

# DA TAX ALERT INDIRECT TAX

AN E-TAX ALERT FROM  
**Darda Advisors LLP**

January 2025

Issue: 56

**GST COMPLIANCE  
CALENDER**

**GOODS AND  
SERVICE TAX**

**CUSTOMS AND  
OTHER**

**DA NEWS**

# PREFACE

We are pleased to present to you the Fifty-Sixth 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 December 2024.

During the month of December 2024, there were certain changes under Goods and Service Tax, Customs and other; key judgments and rulings such as 'Transfer of leasehold land exempt from GST and EOUs' has right to avail benefits under various customs notifications.

In the Fifty-Sixth 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 December 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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# GST COMPLIANCE CALENDAR

January  
2025

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





# Consent of Co-Owner Not Mandatory with Ownership Proof for GST Registration - HC

## DA Insights:

*This case underscores the sufficiency of ownership documentation, such as an electricity bill, for GST registration under the applicable rules. It also reiterates the limited scope of judicial intervention under Article 226 in procedural matters that comply with statutory provisions.*

### **Issue:**

Whether GST registration granted to a co-owner of a property can be canceled on the grounds that the co-owner's consent was not obtained.

### **Legal Provisions:**

Section 29 CGST Act, 2017 & Clause (a) and (c) of Proof of Principal Place of Business under GST Registration Rules

### **Observation and Comments:**

The High Court upheld the rejection of the petitioner's application for cancellation of GST registration granted to the co-owner of a property. The petitioner contended that the registration was granted without obtaining their consent as a co-owner. However, the court noted that the GST registration process requires proof of the principal place of business. Since the electricity bill for the premises was in the name of the registered owner, the requirement under Clause (a) of the GST registration rules was satisfied, and there was no need for a consent letter from the co-owner.

The court further clarified that Clause (a) applies to cases where the applicant is the owner of the property, and the provided documents, such as an electricity bill, suffice to establish ownership. The contention that a consent letter was necessary was rejected. The court found no irregularity in the decisions of the authorities and dismissed the writ petition.

*Satya Dev Singh vs. Union of India & Others, WRIT TAX No. - 261 of 2024, [TS-851-HC(ALL)-2024-GST]*

# Supplies from SEZ to DTA are considered imports, and IGST liability lies with the DTA unit, not the SEZ supplier

## DA Insights:

*Supplies from SEZ to DTA are considered imports, and IGST liability lies with the DTA unit, not the SEZ supplier and Procedural lapses, such as ignoring the taxpayer's explanations and legal context, can render demand notices invalid.*

### **Issue:**

Whether the Revenue's demand for IGST based on discrepancies between GSTR-1 and GSTR-3B was valid, despite the Assessee's payment of IGST through TR-6 challan and the inapplicability of IGST liability on supplies from SEZ to DTA.

### **Legal Provisions:**

Section 74 of the GST Act (mechanism for adjudication of tax demands)

### **Observation and Comments:**

The Gujarat High Court quashed the Revenue's demand of ₹1.63 crores raised under Section 74, citing that:

- The Assessee had paid the IGST via TR-6 challan, which was not required to be reflected in GSTR-3B. The discrepancy between GSTR-1 and GSTR-3B was a result of technical limitations of the GST portal and not a tax liability issue.
- Supplies from SEZ to DTA are treated as imports for the DTA unit, which bears the IGST liability. The Assessee was not required to pay IGST for such supplies, as clarified under the SEZ Act.

- The Revenue failed to consider the Assessee's explanations or the applicable legal provisions and passed an order devoid of reasoning, rendering it untenable.

The court emphasized that the demand notice was issued without proper adjudication and disregarded procedural requirements under Section 74. Consequently, the demand order dated 05.02.2022 was set aside.

*Baccarose Perfumes and Beauty Products Pvt Ltd vs State of Gujarat & Ors. [TS-852-HC(GUJ)-2024-GST]*



# Refunds of voluntary payments made by mistake are not subject to the time limitation - HC

## DA Insights:

*Refunds of voluntary payments made by mistake are not subject to the time limitations of Section 54(1) when they do not represent actual tax liabilities and Revenue's retention of such amounts violates constitutional safeguards under Article 265.*

### Issue:

Whether the Assessee was entitled to a refund of ₹40 lakhs, paid voluntarily under Form DRC-03 due to a system error, despite the Revenue rejecting the refund claim on grounds of limitation under Section 54(1) of the GST Act.

