

January 2023



Key Case Law Alert

Notifications

Competition Commission of India (“CCI”) to handle anti-profiteering cases under Central Goods and Services (“CGST”) Act, 2017 with effect from 01 December 2022

Notification No. 23/2022 –Central Tax dated 23 November 2022 has been issued to empower CCI, with effect from 1 December 2022, to take on the functions of examining anti profiteering cases. The CCI will now examine whether Input Tax Credit (“ITC”) availed by any registered person, or any reduction in tax rates, have actually resulted in a commensurate reduction in the price of the goods or services or both supplied to end customers.

CGST Rules amended to make Competition Commission of India to be permanent Authority for Anti-Profiteering

Notification No. 24/2022 –Central Tax dated 23 November 2022 has amended the CGST Rules, 2017 to omit the reference of constitution of Authority of Anti-Profiteering and empower the Competition Commission as the Authority for Anti-Profiteering. The changes in the CGST Rules are as follows:

- Rule 122 omitted - related to Constitution of the Authority,
- Rule 124 omitted - related to Appointment, salary, allowances and other terms and conditions of service of the Chairman and Members of the Authority.
- Rule 125 omitted - related to Secretary to the Authority,
- Rule 134 omitted - related to Decision to be taken by the majority and
- Rule 137 omitted - related to Tenure of Authority
- Rule 127 substituted – The new Rule defines function of the authority as “To determine whether any reduction in the rate of tax on any supply of goods or services or the benefit of the input tax credit has been passed on to the recipient by way of commensurate reduction in prices”.
- Explanation added to Chapter XV on Anti Profiteering - to empower Competition Commission of India as Authority of Anti Profiteering.

CGST Rules have been amended to give effect to the recommendations of the 48th GST Council Meeting held on 17 December 2022

Notification No. 26/2022 –Central Tax dated 26 December 2022 has amended the CGST Rules as below:

S. No	Rule	Amendment
1.	Rule 8	<p>In Rule 8 of the CGST Rules i.e., Application for registration:</p> <ul style="list-style-type: none"> • The requirement of declaration and verification of mobile number and e-mail address by the person applying for GST registration has been omitted • Permanent Account Number (“PAN”) to be verified through OTP sent to the mobile number and e-mail address linked to the PAN details provided

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S. No	Rule	Amendment
2.	Rule 9	New proviso to Rule 9(1)(aa) and Rule 9(2)(aa) of the CGST Rules has been inserted. The new Rules provide that the registration shall be granted within seven days of the application. However, where upon undergoing Aadhaar number authentication, and identification on the common portal, data analysis and risk parameters mandate the carrying out physical verification of places of business. The registration will be granted after thirty days of submission of application, and upon completion of such physical verification
3.	Rule 12	Amended Rule 12(3) of the CGST Rules, to state where the proper officer, after satisfaction, believes that a registration granted for collecting tax at source under Section 52, or deduction of tax at source under Section 51 of CGST Act is not required, he may cancel such registration following a written request
4.	Rule 37	<ul style="list-style-type: none"> Amended Rule 37(1) of the CGST Rules, with effect from 1 October 2022, to state that where a registered person fails to pay to the supplier within the specified time limit under GST laws, the said registered person shall pay or reverse an amount equal to the Input Tax Credit ("ITC") availed in respect of such supply proportionate to the amount not paid to the supplier along with interest. New Rule 37A of the CGST rules has been introduced with respect to reversal of ITC. The Rule provides that in case of non-payment of tax by the supplier by furnishing GSTR 3B till the 30th day of September following the end of financial year in which the input tax credit pertains, the amount of ITC availed by the registered person should be reversed in the return in FORM GSTR-3B on or before the 30th day of November following the end of such financial year. In case the same is not reversed by 30 November, the same will be payable by the registered person along with interest. In case the details are subsequently furnished by the supplier, the credit can be re-availed by the registered person in a tax period thereafter
5.	Rule 46	<ul style="list-style-type: none"> New proviso to Rule 46(f) has been inserted to provide that a tax invoice issued by the registered person shall contain the name and address of the recipient along with its PIN code and the name of the State and the said address shall be deemed to be the address on record of the recipient, in case where any taxable service is supplied by or through an Electronic Commerce Operator ("ECO") or by a supplier of Online Information And Database Access Or Retrieval ("OIDAR") services to an un-registered person. New proviso to Rule 46A has been inserted to provide that where a registered person is supplying taxable as well as exempted good and/or services to an unregistered person, a single 'invoice-cum-bill' may be issued for such supplies.
6.	Rule 59	New Rule 59(6)(d) has been inserted to prescribe that a registered person, to whom an intimation has been issued on the common portal for mismatch of GSTR 1 and GSTR 3B, shall not be allowed to furnish his GSTR 1 or use the invoice furnishing facility for a subsequent tax period, unless he has either deposited the amount specified in the said intimation or has furnished a reply explaining the reasons for any amount remaining unpaid.
7.	Rule 88	Rule 88(C) has been inserted to lay down the procedure where there is a difference in statement of outward supplies (GSTR 1) and tax reported in GST return (GSTR 3B). It has been specified that post intimation for payment of differential duty is sent by the proper officer, on the common portal, the registered person will be liable to pay the differential tax or specify reason for non-payment of such differential tax within a period of seven days, failing which, the proper officer may proceed to recover the same in accordance with GST laws.

