

INDIRECT TAX WEEKLY DIGEST

04 January 2023
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GOODS & SERVICES TAX

LEGISLATIVE UPDATES

NOTIFICATION

AMENDMENTS MADE IN THE CENTRAL GOODS AND SERVICES TAX RULES, 2017 (CGST RULES)

- Rule 8 of the CGST Rules is amended to capture and use the Income Tax Permanent Account Number (PAN) linked mobile number and e-mail address (fetched from the CBDT database) in GST registration application and to conduct One Time Password (OTP) based verification at the time of registration by using such PAN-linked mobile number and email address, instead of using any other mobile number and email address submitted by the applicant;
- Rules 8 and 9 of the CGST Rules have been amended to provide for biometric-based Aadhaar authentication, along with verification of the original copy of other documents uploaded with the registration application and risk-based physical verification of the premises of the applicants. Presently, these provisions are made applicable only for the applicants in Gujarat State;
- Rule 12 of the CGST Rules is amended to enable the persons required to deduct or collect tax at source under Section 51 and 52 of the CGST Act, respectively, to apply for cancellation of registration to deduct/collect tax at source;
- Rule 37 of the CGST Rules has been amended with retrospective effect from 1 October 2022 to provide that in case of non-payment of consideration to the supplier within 180 days, the recipient would need to reverse/repay input tax credit (ITC), only on a proportionate basis, i.e. in proportion to the amount unpaid to the supplier, instead of previous provision (which was introduced from 1 October 2022) requiring reversal of entire ITC in such cases;
- Rule 37A has been inserted to stipulate the following process for reversal of ITC availed and its subsequent re-availment in cases where the supplier has not paid GST:
 - Where the supplier has declared an invoice/debit note in Form GSTR-1 or in Invoice Furnishing Facility ('IFF') but has not filed a return in Form GSTR 3B for that period till 30th September of the following FY in which the recipient has availed the ITC, the recipient would be required to reverse the ITC availed in form GSTR 3B, filed on or before 30th November of following the end of the year in which ITC is claimed;
 - Non-reversal of ITC by a recipient as above would require the recipient to repay the ITC availed along with the interest payable under Section 50;
 - The recipient can re-avail the ITC in form GSTR 3B once the supplier has furnished the return in Form GSTR 3B for the said tax period.

- Rule 46 of the CGST Rules relating to the issue of invoices is amended to provide that where any taxable service is supplied by or through an Electronic Commerce Operator or by a supplier of Online Information and Database Access or Retrieval services (OIDAR) to an unregistered recipient, irrespective of the value of supply, the tax invoice issued by the registered person should contain the name and address of the recipient along with its PIN code and the name of the State and the said address shall be deemed to be the address on record of the recipient;
 - Rule 46A of the CGST Rules relating to the issue of invoice-cum-bill of supply is amended to specifically provide that such invoice-cum-bill of supply shall contain all the particulars, which are required to be mentioned on invoice and bill of supply;
 - Rule 87(8) of the CGST Rules has been amended to provide that the Electronic Cash Ledger (ECL) can be updated on the basis of the e-scroll of the Reserve Bank of India, where the details as per e-scroll match with the details in challan in form PMT-06, even if the bank fails to communicate details of Challan Identification Number to the Common Portal;
 - A new Rule 88C of the CGST Rules has been inserted to provide the following process to deal with the difference in liability reported in the statement of outward supplies in form GSTR 1 or IFF (as the case may be) and the return in Form GSTR-3B:
 - If tax payable as per GSTR 1 or IFF exceed tax payable as per GSTR 3B, by a specified percentage or amount, the taxpayer would be intimated of such difference in Part A of Form DRC-01B, directing him to either pay the differential tax or explain the difference, within seven days;
 - The taxpayer, on receipt of such form, shall pay the differential liability, along with interest under Section 50 in Form DRC-03 or furnish a reply for the differential tax liability, remaining unpaid. The details should be submitted in part B of form DRC-01B;
 - Where the taxpayer neither pays the liability nor provides the explanation for the difference or the explanation submitted by the taxpayer is not accepted by the tax authorities, such differential tax amount will be treated as recoverable from the taxpayer.
 - A consequential amendment has been made by introducing Rule 59(6)(d) of the CGST Rules, to provide that a taxpayer to whom an intimation in Form DRC-01B has been issued for a tax period, shall not be allowed to submit form GSTR 1 or IFF (as the case may be) for the subsequent tax period unless he has either paid differential tax or has submitted explanation for difference;
 - Clauses (ka) and (kb) to Rule 89(2) of the CGST Rules have been introduced to prescribe list of documents to be submitted while claiming a refund by an unregistered person. Rule 89(2)(m) of the CGST Rules is also amended to prescribe that an unregistered person, who has borne the incidence of tax and has applied for a refund is not required to submit a CA certificate stating that he has borne the incidence of tax;
 - Rules 108(3) and 109 of the CGST Rules dealing with filing of appeal are amended to lay down a procedure for submission of a self-certified copy of the order appealed against;
 - Rule 109C of the CGST Rules has been introduced to provide for the withdrawal of an appeal before an order is passed. The application for withdrawal has to be made in the form GST APL-01/03W. The application for withdrawal after receipt of final acknowledgment by the Appellate Authority would be subject to the approval of the Appellate Authority, who would decide such application in seven days. Further, any fresh appeal filed by the Appellant pursuant to such withdrawal would be filed within the prescribed time limits;
 - Rule 138 of the CGST Rules has been amended to provide for requirement of generating e-way bill on the movement of imitation jewellery;
 - Various amendments, including consequential amendments, have been made in various forms, including in form GSTR 1, and new forms have been inserted.
- The amendments have been made effective from the date of publication of notification in the official Gazette, except where specified otherwise.
- [Notification no:26 & 27/2022-Central Tax dated 26 December 2022]*

