

# INDIRECT TAX DIGEST

12 April 2024  
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## GOODS & SERVICES TAX



### LEGISLATIVE UPDATES

#### NOTIFICATION

07/2024 - Central Tax <sup>1</sup>	The liability to pay interest on delayed payment of GST in Form GSTR-3B has been exempted for 4 specified GSTINs for the respective specified tax period/s.
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#### INSTRUCTION / CIRCULAR

Instruction No. 01/2023-24-GST <sup>2</sup>	CBIC has issued directions to the CGST field formations to follow a uniform procedure in undertaking enforcement activities to promote ease of doing business in India <sup>3</sup> .
Circular No. 1/2024 (Assam) <sup>4</sup>	It has been clarified that in lieu of the rent agreement/leased deed registered with the sub-registrar, an application for registration can also be made through a notarised rent agreement/ leased deed/ NOC along with an affidavit certifying the genuineness of the principal place of business sworn before a First-Class Judicial Magistrate. For this, the applicant would be required to obtain prior approval from the concerned Zonal Joint Commissioner of State Tax.
Circular No. 6/2024 (Kerala) <sup>5</sup>	Kerala State Government has issued instructions to bring uniformity in the matter of issuance/ non-issuance of notices in case of voluntary compliance under Sections 73 and 74 of the Central Goods and Services Tax Act, 2017 (CGST Act) i.e., payment of tax, interest, penalty (wherever applicable).
CCT/1919/03/2023 (Gujarat) <sup>6</sup>	Section 143(1) of the CGST Act <i>inter alia</i> provides that inputs and capital goods sent to job-worker are required to be brought back within a period of 1/ 3 year/s, as the case may be. Further, in certain cases, the Commissioner is empowered to extend the aforesaid period by an additional period of 1 year (for inputs) and 2 years (for capital goods). The Gujarat GST Department has issued an order assigning the aforesaid power to the Joint Commissioner.
GSTN Advisory <sup>7</sup>	Taxpayers whose turnover in the FY 2023-24 exceeds INR 50mn will be required to start e-invoicing from 1 April 2024 onwards. Further, the Taxpayers can self-enable e-Invoicing by visiting the E-Invoicing portal ( <a href="https://invoice.gst.gov.in">https://invoice.gst.gov.in</a> ) and start reporting through any of the 4 specified new Invoice Registration Portals.
GSTN Advisory <sup>8</sup>	The facility for resetting and re-filing of Form GSTR-3B has been enabled for specified taxpayers in cases where there was a difference between the saved data and the filed Form GSTR-3B.
GSTN Advisory <sup>9</sup>	A new feature to auto-populate the HSN-wise summary from e-Invoices into Table 12 of GSTR-1 has been introduced.

<sup>1</sup>Dated 8 April 2024

<sup>2</sup>Dated 30 March 2024

<sup>3</sup>Our alert summarising this Instruction can be accessed by clicking [here](#)

<sup>4</sup>Dated 30 March 2024

<sup>5</sup>Dated 6 April 2024

<sup>6</sup>Dated 5 April 2024

<sup>7</sup>Dated 3 April 2024

<sup>8</sup>Dated 9 April 2024

<sup>9</sup>Dated 9 April 2024

## JUDICIAL UPDATES

### [Innovators Facade Systems Ltd Vs. Assistant Additional Director General of GST Investigation \[TS-163-HC\(BOM\)-2024-GST\]](#)

#### Issue

- Whether the recovery of GST of INR 25mn at 3:30 am can be construed as being made under coercion, and whether the Taxpayer would be entitled to claim a refund of amounts so collected/retained as being made without the authority of law?

