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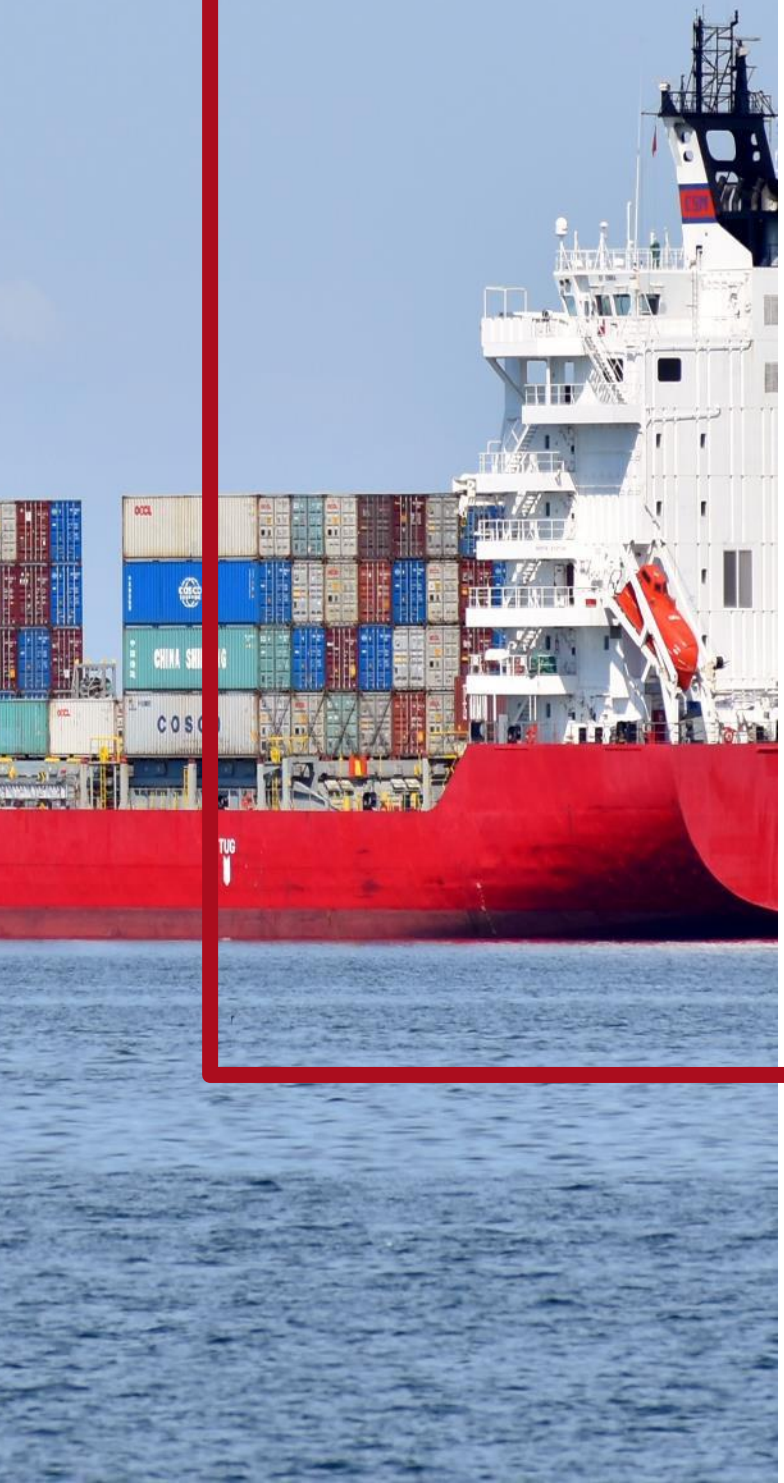

Indirect Tax Newsletter

January 2022

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What's Inside?

01

Key Jurisprudence and Advance Rulings

Uttar Pradesh Appellate Authority for Advance Ruling holds that the importer is liable to GST under reverse charge on ocean-freight in case of cost insurance and freight imports

Brief Facts

M/s. Sangal Papers Limited ('the Appellant') is a public limited company, engaged in manufacturing of paper. The Appellant imports waste papers from various countries and customs duty is paid on the same on cost insurance and freight (CIF) value. Once the paper is manufactured, the Appellant shows the value of goods and freight separately on the invoice and pays GST on the invoice value.

The Appellant sought a ruling from the Uttar Pradesh Authority for Advance Ruling ('AAR'): i) when GST has been paid on the freight in the case of indigenous supplies, whether the supplier is required to pay GST again on the freight under reverse charge mechanism ('RCM')?; ii) when GST has been paid on ocean freight in case of imports on the CIF value and the value of the ocean freight is included in the value of the imported goods, whether any further GST liability arises under RCM?

The AAR ruled that: i) in terms of the Notification No. 13/2017 - Central Tax (Rate) dated 28 June 2017 (as amended) ('Notification No. 13/2017'), the applicant is liable to pay GST under RCM on the freight paid; ii) the applicant is liable to pay Integrated GST ('IGST') on transportation of goods by vessels under RCM under Notification No. 10/2017 - Integrated Tax (Rate) dated 28 June 2017 (as amended) ('Notification No. 10/2017').

Being aggrieved by the AAR order, the Appellant filed an appeal application with the Uttar Pradesh Appellate Authority for Advance Ruling ('AAAR').

The Appellant, relying on the Gujarat High Court ('HC') judgement in case of M/s. Mohit Minerals Pvt. Ltd. vs. UOI, stated that in terms of Section 5(3) of the IGST Act, liability to pay tax is shifted from the provider of service to the recipient on reverse charge basis. However, in terms of the impugned entry no. 10 of Notification No. 10/2017, the liability to pay the tax has been shifted on the importer and not on the recipient. Thus, entry no. 10 of the said notification is ultra vires to Section 5(3) of the IGST Act.

Further, the Appellant stated that no tax is leviable under the IGST Act on ocean freight for the services provided by a person located in a non-taxable territory by the way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India. The insurance and the freight component are added to the value of the goods and the GST is paid as a composite supply. Accordingly, there should not be any further requirement for payment of GST under RCM as it would tantamount to double taxation.

