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TAX & REGULATORY DEVELOPMENTS

November 2024

FOREWORD

NMAH*Edge* is the insight and resource arm of NMAH & Co devoted to equipping you with the knowledge, perspectives, and tools needed to navigate the complexities of today's tax and regulatory environment.

This compendium represents a curated collection of insights, analysis, and practical guidance from our team of experts - created exclusively of NMAH and Co's network partners and clients.

At NMAH & Co., we believe that knowledge is power, and through NMAH*Edge*, we strive to empower you with the edge needed to excel. We hope this compendium serves as a trusted companion in your endeavors, helping you stay informed, prepared, and ahead of the curve.



FROM THE LEGISLATURE

Notifications, Circulars/Instruction & Advisory



Notification No. 20/2024 - Central Tax dated 08th October 2024

Amendment in Rule 36(3) – Conditions for claiming ITC (Effective Date – 8th October 2024)

Rule 36(3) restricted the claiming of the ITC if any tax has been paid in pursuance of any order where any demand has been confirmed on account of any fraud, willful misstatement or suppression of facts. Now the same has been amended to restrict the ITC only if the tax in the given situation has been paid u/s 74. The same therefore indicates that the given restriction shall not apply if the tax is paid u/s 74A (a combined provision for demand and recovery) which is applicable from FY 2024-25 onwards.

Rule 47A inserted to provide Time limit for self-invoice (Effective Date – 1st November 2024)

Rule 47A has been inserted to provide that the registered person shall issue a self-invoice within 30 days from the date of receipt of goods or services for the purpose of payment of GST under RCM on supply received from unregistered supplier.

Clause (s) of Rule 46 omitted to remove provision of Consolidated invoice

The option available to a registered person to issue a consolidated self-invoice at the end of the month for the supplies covered under reverse charge mechanism, procured from unregistered person where the aggregate value of such supplies exceeds INR 5,000 in a day from any or all the suppliers, has been removed.

Rule 164 inserted to provide procedure for availing benefit of amnesty scheme under section 128A: (Effective Date – 1st November 2024)

Rule 164 has been inserted to provide for procedure for availing benefit of waiver of interest/penalty and closure of proceedings under section 128A in respect of demands issued u/s 73. (Read our detailed Release "Key clarifications issued vide Circular 238/32/2024-GST dated 15 October 2024)





Refunds of accumulated ITC on account of zero-rated supplies: (Effective Date – 8th October 2024)

Rule 89(4A) and (4B) provided a special mechanism to enable the exporters to claim the refund of the accumulated ITC on account of zero-rated supplies made under LUT without payment of IGST in cases where the exporters have availed benefits of GST exemption or concessional rate under the prescribed notifications (viz. advance authorization, deemed exports, EOU, merchant exporters, etc.). Further Rule 96(10) contained restrictions for allowing such exporters to claim the refund of the accumulated ITC on payment of IGST. Now Rule 89(4A), 89(4B) as well as Rule 96(10) have been omitted. Consequential changes have also been made in other Rules which related to the omitted Rules.



Notification No. 21/2024 - Central Tax dated 08th October 2024 [Effective Date: 1st November 2024]

CBIC has notified the due date for tax payment under Section 128A for waiver of interest and penalty under GST Amnesty Scheme.

- 1. With respect to tax demand under SCN/Order in Original or Order in Appeal, the due date is set as 31 March 2025.
- 2. With respect to redetermination of Order from Fraud to Non-fraud cases, the due date is set as completion of six months from the date of issuance of such order by the proper officer.

Notification No. 22/2024 - Central Tax dated 08th October 2024 [Effective Date: 08th October 2024]

The CBIC has notified the special procedure under this notification for rectification of order for those taxpayers who have been issued order under section 73 or section 74 or section 107 or section 108 confirming the demand for wrongful availment of ITC due to its time barring but is now available after extended time limit of 30 November 2021, after introduction of Section 16(5) & Section (6) of CGST Act. Such persons can now file an application for rectification of an order electronically on the common portal within a period of six months from the date of issuance of this notification i.e. 7th April 2025.



