

DA TAX UPDATE INDIRECT TAX

An E-Tax update from
Darda Advisors LLP

Fortnightly update – September 2023

Issue -54

Goods and Service Tax

Customs and Others

Goods and Service Tax

Suncraft Energy Private Limited And Another Vs Assistant Commissioner, State Tax [MAT 1218/2023]

The Court, in a recent judgment, set aside a demand notice for reversing excess credit in Form GSTR-3B compared to Form GSTR-2A. The court ruled that such demands must be based on a proper investigation into the supplier's actions and should only proceed against the recipient in exceptional cases like collusion or supplier's absence, citing a Supreme Court precedent that Form GSTR-2A is for facilitation and self-assessment, and non-performance of the form is inconsequential due to the manual submission of Form GSTR-3B at the time.

Arhaan Ferrous And Non-Ferrous Solutions Pvt Ltd Vs Deputy Assistant Commissioner [WPN No 15487/2023]

The Court ruled that an assessee is only responsible for proving they purchased goods from a supplier for valuable consideration after

verifying their GST registration on the GST portal. The court noted that proceedings can be initiated against the supplier in transit, but not merely on the basis of the claim.

State Tax Officer (IB) & ORS. Vs Shabu George & ANR. [SLP 27670/2023]

The Revenue Department seized cash from Shabu George's premises, despite not issuing a show cause notice after six months. The respondent filed a writ, arguing that seizure of cash not part of the stock in trade was not justified. The Court ordered the department to release the cash.

Ashish Garg Proprietor Vs Assistant Commissioner of State Goods And Service Tax LLP [WP(C) No 6652/2023]

The Court held that although Revenue department has discretion to cancel GST registration from a retrospective date but doing so without valid justification constitutes the arbitrary exercise of power.

Goods and Service Tax

Aastha Enterprises through its Proprietor Sanjay Kumar Vs State of Bihar [CWJ No. 10395 of 2023]

The Court ruled that ITC is a benefit/concession, not a right granted to the assessee under the statutory scheme. The burden of proof lies with the assessee to prove the tax collected has been paid to the government. The court emphasized the importance of statutory compliance and the necessity of genuine transactions for ITC claims.

Wallem Shipmanagement (India) Pvt. Ltd. Vs Union of India [WPN. 3460/2021]

The Court noted that the reason furnished by the Petitioner to seek extended time to file a reply to the SCN on account of the pandemic was a sufficient reason and the Respondent gave only three days to file the reply, which cannot be termed as reasonable time or an adequate opportunity of a hearing to the Petitioner. The Honorable Court held that the Petitioner was not granted the proper opportunity to reply to the SCN and set aside t

he Impugned order being violative of the principle of natural justice.

Panji Engineering Private Limited Vs Union of India [SCA No. 560/2022]

The Honorable Court held that the Petitioner's case is fit for grant of interest on refund under section 56 of the CGST Act due to a delay of more than 60 days from the date of application as prescribed under Section 54(1) of the CGST Act

Rama Shanker Modi Vs Assistant Commissioner [WPA No. 15639 of 2023]

The Court set aside the impugned order and held that mere non filing of order physically within the time limit cannot be a valid ground to rejection of appeal.

GST Updates

Government Imposes 30-Day Invoice Reporting Limit for Large Taxpayers

The government has imposed a 30-day reporting limit on old invoices on e-invoice IRP portals for taxpayers with AATO greater than 100 crores. This restriction applies to all document types, including invoices, credit notes, and debit notes. No reporting restriction is currently in place for taxpayers with AATO less than 100 crores. The new time limit will be implemented from 1st November 2023, requiring system changes.

[Press Release No. 602](#)

Constitution of State Benches of the GST Appellate Tribunal

The Central Government, on the recommendation of the Goods and Services Tax Council, has formed the number of State Benches of the Goods and Services Tax Appellate Tribunal. The State Benches are located in various states and locations, with effect from the date of publication in the Gazette of India.

[S.O. 4073\(E\)](#)

Customs & Others

IBM India (P) Ltd. Vs Commissioner of Customs [CPM No . 2535/2011]

CESTAT held that section 149 of the Customs Act, 1962 allows amendment of a Bill of Entry after the clearance of the goods only on the basis of documentary evidences which were in existence at the time the goods were cleared for home consumption. In absence of the same, the amendment is unjustified.

Salzer Electronics Ltd. (Unit III) Vs Commissioner of GST and Central Excise [CPN. 42510 of 2013]

CESTAT Chennai upholds the demand of concession availed vide customs notification on failure of appellant to maintain proper accountal of the receipt of imported goods till their utilization in the manufacture of the specified finished products.

S R Traders Vs Commissioner of Customs [CPN. 88044/2019]

The S R Traders vs. Commissioner

of Customs case under section 28 of the Customs Act, 1962, raises significant issues regarding the valuation of imported cosmetics. It underscores the importance of adhering to Customs Valuation Rules, conducting market surveys transparently, and providing credible evidence in customs proceedings.

RKM Powergen Pvt Ltd Vs Commissioner of Customs [CPN. 41884 of 2013]

The case underscores the importance of timely documentation and communication with Customs authorities when seeking project import benefits. It reaffirms that project import benefits should not be denied solely on the grounds of goods being imported before contract registration.

