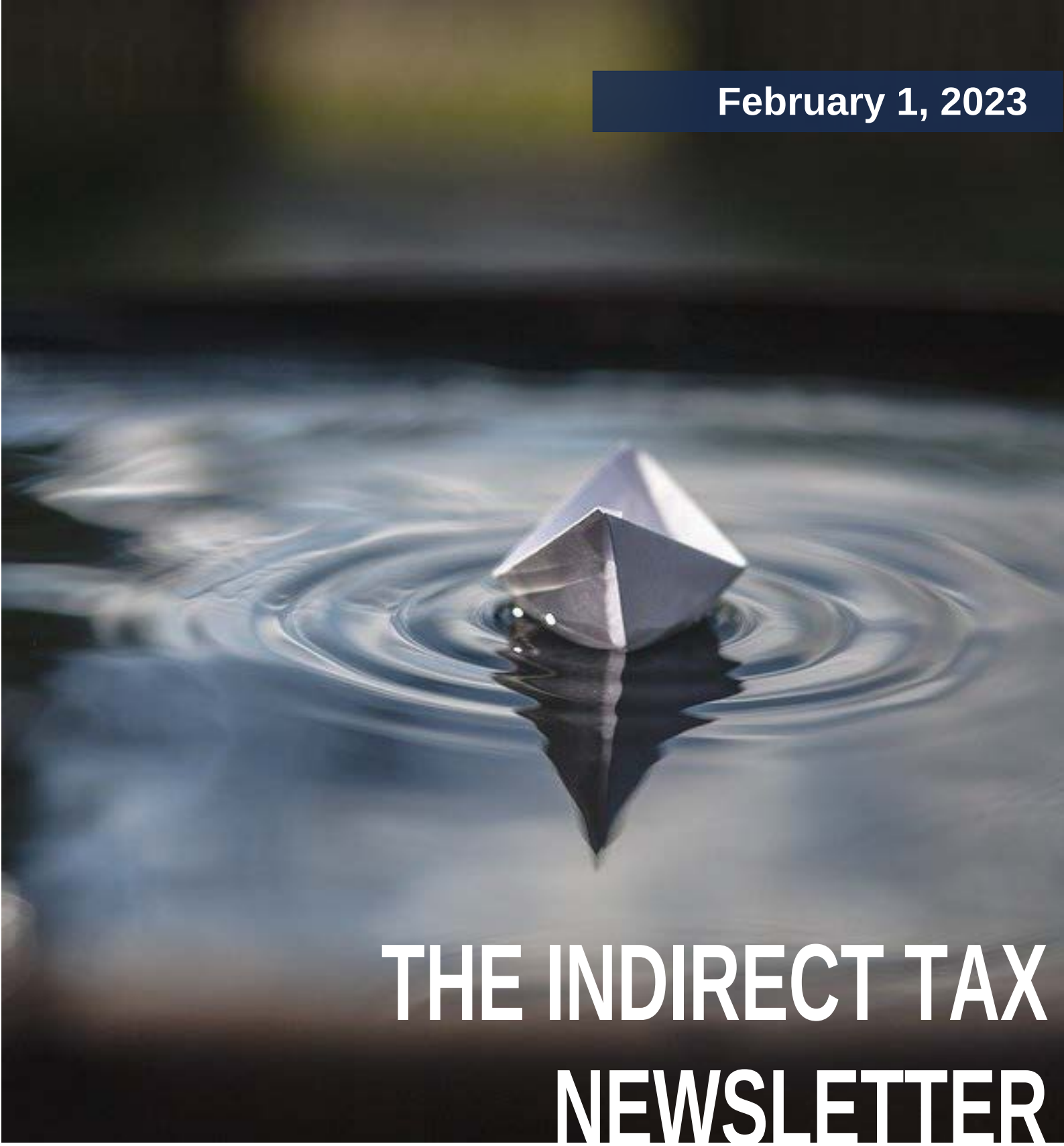

February 1, 2023

THE INDIRECT TAX NEWSLETTER

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Recent Case Laws

Goods and Services Tax (GST)

1. *The jurisdiction to determine eligibility of CENVAT credit transitioned under GST law would lie on the adjudicating officers under erstwhile laws and not GST laws.*

Usha Martin Limited v. *Additional Commissioner, Central GST & CE* [Writ Petition (T) No. 3055 of 2022 (Hon'ble High Court of Jharkhand), decided on November 10, 2022].

