

INDIRECT TAX WEEKLY DIGEST

07 March 2023
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GOODS & SERVICES TAX

LEGISLATIVE UPDATES NOTIFICATION

GST RATE CHANGES

To give effect to the recommendations made by the GST Council in its 49th meeting, the notifications are issued to modify the GST rates/exemptions as follows:

- Exemption available to educational institutions and Central and State educational boards for the conduct of entrance examination is now extended to any authority, board or body set up by the Central Government or State Government including the National Testing Agency for the conduct of entrance examination for admission to educational institutions.
- The dispensation available to Central and State Governments, Parliament and State Legislatures from payment of GST under the Reverse Charge Mechanism (RCM) is extended to the Courts and Tribunals in respect of taxable services supplied by them such as renting of premises to telecommunication companies for installation of towers, renting of the chamber to lawyers, etc.
- Reduction of GST rates on Pencil Sharpener (from 18% to 12%) and Rab [from 18% to 5% (if pre-packaged and labelled) and Nil (in other cases)].
- Compensation Cess has been exempted on 'coal rejects supplied to a coal washery' arising out of coal on which compensation cess has been paid and no input tax credit has been availed.

[Notification no:01,02,03 and 04/2023-Central Tax (Rate) and Notification no:1/2023-Compensation Cess (Rate) dated 28 February 2023]

JUDICIAL UPDATES

WRIT PETITION

TAX AUTHORITIES CANNOT GO BEYOND THE SCOPE OF SHOW CAUSE NOTICE AND ISSUE AN ORDER BASED ON A NEW GROUND

Facts of the case

- M/s. CJ Darcl Logistics Limited (Taxpayer), engaged in the business of providing Goods Transportation Agency (GTA) services had obtained two GST registrations, one for the supply of services attracting GST liability under the RCM (RCM GSTIN) and another for discharging GST under the Forward Charge Mechanism (FCM GSTIN).
- The Taxpayer inadvertently deposited cash in the Electronic Cash Ledger (ECL) pertaining to RCM GSTIN, instead of depositing the same in the ECL of FCM GSTIN. The amount inadvertently deposited in the ECL of RCM GSTIN was claimed as a refund by filing an application in FORM GST RFD-01.
- The Taxpayer received a show cause notice (SCN) requiring the Taxpayer to provide reasons for non-payment of GST in Form GSTR-3B return. Further, the SCN did not provide any reasons for the inadmissibility of the refund application.
- The Taxpayer furnished its reply to the SCN. Subsequently, without providing an opportunity of being heard, the Tax Authority issued an order in FORM GST RFD-06 rejecting the refund application filed by the Taxpayer.
- The aforesaid rejection order was challenged in an appeal filed before the Appellate Authority which affirmed the order passed by the Tax Authority.

- Aggrieved by the above, the Taxpayer filed a writ petition before the Hon'ble High Court.

Contentions by the Taxpayer

- The formal notice in FORM GST-RFD-08 under Rule 92(3) of the CGST Rules for rejection of refund application was not intimated to him. Hence, the principles of natural justice were violated.
- It was submitted that the rejection order dealt with an allegation different from that mentioned in the SCN. Accordingly, qua such allegation, an opportunity of being heard was not granted.
- It was also contended that the proviso to section 25(2) of the CGST Act (both, before and after the amendment) does not contain any restriction on obtaining multiple GST registrations.

Contentions by the Tax Authorities

- The Taxpayer violated the proviso to section 25(2) of the Central Goods and Services Tax Act, 2017 (CGST Act) by obtaining two GST registrations (i.e., RCM GSTIN and FCM GSTIN) for the same category of services and having the same principal place of business.
- On clubbing the turnover and input tax credit (ITC) availed by both GST registrations, the Tax Authorities concluded that the Taxpayer has availed excess ITC by obtaining multiple GST registrations in the same State.
- Thus, the Taxpayer is not entitled to take two registrations for the same type of business under the same PAN, having the same principal place of business.
- It was also contended that since the Taxpayer has not paid the excess benefit under section 49 of the CGST Act, the Taxpayer failed to comply with the conditions provided under section 54(1) of the CGST Act read with rule 89(1) of the Central Goods and Services Tax Rules, 2017 (CGST Rules).

