

DA TAX UPDATE INDIRECT TAX

An E-Tax update from
Darda Advisors LLP

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Issue -58

Goods and Service Tax

Customs and Others

Goods and Service Tax

TSN Old Iron Scrap Mechants Vs Deputy Assistant Commissioner of State Tax [WP No. 32206 of 2023]

The HC ruled that an assessee's non-appearance for a personal hearing on a fixed date by a GST Officer does not constitute a violation of natural justice. The court held that the assessee had no justifiable reason for not appearing for the personal hearing on the fixed date, and that the material was disclosed to the assessee in the Show Cause Notice. The court also emphasized the importance of availing statutory remedies and dismissed the writ petition. The decision reinforces that an assessee's non-appearance during a GST hearing does not infringe upon the principles of natural justice.

Sumit Enterprises Vs Commissioner of Delhi Goods And Services Tax Anr [W.P.C. . 226/2024]

The High Court examined the rejection of a GST registration cancellation application and subsequent retrospective cancellation order. The court

emphasized the petitioner's failure to provide necessary details and the importance of the proper officer using objective criteria for retrospective cancellations. An error in the retrospective cancellation order was noted, leading to modification of the effective date to 02.09.2021. The case highlights the need for a fair process in GST registration cancellations.

Kali Shankar Enterprises Vs Additional Commissioner [W.P. No 31675/2023]

The HC has ruled that the cancellation of GST registration cannot be justified solely based on the continuous filing of nil returns for over six months. The court observed discrepancies in the cancellation order, emphasizing a lack of reasoning and prima facie non-application of mind. The petitioner argued that the ground for cancellation did not align with statutory provisions. The court concurred, highlighting that filing nil returns is not a specific provision for cancellation under Section 29 of the GST Act. The ruling sets a precedent against canceling GST registration solely for filing nil returns.

Goods and Service Tax

Cholaa Tapes Vs Additional Commissioner [WP No. 34742 of 2023]

The petitioner challenged the rejection of their GST appeal on grounds of limitation due to a delay in filing. The court recognized the circumstances of delayed uploading of the order on the GST portal and directed the petitioner to utilize the Amnesty Scheme. The court emphasized that even if an appeal is rejected on limitation, assesseees are entitled to avail Amnesty benefits. This decision sets a precedent for flexibility in the application of the Amnesty Scheme to provide relief to taxpayers facing procedural challenges.

Rathore Building Material Vs Commissioner of State tax [W.T. No.1361/2023]

The High Court addressed the imposition of a penalty despite the petitioner complying with the terms of the Show Cause Notice (SCN) by furnishing returns within the stipulated time. The court found that the penalty imposed was unwarranted, as the petitioner had adhered to the conditions of the SCN. The court held that the Impugned Order was contrary to law and passed without the

application of mind. Consequently, the court set aside the penalty orders.

Mittal Footcare Vs Commissioner of Central Goods And Services Tax And Anr. [W.P.(C) 15518/2023]

The High Court addressed a case involving Mittal Footcare challenging the dismissal of their GST Input Tax Credit (ITC) refund application for April 2021 to March 2022. The rejection was based on grounds of a mismatch in turnover, excess availment, and misdeclaration of invoice value. The court noted a misinterpretation by the appellate authority and emphasized that a refund application cannot be rejected solely due to non-submission of authenticated documents. The case is remitted for reevaluation, highlighting the importance of fair consideration and the opportunity for rectification in GST ITC refund claims.

GST Updates

Advisory on introduction of new Tables 14 & 15 in GSTR-1

As per Notification No. 26/2022 – Central Tax dated 26th December 2022 two new tables Table 14 and Table 15 were added in GSTR-1 to capture the details of the supplies made through e-commerce operators (ECO) on which e-commerce operators are liable to collect tax under section 52 of the Act or liable to pay tax u/s 9(5). These tables have now been made live on the GST common portal. These two new tables will be available in GSTR-1/IFF from January-2024 tax periods onwards

ADD RECORD DETAILS ▲			
4A, 4B, 6B, 6C - B2B, SEZ, DE Invoices	5 - B2C (Large) Invoices	6A - Exports Invoices	7 - B2C (Others)
✓ 0	✓ 0	✓ 0	✓ 0
8A, 8B, 8C, 8D - Nil Rated Supplies	9B - Credit / Debit Notes (Registered)	9B - Credit / Debit Notes (Unregistered)	11A(1), 11A(2) - Tax Liability (Advances Received)
✓ 0	✓ 0	✓ 0	✓ 0
11B(1), 11B(2) - Adjustment of Advances	12 - HSN-wise summary of outward supplies	13 - Documents Issued	14 - Supplies made through ECO
✓ 0	✓ 0	✓ 0	✓ 0
15 - Supplies U/s 9(5)			
✓ 0			

Customs & Others

Oil and Natural Gas Corporation Ltd VERSUS The Commissioner of GST& Central Excise [STA No. 41666 of 2018]

The CESTAT in Chennai, India, has ruled in favor of ONGC in a service tax appeal against the Commissioner of GST and Central Excise. The appellant argued that royalty is a tax rather than a service, and the assignment of the right to use oil fields is a government regulatory function. The tribunal also held that the taxable event for service tax levy occurred before the levy was introduced, and the exemption notification applies. The tribunal set aside the original authority's demand for service tax, interest, and penalties.

