CNK
& ASSOCIATES LLP
CHARTERED ACCOUNTANTS

Annual Updates 2022-23
Goods and Services Tax

2022-23 Headlines

- The Maze of Indian GST: Despite Progress, Businesses Continue to Struggle with Complexity and Ambiguity.
- Clearing the Logjam: Green Light to GST Appellate Tribunal after Six Years of Delay.
- India's War Against GST Evasion Continues – Data Analytics and Human Intelligence Uncover GST evasion of INR 1.01 Trillion in 2022-23.
- From Paper to Pixels, From Big to Small, E-Invoicing for All: Indian Government's Bold Move to Extend Digital Invoicing to Businesses with Turnover up to 10 Crore.
- Game-Changing All India GST Audit Manual, 2023 Released to Standardize Audits Across States and Centre.
- GST Rulings Shake Up Tax Landscape: Changes Coming for Businesses Nationwide.
- Unlocking the Power of GST: Indian Government's Notifications and Circulars Provide a Pathway to Clarity and Compliance.

Important Notifications

Amnesty Scheme for Non- Filers and Rationalisation of Late Fees

Amnesty Scheme introduced for the non-filers of annual return which provides for reduced fees if the returns are filed during the period April 1, 2023 to June 30, 2023. Further, late fees for annual reutrn have been rationalised for the tax-payers having aggregate turnover upto INR 20 crore in a financial year.

Notification No.	GST Return Form	Period	Turnover	Existing Late Fees per Return		Revised Late Fees Per Return	
				Fees (INR)	Maximum Limit (INR)	Late Fees (INR)	Maximum Limit (INR)
07/2023-Central Tax dated 31.03.2023	GSTR-9 (Annual Return)	2017-18 to 2021-22	Any	200 per day	0.5% of Turnover	20,000	
		2022-23 and onwards	Up to 5 crore			50 per day	0.04% of Turnover
			> 5 crore <= 20 crore			100 per day	
			> 20 crore			200 per day	0.5% of Turnover

Amnesty Scheme for Non- Filers

Amnesty Scheme introduced for the non-filers which provides for nil / reduced fees if the returns are filed during the period April 1, 2023 to June 30, 2023.

Notification No.	GST Return Form	Type of Return	Period	Existing Late Fees per Return		Revised Late Fees Per Return	
				Fees (INR)	Maximum Fees (INR)	Late Fees (INR)	Maximum Fees (INR)
02/2023-Central Tax dated 31.03.2023	GSTR-4 (Composition Dealer)	NIL	2017-18 to 2021-22	50 per day	500	NIL	
		Other than NIL			2,000	500	
08/2023-Central Tax dated 31.03.2023	GSTR-10 (Final Return)	NA	Failure up to 30.06.2023	200 per day	10,000	200 per day	1,000

Important Notifications

<table>
<tr><th>Sr. No.</th><th>Notification No.</th><th>Summary of Amendment</th></tr>
<tr><td colspan="3">Amnesty Scheme</td></tr>
<tr><td>1.</td><td>03/2023- Central Tax dated 31.03.2023</td><td>▪ Amnesty to registered person whose registration cancelled on or before 31.12.2022
▪ Application for revocation to be filed latest by 30.06.2023 and only after furnishing the returns due upto the effective date of cancellation of registration and after payment of any amount due as tax, interest, penalty and late fee in respect of the such returns.</td></tr>
<tr><td>2.</td><td>06/2023- Central Tax dated 31.03.2023</td><td>▪ Amnesty to registered person in whose case best judgement assessment done on or before 28.02.2023.
▪ Assessment order deemed to be withdrawn if the return is furnished up to 30.06.2023 along with interest and late fees</td></tr>
<tr><td colspan="3">Recovery of Demand</td></tr>
<tr><td>3.</td><td>09/2023- Central Tax dated 31.03.2023</td><td>▪ Time limit for issuance of order or show cause notice under Section 73 of the CGST Act for recovery of tax not paid or short paid or input tax credit (ITC) wrongly availed or utilized extended.
<table>
<tr><th>Financial Year</th><th>Extended Time to Pass Order</th><th>Last Date to Issue SCN</th></tr>
<tr><td>2017-18</td><td>31.12.2023</td><td>30.09.2023</td></tr>
<tr><td>2018-19</td><td>31.03.2024</td><td>31.12.2023</td></tr>
<tr><td>2019-20</td><td>30.06.2024</td><td>31.03.2024</td></tr>
</table></td></tr>
<tr><td>4.</td><td>26/2022 –Central Tax dated 26.12.2022</td><td>▪ Rule 88C - If the tax payable by a registered person according to the statement of outward supplies in GSTR-1 exceeds the amount payable according to the GSTR-3B return, the registered person will be informed of the difference and must either pay the differential tax liability with interest or provide an explanation on the common portal within seven days. If the amount remains unpaid and no acceptable explanation is provided, it will be recoverable under Section 79.</td></tr>
<tr><td colspan="3">Returns</td></tr>
<tr><td>5.</td><td>26/2022 –Central Tax dated 26.12.2022</td><td>▪ Changes in Form GSTR-1 to declare supplies made through each e-commerce operator.</td></tr>
</table>

