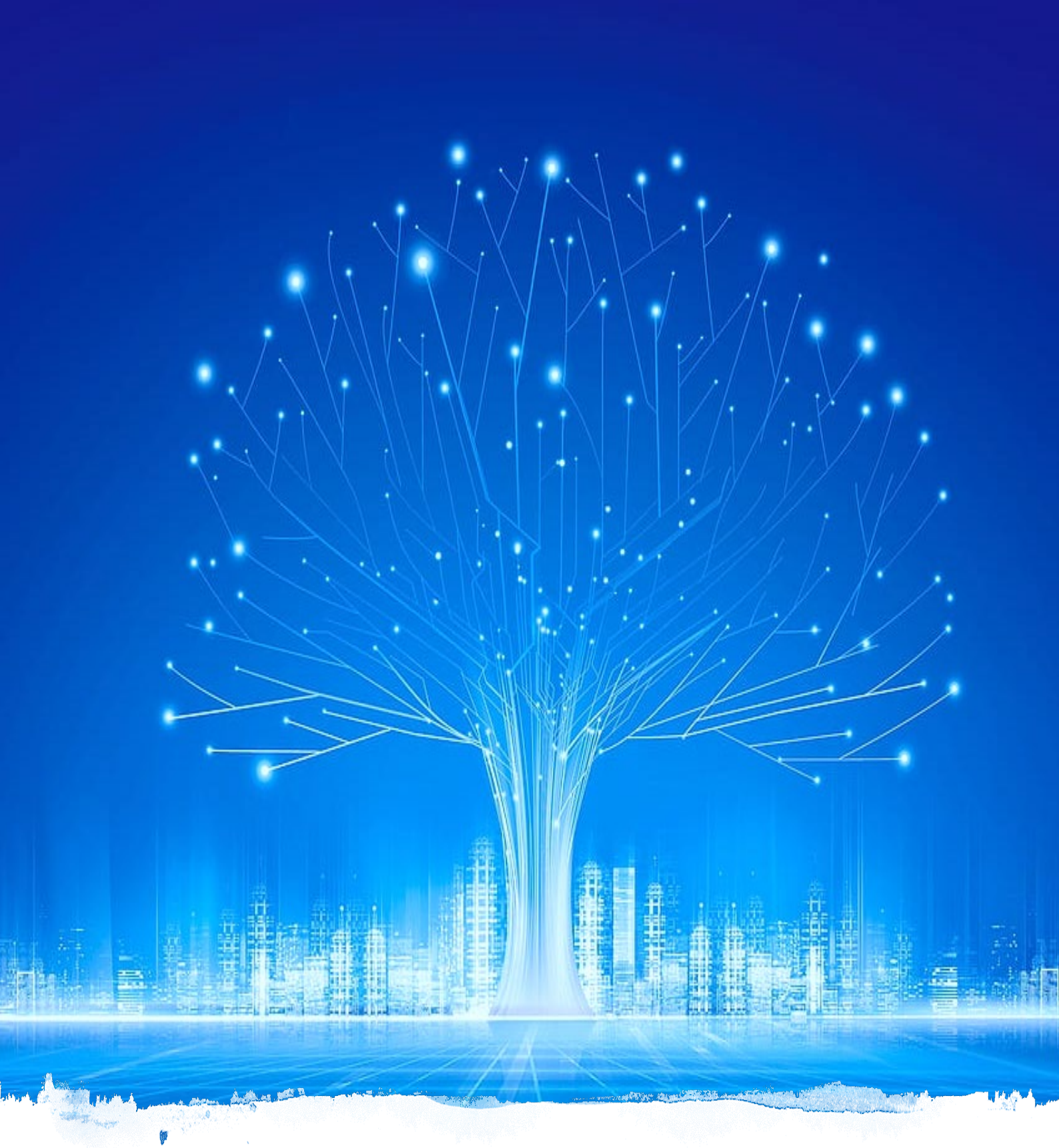

Indirect Tax Compendio

Vol 20: Oct 2024

Newsletter from Mukesh Manish & Kalpesh, Chartered Accountants

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Articles

Classification of auto-components – The phoenix raises again

- **ON** 30th July 2024, the Delhi Tribunal delivered a decision in an appeal filed by M/s Mitsubishi Electric Automotive India Pvt Ltd - 2024-TIOL-728-CESTAT-DEL on a classification matter where the classification of an Electronic Control Unit (ECU) for an Electronic Power Steering system(ECU-EPS) of an automobile was an issue.
- The Hon'ble Tribunal ruled in favour of Revenue upholding the classification of the ECU -EPS under CTH87089400 as part of power steering system of an automobile. In the process the Hon'ble Tribunal ruled out the classification under CTH 9032 and also the alternative classification under CTH 8537 and CTH 8543 argued by the Appellant, approval of either of which could have taken the impugned goods out of Section XVII, hence out of CTH 8708.
- As regards ruling out classification under CTH 9032, the Hon'ble Tribunal took the inexplicable line that though electronic instruments and apparatus used in automobiles are classifiable under Chapter 90, the ECU-EPS in question is not an instrument or an apparatus and therefore will remain a part of an automobile. The observations of the Hon'ble Tribunal in this regard were:

  "We are conscious that there are electronic instruments and apparatus which, though used in automobiles, are classifiable under Chapter 90. However, EPS-ECU is not an instrument or an apparatus but is a part of the power steering system. Merely because it is in the form of a PCB and other electronic components does not change it from a part of an automobile into an instrument or an apparatus. It is, in essence, a microprocessor with certain other parts which receives information from the speed and torque sensors and processes it and issues instructions to regulate the assistance provided by the power steering to the driver. Therefore, in our considered view, EPS-ECU does not merit classification under CTI 9032 90 00."

- Though this line of argument was not proposed by Revenue, the Hon'ble Tribunal took it upon themselves to use this line of argument to justify their decision to rule out CTH 9032. Therefore, it was incumbent upon the Hon'ble Tribunal to have been conscious of their decision, which will have wider implication for the auto industry in general.
- In this regard a reference to the Hon'ble Supreme Court in the matter of COMMISSIONER OF CUSTOMS, NEW DELHI VERSUS C-NET COMMUNICATION (I) PVT. LTD 2007 (9) TMI 15 - SUPREME COURT- Other Citation: 2007 (216) E.L.T. 337 (S.C.) = 2007-TIOL-166-SC-CUS where the Hon'ble Supreme Court dealt with the question what constitutes an apparatus, holding as under:

  "16. As per Stroud's Judicial Dictionary the term "apparatus" includes the distribution board of an electrical installation. It must be considered when current is passing through and not when it is in its inanimate state. This meaning has been assigned to it in Waddell's Curator Bonis v. Alexander Lindsay Ltd. [1960 SLT 189(OH)]. This would indicate that the terms "apparatus" has been interpreted as something which is inclusive of some other appliance.

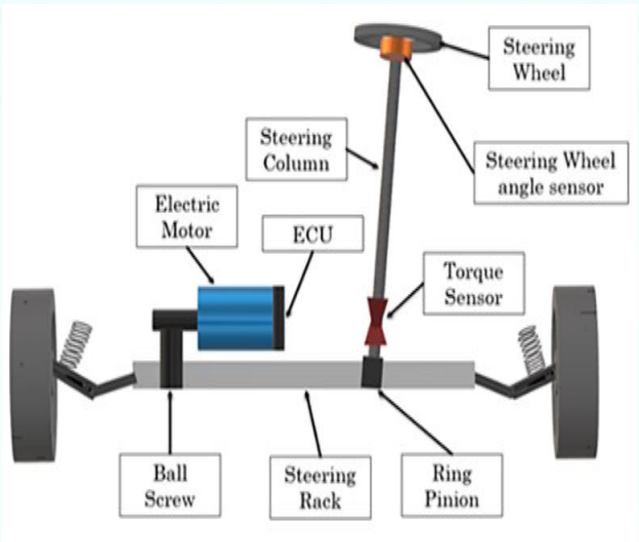
Classification of auto-components- The phoenix raises again (Contd.)

