

# INDIRECT TAX WEEKLY DIGEST

10 October 2023

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## GOODS & SERVICES TAX

### LEGAL UPDATES

#### GSTN ADVISORY

#### NOTIFYING THE EFFECTIVE DATE OF THE AMENDMENTS TO THE GST LAW IN RESPECT OF THE ONLINE GAMING AND CASINO INDUSTRY

Earlier, the Union Government had passed the Central Goods and Services Tax (Amendment) Act, 2023 (CGST Amendment Act), Integrated Goods and Services Tax (Amendment) Act, 2023 (IGST Amendment Act) inter alia proposing to bring various amendments in respect of supplies by Online Gaming and Casino Industry. Further, the valuation mechanism in respect of the aforesaid supplies was also notified by amending the Central Goods and Services Tax Rules, 2017 (CGST Rules). The effective date of the aforesaid amendments (along with other consequential notifications) has been notified to be 1 October 2023<sup>1</sup>. For ease, these amendments/notifications have been tabulated hereunder:

SL. NO.	NOTIFICATION / AMENDMENT ACT	GIST OF THE AMENDMENT
1.	CGST Amendment Act and Notification no: 48/2023-Central Tax dated 29 September 2023	Notifies provisions with respect to GST on Online Gaming and Casinos in the Central Goods and Services Tax Act, 2017 (CGST Act)
2.	Notification no: 49/2023-Central Tax dated 29 September 2023	Notifies that the value of supply in respect of online money gaming, online gaming other than online money gaming and actionable claims in casinos are to be determined in a prescribed manner.
3.	Notification no: 50/2023-Central Tax dated 29 September 2023	Exclusion of persons supplying specified actionable claims (as defined under Section 2(102A) of the CGST Act) from the exemption available with respect to the levy of GST on advances received for the supply of goods.
4.	Notification no: 51/2023 - Central Tax dated 29 September 2023	Notifies provisions under the CGST Rules inter alia relating to registration, value of supply, returns, etc. concerning the Online Gaming and Casino industry.
5.	IGST Amendment Act and Notification no: 2/2023-Integrated Tax dated 29 September 2023	Notifies provisions with respect to GST on Online Gaming and Casinos in the Integrated Goods and Services Tax Act, 2017 (IGST Act)

<sup>1</sup> Our summary of the relevant Acts / Notifications can be accessed [here](#).

SL. NO.	NOTIFICATION / AMENDMENT ACT	GIST OF THE AMENDMENT
6.	Notification no: 03/2023-Integrated Tax dated 29 September 2023	Import of online money gaming to attract IGST under Section 5(1) of the IGST Act as against customs duties payable under proviso to Section 5(1) of the IGST Act.
7.	Notification no: 49/2023-Central Tax dated 29 September 2023	Notifies officers empowered to grant registration in case of supply of online money gaming
8.	Notification nos.: 11/2023-Central Tax (Rate), 14/2023-Integrated Tax (Rate) and 11/2023-Union Territory Tax (Rate) dated 29 September 2023	Stipulates the GST rate on the supply of 'specified actionable claims'
9.	Notification no: 72/2023-Customs (NT) dated 30 September 2023	Amends First Schedule to the Customs Tariff Act, 1975 to add entries relating to 'Specified actionable claims' (HSN Code 9807, including tariff entries thereof) and 'Spirits for industrial Use' (HSN Code 2207 10 12)

## JUDICIAL UPDATES

### SUMMARY OF A SHOW CAUSE NOTICE (IN FORM GST DRC-01 AND GST DRC-02) ISSUED AT A LATER STAGE RESULTS IN SUBSTANTIAL COMPLIANCE WITH RULE 142(1) OF THE CENTRAL GOODS AND SERVICES TAX RULES, 2017 (CGST RULES)

#### Facts of the case

- M/s. Shubham Gupta (Taxpayer) is inter alia registered under the GST law. The Tax Authorities issued a Show Cause Notice dated 2 August 2023 (SCN) to the Taxpayer proposing imposition of penalty under Section 74(1) of the CGST Act.
- However, the summary of the SCN was not communicated electronically to the Taxpayer in Form GST DRC-01 and GST DRC-02 as mandated under Rules 142(1)(a) and 142(1)(b) of the CGST Rules respectively.
- Aggrieved by the above, the Taxpayer filed a Writ Petition before the Hon'ble Delhi High Court.