Facts of the case:

(a) The Petitioner is engaged in the manufacture of iron and steel products in its factory premises. In the course of its business, the iron ore required was extracted from its captive mines, which was then transferred to the factory for processing. The CENVAT credit pertaining to the Service tax paid on services received at the mines was distributed via input service distributor mechanism to the factory. The availment of such credit by the factory of the Petitioner was under dispute in the erstwhile Central Excise regime and the proceedings for multiple periods were pending for final hearing at different stages.

(b) After the implementation of the GST regime w.e.f. July 1, 2017, the Petitioner duly filed Form TRAN-1 in terms of Section 140 of the Central Goods and Services Tax Act, 2017 (**"CGST Act"**) to carry forward the amount of CENVAT credit from the return of the erstwhile regime. In pursuance thereto, the GST authorities initiated adjudication proceedings as per Section 73(1) of the CGST Act, thereby disallowing the disputed CENVAT credit carried forward by the Petitioner through Form TRAN-1.

(c) Being aggrieved by the action of the GST authorities, the Petitioner filed a petition before the Hon'ble High Court. The present dispute pertains to the legality and jurisdiction of the GST authorities to initiate proceedings under Section 73 of the CGST Act for transition of CENVAT credit, which was allegedly inadmissible under the erstwhile regime.

Judgment:

The Hon'ble High Court examined the relevant provisions of the erstwhile regime and observed as follows:

(a) In the present case, the proceedings with respect to eligibility of CENVAT Credit have already been initiated in the erstwhile regime under the Central Excise Act, 1944 (**"CEA"**) read with the CENVAT Credit Rules, 2004 (**"CCR"**) as well as under the GST Regime in terms of Section 73 of the CGST Act.

(b) The GST law has provided that a proceeding can be initiated under Section 73 of the CGST Act for non-payment or short payment of tax or erroneous refund or for wrongly availing and utilising the input tax credit, which is available under the CGST Act. Section 73 of the CGST Act does not provide for CENVAT credit, rather the term has been subsumed in the expression "input tax credit" both relating to the supply of goods or services. Hence, the assumption of jurisdiction by the GST Authority to determine whether CENVAT Credit was admissible under the existing law or not is improper.

(c) Further, the repeal of the existing laws upon advent of GST regime did not leave vacuum to the past unclosed transactions. The repeal and saving clauses under Section 174(1)(e) of the CGST Act allowed legal proceedings to be instituted in respect of in-choate rights, except the rights under transaction which was passed and closed. Hence, the proceedings for availment of CENVAT credit which is allegedly inadmissible under the erstwhile laws could have been initiated under the existing laws.

(d) If the proceedings for transition of CENVAT credit alleged to be inadmissible is permitted to be carried out under the CGST Act, it may lead to uncertainty before both the jurisdictional authorities and the taxpayers. Hence, such a course cannot be laid down in law.

(e) Therefore, the initiation of proceedings by the GST authorities against the Petitioner under Section 73(1) of the CGST Act for alleged contravention of the erstwhile laws arising out of filing Form GST TRAN-1 was beyond the jurisdiction of the CGST Law and thus such action of the GST Authorities is untenable and liable to be set aside.

2. *BPO Service rendered on principal to principal basis to group entity located abroad does not qualify as an 'intermediary' service.*

Genpact India Private Limited v. *Union of India & Others* [CWP No. 6048/2021 (O&M) (Hon'ble High Court of Punjab and Haryana), decided on November 11, 2022].

Facts of the case:

(a) The Petitioner entered into a Master Service sub-contracting Agreement with Genpact International Incorporation (**"GI"**), an entity located outside India. In terms of the agreement, the Petitioner was involved in providing a host of services (herein-after referred to as **"BPO"**) to the customers of GI located in India as well as outside India. The invoices would be issued by the Petitioner on GI, who would transfer payment in convertible foreign exchange towards the service fee. Simultaneously, GI would issue invoices and receives remittance from its customers.

