



Indirect Tax Compendio

Vol 2: April 2023

Newsletter from Mukesh Manish & Kalpesh, Chartered Accountants

Contents

| | |
|---|-----------|
| Key Rulings and Insights | 3 |
| Notifications, Circulars & Other Updates | 11 |
| Compliance Calendar – May 2023 | 16 |

Key Rulings and Insights

Suzlon Energy Limited (SC)

Ratio

- ↳ The question of law before the Hon'ble SC was whether service tax would be applicable on designs which were imported into India.
 - ↳ The Tribunal had held that the assessee was not liable to pay service tax on the design charges on the grounds that the customs authority had treated the transaction as import of goods and therefore the same transaction cannot qualify as a service.
 - ↳ The Hon'ble SC held that Design would constitute a "Service" even though the same might have been assessed as "Goods" through Bill of Entry on import applying aspect theory.
 - ↳ The Court applied the 'intention test' and held that the transaction is one of a service.
- ↳ The Court followed the Ruling of the Hon'ble SC in the case of BSNL to hold that the same activity can be taxed as both goods and services provided the contract is indivisible and service tax can be levied on the service aspect.

Key Insights

- ↳ This decision of the SC will have wide ramifications in many matters where the assessee treats the transaction either as goods or services and arguments relating to double taxation are taken.
- ↳ This decision brings back the dominant intention test which was put to rest after the insertion of Article 366(29A).
- ↳ **Citation:** Civil Appeal 11400-11401/2018

Edelweiss Financial Services Ltd (SC)

Ratio

- ↳ The question of law before the Hon'ble SC was whether corporate Guarantee provided to a subsidiary company will be liable to Service Tax. The Hon'ble SC, vide a short order, affirmed the order of the Hon'ble Tribunal.
- ↳ The Tribunal had held that the assessee had not received any consideration for providing corporate guarantee to its group subsidiary company.
- ↳ Without the existence of a valid consideration, there could not be a valid levy of service tax.

Key Insights

- ↳ this decision reiterates the settled principle that there must be a valid consideration for the levy to get triggered under the Finance Act. This decision will assist assessee, who are facing similar litigation under the past regime.
- ↳ It is also to be noted that there has been a change in the law under the GST regime where the requirement of a consideration may not be relevant for related party transactions. Hence, the application of this decision to the GST regime is to be evaluated in light of the legal provisions present under the GST Act.
- ↳ **Citation:** Civil Appeal 001769 OF 2023

Sony India Private Limited (SC)

Ratio

- ↳ The Department had filed an SLP against the decision of the Hon'ble Telangana HC in Sony India.
- ↳ The question of law before the Hon'ble Court was if refund of excess CVD paid can be claimed by an assessee only through an amendment to the bill of entry under Section 149 or challenge to the claim under Section 128 was a pre-requisite for claiming the refund in light of the decision of the SC in the case of M/s ITC Limited.
- ↳ The SC condoned the delay and passed a brief order stating that the SC is not inclined to interfere with the impugned judgment and order of the HC and the SLP stands dismissed.

Key Insights

- ↳ The Hon'ble HC of Telangana had laid out the following important propositions: -
 - Section 149 of the Act was an additional remedy available to the petitioner to seek amendment.
 - Section 149 does not prescribe any time limit amend a bill of entry already filed and assessed.
- ↳ Though the doctrine of merger does not apply to the instant case, the propositions laid out by the Hon'ble HC Telangana provides a huge respite to assessee intending to claim the ITC/refund of differential duty paid on import of goods without challenging the Bills of Entry under Section 128 of the Act.
- ↳ **Citation:** Writ Petition No.4793 of 2021

Cosmo Films (SC)

Ratio

- ↳ The Question of law before the Hon'ble SC related to the constitutional validity of the pre-import condition in the Foreign Trade Policy for availing benefit of exemption from levy of integrated tax and GST compensation cess on import under Advance Authorisation (AA).
- ↳ The Hon'ble Gujarat HC had struck down the condition as unconstitutional and the revenue preferred an appeal against the Order of the HC before the SC
- ↳ The SC set aside Gujarat HC judgment and held that pre-import condition in Foreign Trade Policy for availing benefit of exemption is not arbitrary or unreasonable.

