Nangia Andersen LLP

Indirect Tax Newsletter

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Key Jurisprudence and Advance Rulings

Supreme Court criticizes department's attempt to allege tax evasion for mere expiry of e-waybill

Brief Background

Revenue authorities detained goods carried by an auto trolley on the allegation that the e-waybill for the supply has expired a day earlier. Upon investigation, the driver submitted that due to public protests on the roads, delivery got delayed by a day. The department did not accept the contention of the driver and alleged that there was intention to evade taxes and levied tax and penalties while also detaining the goods in question for 16 days. Taxpayer filed a writ petition[1] before the Telangana High Court wherein the hon'ble high court agreed with the contention of the applicant and set aside the order imposing tax and penalties and also imposed a cost of INR 10,000 on the adjudicating officer. Aggrieved by the order, Revenue authorities challenged the HC order before the Hon'ble Supreme Court.

SC Judgement

The Supreme Court held that they did not find any reason to interfere with the order of the Hon'ble High Court. The argument of the revenue that the writ petitioner was evading taxes merely because the e-waybill had expired a day earlier, is not only baseless but even the intent behind the proceedings initiated by the officer is questionable as the goods detained were retained at the officer's relative's house for 16 days rather than at a designated warehouse. The contention of the writ petitioner was easily corroborated by the fact that there were in fact public protests happening on the route adopted by the writ petitioner and accordingly guilt of evasion of tax cannot be established.

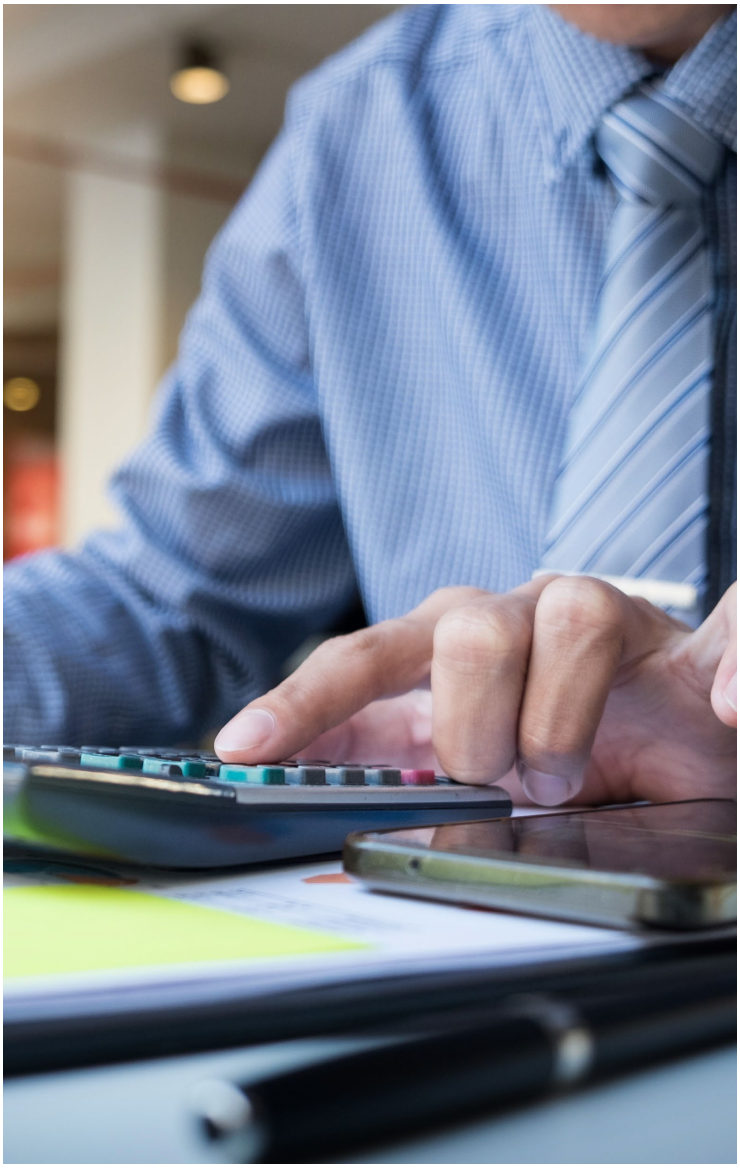
More importantly, the Hon'ble court categorically held that mere expiry of e-waybill by a day cannot be grounds for qualifying tax evasion. The Hon'ble court increased the costs on the individual officer responsible for such frivolous litigation.

[1]Write Petition no. 9688 of 2020
[2][TS-13-SC-2022-GST]

Nangia Andersen LLP's Take

This judgement holds strong relevance where officers demand tax upon mere procedural lapses such as invalidity of e-waybill by a single day. The judgement establishes that intent to evade tax cannot be circumstantial but beyond reasonable doubt.

