

INDIRECT TAX DIGEST

21 June 2024
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GOODS & SERVICES TAX



LEGISLATIVE UPDATES

NOTIFICATION

<p>GSTN Advisory¹</p>	<p>The Government <i>vide</i> Notification No. 04/2024 - Central Tax dated 5 January 2024² had notified the procedure to be followed by registered persons engaged in the manufacture of specified goods (viz., pan masala and tobacco products). In this connection, while the facility to furnish Form GST SRM-I (for furnishing information pertaining to registration and disposal of machines) was made available on the GST portal, the GSTN has issued another advisory stipulating that the facility to furnish Form GST SRM-II (for furnishing information pertaining to inputs and outputs during a month) has now been made available.</p>
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JUDICIAL UPDATES

An adjudication order cannot be passed merely on the grounds that the reply was not properly filed or filed without any justification

Future Generali India Insurance Company Ltd. Vs. Goods and Services Tax Officer (GSTO) Ward 203 & Anr. [2024:DHC:4315-DB]

Issue

- Whether an order can be passed without taking into consideration the reply filed by the Taxpayer merely on the ground that the reply was not properly filed or filed without any justification?

Ratio

- The observations as per the Impugned Order are not justified because the submission against the Show Cause Notice (SCN) filed by the Taxpayer was a detailed reply with supporting documents.
- The tax authorities had to at least consider the reply on merits and then form an opinion. Whereas in the present case, it was merely held that the reply was not properly filed or filed without any justification which clearly shows that the tax authority had not applied his mind while issuing the Impugned Order.
- If the tax authority was of the view that any further details were required, the same could have been specifically sought. However, no such opportunity was provided to the Taxpayer.
- In view of the above, the Impugned Order was set aside, and the matter was remanded to the tax authorities for issuing a fresh speaking order after adhering to the principles of natural justice.
- As regards the Taxpayer's challenge to Notification No. 56/2023-Central Tax dated 28 December 2023 with regard to the extension of time, the same was left open.

¹ Dated 7 June 2024

² The original Notification covered in Indirect Tax Digest dated 19 January 2024 can be accessed by clicking [here](#)

Appellate Authority can condone the delay in filing an appeal beyond one month in case where sufficient cause for such delay is provided by the Taxpayer

Sushil Kumar Hazra Vs. The State of West Bengal & Ors. [WPA 11649 of 2024]

Issue

- Whether the Appellate Authority condone delay in filing the appeal beyond one month?

Ratio

- In the present case, it is undisputed that the Taxpayer has filed an appeal beyond the prescribed time. However, the Taxpayer had explained the reason for the delay in filing the appeal by contending that the said delay was on account of medical reasons. To substantiate this, the Taxpayer had also furnished the medical certificate which was not questioned by the Appellate Authority.
- Once, the Appellate Authority had accepted the medical certificate, there was nothing on record for the Appellate Authority to conclude since the Taxpayer could carry on business (submitting Form GSTR-1 and Form GSTR-3B within the prescribed period) despite illness, the illness could not be a reason for non-filing of the appeal within the prescribed time limit.
- The Taxpayer cannot be penalised for complying with the statutory obligations. Since, on the disclosure made by the Taxpayer, it is apparent that the Taxpayer was prevented by medical reasons from filing the appeal, the Appellate Authority ought to have condoned the delay by taking the same into consideration.
- The discretion exercised by the Appellate Authority in refusing to accept the explanation is unjustifiable and arbitrary and the delay in preferring the appeal should be condoned.
- In view of the above, the order passed by the Appellate Authority is set aside with a direction that the Appellate Authority shall hear and dispose of the appeal on merits after giving an opportunity to be heard in a time-bound manner.

