

# DA TAX UPDATE INDIRECT TAX

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

Fortnightly update – January 2025  
Issue - 71

**Goods and Service Tax**

**Customs and Others**

## Goods and Service Tax

### HC Dismisses Petition Challenging GST on Corporate Guarantees and ITC Denial

The Madras High Court dismissed a writ petition filed by Ramco Cements challenging the levy of GST on corporate guarantees and the disallowance of ITC for delayed payments beyond 180 days. The court directed the petitioner to pursue an appellate remedy, emphasizing that adequacy of evidence and factual issues are better resolved by the appellate authority. The court also excluded the time spent in the writ process for calculating the limitation period for filing the appeal.

*Ramco Cements Limited vs The Deputy Commissioner (ST)*[TS-871-HC(MAD)-2024-GST]

### HC Quashes Assessment Order in GST Discrepancy Case, Grants Liberty for Re-examination

The Madras High Court quashed the assessment order concerning discrepancies between GSTR-2A and GSTR-3B, allowing Total Environment Building Systems Pvt. Ltd. to treat the impugned orders as a Show Cause Notice and submit a response with supporting documentary evidence. The petitioner contended that taxes had been remitted in other states, and relevant invoices were provided to demonstrate compliance. The court found that the impugned order did not address the documents

submitted and suffered from non-application of mind. The Revenue agreed to re-examine the issue, and the case was disposed of with no costs.

*Total Environment Building Systems Pvt. Ltd Vs. The Assistant Commissioner of GST & Central Excise and Ors.*[TS-879-HC(MAD)-2024-GST]

### Terms 'Ratification' and 'Recommendation' "not same"

The Gauhati High Court dismissed the Revenue's review petition against its earlier judgment, which had declared Notification No. 56/2023-CT ultra vires Section 168A of the GST Act for being issued without the GST Council's recommendation. The Revenue argued that the notification was ratified by the GST Council in June 2024, and thus the judgment contained an error. However, the Court queried whether ratification could substitute a recommendation, highlighting the difference between approval and recommendation. Since the Revenue could not answer satisfactorily, the Court upheld its decision and dismissed the review petition.

*The Central Board Of Indirect Taxes and Customs and Ors Vs. Barkataki Print and Media Services and Ors*[TS-05-HC(GAUH)-2025-GST]

## Goods and Service Tax

### HC Allows Differential Refund under IDS for Claims Made Prior to July 2022

The Gujarat High Court allowed differential refunds under the inverted duty structure (IDS) based on the amended formula in Rule 89(5) for applications filed before July 5, 2022. The petitioners had sought rectification of their refund claims as per the new formula after it was amended by Notification No. 14/2022-CT. Their applications were initially rejected on the ground that they had already received refunds under the old formula. The Court held that the amended formula was retrospective and should apply to refund applications filed within the two-year limit under Section 54(1) of the GST Act, directing the release of differential amounts.

*Tirth Agro Technology Pvt. Ltd. & Anr. vs. UOI & Ors.[TS-883-HC(GUJ)-2024-GST]*

### HC Remands Matter for Reconsideration of Assessee's Response to SCN

The Madras High Court directed the State Tax Officer to reconsider the Assessee's response to the Show Cause Notice (SCN) concerning discrepancies in GST returns and excess ITC claims. The Assessee, an event management service provider, had filed GST returns, which were scrutinized, revealing issues like under-declared outward tax liabilities, excess ITC claims, non-reversal of ITC for non-business transactions, and interest for late

payment. The Assessee contended that it had already submitted a response in Form GST DRC-01, which was acknowledged. The Court quashed the earlier order and remanded the matter for fresh consideration, instructing the authorities to review the Assessee's reply.

*Karthik Kumar Yogapriya Vs. The State Tax Officer (FAC)[TS-887-HC(MAD)-2024-GST]*

### HC Rules Solar Power Generating System Not a Works Contract Under GST

The High Court ruled that a Solar Power Generating System is not considered immovable property and does not qualify as a "works contract" under Section 2(119) of the GST Act. Sterling and Wilson Private Limited, engaged in setting up solar power plants, had paid GST at 5% and claimed a refund under the inverted duty structure, which was denied. The Court distinguished the SC judgment in Duncans Industries Ltd. and upheld the applicability of 5% GST on solar projects, citing Sirpur Paper Mills Ltd. It concluded that the solar systems are a composite supply and not works contracts, thus rejecting the proposed 18% GST rate and penalty.