Key Insights

- ↳ All Advance Authorization holders have to relook and reexamine their existing positions on the basis of this decision
- ↳ Though the SC had in-principle decided the issue against the assessee, the SC also granted relief to assessee who are under litigation.
- ↳ Such assessee who had interim orders issued to them, have been permitted to claim refund of input credit. Such assessee are now required to approach the jurisdictional Commissioner and apply with documentary evidence within six weeks from the date of the judgment.
- ↳ **Citation:** Civil Appeal 11400-11401/2018

Pinstar Automotive Ltd.(Mad)

Ratio

- ↳ The Question of law was eligibility of ITC to the recipient when the supplier did not discharge GST.
- ↳ The Hon'ble HC held that provisions of Section 16(2)(c) (regarding payment of tax by supplier to Government) are to be observed strictly and this Section protects the interest of revenue when the supplier has not deposited tax.
- ↳ Consequently, if supplier fails to deposit tax, recovery can be made at the recipient's end. The Court also observed that if tax liability is subsequently recovered from the supplier, the Department must restore the ITC to the recipient.
- ↳ The Court also made a unique categorization by holding that while the supplier has substantive liability, the recipient has protective liability in respect of the tax.

Key Insights

- ↳ This is a very important ruling of the HC as past judicial precedents of the VAT regime may not be reliable under GST law due to the change in the legal framework. At the same time, the observation made by the Hon'ble Court that the recipient is only having protective liability clearly demonstrates that where the recovery of tax is affected through the vendor, the recipient cannot be penalized. A mechanism must be developed to ensure that any amount which is recovered from the recipient is to be re-credited as and when tax is deposited by the Supplier.
- ↳ **Citation:** W.P.No.8493 of 2023 dated 20th March 2023

Balaji Exim (Del)

Ratio

- ↳ The Question of law before the Hon'ble Court was whether refund can be denied to an assessee on the allegation that there may have been certain fake invoices on which ITC may have been claimed.
- ↳ The Hon'ble Court held that allegations of any fake credit availed by supplier could not be a ground for rejecting petitioner's refund applications unless it was established that petitioner not received goods or paid for them.

Key Insights

- ↳ This decision will assist various exporters where the refund has been withheld by the Department on the sole ground that there may be alleged transactions where ITC may have been availed on bogus invoices without any finding by the Department to this effect. Assessee who are facing such issues may consider going to the writ court to expedite their claims for refund.
- ↳ **Citation:** [2023] 149 taxmann.com 44 (Delhi)

Ohmi Industries Asia Private Limited (Del)

Ratio

- ↳ The Question of law before the Hon'ble Delhi HC was whether the activities carried out by the Assessee was intermediary or qualified as export of services. The assessee undertook the following activities:-
 - i. Research and analyse details of product requirements in steel industry, together with details/background of its opportunities.
 - ii. Research and analyse trend of business agreements related to prospective customers.
 - iii. Research and analyse the situation of prospective customer's competitors.
 - iv. Research and analyse the price trend of steel products in the market.
 - v. Research and analyse information production of major steel mills in India.
- ↳ The Court held that the Assessee had rendered Market Research Services on its own and it had not arranged the activity through any third party.

- ↳ The Court relied on the decision of the Delhi HC in the case of **Ernst & Young** and held that the transaction will not qualify as an 'Intermediary'.