### Legal Provisions:

Section 54(1) of the GST Act, 2017

### Observation and Comments:

The Gujarat High Court observed that the payment of ₹40 lakhs made under Form DRC-03 was not a tax liability but a voluntary deposit due to a system error. Citing precedents such as Joshi Technologies International and Gujarat State Police Housing Corporation, the court held that retaining amounts paid mistakenly or in ignorance is unconstitutional under Article 265. Such retention lacks the authority of law and violates the principles of fair taxation.

The court concluded that the limitation under Section 54(1) does not apply to amounts paid mistakenly as they do not constitute tax liabilities. Therefore, the Revenue was directed to refund the ₹40 lakhs to the Assessee but clarified that no interest on the refunded amount would be granted. The earlier order rejecting the refund claim was quashed.

[Aalidhra Texcraft Engineers & Anr. vs. UOI \[TS-853-HC\(GUJ\)-2024-GST\]](#)

# HC Upholds GST Registration Cancellation and Appeal Rejected for Delay Beyond Limitation

## DA Insights:

*Strict adherence to statutory timelines for filing appeals under GST is crucial, and delays beyond the prescribed period cannot be condoned without valid justification and Non-filing of returns for extended periods is a serious breach under GST provisions and can result in the cancellation of registration.*

### **Issue:**

Whether the cancellation of GST registration and the rejection of the appeal due to the delay in filing it beyond the prescribed period of limitation were justified.

### **Legal Provisions:**

Section 29 & Section 107(1) of the CGST Act

### **Observation and Comments:**

The Jharkhand High Court, in its judgment, noted that the petitioner's GST registration was canceled due to the non-filing of returns for a continuous period of six months, which is a clear violation of the provisions under Section 29 of the Central Goods and Services Tax Act, 2017. Despite the petitioner's claim that the non-filing was a result of financial hardships caused by non-receipt of payments from clients, the Court emphasized that the statutory requirement to file returns cannot be ignored, and the failure to comply for such a prolonged period justifies the cancellation of the registration. The Court also highlighted that the petitioner's business operations had been affected by external circumstances, but this did not absolve the firm from fulfilling its legal obligations under the GST regime. Therefore, the cancellation of registration was deemed to

be valid, as it was based on clear legal grounds.

Further, the Court dealt with the issue of delay in filing the appeal, which was submitted nearly 17 months after the order for cancellation was passed. Section 107(1) of the CGST Act mandates that any appeal against an order of the GST authorities must be filed within three months from the date of the order. The statute also allows for an extension of one month if the appellant can demonstrate sufficient cause for the delay. However, the petitioner failed to provide any adequate justification for the significant delay in filing the appeal. The Court firmly stated that the statutory time limits prescribed under the law cannot be disregarded, and no sufficient cause was shown for such a prolonged delay. As a result, the appellate authority's decision to reject the appeal due to the lapse of the statutory limitation period was upheld, reinforcing the importance of timely compliance with legal processes under the GST law.

[Bokna Raiyat Rojgar Committee vs. Union of India & Ors \[TS-855-HC\(JHAR\)-2024-GST\]](#)



# Reconsideration of Denied ITC Due to Supplier Tracing Challenges Under GST

## DA Insights:

*The case underscores the flexibility of tax authorities in considering ITC claims, particularly in scenarios where tracing suppliers is a challenge. It also reflects the Court's emphasis on ensuring taxpayers are given a reasonable window to comply with regulatory requirements.*

### **Issue:**

The petitioner challenged the denial of Input Tax Credit (ITC) under Sections 16(2)(c) and 16(4) of the CGST/SGST Acts, arguing that the inability to trace suppliers prevented them from availing the benefits under the Circulars issued by the authorities. The petitioner sought a reconsideration of their ITC claim based on similar circumstances in *M. Trade Links v. Union of India*.

### **Legal Provisions:**

Section 16(2)(c) of the CGST/SGST Acts & Section 16(4) of the CGST/SGST Acts

### **Observation and Comments:**

The Kerala High Court disposed of the writ petition by directing the State Tax Officer to issue fresh orders, considering the directions in *M. Trade Links v. Union of India* if the facts are similar. The petitioner's ITC claim, previously denied under Section 16(2)(c) and Section 16(4), was directed to be reconsidered in light of the applicable Circulars. The order denying the claim was set aside to the extent that it relied on these provisions. The Tax Officer was instructed to pass fresh orders within two months from the date of receipt of the certified copy of the judgment.

