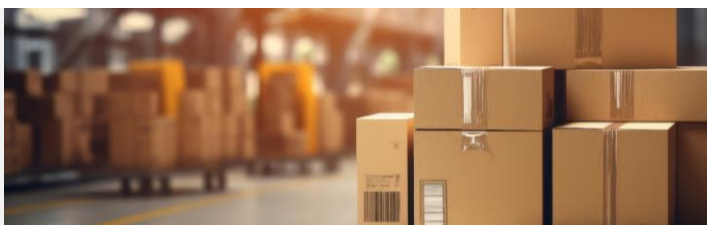


# INDIRECT TAX DIGEST

27 October 2023

[www.bdo.in](http://www.bdo.in)

## GOODS & SERVICES TAX



### LEGISLATIVE UPDATES

<p>GSTN Advisory<sup>1</sup></p>	<p>Pursuant to the recent amendments to the GST law, persons situated outside India, supplying ‘Online Money Gaming’ (OMG) to a resident in India are liable to obtain GST registration. GSTN is in the process of amending the forms (Form GST REG-10 and Form GSTR-5A) for obtaining registration, pending which, the following clarifications have been provided :</p> <ul style="list-style-type: none"> <li>▪ Along with the application for registration (Form GST REG-10), the applicant is required to furnish a PDF copy of the said application along with certain information viz. type of supply, date of commencement of OMG or online service in India, URLs, etc.</li> <li>▪ In Table 5 and 5A of Form GSTR-5A, the taxpayer shall furnish details of supplies of OMG.</li> </ul>
<p>GSTN Advisory<sup>2</sup></p>	<p>The e-Invoice JSON download functionality is now available on the GST e-Invoice Portal for Invoice Reference Number (IRN) generated within 6 months. The procedure for downloading the generated and received e-Invoices in JSON format has also been given.</p>
<p>GSTN Update<sup>3</sup></p>	<p>The functionality for enrolment of unregistered persons supplying goods through E-Commerce Operators (ECOs) is made available and the procedure for enrolment has been given.</p>
<p>GSTN Advisory<sup>4</sup></p>	<p>The functionality for compliance with Rule 88D of the Central Goods &amp; Services Tax Rules, 2017 (CGST Rules) has been operationalised. Accordingly, the taxpayers would receive an intimation (for the difference between Input Tax Credit (ITC) available in Form GSTR-2B vis-à-vis ITC availed in Form GSTR-3B) in Part A of Form DRC-01C. The taxpayer can file a response in Part B of Form DRC-01C.</p>

### NOTIFICATIONS

<p>12/2023-Central Tax (Rate)<sup>5</sup></p>	<p>Notification no: 11/2017-Central Tax (Rate) dated 28 June 2017 which inter alia stipulates the GST rate on supply of services, has been amended w. e. f. 20 October 2023 as follows:</p> <ul style="list-style-type: none"> <li>▪ The following additional condition has been introduced with respect to the supply of ‘Transport of passengers by any motor vehicle designed to carry passengers’ and ‘Renting of motor vehicles designed to carry passengers’, where the cost of fuel is included in the consideration charged to the recipient and the supplier discharges GST @ 5%: <ul style="list-style-type: none"> <li>– ITC in respect of services of the same line of business cannot be availed in excess of 5%.</li> <li>– Accordingly, even if the service providers charge GST @ 12%, the ITC which can be availed by the supplier cannot exceed 5%.</li> </ul> </li> <li>▪ Sl. no. 34 of the GST notification supra, which stipulates a GST rate of 28% on ‘Gambling’ falling under HSN code 9996 has now been omitted.</li> <li>▪ The entry pertaining to ‘Services provided by a race club by way of totalisator or a license to the bookmaker in such club’ is amended to delete reference to services provided by way of totalisator.</li> <li>▪ Further, the Annexure stipulating the scheme for classification of Services has been amended to exclude the following: <ul style="list-style-type: none"> <li>– 999692 - Gambling and betting services including similar online services; and</li> <li>– 999694 - Lottery Services</li> </ul> </li> </ul>
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<sup>1</sup> dated 17 October 2023

