

INDIRECT TAX DIGEST

11 November 2024

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GOODS & SERVICES TAX (GST)



LEGISLATIVE UPDATES

NOTIFICATION

<p>Corrigendum to Circular no:237/31/2024-GST¹</p>	<p>A Corrigendum has been issued to insert a new para in circular no:237/31/2024-GST dated 15 October 2024 to clarify that the restriction on refund under Section 150 of Finance (No.2) Act, 2024, of tax paid on account of contravention of the provisions of section 16(4) of the Central goods and Services Tax Act, 2017 (CGST Act) shall not apply to the refund of the an amount paid as pre-deposit by the taxpayer at the time of filing an appeal under sections 107(6) or 112(8) of the CGST Act, where such appeals are decided in favour of the said taxpayer.</p>
<p>CST/JC(HQ)-5/AR-2/GST/Revocation extension/2024 (Maharashtra GST)²</p>	<p>Joint Commissioners of State Tax of the concerned nodal division are appointed as proper officers to undertake <i>suo moto</i> cancellation of GST registration under Rule 23(1) of the Maharashtra Goods and Services Tax Rules, 2017.</p>
<p>3/2024-TNGST (Tamil Nadu)³</p>	<p>Effective 1 November 2024, the Deputy State Tax Officer, appointed as the proper officer for the purpose of assessment, demand and adjudication under sections 60, 61, 62, 63, 64, 73, 74, 75 and 76 of the Tamil Nadu Goods and Services Tax Act, 2017 shall now exercise their powers only in respect of those taxpayers whose turnover in the State is up to INR 20mn in the previous financial year or the current financial year.</p>

INSTRUCTION

<p>CBIC Instruction⁴</p>	<p>CBIC had issued Instruction dated 21 August 2020 <i>inter alia</i> laying down guidelines for conducting personal hearings under the CGST Act, Integrated Goods and Services Tax Act, 2017, Customs Act, 1962, Central Excise Act, 1944 and Chapter V of the Finance Act, 1994. The said instruction was subsequently amended on 28 July 2022 <i>inter alia</i> stipulating that the virtual mode of hearing shall not be mandatory and the same shall be done only at the request of the assessee. The aforesaid amendment has now been withdrawn and the original Instruction dated 21 August 2020 has been reinstated, making it mandatory for all departmental quasi-judicial / appellate authorities to conduct personal hearings through Video Conferencing i.e., in the virtual mode. Further, personal hearing in physical mode may be resorted to only on specific request from the party concerned, and after recording the reasons for the same in writing.</p>
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¹Dated 25 October 2024

²Dated 23 October 2024

³Dated 28 October 2024

⁴Dated 5 November 2024

GSTN UPDATES

GSTN Update ⁵	Pursuant to amendments made by the Finance Act, 2023 w.e.f. 1 October 2023, a taxpayer shall not be allowed to file GST returns (Forms GSTR-1, GSTR-3B, GSTR-4, GSTR-5, GSTR-5A, GSTR-6, GSTR-7, GSTR-8 and GSTR-9) after the expiry of three years from the due date of furnishing the respective return. In this regard, GSTN has issued an update that the aforesaid changes will be implemented on the GST portal from early next year (2025) and hence, taxpayers are advised to reconcile their records and file their GST returns.
GSTN Advisory ⁶	GSTN has issued an advisory that biometric-based Aadhaar authentication and document verification for GST registration applicants of Ladakh has been implemented from 30 October 2024.
GSTN Advisory ⁷	Effective 1 April 2025, taxpayers having An Annual Aggregate Turnover of INR 100mn and above will not be allowed to report e-invoices and generate Invoice Reference Number (for Invoice/ Credit Notes/ Debit Notes) after 30 days from the date of invoice.
GSTN Advisory ⁸	GSTN has issued an advisory that the functionality to adjust the amount paid through Form GST DRC-03 against a demand order through filing Form GST DRC-03A is made available. This option is available in cases where the reason of payment in Form GST DRC-03 is disclosed as 'Voluntary' or 'Others'. A detailed advisory and FAQ's have been issued by GSTN in this regard. ⁹

JUDICIAL UPDATES

Value of supply in respect of salaries paid to seconded employees would be 'Nil' if no invoice is issued

Metal One Corporation India Pvt. Ltd. Vs. Union of India and Ors. [TS-697-HC(DEL)-2024-GST]

Issue

- Whether GST is leviable on salaries paid to expats seconded by a foreign related person in case where no invoice is issued for supply of such services?

