



Indirect Tax

September, 2024



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01

**Advance Rulings
& Judgements**

Gujarat High Court ruled that date of filing of first refund application to be taken into consideration for the purpose of limitation period of 2 years

Brief Facts

- Darshan Processors ('Petitioner') is a partnership firm engaged in textile dyeing and printing. Petitioner filed refund application in Form RFD-01A online and thereafter manually before State GST Authorities (due to refund module being unavailable online) on account of refund of unutilized Input Tax Credit due to inverted duty structure. After a while, Petitioner came to know that refund application was required to be filed before Central GST Authorities and accordingly, petitioner requested State GST Authorities to transfer the files and subsequently said files were transferred to Central GST Authorities;
- Central GST Authorities issued a deficiency memo to Petitioner for furnishing relevant information/ documents. Petitioner provided all the information as required. Subsequently, Central GST Authorities issued a Show Cause Notice ('SCN') to the petitioner stating that the time limit for filing refund application is two years from due date of filing return under section 39 of the CGST Act and accordingly refund application filed is time-barred. Petitioner responded that delay was due to some ambiguity in ascertaining the relevant jurisdiction, and original refund application was timely filed. However, Central GST Authorities rejected the refund claim;
- Aggrieved by the order, Petitioner preferred the present petition before Hon'ble Gujarat High Court.

Observations

- Hon'ble Gujarat High Court observed that, it is apparent that the petitioner has filed refund application within the period of two years and subsequently, fresh refund application was filed after receipt of deficiency memo;

- High Court further relied on the decision of same Court in case of M/s LA-Gajjar Machineries Private Limited and held that original refund application filed by the Petitioner would be considered as a proper refund application within the period of limitation and fresh refund application filed pursuant to the deficiency memo, would be considered as in continuation of first refund application.

Decision

- Petition allowed and accordingly, Impugned Order rejecting the application for refund filed by the Petitioner on the ground of limitation was quashed and set aside;
- Proper Officer to pass fresh order on merits in accordance with law within 12 weeks of receipt of present order.

[Darshan Processors vs. Union of India (2024) 21 Centax 342 (Guj.)-GST, dated 26 July 2024]

Maharashtra Appellate Authority for Advance Ruling ruled that application for rectification of mistake apparent from record does not envisage rectification of an error of judgment or a different interpretation

Brief Facts

- M/s Puranik Builders Private Limited ('Appellant') is engaged in the construction and sale of residential apartments, filed an application before the Advance Ruling Authority (AAR) seeking clarification on whether "other charges" namely 'club house maintenance', 'Infrastructure charges' etc. collected from flat buyers would be considered as part of construction services. The AAR ruled that "other charges" would not be classified under construction services and would attract 18% GST;
- Aggrieved by the order of AAR, Appellant appealed to the Appellate Authority for Advance Ruling (AAAR), which partially modified the AAR's ruling and held that "other charges" that are inextricably linked to supply of construction services forming part of bundled services related to construction would attract 12% GST (namely water connection charges, electric meter installation charges, development charges, legal fees etc.) but charges that do not meet the criteria for bundled services (such as club house maintenance, advance maintenance etc.) would be treated as independent supplies and taxed according to their respective classification. Further, the appellant was also directed by AAAR to refund any excess GST collected from customers, emphasizing equity and justice. Aggrieved by the order of AAAR, Appellant filed the application for rectification of the AAAR's order, contending errors in judgment.

Observations

- AAAR relied on various cases and observed that 'mistake to be rectified' must be one that is 'apparent' from record and not a debatable point of law or disputed fact. And 'apparent' is that it must be something which appears to be so ex-facie that there cannot be any argument or debate in that regard and accordingly rectification of mistake does not envisage rectification of an alleged error of judgment or a different interpretation;
- AAAR further noted that GST Legislation does not restrict authority in any manner from giving their rulings on any facts presented before them - Since, it is not in dispute that appellant have collected excess tax from their customers, therefore, Appellate Authority deemed it completely proper and legal by ruling that said excess GST amount should be refunded back to customers from whom such excess amount have been collected by appellant.

Decision

- The application for rectification rejected and ruling by the AAAR upheld as proper and legal.