Observations and Ruling by the Hon'ble High Court

- The Hon'ble High Court observed the following undisputed facts:
 - The SCN did not make any allegation concerning contravention of proviso to Section 25(2) of the CGST Act. However, the Tax authorities defended by stating that, they were unaware of the two GSTIN registrations of the Taxpayer at the time of issuance of the SCN.
 - The absence of any specific contravention indicated in Form GST-RFD-08 which was the basis for proceeding against the Taxpayer on his refund application.
- It is well settled that if an allegation or ground is not made at the time of issuance of SCN, the Tax Authority cannot go beyond the scope of the SCN to create a new ground at the later stage of adjudication.
- Applying the aforesaid principle to the present case, the Hon'ble High Court observed that the ground on which the refund rejection order was issued by the Tax Authority was different from the allegations levelled against the Taxpayer in the SCN.
- Considering the above, the High Court concluded that the SCN issued by the Tax Authority is vague and cryptic in nature. Consequently, the SCN, refund rejection order and the order passed by the Appellate Authority, which is beyond the scope of the SCN were quashed and set aside.
- However, the High Court granted liberty to the Tax Authorities to issue a fresh SCN and proceed in accordance with the law, within 4 months from the date of the decision, failing which, the Taxpayer would be entitled to claim a refund in accordance with the law. *[High Court of Jharkhand, M/s. CJ Darcl Logistics Ltd Vs. Union of India, dated 9 February 2023]*

EXCISE/ SERVICE TAX

JUDICIAL UPDATES

ONCE THE TAX LIABILITY HAS BEEN DISCHARGED AND ACCEPTED BY THE TAX AUTHORITIES, THE CONSEQUENTIAL CENVAT CREDIT CANNOT BE DENIED TO THE RECIPIENT

Facts of the case

- M/s. ICICI Lombard General Insurance Company Ltd (Taxpayer), a general insurance company, is, inter alia, engaged in providing automobile insurance services.
- As per the industry practice, the automotive dealers (dealers) being the first point of contact with the buyers, facilitates insurance services of the Taxpayer in lieu of commission payable by the Taxpayer.
- The dealers collected Service tax on the aforesaid commission and paid the same to the Government on which, CENVAT credit was availed by the Taxpayer.

- The aforesaid CENVAT credit was denied on the ground that no commission was payable by the Taxpayer to the dealers under Section 40 of the Insurance Act, 1938 and that payment of such commission was illegal. Thus, an SCN was issued seeking recovery of CENVAT credit availed by the Taxpayer along with interest and penalty. The said SCN was confirmed in the adjudicating order.
- Aggrieved by the above, the Taxpayer filed an appeal before the CESTAT.

Contentions by the Taxpayer

- The Taxpayer inter alia relied upon the following judicial proceedings:
 - *M/s. Cholamandalam M/s. General Insurance Co. Ltd. Vs. The Commissioner of G.S.T. & Central Excise, Chennai [2021 (47) GSTL 263 (Tri.-Chennai)]* wherein it was held that since the tax had been paid by the dealers and their assessment had not been reopened or questioned, the recipient is entitled to claim CENVAT credit.

- *CCE&C v. MDS Switchgear Ltd. [2008 (229) ELT 485 (SC)]* wherein it was held that once the tax liability has been discharged and accepted by the Tax authority, the consequential CENVAT credit cannot be denied at the recipient's end.
- Relying on clarification provided by the Insurance Regulatory Development Authority (IRDA) vide a letter dated 12 August 2015 to CBIC in respect of the procedures to be followed for outsourcing non-core services of the dealers, it was contended that the same is binding on the Tax Authorities.

