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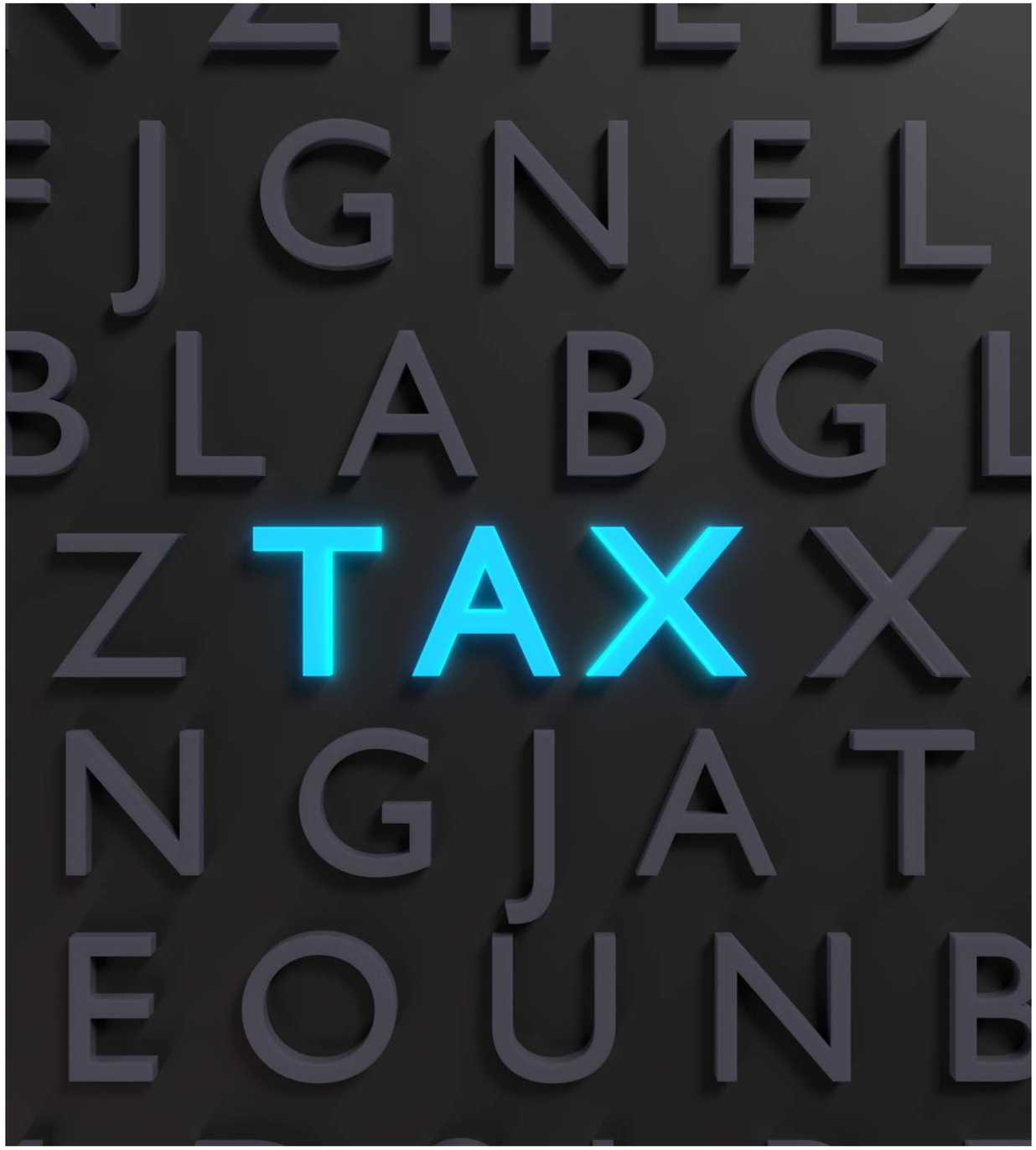

Indirect Tax

July 2023

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CBIC issued circulars to provide clarification on various issues/points of GST

Clarification on charging of interest under section 50(3) of the CGST Act, 2017, in cases of wrong availment of IGST credit and reversal thereof

