



JSA Newsletter Indirect Tax

August 2022 Edition

Recent Rulings by Courts and Authorities

Supreme Court

GSTN portal to be reopened for filing claims for transitional credit

In the case of *Union of India and Anr. vs. Filco Trade Centre Pvt. Ltd. and Anr.*¹, the Supreme Court of India (“**Supreme Court**”) has directed the GSTN² to open the portal for a period of 60 (sixty) days from September 1, 2022, to October 30, 2022 by filing/ revising Forms TRAN-1 and TRAN-2 for claiming transitional credits carried over from the erstwhile regime³, for all taxpayers.

To ensure compliance with the above, the Supreme Court has also issued the following directions:

1. GSTN to ensure access to a glitch free portal for the said period.
2. Concerned officers to verify the claim of transitional credit on merits and pass appropriate orders after granting an opportunity to be heard to the taxpayers, within 90 (ninety) days of filing Forms TRAN-1 and TRAN-2.
3. Thereafter, the allowed transitional credit is to be reflected in the ECL⁴.

JSA Comment: The present ruling helps settle the long-drawn litigation on transitional credits and provides one final opportunity for all taxpayers to avail/ rectify their claims for transitioning credits from the erstwhile tax regime.

High Court

Inbound roaming and international long-distance voice and data services provided by a telecom network service provider qualify as export of services

The Hon’ble High Court of Bombay (“**Court**”) in the case of *Commissioner of CGST and Central Excise vs. Vodafone Idea Limited*⁵, ruled upon the place of supply of inbound roaming (“**IR**”) and international long-distance voice and data (“**ILD**”) services provided by a network service provider.

Vodafone Idea Limited (“**Respondent**”) *inter alia* contended that IR and ILD services are provided by the Respondent to a foreign telecom operator (“**FTO**”), whereby the subscriber of the FTO, travels to India and uses telecom services from the FTO through roaming services provided by the Respondent. It was contended that in

¹ MANU/SCOR/42365/2022

² Goods and Services Tax Network

³ Central and State Taxes that were subsumed under GST with effect from July 01, 2017

⁴ Electronic Credit Ledger

⁵ 2022 (7) TMI 645

terms of Section 13(2) of the IGST Act⁶, the place of supply for such services is outside India and therefore, the services provided to the FTO qualify as an export of service. Accordingly, the Respondent is eligible for refund of IGST paid on export of services. However, the GST authorities were of the view that the place of supply of services is India i.e., the place of the subscriber of the telecom services, in terms of Section 13(3)(b) of the IGST Act.

The Court observed that the Respondent had entered into agreements with the FTOs and not with the subscribers of the FTO. Accordingly, the Court held that the subscribers of the FTO cannot be considered as the recipient of services and that the said services were supplied to the FTO, who was located outside India. Therefore, in view of Section 13(2) of the IGST Act, the place of supply of services will be the location of the recipient i.e., the location of FTO located outside the taxable territory and the services provided by the Respondent would qualify as export of services, since all the conditions set out in this regard were fulfilled.

GST authorities to record proper reasons for blocking ITC⁷ under Rule 86A of CGST Rules⁸

In the case of *Rajnandini Metal Limited vs. Union of India and Ors.*⁹, the ITC lying in the ECL of Rajnandini Metal Limited (“**Petitioner**”) was blocked by the GST authorities (to the extent availed from specific supplier alleged to be engaged in fraudulent activity) under Rule 86A of the CGST Rules. Such ITC was blocked merely on an indication that one of the suppliers of the Petitioner was found to be non-existent. However, the GST authorities did not provide substantial material or reason to believe that the Petitioner had availed ITC fraudulently. Aggrieved by this, the Petitioner approached the Hon’ble High Court of Punjab and Haryana (“**High Court**”) under Article 226 of the Constitution of India¹⁰.

The Petitioner, *inter-alia*, contended that the misappropriation or fraud, if any, was committed by the supplier, for which the Petitioner cannot be deprived of its right to claim ITC. Hence, the denial of ITC was violative of Article 19(1)(g) and Article 21 of the Constitution of India.

The High Court, while deciding the issue, observed that the power under Rule 86A of the CGST Act, can be exercised only where the prescribed officer has ‘reason to believe’ that ITC in the ECL has been fraudulently availed. However, mere recording of some investigation, as a cause to invoke the powers under Rule 86A of CGST Rules is a far-reaching action is not sustainable. Therefore, in absence of independent application of mind in the case of the Petitioner and that “reason to believe” is *sine qua non* for exercising power under Rule 86A of the CGST Rules, the High Court set aside the order blocking ITC.

Requirement of a reasoned SCN¹¹

The Hon’ble High Court of Jharkhand in the case of *Pawan Kumar Singh vs. Commissioner of State Tax, Jharkhand*¹² emphasised on the requirement of a proper and reasoned SCN before issuance of an adjudication order.