(b) The Petitioner treated its activity as an 'export of service' and filed a refund claim of the unutilized input tax credit used in making zero rated supply of service without payment of tax. However, the departmental authorities alleged that since the Petitioner was not providing service on its own account, the services supplied by the Petitioner qualify as an intermediary service and was therefore outside the ambit of "export of service". Consequently, the authorities rejected the refund of the Petitioner.

(c) Aggrieved by the same, the Petitioner filed the petition before the Hon'ble High Court on the question whether the service provided would qualify as an intermediary service under the provisions of the Integrated Goods & Service Tax Act, 2017 ("**IGST Act**") or not.

Judgment:

(a) The Hon'ble High Court perused the Terms of Agreement between the Petitioner and GI, for performance of BPO service and Information Technology service to the customers of GI. It was observed that the Petitioner was responsible for all the risks pertaining to performance of its service, which was akin to service provided on its own account. The clauses of the agreement between the parties also did not indicate that the Petitioner was acting as an "intermediary" in terms of the IGST Act. In fact, the said

clauses in the agreement duly stipulate the modalities of performance of the actual work and did not in any manner establish that the Petitioner was required to facilitate rendering of the main service to a third party.

(b) It was further held that as per the definition of "intermediary" under the IGST Act, the following conditions must be satisfied:

i. The relationship between the parties must be that of a principal-agency;

ii. The person must be involved in arrangement or facilitation of provision of services provided to the principal by a third party; and

iii. The person must not actually perform the main service intended to be received by the service recipient itself.

(c) Applying the aforesaid principle in the factual scenario pertaining to the Petitioner, the Hon'ble High Court held that the Petitioner did not qualify as an "intermediary" under the GST Law.

(d) The Hon'ble High Court further held that the definition of "intermediary" under the Service Tax Regime, vis-à-vis the GST Regime has remained similar, except addition of supply of securities in the definition of "intermediary" under the GST law. As such, the Department cannot adopt a different view qua taxability of such service under the GST Regime and the Service Tax Regime and that the principal of consistency would apply in the instant case.

(e) In light of the aforesaid, the Hon'ble High Court quashed the departmental proceedings, thereby granting refund to the Petitioner.

3. *"Any person" aggrieved by a decision or order passed under the Act may appeal to the Appellate Authority, even if such person is not a party to the said decision or order.*

Mehndihasan Rahemtulla Hariyani v. *Deputy Commissioner of Revenue, Bureau of Investigation (North Bengal), Alipurduar Zone & Ors.* [W.P.A. No. 927/2022 (Hon'ble High Court of Calcutta), decided on November 3, 2022].

Facts of the case:

(a) The departmental authorities initiated investigation proceedings under Section 129 of the West Bengal Goods & Service Tax Act, 2017 (**"WBGST Act"**) against the alleged driver / person in-charge of the relevant vehicle and imposed tax and penalties thereupon.

(b) Aggrieved against such demand, the proprietorship concern of the driver filed an appeal under Section 107 of the WBGST Act. The Departmental Authorities rejected the appeal on the ground that the proprietorship concern of the driver had no right to challenge the said order inasmuch as it was the consignee in respect of the goods being transported. Aggrieved against such order, a petition was filed before the Hon'ble High Court.

Judgment:

(a) The Hon'ble High Court held that Section 107 of the WBGST Act provides that "any person" aggrieved by any decision or order passed under the Act may appeal to the Appellate Authority within the time limit prescribed in the statute. In the present case, though the adjudication proceeding was initiated and passed against the driver / person in-charge of the vehicle in question, the consignee of the goods was also aggrieved by the order of the Adjudicating Authority.

(b) Therefore, the rejection of the appeal on the ground that the consignee of the goods was ineligible to file an appeal was unsustainable. Accordingly, the Hon'ble High Court directed the Appellate Authority to hear the appeal in accordance with law and disposed of the Petition.

Service Tax

4. *Cost sharing between associate companies does not amount to provision of service*

Hazira Lng Private Limited v. *Commissioner of Service Tax, Ahmedabad* [Final Order No. A/11349/2022 (Hon'ble CESTAT, Ahmedabad), decided on November 2, 2022]

Facts of the case:

(a) The Appellant was engaged in the sharing of certain expenditure, such as common office building, security service, insurance service, man-power costs etc. with its associate enterprise, viz. M/s. Hazira Port Private Limited (HPPL). During the period between April 1, 2005 to March 31, 2008, the Appellant raised cost sharing invoices on HPPL along with appropriate Service tax thereon. However, due to poor financial condition of HPPL, the Appellant waived all the cost sharing expenses along with Service tax.

