

Consultation with Mr Sanjay Mangal, Commissioner, GST Policy Wing, CBIC to discuss GST policy & procedural issues

September 05, 2023

Summary of discussions

Topics	Discussions	Action steps
<b><i>Emerging issues under GST – need for clarifications</i></b>		
Standalone testing services on goods/ components imported	<ul style="list-style-type: none"> <li>We stated that the tax officers are denying the export status for independent testing services provided by Indian companies on goods imported FoC from overseas affiliates, particularly in the engineering (particularly semi-conductor) and auto mobile sectors.</li> <li>We explained the need for a clarification that independent testing services in India on goods imported from overseas service recipient on FoC basis will qualify to be “export of services” as they would get covered under Section 13(2).</li> <li>We also explained that similar stance has been taken for pharmaceutical and MRO services.</li> </ul> <p><b><i>Feedback received</i></b></p> <ul style="list-style-type: none"> <li>Mr. Mangal understood the issue said that he would examine the issue basis our representation document.</li> </ul>	<ul style="list-style-type: none"> <li>Issue to be included in GST memorandum and resubmitted with Mr Mangal’s office.</li> </ul>
Implementation of Intermediary Circular	<ul style="list-style-type: none"> <li>We discussed that several jurisdictions are yet to give due cognizance to the GST Council’s well drafted circular in 2021.</li> <li>The benefit of such clarification is yet to be fully witnessed particularly with certain categories of exporters i.e. (i) IT / ITeS services, and (ii) data hosting services.</li> </ul>	<ul style="list-style-type: none"> <li>No specific action needed. Continue advocacy and perhaps consider again specifically highlighting</li> </ul>

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	<p><b>Feedback received</b></p> <ul style="list-style-type: none"> <li>To recap, we have discussed this issue with him in the past, to which he had expressed the limitations he has as the Policy Wing. He had explained that such matters may be better resolved through discussions with the concerned GRCs/ Commissioner(s).</li> <li>Given that we stressed on the magnitude of the challenges faced at the ground, he said that he would make a mention of this issue with the Board and seek their views and request for action.</li> </ul>	<p>challenges to the Board.</p>
<p>TR 6 challan is valid document for claiming credit</p>	<ul style="list-style-type: none"> <li>We discussed that there is a need for a suitable clarification/ modification in Circular 16/2023-Cus dated 7th June 2023 to treat TR-6 challan as an eligible duty paying document for the purpose of availing ITC.</li> </ul> <p><b>Feedback received</b></p> <ul style="list-style-type: none"> <li>Mr. Mangal said that they are well aware about this issue and the same is currently being discussed within CBIC to align Customs laws with GST provisions on linking the TR 6 challan with GSTR 2A/2B.</li> </ul>	<ul style="list-style-type: none"> <li>This issue is already a part of the GST memorandum. As a next step, we can advocate with Member (Customs)/ JS(Customs).</li> </ul>
<p>Parallel/ dual proceedings and investigation</p>	<ul style="list-style-type: none"> <li>We discussed that there is lack of clarity on duplicity of proceedings by multiple authorities.</li> <li>As a result, authorities at the States and Central level (including DGGI) are approaching companies parallelly for investigations under GST, resulting in hardship to the industry in handling the matter conjointly with both the authorities.</li> </ul> <p><b>Feedback received</b></p>	<ul style="list-style-type: none"> <li>This issue is already a part of the GST memorandum. We could evaluate writing to the Board with instances involving significant revenue/ demand.</li> </ul>

Topics	Discussions	Action steps
	<ul style="list-style-type: none"> <li>Mr. Mangal as with the challenges in implementation of Circulars, explained his limitation on the issue and said that he would table the issue before the Chairman, CBIC.</li> </ul>	
Taxability of discount issued on purchase of gift cards/ vouchers	<ul style="list-style-type: none"> <li>We requested for a specific clarification with respect to taxability of discount received at the time of purchase of voucher</li> </ul> <p><b>Feedback received</b></p> <ul style="list-style-type: none"> <li>Mr. Mangal said that this issue has been examined and the Circular under discussion on this matter would cover this issue. The same is currently under discussion by the Law Committee.</li> </ul>	<ul style="list-style-type: none"> <li>No action needed. Continue advocacy.</li> </ul>
Classification of permanent transfer of IP	<ul style="list-style-type: none"> <li>We discussed that there is emerging disputes on account of lack of clarity in the GST law regarding classification of permanent transfer of IP from overseas affiliates to India companies and from Indian affiliates to foreign companies as “goods” or “services” given that an entry for permanent transfer finds mention in both the notification prescribing rate for “goods” as well “services”.</li> <li>We also explained the challenges faced in refund claims filed and the lack of procedural mechanism under Customs to classify intangibles as “goods”.</li> </ul> <p><b>Feedback received</b></p> <ul style="list-style-type: none"> <li>Mr. Mangal said that they are open to considering an enabling provision under GST law for refund of taxes paid on permanent transfer of IP instead of routing it through Customs.</li> </ul>	<ul style="list-style-type: none"> <li>USISPF to file a detailed document on this. We will have to articulate the exact ask.</li> </ul>

