

# DA TAX UPDATE INDIRECT TAX

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

Fortnightly update – September 2024

Issue - 67

**Goods and Service Tax**

**Customs and Others**



## Goods and Service Tax

### HC Upholds Refund Entitlement Under Section 54 of the CGST Act

The Madras High Court dismissed the Revenue's appeals and upheld Suzlon Energy Ltd's entitlement to a refund under Section 54 of the CGST Act. Suzlon paid higher IGST of 18% through its supplier, while its output tax was only 5%. The Court ruled that excess input tax can be refunded as per the law when the input tax is higher than the output tax. However, the Court modified the earlier order's interest rate on the refund from 9% to 6%, as per Notification No. 01/2017.

*The Commercial Tax Officer vs. Suzlon Energy Ltd [TS-555-HC(MAD)-2024-GST]*

### HC Dismisses Petition Against Show Cause Notice Issued Post Audit

Magicon Impex Pvt. Ltd. challenged a Show Cause Notice (SCN) issued after an audit under Section 65 of the CGST/DGST Act, claiming that multiple audit memos issued for the same period were time-barred under Section 65(4). The Delhi High Court held that while there were procedural irregularities in issuing multiple audit memos, these did not invalidate the SCN, which was within the statutory framework. The Court dismissed the petition but allowed Magicon Impex to contest the SCN through a formal response.

*Magicon Impex Private Limited Vs.*

*Commissioner of Central Goods and Service Tax & Ors. [TS-558-HC(DEL)-2024-GST]*

### HC Quashes Penalty Imposed for Expired E-Way Bill Due to Technical Error

The Allahabad High Court quashed the penalty imposed on Creative Lab for transporting goods with an e-way bill that had expired by one day due to a technical error caused by a truck breakdown. The Court noted that all required documents were valid and available on the GST portal, and there was no intent to evade taxes. The penalty was deemed unjustified, as the reason for imposing it was not clearly stated in the order, violating natural justice principles. The Court directed the refund of the penalty amount and highlighted that an order must be supported by valid reasoning.

*Creative Lab Situated vs State of UP And 2 Others [TS-559-HC(ALL)-2024-GST]*



## Goods and Service Tax

### HC Sets Aside Retrospective GST Registration Cancellation for Lack of Justification

The Delhi High Court set aside the retrospective cancellation of GST registration for Guruji Enterprises, ruling that the cancellation violated the principles of natural justice and lacked adequate reasoning. The Court directed that the cancellation should take effect from the date Guruji Enterprises applied for the cancellation (February 8, 2021), rather than retrospectively from July 1, 2017. The Court clarified that while GST registration can be cancelled retroactively, it must be based on valid reasons. Furthermore, the cancellation does not absolve the taxpayer from statutory non-compliance or liability.

*Guruji Enterprises Vs. Principal Commissioner Delhi Goods and Services Tax & Ors. [TS-561-HC(DEL)-2024-GST]*

### AAR Rules Out Export Status for Goods Procured from Indian Company in Liquidation

The Andhra Pradesh AAR ruled that the procurement of goods by MCM Pacific PTE Ltd., a Singaporean company, from an Indian firm in liquidation does not qualify as exempt or zero-rated export under GST. As MCM Pacific has no GST registration in India, the transaction involves the delivery of goods within India. The AAR concluded that since

the transaction does not meet the criteria for export under the IGST Act, it does not qualify for tax benefits associated with exports.

*In the matter of MCM Pacific PTE Ltd [TS-566-AAR(AP)-2024-GST]*

### HC Invalidates Late-Issued Assessment Orders and Mandates Fair Adjudication

The Delhi High Court addressed a series of writ petitions challenging the validity of assessment orders issued under Section 73 of the CGST Act. The court found that many orders were issued unreasonably close to the limitation deadline for the financial years 2017-18 and 2018-19, without proper consideration of the taxpayers' responses. The court noted that some officers issued a large number of orders in the final days before the deadline, potentially to evade the limitation period's intent.

The court set aside these orders and remanded the cases for fresh adjudication. It directed that no adverse orders be passed without giving the petitioners a fair opportunity to be heard, and mandated that the adjudicating authorities complete the reconsideration process within six months. Additionally, the court acknowledged issues with the use of AI in generating show cause notices and ordered a review of these notices.

*Mohinder Kumar vs. Principal Commissioner of DGST [TS-567-HC(DEL)-2024-GST]*



## GST Updates

### Clarification on GST for Advertising Services to Foreign Clients

The circular clarifies that Indian advertising agencies providing services to foreign clients are not considered intermediaries, establishing the foreign client as the recipient of the services. The place of supply is determined to be outside India, confirming these services qualify as exports. If agencies merely facilitate transactions between foreign clients and media owners, they are classified as intermediaries, shifting the place of supply to their location in India.

