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Part I – Direct Tax

Judgements

Telangana High Court sustains GAAR invocation on a 'bonus stripping' transaction

In *Ayodhya Rami Reddy Alla v PCIT (Central)*[1], the taxpayer subscribed to shares of a private limited company. Within a few days, that private limited company issued bonus shares in the ratio of 1:5. Pursuant to the issuance of such bonus shares, the value of each share was reduced to 1/6th of its original value. Thereafter, the taxpayer sold the original shares to another company, on which the taxpayer incurred a short-term capital loss. In its return of income the taxpayer claimed set-off of the short-term capital loss incurred on the above transaction against the long-term capital gains realised on another transaction of sale of shares.

Assessment order passed without granting sufficient opportunity to taxpayer quashed - Bombay High Court

During the assessment proceedings, the tax officer (TO) sought to treat the transaction of sale of the original shares as an 'impermissible avoidance arrangement', as per the provisions of general anti-avoidance rules (GAAR) under Chapter X-A of the Act.

The TO issued a notice under rule 10UB of the Income-tax Rules, 1962, to the taxpayer seeking objections from the taxpayer under section 144BA of the Act.

The taxpayer argued that since the transaction undertaken was covered by provision of law for bonus stripping in section 94(8) forming part of Chapter X of the Act of dealing with specific anti-avoidance rules (SAAR), the provisions under Chapter X-A dealing with GAAR cannot be invoked.

High Court's decision

The High Court, while dismissing the taxpayer's writ petition, held that the GAAR provisions will apply to the facts of the case. The High Court observed that SAAR under Chapter X of the Act were in existence before the insertion of GAAR provisions under Chapter X-A of the Act. Several courts, including the Supreme Court of India, consistently held that when a special provision of law is enacted, general provisions of the Act cannot be invoked. Therefore, the said principle cannot be applied in this case, as GAAR was enacted after the specific provisions. The High Court also noted that Chapter X-A of the Act begins with a non obstante clause and has an overriding effect on all other provisions of the Act.

The High Court also observed that the taxpayer's argument that SAAR as per section 94(8) of the Act should take precedence over GAAR is fundamentally flawed and lacks merit, even otherwise, as the transaction was in shares and not units as required by the said section in the relevant assessment year.

The High Court held that the Revenue had persuasively and convincingly shown that transactions in the instant case were not permissible tax-avoidance arrangements. Therefore, the provisions of Chapter X-A were held prima facie applicable, and the revenue was allowed to proceed with GAAR assessment in accordance with the Act.

Interest income earned by Indian PE from overseas HO not taxable in India – Delhi High Court

In *CIT v Bank of Tokyo-Mitsubishi UFJ Ltd,*[2] the taxpayer was a multinational banking enterprise,

1 [2024] 163 taxmann.com 277 (Telangana)

2 [2024] 162 taxmann.com 872 (Delhi)

with a permanent establishment (PE) in India comprising of branches. During AY 2003-04, the PE in India received interest income from its HO and other overseas branches. The taxpayer included this income in its total taxable income while filing its return of income but challenged it before the Commissioner of Income-tax (Appeals) (CIT(A)) on the ground that it was not taxable in India as it was a payment to self. The CIT(A) rejected the claim. However, the Income-tax Appellate Tribunal (Tribunal) allowed the taxpayer's claim following its previous order passed in the taxpayer's case.

The Delhi High Court upheld the order of the Tribunal and held that since the PE and HO were the same persons and not separate legal entities, and a person cannot earn from itself, the interest income was not taxable in India.

Moreover, the Delhi High Court noted that the Explanation to section 9(1)(v) of the Act, which created a statutory fiction of treating the PE as a separate and independent person, was not applicable to the case as it was introduced by the Finance Act, 2015, with effect from 1 April 2016 and the present case pertains to AY 2003-04.

Assessment order passed without granting sufficient opportunity to taxpayer quashed - Bombay High Court

In Vivek Jaisingh Asher v ITO,[3] the taxpayer had received a permanent alternate accommodation and possession letter of a flat from the developer in lieu of surrender of his tenancy rights in respect of another flat.

The taxpayer had treated the stamp duty value as consideration for surrender of his tenancy rights and had claimed the investment made towards the new flat received from the developer as a deduction under section 54F of the Act.

During the assessment proceedings, the Revenue issued a show cause notice (SCN) asking why the

stamp duty should not be treated as deemed income under section 56(2)(x) of the Act and deduction under section 54F of the Act be denied. However, in the assessment order, Revenue treated the stamp duty value as unexplained investments under section 69 of the Act and charged to tax under section 115BBE of the Act. No query with respect to this was raised during assessment proceedings.

The taxpayer contended that the Revenue had not issued any SCN providing opportunity to show cause regarding why the stamp duty value should not be treated as unexplained investment under section 69 of the Act.

The Revenue's contention was that as the assessment was getting time barred by limitation, there was no time for further SCN. Hence, the order was passed after considering all submissions on record.

Bombay High Court's observations and decision

- The Bombay High Court quashed the assessment order since the SCN issued by Revenue did not mention the section of the Act under which variation was made. Therefore, a reasonable opportunity was not given to the taxpayer.

