

INDIRECT TAX

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GOODS & SERVICES TAX

JUDICIAL UPDATES

ORDERS BY AUTHORITY FOR ADVANCE RULING (AAR)

Concessional rate of GST of 5% is applicable to only MRO services in respect of aircrafts, aircraft engines and other aircraft components or parts

Facts of the case

- M/s. Testmesures Spherea Solutions Private Limited ('Taxpayer') is a wholly owned subsidiary of Spherea Test & Services ('Parent Company');
- The parent company sold two equipment (Test benches for aeronautics cases) to their customer in India and the said equipment are currently with Indian Air Force for operational forward basis;
- The parent company has sub-contracted certain services to the Taxpayer with respect to the test benches.

Questions before the AAR

- Whether the services provided by the Taxpayer to its parent company relating to the test benches which are in the name of Maintenance, Repair or Overhaul ('MRO') services would be classified under heading '9987 - i(a) Maintenance, Repair or Overhaul services in respect of aircrafts, aircraft engines and other aircraft components or parts'?
- If the answer to the above is in affirmative, whether the place of supply is the 'location of the recipient' as per notification no:02/2020-IGST dated 26 March 2020 which

would be the location of the Parent Company, and hence, the same can be construed as export of services?

- If the answer to the first question is in negative, what would be the relevant classification of the services supplied to the Parent Company and whether the same can be considered as export of services?

Submissions by the Taxpayer

- The Taxpayer stated that these test benches are used to test and prove the airworthiness of the aircraft's equipment. Also, on detection of any errors, the test benches are used for determination and correction of the errors which will ensure the safe flight of these aircrafts;
- For the set of activities performed by the Taxpayer, an invoice will be raised to its Parent Company, since Taxpayer does not have direct contract with the Indian customer;
- The Taxpayer contended that the activities performed are categorized as MRO. The place of supply of MRO services shall be the location of recipient of services as per the notification no:02/2020- IGST dated 26 March 2020;
- The Taxpayer submitted that the Parent Company is situated outside India, and hence, the Parent Company has not obtained registration under the GST law. Consequently, the place of supply shall be the location of the Parent Company which is outside India since the services are covered under Section 2(14)(b) of the IGST Act, 2017. As a result, the services supplied by the Taxpayer to the Parent Company would be export of services, and hence, zero-rated supply.

Observations and Ruling by the AAR

- The AAR, upon review of the agreement with the Parent Company noted that the services provided are covered under maintenance and repair services of other machinery and equipment and are classifiable under SAC 998719;
- It is observed that the entry no:25(ia) and concessional rate of GST of 5% is applicable to only MRO services in respect of aircrafts, aircraft engines and other aircraft components or parts;
- In the instant case, the Taxpayer is providing maintenance and repair services of test bench equipment (Mermoz system) which are used for testing air worthiness of an aircraft. The said equipment does not qualify to be an aircraft or as an aircraft engine. To be termed as 'other aircraft components or parts', it should form a constituent piece or ingredient that is used to build an aircraft, which is not the case here;
- The test bench equipment (Mermoz system) would neither form part of an aircraft nor a component of aircraft, and therefore, the said entry no:5(ia) of notification no:11/2017-CT(R), dated 26 June 2017 as amended and the concessional rate of GST of 5% is not applicable;
- The AAR also noted that as the first question is answered in negative, this question becomes redundant, and no ruling is offered in this regard;
- With respect to the third question, it was held that the place of supply needs to be determined to decide whether the supply of services by the Taxpayer amounts to export of services or not. Since the determination of place of supply is beyond its jurisdiction, the AAR refused to give ruling on the question.

[AAR-Karnataka, M/s. Testmesures Sphera Solutions Private Limited, Ruling no:KAR ADRG 46/2022 dated 02 December 2022]

CUSTOMS

NOTIFICATION

Amendment in Land Customs Stations for import and export of goods by land

Amendment has been made in notification no:63/1994-Customs (N.T.) dated 21 November 1994, by inserting the condition that Kulkuli Land Customs Station is appointed for import of Oranges and Nagarkata and Kulkuli Customs Station shall be allowed for period between August to 31 March every year.

