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DA TAX ALERT
INDIRECT TAX

AN E-TAX ALERT FROM
Darda Advisors LLP

October 2024
Issue: 53

GST COMPLIANCE CALENDER

GOODS AND SERVICE TAX

CUSTOMS AND OTHER

DA NEWS

PREFACE

We are pleased to present to you the Fifty-Third edition of DA Tax Alert, our monthly update on recent developments in the field of Indirect tax laws. This issue covers updates for the month September 2024.

During the month of September 2024, there were certain changes under Goods and Service Tax, Customs and other; key judgments and rulings such as SC ruling on Eligibility of ITC on Immovable Property and RoDTEP Scheme Extended for DTA, AA, EOU, and SEZ Units and new rates has been prescribed

In the Fifty-Third edition of our DA Tax Alert-Indirect Tax, we look at the tumultuous and dynamic aspects under indirect tax laws and analyze the multiple changes in the indirect tax regime introduced during the month of September 2024.

The endeavor is to collate and share relevant amendments, updates, articles, and case laws under indirect tax laws with all the Corporate stakeholders.

We hope you will find it interesting, informative, and insightful. Please help us grow and learn by sharing your valuable feedback and comments for improvement.

We trust this edition of our monthly publication would be an interesting read.

Regards

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Co-founder and Managing Partner

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Tax and Regulatory Services

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GST COMPLIANCE CALENDAR

October 2024

10
GSTR-7
TDS Deductor

10
GSTR-8
TCS Deductor

11
GSTR-1
Normal Taxpayer

13
GSTR-1/6
QRMP Taxpayer & Input Service Distributor

20
GSTR-5A
OIDAR Service Provider

20
GSTR-3B
Normal & QRMP Taxpayer

20
GSTR-5
Non-Resident Taxable Person

ITC related Case laws:

- SC ruling on Eligibility of ITC on Immovable Property
- HC Quashes Orders Blocking ITC Under Rule 86A
- HC Restores Application Against ITC Blocking Under Rule 86A

Other Case laws:

- Jurisdictional Validity of Show Cause Notices under Section 74 of the CGST Act
- Legality of Consolidated Show Cause Notices Across Multiple Assessment Years
- High Court Quashes Duplicate Tax Demand
- Reaffirming Limits on Issuing Show Cause Notices Under GST
- HC Orders Bifurcation of Show Cause Notices to Facilitate Amnesty Scheme Benefits
- Other Notifications/Circulars/Guidelines/instructions/Portal changes

SC ruling on Eligibility of ITC on Immovable Property

Issue:

Whether the Input Tax Credit (ITC) can be claimed for goods and services used in the construction of immovable property (e.g., malls) intended for rental or lease. This revolves around the interpretation and application of Section 17(5)(d) of the Central Goods and Services Tax (CGST) Act, 2017, which restricts the availability of ITC in certain circumstances, especially concerning construction undertaken for one's own account.

Legal Provisions:

1. **Section 17(5)(d) of the CGST Act, 2017:** Prohibits ITC for the construction of immovable property unless it pertains to "plant or machinery."
2. **Articles 14 and 19(1)(g) of the Indian Constitution:** The respondents argue that the denial of ITC is discriminatory and violates the constitutional principles of equality and freedom of trade.

Observation and Comments:

1) Distinction Between Clauses (c) and (d) of Section 17(5):

Clause (d) prevents ITC when goods or services are used to construct an immovable property for personal use, but makes exceptions for "plant or machinery" or construction not for one's own account.

SC emphasized that construction is not on a taxable person's "own account" if it is intended for lease, rental, or sale.

2) Clarification on 'Plant or Machinery':

SC clarified that the term "plant or machinery" has a broader commercial meaning and is not limited by the narrow definition found elsewhere in the CGST Act. The court reiterated that buildings used for business purposes (e.g., malls, warehouses) could be treated as a plant, depending on their functionality.

The SC ruled against reading "or" in Section 17(5)(d) as "and," preserving the legislative intent that plant and machinery can be distinct entities.

3) Functionality Test:

The SC introduced a functionality test to determine whether a building can qualify as a "plant" under Section 17(5)(d). If a building is essential for business operations (e.g., malls designed for lease), it could be considered a plant and thus eligible for ITC.

4) Revenue's Argument on Breaking the Credit Chain:

SC rejected Revenue's argument that constructing immovable property automatically breaks the tax chain. Rental or leasing activities are deemed as supplies, and ITC could be valid if the building qualifies as a plant.

5) Potential Discriminatory Treatment:

The SC addressed the apprehension that distinguishing "plant and machinery" from "plant or machinery" could lead to unequal treatment. However, it noted that the two clauses operate in substantially different areas, thereby negating any claims of discrimination.

6) Constitutional Validity:

The SC affirmed the constitutional validity of clauses (c) and (d) of Section 17(5), stating that they comply with the reasonable classification principles and do not violate Articles 14 or 19(1)(g). The right to ITC is statutory, and taxpayers cannot claim it as a fundamental right unless explicitly provided by the law.

Chief Commissioner of Central Goods and Service Tax & Ors. vs. M/s Safari Retreats Private Ltd. & Ors. (Civil Appeal No. 2948 of 2023)

SC ruling on Eligibility of ITC on Immovable Property

7) High Court Remand:

SC referred the case back to the High Court, instructing it to apply the functionality test to decide whether the mall in question qualifies as a plant. Each case must be determined on its specific facts and merits.

DA Insights:

1) Precedent-Setting on ITC for Real Estate:

This judgment sets an important precedent for developers, mall owners, and companies constructing commercial buildings. If a building is deemed a "plant," businesses may benefit from claiming ITC, potentially reducing their tax liability.