3 [2024] 299 Taxman 222 (Bombay)

- The court observed that issuance of SCN is not an 'empty' formality. It is to provide reasonable opportunity to the taxpayer to deal with the allegations in the SCN.
- Additionally, by not specifying in the SCN whether sections 56(2)(x)(a) or 56(2)(x)(b) of the Act is applicable in the first instance, the Revenue had not given the opportunity for showing cause to the taxpayer. Hence, the powers conferred upon the Revenue under the Act were not properly executed.

Section 56(2)(viib) of the Act does not apply if no consideration is received in the year of conversion of loan into equity – Himachal Pradesh High Court

In *PCIT v I.A. Hydro Energy (P.) Ltd.*,[4] the taxpayer was incorporated in FY 2016-17 through the conversion of a partnership firm into a company. Upon conversion, all partners of the firm became shareholders of the company. During the year, unsecured loans previously advanced by the partners to the partnership firm were converted into equity shares of the company issued at a premium.

In the assessment proceedings under section 143(3) of the Act, an addition was made by the TO under section 56(2)(viib) of the Act as the taxpayer had issued equity shares at a premium, in excess of the fair-market value of shares as per rule 11UA(2) of the Rules.

The CIT(A) deleted the above addition. The Tribunal upheld the CIT(A)'s order, holding as follows:

- Loans were outstanding since 2010, the source of which was satisfactorily explained, and such loans were transferred to the taxpayer on the conversion of partnership firm in FY 2016-17.
- Shares were issued during previous year merely on conversion of loans. No money or consideration was received on the issue of shares in the year of conversion. Therefore, section 56(2)(viib) of the Act could not apply.

Section 56(2)(viib) of the Act does not apply if no consideration is received in the year of conversion of loan into equity – Himachal Pradesh High Court

The High Court while upholding the decision of Tribunal held that section 56(2)(viib) of the Act is applicable only if consideration was received for issue of shares. As no consideration was received, section 56(2)(viib) of the Act was not applicable. The High Court held that no substantial questions of law arose in this case.

In absence of FTS clause in the India-Thailand tax treaty, technical service rendered being in the nature of business income, not to be taxable in India in absence of PE in India – Delhi bench of the Tribunal

In *Denso (Thailand) Co. Ltd. v ACIT*,[5] for AY 2020–2021, the taxpayer, a resident of Thailand, provided technical services to its AEs in India being in the nature of fees for technical services (FTS).

The taxpayer treated the same as business income in the absence of FTS clause in the India–Thailand tax treaty. As the taxpayer was not having a PE in India, it treated such income as non-taxable.

The AO accepted the nature of income as FTS but contended that it was taxable as 'Other Income' as per Article 22 of the India–Thailand tax treaty and taxed the same at 10% as per section 9(1)(vii) of the Act.

On appeal before the Tribunal, the Tribunal observed that the FTS is a species of income with a specific definition and components, as mentioned

4 [2024] 163 taxmann.com 408 (Himachal Pradesh)

5 [2024] 163 taxmann.com 257 (Delhi - Trib.)

under the provisions of the Act. In case the tax treaty does not make any separate reference on the taxability of the FTS income, then Article 22 of the said DTAA (which deals with residuary powers) can be invoked only when the FTS income is not subject to any other Articles of the DTAA.

The Tribunal held that the purpose of Article 22 of the DTAA is to tax incomes that, owing to lack of regularity, continuity and frequency, do not form part of regular business activities of the entity.

The Tribunal, on perusal of the documentary evidence filed and taking into consideration the nature of services rendered by the taxpayer, concluded that the same were in the nature of FTS and could very well be part of the business income of the taxpayer.

The Tribunal was of the view that, in the absence of a PE in India of the taxpayer, the FTS income would not be taxable under Article 22 of the India–Thailand DTAA.

Part II – Indirect Tax

I. 53rd GST Council meeting

The 53rd GST Council meeting was held on 22 June 2024[6] following the 2024 general elections. Although industry expectations were high, the Council deliberated on only part of the agenda. It is expected to take up the remaining agenda in the August 2024 meeting. However, key clarifications and amendments proposed in this meeting have been summarized below-

i. Recommendations impacting substantive liability

- A mechanism is prescribed to claim refund of additional IGST paid on account of upward price revision of the goods subsequent to export.
- The rate of TCS should be reduced from the present 1% to 0.5%.
- Where supplies are received from unregistered suppliers where tax has to be paid by the recipient under RCM and the invoice is also required to be issued by the recipient, the relevant financial year (FY) to calculate the time limit to avail the input tax credit (ITC) under section 16(4) of the Central Goods and Services Tax Act, 2017 (CGST Act) is the FY in which the recipient issued the invoice, i.e. self-invoice required under section 31(3)(f) of the CGST Act.
- Amendment is to be made to rule 28(2) of the Central Goods and Services Tax Rules, 2017 (CGST Rules), retrospectively in effect from 26 October 2023. Moreover, a circular is to be issued to clarify various issues regarding the valuation of the service of providing corporate guarantees between related parties.

