

LATEST DEVELOPMENT IN GST

National Conference on GST



ICAI-National Conference
Ernakulam
May-2024

Tri Dev of Taxation!

- Brahma – Parliament – Law Maker- **LEGISLATIVE**
- Vishnu – Consultants / Department Officials - **EXECUTIVE**
- Shiva – Judiciary – Interpreting/Amending laws- **JUDICIAL**
- Soul – All 3 are connected by Heart & Soul- **GSTN Portal**

Agenda

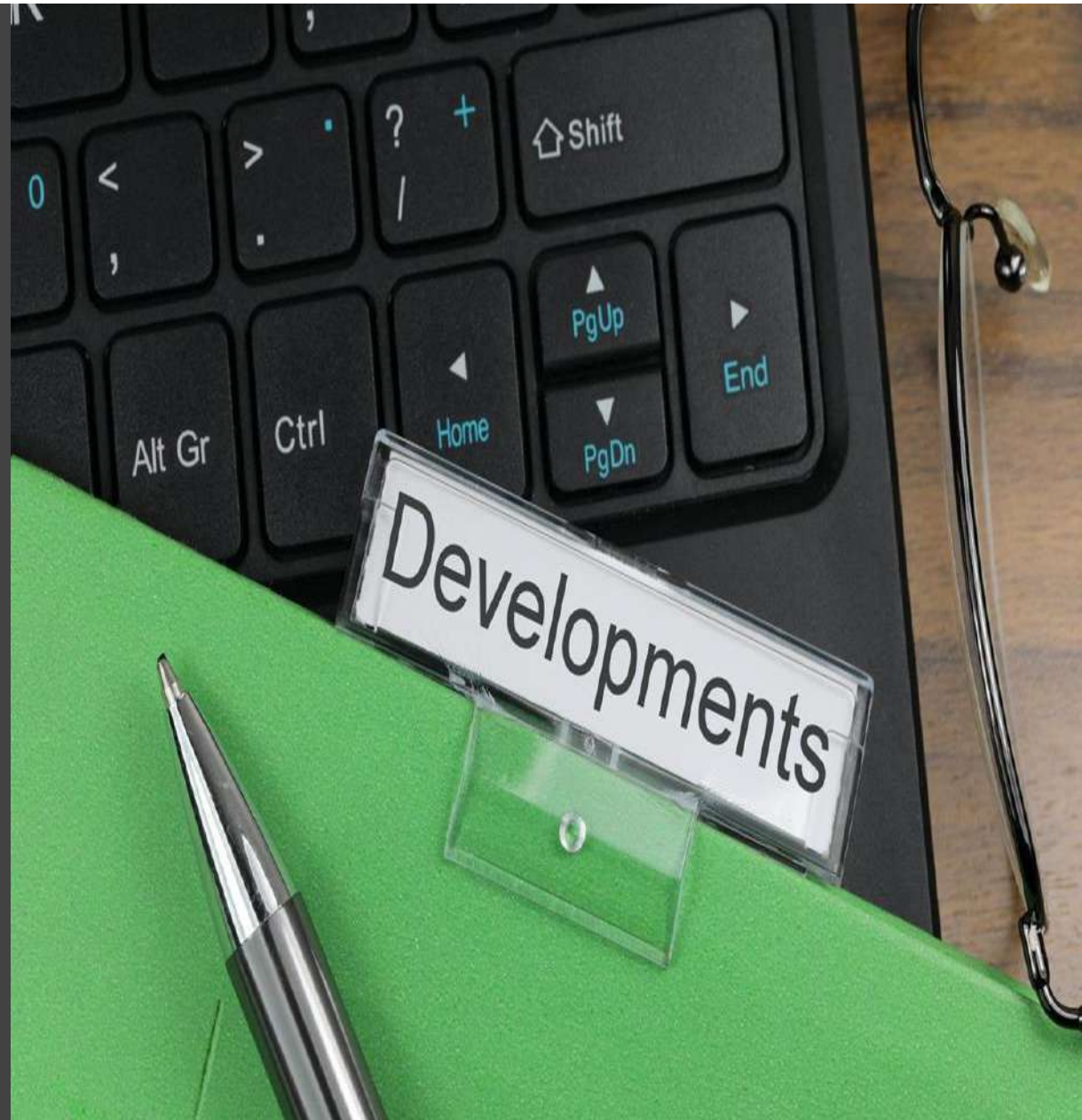
Section 1
LEGISLATIVE

Section 2
EXECUTIVE

Section 3
JUDICIAL

Section 5
PORTAL

Section 6
Questions!



Legislative Developments

1

Input Service Distributor

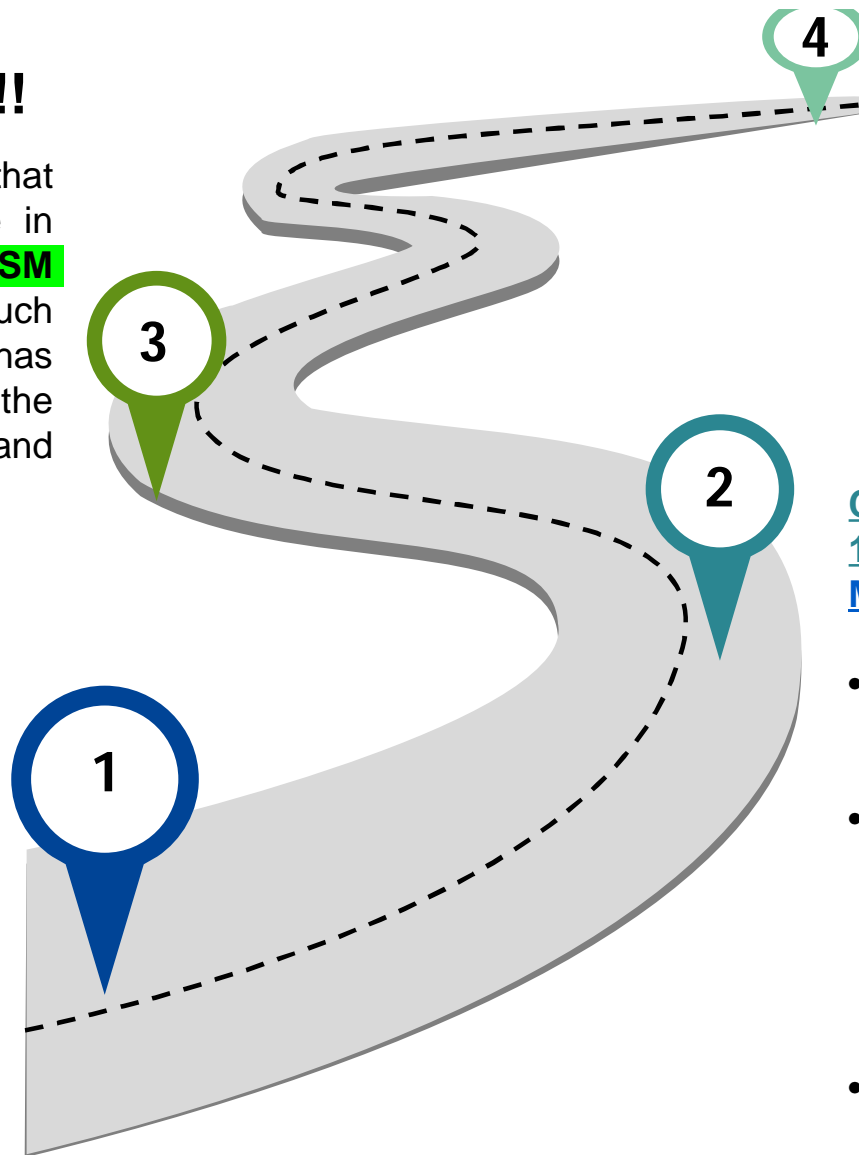
ISD Vs CC Story So Far !!!

