



NAVIGATING GST 2.0

- THOUGHT LEADERSHIP
- INSPECTION, SEARCH AND SEIZURE UNDER GST
- FROM THE BENCH - KEY JUDICIAL PRONOUNCEMENTS
- EXPERT SPEAKS
- LEGISLATION AT WORK - RECENT AMENDMENTS
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INTRODUCTION

Note from Editor:

The successful landing of Chandrayaan-3 on the moon's south pole and the entire world lauding the dedication and efforts of Indian scientists and engineers marks India's prominence in the global space community. On the tax front, while the introduction of GST in June 2017 marked a significant milestone in the history of taxation in India, the exemplary GST collection of Rs.1.5 trillion monthly tax revenue coinciding with completion of its 6 years journey has become the 'new normal'.

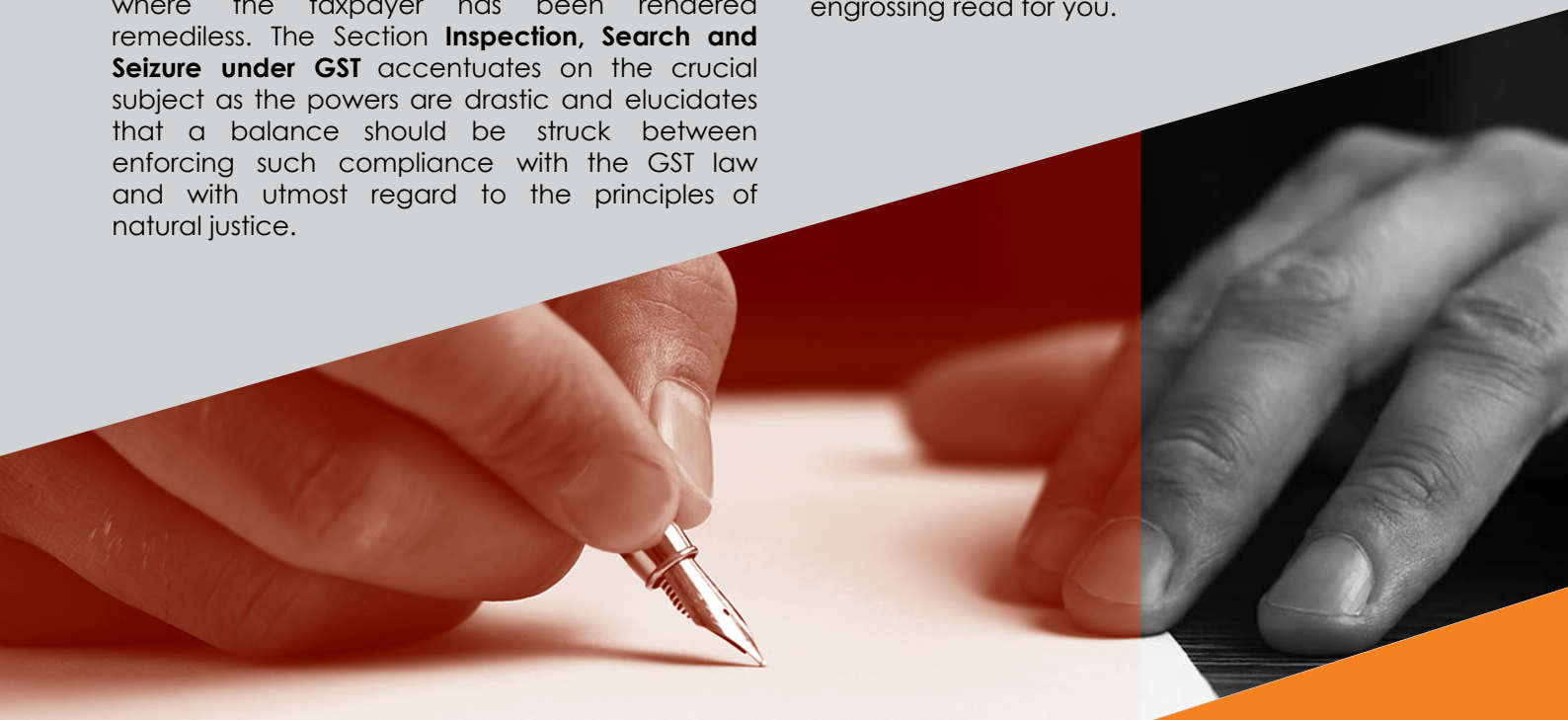
On these lines, we are ecstatic to present the 17th Edition of our **GST Newsletter** encompassing the advancements in the Indirect Tax arena which is inclusive of policy amendments, landmark judgments, notifications, publications, and more. In the **Thought Leadership** segment, ELP Partner **Nishant Shah** discusses the transparency that the GST law has brought about and also talks about digitisation that has not only facilitated significant levels of compliance but also aided in better accountability, evident from the ever increasing numbers of tax collection.

Though it has been more than half a decade since the inception of GST, the power of authorities of inspection, search and seizure, still needs to be regulated as there are many instances where the taxpayer has been rendered remediless. The Section **Inspection, Search and Seizure under GST** accentuates on the crucial subject as the powers are drastic and elucidates that a balance should be struck between enforcing such compliance with the GST law and with utmost regard to the principles of natural justice.

The Chapter **From the Bench - Key Judicial Pronouncements** delineates the recent remarkable judgments and orders of the Hon'ble Supreme Court, High Courts, AARs, Tribunals and the Appellate Authorities. The **Expert Speak** Module contains excerpts from the captivating interview of **Mr. Saurabh Goel (Vice President Finance – First Advantage Group)** who applauds the digital movement of GST and also remarks that *"continued prompt action by GST law makes, to bring clarity in the law will help the industry to abide and follow the true intent with which GST was formulated."*

In the segment **Legislature at work – Recent Amendments**, the Newsletter covers all the amendments, updates, clarifications and modifications to the indirect tax laws by the Government. The **Allied Laws** module sheds light on the exemption of customs duties, manner of issue of duty credit for goods exported under the RoDTEP Scheme, addressing the issues faced by some exporters in filing applications in the EOC module of DGFT and more. Under **Legal Classics**, emphasis is laid on a prominent verdict of the erstwhile indirect tax regime which has set a strong judicial precedent, and can be made applicable to the GST era as well on account of the principles laid down in the judgement. We round off the Newsletter with some exceptional quotes of GST experts.

We hope the 17th issue of '**Navigating GST**' is an engrossing read for you.





THOUGHT LEADERSHIP

The following chapter has been authored by Nishant Shah (Partner) - ELP

The GST Conundrum Continues...

With the completion of 6 years since introduction of GST, the country has seen a significant change in the manner in which indirect tax is levied and collected on business activities. Digitization in the GST regime has facilitated significant levels of compliance being carried out by companies from their desktops. This has also resulted in better accountability, subject of course to some areas of concern, that are promptly remedied by the authorities. Better accountability is also reflected in the impressive numbers of tax collection each month.

The level of digitization as anticipated prior to the introduction of GST, was required to be curtailed to meet with certain interface issues with the GST Network (GSTN). Some of such teething issues are now being rectified with gradual re-introduction of internal checks, automated reconciliation and prompt issuance of notices to taxpayers upon identification of unreconciled transactions/ balances.

Having so said, the recent trend of audits has thrown up some interpretational aspects not effectively deciphered by the GSTN thereby making it further complicated and cause avoidable hassles for businesses. Some such issues are deliberated hereunder:

1. Reversal of ITC by the recipient to whom a credit note has been issued

Section 34 of the CGST Act deals with the issuance of credit notes including the situation and circumstances when such credit notes may be issued. An analysis of this provision clearly suggests that credit notes may be required to be issued for the following purposes:

- I. Taxable value or tax charged in the tax invoice is found to exceed the taxable value or tax payable in such supply;
- II. Goods supplied are returned by the recipient;
- III. Goods or services or both are found to be deficient.

One of the purposes for which the credit note is required to be issued finds its genesis in section 15(3) i.e., determination of the value of supply on which any discount has been offered by the supplier. As per this section, the amount of discount shall not be included in the value of the supply, in a situation where after the supply has been affected, such discount has been granted:



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- a) In terms of an agreement entered into, at or before the time of such supply and specifically linked to relevant invoices; and
- b) ITC as is attributable to its discount has been reversed by the recipient of the supply on the basis of credit note issued by the supplier;

The condition at (b) above does not appear in relation to other situations set in section 34, for issuance of a credit note. However, it has been observed that the authorities have been insisting on providing a confirmation/declaration from the recipient of the supply as to the reversal of the ITC by such recipient. Non-furnishing of the same has resulted in demand notices being issued by the authorities. Such requirements could therefore be considered as extraneous in relation to situations where credit notes have been issued other than post-supply discount.

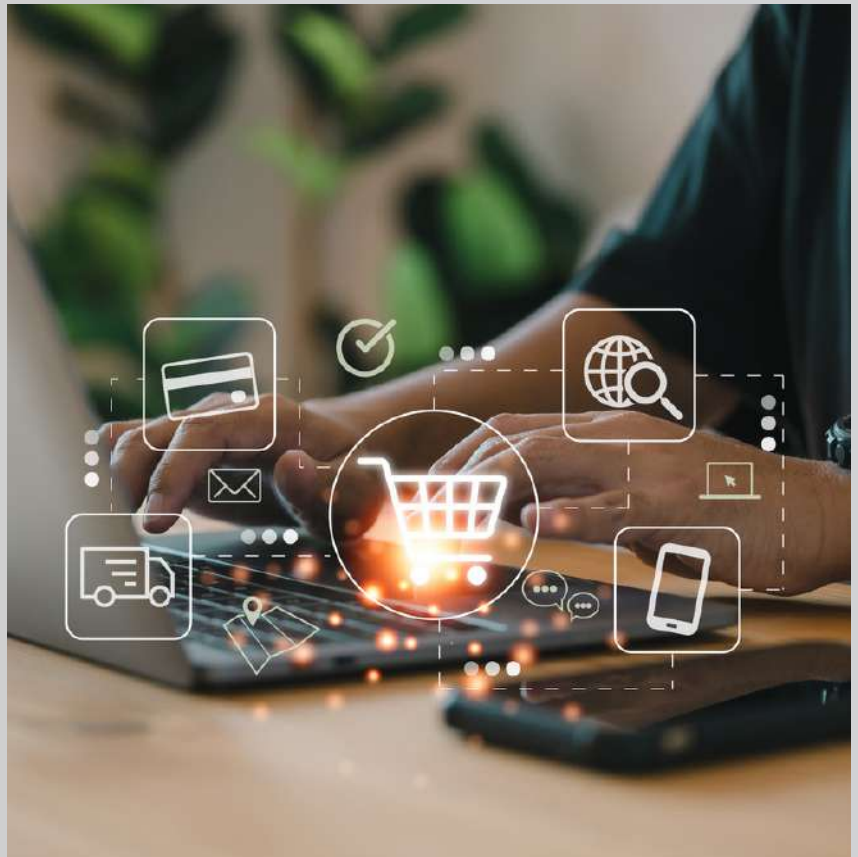
While the requirement of such a declaration/ confirmation existed in the erstwhile VAT regime the same has not been mandated under GST. One believes that considering the digitization brought about under GST, should such a requirement to be made mandatory, should be duly facilitated through a module under the GSTN as was contemplated under Section 42.

