

INDIRECT TAX DIGEST

03 January 2025
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GOODS & SERVICES TAX (GST)



LEGISLATIVE UPDATES

PRESS RELEASE

ID 2086873 ¹	The 55 th GST Council meeting was held on 21 December 2024 in Jaisalmer. The GST Council made the various recommendations inter alia relating to changes in GST rates, amendments to the GST law and measures for streamlining compliances in GST. ²
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CIRCULARS³

240/34/2024-GST ⁴	<p>Following clarifications have been issued in respect of Electronic Commerce Operators (ECOs) liable to pay tax under Section 9(5) of Central Goods and Services Tax Act, 2017 (CGST Act):</p> <ul style="list-style-type: none"> ECOs are not required to reverse proportionate credits under Sections 17(1) or 17(2) of CGST Act to the extent of supplies made under Section 9(5) of the CGST Act. Such ECOs are liable to pay full tax liability on account of such supplies only through Electronic Cash Ledger. Input tax credit (ITC) availed by ECOs in relation to inputs/ input services used to facilitate such supplies cannot be used for discharging tax liability under Section 9(5) of the CGST Act. However, the same can be utilised for discharging tax liability in respect of supply of services on their own account.
241/35/2024-GST ⁵	<p>Following clarifications have been issued in respect of a recipients' ITC eligibility on the procured under Ex-Works (EXW) contract:</p> <ul style="list-style-type: none"> As per Explanation to Section 16(2)(b) of CGST Act, a recipient is considered to have 'received' goods under EXW contract at the time of handing over of such goods by supplier to the transporter, i.e., at his factory gate, for their onward transmission to the dealer. This principle would also apply in case of an EXW contract where the goods are to be delivered by the supplier to the recipient, or to any other person (including the transporter) on behalf of the recipient, at the supplier's place of business and the property in the goods stands transferred to the recipient at the time of handing over the said goods. The ITC eligibility is subject to the other provisions of Sections 16 and 17 of CGST Act including the condition that the goods are used or intended to be used in the course or furtherance of business by the dealer. If the goods are found to be diverted for non-business purposes at any stage, either before physically receiving the said goods at their business premises or subsequently, the dealer shall not be entitled to claim ITC on such goods. Further, if at any time after 'receiving' the goods, such goods are lost, stolen, destroyed, written off or disposed of by way of gift or free samples, the recipient would not be entitled to claim ITC on such goods as per Section 17(5)(h) of CGST Act.

¹Dated 21 December 2024

²Our Alert on the recommendations of the 55th GST Council meeting can be accessed by clicking [here](#).

³Our alert on these Circulars can be accessed by clicking [here](#)

⁴Dated 31 December 2024

⁵Dated 31 December 2024

242/36/2024-GST ⁶	<p>Following clarifications have been issued in respect of place of supply (POS) of online services:</p> <ul style="list-style-type: none"> Proviso to Rule 46(f) of the Central Goods and Services Tax Rules, 2017 (CGST Rules) is applicable in respect of all online services supplied to an unregistered recipient, including online gaming and OIDAR services. Examples of such services include subscription of e-newspapers and e-magazines, online subscription of entertainment services (e.g. OTT platforms), online telecom services, digital services through mobile applications, etc. In respect of such services, the supplier is mandatorily required to record the name of State of the recipient on tax invoice irrespective of the value of supply of such services and to declare POS of such services as the location of recipient of service (based on the name of State of recipient) in their details of outward supplies in Form GSTR-1/ 1A.
243/37/2024-GST ⁷	<p>Following clarifications have been issued in respect of the taxability of vouchers:</p> <ul style="list-style-type: none"> Supply of vouchers would neither be treated as supply of goods nor as a supply of services and hence, not leviable to GST. Transactions in vouchers on Principal-to-Principal basis would not be leviable to GST. However, if the distributor/ sub-distributor/ agent receives commission or fee or any other amounts from the issuer of voucher, the same would be leviable to GST. Supplying additional services such as advertising, co-branding, marketing and promotion, customisation services, technology support services, customer support services, etc. would attract GST at applicable rates. Amounts attributable to non-redemption of vouchers would not amount to supply of service and hence, not leviable to GST.