In 52nd GST Council recommended that necessary amendments will be made in the CGST Act to **MAKE ISD MECHANISM MANDATORY**. Pursuant to such recommendations, the GST Council has now proposed amendments to the following provisions of the CGST Act and the rules thereunder:

- Section 2(61) of CGST Act
- Section 20 of CGST Act
- Rule 39 of CGST Rules

35th GST Council Meeting held on 21/06/2019

- Proposed a Circular for Clarification on taxability of DP & distribution of ITC by ISD is mandatory?. Circular **DEFERRED** as almost 90% of TP has not complied & it does not have **REVENUE IMPLICATION**
- Conflict in views of AAR's **(Columbia Asia vs Cummins India)**



4 Amendment in Finance Act, 2024

Amendments made vide Finance Act, 2024 to make ISD mandatory

- **Substituted** definition u/s 2(61) of the CGST Act, 2017
- Substituted Sec. 20 of the CGST Act, 2017

Circular No. 199/11/2023-GST dated 17/07/2023 (Outcome of 50th Council Meeting)

- ISD is not mandatory **(HO can follow ISD or Cross Charge)**
- Internal Cost (Salary of employee) is not required to be distributed if recipient is eligible for FULL-ITC (Rule 28).– Invoice value shall be **Deemed as zero.**
- Internal Cost of employee is not mandatorily required to be included for computing taxable value of Services.

Amendment & Impact

Proposed amendment to Section 2 (61) of the CSGT Act, 2017:

“2(61) “Input Service Distributor” means an office of the supplier of goods or services or both which receives tax invoices towards the receipt of input services, including invoices in respect of services liable to tax under sub-section (3) or sub-section (4) of section 9, for or on behalf of distinct persons referred to in section 25, and ***liable to distribute*** the input tax credit in respect of such invoices in the manner provided in section 20”

Effect of Amendment



Distribution of common credit shall **become MANDATORY** by way of ISD Route



The Taxpayers are **MANDATORY required to obtain ISD registration in the Location of HO.**



ISD shall also be applicable to **services covered under RCM (Earlier RCM-ITC was allowed in ISD)**



Cross charge option will become a matter **of the PAST.**



ADDITIONAL COMPLIANCE BURDEN on Taxpayers as they are required to file GSTR-06 for distribution of common ITC .



Possible increase in Accounting and identification of Common Input services from select Vendors.

The Budget 2024 has proposed amendment to make distribution of common credit mandatorily by ISD route. This proposal is yet to be notified.

Preparedness by Taxpayers!



The Finance Act, 2024 has not provided the notified date on which the amendment will be applicable. However, once the same is notified, the Company is required to take ISD-registration for the purpose of distribution of common ITC to various GSTN of the same PAN.



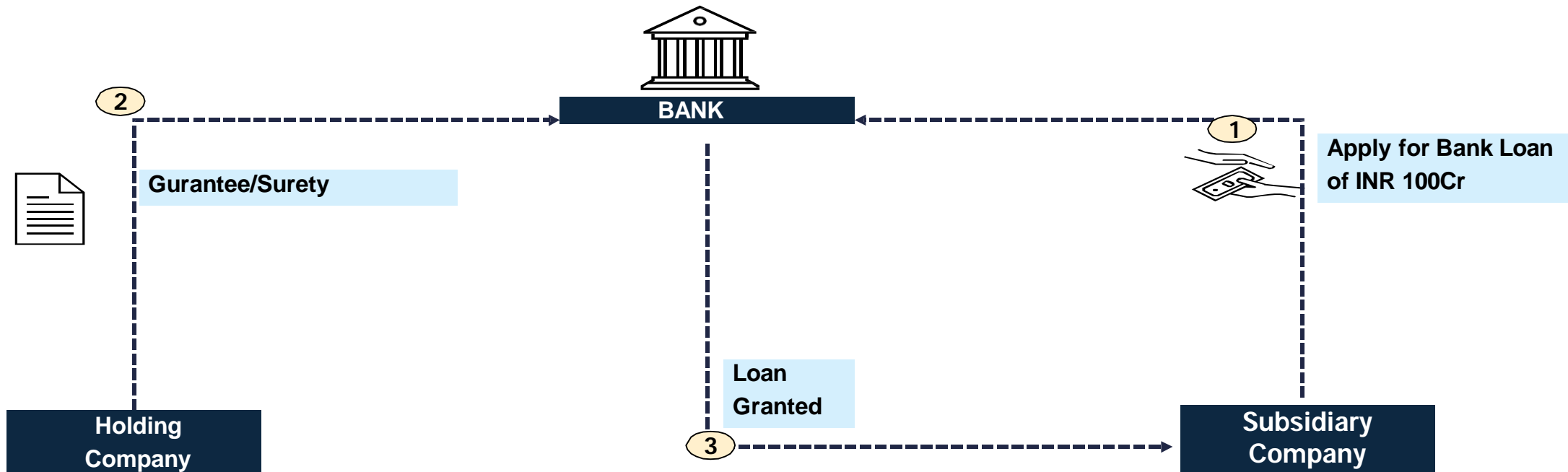
As a result of which company shall be required to take ISD registration for distribution of Common-ITC from ISD registration.



We need to list down the common input services received by the Company and inform the suppliers of such services about the ISD-GSTN to them so that the distribution of credit can be passed on to the recipients.

Taxing Corporate Guarantees!!!

Understanding CG!