GST RATE CHANGES AND REVERSE CHARGE MECHANISM ('RCM') LIABILITY AS PROPOSED BY THE GST COUNCIL

- Following are the GST rate changes:

Description	Existing rate	Proposed rate
Husk of pulses including chilka and concentrates including chuni/churi, khanda	5%	NIL
Ethyl alcohol supplied to refineries for blending with motor spirit (petrol)	18%	5%
Aquatic feed including shrimp feed and prawn feed, poultry feed and cattle feed, including grass, hay and straw, supplement and additives, wheat bran and de-oiled cake [other than rice bran]	5%	NIL

- Prescribed tax under RCM for the below supply

Sno	Tariff item, sub-heading, heading or Chapter	Description of supply of Goods	Supplier of goods	Recipient of supply
1	3301 24 00, 3301 25 10, 3301 25 20, 3301 25 30, 3301 25 40, 3301 25 90	Following essential oils other than those of citrus fruit namely: - (a) Of peppermint (Mentha piperita); (b) Of other mints: Spearmint oil (ex-mentha spicata), Water mint oil (ex-mentha aquatic), Horsemint oil (ex-mentha sylvestries), Bergament oil (ex-mentha citrate), Mentha arvensis	Any unregistered person	Any registered person

- GST rate of 12% prescribed for Fruit pulp or fruit juice-based drinks would not apply to Carbonated Beverages of Fruit Drink or Carbonated Beverages with Fruit Juice. [Notification no:12,13 & 14/2022-CT(R) dated 30 December 2022]
- In addition to the above, the exemption given to the services by way of access to a road or a bridge on payment of annuity has now been withdrawn. [Notification no:15/2022-CT(R) dated 30 December 2022]

EXPLANATION INSERTED TO EXEMPTION ENTRY FOR 'RENTING OF RESIDENTIAL DWELLING FOR USE AS RESIDENCE EXCEPT WHERE THE RESIDENTIAL DWELLING IS RENTED TO A REGISTERED PERSON'

- Renting of residential dwelling
 - The registered person is a proprietor of a proprietorship concern and rents the residential dwelling in his personal capacity for use as his own residence; and
 - Such renting is on his own account and not that of the proprietorship concern.”;

CIRCULARS

CLARIFICATION TO DEAL WITH DIFFERENCE IN ITC AVAILED IN FORM GSTR-3B AS COMPARED TO THAT DETAILED IN FORM GSTR-2A FOR FY 2017-18 AND 2018-19

- The Circular seeks to clarify the manner in which the difference in ITC availed in Form GSTR-3B vis-à-vis GSTR-2A for FY 2017-18 and 2018-19 would be dealt with by the tax authorities;
- Four specific situations, as given below, are sought to be addressed by following certain procedures:

- the supplier failed to submit a declaration in Form GSTR-1
- the supplier failed to report a particular supply in Form GSTR-1
- supplier reported a B2B supply as B2C in Form GSTR-1
- supplier declared the supply under the wrong GSTIN in Form GSTR-1

As per the above circular, the proper officer will follow below process/steps:

- Seek details of ITC not reflected in GSTR-2A from the recipient
 - Validate the following:
 - Whether the credit has been taken within the time limit
 - Whether the recipient has availed ITC on restricted items or has reversed ITC, wherever applicable
 - Whether the recipient has paid the value of supply along with GST
 - Whether the recipient has received said goods or service
 - Whether the recipient possesses an invoice/debit note covering the supply
 - If the difference in ITC in respect of a supplier is in excess of INR 500,000/-, the recipient would be required to submit a Certificate from a Chartered Accountant or a Cost Accountant, stating that the said supply has been actually undertaken by the said supplier and applicable taxes have been paid.
 - If the difference is less than Rs.500,000/-, the supplier can self-certify it.
 - For FY 2017-18, aforesaid relaxations shall not be applicable to the claim of ITC made in form GSTR-3B filed after the due date of the furnishing return for September 2018 till the due date of the furnishing return for March 2019, if the supplier had not furnished details of the said supply in his FORM GSTR-1 till the due date of furnishing FORM GSTR 1 for the month of March 2019.
- [Circular No:183/15/2022-GST dated 27 December 2022]*

CLARIFICATION ON THE ENTITLEMENT OF ITC WHERE THE PLACE OF SUPPLY IS DETERMINED IN TERMS OF THE PROVISO TO SECTION 12(8) OF THE INTEGRATED GOODS AND SERVICES TAX ACT, 2017

- CBIC has clarified that the 'Place of Supply' (PoS) and ITC eligibility on Transportation of goods including by mail or courier, where the Supplier and the Recipient are located in India.