Key Insights

- ↳ This is a significant ruling of the Hon'ble Court which offers clarity on the vexed question pertaining to what qualifies as an intermediary service. The Court has categorically held that the activities relating to researching various aspects of business which may assist the foreign principal may not qualify as 'intermediary'. Various marketing activities which may be performed by agencies may review their positions and take a considerate view in respect of their activities
- ↳ **Citation:** W.P.(C) 6838/2022 dated 29th March 2022

Uber India (Del)

Ratio

- ↳ The Assessee challenged the constitutional validity of notifications withdrawing GST exemption to transportation service by auto-rickshaws and non-AC stage carriage provided through-commerce operators (ECOs)
- ↳ The e-commerce operators had challenged Notifications No. 16/2021-Central Tax (Rate) and 17/2021-Central Tax (Rate) as violative of Articles 14, 19(1)(g) and 21 of the Constitution on the ground that while individual auto-drivers who are hailed on road by passenger are exempted, they are being discriminated only because the customer books through ECOs.
- ↳ The Hon'ble Delhi HC did not accept the contention of the Assessee and held that suppliers of service through ECOs and individual service providers are considered as separate class of persons under GST law.

- ↳ Hence, there exists a reasonable difference in classification between ECOs and individual service providers.
- ↳ The Court also noted that auto-rickshaw drivers / bus-operators supplying transportation of passenger service through ECOs are not on par with individual auto-rickshaw drivers / individual bus operators and they form a distinct category under GST.

Key Insights

- ↳ This decision provides important discussions on the interpretation of Article 14, 19(1)(g) and other provisions and will have an impact of the tax position adopted by E-Commerce Operators who get covered and impacted under the provisions of Section 9.

- ↳ **Citation:** W.P.(C) 14048/2021

Dharmendra Jani (Bombay)

Ratio

- ↳ The Question of law in this decision was on the constitutional validity of levy of GST on Intermediary Services.
- ↳ The assessee herein, was providing marketing and promotion services to customers located outside India and also received the consideration in Convertible foreign currency. On the destination based principle of Indirect Taxation, the assessee argued that the transaction will clearly be an export. However, due to deeming fiction by Section 13(8)(b) of IGST Act, the place of supply was deemed to be the location of the supplier of services which is in India and levy of CGST and SGST would arise. Hence, the assessee challenged the constitutional validity of section 13(8)(b) of the IGST Act.
- ↳ This order is a referral order passed by the third judge of the Bombay HC as the Division bench before whom the matter was placed had a difference of opinion on the constitutional validity.
- ↳ One Judge of Division Bench Bombay HC observed that Section 13(8)(b) of IGST Act not only falls foul of overall scheme of CGST Act and IGST Act and also violates Articles 245, 246A, 269A and 286(1)(b) of Constitution. The other judge had opined that the IGST Law was constitutional.
- ↳ The Third judge in this case upheld the constitutional validity of Section 13(8)(b) and Section 8(2) of the IGST Act and also observed that the fiction created by Section 13(8)(b) would be required to be confined only to the provisions of IGST.
- ↳ At the same time, the court has also held that these provisions can only be applied to the IGST Act and can't be used to levy tax on intermediary services under the CGST and SGST Acts.

Key Insights

- ↳ The ruling of the third member is different from the views of the division bench and has given a third perspective to the issue at hand. The issue of constitutional validity of levy of tax on intermediary services will continue to remain an open position and will be settled only at the higher Forum. Till such time, it would be prudent for assessee to take positions based on their overall appetite for litigation.
- ↳ **Citation:** WRIT PETITION NO.2031 OF 2018

Profilic Solutions (TN AAR)

Ratio

- ↳ The question of law before the Tamil Nadu Advance Authority was whether services provided to head office will be liable to GST.
- ↳ The applicant from its branch office had supplied, apart from the accounting services, various technical services to the head office situated outside the State.
- ↳ The applicant argued that the employees were employed for the company as a whole and not for any specific state or branch.
- ↳ The AAR after perusing the facts held that any supply of service between two registrations of the same person will attract the provisions registration and levy.

- ↳ Hence, services, including the services of common employees of a person, provided by a branch office to head office will attract GST liability.

