



India Tax Konnect

September 2024

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Direct Tax

a. Decisions – International Tax



Fees for providing access to online learning platform are not taxable as fees for included services – Delhi Tribunal¹

The taxpayer, a tax resident of the USA, operates a global online learning platform, which offers online courses and degrees from leading universities and companies.

The taxpayer received payments from the Indian customers for providing the access to its platform in India.

The issue arose whether such payments were taxable as fees for included services (FIS) under the India-USA tax treaty.

Revenue's contentions

Consideration for services relating to online platform was in the nature of FIS as the taxpayer made available technical knowledge, know-how, skills, etc. to the service recipient.

As per the agreement with one of the Indian customers, the taxpayer provides two types of services i.e., content services and user services. The content services include access to taxpayer's course and specialisation certificate services including access to course assessments and grades.

The completion certificate bears the logo of the educational institution as well as of the taxpayer. This signifies that the training services were provided by the taxpayer.

The user services include a customised landing page, user engagement reports, payment solution and enterprise-level user support which are specific and customised services which involve a high degree of human intervention.

Article 12(5) provides that FIS does not include the amount paid for teaching in or by educational institutions. The taxpayer was not an educational institution, and not covered under the exception. The taxpayer is an aggregation service provider, which brings educational institutions and learners on one platform by using special cutting-edge technology and services.

Taxpayer's contentions

Services were not taxable as FIS as the taxpayer had not provided any technical services. The platform is fully automated without any human intervention.

The taxpayer was merely an aggregator of educational content and certification courses offered by different universities. It had merely provided a platform and access to the educational content. The taxpayer was not involved in the creation of content.

Under user services, only a customised landing page featuring the organisation logo and selected courses were provided. Online examinations were conducted by the concerned universities and the certificates were also issued by them.

Further, even if services are assumed as technical services, the taxpayer did not make available any technical knowledge, know-how, skills, etc. to the service recipient.

¹ *Coursera Inc. v. ACIT* (ITA No. 2416 and 3646/Del/2023) (Del) – Source: Taxsutra

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The consideration for services was covered in the exception provided under Article 12(5), as the taxpayer was an educational institution providing a teaching facility.

Decision

The Delhi bench of the Tribunal held that the fees received for providing access of online learning platform were not taxable as FIS based on the following:

- The taxpayer merely provides access to the contents of the universities through the platform on receipt of fees.
- While providing access to various courses on its platform, the taxpayer did not provide services of a technical nature. The taxpayer acted only as a facilitator.
- Merely because the taxpayer has a customised landing page, it does not mean that the taxpayer provided technical services, that too, through human intervention.
- The services provided by the taxpayer did not make available technical knowledge, know-how, skills, etc. to the Indian customers.
- The Revenue had neither properly examined the agreement with the customer nor had factually examined the taxpayer's contentions.

² *Tyco Electronics Singapore Pte Limited. v. DCIT* (ITA No. 1760/Del/2022) (Del) – Source: Taxsutra

Benefit of India-Singapore treaty granted basis the residency certificate in the absence of valid evidence to prove the taxpayer as a conduit – Delhi Tribunal²

The taxpayer, a tax resident of Singapore, sold shares of an Indian company and earned capital gains.

The taxpayer claimed that the gains were not taxable in India under the Capital Gains Article of the India-Singapore tax treaty³.

The Revenue denied the treaty benefit to the taxpayer and taxed the capital gains.

Revenue's contentions

To claim a benefit of the Capital Gains Article, the onus is on the taxpayer to provide adequate documents in support of its claim. The taxpayer did not submit enough documents to prove its claim.

The claim of the taxpayer that the TRC is the final document for determining the allowability of benefits under the treaty was not correct. The revenue can go beyond the TRC to investigate any device used for tax evasion.

Taxpayer's contentions

The Revenue was not correct in disregarding the TRC and other relevant documents supporting the fact that the taxpayer was entitled to the treaty benefits.