M/s SIDMAK LABORATORIES (INDIA) PRIVATE LIMITED Vs THE COMMISSIONER OF CENTRAL EXCISE AND SERVICE TAX DEHRADUN [STA No. 51329/2017]

The applicability of service

mechanism in India on fees paid by an Indian pharmaceutical tax under the reverse charge company to the United States Food and Drugs Administration (USFDA) for export approval. It explores whether the USFDA's function falls under taxable services as per the Indian Finance Act, 1994, and references a CBEC Circular on the distinction between statutory functions and taxable services. The CESTAT ruled in favor of the pharmaceutical company, stating that the USFDA's approval is a statutory function, and therefore, the fees are not subject to service tax.

Commissioner of Customs (Port) Vs Patna Offset Press [CAN. 78535/2018]

The recent CESTAT order in the case revolves around the non-imposition of redemption fine and penalty despite the respondent's failure to fulfill export obligations as per Customs Notification. The confusion regarding the export obligation period played a crucial role, and the immediate payment of duty and interest demonstrated the respondent's commitment to compliance. The order ensures a fair approach to Customs Notification compliance.

Customs & Others

Kabir Oldtex Vs Commissioner of Customs [CA No. 52760/2019]

The case of Kabir Oldtex vs Commissioner of Customs (CESTAT Delhi) explores the implications of a delayed Export Obligation Discharge Certificate (EODC) issuance by the Directorate General of Foreign Trade (DGFT). CESTAT ruled that importers should not be penalized for delays in certificate issuance, emphasizing that the responsibility lies with the authority. The decision sets a precedent, protecting importers' rights in the context of duty benefits.

J K Tyre & Industries Ltd Vs Commissioner of Central Excise & Service Tax [EPN. 2911/2011]

The case involves the unilateral appropriation of an excise duty refund without providing the appellant, J K Tyre & Industries Ltd, an opportunity to present their case. The CESTAT emphasized the importance of providing appellants with an opportunity to contest deductions made by authorities before appropriating amounts during excise duty refund

Proceedings.

Marble Art & Anr. Vs Union of India & Ors [WPC. 8048/2014]

The High Court recent judgment in the case of Marble Art & Anr. vs. Union of India & Ors. addresses the fixation of wastage norms for Export-Oriented Units (EOUs). The court set aside the Norms Committee's report and directed a re-consideration of the wastage norms for the petitioner's products within eight weeks. The judgment emphasizes the importance of proper implementation of policies affecting EOUs and underscores the necessity of adherence to established procedures.

Customs & Other Updates

Validity of PSIA's in A&ANF Appendix 2G extended until 31.03.2024

The extension of PSIA's' validity by the DGFT is a strategic move to support businesses and maintain the integrity of pre-shipment inspection processes. It showcases the government's commitment to facilitating a conducive environment for foreign trade amid dynamic global scenarios. Businesses affected by the original tenure completion will benefit from this extension, fostering smoother international trade transactions until 31st March 2024.

Public Notice No. 37/2023-GST, dated 12th January 2024

Import Restrictions and Authorization Requirements for Specific IT Hardware (HSN 8471)

DGFT Circular clarifying import restrictions on specific IT hardware (Laptops, Tablets, etc.) under HSN 8471. The import of these items is deemed 'Restricted,' requiring a valid Import authorization. Desktop Computers under the same tariff head are not covered. Importers must comply with these guidelines for a lawful import process

Public Circular No. 09/2023-GST, dated 12th January 2024

Import and Export data

Imports of December 2023 at \$ 71.50 B

Exports of December 2023 at \$ 66.33 B

		December 2023 (USD Billion)	December 2022 (USD Billion)
Merchandise	Exports	38.45	38.08
	Imports	58.25	61.22
Services*	Exports	27.88	31.19
	Imports	13.25	15.81
Overall Trade (Merchandise +Services) *	Exports	66.33	69.28
	Imports	71.50	77.03
	Trade Balance	-5.17	-7.75

Source : PIB

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