TAX NEWSLETTER

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What's Inside

Part I – Direct Tax

Part II – Indirect Tax

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PART I – DIRECT TAX

Set-off of losses upon demerger denied as the sole purpose of the demerger was to avail tax benefits –Pune bench of the Tribunal

The Pune bench of the Income-tax Appellate Tribunal (Tribunal), in the case of *DCIT* v *Cummins Sales & Services (I) Ltd*[1], denied to the taxpayer the set off of brought forward business losses and unabsorbed depreciation pertaining to a demerged undertaking on the ground that the taxpayer did not carry on the business of the demerged undertaking after the sanction of the demerger and the scheme of demerger was carried out only with the sole objective to avail the benefit of set-off of losses.

An option agreement with a group entity for interim funding is commercially prudent and not a sham transaction – The Mumbai bench of the Tribunal

The Tribunal observed that unlike the conditions stipulated under section 72A(2) of the Income-tax Act, 1961 (the Act) for availing the benefit of set-off of brought forward business losses on amalgamation, there are no conditions prescribed for demerger under the provisions of section 72A(5) of the Act by the Central Government to determine the genuineness of the demerger.

The Tribunal referred to the decisions of the Delhi High Court in *IEL Limited* v. *UOI* [1992] 195 ITR 232 (Del) and Bombay High Court in *Ballarpur Industries Limited* v. *CIT* [2017] 398 ITR 145 (Bom), where it was held that the benefit under section 72A of the Act cannot be obtained if the sole idea of amalgamation was not the revival of the amalgamating company but was only to take benefit of the carry forward losses and unabsorbed depreciation.

The Tribunal held that there is no difference in the object behind the enactment of provisions governing the scheme of amalgamation and the provisions governing the case of demerger. The objective behind enactment of section 72A as explained in the memorandum explaining the provisions of Finance (No.2) Bill of 1997 and by the Supreme Court in the case of *CIT* v. *Mahindra & Mahindra Limited* [1983] 144 ITR 225 (SC) is the revival of sick units and relieving the government of an uneconomical burden of taking over the sick units by way of offering incentives for the merger of sick industrial units with robust companies.

By virtue of the provisions of section 72A(5) of the Act, the Central Government may specify conditions as it considers necessary to ensure that a demerger is for genuine business purposes. The Tribunal held that section 72A(5) of the Act has been enacted to empower the Assessing Officer (AO) to deny the benefit of set-off of brought forward business losses and unabsorbed depreciation. Merely because the scheme of demerger was approved by the Hon'ble High Court *ipso facto* should not entitle the assessee for the benefit of set-off of brought forward business losses, contrary to the objects behind the enactment of the provisions of section 72A of the Act.

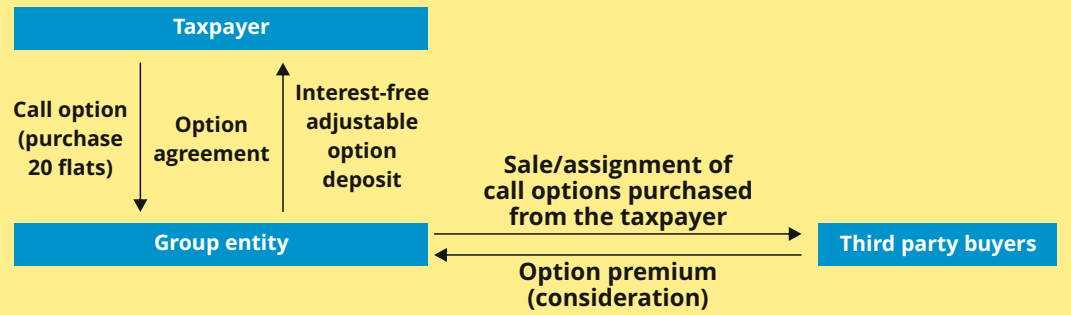
Accordingly, as the business of the demerged undertaking was not continued by the taxpayer and the scheme of demerger was carried out only with the sole objective to avail the benefit of set-off of losses, the set-off of brought forward business losses and unabsorbed depreciation of the demerged undertaking, claimed by the taxpayer was denied.

