once the new management has taken over the Company as a part of the Resolution Plan.
- The Taxpayer's contention that the aforesaid judgment contains nothing to state that the past credit due to the company gets expunged, is misconceived. In fact, the liability of the earlier management may not be shifted to the current management, but the ITC available to the earlier management can also no longer be availed by the current management which was not a Taxpayer during the period of procurement of inputs/ capital goods as availed in Form GST TRAN-1 filed on 30 November 2022.
- Accordingly, on one hand, the Tax Authorities had illegally and arbitrarily confirmed the demand for INR 60.23mn along with interest and penalty, on the ground of irregular availment of transitional credit in 2017-18, but at the same time, the Taxpayer cannot avail ITC of the earlier period i.e., any dues prior to 17 April 2018 i.e., the date on which NCLT has approved the Resolution Plan.
- The Tax Authorities were correct in holding that as the Hon'ble Supreme Court was of the view that the liability of earlier management cannot be transferred to the current management, likewise, the credit available to the earlier management will not be shifted to the current management because the current management was not a Taxpayer during the period of procurement of inputs or capital goods. However, the Tax Authorities have misdirected in holding that the whole amount taken as transitional credit is liable to be recovered along with interest and penalty, against the ratio in *Ghanshyam Mishra and Sons Pvt. Ltd. (supra)*.

- In view of the foregoing, the Impugned Order is quashed and set aside. It has been categorically held that the Taxpayer cannot take ITC of the earlier period i.e., prior to 17 April 2018. Accordingly, the Taxpayer is not entitled to avail ITC amounting to INR 9.21mn claimed by filing new Form GST TRAN-1.

[ESL Steel Ltd. Vs. Principal Commissioner, CGST and Central Excise & Ors., [TS-323-HC(JHAR)-2023-GST] dated 11 July 2023]

CENTRAL EXCISE

LEGISLATIVE UPDATES

NOTIFICATION

CHANGE IN RATE OF SPECIAL ADDITIONAL EXCISE DUTY (SAED) ON PETROLEUM CRUDE

Effective 01 August 2023, Notification no:18/2022 and 04/2022-Central Excise dated 19 July 2022 and 30 June 2022 respectively inter alia stipulating the applicable SAED rate on Petroleum crude and High-Speed Diesel Oil respectively are amended as under:

HSN Code	Description of goods	Existing Rate	Proposed Rate
2709	Petroleum crude	INR 1,600 per tonne	INR 4,250 per tonne
2710	High Speed Diesel Oil	Nil	INR 1 per litre

[Notification no:24&25/2023-Central Excise dated 31 July 2023]

SALES TAX

LEGISLATIVE UPDATES

NOTIFICATION

WEST BENGAL: EXTENSION OF LAST DATE FOR FILING SETTLEMENT APPLICATION

The last date for submission of settlement application under Section 5 of the West Bengal Sales Tax (Settlement of Dispute) Act, 1999 has been extended from 30 June 2023⁴ to 31 August 2023.

[Notification no:1292-F.T. (West Bengal) dated 31 July 2023]

JUDICIAL UPDATES

OBLIGATION DISCHARGED BY THE CO-VENTURER IS NOT SUBJECT TO SERVICE TAX

Facts of the case

- M/s. BG Exploration and Production India Ltd. (Taxpayer) is inter alia engaged in mining oil and natural gas under a 'Production Sharing Contract' (PSC).
- For this, the Taxpayer entered a 'Joint Operating Agreement' (JOA) with M/s. Oil and Natural Gas Corporation Ltd. (ONGC) and Reliance Industries Ltd. (RIL) to perform the aforesaid operations.
- The Tax Authorities issued SCN demanding Service tax on the following amounts:
 - Difference between the ST-3 returns and the Balance Sheet.
 - 1% indirect cost allocation from the Joint Venture.
 - Demand of interest under Section 75 of the Finance Act, 1994 (Finance Act) for delayed Service tax payment under the RCM.

- Amount disclosed as 'receivables' in the Balance Sheet.

- Against this, the Taxpayer filed their reply to the aforesaid SCN, post which, the Tax Authorities confirmed the aforesaid SCN vide Order-in-Original (Impugned Order) imposing recovery of Service tax along with interest and penalty.
- Aggrieved by the above, the Taxpayer filed an appeal before CESTAT.