Assistant Commissioner (ST) & Ors Vs. Satyam Shivam Papers Pvt. Limited & Anr. [2]



Extension of time limit by the Supreme Court's order, due to COVID-19, will cover refund application

Brief Background

The Company filed first refund application for the period July 2018 to September 2018 on August 21, 2020 online on the GST portal. The said application was rejected by the Assistant Commissioner on September 05, 2020 on the ground that there were certain deficiencies in the said application.

Second refund application was filed on September 08, 2020 but this application was also rejected by the Assistant Commissioner, CGST, pointing out certain deficiencies. Thereafter, the Company filed a third refund application on September 30, 2020, but that was also rejected by the Assistant Commissioner on the ground that the said application was time barred.

Before the Hon'ble High Court, the Company sought a declaration that, Rule 90(3) of the CGST Rules, 2017 which relates to calculation of limitation period when deficiency memo is issued, is ultra vires the Constitution of India and the CGST Act and consequently to strike down the same. The Company also sought quashing and setting aside the rejection order and a direction to restore the third refund application of the petitioner so that the same may be decided on merits.

Contention of the petitioner

The petitioner relied upon the order of the Hon'ble Supreme Court on March 23, 2020 wherein the Supreme Court has held that a period of limitation in all proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. March 15, 2020 till further order/s to be passed by this Court in present proceedings.

Given that the period between March 15, 2020, to October 2, 2021, shall stand excluded from counting the period of limitation for filing a refund application, the refund application filed on September 30, 2020 cannot be rejected on the grounds of limitation.

Judgement

The High Court held that it is not in dispute that the first two refund applications were rejected on the grounds of deficiencies and following the refund Circular No.20/16/04/18-GST dated 18 November 2019 under Section 54(1) of CGST Act and the third refund application should have been filed within 2 years. The limitation period fell between 15 March 2020 and 2 October 2021, which was excluded by the Hon'ble Supreme Court vide its order and accordingly, the due date to file the third refund application also stands extended.

Nangia Andersen LLP's Take

This judgement is important because despite specific clarifications[3] from the CBIC that the Hon'ble Supreme Courts' order will not apply to regular compliance deadlines such as returns and refund applications, the Hon'ble High court has categorically allowed the extension granted by the Supreme Court. This will bring considerable amount of relief to taxpayers who could not file their refund claims within time limit due to the pandemic.

Saiher Supply Chain Consulting Pvt

[3]Circular No. 157/13/2021-GST

GST applicable on recoveries made from the employees towards notice pay and parental insurance

Brief Facts

M/s. Syngenta India Limited ('the Applicant') manufactures and sells pesticides, herbicides and various types of seeds. It offers various incentives to its employees as a part of its employment policy viz. group insurance policy for its employees, parental insurance policy, etc. Employment letter/ agreement with its employees contains various terms and conditions of the employment. The Applicant, in its general employment conditions ('HR policy'), also mentions the terms and conditions related to work, responsibility, termination, etc.

In the above backdrop, the Applicant applied before the Maharashtra Authority for Advance Ruling ('AAR') seeking a ruling on the following:

i. whether GST would be payable on recoveries made from the employees towards providing parental insurance
ii. whether GST would be payable on the notice pay recoveries made from the employees on account of not serving the full notice period

The Applicant stated that it is neither an insurance company nor an insurer. It also stated that it does not hold a license to carry out insurance business under the IRDA Act. The parental insurance scheme is merely a facility extended to the employees by the Applicant. Thus, the said activity cannot be treated as business as defined in Section 2(17) of the CGST Act and accordingly, would not qualify to be a supply in terms of Section 7 of the CGST Act.

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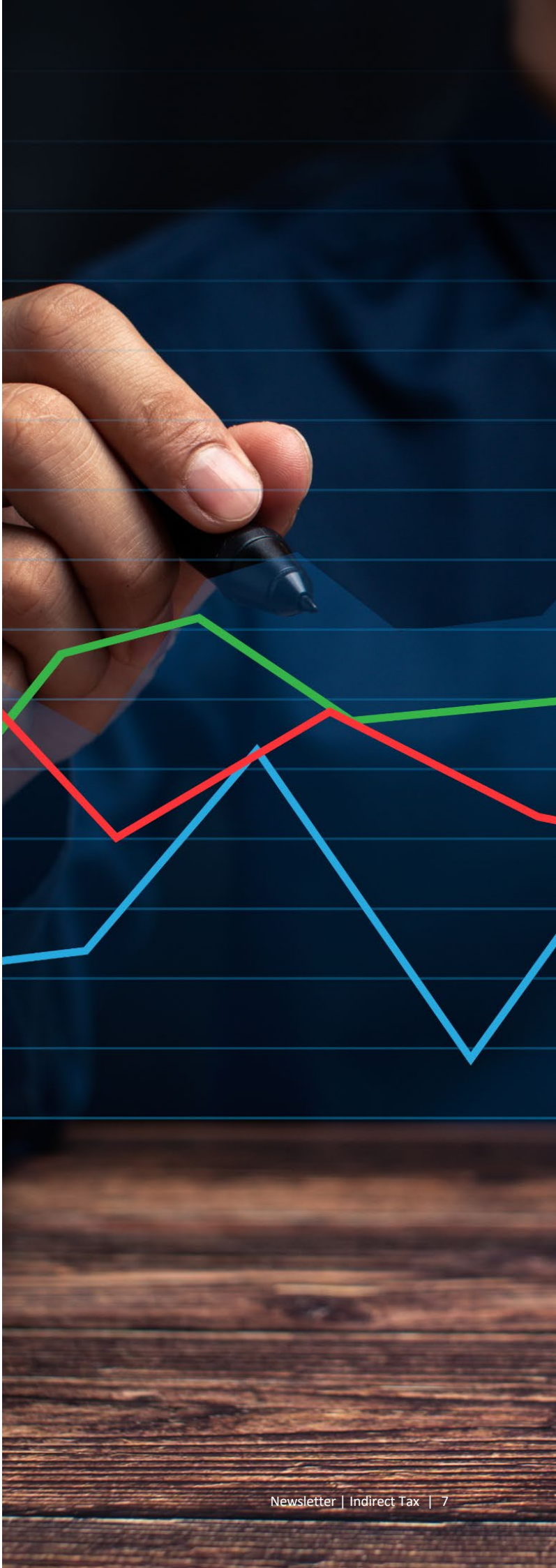


