

A photograph of two business professionals in an office setting. One person is holding a tablet, and the other is holding a pen, pointing at the screen. There are documents and a calculator on the table. The image is partially obscured by a white diagonal overlay.

# THE TAX POST

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# PREFACE

*“GST is a tribute to the maturity and wisdom of India's democracy.”*

- Pranab Mukherjee

The Finance (No. 2) Act, 2024 has introduced some significant indirect tax amendments, including revisions to the GST and Customs laws. Notably, it has amended Section 3(12) of the Customs Tariff Act, 1975 (CT Act), incorporating a provision for levy of interest and penalty from the Customs Act, 1962. This change addresses a longstanding ambiguity arising from the Bombay High Court's decision in the case of Mahindra & Mahindra Ltd., which held that these levies were not applicable to taxes imposed under Section 3 of the CT Act. Given conflicting judicial interpretations, the scope of this ruling has been a subject of considerable debate within the trade and industry. The ‘Cover Story’ section of this edition of the ‘Tax Post’ dissects the amendments as well as the judicial developments concerning the levy of interest and penalty with respect to the taxes imposed under Section 3 of the CT Act.

This edition's ‘Expert Speak’ segment provides an analysis of the recently introduced Amnesty scheme in terms of Section 128A of the Central Goods and Services Tax Act, 2017 (CGST Act) as has been introduced vide the Finance (No. 2) Act, 2024. The section also highlights the key open issues that need to be addressed by the Government to ensure a successful implementation and wide use of the Amnesty scheme.

The ‘In Tales’ section dissects the Education sector, highlighting the global outlook and India's position in the global education sector. The section also highlights the various challenges faced by the sector including the challenges from the indirect tax perspective.

The ‘Decoded’ segment of this edition dissects a vital judgement inter alia holding that the outward supply of goods procured by the Taxpayer from an Indian company undergoing liquidation for onward dismantling and exports to Myanmar is neither exempted nor treated as export of goods/ services.

We continue to bring the latest news on indirect taxes from across the globe in our feature ‘Global Trends’.

We wish our readers happy reading!



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# COVER STORY

## THE FINE PRINT OF IMPORT DUTIES: INTEREST ON DELAYED PAYMENTS OF CUSTOMS DUTIES

### INTRODUCTION

Section 3 of the Customs Tariff Act, 1975 (CT Act) is the charging section for levy of Additional Duty of Customs, Special Additional Duty (SAD), Integrated Goods and Services Tax (IGST) and GST Compensation Cess (Cess). Section 3(12) of the CGST Act incorporates by reference various provisions of the Customs Act, 1962 (Customs Act) including those relating to drawbacks, refunds and exemption from duties. The relevant extract of Section 3(12) of the CT Act is reproduced below<sup>1</sup>:

*“(12) The provisions of the Customs Act, 1962 (52 of 1962) and the rules and regulations made thereunder, including those relating to drawbacks, refunds and exemption from duties shall, so far as may be, apply to the duty or tax or cess, as the case may be, chargeable under this section as they apply in relation to the duties leviable under that Act.”*

On perusal of the aforesaid provision, it may be noted that the provisions relating to drawback, refund and exemption under the Customs Act have been specifically incorporated by reference. However, no corresponding incorporation by reference has been made in respect of provisions pertaining to the imposition of interest and penalty. In this regard, an issue that arises is whether Section 3(12) of the CT Act empowers the Customs Authorities to recover interest and/ or penalty for delayed payment of duties leviable under Section 3 of the CT Act.

### JUDICIAL PRECEDENTS

While initially, the tax authorities were of the opinion that since the above provision uses the phrase ‘including those relating to ...’, it would imply that all other provisions including those relating to interest, fines and penalties are also incorporated in respect of taxes levied under Section 3 of the CT Act. However, the Courts/ Tribunals have adopted divergent views as regards the liability to pay interest and/ or penalty. The ratios laid down by various Courts/ Tribunals are as under:

#### ▪ Interest and/ or penalty cannot be levied under Section 3(12) of the CT Act:

##### - Mahindra & Mahindra Ltd.:

- The Bombay High Court<sup>2</sup> held that in the absence of incorporation by reference of all provisions relating to confiscation, levy of interest and/ or penalty for short levy of duties leviable under Section 3 of the CT Act, the same cannot be recovered by taking recourse to the machinery provisions relating to the recovery of duty.

- In this regard, the Supreme Court<sup>3</sup> had dismissed the Special Leave Petition (SLP) as well as the Review Petition filed by the tax authorities against the Bombay HC decision.

- **Acer India Pvt. Ltd.**<sup>4</sup>: Where an importer is liable to pay differential Countervailing Duty, there shall be no recovery of interest or confiscation of goods or imposition of fine since the CT Act has not borrowed the relevant provisions by reference. Thus, the imposition of interest, fine and penalty may be set aside as being without authority of law.

- **Chiripal Poly Films**<sup>5</sup>: Interest, fine and penalty are independent financial levies and specific provisions must be there in a statute to levy them. In the absence of a specific provision relating to levy of Interest, Redemption Fine and Penalty in the respective legislation, the same cannot be imposed by taking recourse to machinery provisions.

#### ▪ Interest and/ or penalty can be levied under Section 3(12) of the CT Act:

- **Texmaco Rail Engineering Ltd.**<sup>6</sup>: As per Section 3 of the CT Act read with Section 12 of the Customs Act, the additional duty is to be construed as ‘Customs Duty’. Accordingly, all the provisions of the Customs Act and rules and regulations made thereunder are applicable in respect of the duty leviable under Section 3 of the CT Act. Against this, an appeal has been filed before the Calcutta High Court and the same is currently pending.

