

# DA TAX UPDATE INDIRECT TAX

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

Fortnightly update – February 2024  
Issue -60

**Goods and Service Tax**

**Customs and Others**

## Goods and Service Tax

### **Unique Speciality Chemicals Vs Deputy Commissioner of State Tax [WP No.88 of 2023]**

Unique Speciality Chemicals faced an exorbitant tax demand, nearly 2000 times higher than the actual payable amount, due to an error in the E-way bill where the HSN code 34049090 was mistakenly entered in the taxable value field. Despite submitting evidence and clarifications, an order was passed confirming the inflated GST amount of approximately Rs. 61 lakh. The petitioner, having already paid the correct GST of around Rs. 3,000, approached the High Court for relief. The Court, acknowledging the taxpayer's genuine mistake and finding no loss of revenue to the department, quashed the order. It directed acceptance of corrections made by the petitioner, emphasizing the importance of rectifying bonafide mistakes without prejudice.

### **GS Exim International LLP Vs Commissioner [WP.C. 3300/2022]**

The Court intervenes in GS Exim International LLP's appeal against a cryptic rejection of their GST refund application. The Court finds the Order-in-Appeal lacking in substantive reasoning and

justification, prompting a remit for a fresh hearing. Emphasizing procedural fairness, the Court directs the Appellate Authority to provide a speaking order and a fair opportunity for GS Exim International LLP to present their case. This underscores the importance of transparency in administrative proceedings.

### **Trading Co. Proprietorship of Mr.Rajendra Kumar Bothra Vs Commissioner of Delhi Goods And Services Tax And Another [W.P. C 809/2024]**

In a recent case, Mr. Mudit Bothra, challenged the retrospective cancellation of GST registration by the Delhi Commissioner. The issue stemmed from non-filing of returns after Rajendra demise. The High Court emphasized that registration cannot be cancelled retrospectively without discretion, especially based solely on non-filing of returns. It noted the denial of input tax credit to customers as a consequence. Highlighting procedural lapses, the Court modified the cancellation to be effective from the taxpayer's demise, underscoring the importance of fairness and objective criteria in tax matters.

## Goods and Service Tax

### **Bharti Enterprises Vs Commissioner [WPC. 10244/2023]**

The High Court intervenes in the case of Bharti Enterprises versus the Commissioner regarding the rejection of an Input Tax Credit (ITC) refund application. Despite initial dismissal due to a perceived delay, subsequent developments, including a CBIC Circular extending the limitation period, prompt the Court to remand the matter for fresh consideration. This decision emphasizes the importance of legal interpretations in evolving regulatory frameworks and ensures procedural fairness for taxpayers.

### **Globe Panel Industries India Pvt Ltd Vs State of U.P. And Others [W.T. No.141/2023]**

The Allahabad High Court's landmark judgment in the case of Globe Panel Industries India Pvt Ltd versus the State of U.P. offers relief and sets a precedent regarding penalty imposition for expired GST E-Way Bills. The court emphasizes the necessity of proving intent to evade tax before imposing penalties under Section 129(3) of the Uttar Pradesh Goods and Services Tax Act, 2017. This decision clarifies that technical violations,

without intent to evade tax, should not result in punitive measures, providing guidance for future cases and offering clarity in GST compliance.

### **Eden Real Estates Pvt Ltd & Anr Vs Senior Joint Commissioner of Revenue [W.P.A 1205/2024]**

The case revolved around the issuance of a GST show-cause notice, which the petitioner argued violated natural justice principles. The court acknowledged the oversight and set aside the notice, remanding the case back to the GST authority. The ruling highlights the importance of adhering to procedural justice in tax disputes and sets a precedent for future disputes.

## Customs & Others

### **Samarth Corporation Vs Commissioner of Customs [CAN. 41597 of 2014]**

The non-furnishing of a bond mandated by a Customs notification. The tribunal's decision addresses whether such non-compliance amounts to misdeclaration, scrutinizing the implications of demands for interest and penalties. CESTAT acknowledges the judgment of the Madras High Court, ruling that the amendment to the notification cannot be applied retrospectively. Considering the transitional period and lack of intent to evade duty, the tribunal sets aside demands for interest and penalties. This ruling provides relief to importers navigating Customs law complexities and underscores the importance of compliance efforts in procedural violations

### **Deeplalit Enterprise P Ltd Vs C.C.-Ahmedabad [CPN. 11063/2017]**

The appellant contested the rejection of their declared value by lower authorities, citing arbitrary comparisons and a lack of solid evidence. The Tribunal emphasized

the necessity of a systematic approach in rejecting declared values and stressed the primacy of transaction value unless compelling evidence warrants otherwise. It found the authorities failed to justify the rejection, setting aside the impugned orders and underscoring the importance of transparency and adherence to legal standards in customs proceeding.

