

DA TAX UPDATE INDIRECT TAX

An E-Tax update from
Darda Advisors LLP

Fortnightly update – July 2024
Issue -65

Goods and Service Tax

Customs and Others

Goods and Service Tax

HC Overturns Demand Issued to Non-Existent Amalgamating Company

The HC set aside a total demand of ₹176 crores, which included interest and penalty, across five Show Cause Notices (SCNs) issued for the period from 2017-18 to 2019-20. The SCNs were issued to Trelleborg Sealing Solutions (India) Private Limited, an amalgamating company that ceased to exist after its merger with the amalgamated company. The court held that proceedings could not continue against a non-existent company and emphasized the precedent set by the Supreme Court in Maruti Suzuki (India) Ltd. The High Court granted the Revenue the liberty to pursue proceedings against the appropriate entity, the amalgamated company, if permissible by law.

Trelleborg India Private Limited vs State of Karnataka [TS-414-HC(KAR)-2024-GST]

HC Permits Challenge to Ex-Parte Order Due to Portal Confusion

The HC has allowed Mitali Saha to challenge an ex-parte order, citing confusion over the uploading of the Show Cause Notice (SCN) and Order under section 73(9) of the CGST Act on the GST portal. The Assessee argued that the SCN and order were not uploaded in the 'view notices and orders' section, making access difficult due to the complex and

recently redesigned portal. The court acknowledged the confusion and directed the Appellate Authority to hear and dispose of the appeal within 12 weeks.

Mitali Saha vs. State of West Bengal & Ors. [TS-419-HC(CAL)-2024-GST]

HC Dismisses Writ Petition, Directs Participation in SCN Proceedings

The High Court dismissed a writ petition by The Coronation Fireworks Factory, challenging a Show Cause Notice (SCN) proposing appropriating seized cash towards tax liability. The factory argued that the seized amount should be refunded after a favorable Tribunal order in an Excise-related challenge. The court ruled that the factory could not avoid GST proceedings merely because of the favorable Tribunal order. The court emphasized that the SCN only sought to appropriate the seized amount and directed the factory to participate in the SCN proceedings.

The Coronation Fireworks Factory vs. Joint Director [TS-420-HC(MAD)-2024-GST]

Goods and Service Tax

Alternative Appeal Remedy for Delayed Portal Access

The HC upheld a Single Judge's decision to allow Sunil Kumar K to appeal an assessment order. The Assessee challenged the order, citing delays in accessing the common portal and orders due to lack of notification. The court rejected this argument, stating that the notified common portal can be used for various statutory functions. The court dismissed the writ appeal, confirming the portal's validity for all statutory functions.

Sunil Kumar K vs. The State Tax Officer [TS-422-HC(KER)-2024-GST]

HC Directs Reconsideration of IGST Refund Claim for Procedural Irregularity

The High Court has ordered the Revenue to reconsider Shobikaa Impex Pvt Ltd's refund claim for IGST paid on exports. The Assessee mistakenly claimed refunds under Rule 96 instead of Rule 89 of the CGST Rules, 2017. The court emphasized that procedural irregularities should not hinder legitimate export incentives and referenced the Supreme Court decision in Commissioner of Sales Tax vs. Auriaya Chamber of Commerce. The case was remitted to the adjudicating authority for a fresh order.

Shobikaa Impex Pvt Ltd vs. Union of

India & ors. [TS-425-HC(MAD)-2024-GST]

ITC allowed on Capital Goods Used for Electricity Transmission to Factory

The Gujarat Authority for Advance Rulings (AAR) has ruled that Elixir Industries Pvt Ltd, a manufacturer, can claim Input Tax Credit (ITC) on capital goods used for transmitting electricity from a power station to its factory premises. The ruling was based on a thorough examination of sections 16 and 17 of the GST Act, which do not bar ITC availment if the capitalized goods are later handed over to entities like GETCO. However, the AAR reminded the applicant of their liability under section 18(6) to pay an amount equal to the ITC taken on the capital goods, reduced by a prescribed percentage, or the tax on the transaction value, whichever is higher.

In the matter of Elixir Industries Pvt Ltd. [TS-426-AAR(GUJ)-2024-GST]

Goods and Service Tax

GST Implications for Employee Canteen Facility

The Gujarat Authority for Advance Rulings (AAR) has ruled that Alleima India Pvt Ltd's nominal amount deducted from employees' salaries for food provided at the factory premises does not constitute a 'supply' under Section 7 of the CGST and GGST Act, 2017, and is therefore not subject to GST. The AAR also ruled that Input Tax Credit (ITC) is available to the applicant for food and beverages provided in the canteen, as it is a mandatory requirement under the Factories Act, 1948, and Gujarat Factories Rules, 1963. The ITC is restricted to the cost borne by the applicant, excluding the amount recovered from employees.