An option agreement with a group entity for interim funding is commercially prudent and not a sham transaction – The Mumbai bench of the Tribunal

The Mumbai bench of the Tribunal, in the case of *K Raheja Pvt. Ltd, Mumbai* v *DCIT,*[2] upheld the commercial validity of an option agreement entered into between the taxpayer and its group entity. As per the terms of the option agreement, the group entity was given an option to purchase certain flats at a pre-determined price on a future

[1] ITA No. 2121/PUN/2017
[2] [2022] 142 taxmann.com 171 (Mumbai - Trib.)

date, in lieu of interest-free adjustable option deposits placed with the taxpayer.



The group entity sold/ assigned the options in favour of actual buyers against the option premium (consideration). Thereafter, the group entity sold such flats to the actual buyers in later years for which a tripartite agreement was entered into between the actual buyer, the taxpayer and the group entity.

According to the AO, the price fixed in the option agreement for right to exercise the option to purchase the flats was on the lower side. The AO, while passing the assessment order, held that such option agreement was a sham transaction and was a way to divert part of the sales consideration and the profits from the books of the taxpayer to the group entity. Accordingly, the AO included the entire sales consideration received by the group entity in the hands of the taxpayer.

The Tribunal, based on the facts of the case, held that the option agreement entered between the taxpayer and its group entity was commercially expedient and acceptable and that it was not a sham transaction. The bench reiterated the established principle that the tax officer cannot step in the shoes of the businessman or question the reasonableness and business expediency of a transaction.

The Tribunal held that the correct approach to determine the reasonableness of the option price should be based on the market conditions, facts and circumstances in the year of the entering into such an option agreement as against benchmarking the arm's length price of the options to the actual sale consideration in later years. Further, the bench observed that the fair value of the option agreement can be determined only in accordance with the provisions of sections 50C or 43CA of the Act as the case may be, prevailing at the time when group entity was given an option to purchase the flats.

Additional Guidelines issued by the Central Board of Direct Taxes (CBDT) for removal of difficulties under section 194R(2) of the Act

The Finance Act, 2022, inserted section 194R in the Act, with effect from 1 July 2022. The section requires a person, who is responsible for providing any benefit or perquisite to a resident, to deduct tax at source at 10% of the value or aggregate of value of such benefit or perquisite, provided that the benefit or perquisite arises from business or the exercise of a profession.

The CBDT previously issued guidelines[3] to remove difficulties in the implementation of section 194R of the Act.

The CBDT has now introduced certain additional guidelines[4] exercising the powers given in section 194R(2) of the Act, to address certain issues raised by various stakeholders.

The key issues addressed in the Circular are as follows:

[3] Circular No. 12 of 2022 dated 16 June 2022
[4] Circular No. 18 of 2022 dated 13 September 2022

a) **Loan settlement** – A one-time loan settlement with borrowers or a waiver of loan granted on reaching a settlement with the borrowers, by certain prescribed institutions would not be subjected to tax deduction at source under section 194R of the Act. Further, the guidelines state that this clarification is only for the purposes of section 194R of the Act. The taxability of such settlement/ waiver in the hands of the beneficiary will not be impacted by this clarification.

b) **Expense incurred by a 'pure agent' under GST laws** – An expense incurred by a service provider, in the capacity of a "pure agent" (as defined under GST laws and fulfilling the conditions required to be satisfied therein), for which he is reimbursed by the service recipient, would not be treated as benefit or perquisite for the purpose of section 194R of the Act.

c) **Reimbursement of expenses, if tax has already been deducted under other sections of the Act** – If out of pocket expenses (reimbursements) are already part of the consideration in the bill on which tax is deducted under the relevant provisions of the Act, other than section 194R of the Act, in accordance with the Circular No 715 dated 8th August 1995, there should not be a further liability for tax deduction under section 194R of the Act.

d) **Certain issues relating to dealer conferences** –

(I) It is not necessary that all dealers are required to be invited in a dealer/ business conference for the expenses to be not considered as benefit/ perquisite for the purposes of tax deduction under section 194R of the Act.

(ii) A day immediately prior to the actual start date of the conference and a day immediately following the actual end date of conference would not be considered as over stay.

