

# DA TAX UPDATE INDIRECT TAX

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

Fortnightly update – October 2024  
Issue - 68

**Goods and Service Tax**

**Customs and Others**



## Goods and Service Tax

### HC Orders Unblocking of Rs. 2.44 Crores in ECRL Due to Insufficient Credit Balance

The High Court directed the Revenue to withdraw the blocking of Rs. 2.44 Crores in the assessee's Electronic Credit Ledger (ECRL) since no sufficient balance was available for blocking. Citing its earlier rulings, the court emphasized that credit cannot be blocked without sufficient available credit in the ECRL. The assessee had previously paid Rs. 59 Lakhs voluntarily during a DGGI investigation, and other proceedings confirmed the validity of input tax credit (ITC) claimed. Despite multiple requests, the blockage was not removed, leading to the writ petition before the High Court. The court ordered the credit to be unblocked and allowed the assessee to file returns.

*PMW METAL AND ALLOYS PVT. LTD. Versus UNION OF INDIA & ORS. [TS-637-HC(GUJ)-2024-GST]*

### HC Upholds Refund of IGST on Ocean Freight in FOB-based Imports

The High Court ruled that after the Supreme Court struck down the notification for levying IGST on ocean freight, Revenue cannot impose IGST on FOB-based import transactions. Citing the Mohit Minerals judgment, the court emphasized that IGST is payable on the full value of goods, regardless of whether they are

imported on a CIF or FOB basis. The court quashed the Revenue's order that withdrew the refund of IGST paid on ocean freight, supporting the importer's claim.

*BLA Coke Pvt. Ltd. Vs UOI & ors. [TS-638-HC(GUJ)-2024-GST]*

### HC Grants Refund for Exported Services Despite Payment to Different Bank Account

The High Court allowed a refund to Cable and Wireless Global India Pvt. Ltd. for exporting services to Vodafone Group Services Ltd. (VGSL) despite the payment being received in its Head Office's bank account in Bangalore, while the services were provided by the Delhi Branch Office. The court ruled that the payment remittance to a different bank account was irrelevant, as long as the services were rendered and the payment linked. The court dismissed Revenue's objections as overly technical and upheld the refund, noting that the law doesn't mandate payment receipt in a specific account.

*CABLE AND WIRELESS GLOBAL INDIA PRIVATE LIMITED Vs ASSISTANT COMMISSIONER, CGST & ORS*



## Goods and Service Tax

### HC Dismisses Appeal for Exceeding Limitation Period, Citing GST Act's Strict Timelines

The High Court dismissed a writ petition by Raj Trade House, ruling that delays in filing appeals beyond the prescribed period cannot be condoned. The court referred to the Yadav Steels case, which emphasized that the GST Act is a self-contained code with specific limitation provisions for filing appeals. Raj Trade House's appeal was dismissed due to exceeding the limitation period. The court held that a CBIC notification allowing appeals filed before January 31, 2024, without dismissal on limitation grounds, was not applicable in this case.

*Raj Trade House vs. UOI & 2 Ors. [TS-655-HC(ALL)-2024-GST]*

### HC Modifies GST Registration Cancellation to Take Effect Prospectively from Show Cause Notice Date

The High Court modified the cancellation of Star Enterprises' GST registration, making it effective prospectively from the date of the show cause notice (December 21, 2021) instead of the retrospective date of July 17, 2021. The court noted that the show cause notice did not propose retrospective cancellation and the cancellation order lacked any reasons for such action. The petitioner was not opposed to the

cancellation itself but objected to its retrospective application. The court ruled in favor of a prospective cancellation.

*Star Enterprises vs. Commissioner of Delhi GST [TS-656-HC(DEL)-2024-GST]*

### HC Directs Submission of GSTR-1 Report for Verification of E-Invoice Legitimacy in Export Case

The Madras High Court directed Aqua Excel, an exporter, to submit a GSTR-1 report to verify the legitimacy of an E-invoice that was not generated during transit. The court noted that goods would be released provisionally since the transaction was disclosed as a zero-rated sale in GSTR-1. The exporter had faced detention of a consignment worth approximately Rs. 24 lakhs due to the absence of an E-invoice, but argued that the goods were intended for export, thus exempt from tax and penalties.