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<p>GST paid on secondment – Demand of interest &amp; denial of credit</p>	<ul style="list-style-type: none"> <li>· We discussed that authorities are demanding interest and denying ITC on taxes paid pursuant to the <i>Northern Operating</i> decision of the Hon’ble Supreme Court.</li> </ul> <p><b>Feedback received</b></p> <ul style="list-style-type: none"> <li>· Mr. Mangal said that this has been discussed at the highest level (including by Embassies, Board etc) and as of now the position is that interest would be liable on cases involving a delay as interest under Section 50(1) is automatic and certain.</li> <li>· With regard to ITC denial, Mr. Mangal mentioned that some of the States have expressed their concerned during discussions on this topic at the recent Law Committee meeting(s).</li> <li>· However, Mr. Mangal also said that this is a valid ask of ITC eligibility and Industry should continue advocacy.</li> </ul>	<ul style="list-style-type: none"> <li>· USISPF to refile the documents.</li> </ul>
<p>Recommendation on applicability of TDS for services provided by PSU to foreign private banks</p>	<ul style="list-style-type: none"> <li>· We discussed on applicability of TDS for services provided by PSU to foreign private banks.</li> </ul> <p><b>Feedback received</b></p> <ul style="list-style-type: none"> <li>· Mr. Mangal has directed industry to submit a detailed document on this to discuss further.</li> </ul>	<ul style="list-style-type: none"> <li>· USISPF to file a detailed document on this.</li> </ul>
<p>GST on use of common logo, trademark, or brand name</p>	<ul style="list-style-type: none"> <li>· We discussed how tax officers are alleging non-payment of GST on receipt of access to such IPs for India operations without appreciating the facts that it is used for captive consumption.</li> </ul>	<ul style="list-style-type: none"> <li>· USISPF to file a detailed document covering the aspects</li> </ul>

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	<p><b>Feedback received</b></p> <ul style="list-style-type: none"> <li>· Mr. Sanjay Mangal understood the issue, however, he has directed us to submit a document with details like:               <ul style="list-style-type: none"> <li>a. Whether we looking at redressal/ clarity only for captive consumption</li> <li>b. How do we define “captive consumption”</li> <li>c. TP &amp; OECD guidelines on this issue</li> <li>d. Whether we looking at a clarification only for entities who provide services 100% to their overseas affiliates on <i>cost plus</i></li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>· highlighted by Mr. Mangal.</li> </ul>
<p>Clarification regarding place of supply for transportation of goods (including mail and courier) when either supplier or recipient of service is located outside India</p>	<ul style="list-style-type: none"> <li>· We requested for a Circular to be issued to elucidate that even for transportation of goods by way of mail or courier, the place of supply is to be determined as per sub-section 2 of section 13 of the IGST Act (i.e., where the location of the supplier or location of recipient is located) for international transactions</li> </ul> <p><b>Feedback received</b></p> <ul style="list-style-type: none"> <li>· Mr. Mangal clarified that they are working on this and the Circular on this is in the process of being finalised and is likely to be issued shortly.</li> </ul>	<ul style="list-style-type: none"> <li>· No action needed.</li> </ul>
<p>Reimbursement of ESOP should not be classified as import of services</p>	<ul style="list-style-type: none"> <li>· We mentioned that Tax officers are alleging that obligation of providing shares as per the employment contract rests with the Indian company which in turn is being fulfilled by foreign counterpart, it qualifies to be import of financial service from foreign counterpart.</li> </ul>	<ul style="list-style-type: none"> <li>· USISPF to organise a meeting with members of CBIC researching this issue</li> </ul>