**Holding Company has not charged any
Guarantee
fees/commission to Subsidiary Company**

(Supply of service by HC to SC)

Background

Understanding Guarantee

- Guarantee in general terms is understood to mean a kind of **contract** wherein a **third-party promises** or undertakes to **pay the debt** of another person in case they default in making the debt re-payment. A guarantee may be either oral or written.
- A **“Contract of guarantee”** is a **contract to perform the promise, or discharge the liability, of a third person in case of his default. (Sec 126 of Contract Act, 1872)**

Consideration for “Contract of Guarantee”

- Anything done, or any promise made, for the **benefit of the principal debtor**, may be a **sufficient consideration** to the surety for giving the guarantee. (127 of ICA, 1872).
- it is evident that any act done or promise made for the benefit of the principal debtor (**SC**) (for instance, to provide a loan by **Bank**) performed by the creditor (**Bank**), acts as sufficient consideration to the surety (**HC**)
- Flow of **Consideration & Beneficiaries** under COG??

Parties involved in the Contract

- **SURETY:** Person who gives the guarantee →**HC**
- **PRINCIPAL DEBTOR:** The person in respect of whose default the guarantee is given →**SC**
- **CREDITOR:** The person to whom the guarantee is given is called the **“Creditor”**. → **Bank**

Companies Act & Income Tax Act

- Compliance (L/**Guarantee**/S/I given to person whom director is interested- Allowed by SR and used for business purpose (Exception is wholly owned subsidiary)
- “International transaction” means a transaction between two or more AEs, either or both of whom are non-residents, in the nature of, or **provision of services**, or lending or borrowing money, or any other transaction **having a bearing on the profits.....**
- Explanation "international transaction" shall include – (c) capital financing, including any type of long-term or short-term borrowing, lending or **guarantee**,.....;

SC judgement on CG's → Taxability under Erstwhile regime-

Negative List

- ❖ Under Negative list, it is important to understand the definition of “Service” under 65B(44) "service" means any **activity** carried out by a **person** for **another for CONSIDERATION**, and include a declared service, but shall not include.....(a)...(b).(c) fees taken in any Court or tribunal established under any law for the time being in force...”
- ❖ Landmark judgement of SC in case of **EDELWEISS FINANCIAL SERVICES LTD {2023 (4) TMI 170 - SC ORDER}** in which has been summarized as follows:

Edelweiss provided corporate guarantees to financial institutions on behalf of its overseas subsidiaries and Indian subsidiaries. The overseas subsidiaries paid commission, but the Indian subsidiaries did not. It was held by AA which was upheld by Tribunal as follows:

 - ✓ **Positive List** – only ‘bank guarantee’ covered not ‘corporate guarantee’. Also, commission from overseas subsidiaries is exports.
 - ✓ **Negative List** – No consideration monetary or non-monetary is received by assessee. Hence service tax not applicable as it doesn’t qualify as Service u/s 65(44) of the Finance Act.
- ❖ Appeal was filed by GST-Department to SC, which was dismissed in favor of the assessee by holding that “**No effort was made** on behalf of the Revenue to assail the (above) finding or to demonstrate that issuance of corporate guarantee to or demonstrate that issuance of corporate guarantee to companies without consideration would be a **taxable service**”. **(SC → Existence of Service ?)**

Relevance Under GST: *Consideration between related persons is NOT a pre-condition for taxability under GST laws.*

Taxability under GST

LEVY UNDER GST

- GST is levied on the **supply of goods or services** or both (Sec. 9)
- Supply has been defined to include **all forms of supply** such as sale, exchange, barter etc. by a person **for a consideration** in the course or furtherance of business (Sec. 7)
- Supply of goods/services between **related persons, in the course or furtherance of business, taxable even if there is no consideration** (Sec. 7(1)(d) read with schedule 1 of CGST Act, 2017)- *Consideration is not pre-condition to qualify as Supply under GST.*
- Related person as per explanation (a) to section 15 includes:
 - ✓ any person **directly or indirectly owns**, controls or holds **twenty-five per cent.** or more of the outstanding voting stock or shares of both of them; (SC & GC are related party)

INSERTION IN RULE 28

[(2) **NOTWITHSTANDING** anything contained in sub-rule (1), the value of supply of services by a supplier to a recipient who is a related person, by way **of providing corporate guarantee** to any banking company or financial institution on behalf of the said recipient, shall be **DEEMED TO BE ONE PER CENT** Of the amount of such guarantee offered, or the **ACTUAL CONSIDERATION**, whichever is **HIGHER**.]

Taxing CG's-Outcome of 52nd council meeting

Taxability of Corporate guarantee

- It is clarified that the **activity of providing corporate guarantee** to the bank/financial institutions for providing credit facility to the other company, where both the companies **are related**, is to be treated as **supply of service**.
- In case where **no** consideration is involved then also it is to be treated as a taxable supply of service as per provisions of Schedule I of CGST Act.

Taxability of Personal guarantee by Directors

- The CBIC has taken reference from **RBI Circular** which clearly states that **no consideration** by way of **commission**, brokerage fees or any other form, can be paid to the director by the company, directly or indirectly, in lieu of providing personal guarantee to the bank for borrowing credit limits.
- Therefore, it is clarified that the open market value of the said transaction may be taken as zero and thus, the taxable value would be zero.

New Valuation rule

- New rule 28(2) is inserted to determine value of CG which shall be **HIGHER** of following:
- 1% of the amount of such guarantee offered, or (**Safe Harbor rules- 1 % PA. -GST? (recurring till COA)**)
 - Actual consideration
- The above rule is **NOT** applicable for personal guarantee offered by Directors.
 - The new provision has "**Overriding effect** " on existing valuation rules u/r 28 (The above provision to be applied irrespective of OMV, Value of supply of like kind or quality or even the value of supply in invoice.

Retrospective Application of Circular – A Possibility?

01

The New Valuation rule cannot be applied retrospectively

- No effective machinery provisions for value determination, so levy on supply would not be possible - **CIT v. B.C. Srinivasa Setty[1981] 5 Taxman 1(SC)**
- Settled law that any amendment or new law provision would operate prospectively unless retrospective in operation. In the present case the new valuation would apply from 26.10.2023

02

Benefit of 2nd Proviso to rule erstwhile rule 28(1)
(Any value as Invoice value)

In terms of Rule 28 for periods prior to 26th October 2023, if the recipient is eligible for full ITC. This view is supported by **CBIC Circular No. 199/11/2023-GST** which clarifies regarding the taxability of services provided between Head Office and Branch Offices of the same organization, where the same valuation provisions, as applicable to related persons, apply.(**Full-ITC**)

03

Valuation based on erstwhile valuation rules- OPV/Like Kind/110% Cost/- Residual method

The valuation based on existing rules has its own challenges in terms of

- Open market value for RP transactions. ()
- There is no similar or like kind of service to compare CG as every CG has its own basis of issuance.
- In case of 110% of Cost, direct calculation attributable to CG are very minimal

HC Stays CBIC Circular on Corporate Guarantee

STERLITE POWER TRANSMISSION LIMITED & ORS. VERSUS UNION OF INDIA & ORS.-D-HC

ACME CLEANTECH SOLUTIONS P(LTD) vs UOI-P&H HC

Ratio Decendi

Facts

Summons u/s 70 is issued to provide details of CGs after issuance of the Circular to levy GST on CG executed by the Company

ISSUE

A declaration is requested by PETITIONERS that the activity of the holding company providing a Corporate Guarantee to a subsidiary is **not in the nature of supply of services** taxable under Section 9 of the Central Goods & Service Tax Act, 2017

Petitioner Submission

- CGs are in the nature of **CONTINGENT CONTRACT** which is not enforceable till the guarantee is enforced by the entity to whom the guarantee is provided
- The value of enforcement is not dependent on the value of the guarantee, and it is only where the guarantee is enforced that the issue of service may arise,
- Fixing a value at 1% of the Corporate Guarantee provided would put onerous burden on the entity providing the Corporate Guarantee.