³ Article 13(4) of the treaty

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The taxpayer's business was managed and controlled in Singapore. All the board meetings and the shareholders meetings were held in Singapore and the key decisions were taken in Singapore.

The taxpayer incurred expenditure more than the threshold prescribed in the limitation of benefits (LOB) clause which shows that the taxpayer has significant business operations/activities in Singapore.

The Singapore's Economic Development Board has also recognised the taxpayer as the Asia Pacific headquarters and the regional trading hub for a period of ten years.

The taxpayer was an actual operating entity and conducted business on a regular basis. It also had substantial revenue as well as employees.

Decision

The Delhi bench of the Tribunal held that the taxpayer was eligible to claim the treaty benefit, and the gains were not taxable in India based on the following:

- The TRC may not be the conclusive evidence of a tax residency of an entity, but it certainly is statutory evidence.
- The burden is on the Revenue to establish that the entity has been formed only with the intention to take benefit of the tax treaty without any actual economic activity.

- There was no finding of the Revenue to rebut the statutory evidence of tax residency.
- Once the expenditure test of the LOB clause is satisfied, it cannot be alleged that the taxpayer was not a resident in Singapore.
- The taxpayer was incorporated in 1996, and the relevant investments were made by the taxpayer in 2012 i.e., 16 years after the incorporation.
- The taxpayer consistently filed its return of income in India and has been availing the treaty benefits over the past years. The Revenue did not deny the treaty benefits in any of such years. Drifting from the rule of consistency without assigning any reasons is not sustainable.
- The transaction which the Revenue has alleged to be out of tax evasion and treaty shopping was, in fact, a long-term investment decision by an entity, which has sufficient managerial and operational structure to run an entity based in Singapore.

b. Decisions – Domestic Tax



Deemed dividend provisions are not applicable as there was no actual payment by the company – Bangalore Tribunal⁴

The taxpayer has 41 per cent shareholding of MSF, a closely held company.

MSF has an investment in SARL. There were some disputes/ problems in SARL because of which the MSF's investment in SARL went bad.

In this regard, the shareholders of SARL were paid off. However, in the case of MSF, the shares of UFM (another group company) were transferred to the taxpayer in lieu of the investment of MSF in SARL without any consideration. In other words, for the loss of investment in SARL, instead of paying the consideration to MSF, some investments were transferred to shareholder of the MSF i.e., taxpayer.

As per section 2(22)(e), 'dividend', inter alia, includes (i) any payment by a closely held company by way of advance or loan to a shareholder being the beneficial owner of equity shares holding not less than ten per cent of the voting power or (ii) any payment on behalf, or for the individual benefit, of such shareholder.

The issue arose whether the transfer of benefit in the nature of shares to the shareholder of MSF (i.e., to the taxpayer) would be covered under deemed dividend provisions.

Revenue's contentions

Money invested by MSF in SARL has been diverted (in the form of UFM's share) for the individual benefit of the taxpayer.

Since the taxpayer was holding more than 10 per cent of voting rights in MSF, the deemed dividend provisions were applicable to the transaction.

The claim of the taxpayer that he was holding the shares of UFM on behalf of MSF was not correct as this investment was not disclosed in the books of MSF. Further, the financials of UFM nowhere stated that the shares were held by the taxpayer on behalf of MSF and not as an individual.

The genuineness of the transaction remains doubtful, and the layers of the transactions seem to be a colourable device to prevent the applicability of the deemed dividend provisions.

Taxpayer's contentions

The contractual obligation and business transactions does not come under the purview of deemed dividend provisions.

Deemed dividend provisions only deal with the benefit received by shareholder from any payment made by the company. In this case, there is no payment by the company (MSF).

MSF continues to disclose the investment in SARL in its books of account and MSF has the legal right to enforce the recovery of the said amount.