With respect to the notice pay, the Applicant stated that notice pay is recovered in lieu of or in return for any activity performed by the Applicant. Therefore, it cannot be treated as a consideration for performing any activity by the Applicant. Since, there is no consideration involved in the notice pay recoveries, the said transaction will not amount to supply in terms of Section 7 of the CGST Act and thus, no GST shall be payable by the Applicant on the said transaction.

Ruling

The AAR held that GST is not payable on recoveries made from the employees towards parental insurance as such a recovery doesn't amount to supply of service under Section 7 of the CGST Act. The AAR referred and relied upon its ruling in the case of Jotun India Private Limited and POSCO India Pune Processing Private Limited.

With regard to GST on notice pay, the AAR observed that GST is not payable on notice pay recoveries made from the employees on account of not serving the full notice period. The AAR held that an employee opting to resign by paying an amount equivalent to the month of salary in lieu of salary has acted in accordance with the contract and that being the case, there does not arise any question of forbearance or tolerance. Further, as per the agreement, resignation by the employee is not subject to any acceptance or approval and the employee is free to tender his resignation, make payment of notice period and leave. Hence, there is neither any activity nor any passive role played by the employer leading to no consideration being involved within the meaning of Section 2(31)(b) of the CGST Act flowing from an act of forbearance in as much as there is no breach of contract.

Nangia Andersen LLP's Take

It is pertinent to note that similar decision of the Maharashtra AAR on the notice period, parental insurance, canteen, and bus transportation recovery was laid down in the case of Jotun India Private Limited (Order No. GST-ARA-19/2019-20/B-108 dated 4 October 2019), POSCO India Pune Processing Center Private Limited (Order No. GST-ARA-36/2018-19/B-110 dated 7 September 2018) and Emcure Pharmaceuticals Limited (Order No. GST-ARA-119/2019-20/B-03 dated 4 January 2022). Whereas, on the contrary, the Madhya Pradesh AAR in the case of Bharat Oman Refineries Limited (Order No. 02/2021 dated 7 June 2021) held that GST is applicable on the payment of notice pay recovery, medical insurance policy and telephone charges from employees.

[M/s. Syngenta India Limited (Order No. GST-ARA-25/2020-21/B-05 dated 19 January 2022)]

Inspection performed in India on goods sold to the foreign buyer is not export of service

Brief Facts

M/s. International Inspection Services Private Limited ('the Applicant') provides inspection services for its foreign clients in respect of the equipment/ machinery/ material in India which are eventually exported. The Applicant receives inspection charges from its clients in foreign currency. The Applicant certify the quality and quantity of goods being supplied by Indian supplier.

The Applicant sought advance ruling if services rendered for foreign companies in India (which do not have any business place/ agency in India) is considered as an export or not. Also, whether such services provided in respect of goods that are being exported are considered as export of services.

Ruling

The AAR stated that the recipient of services is a foreign buyer of Indian goods. The Applicant performs services in relation to the goods located or under manufacture in India. Hence, place of supply will be determined in terms of provisions of Section 13(3) of the Integrated Goods and Services Tax Act, 2017 ('IGST Act'). Section 13(3) provides that place of supply of services in respect of the goods required to be made physically available by the recipient of service to the supplier of service, or to a person acting on behalf of the supplier of service in order to provide the services, shall be the location where the services are actually performed. The AAR holds that in the instant case, the location of the recipient is outside India, however, the location where the services are performed in respect of the goods is in the country i.e., India. Therefore, the place of supply of services provided by the Applicant is within India and thus, liable to tax.

The AAR held that the services of inspection involving certification of quality and quantity of goods supplied by an Indian supplier to the foreign recipient /buyer is not export, and hence, liable to State Goods and Services Tax ('SGST') & Central Goods and Services Tax ('CGST').

