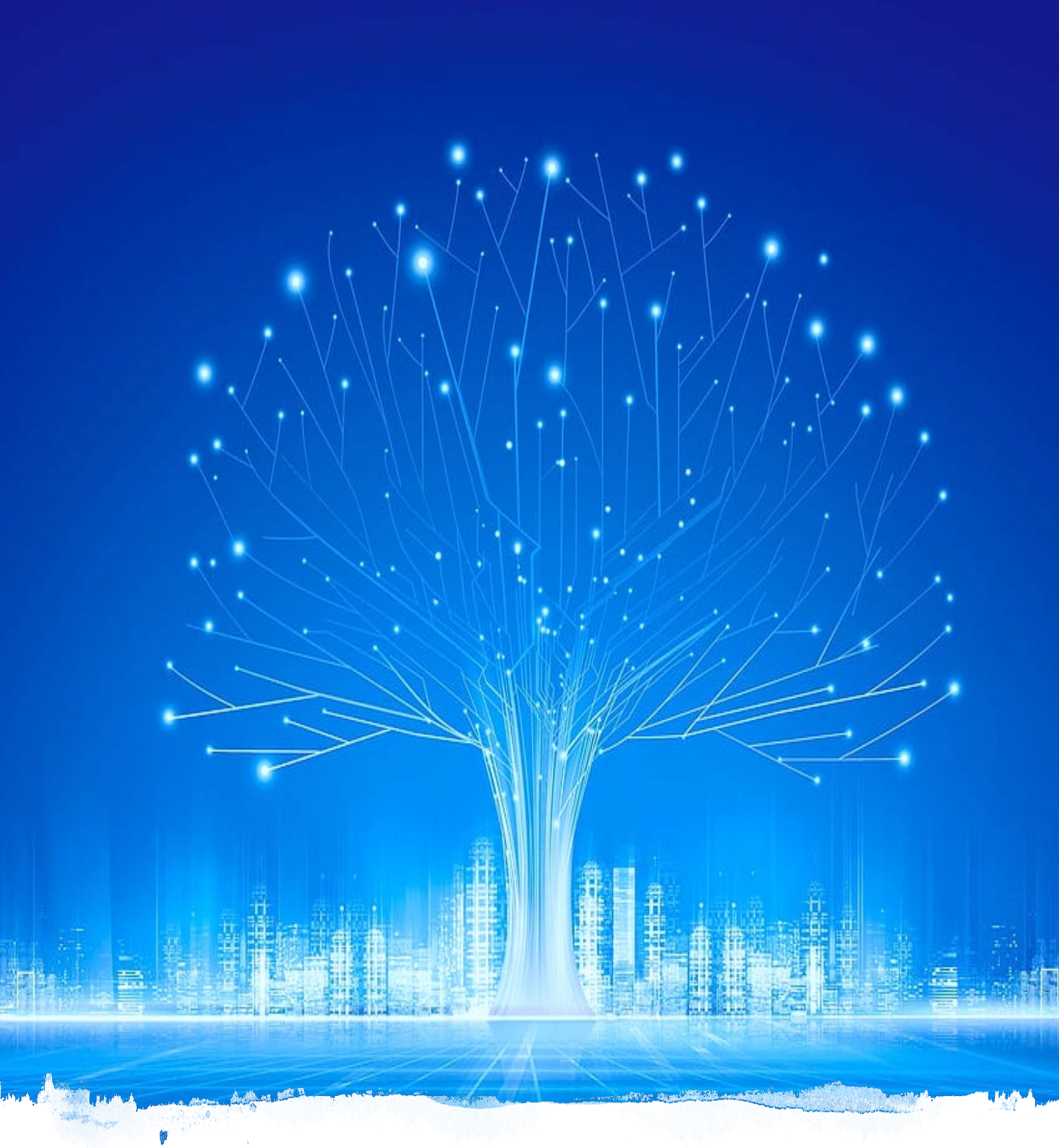

Indirect Tax Compendio

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Newsletter from Mukesh Manish & Kalpesh, Chartered Accountants

Contents

Key Rulings and Insights

1. M/s. Safari Retreats (SC)

Introduction

- The Hon'ble Supreme Court, in its highly anticipated decision, has addressed the question of law concerning the eligibility of Input Tax Credit (ITC) on construction-related supplies pertaining to immovable property.
- **Relevance -** All manufacturers and service providers who have undertaken any recent construction or proposing any construction related activities.

Question of Law

- Whether Section 17(5)(c), 17(5)(d) and Section 16(4) of the Central Goods and Services Tax (CGST) Act are constitutionally valid?
- Whether the definition of "plant and machinery" provided in the explanation to Section 17 of the CGST Act extend to the expression "plant or machinery" as used in clause (d) of Section 17(5)?
- If the answer to the above question is affirmative, what meaning must be assigned to plant or machinery.

Legal Provisions

- Provisions of Section 17(5) Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 18, input tax credit shall not be available in respect of the following, namely :-
- *(c) works contract services when supplied for construction of an immovable property (other than **plant and machinery**) except where it is an input service for further supply of works contract service;*
- *(d) goods or services or both received by a taxable person for construction of an immovable property (other than **plant or machinery**) on his own account including when such goods or services or both are used in the course or furtherance of business.*

Explanation- For the purposes of this Chapter and Chapter VI, the expression "plant and machinery" means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes-

i. land, building or any other civil structures;

ii. telecommunication towers; and

iii. pipelines laid outside the factory premises.