Ruling

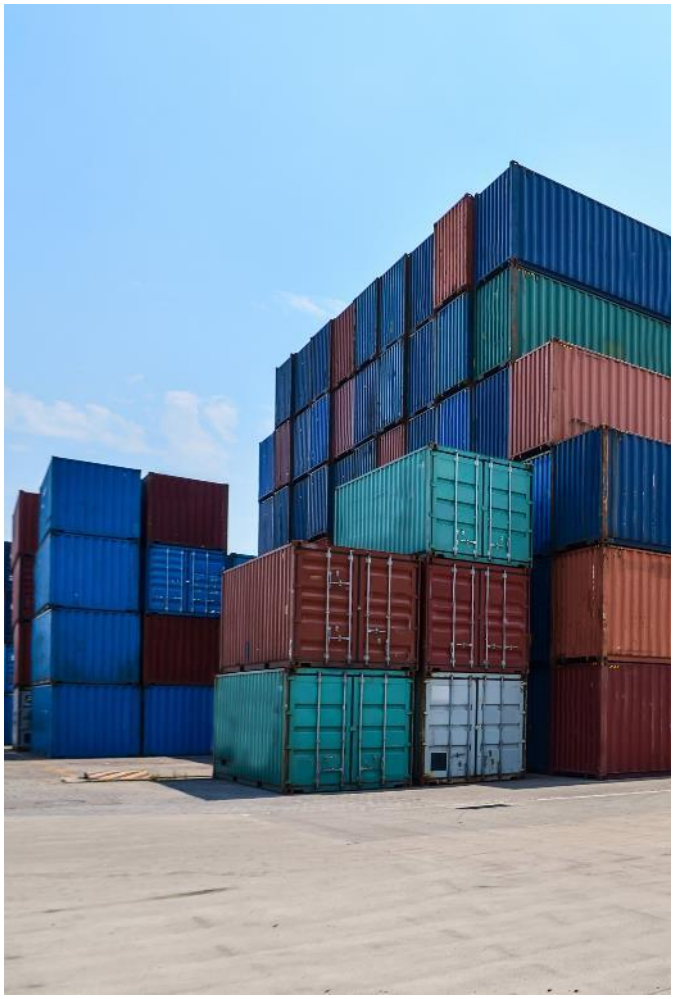
The AAAR stated that the service of transportation of goods in a vessel to a port in India supplied by the foreign shipping entity is an inter-State supply in terms of Section 7 of the IGST Act. Also, in case of import of goods on CIF basis, the appellant is liable to pay GST on the component of ocean freight paid by the foreign supplier to the shipping company in terms of entry no. 10 of Notification No. 10/2017.

The AAAR upheld the decision of the AAR, however, with respect to question no. 2 above, it stated that this ruling shall be subject to the outcome of SLP filed by the Department against the judgment of the Gujarat HC in the case of M/s. Mohit Minerals Pvt. Ltd. vs. UOI and thus, it shall be inappropriate for this authority to pass any order in the instant case.

Nangia Andersen LLP's Take

It is pertinent to note that the decision of the HC in case of Mohit Minerals Pvt. Ltd. vs. UOI has been appealed against and the same is pending before the Hon'ble Supreme Court. However, the operation of the judgement has not been stayed and the final verdict of the Hon'ble Supreme Court is most awaited by the industry at large.

[M/s. Sangal Papers Ltd. (Appeal Order No. 14/AAAR/10/03/2021 dated 10 March 2021)]



Multi-speciality hospital providing consumables with healthcare as a package constitutes a composite supply

Brief Facts

M/s. Dadaji Hospitals Private Limited ('the Applicant') is multispecialty hospital providing the best end to end primary health care and secondary health care services including diagnostics, basic and special medical and surgical services, treatments, etc., to patients. For effective operational and functional management/ administration of provision of health care services, the Applicant has categorized the patients as out-patients (people with health problems who visit the hospital for diagnosis or treatment, but do not require bed at this time or to be admitted for overnight care), and in-patients (people whose diagnosis require admission to the hospital for required treatment; stay in the hospital for requisite medical facility under the care/ supervision of a nurse/ doctor and are provided with medicine, surgical, dietary food and other surgeries/ procedure required for the treatment).

To ensure better accounting and costing (by building/ matching the revenues and expenses arising from a distinct service), the Applicant has put in separate billing system/ series of the in-patient pharmacy with separate records and accounting. For the out-patients, medicines are issued separately through the out-patient billing series.

In the above backdrop, the Applicant sought ruling on the following

i. whether the medicines, consumables, surgical, etc. used in the course of providing health care services to the patient admitted in the hospital for treatment, surgery or diagnosis would be considered as composite supply of the health care services?.
ii. whether supply of medicines, consumables, etc. to patients admitted in hospitals is exempted under Notification No. 12/2017 read with Section 8(a) of the CGST Act?

Ruling

The Madhya Pradesh Authority for Advance Ruling ('AAR') held that if a composite amount is charged from the patient admitted in hospital for treatment, surgery or diagnosis (including medicines, consumables, surgical, etc. used in the course of providing healthcare & other goods and services supplied in course of treatment of the patient), then it is a 'composite supply' with healthcare services as 'principal supply' and the same is exempt from tax in terms of sr. no. 74 of Notification No. 12/2017.

On the other hand, the AAR held that in case of a pharmacy located in the hospital premise and being owned by a separate person, then the medicines/ surgical/ consumables supplied by such pharmacy to in-patient for use in the course of healthcare service provided by the hospital cannot be termed as 'composite supply'. Moreover, where package is not applicable and treatment, medicines, other supplies, and other items are charged to patients separately at actuals and also in case where supply of medicines and other supplies are being charged separately and quantity of items issued to patients, it could not be classified as composite supply of healthcare service. Further, the AAR holds that the supply of medicines, consumables, etc. to the patients admitted in the hospital are exempted *vide* para 2(zg) of Notification No. 12/2017, only if it fulfills the conditions as mentioned in the said notification.

[M/s. Dadaji Hospitals Pvt. Ltd. (Order No.13/2021 dated 6 October 2021)]

Job-work services on goods/ materials belonging to principal manufacturer registered under Goods and Services Tax is taxable at 12%

Brief Facts

M/s. ALCOATS ('the Applicant') is engaged in providing job work services by carrying out processes such as anodizing, plating on the materials sent by its customers (principal manufacturer), on job work basis i.e., manufacturing services on physical inputs (goods) owned by others. After carrying out the required treatment, the Applicant sends back the material to its customers. The Applicant provides services only to a registered person.