Interim Order

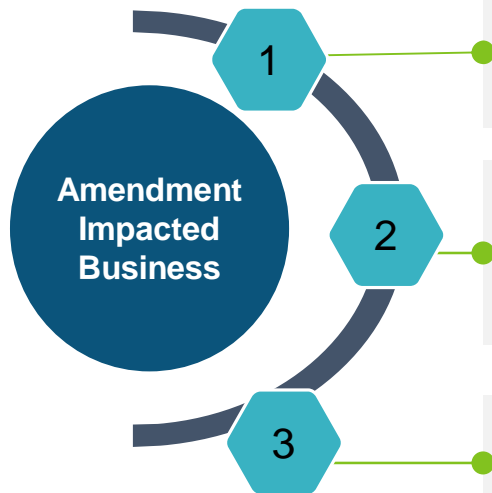
- Notice is issued to UOI, and it is directed that **NO COERCIVE ACTION** shall be taken against the petitioner in case a final assessment order is passed, or a demand is created.
- Meanwhile, effect and operation of the impugned Circular dated 27.10.2023 (Annexure P-2) relating to Item No. 2 shall **REMAIN STAYED** and the Appellate Authority shall **BE FREE** to decide the case of the petitioner without being **INFLUENCED** by the **CLARIFICATION**

M/s Sterlite Industries India Ltd vs Commissioner of GST & Central Excise 2019 (2) TMI 1249 Chennai-CESTAT had held that the provision of only a Corporate Guarantee to an associate company is like an **in-house guarantee** and **does not** amount to providing any services.

SC judgement in case of **Edelweiss Financial services**

GST on International Freight- Impact of changes in Place of Supply provisions

Overview of GST amendments impacting Freight Forwarding business



- Discontinuation of **EXEMPTION** w.e.f **01.10.2022** on **Export Air Freight & Export Ocean Freight**. However, Air-Import freight remains **EXEMPTED**.
- Only Air-Import freight remains **EXEMPTED** based on the above amendment.

- Circular issued by CBIC clarifying that ITC is available in hands of the recipient where the POS is outside India for Air & Ocean export shipments.
- The Clarification has ensured that levy of 5%/18% on account of discontinuance of exemption is not added to the cost of services provided.

Non-Applicability of RCM on Ocean Freight Import where the Contract is on CIF Basis is affirmed by Supreme Court in case of “Mohit Minerals Private Limited” providing much aviated and ending long-drawn litigation

Deletion of Proviso to 12(8) and 13(9) of CGST Act, 2017

(W.EF. 01.10.2023)

- **Impact of deletion of Proviso to 12(8)** : The Place of supply for movement of goods from India to Outside India shall be based on **the location of the Client, whereas earlier the place of supply was outside India levying IGST.**
- **Impact of deletion of Proviso to 13(9)**: The place of supply shall be based on residual clause that is location of recipient which shall be outside India in case of Export-Air shipments and India in case of client located in India.
- ***Risk of levy of GST on Import of Service for Destination/Origin charges incurred outside India if POS is determined based on residual clause i.e., Location of recipient.***

Example- Deletion of 12(8) of IGST Act, 2017







Table 1- Outbound freight- Location of service provider and recipient is in India

Location		Place of Supply		Taxability	
Service Provider	Service Recipient (GST registered)	Before 1-10-2023	From 1-10-2023	Before 1-10-2023	From 1-10-2023
Maharashtra	Maharashtra	Outside India (POD)	Maharashtra (LOR)	IGST	CGST+SGST
Maharashtra	Gujarat	Outside India (POD)	Gujarat (LOR)	IGST	No change

POD: Place of destination

LOR: Location of recipient

Summarizing: GST Rates for **EXPORT** out of **INDIA** (Revenue Perspective)

DGFIN Billing to ->		Indian GST Unregistered Customer	Indian GST Registered Customer	Indian SEZ Customer (Authorised Operation)	Foreign customer / DHL Network entity (Overseas)
Type of Charges ↓					
	Ocean Freight	Taxable (5%)	Taxable (5%)	Taxable (0%)	Export (0%)
	Air Freight	Taxable (18%)	Taxable (18%)	Taxable (0%)	Export (0%)
	Handling service at origin of goods (in India)	Taxable (18%)	Taxable (18%)	Taxable (0%)	Taxable (18%)
	Road transportation at origin of goods (in India)	Taxable (18%)	Taxable (18%)	Taxable (0%)	Export (0%) [changed from taxable 18%]
	Handling service at destination of goods (overseas)	Taxable (18%)	Taxable (18%)	Taxable (0%)	Export (0%)
	Road transportation at destination of goods (overseas)	Taxable (18%)	Taxable (18%)	Taxable (0%)	Export (0%)

Summarizing: GST Rates for **IMPORT** into **INDIA** (Revenue Perspective)

DGFIN Billing to ->		Indian GST Unregistered Customer	Indian GST Registered Customer	Indian SEZ Customer (Authorised Operation)	Foreign customer / DHL Network entity (Overseas)
Type of Charges	v				
	Ocean Freight	Taxable (5%)	Taxable (5%)	Taxable (0%)	Export (0%) [changed from taxable 5%]
	Air Freight	Exempt (0%)	Exempt (0%)	Taxable (0%)	Export (0%) [changed from exempt 0%]
	Handling service at origin of goods (overseas)	Taxable (18%)	Taxable (18%)	Taxable (0%)	Export (0%)
	Road transportation at origin of goods (overseas)	Taxable (18%)	Taxable (18%)	Taxable (0%)	Export (0%)
	Handling service at destination of goods (in India)	Taxable (18%)	Taxable (18%)	Taxable (0%)	Taxable (18%)
	Road transportation at destination of goods (in India)	Taxable (18%)	Taxable (18%)	Taxable (0%)	Export (0%) [changed from taxable 18%]