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S. No	Rule	Amendment
8.	Rule 89	<p>In Rule 89 of the CGST Rules i.e., rules for application for refund of tax, interest, penalty, fees or any other amount, the following amendments have been made:</p> <p>Rule 89(2)(ka) has been introduced to prescribe that a refund application shall be accompanied by the following documents:</p> <ul style="list-style-type: none"> A statement containing the details and copy of invoices in respect of which refund is being claimed; proof of making payment to the supplier; the copy of agreement or registered agreement or contract, if any; letter issued by the supplier for cancellation or termination of contract for supply of service, if any; details of payment received from the supplier against cancellation or termination of such agreement along with proof thereof in a case where the refund is claimed by an unregistered person upon contract for supply of service been cancelled or terminated. Rule 89(2)(kb) has been introduced to prescribe that the refund application shall be accompanied by a certificate issued by the supplier to the effect that he has paid tax in respect of the invoices on which refund is being claimed by the applicant; and further, that he has not adjusted the tax amount involved in these invoices against his tax liability by issuing credit note; and also, that he has not claimed and will not claim refund of the amount of tax involved in respect of these invoices. Inserted new proviso to Rule 89(2)(m) to provide that a certificate is not required to be furnished in cases where refund is claimed by an unregistered person who has borne the incidence of tax.
9.	Rule 109	<p>Rule 109 of the CGST Rules has been amended to provide for immediate issue of provisional acknowledgement on filing an appeal under Section 107 (2) – which relates to GST authorized officers filing an appeal against any decision under GST laws</p> <p>New Rule 109C of the CGST Rules has been introduced prescribing provisions for withdrawal of appeal by an appellant.</p>
10.	Rule 138	<p>Amended Rule 138(14) of the CGST Rules, to prescribe that no e-way bill is required to be generated in case of jewellery, goldsmiths' and silversmiths' wares and similar articles, except imitation jewellery.</p>

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Risk-based physical verification and biometric authentication for GST registration

Notification No. 27/2022-Central Tax dated 26 December 2022 has been issued to notify that the government is adopting a risk-based physical verification and biometric authentication of AADHAR for GST registration with a pilot program starting in Gujarat.

Unregistered buyer to get temporary GST registration for tax refund on cancelled flat booking, insurance policy

Circular No. 188/20/2022-GST dated 27 December 2022 has clarified that an unregistered buyer (individual customer) will need to get temporary GST registration under the category of **"Refund for Unregistered person"**, on the GST portal to

get a tax refund in case of cancellation of a flat booking or insurance policy.