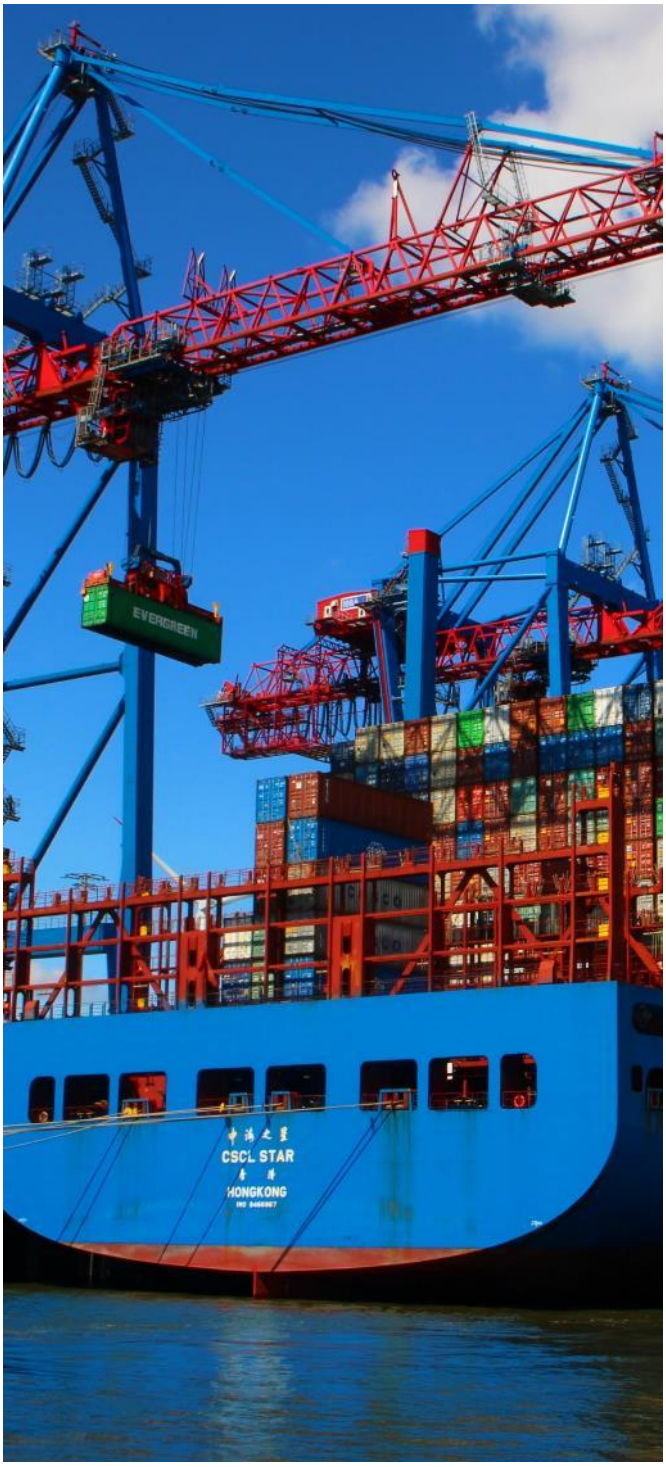
In the above backdrop, the Applicant sought advance ruling in respect of applicable GST rate for the above activity when it is provided to a registered person as per Notification No. 11/2017 - Central Tax (Rate) dated 28 June 2017 (as amended) ('Notification No. 11/2017') and Circular. No. 126/45/2019-GST dated 22 November 2019 ('Circular No. 126/2019').

Ruling

The Karnataka Authority for Advance Ruling ('AAR') held that based on the facts provided by the Applicant, job work services provided by the Applicant appears to be covered under two clauses viz. 'id' which attracts GST at 12% and 'iv' which attracts GST at 18% under entry no. 26 of Notification No. 11/2017. In this regard, the CBIC has issued a clarification *vide* para 4 of Circular No. 126/2019, whereby it is clarified that there is a clear demarcation between the scope of the entries at item 'id' and item 'iv' under heading 9988 of entry no. 26 of Notification No. 11/2017. Entry at item 'id' covers only job work services as defined under Section 2(68) of the CGST Act i.e., services by the way of treatment or processes undertaken by a person on goods belonging to another registered person, whereas entry at item

'iv' specifically excludes the services covered by entry at item 'id', and thus, only covers such services which are carried out on physical inputs (goods) owned by persons other than those registered under GST.

The AAR holds that with effect from 1 October 2019, the Applicant is liable to pay GST at the rate of 12% in terms of clause 'id' of entry no. 26 of Notification No. 11/2017, if the job work services are provided to registered persons



Nangia Andersen LLP's Take

In this case, the Applicant provided the goods to the retailers upon fulfilment of certain conditions i.e., purchase of a certain quantity of goods. Therefore, the same cannot be equated as 'gifts.' It would be pertinent to note that in terms of a press release issued by the CBIC, gift is something that cannot be demanded as matter of right. In the instant case however, the retailers could demand for the promises by the Applicant, subject to the fulfilment of the criteria.

[M/s. ALCOATS (Advance Ruling No. KAR/ADRG/62/2021 dated 29 October 2021)]

No IGST on goods supplied on High Sea or from Free Trade Warehousing Zone

Brief Facts

M/s. AIE Fiber Resource and Trading (India) Private Limited ('the Applicant') is intending to make: i) supply of imported goods to Indian customers on High Sea Sale (HSS) basis; ii) supply of imported goods to Indian customers from Free Trade Warehousing Zone (FTWZ). The Applicant sells the imported goods before the goods cross the customs frontier of India i.e., prior to clearance of goods from the customs to pre-identified customers. The invoice will be raised from the office located in the State of Telangana.

Further, the Applicant would import the goods and entrust them to a logistic service provider i.e., DHL Logistics Pvt. Ltd. who will store the imported goods of the Applicant at their FTWZ facilities of Mumbai & Chennai. The Applicant would then identify the Indian customer and on the directions of the Applicant, M/s. DHL would cause delivery of goods to the Indian customer. The Indian customer would take delivery of such goods by filing ex-bond bill of entry ('BOE') and discharging their liability to the customs.