  It is being clarified that, inter alia, valuation under rule 28(2) of the CGST Rules is not applicable in the case of export of such services and where the recipient is eligible for full ITC.
- On the Council's recommendations, a new section 11A is to be inserted into the CGST Act to give the government powers to allow regularisation of non-levy or short levy of GST, where tax was being short paid or not paid due to common trade practices.
- The GST Council recommends that the time limit to avail ITC in respect of any invoice or debit note under section 16(4) of the CGST Act, through any return in the Form GSTR-3B filed up to 30 November 2021 for FYs 2017–18 to 2020–21, may be deemed to be 30 November 2021. To implement this, an amendment would be introduced in section 16(4) of the CGST Act, retrospectively in effect from 1 July 2017.

  Provisions of section 16(4) of the CGST Act would also be conditionally relaxed in case of cancellation of GST registration, where returns for the period from the date of cancellation of registration till the date of revocation of cancellation of the registration are filed by the registered person within 30 days of the order of revocation.
- Amendment is to be made in section 122(1B) of the CGST Act, retrospectively in effect from 1 October 2023. This will clarify that the said penal provision is applicable only for ECOs who are required to collect tax under section 52 of the CGST Act and not other ECOs.
- Clarification is provided for cases where a foreign affiliate provides certain services to a related domestic entity, for which full ITC is available to said related domestic entity. Value of such supply of services declared in

6 PIB Press Release dated 22 June 2024

the invoice by said related domestic entity may be deemed as open market value in terms of the second proviso to rule 28(1) of the CGST Rules.

Moreover, in cases where full ITC is available to the recipient, if the related domestic entity does not issue an invoice with respect to any service provided to it by the foreign affiliate, the value of such services may be deemed to be declared as nil and may be deemed as open market value in terms of the second proviso to rule 28(1) of the CGST Rules.

- Section 171 of the CGST Act should be amended to provide for a sunset clause for anti-profiteering provisions under GST. The recommended last date for receipt of new applications with respect to anti-profiteering is 1 April 2025. Section 109 of the CGST Act would also be amended to provide for handling of anti-profiteering cases by the Principal bench of the GST Appellate Tribunal (GSTAT).
- Amendment is to be made in rule 88B of the CGST Rules to ensure that amounts available in the electronic cash ledger on the due date of filing the return are not included while calculating interest for delayed returns.
- No supply under Schedule III of the CGST Act in the following cases:
  - o Co-insurance premium apportioned by the lead insurer to the co-insurer for the supply of insurance service by the lead and co-insurers to the insured in coinsurance agreements.
  - o Transaction of ceding commission or re-insurance commission between the insurer and re-insurer.

  Past cases will be regularised on an 'as is where is' basis.
- GST liability on reinsurance services of specified insurance schemes covered by serial numbers 35 and 36 are to be regularised for the period from 1 July 2017 to 24 January 2018.

  GST liability on reinsurance services of the insurance schemes for which the government pays the total premium and are covered under serial numbers 40 are to be regularised for the period from 1 July 2017 to 26 July 2018.

  It is clarified that retrocession is 're-insurance of re-insurance' and is therefore eligible for the exemption under serial number 36A.

ii. Recommendations relating to tax dispute resolution

- Section 128A is to be inserted into the CGST Act to provide for conditional waiver of interest or penalty relating to demands raised under section 73 of the CGST Act for FYs 2017–18 to 2019–20.
- Monetary limits are prescribed, subject to certain exclusions, for the department filing GST appeals before GSTAT, High Court and Supreme Court. The goal is to reduce litigation by revenue authorities.
- It is now recommended to reduce the maximum pre-deposit amount to INR400m cumulatively (CGST INR200m + SGST INR200m).

- Amendment to section 112 of the CGST Act will allow the three-month period for filing appeals before the GSTAT. This period will start from a date to be notified by the government in respect of the appeal revision orders passed before the date of said notification.
- The Council recommends an amendment in rule 142 of CGST Rules and issuance of a circular to prescribe a mechanism for adjustment of the amount paid in respect of a demand through Form GST DRC-03 against the amount to be paid as pre-deposit for filing appeal.
- For issuance of demand notices and orders for FY 2024–25 onwards, a common time limit is proposed for cases under sections 73 and 74 of the CGST Act, irrespective of whether the cases involve fraud, suppression, wilful misstatement, etc.

  Time limit to avail the benefit of reduced penalty is increased to 60 days.
- Amendments are recommended to section 16 of the Integrated Goods and Services Tax Act, 2017 (IGST Act) and section 54 of the CSGT Act to restrict refund of IGST on goods where export duty is applicable. This restriction will be applied uniformly for all exports of goods (i.e. with or without payment of tax).