⁴ *Haris Kalandan Mohammed v. DCIT* (ITA No.878/Bang/2024) (Bang) – Source: Taxsutra

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Tribunal's decision

Deemed dividend provisions are legal fictions and are only for a definite purpose. Such provisions should not be extended beyond that legitimate field.

The provisions were not applicable in the instant case as there was no actual payment made by MSF to the taxpayer during the year nor there was any movement of accumulated profits to the taxpayer.

For the investments made by the company, the equivalent shares in the SARL were allotted to MSF. Thus, there was no benefit accruing to the taxpayer as a shareholder of the company.

There was no direct link between the investment made by MSF in SARL and the share transfer of UFM to the taxpayer. Both are mutually exclusive transactions and independent from one another.

Even if it is assumed that the investment by MSF has indirectly benefited the taxpayer, the same will not attract the deemed dividend provisions as the provisions do not cover such indirect benefit to the shareholder.

The investment made by MSF in SARL is still outstanding in the books of accounts of MSF. Without writing off the investment, it cannot be said that any benefit has been passed to the taxpayer.

Income of a private trust is not chargeable at maximum tax rate even though shares of beneficiaries are unknown as it was covered by specific exception – Ahmedabad Tribunal⁵

The taxpayer is a private trust created by an individual by way of a will. The trust was created by the individual for the benefit of her family after her death.

The trust filed return of income and claimed specified deductions (section 80C⁶ and 80TTA⁷) and also claimed tax deducted at source (TDS).

Income of private trusts where the shares of the beneficiaries are indeterminate, or unknown is to be charged to tax at the maximum marginal rate (MMR). However, this is subject to an exception. The income is taxable at normal rates if the income is receivable under a trust declared by any person by will and such trust is the only trust so declared by him⁸.

The issue arose whether the taxpayer trust, being the only trust declared by the individual through her will, should be taxed at the MMR or at normal rates.

The Revenue taxed the income of the taxpayer at the MMR of 42.17 per cent and rejected the claim of the specified deductions and TDS. The Revenue contended that there were many beneficiaries, and their share of income was unknown and indeterminate, and thus the taxpayer was to be taxed at MMR.

⁵ *Smt. Pashiben Prajapati Family Trust (DISC) v. ITO* (ITA No. 305/Ahd/2024) – Source: Taxsutra

⁶ Deduction in respect of life insurance premium, deferred annuity, contributions to provident fund, subscription to certain equity shares or debentures, etc.

⁷ Deduction in respect of interest on deposits in savings account

⁸ Section 164 of the Income-tax Act, 1961

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Decision

As the income was received under a trust declared by a will and such trust was only trust declared by the individual, the transaction was covered under specific exception and thus the income was not taxable at the MMR.

As all the beneficiaries under the trust were individuals, tax will be charged on the relevant income, as if it were the total income of an AOP, but that deeming fiction cannot be extended to an extent of denial of specified deductions which are otherwise available to individuals⁹.

The claim of TDS credit was also allowed to the taxpayer.



⁹ *Mrs. Amy F. Cama v. CIT* [1999] 237 ITR 82 (Bom), *Niti Trust v. CIT* [1997] 90 taxman 169 (Guj)

Foreign Exchange Management Act

New Foreign Exchange (Compounding Proceedings) Rules, 2024 issued, superseding the 2000 Rules

The Department of Economic Affairs, Ministry of Finance has notified the New Foreign Exchange (Compounding Proceedings) Rules 2024¹⁰ which supersede the existing Compounding Rules issued in 2000. Whilst most provisions of the Rules remain the same, key changes in the new Rules are as under

- a. Filing fees for compounding application doubled from Rs. 5,000 to Rs 10,000 (plus GST).
- b. Digital/online payment options enabled for payment of compounding application fees and the amount compounded.
- c. Threshold amount of contravention raised across levels of RBI officers empowered to do compounding. .
- d. The Compounding Authority now empowered to ask the Applicant to take necessary actions as may be required with respect to the transaction involved in the contravention.
- e. The New rules apply prospectively i.e., any compounding application pending before the compounding authority, on the date of commencement of new rules, will be governed by the provisions of the old Compounding Rules 2000
- f. The Form for filing compounding application now requires providing of much more elaborate details about the Applicant, its history and the contravention to be compounded.
- g. The cases of contraventions which cannot be compounded expanded to included cases where:
 - i. Section 37A of FEMA 1999 is applicable; .