Important Notifications

Sr. No.	Notification No.	Summary of Amendment
Input Tax Credit (ITC)		
6.	26/2022 –Central Tax dated 26.12.2022	▪ A new Rule 37A requires recipient to reverse ITC if the supplier has not paid tax and has not filed the corresponding GSTR-3B return by 30th September of the following financial year in which ITC in respect of such invoice/ debit note has been availed. If ITC is not reversed, the amount becomes payable with interest. If the supplier files the return later, the recipient may re-avail the credit in a subsequent return.
7.	14/2022 –Central Tax dated 05.07.2022	▪ The value of supply of Duty Credit Scrips shall not be considered as exempt supply for the purpose of computation of ITC reversal under Rule 42 and 43 of the CGST Rules.
Invoicing		
8.	14/2022 –Central Tax dated 05.07.2022	▪ Below declaration on invoice to be given mandatorily by the suppliers exempted from e-invoicing. "I/We hereby declare that though our aggregate turnover in any preceding financial year from 2017-18 onwards is more than the aggregate turnover notified under sub-rule (4) of rule 48, we are not required to prepare an invoice in terms of the provisions of the said sub-rule."
Taxes / Interest		
9.	09/2022 –Central Tax and 14/2022 –Central Tax dated 05.07.2022	▪ Transfer of any amount available in CGST and IGST electronic cash ledger of a registered person to the electronic cash ledger of a distinct person (GSTINs with same PAN) allowed through Form GST PMT-09 unless taxpayer has any unpaid tax liability. ▪ UPI and IMPS provided as an additional mode of payment.
10.	08/2022 –Central Tax dated 07.06.2022	▪ Waiver of interest on delay filing of Statement in Form-8 due to technical glitch by specified e-commerce operators for specified tax period. (related with Tax Collected at Source)

Important Amendments of The Finance Act, 2023

Important Finance Act, 2023 amendments which are yet to be notified and implemented.

- No ITC can be availed in respect of procurements towards CSR-Corporate Social Responsibility activities.
- Value of exempt supply shall include the value of supply of warehoused goods before clearance for home consumption for the purposes of ITC reversal.
- A maximum time limit of 3 years from the due date has been prescribed to file GST returns.
- The definition of Online Information Database Access and Retrieval services amended to delete the condition of 'essentially automated and involving minimum human intervention.'

Important Circulars

Sr. No.	Circular No.	Clarification
Taxability		
1.	190/02/2023-GST dated 13.01.2023	▪ Incentives paid by Ministry of Electronics and Information Technology (MeitY) to acquiring banks under the incentive scheme for promotion of RuPay Debit Cards and low value BHIM-UPI transactions are in the nature of subsidy and thus not taxable under GST.
2.	186/18/2022-GST dated 27.12.2022	▪ No Claim Bonus allowed by the insurance company is not subject to GST and it cannot be considered as a consideration for any supply provided by the insured to the insurance company. ▪ GST leviable on actual insurance premium amount payable by the policy holders to the insurer, after deduction of No Claim Bonus mentioned on the invoice.
3.	178/10/2022-GST dated 03.08.2022	▪ Liquidated damages arising out of breach of contract are not liable to GST. ▪ Cheque dishonor fine or penalty or penalty imposed for violation of laws is not a consideration for any service and is not subject to GST. ▪ Forfeiture of salary or payment of bond amount in the event of the employee leaving the employment before the minimum agreed period is not liable to GST. ▪ The amount forfeited in the case of non-refundable ticket for air travel or security deposit, or earnest money forfeited in case of the customer failing to avail the travel, tour operator or hotel accommodation service or such other intended supplies should be assessed at the same rate as applicable to the principal service contract.
4.	177/09/2022-TRU dated 03.08.2022	▪ Sale of space for advertisement in souvenir book subject to GST @ 5%. ▪ If body corporate hires the motor vehicle (for transport of employees etc.) for a period of time, during which the motor vehicle shall be at the disposal of the body corporate then the body corporate shall be liable to pay GST on the same under RCM – Reverse Charge Mechanism. ▪ If body corporate avails the passenger transport service for specific journeys or voyages and does not take vehicle on rent for any particular period of time, then the body corporate shall not be liable to pay GST on the same under RCM.
5.	172/04/2022-GST dated 06.07.2022	▪ 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

