

# DA TAX UPDATE INDIRECT TAX

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

Fortnightly update – December 2023

Issue -57

**Goods and Service Tax**

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## Goods and Service Tax

### **SUNCRAFT ENERGY PRIVATE LIMITED AND ANOTHER VERSUS THE ASSISTANT COMMISSIONER, STATE TAX, [MAT 1218 of 2023]**

In this intra-court appeal, the petitioner challenges an order reversing input tax credit under the West Bengal Goods and Services Tax Act. The appellant contends that despite fulfilling all conditions, the first respondent erred in reversing the credit without conducting an inquiry into the supplier. The appellant cites a Supreme Court decision and press releases to argue against automatic credit reversal based on GSTR-2A. The court, finding no action against the supplier and noting the appellant's compliance, sets aside the demand, directing action against the supplier before proceeding against the appellant. The appeal is allowed.

### **Thirumalai Sales Corporation vs. The Assistant Commissioner [W.P.No. 8860/2023]**

The High Court ruled that the Department of Revenue should have issued a show cause notice directly to the assessee, not

through e-Portal, when the assessee's GST portal was closed due to registration cancellation. The court found that the assessee was only informed about the SCN when it received a property attachment notice, which was not served directly. The court deemed the orders in violation of natural justice principles and liable to be set aside.

### **Akshaya Building Solution vs. Assistant Commissioner of CGST [W.P. No 11526/2023]**

The writ petition challenges an order dated 06.01.2022, seeking permission to rectify GSTR-1 statements for certain periods involving Input Tax Credit of Rs.23,39,613. The petitioner claims an inadvertent error and inability to file a revised statement due to a lapsed extension. The respondent argues that opportunities were provided, but the petitioner failed genuine error, lack of awareness about a notification, and grants permission for rectification within specified timelines, citing a similar precedent. The writ petition is disposed of with no costs.

## Goods and Service Tax

### **BBA Infrastructure Ltd vs Senior Joint Commissioner of State Tax and others [MAT No. 1099 of 2023]**

The High Court clarified that interest and penalties under Section 50 of the CGST Act should be imposed only when excess input tax credit (ITC) has been utilized, not just claimed or reflected in the electronic ledger. The court ruled in favor of the taxpayer, Deepak Sales Corporation, stating that since the excess ITC was corrected before utilization, the demand for interest and penalty was untenable. This decision provides relief to taxpayers who promptly rectify errors in claiming ITC.

### **In the matter of Vijay Flexi Packaging Industries [AAR No.106/AAR/2023]**

The Tamil Nadu AAR has ruled that the payment of customs duty, countervailing duty, and special additional duty towards non-fulfillment of export obligation (EO) for imports under the EPCG scheme cannot be considered as input tax credit under GST. The ruling follows a case where the applicant, a printed poly packaging materials manufacturer, claimed concessional duty benefits on machinery

imported before and after GST implementation.

### **Neeraj Paper Marketing Ltd Vs Special Commissioner [W.P.(C) 158/2023]**

The Delhi High Court ruled that payments made under duress during a search operation, without determining tax liability or issuing a proper notice, must be refunded to the taxpayer with interest. The petitioner, a waste paper and craft paper trader, underwent a search, revealing mismatches in returns. The petitioner claimed that an amount of Rs. 28,20,000 was deposited under GST DRC-03 due to coercion. The court found the payments were non-voluntary and ordered a refund of Rs. 23,70,000 in cash with interest, stating that the authorities hadn't ascertained the tax liability or issued a notice as required.



## Goods and Service Tax

### ATT SYS India Pvt Ltd Vs Commissioner Goods And Services Tax [W.P.(C).14494/ 2023]

The High Court's recent judgment in the case addresses the cancellation of GST registration without allowing the petitioner an opportunity to be heard. The court ruled that the cancellation of registration violated natural justice principles and the court directed the immediate restoration of the registration, highlighting the need for procedural correctness in tax cancellations.

## GST Updates

### Board Instruction on Service Tax Implications of Secondment: Nuanced Examination and Clarification on Section 74(1) of CGST Act

The Board has issued an instruction referring to the Hon'ble Supreme Court's judgment in the case of CC, CE & ST, Bangalore Vs. Northern Operating Systems Private Limited (NOS), emphasizing the Service Tax implications of secondment of employees by overseas entities to Indian firms. It notes that post this judgment, field formations have initiated proceedings for alleged GST evasion on secondment under section 74(1) of the CGST Act. The Board advises a nuanced examination of each secondment arrangement's distinct factual matrix, highlighting that the applicability of tax principles from the NOS judgment should not be mechanical. It clarifies the specific conditions under which section 74(1) of the CGST Act can be invoked and advises careful consideration before initiating proceedings involving secondment.

*[Instruction No. 05/2023-GST, dated 13<sup>th</sup> December 2023](#)*

### Finance Minister Introduces CGST (Second Amendment) Bill, 2023 in Lok Sabha

The Central Goods and Services Tax (Second Amendment) Bill, 2023 aims to further amend the Central Goods and Services Tax Act, 2017. The key provisions of the amendment include:

- 1. Qualifications for Appointments:** The amendment introduces new qualifications for the appointment of Judicial Members, specifying substantial experience in indirect tax litigation.
- 2. Age Limit for Appointments:** The age limit for the President or Member of the Appellate Tribunal is set at fifty years, and re-appointment is subject to a maximum period of two years.
- 3. Alignment with Tribunal Reforms Act, 2021:** The amendment aligns provisions with the Tribunal Reforms Act, 2021, to facilitate the creation of Goods and Services Tax Appellate Tribunals.
- 4. Operationalization of Tribunals:** The objective is to initiate administrative processes to operationalize Goods and Services Tax Appellate Tribunals promptly.