The concerned suppliers are also allowed to issue a credit note to the unregistered person and pay back the amount of tax collected from such unregistered person. The above refund claim is restricted to be filed by the unregistered persons only in those cases, where at the time of cancellation/termination of agreement/contract for supply of services, the time period for issuance of credit note under section 34 of the CGST Act has already expired.

GST is levied only on the actual insurance premium amount, after deducting the no-claim bonus

Circular No. 186/18/2022-GST dated 27 December 2022 has been issued to clarify



that where an amount for no-claim bonus is deducted [by the insurance company] from the insurance premium payable by the insured person, there is no corresponding supply of agreeing to an obligation being provided by said insured person to the insurance company.

It has also been clarified that the exemption from generation of e-invoices [in cases where certain entities/sectors [like local authorities, SEZ units, government departments etc.] have been exempted from mandatory generation of e-invoices] applies to the entity as a whole and is not restricted to specific nature of supplies being made by such entity.

Clarification on pre-CIRP GST dues under IBC

Circular No.187/19/2022 -GST dated 27 December 2022 has been issued to clarify that if the government dues against any person under GST laws, as a result of any appeal, revision or other proceedings, the term “proceedings” would also cover proceedings under IBC laws and the NCLT in respect of a corporate debtor. Accordingly, in cases where a confirmed demand for recovery has been issued by the tax authorities, against the corporate debtor, and where such proceedings have been finalised against the corporate debtor under IBC, reducing the amount of statutory dues payable to the government, the jurisdictional Commissioner shall issue an intimation reducing such demand, to the taxable person, as well as to the appropriate authority with whom recovery proceedings are pending. This Circular recognizes the supremacy of NCLT and IBC proceedings with respect to such recoverable dues from the corporate debtor.

CBIC issues clarification on claims of differential ITC in GSTR 3B vis-à-vis GSTR-

2A [for a recipient] for FY 2017-18 and FY 2018-19

Circular No. 183/15/2022-GST has been issued to clarify the procedure to examine/reconcile the differences in ITC claimed by a registered period in GSTR-3B, when compared with GSTR-2A for the FY 2017-18 & 2018-19 [“**Relevant Period**”]. This clarification has been issued as there was no mechanism to match ITC in GSTR 2A and GSTR 3B in the Relevant Period.

The circular states that only the following scenarios are covered in the clarification:

- i. Where a supplier has not filed a GSTR-1 for the Relevant Period, but filed a GSTR-3B, due to which the invoices are not reflected in the GSTR-2A of the recipient of supply
- ii. Where the supplier has filed both a GSTR-1 and GSTR 3B in the Relevant Period but has failed to report an invoice in the GSTR-1; consequent to which the missing invoice is not reflected in GSTR-2A of the recipient of supply
- iii. Where the supply was made to a registered person along with an appropriate invoice, but the supplier wrongly reported the invoice as a B2C supply, instead of a B2B supply in the corresponding GSTR-1, and due to which the invoice in question does not reflect in the GSTR-2A of the actual recipient
- iv. Where the supplier has filed both GSTR-1 and GSTR 3B returns but has issued invoices /declared a wrong GSTIN of the recipient in the returns, leading to mismatch with the GSTR 2A of the recipient

In the above cases, the following procedure has been prescribed to examine such differences and verify the ITC claimed by the recipient in the Relevant Period:

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For cases in (i), (ii), (iii) above	<ul style="list-style-type: none"> The proper officer will seek the details of all invoices from the recipient against which ITC has been availed, but the same does not reflect in the GSTR 2A. The possession of tax invoice or debit note will be confirmed against the above details. Confirmation will be obtained that the supply [goods and/or services were received]. Payment was made to the supplier, along with the appropriate GST in respect of the above invoices, will be confirmed. Whether any reversal of input credit is required under GST laws and whether the ITC was claimed within the time period prescribed under GST laws. <p>Post the above verification, where:</p> <ul style="list-style-type: none"> The difference involved exceeds INR 5 Lakh: The registered person should produce a certificate for the concerned supplier from a Chartered Accountant (CA) or the Cost Accountant (CMA), [with valid UDIN], certifying that the supply was made by the said supplier to the recipient, and the tax on such supplies has been paid by the said supplier in his return in FORM GSTR 3B. The difference involved is up to INR 5 Lakh: The registered person should produce a certificate from the concerned supplier to the effect that the 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. Subject to the above certification, the ITC will be allowed to the registered recipient.
For cases in (iv) above	<p>The above procedure will be applicable. In addition:</p> <p>The proper officer of the actual recipient shall intimate the concerned jurisdictional tax authority of the registered person [whose GSTIN has been wrongly mentioned] that any ITC claimed by such wrongly notified persons should be disallowed.</p> <p>The allowance of ITC to the actual recipient shall however not depend on the completion of the above action by the tax authority of the incorrect recipient and this action will be pursued independently and completed.</p>