The Court further clarified that the petitioner must submit the required documents to substantiate the ITC claim within one month, failing which they would lose the benefit of the Circulars. This decision highlights the importance of providing a fair opportunity to taxpayers in similar situations and ensures that judicial precedents are applied consistently to maintain uniformity in the legal process.

*Champadan Kandiyil Vijeesh Vs. The State Tax Officer & Ors. [TS-859-HC(KER)-2024-GST]*

# HC - Sets Aside Interest on Unutilized ITC Refund, Clarifies Conditions for Levying Interest

## DA Insights:

*The decision highlights that interest under Section 50(3) is not applicable when the taxpayer has not utilized accumulated ITC in violation of the law. It also emphasizes the need for a detailed examination by authorities before making such decisions.*

### **Issue:**

The issue revolves around whether the imposition of interest on the refund of unutilized Input Tax Credit (ITC) under the inverted duty structure, due to delayed reversal of accumulated ITC, is justified. The taxpayer contended that the interest should not be levied as they did not wrongly utilize the accumulated credit after the cut-off date specified in the relevant Circulars and Notifications.

### **Legal Provisions:**

Section 50(3) of the CGST Act & Circular No. 94/13/2019-GST

### **Observation and Comments:**

The Madras High Court set aside the order of the Additional Commissioner (Appeals), which upheld the imposition of interest on the refund of unutilized ITC. The Court clarified that the question of levying interest under Section 50(3) only arises if there was a wrongful utilization of ITC prior to the cut-off date as specified in Notification No. 20/2018. In this case, since the assessee had not utilized the accumulated credit and did not incur any tax liability after the cut-off date, the imposition of interest was deemed unjustified.

Further, the HC referred to the Supreme Court decision in Daichi Karkaria Ltd case, which

emphasized that interest could not be levied on ITC that was validly availed but remained unutilized. However, the Court also noted that the Additional Commissioner (Appeals) had not conducted a detailed analysis, and thus remanded the matter for further consideration within three months.

[Sri Cheran Synthetics India Pvt Ltd vs UOI & Ors \[TS-863-HC\(MAD\)-2024-GST\]](#)



# Transfer of leasehold land exempt from GST

## DA Insights:

*The judgment underscores the distinction between leases and transfers under GST law, affirming that transactions involving land transfers, including leasehold rights, are outside the GST purview. It provides relief to businesses engaged in similar transactions.*

### **Issue:**

Whether the transfer of leasehold rights in land is subject to GST under the CGST Act, 2017, and if the demand for 18% GST on such transactions is lawful.

### **Legal Provisions:**

Section 7 and Entry 2(a) of Schedule II of the CGST Act, 2017 & Entry 5 of Schedule III of the CGST Act, 2017 (Exclusion of land transactions from GST)

### **Observation and Comments:**

The Gujarat High Court ruled that GST is not applicable to the permanent assignment or transfer of leasehold rights in land. The Court observed that such transactions involving land are excluded from GST under Entry 5 of Schedule III of the CGST Act, 2017. It clarified that the transfer of leasehold rights cannot be equated to a lease under Section 7 and Entry 2(a) of Schedule II of the Act, as lease rights were permanently transferred and not merely leased.

The Court further held that demanding 18% GST on such transactions is unconstitutional and beyond the scope of the CGST Act. The decision came in the context of a petitioner who had entered into a long-term lease of industrial land in 2012 and transferred those rights to another company in 2018 as part of a factory

sale. The Court quashed the show cause notices (SCNs) issued by the authorities and the circulars underpinning the GST demand.

[Suyog Dye Chemie Private Limited & Ors vs Union of India \[R/Special Civil Application No. 17792 of 2023\]](#)

## **GST Notification / Circulars / Guidelines / Instructions**

### **Clarification on Input Tax Credit (ITC) Reversal for Electronic Commerce Operators Under Section 9(5) of the CGST Act**

The Circular provides clarification regarding input tax credit (ITC) reversal for electronic commerce operators (ECOs) who are required to pay tax under Section 9(5) of the Central Goods and Services Tax (CGST) Act. The circular confirms that ECOs are not required to reverse ITC on their inputs and input services for supplies made under Section 9(5), including services other than restaurant services. However, ECOs must pay the entire tax liability under Section 9(5) through the electronic cash ledger, and the ITC cannot be used for this purpose. The input tax credit can still be utilized for other services provided by the ECO.

