

DA TAX UPDATE INDIRECT TAX

An E-Tax update from
Darda Advisors LLP

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Issue - 73

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Goods and Service Tax

Validity of Retrospective Tax and Cess Application Under GST Based on Product Reclassification

The petitioner, a beverage manufacturer, challenged a Show Cause Notice (SCN) and order reclassifying its products under Customs Tariff Head 2202 10 90 instead of 2202 99 20, leading to higher tax and cess. The Court held that tax and cess at 14% and 12%, introduced by Notifications dated 30.09.2021, could not be applied retrospectively to periods before 01.10.2021. It ruled that classification should follow statutory interpretation, and the Revenue had no justification for retrospective application. The SCN and impugned order were quashed, granting relief to the petitioner.

X SS Beverage Company vs. State of Assam & Ors. W P (C) NO. 5347/2022

Retrospective Cancellation of GST Registration Declared Invalid Due to Procedural Lapses and Lack of Material Basis

The Delhi High Court quashed the order canceling JSD Traders LLP's GST registration retrospectively from November 9, 2017, citing procedural lapses. The court noted that neither the Show Cause Notice (SCN) nor the final order provided any material basis for invoking Section 29(2)(e) of the CGST Act, 2017. The absence of prior notice regarding retrospective cancellation rendered the action invalid. The court directed the tax

authorities to re-adjudicate the matter after affording a hearing to the petitioner. The statutory appeal's dismissal due to limitation will not hinder the fresh proceedings.

JSD Traders LLP Vs Additional Commissioner, CGST & Anr [W.P. (C) 2608/2025]

GST Appeal Rejection Set Aside Due to Procedural Delays and Substantive Compliance with Pre-Deposit Requirement

The Madhya Pradesh High Court ruled in favor of Shri Laxman Das Jaisinghani, whose GST appeal was rejected for procedural delays. The court noted that manual filing of appeals was allowed in December 2022 and that the petitioner had made a valid pre-deposit before the appeal deadline. Since the GST order was uploaded late, the petitioner could not file online earlier. The court held that the appeal should not be dismissed on technical grounds when substantive compliance was met. The matter was remanded for a decision on merits.

Shri Laxman Das Jaisinghani vs. Union of India & Others, [Writ Petition No. 35069 of 2024]

Goods and Service Tax

Interim Relief Granted in GST Case Challenging Garnishee Notice and Time Limit Extensions

The Bombay High Court admitted the writ petition filed by NTT Data Business Solutions Pvt Ltd challenging a garnishee notice, show cause notice, and related GST demand order. The petitioner argued that the notifications extending the time limit under Section 168A of the CGST Act were ultra vires as they lacked GST Council approval. Similar petitions are pending, and the Gauhati High Court has already struck down these notifications. The court found a prima facie case for relief and granted an interim stay on coercive recovery actions, tagging the case with related petitions.

NTT Data Business Solutions Pvt Ltd vs. Union of India [Writ Petition No. 2616 of 2025]

HC Allows ITC Rectification Application Under Amended GST Provisions for Late Filed Returns

Prabir Kumar Das challenged the disallowance of his Input Tax Credit (ITC) claim due to late filing of GST returns for the period from September 2018 to March 2019. The petitioner argued that the recent amendment to Section 16 of the GST Act, which extended the deadline for filing returns, should allow him to claim the ITC. The Calcutta High Court agreed, ruling that the petitioner could avail the benefit of the amended provision. The court directed the petitioner to apply for rectification before the

appropriate authority.

Prabir Kumar Das vs. Assistant Commissioner of State Tax [WPA 21120 of 2021]

HC Dismisses Challenge to Rule 36(4) of CGST Rules Citing Validity Under Section 16 of CGST Act

M/s High Tech Ecogreen Contractors LLP filed a writ petition challenging the tax demand raised for the period October 2019 to March 2021, arguing that Rule 36(4) of the CGST Rules was not valid due to the non-enforcement of Section 43A of the CGST Act. The petitioner contended that the tax demands were illegal since Section 43A was never notified for enforcement. The Gauhati High Court dismissed the petition, stating that Rule 36(4) derives its validity from Section 16 of the CGST Act and not from Section 43A. The Court found no merit in the challenge and dismissed the petition, though it allowed the petitioner to pursue alternative legal remedies.

M/s High Tech Ecogreen Contractors LLP vs. Directorate General of Goods and Services Tax Intelligence (DGGI), [WP(C)/4787/2024]

Customs & Others

Invalidity of Second Show Cause Notice Under Customs Act for Identical Facts and Change of Opinion

The petitioner, M/s ISMARTU India Pvt Ltd, challenged the issuance of a second Show Cause Notice (SCN) under Section 28(4) of the Customs Act, arguing it was invalid as a prior notice had already been issued under Section 28(1) for the same facts. The Court found that issuing two notices under different sections for the same factual matrix amounted to a "change of opinion." The Court ruled that a SCN under Section 28(1) and Section 28(4) could not be issued interchangeably for the same issue and set aside the impugned SCN.