Contentions by the Taxpayer

- **Difference between ST-3 returns and Balance Sheet:**
 - The difference between the amounts reported in the ST-3 returns vis-à-vis the Balance Sheets is on account of the following:
 - Management Service Unit Charges (MSU charges) allocated by M/s. B.G. International Ltd. (BGIL) for 'Mining Services' provided before 01 June 2007, during which, the said activity was not leviable to Service tax.
 - Certain 'Provision entries' were not related to any services rendered by the Taxpayer, and hence, not leviable to Service tax.
 - Expenses towards the taxes paid by the Taxpayer which were not liable for Service tax.
 - It is well settled that Service tax is not leviable solely based on balance sheet/ income tax returns. Reliance in this regard is placed on the following:
 - **Synergy Audio Visual Workshop Pvt. Ltd. Vs. CST [2008 (1) TMI 188 - CESTAT Bangalore].**

⁴Our summary of the notification can be accessed [here](#).

- **Mahindra Holiday and Resorts India Ltd. Vs. The Commissioner of LTU [2018 (10) TMI 35 - CESTAT Chennai].**
 - With respect to amounts paid to BGIL, from the date when 'mining services' were leviable to Service tax (i.e., effective 1 June 2007), the Taxpayer has duly accepted and has voluntarily paid applicable Service tax dues under the RCM. However, for the period prior to 1 June 2007, such charges are not leviable to Service tax. However, the Tax Authorities, in the Impugned Order, have sought to re-classify 'mining services' as 'management and business consultancy services', which is illegal and wholly without jurisdiction.
 - **1% indirect cost allocation:**
 - As regards the 'annual overhead charge', these expenses are executory costs and not related to the provision of 'management and business consultancy services'.
 - Such allocations are in the nature of reimbursement of expenditures i.e., an indirect expense incurred by the Taxpayer while carrying out its obligations under the JOA.
 - Thus, the allocation of 1% was only sharing of expense and not a consideration for service. Applying the doctrine of mutuality, the Taxpayer, being a member of joint venture cannot provide service to itself.
 - In view of the above, the indirect allocation cost cannot be regarded as 'service' and hence, the question of levy of Service tax on the said transaction would not arise. Reliance was placed on **Mormugao Port Trust Vs. CCE&ST, Goa [2017 (48) STR 69 (Tri. Mum.)]**.
 - **Interest on delayed payment of Service tax:**
 - The Taxpayer had duly discharged Service tax based on the SAP posting date i.e., the date when the transaction was recorded in their accounting books. Consequently, in the absence of delayed payment of Service tax, the question of imposition of interest would not arise.
 - **Amount disclosed as 'Receivables' in the Balance Sheet:**
 - The amounts disclosed as 'Receivables' pertains to the provision of 'manpower supply services' by the Taxpayer to a recipient situated outside India.
 - During the relevant period i.e., FY 2011-12, the services in question would be treated as export of services if the location of the recipient of services is situated outside India.
 - Since the recipient of service in the present case was situated outside India, the service in question was rightly classified as 'export of services' and hence, not leviable to Service tax.
- Observations and Ruling of the CESTAT**
- **Difference between ST-3 returns and Balance Sheet:**
 - This issue is no longer res integra and has been decided in the following judicial precedents:
 - In **Synergy Audiovisual Workshop Pvt. Ltd. (supra)**, wherein it was held that the levy of Service tax solely based on Balance Sheet or Income Tax returns is unsustainable in law.
 - In **Mahindra Holiday and Resorts India Ltd. (supra)**, wherein it was held that the Balance Sheet entries per se cannot be considered as income or expenditure for the purpose of levying Service tax.
 - Based on the aforesaid decisions, it is evident that the demand for Service tax solely based on the difference between the figures in the Balance Sheet and ST-3 Returns is untenable.
 - **1% indirect cost allocation:**
 - As regards the 'annual overhead charges', the issue is no longer res integra and has been decided in the Taxpayer's own case, in **BG Exploration & Production India Ltd Vs. CST [2020 (10) TMI 579 - CESTAT Mumbai]**, wherein it was held that the performance of obligations by a party to the joint venture is intended to service itself, and thereby, the joint-venture and the fulfilment of obligations to contribute to the capital is beyond the scope of taxation under the Finance Act.
 - Accordingly, the confirmation of Service tax demand on such cost allocation is unsustainable.
 - **Interest on delayed payment of Service tax:**
 - Service tax was paid by the Taxpayer under the RCM on payments made to BGIL under the category 'Management Consultancy services' and 'Mining services'.
 - The Tax Authorities demanded Service tax taking invoice date as the relevant date for payment of Service tax. However, in as much as the Taxpayer had paid Service tax along with interest and the same has also been appropriated by the Tax Authorities and the rest of the demands under the SCN adjudged by the Tax Authorities is not sustainable, there is no need to delve into this issue.
 - **Amount disclosed as 'Receivables' in the Balance Sheet:**
 - Since the issue concerning the difference between figures as per ST-3 returns and Balance Sheet has already been dealt with in Taxpayer's favour as stated above, the same need not be re-examined again.
 - Since the demand raised in the Impugned Order is based on the Taxpayer's ST-3 returns and Balance Sheet, this could only lead to an irresistible conclusion that no suppression or intention to evade payment of tax could be levelled against the Taxpayer.
 - Accordingly, there was reasonable cause for the failure to discharge Service tax liabilities which has been duly rectified by the Taxpayer along with interest. Accordingly, the imposition of penalty is unjustified and the same is set aside.
 - In view of the above, the Impugned Order is amended to the extent of allowing the appeals filed by the Taxpayer and upholding the confirmation of demand arising out of