*Circular No. 240/34/2024 – GST, dated 31<sup>st</sup> Dec, 2024*

### **Clarification on Availability of Input Tax Credit (ITC) for Ex-Works Contracts**

This circular clarifies that automobile dealers engaged in Ex-Works (EXW) contracts can claim Input Tax Credit (ITC) when goods are handed over by the supplier (OEM) to the transporter at the OEM's factory gate, even if the goods are not physically received at the dealer's premises. ITC is available as long as the goods are used in the course or furtherance of business. The physical receipt of goods at the dealer's premises is not required to claim ITC, and the transfer of property to the transporter is sufficient. Conditions under Section 16 and Section 17 of the CGST Act must be fulfilled to retain ITC eligibility.

*Circular No. 241/35/2024 - GST, dated 31<sup>st</sup> Dec, 2024*

### **Clarification on Place of Supply of Online Services Supplied to Unregistered Recipients**

This circular clarifies the requirements for suppliers of online services to unregistered recipients regarding the place of supply and invoicing. It mandates that suppliers must record the recipient's state on the invoice, irrespective of the value of the service. This applies to all online services, including digital content, OIDAR services, and online gaming. The place of supply will be considered as the recipient's location, based on the recorded state. Suppliers are required to ensure compliance, and failure to do so may lead to penalties. The circular aims to correct the misapplication of the place of supply provisions.

*Circular No. 242/36/2024 - GST, dated 31<sup>st</sup> Dec, 2024*

### **Clarification on GST Treatment of Vouchers**

The GST Board has issued clarifications on the treatment of vouchers under the CGST Act to address industry concerns. Transactions involving vouchers, whether in the form of pre-paid instruments recognized by the RBI or as actionable claims, are not considered a supply of goods or services and therefore do not attract GST. For distribution models, where vouchers are traded by distributors/sub-distributors on a Principal-to-Principal basis, GST is not applicable. However, if vouchers are distributed by agents on commission/fee basis, GST applies to the commission received by the agents. Additional services like marketing, advertisement, and customization provided to the voucher issuer are subject to GST. Finally, unredeemed vouchers (breakage) are not taxable under GST as they do not involve the supply of goods or services or consideration.

*Circular No. 243/37/2024 - GST, dated 31<sup>st</sup> Dec, 2024*



## GSTN Portal Changes

### **Advisory for Entry of Receipt Numbers Pertaining to Leased Wagons in the E-Way Bill System**

This advisory outlines the guidelines for entering Receipt Numbers for Leased Wagons in the E-Way Bill (EWB) system. Starting January 1st, 2025, taxpayers must prefix Receipt Numbers with "L" when entering them into the EWB system for leased wagons, in line with existing practices for Parcel Way Bill (PWB) and Railway Receipt (RR) numbers. For rail transport, taxpayers must select the "Rail" transport mode and enter the Receipt Number with the "L" prefix in Part-B of the EWB. The system will validate these entries, and any discrepancies will prompt alerts for corrections. For further assistance, taxpayers can contact the EWB support team.

### **Advisory for Biometric-Based Aadhaar Authentication and Document Verification for GST Registration Applicants of Arunachal Pradesh**

This advisory informs taxpayers about the new biometric-based Aadhaar authentication and document verification process for GST registration applicants in Arunachal Pradesh, effective from December 28, 2024. As per the amended Rule 8 of the CGST Rules, applicants may be identified via biometric authentication and photo capture, along with verification of the original documents submitted. Applicants will receive an email with a link for either OTP-based Aadhaar authentication or for booking an appointment at a GST Suvidha Kendra (GSK) for biometric verification. Applicants must bring required documents, including Aadhaar and PAN cards, to their GSK appointment for verification. Once completed, ARNs will be generated.

### **Advisory to Taxpayers on Extension of E-Way Bills Expired on 31st December, 2024**

This advisory informs taxpayers that the technical issues affecting the e-way bill generation process have been resolved. The window for extending e-way bills that expired on 31st December 2024 has been extended until midnight of 1st January 2025. Taxpayers and transporters are encouraged to use the "Extend EWB" facility to extend these bills if necessary. Additionally, those who moved goods on 31st December 2024 without generating e-way bills due to the technical issues are advised to generate the required e-way bills on 1st January 2025 using the portal.

