October 2024 Edition

Recent Rulings by Courts and Authorities

High Court

Expression 'as is where is' basis means that status of payment of GST[1] adopted by the assessee will prevail

In ***J.K. Papad Industries and Anr vs. Union of India and Ors***[2], the company was engaged in manufacturing and sale of unfried fryums. Considering that fryums were nothing but papad of different shapes and sizes, the company classified unfried fryums under Tariff heading 1905, attracting nil rate of GST under Entry No. 96 of the exemption notification[3]. The company also obtained an advance ruling from AAAR[4] which upheld the classification adopted by the company.

Subsequently, CBIC[5] *vide* circular dated January 13, 2023, clarified that snack pellets such as fryums will be classified under tariff Heading 19059030 and attract GST at 18%. Subsequently, CBIC issued another circular which clarified that the rate of GST on un-cooked/un-fried extruded snack pellets falling under Tariff Heading 1905 was reduced from 18% to 5% with effect from July 27, 2023. It was further clarified that issues pertaining to past period will be regularised on 'as is where is' basis.

The revenue authorities, however, interpreted 'as is where is' basis, to be read in the context of classification which ought to be ascribed to it under the law and accordingly issued an SCN[6] to the company proposing to levy GST at 18% for the period before July 27, 2023.

The Hon'ble High Court of Gujarat ("**Gujarat HC**") held that the revenue authorities have misinterpreted the expression 'as is where is' basis. 'As is where is' basis means that whatever status of payment of GST had been adopted by the assessee for the past period will continue to prevail. If the assessee had claimed their product to be exempt from GST, they cannot be subjected to levy of GST in order to regularise their past returns. Basis this, Gujarat HC quashed the SCN issued to the company.

[1] Goods and Service Tax
[2] TS-568-HC(GUJ)-2024-GST
[3] Notification No. 2/2017-CGST Rate dated June 28, 2017
[4] Appellate Authority for Advance Ruling
[5] Central Board of Indirect Taxes and Customs
[6] Show Cause Notice

Common SCN issued for multiple tax periods 'fundamentally flawed' and contravenes CGST Act[7]

In the matter of ***Veremax Technologie Services Ltd vs. The Assistant Commissioner of Central Tax***[8], a common SCN was issued to the petitioner under Section 73 of the CGST Act for multiple tax periods 2017-18, 2018-19, 2019-20 and 2020-21. Aggrieved, the petitioner filed a writ petition before the Karnataka High Court ("**Karnataka HC**") contending that the adjudicating authority cannot issue a common SCN by grouping the tax periods. It further asserted that under Section 73 of the CGST Act, a specific action must be completed within the relevant year, and the limitation period of 3 (three) years applies separately to each assessment year. Consequently, clubbing multiple tax periods in a single notice is impermissible.

The Karnataka HC highlighted that Section 73(10) of the CGST Act mandates a specific time limit from the due date for furnishing the annual return for the financial year to which the tax dues relate. The law stipulates that particular actions must be completed within a designated year, and such actions should be executed in accordance with the provisions of the law. The ratio laid down by the Hon'ble Supreme Court in the matter of *State of Jammu and Kashmir and Ors vs. Caltex (India) Ltd.*[9], - where an assessment encompasses different assessment years, each assessment order can be distinctly separated and must be treated independently, is squarely applicable in the present case.

Basis the above, the Karnataka HC held that the SCN issued by the adjudicating authority is fundamentally flawed. The practice of issuing a single, consolidated SCN for multiple assessment years contravenes the provisions of the CGST Act and thereby, quashed the SCN.

Notification extending time limit to issue orders for F.Y.[10] 2018-19 and 2019-20, quashed

The time limit to pass an order under Section 73(10) of CGST Act for F.Y. 2018-19 and 2019-20 was extended by way of Notification No. 56/2023 – CT dated December 28, 2023, ("**Notification**"). The said Notification was challenged in ***Barkataki Print and Media Services vs. Union of India***[11], wherein the petitioner challenged orders passed under Section 73(10) of the CGST Act, on the ground that the Notification is *ultra vires* the CGST Act. The petitioner contended that the condition precedent for issuance of Notification in exercise of the powers under Section 168A of the CGST Act were not fulfilled as there were neither recommendations of the GST Council nor any *force majeure* event.

Considering the petitioner's submissions, the Guahati High Court ("**Guahati HC**") held the Notification to be *ultra vires* Section 168A of the CGST Act. The Guahati HC observed that as mandated under Section 168A of the CGST Act, the Notification was issued without the recommendations of the GST Council ("**GST Council**"). The Notification had a false statement claiming that a recommendation was made where, in fact no such recommendation existed prior to issuance of the Notification. In such circumstances, there is a colourable exercise of power by the Government in issuing the Notification.