2) Functionality Test is Crucial:

The introduction of the functionality test is a key insight for businesses constructing immovable properties. For developers of malls, warehouses, and commercial buildings, proving that a building serves a crucial function in delivering taxable services could open the door for substantial ITC benefits.

3) Distinction in Treatment of Immovable Property:

The SC's distinction between "plant and machinery" and "plant or machinery" reinforces the need for businesses to assess the nature of their assets. Entities involved in rental, leasing, or service delivery may now have stronger grounds to claim that their premises qualify as "plant."

4) Impact on Business Models:

The ruling favors businesses that lease or rent out commercial properties, as they can argue that their building qualifies as plant, thereby continuing the GST tax credit chain. This could encourage the construction of commercial properties intended for lease rather than sale, affecting business strategies in sectors like retail, hospitality, and warehousing.

5) Implications for State and Central Legislation:

The judgment also emphasizes the delicate balance between State and Central tax powers. The CGST Act allows for ITC on services used for leasing and renting activities, aligning with the federal structure without overstepping into state powers under Entry 49 of List II (related to land and buildings).

6) Clarity on GST and Construction:

By clarifying that even buildings constructed after receiving a completion certificate can be taxed as a service, the SC has provided businesses with much-needed clarity on when and how ITC can be claimed in relation to commercial properties.

7) Long-Term Impact on Compliance:

The judgment is expected to have a long-term impact on tax compliance by providing clear guidelines on the interpretation of "plant" and "machinery" in the context of immovable property, thus helping businesses optimize their tax planning.

8) Complexities in Future Litigation:

The emphasis on case-by-case application of the functionality test suggests that future disputes involving ITC claims on commercial properties are likely to be fact-driven, with courts assessing whether buildings serve a pivotal role in service delivery.

Chief Commissioner of Central Goods and Service Tax & Ors. vs. M/s Safari Retreats Private Ltd. & Ors. (Civil Appeal No. 2948 of 2023)

Jurisdictional Validity of Show Cause Notices under Section 74 of the CGST Act

DA Insights:

This case underscores the wide jurisdiction of State GST officers under the CGST Act, affirming that a proper officer can issue SCNs even concerning dealings across multiple states.

Issue:

Whether the issuance of a Show Cause Notice (SCN) under Section 74 of the CGST Act by the Chandigarh authority, related to transactions in other states, constitutes a jurisdictional error.

Legal Provisions:

Section 74,4,5 and 6(2)(b) of the CGST Act, 2017

Observation and Comments:

The Punjab & Haryana High Court held that the issuance of the SCN by the Chandigarh authority was valid and found no jurisdictional error in the case. The Assessee argued that the SCN was issued erroneously since it related to supplies made in other states, and thus, the Chandigarh authorities lacked jurisdiction. However, the Court noted that the Assessee did not respond to the SCN and instead approached the court directly on jurisdictional grounds.

The Court, after referring to relevant provisions of the CGST Act, concluded that the powers of State GST officers are equivalent to those appointed under Union Territory law. As per the CGST Act, once a State GST officer issues a notice under Section 74, no other authority from a different state can initiate parallel proceedings. The Court left it open for the Assessee to file its objections and expected the authority to pass a well-reasoned speaking order.

Ethos Ltd vs. The Additional Commissioner [TS-591-HC(P&H)-2024-GST]

Legality of Consolidated Show Cause Notices Across Multiple Assessment Years

DA Insights:

This ruling underscores the necessity for tax authorities to issue separate SCNs for each assessment year, reinforcing compliance with the CGST Act's procedural requirements.

Issue:

Whether the issuance of a common show cause notice (SCN) encompassing multiple assessment years from 2017-18 to 2020-21 contravenes the provisions of the CGST Act.

Legal Provisions:

Section 73 & 73(10) of the CGST Act, 2017

Observation and Comments:

The Karnataka High Court quashed the consolidated show cause notice issued for multiple assessment years, stating that the practice of grouping tax periods contravenes the provisions of the CGST Act and established legal precedents. The court emphasized that actions related to tax assessments must be executed within designated years and cannot be combined across different years. This stance was supported by the Supreme Court's judgment in the Caltex (India) Ltd. case, which clarified that assessments covering different years must be treated distinctly.

The court found the respondent had fundamentally erred in issuing a single SCN for the years 2017-18 to 2020-21. It highlighted the importance of adhering to the legal requirement that actions must be completed within the relevant year, as stipulated in Section 73(10) of the CGST Act. The ruling allowed the writ petition and quashed the impugned SCN while clarifying that the respondent is permitted to issue separate SCNs for each assessment year as per legal provisions.

Veremax Technologie Services Limited Vs The Assistant Commissioner Of Central Tax [TS-602-HC(KAR)-2024-GST]

HC Quashes Orders Blocking ITC Under Rule 86A

DA Insights:

This judgment reinforces the principle that taxpayers possess a statutory right to Input Tax Credit, which cannot be unduly curtailed without clear justification.

Issue:

The case examines the legality of orders passed by the Commissioner, or an officer authorized by the Commissioner, under Rule 86A of the CGST Rules, which blocked Input Tax Credit (ITC) in the Electronic Credit Ledgers (ECL) of taxpayers, thereby creating an artificial negative balance.

Legal Provisions:

Rule 86A of the CGST Rules, 2017 & Section 41 of the CGST Act

Observation and Comments:

The Delhi High Court highlighted that the blocking of ITC under Rule 86A is a significant action that effectively reduces a taxpayer's working capital. The Court emphasized that the phrase "amount equivalent to such credit" refers specifically to the ITC available in the taxpayer's ECL, not to ITC that has been previously utilized or refunded. The Court clarified that Rule 86A does not authorize the Commissioner to require a taxpayer to replenish their ECL with valid ITC that had been used in the past, as this would equate to an order for tax recovery.