Circular No. 230/24/2024-GST dated 10<sup>th</sup> Sep 2024

### Clarification on Input Tax Credit for Demo Vehicles

The circular clarifies the availability of input tax credit (ITC) for demo vehicles used by authorized dealers. Demo vehicles, used for trial runs and demonstrations, do not qualify for ITC restrictions under section 17(5)(a) of the CGST Act as they facilitate the further supply of motor vehicles. If dealers capitalize these vehicles as capital goods, they are entitled to ITC, provided they meet all other conditions. However, if the vehicles are used for non-supply purposes or if dealers act merely as agents for manufacturers, ITC will not be available.

Circular No. 231/25/2024-GST dated 10<sup>th</sup> Sep 2024

### Clarification on Place of Supply for Data Hosting Services

This circular clarifies the place of supply for data hosting services provided by Indian service providers to overseas cloud computing companies. It states that these services do not qualify as intermediary services, as data hosting providers operate independently and do not engage with end users. The place of supply is determined under section 13(2) of the IGST Act, meaning it will be considered outside India if the recipient is based there, thus qualifying as an export of services, provided other conditions are met.

Circular No. 232/26/2024-GST dated 10<sup>th</sup> Sep 2024

## GST Updates

### Clarification on Regularization of IGST Refund

This circular addresses the regularization of Integrated Goods and Services Tax (IGST) refunds in cases where exporters initially imported inputs without payment of IGST and compensation cess, benefiting from certain customs notifications. It clarifies that if exporters later pay the IGST and compensation cess, along with interest, the refund of IGST on exports can be considered compliant with the rules. This is based on an explanation added retroactively to the CGST Rules, indicating that if IGST is paid later, the benefits of the initial exemption notifications are not deemed to have been availed.

Circular No. 233/27/2024-GST dated 10<sup>th</sup> Sep 2024



# GST Portal

## Re-opening of Reporting ITC Reversal Opening Balance

Taxpayers are given a final opportunity to report cumulative ITC reversals as opening balances in the Electronic Credit Reversal and Re-claimed Statement from September 15 to October 31, 2024. Amendments can be made until November 30, 2024. Monthly and quarterly taxpayers must report reversals up to specific periods. After this window, re-claiming ITC beyond previously reversed amounts will be restricted. For more details, refer to the advisory link provided.

## Draft Manual on Invoice Management System

The GST Common Portal has introduced the Invoice Management System (IMS), enhancing how taxpayers manage invoices. This system allows taxpayers to accept, reject, or hold invoices for later use, improving the reconciliation process and ensuring accurate Input Tax Credit (ITC) claims. The IMS aims to reduce errors and optimize GST compliance for businesses. A detailed draft manual is available, with a final version to be published later.

Dashboard	<b>Services ▾</b>	GST Law	Downloads ▾	Search Taxpayer ▾	Help and Taxpayer Facilities	e-Invoice	News and Updates	
Registration	Ledgers	<b>Returns</b>	Payments	User Services	Refunds	E-Invoice	e-Way Bill System	Track Application Status
Returns Dashboard					View Filed Returns			
Track Return Status					Transition Forms			
ITC Forms					Annual Return			
TDS and TCS credit received					Tax liabilities and ITC comparison			
Opt-in for Quarterly Return					Rule-86B Compliance			
Return Compliance					Application for increasing credit limit			
<b>Invoice Management System (IMS) Dashboard</b>								

## Customs & Others

### SC Upholds CESTAT's Quashing of Customs Duty and Penalties Due to Lack of Suppression

The Supreme Court dismissed the Revenue's appeal against the CESTAT order, which quashed the customs duties and penalties imposed on EMD Locomotive Technologies Pvt. Ltd. in a dispute over the classification of imported goods. The Revenue claimed that the goods were misclassified and ineligible for a reduced duty rate under the India-Japan Comprehensive Economic Agreement. However, the Court upheld CESTAT's decision, noting that the Revenue failed to prove suppression by the importer, which was the basis for issuing the Show Cause Notices (SCNs). The Revenue had opportunities in 2013 to obtain necessary technical information but did not do so.

*Commissioner of Customs vs. EMD Locomotive Technologies Pvt. Ltd. [TS-402-SC-2024-CUST]*

### HC Dismisses Appeal in Duty Drawback Dispute for 100% Export-Oriented Unit

The Delhi High Court dismissed the Commissioner of Customs' appeal, affirming a ruling that a 100% Export-Oriented Unit (EOU) is entitled to duty drawback on goods manufactured from duty-paid materials. The court referenced similar rulings by the Karnataka and

Madras High Courts, where it was held that statutory rights to duty drawback under Section 75 of the Customs Act cannot be overridden by circulars. The Supreme Court had previously dismissed related appeals, solidifying the legal position.