- **Mayur Uniquoters Ltd.**<sup>7</sup>: Interest is leviable on delayed payment of IGST based on the following:

- Duties of customs, whether basic or additional, are levied on the act of importation or exportation. Further, IGST is levied on supply in the course of importation and it is not a duty/ additional duty of Customs. Hence, the judgment in **Mahindra and Mahindra** which pertains to additional duty of customs in pre-GST regime is inapplicable.
- IGST is chargeable on supplies in the course of import under Section 3 of the CT Act read with Section 5 of the Integrated Goods and Services Tax Act, 2017 (IGST Act). Section 20 of the IGST Act makes some provisions of the Central Goods and Services Tax Act, 2017 (CGST Act) applicable to the IGST Act, including Section 50 which is the charging section for Interest. Thus, interest is payable on delayed payment of IGST where the supplies are made within India and the same applies to interest on delayed payment of IGST on imports.

<sup>1</sup> Prior to the amendment proposed by the Finance (No. 2) Act, 2024 (i.e., prior to 16 August 2024)

<sup>2</sup> Mahindra and Mahindra Ltd. Vs. Union of India and Ors. [2022-TIOL-1319-HC-MUM-CUS] - Our alert on this ruling can be accessed by [clicking here](#)

<sup>3</sup> Union of India Vs. Mahindra and Mahindra Ltd. [2023 (8) TMI 135 (SC)] and Union of India and Ors. Vs. Mahindra and Mahindra Ltd. [R.P.(C) Diary No. 41195/2023] dated 9 January 2024

<sup>4</sup> Acer India Private Ltd. Vs. CC, Chennai [2023-VIL-998-CESTAT-CHE-CU] and Acer India (Pvt.) Ltd. Vs. Commissioner of Customs (Audit), Chennai [2024 (5) TMI 478 - CESTAT CHENNAI]

<sup>5</sup> Chiripal Poly Films Ltd Vs Commissioner of Customs, Ahmedabad [TS-310-CESTAT-2024-CUST]

<sup>6</sup> Texmaco Rail Engineering Limited Vs Commissioner of Customs (Port), Kolkata [TS-25-CESTAT-2024-CUST]

<sup>7</sup> Mayur Uniquoters Ltd. Vs. Commissioner (Appeals) [2024-TIOL-774-CESTAT-DEL]

## AMENDMENTS PROPOSED BY THE FINANCE (NO. 2) ACT, 2024 (FA 2024)

Recently, Section 3(12) of the CT Act has been amended vide Section 106 of the FA 2024 with effect from 16 August 2024. The relevant excerpt of the amended provision is reproduced hereunder:

*“(12) The provisions of the Customs Act, 1962 (52 of 1962) and all rules and regulations made thereunder, including but not limited to those relating to the date for determination of rate of duty, assessment, non-levy, short-levy, refunds, exemptions, interest, recovery, appeals, offences and penalties shall, as far as may be, apply to the duty or tax or cess, as the case may be, chargeable under this section as they apply in relation to duties leviable under that Act or all rules or regulations made thereunder, as the case may be.”*

On perusal of the above, it may be noted that the amended Section 3(12) of the CT Act provides an incorporation by reference to the provisions *inter alia* relating to the imposition of interest and penalties. Thus, the aforesaid amendment seeks to overrule the ratio laid down by the **Mahindra & Mahindra** ruling. Consequently, pursuant to the above amendment, the provisions relating to imposition of interest and penalty under the Customs Act would apply in respect of non-payment/ short-payment of duties leviable under Section 3 of the CT Act<sup>8</sup>.

## CONCLUSION

The proposed amendments to the Finance Act of 2024 aim to expressly provide the power to levy interest and penalty for delayed payment of taxes/ duties which are levied under Section 3 of the Customs Tariff Act. However, these amendments are only applicable prospectively, starting from 16 August 2024. For the period before this date, the issue of whether customs authorities have this authority remains unresolved and one possible interpretation is that the Bombay High Court's decision in Mahindra and Mahindra Ltd. would be applicable for the past period. It would be interesting to see how the Courts would look at the issue arising in the interim.



<sup>8</sup> It may be noted that similar amendments qua reference to the provisions relating to interest is made in respect of other levies such as National Calamity Contingent duty (on Excisable goods and Imports), Special Additional Excise Duty, Additional duty of excise on certain goods (covering Tobacco products) and Health Cess on imported medical devices.

# THE EXPERT SPEAK

## GST AMNESTY: IMMUNITY FROM INTEREST AND PENALTY



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### BACKGROUND

The GST law, one of the biggest tax reforms in India, was implemented over seven years ago, i.e., with effect from 1 July 2017. In the words of Prime Minister Narendra Modi, GST is “a path-breaking legislation for New India”. The GST law was implemented with the intent of having “One Nation-One Tax”, i.e., the replacement of multiple taxes levied by the Centre and the State with a single tax. However, the taxpayers faced multiple challenges in the initial years after the implementation of GST. Some of these challenges included interpretation of the complex tax structure with frequent legislative and procedural changes, implementation of the changes in the ERP systems of the assessee, technical glitches in the GST portal, etc. This resulted in the issuance of multiple notices for the initial years of GST, i.e. FY 2017-18, FY 2018-19 and FY 2019-20. As per some press reports<sup>9</sup>, demand notices of approximately ₹1.45 lakh crore were issued for FY 2017-18 alone.

Given the difficulties faced by taxpayers during the initial years of GST implementation, the GST Council in the 53rd Council meeting recommended the implementation of the GST Amnesty Scheme for providing a conditional waiver of interest and penalty. In line with the said recommendations, the Finance Bill 2024 proposed to introduce a new section 128A in the Central Goods and Services Tax Act, 2017 (CGST Act) for waiving interest and penalties for demand notices issued under Section 73 of the CGST Act for FY 2017-18, 2018-19 and 2019-20, in cases where the taxpayer pays the full amount of tax demanded.