[Notification no:102/2022 dated 08 December 2022]

Exports by Post (Amendment) Regulations, 2022

The amended Regulations will be called 'Exports by Post (Amendment) Regulations, 2022'.

Through the amendment, Regulation 3(1) has been amended to the extent that, for the words 'international credit and debit cards and as specified', the words 'various electronic means and in accordance with the guidelines issued' have been substituted.

Also, the forms appended in the Regulations have also been substituted by the new forms prescribed in the amendment notification.

[Notification no:103/2022 dated 09 December 2022]

INSTRUCTIONS

Sugar policy and sugar mill wise export quantity of sugar for export in sugar season 2022-23

- Vide [notification no:10/2015-20 dated 24 May 2022](#) regarding DGFT amended the export policy of sugar (Raw, Refined and White Sugar) which was placed under restricted category from 01 June 2022 till 31 October 2022;
- In the partial modification to above DGFT notification, it was issued [notification no:40/2015-2020 dated 28 October 2022](#), regarding extension of the date of 'Restriction' by the Government, on export of sugar (Raw Sugar, Refined sugar and White Sugar) under [HS Codes 1701 14 90](#) and [1701 99 90](#) beyond 31 October 2022 till 31 October 2023;
- Government has decided to allocate sugar mill wise export quota of 60 LMT of sugar for export for sugar season 2022-23 w.e.f. 01 November 2022. The modalities to undertake export of sugar and guidelines thereof is in the OM F.No. 1(1)/2022-Trade dated 05 November 2022 received from Department of Food & Public Distribution. *[Instruction no:33/2022 dated 12 December 2022]*

VALUE ADDED TAX (VAT)

Input Tax Credit (ITC) of VAT in relation to goods purchased in previous tax periods cannot be claimed in subsequent tax periods

Facts of the case

- M/s. ABB Limited ('Taxpayer') engaged in the business of providing works contract service;
- Taxpayer had purchased material from supplier, against which supplier issued tax invoice including component of VAT;
- Taxpayer paid all the consideration in relation to purchase of goods to the supplier in the same tax period in which tax invoice was issued. However, the Taxpayer paid tax component in the subsequent tax period to the supplier and then claimed the ITC of the same.

Issue before the High Court

- Whether the Taxpayer would be eligible to claim ITC of VAT in subsequent tax period in relation to tax paid on goods purchased in previous tax period?

Contention of the Taxpayer

- The Taxpayer submitted that as per the provisions of Delhi Value Added Tax Act, 2004 ('DVAT Act, 2004') and Delhi Value Added Tax Rules, 2005 (DVAT rules, 2005), tax period in which ITC can be claimed is not dependent on the date on which invoice was issued.

Submissions by the Tax Authority

- Tax authority submitted that as per the provisions of DVAT Act, 2004 and DVAT Act Rules, 2005, ITC of VAT in relation to goods purchased in previous tax period cannot be claimed in subsequent tax period.

Observations and Ruling by the High court

- The Hon'ble High Court observed that as per the provision of Section 9(3) of Delhi Value Added Tax Act, 2004, for a relevant tax period, the Taxpayer is entitled to claim ITC in relation to goods purchased up to the amount of input tax arises in relation to goods purchased during that relevant tax period, reduced in the manner described in subsequent sub-section;

- On a combined reading of Section 12(4) of DVAT Act, 2004 and rule 4(c) of DVAT Rules, 2005, the Hon'ble High Court observed that the amount of goods purchased in relation to executing work contract service in a particular tax period shall be the amount of consideration received for the transfer of ownership in goods by the supplier;
- The High court further observed that in the current scenario, the consideration was received by the supplier at the time of issue of tax invoice;
- Based on the above observations, the Hon'ble High court held that the Taxpayer is not eligible to claim ITC in the subsequent tax period in relation to goods purchased in previous tax period.