## GST Collection

**Rs 1,76,857 crore gross GST revenue collected for December 2024**

GST Gross and Net Collections as on 31/12/2024 (Amount in crores)						
GST Collections	Monthly			Year To Date		
	Dec-2023	Dec-2024	% Growth	Dec-2023	Dec-2024	% Growth
A	B	C	D = C/B-1	E	F	G = F/E-1
<b>A.1. Domestic</b>						
CGST	30,443	32,836		2,76,708	3,04,350	
SGST	37,935	40,499		3,46,938	3,77,911	
IGST	42,721	47,783		4,01,623	4,49,839	
CESS	11,170	11,471		98,349	1,05,305	
<b>Gross Domestic Revenue</b>	<b>1,22,270</b>	<b>1,32,589</b>	<b>8.4%</b>	<b>11,23,618</b>	<b>12,37,405</b>	<b>10.1%</b>
<b>A.2. Imports</b>						
IGST	41,534	43,438		3,64,572	3,87,697	
CESS	1,079	830		9,132	8,465	
<b>Gross Import Revenue</b>	<b>42,612</b>	<b>44,268</b>	<b>3.9%</b>	<b>3,73,704</b>	<b>3,96,162</b>	<b>6.0%</b>
<b>A.3. Gross GST Revenue(A.1+A.2)</b>						
CGST	30,443	32,836		2,76,708	3,04,350	
SGST	37,935	40,499		3,46,938	3,77,911	
IGST	84,255	91,221		7,66,195	8,37,536	
CESS	12,249	12,301		1,07,480	1,13,770	
<b>Total Gross GST Revenue</b>	<b>1,64,882</b>	<b>1,76,857</b>	<b>7.3%</b>	<b>14,97,322</b>	<b>16,33,567</b>	<b>9.1%</b>

Link:

[https://tutorial.gst.gov.in/downloads/news/approved\\_monthly\\_gst\\_data\\_for\\_publishing\\_dec\\_2024.pdf](https://tutorial.gst.gov.in/downloads/news/approved_monthly_gst_data_for_publishing_dec_2024.pdf)







# CESTAT - Sets Aside Customs Reclassification Order, Remands Case for Procedural Compliance

## DA Insights:

This decision emphasizes the importance of following due process and issuing a speaking order when self-assessment is overruled. It also highlights the need for proper evidence and documentation before reclassification of goods can be made. The remand for further proceedings ensures the appellant's right to a fair process.

### **Issue:**

The issue in these appeals is the reclassification of goods imported by Daikin Airconditioning India Pvt Ltd. The appellant contested the revised duty liability, which was adjusted based on the classification of the imported items as “split air conditioners incorporating refrigerating units with dual function (cooling and heating)”, for which the applicable exemption under the relevant Customs Tariff was not granted.

### **Legal Provisions:**

Section 17 & Section 129B(1) of the Customs Act, 1962

### **Observation and Comments:**

The Tribunal observed that the dispute arose from a reclassification of goods based on investigations in 2013, which led to the redetermination of the classification of imports between 2009 and 2014. The classification was revised by the authorities, which the appellant contested. The Tribunal noted that the issue had already been dealt with by the Tribunal in a previous case concerning the same appellant, Daikin Air-Conditioning India Pvt Ltd, and a decision was still pending before the Hon'ble Supreme Court.

Furthermore, the Tribunal highlighted that the first appellate authority had not issued a speaking order as required under Section 17(5) of the Customs Act, 1962, before affirming the reclassification proposed by the assessing officer. The Tribunal ruled that such failure was a breach of procedure and a violation of the statutory requirement to issue a speaking order in cases where re-assessment is contrary to self-assessment by the importer. As the re-assessment lacked proper documentation and evidence, the Tribunal set aside the impugned order and remanded the matter to the original authority for proper compliance with the procedures set out in the Customs Act.

*[Daikin Airconditioning India Pvt Ltd vs Commissioner of Customs \(Import\), \[Customs Appeal No: 89252 of 2014\]](#)*



# Amendment of Shipping Bill and Refund of Customs Duty Allowed for Re-exported Goods - HC

## DA Insights:

*This case highlights the importance of procedural flexibility in ensuring that substantial justice is served. It underscores that technical lapses should not hinder the legitimate claim for benefits, especially when the goods have undergone thorough examination by the authorities.*

### **Issue:**

The petitioner sought a Writ of Mandamus to amend Shipping Bill No.1977648 from a "Free Shipping Bill" to a "Shipping Bill for Claim for Drawback" under Section 149 of the Customs Act, 1962, and a refund of Rs.13,62,098/- paid as customs duty on re-exported goods.

goods had already been tested and subjected to customs procedures. Referring to the Supreme Court's judgment, the Court held that procedural compliance should not defeat substantive justice. As the petitioner had met the conditions for re-export, the Court directed the respondent to amend the shipping bill and refund the customs duty within two months.