SCNs were issued to Pawan Kumar Singh (Petitioner) under Section 73(1) of the CGST Act on account of mismatch in Forms GSTR-3B and GSTR-2A (i.e., mismatch of ITC) along with summary of SCN in Form DRC-01. The said SCNs did not outline the reasons for contravention of the provisions of the GST Law. Therefore, the Petitioner was unable to file a response to the said SCNs. GST authorities in turn issued the summary of order in Form GST DRC-07, demanding GST, along with 100% penalty. Aggrieved by the actions of the GST authorities, the Petitioner approached the Hon’ble High Court challenging the SCNs, summary of the SCN and summary of orders.

The High Court observed that the SCNs were issued without application of mind in standard format, without indicating the contraventions/ reasons or the relevant provisions, which could enable the petitioners to furnish

⁶ Integrated Goods and Services Tax Act, 2017

⁷ Input Tax Credit

⁸ Central Goods and Services Tax Rules, 2017

⁹ *Rajnandini Metal Limited vs. Union of India*, 2022 (6) TMI 279 - Punjab and Haryana High Court

¹⁰ Constitution of India, 1950

¹¹ Show Cause Notice

¹² 2022 (7) TMI 703

a proper reply. Relying on the ruling of *Nikas Services Pvt. Ltd vs. The State of Jharkhand and Ors.*¹³, the Court, in absence of application of mind, quashed the SCN proceedings against the Petitioner.

Amendments pursuant to the recommendations of the 47th GST Council Meeting

CBIC¹⁴ has issued various notifications and circulars, notifying the recommendations made by the GST Council in its 47th meeting held on June 29, 2022.

Some of the key amendments/ clarifications are summarized below:

| Notification/ Circular No. | Particulars |
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| Notification No. 09/2022 – Central Tax dated July 05, 2022 | <p>Transfer of amount lying in <u>electronic cash ledger</u> (Integrated Tax or Central Tax) of a registered person to a distinct person enabled.</p> <p>With this amendment, the balance lying in the cash ledger can be transferred from one branch to another/ head office to the branch, as the case maybe, thereby reducing blockage of funds.</p> <p>FORM PMT-09 notified to facilitate such transfer¹⁵.</p> |
| Notification No. 13/2022 – Central Tax dated July 05, 2022 | <p>The period of March 01, 2020, to February 28, 2022, to be excluded for computing limitation period for the purpose of,</p> <p>(i) filing refund claims under Sections 54 and 55 of the CGST Act; and</p> <p>(ii) issuance of orders in respect of erroneous refunds under Section 73 of the CGST Act.</p> <p>Further, the due date for passing orders pertaining to tax demands for FY 2017-18 is extended to September 30, 2023.</p> |
| Notification No. 14/2022 – Central Tax dated July 05, 2022 | <p>In cases where registration is suspended due to continuous non-filing of returns, suspension will be deemed to be revoked upon furnishing of pending returns [proviso inserted to Rule 21A(4) of CGST Rules].</p> <p>Value of supply of Duty Credit Scrips to be excluded from the value of exempted supplies, for the purpose of Rules 42 and 43 of the CGST Rules, thereby no reversal of ITC is required for such value [Clause (d) inserted to Explanation 1 of Rule 43 of CGST Rules].</p> <p>Taxpayers, not required to issue e-invoices as per Rule 48(4) of the CGST Rules, having aggregate turnover of more than prescribed limit in any financial year from FY 2017-18 onwards, are required to make the following declaration on their invoice:</p> <p><i>“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.”</i></p> <p>In cases of refund erroneously availed by a taxpayer, such refund needs to be deposited along with interest and penalty in Form DRC-03. Further, such amount to be re-credited in the ECL by the authorities, to the extent of refund erroneously availed by a taxpayer (Form PMT-03A).</p> <p>[Sub-rule (4B) to Rule 86 of the CGST Rules inserted]</p> |