In our opinion, the word "apparatus" would certainly mean the compound instrument or chain of series of instruments designed to carry out specific function or for a particular use."

- When a distribution board of an electrical installation can be regarded as an apparatus, it cannot be comprehended, that a complex instrument such as an ECU of an EPS, was decided not to be an apparatus for purposes of classification under CTH 9032. As the ECU-EPS did not pass muster as an apparatus at the threshold, the Hon'ble Tribunal did not get into the question whether the ECU -EPS met the requirements of Note 7 (b) to Chapter 90, which is a sine-qua-non for an apparatus or an instrument to fall under CTH 9032.
- The reasons for ruling out the alternative classification under CTH 8537 as stated by the Hon'ble Tribunal, are as under:

33. As discussed above, EPS-ECU is not designed for electricity distribution or electric control. It is a part of an automobile –specifically a part of the power steering system to decide how much assistance should be provided to the driver in steering. The mere fact that it makes this determination and intervenes between the 12-volt car battery and a small motor does not, in our considered view does not make, EPS-ECU into an electrical board, panel, etc. We, therefore, find that EPS-ECU does not merit classification under CTI 8537 10 00."

- Based on the signals received from the sensors such as the steering wheel angle sensor, speed sensor and the torque sensors, the ECU-EPS, decides on the assistance required to be provided to the steering wheel, by regulating the current supplied to the motor. The ECU - EPS thus controls the operation of the motor and it is the motor, so controlled by the ECU's regulatory action, that provides the assistance required to the driver for steering. Therefore, the steering system is called as Electrical Power assisted Steering (EPAS) system. Thus, the ECU -EPS controls the speed of the motor by regulating the current supplied to the motor. For carrying out this regulatory function the ECU-EPS has the algorithm programmed in it, that decides the appropriate logic for regulating the flow of power to the motor. Therefore, the ECU-EPS in an EPAS is a controller for the motor. A general schematic description of an EPAS is as under:



Classification of auto-components- The phoenix raises again (Contd.)

- It could be seen that the ECU is attached to the electric motor. It would be appropriate to note that the HSN explanatory Notes under CTH 8537, specifically mention, programmable controllers as under:

  The heading also covers :

  "(3) "Programmable controllers" which are digital apparatus using a programmable memory for the storage of instructions for implementing specific functions such as logic, sequencing, timing, counting and arithmetic, to control, through digital or analog input/output modules, various types of machines."

- The ECU-EPS in question is indeed a programmable controller for controlling the operation of the Electric motor which is an important component in an EPAS. It is also pertinent to note that the electric motor cannot be classified under CTH 8708,even though it is identifiable for use in an EPAS.
- Therefore, ruling our CTH 8537 on the ground that the ECU-EPS is not meant for electrical control may not be justified. From the HSN Explanatory Notes under CTH 8537, it could be seen that the term 'electrical control' has to be understood as electrical control of the machinery. The ECU-EPS controls the speed of the motor by regulating the electrical power supplied to the motor.
- It therefore appears that the ECU-EPS fully merited classification under CTH 8537, even granting that classification under CTH 9032 may not be appropriate. It is apparent that articles of Chapter 85 are excluded from Section XVII by Note 2(f) to Section XVII, which the Hon'ble Tribunal fairly recognised.
- Classification under CTH 8708 cannot be forced upon the importers/ manufacturers merely for the reason that the components are identifiable for use with the automobiles and more circumspection is required. Revenue fairly decided not to follow such a position taken by the Hon'ble Supreme Court in the Westinghouse matter. This decision raises the same question again, calling for a rethink on the proper appreciation of the exclusions from Section XVII afforded by Note 2 to Section XVII.

Can HC decide on classification matter in appeal filed against ARA order?

- **IN** a recent decision, the Hon'ble Delhi High Court in the matter of AMAZON WHOLESALE INDIA PRIVATE LIMITED VERSUS CUSTOMS AUTHORITY FOR ADVANCE RULINGS, NEW DELHI & ANR = 2024-TIOL-1608-HC-DEL-CUS decided an appeal filed before it in terms of Section 28KA of the Customs Act, 1962.
- In this matter the Hon'ble Delhi High Court was dealing with a challenge to a ruling of the Advance Ruling Authority (ARA) pertaining to the classification of three devices, namely Echo Dot (5th Gen), Echo Dot (5th Gen) with Clock and EchoPop.
- The ARA found that the principal function of the goods in question was to reproduce sound and act as a speaker. Admittedly, for these devices to function as speaker, they accept voice commands and with wi-fi/Bluetooth connection capability, manage to get the input sound for reproduction from various web channels. These features of the devices, make them work as "smart" speakers, retaining nonetheless the principal function as speaker. The ARA thus had ruled that the three devices would merit classification under CTH 851830, as these devices are essentially speakers.
- The importer challenged the ruling before the Hon'ble Delhi High Court, in terms of Section 28KA of the Customs Act, 1962. This Section is extracted below:

  "Appeal

  28KA. (1) Any officer authorised by the Board, by notification, or the applicant may file an appeal to the High Court against any ruling or order passed by the Authority, within sixty days from the date of the communication of such ruling or order, in such form and manner as may be prescribed:"

- There is no doubt that a challenge to a ruling by the ARA is available by way of an appeal before the High Court, which the importers have duly availed. The objective of this article is to highlight the apparent inconsistency in the provisions of the Customs Act, in relation to the jurisdiction of High Courts, in deciding matters pertaining to classification of import goods.
- In this regard a reference to Section 130(1) ibid, and the stand of the Hon'ble Supreme Court on this question will be relevant. Section 130 (1) ibid reads as under:

  *"**SECTION 130. Appeal to High Court.** - (1) An appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal on or after the 1st day of July, 2003 (not being an order relating, among other things, to the determination of any question having a relation to the rate of duty of customs or to the value of goods for the purposes of assessment), if the High Court is satisfied that the case involves a substantial question of law."*

Can HC decide on classification matter in appeal filed against ARA order? (Contd.)

- The Hon'ble Supreme Court in the matter of COMMISSIONER OF CUSTOMS, BANGALORE-1 Vs M/s MOTOROLA INDIA LTD = 2019-TIOL-398-SC-CUS-LB, when faced with the question on matters where a direct appeal to the Supreme Court would be necessary held as under:

  "16. We are of the considered view that the Legislature has carved out only following categories of cases to which it has intended to give a special treatment of providing an appeal directly to this court.

  "(i) determination of a question relating to a rate of duty;

  (ii) determination of a question relating to the valuation of goods for the purpose of assessment;

  (iii) determination of a question relating to the classification of goods under the Tariff and whether or not they are covered by an exemption notification;

  (iv) whether the value of goods for purposes of assessment should be enhanced or reduced having regard to certain matters that the said Act provides for."

- The Hon'ble Supreme Court while laying down these principles took into account the ratio laid down in the matter of Navin Chemicals Manufacturing & Trading Company Ltd. vs. Collector of Customs - 2002-TIOL-460-SC-CUS and Steel Authority of India Ltd. Vs. Designated Authority, Directorate General of Anti-Dumping & Allied Duties - 2017-TIOL-173-SC-CUS.