The Court dismissed the Revenue's contention that Rule 86A could be interpreted in multiple ways, affirming that its plain language is unambiguous. It noted that the two conditions for invoking Rule 86A must be satisfied, and if no ITC is available in the ECL, the prerequisites for passing an order under Rule 86A(1) would not be met. Furthermore, it clarified that the power to block ITC under Rule 86A is a drastic one and that the lack of a prior show cause notice is permissible given the emergent nature of this provision. The judgment ultimately underscored the vested right of taxpayers to utilize their valid ITC without arbitrary interference.

Best Crop Science Pvt. Ltd Vs Principal Commissioner, CGST Commissionerate, Meerut and ors. [TS-603-HC(DEL)-2024-GST]

HC Restores Application Against ITC Blocking Under Rule 86A

DA Insights:

This judgment underlines the importance of due process in blocking ITC and emphasizes that taxpayers must be given a fair opportunity to present their case for unblocking.

Issue:

The case concerns the blocking of Input Tax Credit (ITC) under Rule 86A of the CGST/OGST Act by the Commissioner of State Tax and the subsequent rejection of Atulya Minerals' application to unblock the ITC without proper consideration.

Legal Provisions:

Rule 86A of the CGST/OGST Rules, 2017 and Section 41 of the CGST Act

Observation and Comments:

The Orissa High Court noted that the Commissioner had rejected Atulya Minerals' application to unblock the ITC without applying its mind. The rejection referenced a prior High Court decision without addressing the specific reasons provided by the petitioner for unblocking the ITC. The Court emphasized that Rule 86A(2) provides a mechanism for the taxpayer to apply for the unblocking of ITC after receiving the reasons for the blockage, and the authority is required to consider such applications carefully.

The Court set aside the impugned communication and restored the application for reconsideration by the Commissioner. The Court highlighted that the legislature's intention is to provide taxpayers with an opportunity to present their case for unblocking within a year, recognizing that ITC blocking imposes significant business hardship. The Court directed the Commissioner to pass a fresh order within three weeks.

Orissa High Court, Atulya Minerals vs. Commissioner of State Tax [W.P.(C) No. 22157 of 2024]

High Court Quashes Duplicate Tax Demand

DA Insights:

The judgment emphasizes the importance of providing personal hearings and avoiding repetitive demands for the same issue. Authorities must follow due process when issuing tax demands, ensuring taxpayers have adequate opportunities to address discrepancies.

Issue:

The case addresses a duplicate demand issued by the Revenue concerning a mismatch between GSTR-3B and GSTR-2A, which was raised again after the Madras High Court had quashed a similar previous order and remanded the matter for reconsideration.

Legal Provisions:

GST Provisions regarding reconciliation of GSTR-3B and GSTR-2A

Observation and Comments:

The Madras High Court observed that the Revenue had issued a new order dated December 30, 2023, demanding the same tax of ₹24,95,172 due to a mismatch between GSTR-3B and GSTR-2A for the 2017-18 assessment year. This demand duplicated an earlier order dated December 19, 2023, which had been set aside by the Court on the ground that the petitioner had not been provided with a personal hearing.

Justice noted that the issues raised in the impugned order overlapped with the earlier assessment, which had already been quashed and remanded for fresh consideration. The Court, therefore, set aside the impugned order once again and directed the Revenue to provide a fresh opportunity for a personal hearing before issuing any new orders.

Madras High Court, Rice Lake Weighing Systems India Ltd vs. The State Tax Officer [W.P. No. 12322 of 2024]

Reaffirming Limits on Issuing Show Cause Notices Under GST

DA Insights:

The judgment reinforces the distinct scope and applicability of Sections 73 and 74 of the GST Act. It clarifies that an SCN under Section 74 can only be issued in cases of fraud or wilful misstatement, and authorities cannot arbitrarily reissue a notice under this section after dropping an earlier one under Section 73 without meeting the requisite conditions.

Issue:

The case pertains to the legality of a second Show Cause Notice (SCN) issued under Section 74 of the GST Act, 2017, for excessive Input Tax Credit (ITC) claims. The second SCN was issued after the first SCN under Section 73 was dropped by the Revenue following a detailed reply and submission of documents by the assessee.

Legal Provisions:

Sections 73 & 74 of the GST Act

Observation and Comments:

The Allahabad High Court quashed the second SCN issued under Section 74, holding that it was without jurisdiction as it lacked the essential ingredients of fraud, wilful misstatement, or suppression of facts. The Court observed that the second SCN was issued on the same facts as the first one, which had already been dropped by the Revenue after considering the detailed reply and evidence submitted by the assessee.

The Court emphasized the clear distinction between Sections 73 and 74. Section 73 applies to cases where ITC is wrongly availed for reasons other than fraud, while Section 74 applies in cases involving fraud or wilful suppression of facts. Since the second SCN under Section 74 did not mention any fraudulent activity or suppression of facts, it was deemed invalid.

The High Court, referring to Supreme Court judgments in Raj Bahadur Narain and HMM Ltd., concluded that once the proceedings under Section 73 had been finalized, the authorities could not reopen the case under Section 74 unless they were satisfied that fraud or wilful suppression had occurred. Since the second SCN failed to meet these requirements, the proceedings were held to be without jurisdiction.

HCL Infotech Ltd. vs. Commissioner, Commercial Tax & Anr. [TS-613-HC(ALL)-2024-GST]

HC Orders Bifurcation of Show Cause Notices to Facilitate Amnesty Scheme Benefits

DA Insights:

This case reinforces judicial opposition to the practice of bunching SCNs, especially when it prevents taxpayers from utilizing beneficial schemes. The decision supports clarity in tax administration and highlights the importance of segregating assessment periods for compliance.