- It is clarified that where transportation of goods is to a place outside India (say the USA), and where the supplier and recipient are located in India, PoS would be the concerned foreign destination where the goods are transported (i.e., USA).
- The aforesaid supply is an inter-State supply in terms of Section 7(5) of IGST Act since the location of the supplier is in India and the place of supply is outside India. Therefore, integrated tax (IGST) would be chargeable on the said supply.
- Recipient of service shall be eligible to avail ITC, subject to fulfilment of other conditions under Sections 16 & 17 of CGST Act.
- The Supplier shall report PoS by selecting State code '96- Foreign Country' from the list of codes in the drop-down menu in the common portal while declaring the transaction in GSTR-1.

[Circular no:184/16/2022-GST dated 27 December 2022]

CLARIFICATION WITH REGARD TO APPLICABILITY OF PROVISIONS OF SECTION 75(2) OF CENTRAL GOODS AND SERVICES TAX ACT, 2017 AND ITS EFFECT ON LIMITATION

- This circular clarifies what is the time limit for re-determination of tax liability under Section 75(2) of the CGST Act, where an Appellate authority concludes that an SCN issued invoking larger period of 5 years (alleging fraud, wilful misstatement or suppression of facts - "fraud" in short) is not sustainable.
- As per Section 75(3) of CGST Act, the proper officer is required to issue an order within two years of the date of communication of the order by the said Appellate Authority/Tribunal/Court.
- Where the proper officer himself is required to issue an order, in cases not involving fraud under Section 73 of CGST Act, the time limit for issuance of the order is 3 years from the due date of submission of annual return for the respective year. The said Section also mandates that SCN is required to be issued at least within 3 months prior to the 3-year limit specified to pass an order - in other words, within 2 years and 9 months of the time limit for passing an order, SCN must be issued.
- Thus, the amount of tax not/short paid, or ITC wrongly availed/utilized or erroneous refund claim, along with interest and penalty, can be determined under Section 73 of CGST Act relating to such financial years, where SCN was issued within 2 years and 9 months. If a notice is issued invoking the larger period of 5 years and the appellate authority/tribunal/court concludes that the invocation of larger period is not sustainable, any demand beyond 2 years and 9 months shall have to be dropped.

[Circular no: 185/17/2022-GST dated 27 December 2022]

CLARIFICATION ON VARIOUS ISSUES PERTAINING TO GST

▪ No Claim Bonus given by Insurance Companies:

- The circular seeks to clarify certain doubts with respect to the taxability of the 'No Claim Bonus' (NCB) offered by Insurance companies and the applicability of the e-invoicing mandate as regards an entity.
- It is clarified that an insured person procures an insurance policy to indemnify himself against any loss/injury arising out of specified perils covered in the policy document and is not under any contractual obligation not to claim insurance during any period, in lieu of NCB.
- Therefore, there is no supply by the insured to the insurance company in form of agreeing to the obligation to refrain from the act of lodging an insurance claim; NCB cannot be considered as a consideration for any supply provided by the insured to the insurance company.
- The insurance companies make a disclosure to the insured about the availability of discount in form of NCB, subject to certain conditions, in the insurance policy itself and hence the deduction of NCB is in the form of a discount under Section 15(3)(a) of CGST Act, which cannot be subject to GST.

▪ E-Invoicing mandate

- In terms of notification no:13/2020-CT dated 21 March 2020 (as amended), certain entities/sectors have been exempted from a mandatory generation of e-invoices under Rule-48(4) of CGST Rules, 2017 and this exemption is for the entity as a whole and not restricted by the nature of supply being made by the said entity.
- Thus, for example, a Banking company is exempt from mandatory issuance of e-invoices for all supplies of goods and services.

[Circular no:186/18/2022-GST dated 27 December 2022]

CLARIFICATION REGARDING THE TREATMENT OF STATUTORY DUES UNDER GST LAW IN RESPECT OF THE TAXPAYERS FOR WHOM THE PROCEEDINGS HAVE BEEN FINALISED UNDER INSOLVENCY AND BANKRUPTCY CODE, 2016

- The circular deals with the treatment of statutory dues under the GST law, in respect of the taxpayers against whom proceedings under the Insolvency and Bankruptcy Code, 2016 (IBC) is under finalisation.