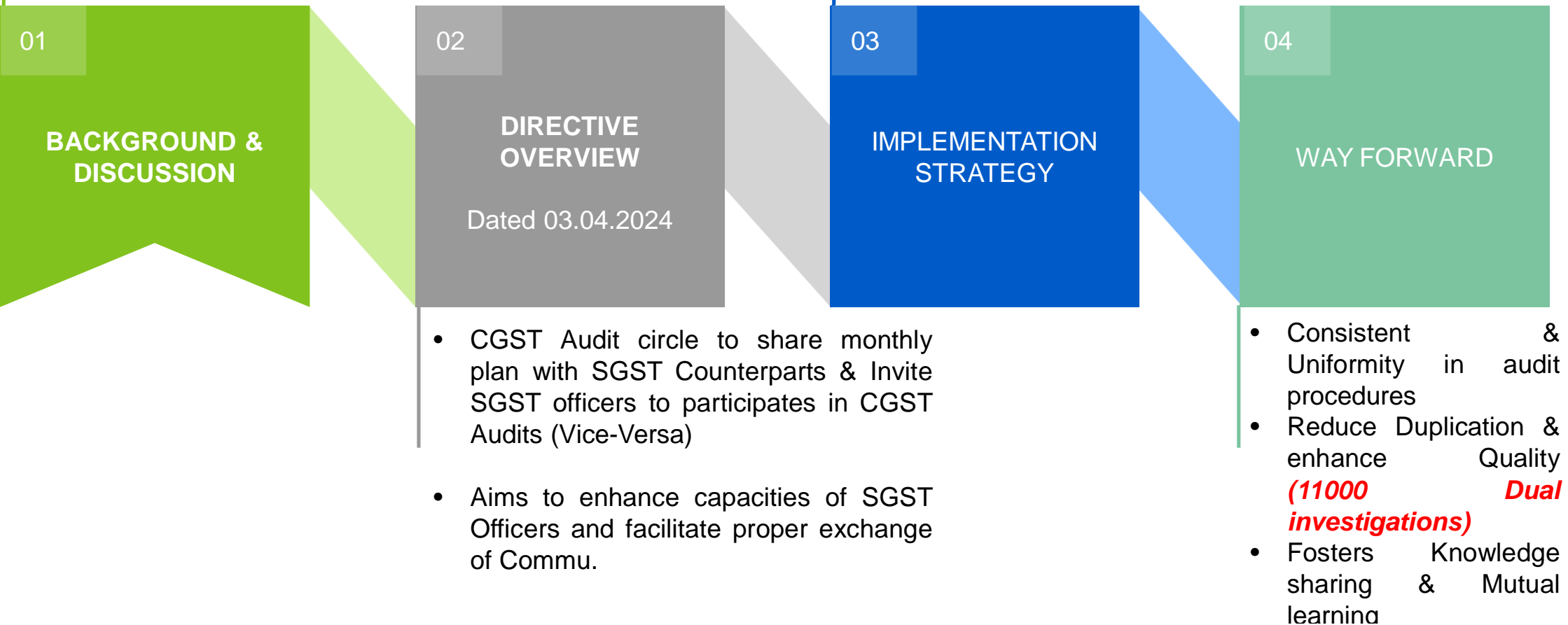
Executive Developments

2

Joint Audits by CGST/SGST a reality?

- Initiative from Meeting between CC.
- The audit functions undertaken by SGST were scrutinized, leading to the decision to foster collaboration between CGST and SGST audit teams

Instructed AC's/ DCs to coordinate with SG & devise framework to conduct joint Audit **PROMPTLY**



Directive on Rectification of orders!

GST Authorities have outrightly passed orders (Especially for FY 2017-18 & 2018-19) to meet the statutory time-limit under GST law which has adversely impacted taxpayers **(NO NATURAL JUSTICE, NOT RELYING ON SCN REPLY ETC.)**. The Taxpayers have 2 options against the adverse Orders:

- File Appeal u/s 108 of CGST Act **OR** Apply for Rectification of order u/s 162 of CGST (If Law permits)
- However, in respect of rectification of order, divergent practices are being followed by field authorities (Pro-Revenue) because of which the instruction has been issued by Delhi-SGST discussing the instances which can be considered for rectification and instances which doesn't qualify for rectification.

- ❖ The rectification of order shall be permitted only for **"MISTAKES APPARENT ON FACE OF THE RECORD"** and doesn't include further representation of replies, arguments by either counter parties. **(Non-Consideration of arguments cannot be considered as MISTAKE)**
- ❖ A decision on the **DEBATABLE POINT OF LAW** or undisputed questions of fact **is not a mistake apparent from the record.**
- ❖ If there are **INTERPRETATION POINTS** on facts of the case or from the law perspective, then it cannot be processed through rectification procedure.
- ❖ The rectification may not be done **WHERE AN APPEAL** is preferred by the registered person to higher appellate forums.

Rectification permitted under this instances.

- Where the demand amount **fully paid** via **DRC-03 and informed**, but **NOT** considered by officer when issuing the demand order
- Where there is **ARITHMETICAL ERROR/ HEAD ERROR** i.e., IGST, CGST and SGST in the demand order issued by the proper officer.

Important Judicial Developments

3

Cross Empowerment under GST-

Ram Agencies v. Assistant Commissioner of Central Tax (W.P. No. 34792 of 2019 and Ors.)

Facts of this Case

- Taxpayers are either assigned to State or Central authorities for **ADMINISTRATIVE PURPOSE** based on which the relevant department carried out respective proceedings under the GST Act.
- The issue was whether the petitioners, who are assigned to either the central or state tax authorities under the CGST Act and/ or TNGST Act, can be subjected to investigation and further proceedings by their counterparts in ABSENCE OF PROPER Notification u/s 6 of respective GST Law.?

Petitioners key Contentions

- Article 279A of the Constitution of India provides for the constitution of and various powers to the GST Council.
- Prior to the GST law coming into effect, during the 9th GST Council meeting, a decision was taken regarding cross-empowerment to ensure a single interface with authorities for the future GST laws
- Pursuant to decisions taken in the 9th GST Council meeting, first impetus for cross-empowerment was given via a circular², which provided guidelines for division of taxpayers between central and state tax authorities to ensure a single interface for the purpose of tax administration. The circular also provided that suitable notifications regarding cross-empowerment of State and Central TOs under the respective CGST, IGST, and State Goods and Services (SGST) Acts (SGST Act) would be issued separately
- In the 22nd GST Council meeting, separate model notification was circulated for deliberation which provided for the cross empowerment of various functions. However, due to persistent difference regarding cross-empowerment for the place of supply rules, it was decided that notification providing for cross-empowerment in respect of other matters was to be deferred.
- Accordingly, a notification³ was issued providing for cross empowerment by authorising officers under the respective SGST Act as the proper officer under the CGST Act for the purposes of sections 54 and 55 of the CGST Act, which provide for refund provisions. The draft notification for cross-empowerment of other functions (other than refund) has not been notified till date, and thus, there is no cross-empowerment. **(NO OTHER NOTIFICATION HAS BEEN PROVIDED FOR CROSS-EMPOWERMENT)**

Madras HC's observations and judgement

The Madras High Court held that in the absence of a notification under section 6 of the respective GST enactments for cross-empowerment, State or Central TOs cannot usurp the power of investigation or adjudication of a taxpayer who is not assigned to them. As a case may be made out against the petitioners, the court held that the proceedings should be initiated against them by the authority to whom they are assigned. A summary of the rationale applied by the court is provided below

A. Scheme of GST enactments

B. Appointment and empowerment of officers

C. Absence of notification for cross-empowerment

KEY TAKE AWAY'S

This is a very significant decision **ADDRESSING THE GAP** in the issuance of notifications for cross-empowerment. Based on this decision, the proceedings in the said case have been held to be **without jurisdiction**. To deliberate on the gap in the issuance of the notifications, the Madras High Court has discussed various aspects on the GST Council deliberations, comparison of provisions between the CGST Act and corresponding SGST enactments, and the Model GST Law, among other things.

