



Indirect Tax Weekly Updates

December 2022

Volume – I



Executive summary

Judgments

- Circular on notice pay is applicable retrospectively
- Electronic credit ledger (ECRL) cannot be blocked in case of non-payment to supplier
- Summary SCN cannot substitute proper SCN
- No GST on reimbursement of expenses incurred by employees

Notifications, Circulars and Releases

- Instruction on processing of IGST refund of risky exporters
- 'E-commerce' definition in Exports by Post Regulations, 2018 amended
- Postal Exports (Electronic Declaration and Processing) Regulations, 2022 notified
- Rates under RoDTEP in Appendix 4R notified for the period 15 December 2022 to 30 September 2023
- Terms and conditions of work from anywhere outside SEZ amended

News Highlights

- Centre releases INR 17,000 crore of GST compensation to States/Union Territories
- INR 1,45,867 crore gross GST revenue collected for November 2022. Records increase of 11% Year-on-Year

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Key Judgements

Circular on notice pay is applicable retrospectively

Statute: GST

Manappuram Finance Ltd Vs Assistant Commissioner, Central Tax and Excise, Thrissur & Anr

Forum : Kerala High Court

2022-VIL-807-KER

- Petitioner filed for claim of refund of GST paid on notice pay received from erstwhile employees. This was rejected by original authority and upheld by appellate authority. Aggrieved by the order-in-appeal, Petitioner filed a writ.
- Kerala High Court allowed the writ in favour of the Petitioner relying on the clarification provided in paragraph 7.5 of Circular No. 178/10/2022-GST dated 3 August 2022. Other inferences are as follows :
 - It is now clear that the Petitioner is clearly not required to pay any GST on notice pay received from employees.
 - Circular only clarifies the existing law. The question as to whether the Circular has any retrospective effect need not be considered. Even otherwise, the provisions of a Circular will have to be deemed to apply retrospectively.

Comments

- Taxpayers who have paid GST on notice pay can explore the opportunities to file refund claims for past period considering doctrine of unjust enrichment.

ECRL cannot be blocked in case of non-payment to supplier

Statute: GST

Sunny Jain Vs UOI & Ors.

Forum : Delhi High Court

TS-659-HC(DEL)-2022-GST

- ITC lying in the Electronic Credit Ledger (ECRL) was blocked on the allegation that Petitioner had not paid consideration to one of its suppliers within 180 days. Revenue further alleged that they have reason to believe that the ITC available in the ECRL of the Petitioner had been wrongly availed and, therefore, it was blocked in the exercise of the power under rule 86A.
- Petitioner challenged the blocking of ECRL contending that it is not required to pay any interest on the ITC as it has not utilised the ITC in respect of the impugned supplies. It also contended that recovery of interest cannot be effected without show cause notice and initiating the proceedings to adjudicate the same.
- Delhi High Court allowed the writ in favour of the Petitioner. It held that the Revenue has completely misdirected itself in proceeding on the basis that unless a taxpayer pays the supplier, it is ineligible to avail of the ITC lying to its credit in the ECRL. Other findings are as follows :
 - It is clearly not the scheme of the CGST Act to restrain a person from availing the ITC till it has paid the supplier for such goods/services. A recipient of goods/services who receives goods and services on supplier's credit is also entitled to avail ITC.
 - A conjoint reading of rule 37 of the CGST Rules and the proviso to section 16(2) of the CGST Act leaves no room for doubt that a taxpayer is entitled to avail of ITC in the first instance even though it has not paid the supplier for the goods/services.

Comments

- Though the High Court has directed the Revenue to unblock ITC available to the Petitioner in ECRL, it has clarified that Revenue can take such steps as are necessary for recovering any ITC along with interest from the assessee if the same is otherwise required to be added to the Petitioner's output liability in terms of the second proviso to section 16 of the CGST Act.

Summary SCN cannot substitute proper SCN

Statute: GST

Thriveni Earthmovers Private Limited Vs The State of Jharkhand & Ors.