CBIC vide Circular No-192/04/2023-24 dated July 17, 2023 clarified charging of interest under Section 50(3) of CGST Act, 2017, Under this Circular, it is clarified that IGST credit has been wrongly availed and at the time of reversal ITC Balance in IGST Head has fallen below the amount of wrongly availed IGST, but having sufficient balance in CGST & SGST Head. No Interest liability u/s 50 (3) CGST Act if combined ITC balance (IGST+ CGST+SGST) in credit ledger has never fallen below the amount of such wrongly availed ITC during time period starting from such availment and up to such reversal. Credit of Compensation Cess available in credit ledger cannot be taken into consideration.

Source: Circular No. 192/04/2023-GST

Clarification to deal with difference in Input Tax Credit (ITC) availed in FORM GSTR-3B as compared to that detailed in FORM GSTR-2A for the period 01.04.2019 to 31.12.2021

This circular mainly deals with the Rule 36(4) of CGST Rules 2017 & its subsequent changes, as rule 36(4) came from October, 09 2020 and provided that additional credit to the tune of 20%, 10% and 5%, as the case may be, during the period from October 09, 2019 to December 31, 2019, January 01, 2020 to December 31, 2020 and January 01, 2021 to December 31, 2021 respectively, subject to certain terms and conditions. For 2017-18 & 2018-19, the guideline already provided by Circular No 183/15/2022-GST dated December 27, 2022, which provide certain conditions & certain certification by the professionals (CA / CMA). Now through this circular, it is clarified that the difference in ITC availed in GSTR-3B Vs GSTA-2A for period for April 01,2019 to October 08,2019 (Before Rule 36(4) CGST Rules 17)- Circular No 183/15/2022-GST dated December 27, 2022 will apply from October 09, 2019 to December 31, 2021 (after Rule 36(4) but before GSTR-2B) ITC availed in FORM GSTR-3B in excess of that available in FORM GSTR-2A up to an amount of as per rule 36(4) from time to time (say 20%, 10% or 5%) can be only allowed subject to production of the requisite certificates.

From January 01, 2022 (After GSTR-2B) No ITC shall be allowed from January 01, 2022 onwards in respect of a supply unless the same is reflected in FORM GSTR-2B.

Source: Circular No. 193/05/2023-GST

CBIC issued circulars to provide clarification on various issues/points of GST

Clarification on TCS liability under Sec 52 of the CGST Act, 2017 in case of multiple E-commerce Operators in one transaction

In case of multiple E-commerce Operators (ECOs) in one transaction, in the context of Open Network for Digital Commerce (ONDC), it is clarified that · Where multiple ECOs are involved in a single transaction of supply of goods or services or both through ECO platform and where the supplier-side ECO himself is not the supplier of the said goods or services, the compliances under section 52 of CGST Act, including collection of TCS, is to be done by the supplier-side ECO, who finally releases the payment to the supplier. · Where multiple ECOs are involved in a single transaction of supply of goods or services or both through ECO platform and the Supplier-side ECO is himself the supplier of the said supply, TCS is to be collected by the Buyer-side ECO while making payment to the supplier for the particular supply being made through it.

Source: Circular No. 194/06/2023-GST

Clarification on availability of ITC in respect of warranty replacement of parts and repair services during warranty period

Where the replacement of parts and/ or repair services to the customer during the warranty period, without separately charging any consideration, no further GST is chargeable during warranty period. However, if any additional consideration is charged, then GST will be payable on such additional consideration. · In such cases, these supplies cannot be considered as exempt supply and accordingly, who provides replacement of parts and/ or repair services to the customer during the warranty period, is not required to reverse the input tax credit in respect of the said replacement or services. The above is also applicable for distributer also. · Extended warranty at the time of original supply, then the consideration for such extended warranty becomes part of the value of the composite supply, the principal supply being the supply of goods, and GST would be payable accordingly. AND · Agreement of extended warranty at any time after the original supply, then the same is a separate contract and GST would be payable by the provider depending on the nature of the contract

Source:Circular No. 195/07/2023-GST

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Clarification on taxability of shares held in a subsidiary company by the holding company

Activity of holding of shares of subsidiary company by the holding company cannot be treated as a supply of services by a holding company to the said subsidiary company and cannot be taxed under GST.