- As per Section 84 of CGST Act, if government dues against any person are reduced as a result of any appeal, revision or other proceedings, then an intimation for such reduction of government dues has to be given by the Commissioner to such person and to the appropriate authority with whom the recovery proceedings are pending. Further, recovery proceedings can be continued in relation to such a reduced amount of government dues.
- The word 'other proceedings' is not defined in CGST Act. Adjudicating authorities and Appellate authorities under IBC are quasi-judicial authorities constituted to deal with civil disputes pertaining to insolvency and bankruptcy.
- Proceedings under IBC also adjudicate the government dues pending under the CGST Act and the same appear to be covered under the term 'other proceedings' in Section 84 of the CGST Act.
- Thus, where a confirmed demand has been issued by tax authorities on a corporate debtor, against whom proceedings have been finalised under IBC to reduce the amount of statutory dues, the jurisdictional Commissioner shall issue an intimation in FORM GST DRC-25 reducing such demand, to the taxable person as well as the appropriate authority with whom recovery proceedings are pending.
[Circular no:187/19/2022-GST dated 27 December 2022]

PRESCRIBING MANNER OF FILING AN APPLICATION FOR REFUND BY UNREGISTERED PERSONS

- This circular prescribes the manner in which an unregistered person, who has suffered the burden of GST, but the contract has been cancelled later (e.g., construction contract or a long-term Insurance policy, where the supplier is bound by the statutory time limit to issue credit note with GST), file application for refund of GST.
- The following procedure has been prescribed as to how the unregistered person can obtain a temporary GST registration to claim a refund of GST:
 - New functionality has been introduced in the GST common portal to obtain temporary registration in the supplier's State and apply for a refund under the category 'Refund for Unregistered person'
 - An unregistered person would be required to undergo Aadhaar authentication and enter his bank account details in which he seeks to obtain the refund;

- Refund claim shall be filed in FORM GST RFD-01 on the common portal which cannot exceed the GST charged on the invoice;
- Upload documentary evidence to establish that he has borne the tax incidence;
- Where the time limit for issue of a Credit Note has not expired at the time of cancellation/termination of agreement/contract, the concerned suppliers can issue a credit note and pass on the benefit;
- The date of cancellation of the contract/agreement for supply will be considered as the relevant date for ascertaining the time limit;
- A refund application would be not entertained if the claim is less than INR 1,000/-

[Circular no:188/20/2022-GST dated 27 December 2022]

JUDICIAL UPDATES

ORDERS BY APPELLATE AUTHORITY FOR ADVANCE RULING (AAAR)

LEASING OF TANK CONTAINERS TAKEN FROM A SUPPLIER LOCATED OUTSIDE INDIA IS A SUPPLY OF SERVICE

Facts of the Case

- M/s. Deccan Transcon Leasing Private Limited (Taxpayer or DTLPL) are non-vessel owner container carriers/Operators (NVOCC) based in India taken on lease containers from suppliers outside the country and in turn use it in the transportation of bulk chemicals;
- Taxpayer sought Advance Ruling before the AAR on whether GST is liable to be paid on leasing of tank containers taken from a supplier located outside India and the tank containers do not reach India;
- The AAR held that the Taxpayer is liable to pay IGST on the importation of lease services into India. Aggrieved by the ruling, the Taxpayer preferred an appeal before the AAAR.

Questions before the AAAR

- Whether GST is liable to be paid on leasing of tank containers taken from a supplier located outside India and the tank containers do not reach India

Contentions by the Taxpayer

- The Taxpayer contended that Article 366(29A) of the Constitution of India specifically & unequivocally provides that the present transaction is to be classified as a 'sale of goods' thereby it shall be treated as a 'supply of goods';

- Article 366(29A) of the Constitution of India and the 'Sale' definition given under the CST Act, 1956 vide Section 2(g) remain untouched even after the introduction of GST thereby making the lawmakers' intention to continue the deeming fiction to treat the transaction as 'supply of goods' under GST law also;
- The transaction of purchasing the containers during the lease period is 'supply' under Section 7 of CGST Act, 2017 and would be classified as 'supply of goods in terms of entry no:1(c) of Schedule II to the CGST Act;
- The supplier has transferred the title only after payment of full consideration as is evident from the terms of the agreement and ownership certificates. Therefore, the present transaction entered with the supplier is a 'supply of goods';
- The taxpayer contended that the order by the AAR has stated that 'The above entry in Schedule II employs the word 'Stipulation' to be enshrined in the agreement and also the word 'Shall' to make it obligatory on the supplier to sell the goods at a future date when the full consideration is received both the words 'Stipulation' and the word "Shall" in the entry do not leave any option to either the purchaser or the seller in this matter;
- 'Stipulation' means to have a condition in an agreement. Therefore, keeping the meaning of stipulation in entry 1(c) of Schedule II, would mean that 'there must be a clause in the agreement for the transfer of title in goods stating that the goods would be transferred upon a future date provided on payment of full consideration';
- Taxpayer relied on the judgement of Charanjit Singh Chadha v. Sudhir Mehra 2001 AIR SCW 3487 (2001) 7 SCC 417, wherein it was observed, 'Hire purchase agreements are executory contracts under which goods are let on hire and hirer has to option to purchase in accordance with terms of the agreement. Under the hire purchase agreement, the hirer is simply paying for the use of goods and for an option to purchase them. If the hirer makes a default by not paying installments, the owner can take possession of goods;
- Taxpayer contended that the substance of the transaction must prevail over his legal form and AS-19 follows the substance over the form, and hence, the transaction is a finance lease and is the purchase of goods and not services;
- The transaction is carried out outside India, and hence, is not liable for indirect taxes in India as the Indirect taxes including the GST is a destination-based consumption tax;