Providing online platform services are to be treated as e-commerce operators and are liable to collect tax at the source

In the matter of Changejar Technologies Pvt. Ltd. [TS-106-AAR(KAR)-2024-GST]

Issue

- The Taxpayer provides an online platform (Jar) for offering the sale of M/s. Digital Gold India Private Limited's (DGIPL's) gold (digital gold), under the distribution agreement (agreement) with DGIPL. Digital gold is a non-custodial form of owning gold which is vaulted by DGIPL.
- Whether the Taxpayer is covered by Notification No. 52/2018-Central Tax dated 20 September 2018 (NN 52/2018) read with Section 52(1) of the Central Goods and Services Tax Act, 2017 (CGST Act) and hence, liable to collect tax at source?
- Whether the Taxpayer is liable to obtain GST registration as an E-Commerce Operator (ECO)?

Ratio

- The agreement with DGIPL provides that neither the Taxpayer nor DGIPL are agents of each other. Since the sale of goods i.e., digital gold happens through the Taxpayer's online portal, as a result, the Taxpayer would squarely fit into the definition of ECO.
- Further, the conditions laid down under Section 52 of the CGST Act are satisfied as under:
 - The Taxpayer owns, operates or manages a digital platform for electronic commerce.
 - The supply, being affected by a third party i.e., DGIPL is digital gold wherein the title of gold purchased by the customer is passed on by DGIPL whereas such gold is stored with the custodian (Security Trustee). Accordingly, the transaction amounts to a supply of goods in terms of Section 7(i)(a) of the CGST Act.
 - The supply of gold made by DGIPL through the online platform is leviable to GST and hence, is a taxable supply under the CGST Act.
 - The Taxpayer is an ECO and is not an agent of DGIPL as highlighted above and the Taxpayer is admittedly a registered person under the CGST Act.
 - The consideration towards the supply of gold is collected through the app by the Taxpayer and deposited into an Escrow Account, being a joint account of the Taxpayer and DGIPL meant for specifically dealing with the supply of gold.

Considering the above, the Taxpayer is liable to collect tax under Section 52 of the CGST Act read with NN 52/2018 on the net value of the taxable supply.

- As regards the Taxpayer's contention that they do not assume any responsibility with regard to the supply of gold (i.e., they do not compensate/pay for the damages that may arise during the delivery), it was held that post-sale conditions such as responsibility of delivery of digital gold, vaulting of gold, etc., do not alter the fact that the sale of product is done through the Taxpayer's platform and that the sale consideration is collected by the Taxpayer. In fact, in the instant

case, two supplies are involved viz., the supply of gold by DGIPL to the customer through the app and the supply of platform services by the Taxpayer to DGIPL.

- In view of the above, it was held that the Taxpayer qualifies as an ECO and is liable to deduct tax at source in terms of Section 52 read with NN 52/2018.

Penalty cannot be imposed on mere wrong availment of credit which was reversed prior to its utilisation

M/s. Greenstar Fertilizers Limited Vs. The Joint Commissioner & Ors. [2024-VIL-577-MAD]

Issue

- Whether penalty can be imposed under Section 74 of the CGST Act on mere wrong availment of credit which was reversed prior to its utilisation?

Ratio

- In *Aathi Hotel, Rep. by its Proprietor S.Vaithiyanathan Vs. Assistant Commissioner (ST) (FAC) [2021 SCC OnLineMad 16170]*, although proceedings under Sections 73(1) and 74(1) of the CGST Act can be initiated for mere wrong availing of Input Tax Credit (ITC) followed by the imposition of interest and penalty under the respective provisions, they stand attracted only where such credit was not only availed but also used for discharging tax liability³.
- In view of the above, the imposition of a penalty under the peculiar facts & circumstances of the case is unjustified. However, considering the fact that the Taxpayer had availed ineligible ITC that could have resulted in the wrong utilisation of the ITC, a token penalty of INR 10,000 was imposed on the Taxpayer.

