

INDIRECT TAX DIGEST

22 December 2023

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GOODS & SERVICES TAX



LEGISLATIVE UPDATES

NOTIFICATION

55/2023-Central Tax ¹	The due date for furnishing Form GSTR-3B for November 2023 for registered persons having principal place of business in the districts of Chennai, Tiruvallur, Chengalpattu, and Kancheepuram in the State of Tamil Nadu is extended till 27 December 2023.
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INSTRUCTION

05/2023-GST ²	Central Board of Indirect Taxes and Customs (CBIC) has issued instructions on the applicability of Northern Operating Systems Pvt. Ltd. ruling to the investigations/ assessments under the GST law ³ .
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JUDICIAL UPDATES

AAR-Gujarat, Tata Advanced Systems Ltd. [TS-623-AAR(GUJ)-2023-GST]

Issue

- In cases where the contract entails both supply of goods, viz., aircraft, as well as supplying support services, what is the nature of supply under such contract, i.e., whether it would be treated as supply of goods or as supply of services?
- What will be the appropriate classification and applicable GST rate on such supply?
- Whether the value of supply would include the value of Free-Issue-Materials (FIMs), i.e., the value of supplies made by Airbus to the Taxpayer on a free-of-cost basis?
- What will be the time of supply for discharging GST liability on such supplies?

Ratio

- **Nature of supply:**
 - In the present case, the supply of aircraft and the provision of support services are naturally bundled and supplied in conjunction with each other in the ordinary course of business. Accordingly, in terms of Section 2(30) of the Central Goods and Services Tax Act, 2017 (CGST Act), the supply would be covered under the purview of 'composite supply'.
 - This is further substantiated from the fact that provision of support services (i.e., maintenance) is possible only when the goods, i.e. aircraft, are supplied to the customer wherein the principal supply is that of aircraft considering that the prices quoted in the contracts is *qua* each aircraft.
- **Classification and GST rate:**
 - Since the transaction is a composite supply with principal supply being that of supply of aircraft, the same would be classified under CTH 8802 (i.e., aircraft) attracting GST @ 5%.

¹ Dated 20 December 2023

² Dated 13 December 2023

³ The Tax Alert on this instruction can be accessed by clicking [here](#)

- **Inclusion of FIMs in the value of supply:**
 - Considering that the FIMs supplied by Airbus are crucial/ critical components of the aircraft, relying on *Shree Jeet Transport Vs. Union of India [TS-642-HC(CHAT)-2023-GST]*, it was held that the value to be adopted for payment of GST in respect of 40 aircraft will include the FIM supplies made by Airbus to the Taxpayer.
- **Time of supply:**
 - Since GST is not leviable on advances received on supply of goods (Notification no:66/2017-Central Tax dated 15 November 2017), the time of supply would be determined in terms of the provisions of Section 12 of the CGST Act.

[Star Engineers \(India\) Pvt. Ltd. Vs. Union of India & Ors. \[TS-654-HC\(BOM\)-2023-GST\]](#)

Issue

Whether the Taxpayer is entitled to rectify bonafide and inadvertent error in the furnishing of particulars in Form GSTR-1 post the due-date (under *proviso* to Section 37(3) of the CGST Act)?

Ratio

- *Proviso* to Section 37(3) of the CGST Act cannot be read to prevent a Taxpayer to place the correct position having accurate particulars and there would not be any scope for a bonafide and inadvertent rectification/ correction.
- The *proviso* must not defeat the legislative intent in such cases, when there is no revenue loss while allowing correction of such mistake. The Tax Authorities ought to have granted the Taxpayer's request to rectify/ amend Form GSTR-1 either through online or manual means.
- Relying on the provisions of the CGST Act along with the various judicial precedents⁴, it was noted that there are likely to be inadvertent and bonafide human errors when the assessee adapts to the new tax regime. To understand a system and operate perfectly, it certainly takes some time, during which the provisions of the CGST Act are required to be alive to such considerations by permitting rectification of inadvertent errors.
- Thus, bonafide, inadvertent errors in furnishing GST returns need to be recognised and permitted to be corrected by the Tax Authorities when there is no loss of revenue to the Government. This would also avoid unwarranted litigation on such issues and make the system more assessee-friendly. Accordingly, the Writ Petition was allowed, and the Tax Authorities were directed to amend/ rectify Form GSTR-1 either online or through manual means.