- Taxpayer further contended that the impugned transaction squarely falls under entry no:7 of Schedule III of the CGST Act which provides that supply of goods from one place to another place in non-taxable territory without bringing into India is neither supply of goods nor supply of services;

Observations and Ruling by the AAAR

- The Taxpayer has entered into 'lease purchase agreements' with M/s Tankspan leasing Ltd, Surrey, United Kingdom, as per the agreements the Taxpayer shall pay agreed rates of lease rentals every month and the Taxpayer shall have the option to purchase the tank containers at the end of the lease period;
- Hon'ble Supreme court of India in the case of M/s Magma fincorp Limited Vs Rajesh Kumar Tiwari (Civil appeal No 5622 of 2019) held that the financier/lessee continues to remain the owner of a vehicle, covered by a hire purchase agreement till all the hire installments are paid and the hirer/lessee exercises the option to purchase;
- Till such time the option is exercised, the hirer remains only as the trustee or bailee of goods covered by such agreement. The same is applicable to lease purchase agreements also;
- From the conditions of the lease-purchase agreements and abovesaid Judgment of the Honorable Supreme Court, the ownership of the containers lies with M/s Tankspan Leasing Ltd until the Taxpayer exercises the option to purchase the container;
- In view of the above there is no transfer of title in goods until the Taxpayer purchases the container, as there is no transfer of title in goods i.e., containers from the lessor to the lessee until purchased by the lessee;
- The supply does not fall under entry 1(c) of Schedule II of the CGST Act. As per clauses of the agreement, default in payment is one of the conditions for the return of goods and not the sole condition for 'return of goods', which makes it clear that title transfer after the payment of full consideration is not automatic;
- For supplies falling under entry 1(c) of Schedule II to the CGST Act, there should be an immediate transfer of title in goods as per the agreement and property should be passed automatically on payment of full consideration at a future date;
- Where there is a future title transfer, the supply cannot be classified under entry 1(c) of Schedule-II. Entry 1(c) shall not be rendered otiose merely because the subject transactions do not fall under the said entry;
- The entry may be interpreted to include such type of transactions where the title transfer is done immediately but the physical possession of the goods is passed on at a future date, upon payment of full consideration;
- The supply is squarely covered under entry 1(b) of Schedule-II, which reads as 'any transfer of right in goods or of undivided share in goods without the transfer of title thereof, is a supply of services', as in this case, there is a transfer of right in goods without the transfer of title;
- Therefore, the transaction in question is decided to be 'supply of services' as per the provisions of Section 7(4) of the IGST Act, 2017 the transaction attracts IGST and is exigible to tax under the provisions of Section 5(1) & (2) of IGST Act and notification no:10/2017-IGST(R) dated 28 June 2017;
- As per the provisions of Section 13 of the IGST Act where the location of the supplier of services or recipient of services is located outside India, the place of supply is the location of the recipient of services;
- Therefore, the transaction is taxable under the reverse charge mechanism, with IGST to be paid by the recipient of services i.e., the Taxpayer with a place of supply as 'Telangana'. Thus, the Taxpayer is liable to pay IGST on the importation of lease services into India;
- The ruling of the AAR is therefore upheld and the appeal is disposed of.

[AAAR-Telangana, M/s. Deccan Transcon Leasing Private Limited, AAAR.COM/07/2021 dated 26 August 2022]

THE PLACE WHERE THE AGREEMENT TO PERFORM THE SERVICE IS EXECUTED WOULD BE TREATED AS THE LOCATION OF THE SUPPLIER OF THE SERVICE

Facts of the Case

- M/s. National Buildings Construction Corporation Limited (NBCCL), Delhi entered into a contract with M/s. Sri Avantika Contracts (I) Limited (Taxpayer) for the construction of an institute for security and law enforcement studies at Addu, Republic of Maldives;
- The recipient of the construction service is the Government of Maldives as the institute is being constructed as part of assistance from the Government of India to the Government of Maldives;
- Taxpayer have not entered into any contract with the Government of Maldives for carrying out the said construction;
- As per the agreement, the Taxpayer receives consideration for implementing the project from M/s NBCC in Indian Rupees;

- Further, the Taxpayer does not have any privity with respect to the MOU between the Government of the Republic of India & Government of Maldives. Therefore, the Taxpayer does not have any mutual or successive relationship with the Government of Maldives;
- The AAR has examined the submissions made by the Taxpayer and vide the impugned order, had given the following Advance Rulings:

Question Raised	Ruling
Whether the construction of the Institute of Security and Law Enforcement studies at Addu City in Maldives, constructed for the Government of Maldives under a Memorandum of Understanding between India and Maldives falls within the GST net	The Taxpayer who is the supplier of the service & NBCCL who is the recipient of the service is located in India and therefore the place of supply is to be determined under Section 12 of the IGST Act. The proviso to Section 12(3) of the IGST Act clearly mentions that if the location of immovable property is intended to be located outside India, the place of supply shall be the location of the recipient. Therefore, the supply by the Taxpayer to the NBCCL is within the ambit of GST.
Who is the recipient of service in the instant case	National Buildings Construction Corporation Limited is a recipient of service from the Taxpayer
What is the place of supply in respect of the works contract for setting up of the Institute of Security and Law Enforcement Studies at ADDU City in Maldives?	Taxpayer who is the supplier of service & NBCCL who is a recipient of the service is located in India and therefore the place of supply is to be determined under Section 12 of the IGST Act. The proviso to Section 12(3) of the IGST Act clearly mentions that if the location of immovable property is intended to be located outside India, the place of supply shall be the location of the recipient i.e. NBCCL

Contention by the Taxpayer

- The impugned order is passed without proper appreciation of the GST law holding that the supply made by the Taxpayer is within the ambit of GST;
- Levy of GST depends on the place i.e. situs of the tax event. In a destination-based consumption tax like GST, the tax goes to a place where the goods or services are consumed;
- CGST, SGST and IGST are accordingly levied based on the place of supply, the location of the recipient of the supply and the location of the supplier;
- The Taxpayer has an established office in Maldives which is registered under the laws of Maldives and is considered a branch or project office of the Taxpayer. There is no dispute that the supply made by the Taxpayer is a construction service which requires manpower and execution of goods in the premises where the immovable property is located and such supply cannot be undertaken from a distance from the head office and can be executed and supervised only from the project office or branch office located at the place of construction. Hence, the office (fixed establishment) of the Taxpayer registered in Maldives is directly concerned with the provision of the Works Contract Service (WCS) to the Government of Maldives;
- Merely because the consideration is paid in Indian currency by the recipient from its registered place of business in India to the supplier at its registered place of business in India, the location of either of the parties cannot be said to be constituted in India and the place where service is received is the only determining factor for determining the location under GST law and not where the consideration is paid from. Hence, the location of the recipient is also outside India;
- There is no dispute with regard to the fact that the Taxpayer is executing a works contract of the construction of a building for the government of Maldives on behalf of the Ministry of External Affairs, Government of India. The building being an immovable property, all services in relation to such construction are treated as relating to immovable property;
- The AAR erred in not appreciating the facts and legal position that the supply provided by the Taxpayer in the non-taxable territory of Maldives is outside the ambit of GST for the above reasons.

Observations and Ruling by the AAAR

- The essential element of a works contract is that it is a contract between the supplier and recipient. In the instant case, for the supply of service of WCS, the agreement which is enforceable by law is entered into

- between Taxpayer and M/s NBCC Limited, New Delhi;
- Hence, the Taxpayer, will be the supplier of WCS, The discussion from where the 'individual' goods and services involved in the WCS are supplied from, is immaterial in determining the supplier or the location of the supplier;
 - The WCS has to be looked in a holistic manner and the promise to deliver has been made by Taxpayer, who will be held responsible in the event of any non-performance of the agreement;
 - In this case, agreement to perform the service is being made from the place of business for which registration has been obtained i.e., Hyderabad. Hence, such location will be the location of the supplier of services;
 - In terms of the definition of 'person' under Section 2(84) of the CGST Act and the definitions of 'company' and 'foreign company' under Section 2 of the Companies Act, 2013, a company incorporated in India and a foreign company incorporated outside India, are separate 'person' under the provisions of CGST Act and accordingly, are separate legal entities;
 - The registered place of business of M/s Avantika Contractors (I) Limited, Maldives cannot be considered as a fixed establishment of Taxpayer;
- In view of the above, the Taxpayer's contention that the location of the supplier of services in the Maldives is not correct. As per Section 2(15) of the IGST Act, 2017 location of the supplier of services is the registered place of business of the Taxpayer i.e. Hyderabad
 - In this case, the agreement to perform is received at the place of business for which registration has been obtained i.e., NBCC (India) Limited, New Delhi, this location, i.e., NBCC (India) Limited at New Delhi will be the location of the recipient of services;
 - Since both the location of the recipient of services and location of supplier of services are located in India and also since the service is 'directly in relation to' construction of immovable property, the provisions of section 12(3)(a) of the IGST Act, 2017 would apply;
 - The location of immovable property is outside India, therefore the Place of supply of services is the location of the recipient i.e., Delhi as per the provisions of Section 12(3) of the IGST Act, 2017. The subject transaction becomes an inter-state supply and is taxable within the ambit of GST.
- [AAAR-Telangana, M/s. Sri Avantika Contracts (I) Limited, AAAR.COM/02/2021 dated 16 August 2022]*

CUSTOMS

NOTIFICATION

EXEMPTION ON CERTAIN GOODS WHEN IMPORTED FROM AUSTRALIA

The CBIC has extended exemption (wholly or partially, as the case may be) on certain goods prescribed in the notification from the levy of duty of customs and the Agriculture Infrastructure and Development Cess (AIDC) leviable under Section 124 of the Finance Act, 2021 when such goods are imported from Australia.