(b) The departmental authorities alleged that the Appellant was liable to pay Service tax on the services provided to its associate enterprise, for which the cost sharing invoices had been issued. Aggrieved against such demand of Service tax, the assessee filed an appeal before the CESTAT.

Judgment:

(a) The Hon'ble CESTAT observed that the arrangement between the Appellant and the associate company was a mere case involving cost sharing between the parties, for which no consideration was either received or was receivable. Reference was made upon the decision of the Hon'ble Apex Court in the case of ***Gujarat State Fertilizer & Chemicals Limited v. Commissioner 2016 (45) STR 489 (SC)***, wherein it was held that the cost sharing arrangement of the assessee with its associate company was not in the nature of the provision of any service to its associate company. Reliance was also placed on the decision of the Tribunal in the case of ***Reliance ADA Group Private Limited v. CST 2016 (43) STR 372 (T)***. Applying the principle laid down in the aforesaid judgements, the Hon'ble Tribunal held that the demand of Service tax on cost sharing was unsustainable.

(b) The Hon'ble Tribunal further held that since the departmental authorities were unable to identify any specific service provided by the Appellant to its associate companies,

the activities undertaken under the cost sharing agreement did not amount to the provision of service. In view of the same, the CESTAT set aside the demand of Service tax and allowed the appeal.

Customs

5. *Doctrine of Promissory Estoppel is not applicable to a policy decision made in respect of an incentive granted by the Government.*

Chowgule & Company Limited v. *Assistant Director General of Foreign Trade & Others* [Civil Appeal No. 8225/2009 (Hon'ble Supreme Court of India), decided on November 4, 2022].

Facts of the case:

(a) The assessee was engaged in the export of "processed Iron Ore" during April, 1990 to March, 1991. During such period, the Exim policy 1988-91 specified that the export of "unprocessed iron ore" was ineligible for the benefit of additional licence. However, after implementation of the Exim Policy 1990-1993, minerals and "iron ore" were also included in the list of "ineligible items" for such additional license.

(b) Considering that the assessee had entered into exports contracts of "processed iron ore" acting upon the Exim Policy 1988-91 and that the benefit of additional license was available on actual export of such goods in the preceding year, an application for grant of additional license was made.

(c) However, the benefit of additional license was denied by the authorities on the ground that the "processed iron ore" was not included in the list of eligible items for grant of additional license under the Exim Policy 1990-1993. Aggrieved by such denial, the assessee filed an appeal before the Hon'ble Apex Court on the ground of promissory estoppel.

Judgment:

The Hon'ble Apex Court observed that once the new Exim Policy 1990-93 came into force, assessee cannot be permitted to claim benefit of additional licence under old Exim Policy which was not in existence. Further, the doctrine of promissory estoppel shall not be applicable to such a policy decision with respect to an incentive, more particularly, when it is well within the right of the appropriate authority to issue a new Exim Policy. Consequently, the Hon'ble Supreme Court dismissed the appeal and denied the benefit of additional licence to the assessee.

Central Excise, Sales Tax, VAT

6. *Interunit transfer of CENVAT Credit is permissible when the units bearing multiple excise registrations are part of a 'factory'.*

Messers Steel Authority of India Limited v. *Commissioner of CGST & CX, Rourkela Commissionerate* [Final Order No. 75561 of 2022 (Hon'ble CESTAT, Kolkata), decided on November 1, 2022].

Facts of the case:

(a) The Appellant had two divisions located in the same premise and under the same management – Rourkela Steel Plant (RSP) and Rourkela Fertiliser Plant (RFP). The units were engaged in the manufacture of iron and steel products. During 2002-03, RFP received capital goods involving Central Excise Duty and availed 50% of total CENVAT Credit and the balance credit was availed by RSP.

