

INDIRECT TAX

Weekly Digest

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GOODS & SERVICES TAX

JUDICIAL UPDATES

WRIT PETITION

Utilisation of ITC for making mandatory pre-deposit payment of GST appeal

Facts of the case

- M/s Oasis Realty (Taxpayer), located in Maharashtra, filed an appeal before the Honorable Bombay High Court against the order passed by the Appellate Authority
- The issue involved in the aforesaid ruling is whether the Taxpayer can utilise the Input Tax Credit (ITC) balance available in the Electronic Credit Ledger (ECRL) to pay the mandatory pre-deposit under Section 107(6) of the Maharashtra Goods and Services Tax Act, 2017 (MGST Act) required for filing the appeal before the Appellate Authority
- According to the tax authority, the Taxpayer can only utilise the credit available in the Electronic Cash Ledger (ECL) to make the said payment and not the credit in the ECRL. Whereas the taxpayer contended that credit in both ECL and ECRL could be utilised for the same

Questions before High Court

Whether payment can be made by utilising ECRL to comply with the requirements of Section 107(6) of the MGST Act for making payment of mandatory pre-deposit

Observations and Ruling by the High Court

- The Honorable High Court observed that as per Section 107(6) of the MGST Act, where there is an admission of part of the order and the admission is in relation to tax, interest, fine, fee and penalty, all those amounts will have to be paid first and, to the part which is not admitted only 10% of the tax in dispute must be paid
- Moreover, the term used in Section 107(6) is 'paid' and not 'deposited'. Further, Sections 49(3) and 49(4) of the MGST Act provide that 'payment' of tax can be done through ECL and ECRL, respectively. Hence payment of pre-deposit can be made either through ECL or ECRL
- In addition to the above, Section 49(4) of the MGST Act allows payment of 'tax' through the ITC balance in the ECRL, thus, the pre-deposit can also be paid through the ECRL because the requirement in Section 107(6) is to pay 'tax in dispute', where the word 'tax' means Integrated Tax, Central Tax or State Tax
- Rule 86(2) of MGST Rules provides that for debiting ECRL to the extent of discharge of any liability in accordance with the provisions of Section 49 of the MGST Act. Further, output tax in relation to a taxable person is defined in Section 2(82) of the MGST Act as the tax chargeable on the taxable supply of goods or services or both but excludes tax payable on the reverse charge mechanism. Therefore, any payment towards output tax, whether self-assessed in the return or payable because of any proceeding instituted under the MGST Act can be

made by utilisation of the amount available in the ECRL. Hence, a party can pay 10% of the disputed tax either using the amount available in the ECL or the amount available in the ECRL

- Owing to the clarification issued by the Central Board of Indirect Taxes & Customs (CBIC) vide circular no:172/04/2022-GST dated 06 July 2022, the Honorable High Court distinguished the order passed by the Honorable Orissa High Court in M/s Jyoti Construction Vs. Deputy Commissioner of CT & GST [2021 (10) TMI 524]. Vide the aforesaid Circular, the CBIC had clarified that any amount towards output tax payable, because of any proceeding instituted under the provisions of GST Laws, can be paid by utilisation of the amount available in the ECRL of a registered person
- In view of the above, the Honorable High Court has held that the taxpayer may utilise the amount available in the ECRL to pay the 10% of tax in dispute as prescribed under Section 107(6) of MGST Act since amounts payable are towards output tax

[Bombay High Court, M/s. Oasis Realty, Writ Petition (St) no:23507 of 2022, dated 16 September 2022]

Benefit of the period of limitation for filing refund application under Section 54 of the CGST Act, 2017 entitled to the taxpayer as excluded from 01 March 2020 to 28 February 2022

Facts of the case

- M/s. Supernova Engineers Limited (Taxpayer) is a company engaged in the business of manufacturing and supply of Genset. In February 2018, Taxpayer supplied DG set and panel to a company situated in the SEZ, treating the same as a 'zero-rated supply'
- The last date for filing a refund claim for the month of February 2018 would be 20 March 2020 being two years from the due date of furnishing GSTR-3B returns in terms of explanation to section 54 of the CGST Act, 2017. However, the Taxpayer filed the refund application on 02 May 2020. Consequently, the refund of the Taxpayer was rejected by the Tax Authority alleging it to be time-barred
- Being aggrieved by the order passed by the adjudicating authority, the Taxpayer filed an appeal before the first appellate authority who upheld the findings of the original authority. Against the order of the first appellate authority, the Taxpayer approached the Honorable High Court