[Indian Oil Corporation Ltd. Vs. Commissioner of CGST \[TS-626-HC\(DEL\)-2023-GST\]](#)

Issue

Whether the refund of accumulated ITC on account of Inverted Duty Structure⁵ (IDS) under Section 54(3)(ii) of the CGST Act is permissible when the principal input and output supply (i.e., bottled LPG) bear the same GST rate?

Ratio

- Section 168(1) of the CGST Act, confines the powers of CBIC to issue circulars for uniformly implementing the provisions of the GST law, not adding or reducing them. Thus, as long as the Taxpayer is entitled to claim refund under Section 54 of the CGST Act, the same cannot be denied by a circular issued under Section 168(1) of the CGST Act.
- Under Section 54(3)(ii) of the CGST Act, the use of the word 'inputs' in plural implies that the refund of accumulated ITC is not confined to a singular input. Similarly, the phrase 'output supplies' indicates that the Taxpayer's output supply may not be singular.
- Section 54(3)(ii) of the CGST Act does not contemplate comparing the rate of tax on principal input with the rate of tax on principal output. Thus, the scope of the aforesaid refund provision cannot be restricted to cases where the GST rate on the main input is higher than the GST rate on the principal output.
- Para 3.2 of the Circular no: 135/05/2020 dated 31 March 2020 addresses an issue where the ITC is accumulated on account of different GST rates being applicable at different points of time and does not cover the issue where the principal input and the principal output are the same.
- In the present case, since the rate of tax on certain items and accessories used in making output supply are leviable to GST @ 18%, the Taxpayer would be entitled to claim refund on account of IDS in terms of Section 54(3)(ii) of the CGST Act.

⁴M/s. Sun Dye Chem Vs. Assistant Commissioner (ST) & Ors. [2020 TIOL 1858 HC MAD.GST], Pentacle Plant Machineries Pvt. Ltd. Vs. Office of GST Council & Ors. [TS-88-HC(MAD)-2021-GST], Shiva Jyoti Construction Vs. The Chairperson, Central Board of Excise & Customs & Ors. [TS-79-HC(ORI)-2023-GST], Mahalaxmi Infra Contract Ltd. Vs. Goods and Services Tax Council & Ors. [TS-579-HC(JHAR)-2022-GST]

⁵Where the rate of tax on inputs is higher than the rate of tax on output supply

CUSTOMS / CENTRAL EXCISE



LEGISLATIVE UPDATES

NOTIFICATION

64/2023- Customs ⁶	Yellow Peas falling under tariff item 0713 10 10 have been exempted from the levy of Basic Customs Duty and Agriculture Infrastructure and Development Cess during the period starting from 8 December 2023 to 31 March 2024.
14/2023- Customs (ADD) ⁷	Imposition of Anti-Dumping Duty on import of 'Synthetic Grade Zeolite 4A' falling under specified Tariff headings originating in or exported from Iran and Thailand for a period of five years.

INSTRUCTION

28/2023- Customs ⁸	CBIC has streamlined the process for verification of BIS registration on imported goods notified under the Electronic and Information Technology Goods (Requirement of Compulsory Registration) Order, 2012 and random sampling of LED products and control gear for LED.
29/2023- Customs ⁹	Department of Animal Husbandry and Dairying (DAHD) has mandated the requirement of integrated Veterinary Health Certificate for the import of Milk and Milk Products into India incorporating DAHD's sanitary requirements and requirement of FSSAI's food safety norms to be certified by the exporting country along with the consignments to be exported into India. In this regard, the exporting country may issue a single Veterinary Health Certificate certified by the Official Veterinarian or a certificate with the annexure as provided by the regulations notified in this regard.
F.No.275/15/20 21-CX.8A. ¹⁰	CBIC has launched the Systematic Adherence and Management of timelines for Yielding results in litigation (SAMAY) application which is an online portal for monitoring the proposals of SLP/ Civil Appeal filings which can be accessed through the DLA website for use at Board, Chief Commissioner and Commissioner levels.