Topics	Discussions	Action steps
	<p><b>Feedback received</b></p> <ul style="list-style-type: none"> <li>Mr. Sanjay Mangal immediate answer to this that we are aware of this issue and this need time to discuss as it is a complicated subject.</li> <li>Mr. Sanjay Mangal also mentioned that there is a need for further consultation.</li> </ul>	<p>(Mr. Raghavendra, ADC and Nitesh, DC).</p>
<p>Definition of supplier for online money gaming</p>	<ul style="list-style-type: none"> <li>We mentioned that the definition of Supplier for Online Money Gaming provisions introduced by the CGST Amendment Act seems very wide, and could also be read to cover platform providers merely enabling hosting of the App, without being in the money flow.</li> </ul> <p><b>Feedback received</b></p> <ul style="list-style-type: none"> <li>Mr. Mangal has asked USISPF to collate all issues and submit for his consideration. He also acknowledged that it may be a little early in the day to comment further on this.</li> </ul>	<ul style="list-style-type: none"> <li>USISPF to file a document on this issue.</li> </ul>
<p><b>Issues relating to GST refund</b></p>		
<p>Permitting refund of credit on capital goods</p>	<ul style="list-style-type: none"> <li>We made a point that exporters should be allowed with refund of capital goods. If not at once, but atleast in a staggered manner.</li> <li>Also, we discussed that how STPI unit is unable to claim refund under both rebate as well as regular refund route.</li> </ul> <p><b>Feedback received</b></p> <ul style="list-style-type: none"> <li>Mr. Mangal mentioned that this would be a long term goal.</li> </ul>	<ul style="list-style-type: none"> <li>USISPF to file a document on rebate for STPIs.</li> </ul>

Topics	Discussions	Action steps
	<ul style="list-style-type: none"> <li>With regard to rebate route for STPI – Mr. Mangal said that there is merit on representing on this and USISPF has been directed to file the detailed document on this.</li> </ul>	
Inverted duty refund for “input services”	<ul style="list-style-type: none"> <li>We discussed that despite the change in the formula to include input services, section 54(3) of the CGST Act still allows refund on account of inverted duty structure only in cases where the rate of tax on input is higher than the rate of tax on outward supplies.</li> </ul> <p><b>Feedback received</b></p> <ul style="list-style-type: none"> <li>Mr. Sanjay Mangal immediate answer to this will not be implemented now.</li> <li>Mr. Mangal however mentioned that this is well thought amendment made.</li> </ul>	<ul style="list-style-type: none"> <li>This issue is already a part of the GST memorandum.</li> <li>Continue advocacy.</li> </ul>
Allow refund of closing balance of input tax credit	<ul style="list-style-type: none"> <li>We discussed that pre-GST regime allowed refund of closing balance of credit.</li> <li>However, GST does not allow the same.</li> </ul> <p><b>Feedback received</b></p> <ul style="list-style-type: none"> <li>Mr. Sanjay Mangal immediate answer to this will not be implemented now.</li> </ul>	<ul style="list-style-type: none"> <li>This issue is already a part of the GST memorandum.</li> <li>Continue advocacy.</li> </ul>
Allow GST refund basis Foreign inward remittance certificate (FIRA)	<ul style="list-style-type: none"> <li>Presently, banks issue FIRA in lieu of FIRC, containing identical details as in the FIRC</li> <li>However, tax authorities do not consider the same as sufficient documentary evidence for corroborating realisation of convertible foreign exchange, as it does not find mention in CGST Rules</li> </ul>	<ul style="list-style-type: none"> <li>USISPF should take up the matter with State Export Promotion Councils.</li> </ul>

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	<p><b>Feedback received</b></p> <ul style="list-style-type: none"> <li>Mr. Mangal answer to this was that the RBI has clarified to the CBIC that FIRAs is not a valid document and that banks should have issued FIRC.</li> <li>Banks should have issued FIRC/ BRC for all export realisations.</li> </ul>	
<b>Need for amendment in GST law</b>		
Relaxation from having physical PPOB in each state	<ul style="list-style-type: none"> <li>Sellers having operations out of warehouses of ECOs to be allowed to register in each State of operations with the home state PPOB address and warehouses continue to be registered as APOB in respective states.</li> <li>Above model in line with recommendation of the <b>172nd Parliamentary Committee</b>.</li> </ul> <p><b>Feedback received</b></p> <ul style="list-style-type: none"> <li>Mr. Mangal said ECO should be ready to take responsibility on behalf of seller</li> <li>Additional guardrails to be submitted to safeguard revenue.</li> <li>Mr. Mangal concern was on fake invoicing business and thus this recommendation would need more deliberation.</li> </ul>	<ul style="list-style-type: none"> <li>USISPF to get back with alternatives after discussing internally with members.</li> </ul>
Enabling paperless movement of goods for B2C supplies	<ul style="list-style-type: none"> <li>Allow paperless movement for B2C transactions as well – digital copy to be accepted. Global precedence on Digital invoice acceptance for B2C as well.</li> </ul> <p><b>Feedback received</b></p> <ul style="list-style-type: none"> <li>Mr. Mangal noted the issue and USISPF has been asked to submit a detailed document in this regard.</li> </ul>	<ul style="list-style-type: none"> <li>USISPF to get back with a detailed document on this.</li> </ul>