Provisions of Section 2(119)

"works contract" means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract"

1. M/s. Safari Retreats (SC)- Key insights (Contd.)

Key observation of the Hon'ble Apex Court.

1. Constitutional Validity– Upheld.

The Hon'ble Apex Court held that the Section 16(4), 17(5)(c) and 17(5)(d) are constitutionally valid and does not infringe Article 14 or Article 19 of the Constitution. The Court also observed that the Input tax credit is a benefit provided by the statue and not a right. Hence, the legislature can always carve out exceptions for entitlement of ITC.

2. Interpretation of Section 17(5)(c)

- **Ineligibility of ITC for Works Contract Services for Immovable Property Construction:** The Court held that ITC is not available for works contract services supplied for the construction of immovable property, except in specified cases under Section 17(5)(c).
- **Exception for Plant and Machinery:** ITC is available when goods or services are received by a taxable person for constructing "plant and machinery" as defined in the explanation to Section 17.
- **Further Supply Exception:** The second exception to Section 17(5)(c) allows ITC where works contract services are used as an input for further supply of the works contract.

3. Interpretation of Section 17(5)(d)

- **Exceptions to Clause (d)'s Exclusion of ITC:** Clause (d) permits ITC where goods or services are received for the construction of immovable property comprising "plant or machinery," or where the construction is not on the taxable person's own account.
- **Definition of Own Account:** Construction is considered "on own account" if it is for the taxable person's personal use or as a business premises, but not if intended for sale, lease, or license.
- **Broad Definition of Construction:**

  The explanation to Section 17(5) expands "construction" to include reconstruction, renovation, additions, alterations, or repairs to immovable property, to the extent of capitalization.
- **Interplay between Clauses (c) and (d):** Hon'ble SC held that clause (d) differs from clause (c), focusing on the exclusion of ITC for goods or services received for construction of immovable property on a taxable person's own account.
- **Meaning of "Plant or Machinery" in Clause (d):** While clause (c) defines "plant and machinery" in the explanation, clause (d) uses the expression "plant or machinery" without a specific statutory definition.

1. M/s. Safari Retreats (SC)- Key insights (Contd)

- The Hon'ble Court has observed that the word "Plant and machinery" has been used at least 10 times in the chapter and the expression "Plant or machinery" has been specifically used in Section 17(5)(d).
- The "plant or machinery" was not originally part of the Model GST Code but was deliberately added when the legislation was enacted.
- The inclusion of the phrase was intentional by the legislature.
- If the use of "plant or machinery" had been an error, the legislature had ample opportunity to rectify it, which has not been done.
- The Hon'ble court held that if the argument that the expression "plant and machinery" and "plant or machinery" are to be construed as same then the intent of legislation would fail.
- Hence it was concluded that the words "plant or machinery" cannot be given the meaning of "plant and machinery" as per the Act.

Scope of Plant and Machinery

- **What the scope of "plant or machinery" would be -** The Hon'ble Apex Court had provided that when plant is not defined in the Act then the ordinary meaning in commercial terms will have to be attached to it.
- The Hon'ble Apex court relied on Larger bench M/s Karnataka Power Corporation where in the Hon'ble Apex court has provided that super ceded the earlier decision of M/s Anand Theatres [(2000) 5 SCC 393: (2000) 244 ITR 192].
- The Hon'ble Apex Court in M/s Karnataka Power Corporation stated that if a building is planned and constructed to meet an assessee's specific technical requirements, it qualifies as a plant for investment allowance purposes.
- Revenue argument that different meanings given to "plant and Machinery" and "plant or machinery" would result in discrimination, rejected
- The Hon'ble Apex Court concluded that for interpreting plant or machinery the "functionality test" must be applied.
- If a building is designed to meet an assessee's specific technical requirements, it qualifies as a plant for investment allowance. Consequently, the term "plant" should not be interpreted restrictively under Section 17(5).
- Hence if a building qualifies as a plant, ITC can be claimed for services related to renting or leasing the building, provided all other conditions of the CGST Act and its rules are fulfilled.

1. M/s. Safari Retreats (SC)- Key insights (Contd.)

Open Questions

- What is the categorization of Works Contract service vis a vis construction service ?
- Can recipient classify the service at their end ?
- Whether the exclusion in sub-clause (c) on "further supply of works contract" would include cases of exclusion on "own Account" ?
- Whether natural meaning of plant would apply for works contract service ?
- Whether ITC will be available for factory building, fire plant, solar plant, etc. ?
- Whether refund will be available for ITC already reversed by taxpayers?
- If the Government rectifies the legislature mistake through Amendment, would that amendment lead to retrospective change in position ?
- Whether any clarifications/ circulars will be issued by the Department to clarify what will qualify as 'plant' ?

