



Weekly GST Communique



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- Importer has to provide a 'no incentive certificate' from RA of DGFT before clearance of re-import of exported goods

Recent Judgements

Challenge to 6 months limitation period for Service Tax refund u/s 102(3) to be heard by SC

Facts	<p>M/s. MDP Infra (India) Pvt. Ltd. ("the Petitioner") is engaged in the business of executing construction contracts for Government, Semi-Government, Governmental authorities, Local Authorities, Charitable Trusts, and other private projects. The Petitioner availed exemption on the construction contracts executed by it in terms Serial No. 12 of the Mega Exemption Notification No. 25/2012-ST</p> <p>The said exemption was withdrawn with effect from March 1, 2015 vide Notification No. 6/2015-ST and once again restored vide Finance Bill, 2016. As per Section 156 of the Finance Bill, 2016, a new Section 102 was inserted in the Finance Act, 1994 ("Finance Act") which retrospectively provided that no service tax ("ST") would be levied from April 1, 2015 to February 29, 2016 in respect of certain taxable services relating to construction of Government building.</p> <p>As per Section 102, an application for the claim of refund of ST shall be made within a period of 6 months from the date on which the Finance Bill, 2016 receives the assent of the President i.e. 6 months from May 14, 2016 being November 13, 2016. However, since the affairs of the Petitioner about the availability of exemption on contracts executed by it for the Government/ Government entities was under investigation, the Petitioner could not file the refund claim within the stipulated time of 6 months i.e. by November 13, 2016 but filed same on March 23, 2017.</p>
Issue	<p>The Petitioner prayed the Supreme Court to issue notice and tag the present matter with the Special Leave Petition ("SLP") similar in the case of M/s. Essar Bulk Terminal Salaya Ltd. and Anr. Vs. Union of India.</p>
Held	<p>The Hon'ble Supreme Court under <i>Civil Appeal Diary No(s). 17814/2019 dated August 2, 2019</i>, noted the contentions of the Petitioner which are as under:</p> <ul style="list-style-type: none"> • The Petitioner contended that Section 102(3) of the Finance Act is ultra vires to Article 265 of the Constitution of India read with Article 19(1)(g) is as much as it hedges conditions in the form of a period of limitation, on the repayment of amounts even when the levy and collection have been done away with. • It was further submitted that the refund claimed is not time barred by virtue of the provisions of Section 11B of the Central Excise Act, 1944 which has been made applicable to ST by virtue of Section 83 of the Finance Act. The Petitioner submitted that the limitation period of one year from the relevant date as provided under Section 11B would be applicable to refund claim of the Petitioner and accordingly the application for refund is not time barred. • Furthermore, it was submitted that the time limit/ condition of 6 months for making an application for refund is merely directory/procedural and the said Section ought to be construed liberally. The Petitioner submitted that Section 102(3) of Finance Act does not provide any consequence like a prohibition against grant of refund if the application for refund is not made within the stipulated period. <p>Thus, the Hon'ble SC condoned the delay and issued a notice to Revenue and Tag with SLP(C) No. 25251/2018, to be heard at a future date.</p>

HC directs assessee's banker to pay his admitted interest liability from the balance available in its account

Facts	<p>M/s Daejung Moparts (P.) Ltd. (“the Petitioner” or “assessee”) has received a notice issued by Competent Authority for payment of a certain amount as interest under Section 50 of Central Goods and Services Tax Act, 2017 (“CGST Act”) for delayed payment of tax and as per communication dated May 21, 2019, the Madras HC directed assessee’s banker under Section 79 of CGST Act, to make payment in pursuance of aforesaid demand of interest.</p> <p>Assessee had produced a computer-generated statement for its bank account to show that balance available in its account as on June 12, 2019 was Rs. 33.77 lakhs.</p>
Issue	Whether the HC can direct the assessee’s banker to make payment of his admitted interest liability of Rs. 9.15 lakhs out of aforesaid balance of Rs. 33.77 lakhs to department on or before June 20, 2019?
Held	<p>The Hon’ble High Court of Madras under W.P.No. 15978 of 2019 and W.M.P.Nos.15752 and 15753 of 2019 noted and directed as under:</p> <ul style="list-style-type: none"> • Out of the aforesaid balance of Rs. 33.77 lakhs, the bank shall pay out the assessee’s admitted interest liability of Rs. 9.15 lakhs to the department. • On payment of the aforesaid interest amount by the assessee's banker to the department on or before June 20, 2019, the impugned communication dated May 21, 2019 under Section 79 will stand set aside and the assessee can operate the bank account with the exception of aforementioned admitted interest amount. • Competent Authority shall consider all the points raised in assessee's reply and pass an order in a manner known to law and communicate the same to the assessee. • If the decision taken by the Competent Authority is in favour of the assessee, it is the end of the matter. If that be not so, the assessee shall avail alternate remedy of preferring a statutory appeal to the Appellate Authority under Section 107 of CGST Act.