Notification No. 23/2024 – Central Tax dated 08th October 2024 [Effective Date: 01st November 2024]

Late fee in case of delay in filing GSTR 7 (TDS returns) from June 2021 onwards is now capped at Rs. 50 per day of default subject to a maximum late fee of Rs. 2000 per day.

In case of nil returns, no late fee shall be payable.







Notification No. 24/2024 – Central Tax dated 09th October 2024 [Effective Date: 10th October 2024]

Persons engaged in supply of metal scrap falling under Chapters 72 to 81 of the First Schedule to the CT Act would be required to obtain GST registration upon surpassing the threshold limits or if the situations provided under Sections 22 / 24 of the CGST Act are being applicable as the case may be and cannot claim exemption from obtaining GST registration as provided in Notification No. 05/2017-Central Tax dated 19 June 2017.

Notification No. 25/2024 – Central Tax dated 09th October 2024 [Effective Date: 10th October 2024]

GST TDS of 2% will have to be deducted by a registered person receiving supplies of metal scrap falling under Chapters 72 to 81 in the First Schedule to the Customs Tariff Act,1975 (51 of 1975), from any other registered person, where the total value of supply under a contract exceeds Rs. 2.50 lakh.



Notification No. 06/2024 – Central Tax (Rate) dated 08th October 2024 [Effective Date: 10th October 2024]

As per this notification, sale of metal scrap falling under the Chapter headings 72 to 81, by any unregistered person to any registered person shall be liable to tax under RCM.



Notification No. 07/2024 – Central Tax (Rate) dated 08th October 2024 [Effective Date: 10th October 2024]

Transportation of passengers, with or without accompanied baggage in a helicopter on seat share basis would be leviable to GST @ 5% without ITC.



Notification No. 08/2024 – Central Tax (Rate) dated 08th October 2024 [Effective Date: 10th October 2024]

The following services are now exempt:

1. Supply of services by way of providing metering equipment on rent, testing for meters/transformers/capacitors, releasing electricity connections, shifting of meters/service lines, issuing duplicate bills and distribution of utilities to consumers which are incidental or ancillary to the supply of transmission and distribution of electricity provided by electricity transmission.





- 2. Research and development services provided against consideration received in the form of grants supplied by:
 - A Government Entity; or
 - A research association, university, college, or other institution notified under clauses (ii) or (iii) of sub-section (1) of section 35 of the Income Tax Act, 1961.
- 3. Services of affiliation provided by a Central or State Educational Board or Council or any other similar body, by whatever name called, to a school established, owned, or controlled by the Central Government, State Government, Union Territory, local authority, governmental authority, or government entity.

4 Any services provided by:

- the National Skill Development Corporation set up by the Government of India
- the National Council for Vocational Education and Training
- an Awarding Body recognized by the National Council for Vocational Education and Training
- an Assessment Agency recognized by the National Council for Vocational Education and Training
- a Training Body accredited with an Awarding Body that is recognized by the National Council for Vocational Education and Training in relation to:
 - the National Skill Development Program or any other scheme implemented by the National Skill Development Corporation; or
 - o a vocational skill development course under the National Skill Certification and Monetary Reward Scheme; or
 - any National Skill Qualification Framework aligned qualification or skill in respect of which the National Council for Vocational Education and Training has approved a qualification package.

Notification No. 09/2024 – Central Tax (Rate) dated 08th October 2024 & its Corrigendum dated 22nd October 2024

Service by way of renting of any immovable property other than residential dwelling by an unregistered person to any registered person liable to tax under reverse charge.