Observations and Rulings by the CESTAT

- The CESTAT observed that it is undisputed that applicable Service tax has been paid as is evidenced by the invoices issued by the dealers to the Taxpayer. Further, the same has been accepted by the Tax Authorities. Accordingly, availing CENVAT credit of such Service tax is in conformity with the CENVAT Credit Rules, 2004 (CCR).
- It is well settled that when a competent authority has issued an opinion on a matter, the same is binding and cannot be questioned by other authorities. Applying the aforesaid principle, it was observed that IRDA had clarified the correct legal position vide letter dated 12 August 2015 and the same would be binding on the Tax Authorities.
- In view of the above, the CESTAT has concluded that the impugned order deserves to be set aside.

[CESTAT-Mumbai, ICICI Lombard General Insurance Company Ltd Vs. CCGST & CE dated 06 February 2023]

INPUT SERVICE CREDIT ON COMMISSION PAID TO COMMISSION AGENT IS ELIGIBLE TO BE AVAILED AND UTILISED

Facts of the case

- During the period 1 April 2011 to 31 March 2015, M/s. Moulded Fibreglass Products (Taxpayer) availed CENVAT credit of Service tax paid on sales commission cost incurred for the sale of finished products and utilized such credit for payment of Central Excise duty leviable on finished goods.
- The Tax Authority issued an SCN alleging that CENVAT credit on such input service is not available under Rule 3(i) read with Rule 2(l) of CCR.
- The aforesaid SCN was confirmed in the adjudicating order seeking recovery of irregularly availed CENVAT credit along with interest and penalty.
- Accordingly, the Taxpayer filed an appeal before Commissioner (Appeals) which has affirmed the adjudicating order passed by the Tax Authority.
- Aggrieved by the above, the Taxpayer filed an appeal before CESTAT.

Contention by the Taxpayer

- The Taxpayer submitted that it is engaged in procuring services from commission agents situated across India for procuring purchase orders from customers. The scope of commission agents is not only limited to procuring purchase orders, but also extends to providing liaison services, letter of credit services, resolution of any disagreements/disputes and other ancillary services.
- For providing such services, the agents charge commission along with applicable Service Tax on which, CENVAT credit was availed under rule 3 read with rule 2(l) of the CCR.
- The Taxpayer relied on circular no:943/4/2011-CX dated 29 April 2011 wherein the Tax Authority had unambiguously accepted the eligibility to claim CENVAT credit on sales commission.

Contention by the Tax Authority

- The Tax Authority submitted that the CENVAT credit availed by the Taxpayer on input services being sales commission in nature is not an eligible 'input service' under the CCR.

Observations and Ruling by the CESTAT

- It was observed that sales promotion is a valid input service and is covered in the inclusive part of the definition. This is also substantiated by the circular dated 29 April 2011 wherein CBIC had unambiguously accepted the legality of availment of credit on sales commission.
- It was also held that sales commission is directly attributable to the sale of the final product and any activity amounting to sale is deemed to be a sales promotion activity in normal trade parlance.
- CESTAT also observed that the Hon'ble Punjab & Haryana High Court in Commissioner of Central Excise, Ludhiana Vs. Ambika Overseas [2011-TIOL-951-HC-P&H-ST] had held that sale and manufacture are directly interrelated and the commission paid on sales needs to be accounted for as services related to sales promotion.
- In view of the above, the CESTAT concluded that the Taxpayer would be eligible to avail CENVAT credit of Service Tax paid on sales commission. Accordingly, the impugned order is unsustainable in law, and is, therefore, set aside.

[CESTAT-Kolkata, M/s Moulded Fibreglass Products Vs. Commissioner of CGST and CX: Service tax appeal no 79534 of 2018 dated 03 February 2023]

CUSTOMS

NOTIFICATION

EFFECTIVE RATE OF CUSTOMS DUTY FOR GOODS FALLING UNDER HSN 8908 00 00 [VESSELS AND OTHER FLOATING STRUCTURES FOR BREAKING UP]

Notification no:50/2017-Customs has been amended to exempt customs duty and IGST for "All goods" falling under HSN 8908 00 00 imported into India till 31 March 2025.

[Notification no:13/2023-Customs dated 23 February 2023]

EXTENSION OF EXEMPTION TO DEVICES AFFIXED ON THE CONTAINS OF DURABLE NATURE

Notification no:104/1994-Customs exempts containers that are of durable nature falling within the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), when imported into India from the duty of customs and Integrated Tax provided it is re-exported within 6 months from the date of their importation.

