



# Indirect Tax Weekly Updates

November 2022

Volume – II



# Executive summary

## Judgments

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- 'Commencement of audit' starts on the day of submitting records
- GST paid on purchases to meet CSR obligations is eligible for ITC
- Imposition of a 'penalty' is not automatic

## Notifications, Circulars and Releases

- CBIC issues circular on clarification on refund issues
- CBIC issues circular on guidelines for verifying transitional credit
- Form GSTR-9 (Annual Return) amended to align with extended timelines
- International trade settlement in Indian Rupees (INR)

## News Highlights

- Government withdraws export duty on steel
- GST Appellate Tribunals likely to be set up by December 2023

**01**

# **Key Judgements**

# Form GSTR-1 cannot be rectified after the prescribed limitation period

Statute: GST

Yokohama India Private Limited Vs The State of Telangana

Forum : Telangana High Court

2022-VIL-733-TEL

- During the period January 2018 to August 2018, Petitioner made a mistake by disclosing a supply to the wrong distributor. Since the GST did not reflect in Form GSTR-2A, the actual recipient-distributor did not pay the amount due to Petitioner. It made a representation to the Department on 15 March 2021 (i.e. after the limitation period), but there was no response. In these circumstances, it filed a writ seeking a direction to allow amendment in Form GSTR-1.
- Telangana High Court, relying on Supreme Court judgement in the case of Bharti Airtel Ltd., held that Petitioner cannot be permitted to rectify Form GSTR-1 beyond the statutorily prescribed period.

## Comments

- There are conflicting interpretations of the Supreme Court judgement. The Telangana High Court, in this case, has held that Form GSTR-1 cannot be rectified after the prescribed period. In contrast, the Jharkhand High Court has directed GSTN to open the GST portal after the prescribed limitation period for the correction of Form GSTR-1.

# 'Commencement of audit' starts on the day of submitting records

Statute: GST

Simon India Ltd Vs CT and GST Officer, Cuttack-II Circle, Cuttack

Forum : Orissa High Court

2022-VIL-747-ORI

- Audit by the tax authorities was commenced on 8 October 2021 in terms of section 65. The Petitioner submitted documents on 22 March 2022.
- The authorities issued both the draft audit report and the final audit report on the same day, i.e. 30 June 2022. Aggrieved that there was no opportunity granted to file a reply to the draft audit report, Petitioner approached the Orissa High Court.
- The Orissa High Court set aside the final audit report dated 30 June 2022 as Petitioner was not given thirty days to file a reply. Further, it directed that the Petitioner be allowed to file the reply by 28 November 2022 and the final report to be issued no later than 21 December 2022. This is subject to the Commissioner granting an extension of time (i.e. six months, which lapses on 21 December 2022). The draft audit report will stand quashed if the extension is not granted.

## Comments

- Explanation to sub-section (4) of section 65 states that for the purposes of this sub-section, the expression "commencement of audit" shall mean the date on which the records and other documents, called for by the tax authorities, are made available by the registered person or the actual institution of audit at the place of business, whichever is later. The proviso to this sub-section states that Commissioner can extend the period by a further period not exceeding six months.
- This ruling transpires to be in consonance to provisions contained in section 65.

# GST paid on purchases to meet CSR obligations is eligible for ITC

Statute: GST

Bambino Pasta Food Industries Private Limited

Forum : Telangana Authority for Advance Ruling

2022-VIL-293-AAR

- The Applicant contends that it is eligible to claim ITC on Corporate Social Responsibility (CSR) expenditure on the following grounds:
  - A clear distinction needs to be drawn between goods given as 'gift' and those provided/supplied as a part of CSR activities to satisfy the requirement of law.
  - CSR activity is to be considered as "used or intended to be used in the course or furtherance of business" because any Company, which meets the criteria for CSR, is mandatorily required to incur in CSR activities to comply with the Companies Act, 2013. The use of the expression 'in connection with' or 'incidental' in the definition of 'business' purports to expand the scope of the definition so as to include such activities which, though, might not have a direct bearing on the profits of the Company, but, if not done, might result in the business suffering from the coercive process and unlawful expropriation which will ultimately hamper its profit making.
  - The concept of non-availability of ITC on inputs and input services in case of free supplies of goods/services shall not be applicable in the present case since the CSR activities, which involve the supply of goods or services without any consideration, are said to be done in the course and furtherance of business.
- Telangana Authority for Advance Ruling held that expenditure made towards CSR under section 135 of the Companies Act, 2013 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.

## Comments

- There are conflicting decisions on the eligibility of ITC on procurements to meet CSR obligations. A clarification from the Central Government could end this obfuscating issue.