Important Circulars

Sr. No.	Circular No.	Clarification
ITC		
6.	184/16/2022-GST dated 27.12.2022	▪ The law does not restrict the recipient of an input service located in India from availing ITC if the place of supply of the service is outside India. Accordingly, the recipient of transportation services for goods can avail ITC for IGST charged by the supplier.
7.	183/15/2022-GST dated 27.12.2022	▪ In case of discrepancies during F.Y. 2017-18 and F.Y. 2018-19 between ITC claimed in Form GSTR-3B and Form GSTR-2A for a financial year exceeds Rs 5 lakh, the recipient must produce a certificate bearing UDIN from a Chartered Accountant or Cost Accountant certifying that the supplier has made supplies and paid taxes for those supplies. For discrepancies up to Rs 5 lakh, the recipient to produce a certificate from the concerned supplier confirming the supplies made and taxes paid.
Recovery of Demand		
8.	187/19/2022-GST dated 27.12.2022	▪ If tax authorities have issued a confirmed demand for recovery against a corporate debtor and the adjudicating authority under Insolvency and Bankruptcy Code reduces the amount of dues payable, the jurisdictional Commissioner must issue an intimation in Form GST DRC-25 reducing such demand to the taxable person and other parties with whom recovery proceedings are pending.
Miscellaneous		
9.	186/18/2022-GST dated 27.12.2022	▪ Notification No. 13/2020-Central Tax dated 21.03.2020, as amended, exempts certain entities/sectors from mandatory generation of e-invoices. This exemption applies to the entity as a whole and is not restricted by the nature of supply being made by the entity.
10.	172/04/2022-GST dated 06.07.2022	▪ Any payment towards output tax, whether self-assessed in the return or payable as a consequence of any proceeding can be made by utilization of the amount available in the electronic credit ledger.

Index

Judicial Pronouncements

I. Supreme Court Case Laws

A. Striking down of the levy of IGST on importers for ocean freight services provided by foreign shipping lines to foreign suppliers in a CIF contract for import of goods :

Union of India vs. Mohit Minerals (P.) Ltd. [2022] 138 taxmann.com 331. (In favour of Assessee)

Relevant Facts

The respondent imported non-cooking coal from Indonesia, South Africa and the U.S. by ocean transport on Cost Insurance Freight (CIF) basis. The respondent paid customs duties on the import of coal, which included the value of ocean freight. In the case of a CIF contract, the freight invoice was issued by the foreign shipping line to the foreign exporter, without the involvement of the importer. Ocean freight was paid by the importer only when goods were imported under Free-on-Board contract.

Entry No. 9 of Notification No. 8/2017 – IGST (Rate) notified GST @ 5% on ocean freight services provided or agreed to be provided by a person located in a non-taxable territory to another person located in a non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs stations of clearance in India.

The respondent filed a writ petition before the Gujarat High Court challenging Notifications 8/2017 and 10/2017. The Gujarat High Court held the notifications unconstitutional for exceeding the powers conferred by the IGST Act and CGST Act.

A batch of Special Leave Petitions were filed before the Supreme Court by the Department against the decision of the Gujarat High Court.

Held

The Hon'ble Supreme Court held that:

i. The impugned levy imposed on the 'service' aspect of the transaction is in violation of the principle of 'composite supply' enshrined under Section 2(30) read with Section 8 of the CGST Act. Since the Indian importer is liable to pay IGST on the 'composite supply', comprising of supply of goods and services in a CIF contract, a separate levy on the Indian importer for the 'supply of services' by the shipping line would be in violation of Section 8 of the CGST Act.

ii. Importer of goods in India is to be considered as recipient of service of transportation of goods by vessel from outside India to a place in India as he is ultimate beneficiary though shipping service is provided by foreign shipping line to foreign exporter in a CIF contract. Mere payment of consideration by foreign exporter to foreign shipping line in CIF imports does not mean that there was no supply of freight service to importer.