[M/s. International Inspection Services Private Limited (TSAAR Order No. 33/2021 dated 29 December 2021)]

Sub-dividing larger land to smaller plots for sale is not a supply

Brief Facts

M/s. Shantilal Real Estate Services ('the Applicant'), is a real estate developer carrying on the business of construction of residential apartments, shops, and development of plots. The Applicant has acquired by sale deeds certain parcels of land at Dabolim & Chicalim in Mormugao, Goa. It is undertaking certain plotting scheme on the said parcel of land. The Applicant has proposed a value-addition by sub-dividing larger land into two plotting schemes/ project to sell smaller plots to the buyers. The Applicant has also developed certain amenities such as roads, drainage etc.

The Applicant sought advance ruling on the following:

i. whether sale of plots is a supply;
ii. if yes, whether it is a supply of good or service and under which category does it fall
iii. valuation of supply, if applicable;
iv. rate of tax as applicable and abetment, if any.

Ruling

The AAR notes that the Applicant, a real-estate developer, has acquired certain parcel of lands and in its capacity as absolute owner. As a pre-condition for getting NOC from Mormugao Planning and Development Authority for plot development, the Applicant needs to construct roads and drains, and re-align/ add electricity poles, when necessary.

The AAR agreed that a plot when purchased as a parcel of land, subdivided into smaller plots saleable with basic amenities involves sizable amount of value addition. The AAR stated that before the OC, it is land and after OC, it will be plot.

The AAR elucidates that the principal transaction is the sale of land and the amenities are a natural part of the sale of the plot of land and

thus, these do not, in anyway change, the nature of the land or of the transaction or activity being that of sale of land. Further, it stated that mere value addition done to the land to convert it into plot after NOC by relevant Development Authority will not change the land from an immovable property to goods taxable under the scope of 'supply'.

The AAR held that a land is excluded in entirety and in all circumstances from the scope of supply and thus, sale of plot (or sub-divided plot of lands) is not a supply' in terms of Section 7 read with Schedule III of the CGST Act.

Nangia Andersen LLP's Take

While land being an immovable property is kept outside the purview of GST, Haryana AAR in Informage Realty Private Limited (Ruling No. HAR/HAAR/R/2018-19/15 dated 5 October 2018) has also extended the scope of sale of land to booking/ selling of plots during development of township. The Madhya Pradesh AAR in Bhopal Smart City Development Corporation Limited (Ruling No. 05/2021/AAR/R-28/34 dated 22 November 2021) also took a similar view by holding that sale of developed land for smart city development is not liable to GST.

On the contrary, the Gujarat AAR in Shree Dipesh Anikumar Naik (Ruling No. GUJ/GAAR/R/2020/11 dated 19 May 2020) held that if sale of developed plots includes services of primary or basic amenities such as electricity line, drainage line, etc., then GST will be applicable on the said sale.

[M/s. Shantilal Real Estate Services (Ruling No. GOA/GAAR/02 of 2020-21/340 dated 18 May 2021)]

Input Service Distributor registration is mandatory; no GST on common input service facilitation by the Head Office as pure-agent

Brief Background

M/s. Cummins India Limited ('the Appellant') is engaged in manufacture and supply of diesel engines, parts thereof and related services. The Appellant has its presence across various States in India. In terms of Section 25(4) of the CGST Act, such registered units located in each State (are registered under GST) are treated as distinct person from units located in other States.

The Appellant stated that amongst all the procurements, certain common input services are procured by the head office ('HO'). The costs incurred by the HO/ units for procurement of common input is booked by such unit/ HO in its own books of accounts. Such cost is then allocated and recovered proportionately from each of the recipient units to determine the office/plant-wise profitability, which is an internal procedure.

In the above backdrop, the Applicant applied before the Maharashtra Authority for Advance Ruling ('AAR') seeking a ruling on i) classification of engine manufactured by the Applicant; ii) levy of GST on facilitation of common input services, necessity of registering as an Input Service Distributor ('ISD') and determination of assessable value.

The AAR held that i) availment of ITC on common input supplies on behalf of other unit/ units registered as distinct person qualifies as supply and attracts GST; ii) assessable value shall be arrived at in terms of Rule 30 of the Central Goods and Services Tax Rules, 2017 ('CGST Rules') i.e., 110% of the cost of provision of such services; iii) the Appellant is required to obtain registration as ISD.

Being aggrieved by the AAR order, the Appellant filed an appeal with the Maharashtra Appellate Authority for Advance Ruling ('AAAR'). The appeal was limited to the ruling in relation to necessity of obtaining registration as an ISD and determination of assessable value for facilitation of common input services.

AAR Judgement

The AAAR held that GST law has provided a very wide definition of services to also include the activities of providing facilitation services to other registrations of the company by way of availment of the common input services by the Appellant on behalf of its other registration and hence, would qualify as supply in terms of Section 7(1) (a) of the CGST Act.