- The Hon'ble Supreme Court, quoted with approval, the following observations of the Hon'ble Supreme Court in the Steel Authority of India Ltd as under:

  "18. Section 130-E(b) of the Act provides for a direct appeal to the Supreme Court against an order of the Appellate Tribunal, broadly speaking, on a question involving government revenue. This seems to be in view of the fact that the order that would be under appeal i.e. (order of the Appellate Tribunal) may go beyond the inter se dispute between the parties and effect upon a large number of assessees. The issue, in such an event, surely will be one of general/public importance. Alternatively, the question raised or arising may require interpretation of the provisions of the Constitution. Such interpretation may involve a fresh or a relook or even an attempt to understand the true and correct purport of a laid down meaning of the constitutional provisions that may come into focus in a given case. It is only such questions of importance, alone, that are required to be decided by the Supreme Court and by the very nature of the questions raised or arising, the same necessarily have to involve issues of law going beyond the inter partes rights and extending to a class or category of assessees as a whole. This is the limitation that has to be understood to be inbuilt in Section 130-E(b) of the Act which, in our considered view, would also be consistent with the role and jurisdiction of the Supreme Court of India as envisaged under the Constitution. Viewed from the aforesaid perspective, the jurisdiction of the Supreme Court under Section 130-E(b) of the Act or the pari materia provisions of any other statute would be in harmony with those contained in Chapter IV of Part V of the Constitution."

Can HC decide on classification matter in appeal filed against ARA order? (Contd.)

- Thus the position that emerges is that the law makers consciously excluded the jurisdiction of the High Courts in matters involving, inter-alia, a determination of rate of duty and classification, as such matters will obviously go beyond an inter-se dispute between parties and will have all India implications involving a large number of importers/ assessees In such matters, the law makers consciously provided for a direct appeal to the Supreme Court.
- While Section 130(1) ibid is in line with this principle, the provision of appeal before the High Court under Section 28KA ibid, insofar as matters involving determination of rate of duty and classification is concerned, is in apparent conflict with the settled ratio and also runs counter to the exclusion provided under Section 130(1) ibid. It could not have been the intention of the framers of Section 28KA ibid, which was amended on 04 April 2021 to replace the Appellate Authority with the High Court as the Appellate destination.
- If Supreme Court alone will have jurisdiction over a matter involving rate of duty and classification on account of the fact that the question has all India ramifications, it is not clear as to how a High Court could be conferred with the jurisdiction on a similar question where the ARA is the lower authority.
- Now reverting to the Hon'ble High Court's decision in the Amazon Wholesale India Pvt Ltd, the High Court considered various aspects of the classification of the goods in question and decided to set aside the ruling by ARA on four grounds:

  "a) The devices in question are essentially convergence devices which are covered under the heading 8517;

  b) An earlier ruling of the same High Court setting aside the ruling by ARA for similar products;

  c) End use cannot be the criterion for determining classification; and

  d) The scope of the heading 8518 was not altered when the hearable devices were sought to be brought under this heading"
- Without going into the merits of the case, the question decided by the Hon'ble High Court will have ramifications across the country as the Hon'ble High Court decided a very important question of classification of Bluetooth enabled devices which are the norm these days. The decision of the Hon'ble High Court, having been based on the convergence capability and the un-altered scope of the heading 8518, will have all India ramifications as a considerable quantum of import of similar goods have been imported under the heading 8518 after February 2022. Effective from 2nd February 2022, True Wireless Stereo (TWS), headphones, earphones and similar devices like earbuds, neckbands, headsets, etc., whether or not combined with a microphone, being capable of connecting through a wireless medium and portable Bluetooth speakers of meeting specified prescriptions were included under the broad category of 'hearable devices' under the heading 8518.
- Further the Hon'ble High Court laid much emphasis on the uniformity sought to be achieved under the HSN stating as under:

  "51. We find ourselves unable to sustain the view as expressed by the AAR for the following additional reasons.

Can HC decide on classification matter in appeal filed against ARA order? (Contd.)

Undisputedly, India follows the HSN system of classification. We take note of the determinations made by competent authorities in jurisdictions overseas with respect to similar convergence devices and which too though not strictly binding on the AAR, would have merited due consideration and are liable to be accorded deserved weightage while answering an issue of classification. Ultimately the raison d'etre for adoption of the HSN system is to aid international commerce as well as to achieve uniformity and certainty in trade and commerce. Those determinations are not only representative of how such products have come to be classified globally, they would also be germane and relevant to answer questions of classification when raised."

- In this context, it would be relevant to note that the HS Committee of the World Customs Organization in their 72nd session held in September 2023, gave the following ruling in respect of Bluetooth enabled wireless headphones, holding that they would remain classified under CTH 851830 in preference to CTH 851762.

No	Product description	Classification	HS codes considered	Classification rationale
23	Bluetooth® wireless earphones with a built-in microphone, designed to pair with a host device, put up in a set for retail sale with charging case, charging cable and instruction manual. The earphones have functions to control audio file playback and to direct the host device to answer, reject or hang-up calls.	851830	8517 and 8518	Application of GIRs 1 (Note 3 to Section XVI), 3 (b) and 6.

- It is pertinent to note that these devices also use convergence technology, i.e., pairing with other devices in a piconet work, and the WCO's HS Committee did not think that the heading 8517 could be preferred over 8518. The fact that the HS Committee cited GIR 3(b) in support of this ruling, is indicative of the fact that in the opinion of the HS Committee the essential characteristic of these Bluetooth headphones would be provided by the speaker function and not the convergence function. It is also important to note that the above decision, taken by a majority of the members of the HS Committee members, has been accepted by India also as no reservations against this order has been lodged against this ruling by India, as provided under Article 8 of the HS Convention.
- While in terms of Section 28J ibid, a ruling provided by ARA is binding on the parties and jurisdictional Customs authorities, Section 28KA does not so limit the applicability of a High Court decision in its capacity as an Appellate Authority. Given the fact that the decision pertaining to classification will have all India ramifications, the apparent conflict between Section 28KA and Section 130(1) ibid, has been brought to the fore. A ruling under Section 28KA ibid on classification and applicable rate of duty may also not be strictly in line with the settled law in this regard. This is an area for the law makers to take remedial action.

Key Rulings and Insights

1. Sance Laboratories Private Limited (Ker HC)

Facts of the case

- **The primary question of law pertains to the following:**

i. **Whether the provisions of Rule 96(10) are ultra vires the provisions of S.16 of the IGST Act?**

ii. **Whether the introduction of the conditions in that Rule has taken away the vested right of the Assessee to claim a refund of IGST paid on export of goods; and**

iii. **Is the Rule violative of Articles 14, 19(1) (g) and 265 of the Constitution of India and is it 'manifestly arbitrary' in the sense the term is understood in Shayara Bano case?**

- The Assessee argued that rule 96(10) imposes restrictions on IGST refunds for exporters who have availed certain input benefits, which contradicts Section 16 of IGST Act.
- The Assessee further argued that rule 96(10) is ultra vires as it introduces restrictions not intended or authorized by the statute. The Assessee cite certain case laws to argue that delegated legislation must align with the parent statute and that courts can intervene to interpret provisions reasonably.
- The Assessee contended that the Supreme Court has held that subordinate legislation cannot override or restrict rights granted by the primary legislation. Rule 96(10) of the CGST Rules, by restricting IGST refunds, is contrary to the legislative intent of S. 16 of the IGST Act and thus should be invalidated.
- The phrase "subject to such conditions, safeguards and procedures as may be prescribed" in S. 16 of the IGST Act is argued to mean administrative safeguards to prevent revenue leakage, not restrictions on substantive rights. Therefore, Rule 96(10), exceeds the intended scope of these conditions and safeguards.
- The Revenue argued that Rule 96(10) aligns with S. 16 of the IGST Act, asserting that the provision was enacted to ensure conditions on refund claims, aligned with fiscal objectives. The Revenue stressed that Parliament intentionally granted the rule-making authority the power to set conditions, limitations, and safeguards on refunds under S. 16, and Rule 96(10) reflects this legislative intent.
- The Revenue contended that any ambiguity in exemption interpretation should favour the Revenue, and refunds must adhere strictly to rules rather than go beyond them.
- Under Rules 89 and 96, the Revenue highlighted the exporter's choice between claiming IGST refund with capital goods credit or using an LUT/bond for refund on input goods and services. The selected procedure dictates the applicable conditions and restrictions.
- The Revenue referred to the case of Zenith Spinners, upheld by the Supreme Court, arguing that conditions, safeguards, and limitations on refund rights are valid, and that Rule 96(10) does not infringe the right to refund but restricts it within statutory intent for fiscal discipline.