¹³ 2022 (2) TMI 1157

¹⁴ Central Board of Indirect Taxes and Customs

¹⁵ Refer Circular No. 174/06/2022 – GST dated July 2022

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| | <p>Rule 88B introduced, prescribing the manner of calculating interest under Section 50 of CGST Act.</p> <ul style="list-style-type: none"> • GST liability declared in the GST returns furnished after the due date and tax paid by debiting ECL – Interest to be computed from the due date of the return to the actual date of filing the return. • In other cases, where GST liability is not declared in the GST return – Interest to be computed from the due date of the tax to be paid to the date of actual payment of tax. • Wrongful availment and utilization of ITC – Interest to be computed from the date of incorrect utilization of ITC to the date of reversal of ITC. <p>Manner for filing refund of unutilized ITC on account of export of electricity prescribed [Clause (ba) inserted in sub-rule (2) of Rule 89 of CGST Rules]¹⁶.</p> |
| | <p>Formula for calculating refund of unutilized ITC on account of inverted duty structure has been amended to allow utilization of proportionate ITC on input services for payment of output tax liability. The amended formula is as follows:</p> $\text{Maximum Refund Amount} = \{(\text{Turnover of inverted rated supply of goods and services}) \times \text{NET ITC} \div \text{Adjusted Total Turnover}\} - \{\text{tax payable on such inverted rated supply of goods and services}\} \times (\text{NET ITC} \div \text{ITC availed on inputs and input services})\}$ <p>JSA Comments: This amendment has been made, keeping in mind the directions of the Supreme Court in the case of <i>Union of India vs. VKC Footsteps India Private Limited</i>¹⁷.</p> |
| KEY RATE CHANGES (with effect from July 18, 2022) | |
| <p>Notification No. 03/2022 – Central Tax (Rate) dated July 13, 2022</p> | <p>GST applicable on different categories of renting of vehicles:</p> <ul style="list-style-type: none"> • Renting of vehicle for goods transportation with operator, wherein the cost of fuel is <u>not</u> included: GST at the rate of 18% • Renting of vehicle for goods transportation with operator and cost of fuel included: GST at the rate of 12% • Renting of vehicle for goods transportation without operator and fuel: Rate of GST as applicable on the vehicle <p>GTA¹⁸ provided with an option (i) to pay GST at 5%, without availing ITC or (ii) to pay GST at 12% and avail ITC.</p> |
| <p>Notification No. 06/2022 – Central Tax (Rate) dated July 13, 2022</p> | <p>Concept of ‘branded goods’ replaced with ‘pre-packaged and labelled’ food items, as specified in the notification. Accordingly, with effect from, July 18, 2022, pre-packaged food items (upto 25 (twenty five) kgs) will attract 5% GST.</p> <p>It has been clarified that a single package of more than 25 (twenty five) kgs/25 (twenty five) litres will not fall within the category of pre-packed and labelled commodity and accordingly, will not be taxable. The term ‘pre-packaged and labelled’ will have the same meaning ascribed under Section 2(1) of the Legal Metrology Act, 2009.</p> |
| <p>Notification Nos. 3 to 6 of 2022- Central Tax dated July 13, 2022</p> | <p>Withdrawal of GST concessions/ exemptions on following services:</p> <ul style="list-style-type: none"> • E-waste: increase in rate of GST from 5% to 12% • Works Contract services for, <ul style="list-style-type: none"> (i) For roads, bridges, railways, metro, effluent treatment plant etc. |

¹⁶ Also refer Circular No. 175/07/2022-GST, dated July 06, 2022

¹⁷ 2021 (9) TMI 626

¹⁸ Goods Transport Agency

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| | <p>(ii) Supplied to Central or State Governments, UTs and Local Authorities for historical monuments, canals, dams, pipelines, educational institutions, hospitals etc. (including provided by subcontractor to contractor).</p> <p>Increase in rate of GST from 12% to 18%</p> <ul style="list-style-type: none"> • Works contract services supplied to Central or State Governments, UTs and Local Authorities involving predominantly earthwork: increase in rate of GST from 5% to 12%. • Renting of residential dwellings where such services are provided to a registered person: Withdrawal of exemption, service to be subject to GST at the rate of 18% payable by the registered person under RCM. • Hotel, guest house, club or campsite for residential or lodging purpose with value of supply of a unit upto INR 1,000 per day: Withdrawal of exemption, service to be subject to GST rate of 12% • Hospital room rent (excluding ICU) exceeding INR 5,000 (Indian Rupees five thousand only), per day: Withdrawal of exemption, service to be subject to GST rate of 5% (without ITC). • Services by RBI, IRDA, SEBI and FSSAI: Withdrawal of exemption, service to be subject to GST rate of 18%. • All services provided by department of posts to be taxable. • Services of transportation of goods, where consideration charged for a consignment transported in a single carriage does not exceed INR 1,500 (Indian Rupees one thousand five hundred only) or where consideration charged for a single consignee does not exceed INR 750 (Indian Rupees one thousand five hundred only): Withdrawal of exemption, service to be subject to applicable rate. • Services of renting of residential dwelling when provided to a registered person: Withdrawal of exemption, service to be subject to applicable rate. Further, registered person required to pay GST under RCM. • Services provided by a tour operator to a foreign resident to be taxed proportionately to the services provided to such foreign resident within India. |
| <p>Notification No. 08/2022 – Central Tax (Rate) dated July 13, 2022</p> | <p>The rate of GST applicable on specified goods supplied in connection with petroleum operations is revised from 5% to 12% (prescribed conditions continue to remain the same)</p> |

