

# INDIRECT TAX

## Weekly Digest

06 October 2022

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## GOODS & SERVICES TAX

### LEGISLATIVE UPDATES

#### NOTIFICATION

#### CBIC issues notifications giving effect to Budget proposals and consequential amendments to the CGST Rules

#### CBIC notifies the date of applicability of the GST Budget Amendments

CBIC vide notification no:18/2022-Central Tax dated 28 September 2022 has notified that the Budget 2022 amendments in the context of the Central Goods and Services Tax Act, 2017 (CGST Act) (viz., Sections 100 to 114 of the Finance Act, 2022 (FA 2022)) would be effective from 1 October 2022 subject to the following exceptions which were already notified with effect from 5 July 2022

- Section 110(c) of the FA 2022: Amending Section 49(10) of the CGST Act for providing a facility to the taxable persons for transferring the CGST balances lying in Electronic Cash Ledger as IGST or CGST to its distinct person (i.e. separate GST registration of a legal entity)
- Section 111 of FA 2022: Amendment to Section 50(3) of the CGST Act for levying interest on ITC which has been 'wrongly availed and utilised'

The key amendments which have been notified effective 1 October 2022 are summarised below

- **Section 16 of the CGST Act**
  - Additional restriction to avail ITC introduced; ITC can be availed only if the same is not restricted under

Section 38 of the CGST Act (i.e. as per the details communicated in Form GSTR-2B)

- The time limit to avail ITC in respect of invoices/debit notes issued during a financial year has been extended till 30 November following the end of the financial year or the date of furnishing of annual return, whichever is earlier
- **Section 34 of the CGST Act**
  - The time limit for issuing Credit Notes has been extended to 30 November following the end of the financial year in which the supply was made or the date of furnishing of annual return, whichever is earlier
- **Section 37 of the CGST Act**
  - The Time limit for rectification of error or omission has been extended till 30 November following the end of the financial year in which the supply was made or the date of furnishing of annual return, whichever is earlier
  - The facility for furnishing Form GSTR-1 will not be available if the taxpayer has not furnished the details of outward supplies for any of the previous tax periods
- **Sections 38, 42, 43 and 43A of the CGST Act**
  - The existing provision stipulating a two-way communication process for the claim of ITC and submissions of form GSTR 2 and GSTR 3 has been omitted
  - Consequently, the existing provisions of Sections 42, 43 and 43A of the CGST Act have been omitted

- Moreover, Section 38 of the CGST Act has been substituted to provide the manner, conditions and restrictions for communication of the details of inward supplies and ITC to the recipient by an auto-generated statement in Form GSTR-2B

#### ▪ Section 54 of the CGST Act

- The time limit to apply for a refund of tax paid by the specified international organisations on inward supplies of goods or services or both has been increased to two years (instead of six months). A consequential amendment has been made by rescinding notification no:20/2018-Central Tax dated 28 March 2018 which had provided an enhanced time limit of 18 months.

#### Amendment to the CGST Rules

CBIC vide notification no:19/2022-Central Tax dated 28 September 2022 has made certain amendments to the Central Goods and Services Tax Rules, 2017 (CGST Rules) effective 1 October 2022. The key amendments to the CGST Rules are set out below

- **Rule 21 of the CGST Rules:** The GST registration of a person may also be cancelled in the following situations
  - A registered person liable to file Form GSTR-3B on a monthly basis fails to furnish the said return for a continuous period of 6 months or
  - A registered person who has opted for Quarterly Return Monthly Payment (QRMP) scheme, fails to furnish quarterly returns in Form GSTR-3B for a continuous period of 2 tax periods
- **Rule 36 and 37 of the CGST Rules:** Amendment has been made on rules related to the reversal of ITC on account of failure to pay an invoice value beyond a period of 180 days
  - Reversal of ITC for failure to pay an invoice beyond a period of 180 days from the date of invoice will not attract in the case of procurements attracting GST liability under RCM
  - Further, in case of non-payment of consideration, the entire amount of ITC would need to be reversed, instead of on a proportionate basis earlier
- **Omission of Rules 69, 70, 71, 72, 73, 74, 75, 76, 77 and 79 of the CGST Rules, and consequential changes in Rules 38 and 96 of CGST Rules due to amendment in CGST Act**
  - Consequent to the omission of the provisions concerning two-way communication inter se between periodical GST returns, all the Rules concerning the matching of ITC as prescribed in Rule 69, 70, 71, 72, 73, 74, 75, 76, 77 and 79 have been omitted
  - Further, consequential changes due to amendments in the CGST Act have been made in Rules 38 and 96 of CGST Rules
- **Rule 89 of the CGST Rules**
  - For claiming a refund of the balance in the electronic cash ledger, an application in Form RFD-01 is required to be made