Issue:

The petitioner challenged the issuance of a single Show Cause Notice (SCN) covering six assessment years for the alleged misclassification of two-wheeler seats, which resulted in short payment of GST. They sought bifurcation of the SCNs to avail benefits of an Amnesty Scheme scheduled for November 2024.

Legal Provisions:

Section 74 of the CGST Act and Amnesty Scheme for waiver of interest and penalties (effective from November 2024)

Observation and Comments:

The Madras High Court observed that the petitioner had already deposited ₹124 crores as differential tax under protest and was willing to forgo any refund or raise limitation issues, provided that separate SCNs were issued for each assessment year. The Court noted that the practice of bunching SCNs for multiple years was previously found flawed in the Titan Company Ltd. case. The petitioner's inability to avail of the Amnesty Scheme due to this bunching was a valid concern.

Therefore, the Court set aside the impugned SCN, directing the Revenue to issue separate SCNs for each of the six assessment years within two weeks. The Court recorded the petitioner's commitment to neither seek a refund of the deposited amount nor raise any issues of limitation if separate notices were issued.

Uno Minda Ltd. vs. The Joint Commissioner of GST and Central Excise, W.P. No. 27776 of 2024

GST Notification / Circulars / Guidelines / Instructions

Empowerment of Principal Bench of Appellate Tribunal

The Central Government, through Notification No. 18/2024 dated 30th September 2024, empowers the Principal Bench of the Appellate Tribunal under the GST Act, 2017 to assess whether input tax credits or tax rate reductions availed by registered persons have resulted in a corresponding price reduction for goods or services supplied. This decision follows recommendations from the GST Council and will be effective from 1st October 2024.

Notification No. 18/2024 – Central Tax, dated 30th Sep, 2024

Cessation of Authority for Price Examination

The Central Government, via Notification No. 19/2024 dated 30th September 2024, announces that from 1st April 2025, the Authority under section 171 of the GST Act, 2017 will no longer accept requests to examine whether input tax credits or tax rate reductions have led to corresponding price reductions for goods or services. This decision is based on recommendations from the GST Council and is effective from the date of the notification's publication in the Official Gazette.

Notification No. 19/2024 – Central Tax, dated 30th Sep, 2024

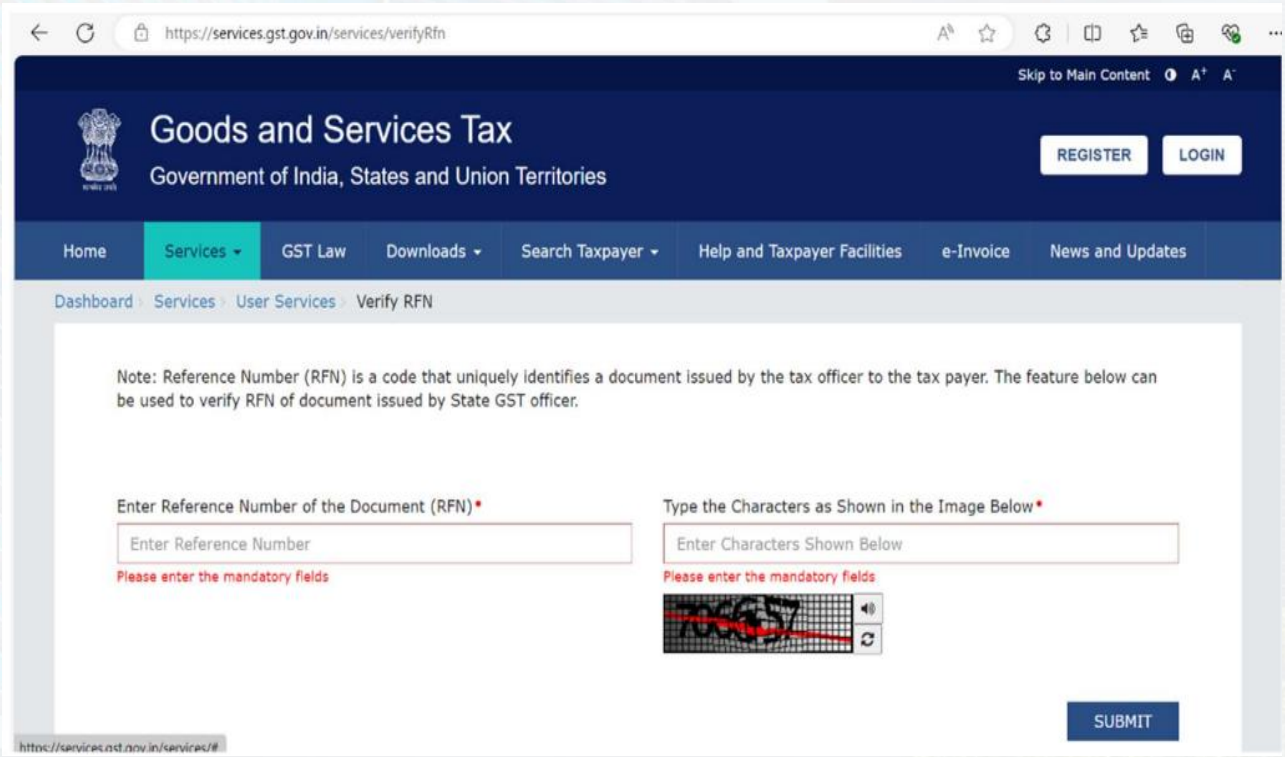
GSTN Portal Changes

Archival of GST Returns Data on GST Portal

As per Section 39(11) of the CGST Act, 2017, taxpayers can no longer file GST returns three years after the due date, effective from October 1, 2023. Following the GST portal data policy, data will be available for taxpayer view for only seven years. Accordingly, returns filed for July 2017 have been archived on August 1, 2024, and August 2017 data was archived on September 1, 2024. This archival process will continue monthly, with September 2017 data being taken down on October 1, 2024. Taxpayers are advised to download any necessary data for future reference.