#### Contentions by the Taxpayer

- In the present case, the SCN has been issued under Section 74(1) of the CGST Act.
- Although the Taxpayer has received the SCN, the summary of the proposed demand, as mandated under Rule 142(1) of the CGST Rules was not communicated to the Taxpayer in Form GST DRC-01 and GST DRC-02.
- As per Rule 142(1) of the CGST Rules, a notice issued under the provisions of the CGST Act, including Section 74(1) of the CGST Act must be accompanied by a summary thereof, electronically in Form GST DRC-01 and Form GST DRC-02.

#### Contentions by the Tax Authorities

- Since the summary of the SCN has not been issued in the requisite form, the Tax Authorities shall now issue the same in compliance with Rule 142 of the CGST Rules.

#### Observations and Ruling by the Hon'ble High Court

- Although the summary in the electronic form must be furnished along with the SCN, furnishing such a summary at this stage would be in substantial compliance with Rule 142(1) of the CGST Rules.
- In view of the above, the Writ Petition is allowed, and the Tax Authorities are directed to issue a summary of the SCN and demands electronically in Form GST DRC-01 & GST DRC-02 as expeditiously as possible, & preferably within 1 week.  
*[M/s. Shubham Gupta Vs. Additional/Joint Commissioner of CGST & Anr., [2023-VIL-661-DEL], dated 21 September 2023]*

### FIRST APPELLATE AUTHORITY CANNOT CONDONE DELAY BEYOND A PERIOD OF ONE MONTH AFTER THE EXPIRY OF THE TIME LIMIT UNDER SECTION 107 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 (CGST ACT)

#### Facts of the Case

- M/s. Isha Holidays Pvt. Ltd. (Taxpayer), a registered taxpayer under the GST law had received the Assessment Order dated 25 July 2022 (Order-in-Original) for FY 2017-18 seeking recovery of differential tax along with interest and penalty under Section 73 of the CGST Act.
- Against this, the Taxpayer filed an appeal before the First Appellate Authority under Section 107 of the CGST Act on 18 March 2023 which was dismissed on the following grounds:
  - Under Section 107(1) of the CGST Act, an appeal can be filed within 3 months from the date on which the decision/order is communicated to the assessee.
  - Where the assessee was prevented by sufficient cause to file an appeal within the aforesaid period of 3 months, the First Appellate Authority may condone the delay in filing the appeal by a further period of 1 month under Section 107(4) of the CGST Act.

- Since the Taxpayer had failed to file an appeal within the total period of 4 months from the date of communication of the Order-in-Original, the appeal filed by the Taxpayer is barred by limitation.
- Aggrieved by the above, the Taxpayer filed a Writ Petition before the Hon'ble Kerala High Court.

#### Observations and Ruling by the Hon'ble High Court

- In the present case, the Taxpayer filed the appeal only on 18 March 2023 i.e., after the delay of 144 days.
- The First Appellate Authority is not empowered to condone the delay in filing the appeal beyond 1 month after the expiry of 3 months from the date of communication of Order-in-Original. Since the Taxpayer had filed the appeal beyond the total period of 4 months, the First Appellate Authority dismissed the appeal, being barred by limitation.
- The Taxpayer is not able to point out any powers vested with the First Appellate Authority to condone the delay beyond the total period of 4 months. Accordingly, the appeal must be filed within three months prescribed under Section 107 of the CGST Act.
- Further, the First Appellate Authority has the power to condone the delay in filing an appeal by a further period of one month in specified circumstances.
- Because there is no power vested with the First Appellate Authority to condone the delay beyond one month, the Writ Petition cannot be entertained and hence, is dismissed.

*[M/s. Isha Holidays Pvt. Ltd. Vs. Commissioner of State Tax & Ors., [WP(C) No. 30666 of 2023], dated 25 September 2023]*

## ORDERS BY AUTHORITY FOR ADVANCE RULING (AAR)

### INPUT TAX CREDIT (ITC) OF GST PAID ON PURCHASE OR REPAIRS (INCLUDING SPARES) WITH RESPECT TO JCB USED FOR TRANSPORTATION OF GOODS IS AVAILABLE

#### Facts of the case

- M/s. Sri Kalaiselvan Sago Factory (Taxpayer) is inter alia engaged in the manufacture and supply of Sago (Sabudana) from Tapioca roots.
- For this, the Taxpayer has purchased a motor vehicle i.e., JCB, for the movement of goods within the factory on 9 March 2021 on payment of applicable GST.
- The Taxpayer has filed an application before the Authority for Advance Ruling, Tamil Nadu (AAR), to determine the eligibility to claim ITC on GST paid at the time of purchase or repairs (including repairs) in respect of the motor vehicles used for movement of goods within the factory.

