

A stylized, light-colored illustration of a plant with several stems and leaves, positioned on the left side of the page. The leaves are layered and have a soft, ethereal appearance. The background is a light beige color with a subtle, large-scale wave-like pattern.

Indirect Tax Compendio

Vol 1: March 2023

Newsletter from Mukesh Manish & Kalpesh, Chartered Accountants

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Key Rulings and Insights

Newsletter from Mukesh Manish & Kalpesh, Chartered Accountants

Ecom Gill Coffee Trading (P.) Ltd. – SC

Ratio

- ↳ The Question before the Hon'ble Supreme Court was on the eligibility of a purchaser to take credit due to defaults by the selling dealer under the provisions of the Karnataka VAT Act.
- ↳ The Department had suspected the veracity of the purchases made by the dealers and denied ITC. The Supreme Court, after examining the provisions of Section 70 of the KVAT Act (dealing with burden of proof) held that the burden of proving genuineness of ITC was on the purchaser and not the Department.
- ↳ The Court further held that mere production of the invoices or the payment made by cheques is not enough to discharge the burden of proof cast under section 70 of the KVAT Act.

Key Insights

- ↳ Though this ruling has been rendered under the KVAT Act, similar provision relating to Burden of proof exists under Section 155 of the Central Goods and Services Tax Act, 2017 ("CGST Act"). Resultantly, the observations of the Supreme Court will squarely apply to all GST matters also. Claimants of ITC will now be saddled with additional responsibility of proving the legitimacy of the transaction through additional documentation in case where such matters are litigated by GST Department
- ↳ Citation: CIVIL APPEAL NO. 230 OF 2023

Ernst & Young – Delhi HC

Ratio

- ↳ The Question of law before the Hon'ble Court was on scope of intermediary. Hon'ble Delhi HC held that the services provided by E&Y are in the nature of assurance and business advisory services; technical assistance / advice in relation to expatriate tax compliance services, advice and technical assistance with respect to US audit processes various service agreements for providing professional consultancy service will not qualify as an intermediary.
- ↳ The Court held that the service provider in this case does not arrange or facilitate services to EY entities from third parties. Further, the services were provided on their own account.

Key Insights

- ↳ This is the second HC decision after the Punjab and Haryana High Court decision on the scope of intermediary and will be useful in many pending litigation cases and interpretation of the scope of intermediary under GST law also.
- ↳ Citation: W.P.(C) 8600/2022

Myntra Designs (P.) Ltd - AAAR

Ratio

- ↳ The Question of law related to ITC admissibility on vouchers and subscriptions.
- ↳ The AAAR held that issuance of vouchers and subscription packages are considered as neither goods nor services.
- ↳ The AAR followed the recent decision of the Hon'ble Karnataka High Court of Premier Sales Promotions P. Ltd.
- ↳ The AAAR also held that once vouchers are not goods and services procurement of vouchers will not amount to procurement of goods or services and consequently the question of ITC of vouchers does not arise.

Key Insights

- ↳ The extension of this ruling is that wrong payment of tax cannot be corrected by availing ITC (leaving refund route open to assessee). Hon'ble Mumbai Tribunal in Bajaj Allianz General Insurance held that where tax is erroneously paid, credit taken to amounts to refund of such tax. Applying that principle, ITC can be argued in such facts.
- ↳ Citation: KAR/AAAR/03/2023.

Summit Online Trade Solutions P Ltd - SC

Ratio

- ↳ The Question of law related to appropriate jurisdiction for filing of writ.
- ↳ In this case, the petitioners were carrying on the business of sale of lottery tickets and the Goa Government levied tax in respect of such business carried within the territory of Goa. Petitioner company had their office in Gangtok, Sikkim.
- ↳ The petitioner challenged the levy of GST on the Goa business before the Hon'ble Sikkim High Court. The SC held that merely having office in Sikkim does not form an integral part of the cause of action authorizing the petitioning company to move the High Court of Sikkim.

