INDIRECT TAX UPDATE- JULY 2020-4TH ISSUE FOR JULY

S.K.KANODIA & ASSOCIATES CHARTERED ACCOUNTANTS

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HC: Revenue cannot raise Deficiency Memo at a belated stage

Jian International Versus Commissioner of Delhi Goods and Service Tax [TS-568-HC-2020(DEL)-NT]

Delhi HC rejects Revenue's prayer to raise a deficiency-memo at a belated stage, calls it a hyper-technical plea; Directs Revenue to refund the amount to Assessee along with interest where writ petition was filed for grant of refund u/s 54 along with interest; Observes that the Assessee's refund application dated November 04, 2019 had not been processed, neither any acknowledgement in FORM GST RFD-02 was issued nor deficiency memo was issued by Revenue within time frame of 15 days, therefore the refund application shall be presumed to be complete as per Rule 89 of CGST/DGST Rules; Further outlines that to issue a deficiency memo today would amount to enabling the Revenue to process the refund application beyond the statutory timelines as provided under Rule 90 of the CGST Rules which would delay Assessee's right to refund; Explains that "Rules 90 and 91 of CGST/DGST Rules provide a complete code with regard to acknowledgement, scrutiny and grant of refund" while adding that "said Rules also provide a strict time line for carrying out the aforesaid activities"; Concludes that "this Court is of the view that the respondent has lost the right to point out any deficiency, in the petitioner's refund application, at this belated stage"

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SKKA COMMENTS

The above judgment by HC brings relief to the taxpayers as it provides stress on the fact that assessee should not suffer for delay caused by the department. Ruling highlights that deficiency memo cannot be issued at a belated stage i.e. beyond the time limit (of 15 days) as prescribed by the CGST Rules and thus refund application shall be deemed valid and refund should be processed. Thus, this ruling will enable other assessees facing similar issues in claiming refund and put check on department to comply with the statutory timelines.

HC: Disposes of petition as order for sanctioning the refund is appealable -

M/S Pitambra Books Pvt. Ltd. vs. Union Of India & Ors. [TS-570-HC-2020(DEL)-NT]

Delhi HC holds that since the sanction order is appealable order, the present petition and all pending applications are disposed of; the Assessee had agreed to reduce its refund claim and the Revenue sanctioned the refund claim for the balance amount; However, being aggrieved by the said sanction order the Assessee filed this petition; states that the Assessee is at liberty to the to file appropriate proceedings in accordance with law.

SKKA COMMENTS

The HC disposed the writ since the order by department is appealable in accordance with law. HC stated that petitioner is at the liberty to file appropriate proceedings in accordance with the law. All the rights and contentions of the parties are left open. Taxpayers should refrain from filing unnecessary writ before the High Courts when there is a recourse available in the law itself.

HC: Quashes order passed in breach of natural justice for applicant's failure to appear due to COVID-19 pandemic

Remankhan Berlin Versus State of Gujrat [TS-557-HC-2020(GUJ)-NT]

Gujarat HC sets aside order u/s 130 of the GST Act passed in breach of principles of natural justice by not offering opportunity of hearing to the assessee; Notes that the impugned order pertains to Form GST MOV-11 and it was passed in absence of assessee as he couldn't be present due to COVID-19; He preferred to stay safe and meanwhile, the impugned order was passed; Directs Revenue to pass fresh order on merits without being influenced by the order and inform the assessee in advance of the next hearing, also, directs the assessee to remain present;

SKKA Comments

This is a welcome judgment by the HC amid this COVID-19 pandemic wherein the impugned ex-parte order passed by the authority has been set aside. HC emphasized on principle of natural justice thus protecting the interest of assessee who couldn't appear before authority amid this pandemic to stay safe. This also puts a check on the department who in these uncertain times have passed ex-parte orders.