*Sterling And Wilson Private Limited vs. Joint Commissioner and Others[TS-07-HC(AP)-2025-GST]*

## GST Portal

### **Enabled Filing of Application for Rectification as per Notification No. 22/2024-CT, dated 08/10/2024**

The Central Government, following the 54th GST Council's recommendations, issued Notification No. 22/2024-CT on 08.10.2024, allowing registered persons to file applications for rectification of demand orders related to the wrong availment of ITC under section 16(4), if the ITC is now available as per the newly inserted sub-sections (5) and/or (6) of section 16. A functionality has been made available on the GST Portal for taxpayers to file such applications. They can navigate to Services > User Services > My Applications, select "Application for rectification of order," and enter the required details.

### **Implementation of Mandatory Mentioning of HSN Codes in GSTR-1 & GSTR-1A**

Phase-III of implementing the mandatory mentioning of HSN codes in GSTR-1 and GSTR-1A returns is being rolled out starting from the January 2025 return period. In this phase, the manual entry of HSN codes has been replaced with a dropdown option for selecting the correct HSN. Additionally, Table-12 has been split into two sections, B2B and B2C, to separately report these supplies. Validation of the values and tax amounts in both tabs has been introduced, although initially, these validations will be in warning mode, meaning they won't block the filing of GSTR-1 and GSTR-1A if failed.

### **Advisory for Waiver Scheme under Section 128A**

Taxpayers are informed that both Forms GST SPL 01 and GST SPL 02 are now available on the GST portal for filing applications under the Waiver Scheme. One of the eligibility criteria is to withdraw any appeal applications filed against the demand order/notice/statement for which the waiver application is being submitted. While the withdrawal option is available on the portal for appeal applications (APL 01) filed before the First Appellate Authority, it is not available for those filed before 21.03.2023. For such cases, taxpayers must submit a request for withdrawal to the concerned Appellate Authority, who will forward it to GSTN.

## Customs & Others

### Customs Act Penalty Not Applicable for Misdeclarations Made to DGFT for EPCG License

The CESTAT allowed the appeal of assessee challenging the personal penalty of Rs. 71,66,520 imposed under Section 114AA of the Customs Act. The penalty was imposed due to alleged mis-declaration in the application to DGFT for an EPCG licence, related to machinery imports. The Tribunal concluded that mis-declaration made before DGFT did not fall under the scope of Section 114AA, as it was not within the Customs Act's jurisdiction. The penalty was set aside, and the appellant was granted consequential relief.

*S.B. Agarwal Vs. Commissioner of Customs [Customs Appeal No.146 of 2012]*

### CESTAT Grants Interest on Refund Due to Delay in Excess Export Duty Assessment

Assessee filed for a refund of excess export duty paid due to an error in the assessment of shipping bills in 2008. After a delay of over 14 years in the reassessment process, CESTAT ruled that the company is entitled to 12% interest on the refund, as per Section 27A of the Customs Act. The Tribunal noted the financial burden caused by the delay, as the company had to borrow funds due to the prolonged retention of excess duty. The decision follows the

Supreme Court's ruling in *Sandvik Asia* regarding such delays.

*Vedanta Ltd vs Commissioner of Customs (Ports), CESTAT Kolkata, TS-13-CESTAT-2025-CUST*

### HC Allows Amendment of Bill of Entry, Clarifies Provisions Under Customs Act

High Court allowed Bharti Airtel's writ petition against the rejection of its request to amend a Bill of Entry (BoE). The Revenue had denied the amendment, citing Public Notice No.88/2019, which misinterpreted the Supreme Court's decision in *ITC Ltd*. The Court clarified that a BoE can be amended not only by appeal but also under sections 149 and 154 of the Customs Act. The amendment request was made due to a clerical error in the tax rate on goods cleared from SEZ to DTA. The Court directed the Revenue to reconsider the amendment application within three months.