#### Contentions by the Taxpayer

- Reliance was placed on *M/s. Purewal Stone Crusher [TS-533-AAR-2018-NT]* wherein it was held that -

- As per Section 17(5)(a) of the CGST Act, ITC shall not be available on 'motor vehicle', unless it is used for a specified purpose i.e., transport, training etc.
- The definition of 'motor vehicles' as per Section 2(76) of the CGST Act read with Section 2(28) of the Motor Vehicles Act, 1988 (MV Act) does not include vehicles such as mining equipment like tippers, dumpers, etc.
- The aforesaid view was further affirmed by Question 21 of the FAQ published in 'GST Sectoral Series - Mining' (FAQ) wherein it was inter alia clarified that ITC of GST charged on the purchase of earth moving machinery including tippers, dumpers used for transportation of goods by a mining company is available.
- In view of the above, ITC on 'Pockland, JCB, Dumper & Tipper' used for transportation of goods is available.
- Sago is manufactured by crushing tapioca roots and the starch extracted is stored in large tanks. The starch is washed again and rolled into granules, roasted, and then dried and the same leads to the emergence of a new product i.e., Sago.
- The motor vehicle is used by the Taxpayer for the movement of starch within the factory and is transported from one tank to another or to any machines (as the case may be). The transportation of starch with the help of 'motor vehicle' speeds up the production process.

#### Observations and Ruling by the AAR

- As per Section 17(5)(a) of the CGST Act, there is a restriction on the availment of ITC in respect of 'motor vehicles' and ITC is not available unless it is used for specified purposes like transport, training, etc.
  - In *Goodyear India Vs. Union of India [1997 (92) ELT 14 (SC)]*, it was held that merely because the areas on which such heavy movers traverse might sometimes include roads, it is not enough to hold that they are 'adopted for use upon roads'. Such use of the heavy mover on the road may only be ancillary or incidental to the main use of it.
  - Further, on perusal of Section 2(28) of the MV Act, FAQ, and *Goodyear India (supra)*, it is apparent that Section 2(28) of the MV Act does not include mining equipment viz., JCB, tippers, dumpers etc. Consequently, GST charged on the purchase of earth-moving machinery like JCB used for transportation of taxable goods is eligible to be allowed as ITC.
  - In view of the above, the Taxpayer is eligible to claim ITC of GST paid on purchase or repairs (including spares) in respect of motor vehicles i.e., JCB used for movement of goods in its place of business, subject to conditions stipulated in Section 17(5)(a)(ii) and Section 17(2) of the CGST Act.
- [AAR-Tamil Nadu, Sri Kalaiselvan Sago Factory, [TS-488-AAR(TN)-2023-GST], dated 29 September 2023]*

## CENTRAL EXCISE

### LEGISLATIVE UPDATES

#### NOTIFICATIONS

#### CHANGE IN RATE OF SPECIAL ADDITIONAL EXCISE DUTY (SAED) ON PETROLEUM CRUDE, AVIATION TURBINE FUEL AND HIGH-SPEED DIESEL OIL

Effective 30 September 2023, Notification nos: 18/2022 dated 19 July 2022 and 04/2022-Central Excise dated 30 June 2022 inter alia stipulating the applicable SAED rates on Petroleum crude, Aviation Turbine Fuel & High-Speed Diesel Oil are amended as under:

CHAPTER OR HEADING OR SUBHEADING OR TARIFF ITEM	DESCRIPTION OF GOODS	EXISTING RATE	NEW RATE
2709	Petroleum crude	INR 10,000 per tonne	INR 12,100 per tonne
2710	Aviation Turbine Fuel	INR 3.50 per litre	INR 2.50 per litre
2711	High-Speed Diesel Oil	INR 5.50 per litre	INR 5 per litre

[Notification nos: 32&33/2023-Central Excise dated 29 September 2023]

