

Indirect Tax

Newsletter

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01

Advance Rulings & Judgements

Hon'ble Supreme Court of India dismisses Special Leave Petition ('SLP') filed by Revenue involving denial of Input Tax Credit ('ITC') on account of mismatch between GSTR-2A and 3B

Brief Facts

- M/s. Suncraft Energy Private Limited ('Assessee' or 'Respondent') is registered for GST purposes and procures certain supplies for running its business. Certain vendors from whom supplies were procured did not reflect the details of outward supplies in their GSTR-1 and as a result certain invoices were not reflected in GSTR-2A of Assessee for FY 2017-18. Show Cause Notice was issued by the Assistant Commissioner of State Tax, Ballygunge charge & Ors. ('Petitioner') demanding the excess ITC availed by the Assessee;
- The Assessee was in possession of all the tax invoices and details of the payment for value of supply and taxes thereon. However, the Petitioner chose to raise the demands with the appellants before conducting any enquiry against the supplier;
- Aggrieved by the order of the Petitioner, Assessee preferred a writ before the Hon'ble Calcutta High Court;
- Hon'ble Calcutta High Court held that the Petitioner had not conducted any enquiry on the supplier more particularly when clarification had been issued where furnishing of outward details in Form GSTR 1 by a corresponding supplier and the facility to view the same in Form GSTR 2A by the recipient is in the nature of tax payer facilitation and does not impact the ability of the taxpayers to avail input tax credit on self-assessment basis in consonance with the relevant provisions;
- Basis the above, the Hon'ble Calcutta High Court ruled in favour of the Assessee and set aside the order passed by the Petitioner. Aggrieved by the Hon'ble Calcutta High Court decision, the Petitioner preferred filing a Special Leave Petition ('SLP') before the Hon'ble Supreme Court of India.

Observation & Decision

- The Hon'ble Supreme Court of India exercised its power under Article 136 of the Constitution of India and refused to interfere in the matter citing the demand to be on the lower side. SLP filed by revenue was thus dismissed.

[The Assistant Commissioner of State Tax, Ballygunjge charge & Ors. Vs. Suncraft Energy Private Limited -TS-653-SC-2023-GST]

Himachal Pradesh Appellate Authority for Advance Ruling ('AAAR') held that Input Tax Credit ('ITC') not available on supply of food to employees at subsidized rates

Brief Facts

- M/s Federal-Mogul Anand Bearings India Limited ('Appellant') is engaged in manufacture, supply and distribution of automotive components used in automobiles. At its manufacturing units located in the state of Himachal Pradesh, the Appellant is mandated by the Factories Act, 1948 to provide canteen facility. It provides such facility to its management and contractual employees as per provisions of the Factories Act, 1948 at subsidized rates;
- Accordingly, Appellant entered into an agreement with a canteen service provider who raises GST invoice for his services charging GST @5%. The Appellant does not avail ITC of GST paid on invoice raised by the Canteen Service provider;
- Appellant recovers fixed amount from the salary of management employees irrespective of whether canteen facility is used or not. Further, the amount liable to be paid by contractual employees is recovered from the manpower supplier. The manpower supplier issues credit note to the appellant towards recovery of such canteen charges;
- Appellant preferred an Advance Ruling application before Himachal Pradesh Authority for Advance Ruling. Himachal Pradesh Advance Ruling Authority vide order no. HP-AAR-21/2021-7865-68 ruled as under:
 1. Whether the subsidized deduction made by the Applicant from the Employees who are availing food in the factory would be considered as a "supply" by the Appellant under the provisions of Section 7 of Central Goods and Service Tax Act, 2017 and Himachal Pradesh Goods and Service Tax Act, 2017- **Answered in affirmative;**

2. In case response to the above is yes,

- Whether GST is applicable on the nominal amount deducted from the salaries of its employees- **Answered in affirmative;**
- Whether GST would be applicable on the nominal amount deducted from the Manpower supply contractor in case of contractual employees- **Answered in affirmative;** and
- Whether ITC of the GST charged by the Canteen Service Provider would be eligible for availment to the Applicant- **Answered in negative.**

