

INDIRECT TAX DIGEST

26 April 2024

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GOODS & SERVICES TAX



LEGISLATIVE UPDATES

NOTIFICATION

08/2024 - Central Tax ¹	Notification No. 04/2024-Central Tax ² had prescribed a special procedure to be followed by registered persons engaged in the manufacture of specified goods (such as pan masala and certain tobacco products). This procedure will now come into effect from 15 May 2024 as against 1 April 2024.
09/2024 - Central Tax ³ & GSTN Advisory ⁴	For taxpayers filing monthly GST returns, the due date of filing Form GSTR-1 for March 2024 has been extended to 12 April 2024 (earlier 11 April 2024).

INSTRUCTION/ CIRCULAR

Circular No. 03/2024 (Kerala) ⁵	The time limit for issuance of adjudication orders under Section 73 of the CGST Act is expiring on 30 April 2024 (for FY 2018-19) and 31 August 2024 (for FY 2019-20). In this regard, the Kerala tax authorities are directed to issue adjudication orders in a timely manner while also adhering to the principles of natural justice, thereby maintaining the quality of the orders so that they can withstand judicial review at a higher forum.
Circular No. 04/2024 ⁶ & 05/2024 ⁷ (Kerala)	The guidelines for numbering of Show Cause Notices (SCNs), Adjudication order, Appellate order and Revisional order along with the manner of recording the register of such SCNs/ orders (as the case may be) have been notified.
Circular No. 2425001 (Uttar Pradesh) ⁸	The Uttar Pradesh Goods and Services Tax Department has issued a clarification stipulating the procedure to be adopted for the recovery of demands pertaining to the pre-GST regime.

JUDICIAL UPDATES

Thai Mookambikaa Ladies Hostel Vs. Union of India & Ors. [TS-157-HC(MAD)-2024-GST]

Issue

- Whether GST is leviable on hostel accommodation provided to college students and working women or whether the same would be covered under Sl. No. 12 of Notification No. 12/2017-Central Tax dated 28 June 2017 (Exemption Notification) which exempts 'Services by way of renting of residential dwelling for use as residence'.

¹ Dated 10 April 2024

² Dated 5 January 2024.

The summary of the notification can be accessed by clicking [here](#)

³ Dated 10 April 2024

⁴ Dated 11 April 2024

⁵ Dated 23 March 2024

⁶ Dated 30 March 2024

⁷ Dated 6 April 2024

⁸ Dated 16 April 2024

Ratio

- The exemption under Sl. No. 12 of the Exemption Notification was given to a person engaged in renting of residential dwelling when the same is used as residence. Thus, the exemption would be available when a landlord rents the property to a corporate/ tenants who in turn rent out the said property to students/ working professionals/ other persons.
- Applying the purposive interpretation, the object of Sl. No. 12 of the Exemption Notification was only to give exemption towards premises which are residential and not towards commercial premises, and the premises should be of residential dwelling for use as residence.
- The Karnataka High Court, in *Taghar Vasudeva Ambrish Vs. Appellate Authority for Advance Ruling [2022 (63) GSTL (Kar.)]* had held that the activity of leasing out residential premises as a hostel to students and working professionals would be eligible to exemption as per Sl. No. 12 of the Exemption Notification. Against this, a Special Leave Petition was filed by the tax authorities before the Supreme Court. However, no stay on the operation of the aforesaid ruling was granted. Consequently, the ratio laid down by the Karnataka High Court was followed.
- The aforesaid exemption entry should be viewed from the perspective of the service recipient and not from the supplier's perspective. Thus, the exemption would be available based on the 'end-use' of the property which should be for 'residential' purposes, and the exemption cannot be denied based on the nature of the property or the nature of the business of the supplier.
- In view of the above, the services supplied by the Taxpayer would be exempt in terms of Sl. No. 12 of the Exemption Notification.

Satyam Castings Pvt. Ltd. Vs. Deputy Director, DGGI [TS-198-HC(ORI)-2024-GST]

Issue

- Whether parallel proceedings can be initiated by the Directorate General of GST Intelligence (DGGI) in cases where a verification proceeding is pending before the State tax authorities.

