

GST BULLETIN

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Delhi, Pune, Bangalore

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1. Differential Refund Under 'Inverted Duty Structure' Allowed as Per Modified Formula

Case of : M/s Trith Agro Technology Pvt Ltd

Decision by : Gujarat High Court

Date of Ruling : 02nd May 2024/20th Dec 2024

Facts:

- A batch of writ petitions was filed before the Gujarat High Court (HC) seeking a differential refund under the Inverted Duty Structure (IDS) based on Section 54(3) read with Rule 89(5).
- Taxpayers had earlier received partial refunds under the unamended formula, which excluded input services from the refund calculation.
- Post-amendment of refund formula vide Notification No. 14/2022-CT dated 5th July 2022, the taxpayers filed rectification applications for the differential refund, which were rejected by the authorities through show cause notices (SCNs) citing that refunds as per the old formula had already been granted.
- The authorities relied on Circular No. 181/13/2022-GST dated November 10, 2022, which clarified that the amendment made via Notification No. 14/2022-CT was prospective and not applicable to applications made before July 5, 2022.

Issue:

- Whether the amendment to Rule 89(5) made via Notification No. 14/2022-CT, allowing the inclusion of input services in the refund calculation under IDS, should apply retrospectively to refund or rectification applications filed prior to July 5, 2022.



Court Observation

- The Gujarat HC referred to its own judgment in the case of Ascent Meditech, where it was held that Notification No. 14/2022-CT is clarificatory and curative in nature and therefore should apply retrospectively.
- It was observed that refund applications filed within the two-year limitation period under Section 54(1) of the GST Act must be assessed as per the amended formula in Rule 89(5).
- The HC noted that the CBIC Circular dated November 10, 2022, contradicted the provisions of the Act by attempting to restrict the benefit of the amended formula to applications filed after July 5, 2022.
- The Court concluded that the respondents failed to provide any substantial arguments to deviate from the reasoning in the Ascent Meditech case.
- The HC directed the authorities to release the differential refund amounts to the Assesseees as per their rectification applications.
- CBIC Circular No. 181/13/2022-GST had clarified that Notification No. 14/2022-CT is prospective. However, Gujarat HC held that the amended formula under Rule 89(5) is clarificatory and curative, thus applicable retrospectively for refund or rectification applications filed within the prescribed two-year limitation period.



Full Judgement: [M/s Trith Agro Technology Pvt Ltd](#)

SNR's Take

The Gujarat High Court's decision highlights that changes in tax laws meant to fix issues or provide clarity should be applied to past cases and thus retrospective in application, especially when they are meant to correct unfairness or confusion. By allowing the amended formula under Rule 89(5) of the CGST Rules to apply to refund applications made before the amendment effective date, the court ensured fairness for taxpayers.

2. GST Not Applicable on Free Bus Transportation for Employees; ITC Allowed on Motor Vehicles

Case of : Emcure Pharmaceuticals Ltd.

Decision by : Authority for Advance Ruling Gujarat

Date of Ruling : 30th Dec 2024

Facts:

- M/s Emcure (Applicant) provides free-of-cost (FOC) bus transportation facilities to employees under its HR policy and employment agreements.
- The AAR had ruled that:
 - GST is not applicable on the bus transportation facilities provided to employees free of charge.
 - Input Tax Credit (ITC) on motor vehicles used for transportation of persons with a seating capacity of more than 13 is admissible under Section 17(5)(b)(i).
- The Department appealed against the AAR's decision, questioning the GST exemption and ITC admissibility.

Issue:

- Whether GST is applicable on free bus transportation facilities provided to employees under the company's HR policy.
- Whether ITC on motor vehicles with a seating capacity exceeding 13 persons is admissible for the respondent.



Advance Ruling Observation

- The AAAR upheld the AAR's ruling and agreed that:
 - Free bus transportation facilities provided to employees under the HR policy are exempt from GST.
 - ITC on motor vehicles with a seating capacity of more than 13 persons is admissible, as it is not blocked under Section 17(5)(b)(i).
- The AAAR noted that the transportation services were arranged through a third-party vendor who was discharging GST, as confirmed by the respondent in written submissions.
- The AAAR clarified that recoveries made for providing canteen facilities are not subject to GST, and ITC for bus hiring services is admissible.
- The appeal by the Department was rejected, and the ruling in favor of M/s Emcure was upheld.