NOTIFICATION

10/2024-State Tax (Kerala GST) ⁸	A registered person causing intra-state movement of gold and precious stones, with a consignment value equal to or exceeding INR 10 lakh, needs to generate E-way Bill, when such movement is for outward supply or for reasons other than supply or due to an inward supply from an unregistered person.
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GSTN ADVISORY

GSTN Advisory ⁹	The Freight Operation Information System (FOIS) of the Indian Railways has been integrated with the E-way Bill (EWB) system <i>via</i> application programming interfaces. Taxpayers transporting goods <i>via</i> FOIS have been advised to adhere to the guidelines ¹⁰ for correctly entering Railway Receipt number in the EWB system to avoid discrepancies.
GSTN Advisory ¹¹	Specific instructions ¹² are provided for entering Receipt Numbers related to Leased Wagons in the EWB system.
GSTN Advisory ¹³	Form GST SPL-02 has been made available in the GST Portal for making an application under the GST Amnesty scheme notified under 128A of CGST Act and detailed guidelines have been issued in this regard. ¹⁴
GSTN Advisory ¹⁵	Biometric-based Aadhaar Authentication and Document Verification for the GST registration applicants in Arunachal Pradesh was rolled out on 28 December 2024.
GSTN Advisory ¹⁶	Owing to a technical glitch, the E-way Bill (EWB) portal was not operational on 31 December 2024. It has been informed that EWBs expired on 31 December 2024 can be extended up to midnight of 1 January 2025. Further, for the goods that were moved without generation of EWB on 31 December 2024, an EWB can be generated on 1 January 2025 for the same.

JUDICIAL UPDATES

Complete proceedings under Section 74 of the CGST Act to be undertaken by the Proper Officer for a notice to not be invalid

Vigneshwara Transport Company Vs. the Additional Commissioner of Central Tax, Commissioner of Central Tax & the Principal Commissioner of Central Tax [TS-856-HC(KAR)-2024-GST]

Issue

- Whether a show cause notice issued under Section 74 of the CGST Act by the proper officer is valid if a substantial part of the investigation, including search and seizure, is carried out by an officer other than the proper officer?

⁶Dated 31 December 2024

⁷Dated 31 December 2024

⁸Dated 27 December 2024

⁹Dated 18 December 2024

¹⁰Guidelines for correctly entering Railway Receipt number in the EWB system can be accessed by clicking [here](#).

¹¹Dated 23 December 2024

¹²Instructions to correctly enter the Receipt Number pertaining to Leased Wagons

in the EWB system can be accessed by clicking [here](#).

¹³Dated 29 December 2024

¹⁴Detailed guidelines for E-filing of Form GST SPL-02 can be accessed by clicking [here](#).

¹⁵Dated 31 December 2024

¹⁶Dated 1 January 2025

Ratio

- Only a proper officer can investigate evasion of GST and carry out search, seizure and arrests to determine the presence of *mens rea* and accordingly issue a notice under Section 74 of the CGST Act.
- Unless an independent investigation was undertaken by the proper officer to reach an independent conclusion, a show cause notice cannot be issued under section 74 of the CGST Act on borrowed satisfaction.
- The Respondents were directed to refund the sum deposited by the Petitioner along with the seized materials, with a liberty to initiate the proceedings in accordance with law.

CUSTOMS



LEGISLATIVE UPDATES

NOTIFICATION

27/2024-Customs (ADD) ¹⁷	Effective 27 June 2024, Anti-Dumping duty has been imposed on 'Telescopic Channel Drawer Slider' classified under ITC HSN 8302 4110, 8302 4190, 8302 4200 and 8302 4900 originating in or exported from China PR for a period of 5 years.
28/2024-Customs (ADD) ¹⁸	Effective 26 December 2024, Anti-Dumping duty has been imposed on 'Digital Offset Printing Plates' classified under ITC HSN 8442 50, 3701 3000, 3704 0090, 3705 0000, 7606 1190, 7606 9190, 7606 9290 originating in or exported from China PR, Korea RP, Japan, Taiwan and Vietnam for a period of 5 years.
49/2024-Customs ¹⁹	The exemption of Yellow Peas classified under HSN 0713 1010 imported into India from Basic Custom Duty and Agriculture Infrastructure and Development Cess has been extended from 31 December 2024 to 28 February 2025.
50/2024-Customs ²⁰	Effective 1 January 2025, rates of Basic Custom Duty have been revised for specific goods originating in Australia in terms of the India Australia Economic Cooperation and Trade Agreement.
27/2024-Customs ²¹	ICEGATE e-Payment Platform has been enabled with electronic collection of Voluntary Self-Initiated Payments to replace the existing TR-6 payments which are currently being done manually at various Customs Stations. This functionality shall enable the users to generate a self-initiated challan for voluntary payments and then make payments through the ICEGATE e-payment platform without any further approval by officers of Customs. Consequently, it has been informed that no payments shall be accepted through manual TR-6 challans after 31 December 2024 unless they are approved by the concerned Principal Commissioner/ Commissioner of Customs.
01/2025-Customs ²²	Effective 1 January 2025, an automated Out of Charge for T2 and T3 Authorised Economic Operators (AEOs) is being rolled out where there is no requirement of compulsory compliance requirement verification. The first phase would cover the eligible bills of entry of such AEOs which are (i) not selected for examination or scanning or for any Partner Government Agency related No Objection Certificate, (ii) whose assessment is complete and (iii) the authentication of the bill of entry by way of one-time password is complete for duty deferment. However, in case of any intelligence, the option for "HOLD" is provided in Customs Systems to override the Auto-out of charge by the concerned officer of customs.

