

Recent Rulings by Courts and Authorities

High Courts

No illegal exercise of power in issuance of notifications extending the timelines for passing of assessment orders for recovery of tax

In the case of ***Graziano Trasmissioni vs. Goods And Services Tax & 5 Ors***¹, the Allahabad HC² dismissed a batch of petitions challenging the validity of the Notifications³ wherein the statutory timelines for issuance of assessment orders and issuance of show cause notices were extended. The petitioners contested the Notifications primarily on the grounds that the provisions of Section 168A of the CGST Act⁴ were wrongly invoked and there was no prevailing *force majeure* event occasioning the extension of time limit as stipulated by the Notifications. The Allahabad HC dismissed the petitions and made the following observations: the powers under Section 168A of the CGST Act (which enables the Central Government to extend statutory timelines due to *force majeure*) is a legislative power and not an administrative power, thereby the extension of limitation prescribed was a legislative function.

Upon examining the minutes of the 47th and 49th GST Council meetings and the Supreme Court's directions, wherein the intervening period, from March 2020 to February 2022, which was affected by COVID19, was excluded for computing limitation period⁵, the legislative function was exercised by the delegatee, i.e., the Central/State Governments. Accordingly, there existed circumstances for exercise of the power of conditional legislation. Further, the Allahabad HC also noted that the principal legislature has laid down strict conditions for exercise of special powers to extend the limitation.

Regarding the interpretation of a *force majeure* event and whether its active occurrence triggered the provisions of Section 168A of the CGST Act, it was observed that such an exercise was not within the ambit of judicial review/query.

Certain provisions of CGST Act held constitutionally valid

In the case of ***M. Trade Links vs. Union of India***⁶, the petitioner filed a writ petition before the Kerala HC⁷ challenging the constitutional validity of Sections 16(2)(c) and 16(4) of the CGST Act. Section 16(2) of the CGST Act prescribes conditions to avail ITC⁸. As per Section 16(2)(c), ITC is not available if the tax charged in respect of a supply has not

¹ 2024 (6) TMI 233 – Allahabad High Court

² Allahabad High Court

³ Notification No. 09/2023 - Central Tax dated March 31, 2023, and the corresponding State Notification No. 515/2023 dated April 24, 2023

⁴ Central Goods and Services Tax Act, 2017

⁵ Suo Moto Writ Petition (C) No. 3 of 2020, in Re: Cognizance for Extension of Limitation

⁶ 2024 (6) TMI 288 – Kerala High Court

⁷ Kerala High Court

⁸ Input Tax Credit

been paid to the government by the supplier. This provision places the onus on the recipient to ensure that the supplier has complied with their tax obligations. Expecting recipients to ensure that suppliers have paid the tax is unreasonable and imposes an undue burden, violating the principles of natural justice.

Further, Section 16(4) prescribes time limit for claiming ITC. As per unamended Section 16(4) (i.e., prior to October 01, 2022), the last date for claiming credit on invoices pertaining to a FY⁹ was the due date for filing return for the month of September following the end of the said FY or filing of the relevant annual return, whichever is earlier. Section 16(4) *vide* the Finance Act 2022, was amended to extend the time limit to November 30th of the following FY, or filing of the relevant annual return, whichever is earlier. It was contended that timeframe to claim ITC was arbitrary and burdensome, particularly for businesses that might face delays due to genuine reasons.

Based on the above facts, the Kerala HC observed as follows:

1. ITC is a statutory benefit for a taxpayer, contingent upon meeting specific conditions and restrictions outlined in Sections 16(2) to 16(4) and Section 43 read with relevant CGST Rules¹⁰. Various courts have determined that nature of a claim for credit is a concession or entitlement, which is not an absolute right and is subject to the conditions and restrictions as per the scheme of the legislation;
2. when ITC is not an absolute right but is an entitlement subject to the conditions and restrictions prescribed under the specified laws, the conditions, restrictions and time limit specified by law, forms the fulcrum on which the grant of ITC and tax collection for each FY are balanced. Hence, the conditions and restrictions under Section 16 are not excessively burdensome or unconstitutional but are necessary for the functioning of the GST framework;
3. Section 16(2)(c) of the CGST Act is aimed to ensure that there is no loss of tax in inter-state transactions, where the originating State Government will have to transfer the amount, it never received in the tax period in a FY to the destination States, causing loss to the tune of several crores in each tax period. Thus, the Kerala HC held that Section 16(2)(c) of the CGST Act is constitutionally valid;
4. the time limit prescribed under Section 16(4) of the CGST Act is not a new phenomenon, as it was prevalent in the earlier regime also and is as such a reasonable mechanism for availing ITC;
5. Section 16(2) restricts the eligibility under Section 16(1) of the CGST Act for entitlement to claim ITC. Whereas Section 16(4) is the restriction on the time for availing ITC. These provisions cannot be read to restrict other restrictive provisions, implying that when one provision is complied with, it cannot be said that the other provision falls redundant. Both Sections 16(2) and 16(4) are 2 (two) different restricting provisions which have no inconsistency and can exist mutually. Accordingly, it is not accepted to contend that one of the restricting provisions overrides other restrictions; and
6. on a separate note, the Kerala HC observed that the amendment in Section 16(4) for extending the time limit from September 30th to November 30th was aimed to ease taxpayer difficulties. Accordingly, it was also held that such amendment being procedural in nature, must be given retrospective effect with effect from July 1, 2017.

Mere bifurcation of consideration cannot change a slump sale transaction to an itemised sale

In the case of *Piramal Enterprises Limited vs. The State of Maharashtra*¹¹, the petitioner entered into a BTA¹² with Abbott Healthcare Private Limited to sell its 'Base Domestic Formulations' business on a 'going concern' basis. The BTA was subsequently amended to include other tangible and intangible assets such as trade name, logo, goodwill to ensure genuineness of the products sold even after the transfer. As per Section 25 of the MVAT Act¹³ transaction

⁹ Financial Year

¹⁰ Central Goods and Services Tax Rules, 2017

¹¹ 2024 (6) TMI 489 – Bombay High Court

¹² Business Transfer Agreement

¹³ Maharashtra Value Added Tax Act, 2002

effected under a BTA as a going concern, is not subject to VAT¹⁴, which was also confirmed by the assessment order for FY 2010-11.

An SCN¹⁵ was issued to review the assessment order for levy of VAT, premised on the fact that the itemised breakdown of consideration for tangible, intangible, movable and immovable property in the BTA for stamp duty purposes was erroneously treated as a transfer of business on a 'slump sale' basis. Consequently, the demand was confirmed on the ground that while there was a transfer of business, there was also a transfer of 'right to use' of IPR¹⁶ namely trade name, logo, goodwill etc. for the fixed period under the BTA, which falls under the ambit of 'sale', thereby being taxable under the MVAT Act.

Aggrieved by the above, the petitioner approached the Bombay HC¹⁷ under a writ petition. The Bombay HC observed the following:

1. the commercial scheme of the BTA along with lump sum consideration categorically indicated that the underlying intention was to transfer the business as going concern on a slump sale basis;
2. the values of intangible assets were provided merely for the purpose of determining stamp duty which is also recognised as per the provisions of the Income Tax Act, 1961;
3. as per the provisions of MVAT Act, the term 'business' would not qualify as 'goods', and accordingly, sale of business cannot be categorised as sale of goods;
4. it is not permissible for the authorities to dissect the BTA when the intention of the parties is clear on reading the entire agreement. It was highlighted that the commercial efficacy as well as the underlying intention would not change merely by assigning values to tangible and intangible assets; and
5. the approach of the authority is against the established principles of natural justice, as the SCN, on one hand recognised the sale under BTA as 'slump sale' and on the other hand, held that the itemised sale amounts to 'sale of goods' liable to VAT, thereby vitiating the order.

Accordingly, the Bombay HC held that the order was issued beyond jurisdiction and not sustainable.