Notably, while various high courts have either upheld or quashed parallel proceedings by state or central tax authorities on the basis of section 6(2) of the CGST or respective SGST Acts, **these rulings have not dealt with the issue of the absence of a notification for cross-empowerment**

Sec. 54 & Rule 96(10)-Amendment in BOE Travancore Cocolut Private Ltd-KC

FACTS

- The Taxpayer has paid IGST along with interest to safeguard the refund of IGST on account of non-compliance of rule 96(10) of CGST rules, 2017?
- Allowing only to pay the IGST & Interest by way of TR-06 Challan

ISSUE

Before

HC

The Department has denied amendment of Bill of entry on the premise that the Taxpayer has only following options:

- Appeal against assessed BOE under 128
- The Amendment u/s 149 can be done only based on documentary evidence which are existence at the time of clearance of goods

HC has allowed amendment in BOE u/s 149 as additional remedy available in hands of the Taxpayer based on following premise.

- Relying on the principals of amendment of BOE as provided in Circular 16/2023 dated 17.06.2023 which was issued with respect to amendment of BOE in case of violation of Pre-Import condition under AA.
- Relying on decided HC judgements has negated the department contention as to why amendment u/s 147 cannot be applied by TP.

ORDER

RATIO DECENDI

1. *SC case of ITC Ltd (2019-VIL-32-SC-CT) wherein the SC has held order can be modified by 128 or any other provisions of the Act.*
2. *The Mechanism of amendment provided in Circular 16/2023 can also be applied for rectification of rule 96(10) non-compliance*
3. *2nd Proviso to section 149 with regard to amendment in BOE only based on the documents available is not a valid ground of defence.*

Sec. 50-interest

Eicher Motors Ltd. v. Superintendent of GST & CE, Range-II

2024 (1) TMI 1111 - MADRAS HIGH COURT

FACTS

Liability to pay interest for the GST amount, which was routinely deposited into the Electronic Cash Ledger (ECL) within the due date

ISSUE

Whether depositing the tax in Electronic cash ledger within due date would amount to Payment of tax and remit GST in time?

ORDER

- The amount available in the ECL is not the amount available for the Government and utilized only upon the debiting of payment.
- The money available in E-Cash Ledger and E-Credit Ledger is the money, which belongs to the Assessee till the time of debit entry is made in the GSTR-3B returns

Important Legal Points associated

1. ***M/S. RSB TRANSMISSIONS INDIA LIMITED DELHI 2022 (11) TMI 483 - JHARKHAND HIGH COURT not followed.***
2. ***Cash Ledger is akin to PLA. Deposit of money enough (ModiPon Ltd 2017 SC)***
3. ***FAQ 8 of RBI dated 14-04-2020 clarifies the same. PMT 06 deposit would be enough.***
4. ***Debit entry after 3B is an accounting set off***
5. ***Cash ledger balance not available at his sweet will***

Sec. 7-Supply

YONEX INDIA (P.) LTD. V. UNION OF INDIA

2024 (2) TMI 59 - KARNATAKA HIGH COURT

FACTS

Whether Activity of holding of shares by Holding in Subsidiary per se be considered as “supply of service” and eligible to GST ?

ISSUE

1. Notificaiton No.08/2017 – IT (Rate) dated 28-06-2017
2. Entry No. SAC 997171 the services provided by holding companies, i.e, holding securities of (or other equity interests in) companies and enterprises for the purpose of owning a controlling interest

ORDER

- Shares are securities - neither goods nor services
- Holding of shares in a subsidiary company by the holding company cannot be construed or treated as “supply of service
- Circular 196/08/2023-GST dated 17th July 2023
- Notice quashed

Ratio Decendi

1. Burden of Proof on Department to bring under particular classification the goods or services:

❑ **Hindustan Ferodo Ltd. Vs CCE 1997 (89) E.L.T 16 (SC)**

2. Existence of Classification Exemption Entry cannot pre-suppose the levy of GST:

❑ **Aparti Private Limited Vs UOI 1985(22)ELT644(BOM)**

Sec.15-Discount

SUPREME PARADISE V. ASSISTANT COMMISSIONER

2024 (2) TMI 351 - MADRAS HIGH COURT

FACTS

Valuation u/s 15(3) - Validity of GST on volume discount - GST is levied and paid on the entire invoice amount, which includes volume discount. -

ISSUE

- Whether GST on volume discount would be double taxation?
- Whether discounted price itself was on account of the subsidy?

ORDER

- **The discounted price at which goods are sold is relevant only for determining the “transaction value”**
- **Discount falls under the purview of Section 15 (3) TNGST Act, 2017**
- **Both are different and volume discount is different from subsidy. Unless subsidy, it cannot be added back.**

Important Legal Principles associated :

Ratio Decendi

Eicher Tractor vs CC (2000) 122 ELT 321 “wherein it was categorically held that discount is a commercially acceptable measure and **no criteria is required for arriving at a particular discount rate.**”

Demand of discount in Invoice - Impractical

Southern Motors vs. State of Karnataka (2017) 98 VST 207 “...the quantification of trade discount for deduction at the time of sale itself, by incorporating the same in the tax invoice/bill of sale would be to demand the impossible for all practical purposes and thus would be illogical.”

Important Legal Principles associated :

FACTS	ITC claim rejected solely on the ground that the petitioner had not claimed ITC in the GSTR-3B returns
ISSUE	Whether registered person can claim the ITC referring to GSTR-2A and GSTR-9 returns?
ORDER	The assessing officer should examine whether the ITC claim is valid by examining all relevant documents, including by calling upon the registered person to provide such documents.