Key Insights

- ↳ This decision will be helpful to all Assessee to correctly gauge the proper jurisdiction to file writ petitions, where the challenge is to be made to legal provisions.
- ↳ Citation: CIVIL APPEAL NO. 1700/2023

M/s Ravi Enterprises - Uttarakhand HC

Ratio

- ↳ The Question of law before the Hon'ble High Court was whether issuance of DRC - 01A and providing an opportunity for PH against DRC 01A is a pre-requisite for initiating a demand.
- ↳ The Hon'ble High Court of Uttarakhand held that not furnishing time to file reply to Form GST DRC-01A will be violation of natural justice and remanded the matter for fresh adjudication. Though the HC does not deal with the specific aspect of change in the law from 'shall' to 'May', the period in the issue seems to be after the amendment and the amended provisions are also extracted in the judgment.

Key Insights

- ↳ Procedure of DRC 01A under Rule 142 was initially brought as a welcome measure as persons were having an option to assess their liability and wherever required, voluntarily settle the liability without the hassles of further litigation. Recently, the Hon'ble Madras High Court in the case of M/s Visaka Exports have held that there is no mandatory requirement of issuance of DRC 01A after amendment to Rule 142 ('proper officer shall' with 'proper officer may') in October 2020. Hence, with two contra views existing from different High Courts, Assessee have to wait and watch on the developments on this issue.

↳ Citation: W.P.(M/S) No.141 of 2023

Consolidated Construction Consortium Limited - Madras HC

Ratio

- ↳ The Question of law revolved around interpretation of Section 18 of TNVAT Act.
- ↳ In a landmark decision, the Division Bench of the Hon'ble Madras High Court, in the context of Section 18(1) of the TNVAT Act, has held that works contractors involved in the works contracting activity to SEZ units/ developers/ entrepreneurs are entitled to the benefit of Input Tax Credit under Section 18 of TN Value Added Tax Act,2006.
- ↳ The Question of law stemmed due to the requirement of Section 18(2), which had restricted refund of tax only to the extent of export sale. The Court held that 18(1) and 18(2) operated independently.

Key Insights

- ↳ This decision effectively has culminated a long-standing debate on the scope and construction which was to be meted out to SEZ supplies. The dichotomy created due to wordings of Section 18(1) and 18(2) and the Circular 9/2013 dated 24th July 2013 adding fuel to the fire has now been put to rest. Assessee with pending litigations can heave a sigh of relief.

↳ Citation: WA No 703/2015 dated 28th Feb 2023

Tonbo Imaging India P Ltd – Karnataka HC

Ratio

- ↳ The Hon'ble Karnataka High Court has quashed Rule 89(4)(C) of the CGST Rules, 2017 and declared it to be ultra vires the Constitution, Section 54 of the CGST Act and Section 16 of the IGST Act.
- ↳ To recap, sub-rule 89(4)(c) was introduced to amend the definition of "turnover of zero-rated supply of goods" and artificially restricted the turnover to the lesser of: (a) value of zero-rated supply of goods; or (b) value which is 1.5 times the value of like goods domestically supplied by the same or, similarly placed, supplier, as declared by the supplier.
- ↳ The Court held that this amendment is illegal, arbitrary, unreasonable, irrational, unfair, unjust as it places two classes of export (LUT Exporters and Exporters paying tax and claiming rebate) on distinct footing. The differential in treatment is irrational and unreasonable. Further, the amendment is against the scheme of grant of refund to the exporters

Key Insights

- ↳ The decision of the Hon'ble Court striking down the Arbitrary rule is a welcome move and will provide immediate relief to various exporters where refunds were restricted due to the interpretation of the Rule.
- ↳ However, considering the stakes involved, the Government may choose to move to the Supreme Court and also propose legislative amendments to overcome the impact of the decision.
- ↳ Citation: WRIT PETITION NO. 13185 OF 2020 (T-RES)

A stylized, light-colored illustration of a plant with various leaves and branches, positioned in the background of the page. The plant is rendered in a soft, muted green and brown color palette, blending with the overall light beige background. The leaves are detailed with veins, and the branches are thin and elegant. The overall aesthetic is clean and modern.