(iii) In group activities, there may be practical difficulties in identifying a benefit/ perquisite to the actual recipient and reasonable allocation may not possible. In order to remove these practical difficulties, it is clarified that if the benefit/ perquisite provider, at his option, does not claim the expense, representing such benefit/ perquisite, as a deductible expenditure for the purpose of calculating his total income, then he will not be required to deduct tax under section 194R of the Act on such benefit/ perquisite.

e) **Depreciation by dealer on gifted car** – For the purposes of computing depreciation under section 32 of the Act on a gifted car, the term 'actual cost' will be deemed to be the amount of benefit included by the recipient dealer as income in the return of income, provided that tax is deposited under section 194R at the time of providing the gift.

f) **Embassy or High Commissions** – The provisions of section 194R of the Act are not applicable on the benefit/ perquisite provided by certain entities such as an Embassy, a High Commission, etc.

g) **Issuance of bonus or right shares** – Tax is not required to be withheld under section 194R on the issuance of bonus or right shares by a 'company in which the public are substantially interested', in case bonus shares are issued, or right shares are offered to all the shareholders.

Form 10F and some other forms to be furnished electronically

The Director General of Income-tax (Systems) has, by a Notification[5] stipulated various forms, returns, statements, reports, orders to be furnished electronically with immediate effect. The Notification covers, inter alia, the following forms:

- Form 3CEF for Annual Compliance Report on Advance Pricing Agreement
- Form 10F for information to be provided under section 90(5) or section 90A(5) of the Act.

[5] Notification No. 03/2022 dated 16 July 2022

- Form 27C for declaration under section 206C(1A) of the Act, to be made by a buyer for obtaining goods without collection of tax

Forms notified for recomputation of income without allowing the claim for deduction of surcharge or cess

The Finance Act, 2022, had overturned various High Court decisions[6] on the allowability of surcharge and/ or education cess by making a retrospective amendment under section 40(a)(ii) of the Act with effect from 1 April 2005. To give effect to this amendment, the CBDT has notified[7] rule 132 in the Income-tax Rules, 1962 (the Rules), and the prescribed Forms to provide the procedure required to be followed by the taxpayers and tax officers to recompute income after disallowing surcharge and cess claimed and allowed as deduction in the earlier previous years.

Under rule 132(1), taxpayers are required to file an application requesting for a recomputation of total income of the relevant previous year without allowing the claim for deduction of surcharge or cess, which had been claimed and allowed as a deduction in the said previous year. Taxpayers are required to file the application electronically in Form No. 69, on or before the 31st day of March, 2023. Upon receipt of the application, the AO will recompute the total income of the taxpayer by amending the relevant order and by issuing a notice of demand specifying the time period within which, the amount of tax payable, if any, is to be paid by the taxpayer. Thereafter, the taxpayer has to, after making the payment of tax determined by the AO, furnish the details of payment of tax in Form No.70 to the AO within thirty days from the date of making the payment.

Form 29D for claiming a tax refund under section 239A of the Act

The Finance Act, 2022, inserted section 239A in the Act with effect from 1 April 2022. Section 239A provides that where, under an agreement or other arrangement, in writing, the tax deductible on any income under section 195 is borne by a person, by whom the income is payable and such person having paid such tax to the Central Government claims that no tax was required to be deducted on such income, may, within a period of thirty days from the date of payment of such tax, file an application before the AO for refund of such tax in such form and such manner as may be prescribed.

Therefore, to enable the manner of claiming a tax refund in such cases, the CBDT has notified[8] rule 40G in the Rules. As per rule 40G(1), a claim for refund under section 239A of the Act has to be made in Form 29D.

Time-limit for furnishing Form 67 extended for the purpose of claiming a foreign tax credit

The CBDT has extended the time limit for furnishing Form 67. It can now be furnished on or before the end of the assessment year relevant to the previous year in which the relevant income has been offered to tax or assessed to tax in India and the return for such assessment year has been furnished within the time specified under sub-section (1) or sub-section (4) of section 139.

Where an updated return under section 139(8A) has been furnished, Form No. 67 to the extent it relates to the income included in the updated return is to be furnished on or before the date on which such return is furnished.

This amendment is effective from 1 April 2022. It applies to all the claims of foreign tax credit furnished during the financial year 2022-2023. The explanatory memorandum certifies that no person is being adversely affected by giving retrospective effect to this rule.

