
July 2023 Edition

# Recent Rulings by Courts and Authorities

## High Court

### Procedural lapses cannot be the ground for denying MEIS benefits

In the case of ***Anupam Port Cranes Corporation Limited vs. Union of India***[1], Anupam Port Cranes Corporation Limited ("**Petitioner**") was involved in the business of manufacturing and supplying cranes. The Petitioner exported 'Steel plates' under MEIS[2], notified under FTP[3]. At the time of filing the shipping bills, the Petitioner faced technical issues in selecting the option "YES/NO" for availing the benefits. Due to the technical issue, shipping bills were not electronically transmitted to the authorities for processing MEIS scrips and therefore, the Petitioner was not able to claim the benefit. The Petitioner in its email communications requested the authorities to consider the claim for MEIS benefits and not reject the same based on technical issues. In the absence of any response from the authorities, the Petitioner invoked the writ jurisdiction of the Hon'ble High Court of Gujarat ("**Court**").

The Court relied on its decision in the case of *Bombardier Transportation India Private Limited vs. Directorate General of Foreign Trade*[4], wherein it was observed that MEIS (prescribed under the FTP) was a substantive right of a taxpayer, which arises on exportation of the notified goods and the benefits accruing under MEIS cannot be denied on account of procedural lapse. Placing reliance on the aforementioned judgement, the Court held that once the Petitioner had fulfilled the conditions provided under MEIS, benefits accruing thereof cannot be denied due to a technical error in the electronic system. Consequently, the Court directed the authorities to grant the benefit of MEIS to the Petitioner within 6 (six) weeks from the date of receipt of the order.

## Custom, Excise, and Service Tax Appellate Tribunal (CESTAT)

### Refund of service tax allowed on cancellation of contract

In the case of ***Guardian Landmarks LLP vs. Commissioner of Central Excise and Service Tax, Pune II***[5], Guardian Landmarks LLP ("**Appellant**") constructed a residential complex, wherein 2 (two) customers booked flats and paid part payment along with service tax, as prescribed under the contract. Service tax collected from the customers was duly deposited by the Appellant with the exchequer. Subsequently, both the bookings were cancelled by the customers

1 2023 (6) TMI 862
2 Merchandise Export from India Scheme
3 Foreign Trade Policy, 2015-20.
4 2021 (3) TMI 9
5 2023 (6) TMI 309

and the Appellant refunded the consideration to the customers. The Appellant approached the authorities, seeking refund of the service tax deposited as, such service tax collected from the customers was to be paid back on account of cancellation of the booking. Consequently, the authorities issued 2 (two) show cause notices to the Appellant, rejecting the refund claims on the ground that the same was time barred as per Section 11B of the Central Excise Act[6], which was upheld by the Commissioner (Appeals). Aggrieved by the rejection order of the Commissioner (Appeals), the Appellant filed an appeal before the CESTAT.

CESTAT observed that service tax has to be paid only on the services which are taxable under the Service Tax Law[7], provided there is a service element. In absence of provision of any service, the assessee cannot be saddled with service tax liability. In such a situation, the amount deposited by the assessee with the exchequer will be considered as 'deposit' for which provision of Section 11B of the Central Excise Act will not be applicable and retaining such amount will be violative of Article 265 of the Constitution of India. Accordingly, CESTAT held that on cancellation of the bookings, the service contract was terminated, and therefore no service was provided by the Appellant. Accordingly, the amount of service tax deposited by the Appellant was to be refunded.

### Delayed payment charges not a consideration for service

In the case of ***Cholamandalam Investment and Finance Company Limited vs. Commissioner of GST and Central Excise***[8], Cholamandalam Investment and Finance Company Limited ("**Appellant**") was engaged in the business of financing activities such as automobile financing, consumer loan, loans against securities, etc. During the course of audit, it was noticed that the Appellant had not paid service tax on the 'delayed payment charges' collected from the borrower(s) who had made belated loan repayments. The Principal Commissioner confirmed the demand of service tax on such charges. Aggrieved by such order, the Appellant filed an appeal before the CESTAT.

CESTAT relied on various clauses of the agreement entered between the Appellant and the borrower(s) and observed that strict compliance of the repayment schedule is an essential condition for granting the loan. Delayed payment charges are agreed under the agreement as a safeguard to the commercial interests of the Appellant. Therefore, the delayed payment charges are collected in compliance with a condition to the agreement which cannot be treated as consideration for the service of agreeing to tolerate an act or a situation. Placing reliance on the rulings in the case of *South Eastern Coalfields Limited vs. Commissioner of CGST and Central Excise*[9], *Neyveli Lignite Corporation Limited vs. Commissioner of Customs, Central Excise and Service Tax*[10], CESTAT held that Service tax cannot be levied on 'delayed payment charges' collected by the Appellant.

## Appellate Authority for Advance Ruling (AAAR)/ Authority for Advance Ruling (AAR)

### Movement of equipment between distinct establishments taxable as 'lease rental service'

In the case of ***CHEP India Private Limited*** [11], CHEP India Private Limited ("**Appellant/ CIPL**") is engaged in the business of leasing pallets, crates, and containers. CIPL proposes to implement the following business model:

1) The ownership of all equipment is proposed to be with CIPL Maharashtra, who would lease the equipment to customers for an agreed consideration.