[Notification no:62/2022-Customs dated 26 Dec 2022]

Sl. No. of notification	Chapter, Heading, Subheading and Tariff item	Description	Rate (in percentage unless otherwise specified)	Revised Rate (in percentage)
80	090111	All Goods	48.0	45.0
81	090240	All Goods	48.0	45.0
83	090411	All Goods	51.0	50.0
124	151110	All Goods	41.0	37.5
125	151190	All Goods	51.0	45.0

[Notification no:63/2022-Customs dated 27 Dec 2022]

NOTIFIED RULES W.R.T. DETERMINATION OF THE ORIGIN OF GOODS UNDER THE INDIA-AUSTRALIA ECONOMIC COOPERATION AND TRADE AGREEMENT (INDAUS ECTA)

Pursuant to INDAUS ECTA, CBIC has issued 'The Customs Tariff (Determination of Origin of Goods under India-Australia Economic Cooperation and Trade Agreement) Rules, 2022 to determine the origin of goods imported to India w.e.f 29 Dec 2022.

[Notification no:112/2022-Customs (N.T.) dated 22 December 2022]

EXCISE/SERVICE TAX

REFUND OF CENTRAL EXCISE DUTY PAID ON GOODS CLEARED FROM THE FACTORY AND RETURNED POST 01 JULY 2017 WOULD BE AVAILABLE TO THE TAXPAYER

Facts of the Case

- M/s. Oswal Cables Private Limited (Taxpayer) is engaged, in manufacture of ASCR conductors, LT insulated armoured cables, concentric cables & transformers (final products);
- The Taxpayer manufactures and clears final products upon payment of Central Excise duty;
- The aforesaid final products cleared to the customer were received back by Taxpayer as returned/rejected within six months of the appointed day of the CGST Act, i.e., 01 July 2017;
- Taxpayer transitioned the CENVAT credit of INR 3.50 Mn involved in the goods so returned, by filing Form GST TRAN-1 ('TRAN-1');
- Since TRAN-1 is subject to the Tax authority's verification, and to avoid lapsing of a period of limitation for claiming a refund, Taxpayer also filed a refund of Central Excise duty of the same value, involved in the goods so returned, in terms of Section 142(1) of the CGST Act, read with Rule 16 of the Central Excise Rules, 2002 (Excise Rules), and Section 11B of the Central Excise Act, 1944 (Excise Act);
- It was categorically mentioned in the refund claim that the same is filed simultaneously with TRAN-1, & Taxpayer neither intends to nor shall claim the amount twice;
- The Tax authority has informed the Taxpayer that the refund claim is liable to be rejected since the amount has already been claimed in TRAN-1;
- In response, the Taxpayer submitted that the refund claim was filed out of abundant caution because if TRAN-1 is not accepted by a Tax authority, the refund claim would get time-barred;
- Show Cause Notice (SCN) issued, proposing to reject the refund claim on the ground that the amount was already availed in TRAN-1;
- Order-in-Original (OIO) passed, rejecting the refund claim by giving a finding that TRAN-1 has been verified;
- Commissioner (Appeals) passed Order-in-Appeal (impugned order), upholding OIO and rejecting appeal;
- The impugned order, read with OIO, that TRAN-1 has been verified by the Tax authority, the Taxpayer was under a bonafide belief that the Tax authority has accepted TRAN-1. Accordingly, Taxpayer did not file any appeal against the impugned order;
- Tax authority issued a letter stating that the Taxpayer has availed excess credit of INR 3.50 Mn in TRAN-1, which is required to be reversed along with interest;
- An audit objection was raised by the Tax authority, stating that Taxpayer has availed excess credit in TRAN-1. In response, the Taxpayer submitted that no excess credit has been availed by it;
- Tax authority issued Show Cause Notice ('TRAN SCN') proposing to deny credit availed in TRAN-1;
- Taxpayer filed an appeal against the impugned order before the CESTAT;
- CESTAT allowed an appeal by holding that although the Taxpayer would not be entitled to the benefit of both the remedies of TRAN-1 and refund, the Taxpayer cannot be restrained from pursuing both remedies;
- Being aggrieved, the Taxpayer is in an appeal against the order-in-appeal.

Contention by the Taxpayer

- The refund has been rejected not on merits but only on the ground that Taxpayer has received the benefit of amount claimed as a refund, as credit under the GST regime;
- Pursuant to the issue of SCN proposing to deny the refund of CENVAT credit availed in Tran-1 on the ground that this amount did not appear as credit as on 30 June 2017 in the Central Excise/Service Tax Return;
- The issue is no longer res intergra and the refund on returned goods, which were supplied or cleared prior to 1 July 2017 was considered by the CESTAT in Rajasthan Transformers & Switchgears Vs. Commissioner, CGST and Central Excise, Jaipur-2022 (5);
- Being the fact that goods were returned by unregistered dealer, The CESTAT held that in terms of Section 142(1) of the CGST Act read with Section 142(3) that the Taxpayer is entitled to a refund as there is no dispute with regard to the identity of the goods & further, there is no dispute to the nature of the duty paid goods at the time of clearance. The substantial benefit of refund of duty paid at the time of clearance cannot be denied.