Ratio

- Section 6(2)(b) of the Central Goods and Services Tax Act, 2017 (CGST Act) bars initiation of a proceeding by a proper officer under the CGST Act in cases where a proper officer under the State Goods and Services Tax Act/ Union Territory Goods and Services Tax Act has initiated a proceeding on the **same subject matter**.
 - If the subject matter of the proceeding is entirely different, there is no bar to the maintainability of the proceeding. The words 'subject matter' can be equated with the phrase 'cause of action.'
 - The reason behind barring initiation of proceeding on the same subject matter seems to be that the possibility of the final decision in the two proceedings being different cannot be ruled out which would create confusion.
- In the present case, DGGI was investigating clandestine supply by the Taxpayer in March 2022 whereas the investigation by the officer under the State GST Act was with reference to receipt of materials from one of its suppliers i.e., M/s. Anamika Enterprises.
- However, there was no reason for the Taxpayer to abstain from responding to the summons issued by the DGGI. Accordingly, without providing a definite opinion on the validity of the parallel proceedings, the Taxpayer was directed to respond to the DGGI proceedings including the SCN. Further, the Taxpayer may also take a plea that the case is covered by Section 6(2)(b) of the CGST Act before the appropriate forum in an appropriate proceeding.

M/s. Agarwal Coal Corporation Pvt. Ltd. Vs. The Assistant Commissioner of State Tax [TS-199-HC(BOM)-2024-GST]

Historical Background

- Entry 10 of Notification No. 10/2017-Integrated Tax (Rate) dated 28 June 2017 (RCM Notification)⁹ imposed the IGST liability under the reverse charge mechanism (RCM) on the importer on services provided by a person located in a non-taxable territory by way of transportation of goods by a vessel from a place outside India to the customs station of clearance in India.
- The validity of the aforesaid notification was challenged before the Gujarat High Court. The High Court in *Mohit Minerals Pvt. Ltd. Vs. Union of India [2020 (33) GSTL 321 (Guj.)]* had struck down the levy of IGST under RCM on the aforesaid services as being ultra vires the provisions of the Integrated Goods and Services Tax Act, 2017 (IGST Act).
- The aforesaid ruling was challenged by the tax authorities before the Supreme Court¹⁰ wherein it was inter alia held that:
 - The levy of IGST on the 'service' aspect of the transaction is in violation of the principle of 'composite supply' enshrined under Section 2(30) read with Section 8 of the CGST Act.
 - Since the Indian importer is liable to pay IGST on the 'composite supply' comprising of the supply of goods and the supply of services of transportation, insurance, etc., in a CIF contract, a separate levy on the Indian importer for the 'supply of services' by the shipping line would be in violation of Section 8 of the CGST Act.

⁹ Entry 10 was omitted with effect from 1 October 2023

¹⁰ Union of India Vs. Mohit Minerals Pvt. Ltd. [2022 (61) GSTL 257 (SC)]

- Pursuant to the above, the following rulings were issued by the High Courts:
 - *Agarwal Fuel Corporation Pvt. Ltd. Vs. Union of India and Anr. [WP No. 19382 of 2017]*: Madhya Pradesh High Court had held that the Taxpayer was not liable to pay IGST on ocean freight services. Hence, Entry 10 of the RCM Notification was quashed as being ultra vires.
 - *Liberty Oil Mills Vs. Union of India [2023 (72) GSTL 305 (Bom.)]*: The Bombay High Court relying on the Supreme Court and Gujarat High Court ruling in Mohit Minerals Pvt. Ltd. had allowed the Writ Petition and set aside the SCN proposing to recover IGST under the RCM.
 - *Agarwal Coal Corporation Pvt. Ltd. Vs. Union of India and Anr. [WP (C) 8720 of 2017, dated 24 August 2022]*: The Delhi High Court, in the Taxpayer's own case, had quashed Entry 10 of the aforesaid Notification and held that no tax is leviable on ocean freight for services supplied by a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India.

Issue

- Whether the Taxpayer is liable to pay IGST under the RCM in terms of Sl. No. 10 of the RCM Notification which was struck down by the High Court and Supreme Court.

Ratio

- The Gujarat High Court ruling in Mohit Minerals Pvt. Ltd. dealt with both categories of contracts, namely CIF and FOB as was duly noted in Para 57 of the judgement. Based on such facts, Sl. No. 10 of the RCM Notification was held to be ultra vires the GST law.
- Once the notification itself has been declared as ultra vires and the same has been upheld by the Supreme Court, the said notification cannot be applied by the tax authorities as the same would amount to implementing an illegal notification.
- Considering the above, the Impugned SCN is without jurisdiction and hence, set aside. Further, the amounts paid by the Taxpayer under protest have been directed to be refunded along with interest @ 7% per annum.

[In Re: Prinsep Association of Apartment Owners \[TS-193-AAAR\(WB\)-2024-GST\]](#)

Issue

- Whether GST is leviable on the following amounts collected by the Taxpayer, being a Residents Welfare Association (RWA) from its members:
 - For setting up a corpus/ sinking fund for future contingencies/ major CAPEX; and
 - Electricity charges collected on pro-rata basis for Common Area Maintenance (CAM).