1. Sance Laboratories Private Limited (Contd.)

- The Court held that Rule 96(10) of the CGST Rules is ultra vires to the provisions contained in S. 16 of the IGST Act.
- It was held that the provisions of S. 16 of the IGST (before and after amendment) Act do not restrict the right of an exporter to claim a refund of either IGST paid on exports or tax paid on input services or input goods used in the export of goods or services. The amendment only added categories of eligible exporters for purpose of IGST refunds.
- Reaffirming the doctrine that subordinate legislation cannot supersede primary legislation, the Court emphasized that while conditions may be imposed in relation to refunds, such conditions must not encroach upon the statutory entitlement to a refund as conferred by the IGST Act.
- It was further observed that the words "subject to such conditions, safeguards and procedure as may be prescribed" in Section 16(3) of the IGST Act and Section 54 of the CGST Act, does not empower the imposition of conditions or limitations that would abrogate or nullify the substantive rights conferred under Section 16.
- Reliance was placed in the case of Zenith Spinners wherein the Apex Court had affirmed that by issuing a Notification the authority cannot exceed jurisdiction by providing for a situation which either restricts the rights granted under the Rule or make the rule itself redundant.
- It was observed that Rule 96(10) caused adverse discrimination amongst exporters who opt for the option of claiming IGST refunds (on exports) with respect to those using the LUT mechanism.
- Further, reliance was placed in the case of Shayaro Bano wherein the Hon'ble Apex Court held that "when the court find that provisions of plenary or subordinate legislation manifestly arbitrary, those provisions must be struck down".
- The court concluded that Rule 96(10) creates a restriction not contemplated by Section 16 of the IGST on the right to refund. Rule 96(10) was further held to be 'manifestly arbitrary' and Ultra vires to the provisions under Section 16 of the IGST Act producing absurd results not intended by the Legislature.
- The Court quashed any proceedings pertaining to Rule 96(10) of the CGST Rules and as inserted by Notification No. 53/2018 – CT with effect from 23-10-2017 to 08-10-2024.

Key Insights:

- This ruling brings a welcome relief to exporters by upholding their statutory right to claim IGST refunds without undue restrictions. The judgment underlines the precedence of primary legislation over delegated rules, clarifying that rights granted by the IGST Act cannot be limited by subordinate legislation that exceeds its authority.
- This judgment sets a valuable precedent, ensuring that similar ultra vires conditions cannot curtail the entitlements intended by primary legislation.
- **Citation:** 2024 (11) TMI 188

2. Metal One Corporation India Pvt. Ltd. (Delhi HC)

Facts of the Case

- **The question of law pertains to the nature of supply of services connected with the placement of foreign expatriates to aid and assist in the functions carried out by the Indian entities.**
- Individual employment agreements with the employees of Metal One Corporation, Japan (parent entity) have been entered with the Assessee.
- Relying on the decision of Hon'ble *Supreme Court in CCE & Service Tax vs. Northern Operating Systems (P)Ltd. (2022) 17 SCC 90*, the Department had taken a view that where an oversees entity had seconded employees to an Indian entity and then charged the employees' salaries borne in the form of reimbursement – it would qualify as manpower supply by the overseas company to the Indian subsidiary.
- The assessee argued that the seconded employees were hired for a short span of time, and thus employer-employee relationship does not arise. The assessee has only availed import of service as evidenced from the contract of employment between the assessee and the seconded employees.
- As per the rules on value of supply (second proviso to Rule 28 in this case), where ITC is fully available to the assessee, the value of supply of services declared in the invoice by the domestic entity is deemed to be the open market value.
- Reading Para 3.7 of Circular No. 210/4/2024-GST in conjunction with the rules, where invoices are raised by domestic entity in respect of its foreign affiliate, the value of such supply would be deemed to have "nil value," which is to be treated as the market value as per Rule 28, and no further tax implication would arise.
- On this basis, given that the assessee had not generated any invoices, the Court held that no tax liability arises on part of the assessee.
- Consequently, the Court had observed that the proceedings initiated by the Department are futile and impractical, therefore quashed the same.

Key Insights:

- The Court has rightly interpreted using the Circular to hold that tax liability does not arise if no invoice is issued by assessee, provided that they are fully eligible for ITC. This ruling brings much-needed clarity to Indian companies facing secondment-related issues.
- **Citation:** 2024 (10) TMI 1534.

3. Group M Media India Pvt Ltd. (P&H HC)

Facts of the Case

- **The question of law pertains to the legality of initiating proceedings under Section 74 after closure of proceedings under Section 73 of the CGST Act, 2017.**
- In the present case, the proceedings under Section 73 were dropped after filing of reply by the Assessee.
- However, the office of DGGI had issued notices under Section 74 on the same subject matter to the Assessee.
- The Assessee argued that the notice issued did not mention any incriminating allegations as to fraud or willful mis-statement with an intention to evade tax (according to Section 74) and further that this tantamount to parallel proceedings.
- The Court observed that the Assessee's contentions were wholly misconceived, and relying upon *HCL Infotech Ltd. v. Commissioner, Commercial Tax and Anr., 2024 (9) TMI 1644*, the Court held that dropping of notice issued under Section 73 would not prevent the authorities from independently initiating proceedings under Section 74 of the CGST Act.
- With regards to the contention of parallel proceedings, the Court noted that no proceedings under Section 74 were initiated in the present case, and only a notice was issued by DGGI seeking certain queries. Thus, the writ petition was disallowed.

Key Insights:

- The Court has ruled in favor of the Department as to the legality of initiating proceedings under Section 74, even if the proceedings under Section 73 has been already dropped.
- Factually, for initiation of Section 74, it is required to be seen whether the information was already with the Department, and they did not act upon the same.
- But as a correct principle, the issuance of notice under Section 73 would ipso facto not lead to an irrebuttable presumption that notice under Section 73 cannot be issued.
- **Citation:** 2024 (10) TMI 1611.

4. Cable and Wireless Global India Private Limited (Del HC)

Facts of the Case

- **The question of law revolves around whether the revenue authorities were justified in denying the refund of unutilized ITC to the Assessee, with respect to the exports made without payment of tax, solely on the grounds that the payment for those services was received in a bank account maintained by a different branch office of the Assessee?**
- The assessee argued that it provides Business Support Services to Vodafone Group Services Limited (VGSL) through its Delhi Branch Office (BO) and that the services qualify as export of services under Section 2(6) of the Integrated Goods and Services Tax (IGST) Act.
- According to the assessee, although payments for these services were received in the Bangalore BO's bank account, the location of the supplier should be determined based on the place of business from which the supply was made, in this case, the Delhi BO.
- The assessee contended that the location of payment receipt should not impact the status of services as exports or eligibility for an ITC refund.
- In contrast, the revenue authorities maintained that as the payment for the services was credited to the Bangalore BO's bank account, the assessee did not meet the requirement that payment for the export of services must be received by the supplier of services.
- Relying on Section 25 of the CGST Act, they argued that branches in different states are treated as distinct entities, and hence, the Delhi BO was not the supplier in the strict sense for the purposes of the refund claim.
- The Court held that Section 2(71) of the CGST Act prescribes the location of the supplier should be determined by the situs of the registered place of business from which the service is supplied, in this case, the Delhi BO.
- The Court found that remittances received by the Bangalore office's bank account do not alter the Delhi BO's status as the supplier.
- The Court noted that Sections 2(6) and 2(15) of the IGST Act do not require the payment for services to be tied to a specific bank account, but rather to the supplier's registered place of business.