### APPLICABILITY OF GST AMNESTY SCHEME

Demands for FY 2017-18 To FY 2019-20 (or part thereof) pertaining to the following cases under Section 73 of the CGST Act:

- Where show cause notice issued under Section 73(1) of the CGST Act or a Statement issued under section 73(3) of the CGST Act, pending for adjudication;

<sup>9</sup> <https://economictimes.indiatimes.com/news/economy/finance/gst-notices-of-1-45-lakh-crore-sent-out-in-december-for-fy18/articleshow/106620413.cms?from=mdr>

- Where no order has been issued by Appellate Authority as per Section 107(11) or 108(1) of the CGST Act and/ GST Appellate Tribunal as per Section 113(1) of the CGST Act;
- Cases where Section 75(2) of the CGST Act is applicable, i.e. SCNs alleging fraud, etc. which are subsequently held as not sustainable by Appellate Authority or GST Appellate Tribunal or Court since the charges of fraud or any wilful-misstatement or suppression of facts to evade tax were not established against the person and hence tax is to be determined as if the notice was issued as per Section 73(1) of the CGST Act.

#### **BENEFIT OF GST AMNESTY SCHEME:**

Conditional Waiver of Interest and Penalties if the -

- Tax is paid within the specified period (as per the GST Council recommendation in 53rd and 54th Council meeting - 1 November 2024 to 31 March 2025);
- Additional tax pursuant to order in respect of appeal/ application filed by tax authorities before First Appellate Authority / GSTAT / Court is paid within 3 months from the date of the said order.

#### **KEY POINTS TO BE NOTED:**

- No refund, if interest and penalty are already paid;
- The GST Amnesty Scheme is not applicable to amounts payable on account of erroneous refund;
- The pending Appeal/ Writ petition to be withdrawn before the due date for payment;
- Conclusion of proceedings under GST Amnesty scheme is non-appealable (by taxpayers).

#### **RECOMMENDATIONS IN THE 54TH GST COUNCIL MEETING WITH RESPECT TO GST AMNESTY SCHEME:**

- The GST Amnesty Scheme to be effective from 1 November 2024;
- The due date of payment of tax to avail the benefit of GST Amnesty Scheme is 31 March 2025;
- Procedure and conditions for availment of benefit of waiver of interest or penalty or both to be provided by insertion of rule 164 in Central Goods and Services Tax Rules, 2017 (CGST Rules), along with relevant Forms.

#### **KEY OPEN ISSUES REQUIRING CLARIFICATIONS:**

- Option of GST Amnesty Scheme applicable only for a particular financial year: A clarification may be required on whether a taxpayer may opt for GST Amnesty Scheme for a particular financial year in case of a notice issued for multiple financial years including notices where a part of the period is covered by the Amnesty scheme.
- Adjustment of tax payable against pre-deposit: A taxpayer is required to discharge a pre-deposit for an appeal filed with the First Appellate Authority / GST Appellate Tribunal. A clarification is required on whether the same can be adjusted against the tax payable under the GST Amnesty Scheme.

- Utilisation of Input Tax Credit for payment of tax: A clarification on whether the input tax credit as available in the Electronic Credit Ledger may be used for payment of tax.
- Adjustment of tax payable against payment made under protest: It may be relevant to note that on a practical basis, many taxpayers pay the entire tax liability under protest when a particular matter/ issue is sub judice. A clarification may be required on whether the taxpayer can adjust the tax payable against payment made under protest.

#### **CONCLUSION**

The taxpayers faced various challenges in the initial years of implementation of GST. In addition, as is expected from a change of this magnitude, there were situations where the taxpayers had revisited the initially adopted positions, after getting more clarity. However, all this led to the issuance of a number of notices. GST Amnesty Scheme is a welcome move by the Government and an opportunity to reduce litigations for taxpayers. However, one key point that the Government must relook at is the operation of the scheme notice-wise/ order-wise/ statement-wise. On a practical basis, the GST Authorities have issued a single notice covering multiple issues with varied degrees of merit. The requirement of opting for the scheme notice-wise/ order-wise/ statement-wise and not issue-wise may prevent taxpayers from opting for the scheme.

It is imperative that the Government provides clarifications on all the open issues of the scheme and revisits the scheme wherever required for it to be successful in the true sense.



# IN-TALES

## THE FUTURE OF INDIAN EDUCATION: OVERCOMING INDIRECT TAX CHALLENGES

### INTRODUCTION

Education is the backbone of the socio-economic structure of any civilisation. The Indian education system can be divided into numerous sub-systems. It can be broadly classified into the public and private sectors. The public sector comprises Government schools, Central- / State-government funded institutions including higher education institutions. The private sector has two aspects, formal and informal. The formal setup consists of schools and higher education institutions whereas the informal setup includes pre-schools, coaching institutions, multi-media schools, vocational training centres and education material suppliers.

The National Education Policy (NEP) 2020 was approved to improve education in India. The goal is to make schools and colleges more flexible and focused on individual students' needs. This will help India become a leading knowledge-based country.