Advisory on Issuance of Notices/Orders Without Digital Signatures of the Issuing Authorities

Concerns have arisen regarding the validity of documents issued by tax officers on the common portal, such as Show Cause Notices and Refund Orders, that lack digital signatures. It is clarified that these documents are generated through the officer's login using digital signatures, rendering physical signatures unnecessary. Such computer-generated documents contain order details and are stored in the GST system with the issuing officer's digital signature. Taxpayers can verify the validity and purpose of these documents by navigating the GST common portal pre-login and post-login. All critical actions by officers are authenticated through their digital signatures, including the issuance of notices and orders.



GSTN Portal Changes

Restoration of GST Returns Data on Portal

Following the advisory on September 24, 2024, regarding the archival of GST return data after seven years, the archived data for July and August 2017 was restored on the portal due to requests from the trade community facing difficulties. Users are advised to download and save the restored data as the archival policy will be implemented again after providing advance notice.

Advisory: GSTN e-Services App to Replace e-Invoice QR Code Verifier App Shortly

GSTN announces the launch of the new GSTN e-Services app, which will replace the existing e-Invoice QR Code Verifier App. The new app allows users to verify B2B e-Invoices by scanning QR codes, check the live status of Invoice Reference Numbers (IRNs), search for GSTIN details, and view return filing history. Users can input search details through text, voice, or scan functions, and share results via the app. The app will soon be available on Google Play Store and App Store, and no login is required for use.

Advisory on Proper Entry of RR No./Parcel Way Bill (PWB) Numbers in EWB System Post EWB-PMS Integration

This advisory informs taxpayers about the integration of the Indian Railways Parcel Management System (PMS) with the E-Way Bill (EWB) system, allowing for seamless transfer of RR No./PWB data. Taxpayers must accurately enter the Parcel Way Bill or RR No. in Part-B of the EWB to ensure compliance and avoid discrepancies. The correct format for entry is specified as "PXXXRRNo," where "P" indicates PMS, "XXX" is the From Station Code, and "RRNo" is the Railway Receipt number. Mismatches will trigger alerts in the system, emphasizing the importance of accurate data entry for tracking and verification. For assistance, taxpayers are encouraged to raise tickets with the support team.

Advisory for Biometric-Based Aadhaar Authentication for GST Registration in Kerala, Nagaland, and Telangana

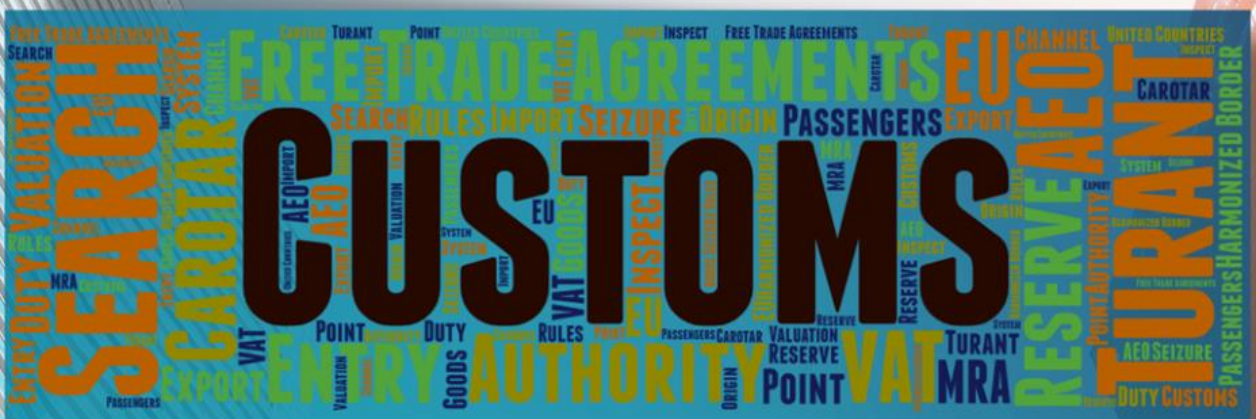
As of October 5th, 2024, the GST registration process in Kerala, Nagaland, and Telangana requires applicants to undergo Biometric-based Aadhaar Authentication and document verification. This follows an amendment to Rule 8 of the CGST Rules, 2017. Upon submitting Form GST REG-01, applicants will receive an email with a link for either OTP-based Aadhaar Authentication or to book an appointment at a GST Suvidha Kendra (GSK). At the GSK, applicants must present their Aadhaar, PAN, and original documents. Successful biometric verification will lead to the generation of ARN, and appointments should be scheduled within the allowed timeframe.