Notifications, Circulars and Other Developments

Latest Changes and Updates in the GST Portal

GSTN launches e-invoice registration services with private IRPs:

- ↳ Taking a further step towards digitalization of the business process flow, the GST Network has launched the e-invoice registration services through multiple private IRPs at the recommendation of GST Council.
- ↳ Four private companies viz. ClearTax, Cygnet, E&Y and IRIS Business Ltd were empanelled by GSTN for providing these e-invoice registration services to all GST taxpayers of the country.
- ↳ The taxpayers now have a choice of more than one IRP (earlier being the only single portal of NIC), which they can use to register their e-invoices.

Advisory for the taxpayer wishing to register as “One Person Company” in GST:

- ↳ The GSTN has clarified on taxpayers wishing to register as OPC in the GST
- ↳ The applicant may select “Others” Option under the Constitution of Business of ‘Business Details’ tab using dropdown list and mention “One Person Company” in the text field, post which the steps for a normal registration application be followed to complete the process.

6-Digit HSN Code Reporting in e-Invoice on IRP Portals.

- ↳ The GSTN has now made mandatory for taxpayers (having AATO of more than Rs. 5 crores in any of previous financial year) to report a minimum of six-digit valid HSN code in the IRPs portal, for outward supplies.
- ↳ It is further suggested that in case wherever valid six digit HSN code is not available, a corresponding valid eight digit HSN code be reported instead of artificially creating six digit HSN code.



Indirect Tax Compliance Calendar for April 2023

April 2023

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					

Due Date	Description
10 April 2023	Filing of GSTR-7 - By Tax Deductor and GSTR-8 - By E-Commerce Operator for the month of March 2023
11 April 2023	Monthly filing of GSTR-1 for the month of March 2023. (Regular taxpayers)
13 April 2023	<ul style="list-style-type: none"> ↳ Quarterly filing of GSTR 1 for the Quarter January to March 2023 (Taxpayer Opted under QRMP Scheme) ↳ Filing of GSTR-5 - By Non-Resident Taxable Persons for the month of March 2023 ↳ Filing of GSTR-6 - By Input Service Distributor for the month of March 2023
15 April 2023	<ul style="list-style-type: none"> ↳ Monthly payment of ESIC Contribution to Government ↳ Monthly payment PF Contribution to Govt with ECR.
18 April 2023	CMP-08 for payment of self-assessed tax liability to be filed quarterly by composition taxable person.
20 April 2023	<ul style="list-style-type: none"> ↳ Filing of GSTR-3B (Regular Taxpayers) for the month of March 2023. ↳ Filing of GSTR-5A by OIDAR Service Providers for the month of March 2023
22 April 2023	Quarterly Filing of GSTR-3B for the quarter January to March 2023 (Taxpayer Opted QRMP Scheme)
24 April 2023	Quarterly Filing of GSTR-3B for the quarter January to March 2023 (Taxpayer Opted QRMP Scheme and located in the specified states)
25 April 2023	<ul style="list-style-type: none"> ↳ Monthly Payment of GST PMT-06 for Taxpayer with ATO up to Rs. 5Cr & Opted for QRMP Scheme. ↳ Filing of Form ITC-04 by Job workers, for the half year October 2022 to March 2023
30 April 2023	Annual Return filing for Composition Dealers for the FY 2022-23.

Key Connects

Kalpesh Jain, Partner:

E-Mail: kalpesh@m2k.co.in

Mob No.: +91 95001 17061

Rahul Jain, Partner:

E-Mail: rahul.jain@m2k.co.in

Mob No.: +91 97908 78922

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

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