- i. where an order has already been passed imposing penalty under Section 13;
- ii. where compounding authority is of the view that further investigation by ED is required to ascertain the amount of contravention.

RBI allows eligible foreign investors to invest in sovereign green bonds (SGrBs) in IFSC

The RBI introduced the 'Scheme for Trading and Settlement of Sovereign Green Bonds¹¹ in the International Financial Services Centre (IFSC) in India'. The key highlights of scheme are as below :

- a. Eligible foreign investors includes –
 - i. Persons resident outside India as defined in Section 2(w) of the FEMA
 - ii. International Banking Units (IBUs) of foreign banks without a branch or subsidiary in India
 - iii. Schemes funds regulated under the IFSC Authority.
 - iv. Entities from high-risk jurisdictions, as flagged by the Financial Action Task Force (FATF), are excluded from participation in this scheme.
- b. The scheme allows investors to engage in primary auctions and secondary market transactions. While IBUs cannot participate in primary auctions, they are permitted to trade in the secondary market under a "back-to-back" arrangement with their parent banks.
- c. Trading, settlement, compliance, reporting and operational guidelines are further notified in the schemes.

¹⁰ Notification no. G.S.R 566 (E) issued by Ministry of Finance (Department of Economic Affairs) on 12 September 2024

¹¹ Circular No. CO.FMRD.FMIA.No.S242/11-01-051/2024-2025 dated 29 August 2024.

Indirect Tax

Key recommendations of 54th GST Council meeting



1. GST Rate changes

- a. Extruded or expanded food products, savoury or salted (other than unfried or uncooked) – 12%
- b. Specific cancer drugs– 5%
- c. Car seats – 28%
- d. Transport of passengers by helicopters on seat share basis – 5%*
- e. R&D services by a Government entity; or a notified university¹² using Govt/private grants to be exempt*
- f. Import of services by an establishment of a foreign airline company from a related person/ its establishments outside India without consideration to be exempt*
- g. Services incidental to supply of transmission and distribution of electricity by transmission and distribution utilities to customers when provided as composite supply to be exempt*

2. Clarifications regarding GST rate

- a. Roof Mounting package unit (RMPU) Air conditioning machines for railways – 28%
- b. Un-fried or un-cooked snack pellets manufactured through process of extrusion – 5%

- b. Motorcycle seats – 28%
- d. Charter of helicopter – 18%
- e. Approved flying courses by DGCA-approved FTOs¹³ are exempt
- f. PLC¹⁴ charges paid along with consideration for construction services form part of composite supply, with construction services being the principal supply
- g. Past period (before 1 October 2021) GST regularization on 'as is where is basis' where distributor/sub-distributor acts as a principal to acquire and distribute films
- h. Affiliation services by
 - Educational boards taxable
 - State/Central educational boards, educational councils and other similarly placed bodies to Government schools to be exempt prospectively
Past demands (for period between 1 July 2017 to 17 June 2021 to be regularized on 'as is where is basis')
 - Universities to their constituent colleges liable to 18%
- i. Ancillary/intermediate services provided by GTA
 - if in the course of transportation of goods and GTA issues a consignment note –composite supply
 - if not in the course of transportation of goods and invoiced separately – not a composite supply

* Past demands to be regularized on 'as is where is basis'

¹² Notified under clause (ii) or (iii) of section 35(1) of Income Tax Act, 1961

¹³ Flying Training Organizations

¹⁴ Preferential Location Charges

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3. RCM Applicability

Supply of metal scrap:

- RCM to be introduced on the supply of metal scrap by URP¹⁵ supplier to RP¹⁶. The supplier shall take registration on crossing the threshold.
- TDS of 2% on B2B supply of metal scrap.

