

INDIRECT TAX DIGEST

05 January 2024

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GOODS & SERVICES TAX



LEGISLATIVE UPDATES

NOTIFICATIONS

56/2023-Central Tax ¹	CBIC extends the time limit to issue orders for recovery of tax not paid or short paid or of Input Tax Credit (ITC) wrongly availed or utilised for FY 2018-19 and FY 2019-20 to 30 April 2024 and 31 August 2024 respectively.
S.O. 1(E) ²	The Central Government has notified the constitution of the Principal Bench of the Goods and Services Tax Appellate Tribunal (GSTAT) at New Delhi in supersession of Notification no: S.O, 1359(E) dated 13 March 2019 which <i>inter alia</i> notified the creation of National Bench of the GSTAT at New Delhi.

INSTRUCTION

13/2023-GST (Assam) ³	Directs to drop automated notices issued in Form GST DRC-01 to taxpayers in certain cases such as (i) completion of audit/scrutiny/advisory/ summon proceedings which covered the grounds on which the notice was issued, (ii) taxpayers have already made voluntary payment of tax or other amounts, (iii) invoices were issued without movement of goods etc., subject to certain conditions and verification.
05/2023/GST -II (Haryana) ⁴	Instructions issued for compliance discharge of assigned duties by Taxation Inspectors, who are the Proper Officers for GST registration and amendment, cancellation, and revocation of cancellation thereof under the Haryana Goods and Services Tax Act, 2017. The Instructions will be effective from 15 January 2024.

ADVISORY

GSTN Advisory ⁵	GSTN has extended the time limit to declare the opening balance for Input Tax Credit (ITC) reversal in Electronic Credit and Re-claimed Statement to 31 January 2024. Further, the time limit to amend the aforesaid opening balance has been extended to 29 February 2024.
GSTN Advisory ⁶	<p>The following functionalities have been enabled on the common portal:</p> <ul style="list-style-type: none"> Facility to file a declaration in Annexure V (Option to pay tax under the forward charge mechanism) / Annexure VI (Option to revert from the payment of tax under forward charge mechanism) by Goods Transport Agency (GTA) for the Financial Year (FY) 2024-25 available from 1 January 2024 to 31 March 2024. Facility to upload manually filed declaration in Annexure V with jurisdictional authority for FY 2023-24 by GTAs.

¹ Dated 28 December 2023

² Dated 29 December 2023

³ Dated 26 December 2023

⁴ Dated 28 December 2023

⁵ Dated 28 December 2023

⁶ Dated 1 January 2024

JUDICIAL UPDATES

[Tvl. Kavin HP Gas Gramin Vitrak Vs. Commissioner of Commercial Taxes & Ors. \[TS-670-HC\(MAD\)-2023-GST\]](#)

Issue

Whether the belated claim of ITC, due to the belated filing of form GSTR 3B, can be disallowed by the Tax Authority?

Ratio

- If the Taxpayer has not paid tax on outward supplies (output tax), he is not permitted to file Form GSTR-3B online which indirectly obstructs the Taxpayer from claiming ITC.
- The ITC was to be claimed in form GSTR 2, which has not been made available. The petitioner had already filed form GSTR 3B physically. In this factual scenario, the petitioner's claim of belated returns should be considered.
- The Taxpayer has expressed the real practical difficulty of not being able to submit form GSTR 3B without payment of tax, which should be rectified by the Tax Authorities. The Tax Authorities should permit the Taxpayer to file manual returns where the Taxpayer claims ITC without paying output tax, accept belated returns and allow the claim of ITC where the returns are in order and in accordance with the law.

CUSTOMS



LEGISLATIVE UPDATES

NOTIFICATION

65/2023- Customs ⁷	Extends the exemption from Agriculture, Infrastructure and Development Cess (AIDC) on Lentil (Mosur) till 31 March 2025.
66/2023 - Customs ⁸	Valid India-UAE Tariff Rate Quota (TRQ) Holders notified by International Financial Services Centres Authority (IFSCA) through India International Bullion Exchange can import Gold (HSN code 7108 1100 / 7108 1200 / 7108 1300) under the India-UAE CEPA against the TRQ and can obtain physical delivery of their imports through IFSCA registered vaults located in SEZs as per guidelines prescribed by the IFSCA.
67/2023 - Customs ⁹	Goods imported from the Democratic Republic of Congo are eligible for duty-free tariff precedence for least developed countries as notified <i>vide</i> Notification no:96/2008 - Customs dated 13 August 2008.
68/2023 - Customs ¹⁰	Notification no:62/2022 - Customs (Tariff) dated 26 December 2022, inter alia, specifying the effective rate of Basic Customs Duty (BCD) and AIDC on import of specified goods from Australia, is amended with effect from 1 January 2024 to notify new effective rates of BCD and AIDC on import of specified goods from Australia under India Australia ECTA.
94/2023 - Customs (NT) ¹¹	The transitional facility to deliver cargo declaration by an authorised sea carrier in Form III of the Import Manifest (Vessel) Regulations, 1971 and Form I of the Export Manifest (Vessels) Regulations, 1976 by authorised sea carrier is extended till 31 March 2024.
15/2023 - Customs (ADD) ¹²	Imposition of Anti-Dumping Duty on import of 'Industrial Laser Machines used for cutting, marking, or welding operations' falling under specified tariff headings originating in or exported from the People's Republic of China for a period of five years.
16/2023 - Customs (ADD) ¹³	Imposition of Anti-Dumping Duty on import of 'Gypsum Board / Tiles with lamination at least on one side' falling under specified tariff headings originating in or exported from the People's Republic of China or Oman for a period of five years.

