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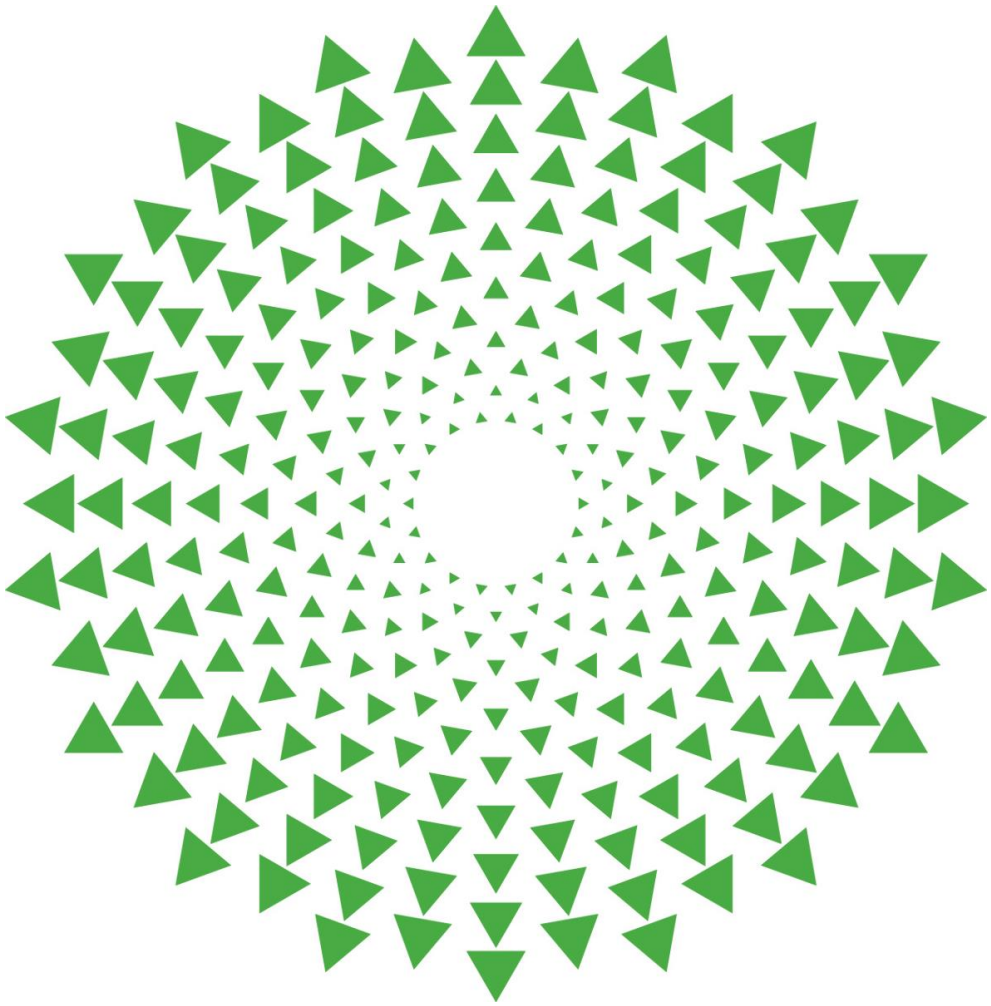

Indirect Tax Newsletter

Indirect tax updates

February 2025

Here are a few important judgments/advance rulings passed under Goods and Services Tax (GST), Customs, Central Excise and Service Tax available in the public domain from November to December 2024. This issue also covers some updates from the indirect tax perspective.

Goods and services tax

Ascent Meditech Ltd. v. Union of India and others 2024-VIL-1273-GUJ (Gujarat High Court)

The petitioner filed a refund application for claiming a refund of unutilised Input Tax Credit (ITC) on account of an inverted tax structure per the provisions of Section 54(3) of the Central Goods and Services Tax Act, 2017 (CGST Act) read with Rule 89(5) of the Central Goods and Services Tax Rules, 2017 (CGST Rules). Section 54(3) of the CGST Act provides for a refund of unutilised ITC accumulated because the rate of GST on inputs is higher than the rate of GST on outward supplies. Meanwhile, Rule 89(5) of the CGST Rules provides a formula by which such refund shall be granted.