ITR-A for filing a modified return pursuant to business reorganisation

Form ITR-A[9] has been prescribed for filing the modified return of income by a successor entity to a business reorganisation, as referred to in section

[6] *Sesa Goa Limited* v. *JCIT* [2020] 423 ITR 426 (Bombay); *Chambal Fertilizers & Chemicals Limited* v. *JCIT* (ITA No. 52/2018)
[7] Notification No. 111/2022 dated 28 September 2022
[8] Notification No. 98 of 2022 dated 17 August 2022
[9] Notification No. 110 of 2022 dated 19 September 2022

170A. This will come into force from 1 November 2022.

As per section 170A of the Act, the successor entity should file the modified return of income, i.e. ITR-A, within a period of six months from the end of the month in which the order for business reorganisation is issued by the competent authority. As ITR-A will come into effect from 1 November 2022, this has reduced the time available for furnishing modified returns for successor companies in cases where the order of business organisation of the competent authority was issued between 1 April 2022 and 30 September 2022.

Therefore, the CBDT has issued an Order[10] dated 26 September 2022 to provide that for successor companies where the order of business reorganisation of the competent authority was issued between 1 April 2022 and 30 September 2022, the time available to furnish modified returns under section 170A of the Act should be extended to 31 March 2023.

PART II – INDIRECT TAX

The Central Board of Indirect Taxes and Customs (CBIC) issued notifications, making key amendments to the Central Goods and Services Tax Rules, 2017 (CGST Rules), and the statutory forms therein in furtherance of announcements made at the 47th Meeting of Goods and Services Tax ('GST') Council.

Amendment made to the CGST Rules[11]

Refund Related Provisions

- An explanation has been inserted in Rule 89(4) of the CGST Rules (pertaining to refund claim on account of export of goods without payment of tax) to provide the value of export of goods to be considered for refund purposes and states that the lower of Free on Board value as per the shipping bill, bill of export, tax invoice, or bill of supply is to be considered.
- In wake of the Supreme Court Judgement[12] wherein it was held that refund is not allowed for Input Tax Credit (ITC) pertaining to input services, a revised formula is prescribed by substitution in Rule 89(5) of the CGST Rules to factor Reduction of output tax on inverted rated supplies is to be done in the same ratio in which ITC has been availed on input and input services during the relevant period.
- For categories pertaining to refund for export of electricity, Statement-3B for the export of electricity without payment of tax has been introduced.
- Form PMT-03A is prescribed to provide re-credit to the taxpayer by inserting sub-rule 4B in Rule 86 for the re-credit of the amount of erroneous refund sanctioned and subsequently deposited by the taxpayer in cash by filing Form DRC-03.
- The time period from 01 March 2020 to 28 February 2022 is to be excluded from the calculation of the limitation period for a filing refund claim under Sections 54 and 55 of the Central Goods and Services Tax Act, 2017 ('CGST Act') and for the issuance of an order under Section 73 of the CGST Act.
- In case of filing a refund of IGST on the export of goods or services, there is a mismatch between data furnished in the shipping bill and Form GST-1 then the refund application will be deemed to be rectified on the date on which such mismatch is rectified.

Interest-Related Provisions

- In wake of the amendment[13] made in Section 50 (3) of the CGST Act which provides that interest would be applicable only in cases where the ITC has been wrongly availed and utilised, a new Rule 88B to the CGST Rules has been added w.e.f 01 July 2017 which provides the manner of calculating the interest:

10 F No. 370142/41/2022-TPL
11 Notification No. 14/2022 Central Tax dated 6th July 2022
12 Civil Appeal No. 4810 of 2021
13 Notification No. 09/ 2022-Central Tax New Delhi, dated 5 July 2022

- In case of belated filing of return, interest is applicable on that portion of the tax that is paid by debiting the Electronic Cash Ledger for the period of delay in filing the return beyond the due date.
- In cases other than the belated filing of a return, interest is paid on the amount which is unpaid and is to be calculated from the date on which tax was due to be paid till the date of payment.
- In case of ITC wrongly availed and utilized, interest to be calculated from the date of utilization i.e. the date on which the balance in the Electronic Credit Ledger falls below the amount of ITC wrongly availed, till the date of reversal of ITC wrongly availed.

Payment of Tax

- The common portal now provides the additional methods of the Unified Payment Interface and Immediate Payment Service from any bank to deposit the amount in the Electronic Cash Ledger (PMT-06).

Tax Invoices

- Taxpayer whose aggregate turnover in the preceding financial year (FY) from 2017–18 onwards is more than INR 200 million is required to declare it on the tax invoice but is not required to generate an invoice reference number or QR code.