2) CIPL Maharashtra may also lease equipment to its distinct establishments (say CIPL Karnataka) under cover of a delivery challan, who may further lease the equipment to its customers.

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6 Central Excise Act, 1944.
7 Chapter V of Finance Act, 1994
8 2023 (6) TMI 501
9 2020 (12) TMI 912
10 2021 (7) TMI 1090
11 2023 (6) TMI 776

3) There may be a situation where a third distinct establishments of CIPL Maharashtra (say CIPL Tamil Nadu) may also require such equipment (which maybe lying with CIPL Karnataka). In such a scenario, CIPL Karnataka will transfer the equipment required by CIPL Tamil Nadu, on instructions of CIPL Maharashtra. CIPL Maharashtra will collect lease charges from CIPL Tamil Nadu and will not charge CIPL Karnataka. CIPL Karnataka will charge CIPL Maharashtra a consideration for facilitation/ arrangement of movement of equipment to CIPL Tamil Nadu.

For the aforementioned proposed transaction, the Maharashtra AAR observed that the transaction between CIPL Maharashtra and other distinct establishments qualifies as a supply of leasing service. The AAR further held that the value on which GST is to be charged should be the value which is charged by the recipient distinct establishment to the ultimate customer in the other State. Aggrieved by the ruling of the AAR, the Appellant appealed before Maharashtra AAAR.

**Q1.** The first issue of consideration before the AAAR was whether equipment leased by the Appellant located and registered in Maharashtra to CIPL Karnataka would be considered as lease transaction and accordingly, taxable as supply of services? If yes, what is the value on which GST must be charged?

**A1.** The AAAR ruled that transfer of equipment on lease to the distinct entity, as per the agreement entered between CIPL Maharashtra and CIPL Karnataka would amount to lease or renting of the goods for a consideration. Accordingly, the said transaction would be treated as supply of services, thereby, being subject to GST.

In order to ascertain the valuation of such transaction being treated as a supply, AAAR observed that the price actually paid for the lease cannot be treated as value of supply as, the supplies are between related persons/ distinct establishments. Therefore, valuation will have to be ascertained in terms of Rule 28 of the CGST Rules[12]. Additionally, CIPL Karnataka (who is recipient of the leasing services) is eligible to full ITC[13] on the transaction between the appellant and the CIPL Karnataka, and therefore, the invoice value would be the value of goods or services or both as per the second proviso to Rule 28 of the CGST Rules.

**Q2.** Whether movement of equipment from CIPL Karnataka to CIPL Tamil Nadu on the instruction of CIPL Maharashtra can be said to be mere movement of goods, not amounting to a supply?

**A2.** For movement of goods from CIPL Karnataka to CIPL Tamil Nadu, at the instruction of CIPL Maharashtra, the AAAR observed that the said transaction is a combination of the following transactions

1) returning back the goods on lease by CIPL Karnataka to CIPL Maharashtra; and,

2) re-sending the same goods on a new lease contract to CIPL Tamil Nadu.

Accordingly, it cannot be termed as a mere movement without any involvement of supply, thereby, being liable to tax in the hands of CIPL Maharashtra.

## No ITC reversal on commercial/ financial credit note towards post sale discount

In the case of ***Vedmutha Electricals India Private Limited***[14]***,*** Vedmutha Electricals India Private Limited ("**Applicant**") is engaged in the business of supplying electronic items, which are procured from supplier(s) on payment of consideration, under the cover of a tax invoice. The Applicant receives various incentives in the nature of 'discounts' from the supplier viz. turnover discount, quantity discount, cash discount, additional scheme discount, etc., which are in the form of after sales discount. For such discounts provided to the Applicant, the supplier raises financial/ commercial notes without GST. Additionally, the supplier does not reduce/ adjust its output tax liability in respect of such financial/ commercial notes issued, as Section 15 of the CGST Act restricts exclusion of 'post sale discount' from the transaction value. The question before the Andhra Pradesh AAR was whether the Applicant is eligible to claim ITC of GST charged in the tax invoice issued by the supplier.

12 Central Goods and Services Tax Rules, 2017.
13 Input Tax Credit
14 2023 (6) TMI 1051

On examination of transaction between the Applicant and supplier, the AAR noted that the supplier is issuing a tax invoice on the supply of goods to the Applicant and the Applicant is availing ITC on the same. Further, the issuance of financial/ commercial notes, without GST, is for accounting purposes only. The AAR observed that for Section 15(3)(b) of the CGST Act, there should exist a prior agreement for the discounts that are to be offered.

In the present case, no such corelation between the financial/ commercial notes and invoices is found. In absence of such linkage, the benefit of reducing the transaction value by the amount of discount offered to the Applicant cannot be allowed. Further, the supplier has made no adjustment of price as well as GST in furtherance of issuance of credit notes. Therefore, the corresponding reduction in ITC is also not warranted as there is no corresponding reduction of outward tax liability by the supplier. For the reasons stated above, the AAR held that the Applicant is eligible to take full ITC of charged on the tax invoice issued by the supplier.