Renting of commercial property

- RCM applicable on renting of commercial property by URP to RP.

Earlier renting of residential property by URP to RP was brought under RCM via Notification 5/2022-CT (Rate) dated 13 July 2022)

4. Measures for trade facilitation

a) GST Amnesty – Section 128A of the CGST Act

- To be notified w.e.f. 1 November 2024
- New Rule 164 to CGST Rules to prescribe procedures and conditions.
- 31 March 2025 to be notified as the last date for availing amnesty.

b) Implementation of Section 16(5) and 16(6) of the CGST Act

- To be notified at the earliest.
- Special procedure to enable ITC through rectification of orders which confirmed wrong availment of ITC in contravention of section 16(4), but where such ITC is now available as per section 16(5) & 16(6) of the CGST Act, and where no appeal has been filed.

¹⁵ Unregistered persons

¹⁶ Registered persons

c) Amendments to Rule 89 and Rule 96 to the CGST Rules

- Rule 96(10) *inter-alia* restricts refund of IGST on payment of tax when exporting unit avails IGST exemption for Imports under advance authorisations or as an EOU.
- Where IGST and Cess on such imports are subsequently paid, along with interest, and the BoE is reassessed then the IGST refund to the exporter shall not be in contravention of rule 96(10).
- Council recommended omitting prospectively rule 96(10), rule 89(4A) & rule 89(4B) to simplify and expedite the procedure for refunds.

Presently separate refund mechanisms are prescribed under these rules for claiming refunds by taxpayers availing the benefits under Deemed exports, Advance Authorisation, EPCG, EOU, Concessional rate of 1% for exports subject to conditions

5. Clarifications to be issued

- a. Waiver of interest and penalty under section 128A of the CGST Act.
- b. Implementation of the provisions of Section 16(5) and 16(6) of the CGST Act.

6. Other Measures

- a. Roll-out of a pilot for B2C e-invoicing on a voluntary basis in selected Sectors and States. This will benefit the consumer in verifying the validity of invoices and would also help in processing refund claims for foreign tourists on goods taken outside India¹⁷.
- b. Constitution of Group of Ministers to look into GST issues relating to life and health insurance.

¹⁷ As highlighted during the press conference of the Finance Minister

Circulars



Pursuant to the 54th GST Council meeting held on 9 September 2024; the below circulars have been issued:

1. Advertising Services provided to Foreign Clients¹⁸

Foreign Companies enter into an agreement with advertising agencies in India, to outsource the entire activity of advertising services which *inter alia* covers identification and dealing with media company, media and investment planning, content creation including procurement of media space.

In such case, media company raises invoice on the advertising agency for inventory costs (media space), which are paid by the advertising agency. Subsequently, the advertising agency raises an invoice on the foreign client for the entire gamut of advertising services (including inventory cost) and receives the payments in foreign exchange.

Whether the advertising company can be considered as an "intermediary" between the foreign client and the media company?

Advertising agencies enter two separate agreements:

- With the foreign client for outsourcing the entire activity.
- With the media company in India for implementing the said media plan, procurement of media space for airing or releasing or printing advertisement.

Both the agreements are on a P2P basis and no agreement exists between the media company and the foreign client. Therefore, the advertisement agency is not acting as an agent and does not fulfill the criteria of "intermediary".

¹⁸ Circular No. 230/24/2024-GST dated 10 September 2024

In case the agreement for media space and broadcast is between media company and the foreign client, then the advertising company acts as an agent by merely facilitating the services and would be considered as an intermediary.

Whether the representative of foreign client or the target audience in India can be considered as the "recipient" of the services supplied by advertising company?