Reversal of ITC

- Rule 43 of the CGST Rules providing for the reversal of ITC is amended to provide that the value of exempt supply is to exclude the value of duty credit scrips sold.
- The period of limitation for issuance of an order under Section 73(9) of the CGST Act for recovery of tax not paid, tax short paid, or ITC wrongly availed or utilised, as pertaining to FY 2017–18, is extended from 31 January 2023 to 30 September 2023.

Circulars to clarify various issues under GST[14]

Refunds claimed by the recipients of supplies regarded as deemed export

The refund of deemed exports is the refund of tax paid on such supplies. However, difficulties are being faced on the portal to claim such refund of such tax paid due to the requirement of the portal to debit such amount from their Electronic Credit Ledger. Such tax was available as ITC vide Circular No. 147/03/2021 only to enable to claim of refund and is not ITC in principle.

Blocked ITC under Section 17(5) of the CGST Act

- Proviso to Section 17(5)(b) is applicable to the whole clause (b) and to all goods and services mentioned therein.
- Availment of ITC is not barred in case of leasing other than leasing of motor vehicles, vessels and aircraft.

Perquisites the employer has provided to the employees

- Any perquisites the employer provides to the employee are in lieu of the services and in course of a contractual agreement between them and such perquisites are not subjected to GST.

Electronic Credit Ledger and Electronic Cash Ledger

- The amount available in Electronic Credit Ledger can be used for payment of output tax, whether self-assessed or otherwise and does not include tax payable under the Reverse Charge Mechanism.
- Electronic Credit Ledger can be used for making payment of tax only and not interest and penalty whereas Electronic Cash Ledger can be used for making any payment of tax, interest, and fees.

Categories of Refund where re-credit can be done using Form GST PMT-03A[15]

- Recredit of the amount to Electronic Credit Ledger equal to the amount of erroneous refund deposited by the taxpayer along with

[14] Circular No. 172/04/2022-GST dated 06th July 2022
[15] Circular No. 174/06/2022-GST dated 06th July 2022

interest and penalty in case of the following refund categories:

- ✓ IGST obtained in contravention of Rule 96(10) of the CGST Rules
- ✓ Unutilized ITC on account of export of goods or services and Zero-Rated Supply
- ✓ Inverted Duty Structure

- Amount of erroneous refund along with interest and penalty made through Form DRC-03 along with the written request to the jurisdictional proper officer to re-credit such amount. On confirmation, the said amount is recredited to Electronic Credit Ledger within 30 days of the receipt of the request for a re-credit of the erroneous refund.

Applicability of demand and penalty provisions in transactions involving fake invoices[16]

- Issuance of Tax Invoice without an underlying supply of goods or Services, with or without availing of ITC by the recipient: Demand, recovery provision or penal action cannot be initiated under Sections 73 and 74 of the CGST Act. Only penal action under Section 122(1)(ii) of the CGST Act can be initiated.
- Availment and passing of ITC on the customer by the recipient basis the fake tax invoices: Recovery of ITC from the customer under Sections 73 and 74 of the CGST Act and penal action under Section 122(1)(ii) of the CGST Act.

GST Treatment of liquidated damages, breach of contract, compensation or penalties and other related contentious issues[17]

- For GST to be applicable on any amount, it is important that the payment should constitute consideration towards tolerating of an act or situation or refraining from doing any act or situation or simply doing an act. In addition, the circular discusses specific scenarios and throws light on taxability

- ✓ Compensation for cancellation of coal blocks in pursuance of the Supreme Court's decision is not in nature of consideration for promise and hence not taxable
- ✓ Fine or penalty imposed for cheque dishonour is not a consideration for a promise
- ✓ Penalty imposed for violation of laws is not taxable as the laws are not framed in order to violate them and there is no agreement between the Government and the violater
- ✓ For Forfeiture of salary or payment of bond amount in the event of premature quitting are not taxable as the amounts recovered are not for consideration
- ✓ Compensation for not collecting toll charges is not taxable as toll reimbursement paid by NHAI in lieu of not recovering toll charges by the toll operators from the users during the demonetization phase is simply consideration for accessing the toll; the consideration is paid by NHAI and not users
- ✓ Late payment surcharge or fee is taxable or not depending on the principal supply as the supplier factors in potential delayed payment charges.
- ✓ Fixed capacity charges for power are not taxable as all the components charged for sale of electricity which is exempt.
- ✓ Cancellation charges are taxable or non-taxable depending upon principal supply as cancellation charges are for the

[16] Circular No. 171/03/2022-GST dated 06 July 2022
[17] Circular No. 178/10/2022-GST dated 03 August 2022

facilitation of services which are naturally bundled with the principal supply. Forfeiture of earnest money deposits to discourage the non-serious buyers or bidders are payments being merely flow of money and thus not taxable.