Key sectors that will be most impacted by the judgment:

Nature of services	Storage/ Warehouse/ Malls/ Renting	Specific building like Airport/port/ Co-working space/Hospitals	Factory building/ Office Space	Hotel & Multiplex
Works Contract (Civil)	Highly litigative	Highly litigative	Highly Litigative	Not available
Goods (Civil)	Possible to avail	Possible to avail	Arguable	Not available
Services (construction)	Possible to avail	Possible to avail	Arguable	Not available
Plant and Machinery	Available	Available	Available	Eligible

2. Rinkumoni Bordoloi (Gauhati HC)

Facts of the Case

- **The question of law is whether Notification No. 56/2023-CT dated 28.12.2023, which extended the time limit for issuing orders under Section 73(10) of the CGST Act, was valid on grounds that the extension of time limit was issued without fulfilling the existence of force majeure.**
- The said notification provides for the extension for the following financial years:

Financial Year	Extended Date
2018-19	30.04.2024
2019-20	31.08.2024

- The petitioners argued that the Government lacked the authority to issue the said notification, as the conditions required for invoking Section 168A of the CGST Act, in this case the presence of force majeure, were not met.
- It was contended that the extension granted was without any real justification which violated the procedural requirements of the Act. Further that the state of Assam had not issued any notification under Section 168A of the Assam GST Act, any demand for taxes under the AGST Act was invalid.
- The Department defended the notifications, arguing that the extension was necessary due to the delays caused by the COVID-19 pandemic (considered as the force majeure event), which impacted tax audits and assessments.
- It was also contended that the notifications were in line with the recommendations of the GST Council and were thus valid.
- The court found that the challenge was based on valid concerns, i.e., the absence of force majeure and without a recommendation from the GST Council, the issuance of Notification No. 56/2023-CT was beyond the powers of the Government.
- Consequently, the court quashed the notification and held that the Orders-in-Original issued under the extended time-period were invalid.

Key Insights:

- While the judgment is seen as a welcome measure that provides relief measures for the taxpayers; considering the high stakes involved, it is seen that the matter has not yet reached finality. It is likely that the department may knock the doors of the Hon'ble Supreme Court in this regard.
- Citation: W. P. (C)/ 3283/ 2024.

3. M/s. Best Crop Science Pvt Ltd. (Delhi HC)

Facts of the Case

- **The case revolves around whether Rule 86A of CGST Rules permits the Department to block a taxpayer's Electronic Credit Ledger for an amount exceeding the ITC available at the time of issuance of order.**
- Rule 86A empowers the authorities to temporarily block the use of ITC in the Electronic Credit Ledger (ECL) if there are reasons to believe that it has been fraudulently availed or is ineligible.
- The Assessee argued that the rule should only apply to the credit available at the time of passing the order, and blocking beyond what is available in the ECL is impermissible.
- The ITC balance of the assessee was Nil when the authorities invoked Rule 86A and inserted a negative balance.
- The Hon'ble court observed that since the ledger had no ITC balance, the blocking and insertion of a negative balance exceeded the jurisdiction conferred under Rule 86A.
- It was emphasized that Rule 86A is a provisional and protective measure, not a recovery mechanism.
- Thus, it was concluded that such action was beyond the authority of Rule 86A and was therefore without jurisdiction and illegal.
- The Court also noted that any permanent recovery of ITC must follow the due process under Sections 73 or 74 of the CGST Act, which govern the recovery of improperly availed or utilized ITC.
- Rule 86A, therefore, could not be used to bypass these provisions by directly affecting the credit ledger balance when no ITC was available at the time.

Key Insights:

- The Court has highlighted the limited scope of Rule 86A, stating that it is a temporary, protective provision and cannot be misused as a recovery mechanism.
- The rule only disallows the use of ITC presently available in the electronic credit ledger. The decision provides significant relief to taxpayers who face arbitrary blocking of credits.
- Citation: 2024 (9) TMI 1543.

4. Deepak Singhal (KA HC)

Facts of the case

- **The key issue in this case is whether the GST authorities can initiate criminal proceedings under the Indian Penal Code (IPC) for offenses related to GST without first invoking the penal provisions of the GST Act, 2017.**
- Pursuant to investigation by GST authorities, the assessee was accused of fraudulently availing ITC based on bogus invoices, without any actual movement of goods.
- An FIR was filed against the assessee under IPC, for offences including charges of forgery and cheating.
- The assessee argued that the GST Act is a complete code for dealing with offences related to GST and that the authorities should have followed the procedures laid out in the Act, including obtaining prior sanction from the commissioner.
- The assessee contented that bypassing these provisions and directly invoking the IPC was illegal.
- The Department on the other hand argued that the alleged offenses, such as forgery and cheating, are distinct and prosecutable under the IPC independently of the GST Act.
- The court ruled in favor of the petitioner, holding that the offenses in question primarily pertain to the GST regime and must first be dealt with under the specific provisions of the GST Act.
- The Act itself prescribes penalties and prosecution under its penal provisions, specifically Section 132.
- The court further held that prosecution under the IPC without obtaining the requisite sanction from Commissioner under Section 132(6) of the GST Act was invalid.
- The GST Act provides a structured penal process, which cannot be circumvented by resorting directly to the IPC. Accordingly, the proceedings under IPC were quashed by the Hon'ble Court

Key insights

- The decision clarifies that authorities cannot bypass the procedural safeguards enshrined in the GST Act, particularly the need for prior sanction before initiating criminal prosecution.
- It reinforces the protection of taxpayers from arbitrary prosecution and highlights the necessity of adhering to GST Act before invoking general criminal law provisions.
- Citation: 2024 (9) TMI 233.