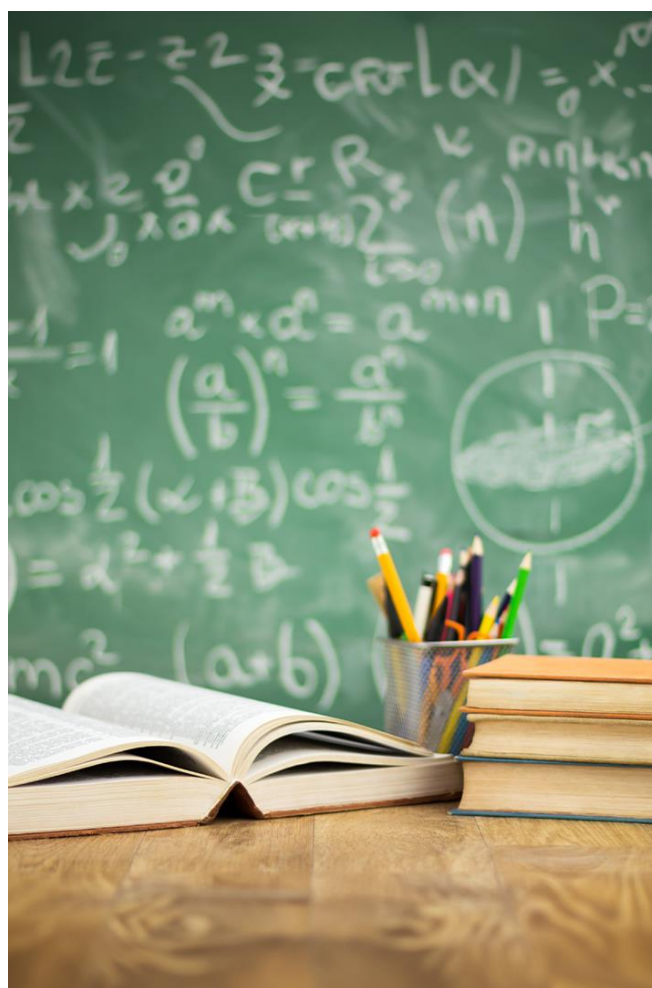
### GLOBAL OUTLOOK

The global Higher Education Market size was valued at USD 506.54bn in 2022 and is projected to reach USD 860.11bn by 2030, growing at a CAGR of 7.03% from 2023 to 2030<sup>10</sup>. In recent years, the market has grown rapidly *inter alia* attracting investments from private and public institutions including education and testing companies. With an increased focus on incorporating technology, there is a growing use of education technology that allows for greater interaction between students and educators.

### INDIA OUTLOOK

The education sector in India is a complex and multifaceted landscape, characterised by both significant progress and persistent challenges. Here are some key indicators that illustrate its position<sup>11</sup>:

- **Robust Demand:** India's education sector provides numerous opportunities for growth. India has the largest population in the world in the age bracket of 5-24 years with 580 million people and ~26.31% of the population in the age group of 0-14 years. This presents a huge opportunity for the education sector in India.
- **Increasing Investments:** The education market in India is expected to amount to USD 225bn in FY25. Between April 2000 and December 2023, Foreign Direct Investment (FDI) equity inflow in the education sector stood at USD 9.49bn. The Edtech space has attracted private equity investments of over USD 4bn over the last five years.



- **Competitive Advantage:** The Indian education sector also possesses a competitive advantage with nine Indian institutes (Indian Institute of Science (IISc) and eight Indian Institutes of Technology (IITs)) being ranked among the top 500 universities in the QS World University Rankings 2023.
- **Government Initiatives:** To liberalise the sector, the Government has taken initiatives such as the National Accreditation Regulatory Authority Bill for Higher Education, and the Foreign Educational Institutions Bill. Further, schemes of Revitalising Infrastructure and System in Education (RISE) and Education Quality Upgradation and Inclusion Programme (EQUIP) are helping the Government tackle the prominent challenges faced by the education sector.

<sup>10</sup> <https://www.kingsresearch.com/higher-education-market-38#:~:text=The%20global%20Higher%20Education%20Market,as%20Brain4ce%20Education%20Solutions%20Pvt.>

<sup>11</sup> Source - IBEF report on Education and Training - May 2024



## CHALLENGES FACED BY THE INDIAN EDUCATION SECTOR

The key challenges faced by the Education Sector in India are set out hereunder<sup>12</sup>:

- **Quality of education:** The quality of education remains a pressing concern within India's educational landscape. Despite notable strides, many schools, colleges, and universities are still hampered by inadequate facilities, a deficiency of qualified faculty, and a curriculum that is not fully aligned with contemporary needs.
- **Affordability and Accessibility:** The affordability and accessibility of education remain substantial obstacles for India's educational system. A significant portion of the population continues to find the cost of education beyond their financial means. Moreover, there is a pronounced disparity in access to education between urban and rural regions, with many rural students facing challenges in obtaining quality instruction.
- **Teacher shortage:** A significant shortage of qualified teachers prevails across the country, particularly in rural regions. This deficiency can significantly compromise the quality of education offered to students and result in a lack of consistency in teaching.
- **Examination system:** India's education system places excessive reliance on examinations to assess students, which can be a source of stress and often leads to a focus on rote learning rather than conceptual understanding. Furthermore, the examination system can be a significant source of stress for students, diminishing their interest in learning.

## CHALLENGES FROM THE INDIRECT TAX PERSPECTIVE

### ▪ GST implications on grants

- Taxability of grants has been a subject matter of dispute between the taxpayers and the tax authorities. Generally, 'grant' implies that something is given by the donor unilaterally or voluntarily. Such grant may be given with or without an intention to carry out a specific activity (involving *quid pro quo*/ reciprocal benefit). The taxability of different types of grants is summarised below:

- **Gratuitous grants:** Here, a sum of money/ gift is given by the donor unilaterally or voluntarily without any obligation of the recipient to undertake a particular activity. In such cases, the donor's name may also be displayed in the premises of the recipient, if it is for setting up the premises. The issue that arises is whether such grants can be treated as a consideration for the supply of service involving *quid pro quo*. In this regard, the Central Board of Indirect Taxes and Customs (CBIC) has issued Circular No. 116/35/2019-GST dated 11 October 2019 inter alia clarifying that GST is not leviable on donation/ gifts given to charitable institutions if all the following conditions are satisfied:
  - Gift/ donation is made to a charitable institution;
  - The payment has a character of gift or donation; and

- The purpose of the gift/ donation is philanthropic, i.e., it leads to no commercial gains and no advertisements. Thus, it is not aimed at giving publicity to the donor in such manner that it would be an advertising or promotion of its business.