[Notification no:18 & 19/2022-Central Tax dated 28 September 2022]

## JUDICIAL UPDATES

### ORDERS BY AUTHORITY FOR ADVANCE RULING (AAR)

#### Service by way of construction of integrated water transport project is a works contract service attracting 12% GST

##### Facts of the case

- M/s. Kool Home Builders(Taxpayer), a registered partnership firm has been awarded a works contract by Kochi Metro Rail Limited (KMRL) for 'the construction of terminals for phase 1 stage 2' for the Kochi Water Metro Project (KWMP), an integrated water transport project in Greater Kochi region
- The project includes providing modern and safe watercraft, boat terminals, access roads, lighting, and other ancillary infrastructure developments, which have been initiated as part of urban planning and to improve amenities available to the public

##### Questions before the AAR

- Whether the KWMP comes under exclusion specified for the term 'business' as per the explanation to heading 9954; Item no. (vi) of notification no:11/2017-CT(R)-dated 28 June 2017
- Whether the works contract awarded to the taxpayer qualifies to tax @ 12% as per above said notification under clause (a) of the item number (vi) of serial number 3, under section 5 of chapter 99 as amended by notification no:24/2017-CT(R) dated 21 September 2017

##### Observations and Ruling by the AAR

- As defined under Section 2(119) of the CGST Act the term works contract under GST has been restricted to any work undertaken for an 'immovable property' wherein transfer of property in goods whether as goods or in some other form is involved. From the description of the works submitted by the Taxpayer, the activity squarely falls under the definition of a works contract
- Explanation to entry no:3 (vi) of the notification no:11/2017-CT(R) dated 28 June 2017 as amended reads as follows:  
'For the purposes of this item, the term 'business shall not include any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities'
- The composite supply of works contract services as defined under Section 2(119) of the CGST Act provided to a Government by way of construction of a civil structure or any other original works meant predominantly for use other than for commerce, industry or any other business or profession attracts GST at the rate of 12%
- In the instant case, though the contract for construction of the terminals and other infrastructural facilities for the integrated water transport project is awarded to the Taxpayer by KMRL as the executing and operating agency (Project Management Consultants), the contract is awarded on behalf of the Government of Kerala and the transfer of property in goods in the work contract services rendered by the taxpayer takes place to the Government of Kerala. The de jure owner of the assets of

the integrated water transport project and hence, the recipient of works contract services rendered by the Taxpayer is the Government of Kerala

- KWMP is an integrated water transport project in the Greater Kochi region undertaken by the Government of Kerala. As per the explanation to entry no:3(vi) of the notification no:11/2017-CT(R) dated 28 June 2017 the term 'business' shall not include any activity or transaction undertaken by the Central Government, a State Government, or any local authority in which they are engaged as public authorities. Undoubtedly, the integrated water transport project is an activity undertaken by the Government of Kerala as a public authority, and hence, is squarely covered by the explanation to entry no:3 (vi) of the notification no:11/2017-CT(R) dated 28 June 2017 and hence the activity is not a business for the purpose of the above-said entry
- The AAR held that KWMP is an activity undertaken by the Government of Kerala as a public authority and hence squarely covered by the explanation to entry no:3(vi) of the notification no:11/2017-CT(R) dated 28 June 2017
- The works contract services performed by the taxpayer as per the above-mentioned contracts awarded by KMRL is eligible for 12% GST as per entry no:3(vi) of notification no:11/2017-CT(R) dated 28 June 2017 as amended

[AAR-Kerala-M/s. Kool Home Builders Ruling no: KER/133/2021 dated 18 February 2022]

## SERVICE TAX / VALUE ADDED TAX

### Taxpayer is entitled for a refund of service tax paid under a mistake of law without any restriction in the period of limitation

#### Facts of the case

- M/s. Techno Power Enterprises Private Limited (Taxpayer) filed a claim for a refund of Service Tax on 14 October 2019 on the ground that service tax was wrongly deposited by them on warehousing services provided by them to M/s. Haryana State Co-operative Supply and Marketing Federation Limited, which is squarely covered under the Negative list of services on which no service tax was payable
- The Ld. Assistant Commissioner disputed the said refund claim and issued Show Cause Notice dated 19 November 2019 wherein it was alleged that the said refund claim was barred by limitation of time under Section 11B of the Central Excise Act, 1944, as made applicable for Service Tax refund.