5. M/s. NHPC (HP HC)

Facts of the case

- **The primary question of law pertains to whether the free supply of electricity by the assessee to various State Governments, as compensation for environmental and social distress caused by hydroelectric projects, can be considered as "consideration" for services rendered and thereby subject to GST.**
- The assessee is a power generation company operating hydroelectric projects.
- It provides 12% of the power generated free of cost to the respective states as compensation for the environmental and social impact caused by the construction and operation of hydroelectric projects, as per the Hydropower policy.
- The Department confirmed tax liability on the supply, on the ground that free supply of power is "consideration" for the licensing services provided by the State Governments for granting access to natural resources for power generation.
- The assessee argued that the supply of 12% free power to the State Governments is not "consideration" for any services rendered but rather compensation for the distress caused by the establishment of hydroelectric projects.
- The Hon'ble Court noted the earlier decision in the Service tax regime relating to the assessee, where the demand of Service Tax was dropped.
- The demand of Service tax on was dropped holding that such free supply of power could not be treated as royalty or consideration for services rendered, but was instead compensatory.
- This conclusion was based on the Hydropower Policy and related agreements that described the free power as a means of compensating affected states for environmental and social distress.
- It was highlighted that a decision by a specific High Court Bench is typically binding on other coordinate Benches unless reversed on appeal.
- Noting that there is a serious doubt as to whether the supply of free electricity constitutes "consideration" or mere "compensation", an interim stay has been granted.

Key insights

- The distinction between "compensation" and "consideration" is crucial for businesses, where the line between compensatory measures and taxable services may blur.
- The stay has been granted taking into account the conflicting stance of the two departments within the same Ministry, and the significant liability imposed on a government company like NHPC.
- Citation: 2024 (9) TMI 1542.

6. M/s Sowmiya Spinners (P) Ltd (Mad HC)

Facts of the Case

- **The issue revolves around whether the assessee is entitled to the ITC transitioned from old regime, despite procedural irregularities in filing of the monthly return under Central Excise Rules.**
- The Assessee had transitioned ITC without having filed the requisite returns under the Central Excise Rules for the month of July 2017. The return was later filed.
- It was argued that the substantive benefit of CENVAT credit permitted to be transitioned under Section 140 of the CGST Act, 2017 ought not to have been denied to the Assessee.
- The Department contended that the ITC was transitioned without the same being reflected in the returns for July 2017, and only later on the returns were filed.
- It was held, as long as the Assessee was entitled to avail ITC under the provisions of the CENVAT Credit Rules, 2004, it cannot be allowed to be lapsed, unless the provisions of the CENVAT Credit Rules, 2004 itself provided for its lapsing.
- It was further observed by the court that any procedural irregularities in transitioning the credit should not obstruct the legitimate claim to ITC. Since the assessee had rectified their procedural default, the minor delay should not invalidate their claim to the transitioned credit.

Key Insights:

- The ruling in favour of the taxpayers, reinforces that procedural lapses/ technicalities should not override substantive rights; Credit once validly earned, cannot be denied unless expressly provided for by law.
- Thus, even if procedural irregularities occur, such as delayed filing of returns, they should not defeat the taxpayer's legitimate entitlement to ITC, provided the credit was earned lawfully under the old regime
- Citation: 2024 (9) TMI 1543.

7. M/s. Meghmani Organochem Limitd (Guj HC).

Facts of the Case

- **The Question of law pertains to whether an SEZ unit is entitled to claim a refund of ITC on the taxable inputs procured in SEZ?**
- The assessee, an SEZ unit, exports goods without payment of tax. It pays taxes on the inputs procured in SEZ and claims ITC, which accumulates, since outward supplies are exports made without tax payment.
- The assessee filed for a refund of such ITC. The refund was rejected on the ground that the refund for supplies made to an SEZ Unit could only be claimed by the supplier, not the SEZ Unit itself.
- The Department argued that under Rule 89, only the supplier of goods or services to the SEZ Unit could file for a refund of the ITC related to such supplies. The assessee, a recipient in the SEZ, did not qualify to claim this refund.
- The Assessee argued that the entitlement of SEZ units to claim refunds of ITC for the procurements made in SEZ under Rule 89 of the CGST Rules, due to exports made without tax payment, is well established by the Hon'ble Gujarat High Court's decision in *Britannia Industries Limited vs. Union of India*.
- In the *Britannia* case, it was observed that while Rule 89 of the CGST Rules specifies that the supplier of goods or services should file the refund claim for supplies made to an SEZ unit, this does not preclude the SEZ unit from claiming a refund for unutilized ITC in cases of exports without payment of tax under an LUT or bond.
- SEZ units are involved in activities exempt from payment of tax, but they can still accumulate ITC on input supplies. Thus, SEZ units are entitled to claim refund of such unutilized ITC accumulated due to exports made without payment of tax.
- In the case in hand, it was argued that despite a pending S.L.P against that decision, there is no stay from the Apex Court, making the precedent binding.
- The Hon'ble court acknowledged that no stay has been granted by the Apex Court in the S.L.P. against the Britannia Industries decision.
- Consequently, the established legal principles cannot be disregarded.
- Given the similarities in facts between the two cases, the court found no basis to diverge from the prior ruling. Therefore, the rejection order was quashed.

Key Insights

- The Court in Britannia Industries had clarified that an SEZ unit, as an ISD, have accumulated ITC due to their operational structure, and therefore could legitimately claim the refund.
- The present ruling has reiterated the principles established in the Britannia case and provides provides clarity on the interpretation of Rule 89.
- Thus, there is no bar SEZ units from claiming refunds of ITC of procurements made in SEZ accumulated due to exports made without payment of tax.
- Citation: 2024 (9) TMI 1459.

