

INDIRECT TAX DIGEST

10 May 2024
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GOODS & SERVICES TAX



LEGISLATIVE UPDATES

NOTIFICATION

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| GSTN Advisory ¹ | An enhanced version of the GST portal was launched on 3 May 2024 to improve user experience and ensure easy access of information to users. |
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INSTRUCTION/ CIRCULAR

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| Circular No. 1 (2022)/2024 - TNGST (Tamil Nadu) ² | <p>Section 84 of the Tamil Nadu Goods and Services Tax Act, 2017 (TNGST Act) provides for the manner of initiating recovery proceedings where the demand is reduced pursuant to an appeal, revision, or 'any other proceedings' in respect of such dues. In this regard, it is clarified that -</p> <ul style="list-style-type: none"> The proceedings under the Insolvency and Bankruptcy Code, 2016 (IBC), by which, government dues under the GST law or the existing law (i.e., erstwhile indirect tax laws) are adjudicated against the corporate debtor would be covered under the purview of the term 'other proceedings'. Further, where the GST demand as per the order is subsequently reduced, and where such reduction has attained finality, the jurisdictional Commissioner shall issue an intimation in Form GST DRC-25 informing about such reduction in tax demand. |
| Act 4 of 2024 (Chhattisgarh) ³ | Chhattisgarh Goods and Services Tax (Amendment) Act, 2024 has been notified to implement the changes corresponding to the amendments notified vide the Finance Act, 2023 and the Central Goods and Services Tax (Amendment) Act, 2023. |

JUDICIAL UPDATES

[Otsuka Pharmaceutical India Pvt. Ltd. Vs. Union of India & Ors. \[2024 \(4\) TMI 282 \(Guj.\)\]](#)

Historical Background

- Prior to the amendment, Rule 108(3) of the Central Goods and Services Tax Rules, 2017 (CGST Rules) *inter alia* mandates the appellant to furnish a certified copy of the decision/ order appealed against within a period of 7 days from the date of filing of an appeal. Further, proviso to Rule 108(3) of the CGST Rules provides that in cases where the certified copy of the decision/ order is not filed within a period of 7 days, the date of filing of appeal shall be the date on which the appellant files the certified copy of the order.
- Vide* Notification no:26/2022 - Central Tax dated 26 December 2022, Rule 108(3) of the CGST Rules was amended (with effect from 26 December 2022) to *inter alia* provide that -

¹ Dated 26 April 2024

² Dated 24 April 2024

³ Dated 04 April 2024

- The requirement to furnish the certified copy of the order would not apply to cases where the copy of the decision/ order appealed against is uploaded on the GST portal.
- In other cases, the appellant is required to furnish the certified copy of the order within 7 days from the date of filing of an appeal, failing which, the date of submission of the certified copy of the order would be considered as the date of filing of the appeal.

Issue

- Whether the aforesaid amendment to Rule 108(3) of the CGST Rules can be construed to have retrospective effect?
- Whether the appeal filed by the Taxpayer can be rejected on the ground of delay in furnishing the certified copy of the decision/ order appealed against?

Ratio

- As per the Minutes of the 48th GST Council meeting, the GST Council had agreed to the recommendation of the Law Committee which provided that when an order appealed against is issued or uploaded on the GST portal, the same can be viewed by the appellate authority, and consequently, the requirement of submission of the certified copy of such order to vouch for its authenticity would be insignificant. Accordingly, the aforesaid amendment to Rule 108(3) of the CGST Rules would have a retrospective effect as the same is clarificatory in nature.
- Considering the above, the Impugned Order passed by the appellate authority to reject the appeal on the ground of delay in furnishing the certified copy of the decision/ order appealed against would not survive. Hence, the Impugned Order was quashed and set aside, and the matter was remanded to the appellate authority to pass a fresh *de novo* order on merits after providing an opportunity of being heard to the Taxpayer.

M/s. Silver Oak Villas LLP Vs. The Assistant Commissioner (ST) & Ors. [TS-197-HC(TEL)-2024-GST]

Issue

- Whether an unsigned Show Cause Notice (SCN) and Assessment Order which is neither signed electronically nor physically can be considered as a valid SCN / Assessment Order (as the case may be) in terms of Rule 26 of the CGST Rules?