Madras HC directed revenue department to permit the assessee's to download 'C' forms in post GST regime

Facts	<p>M/s. Shir Varalakshmi Company (“the Petitioner”) making inter-state purchases of High-Speed Diesel Oil on concessional rate of tax at 2% by way of 'C' forms.</p> <p>After the introduction of GST, the petitioner continued to purchase High-Speed Diesel Oil, but, they could not download the 'C' forms from the system. When the petitioner enquired with the revenue department, the petitioner was informed that after introduction of GST regime with effect from July 1, 2017, the petitioner was not entitled to make purchase of High-Speed Diesel Oil from other States on concessional rate of tax i.e., @ 2% and therefore, the Department's site has been blocked to deny access to the petitioner and other similarly placed persons from downloading 'C' forms.</p> <p>As in the present case, the aforesaid issue came up for consideration before another Judge of the Madras High Court in a case M/s. Ramco Cements Ltd. v. Commr. of Commercial Taxes [2018] 99 taxmann.com 20 (Mad.) (“Ramco Cements”) and in another case M/s. Southern Cotspinnners Coimbatore (P.) Ltd. [W.P. No. 12520 of 2019, dated April 26, 2019] wherein the High Court allowed the writ petitions filed by the assessee and directed the revenue department to permit the assessee's to download the 'C' Forms.</p>
Issue	Whether the assessee is allowed to download 'C' Forms for inter-state purchases of High-Speed Diesel Oil post GST regime?

Held	<p>The High Court of Madras under W.P. No. 15233 of 2019 and W.M.P No. 15213 of 2019 dated June 4, 2019 noted and directed as under:</p> <p>There is no dispute or disagreement that the instant writ petition falls clearly within the four corners of Ramco Cements case as well as the aforesaid order of another Hon'ble Single Judge in 'Southern Cotspinnners Coimabatore Private Limited' and held as under:</p> <ul style="list-style-type: none"> • '5. In such circumstances, till such time the order of this court in the case of M/s. Ramco Cements Ltd. (supra) is either stayed or reversed it is incumbent upon all Assessing Authorities within the State of Tamil Nadu to apply the rationale of the decision to all pending assessments. The Petitioner in this Writ Petition has stated on affidavit that it is unable to download the 'C' forms from the websites as the same stand blocked from use. Upon enquiry with the Assessing Authorities, they have been informed that the benefit of the decision in M/s Ramco Cements Ltd can be extended only to those dealers that are party to the decision. This stand is unacceptable in so far as the decision of this Court as well as other High Courts, one of which has been confirmed by the Supreme Court, are decisions in Remco Cement, applicable to all dealers that seek benefit thereunder, of course, in accordance with law. • '6. In the aforesaid circumstances and in the light of the order passed above, this Writ Petition is allowed. Consequently, necessary action to be taken by the department, forthwith. No costs. Connected Miscellaneous Petition is closed.' <p>Thus, in the light of the narrative supra and in the light of the trajectory, which this matter has taken at the admission stage, it follows as a natural sequitur that the instant writ petition stands allowed. Consequently, necessary action has to be taken by the revenue department forthwith which in any case shall not be more than 5 working days from the date of receipt of copy of order.</p>
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Telangana HC grants interim stay while keeping the matter of retrospective applicability of Section 50, duly amended vide the Finance Bill (No.2), 2019.