#### Ratio

- The letter filed by the Taxpayer consequent to the aforesaid payment of GST signified that -
  - The Taxpayer had voluntarily decided to deposit the aforesaid amount of INR 25mn; and
  - The balance amount of GST liability was undertaken to be discharged within 10 days.
- If the Taxpayer was coerced by the tax authorities, then as a prudent legal person, the Taxpayer could have filed complaints and/ or representation against such actions of the tax authorities, which in law can be regarded as highhanded and illegal. However, no such action is evident from the letters filed by the Taxpayer.
- Any amount voluntarily deposited by the Taxpayer to mitigate the circumstances and/or avoid legal proceedings being initiated against it cannot be categorised as a deposit made under coercion. In fact, there cannot be a straight-jacket / blanket opinion in this regard as any action taken by the tax authorities must be tested on its facts.
- When an assessee comes before the Court invoking jurisdiction under Article 226 of the Constitution of India (Constitution) by making a serious grievance that the tax authorities had coerced the assessee to deposit the tax amounts, whether such payments were made under coercion or whether it was a voluntary deposit is **purely a disputed question of fact which cannot be gone into and appreciated in the proceedings under Article 226** of the Constitution.
- In view of the above, the Writ Petition filed by the Taxpayer was dismissed by holding the same to be misconceived.

### [Shantanu Sanjay Hundekari and Ors. Vs. Union of India and Ors. \[TS-166-HC\(Bom\)-2024-GST\]](#)

#### Issue

- The Petitioner is an employee working as a Taxation Manager in Maersk Line India Pvt. Ltd. The Petitioner also provided assistance to Maersk A/s (Maersk) in carrying out compliances under the GST law, for which Power of Attorney was given to the Petitioner. However, the Petitioner was not in charge of the day-to-day business of Maersk.
- In respect of the alleged wrongful utilisation of input tax credit (ITC) by Maersk, whether a Show Cause Notice (SCN) be issued to the Petitioner under Section 122(1A) read with Section 137 of the Central Goods and Services Tax Act, 2017 (CGST Act) proposing to demand penalty to the tune of INR 37.31bn?

#### Ratio

- Section 122 of the CGST Act provides for the levy of penalty for “certain offences” by a taxable person. Section 122(1A) of the CGST Act provides that any person (being a taxable person) who -
  - Retains the benefit of the transactions covered under clauses (i), (ii), (vii) or (ix) of Section 122(1); and/ or
  - In whose instances, such a transaction is conducted
 shall be liable to a penalty of an amount equal to the tax evaded or ITC availed of or passed on.
- Absent the aforesaid basic element, the SCN issued seeking to impose penalty would be rendered illegal, for want of jurisdiction as would also stand vitiated by patent non-application of mind.
- Applying the above to the present case, the Petitioner, being a mere employee of MLIPL which is a group company of Maersk, cannot fall under the purview of Section 122(1A) of the CGST Act as the Petitioner cannot be a ‘taxable’ or a ‘registered person’ so as to retain the benefits as the provision ordains. Accordingly, the Impugned SCN invoking the aforesaid provision is wholly without jurisdiction, which is *ex-facie* inapplicable to the present case.
- Even assuming that Section 122(1A) is applicable to the Petitioner, there is no material to substantiate that the ITC was availed at the instance of the Petitioner. Thus, there is no material to support that any of the ingredients of Section 122(1A) of the CGST Act would stand attracted so as to confer jurisdiction to the tax authorities *qua* the Petitioner.
- Section 137 of the CGST Act provides that when an offence is committed by a person under the CGST Act, every person who, at the time of the offence being committed, was in charge of and responsible to the company for the conduct of the business of the company, as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. The manner in which Section 137 of the CGST Act can form part of any invocation against the Petitioner, that too along with Section 122(1A) of the CGST Act cannot be comprehended, more particularly because the SCN is issued under Section 74 of the CGST Act. This also touches on the very jurisdiction in the issuance of the SCN.