short payment of Service tax already paid by the Taxpayer along with interest.

[M/s. BG Exploration & Production India Ltd. Vs. CST - VII, Mumbai, [TS-355-CESTAT-2023(Mum)-ST], dated 17 July 2023]

CUSTOMS

LEGISLATIVE UPDATES

CIRCULAR

EXPANSION OF AUTOMATIC LET EXPORT ORDER (AUTO LEO) FACILITY IN EXPRESS CARGO CLEARANCE SYSTEM (ECSS)

Presently, vide Circular no:41/2020-Customs dated 7 September 2020, the auto LEO facility was enabled in ECCS for Courier Shipping Bills (CSB) which were not interdicted by Risk Management System (RMS) and were then cleared in the Customs X-ray scanning process. The aforesaid auto LEO facility shall now be allowed upon X-ray clearance to CSB marked for 'assessment only', provided that the CSB has been cleared under assessment and examination has not been mandated.

[Circular no:19/2023-Customs dated 2 August 2023]

INSTRUCTION

STANDARDISATION OF DOCUMENTARY AND INFORMATIONAL REQUIREMENTS FOR AUTHORIZED DEALER (AD) CODE REGISTRATION / MODIFICATION IN RELATION TO EXPORTS

- Circular no:32/2020-Customs dated 06 July 2020 which inter alia stipulates the facility of online registration of AD Code on ICEGATE.

- CBIC has clarified and provided a standardised list of documents required to be uploaded (using digital signature) on e-Sanchit for AD Code / bank account registration approval:
 - Bank's Authorization Letter incorporating various details such as name and address of the exporter, IEC, PAN, Bank Account associated with IEC, name of Bank Account holder, confirmation stating that the PAN linked with the Bank Account is same as PAN linked with IEC, Bank AD Code / IFSC Code and details of Bank branch where the Bank Account is held viz., name, address, contact details and official email-ID.
 - Copy of a cancelled cheque related to the Bank Account Number (or the latest bank statement endorsed by the Bank).
- It is also clarified that the Tax officers should ensure a prompt response to applications made before 2 PM viz., on the same day, and in other cases, the application should be addressed before 2 PM on the next working day.

[Instruction no:25/2023-Customs dated 28 July 2023]

FOREIGN TRADE POLICY (FTP)

LEGISLATIVE UPDATES

NOTIFICATION

AMENDMENT IN EXPORT POLICY OF DE-OILED RICE BRAN

The Export Policy of De-Oiled Rice Bran under ITC (HS) Code 2306 and under any other HS Code is revised from 'Free' to 'Prohibited' till 30 November 2023.

[Notification no:21/2023 dated 28 July 2023]

AMENDMENT IN EXPORT POLICY OF FOOD SUPPLEMENTS CONTAINING BOTANICALS

Export of Food Supplements containing botanicals under ITC HS Code 1302 (Vegetable saps and extracts; pectic substances, pectinates and pectates, agar-agar and mucilages and thickeners, whether or not modified, derived from vegetable products) or 2106 (Food preparations not elsewhere specified or included) intended for human or animal consumption to European Union and United Kingdom has been allowed subject to issuance of official certificate by Export Inspection Council

(EIC)/ Export Inspection Agencies (EIAs), the designated Competent Authority for issuance of the official certificate. The official certificate will be issued based on the satisfactory analytical test report from EIC/ EIC approved laboratories as per the requirements laid down by the EU.