Ratio

- **Corpus/ sinking fund:**
 - The corpus/ sinking fund is created by the RWA to meet future contingencies such as structural repairing, reconstruction work, etc. Such contributions are made with the presumption that the same would be used for incurring expenses for future supply of services.
 - Hence, such contributions are not in the nature of deposits in their truest sense, but an advance payment made by the members for receiving CAM services from the Taxpayer.
 - Accordingly, the recovery towards corpus/ sinking fund would be leviable to GST at the time of receipt of such amount as per Section 13(2) of the CGST Act.
- **Electricity charges:**
 - In the present case, the Taxpayer collects electricity charges consumed for CAM from its members on a pro-rata basis. The tax invoice shows a consolidated amount under HSN code 999598 where a fixed rate is levied per square feet of the area of the flat, on which GST is levied by the Taxpayer on the entire amount.
 - CAM charge not only includes common area electricity but also charges for other services like security, scavenging, water supply, maintenance of garden, etc. Further, the amount collected for the consumption of electricity is not shown separately in the tax invoice.
 - Hence, the services relating to electricity charges are bundled with the supply of goods and services for the common use of its members, and hence, form part of the composite supply where the principal supply is the supply of CAM services. Consequently, the same would be leviable to GST at the rate of the principal supply.

CUSTOMS



LEGISLATIVE UPDATES

INSTRUCTION

09/2024¹¹

Tax Authorities have been sensitised that Ortho Phosphoric Acid when used as a raw material in the production of fertilisers has been exempted from BIS Standard IS 798:2020 for a period of **ninety days**¹² from the date of publication of Notification S. No. 1709(E) dated 13 April 2024.

JUDICIAL UPDATES

Travancore Cocotuft Private Limited and Ors. Vs. Commissioner (Customs) and Anr. [TS-127-HC-2024(KER)-CUST]

Issue

- Whether Section 149 of the Customs Act, 1962 (Customs Act) prescribes for amending the Bills of Entry (BoE) and the only recourse available to an importer is under Section 128 of the Customs Act to get the BoE amended or modified.
- Whether no amendment of BoE is possible under Section 149 of the Customs Act except based on documentary evidence which was in existence at the time of clearance of goods.

Ratio

- In terms of Notification No. 78/2017-Customs dated 13 October 2017 and the Public Notice dated 23 February 2024 issued by the Principal Commissioner of Customs, Maharashtra, the contention of the tax authorities that the BoE cannot be amended as the Taxpayer has not paid IGST at the time of clearance of imported goods and as a BoE can only be amended based on the documents available at the time of clearance of goods was rejected.
- Reliance in this regard was *inter alia* placed on the following judicial precedents:
 - The Telangana High Court in *Sony India Pvt. Ltd. Vs. Union of India [2022 (379) ELT 588 (Tel.)]* had held that Section 149 of the Customs Act is an additional remedy available to the person who seeks amendment of the BoE.
 - The Bombay High Court in *Dimension Data India Pvt. Ltd. Vs. Commissioner of Customs [2021 (376) ELT 192 (Bom.)]* has held that the customs authorities have the power and jurisdiction to make corrections of any clerical or arithmetical mistakes arising in any decision or order due to any accidental slip or omission at any time which would include an order of self-assessment post out-of-charge.
 - The Madras High Court in *Hindustan Unilever Ltd. Vs. Union of India [Laws (MAD)-2021-3-454]* had held that for amending the BoE, the ground of the documents available at the time of clearance of the goods cannot be invoked.
- The tax authorities have not provided any explanation as to why the request for amendment of BoE was allowed in the case of some taxpayers whereas the same relief was denied to the others. Accordingly, the Writ Petition was allowed with a direction to the tax authorities to amend the BoE filed by the Taxpayer.

¹¹ Dated 22 April 2024

¹² **Editor's Note:** While the subject of the Instruction refers the extension period of '3 months', it appears that the extension has been provided for a period of ninety days in line with the Amendment Notification S. No. 1709(E) dated 13 April 2024 which has amended the Ortho Phosphoric Acid (Quality Control) Order, 2021. Further, the body of the aforesaid instruction also refers to an extension of ninety days. Hence, it appears that the extension is intended for ninety days and a clarification from the Government can help remove the ambiguity.