Full Judgement: [Emcure Pharmaceuticals Ltd.](#)

SNR's Take

The Gujarat AAAR's decision provides clarity on the GST treatment of employee benefits, such as free bus transportation facilities provided under an employer's HR policy. By upholding the exemption from GST on such services and allowing ITC on motor vehicles with a seating capacity exceeding 13 persons, the ruling emphasizes the importance of aligning tax provisions with the practical needs of businesses and employees. This ruling reinforces that benefits provided as part of employment agreements, where the GST is already discharged by third-party vendors, should not be taxed again at the employer's end.

3. Permission to Upload ITC Details upon Transition from Composition Scheme to Regular Scheme

Case of : M/s Mariya Agencies

Decision by : Kerala High Court

Date of Ruling : 05th November 2024

Facts:

- The Assessee, a registered entity under the CGST/SGST Act as composition dealer and engaged in the supply of electrical goods, switched from the Composition Scheme (Section 10 of the CGST/SGST Acts) to the Regular Scheme (Section 9) in April 2024.
- Upon switching, the Assessee attempted to upload FORM GST ITC-01 to claim input tax credit (ITC) on opening stock as of April 9, 2024, as permitted under Section 18(1)(c) of the CGST/SGST Acts and Rule 40(1)(b) of the GST Rules, 2017.
- Due to technical issues on the GST Portal, the petitioner was unable to upload FORM GST ITC-01 before the deadline of May 8, 2024, despite multiple attempts, as evidenced by a screenshot and a formal complaint filed with the GST Help Desk on the last day.

Issue:

- Whether the petitioner should be granted an additional opportunity to upload FORM GST ITC-01 to claim ITC on the closing stock due to technical glitches on the GST Portal.



Court Observation

- The court acknowledged that the petitioner faced legitimate technical issues on the GST Portal that prevented the timely filing of FORM GST ITC-01.

- The court noted that although the GST Network claimed the complaint was closed due to a lack of response from the petitioner, there was no clear resolution provided to the petitioner regarding the technical difficulties experienced on the last day for filing.
- In light of these facts, the court ruled that the petitioner should be granted another opportunity to upload FORM GST ITC-01, if necessary by enabling the GST Portal.



Full Judgement: [M/s Mariya Agencies](#)

SNR's Take

This case highlights an important issue related to technical challenges on the GST Portal that can obstruct taxpayers' ability to comply with regulatory requirements. The court's decision to allow an additional opportunity for the petitioner to file FORM GST ITC-01 emphasizes the judiciary's acknowledgment of the practical challenges taxpayers face due to digital infrastructure limitations. The ruling underlines that technical issues on government portals should not penalize taxpayers who have made genuine efforts to comply with the law.

4. GST to be paid by Uber, even if fare is collected directly by drivers registered on app.

Case of : M/s Uber India System Pvt Ltd

Decision by : Karnataka Advance Ruling

Date of Judgement : 04th November 2024

Facts:

- The applicant, Uber India Systems, an E-commerce Operator (ECO), operates a platform connecting drivers with passengers for passenger transportation services.
- Under a new business model, the platform connects the driver and passenger, but the contract is directly between them. The driver sets the fare with the passenger, collects payment directly, and only pays a membership fee to Uber India for app usage.
- Uber India argued that as they only provide the technology platform without involvement in fare collection or fare determination, they should not be liable for GST as an ECO.

Issue:

- Whether Uber India, as an E-commerce Operator, is required to collect and pay GST on passenger transportation services provided by drivers using its platform, despite not directly controlling fare determination or collection.



AAR Observations

- The Karnataka AAR ruled that, under Section 9(5) of the CGST Act, an ECO must collect and pay GST on specified services, regardless of whether the ECO itself collects the fare or enters the contract with the passenger.

