

INDIRECT TAX DIGEST

16 August 2024

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GOODS & SERVICES TAX



LEGISLATIVE UPDATES

BUDGET - JULY 2024

Amendments proposed in Finance (No. 2) Bill, 2024	The Finance (No. 2) Bill, 2024 (the Bill) was introduced by the Finance Minister in the Lok Sabha on 23 July 2024 ¹ . The amendments to the Bill have been tabled in the Lok Sabha by notice of amendments ² .
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NOTIFICATION

GSTN Advisory ³	GSTN has issued an advisory which <i>inter alia</i> provides that biometric-based Aadhaar Authentication and Document Verification for GST Registration applicants in Jammu and Kashmir and West Bengal has been implemented on 2 August 2024.
GSTN Advisory ⁴	GSTN has issued an advisory highlighting that the GSTN team is working on the validation errors reported by the taxpayers while filing Form GSTR-6 pursuant to a reduction in the rate of Tax Collected at Source from 1% to 0.5%.
GSTN Update ⁵	GSTN has issued a detailed manual and FAQs on filing Form GSTR-1A ⁶ .
16/2024 - Central Tax ⁷	The Finance Act, 2024 had <i>inter alia</i> amended various provisions of the Central Goods and Services Tax Act, 2017 (CGST Act). These amendments will come into force on the following dates: <ul style="list-style-type: none"> 1 October 2024 - Amendments in the provisions relating to imposition of penalty for failure to register machine as per Section 148 of the CGST Act i.e., Section 122A of the CGST Act; and 1 April 2025 - Amendments in the provisions relating to the Input Service Distributor mechanism viz., Sections 2(61) and 20 of the CGST Act⁸.
01/2024-State Tax GSTAT (Chhattisgarh) ⁹ , 20/GST-2 (Haryana) ¹⁰ and 749/XI-2-24-9(47)/17-T.C.260-U.P.Act-1-2017-Order-(320)-2024 (Uttar Pradesh) ¹¹	The qualification criteria for appointment as a Technical Member (State) of the GST Appellate Tribunal (GSTAT) in Chhattisgarh has been relaxed to '25 years of service in the Government, as Gazetted officer' (earlier '25 years of service in Group A, or equivalent'). This relaxation shall remain in force for a period of 10 years. However, all other conditions provided under Section 110(1)(d) of the CGST Act shall continue to apply. Similar Notification is issued by the Government of Haryana and Uttar Pradesh.

¹ Our publication on the amendments proposed by the Union Budget can be accessed by clicking [here](#).

² Our alert on the amendments proposed in the Bill can be accessed by clicking [here](#).

³ Dated 2 August 2024

⁴ Dated 2 August 2024

⁵ Dated 1 August 2024

⁶ The detailed manual and the FAQs can be accessed by clicking [here](#) and [here](#).

⁷ Dated 6 August 2024

⁸ Our publication on the Budget proposals dated 1 February 2024 can be accessed by clicking [here](#). Our alert on the notification stipulating the effective date of implementation of these provisions can be accessed by clicking [here](#).

⁹ Dated 31 July 2024

¹⁰ Dated 8 August 2024

¹¹ Dated 7 August 2024

15-GSTAT/2024-State Tax (Maharashtra) ¹²	One of the qualification conditions for appointment as a Technical Member (State) of the GSTAT in Maharashtra is such a person should not be below the rank of Additional Commissioner. This qualification requirement has been amended to provide that the Technical Member (State) should not be below the Additional Commissioner's rank.
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INSTRUCTION

02/2024-GST ¹³	A special All-India drive was conducted during the period from 16 May 2023 to 15 July 2023 (which was further extended till 14 August 2023), for verification and detection of suspicious/fake registrations and for taking timely remedial action to prevent any further revenue loss to the Government. Guidelines for the same were issued <i>vide</i> Instruction No. 01/2023-GST dated 4 May 2023 ¹⁴ . The aforesaid guidelines have been partially modified for conducting the Second Special All-India Drive against fake registrations to commence from 16 August 2024 to 15 October 2024.
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JUDICIAL UPDATES

Input Tax Credit (ITC) cannot be denied to bona fide purchasers due to seller's failure to deposit tax

National Plasto Moulding Vs. The State of Assam & Ors. [TS-469-HC(GAUH)-2024-GST]

Issue

- Validity of the Show Cause Notice (SCN) and the consequent order issued to a *bona fide* Taxpayer for denying ITC on account of the supplier's failure to deposit tax.
- Validity of Sections 16(2)(c) and (d) of the CGST Act.

