

INDIRECT TAX DIGEST

10 November 2023

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GOODS & SERVICES TAX



LEGISLATIVE UPDATES

GSTN ADVISORY

GSTN Advisory ¹	The functionality for biometric-based Aadhaar Authentication which was initially launched in Puducherry from 30 August 2023 to be rolled out in Gujarat from 7 November 2023. The procedure for document verification and appointment booking for biometric verification has been prescribed in the Advisory.
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NOTIFICATIONS

G.S.R. 793 (E) ²	The Goods and Services Tax Appellate Tribunal (Appointment and Conditions of Service of President and Members) Rules, 2023 has been notified.
52/2023-Central Tax ³	<p>Effective 26 October 2023, the provisions of the Central Goods and Services Tax Rules, 2017 (CGST Rules) are amended, inter alia, including the following:</p> <ul style="list-style-type: none"> ▪ Rule 28: Notwithstanding the eligibility of full Input Tax Credit (ITC) to the recipient, the value of supply of services supplied by a supplier to its 'related' person by way of providing Corporate Guarantee (CG) to any banking company/financial institution shall be higher of the following: <ul style="list-style-type: none"> - 1% of the amount of CG; or - Actual consideration for providing such a guarantee. ▪ Rule 159: Provisional attachment order shall be removed/withdrawn on receipt of written instructions from the Commissioner or after the expiry of one year from the issuance of provisional attachment order, whichever is earlier.
53/2023-Central Tax ⁴	In line with the recommendation of the 52nd GST Council Meeting, the Amnesty Scheme for filing of appeals where appeals were not filed, or appeals were rejected solely on the grounds of limitation ⁵ has been notified. The benefit under this Scheme would not apply in respect of a demand not involving tax.
05/2023-Integrated Tax ⁶	Notification no: 01/2023-Integrated Tax dated 31 July 2023 is amended with retrospective effect from 1 October 2023 to provide that supply of all goods and services made to SEZ Developer or SEZ unit for authorised operations (except goods such as pan masala, tobacco products and specified essential oils as mentioned in the aforesaid notification) can be made on payment of Integrated Tax.

¹ Dated 4 November 2023

² Dated 25 October 2023

³ Dated 26 October 2023

⁴ Dated 2 November 2023

⁵ Our summary of the press release can be accessed [here](#)

