

INDIRECT TAX DIGEST

29 March 2024

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GOODS & SERVICES TAX



LEGISLATIVE UPDATES

INSTRUCTION

<p>CBIC- 21/125/2021- INV- CUSTOMS- CBEC¹</p>	<p>CBIC has issued the Standard Operating Procedure for stepping up of Preventive Vigilance Mechanism by the jurisdictional CBIC field formations and to prevent the flow of suspicious cash, illicit liquor, drugs/narcotics, freebies and smuggled goods during elections.</p>
<p>Instruction no. 14/2024-GST (Assam)²</p>	<p>The time limit for issuance of adjudication orders under Section 73 of the Central Goods and Services Tax Act, 2017 (CGST Act) is expiring on 30 April 2024 (for FY 2018-19) and 31 August 2024 (for FY 2019-20). In this regard, the Assam Tax Authorities are directed to issue adjudication orders in a timely manner while also adhering to the principles of natural justice, thereby maintaining the quality of the orders so that they can withstand judicial review at a higher forum.</p>

JUDICIAL UPDATES

[Tvl. Vardhan Infrastructure and Ors. Vs. The Special Secretary, Head of GST Council Secretariat \[WP No. 34792 of 2019\]](#)

Issue

- Whether the GST law contains provisions for cross-empowerment in respect of assessments (i.e., show cause notices³ and orders⁴) undertaken by the Central and State Tax Authorities in the following manner:
 - Whether the Central Tax Authority can undertake an assessment of the Taxpayer who is assigned to the State Tax Authority; or
 - Whether the State Tax Authority can undertake an assessment of the Taxpayer who is assigned to the Central Tax Authority.

Ratio

- Under Section 3 of the CGST Act and the Tamil Nadu Goods and Services Tax Act, 2017 (GST enactments), the Central Government or the State Government (as the case may be) has appointed a class of officers for the purpose of enforcement of the respective GST enactments.
- Further, under Section 4 of the GST enactments, the Board (i.e., Central Board of Indirect Taxes and Customs) or the State Government (as the case may be) can appoint such officers as they may deem fit to be the officers under the respective GST enactments (i.e., the Central Tax Officer or the State Tax Officer, as the case may be).
- Section 4(2) of the GST enactments *inter alia* provides that the Board or the Commissioner (as the case may be) can authorise any officers referred in clauses (a) to (h) of Section 3 of the respective GST enactments to appoint an officer below the rank of Assistant Commissioner under the respective GST enactments. However, such appointments can only be a linear delegation i.e., the Board can only appoint a Central Tax Officer whereas the Commissioner can only appoint a State Tax Officer.

¹Dated 23 March 2024

²Dated 14 March 2024

³Under Sections 62 and 63 of the Tamil Nadu Goods and Services Tax Act, 2017 (TNGST Act) / Sections 62 and 63 of the CGST Act

⁴Under Sections 73 and 74 of the TNGST Act / Sections 73 and 74 of the CGST Act

- The provisions of Section 6 of the respective GST enactments are relevant for cross-empowerment which *inter alia* empowers the Central / State Government (as the case may be) to issue notification for cross-empowerment based on the recommendations of the GST Council. However, no notification has been issued under the said provision (except for the purpose of refund under Chapter XI of the respective GST enactments).
- In the absence of notification under Section 6 of the respective GST enactments for cross-empowerment, the Central Tax Authorities cannot undertake an assessment of a Taxpayer who is under the jurisdiction of the State Tax Authority, and *vice versa*. Accordingly, the proceedings impugned in the present matters were held to be undertaken without jurisdiction and hence, set aside.
- While quashing the impugned proceedings, directions were issued to the Central Tax Authority/ State Tax Authority, as the case may be, to initiate appropriate proceedings afresh under the respective GST enactments. Further, the time limit between the initiation of these proceedings and the date of receipt of this order shall be excluded from the computation of the limitation period.

In Re: Suswani Foundations Pvt. Ltd. [TS-742-AAR(TN)-2023-GST]⁵

Issue

- Whether Input Tax Credit (ITC) is available on inputs used for the construction of godown which is entirely meant for renting out for commercial purposes to registered dealers?

Ratio

- As per Section 17(5)(d) of the CGST Act, ITC is not available in respect of goods or services procured by a taxpayer for the construction of immovable property on his own account irrespective of whether such procurements are made in the course or furtherance of business.
- Further, the power to restrict the flow of credit exists under Section 16(1) of the CGST Act which reflects a legislative intent that ITC may not always be allowed partially or fully and that it would be mandatory for the Taxpayer to adhere to the restrictions prescribed under the GST law.
- Accordingly, ITC cannot be availed on inputs used for the construction of godown meant solely for renting out for commercial purposes to registered dealers.