Key Insights

- ↳ This ruling brings the light on the vexed issue of cross charge for services rendered within the entity.
- ↳ The issues arise more on the value which is to be adopted for rendition of the services, especially in cases where full ITC is not available to the recipient.
- ↳ **Citation:** AR NO.7/ARA/2023 dated 31.03.2023

Shree Seetaramjeneya Dal and Fried Gram – AAR (AP)

Ratio

↳The question of law before the AAR was whether the supply of 1 kg packing of red dal in 50 kg bag made to AP Civil Supplies corporation ltd under pre-existing agreements with the Corporation attracts GST.

↳The AAR analysed the definition of a pre-packaged commodity and held that the following conditions needs to be satisfied cumulatively a) packing without purchaser being present, b) commodity must be in a package & c) product must have pre-determined qty.

↳The AAR held that the purchaser in this case was clearly identified, and the packing was made for and at the behest of the corporation following clear instructions.

- ↳ Hence, even if the commodity was packed for retail distribution at a later point, in the assessee's hand, it is packed for a particular buyer. Hence, the supply is not a pre-packed commodity and does not attract GST.

Key Insights

- ↳ This ruling will have a significant impact on the food sector where various interpretational issues are being faced. Though the Hon'ble AAR has given a favorable ruling, the interpretation regarding the condition of packing without purchaser being present will not constitute a pre-packaged commodity will be subject to intense judicial scrutiny.
- ↳ **Citation:** AAR 03/AP/GST/2023

AP Power Development Corporation – AAR- AP

Ratio

- ↳ The question of law was whether liquidated damages collected by the assessee from Chettinad logistics private limited for non-performing of job assigned will constitute as supply.
- ↳ The Assessee had entered an agreement with Chettinad logistics private limited for supply of certain services which includes liasoning with vendors for coordination and supervision of coal loading, liasoning with railways for arranging rakes, transportation of raw coal, and such other amounts.
- ↳ The AAR after perusing the contract held that there was reasonable certainty that the payment was made only for certain advantage derived or to ward-off any disadvantage incurred. Hence it is only in response to something done by the assessee. Hence, the payment would attract the character of a consideration for a service.

- ↳ In regard to the reliance of the recent circular of the Board clarifying the position adopted by the Board, the AAR held that the circular is not universal and absolute. The circular is only meant to clarify the position of law and shall be applied reasonably having regard to the Ratio.

Key Insights

- ↳ This AAR has again taken a myopic position in respect of taxability of liquidated damages despite the Board coming up with a detailed circular on the point clearly stating that such amounts will not be taxable. Assessee having such transaction continue to be uncertain on what positions are to be adopted for critical transactions. In our view, this amount is purely a damage paid for non-performance of contract and will not be characterized as a consideration.
- ↳ **Citation:** AAR No. 04/AP/GST/2023 dated 31st March 2023

Manishaben Vipulbhai Sorathiya – AAR - Gujarat

Ratio

- ↳ The question of law pertained to appropriate classification of 'PVC floor mats' for use in cars. The AAR held that the goods are suitable for use solely or principally with vehicles mentioned from 87.01 to 87.05 as it is a tailor-made product, therefore, Section note 3 gets satisfied. Further, goods are not excluded from Chapter note 2. Hence, the goods merit classification under Heading 8708.

Key Insights

- ↳ The Ruling does not reflect the correct and appropriate position of law. The HSN Explanatory Notes dealing with interpretation of rules specifically exclude "tufted textile carpets, identifiable for use in motor cars" from Heading 8708 ibid and placed them under Heading 5703. Further, a recent decision of the Hon'ble SC in the case of M/s Uni Products 2020 (372) E.L.T. 465 (S.C.) clearly held that door mats will not be classifiable under Chapter 8708. The ruling of the AAR has not followed the SC and will lead to unwarranted litigation on a settled area of classification.

- ↳ **Citation:** GUJ/GAAR/R/2023/10 dt. 09.03.2023

Notifications, Circulars and Other Developments

Notifications

1. Amnesty to GSTR-4 Non-filers (Notification 02/2023 – Central Tax):

- ↳ Late fees payable u/s 47 of CGST Act, 2017 stands waived in excess of ₹500 (CGST + SGST) for those who failed to furnish the return in FORM GSTR-4 for the quarters from July 2017 to March 2019 or for the Financial years from 2019-20 to 2021-22 by the due date but furnish the said return between the period from the 01.04.2023 to 30.06.2023.
- ↳ For taxpayers with tax payable being nil in the said returns, the late fees stand fully waived.