*Aqua Excel vs. The State Tax Officer & Anr. [TS-665-HC(MAD)-2024-GST]*



## GST Updates

### **Central Goods and Services Tax (Second Amendment) Rules, 2024**

This notification amends the Central Goods and Services Tax Rules, 2017, effective from November 1, 2024. Key changes include new provisions for tax invoice issuance timelines, the removal of certain clauses related to refunds and penalties, and the introduction of procedures for waiving interest or penalties under specified conditions. It also expands the applicability of provisions under sections 74A and related sections. These amendments streamline processes and clarify tax obligations for registered persons.

Notification No. 20/2024-Central Tax, dated 08<sup>th</sup> Oct 2024

### **Notification Seeks to notify date under sub-section (1) of Section 128A of CGST Act.**

The Central Government has issued Notification under Section 128A of the Central Goods and Services Tax Act, 2017, to establish timelines for registered taxpayers regarding tax payments after receiving specific notices or orders. The notification specifies that registered persons who receive notices or orders as mentioned in clauses (a), (b), or (c) of Section 128A must make their tax payments by March 31, 2025, to qualify for waivers on interest and penalties. Additionally, for registered persons who receive notices under Section 74, payments should be made within six months of the proper officer's order that re-determines the tax liability, treating the notice as if it were issued under Section 73. This measure aims to promote compliance and provide clarity to taxpayers. The provisions of this notification will take effect on November 1, 2024.

Notification No. 21/2024-Central Tax, dated 08<sup>th</sup> Oct 2024

### **Notification Seeks to notify the special procedure under section 148 of the CGST Act for rectification of demand orders issued for contravention of section 16(4) of the said Act.**

The Central Government has issued Notification No. 22/2024 under Section 148 of the Central Goods and Services Tax Act, 2017, outlining a special procedure for rectifying orders related to the wrongful availment of input tax credit (ITC). This applies to registered persons with orders under Sections 73, 74, 107, or 108, confirming incorrect ITC claims due to Section 16(4) violations, where these claims are now valid under Sections 16(5) or 16(6). Affected persons must electronically file rectification applications within six months of the notification date. The original authority will process these requests and issue rectified orders within three months. Natural justice principles will apply if rectifications adversely impact the applicant.

Notification No. 22/2024-Central Tax, dated 08<sup>th</sup> Oct 2024

## GST Updates

### **Notification Seeks to provide waiver of late fee for late filing of NIL FORM GSTR-7**

The Government of India has issued Notification under Section 128 of the Central Goods and Services Tax Act, 2017, waiving late fees for registered persons required to deduct tax at source under Section 51 who failed to submit their GSTR-7 returns from June 2021 onward by the due date. The late fee, which exceeds ₹25 per day, will be waived up to a maximum of ₹1,000. Additionally, registered persons with nil central tax deductions for any month will have their late fees completely waived. This notification will take effect from November 1, 2024.

Notification No. 23/2024-Central Tax, dated 08<sup>th</sup> Oct 2024

### **Notification Seeks to amend Notification No. 50/2018-Central Tax dated 13.09.2018**

The Government of India has issued Notification under the Central Goods and Services Tax Act, 2017, amending Notification No. 50/2018-Central Tax. This amendment introduces a new provision allowing registered persons to receive supplies of metal scrap (Chapters 72 to 81 of the Customs Tariff Act, 1975) from other registered persons. Furthermore, it modifies the third proviso to clarify that the notification does not apply to supplies of goods or services between specified persons under Section 51, except for those mentioned in the newly added clause (d). This notification is effective from October 10, 2024.

Notification No. 25/2024-Central Tax, dated 08<sup>th</sup> Oct 2024



## GST Updates

### Clarifications regarding applicability of GST on certain services

The Circular issued by the Government of India provides clarifications on the applicability of GST on various services following the 54th GST Council meeting held on September 9, 2024. Key points include:

**University Affiliation Services:** GST at 18% applies to affiliation services from universities to colleges, as these do not fall under educational exemptions.

**School Affiliation Services:** Services provided by Central and State educational boards to schools are taxable; exemptions apply only to government schools. Past GST liabilities from July 1, 2017, to June 17, 2021, are regularized.