⁷ Dated 21 December 2023

⁸ Dated 22 December 2023

⁹ Dated 29 December 2023

¹⁰ Dated 29 December 2023

¹¹ Dated 28 December 2023

¹² Dated 22 December 2023

¹³ Dated 26 December 2023

17/2023 - Customs (ADD) ¹⁴	Imposition of Anti-Dumping Duty on import of 'Wheel Loaders' falling under specified tariff headings originating in or exported from the People's Republic of China for a period of five years.
18/2023 - Customs (ADD) ¹⁵	Notification no: 29/2022-Customs (ADD) dated 19 October 2022, <i>inter alia</i> , imposed Anti-Dumping Duty on the import of 'Electro-galvanised Steel' falling under specified tariff headings originating in or exported from Korea RP, Japan, and Singapore. The aforesaid notification has been amended to amend the name of a producer.

FOREIGN TRADE POLICY



LEGISLATIVE UPDATES

NOTIFICATION

54/2023 ¹⁶	Extends the 'Free' import policy condition of Urad and Tur till 31 March 2025.
55/2023 ¹⁷	The import policy of 'Screws' classified under HS 73181110, 73181190, 73181200, 73181300, 73181400, 73181500 and 73181900 is revised from 'Free' to 'Prohibited'. However, if the CIF value is INR 129 or more per kg, the import shall remain 'free'.
56/2023 ¹⁸	Import policy of Used IT Assets (laptops, desktops, monitors, printers etc.) moved from Special Economic Zone (SEZ) to Domestic Tariff Area (DTA) operations is made 'free', subject to specified conditions.

POLICY CIRCULAR

07/2023 ¹⁹	Clarifies that the condition of minimum value addition of 25% in the case of spices as per Para 4.09(v) of FTP 2023 is applicable only where both exports as well as import items pertain to Chapter 9 of HS Code.
08/2023 ²⁰	Clarifies that valid ad-hoc norms ratified on or after 1 April 2015 will also be applicable to pending cases/applications under the self-declaration scheme filed on or after 1 April 2015, but filed prior to the application against which ratification of such ad-hoc norms was done. However, the aforesaid clarification is not applicable to items specified in Appendix 4P of the Handbook of Procedures, 2023 for other applicants.

TRADE NOTICE

36/2023-24 ²¹	The transition period for mandatory filing of applications for Non-Preferential Certificate of Origin (CoO) through the e-CoO Platform has been extended to 31 December 2024 and accordingly, non-preferential CoO applications in manual/paper mode will also be permitted till the aforesaid date.
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¹⁴ Dated 27 December 2023

¹⁵ Dated 29 December 2023

¹⁶ Dated 28 December 2023

¹⁷ Dated 3 January 2024

¹⁸ Dated 1 January 2024

¹⁹ Dated 21 December 2023

²⁰ Dated 27 December 2023

²¹ Dated 26 December 2023

JUDICIAL UPDATES

Additional Director General of Foreign Trade Vs. Jindal Drugs Pvt. Ltd. & Ors. [TS-660-HC-2023(MAD)-FTP]

Issue

Whether exports undertaken by the Taxpayer wherein the merchandise to be exported are sent for warehousing in the Free Trade Warehousing Zone (FTWZ) on behalf of the Foreign Buyer before exporting the same on instruction of the Foreign Buyer, are ineligible for the benefits of duty credit scrips under the Merchandise Exports from India Scheme (MEIS) under Para 3.06(i) or Para 3.06(vii) of the Foreign Trade Policy 2015-20 (FTP)?