*Commissioner of Customs vs. M/S. Fancy Images. [CUSAA 50/2017]*

### CESTAT Sets Aside Customs Duty Demand on Goods Destroyed in SEZ Fire

The Ahmedabad CESTAT quashed the demand for customs duty on goods destroyed in a fire at PI Industries Ltd's SEZ unit. The Tribunal ruled that since the goods were in an SEZ, considered "foreign territory," no customs duty could be imposed. The fire destroyed duty-free indigenous and imported raw materials, leading Revenue to claim the goods were not used for authorized operations. CESTAT rejected this, noting the SEZ Act operates independently of Sections 58 and 60 of the Customs Act. The Tribunal also found no basis for the duty demand, as no evidence supported the complete destruction of the goods.

*PI Industries Ltd vs. Principal Commissioner of Customs [TS-386-CESTAT-2024-CUST]*



## Customs & Others

### CESTAT Allows Refund of CENVAT Credit Post GST Implementation

The Mumbai CESTAT granted Lupin Limited's appeal, directing a refund of ₹30 lakhs in CENVAT credit after they filed revised excise returns post-GST implementation. Lupin admitted failing to transition the credit via TRAN-1 and sought a refund under Section 142(9)(b) of the CGST Act. Revenue rejected the refund, citing Section 11B of the Central Excise Act. However, CESTAT ruled that Section 142(9)(b) of the CGST Act allows for such refunds, rejecting the narrow interpretation of the transitional provisions. The Tribunal concluded that input tax credits from the old tax regime should not be forfeited.

*Lupin Limited vs. Commissioner of GST & Central Tax [TS-406-CESTAT-2024-EXC]*

### HC Directs Payment of Interest on Delayed Refunds

Qualcomm India Pvt. Ltd. filed a writ petition challenging the rejection of its request for interest on a delayed refund of ₹1.06 crores, granted under Section 11B of the Central Excise Act. Qualcomm argued that under Section 11BB, interest should have been automatically applied for refunds delayed beyond three months, supported by a 2002 CBEC circular. The court, referring to Qualcomm's earlier case, agreed and directed the Respondents to calculate and pay the

interest within four weeks, emphasizing that the officer should have been aware of the law.

*Qualcomm India Pvt. Ltd. vs. Union of India (Writ Petition No. 2911 of 2024)*

### CESTAT Ruling on Duty-Free Goods Leasing by STP Unit

M/s. Velankani Information Systems, an STP unit, leased duty-free goods without proper authorization, violating customs notifications. They paid the required duties and interest voluntarily. The Commissioner confirmed the duty demand but did not impose penalties. The Revenue appealed for fines, but the Tribunal upheld the Commissioner's decision, noting the goods remained within the STP framework, and dismissed both the appeal and the respondent's objections.

*Commissioner of Customs, Bangalore vs. M/s Velankani Information Systems [Final Order No. 20998/2016]*



## Customs & Other Updates

### Amendments to Export Regulations

The regulation will omit the phrase regarding goods exported under the Merchandise Exports from India Scheme (MEIS). A new proviso will be added, stating that for exports under Duty Drawback, RoDTEP, or RoSCTL schemes, the Authorised Courier or their agent, having passed specific examinations, must enter goods for export in the electronic integrated declaration as per the relevant regulations.

Notification No. 60/2024-Customs (N.T.) dated 12<sup>th</sup> Sep 2024

### Implementation of Automation for EOUs under Customs Rules 2022

Circular No. 16/2024-Customs announces the implementation of automation in the Customs (Import of Goods at Concessional Rate of Duty or for Specified End Use) Rules, 2022, for Export Oriented Units (EOUs), effective from September 25, 2024. This decision follows stakeholder requests to address issues in registration, IIN generation, and bond utilization. The Board advises issuing public notices for guidance and reporting any difficulties during implementation.

Circular No. 16/2024-Customs, dated 17<sup>th</sup> Sep 2024

### Amendments under Interest Equalisation Scheme (IES)

Trade Notice No. 17/2024-2025 announces amendments to the Interest Equalisation Scheme (IES), effective immediately, capping the annual subvention at ₹10 crore per IEC for the financial year. Specifically, MSME Manufacturers have a cap of ₹5 crore until 30.09.2024, while Manufacturer Exporters and Merchant Exporters have a cap of ₹2.5 crore until 30.06.2024. The scheme has been extended until 30.09.2024, as per previous notifications.

Trade Notice No. 17/2024-25 - DGFT, dated 17<sup>th</sup> Sep 2024



## Import and Export data

**Imports of August 2024 at \$ 80.06 B**

**Exports of August 2024 at \$ 65.40 B**

		August 2024 (USD Billion)	August 2023 (USD Billion)
Merchandise	Exports	34.71	38.28
	Imports	64.36	62.30
Services*	Exports	30.69	28.71
	Imports	15.70	15.09
Total Trade (Merchandise + Services) *	Exports	65.40	67.00
	Imports	80.06	77.39
	Trade Balance	-14.66	-10.39

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](http://www.dardaadvisors.com)



[da@dardaadvisors.com](mailto: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.