Key insights

- The Court's decision in this case provides a significant clarification on the treatment of branch offices and the receipt of foreign remittances under the GST framework, especially for entities operating across multiple states in India. By affirming that the "location of the supplier" is linked to the registered place of business from which the service is provided, the Court has addressed a longstanding ambiguity around export transactions.
- **Citation:** 2024 (10) TMI 442

5. K-9-Enterprises, Kwality Metals (Kar HC)

Facts of the Case

- **The question of law pertains to whether the revenue was justified in passing the impugned orders blocking the Electronic Credit Ledger of the Appellants by invoking Rule 86A of the CGST Rules without granting a pre-decisional hearing to the assessee' s before passing the impugned order.**
- The Assessee' s argued that a pre-decisional hearing is mandatory before blocking the electronic credit ledger (ECL) under Rule 86A. A post-decisional hearing is not a substitute and should only occur if delay in a pre-decisional hearing is justifiable.
- It was further argued that blocking ITC must be based on an independent application of mind by the authorities, not solely on reports or instructions from other officers, ensuring that the decision is grounded in objective evidence.
- The Revenue supported the impugned order and submitted that there is no merit in the appeals and the same are liable to be dismissed.
- The Division Bench referred to the precedent set in the case of Samay Alloys India (P) Ltd., and ruled that, while Rule 86A does not specifically mandate adherence to the principles of natural justice, these principles may be implied when an action has significant consequences, such as the blocking of ITC. The Court highlighted that a pre-decisional hearing is essential in these cases, as a post-decisional hearing cannot substitute it.
- The Court characterized Rule 86A as "drastic and draconian," requiring strict compliance with its conditions. This includes the need for a clear "reason to believe" that ITC has been fraudulently claimed or is otherwise ineligible. The Court emphasized that officers exercising this power must base their decisions on an independent inquiry, not merely on information or investigations provided by other authorities.
- Additionally, adherence to the guidelines in Circular No. CBEC-20/16/05/2021-GST/1552 dated November 2, 2021, which specifies procedural steps for blocking ITC, was deemed to be essential.
- The Court found that blocking the electronic credit ledger (ECL) without independent transaction verification and without allowing the appellants a chance to be heard violated statutory provisions as well as the principles of natural justice.

Key Insights

- The Court has reinforced the importance of procedural fairness when blocking the ECL under Rule 86A. The Karnataka High Court's emphasis on a mandatory pre-decisional hearing and independent application of mind establishes a strong precedent, ensuring that ITC can only be blocked with concrete evidence and due process. This is beneficial for businesses as it safeguards against arbitrary restrictions on ITC.
- **Citation:** 2024 (10) TMI 491.

6. New Jai Hind Transport Service (UTK 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 contended that they are responsible only for transportation services, and charge freight fees. The fuel is supplied and owned by recipient and does not constitute "consideration."
- The Assessee also argued that this free supply of diesel should not be added to the transaction value as per Sections 7(1)(a) and 15(2)(b) of the CGST Act.
- The Assessee relied on SC cases wherein it was held that free goods or services provided by the recipient do not form part of value of supply. They also mentioned about he exclusion of the value of diesel from the taxable value of GTA services.
- In response, the Department argued that the fuel provided by recipient is an integral part of the GTA service and that, under Section 15(2)(b), all components necessary for the service must be considered in the transaction value. They argued that without fuel, the service cannot be performed, and thus, the value of the fuel should be included in the GST calculation.
- The Court held in favor of the Assessee by relying on several precedential case laws wherein it found that the transaction value should be based on the actual consideration for the supply — in this case, the freight charges paid for transportation.
- It was stated that since the cost of fuel was not borne by the Assessee (the GTA provider), it did not constitute "consideration" under the GST framework.
- The court noted that according to the draft agreement the freight charges were the only consideration agreed upon between the parties and that the fuel cost fell outside the assessee' s scope of expenses, reinforcing that fuel could not be included in the transaction value.
- The court cited precedents wherein it was held that costs or goods provided free of charge by the service recipient should not be included in the taxable value. These judgments supported the view that unless a component directly constitutes part of the consideration for the service, it should not be factored into the transaction value.
- The Hon'ble High Court further referred to Circular No. 47/21/2018, which clarified that items provided by the recipient at no cost (such as molds in the cited circular) do not need to be included in the taxable value of the service provided.
- Based on the above said findings, the court ruled that the value of the free fuel provided by the service recipient should not be added to the taxable value of the GTA service, and GST should only be charged on the agreed freight charges.

Key insights

- The interpretation of the Courts in this case offers significant clarity on the inclusion of free-of-cost items provided by the recipient in the transaction value under GST. This decision reaffirms that only the actual consideration paid by the recipient to the service provider forms the basis for the taxable value.
- **Citation:** 2024 (10) TMI 443.

7. M/s. Flemingo Duty free Shop Private Limited (Guj HC)

Facts of the case

- **The issue pertains to whether Duty-Free Shops (DFS) at international airports operating beyond customs barriers are liable to pay GST on the concession fees charged by the Airport Authority of India (AAI).**
- AAI contended that the supply of services, such as granting concessions for space within the airport premises, are subject to GST and not exempt or zero-rated.
- The assessee contended that the Duty-Free Shops operate in areas beyond the customs frontier of India, where supplies are considered as exports. Thus, the concession fees paid to the Airport Authority for operating these shops should not attract GST.
- The assessee also argued that these transactions are zero-rated and thus they are entitled to claim ITC and refunds.
- The Court observed that since the assessee's business primarily involves zero-rated supplies, they are entitled to adjust the unutilized ITC against any GST paid.
- In other words, for Flemingo Duty-Free, even if they pay GST on services like concession fees to the AAI, they can claim a refund of this tax under the ITC mechanism.
- Therefore, the imposition of GST in this context would not create any tax burden on the petitioner, as it would be eligible for a refund of any excess credit.
- The Court thus directed the petitioner to pay the GST on concession fees for the period under dispute, along with applicable interest. However, it also allowed the petitioner to file for a refund of the GST paid. The tax authorities were instructed to expedite the refund process.

Key insights

- This judgment provides essential clarity for Duty-Free Shops (DFS) at international airports regarding the applicability of GST on concession fees paid to the Airport Authority of India (AAI).
- By establishing that GST is payable on concession fees while also allowing for a refund through the Input Tax Credit (ITC) mechanism, the court effectively neutralizes the tax burden on DFS operators. This decision helps streamline cash flow for DFS entities by enabling timely refunds.
- **Citation:** 2024 (10) TMI 1117. .

8. Natural Language Technology Research (AAR - WB)

Facts of the Case

- **The question of law pertains to whether the Applicant can be classified as an e-commerce operator and a service provider who is liable to collect and remit GST on services provided by the drivers to customers on the Applicant's app.**
- The Applicant developed an app under the guidance of state government to provide a platform for drivers to register & offer services to customers.
- The Applicant operates on a subscription model without commission but is not involved in fare transactions or service quality, and the customers independently pay drivers based on the fare rates set by the West Bengal Transport department.
- The Applicant sought an advance ruling on whether it owning or managing a digital platform for the supply of goods or services would qualify as E-commerce operator and a service provider who has to remit GST on the services provided by the drivers to customers in the app.
- The Applicant merely provide a platform to connect drivers & customers without managing/ controlling the service transactions.
- Based on the facts mentioned above, the Applicant contended that these factors exclude it from the responsibilities of an "ECO" under Section 2(45), arguing that it is not liable for GST collection under Section 9(5).
- The Authority found that the Applicant's ownership of the app to facilitate drivers and customers aligns with the definition of e-commerce operators under Section 2(45) of the CGST Act.
- Further that the services provided by drivers via the App are not considered supplies by the Applicant under Section 9(5), and therefore the Applicant cannot be considered as a service provider.
- It was ruled that the Applicant does not facilitate bookings, payments, or service delivery and lacks an active role in the transaction process, operating only as a connector without involvement in ride facilitation, fare collection, or quality oversight.
- Therefore, the ruling exempted the Applicant from the liability to pay tax concerning the services rendered by drivers using the app's platform.