[Delhi High court, M/s. ABB Limited vs Commissioner VAT Delhi & ORS Case no:VAT Appeal 38/2022 dated 22 November 2022]

Supreme Court order in Suo motu extension of limitation applicable to Tax authorities also as they are also the State is also a litigant

Facts of the case

- M/s. Prabhu Chaitanya Enterprises ('Taxpayer') for the assessment year 2013-2014 filed their returns under Central Sales Tax Act, 1956 (CST Act, 1956) and claimed exemption under Section 5(3) of CST Act, 1956 based on 'H' forms issued by the buyers;
- The Tax authorities after verifying the documents supporting the claim, granted the exemption;
- Five years later, the Taxpayer received proceedings through a re-assessment order for the withdrawal of exemption on the ground that on investigation, the H forms were found to be bogus;
- The Taxpayer challenged the withdrawal of exemption by a Writ petition to quash the re-assessment order, being barred by limitation.

Issue before the High Court

- Whether the re-assessment order is barred by limitation as the Tax authorities could have re-opened the assessment within a period of four years and not beyond that.

Contention by the Taxpayer

- The Taxpayer claimed that the verification of Forms ought to have been completed before the expiry of four years from the date of the assessment year, and hence, revision of the order after five years from the date of issuance of the original order is bad in law;
- Taxpayer also relied upon the judgment of the Hon'ble Supreme Court in S.Kasi vs. State through the Inspector of Police, Samaynallur Police Station, Madurai district and the order, dated 10 January 2022, passed in Suo Motu Writ Petition (C).No.3 of 2020 in support his plea;
- There has been violation of principles of natural justice as the impugned order was served only through e-mail on 24 February 2022 and in person on 14 March 2022. The endorsement that the Taxpayer was not at home is misleading and cannot be made the basis to deny the Taxpayer, an opportunity of being heard.

Contention by the Tax authority

- Tax authority opposed the same stating that since Government of India has issued notification relaxing the limit under certain indirect tax laws, the same can be extended to the state laws more particularly, under CST;

- It was also contended that the State is also a litigant and is equally affected, like any other individual party litigant and by relying upon the judgment of a division bench of Supreme Court of India in V-Guard Industries Limited Vs. The Commercial Tax Officer, Mangalagiri Circle and Others in support of the plea.

Observations and Ruling by the HC

- It was noted that an opportunity ought to have been given to the Taxpayer to explain his stand on genuinity of 'H' forms;
- The Hon'ble Supreme Court extended the period of limitation from time to time, and orders extending time came to be passed on 23 September 2021 and 10 January 2022 as well;
- As the State is also a litigant, and if orders could not be passed within the time prescribed due to the prevailing pandemic, coupled with the difficulties faced by the authorities in passing orders due to pandemic, they would be barred by limitation;
- When the assessee are permitted to file their returns beyond the period prescribed due to pandemic, in view of the judgment of the Hon'ble Supreme Court and circulars issued, the tax authorities also should be given time to pass orders during the pandemic;
- Possibility of the State authorities falling sick and not able to discharge their functions due to pandemic cannot also be ruled out, which cannot be taken advantage of by the tax evaders or defaulters;
- The period of limitation, as extended by the Hon'ble Supreme Court in Suo Motu Writ Petition, applies to the orders to be passed by statutory authorities as the State is also a litigant raising disputes by protecting the Revenue from the defaulters and tax evaders;
- In view of the above, the re-assessment order is set aside, and the matter is remitted back to the assessing authority to pass orders afresh after providing an opportunity of being heard to the Taxpayers.

[HC-Andhra Pradesh, M/s. Prabhu Chaitanya Enterprises vs Commercial Tax Officer, Writ Petition no:18405 of 2022 dated, 25 November 2022]

FOREIGN TRADE POLICY (FTP)

NOTIFICATION

Amendment in Import Policy Condition for de-notifying MMTC as a STE for import of Copra under Chapter 12 of ITC (HS), 2022, Schedule-I (Import Policy)

Metals and Minerals Trading Corporation of India (MMTC) has been de-notified as a State Trading Enterprise (STE). Henceforth, import of Copra under HS Code 12030000 shall be allowed through National Agricultural Cooperative Marketing Federation of India Ltd.(NAFED).

