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# **Indirect Tax Compendio**

**Newsletter from Mukesh Manish & Kalpesh, Chartered Accountants**

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# **Key Rulings and Insights**

# Tata Motors (SC)

## Ratio

- ↳ The Question of law before the Larger Bench of the Hon'ble Supreme Court was the correctness of the decision of Supreme Court in the case of Md. Ekram Khan.
- ↳ Say Mr. A bought a car from Tata Motors under a warranty for 2 years. Within one year, a part was required to be replaced and Mr. A approached the Authorized Dealer of Tata, say Shyam Motors. Shyam motors, under its agreement with Tata, replaced the part and it was a FOC transaction for Mr. A.
- ↳ However, the part may have already been in Stock with Shyam Motors, as it would have been purchased earlier or Shyam Motors may have alternatively bought out this part from the market. In both cases, Tata motors issues a Credit note for the value of the part to Shyam Motors.
- ↳ The question before the Court was whether there is an underlying sale of the part from Shyam Motors to Tata Motors when a Credit note is issued.
- ↳ The Hon'ble SC, after a lengthy discussion on Contract Act, various treatises and numerous decisions has held that rationale laid out in the case of Mohd. Ekram Khan is a good law. There will be a sale when the dealer is issuing parts to the OEM and the OEM issues CN to the dealer. The CN will be a valid consideration for such sale.
- ↳ The Court also held that if the OEM provided free parts to the dealer for warranty replacements, such transaction would not qualify as a sale. There will however be a service element involved which the dealer may be providing to the OEM. The decision has captured various important decisions and legal aspects

surrounding the transactions & is a must read.

- ↳ The Court further held that if the OEM provided free parts to the dealer for warranty replacements, such transaction would not qualify as a sale. There will however be a service element involved which the dealer may be providing to the OEM. The decision has captured various important decisions and legal aspects surrounding the transactions & is a must read.

## Key Insights

- ↳ Though the decision was rendered in the context of Central Sales Tax, the rationale of the decision carries profound implications for all warranty transactions.
- ↳ In all cases of warranty, it is a common business practice for the OEMs/ company to issue Credit notes to the dealers/customers.
- ↳ The decision of the Supreme Court may have an impact on all such warranty cases where the transaction may not be viewed as settlement of an obligation but will be treated as a contra sale of goods by the dealer/customer to the assessee.
- ↳ Further, the aspect of earmarking goods for warranties have been clearly specified as a non-sale transaction.
- ↳ Hence, the modalities to be followed for this aspect requires a very close deliberation.

- ↳ **Citation:** Civil Appeal No. 1822/2007



# Delhi International Airport Ltd (SC)

## Ratio

- ↳ The Question of law before the Hon'ble Supreme Court was levy of service tax on the **user development fee** which is levied and collected by the airport operation, maintenance and development entities in terms of the Airport Authority of India Act, 1994, as amended from time to time.
- ↳ The Department contended that the transaction was liable to Service Tax as the fee constituted a consideration for provision of Airport Services under Section 65 (105) (zzm);
- ↳ Whereas the Appellant contended that the user development fee collected was not any charges representing any consideration for any activity. Reliance was placed on the nature of these charges under Section 22A of the AAI Act and the decision of the SC in M/s Consumer Online Foundation
- ↳ Hon'ble SC after examining the nature of the User Development fee has held that the UDF constituted a fee for future development of airports and cannot be considered as any charges or any other consideration for services for any facilities provided by the Airports

Authority. Accordingly, the Hon'ble Supreme Court upheld the order passed by the Tribunal and has held that such fee will not be liable to Service Tax.

## Key Insights

- ↳ The decision is of relevance both in the Service Tax and the GST era as it once again brings focus on the concept of what constitutes a consideration for a service.
- ↳ The **nexus test** which is required for any payment to constitute a consideration which has been highlighted in various foreign jurisprudences such as **New Zealand Refinery** case assumes significance and the relevancy of this test has again been fortified through this decision.
- ↳ The requirement to pay tax on various charges, esp paid to Govt., requires a through scrutiny as only such charges obtain the color of a consideration may be liable to tax
- ↳ **Citation:** Civil Appeal No (S). 8996 of 2019

# Interarch Building Products Pvt. Ltd. (SC)

## Ratio

- ↳ The Question of law before the Hon'ble Supreme Court was whether the Assessee had the option to pay tax on full value of the works contract and avail ITC, instead of paying tax under Section 2A of the Service Tax (Determination of Value) Rules, 2006 or composition scheme.
- ↳ The Hon'ble Supreme Court held that once there were two specific mechanisms provided under the law, it was not open for the Assessee to pay tax under Section 67 on the gross value of contract and avail ITC.