The Guahati HC further observed that there is a difference between 'no recommendation made' and 'effectiveness of the recommendation'. The fact that it is not binding does not mean the Government can act without a recommendation of the GST Council. Moreover, Section 168A of the CGST Act empowers the Government to extend time limit in case of *force majeure*. The Guahati HC observed that the GST Council had no occasion to consider existence of *force majeure*, therefore the Notification would also be seen as being issued without the *force majeure* condition. Hence, neither conditions prescribed under Section 168A of the CGST Act were fulfilled for issuance of the Notification, thereby holding the Notification to be invalid.

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[7] Central Goods and Services Tax Act, 2017
[8] TS-602-HC(KAR)-2024-GST
[9] AIR 1966 SC 1350
[10] Financial Year
[11] TS-588-HC(GAUH)-2024-GST

Authorities cannot prosecute GST offenses under IPC[12] without invoking penal provisions of GST Act[13]

The Madhya Pradesh High Court ("**Madhya Pradesh HC**") has ruled on the power of the authorities to prosecute GST offenses under IPC without invoking penal provisions under CGST Act. In the matter of ***Deepak Singhal vs. Union of India and Ors***[14], the petitioner was a proprietor firm engaged in trading of soya bean seeds and soya de-oiled cakes. The petitioner was summoned under Section 70 of the CGST Act and statements of the petitioner was recorded. Subsequently, the GST authorities conducted search and seizure on the petitioner's premises under Section 67(2) of CGST Act. An inspection report was prepared wherein it was alleged that the firm was a bogus firm and fraudulently registered and issued invoices/bills without supply of goods/services, thereby leading to wrongful availment or utilisation of ITC/refund of tax. One office of the revenue authorities issued a complaint to another office, basis which an FIR under the provisions of IPC was registered against the proprietor of the said firm. The assessee had approached the Madhya Pradesh HC challenging the same.

The petitioner submitted that CGST Act is a complete code which provides procedure to be adopted by GST authorities, penalties in case of breach and punishment for offences committed under GST Act. In the present case, search and seizure operations conducted by GST authorities revealed commission of offence punishable under Section 132 of GST Act. GST being a special statute, for any offence which is squarely covered by the CGST Act, provisions of IPC could not have been invoked without first invoking the provisions of CGST Act. It was further submitted that Section 132(6) of the CGST Act requires previous sanction of the Commissioner before a person can be prosecuted for offences committed under Section 132 of GST Act, which has not been followed in the present case. Accordingly, registration of 'FIR' at the instance of GST authorities under provisions of IPC without invoking penal provisions under GST Act is bad in law and the 'FIR' and hence consequential proceedings are liable to be quashed.

Considering the petitioner's submissions, Madhya Pradesh HC held that for offences covered under Section 132 of the CGST Act, the GST authorities cannot be permitted to bypass procedure and penal provisions under GST Act for launching prosecution against the assessee by invoking IPC provisions. Letting GST authorities to adopt such course of action would amount to abuse of process of law which cannot be permitted.

Customs, Excise and Service Tax Appellate Tribunal

Excess reversal of CENVAT[15] credit eligible for cash refund under GST regime

The Hon'ble CESTAT[16] Mumbai analysed whether the appellant (a manufacturer and trader of motor vehicles) could claim refund of excess CENVAT credit reversed towards provision of exempt goods/services during April to June 2017 under Rule 6(3A) of CCR, 2004[17].

In ***Mercedes Benz India Pvt. Ltd. vs. Principal Commissioner of Central Tax***[18], the adjudicating authority and the Commissioner (Appeals) rejected the refund of the appellant on the ground that there exists no provision under Rule 5 and/or 7 of the CCR, 2004, for cash refund of excess CENVAT credit reversed and therefore no refund will be permissible under clause (c) of proviso to Section 11B(2) of the Excise Act[19].

The CESTAT observed and highlighted the below:

given that GST was introduced with the intention of eliminating cascading on taxes and taxing only at the consumption stage, it would be least expected that the legislation intended that input credit which was validly available through

[12] Indian Penal Code
[13] Goods and Services Tax
[14] 2024 (9) TMI 828
[15] Central Value Added Tax
[16] Customs, Excise & Service Tax Appellate Tribunal
[17] CENVAT Credit Rules, 2004
[18] TS-385-CESTAT-2024-EXC
[19] Central Excise Act, 1944

erstwhile laws of Excise Act and Chapter V of the Finance Act[20] would have to be foregone by not allowing the taxpayers such validly earned credit. Accordingly, the transitional provisions under Section 142 of the CGST Act, providing refund of CENVAT credit in accordance with provisions of existing law, cannot be interpreted narrowly to mean that cash refund of CENVAT credit is not permissible because CCR, 2004 provided only for refund in specified situations as stated in Rule 5 of CCR, 2004.