Circular No. 234/28/2024-GST dated 11th October 2024

Clarifications for certain services are issued:

- 1. Affiliation services provided by universities to their constituent colleges are not covered within the ambit of exemptions provided to educational institutions and GST at the rate of 18% shall be applicable.
- 2. Approved flying training courses conducted by FTOs approved by DGCA, wherein the DGCA mandates the requirement of a completion certificate, are covered under SI. No. 66 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 and are hence, exempt.
- 3.GST on transportation of passengers, with or without accompanied baggage, by air, in a helicopter is regularized on "as is where basis" for the period 01 July 2017 to 09 October 2024. Ancillary or incidental services provided by GTA in the course of transportation of goods by road, such as loading/unloading, packing/unpacking, transshipment, temporary warehousing etc. will be treated as composite supply of transport of goods. However, if such services are not provided during transportation of goods and are invoiced separately, then these services will not be treated as composite supply of transport of goods.
- 4. Regularization of payment of GST towards import of services by an establishment of a foreign airlines company from a related person or any of its establishment outside India, when made without consideration for the past period on 'as is where is' basis.
- 5. Location charges or Preferential Location Charges (PLC) paid along with the consideration for the construction services of residential /commercial/industrial complex forms part of composite supply where supply of construction services is the main service and PLC is naturally bundled with it and are eligible for same tax treatment as the main supply of construction service.
- 6. Payment of GST on services provided by an electricity transmission or distribution utility which are incidental or ancillary to the supply of transmission and distribution of electricity by such utility, such as those listed in Notification Number 08/2024 is hereby regularized on 'as is where is' basis from 01.07.2017 to 09.10.2024.
- 7. Payment of GST on transaction between distributors and exhibitors wherein the distributors grant the theatrical rights to the exhibition centres is regularized for the period from 01.07.2017 to 30.09.2021 on 'as is where is' basis.







Circular No. 236/30/2024-GST dated 11th October 2024

The CBIC has clarified the meaning of phrase "as is where is" as many tax regularization for past period has been on such basis. It has been clarified that the phrase means that the payment made at the lower rate or exemption claimed by the taxpayer shall be accepted and no refund shall be made if tax has been paid at the higher rate. Thus, the payments made, or exemption claimed (if any) by the taxpayer on a transaction / supply declared in the GST returns would be treated towards the full discharge of tax liability.

It has been clarified by way of example that where there is an ambiguity/issue on the applicable GST rate on a product (say, between 5% and 12%) and the GST Council has recommended the applicable rate of GST (say 12%) and regularizes the payment of GST for the past period, following situations would be there:

- 1. If taxpayers have claimed exemption or discharged GST @ 5% Since the tax liability for the past period is regularized, the tax paid by the taxpayer would be considered as fully paid and the taxpayer would not be liable for payment of differential 7% GST.
- 2. If taxpayers have discharged GST @ 12% The taxpayer would not be eligible to claim refund of tax paid.
- 3. If no tax is discharged by the taxpayers The benefit of the regularization would not be available to such taxpayers and they would be liable to discharge GST @ 12% on the supplies made in the past period.

Circular No. 237/31/2024-GST dated 15th October 2024

The CBIC vide Notification No. 22/2024-Central Tax dated 8 October 2024 had notified special procedure for rectification of orders for a person against whom an order under Sections 73 / 74 / 107 / 108 of the CGST Act was issued confirming demand for wrong availment of input tax credit (ITC) on account of contravention of the time limit prescribed under section 16(4) of CGST Act and where ITC is now admissible considering amended section 16.

The following clarifications with respect to the said procedure have been issued:

- 1. In cases of pre-adjudication stage, before SCN, the proper officer should take into consideration the amended section 16 of the CGST Act and take appropriate action.
- 2. In cases where SCNs have been issued but are pending for adjudication, the proper officer should consider the amended section 16 of the CGST Act and pass appropriate order.





