

DA TAX UPDATE INDIRECT TAX

An E-Tax update from
Darda Advisors LLP

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Issue - 70

Goods and Service Tax

Customs and Others

Goods and Service Tax

HC Quashes GST Demand and Appeal Dismissal Orders, Cites Violation of Natural Justice

The Allahabad High Court quashed twin orders—one creating a GST demand under Section 73 of the GST Act and another dismissing the appeal against the demand on limitation grounds. The court observed that the petitioner was denied an opportunity for a hearing before the demand order was passed, which violated the mandatory requirements under Section 75(4) of the GST Act. Additionally, the court noted the petitioner's contention that the demand order was not properly uploaded in the relevant portal tab, leading to procedural lapses.

Shakti Brick Field Hardoi vs. State of U.P. [TS-812-HC(ALL)-2024-GST]

HC Directs Restoration of ₹9.8 Crore ITC Reversed Under Duress, Terms Double Debit Impermissible

The Gujarat HC directed Revenue to restore ₹9.8 crore ITC reversed by the assessee under alleged duress during a DGGI summons without adjudication proceedings. The court observed that the same ITC was debited twice—once during the reversal and again when the assessee filed a refund claim for accumulated ITC as an exporter. It noted that the reversal was made under compulsion and not voluntary, as claimed by the Revenue. While refraining from addressing the merits of ITC eligibility

and refund, which remain sub-judice, the HC deemed double debit impermissible and ordered the restoration of the ITC in the Electronic Credit Ledger.

Hilti Manufacturing India Pvt Ltd vs UOI & Ors [TS-814-HC(GUJ)-2024-GST]

HC Quashes GST Assessment Order, Highlights Denial of Fair Hearing and Violation of Natural Justice

The Allahabad HC quashed an assessment order under Section 73 of the GST Act, finding it in violation of natural justice principles. Despite the assessee requesting a personal hearing in Form DRC-06, no date, time, or venue was provided in the show-cause notice. The assessment order was passed on the same day as the reply submission, without granting the requested hearing. The court ruled that prior opportunities before issuing the show-cause notice are irrelevant and directed the authority to pass a fresh order after providing a fair hearing.

Gannon Dunkerley & Co. Ltd. vs. Joint Commissioner Corporate Circle [TS-819-HC(ALL)-2024-GST]

Goods and Service Tax

HC Upholds State Tax Officers' Authority Under IGST Act, Dismisses Petition Challenging

The Orissa High Court upheld the authority of State Tax officers as Proper Officers under Section 4 of the IGST Act, dismissing the petition challenging the demand of Rs. 41 lakh (including interest and penalty). The petitioner contended that there was no clear notification defining the jurisdiction or functions of cross-authorized officers. However, the court referenced relevant CBIC circulars and Odisha GST notifications, concluding that State Tax officers were authorized to act under the IGST Act, with no notifications restricting this authority. The petition was dismissed, and the order was upheld.

Narayan Sahu Vs. Union of India & Ors.
[TS-824-HC(ORI)-2024-GST]

HC Quashes ITC Recovery Demand, Cites Violation of Natural Justice and Lack of Reasoned Order

The Allahabad High Court quashed the demand order for the recovery of Input Tax Credit (ITC), finding that the order was issued without an opportunity for hearing and lacked application of mind. The court observed that the order was merely a copy of the taxpayer's response to the show-cause notice (SCN), and did not address the explanation regarding the raw materials used in the manufacturing process. The Revenue had failed to examine whether these materials were indeed used to produce

fabrics. The court emphasized the principles of natural justice, referencing various Supreme Court rulings, and directed the authorities to grant a hearing, examine the fabrics, and issue a reasoned order. The writ petition was allowed.

AGMOTEX FABRICS PRIVATE LIMITED
[TS-830-HC(ALL)-2024-GST]

HC Quashes Rs. 140 Crore GST Liability, Directs Fresh Adjudication with Full Hearing

The Bombay High Court quashed the order imposing a liability of over Rs 140 Crores on Mediacom Communications Private Limited, which had been levied due to disallowance of zero-rated supplies and reclassification of advertising services rendered abroad as 'intermediary' services. The Court noted that the original order-in-original (OIO) suffered from the same issues as a prior case involving the petitioner, particularly the non-consideration of submissions during adjudication. The Court directed the Adjudicating Authority (AA) to reconsider the matter, considering all submissions and the CBIC Circular No. 230/24/2024 dated 16.09.2024, while providing full opportunity for a hearing. The petitioner was also granted the opportunity to present the circular and receive copies of the statements recorded under section 70, agreements, and invoices for proper adjudication.