Contention of the Taxpayer

- During the pendency of this Special Civil Application, the CBIC issued notification no:13/2022-CT dated 05 July 2022, whereby the computation of the period of limitation for filing refund application under Section 54 of the Act came to be excluded from 01 March 2020 to 28 February 2022

Contention by Tax Authority

- The refund application was time-barred as filed beyond the limitation period of two years from the relevant date

Ruling by the High Court

- Honorable Court held that the refund application was filed on 02 May 2020, however in view of the notification, in the particular clause (iii) thereof, the period from 01 March 2020 to 28 February 2022 was excluded from the limitation period. The Taxpayer would be entitled to the benefit of the same

- The case was remanded back to the competent authority for deciding the refund claim on the merits

[High Court of Gujarat - M/s. Supernova Engineers Limited Vs. Joint Commissioner (Appeals) (Gujarat HC2022-VIL-646-GUJ dated 26 August 2022)]

CENTRAL EXCISE

NOTIFICATION

Amendment to excise duty on Motor spirit and High-speed diesel (HSD)

Amendment has been made in notification no:11/2017-CE, dated 30 June 2017 which prescribes the effective rate of excise duty. In the said notification

Sl No.	Chapter or heading or sub-heading or tariff item	Description of goods	Existing Rate	New Rate
2A	2710	Motor spirit commonly known as petrol which is intended for retail sale, not so blended with ethanol or methanol as conforming to Bureau of Indian Standards specifications from time to time for the blended motor spirit- <ul style="list-style-type: none"> without a brand name with a brand name. 	INR 1.40 per litre	INR 3.40 per litre
			INR 2.60 per litre	INR 4.60 per litre
3A	27101930	HSD intended for retail sale, not so blended with alkyl esters of long chain fatty acids obtained from vegetable oils, commonly known as bio-diesels as conforming to Bureau of Indian Standards specifications from time-to-time for blended diesel - <ul style="list-style-type: none"> without a brand name with a brand name. 	INR 1.80 per litre	INR 3.80 per litre
			INR 4.20 per litre	INR 6.20 per litre

- Notification shall apply to
 - The goods specified against serial number 2A of the Table above before 01 November 2022.
 - The goods specified against serial number 3A of the Table above before 01 April 2023.

[Notification no:31/2022 dated 30 September 2022]

Reduction of the Special Additional Excise Duty on the production of Petroleum Crude and Aviation Turbine Fuel

Amendment has been made in notification no:18/2022-CE, dated 19 July 2022 which prescribes reduction of the Special Additional Excise Duty on the production of Petroleum Crude and export of Aviation Turbine Fuel. In the said notification following amendment is made in the table

S. No.	Chapter or heading or subheading or tariff item	Description of goods	Existing Rate	Proposed Rate
1	2709	Petroleum crude	INR 10,500 per tonne	INR 8,000 per tonne
2	2710	Aviation Turbine Fuel	INR 5 per Litre	Nil

This notification shall come into force on 02 October 2022.
[Notification no:32/2022 dated 01 October 2022]

Reduction of the Special Additional Excise Duty on high-speed diesel oil

Amendment has been made in notification no:04/2022-CE, dated 30 June 2022 which prescribes the rate of Special Additional Excise Duty for exports of petrol and diesel. In the said notification following amendment is made in the table:

S. No.	Chapter or heading or subheading or tariff item	Description of goods	Existing Rate	New Rate
2	2710	High-speed diesel oil	INR 8.50 per litre	INR 3.50 per litre

This notification shall come into force on 02 October 2022.
[Notification no:33/2022 dated 01 October 2022]

JUDICIAL UPDATES

CST paid in the wrong state shall be adjusted between the state wrongly collected and ought to have been collected

Facts of the case

- Tata Motors Limited (Taxpayer) is engaged in the manufacturing and trading of automobiles. The Taxpayer had undertaken the transaction of the sale of buses through the Regional Sales Office (RSO) Vijayawada to Andhra Pradesh State Road Transport Corporation (APSRTC)
- The aforesaid transaction was reflected by the Taxpayer as under:
 - **Movement of goods from the Taxpayer's place of business (in Jharkhand) to RSO, Vijaywada:** The transaction was treated as a stock transfer. Accordingly, under Section 6A of the Central Sales Tax Act, 1956 (CST Act), no tax was paid by the Taxpayer in Jharkhand
 - **Movement of goods from RSO, Vijaywada to APSRTC:** The transaction was treated as an intra-state sale of goods. Consequently, the Taxpayer's

