

TAX NEWSLETTER

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Issue - 05

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THE ASSOCIATED CHAMBERS OF COMMERCE AND INDUSTRY OF INDIA

Part I – Direct Tax

Budget

Finance Act, 2023

The Finance Bill, 2023 (Bill), received the President's assent on 31 March 2023.

Some of the key features and amendments passed by Finance Act, 2023, are stated below:

a) Tax rates

- The income-tax rates (including surcharge, health and education cess) for companies (domestic and foreign), firms, limited liability partnerships and individuals (under the old regime) shall remain unchanged. This includes rates for minimum alternate tax and alternative minimum tax.
- The New Personal Tax Regime (NPTR) is extended to cover association of persons (AOPs) (other than a co-operative society), body of individuals and artificial judicial persons.
- It may be noted that the tax slabs under the NPTR have undergone a change.

The revised tax slabs are as follows:

| Part I – Direct Tax | Rates |
|---------------------|-------|
| 0-300,000 | Nil |
| 300,001-600,000 | 5% |
| 600,001-900,000 | 10% |
| 900,001-1,200,000 | 15% |
| 1,200,001-1,500,000 | 20% |
| Above 1,500,000 | 30% |

- The maximum surcharge under the NPTR is restricted to 25% (against 37%).
- Other benefits provided to taxpayers under the NPTR are as follows:
 - Rebate under section 87A enhanced up to INR 25,000

- Standard deduction, family pension and deduction in respect of the amount paid or deposited in the Agniveer Corpus Fund is allowable as a deduction
- The electronic ITR form will consider this regime as default unless the taxpayer specifically requests for being taxed under the old regime
- Persons having income from business and profession can opt out from the NPTR only once.
- A concessional tax regime of 15% (plus 10% surcharge) is provided for newly set up co-operative societies (set up on or after 1 April 2023) that are engaged in manufacturing, which commence operations on or before 31 March 2024.
- In case of AOPs that consist of only companies as their members, the maximum surcharge is restricted to 15%.
- Marginal relief is to be offered to taxpayers even under the NPTR where income exceeds INR 700,000.
- Income by way of royalty and FTS is to be taxed at 20% (plus surcharge and cess) in the case of non-resident taxpayers that do not have a permanent establishment in India.

b) Some other direct tax amendments

- New provisions are introduced to provide for taxation and tax deduction on income from online gaming. The net winnings from online games are to be taxed at 30% (plus surcharge and cess). The tax is to be deducted on the net winnings in the user account at the end of the Financial Year (FY) or at the time of earlier withdrawal. The tax withholding provisions are applicable with effect from 1 April 2023.
- TDS on winnings from lottery, crossword puzzle, horse race, etc. is to apply on the amount or aggregate of the amounts exceeding INR 10,000 during the FY.

- The conversion of physical gold into Electronic Gold Receipts and vice-versa shall not be liable to capital gains. The cost of acquisition and period of holding are to be grandfathered.
- For startups:
 - Protection to carry forward and set off of losses in case of change in shareholding by more than 51% is extended from seven to ten years from incorporation.
 - Last date for the incorporation of start-ups eligible for claiming tax holiday is extended to 31 March 2024.
- For speedy disposal of pending appeals, a new appellate authority - Joint Commissioner [Appeals] is introduced to handle appeals involving a small amount of disputed demand.
- In cases where income is offered by a taxpayer on the basis of accrual in a year but tax on such income is deducted by the payer in the following year(s) at the time of payment, the taxpayer is allowed to make a claim of such TDS within two years from the end of the year in which such tax is deducted. However, the interest on income-tax refund arising from such a claim is to be allowed only for the period starting from the date of the claim.
- Deduction in respect of payments to micro, small and medium enterprises (MSMEs) beyond the time limit specified in the MSME Act, 2006, are to be allowed on actual payment basis. If the payment is made after the end of the previous year, it is to be allowed only in the subsequent year even if it is paid before the due date of filing the tax return of the previous year.
- The time limit for completion of assessment proceedings from Assessment Year (AY) 2022-23 onwards is increased to 12 months from the end of the AY.
- The exemption available to news agencies set up in India solely for the collection and distribution of news in respect of their incomes is withdrawn.