iii. Levy of GST on supply of transportation service by foreign shipping line to foreign exporter to import goods into India is not extra-territorial as services are rendered for benefit of Indian importer and transaction has nexus with territory of India.

iv. Specification of Indian importer as recipient of service by Notification No. 10/2017 IGST (Rate) is only clarificatory; this notification does not specify taxable person different from recipient prescribed in Section 5(3) IGST Act for reverse charge.

v. The recommendations of the GST Council only have persuasive value as they are the product of a collaborative dialogue involving the Union and States. Legal enaction of the recommendations would disrupt fiscal federalism.

CNK Comments

Huge respite to the importers who were subject to levy of GST under RCM on ocean freight services in a CIF contract. However, the judgement opens a pandora's box with respect to the findings that the importer is the recipient which may have implications in other similar cases; the recommendations of the GST Council are non-binding; and that the Centre and States are at liberty to use different means of persuasion ranging from collaboration to contestation as they are conferred with equal power to legislate on GST.

B. Upholding the levy of service tax under RCM mechanism on secondment of employees :

C.C.,C.E. & S.T. Bangalore vs. Northern Operating Systems (P.) Ltd. [2022] 138 taxmann.com 359. (In favour of Revenue)

Relevant Facts

The assessee was registered as a service provider under the categories of Manpower Recruitment Agency Service, Business Auxiliary Service, Commercial Training and Coaching Service, TTSS, Telecommunication and Legal Consultancy Service etc., under the Finance Act, 1994. Following an audit by the revenue, proceedings were initiated against the assessee for alleged non-payment of service tax concerning agreements entered into by it with its group companies located in USA, UK, Dublin (Ireland), Singapore, etc. to provide general back-office and operational support to such group companies.

The nature and contents of the agreements were as follows:

i. When required the respondents requested the Group Companies for managerial and technical personnel for assistance in business and accordingly the employees were selected by the group company, and they would be transferred to the respondents.

ii. The employees acted in accordance with the instructions and directions of the respondents. The employees would devote their entire time and work to the employer seconded to.
iii. The seconded employees would continue to be on the payroll of the group company (foreign entity) for the purpose of continuation of social security/retirement benefits, but for all practical purposes, the respondents would be the employer. During the term of transfer or secondment the personnel would be the employee of the respondents. The respondents issued an employment letter to the seconded personnel stipulating all the terms of the employment.
iv. The employees so seconded would receive their salary, bonus, social benefits, out of pocket expenses and other expenses from the group company.
v. The group company would raise a debit note on the respondents to recover the expenses of salary, bonus etc. and the respondents would reimburse the group company for all the expenses and there would be no mark-up on such reimbursement.

Held

i. The Hon'ble Supreme Court after referring to its previous judgments, wherein it was held that 'control' alone cannot be a factor to decide as to who is the employer stated that there is no one single determinative factor, which the courts give primacy to, while deciding, **whether an arrangement is a Contract of Service or a Contract for Service** and stated that **'substance over form' is the one test that had been consistently applied requiring a detailed examination of the contracts/agreements.**
ii. In the current case, while the control over performance of the seconded employees' work and the right to ask them to return, if their functioning is not as is desired, was with the assessee, the fact remains that their overseas employer in relation to its business, deployed them to the assessee, on secondment. Secondly, the overseas employer- for whatever reason, paid them their salaries.
iii. Their terms of employment even during the secondment were in accordance with the policy of the overseas company, who is their employer. Upon the end of the period of secondment, they returned to their original places, to await deployment or extension of secondment.
iv. The earlier cases had limited precedential value as independent reasonings were not detailed. The question of revenue neutrality was set aside as the Court was called upon to adjudicate the nature of transaction and whether the incidence of service tax aroused by virtue of provision of secondment services. The assessee was the service recipient of manpower recruitment and supply services by the overseas entity, with respect to the employees it seconded to the assessee for the duration of their deputation and was liable to pay service tax under RCM.

CNK Comments

This judgement has unsettled the once settled principle which can have implications even under the GST regime. Secondment arrangements are common among multi-national corporations wherein employees are deputed to subsidiary companies for specified projects/period. There are a series of judgements wherein the Tribunals have held that there would be no service tax liability under reverse

charge as there are no manpower supply services provided by the overseas entity when they send their employees on secondment agreements to the Indian entities as the Indian entities would be the employer for the employees on secondment. However, while applying the judgement, the provisions under the Income Tax Act, 1961 will also require consideration to ensure uniformity in the tax position adopted under all taxation laws.