JUDICIAL UPDATES

Sets aside Show Cause Notices and Final Orders pursuant to adjudication of matters placed in call book beyond a reasonable period

M/s. Vos Technologies India Private Limited Vs. the Principal Additional Director General and another [TS-620-HC-2024(DEL)-NT]

¹⁷Dated 18 December 2024

¹⁸Dated 26 December 2024

¹⁹Dated 26 December 2024

²⁰Dated 30 December 2024

²¹Dated 23 December 2024

²²Dated 1 January 2025

Historical Background

- Prior to the amendment made by the Finance Act, 2018 (FA 2018), Section 28(9) of the Customs Act, 1962 (Customs Act) *inter alia* prescribed the time limit for determining the amount of duty or interest under Section 28(8) (i.e. adjudication). However, such time limit was accompanied by the use of the phrase ‘where it is possible to do so’.
- *Vide* FA 2018, Section 28(9) of the Customs Act was amended as under:
 - The phrase ‘where it is possible to do so’ referred to in Section 28(9) was deleted.
 - **Insertion of first proviso:** The time limit prescribed in Section 28(9) can be extended in specified circumstances.
 - **Insertion of second proviso:** Where the tax authorities fail to determine the amount of duty or interest within such extended period, the proceeding shall be deemed to be concluded.

Issue

- Whether the matter placed by the tax authorities in call book can be allowed to be adjudicated beyond the reasonable period, being beyond the time limits provided under Section 28(9) of the Customs Act (both prior to and after the amendment by FA 2018)?

Ratio

- **Settled principles for adjudication of matters** (applicable to cases falling under the Customs Act, Central Excise Act, 1944 or the CGST Act):
 - A statute enabling an authority to conclude proceedings within a stipulated period of time “*where it is possible to do so*” cannot be countenanced as a license to keep matters unresolved for years. The flexibility which the statute confers is not liable to be construed as sanctioning lethargy or indolence.
 - It is incumbent upon the tax authorities to establish that it was genuinely hindered and impeded in resolving the dispute with reasonable speed and dispatch. When faced with such a challenge, the tax authorities are obligated to prove that it was either impracticable to proceed or it was constricted by factors beyond its control which prevented it from moving with reasonable expedition.
- In the present case, the tax authorities have failed to establish the existence of insurmountable constraint and which could be acknowledged in law as impeding their power to conclude pending adjudications.
- The frequent placement of matters in call book, retrieval thereof and transfer all over again not only defies logic but is also demonstrative of non-application of mind. The tax authorities failed to abide by CBIC Circulars pertaining to placing of matters in call book that had *inter alia* contemplated the affected parties to be placed on notice and a periodic review of such matters.
- In the present case, the proceedings have been lingered unnecessarily with no plausible explanation. The inaction and the state of inertia which prevailed thus leads to the inevitable conclusion that the tax authorities have clearly failed to discharge their obligation within a reasonable time. Further, the tax authorities failed to act in accordance with the legislative interventions that were intended to empower them to take the adjudication process to its logical conclusion.
- While these above observations are confined to cases where the second proviso to Section 28(9) of Customs Act would not apply, in cases such proviso is applicable, the same would deprive the tax authorities to continue a pending matter or frame a final order once the time limit or the extended time limit (as the case may be) provided under Section 28(9) of Customs Act expires.
- In view of the above, the writ petitions were allowed with a direction to quash all the show cause notices as well as any final orders that may have come to be passed and were impugned in the present writ petitions.