Ratio

- The Delhi High Court in *On Quest Merchandising India Private Limited Vs. Government of NCT of Delhi & Ors. [TS-314-HC-2017(DEL)-VAT]* (affirmed by Supreme Court in *[TS-2-SC-2018-VAT]*) had held that a purchasing dealer cannot be punished for the act of a selling dealer in case the selling dealer had failed to deposit the tax collected by it.
- The issue involved in the present matter is squarely covered by the above ruling and hence, the SCN impugned in the present Writ Petition and the consequential order are set aside. However, the tax authorities were granted liberty to act in those cases where the purchase transactions were not *bona fide*¹⁵.

Penalties, late fees, penal interest and fines collected by the Reserve Bank of India (RBI) for contravention of law or for non-performance/under-performance are not leviable to GST

Reserve Bank of India [TS-461-AAR(MAH)-2024-GST]

Issue

- Whether the following charges recovered by RBI are leviable to GST:
 - Penalties, late fees, penal interest or fines for contravention or violation of the provisions of law.
 - Penalty for non-performance or under-performance as per the contractual agreement with third-party vendors.

Ratio

- **Amounts recovered for contravention/violation of the provisions of law:**
 - In the present case, penalties, late fees, penal interest, fines, etc. are recovered by RBI for contravention or violation of the provisions of the law administered by RBI. Such recoveries are for maintaining discipline and deterrence in the regulatee banks, non-banking financial institutions and other institutions.
 - Therefore, these recoveries are covered by the clarification provided in Para 7.4 of Circular No. 178/10/2022-GST dated 3 August 2022 (Circular No. 178/10/2022) as well as the Frequently Asked Questions (FAQs) on Banking, Insurance and Stockbrokers Sector wherein it was clarified that fines and penalties for violation of the provision of law cannot be treated as consideration for an activity.
 - The Authority for Advance Ruling is bound by the Circular and hence, penalties, late fees, penal interest, and fines levied and collected by RBI for contravention or violation of the provisions of law are not in the nature of consideration for an activity and hence, would not constitute a supply of service.
- **Penalty for non-performance or under-performance as per the contractual agreement:**
 - The amounts recovered towards penalty for non-performance or under-performance as per the contractual agreement by RBI with third-party vendors is in the nature of liquidated damages and the same is paid to compensate for injury, loss or damage suffered by RBI due to breach of the contract by third-party vendors. RBI is interested in procuring services within the stipulated time and not in collecting penalties.

¹² Dated 12 August 2024
¹³ Dated 12 August 2024

¹⁴ The original Instruction covered in Indirect Tax Digest dated 16 May 2023 can be accessed by clicking [here](#)

¹⁵ Although the constitutional validity of Section 16(2)(c) and (d) of the CGST Act were challenged in the Writ Petition, it appears that the same has not been dealt with/ examined by the High Court.

- As a result, the present case is covered by the clarification provided in Paras 7.1, 7.14 and 7.1.5 of Circular No. 178/10/2022 wherein it was held that damages do not constitute consideration for a supply and are not taxable.
- The AAR is bound by the Circular, and hence, amounts recovered for non-performance or under-performance as per the contractual arrangement are not in the nature of consideration for an activity and hence, would not constitute a supply of service.