**However, in cases where either of the aforesaid pre-conditions are not satisfied, gift/ donation may be considered as a supply of service, and hence, leviable to GST.**

- **Non-gratuitous grants:** Such grants are characterised by reciprocal obligations on the part of the recipient and the gift/ donation is made either as a condition of or in expectation of services being rendered or agreed to be rendered by the recipient. In such a scenario, the donation/ grant may be treated as a consideration for the supply of services.
  - Generally, educational institutions are also given grants with the sole intention of undertaking Research and Development (R&D) activities. In this regard, an issue arose as to the taxability of such grants, especially where the Intellectual Property arising out of the R&D carried out by such institution belongs to the donor. In this regard, a number of notices have been issued by the GST authorities to various institutions<sup>13</sup>. The matter was examined by the GST Council in its 54th meeting and it was recommended as under -
    - Supply of research and development services by a Government Entity; or a research association, university, college or other institution, notified under clauses (ii) or (iii) of sub-section (1) of section 35 of the Income Tax Act, 1961 using Government or private grants will be exempted from the levy of GST; and
    - Past demands will be regularised on '*as is where is*' basis.
  - While we await the exact text of the exemption entry<sup>14</sup>, the same would determine the way forward in respect of taxability of such grants for carrying out R&D activities.
- **GST implications on hostel accommodation**
  - The taxability of the services supplied by hostel has been a subject matter of various tax disputes. Further, the relevant entry pertaining to its taxability has also undergone various changes wherein the following supplies were covered under the ambit of exemption notifications:
    - Services by a hotel, inn, guest house, club or campsite, by whatever name called, for residential or lodging purposes, having "value of supply" of a unit of accommodation below or equal to INR 1,000 per day or equivalent (up to 17 July 2022).
    - Services by way of renting of residential dwelling for use as residence (up to 14 July 2024). However, the applicability of exemption under this entry has been subject to various contrary rulings, some of which are set out hereunder:
      - **Rulings holding that the hostel accommodation qualifies for exemption as a 'residential dwelling':**

<sup>12</sup> <https://educationforallindia.com/issues-challenges-indian-education-system-is-facing>

<sup>13</sup> <https://www.financialexpress.com/business/industry-conundrum-surrounding-taxability-of-grants-received-by-educational-and-charitable-institutions-3598974/>

<sup>14</sup> At the time of writing this article

- *Taghar Vasudeva Ambrish Vs. Appellate Authority for Advance Ruling, Karnataka [2022 (2) TMI 780 (Kar.)]*<sup>15</sup>
- *Thai Mookambikaa Ladies Hostel Vs. Tamil Nadu State Appellate Authority for Advance Ruling [2024 (3) TMI 1271 (Mad.)]*<sup>16</sup>
- Rulings holding that the hostel accommodation is not eligible for exemption as a 'residential dwelling':
  - *In Re: New Sneham Girls Hostel [2024 (22) Centax (AAR - GST - TN)]*<sup>17</sup>
  - *In Re: Srisai Luxurious Stay LLP [2023 (8) Centax 264 (AAR - GST Kar.)]*<sup>18</sup>

Effective 15 July 2024, the aforesaid entry has been amended to provide that the exemption under this entry would not apply to accommodation services for students in student residences and accommodation services provided by Hostels, Camps, Paying Guest accommodations and the like.

- Effective 15 July 2024, supply of accommodation services having value of supply less than or equal to twenty thousand rupees per person per month has been exempted from the levy of GST. However, the same is subject to the condition that the accommodation service is supplied for a minimum continuous period of 90 days.

#### - Ancillary services supplied by hostels:

- In addition to accommodation services, hostels also provide other amenities communal kitchens/cafeterias, Wi-Fi, bathrooms, gymnasium, etc. to the students.
- The issue which arises for consideration is whether these services/ amenities provided by hostel can be treated as 'ancillary services' forming part of the composite supply of accommodation services.
- In *Bharath Jothi Ladies Hostel [2024 (14) Centax 329 (AAR)]*, it was held that food and other ancillary services provided with principal service of providing hostel accommodation, become composite supply and will attract the same rate as its principal supply.

#### ▪ GST on school bags, books, stationery and tablet provided by educational institutions

- It is a common practice that articles like school bags, uniforms, shoes, textbooks, stationery and in some cases, laptops or tablets, are provided by the educational institutions to its students.
- If the price for such articles is not included in the tuition fees and is collected separately by the schools, the same may be treated as an independent supply of goods and such supplies may be taxed at the individual rates applicable to them. However, if the price for such articles is included in the tuition fee without providing bifurcation thereof, it may be treated as a composite supply of education services from the educational institution to its students and be eligible for exemption (if applicable). However, the claim of such exemption could be disputed by the tax authorities.

#### ▪ Other issues:

- Taxability of online education/ courses offered by educational institutions situated outside India is an area of dispute with the tax authorities alleging that these activities can be considered as supply of Online Information Database Access or Retrieval (OIDAR) services. Accordingly, in respect of OIDAR services supplied by these institutions, they are made liable to obtain GST registration and discharge applicable GST. Failure to obtain GST registration and discharge GST can result in penal consequences.
- The taxability of amounts collected by schools/ institutions for organising picnics, industrial visits, trips within and outside India is another area that requires clarification from the GST authorities as to whether the same can be considered as a transaction in money/ pure agent activity or whether the same would be leviable to GST.
- The levy of GST on consultation or referral services supplied by the service providers in India to Foreign Universities is another area that needs clarification, especially in cases where the supplier does not act as an 'intermediary'.

#### CONCLUSION

Education is a rapidly growing and diversifying industry with vast opportunities for growth. Despite challenges, the world is moving forward rapidly to revolutionise the education system. An increased number of initiatives are being taken by global agencies, government bodies, charitable institutions and educational institutions of repute to overcome the shortcomings of the sector.



<sup>15</sup> The terms 'residence' and 'dwelling' have more or less the connotation in common parlance and no different meaning can be assigned to the expression 'residential dwelling'. Hence, it cannot be held that the same does not include hostel used for residential purposes by students or working women.