Forum : Jharkhand High Court

2022-VIL-818-JHR

- During 2018-19, Petitioner received supplies but claimed ITC in the subsequent FY 2019-20 within the prescribed due date under section 16(4) of the Act. Likewise, Petitioner encountered such transactional events for supplies in FY 2019-20. Due to this, the Petitioner availed less credit of GST than what was available to it in terms of Form GSTR 2A in FY 2018-19 but took ITC in excess of GST paid on the inward supplies effected in FY 2019-20.
- Revenue issued a summary of show cause notice alleging that Petitioner has taken excess ITC.
- Petitioner contended that the summary of the show cause notice was not accompanied by a show cause notice (SCN), and no copy of any SCN to which the said summary pertains was or has been received by it.
- Jharkhand High Court allowed the writ in favour of the Petitioner and quashed and set aside the summary of SCN. It held that :
 - Summary of SCN cannot substitute or be deemed as proper SCN as per section 73 of the GST Act.
 - There is a violation of the principle of natural justice and mandatory procedure prescribed under law as a proper SCN was not issued, but only a summary of show cause in Form DRC-01 was issued. Further, no personal hearing was granted to the Petitioner.

Comments

- High Court has not gone into the merits of the case but has only quashed the summary of SCN. In such a case, the proper officer is at liberty to initiate a fresh proceeding by issuing SCN in terms of section 73 read with rule 142(1) of CGST Rules.

No GST on reimbursement of expenses incurred by employees

Statute: GST

Yaadvi Scientific Solutions Private Limited

Forum : Karnataka Authority For Advance Ruling

2022-VIL-303-AAR

- Applicant-Company states that its employees are required to undertake travel/work from home etc., for which the employees incur some expenses on behalf of the Company, which are later reimbursed to the employees periodically. The employees take all the invoices in the name of the Company with the Company GSTIN. The Company takes ITC in respect of eligible transactions. For transactions which attract a reverse charge, the Company pays GST.
- Applicant sought advance ruling on whether reimbursement of expenses at an actual cost which the employees incur on behalf of the Company is liable to tax.
- Ruling by Karnataka Authority For Advance Ruling (AAR) is as follows:
 - Reimbursement of expenses at an actual cost which the employees incur on behalf of the Company is not liable to tax since the same is covered under paragraph 1 of Schedule III of CGST Act, 2017;
 - Reverse charge mechanism is not applicable on reimbursement of expenses paid on behalf of the Company at actuals which are incurred by the employee who is also a whole-time director of the Company;
 - Reverse charge is to be calculated on values excluding GST.

Comments

- Applicant had raised another two questions, namely – (1) Whether the time limit prescribed to take ITC under section 16(4) applies to self-invoices for reverse charge transactions? (2) In cases where tax is paid during the current FY under reverse charge for any of the previous FY transactions, whether ITC on such payment of tax would be availed in the year of payment or in the year in which the transaction happened?
- AAR declined to answer these questions stating that these are not covered under the scope of advance ruling under section 97(2).

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**Important
Notifications,
Circulars &
Releases**

Goods and Services Tax

Instruction on processing of IGST refund of risky exporters¹

- Standard Operating Procedures (SOPs) dated 23 January 2020 and 20 May 2020 were issued, prescribing the procedure to be followed for verification of the risky exporters and their suppliers. These SOPs are superseded with instruction dated 28 November 2022 on account of an amendment to rule 96 of CGST Rules.
- Gist of the instruction is as follows:
 - As per Rule 96(4)(c) of CGST Rules, refund claims can be withheld if specified authorities are of the opinion that verification of credentials of exporters, including availment of ITC, is considered essential before the grant of refund. Changes have been made to the alert module on ICES to withhold IGST refunds of taxpayers identified as risky exporters;
 - Refund claims shall be transmitted to the proper officer under the head “Any other (GST paid on exports of goods)” with the remark “Refund not processed by ICEGATE”. Risk parameters based on which the exporter is classified as risky will also be shared with jurisdictional officers;
 - These refund claims for which data is collated from shipping bills would be auto-acknowledged by the system, and no deficiency memo in Form GST RFD-03 can be issued against such system-generated Form GST RFD-01 refund claims;
 - Proper officer to ascertain the genuineness of exporter, verify ITC and accordingly issue speaking order for the refund claim. Proper officer can also provide feedback on whether to continue or remove the alert/restriction on the exporter.

