

GST CUSTOMS & DGFT Updates

From 03.07.2022 to 15.07.2022

Updates covering all the important Judgements



GST

DEMAND AND PENALTY IN RESPECT OF TRANSACTIONS INVOLVING FAKE INVOICES



HELPING CLIENTS KEEP MORE OF WHAT THEY EARN

Applicability of penal action on taxpayer in respect of supply made through fake invoices:

In current scenario many litigations are taken up by GST department in respect of transactions made by the taxpayers without actual supply. And there is no clarity on this transactions whether it can be treated as fraudulent transactions or not. As there was no clarity there was unnecessary litigations were incurred and penal actions taken on taxpayer irrespective of when the taxpayers are innocent.

To reduce these difficulties CBIC vide Circular¹ give some clarification on the following parts:

Situation 1: Registered person issued tax invoice without making supply of goods & services

Clarification:

1. In the given case as the **tax invoices raised without supply** of goods & services it cannot be treated as Supply.
2. There is **no supply** in regard to such tax invoice and therefore **no tax liability** arises for the said transactions, no demand & recovery is required to be made.
3. The registered person herein referred as “**recipient**” shall be liable to penalty of **Rs. 10,000 or tax evaded whichever is higher.**

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Situation 2: Registered person has issued tax invoice without making any supply but avails the ITC and further passes to another registered person.

Clarification:

1. No demand & recovery shall be made from taxpayer under Section 73 & 74 of CGST Act
2. But the **recipient** is liable for penal action under section 122 of the CGST Act, for issuing invoices without any actual supply of goods or services as also for utilizing input tax credit without actual receipt of goods or services.z

It may also be noted that in such cases of wrongful or fraudulent availment or utilization of input tax credit, or in cases of issuance of invoices without supply of goods or services or both, leading to wrongful availment or utilization of input tax credit or refund of tax shall be punishable under Section 132.

Any person who has retained the benefit of transactions and at whose instance such transactions are conducted, shall also be liable for penal action with an amount equivalent to the tax evaded or input tax credit availed of or passed on.

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Interpretation:

The above clarification given by CBIC vide Circular is override the provision of CGST Act, where the condition of availment of input tax credit is clearly mentioned. The condition as per the provision of CGST Act is as under:

1. Taxpayer is in possession of the invoice or debit notes;
2. He has received the goods or service or both;
3. Tax has been charged on such supply and paid to Government;
4. Taxpayer has duly furnished his return.

As per the above provision the taxpayer is eligible to claim if he satisfies the above condition. But **in the circular the provision of Act is override as the circular clarified that all the penal actions shall be taken on the recipient which is clearly against the principal of natural justice.**

Hence the clarification made by the CBIC is clearly not valid as all the penal actions are taken on recipient who is following the provisions and also discharge his tax liability to Government.

CHANGE IN FORMULA OF INVERTED DUTY REFUND



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Implementation in respect of GST Council Meeting:

- CBIC vide Circular¹ has amended the formula for calculation of refund under inverted duty structure. The new formula for calculating refund is highlighted below: -

Maximum Refund Amount

{(Turnover of inverted rated supply of goods and services) x Net ITC ÷ Adjusted Total Turnover} – (tax payable on such inverted rated supply of goods and services* Net ITC/ITC on Input & Input Services)

From the above it is evident that the word tax payable on inverted rated supply of goods and services for calculation of refund amount has been substituted with proportionate portion of tax liability on inverted supply attributable to both goods and services.

- CBIC vide Notification² Transfer of balance in electronic cash ledger of a registered person to electronic cash ledger of CGST and IGST of a distinct person has been made available through PMT-09. The facility shall be implemented in portal at the earliest.
- CBIC vide Notification³ notified that refund of unutilised ITC cannot be availed on coal.

1. Circular 171/03/2022-GST dated 06.07.2022
2. Notification 14/2022-CT dated 05.07.2022
3. Notification No. 09/2022-CTR dated 13.07.2022

Credit on warranty service provided free of cost during warranty period through third party cannot be denied

□ Facts:-

- The appellant is a manufacturer company and entered into agreement with the customers to provide the warranty service if the goods are damaged or any technical issued arises during the warranty period.
- To provide the after sales services to it's customer the appellant has entered into agreement with third party and provide all the warranty services through the third party and discharge the service tax on services provided by the dealer.
- The appellant had paid the service tax on such services and availed the cenvat credit on input services provided by the dealer to the customer on behalf of appellant.
- The department alleged that the cenvat credit availed by the appellant is in admissible as it is not used for providing any taxable service for providing an output. Being aggrieved by the action of department, the appellant had filed the appeal before the Hon'ble CESTAT.