# Imposition of a 'penalty' is not automatic

Statute: VAT

Sayar Cars Vs The Appellate Deputy Commissioner & Anr

Forum : Madras High Court

TS-488-HC-2022(MAD)-VAT

- The Petitioner, registered under Tamil Nadu VAT and subsequent under GST, is an authorised sales and service centre for a car brand. In February 2016, Enforcement Wing inspected the premises of the Petitioner and pointed out two defects. The first is related to a difference in sales turnover as per invoices, and the second is related to a difference in consideration on sales of old vehicles. The defects were forwarded to the assessing authority, who issued SCN in respect of AY 2013-14, 2014-15 and 2015-16. Subsequently, the penalty was confirmed. Petitioner challenged the order before the appellate authority. The appellate authority sustained the order of assessments and rejected the grounds challenging the levy of penalty, stating that such levy is automatic.
- Madras High Court allowed the appeal in favour of the Petitioner, upholding that levy of the penalty must be considered on the basis of the judicial determination of the question as to whether grounds exist so as to justify such imposition. Other observations and conclusions are :
  - Assessing Authority had proceeded solely on the basis of the proposals by the enforcement officials that included a proposal to levy penalty;
  - None of the assessment orders or SCNs reveal any application of mind to the aspect of wilful suppression;
  - Petitioner has admittedly remitted the difference in tax along with interest even at the time of inspection;
  - The conclusion arrived at by the appellate authority that the imposition of penalty is automatic is erroneous in law.

## Comments

- The principle laid down, in this case, is not novel as the Courts have looked into this issue and concluded in favour of assessee. Taxpayers should be conscious of this principle and could litigate even under GST if there are no grounds to justify the imposition of a penalty.

**02**

**Important  
Notifications,  
Circulars &  
Releases**



## CBIC issues circular on clarification on refund issues<sup>1</sup>

- **Refund formula**
  - The formula prescribed in Rule 89(5) for the grant of refund in cases of inverted duty structure is amended vide Notification No. 14/2022-Central Tax dated 5 July 2022.
  - CBIC has clarified that the amended formula would be applicable in respect of all refund applications filed on or after 5 July 2022.
- **Restrictions on unutilised input tax credit**
  - Central Government vide Notification No. 5/2017-Central Tax dated 28 June 2017 notified certain goods in respect of which no refund of the unutilised input tax credit shall be allowed where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on the output supplies of such goods (other than nil rated or fully exempt supplies). This notification is amended by Notification No. 09/2022-Central Tax (Rate) dated 13 July 2022 to add additional goods falling under chapters 15 and 27 to the restricted list, effective from 18 July 2022.
  - CBIC has clarified that this restriction will be applicable in respect of all refund applications filed on or after 18 July 2022 and will not apply to the refund applications filed before 18 July 2022.

<sup>1</sup>CBIC Circular No. 181/13/2022-GST dated 10 November 2022

## CBIC issues circular on guidelines for verifying transitional credit<sup>2</sup>

CBIC has issued guidelines for verifying the transitional credit to the tax officers. It contains the following:

- i. Verification of transitional credit: Back-office system and other guidelines for tax officers prescribed
  - a. Annexure I to the circular: Contains checks for verification of entries in TRAN-1 Table
  - b. Annexure II to the circular: Format of verification report for TRAN-1/TRAN-2 to be submitted by the counterpart officer to the jurisdictional tax officer
- ii. Modalities of coordination between central tax authorities and state tax authorities

## Form GSTR-9 (Annual Return) amended to align with extended timelines<sup>3</sup>

The phrase “April, 2022 to September, 2022” (mutatis mutandis) at respective places under the heading Instructions in paragraph 7 of Form GSTR-9 have been substituted with the phrase “April, 2022 to October, 2022 upto 30th November, 2022” (mutatis mutandis).

<sup>2</sup>CBIC Circular No. 182/14/2022-GST dated 10 November 2022

<sup>3</sup>Notification No. 22/2022-Central Tax dated 15 November 2022

# Foreign Trade Policy

## International trade settlement in Indian Rupees (INR)<sup>4</sup>

- RBI vide A.P. (DIR Series) Circular No. 10 had issued directions for international trade settlement in Indian Rupees (INR). In cognizance of this directions, Central Government has amended the Foreign Trade Policy 2015-20 to permit export benefits/fulfilment of export obligations for invoicing, payment and settlement of exports and imports in Indian Rupees (INR).

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<sup>4</sup>Notification No. 43/2015-2020 dated 09 November 2022, Ministry of Commerce & Industry

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# **News Highlights**

# News Highlights

- Central Government has withdrawn the export duty on iron ores lumps and fines below 58% Fe content, iron ore pellets and specified steel products including pig irons.
- GST Appellate Tribunals likely to be set up by December 2023.



Source: Notification No. 58/2022-Customs dated 18<sup>th</sup> November 2022, Financial Express

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