Aggrieved by the order of Advance Ruling Authority, Appellant preferred the present Appeal to the Himachal Pradesh Appellate Authority

Observations

- Himachal Pradesh Appellate Authority observed as under:
 - Factories Act, 1948 mandates appellant for providing canteen facility to its employees. In this case, Authorities held that such facility is in connection with and ancillary to its main activity irrespective of volume of transactions;
 - Authorities clarify that concessional amount charged from employees treated as consideration as quantum of amount recovered is immaterial for GST purpose;
 - It is also observed that Circular No. 172/04/2022 dated 6 July 2022, that perquisites which mandatory provided by employer to employees in terms of contractual agreement are outside ambit of GST. Relevant extract of such circular stated below:

Issue	Clarifications
Whether various perquisites provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee are liable for GST?	<ol style="list-style-type: none">1. Schedule III to the CGST Act provides that “services by employee to the employer in the course of or in relation to his employment” will not be considered as supply of goods or services and hence GST is not applicable on services rendered by employee to employer provided they are in the course of or in relation to employment.2. Any perquisites provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee are in lieu of the services provided by employee to the employer in relation to his employment. It follows therefrom that perquisites provided by the employer to the employee in terms of contractual agreement entered into between the employer and the employee, will not be subjected to GST when the same are provided in terms of the contract between the employer and employee.

- AAAR observed that appellant had no explicit contractual agreement related to canteen facility with the employees/contractual workers, therefore cannot be treated as perquisites as per circular;
- Canteen contractor is providing service to Appellant which is classifiable as Restaurant Service and the Appellant himself is providing the same to its workers. Restaurant services compulsorily attracts GST @5% without ITC in non-specified premises and Appellant's premises fall under such category.

An alternate view was given wherein the AAAR observed that had the Canteen contractor not been appointed but decided to run the canteen himself, as mandated under the Factories Act, 1948, then also he would have had to compulsorily pay GST @5% without availment of ITC.

Decision

- Supply of food to the employees and contractual workers is a supply under the provisions of section 7 of CGST Act and Himachal Pradesh Factories Rules 1950 and accordingly, leviable to GST;
- Input Tax Credit of the GST charged by the Canteen Service Provider would not be available to the Appellant.

[M/s. Federal-Mogul Anand Bearings India Limited [HP/AAAR/RP-DY/FM/01/2023, Dated 26 September 2023]

Rajasthan Authority for Advance Ruling ('AAR') held that Residential dwelling leased out for commercial purpose will be taxable under forward charge

Brief Facts

- Deepak Jain ('Applicant') is the owner of a property ('Demised Premises') and has leased the same to Back Office IT Solutions Private Limited ('Lessee') which is engaged in providing comprehensive fund accounting, reporting, and analytics solutions to fund administrators in the hedge fund industry. The Lessee is registered for GST purposes in the state of Rajasthan;
- Lease deed issued by the Jaipur Development Authority ('JDA') stipulates that the land use of the property to be residential;
- Further, lease agreement entered into by the Applicant and the lessee stipulates that the property be used solely for commercial use (i.e. for establishing branch/office) of the lessee and that construction of property is done for commercial purposes only;
- In view of the above facts, Applicant filed Advance Ruling Application before the AAR on following questions:
 - Whether the Demised premises will be covered in definition of residential dwelling for the purpose of notification No.05/2022-CentralTax (Rate) dated July 13, 2022?
 - If out of following which are factors important to include in definition of residential dwelling?
 1. Land use of property by local authorities; or
 2. Layout of the property, its structure, whether it is designed for usage as a residential unit or a commercial unit; or