FOREIGN TRADE POLICY



LEGISLATIVE UPDATES

NOTIFICATION

44/2024-25²³ &
Trade Notice
25/2024-25²⁴

Effective from 01 January 2025 up to 30 June 2025, based on the recommendations contained in the final findings of Directorate General of Trade Remedies issued *vide* Notification No. 22/4/2023-DGTR read²⁵ with Notification²⁶, import of low ash metallurgical coke has been placed under ‘Restricted’ category with country-wise Quantitative Restrictions prescribed, for a period of six months. Import applications for the same shall be accepted from 1 January 2025 to 12 January 2025 wherein the importers shall be required to provide specified details, including the details of import of the said product for the past 3 years, production capacity and actual production for the period ending 31 December 2024 and file country-wise applications.

²³Dated 26 December 2024

²⁴Dated 30 December 2024

²⁵Dated 29 April 2024

²⁶Dated 28 May 2024

45/2024-25 ²⁷	Minimum Export Price on Natural Honey (HSN 0409 0000) is extended from 31 December 2024 to 31 December 2025.
46/2024-25 ²⁸	Minimum Import Price of INR 20,108 per metric tonne is imposed on Disodium Carbonate (Soda Ash) covered under Chapter 28 of ITC (HS) 2022, Schedule-I (Import Policy), up to 30 June 2025.

TRADE NOTICE / CIRCULAR / PUBLIC NOTICE

Trade Notice 24/2024-25 ²⁹	Scheduled launch of enhanced Preferential Certificate of Origin system, eCoO 2.0, has been extended from 21 December 2024 to 17 January 2025.
Trade Notice 26/2024-25 ³⁰	To facilitate trade, reduce turnaround time for obtaining export authorisations, and streamline the process for export of seeds and planting materials categorised as 'Restricted', a Standard Operating Procedure (SOP) has been prescribed, which needs to be adhered to while filing applications with DGFT for export authorisation.
Public Notice 35/2024-25 ³¹	Effective 24 December 2024, Standard Input Output Norms/ Ad hoc norms for Import of Menthol now covered under ITC HSN 2906 1110 and 2906 1190, suspended <i>vide</i> Public Notice No. 48/2023 ³² have been re-instated.
Public Notice 36/2024-25 ³³	Nine new agencies have been designated as Pre-Shipment Inspection Agencies (PSIAs). Additionally, the increase in instruments and areas of operation for six existing PSIAs have been notified. The mapping of equipment vis-à-vis the respective areas of operation/ countries have been extended to all PSIAs.

SPECIAL ECONOMIC ZONE



LEGISLATIVE UPDATES

NOTIFICATION

K-43013(12)/1/2021-SEZ ³⁴	Rule 43A of the Special Economic Zones Rules, 2006 (SEZ Rules) allows a SEZ unit to permit employees of specified categories to work from any place outside the SEZ. Rule 43A(3) of the SEZ Rules is amended to extend the validity of the permissions for hybrid working from 31 December 2024 to 31 December 2027.
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INDIRECT TAX NEWS FLASH



Money Control (23 December 2024)	<ul style="list-style-type: none"> From popcorn to parathas: Various complexities of India's GST regime GST Meeting: What's the cost of delayed decision-making?
Economic Times (29, 22 & 22 December 2024)	<ul style="list-style-type: none"> EEPC India proposes faceless GST audit to empower MSME sector GST Council meet: No tax on bank penalties, EV tax hike, popcorn tax clarity, and other key highlights GST recommendations to create business-friendly environment, ensure fairness: Experts
Business Today (23 & 26 December 2024)	<ul style="list-style-type: none"> Construction industry in a tough spot after GST Council decision to overturn SC ruling on Safari Retreats Case GST on used cars: Check details on when GST rates will be applicable on pre-owned cars, EVs
Telegraph Online (23 December 2024)	<ul style="list-style-type: none"> GST Council bid to overturn SC order in Safari Retreats case, construction industry to be hit

²⁷Dated 30 December 2024
²⁸Dated 30 December 2024
²⁹Dated 20 December 2024
³⁰Dated 30 December 2024

³¹Dated 24 December 2024
³²Dated 7 March 2024
³³Dated 27 December 2024
³⁴Dated 26 December 2024

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