In the above backdrop, the Applicant sought ruling in respect of following:

i. whether the supply of imported goods on High sea basis or supply of goods from FTWZ facilities to the Indian customers would be subject to IGST?
ii. If answer to the above is negative, whether ITC already taken will have to be reversed to the extent of inputs, input services and capital goods used by the Applicant to the extent of the aforesaid supply?
iii. whether issue of invoices from the Applicant's only office located in Hyderabad, Telangana for the sale of goods from Mumbai and Chennai FTWZ facilities of the third party logistic service provider would qualify for purpose of discharge of its obligation in terms of Sec 31 of the CGST Act considering the fact that the Applicant does not have any other business/ fixed establishment in the States where such FTWZ facilities are located?
iv. In case the answer to the previous question is in negative, then whether the Applicant ought to obtain registration in the States of Maharashtra and Tamil Nadu (location of the FTWZ facilities) for sale of such goods from the FTWZ facilities belonging to the logistic service provider namely DHL?

Ruling

The Telangana Authority for Advance Ruling ('AAR') held that the above transaction is covered by Entry 8 of Schedule III of the CGST Act inserted *vide* CGST (Amendment) Act, 2018 w.e.f. 1 February 2019 ('CGST Amendment Act') and thus, such transactions do not attract GST in terms of Section 7 read with Schedule III of the CGST Act. Further, with respect to reversal of ITC already taken to the extent of inputs, input services and capital goods used by the Applicant to the extent of the aforesaid supply, the AAR answers in negative and sates that the value of the transaction will not form part of the value of exempt supply as per Explanation to Section 17(3) of the CGST Act inserted *vide* the CGST Amendment Act. Furthermore, as for obtaining GST registration, the Authority stated that the supplier in this case is situated at Hyderabad, Telangana whereas goods are delivered in other States, therefore, it is an inter-State supply in terms of Section 7 of the IGST Act and thus, the Applicant need not obtain any registration in the other States in order to effect such inter-State transactions.

[M/s. AIE Fiber Resource and Trading (India) Private Limited (TSAAR Order No. 30/2021 dated 24 December 2021)]

Body building on chassis supplied by Tata Motors is taxable as job-work at 18%

Brief Facts

M/s. Adithya Automotive Applications Pvt Ltd ('the Appellant') is engaged in body building and mounting of body on the chassis of different models of Trippers, Tankers, Trucks and Trailers. It receives chassis from TATA Motors and other customers on the basis of returnable challan. They undertake body building as per the contract/ purchase order issued by TATA Motors.

The Appellant submitted an application before the Uttar Pradesh Authority for Advanced Ruling ('AAR'). The AAR *vide* its Order No. 82/2021 dated 30 June 2021 held that the body building activity on the chassis provided by the principal would not amount to manufacturing services attracting 18% GST. Clarification by the CBIC *vide* para no. 12.3 of Circular No. 52/2018 clarifying 18% GST in respect of building of body of buses would not apply in the case of the applicant.

Being aggrieved by the AAR order, the Appellant filed an appeal application with the Uttar Pradesh Appellate Authority for Advance Ruling ('AAAR')

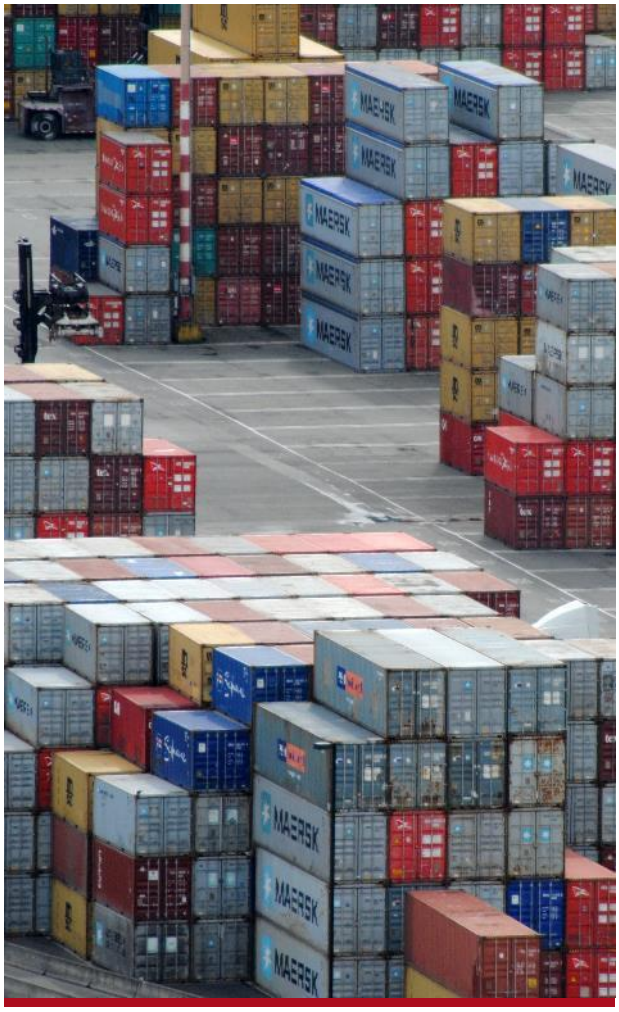
Order

The AAAR peruses the process of body building as informed by the Appellant and the definition of 'job work' in term of Section 2(68) of CGST Act and accordingly, determines that as regards use of inputs required for fabrication of body by the Appellant on its own, the same has been clarified by Circular No. 52/2018 whereby it is stated that a job worker can use certain inputs for fabrication work and same will not amount to manufacture.

In respect of the issue of transfer of ownership, and on considering the Appellant's submission that it is procuring some inputs (like steel sheets, windows, glasses) on payment of duty which is further claimed as ITC, whereas chassis (of tippers, tankers and truckers) is received by it free of cost under delivery challans, the AAAR observes that the chassis remain in temporary possession of the Applicant only as a job worker and the ownership always remains with the principal. Furthermore, on the applicability of rate of tax, the AAAR relies on Circular no. 52/2018 which at Para 12.2(b) clarified that the fabrication of body on chassis provided by the principal would merit classification as a supply of service at 18% GST.

In the above background, the AAAR reverses the AAR order and holds that body building and mounting of body on chassis supplied by the principal (Tata Motors), on delivery challans, by collecting job work charges for such fabrication work is taxable at 18% GST.

