

Nangia Andersen LLP



Indirect Tax Newsletter

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What's Inside?



Advance Rulings & Judgements

03

- Hon'ble Punjab and Haryana High court in the matter of M/s. Genpact India (P.) Ltd. ('Assessee' or 'Genpact India') has held that BPO services (including maintaining vendor/customer master data, bookkeeping, developing, licensing, and maintaining software, technical IT support services, data analysis and supporting various business functions like sourcing and supply chain management) are not 'intermediary service' under GST.
- Hon'ble High Court (Karnataka) dismisses appeal by the Revenue and allows ITC to purchaser even if tax not discharged by the seller
- Telangana Authority for Advance Ruling ('AAR') held that tax paid on purchases to meet the Corporate Social Responsibility ('CSR') obligations is eligible for Input Tax Credit ('ITC')



GST Clarifications and Updates

07

- Seeks to empower the Competition Commission of India ('CCI') to handle anti-profiteering cases in GST
- CBIC issues clarifications on refunds due to Inverted Duty Structure ('IDS') under GST
- CBIC issues guidelines for verification of transitional credit claimed pursuant to SC ruling



Customs Update & Foreign Trade Policy Update

08

- Extension of exemption from payments of deposits (towards duty, interest, penalty, fee or any other sum payable) through electronic cash ledger.
- CBIC has amended the notification no. 19/2022- Customs (N.T.) dated 30th March 2022 providing exemption from deposits u/s 51A (Payments through electronic cash ledger) of Customs Act, 2022
- Amendments under the Foreign Trade Policy in sync with RBI's A.P. (DIR Series) Circular No. dated 11th July 2022



Compliance Calendar

10

01 Judgements & Advance Rulings

Hon'ble Punjab and Haryana High court in the matter of M/s. Genpact India (P.) Ltd. ('Assessee' or 'Genpact India') has held that BPO services (including maintaining vendor/customer master data, bookkeeping, developing, licensing, and maintaining software, technical IT support services, data analysis and supporting various business functions like sourcing and supply chain management) are not 'intermediary service' under GST.

Brief Facts:

- Genpact India is registered with Haryana GST authorities and is engaged in providing services of maintaining vendor/customer master data, scanning and processing vendor invoices, book keeping, preparing/finalizing books of account, licensing and maintaining software, Technical IT support, data analysis collectively referred as BPO Services to Genpact International.
- Genpact India has filed an application with Haryana GST authorities claiming refund of un-utilized input tax credit ('ITC') on account of zero-rated supplies of services without payment of IGST under the Letter of Undertaking.
- Department filed an appeal before Joint Commissioner CGST (Appeals) against the order passed by Deputy Commissioner contesting entire refund amount and that services provided by Genpact India are intermediary services.
- Pursuant to the same, Order-in-Appeal was passed by the Joint commissioner, CGST (Appeals) holding that the refund was erroneously refunded to the petitioner by considering the services provided by the Assessee are intermediary services and do not qualify as export of services.
- Assessee filed a writ petition against the Order-in-Appeal before the Hon'ble Punjab and Haryana High Court.

Observations and Ruling:

- Recitals of the Agreement provide that the Genpact International has sub-contracted the Assessee for providing the services to its customers. Therefore, it is clear that the Assessee is actually providing the BPO services and information technology services to the customers of Genpact International.
- Scope of an "intermediary" is to mediate between two parties *i.e.* the principal service provider (the 3rd party) and the beneficiary (the agents principal) who receives the main service and expressly excludes any person who provides such main service "on his own account". Accordingly, following three conditions must be satisfied for a person to qualify as an "intermediary"
 - Relationship between the parties must be that of a principal-agency relationship.
 - Person must be involved in arrangement or facilitation of provisions of the service provided to the principal by a 3rd party.
 - Person must not actually perform the main service intended to be received by the service recipient itself.
- There is no change in the legal position *i.e.* with regard to the scope and ambit of "intermediary" services under the service tax regime *vis-a-vis* the GST regime.
- Finding recorded by the respondents-department to hold the Assessee to be in a principal agent relationship with the Genpact International to be without any basis and to be clearly erroneous.
- Sub-contracting for a service is not an "intermediary" service.
- Hon'ble Punjab and Haryana High Court held that order passes by Joint Commissioner (Appeals) holding the Assessee to be an "intermediary" under section 2 (13) of the IGST Act, cannot sustain and is accordingly quashed.

[CWP-6048-2021 (O&M) Dated 11 November 2022]



Hon'ble High Court (Karnataka) dismisses appeal by the Revenue and allows ITC to purchaser even if tax not discharged by the seller

Brief Facts

- M/s. Priyanka Products ('Respondent') is the purchaser of the goods. The Assessing Officer has disallowed the Input Tax Credit ('ITC') on the ground that the seller has not paid the tax.
- The First Appellate Authority has dismissed the appeal. Karnataka Appellate Tribunal ('Tribunal') by the impugned order has allowed the appeal and set-aside the order of assessment and the order passed by the Appellate Authority.
- Revenue filed Sales Tax Revision Petition ('STRP') before High Court of Karnataka at Bengaluru to ascertain whether the Tribunal was right in allowing ITC to the purchaser even if seller has not made the payment of taxes on the output sales.