- For AY 2024-25 and onwards, Special economic zone (SEZ) units can claim income tax deduction only if:
 - they file their return of income within the prescribed due date, and
 - proceeds from the export of goods or services are received in India within six months from the end of the previous year or such further period as may be allowed by the RBI or the proceeds are credited to a bank account maintained outside India with approval from the RBI.
- The maximum deduction for long-term capital gains upon investing in residential property is restricted to INR 10 crores.
- Threshold for small businesses to be taxed on presumptive basis at 6% or 8% is increased from INR 20,000,000 to INR 30,000,000.
- Threshold limit for small professionals to be taxed on presumptive basis at 50% is increased from INR 5,000,000 to INR 7,500,000.
- Preliminary expenses pertaining to the feasibility report, project report, market survey and engineering services based on a prescribed statement will be allowed as a deduction.

Others – significant judgments

In the absence of a back-to-back arrangement with the holding company, the taxpayer, being the beneficial owner of income (i.e., fees for branding and management services), is entitled to the beneficial rate of tax under Article 12 of the India-US tax treaty – Delhi High Court

In *CIT (International Taxation-1) v. Fujitsu America Inc.*,¹ the taxpayer was a company incorporated under the laws of USA. During the relevant previous year, the taxpayer rendered branding and management services to its associate entity situated in India. In consideration for such services, the taxpayer received a fee from its associate entity. In terms of Article 12 of the India-USA tax treaty, the taxpayer offered such income to tax in India at the rate of 15% (gross basis).

During the assessment proceedings, the tax officer noted that the taxpayer had an agreement with its holding company. Under this agreement, the fee received by the taxpayer from its associate entity was transferred to its holding company on a back-to-back basis. Accordingly, the tax officer taxed such receipts at the rate of 25% (gross basis) under the Income-tax Act, 1961 (Act). The tax officer held the taxpayer was a mere recipient and not the beneficial owner of such fee.

On first appeal, the CIT(A) concluded that the taxpayer is a beneficial owner of the fees it has received from the Indian entity, and there is no back-to-back arrangement between the taxpayer and its holding company. In doing so, it made the following observations regarding the taxpayer and the transaction in question:

- a. The taxpayer, being one of the group companies, has a place of management in the US to provide global headquarter services. It is a separate legal entity within the group, with a specific set of roles and responsibilities.
- b. The transaction in question is part of a case of cost pooling, where various group companies deliver services of different nature that are of mutual benefit to the group entities.
- c. perusal of the emails exchanged between the taxpayer and the Indian entity shows that the taxpayer plays a meaningful role

in the delivery of services to the Indian entity.

- d. A beneficial owner is someone who, besides being a legal owner, has 'dominion and control' over the property. That is, they are the owner of a property who hold it for their own benefit and not as an agent, trustee or nominee for some other person, and they have the right to deal with the property as their own.
- e. Based on the facts, it can be said that this is not a case where the taxpayer is a conduit company. In fact, the taxpayer is a beneficial owner of the fees, entitling it to the DTAA benefits.

The Revenue carried the matter in appeal to the Tribunal. It contended that the recipient was not the beneficial owner of the charges and hence was not entitled to the treaty benefit.

The High Court, considering the findings of the CIT(A), observed that where there was no back-to-back arrangement between the taxpayer and its holding company. Also, the taxpayer, playing the role of a service provider after procuring the same from other group companies, had dominion over the fees received by it. The High Court held that the taxpayer was entitled to the status of beneficial owner of the fees received from the Indian entity and was entitled to the benefit under Article 12 of the India-US DTAA.

The High Court has noted that the Tribunal had sustained the order of the CIT(A). Since no substan-



¹ ITA 530/2022 judgement dated 15 December 2022

tial question of law had arisen in the appeal filed before the High Court, it was dismissed.