#### Question before the CESTAT

Whether the Taxpayer is entitled for a refund of service tax paid under a mistake of law

#### Observations and Ruling by the CESTAT

- The only issue to be decided is whether the taxpayer is entitled to a refund for the claim filed by the assessee after the period of one year as prescribed under Section 11B of the Central Excise Act, 1944. It is not in dispute that the taxpayer is not liable to pay Service Tax in respect of warehousing services which is categorically specified in the Negative List of the services

- The Honorable High Court of Bombay in the case of **Parijat Construction Vs. Commissioner of Central Excise, Nashik [2018 (359) ELT 113 (Bom.)]** and the Honorable Madras High Court in the case of in case of **3E Infotech Vs. CESTAT, Chennai [2018 (18) GSTL 410 (Mad.)]** had held that the limitation period prescribed under 11B of the Central Excise Act, 1944, is not applicable to a refund claim for amounts paid under a mistake of law and that the action to refuse to refund the same would vitiate Article 265 of Constitution of India
- Since the issue is no longer res Integra, there is no reason to deny the refund claim on the ground of limitation since the period of limitation prescribed under Section 11B would not be a bar for the Taxpayer to claim a refund of tax paid under a mistake of law
- Consequently, the Impugned Orders are set-aside, and the appeal is allowed with consequential relief as per law. Accordingly, it was concluded that the Taxpayer is not liable to pay Service tax in respect of warehousing services which is categorically specified in the negative list of services. Thus, where a certain sum of money has been paid by mistake, the person in receipt of such money becomes a Trustee with an obligation to repay the sum received and accordingly, the period of limitation provided therein would not apply

[CESTAT-Kolkata, Techno Power Enterprises Ltd. Service Tax Appeal no.75972 of 2021, dated 16 September 2022]

### High Court should not entertain a Writ Petition unless the Taxpayer exhausts the statutory remedy of appeals

#### Facts of the case

- Notice of assessment was issued to the Taxpayer under the provisions of the Maharashtra Value Added Tax Act, 2002 (MVAT Act) and the Central Sales Tax Act, 1956 (CST Act). The Taxpayer submitted the required documents to the tax authorities
- While a personal hearing for scheduled for 16 March 2020, no hearing took place. Despite the periodic follow-up by the Taxpayer, a personal hearing was not scheduled
- Subsequently, the Assessing Officer passed an order on 20 March 2020 determining the tax liability along with interest and penalty under the MVAT Act and the CST Act
- Aggrieved by the above, the Taxpayer challenged the validity of the aforesaid order before the Honorable Bombay High Court inter alia on the ground that 'no order was passed on 20 March 2020 and it was passed in July 2020, which was beyond the period of limitation.'
- The Honorable Bombay High Court entertained the said writ petition against the assessment order and quashed the assessment order passed by the tax authorities
- Aggrieved by the aforesaid decision of the Honorable Bombay High Court, the tax authorities have filed the Civil Appeal before the Honorable Supreme Court

#### Issue under consideration

- Whether the Honorable High Court ought to have entertained the writ petition or should have relegated the Taxpayer to prefer the appeal before the first appellate authority

### Taxpayer's contentions

- Since the assessment order was not passed on 20 March 2020 and was passed subsequently i.e. beyond the period of limitation (viz. 31 March 2020), the Honorable High Court was justified in entertaining the Writ Petition. Reliance was also placed on the following decisions passed by the Honorable Supreme Court
  - **Filterco & Another Vs. Commissioner of Sales Tax, Madhya Pradesh and Another [1986 (2) SCC 103]**
  - **Assistant Commissioner LTU & Anr. Vs. Amara Raja Batteries Limited [2009 (8) SCC 209]**
  - **Whirlpool Corporation Vs. Registrar of Trademarks, Mumbai [1998 (8) SCC 1]**
- Moreover, in the earlier assessment order, there was a decision against the Taxpayer on merits by the First Appellate Authority and hence, there did not exist an efficacious alternate remedy
- Considering the above, the Taxpayer had rightly preferred the Writ Petition before the Honorable Bombay High Court

### Ruling by the Court

- The taxpayer had straightaway preferred the Writ Petition before the Honorable Bombay High Court under Article 226 of the Constitution of India without exhausting its alternate appellate remedy
- In such a scenario, the Honorable Bombay High Court should not have entertained the Writ Petition under Article 226 by by-passing the statutory remedy available under the MVAT Act / CST Act
- In addition to the above, it was also held that no valid reasons have been shown by the Taxpayer to by-pass the statutory remedy of appeal and hence, the judicial prudence demands that the Honorable High Court refrains from exercising its jurisdiction under the Constitutional provisions
- The Hon'ble Bombay High Court ought to have relegated the Taxpayer to avail the statutory remedy of appeal and thereafter to avail the other remedies.