- The AAR found that Uber India's platform meets the three conditions for ECO liability under Section 9(5):
 - Notification No. 17/2017 specifies that GST on passenger transportation services (radio-taxi, motocab, maxicab, motor cycle) is to be paid by ECOs.
 - The services are intra-state supplies as defined under GST notifications for passenger transportation.
 - The AAR interpreted "through" to mean that the ECO facilitates the service end-to-end, as Uber's app is essential for the driver-passenger connection, trip information, and route tracking.
- Thus, the AAR concluded that Uber India's app is integral to the passenger transport service from beginning to end, fulfilling the ECO definition and requiring Uber India to collect and pay GST for these services



Full Judgement: [M/s Uber India Systems Pvt Ltd](#)

SNR's Take

This decision highlights the broader interpretation of "through" as outlined in the legislation, reinforcing the notion that an ECO's involvement in the entire transaction chain, even if indirect, triggers GST liability. Therefore, despite Uber not being involved in fare collection or setting, it remains responsible for the tax obligations associated with the services provided via its platform. This ruling emphasizes the increasing regulatory scrutiny on digital platforms, ensuring that they adhere to tax responsibilities even when their role is purely technological in nature.

5. Upholds Restriction on ITC Refund for Exempt Education Services Under Section 17(2) of CGST Act

Case of : M/s Empire Foundation

Decision by : Gujarat High Court

Date of Ruling : 10th Oct 2024

Facts:

- The Assessee, engaged in providing exempted education services, sought a refund of unutilized input tax credit (ITC) accumulated due to an inverted duty structure (IDS).
- The Assessee argued that they were constitutionally entitled to a refund of ITC under the first proviso to Section 54(3) of the CGST Act, 2017.
- The Assessee claimed that the refund of ITC on inputs, capital goods, and input services used for exempt education services was a vested right under Article 300A of the Constitution.
- The challenge was made to the constitutional validity of Section 17(2) of the CGST Act, 2017, which restricts the refund of unutilized ITC accumulated due to IDS only.

Issue:

- Whether the Assessee is entitled to a refund of unutilized ITC under the first proviso to Section 54(3) of the CGST Act, despite providing exempted education services and accumulating ITC due to the inverted duty structure.



High Court Observation

- The Gujarat High Court rejected the Assessee's challenge to the constitutional validity of Section 17(2) of the CGST Act.

- The Court clarified that the refund under Section 54(3) is governed by specific categories under the first proviso, which are limited to zero-rated supplies and refunds arising from inverted duty structure (IDS), but not applicable to exempt services like education.
- Referring to the VKC Footsteps case, the Court emphasized that there is no constitutional or statutory entitlement to refund ITC on exempt output services.
- The Court distinguished the refund mechanisms under clauses (i) and (ii) of the first proviso to Section 54(3), noting that the refund provision for IDS applies only in cases where inputs are used for taxable output or zero-rated supplies, and not for exempt services.
- Therefore, the Assessee was not entitled to a refund of ITC on inputs used for exempt education services under the current legal framework.



Full Judgement: [M/s Empire Foundation](#)

SNR's Take

The Gujarat High Court's ruling in this case reinforces the legal principle that the refund of unutilized Input Tax Credit (ITC) is not an automatic or constitutional entitlement, particularly for exempt services such as education. The Court's decision clearly draws a distinction between the categories of services eligible for refund under Section 54(3) of the CGST Act, where refunds are permissible in cases of zero-rated supplies or those affected by an inverted duty structure (IDS). However, exempt services like education do not fall within these categories.

Circulars/ Notifications:

Central Board of Indirect Taxes & Customs (CBIC), pursuant to 55th GST council Meeting recommendations, has issued four circulars on 31st December 2024 providing clarification on certain critical issues being faced by Trade and Industry. Aforesaid circulars have been summarized in this Update.

