

DA TAX UPDATE INDIRECT TAX

An E-Tax update from
Darda Advisors LLP

Fortnightly update – August 2024
Issue - 66

Goods and Service Tax

Customs and Others

Goods and Service Tax

High Court Quashes GST Registration Cancellation Due to Lack of Personal Hearing in Kloud Data Labs Case

The High Court quashed the cancellation of GST registration for Kloud Data Labs Private Limited, citing non-compliance with the requirement of a personal hearing as outlined in Section 75(4) of the CGST Act. The court set aside the ₹14.77 Lakhs tax demand, remanding the case back to the Deputy Commissioner for a fresh hearing. The petitioners' claim that the action was without jurisdiction was rejected, with the court affirming that the cancellation did not negate the petitioner's liability for any dues prior to cancellation.

Kloud Data Labs Private Limited and Anr. Vs. Deputy Commissioner of State Tax, Nagpur [TS-473-HC(BOM)-2024-GST]

AAR Rules Transfer of Goods within FTWZ Not a Supply under GST

In the case of Panasonic Life Solutions India Private Limited, the Tamil Nadu Authority for Advance Rulings (AAR) held that the transfer of goods within a Free Trade and Warehousing Zone (FTWZ) or from FTWZ to customers in Domestic Tariff Area (DTA) does not constitute a supply under the CGST Act due to the insertion of Entry 8(a) to Schedule III. The ruling clarified that customs duties, including IGST, are payable

only when goods cross into the customs territory of India. Additionally, the AAR required the applicant to reverse input tax credits (ITC) proportionally for common inputs and services linked to such transactions. The applicant's plea to classify these transfers as high sea sales was rejected.

In the matter of Panasonic Life Solutions India Private Limited [TS-474-AAR(TN)-2024-GST]

HC Directs to consider CBIC Circular for deciding ITC

In the case the High Court addressed a writ petition challenging a Show Cause Notice (SCN) issued for alleged delayed Input Tax Credit (ITC) claims on manpower supply services under the reverse charge mechanism (RCM). The court, referencing a CBIC Circular clarifying the timeline for availing ITC, directed the Deputy Commissioner of Commercial Taxes to review Bosch's objections, allowing the petitioner three weeks to submit them. The circular, issued after the SCN, was deemed binding and supported Bosch's defense that its ITC claims were valid.

Bosch Automotive Electronics India Pvt. Ltd. vs. The State of Karnataka & Anr, Karnataka High Court, [TS-482-HC(KAR)-2024-GST]

Goods and Service Tax

HC Set aside GST Order Over Natural Justice Violation

The High Court set aside an order alleging excess Input Tax Credit (ITC) availment on inputs subject to Reverse Charge Mechanism (RCM) and non-reversal of ITC on credit notes. The petitioner was denied a personal hearing after requesting an adjournment due to illness, resulting in a tax demand of approximately ₹1 crore. The Court found this to be a violation of the principles of natural justice and remitted the case back to the Assistant Commissioner. The respondent was directed to provide a fresh opportunity for a personal hearing within 14 days and pass final orders accordingly.

Alliance Granimarmo Pvt Ltd. vs. The Assistant Commissioner [TS-489-HC(MAD)-2024-GST]

Stay Granted on ₹40 Crore GST Demand Due to Dispute Over Tax Classification

The High Court granted a stay on the recovery of a CGST and SGST demand amounting to ₹40 crores, imposed by the UP GST Department on Primeone Workforce Pvt. Ltd., which provides manpower services. The petitioner had already paid IGST on the services, believing the supply to be an inter-state transaction from Madhya Pradesh. However, the Revenue treated it as an intra-state supply because of fixed offices in Uttar

Pradesh. The petitioner challenged this, asserting that IGST had been paid and that the UP offices were merely facilitation centers. The High Court acknowledged that IGST had been paid and found no revenue loss. It directed the petitioner to approach the Appellate Authority within two weeks, emphasizing that failure to comply would nullify the stay order.