2. Extension of time limit for application for revocation of cancellation of registration (Notification 03/2023 – Central Tax)

- ↳ The Central Govt. extended the time limit for revocation of cancellation of registration for those who failed to do the same within the time period. The extended time period is till 30-06-2023. (Provided the person shall file all his due returns and pay all his liabilities and there will be no further extension.)

3. Amnesty scheme for deemed withdrawal of assessment orders issued under Section 62 – (Notification 06/2023 – Central Tax)

- ↳ The Central Government has notified that a registered person who has failed to furnish his valid return within 30 days from the receipt of assessment order on or before 28 February 2023 under Section 62(1) is deemed to be withdrawn if the following special procedures are followed:
 - Shall furnish the return on or before 30.06.2023
 - Return shall be accompanied with Interest and Late fees, if any.

4. Amnesty to GSTR-10 non-filers (Notification 08/2023 – Central Tax)

The Central Government waives the amount of late fees u/s 47 of CGST Act, 2017 which is in excess of Rs. 1,000/- for a registered person who has failed to furnish his final return in Form GSTR-10 within the due date but has to furnish the return between the period 01.04.2023 to 30.06.2023.

5. Rationalisation of late fee for GSTR-9 and Amnesty to GSTR-9 non-filers (Notification 07/2023 – Central Tax)

↳ The Central Government waives the amount of late fees referred to u/s 47 of CGST Act, 2017 in respect of Annual, for the FY 2022-23 for the following class of registered person in excess of the following:

| Sl No. | Class of Registered person | Amount (Rs.) |
|---------------|--|--|
| 1. | Registered person having aggregate turnover up to Rs. 5 Cr | Rs. 25/day maximum up to 0.02% of T/o in state or UT |
| 2. | Registered person having aggregate turnover > Rs. 5 Cr up to Rs. 20 Cr | Rs. 50/day maximum up to 0.02% of T/o in state or UT |

↳ If the registered persons who fail to furnish the return u/s 44 of the said Act by the due date for any of the last 5 FYs but furnish the said return between the period from the 01.04.2023 to 30.06.2023, the total amount of late fee u/s 47 of the said Act payable in respect of the said return, shall stand waived which is in excess of twenty thousand rupees.

6. Extension of limitation under S.168A of CGST Act (Notification 09/2023 – Central Tax)

The Government has extended the time limit for issuing order for recovery of tax not paid / short paid / ITC wrongly availed for the various period as follows:

- ↳ For FY 2017-18 – up to 31.12.2023
- ↳ For FY 2018-19 – up to 31.03.2024
- ↳ For FY 2019-20 – up to 30.06.2024

GST Portal Updates

1. Advisory on Bank Account Validation:

↳ The GSTN on 24 April 2023 has now integrated the functionality of bank account validation with the GST System to ensure that Bank accounts provided by the Taxpayer is correct. Taxpayers will also receive the bank account status detail on registered email and mobile number immediately after the validation is performed for his declared bank account.

↳ The bank account validation status can be seen under the Dashboard → My Profile → Bank Account Status tab in the FO portal.

2. Time limit for Reporting Invoices on the IRP Portal

The GSTN has issued an Advisory dated 12 April 2023 (updated on 13 April 2023) in respect of the time-limit for reporting invoices on the IRP Portal. A brief note on the changes is highlighted below.