HC: Directs GST Council, Commissioner to take early decision on Petitioner's transitional-credit claim, remits matter

Dhamtari Krishi Kendra vs UOI & Ors [TS-573-HC-2020(CHAT)-NT]

Chhattisgarh HC (Bilaspur) remits the matter back to Commissioner for re-considering Petitioner's request to submit Transitional Credit claim in TRAN-1 & TRAN-2 which could not be uploaded on web-portal within duedate: Directs the Commissioner. Commercial Tax to take a decision at the earliest preferably within an outer limit of 60 days from the date of receipt of copy of this order; Further, in case of a reference to the GST Council, expects the Council to take an early decision on the reference made by the Commissioner preferably within a period of 90 days; Citing orders of Madras HC in Tara Exports as well as P&H HC in Adfert Technologies Pvt. Ltd., opines that State authorities in the earlier round of litigation should have considered Petitioner's contentions with respect to (i) technical glitches while submitting TRAN-1 forms, (ii) lodging of report & complaint in this regard well before last date (i.e. December 27, 2017) and (iii) attempt to file manual return later (January 18, 2018) and sending of same by registered post; Thus, deduces that Petitioner had timely intimated the department in respect of the technical glitch, promptly submitted his forms manually and had also approached the High Court immediately in the year 2018

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HC: Directs GST Council, Commissioner to take early decision on Petitioner's transitional-credit claim, remits matter

Dhamtari Krishi Kendra vs UOI & Ors [TS-573-HC-2020(CHAT)-NT]

and hence, "has been promptly pursuing his claim all along"; Recommending that appropriate decision may be taken at the earliest, suggests "**If required**, **the Commissioner can refer the matter to the GST Council with its report for taking appropriate sanction/recommendations from the GST Council**"

SKKA Comments

In many instances High Courts of various states have directed department to allow assessee to claim transitional credits but the judgment given by Delhi High Court in Brand Equity case has been stayed by the Apex Court. Though judgment of Apex court is awaited but this judgment by Chhattisgarh HC is another indication that GST Council should come forward and allow all aggrieved assessee to claim transitional credit.

CENVAT Credit on Outdoor Catering Service in factory is allowed

M/s. Indian Oil Corpn. Ltd. Versus Commissioner of CGST & Central Excise, Haldia [Excise Appeal No.77632 of 2018 CESTAT-Kol]

CESTAT Kolkata held that even though in the case of Wipro Limited, the Larger Bench observed that credit is not available as food is mainly for personal consumption, it cannot be said that the facility obtained for catering services is for a particular employee or group or employees but for all the employees working in the factory; It would be pertinent to note that Rajasthan High Court had already decided the same matter and allowed the credit and the said fact was never brought to the attention of the Larger Bench (in above case).

SKKA Comments

CENVAT Credit on outdoor catering (post 2011 amendment) has been a subject matter of dispute. Department has always fantasized a chance to deny credits when something is used for personal consumption of the employees (as if employees don't form an integral part of business). Although, tough to accept but the decision in case of Wipro Limited was like a generalised conclusion drawn without dwelling into the facts. Thankfully, it is not the situation anymore.

PROPOSED UPCOMING CHANGES IN GST PORTAL

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UPCOMING CHANGES IN GST PORTAL

Important changes which have been proposed in the GST returns in order to make it more user friendly and to further simplify the return filing process, has been summarized below:

I. Changes in GSTR - I

- Delinking of credit/debit notes with the original invoice;
- Amendments in GSTR-1 will be tagged with original invoices to ensure there are no double accounting entries;
- To reflect the status of amendment of the invoice along with the month of the amendment.

2. Changes in GSTR 2A and 2B

- To reflect return (GSTR-1 and GSTR-3B) filing status of vendors in GSTR-2A;
- To generate Static GSTR-2A on monthly basis along with the documentlevel classification of ITC available and ITC not available
- GSTR-2B referred to as auto-drafted ITC statement to provide advice on credit that can be availed, credit to be reversed, etc. will be introduced soon;
- Option of downloading GSTR-2B in PDF and Excel format.
- 3. Changes in GSTR 3B
 - To link GSTR-2A/2B and ICEGATE data with GSTR-3B;
 - To link GSTR-1 with GSTR-3B;
 - To develop a facility of sending copy of filed GSTR-3B in PDF format over Email.