Source: Circular No. 196/08/2023-GST

Clarification on refund related issues

Modification in earlier circular context with ITC Linked with FORM GSTR-2B 01.01.2022 Para 36 of Circular No. 125/44/2019-GST dated 18.11.2019, which was earlier modified vide Para 5 of Circular No. 135/05/2020-GST dated 31.03.2020, stands modified to this extent. Consequently, Circular No. 139/09/2020-GST dated 10.06.2020, which provides for restriction on refund of accumulated input tax credit on those invoices, the details of which are uploaded by the supplier in FORM GSTR-1 and are reflected in the FORM GSTR-2A of the applicant, also stands modified accordingly.

The said restriction shall be applicable for the refund claims for the tax period of January 2022 onwards. However, in cases where refund claims for a tax period from January 2022 onwards has already been disposed of by the proper officer before the issuance of this circular, in accordance with the extant guidelines in force, the same shall not be reopened because of the clarification being issued by this circular.

Modification undertaking in FORM RFD 01. Amendments in Annexure-A to the Circular No. 125/44/2019-GST dated 18.11.2019 also stands amended · Manner of calculation of Adjusted Total Turnover “Turnover of zero-rated supply of goods”, needs to be taken into consideration while calculating “turnover in a state or a union territory”, and accordingly, in “adjusted total turnover” for the purpose of sub-rule (4) of Rule 89. Clarification in respect of admissibility of refund where an exporter applies for refund subsequent to compliance of the provisions of sub-rule (1) of rule 96A Clarifications imply that as long as goods are actually exported or as the case may be, payment is realized in case of export of services, even if it is beyond the time frames as prescribed in sub-rule (1) of rule 96A, the benefit of zero-rated supplies cannot be denied to the concerned exporters. Accordingly, it is clarified that in such cases, on actual export of the goods or as the case may be, on realization of payment in case of export of services, the said exporters would be entitled to refund of unutilized input tax credit in terms of sub-section (3) of section 54 of the CGST Act, if otherwise admissible.

CBIC issued circulars to provide clarification on various issues/points of GST

It is also clarified that in such cases subsequent to export of the goods or realization of payment in case of export of services, as the case may be, the said exporters would be entitled to claim refund of the integrated tax so paid earlier on account of goods not being exported, or as the case be, the payment not being realized for export of services, within the time frame prescribed in clause (a) or (b), as the case may be, of sub-rule (1) of rule 96A. It is further being clarified that no refund of the interest paid in compliance of sub-rule (1) of rule 96A shall be admissible · Refund application in the said scenario may be made under the category “Excess payment of tax”. However, till the time the refund application cannot be filed under the category “Excess payment of tax” due to non-availability of the facility on the portal to file refund of IGST paid in compliance with the provisions of sub-rule (1) of rule 96A of CGST Rules as” Excess payment of tax”, the applicant may file the refund application under the category “Any Other” on the portal.

Source: Circular No. 197/09/2023- GST

Clarification on issue pertaining to e-invoice

Government Departments or establishments/ Government agencies/ local authorities/ PSUs, which are liable for compulsory registration in accordance with section 24(vi) of the CGST Act. These Organizations are to be treated as registered persons under the GST law as per provisions of clause (94) of section 2 of CGST Act. Accordingly, the registered person, whose turnover exceeds the prescribed threshold for generation of e-invoicing, is required to issue e-invoices for the supplies made to these organizations.

Source: Circular No. 198/10/2023-GST

Clarification regarding taxability of services provided by an office of an organization in one State to the office of that organization in another State, both being distinct persons

This circular mainly for Cross Charged between distinct persons (i.e., Head Office-HO & its Branch Office-BO) Common input services procured by the HO from a third party but attributable to both HO and BOs or exclusively to one or more BOs, HO has an option to distribute ITC in respect of such common input services by following ISD mechanism BUT it is not mandatory for the HO to distribute such input tax credit by ISD mechanism. HO can also issue tax invoices under section 31 of CGST Act to the concerned branches The value of supply of services made by a registered person to a distinct person needs to be determined as per rule 28 of CGST Rules, read with sub-section (4) of section 15 of CGST Act.