2. ISD versus Cross Charge

The issue of whether common expenses arising on account of internal incurrence of cost or external incurrence should be cross charged to other locations i.e. distinct persons has been an issue of legal debate for a while now. Internal expenses would be in the nature of salaries paid to the top management, and common expenses incurred at the Head Office ('HO'). On the other hand, external expenses would be in the nature of obtaining common services such

as legal, audit, etc. Up until the recent issuance of Circular dated 17 July 2023 there was an ambiguity whether:

- I. Such common expenses are required to be cross charged;
- II. The value at which the cross charge is to be undertaken;
- III. Whether there is a need to compulsory follow the Input Service Distributor (ISD) procedure in relation to such cross charge;



A reading of section 16(2) of CGST Act facilitates the availability of ITC to a dealer only to the extent such tax paid by him is co-related to inputs and input services used in the course of furtherance of his business. Common expenses, therefore, incurred at the HO cannot be considered to have been only for the purpose of the business and thereby restricts the availability of the credit in the hands of the HO as per the reading of section 16(2). Thus, it is clear that the compulsion for

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the cross charge is incorporated within the provision of the CGST Act.

At this point, it is also important to refer to section 20 of the CGST act which deals with the concept of ISD, the purpose of which is to avail common credits and distribution thereof among the relevant distinct GST registrations of the entity. The issuance of circular dated 17 July 2023 has left the option of opting for ISD or cross charge with the taxpayer for the

section 20 of CGST falls short of suggesting treatment to be carried out in relation to internal expenses, since the ISD mechanism only deals with distribution of such credits, which does not arise in the normal course on incurrance of such internal expenses.

One wonders and worries therefore if the reading of the recent circular may be interpreted by the authorities as a need to cover both internal and external expenses. However, there is no corresponding mechanisms/procedure prescribed for distribution of internal expenses under the GST legislation.

3. Mismatch in ITC

The mechanism on the GSTN portal as it was contemplated on the date of implementation of the GST in July 2017 was required to be significantly watered down to meet with the teething issues and facilitate businesses to cope up with digitization. While certain checks and reconciliatory mechanisms intended to be incorporated are once again being activated gradually, the same is resulting in concerns arising for businesses due to non-alignment of the output of these checks with the realities of the manner in which transactions are conducted by the businesses. One such instance is the incorporation of Rule 88D in the CGST Rules. Such rule provides for comparison of ITC availed in form GSTR-3B vs the ITC available in form GSTR-

2B (static data). In case there is availment of excess credit as compared to that available in GSTR-2B shall now result in an auto issuance of a notice to the taxpayer without recognizing the fact that the mismatch could be on account of delayed accounting of purchase invoice, payment of basis of availing ITC etc. Therefore, there is a need for the authorities to undertake a parallel manual check or incorporate flexibility within the system to allow the taxpayer to state the reasons for such mismatch .

past. However, as per the press release of 50th Meeting of GST Council on 11 July 2023, it is recommended that amendment may be made in GST law to make ISD mechanism mandatory going forward.

While the issuance of this circular is a welcome move in clarifying certain past controversies, it does not specify the treatment in relation to common internal incurrance of expenses. In fact, the ISD mechanism as imbibed in



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4. Cross border inter-company reimbursements

Typically, there is an internal administrative arrangement between overseas group companies and its related / associated companies located in India. Entities incur expenditure on behalf of its related/ associated companies in their respective jurisdiction, for instance - travel cost of employee, hotel accommodation, infra cost etc. while the employee travels for work purposes. From GST perspective, if the Indian company incurs such expenditure and later recovers such cost from overseas group company on actual basis, there is a possibility that authorities may question the transaction and demand GST. It would be pertinent to understand the place of supply of such transaction and accordingly determine the taxability. Alternatively, it would also be important to understand whether the provisions of pure agency shall come into play or not. Maintenance of appropriate documents shall be the key to defend such taxability/ claiming zero rating of such transactions.

Conclusion:

There is an active role played by the GST council in clarifying and implementing various checks and mechanisms to avoid abuse of implementation of GST with its true intent. It would be helpful to taxpayer if such actions are tested beforehand and implemented on pilot basis so as to give sufficient time to adapt to such digitization.

The implementation of additional checks such as obtaining declaration from the recipient of supply regarding reversal of ITC could have been communicated much earlier so as to enable taxpayer to maintain appropriate documents. Such asks of the officers during the audit/ investigations do not really help the taxpayer as well as revenue which results in long drawn litigations.

It would be of great importance if the authorities shared their learning through the audit/ investigations conducted and clarified issues observed so that the corrective measures can be taken by the taxpayers at appropriate time.





Inspection, Search and Seizure under GST

The following chapter has been authored by Virangana Wadhawan (Principal Associate) & Bhargavi Shukla (Associate) - ELP

Inspection, Search and Seizure under GST

In any tax administration, powers of Inspection, Search and Seizure are granted to tax officers as a measure to dissuade taxpayers from tax evasion. The Central Goods and Service Tax Act, 2017 ('CGST Act') and allied laws have been incorporated with an intention to provide a comprehensive tax structure including powers and duties of tax authorities as well as duties and safeguards for the taxpayers. To protect the interest of genuine taxpayers and as well as the revenue, the Goods and Services Tax ('GST') laws provide powers for inspection, search and seizure to tax officers. However, the powers given to the revenue authorities are to be exercised reasonably only in exceptional circumstances and as a last resort.

Proper officers under GST laws for Inspection, Search and Seizure

- To ensure that these provisions are implemented judiciously, it is stipulated that inspection, search or seizure can be carried out only by a 'proper officer' as envisaged by the legislature. Under the GST law, enforcement action can be initiated either by State or by Central tax authorities against taxpayers, irrespective of the administrative assignment of taxpayer to any authority. As per Circular No. 3/3/2017-GST dated 5th July 2017, issued by the Central Board of Indirect Taxes & Customs ('CBIC') the power to give authority for inspection, search and seizure under have been given to the Additional/ Joint Commissioner of Central Tax.
- In terms of the Circular No. 3/3/2017-GST, the following officers have been made the proper officers to initiate action against the different offences envisaged in the Section 67 of the CGST Act:
 - The Principal Commissioner or Commissioner of Central Tax have been made the proper officers to extend the time limit to issue notice after the goods are seized.

- The Additional Commissioner or Joint Commissioner of Central Tax have been made proper officers to give authority to inspect (Section 67(1)), give authority to search and seize (Section 67(2)), deny copies of seized documents to the person whose documents are being seized (Section 67(5)) and to prepare inventory of the documents seized (Section 67(9))
- The Superintendent of Central Tax has been made the proper officer for seizing accounts, registers or documents and retaining them for as long as may be necessary (Section 67(11)) and issuing summons under Section 70 of the CGST Act.
- Further, as per Notification No. 2/2022 dated 11th March 2022 read with Circular No. 169/01/2022-GST dated 12th March 2022, the Directorate General of Goods and Services Tax Intelligence ('DGGI') has been given the power to issue



show cause notice ('SCN') however, the power to adjudicate and take subsequent action has been given to the relevant Additional/Joint Commissioner having all India jurisdiction.

- Under Section 6 (1) of the CGST Act, officers appointed under the State GST Act ('SGST')/ Union Territory GST Act ('UTGST') are also

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authorized to be the proper officers under the CGST Act, subject to such conditions as the Government may specify. Also, under Section 6(2) of the CGST Act, where a proper officer under the SGST Act/UTGST Act has initiated any proceedings on a subject matter, no proceedings shall be initiated by the proper officer under CGST Act.

- o 'Subject Matter' has not been defined under the GST laws. The Hon'ble Supreme Court, in **Ballabh Das v. Madan Lal [1970 1 SCC 761]** held that 'subject matter' means cause of action and relief claimed.
- o Accordingly, under GST laws, on the same issue, CGST officers as well as SGST officers cannot initiate proceedings.
- Further, in order to bring the provisions of CGST Act and SGST Act, it was held in **[Indo International Tobacco Ltd. vs Vivek Prasad \[TS-558-HC\(DEL\)-2021-GST\]](#)** that where there is overlap between the jurisdiction of Central officers with the State officers, the investigation and the documents seized by the State officers should be transferred to the Central officers to avoid parallel proceedings.

Difference between Inspection, Search and Seizure

According to the Chapter 19 of the CBIC FAQs dated 31.03.2017¹, 'inspection' is a softer provision than 'search'. 'inspection' enables officers not below the rank of Joint Commissioner to access any place of business of a taxable person or any place of business of a person engaged in transporting goods or a person who is an owner and operator of a warehouse or godown if such officer has reasons to believe that an exceptional circumstance under Section 67(1)(a) or 67(1)(b) of the CGST Act exists.

Similarly, 'search' has been defined as an action of a government machinery to go, look through or examine carefully a place, area, person, object etc. in order to find something concealed or for the purpose of discovering evidence of a crime.

Lastly, 'seizure' has been defined in the Law Lexicon Dictionary as the act of taking possession of property by an officer under legal process. It generally implies taking possession forcibly, contrary to the wishes of the owner of the property or who has the possession and who was unwilling to part with the possession.

Powers of Proper officers under Inspection, Search and Seizure

Under the CGST Act, Section 67 of the CGST Act deals with powers and duties of tax officers for undertaking inspection, search, and seizure, as well as rights of taxpayers during such proceedings.



The powers given to the proper officers in case of inspection, search and seizure are as under:

Under Section 67(1) of the CGST Act, the proper officer, not below the rank of Joint Commissioner, can upon written authorization, order any officer of the CGST/SGST if he has reasons to believe that the person concerned has:

- Suppressed any transaction of supply;
- Suppressed any stock of goods in hand;
- Claimed excess input tax credit than what is entitled to him;
- Contravened any provision of the CGST/SGST Act or rules thereunder to evade tax; or
- Where a transported or warehouse owner has kept goods which have escaped payment of tax or has kept accounts or goods in a manner that is likely to cause evasion of tax;

Such authorization may be made only in writing to inspect any places of business of the taxable person, or the persons engaged in the business of transporting goods or the owner or the operator of warehouse or godown or any other place.