Notification No. 14/2022 – Central Tax dated 5 July 2022 was issued by the Central Board of Indirect Taxes and Customs (CBIC) by way of which the formula prescribed under Rule 89(5) of the CGST Rules was amended to consider ITC availed on input services in the formula. Furthermore, Circular No. 181/13/2022-GST dated 10 November 2022 clarified that such amendment in the formula is not clarificatory in nature and is applicable prospectively with effect from 5 July 2022.

After the above notification was issued, the petitioner filed a rectification application to claim a differential refund per the amended formula. However, the rectification application was rejected on the ground that the amended formula applies only to refund applications filed after 5 July 2022, for which reliance was placed on the circular stated above.

Being aggrieved, a writ petition was filed before the Gujarat High Court challenging the order rejecting the refund and GST circular dated 10 November 2022.

The court held that the amendment in the formula is curative in nature and, hence, should be given retrospective effect. Prospective application of the amended formula only to refund application filed post the amendment notification creates inequality between the assessees solely based on the timing of their application. The court further held that the amendment is clarificatory in nature as the GST Council recommended it on the directions of the Supreme Court in the case of VKC Footsteps India Pvt. Ltd. Hence, the impugned circular was quashed to this extent. The impugned order rejecting refund per the amended formula was also quashed and set aside.

L&T IHI Consortium v. Union of India
2024-VIL-1219-BOM (Bombay High Court)

The petitioner is a consortium formed by its constituents to execute a contract for Mumbai Metropolitan Region Development Authority (MMRDA). To execute the contract, the petitioner's constituents shall raise an invoice on the petitioner, which in turn shall raise an invoice to MMRDA without any additional value. Per the contract terms between the petitioner and MMRDA, MMRDA shall make an advance payment as an interest-free loan, which shall be repayable by the petitioner through a percentage deduction from the interim payments to be made by MMRDA.

The petitioner paid GST on the advance amount received and remitted it to its constituents. The petitioner issued an advance receipt voucher to MMRDA, and in turn, the constituents issued such vouchers to the petitioner. However, the petitioner was denied ITC of the GST paid to its constituents against the receipt voucher.

The petitioner filed a writ petition challenging the constitutional validity of Sections 7, 12, 13, 16 and 54(3) of the CGST Act because no GST can be levied on advance amounts. It also contended that if GST is levied on advance amounts, ITC should be available.

The court upheld the validity of impugned provisions and held that the term “supply” under Section 7 of the CGST Act also covers deferred supply. Therefore, advance received by the petitioner will attract a GST levy. The court also held that, though the receipt voucher is not mentioned as one of the tax-paying documents, the petitioner was entitled to avail ITC based on the receipt voucher.

Indus Towers Limited v. Union of India and others
2024-VIL-1356-DEL (Delhi High Court)

The petitioner provides passive infrastructure services to telecommunication service providers. Being aggrieved by the Show Cause Notice (SCN) denying ITC on inputs and input services procured for setting up telecommunication towers, relying on the provisions of Section 17(5)(d) of the CGST Act, a writ petition was filed. The subject section restricts ITC on goods or services procured for the construction of an immovable property (other than plant or machinery) on his own account, including when such goods or services are used in the course or furtherance of business.

The court relied on the Supreme Court judgement in M/s Bharti Airtel Ltd. v/s Commissioner of Central Excise, which conclusively held that telecommunication towers qualify as movable property as they do not satisfy the test of permanency. They can be easily dismantled, moved and then erected in another place.

The court further noted that Section 17(5(d) of the CGST Act excludes "plant or machinery" from immovable property. Furthermore, "plant and machinery" has been defined under the explanation to Section 17(5) of the CGST Act, which includes apparatus, equipment and machinery fixed to earth or structural support but specifically excludes telecommunication towers. The court held that the exclusion of telecommunication towers from the definition of "plant and machinery" does not categorically establish them as immovable property. Hence, the impugned SCN was dismissed.

M/s Barhonia Engicon Private Limited v. State of Bihar
2024-VIL-1281-PAT (Patna High Court)

The petitioner received demand orders under Section 73 of the CGST Act for FY 2017–18, 2018-19 and 2019-20. Proceedings under section 73 of the CGST Act are invoked in case of non-payment/short-payment of tax, wrongful availment of ITC and erroneous claim of refund for cases other than fraud.