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	<ul style="list-style-type: none"> <li>Mr. Mangal also mentioned that bringing B2C under ambit of e-invoice for all may be not possible. However, he may look into allowing as an optional basis or atleast for ECOs.</li> </ul>	
Reversal of input credit on destruction of date expired goods/ physician samples	<ul style="list-style-type: none"> <li>We requested that the Section 17(5) should be suitably amended to remove date expired/ near expired products and samples from the negative list of input tax credit</li> </ul> <p><b>Feedback received</b></p> <ul style="list-style-type: none"> <li>Mr. Mangal noted the issue and USISPF has been asked to submit a detailed document in this regard.</li> </ul>	<ul style="list-style-type: none"> <li>USISPF to file a detailed document on this.</li> </ul>
Parity between Income Tax and GST on levy of TCS	<ul style="list-style-type: none"> <li>Bring in parity between Income Tax and GST, by <b>levying 0.1% TCS instead of 1%.</b></li> <li><b>We also highlighted that more than 80% of taxpayer are filing refund of TCS and thus this is only a monitoring mechanism.</b></li> </ul> <p><b>Feedback received</b></p> <ul style="list-style-type: none"> <li>Mr. Mangal noted the issue he said that this may not be possible now as state compensation cess has ended recently.</li> <li>Mr. Mangal also mentioned that he will look into the data from GSTN and see if all cases are being refunded to taxpayer and then he may probably take this up for discussion in GST law committee.</li> <li>He also highlighted that there is a proposal to increase the GST TDS from 1% to 8%. This was just FYI highlighting that 0.1% may not be possible and need deliberation.</li> </ul>	<ul style="list-style-type: none"> <li>This issue is already a part of the GST memorandum.</li> <li>Continue advocacy.</li> </ul>

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Inclusion of Natural gas ('NG') and Electricity production and transmission under GST	<ul style="list-style-type: none"> <li>Mr. Mangal has directed that we take this matter to TRU for discussion.</li> </ul>	<ul style="list-style-type: none"> <li>USISPF to organise a discussion with TRU.</li> </ul>
Removing prohibition on availment of tax credits on construction of immovable property under Section 17(5) of the CGST Act	<ul style="list-style-type: none"> <li>We discussed the said issues very briefly due to time constraint.</li> </ul> <p><b>Feedback received</b></p>	<ul style="list-style-type: none"> <li>USISPF to organise a discussion with TRU.</li> </ul>
Removing prohibition on availment of tax credits on employee related insurance, catering, and transportation services	<ul style="list-style-type: none"> <li>Mr. Sanjay Mangal immediate answer to this will not be implemented now and will take some time to come through.</li> <li>USISPF has also been asked to file the representation document on these.</li> </ul>	<ul style="list-style-type: none"> <li>USISPF to organise a discussion with TRU.</li> </ul>
<b>Forward looking thoughts</b>		
Allow cross utilization of CGST credit between distinct persons	<p><b>Feedback received</b></p> <ul style="list-style-type: none"> <li>Mr. Sanjay Mangal immediate answer to these recommendations were that these will not be implemented now and will take some time to come through.</li> </ul>	<ul style="list-style-type: none"> <li>These issues are already a part of the GST memorandum.</li> <li>Continue advocacy.</li> </ul>
Grouping of multiple registrations within group entities for ITC utilisation		
Deemed supply on import of services under reverse charge mechanism to be done away with, where recipient is eligible to full input tax credit		
Reverse charge liability may be allowed to be paid through Input tax credit		
High pre-deposit under GST vis-à-vis regime vis pre-GST regime	<ul style="list-style-type: none"> <li>We discussed, how there is a steep increase in the pre-deposit payment percentage from erstwhile regime i.e., 10% to 30%. This causes unnecessary blockage of funds due to tedious litigation process.</li> </ul>	<ul style="list-style-type: none"> <li>Issue to be included in GST memorandum</li> </ul>

Topics	Discussions	Action steps
	<ul style="list-style-type: none"> <li>· We requested that the Pre-deposit payment percentage may be brought back to the percentage and value cap as it was available under the pre-GST</li> </ul> <p><b><i>Feedback received</i></b></p> <ul style="list-style-type: none"> <li>· Mr. Sanjay Mangal noted the issue.</li> <li>· USISPF has been directed to file a detailed document on this.</li> </ul>	<ul style="list-style-type: none"> <li>· and resubmitted with Mr Mangal's office.</li> <li>· Continue advocacy.</li> </ul>

\*\*\*\*Prepared with support from knowledge partners, Deloitte\*\*\*\*

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