FOREIGN TRADE POLICY



LEGISLATIVE UPDATES

NOTIFICATION

06/2023 ¹³	Imposition of Port restrictions for exporting essential commodities under Prohibited/ Restricted category to the Republic of Maldives during 2024-25, as per the quota under DGFT Notification No. 03/2023 ¹⁴ dated 5 April 2024 ¹⁵ , has been notified.
07/2023 ¹⁶	The export of 10,000 MT of onions (under HS code 0703 10 19) to Sri Lanka through National Cooperative Exports Limited (NCEL) has been allowed. Further, the export of additional 10,000 MT quantity of Onions (under HS code 0703 10 19) through NCEL to the United Arab Emirates, over and above the quota of 24,400 MT already notified <i>vide</i> Notification No. 65/2023 dated 1 March 2024 and 02/2023 dated 3 April 2024, has been allowed.
08/2023 ¹⁷	The period for accreditation of halal Certification Bodies and registration of Export Units has been extended by three months i.e., up to 4 July 2024.

PUBLIC NOTICE/ TRADE NOTICE/ CIRCULAR

Policy Circular No. 01/2024 ¹⁸	<ul style="list-style-type: none"> ▪ Advance Authorisation (AA) issued on or after 1 April 2015 can fulfil Export Obligation (EO) either by physical exports or by supplying goods against AA/AA for annual requirement/DFIA (under Para 7.02A(a) of FTP 2015-20 (FTP)) ▪ Additionally, AAs issued on or after 10 January 2019 can fulfil EO by - <ul style="list-style-type: none"> – Supplying goods to EOU/STP/EHTP/BTP (under Para 7.02A(b) of FTP); or – Supplying capital goods against EPCG Authorisation, subject to certain conditions (under Para 7.02A(c) of FTP) ▪ The aforesaid clarification would also apply to AAs for deemed exports.
Trade Notice No. 02/2024-25 ¹⁹	Effective 1 April 2024, the country-wise Quantitative Restriction measures imposed on the import of Isopropyl alcohol (IPA) under HS code 2905 1220 <i>vide</i> Notification No. 64/2015-20 dated 31 March 2023 is discontinued. Accordingly, the import of IPA is now 'Free' without any Policy Condition.

SPECIAL ECONOMIC ZONE



LEGISLATIVE UPDATES

INSTRUCTIONS

Instruction No. 115 ²⁰	Clarification on operational and procedural aspects concerning Rule 11B of the SEZ Rules (Non-Processing Area for IT/ ITES SEZ units) inserted <i>vide</i> Notification G.S.R.881(E) dated 6 December 2023 has been provided ²¹ .
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¹³ Dated 15 April 2024

¹⁴ The original notification covered in Indirect Tax Digest dated 12 April 2024 can be accessed by clicking [here](#)

¹⁵ Editor's Note: The notification inadvertently refers the date of the notification as 5 April 2023 instead of 5 April 2024.

¹⁶ Dated 15 April 2024

¹⁷ Dated 23 April 2024

¹⁸ Dated 12 April 2024

¹⁹ Dated 18 April 2024

²⁰ Dated 9 April 2024

²¹ Our Alert summarising this Instruction can be accessed by clicking [here](#)

CENTRAL EXCISE/ SERVICE TAX/ VALUE ADDED TAX



LEGISLATIVE UPDATES

NOTIFICATION

12/2024 - Central Excise ²²	Effective 16 April 2024, the applicable rate of Special Additional Excise duty on production of Petroleum Crude has been increased from INR 6,800 per tonne to INR 9,600 per tonne.
S.O. No. 05 (Jharkhand) ²³	Effective 1 April 2024, the Jharkhand Government has exempted the levy of VAT on sale of liquors for human consumption by or to the Border Security Force, subject to certain conditions and restrictions.

INDIRECT TAX NEWS FLASH



The Hindu-BusinessLine (11 and 20 April 2024)	<ul style="list-style-type: none"> ▪ Pan masala, gutkha firms get time till May 15 to roll out special procedure for registration, monthly return filing ▪ Zomato gets ₹11.82 crore tax demand notice
Times of India (23 April 2024)	<ul style="list-style-type: none"> ▪ Reserve 5% GST benefit for smaller EVs: Skoda
Economic Times (11 and 18 April 2024)	<ul style="list-style-type: none"> ▪ GSTR-1 filing due date to be extended till Apr 12: GSTN ▪ AIGF estimates USD 2.5 bn GST loss from offshore illegal, betting firms
Money Control (15 and 18 April 2024)	<ul style="list-style-type: none"> ▪ Ola, Uber and Rapido remove in-app wallet payments for auto-rickshaws to retain drivers, cut costs ▪ Major GST relief for foreign airlines, shipping lines on cards after elections
Financial Express (21 April 2024)	<ul style="list-style-type: none"> ▪ Lok Sabha Election 2024: GST amendments new government should bring in to support MSMEs

²² Dated 15 April 2024

²³ Dated 18 April 2024

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