Common portal can be used for the issuance of assessment orders

Sunil Kumar K Vs. The State Tax Officer [TS-422-HC(KER)-2024-GST]

Historical Background

- Section 146 of the CGST Act empowers the Government to notify the common portal for facilitating registration, payment of tax, furnishing of returns, computation and settlement of IGST, E-Way bill and for carrying out such other functions and for such purposes as may be prescribed.
 - Notification No. 9/2018-Central Tax dated 23 January 2018 (NN 9/2018) notifies the GST portal (www.gst.gov.in) as the common portal for facilitating registration, payment of tax, furnishing of returns and computation and settlement of IGST.
 - Subsequently, vide Section 115 of the Finance Act, 2022, NN 9/2018 was amended **with retrospective effect from 22 June 2017** to inter alia notify the GST portal for all other functions (except e-invoicing) under the Central Goods and Services Tax Rules, 2017 (CGST Rules).
 - Section 169 of the CGST Act inter alia provides that any decision, order, summons, notice or other communication under the CGST Act or the Central Goods and Services Tax Rules, 2017 (CGST Rules) can be served by making it available on the common portal.

Issue

- Whether the GST portal notified under Section 146 be used for the communication of orders?

Ratio

- A harmonious reading of Sections 146 and 169 of the CGST Act implies that once a common portal is notified for the purpose of the CGST Act, then any action such as registration, payment of tax, furnishing of returns, etc. as also the communication of notices, orders, etc., as provided under the GST law can be affected through the notified portal viz., GST portal.
- On perusal of NN 9/2018 and its subsequent retrospective amendment, it is beyond doubt that the GST portal can also be used for all functions provided under the CGST Rules. Accordingly, the Writ Appeal filed by the Taxpayer was dismissed.

Transfer of title of goods stored in FTWZ units to the customers situated in the Domestic Tariff Area (DTA) is covered in Para 8(a) of Schedule III to the CGST Act

Panasonic Life Solutions India Pvt. Ltd. [TS-474-AAR(TN)-2024-GST]

Issue

- **Issue 1:** Whether transfer of title in goods stored in the Free Trade Warehousing Zone (FTWZ) unit to the customers situated in DTA or multiple transfers within FTWZ, followed by a subsequent removal from FTWZ unit would be covered under Para 8(a) of Schedule III to the CGST Act?
- **Issue 2:** If the answer to Issue 1 is negative, whether IGST is leviable on such supply in addition to the customs duties (i.e., Basic Customs Duty (BCD) + IGST) payable by the customer on removal of goods from the FTWZ unit?
- **Issue 3:** Irrespective of whether the supply of goods lying in FTWZ unit to customer in DTA is covered under Schedule III, whether the Taxpayer would be liable to reverse ITC on common inputs/inputs services/capital goods as per the amended Section 17(3) of the CGST Act?

Ratio

- The gist of the key provisions of the Special Economic Zones Act, 2005 (SEZ Act) are as under:
 - FTWZ is part of the SEZ scheme and is a customs-bonded warehouse.
 - Warehousing of goods that are imported without payment of customs duties is carried out in these zones.
 - SEZ is a specifically delineated duty-free enclave which is deemed to be a foreign territory for the purpose of trade operations and duties and tariffs.

Thus, the basic purpose of an FTWZ unit is the warehousing of goods belonging to its client.

Issue 1

- The query involves three activities viz., transfer of title in goods by the applicant to customers in DTA, multiple transfers within the FTWZ and followed 'a subsequent removal' from the FTWZ unit.

- In the present case, the imported goods belonging to the Taxpayer are deposited and warehoused in the FTWZ unit for further modes of transfer. As far as the activities relating to the transfer of title in goods by the applicant to the customers in DTA and 'multiple transfers within the FTWZ' are concerned, these activities would be covered under Para 8(a) of Schedule III to the CGST Act.
 - As regards activity relating to 'followed by a subsequent removal from FTWZ unit', the removal of goods can be undertaken by the customer in DTA from FTWZ only on payment of applicable customs duties including BCD and IGST as per Section 30 of the SEZ Act. Since the said activity does not concern the Taxpayer, the same need not be answered.
- Since the answer to Issue 1 above is in the affirmative, the question of answering Issue 2 would not arise.
 - **Issue 3:**
 - Prior to 1 October 2023, Explanation to Section 17(3) of the CGST Act stipulated that the value of exempt supply shall not include the value of activities/transactions specified in Schedule III of the CGST Act. However, an exception in respect of activities/transactions specified in Para 5 of Schedule III to the CGST Act was carved out. Thus, the value of activities/transactions specified in Para 5 of Schedule III to the CGST Act was required to be included in the 'value of exempt supply'.
 - Pursuant to the amendment of Explanation to Section 17(3) of the CGST Act, the scope of the phrase 'value of exempt supply' would now also include the value of activities/ transactions specified in Para 8(a) (in addition to para 5) of Schedule III to the CGST Act.
 - Considering the above, the Taxpayer would be required to reverse proportionate ITC availed on common inputs, input services and capital goods.