As per Section 2(93)(a) of the CGST Act, the "recipient" of the services means the person who is liable to pay consideration. Since foreign client is liable to pay consideration, it shall be considered as the recipient.

Whether the advertising services provided by the advertising companies to foreign clients can be considered as performance-based services as per section 13(3) of the IGST Act?

Section 13(3)(a) of the CGST Act – not applicable as advertisement services do not involve goods that are required to be made physically available.

Section 13(3)(b) of the CGST Act – not applicable as advertising services do not require any physical presence of the recipient.

Hence, Place of Supply (PoS) is as per Section 13(2) CGST Act, i.e. location of the recipient (location of the foreign client), and would be treated as export of services, subject to other conditions.

2. Availability of ITC in respect of Demo Vehicles (DV)¹⁹

Whether ITC available on DV?

It is clarified that the usage of the words 'such' motor vehicles (MV) instead of

¹⁹ Circular No. 231/25/2024-GST dated 10 September 2024

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'said' MV, in Section 17(5)(a)(A) of CGST Act, implies that the intention of the lawmakers was not only to exclude from the blockage of ITC, the motor vehicle which itself was further supplied, but also to exclude the MV which was used for the purpose of further supply of similar type of MV.

DV are used by authorized dealers to provide trial run and to demonstrate features of the vehicle to potential buyers. Therefore, ITC on DVs involved in 'further supply of such MV is eligible.

The circular carves out following exceptions where the ITC is not available as DV is not used for further supply of similar type of MV:

- Where MV are used by an authorized dealer for transportation of its staff employees/ management etc.
- Where the manufacturer sells vehicles directly to the customers and authorized dealer acts as an agent or service provider to the vehicle manufacturer, providing marketing services including test drives to potential customers, but is not directly involved in the purchase and sale of vehicles

Can ITC be availed on DVs when capitalized in the books of account by authorized dealers?

The circular explains that DVs, even if capitalized in the books, are used by authorized dealers to promote sales which are in the course of business and hence ITC is eligible.

However, ITC is not eligible in case the tax component is capitalized and depreciation is claimed.

3. Data hosting services (DHS) provided from India to overseas cloud computing service (CCS) providers²⁰

The CCS providers enter into contract with DHS providers to use their data centers for hosting CCSs. The DHS provider generally provides a comprehensive service involving all aspects of data center like rent, software and hardware infrastructure, power, net connectivity, security, human resource, etc.

The DHS providers do not deal with end consumers of CCS and may not even know about the end users and there is no contact between DHS provider and the end consumers of the overseas CCS provider.

Whether DHS provider qualifies as 'Intermediary' between the CCS provider and their end customers

There is no contract between DHS provider and the end customer. DHS provider renders service to CCS provider on P2P basis and is not acting as a broker or agent. Hence, DHS provider does not fulfill the criteria for an "intermediary"

Whether the DHS are provided in relation to goods "made available" by service recipient to service provider

The overseas CCS providers cannot be considered to own the infrastructure and make the same physically available to the DHS provider. Hence, the PoS cannot be determined under section 13(3)(a) of the IGST Act.

There may be some cases where hardware required for DHS is provided by the CCS provider. Even in such cases, it cannot be said that the service provided by DHS is in relation to the goods being made available by the CCS provider and therefore POS cannot be determined under Section 13(3)(a) of the IGST Act.

²⁰ Circular No. 232/26/2024-GST dated 10 September 2024

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Whether the data hosting services are provided directly in relation to "immovable property".

Considering that the DHS provider provides comprehensive service, it cannot be said that the services are provided directly in relation to immovable property or physical premises and hence, the POS cannot be determined under section 13(4) of the IGST Act.

Hence, PoS is as per Section 13(2) of the IGST Act, i.e., location of the recipient (location of the foreign CCS provider), and would be treated as export of services, subject to other conditions.