[Notification no:22/2023 dated 31 July 2023]

PUBLIC NOTICE

AMENDMENT UNDER APPENDIX 2T OF THE FTP 2023

The Ayush Export Promotion Council (AYUSHXCIL) has been included in the Appendix 2T of FTP i.e., list of Export Promotion Councils or Commodity Boards, for issuing of Registration-Cum-Membership Certificates (RCMC) for the specified items. RCMCs already issued by the Basic Chemicals Cosmetics & Dyes Export Promotion Council and

Pharmaceuticals Export Promotion Council of India till 31 July 2023 for the items now allocated to AYUSHEXCIL will remain valid till their expiry.

[Public Notice no:23/2023 dated 31 July 2023]

TRADE NOTICE

PROCEDURE FOR ALLOCATION OF QUOTA FOR EXPORT OF BROKEN RICE, WHEAT, WHEAT FLOUR (ATTA), MAIDA AND SEMOLINA ON HUMANITARIAN AND FOOD SECURITY GROUNDS

Presently, export of broken rice, wheat, wheat flour (Atta), Maida and semolina is prohibited. However, the competent authority has approved the following export quotas based on the requests received from the Government of Bhutan and Mali:

Product	Quantity	Receiving Country
Broken Rice	1,00,000 MT	Mali (FY23-24)
Broken Rice	48,804 MT	Bhutan (FY23-24)
Wheat Grain	14,184 MT	Bhutan (FY23-24)
Wheat Flour (Atta)	5,326 MT	Bhutan (FY23-24)
Maida / Semolina	15,226 MT	Bhutan (FY23-24)

In this regard, the procedure to apply for export authorisations under the approved quota is as under:

- Only online applications submitted during the period 28 July 2023 to 7 August 2023 will be considered.
- Export Authorizations for broken rice and wheat, wheat flour (Atta), Maida and Semolina issued under this Trade Notice, will be valid till 31 March 2024 respectively.
- In order to be eligible for allocation of quota export data for export of broken rice, wheat, wheat flour, Maida/ semolina to Mali and Bhutan during the three years previous to financial year in which the item was prohibited should be submitted.

The allocation shall be subject to the following conditions:

- The minimum quota for export of broken rice and wheat is 2000 MT by sea and 100 MT by land transport respectively and applications below minimum quota will be rejected.
- Allocation of the export quota will be lower of:
 - Average export of rice or wheat as applicable to specific countries in the previous three years to FY on pro-rata basis; and
 - The quantity applied for by the exporter.
- However, any unutilised quantity will be again reallocated to the applicant on pro-rata basis.
- The exporter should file the Landing Certificate within a period of 90 days of export of the allocated quota.

In case of any mis-declaration by the applicant or where the applicant fails to export the allocated quota to the respective country within the specified time, the applicant will be blacklisted for the next two financial years and action will be taken against the applicant under the provisions of the Foreign Trade (Regulations & Development) Act, 1992.

[Trade Notice no:17&18/2023 dated 28 July 2023]

NEWS FLASH

“GST collection rises 11% to Rs 1.65 lakh crore in July”

<https://indianexpress.com/article/business/economy/goods-and-services-tax-gst-collections-gst-revenue-collection-8872021/>

[Source: *The Indian Express*, 2 August 2023]

“GST Council recommended 28% GST on deposits with companies”

<https://economictimes.indiatimes.com/news/economy/policy/gst-council-recommended-28-gst-on-deposits-with-companies/articleshow/102359866.cms?from=mdr->

[Source: *Economic Times*, 3 August 2023]

“Finance ministry files special leave petition in Supreme Court against Karnataka HC’s Gameskraft ruling”

<https://www.businesstoday.in/latest/economy/story/finance-ministry-files-special-leave-petition-in-supreme-court-against-karnataka-hcs-gameskraft-ruling-392611-2023-08-03>

[Source: *Business Today*, 3 August 2023]

“No plans to eliminate milk and milk products from GST net, says Union Minister Pankaj Chaudhary”

<https://www.thehindu.com/news/national/tamil-nadu/no-plans-to-eliminate-milk-and-milk-products-from-gst-net-says-union-minister-pankaj-chaudhary/article67149712.ece>

[Source: *The Hindu*, 2 August 2023]

“2 GST tribunals to be functional from October”

<https://indianexpress.com/article/cities/kolkata/2-gst-tribunals-to-be-functional-from-october-8875485/>

[Source: *The Indian Express*, 4 August 2023]

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