GST Collection

Rs 1,73,240 crore gross GST revenue collected for September 2024

GST Gross and Net Collections (Amount in crores) – September 2024						
	Monthly			YTD		
GST Collections	Sep 2023	Sep 2024	% Growth	Sep 2023	Sep 2024	% Growth
A	B	C	D = C/B-1	E	F	G = F/E-1
A.1. Domestic						
CGST	29,818	31,422		1,85,784	2,03,552	
SGST	37,657	39,283		2,32,606	2,52,502	
IGST	42,477	46,087		2,61,903	2,97,085	
CESS	10,733	11,059		64,778	69,749	
Gross Domestic Revenue	**1,20,686**	**1,27,850**	**5.9%**	**7,45,071**	**8,22,888**	**10.4%**
A.2. Imports						
IGST	41,145	44,507		2,41,714	2,58,291	
CESS	881	883		5,723	5,917	
Gross Import Revenue	**42,026**	**45,390**	**8.0%**	**2,47,436**	**2,64,208**	**6.8%**
A.3. Gross GST Revenue(A.1+A.2)						
CGST	29,818	31,422		1,85,784	2,03,552	
SGST	37,657	39,283		2,32,606	2,52,502	
IGST	83,623	90,594		5,03,617	5,55,376	
CESS	11,613	11,941		70,501	75,666	
Total Gross GST Revenue	**1,62,712**	**1,73,240**	**6.5%**	**9,92,508**	**10,87,095**	**9.5%**

Link: https://tutorial.gst.gov.in/downloads/news/revenue_report_sep24.pdf



- CESTAT Rules e-Learning Content Not OIDAR Service , Classifies as Export of Services
- High Court Holds 120-Day Time Limit for CESTAT to Submit Statement of Case as Directory, Not Mandatory
- High Court Allows Refund of Customs Duty Paid by Mistake Despite Time-Bar Under Section 27
- CESTAT Affirms Confiscation and Penalties for Mis-declaring Country of Origin to Evade Anti-Dumping Duty
- SC Rules Recovery Notice Against Director for Company VAT Dues Invalid
- SCN demanding Excise-duty instead of Customs-duty on EOU to DTA clearances 'void-ab-initio'
- Other Notifications/Circulars/Instructions

CESTAT Rules e-Learning Content Not OIDAR Service , Classifies as Export of Services

DA Insights:

This ruling reinforces the understanding that not all online educational services are classified as OIDAR. The distinction made regarding hosting and content provision has implications for service tax liabilities and emphasizes the importance of the recipient's location in determining service classification.

Issue:

The primary issue was whether the e-learning content supplied by the Assessee to its counterpart in the USA could be classified as 'Online Information and Database Access or Retrieval Service (OIDAR)' under service tax regulations.

Legal Provisions:

Rule 3 of the Place of Supply of Services Rules, 2012 (POPS Rules) and Rule 6A of the Service Tax Rules, 1994

Observation and Comments:

The CESTAT, Bangalore, ruled that the e-learning content developed and supplied by Focus Edu Care Pvt Ltd was not an OIDAR service but rather an export of services. The Tribunal emphasized that the recipient of the service is located in the USA, in line with the POPS Rules. The CESTAT found that the appellant does not host the e-learning courses on a web platform, but rather, the content is hosted by the client in the USA, supporting the classification as an export of service.

Furthermore, the Tribunal referred to the CBEC's educational guide, highlighting that online tutoring provided to a foreign entity also does not fall under the taxable category of OIDAR services. The Tribunal relied on a prior ruling which established that online distance learning is not classified as OIDAR, ultimately leading to the dismissal of the Revenue's demand of ₹8.90 crore.

Focus Edu Care Pvt Ltd vs The Principal Commissioner of Service Tax [TS-440-CESTAT-2024-ST]

High Court Holds 120-Day Time Limit for CESTAT to Submit Statement of Case as Directory, Not Mandatory

DA Insights:

This judgment underscores the flexibility in procedural timelines when it comes to judicial bodies and protects parties from losing their right to appeal due to delays beyond their control. It also highlights the court's consideration of the assessee's financial situation in making its ruling.

Issue:

Whether the 120-day time limit prescribed under Section 130A(4) of the Customs Act, 1962 for CESTAT to submit a statement of facts/case to the High Court is mandatory or merely directory.

Legal Provisions:

Section 130A(4) of the Customs Act, 1962

Observation and Comments:

The Bombay High Court held that the 120-day time limit for CESTAT to submit a statement of facts/case to the High Court is not mandatory but directory. The court explained that since CESTAT is a judicial body, the Commissioner of Customs does not have control over its actions, and imposing strict adherence to the time limit could unjustly deprive a party of its right to have a question of law considered by the court. The High Court declined the assessee's request to dismiss the case due to CESTAT's delay in submitting the statement, noting that the assessee was undergoing financial hardship.

The court refused to direct the return of the Bank Guarantee provided by the assessee, considering their liquidity crisis, but allowed more time for CESTAT to submit the statement. The court also indicated that the assessee may apply again for the return of the Bank Guarantee if the Customs application is not disposed of within a year of receiving the statement from CESTAT.

Asit C. Mehta Financial Services Limited vs CESTAT, TS-617-HC-2022(BOM)-CUST.

High Court Allows Refund of Customs Duty Paid by Mistake Despite Time-Bar Under Section 27

DA Insights:

This case highlights the principle that procedural limitations on refund claims do not apply in situations where duties or taxes were paid by mistake. The ruling extends a judicial precedent from service tax law to customs law, ensuring equitable treatment in refund matters.

Issue:

Whether the petitioner is entitled to a refund of customs duty paid twice due to a technical error, despite the claim being time-barred under Section 27 of the Customs Act, 1962.

Legal Provisions:

Section 27 of the Customs Act, 1962 and Section 11B of the Central Excise Act

Observation and Comments:

The court held that while Section 27 of the Customs Act prescribes a one-year time limit for claiming refunds, this limitation does not apply when customs duty has been paid by mistake. Referring to the judgment in 3E Infotech vs. CESTAT, Chennai, the court ruled that the limitation period does not bar claims for refunds when the payment was made due to a mistake.

The court noted that Section 27 of the Customs Act and Section 11B of the Central Excise Act operate similarly in this context. Consequently, the rejection of the petitioner's refund claim solely on the ground of limitation was deemed unsustainable.

The court set aside the impugned order and remanded the case to the respondent for hearing, and pass a fresh order within four weeks.