In Re: Tamil Nadu Generation and Distribution Corporation Ltd. [TS-743-AAR(TN)-2023-GST]

Issue

- Whether GST is leviable on the following charges recovered by the Taxpayer from its consumers in the course of transmission/ distribution of electricity:

Sl. No.	Nature of charges
1.	Network/ wheeling charges
2.	Belated Payment Surcharge (BPSC) and Dishonored cheque service charge
3.	Application fee, meter rent, testing fee, service/line structures and equipment shifting charge
4.	Reconnection charges, labour charges for shifting of meters or shifting of service lines, charges for providing CMRI data, changing/ shifting of meter board / LTCT box / HT box due to damage or for accommodating additional safety features, charges for furnishing certified copies of documents to consumer and dismantling charges
5.	Harmonic compensation charges, capacitor compensation charges, estimate charges for additional load or reduction in load, excess contracted load charges, name transfer charges, consumer meter card replacement charges, charges for restoration of cheque payment facility, excess demand charges and excess energy charges during restriction and control of supply, excess demand and excess energy charges, recoveries from consumers for damage of Board properties, changing meter at the request of the consumer, inspection charges, replacement of burnt / damaged meter, temporary disconnection at the request of the consumer, additional surcharge, tariff change and cross-subsidy surcharge

⁵Editor's Note: This ruling does not refer to the Orissa High Court decision in the case Safari Retreats Pvt. Ltd. Vs. Chief Commissioner of CGST [TS-350-HC(ORI)-2019-NT] which had read down Section 17(5)(d) of the CGST Act to allow ITC on inputs/input services used for construction of mall for onward renting. Against the Orissa High Court ruling, the Tax Authorities have filed SLP before the Supreme Court, in which, the hearings have been completed and the judgement is reserved.

Ratio

- The Taxpayer is a distribution licensee under Section 14 read with Section 131 of the Electricity Act, 2003 and is authorised to operate and maintain a distribution system for supplying electricity to the consumers. Hence, the Taxpayer is an 'Electricity transmission or distribution utility' and the electricity transmitted/ distributed by the Taxpayer is exempt from the levy of GST in terms of Notification No.: 12/2017-Central Tax (Rate) dated 28 June 2017 (Exemption Notification).
- **Network/ wheeling charges (Sl. No. 1):** On perusal of the definition of 'wheeling' under Section 2(76) of the Electricity Act and the Explanatory Statement to the amendment notification⁶, wheeling/ network charges are recovered for providing the service of transmission of electricity and hence, the same forms part of the consideration for the same supply i.e., electricity. Accordingly, such charges would not be leviable to GST, being covered by the Exemption notification.
- **BPSC and dishonoured cheque service charge (Sl. No. 2):** In terms of Circular No. 178/10/2022-GST dated 3 August 2022, the charges collected for dishonoured cheques are not taxable and the charges collected for belated payment are naturally bundled with the main supply i.e., the transmission of electricity. Thus, both the aforesaid charges would be exempted from the levy of GST in terms of the Exemption Notification.
- **Services enumerated at Sl. Nos. 3 and 4:**
 - Circular No. 34/8/2018-GST dated 1 March 2018 *inter alia* provides that services which are ancillary in nature and not closely or directly related to the transmission or distribution of electricity will not be exempted in terms of the Exemption Notification.
 - While the Gujarat High Court ruling⁷ had struck down the exclusion clause of Para 4(1) of the aforesaid Circular, the Tax Authorities have challenged the same before the Supreme Court, which is pending. Pending disposal of such matter, the Gujarat High Court ruling cannot be treated as a precedent.
 - Thus, applying the aforesaid Circular, the charges enumerated at Sl. No. 3 would be leviable to GST @ 18%. As regards charges highlighted at Sl. No. 4, the same are only ancillary charges, *akin* to the charges which are held to be taxable (leviable to GST @ 18%) in terms of the aforesaid Circular and hence, leviable to GST.
- **Services enumerated at Sl. No. 5:**
 - The services highlighted in Sl. No. 5 are only ancillary services which can be considered as 'value-added services' under electricity consumption as additional/ facilitation services, some of which are on the request of the consumers and to implement regulatory mechanisms with respect to electricity consumption.
 - Further, these services are not naturally bundled with the principal supply i.e., transmission/ distribution of electricity and the main supply may take place without such ancillary services.
 - The main supply, i.e., supply of electricity is not affected even if any of the services enumerated at Sl. No. 5 is not rendered. Further, these services can be provided by independent suppliers. While these charges may have a nexus with the supply of electricity, they are not naturally bundled, and hence, cannot be treated as a composite supply.
 - In view of the above, these services would be leviable to GST @ 18%.