Notifications, Circulars and Instructions

Based on the recommendations made during 53rd GST Council meeting held on June 22, 2024, CBIC has clarified the following on some of the key aspects:

Circular No. and subject	Clarification
207/1/2024-GST Monetary limits for filing appeal/application/SLP¹⁸ by Central Tax officers	<ol style="list-style-type: none"> 1. Section 120(1) of the CGST Act empowers CBIC¹⁹ to fix monetary limits for filing of appeal by tax authorities. In exercise of the same and with an aim to reduce litigation, the following monetary limits have been prescribed for filing of appeal/application/SLP by the Central Tax officers subject to certain exclusions: <ol style="list-style-type: none"> a) Goods and Services Tax Appellate Tribunal (INR 20,00,000 (Indian Rupees twenty lakh)) b) High Court (INR 1,00,00,000 (Indian Rupees one crore)) c) Supreme Court (INR 2,00,00,000 (Indian Rupees two crore))

¹⁴ Value Added Tax

¹⁵ Show cause Notice

¹⁶ Intellectual Property Rights

¹⁷ Bombay High Court/

¹⁸ Special Leave Petition

¹⁹ Central Board of Indirect Taxes and Customs

Circular No. and subject	Clarification
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2. Principles prescribed for determining whether a case falls within monetary limit:
 - a) only the aggregate amount of tax in dispute to be considered to calculate the above monetary limit;
 - b) where dispute pertains to imposition of interest/penalty/late fees only, such amount of interest/penalty/late fees to be considered for calculating the monetary limit;
 - c) in disputes involving refund, the amount of refund to be considered; and
 - d) in a composite order disposing more than one appeal/demand notice, monetary limit to be applicable on total amount of tax/interest/penalty/late fees involved and not the amount involved in individual matter.
3. No monetary limit to apply where the dispute pertains to issues around interpretation, valuation, classification, refunds, place of supply, any other recurring issues.
4. Filing of appeal to be decided on merits of the case and not merely because the disputed tax amount exceeds the monetary limit.
5. Where no appeal is filed, such cases will not have any precedent value.

209/3/2024-GST

Place of supply for goods supplied to unregistered persons where billing address is different from delivery address

1. Section 10(1)(ca) of the IGST Act²⁰ provides that in case of supply of goods made to an unregistered person, place of supply will be the address of the said person recorded in the invoice.
2. Ambiguity prevailed in determination of place of supply under the said Section in the context of supplies made through e-commerce platforms where the billing address is different from the delivery address.
3. It has thus been clarified that for supply of goods made to unregistered persons where the State of billing address is different from the State of delivery (particularly being supplied through e-commerce platforms), place of supply will be the State of delivery.
4. In such cases, the supplier may record the delivery address as the address of the recipient on the invoice for determining place of supply.

210/4/2024-GST

Open market value for supply of services by a foreign affiliate to related domestic entity

1. For determining value of supply of services by a foreign affiliate entity to a related domestic entity located in India, CBIC clarified that Circular No. 199/11/2023-GST dated July 17, 2023, will be applicable.
2. Accordingly, as prescribed under second proviso to Rule 28(1) of CGST Rules²¹, where full ITC is available to the related domestic entity, value of supply of services declared in the invoice issued by the said related domestic entity may be deemed as open market value.
3. Where invoice is not issued by the related domestic entity, the value of such services may be deemed to be declared as Nil and may be deemed as open market value.

211/5/2024-GST

Time limit for availment of ITC u/s. 16(4) of CGST Act²² for

1. Discrepancies prevailed with respect to time limit to avail ITC under Section 16(4) of the CGST Act in respect of tax paid under RCM on the