The AAAR also analysed Section 16 of the CGST Act and observed that the common input services received by the Appellant are in fact being used by other registrations and not by the HO. Therefore, HO is not entitled to avail and utilize the credit of tax paid to the third-party service vendors for the common input services received by it on behalf of the other registrations.

The AAAR modified the ruling of the AAR and held that availment of common input supplies from the third-party service vendors/ suppliers on behalf of other registrations i.e., Branch Office (BO) registered as 'distinct person', will qualify as supply of service in terms of Section 7(1)(a) of CGST Act. However, the cost of such common input services availed and allocated to the BOs/ units by the HO will not attract the GST as the said costs have been incurred by the HO in the capacity of a pure agent of the BOs/ units and as such, the cost incurred by the HO shall be excluded from the value of supply of the facilitation services. The assessable value of the services provided by the HO to other registrations can be determined as per the second proviso to Rule 28(c) of the CGST Rules.

Furthermore, the Appellant is required to obtain ISD registration as mandated by Section 24(viii) of the CGST Act and comply with all the provisions made in this regard, if it intends to distribute the credit of tax paid on the common input services received by it on behalf of other registrations. On the issue of employee salary cost, the AAAR noted that it is evident that the employees of the Appellant's HO are working at the behest of the HO, and not at the behest of the other registration. Since, the HO is using all its human resources to facilitate the operational requirements of the other registrations by way of procuring common input services on behalf of other registration, it is, in essence, providing facilitation services. Therefore, allocation and recovery of any amount including its employees salary cost from the BO/ units will be subject to GST.

Nangia Andersen LLP's Take

The ruling has touched upon one of the most contentious issues under GST that is yet to reach finality. This ruling seems to be not a good law on many counts like non availability of ITC on common input services, need of mandatory ISD registration etc. the CBIC issued FAQs issued by the CBIC for banking, insurance and stockbrokers wherein it has been clarified that HO has option to either cross charge or raise ISD invoice. HO is entitled to ITC if it cross charges such expenses to other units and pays GST.

The Government ought to bring a detailed circular on this issue as both the judicial forums and industry are grappling with the most appropriate tax position on this issue.

[M/s. Cummins India Limited (Order No. MAH/AAAR/AM-RM/01/2021-22 dated 21 December 2021)]

Sharing report of Technical Testing Services performed in India to overseas customers do not qualify as export

Brief Facts

M/s. Syngenta Biosciences Private Limited ('the Appellant') is engaged in providing R&D services on agrochemical products. It filed an application with Goa Authority for Advance Ruling ('AAR') seeking ruling on i) whether the activity of technical testing services carried out by the Appellant be treated as zero rated supply? ii) if the answer to the previous question is negative, then is the Appellant liable to pay IGST on the said supply?

The AAR ruled that service provided by the Appellant does not fall within the definition of export of service as defined under Section 2(6) of the IGST Act and that the Appellant is liable to pay State Goods and Services Tax ('SGST') and Central Goods and Services Tax ('CGST') on the aforesaid supply of service.

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

The Appellant stated that the activity carried out by it qualify as R&D services. They receive samples from the overseas companies and/ or the other facilities on which research is carried out. Post the testing completion activity, the goods either cease to exist or do not remain in the form in which they were handed over to the Appellant. The recipient of the service is concerned only with the test report. The Appellant carries out testing activity in India and shares the test report with the customer located outside India. The Appellant submitted that the nature of its service supplied is R&D and the place of supply would be outside India. Even if assumed that the activity carried out is not R&D, the same would be treated as testing service where the ultimate deliverable of service is in the form of provision of a test report. Accordingly, the POS shall be the location of the recipient of service in terms of Section 13 of the IGST Act.

AAAR decision

AAAR confirmed the AAR order to rule that technical testing services carried on samples/ goods in India by the Appellant and made available to overseas service recipients does not amount to 'zero rated supply'/ 'export of services' and hence, the Appellant is liable to pay CGST and SGST on such supply of service. The AAAR acknowledges the analysis of the AAR which holds that the Appellant does not meet all the essential requirements for its transaction to qualify as an export of service. AAAR also takes a note of the AAR order which stated that the POS of the said service is in Goa itself in terms of Section 13(3) of the IGST Act given the fact that the samples/ goods on which testing service is to be performed by the Appellant were made physically available by the service recipient.

Further, as regard the issue of liability to pay IGST on said supply of services, AAAR held that since both the supplier of service and the POS is in Goa, the same falls under intra-State supply in terms of Section 8(2) of the IGST Act.

[M/s. Syngenta Biosciences Private Limited (Order No. Goa/AAAR/02/2019-20/307 dated 3 February 2020)]

Trading in vouchers taxable as supply of goods

Brief Facts

M/s Premier Sales Promotions Private Limited ('the Appellant') is engaged in providing marketing services. During business, the Appellant receives orders for supply of e-vouchers wherein it sources e-vouchers (viz., gift vouchers, cash back vouchers and multiple options e-vouchers) for such customers as per orders received, and acts as an intermediary for buying and supplying of e-vouchers.