[M/s Puranik Builders Limited (2024) 21 Centax 225 (App. A.A.R. - GST - Mah.) dated 22 July 2024]

The Hon'ble Customs, Excise & Service Tax Appellate Tribunal (CESTAT), Ahmedabad held that no service tax leviable on advertising services used solely for marketing outside India. CESTAT remanded the case to the Adjudicating Authority for a fresh review, considering whether the services were indeed used in India.

Brief Facts

- M/s Bajaj Herbals Private Limited ('Appellant') is engaged in the manufacture of Hair oil, Hair Cream, Toothpaste etc. and holding a Central Excise registration as well as Service Tax registration under the category of Goods Transport Agency ('GTA') services;
- It was contended by the Appellant that it had made payments to various parties towards Exhibition expenses, sales promotion expenses and advertisement expenses in foreign currency to the foreign based service providers;
- The Adjudicating Authority contended that the said services being classifiable under the category of 'Business Exhibition Services', 'Business Auxiliary Services' and 'Advertising Agency Services' and the Appellant being the recipient of the said services, liable to pay service tax under Reverse Charge Mechanism ('RCM') under the provision of Section 66A of the Finance Act, 1994. The Adjudicating Authority passed the Order-in-Original and demanded the service tax on the same.
- The Appellant further filed an appeal before the Commissioner (Appeals). In response to which, Commissioner (Appeals) rejected the appeal to the extent it relates the demand on advertising agency services.
- Aggrieved by the order, Appellant filed a present appeal before the CESTAT.

Observations

- CESTAT observed that merely because the Appellant is located in India is not the deciding factor that the services were received in India. As per the submission of the Appellant the service of advertising agency service was provided by foreign based service provider in relation to the marketing and sales promotion of appellant's goods in foreign country only. However, this aspect was not properly considered by both the lower Authorities.
- CESTAT further observed that if the service so provided in foreign country admittedly is not received in India and not used in India, the appellant are prima facie not liable for Service Tax.

Decision

- CENTAT allowed the appeal filed by the Appellant by way of remand to the Adjudicating Authority for passing a fresh order.

[M/s. Bajaj Herbals Private Limited v/s Commissioner of Service Tax, Ahmedabad, Final Order No. 12102/2023-WZB/AHD in Appeal No. ST/12929/2014-DB, decided on 22-9-2023]

02

Foreign Trade Policy Updates

Directorate General of Foreign Trade ('DGFT') has notified that Kandla and Vishakhapatnam Customs Sea ports have now been added to the list of ports allowed for Export of Essential Commodities, which are under the Prohibited/Restricted category earlier.

[Notification No. 22/2024-25, dated 1 August 2024]

DGFT has provided the Harmonisation of Chapters 40 to 98 of Schedule-II (Export Policy) to ITC(HS) code.

[Trade Notice No. 11/2024-25, dated 2 August 2024]

DGFT introduce API integration and Bulk Upload Facility for Self- Certificate of electronic Bank Realisation Certificate (e-BRC), effective from 20 August 2024 to improve the certification process for Exporters in India.

[Trade Notice No. 12/2024-25, dated 14 August 2024]

DGFT has launched the revamped Non-Preferential Certificate of Origin (eCoO) 2.0 system wef 28 August 2024 to streamline the certification process for Exporters.

[Trade Notice No. 13/2024-25, dated 16 August 2024]

DGFT issued Draft Modalities for Pilot Launch of E-Commerce Export Hubs (ECEHs) to enhance Cross Border E-Commerce activities by providing a supportive infrastructure and streamlining operational processes.

[Trade Notice No. 14/2024-25, dated 22 August 2024]

DGFT proposes to revise the wastage permissible and Standard Input Output Norms (SION) for Gold, Platinum, and Silver content in export items. These changes are based on industry visits across various units and locations.

[Trade Notice No. 15/2024-2025, dated 29 August 2024]

DGFT has extended the time period of Interest Equalisation Scheme (IES) for Pre and Post Shipment Rupee Export Credit, till 30 September 2024 for MSME manufacturing exporters.

[Trade Notice No. 16/2024-2025, dated 31 August 2024]

DGFT amended the Para 10.06 (III) of Handbook of Procedures 2023 (HBP 2023) to notify the changes in the delegation of powers for approval of authorizations under SCOMET where comments/views/NOC(s) are received from all concerned agencies with no divergence in views.

[Public Notice No. 17/2024, dated 14 August 2024]

DGFT has amended Chapter 4 of the HBP 2023 by including all types of Shipping Bills in lieu of Destruction Certificate and simplified the provision for re-export of un-utilized drugs, removing the need to re-export to the same supplier, for ease of doing business and reduction of compliance burden.