M/s. Omya India Private Limited vs. The Assistant Commissioner of Customs (Refunds-II), W.P. No. 36159 of 2023

CESTAT Affirms Confiscation and Penalties for Mis-declaring Country of Origin to Evade Anti-Dumping Duty

DA Insights:

This ruling emphasizes the importance of accurate declarations in customs operations and the significant penalties for manipulation of information to evade duties. It also highlights the burden of proof on the Revenue to substantiate claims of mis-declaration effectively.

Issue:

The key issue is whether DD Marketing manipulated the details regarding the country of origin (COO) of imported goods to evade the anti-dumping duty (ADD) and the appropriate penalties and duties applicable in this scenario.

Legal Provisions:

Section 125 of the Customs Act (confiscation and redemption fine) and Section 114AA of the Customs Act (penalty for mis-declaration)

Observation and Comments:

The CESTAT Ahmedabad upheld the Revenue's action of confiscating goods and imposing a redemption fine under Section 125 of the Customs Act, concluding that DD Marketing had intentionally misdeclared the COO to avoid the ADD levy. The Assessee had imported "Pre-Sensitized Positive offset Aluminum Plates," falsely declaring Taiwan as the COO, whereas the actual origin was China, which would subject the goods to ADD as per Notification No. 51/2012. The Tribunal noted that the Assessee's failure to come forward with the correct information until after the investigation had commenced warranted a penalty under Section 114AA.

The Tribunal observed that the Revenue had not adequately established that the imported goods fell under the classification of "Digital offset printing plates," which would have changed the duty implications. Instead, they focused on the classification under Notification No. 25/2014, which was relevant to the goods imported by the Assessee. The Tribunal ultimately decided to revise the duty and penalty amounts, emphasizing the need for the Revenue to provide compelling evidence regarding the misclassification and misdeclaration.

DD Marketing vs Commissioner of Customs [TS-409-CESTAT-2024-CUST]

SC Rules Recovery Notice Against Director for Company VAT Dues Invalid

DA Insights:

This judgment underscores the necessity for clear legal provisions regarding the liability of company Directors for tax dues, reinforcing that recovery actions against Directors must be well-grounded in statutory law.

Issue:

The issue at hand is whether the notice of recovery issued against Shankar Rudra, a Director of SLR Impex Pvt Ltd, for recovering the company's VAT dues as arrears of land revenue under the Uttarakhand VAT Act, 2005, is valid.

Legal Provisions:

Section 12(1) & Section 51

Observation and Comments:

The Supreme Court allowed the civil appeal filed by Shankar Rudra, stating that the notice of recovery issued against him by the Revenue for the company's dues was not justified. The Court observed that both the Single Bench and Division Bench of the High Court had declined to hear the writ petition, citing the need to resolve disputed questions of fact and suggesting that the Assessee had an alternative remedy under Section 51 of the Uttarakhand VAT Act, 2005. However, the Supreme Court clarified that the Director's liability under Section 12(1) arises only when a private company is wound up after the Act's commencement.

The Supreme Court emphasized that there was no provision in the Act that allowed for the recovery of a limited company's dues directly from its Directors. The Court remarked that the lower courts had overlooked critical factors and should have recognized that attempting to recover tax from the Director was illegal from the outset. Consequently, the Court quashed the recovery notice and set aside the judgments of the High Court.

Shankar Rudra Vs The State of Uttarakhand & ors. [TS-390-SC-2024-VAT]

SCN demanding Excise-duty instead of Customs-duty on EOU to DTA clearances 'void-ab-initio'

DA Insights:

This decision emphasizes the critical distinction between customs and excise duties, affirming that the appropriate legal framework must be invoked for recovery, particularly for EOUs, to ensure compliance with the respective notification provisions.

Issue:

The primary issue is whether the demand for Central Excise duty, raised against M/s Basf India Limited for clearing imported goods to the domestic tariff area (DTA) under Notification 52/2003-Cus, is valid when the actual duty required is customs duty.

Legal Provisions:

Section 11A(5)

Observation and Comments:

The Customs, Excise & Service Tax Appellate Tribunal (CESTAT) ruled in favor of M/s Basf India Limited, stating that the demand for Central Excise duty was improper and should have been customs duty instead. The appellant, a 100% Export Oriented Unit (EOU), had cleared imported raw materials under Notification 52/2003-Cus but paid duty using the cenvat credit account. The Central Excise Revenue Audit (CERA) raised an objection, insisting that duties should be paid in cash rather than through cenvat credit. This led to a show cause notice being issued, demanding payment of central excise duty.

However, the Tribunal noted that the lower court had incorrectly treated the demand as Central Excise duty while the case pertained to customs duty. The Tribunal pointed out that Notification 52/2003 clearly mandates that if imported goods are cleared to the DTA, customs duty is applicable, and cenvat credit cannot be used for this payment.

As there was no explicit charge regarding customs duty in the show cause notice, the Tribunal declared the proceedings initiated under Section 11A of the Central Excise Act invalid. Therefore, the appeal was allowed, and the demand was set aside.

M/s Basf India Limited vs. C.C.E. & S.T. Vadodara-II [Excise Appeal No. 10833 of 2018-DB]

Customs Notification / Circulars / Guidelines / Instructions

Amendment in Chapter 5 of the Handbook of Procedures (HBP) 2023 Related to EPCG Scheme

The Director General of Foreign Trade has amended Chapter 5 of the HBP 2023 to streamline compliance for the Export Promotion Capital Goods (EPCG) Scheme. Effective immediately, authorization holders are now required to submit a report on export obligation (EO) fulfillment online after the first four-year block period and continue reporting until the EO period ends. The report must include details such as shipping bill, invoice number, and bill of export, certified by a Chartered Accountant, Cost Accountant, or Company Secretary. This amendment aims to reduce compliance burdens and enhance the ease of doing business under the EPCG Scheme.