C. Genuineness of transactions need to be proved by purchasing dealers for claiming ITC:

M/s. Ecom Gill Coffee Trading Pvt. Ltd. dated 13-03-23 (In favour of Revenue)

Relevant Facts

M/s. Ecom Gill Coffee Trading Pvt. Ltd. – purchasing dealer purchased green coffee bean from other dealers for the purposes of further sale in exports and in domestic market. Upon finding some irregularities in Input Tax Rebate claimed by the purchasing dealer for Assessment Year 2010-2011, the Assessing Officer (AO) issued notice under section 39 of the Karnataka Value Added Tax (KVAT) Act, 2003 seeking furnishing of accounts, books, tax invoices etc. Re-assessment order came to be passed. It was found that the purchasing dealer had claimed ITC from mainly 27 sellers and out of aforesaid 27 sellers, 6 were found to be de-registered; 3 had affected sales to the respondent but did not pay taxes and 6 have out rightly denied turnover nor paid taxes.

The first Appellate Authority confirmed the findings of the AO. However, the Tribunal allowed the second appeal on the ground that the purchasing dealer purchased the coffee from the registered dealer under genuine tax invoices and on payment by cheque and consequently allowed the ITC claimed. The revision application by the State before the High Court was dismissed, relying upon its earlier decision in the case of M/s. Tallam Apparels.

Held

The Supreme Court of India ruled that –

i. The provisions of Section 70 of the KVAT Act, 2003 clearly stipulate that the burden of proving that the ITC claim is correct lies upon the purchasing dealer claiming such ITC.
ii. Merely because the dealer claiming such ITC claims that he was a bonafide purchaser was not enough and sufficient.
iii. Such a burden of proof cannot get shifted on the revenue.
iv. Mere production of the invoices or the payment made by cheques was not enough and cannot be said to be discharging the burden of proof cast under section 70 of the KVAT Act, 2003.
v. The dealer claiming ITC had to prove beyond doubt the actual transaction which can be proved by furnishing the name and address of the selling dealer, details of the vehicle which has delivered the goods, payment of freight charges, acknowledgement of taking delivery of goods, tax invoices and payment particulars etc.

vi. In fact, if a dealer claims ITC on purchases, such dealer/purchaser shall have to prove and establish the actual physical movement of goods.

In view of the above and for the reasons stated above and in absence of any further cogent material like furnishing the name and address of the selling dealer, details of the vehicle which has delivered the goods, payment of freight charges, acknowledgement of taking delivery of goods, tax invoices and payment particulars etc. and the actual physical movement of the goods by producing the cogent materials, the AO was absolutely justified in denying the ITC, which was confirmed by the first Appellate Authority. Both, the second Appellate Authority as well as the High Court have materially erred in allowing the ITC despite the concerned purchasing dealers failed to prove the genuineness of the transactions and failed to discharge the burden of proof as per section 70 of the KVAT Act, 2003.

CNK Comments

A very disturbing judgement from the Apex Court though under the pre- GST regime clarifying the ambiguities with respect to discharge of burden of proof for genuineness of transactions. A very critical aspect from the point of view of purchasing dealers as pronounced by the Court is to prove and establish the actual physical movement of goods for claiming ITC This judgement may hold good even under the GST regime.

II. High Court Case Laws

A. While valuing Construction Service, actual cost of land, if available, shall not be subject to GST. The prescribed rate of deduction of 1/3rd of total amount towards land value is ultra-vires the CGST Act, 2017 and is discriminatory, arbitrary and violative of Article 14 of Constitution of India:

High Court of Gujarat - Munjaal Manishbhai Bhatt vs. Union of India [2022] 138 taxmann.com 117 (In favour of Assesee)

Relevant Facts

The writ applicant entered into an agreement for purchase of a plot of land and construction of bungalow. Separate and distinct consideration was agreed upon between the parties to the agreement for the sale of land and construction of a bungalow on the land. The writ applicant believed that he would be liable to pay GST on the consideration payable for construction of bungalow in as much as it would constitute supply of construction service under the GST Acts. However, the developer relied on Entry No. 3(if) of Notification No. 11/2017 – Central Tax (Rate) read with Paragraph 2 of the said notification and informed the applicant that he would be liable to GST on the entire consideration payable for land as well as construction of bungalow after deducting 1/3rd of the value towards the land in accordance with the paragraph 2 of the said notification.