¹ [CBIC FAQs on GST 2nd Edition dated 31st March 2017](https://cbic-gst.gov.in/pdf/new-faq-on-gst-second-edition.pdf) <<https://cbic-gst.gov.in/pdf/new-faq-on-gst-second-edition.pdf>>.

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- **Reasons To Believe:** 'Reasons to believe' has been defined² to have knowledge of facts which, although not amounting to direct knowledge, would cause a reasonable person, knowing the same facts, to reasonably conclude the same thing. The expression 'reason to believe' does not mean a purely subjective satisfaction on the part of the officer and the reason must be held in good faith and not merely be a pretense.³
 - As per CBIC FAQs dated 31.03.2017, an officer is not required to state the reasons for



such belief before issuing an authorization for search. He merely needs to disclose the material on which his belief was formed.

- The Hon'ble Delhi High Court, in **R.J. Trading Co. vs. Commissioner of CGST, Delhi North and Ors.** [\[TS-356-HC\(DEL\)-2021-GST\]](#) has held that simply replicating the provision and mentioning that there are "reasons to believe" is not enough, and search conducted under this is flawed and unsustainable in law.

Section 67(2) of the CGST Act empowers the proper officer to carry out search proceedings if he has reasons to believe that any goods liable to confiscation or any documents or books or things which in opinion of the proper officer is relevant for proceedings, but such documents/books are 'secreted' at any place. However, the provision of Section 67 of the CGST Act should not be exercised as a matter of course, but only after due application

of mind to the relevant factors⁴. Section 67(2) of the CGST Act is *pari materia* to Section 105 of the Customs Act, 1962.

- **Goods liable for confiscation:** It is pertinent to note that under Section 67(2) of the CGST Act, goods can be seized when the proper officer has reasons to believe that goods are liable for confiscation. Section 130(1) of the CGST Act envisages situations where goods are liable for confiscation. The following are the situations where goods shall be liable to confiscation:
 - if supply is made in contravention of any of the provisions of GST law with intention to evade payment of tax; or
 - if goods are not accounted for on which tax is liable to be paid; or
 - if goods liable to tax are supplied without having applied for registration; or
 - Contravenes any provisions of the CGST Act or Rules with an intent to evade tax.

Therefore, it can be inferred that when goods are not liable for confiscation in terms of the provisions of Section 130(1) of the CGST Act, then such goods cannot be seized in terms of provisions of Section 67(2) of the CGST Act.

Section 67(4) read with Section 67(2) of the CGST Act empowers the proper officer to seal or break doors of premises, open almira's, electronic devices, boxed with goods, accounts, etc. in which any goods, documents, accounts or registers of the person are suspected to be concealed, if access to such premises etc. is denied.

Section 67(11) of the CGST Act empowers the proper officer to seize accounts, registers or documents of a person if the proper officer has reasons to believe (to be given in writing) that such person is evading or attempting to evade tax. The accounts, registers or documents seized hereunder may be retained by the proper officer for as long as may be necessary in connection with any proceedings in that regard.

Section 67(12) of the CGST Act empowers the Commissioner or any officer authorized by him to purchase of any goods or services from the premises

² [CBIC FAQs on GST 2nd Edition dated 31st March 2017](https://cbic-gst.gov.in/pdf/new-faq-on-gst-second-edition.pdf) <<https://cbic-gst.gov.in/pdf/new-faq-on-gst-second-edition.pdf>>.

³ *ITO vs. Lakhmani Mewal Das* [1976] 103 ITR 437 / [\[TS-3-SC-1976-Q\]](#).

⁴ [Patran Steel Rolling Mill vs. Assistant Commissioner of State Tax](#) [2019]

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of taxable person to check whether taxable person issues tax invoice or bill of supply or not. In case the invoice or bill of supply has been properly issued, then the officer can return the goods purchased and can claim the refund. However, no such refund can be claimed in case of supply of services once it is availed.

Obligations of Proper Officers and Rights of Taxpayers

Under Section 67 of the CGST Act, certain obligations of the proper officers/rights of taxpayers have been envisaged as follows:

Section 67(3) of the CGST Act requires the proper officer to return any documents, books or things seized by them which have not been relied upon within 30 days from the issue of notice of search under Section 67(2) of the CGST Act.

Section 67(5) of the CGST Act allows the taxpayer from whose custody any documents are seized to make copies of the documents seized or take extracts therefrom in the presence of an authorised officer. The authorised officer may indicate the place and time from where such copies may be made by the taxpayer.

Section 67(6) of the CGST Act provides an option to the taxpayer to furnish a bond and security, along with tax, interest or penalty payable, for release of any goods seized under Section 67(2) of the CGST Act and the proper officer is under the obligation to release such goods on provisional basis.

Section 67(7) of the CGST Act provides that any goods seized under the Section 67(2) of the CGST Act shall be returned to the concerned taxpayer in case where no notice regarding such seizure is given to the taxpayer within six months of the seizure of goods. However, the period of six months

may be extended by the proper officer for another period not extending six months if sufficient cause is shown.

Section 67(9) of the CGST Act obligates the proper officer or any officer authorised by him to prepare an inventory of the goods seized, if any, under Section 67(2) of the CGST Act in the manner prescribed.

Section 67(10) of the CGST Act provides that copies of any record made during search by the proper officer are to be sent to the nearest Commissioner empowered to take cognizance of the offence. The owner or occupier of the place searched has the right to obtain a copy of the same, on application, from the Commissioner.



Additionally, the CBIC has issued guidance⁵ for conducting search and seizure under the GST law. As per the guidelines, an officer issuing authorization must duly record the reasons for such search and seizure in the file. The premises of person cannot be searched on the authority of search warrant issued for premises of another person and a lady officer shall necessarily be part of search team if search is conducted at a residence.

- Moreover, a person from whose custody any documents are seized may be allowed to make copies thereof and extracts therefrom for which suitable time and place to take such copies/extracts.

⁵ [CBIC Instruction No. 1/2020-21/GST-Investigation](#) dated 02.02.2021.

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- A Panchnama containing truthful account of proceedings, list of goods/documents recovered along with time and date should be prepared by the officers and each page of the Panchanama shall be duly signed by them.
- Also, in case any statement is recorded, each page should be signed by the person whose statement is recorded.

Form and Manner of Inspection, Search and Seizure

- As per Section 67 read with Rule 139 of the CGST Rules, 2017, authorization for the purpose of inspection under Section 67(1) of the CGST Act should be in writing and in the prescribed form i.e., **Form GST INS-01**. An order of seizure is to be made by issuing an authorisation in **Form GST INS-02**. Any search warrant, authorization, summons, arrest memo, letter of enquiry etc. issued to the taxpayer must have Document Identification Number (DIN) generated on digital platform, except in case of emergency. If document is issued without DIN, reason should be recorded, and document should clearly indicate 'issued without DIN'. Also, where it is not practicable to seize any goods, the proper officer may serve on the owner or the custodian of the goods, an order of prohibition in **Form GST INS-03** to not remove any part of the goods without the permission.
- During inspection, search or seizure, a taxpayer can request the officer to show a Copy of ID Card to ensure authenticity.
- Form GST INS-01 sets out certain instances where the officer may have reasons to believe that inspection needs to be carried out. Such reasons to believe should be indicated in the Notified Form INS-01 by selecting the appropriate checkbox provided in the Form.

Rights of Taxpayers

The Taxpayers have various rights that can be exercised while any inspection, search or seizure proceedings are taking place.

- **Right to remain silent:** Under the Article 20(3) of the Constitution of India, no person accused of any offence shall be compelled to be a witness

against himself. Moreover, as per Section 161 of Criminal Procedure Code, 1973, no person is bound to answer any question which exposes him to a criminal charge.

- It has been held in **NSR Krishna Prasad v. Directorate of Enforcement Loknayakan Bhawan Khan Market, New Delhi and Ors (1992) 57 ELT 568 AP** that the right to silence is not an offence and cannot be said to be an obstruction to a proceeding.



- **Right to retract statement:** Where summons have been issued to a taxpayer and in pursuance of that statements have been recorded under pressure or coercion, then the taxpayer has the right to retract or call back such a statement which was made under pressure.
- **Right to cross examine:** A taxpayer also has the right to cross-examine any third person who has made any adverse statement in a proceeding. In case where a cross-examination is not allowed, it would amount to a violation of the principle of natural justice envisaged under the Constitution of India.⁶
- The Hon'ble Supreme Court of India in **Paramvir Singh Saini vs. Baljit Singh & Others (Special Leave Petition (Criminal) NO.3543 of 2020)** has directed the Government to install CCTV cameras and recording equipment more specifically in the office of Department of Revenue Agency or any other agency that carries out interrogation and has the power to arrest. Based on this, a taxpayer can insist that the inquiry should be recorded by audio-video equipment and in case the officer does not agree for this then the taxpayer can approach High Court.

⁶ Andaman Timber Industries Vs. CCE, 2015 (324) ELT 641(S.C.).

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Parallel Proceeding under Section 65 of the CGST Act and Section 67 of the CGST Act

Section 65 of the CGST Act empowers tax officers to conduct GST Audits and lays down the procedure for conducting audit proceedings. Section 67 of the CGST Act authorizes tax officers to carry out inspection, search, and seizure. Such provisions have led to the initiation of proceedings like assessment, scrutiny, search, seizure, investigation, etc. which if conducted simultaneously, would lead to a multiplicity of notices and duplication of efforts by assesses in responding to authorities.

Various courts from time to time have given digressing opinions on the validity of parallel proceedings. The Hon'ble Calcutta High Court⁷ has held that since the audit proceedings under Section 65 of the CGST Act have already been commenced by Audit Commissionerate, the proceedings initiated by the Anti Evasion and Range Office for the very same period shall not be proceeded with any further. Even the Delhi High Court has held that while dealing with simultaneous investigations and directed the GST Commissioner to hand over the investigation to the DGGI.⁸ However, the Kerala High Court in the case of **M/s Suresh Kumar P.P. Vs DGGI**⁹ held that Audit is a routine procedure to be carried out by the Department under Section 65 of the CGST Act and is, therefore, independent of an investigation conducted under Section 67 of the CGST Act. This decision of was later upheld by the Apex Court whereby it was held that audit and investigation proceedings can be initiated simultaneously by different authorities.