8. M/s. Kundlas Loh Udyog (HP HC)

Facts of the case

- **The Question of law is whether the Central authorities can initiate proceedings on a subject matter on which the State authorities had already initiated the proceeding ?**
- The Assessee was summoned by DGGI concerning five specific suppliers. The Assessee replied that the State authority had already initiated proceedings relating to the five suppliers, and documents were submitted. Despite this, the DGGI blocked the Assessee's ITC without due process or a hearing.
- The authorities argued that they were empowered to act based on intelligence-driven enforcement, and cross-empowerment allowed both State and Central authorities to carry out enforcement actions.
- They also relied on the circular dated 05.10.2018, which allows officers from either jurisdiction to initiate and complete enforcement actions without transferring the case between authorities.
- The Court observed that to avoid overlapping or multiple proceedings, Section 6(2)(b) clearly states that once proceedings have been initiated by one authority (either State or Central), the other cannot initiate proceedings on the same subject matter.
- It was noted that the circular dated 05.10.2018 clarified that intelligence-based enforcement actions could be initiated by either authority. However, this does not mean that parallel proceedings can be initiated by the other authority on the same issue.
- It was put forth that any new information related to the allegation could be shared with the authorities already conducting the investigation.
- Citing that as per Section 6(2)(b) of the CGST Act 2017, the words "subject matter" refers to the nature of the proceedings, it was held, Central authorities cannot initiate proceedings on matters already addressed by state authorities.

Key insights

- Time and again, the Courts have safeguarded assessees from the burden of parallel proceedings.
- The Decision clarifies that while cross-empowerment of officers under the GST regime allows State and Central authorities to act interchangeably, they cannot initiate parallel proceedings on the same subject matter.
- TMI Citation: 2024 (9) TMI 1236.

9. M/s. Veremax Technologie Services Limited (Kar HC)

Facts of the case

- **The Question of law is whether the issuance of a consolidated SCN for multiple years is permissible, given the distinct limitation periods for each assessment year.**
- The Assessee argued that the Department cannot issue a common SCN for different tax periods, asserting that under Section 73 of the CGST Act, actions must be completed within each relevant year, with a separate 3-year limitation for each assessment year.
- Further the Assessee cited the decisions in **M/s. Titan Company Ltd. v. Joint Commissioner of GST (Mad HC)** and the Supreme Court's ruling in case of **State of J&K and Ors vs. Caltex (India) Ltd.**
- Held, the Department had incorrectly issued a consolidated SCN for multiple years. The Court emphasized that Section 73(10) requires actions to be completed within the relevant year, aligning with established legal principles.

Key insights

- This ruling has made it clear that each tax period must be treated separately, and issuing a consolidated SCN for multiple years is not permissible under Section 73 of the CGST Act. Taxpayers should may ensure that the Department follows the correct limitation periods for each assessment year and avoid arbitrary tax demands being clubbed into a single notice.
- TMI Citation: 2024 (9) TMI 1347.

10. M/s. Wintry Engineering & Chemicals Pvt. Ltd. (Bom HC)

Facts of the Case

- **The question of law is whether the scope of phrase "disputed tax" relating to pre-deposit for appeal under Section 406(8) of Maharashtra Municipal Corporations Act ("MMCA") includes the amount of tax along with interest/ penalty.**
- The disputed tax pertains to the Local Body Tax ("LBT") which is levied on consumption, use or sale of goods that enter municipal limits of a city as per the provisions of Section 127 of MMCA and its rules.
- The Court observed that a judgment must be read in the context of facts, and if they are distinct then the precedent value cannot be made binding.
- Accordingly, the Court upheld the rationale of **C.G. International Pvt. Ltd. case** that MMCA recognizes the distinction between tax, interest and penalty.
- The Court held that only the "disputed tax" is to be deposited, and interest and penalty are not inclusive of this amount for preferring an appeal.

Key Insights:

- The distinction between tax, interest and penalty has been put forth; and the interpretation of "disputed tax" in the context of preferring an appeal has been highlighted in this case. The disputed tax means as to what is required to be deposited, and it need not include interest and penalty.
- Citation: 2024 (8) TMI 1326.

11. J.K. Papad Industries.(Guj HC)

Facts of the case

- **The question of law is whether the assessee is liable to pay GST at the rate of 18% on the supply of unfried fryums, despite the subsequent clarification and decision by the GST Council and CBIC lowering the tax rate to 5% and regularizing the issue for the past period on an "as is where is" basis?**
- The Assessee argued that in light of the circular dated 01.08.2023, the prevailing dispute regarding the applicable GST rate on the assesses product has been resolved, reducing the GST rate to 5% instead of the 18% proposed in the impugned show cause notice.
- The assessee submitted that Circular No. 18/2023 specifies that, due to genuine doubts about the GST rate applicability for the past period up to 27.07.2023, the issue should be regularized on an "as is" basis. The assessee also argued that this provision applies to them and that their product should be subjected to a Nil GST rate.
- The assessee contended that the Gujarat AAAR had previously classified their product as 'Papad', after considering the ingredients, manufacturing process, and common parlance. Since section 103 of the GST Act makes such rulings binding on both the assessee and the jurisdictional officer, the product should attract a Nil GST rate. The SCN lacks jurisdiction, especially since the manufacturing process submitted before the Appellate Authority was the same as that observed by the audit authority.
- The assessee cited the judgments under the Gujarat VAT Act—where fryums were classified as 'Papad'. The assessee argued that even though these judgments were delivered under VAT law, the dispute regarding the classification of fryums as papad is identical and should be followed under the GST regime.
- The assessee further contended that the reliance on paragraph 5 of the CBIC Circular dated 13.01.2023 in the SCN is misplaced. They argued that Notification No. 2/2017-Central Tax (Rate) "Papad by whatever name it is known", and that this classification was supported by various advance rulings. It is argued that they are not liable for GST on the product until 27.07.2023, and their returns should be regularized on an "as is" basis.
- The department argued that the assessee could not challenge the validity of paragraph 5 of CBIC Circular No. 189/09/2023 dated 13.01.2023, as it was issued based on recommendations from the GST Council, in line with Article 279A of the Constitution of India. The department further stated that the circular, was merely clarificatory.