The writ application was filed as the actual consideration paid towards the sale of land had not been excluded for computation of liability and instead 1/3rd of the total consideration was deemed to be the land value in accordance with paragraph 2 of the said notification.

The Appellate Authority for Advance Ruling upheld the decision by the Advance Ruling Authority in a related matter concerning the developer where the deduction for sale of land (developed plots) was admissible only to the extent of 1/3rd of the total consideration based on the notification.

A common judgement was issued to dispose of the above cases.

Held

i. Paragraph 2 of the Notification No. 11/2017-Central Tax (Rate), which provides for a mandatory fixed rate of deduction of 1/3rd of total consideration towards the value of land was ultra-vires the provisions as well as the scheme of the GST Acts. Application of such mandatory uniform rate of deduction is discriminatory, arbitrary and violative of Article 14 of the Constitution of India. The said paragraph would have to be read down to the effect that the deeming fiction of 1/3rd will not be mandatory in nature. It will only be available at the option of the taxable person in cases where the actual value of land or undivided share in land is not ascertainable.

ii. Legislative intent was to impose tax on construction activity undertaken by a supplier at behest of or pursuant to contract with recipient. There is no intention to impose tax on supply of land in any form and it is for reason that it is provided in Schedule III to CGST Act. Charge of tax is only on supply of goods or services made or agreed to be made for a consideration. Imposition of tax can only be on construction activity which is undertaken by supplier at behest of proposed buyer.

iii. Measure of tax imposed has no nexus with charge of tax on supply of construction. Prescription under Section 15(5) of CGST Act must be by way of Rules and not by notification. Challenge of delegated legislation as being ultra vires provisions of CGST Act as well as violation of Article 14 of Constitution of India, cannot be defended merely on ground that Government had competence to issue such delegated piece of legislation.

CNK Comments

A welcome judgement clarifying the intent of the Government to not impose tax on the sale of land. In cases where the value of land is available, the same will not form part of the taxable value subject to GST.

B. Interest was payable on tax paid by debiting electronic cash ledger in respect of delayed filing of returns; availability of balance in cash ledger could not be assumed as payment of tax unless it was debited :

High Court of Madras – India Yamaha Motor Pvt Ltd Vs Asst Commissioner - WP.No.19044 of 2019 and WMP.No.18404 of 2019 – Order dated 29-8-2022. (In favour of Revenue)

Relevant Facts

Petitioner filed GST returns for the month of July 2017 but due to errors, the return was merely 'filed' and not 'submitted' and the process was aborted at that stage. According to the petitioner, the output tax liability has been remitted in full into the cash ledger even prior to the 'filing' of the return and the petitioner was making efforts to correct the error in GST portal. Unfortunately, due to this, subsequent returns was delayed as well and proper determination of output tax liability for subsequent months could not be made. Department levied interest u/s 50 of CGST Act for the belated filing of returns to which the petitioner contended that it had sufficient balance in their Electronic Cash and Electronic Credit Ledger and there was no loss caused to revenue and no justification for levy of interest.

Held

The court held that even though the assessee had sufficient closing balance in ITC and net tax liability was deposited in Electronic Cash ledger before due date of filing returns, having sufficient balance of ITC in the Electronic Credit Ledger is immaterial unless the Return is filed and the same is debited towards payment of GST. Hence any kind of tax payment is final only when the Returns are electronically filed in the common portal and the actual tax liability is debited in the 'Electronic Credit/ Cash Ledgers' and the assessee cannot claim that the tax was debited in their books of accounts when as admitted, the filing of proper return was delayed.

CNK Comments

The High Court has laid out that mere availability of electronic credit should not be assumed to be utilization that would insulate the petitioner from the levy of interest and unless an assessee actually files a return and debits the respective registers, the authorities cannot be expected to assume that available credits will be set-off against tax liability.

C. CBIC Circular clarifying GST exemption on notice pay received from employee applies retrospectively :

High Court of Kerala - M/s. Manappuram Finance Ltd. v/s Assistant Commissioner of Central Tax and Excise [2022] 145 taxmann.com 422 dated 07-12-2022. (In favour of Assessee)

Relevant Facts

The petitioner was a non-banking finance company. The GST department held that the petitioner was liable to pay tax on notice pay received from the former employees of the petitioner. On appeal, the appellate authority upheld the orders of the original authority, which had rejected the claim for refund made by the petitioner for refund of GST paid on notice pay received from the erstwhile employees.