  This restriction is extended to instances where goods are supplied to special economic zone (SEZ) developers or units for authorised operations.
- Amendment is recommended to section 140(7) of the CGST Act retrospectively in effect from 1 July 2017 to provide for transitional credit in respect of invoices pertaining to services provided before the appointed date and where invoices were received by an input service distributor (ISD) before the appointed date.

iii. Compliance-related changes

- New Form GSTR-1A is introduced wherein a new optional mechanism is provided to facilitate the taxpayers to amend the details in Form GSTR-1 and declare additional details, if any, before filing a return in Form GSTR-3B for a tax period.
- Form GSTR-7 must be filed even if tax has not been deducted in a particular month. However, no late fee is prescribed for a 'nil' Form GSTR-7. Invoice-wise details must now be furnished in Form GSTR-7.
- The threshold for reporting invoice-wise details in Table 5 of Form GSTR-1 for B2C interstate supplies has been reduced from INR250,000 to INR100,000.
- The due date for filing of return in Form GSTR-4 for composition taxpayers to be extended from 30 April to 30 June following the end of the FY. This will apply for returns for FY 2024–25 onwards.
- Taxpayers with aggregate annual turnover of up to INR20m will be exempt from filing annual return in Forms GSTR-9 or 9A for FY 2023–24.

iv. GST-rate-related changes

- Amendments to be made in section 9(1) of the CGST Act to explicitly exclude ENA used for the manufacture of alcoholic liquor for human consumption from the GST levy.
- GST rate on the import of 'parts, components, testing equipment and tools and toolkits of aircrafts' will be at a uniform rate of 5% IGST.
- Compensation cess on imports by SEZ units or developers for authorised operations will be exempted retrospectively from 1 July 2017.
- The acquiring bank sharing the incentive with other stakeholders is not taxable, so

long as (a) sharing of such incentive is clearly defined under the incentives scheme for the promotion of RuPay debit cards and low-value BHIM-unified payments interface (UPI) transactions; and (b) the National Payments Corporation of India has decided its proportion and manner in consultation with the participating banks.

- Statutory collections made by the Real Estate Regulatory Authority are exempt from GST as services rendered by the Central Government, State Government, etc.
- GST exemption is provided to services that Indian Railways provides to the general public: sale of platform tickets, facility of retiring and waiting rooms, cloak-room services, battery-operated car services and intra-railway transactions.
- GST exemption is provided on services that special purpose vehicles (SPVs) provide to Indian Railways by way of allowing Indian Railways to use infrastructure that is built and owned by the SPV during the concession period as well as on maintenance services supplied by Indian Railways to the SPV.
- Separate entry is to be inserted to exempt accommodation services having the value of up to INR20,000 per month per person, subject to the condition that the accommodation service is supplied for a minimum continuous period of 90 days.
- GST rate on all milk cans made of steel, iron or aluminium will now attract a 12% GST, irrespective of their use.
- GST rate on cartons, boxes and cases made of both corrugated and non-corrugated paper or paperboard will be reduced from 18% to 12%.
- All types of solar cookers, whether single or dual energy source, will attract 12% GST.
- The existing entry covering poultry-keeping machinery, which attracts 12% GST, will be amended to include 'parts of poultry-keeping machinery'.
- Clarification is provided that all types of sprinklers, including fire-water sprinklers, will attract 12% GST.
- IGST exemption provided on the import of specified items for defence forces has been extended for five years (until 30 June 2029).
- IGST exemption on import of research equipment and buoys under the Research Moored Array for African-Asian-Australian Monsoon Analysis and Prediction program will continue, subject to specified conditions.

v. Other administrative changes

- Clarifications are provided on various issues pertaining to special procedures for the manufacturer of specified commodities, such as pan masala and tobacco.
- Biometric-based Aadhaar authentication of registration applicants will be rolled out on a pan-India basis in a phased manner, following successful pilot implementations in states such as Gujarat, Puducherry and Andhra Pradesh.

II. CBIC issued Circulars pursuant to recommendations made during the 53rd Meeting of the GST Council

16 circulars have been issued under the CGST Act on multiple issues to bring ease of doing business and reduce unwarranted litigation in furtherance of the recommendations made in the 53rd GST Council meeting. Clarifications have been summarized below-

Sl. No.	Circular No. and date	Clarification
1.	Circular No. 207/1/2024-GST dated 26 June 2024	Notifies the following monetary limits, subject to certain principles, exclusions, monetary limits for filing of appeals under GST by the department before GSTAT, High Court, and Supreme Court: GSTAT: INR 2m High Court: INR10 m Supreme Court: INR 20m It has also been clarified that non-filing of appeal based on the above monetary limits, will not preclude the tax officer (TO) from filing appeal or application in any other case involving the same or similar issues in which the tax in dispute exceeds the monetary limit or case involving the questions of law. The Department's decision not to appeal based on monetary limits does not imply acceptance of the underlying issues, and each cited prior order must be verified for acceptance due to monetary limits before being considered as a precedent.
2.	Circular No. 208/2/2024-GST dated 26 June 2024	Clarifies on various practical issues while complying with the special procedure to be followed by a registered person engaged in manufacturing of certain goods such as pan masala, tobacco, and others. The clarifications are largely on reporting aspects, such as non-availability of make, model number and machine number, absence of electricity consumption rating of the packing machine, etc. and provides for the manner of undertaking compliances in such cases. The circular also, inter-alia, clarifies that the special procedure is not applicable to (i) special economic zone units; (ii) the manual processes using electric operated heat sealer and seamer. However, the procedures are applicable for job-work and contract manufacturing scenarios.