Therefore, there still exists a lack of clarity under GST

laws on conducting parallel proceedings. This has resulted in confusion among taxpayers which calls for clarification by GST Authorities on the same at the earliest.

Payments under protest

Under GST law, there is no concept of payment of tax under protest however, it is a universally recognised legal principle under the 'doctrine of duress'. In case a payment is to be made 'under protest', it needs to be made under DRC-03 by mentioning 'investigation' as the cause for payment.



The Hon'ble Gujarat High Court in the case of **Bhumi Associates vs. Union of India [TS-53-HC(GUJ)-2021-GST]** directed the CBIC to issue instructions and guidelines for carrying out investigations while making it clear that no payment should be accepted during an ongoing investigation. However, the CBIC vide above-mentioned

⁷ [M/s. R.P. Buildcon Private Limited & Anr v. The Superintendent, CGST & CX \[TS-495-HC\(CAL\)-2022-GST\]](#).

⁸ [M/s Watermelon Management Services Private Limited Vs The Commissioner, Central Tax, GST Delhi \(East\) & Anr \[TS-328—HC-2020\(DEL\)-NT\]](#).

⁹ [\[TS-649-HC\(KER\)-2020-NT\]](#)

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Instructions issued directions emphasizing that no tax recovery should take place during a search, inspection, or investigation unless it is voluntary.

In [M/S. Vallabh Textiles v. Senior Intelligence Officer And Ors. \[TS-667-HC\(DEL\)-2022-GST\]](#) relying on the decision in *Bhumi Associates* (supra), it was held that payment of tax made during conduct of search cannot be considered as voluntary payment of tax. Further, it was stated that the Instructions are not in line with the guidelines set out in *Bhumi Associates* (supra) and therefore the CBIC

times, such summons can be issued against the assessee and for what purpose. Accordingly, as per [Instruction No. 3/2022-23 \(GST-Investigation\) dated 17th August 2022](#), guidelines were laid down on issuance of summons under Section 70 of the CGST Act, whereby it was stated that generally 3 summons at reasonable intervals should be given before filing a complaint with the Judicial Magistrate alleging that the accused has committed offence under Sections 172 and/or Section 174 of the Indian Penal Code, 1860.

Relevance of Statements

Under Section 70 of the CGST Act, where summons have been issued to a taxpayer, the proper officer may record their statement and such recording can be used as evidence against the taxpayer. For the purpose of recording of statement, a police officer would not be the proper officer under the GST law.¹¹

In case of an offence by a commercial organisation, statements may be taken not only of the authorized persons of the organization but also of the



was directed to bring the Instructions in line with guidelines prescribed in *Bhumi Associates* (supra). However, no such amendments have been made by the CBIC yet.

Summons

Under Section 70 of the CGST Act, 2017, a proper officer can issue summons to any person whose attendance he considers necessary either to give evidence or produce any document. The modes of service of summons are prescribed under Section 169 of the CGST Act. Such summons cannot be issued repeatedly to coerce or harass the taxpayer with the purpose to recover substantial amounts during investigation. Any statement made by such person can be recorded and can be used against them as evidence.

The Hon'ble Bombay High Court¹⁰ had directed GST authorities to issue norms as to how many

persons indirectly associated with the organization such as transporters, buyers etc. However, such statements should have been taken without any coercion, duress or pressure and if not, the only recourse available with the person who has given the statement is to retract it immediately or within reasonable time.

As per Section 136 of the CGST Act, a statement made by a person in connection with the summons issued under section 70 of CGST/ SGST Act during a course of an inquiry shall be considered relevant for the proving the truth of facts for prosecution of offence in case where the person who made the statement is dead, or cannot be found, obstructed by the adverse party or whose presence cannot be obtained without a delay which the court considers unreasonable, or the person who made the statement is examined as a witness before the court and the court considers it necessary to admit the statement in evidence in the interest of justice.

¹⁰ [Shalaka Infra-Tech India Pvt. Ltd. Vs The Union of India W.P. No. 1745 of 2022 \[TS-68-HC\(BOM\)-2022-GST\]](#).

¹¹ [P V Rammana Reddy \[TS-274-HC-2019-\(Teland AP\)-NT\]](#).

INSPECTION, SEARCH AND SEIZURE UNDER GST

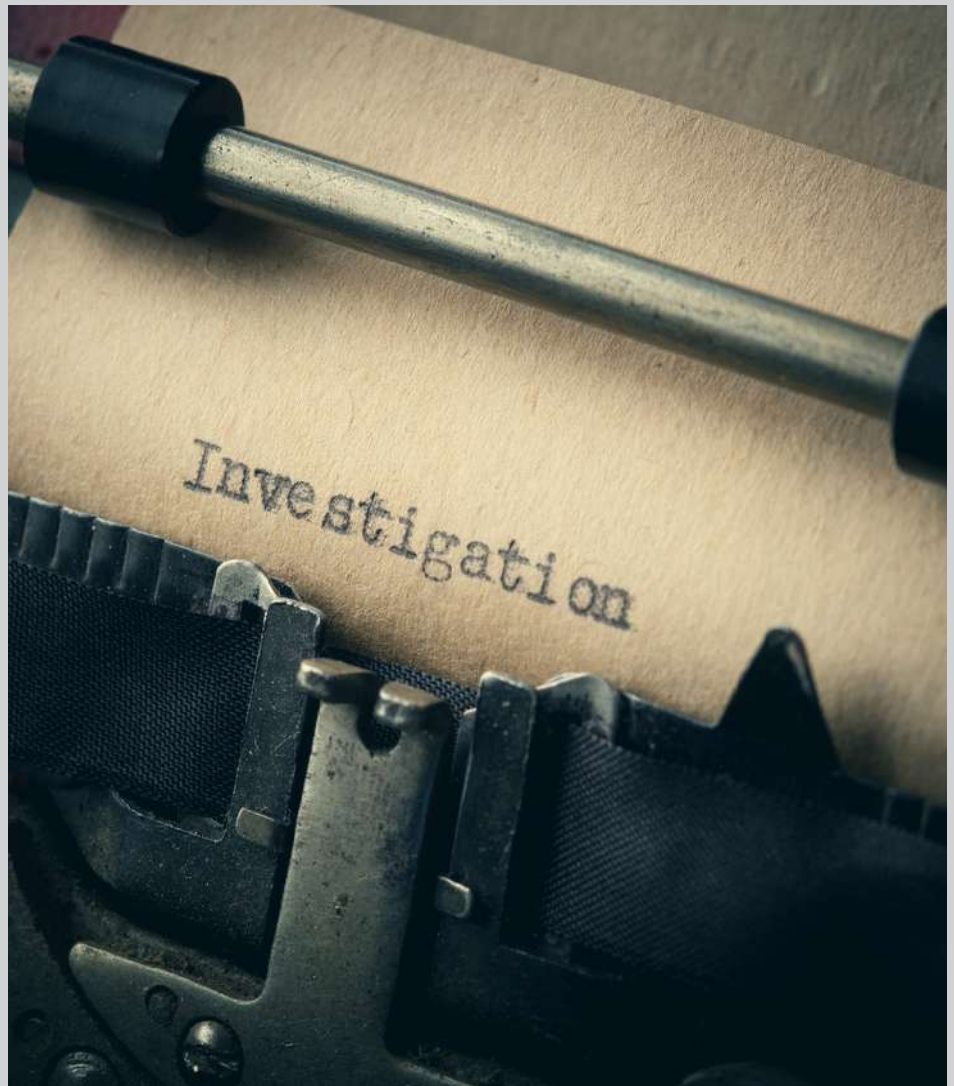
While recording a statement, the following aspects are to be kept in mind:

- For a statement to be treated 'relevant' and 'admissible' under the law mere recording of statement is not enough but it has to be fully conscious application of mind by the adjudicating authority that the statement is required to be admitted in the interest of justice.¹²
- Statements of various third parties cannot be made the sole basis for prosecution if there is no corroborative evidence to support such statement.¹³
- Retraction of confessional statement after an unreasonably long gap is not acceptable.¹⁴
- A recovery notice cannot be issued merely on the basis of statement given by an assessee, unless an assessment has been done for recovery of sum payable.¹⁵

Conclusion

In conclusion, inspection, search, and seizure are crucial components of the GST law, aimed at ensuring compliance and preventing tax evasion. These powers granted to GST officers play a pivotal role in maintaining the integrity of the tax system and protecting the revenue of the nation. However, it is imperative to recognize that such powers, though necessary, must be exercised judiciously and reasonably in furtherance of justice to taxpayers.

Therefore, a balance must be struck between enforcing compliance with the GST law and ensuring that the process remains fair, transparent, and respectful of taxpayer's rights. While authorities should conduct investigations while upholding the principles of justice, taxpayers should also be aware of their rights and responsibilities under the law. With the right balance of enforcement and protection of taxpayer rights, the GST regime can further strengthen its position as a fair and efficient tax system.



¹² *Hi-Tech Abrasives Ltd vs CCE* 2018 (362) ELT 961 (Chhattisgarh).

¹³ *Commissioner of C.Ex., Indore v. Prag Pentachem Pvt. Ltd.* [2018 (360) E.L.T. 1025 (TRI.-DEL)].

¹⁴ *ACTO, Anti-evasion-I, Alwar v. Khandelwal Food Products* [2018 (8) G.S.T.L. 112 (RAJ.).

¹⁵ *Rayan Traders v. Principal Chief Commissioner of GST Central Excise* [TS-628-HC(MAD)-2022-GST].



FROM THE BENCH - KEY JUDICIAL PRONOUNCEMENTS

The following chapter has been authored by Stella Joseph (Partner), Rushil Shah (Principal Associate) & Anushree Kothari (Associate) - ELP

Spotlight Case

1. Gameskraft Technologies Private Limited Vs DGGI [\[TS-181-HC\(KAR\)-2023-GST\]](#)

Facts:

- A show cause notice was issued to Gameskraft demanding Rs 20,989 crore in taxes for the period August 2017 to June 2022 for the services provided by Gameskraft. The Department alleged that the services provided by Gameskraft fall under the purview of betting and gambling and are subject to 28% GST in terms of Rule 31A of the Central Goods and Services Tax Rules, 2017 (“**CGST Rules**”).
- The petitioner filed a writ petition before the Hon’ble Karnataka High Court *inter alia* challenging the rate of GST imposed on the services provided by online gaming industry.
- Gameskraft along with All India Gaming Federation and E-Gaming Federation contended that offerings made by the platform of Gameskraft qualify as skill-based gaming activities, which attract only 18% GST on the platform fee.