Ratio

- Relying on the ratio laid down by the Andhra Pradesh, Bombay, and the Delhi High Courts⁴, it was held that an unsigned document loses its efficacy in light of the requirement under Rule 26(3) of the CGST Rules. Consequently, both the SCN and the Assessment order would not be sustainable and the same deserves to be set aside/ quashed.

Faizal Traders Pvt. Ltd. Vs. Central Board of Indirect Taxes and Customs & Ors. [2024-TIOL-736-HC-KERALA-GST]

Issue

- Whether Notifications nos.:13/2022-Central Tax dated 5 July 2022 and 09/2023-Central Tax dated 31 March 2023 (Impugned Notifications) whereby the time limit for issuance of an order under Section 73 of the Central Goods and Services Tax Act, 2017 (CGST Act) was extended, are *ultra vires* Section 168A of the CGST Act being issued without the existence of a *force majeure*?

Ratio

- If there is a *force majeure*, as per Section 168A of the CGST Act, the Government is empowered to extend the limitation period for taking actions which could not be completed or complied with due to force majeure.
- It cannot be denied that COVID-19 was *force majeure* as it was a pandemic that caused large-scale human tragedy and suffering all over the world and paralysed the world, including economic activities. The Impugned Notifications were issued on recommendations of the GST Council based on a *suo motu* order passed by the Supreme Court in consideration of the COVID-19 pandemic.
- How much time could have been extended considering the pandemic is the discretion of the Executive which has been taken based on the recommendations of the GST Council. Accordingly, the Impugned Notifications are not *ultra vires* the provisions of Section 168A of the CGST Act.
- The Government is well within its power to extend the limitation for completing the proceedings and taking action under Section 73 of the CGST Act if there is force majeure. COVID-19 was a force majeure, and hence, the time limit has been extended taking into account various factors.
- In view of the above, the challenge to the Impugned Notifications was set aside and the Writ Petition was dismissed to that extent.
- Additionally, since the Taxpayer was not provided with the opportunity to substantiate its claim of input tax credit in terms of Circular No. 183/15/2022-GST dated 27 December 2022, the order passed by the Tax Authorities is set aside and the matter is remanded back to pass a fresh assessment order.

⁴ SRK Enterprises Vs. Assistant Commissioner (ST), Bheemili Circle, Visakhapatnam [2023 (12) TMI 156 (AP)], AV Bhanoji Row Vs. Assistant Commissioner ST Visakhapatnam [2023 (2) TMI 1224 (AP)], Ramani Suchit Malushte Vs. Union of India and Ors. [2023 (112) GSTR 149 (Bom.)] and Marg ERP Ltd. Vs. Commissioner of Delhi Goods and Services Tax and Anr. [2023 (112) GSTR 153 (Del.)]

CUSTOMS



LEGISLATIVE UPDATES

NOTIFICATION

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| 24/2024-Customs ⁵ | <p>Effective 4 May 2024, the following changes in the applicable customs duty rates have been notified:</p> <ul style="list-style-type: none"> Customs duty will now be leviable @ 40% on export of Coffee (HSN Code 0901) (earlier export duty was exempted). The Customs duty and Agriculture Infrastructure and Development Cess (AIDC) have been exempted from import of Bengal gram (desi chana) falling under HSN Code 0713 2020, subject to certain conditions. The Customs duty and AIDC exemption on the import of Yellow Peas (HSN Code 0713 1010) has been extended till 31 October 2024 (earlier than 30 June 2024), subject to certain conditions. |
| 25/2024-Customs ⁶ | <p>Notification No. 50/2017-Customs dated 30 June 2017 has been amended to provide a revised list of banks that are permitted to import gold (List 34B) and gold or silver or both (List 34A) without payment of Basic Customs Duty and Integrated Goods and Services Tax. The revised list of banks shall remain valid from 1 April 2024 till 31 March 2025.</p> |
| 33/2024-Customs (N.T.) ⁷ read with Circular No. 4/2024-Customs ⁸ | <p>Effective 3 May 2024, Notification no: 77/2023-Customs (N.T.) dated 20 October 2023⁹ which provides the All-Industry Rate for Duty Drawback has been amended by <i>inter alia</i> enhance AIRs/caps of Duty Drawback on</p> <ul style="list-style-type: none"> Specified marine products (Chapters 3 and 16) Specified goods bags, handbags, trunks, and suitcases (Chapter 42) Articles of bed linen, table linen, toilet linen and kitchen linen (Chapter 63) Radar apparatus, radio navigational aid apparatus and radio remote control apparatus (Chapter 85) Unmanned aircraft (Chapter 88) |