It has been clarified by way of insertion of an Explanation that a device such as a tag, tracking device or data logger already affixed on the container at the time of import shall also be eligible for exemption from the duty of customs and the Integrated Tax, as available to the said container.

[Notification no:14/2023-Customs dated 28 February 2023]

CIRCULAR

AMENDMENT TO CIRCULAR NO.:26/2016-CUS. DATED 9 JUNE 2016

The Circular dated 9 June 2016 stipulates the Form for application for a License under Public Warehousing Licensing Regulations, 2016 / Private Warehousing Regulations, 2016 / Special Warehousing Regulations, 2016. The said Circular also mandates undertaking antecedent verification. However, no time limit was prescribed for completing such antecedent verification. The said Circular has been amended to stipulate that the antecedent verification must be completed within 45 days from the date of receipt of the application.

CBIC has further directed that it must be ensured that each and every requirement prescribed in the aforesaid Circular is properly complied with by the applicant and the same is thoroughly checked by the respective officers.

[Circular no.:05/2023-Cus. dated 21 February 2023]

FOREIGN TRADE POLICY (FTP)

PUBLIC NOTICE

ONE TIME RELAXATION FOR FURNISHING ADDITIONAL FEE TO COVER EXCESS IMPORTS AFFECTED UNDER THE EPCG SCHEME

One time relaxation has been granted for submission of additional fee to cover excess duty utilised in EPCG authorisations issued under Foreign Trade Policy (2009-14) (extended upto 31 March 2015).

[Public Notice no:58/2015-2020 dated 24 February 2023]

AMENDMENTS IN PARA 4.42 OF THE HANDBOOK OF PROCEDURES 2015-2020

Para 4.42 of the Handbook of Procedures 2015-2020 has been amended to integrate a uniform and transparent system for the implementation of all PRC decisions including previous decisions involving the process of levying composition fees in case of extension of Export Obligation Period (EOP) and/or regularisation of exports already made under Advance Authorization scheme, for ease of doing business and reduction of the transaction cost.

[Public Notice no:59/2015-2020 dated 28 February 2023]

NEWS FLASH

“GST collections grow 12.4% to surpass ₹1.49 lakh crore; cess inflows hit a record.”

<https://www.thehindu.com/business/Economy/gst-revenues-grow-124-in-february-2023/article66567289.ece>

[Source: *The Hindu*, 02 March 2023]

“GST rate reduced on pencil sharpeners, rab.”

<https://www.financialexpress.com/economy/nbspgst-rate-reduced-on-pencil-sharpenersnbsprab/2998061/>

[Source: *Financial Express*, 03 March 2023]

“Weavers demand GST withdrawal in Andhra Pradesh.”

<https://timesofindia.indiatimes.com/city/amaravati/weavers-demand-gst-withdrawal/articleshow/98378182.cms>

[Source: *Times of India*, 03 March 2023]

“To pay or not to pay: High Court decides on the levy of GST on vouchers.”

<https://economictimes.indiatimes.com/news/economy/finance/to-pay-or-not-to-pay-high-court-decides-on-the-levy-of-gst-on-vouchers/articleshow/98333531.cms>

[Source: *Economic Times*, 01 March 2023]

“GST Council adopts GoM report on setting up tribunals with modifications.”

<https://economictimes.indiatimes.com/news/economy/policy/gst-council-adopts-gom-report-on-setting-up-tribunals-with-modifications/articleshow/98048875.cms>

[Source: *Economic Times*, 20 February 2023]

“Telangana GST collection growth rate in February among lowest.”

<https://timesofindia.indiatimes.com/city/hyderabad/telangana-gst-collection-growth-rate-in-february-among-lowest/articleshow/98348581.cms>

[Source: *Times of India*, 02 March 2023]

“Chandigarh’s GST collection witnesses increase of 5 per cent in February.”

<https://indianexpress.com/article/cities/chandigarh/chandigarh-gst-collection-increase-5-per-cent-february-8474561/>

[Source: *Indian Express*, 02 March 2023]

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