- 3. Where an appeal is filed before the First Appellate Authority (FAA) or Revisional Authority (RA) and no order is issued, the FAA or RA should take cognizance of the amended section 16 of the CGST Act and pass appropriate orders.
- 4. It is clarified that only in cases where an order has been passed by the FAA / Revisional Authority (as the case may be) and no appeal has been filed with the GST Appellate Tribunal (GSTAT), the concerned taxpayer may apply for rectification of such order under the special procedure provided in Notification No.22/2024 within a period of six months from the date of issuance of the said notification i.e., from 8 October 2024.
- 5. It is also clarified that in terms of Section 150 of the Finance (No. 2) Act, 2024, no refund of tax already paid / ITC reversed would be available where such tax has already been paid or ITC has already been reversed.
- 6. It is further clarified that the application for rectification of orders under the aforesaid special procedure can be initiated only in cases where ITC is denied on account of contravention of the time limit provided under section 16(4). In other cases, the rectification application may be filed by the taxpayer as per section 161 of the CGST Act, within the time limit specified in said section.

The detailed procedure for filing the rectification application has also been prescribed.

Circular No. 238/32/2024-GST dated 15th October 2024

The CBIC vide this circular has summarised the procedure and conditions for availing the benefit of GST Amnesty scheme notified under Section 128A of GST Act for waiver of interest or penalty or both relating to demands under Section 73 of CGST Act for FY 2017-18 to FY 2019-20.

Detailed procedure and clarifications issued in this regard are outlined separately. Refer our detailed Release "Key clarifications issued vide Circular 238/32/2024-GST dated 15 October 2024).



Advisory for Biometric-Based Aadhaar Authentication and Document Verification for GST Registration

Biometric-based Aadhaar Authentication and Document Verification for GST registration applicants of Kerala, Nagaland and Telangana has been implemented with effect from 5 October 2024 and for the UT of Ladakh from 30 October 2024.



Advisory related to Invoice Management system(IMS)

Invoice Management System (IMS) has been made effective from 14 October 2024. From October 2024 return period onwards, Form GSTR-2B shall be generated considering the action taken on IMS. FAQs related to the same have also been provided on GST Portal.







Advisory related to Form GSTR 9/9C

Effective 15 October 2024, for GSTR-9 and 9C starting from FY 2023-24 onwards, the GST portal will auto-populate eligible ITC for domestic supplies (excluding RCM and imports) from Table 3(I) of Form GSTR-2B to Table 8A of GSTR-9. A validation utility will be implemented to complete the auto-population of details in Table 8A of FORM GSTR-9 from GSTR-2B for the period - April 2023 to March 2024.



Portal Update: Validation of bank account details while adding bank account as Non-Core amendment

GSTN has implemented a validation process of account for cases where a taxpayer attempts a non-core amendment to update bank account details.

Advisory: GST registration of Metal scrap Buyers

GSTN has introduced an update to facilitate the registration compliance for buyers of metal scrap through FORM GST REG-07. This update is to implement the new GST provisions for GST registration of metal scrap buyers as mandated by Notification No. 25/2024 - Central Tax, dated October 9, 2024.

Portal Update- Barring of GST Return on expiry of three years

Vide Notification No. 28/2023 – Central Tax dated 31th July, 2023, the taxpayers shall not be allowed to file their GST returns after the expiry of a period of three years from the due date of furnishing the said return under Section 37 (Outward Supply), Section 39 (payment of liability), Section 44 (Annual Return) and Section 52 (Tax Collected at Source). These Sections cover GSTR-1, GSTR 3B, GSTR-4, GSTR-5A, GSTR-6, GSTR 7, GSTR 8 and GSTR 9.

The said changes are going to be implemented in the GST portal from early next year (2025).





LEGAL COMPENDIUM

WHAT'S COVERED?