Appellant sought an advance ruling in respect of the following:

i. Whether vouchers themselves, or the act of supplying them is taxable, and at what stage, for each of the three categories of transactions/ e-vouchers undertaken by the Applicant;
ii. If the answer to the above question is affirmative, what would be the rate of tax at which this would be taxable, i.e., the category under which this would be taxed.

The AAR held that the Applicant is involved in trading of vouchers for a consideration in the course or furtherance of business and the said transaction amounts to supply under Section 7(1)(a) of the CGST Act. Payment instruments ('PI') would squarely be covered under the definition of vouchers as there is an obligation for the acceptor to accept it as consideration or part consideration for a supply of goods or services or both. In respect of the gift vouchers, AAR explained that the Appellant purchases the PI and sells the same to their clients, who in turn distributes them to their clients/ customers, and the customers use them to discharge their obligation to pay consideration for goods or services procured by them from their suppliers. Thus, PIs would not obtain the character of money at the time of their supply to the Appellant. For cash-back vouchers and multiple options e-vouchers, the PI supplied by the

Appellant to its clients cannot be covered under the definition of 'money' at the time of supplying them but would fall under the scope of 'money' only when used for payment of a consideration for supply of goods or services procured by the end user.

The AAR also stated that the vouchers are not actionable claims as they are not debt. Supply of vouchers is taxable and the time of supply in all the three cases would be governed by section 12(5) of the CGST Act. Rate of tax on the supply of vouchers shall be 18% as per entry no. 453 of Schedule III of Notification No. 1/2017-Central Tax (Rate) dated 28 June 2017 (as amended ('Notification No. 1').

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

AAAR Judgement

AAAR upholds the order of AAR that supply of voucher is supply of goods for purpose of Section 7(1)(a) of CGST Act and as mentioned *supra*. The authority finds that the vouchers are not claim to any debt and in the present case, voucher is in possession of the claimant at the time of claim and hence, cannot be considered as 'actionable claim'.

AAAR noted that the Appellant is not authorized by the Reserve Bank of India to issue any voucher and is not the issuer of voucher but is merely trading in vouchers. AAAR agreed that vouchers are not money as defined under Section 2(75) of the CGST Act as vouchers in the hands of the Appellant does not settle an obligation but rather creates an obligation whereby, settlement occurs when ultimate beneficiary uses the same to purchase goods/ services. AAAR also stated that the decision of the Tamil Nadu AAAR in Kalyan Jewellers India Limited [Order in Appeal No. AAAR/1/2021 (AR) dated 30 March 2021] has no relevance or persuasive value.

Nangia Andersen LLP's Take

The issue of applicability of GST on vouchers has been dealt in the matter of Kalyan Jewellers India Limited [Order in Appeal No. AAAR/1/2021 (AR) dated 30 March 2021] whereby it has been held that voucher is only an instrument of consideration and not goods or services, the same is not classifiable separately but only the supply associated with the voucher is classifiable according to the nature of the goods or services supplied in exchange of the voucher. Further, the AAR discussed the aspect of actionable claim but ruled that vouchers are not actionable claim.

[M/s. Premier Sales Promotion Private Limited (Order No. KAR/AAAR/11/2021-22 dated 22 December 2021)]

GST Clarifications and Updates

Guidelines for recovery proceeding under Section 79 of the CGST Act for cases covered under explanation to sub-section (12) of Section 75

- Sub-section (12) of section 75 of the CGST Act deals with cases where amount of self-assessed tax or interest payable on such tax remains unpaid, the same shall be recovered under the provisions of Section 79 of CGST Act.
- Effective from 1 January 2022, an explanation has been added to Section 75(12) of CGST Act to clarify that "self-assessed tax" shall include the tax payable in respect of outward supplies, the details of which have been furnished under section 37 (GSTR-1), but not included in the return furnished under section 39 (GSTR-3B).
- It implies that where details of tax payable as per details furnished in GSTR-1, has not been paid through GSTR-3B return (either wholly or partly), or any interest payable on such tax remains unpaid, then in such cases, tax short paid on such self-assessed and thus self-admitted liability (and interest thereon), are liable to be recovered Section 79.
- However, it has been clarified through the instruction that an opportunity would be provided to the concerned registered person before initiating recovery proceedings under Section 79 of the CGST Act to explain reasons for differences between GSTR-1 and GSTR-3B. No recovery proceedings would be initiated under Section 79 of CGST Act on account of genuine reasons i.e., typographical error, wrong reporting in GSTR-1 or GSTR-3B, etc.
- If the taxpayer fails to make the payment of short payment/non-payment or fails to explain the difference between GSTR-1 and GSTR-3B within prescribed timeline, proper officer may initiate recovery proceedings under Section 79 of the CGST Act.

(Instruction No. 01/2022-GST dated 07 January 2022)

Functionality for interest calculation in GSTR-3B

Functionality for interest calculation in GSTR-3B to assist the taxpayers in doing a correct self-assessment of tax. This functionality will compute the minimum interest applicable, as per Section 50 of the CGST Act basis the tax liability values declared by the taxpayers.