Ratio

- Para 3.7 of Circular no:210/4/2024-GST dated 26 June 2024 clarifies that where full input tax credit is available to the Taxpayer and no invoice is raised in respect of the services rendered by the foreign affiliate, the value of such services would be "deemed" to have been declared as 'Nil' and the same would be treated as the market value for the purpose of second proviso to Rule 28 of the Central Goods and Services Tax Rules, 2017 (CGST Rules).
- In the present case, although payments were made, it is conceded that no invoices were raised in connection with the services supplied by the foreign related person. Accordingly, as per the Circular, the value of services rendered would have to be treated as 'Nil'. This would lead to the inescapable conclusion of no perceivable or plausible tax liability possibly being created. As a result, the proceedings initiated in terms of the Impugned Show Cause Notices (SCN) and their continuance would be futile and impractical and hence, the Impugned SCNs are set aside.
- However, in one of the petitions before the Delhi High Court, while the Petitioner had discharged GST liability (and claimed ITC thereof), the Impugned Order-in-Original was issued by the tax authorities for recovering interest and penalty. In this regard, it was held that once the position to govern all assessee PAN-India came to be clarified by CBIC, the continuation of penalty proceedings or imposition of interest would not sustain. Hence, the said petitioner was held as being absolved from all tax liabilities and implications flowing from the CGST Act.

Pre-deposit payment made through Electronic Credit Ledger is valid and sufficient compliance

Yasho Industries Vs. Union of India and Anr. [TS-708-HC(GUJ)-2024-GST]¹⁰

Issue

- Whether the payment of pre-deposit can be made by utilising the Electronic Credit Ledger (ECrL)?

Ratio

- The Gujarat High Court in *Shiv Crackers Vs. Chief Commissioner of CGST and CE [2024 (86) GSTL 220 (Guj.)]* relied upon the Bombay High Court ruling in *Oasis Reality Vs. Union of India and Ors. [TS-493-HC(BOM)-2022-GST]* and CBIC Circular No:172/04/2022-GST dated 6 July 2022 and held that payment of pre-deposit can be made by utilising the amount available in EcrL.
- Relying on Shiv Crackers (supra), it was held that the payment of pre-deposit by the Taxpayer from EcrL is required to be considered valid and as a sufficient compliance of section 107(6)(b) of the CGST Act. Consequently, the Impugned Letter directing the Taxpayer to make payment of pre-deposit through Electronic Cash Ledger was set aside.

⁵Dated 29 October 2024⁶Dated 30 October 2024⁷Dated 5 November 2024⁸Dated 5 November 2024⁹Detailed advisory on Form GST DRC-03A can be accessed by clicking [here](#) and FAQ's by clicking [here](#).¹⁰Editor's Note: The Patna High Court in *Flipkart Internet Pvt. Ltd vs The State of Bihar [TS-611-HC(PAT)-2023-GST]* had held that pre-deposit for appeals under GST is allowable through Electronic Cash Ledger only and not through Electronic Credit Ledger. This judgment has been stayed by the Supreme Court [*Special Leave to Appeal (C) No. 25437/2023*]. However, none of these rulings have been referred by the Gujarat High Court while deciding the present matter.

CUSTOMS



LEGISLATIVE UPDATES

NOTIFICATION

74/2024-Customs (N.T.) ¹¹	The applicability of the transitional provisions under the Sea Cargo Manifest and Transshipment Regulations, 2018 has been extended for all Customs ports (other than Mormugao (INMRM1), Mumbai (INBOM1), Mangalore (INNML1) and Kandla (INIXY1)).
23/2024-Customs (ADD) ¹²	Effective 4 November 2024, anti-dumping duty has been imposed on 'Welded Stainless Steel Pipes and Tubes' originating in or exported from Vietnam or Thailand, subject to certain exceptions/ conditions.