- Bombay High Court dismisses Writ Petition challenging SCN, rejecting assessee's contention of 'vagueness'
- Delhi High Court quashes SCNs and orders raising GST demand on expat salary relying on Circular No. 210/4/2024-GST
- Rajasthan AAR clarifies on Time of Supply w.r.t Corporate Guarantee service availed from foreign entity.
- AP High Court held that no separate authorization is required for assessment of unregistered person by proper- officer after an inspection or audit.
- Karnataka HC held that there shall be no recovery under GST during pendency of adjudication.
- Delhi High Court granted a refund where services are exported by a branch, but the payment is received in the bank account of Head office.
- **7** Kerala High Court remands back the matter in relation to delay in availment of ITC on account of introduction of additional time limit introduced under the Finance Act, 2024.
- 8 Kerala High Court Holds Rule 96(10) as Ultra-virus





Bombay High Court dismisses Writ Petition challenging SCN, rejecting assessee's contention of 'vagueness'

Viswaat Chemical vs Union of India & Ors [TS-670-HC(BOM)-2024-GST]

FACTS

The Petitioners were in receipt of SCN and had filed a detailed reply to SCN considering all possible defenses.

 The Petitioner argued that the SCN was vague and bereft of relevant particulars and thus were deprived of opportunity to respond resulting in gross violation of principles of natural justice.

OBSERVATIONS

- The High Court observed that the SCN was detailed and specific, providing a clear outline of the allegations, legal references, and factual background, refuting claims of vagueness.
- The impugned show cause notice refers to the intelligence inputs based upon which the impugned show cause notice was issued. There is detailed reference to several factual aspects and the legal provisions.
- The Court observed that had the Petitioners genuinely found the notice unclear, they should have challenged it immediately. However, from the detailed reply, it is apparent that the Petitioners were not in the least prejudiced in either understanding the revenue case or responding to the multiple allegations in the impugned show cause notice.

The High Court held that the grounds for alleged vagueness in the SCN so belatedly raised were entirely misconceived and that the petition is nothing but an attempt to circumvent the alternate remedy and to take a chance to see whether any relief can be wriggled out of this Court. The Court dismissed the petition with exemplary costs of Rs. 5 lakhs. However, the decision of the Court will not preclude the Petitioner from availing alternate statutory remedies of appeal, etc.

NMAH Remarks: There are various High Court Judgements which have quashed the SCN on the facts of being vague. However, in cases where SCN is issued based on the investigation report or where it has all the material facts in place, basis which detailed response can be filed, SCN cannot be claimed as invalid. Accordingly, it becomes imperative to identify the actual defects in the SCN at the initial stage before furnishing detailed response.





Delhi High Court quashes SCNs and orders raising GST demand on expat salary relying on Circular No. 210/4/2024-GST

Metal One Corporation India Pvt. Ltd. vs UOI and Ors [TS-697-HC(DEL)-2024-GST]

FACTS

- The petitioner had entered into individual employment agreements with employees of foreign parent entity of Japan.
- The revenue issued an SCN demanding GST on supply of services in connection with placement of foreign expatriates as manpower services relying on the decision of the Supreme Court in CCE & Service Tax vs. Northern Operating Systems (P) Ltd.
- The petitioners did not contest the secondment arrangement but argued that no GST should apply relying on CBIC Circular No. 210/4/2024-GST as the value shall be deemed to be "Nil" in cases where recipient is eligible for full input tax credit.

OBSERVATIONS

- The Court stated that the market value under the second proviso to Rule 28 would be "Nil" thereby, preventing levy of any GST liability in such cases.
- The Court stated that the correctness of the position advocated in the circular may be questioned based on the ground that the same would be contentious to the intent of the second proviso to Rule 28. However, opined that it is not for the Court to question the wisdom of CBIC as the circular in any case is binding on the revenue.

The High Court held that tax liability cannot be imposed based on the provided facts, and that continuing the proceedings based on the SCNs would be futile and impractical, as the statutory provisions and the Circular leave no basis for tax liability. Therefore, the writ petitions are allowed, and the impugned SCNs and Orders-in-Original are quashed.

NMAH Remarks: This is first judgment where the High Court has provided the relief by applying the circular 210/4/2024-GST and held that GST liability would not arise where invoice is not issued by a taxpayer if he is eligible for full input tax credit. This ruling would help in forming a strong base for other on-going litigations in similar matter.