Primeone Workforce Pvt. Ltd vs State of U.P. [TS-475-HC(ALL)-2024-GST]

High Court Remands RCM Liability Case for Reconsideration Due to Procedural Flaws

The High Court quashed an order related to Reverse Charge Mechanism (RCM) liability and trade payables issued by the Assistant Commissioner. The Court found that the order was flawed due to non-application of mind and failure to consider the petitioner's reply to the show cause notice. The petitioner, Paramount Shipping Services Pvt. Ltd., had addressed all defects listed in the notice, but the Assistant Commissioner's order failed to reflect this consideration. The High Court directed that the matter be remanded for reconsideration, ensuring that a fresh order be issued with proper consideration of the petitioner's submissions.

Paramount Shipping Services Pvt. Ltd. Vs. Assistant Commissioner (ST) [TS-487-HC(MAD)-2024-GST]

GST Updates

Notification of Amendments to the CGST Act by Finance Act (No. 8) 2024

Sections 13 & 11,12 of the Finance Act (No. 8) 2024 have been notified, with changes effective from October 1, 2024, and April 1, 2025.

Key amendments include:

Section 11: Revises the definition of "Input Service Distributor" (ISD) to specify the responsible office for input tax credit distribution.

Section 12: Updates the manner of credit distribution by ISDs, including registration requirements and methods of distribution.

Section 13: Introduces a ₹1 lakh penalty per unregistered machine used in manufacturing, with potential seizure and confiscation if registration and penalties are not addressed within three days.

CBIC Announces Second All-India Drive Against Fake GST Registrations

The CBIC has launched a second nationwide initiative to tackle fake GST registrations, effective from August 16, 2024, to October 15, 2024. Building on the success of the first drive, this effort aims to identify and remove fraudulent GSTINs to prevent revenue loss. Key aspects include:

Guidelines: Fraudulent GSTINs will be identified using advanced data analytics in collaboration with GSTN and DGARM.

Verification: Central and state tax authorities will verify high-risk GSTINs. Immediate actions like registration suspension, cancellation, and blocking of input tax credits may be taken against non-existent or fictitious taxpayers.

Coordination: Nodal officers will oversee the drive in each CGST zone and state. Weekly reports will document actions, tax evasion detected, and recoveries made.

Further Actions: Provisions are included for provisional attachment of property and bank accounts of masterminds behind fake registrations.

CBIC Issues Guidelines for CGST Audits to Enhance Consistency

CBIC's Instruction No. 03/2024-GST, issued on August 14, 2024, builds on earlier guidelines by emphasizing uniformity in CGST audits. It directs CGST Audit Commissioners to refer complex or disputed issues to the policy wing of the Board before concluding audits and issuing show cause notices. This approach aims to address potential litigation and ensure consistent interpretation of CGST laws across audits.

Customs & Others

Customs Appeal Dismissed: Post-Importation Charges Not to Be Added to Customs Valuation

The CESTAT addressed whether charges for supervision of installation and field efficiency tests paid to overseas suppliers should be included in the assessable value for customs duty. The Revenue argued that these charges should be added under Rule 9(1)(e) of the Customs Valuation Rules, 1988, claiming they were part of the conditions of sale. The respondent contended that these charges were related to post-importation activities and should not be included. The tribunal upheld the respondent's position, ruling that such charges are not part of the assessable value for customs duty, as they are post-importation costs rather than conditions of sale.

Commissioner of Customs Vs Kerala State Electricity Board Ltd. [C.A.N. 22304 of 2015]

Court Lowers Pre-Deposit Requirement for Customs Duty Dispute Over Classification of Import Goods

Shubh Impex challenged the classification of imported "hooks and eyes fastening strips" for customs duty, arguing it should be under CTH 83081010, resulting in a higher duty of ₹16.82 crores. The petitioner had to pre-deposit ₹1.27 crores to appeal, but the Delhi High Court reduced the pre-deposit to ₹5 lakhs due to

financial difficulties. The court emphasized that such reductions should be rare and based on compelling circumstances.