*Bharti Airtel Ltd vs UOI & Ors, Madras High Court, TS-709-HC-2024(MAD)-CUST*

## Customs & Others

### **CESTAT Upholds Customs Duty Demand and Penalties for Non-Fulfillment of EPCG Export Obligations**

CESTAT Chennai upheld the customs duty demand, along with confiscation of goods and penalties, against Pentafour Solec Technologies Ltd for failing to meet export obligations under the EPCG Scheme. The Tribunal relied on the Bombay Hospital Trust case and SC's decision in Weston Components, affirming that non-fulfillment of export obligations under an exemption notification warrants recovery of escaped duties. The company had imported capital goods worth Rs. 20.01 crores under the EPCG scheme in 1997, but failed to export them due to the South Asian crisis. A demand of Rs. 7.89 crores with penalties was confirmed after investigation.

*Pentafour Solec Technologies Ltd vs Commissioner of Customs, CESTAT Chennai, TS-704-CESTAT-2024-CUST*

### **HC Upholds CESTAT Ruling, Quashes Penalty Against Director in Customs Case**

Bombay HC dismissed the Revenue's appeal against CESTAT's order quashing the penalty imposed on Aditya Arunkumar Bhuwania, Director of the appellant company. The penalty was originally imposed after the director made an inculpatory statement, which was later retracted. CESTAT had emphasized that the

shipping bill declaration matched the Bill of Entry, leading to the quashing of the penalty. HC upheld this view, noting no substantial question of law and referring to a previous case where appeals on classification issues are only maintainable before the Supreme Court.

*The Commissioner of Customs (Import) vs. Aditya Arunkumar Bhuwania, Bombay HC, TS-699-HC-2024(BOM)-CUST*

### **HC Rules Unutilized CENVAT Credit Cannot Be Denied for Goods Under Conditional Exemption**

Gujarat HC ruled in favor of Vineet Synthetics, holding that unutilized CENVAT credit on inputs used to manufacture "Texturized yarn" cannot be denied under Rule 11(3)(ii) of the CCRs, 2004 when goods are cleared under a conditional exemption notification. The court clarified that Rule 11(3)(ii) applies only to goods under absolute exemption, not conditional exemptions like Notification No. 30/2004-CE. The HC also stated that unutilized credit cannot lapse if carried forward properly and directed the revenue to sanction rebate claims with interest.

*Vineet Synthetics Pvt. Ltd. & Anr. Vs. UOI & Ors., Gujarat HC, TS-698-HC-2024(GUJ)-EXC*

## Customs & Other Updates

### Standard Operating Procedure/ Guidelines for Voluntary Disclosure of Non-Compliance/ Violations related to Export of SCOMET Items and SCOMET Regulations

The Directorate General of Foreign Trade (DGFT) has issued the Standard Operating Procedure (SOP) and guidelines for the voluntary disclosure of non-compliance or violations related to the export of SCOMET (Special Chemicals, Organisms, Materials, Equipment, and Technologies) items and SCOMET regulations. This is in accordance with Para 1.03 and 2.04 of the Foreign Trade Policy (2023) and Para 10.19 of the Hand Book of Procedures (HBP). The SOP is effective immediately, and it outlines the procedure for voluntarily disclosing any violations or non-compliance concerning the export of SCOMET items and regulations.

Public Notice No. 40/2024-25-DGFT, dated 15<sup>th</sup> Jan 2024

## Import and Export data

**Imports of December 2024 at \$ 77.44 B**

**Exports of December 2024 at \$ 70.67 B**

		December 2024 (USD Billion)	December 2023 (USD Billion)
Merchandise	Exports	38.01	38.39
	Imports	59.95	57.15
Services*	Exports	32.66	31.63
	Imports	17.50	15.63
Total Trade (Merchandise +Services) *	Exports	70.67	70.02
	Imports	77.44	72.78
	Trade Balance	-6.78	-2.76

Source : PIB



# Darda

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