- RSO had discharged applicable tax on such sales in Andhra Pradesh
- On the other hand, the Jharkhand tax authorities contended that the sale of goods by the Taxpayer's place of business (in Jharkhand) to APSRTC constitutes an inter-state sale and hence, the Taxpayer was liable to pay Central Sales Tax (CST) on the said transaction
- The Central Sales Tax Appellate Authority, New Delhi (Appellate Authority) held that the transaction/sales of buses undertaken by the Taxpayer to APSRTC through RSO, Vijayawada were in the nature of inter-state sales and not a stock transfer. Consequently, the Taxpayer was liable to discharge CST in Jharkhand on such sales
- However, no further consequential order was passed by the Appellate Authority directing the state of Andhra Pradesh to adjust the amount of tax paid on the aforesaid transaction against the tax to be paid to the state of Jharkhand
- In the above factual background, the Taxpayer has preferred the appeal to the Honorable Supreme Court of India

Observations and Ruling by the Supreme Court

- The issue in the present case was to seek direction to transfer the amount of tax recovered by the State of Andhra Pradesh to the State of Jharkhand and the said amount be adjusted towards the tax payable by the Taxpayer in the State of Jharkhand
- The Honorable Supreme Court observed that prior to the insertion of Section 22(1B) of the CST Act, there was no provision by which, the CST Appellate Authority could issue directions for refund/transfer of the tax collected by a state to which the tax is not due, to the state to which the tax is due on the same transaction
- However, with the insertion of Section 22(1B) of the CST Act vide the Finance Act, 2010, the said provision was introduced which provides as follows:

“The Authority may issue direction for a refund of tax collected by a State which has been held by the Authority to be not due to that State, or alternatively, direct that State to transfer the refundable amount to the State to which central sales tax is due on the same transaction. Provided that the amount of tax directed to be refunded by a State shall not exceed the amount of central sales tax payable by the appellant on the same transaction.”
- The Honorable Supreme Court pointed out that the transaction is question pertains to the period prior to the aforesaid insertion of Section 22(1B) of the CST Act, and that the impugned order has been passed by the Appellate Authority prior to the insertion of Section 22(1B) to the CST Act, 1956. Consequently, it cannot be held that the CST Appellate Authority has committed any error in not issuing any direction under Section 22(1B) of the CST Act
- Placing reliance on Section 22(1B) of the CST Act, the Honorable Supreme Court held that the State of Andhra Pradesh cannot retain the amount of CST paid by the Taxpayer on the transaction of sale. Therefore, it must transfer the amounts deposited by the Taxpayer to the

State of Jharkhand with respect to the transaction in question. However, the Taxpayer must submit proof of the amount of CST already paid on the transaction in question

- Considering the above, the Honorable Supreme Court has directed the State of Jharkhand to adjust the same against the CST liability of the Taxpayer on the impugned transaction, within a period of 3 months from the date of its order i.e. 01 September 2022

[Tata Motors Limited vs Central Sales tax Appellate Authority and ors, 2022-VIL-73-SC]

CUSTOMS

NOTIFICATION

Increase in Basic Customs Duty on imports of platinum

Amendment has been made in notification no:50/2017-Customs, dated 30 June 2017 which prescribes the effective rates of customs duty and IGST for goods imported into India. Exemption on import duty on platinum, unwrought or in semi-manufactured form, or in powder form in excess of 10% has been withdrawn. All the goods covered under 7110 except those mentioned below in the table is taxable at 12.5%.

Chapter or heading or subheading or tariff item of the First Schedule	Description of goods	Rate
7110	<p>Goods, other than the following:</p> <ul style="list-style-type: none"> Platinum and Palladium for use in the manufacture of: <ul style="list-style-type: none"> all goods, including Noble Metal Compounds and Noble Metal Solutions, falling under heading 2843 all goods falling under sub-heading 3815 12 catalytic convertors falling under tariff item 8421 32 00 <p>Provided that, the importer follows the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty or for Specified End Use) Rules, 2022</p> <ul style="list-style-type: none"> Rhodium 	1.5%

[Notification no:52&53/2022 dated 03 October 2022]

Amendment on land customs stations and routes for import and export of goods by land or inland waterways

Amendment has been made in notification no:63/1994-Customs (N.T.), dated 21 November 1994 which specifies regarding land customs stations and routes for import and export of goods by land or inland waterways. Amendment has been made in land customs stations related to Bangladesh.