(b) The availment was denied by the departmental authorities on the ground that the RSP unit was not in possession of the capital goods belonging to the RFP unit. It was also alleged that since both the units were separate manufacturing units containing different excise registrations, the availment of CENVAT credit of RFP unit is in contravention of the CCR. Aggrieved against such denial, the Appellant filed an appeal before the CESTAT.

Judgment:

The Hon'ble CESTAT held that the definition of "factory" in terms of the CEA includes any number of units within the same premise irrespective of the number of Central Excise Registrations. Thus, no distinction between the RSP and RFP unit can be inferred as both are one and the same factory located in close premise. Reliance was also placed on the ruling in the case of ***Dhampur Sugar Mills Ltd. Vs. CCE Meerut [2001 (129) ELT 73 (Tri-Delhi)]*** wherein the said principle had been laid down. Accordingly, the Hon'ble CESTAT held that inter-unit transfer of CENVAT Credit was duly admissible and the appeal was allowed.

Recent Notifications and Circulars

No.	Reference	Particulars
1.	Notification No. 27/2022-Central tax dated December 26, 2022	Seeks to provide that the provisions of Rule 8(4A) of the Central Goods and Services Tax Rules, 2017 (**"CGST Rules"**) regarding authentication of Aadhaar Number shall not apply in all the States and Union territories except the State of Gujarat.
2.	Notification No. 26/2022-Central tax dated December 26, 2022	Seeks to amend various CGST Rules and forms issued under the GST Law. A summary of some of the amendments is provided herein-below: a. Amendment of Rule 37 of the CGST Rules to provide that recipient is required to reverse input tax credit (**"ITC"**) proportionate to the amount not paid to the supplier. b. Insertion of Rule 37A of CGST Rules which provides for reversal of ITC in the case of non-payment of tax by the supplier and re-availment thereof. c. Insertion of Rule 88C of CGST Rules to specify tax recovery procedure in case of difference in between Form GSTR 1 and Form GSTR 3B, as specified by the GST Council.

		d. Insertion of certain clauses in Rule 89 of the CGST Rules to provide for the procedure by which unregistered persons can claim refund. e. Substitution of sub-rule (3) of Rule 108 of the CGST Rules dealing with filing of an appeal before the appellate authority under Section 107 of the CGST Act. Vide the amendment, the requirement of furnishing a certified copy of Order in case of filing the appeal has been waived off, provided the Order copy is uploaded on the portal.
3.	Notification No. 25/2022-Central Tax dated December 13, 2022	Seeks to extend time limit for filing of FORM GSTR-1 for the tax period of November, 2022 for the registered persons whose principal place of business is in the specified districts of Tamil Nadu till 13th December, 2022.
4.	Notification No. 22/2022-Central Tax dated November 15, 2022	Seeks to amend certain declarations to be made in Form GSTR-9 to show ITC claims and amendment in invoices (related to previous Financial Year) until November 30, 2022.
5.	Notification No. 23/2022-Central Tax dated November 23, 2022	Seeks to empower the Competition Commission of India to examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him as required under Section 171 of the CGST Act.
6.	Notification No. 24/2022-Central Tax dated November 23, 2022	Seeks to omit certain rules under the Central Goods and Services Tax Rules, 2017 with respect to appointment, salary, secretary, tenure and decision etc. of Anti-profiteering authority.
7.	Circular No. 188/20/2022-GST dated December 27, 2022	Seeks to prescribe a manner of filing an application for refund by unregistered persons in line with amendment to Rule 89(2) of the CGST Rules vide Notification No. 26/2022-Central Tax dated December 26, 2022.
8.	Circular No. 187/19/2022-GST dated December 27, 2022	Seeks to clarify that in cases where a confirmed demand for recovery has been issued in FORM GST DRC-07/DRC 07A against the corporate debtor, and where the proceedings have been finalised under Insolvency and Bankruptcy Code, 2016 reducing the statutory dues payable, the jurisdictional Commissioner shall issue an intimation in FORM GST DRC-25 reducing such demand.
9.	Circular No. 186/18/2022-GST dated December 27, 2022	Seeks to clarify the following issues: **<u>No claim bonus provided by Insurance companies to insured</u>**