CIRCULAR

21/2024-Customs ¹³	Effective 1 December 2024, as an additional qualifier/ identifier, it shall be mandatory to declare the method of production used for lab grown diamonds classifiable under HSN codes 7104 2110, 7104 2120, 7104 9110 and 7104 9120 in import/ export declarations. This will improve the quality of assessment and intervention and increase facilitation.
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INSTRUCTION

25/2024-Customs ¹⁴	Instruction no:08/2024-Customs dated 5 April 2024 <i>inter alia</i> providing the list of 50 High End and High Value used/ refurbished Medical Equipment other than critical care medical equipment has been amended to cover 38 such equipment.
26/2024-Customs ¹⁵	The seized, confiscated gold meant for disposal from the Customs Zones in Telangana and Andhra Pradesh would be lifted and processed by IG Mint, Mumbai (in place of IG Mint, Hyderabad).
27/2024-Customs ¹⁶	CBIC has issued guidelines have been issued to the Customs authorities, to be followed while engaging in investigation relating to Commercial Intelligence/ fraud cases. These guidelines have been issued to maintain the ease of doing business.

FOREIGN TRADE POLICY



LEGISLATIVE UPDATES

NOTIFICATION

39/2024-25 ¹⁷	Consequent to the amendments made under the Customs Tariff Act, 1975 (CT Act) <i>vide</i> the Finance Act, 2024, certain changes in RoDTEP Schedule (Appendix 4R and Appendix 4RE) have been made with effect from 1 October 2024 to align with the First Schedule of the Customs Tariff Act, 1975.
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¹¹Dated 30 October 2024

¹²Dated 4 November 2024

¹³Dated 30 October 2024

¹⁴Dated 28 October 2024

¹⁵Dated 30 October 2024

¹⁶Dated 1 November 2024

¹⁷Dated 28 October 2024

TRADE NOTICE / CIRCULAR / PUBLIC NOTICE

Public Notice No. 28/2024-25 ¹⁸	Effective 28 October 2024, Standard Input Output Norm (SION) E-125 for the export of Shea Stearine has been amended with revised import entitlements and the same shall be valid till 31 March 2027.
Public Notice No. 29/2024-25 ¹⁹	Public Notice No. 05/2024 ²⁰ providing for modification of SIONs pertaining to Gold/ Silver/ Platinum content in export items is kept in abeyance till 31 December 2024.
Public Notice No. 30/2024-25 ²¹	The permissible wastage norms under Para 4.59 of Handbook of Procedures, 2023 and SION pertaining to export of jewellery has been revised.
Public Notice No. 31/2024-24 ²²	Effective 5 November 2024, in pursuance of notification no:71/2023 ²³ , the Ministry of Heavy Industries is added to the list of Ministries/ Department under Appendix 2Y of the Foreign Trade Policy, 2023.

CENTRAL EXCISE/ SERVICE TAX/ VALUE ADDED TAX



LEGISLATIVE UPDATES

NOTIFICATION

27/2024-Central Excise ²⁴	Effective 29 October 2024, the effective rate of Excise Duty for “Blended Aviation Turbine fuel” (HSN 2710 1933) and “Blended Aviation Turbine fuel drawn by selected airline operators or cargo operators for the Regional Connectivity Scheme (RCS) flights from the RCS - Ude Deshka Aam Nagrik airport or heliport or waterdome” (HSN 2710 1933) is notified as 11% and 2% respectively.
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INDIRECT TAX NEWS FLASH



Hindustan Times (2 November 2024)	<ul style="list-style-type: none"> ▪ GST collection rises 9% on domestic demand
MoneyControl (5 November 2024)	<ul style="list-style-type: none"> ▪ GST Council likely to meet in November after state elections, set to accept GoM report on insurance premium
Times of India (5 November 2024)	<ul style="list-style-type: none"> ▪ GST on replacement charges goes, power consumers breathe easy
Economic Times (6 November 2024 and 26 October 2024)	<ul style="list-style-type: none"> ▪ GST return filing time limit soon: No filing to be allowed after 3 years of due date, it's time to file any pending return ▪ Customs duty overhaul before the next budget
The Indian Express (5 November 2024)	<ul style="list-style-type: none"> ▪ Maintain balance between probes and ease of biz: CBIC to Customs
Business Standard (2 November 2024)	<ul style="list-style-type: none"> ▪ GST collections hit second-highest ever in October 2024

¹⁸Dated 28 October 2024¹⁹Dated 1 November 2024²⁰Dated 27 May 2024²¹Dated 1 November 2024²²Dated 5 November 2024²³Dated 11 March 2024²⁴Dated 28 October 2024

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