**DGCA Flying Training Courses:** Approved flying training courses by DGCA are exempt from GST as educational services.

**Helicopter Passenger Transport:** GST on helicopter transport of passengers on a seat-share basis is set at 5%, while charter services remain at 18%. Past liabilities are regularized.

**GTA Ancillary Services:** Ancillary services related to road transportation will be treated as composite supplies, exempting them from separate GST if included in the transport charge.

**Import of Services by Foreign Airlines:** Exemptions for GST on imported services by foreign airlines from related establishments when made without consideration are regularized for past periods.

**Preferential Location Charges:** These charges for residential/commercial property sales are part of construction service consideration and attract GST at the same rate.

**Electricity Utilities:** Ancillary services by electricity utilities are exempt from GST, with past liabilities regularized.

**Film Distribution Services:** GST on transactions between film distributors and exhibitors, where theatrical rights are granted, is regularized for the period from July 1, 2017, to September 30, 2021.

Circular No. 234/28/2024-GST, dated 11<sup>th</sup> Oct 2024

## GST Updates

### Clarification regarding GST rates & classification (goods) based on the recommendations of the GST Council in its 54th meeting held on 9 th September 2024 at New Delhi

This circular from the Government of India, dated October 11, 2024, addresses clarifications on GST rates and classification of certain goods based on the recommendations of the GST Council from its 54th meeting. Here's a breakdown of the key points discussed in the circular:

#### Key Highlights:

##### 1) Extruded Savoury Food Products:

- Effective October 10, 2024, products under HS 19059030 attract 12% GST (previously 18%).
- Un-fried snack pellets retain 5% GST.

##### 2) RMPU Air Conditioning Machines for Railways:

- Classified under HS 8415, these machines attract a 28% GST rate.

##### 3) Car and Motorcycle Seats:

- Seats for two-wheelers: HS 8714 with 28% GST.
- Seats for four-wheelers: HS 9401 with 18% GST;
- 28% GST effective from October 10, 2024 to align with two-wheeler seats.

##### 4) Implementation:

- Field formations should follow these clarifications and report any issues to the Board.

Circular No. 235/29/2024-GST, dated 11<sup>th</sup> Oct 2024

### Clarification on Waiver of Interest and Penalty under Section 128A of CGST Act

The circular clarifies the implementation of Section 128A of the CGST Act, effective from November 1, 2024, which provides for the waiver of interest and/or penalty on demands raised under Section 73 for the financial years 2017-18, 2018-19, and 2019-20. It outlines the procedure for taxpayers to apply for the waiver, the conditions to be met, and the role of tax officers in processing the applications. The deadline for payment of tax to avail the waiver is March 31, 2025, or within six months for certain cases, with detailed steps for filing, payment, and rectification of demands.

Circular No. 238/32/2024-GST, dated 15<sup>th</sup> Oct 2024



## GST Updates

### Clarification regarding the scope of "as is / as is, where is basis" mentioned in the GST Circulars issued on the basis of recommendation of the GST Council in its meetings

#### Key Highlights:

#### 1) Clarification on "As is/As is, where is" basis:

- The "as is" or "as is, where is" basis regularizes past GST payments where competing rates existed.
- For situations where some taxpayers paid a lower rate (including nil) and others paid a higher rate, the lower rate will be accepted as full discharge of tax liability, with no refunds for those who paid the higher rate.

#### 2) Illustrations:

- **Example 1:** If taxpayers paid 5% and others paid 12%, the 5% payment is treated as fully settled for the past period, and no refund will be given to those who paid 12%.
- **Example 2:** If some taxpayers paid 5% and others claimed exemption (nil), the non-payment of tax is accepted, and no differential tax is due.
- **Example 3:** If an issue arose between 5% and 12%, and some paid 5%, it will be treated as full payment, but unpaid tax will be recovered at 12%. Action: Field formations are directed to follow these clarifications for consistent application.