1. Delayed filing of return: If GSTR-3B is filed after the due date, interest will be applicable from the due date till the actual date of filing return. For taxpayers who are filing GSTR-3B after due date, a pop-up will be shown regarding the option to declare tax-period wise tax liability, if applicable to them.
2. Delayed declaration of liability: A new feature has been provided to voluntarily declare tax-period wise break-up of liability. If exact tax-period wise break-up is provided, then interest will be computed by the system accordingly.

New button called 'Tax liability break-up (voluntary)' has been added in GSTR-3B. System-computed interest values will be auto-populated in the Table-5.1 of the GSTR-3B of the next tax-period. Interest values will be editable. On downward editing of values, the concerned cell will become Red. The system-computed values will also be shown during mouse hovering to caution the taxpayer from making a mistake. Despite these warnings, the system will not stop the taxpayers from filing their GSTR-3B with changed values. The break-up and the manner of interest computation can be viewed by clicking the 'System Generated GSTR-3B' button also. The system-generated PDF of filed GSTR-3B will contain both values: the System computed interest, and the user paid interest values.

Customs & FTP Updates

Master circular on recovery and write-off of arrears of revenue

- Board has issued various Instructions/Circulars to recover arrears under Central Excise, Service Tax and Customs from time to time. Arrears are the overdue payments in terms of taxes, interest, penalty and fine that is confirmed against a person who is liable to pay to the exchequer.
- This Master Circular has superseded the earlier instructions and provides a consolidated guidelines for recovery and write-off of arrears of Indirect Taxes and customs.
- The taxing statute incorporate the legal provisions for such recovery. Various Act and provisions are updated to recovery of arrears.
- Classification of arrears are as follows:
  a) Arrears in litigation/appeal
  b) Restrained Arrears
  c) Arrear where appeal period is not over
  d) Arrear fit for write-off
  e) Any other recoverable arrears
- Procedure under various categories is listed below:

1. Cases under Litigation/Appeal

a) Cases of arrear pending before Supreme Court/ High Court / CESTAT-

I. The Jurisdictional Principal Commissioners/ Commissioners will identify cases whose arrears are above Rs. 1Cr and where the department has sure chances of success in recovery.

II. Such above selected cases would be set for regular monitoring of tax recovery cell/Legal cell/Review cell.

III. Miscellaneous application for early hearing, out-of-turn hearing, early decision, stay vacation, bunching of cases as per merits/ requirement should be requested and respective procedure to be followed.

b) Cases before Commissioner (Appeals)

I. Commissioner (Appeals) will take up cases where the revenue implication is Rs.10 Lakhs or more/recurring nature for immediate disposal.

II. Commissioner (Appeals) shall ensure immediate communication of order to the Assessee as well as to the department.

c) The appeal pending with Additional/ Joint commissioner would be reviewed and high value cases would be taken on priority.

d) Cases before Additional Secretary (Revision Application)- All cases pending should be scrutinized by the jurisdictional Principal commissioners/ commissioners and it should be ensured that comments are sent promptly to the assessee.

2. Cases of restrained arrears

- Recovery in many cases is restrained due to pendency of cases relating to the financial viability of the defaulter before the Board for Industrial and Financial Reconstruction ('BIFR')/ Official liquidator ('OL')/National Company Law Tribunal ('NCLT')/ Debt Recovery Tribunal ('DRT').
- Respective authorities have set out procedures for speedy trial and quicker recovery of arrears.

3) Cases where appeal period is not over

These cases are monitored closely since these are new/fresh cases where the period of appeal is over and no appeal is filed. These cases will switch over to category of 'recoverable arrear' and accordingly action will be undertaken.

