

DA TAX UPDATE INDIRECT TAX

An E-Tax update from
Darda Advisors LLP

Fortnightly update – May 2024

Issue -63

Goods and Service Tax

Customs and Others

Goods and Service Tax

SC Notice on GST Levy for Transfer of Land Development Rights

The Supreme Court issued a notice in the Special Leave Petition (SLP) filed by Prahitha Constructions Pvt. Ltd., challenging the Telangana High Court's judgment dismissing a writ petition against GST levy on the transfer of Land Development Rights (TDR) under a Joint Development Agreement (JDA) for residential projects. The SC clarified that it had not stayed the operation of the impugned judgment/order, indicating that taxes would need to be paid. However, it assured that appropriate orders would be passed in accordance with the law if the petitioner remained aggrieved.

Prahitha Constructions Pvt. Ltd. Vs. UOI & Ors [S.L.A.N 11079/2024]

HC Stay Order on Taxability of Corporate Guarantee

The Punjab & Haryana High Court has stayed Circular no. 204/16/2023, which concerns the taxability of corporate guarantees between related persons. ACME Cleantech Solutions Pvt Ltd challenged the validity of Rule 28(2) of the CGST Rules, 2017, arguing it is arbitrary, discriminatory, and lacks a discerning principle. The court, stayed the circular's effect, allowing the Appellate Authority to decide the case without being influenced by the clarification.

ACME Cleantech Solutions Pvt Ltd vs. Union of India & Ors [CWP No. 10249/2024]

Orissa HC's Decision on Parallel GST Proceedings

In the case the Orissa High Court refrained from expressing a definite opinion on a writ challenging parallel proceedings by State and Central GST authorities on the same subject matter. The petitioner, Satyam Castings Pvt. Ltd., contested a notice issued by the Directorate General of GST Intelligence (DGGI), citing the bar under Section 6(2)(b) of the CGST/OGST Act. The HC clarified that the objective behind the provision is to prevent confusion arising from differing final decisions. Noting that the subject matter in both proceedings should be distinct, the HC equated it with the cause of action. While the HC refrained from expressing a definite opinion on the objection raised by the assessee, it granted liberty to respond to the notice and take appropriate recourse under the CGST Act.

Satyam Castings Pvt. Ltd. vs. Deputy Director, DGGI & Anr. [WPC No. 2530/2024]

Goods and Service Tax

ITC Refund Denial Due to Procedural Lapse

The Gujarat High Court quashed an order from the appellate authority denying an ITC refund to Omkareshwar Embroideries Ltd for non-payment of interest on credit reversal from July 2017 to July 2018. The court cited the original order's lack of a show cause notice and the assessee's argument about the absence of an SCN. The court remanded the matter to the adjudicating authority for fresh consideration of the refund claims.

Omkareshwar Embroideries Ltd vs UOI & ors [S.C.A.N 13339/2022]

AAR Rules Referral Services to Foreign Universities Not 'Intermediary'

The Telangana Authority for Advance Rulings (AAR) has ruled that the Center for International Admission and Visas' referral services to foreign universities do not fall under the 'intermediary' category under Section 2(13) of the GST Act. Instead, the AAR deemed the activity as 'export of service' under Section 2(6) of the IGST Act, as the Applicant receives referral income or commission in foreign exchange from foreign colleges based on successful admissions. The AAR also noted that the Applicant's role is independent and not influenced by the selection process.

In the matter of Center for International Admission and Visas [TSAAR No. 09/2024]

Delhi High Court Upholds Solar Industry's Access to MOOWR Scheme

The Delhi High Court's recent verdict nullified CBIC's show cause notices challenging solar power firms' eligibility for the MOOWR scheme, allowing them full access to its benefits. Solar developers can now defer customs duty and GST payments until equipment becomes operational, enhancing financial flexibility. The MOOWR scheme, revamped in 2019 to spur domestic manufacturing, incentivizes local production by deferring customs duty on imports. The solar industry welcomes the decision, emphasizing the need for regulatory clarity. Experts view the ruling as pivotal for India's sustainable energy transition, but stakeholders remain vigilant amidst potential policy shifts.