- Even assuming that Section 137 of the CGST Act could be invoked or is made applicable against the Petitioner, the said proceedings cannot be made answerable in a SCN issued under Section 74 of the CGST Act as such proceedings would be in the nature of prosecution necessarily involving Section 134 of the CGST Act. There cannot be intermixing of jurisdictions and that too in foisting a monetary liability demanded from the Petitioner which is alleged to be the principal noticee's liability i.e., of Maersk.
- In view of the above, the tax authority lacks the jurisdiction to issue the SCN to the Petitioner. Hence, the SCN was rendered bad and illegal, deserving to be quashed and set aside.

## CUSTOMS



## LEGISLATIVE UPDATES

### NOTIFICATION

22/2024-Customs <sup>10</sup>	Effective 3 April 2024, customs duty on the Export of 'Kala Namak Rice' falling under HSN Code 1006 3090 has been exempted, subject to certain conditions and restrictions.
23/2024-Customs <sup>11</sup>	The Customs duty and Agriculture Infrastructure and Development Cess exemption on the import of Yellow Peas falling under HSN Code 0713 1010 has been extended till 30 June 2024 (earlier 30 April 2024), subject to certain conditions.

### INSTRUCTION

Instruction No. 07/2024-Customs <sup>12</sup>	Effective 1 April 2024, vide FSSAI notification dated 7 March 2024, FSSAI has notified Authorised Officers (FSSAI officials and Customs officials) at 155 specified Points of Entry for specified food imports. The tax authorities are advised to take note of the same.
Instruction No. 08/2024-Customs <sup>13</sup>	The Customs authorities have been sensitised to note that exemption from the Import Prohibition/Restriction has been provided for specified import of High End and High Value used/refurbished Medical Equipments other than critical care medical equipment, subject to certain conditions. The list of permissible imports is <b>specified</b> in the OM issued by the Ministry of Environment, Forest and Climate Change.

## FOREIGN TRADE POLICY



## LEGISLATIVE UPDATES

### NOTIFICATION

01/2023 <sup>14</sup>	Effective 2 April 2024, exports upto an aggregate quantity of 1,000 MT of 'Kala Namak rice' (HSN Code 1006 3090) have been allowed through specified customs stations. The authorised signatory for certification of Kala Namak rice and its quantity will be the Director, Agriculture Marketing & Foreign Trade, Lucknow.
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<sup>10</sup>Dated 2 April 2024

<sup>11</sup>Dated 5 April 2024

<sup>12</sup>Dated 1 April 2024

<sup>13</sup>Dated 5 April 2024

<sup>14</sup>Dated 2 April 2024

02/2023 <sup>15</sup>	Export of an additional 10,000 MT of Onions (HS code 0703 1019) over and above the quota (notified vide notification no.: 65/2023 dated 1 March 2024) is permitted to be exported to the United Arab Emirates through National Cooperative Exports Limited.
03/2024 <sup>16</sup>	The permissible quantities for export of Eggs, Potatoes, Onions, Rice, Wheat Flour, Sugar, Dal, Stone Aggregate and River Sand have been permitted to the Maldives under bilateral trade agreement between India and Maldives during 2024-25 has been notified. The export of the above items to Maldives will be exempted from any existing or future restriction/prohibition on export.
04/2023 <sup>17</sup>	Import of Yellow Peas under ITC (HS) Code 0713 1010 is 'Free' without the Minimum Import Price condition and without Port Restriction, subject to registration under the online Import Monitoring System, with immediate effect for all import consignments where Bill of Lading (Shipped on Board) is issued on or before 30 June 2024.
05/2023 <sup>18</sup>	Import of Melon Seeds under ITC(HS) code 12077090 is 'Free' with effect from 1 May 2024 till 30 June 2024, on an 'Actual User' basis for Processors of Melon Seeds having a valid FSSAI Manufacturing Licence in line with FSSAI Order dated 15 March 2024. Further, goods imported/shipped/arrived but not cleared from Customs prior to 1 May 2024 may also be cleared between 1 May 2024 and 30 June 2024.