Facts	M/s Raghava Constructions (" the Petitioner ") filed Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the writ petition to relief under section 50 of the CGST Act., duly amended vide the Finance Act, 2019.
Issue	The petitioner prayed to stay proceeding to decide the retrospective applicability of Section 50 of the CGST Act, duly amended vide the Finance Act, 2019
Held	<p>The Hon'ble Telangana HC under WP No. 16885 of 2019 dated August 7, 2019 observed that as to whether the amendment to Section 50 of the CGST Act would be retrospective applicable and whether a notice was liable to be issued to the Petitioner before attachment of his account requires examination.</p> <p>Accordingly, the HC granted interim stay of the proceedings as prayed for.</p>

FAQs

FAQs on Sabka Vishwas Scheme (Legacy Dispute Resolution), 2019

The Finance Minister in her maiden budget, introduced Sabka Vishwas (Legacy Dispute Resolution) 2019 (LDRS) in order to curb the pending litigations under the erstwhile central Excise and Service Tax. The scheme provides relief from tax, penalty, interest, immunity from prosecution, etc., on account of pending disputes.

CBIC has released [FAQs](#) on Sabka Vishwas Scheme (Legacy Dispute Resolution), 2019.

Instruction

Importer has to provide a 'no incentive certificate' from RA of DGFT before clearance of re-import of exported goods

The issue regarding recovery of export benefits given under incentive and reward schemes under Chapter 3 of Foreign Trade Policy (FTP) on re-import of exported goods has been highlighted by C&AG of India via *Notifications No.94/1996-Cus dated December 16, 1996, No.45/2017-Cus, No.46/2017-Cus and No.47/2017-Cus* all dated June 30, 2017. In the audit observation by C&AG, it was inter-alia pointed out that there was no provision in the Customs notification to recover the duty credit given under reward and incentive schemes under Chapter 3 of FTP at the time of re-import of such goods on which such benefit has been availed at the time of export.

CBIC vide [Instruction No. 03/2019-Customs dated August 13, 2019](#) has examined and consulted with the Directorate General of Foreign Trade ("DGFT"), which administers the reward schemes under Chapter 3 of FTP as under:

- DGFT has informed that RBI Master Direction on exports and imports issued vide F.No. RBI/2006-2007/313 A.P. ("**DIR Series**") Circular No.37 dated April 5, 2007, already has a provision regarding refund of incentives taken from DGFT for such re-imports.
- DGFT has also informed that as per para 3.24 of Handbook of Procedures issued under FTP 2015-20, a procedure for obtaining 'no incentive certificate' from Regional Authority ("**RA**") of DGFT has been prescribed for such cases of re-import.

Thus, it is incumbent upon the importer to provide a no incentive certificate from RA of DGFT at the time of re-import of exported goods. Accordingly, it is reiterated that before allowing clearance in cases of re-import of exported goods, a 'no-incentive certificate' from the respective RA of DGFT shall be ensured by Customs field formations.

Further, field formations should review past cases of re-import of exported goods and take necessary action for recovery of inadmissible duty credit, if any, in coordination with DGFT authorities. A compliance report may please be sent to Drawback Division by September 30, 2019.

Note:

These instructions may be brought to the notice of all concerned by issuing suitable Standing Order and Trade Notice.

News Flash

1. **GST council to meet on Sept 20 in Goa; relief for auto cos unlikely**
<https://www.a2ztaxcorp.com/gst-council-to-meet-on-sept-20-in-go-relief-for-auto-cos-unlikely/>
2. **UT ranks first in GST return compliance**
<https://www.a2ztaxcorp.com/ut-ranks-first-in-gst-return-compliance/>
3. **CBIC looks for public feedback to curb GST evasion by etailers**
<https://www.a2ztaxcorp.com/cbic-looks-for-public-feedback-to-curb-gst-evasion-by-etailers/>
4. **'Sub-optimal' number of returns filed concerns CBIC, suggests outreach programmes to guide taxpayers**
<https://www.a2ztaxcorp.com/sub-optimal-number-of-returns-filed-concerns-cbic-suggests-outreach-programmes-to-guide-taxpayers/>
5. **Government likely to announce steps to remove friction points in economy to boost growth**
<https://www.a2ztaxcorp.com/government-likely-to-announce-steps-to-remove-friction-points-in-economy-to-boost-growth/>



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Thanks & Best Regards,

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