Public Notice No. 24/2024-25 - DGFT, dated 20th Sep, 2024

Procedure for Implementation of DGFT Notifications Beyond September 30, 2024

The Directorate General of Foreign Trade (DGFT) has issued Policy Circular No. 07/2024-25, clarifying the implementation procedures for Notifications No. 23/2023, 26/2023, and 38/2023, which restrict the import of certain specified IT hardware. Importers are permitted to apply for Import Authorizations, which will now be valid until December 31, 2024. Existing Import Authorizations issued until September 30, 2024, will also remain valid until this date. Importers will need to apply for fresh authorizations starting January 1, 2025, with further guidance to be provided shortly. All other provisions from Policy Circular No. 06/2023-24 remain applicable

Policy Circular No. 07/2024-25 - DGFT, dated 24th Sep, 2024

Extension of Interest Equalisation Scheme (IES) for Rupee Export Credit

The Interest Equalisation Scheme (IES) for Pre and Post shipment Rupee Export Credit has been extended for three additional months, now valid until December 31, 2024. This extension retains the same terms and conditions as the previous extension, but with a new restriction that the fiscal benefits for each MSME will be capped at ₹50 lakhs for FY 2024-25 until December 2024. MSME manufacturer exporters who have already received equalisation benefits of ₹50 lakhs or more by September 30, 2024, will not be eligible for further benefits during this extended period. The extension remains effective until a revised approval is issued or the three-month period lapses.

Trade Notice No. 18/2024-25 - DGFT, dated 30th Sep, 2024

Customs Notification / Circulars / Guidelines / Instructions

Digitization of Customs Bonded Warehouse Procedures

In an important initiative to enhance the ease of doing business, the Central Board of Indirect Taxes and Customs (CBIC) has introduced significant updates to the procedures for Customs Bonded Warehouses. These improvements are aimed at digitizing and streamlining key processes, making operations more efficient and transparent for businesses.

Key Features of the Update:

- **Online Warehouse Licensing:** Businesses can now apply for warehouse licenses through the ICEGATE portal, with the entire process—from application submission to approval—handled digitally. This eliminates the need for physical paperwork, significantly reducing processing time and improving communication between applicants and customs officers.
- **Bond to Bond Goods Movement:** The digitized system facilitates seamless transfer of goods between warehouses or owners, providing end-to-end tracking of goods, ensuring accurate records of ownership and location. This process is fully automated, enabling faster, more transparent transactions.
- **Monthly Returns Submission:** Filing monthly returns has been fully digitized. Licensees can now upload their returns directly via the ICEGATE portal, allowing for efficient reconciliation of goods and simplifying compliance for both businesses and customs authorities.

Circular No. 19/2024 - Customs, dated 30th Sep, 2024

RoDTEP Scheme Extended for DTA, AA, EOU, and SEZ Units and new rates as been prescribed

The Government of India, via Notification No. 32/2024-25 from the Directorate General of Foreign Trade (DGFT), has announced a significant extension of the Remission of Duties and Taxes on Exported Products (RoDTEP) scheme to support exporters across sectors.

Key Updates:

- The RoDTEP scheme for DTA (Domestic Tariff Area) Units has been extended beyond 30th September 2024 and will now be valid till 30th September 2025.
- For exports from Advance Authorization holders (AA), Export Oriented Units (EOUs), and Special Economic Zone (SEZ) Units, the scheme has been extended until 31st December 2024.
- Despite the extension, the benefits under the RoDTEP scheme will be aligned with the budgetary provisions outlined in the Foreign Trade Policy (FTP) 2023 to ensure the scheme stays within the approved financial limits. This means necessary changes may be made to the scheme benefits, including revisions in eligible export items, rates, and per-unit value caps as per Para 4.54 of FTP 2023.
- The new RoDTEP rates based on the recommendations from the RoDTEP Committee will be effective from 10th October 2024 for both DTA and AA/EOU/SEZ units, under revised Appendix 4R and Appendix 4RE. However, for exports between 1st October 2024 and 8th October 2024, the current rates as per Notification No. 70/2023 will apply.

Notification No. 32/2024-25 - DGFT, dated 30th Sep, 2024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Goods and Services Tax

- GST Council may consider imposing 18% tax on payment aggregators for small transactions up to Rs 2,000
- GST Council decides to form new GoM for health insurance premium
- GST Council Meeting Highlights: Council reduces rate on cancer drugs to 5% from 12%
- GST Council to deliberate on taxation of insurance premium, report on online gaming
- Record Rs 81,875 crore GST evasion detected in online gaming in FY24

Customs and other

- India raises customs duty on edible oils to support farmers
- DRI officers also empowered to seek recovery of duty on imported goods, customs dept tells SC
- SC reserves verdict on review plea of customs department against 2021 judgement

DA Updates and Articles for the month of September 2024

DA - Indirect Tax Fortnightly Update - September 2024

Link: https://www.linkedin.com/feed/update/urn:li:activity:7242842940622938114

DA Newsflash (GST): GST Updates from the Finance Act, 2024

Link: https://www.linkedin.com/feed/update/urn:li:activity:7247100586922278913

DA Newsflash (DGFT): RoDTEP Scheme Extended for DTA, AA, EOU, and SEZ Units

Link: https://www.linkedin.com/feed/update/urn:li:activity:7247115621606268930

DA Newsflash (Customs): Digital Transformation of Customs Bonded Warehousing Procedures by CBIC

Link: https://www.linkedin.com/feed/update/urn:li:activity:7247876356733034496

DA Newsflash (GST): SC ruling on Eligibility of ITC on Immovable Property

Link: https://www.linkedin.com/feed/update/urn:li:activity:7248187715874107392

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