3. The purpose for which the dwelling is put to use; or
4. How is the plan of the property sanctioned by the local authorities; or
5. The intention of the developer / owner of the property; or
6. The length of stay intended by the users; or
7. Electricity Bill; and
8. Municipal Tax

Observations

- AAR observed that renting of immovable property is considered as a supply service under the GST Legislation;
- Until July 17, 2022, renting residential dwellings for use as a residence was exempt from GST, while renting for commercial use was taxable at 18%. However, from July 18, 2022, the taxability of renting of residential property underwent certain changes and services by way of renting of residential dwelling used as residence is taxable under the reverse charge mechanism, if rented to a registered person. Taxability of renting of Commercial property remains taxable under the forward charge mechanism;
- AAR observed that the term “residential dwelling” is not defined under Central Goods and Services Tax Act, 2017. AAR further observed that primary consideration is to find out the use of property rented to determine the taxability;
- In the present case, lease agreement entered between Applicant and lessee stipulates that premises shall be used solely for commercial purpose (i.e. for establishing branch/office) and the electricity connection of the premises has also been issued for commercial purpose.

Decision

- AAR ruled that premises will not be covered in the definition of residential dwelling in terms of Notification No.05/2022-Central Tax (Rate) dated 13 July 2022 as it is being used for commercial use;
- In response to the Second question, AAR ruled that the important factors to be included in the definition of Residential Dwelling is the purpose for which the dwelling is put to use and the length of stay intended by the users.

[Deepak Jain - TS-664-AAR (RAJ)-2023-GST, Dated 20 December 2023]



Hon'ble Bombay High court held that GSTR-1 rectification post due date shall be allowed if due to bona fide human errors

Brief Facts

- M/s. Star Engineers(I) Private Limited ('Petitioner'), is engaged in designing, developing, manufacturing and supplying wide range of electronic components for industrial purpose. Petitioner has a regular business relationship with Bajaj Auto Limited ('BAL');
- During Financial Year ('FY') 2021-2022 , the Petitioner delivered goods to third-party vendors on behalf of BAL, following a "Bill-to-Ship-to-Model" as per BAL's instructions. Although, the petitioner correctly issued e-invoices and credit notes to BAL with the appropriate GST identification number (GSTIN), there was an inadvertent error in Form GSTR-1 for the periods July 2021, November 2021, and January 2022. The GSTIN of third-party vendors who received the shipment was inadvertently reported instead of BAL's GSTIN in the said returns;
- Petitioner discovered this inadvertent error, post due date of correction in form GSTR-1 for the FY 2021-22. As a result, these invoices were appearing in GSTR-2B of third party instead of BAL, restricting BAL to claim Input Tax Credit ('ITC') for these invoices;
- Petitioner filed an application before the Deputy Commissioner of State Tax seeking approval to Modify/Amend the GSTR-1 for FY 2021-22. However, the said request by the Petitioner was rejected;
- Aggrieved by the order of the Deputy Commissioner of State Tax, Petitioner filed the present writ petition before the Bombay High Court;

Observations

- Hon'ble High court observed that Section 37, read with Section 38 and Section 39 of CGST Act, 2017 need to be purposively interpreted. Interpreting sub-section (3) of Section 37 should not restrict the petitioner from presenting accurate details in their GST returns in the category of cases when there is a bona fide and inadvertent error in furnishing any particulars in filing of returns, accompanied with the fact that there is no loss of revenue;
- High court observed that Petitioners reliance on the judgement of Hon'ble Madras High Court in the matter of Sun Dye Chem vs. Assistant Commissioner (ST) & Ors. wherein an error was committed by Sun Dye Chem in filing details relating to credit is apt in the current circumstance;
- It was also observed that in such cases the department is aware that there is no loss of revenue to the Government. The department needs to avoid unwarranted litigation on such issues, and make the system more assessee friendly.

Decision

- Hon'ble High court allowed the petitioner to amend/rectify the Form GSTR-1 for the impugned tax periods of FY 2021-22.