The amendment addresses the need for alignment with the Tribunal Reforms Act, streamlining qualifications for appointments, and establishing an age limit for members of the Appellate Tribunal.



## Customs & Others

### **Ajay Traders Vs C.C.- Mundra [CA No . 10211/2019]**

The case involves enhancement of the value of imported goods by Customs Authorities relying on data from the Zuaba website. Ajay Traders contested the value increase, arguing against Zuaba's data authenticity and highlighting disparities in origin. The Revenue supported Customs, citing a precedent. The CESTAT Ahmedabad ruled in favor of Ajay Traders, stating Zuaba's data was unauthenticated and emphasizing the need for authenticity in Customs assessments. The case clarifies that Customs cannot enhance imported goods' value based on unverified private website data.

### **Softel Overseas Private Limited Vs Commissioner of Customs [CAN. 75195 of 2014]**

The CESTAT ruled in favor of Softel Overseas Private Limited, stating that substantive benefits should prevail over procedural lapses in

customs duty matters. The appellant failed to claim the benefit of Notification No.46/2011-CUS, leading to an unintended excess payment of duty. The tribunal cited legal precedents and clarified that a clerical error should not lead to the rejection of the entire certificate of origin.

### **Atlantis Trading Company Vs Commissioner of Customs [CAN. 42305/2013]**

The CESTAT ruled that the rejection of Atlantis Trading Company's declared value based solely on National Import Database (NIDB) data was justified. The Tribunal emphasized that NIDB data alone cannot be the sole basis for rejecting the declared value and that rejection must be based on comprehensive evidence, including contemporaneous imports. The decision promotes fairness and evidentiary diligence in customs valuation proceedings.

## Customs & Others

### **Commissioner of Central Excise & Service Tax Vs A.K. Singh [CEA-6-2022]**

The High Court ruled against the CESTAT in a case involving M/s Pelican Tobacco Co. Ltd. and its Director, Mr. A.K. Singh. The appeals were filed against CESTAT's orders that restored the appeals without the required pre-deposit. The court emphasized the tribunal's overstepping of jurisdiction and misuse of legal process by the directors, stating that the Tribunal should have become functus-officio once the ordered amounts were not deposited. The judgment highlights the importance of adherence to legal procedures and the limits of the tribunal's jurisdiction.

### **Kanade Anand Udyog Pvt Ltd Vs CCE Thane [EPN. 85931/2013]**

The case involved the denial of CENVAT credit for duty discharged on the procurement/import of 'capital goods' between 2005-06 and 2007-08. The denial was based on a lack of evidence, with the initial demand reduced by ₹37,061 after the appellant's

explanations were rejected. The case highlighted the importance of clear evidence in CENVAT credit disputes, as presumptions have no place in adjudicatory proceedings. The appeal was allowed, emphasizing the rule of law in taxation matters.



## Customs & Other Updates

### **BIS Registration and Sampling Requirements for Electronic and IT Goods**

The Board has directed the Customs Officer to check for BIS registration for import goods notified under the "Electronic and Information Technology Goods (Requirement of Compulsory Registration) Order, 2012" and to random sample LED products and control gear. Samples will be sent to BIS-recognized labs for testing, and Out of Charge (OOC) will only be given if the sample meets the standard requirements.

### **DGFT Amnesty Scheme: Deadline Extended for Export Obligation Cases**

The DGFT in India has extended the deadline for submitting applications for the closure of cases of default in Export Obligation (EO) under Advance Authorisation (AA) and EPCG Schemes. The notice advises members of trade and industry, RAs of DGFT, FIEO/EPCs/Chambers of Commerce, and Regional Authorities to submit their applications by the specified date. The notice also urges authorization holders to take advantage of the opportunity to address default cases under these schemes. Timely action is recommended to ensure compliance with the extended deadline.

### **Government Introduces Amendment for Non-processing Areas in IT/ITES SEZs: Key Updates in Special Economic Zones Rules, 2023**

The Ministry of Commerce and Industry, Government of India, issued the Special Economic Zones (Fifth Amendment) Rules, 2023, on December 6, 2023, amending the Special Economic Zones Rules, 2006. Key points include the introduction of Rule 11B for demarcating non-processing areas in IT/ITES SEZs, outlining usage conditions, access control mechanisms, repayment conditions for tax benefits, limitations on demarcation, and restrictions on rights and facilities for businesses in these areas. The amendment aims to establish a framework for non-processing areas, ensuring compliance within IT/ITES SEZs.



## Import and Export data

**Imports of November 2023 at \$ 67.88 B**

**Exports of November 2023 at \$ 62.58 B**

		November 2023 (USD Billion)	November 2022 (USD Billion)
Merchandise	Exports	33.90	34.89
	Imports	54.48	56.95
Services*	Exports	28.69	26.93
	Imports	13.40	15.39
Overall Trade (Merchandise +Services) *	Exports	62.58	61.82
	Imports	67.88	72.34
	Trade Balance	-5.30	-10.52

Source : PIB



# Darda

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