3.	Circular No. 209/3/2024-GST dated 26 June 2024	Clarifies that where the address of delivery of goods recorded on the invoice is different from the billing address of the unregistered person on the invoice, the place of supply of goods will be the address of delivery of goods recorded on the invoice. It is stated that the supplier may record the delivery address as the address of the recipient on the invoice for the purpose of determining the place of supply of the said supply of goods.
4.	Circular No. 210/4/2024- GST dated 26 June 2024	Clarifies that earlier circular dated 17 July 2023[7] regarding the supplies of services between distinct persons in cases where full ITC is available to the recipient, is equally applicable for the import of services between related persons. Accordingly, the value of the said supply of services declared in the invoice will be deemed to be the open market value of such services, if the recipient is eligible for full ITC as per second proviso to rule 28 (1) of the CGST Rules.
5.	Circular No. 211/5/2024-GST dated 26 June 2024	Clarifies that in case the supplies on which tax is paid by a recipient under RCM are received from unregistered suppliers and the invoice is issued by recipient as per section 31(3)(f) of the CGST Act, the relevant FY for the calculation of time limit for availing ITC will be the FY in which self-invoice has been issued by the recipient, as per section 16(4) of the CGST Act. When the recipient issues invoice after the time of supply and pays tax thereon, it will be required to pay interest and may also be liable to pay a penalty according to section 122 of the CGST Act.
6.	Circular No. 212/6/2024-GST dated 26 June 2024	States that till a functionality or facility is made available on the common portal to verify compliance with section 15(3)(b)(ii) of the CGST Act, the supplier may procure a certificate issued by a Chartered Accountant (CA) or Cost Accountant (CMA) [containing a Unique Document Identification Number (UDIN)] from the recipient of the supply. The suppliers can obtain self-undertaking from the recipients (if the reversal amount is less than INR0.5m in a FY).

7 Circular No. 199/11/2023-GST dated 17 July 2023

7.	Circular No. 213/07/2024-GST dated 26 June 2024	Clarifies that GST is not leviable on the allotment of securities or shares by the foreign holding company to the employees of the domestic subsidiary company on the following grounds: • Transaction is neither a supply of goods nor a supply of services as it is undertaken as part of the compensation package for the enhanced performance of employees and their retention (covered under Entry 1 of Schedule III of the CGST Act). • Shares are securities, which are excluded from the definition of goods as well as services. Circular caveats that if the foreign holding company charges any additional fee, markup, or commission from the domestic subsidiary company for issuing ESOP, ESPP or RSU provided by a company to its employees through its overseas holding company, then GST would be leviable on such amount as consideration for the supply of services of facilitating or arranging the transaction in securities or shares by the foreign holding company to the domestic subsidiary company.
8.	Circular No. 214/8/2024-GST dated 26 June 2024	Life insurance policies which include a component of investment along with the component of risk cover for life insurance, are covered under the life insurance business. The provisions regarding the value of supply of the services in relation to life insurance business are contained in rule 32(4) of the CGST Rules. It provides that the value of supply of services in respect of life insurance business is primarily to be determined by deducting the amount of premium allocated for investment or savings on the policy holder's behalf from the gross premium charged from them. It also provides for the determination of value of supply of such services based on a certain percentage of gross premium in other situations. Section 17(2) of the CGST Rules read with rules 42 or 43 of the CGST Rules require ITC reversal where ITC is used partly for effecting taxable supplies and partly for exempt supplies. Circular clarifies that just because some amount of consideration is not included in the value of taxable supply as per valuation provisions, the said portion of consideration cannot be said to now be attributable to a non-taxable or exempt supply. Hence, there is no requirement of ITC reversal regarding the said amount.

9.	Circular No. 215/9/2024-GST dated 26 June 2024	Circular provides clarification for the below scenarios: **Deduction of salvage or wreckage:** • When the insurance contract specifies that the insurer's liability is limited to the Insured's Declared Value (IDV) minus the salvage value, the ownership of the salvage remains with the insured even when insurance companies may assist in obtaining competitive quotes for the salvage. • The deduction of salvage value cannot be said to be a consideration for any supply being made by the insurance company and hence there is no GST liability for the insurance company on this salvage value. **Full IDV Settlement:** • In cases where the insurance contract provides for settlement of the full IDV without deducting the salvage value, the salvage becomes the property of the insurance company once the claim is settled. • The insurance company must then handle or dispose of the salvage and discharge GST liability on the disposal or sale of the salvage.
10.	Circular No. 216/10/2024-GST dated 26 June 2024	Circular dated 17 July 20234 had clarified that if the manufacturer replaces any parts free of cost during the warranty period, they are neither liable to pay any GST thereon, nor any ITC availed on such parts needs to be reversed. The present circular is further clarifying the following – • Clarification via the previous circular4 will be equally applicable, even when the entire goods are supplied or replaced completely (instead of only parts) during warranty. • If the distributor replaces the parts or goods during warranty, from his own stock on the behalf of the manufacturer and gets replenishment of the same from the manufacturer, the same treatment will apply, i.e. the manufacturer is neither liable to charge any GST nor liable to reverse any ITC. • If extended warranty against payment is provided by the supplier of the goods itself at the time of original supply, it will be a composite supply, but if the supplier of goods (dealer or distributor) and the supplier of extended warranty (manufacturer) are different, the supply of extended warranty would be a distinct supply of service and the supplier of extended warranty will be liable to discharge GST.

