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Clarifications issued on refund of IGST paid on import in case of United Nations or other International Organizations.

On August 1, 2019 vide Circular No. 23/2019-Customs, CBIC has clarified refund mechanism of IGST paid on imports by specialized agencies of the United Nations Organization or a specified international organization shall be entitled to claim refund of central taxes paid on the supplies of goods or services received by them.

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Editorial Comment: *This circular has brought a welcoming clarification for specialized agencies that were paying IGST on imports but were unable to claim refund of taxes paid as they were not being processed by the Customs.*

RWA shall levy GST when the Annual Turnover & Monthly contribution are more than Rs. 20 lakhs & Rs. 7500 per month per member.

On July 22, 2019 vide Circular No. 109/28/2019 dated, CBIC has clarified that if the annual turnover of RWA in a financial year does not exceed Rs. 20 lakhs then it is not required to pay GST even if the monthly contribution exceeds Rs. 7,500 per month per member. However, RWA shall be required to pay GST if such subscription is more than Rs. 7500/- per month per member and the annual turnover of RWA exceeds Rs. 20 Lakhs.

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Editorial Comment: *It is worth noting that services provided by Central Governments, State Government or local authority to a person other than business entity is exempted from GST. Thus, any Property Tax, Water charges if collected by RWA/Co-operative housing society on behalf of government then they shall be treated as a Pure Agent and shall not be liable for GST. However, any charges collected by RWA/Co-operative housing society for generation of electricity by Society's generator or providing drinking water facility or any other similar service which are otherwise collected under any other statute and are not liable to GST, then the charges so collected by the society shall be covered under the ambit of GST.*

Goods sent/taken out of India for the purpose of exhibition or export promotion, not to be treated as export of goods

On July 18, 2019, vide Circular No. 108/27/2019-GST, CBIC has cleared doubts relating to goods sent/taken out of India for exhibition or on a consignment basis for export promotion, except when such activity satisfies the conditions laid in Schedule I of the CGST Act, cannot be considered as 'Zero-rated supply' as per the provisions contained in section 16 of the IGST Act.

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Editorial Comment: *The Legality of this circular is quite dubious since the CGST Amendment Act 2017 nowhere constitute that any goods sent on approval basis shall deemed to be supply if they are neither sold nor brought back within stipulated time. Thus, the legal fiction created by this circular is only binding on department and not on assessee.*

CBIC issues clarification in respect of IT-enabled services provided by Indian suppliers to clients located abroad

On July 18, 2019, vide Circular No. 107/26/2019-GST, CBIC has cleared doubts relating to the supply of IT-enabled services such as call center, BPO & Intermediaries services provided by Indian suppliers to clients located abroad.

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Editorial Comment: *This circular adds more of confusion rather clarification as the same fails to explain clearly as to 'What constitutes to be a supply as intermediary' and "supply of service on his own account'. The topic has always been debatable and the circular itself constitutes that the same shall depend on the facts and circumstances of each case.*

CBIC prescribes procedure for filing & processing of refund claims by retail outlets established at Airports

On June 29, 2019 vide Circular No. 106/25/2019-GST, CBIC has specified conditions, manner and procedure for filing and processing of refund claims of CGST, IGST,UTGST and Compensation Cess paid on inward supplies which are subsequently supplied to outgoing international tourists by retail outlets established at the departure area of international airports.

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Editorial Comment:

- a) *It must be kept in mind that the refund under Section 55 is of the taxes paid on the inward supplies 'indigenous goods'. However such retail outlets would still be required to reverse their input tax credit, as per Rule 42 and 43, because their outward supplies would be exempt supplies.*
- b) *The refund would only be in respect of goods and no refund of input or capital goods will be allowed.*
- c) *The expression 'indigenous goods' has not been defined in the act and thus would have been construed in accordance with common parlance. The exemption to such retail outlet is not confined to 'indigenous goods' but is only restricted to 'outgoing international tourists'. However, the refund is restricted only in respect of 'indigenous goods'.*
- d) *It would be very difficult for retail outlets to draw a distinction between a normal tourist travelling abroad and between a outgoing international tourist. The retail outlet will have to rely upon the declaration in Annexure B of the said Notification.*

However, the Editor has serious doubt as to whether said form/declaration as mentioned in Annexure A / Annexure B of the said circular can be introduced by way of a circular.

Refund application can now be filed for July 17-June 19 for IGST paid on export of services & supplies made to SEZ

On July 18, 2019 vide Corrigendum to Circular No.45/19/2018 dated May 30, 2018, CBIC has extended the tax period from March 18 to June 19 for filing refund application in respect of IGST paid on export of services & supplies made to SEZ. Press release has been issued to clarify the reason for such extension that registered persons have committed errors in declaring the details of the tax paid in Form GSTR-3B in respect of which refund was filed.