CUSTOMS



LEGISLATIVE UPDATES

NOTIFICATION

41/2024-Customs ¹⁶	Effective 1 August 2024, Notification No. 50/2017-Customs dated 30 June 2017 <i>inter alia</i> prescribing the effective rate of customs duties is amended to prescribe the effective rate of Basic Customs Duty @10% on all goods (excluding undenatured ethyl alcohol of any alcoholic strength) for use in laboratory or Research and Development purposes (falling under HSN code 9802 0000), subject to prescribed condition.
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FOREIGN TRADE POLICY



LEGISLATIVE UPDATES

NOTIFICATION

22/2024-25 ¹⁷	Kandla and Vishakhapatnam Customs Sea ports have been added to the list of ports allowed for Export of Essential Commodities which are under the Prohibited/ Restricted category, to the Republic of Maldives for FY 2024-25. This is in addition to the 4 ports already listed in Notification No. 06/2023 dated 15 April 2024 ¹⁸ .
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¹⁶ Dated 31 July 2024
¹⁷ Dated 1 August 2024

¹⁸ The earlier Notification No. 06/2023 covered in Indirect Tax Digest dated 26 April 2024 can be accessed by clicking [here](#)

TRADE NOTICE/ CIRCULAR/ PUBLIC NOTICE

TN 11/2024-25¹⁹

As the ITC(HS) Code mapped Export Policy is a pre-requisite to streamline the process of Export Control and Facilitation, the DGFT is in the process of harmonising Schedule II (Export Policy) with the 8-digit ITC (HS) Codes in lieu of the description-based Export Policy.

In this regard, the DGFT *vide* Notification No. 60/2023 dated 13 February 2024²⁰ had notified Chapters 1 to 39 of Schedule 2 (Export Policy) of ITC (HS). In continuation to the said Notification, the draft Schedule-II (Export Policy) of ITC(HS) 2022 aligning with the 8-digit ITC(HS) codes for the remaining Chapters i.e., 40 to 98 is prepared for comments (to be provided by 11 August 2024). It is also clarified that no substantive Export Policy amendments have been proposed. After considering the comments (if any), Chapters 40 to 98 of Schedule II (Export Policy) shall be re-notified.

SPECIAL
ECONOMIC ZONE

LEGISLATIVE UPDATES

INSTRUCTION

No. J-16/3/2007-SEZ Vol-V²¹

The use of SEZ-Online portal for filing of documents by SEZ units is extended till 11 September 2024 (earlier 12 August 2024)²².

CENTRAL EXCISE/ SERVICE TAX/
VALUE ADDED TAX

LEGISLATIVE UPDATES

NOTIFICATION

19/2024-Central Excise²³

Effective 1 August 2024, the applicable rate of Special Additional Excise duty on production of 'Petroleum Crude' (HSN 2709) is reduced from INR 7,000 per tonne to INR 4,600 per tonne.

S. R. O. No. 663/2024 (Kerala) and S. R. O. No. 664/2024 (Kerala)²⁴

In the recent Kerala State Budget 2024, the Government of Kerala has announced an Amnesty Scheme, 2024 (Amnesty Scheme) for settlement of tax arrears under the pre-GST indirect taxes levied by the State of Kerala. Pursuant to the above, the Government has also notified the rules setting out the administration and other related procedures pertaining to the Amnesty Scheme .

