Weekly Update - 2

INDIRECT TAX

An E-weekly update from
Annveshan Business solutions Pvt Ltd

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Circular / Instructions / Notifications

Goods and Service Tax (GST)

1. Clarification on certain refund related issues

Tamil Nadu Commercial Tax Department has issued certain clarifications on refund-related matters. It has clarified that in cases of refund of excess balance in electronic cash ledger, the time limit as specified under section 54(1) of the TNGST Act is not applicable. Further, the declaration of not passing the incidence is also not necessary in such cases.

It is also clarified that any amount including TDS/TCS deposits, which remains unutilized in the electronic cash ledger, after discharge of tax dues and other dues payable under the TNGST Act and rules made thereunder, can be refunded to the registered person as excess balance in electronic cash ledger in accordance with the proviso to sub-section (1) of section 54, read with sub-section (6) of section 49 of TNGST Act.

Circular No: 06/2022(2021) TNGST dated 25.04.2022

2. Clarification in respect of applicability of dynamic quick response code (QR Code):

It is clarified by the Tamil Nadu Commercial Tax department that wherever an invoice is issued to a recipient located outside India, for the supply of services, for which the place of supply is in India, as per the provisions of IGST Act 2017, and the payment is received by the supplier, in convertible foreign exchange or in Indian Rupees wherever permitted by the RBI, such invoice may be issued without having a Dynamic QR Code, as such dynamic QR code cannot be used by the recipient located outside India for making payment to the supplier.

Circular No: 06/2022(2021) TNGST dated 25.04.2022

Annveshan comments

The clarification is really helpful to the intermediary (as per GST law) business and reduces the compliance burden.

3. Instruction from Haryana Govt on GST Registration:

Haryana Government has instructed its officers that the practice of demanding physical appearance and personal statements of the applicant at the time of registration must be discouraged. Also seeking extraneous details must be avoided. Instruction also said it is only in case of suspicious cases only physical appearance and personal statement can be asked. In a normal situation, the provision laid down under Section 25 must be followed.

Memo No 367/GST 2 dated 24.05.2022

Annveshan comments

In the field, it is becoming a normal tendency to seek extraneous documents and ask for physical appearance. It is creating a lot of hardship for businesses. We expect other States also issues similar instructions to their field officers.

Directorate General of Foreign Trade

1. Alignment of RoDTEP Schedule with the Finance Act, 2022 with effect from 01.05.2022

The Central Government notifies Appendix 4R in alignment with Finance Act 2022. It is to be noted that Consequent to Finance Act, 2022, certain changes in the Customs Tariff Schedule shall take effect from 01.05.2022. Accordingly, after alignment, a new RoDTEP schedule (Appendix 4R) is being notified for implementation with effect from 01.05.2022.

Notification No 12/2015-20 dated 01st June 2020

2. Relaxation in the provision of Bill of export as evidence of export obligation discharge for supplies made to SEZ units in case of Advance Authorisation

One of the documentary requirements in case of supply made to SEZ under advance authorization was the Bill of Export (For ANF4). However, this created a challenge amongst the supplier to SEZ for the period 2009 to 2014 due to non – the availability of the provision in FTP. Meanwhile, affected suppliers had approached the High Courts and High Courts in many cases granted the relief.

This matter was examined by DGFT now and relaxation is granted from the furnishing of Bill of export for the supplies made prior to 2015.

Policy Circular No 39/2015-20 dated 07th June 2022

Judicial Pronouncement

Goods and Service Tax (GST)

1. JSW Steel Ltd versus Union of India & Others:

The Orissa High Court in the said case has ruled that claim of input tax credit by Input Service Distributor in case of ITC transfer from one State to another is invalid and such transfer will not qualify as inward supply

JSW Steel Ltd., the public limited company, has units located in different States including the State of Odisha with its Head Office in Mumbai. The Head Office in Mumbai is registered as ISD. It is also registered as a normal taxpayer being in the State of Maharashtra.

JSW-Company from its Head Office at Bombay had applied and participated in the tender process and granted the mining lease for the four Iron mines situated within the State of Odisha. The Company to undertake the process of mining had to get itself registered in the State of Odisha as per the statutory provisions of CGST/OGST to undertake the execution of the mining lease.

JSW at Orissa has transferred the excess input tax credit in the name of support service to JSW Maharashtra ISD. In turn, Maharashtra ISD distributed such credit to other units across the country.