Rajasthan AAR clarifies on Time of Supply w.r.t Corporate Guarantee service availed from foreign entity.

Green Infra Wind Farm Assets Ltd., [AR No. RAJ/AAR/2024-25, 10]

FACTS

• The applicant has taken corporate guarantee from foreign group company with respect to loan taken from banks & financial institutions & seeks advance ruling on whether GST under RCM on issuance of corporate guarantee is payable one time or on periodical basis, considering that guarantee has been issued only once and is valid for specified period of time without requirement of any periodical renewal in terms of Rule 28(2).

OBSERVATIONS

- Advance ruling authority based on the fact presented before them ruled that the time of supply for CG service availed from a foreign group company without any consideration to Indian entity is to be determined in accordance with section 13(3) of CGST Act 2017.
- As per Section 13(3), TOS shall be date of entry in books of accounts of recipient of supply when there is no payment. Hence RCM is required to be paid only once and the question of periodic payment does not arise considering that there is no payment.

The AAR of Rajasthan has provided that GST of 1% under RCM is payable only once in case of associated enterprise, at time of execution of contract.

NMAH Remarks: Though this is a beneficial ruling, it would be applicable only to the applicant of this advance ruling and only has a persuasive value. Also, it would be important to see whether the Hon'ble High Courts affirms with this view wherein the valuation towards Corporate Guarantee is decided basis the time of supply provisions.





AP High Court held that no separate authorization is required for assessment of unregistered person by proper-officer after an inspection or audit.

Sri Srinivasa Lorry Transport vs The Assistant Commissioner St and Others [TS-619-HC(AP)-2024-GST]

FACTS

- The appellant is unregistered person under Andra Pradesh GST Act 2017. The inspection of premises was carried out by the inspector & based on which SCN was issued by the officer.
- The appellant has filed his objection letter in response to SCN. However, the officer passed the Order of assessment & order of penalty.
- Aggrieved by these two orders, the petitioner approached the Court by way of writ petitions challenging the order of assessment & order of penalty on various grounds wherein one of the grounds taken by the petitioner is that a separate authorization has to be given for the said inspecting officer to take up assessment proceedings, if the said officer is not the proper officer under the provisions of the CGST Act, 2017.

OBSERVATIONS

- The HC has referred to the facts of the case & highlighted that Section-67 of the CGST Act, 2017 requires previous authorization from the competent authority before inspection is carried out.
- The HC further highlights that the provisions relating to assessment of a dealer are contained in Chapter XII of the CGST Act, 2017 consisting of Sections 59 to 64 & the appellant being an unregistered person, relevant assessment proceedings will be undertaken as per Section 63 of CGST act.
- Further the language in Section-63 of the CGST Act, 2017 does not provide for any prior authorization being necessary where the assessment has been done by the proper-officer.

Andhra Pradesh HC clarified that according to section 63 of the CGST Act, which regulates the assessment of unregistered persons, does not talk about any prior authorization after inspection or audit. Thus, the Court dismissed the assessee's argument. However, it set aside the assessment and penalty orders since no personal hearing was granted to the assessee.

NMAH Remarks: This ruling provides clarity on the assessment proceedings of an unregistered (URD) person signifying that there is no requirement of prior authorization in such cases.





Karnataka HC held that there shall be no recovery under GST during pendency of adjudication.

Kesar Colour Chem Industries vs. The Intelligence Officer [TS-636-HC(KAR)-2024-GST]

FACTS

- The petitioner has questioned the correctness and legality of Investigation carried out under Section 67 of the CGST Act, 2017.
- The assessee sought relief by way of refund of INR 2.50 crore collected during the investigation under duress, while keeping open the other contentions in light of pending adjudication initiated by issuance of show cause notice.
- The petitioner contended that the department does not have power to recover amounts during investigation prior to the issuance of show cause notice and hence has sought for refund of amount paid.
- The appellant contended that self-ascertainment of tax was not established, and that recovery made during investigation was in violation of legal mandate contained in Article 265 of the Constitution of India.