11.	Circular No. 217/11/2024-GST dated 26 June 2024	ITC is available to insurance companies for the motor vehicle repair expenses incurred by them in the case of the reimbursement mode of claim settlement. This is because the insurance company qualifies as a recipient and the consideration includes payment made by third person. Some scenarios may exist where the amount of repair services is more than the approved claim cost and the insurance company only reimburses the approved claim cost to the garage after considering the standard deductions. The remaining amount is to be paid by the insured to the garage. Here, the circular clarified on following two scenarios – • The garage issues 2 separate invoices to the – (1) insurance company regarding the approved claim cost; and (2) customer for the amount of repair service in excess of the approved claim cost: ITC is available to the insurance company on the said invoice subject to the reimbursement of the said amount by the insurance company to the customer. • The garage issues an invoice for the full amount for repair services to the insurance company while the latter makes a reimbursement to the insured only for the approved claim cost: ITC is available to the insurance company only to the extent of the reimbursement of approved claim cost to the insured, and not on full invoice value. ITC is available to the insurer only when the invoice for the repair of the vehicle is in the name of the insurance company to satisfy the conditions laid down in section 16(2)(a) and (aa) of the CGST Act.
12.	Circular No. 218/12/2024-GST dated 26 June 2024	Interest or discount charged on loan amounts is exempt from GST under S. No. 27(a) of Notification dated 28 June 2017.[8] When no consideration is charged for processing, administering or facilitating a loan, processing fees, which are generally non-refundable, cover the administrative costs. For related entities, credit assessment may not be necessary, and the administrative costs may be absent, distinguishing these services from those provided by banks or independent lenders. Even between unrelated parties, administrative charges might be waived based on the relationship. Therefore, no service or supply exists between related persons for processing, administering or facilitating loans, and no GST is applicable as per section 7(1)(c) read with Schedule I of the CGST Act.

8 Notification No. 12/2017-Central Tax (Rate) dated 28 June 2017

		However, when a fee is charged for processing, administering or facilitating a loan, it qualifies as consideration for the supply of services and is subject to GST.
13.	Circular No. 219/13/2024-GST dated 26 June 2024	Clarified the issue of availing ITC on ducts and manholes used in the network of OFC's which was denied as the same was said to be restricted in terms of sections 17(5)(c) and 17(5)(d) of the CGST Act. Now, it has been clarified that availing ITC on ducts and manholes used in the network of OFC's is not restricted in terms of the said section because of the following – • Ducts and manholes are basic components for the optical fibre network used in providing Telecommunication services. • Regarding the explanation to section 17 of the CGST Act, ducts and manholes are not specifically excluded from the definition of plant and machinery as they are neither in the nature of land, building or civil structures nor are they in the nature of telecommunication towers or pipelines laid outside factory. • Ducts and Manholes are in the nature of plant and machinery as they are used as part of the OFC network for making outward supply of the transmission of telecommunication signals.
14.	Circular No. 220/1/2024-GST dated 26 June 2024	Circular clarifies the place of supply for custodial services provided by banks to FPIs. It states that these services should not be considered as services provided to 'account holders' under section 13(8)(a) of the IGST Act. The place of supply for such services should be determined under the default provision, which is sub-section (2) of section 13 of the IGST Act. The circular provides details on the definition of custodial services, the types of securities FPIs can invest in, and the main activity of banks in providing custodial services. The circular also specifies that similar provisions were there under the service tax regime.
15.	Circular No. 221/15/2024-GST dated 26 June 2024	Clarified the issue of the Time of Supply for the purpose of payment of tax on the deferred annuity payments received by the concessionaire from NHAI for the construction of road and operation and maintenance (O&M) thereof under the HAM model.

		In HAM contracts, a certain portion of payment linked to construction is payable during the construction and the remaining payment is received in instalments over the concession period as per the payment schedule. However, the revenue authorities have been advancing the view that GST is payable on the percentage of construction completion method. The circular has clarified the time of supply provisions mainly considering that the HAM contract should be considered holistically as a single contract for both construction and O&M services. It cannot be artificially split based on payment terms. The following clarifications have been provided. • The tax liability on the concessionaire under the HAM contract, including on the balance portion linked to the construction portion will arise at the time of issuance of invoice or receipt of payment, whichever is earlier [if the invoice is issued on or before the specified date or date of completion of the event specified in the contract]. • If the invoices are not issued on or before the specified date or date of completion of the event as specified in the contract, the tax liability will arise on the date of provision of the said service or date of receipt of payment whichever is earlier. • Instalments or annuity payable by NHAI to the concessionaire includes the interest component. The interest amount should also be includible in the taxable value for the purpose of payment of tax on the annuity or instalment in terms of section 15(2)(d) of the CGST Act.
16.	Circular No. 222/16/2024GST dated 26 June 2024	Clarifies the time of supply for the GST payment on spectrum allocation services when the telecom operator opts for deferred payment in instalments. The spectrum allocation service provided by the Department of Telecommunications (DoT) is treated as a continuous supply of services under section 2(33) of the CGST Act. The circular clarifies that the Frequency Assignment Letter issued by the DoT which details the auction results and payment options, is not considered as an invoice but a bid acceptance document. Hence, the GST liability arises at the time the instalment payments are due or made, whichever is earlier.