The tax office has questioned such transaction as there is no actual support service rendered and also such transfer is not as per the provisions of ISD. The JSW filed a writ before the High Court of Orissa and the Court held that;

As per the definition of “Input Service Distributor” contained in Section 2(61), it is necessary that the ISD as an office is required to receive tax invoices for inward supply. Since no such supply is shown to have been made by JSW Steel Ltd. of Odisha to JSW Steel Ltd. of Maharashtra, no prima facie case is made out by the Petitioner. Thus, transactions in question prima facie amount to siphoning of tax amounts, therefore, apparently warrant invocation of proceeding under Section 74 of the OGST/CGST Act. And accordingly dismissed the writ filed by JSW.

2022(5) TMI 1238-GST-ORISSA HIGH COURT

Annveshan comments

The decision is really significant to trade and industry manyfold where it has multiple branches across the country. The decision had made very clear that support service/cross charge should not be in lieu of ISD registration. Further, cross charge/support service must not be dubious. In other words, unless the company provides support service in reality, it cannot simply raise an invoice under support service to substitute ISD registration. Definitely, now, the Companies need to go back to the drawing room and they have to revisit their cross-charge positions in the light of the judgment

2. Varadarajulu Srinivasan Vs Deputy Commissioner (ST)

In the said case the Appeal before Commissioner (Appeals) was filed beyond the time limit (After the condonable time). The Commissioner (Appeals) had rejected the appeals citing the limitation of time. Aggrieved by such rejection, the writ was filed before High Court.

It was held that the appellate commissioner cannot exercise jurisdiction beyond provisions of the Act and therefore the Appellate authority rightly rejected. However, the court has found that there are overwhelming reasons for granting relief to the petitioner and granted the relief with certain directions.

The subject matter in the above case was the revocation of registration beyond statutory limits. In the instant case, the parties' GST registration was automatically cancelled for non filing of returns. The parties didn't apply for revocation within the limit and also didn't utilize the extended limit provided by the various notification. However, they approached the appellate authority after the condonable limit. Naturally, the Appellate authority rejected and finally knocked on the doors of High the Court. The High Court took a lenient view considering the covid situation during that time and also opined that there nothing will be achieved by keeping them from the GST net. The court said that it is effectuating the object under the GST enactment of levying and collecting just tax from every assessee who either supplies goods or services. Legitimate Trade and Commerce by every supplier should be allowed to be carried on subject to payment of tax and statutory compliance. Therefore, the impugned orders deserve to be quashed.

2022(6) TMI273–Madras High Court

Annveshan comments

The court has categorically reemphasized that appellate authority cannot condone the time beyond condonable time. Therefore, trade and industry must be mindful of the limitations of time for filing an appeal. Every time and everybody cannot go for writ and every time writ may not succeed. The only remedy is to be on time

3. The Managing Director Tamil Nadu State Marketing Corporation Vs Sivashanmugam K

The short question before Court, in this case, will the penalty have imposed by the Company on an employee in the disciplinary proceeding attracts GST?

The court held that penalty imposed in the course of trade or commerce alone is liable to GST and disciplinary proceedings against employees will not attract GST.

2022(6) TMI 227 – Madras High Court

Annveshan comments

We echo the judgment. Every item on the credit side of the Profit or Loss Account will not automatically attract GST. The revenue must be accrued in the course of trade and business in order to attract GST.

SERVICE TAX

1. Sriram Insight Share Brokers Ltd vs Commissioner of Service Tax

The fact in the above case was the Appellant submitted reconciliation statements showing the brokerage income as per the ledger and the disputed adjusted amount. The Appellant also submitted a Chartered Accountant's Certificate to justify the said computation before the appropriate authorities.

The Commissioner rejected the CA certificate and confirmed the demand.

The Hon'ble CESTAT held that it is a settled position that the authorities cannot reject the CA certificate without stating the reasons as to why the CA certificate submitted by the Appellant is not acceptable to such authorities. Therefore, the stand was taken by the Ld. Commissioner to confirm the impugned demand of service tax is legally not tenable.

2022(6) TMI 307 – CESTAT Kolkata

2. Indo Unique Flame Limited vs Commissioner of Central Tax

The fact in the above case was the SCN was issued to the Appellant but the Appellant failed to answer the SCN. The adjudicating authority proceeded to confirm the demand without giving a personal hearing.

The Hon'ble CESTAT held that there are no justification for the peremptoriness of the adjudicating authority in foreclosing grant of opportunity to reply to the notice which would serve in the disposal of the proceedings in a fair and judicious manner. On the contrary, he seems to have taken elaborate pains to controvert the essentiality of compliance with **principles of natural justice**. The haste, so demonstrated, is unseemly. We do not propose to dilate further on the inappropriateness of proceeding to adjudication without the benefit of some response from the noticee.

2022(5) TMI 1398 – CESTAT Mumbai

Annveshan comments

Assessee must know their right to a personal hearing. If an order is passed without giving reasonable opportunity of PH, the same will not withstand under the eyes of the law.

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