⁶ Dated 26 October 2023

CIRCULARS

202/14/2023 -GST ⁷	In the case where the export proceeds are realised in the designated Special Vostro Account of the correspondent bank of the partner country, the condition for receipt of consideration in respect of export of services as stipulated under Section 2(6)(iv) of the Integrated Goods and Services Tax Act, 2017 (IGST Act) shall be deemed to have been fulfilled.
203/15/2023 -GST ⁸	<ul style="list-style-type: none"> ▪ Place of Supply (POS) of services of transportation of goods (including through mail and courier) where the location of supplier or recipient is outside India - Will be determined under the default rule i.e., Section 13(2) of the IGST Act. ▪ POS of services in relation to an advertisement on hoarding/structure <ul style="list-style-type: none"> - POS of services involving supply (sale) of space or supply (sale) of rights to use the space on the hoarding/structure (immovable property), owned by the vendor, to the client/advertising company for the display of their advertisement on the immovable property will be the location of the immovable property (Section 12(3)(a) of the IGST Act). - POS of services supplied in relation to displaying an advertisement on hoarding/billboards at a specific location by the vendor who owns/arranges such hoarding/structure will be the location of the recipient (Section 12(2) of the IGST Act), subject to the condition that the vendor is required to display the advertisement at such location. ▪ POS of co-location services <ul style="list-style-type: none"> - POS of co-location services in the nature of Hosting and Information Technology Infrastructure provisioning services inter alia involving facilities such as network connectivity, backup facility, firewall services and monitoring and surveillance service for ensuring continuous operations of servers/related hardware, essential to interact with the system relating to the hosting and operation of servers, would be the location of recipient (Section 12(2) of the IGST Act). - However, where the agreement is restricted to providing physical space on rent along with basic infrastructure without components of Hosting and Information Technology Infrastructure provisioning services, POS will be location of immovable property (Section 12(3)(a) of IGST Act).
204/16/2023 -GST ⁹	<p>The personal guarantee provided by the Directors:</p> <ul style="list-style-type: none"> ▪ Since the RBI Circular mandates that no consideration is payable in respect of personal guarantee provided by a director, the Open Market Value of services by way of providing personal guarantee may be treated as 'Zero' and hence, no GST would be leviable on such supply. ▪ However, the RBI Circular envisages an exceptional circumstance where the consideration can be recovered by a guarantor for the continuance of personal guarantee. In such cases, the value of supply shall be the remuneration/consideration paid to the guarantor. <p>Corporate guarantee</p> <ul style="list-style-type: none"> ▪ In respect of corporate guarantee provided by the company to a bank/financial institution on behalf of another related person (including a subsidiary company), the value of supply will be determined as per Rule 28(2) of the CGST Rules, irrespective of the recipient's eligibility to avail full ITC.
205/17/2023 -GST ¹⁰	It is clarified that ' <i>imitation zari thread or yarn made from metallised polyester film/plastic film</i> ' falling under HS Code 5605 attracts GST @ 5%. However, no refund of unutilised ITC on account of an Inverted Duty Structure is allowed on polyester film (metallised)/plastic film.
206/18/2023 -GST ¹¹	<p>The following clarifications have been provided by the Circular:</p> <ul style="list-style-type: none"> ▪ The phrase '<i>same line of business</i>' as referred to in Notification no: 11/2017-Central Tax (Rate) dated 28 June 2017 includes services for transportation of passengers (SAC 9964) or renting of motor vehicle with operator (SAC 9973) and does not include leasing of motor vehicles without operator (SAC 9973) which attracts GST and/or Compensation Cess at same rate as supply of motor vehicles by way of sale. ▪ GST implications of recovery of electricity charges along with renting of immovable property and/or maintenance of premises <ul style="list-style-type: none"> - Irrespective of whether electricity is billed separately, in as much as electricity is supplied as a bundled service along with renting of immovable property and/or maintenance of premises, it forms part of the composite supply and will be taxed as per the applicable GST rate on principal supply viz., renting of immovable property or maintenance of premise as the case may be.

⁷ Dated 27 October 2023⁸ Dated 27 October 2023⁹ Dated 27 October 2023¹⁰ Dated 31 October 2023¹¹ Dated 31 October 2023

	<ul style="list-style-type: none"> - However, if electricity is supplied by Real Estate Owners, Resident Welfare Associations, Real Estate Developers, etc. as a pure agent and cost is recovered on an actual basis, it will be deemed that the supplier acts as a pure agent and hence, the same will not form part of value of supply. ▪ Irrespective of the end-use of 'malt' (i.e., as an ingredient in food products or for the manufacture of alcoholic liquor for human consumption), conversion of 'barley' into 'malt' amounts to job work in relation to food products. Accordingly, the same would be leviable to GST @ 5%. ▪ District Mineral Foundations Trusts set up by the State Governments are Governmental Authorities and hence, are eligible for the same exemptions from the levy of GST as available to any other Governmental Authority. ▪ Supply of pure services and composite supplies by way of horticulture/horticulture works (where the value of goods constitutes not more than 25% of the total value of supply) made to the Central Public Works Department are eligible for exemption from the levy of GST.
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INSTRUCTIONS