[Star Engineers (I) Pvt. Ltd. vs. UOI & Ors. -TS-654-HC(BOM)-2023-GST dated 14 December 2023]



02

GST Updates

Introduction of Amnesty scheme for GST appeal filing

- CBIC introduced an amnesty scheme for GST appeal filing providing relief to the following taxable persons:-
 - Those taxable persons who could not file an appeal against the order passed by the proper officer on or before the 31st day of March, 2023 under section 73 or 74 of the CGST Act, 2017 ('The said act') within the time period specified in sub-section(1) of Section 107 read with sub-section (4) of Section 107 of the said Act, and
 - Those taxable persons whose appeal against the said order was rejected solely on the grounds that the appeal was not filed within the time period specified in Section 107
- The said person shall file an appeal against the said order in FORM **GST APL-01** in accordance with subsection (1) of Section 107 of the said Act, on or before 31st day of January 2024
- An appeal under this notification can be filed only if the appellant has paid the full amount of tax, interest, fine, fee and penalty arising from the order and a sum equal to twelve and a half per cent of the remaining amount of tax in dispute arising from the said order , subject to a maximum of twenty-five crore rupees out of which twenty percent should have been paid by debiting from Electronic Cash Ledger,
- Further, an appeal under this notification shall not be admissible in respect of a demand not involving tax.

[Notification No. 53/2023-Central Tax dated 2 November 2023]

Extension of due date for filing GSTR-3B for Nov-2023 in certain districts of Tamil Nadu

CBIC vide notification 55/2023- Central Tax has extended the due date for furnishing the return in **Form GSTR-3B** for the month of November-2023 till 27th day of December, 2023 for registered persons whose principal place of business is in the districts of Chennai, Tiruvallur, Chengalpattu and Kancheepuram in the state of Tamil Nadu and are required to furnish return under sub-section (1) of section 39 read with clause (i) of sub-rule (1) of rule 61 of the Central Goods and Services Tax Rules, 2017.

[Notification No. 55/2023-Central Tax dated 20 December 2023]

Extension of time limit for issuance of order under Section 73 for the Financial Year 2018-19 and 2019-20

CBIC has extended the time limit specified under sub-section (10) of Section 73 for issuance of order under sub-section (9) of Section 73 of the CGST Act, 2017 ('the said act'), for recovery of tax recovery of tax not paid or short paid or of input tax credit wrongly availed or utilized, relating to the period as specified below, namely:-

- For the Financial Year 2018-19, up to the 30th day of April, 2024; and
- For the Financial Year 2019-20, up to the 31st day of August, 2024.

[Notification No. 56/2023-Central Tax dated 28 December 2023]



03

Custom Updates

Authorization of Booking Post Offices and their corresponding Foreign Post Offices in terms of the Postal Export (Electronic Declaration and Processing) Regulations, 2022

Government of India issued Circular no – 27/2023- Customs which provides for important update on the Postal Export (Electronic Declaration and Processing) Regulations, 2022.

The circular addresses the authorization of additional 170 Booking Post Offices and their corresponding Foreign Post Offices in the context of the new regulations. It aims to streamline the process of electronic declaration for the export of goods through postal channels.

[Circular No. 27/2023- Customs dated 1 November 2023]

Advance Assessment of Courier Shipping Bills implemented

In order to reduce dwell time, CBIC issued Circular No – 28/2023 dated 8 November 2023 to allow advance assessment of Courier Shipping Bills on the Express Cargo Clearance System (ECCS). The Directorate General of Systems has confirmed the enabling of appropriate technical changes in the ECCS export workflow for this purpose.

[Circular No. 28/2023- Customs dated 8 November 2023]



04

Foreign Trade Policy Updates

Amendment of Import Policy and Policy Condition for Yellow Peas under ITC(HS) Code 07131010

Import policy for Yellow Peas has been revised and accordingly it has been made “Free” subject to registration under the Import Monitoring System with immediate effect for the period up to 31st March 2024. Minimum Import Price (‘MIP’) Condition and Port Restriction shall also not be applicable to such Yellow Peas Imports for the period up to 31st March 2024.