²⁰ The Integrated Goods and Services Tax Act, 2017

²¹ Central Goods and Services Tax Rules, 2017

²² Central Goods and Services Tax Act, 2017

Circular No. and subject	Clarification
<p><i>supplies subject to GST under RCM²³</i></p>	<p>premise that the relevant FY for determination of time limit would be the FY in the year in which services are received.</p> <ol style="list-style-type: none"> 2. CBIC has clarified in this regard that the time limit to avail ITC for supplies received from unregistered supplier, where tax is to be paid under RCM, the relevant FY for calculation of time limit for availment of ITC under Section 16(4) of the CGST Act will be the FY in which the self-invoice has been issued by the recipient of supply under Section 31(3)(f) of CGST Act. 3. The above will be subject to payment of tax along with applicable interest on the said supply by the recipient and fulfilment of other prescribed conditions. 4. However, where self-invoice is issued and tax paid after the time of supply of said supply, the recipient may be prone to penal action.
<p>212/6/2024-GST</p> <p><i>Mechanism to ensure reversal of ITC²⁴ by recipient for discounts offered through credit notes</i></p>	<ol style="list-style-type: none"> 1. Section 15(3)(b)(ii) of the CGST Act provides that reduction in value of supply where credit notes have been issued for a post-sale discount will be allowed only if the concerned recipient has reversed proportionate ITC. However, no mechanism is operational to enable the supplier to establish that the concerned recipients have reversed ITC. 2. Accordingly, it has been clarified that till the time a mechanism is provided to enable supplier/tax officer to verify whether the recipient has reversed ITC, supplier may procure the following: <ol style="list-style-type: none"> a) Where the amount of tax involved in the discount given to a recipient during a FY does not exceed INR 5,00,000 (Indian Rupees five lakh): Undertaking/certificate from recipient that ITC confirming the amount of ITC reversed for credit notes along with details of credit note number, original invoice number, the amount of ITC reversed for credit notes along with details of Form GST DRC-03/return/other relevant document; and b) Where amount of tax involved in the discount given to a recipient during a FY exceeds INR 5,00,000 (Indian Rupees five lakh): Certificate from the recipient, issued by a CA/CMA²⁵ certifying that the recipient has reversed ITC for the credit notes. The said certificate must contain UDIN²⁶ along with other details mentioned at (a) above.
<p>213/07/2024-GST</p> <p><i>Taxability of ESOP²⁷/ESPP²⁸/RSU²⁹ provided by a company to its employees through its overseas holding company</i></p>	<ol style="list-style-type: none"> 1. Generally, companies provide their employees with an option of allotment of securities/shares of their foreign holding companies in the form of ESOP/ESPP/RSU as part of their employment compensation package. 2. Where the employee exercises such an option, the foreign holding company directly allots securities/shares to the employees of the domestic subsidiary company, for which the domestic subsidiary makes reimbursement to the foreign holding company.

²³ Reverse charge mechanism

²⁴ Input tax credit

²⁵ Chartered Accountant/ Certified Management Accountant

²⁶ Unique Document Identification Number

²⁷ Employee Stock Option Plan, i.e., option granted to employee to avail stock/ securities of foreign holding company.

²⁸ Employee Stock Purchase Plan, i.e., option granted to employee to avail stock/ securities of foreign holding company.

²⁹ Restricted Stock Unit, i.e., stock/ securities issued to employees in the form of awards/ rewards contingent upon the employee meeting specific performance standards.

Circular No. and subject	Clarification
	<ol style="list-style-type: none"> 3. Clarity on whether this transaction between the foreign holding company and domestic subsidiary can be treated as an import of financial services has been provided. 4. It is clarified that ESOP/ESPP/RSU are in the nature of securities/shares, which are neither 'goods' nor 'services' under GST laws, and hence, outside the purview of GST. 5. ESOP/ESPP/RSU are provided to employees as remuneration in the course of employment to motivate them to perform better and retain them. The activity is neither supply of 'goods' nor 'services' in terms of Entry 1 of Schedule III of the CGST Act. 6. Domestic subsidiary company reimburses the foreign holding company for these securities/shares on cost-to-cost basis, i.e., market value of securities/shares without any additional fee, mark-up or commission. As the reimbursement is for transfer of securities/shares, which are neither 'goods' nor 'services', the same cannot be treated as import of services by the domestic subsidiary company from the foreign holding company and hence, is not liable to GST under CGST Act. 7. Any additional fee/mark-up/commission charged by the foreign holding company from the domestic subsidiary company will be towards provision of service of facilitating/arranging transactions in securities, which will be subject to GST under RCM for the said additional fee/mark-up/commission.
215/9/2024-GST <i>Taxability of Salvage/Wreck Value in Insurance Claims</i>	<ol style="list-style-type: none"> 1. In case of motor vehicle insurance, the insurance company may either include the value of wreck/salvage in the insurance claim settlement and take over the possession of the wreck/salvage or the insurance company may deduct the value of wreck/salvage from the insurance claim and the insured keeps the ownership of wreck/salvage. 2. Ambiguity persisted with respect to the taxability of such deduction/inclusion of wreck/salvage value in the insurance claim. 3. In this regard, it has been clarified that where the deduction of the salvage/wreck amount from the insurance settlement amount is as per the terms of the insurance contract, ownership in salvage rests with the insured only. Therefore, since no supply can be said to be made by the insurance company, no GST is liable to be paid by the insurance company. 4. Where an insurance claim is settled for the full claim amount without deducting salvage or wreckage value, the property in wreck/salvage rests with the insurance company, which is obligated to deal/dispose the same. Therefore, the insurance company will be liable to pay the applicable GST on disposal/sale of the same.
216/10/2024-GST <i>Taxability of warranty/extended warranties</i>	<ol style="list-style-type: none"> 1. Circular No. 195/07/2023-GST dated July 17, 2023 ("Circular") provided clarification that the cost for replacement of parts of goods provided by the manufacturer or dealer under a warranty is included in the cost of goods. Hence, ITC with respect to such free of cost replacement is not required. Further clarification was sought for cases where not just a part but the product itself is replaced by the manufacturer or dealer.