Circular No. 236/30/2024-GST, dated 11<sup>th</sup> Oct 2024

### Clarification on Provisions of Section 16 (5) and (6) of the CGST Act, 2017

The Circular clarifies the implementation of sub-sections (5) and (6) in Section 16 of the CGST Act, 2017, inserted retrospectively through the Finance Act, 2024. It extends the time limit for availing input tax credit (ITC) in certain cases for financial years 2017-18 to 2020-21 and specifies conditions under which taxpayers can rectify past orders. It also provides procedures for taxpayers to avail ITC and rectify wrong availment, excluding cases where ITC was wrongly claimed but now allowed due to the amendments. No refunds for taxes paid or ITC reversed earlier will be granted under this amendment.

Circular No. 237/31/2024-GST, dated 15<sup>th</sup> Oct 2024



# GST Portal

## New GST Provision for Metal Scrap Transactions

The government has issued Notification 25/2024-Central Tax, on October 9, 2024, under GST Section 51 of the CGST Act, 2017 mandating compliance by the businesses dealing with Metal Scrap. The GST portal will soon be updated to enable compliance of registration through FORM GST REG-07 by these category of registered persons.

## Advisory on IMS

Invoice Management System (IMS) is made available to taxpayers from Today, 14th Oct, 2024. The new system shall facilitate taxpayers in matching their records/invoices vis a vis issued by their suppliers for availing the correct Input Tax Credit (ITC). Taxpayers can make use of this system to take action on the invoices reflecting on IMS from 14th Oct, 2024. The first GSTR-2B would be generated for the return period Oct'24 on 14th November, 2024 considering action taken on Invoice Management System. It may be noted that it is not mandatory to take action on invoices in IMS dashboard for GSTR-2B generation.

## Important advisory for GSTR-9/9C

Starting FY 2023-24, GST system will auto-populate eligible ITC for domestic supplies (excluding reverse charge and imports ITC) from table 3(l) of GSTR-2B to table 8A of GSTR-9. These changes in GSTR-9 and 9C for the FY 2023-24 will be available on the GST portal from today i.e., 15th October 2024 onwards. Further, a validation utility will be executed progressively (for validation by taxpayers) to complete the auto population of GSTR-9 from GSTR-2B for Apr-23 till Mar-24.



# GST Portal

## Locking of auto-populated liability in GSTR-3B

This update describes recent and upcoming changes to the GST return filing process aimed at reducing errors and enhancing accuracy. Key points are:

- **Pre-filled GSTR-3B:** The GST Portal now provides a pre-filled GSTR-3B form. Tax liability is auto-populated from GSTR-1/GSTR-1A/IFF (as declared by the supplier), and Input Tax Credit (ITC) is auto-populated from GSTR-2B. A detailed, system-generated PDF of the pre-filled form is also available.
- **Amendment of Outward Supplies:** Taxpayers can correct any errors in their outward supplies via GSTR-1A before filing GSTR-3B. For inward supplies, taxpayers can manage their ITC claims using the Invoice Management System (IMS), allowing them to accept, reject, or mark invoices as pending.
- **Restriction from January 2025:** Starting from January 2025, the GST Portal will restrict changes to the auto-populated tax liability in GSTR-3B. Any necessary changes must be made through GSTR-1A before finalizing the return.
- **Locking of Auto-populated ITC:** The locking of ITC in GSTR-3B will be implemented later, after the IMS issues are fully resolved. A separate advisory will be issued before this change comes into effect.



## Customs & Others

### CESTAT Grants Refund of CVD Based on Supreme Court Ruling

In the case the CESTAT Chandigarh allowed the appeal by Vinod Brothers, granting them a refund of Countervailing Duty (CVD) paid under protest. The refund was based on the Supreme Court's ruling in SRF Limited, which allowed a class of importers exemption from CVD under Notification No. 30/2004-CE. The Tribunal ruled that payments made under protest are treated as deposits, not duty, and are thus not subject to a limitation period. CESTAT rejected the Revenue's argument on the timing of the protest and ruled in favor of the Assessee, noting that no show-cause notice or adjudication was issued to deny the refund.