Since the GST Appellate Tribunal had not been constituted, the petitioner filed a writ petition before the High Court. The petitioner relied on the CBIC Circular No. 178/10/2022-GST and contended that with the issuance of the aforesaid Circular, it was now clear that the petitioner was clearly not required to pay any GST on notice pay received from employees.

Held

The High Court of Kerala, held that the circular only clarified the existing law. "In that view of the matter, the question as to whether the Circular had any retrospective effect need not be considered. Even otherwise, in the light of the law laid down in Suchitra Components Ltd the provisions of a Circular will have to be deemed to apply retrospectively,"

The High Court allowed the writ petition and quashed all the orders which erstwhile rejected the application of the petitioner for a refund of GST paid on notice pay received by the petitioner from its employees.

CNK Comments

This judgement elucidates that the Circular clarifies the existing law and asserts that a beneficial Circular applies retrospectively. It confirms that there is no liability of GST on notice pay received from employee. This judgement is also in line with various positive rulings given in this regard earlier.

D. Gift/ Cash back vouchers are in nature of instruments covered under definition of money and do not fall under the category of Goods and Services hence GST is not leviable:

High Court of Karnataka - M/s. Premier Sales Promotion Pvt. Ltd. [2023] 147 taxmann.com 85 dated 16-01-2023. (In favour of Assessee)

Relevant Facts

Premier Sales Promotion Pvt. Ltd. was a registered company engaged in the transactions of procuring Pre-paid Payment Instruments of Gift Vouchers, Cash Back Vouchers and E-Vouchers from the issuers and supplying them to its clients for specified face value. Its clients issued such vouchers to their employees in the form of incentive or to other beneficiaries under promotional schemes for use as consideration for purchase of goods or services or both as specified therein.

The Advance Ruling Authority, ruled that the supply of vouchers was taxable as goods and the time of supply in all the three cases would be governed by Section 12(5) of the Central Goods and Services Tax Act, 2017.

The Appellate Authority affirmed the order passed by the Advance Ruling Authority. Being aggrieved, the assessee filed this the Writ Petition.

Held

It was not in dispute that the vouchers involved in the instant petition were semi-closed Prepaid Payment Instruments (PPIs) in which the goods or services to be redeemed were not identified at the time of issuance. Vouchers were distributed to its employees or the customers which could be redeemed by them. These PPIs did not permit cash withdrawal, irrespective of whether they were issued by banks or non-banking companies, and they could be issued only with the prior approval of RBI.

In substance the transaction between the assessee and its clients was procurement of printed forms and their delivery. The printed forms were like currency. The value printed on the form could be transacted only at the time of redemption of the voucher and not at the time of delivery of vouchers to assessee's client. Therefore, the issuance of vouchers was similar to pre-deposit being transaction in money and not supply of goods or services. Hence, vouchers were neither goods nor services and therefore could not be taxed.

CNK Comments

Taxability of vouchers has been a bone of contention since inception of GST law. Provisions under current GST law shows intent of Legislature to tax vouchers independently from underlying goods and services This decision comes as a huge sigh of relief for the stakeholders as it tries to settle the long-standing dispute on taxability of vouchers.

E. Refund of unutilized ITC could not be denied when petitioner established that goods had been exported; invoices had been raised by registered dealer; and petitioner had paid invoices, which include taxes:

M/s. Balaji Exim [2023] 149 taxmann.com 44 (High Court of Delhi) dated 10-03-23
In favour of Assessee

Relevant Facts

M/s. Balaji Exim was an Export-Oriented trading house supplying Spices, Pulses, Agri-commodities, Reclaim rubber, etc.

The assessee filed refund applications for unutilized ITC comprising of IGST and Cess. The refund applications were rejected indicating the legitimacy and genuineness of the exports of goods from whom the purchase was made.

Aggrieved by the said order, an appeal had been filed before the Appellate Authority which was rejected by it, stating that the supply was made without actual delivery of goods, on the strength of fake invoices but without finding any cogent material in support thereof and thus confirmed the earlier order. The assessee had no other option but to file a Writ in absence of Tribunal.