20006/15 /2023-GST ¹²	CBIC has issued an instruction suggesting the action that can be initiated by the Tax Authorities for non-issuance of e-invoices by notified taxpayers who are mandatorily required to issue e-invoices as per Rule 48(4) of the CGST Rules.
F.3/432/GST/ Policy/2023/ 1048-1053 ¹³	<p>The following clarifications have been issued by the Delhi Goods and Services Tax Department for scrutiny of GST returns for FY 2017-18.</p> <ul style="list-style-type: none"> ▪ Fixing of personal hearing before the expiry of 30 days (i.e., the time period to file a reply to SCN) before filing any written reply/representation would not serve any useful purpose. Hence, the Proper Officer shall provide a personal hearing after the filing of reply/representation by the taxpayer or after the expiry of 30 days. Before passing any adverse order, a personal hearing must be given to the taxpayer. ▪ It would not be appropriate to adjudicate issues that have already been decided/dropped under Section 61 of the Delhi Goods and Services Tax Act, 2017 (DGST Act). ▪ Where notices have been issued even after the completion of audit proceedings, the same needs to be withdrawn after following the required course of action. ▪ Where notices have been issued after the completion of scrutiny of return proceedings, the same needs to be withdrawn to the extent of subject matter or issues which have been covered in previous proceedings. ▪ In case of ITC reversal, the Proper Officer is to undertake due verification of input used for making taxable/non-taxable supplies or input used for non-business or personal purposes or making exempt supplies. ▪ In case of blocked credit where notices have been issued based on HSN/SAC Codes OR where transactions have been made with taxpayers whose registration is cancelled, the Proper Officer should examine relevant facts along with supporting records and take the decision on a case-to-case basis. ▪ Where Proper Officer is of the opinion that the notice is required to be withdrawn, the proceedings can be dropped after recording reasons, and the same must be intimated to the taxpayer.

JUDICIAL UPDATES

[New India Traders Vs. State of U.P. & Ors. \[TS-553-HC\(ALL\)-2023-GST\]](#)

Issue

- Whether the Appellate Authority was justified in drawing an inference alleging foul play by the Taxpayer for the first time (although the same was not covered in the Order-in-Original) without providing an opportunity to be heard?

Ratio

- Once the Tax Authorities intend to take an adverse view, the Taxpayer must be informed and put on notice to rebut the same, failing which, the order is unsustainable in the eyes of the law.
- In the present case, neither the Taxpayer was put to notice nor an opportunity to put relevant material on record to contest its case was provided which is a clear violation of the principle of natural justice. Accordingly, the Writ Petition filed by the Taxpayer was allowed and the matter was remanded back to decide the issue afresh.

¹² Dated 18 November 2023

¹³ Dated 31 October 2023

Aditya Medisales Ltd. Vs. The State of Jharkhand [TS-540-HC(JHAR)-2023-GST]

Issue

- Whether the initiation of proceedings by merely issuing a summary of SCN (in Form GST DRC-01) without the issuance of a proper SCN is valid and justified?
- Whether the transitional credit can be denied in the garb of undertaking assessment under the Jharkhand Value Added Tax Act, 2005 (JVAT Act)?

Ratio

- Relying on Juhi Industries (P) Ltd.¹⁴, it was held that initiation of proceedings by issuing Form GST DRC-01 without issuance of a proper SCN is bad in law. Further, challenges to the initiation of proceedings can be raised even at this stage.
- Under the garb of disallowing the transitional credit, the Tax Authorities cannot assess the returns filed under the JVAT Act basis the following reasons:
 - Furnishing copies of the invoices would suffice the requirement of Section 140(3)(iii) of the Jharkhand Goods and Services Tax Act, 2017 (JGST Act), and the Taxpayer is not required to furnish declarations in Form JVAT 410/411 (under the JVAT Act) to support his claim of credit.
 - For verification of transitional credit, the Tax Authorities are only required to verify the amounts specified in Form GST TRAN-1 and whether the conditions under Section 140(3) are satisfied (i.e., admissibility of credit under the JGST Act). The transitional credit cannot be denied based on the VAT returns which are the subject matter of assessments under the JVAT Act.

Malik Traders Vs. State of U.P. and Ors., [TS-543-HC(ALL)-2023-GST]

Issue

- What are the relevant documents to establish the genuineness of the transaction during proceedings concerning the denial of ITC?