CUSTOMS



LEGISLATIVE UPDATES

NOTIFICATION

09/2024- Customs (ADD) ⁴	Effective 13 June 2024, Anti-dumping Duty is imposed on import of 'Poly Vinyl Chloride Paste Resin' falling under HSN Codes 3904 1010, 3904 1020, 3904 1090, 3904 2100, 3904 2200, 3904 3010, 3904 3090, 3904 9000, 3904 4000 and 3904 9090, originating in or exported from China PR, Korea RP, Malaysia, Norway, Taiwan and Thailand.
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INSTRUCTION/ CIRCULAR

Circular No. 06/2024- Customs ⁵	<p>The Ministry of Electronics and Information Technology (MeitY) shared a Technical Document <i>vide</i> O.M. No. W-14/2/2020- IPHW dated 23 September 2020 containing the prominent constituents of a Display Assembly of cellular mobile phones. However, despite the above, the Customs Authorities observed instances of mis-declaration of 'Display Assembly' (attracting Basic Customs Duty @ 10%) as 'Inputs or parts for use in manufacture of a Display Assembly' (attracting Nil BCD rate). In this regard, CBIC has issued a Circular <i>inter alia</i> providing the following:</p> <ul style="list-style-type: none"> ▪ Essential components of the Display Assembly of a cellular mobile phone, ▪ Taxability and Classification (i.e. whether classifiable as 'Display Assembly' or a general part of a cellular mobile phone) if the specified item/ components are fabricated, embedded, fitted or attached with the Display Assembly of a cellular mobile phone.
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³ Similar view was also taken in *Kumaran Filaments (P) Ltd. Vs. Commissioner of Central GST and Central Excise, Madurai & Ors.*, [2021 SCC OnLine Mad 12062] and *Commercial Steel Engineering Corporation Vs. State of Bihar & Ors.* [TS-553-HC-2019(PAT)-NT]

⁴ Dated 13 June 2024

⁵ Dated 7 June 2024

FOREIGN TRADE POLICY



LEGISLATIVE UPDATES

NOTIFICATIONS

<p>16/2024-25⁶ read with PN 10/2024-25⁷, Corrigendum to the notification no. 16/2024- 25⁸ and Corrigendum to the Public Notice no. 10/2024-25⁹</p>	<p>Enabling provisions are made for exempting inputs imported by Advance Authorisation holders, Export Oriented Units and Special Economic Zone (SEZ) from mandatory Quality Control Orders (QCOs). Also, in pursuance of Notification No. 71/2023 dated 11 March 2024¹⁰, the Department of Chemicals & Petrochemicals (DCPC) has been notified in Appendix 2Y of FTP, 2023. The Export Obligation (EO) period for the products of the Ministry of Textiles and the DCPC is restricted to 180 days from the date of clearance of import consignments in respect of QCO exemption.</p>
<p>17/2024-25¹¹ read with Policy Circular No. 05/2024- 25¹² and Policy Circular No. 06/2024-25¹³</p>	<ul style="list-style-type: none"> ▪ Effective 11 June 2024, the Import Policy of goods falling under ITC (HS) code 7113 1912, 71131913, 7113 1914, 7113 1915, 7113 1960 is amended from “Free” to “Restricted”. ▪ However, import under ITC (HS) codes 7113 1912, 7113 1913, 7113 1914 and 7113 1915 shall be permitted without restricted Import Authorisation under a valid INDIA-UAE Comprehensive Economic Partnership Agreement Tariff Rate Quota. ▪ The aforesaid restriction will not apply to the re-import of unsold jewellery falling under ITC (HS) 7113 1912, 7113 1913, 7113 1914 and 7113 1915 exported for the purpose of exhibition abroad as per Para 4.79 and 4.92 of the Handbook of Procedures, 2023 (HBP) and the same may be allowed for clearance by the Customs Authorities without import licenses. ▪ It is also clarified that this restriction will also not apply to imports made by SEZ units (other than Free Trade Warehousing Zone units) under the ITC (HS) Codes 7113 1912, 7113 1913, 7113 1914, 7113 1915 and 7113 1960.
<p>18/2024-25¹⁴</p>	<p>The permissible quantities for export of Non-Basmati White Rice (under HS code 1006 3090) to Malawi and Zimbabwe through National Cooperative Exports Limited are notified.</p>

