

Nangia Andersen LLP



Indirect Tax Newsletter

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01 Judgements & Advance Rulings

The Supreme Court held that Purchaser of Sugar-Mill in slump sale not liable for the pre-sale transactions liabilities.

Brief Facts:

- M/s. Wave Industries Private Limited ('Applicant') entered into a Slump Sale Agreement dated 17 July 2010, followed by the sale deed dated 4 October 2010 for the Amroha sugar mill with UPSSCL [one of the loss making sugar mill owned by the Uttar Pradesh State Sugar Corporation Limited ('UPSSCL')] and the applicant got the possession of the Amroha unit on 17 August 2010;
- The Sale deed agreement stated that seller shall be liable to bear all assessments, rents, rates, taxes, outgoing and impositions of whatsoever nature relating to the Unit upto the signing date and thereafter these will be the liability of the purchaser;
- The dispute here relates to liability of unpaid duty, penalty, and interest. The Appellant filed writ petition before the Lucknow Bench of the High Court of Allahabad for the payment of certain liabilities. Consequently, declared to be borne by the Appellant and not by the seller;
- The appeal is to solve the issue whether those outstanding liabilities are to be discharged by the seller or the purchaser.

Observations:

- The Supreme Court observed that liability of duty, interest and penalty for the period prior to the date of signing of agreement has been fastened on the purchaser on the basis that the recovery of all contingent liabilities after the date of signing of agreement would be from purchaser and not from the seller;

- The Supreme Court further observed that there is no dispute that the liability towards the duty in question for the Amroha unit are in respect of business transactions for the period anterior to the signing date of the Slump Sale Agreement. Moreover assessment orders and recovery citations have been issued by the taxing authorities in the name of the UPSSCL;
- It referred to case of 'Bharat Earth Movers vs. Commission of Income Tax', Karnataka where Justice R C Lahoti stated on the issue of contingent liability. Furthermore, detailed provisions with regard to distribution of liabilities in respect of the dues whereby duties in respect of the transactions upto the date of agreement are to be borne by the seller and buyer is responsible for the post-sale transactions;
- The Supreme Court stated that liability in question, not being a contingent one, cannot be fastened on the purchaser who were not operating the unit, prior to the Slump Sale Agreement dated 17 July 2010;

- The Supreme Court further held that prior to 17 July 2010, the Appellant was neither a dealer nor a manufacturer. Therefore, not liable for duty and tax obligations to satisfy for the operation of the sugar mill.

Decision

- The Supreme Court concluded that the rejection of the representation of the Appellant appears to be arbitrary and the speaking order could not therefore have been sustained by the High Court in the impugned judgment.
- The appeal is accordingly allowed by setting aside the impugned judgment and the liability in question, not being a contingent liability, cannot be fastened on the shoulders of the Appellant.

[M/s. Wave Industries Private Limited [TS-548-SC-2022-NT, dated 16 December 2022]



Gujarat Appellate Authority for Advance ruling ('AAAR'): Tata Motors eligible for input tax credit (ITC) on canteen charges recovered from 'direct' employees only.

Brief Facts

- M/s TATA Motors Limited ('Appellant') submitted that they are a manufacturing unit and are maintaining a canteen facility for their employees at their factory premises to comply with the mandatory requirement under the Factories Act, 1948.
- The Appellant is recovering nominal amount from employees and expenditure incurred towards canteen facility borne by Appellant is part and parcel cost to Company.
- The Appellant has sought Advance ruling on inter-alia "whether ITC is available to applicant on GST charged by service provider on canteen facility provided to employees working in factory?"
- The Gujarat Authority for Advance Ruling ('GAAR') ruled that ITC on GST paid on canteen facility is blocked credit under Section 17(5)(b)(i) of Central Goods and Services Tax Act, 2017 ('CGST Act') and inadmissible to applicant.
- Dissatisfied with the ruling of GAAR, the Appellant further filed an appeal with the AAAR.