Revision under section 263 is not tenable where issue was examined during assessment proceedings – Provisions of section 79 cannot be invoked, where ultimate beneficial shareholder remains the same – Mumbai Bench of the Tribunal

In *Sodexo India Services Pvt Ltd Vs PCIT*², the taxpayer had filed its return of income for the AY 2017–18 declaring tax losses. The tax officer completed the assessment under section 143(3) of Act by making certain additions and thereby reducing the loss claimed by the taxpayer in its return.

The Principal Commissioner of Income-tax (PCIT) passed an order by invoking Explanation 2(a) to section 263(1) of the Act. It set aside the tax officer's order by holding it to be erroneous and prejudicial to the interest of the revenue. The PCIT held that there was a substantial change (>51%) in the shareholding pattern of the taxpayer as on 31 March 2017 and therefore, the taxpayer cannot utilise its brought forward business loss of the preceding assessment years on account of section 79 of the Act.

On an appeal before the Mumbai Bench of the Tribunal, the Tribunal held that the tax officer's order was neither erroneous nor prejudicial to the interest of the revenue, and hence the order passed by the PCIT was to be quashed, on the following reasoning:

- a. The taxpayer returned loss in the relevant assessment year; it had no occasion to claim any set-off. Therefore, the order of the tax officer cannot be termed as erroneous.
- b. The tax officer had conducted enquiry into the issues flagged by the PCIT and had taken a plausible view. The PCIT has wrongly concluded that the tax officer did not conduct any enquiry during the assessment proceedings on the issues flagged by him.

² ITAT Appeal no.930/Mum/2022.



- c. When beneficial ownership is with ultimate holding company, loss cannot be disallowed.
- d. Explanation 2(a)³ to section 263 of the Act cannot be invoked while passing order under section 263 of the Act, if the same was not invoked at the time of issuing notice.

Salary reimbursements of seconded employees do not come within the scope of FTS and FIS under the Act or DTAA - Bangalore Bench of the Tribunal

In the case of *Google LLC (formerly Google Inc.) v JCIT*,⁴ the Bangalore bench of the Tribunal held that the cost-to-cost salary reimbursement of seconded employees' to the appellant (foreign company) by its Indian Associate Enterprise (AE) was not taxable as fees for technical services (FTS) under the Act or fees for included services (FIS) under Article 12 of the India-US Double Taxation Avoidance Agreement (DTAA).

In the above case, the appellant, a foreign company had seconded its employees to its Indian AE. For administrative convenience, the appellant had paid the salary of seconded employees in their home country bank account. The Indian AE reimbursed to the appellant the actual cost incurred by it.

The tax officer relying on the decision of Delhi High Court in the case of *Centrica India Offshore (P.) Ltd. v. CIT* [2014] 364 ITR 336, held that the relationship

³ Explanation 2 to section 263 covers situations where, based on the opinion of the PCIT, the order passed by the Assessing Officer is deemed to be erroneous in so far as it is prejudicial to the interests of the revenue. Clause (a) provides that when the order is passed without making inquiries or verification which should have been made.

⁴ [2023] 147 taxman.com 428 (Bengaluru- Trib)

between the Indian AE and seconded employees was not that of an employer-employee; rather, that relationship was between the appellant and the seconded employees. The tax officer further held that the services provided by the seconded employees were in the nature of technical, managerial and consultancy services. Hence, the payments received by the appellant were to be treated as FTS as per Explanation 2 to section 9(1)(vii) of the Act.

The Tribunal held that the amount paid by the Indian AE to the appellant as salary reimbursement of seconded employees did not come within the scope of FTS or FIS as per the Act or India-US tax treaty, on account of the following reasoning.

- a. From the assignment letters issued by the appellant to the seconded employees, the Tribunal observed that:
 - The service provided by seconded employees were solely for the benefit of the Indian AE.
 - Seconded employees were reporting to the

Indian AE management and working under the control and supervision of the Indian AE.