### **Legal Provisions:**

Section 149 of the Customs Act, 1962 & Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995

### **Observation and Comments:**

The Court noted that the facts of the case were not in dispute. The petitioner had imported goods (Black Pepper), paid customs duty, and was unable to clear the goods after a lab test under the Food Safety and Standards Act. As per the order of the Joint Commissioner, the petitioner was given the option to redeem the goods for re-export. However, the petitioner sought to amend the shipping bill to claim the drawback, as the goods had been re-exported.

The Court emphasized that procedural irregularities in complying with the Re-export of Imported Goods (Drawback of Customs Duties) Rules should not prevent the petitioner from availing the benefit of the duty drawback. The

*M/s.G.T.India Private Limited vs. The Commissioner of Customs (Exports), W.P.No.12367 of 2022*

# EOUs' has right to avail benefits under various customs notifications - CESTAT

## DA Insights:

*EOUs are allowed to avail exemptions under other customs notifications, provided they meet all conditions and No penalty or extended limitation period applies where all facts were disclosed in the Bill of Entry.*

### **Issue:**

Whether Export Oriented Units (EOUs) are allowed to avail benefits under customs notifications other than Notification No. 52/2003-Cus., and whether the extended period of limitation and penalty can be imposed for alleged non-disclosure.

### **Legal Provisions:**

- Notification No. 52/2003-Cus. (special exemption for EOUs)
- Notification No. 50/2017-Cus. and Notification No. 46/2011-Cus. (general exemptions)

### **Observation and Comments:**

The appellant, Galaxy Surfactants Limited, an Export Oriented Unit (EOU), challenged the denial of exemptions under certain customs notifications. The appellant argued that there is no legal bar preventing EOUs from availing benefits under notifications other than Notification No. 52/2003-Cus., which is specifically designed for EOUs. The counsel cited clarifications from the DGEP and TRU, which explicitly allowed EOUs to benefit from other customs notifications, such as Notification No. 50/2017-Cus. and Notification No. 46/2011-Cus. The Revenue, however, relied on a decision in the Jaipur Golden Transport Co.

Ltd. case to argue that EOUs must be treated separately from Domestic Tariff Area (DTA) units and should only avail benefits under the specific EOU notification.

The Tribunal examined the issue in light of the legal framework and the clarifications from the DGEP and TRU, and concluded that the EOU could indeed avail the benefits under other relevant notifications, as no explicit restriction existed in those notifications regarding EOUs. Additionally, the Tribunal found no grounds for imposing penalties or invoking the extended period of limitation, as the appellant had disclosed all facts in the Bill of Entry during the import process.

[Galaxy Surfactants Limited vs. C.C.-Ahmedabad, Customs Appeal Nos. 10961 of 2021 and 10319 of 2022, dated 03.12.2024.](#)



# Interpretation of Exemption Criteria based on intent rather than a rigid end-use requirement

## DA Insights:

*The ruling underscores the importance of interpreting statutory terms based on intent rather than a rigid end-use requirement. It also clarifies that intermixing during transport, due to technical reasons, does not disqualify goods from duty exemptions if their intended use remains unchanged.*

### **Issue:**

The primary issue was whether Bharat Petroleum Corporation Ltd. (BPCL) was liable to pay excise duty on Special Kerosene Oil (SKO) that got intermixed with High-Speed Diesel (HSD) and Motor Spirit (MS) during transportation through a pipeline, despite the intended use being for the Public Distribution System (PDS).

### **Legal Provisions:**

Exemption Notification No. 04/2006-CE dated March 1, 2006 and Interpretation of the term "for use" under the Exemption Notification.

### **Observation and Comments:**

The CESTAT Mumbai ruled that the demand for excise duty on SKO, which got intermixed during transportation, was not justified. The Tribunal clarified that the exemption under the Notification applies to goods "intended for use" in the Public Distribution System (PDS), not necessarily those that are completely untainted by intermixing. It emphasized that the phrase "for use" should be interpreted as "intended for use" rather than a strict end-use condition. Citing the Supreme Court's decision in the Dalmia Dadri Cement case, the Tribunal reasoned that the goods should qualify for exemption as long as their intended purpose aligns with the PDS, irrespective of technical intermixing during transportation.