*In the matter of Alleima India Pvt Ltd
[TS-428-AAR(GUJ)-2024-GST]*

GST Updates

Exemption from Annual Return for Small Businesses

The CBIC has exempted registered persons with an aggregate turnover of up to Rs. 2 crore in FY 2023-24 from filing the annual return (GSTR-9) as per Notification No. 14/2024 – Central Tax dated 10th July 2024.

Reduction in TCS Rate for Electronic Commerce Operators

CBIC Notification No. 15/2024-Central Tax, dated 10th July 2024, reduced the Tax Collected at Source (TCS) rate for electronic commerce operators from 0.50% to 0.25% of the net value of intra-State taxable supplies. This change, effective from 10th July 2024, aligns with the 53rd GST Council meeting recommendations.

Reduction in TCS Rate for Inter-State Supplies by ECOs

CBIC Notification No. 01/2024-Integrated Tax, dated 10th July 2024 and CBIC Notification No. 01/2024- Union Territory Tax, dated 10th July 2024, reduced the Tax Collected at Source (TCS) rate for electronic commerce operators on inter-State taxable supplies from 1% to 0.5%, effective from 10th July 2024. This change follows recommendations from the 53rd GST Council meeting.

Amendment in Proper Officer Designation for GST Registration and Composition Levy

Circular No. 223/17/2024-GST, dated 10th July 2024, updates the designation of the proper officer for GST registration and composition levy. Functions under various sections and rules of the CGST Act are now assigned to the Superintendent of Central Tax, replacing Assistant or Deputy Commissioners and Directors. This change follows the shift of GST back-office operations to GSTN BO.

Guidelines for Recovery of Dues Pending Appellate Tribunal Formation

Circular No. 224/18/2024-GST, dated 11th July 2024, provided guidelines for recovering outstanding dues when the first appeal has been disposed of but the Appellate Tribunal is not yet operational. Taxpayers can pay the pre-deposit amount and file an undertaking to stay recovery proceedings. Payments made inadvertently through FORM GST DRC-03 can be adjusted against the pre-deposit. The Circular also outlines procedures for taxpayers to follow until the functionality for FORM GST DRC-03A is available.

GST Updates

Clarification on Taxability and Valuation of Corporate Guarantees

This Circular No. 225/19/2024-GST dated 11 July 2024 addresses the GST implications for corporate guarantees between related persons. It clarifies that the new valuation rule (1% of the guarantee amount per annum) applies only from 26th October 2023. Pre-existing guarantees are valued under previous rules. GST is payable based on the actual consideration or 1% of the guarantee amount, whichever is higher. Multiple co-guarantors should pay GST proportionately. Domestic intra-group guarantees require forward charge payment, while foreign guarantees use reverse charge. Exported services of corporate guarantees are exempt from the new valuation rule.

Refund Mechanism for Additional IGST Due to Price Revision Post-Export

This Circular No. 226/20/2024-GST dated 11 July 2024 established a procedure for refunding additional Integrated Goods and Services Tax (IGST) paid due to upward revision in the price of goods after export. Exporters can file a refund application electronically in FORM GST RFD-01. The refund process will be handled by jurisdictional GST officers. Refund claims must include specific documents like shipping bills, invoices, and proof of additional IGST payment. The minimum refund amount is set at one thousand rupees, and applications must be filed within two years from the relevant date. If the price is reduced post-export, the exporter must repay the excess IGST.

Electronic Processing of Refund Applications by Canteen Stores Department (CSD)

This Circular No. 227/21/2024-GST dated 11 July 2024 outlined the updated procedure for Canteen Stores Department (CSD) to claim refunds electronically for 50% of applicable central, integrated, and Union territory taxes paid on inward supplies. A new functionality on the common portal allows CSD to file refund applications electronically using FORM GST RFD-10A. The refunds are based on invoices for goods supplied to Unit Run Canteens or authorized customers. Applications must be filed quarterly, with a two-year window from the last day of the relevant quarter. The refund process involves validation of invoices and ensuring compliance with previous circulars. Manual applications filed before the update will continue to be processed manually.

GST Updates

Clarifications on GST Applicability for Certain Services

The Circular No. 228/22/2024-GST Dated the 15th July, 2024 clarifies GST exemptions and liabilities for services including those by Indian Railways, Special Purpose Vehicles, RERA, and digital payment incentives. It also addresses GST on reinsurance, retrocession services, and accommodation. Key changes include exemptions for certain services provided by Indian Railways and SPVs, and adjustments to GST liabilities for specified periods.