Observations

- Hon'ble High Court mentioned that it is settled law that the ITC claimed by the purchaser cannot be disallowed on the ground that the seller has not made the payment.
- The Tribunal observed that entire payment including the tax component was made through Account Payee Cheques, RTGS, NEFT.
- The High Court further relied on the decision passed under the case '*State of Karnataka vs. Sri. Rajesh Jain*' wherein it was held that once the assessee has discharged his burden of proof, the ITC cannot be disallowed.

Decision

Hon'ble High Court allowed the ITC to the Respondent and dismissed the STRP filed by the Revenue.

[Sale Tax Revision Petition No.1 of 2022 dated 2 November 2022 - Karnataka HC]



Telangana Authority for Advance Ruling ('AAR') held that tax paid on purchases to meet the Corporate Social Responsibility ('CSR') obligations is eligible for Input Tax Credit ('ITC')

Brief Facts

- M/s Bambino Pasta Food Industries Private Limited ('Applicant') is a manufacturer of Vermicelli and pasta products.
- During Covid period, the applicant donated an oxygen plant as a part of its CSR to AIIMS hospital Bibinagar, Yadadri Bhongir District costing INR 62,74,200 and IGST paid on the same amounted to INR 9,16,200.
- The applicant was of the opinion that such expenditure doesn't qualify as 'gift' as the expense is not incurred voluntarily but incurred to be in compliant with the Act and therefore its credit should not be restricted under Section 17(5) of the CGST Act, 2017.
- The sum and substance of the averments made is that these purchases are made in furtherance of their business and hence tax on such purchases is eligible for input tax credit under section 16(1) of the CGST Act
- Applicant vide instant Application for Advance Ruling sought a ruling on the following question
 - Whether ITC is available on CSR Expenditure spent by company?

Decision

- The Applicant has purchased oxygen plant and donated to AIIMS as a part of their CSR u/s 135 of Companies Act 2013
- The expenditure made towards corporate responsibility under Section 135 of the Act, is an expenditure made in the furtherance of the business. Hence, the tax paid on

purchases made to meet the obligations under CSR will be eligible for ITC under CGST and SGST Acts.

[TSAAR Order No.52/2022 dated 20 October 2022; M/s Bambino Pasta Food Industries Private Limited]



02 GST Updates

Seeks to empower the Competition Commission of India ('CCI') to handle anti-profiteering cases in GST

Central Government on the recommendations of GST Council empowers CCI to examine input tax credit availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by the registered person.

[Notification No. 23/2022 – Central Tax dated 23 November 2022 effective from 1 December 2022]

CBIC issues clarifications on refunds due to Inverted Duty Structure ('IDS') under GST

CBIC clarifies issues relating to refund of unutilized ITC on account of IDS under GST. CBIC vide Notification dated 5 July 2022, amended the formula prescribed for refund on account of IDS under the CGST Rules. Further, CBIC also restricted refund due to IDS in case of supply of certain goods falling under Chapter 15 (edible oils) and Chapter 27 (coal). On the applicability of the said amendments, CBIC has clarified the following:

- The new formula would be applicable for IDS refund claims prospectively i.e. on refund applications filed on or after 5 July 2022. For refund claims filed before 5 July 2022, the erstwhile formula shall apply.

- The restriction on refund under IDS for edible oils and coal, shall apply prospectively, i.e. for refund claims filed on or after 18 July 2022.

[Circular No. 181/13/2022-GST dated 10 November 2022

Notification No. 14/2022-Central Tax dated 5 July 2022

Notification No. 9/2022- Central Tax Rate dated 13 July 2022, effective 18 July 2022]

CBIC issues guidelines for verification of transitional credit claimed pursuant to SC ruling

CBIC has issued fresh guidelines for verification of ITC claims by businesses relating to their transition to the GST regime in 2017. These guidelines are issued in light of the order issued by the Hon'ble Supreme Court of India in July 2022 directing the revenue department to open the GST portal for two months (i.e., from 1-Oct-22 to 30-Nov-22) to enable taxpayers to file/revise Form TRAN-1 and TRAN-2. It may be noted that the Hon'ble Court has only allowed filing of TRAN-1/ TRAN-2 or revising the TRAN-1/ TRAN-2 already filed by the applicant and has not allowed the applicant to file revised returns under the existing laws. The veracity of transitional tax credit claims by businesses has to be verified by the tax officers within a 90-day period, which ends on 28 February 2023.

[Circular No. 182/14/2022-GST dated 10 November 2022]

03

Custom Updates



Extension of exemption from payments of deposits (towards duty, interest, penalty, fee or any other sum payable) through electronic cash ledger.