## Key Insights

- ↳ This decision of the Hon'ble Supreme Court is going to present a significant challenge in the manner in which valuation mechanisms are to be construed.
- ↳ The decision has given weight to the Rules rather than the fundamental valuation mechanisms prescribed under the Act. Under the GST context, if the rules (say Air Travel Agent) prescribe specific valuation mechanisms for specified transactions, assessee who still intend to pay tax on merit rate on the consideration earned may face challenge
- ↳ **Citation:** Civil Appeal No.11330 of 2018

# Gameskraft Technology Private Limited (Kar)

## Ratio

- ↳ The Question of law before the Hon'ble High Court was the validity of the SCN issued to the company on the alleged betting and gambling activities undertaken by the Company.
- ↳ The Petitioner in this case is engaged in providing online platforms to assist players to play games of skill like 'Rummy', online.
- ↳ The Petitioner charged 'platform fee' for providing a platform to players to play games, on which GST at the rate of 18% was deposited.
- ↳ The Department argued that the activity provided on the platform constituted a 'game of chance' and treated the consideration received for the games as 'actionable claim' and sought to demand GST. The total demand in this case was around **21,000/- Crores**.
- ↳ The High Court quashed the SCN holding that games such as 'rummy' was a game of skill and not a game of chance. Once it was not a game of chance (betting), the same did not constitute an actionable claim

## Key Insights

- ↳ The decision of the High Court has provided a welcome relief to the entire gaming industry. The High Court has again brought to fore the important distinction between when an activity will be a considered game of skill vis a vis a game of chance.
- ↳ However, with the growth of the gaming industry, the line of distinction between game of skill and chance will get more and more blurred. Hence, companies in the gaming industry will be advised to maintain proper and appropriate records and proof of their business models.
- ↳ Further, considering the high stakes involved, it is very likely that the revenue will appeal against the order before the Supreme Court.
- ↳ **Citation:** Writ Petition No. 19570 of 2022

# Sesame Workshop Initiatives (Del)

## Ratio

- ↳ The question of law in this decision was whether the Petitioner was eligible to claim interest on delayed refund. In this case, the Department had granted the SGST Component as refund but did not grant the CGST and IGST component. The refund sanction order was passed on 04th October 2021, however the refunds were sanctioned only in April 2023. The High Court held that there was in-ordinate delay in processing the refund application. Consequently, the Department is liable to pay interest for the delay.

## Key Insights

- ↳ In certain situations, the law does not provide for a remedy by way of interest etc. where there is a delay attributed to the Department. In such circumstances, many assessee forgo such right to claim interest pertaining to the refund. In light of the directions given by the High Court, assessee may be within their right to now file application for seeking interest where a delay is attributed to the Department in issuing refund
- ↳ **Citation:** W.P.(C) 5590/2023 & CM APPL. 21905/2023

# Avighna Properties Pvt Ltd vs. State Tax Officer (Madras)

## Ratio

- ↳ The question of law before the Hon'ble High Court was on the validity of the deeming fiction of treating 1/3 of the total contract price as the value of the land for discharging GST. Show cause notices were issued to various developers alleging that they did not follow clause 2 of Notification 11/2017 which artificially prescribed 1/3 of the value of the total contract as value of land for GST purposes.
- ↳ The Hon'ble High Court held that the methodology set out under the Notification is for bifurcation of the total consideration by way of a deeming fiction, to arrive at the **deemed value** attributable to construction services and land costs.
- ↳ The Court held that the deeming fiction would **not apply** in cases where the assessee is in a

position to supply the actual amount of the consideration received towards construction services and land cost.

## Key Insights

- ↳ The decision of the Hon'ble Madras High Court provides a welcome sigh of relief for all real estate developers.
- ↳ In many cases, the value of land is much higher than 33% of the total contract value. This is true for many re-development projects. Further, the developers also know the actual value of land being transferred as such land separately is liable to stamp duty as well
- ↳ **Citation:** W.P. No. 6431 of 2023

# Medicamen Biotech Limited vs. Union of India (Rajasthan)

## Ratio

- ↳ The Question of law before the Hon'ble High Court was whether the refund application is to be signed physically or digital signature is sufficient? The Department argued that the refund application filed by the Petitioner was not signed physically and hence was not maintainable.
- ↳ The Hon'ble Court held that under Rule 89 of the CGST Rules, there is no mandate that the application must be physically signed. Such a requirement of signing the application only emanate from a circular of the Board.
- ↳ The Court further opined that though non-submission of refund application along with the declarations as required under the law would certainly be illegal.