<sup>2</sup> dated 3 October 2023

<sup>3</sup> dated 12 October 2023

<sup>4</sup> dated 6 October 2023

<sup>5</sup> dated 19 October 2023

13/2023-Central Tax (Rate) <sup>5</sup>	<p>Notification no: 12/2017-Central Tax (Rate) dated 28 June 2017, which exempts services from the levy of GST, has been amended w.e.f. 20 October 2023 as under:</p> <ul style="list-style-type: none"> <li>▪ Exemption has been extended to services provided to a Governmental Authority by way of - <ul style="list-style-type: none"> <li>- Water supply;</li> <li>- Public health;</li> <li>- Sanitation conservancy;</li> <li>- Solid waste management;</li> <li>- Slum Improvement and upgradation.</li> </ul> </li> <li>▪ The exemption available in respect of services supplied by the Ministry of Railways (Indian Railways) under sl. nos. 6 to 9 of the aforesaid notification has been withdrawn.</li> </ul>
14/2023-Central Tax (Rate) <sup>7</sup>	<p>Notification no: 13/2017-Central Tax (Rate) dated 28 June 2017, which inter alia stipulates the categories of services on which GST is liable to be paid under the reverse charge mechanism (RCM), is amended w.e.f. 20 October 2023 to exclude services covered at sl. nos. 5 and 5A of the aforesaid notification, when supplied by the Ministry of Railways (Indian Railways).</p>
15/2023-Central Tax (Rate) <sup>8</sup>	<p>Effective 20 October 2023, refund of unutilised ITC under Section 54(3) of the CGST Act shall not be allowed in case of supply of services by way of <i>'Construction of a complex, building or part thereof, intended for sale to a buyer, wholly or partly, where the consideration charged from the recipient of service includes the value of land or undivided share of land, except where the consideration has been received after issuance of completion certificate, by the competent authority or after its first occupation, whichever is earlier'</i>. The earlier entry pertaining to sub-item (b) of item 5 of Schedule II of the CGST Act has been deleted.</p>
16/2023-Central Tax (Rate) <sup>9</sup>	<p>Notification no: 17/2017-Central Tax (Rate) dated 28 June 2017, which stipulates categories of services in respect of which GST shall be paid by the ECO, is amended w.e.f. 20 October 2023 as follows:</p> <ul style="list-style-type: none"> <li>▪ An exclusion has been provided with respect to the applicability of the aforesaid notification on services by way of transportation of passengers by an omnibus, where the person supplying such service through ECO is a Company.</li> <li>▪ Further, the term 'Company' has been defined to have the same meaning assigned to it under Section 2(20) of the Companies Act, 2013.</li> </ul>
17/2023-Central Tax (Rate) <sup>10</sup>	<p>Notification no: 17/2023-Central Tax (Rate) dated 19 October 2023, which stipulates GST rate on goods is amended w.e.f. 20 October 2023 as under:</p> <ul style="list-style-type: none"> <li>▪ GST rate on Molasses - Reduced to 5% (from 28%)</li> <li>▪ GST rate on 'Food preparation of millet flour, in powder form, containing at least 70% millets by weight, pre-packaged and labelled' - Reduced to 12% (from 18%)</li> <li>▪ Spirits for industrial use have been inserted in Schedule IV - 18%.</li> </ul>
18/2023-Central Tax (Rate) <sup>11</sup>	<p>Effective 20 October 2023, notification no: 02/2017-Central Tax (Rate) dated 28 June 2017, which inter alia exempts goods from the levy of GST, is amended to include <i>'Food preparation of millet flour, in powder form, containing at least 70% millets by weight other than pre-packaged and labelled'</i></p>
19/2023-Central Tax (Rate) <sup>12</sup>	<p>Notification no:4/2017-Central Tax (Rate) dated 28 June 2017 which inter alia stipulates that GST on <i>'Used vehicles, seized and confiscated goods, old and used goods, waste and scrap'</i> supplied by Central Government to a registered person would be payable by the recipient under the RCM. Effective 20 October 2023, the aforesaid entry is amended to exclude supplies made by the Ministry of Railways (Indian Railways).</p>
20/2023-Central Tax (Rate) <sup>13</sup>	<p>Notification no: 5/2017-Central Tax (Rate) dated 28 June 2017, which stipulates that refund of unutilised ITC will not be allowed in cases where ITC is accumulated on account of 'Inverted Duty Structure' is amended w.e.f. 20 October 2023 as under:</p> <ul style="list-style-type: none"> <li>▪ Refund of unutilised ITC will not be available on 'Imitation zari thread or yarn made out of Metallised polyester film/plastic film'.</li> <li>▪ The aforesaid entry shall apply for a refund of unutilised ITC only on polyester film/plastic film.</li> </ul>