		a. In case of no-claim bonus deducted from the gross premium amount by the insurance companies, no supply is provided by the insured to the insurance company in form of agreeing to the obligation to refrain from the act of lodging insurance claim during the previous year(s). Thus, no Claim Bonus cannot be considered as a consideration for any supply provided by the insured to the insurance company. b. The insurance companies make the disclosure of the fact of availability of discount in form of No Claim Bonus, subject to certain conditions, to the insured in the insurance policy document itself and also provide the details of the no claim Bonus in the invoices also. Such pre-disclosure is in consonance with the conditions laid down for deduction of discount from the value of supply under Section 15(3)(a) of the CGST Act. c. Accordingly, where the deduction on account of No claim bonus is provided in the invoice issued by the insurer to the insured, GST shall be leviable on actual insurance premium amount, payable by the policy holders to the insurer, after deduction of No Claim Bonus mentioned on the invoice. **E-Invoicing with respect to an entity** a. In terms of Notification No. 13/2020-Central Tax dated March 21, 2020, as amended, certain entities/sectors have been exempted from mandatory generation of e-invoices as per Rule 48(4) of CGST Rules. Vide the Circular, it has been clarified that the said exemption from generation of e-invoices is for the entity as a whole and is not restricted by the nature of supply being made by the said entity.
10.	Circular No. 185/17/2022-GST dated December 27, 2022	Seeks to issue clarification in respect of Section 75(2) of the CGST Act as follows: - Where the show cause notice has been issued under Section 74(1) of CGST Act but the appellate authority or appellate tribunal or the court concludes that the said notice is not sustainable therein as the charges of fraud or any willful-misstatement or suppression of facts to evade tax have not been established, and directs the proper officer to re-determine the amount of tax payable deeming the notice to have been issued under Section 73(1) of CGST Act, what would be the time period for re-determination? In terms of Section 75(3) of CGST Act, the order, required to be issued in pursuance of the directions of the appellate authority or appellate tribunal or the court,

		has to be issued within two years from the date of communication of the said direction. - <u>How would the amount payable be determined by the officer in view of Section 75(2) of the CGST Act?</u> In terms of Section 73 of the CGST Act, the show cause notice is to be issued within 2 years and 9 months from the due date of furnishing of annual return or date of erroneous refund, as the case may be, for the respective financial year. Thus, at the time of redetermination under Section 75(2) of the CGST Act, it is pertinent to examine whether the show cause notice was issued within the specified time limit or not. If the show cause notice was not issued within such time, the entire proceedings shall have to be dropped. However, if the show cause notice was issued within such specified time, the entire amount of the said demand in the show cause notice would be covered under re-determined amount. In case the show cause notice was issued for multiple financial years, the re-determination of demand shall be made only for such financial year for which the show cause notice was issued within the specified time limit.
11.	Circular No. 184/16/2022-GST dated December 27, 2022	Seeks to provide clarification on the entitlement of ITC where the place of supply is determined in terms of the proviso to Section 12(8) of the IGST Act. Clause (a) to the said sub-section provides that where location of the supplier as well as the recipient of services is in India, the place of supply of services by way of transportation of goods, including by mail or courier, shall be the location of such registered person. However, the proviso to the aforesaid sub-section which was inserted vide the Integrated Goods and Services Tax (Amendment) Act, 2018 w.e.f. February 01, 2019 provides that where the transportation of goods is to a place outside India, the place of supply of the said service shall be the place of destination of such goods. In such cases, as the place of supply of services, as per the proviso to sub-section (8) of section 12 of IGST Act, is the concerned foreign destination and not the State where the recipient is registered under GST, doubts were raised regarding the availability of input tax credit of the said services to the recipient located in India. In this regard, it has been clarified as under:

		- The aforesaid supply of transportation services would be considered as inter-State supply and will be chargeable to IGST. - The GST Law does not restrict availment of ITC by the recipient located in India if the place of supply of the said input service is outside India. Thus, the recipient of service of transportation of goods shall be eligible to avail ITC in respect of the IGST so charged by the supplier, subject to the fulfilment of other conditions laid down in Section 16 and 17 of the CGST Act. - The supplier of service shall report place of supply of such service by selecting State code as '96-Foreign Country' from the list of codes in the drop-down menu available in portal of FORM GSTR-1.
12.	Circular No. 183/15/2022-GST dated December 27, 2022	Seeks to clarify a mechanism to deal with difference in ITC availed in FORM GSTR-3B as compared to that detailed in FORM GSTR-2A for FY 2017-18 and 2018-19. The following scenarios have been dealt with in the Circular: a. Where the supplier has failed to file FORM GSTR-1 for a tax period but has filed the return in FORM GSTR-3B for said tax period, due to which the supplies made in the said tax period do not get reflected in FORM GSTR-2A of the recipients. b. Where the supplier has filed FORM GSTR-1 as well as return in FORM GSTR-3B for a tax period but has failed to report a particular supply in FORM GSTR-1, due to which the said supply does not get reflected in FORM GSTR-2A of the recipient. c. Where supplies were made to a registered person and invoice is issued as per Rule 46 of Central Goods and Services Tax Rules, 2017 (**"CGST Rules"**) containing GSTIN of the recipient, but supplier has wrongly reported the said supply as B2C supply, instead of B2B supply, in his FORM GSTR-1, due to which the said supply does not get reflected in FORM GSTR-2A of the said registered person. d. Where the supplier has filed FORM GSTR-1 as well as return in FORM GSTR-3B for a tax period, but he has declared the supply with wrong GSTIN of the recipient in FORM GSTR-1. For all the aforementioned situations, the procedure to be followed is provided herein-under: i. The proper officer shall first seek the details from the registered person regarding all the invoices on which

		ITC has been availed by the registered person in his FORM GSTR-3B but which are not reflecting in his FORM GSTR 2A. He shall then ascertain fulfillment of the following conditions of Section 16 of CGST Act in respect of the input tax credit availed on such invoices by the said registered person: - that he is in possession of a tax invoice or debit note issued by the supplier or such other tax paying documents - that he has received the goods or services or both - that he has made payment of the amount towards the value of supply, along with tax payable thereon, to the supplier. ii. The proper officer shall also check whether any reversal of ITC is required to be made in accordance with Section 17 or Section 18 of CGST Act and also whether the said ITC has been availed within the time period specified under Section 16(4) of CGST Act. iii. In order to verify the condition specified under Section 16(2)(c) of the CGST Act that tax on the said supply has been paid by the supplier, the following action may be taken by the proper officer: - In case where difference between the ITC claimed in FORM GSTR-3B and that available in FORM GSTR 2A of the registered person in respect of a supplier for the said financial year exceeds Rs 5 lakh, the proper officer shall ask the registered person to produce a certificate for the concerned supplier from the Chartered Accountant (CA) or the Cost Accountant (CMA), certifying that supplies in respect of the said invoices of supplier have actually been made by the supplier to the said registered person and the tax on such supplies has been paid by the said supplier in his return in FORM GSTR 3B. - In case where difference between the ITC claimed in FORM GSTR-3B and that available in FORM GSTR 2A of the registered person in respect of a supplier for the said financial year is upto Rs 5 lakh, the proper officer shall ask the claimant to produce a certificate from the concerned supplier to the effect that said supplies have actually been made by him to the said registered person and the tax on said supplies has been paid by the said supplier in his return in FORM GSTR 3B.

		iv. However, for the period FY 2017-18, as per proviso to Section 16(4) of CGST Act, the aforesaid relaxations shall not be applicable to the claim of ITC made in the FORM GSTR-3B return filed after the due date of furnishing return for the month of September, 2018 till the due date of furnishing return for March, 2019 (if supplier had not furnished details of the said supply in his FORM GSTR-1 till the due date of furnishing FORM GSTR 1 for the month of March, 2019). v. In addition, for the scenario mentioned in (d) above, the proper officer of the actual recipient shall intimate the concerned jurisdictional tax authority of the registered person, whose GSTIN has been mentioned wrongly, that ITC on those transactions is required to be disallowed, if claimed by such recipients in their FORM GSTR-3B. However, allowance of ITC to the actual recipient shall not depend on the completion of the action by the tax authority of such registered person, whose GSTIN has been mentioned wrongly, and such action will be pursued as an independent action. vi. It has also been specified that the aforesaid clarifications are case specific and are applicable to the bonafide errors committed in reporting during FY 2017-18 and 2018-19. Further, these guidelines are clarificatory in nature and may be applied as per the actual facts and circumstances of each case and shall not be used in the interpretation of the provisions of law. vii. Also, these instructions will apply only to the ongoing proceedings in scrutiny/audit/ investigation, etc. for FY 2017-18 and 2018-19 and not to the completed proceedings. However, these instructions will apply in those cases for FY 2017-18 and 2018-19 where any adjudication or appeal proceedings are still pending.
13.	Circular No. 181/13/2022-GST dated November 10, 2022	Seeks to clarify the following issues with respect to refund: (i) <u>Whether the formula prescribed under Rule 89(5) of the Central Goods and Services Tax Rules, 2017 for calculation of refund of unutilised input tax credit on account of inverted duty structure, as amended vide Notification No. 14/2022-Central Tax dated July 5, 2022, will apply only to the refund applications filed on or after July 5, 2022, or whether the same will also apply in respect of the refund applications filed before July 5, 2022 and pending with the proper officer as on July 5, 2022?</u> The said amendment is not clarificatory in nature and is applicable prospectively with effect from July 5, 2022. Accordingly, it is clarified that the said amended formula prescribed for calculation of refund of input tax