Comments:

- **Likely to be challenged**
- **Not correct when read with Section 16(2)(d) and Section 59**
- **Self assessment is complete only when return as per Section 39.**
- **Bharathi Airtel SC would be against if ratio applied.**

Sec. 16-ITC Engineering Tools Corporation v. Assistant Commissioner (ST) Chennai

2024 (2) TMI 1126 - MADRAS HIGH COURT

FACTS

Reversal of Input Tax Credit (ITC) availed by the petitioner - reversal on the ground that the GST registration of the relevant supplier was cancelled with retrospective effect

ISSUE

Whether the contentions of the petitioner which was rejected on the ground that he should have proved the existence of Supplier is right?

ORDER

- The petitioner have to produce evidence of the existence and prove that the transactions are genuine.
- It appears that the petitioner submitted such documents but these documents were disregarded. Hence, the impugned assessment order is quashed

Ratio Decendi

Commissioner of Trade & Taxes, Delhi and others Vs. Arise India Limited and others [TS-2-SC-2018- VAT]

M/s. Gargo Traders versus the Joint Commissioner, Commercial Taxes (State Tax) & Ors.

M/s LGW Industries Limited [2021 (12) TMI 834 - Calcutta High Court

Sec. 16-Reversal of ITC

Ingram Micro India (P.) Ltd. v. State Tax

2024 (1) TMI 1103 - MADRAS HIGH COURT

FACTS

Denial of ITC for non-payment to suppliers exceeding 180 days

ISSUE

Is the entire trade payables of the company across India should be taken as the trade payables ?

ORDER

- The assessing authority has clearly not applied its mind before drawing the conclusions extracted above.
- The impugned order is liable to be and is hereby quashed.
- The matter is remanded for reconsideration by the assessing authority

OBSERVATIONS

1. There is no state specific FS.
2. Non-Application of Mind
3. SCN cannot be based on assumptions and presumptions
4. DRC 01 to be Uploaded on the common portal R 142(1)

Sec. 47 Late fees on GSTR-9C → ANISHIA CHANDRAKANTH V. SUPERINTENDENT (KERELA HC)

Facts

The petitioner has been issued show cause notice regarding late fee u/s 44(1) [Belated filing of Annual return i.e., GSTR-9] along with Sec. 44(2) [Belated filing of Reconciliation statement i.e., GSTR-9C] of Rs. 2,93,600 for the period before commencement of amnesty scheme dated 31.03.2023.

Issue

Whether Late fees for belated GSTR 9C be levied if filed before commencement of amnesty or not?

Order

- Kerala High Court in its ruling carried that the demand for a **late fee for belated GSTR 9C is invalid** as the Central Goods and Service Tax (CGST) notification exempted the same and permitted the refund of the late fee paid as per **the amnesty scheme introduced through Notification 07/2023**.
- The judgment highlighted the **discrepancies in the GST portal's support** for payment of late fees, particularly concerning GSTR-9C. It clarified that while the portal enabled the charging of late fees for GSTR-9, it **lacked provisions for GSTR-9C late fees**. Furthermore, it emphasized the **one-time amnesty's intent to alleviate the burden on taxpayers**, particularly those who filed their returns **before the scheme's implementation**.
- However, it is made clear that the petitioners **will not be entitled to claim refund of the late fee** which has already paid by them **over and above Rs.10,000/-**

Sec. 50-interest

M/s. East India Udyog Ltd Vs. STO Jamshed Circle

2024-VIL-327-JHR – Jharkhand HC

FACTS

Demand Notices and Advises are sent to pay interest on tax accepted before passing order.

ISSUE

Whether demand of Interest in automatic and whether notice under 73 /74 is mandatory (i.e. is adjudication mandatory)

ORDER

Demand of Interest is automatic as interest arises by operation of law as per Section 50 of the CGST Act, 2011. **ASSESSMENT / QUANTIFICATION IS NOT AUTOMATIC.** Quantum cannot be unilateral especially when noticee disputes it. "automatic" does not mean or to be construed as excluding "the arithmetic exercise"

Important Legal Points associated

1. **M/S. RSB TRANSMISSIONS INDIA LIMITED DELHI 2022 (11) TMI 483 - JHARKHAND HIGH COURT not followed.**
2. **Cash Ledger is akin to PLA. Deposit of money enough (ModiPon Ltd 2017 SC)**
3. **FAQ 8 of RBI dated 14-04-2020 clarifies the same. PMT 06 deposit would be enough.**
4. **Debit entry after 3B is an accounting set off**
5. **Cash ledger balance not available at his sweet will**

Sec. 54-Refund

Mittal Footcare v. Commissioner of Central Goods & Services-tax

2024 (1) TMI 283 - DELHI HIGH COURT

FACTS

Seeking refund on the Input Tax Credit - rejection on the ground that there was a mismatch of turnover - excess availment and misdeclaration of invoice value and no supporting documents

ISSUE

Whether refund can be rejected on the ground of non-supply of authenticated document & Annexure B was not signed?

ORDER

A refund cannot be rejected merely on the ground of non-supply of authenticated document.

It is open to the Department to call for further clarification or documents as may be required to satisfy itself that refund is due and payable

RATIO DECENDI

- 1. Non-Authenticated Annexure B***
- 2. Documents not uploaded in portal***
- 3. Appellate Authority has misconstrued the facts and proceeded to pass the OIA.***
- 4. Technical considerations vs substantive justice***

Sec. 54-Refund- Consignment Sale

VENUS JEWEL Vs UOI 2024-VIL-326-BOM

FACTS

Refund of IGST paid on Goods exported on consignment stuck between GST and Customs Portal

ISSUE

- Shipping Bill date prior to Invoice date leading to mismatch in Electronic Records. Can this be a ground to deny the refund?
- Exported goods on consignment basis re-imported – Circular 20/06/03/2019 GST 18-07-19

ORDER

- GST Common Portal and ICAGATE did not cater to any provisions to cater to this situation
- No fault on the petitioner. Circular will not apply for July 17 to Dec 18
- On sale, exports is confirmed. Authorities cannot disown their responsibilities
- Refund with Interest of 9% within 3 weeks.

RATIO DECENDI

It is, hence, clear that both the authorities are **DISOWNING THEIR OBLIGATION** and/or authority to refund the IGST as paid by the petitioner while **NOT DENYING** that the petitioner was entitled to the refund. The position is something which is **NOT ONLY DISTURBING BUT A SHOCKING STATE** of affairs in the authorities inter se not resolving such issues. We also do not find that any attempt was made to resolve the issues by both the parties. Any internal or departmental conflicts cannot cause prejudice to the assessee..

Sec. 73-SCN Titan Company Ltd. v. Joint Commissioner of GST & Central Excise

2024 (1) TMI 619 - MADRAS HIGH COURT

Facts	Bunching of SCN from FY 2017-18 to FY 2019-20
Issue	Is bunching of show cause notice is permissible under the ACT what is the procedure for it?
Order	Directions issued for disposal of the representation of the petitioner to split up the show cause notices for each year separately.

Observations

1. State of Jammu and Kashmir and Others v. Caltex (India) Ltd [1965(12) TMI 125 – SC

An Assessment encompasses different assessment years, each assessment year could be easily split up and dissected and the items can be separated and taxed for different periods.