- For administrative convenience, the salary was disbursed by the appellant in the home country of the seconded employees on behalf of the Indian AE and the appellant was reimbursing the same to the appellant on a cost-to-cost basis.
 - The appellant was not responsible for the work undertaken by seconded employees for the Indian AE.
 - Once employees were seconded to the Indian AE, they did not have an employment guarantee upon return to the US after the secondment period.
- b. The tax was duly deducted by Indian AE under section 192 against the salary paid to the seconded employees.
 - c. The tribunal followed the decision of the Karnataka High Court in Flipkart Internet Private Limited v. DCIT (Writ petition No. 3619/2021 (T-IT) (judgment dated 24 June 2022). ■

Part II – Indirect Tax

Finance Act, 2023

The Finance Act, 2023, received the President's assent on 31 March 2023. Some of the key amendments passed by the Finance Act, 2023, are stated below:

a) Composition Levy

- Section 10 (2) (d) and Section 10 (2A) (c) of the Central Goods and Services Tax Act, 2017 ('CGST Act') provides that the persons who are engaged in supply of goods or services through an ECO are not eligible to opt for the Composition scheme.
- Amendments to Sections 10 (2) (d) and 10 (2A) (c) to delete the word 'goods' from this exclusion entry.

b) Registration

- Substitution of Section 23(2) of the CGST Act retrospectively to add 'non obstante clause', to provide an overriding effect over Section 22 (1) and Section 24 of the CGST Act. Non-obstante clause inserted only in the case of the categories of person as the government may specify.
- Section 30(1) of the CGST Act amended to remove 30 days period and provide that application can now be made 'within such time and manner as may be prescribed and subject to such conditions and restrictions'. The proviso to Section 30(1) has been deleted.

c) Returns

- Sections 37, 39, 44 and 55 of the CGST Act

amended to prohibit taxpayers to furnish Form GSTR-1, GSTR-3B, GSTR-9 and GSTR-8 after expiry of 3 years from the due date of furnishing. However, a Proviso included in certain cases empowering the Government to allow taxpayers to file the respective forms even after expiry of 3 years.

d) Input Tax Credit

- The words “added to his output tax liability along with interest thereon” substituted with “paid by him along with interest payable under section 50” in the 2nd proviso to Section 16 (2) of the CGST Act which relates to reversal of ITC in case of non-payment to the supplier within 180 days.
- The words “to the supplier” is added to the third proviso to Section 16 (2) which clarifies that the payment referred therein is to the supplier.
- Para No. 8 (a) of Schedule III (i.e. sale of warehouse goods) included in the exclusion list under section 17(3) of the CGST Act which provides value of exempt supply inter alia excludes the activities and transactions as listed in Schedule III to the CGST Act, except sale of land and building.
- A new clause (fa) inserted in Section 17 (5) of the CGST Act to restrict ITC against goods or services which are used or intended to be used for activities relating to his obligations under CSR under Section 135 of the Companies Act, 2013.

e) Refunds and interest thereon

- The phrase “excluding the amount of input tax credit provisionally accepted” omitted from Section 54(6) of the CGST Act.
- Section 56 of the CGST Act amended to grant rule making power to the Government so as to provide the manner of calculation of interest in cases where refund is disbursed beyond 60 days from the date of receipt of refund application.

f) Schedule III to the CGST Act, 2017

- High seas sales, merchant trading and supply of warehoused goods before clearance for home consumption to be treated as neither supply of goods nor supply of services retrospectively from 01 July 2017. No refund will be allowed for all the taxes paid on such transactions, possibly till 31st January 2019.

g) Others

- Definition of Non-Taxable Online Recipient (‘NOTR’) as well as Online Information Database Access and Retrieval services (OIDAR) was simplified but broadened. Explanation clarifying that a person who has got registration only under the TDS provisions is to be considered as an unregistered person for the definition of NOTR inserted.
- Proviso to sub-section (8) of section 12 of the Integrated Goods and Services Tax Act, 2017 (‘IGST Act’), omitted to specify the place of supply for goods transportation services, irrespective of destination of the goods, in cases where the supplier of services and recipient of services are located in India.
- Section 13(9) of the IGST Act has been deleted.
- Sub-section (4A) to Section 25 of the Customs Act, 1962 amended to exclude certain categories of conditional customs duty exemptions from the validity period of 2 years.
- A new sub-section (8A) to section 127C of the Customs Act inserted to specify a time limit of



nine months from date of filing application for passing final order by Settlement Commission.