Key Insights

- This ruling emphasizes that e-commerce operators are liable to pay GST, only if they actively facilitate service provision beyond mere connection. This may help guide similar platforms on structuring their operations to manage GST obligations effectively.
- **Citation:** 2024 (10) TMI 194.

9. Kundan Kumar Prasad (AAR - WB)

Facts of the case

- **The Question of law pertains to the GST obligations of second-hand jewelry dealers in respect of valuation method, RCM applicability, and classification of goods or services.**
- The applicant is engaged in the business of buying second-hand gold and diamond jewelry and is involved in creating new items by melting old jewelry and performing minor processing that doesn't alter the nature of the jewelry.
- Based on the above facts, the Applicant sought an advance ruling on whether the Applicant would qualify as a dealer in second-hand goods who is eligible to pay GST on the margin (difference between purchase and selling price) as per Rule 32(5) of CGST Rules.
- Further that whether the purchase of jewelry from unregistered individuals attracts tax under RCM as either a supply of good or service. If so, would this supply be taxable under HSN 7108/ 7113 at the rate of 3% or under SAC 9988 at the rate of 5% and further whether GST is applicable on the goods received from the buyer.
- The Authority held that the Applicant cannot use the valuation method under Rule 32(5) as the old jewelry undergoes certain minor processing, when transformed into new pieces, thus GST is calculated on the full value, and not the margin.
- With regards to the classification of the supply as good or services, if the items are processed minorly without altering the product or are reformed into a new product – it is classified as a good. And it is to be classified as services, if the items are returned to the original buyer after modification/ re-processing.
- Depending on the nature of the transaction, as specified in the above para, the supply is taxable at 3% if classified as good under HSN 7108/ 7113, or 5% if as service under SAC 9988. The ruling also clarified that no RCM is applicable to the goods supplied by the buyer.

Key insights

- This ruling provides clarity over how GST obligations are to be handled by second-hand dealers involved in the field of jewelry making.
- **Citation:** 2024 (9) TMI 265.

Notifications, Circulars and Other Developments

Key GST Notifications

1. CGST (Second Amendment) Rules, 2024

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

Rule	Summary of the Amendment/new provisions	Effective Date
Rule 36(3)	Rule amended to restrict disallowance of ITC specifically to cases where taxes are paid for demands under Section 74.	08.10.2024
Rule 46	The option available to the supplier for issuing a consolidated self invoice at the end of the month for inward supplies subject to RCM where the aggregate value of supply exceeds ₹. 5,000 in a day has been removed.	01.11.2024
Rule 47A	Rule inserted to stipulate time frame for issuance of self invoice by recipients liable to pay tax under RCM, for supplies received from unregistered persons. The self - invoice must be issued within 30 days from the date of receipt of goods, services, or both.	01.11.2024
Rule 66	Rule amended to specify that Form GSTR-7 (Return for TDS) must now be filed by the 10th of the succeeding month.	01.11.2024
Rule 86(4B)(b)	Rule has been amended to remove reference to Rule 96(10), to give effect to the omission of the said rule.	08.10.2024
Rule 89	Rule 89 4A and 4B, which provided a separate mechanism for claiming refund on deemed exports, supplies under Advance Authorisation, EPCG schemes, EOUs, and exports at concessional rates have been omitted. Henceforth, there is only a single mechanism provided for all the suppliers claiming the refund of unutilized ITC.	08.10.2024

Notifications

Rule	Summary of the Amendment/new provisions	Effective Date
Rule 96(10)	Rule omitted to remove restrictions on claiming IGST refunds for exporters who have availed certain exemptions under Advance Authorisation, EOU, and similar schemes, thus allowing such exporters to claim refunds on zero-rated supplies without prior conditions.	08.10.2024
Rule 164	Rule introduced to outline the procedural requirements of the newly introduced amnesty Scheme under Section 128A of the CGST Act, 2017 and is aimed to provide clarity on the implementation and compliance framework of the Amnesty scheme.	01.11.2024
Rule 88B, 88D, 142, 121, 96B	Rules amended to bring in the effect of the insertion of Section 74A.	01.11.2024

2. Special Procedures for taxpayers in case of ITC wrongly claimed under Section 16(4) but available under Section 16(5) and 16(6)

- Special procedures introduced for taxpayers who have received orders under Sections 73, 74, 107, or 108 of CGST Act and have not filed an appeal.
- Taxpayers can file an application for rectification of an order, specifically in cases where the order has confirmed a demand for reversal of ITC that was claimed wrongly under Section 16(4) but is currently available under Sections 16(5) and 16(6) of CGST Act.
- Taxpayers shall submit the rectification application, along with Annexure A (Refer detailed notification for the template), within six months from the date of notification, that is, between the period 08.10.2024 to 08.04.2025.
- The proper officer will then issue the rectification order within three months from the date of the taxpayer's application, allowing the ITC to the extent it was previously denied but is now permissible.

(Notification No. 22/2024- CT dated 08.10.2024)

Notifications

3. Waiver of late fee payable if GSTR-7 filed as a NIL return

- Section 47 provided for late fee amounting to ₹25/- per day subject to maximum of ₹1,000/- for the delay in filing of GSTR-7 by TDS deductors under Section 51.
- Notification - 23/2024-CT amends the Section 47 which provides waiver for the late fee payable by TDS deductor who files GSTR-7 as a Nil return, for the period starting from 01.06.2021 onwards on an 'as-is-where-is' basis.
- This ensures that, for months where no tax was deductible, the complete waiver is provided in respect of late fee for delayed filing of GSTR-7, therefore no businesses are penalized unnecessarily for zero TDS activity.
- Effective date of the notification: 01.11.2024.

(Notification No. 23/2024- CT dated 08.10.2024)

4. Unregistered suppliers of metal scrap liable to be registered under Section 22

- In connection to Notification No. 06/2024- CT(Rate) that provides for payment of tax on RCM basis in respect of supply of metal scrap from unregistered supplier to registered recipient, it is provided that the exemption from registration provided under Section 23 read with Notification No. 5/2017 shall not be available to such unregistered suppliers.
- This implies that even though the tax on their outward supply is exclusively covered under RCM, they are still liable to be registered under Section 22, if their aggregate turnover exceeds threshold limit and shall start paying tax under forward charge basis.
- Effective date of the notification: 10.10.2024.

(**Notification No. 24/2024- CT dated 09.10.2024)**

Notifications

5. TDS deductible at the rate of 1% by Registered recipients of Metal Scraps

- A new clause (d) has been included to Section 51 of CGST Act, 2017 which provides a registered recipient of metal scraps to deduct TDS @1% when the same is supplied by the registered supplier, provided that the contract value exceeds ₹. 2,50,000/-.
- It is also provided that TDS is deductible even in cases where the supply made from the said recipient who is a registered person to another registered person irrespective of such recipient being a dealer in the business of metal scrap.
- Effective date of the notification: 10.10.2024.