TL in Section 73(10) would be in otiose.

Sec. 73-SCN Appario Retail (P.) Ltd. v. Deputy Commissioner of Commercial Tax

2024 (2) TMI 588 - KARNATAKA HIGH COURT

OBSERVATIONS

Facts

Entire Process of Intimation to Form GST DRC 01A to DRC 01 within 8 days from 22.09.2023 to 30.09.2023

Issue

Intimation in DRC 01 A mandatory or directory
Once Intimation issued and reply filed, whether non-consideration of Reply to Intimation will it harm the adjudication.

Order

- The petition is allowed-in-part and the impugned Show Cause Notice is quashed.
- The petitioner shall be at liberty to file further submissions in continuation of the submission filed
- The respondents shall examine these submissions in the light of the material already on record.

1. **Failure to consider the reply to Form GST DRC 01A is firm infirmity**
2. ***SCN quashed & Matter remanded from DRC 01 A stage***
3. ***Court was silent whether Form DRC 01A is still mandatory or optional.***
4. ***However, once issued, reply to be considered***

Sec. 108-Pre-Deposit

M/S FLIPKART INTERNET PVT. LTD. VERSUS THE STATE OF BIHAR

2023 (12) TMI 419 - PATNA HIGH COURT

Facts

Maintainability of appeal - appeal rejected as being defective for non-payment of the pre-deposit - whether by debiting ECRL, an assessee can claim to have satisfied the requirement of pre-deposit of a sum equal to 10 percent of the remaining amount of tax in dispute as per the order under appeal, for maintaining appeal as per Section 107 (6) of the CGST/BGST Act

Issue

Whether **ELECTRONIC CREDIT LEDGER** can be used for statutory pre deposit?

Order

The amount credited on a provisional basis in the Electronic credit ledger are subject to an assessment proceedings to determine the amount of credit eligible for utilization by registered person and **cannot be utilized** for making payment of any interest, penalty and fees.

Ratio Decendi

OASIS REALTY V. THE UNION OF INDIA & ORS.

“It was held that appellate authority can insist on making payment of disputed tax only through ECL only.”

Sec. 108 -Limitation Period

M/S ABHISHEK TRADING CORPORATION VERSUS COMMISSIONER (APPEALS) AND ANOTHER

2024 (2) TMI 1214 - ALLAHABAD HIGH COURT

Facts

Maintainability of appeal - appeal filed by the petitioner dismissed on the ground that the same was time barred as it was filed beyond the period of four months

Issue

Whether Limitation act is to be excluded in CGST Act ?

Order

- The Allahabad High Court said no to a request, confirming that the rules for appealing under the CGST Act are strict and should be followed.
- They made it clear that the time limit for appeals can't be extended by using the Limitation Act.

Ratio Decendi

1. **The Supreme Court in Singh Enterprises v. Commissioner of Central Excise, Jamshedpur and Others reported in (2008) 3 SCC 70**
 - The Commissioner and the High Court were therefore justified in holding that there was no power to condone the delay after the expiry of 30 days' period."
2. **In Commissioner of Customs and Central Excise v. Hongo India Private Limited and Another reported in (2009) 5 SCC 791**
 - The High Court was, therefore, justified in holding that there was no power to condone the delay after expiry of the prescribed period of 180 days."

Sec. 122 Penalty on Employee → SHANTANU SANJAY HUNDEKARI V. UOI

Facts

The Petitioner and other employees of Maersk were issued a Show Cause Notice (“the Impugned SCN”) under Section 74 of the CGST Act amounting to **RS. 3731 CRORE**.

Issue

Whether penalty can be levied from the employees of the Company under Section 122 (1A) of the CGST Act who is not directly involved in day-to-day affairs of the Company and has not retained the benefit of transaction?

Order

- The penalty is imposable only on person u/s 122(1A) of the CGST Act, who is **responsible for the transaction** conducted, is a **taxable person** and is in **legal position to retain the benefit of tax** on the transaction covered under aforesaid clause of Sec. 122(1) of the CGST Act.
- **Sec. 137 of the CGST Act**, relating to prosecution **would not be applicable when demand cum show cause notice** is issued under Section 74 of the CGST Act.
- The demand from the petitioner an amount of Rs.3731 crores, which in fact is clearly **alleged to be the liability of Maersk**.

Relevant Provision

Section 122 (1A) of the CGST Act

“Section 122: Penalty for certain offences

(1) Where a *taxable person* who—

(A) Any *person* who retains the benefit of a transaction covered under clauses (i), (ii), (vii) or clause (ix) of sub-section (1) and at whose instance such transaction is conducted, shall be liable to a penalty of an amount equivalent to the tax evaded or input tax credit availed of or passed on”

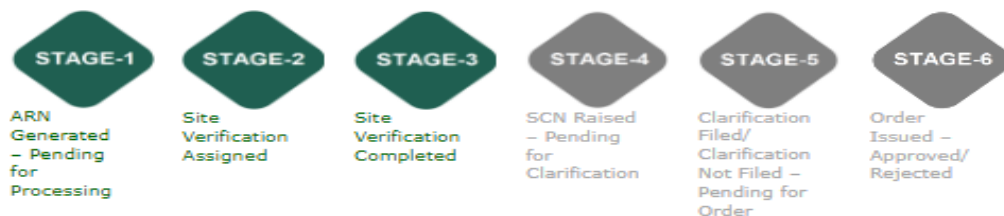
Portal Developments

4

GSTN Portal Update-Track your Registration with PV Status

The 'Track Application Status' tab on the GST Portal now reflects whether a New Registration Application has been marked for Physical Verification. This update, which was announced in the *GSTN's Advisory dated February 28, 2024*, has now been made operational.

Detailed Status : Show Case History of New Registration Application ARN



Basic Details	
ARN	AA330424062331Q
GSTIN	NA
Date	22/04/2024
Application assigned to	CENTER
Current Status	Pending for Processing
Application Type	New Registration Application
Center Jurisdiction	(CBIC),(CHENNAI),(CHENNAI-OUTER),(SRIPERUMPUDUR),(SUNKUVARCHATRAM RANGE)

Case History			
Stage	Status of the Application	Action Date	Remarks
1	ARN Generated - Pending for Processing	22/04/2024	Details shared to taxpayer on email/SMS.Pending with jurisdictional tax authority for action
2	Site Verification assigned	26/04/2024	Application is marked for Site verification
3	Site Verification Completed	06/05/2024	Site Verification is done.

Questions !



Thank you

Linked In: **Shravan Gehlot**

Email: **Shravan@saaasllp.com**

Mobile :**9500144702**

WhatsApp: **GST Knowledge Forum! (DM to Join!)**

PPT Credits: Teja, Shwetha, Luckshya, CA. Ashwin