### **Commissioner of Customs Vs Michelin India Pvt Ltd [CAN. 40109/2017]**

the royalty and license fee paid on net sale value of products sold in India which has nothing to do with imported goods nor was a condition of sale cannot be included in the assessable value. Held that as far as the relationship has not influenced the pricing pattern there is no justification for inclusion of royalty and technical know-how in the assessable value of the imported products. Therefore, we set aside the impugned order.

## Customs & Others

### **Hazel Mercantile Ltd. Vs Commissioner of Customs [CA No.2292/2010]**

CESTAT Bangalore ruled in favor of Hazel Mercantile Ltd. in a customs valuation dispute over imported Methyl Phenyl Acetylene from Singapore. The company argued that their declared value accurately reflected the transaction value, backed by extensive imports and sales contracts. The Revenue alleged undervaluation, citing disparities with contemporaneous imports. However, the tribunal set aside the demand for differential duty, emphasizing the need for concrete evidence to justify deviations from transaction values. This highlights the complexities of customs valuation and the importance of meticulous documentation in import disputes.

### **Priyanka Enterprises Vs Commissioner of Customs [CAN. 4106/2018]**

The CESTAT Chennai Bench ruled that the importer's burden of verifying eligibility for benefits under a notification is on the department. The importer filed a bill of entry for clearance of goods and sought preferential IGST

under a different notification. The department confirmed the IGST @ 5% rate and demanded differential duty of Rs. 31,70,083/-. The Tribunal held that no suppression or misstatement could be alleged against the importer, and no penalty could be imposed or confiscation legal.

## Customs & Other Updates

### DGFT Simplifies Clubbing Provisions for Advance Authorization Scheme

The Directorate General of Foreign Trade (DGFT) has amended Para 4.36 of the Handbook of Procedures, 2023, aiming to streamline procedural requirements for exporters and importers under the Advance Authorization Scheme. Prior to the amendment, authorizations could be clubbed within 18 months, with imports considered within 30 months. The amendment extends the window for clubbing authorizations to 24 months and introduces a 48-month period for considering exports.

*Public Notice No. 40/2023-DGFT, dated 12th February 2024*

### Covering SEZs and EOUs under the RoDTEP Scheme

The Office Memorandum dated 16th February 2024 forwards a communication from EPCES, recommending the inclusion of SEZs and EOUs under the RoDTEP Scheme. It suggests starting with EOUs and highlights completed hardware installations for ICEGATE in some SEZs. The memo indicates a potential extension of the RoDTEP scheme to SEZs in the future and urges SEZ Online to prepare for the scheme. Concerns from SEZ units regarding system implementation are addressed, emphasizing the need for a prompt decision on including EOUs and finalizing a mechanism for SEZs.

*Office Memorandum K.43022/35/2019-SEZ*

### DGFT Trade Notice 38/2023-24: Clarification on ITCHS Export Policy Changes

DGFT issued Trade Notice No. 38/2023-24 on 16th February, 2023, addressing concerns and providing clarification regarding Notification No. 60 dated 13th February, 2024, related to the ITCHS based Export policy for chapters 1-39. Notification No. 60 simplifies the Schedule 2 of ITCHS Export policy, ensuring clarity on policies applicable to each ITCHS Code. This initiative aims to facilitate trade by integrating data with ICEGATE, streamlining export licensing details, and reducing compliance burdens. It's emphasized that the notification does not introduce new policies but maps existing policies to each 8-digit ITCHS Code for Chapters 1-39.

*Trade Notice No. 38/2023-24-DGFT, dated 16th February 2024*

## Import and Export data

**Imports of January 2024 at \$ 70.46 B**

**Exports of January 2024 at \$ 69.72 B**

		January 2024 (USD Billion)	January 2023 (USD Billion)
Merchandise	Exports	36.92	35.80
	Imports	54.41	52.83
Services*	Exports	32.80	28.00
	Imports	16.05	14.83
Overall Trade (Merchandise +Services)*	Exports	69.72	63.80
	Imports	70.46	67.65
	Trade Balance	-0.74	-3.85

Source : PIB

# Darda

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