4. Regularization of IGST Refunds in Contravention of Rule 96(10) of CGST Rules²¹

Rule 96(10) prohibits the refund of IGST paid on the export if the benefits of certain concessional or exemption notifications have been availed, including exemptions under the EOU and Advance Authorization schemes.

It has been clarified that if an exporter initially had imported inputs without paying IGST and compensation cess under the Advance Authorization or EOU scheme but later paid these amounts along with interest and gets the Bills of Entry reassessed by Customs, the IGST paid on their exported goods can still be refunded.

This refund will not be considered a violation of Rule 96(10) of the CGST Rules.

²¹ Circular No. 233/27/2024-GST dated 10 September 2024

Invoice Management System



Under the new Invoice Management System (IMS), effective from 1 October 2024 on the GST portal, recipients will be able to preview invoices uploaded by suppliers before they are included in GSTR-2B and auto-populated into GSTR-3B. This preview feature would allow businesses to detect errors or discrepancies in invoices, providing an additional layer of control over their input tax credit (ITC) claims. However, certain supplies will not be considered under IMS and will be directly populated in GSTR-3B:

- Inward supplies under the Reverse Charge Mechanism (RCM), where the supplier has reported the supply in Table 4B of Invoice Furnishing Facility (IFF), GSTR-1, or GSTR-1A.
- Supplies where ITC is ineligible due to section 16(4) of the CGST Act or on account of the POS rules.

Recipients can take action on invoices from the time invoice details are saved in GSTR-1 until the filing of GSTR-3B. GSTR-2B will be generated based on data available as of the 14th of each month. If any action is taken on invoices after this cut-off date, GSTR-2B will need to be recomputed.

Within the IMS, suppliers will also have visibility into the actions taken by their recipients on invoices.

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Recipient's Action:

Accept – Invoice becomes part of GSTR 2B and GSTR 3B

Reject – Invoice does not become part of GSTR 2B and GSTR 3B. (Removed from IMS post-filing GSTR 3B)

Pending – Not considered in GSTR-2B and carried forward to next month in IMS for further Acceptance or rejection

No Action – Deemed accepted at the time of GSTR-2B generation

The liability of the supplier will be increased in GSTR-3B for the subsequent tax period, for the following transactions which have been rejected by the recipient (*Pending action not allowed on the following transaction*):

- a) Original Credit note;
- b) Upward amendment of the credit note (irrespective of the action taken on the original credit note);
- c) Downward amendment of the credit note (in case original credit note was rejected);
- d) Downward amendment of Invoice/ Debit note (in case original Invoice/ Debit note was accepted and respective GSTR 3B has also been filed).

High Court Decision



Once GST proceedings on a specific issue have been initiated by a State tax authority, they cannot be transferred to DGGI²²

The case involved a manufacturer of lead alloys who was subjected to multiple inquiries for allegedly wrongful availment of ITC. The State GST department and the DGGI both initiated separate proceedings on the same matter. The petitioner challenged the transfer of proceedings from the State GST officer to DGGI, arguing that this violated Section 6(2)(b) of the HGST Act and the CGST Act, which bars concurrent proceedings by different officers on the same subject matter.

The petitioner contended that once the State tax officer had initiated proceedings, it was unlawful to transfer the case to DGGI. They argued that the GST law, unlike other taxation laws, does not provide for transferring proceedings between authorities, and that the State tax department had already taken steps by issuing notices and starting inquiries.

On the other hand, the respondent (DGGI) argued that the transfer was justified due to the complexity and scope of the investigation, which involved multiple firms engaged in fraudulent activities across state lines. They claimed that the DGGI, with its broader jurisdiction, was better equipped to handle the investigation.