(**Notification No. 25/2024- CT dated 09.10.2024)**

6. Effective date for Amnesty Scheme under Section 128A

- The new Amnesty scheme under Section 128A read with Rule 164 in CGST Act and its Rules provides a mechanism for taxpayers to seek a waiver of interest or penalty in connection with demands for specific tax periods (2017-18, 2018-19, and 2019-20) provided that certain conditions are met. An overview on how to avail the benefits is given hereunder:
- 31st March 2025 is the deadline for taking benefit of waiver of interest and penalty for the tax demanded under section 73 for the periods from July 2017 to March 2020.
- In case of the Notice issued under section 74 and further requiring an Order to be passed for redetermination of tax by way of remand, then the time limit applicable for the waiver of interest and penalty would begin from six months from the date of such Order.
- The taxpayers who fulfil the criteria provided under section 128A are eligible for this benefit. This notification will take effect from 01.11.2024.
- Various doubts relating to the Amnesty Scheme has been clarified vide Circular no. 238/2024 dated 15.10.2024 (Refer next page)

(Notification No. 21/2024- CT dated 08.10.2024)

Circulars

Clarification of various doubts related to Amnesty scheme:

i. **Eligibility and Application Process**:

- Conditions for Waiver: Section 128A allows for waivers on interest or penalties if demands were issued for non-fraud cases for the specified tax periods and if:
  - **Case 1**: No order has been issued.
  - **Case 2**: An order has been issued by the Adjudicating authority and no order has been passed by Appellate authority.
  - **Case 3**: An order from an Appellate Authority or Revisional Authority exists without a further order from Appellate Tribunal.
- Application Forms:
  - Taxpayers should file Form GST SPL-01 for Case 1.
  - Form GST SPL-02 should be used where any order has been issued.
- Deadlines: Applications must be filed within three months of the waiver's notification date, i.e., by 30.06.2025. In specific cases requiring re-determination, applications are due within six months of the order pronounced by the proper officer.

ii. **Payment of Tax Dues:** All tax payments must be made by 31.03.2025, or within six months for specific re-determination cases.

iii. **Processing and Issuance of Order**: Upon submission, the proper officer will review the application. If eligible, the officer will approve it via Form GST SPL-05; if not, they'll reject it using Form GST SPL-07. If the officer fails to issue a decision within the prescribed period, the waiver application is deemed to be approved.

iv. **Validity of Waiver**: Waivers are contingent on payment within the timelines. If amounts for additional taxes or penalties remain unpaid, the waiver becomes void.

(Circular No, 238/2024 dated 15.10.2024)

Circulars

Clarifications regarding applicability of GST on certain services

- Clarifications on taxability of specific services as recommended by the GST Council meeting are summarized hereunder:
    - Affiliation services that universities provide to colleges are subjected to GST at the rate of 18%, as they are not eligible for GST exemption – as per Notification No. 12/2017-CT(R) dated 28.06.2017.
    - Services of affiliation provided by educational boards/ councils to schools (other than govt. schools) are taxable. Further that accreditation services by boards are taxable at 18%.
    - DGCA-approved flying training courses conducted by Flying Training Organizations are exempt under GST – as they are provided by educational institutions to students, faculty, and staff which is exempt from GST.
    - For Seat-sharing helicopter transport, a new GST rate of 5% will be implemented with effect from 10.10.2024, by regularizing past payments. For Charter helicopter transport, GST will be collected at the rate of 18%.
    - Ancillary services provided by Goods Transport Agencies (GTAs) as part of goods transportation by road to be treated as a composite supply of goods transportation. Hence, rate of tax as applicable to GTA services will be applicable to such ancillary services.
    - Exemption from GST has been given to import of services by an establishment of a foreign airline from a related entity or its foreign establishment, provided there is no consideration involved. This is made effective from 10.10.2024.
    - Location charges or Preferential Location Charges (PLC) for selecting an apartment's location to be part of overall consideration for construction services. Hence, these charges will attract the same GST rate as construction services.
    - Services incidental to transmission and distribution of electricity, such as, providing metering equipment on rent, testing meters, issuing duplicate bills, and related services are exempt when supplied by transmission and distribution utilities. This will be made effective from 10.10.2024.

Circulars

- Regularization of GST payments for distributor-exhibitor transactions involving theatrical rights from 01.07.2017 to 30.09.2021 recommended by GST Council. Previously, such transactions faced classification issues, with SAC 9996 taxed at 18% and certain IP rights at 12%. Resolving this, a uniform 18% rate will be applicable from 01.10.2021 onwards.

(Circular No. 234/2024 dated 11.10.2024)

Clarification regarding GST rates & classification

- Clarifications on GST classifications and rates for following products is made effective from 10.10.2024:

  i. Extruded/Expanded Savory Snacks:
  - Savory or salted extruded snack pellets will be classified under HS 1905 90 30, attracting a GST of 12%, aligning with namkeens and similar products.
  - Un-fried or un-cooked snack pellets continue to attract a 5% GST.
  - For the past period, an 18% GST applies to these products.

  ii. Roof Mounted Package Unit (RMPU) Air Conditioning for Railways:
  - RMPU Air Conditioning Machines are classified under HS 8415, subject to a GST rate of 28%. They are not classified as parts under HS 8607, which has an 18% rate.

  iii. Car and Motorcycle Seats:
  - Motorcycle seats are classified under HS 8714, attracting a 28% GST.
  - Car seats are classified under HS 9401 and currently attract an 18% GST. In order to bring parity, from 10.10.2024, car seats will also attract a 28% GST prospectively.

(Circular No. 235/2024 dated 11.10.2024)

Clarification regarding the scope of "as is / as is, where is basis"

- The regularization of GST payments on an "as is" or "as is, where is" basis," has been clarified. In GST terms, the terms means that – lower rates claimed by some suppliers will be regarded as complete tax payment, with no refunds available for those who paid higher rates.

Circulars

- When GST is regularized on this basis, payments made at lower rates (or nil rates) will be accepted as full tax payment for the specified period. Suppliers who paid higher rates will not be eligible for refunds.
    - **E.g. 1**: If some taxpayers paid 5% GST while others paid 12%, and the rate is clarified to be 5%, those who paid 5% will be considered fully compliant, while those who paid 12% will not receive refunds.
    - **E.g. 2**: For supplies where some taxpayers claimed nil GST due to doubts about exemptions, if the rate is clarified to be 5%, those who declared the supply as exempt will not owe the 5% differential.
    - **E.g. 3**: If the applicable rate is clarified to be 12%, those who paid 5% will be considered compliant, and the 12% will be due from those who paid nothing.

(Circular No. 236/2024 dated 11.10.2024)

Implementation of provisions of extended time limit for availing ITC:

- The clarifications on recent amendments to Section 16 of the CGST Act, 2017, which retroactively extended time limit to ITC for certain cases are summarized below:
    - **Amendments to ITC Provisions**: Section 16(5) and (6), extending the time to claim ITC in specific cases from 01.07.2017. Notably, no tax refund or reversed ITC will be granted due to this retrospective change as per Section 150 of Finance Act, 2024.
    - **Special Procedure for Rectification**: Notification No. 22/2024 dated 08.10.2024 introduces a process for rectifying orders confirming ITC denial under Section 16(4) of CGST Act, where ITC can now be claimed based on the amended provisions.
    - **Guidance on Ongoing Cases**:
        - For cases without demand notices, officers should consider the amended provisions.
        - For cases where orders are issued but appeals are pending, the adjudicating authority must factor in these changes.

Circulars

- **Rectification Applications**:
  - Taxpayers can file rectification applications online within six months of the issuance of the said Notification. They must submit applications with required details electronically.
  - Proper officers are directed to process them within three months, applying principles of natural justice, if decisions adversely impact taxpayers.
  - If the issues are not related to ITC denial under Section 16(4), taxpayers cannot use this special procedure but may apply for rectification under Section 161.

(Circular No. 237/2024 dated 25.10.2024)

Clarification of various doubts related to Amnesty scheme:

- The new Amnesty scheme under Section 128A read with Rule 164 in CGST Act and its Rules provides a mechanism for taxpayers to seek a waiver of interest or penalty in connection with demands for specific tax periods (2017-18, 2018-19, and 2019-20) provided that certain conditions are met. An overview on how to avail the benefits is given hereunder:

  i. **Eligibility and Application Process**:

  - Conditions for Waiver: Section 128A allows for waivers on interest or penalties if demands were issued for non-fraud cases for the specified tax periods and if:
    - **Case 1**: No order has been issued.
    - **Case 2**: An order has been issued by the Adjudicating authority and no order has been passed by Appellate authority.
    - **Case 3**: An order from an Appellate Authority or Revisional Authority exists without a further order from Appellate Tribunal.
  - Application Forms:
    - Taxpayers should file Form GST SPL-01 for Case 1.
    - Form GST SPL-02 should be used where any order has been issued.
  - Deadlines: Applications must be filed within three months of the waiver's notification date, i.e., by 30.06.2025. In specific cases requiring re-determination, applications are due within six months of the order pronounced by the proper officer.

