

# DA TAX UPDATE INDIRECT TAX

An E-Tax update from  
**Darda Advisors LLP**

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Issue -53

**Goods and Service Tax**

**Customs and Others**



## Goods and Service Tax

### **Ajit Associates Architectural Consultants PVT. LTD Vs Assistant Commissioner Second Circle [WP(C) 41275/2022]**

The petitioner asserts that the cancellation occurred without providing an adequate opportunity for a hearing, as required by Section 29(2) of the Goods and Service Tax Act (GST Act). This section mandates that the proper officer must not cancel the registration without affording the concerned person an opportunity to be heard.

### **Britannia Industries Limited Vs Union of India [SCA No 14867/2022]**

The Court emphasized that failure to upload an order copy on the GSTN portal cannot be the sole reason to prevent a time-barred appeal, especially when the order has been manually received by the assessee.

### **Shivbholra Filaments Private Limited Vs Assistant Commissioner CGST & Anr**

### **[W.P.(C) 9742/2023]**

The court has held that the rejection of the petitioner's refund application without granting opportunity of hearing is violative of the principle of natural justice and restored the refund application rejected by the authority and held that the assessee would not be left unheard.

### **In re Karnani FNB Specialities LLP [WBRRR/02/2023]**

The case concerns whether the appellant, should reverse input tax credit (ITC) for selling alcoholic liquor for human consumption. The appellant argued that alcoholic liquor is not goods under GST and should not be included in exempt turnover or total turnover computations. The respondent and WBAAR argued that alcoholic liquor is goods and supply under GST, but excluded from tax levy, falling under exempt supply category. The WBAAR ruling confirmed the ruling, and the appeal was rejected.

## Goods and Service Tax

### **Tikona Intinet Private Limited Vs State of U.P. and Another [WT No. 859 of 2023]**

The Court set aside the demand raised on the ground that the assessee instead of passing the Input Tax Credit ("ITC") through Form GST ITC-02 transferred ITC through Form GSTR-3B and held that the stand of the Revenue Department was not correct since the Form ITC-02 was not live on the common portal.

### **Ashish Kumar Kar Vs Central Board of Indirect Taxes and Customs Dept of Revenue [W.P.(C) 21687/2023]**

The petitioner in this case had filed an appeal challenging an order but saw it rejected due to the non-supply of certified copies. This rejection was made without notifying the petitioner of the defect in the appeal, nor was any opportunity for a hearing given. The Revenue Department justified the rejection, but the court found the action arbitrary and unreasonable.

### **Arhaan Ferrous And Non-Ferrous Solutions Pvt Ltd Vs Deputy Assistant Commissioner [WPN. 15487/2023]**

The tax authorities allege that the seller was a fake dealer who obtained registration with fabricated documents and had no place of business. The court rules that the tax authorities cannot confiscate the goods of the trader based on the proceedings against the seller, but can initiate separate proceedings against the trader under Section 129 of the GST Act.

### **In re Sai Service Pvt. Limited [TSAAR No. 13/2023]**

The Advance Ruling Authority (AAR) has clarified that the dealer can claim the input tax credit on vehicles only if they make a further supply of such vehicles, as per the exception clause in Section 17 (5) of the CGST Act, 2017. However, if the dealer retains the vehicles for their workshop as replacement vehicles, they are not eligible for the input tax credit and have to repay it in cash.



## Goods and Service Tax

### JEM Exporter Vs Union of India [WP (L) No. 25142 of 2022]

The case involved a dispute over composite notices and procedural lapses, impacting businesses. The petitioner claimed a refund of input tax credit under CGST Act, while a show cause notice was issued for fake ITC. The Hon'ble High Court of Bombay overturned the order, citing legal and procedural mistakes. The court emphasized that technical objections should not obstruct substantive justice.

## GST Updates

### Integrated Goods And Services Tax (Amendment) Bill, 2023

The IGST (Amendment) Bill, 2023 is a comprehensive move towards refining and updating the taxation system, particularly in the domains of online gaming and other digital services. By considering modern dynamics, the bill ensures alignment with global practices and fosters a clear understanding of tax liabilities and responsibilities.