Rulings:

- The meaning of terms “lottery, betting and gambling” as contemplated in Entry 6 of Schedule III of the Central Goods and Services Tax Act, 2017 (“**CGST Act**”) should be construed *nomen-juris* in the light of the catena of decisions of the Hon’ble Supreme Court, this Court and other High Courts *supra* which do not include games of skill. Entry 6 in Schedule III to the CGST Act taking actionable claims out of the purview of supply of goods or services would clearly apply to games of skill and only games of chance such as lottery, betting and gambling would be taxable.
- Taxation of games of skill is outside the scope of the term “supply” as explained in Section 7(2) of the CGST Act read with Schedule III of the Act.

- A game of chance played with stakes is gambling, a game of skill whether played with stakes or without stakes is not gambling.
- A game of mixed chance and skill is gambling, if it is substantially and predominantly a game of chance and not of skill, a game of mixed chance and skill is not gambling if it is substantially and predominantly a game of skill and not of chance.
- The expressions, ‘Betting’ and ‘Gambling’ having become *nomen-juris*, the same are applicable for the purpose of GST also and consequently, the



said words, ‘Betting’ and ‘Gambling’ contained in Entry 6 of Schedule III to the CGST Act are not applicable to Online/Electronic/Digital Rummy, whether played with stakes or without stakes as well as to any other Online/Electronic/Digital games which are also substantially and predominantly games of skill.

- The subject Online/Electronic/Digital Rummy game and other Online/Electronic/Digital games played on the petitioners’ platforms are not taxable as ‘Betting’ and ‘Gambling’ as contended by the respondents under the CGST Act and CGST Rules or under the impugned show cause notice issued by the respondents.

FROM THE BENCH - KEY JUDICIAL PRONOUNCEMENTS

- Consequently, the impugned show cause notice dated 23.09.2022 was held to be illegal, arbitrary and without jurisdiction or authority of law and deserves to be quashed.

ELP Comments

Much awaited relief was granted to the online gaming industry vide the said judgement. The high court provided a detailed analysis of various nuances of 'game of chance' and 'game of skill'. It may however be noted that GST Council at its 50th meeting has inter alia recommended to levy tax on online gaming on the entire bet value at 28%. Pursuant to the said meeting the Department has decided to challenge this judgment before the Hon'ble Supreme Court.

- The petitioner also contended that the show cause notice neither contained the material and information nor the statement containing details of Input Tax Credit ("ITC") transaction under consideration in the subject show cause notice.
- Reliance was placed on the decision of **Sidhi Vinayak Enterprises Vs. The State of Jharkhand & Ors.** where a similar show cause notice under the same provisions was held to be vague and cryptic.
- The Respondent alleged that this argument was not raised in the reply to the appellate proceedings.



Ruling:

- The Hon'ble Madhya Pradesh High Court observed that though the petitioner had not specifically raised the ground on vagueness of show cause notice before the appellate authority, mandatory provisions of Section 74 of CGST Act make it incumbent upon the revenue to ensure the show cause notice be speaking enough to enable the assessee to respond to the same.
- Further, the Statute itself prescribes for affording reasonable opportunity. Any deficiency in that regard vitiates the end result.

2. Durge Metals thr. Proprietor v. Appellate Authority and Joint Commissioner State Tax thr. Sagar Division (Madhya Pradesh) [\[TS-213-HC\(MP\)-2023-GST\]](#)

Facts:

- Writ petition filed challenging the show cause notice issued under Section 74(1) of CGST Act for being vague and thus not satisfying the requirements of the said provision read with Rule 142 of CGST Rules. The petitioner alleged that the show cause notice did not communicate relevant information and material thereby disabling the petitioner to respond to the same. Thus, the consequent proceedings and orders were bad in law.
- Reliance was placed on the **Sidhi Vinayak decision (supra)** wherein it was held that a vague show cause notice amounts to violation of principles of natural justice and thus liable to be quashed. Thus, the proceedings were held to be vitiated for being vague.
- The above judgment held that Section 75 of CGST Act prescribes for various stages or determination of wrongful utilization of ITC subject to affording of reasonable opportunity of being heard to the assessee. Where the Statute itself prescribes for affording reasonable opportunity, it is mandatory that the Revenue provide a reasonable opportunity for the same to the assessee.

FROM THE BENCH - KEY JUDICIAL PRONOUNCEMENTS

ELP Comments

The said judgment held that the show cause notice issued by the department cannot be vague and non-speaking.

3. Modern Insecticides Ltd and Anr. Vs. Commissioner, CGST & Anr. – [CWP No.8035 of 2021] / [TS(DB)-GST-HC(P&H)-2023-351]

Facts:

- The respondent conducted a search on the premises of the petitioner and on the second search, took the Chartered Accountant and Director of the petitioner to their office. Both the individuals were detained in the office till 1:00 am.
- They were released on a condition that a deposit of Rs. 2.15 crores be made. The same was deposited through a reversal of ITC from electronic credit ledger via DRC-03. Further under the pressure of respondents, the petitioner vide challan dated 07.03.2020, deposited Rs. 34.04 lakhs towards GST from Electronic Credit Ledger and Rs. 5.10 lakhs towards penalty from Electronic Cash Ledger.
- However, copy of Panchnama, copy of electronic goods and electronic gadgets, which were necessary to file returns, were not provided to the petitioner.
- The petition was filed in this regard for the refund of the amount of ₹ 2.54 crores that were deposited.

Ruling:

- Relying on the judgement of Vallabh Textile's case, the amount deposited during the search and cannot be taken to be voluntary.
- Since, no proceedings under Section 74(1) of the CGST Act was initiated till date, as per Rule 142(1A) of CGST Rules, the department

cannot even issue Form GST DRC-01A to ask the petitioner to make payment of tax, interest and penalty due.

- The very fact that in two years' time, no notice has been issued, the deposit of tax during search cannot be retained by the department till the adjudication of notice, which can take more time in future.
- The respondents were asked to return the amount of Rs. 2.54 crores to the petitioner(s) along with simple interest at the rate of 6 % per annum from the date of deposit till the payment is made.



ELP Comments

The said judgement reaffirms the position that the amount recovered illegally vide DRC-03 during search should be refunded to the taxpayer, in absence of any show cause notice issued. Due to the flurry of investigations being carried out by the Department, this judgment would come in handy where in the course of proceedings a taxpayer has involuntarily deposited tax and/or other amounts.

FROM THE BENCH - KEY JUDICIAL PRONOUNCEMENTS

4. M/s Samyak Metals Pvt. Ltd. vs. Union of India & Ors. [\[TS-245-HC\(P&H\)-2023-GST\]](#)

Facts

- The Petitioner is engaged in the business of manufacturing aluminium ingots. The premises of the Petitioner was searched by the tax authorities and in its course, the Petitioner was forced to deposit tax through DRC-03 on account of ITC which was alleged to have been wrongly availed.
- The Petitioner contended that amount has been recovered without issuing any adjudicating order or following the due process for issuance of show cause notice under Sections 73 or 74 of the CGST Act. Hence, the amount illegally recovered from the Petitioner was liable to be refunded.

Ruling:

- The Court observed that as per CBIC's *Instruction No. 01/2022-23* dated 25.05.2022 no recovery of tax should be made during search, inspection, or investigation unless it is voluntary payment. Further, if the payment of tax were voluntary, an acknowledgement accepting the payment in DRC-04 must be issued to the taxpayer as per Rule 142(2) of the CGST Rules.
- In the instant case, the amount was deposited under Section 74(5) of CGST Act, but neither has GST DRC-04 been issued nor any show cause notice under Section 74(1) of the CGST Act. Accordingly, the respondent was directed to refund the amount illegally recovered, along with interest.

ELP Comments

The said judgment provides that where a taxpayer is forced to pay tax in the course of search proceedings, such amount ought to be refunded where due process has not been followed.

5. Gargo Traders vs. Joint Commissioner, Commercial Taxes (State Tax) & Ors. [\[TS-239-HC\(CAL\)-2023-GST\]](#)

Facts:

- The petitioner claimed ITC on purchase of goods from a supplier which the tax authorities

sought to deny on the allegation that the supplier in question is a non-existing entity and the registration of the supplier stands cancelled with retrospective effect i.e., from the date prior to the transaction date with the petitioner.

- The petitioner contested its ITC eligibility on the basis that the transaction was genuine and duly supported by a valid tax invoice, debit note, e-way bill and bank account statements reflecting the payment.

Rulings

- Considering the documents relied by the petitioner, the court observed that, it cannot be said that there was any failure on the part of the petitioner in compliance with any statutory obligation before entering into the transactions. It was also observed that at the time of the transaction, the supplier was a registered taxable person as per Government records, and the amount was paid through bank and not in cash.
- Thus, the Court allowed the writ petition and held that ITC cannot be denied solely on the ground that there has been a retrospective cancellation of the registration of the supplier.

ELP Comments

The court held that the ITC in respect of a genuine transaction cannot be denied on the basis of retrospective cancellation of GST registration.





EXPERT SPEAKS

Mr. Saurabh Goel – Vice President Finance – First Advantage Group

Interview conducted by Varun Parmar (Associate Partner) - ELP

Q 1 : What relevance does GST hold post 6 years of its introduction? Has it now settled down to become just another tax law or does it continue to have other ramifications?

GST law is still evolving, which is evident from number of circular/ notification/ clarifications issued from time to time. Dependence on technology continues to be high which is good in a way. GST law would need some more time to become just another tax law, but definitely the issues faced during implementation have been addressed to a large extent.

The success of GST can be established by the fact the IRN has been mandated and accepted by assessee with a turnover of Rs. 5 crores and above.

I believe with the Digital Movement like, digitization of money (via PAY, Gpay, etc), GST reporting, ITC Credit transparency, etc. has helped ease of doing and reporting financial transaction. At the same time, it imposes responsibility on the assessee to be compliant and follow the law of the land.

Q 2 : With regard to your business, what are the major pain points under GST that still survive and how do you see getting them resolved?

By and large, we have aligned to all GST reporting requirements, and we are very comfortable. The one that worries me are “subjective tax assessments” and issues for which clarification from the department are still awaited. I believe continued prompt action by GST law makes, to bring clarity in the law will help the industry to

abide and follow the true intent with which GST was formulated.

Q 3 : Did transition into GST, in the parallel, evolve your business processes and add efficiency to the value chain and thus lead to larger non-tax benefits? Please elaborate.