*[Supreme Court of India - The State of Maharashtra Vs. Greatship (India) Ltd. [2022-VIL-72-SC]]*

## CUSTOMS

### NOTIFICATION

#### Amendment in List 33 of notification no:50/2017-Customs, dated 30 June 2017

Amendment has been made in notification no:50/2017-Customs, dated 30 June 2017 which prescribes the effective rates of customs duty and IGST for goods imported into India.

The following goods have been added in List 33 (imported by a specified person, in relation to petroleum operations or coal bed methane operations), which provides exemption on BCD and 12% IGST on import.

- HSN 8413 (Pumps for liquids, whether or not fitted with a measuring device; liquid elevators)
- HSN 2915 (Saturated acyclic monocarboxylic acids and their anhydrides, halides, peroxides and peroxyacids; their halogenated, sulphonated, nitrated or nitrosated derivatives)

*[Notification no:50/2022 dated 27 September 2022]*

### Amendment of the Courier Imports and Exports (Electronic Declaration and Processing) Regulations, 2010

- Amendment has been made to the Courier Imports and Exports (Electronic Declaration and Processing) Regulations, 2010. These regulations may be called the Courier Imports and Exports (Electronic Declaration and Processing) Second Amendment Regulations, 2022
- Changes also have been made in Form D, E and HA of the Regulations

*[Notification no:81/2022 dated 23 September 2022]*

### Amendments in the provisions of GSR are in line with the guidelines issued by the Department of Science & Technology (DST) for acquiring and producing Geospatial Data and Geospatial Data Services including Maps

CBIC has prohibited the export of maps and geospatial data of spatial accuracy and values finer than the threshold values as specified in annexure-I of the notification for the maintenance of the security of India. Export of maps and geospatial data with attributes mentioned in Annexure-II shall be restricted as per the sensitive attributes as specified in the said annexure-II.

*[Notification no:82/2022 dated 23 September 2022]*

### CIRCULARS

#### Classification of goods that undertake lifting and handling functions and have mobility as a function

CBIC has issued clarification regarding the classification of goods used in lifting and handling heavy loads and has mobility as a function. The circular has discussed various case laws and explanatory notes on the subject goods and mentioned that those judgements or other similar judgements and opinions cannot apply squarely to all goods of a similar nature.

Some important aspects to be considered for classification have been laid down in the circular as below:

- Movement under load
  - As a general principle, it can be seen that mobile machines that can move under load are classifiable under 8705
  - However, when the machine does not move under load or, if they do, when movement is limited and subsidiary to their main function, it is classifiable under 8426
- Location of propelling and control elements
  - It is clear that when one or more of the propelling or control elements that are features of an automobile chassis, are located in the cab of lifting or handling machine (such as a crane) mounted on a wheeled chassis, the product is to be included in the heading 8426
  - When there are two cabs in the mobile machine one that houses the propelling function connected to the chassis and one having the controls for the handling and lifting, the inclusion or exclusion from a heading can only be decided by examining the integration of the chassis with the working machine
- The number of engines
  - Whether the mobile machine comprises of a single engine used for propelling as well as lifting or if it consists of two separate engines i.e. one each for propelling the vehicle and for the lifting function, does not have a bearing on the classification between 8426 and 8705

- The presence of a separate engine only for lifting and handling purposes is generally indicative of a larger load lifting capability of the mobile machine
- Integration of the working machine with the chassis
  - When the work machine is merely mounted (not integrated mechanically) on the chassis, the goods are classifiable under 8705
  - When the chassis and working machine are specially designed for each other and form an integral mechanical unit and the chassis cannot be used for any other purpose, the goods are excluded from 8705 and are thus classifiable under 8426
  - Outriggers are crucial to the functioning of the mobile machine as they provide the necessary stability in order for the machine to lift heavy loads. If the outriggers are connected to and are a part of the substructure i.e. the chassis and are controlled by the engine fitted with the chassis, it implies that the functioning of the outriggers which are a part of the chassis is crucial to the functioning of the crane
  - In such a scenario, the superstructure i.e., the crane and the sub-structure i.e. the chassis, can be said to be working in tandem and can thus be considered to be mechanically and electrically integrated and the goods are to be classifiable under heading 8426
  - In the absence of such integration of the chassis and working machine, the goods are classifiable under 8705

*[Circular no: 20/2022 dated 22 September 2022]*

#### **Amendments to Scheme for Remission of Duties and Taxes on Exported Products (RoDTEP) and Rebate of State and Central Taxes and Levies (RoSCTL) Scheme**

The RoDTEP scheme notification no:76/2021-Customs (N.T.) dated 23 September 2022 and the RoSCTL scheme notification no:77/202-Customs(N.T.) dated 24 September 2021 has been amended vide notification no:75/2022-Customs (N.T.) dated 14 September 2022 & notification o:76/2022-Customs (N.T.) dated 14 September 2022, whereby the para 4(2), para 5(5) and the words 'or the transferee' in para 6 of the principal notification have been deleted. The effect of these amendments is the deletion of certain conditions related to the transferee-holder of the scrip. Further, the validity period of scrips is increased from one year to two years from the date of their generation.