Similar amendments have also been made in respect of notifications issued under the Integrated Goods & Services Tax Act, 2017 (See notification Nos. 15, 16, 17, 18, 19, 20, 21, 22 & 23/2023-Integrated Tax (Rate)<sup>14</sup>

<sup>5</sup> dated 19 October 2023  
<sup>7</sup> dated 19 October 2023  
<sup>8</sup> dated 19 October 2023  
<sup>9</sup> dated 19 October 2023  
<sup>10</sup> dated 19 October 2023

<sup>11</sup> dated 19 October 2023  
<sup>12</sup> dated 19 October 2023  
<sup>13</sup> dated 19 October 2023  
<sup>14</sup> dated 19 October 2023

## JUDICIAL UPDATES

### [Henna Medicals Vs. State Tax Officer, SGST Department \[2023 \(10\) TMI 98 - KERALA HIGH COURT\]](#)

#### Issue

- Can ITC be denied merely due to a mismatch between Form GSTR-2A and Form GSTR-3B?

#### Ratio

- In another case of *Diya Agencies*<sup>15</sup>, the Kerala High Court has held that ITC cannot be denied merely on account of the difference between the amounts shown in Form GSTR-2A vis-à-vis ITC availed in Form GSTR-3B.
- Relying on the aforesaid ruling, the Court has remanded the case with direction to examine the evidence furnished by the Taxpayer supporting their eligibility to ITC irrespective of Form GSTR-2A.

### [Indian Herbal Store Pvt. Ltd. Vs. Union of India & Ors. \[TS-504-HC\(DEL\)-2023-GST\]](#)

#### Issue

- The amendment to Rule 89(4)(c) of the CGST Rules restricts the value of 'turnover of zero-rated supply of goods' (for a refund of unutilized unutilised ITC) to 1.5 times of the value of like goods domestically supplied by the supplier/similarly placed supplier was introduced by the Central Goods and Services Tax (Third Amendment) Rules, 2020 effective 23 March 2020 (relevant date). Whether the aforesaid amendment would apply retrospectively?
- Whether the aforesaid amendment is ultra vires the Constitution of India (Constitution)?

#### Ratio

- Retrospective applicability of the aforesaid amendment:**
  - The right for a refund of accumulated ITC is crystallised on the date when the goods are exported. Further, the limitation for filing a refund application in respect of export of goods/services is reckoned from the date when the said goods/services are exported. Accordingly, the term 'turnover' must be read in reference to the period during which the supplies are made.
  - In view of the above, the Taxpayer would be entitled to claim a refund of accumulated ITC in respect of its exports for the period from October 2018 to September 2019.
- Constitutional validity of the aforesaid amendment:**
  - The aforesaid amendment to Rule 89(4)(c) of the CGST Rules has been struck down by the Hon'ble Karnataka High Court in *Tonbo Imaging India Pvt. Ltd.*<sup>16</sup> and hence, as of date, the amended provisions are non-existent.
  - It is well settled that if a statute/statutory provision is struck down as ultra vires the Constitution, it relates back to the date on which it was promulgated.
  - The Hon'ble High Court did not consider it necessary to examine the constitutional validity of the aforesaid amendment in view of the decision in *Tonbo Imaging India Pvt. Ltd. (supra)*.