Ratio

- In cases where the Taxpayer only provides copies of invoices, e-way bills, Goods Receipt Notes, and payment through banking channel as evidence without providing copies of other documents such as payment of freight charges, acknowledgement of taking delivery of goods, toll receipts and payment thereof, the actual physical movement of goods and the genuineness of transportation and transaction cannot be established.
- In view of the above, the proceedings seeking denial of ITC have been rightly initiated against the Taxpayer.

New Morning Star Travels Vs. The Deputy Commissioner [TS(DB)-GST-HC(AP)-2023-993]

Issue

- Whether the Tax Authorities are justified in issuing the SCN (and consequently, the assessment order) without issuing an intimation under Rule 142(1A) of the CGST Rules?

Ratio

- Interpretation of Rule 142(1A) of CGST Rules before & after amendment *vide* Notification no:79/2020-CT dated 15 Oct 2020
 - The employment of the word ‘shall’ in Rule 142(1A) indicates that the proper officer shall necessarily follow the procedure and issue an intimation and if the Taxpayer does not respond, then he can issue a SCN.
 - Post the amendment of Rule 142(1A), the issuance of intimation is not mandatory but discretionary on the part of the Tax Authorities.
- In the present case, since the period of dispute is from FY 2017-18 to FY 2020-21, with the majority of the tax period about the period before the amendment of Rule 142(1A) of the CGST Rules, the Tax Authorities ought to have issued an intimation under Rule 142(1A) of the CGST Rules for the entire period and thereafter only must have issued the SCN.
- Given that an intimation was not issued by the Tax Authorities, the assessment order fell foul of the law and is liable to be set aside. Accordingly, the Impugned Order was set aside with a direction to the Tax Authorities to issue a fresh intimation under Rule 142(1A).

M/s. Galaxy Traders Vs. Union of India [2023 (10) TMI 1204 - Kerala High Court]

Issue

- Whether ITC can be denied on the ground that the details of the procurements (on which ITC is availed) is not appearing in Form GSTR-2A?

Ratio

- Section 155 of the CGST Act covers a situation where the assessee has undertaken certain procurements and paid consideration (including the applicable tax) to the supplier, but the supplier failed to deposit the applicable tax to the Government wherein the burden to prove the claim of ITC is on the recipient who must furnish documentary evidence to prove that applicable tax has been paid by him to the supplier.
- In the present case, the Tax Authorities have denied ITC on the ground that the procurement was not reflected in Form GSTR-2A, and the Taxpayer did not submit any proof of payment of GST to the Government. In view of the above and relying on the judgement of Diya Agencies¹⁵, the matter was remanded to the Tax Authorities to examine the evidence in possession of the Taxpayer irrespective of the difference in Form GSTR-2A and Form GSTR-3B.

¹⁴ Juhi Industries (P) Ltd. Vs. State of Jharkhand [2022 SCC Online Jhar 816]

¹⁵ M/s. Diya Agencies Vs. State Tax Officer (GST Department) & Ors. [TS-461-HC(KER)-2023-GST]- Our summary of the judgement can be accessed [here](#)

CUSTOMS



LEGISLATIVE UPDATES

ADVISORY

27/2023 ¹⁶	The Customs officers can now amend the GSTIN of the Bill of Entry after Out-of-Charge (OOC), provided that the PAN remains the same. Such amendment can be carried out only once. After the amendment of GSTIN in a Bill of Entry, no other amendments can be made on the same day and vice versa. The officer is required to give OOC for pushing the amended data to GSTN.
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NOTIFICATION

61 & 62/2023-Customs ¹⁷	Notification no: 48/2023-Customs dated 19 August 2023, which inter alia stipulates the effective rate of Export Duty on Onions (of 40%) is rescinded with effect from 29 October 2023. Concurrently, Onions are exempted from the imposition of Export Duty by amending Notification no:27/2011-Customs dated 1 March 2011.
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CIRCULARS