The CESTAT further noted that there was no evidence of clandestine removal or misuse of SKO, and the Revenue had failed to test the intermix samples to establish the quantity of SKO. As a result, the Tribunal quashed the excise duty demand, granting BPCL full exemption under the relevant Notification.

*[Bharat Petroleum Corporation Ltd. vs. Commissioner of CGST, Mumbai East \(TS-646-CESTAT-2024-CUST\)](#)*

# Excise Duty Demand Sets Aside being time barred – CESTAT

## DA Insights:

*The case highlights the importance of timely action by tax authorities in raising demands and the recognition of bona fide belief in duty payment. The Tribunal's decision reinforces the view that demands based on a genuine misunderstanding of applicable rules, without suppression of facts, should not lead to time-barred penalties.*

### **Issue:**

The issue in the case was whether Shakti Insulated Wires Pvt Ltd was liable to pay differential excise duty at 12% instead of 10% on the copper strips/wires removed for home consumption, and whether the demand for such duty was time-barred.

### **Legal Provisions:**

Notification No. 12/2012-CE (amended vide Notification No. 4/2014)

### **Observation and Comments:**

The CESTAT Ahmedabad concluded that while the assessee was liable to pay duty at the rate of 12% instead of 10% on the finished goods, the demand for differential duty was time-barred. The Tribunal found that the assessee had a bona fide belief that they were eligible for the concessional duty rate of 10% on goods classified under CETH 85441190, as per Sr. No. 346 of Notification No. 12/2012-CE, even after the amendment in July 2014, which removed this classification. The Tribunal emphasized that the assessee had been paying the 10% duty rate, and this practice was reflected in the monthly ER-1 returns.

Moreover, the Department was aware of the amendment and the fact that the assessee had been paying the concessional rate. The Department had sufficient time and information to approach the assessee regarding the discrepancy when the ER-1 return for July 2014 was filed. Since no suppression of facts occurred on the part

of the assessee, the Tribunal held that the demand for excise duty could not be extended beyond the normal period due to the time-bar provisions.

[Shakti Insulated Wires Pvt Ltd vs Commissioner of CE&ST \(TS-682-CESTAT-2024-EXC\)](#)



# Classification of Services as ‘Works-Contracts’ Versus ‘Commercial or Industrial Construction Services’

## DA Insights:

*The Court's decision reinforces the importance of correct classification in service tax matters, particularly when determining whether a service is subject to tax. It also clarifies the process for appealing CESTAT decisions on taxability matters, ensuring the proper legal recourse through the Supreme Court.*

### **Issue:**

The issue revolves around the taxability of services provided by the Assessee, specifically whether the services fall under ‘commercial or industrial construction service’ or ‘works-contract’ under GST law, and the maintainability of the appeal before the High Court.

### **Legal Provisions:**

Section 35G of the Central Excise Act, 1944 and Larsen & Toubro Ltd case (2015) for classification of works contracts

### **Observation and Comments:**

The Delhi High Court upheld the decision of the CESTAT, which had ruled that the services provided by JMD Limited were correctly classified as ‘works-contracts’ and not as ‘commercial or industrial construction services’ as per the relevant provisions of the Finance Act, 1994. This classification is crucial as ‘works-contracts’ are not subject to service tax under the judgment in Larsen & Toubro Ltd. The Revenue’s contention that the services should be taxed under the ‘commercial or industrial construction’ head was thus rejected. The Court observed that the issue at hand pertains to taxability and involves legal questions regarding service classification, which, as per Section 35L of the Central Excise Act, must be raised before

The Court further emphasized that, in matters of taxability or the determination of service classification, appeals from CESTAT decisions must be directly made to the Supreme Court, as prescribed by Section 35L. This principle was reiterated through references to previous judgments such as in M/s Spicejet Ltd. The Court found that since the issue raised pertains directly to the rate of tax, it falls within the purview of Section 35L, thus ruling the present appeal as not maintainable before the High Court. The appellant was granted liberty to approach the Supreme Court in accordance with law and could claim benefits under Section 14 of the Limitation Act, 1963 for the period during which the current appeal was pending.