UPCOMING CHANGES IN GST PORTAL

4. Changes in GST Refund

- Auto-population of data in the refund applications based on data furnished in GSTR-1 and as per GSTR-2A would be enabled;
- Facility for bunching of refund claims across financial years, status of processing of refund claims at every stage would be made available.

5. Other Changes

- **GSTR-6A** would be available for download;
- Details of invoices considered for preparation of Table 8A of GSTR-9 will be provided
- To implement E-invoicing facility for companies with a turnover of more than INR 500 crores from October 2020;
- To introduce a matching tool for comparison of system drafted purchase register and own purchase register;
- To develop a communication channel between the buyer and supplier for missing invoices;

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• Facility to create vendor master / HSN master on taxpayer dashboard.

KERALA GST CIRCULAR ON MANNER OF DECLARATION OF ITC IN GSTR-3B

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MANNER OF DECLARATION OF ITC

Circular - 06/2020 dated 16.06.2020 : Kerala GST Department Subject – Submission of correct return under GST.

The fund transfer from Centre (IGST) on account of settlement and apportionment of IGST is based on the returns filed by the taxpayers. Incorrect disclosure of Input Tax Credit (ITC) of IGST on account of interstate inward supplies or import supplies of goods or services results in short settlement of amount of fund transfer to the State.

The aforesaid Fund Transfer and apportionment is predominantly based on the information of GSTR-3B returns available with the GSTN. The facility to file simple and summary periodical return in Form-GSTR 3B in lieu of GSTR-3 was made available to the taxpayers.

Hence, it necessitates the availability of correct data / information of GSTR-3B with the GSTN for proper settlement and apportionment of fund transfer.

A. Declaration in monthly GSTR-3B shall be done in following manner -

• Report entire ITC eligible including reversal but excluding ineligible in Table 4(A);

• Reversal under Rule 42 & 43 shall be reported in Table 4 (B) (1), whereas reversal as per Rule 37 and any other reversal shall be reported in Table 4 (B) (2).

• Ineligible or blocked credit as per provisions of Section 17 (5) shall be reported in the Table 4 (D) (1).

•Table 4 (D) (2) shall include the ineligible credit as per section 17 (4) of CGST / SGST Act(s) read with Rule 38 thereto. The other ineligible ITC, like ITC

wrongly availed in previous period, etc. shall also be reported in Table 4 (D) (2). Contd...

MANNER OF DECLARATION OF ITC

Circular - 06/2020 dated 16.06.2020 : Kerala GST Department Subject – Submission of correct return under GST.

• Instead, only net effect shown by taxpayers in the return would result in short settlement of IGST. Therefore, reversal of ITC and ineligible ITC has to be reported by taxpayers while filing his due return.

B. Correction of returns filed earlier -

All such taxpayers who have not furnished details of ineligible ITC or furnished partial details of ineligible ITC or not reported reversal of ITC fully or partially, are hereby required to correct the mistakes in following manner –

- For FY 2018-19: report it in annual return to be filed in GSTR-9;
- For FY 2019-20: report it in GSTR-3B for the period from April to September 2020).
- For return period from April 2020: report it in subsequent GSTR 3B to be filed by giving net effect in that subsequent return.

It should be noted that such incorrect information of ITC in periodic returns indicates impropriety in return(s) filed by taxpayers. It may result in selection of cases of such taxpayers for scrutiny. And, which later on might result into imposition of penalty under the CGST / SGST Act(s). It is advised that we provide appropriated disclosures in returns and save ourselves from unnecessary penalty.

CONTACT US

THANK YOU

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