III. CBIC issued guidelines issued for CGST field officers to maintain ease of doing business during investigation

CBIC has issued guidelines in four different categories.

i. Initiation of proceedings

- Principal Commissioner (Pr. Commissioner) will be responsible for developing and approving any intelligence, conducting search and completing investigation for their allocated jurisdiction.
- Any information pertaining to another jurisdiction during investigation will be forwarded to the concerned jurisdictional Pr. Commissioner or Directorate General of GST General Intelligence (DGGI), as the case maybe.
- Permission of the zonal Principal Chief Commissioner (Pr. Chief Commissioner) is required to initiate investigations pertaining to the following categories-
  - Matters of interpretation seeking to levy tax or duty on any sector, commodity, or service for the first time whether in Central Excise or GST; or
  - Big industrial house and major multinational corporations; or
  - Sensitive matters or matters with national implications; or
  - Matters which are already before the GST Council
- To initiate all other investigations, the permission of the Pr. Commissioner is required
- Before initiating an investigation, it is to be ascertained whether any other investigating office or tax administration has already initiated an inquiry on the same subject matter related to the same taxpayer or GSTIN.

ii. Dual or multiple proceedings

- In case of record-based investigation the Pr. Commissioner must communicate with such other investigating officer(s) to consider the feasibility of only one of the offices pursuing the investigation on all subject matters.
- In situations where the Pr. Commissioner has initiated an investigation related to a GSTIN within their jurisdiction, and the issue is relevant to some or all of that taxpayer's GSTINs registered under the same PAN in multiple jurisdictions, and if the matter is also covered within the domain of the DGGI, the Pr. Commissioner must promptly create a self-contained reference to their zonal Pr. Chief Commissioner, who will then formally request the Principal Director General of DGGI (Pr. DG DGGI) to take up the matter in accordance with DGGI guidelines.
- Where investigation has been initiated on an issue which is relevant in other CGST jurisdictions for other taxpayers also, the Pr. Commissioner will take either of the following actions within 30 days of the initiation of investigation with approval of the zonal Pr. Chief Commissioner.
  - If description of GSTINs or similar entity types involved (or likely to be involved) across various jurisdictions related to the

issue or topic is available, self-contained references must be shared with the respective zonal officers.

- In other situations, the Pr. DG DGGI will be requested to issue suitable alert.

iii. Safeguards against exploitation during investigation

- During investigation, if the Pr. Commissioner notices that the issue is based on a matter of interpretation entailing the demand of tax, while the taxpayer(s) is found to be following a prevalent trade practice as per their sector, the Pr. Chief Commissioner is recommended to make a reference to the relevant policy wing of the CBIC.
- While initiating investigation of a listed company, public sector undertaking, corporation, or government department, agency authority established by law, or seeking details from them, official letters should be first issued instead of summons to the designated officer of such entity detailing the reasons for investigation and legal provisions thereof. The designated officer should be requested to submit the relevant specified details in a specified reasonable time. Written reasons should be provided in the case of divergence from this practice.

- Letter or summons issued should disclose the specific nature of the inquiry being initiated or undertaken. The letter should not be vague, and information available digitally or on the online GST portal should not be called for.
- Summons should be only issued as per the conditions laid down under section 70 of the CGST Act. An addressing letter or summon with context or content akin to a fishing inquiry is not acceptable.
- For issuing summons, the prior reasoned approval of the officer (not below the Deputy or Assistant Commissioner level) is required regarding the content of the summons to be printed by the summoning officer, including regarding the information being sought and that provided time frame is reasonable for its compliance. If prior written approval is not operationally feasible, verbal approval can be taken subject to written approval being taken at the earliest opportunity. Appropriate prior preparation is required to avoid repeated issuance of summons or seeking piecemeal information.
- Scanned copy of statement and outcome of the search or inspection should be uploaded in the e-file within four working days of completion thereof.

iv. Completing investigation

- Investigation must be completed within a year. Show cause notices need not be delayed after concluding the investigation. The closure report should include a brief self-explanatory note and not be delayed.
- Investigation can also be concluded with the reason that it is not being pursued further as nothing objectionable was found.