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The above clarification applies to all proceedings for FY 2017-18 and 2018-19 where any adjudication or appeal proceedings are still pending and also to any ongoing proceedings in scrutiny/audit/ investigation, etc. for FY 2017-18 and 2018-19

India Australia to strengthen trade relations with India-Australia Economic Cooperation and Trade Agreement

Notification No. 112/2022-Customs (N.T.) dated 22 December 2022 has been issued to notify 'The Customs Tariff (Determination of Origin of Goods under the India-Australia Economic Cooperation and Trade Agreement) Rules, 2022'. The Notification notifies the rules and procedures with respect to originating goods, wholly/not-wholly obtained or produced goods, accumulation, calculation of qualifying value content, treatment of

packaging materials and containers for retail sale/ transportation and shipment accessories, certificate/application of origin certification procedures, etc., under the India-Australia Economic Cooperation and Trade Agreement with effect from 29 December 2022.

India to strengthen trade relations with Japan and Philippines

Notification No. 111/2022- Customs (N.T.) dated 20 December 2022 has been issued to notify the Agreement or Arrangement on Cooperation and Mutual Administrative Assistance (CMAA) in Customs matters with:

- Japan - For Implementing Agreement between the Government of the Republic of India and the Government of Japan as per Comprehensive Economic Partnership Agreement between the

Republic of India and Japan; and Practical Arrangement on Information Exchange for the implementation of the Chapter on Customs Procedures of the Comprehensive Economic Partnership Agreement between the Republic of India and Japan.

- Philippines: Agreement between the Government of the Republic of India and the Government of the Republic of the Philippines on Co-operation and Mutual Assistance in Customs Matters.

Postal Export (Electronic Declaration and Processing) Regulations, 2022 has amended the 'Exports by Post' Regulations 2018 to regularise export goods through post electronically

Notification No. 104/2022- Customs (N.T.) and No. 103/2022-Customs (N.T.) dated 9th December 2022 has notified the Postal Export (Electronic Declaration and Processing) Regulations, 2022 and has amended the 'Exports by Post' Regulations 2018 respectively for allowing postal authorities to set up, operate and maintain the PBE (Postal Bill of Export) Automated System for filing of electronic declaration for export of goods through Post.

Anti-Dumping Duty ("ADD") on 'Jute' from Bangladesh and Nepal

Notification No. 33/2022-Customs (ADD) has been issued to notify the levy of ADD on Jute Products ("Jute Products comprising of

Jute Yarn/Twine (multiple folded/cabled and single), Hessian fabric, Jute sacking bags and Jute sacking cloth") originating in or exported from Nepal and Bangladesh.

Anti-Dumping Duty on 'Fishing Net' from China

Notification No. 01/2023-Customs (ADD) dated 6 January 2023 has been issued to notify the levy of ADD on Fishing Nets originating from China PR.

Anti-Dumping Duty ("ADD") on 'Semi-finished Ophthalmic lenses' from China

Notification No. 32/2022-Customs (ADD) has been issued to notify the levy of ADD on Semi-finished Ophthalmic lenses imported from China PR.

Anti-Dumping Duty on 'Stainless-Steel Seamless Tubes and Pipes' from China

Notification No. 31/2022-Customs (ADD) has been issued to notify the levy of ADD on Stainless-Steel Seamless Tubes and Pipes originating in or exported from China PR.