Observations

AAAR modified the advance ruling of the AAR, placing reliance on the clarification issued by CBIC vide Circular No. 172/04/2022-GST dated 6 July 2022 which states that the ITC in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force and ruled the following:

- ITC will be available to the Appellant on GST charged by the service provider in respect of canteen facility provided to its direct employees working in their factory, in view of the provisions of Section 17(5)(b) as amended effective from 1 February 2019 and clarification issued by CBIC vide Circular No. 172/04/2022-GST dated 6 July 2022, read with provisions of Section 46 of the Factories Act, 1948, and Gujarat Factory Rules , 1963;
- ITC on the above is restricted to the extent of the cost borne by appellant for providing canteen services to its direct employees, but disallowing proportionate credit to the extent embedded in the cost of food recovered from such employees.

[M/s TATA Motors Limited - GUJ/GAAAR/APPEAL/2022/23 dated 22 December 2022]

[M/s TATA Motors Limited - GUJ/GAAR/R/39/2021 dated 30 July 2021]



02

GST Clarification Updates

Circular issued by CBIC for clarifying to deal with difference in ITC availed in GSTR-3B as compared to ITC available in GSTR-2A for FY 2017-18 and FY 2018-19

Proper officer may follow below procedure to handle following situations:

- Supplier failed to file GSTR-1 for a tax period but has filed GSTR-3B for such tax period;
- Supplier has filed GSTR-1 and GSTR-3B for a tax period but failed to report a particular tax invoice in his returns;
- Supplier has reported B2B supply as B2C supply; and
- Supplier has filed GSTR-1 and GSTR-3B for a tax period but has mentioned wrong GSTIN of the recipient.

Procedure to be followed :

- The proper officer will seek details of all such invoices on which ITC has been availed but were not available in GSTR-2A of the recipient;
- Proper officer shall ascertain the fulfilment of conditions of section 16 subsection 2 of CGST Act.
- For ensuring that tax on such invoices was actually paid by the supplier, the proper officer shall seek:
 - A certificate from the Chartered Accountant (CA) or the Cost Accountant (CMA) with a UDIN in cases where difference between ITC claimed in GSTR-3B by the recipient v/s ITC available in GSTR-2A of the recipient in respect of a particular supplier exceeds INR 5 Lakhs. The certificate shall state that such supplies

were actually made by the supplier to the recipient and GST on such invoices has been paid by the supplier in its GSTR-3B;

- A certificate from the concerned supplier in cases where difference between ITC claimed in GSTR-3B by the recipient v/s ITC available in GSTR-2A of the recipient in respect of a particular supplier is upto INR 5 Lakhs. The certificate shall state that such supplies were actually made to the recipient by the supplier and the supplier in its GSTR-3B has paid GST on such invoices.
- It may be noted that the process mentioned above is case specific and is applicable for errors committed in reporting during FY 2017-18 and FY 2018-19 only. In addition, such process will apply only to ongoing proceedings in scrutiny/ audit/ investigations or where any adjudication or appeal proceedings are still pending and not to the completed proceedings.

[Circular No. 183/15/2022 dated 27 December 2022]

Clarification issued by CBIC in relation to entitlement of ITC in case of supply of services by way of transportation of goods, including by mail or courier where place of supply is outside India and supplier and recipient of such supply of services are located in India

- CBIC clarified that in case of supply of services by way of transportation of goods, including by mail or courier, where the transportation of goods is to a place outside India, and where the supplier and recipient of the said supply of services are located in India, the place of supply is the foreign destination where the goods are being transported;
- Aforesaid supply of services would be considered as inter-State supply since the location of the supplier is in India and the place of supply is outside India & accordingly Integrated Tax (IGST) would be chargeable on the said supply of services. Additionally, supplier of service would report place of supply of such service by selecting State code as '96-Foreign Country';
- CBIC further clarified that recipient of aforesaid services of transportation of goods would be eligible to avail ITC in respect of the IGST so charged by the supplier, subject to the fulfilment of other conditions in GST legislation;

[Circular No. 184/16/2022 dated 27 December 2022]

Clarification on applicability of provisions of section 75(2) of the CGST Act and its effect on limitation

- Clarification provided with regard to case where the appellate authority or appellate tribunal or court concludes that the notice

issued by proper officer under section 74(1) is not sustainable for reason that the charges of fraud or any willful-misstatement or suppression of facts to evade tax have not been established, then the proper officer shall determine the tax payable by the notice, deeming as if the notice was issued under Section 73(1);