Customs & Others

In re Siemens Healthcare Pvt. Ltd [Ruling No. CAAR/MUM/ARC/63/2023]

The company specializing in medical equipment, has been granted a 7.5% basic customs duty rate for X-Ray tubes and spare parts used in medical equipment. The ruling, which was issued by the Customs Authority of Advance Ruling in Mumbai, has implications for importers and manufacturers in the healthcare industry, as it affects duty rates for critical components used in diagnostic and medical imaging equipment.

Ajay Saraogi Vs Union of India [FEA 2 of 2009]

The Court held that initiation of adjudication proceeding without allowing cross-examination of person whose statements recorded and relied upon in the adjudication proceeding makes the entire proceeding vitiated.

Madhu Silica Pvt Ltd Vs C.C.-Ahmedabad [CPN. 104 of 2012- DB]

The CESTAT ruling serves as a reminder for authorities to adhere

strictly to procedural laws and natural justice. A fair and thorough inquiry is crucial for accurate classification under the Customs Tariff Act, and this decision could serve as a precedent for similar cases in the future. The matter has been remanded for fresh adjudication, highlighting the tribunal's focus on setting clear legal standards for customs classification.

Style Garments Vs Commissioner of Customs [W.P. No. 18752 of 2023]

This judgment serves as a precedent for ensuring that authorities must take into consideration all available records, including those uploaded in digital portals, before denying benefits like duty drawbacks. It underscores the need for due diligence and procedural integrity on the part of authorities to uphold justice

Customs & Others

Godfrey Philips India Ltd. Vs Commissioner of Central Excise [EPN. 88061 of 2013]

The manufacturer cannot be held liable for a sealed/uninstalled packing machine in the factory premises unless it falls under Rule 18 (2) ibid, which provides for penalties for contravention. Authorities expected the appellant to ensure compliance but failed to notice noncompliance from their officials.

Biswajit Saha Vs Commissioner of Central Excise [EP No. 391 of 2012]

CESTAT held that appellant were under the bonafide belief that processes undertaken by them doesn't amount to manufacture and accordingly, they cleared goods to raw material supplier on collection of job charges only. Accordingly, extended period of limitation not invocable.

Renault Nissan Automotive India Private Limited Vs Commissioner of GST and

Central Excise [EP No. 40290 of 2019]

The CESTAT has ruled in favor of Renault Nissan Automotive India Private Limited, stating that their refund claim cannot be rejected merely for not opting for Provisional Assessment. The decision sets an important legal precedent and could have broader implications for other companies in similar legal disputes over excise duties.

K.L. Hakkim Vs Commissioner of GST & Central Excise [EP No. 40526 of 2014]

CESTAT ruled that a remand order of de novo adjudication passed after 18 years is unsustainable due to the department's failure to explain the delay. The appellant was liable to pay duty of Rs.17,96,241/- during 1984-85 and 1985-86. The appellant filed an appeal, which was set aside and remanded for de novo. The order was deemed unsustainable and unsustainable.

Customs & Others

Ref Cem Industries Vs Commissioner of Central Excise & ST [EP No. 10070 of 2014]

CESTAT ruled that the demand for a 5%/10% payment of exempted goods was unjustified, as the appellant had rightly availed the option of reversing proportionate cenvat credit attributed to exempted goods. The appellant, a fire brick manufacturer, had not maintained separate accounts of input for exempted and dutiable final products. The court concluded that there was no reason for imposing the option under Rule 6(3).

M R Beltings Vs Commissioner of Central Excise [EP No. 57958 of 2013]

The CESTAT set aside the demand order on the ground that the entire demand is barred by limitation since, the department was not able to bring anything on record to show that the assessee has suppressed the material fact in order to evade the payment of duty.

Customs Updates

Implementation of Supreme Court's Pre-Import Condition Directive

Public Notice No. 32/2023-DGFT. dated: 8th September 2023

The directive from the Hon'ble Supreme Court regarding the 'pre-import condition' has significant implications for the import community. While it upholds the condition's validity, it also offers a pathway for refunds and input credits. The issuance of Circular No.16/2023 provides clarity on the procedure to be followed in this regard. Importers, customs brokers, and stakeholders should take note of these developments and ensure compliance with the new regulations.

Public Notice No. 31/2023-DGFT. dated: 21th August 2023

New Export Obligation Monitoring SOP for EPCG & Advance Authorization

The Office of the Commissioner of Customs, Chennai-II (Import), has introduced a new set of Standard Operating Procedures (SOP) for the monitoring of Export obligation fulfillment. This pertains to the Export Promotion Capital Goods (EPCG) scheme and the Advance Authorization scheme

Import and Export data

Imports of August 2023 at \$ 72.50 B

Exports of August 2023 at \$ 60.87 B

		August 2023 (USD Billion)	August 2022 (USD Billion)
Merchandise	Exports	34.48	37.02
	Imports	58.64	61.88
Services*	Exports	26.39	26.50
	Imports	13.86	15.22
Overall Trade (Merchandise + Services)*	Exports	60.87	63.52
	Imports	72.50	77.10
	Trade Balance	-11.63	-13.58

Source : PIB

Darda

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www.dardaadvisors.com



da@dardaadvisors.com

Our Locations

Hyderabad

6-3-1086, 5th Floor, Vista Grand Towers, Raj Bhavan Road, Somajiguda, Hyderabad - 500082, TS

Chennai

13, T.K. Mudali Street, Choolai, Chennai - 600112, Tamil Nadu

Delhi-NCR

N 93, Ground floor, Mayfield garden, Sector 51, Gurgaon, Haryana - 122018

Bhilwara

Moti Chambers, 62&63, Sancheti Colony, Pur Road. Bhilwara - 311001, Rajasthan

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