[M/s. Adithya Automotive Applications Pvt Ltd (Appeal Order No 19/AAAR/25/11/2021 dated 25 November 2021)]



Bombay High Court interprets provisions of Rule 97A as non-obstante to other Rules, allows petitioner to file manual refund claim

Brief Background

The petitioner, having failed to upload 'Statement 5B' along with refund applications which were filed online, submitted the same manually on 10 June 2021 and 22 June 2021 for FY19 and FY20. These applications were returned by the department without being processed with an instruction that in terms of Circular No. 125/44/2019-GST dated 18th November 2019 (hereafter 'impugned circular'), a refund application has to be filed in FORM GST RFD 01 on the common portal and the same has to be processed electronically, with effect from 26th September 2019.

Aggrieved by the order of the jurisdictional GST authorities, the petitioner approached the Hon'ble High Court. The petitioner referred to rule 97A of the Central Goods and Services Tax Rules, 2017 (hereafter 'CGST Rules') and contended that such a rule permits processing of an application for refund filed manually and not on the common portal as referred to in the impugned circular. The terms of Rule 97A of the CGST Rules are such that an application filed manually must be accepted and an order passed thereon one way or the other.

We have reproduced the text of the rule 97A for ease of reference.

97A. Manual filing and processing-

Notwithstanding anything contained in this Chapter, in respect of any process or procedure prescribed herein, any reference to electronic filing of an application, intimation, reply, declaration, statement or electronic issuance of a notice, order or certificate on the common portal shall, in respect of that process or procedure, include manual filing of the said application, intimation, reply, declaration, statement or issuance of the said notice, order or certificate in such Forms as appended to these rules.

Given that the rule is a non-obstante clause, it overrides the provisions of any other rule in the chapter.

Judgement

The court agreed to the contention and noted that since Rule 97A contains a non-obstante clause, it is intended to override Rule 89 to 97 of the CGST Rules forming part of Chapter X. The plain and simple construction of Rule 97A is that despite Rule 89 providing for electronic filing of applications for refund on the common portal, in respect of any process or procedure prescribed in Chapter X any reference to electronic filing of an application on the common portal shall, in respect of that process or procedure, include manual filing of the said application. If the argument of the department that no application in any form other than online can be received and processed is accepted, Rule 97A would be a dead letter and rendered redundant. Rule 97A cannot be construed in a manner so as to defeat the purpose of legislation.

Given the above, the Hon'ble Court concluded that the impugned circular would certainly be applicable to all applications filed electronically on the common portal, but the impugned circular cannot affect or control the statutory rule, i.e., Rule 97A of the CGST Rules or derogate from it.

Nangia Andersen LLP's Take

The ruling holds relevance in cases where the applicant wants to file a refund claim that is out of the ordinary and requires various other substantial documents to substantiate the refund claim or make a better case before the jurisdictional GST authorities. While the impugned circular is treated as the most sacrosanct document for refund procedures, this ruling highlight that it is not above the GST law framework.

[M/s Laxmi Organic Industries Ltd. vs. UOI & Ors [TS-660-HC(BOM)-2021-GST]

02

GST Clarifications and Updates

Amendment in Central Goods and Services Tax Rules, 2017 ('CGST Rules') through Central Goods and Services Tax (Ninth Amendment) Rules, 2021

- Rule 137 of CGST Rules has been amended effective from 30 November 2021 to extend the tenure of National Anti-Profiteering Authority from four years to five years from the date on which Chairman enters upon his office unless the council recommends otherwise.
- Certain amendments have been made in Form GST DRC-03 (Form).

(Notification No. 37/2021 – Central Tax dated 01 December 2021)

Mandatory Aadhaar Authentication for Registered Person

- The government has notified Rule 10B of the CGST Rules effective from 1 January 2022.
- As per Rule 10B of the CGST Rules, it is mandatory for the registered person to undergo Aadhaar authentication for below purposes:
    - Filing of application for revocation of cancellation of registration in FORM GST REG-21 under Rule 23 of CGST Rules.
    - Filing of refund application in FORM RFD-01 under Rule 89 of CGST Rules.
    - Refund of the IGST paid on goods exported out of India under Rule 96 of CGST Rules.
- The taxable person, who have not yet authenticated their Aadhaar, may like to go through this authentication process before filing the above refund applications and enabling GST system to validate and transmit the IGST refund data from GST system to ICEGATE system.
- Such person shall undergo the Aadhaar authentication within a period of thirty days from allotment of the Aadhaar number.
- If Aadhaar number has not been assigned to the concerned person for Aadhaar authentication, such person may undergo e-KYC verification by following the prescribed procedure.

(Notification No. 38/2021 – Central Tax dated 21 December 2021)

Key GST amendments brought through Finance Act 2021 made effective from 1 January 2022

A. Changes related to Input Tax Credit ('ITC')

- Section 16(2)(aa) of CGST Act which requires that ITC can be claimed to the extent of amount reflected in their GSTR-2A/2B. This implies that effective from 1 January 2022, ITC to the extent of invoices appearing in GSTR2A/2B only can be claimed.

B. Change in the definition of 'Supply' - Section 7 of CGST Act

- Section 7(1)(aa) introduced to increase the scope of supply by including the activities performed by any club or an association in supplying goods or services or both to its members. Hence, now this activity is under the net of GST.
- Further, this amendment is retrospective in nature, i.e. **this is applicable from 01 July 2017**.

C. Power of GST Authorities

- Explanation to section 75(12) of the CGST Act has been added which empowers GST authorities to recover self-assessed tax without issuing any show cause notice ('SCN'), if there is a difference in outward supply shown in GSTR-1 and GSTR -3B.

- This amendment broadens the scope of recovery of taxes as the requirement to issue SCN before the recovery proceedings is no more required.

- Amendment in section 83 of the CGST Act - provisional attachment, the amendment has given the authorities, powers to invoke provisional attachment to property any time after the initiation of proceedings.

- Amendment in section 151 of CGST Act 2017- power to call for information, has empowered commissioner or any officer authorized by him to direct any person to furnish information relating to any matter dealt with this act.

D. Changes in provision regarding confiscation and detention of goods during movement

- Confiscation and detention proceedings can be continued even after dropping of proceedings under section 73 and 74 of the CGST Act.

- The quantum of penalty under section 129 is increased to 200% from 100% and the option to provisionally release the goods from detention is no more available.

- For filing an appeal against the order of detention a pre-deposit of 25% of penalty amount has to be made.