Observations and Ruling by the CESTAT

- There is no dispute with regard to identity of goods cleared and same goods have been returned back. Further, there is no dispute as to duty-paid nature of the goods under provisions of the Central Excise Act.
- Further, the goods have been returned by a public sector entity, which is not registered under the provisions of the CGST Act;
- In this view of this, an appeal was allowed and the impugned order was set aside. The Adjudicating Authority is directed to grant a refund of INR 3.50mn with interest. *[CESTAT-Delhi, M/s Oswal Cables Private Limited Vs Commissioner Of Central Goods & Service Tax, Jaipur dated 19 October 2022]*

FOREIGN TRADE POLICY (FTP)

NOTIFICATION

AMENDMENT IN IMPORT POLICY CONDITION OF ITEMS UNDER HS CODE 1511 90 (PALM OIL PRODUCTS)

Free import policy of items under HS code 15119010 (Refined bleached deodorised palm oil), 15119020 (Refined bleached deodorised palmolein) and 15119090(Other) is extended beyond 31 December 2022 until further orders.

[Notification no:51/2015-2020 dated 28 December 2022]

AMENDMENT IN IMPORT POLICY OF URAD AND TUR/PIGEON PEAS

The 'Free' Import Policy of Urad and Tur/Pigeon Peas shall stand extended up to 31 March 2024.

[Notification no:52/2015-2020 dated 28 December 2022]

PUBLIC NOTICE

AMENDMENT IN LIST OF EXPORT PROMOTION COUNCILS/ COMMODITY BOARDS/EXPORT DEVELOPMENT AUTHORITIES)

Details of products falling under the jurisdiction of the Export Promotion Council for EOU and SEZ(EPCES) have been updated in Appendix 2T of FTP 2015-2020, with immediate effect as follows:

- All products and services by EOU except spices. In case of spices, it would be mandatory for units to get themselves registered with Spices Board.
- All products and services by SEZs

[Public notice no:45/2015-20 dated 27 December 2022]

AMENDMENTS UNDER PARA 2.107 AND APPENDIX-2A OF HANDBOOK OF PROCEDURE 2015-20 FOR INCLUSION OF TRQs UNDER THE INDIA-AUSTRALIA ECONOMIC COOPERATION AND TRADE AGREEMENT (IND-AUS ECTA)

The procedure has been prescribed for allocation of Tariff Rate Quotas (TRQ) in line with the Ministry of Finance (Department of Revenue) notification no:66/2022-Customs dated 26 December 2022 under Ind-Aus ECTA is notified.

- Para 2.107 of the HBP is amended to include the following annual Import TRQs under Ind-Aus ECTA.

HS code	Item Description	In Quota rate (%)	TRQ Quantity for Calendar year 2022	TRQ Quantity Calendar Year 2023 onwards
07134000	Lentils	50% of the applied rate of duty	1,233 MTs	1,50,000 MTs
08021100	In shell almonds	50% of the applied rate of duty	279 MTs	34,000 MTs
08021200	Shelled almonds			
08051000	Oranges	50% of the applied rate of duty	113 MTs	13,700 MTs
08052100	Mandarins (including tangerines & satsumas)			
08083000	Pears	50% of the applied rate of duty	30 MTs	3,700 MTs
52010020	Extra Long Staple Cotton of minimum 28 mm staple length	0% duty	419 MTs	51,000 MTs

- Australia shall allocate TRQs to exporters or producers by issuing TRQ certificates up to relevant quantities for each TRQ. [Public notice no:46/2015-20 dated 28 December 2022]

NEWS FLASH

“No proposal before govt to lower threshold for generating e-invoice”

<https://economictimes.indiatimes.com/news/economy/policy/no-proposal-before-govt-to-lower-threshold-for-generating-e-invoice/articleshow/96524567.cms>

[Source: *Economic Times*, 26 December 2022]

“Private satcoms seek GST, other tax benefits to boost competitiveness, affordability”

<https://economictimes.indiatimes.com/industry/telecom/telecom-news/private-satcoms-seek-gst-other-tax-benefits-to-boost-competitiveness-affordability/articleshow/96542825.cms>

[Source: *Economic Times*, 27 December 2022]

“Unregistered persons can claim tax refunds for cancelled contracts on GST portal”

<https://economictimes.indiatimes.com/news/economy/policy/unregistered-persons-can-claim-tax-refunds-for-cancelled-contracts-on-gst-portal/articleshow/96574961.cms>

[Source: *The Economic Times*, 28 December 2022]

“Government tweaks GST rules for claiming input tax credit”

<https://economictimes.indiatimes.com/news/economy/policy/government-tweaks-gst-rules-for-claiming-input-tax-credit/articleshow/96549862.cms>

[Source: *The Economic Times*, 28 December 2022]

“CBIC to taxmen: Reduce GST demand for insolvency cases”

<https://timesofindia.indiatimes.com/business/india-business/cbic-to-taxmen-reduce-gst-demand-for-insolvency-cases/articleshow/96582415.cms>

[Source: *Times of India*, 29 December 2022]

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