CBIC has provided exemption from the applicability of the provision of 'payments through electronic cash ledger' under section 51A the Customs Act, 1962 till 31st March 2023 to all classes of persons and all categories of goods from payments of deposits (towards duty, interest, penalty, fee or any other sum payable).

[Notification No. 98/2022-Customs (N.T.), dated 29th November 2022]

CBIC has amended the notification no. 19/2022- Customs (N.T.) dated 30th March 2022 providing exemption from deposits u/s 51A (Payments through electronic cash ledger) of Customs Act, 2022

CBIC has extended the exemption till 1 April 2023 from payment of deposits (towards duty, interest, penalty, fee or any other sum payable) through electronic cash ledger in relation to the following:

- with respect to accompanied baggage;
- with respect to goods imported or exported in customs station where customs automated systems are not in place;
- with regard to payments other than for the specified purposes

[Notification No. 99/2022-Customs (N.T.), dated 29th November 2022]

04

Foreign Trade Policy Updates

Amendments under the Foreign Trade Policy in sync with RBI's A.P. (DIR Series) Circular No. dated 11th July 2022

Central Government has made the following amendments in the Foreign Trade Policy 2015-20, with effect from 9 November 2022, in sync with the RBI's A.P. (DIR Series) Circular No. 10 dated 11th July 2022;

- Para 2.46 "Import for export" has been amended to include the effect of para 2.52(d)(ii) allowing the export realisation in INR also. However, goods imported under para 2.52(d)(i) would be permitted for exports only against payment as per para 2.52(d)(ii), unless otherwise notified by the DGFT;
- In Para 3.20 "Status Holder" INR receipts will also be included for the determination of the status holder.

[Notification No. 43/2015-2020, dated 9th November 2022]



Compliance Calendar

S. No.	Compliance Category	Compliance Description	Frequency	Due Date	Due Date falling In September 2022
1	Form GSTR-1 (Details of outward supplies)	Registered person having aggregate turnover more than INR 5 crores and registered person having aggregate turnover up to INR 5 crores who have not opted for Quarterly Returns Monthly Payment ('QRMP') Scheme	Monthly	11 th day of succeeding month	For Tax Period November 2022 - 11 December 2022
2	Form GSTR-3B (Monthly return)	Registered person having aggregate turnover more than INR 5 crores and registered person having aggregate turnover up to INR 5 crores who have not opted for Quarterly Returns Monthly Payment ('QRMP') Scheme	Monthly	20 th day of next month	For Tax Period November 2022 - 20 December 2022
3	QRMP Scheme				
	Invoice furnishing facility ('IFF')	<ul style="list-style-type: none"> Optional facility to furnish the details of outward supplies under QRMP Scheme 	Monthly	1 st day to 13 th day of succeeding month	For Tax Period November 2022 – 1 to 13 December 2022
	Form GST PMT-06 (Monthly payment of tax)	<ul style="list-style-type: none"> Payment of tax in each of the first two months of the quarter under QRMP Scheme 	Monthly	25 th of the succeeding month	For Tax Period November 2022 – 25 December 2022
	Form GSTR-1 (Details of outward supplies)	<ul style="list-style-type: none"> Registered person having aggregate turnover up to INR 5 crores who have opted for QRMP Scheme 	Quarterly	13 th day of the subsequent month following the end of quarter	For the quarter October 2022 to December 2022 – 13 January 2023

	Form GSTR-3B	<ul style="list-style-type: none"> Registered person with aggregate turnover up to INR 5 crore (opted for QRMP Scheme) having place of business in Group 1 states¹ and union territories 	Quarterly	22 nd day of the subsequent month following the end of quarter	For the quarter October 2022 to December 2022 – 22 January 2023
	Form GSTR-3B	<ul style="list-style-type: none"> Registered person with aggregate turnover up to INR 5 crore (opted for QRMP Scheme) having place of business in Group 2 states² and union territories 	Quarterly	24 th day of the subsequent month following the end of quarter	For the quarter October 2022 to December 2022 – 24 January 2023
4	Form GSTR-6 (Return for input service distributor)	<ul style="list-style-type: none"> Return for input service distributor 	Monthly	13 th of the succeeding month	For Tax Period November- 13 December 2022
5	Form GSTR-9 (Annual Return)	<ul style="list-style-type: none"> Annual Return if aggregate turnover is more than INR 2 crore 	Yearly	On or before the 31 st December following the end of FY	Annual Return and reconciliation statement for FY 2021-22: 31 December 2022
6	Form GSTR-9C (GST Audit)	<ul style="list-style-type: none"> GST Audit if aggregate turnover is INR 5 crore or more 			

¹Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh, the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands or Lakshadweep.

²Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, , Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand, Odisha, Jammu and Kashmir, Ladakh, Chandigarh and Delhi



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