TRADE NOTICE/ CIRCULAR/ PUBLIC NOTICE

<p>TN 05/2024- 25¹⁵</p>	<p>Through Public Notice No. 18/2023 dated 23 June 2023, the Export Promotion Council (EPC) for Medical Devices has been included in Appendix 2T of FTP 2023 for issuing Registration-Cum-Membership Certificate (RCMC) for specific items. Pending regular functioning of the EPC for medical devices, the RCMC may be issued by the Engineering Export Promotion Council (EEPC) India and any other concerned EPC for Medical Devices.</p>
<p>TN 06/2024- 25¹⁶</p>	<p>Comments/ suggestions/ views of the stakeholders with regard to the proposed enhancement of the EO period as provided in Appendix-4J of HBP.</p>

⁶ Dated 6 June 2024

⁷ Dated 6 June 2024

⁸ Dated 12 June 2024

⁹ Dated 12 June 2024

¹⁰ The original Notification covered in Indirect Tax Digest dated 15 March 2024 can be accessed by clicking [here](#)

¹¹ Dated 11 June 2024

¹² Dated 13 June 2024

¹³ Dated 19 June 2024

¹⁴ Dated 19 June 2024

¹⁵ Dated 12 June 2024

¹⁶ Dated 18 June 2024

PN 09/2024 ¹⁷	Para 2 (b) of the 'Guidelines for Applicants' under ANF-4F of the HBP is revised to simplify the procedure and reduce the compliance burden for applying Export Obligation Discharge Certificate (EODC) in case of deemed exports.
PN 11/2024-25 ¹⁸	16 Agencies are notified as Pre-Shipment Inspection Agency (PSIA) and additional instruments in respect of two existing PSIA's have been notified. Further, the area of operation of 24 existing PSIA has been revised.

SPECIAL ECONOMIC ZONE



LEGISLATIVE UPDATES

INSTRUCTIONS

G.S.R. 314(E) ¹⁹	Rule 29A of the Special Economic Zones Rules, 2006 which relates to the 'procedure for Import, Export, Procurement from or supply to Domestic Tariff Area (DTA) of aircraft by a unit in International Financial Services Centre' is amended to substitute the word "aircraft" with "aircraft or aircraft engine". Thus, the procedure prescribed under Rule 29A would also apply to aircraft engines with effect from 6 June 2024.
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CENTRAL EXCISE/ SERVICE TAX/ VALUE ADDED TAX



LEGISLATIVE UPDATES

NOTIFICATION

16/2024-Central Excise ²⁰	Effective 15 June 2024, the applicable rate of Special Additional Excise duty on production of 'Petroleum Crude' (HSN 2709) has been reduced from INR 5,200 per tonne to INR 3,250 per tonne.
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¹⁷ Dated 6 June 2024

¹⁸ Dated 12 June 2024

¹⁹ Dated 6 June 2024

²⁰ Dated 14 June 2024

INDIRECT TAX NEWS FLASH



<p>The Hindu-BusinessLine (12 and 13 June 2024)</p>	<ul style="list-style-type: none"> ▪ Informed GST decisions crucial for sustainable growth of domestic online gaming industry, says SOGI ▪ GST Council meeting on June 22 to discuss key taxation issues
<p>Times of India (13 June 2024)</p>	<ul style="list-style-type: none"> ▪ Personal QR codes used to evade GST
<p>Economic Times (12 June and 14 June 2024)</p>	<ul style="list-style-type: none"> ▪ Auto industry body seeks cut in two-wheeler GST; SIAM suggests three-level slabs based on fuel types ▪ GST council may cut upfront payment for tax appeal to 7%
<p>Business Standard (12 and 13 June 2024)</p>	<ul style="list-style-type: none"> ▪ Int'l Road Federation wants no GST on helmets to make them affordable ▪ Bring petroleum products, realty, and electricity under GST: CII President
<p>The Pioneer (8 June 2024)</p>	<ul style="list-style-type: none"> ▪ Future of GST: Industry leaders discuss key issues and innovations

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