OBSERVATIONS

- The HC observed that payment made by the petitioner were in duress and considering the contentions made in this Writ petition and basis the affidavit filed, the payments appear not made voluntarily despite of declarations made in DRC-03 as the same were made under the pressure of department.
- The Court further observed that if the authority is of the view that payments are made by selfascertainment, then the scheme of section 74 contemplates termination of proceedings on such payment or issuance of SCN only towards short payment of tax, if the department is of the view that there is short payment. However, in the instant case, SCN is issued for the entire amount after collecting the revenue. Hence HC directed revenue to refund the same to the appellant along with interest as applicable.

The Court held that recovery during investigation is illegal and directed revenue to refund the amount within a period of four weeks from the date of receipt of certified copy of the order, with interest as is applicable.

NMAH Remarks: It is a Welcome Ruling reinstating the provisions of the law that no payment can be construed as "Voluntary" when made in duress and its recovery is illegal, liable to be refunded. The High Court have very diligently reading the provisions of section 74 extensively and held that when payment itself was made during investigation, there cannot be issuance of SCN under section 74.





Delhi High Court granted a refund where services are exported by a branch, but the payment is received in the bank account of Head office.

Cable And Wireless Global India Private Limited Vs Assistant Commissioner, Cgst & Ors [Ts-642-Hc(Del)-2024 Gst]

FACTS

- The petitioner is registered under the CGST Act, 2017 in multiple states, providing export of business support services under an Intercompany agreement and availed ITC on input services used for export of services. The petitioner has challenged the refusal of the refund of unutilized ITC in order dt. 29-06-2021 & 07-06-2022 by the respondent.
- The dispute, however, stems from the fact that the payments for the services in question were routed through the bank account of the petitioner's head office, rather than being directly received by the branch.
- The respondents argue that the refund claim is untenable because the definition of "export of service" under the GST law is closely tied to the condition that the supplier must receive payment for the service and thus the refund shall be disallowed.

OBSERVATIONS

- The High Court emphasized that the nature of the export services was neither disputed nor doubted by the respondent, and the only objection raised regarding the denial of the refund was the remittance to the bank account of the Head Office, which was deemed excessively technical and lacking in substance, making it unsustainable.
- However, the Court also remarked that the IGST Act, in defining the term 'export of service' under Section 2(6), places emphasis on the payment for the service being received by the 'supplier of service.' However, Section 2(6)(iv) does not mandate that the payment be received in a specific bank account.

The Court allowed the present writ petition and set aside the impugned Order-in-Appeal which had affirmed the Order-in-Original. The application for a refund shall be processed in accordance with the provisions of the GST law and disposed of expeditiously.

NMAH Remarks: The department in many cases has started contesting such technical issues and thus rejecting the refund. Accordingly, it is important to satisfy the conditions of export of services as per section 2(6) of IGST Act. It is advisable in such cases to receive payment only in the bank account of a Branch from where service is provided. Similarly, it would be prudent to ensure that receipt of such money is only from the service recipient





Kerala High Court remands back the matter in relation to delay in availment of ITC on account of introduction of additional time limit introduced under the Finance Act, 2024.

Four Square Hospitality Vs. The Superintendent of Central Tax [TS-664-HC(KER)-2024-GST]

FACTS

- The petitioner challenged the impugned order passed by the respondent where input tax credit has been denied on account of provision contained in section 16(4) of the CGST Act, 2017
- The petitioner counsel argued that with the introduction of sub section 5 of section 16 of the CGST Act, the time limit to claim the credit is extended and thus credit is no longer time barred.

OBSERVATIONS

 The court has acknowledged the insertion of sub section 5 of section 16 of the CGST Act, 2017 and given direction for the re-evaluation of input tax credit eligibility for the petitioner.