INSTRUCTION

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| 10/2024-Customs ¹⁰ | <p>It is clarified that in pursuance of the implementation of the India-Korea Electronic Origin Data Exchange System (EODES), the Electronic Certificate of Origin (e-CoO) issued by the issuing Authority of the Republic of Korea shall be acceptable for the purpose of claiming preferential duty benefit under India-Korea Comprehensive Economic Partnership Agreement (CEPA), subject to specified conditions and restrictions. It is also clarified that the e-CoO shall have the same legitimacy as the original copy of the manually issued counterpart. Further, the physical defacement of the printed copy of e-CoO shall no longer be required with respect to the India-Korea CEPA.</p> |
| 11/2024-Customs ¹¹ | <p>Customs authorities have been informed that the United Arab Emirates (UAE) has <i>inter alia</i> added an additional security feature to the Certificate of Origin (CoO) format, in the form of a password, for verification of the genuineness and authenticity of CoO issued by UAE, under the India-UAE CEPA.</p> |
| 12/2024-Customs ¹² | <p>CBIC has issued an instruction <i>inter alia</i> directing the Principal Chief Commissioner or Chief Commissioner to undertake the annual review of the requirement of G-Card holders at every Customs Station under its jurisdiction in the Customs Clearance Facilitation Committee.</p> |

⁵ Dated 3 May 2024

⁶ Dated 6 May 2024

⁷ Dated 30 April 2024

⁸ Dated 7 May 2024

⁹ The original Notification covered in Indirect Tax Digest dated 27 October 2023 can be accessed by clicking [here](#)

¹⁰ Dated 1 May 2024

¹¹ Dated 1 May 2024

¹² Dated 1 May 2024

FOREIGN TRADE POLICY



LEGISLATIVE UPDATES

NOTIFICATION

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| 09/2024-25 ¹³ | Exports up to an aggregate quantity of 2,000 MT of white onion (HS code 0703 1019) have been allowed through specified ports, taken together, with immediate effect. The exporter is required to obtain a certificate from the Horticulture Commissioner, Government of Gujarat certifying the item and the quantity of white onion to be exported. |
| 10/2024-25 ¹⁴ | Effective 4 May 2024, the export policy of Onions (HS 0703 1019) is amended from 'Prohibited' to 'Free', subject to a Minimum Export Price of USD 550 per Metric Tonne. |
| 11/2024-25 ¹⁵ | The export of 14,000 MT of Non-Basmati White Rice (HS code 1006 3090) to Mauritius has been permitted through National Cooperative Exports Limited. |
| 12/2024-25 ¹⁶ | 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 31 October 2024. |

PUBLIC NOTICE/ TRADE NOTICE/ CIRCULAR

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| Corrigendum to PN 01/2024 ¹⁷ | The permissible import quantity of ' <i>Filter Aid</i> ' at S. No. 6 of Public Notice No. 01/2024 dated 9 April 2024 stands corrected from '3,600 Kg' to '3.600 Kg'. ¹⁸ |
| PN 03/2024-25 ¹⁹ | The specified list of Standard Input-Output Norms (SIONs) is observed as being inoperative over the last 5 years, and hence, the same are suspended. |
| Policy Circular No. 02/2024 ²⁰ | It is clarified that the provisions relating to the payment of 10% of CIF value and 3% of the shortfall in FOB value amounts specified in Paras 4.49(a)(ii) and 4.49(b) (for Regularisation of Bonafide Default) respectively of Handbook of Procedures, 2023 are applicable only in cases where Advance Authorisation (AA) is issued on or after 1 April 2023. |