New GST rates notified for Ethyl alcohol and other spirits, denatured other than ethyl alcohol supplied to Oil Marketing Companies and others

Notification No. 12/2022-Central Tax (Rate) dated 30th December 2022 has been issued to notify the following rates:

S.No.	Product	Rate (%)
1	Bran, sharps and other residues, whether or not in the form of pellets, derived from the sifting, milling or other working of cereals or of leguminous plants [other than aquatic feed including shrimp feed and prawn feed, poultry feed and cattle feed, including grass, hay and straw, supplement and additives, husk of pulses including chilka, concentrates including chuni or churi, khanda, wheat bran, de-oiled cake	5
	Ethyl alcohol supplied to Oil Marketing Companies for blending with motor spirit (petrol)	5
2	Fruit pulp is other than Carbonated Beverages of Fruit Drink	12
3	Mathematical boxes, geometry boxes and colour boxes	12
4	Ethyl alcohol and other spirits, denatured other than ethyl alcohol supplied to Oil Marketing Companies	18

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Dhruv Krishan Maggu Versus Principal Directorate General (Delhi High Court in WP 7517 of 2020 judgment dated 12 December 2022)

The Delhi High Court has refused to release laptops, computers, documents, and other things that were seized by the Directorate General of GST Intelligence (DGGI) during a search conducted by the DGGI.

The single bench of Justice Prathiba M. Singh has observed that the “documents, books, or things” can be retained for a maximum period of four and a half years, within which period the notice has to be issued. The time limit of four and a half year was arrived by the Hon’ble Court by holding that the Proper Officer under Section 74(2) of the CGST Act has to issue a show cause notice as per Section 74 at least six months prior to the time limit specified in Sub-section 74(10) of the CGST Act for issuance of the order. Under sub-section 74(10) of the CGST Act, the Proper Officer has five years from the date of the erroneous refund/short payment to pass the order in such cases. A conjoint reading of Section 74(2) of the CGST Act and Section 74(10) of the CGST Act would clearly show that the maximum period for issuance of the show-cause notice is six months prior to five years from the date of the erroneous refund / short payment of tax.

CIT Versus Swapnil Finance Pvt. Ltd. (Supreme Court in Civil Appeal No. 50 of 2010 Order dated 30 November 2022)

The division bench of Justice M.R. Shah and Justice Sudhanshu Dhulia observed that the monetary limit to file an appeal before the Supreme Court is Rs. 2 crores.

Further, as per the CBIC circular dated 22 August 2019, the monetary limit below which an appeal cannot be filed in CESTAT, the High Court, or the Supreme Court is Rs. 50,00,000, Rs. 1,00,00,000 and Rs. 2,00,00,000 respectively.

T.V.L. Marimuthu Venkateshwaran Versus Commissioner CGST (Madras High Court, Madurai Bench in W.P. (MD) No.25865 of 2022 judgment dated 15 November, 2022)

The Hon’ble Madurai Bench of the Madras High Court has lifted the cancellation of the GST registration as the appropriate tax returns were not filed by the taxpayer due to health issues.

The Petitioner had challenged the order of cancellation of the registration certificate due to failure to file monthly goods and services tax returns. The registration certificate was cancelled with effect from 2 February 2022, in view of Section 29 of the CGST Act, 2017. The Petitioner contended that it has not filed monthly goods and services tax returns due to health issues. The single bench of Justice Mohammed Shafiq, has directed the department to revoke the cancellation of the GST registration.

M/S Firmenich Aromatics Production (India) Pvt. Ltd. Versus Union of India (Gujarat High Court in R/SPECIAL CIVIL APPLICATION NO. 23522 of 2022 order dated 30 November 2022)

The Gujarat High Court has issued a notice to the central and state government asking them to file replies detailing the steps taken to establish the GST Appellate Tribunal

M/s. Vallabh Textiles Versus Senior Intelligence Officer and Ors. (Delhi High Court in WP (C) 9834 of 2022 judgment dated 20 December 2022)

The Petitioner was engaged in the business of trading or readymade garments. A search was conducted based on the intelligence that the Petitioner had sold goods, in cash, on behalf of two entities and failed to disclose such transactions.