The Kerala High Court has set aside the order that denied the Input Tax Credit (ITC) and directed a review of the assessee's entitlement to ITC.

NMAH Remarks: It is a welcome ruling clarifying the position of the law. However, there may not be any requirement to file a Writ petition to claim the benefit in such cases as the procedure to avail this benefit is now clarified by way of FAQ provided vide Circular 237/31/2024-GST.





Kerala High Court Holds Rule 96(10) as Ultra-virus

Sance Laboratories Pvt Ltd vs Union of India (TS-700-HC(KER)-2024-GST)

FACTS

- Rule 96(10) of the CGST Rules (dealing with refund of IGST paid on exports) specifically barred an exporter to claim refund of goods/ services exported 'on payment of IGST' and consequently claim refund in case the benefit is claimed towards EPCG, as an EOU / STPI, Merchant Exports, etc.
- The Petitioner contended that Rule 96(1) restricts right of an exporter to avail refund granted by main section 16 of IGST Act, 2017.
- The right to restrict the refund is not found in CGST Act, 2017 or IGST Act, 2017 and is only under Rule 96(10).
- There leads to an anomalous situation where an exporter who is otherwise on the same footing will get the benefit of refund if claimed under LUT whereas the same is restricted if rebate route is opted.
- GST Act, the time limit to claim the credit is extended and thus credit is no longer time barred.

OBSERVATIONS

- The court observed that CGST Rules have travelled beyond CGST Act, 2017 as there is no conditions prescribed under the GST Act to restrict refund. The phrase 'subject to such conditions, safeguards and procedures as may be prescribed' in Sections 16(3)(a) and 16(3)(b) of the IGST Act and the provisions of Section 54 of the CGST Act do not authorize the imposition of restrictions in such a manner that it would completely take away the right granted under Section 16 of the IGST Act.
- Hence, Rule 96(10) of the CGST Rules is ultra vires Section 16 of the IGST Act and is manifestly arbitrary.
- It was also noted that Rule 96(10) of the CGST Rules was deleted with effect from 8 October 2024. Hence, notwithstanding the said deletion, the Court ruled on the validity of Rule 96(10) of the CGST Rules for the prior period.

The Kerala High Court held that Rule 96(10) of the CGST Rules was held to be ultra vires the provisions of Section 16 of the IGST Act and is therefore, unenforceable on account of being manifestly arbitrary.

NMAH Remarks: This judgment has been provided on the basis that "Rules cannot travel beyond the provisions in the Act". The Taxpayers who have ongoing disputes wherein they have already repaid the amount of refund claimed can now revalidate their position and closely assess the way forward to avail remedies after this judgement.





GOODS AND SERVICES TAX

- INTERNATIONAL AND DOMESTIC DIRECT TAX
- RISK ADVISORY
 & INFORMATION
 & SYSTEMS
 AUDIT

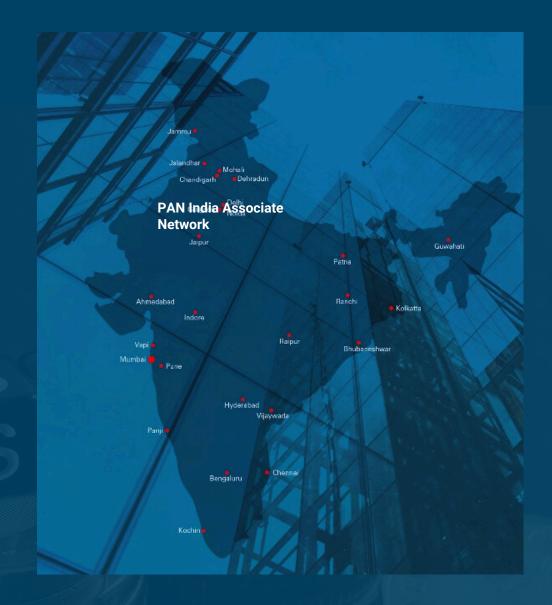
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THANK YOU

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