E. Changes in provisions related to E-Commerce operators ('ECO')

- Passenger transportation services in a non-air-conditioned contract carriage or state carriage, auto rickshaw mediated by ECO is now under the ambit of GST.

- Also, if ECO is involved in delivery of food, would make ECO the supplier of services and it has to pay GST on behalf of restaurants.

F. Other amendments

- Composite supply of works contract services to Governmental authority or Government entity is taxable at 18%, as the services provided to the Governmental authority and entity is no more exempt supply.

Amendment made in the CGST Rules effective from 1 January 2022 through Central Goods and Services Tax (Tenth Amendment) Rules, 2021

- **Rule 36(4) of CGST Rules** has been substituted to provide that input tax credit shall not be available to the registered person unless the said invoice/debit note has been reported by the vendor in GSTR-1 or using Invoice Furnishing facility ('IFF') and the same is reflecting in GSTR-2B of the recipient.
- **Rule 80 of CGST Rules** has been amended to extend the due date of furnishing GSTR-9 (Annual Return) and GSTR-9C (Self-Certified Reconciliation Statement) to 28 February 2022.
- **A new proviso** is being inserted after clause (c) under sub rule (3) of Rule 95 of CGST Rules effective from 1 April 2021 to provide that in case of a Unique Identification Number (UIN) holder, if UIN is not mentioned on a tax invoice, the refund of tax paid shall be available only if copy of the invoice, duly attested by the authorized representative of the applicant, is submitted along with the refund application in Form GST RFD-10.
- **Sub Rule (3) of Rule 142** has been amended to align it with new provisions of Section 129 of CGST Act providing for making the payment of amount as per Section 129(1) within 7 days of issuance of notice under sub section (3) of section 129 but before issuance of order under said sub section (3).
- **Sub Rule (5) of Rule 142** has been amended to replace the words "tax, interest and penalty payable by the person chargeable with tax" with "tax, interest and penalty, as the case may be, payable by the person concerned".
- **A new Rule 144A** has been inserted which deals with recovery of penalty by sale of goods or conveyance detained or seized in transit.
- **Rule 154** of CGST Rules has been substituted to provide for appropriation of the proceeds received from sale of goods or conveyance and movable or immovable property in chronological order.
- **Rule 159** of CGST Rules has been amended to include changes made in section 83 providing for attachment of property of a person other than the taxable person i.e. any person specified in sub section (1A) of Section 122. Also, FORM DRC-22A has been notified to file an objection against the order of provisional attachment of property.
- Certain changes have been made in FORM DRC-10, DRC-11, DRC-12, DRC-22, DRC-23 and APL-01 to incorporate the above changes as well as the changes brought vide notification no. 39/2021-Central tax dated 21 December 2021.

(Notification No. 40/2021 – Central Tax dated 29 December 2021)

Changes in Description or Tariff Heading of Goods in Notification No. 01/2017 -Central Tax (Rate) dated 28 June 2017 ('Rate Notification of Goods') effective from 1 January 2022

- Certain changes in the description or Chapter/Heading/Sub-Heading/tariff item of goods have been substituted/omitted pursuant to change in HSN.

Clarification in respect of services provided by restaurants through e-commerce operators

Vide Notification No. 17/2021 – Central Tax (Rate) dated 18 November 2021, the tax on supplies of restaurant service supplied through e-commerce operator shall be paid by the e-commerce operator under section 9(5) of the CGST Act.

In this regard, following clarifications are issued regarding the modalities of compliance to the GST laws in respect of supply of restaurant service through e-commerce operators (ECO) –

Serial No.	Issue	Clarification
1.	Would ECOs have to still collect TCS in compliance with section 52 of the CGST Act?	As 'restaurant service' has been notified under section 9(5) of the CGST Act, the ECO shall be liable to pay GST on restaurant services provided through them with effect from 1 January 2022. Accordingly, the ECOs will no longer be required to collect TCS and file GSTR 8 in respect of restaurant services on which it pays tax in terms of section 9(5). On other goods or services supplied through ECO, which are not notified u/s 9(5), ECOs will continue to pay TCS in terms of section 52 of CGST Act in the same manner at present.
2.	Would ECOs have to mandatorily take a separate registration w.r.t supply of restaurant service [notified under 9(5)] through them even though they are registered to pay GST on services on their own account?	As ECOs are already registered in accordance with rule 8 (in Form GST-REG 01) of the CGST Rules (as a supplier of their own goods or services), there would be no mandatory requirement of taking separate registration by ECOs for payment of tax on restaurant service under section 9(5) of the CGST Act.
3.	Would the ECOs be liable to pay tax on supply of restaurant service made by unregistered business entities?	Yes. ECOs will be liable to pay GST on any restaurant service supplied through them including by an unregistered person.

4.	What would be the aggregate turnover of person supplying 'restaurant service' through ECOs?	It is clarified that the aggregate turnover of person supplying restaurant service through ECOs shall be computed as defined in section 2(6) of the CGST Act and shall include the aggregate value of supplies made by the restaurant through ECOs. Accordingly, for threshold consideration or any other purpose in the Act, the person providing restaurant service through ECO shall account such services in his aggregate turnover.
5.	Can the supplies of restaurant service made through ECOs be recorded as inward supply of ECOs (liable to reverse charge) in GSTR 3B?	No. ECOs are not the recipient of restaurant service supplied through them. Since these are not input services to ECO, these are not to be reported as inward supply (liable to reverse charge).
6.	Would ECOs be liable to reverse proportional input tax credit on his input goods and services for the reason that input tax credit is not admissible on 'restaurant service'?	ECOs provide their own services as an electronic platform and an intermediary for which it would acquire inputs/input service on which ECOs avail input tax credit (ITC). The ECO charges commission/fee etc. for the services it provides. The ITC is utilised by ECO for payment of GST on services provided by ECO on its own account (say, to a restaurant). The situation in this regard remains unchanged even after ECO is made liable to pay tax on restaurant service. ECO would be eligible to ITC as before. Accordingly, it is clarified that ECO shall not be required to reverse ITC on account of restaurant services on which it pays GST in terms of section 9(5) of the Act. It may also be noted that on restaurant service, ECO shall pay the entire GST liability in cash (No ITC could be utilised for payment of GST on restaurant service supplied through ECO).
7.	Can ECO utilize its Input Tax Credit to pay tax w.r.t 'restaurant service' supplied through the ECO?	No. As stated above, the liability of payment of tax by ECO as per section 9(5) shall be discharged in cash.
8.	Would supply of goods or services other than 'restaurant service' through ECOs be taxed at 5% without ITC?	ECO is required to pay GST on services notified under section 9(5), besides the services/other supplies made on his own account. On any supply that is not notified under section 9(5), that is supplied by a person through ECO, the liability to pay GST continues on such supplier and ECO shall continue to pay TCS on such supplies. Thus, present dispensation continues for ECO, on supplies other than restaurant services. On such supplies (other than restaurant services made through ECO) GST will continue to be billed, collected and deposited in the same manner as is being done at present. ECO will deposit TCS on such supplies.