4) Recovery of undisputed arrears

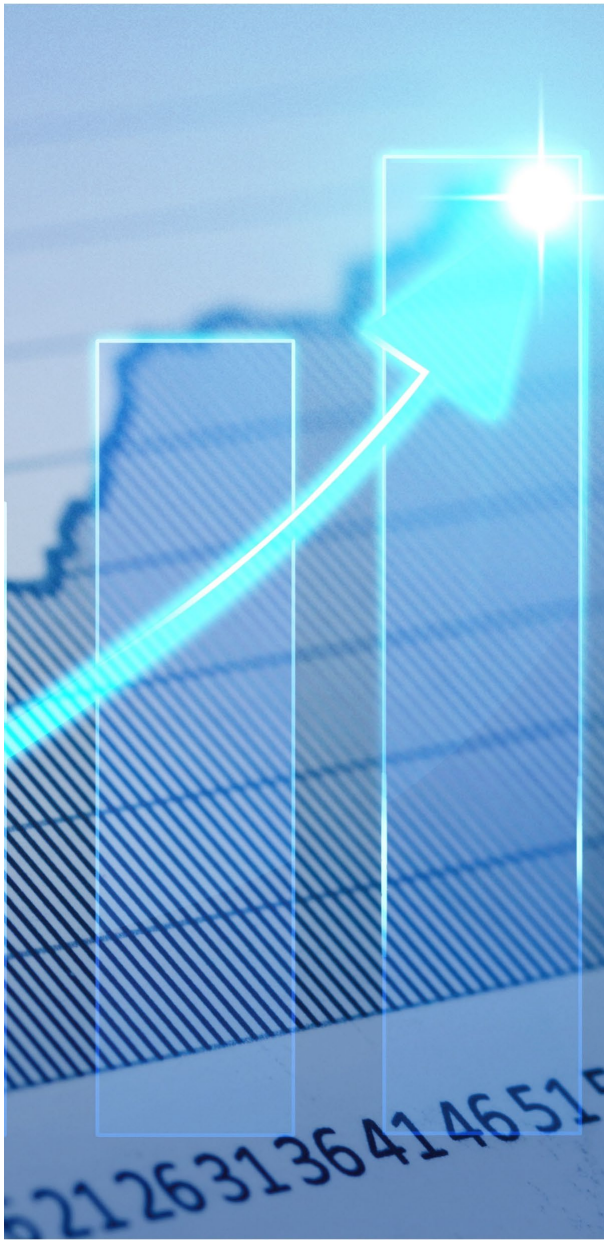
For the cases where demands have been confirmed and the party has not preferred an appeal or where the appeal period is already over or the arrears arise out of orders of Settlement Commission, the recoveries should be initiated immediately, as such cases are free from any restrain/litigation. Following are the steps to recovery:

- Deducting such amounts from any money owing to the defaulter.
- Attachment and sale of excisable goods belonging to the defaulter.
- If the goods belonging to a defaulter are under the control of Customs Officers anywhere in the country (including Ports, lCDs, CFSs, Bonded Warehouses), such officers would be required to recover the said amount by detaining and selling such goods belonging to the defaulter.
- Other ways to collect:
    - Collection through District collector.
    - Detention/attachment and sale of property of defaulter by the department as per provisions of Section 142 1 (c)(ii) of Customs Act, 1962.
    - Recovery by way of attachment and sale of goods/ material etc. from the successor of the defaulter (i.e. transferee, purchaser etc.) in business or trade in whole or part thereof.
    - Invoking Garnishee provision i.e. recovery from the other person whom money is due to such default.

Apart from aforesaid legal provisions there may be other occasions for recovery such are:

- On the Customs side- Recovery through encashing the bank guarantee.
- Attachment of bank accounts of the defaulter.
- The following instructions regarding publication of names of defaulters and grant of reward to the informers and government servants are in place, which should be followed wherever required.
- The responsibility to affect actual recovery will continue to vest with Jurisdictional Principal Commissioners/Commissioners where the cause of arrears took place.
- Instructions contained in CBEC (CBIC) Handbook issued in year 2012 on recovery of arrears or any other circular/ instruction/letter contrary to this circular stand amended accordingly.

(Master Circular No. 1081/02/2022 –CX dated 19 January 2022)



Foreign Trade Policy Updates

Deactivation of Import Export Codes ('IECs') not updated at Director General of Foreign Trade ('DGFT')

- The revised last date for updating the IECs was 31 August 2021, thereafter on non-updating the IECs the third phase of deactivation has been initiated.
- All IECs which have not been updated after 01 July 2020 shall be de-activated with effect from 01 February 2022. The list of such IECs may be seen at the given link (https://www.dgft.gov.in/CP/?opt=IECDL).
- Any IEC where an online updation application has been submitted but is pending with the DGFT Regional Authority for approval shall be excluded from the de-activation list.
- It may further be noted that any IEC so de-activated, would have the opportunity for automatic re-activation without any manual intervention.
- For IEC re-activation after 31 January 2022, the said IEC holder may navigate to the DGFT website and update their IEC online. Upon successful updation the given IEC shall be activated again and transmitted accordingly to Customs system with the updated status.

(Trade Notice 31/2021-22 dated 14 January 2022)

Compliance Calendar

Indirect Tax

Compliance Category	Compliance Description	Frequency	Due dates falling in the month of February 2022
Form GSTR-1	Details of outward supplies filed by registered person	Monthly	11 February 2022
GST Invoice furnishing facility	Optional facility to furnish the details of outward supplies under QRMP Scheme (Optional)	Monthly	13 February 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 February 2022
Form GST PMT-06 (Monthly payment of tax)	Payment of tax under QRMP Scheme	Monthly	25 February 2022
Form GSTR-6 (Return for Input Service Distributor)	Details of input tax credit received and distributed by input services distributor	Monthly	13 February 2022
Form GSTR – 7 (Return for TDS Deductor)	For persons who are required to deduct TDS under GST	Monthly	10 February 2022
Form GSTR – 8 (Return for TCS Collector)	For persons who are required to collect TCS under GST	Monthly	10 February 2022
Form GSTR - 9 (Annual Return)	For registered person having aggregate turnover more than INR 2 crore	Yearly	28 February 2022
Form GSTR-9C (Reconciliation statement)	For registered person having aggregate turnover more than INR 5 crore	Yearly	28 February 2022

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