*M/s Vinod Brothers vs Commissioner of Customs, Amritsar, [Customs Appeal No. 60470 of 2019]*

### HC Dismisses Writ Petition on Seizure of Imported Goods Due to Misrepresentation

In the case the High Court dismissed a writ petition challenging the seizure and confiscation of jewellery valued at approximately ₹3 crores. The court ruled that the petitioner failed to make a "candid disclosure" of all relevant facts, specifically regarding the import status of the goods and the firm's legal registration. The case revolved around whether the imported goods qualified as freely importable silver jewellery or fell

under a restricted category. The court upheld the confiscation under Section 125 of the Customs Act, 1962, criticizing the petitioner for misleading the court and making false claims about being a registered partnership firm.

*Purvi Jewellers vs. UOI & Ors. [TS-432-HC-2024(BOM)-CUST]*

### CESTAT Allows Refund of Excise Duty to Company Despite Procedural Lapse

In the case the CESTAT Ahmedabad allowed a refund of 20% excise duty and infrastructure cess to General Motors India for vehicles registered as taxis. The Tribunal ruled that although there was a procedural lapse in how the credit was taken, the substantive conditions for claiming the exemption under Notification No. 12/2012-CE were met. The manufacturer fulfilled key requirements, such as ensuring the vehicle registration as taxis and refunding the reduced duty to end consumers. The Tribunal held that the procedural lapse did not justify denying the refund claim.

*General Motors India Pvt. Limited vs. Commissioner of Central Excise & ST, Vadodara-II [TS-454-CESTAT-2024-EXC]*



## Customs & Others

### CESTAT Remands Appeal for Fresh Consideration of Cenvat Credit Related to Factory Construction Services

In the case the Customs, Excise, and Service Tax Appellate Tribunal (CESTAT) addressed the entitlement of Kohler India for Cenvat Credit concerning services used in constructing their factory building. The Learned Commissioner disallowed the credit, citing that the factory was neither an output service nor subject to Central Excise duty. However, this is the second round of appeal; the Tribunal previously remanded the matter due to non-compliance with legal precedents and a lack of independent reasoning from the adjudicating authority. The Tribunal found that the current order was a verbatim repetition of an earlier order, lacking a fresh application of mind. Consequently, it set aside the impugned order, remanding the case for a de novo decision within two months, ensuring the appellant receives adequate opportunity for a personal hearing.

*Kohler India Corporation Pvt. Ltd. vs. Commissioner of Central Excise [Excise Appeal No. 10254 of 2024 - DB]*

### High Court Upholds Input Tax Credit Claim, Dismissing State's Appeal

The Court noted that the questions raised by the State primarily focused on the Tribunal's findings rather than

on issues of law. The Tribunal had confirmed that Jain had satisfactorily demonstrated compliance with the requirements for claiming input tax credit, producing necessary documentation, including tax invoices, payment records, and certificates from banks verifying payments to the selling dealers.

The High Court ruled that the Tribunal's findings were based on substantial evidence and were not perverse. The court emphasized that the purchaser dealer should not be deprived of input tax credit if they could prove payment of the VAT to the selling dealer, regardless of whether the dealer subsequently deposited that amount with the government. As a result, the Court found the State's petitions meritless, condoned the 22-day delay in filing, and dismissed the appeals.

*State of Karnataka vs. Sri Rajesh Jain [STRP No. 712016]*



## Customs & Other Updates

### Retrospective issuance of certificates of origin under India-UAE CEPA.

The Central Board of Indirect Taxes & Customs (CBIC) has issued Instruction No. 21/2024-Customs to address concerns related to the retrospective issuance of Certificates of Origin (COO) under the India-UAE Comprehensive Economic Partnership Agreement (CEPA). The key issues pertain to the acceptance of COOs issued retrospectively during provisional assessments, which has resulted in the denial of preferential benefits.

#### Key Clarifications in the Instruction:

##### 1) Retrospective Issuance of COO:

- As per Rule 15(11) of CEPA's rules of origin, COOs can be issued retrospectively in exceptional circumstances, such as errors or omissions during the shipment process. These COOs must be marked as "ISSUED RETROSPECTIVELY" and issued within 12 months from the shipment date.

##### 2) Refund Claims:

- Rule 21(3) allows importers to claim refunds for excess duties paid if the product qualifies as originating but the preferential benefit was not granted at the time of import. This can be done upon subsequent submission of a valid COO.