## Target incentives received by reseller is consideration for supply and not trade discount

In the case of ***MEK Peripherals (India) Private Limited***[15], the MEK Peripherals (India) Private Limited ("**Applicant**") is engaged in the business of reselling Intel products, which are manufactured by Intel US and received through the distributors. The Applicant has entered into an agreement with Intel US, which entitles the Applicant to earn certain incentives on achieving a specified target.

The Applicant has approached Maharashtra AAR to understand if the incentives received by the Applicant could be considered as 'trade discount'.

The Maharashtra AAR observed that the Applicant had purchased the goods from distributors and that the discount received was not provided by the distributors. Further, there was no transaction of sale of goods or services between the Applicant and Intel US, and therefore, incentives received from Intel US would not be covered under Section 15 (3) of the CGST Act[16]. Therefore, such incentives cannot be said to be in the nature of 'trade discount'. Being aggrieved by the ruling of AAR, the Applicant filed an appeal before AAAR Maharashtra.

The AAAR, by relying on Section 15(3) of the CGST Act, observed that the criteria basis which an amount may be termed as 'trade discount' are as follows:

1) Where a discount is mentioned on the face of the invoice, such discount may be reduced from the taxable value of the supply of goods; and,
2) where the discount is not mentioned on the face of the invoice, then such discount may be reduced from taxable value only if:
    a) buyer and the supplier have entered into an agreement that includes provision for discount,
    b) discount must be linked to a specific invoice,
    c) any ITC attributable to the discount must be reversed by the buyer or recipient of the supply.

The AAAR further observed the following:

1) Trade discount, being unascertainable at the time of supply, is not mentioned on the face of the invoice.
2) There is no agreement entered between the Applicant and the distributor outlining such incentive.
3) Incentive is not linked to the invoices.
4) Distributors have not reversed ITC in relation to the goods supplied to the Applicant.
5) The incentive received from Intel US is separate from the transaction undertaken by the Applicant with the distributors.

15 2023 (6) TMI 777
16 Central Goods and Services Tax Act, 2017.

Therefore, the AAAR observed that payment of incentives was wholly dependent on the outcome achieved by the Applicant in terms of purchase/ sale data. Accordingly, the Applicant is bound by the agreement to perform the tasks as specified and in lieu of the aforesaid services, the incentives are given to the Applicant. Such incentives are in the nature of consideration for supply of marketing and technical support services and not in the nature of trade discount.

# Notifications and Circulars

## Introduction of online facility of requesting appointment for virtual/ personal meeting to the exporters

### Trade Notice No. 06/2023-24 dated May 31, 2023

DGFT[17] has introduced an online facility of requesting appointment for virtual/ personal hearing to the exporters with effect from June 1, 2023. This change was brought in to facilitate trade and extend proactive handholding and support to the exporting community. Through this facility, the exporters would be able to request an online personal hearing and the concerned officers at regional authorities of DGFT would provide them with a link and a suitable time to attend the hearing. Manuals for suitable guidance is also made available on the DGFT website.

# Other Updates

## EU[18] introduces CBAM[19] to put a fair price on the carbon emitted during the production of carbon intensive goods

On April 18, 2023, the European Parliament passed a legislation for implementation of CBAM as part of EU's Green Deal, aimed at reducing greenhouse gas emissions. CBAM will be rolled out in multiple phases, enabling EU to impose a Carbon Border Tax on specific imports, such as steel, aluminum, fertilizer, electricity, cement, and hydrogen, from January 2026.

[17] Directorate General of Foreign Trade
[18] European Union
[19] Carbon Border Adjustment Mechanisms

## 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. Indirect Tax services include 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. 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.

**This Newsletter has been prepared by:**


**Manish Mishra**
Partner & Head of Practice - Indirect Tax

**Shareen Gupta**
Partner

**Ruchita Modi**
Senior Consultant

**Tanay Vyas**
Associate

**Meghna Mittal**
Associate

17 Practices and
24 Ranked Lawyers

16 Practices and
11 Ranked Lawyers

7 Practices and
2 Ranked Lawyers

11 Practices and
39 Ranked Partners
**IFLR1000 APAC Rankings 2022**

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Banking & Finance Team of the Year

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Fintech Team of the Year

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Restructuring & Insolvency Team of the Year

Among Top 7 Best Overall Law Firms in India and
9 Ranked Practices

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11 winning Deals in
IBLJ Deals of the Year

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10 A List Lawyers in
IBLJ Top 100 Lawyer List

Banking & Financial Services Law Firm of the Year 2022

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Dispute Resolution Law Firm of the Year 2022

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Equity Market Deal of the Year (Premium) 2022

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Energy Law Firm of the Year 2021

**Ranked #1**
**The Vahura Best Law Firms to Work Report, 2022**

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Top 10 Best Law Firms for Women in 2022

For more details, please contact km@jsalaw.com

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