²² *Stalwart Alloys India Private Limited v. Union of India and Others* [(2024-VIL-920-P&H)]

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The High Court ruled that the provisions of the GST law do not allow for the transfer of proceedings once they have been initiated by a proper officer. The court relied heavily on Section 6(2)(b) of the HGST Act and the CGST Act, which clearly state that no other officer can commence proceedings on the same subject matter once initiated by a proper officer under State GST. The court made it clear that the term "subject matter" refers not to the tax period in question but to the nature of the proceedings themselves. In this case, the issue was the alleged fraudulent avilment of ITC, and the court held that once the State tax officer had initiated proceedings on this matter, the DGGI could not step in, even for subsequent periods. The court also referred to the Ministry of Finance circular dated 5 October 2018, which clarified that officers of both Central and State tax authorities are empowered to conduct intelligence-based enforcement actions but must complete the process themselves without transferring cases between authorities.



KPMG in India addresses:

Ahmedabad

Commerce House V, 9th Floor,
902, Near Vodafone House, Corporate Road, Prahlad Nagar,
Ahmedabad – 380 051.
Tel: +91 79 4040 2200

Hyderabad

Salarpuria Knowledge City, 6th Floor, Unit 3, Phase III,
Sy No. 83/1, Plot No 2, Serilingampally Mandal, Ranga Reddy District,
Hyderabad – 500 081.
Tel: +91 40 6111 6000

Noida

Unit No. 501, 5th Floor, Advant Navis Business Park, Tower-A, Plot# 7, Sector 142, Expressway Noida,
Gautam Budh Nagar, Noida – 201 305.
Tel: +91 0120 386 8000

Bengaluru

Embassy Golf Links Business Park,
Pebble Beach, 'B' Block, 1st & 2nd Floor,
Off Intermediate Ring Road, Bengaluru – 560071
Tel: +91 80 6833 5000

Jaipur

Regus Radiant Centre Pvt Ltd., Level 6, Jaipur Centre Mall,
B2 By pass Tonk Road, Jaipur – 302 018.
Tel: +91 141 - 7103224

Pune

9th floor, Business Plaza, Westin Hotel Campus, 36/3-B, Koregaon Park Annex, Mundhwa Road, Ghorpadi, Pune – 411 001.
Tel: +91 20 6747 7000

Chandigarh

SCO 22-23 (1st Floor), Sector 8C, Madhya Marg, Chandigarh – 160 009.
Tel: +91 172 664 4000

Kochi

Syama Business Centre,
3rd Floor, NH By Pass Road, Vytilla, Kochi – 682 019.
Tel: +91 484 302 5600

Chennai

KRM Towers, Ground Floor,
1, 2 & 3 Floor, Harrington Road, Chetpet, Chennai – 600 031.
Tel: +91 44 3914 5000

Kolkata

Unit No. 604, 6th Floor, Tower – 1, Godrej Waterside, Sector – V, Salt Lake, Kolkata – 700 091.
Tel: +91 33 4403 4000

Mumbai

2nd Floor, Block T2 (B Wing), Lodha Excelus, Apollo Mills Compound, N M Joshi Marg, Mahalaxmi, Mumbai- 400011
Tel: +91 22 3989 6000

Vadodara

Ocean Building, 303, 3rd Floor, Beside Center Square Mall, Opp. Vadodara Central Mall, Dr. Vikram Sarabhai Marg, Vadodara – 390 023.
Tel: +91 265 619 4200

Vijayawada

Door No. 54-15-18E, Sai Odyssey, Gurunanak Nagar Road, NH 5, Opp. Executive Club, Vijayawada, Krishna District, Andhra Pradesh – 520 008.
Tel: +91 0866 669 1000

Gurugram

Building No.10, 8th Floor, DLF Cyber City, Phase II, Gurugram, Haryana – 122 002.
Tel: +91 124 307 4000

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KPMG Assurance and Consulting Services LLP, Lodha Excelus, Apollo Mills Compound, NM Joshi Marg, Mahalaxmi, Mumbai - 400 011 Phone: +91 22 3989 6000, Fax: +91 22 3983 6000

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