Portal Updates

New GSTN e-Services App to be launched

- The new GSTN e-Services app is to be launched, which will replace the previous e-Invoice QR Code Verifier App. The app will be made available on both Google Play Store and Apple App Store, and no login is needed to access its features.
- Some of the features offered in the app are as follows:
    - **Verify e-Invoices**: Users can scan a QR code to verify B2B e-Invoice QR codes and check the real-time status of the Invoice Reference Number (IRN).
    - **GSTIN Search**: Allows users to look up GSTIN details using either GSTIN or PAN.
    - **Return Filing History**: Provides access to the return filing history for a particular GSTIN.
    - **Multiple Input Methods**: Users can search by entering text, using voice commands, or scanning relevant codes.
    - **Result Sharing**: Users can share their search results directly from the app.

Detailed procedure for proper entry of parcel way bill data into E-way bill system

- The Parcel Management System (PMS) of Indian Railways is integrated with the E-Way Bill system which facilitates seamless transfer of RR No./ parcel way bill (PWB) data to the EWB portal, ensuring better traceability and compliance. The accurate process for entering PWB data into the EWB system is explained in detail on the GSTN portal.

Advisory for GSTR-9/ 9C

- Starting from FY 2023-24, the GST system will auto-populate eligible ITC for domestic supplies (excluding ITC related to reverse charge and imports) from Table 3(I) of GSTR-2B to Table 8A of GSTR-9. These updates are made available on the GSTN portal from 15.08.2024.
- Additionally, a validation utility will be implemented progressively to validate the auto-populated data in GSTR-9 from GSTR-2B for the period April 2023 to March 2024.

Portal Updates

Locking of auto-populated liability in GSTR-3B

- The GST Portal offers a pre-filled GSTR-3B form, with tax liability automatically populated from the supplier's GSTR-1/GSTR-1A/IFF, while ITC is auto-populated from GSTR-2B.
- Starting from January 2025, the GST Portal will restrict changes to the auto-populated liability in the pre-filled GSTR-3B to improve return filing accuracy. In case of any required changes, it is advised the same should be made through GSTR-1A. The locking of auto-populated ITC in GSTR-3B will be implemented following the roll-out of IMS.

GST returns cannot be filed on expiry of three years

- Through Finance Act, 2023 and vide Notification No. 28/2023- CT dt. 31.07.2023, certain amendments relating to filing of GST returns were implemented. Notably, taxpayers are not allowed to file returns after expiry of three years from the due date for filing. This change will be implemented in the GSTN portal by early 2025 and is applicable to the following forms:
    - **Section 37 (Outward Supply):** GSTR-1
    - **Section 39 (Payment of Liability):** GSTR-3B, GSTR-4, GSTR-5, GSTR-5A, GSTR-6
    - **Section 44 (Annual Return):** GSTR-9
    - **Section 52 (Tax Collected at Source):** GSTR-7, GSTR-8
- Therefore, taxpayers are urged to reconcile their records and duly file their returns to prevent any issues that may potentially arise in the future.

Registration compliance requirements for Metal Scrap transactions

- The registration of businesses dealing with metal scrap has been made mandatory in accordance with the newly introduced provision under Section 51 of the CGST Act, 2017 vide Notification No. 25/2024- CT dated 09.10.2024.
- In this regard, form GST REG-07 has been updated on the GSTN portal to facilitate the registration compliance for buyers of metal scrap.

Portal Updates

- The advisory given to the buyers of metal scrap in this regard is given hereunder:
    - Taxpayers in this category are required to select "Others" in Part B of Table 2 under "Constitution of Business" section.
    - This would enable a text box with the heading "Others (Please specify)" with an asterisk wherein the taxpayer shall enter "Metal Scrap Dealers".
    - Post this, the remaining details in the form GST REG-07 is to be filled and submitted on the portal to comply with registration requirements as per the said Notification.

Invoice Management System (IMS) launched and action on invoices can be taken from 14.10.2024 onwards

- IMS is made available to taxpayers to facilitate seamless ITC availment by way of matching their invoices/ records with the suppliers. Taxpayers take action on invoices reflecting on the IMS dashboard from 14.10.2024 onwards.
- In this regard, the summary of additional FAQs published on the GSTN portal is as follows:
    - IMS has been launched from GSTR-2B for the return period of October 2024. Hence, all the records eligible for the said period onwards will be made available on IMS.
    - The first draft GSTR-2B on the basis of actions taken on invoices would be generated and made available to all taxpayers on 14.11.2024 for the return period October 24.
    - It is not mandatory to take action on invoices in IMS dashboard for GSTR-2B generation.
    - A record may be rejected if it does not pertain to the recipient, or the detail of the record is erroneous to such an extent that a credit note, and debit note cannot handle the situation.

Portal Updates

- Caution must be exercised while rejecting an invoice, as it will result in no ITC for the recipient. In case of erroneous rejection of an invoice, the same can be accepted in IMS before filing of GSTR-3B. After accepting the same, the recipient shall recompute the updated GSTR-2B for availing credit in GSTR-3B.
- If a recipient has already reversed the ITC on an invoice due to provisions under Section 17(5), Rule 42, Rule 43, or ineligibility under Section 16(4), they can still accept a genuine credit note in the GST Invoice Matching System (IMS). Since the ITC was already reversed or not claimed, no further reversal is required when accepting the credit note.
- The recipient cannot take any action on an upward amended invoice or debit note, if the supplier has only saved the record in GSTR-1/GSTR-1A/ IFF but has not filed it. The recipient will only be able to take action once the supplier has filed the amended record.
- If a supplier issues a credit note to correct an invoice instead of amending it, and the recipient rejects the credit note, the system cannot link the credit note to the original invoice. To resolve this, it is advisable for the supplier to amend the invoice in GSTR-1 rather than issue a credit note.
- The recipient cannot keep a credit note pending in IMS, as the supplier has already reduced their outward tax liability. IMS follows the existing process, with supplier records reported in GSTR-1 and reflected in GSTR-2B. The recipient can only reject the credit note if it does not apply to them.
- In case a credit note is rejected by the recipient before the supplier files GSTR-3B, the supplier's liability will not be added to GSTR-3B of the same tax period, but in the subsequent tax period.
- **Effective date**: 14th October 2024

Indirect Tax Compliance Calendar for November 2024

November 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

Important Due Dates under Indirect Tax

Due Date	Description
10 November 2024	↳ Filing of GSTR-7 - By Tax Deductor for the month of October 2024. ↳ Filing of GSTR-8 - By E-Commerce Operator for the month of October 2024.
11 November 2024	↳ Monthly filing of GSTR-1 for the month of October 2024 (Regular taxpayers).
13 November 2024	↳ Filing of GSTR-1 IFF - By Taxpayers under QRMP Scheme for the month of October 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.
20 November 2024	↳ Filing of GSTR-3B (Regular Taxpayers) for the month of October 2024. ↳ Filing of GSTR-5A by OIDAR Service Providers for the month of October 2024.
22 / 24 November 2024	↳ Filing of GSTR-3B under QRMP Scheme.
25 November 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.
28 November 2024	↳ Filing of GSTR-11 - Statement of Inward supplies by persons having Unique Identification Number (UIN) for claiming GST refund.
30 November 2024	↳ Last date to amend declared ITC reversal opening balance. ↳ Last date to claim ITC of FY 2023-24.

Key Connects

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