¹³ Dated 25 April 2024
¹⁴ Dated 4 May 2024
¹⁵ Dated 6 May 2024

¹⁶ Dated 8 May 2024
¹⁷ Dated 29 April 2024

¹⁸ The original Public Notice covered in Indirect Tax Digest dated 26 April 2024 can be accessed by clicking [here](#)

¹⁹ Dated 3 May 2024
²⁰ Dated 3 May 2024

CENTRAL EXCISE/ SERVICE TAX/ VALUE ADDED TAX



LEGISLATIVE UPDATES

NOTIFICATION

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| 13/2024-Central Excise ²¹ | Effective 1 May 2024, the applicable rate of Special Additional Excise duty on production of 'Petroleum Crude' (HSN 2709) has been reduced from INR 9,600 per tonne to INR 8,400 per tonne. |
| No. VAT-1524/C.R.15/Taxation-1 (Maharashtra) ²² | <p>The late fee for delayed filing of VAT returns under Rules 17 /18 of the Maharashtra Value Added Tax Rules, 2005 whose due date was between 1 March 2024 and 31 March 2024 has been exempted subject to the condition that,</p> <ul style="list-style-type: none"> ▪ The relevant return is filed on or before 30 April 2024; and ▪ Tax payable along with applicable interest is paid on or before 31 March 2024. |

JUDICIAL UPDATES

Commissioner of Customs and Central Excise vs. Credible Engineering Construction Projects Ltd [TS-139-HC-2024(TEL)-EXC]

Issue

- Whether the limitation period under Section 11B of the Central Excise Act, 1944 (CE Act) (as applicable to Service tax under Section 83 of the Finance Act, 1994 (Finance Act)) would be applicable in case of a refund of Service tax paid under mistake?

Ratio

- The Delhi High Court in *Hind Agro Industries Vs. Commissioner of Customs [2008 (221) ELT 336 (Del.)]* had *inter alia* held that the Supreme Court ruling in *Mafatlal Industries Ltd. Vs. Union of India [1997 (89) ELT 247 (SC)]* does not cover a situation of refund of erroneous tax payment under the relevant enactments. Hence, the Supreme Court ruling would not apply to instances where tax is erroneously paid as a mistake of law.
- The Karnataka High Court in *Commissioner of C. Ex. (Appeals), Bangalore Vs. KVR Construction [2012 (26) STR 195 (Kar.)]* had held that where the tax is admittedly paid as a mistake of law, the limitation will not come in the way of a refund. Further, the SLP filed by the Tax Authorities challenging the aforesaid ruling was dismissed. A similar view was also held by the Telangana High Court in *Vasudha Bommireddy Vs. Assistant Commissioner of S.T., Hyderabad [2020 (35) GSTL 52 (Tel.)]*.
- In view of the above, it is well settled that if a contractor was not liable to pay tax, the Tax Authorities cannot retain the amount paid and in view of the matter, bar of limitation under Section 11B of the CE Act cannot be pressed into service.
- Considering the above, it was held that no substantial question of law subsists in the present case and hence, the admission of the appeal filed by the Tax Authorities was declined.

²¹ Dated 30 April 2024

²² Dated 24 April 2024

INDIRECT TAX NEWS FLASH



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| <p>The Hindu-BusinessLine (30 April and 3 May 2024)</p> | <ul style="list-style-type: none">▪ Patanjali Foods gets show cause notice for GST dues▪ Sanjaya Kumar Mishra to head GST Appellate Tribunal |
| <p>Times of India (4 May 2024)</p> | <ul style="list-style-type: none">▪ Furnish data on GST notices & arrests, SC directs Centre |
| <p>Economic Times (30 April, 1 and 2 May 2024)</p> | <ul style="list-style-type: none">▪ ICICI Prudential receives GST and penalty order of Rs 835 cr▪ Record GST mop-up reflects robust eco, audit efficacy; raises hope for further reforms: Experts▪ DGGI launches probe into 'tax evasion' worth Rs 18k cr by agricultural brokerage houses |
| <p>Money Control (1 May 2024)</p> | <ul style="list-style-type: none">▪ GST collection for April 2024 highest ever at Rs 2.1 lakh crore, up 12.4% YoY |

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