Procedural related clarifications pursuant to the recommendations made during the 47th Meeting of the GST Council

Clarification on correct or proper reporting of Information on inter-state supplies, ineligible or blocked ITC, and reversals[18]

- Clarification is provided on various issues such as simplification of the return filing process, ITC reversal, reporting of ineligible ITC in Table 4 of Form GSTR-3B, as well as on infirmities in information the registered person has furnished in relation to inter-state supplies to unregistered persons (unregistered dealers [URDs]), composition taxable persons and Unique Identification Number holders.

Clarification on refund under inverted duty structure on the same input-output goods and where goods are supplied under concessional notification[19]

- It is clarified that cases, where the rate of tax of output supply is less than the rate of tax on inputs at the same point of time due to the supply of goods by the supplier under a concessional notification, are admissible for refund.
- This is so except in cases where output supply is either nil rated or fully exempted, and provided that the supply of such goods or services is not notified by the government for exclusion from the refund of the accumulated ITC.

[18] Circular No. 170/02/2022-GST dated 06 July 2022
[19] Circular No. 173/05/2022-GST dated 06 July 2022

Rate-related clarifications pursuant to the recommendations made during the 47th Meeting of the GST Council[20]

Sr. No.	Clarifications
I	**Services: Taxable Category**
1.	GST on the Supply of Ice cream by ice-cream parlours will be paid at 18% GST with ITC from 06th October 2021 and GST paid at 5% without ITC prior to 6th October will be treated as fully paid
2.	Souvenir books at the rate of 5% as the rate on selling of space for advertisement in print media is 5% and books is included in the definition of print media
3.	No exemption is not available on sanitation and conservancy services supplied to the army and other Central and State Government departments, which do not perform any functions listed in the 11th and 12th Schedules of the Constitution.
4.	Renting of trucks or other freight vehicles with a driver for a period of time is a service of renting transport vehicles with the operator covered under Heading 9966 and not service of transportation of goods by road.
5.	GST is applicable to the honorarium received by guest anchors from TV channels for participating in their TV shows.
6.	Where body corporates hire a motor vehicle for a period of time, during which the motor vehicle is at the disposal of the body corporate, the services are covered under Heading 9966, and the body corporate is liable to pay GST on the same under reverse charge. Where the body corporate avails passenger transport service for specific journeys or voyages, the service would be covered under Heading 9964, and the body corporate is not liable to pay GST under reverse charge.
7.	Services of hiring of contract carriage by firms for transportation of their employees for a specified period of time, during which the contract carriage is at their disposal, are not exempted from GST.
8.	The rate of tax is w.e.f 18 July 2022 on Turnkey projects for the construction, supply, installation and commissioning of a 2.00 LLPD dairy plant are covered within the definition of works contract, since a dairy plant which comes into existence is an immovable property is 18%.
II	**Services: Exempt Category**
9.	Location charges or preferential location charges paid upfront in addition to the lease premium for the long-term lease of land constitute part of the upfront amount charged for long-term lease of land and are eligible for exemption.
10.	Sale of developed land is the sale of land and is not taxable as the same is covered under Schedule III of CGST Act. Clarified that services provided in relation to developed land are taxable.
11.	Additional toll charges which are collected for not having a fashtag are in the nature of toll charges
12.	The amount charged by educational institutions for issuing examination eligibility certificates or issuing migration certificates
13.	Exemption to services of warehousing of cotton in ginned or in baled form, withdrawn from 18 July 2022.