Section 142(3) of the CGST Act specifically provides that refund of any amount of CENVAT credit, duty, tax, interest or any other amount paid under the existing laws will be paid in cash. It is only such amount of CENVAT credit which is rejected, as ineligible, that alone will lapse.

Section 142(3) of the CGST Act is a transitional arrangement wherein it has been specifically provided that the said provision apply as a *non-obstante clause* and thus will have an overriding effect to the provisions of the Excise Act, except for Section 11B(2) of the CGST Act.

The phrase 'duty of excise' used in Section 11B(2)(d) of the Excise Act refers to duties of excise leviable and also includes CENVAT credit, which is nothing, but duty of excise paid on inputs, which has been allowed for taking credit in terms of Rules 3 of CCR, 2004.

In light of the above, the CESTAT granted cash refund of CENVAT credit excessively reversed during the erstwhile regime.

Courtroom updates

SCN levying GST on license-fees collected by 'State Electricity Regulatory Commission' stayed

In the matter of ***U.P. Electricity Regulatory Commission vs. Additional Commissioner of GST and Central Excise***[21], the revenue authorities have issued SCN to the petitioner under Section 74 of the CGST Act proposing to levy GST on the license fees collected by the petitioner for grant of licenses to various power corporations/companies for distribution, transmission and trading of electricity.

The petitioner has pleaded that it is a statutory body set up by the Government of Uttar Pradesh under the Uttar Pradesh Electricity Reforms Act, 1999 and performs functions as assigned under the Electricity Act, 2003. It is further submitted that the petitioner performs quasi-judicial proceedings while granting the said licence. For granting such licence, the petitioner collects licence fees from the licensees as prescribed under the Uttar Pradesh Electricity Regulatory Commission (Fees and Fines) Regulations, 2010. The activity of granting licence for licence fees cannot be subjected to GST in light of Entry 2 of Schedule III of the CGST Act, which states that 'services by any court or Tribunal established under any law for the time being in force' will be treated neither as a supply of goods nor a supply of services.

Considering the submissions by the petitioner, the Hon'ble High Court has stayed the SCN and directed the petitioner to file reply to the SCN. However, the revenue authorities have been refrained from taking final decision in the matter till next date of listing.

The petitioner was represented and the matter was argued by Mr. Manish Mishra, Head of Practice – Indirect Tax at J. Sagar Associates.

[20] Finance Act, 1994
[21] Writ Tax No. 239 of 2024

Supreme Court admits SLP[22] challenging levy of interest in revenue neutral transaction

In the matter of ***Grapes Digital Private Limited v. Principal Commissioner, CGST***[23], the Hon'ble Supreme Court grants leave and admits SLP challenging judgement of Delhi High Court involving the main issue of whether the revenue authorities could have levied and adjusted interest on the tax amount paid by the Petitioner which had already been sanctioned for refund by the revenue authorities, in a revenue neutral situation. The Delhi High Court had earlier rejected the Petitioner's stance that transaction of imports and exports is revenue neutral and held that levy of GST is a statutory exaction. Interest on delayed payment of tax being a statutory levy cannot be avoided on the ground that the Petitioner at a subsequent stage is entitled to a refund of the ITC. Accordingly, the Delhi High Court passed an order upholding levy of interest on delayed payment of IGST under RCM as also delayed payment of IGST on output supply (export) for which ITC of IGST paid under RCM was utilised.

The Petitioner contends that although, the Petitioner was liable to pay IGST on import of services, it is entitled to refund of the same on export of services. It is also entitled to a refund of any IGST paid on output supplies, therefore, the delay in payment of IGST, input or on output supplies did not prejudice the revenue in any manner. The levy of interest is compensatory in nature, thus, if the Petitioner is entitled to refund on payment, the revenue cannot claim any interest on account of any delay as in any event it could not retain any amount of IGST so paid. Relying on the judgement of this Court in the matter of ***Pratibha Processors v. Union of India***[24], the Petition highlights that interest is a mere accessory to the principal amount of tax and if the tax itself is not recoverable, no interest can be charged. It is further submitted that the intent of the State exchequer is to make exports tax free and competitive. Levy of interest in a revenue neutral situation has the potential of making exports costly.