## PUBLIC NOTICE / TRADE NOTICE

Public Notice 54/2023 <sup>19</sup>	The list of banks authorised by the Reserve Bank of India to import gold and/or silver for FY 2024-25 under Appendix 4B of the Handbook of Procedures, 2023 has been updated.
Public Notice 01/2024 <sup>20</sup>	Standard Input Output Norm (SION) E-124 for the export of Refined Sunflower Oil (Edible Grade) has been amended with revised import entitlements.
Public Notice 02/2024-25 <sup>21</sup>	Timelines and Procedures for registration under the Melon Seeds - Import Monitoring System (MS-IMS) for import of Melon Seeds are notified.
Trade Notice No. 01/2024-25 <sup>22</sup>	Directions have been issued regarding the submission of digitised Aayat Niryat Forms (ANFs) and Appendices as well as their applications via the DGFT portal. It is also clarified that there is no requirement to submit hard or soft copies of the digitised ANFs, Appendices, Importer-Exporter Code (IEC), Registration-cum-Membership Certificates (RCMCs) or MSME Udyam Registration Certificates to the DGFT (HQ) or its Regional Authorities. Further, there is no requirement to upload such documents alongside online applications. All deficiency letters and correspondences pertaining to online applications must be issued and responded to exclusively online. Physical paper responses to such communications should not be entertained.

## CENTRAL EXCISE/ SERVICE TAX/ VALUE ADDED TAX



## LEGISLATIVE UPDATES

### NOTIFICATION

11/2024 - Central Excise <sup>23</sup>	Effective 4 April 2024, the applicable rate of Special Additional Excise duty on production of Petroleum Crude has been increased from INR 4,600 per tonne to INR 6,800 per tonne.
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<sup>15</sup>Dated 3 April 2024  
<sup>16</sup>Dated 5 April 2024  
<sup>17</sup>Dated 5 April 2024  
<sup>18</sup>Dated 5 April 2024  
<sup>19</sup>Dated 28 March 2024

<sup>20</sup>Dated 9 April 2024  
<sup>21</sup>Dated 9 April 2024  
<sup>22</sup>Dated 2 April 2024  
<sup>23</sup>Dated 3 April 2024

11/AN. SH./VAT Audit- 07/2024-1486 (Bihar) <sup>24</sup>	The Commissioner has enlisted 14 dealers who have been selected for detailed Audit of their businesses for FY 2022-23.
S.O. No. 04 (Jharkhand) <sup>25</sup>	The Jharkhand Government has exempted the levy of VAT on the sale of liquors for human consumption by or to the Canteen Stores Department or the Defence Regimental Units, subject to certain conditions.

## JUDICIAL UPDATES

### [Tata Teleservices \(Maharashtra\) Ltd. Vs. Commissioner, Service tax \[TS-105-CESTAT-2024-ST\]](#)

#### Issue

- Whether Service tax paid by the Taxpayer (during the period starting from 1 April 2007 to 31 March 2011) on insurance premium in respect of policy taken for the employees and their family members can be considered as an 'activity relating to business' and hence, covered in the inclusive part of the definition of 'input service' defined in Rule 2(l) of the CENVAT Credit Rules, 2004 (CCR)?

#### Ratio

- Industries involved in banking, software, telecommunication and insurance services depend highly on skilled, quality and experienced manpower for providing quality output services. To attract and retain the best available talents in the market, the Taxpayer is required to extend benefits which are prevalent in the market to avoid brain drain and attrition. Consequently, the Taxpayer is required to provide various facilities by way of a contractual obligation.
- Considering the above, the Taxpayer is entitled to avail CENVAT Credit of Service tax paid on procuring insurance policies for the employees and their family members. The decisions in *Milipore India, Axis Bank and PTC Software*<sup>26</sup> clearly supports this view. On the other hand, the decision in *John Deere India, Emerson Export and Infosys Ltd.*<sup>27</sup> do not lay down the correct law.
- In view of the above, it was held that the Taxpayer would be entitled to claim the CENVAT Credit of Service tax paid on insurance premiums for its employees and their family member's insurance.