FOREIGN TRADE POLICY



LEGISLATIVE UPDATES

NOTIFICATION

47/2023 ¹¹	One time exemption from 'Prohibition' is granted to the Indian Rice Exporters Federation for the export of 20 MT of Non-basmati white rice (Semi-milled or wholly milled rice, whether or not polished or glazed: Other) falling under HS Code 1006 30 90 as donation to Nepal for earthquake victims.
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⁶ Dated 07 December 2023

⁷ Dated 11 December 2023

⁸ Dated 12 December 2023

⁹ Dated 12 December 2023

¹⁰ Dated 13 December 2023

¹¹ Dated 07 December 2023

48/2023 ¹²	The quantities for export of Non-Basmati Rice (under HS Code 1006 30 90) to Comoros, Madagascar, Equatorial Guinea, Egypt and Kenya through National Cooperative Exports Ltd. have been notified.
49/2023 ¹³	The Export Policy of Onions under HS Code 0703 10 19 is revised from 'Free' to 'Prohibited' till 31 March 2024, subject to specified exceptions.
50/2023 ¹⁴	Import of Yellow Peas under ITC (HS) Code 0713 10 10 is 'Free' subject to registration under the Import Monitoring System with immediate effect for the period up to 31 March 2024. Further, the condition of Minimum Import Price of INR 200 and above per kg and Port Restriction (i.e., import is allowed through Kolkata Sea port only) will not apply to import of Yellow Peas till 31 March 2024.
51/2023 ¹⁵	The prohibition for export of De-Oiled Rice Bran under ITC (HS) Code 2306 and under any other HS Code is till 31 March 2024.
52/2023 ¹⁶	Notification no: 09/2023 dated 29 May 2023 is amended to the extent that export of Rice (Basmati and Non-basmati) to EU members and other European Countries namely the United Kingdom, Iceland, Liechtenstein, Norway and Switzerland will only require the Certificate of Inspection from the Export Inspection Agency (EIA) / Export Inspection Council (EIC). Exports to remaining European countries will not require any such certificate for export starting from 12 December 2023 for a period of 6 months.
53/2023 ¹⁷	Notification no: 31/2023 dated 11 September 2023 has been amended to provide that export of Food Supplements containing botanicals under specified ITC (HS) Codes intended for human or animal consumption to European Union and United Kingdom will require issuance of official certificate by EIA / EIC or Shellac and Forest Products Export Promotion Council.

PUBLIC NOTICE

35/2023 ¹⁸	Procedure for registration of import of Yellow Peas (ITC (HS) Code 07131010) under the Import Monitoring System (YP-IMS) has been notified.
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MISCELLANEOUS



LEGISLATIVE UPDATES

NOTIFICATION

G.S.R.881 (E) ¹⁹	The Special Economic Zones (Fifth Amendment) Rules, 2023 is notified to provide rules in relation to ' <i>Non-processing areas for Information Technology or Information Technology Enabled Services Special Economic Zones</i> '.
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¹² Dated 07 December 2023
¹³ Dated 07 December 2023
¹⁴ Dated 08 December 2023
¹⁵ Dated 08 December 2023
¹⁶ Dated 12 December 2023

¹⁷ Dated 15 December 2023
¹⁸ Dated 13 December 2023
¹⁹ Dated 06 December 2023

CENTRAL EXCISE / SERVICE TAX / VALUE ADDED TAX



LEGISLATIVE UPDATES

NOTIFICATION

41&42/2023-Central Excise ²⁰	Effective 19 December 2023, the rate of Special Additional Excise Duty on Petroleum Crude, Aviation Turbine Fuel and High-speed diesel oil have been amended to INR 1,300 per tonne, INR 1 per litre and INR 0.5 per litre, respectively.
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INDIRECT TAX NEWS FLASH



Economic Times (12 December 2023)	<ul style="list-style-type: none"> ▪ No GST dues pending, some states have not submitted AG's report: Nirmala Sitharaman
Business Standard (18 December 2023)	<ul style="list-style-type: none"> ▪ SC quashes GST department's plea against HC order on input tax credit
The Times of India (17 & 18 December 2023)	<ul style="list-style-type: none"> ▪ At 1.1 crore, number of GST return filers up 65% in 5 years ▪ Bill brings setting up of GST Tribunals a step closer
Financial Express (15 December 2023)	<ul style="list-style-type: none"> ▪ GST: E-commerce MSMEs, experts suggest measures for simplified tax regime; see recommendations

²⁰ Dated 18 December 2023

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