- Through this Circular, CBIC provides clarifications on what would be the time period for re-determination of the tax, interest and penalty payable by the noticee in such cases?
 - It would be two years from the date of communication of the said direction by Appellate Authority or Appellate Tribunal or the Court.
- Clarification provided with regard to how the amount payable by the noticee be recomputed by the proper officer?
 - The amount is to be re-determined as per the provisions of sub-section (2) of section 73 of the CGST Act, atleast three months prior to the time limit, read with section 73(10) of the CGST Act which provides a time limit of three years from the date of furnishing of annual return for the relevant period.

[Circular No. 185/17/2022-GST dated 27 December 2022]



Clarification issued by CBIC in relation to taxability of no claim bonus offered by Insurance companies and applicability of e-invoicing w.r.t an entity

Clarification in relation to taxability of No Claim Bonus offered by Insurance Companies:

- CBIC clarified that activity of not lodging insurance claim in previous years would not be considered as supply by a person claiming No claim bonus;
- Further, no claim bonus is a permissible deduction under Section 15 (3)(a) of the CGST Act for the purpose of calculation of value of supply of the insurance services provided by the insurance company to the insured. Accordingly, GST would be leviable on actual insurance premium amount (payable by the policy holders to the insurer) after deduction of No Claim Bonus mentioned on the invoice.

Clarification in relation to applicability of e-invoicing w.r.t an entity

- Certain entities/sectors have been exempted from mandatory generation of e-invoices as per rule 48(4) of Central Goods and Services Tax Rules, 2017. CBIC clarified that such exemption from generation of e-invoices is for the entity as a whole and is not restricted by the nature of supply being made by the said entity.

[Circular No. 186/18/2022 dated 27 December 2022]

CBIC issues clarifications regarding the treatment of statutory dues under GST law in respect of the taxpayers for whom the proceedings have been finalized under Insolvency and Bankruptcy Code, 2016 ('IBC')

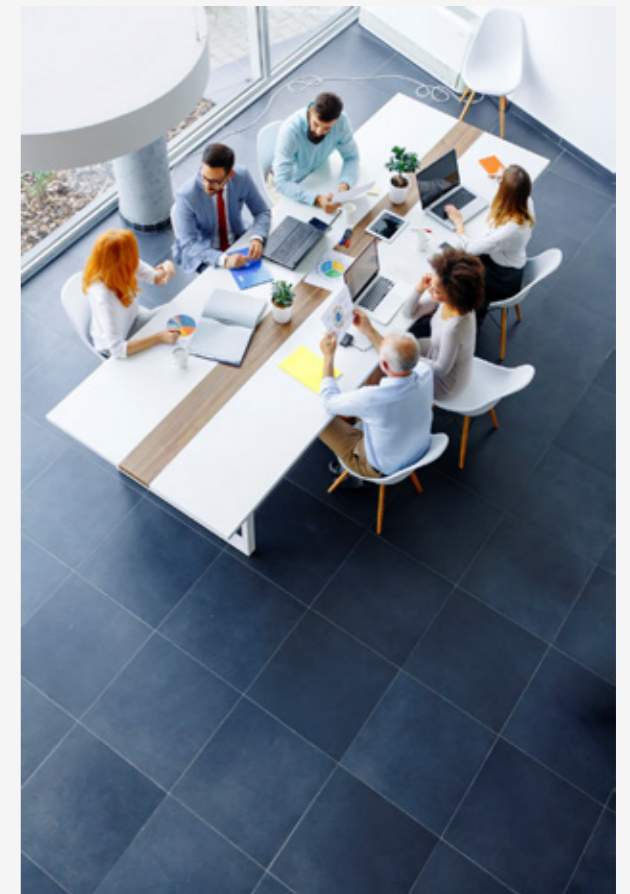
- To bring uniformity, it has been clarified that in terms of Section 84 of the CGST Act if government dues against any person under CGST Act are reduced as a result of any appeal, revision or other proceedings, then the Commissioner has to provide an intimation of such reduction to the taxpayer as well as to the appropriate authority with whom the recovery proceedings are pending.
- It has been clarified that recovery proceedings can be continued in relation to such reduced amount of government dues.
- The proceedings conducted under IBC also adjudicate the government dues pending under the CGST Act or under existing laws against corporate debtors, these are to be covered under the term 'other proceedings' in section 84 of the CGST Act.
- Therefore, in cases where a confirmed demand for recovery has been issued by the tax authorities for which a summary has been issued in FORM GST DRC-07/DRC 07A against the corporate debtor and where the proceedings have been finalised against the corporate debtor under IBC reducing the amount of statutory dues payable, then the Jurisdictional Commissioner shall issue an intimation in Form GST DRC-25 for reducing such demand to the taxable person or any other person as well as the appropriate authority with whom the recovery proceedings are pending.