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CGST 5th Amendment Rules, 2019 have been notified by the CBIC

On July 18, 2019, CBIC has notified Fifth Amendment Rules, 2019 vide Notification No. 33/2019-Central Tax. These rules have provided changes in refund application, a facility for unblocking of the generation of the e-way bill, the surrender of enrolment of GST practitioner certificate, etc.

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Due date to make payment of taxes by Composition Dealers in form CMP-08 has been extended to 31st August, 2019

On July 18, 2019, vide Notification No. 34/2019-Central Tax, CBIC extended the due date for making payment of taxes in form GST CMP-08. The Composition dealers for the quarter April, 2019 to June, 2019 shall be filed till July 31, 2019. However, the due dates for CMP-08 has been again extended vide Notification No. 35/2019-Central Tax and the same shall now be filed till 31st August 2019.

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Services by way of giving Electric vehicles on hire to local authority are now exempted from GST

On July 31, 2019 vide Notification No. 13/2019-Central Tax (Rate), Central government has exempted electrically operated vehicles designed to carry more than 12 passengers given on hire to a local authority from GST by amending Notification No. 12/2017-Central Tax (Rate) dated June 28, 2017.

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Supply of Electric Vehicles including two & three wheelers, shall be subject to 5% GST

On July 31, 2019 vide Notification No. 12/2019-Central Tax (Rate), Central government has notified the GST rate of 5% for electric vehicles including two/three wheelers and charger or charging station for such vehicles by amending Notification No. 1/2017-Central Tax (Rate) dated June 28, 2017. This notification shall come in to force from August 1, 2019.

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LEGAL UPDATES

HC directed Competent Authority to release seized goods on furnishing of bank guarantee by assessee.

Maa Vindhyavasini (P.) Ltd.v.State of U.P. [HIGH COURT OF ALLAHABAD]

Where Competent Authority had seized goods of assessee under transport and also imposed penalty under section 129(3) and assessee filed writ petition challenging penalty order, against penalty order assessee had an efficacious remedy under section 107 of filing an appeal, said authority was directed to release goods on assessee furnishing bank guarantee.

FACTS

- The Competent Authority had seized the goods of the assessee under transport from Uttar Pradesh to Bihar and also imposed the penalty under section 129(3).

HELD

- From perusal of the writ petition, it is clear that the assessee has challenged the penalty order against which it has an efficacious remedy under section 107 of filing an appeal. The assessee can raise the entire plea as has been pleaded in the instant writ petition before the Competent Authority in appeal, who shall consider the same and pass reasoned and speaking order in accordance to law after providing proper opportunity of hearing to the assessee.
- In case the assessee files an appeal within a period of one week, the authority concerned shall decide the appeal within a period of three weeks thereafter.
- With regard to the seizure of the goods, attention has been drawn by the assessee upon rule 140, wherein it has been provided that the GST Authorities are bound to release the goods on furnishing of a security by the assessee in the form of bank guarantee to the satisfaction of the authority concerned.
- The revenue does not also dispute the fact that the goods of the assessee can be released in accordance with rule 140.
- In view of the aforesaid, the assessee is directed to move appropriate application before the Competent Authority for release of goods. If such an application is moved by the assessee, the Competent Authority shall release the goods on furnishing the bank guarantee. The said exercise shall be completed within a period of one week.

Accumulated ITC lying unutilized in respect of notified goods, on account of inverted duty structure, shall not lapse

Shabnam Petrofils (P.) Ltd.v.Union of India [HIGH COURT OF GUJARAT]

There being no express provision in section 54(3) empowering Central Government to provide for lapsing of unutilised ITC, petitioners have a vested right to unutilised ITC accumulated on account of rate of tax on inputs being higher than rate of tax on output supplies (inverted rate structure).

FACTS

- The petitioners have challenged the provisions of Central Goods and Service Tax Act, 2017 and Notification and Circular issued there under, by which the inverted tax structure refund of excess duty is not granted, the same are heard, decided and disposed of by this common order.

HELD

The impugned Notification dated 26.07.2018 bearing No.20/2018 and Circular dated 24.08.2018 bearing Circular No.56/30/2018-GST to the extent it provides that the input tax credit lying unutilized in balance, after payment of tax for and upto the month of July, 2018, on the inward supplies received upto the 31st day of July, 2018, shall lapse, are hereby quashed and set aside and are hereby declared as ultra vires and beyond the scope of section 54(3)(ii) of the CGST Act, as section 54(3)(ii) of the CGST Act does not empower to issue such notifications and consequently, it is held that the petitioners and members of the petitioners are entitled for the credit and it be granted to them.