11. J.K. Papad Industries.(Guj HC)

- The department contended that the assessee did not disclose the extrusion process in their manufacturing process chart submitted to the Gujarat AAAR. By suppressing this material fact, the assessee obtained a ruling classifying the product under HSN 19059040 instead of the correct classification under HSN 19059030, which attracts 18% GST.
- The department argued that the judgments relied upon by the assessees under the VAT regime cannot be applied to the GST regime, as the classification of the product under GST is governed by specific tariff entries. They maintained that the product should be classified under Tariff Item 19059030 (extruded or expanded product), which attracts an 18% GST rate.
- The department argued that the assessee misinterpreted the phrase "as is" from the circular dated 1st August 2023. They contended that "as is" must be understood in the context of the correct classification which would attract 18% GST. The departments maintained that the assessee had installed extrusion machines in their factory, which clearly indicated that the product underwent the extrusion process.
- The departments cited the Supreme Court's decision in Commissioner of Customs (Import) Mumbai v. Dilip Kumar & Company (2018) to argue that tariff notifications must be strictly interpreted, and tax concessions cannot be expanded by courts.
- The departments concluded that, based on the 50th GST Council meeting and the circular clarifications, the assessee are liable to pay 18% GST on the product manufactured and sold up until 27.07.2023
- The court held that the department had misconstrued the meaning of the phrase "as is where is." 'As is where is' premise means that whatever status of payment of GST had been accepted by the assessee for the past period will continue to prevail. The assessee cannot be forced to pay GST in order to regularize their previous returns if they had declared their product to be exempt from GST.

Key Insights:

- The court has rightly interpreted the GST Council's minutes and the circular. The key takeaway here is that that whatever the assessee had declared for past GST returns (in this case, exempting the product) would remain accepted, and the assessee could not be retroactively required to pay GST for that period.
- By misinterpreting this provision, the department wrongly imposed 18% GST, despite the assesses filing Nil returns based on a valid exemption claim under Tariff Item No. 19059040. The quashing of the impugned notice reinforces the assesses right to this exemption
- Citation: 2024 (9) TMI 759.

Notifications, Circulars and Other Developments

Key GST Notifications

Effective date for the amendments/new provisions specified in the Finance (No. 2) Act, 2024 – Notification No. 17/2024, dated: 27.09.2024.

- The key amendments/new provision made effective through this notification are as under:

S.No.	Section	Summary of the Amendment/new provisions	Effective Date
Central Goods and Service Tax Act 2017			
1.	Section 9	Exclusion of un-denatured ENA or rectified spirit used for manufacture of alcoholic liquor, for human consumption from the levy of GST	1.11.2024
2.	Section 11A	Power of Government to exempt or reduce taxes through a notification if it determines that such actions align with the common practices of the trade.	1.11.2024
3.	Section 13	Time of supply in cases involving the reverse charge mechanism, when the invoice is raised by recipient.	1.11.2024
4.	Section 16	Insertion of 16(5) and 16(6) – Time limit to avail ITC claimed in GSTR 3B as per Section 16(4).	27.09.2024
5.	Section 31	Time limit for issuing an invoice in the case of the reverse charge mechanism, where the invoice is raised by the recipient.	1.11.2024
6.	Section 39	Filing of the TDS return every month by the registered person who is liable to deduct tax, irrespective whether the tax has been deducted or not.	1.11.2024

Key GST Notifications

S.No.	Section	Summary of the Amendment/new provisions	Effective Date
7.	Section 54	Insertion of sub section (15) which provides that no refund will be granted for zero-rated supply of goods or for the IGST paid on such zero rated supply supplies if they are subject to export duty.	1.11.2024
8.	Section 74A	Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason pertaining to Financial Year 2024-25 onwards.	1.11.2024
9.	Section 107	Reduction of maximum amount of mandatory pre-deposit form Rs. 25 crores to Rs. 20 crores.	1.11.2024
10.	Section 112	Extension of time limit for filing the appeal in the tribunal.	1.11.2024
11.	Section 128A	Waiver of interest or penalty or both for demands raised under section 73, for the FY 17-18,18-19,19-20 provided that the tax demanded is paid in full.	1.11.2024
12.	Section 171	Government empowered to notify the date from which the Authority will not accept any applications for anti-profiteering cases.	27.09.2024
13.	Schedule III	Insertion of Co-insurance and Re-insurance premium	1.11.2024
Integrated Goods and Service Tax Act 2017			
14.	Section 16	Amendment to link provision of this section to the refund provisions under Section 54 and also restricting the refund of ITC in case where the Zero rated supply is subject to export duty.	1.11.2024

Notifications

2. GSTAT empowered to Adjudicate on going Anti-Profiteering cases.

- Effective from 01st October 2024, the Principal Bench of the GST Appellate Tribunal, has been given the authority (replacing Competition Commission of India) to review whether businesses have correctly passed on the benefits of input tax credits or lower tax rates to customers by reducing the prices of goods or services supplied.