¹Instruction No. 4/2022-GST dated 28 November 2022, CBIC

Customs

'E-commerce' definition in Exports by Post Regulations, 2018 amended²

- Export by Post Regulations, 2018 were notified prescribing that in case of goods to be exported through a foreign post office, an entry shall be required to be presented to the proper officer at the foreign post office of clearance, in the forms appended to these regulations.
- The definition of 'e-commerce' is amended to state that "e-commerce" means buying and selling of goods through the internet on an e-commerce platform, the payment for which shall be done through various electronic means and in accordance with the guidelines issued by the Reserve Bank of India from time to time.
- The earlier definition as "e-commerce" means buying and selling of goods through the internet on an e-commerce platform, the payment for which shall be done through international credit or debit cards and as specified by the Reserve Bank of India from time to time.
- The appended forms in this regulations have been substituted.

²Notification No. 103/2022-Customs (N.T.) dated 9 December 2022

Customs

Postal Exports (Electronic Declaration and Processing) Regulations, 2022 notified³

- For exporting a parcel through the postal route, an exporter or its agent is presently required to come to any of the twenty-eight Foreign Post Offices (FPO) to file the export declaration and hand over its consignment for export.
- CBIC has notified Postal Exports (Electronic Declaration and Processing) Regulations, 2022, to facilitate the processing of commercial postal exports by automating the entire procedure and seamlessly connecting the postal network to the notified FPO.
- In the new system, the exporter will not be required to visit FPO but can file the Postal Bill of Exports (PBE) online and deposit the parcel in a nearby post office for export. The export parcel so deposited will be moved by the Department of Post (DoP) to FPO for customs clearance.
- The regulations provide for registration on PBE Automated System, forms for electronic declaration for postal exports, authorised post offices for handling postal export, clearance of goods for export at the foreign post office, retention of records, role and responsibilities of authorised agent and penalty.

³Notification No. 104/2022-Customs (N.T.) dated 9 December 2022 read with Circular No. 25/2022-Customs dated 9 December 2022

Foreign Trade Policy

Rates under RoDTEP in Appendix 4R notified for the period 15 December 2022 to 30 September 2023⁴

- The Central Government has notified a revised Appendix 4R under Para 4.59 of Foreign Trade Policy, 2015-20 for exports made from 15 December 2022 to 30 September 2023.
- Additional export sectors/items in Chapter 28 (Inorganic chemicals; organic or inorganic compounds of precious metals, of rare-earth metals, of radioactive elements or of; isotopes), Chapter 29 (Organic chemicals), Chapter 30 (Pharmaceutical products) and Chapter 73 (Articles of iron or steel) are added.
- The RoDTEP rate prescribed as percentage of FOB range between 0.50% to 2.00% for these export sectors/items.

⁴Notification No. 47/2015-2022 dated 7 December 2022, Ministry of Commerce & Industry

Special Economic Zones

Terms and conditions of work from anywhere outside SEZ amended⁵

- Rule 43A of the Special Economic Zones Rules, 2006 has been substituted.
- Gist of the new rule is as follows:
 - A Unit may permit certain specified employees, to work from home or from any place outside the Special Economic Zone upto 31 December 2023;
 - Unit to intimate the same to Development Commissioner through an email on or before 31 January 2023;
 - Requirement for mandatory submission of list of employees to the Development Commissioner is done away with. List of employees to be maintained internally and is to be submitted only if specifically requested;
 - Goods or equipment required for work from home can be taken outside the SEZ without payment of duty on temporary basis for a period commensurate with validity of facility for work from anywhere outside SEZ;
 - The expression 'employee' has been clarified to include all persons employed on the rolls of the Unit or under a direct contract or where the Unit is the principal employer under a contract with another organisation where such persons are expected to report on a day-to-day basis for work to the Unit and the Unit administers the control on their attendance.

⁵Notification G.S.R. 868(E) dated 8 December 2022, Ministry of Commerce & Industry

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News Highlights

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- Centre releases INR 17,000 crore of GST compensation to States/Union Territories¹
- INR 1,45,867 crore gross GST revenue collected for November 2022. Records increase of 11% Year-on-Year²



¹Press release dated 25 November 2022, Ministry of Finance

²Press release dated 1 December 2022, Ministry of Finance

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