		credit on account of inverted duty structure would be applicable in respect of refund applications filed on or after July 5, 2022. The refund applications filed before such date will be dealt as per the formula as it existed before the amendment made vide Notification No. 14/2022-Central Tax dated July 5, 2022. (ii) Whether the restriction placed on refund of unutilised input tax credit on account of inverted duty structure in case of certain goods falling under Chapter 15 and 27 vide Notification No. 09/2022-Central Tax (Rate) dated July 13, 2022, which has been made effective from July 18, 2022, would apply to the refund applications pending as on such date also or whether the same will apply only to the refund applications filed on or after such date or whether the same will be applicable only to refunds pertaining to prospective tax periods? The restriction imposed vide Notification No. 09/2022-Central Tax (Rate) dated July 13, 2022 on refund of unutilised input tax credit on account of inverted duty structure in case of specified goods falling under Chapter 15 and 27 would apply prospectively only. Accordingly, it is clarified that the restriction imposed by the said Notification would be applicable in respect of all refund applications filed on or after July 18, 2022 and would not apply to the refund applications filed before such date.
14.	Circular No. 182/14/2022-GST dated November 10, 2022	Seeks to provide guidelines for verifying the Transitional Credit in light of the order of the Hon'ble Supreme Court in the Union of India vs. Filco Trade Centre Pvt. Ltd., SLP(C) No. 32709-32710/2018, order dated July 22, 2022 & September 2, 2022.
15.	Instruction No. 04/2022-GST dated November 28, 2022	Seeks to supersede the earlier Standard operating procedures (SOPs) prescribing the procedure to be followed for verification of the risky exporters and their suppliers and aims to provide fresh procedures for the same.
16.	Notification No. 112/2022-Customs (NT) dated December 22, 2022	Seeks to issue Customs Tariff (Determination of Origin of Goods under the India-Australia Economic Cooperation and Trade Agreement) Rules, 2022.
17.	Notification GSR No. 868 (E) dated December 8, 2022	Seeks to further to amend Rule 46A of the Special Economic Zones Rules, 2006 dealing with Work from Home (WFH) facility. The salient features of the Notification are as under: • WFH regime has been significantly liberalised based on consultation with all stakeholders. • Erstwhile regime based on permissions has been converted into an intimation-based regime.

		• WFH can be provided to upto 100% of all employees of the SEZ unit. • WFH permitted upto December 31, 2023. • For units already availing WFH under earlier regime, intimation could be sent by email till January 31, 2023. • Units seeking WFH in future can email an intimation on or before the date of commencement of WFH.
18.	Notification No.43/2015-2020 dated November 9, 2022	Seeks to notify certain amendments under FTP, to permit exports benefits / fulfilment of Export Obligations for Invoicing, payment and settlement of exports and imports in INR, as per RBI's A.P. (DIR Series) Circular No. 10 dated July 11, 2022. Similar amendment has been made in HBP vide Public Notice No. 35/2015-2020 dated November 9, 2022 to permit the Invoicing, payment and settlement of exports and imports in INR for Export Proceeds under EPCG Scheme, in sync with RBI's A.P. (DIR Series) Circular No. 10 dated July 11, 2022.

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