##### 3) Minor Discrepancies:

- Under Rule 15(13), minor errors (e.g., typing mistakes) in the COO will not invalidate the certificate, provided that these discrepancies do not affect the authenticity of the document or the product's origin.

##### 4) Application of Rules:

- The requirement to upload the COO on e-Sanchit does not apply when the COO is issued after the date of importation. The instruction emphasizes that procedural discrepancies should not hinder the application of substantive benefits under the trade agreement unless they raise doubts about the product's origin.

The CBIC has urged customs authorities to ensure proper implementation of these guidelines to preserve the benefits of the India-UAE CEPA, particularly when dealing with retrospectively issued COOs.

Instruction No. 21/2024-Customs, dated 16<sup>th</sup> Oct 2024



## Customs & Other Updates

### Clarification on Import/Re-import of "Exhibits and Samples"

The DGFT has clarified that import/re-import of exhibits and samples for demonstration, display, or exhibition (in India or abroad) is exempt from import authorization or registration under the Import Monitoring Systems. This is governed by Para 2.60 of the HBP 2023, requiring only the submission of a bond/security to Customs or an ATA Carnet.

Trade Notice No. 20/2024-25 - DGFT, dated 7<sup>th</sup> Oct 2024

### Amendment in Appendix 10M of HBP 2023 Expanding GAICT Coverage for SCOMET Items

The Directorate General of Foreign Trade (DGFT) has issued a public notice amending Appendix 10M of the Handbook of Procedures (HBP) 2023, expanding the scope of the Global Authorization for Intra-Company Transfer (GAICT) policy. This amendment allows for a broader range of SCOMET Category 8 items, including software and technology, to be exported or re-exported under a liberalized regime. The transfer is permitted to the countries listed in Table 1 of Para 10.15 of HBP 2023, facilitating smoother intra-company transfers and enhancing trade flexibility

Public Notice No. 26/2024-25 - DGFT, dated 7<sup>th</sup> Oct 2024

### Clarification on NOC Requirements for SEZ Procurement

The DGFT has issued a clarification regarding the procurement of Acetic Anhydride by Advance Authorization holders from Special Economic Zone (SEZ) units. It confirms that an NOC is not required if the Acetic Anhydride is produced by an SEZ unit and supported by a Certificate of Supplies. This exemption pertains to the provisions outlined in Paragraph 4.08 (ii) of the Handbook of Procedures 2023, streamlining the procurement process for authorized exporters.

Policy Circular No. 08/2024-25 - DGFT, dated 11<sup>th</sup> Oct 2024



## Customs & Other Updates

### Electronic Submission of Appendix 4H Certificates

The Directorate General of Foreign Trade (DGFT) has introduced an electronic system for the digital submission of Appendix 4H certificates, enabling exporters to seamlessly upload digitally signed documents from Certifying Authorities, such as Chartered Accountants and Company Secretaries.

The online facility allows exporters to fill out the Appendix 4H format, submit it to their certifying authority for verification, and receive a digitally signed certificate automatically attached to their Advance Authorization or DFIA redemption applications. This initiative streamlines the verification of duty-free imported or domestically sourced materials, enhancing efficiency in compliance with the Foreign Trade Policy.

[Trade Notice No. 21/2024-25 - DGFT, dated 17<sup>th</sup> Oct 2024](#)



## Import and Export data

**Imports of September 2024 at \$ 71.68 B**

**Exports of September 2024 at \$ 65.19 B**

|  |               | September 2024<br>(USD Billion) | September 2023<br>(USD Billion) |
|--|---------------|---------------------------------|---------------------------------|
| Merchandise                              | Exports       | 34.58                           | 34.41                           |
|  | Imports       | 55.36                           | 54.49                           |
| Services*                                | Exports       | 30.61                           | 28.42                           |
|  | Imports       | 16.32                           | 14.58                           |
| Total Trade<br>(Merchandise +Services) * | Exports       | 65.19                           | 62.83                           |
|  | Imports       | 71.68                           | 69.06                           |
|  | Trade Balance | -6.49                           | -6.23                           |

Source : PIB



# Darda

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## Indirect Tax Services

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- GCC VAT

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