Circular No. and subject Clarification

2. The captioned circular was issued to widen the scope of the Circular to include replacement of goods as well as any parts thereof. The revised circular provides as under:
 - a) **Replacement of goods or parts thereof by manufacturer during the warranty period:** The cost of said replacement included in the value of original supply of goods. Therefore, these supplies are not exempt supplies and hence, do not require reversal of ITC.
 - b) **Replacement of goods or parts thereof by distributor during the warranty period:** Where the manufacturer provides goods or parts to the distributor for replacement to the customer during warranty period, without separate consideration, no GST is payable by the manufacturer. Further, no reversal of ITC is required to be made by the manufacturer.
 - c) **Replacement of goods or parts thereof by a person different from the supplier of goods during the extended warranty period:** The Circular provided that when a customer opts for an extended warranty with the manufacturer at the time of purchase of goods, extended warranty will form part of the composite supply of goods. However, the captioned circular has provided that where agreement for extended warranty is made at the time of original supply of goods, and the supplier of extended warranty is different from the supplier of goods, supply of extended warranty will be treated as a separate supply from the original supply of goods (and not composite supply).
 - d) **Supply of extended warranty after original supply of goods:** Extended warranty is conveying of an “assurance” and not an actual replacement of parts or repairs. Accordingly, supply of extended warranty will be treated as a supply of services distinct from the original supply of goods, and the supplier of the said extended warranty will be liable to discharge the applicable GST on the said supply of services.

218/12/2024-GST

Taxability of loan provided by an overseas affiliate to its Indian affiliate

1. It is a common practice that various overseas affiliates of domestic entities provide loans to such domestic entities where the consideration is only in the form of interest or discount. Whether provision of such a loan would be treated as a taxable supply or not was clarified *vide* the captioned circular.
2. The CBIC has clarified that extending of loans/advances, the consideration of which is in the form of interest or discount, including those from overseas affiliates to Indian affiliates, are exempt from GST under entry 27(a) of the Service Exemption Notification.³⁰
3. For loans provided between related parties, no ‘processing’ of loan or ‘administrative cost’ may be involved as the related lender may not need to gather information about the related borrower’s business, financial standing and credibility, etc. Accordingly, where no consideration is charged by an overseas affiliate from its Indian party, for extending loan or credit, other than by way of interest or discount, it cannot be said that any supply of service is being provided between the said related persons in the form of processing/facilitating/administering the loan under Schedule III of the CGST Act. Therefore, there is no question of levy of GST on the same