Notifications, Circulars and Instructions

Effective date appointed for provisions of Finance (No. 2) Act, 2024

CBIC, vide notification dated September 27, 2024, has designated the following effective dates for the enforcement of various provisions under the Finance (No. 2) Act, 2024:

Relevant Section of the Finance Act	Description
With effect from September 27, 2024	
Section 118 (*the amendment is effective retrospectively from July 1, 2017*)	1. Section 16(5) of CGST Act inserted to extend the time limit to claim ITC for the period F.Y. 2017-18 to F.Y. 2020- 21 till November 30, 2021. 2. ITC will be available in cases where cancellation of registration was revoked subject to prescribed conditions.
Section 142	Matters relating to anti profiteering to be heard by the Principal Bench of the GSTAT[25].
Section 148	From April 1, 2025, GSTAT will not accept any request with respect to anti profiteering
Section 150	No refund will be made of all the tax paid or ITC reversed, which would not have been so paid, or not reversed, had Section 118 above been in force at all material times.
With effect from November 1, 2024	

[22] Special Leave Petition
[23] SLP (Civil) Diary No. 35601/2024
[24] (1996) 11 SCC 101
[25] Goods and Services Tax Appellate Tribunal

Relevant Section of the Finance Act	Description
Sections 114, 151 and 155	Section 9 of CGST Act, Section 5 of IGST Act[26] and Section 7 of UTGST Act[27] amended to exclude 'un-denatured extra neutral alcohol or rectified spirit used for manufacture of alcoholic liquor, for human consumption' from the levy of GST.
Sections 115, 120, 123, 125, 126, 127, 129 to 134, 139, 140, 141, and 145	Consequential amendments made to make references to newly inserted Section 74A of CGST Act to the relevant provisions such as composition levy (*Section 10*), accounts and other records (*Section 35*), payment of tax (*Section 49*), payment of interest (*Section 50*), refund of tax (*Section 54*), scrutiny of returns (*Section 61*), audit (*Section 65*), appeals to appellate authority (*Section 107*), etc.
Sections 116, 152, 156 and 157	1. Insertion of Section 11A in CGST Act to empower the authorities to accept the existing trade practices where tax is not levied or levied at a lower rate. 2. Similar provision inserted *vide* Section 6A of the IGST Act, Section 8A of the UTGST Act and Section 8A of the GST (Compensation to States) Act, 2017.
Section 117	Section 13(3) of CGST Act amended to determine time of supply for transactions covered under RCM to be earlier of, 1. date of payment; 2. 60 days from date of issuance of invoice by supplier, where invoice is required to be issued by supplier; and 3. date of issuance of invoice by the recipient where invoice is required to be issued by supplier.
Section 119	Section 17(5)(i) of CGST Act amended to remove restriction of ITC for tax paid up to FY 2023-24 in respect of goods and in-transit conveyances detained, seized and released (Section 129) or goods or conveyances confiscated (Section 130).
Section 121	Section 30 of CGST amended to provide that revocation of cancellation of registration will be subject to conditions and restrictions, as may be prescribed in this regard.
Section 122	Section 31 of CGST Act amended to provide that for supplies subject to GST under RCM, the recipient will issue the tax invoice within the period, as may be prescribed.
Section 124	Section 39 of CGST Act amended to provide that a person required to deduct tax at source under Section 51 of CGST Act will electronically furnish a return in such form and manner and within such time, as may be prescribed, for every calendar month whether or not any deductions have been made during the said month.
Sections 128 and 153	1. Sub-section (15) to Section 54 of CGST Act inserted to provide that no refund of unutilised ITC on account of zero-rated supply of goods or of IGST paid on account of zero-rated supply of goods shall be allowed where such zero-rated supply of goods is subjected to export duty. 2. Section 16 of IGST Act amended to provide that no refund of unutilized ITC or IGST will be allowed in cases of zero-rated supply of goods where such goods are subjected to export duty.
Section 135	Sub-section (1A) to Section 70 of CGST Act inserted to provide that the person summoned and/or the authorised representative will be bound to appear for

[26] Integrated Goods and Services Tax Act, 2017
[27] Union Territory Goods and Services Tax Act, 2017

