

# DA TAX UPDATE INDIRECT TAX

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

Fortnightly update – October 2023  
Issue -55

**Goods and Service Tax**

**Customs and Others**



## Goods and Service Tax

### **Western Carrier India Ltd Vs State of U.P [WTN. 1020/2023]**

In the case Court clarified the applicability of Section 129 of the CGST Act regarding the seizure and release of goods and vehicles. The Court upheld that when goods in transit are accompanied by the necessary documents, such as an E-Way bill and invoice, they should be released under Section 129(1)(a) of the CGST Act. This judgment emphasizes the importance of compliance with circulars issued by the tax authorities and ensures that goods are not unduly seized after penalties have been paid in accordance with the law.

### **Indian Herbal Store Pvt. Ltd. Vs Union Of India & Ors. [W.P.(C) 9908/2021]**

The Court, in the case held that Rule 89(4)(C) of the CGST Rules, restricting the refund of unutilized ITC for exporters, does not apply retrospectively. This decision was based on the precedent set by the Karnataka High Court, which found the rule to be arbitrary and contrary to the CGST Act. The court

set aside the Refund Rejection Order and directed the Revenue Department to process the refund claims for unutilized ITC. The ruling protects the rights of exporters and clarifies that such restrictive rules should not have a retroactive impact.

### **Anaz Abdul Rahiman Kutty Vs State Tax Officer [W.P.(C) No. 31056 of 2023]**

The Court ruled in favor of the petitioner, a registered dealer under the GST Act, for the Assessment Year 2017-18. The court noted that during the initial implementation of the GST regime, there were difficulties in understanding the new tax system. The petitioner had paid the tax to the government, and since there was no loss to the government, the disallowance of input tax credit amounting to Rs. 4,84,448 was set aside. The petitioner was directed to provide relevant documents to support their claim for input tax credit..

## Goods and Service Tax

### **In re Adama India Private Limited [AAAR No. GUJ/GAAAR/Appeal/2023/04]**

The GAAR ruled that ITC cannot be claimed for expenses related to CSR initiatives, stating that they do not fall within the scope of "in the course and furtherance of business" under GST law. Adama India challenged this ruling, arguing that CSR activities inherently promote business and should qualify for ITC. The final resolution is pending, but a proposed legislative amendment supports the disallowance of ITC for CSR activities. Companies must stay informed about the evolving legal landscape regarding GST and CSR activities..

### **Makhan Lal Sarkar And Anr. Vs Assistant Commissioner of Revenue [WPA/2146/2023]**

The Calcutta High Court ordered the Revenue Department to review an appeal regarding an Input Tax Credit (ITC) denial due to a GSTR-3B and GSTR-2A mismatch. The court found the denial

unsustainable, citing a breach of the Principle of Natural Justice and failure to consider the circular's clarification. The judgment is partially correct since ITC in GSTR-2A wasn't mandatory for claiming in FY 2017-18.



## GST Updates

### Facility for the e-commerce operators through whom unregistered suppliers of goods can supply goods

GSTN has developed APIs for ECOs to integrate with GSTN, enabling unregistered suppliers to obtain details and validate demographic information. The APIs include the Unregistered Applicants API for obtaining details of unregistered applicants and the Unregistered Applicants Validation API for validating mobile and email IDs. To access these APIs, e-commerce operators should contact GSPs, obtain authentication tokens from the API specifications, and use GSP credentials. Both APIs will be Base64 encoded without encryption.

*Press release no 608. dated: 12<sup>th</sup> October 2023*

### Facility of enrolment for supply of goods through e-commerce operators by GST un-registered suppliers.

The CGST Act has been amended to exempt individuals from mandatory registration for e-

commerce goods supply if they meet certain conditions. These include being in one state/UT, not making inter-state supplies, having a Permanent Account Number, declaring it on the GST Portal, and having an enrolment number. Unregistered individuals can enroll on the GST portal.

### Person supplying of Online Money Gaming services or OIDAR or Both– Form GST REG-10 and Form GSTR-5A

Recent amendments to the CGST/SGST Act and Rules require any person located outside India making online money gaming supplies to individuals in India to register under GST and pay tax. To comply with this, they must file registration or amend existing registrations using the proposed Form GST REG-10. They need to specify the "Type of Supply" under the new Row (iia) in the form. As a temporary workaround until the GST Portal is updated, individuals involved in online money gaming supply can use the existing Form GST REG-10 for registration and provide relevant information in the 'Documents Upload' section. They should also report online money gaming supply details in the existing Tables 5 and 5A of Form GSTR-5A until the portal is updated.