<sup>16</sup> It was held that merely because the persons are staying in hostel rooms due to their financial condition, the same will not take away the status of the said hostel room as residential dwelling for the inmates of the room because after their avocation, they have been staying, sleeping, eating, washing, etc. in the hostel rooms alone.

<sup>17</sup> It was observed that hostel accommodation cannot be considered residential dwelling for use as residence due to separate regulations, services provided by the supplier are beyond mere accommodation, and the absence of landlord-tenant relationship.

<sup>18</sup> It was *inter alia* observed that paying guest accommodation/ hostel services are akin to guesthouse and lodging services and therefore cannot be termed as 'residential dwelling'. Further, since the accommodation does not have an essential characteristic for permanent stay, viz., the existence of individual kitchen facility to each inhabitant/ allowing the inhabitants to cook food, they cannot be treated as a residential dwelling to be eligible for exemption.

# DECODED

## TAXABILITY OF GOODS PROCURED BY AN OVERSEAS ENTITY FROM AN INDIAN COMPANY FOR ONWARD DISMANTLING AND EXPORTS

### INTRODUCTION

Recently, the Andhra Pradesh Authority for Advance Ruling in *MCM Pacific PTE Ltd. [TS-566-AAR(AP)-2024-GST]* has inter alia held that outward supply of goods procured by the Taxpayer from an Indian company undergoing liquidation for onward dismantling and exports to Myanmar is neither exempted nor treated as export of goods/ services.

### FACTS OF THE CASE

- MCM Pacific PTE Ltd. (Taxpayer) is a company registered in Singapore and is in the business of power generation and distribution. The Taxpayer does not have any place of business in India and hence, is not registered under the GST law.
- The Taxpayer is in the process of procuring capital goods/ assets as per the agreement from M/s. Lanco Kondapalli Power Ltd. (LKPL) that is currently undergoing liquidation in India.
- The goods so procured would be transferred to Myanmar after dismantling as the Taxpayer does not have any business operations in India.

### ISSUE

- Whether the outward supply of goods procured by the Taxpayer from LKPL would be treated as zero-rated supplies as per Section 16 of the Integrated Goods and Services Tax Act, 2017 (IGST Act) and whether the same can be exported without payment of IGST under Letter of Undertaking (LUT).

### CONTENTIONS OF TAXPAYER

- The purpose/ intention of the Taxpayer is to procure the goods and take them outside India (to Myanmar) immediately after procuring the same in compliance of the NCLT order. Accordingly, in terms of Section 2(5) of the IGST Act, taking goods outside India falls under the purview of the definition of export of goods.
- As per Section 16 of the IGST Act, zero rated supply of goods can be made without payment of IGST, subject to fulfilment of certain conditions. In the present case, since the Taxpayer intends to take the goods outside India, the Taxpayer is of the view that the supply of such goods may be treated as 'zero rated supply' and hence, the same can be made without payment of IGST under LUT.

### REPRESENTATION FILED BY LKPL

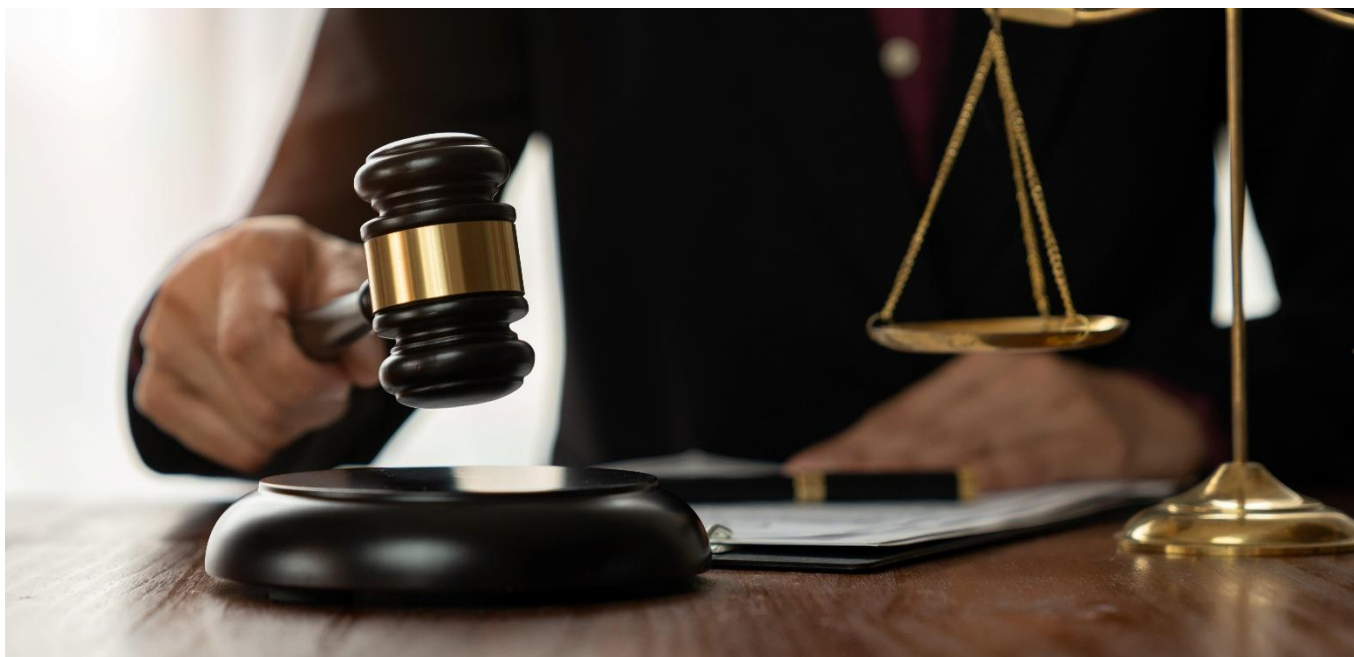
- The Corporate Insolvency Resolution Process was commenced against the Corporate Debtor (CIRP) vide NCLT order dated 23 April 2019. However, since no resolution plan was approved pursuant to the CIRP, an application was filed with NCLT for initiation of liquidation process.
- Vide order dated 16 April 2021, NCLT commenced liquidation proceedings of the Corporate Debtor and a Liquidator was appointed. The Liquidator invited Expressions of Interest through public announcement dated 2 February 2022 for sale of Corporate Debtor as a whole on a going concern basis and sale of certain assets of the Corporate Debtor in parcels separately or sale of assets of the Corporate Debtor collectively.
- The sale process was conducted by way of e-auction wherein the Taxpayer emerged as a successful bidder for assets in one of the parcels, comprising certain assets of Phase III of the Corporate Debtor.
- Accordingly, the Taxpayer is required to pay the entire sale consideration and is also required to bear all applicable taxes and duties. No incidence of tax or other rates will be applicable on or borne by the Corporate Debtor or the Liquidator. The sale certificate will be issued upon payment of such sums.
- Subsequent to the issuance of the sale certificate, the ownership, risk and title of the Phase III assets shall be transferred to the Taxpayer. The legal or beneficial interest, right or title over the Phase III assets shall be issued, vested, transferred to the Taxpayer pursuant to the issuance of sale certificate on an 'as is where is', 'as is what is', 'as is how is', 'whatever there is' and 'no recourse basis'.
- Accordingly, upon the issuance of sale certificate, the Taxpayer will be required to complete the entire process of taking possession of the assets and removing the same from the premises of the Corporate Debtor. Hence, the sale process will conclude in India upon issuance of Sale Certificate by the Liquidator and the Taxpayer will be responsible for dismantling, transporting and exporting the goods to Myanmar. Hence, the Liquidator will not be acting in the capacity of an exporter.