Acme Heergarh Powertech Private Limited V/S Central Board Of Indirect Taxes And Customs & Anr (W.P.(C) 10537/2022)

Goods and Service Tax

Denial of Input Tax Credit Without Supplier Verification

Lokenath Construction Pvt. Ltd. challenged the denial of their input tax credit (ITC) on the grounds that the tax authorities did not verify if the supplier had paid the tax. The Calcutta High Court found that the adjudicating authority had wrongly penalized Lokenath Construction by not pursuing an enquiry with the supplier first. The court set aside the impugned show cause notice and orders, directing the authorities to first address the issue with the supplier before taking action against the appellant.

Lokenath Construction Private Limited vs. Joint commissioner of state tax/ revenue [WP No. 5222 of 2024]

Madras HC Upholds Interest on Delayed Repayment of Wrongly Sanctioned ITC Refund

The Madras High Court ruled that interest is applicable on delayed repayment of erroneously sanctioned ITC refunds. Razack Trading Company received a refund for BCD, which was not eligible for ITC. Despite repaying the amount, the company delayed the repayment by 730 and 854 days. The court emphasized the need for restitution of unjust benefits and held that interest under Section 50(3) of the GST Act applies, even if the refund was initially sanctioned by mistake. The court dismissed the writ

petition, confirming the imposition of interest.

Razack Trading Company vs. The Assistant Commissioner [W.P.C 15302/2024]

Blocking of ITC as Unlawful: Contravention of Rule 86(A) and Natural Justice Principles

Revenue's action of blocking ITC worth Rs 50 lakhs by inserting a negative balance in the electronic credit ledger (ECrL) of Laxmi Fine Chem, deeming it a violation of Rule 86(A) and contrary to the Gujarat High Court's decision in the Samay Alloys case. The court emphasized that the rules allow for blocking available credit but do not permit creating a negative balance. Additionally, the action lacked a show cause notice, breaching natural justice principles. The HC clarified that recovery proceedings under Sections 73 or 74 should be initiated if fraudulent ITC claims are suspected, not by misusing Rule 86(A).

Laxmi Fine Chem vs Assistant Commissioner [W.P.C 5256/2024]

Goods and Service Tax

HC Quashes Notice by Deputy Commissioner Despite Appeal Period

The HC quashed a notice and endorsement issued by the Deputy Commissioner of Commercial Taxes to Indian Potash Ltd., despite the appeal period not having expired. The court allowed the assessee to file an appeal before the Appellate Authority, noting that the period for filing an appeal against the order in original dated December 22, 2023, was until April 22, 2024. However, a notice was issued against the assessee on January 23, 2024, which the court deemed as 'illegal' and 'arbitrary'. The court clarified that the invocation of Section 78 of the KGST Act, which deals with the initiation of recovery proceedings, does not permit waiver of the appeal period without proper reasons recorded in writing by the proper officer. Therefore, the court allowed the petition filed by Indian Potash Ltd.

Indian Potash Ltd. vs. Deputy Commissioner of Commercial Taxes [W.P.N 6625/2024]

Customs & Others

Assessable Value of Imported Goods Clarified in Reliance Brands Case

The CESTAT Delhi ruled that advertising and marketing expenses incurred by Reliance Brands Luxury Fashion Private Ltd. for promoting imported products do not add to the assessable value for customs purposes. The court emphasized that such expenses, even if mandated by agreements with foreign suppliers, were undertaken by the buyer on their own account and not as a legal obligation imposed by the seller. Therefore, these expenses do not constitute additional consideration for the imported goods.