Clarifications on GST Rates & Classification for Goods

The Circular No. 228/22/2024-GST Dated the 15th July, 2024 provided clarifications on GST rates and classifications based on the GST Council's 53rd meeting. Key clarifications include:

- 1) Solar cookers with dual energy sources attract 12% GST.
- 2) Fire water sprinklers are classified under 12% GST.
- 3) Parts of poultry-keeping machinery are specifically included under 12% GST.
- 4) 'Pre-packaged and labelled' agricultural produce above 25 kg/litre is exempt from GST.
- 5) Supplies of pulses and cereals to or by government agencies for welfare programs are regularized on an 'as is where is' basis for the period from 01.07.2017 to 17.07.2022.

Central Goods and Services Tax (Amendment) Rules, 2024

The Central Government, on the recommendations of the Council, has issued amendments to the Central Goods and Services Tax Rules, 2017 through Notification No: 12/2024 – Central Tax dated 10th July 2024 Key changes include:

1. Introduction of new provisos for Aadhaar authentication and photo verification requirements.
2. Amendments to rules concerning the filing and amendment of forms GSTR-1 and GSTR-1A.
3. Changes in the distribution of input tax credit by Input Service Distributors.
4. Provisions for the electronic filing of refund applications for additional integrated tax paid on exported goods.

GST Portal Updates

Increase in Document Upload Size for GST Registration and Amendments

GSTN has increased the maximum document upload size from 100 KB to 500 KB for proof of Principal and Additional Place of Business during new registrations and amendments. This change addresses trade grievances and applies to documents such as Municipal Khata Copy, Electricity Bill, Consent Letter, and Property Tax Receipt.

Refund of Additional IGST Due to Price Revision Post Export

The GST Council has approved a process for refunding additional IGST paid due to upward price revisions after exports. Notification No. 12/2024-Central Tax outlines this new provision. While a separate refund category is being developed in FORM GST RFD-01, exporters should use the "Any other" category with the remarks "Refund of additional IGST paid on account of increase in price subsequent to export of goods." They must upload Statement 9A & 9B and other required documents. Refunds will be processed based on the submitted documentation. Issues should be reported via the GST grievance portal.

Integration of NIC-IRP e-Invoice-1 and e-Invoice-2 Portals

Starting 18th July 2024 on sandbox portals and 1st August 2024 on production portals, NIC is integrating the e-invoice-1 and e-invoice-2 portals. This integration allows for seamless inter-operation with the same login credentials and API tokens. Users can perform tasks like printing, downloading, and canceling e-invoices across both portals. The e-invoice-2 portal can be used if e-invoice-1 is down. Taxpayers should test APIs in the sandbox environment before going live. Other e-invoice portals (IRP-3 to IRP-6) offer similar services.

Customs & Others

Dispute over Duty Exemption for Saffron Import under DFIA Licenses

In this case, USMS Saffron Co Inc imported saffron under DFIA licenses, which are intended for goods classified under chapters 32 or 33 of the ITC (HS) Code per the Foreign Trade Policy (FTP). The Customs department argued that saffron, classified under heading 0910 2090, did not qualify for duty exemption under notifications 40/2006-Cus and 98/2009-Cus. They claimed the saffron was not used in manufacturing the exported products, violating the 'actual use' condition specified in the DFIA licenses. The adjudicating authority upheld this view, asserting that the conditions for duty exemption were not met, allowing confiscation under Section 111(o) of the Customs Act, 1962.

USMS Saffron Co Inc vs. Commissioner of Customs [C.A.N. 87173 of 2023]

Examination of Jurisdiction and Statutory Limitation in Customs Seizure and Show Cause Notice

Amg Sports contested a customs seizure memorandum and show cause notice issued on 30.10.2023 for alleged misdeclaration of imported sports goods. The firm argued the notice was invalid as it was issued by the Commissioner of Customs rather than the proper officer and was time-barred. The Madras High Court

Amg Sports Vs Principal Additional Director General [W.P.No.17464 of 2024]

Dispute Over Classification and Duty Exemption for "Open Cells" Under Notification No. 24/2005-Customs

MIRC Electronics Limited contested a Customs decision denying duty exemption for imported "Open Cells," arguing they should be classified as LCD devices under Notification No. 24/2005-Customs. The Commissioner of Customs (Appeals) ruled that "Open Cells," though crucial for LCD panels, did not qualify as complete LCD devices and thus were not eligible for the exemption. The appellant highlighted procedural inconsistencies and claimed the decision lacked a reasoned approach and technical consideration.