- Section 9, 9A and 9C of the Customs Tariff Act amended retrospectively w.e.f. 01 January 1995 to clarify the intent and scope of these provisions. Explanation also added for to this end.
- National Calamity Contingent Duty (NCCD) on specified cigarettes revised upwards.
- In order to promote green fuel, excise duty on blended Compressed Natural Gas (CNG) exempted from so much of the amount as is equal to GST paid on biogas/compressed biogas contained in such blended CNG subject to the specified conditions.
- The Customs Excise Service Tax Appellate Tribunal ('CESTAT') notified as the authority under the Central Sales Tax Act, 1956 ('CST Act') to settle inter-state disputes falling under Sections 6A and 9 of the CST Act.

GST Council Meeting

The Central Board of Indirect Taxes and Customs (CBIC) issued notifications, making amendments to the Central Goods and Services Tax Rules, 2017 (CGST Rules), in furtherance of announcements made 49th meetings of Goods and Services Tax (GST) Council.

The key recommendations of the GST Council Meeting are as follows:

GST Appellate Tribunal

- GST Council adopted the report of the Group of Ministers (GoM) to constitute the GST Appellate Tribunal with certain modifications.



- The final draft is expected to be prepared with the states consent by 1 March 2023. The government aims to incorporate the enabling legislative changes for the GST Appellate Tribunal in the Finance Bill, 2023.
- Taxation of specified sectors
- GST Council approved the following recommendations of the GoM on capacity-based taxation and Special Composition Scheme for specified sectors such as pan masala, gutkha and chewing tobacco:
 - Capacity - based levy not to be prescribed;
 - Export of such commodities allowed only against LUT with consequential refund of accumulated ITC;
 - Compensation cess levy on such commodities to be changed from ad-valorem to specific tax-based levy; and
 - Compliance and tracking measures to plug leakages and evasions

GST rate and exemptions

- GST rate on rab to be reduced from 18% to 5% if sold packaged and labelled and nil if sold otherwise. Past periods to be regularised on 'as is basis' on account of genuine doubts.
- GST rate on pencil sharpeners to be reduced from 18% to 12%.
- Custom notification⁵ to be amended to extend the 'nil' IGST treatment available to containers to devices such as tag-tracking devices or data logger which are already affixed on containers.
- Exemption for conduct of entrance examination for admission to educational institutions extended to any authority, board or a body set-up by the Central Government or State Government including the National Testing Agency.
- The exemption under Entry No. 41A of the

⁵ Notification No. 104/94-Customs dated 16 March 1994 - Exemption to containers of durable nature

Compensation Cess notification⁶ has been extended to cover both coal rejects supplied to and by a coal washery, arising out of coal on which compensation cess has been paid, and no ITC thereof has been availed by any person. Currently, only such supplies by the coal washery are exempt.

- RCM extended to services provided by courts and Tribunals in respect of renting of premises to telecommunication companies for the installation of towers, renting of chamber to lawyers etc.

Place of Supply

- Proposed to delete Section 13(9) of IGST Act which entails the implication that the place of supply of services of transportation of goods, in cases where the location of the supplier of services or location of recipient of services is outside India, will be the location of the recipient of services.

Trade facilitation and GST Amnesty

Rationalisation of late fee for delayed filing of annual return (Form GSTR-9) for FY 22-23 onwards.

| Aggregate Turnover | Amount of late fee |
|---|--|
| Aggregate turnover of up to INR 50 million in the said FY | INR 50 per day, subject to a maximum of 0.04% of its turnover in the State or Union Territory |
| Aggregate turnover of more than INR 50 million and up to INR 200 million in the said FY | INR 100 per day, subject to a maximum of 0.04% of its turnover in the State or Union Territory |

Cancellation of registration

- Time limit for making an application for revocation of cancellation of registration increased from 30 days to 90 days, with powers to extend for a further period not exceeding 180 days.