Reliance Brands Luxury Fashion Private Ltd. vs. Principal Commissioner of Customs [C.A. 51079 of 2020]

Denial of Conversion for Shipping Bills After Availing Drawback Benefits

The CESTAT Ahmedabad ruled that shipping bills cannot be converted from the drawback scheme to the advance license scheme once drawback benefits have been availed. The court upheld Circular No. 36/2010-Cus, which prohibits such conversions to ensure finality in export decisions. The appellant's request for conversion was rejected, emphasizing the importance of adhering to the conditions specified in the circular.

Stallion Laboratories Pvt Ltd vs. C.C.- Ahmedabad [C.A.N 10034/2024]

Entitlement to Exemption Notifications for Import of Muriate of Potash

CESTAT Hyderabad ruled in favor of Rashtriya Chemicals Fertilizers Ltd., allowing them to claim exemption notifications 01/2011-CE and 02/2011-CE for importing Muriate of Potash. The Revenue had argued that the exemption could not be granted due to the condition of not availing CENVAT credit, which they claimed could not be verified without manufacturing. However, the court referred to precedents and established that importers from outside India cannot avail CENVAT credit. Thus, the appellant was entitled to the exemptions, and the impugned orders were set aside.

Rashtriya Chemicals Fertilizers Ltd. vs. Commissioner of Central Tax [C.A.No. 3027 of 2011]

Customs & Others

Invalid Confiscation and Penalty Imposed for Bonded Area Activities

CESTAT Mumbai ruled in favor of Ganesh Benzoplast Limited, setting aside an order dated 08.01.2024 that invoked Section 111(h) and 111(j) for confiscation of goods and imposition of redemption fine. The court found these provisions inapplicable as the appellants had obtained necessary permissions from customs department for their activities within the bonded area and the goods were not prohibited for importation. Sections 112, 114AA, and 117 were also deemed inapplicable for penalties. Consequently, the impugned order was overturned, and the appeal was allowed.

Ganesh Benzoplast Limited vs. Commissioner of Customs [C.A.No. 85350 of 2024]

Navigating Import Regulations, EPCG Usage, and Export Classifications

In the recent case of *In re Blue Star Climatech Limited*, CAAR Mumbai addressed key queries regarding import conditions, EPCG license utilization, and export categorizations. CAAR refrained from ruling on duty drawback issues, citing jurisdictional constraints. Notably, it affirmed that goods imported under Advance Authorization, compliant with Notification No. 21/2023-Customs, could be utilized in manufacturing for export without duty payment. However, the

debonding of capital goods under the MOOWR scheme with an EPCG license for duty payment was disallowed. Further, it clarified that supplying goods to a third-party customer for direct export constitutes an export transaction. These rulings equip Blue Star Climatech Limited with vital guidance for regulatory compliance and operational efficiency.

In re Blue Star Climatech Limited [CAAR.62/2024]

Customs Updates

Amendments in Appendix-2Y of Foreign Trade Policy, 2023, for Import of Inputs Subjected to Quality Control Orders

The import of inputs subjected to mandatory Quality Control Orders (QCOs) by Advance Authorisation holders, Export Oriented Units (EOU), and Special Economic Zones (SEZ). This amendment updates Appendix-2Y of the FTP, 2023, listing Ministries/Departments exempted from mandatory QCO notifications. The Ministry of Mines has been newly added to this list via Notification No. 71/2023 dated 11.03.2024, effective immediately. This change aims to streamline import procedures and promote ease of doing business for entities engaged in export-oriented activities.

Import and Export data

Imports of April 2024 at \$ 71.07 B

Exports of April 2024 at \$ 64.56 B

		April 2024 (USD Billion)	April 2023 (USD Billion)
Merchandise	Exports	34.99	34.62
	Imports	54.09	49.06
Services*	Exports	29.57	25.78
	Imports	16.97	13.96
Total Trade (Merchandise +Services) *	Exports	64.56	60.40
	Imports	71.07	63.02
	Trade Balance	-6.51	-2.62

[Source : PIB](#)

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