### [Renu Singhania Vs. Commissioner of CGST and CX \[2024 \(17\) Centax 7 \(Tri.-Cal.\)\]](#)

#### Issue

- Where the service provider has classified a service as 'renting of immovable property', whether a service recipient can seek to reclassify the same as 'construction of commercial complex' and claim abatement of 70% in terms of Notification no.: 26/2012-Service tax dated 20 June 2012 and whether such recipient can claim a refund of Service tax incorrectly discharged by the service provider?

#### Ratio

- The Taxpayer, being a service recipient, is not permitted to question the classification adopted by the service provider on account of the following reasons:
  - The service provider at no point in time claimed that excess Service tax was discharged due to a mistake and that they were providing only the service of 'construction of commercial complex'.
  - Accordingly, the Taxpayer is precluded from changing the classification adopted by the service provider to claim the present refund.
- Moreover, the Taxpayer's refund application can also be rejected on the ground that the Taxpayer failed to substantiate the following:
  - The service provider had not availed CENVAT Credit and had paid the Service tax received from the Taxpayer; and
  - The cost of land was included in the total lease value charged by the service provider.
- In view of the above, the Taxpayer is not entitled to claim a refund of Service tax and the appeal filed by the Taxpayer was dismissed.

<sup>24</sup>Dated 28 March 2024  
<sup>25</sup>Dated 28 March 2024

<sup>26</sup>Commissioner of Central Excise, Bangalore-II Vs. Milipore India Pvt. Ltd. [2012 (26) STR 514 (Kar.)], Commissioner of Central Tax & Central Excise, Mumbai Vs. Axis Bank Ltd. [2019 (369) ELT 583 (Bom.)] and PTC Software [TS-267-CESTAT-2013(MUM)-ST]

<sup>27</sup>John Deere India Pvt. Ltd. Vs. CCE, Pune-III [2016 (41) STR 990 (Tri.-Mum.)], Emerson Export Engineering Centre Vs. CCE, Pune-III [2019-TIOL-2508-CSTAT-MUM], Infosys Ltd. Vs. CST, Bangalore [2015 (37) STR 862 (Tri.-Bang.)],

## INDIRECT TAX NEWS FLASH



<p>The Hindu-BusinessLine (1 and 4 April 2024)</p>	<ul style="list-style-type: none"> <li>▪ <a href="#">GST collection in March surges to ₹1.78-lakh crore</a></li> <li>▪ <a href="#">Ice cream not a luxurious item, says Chhattisgarh High Court</a></li> </ul>
<p>Times of India (1 and 2 April 2024)</p>	<ul style="list-style-type: none"> <li>▪ <a href="#">GST March tally second highest at Rs 1.8 L cr, Rs 20 L cr +</a></li> <li>▪ <a href="#">GST Fraud Case: HC Grants Bail to Four Persons In GST Fraud Case</a></li> </ul>
<p>Economic Times (29 and 31 March 2024)</p>	<ul style="list-style-type: none"> <li>▪ <a href="#">HC Stays ₹80 cr GST Demand on Hyundai Seconded Employees Pay</a></li> <li>▪ <a href="#">CBIC: Only principal commissioners or higher officials can probe into GST, other sensitive matters</a></li> </ul>
<p>Money Control (31 March and 1 April 2024)</p>	<ul style="list-style-type: none"> <li>▪ <a href="#">Zomato receives Rs 23.26 crore GST penalty notice for FY19</a></li> <li>▪ <a href="#">India's March GST collection second-highest ever at Rs 1.78 lakh crore</a></li> </ul>
<p>Financial Express (3 April 2024)</p>	<ul style="list-style-type: none"> <li>▪ <a href="#">Centre seen to have met FY24 gross tax target</a></li> </ul>

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