## OBSERVATIONS AND RULING OF THE AUTHORITY FOR ADVANCE RULING (AAR)

- In the present case, the Taxpayer, as a successful bidder takes possession of the assets and removes them from the premises of the Corporate Debtor. Further, the Taxpayer has the responsibility of dismantling, transporting and exporting the assets to Myanmar.
- The transaction involved in the present case can be bifurcated into 2 transactions:
  - **Supply of goods:** One where there is possession of the assets which is in the territory of India and its delivery within the territory of India. It is an undisputed fact that the supply involves movement of goods and hence, the place of supply would be the termination for delivery to the recipient. Since the Taxpayer purchases assets from LKPL and the goods are procured from and delivered in India, the place of supply is the location where the goods are delivered to the Taxpayer i.e., Andhra Pradesh.
  - **Supply of services:**
    - As per Explanation I to Section 8 of the IGST Act, an establishment of a person in India and another establishment of the said person outside India are considered as establishment of distinct persons.
    - As per Section 2(6) of the IGST Act read with Circular No. 161/17/2021 dated 20 September 2021, any supply of services by an establishment of a foreign company in India to any other establishment of the said foreign company outside India will not be covered under the definition of 'export of services'. Further, if a company incorporated in India is operating through a branch or an agency or a representational office in any country outside India, then that branch or agency or a representational office shall be treated as the establishment of the said company in the said country.
- As per the definition of 'person' under Section 2(84) of the Central Goods and Services Tax Act, 2024 (CGST Act) and the definitions of 'company' and 'foreign company' under the Companies Act, 2013, a company incorporated in India and a foreign company incorporated outside India are separate persons under the CGST Act. Thus, a subsidiary/ sister concern/ group concern of any foreign company incorporated in India will be considered as a separate 'person' under the CGST Act and hence, would be considered as a separate legal entity than the foreign company.
- Since the Taxpayer does not have any GST registration in India, the transaction carried out by the Taxpayer does not fall under the definition of 'export of goods'. Hence, the related transactions shall not be considered as zero-rated supply under the IGST Act.
- Considering the above, the supply covered under this application, subject to the agreement, facts and information furnished by the Taxpayer is neither exempted nor export of goods/ services and hence, the same is not treated as zero-rated supplies. Accordingly, the question of export without payment of IGST against LUT does not arise.

## CONCLUSION

The AAR has artificially vivisected the transaction into two separate components, viz. supply of goods and supply of services. However, the facts of the case may not have warranted such a separation. Instead, the evidence suggests that the Taxpayer simply purchased assets, dismantled them, and exported the resulting components to Myanmar. The AAR's failure to recognise the integrated nature of this transaction and to address the relevant questions raised in the application may lead to a challenge before the Appellate Authority for Advance Ruling.



# GLOBAL TRENDS

## VAT/ GST NEWS

### International



#### Switzerland: New Rules for Digital Platforms and service Exemptions

The Swiss Federal Council has enacted amendments to the Value Added Tax (VAT) Act, introducing key changes aimed at modernising the tax framework in line with digital trends. The updated legislation, published in the Swiss Official Gazette as Law No. FF 2024 438, will take effect on 1 January 2025. The key amendments include several significant provisions like a formal definition of digital platforms, updated place of supply rules for travel services, clarifications regarding the relationship between digital platforms and their users, conditions under which platform operators are not considered service providers, etc.

(Source - <https://www.globalvatcompliance.com/globalvatnews/switzerland-new-rules-digital-platforms/>)



#### Peru: New Tax Rules for Non-Domiciled Entities Effective from October 2024

Peru's legislative decree No. 1623 has established new filing deadlines and obligations for non-domiciled taxpayers regarding the General Sales Tax. These regulations, set to come into effect from 1 October 2024, will impact non-domiciled entities engaged in providing digital services or intangible goods to Peruvian consumers. Key deadlines and requirements pertaining to these new rules include monthly return filing and payment, initial filing and annual information declaration.