⁶ Notification No. 1/2017-Compensation Cess (Rate) dated 28 June 2017

- Conditional amnesty to be provided for past cases where registration has been cancelled on account of non-filing of the returns but the application for revocation could not be filed within the specified time period, by allowing such persons to file the revocation application by a specified date.⁷

Best judgement assessments

- In case of assessment for non-filers of returns, the time period for filing of return to enable the deemed withdrawal of the best judgment assessment order to be increased from 30 days to 60 days, conditionally extendable by another 60 days.
- Amnesty to be provided for past cases where the concerned return has been belatedly filed along with due interest and late fee upto a specified date.

Pending returns

- Amnesty in respect of pending returns (in Forms GSTR-4, GSTR-9 and GSTR-10) by way of conditional waiver or reduction of late fee.⁸

Compensation to States

- The Government of India (GoI) to clear the entire pending balance of GST compensation provisionally (amounting to INR 169820 m) for June 2022 from its own resources, and the same will be recouped from future compensation cess collection.
- The GoI would also clear the admissible final GST compensation (amounting to INR 165240 m) to those states that have provided the revenue figures as certified by the Accountant General of the States.

⁷ Notification No.03/2023-Central Tax dated 31st March 2023

⁸ Notifications No .07 and 08/2023-Central Tax dated 31st March, 2023

Circulars⁹ clarifying GST Rates

| Particulars | Clarification provided |
|--|--|
| Rab | Although, rab is a product of sugarcane and exists in semi-solid and liquid forms it is not covered by Heading 1701. Rab is also not identical to molasses and therefore, classifiable under heading 1702 attracting GST at 18%. |
| By-products of milling of dal or pulses such as chilka, khanda and churi or chuni | Supply of the said by-products (irrespective of their end use) would be fully exempt with effect from 1 January 2023 vide S. No. 102C of schedule of Notification No. 2/2017-Central Tax (Rate), dated 28 June 2017. On the regularisation of matters on 'as is' basis, it has been further clarified that for the intervening period (date of issuance of Circular No. 179/11/2022-GST, dated 3 August 2022, till the date of coming into force of the said entry S. No. 102C), the matters are regularised on an 'as is' basis. |
| 'Carbonated beverages of fruit drink' or 'Carbonated beverages with fruit juice | It is clarified that the six-digit HS code for the said items is 220299, and they would attract GST at the rate of 28% and compensation cess at the rate of 12%. |
| Snack pellets manufactured through extrusion process (such as 'fryums') | It is clarified that the subject items which are manufactured through the process of extrusion are classifiable under HS code 19059030 which covers 'extruded or expanded products, savoury or salted', and attracting GST at 18%. |
| Sports utility vehicles (SUVs) | Clarified that compensation cess of 22% is applicable on motor vehicles falling under Heading 8703, which fulfil all the following four specifications: <ul style="list-style-type: none"> – Popularly known as SUVs – Engine capacity exceeds 1,500cc – Length exceeds 4,000mm – Ground clearance is 170mm and above – The clarification is confined to and applicable to SUVs only. |
| Certain goods imported for specified purpose (such as petroleum operations or coal bed methane operations) | It has been clarified that the importer can avail the benefit of lower tax rate as some of the said goods are also eligible for the benefit of lower rate under other notifications. |
| Accommodation services supplied by Air Force Mess to its personnel | Exempt - provided the services supplied by such messes qualify as services supplied by the Central Government, State Government, Union Territory or local authority |
| Incentives paid by the Ministry of Electronics and Information Technology (MeitY) to acquiring banks for use of RuPay debit cards or low-value BHIM-UPI transactions | In the nature of subsidy, therefore not taxable under GST. Consideration for a transaction done using RuPay debit cards or low-value BHIM-UPI transactions is being paid to the acquiring bank by MeitY (a government agency), instead of being paid by the merchant or the user of the card. |