## CUSTOMS



## LEGISLATIVE UPDATES

### Notification

58/2023-Customs <sup>17</sup>	Notification no.152/2009-Customs dated 31 December 2009, which provides the effective rate of customs duties on goods imported into India from Korea, has been amended to include the goods covered under HSN Code 7202, subject to certain conditions.
59/2023-Customs <sup>18</sup>	Export Duty exemption granted to rice, parboiled falling under HSN Code 1006 3010 shall come into force from 1 April 2024 (as against the earlier date of 16 October 2023)
60/2023-Customs <sup>19</sup>	In line with the recommendations made in the 52 <sup>nd</sup> GST Council meeting, notification no. 50/2017-Customs dated 30 June 2017 is amended to inter alia exempt 'Foreign Going Vessel converted for a coastal run', subject to certain conditions.
77/2023 - Customs (N.T.) <sup>20</sup>	The CBIC has notified the duty drawback rates on specified goods, subject to stipulated conditions with effect from 30 October 2023.
10/2023-Customs (ADD)	Imposition of Anti-Dumping Duty on import of Flax Yarn of below 70 Lea Count (or below 42 nm) originating in or exported from China.

<sup>15</sup> *M/s. Diya Agencies Vs. State Tax Officer (GST Department) & Ors.* [TS-461-HC(KER)-2023-GST] - Our summary of the judgement can be accessed [here](#).

<sup>16</sup> *Tonbo Imaging India Pvt Ltd Vs. Union of India & Ors.* [TS-108-HC(KAR)-2023-GST] - Our summary of the judgement can be accessed [here](#).

<sup>17</sup> dated 9 October 2023

<sup>18</sup> dated 13 October 2023

<sup>19</sup> dated 19 October 2023

<sup>20</sup> dated 20 October 2023

## JUDICIAL UPDATES

### Commissioner of Customs (Imports), Mumbai Vs. Ganpati Overseas [TS-513-SC-2023-CUS]

#### Issue

- Whether the allegation of under-valuation of imports (resulting in short payment of duty) be based on unattested photocopies of export declarations given by the foreign supplier (which was subsequently withdrawn) and statements of the importer (Proprietor)?
- Whether enhancement of the value of imports by straightaway invoking Rule 8 instead of sequentially going through Rules 5, 6 and 7 of the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 (Valuation Rules) is justified?