Relevant Section of the Finance Act	Description
	summons before the concerned officer to make statements and/or produce documents, as may be required.
Sections 136 and 137	In light of newly inserted Section 74A, Section 73 and 74 of CGST Act amended suitably to prescribe that notices for period up to F.Y. 2023-24 will be issued and adjudicated only under Section 73 and 74 of the CGST Act.
Section 138	Section 74A inserted in the CGST Act for issuance of notices and adjudication thereof from F.Y. 2024-25 onwards. Key aspects to be noted: 1. removal of extended period to issue notices in cases involving fraud, suppression and willful misstatement; 2. time limit for issuance of notice i.e. 42 months from the due date of furnishing annual return; 3. time limit for issuance of order i.e. 12 months from the date of issuance of notice, extendable by further 6 months, subject to approval; and 4. provisions relating to payment of tax, interest and penalty remain same as prescribed for Section 73 and 74 of the CGST Act (except for extension of time allowed for payment of tax and interest from the date of issuance of notice/order).
Sections 141, 143 and 154	Section 107 and 112 of CGST Act amended to provide: 1. with effect from August 1, 2024, appeal before the GSTAT to be filed within (a) three months from the date of the order; or (b) within a period proposed to be prescribed by the Government, whichever is later; and 2. reduction in the maximum pre-deposit payable while filing an appeal before the appellate authority from INR 25,00,00,000 to INR 20,00,00,000 (Section 107(6) of the CGST Act); 3. Reduction in the maximum pre-deposit payable while filing an appeal before GSTAT from 20% to 10% with a maximum limit of INR 20,00,00,000 instead of INR 50,00,00,000 (Section 112(6) of the CGST Act); 4. Section 20 of the IGST Act is amended to set a maximum pre-deposit amount of INR 40,00,00,000 for filing appeals before appellate authorities or GSTAT, replacing the previous thresholds of INR 50,00,00,000 and INR 100,00,00,000 respectively.
Section 144	Section 122 of CGST Act amended with effect from October 1, 2023, to restrict applicability of relevant penal provisions for Electronic Commerce Operator ("**ECO**"), to cases only where the said ECO is liable to collect tax at source under Section 52 of CGST Act.
Section 146	1. Section 128A inserted in the CGST Act to provide for waiver of interest and penalty for demands raised under Section 73, for the period from July 1, 2017 to March 31, 2020 (subject to prescribed conditions). 2. such waiver will be available in the following cases: a) notice/statement issued under Section 73 of CGST Act; b) order passed under Section 73(9) of CGST Act (Order-in-Original); and

Relevant Section of the Finance Act	Description
	c) order passed under Section 107(11) of CGST Act (Order-in-Appeal) or Section 108(1) of CGST Act (Revision Order); 3. matters pertaining to erroneous refund not covered; 4. benefit of this provision can be availed subject to payment of disputed tax and withdrawal of appeals/writ/application (within prescribed timeline); 5. appellate remedy against proceedings concluded under the said provision will not be available; 6. refund of interest and penalty already paid will not be permitted; and 7. any additional amount arising because of departmental appeal will be payable within 3 months from the date of such appellate order.
Section 147	Transitional provisions under Section 140(7) of CGST Act amended with effect from July 1, 2017 to provide that for services received prior to July 1, 2017, input service distributor will be eligible to distribute ITC thereof under GST regime even if invoices for such services were received prior to July 1, 2017.
Section 149	The following new entries have been added to Schedule III of the CGST Act, stipulating that these activities will be classified as neither a supply of goods nor a supply of services: 1. activity of apportionment of co-insurance premium by the lead insurer to the co-insurer for the insurance services jointly supplied by the lead insurer and the co-insurer to the insured under a coinsurance agreement, subject to payment of tax by lead insurer; and 2. reinsurer services for which ceding commission, or the reinsurance commission is deducted from reinsurance premium paid by the insurer to the reinsurer, provided that tax liability is discharged on the gross reinsurance premium inclusive of reinsurance commission or the ceding commission paid by the reinsurer.

Clarifications based on recommendations of 54th GST Council meeting

Based on the recommendations made during 54th GST Council meeting held on September 9, 2024, CBIC has issued clarifications on the following key aspects:

Circular No. and subject	Clarification
230/24/2024-GST dated September 10, 2024 **Clarification in respect of place of supply of advertising**	1. In a scenario where a foreign client engages an advertising agency in India to provide a one stop solution including services such as media planning, investment strategy, creating and designing content, strategising for maximum customer reach, the identification of media owners, dealing with media owners, procuring media space, etc. for displaying, broadcasting or printing of advertisement including monitoring of the progress, the advertising agency in turn enters into a separate contract with the media company to procure such services. The media company invoices the advertising agency which in turn invoices the foreign client. In such a scenario, the following is clarified:

Circular No. and subject	Clarification
services provided to foreign clients	a) the arrangement between (i) the foreign client and the advertising agency; and (ii) the advertising agency and the media company are in the nature of 2 distinct principal-to-principal arrangements. No agreement exists between the foreign client and the media company. The advertising agency is not acting as an agent but is providing the main supply of services on its own account. Therefore, it does not fulfill the criteria of 'intermediary' under Section 2(13) of the IGST Act. Hence the place of supply cannot be linked with the location of the supplier; b) the foreign client is liable to pay consideration to the advertising agency and not the consumers or target audience that watches the advertisement in India. Even if a representative of the foreign client (including subsidiary or related person) is based in India, the said representative will be acting on behalf of the foreign client only. The advertising agency raises invoice upon and the payment for supply of service is also received directly from the foreign client. Therefore, the foreign client is only considered as the 'recipient' of service; and c) the services provided by the advertising agency cannot be considered as performance based services as there is neither any involvement of goods which are required to be made physically available with the advertising agency nor there is any requirement of physical presence of the recipient (foreign client or its representative) with the advertising agency. Accordingly, the place of supply of advertising services will be location of the recipient, i.e., foreign client located outside India. Therefore, the said advertising services can be considered as export of services, subject to fulfillment of conditions prescribed under Section 2(6) of the IGST Act. 2. However, for situations where the advertising agency in India merely acts as an agent of the foreign client in engaging the media company, the agreement for advertising services is directly between the foreign client and the media company. The media company raises direct invoices upon the foreign client, for which the foreign client makes direct payment to the media company. The advertising agency raises invoices upon the foreign client for facilitation of services. In such a case, the advertising agency is merely facilitating the provision of advertising services by media company to the foreign client and hence, is considered as an 'intermediary', for which the place of supply will be the location of the supplier, i.e., the location of the advertising agency.
231/25/2024 – GST dated September 10, 2024 **Clarification on availability of ITC in respect of demo vehicles**	Demo vehicles are vehicles which the authorised dealers are required to maintain at their sales outlets as per dealership norms and are used for trial run and for demonstrating features of the vehicle to potential buyers. The dealers purchase these vehicles from the vehicle manufacturer against tax invoices and book the same as 'capital assets' in books of accounts. Dealers retain these vehicles for a certain mandatory period and may thereafter sell them at a written down value upon payment of applicable tax. The following is clarified regarding ITC of these demo vehicles: 1. Section 17(5)(a) of CGST Act restricts ITC on motor vehicles for transportation of passengers having approved seating capacity of not more than 13 persons, except when they are used for: a) further supply of such motor vehicles;

Circular No. and subject	Clarification
	b) transportation of passengers; or c) imparting training on driving such motor vehicles. Demo vehicles are apparently neither used for transportation of passengers nor imparting training. However, these are used for '*further supply of such motor vehicles*' since these are neither themselves further supplied nor used for the purpose of further supply of similar type of motor vehicles. Demo vehicles help the potential buyers to make a decision to purchase a particular kind of motor vehicle. Therefore, as demo vehicles promote sale of similar type of motor vehicles, ITC of the same are not blocked under Section 17(5)(a) of CGST Act. 2. motor vehicles used for transportation of staff employees/management, etc. are also not blocked under Section 17(5)(a) of CGST Act; 3. availability of ITC on demo vehicles as per above is not affected even if the demo vehicles are capitalised in books of accounts by the dealer because the definition of 'goods' under Section 2(19) of the CGST Act includes capital goods. As these capital goods are used in the course or furtherance of business, ITC of these capital goods is allowed, subject to other provisions. However, where the dealer has claimed depreciation on the tax component of the cost of capital goods under the Income Tax Act, 1961, then ITC on the said tax component will not be allowed; 4. Where the dealer merely acts as an agent or service provider to the vehicle manufacturer for providing marketing service, including providing test drives to potential customers on behalf of the vehicle manufacturer and is not directly engaged in the purchase and sale of vehicles, then any demo vehicle that the dealer purchases from the vehicle manufacturer for providing the above services will not be considered as being used for making further supply of such motor vehicles. Accordingly, no ITC will be allowed for said demo vehicles;
232/26/2024 – GST dated September 10, 2024 **Clarification on place of supply of data hosting services provided by service providers located in India to cloud computing service providers located outside India**	1. The cloud computing service providers generally enter into contract with data hosting service providers to use their data centers for hosting cloud computing services. The data hosting service providers do not deal with end users/consumers of cloud computing services. There is no contact between data hosting service providers and the end users of the overseas cloud computing service provider. In this backdrop, it has been clarified that data hosting service provider provides data hosting services to the cloud computing service provider on principal-to-principal basis and not as an 'intermediary' under Section 2(13) of the IGST Act. 2. Further, clarification is also provided on whether place of supply of service is to be determined as per Section 13(3)(a) of the IGST Act. Throughout the provision of services, the data hosting service provider owns the premise of data center or operates from leased premises and independently handles the premises as well as the equipment. In such scenario, the overseas cloud computing service providers cannot be considered to own the said infrastructure and make it physically available to the data hosting service provider. In light of the same, it has been clarified that, the place of supply of the said service cannot be determined under Section 13(3)(a) of the IGST Act.