9 Circular Nos. 189/01/2023-GST and 190/02/2023-GST dated 13 January 2023

Amnesty Schemes

Multiple states (i.e., West Bengal, Rajasthan, Himachal Pradesh, Chhattisgarh, Jharkhand and Maharashtra) announced / extended Amnesty Schemes vide their respective State Budgets 2023 for settlement of pre-GST disputes and to clear out the litigation backlog.

| State | Last Date to Apply | Taxes Covered | Settlement fee/Waiver Allowed |
|------------------|---|--|---|
| West Bengal | 31 May 2023 | Central Sales Tax and Pre-GST State based levies including entry taxes | Specified percentage of tax, interest, penalty, and late fee in dispute |
| Rajasthan | Phased manner (Phase I closes on 30 June 2023) | | |
| Himachal Pradesh | 3 months from the date of publication in official gazette | | |
| Chhattisgarh | To be notified | | |
| Jharkhand | 31 July 2023 (may be further extended by 6 months) | | |
| Maharashtra | 31 October 2023 | | |

Customs

Preferential customs duty rates to operationalise trade in goods under India-Australia Economic Co-operation and Trade Agreement ('ECTA')

- Earlier in April 2022, India and Australia had signed a ECTA which has become effective from 29 December 2022.
- CBIC notified¹⁰ the list of goods eligible for preferential customs duty benefits as part of the operationalisation of the first tranche of concessions for trade in goods under the ECTA.
- The CBIC, on 29 December 2022, notified¹¹ the second tranche of concession as well, which is effective from 1 January 2023.

Customs (Assistance in Value Declaration of Identified Imported Goods) Rules, 2023 ('CAVR, 2023'), notified by the CBIC.¹²

¹⁰ Notification No. 62/2022-Customs dated 26 December 2022

¹¹ Notification No. 64/2022-Customs dated 29 December 2022

¹² Notification No. 03/2023-Customs (N.T.) read with Circular No. 01/2023-Customs dated 11 January 2023

- The CAVR, 2023, will be operationalised from 11 February 2023. Through these rules, authorities seek to address the concern of undervaluation of import of goods impacting customs duty assessment on such goods.

Judicial Updates

- The Supreme Court recently¹³ has set aside a decision by the Karnataka High Court to hold that denial of ITC is justified in the absence of any cogent material to prove the genuineness of transactions disputed by the Revenue authorities. The Supreme Court has observed that to claim ITC, the transactions' genuineness and the goods' actual physical movement are sine qua non; the burden of proving the same lies on the purchasing dealer who is claiming such ITC, and it cannot be shifted on the Revenue. Mere receipt of invoices or payment to the seller are not sufficient to discharge the burden on the taxpayer.

¹³ Civil Appeal No. 230 of 2023



- The Karnataka High Court¹⁴ dealt with the taxability of pre-payment instruments (PPIs) or vouchers. The court has held that a voucher is similar to a pre-deposit, it does not qualify as goods or services and is a mere instrument that is covered under the definition of 'money'. Therefore, supply of a voucher is not taxable under the GST law. This is an important decision in the context of taxability of PPIs issued to the customers where the supply is not identifiable at the time of issuance of the voucher.
- The Karnataka High Court¹⁵ has held rule 89(4)(C) of the CGST Rules as arbitrary and unreasonable as it restricts export turnover (i.e. exports without payment of tax) to 1.5 times the value of like goods supplied in the domestic market. The High Court quashed applicability of rule 89(4)(C) of the CGST Rules as being ultra vires the provisions of section 16 of the IGST Act, section 54 of the CGST Act and as being violative of Articles 14 and 19 of the Constitution of India. The Court allowed the writ and directed the Revenue to grant refund along with interest by holding that rule 89(4)(C) of the CGST Rules is unconstitutional and ultra vires the legislative framework of GST law. ■

¹⁴ 2023-VIL-67-KAR






¹⁵ Writ Petition No. 13185 of 2020 (T-Res)

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