Mediacom Communications Private Limited v/s Union of India & Ors

GST Portal

Advisory for Biometric-Based Aadhaar Authentication and Document Verification for GST Registration Applicants of Haryana, Manipur, Meghalaya, and Tripura

The GST registration process in Haryana, Manipur, Meghalaya, and Tripura now includes biometric-based Aadhaar authentication and document verification. This functionality, rolled out on 7th December 2024, requires applicants to complete authentication via OTP or book an appointment at a GST Suvidha Kendra (GSK) for biometric verification. Applicants must bring documents, including Aadhaar and PAN cards, and original copies of documents submitted in the application. After biometric verification and document checks, ARNs will be generated. GSK operation times vary by state.

Advisory on Difference in Value of Table 8A and 8C of Annual Returns FY 23-24

The recent changes in the GSTR-9 form for FY 23-24 have caused a potential mismatch between Table 8A (auto-populated from GSTR-2B) and Table 8C (manual reporting of ITC for inwards supplies). This mismatch occurs due to different reporting methods for FY 22-23 (from GSTR-2A) and FY 23-24 (from GSTR-2B). Specific scenarios, including delayed reporting of invoices, ITC reversals, and goods not received in FY 23-24, are outlined with instructions for proper reporting in GSTR-9. Detailed guidance on handling reclaimed ITC and cross-year invoices is provided to ensure accurate filing.

Advisory for Biometric-Based Aadhaar Authentication and Document Verification for GST Registration Applicants of Chhattisgarh, Goa, and Mizoram

The GST registration process for applicants in Chhattisgarh, Goa, and Mizoram has been updated with biometric-based Aadhaar authentication and document verification. As per the amendment in Rule 8 of the CGST Rules, 2017, applicants can be identified via biometric authentication, including a photograph and verification of uploaded documents. This new process, rolled out on 15th December 2024, involves two options for applicants: OTP-based Aadhaar authentication or an appointment at a GST Suvidha Kendra (GSK) for biometric verification. Applicants must bring necessary documents and follow the appointment process for biometric verification and document validation.

Customs & Others

HC Dismisses Revenue's Appeal, Upholds CESTAT Order Granting Refund of CVD and SAD Under Section 142(3) of CGST Act

The High Court upheld the Tribunal's decision allowing a refund of ₹3.28 crore in CVD and SAD to the assessee under Section 142(3) of the CGST Act, 2017. The refund related to duties paid between August 2018 and March 2019 for fulfilling export obligations. The Court held that the adjudicating authority had jurisdiction under existing laws to process the refund. It dismissed the Revenue's argument that refunds were not permissible under the GST regime. Finding no substantial question of law, the Court ruled in favor of the assessee and dismissed the Revenue's appeal.

Principal Commissioner of Customs vs. Granules India Ltd. [Customs Appeal No.26 of 2024]

HC Upholds Mandatory Pre-Deposit Requirement Under Section 129E, Dismisses Waiver Petition

The Bombay High Court dismissed the petition seeking waiver of the statutory pre-deposit under Section 129E of the Customs Act, 1962, required to admit an appeal. The petitioners argued lack of jurisdiction for imposing penalties and financial incapacity to pay the pre-deposit. However, the Court, citing *Kotak Mahindra Bank Pvt Ltd v. Ambuj A Kasliwal*, held that discretionary relief under Article 226 cannot override

mandatory statutory provisions. The petitioners were earlier informed of the pre-deposit requirement in a prior writ petition but failed to comply. The Court found no merit to consider the case rare or deserving for such a waiver and upheld statutory compliance.

Lalit Kulthia & Anr. Vs. Commissioner of Customs (Appeals) Mumbai III & Ors. [WPN. 476 of 2024]

HC Rules Social Welfare Surcharge Inapplicable on Exempted Customs Duty Under MEIS Scrips

The HC ruled in favor of Dalmia Cements, holding that no Social Welfare Surcharge (SWS) is payable when customs duty is exempted under MEIS (Merchandise Exports from India Scheme) scrips. The Court reasoned that SWS, levied at 10% of the customs duty under Section 110 of the Finance Act, becomes zero if the customs duty under Section 12 of the Customs Act is exempt. It clarified that exemption from customs duty means no actual payment of duty, rendering SWS inapplicable. Disagreeing with the Madras High Court's view in *Gemini Edibles* and aligning with the Supreme Court's ruling in *SRD Nutrients*, the Court dismissed Revenue's argument that SWS is a distinct levy under the Finance Act, emphasizing its linkage to customs duty paid.