Ratio

- **Applicability of Para 3.06(i) of the FTP (Para 3.06(i)):**
 - Para 3.06(i) covers supplies made from DTA units to SEZ units. The expression ‘supplies’ employed in Para 3.06(i) contemplates a contract under which the merchandise is transferred. Thus, a supply made from a DTA unit to a SEZ unit would require a contract between the DTA and the SEZ unit wherein consideration would be paid by the SEZ unit.
 - In the present case, the consideration for supply of merchandise by the Taxpayer was paid by the Foreign Buyer and the delivery to FTWZ was on behalf of the Foreign Buyer. Further, the facility offered by the FTWZ unit is only limited to warehousing.
 - Thus, there is no contract between the Taxpayer and FTWZ unit, much less a contract for the supply of merchandise and hence, Para 3.06(i) is inapplicable to the present case.
- **Applicability of Para 3.06(vii) of the FTP (Para 3.06(vii)):**
 - Para 3.06(vii) covers exports made by units in FTWZ. The dictionary meaning of the expression ‘by’ is ‘who or what does something’. In the present case, the FTWZ unit is the only entity in FTWZ and thus, for the export to be covered under Para 3.06(vii), the export must be made by the FTWZ unit.
 - The FTWZ unit plays the limited role of a logistics facilitator and has no title over the goods assigned. The contract for the supply of merchandise is between the Taxpayer and the Foreign Buyer.
 - The framers of the FTP have used the expression ‘by’ in contradistinction to the expressions ‘from’ and ‘through’ employed in Para 3.06(i) and Para 3.06(v) of the FTP. It is well settled that where words of different import are used in the same Statute / Clause / Section, a strong presumption arises that they are not used in the same sense.
 - If Para 3.06(vii) gets attracted for export from FTWZ irrespective of the fact that the FTWZ unit has a limited role of providing logistic support, it would result in restricting the scope of the benefit by adding the condition of place of commencement of movement of goods for the purpose of export to claim the benefit of MEIS.
 - It is well settled that notifications granting exemptions/benefits are provided with a purpose and policy behind such a grant.
 - Whenever provisions are framed to promote exports, the Courts have consistently held that such provisions must be construed liberally to ensure that the intended objective is achieved rather than adopting a construction which defeats the object.
 - Hence, Para 3.06(vii) would be inapplicable to the present case.

CENTRAL EXCISE / SERVICE TAX / VALUE ADDED TAX



LEGISLATIVE UPDATES

NOTIFICATIONS

01&02/2024 - Central Excise ²²	Effective 2 January 2024, the rate of Special Additional Excise Duty on Petroleum Crude has been amended to INR 2,300 per tonne while Aviation Turbine Fuel and High-speed diesel oil have been exempted from the levy.
71&72/ST-1 ²³	Notifies the Haryana One Time Settlement Scheme for Recovery of Outstanding Dues, 2023 with effect from 1 January 2024.

²² Dated 1 January 2024

²³ Dated 30 December 2023 and 31 December 2023 respectively.

Haryana Act No. 30 of 2023²⁴

The Haryana Settlement of Outstanding Dues Act, 2017 has been amended vide The Haryana Settlement of Outstanding Dues (Amendment) Act, 2023 to cover tax dues up to 30 June 2017 (from 31 March 2017 earlier).

JUDICIAL UPDATES

[Bosch Electrical Drive India Pvt. Ltd. Vs. Commissioner of Central Tax \[TS-664-CESTAT-2023-ST\]](#)

Issue

Whether appeal can be filed before the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) or the GSTAT, against a refund order in respect of CENVAT Credit, passed under Section 142 of the Central Goods and Services Tax Act, 2017 (CGST Act)?

Ratio

- **Jurisdiction of the GSTAT:**
 - As per Section 112 of the CGST Act, an appeal can be filed before the GSTAT against an order passed under Section 107 or 108 of the CGST Act. Thus, an appeal against an order passed under Section 142(3) of the CGST Act would not lie before the GSTAT.
- **Jurisdiction of the CESTAT:**
 - Section 142(3) of the CGST Act specifically states that every claim for refund after 1 July 2017 must be disposed of in accordance with the provisions of the existing law i.e., Chapter V of the Finance Act, 1994 (Finance Act) and the Central Excise Act, 1944 (Excise Act).
 - Section 174(2)(f) of the CGST Act provides that the repeal of the Excise Act under Section 174(1) of the CGST Act and amendment of the Finance Act under Section 173 of the CGST Act shall not affect any proceedings including those relating to an appeal instituted before, on or after the aforesaid amendment/repeal of the aforesaid Acts and shall continue as if the CGST Act had not come into force.
- Thus, there is no doubt that an appeal against an order passed under Section 142 of the CGST Act will lie before the CESTAT.
- The aforesaid view is also supported by the fact that the legislative intent could not have been to deprive either the Taxpayer or the Tax Authorities of the right of an appeal because an order passed under Section 142 of the CGST Act cannot be appealed before the GSTAT.

INDIRECT TAX NEWS FLASH



Hindu BusinessLine (2 January 2024)	<ul style="list-style-type: none"> ▪ GST collections touch INR 1.65-lakh crore in December
Financial Express (26 December 2023 & 3 January 2024)	<ul style="list-style-type: none"> ▪ GST revenues robust amid stricter audit, 2024 may see tax base widen ▪ FMCG firms get flurry of GST tax notices
MoneyControl (25 December 2023)	<ul style="list-style-type: none"> ▪ Modi budget at 10: Did the Make-in-India Gir Lion roar?
Economic Times (26 December 2023 & 3 January 2024)	<ul style="list-style-type: none"> ▪ Taxpayers may be allowed to file revised GST returns from April 2025 ▪ Taxing times: Why are so many companies getting GST notices?
Times of India (2 & 3 January 2024)	<ul style="list-style-type: none"> ▪ State GST collections rose 70% in Dec 2023 ▪ GST kitty grows 10% in December on strong domestic sources ▪ GST department goes on tax demand overdrive

²⁴Dated 28 December 2023

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