9.	Would 'restaurant service' and goods or services other than restaurant service sold by a restaurant to a customer under the same order be billed differently? Who shall be liable for raising invoices in such cases?	Considering that liability to pay GST on supplies other than 'restaurant service' through the ECO, and other compliances under the Act, including issuance of invoice to customer, continues to lie with the respective suppliers (and ECOs being liable only to collect tax at source (TCS) on such supplies), it is advisable that ECO raises separate bill on restaurant service in such cases where ECO provides other supplies to a customer under the same order.
10.	Who will issue invoice in respect of restaurant service supplied through ECO - whether by the restaurant or by the ECO?	The invoice in respect of restaurant service supplied through ECO under section 9(5) will be issued by ECO.
11.	Clarification may be issued as regard reporting of restaurant services, value and tax liability etc. in the GST return	A number of other services are already notified under section 9(5). In respect of such services, ECO operators are presently paying GST by furnishing details in GSTR 3B. The ECO may, on services notified under section 9 (5) of the CGST Act, including on restaurant service provided through ECO, may continue to pay GST by furnishing the details in GSTR 3B, reporting them as outward taxable supplies for the time being. Besides, ECO may also, for the time being, furnish the details of such supplies of restaurant services under section 9(5) in Table 7A(1) or Table 4A of GSTR-1, as the case maybe, for accounting purpose. Registered persons supplying restaurant services through ECOs under section 9(5) will report such supplies of restaurant services made through ECOs in Table 8 of GSTR-1 and Table 3.1 of GSTR-3B, for the time being.

(Circular No. 167/23/2021 - GST dated 17 December 2021)

Clarification on mechanism for filing of refund claim by the taxpayers registered in erstwhile Union Territory (UT) of Daman & Diu for period prior to merger with UT of Dadra and Nagar Haveli

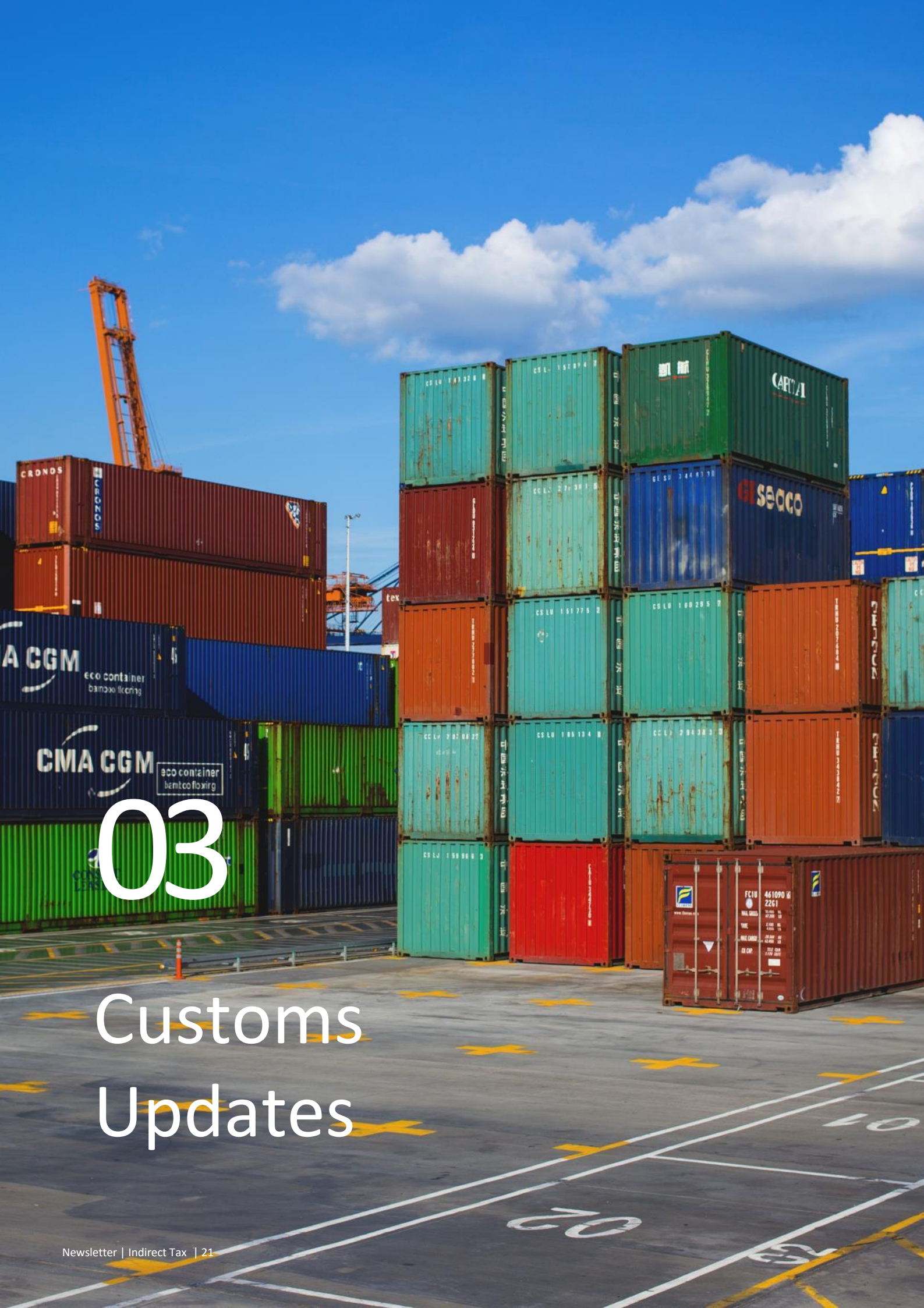
On merger of UT of Dadra & Nagar Haveli and UT of Daman & Diu, new GSTIN's with UT code 26 were created for the taxpayers of erstwhile UT of Daman & Diu w.e.f. 1 August 2020.