Yes, given the nature of the business, in the previous Service tax regime a lot of information was manual, and assessments were a long and lengthy process. Now with digitization of



documents, both at the client's and vendors end, transaction reconciliation is taken care.

However as mentioned earlier “subjectivity during assessments” will continue. From a benefit perspective, dependency on individuals (for reporting and assessment) is reduced, provided seamless flow of data and the right control mechanism exists.

EXPERT SPEAKS

Q 4 : How much weightage do you give to tax and more so GST considerations while undertaking business decisions?

Previously Service tax credit was never considered and used, to form part of the cost base (the likelihood of refunds was low). In the last 3-4 years, GST filing and getting refunds is just part of normal business. The department has been very efficient in processing GST refund claims. However as mentioned risk during “subjectivity assessments” is still an unknow.

Other issues like blocking of tax credits, deferrals due to non-payment of taxes by vendors are the concern areas which are blocking working capital, which I think every customer needs to understand and evolve process to work with compliant vendors.

Q 5: Has your company effectively geared up from the perspective of audit inquiries under the Goods and Services Tax (“GST”) regime? And do you believe that technology shall play a pivot role in handling such inquiries?

Yes, we are fully geared up to deal with physical / site audits from the department. Infact, we have successfully been able to complete assessment until 2019, with minor interpretation differences and reasonable outcome.

The other evolving audit is GST notices issued basis backend information matching. This is another form of audit, while one can respond to GST notices issued but the time involved in understanding the observations (without physical connect) (without back up data), is a time-consuming process.

Q 6: Any other aspect in relation to GST on which you would like to provide your inputs?

GST has come a long way, however I believe with more and more digitisation of data, smart analytics, corroboration of information, etc., GST department will know about my transaction before I do.

Finally, if all goes as per the plan, I believe the benefits of GST implementation is yet to come.





LEGISLATION AT WORK - RECENT AMENDMENTS


The following chapter has been authored by Sahil Kothari (Associate Partner) & Pragya Koolwal (Senior Associate) - ELP



General Legislative updates from April 2023 to June 2023

Sr. No.	Particulars	Summary
1	<u>Instruction No. 01/2023-GST dated May 04, 2023</u>	<p>Guidelines have been issued for Special All-India Drive against fake registrations.</p> <p>A Special All-India Drive against fake GST registrations has been launched by all Central and State Tax administrations during the period May 16, 2023 to July 15, 2023.</p> <p><u>Identification of fraudulent GSTINs & Information Sharing Mechanism</u></p> <ul style="list-style-type: none"> Based on detailed data analytics and risk parameters, GSTN will identify such fraudulent GSTINs for State and Central Tax authorities. GSTN will share the details of such identified suspicious GSTINs, jurisdiction wise, with the concerned State/ Central Tax administration (through DGARM in case of Central Tax authorities) for initiating verification drive and conducting necessary action subsequently. A nodal officer will be appointed by each of the Zonal CGST and SGST Zone and the Nodal officer of the State/ CGST Zone will ensure that the data received from GSTN/ DGARM/ other tax administrations is made available to the concerned jurisdictional formation within two days positively. <p>Action will be taken by the field formations on identification of suspicious GSTINs.</p> <div style="background-color: #2c5e8c; color: white; padding: 5px; display: flex; align-items: center;"> ELP Comments </div> <p><i>Certain instances that prompt the authorities to investigate involve accumulated credits, no payment of GST in cash, physical verification of office has not been successful, non-submission of timely information during audits etc. While certain of these may not be controllable, remedial steps should be taken wherever there are evident lapses to avoid unnecessary investigation.</i></p>

LEGISLATION AT WORK - RECENT AMENDMENTS

2	<p><u>Advisory dated May 06, 2023</u></p>	<ul style="list-style-type: none"> Goods and Services Tax Network ('GSTN') had released an advisory on April 12, 2023 and April 13, 2023 which had inter alia stated that the taxpayers with an annual turnover of Rs.100 crore and more must report tax invoices and credit-debit notes to the IRP within 7 days from the date of issue of the invoice/CDN from May 01, 2023. The implementation of the aforesaid advisory has been deferred. The revised date of implementation shall be announced shortly. <div data-bbox="580 741 1465 1003" style="border: 1px solid black; padding: 5px;"> <div style="display: flex; align-items: center;">  <div style="background-color: #2c5e8c; color: white; padding: 2px 5px; font-weight: bold;">ELP Comments</div> </div> <p><i>A time period of 7 days is not practical from a service provider's point of view considering that in many instances, service providers need time to finalize reports based on which invoices can be raised. The Government should consider a minimum time-limit of 15 days.</i></p> </div>
3	<p><u>Notification No. 05/2023- Central Tax (Rate) dated May 09, 2023</u></p>	<ul style="list-style-type: none"> Central Board of Indirect Taxes & Customs ('CBIC') has extended the time limit till May 31, 2023 to opt for forward charge tax liability by Goods Transport Agencies ('GTAs') for FY 2023-24. Further, GTA who commences new business or crosses threshold for registration during any financial year, may exercise the option to pay GST on the services supplied by it during that financial year by making a declaration in Annexure V before the expiry of forty-five days from the date of applying for GST registration or one month from the date of obtaining registration, whichever is later.
4	<p><u>Notification No. 10/2023 – Central Tax dated May 10, 2023</u></p>	<p>CBIC has lowered the threshold limit for e-invoicing mandate to 'five crores' from 'ten crores', effective from August 01, 2023</p>
5	<p><u>Notification Nos. 11 to 13/2023- Central Tax dated May 24, 2023</u></p>	<p>CBIC has extended the due date for furnishing FORM GSTR1, GSTR3B and GSTR7 for April 2023 for the taxpayers having principal place of business in Manipur. Also, extended the due date for furnishing FORM GSTR-3B for the month of April 2023, for the taxpayers having registered place of business in Manipur till May 31, 2023, effective from May 20, 2023.</p>
6	<p><u>Instruction No. 02/2023-GST dated May 26, 2023</u></p>	<p>CBIC has introduced a 'Scrutiny Module' for online scrutiny of returns on the ACES-GST application. The instruction prescribes for the scrutiny schedule, process, timeline and reporting and monitoring of the process of scrutiny and its reports.</p>
7	<p><u>Instruction No. 03/2023 -GST dated June 14, 2023</u></p>	<p>The CBIC has issued guidelines to the tax officers for processing applications for registration. The detailed guidelines aim to strengthen the verification process by the tax officers.</p>
8	<p><u>Notification Nos. 14, 15, 16/2023 – Central Tax dated June 19, 2023</u></p>	<p>The CBIC for second time has extended the due dates for filing of GSTR-1, GSTR-3B and GSTR-7 for the months of Apr'23 and May'23 to June 30, 2023 for the taxpayers registered in Manipur.</p>
9	<p><u>Notification Nos. 17/2023 – Central Tax dated June 27, 2023</u></p>	<p>The due date for filing of GSTR-3B for the month of May'23 for the taxpayers registered in districts of Kutch, Jamnagar, Morbi, Patan and Banaskantha in Gujarat has been extended to June 30, 2023</p>



ALLIED LAWS

The following chapter has been authored by Niraj Hande (Principal Associate) & Milan Soni (Senior Associate) - ELP

Customs Tariff Notifications

1. [Notification No. 21/2023 – Customs dt. 01.04.2023 – Seeks to exempt materials imported into India against a valid Advance Authorisation issued by the Regional Authority](#)

Exemption from Customs Duties including additional duty, Integrated Tax, Compensation Cess, etc. for materials imported against a valid Advance Authorization issued by the Regional Authority in terms of paragraph 4.03 of the Foreign Trade Policy.

2. [Notification no. 22/2023-Customs dt. 01.04.2023 - Seeks to exempt materials required for the manufacture of the final goods when imported into India](#)

Exemption from Customs Duties including additional duty, Integrated Tax, Compensation Cess, etc. for imported materials to be used in manufacture of final goods against a valid Advance Authorisation issued by the Regional Authority in terms of paragraph 4.03 of the Foreign Trade Policy.

3. [Notification no. 23/2023-Customs dt. 01.04.2023 - Seeks to exempt materials imported into India, against a valid Advance Authorisation for Annual Requirement](#)

CBIC vide Notification No. 23/2023 – Customs dated 01.04.2023 exempted materials imported into India, against a valid Advance Authorisation for Annual Requirement with actual user condition issued by the Regional Authority from the whole of the duty of customs and from the whole of the additional duty, integrated tax, the goods and services tax compensation cess, safeguard duty, countervailing duty, and anti-dumping duty subject to conditions.

4. [Notification no. 24/2023-Customs dt. 01.04.2023 seeks to exempt material imported for export of prohibited goods under Foreign Trade Policy, 2023](#)

CBIC vide [Notification no. 24/2023-Customs dated 21.05.2022](#) exempts materials imported into India

against an Advance Authorisation for export of a prohibited item in terms of paragraph 4.05 of the Handbook of Procedures from the whole of the duty of customs and from the whole of the additional duty, integrated tax, the goods and services tax compensation cess, safeguard duty, countervailing duty, and anti-dumping duty subject to certain conditions.



5. [Notification no. 25/2023-Customs dt. 01.04.2023 seeks to exempt materials imported into India against a valid Duty-Free Import Authorisation](#)

CBIC vide [Notification no. 25/2023-Customs dated 01.04.2023](#) exempts materials imported into India against a valid Duty-Free Import Authorisation issued by the Regional Authority in terms of paragraphs 4.24 and 4.26 of the Foreign Trade Policy from the whole of the duty of customs.

6. [Notification no. 26/2023-Customs dt. 01.04.2023 seeks to exempt certain capital goods](#)

CBIC vide Notification No. 26/2023 – Customs dated 01.04.2023 exempted following goods imported into India from the whole of the duty of customs, from the whole of the additional duty and integrated tax.

ALLIED LAWS

- Capital goods for pre-production, production, and post-production
- Capital goods in Semi Knocked Down (SKD) / Completely Knocked Down (CKD) conditions to be assembled into capital goods by the importer
- Spare parts of goods specified at Serial Nos.1 and 2 as actually imported and required for maintenance of capital goods so imported, assembled, or manufactured
- Spare parts required for the existing plant and machinery of the importer

7. [Notification no. 27/2023-Customs dt. 01.04.2023 seeks to exempt fabrics \(including interlining\) imported into India against a valid Special Advance Authorisation](#)

CBIC vide [Notification no. 27/2023-Customs dated 01.04.2023](#) exempts fabrics (including interlining) imported into India against a valid Special Advance Authorisation issued by the Regional Authority in terms of paragraph 4.04A of the Foreign Trade Policy from the whole of the duty of customs from the whole of the duty of customs and from the whole of the additional duty, integrated tax, the goods and services tax compensation cess, safeguard duty, countervailing duty and anti-dumping duty subject to certain conditions.