[Notification No. 50/2023- DGFT dated 8 December 2023]

DGFT amends Onion and De-oiled rice bran Export Policy

DGFT prohibits export of De- Oiled Rice Bran and Onion having HS Code 0703 10 19 till 31 March 2024.

[Notification No. 49/2023-, dated 7 December 2023;
Notification No. 51/2023, dated 8 December 2023]

Implementation of Yellow Peas Import Monitoring System

DGFT has specified the procedures for registration under Yellow Peas Import Monitoring System (YP-IMS) as follows:-

- The importer may apply under YP-IMS online on the DGFT Portal. On submission of advance information and online payment of INR 500/-, he shall be issued an Automatic Registration Number.
- The importer shall apply for registration not later than 5 days before the expected date of arrival of consignment.
- One automatic Registration number granted shall be valid for any number of import consignments up to 31st March 2024. Further, one automatic registration number shall be valid for 1 specific country of origin and 1 port of importer only.

[Public Notice No. 35/2023 DGFT dated 13 December 2023]

Pilot Launch of the Upgraded Electronic Bank Realization Certificate (eBRC) system for self-certification by Exporters

- Vide Trade Notice no- 33/2023-24 dated 10 November 2023 it has been announced the pilot launch of the upgraded Electronic Bank Realization Certificate (eBRC) system for self-certification by exporters.
- It is a more streamlined process allowing exporters to self-certify based on electronic Inward Remittance Messages (IRMs) directly transmitted by banks to DGFT. This process is expected to reduce transaction time and costs.
- The pilot launch is set to commence from 15th November 2023. Banks will establish their specific cut-off dates based on readiness after User Acceptance Testing (UAT).
- All banks are required to integrate using Application Programming Interface (API) for prompt data exchange. The deadline for transition to API integration with the upgraded eBRC system is 31st January 2024.

[Trade Notice No. 33/2023-24 dated 10 November 2023]



04

Compliance Calendar

S. No.	Compliance Category	Compliance Description	Frequency	Due Date	Due Date falling in January 2024
1	Monthly Return 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 2023-11 th January 2024
2	Monthly Return Form GSTR-3B	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 QRMP Scheme	Monthly	20 th day of succeeding month	For Tax Period December 2023-20 th January 2024
3	QRMP Scheme Form GSTR-1 (Details of outward supplies)	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 2023 to December 2023-13 th January 2024

4	QRMP Scheme	Registered person with aggregate turnover up to INR 5 crore (opted for QRMP Scheme) having place of business in Group 1 ⁱ states and union territories	Quarterly	22 nd day of the subsequent month following the end of quarter	For the quarter October 2023 to December 2023-22 nd January 2024
	Form GSTR-3B	Registered person with aggregate turnover up to INR 5 crore (opted for QRMP Scheme) having place of business in Group 2 ⁱⁱ states and union territories	Quarterly	24 th day of the subsequent month following the end of quarter	For the quarter October 2023 to December 2023-24 th January 2024
5	Form GSTR-6 (Return for Input Service distributor)	Return for input service distributor	Monthly	13 th of the succeeding month	For Tax Period December 2023-13 th January 2024

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

ⁱⁱGroup 2 states - Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand, Odisha or the Union Territories of Jammu and Kashmir, Ladakh, Chandigarh, Delhi

6	Form GSTR-7 (Return for Tax Deducted at Source)	Return filed by individuals who deduct tax at source under GST.	Monthly	10 th of the succeeding month	For Tax Period December 2023-10 th January 2024
7	Form GSTR-8 (Statement of Tax collection at source)	Return to be filed by e-commerce operators who are required to collect tax at source under GST.	Monthly	10 th of the succeeding month	For Tax Period December 2023-10 th January 2024

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