*[Circular no:21/2022 dated 26 September 2022, Circular no:22/2022 dated 26 September 2022]*

## **FOREIGN TRADE POLICY (FTP)**

### **NOTIFICATION**

#### **Extension for the period of exports of broken rice (HS code 1006 40 00)**

Export of consignments of broken rice (ITC HS code 1006 40 00) as permissible under notification no:31 dated 08 September 2022 read with notification no:34 dated 20 September 2022 has been extended till 15 October 2022.

*[Notification no:35/2015-20 dated 27 September 2022]*

#### **Amendment in import policy condition under ITC(HS) 0802 80 10 fresh (green) areca nut**

Import of 17,000 MTs of fresh (green) areca nut without Minimum Import Price (MIP) condition shall be allowed from

Bhutan every year through LCS Jaigaon (INJIGB), subject to a valid Registration Certificate (RC) issued by DGFT. The following are the procedure for application/issuance of RC

- For the second half of the fiscal year 2022-2023, a pro-rata quantity of 8,500 MT of fresh (green) areca nut may be imported without MIP from Bhutan. For the financial year 2023-2024 onwards, a total of 17,000 MTs of fresh (green) areca nut may be imported without MIP from Bhutan
- Before effecting any such imports, the Indian importer shall seek an RC by applying on the DGFT Website →Services→ Import Management System → Apply for RC for Imports
- The maximum quantity permissible under an RC will be 500 MTs. The importer(s) can apply for additional quantities once the quantities already registered have been duly imported
- RC shall be valid for a maximum period of 6 months or the end of the financial year, whichever is earlier. Further, DGFT reserves the right to make any changes in the modalities/allocation process at any point of time, as deemed fit

*[Notification no:36/2015-20 & public notice no:25/2015-20 dated 28 September 2022]*

### **TRADE NOTICE**

#### **Implementation of notification no:31/2015-20 dated 08 September 2022 regarding Export of Broken Rice**

- DGFT issued notification no:31/2015-20 dated 08 September 2022 wherein export of broken rice has been placed under the 'prohibited' category
- Subsequently, representations have been received from trade and industry inviting attention to the problems being faced by exporters in clearing the consignments of other categories of rice due to the presence of certain content of 'broken Rice' in the said consignments;
- Considering the hardships faced by the trade community and in order to facilitate exports, it is clarified that wherever difficulty is being faced, the limit of tolerance of 'Broken Rice' in consignments of Rice for export may be allowed in terms of 'The Rice Grading and Marketing Rules, 1939'

*[Trade notice no:17/2022-23 dated 28 September 2022]*

## NEWS FLASH

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1. “E-way bill under GST not mandatory for intra-city movement of goods, says Allahabad High Court”  
<https://www.thehindubusinessline.com/economy/e-way-bill-under-gst-not-mandatory-for-intra-city-movement-of-goods-says-allahabad-high-court/article65930736.ece>  
[Source: The Hindu Business Line, 24 September 2022]
2. “Threshold for criminal offences under GST law may be raised”  
<https://economictimes.indiatimes.com/news/economy/policy/threshold-for-criminal-offences-under-gst-law-may-be-raised/articleshow/94439928.cms>  
[Source: Economic Times, 25 September 2022]
3. “Clarification on applicability of GST on residential renting”  
<https://www.thehindubusinessline.com/opinion/clarification-on-applicability-of-gst-on-residential-renting/article65941988.ece>  
[Source: The Hindu Business Line, 27 September 2022]
4. “GoM on GST issues of Real Estate reconstituted for second time in 3 years”  
<https://www.thehindubusinessline.com/economy/gom-on-gst-issues-of-real-estate-reconstituted-for-second-time-in-3-years/article65946573.ece#:~:text=After%20over%20three%20years%20of,Devendra%20Fadnavis%20as%20the%20convenor.>  
[Source: The Hindu Business Line, 28 September 2022]
5. “September GST mop-up seen at 1.45 trn”  
<https://www.financialexpress.com/economy/september-gst-mop-up-seen-at-rs-1-45-trn/2694619/>  
[Source: Financial Express, 29 September 2022]



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