Development of Enterprise and Service Hubs (DESH) Bill

The Hon'ble Finance Minister, in the Budget speech for the year 2022, announced replacing of the existing special economic zone legislation with a new reformed legislation to enable States to partner in 'Development of Enterprise and Service Hubs'. The draft of DESH Bill is placed in public domain for comments and the Bill is to be tabled before the Parliament in the Monsoon session. Some of the key objects of the draft Bill are below:

- Promoting manufacture, trade and services in India;
- Waiving off the specific demarcation required for trading and warehousing activities;
- Removal of mandatory condition of maintaining positive net foreign exchange earnings;
- Enabling supply in the domestic market with duties payable only on imported raw materials and inputs instead of final products; and,

- Hubs established under the proposed new law will be allowed to make optimal use of idle infrastructure by delivering services to customers located in India, instead of focusing only on exports.

Other Notifications and Instruction

DGFT amends Foreign Trade Policy 2015-2020 to extend the exemption from IGST and Compensation Cess for specified schemes

Notification No. 16/2015-2020-DGFT dated July 1, 2022

DGFT has amended paragraphs 1.02, 4.14 and 5.01, Foreign Trade Policy 2015-2020, to extend the exemption from IGST and Compensation Cess in respect of the following schemes:

- Liability under advance authorization;
- Liability under EPCG¹⁹ Scheme;
- Liability under EOU²⁰ Scheme.

Exemption from IGST on import of research equipment withdrawn

Notification No. 42/2022-Customs dated July 1, 2022

Exemption from payment of IGST on import of research equipment by public funded research institution or a university, research institutions, Departments and laboratories of the Central Government and State Government, other than a hospital and regional cancer centres, vide Notification No. 51/96 – Customs dated July 23, 1996, has been withdrawn. In this regard, Notification No. 45/2017-Central Tax (Rate) dated November 14, 2017, stands rescinded.

MOOWR²¹ not applicable to solar power generating units

Instruction No. 13/2022-Customs dated July 9, 2022

CBIC has clarified by way of an instruction that the benefits of MOOWR scheme are not available to solar power generating units [such as solar panels, solar cells, etc.] as, electricity is not capable of being deposited in a warehouse. The concerned officers have been instructed not to grant any permission to solar power generating units under the MOOWR scheme, in terms of Section 65 of the Customs Act.

JSA Comments: The said instruction has been challenged before the Hon'ble High Court of Delhi (“**Court**”) in the matter of *Acme Heergarh Powertech Pvt. Ltd. vs. Central Board of Indirect Taxes and Customs and Anr.*²². The matter is *sub judice* before the Court and the Authorities are directed not to take any coercive actions.

¹⁹ Export Promotion Capital Goods

²⁰ Export Oriented Units

²¹ Manufacture and Other Operations in Warehouse (no.2) Regulations, 2019

²² 2022 (7) TMI 726

Tax Practice

JSA offers a broad range of tax services, both direct and indirect, in which it combines insight and innovation with industry knowledge to help businesses remain compliant as well as competitive. The Tax practice offers the entire range of services to multinationals, domestic corporations, and individuals in designing, implementing and defending their overall tax strategy. Direct Tax services include (a) structuring of foreign investment in India, grant of stock options to employees, structuring of domestic and cross-border transactions, advising on off-shore structures for India focused funds and advise on contentious tax issues under domestic tax laws such as succession planning for individuals and family settlements, (b) review of transfer pricing issues in intra-group services and various agreements, risk assessment and mitigation of exposure in existing structures and compliances and review of Advance Pricing Agreements and (c) litigation and representation support before the concerned authorities and before the Income Tax Appellate Tribunal, various High Courts and Supreme Court of India. Under the Indirect Tax, JSA provides services such as (a) advisory services under the Goods and Services Tax laws and other indirect taxes laws (VAT/ CST/ Excise duty etc.), and includes review of the business model and supply chain, providing tax implications on various transactions, determination of tax benefits/exemptions, analysis of applicability of schemes under the Foreign Trade Policy (b) transaction support such as tax diligence (c) assistance in tax proceedings and investigations and (d) litigation and representation support before the concerned authorities, the Appellate Tribunals, various High Courts and Supreme Court of India. The team has the experience in handling multitude of assignments in the manufacturing, pharma, FMCG, e-commerce, banking, construction & engineering, and various other sectors and have dealt with issues pertaining to valuation, GST implementation, technology, processes and related functions, litigation, GST, DRI investigations etc. for large corporates.

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14 Practices and
23 Ranked Lawyers



15 Practices and
18 Ranked Lawyers



7 Practices and
2 Ranked Lawyers



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Team of the Year

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