A writ petition was filed impugning the demand orders and challenging the validity of Notification No. 13/2022 – Central Tax dated 5 July 2022, Notification No. 09/2023 – Central Tax dated 31 March 2023 and Notification No. 56/2023 dated 28 December 2023 (impugned notifications) on the grounds of absence of force majeure. The impugned notifications extended the time limit for issuance or order prescribed under the provisions of Section 73(10) of the CGST Act, which provides for the time limit within which, demand orders can be issued.

The court differed with the Gauhati High Court in the case of Barkataki Print and Media Services and others v. Union of India and held that the impugned notifications were issued following recommendations of the GST Council. These recommendations considered the effect of the COVID-19 pandemic and acknowledged the challenges faced by both tax authorities and taxpayers in their operational functioning.

M/s Sance Laboratories Private Limited v. Union of India
2024-VIL-1160-KER (Kerela High Court)

The petitioner filed a writ petition challenging the validity of Rule 96(10) of the CGST Rules on the ground that it is ultra-vires the provisions of Section 16 of the Integrated Goods and Services Act, 2017 (IGST Act).

Rule 96(10) of the CGST Rules lays down certain restrictions on refund of IGST in case certain inputs have been procured, on the supply of which benefits have been availed under notifications specified in the said rule. Whereas Rule 89(4) of the CGST Rules provides for a formula per which the refund of unutilised ITC shall be granted.

The petitioner contended that Rule 96(10) of the CGST Rules imposes a complete restriction on granting a refund if certain inputs are procured after availing the benefit of the notifications, whereas a registered person, on the same footing, making exports without payment of tax, under bond/LUT is not subject to such restriction. Hence, this creates an arbitrary distinction between the two methods of making exports.

The court held that Rule 96(10) of the CGST Rules creates a restriction not contemplated by section 16 of the IGST Act on the right to refund. Therefore, notwithstanding the prospective omission of Rule 96(10) of the CGST Rules vide Notification No. 20/2024 – Central Tax dated 8 October 2024, the impugned rule is held ultra vires the provisions of section 16 of the IGST Act. Consequently, any SCN or demand order based on the said rule is quashed.

TVL. Skanthaguru Innovations Private Limited v. Commercial Tax Officer Chennai
2024-VIL-1296-MAD (Madras High Court)

In the writ petition, the petitioner challenged the impugned notice in Form GST ASMT-10 issued by the state GST authorities because the central GST authorities have already initiated proceedings for the same matter. The petitioner also challenged the negative blocking of ITC under Rule 86A of the CGST Rules.

The court held that as the quantum of demand and the period of dispute under the proceedings initiated by state and central authorities were different, the question of cross-empowerment does not arise even if the dispute under both proceedings is the same.

Regarding the matter of negative blocking of ITC, the court held that "the amount available in the ECL", as mentioned in Rule 86A of the CGST Rules, would mean fraudulently availed ITC which was made available in the ECL at any point of time before its utilisation. If the fraudulently availed ITC is fully utilised, the state authorities are empowered to pass orders for negative blocking of ITC in the petitioner's ECL.

M/s Uber India Systems Private Limited
2024-VIL-173-AAR (Karnataka Authority for Advance Ruling)

The applicant seeks to enter a new business model in which it would provide technology services by way of a digital platform to suppliers of passenger transportation services ("drivers"), enabling them to connect with the end customers ("riders"). The applicant shall charge a membership/subscription fee from the drivers as a consideration for the services provided.

Under the proposed business model, a rider can use the platform to request trips by providing the start and end location for which they intend to avail the said services. Consequently, the nearby drivers are notified about such requests. Details such as driver information, vehicle information, suggested fare, trip destination and the trip route shall be displayed to the rider on the platform. The platform will provide only an estimated fare, but the final consideration shall be settled independently between the driver and the rider without the applicant's involvement. The platform will have no record of the amount paid by the rider to the driver. Moreover, it will not be involved in any dispute resolution between the driver and the rider.

The applicant applied for an advance ruling to ascertain whether it falls under the definition of an e-commerce operator and whether the provisions of Section 9(5) of the CGST Act apply to the nature of services provided by it. In addition, the applicant wants to ascertain whether it is required to discharge GST liability on the services provided by the drivers on its digital platform.

The Authority of Advance Ruling (AAR) held that as the applicant owns a digital platform for supplying services, it fits into the definition of an e-commerce operator. It further noted that in the case of passenger transportation services through motor cabs, etc., supplied through an e-commerce operator, the provisions of the CGST Act apply to the e-commerce operator as if he is the supplier liable to pay tax on the said services.