(Source - <https://www.globalvatcompliance.com/globalvatnews/peru-new-tax-rules/>)

### India



#### GST collection since its inception has shown buoyancy and remarkable growth: Experts

The GST collection has risen remarkably since its inception. It is difficult to record a consistently high growth rate on a constantly rising and much higher base. This base effect needs to be factored in for a comprehensive assessment of the evolving GST collection scenario in India.

(Source - <https://www.msn.com/en-in/news/other/gst-collection-since-its-inception-has-shown-buoyancy-and-remarkable-growth-experts/ar-AA1pPFdp?ocid=BingNewsVerp>)

#### GST Council Meeting Key Takeaways: From medical insurance premium to rate rationalisation, here's what Sitharaman & Co decided

The 54th meeting of the Goods and Services Tax Council took various key decisions inter alia including the constitution of the new Group of Ministers for GST rate reduction on medical health insurance, exemption for import of services by foreign airline companies and reduction in GST on cancer drugs from 12% to 5%, among others. Further, universities and research centres established by central or state government laws, or those granted income tax exemptions, will now be exempt from paying GST on research funding.

(Source: <https://economictimes.indiatimes.com/news/economy/policy/54-gst-council-meeting-10-key-takeaways-infosys-tax-case-online-gaming-foreign-airline-taxes-health-insurance-premium-gst-news-latest-nirmala-sitharaman/articleshow/113195529.cms?from=mdr>)

#### Dispute over food GST: Gujarat High Court rules in company's favour

Amid disputes over the contentious issue of goods and services tax (GST) rates on food items, the Gujarat high court has quashed a show cause notice sent by the GST authorities to a company, asking it to pay 18% tax on unfried or uncooked extruded snack pellets. The High Court, while ruling in favour of J K Papad Industries, referred to an order passed by the Gujarat Appellate Authority Of Advance Ruling that papad, including fryums, of different shapes and sizes, would draw nil GST.

(Source - [https://www.business-standard.com/economy/news/gst-rate-dispute-on-food-resurfaces-hc-rules-in-favour-of-company-124091701220\\_1.html](https://www.business-standard.com/economy/news/gst-rate-dispute-on-food-resurfaces-hc-rules-in-favour-of-company-124091701220_1.html))

## CUSTOMS NEWS

### INTERNATIONAL



#### U.S. Government Plans to Restrict Low-Value Imports Under De Minimis Exemption

A shipment is eligible for the de minimis exemption if the aggregate fair retail value of the articles imported is USD 800 or less. De minimis shipments enter the United States with less information than other imports and are not subject to duties and taxes. Foreign entities use it to circumvent U.S. trade enforcement actions. The Administration intends to issue a Notice of Proposed Rulemaking that would exclude from the de minimis exemption all shipments containing products covered by tariffs imposed under Sections 201 or 301 of the Trade Act of 1974, or Section 232 of the Trade Expansion Act of 1962 and a Notice of Proposed Rulemaking regarding the entry of low-value shipments that will propose to strengthen information collection requirements to promote greater visibility into de minimis shipments.

(Source - <https://www.whitehouse.gov/briefing-room/statements-releases/2024/09/13/fact-sheet-biden-harris-administration-announces-new-actions-to-protect-american-consumers-workers-and-businesses-by-cracking-down-on-de-minimis-shipments-with-unsafe-unfairly-traded-products/>)



#### China to give LDCs including 33 African countries zero-tariff treatment, move to boost trade prosperity

China has decided to give all least developed countries having diplomatic relations with China, including 33 countries in Africa, zero-tariff treatment for 100% tariff lines. China will expand market access for African agricultural products, deepen cooperation with Africa in e-commerce and other areas, and launch a "China-Africa quality enhancement program". This new trade measure will inject new impetus into Africa's development through enhanced trade and investment.

(Source - <https://www.globaltimes.cn/page/202409/1319333.shtml>)



#### Canada hits China-made electric cars with 100% tariff

Canada will impose a 100% tariff on imports of China-made electric vehicles (EV) (from 1 October 2024) and 25% duty on Chinese steel and aluminium (from 15 October 2024). Canada and its Western allies accuse China of subsidising its EV industry, giving its car makers an unfair advantage. China has called the move "trade protectionism" which "violates World Trade Organization rules".

(Source - <https://www.bbc.com/news/articles/cm2n091v4m5o>)



## India



### Govt eases import norms for raw, calcined pet coke

The Government has eased import norms for raw and calcined pet coke and permitted the inbound shipments to cater entirely to the domestic needs of aluminium and other industries. Earlier, it was allowed only for the aluminium industry.

(Source -

<https://economictimes.indiatimes.com/news/economy/foreign-trade/govt-eases-import-norms-for-raw-calcined-pet-coke/articleshow/113068478.cms>)

### India trade ministry proposes anti-dumping duty on Chinese aluminium foil import

India's trade ministry has advised imposing an anti-dumping duty on aluminium foil imports from China. This recommendation follows a surge in Chinese shipments, which have claimed nearly a third of India's market despite sufficient local production. The proposed duty targets foil up to 80 microns thick, aiming to protect domestic manufacturers.

(Source -

<https://economictimes.indiatimes.com/news/economy/foreign-trade/india-trade-ministry-proposes-anti-dumping-duty-on-chinese-aluminium-foil-imports/articleshow/112940989.cms>)

### India hikes import duty on crude and refined edible oils

The Indian Government has increased the import duty on cooking oils to help farmers get better prices for kharif oilseeds after the rates dropped below the minimum support price fixed for the current crop year. It also hiked the import duty on refined palm oils, refined sunflower oils and refined soyabean oils to 32.5% from the existing rate of 12.5%. Agricultural Infrastructure and Development Cess will apply @ 5% in addition to the import duties.

(Source -

<https://www.thehindubusinessline.com/economy/agri-business/india-hikes-customs-duty-on-edible-oils-aims-to-boost-local-oilseed-production/article68640113.ece>)



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