Circular No. and subject	Clarification
	3. Moreover, the data hosting services are not passive supply of a service directly in respect of immovable property but are regarding supply of comprehensive services related to data hosting which includes supply of various services by data hosting service providers like operating data center, backup generator, network connectivity, firewall services etc., which are essential for provision of cloud computing services. Hence, in such a scenario, the circular clarifies that data hosting services cannot be considered as services provided directly in relation to immovable property and place of supply cannot be determined under Section 13(4) of the IGST Act. 4. The place of supply of data hosting services will thus be determined in terms of Section 13(2) of the IGST Act, i.e., the location of the recipient of supply of service.
233/27/2024 – GST dated September 10, 2024 **Regularisation of refund of IGST availed in contravention of Rule 96(10) of CGST Rules28, where exporters had imported inputs without payment of IGST and Cess29**	Rule 96(10) of the CGST Rules restricts refund of IGST paid on export of goods or services, if exemption from IGST and Cess has been availed on import of inputs used in exports under Notification No. 78/2017-Customs[30] or Notification No. 79/2017-Customs[31] both dated October 13, 2017 (collectively referred to as "**Notifications**"). However, basis explanation provided to Rule 96(10) of the CGST Rules, the said benefits will not be considered to be availed if the importer chose to pay IGST and Cess and availed exemption only to the extent of basic customs duty payable on the imports. Considering the above, it has been clarified that where the importer had availed benefits under the Notifications at the time of import but had subsequently paid IGST and Cess at a later date, along with interest and had got the bill of entry reassessed through jurisdictional customs authorities, then refund of IGST paid on exports will not be considered to be in contravention of Rule 96(10) of CGST Rules and hence, will be allowed.

GSTN[32] to roll out IMS[33] from October 1, 2024

GSTN will implement IMS on GST portal from October 1, 2024. IMS is a facility which will enable the recipient taxpayers to correctly avail ITC by addressing invoice corrections/amendments, matching their records/invoices with invoices issued by the suppliers and either accepting or rejecting an invoice or keeping it pending in the system, to be availed later. This facility will streamline the reconciliation process, ensuring greater accuracy and efficiency in GST compliance.

The taxpayers must note the following key points to comply with the IMS:

1. taxpayers registered as normal taxpayers (including SEZ[34] unit/developer) and casual taxpayers will be able to access IMS functionality;

28 Central Goods and Services Tax Rules, 2017
29 Compensation Cess
30 Seeks to exempt goods imported by EOUs from BCD, IGST and Cess
31 Seeks to exempt IGST and Cess on import of goods under advance authorization/ Export Promotion Capital Goods Schemes
32 Goods and Service Tax Network
33 Invoice Management System
34 Special Economic Zone