[Circular No. 187/19/2022-GST dated 27 December 2022]

Manner of filing an application for refund by unregistered persons prescribed

- It is issued for laying down the procedure for claim of refund of tax borne by the unregistered buyers in cases where the contract/ agreement for supply of services, like construction of flat/ house or long-term insurance policy, is cancelled and the time period of issuance of credit note by the concerned supplier is over.
- Unregistered persons should obtain temporary registration using PAN and refund Application shall be filed in Form GST RFD-1 along with Statement 8 under the category 'Refund for Unregistered person' under section 54(1). Separate applications for refund have to be filed in respect of invoices issued by different suppliers.

[Circular No. 188/20/2022-GST dated 27 December 2022]



Changes made in Central Goods & Services Tax Rules, 2017

Rule 8 - Application for Registration

- Mobile no. and email address will not be required to be filled in Part A of the GST Registration application.
- PAN No. filled in PART A of the application shall also be verified through separate OTP sent to mobile number and e-mail address linked to PAN.
- New sub-rule (4A) is inserted and applicable only in the state of Gujrat: Every application where authentication of Aadhar Number is opted shall be followed by biometric based Aadhar Authentication and taking photograph of the applicant where the applicant is individual along with verification of original copy of documents uploaded with the application at one of the Facilitation Centres notified by Commissioner and application shall be deemed to be complete only after completion of this process.

Rule 9 - Verification of the application and approval

- Person who has undergone Aadhar authentication as specified in sub rule (4A) of Rule 8 and is identified based on data analysis and risk parameters for carrying out physical verification of place of business registration shall be granted after carrying out the physical verification of place of business

Rule 12 - Grant of registration to persons required to deduct tax at source or to collect tax at source

- In case of a person who is registered as Tax Deductor or Tax Collector, the officer may cancel the registration based on a request made in writing by said registered person

Rule 37 - Reversal of ITC in case of non-payment of consideration

- Registered Person who has availed ITC but failed to pay the amount to the supplier wholly or partly shall pay or reverse the amount of ITC proportionate to the amount not paid to the supplier

Rule 37A is inserted:

- Where ITC has been availed by registered person in respect of invoice or debit note, the details of which is furnished by supplier in GSTR1 however GSTR 3B of the corresponding period has not been submitted till 30th September following the end of financial year in which ITC is availed, the said amount of ITC shall be reversed in GSTR 3B on or before 30th day of November following the end of such financial Year, if the said ITC is not reversed till prescribed period, such amount shall be payable along with interest. Further, when such supplier furnishes GSTR 3B, said person may re-avail amount of such credit in GSTR 3B

Rule 46 - Tax Invoice

- Where any taxable service is supplied by or through an electronic commerce operator or by a supplier of OIDAR Services to a recipient who is unregistered, irrespective of the value of such supply, a tax invoice issued by registered person shall contain the name and address of recipient along with its PIN code and name of the state and said address shall be deemed to be the address of recipient

Rule 59 - Form & Manner of furnishing details of outward supplies

- Where a registered person has been intimated for difference in tax liability reported in GSTR1 and in GSTR 3B in respect of a tax period, such person shall not be allowed to furnish GSTR 1 or IFF for subsequent tax period unless he has deposited the amount or furnished the reply explaining the reasons

New Rule 88C shall be inserted:

- Where tax payable as per GSTR1/IFF exceeds the amount of tax liability reported in GSTR 3B by such amount or percentage as may be prescribed, said registered person shall be intimated of such difference in Form GST DRC - 01B on common portal and copy of such intimation shall be sent to email address directing to pay the differential amount or explain the reasons of differences within a period of seven days. If any amount remains unpaid or no reason is furnished within time prescribed or reason is not found acceptable by proper officer, said amount shall be recoverable in accordance with Section 79.