Shubh Impex Vs Union of India & Ors. [W.P.No.138 of 2018]

Refund Claim for Additional Duty of Customs Upheld Despite Minor Documentation Issues

In this case, Jumar Trade Links challenged the rejection of their refund claim of ₹2,28,822 for the 4% Additional Duty of Customs (ADC) paid on imported Galvanized Steel Coils/Strips. The refund claim was made under Notification No. 102/2007-Cus, but was rejected by the proper officer and subsequently by the Appellate Authority due to discrepancies, including the absence of specific period details in the CA's certificate and lack of endorsement regarding ADC on sales invoices. The CESTAT Chennai found that the non-mention of period particulars in the CA's certificate was a minor issue and that the department could have verified the details through simple means. The tribunal deemed the rejection of the claim on this basis to be overly harsh and unjustifiable.

Jumar Trade Links Vs Commissioner of Customs (Exports) [C.A.N. 42425 of 2014]

Customs & Others

Dispute Over Import Regulations on Used Medical Equipment and Alleged Violations of Hazardous Waste Rules

Hemant Surgical Industries Ltd. challenged a customs order stating violations of the import of "Used Critical Care Medical Equipment." The authorities claimed the import was prohibited under policy conditions and Rule 12(6). The petitioner argued they had responded to the queries raised during the assessment. The Bombay High Court ruled that once a query is raised and the respondent provides a reply, it is considered deliberated upon by the Assessing Officer. The court also ruled that an assessment order does not need to explicitly reference every query raised.

Hemant Surgical Industries Ltd. Vs Union of India [W.P.N. 963 of 2022]

The principle of unjust enrichment does not extend to capital consumption, thus entitling to a refund.

Bhor Industries Ltd. sought a refund of central excise duty for the period 1970-1982, which was rejected. After multiple appeals and remands by the CESTAT, the issue focused on whether the test of unjust enrichment applied to captively consumed goods. The CESTAT, Mumbai ruled in favor of Bhor Industries, holding that the payment was made under protest, and the principle of unjust enrichment does not apply to goods

consumed internally without sale.

Bhor Industries Ltd Vs Commissioner of Central Excise Mumbai [E.A.N. 87179 of 2013]

Procedural Errors and Substantive Entitlements in Refund Claims

CESTAT Delhi ruled that Welspring Universal's substantive benefit should not be forfeited solely because the refund claim was filed under Rule 18 of the Central Excise Rules, 2002, instead of Rule 5 of the Cenvat Credit Rules, 2004. Welspring Universal, an EOU, had claimed a rebate on exported goods, later repaid it, and sought to take credit for this amount. The department rejected the credit and imposed penalties. CESTAT Delhi held that the procedural misstep does not negate the substantive benefit of the refund claim.

Welspring Universal Vs Commissioner of Central Tax [EAN. 51000 of 2020]

Customs & Other Updates

Introduction of ICETABs for Efficient Customs Examination

Starting August 23, 2024, CBIC will deploy ICETABs, mobile tablet devices, to enhance the efficiency and transparency of customs cargo examinations. ICETABs will enable Customs Officers to view RMS Instructions, Examination Orders, and Bill of Entry details, capture images of cargo, and submit examination reports in real-time. This shift from paper-based processes to digital reporting aims to expedite and streamline cargo clearance. A detailed advisory on ICETAB use will be issued, and any issues encountered should be reported to the Board. Regular reviews and technical support will be provided to ensure smooth implementation.

API Integration and Bulk Upload Facility for eBRC Self-Certification

Effective August 20, 2024, DGFT introduces two new features to streamline the eBRC self-certification process:

Bulk Upload: Exporters can now generate and certify multiple eBRCs simultaneously by uploading a spreadsheet with IRM, Shipping Bill, and Invoice details. This aims to reduce manual errors and enhance efficiency.