Dalmia Cement (Bharat) Ltd v/s Union of India & Ors. [W.P.C 19961 Of 2019]

Customs & Others

HC Dismisses Writ Petitions on Disentitlement to Reduced Duty on Lentil Imports

Madras HC upheld the denial of reduced Basic Customs Duty for lentils (Masur) imports under Notification No. 26/2020. The Assessee had filed an import manifest on August 31, 2020, but the vessels were not berthed until September 1, 2020, due to port congestion. The Court found that under the Customs Act, an "order for entry inwards" from the proper officer was required before goods could be unloaded. Citing previous Supreme Court rulings, the HC dismissed the writ petitions, confirming that the reduced duty rate could not apply as the conditions were not met by the cut-off date.

Moorthy Traders vs The Commissioner of Customs [W.P.(MD) No. 19235 of 2020]

Subsequent Revenue Actions Invalid Against Final Unchallenged Assessment Order

CESTAT Ahmedabad ruled in favor of Reliance Industries Ltd, stating that once a final assessment order, which remains unchallenged, attains finality, any subsequent allegations by Revenue contrary to that order are invalid. The Tribunal emphasized that the final assessment order forms the basis for granting the refund, and as Revenue did not contest it, subsequent proceedings, including

issuing a show cause notice (SCN), adjudication, and appellate orders against the refund, are rendered infructuous. The decision relies on Supreme Court judgments in Food Specialities and ITC Ltd.

Reliance Industries Limited v/s Commissioner of Customs [TS-614-CESTAT-2024-CUST]

CESTAT Ahmedabad Grants Concessional Duty on LED TV Parts, Clarifies Assembling Constitutes Manufacturing

CESTAT Ahmedabad ruled in favor of Bossh Technology India Ltd, granting the company eligibility for concessional duty rates on the import of 37 parts for manufacturing LED televisions. The Tribunal noted that the parts were "separately classifiable under different headings" and not in a semi-knockdown condition. The Adjudicating Authority had initially denied the benefit, stating that assembling a TV from imported parts does not qualify as 'manufacture.' However, CESTAT clarified that assembling the components into a full television constitutes manufacturing, dismissing Revenue's interpretation. The Tribunal found no evidence suggesting that the parts were imported in semi-knockdown condition.

Bossh Technology India Limited v/s Commissioner of Customs [TS-602-CESTAT-2024-CUST]

Customs & Other Updates

Restriction on Manufacturing Processes in Warehouses for Solar Power Generation

The Central Government has specified that certain manufacturing processes related to goods imported for solar power generation projects, which supply electricity, will not be permitted in a warehouse under Section 65 of the Customs Act, 1962. This restriction applies only when the manufacturing processes result in electricity production from the warehoused goods. The notification will be effective from December 17, 2024.

Notification No. 86/2024-Customs (N.T), dated 16th Dec 2024

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

The Directorate General of Foreign Trade (DGFT) is launching the upgraded Preferential Certificate of Origin (eCoO) 2.0 system, effective from December 21, 2024. Key features include multi-user access, e-signature options, an integrated dashboard, and digitization of cost sheets. Exporters can use the new system to file Preferential Certificates, with a transition from the legacy eCoO system for applications submitted before December 20, 2024. Issuing agencies must complete specific registration steps.

Trade Notice No. 23/2024-25 - DGFT, dated 6th Dec 2024

EPCG Scheme - Applicability of Amendment to Para 5.10(c) of Handbook of Procedures 2015-20 (Mid-Term Review)

The Hon'ble High Court of Ahmedabad, in a judgment dated 21.12.2023, set aside Policy Circular No. 22/2015-20 dated 29.03.2019 issued by DGFT regarding the EPCG Scheme. The Supreme Court dismissed the SLP filed by the Union of India on 02.08.2024. As a result, the amendment to Para 5.10(c) of the Handbook of Procedures 2015-20 (Mid-term review) will be applicable prospectively, affecting only third-party exports against EPCG Authorisations issued on or after 05.12.2017.

Policy Circular No. 10/2024-25 - DGFT, dated 13th Dec 2024

Import and Export data

Imports of November 2024 at \$ 87.63 B

Exports of November 2024 at \$ 67.79 B

		November 2024 (USD Billion)	November 2023 (USD Billion)
Merchandise	Exports	32.11	33.75
	Imports	69.95	55.06
Services*	Exports	35.67	28.11
	Imports	17.68	13.68
Total Trade (Merchandise + Services) *	Exports	67.79	61.85
	Imports	87.63	68.74
	Trade Balance	-19.84	-6.89

Source : PIB

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