During the search, the Petitioner involuntarily deposited Rs. 1,80,10,000/- as tax amount along with interest and penalty through FORM GST DRC-03. Thereafter, the Petitioner filed the writ petition claiming

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that the deposit made during the search was not voluntary. Further the deposit made was contradictory to the provision 142 (1A) of the Central Goods and Services Tax Rules, 2017 as the officials had not issued any notice for ascertaining tax liability.

The Hon'ble High Court observed that payment was made through Form GST DRC- 03 but there was no document on record confirming the acknowledgement of accepting the payment. Hence, the voluntariness of payment of tax by the Petitioner was not established. The Court directed the Revenue to return the amount deposited by Applicant along with the interest at the rate of 6%, from the date of payment, within a period of 10 days from the order.

Genpact India Pvt. Ltd. v. Union of India and Ors. (Punjab and Haryana High Court in CWP 6048 of 2021 (O&M) judgment dated 11.11.2022)

The Petitioner, Genpact India, is registered with the Haryana GST Authorities and is involved in providing a host of services collectively referred to as BPO services to customers located in India as well as outside India.

The Petitioner entered into a Master Services Sub-Contracting Agreement (MSA) with GI, an entity located outside India. As per the terms of the MSA, various services were to be provided by the Petitioner on a principal-to-principal basis. The Petitioner was engaged by GI for the actual performance of BPO services, for the clients of GI located outside India.

The above arrangement required the Petitioner to complete and submit the assigned scope of work directly to third parties located outside India. The Petitioner filed an application with the Haryana GST authorities, claiming a refund of unutilized ITC on account of zero-rated supplies of services without payment of IGST under the Letter of Undertaking. Post adjudication, the Ld. Additional Commissioner CGST (Appeals) held that the services provided by the Petitioner are in the nature of

"intermediary services" and do not qualify as "export of services."

The Additional Commissioner CGST (Appeals) rejected the refund claim of unutilized Input Tax Credit (ITC) used in making zero-rated supplies. The Petitioner on appeal contended that as per the definition of "intermediary" under Section 2 (13) of the IGST Act, a person who provides services "on his own account" is not an "intermediary." The provider of the main service is clearly excluded from the definition of "intermediary." No evidence was on record to establish that the Petitioner had not provided the main service. There was no mention of a third party that the Petitioner had "arranged" and who had then provided the main services.

It was also contended that the Petitioner was rendering services "on its own account" and was not facilitating any supply of services between GI and its customers. The Petitioner was responsible for providing all services as well as all risks associated with their performance and pricing.

The Department refuted that the Petitioner was acting on behalf of GI and supplying support services so that GI could supply main services in the nature of business process outsourcing, information technology services, managing relationships with customers, negotiating customer agreements and statements of work, and customer invoicing and collection to its customers.

The Hon'ble High Court, while allowing the writ petition, relied on the MSA to hold that the Petitioner was not acting as an intermediary and the clauses were in relation to the modalities of the how the actual work would be carried out.

It was further held that the definition of 'intermediary' has remained similar prior to and post GST regime and further also reliance was placed by the High Court on the Circular dated 20.09.2021 issued by the Government of India, Ministry of Finance, Department of Revenue, Central

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Board of Indirect Taxes and Customs (GST Policy Wing) which explained the scope of 'intermediary' services.

The Hon'ble High Court applied the principle of consistency and held that since the position in the service tax regime and GST regime was the same with respect to scope and ambit of intermediary services, the Department could not take a different view for different periods. On

merits, the Hon'ble High Court held that the Petitioner was providing the services that were subcontracted to it by GI. The main contractor, i.e., GI, in turn, is received commissions from its clients for the main services that were rendered by the Petitioner pursuant to the arrangement of subcontracting. Hence, it was held that the Petitioner was not an intermediary in the present case.

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