(**Notification No. 18/2024, dated 27.09.2024)**

3. Non-acceptance of the request for investigation on Antiprofiteering.

- Effective from 01st April 2025, no Anti-profiteering cases will be taken up, i.e., the GST Authority will no longer accept any requests to investigate whether businesses have passed on the benefits of input tax credits or reduced tax rates through price reductions for goods or services.
- This allows businesses to set prices for goods and services without the constraints of anti-profiteering regulations.

(**Notification No. 18/2024, dated 27.09.2024)**

Circulars

Circular No. 230/24/2024-GST: Clarification on Advertising Services to Foreign Clients

- Media owners generate invoices to the advertising agency for inventory costs, which are subsequently paid by the agency.
- Following this, the advertising agency then issues an invoice to the foreign client for the advertising services rendered and receives payment in foreign currency.
- In answering whether the same can be considered as export of services, the following have been clarified.
    - An advertising company cannot be considered as an "intermediary" between the foreign client and media owners, wherein the advertising company is involved in the main supply of services.
    - The representative of foreign client or the target audience of the advertisement in India cannot be seen as "recipient", as they are not liable to pay consideration for the services rendered. Only the foreign client who pays the consideration is regarded as the recipient.
    - Also, advertising services rendered to foreign clients cannot be considered as performance-based services as they do not require the physical presence of the recipient.
- In light of the above, the place of supply for the advertising services provided by the advertising company to foreign clients is determined to be the location of the recipient of the services (which is outside India) in accordance with Section 13(2). **Hence, it can be classified as export of services**.
- However, if the advertising company from India solely acts as an agent to the foreign client, and therefore considered as "intermediary" and the place of supply of services is determined under Section 13(8)(b) which is the location of supplier who is in India.

Circulars

Circular No. 231/25/2024-GST: Clarification on availability of ITC for demo vehicles

- Demo vehicles are used to provide trial run and demonstrate the features to potential buyers. The clarification issued pertains to the availability of ITC on demo vehicles and can be addressed under two key aspects.

Demo vehicles under Section 17(5)(a)	Capitalization of demo vehicles under Section 16(3)
Section 17(5) provides that ITC will be blocked for motor vehicles which transport passengers (not more than 13 persons).	Section 16(3) of the CGST Act provides that if depreciation is claimed by registered person, then ITC will be disallowed.
It has been clarified that demo vehicles promote sale of similar type of motor vehicles, and thus in making "further supply of such motor vehicles" as per Section 17(5). Therefore, ITC will be allowed under this exclusion.	It is clarified that though demo vehicles are purchased by authorized dealers and are capitalized in books, it is subsequently sold (as per the dealership norms) and are subject to pay tax.
However, if the authorized dealer merely provides marketing/ facilitation services, ITC will be blocked under Section 17(5) as there is no further supply of motor vehicles.	

- This clarificatory circular had resolved the doubts and concerns regarding the availability of input tax credit on demo vehicles.

Circulars

Circular No. 232/26/2024-GST – Clarification on place of supply of data hosting services

- Whether the benefit of export of services is available to data hosting services rendered by service providers in India to cloud computing service providers outside India?
- The services rendered by service providers to its overseas cloud computing service providers cannot be considered as intermediary services, as it is on a principal-to-principal basis, and Section 13(8)(b) does not apply.
- As the services provided are not "physically made available," the place of supply cannot be determined under Section 13(3)(a) of the IGST Act.
- The place of supply for data hosting services cannot be considered as services directly in relation to immovable property of physical premises, therefore does not attract section 13(4).
- In light of the above, place of supply is to be determined as per the default provision of Section 13(2), i.e. the location of the recipient of the services, which is outside India. Hence, it **can be considered as export of services** subject to fulfilment of other conditions under Section 2(6) of the IGST Act.

Circular No. 233/27/2024-GST: Clarification on refund of IGST availed under Rule 96(10)

- Whether the refund of IGST on exports can be regularized in cases where inputs were initially imported without payment of IGST and compensation cess under certain notifications but subsequently, both tax and cess along with interest is paid at a later date.

- Rule 96(10) of the CGST Rules, 2017 restricts the refund of IGST on exported inputs if the exporter has availed certain concessional or exemption benefits on imported or domestically sourced inputs.

- **Clarification**: On applying the logic behind the explanation inserted in the said rule with retrospective application, it was clarified that in such circumstances, it will be considered as if the assessee has not availed the benefit of the notifications and will not be in contravention of Rule 96(10).

Portal Updates

Reporting of supplies to un-registered dealers in GSTR-1/GSTR5

- The government vide notification 12/2024-CT has revised the threshold for reporting invoice-wise details of inter-state taxable outward supplies made to unregistered dealers, reducing it from ₹2.5 lakhs to ₹1 lakh. These details are to be furnished in Table 5 of Form GSTR-1 and Table 6 of GSTR-5.
- However, as the relevant functionality is still under development, taxpayers are advised to continue reporting invoice-wise details of such supplies exceeding ₹2.5 lakhs in the usual manner, till it is developed.