³⁰ Notification No. 12/2017 – Central Tax (Rate) dated June 16, 2017

Circular No. and subject	Clarification
219/13/2024-GST <i>ITC eligibility for ducts and manholes in OFC³¹ networks for telecommunication services</i>	<p>by resorting to open market value for valuation of the same as per Rule 28 of CGST Rules.</p> <p>4. For loans provided between related parties, where any processing fee/administrative charges/service fee/loan granting charges, etc. is charged, over and above the interest or discount, the same may be treated as consideration for the supply of services of processing/facilitating/administering of the loan, subject to GST.</p> <p>1. Eligibility of ITC on procurement of ducts/manholes was being denied under Section 17(5) of the CGST Act treating it as blocked credit being immovable property.</p> <p>2. Clarification on availability of ITC on procurement of ducts and manholes has been provided to state that ducts and manholes are basic components for OFC network used in providing telecommunication services, where Polyvinyl Chloride (PVC) ducts/sheaths are components in which OFCs are housed and manholes serve as nodes of the network and are necessary for not only laying of OFC but also their upkeep and maintenance.</p> <p>3. Accordingly, ducts and manholes qualify as "plant and machinery" under GST laws. As such, they are not subject to ITC restrictions under Section 17(5)(c) and (d) of the CGST Act.</p>
221/15/2024-GST <i>Time of supply for HAM³² Highway Projects</i>	<p>1. HAM contracts are typically spread over a period of 15 (fifteen) to 17 (seventeen) years, wherein the contractor undertakes construction, operation and maintenance of roads. Generally, payments are also spread over the term of the contract either on specified dates or on milestones basis. Clarification on determination of time of supply of service under such HAM contracts has been clarified.</p> <p>2. HAM contracts fall under 'continuous supply of services' as defined under Section 2(33) of the CGST Act. In terms of Section 13(2) read with Section 31(5) of the CGST Act, the time of supply for such contract (for both construction and O&M³³ portion) will be:</p> <p>a) if the invoice is issued on or before the specified date or the date of completion of the event specified in the contract: the date of issuance of such invoice, or date of receipt of payment, whichever is earlier; and</p> <p>b) if the invoice is not issued on or before the specified date or date of completion of the event specified in the contract: the date of provision of service (i.e., due date of payment as per the contract), or date of receipt of payment, whichever is earlier.</p> <p>3. Tax will be payable on the amount of instalments/annuity payable by National Highways Authority of India to the concessionaire including interest.</p>

³¹ Optical Fiber Cables

³² Hybrid Annuity Model

³³ Operation and Maintenance

Transfer of goods from one warehouse operating under Section 65 of the Customs Act³⁴ to another

Instruction No. 16/2024 – Customs dated June 25, 2024

CBIC has clarified that the transfer of resultant goods from one unit operating under Section 65 of the Customs Act to another such unit is permitted subject to filing of due documentation (such as Form for transfer of goods from a warehouse, etc.), sending intimation to bond officer and complying with other conditions and procedures prescribed under the Manufacturing and Other Operations in Warehouse Regulations read with warehousing provisions under Chapter IX of the Customs Act. However, prior permission of the proper officer is not an essential condition for removal of warehoused goods (as part of resultant goods).

New mechanism for ISD³⁵ prescribed

Notification No. 12/2024 – Central Tax dated July 10, 2024

Pursuant to the Finance Act 2024-25, with effect from such date as may be notified, the definition of ISD and Section 20 of the CGST Act were amended (a) to provide for mandatory distribution of ITC through ISD mechanism only; and (b) to omit the earlier procedure and mechanism prescribed to distribute ITC through ISD. A detailed mechanism prescribing the manner of distribution through ISD was awaited.

To the above effect, CBIC has amended Rule 39 of CGST Rules with effect from a date to be notified, to prescribe mechanism for distribution of ITC through ISD. It may be noted that the mechanism is similar to the mechanism earlier prescribed under Section 20 of the CGST Act (which was omitted *vide* Finance Act 2024-25). The following conditions and procedure have been prescribed:

1. ITC available for distribution in a month will be distributed in the same month;
2. the amount of ITC distributed will not exceed the amount of ITC available for distribution;
3. an ISD is required to distribute ITC attributable to relevant recipient in the ratio of its respective turnover (including taxable and non-taxable) of the preceding FY;
4. ITC of IGST to be distributed as ITC of IGST;
5. ITC of CGST and SGST to be distributed:
 - a) If recipient located in same State as that of ISD, be distributed as ITC of CGST and SGST respectively; and
 - b) If recipient located in a State other than that of ISD, be distributed as IGST.
6. ISD will issue an ISD invoice for the above distribution.

³⁴ The Customs Act, 1962

³⁵ Input Service Distributor

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