2. invoices will reflect in recipient's dashboard after the same are saved by the supplier in its form GSTR-1/1A/IFF[35]. The recipient can review the genuineness and authenticity of the invoice and suitably accept, reject or simply keep the invoice pending. If no action is taken, then it will be deemed accepted. The invoices kept pending can be availed by taxpayers at any future time, no later than the time limit prescribed under Section 16(4) of the CGST Act;
3. in case the supplier amends the details of the saved invoices in its form GSTR-1 before filing the form GSTR-1, the amended invoice will replace the original invoice in IMS, irrespective of the action taken by the recipient on the original invoice;
4. records will flow to IMS dashboard at the time of saving of record by supplier in respective form and recipient can take action on record in IMS. However, such records will be populated in form GSTR-2B after filing of return in form GSTR-1/IFF/1A by the supplier;
5. draft form GSTR-2B for a month will be generated on 14th of the subsequent month. This draft form GSTR-2B can be treated as final Form GSTR-2B in case no action has been taken by the recipient. If the recipient has taken an action on an invoice after the draft form GSTR-2B, then it will be required to recompute Form GSTR-2B before filing Form GSTR-3B;
6. any action or change in action already taken on accepted invoices can be undertaken by the recipient till the time the recipient taxpayer files form GSTR-3B of the month. However, no action can be taken after filing of form GSTR-3B for the same month;
7. It is not mandatory to accept or reject invoices in IMS dashboard for form GSTR-2B generation. The invoices where no action would be taken by the recipient would be treated as deemed accepted by the IMS system and a draft form GSTR-2B will be generated on 14th of the month including only accepted or 'no action taken' invoice;
8. form GSTR-2B for a month will not be generated until form GSTR-3B for the previous month has been filed;
9. all the accepted/deemed accepted/rejected records will move out of IMS dashboard after filing of respective Form GSTR-3B. Pending records will remain on IMS dashboard and these records can be accepted or rejected in future months;
10. it is mandatory to take action on original record and file the respective form GSTR-3B before taking action on amended record (amended through form GSTR-1A/GSTR-1) when original and amended record belongs to 2 different form GSTR-2B return period. If both the records belong to same period's form GSTR-2B, only amended record will be considered for ITC calculation of form GSTR-2B;
11. the following supplies will not go to IMS and will be directly populated in 'ITC not available' section of Form GSTR-2B:
    a) inward RCM supplies where supplier has reported in table 4B of IFF/form GSTR 1 or form GSTR 1A; and,
    b) supplies where ITC is not eligible due to Section 16(4) of CGST Act or on account of place of supply;
12. the liability of supplier will be increased in form GSTR-3B for the subsequent tax period, for the invoices/records which have been rejected by the recipient in the IMS for the following transactions:
    a) original credit note rejected by the recipient;
    b) upward amendment of the credit note rejected by the recipient irrespective of the action taken by recipient on the original credit note;
    c) downward amendment of the credit note rejected by the recipient if original credit note was rejected by it; and,
    d) downward amendment of invoice/debit note rejected by the recipient where original invoice/debit note was accepted by it and respective form GSTR-3B has also been filed; and

[35] Invoice Furnishing Facility

13. IMS will also shortly provide for 'outward supplies' dashboard to view status of outward supplies reported based on action taken by the recipient.

Tax Practice

JSA offers a broad range of tax services, both direct and indirect, in which it combines insight and innovation with industry knowledge to help businesses remain compliant as well as competitive. The Tax practice offers the entire range of services to multinationals, domestic corporations, and individuals in designing, implementing and defending their overall tax strategy. Indirect Tax services include services such as (a) advisory services under the Goods and Services Tax laws and other indirect taxes laws (VAT/ CST/ Excise duty etc.), and includes review of the business model and supply chain, providing tax implications on various transactions, determination of tax benefits/exemptions, analysis of applicability of schemes under the Foreign Trade Policy (b) transaction support such as tax diligence (c) assistance in tax proceedings and investigations and (d) litigation and representation support before the concerned authorities, the Appellate Tribunals, various High Courts and Supreme Court of India. The team has the experience in handling multitude of assignments in the manufacturing, pharma, FMCG, e-commerce, banking, construction & engineering, and various other sectors and have dealt with issues pertaining to valuation, GST implementation, technology, processes and related functions, litigation, GST, DRI investigations etc. for large corporates. Direct Tax services include (a) structuring of foreign investment in India, grant of stock options to employees, structuring of domestic and cross-border transactions, advising on off-shore structures for India focused funds and advise on contentious tax issues under domestic tax laws such as succession planning for individuals and family settlements, (b) review of transfer pricing issues in intra-group services and various agreements, risk assessment and mitigation of exposure in existing structures and compliances and review of Advance Pricing Agreements and (c) litigation and representation support before the concerned authorities and before the Income Tax Appellate Tribunal, various High Courts and Supreme Court of India.

This Newsletter has been prepared by:

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Associate

18 Practices and
25 Ranked Lawyers

7 Ranked Practices,
16 Ranked Lawyers

Elite – Band 1 -
Corporate/ M&A Practice

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3 Band 1 Practices

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4 Band 1 Lawyers,1 Eminent Practitioner

12 Practices and
42 Ranked Partners
IFLR1000 APAC Rankings 2023

Banking & Finance Team of the Year

Fintech Team of the Year

Restructuring & Insolvency Team of the Year

14 Practices and
38 Ranked Lawyers

20 Practices and
22 Ranked Lawyers

Ranked Among Top 5 Law Firms in India for ESG Practice

Recognised in World's 100 best competition practices of 2024

Among Top 7 Best Overall Law Firms in India and
11 Ranked Practices

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11 winning Deals in IBLJ Deals of the Year

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12 A List Lawyers in IBLJ Top 100 Lawyer List

Asia M&A Ranking 2024 – Tier 1

Employer of Choice 2024

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Litigation Law Firm of the Year 2024

Innovative Technologies Law Firm of the Year 2023

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Top 10 Best Law Firms for Women in 2022

7 Practices and
3 Ranked Lawyers

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