CBIC issued circulars to provide clarification on various issues/points of GST

It is clarified that in respect of supply of services by HO to BOs, the value of the said supply of services declared in the invoice by HO shall be deemed to be open market value of such services. If HO has not issued a tax invoice to the BO in respect of any particular services being rendered by HO to the said BO, the value of such services may be deemed to be declared as Nil by HO to BO, and may be deemed as open market value in terms of second proviso to rule 28 of CGST Rules. · In cases where full input tax credit is not available to the concerned Bos in respect of internally generated services provided by the HO to BOs, it is not mandatorily required to be included (cost of salary of employees of the HO, involved in providing the said services to the Bos) while computing the taxable value of the supply of such services, even in cases where full input tax credit is not available to the concerned BO.

Source:Circular No. 199/11/2023-GST

Loan transaction would not be eligible to GST

Facts

A bank in Tamil Nadu declared a credit card holder in West Bengal eligible to receive a loan. The loan amount was advanced to the cardholder by a cheque issued by the bank, and therefore, the loan amount was not generated by charging the cardholder's credit card.

Ruling

Although the monthly statement issued in relation to the use of the card showed the loan amount and indicated the equated monthly installment payable, it was only a statement of account. The loan transaction had to be considered as an entirely separate transaction. The relationship in such a loan transaction is different from the relationship between the appellant and the bank arising out of the issue, holding, or operation of the credit card. The appellant's loan transaction with the bank was a service that could not be considered a credit card service and was not subject to integrated goods and services tax under Notification No. 9/2017-Integrated Tax (Rate).

Source: Calcutta High Court Judgement dated July, 25 2023 in case Ramesh Kumar Patodia vs. City Bank A.P.O. NO. 10 OF 2023 W.P.O. NO. 547 OF 2019

Hon’ble Delhi High Court says assessee had sufficiently explained delay of 14 days in filling appeal

Facts

The order cancelling the GST registration of the assessee was passed solely on the directions of another authority, which alleged that the assessee had failed to respond to a summons issued under Section 70 of the GST Act. However, the assessee’s accountant had visited the office and had requested an adjournment to prepare the documents. The assessee filed an appeal 14 days late, but explained that the delay was due to the fact that she was in the process of providing documents to the Anti-Evasion Branch for verification. The assessee also sent a letter requesting that the cancellation of her GST registration be revoked.

Ruling

It is a well-established principle of law that an authority that is vested with the power to take a decision must exercise that power independently and cannot do so on the mere directions of another authority. In the present case, the order-in-original was passed solely on the directions of another authority, without considering the assessee’s reply to the show cause notice. As such, the impugned order-in-original cannot be sustained.

The appellate authority had the discretion to condone a delay of up to one month in filing an appeal. In this case, the assessee was in the process of resolving the matter with the department regarding the cancellation of their GST registration, and they had adequately explained the 14-day delay. Given the far-reaching consequences of cancelling a GST registration, the appellate authority should have condoned the delay.

Source: Judgement dated July,18 2023 in case of Kritika Agarwal vs. Union of India W.P.(C) NO. 9424 OF 2023 CM NOS. 36000 & 36001 OF 2023

Hon’ble Bombay High Court says the order rejecting the application was in violation of the principles of natural justice

Facts

The authority issued a notice to the applicant, who requested for an extension of time to reply. The authority rejected the application, citing that the applicant did not reply to the notice despite being given an opportunity to do so.

Ruling

The authority issued a notice to the applicant, who was unable to reply in a timely manner due to disruptions caused by a pandemic. The authority should have given the applicant more time to reply, as the three days that were initially given were not reasonable. The order rejecting the application should be set aside because it violated the principle of natural justice.