[Commissioner of Central Tax, CGST vs JMD Limited \[TS-857-HC\(DEL\)-2024-GST\]](#)

## Customs Notification / Circulars / Guidelines / Instructions

### **Enabling Voluntary Payment Electronically on ICEGATE e-Payment Platform**

The Government has introduced an electronic platform for Voluntary/Self-Initiated Payments (SIP) via ICEGATE to digitize and replace the manual TR-6 payment process at Customs stations. This facility allows users to generate self-initiated challans and make payments without Customs officer approval, provided they are registered on ICEGATE. The payment facility is primarily for past imports/exports and is not for live consignments. Users can make payments via various modes, including internet banking, NEFT/RTGS, and Payment Aggregator methods. After December 31, 2024, manual TR-6 payments will no longer be accepted unless specifically approved. A user manual is available on the ICEGATE platform for guidance.

*Circular No. 27/2024 - Customs, dated 23<sup>rd</sup> Dec, 2024*

### **Rollout of Automated Out of Charge for AEO T2 and T3 Clients**

The CBIC has introduced the Automated Out of Charge (Auto-OOC) facility for Authorized Economic Operators (AEO) T2 and T3 clients to streamline trade processes. Starting from 1st January 2025, eligible clients who meet specific criteria, such as no requirement for examination, scanning, or PGA-related NoC, and complete assessment and OTP authentication for duty deferment, will benefit from Auto-OOC. This system will operate on a risk basis but can be overridden by customs officers in case of intelligence. This initiative aims to enhance trade efficiency, improve compliance, and reduce administrative burdens.

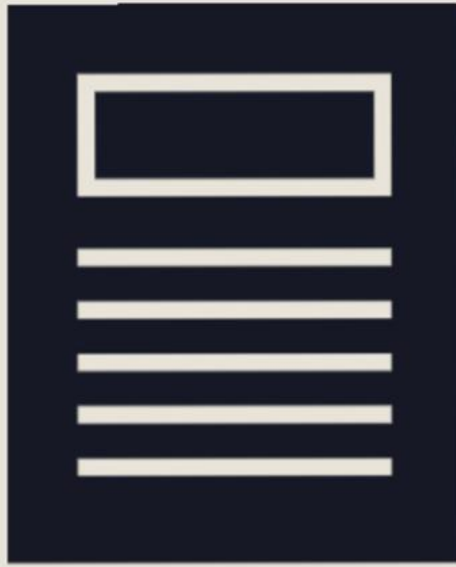
*Circular No. 01/2025 - Customs, dated 1<sup>st</sup> Jan, 2025*

### **Amendment to SEZ Rules 2006: Extension of Work-from-Home Facility for SEZ Employees**

The Ministry of Commerce and Industry has amended Rule 43A of the Special Economic Zones (SEZ) Rules, 2006, allowing employees of SEZ units to work from home (WFH) or from any place outside the SEZ unit until December 31, 2027. This change, formalized through the SEZ (Fifth Amendment) Rules, 2024, extends the flexibility provided to employees in SEZ units and comes into effect immediately upon publication in the Official Gazette.

*Notification under SEZ dated 26th Dec 2024*





# DA NEWS

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# Goods and Services Tax

- [GST Council's Recommendations: What's Getting Expensive And Cheaper](#)
- [New advisory by GSTN: GST E-Way Bill rules changed; Buyers' input tax credit is at risk if seller does not follow these new rules](#)
- [GST Council defers decision to reduce tax on health, life insurance](#)
- [How will sale of used cars will be taxed under new GST rules? A simple guide](#)
- [CBIC clarifies rules, says no GST to apply on pre-paid gift vouchers, cards](#)



# Customs and other

- Airlines to mandatorily share international passenger data with Customs from April 1, 2025
- Govt weighs junking customs relief in 'Make in India' push
- No more duty-free import of solar power items: CBIC
- Major overhaul of customs duty on over 100 items likely in FY26 Budget

# DA Updates and Articles for the month of December 2024

DA - Indirect Tax Fortnightly Update – December 2024

**Link:** <https://dardaadvisors.com/wp-content/uploads/2024/12/DA-Indirect-Tax-Fortnightly-Update-December-2024.pdf>

DA Newsflash (Customs) - MOOWR Scheme Restrictions for Solar Power Firms

**Link:** <https://www.linkedin.com/feed/update/urn:li:activity:7275766912725262337>

DA Newsflash (GST) - Clarification of DIN Applicability in Automated GST Refund Procedures

**Link:** <https://www.linkedin.com/feed/update/urn:li:activity:7275804651378106368>

DA Newsflash (GST): Key recommendations of GST Council (55th Meeting)

**Link:** <https://www.linkedin.com/feed/update/urn:li:activity:7277240845206962176>



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