M/s ISMARTU India Pvt Ltd vs. Union of India & Others [W.P.(C) 15199/2023 & CM APPL. 60759/2023]

Customs Advance Ruling on SFP Modules Set Aside Due to Inconsistency with Established Precedents

M/s. Nokia Solutions and Networks India Pvt Ltd challenged two rulings from the Customs Authority for Advance Rulings (AAR) regarding the classification of Small Form Factor Pluggable (SFP) modules. The dispute was whether the goods should be classified under CTH 8517 7990 as parts of machinery or under CTH 8517 6290 as apparatus. The Court reviewed previous rulings by CESTAT and the Supreme Court, which had

already classified SFPs under CTH 8517 7990, entitling them to Basic Customs Duty (BCD) exemptions. The Court found the AAR ruling inconsistent with established precedents and set it aside, affirming the classification under 8517 7990.

Nokia Solutions and Networks India Pvt Ltd vs. Customs Authority for Advance Rulings, New Delhi & Others [CUSAA 40/2025]

Refund of Extra Duty Deposit Directed by Court as EDD Not Subject to Customs Duty Limitation Period

The petitioner imported goods from Taiwan between 2014 and 2017, which were subjected to provisional assessment and an Extra Duty Deposit (EDD) due to suspected undervaluation. Following an investigation, the Special Valuation Branch (SVB) confirmed that the importer-exporter relationship had not led to undervaluation. Despite this, the Customs Department refused to refund the EDD, citing a delay beyond the one-year limitation under Section 27 of the Customs Act. The Court held that EDD is not customs duty and, therefore, the limitation period does not apply. It directed the Customs Department to refund the EDD with applicable interest.

Sentec India Company Pvt Ltd vs. Assistant Commissioner of Customs, Delhi & Others [W P (C) 868/2025]

Customs & Others

High Court Upholds Rejection of Appeal Filed After Four-Year Delay Due to Procedural Lapses

Tecmax Electronics imported Brass Ceramic Cartridges from China, but customs authorities alleged misdeclaration and undervaluation, imposing a differential duty, penalty, and fine. Tecmax paid the amount and later challenged the order before the Commissioner (Appeals). Due to a change in business premises, it claimed non-receipt of the appellate order. CESTAT rejected its appeal for a delay of over four years, and the Delhi High Court upheld this decision, ruling that Tecmax failed to verify its appeal status or provide an updated address.

M/s TECMAX ELECTRONICS Vs COMMISSIONER OF CUSTOMS (PREVENTIVE) CUSAA 47/2025 & CM APPL. 10721/2025

HC Quashes IGST Levy on Reimported Aircraft Parts Citing Unconstitutional Expansion of Tax Net

Inter Globe Aviation challenged the imposition of customs duty and IGST on the reimportation of aircraft parts sent abroad for repair. The petitioner argued that such transactions should be classified as a supply of service, exempting them from Section 3(7) of the Customs Tariff Act (CTA). The Delhi High Court ruled that amendments to Notification No. 45/2017 and Circular No. 16/2021, which expanded the tax net, were

unconstitutional. It held that the IGST levy on reimported services must be governed by Section 5(1) of the IGST Act, not the CTA, and struck down the impugned notifications.

Inter Globe Aviation Ltd vs. Principal Commissioner of Customs W.P.(C) 4673/2024

HC Quashes Customs Order Due to Excessive Delay in Adjudication of Show Cause Notice

Umesh Gulhar challenged the customs order dated January 15, 2024, which stemmed from a show cause notice issued on November 7, 2013, alleging misdeclaration of export consignments. The Delhi High Court, in an earlier ruling for a related case (M/s Vos Technologies India Pvt. Ltd.), had quashed similar show cause notices due to excessive delay in adjudication under Section 28 of the Customs Act. Since the primary notice against M/s J.R. International had already been set aside, the court ruled that the order against Gulhar must also be quashed, disposing of the petition.

Umesh Gulhar Vs. Principal Commissioner of Customs W.P.(C) 6714/2024

Customs & Other Updates

Revised Procedure for General Authorization for Export after Repair (GAER)

The Directorate General of Foreign Trade (DGFT) has amended Para 10.12(D) of the Handbook of Procedures 2023 to introduce a revised framework for General Authorization for Export after Repair (GAER). The amendment allows the re-export of imported SCOMET items to related entities or repair supply chains abroad after repair in India. The authorization will be granted once and will remain valid for a year, with post-reporting requirements for subsequent exports. It outlines compliance conditions, including registration, proof of import, contract agreements, and restrictions on UNSC-sanctioned destinations. Mandatory Internal Compliance Programs (ICP) and Authorized Economic Operator (AEO) certifications are also required for intra-company transfers and vendor/OEM re-exports.

Public Notice No. 50/2024-25-DGFT, dated 10th Mar 2025

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