#### Ratio

- **Evidentiary value of unattested photocopies of export declarations:**
  - The Apex court observed that unattested photocopies of the relied-upon documents without anyone proving or owning up to the veracity of the same would not have any evidentiary value.
  - This is further substantiated by the fact that the export declarations were subsequently withdrawn by the foreign supplier by filing another set of export declarations before the Hong Kong Customs Authority reflecting the price which reconciles with the declared value of imported goods.
  - Since the Hong Kong Customs Authority had accepted the same (albeit on imposition of penalty), there can be no justifiable reason to rely on the unattested photocopies of the export declarations to prove under-invoicing.
- **Evidentiary value of statements given by the importer:**
  - The Customs officer, who is empowered to record the statement, etc. has the onerous responsibility to see that the statement is recorded in a fair and judicious manner. Further, the concerned person must be provided with procedural safeguards to ensure that the statement so recorded is admissible as evidence and can meet the standard of basic judicial principles and natural justice. Certainly, a statement recorded under duress and coercion cannot be used against a person making the statement.
  - In the present case, after recording the statement of the importer, he was arrested under Section 135 of the Customs Act, 1962 (Customs Act). Subsequently, on 30 March 1999, he was enlarged on bail by the Additional Sessions Judge, Delhi subject to a deposit of INR 3 Mn.
  - Later, vide order dated 26 May 1999, the Additional Sessions Judge, in his bail order had mentioned that the statement of the importer under Section 108 of the Customs Act may not be a voluntary one. Thereafter, the importer retracted the statement made by him under Section 108 of the Customs Act.
  - In view of the above, the findings of CESTAT refusing to give credence to the confessional statement of the importer cannot be faulted.
- **Rejection of import value by straightaway invoking Rule 8 of the Valuation Rules:**
  - As per Rule 3 of the Valuation Rules, the value of imported goods shall be the transaction value (as determined under Rule 4 of the Valuation Rules) and if the same cannot be determined, the value shall be determined by proceeding sequentially through Rules 5 to 8.
  - Further, in *Rabindra Chandra Paul and South India Television (P) Ltd.*<sup>21</sup>, it was held that the transaction value can be rejected if the invoice price is found to be incorrect; but it is for the Tax Authorities to prove the same.
  - In the present case, the Tax Authorities were not justified in straightaway rejecting the import price and enhancing the same by straightaway invoking Rule 8 of the Valuation Rules considering that there was no evidence before them to do so.

## FOREIGN TRADE POLICY



## LEGISLATIVE UPDATES

### Notification

34/2023 <sup>22</sup>	The time period for applying for registration under the Coal Import Monitoring System has been revised. Accordingly, an importer can now apply for registration not earlier than the 60 <sup>th</sup> day and till the date of arrival of the consignment (Zero Day).
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<sup>21</sup> *Rabindra Chandra Paul Vs. Commissioner of Customs* [(2007) 3 SCC 93] and *Commissioner of Customs Vs. South India Television (P) Ltd.* [(2007) 6 SCC 373]  
<sup>22</sup> dated 4 October 2023

35/2023 <sup>23</sup>	In addition to nominated agencies as notified by RBI (in case of banks) and nominated agencies notified by DGFT, qualified jewellers as notified by International Financial Services Centres Authority will be permitted to import Silver under HS Codes 7106 91 10, 7106 92 90 through India International Bullion Exchange IFSC Ltd.
36/2023 <sup>24</sup>	Restriction on the export of sugar (Raw Sugar, White Sugar, Refined Sugar, and Organic Sugar) is extended beyond 31 October 2023 till further orders. However, the aforesaid restriction will not apply to Sugar exported to the EU and USA under CXL and Tariff Rate Quota.
37/2023 <sup>25</sup>	Export quantities of Non-Basmati Rice (under HS Code 1006 30 90) to Nepal, Cameroon, Cote d'Ivoire, Republic of Guinea, Malaysia, Philippines, and Seychelles have been notified.
38/2023 and Policy Circular 06/2023-24 <sup>26</sup>	<ul style="list-style-type: none"> <li>▪ Notification no: 23/2023 dated 3 August 2023 (Notification no: 23/2023) introduced various Import Policy Conditions for import of goods falling under HSN 8471. While the aforesaid amendments were brought into effect on an immediate basis, vide a subsequent notification, the effective date was extended to 1 November 2023.</li> <li>▪ Recently, DGFT has issued another notification amending the Import Policy Conditions notified in the above notification and also issued a Policy Circular clarifying the requirement of Import authorisation in various circumstances.<sup>27</sup></li> </ul>
39/2023 <sup>28</sup>	Import of Human Gametes under ITC(HS) 0511 99 99 is now 'Prohibited' in accordance with the ART (Regulations) Act, 2021 and the Surrogacy (Regulation) Act, 2021.