Re-opening of Reporting ITC Reversal Opening Balance

- New "E-Credit Reversal and Reclaimed Statement" introduced on the GST portal to enable businesses to report their previously reversed ITC.
- Taxpayers can now report the ITC that was earlier reversed and reclaim it now, ensuring that any previous balances are accurately reflected before the system locks the ledger permanently.
- Key dates:
    - 15th September 2024 to 31st October 2024: Opening balances for ITC reversals can be reported.
    - Until 30th November 2024: Amendments to the reported opening balance can be made.
    - For Monthly Taxpayers: Report ITC reversal balances up to July 2023
    - For Quarterly Taxpayers: Report ITC reversal balances up to the first quarter of FY 2024-25.
- It should be noted that once the ledger is hard-locked, the system will not allow any re-claim of ITC. So, it is advised to make use of this extended period to report earlier balances accurately.

Portal Updates

Archival of GST return data

- As per Section 39(11) of the CGST Act, 2017, effective from October 1, 2023, taxpayers cannot file their GST returns after three years from the due date. Additionally, under the GST portal's data retention policy, return data will only be available for seven years.
- Accordingly, return data for July 2017 and August 2017 was archived on 01st August and 01st September respectively and the returns for September 2017 scheduled was archived on 1st October 2024.
- However, due to difficulties faced and request received from trade, data has been restored back on the portal and the data will be archived after giving advance information which is yet to be prescribed, hence it is advised to make use of this extended period to download any necessary information before the archival process is instituted again.

Portal Updates

Invoice Management System (IMS):

- IMS will allow the recipient to accept, reject, or keep invoices filed by their suppliers pending to avail later, as and when required. Such actions taken by the recipient will be made visible to the supplier as well.
- In case the recipient fails to take any action, IMS will automatically consider the invoices as 'deemed accepted'. So, this facility will not add further compliance burden on the part of the recipient.

Action	Explanation
Accepted	Accepted invoices will be part of GSTR-2B generation
Rejected	Invoices not considered for GSTR-2B generation
Pending	Invoices not considered for GSTR-2B generation for the month, but carried forward in IMS for further action in subsequent months subject to conditions under Section 16(4) of the CGST Act
No action taken	Invoices where no action has been taken by recipient will be treated as deemed accepted at the time of GSTR-2B generation

- The said actions can be taken from the point when the supplier saves the invoices in GSTR-1/ IFF/ 1A, until the recipient submits their corresponding GSTR-3B.
- Also, IMS will auto-populate the changes made by the supplier and these amendments will be reflected to their corresponding recipients.
- In case any changes are made to the invoices filed in GSTR-1 through GSTR-1A or if action is taken after 14th of the month (i.e., date of generation of draft GSTR-2B), re-computation of GSTR-2B from the IMS dashboard is mandatory.
- Recipients will not be able to take any action for a particular month after filing of GSTR-3B for the same month.
- This new facility will streamline the reconciliation process between the recipient and the supplier which is quintessential for the purpose of availing input tax credit. This mechanism will allow the recipient to review the authenticity of the invoices and decide whether to accept the same or otherwise.
- IMS functionality is available to all recipients, inclusive of those who opted for the QRMP scheme.
- To avail this option, login to the GST Portal > click the Services > Returns > Invoice Management System (IMS) option.
- Effective date: 1st October 2024

Indirect Tax Compliance Calendar for October 2024

October 2024

Important Due Dates under Indirect Tax

S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

Important Due Dates under Indirect Tax

Due Date	Description
10 October 2024	↳ Filing of GSTR-7 - By Tax Deductor for the month of September 2024 ↳ Filing of GSTR-8 - By E-Commerce Operator for the month of September 2024
11 October 2024	↳ Monthly filing of GSTR-1 for the month of September 2024 (Regular taxpayers)
13 October 2024	↳ Filing of GSTR-1 IFF - By Taxpayers under QRMP Scheme for the Quarter July - September 2024 ↳ Filing of GSTR-5 - By Non-Resident Taxable Persons for the month of September 2024 ↳ Filing of GSTR-6 - By Input Service Distributor for the month of September 2024
18 October 2024	↳ Filing of CMP-08 – For the quarter July to September 2024
20 October 2024	↳ Filing of GSTR-3B (Regular Taxpayers) for the month of September 2024 ↳ Filing of GSTR-5A by OIDAR Service Providers for the month of September 2024
22 October 2024	↳ GSTR 3B - for a taxpayers with aggregate turnover up to Rs. 5 Crores during the previous year under QRMP Scheme registered in specified states.
24 October 2024	↳ GSTR 3B - for a taxpayers with aggregate turnover up to Rs. 5 Crores during the previous year under QRMP Scheme registered in specified states.

Key Connects

Rahul Jain, Partner:
E-Mail: rahul.jain@m2k.co.in
Mob No.: +91 97908 78922

Kalpesh Jain, Partner:
E-Mail: kalpesh@m2k.co.in
Mob No.: +91 95001 17061

Sridharan, Senior Advisor:
E-Mail: sridharan.p@m2k.co.in
Mob No.: +91 94444 20647

Office Address:

M/s Mukesh Manish & Kalpesh
Chartered Accountants,
7th Floor, Briley One,
No. 30/ 64 Ethiraj Salai, Egmore,
Chennai – 600 008, Tamil Nadu, India
Tel: +91 44 4263 9000 | www.m2k.co.in