## Customs & Others

### **Futan Leathers Vs Commissioner of Customs [CPM No . 42369/2013]**

The CESTAT Chennai ruled that imposing redemption fines and penalties on provisionally released, reprocessed, and exported goods is unjustified. The department issued a Show Cause Notice, but the CESTAT deemed confiscation and penalties unwarranted, setting aside the redemption fine, aligning with similar precedents..

### **Commissioner of Customs (Imports) Vs Ganpati Overseas [CPN. 4736 of 2009]**

The Supreme Court ruled that increasing the price of imported goods without evidence is unjustified and legally invalid. In a case involving M/s. Ganpati Overseas, the court found that the import invoice price was correct, and the department and adjudicating authority were unjustified in rejecting it without evidence. The order in original was set aside, indicating that the import invoice price was correct.

### **Nalwa Steel & Power Ltd Vs Commisioner[EAN. 52361/2018]**

CESTAT ruled that Rule 10(b) of the Central Excise Valuation Rules, 1944 cannot be applied when Rule 11 is applied. The case involved a manufacturer of TMT bars selling to independent buyers and interconnected undertakings. The demand confirmed under Rule 11 was set aside, and the appellant was not obligated to pay excise duty.

### **Commissioner of Customs Vs M.D. Overseas [CUSAA 30/2021]**

The Court has ruled that amendments to a shipping bill under Section 149 of the Customs Act, 1962, can be allowed based on existing documentary evidence. The court ruled that the Commissioner of Customs challenged the Customs Appellate Tribunal's orders, which allowed such amendments. The court found no legal issues in the tribunal's decision to grant the benefit of STR based on exports made during the relevant period.

## Customs & Others

### **Hanuman Weaving Factory Vs Commissioner of Customs [CAN. 41631/2013]**

The CESTAT has ruled that the rejection of transaction value for silk yarn should be supported by cogent reasons. The case involved Hanuman Weaving Factory's Bill of Entry for clearance of raw silk yarn in hanks invoiced by a Dubai-based supplier. The tribunal set aside the demand for excise duty, confiscation, redemption fine, and penalty, emphasizing the importance of valid grounds for challenging the transaction value and setting a precedent for similar cases.

### **B.L. Goel And Co. Vs Additional Director General Of GST Intelligence [W.P.(C) 6196/2020]**

The Court ruled that the petitioner, a service provider, was liable to pay 50% service tax on works contracts to the New Okhla Industrial Development Authority (NOIDA), a body corporate. A show cause notice had demanded ₹2,67,26,113 in service tax, contending that NOIDA was not a body corporate, but the court

found this assumption to be erroneous. Section 3(2) of the Uttar Pradesh Industrial Area Development Act, 1976 clearly establishes NOIDA as a body corporate. Therefore, the court held that NOIDA is indeed a body corporate, and the petitioner is liable for only 50% of the service tax.



## Customs Updates

### **Amendment in HBP 2023: GST Input Tax Credit for Advance Authorization Scheme**

The DGFT, has amended Para 4.10 (i) of the Handbook of Procedures 2023 to allow Input Tax Credits (ITC) on materials for the Advance Authorization Scheme. The amendment permits the transfer of duty-free materials between company units for manufacturing purposes, and ITC can be claimed when Goods and Services Tax (GST) has been paid on these materials. This change simplifies business operations, reduces costs, and aligns with the government's goal of enhancing the ease of doing business and promoting economic growth in India..

*Public Notice No. 34/2023-DGFT.  
dated: 13<sup>th</sup> October 2023*

### **EODC camp in RAs W.e.f. 13h November 2023 to 24th November 2023**

To facilitate the expedited disposal of pending applications for Export Obligation Discharge Certificate (EODC) for Advance Authorisation and EPCG, it is decided that the

concerned RAs (as per Annexure enclosed), shall organise a 2-week EODC camp w.e.f. 13.11.2023 to 24.11.2023.

*Trade Notice No. 29/2023-2024  
DGFT. dated: 13th October 2023*

## Import and Export data

**Imports of September 2023 at \$ 68.75 B**

**Exports of September 2023 at \$ 63.84 B**

		September 2023 (USD Billion)	September 2022 (USD Billion)
Merchandise	Exports	34.47	35.39
	Imports	53.84	63.37
Services*	Exports	29.37	29.22
	Imports	14.91	16.27
Overall Trade (Merchandise +Services) *	Exports	63.84	64.61
	Imports	68.75	79.64
	Trade Balance	-4.92	-15.03

Source : PIB



# Darda

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