The AAR noted that the platform does not merely connect the driver and the rider but provides a platform for communication between the two. As the relevant details regarding

the trip are captured on the platform and notified to the rider, it is inferred that the subject services are supplied through the applicant's platform. Moreover, the AAR noted that despite the applicant's claim that the platform displays an estimated fare, there is no explicit indication on the platform that the fare is an estimate.

Therefore, the AAR held that the services are being supplied through the platform operated by the applicant and hence, it shall be liable to pay GST on services supplied by drivers to riders on the platform.

M/s Medpiper Technologies Pvt. Ltd.
2024-VIL-179-AAR (Karnataka Authority for Advance Ruling)

The applicant is an aggregator of diagnostic labs and wellness providers that provides diagnostic services to its client companies, which include insurance companies and insurance brokers. The clients avail the applicant's services for their employees or any group of people (users).

The applicant owns a digital platform (app) that allows users to book appointments with diagnostic labs and wellness providers. Users can select their preferred date, time and the tests they intend to book. Once the tests are done, the labs share the reports directly with the users. The labs raise the invoices on the applicant, and subsequently, the applicant raises invoices on client companies.

The applicant applied for an advance ruling to ascertain (1) if it falls under the definition of an e-commerce operator, (2) whether it is required to pay GST on the entire invoice amount or the margin charged by it, (3) the applicability of TCS provisions under GST and (4) whether it falls under the definition of insurance agent concerning invoices issued to an insurance company.

The AAR held that the applicant is not an e-commerce operator as the applicant merely provided them a platform to connect. It procures services from the labs and provides the same to the client companies by charging a markup; hence, GST is required to be paid on the invoice amount, not just the markup value. It further held that the applicant is not a clinical establishment, an authorised medical practitioner or a para medic but an aggregator of healthcare services. Hence, the services it provides are not exempt under GST.

As the applicant is not an e-commerce operator, the provisions of TCS under GST are not applicable in the applicant's case. Furthermore, it does not fall under the definition of an insurance agent, as the services provided are not even remotely connected with the sale of insurance policies.

Notifications/Circulars/Instructions

CBIC issues various circulars

CBIC has issued various circulars in respect of the following matters:

Circular number	Clarification
239/33/2024-GST dated 04 December 2024	Clarification in respect of advertisement services provided by advertisement companies/agencies to foreign clients
240/34/2024-GST dated 31 December 2024	Clarification with respect to availability of ITC in respect of demo vehicles
241/35/2024-GST dated 31 December 2024	Clarification on the place of supply of data hosting services provided by service providers located in India to cloud computing service providers located outside India
242/36/2024-GST dated 31 December 2024	Clarification regarding regularisation of IGST refund availed in contravention of Rule 96(10) of the CGST Rules, where the exporters imported certain inputs without payment of GST
243/37/2024-GST dated 31 December 2025	Clarification regarding applicability of GST on certain services

Application form for waiver scheme under Section 128A of the CGST Act made available

Form GST SPL-02, i.e., the application for waiver of interest or penalty or both under Section 128A(1) of the CGST Act in respect of an order issued under Section 73 (demand order for cases other than fraud) or Section 107 (order by appellate authority) or Section 108 (order by revisional authority) of the CGST Act is made available on the GST portal.

(Goods and Services Tax Network (GSTN) advisory dated 29 December 2024)

Advisories related to Invoice Management System (IMS)

An advisory has been issued on the GSTN regarding the initial phase of implementing IMS on the GST portal, the “supplier view” of the IMS and the scenarios under which GSTR-2B will not be generated.

(GSTN advisories dated 12 November 2024, 13 November and 16 November 2024)

Advisory for difference in values of Table 8A and 8C in GSTR-9 for FY 2023–24

GSTN issued an advisory regarding the manner of reporting in Form GSTR-9 regarding the mismatch between the ITC auto-populated from GSTR-2B in Table 8A and the ITC on inward supplies received during the FY but availed in the next FY, as stated in Table 8C.

(GSTN advisory dated 9 December 2024)

For more information, please connect with:

Mahesh Jaising
Deloitte Touche Tohmatsu India LLP
mjaising@deloitte.com

Indu Amar
Deloitte Touche Tohmatsu India LLP
induamar@deloitte.com

Deloitte.