During the process of transition, ITC was transferred from old GSTIN to new GSTIN however the taxpayers were unable to apply for refund on account of zero-rated supplies and inverted duty structure for the period prior to merger as they had no ITC in the electronic credit ledger of old GSTIN for claiming refund of unutilized ITC. Also, all the invoices had old GSTIN and the system has certain validations which do not allow the refund application from new GSTIN for the period prior to merger.

To address the above concern, following clarification has been issued –

- The application for refund shall be filed under "Any Other" category using their new GSTIN. In the remarks column of the application, the applicant needs to enter the category for which the refund application otherwise would have been filed.
- The application shall be accompanied by all the supporting documents which otherwise are required to be submitted with the refund claim.
- At this stage, the applicant is not required to make any debit from electronic credit ledger.
- The proper officer if satisfied with the application for refund, shall request the applicant in writing to debit the amount from electronic credit ledger through Form DRC-03.
- On receipt of proof from the applicant, the proper officer shall issue the refund order in FORM GST RFD-06 and the payment order in FORM GST RFD-05.
- For the categories of refund where debit of ITC is not required, the applicant may apply for refund under the category "Any Other" mentioning the reasons in Remarks column along with all the supporting documents.
- No refund claim shall be filed using the old GSTIN which shall require debit from electronic credit ledger or where the refund would result in re-credit of the amount sanctioned in the electronic credit ledger.

(Circular No. 168/24/2021 – GST dated 30 December 2021)



03

Customs Updates

Extension of last date for submitting application for Scrip based Foreign Trade Policy ('FTP') schemes:

- Last date for submitting the online applications under Merchandise Exports from India Scheme ("MEIS"), Service Exports from India Scheme ("SEIS"), Remission of Sate and Central Taxes and Levies ("ROSCTL"), Rebate of State Levies ("ROSL") and 2% additional ad hoc incentive (under para 3.25 of FTP) has been notified to be 31 January 2022.
- Beyond **31 January 2022**, no further application would be allowed to be submitted and they would become time barred. Also, late cut provision shall not be applicable for submitting claims at a later date.
- New late cut provisions for application submitted upto **31 January 2022** has been issued and provisions related to late cut in Para 9.02 of Handbook of Provision ('HBP') has been supressed

Sr. No.	Scheme	Period of Export (Let Export Date in the Period) /Services rendered in the period	Late Cut (as % age of entitlement under the scheme)
1.	MEIS	FY 2018-19 (1/07/2018 to 31/03/2019)	10%
2.	MEIS	FY 2019-20 and FY 2020-21(upto 31/12/2020)	NIL
3.	SEIS	FY 2018-19	5%
4.	SEIS	FY 2019-20	NIL
5.	ROSCTL	07/03/2020 to 31/12/2020	NIL
6.	ROSL	Upto 06/03/2019	NIL

(Notification No. 48/2015-2020 dated 31 September 2021)

Option to file manual/physical application for export obligation discharge certificate ('EODC')/closure under Advance Authorisation scheme ('AAS')

- To ease the process and to counter the difficulties faced by Advance Authorisation ('AA') holder, an option to file manual or physical EODC application has been given for all such AAs, which has been issued before 1 December 2020.
- In case of manual submission of EODC application, Regional Authority ('RA'), on approval of files are required to upload closure letter in the system and update the status of the AA suitably.
- Accordingly, all AA holders are requested to verify the status of the AA issued earlier and submit the online request for updating of status (where required), not later than 31 March 2022. In the absence of updated online status, RA may take necessary action, as deemed fit for non-fulfilment of export obligation.

(Trade Notice 28/2021-22 dated 31 December 2021)

04

Compliance Calendar

Indirect Tax

Compliance Category	Compliance Description	Frequency	Due dates falling in the month of December 2021
Form GSTR-1	Details of outward supplies to be filed by registered person	Monthly	11 January 2022
Form GSTR-1	Details of outward supplies filed by registered person under QRMP Scheme	Quarterly	13 January 2022
Form GSTR- 3B (Monthly Return)	Registered person having turnover more than INR 5 crores in the previous FY and registered person having turnover less than INR 5 crores who have not opted for QRMP Scheme	Monthly	20 January 2022
Form GSTR- 3B (Quarterly Return)	Registered person having turnover less than INR 5 crores in the previous FY and registered in prescribed 14 States/ UT*	Quarterly	22 January 2022
Form GSTR- 3B (Quarterly Return)	Registered person having turnover less than INR 5 crores in the previous FY and registered in prescribed 22 States/ UT**	Quarterly	24 January 2022
Form GSTR-6 (Return for Input Service Distributor)	Details of input tax credit received and distributed by input services distributor	Monthly	13 January 2022
Form GSTR – 7 (Return for TDS Deductor)	For persons who are required to deduct TDS under GST	Monthly	10 January 2022
Form GSTR – 8 (Return for TCS Collector)	For persons who are required to deduct TDS under GST	Monthly	10 January 2022

www.nangia-andersen.com

query@nangia-andersen.com

NOIDA
(Delhi NCR – Corporate Office)
A-109, Sector 136, Noida - 201304
T: +91 120 5123000

GURUGRAM
812-814, Tower B, Emaar Digital Greens
Sector 61, Gurugram, Haryana, 122102
T: +0124-4301551/1552/1554

CHENNAI
Prestige Palladium Bayan, Level 5, 129-140, G reams Road, Thousand Lights,
Chennai 600006
T: +91 44 46549201

PUNE
3rd Floor, Park Plaza,
CTS 1085, Ganeshkhind Road, Next to Pune Central Mall, Shivajinagar, Pune - 411005

DELHI
(Registered Office) B-27, Soami Nagar, New Delhi-110017, India
T: +91 120 5123000

MUMBAI
11th Floo r, B Wing, Peninsula Business Park, Ganpatrao Kadam Marg, Lower Parel,
Mumbai 400013, India | T: +91 22 61737000

CHENNAI
Prestige Obelisk, Level 4, No 3 Kasturba Road, Bengaluru – 560 001, Karnataka, India
T: +91 80 2228 0999

DEHRADUN
First Floor, "IDA" 46 E.C. Road, Dehradun – 248001, Uttarakhand
T: +91 135 2716300/ 301/302/303

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