API Integration: Exporters can link their ERP or accounting systems with the DGFT eBRC system for real-time data retrieval and certification. This feature requires online registration and management of API access by the IEC holder.

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

Amendment in Para 10.06 of Handbook of Procedure 2023

The DGFT has revised Para 10.06 of the Handbook of Procedures (HBP) 2023. The updated text allows for authorization approval by the Chairman of the IMWG or an officer nominated by the Chairman/DGFT (not below the rank of Deputy Director General or Under Secretary) if all comments/views and NOCs are received with no divergent views. The revised procedure still requires that such cases be presented for ex-post facto approval in a subsequent IMWG meeting. This amendment updates the delegation of powers for SCOMET-related authorizations.

Launch of Revamped Non-Preferential Certificate of Origin (eCoO) 2.0 System

The DGFT is introducing eCoO 2.0 on August 28, 2024, featuring multi-user access, Aadhaar-based e-signatures, and an integrated dashboard. Issuing agencies must onboard by August 27, and exporters can start using the new system on August 28. The legacy system will handle pending applications, while new ones will go through eCoO 2.0. Existing DGFT login credentials will work with the new system. The e-Wallet balance from the old system won't transfer immediately, and users will need to add credits to the new e-Wallet. Support and user guides are available on the DGFT website, with helpdesk assistance provided through phone and email.

Import and Export data

Imports of July 2024 at \$ 72.03 B

Exports of July 2024 at \$ 62.42 B

		July 2024 (USD Billion)	July 2023 (USD Billion)
Merchandise	Exports	33.98	34.49
	Imports	57.48	53.49
Services*	Exports	28.43	26.22
	Imports	14.55	13.74
Total Trade (Merchandise +Services) *	Exports	62.42	60.71
	Imports	72.03	67.23
	Trade Balance	-9.61	-6.52

Source : PIB

Darda

Driven by Quality, Powered by Ideation

Darda Advisors LLP offers a wide range of services in the tax and regulatory space to clients in India with professionals having extensive consulting experience. Our approach is to provide customized and client-specific services. We provide well-thought-out strategies and solutions to complex problems in tax and regulatory matters. Our service offerings are:

Invest India Services

- Invest India Study
- Inception And Incorporation Relate
- Incentives, Subsidies and Grant Service
- Start-Up India and MSME Services



Indirect Tax Services

- GST Services
- Representation and Litigation Support
- Corporate Training
- SEZ/EOU/STP Services
- Customs and International Trade
- GCC VAT

Other Services

- Corporate Secretarial Services
- Corporate & International Tax Services
- Certification & Attestation Services
- Financial Advisory Services
- Accounting Advisory Services
- RBI Services



www.dardaadvisors.com



da@dardaadvisors.com

Our Locations

Hyderabad

6-3-1086, 5th Floor, Vista Grand Towers, Raj Bhavan Road, Somajiguda, Hyderabad - 500082, TS

Chennai

13, T.K. Mudali Street, Choolai, Chennai - 600112, Tamil Nadu

Delhi-NCR

N 93, Ground floor, Mayfield garden, Sector 51, Gurgaon, Haryana - 122018

Bhilwara

Moti Chambers, 62&63, Sancheti Colony, Pur Road. Bhilwara - 311001, Rajasthan

Disclaimer:

For private circulation and internal use only. The information contained herein is of general nature and not intended to address the circumstances of the particular individual or entity. The information in this document has been obtained or derived from sources believed by Darda Advisors LLP (DA) to be reliable but DA does not represent that this information is accurate or complete. Readers of this publication are advised to seek their own professional advice before taking any course of action or decision, for which they are entirely responsible, based on the contents of this publication. DA neither accepts nor assumes any responsibility or liability to any reader of this publication in respect of the information contained within it or for any decision's readers may take or decide not to or fail to take.