8. [Notification no. 30/2023-Customs dt. 10.04.2023 seeks to exempt Rice in the husk \(paddy or rough\), of seed quality, from export duty](#)

CBIC vide [Notification no. 30/2023-Customs dated 10.04.2023](#) exempts rice in the husk (paddy or rough), of seed quality, from export duty of 20%.

9. [Notification no. 32/2023-Customs dt. 26.04.2023 seeks to amend Customs notifications to implement "Amnesty Scheme for one time settlement"](#)

CBIC vide [Notification no. 32/2023-Customs dated 26.04.2023](#) seeks to amend Customs notifications to implement "Amnesty Scheme for one time settlement of default in export obligation by Advance and EPCG authorization holders" notified by DGFT.

10. [Notification no. 39/2023-Customs dt. 14.06.2023 seeks to amend notifications 48/2021-Customs dated 13.10.2021 to reduce BCD on Refined Soya Bean Oil and Refined Sunflower oil](#)

CBIC vide [Notification no. 39/2023-Customs dated 14.06.2023](#) seeks to amend notifications 48/2021-Customs dated 13.10.2021 to reduce BCD on Refined Soya Bean Oil and Refined Sunflower oil to 12.5%.

11. [Notification no. 40/2023-Customs dt. 30.06.2023 seeks to levy import duty on Liquefied Petroleum gas \(LPG\)](#)

CBIC vide [Notification no. 40/2023-Customs dated 30.06.2023](#) amends the first schedule to the Customs Tariff Act to levy import duty on Liquefied Petroleum gas (LPG) at 15% effective from 01.07.2023.

12. [Notification no. 41/2023-Customs dt. 30.06.2023 seeks to prescribe Basic Customs duty on LPG](#)

CBIC vide [Notification no. 41/2023-Customs dated 30.06.2023](#) amends [Notification no. 50/2017-Customs dated 30.06.2017](#) to prescribe BCD rate for LPG.



ALLIED LAWS

[13. Notification no. 42/2023-Customs dt. 30.06.2023 seeks to prescribe AIDC rate for LPG](#)

CBIC vide Notification no. 43/2023-Customs dated 30.06.2023 amends Notification no. 11/2021-Customs dated 01.02.2021 to prescribe Agricultural Infrastructure Development Cess ('AIDC') Rate for LPG

Customs Non-Tariff Notifications

1. CBIC vide [Notification No. 24/2023-Customs \(N.T.\) dated 01.04.2023](#) notifies the manner of issue of duty credit for goods exported under the RoDTEP Scheme under Foreign Trade Policy, 2023.
2. CBIC vide [Notification No. 25/2023-Customs \(N.T.\) dated 01.04.2023](#) notifies the manner of issue of duty credit for goods exported under the RoSCTL Scheme under Foreign Trade Policy, 2023.
3. CBIC vide [Notification No. 27/2023-Customs \(N.T.\) dated 10.04.2023](#) amended Notification No. 12/97-Customs (N.T.) dated 02.04.1997 omitting serial number 6, relating to the State of Karnataka, in column (3), item (iii) and the corresponding entry in column (4).
4. CBIC vide [Notification No. 48/2023-Customs \(N.T.\) dated 30.06.2023](#) amends Notification No. 19/2022 Customs (NT) dated 30.03.2022 which deals with exemption of deposits from the provision of Section 51A of Customs Act, 1962 substituting the words '1st October 2023' in para 2, for the words, '1st July 2023'.
5. CBIC vide [Notification No. 49/2023-Customs \(N.T.\) dated 30.06.2023](#) amends Notification No. 18/2023 Customs (NT) dated 30.03.2022 substituting the words '30th September 2023' in para 2, for the words, '30th June 2023'.

Circulars

1. [Circular No. 01/2023-24 dt. 17.04.2023 - Procedure for applying for Amnesty scheme for one-time settlement of default in export obligation by Advance and EPCG authorization holders](#)

DGFT vide Circular No. 01/2023-24 dated 17.04.2023, with Reference to Public Notice No 02/2023 dated 01.04.2023, procedure for filing applications for Amnesty scheme for one-time

settlement of default in export obligation by Advance and EPCG authorization holders is specified.

2. [Circular No. 16/2023 -Cus dt. 07.06.2023 - Implementation of Hon'ble Supreme Court direction in judgment dated 28.04.2023 in matter of Civil Appeal No. 290 of 2023 relating to 'pre-import condition'](#)

CBIC vide Circular No. 16/2023 -Cus dt. 07.06.2023 implemented the Hon'ble Supreme Court's direction in judgment dated 28.04.2023 in matter of Civil Appeal No. 290 of 2023 relating to 'pre-import condition'. The implication of



the said Circular is that the relevant imports that do not meet the said pre-import condition requirements are to pay IGST and Compensation Cess. As directed by the Hon'ble Supreme Court, the Circular specified procedure which to be adopted at the port of import (POI).

3. [Circular No. 02/2023-24 dt. 23.06.2023 - Procedure for applying for Amnesty scheme for one-time settlement of default in export obligation by Advance and EPCG authorization holders in manual mode](#)

To address the issues faced by some exporters in filing applications in EOC module of DGFT website, DGFT vide Circular No. 02/2023-24 dated 23.06.2023 developed an online form in manual mode in standalone website which exporters can file in certain circumstances.

ALLIED LAWS

DGFT Notifications

1. [Notification No. 04/2023 dt. 01.05.2023 - Realignment of RoDTEP Schedule w.e.f 01.05.2023 consequent to amendments made under Finance Bill, 2023](#)

DGFT vide Notification No. 04/2023 dated 01.05.2023 notifies amendments in Appendix 4R w.e.f. 01.05.2023 consequent to enactment of Finance Bill, 2023 to align it with the First Schedule of the Customs Tariff Act.

2. [Notification No. 08/2023 dt. 29.05.2023 - Syncing of ITC \(HS\), 2022- Schedule-1 \(Import Policy\) with Finance Act 2023 \(No.8 of 2023\) dated 31.03.2023 and Foreign Trade Policy, 2023](#)

DGFT vide Notification No. 08/2023 dated 29.05.2023 amends ITC (HS), 2022- Schedule-1 (Import Policy) in sync with the Finance Act, 2023, and Foreign Trade Policy, 2023.

3. [Notification No. 14/2023 dt. 23.06.2023 - Amendments in Category 5B of Appendix 3 \(SCOMET Items\) to Schedule-2 of ITC \(HS\) Classification of Export and Import items](#)

DGFT vide Notification No. 14/2023 dated 23.06.2023 amends Category 5B of the Appendix 3 (SCOMET List) of Schedule 2 of the ITC (HS) classification of Import and export Items which

controlled the export of all kinds of drones / UAVs to simplify and liberalize the SCOMET policy for export of drones / UAVs. Effective this Notification the export of Drones / UAVs not covered under the specified categories in the Notification and capable of range equal to or less than 25 km and delivering a payload of not more than 25 kgs and delivering a payload of not more than 25 kgs (excluding the software and technology of these items), will be subjected to General Authorisation for export of drones (GAED). This will exempt drone manufacturers / exporters with GAED Authorisation from applying for SCOMET license for every similar export shipment, within the validity period subject to post reporting and other documentary requirements. The procedure of GAED shall be notified separately.

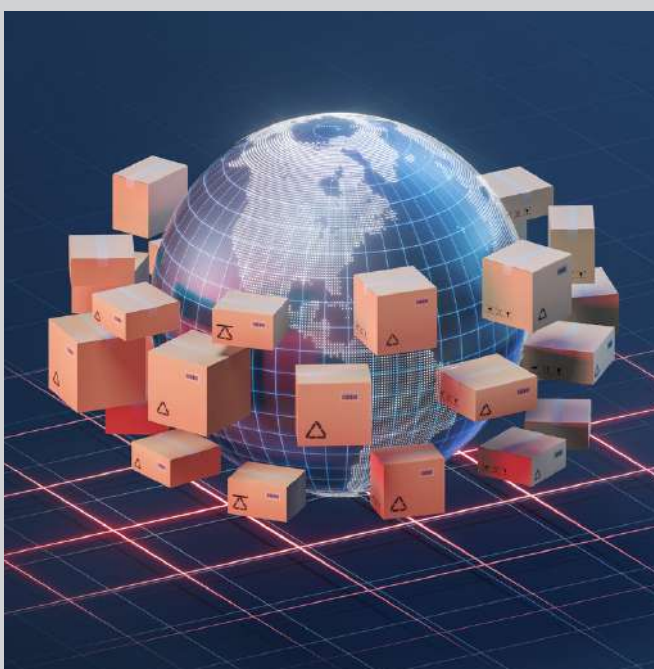
DGFT Public Notices

1. [Public Notice No. 01/2023 dated 01.04.2023 - notified Handbook of Procedures 2023.](#)
2. [Amnesty scheme for one time settlement of default in export obligation by Advance and EPCG authorization holders](#)
 - [Public Notice No. 02/2023 dt. 01.04.2023 – Notification of Amnesty Scheme providing facility for grant of EODC / regularisation of cases of EO default of Advance Authorisation and EPCG authorization under “Amnesty scheme for one time settlement of default in export obligation by Advance and EPCG authorization holders”.](#)
 - [Public Notice No. 07/2023 dt. 18.04.2023 – Amendment of Amnesty Scheme clarifying duty on which interest is payable.](#)
 - [Public Notice No. 20/2023 dt. 30.06.2023 – Amendment of Amnesty Scheme extending the last date to apply under the Amnesty Scheme till 31.12.2023 and the last date of payment of Customs Duty till 31.03.2024.](#)

DGFT Trade Notices

1. [Trade Notice No. 01/2023-24 dt. 06.04.2023 - Issuance of EODC for AA and EPCG process from DGFT portal](#)

In continuation to online functionality to AA / EPCG authorization holders to update closure / redemption status on DGFT website of manually



ALLIED LAWS

issued EODC in case incorrectly reflected on the DGFT portal, process has been specified by DGFT in the said Trade Notice.