[20] Circular No. 177/09/2022 & 179/11/2022-GST dated 03 August 2022

14.	Services by way of Assisted Reproductive Technology procedures such as in vitro fertilisation exempted under the scope of healthcare services
15.	Transportation of passengers in a vessel between places located in India, irrespective of whether the ferry is owned or operated by a private sector enterprise or by public sector undertaking or by a government.
16.	Services associated with transit cargo to Nepal and Bhutan and movement of empty containers from Nepal and Bhutan after delivery of goods associated with delivery
III	**Goods: Taxable Category**
17.	The GST rate on Nicotine Polacrilex Gum covered under Tariff Item 2404 91 00 is 18%.
18.	The condition of 'having 90% or more fly ash content' does not apply to Fly ash bricks or Fly ash blocks.
19.	Rate of 5% on by-products arising out of the milling of dal or pulses (such as chilka, khanda, and churi) as cattle feed ingredients and not meant for direct consumption as cattle feed. Recommended that the issue of rate for past periods be regularized on an as-is basis.
20.	GST rate on electronic vehicles is 5% irrespective of whether they are sold with or without a battery
IV	**Goods: Exempt Category**
21.	Treated sewage water covered under Heading 2201

Instruction for issuance of summons and launching prosecutions[21]

- The CBIC has issued instructions for launching prosecution under Section 132 of the CGST Act for sanction of prosecution and cautioned that prosecution should be launched in cases where the person committing the offence has guilty mind, fraudulent intent or possessed men's rea and cannot be launched basis of difference of opinion, merely because demand is confirmed or in cases of technical nature.
- The CBIC also issued instructions[22] on the issuance of summons under Section 70 of the CGST Act to tax officers. The instructions emphasizes that senior management should not be summoned in the first instance for routine information that is readily available online. Correspondingly, for the arrest and bail in relation to offences punishable under the CGST Act, the instructions emphasize that the power to arrest should not be exercised in a routine and mechanical manner.

Special Economic Zones ('SEZ')

- The Ministry of Commerce had notified specific work from home (WFH) rules as part of the SEZ Rules, 2006. These rules laid down the process, conditions, compliances, etc. for availing of WFH benefits by IT and ITeS SEZ units and certain listed categories, such as employees being temporarily incapacitated, travelling or working offsite, of all other SEZ units. As a further step, to ensure the harmonized implementation of the WFH rules, the Ministry of Commerce has now notified standard operating procedures (SOPs) for the implementation of WFH facility by the jurisdictional Development Commissioner, SEZ.[23]

[21] Instruction No. 04/2022-23 dated 01 September 2022
[22] Instruction Nos 02/2022 and 03/2022 dated 17 August 2022
[23] Instruction No. 110, dated 12 August 2022, SEZ Division, Ministry of Commerce and Industry

Customs

- The CBIC has issued a clarification on the applicable Customs duty on the display assembly of the cellular mobile phone for the reference of the trade and local Customs authorities based on the inputs provided by the Ministry of Electronics and Information Technology (MEITY).[24]

Judicial Updates

- By a recent order, the Supreme Court has disposed off a batch of 400 appeals arising from various High Courts on Forms TRAN - 1 and 2 related issues by passing a common order. Through this order, it has directed the reopening of the GST Network (GSTN) portal for a 60-day period to allow all registered taxpayers who wish to avail of transitional credit or to revise already filed forms. It has also allowed the tax officer to verify the claims as filed and process the same within 90-days.[25]
- The Bombay High Court in a recent judgement, held that the pre-deposit required for filing the appeal before the Appellate Authority can be made by debiting the ITC balance in the Electronic Credit Ledger. In holding so, the court distinguished an earlier contrary judgment of the Orissa High Court.[26]
- The Supreme Court has dismissed the review petition filed for reconsideration of its earlier decision, wherein it had endorsed the test of *'predominant or sole or principal use'* and confirmed the classification of 'relays' used as part of railway signalling systems under Chapter 86. The review petition has been dismissed on the ground of delay and merits.[27]

[24] Circular No 14/2022-Cus dated 18 August 202
[25] Special Leave to Appeal (C) No(s). 32709- 32710/ 2018
[26] W.P.(ST) No.23507 of 2022
[27] 2022-VIL-55-SC-CE

ACTIVITIES

1.	National Conclave on GST	4th July 2022
2.	Webinar on Tax implications vis a vis SEZs and the 'DESH' Bill	24th August 2022
3.	19th International Tax Conference	28th September 2022
4.	Council Meeting - National Council on Indirect Taxes	11th October 2022
5.	Council Meeting - National Council on Direct Taxes	28th October 2022
6.	National Seminar on "Recent developments under GST	25th November 2022

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