Rule 89 - Application for Refund of tax, interest, penalty, fee or any other amount

- In case of claim of refund by an unregistered person where the agreement or contract for supply of service has been cancelled or terminated:
 - a statement containing details of the invoices along with a copy of such invoices, proof of making payment to the supplier, the copy of agreement or registered agreement or contract, as applicable, the letter issued by the supplier for cancellation or termination of agreement or contract for supply of service, details of payment received from the supplier against cancellation

or termination of such agreement in respect of which refund is being claimed shall also be required to be submitted along with refund application.

- A certification from supplier that he has paid tax and he has not adjusted the tax amount involved in these invoices against his tax liability by issuing credit note also he has not claimed and will not claim refund of the amount of tax.

- No certificate from the chartered Accountant is required to be furnished in cases where refund is claimed by an unregistered person who has borne the incidence of tax.

Rule 109C - Withdrawal of Appeal

- The appellant may at any time before issuance of show cause notice or before issuance of order whichever is earlier, file an application to withdraw any appeal in FORM GST APL - 01/03W.

Rule 138 - E-way Bill

- E-way Bill is required to be generated for imitation jewellery as well.

Rule 108 & 109 - Appeal

In case of filing of appeal:

- Where decision or order appealed against is uploaded on common portal, date of issue of provisional acknowledgement shall be considered as date of filing of appeal.
- Where decision or order appealed against is not uploaded on common portal, the appellant shall submit a self-certified copy of said decision or order and officer shall issue an acknowledgement and date of issue of provisional acknowledgement shall be considered as date of filing of appeal.

03 Custom Updates

- Where self-certified copy is not submitted within a period of seven days, the date of submission of such copy shall be considered as the date of filing of appeal.

Rule 46A - Invoice-cum-bill of supply

- When a registered person issues 'invoice cum bill of supply' for supplying taxable as well as exempted goods to an unregistered person, such invoice cum bill of supply shall contain all details which a regular tax invoice contains.

FORM GSTR 1

Certain tables are added in Form GSTR 1:

- Details of the supplies made through e-commerce operators on which e-commerce operators are liable to collect tax under section 52 or liable to pay tax u/s 9(5) (Supplier to report)
- Amendment to details of the supplies made through e-commerce operators on which e-commerce operators are liable to collect tax u/s 52 of the act or liable to pay tax u/s 9(5) (Supplier to report)
- Details of the supplies made through e-commerce operators on which e-commerce operators is liable to pay tax u/s 9(5) (e-commerce operator to report)
- Amendment to details of the supplies made through e-commerce operators on which e-commerce operator is liable to pay tax u/s 9(5) (e-commerce operator to report, for registered recipients)
- Amendment to details of the supplies made through e-commerce operators on which e-commerce operator is liable to pay tax u/s 9(5) (e-commerce operator to report, for unregistered recipients)

[Notification No.- 26/2022 and 27/2022 dated 26 December 2022]

Postal Export (Electronic Declaration and Processing) Regulations, 2022

CBIC has notified Postal Export (Electronic Declaration and Processing) Regulations, 2022. which shall come into force from 9 December 2022.

[Notification No. 104/2022-Customs (N.T.), dated 9 December 2022]

04 Foreign Trade Policy Updates

Inclusion of additional export items in Appendix 4R with effect from 15 December 2022

Central Government has revised RoDTEP (Remission of Duties and Taxes on Exported Products) Appendix 4R thereby covering additional export sectors/items in chapter 28, 29, 30 & 73 for exports with effect from 15 December 2022 and shall be applicable till 30 September 2023.

[Notification No. 47/2015-20, dated 7 December 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 December 2022 - 11 January 2023
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 December 2022 - 20 January 2023
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 December 2022 – 1 to 13 January 2023
	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 December 2022 – 25 January 2023
	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

		<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 		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 (Monthly return)	<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 December- 13 January 2022

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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