## SALES TAX/ VAT

### LEGISLATIVE UPDATES

#### THE HIMACHAL PRADESH SADHBHAWANA LEGACY CASES RESOLUTION SCHEME, 2023 (THIRD PHASE)

- The 3rd phase of the Himachal Pradesh Sadhbhawana Legacy Cases Resolution Scheme, 2023 (Scheme) has been launched which shall come into force with effect from 1 October 2023 to 31 December 2023.
- The Scheme inter alia provides for the settlement of dues under the enactments repealed under Section 173 of the Himachal Pradesh Goods and Service Tax Act, 2017 and Section 64 of the Himachal Pradesh Value Added Tax Act, 2005, subject to certain conditions and restrictions.
- Settlement fee payable under this Scheme is as under:
  - Scenario I: Where no statutory forms were required to be produced or all statutory forms required to be produced have been produced either at the time of assessment or along with the declaration under this Scheme:**

CRITERIA	SETTLEMENT FEE
If the declarant has filed all periodical returns within the stipulated time along with payment of tax due as per such returns with respect to a financial year or any return period.	Nil.
If the declarant has not filed periodical returns within the stipulated time but has made payment of tax due as per such returns with respect to a financial year or any return period.	10% of tax paid after the due date of filing the return or payment of tax.
If the declarant has not filed tax returns and due tax has not been paid with respect to a financial year or any return period.	110% of the tax amount applicable on the taxable turnover.

- Scenario II: Where statutory forms required to be produced have neither been produced at the time of assessment nor along with the declaration under this Scheme: Settlement fee shall be higher of the following amounts:
    - 100% of the tax paid against the turnover of transactions involved in such statutory forms as if the forms were available, which have not been produced; or
    - 1% of the value of the turnover of transactions involved in such statutory forms which have not been produced.
- [Notification no: EXN-F-(10)-17/2022, dated 30 September 2023]

## CUSTOMS

### LEGISLATIVE UPDATES

#### NOTIFICATIONS

##### EXEMPTION ON PAYMENT OF EXPORT DUTY ON EXPORT OF BANGALORE ROSE ONION

Notification no: 55/2022-Customs dated 31 October 2022 inter alia stipulates a Nil rate of Export Duty on the specified varieties of rice classified under HSN code 1006, subject to conditions and restrictions. The aforesaid exemption has now been extended to 'Bangalore Rose Onion' falling under HSN Code 0703 10 11, subject to the following condition:

*'Goods meant for export shall be allowed to be exported subject to the exporter furnishing a certificate from the Horticulture Commissioner, Government of Karnataka, certifying the item and quantity of Bangalore Rose Onion to be exported.'*

[Notification no: 57/2023-Customs dated 29 September 2023]

#### CIRCULARS

##### MANDATORY ADDITIONAL QUALIFIERS IN IMPORT/EXPORT DECLARATIONS IN RESPECT OF CERTAIN PRODUCTS

Circular no: 15/2023-Customs dated 7 June 2023<sup>2</sup> inter alia stipulates the mandatory additional qualifiers in import/export declarations in respect of certain products has been amended as follows:

- **ADDITIONAL QUALIFIERS IN RESPECT OF IMPORTS:**
  - For the commodities imported under chapters 28, 29, 32, heading 3808 and chapter 39, the following additional details shall be mandatorily filed at the time of filing import declarations:

CHEMICAL CATEGORY	ADDITIONAL DETAILS REQUIRED
Bulk and Basic Chemicals	Chemical Abstract Service (CAS) number and International Union of Pure and Applied Chemistry (IUPAC) name is mandatory
Formulation and Mixtures	CAS number and IUPAC name of the Main/Active ingredient (at least one) is mandatory
Propriety component, R&D or Others	CAS number or IUPAC name of the Main/Active ingredient (at least one) is mandatory

- In case of non-availability of information for even one ingredient with the importer for the reason that the information is not shared by the supplier due to confidentiality, a self-undertaking is to be provided in the Bill of Entry.
  - These qualifiers shall be mandatory for imports under the aforesaid chapters for all Bills of Entry filed on or after 15 October 2023.
  - Further, it has been clarified that mandatory additional qualifiers for exports made under the specific CTHs of the said chapters for all Shipping Bills filed on or after 1 October 2023 will remain the same.
- [Circular no: 23/2023-Customs dated 30 September 2023]

##### IMPLEMENTATION OF SECTION 16(4) OF THE IGST ACT CONCERNING RESTRICTIONS ON THE EXPORT OF CERTAIN GOODS ON PAYMENT OF IGST AND ELIGIBILITY TO CLAIM REFUND

- Effective 1 October 2023, Section 16(4) of the IGST Act has been amended to inter alia provide that only notified class of goods or services can be exported on payment of IGST<sup>3</sup>.