[Notification no:86/2022 dated 30 September 2022]

INSTRUCTIONS

Implication of the judgement of the Honorable Apex Court in the case of M/s Westinghouse Saxby Farmer Ltd. Vs. Commissioner of Central Excise, Kolkata

- Instruction no:01/2022-Customs dated 05 January 2022 was issued by CBIC pursuant to the various representations received from the field and trade regarding the divergent practices pertaining to the classification of 'automobile parts' in light of the judgment of the Supreme Court dated 08 March 2021 in the case of M/s. Westinghouse Saxby Farmer Ltd. Vs. Commissioner of Central Excise, Kolkata
- Concerns have been raised on the validity of the above instruction, as the Review Petition (Civil) D. no:802/2022 filed in the instant case, vide its order dated 10 August 2022, was dismissed. The matter was examined, and the opinion of the learned Additional Solicitor General was also sought on the matter
- In terms of the opinion received, it is clarified that Instruction no:01/2022 dated 05 January 2022 has brought out distinguishing reasons as to how the decision of the Supreme Court would apply only to the goods in the facts and circumstances. The law continues to remain the same and therefore, the instruction remains valid and does not require any changes

[Instruction no:25/2022 dated 03 October 2022]

FOREIGN TRADE POLICY (FTP)

NOTIFICATION

Extension of Foreign Trade Policy 2015-2020

The existing Foreign Trade Policy 2015-2020 which is valid up to 30 September 2022 is extended up to 31 March 2023.

[Notification no:37/2015-20 dated 29 September 2022]

PUBLIC NOTICE

Extension of Handbook of Procedures, 2015-2020 and Amendment

Validity of the existing Handbook of Procedures(HBP), 2015-20 is extended up to 31 March 2023.

The last date for filing of annual returns under para 5.15 of HBP 2015-2020 has been extended till 31 December 2022.

[Public notice no:26&27/2015-20 dated 29 September 2022]

TRADE NOTICE

Issues related to the export policy of rice

Reference is made to notification no:31/2015-2020 dated 08 September 2022 amending the export policy of broken rice under HS code 10064000 under chapter 10 of Schedule-2 of the ITC (HS) export policy from 'Free' to 'Prohibited' with immediate effect read with trade notice no:17/2022-2023 dated 28 September 2022.

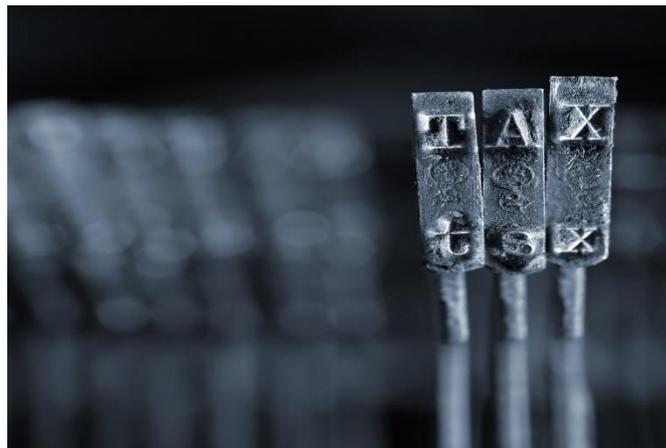
Subsequently, representations have been received regarding rice (5% and 25%) where an irrevocable letter of credit has been issued before 08 September 2022 and is also being stopped at the ports.

Accordingly, in supersession of trade notice no:17/2022-23 dated 28 September 2022, it is clarified in respect of normal rice that 'Rice (5% and 25%) is already exempted as it is not broken rice but normal rice with permissible limits of broken rice as per standards. However, it will carry 20% duty as per notification'.

[Trade notice no:18/2022-23 dated 04 October 2022]

NEWS FLASH

1. “GST implementation, rising costs slowly pushing weavers of Varanasi out of business”
<https://www.thehindu.com/news/national/gst-implementation-rising-costs-slowly-pushing-weavers-of-varanasi-out-of-business/article65963787.ece>
[Source: The Hindu, 04 October 2022]
2. “Traders want GST exemption extended on export freight”
<https://economictimes.indiatimes.com/news/economy/foreign-trade/traders-want-gst-exemption-extended-on-export-freight/articleshow/94628432.cms>
[Source: Economic Times, 04 October 2022]
3. “After uncertainty, GST finally begins to pay dividends”
<https://www.newindianexpress.com/opinions/editorials/2022/oct/04/after-uncertaintygst-finally-beginsto-pay-dividends-2504682.html>
[Source: The New Indian Express, 04 October 2022]
4. “House panels recommends rationalising GST on inputs of man-made textiles”
https://www.business-standard.com/article/economy-policy/house-panels-recommends-rationalising-gst-on-inputs-of-man-made-textiles-122100401066_1.html
[Source: Business Standard, 05 October 2022]
5. “Exporters fear liquidity hit after GST exemption ends”
<https://timesofindia.indiatimes.com/business/india-business/exporters-fear-liquidity-hit-after-gst-exemption-ends/articleshow/94669363.cms>
[Source: Times of India, 06 October 2022]



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