Credit on warranty service provided free of cost during warranty period through third party cannot be denied

□ **Held:-**

- Hon'ble Bench of CESTAT held that the **warranty service provided by the appellant to its customer through the dealers is fall under the definition of the input service.**
- Further the Bench stated that as appellant is under an obligation to provide after sale service on the final products manufactured by it and the repair and maintenance services are, therefore, **linked to the sale.**
- Further the services are used indirectly in relation to the manufacture of final product and hence availment of Cenvat Credit is allowed.

Whether circular is applicable or not is a matter to be considered on the merits of the facts and circumstances of the case

❑ Facts:-

- The petitioner is engaged in job work service and is merely carrying on body building on the chassis. Show cause notice was issued to the petitioner to pay tax on job work services at the rate of 28% instead of 18%. Being aggrieved by show cause notice Petitioner filed writ to the Madras High Court.

❑ Petitioner Submissions:-

- It was contended that they are engaged in job work service and therefore, petitioner is not liable to pay tax at the rate of 28%. As per circular, rate applicable on job work services is 18% and not 28%

❑ Held:-

- Hon'ble High Court held **whether the circular is applicable or not is a matter to be considered on merits of the facts** and circumstances of the case.
- Hon'ble High Court held that **petitioner to file a reply to the impugned show cause notice** within a period of 60 days from the date of receipt of a copy of the order.
- Hon'ble High Court held that respondent shall pass an order within a period of 30 days .

Customs & DGFT

Implementation of Paper Import Monitoring System (PIMS)

❑ Impact on Paper industry :-

- Recently a notification has been issued clarification regarding Implementation of Paper Import Monitoring System. Every Paper importer Shall Compulsorily get register under PIMS.
- Central Government amends the import policy from 'Free' to 'Free subject to compulsory registration under Paper Import Monitoring System (PIMS)' under Chapter 48 of ITS (HS),2022 Schedule –I, from '**Free**' to '**Compulsory registration**' under **Paper Import Monitoring System (PIMS)**.

❑ Technical Specification :-

- Paper Import Monitoring System (PIMS) shall require importers to submit advance information in an online system and obtain a compulsory registration Number by paying registration fee of Rs. 500. The Registration Number thus granted shall remain valid for a period of 75 days.
- Further, The PIMS will be effective from 01.10.2022 i.e. Bill of Entry on or after 01.10.2022 for items as listed in the list issued through Notification shall be governed by PIMS. The facility of online registration will be available with effect from 15.07.2022.

Judgement on whether Customs Authority can recheck the consignment on grounds of technical faults or doubts by the custom authority

❑ Facts:-

- In the given case, the petitioner was importing a consignment on 30.06.2011 and the consignment was demarcated as “PDO” i.e. Pressed Distillate Oil. the said consignment was imported after checking the goods under provision mentioned in section 144 of customs act by the Customs authority.
- Later the CRCL (central Revenues Control Authority) issued a report on 24.08.2011 to the Customs authority stating the said goods weren't ‘PDO’.
- DRI(Director of revenue Intelligence) rushed to the residential and the business premises of the premises of the petitioner and took fresh sample from the consignment to be checked by CRCL on 28.01.2013
- CRCL reported this fresh sample as ‘Base oil’.
- Show Cause Notice was issued on 07.02.2014 which stated that there was a miss –declaration about the said goods and the petitioner have to pay duty of ‘Base oil’ along with penalty as mentioned in the section 112 of Customs Act 1962.

CIVIL WRIT PETITION: PUNJAB AND Haryana HIGH COURT JUDGEMENT



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Judgement on whether Customs can recheck the consignment on grounds of technical faults or doubts by the custom authority

❑ Held:-

- The petition was allowed on the basis that the Custom Authority had no right to draw fresh sample from the factory premises for the goods which has been cleared.
- Accordingly the Show Cause Notice issued on 07.02.2014 was quashed by the Hon'ble HC.

Considering the factual position, notwithstanding the error in the shipping bills, petitioner is entitled to drawback - Refund granted with interest: HC

❑ Facts: -

- Petitioner erroneously indicated the numbers of advance licenses and also indicated that shipping bills were filed under DEEC cum-Drawback shipping bills but which was a factual error as there were no advance licenses in force.
- Petitioner claimed drawback but later SCN was issued for recovery of erroneously granted drawback.

❑ Held: -

- It is indisputable that petitioner did not use any raw material procured under the advance licenses by direct import but procured the materials from indigenous source, If that is the factual position, petitioner should be entitled for the drawback.
- Drawback should be granted as it was rightly granted earlier by the DGFT. Any amount deposited with the authorities shall be refunded along with applicable interest if any, within 4 weeks.

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