Held

i. Hon'ble High Court observed that the refund application had been rejected without any cogent material. There was no dispute that goods had been exported as it was confirmed that the said invoices issued by the supplier reflected in the AIO System which proved that these invoices were not fake. Hence, the supplier who was a registered person under GST law and had paid all the taxes including cess. Thus, the refund application could not be denied on the default of a third person.
ii. The court also stated that the allegations of any fake credit availed by a supplier could not be a ground for rejecting the refund applications of the assessee unless it proved that the assessee had not received the goods or paid for them.
iii. The court directed the respondent to process the refund application of the assessee with respect to ITC including cess in respect of the export of goods.

CNK Comments

A positive decision clarifying that refund of unutilized ITC and cess in respect of export of goods cannot be denied at the default of supplier, where purchaser establishes that the goods had been exported, the invoices claiming refund of ITC had been raised by a registered dealer and the purchaser had paid invoices including taxes.

F. Professional services provided to overseas entity not liable to tax, rules Delhi High Court :

High Court of Delhi - M/s. Ernst & Young Ltd [2023] 148 taxmann.com 461dated 23-03-2023.
(In favour of Assessee)

Relevant Facts :

The petitioner was an Indian Branch Office of M/s. Ernst & Young (E&Y) Limited, a company incorporated under the laws of United Kingdom. E&Y Ltd had provided various professional services to overseas EY entities in terms of the agreements entered into between E&Y Limited and the respective overseas EY entities on arm's length basis. The invoices raised described the nature of services for the invoiced amount as "Professional Fees for Services". The petitioner applied for refund of the ITC availed for providing its professional services for the periods December 2017 to March 2020

The Adjudicating Authority issued show cause notices proposing to reject the refund applications basis:

i. How the output services were treated as export of services.
ii. How the input services had nexus with the provision of exported services and how they had been utilized for provision of the same.

The petitioner responded to the said show cause notices, explaining that the petitioner was involved in providing "business advisory services and technical assistance" and the said supplies were directly related for providing professional services.

However, the same were not considered by revenue and an un-favourable order was passed. Aggrieved by the same, the petitioner filed this writ petition.

Held

The Hon' High Court of Delhi ruled that –

i. The services rendered by the petitioner to EY entities, prior to roll out of the GST regime, were considered as 'export of services'.
ii. The petitioner had prevailed before the concerned service tax authorities in establishing that the professional services rendered by it could not be considered as services as an 'intermediary'.

iii. The petitioner's application for refund of ITC for the period after March 2020 had also been accepted by the Adjudicating Authority. Thus, the petitioner had been denied ITC only for the period from December 2017 to March 2020; it had been allowed CENVAT credit for the period covered under the service tax regime as well as ITC for the period after March 2020.

iv. In terms of Clause (b) of Sub-section (8) of Section 13 of the IGST Act, the place of supply of intermediary services was the location of the supplier of services. In the present case, the place of supply of services has been held to be in India on the basis that the petitioner was providing intermediary services.

v. However, the services rendered by the petitioner were not as an intermediary and therefore, the place of supply of the Services rendered by the petitioner to overseas entities was required to be determined on basis of the location of the recipient of the services. Since the recipient of the services was outside India, the professional services rendered by the petitioner would fall within the scope of definition of 'export of services' as defined under Section 2(6) of the IGST Act.

vi. There was no dispute that the recipient of services – that is EY entities – were located outside India. Thus, indisputably, the services provided by the petitioner would fall within the scope of the definition of the term 'export of service' under Section 2(6) of the IGST Act.

The petition was, accordingly, allowed.

CNK Comments

A momentous verdict setting aside the ambiguities that the professional services rendered to overseas entities was not in the nature of intermediary services and hence, GST cannot be levied on the same. The Court stressed on the point that the petitioner provided the services on its own account and were not arranged or facilitated.

Disclaimer and Statutory Notice

www.cnkindia.com

CNK
& ASSOCIATES LLP

MUMBAI

3rd Floor, Mistry Bhavan, Dinshaw Vachha Road,
Churchgate, Mumbai. 400 020, India.
Tel: +91 22 6623 0600

501/502, Narain Chambers, M.G. Road,
Vile Parle (East), Mumbai 400 057, India.
Tel: +91 22 6250 7600

Bengaluru: +91 80 2535 1353
Chennai: +91 44 3500 3458
Vadodara: +91 265 234 3483
Ahmedabad: +91 79 2630 6530
GIFT City: +91 79 2630 6530
Delhi: +91 11 2735 7350
Pune: +91 020 2998 0865
Dubai: +971 4 3559533
Abu Dhabi: +971 4355 9544