- ↳ The GSTN has proposed to impose a time limit on reporting invoices on the e-invoice IRP portals for taxpayers having AATO greater than or equal to 100 crores.
- ↳ To ensure timely compliance, taxpayers falling in the above category will not be allowed to report invoices older than 7 days on the date of reporting.
- ↳ The above restriction will only apply to all types of documents for which IRN is to be generated. Thus, once issued, the Credit / Debit Note will also have to be reported within 7 days of issue.
- ↳ For Example, if an invoice has a date of 01-Apr-2023, it cannot be reported after 08-Apr-2023. The validation system built into the IRP will not allow the user from reporting the invoice after the said 7-day window.
- ↳ The above changes will be implemented in the portal from 01 May 2023 onwards.

Note: There will be no such reporting restriction on taxpayers with AATO less than 100 crores, as of now.

3. New facility to verify document Reference Number (RFN) mentioned on offline communications issued by State GST authorities

↳ The GSTN on 28 April 2023 has now incorporated a new facility for Reference Number (RFN) generation by State tax officer in the GST portal to ascertain that an offline communication (i.e. one which is not system-generated) was indeed sent by the State GST tax officer or not.

↳ Under this feature, the State Tax office can generate a RFN for the physically generated correspondence sent to the taxpayer, which can be validated by the taxpayer (both pre-login and post-login).

↳ To verify a Reference Number mentioned on the offline communications sent by State GST officers that are being sent to you, navigate to Services > User Services > Verify RFN option and provide the RFN to be verified.

↳ This facility is for offline correspondence issued by State GST authorities. For documents issued by Central GST officers, CBIC DIN facility may be used.

FTP Amnesty Scheme Introduced

- ↳ A one-time amnesty to provide for regularization of cases of Export Obligation default of EPCGs and Advance Authorisation Scheme has been framed.
- ↳ The scheme covers all variants of authorization issued under the obligations under
 1. FTP 2009-14 till 31 March 2015
 2. For prior FTP 2004-09 and before, but limited to Export Obligations (EO) period (original or extended) was valid beyond 12 August 2013.
- ↳ The main benefit of the scheme is that all defaults can be regularised on payment of applicable customs duties in proportion to the unfulfilled EO.
- ↳ Interest is capped at 100% of the duties exempted on which interest is payable.
- ↳ No interest is payable on Additional Customs Duty and Special Additional Customs Duty
- ↳ The only limitation of the scheme is that no CENVAT or refund will be admissible of the duty paid under the amnesty scheme. A suitable declaration to this effect is also to be given.
- ↳ Amnesty scheme shall be available for a limited period, up to 30.09.2023.
- ↳ Cases under investigation for fraud, misdeclaration and diversion of goods are not eligible under this scheme.

**Indirect Tax
Compliance
Calendar for May
2023**

May 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 May 2023 | Filing of GSTR-7 - By Tax Deductor for the month of April 2023 Filing of GSTR-8 - By E-Commerce Operator for the month of April 2023 |
| 11 May 2023 | Monthly filing of GSTR-1 for the month of April 2023. (Regular taxpayers) |
| 13 May 2023 | <ul style="list-style-type: none"> ↳ IFF by Taxpayers under QRMP Scheme for the month of April 2023 ↳ Filing of GSTR-5 - By Non-Resident Taxable Persons for the month of April 2023 ↳ Filing of GSTR-6 - By Input Service Distributor for the month of April 2023 |
| 20 May 2023 | <ul style="list-style-type: none"> ↳ Filing of GSTR-3B (Regular Taxpayers) for the month of April 2023. ↳ Filing of GSTR-5A by OIDAR Service Providers for the month of April 2023 |
| 25 May 2023 | <ul style="list-style-type: none"> ↳ GST PMT-06 - Challan for depositing GST for the first month of the quarter by taxpayers who have opted for QRMP Scheme for the quarter April – June 2023. ↳ Filing of Form ITC-04 by Job workers, for the half year October 2022 to March 2023. |
| 28 May 2023 | Filing of GSTR-11 - Statement of Inward supplies by persons having Unique Identification Number (UIN) for claiming GST refund |
| 30 May 2023 | Filing of Form ITC-03 for ITC reversal pertaining to previous years, in case of persons freshly opting for the Composition Scheme for the FY 2023-24. |

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

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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