- ↳ However, if declarations are digitally authenticated in the manner prescribed under Rule 26 of the CGST Rules of 2017, non-submission of physically signed and scanned declarations may only be an irregularity, but not an illegality

## Key Insights

- ↳ This decision of the Court will assist various assesseees in many matters where applications such as registration related documents/ refund etc. are rejected for want of physical signature. The distinction drawn by the Hon'ble Court between illegality and irregularity is highly apposite with the former not being permissible as against the latter being a condonable defect.
- ↳ **Citation:** D.B. Civil WP No. 2604/2023

# Anmol Industries Limited (Kolkata)

## Ratio

- ↳ The Question of law before the Hon'ble Court was whether the recipient of a supply can seek a ruling before Advance Ruling Authority.
- ↳ The AAR had rejected the application made before it on the ground that the recipient of a supply cannot seek a ruling before the AAR.
- ↳ The matter travelled before the Hon'ble High Court. The High Court analyzed the definition of the phrase 'applicant', which has been defined to mean any person registered or desirous of obtaining registration. The Court held that the definition of the phrase is very wide and jurisdiction of the AAR to consider the application on merits rather than rejecting the same on the ground of lack of locus standi

## Key Insights

- ↳ The decision of the Hon'ble Court is a welcome move as it reiterates the fundamental principle of why an Advance Ruling Authority has been established in the first place. The intent of creating the advance ruling authority is to obtain tax certainty. As the incidence of indirect taxation falls on the recipient of the service, it is equally important that such recipient should get the opportunity to represent his case before the Advance Ruling Authority
- ↳ **Citation:** M.A.T. 630 of 2023

# White Gold Bullion Private Limited- AAR (Kar)

## Ratio

- ↳ The Question of law raised before the Hon'ble AAR was whether the benefit of Rule 32(5) dealing with secondhand goods will be available to jeweler for re-processing of old jewellery. The Applicant herein was engaged in buying old gold ornaments from unregistered sellers. After melting the gold and making lumps of the jewellery, the gold was sold to unregistered purchasers.
- ↳ The AAR observed that one of the conditions to be satisfied for claiming the benefit of Rule 32(5) was that the goods must be sold after minor processing which does not change the nature of the goods. In the given case, gold jewellery (HSN 7113) was converted into gold lumps (HSN 7108). As the process substantially changed the nature of the goods, the benefit of the margin scheme was not available

## Key Insights

- ↳ This ruling will have a significant impact on all the jewellers as this a very common transaction in this sector.
- ↳ The question of what constitutes 'minor processing' assumes significant importance as any person intending to claim the margin scheme has to satisfy the condition very clearly. Else, in many cases, the sustainability of the business itself may become questionable
- ↳ **Citation:** KAR ADRG 20/2023



# Pico3Femto Semiconductor Services Private Limited – AAR (Kar)

## Ratio

- ↳ The question of law before the Advance Ruling authority was whether the slump sale of a business division as a whole constituted a supply and whether the benefit of Sl. No. 2 of the exemption notification will be available to the transaction.
- ↳ The Applicant in this case was engaged in business of providing/supplying engineering services primarily related to semi conductor business. It also had a separate division of staffing business. The assessee transferred all assets and liabilities pertaining to the staffing division under a business transfer agreement for a lump sum consideration.
- ↳ The AAR held that the activity carried out by the applicant will constitute a supply of service. The activity will be liable to tax under SAC 9971 (financial services) and the benefit of the exemption will be available only when the assessee proves the unit which is sold can independently satisfy the test of going concern. In this regard, the Authority noted that no Chartered Accountant certificate was provided by the applicant to the effect that the staffing business was capable of being carried out on a going concern basis. To a question of whether ITC is required to be reversed, the AAR did not provide its views as this question was outside the purview of jurisdiction of the Authority

## Key Insights

- ↳ In many business transfer agreements, the parties transfer all assets and liabilities of a business undertaking.
- ↳ However, in order to claim exemption under GST, the larger test of whether such assets and liabilities **are capable of operating itself** as a going concern needs to be satisfied for the exemption to be made available.
- ↳ This AAR surprisingly left the question open rather than seeking more information from the assessee and deciding the issue.
- ↳ Further, under Section 97(2)(d), the AAR must have also answered the query revolving Input tax credit admissibility. By not answering two crucial aspects of the transaction, the entire exercise of approaching an advance ruling authority to get certainty of the tax treatment to be meted out for the transaction becomes redundant.
- ↳ **Citation:** KAR ADRG 12/2023