MIRC Electronics Limited Vs Commissioner of Customs [C.A.N. 85352 of 2023]

Customs & Others

SC Judgment on Liability for Interest on Duty for Warehoused Goods Beyond Stipulated Period

The Supreme Court of India addressed whether importers must pay interest on customs duty for warehoused goods beyond the stipulated period. Pratibha Processors had imported polyester filament yarn and warehoused it under Section 59 of the Customs Act. Although the goods were cleared duty-free under the DEEC scheme, the Customs Department demanded interest on the duty from the warehousing date until clearance. The Supreme Court examined the applicability of Section 61(2) of the Customs Act, 1962, and upheld the demand for interest, even though the goods were ultimately cleared duty-free.

Pratibha Processors & Ors. Vs Union Of India & Ors. [C.A.N. 13097 of 1996]

CESTAT Ruling on Legality of Imported Plastic Scrap and Redemption Penalties

The CESTAT Kolkata addressed the legality of plastic scrap seized from Nepal. Bindeshwari Poddar claimed the goods were legally imported under a valid bill of entry, while the Customs authorities alleged illegal procurement. The tribunal, after reviewing evidence, found no proof of illegal activity or intent to evade duties. Discrepancies in the quantity seized were noted but did not

substantiate claims of wrongdoing.

Bindeshwari Poddar Vs Commissioner of Customs [C.A.N. 71840 of 2018]

Customs & Other Updates

Exemption from Compensation Cess for SEZ Imports

Notification No. 27/2024-Customs, dated 12th July 2024, exempts goods imported by units or developers in Special Economic Zones (SEZs) for authorized operations from the Goods and Services Tax (GST) Compensation Cess. Effective from 15th July 2024, this exemption follows the 53rd GST Council meeting's recommendation. The measure aims to enhance ease of doing business in SEZs, boost manufacturing, and attract investments by reducing tax burdens on imported goods necessary for SEZ operations.

Amendments to IGST Rates and Exemptions for Imports

Notification No. 28/2024-Customs, dated 12th July 2024, amends Notification No. 50/2017-Customs to implement recommendations from the 53rd GST Council meeting. The key updates include:

- 1) **Uniform IGST Rate:** A 5% IGST rate is now applied to imports of parts, components, testing equipment, tools, and toolkits for aircraft, regardless of their HS classification, to support MRO (Maintenance, Repair, and Overhaul) activities.
- 2) **Exemption for Research Equipment:** IGST exemption is extended to research equipment and buoys imported for the RAMA programme, provided they meet specific conditions, including obtaining a certificate from the Ministry of Earth Sciences and executing a bond for re-export within two years.

These changes are effective from 15th July 2024.

Amendments to Shipping Bill Presentation Requirements for SEZ Units

Notification No. 50/2024-Customs (N.T.), dated 19th July 2024, amends Notification No. 24/2023-Customs (N.T.), effective from 1st July 2024 - Extension of RoDTEP support to exports by unit in SEZ.

- 1) **The amendments include:** Inclusion of SEZ Units: The term "unit in Special Economic Zone" is added alongside "Export Oriented Unit" in clause 2, sub-clause (1), item (b) of the original notification.
- 2) **Presentation Proviso:** A new proviso requires that the shipping bill or bill of export for goods manufactured or exported by a unit in a Special Economic Zone must be presented on or after 1st July 2024.

Customs & Other Updates

Extension and Clarifications on Interest Equalisation Scheme (IES) for Export Credit

Trade Notice No. 08/2024-2025, dated 10th July 2024, extends the Interest Equalisation Scheme (IES) for Pre and Post shipment Rupee Export Credit by two months, until 31st August 2024. Key clarifications include:

- 1) Capping of Interest Equalisation: Limited to Rs. 1.66 crore per IEC for the extended period.
- 2) Applicability: Exclusively for MSME Manufacturer Exporters eligible for a 3% benefit; MSME Merchant Exporters are not covered.
- 3) UIN Requirements: No need for revised UINs if already issued for FY 2024-2025.

Import and Export data

Imports of June 2024 at \$ 73.47 B

Exports of June 2024 at \$ 65.47 B

		June 2024 (USD Billion)	June 2023 (USD Billion)
Merchandise	Exports	35.20	34.32
	Imports	56.18	53.51
Services*	Exports	30.27	27.79
	Imports	17.29	15.61
Total Trade (Merchandise +Services) *	Exports	65.47	62.12
	Imports	73.47	69.12
	Trade Balance	-8.00	-7.00

Source : PIB

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