<sup>3</sup> Our summary of the notification can be accessed [here](#).

- Accordingly, Notification no: 01/2023-Integrated tax dated 31 July 2023<sup>4</sup> has notified that all goods or services can be exported on payment of IGST except pan masala, other tobacco products and specified essential oils (specified goods). In respect of such products, the option of exporting such goods on payment of IGST shall not be available.
- The aforesaid amendments have been implemented in the Customs portal whereby CBIC has developed a backend functionality to restrict the IGST refund route in respect of specified goods. Through this functionality, changes have also been made in the system of filing Shipping Bills and during amendment, with respect to the specified goods.
- It has also been clarified that if a Shipping Bill contains single or multiple invoices for which IGST has been paid and even if one invoice contains specified good(s), the Shipping Bill containing such item(s) will not be allowed to be filed.
- Accordingly, the Tax Authorities must ensure that export of specified goods is not allowed on payment of IGST to ensure that no undue benefits are taken by exporting specified goods.

[Circular no: 24/2023-Customs dated 30 September 2023]

## MISCELLANEOUS PROVISIONS - SEZ

### ALLOWING SEZ UNIT TO SET UP CAFETERIA, CRÈCHE, GYMNASIUM AND SIMILAR FACILITIES

- Instruction no: 95 dated 11 June 2019 allows SEZ units to set up a cafeteria, crèche, gymnasium and similar facilities in the premises of a unit for the exclusive use of such units under proviso to Rule 11(5) of the Special Economic Zone Rules, 2006 (SEZ Rules), subject to the condition that the units shall not be eligible for any exemptions, drawbacks, concessions or any other benefits under Section 7 or 26 of the Special Economic Zone Act (SEZ Act) for creating or operating these facilities.

- In this regard, it has been clarified that the intention of the aforesaid instruction was not to deny the benefit of zero-rating on lease/other charges collected by the Developer from SEZ units.
- Accordingly, the zero-rating benefit continues to be available for lease/other charges collected by the Developer from units for the space utilised for the creation of employee welfare facilities exclusively for the employees of the SEZ unit.

[SEZ Circular no: K-43013(13)/1/2022-SEZ dated 3 October 2023]

## NEWS FLASH

### “GST Council meeting on October 7: Agenda, other details here”

<https://www.livemint.com/news/india/gst-council-meeting-on-october-7-agenda-other-details-here-11696468031012.html>

[Source: *mint*, 05 October 2023]

### “E-gaming cos look to absorb GST through cashback, bonuses”

<https://indianexpress.com/article/business/companies/e-gaming-cos-look-to-absorb-gst-through-cashbacks-bonuses-8967189/>

[Source: *The Indian Express*, 04 October 2023]

### “GST Council's fitment committee rejects rate cut on over dozen items; defers call on uniform cess on tobacco products”

<https://economictimes.indiatimes.com/news/economy/policy/no-major-rate-rejig-gst-councils-fitment-committee-rejects-proposal-to-cut-rates-on-over-dozen-items/articleshow/104155363.cms?from=mdr>

[Source: *Economic Times*, 04 October 2023]

### “India's GST Council to mull exempting distilled alcohol used to make liquor from tax - source”

<https://www.moneycontrol.com/news/business/economy/india-as-gst-council-to-mull-exempting-distilled-alcohol-used-to-make-liquor-from-tax-source-11484301.html>

[Source: *Money Control*, 05 October 2023]

### “GST council to clarify on corporate guarantees, some exemptions likely”

[https://www.business-standard.com/economy/news/18-gst-on-corporate-guarantee-given-in-favour-of-related-parties-123100401220\\_1.html](https://www.business-standard.com/economy/news/18-gst-on-corporate-guarantee-given-in-favour-of-related-parties-123100401220_1.html)

[Source: *Business Standard*, 05 October 2023]

### “Pause likely on gaming levy”

<https://epaper.telegraphindia.com/imageview/447573/1956142/undefined.html>

[Source: *Telegraph India*, 05 October 2023]

<sup>4</sup> Our summary of the notification can be accessed [here](#).

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