26/2023-Customs ¹⁸	<p>Notification no: 77/2023-Customs (N.T.) dated 20 October 2023¹⁹ inter alia stipulates the duty drawback rates on specified goods, subject to specified conditions. In this regard, CBIC has issued a Circular providing the salient features of the revised duty drawback rates as notified above.</p> <p>It is further clarified that products containing cotton and more than one manmade fibre would be covered under tariff item 6109 02 i.e., 'blend containing cotton and manmade fibre' for sanctioning duty drawback.</p>
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INSTRUCTIONS

390/Misc/30/2023-JC ^{20 21}	<p>The monetary limits for filing appeals are modified to INR 5 mn (for CESTAT), INR 10 mn (for High Courts) and INR 20 mn (for Supreme Court). However, the aforesaid limits would not apply to the following cases:</p> <ul style="list-style-type: none"> ▪ Where the Constitutional validity of the provisions of an Act or Rule is under challenge; ▪ Where Notification/Instruction/Order or Circular has been held illegal or ultra vires; and ▪ Classification and refund issues which are of a legal and/or recurring nature. <p>The existing process of withdrawal of cases before the aforesaid forums is to be followed based on the aforesaid revised limits.</p>
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¹⁶ Dated 7 November 2023

¹⁷ Dated 28 October 2023

¹⁸ Dated 26 October 2023

¹⁹ Our summary of the notification can be accessed [here](#)

²⁰ Dated 2 November 2023

²¹ The aforesaid threshold would equally be applicable in respect of other Indirect Taxes viz., Central Excise and Service tax

FOREIGN TRADE POLICY



LEGISLATIVE UPDATES

NOTIFICATION

40/2023 ²²	Policy Condition 1 of Chapter 15 of ITC(HS), 2022 is amended by providing reference to Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011 (made under the Food Safety & Standards Act, 2006).
41/2023 ²³	The time period for accreditation of Halal Certification Bodies and registration of Export Units has been extended by a period of six months i.e., up to 5 April 2024.
42/2023 ²⁴	Export Policy for the export of Onions is amended to 'Free', subject to the imposition of a Minimum Export Price of USD 800 (Free on Board per Metric Tonne) till 31 December 2023, subject to certain conditions.

SPECIAL ECONOMIC ZONE



LEGISLATIVE UPDATES

NOTIFICATION

F. No. K-43013(12) / 1 2021 - SEZ ²⁵	Effective 7 November 2023, the provisions of Rule 43A of the Special Economic Zone Rules, 2006 which dealt with the provisions concerning 'Work From Home' have now been substituted by a new rule dealing with provisions concerning 'Hybrid Working'. As per the new rule, a unit may permit its specified employees for hybrid work, subject to certain conditions and restrictions. The said permission would be valid till 31 December 2024. The term 'Hybrid Working' is also defined in the amended rule.
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CENTRAL EXCISE/ SERVICE TAX/ VALUE ADDED TAX



LEGISLATIVE UPDATES

No:36 & 37/2023-Central Excise ²⁶	The rate of Special Additional Excise Duty on Petroleum Crude, Aviation Turbine Fuel and High-speed diesel oil is amended to INR 9,800 per tonne, Nil, and INR 2 per litre, respectively with effect from 1 November 2023.
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²² Dated 26 October 2023

²³ Dated 27 October 2023

²⁴ Dated 28 October 2023

²⁵ Dated 4 November 2023

²⁶ Dated 7 November 2023

INDIRECT TAX NEWS FLASH



The Times of India (1, 2 and 5 November 2023)	<ul style="list-style-type: none">▪ Big boost! GST collections in October 2023 hit second highest ever of Rs. 1.72 lakh crore▪ Real-money gaming headed for a squeeze after GST ruling, forecasts Lumikai/Google report▪ GST amnesty scheme provides relief, appeals to be filed by January 31, 2024
Hindustan Times (2 November 2023)	<ul style="list-style-type: none">▪ Commercial property tenants to pay 18% GST on electricity bills
The Times of India (3 November 2023)	<ul style="list-style-type: none">▪ Biometric registration rollout for GST from Vapi on Nov 7
The Hindu business line (6 November 2023)	<ul style="list-style-type: none">▪ E-way bill generation surges to all-time high of 10.03 cr in Oct

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