IV. Customs and Foreign Trade Policy

i. Ministry of Commerce has issued instruction clarifying the issues and aspects relating to the guidelines notified as rule 11B of SEZ Rule, 2006.[9]

ii. CBIC issued additional clarification[10] regarding applicability of customs duty on display assembly of a cellular mobile phone.

iii. CBIC issued clarification[11] regarding permissibility of transfer of goods from one bonded manufacturing unit to another. Key aspects discussed by the CBIC are outlined below.

- In terms of MOOWR, deferred customs duty needs on warehoused goods is to be paid on removal of resultant goods for home consumption. The regulations further provide the extent of deferred customs duty payable and the manner of its payment on removal of finished goods for home consumption by filing ex-bond Bill of Entry under section 68 of the Customs Act.
- Moreover, the procedure and process for inter unit transfer of goods from another warehouse including a bonded manufacturing warehouse are laid down in MOOWR in terms of disclosure in the prescribed format, intimation to be filed with the bond officer, etc. apart from debiting or recrediting the triple duty bond and taking a transit risk insurance.
- Circular no. 34/2019-Cus dated 1 October 2019 also clarifies the permissibility of the transfer of resultant goods from one bonded manufacturing unit to another, stating that it is allowed, subject to disclosures, documentation and intimation to the bond officer as laid down in the MOOWR.

9 Instruction No. 115 dated 9 April 2024
10 Circular No 6/2024-Cus dated 7 June 2024
11 Instruction No. 16/2024-Customs dated 25 June 2024

V. Judicial Updates

i. The Larger Bench of the Customs Excise and Service Tax Appellate Tribunal (CESTAT)[12] concluded that the input services used by telecom service providers for the commissioning and erection of base transceiver station (BTS) towers and shelters were admissible for CENVAT credit and the decision of the Bombay High Court in the case of Bharti Airtel Limited[13], which denied credit for inputs used for the same purpose, was not applicable to input services. The bench observed that the definitions of input and input services in the CENVAT Credit Rules, 2004 (CCR), were mutually exclusive and had different eligibility criteria. It also noted that construction services, which were excluded from the definition of an input service by an amendment in 2011, were implicitly included in the pre-amendment era, as held by the Bombay High Court in the case of Coca Cola India Private Limited[14] and Ultratech Cement Limited[15]. The bench also relied on the decision of the Punjab and Haryana High Court in the case of Bellsonica Auto Components India P. Limited[16], which upheld the credit for construction services used for setting up a factory and was accepted by the Revenue.

ii. The Bombay High Court[17], while quashing a Show Cause Notice (SCN) levying Integrated Goods and Services Tax (IGST) on ocean freight, held that no IGST would be leviable on ocean freight for both cost insurance and freight (CIF) and free on board (FOB) contracts, relying on the Supreme Court decision in the case of Mohit

12 Service Tax Appeal No. 86951 of 2015
13 Bharti Airtel Limited v. Commissioner of Central Excise, Pune-III [2014-TIOL-1452-HC-MUM-ST]
14 Coca Cola India Private Limited v. Commissioner of Central Excise, Pune-III [2009-TIOL-449-HC-MUM-ST]
15 Commissioner of Central Excise, Nagpur v. Ultratech Cement Limited [2010-TIOL-745-HC-MUM-ST]
16 Bellsonica Auto Components India Private Limited [2015 (7) TMI 930 - Punjab & Haryana High Court]
17 [2024 (3) TMI 1265 (Bombay High Court)]

Minerals[18]. The Bombay High Court rejected the arguments put forth by the authorities that the Supreme Court decision was applicable only to CIF contracts and not to FOB contracts, stating that the case of Mohit Minerals involved both types of contracts. The High Court also stated that, once the notifications[19] have been declared to be ultra vires, it cannot be the basis for issuing a notice by the authorities.

iii. The Supreme Court[20] has recently dismissed the appeal filed by the petitioners stating that they do not find any reason to interfere with the impugned final order[21] passed by the Allahabad bench of the CESTAT, which had concluded that yoga, encompassing physical, mental and spiritual well-being, is covered under 'Health and Fitness Services' and is taxable. The court thus dismissed the contention that differential treatment based on its therapeutic application is non-taxable.

iv. The Kerala High Court[22] delivered a significant judgment addressing the constitutional validity of sections 16(2)(c) and 16(4) of the CGST Act, coupled with the provisions of the State Goods and Services Tax Act, 2017. The High Court, relying on the decisions of the Supreme Court,[23] noted that the ITC is a concession[24] provided to the taxpayer and subject to the restrictions provided under the statute.

18 Union of India v. M/s Mohit Minerals Private Limited [Civil Appeal No. 1390 of 2022]
19 Notification Nos. 8/ 2017 – IGST (Rate) and 10/ 2017 – IGST (Rate) dated 28 June 2017
20 Civil Appeal Diary no (s). 11256/2024
21 Final order no. 70104/2023 dated 5 October 2023
22 W.P.(C) No. 31559 of 2019 – Kerala High Court
23 Jayam & Co. v. Assistant Commissioner & Another [(2016) 15 SCC 125]
24 Jayam & Co. v. Assistant Commissioner & Another [(2016) 15 SCC 125]; ALD Automotive (P) Limited v. Commercial Tax Officer [(2019) 13 SCC 225]

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