Source: Judgement dated July, 1 2023 in case of Wallem Shipmanagement (India) (P.) Ltd. vs. Union of India Writ Petition No. 3460 OF 2021

Hon’ble Jharkhand High Court says petitioner is not eligible to claim ITC for period prior to NCLT approval of resolution plan

Facts

After the resolution plan was approved, the petitioner revised its tax return and sought to claim input tax credit on capital goods that had not been claimed earlier. The revenue issued a notice to the petitioner on the grounds that the credit had been claimed irregularly. The petitioner argued that no recovery or proceedings could be continued against it for any debts that were incurred before the resolution plan was approved by the National Company Law Tribunal (NCLT).

Ruling

The adjudicating authority correctly held that the liability of the earlier management cannot be shifted to the current management. However, the authority erred in holding that the entire amount of transitional credit taken by the current management is liable to be recovered along with interest and penalties. The confirmation of demand under Section 74(9) is quashed and set aside. The current management cannot claim credit for input tax credit for the period prior to the approval of the resolution plan by the National Company Law Tribunal.

Source: Judgement dated July ,11 2023 in case of ESL Steel Ltd. vs. Principal Commissioner, Central Goods & Services Tax & Central Excise W.P.(T) NO. 1995 OF 2023

Hon’ble Gujarat High Court says tax deposited under mistake could not be denied to be refunded

Facts

The assessee received an order from a registered exporter to supply goods at a concessional rate of IGST of 0.1%. However, the assessee mistakenly supplied the goods at the full rate of IGST of 18%. The assessee filed a refund claim in March 2020, but the respondent authority rejected the claim because the assessee did not submit all of the required documentation. Specifically, the assessee did not submit a copy of the purchase order from the registered exporter to the jurisdictional tax officer and the registered supplier. However, the assessee did submit a letter from the registered exporter to the jurisdictional tax officer and the registered supplier, which stated that the exporter had placed an order with the assessee and had purchased goods from the assessee.

Ruling

The assessee raised a tax invoice on June 30, 2019, and the buyer-exporter exported the goods on July 6, 2019. This fulfilled the condition that the registered recipient must export the goods within 90 days of the date of issue of the tax invoice by the registered supplier. However, the respondent authority rejected the refund claim on a technical ground. The revenue authority should refund the amount along with interest.

Source: Judgement dated July,13 2023 in case of Tagros Chemicals India (P.) Ltd. vs. Union of India R/Special Civil Application No 647 of 2022

Hon'ble Patna High Court says assessee must be extended statutory benefit of stay

Facts

The assessee wished to appeal the order in the Tribunal, but because the Tribunal had not been constituted, they were denied their statutory remedy. They were also prevented from availing the benefit of staying the recovery of the remaining tax amount. However, subject to depositing 20% of the remaining disputed tax amount, in addition to the amount already deposited under Section 107 of the BGST Act, the assessee must be granted the statutory benefit of staying the recovery.

Ruling

The assessee must file an appeal under Section 112 of the BGST Act once the Tribunal is constituted and made functional. Otherwise, the respondent authorities will be free to proceed with the matter in accordance with the law.

Source: Judgement dated July, 10 2023 in case of Metal Management vs. Union of India Civil Writ jurisdiction case no. 9464 of 2023

Hon'ble Supreme court held that demand of GST and penalty not sustainable in case e way bill generated for Bill to Ship to model

Facts

The High Court held that the demand of GST and imposition of penalty on the assessee was not sustainable. The E-Way Bill had been generated by the seller in a bill-to-ship-to model, which mentioned the place of delivery of the ultimate buyer in addition to the consignee assessee. There was no discrepancy between the goods mentioned in the invoice and the E-Way Bill. The Court also held that the authorities should not have dragged the assessee into litigation in the absence of any intention to evade GST, as all statutory documents were accompanying the goods. The Court imposed costs on the State, which were payable to the assessee.

Ruling

The impugned judgment was upheld as it was found to be sound and without any flaws. The special leave petition (SLP) filed by the State was dismissed.

Source: Judgement dated July, 05 2023 in case of Additional Commissioner Grade-2 vs. Sleevco Traders, Special Leave Petition (Civil) Dairy No(s) 20769 of 2023

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