2. [Trade Notice No. 07/2023-24 dt. 08.06.2023 – Implementation of Hon'ble Supreme Court direction in judgment dated 28.04.2023 in matter of Civil Appeal No. 290 of 2023 relating to 'pre-import condition'](#)

DGFT vide Trade Notice No. 07/2023-24 dated 08.06.2023 in compliance with Circular No.16/2023 dated 7th June 2023 informed that all the imports made under Advance Authorization Scheme on or after 13.10.2017 & upto and including 09.01.2019 which could not meet the pre-import condition may be regularized by

making payments as prescribed in the Customs Circular.

3. [Trade Notice No. 11/2023-24 dt. 23.06.2023 – Process for EOP extension and issuance of EODC for Annual requirement](#)

DGFT vide Trade Notice No. 11/2023-24 dt. 23.06.2023 informs in continuation to Trade Notice No. 01/2023-24 dt. 06.04.2023 - Issuance of EODC for AA and EPCG process from DGFT portal that for AA cases, physical files are required to be submitted for redemption to the concerned DGFT Regional Authority. On approval, the Authorisation holders may submit Closure / EODC status update request online to RA for updation.





LEGAL CLASSICS

The following chapter has been authored by **Jitendra Motwani (Partner)**, **Rinke Jassuja (Associate Partner)** & **Anmolee Deole (Associate)** - ELP

Tata Motors Ltd. V. The Deputy Commissioner of Commercial Taxes (SPL) And Anr. [TS-227-SC-2023-VAT]

Introduction

The taxability of spare parts supplied under warranty contracts has been a burning issue under litigation which the industry has been facing for a long time. With the judgment of the Hon'ble Supreme Court in the case of **Mohd. Ekram Khan & Sons V. Commissioner of Trade Tax, UP - (2004) 6 SCC 183** while it was believed that the issue will be put to rest, various High Courts passed contrary judgments following or distinguishing the said judgment. Accordingly, appeals came up before Apex Court against the said orders and the matter was referred to a three-judge bench of the Hon'ble Supreme Court for revalidating the correctness of ruling in the case of Mohd. Ekram Khan (supra).

The Hon'ble Supreme Court in the case of **Tata Motors Ltd. V. The Deputy Commissioner of Commercial Taxes (SPL) And Anr [TS-227-SC-2023-VAT]** upheld its earlier decision in the case of Mohd. Ekram Khan (supra) wherein it was held that a credit note issued by a manufacturer to a dealer, to compensate the latter for replacement of parts supplied under warranty, on its behalf, is a valuable consideration (received by the dealer) and so, leviable to sales tax. However, the Hon'ble Court clarified that where the dealer has received a spare part from the manufacturer to replace a defective part, under a warranty collateral to the sale, such transactions will not be exigible to Sales Tax.

The decision has caused an uproar in the industry not only for the pending litigation on the said issue under the erstwhile laws but will also have a bearing in the GST regime. Issuance of credit notes for a warranty transaction is common even under the GST regime and the ratio of the said decision may equally be applied by the Revenue in the GST regime as well. The said decision has opened a Pandora's box for all such cases

wherein the dealers are being compensated by way of issuance of credit notes.

Decision in Tata Motors

Over 34 cases were pending before the Hon'ble Supreme Court on the said issue, however, the facts of one of the parties viz. M/s, Marudhara Motors was taken up for discussion and analysis by the Hon'ble Court.

M/s Marudhara Motors ('dealer') is a dealer of Tata Motors ('manufacturer'). Apart from the usual business of purchase & sale of automobiles and spare parts, the dealer also provided free of cost replacement of defective parts to the customers, in pursuance of a separate warranty arrangement provided by the manufacturer. In cases of warranty claims, the dealer replaced defective parts with the new ones, available in stock and returned the defective parts to the manufacturer. Towards this activity, the manufacturer issued credit notes to the dealer for an amount equivalent to cost of spare parts (replacements parts that were defective). This practice of using spare parts from its own stock was followed so as to avoid delay in delivery and for sake of convenience of the customer.

The moot issue before the Hon'ble Supreme Court was whether a credit note issued by a manufacturer to a dealer of automobiles in consideration of replacement of a defective part in the automobile



LEGAL CLASSICS

sold according to a warranty agreement being collateral to the sale of the automobile is exigible to sales tax under the sales tax enactments of the respective states.

The Hon'ble court while deciding the issue looked at the following three scenarios for a dealer that can emerge in case of a warranty service arrangement: (i) Dealer may request the manufacturer to provide the spare parts for fulfilling the said replacement request (here the dealer receives the spare parts directly from the manufacturer and uses it as a replacement of defective parts, merely acting as an agent. (ii) Dealer may purchase the spare parts from open market by paying taxes and replaces the defective parts with these bought outs (iii) Dealer may replace the defective parts from his own stock of spare parts.

The Hon'ble Court held that in situations (ii) & (iii) above, the dealer has invested in the stock and supplies it, on behalf of the manufacturer, and in turn is compensated by the manufacturer, in form of credit note. Merely because the dealer is acting as an intermediary on behalf of the manufacturer,



pursuant to a warranty and receives recompense in the form of a credit note, the transaction cannot escape liability of tax. If the manufacturer purchased the spare parts from the open market, for the purpose of replacement of the defective parts, the manufacturer would have paid the applicable sales taxes. Similarly, if the spare parts are provided by the dealer from his own stock, which are later reimbursed in the form of credit notes, the transaction is as good as sale of spare

parts to the manufacturer. The situation is dissimilar from a case where the dealer has received a spare part from the manufacturer to replace a defective part, under a warranty collateral to the sale. Such transactions will not be exigible to Sales Tax. Further, if the dealer receives consideration for the purpose of replacement services rendered by it, under the dealership agreement, such consideration is not sale transaction and so not liable for Sales Tax.

Implications under the GST Law

Under GST, it a common practice for the manufacturers to issue commercial credit notes to dealers on account of various situations such as the one dealt by the Hon'ble Supreme Court, compensation for expired stocks, year-end discounts to cover the losses of dealers, turnover discounts, etc. The industry's general approach in such situations is to consider such payments as pure reimbursement rather than a consideration for any supply and thus, rendering it inexigible to GST.

The intent of the manufacturers to issue commercial credit notes to the dealers in such cases is to avoid any unwarranted questioning on taxability of such transactions. Although issuing commercial credit notes instead of GST credit notes is considered as safer approach from GST perspective, the true essence of the transactions for which these credit notes are issued may be looked into by the Revenue.

Also, for transactions involving barter, though this decision may definitely be of great relief for the assesseees in the sales tax regime, it does seem to benefit the taxpayers in the GST regime, wherein barter has been specifically included under the definition of supply and is thus, leviable to GST.

Considering the aforesaid, the decision might have profound implications for the taxpayers in the GST regime. In a welcome move, the GST Council was proactive in picking up the said issue in its 50th meeting held on 11th July 2023 and has inter alia recommended for issuance of a circular providing clarification on cases involving warranty replacement of parts and repair services. It would be interesting to see what view is taken by the Board on the taxability of the said transactions, whether it would help clear the air around this on-going ambiguity or lead to further prolonged litigation for the taxpayers.



QUOTABLE QUOTES

Compiled by: **Virangana Wadhawan (Principal Associate) & Raghav Khandelwal (Associate) - ELP**

- A group of top online gaming firms has sent a representation through the FICCI Gaming Committee to the Central Board of Indirect Taxes & Customs (CBIC), urging the body not to hike the GST rate for the sector to 28% from 18% as suggested by ministers' panel.

"This (recommendation) is a major shift from the current tax regime of charging GST on the platform fee/ gross gaming revenue (GGR) at the rate of 18%, if the changes recommended by the GoM (group of ministers) are given effect, then the online gaming industry will be adversely impacted," - **A group of top online gaming firms through the FICCI Gaming Committee to the Central Board of Indirect Taxes & Customs (CBIC)**

- "Ever since 2017, growth of the auto parts manufacturing industry of Ludhiana has come

to a standstill, for which a major reason is the high rate of 28% GST on a lot of our products. Due to this, a large amount of our money gets stuck with GST departments in the form of Input Tax Credit (ITC). He further added that added that they have sent a memorandum to the state finance minister Harpal Singh Cheema, urging him to raise the matter with the centre and fix a common slab of 12% for the auto parts industry."

- **Gurpargat Singh Kahlon, President, Auto Parts Manufacturers Association**

- "The real estate industry has seen disruption during the Covid-19 pandemic in the last two years with increasing costs, falling revenues and other problems such as labour shortage. Hence, the finance minister should reverse the decision on GST payment of 5% in order to give a fillip to redevelopment projects." - **Amit Jain, Chairman and Managing Director, ARKADE Group**



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About Taxsutra

Launched in 2011, India based B2B portal Taxsutra.com, <http://www.taxsutra.com> is a trusted online resource for corporate tax directors, policymakers and practitioners. Taxsutra's instant news alerts & incisive analysis on both domestic and international tax, coupled with unique features like tax ring, Taxsutra Insight, Litigation Tracker, Taxsutra TV and blogs make it a "must-have" for every tax professional.

Given the increasing focus of tax administrations on Transfer Pricing, <https://www.taxsutra.com/tp> was launched in October 2011, as India's first exclusive portal on TP. Apart from a comprehensive database of over 6000 Indian TP cases, the portal offers several new editorial features including Case Tracker, International Rulings, APA Space, TP Talk, Expert Corner, TP Personalities and 'Around the World.'

Taxsutra's thought leadership and continuous engagement with tax professionals has been on display through several unique initiatives/microsites/ special coverage on burning tax issues, controversies and important developments, be it APA, the \$2bn Vodafone tax case, BEPS, our roadblocked coverage of Union Budget and even some light tax banter with our microsite on Soccer World Cup & tax!

Taxsutra has also championed various niche events and workshops.

Taxsutra also runs popular websites on GST (www.taxsutra.com/gst), launched in 2017 with a highly interactive Mobile App as well and portals on indirect taxes (www.idt.taxsutra.com), corporate law (www.lawstreetindia.com) and accounting (www.greentick.taxsutra.com).

About ELP

Since its inception 18 years ago, Economic Laws Practice (ELP) has continually evolved to optimally respond to changing market dynamics and emerging client requirements. The firm today boasts a strength of 54 partners and more than 200 professionals (who include chartered accountants, cost accountants, economists and company secretaries other than lawyers), across six (6) offices in the country and has been recognised as one of the fastest growing law firms in the country.

Today, ELP has an extensive client base across multiple industry sectors with clients from Fortune 500 Companies, Public Sector Undertakings, Multi Nationals, Indian Corporate power houses and start-ups. We work closely with leading global law firms in the UK, USA, Middle East and Asia Pacific region, giving us the ability to provide real-time support on cross-border concerns.

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