665-667/ 2024, 6/2024²⁶, Trade Circular 14/2024 (Kerala)²⁷

Effective 1 August 2024, the applications/ returns under the Kerala Value Added Tax Act, 2003, Kerala General Sales Tax Act, 1963, the Central Sales Tax Act, 1956 and the Amnesty Scheme are to be filed on the Kerala Indirect Tax Information System (KITIS) portal viz., www.kitis.keralataxes.gov.in.

¹⁹ Dated 2 August 2024²⁰ The original Notification covered in Indirect Tax Digest dated 16 February 2024 can be accessed by clicking [here](#)²¹ Dated 10 August 2024²² The earlier extension *vide* Instruction No. J.16/3/2007-SEZ Vol-V covered in Indirect Tax Digest dated 19 July 2024 can be accessed by clicking [here](#)²³ Dated 31 July 2024²⁴ Dated 31 July 2024²⁵ Our Alert on Kerala Amnesty Scheme can be accessed by clicking [here](#)²⁶ Dated 31 July 2024²⁷ Dated 3 August 2024

S.O. 358 (Bihar) ²⁸	Rule 19(2)(a) of Bihar Value Added Tax Rules, 2005 which <i>inter alia</i> provides filing of quarterly returns in Form RT-I is amended to provide that the retail outlets which are not owned by any oil company registered under the Bihar Value Added Tax Act, 2005 and have effected sale of motor spirit (petrol) or high-speed diesel oil within the state of Bihar that is purchased from the registered dealers in Bihar shall not be liable to file quarterly returns.
No. FD 45 CSL 2023 (Karnataka) ²⁹	The Government of Karnataka has exempted the tax payable under Section 5 of the Karnataka Sales Tax Act, 1957 on the sale of diesel not exceeding 2,00,000 kilo litres (in volume) for FY 2024-25 for supply to fishermen for use in fishing activities as per the indents issued on a monthly basis by the Director of Fisheries, Government of Karnataka.

TRADE NOTICE

Trade Circular No. 03/2024 ³⁰	The Kerala Goods and Services Tax (KGST) Department has issued guidelines for opting for the Amnesty Scheme <i>inter alia</i> providing the manner of filing the application, determination of tax liabilities under the Amnesty Scheme, the application process and the documents required to be uploaded while filing such application ³¹ .
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INDIRECT TAX NEWS FLASH



The Hindu- BusinessLine (7 and 8 August 2024)	<ul style="list-style-type: none"> ▪ Penalties for unregistered pan masala, gutkha machines under GST begin Oct 1 ▪ GST on counter sales: Kerala AAR defines 5% rate, 18% for hotel premises
Times of India (8 and 13 August 2024)	<ul style="list-style-type: none"> ▪ States get nearly 75% of health, life insurance GST: FM ▪ To check fraud, Centre & Bengal roll out GST Suvidha Kendras
Economic Times (7, 9 and 13 August 2024)	<ul style="list-style-type: none"> ▪ Cos with multi-state presence will have to register as ISD with GST authorities by April 1, 2025 ▪ CAG flags financial loss of Rs 2,604 crore to Railways on interest payments, GST recovery, more ▪ 54th GST Council meeting to be held on September 9
Business Standard (8 and 12 August 2024)	<ul style="list-style-type: none"> ▪ Rs 1.82 trillion GST from mobile phones 5 times what PLI allocated ▪ GST authorities issue Rs 2,000 cr notice to 20 insurers operating in SEZs ▪ CBIC to begin special drive to weed out fake GST registration on Aug 16
The New Indian Express (8 August 2024)	<ul style="list-style-type: none"> ▪ GST reimbursement for handloom weavers in Andhra Pradesh
Outlook Business (3 August 2024)	<ul style="list-style-type: none"> ▪ Clamour Grows For Removal Of GST On Life, Medical Insurance Premiums: How This Stands To Benefit You?

²⁸ Dated 8 August 2024
²⁹ Dated 9 August 2024
³⁰ Dated 1 August 2024

³¹ The Kerala Amnesty Scheme, 2024 covered in Indirect Tax Digest dated 2 August 2024 can be accessed by clicking [here](#)

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