1	<p>Circular No. 240/34/2024-GST ITC for E-Commerce Operators (ECOs) where services specified u/s 9(5) of CGST Act are supplied through their platform</p>	<ul style="list-style-type: none"> As per the circular 167/23/2021-GST issued earlier, it was clarified that ECOs are neither required to reverse ITC nor can utilise such credit for payment of liability for supplies specified under Section 9(5). All the liability is required to be paid in cash. Thus, ECOs liable to pay tax under Section 9(5) of the CGST Act are not required to proportionately reverse ITC on inputs and input services related to such supplies under Sections 17(1) or 17(2) of the Act. ITC can still be utilized by the ECO to discharge tax liability for their own services (e.g., platform fees or commissions).
2	<p>Circular No. 241/35/2024-GST Clarification on ITC for Goods Delivered Under Ex-Works Contracts</p>	<ul style="list-style-type: none"> Ownership of goods transfers to the dealer upon handing over to the transporter at the supplier's factory gate even if transport is arranged by supplier on behalf of dealer. The goods are deemed "received" by the dealer at this point, even if physically delivered later. The same principle applies to other EXW contracts where goods are handed over to the transporter or recipient at the supplier's premises. ITC is available to the dealer on receipt of goods at the supplier's premises, provided they are used or intended for business purposes and other conditions of Sections 16 and 17 of the CGST Act are satisfied.
3	<p>Circular No. 242/36/2024-GST Clarification on Place of Supply for Online Services to Unregistered Recipients</p>	<ul style="list-style-type: none"> It is clarified that the proviso to Rule 46(f) of the CGST Rules applies to all online services supplied to unregistered recipients (for example, online money gaming, OIDAR services, subscriptions to e-newspapers and e-magazines, OTT platforms etc) The supplier must include the name of the recipient's State on the tax invoice, regardless of the value of the supply. For this, suppliers must establish a process to collect the State details from recipients before providing the services. The recorded State will be treated as the recipient's address for determining the place of supply and same shall be declared in FORM GSTR-1/1A. If the supplier fails to issue invoices with the required details (e.g., the recipient's State), they may be liable to penal actions u/s 122(3)(e) of the CGST Act.
4	<p>Circular No: 243/37/2024-GST Clarification on various issues pertaining to GST treatment of vouchers</p>	

	<p>Issue 1: Whether “transactions in vouchers” falls under the category of supply of goods and/or services</p>	<ul style="list-style-type: none"> • If vouchers are pre-paid instruments recognized by the RBI, they qualify as “money” under Section 2(75) of the CGST Act. As money is excluded from the definitions of goods and services, such vouchers are not subject to GST. • If vouchers are not considered money but create an obligation to accept them as consideration, they may qualify as actionable claims. Since actionable claims (other than specified ones like betting or gambling) are excluded from being goods or services under Schedule III, such vouchers are also not taxable under GST. • While transactions in vouchers are not taxable, the supply of goods/services redeemed against vouchers is subject to GST.
	<p>Issue 2: GST on Voucher Distribution Models</p>	<ul style="list-style-type: none"> • In this, distributors purchase vouchers and sell them at a margin. As these transactions do not involve the supply of goods or services, no GST is applicable on the trading margin. However, GST is chargeable on the supply of goods and/or services. • If vouchers are distributed for a commission/fee, the commission earned by the agent is taxable as a supply of services under GST.
	<p>Issue 3: GST treatment of additional services such as advertisement, co-branding, marketing & promotion, customization services, technology support services, customer support services etc.</p>	<ul style="list-style-type: none"> • In some cases, additional services may be provided by the distributor, sub-distributor, or another entity to the voucher issuer. These services are typically provided in exchange for a service fee, service charge, affiliate charge, or any other agreed-upon amount, as per the contract between the service provider and the voucher issuer. • In such instances, the service fee or charge for providing these additional services will be subject to GST at the applicable rate, payable by the service provider.
	<p>Issue 4: GST Treatment of Unredeemed Vouchers (Breakage)</p>	<ul style="list-style-type: none"> • Unredeemed vouchers do not result in the supply of goods or services; hence, no GST is applicable on the breakage amount. • As there is no underlying supply, the breakage amount retained by the voucher issuer cannot be treated as consideration under GST.

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