#### Public Notice/ Trade Notice

Public Notice no:32/2023 and Trade Notice no:28/2023-24 <sup>29</sup>	<p>In most cases, the Status Holder Certificate (SHC) will be generated electronically based on the export data available in the Directorate General of Commercial Intelligence and Statistics (DGCI&amp;S) database and the exporter would not be required to file any application.</p> <p>Further, the SHC issued under the Foreign Trade Policy 2015-20 will remain valid till 30 September 2023 only. Any IEC holder willing to avail SHC under Foreign Trade Policy 2023, who is not covered under the new mechanism of automatic issue, will need to apply online to the concerned jurisdictional Regional Authority of the DGFT.</p>
Public Notice no:33/2023 <sup>30</sup>	Standard Input Output norms (SION) appearing under E-125 for export product Shea Stearine is suspended with immediate effect till a new SION is established based on revised production and consumption data submitted by the exporting firms.
Public Notice no:34/2023 <sup>31</sup>	Para 4.10(i) of the Handbook of Procedures 2023 is amended to permit the availment of ITC on GST paid on materials procured under the Advance Authorisation Scheme.
Trade Notice no:30/2023-24 <sup>32</sup>	The last date for submission of information to the RoDTEP Committee (constituted for reviewing RoDTEP rates) is 30 November 2023. The information is required to be furnished in the designated formats i.e., Annexure B (Part 1 and Part 2) appended to the CBIC letter dated 12 October 2023 (F. No. 605/15/2023-DBK/924-998) <sup>33</sup>
Trade Notice no:31/2023-24 <sup>34</sup>	Discontinuation of issuance of a physical copy of Authorisation for Restricted Imports with effect from 19 October 2023.

#### Policy Circular

No:05/2023-24 <sup>35</sup>	Re-import of unsold jewellery exported for exhibition abroad under HSN Codes 7113 19 11 and 7113 19 19 may be allowed for clearance by the Customs Authorities without import license subject to the provisions of the Customs Act.
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<sup>23</sup> dated 11 October 2023

<sup>24</sup> dated 18 October 2023

<sup>25</sup> dated 18 October 2023

<sup>26</sup> dated 19 October 2023

<sup>27</sup> Our alert on the Notification and Policy Circular can be accessed from [here](#)

<sup>28</sup> dated 23 October 2023

<sup>29</sup> dated 9 October 2023

<sup>30</sup> dated 12 October 2023

<sup>31</sup> dated 13 October 2023

<sup>32</sup> dated 19 October 2023

<sup>33</sup> CBIC Letter can be accessed by clicking [here](#)

<sup>34</sup> dated 19 October 2023

<sup>35</sup> dated 16 October 2023



## CENTRAL EXCISE/ SERVICE TAX/ VALUE ADDED TAX



### LEGISLATIVE UPDATES

No:34 & 35/2023-Central Excise <sup>36</sup>	Special Additional Excise Duty rates on Petroleum Crude, Aviation Turbine Fuel and High-speed diesel oil have been reduced to INR 9,050 per tonne, INR 1 per litre and INR 4 per litre respectively.
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## INDIRECT TAX NEWS FLASH



Business Standard (20 October 2023)	<ul style="list-style-type: none"> <li>▪ <a href="#">GST to be paid on gold coins, white goods given as incentives, rules AAR</a></li> </ul>
Mint (25 October 2023)	<ul style="list-style-type: none"> <li>▪ <a href="#">GST officials serve tax notices worth ₹1 lakh crore to online gaming companies</a></li> <li>▪ <a href="#">GST Evasion: Government expecting ₹50,000 crore mop-up on recovery of dues, multiple notices sent</a></li> </ul>
Indian Express (24 & 25 October 2023)	<ul style="list-style-type: none"> <li>▪ <a href="#">No final order on GST to casino firm sans HC nod: Tax dept</a></li> <li>▪ <a href="#">GST departments on an overdrive with notices and summons</a></li> </ul>
Hindustan Times (25 October 2023)	<ul style="list-style-type: none"> <li>▪ <a href="#">Now, states to have control over import of ethyl alcohol for commercial purposes</a></li> </ul>

<sup>36</sup> dated 17 October 2023

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