# **Notifications, Circulars and Other Developments**

# Notifications

## **1. Time limit to exercise the option to pay tax under Forward Charge for Goods Transport Agency [GTA]:**

- GTA's have an option to pay tax under forward charge basis,
  - At the rate of 2.5% of CGST & SGST without availing ITC or,
  - At the rate of 6% of CGST & SGST with ITC.
- The time limit to exercise the option for the financial year in Annexure V is to be exercised on or before 31<sup>st</sup> of May 2023.
- If a GTA has commenced its business at any time during the financial year, the declaration is to be made in the later of
  - before the expire of 45 days from the date of applying for GST registration or
  - Within 1 month from the date of obtaining GST registration

**[Notification No. 05/2023 Central Tax (Rate),dt. 09th May 2023]**

## **2. Threshold Limit for issuing an E-Invoice:**

- Taking a further step towards digitalization of the business process flow, the Government has decided to reduce the threshold limit for mandatory GST E-Invoicing to an aggregate turnover of Rs. 5 crores. [Currently the limit for issuing an E-Invoice is Rs. 10 Crore]
- Therefore, a registered person shall register in the E-Invoice Portal and issue an E-Invoice if his aggregate turnover is more than Rs. 5 Crore.
- This notification will come into effect from **1st of August 2023**.

**[Notification No.10/2023 Central Tax dt. 10<sup>th</sup> May 2023]**

## **3. Extension of due date for return filing in the State of Manipur:**

- The due dates for filing GSTR 1, GSTR 3B and GSTR 7 for registered taxpayer in the State of Manipur has been extended to 31<sup>st</sup> of May 2023.
- Extension of the due date was implemented in GST portal on 27<sup>th</sup> May 2023, due to which any late fee paid by the taxpayer will be credit to their electronic credit ledger.

**[Notification No. 11/2023 – Central Tax, 12/2023 – Central Tax, 13/2023 – Central Tax dt. 24<sup>th</sup> May 2023]**

# GST Portal Updates

## **1. Deferment of Implementation of Time Limit on Reporting Old e-Invoices**

- The GSTN had earlier issued an Advisory in April stating that if a registered person is having a turnover of more than 100 crore, he shall update all the invoices, credit note, or debit note on the IRP Portal within a period of 7 days.
- However, due to the inputs received from the stakeholders GSTN had deferred the imposition of time limit by a period of three months.
- The implementation date will be shared by the GSTIN to the taxpayers in due course of time.

## **2. Advisory for Timely Filing of GST Returns**

The GSTN has issued an advisory for timely filing of GST Returns by the taxpayers as they are facing difficulties due to last minute filing of returns. The following points were suggested / advised by the GSTN to have a hassle-less time at the time of filing returns:

- Suggestion for taxpayers to use SMS filing option to file NIL returns as it would be more convenient and reduce queue on the GST system.
- To inculcate a month-wise return filing discipline for all the B2B invoices for the month and avoid reporting invoices of the past period in one go, as it may adversely impact the queue (waiting time) on the GST system.

## **3. Webinar on 'New e-Invoice FO portal'**

The GSTN has conducted a Webinar on 29<sup>th</sup> May 2023 for creating awareness amongst the taxpayers regarding the 'New e-Invoice FO portal'. The recorded session of the webinar conducted is available at [https://www.youtube.com/channel/UCFYpOk92qurlO5t-Z\\_y-bOQ](https://www.youtube.com/channel/UCFYpOk92qurlO5t-Z_y-bOQ)



**Indirect Tax  
Compliance  
Calendar for June  
2023**

# June 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	

Due Date	Description
10 June 2023	Filing of GSTR-7 - By Tax Deductor for the month of May 2023  Filing of GSTR-8 - By E-Commerce Operator for the month of May 2023
11 June 2023	Monthly filing of GSTR-1 for the month of May 2023. (Regular taxpayers)
13 June 2023	<ul style="list-style-type: none"> <li>↳ IFF by Taxpayers under QRMP Scheme for the month of May 2023</li> <li>↳ Filing of GSTR-5 - By Non-Resident Taxable Persons for the month of May 2023</li> <li>↳ Filing of GSTR-6 - By Input Service Distributor for the month of May 2023</li> </ul>
20 June 2023	<ul style="list-style-type: none"> <li>↳ Filing of GSTR-3B (Regular Taxpayers) for the month of May 2023.</li> <li>↳ Filing of GSTR-5A by OIDAR Service Providers for the month of May 2023</li> </ul>
25 June 2023	↳ 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.
28 May 2023	Filing of GSTR-11 - Statement of Inward supplies by persons having Unique Identification Number (UIN) for claiming GST refund

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