*Bill No. 120 of 2023*

### CGST (Amendment) Bill, 2023 — Tax Changes on casinos, horse racing & gaming

The CGST (Amendment) Bill, 2023, marks a significant step towards aligning India's taxation framework with the evolving digital landscape. By targeting areas like online gaming and adding clarity to existing laws, the government demonstrates its commitment to modernizing the taxation system while maintaining fiscal responsibility.

*Bill No. 119 of 2023*



## Customs & Others

### **Tata Steel Limited Vs Union of India & Ors [WPA . 15455/2023]**

The Court's ruling in the case establishes that unless expressly or implicitly waived, an administrative authority exercising judicial or quasi-judicial functions must provide reasons for its decisions. This decision emphasizes the importance of transparency, fairness, and the rule of law in administrative processes, and it has wider implications for various sectors involving quasi-judicial actions.

### **Tejinder Singh Makkar Vs C.C.E. & S.T.-surat [CPN. 11695/2014]**

CESTAT ruled that the penalty on a mediator acting as a broker in dealing with forged or fraudulent advance license trading is unjustified as it is not established that the mediator was aware of the forged or fake nature of the license. The court held that the appellant had not dealt with or transacted for the goods in any

manner, nor was it established that he was aware of the forged or fake nature of the licenses. Therefore, the penalty under Rule 209A is unjustified.

### **Metal Powder Company Ltd. Vs Commissioner of Customs [CPN. 42304/2013]**

The case involves the enhancement of the declared value of imported aluminum powder, leading to an increase in customs duty. The Department re-determined the value due to perceived undervaluation, and because the foreign supplier was a related party to the appellant. The CESTAT Chennai has directed the matter to be reconsidered.

## Customs & Others

### **In re Sunmarg Consultancy LLP [ CAAR . 02/2023]**

The applicant applied for an advance ruling on the valuation of imported rags, but the Delhi Customs Authority rejected it due to non-compliance with section 28H of the Customs Act, 1962. This case highlights the complexity of customs regulations and the need for legal compliance.

### **Flemingo DFS Pvt. Ltd. Vs Commissioner of Customs [CPN. 42066/2013]**

CESTAT ruled that non-renewal of a Private Bonded Warehouse license is unjustified, as it is for settling disputes and admission of duty liability before the Settlement Commission. The court held that immunity from fines, penalties, and prosecution under Customs Act and other Central Acts is granted post-settlement.

### **Jindal Exports And Imports Private Limited Vs Director General of Foreign Trade [W.P.(C) 12071/2022]**

The Court ruled that Section 5 of the Foreign Trade Act, 1992 does

not empower the government to make amendments with retrospective effect. The Petitioner applied for an Advance Authorization but was rejected. The court held that the Advance Authorization was applied on June 26, 2019, and subsequent notifications cannot be applied retrospectively.

### **Patanjali Foods Limited Vs Union Of India [WPN.14963/2022]**

The Karnataka High Court has ruled that amendments to FTP can only be made by the Central Government, while amendments to the procedure can be made by the DGFT. The petitioner sought a writ of Certiorari to quash and set aside conditions in public Notice No. 15/2015-20. The court concluded that the DGFT issued the Public Notice containing the impugned condition, which has no application and cannot be relied upon by respondents.



## Customs & Others

### **Hindalco Industries Limited Vs Union of India & Ors [W.P.(C) 14131/2021]**

The company made a mistake in the electronic filing and did not mark 'Y' in the reward column, which resulted in the denial of the benefits. The company challenged the order of rejection in the Delhi High Court, which ruled in its favor and directed the customs authorities to transmit the corrected bills manually and the DGFT to process the claim within a specified time.

### **Alfred Berg & Co. (I) Pvt. Ltd. Vs Commissioner of GST & Central Excise [EAN. 41009/2018]**

The CESTAT held that no refund of unutilized CENVAT credit after stopping manufacturing due to the sale of the business to another company.



## Import and Export data

**Imports of July 2023 at \$ 67.77 B**

**Exports of July 2023 at \$ 59.43 B**

		July 2023 (USD Billion)	July 2022 (USD Billion)
Merchandise	Exports	32.25	38.34
	Imports	52.92	63.77
Services*	Exports	27.17	24.26
	Imports	14.85	14.06
Overall Trade (Merchandise + Services) *	Exports	59.43	62.59
	Imports	67.77	77.83
	Trade Balance	-8.35	-15.24

Source : PIB

# Darda

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