[Notification:48/2015-2020 dated 08 December 2022]

PUBLIC NOTICE

Revision / updation of the list of State Trading Enterprises (STEs for FTP purpose and eligible STEs for allocation of quota for import under the Tariff Rate Quota (TRQ)

Revised / updated Appendix - 2J - List of State Trading Enterprises (STEs) for FTP purpose and eligible STEs for allocation of quota for import under the Tariff Rate Quota (TRQ), is notified. Some of the existing entities have been

de-listed as STE and some new entities have been included as STE for FTP purpose.

[Public notice no:40/2015-20 dated 08 December 2022]

Amendment in Para 2.61 of Hand Book of Procedure (HBP) 2015-20

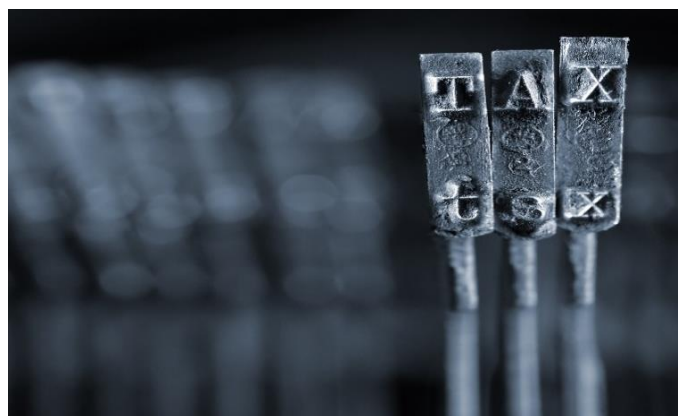
Para 2.61 of the Handbook of Procedure (HBP) 2015-20 has been amended with respect to DGFT Public notice no:40/2015-20 dated 08 December 2022. Subsequent to denotifying 4 Central Public Sector Enterprises (CPSEs) i.e., MMTC, The State Trading Corporation of India Ltd. (STC), PEC Limited and STCL Limited as STE under FTP -2015-20, the aforementioned entities are not eligible for allocation of quota.

[Public notice no:41/2015-20 dated 08 December 2022]

Amendment in Appendix 4J of Handbook of Procedures 2015-20

The import item Shea Nut or Shea Butter is excluded from serial number 10 of Appendix 4J (Export Obligation Period for Specified Inputs with Pre-import Condition) with immediate effect.

[Public notice no:43/2015-20 dated 12 December 2022]



NEWS FLASH

1. “Contractors, commercial consumers can claim input tax credit against GST for services, says Tangedco”
<https://www.thehindu.com/news/cities/chennai/contractors-commercial-consumers-can-claim-input-tax-credit-against-gst-for-services-says-tangedco/article66267004.ece>
[Source: The Hindu, 15 December 2022]
2. “GST Council meet: GoM pitches for 'specific tax levy' on pan masala, gutkha”
https://www.business-standard.com/article/economy-policy/gst-council-gom-pitches-for-specified-tax-based-levy-on-pan-masala-gutka-122121501139_1.html
[Source: Business Standard, 15 December 2022]
3. “GST Council to decide on decriminalisation of GST offences, setting up appellate tribunals”
<https://economictimes.indiatimes.com/news/economy/policy/gst-council-to-decide-on-decriminalisation-of-gst-offences-setting-up-appellate-tribunals/articleshow/96203678.cms>
[Source: Economic Times, 13 December 2022]
4. “Five years on, examining the cost of GST”
<https://indianexpress.com/article/opinion/the-cost-of-gst-trishali-chauhan-christophe-jaffrelet-8321139/>
[Source: Indian Express, 13 December 2022]
5. “GST review for online gaming, casinos, horse racing not on Dec 17 Council agenda”
<https://www.thehindubusinessline.com/economy/gst-review-for-online-gaming-casinos-horseracing-not-on-dec-17-council-agenda/article66259679.ece>
[Source: The Hindu Business Line, 13 December 2022]

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