[Public Notice No. 18/2024, dated 22 August 2024]

DGFT has amended The Export Obligation Period for pre-import conditions from the date of clearance of each import consignment by the Customs Authority for existing entries under Appendix-4J, the same has been rationalised after comprehensive stakeholder consultations, for more efficient and business-friendly process.

[Public Notice No. 19/2024-2025, dated 29 August 2024]

DGFT delisted M/s Oriented Chamber of Commerce & Industry from Appendix 2E of FTP,2023 for issuing Certificate of Origin (Non-Preferential).

[Public Notice No. 21/2024, dated 30 August 2024]

04

**GST Notifications
and Customs
Updates**

Notifies the date from which ISD Mechanism (Sections 11 to 12 of The Finance Act 2024) (No. 8 of 2024) will come into force

- **Section 11 and 12 dealt with ISD mechanism under the CGST Act 2017. Following changes will come into force w.e.f. 1 April 2025:**
 - a) Definition of ISD has been amended to include inward supplies liable to RCM for or on behalf of distinct persons for distribution of common ITC;
 - b) Requirement to obtain ISD registration and distribution of ITC through ISD mechanism is mandatory from 1 April 2025; and
 - c) Modification made in the manner of distribution of ITC by ISD includes:
 - ISD to distribute the credit of CGST or IGST charged on all inward invoices including services liable to RCM for which tax has been paid by a distinct person registered in the same state as the said ISD in the manner as prescribed; and
 - Credit of CGST to be distributed as CGST or IGST and credit of IGST as IGST or CGST by way of issue of a document containing the amount of ITC in such manner as prescribed.



Notifies the date from which Penalty Provisions in case of Pan Masala, Tobacco etc. (section 13 The Finance Act 2024) will come into force

- Section 13 dealt with levy of penalty in case of failure to register certain machines used in manufacture of Pan Masala, Tobacco, etc. as per Special procedure under CGST Act. The said section comes into force w.e.f. 1 October 2024;
- If required machines are not registered by filling out requisite forms, penalty upto INR 1 Lakh may be imposed for every machine not registered in addition to any other penalty payable; and
- In addition to the above penalty, every machine not so registered would be liable for seizure and confiscation unless:
 - The penalty imposed is paid by the person; and
 - Registration of such machine is made in accordance with the special procedure within 3 days of the receipt of the communication of the order of penalty.

Customs

Central Board of Indirect Taxes and Customs (CBIC) has announced the phased implementation of the Sea Cargo Manifest and Transshipment Regulations (SCMTR) to streamline the custom clearance process by ensuring advance collection of information, which is vital for risk-based custom clearance.

[Notification No. 57/2024-Customs (N.T), dated 31 August 2024]

05

Compliance
Calendar

S. No.	Compliance Category	Compliance Description	Frequency	Due Date	Due Date falling in September 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 August 2024- 11 September 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 August 2024- 20 September 2024
3	Form GSTR-6 (Return for Input Service distributor)	Return for input service distributor	Monthly	13 th of the succeeding month	For Tax Period August 2024- 13 September 2024

4	Form GSTR-7 (Return for Tax Deducted at Source)	Return filed by individuals who deduct tax at source under GS	Monthly	10 th of the succeeding month	For Tax Period August 2024- 10th September 2024
5	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 August 2024- 10 September 2024
6	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	Monthly	13 th day of the Subsequent month following the end of quarter	For Tax Period August 2024- 13 September 2024

7	<p>QRMP Scheme</p> <p>Form GSTR-3B (Monthly return)</p>	<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 1ⁱ states and union territories Registered person with aggregate turnover up to INR 5 crore (opted for QRMP Scheme) having place of business in Group 2ⁱⁱ states and union territories 	Quarterly	<p>22nd day of the subsequent month following the end of quarter</p> <p>24th day of the subsequent month following the end of quarter</p>	<p>For Quarter ending September 2024- 22 October 2024</p> <p>For Quarter ending September 2024- 24 October 2024</p>
8	Form ITC - 04	Furnishing declaration for goods dispatched to a job worker or received from a job worker	Quarterly	25 th of the month succeeding the quarter	For Tax Period August 2024- 25 September 2024

ⁱ**Group 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

ⁱⁱ**Group 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

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