CUSTOMS



LEGISLATIVE UPDATES

NOTIFICATION

03/2024 (ADD) ⁸	Anti-Dumping Duty (ADD) has been imposed on the import of specified Printed Circuit Boards (HSN 8534 0000), originating in, or exported from China PR and Hong Kong, subject to certain conditions.
04/2024 (ADD) ⁹	ADD has been imposed on the import of Para-Tertiary Butyl Phenol (HSN 2907 1940), originating in, or exported from Korea RP, Singapore and the United States of America.

⁶Notification No. TNERC/SC/7/1 dated 21 July 2004 which had inserted a new provision pertaining to recovery of wheeling / network charges

⁷Torrent Power Ltd. Vs. Union of India [R/Special Civil Application No. 5343 of 2018], dated 19 December 2018

⁸Dated 14 March 2024

⁹Dated 14 March 2024

NOTIFICATION

05/2024 (ADD) ¹⁰	ADD has been imposed on the import of Ethylene Vinyl Acetate sheets for Solar Module, originating in, or exported from China PR.
06/2024 (ADD) ¹¹	ADD has been imposed on the import of 'All types of Self-Adhesive Vinyl (SAV), with Poly Vinyl Chloride (PVC) film thickness above 100 microns, made by using PVC films and imported in roll form only', originating in, or exported from China PR, subject to certain conditions.
07/2024 (ADD) ¹²	ADD has been imposed on import of 'Cast Aluminium Alloy Wheels or Alloy Road Wheels' (HSN 8708 70) originating in, or exported from China PR, subject to certain conditions.
17/2024-Customs ¹³	The concessional rate of Basic Customs Duty (BCD) @ 10% on goods falling under HSN 8517 6290 / 8517 6990 would not be available to 'smart wearable devices including smart rings, shoulder bands, neck bands or ankle bands'.
18/2024-Customs ¹⁴	Effective 1 April 2024, Notification no: 25/2021-Customs dated 31 March 2021 will be amended to prescribe the effective rate of BCD on specified goods.
19 and 20/2024-Customs ¹⁵	Notification no:50/2017-Customs dated 30 June 2017 has been amended to prescribe the effective rate of customs duty on specified electronically operated vehicles (EVs) (HSN 8703), subject to certain conditions. Further, the levy of Social Welfare Surcharge on specified EVs is exempted by amending Notification No. 11/2018-Customs dated 2 February 2018.
21/2024-Customs ¹⁶	Effective 1 April 2024, Notification No. 22/2022-Customs dated 30 April 2022 will be amended to prescribe the effective rate of BCD and Agriculture Infrastructure and Development Cess for specified goods.
23/2024-Customs (NT) ¹⁷	The provisions of Section 151B of the Customs Act, 1962 (<i>Reciprocal arrangement for exchange of information facilitating trade</i>) will apply to the agreement on cooperation and mutual assistance in customs matters between the Government of India and the Government of Armenia.

INSTRUCTION

05/2024-Customs ¹⁸	Specified breeds of dogs have been identified as ferocious which are dangerous for human life. Consequently, the import, breeding and selling of such breeds as pet dogs and for other purposes shall be prohibited.
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FOREIGN TRADE POLICY



LEGISLATIVE UPDATES

NOTIFICATION

75/2023 ¹⁹	The policy for the Export of Natural Honey (HSN 0409 0000) is 'Free' subject to a Minimum Export Price (MEP) of USD 2,000 per Metric Ton. MEP is imposed till 31 December 2024 or until further orders, whichever is earlier.
76/2023 ²⁰	The prohibition for export of 'De-Oiled Rice Bran' (ITC HS 2306 or under any other HS Code) is extended till 31 July 2024 (earlier than 31 March 2024).

¹⁰Dated 14 March 2024¹¹Dated 14 March 2024¹²Dated 15 March 2024¹³Dated 14 March 2024¹⁴Dated 14 March 2024¹⁵Dated 15 March 2024¹⁶Dated 15 March 2024¹⁷Dated 15 March 2024¹⁸Dated 14 March 2024¹⁹Dated 14 March 2024²⁰Dated 15 March 2024

77/2023 ²¹	A minimum Import Price of USD 3.50 per kg is imposed on specific Synthetic Knitted Fabric for the period up to 15 September 2024. The existing 'Free' Import Policy as it stands prior to the aforesaid amendment will be effective from 16 September 2024 (unless otherwise amended).
78/2023 ²²	The policy condition for import of Premium Duck Meat (ITC (HS) codes 0207 4200 and 0207 4500) for supply to 3-star and above Operational Hotels is 'Restricted' whereas for other imports, the same shall be 'Free'.
79/2023 ²³	The import of Urea (Agricultural grade) on a government account is allowed through Indian Potash Limited till 31 March 2025, subject to Para 2.21 of the Foreign Trade Policy, 2023 (FTP).
80/2023 ²⁴	State Trading Enterprises (STE) conditions for export of Petroleum Crude under ITC HS code 2709 0010 for AMI (ADNOC Marketing International (India) RSC Limited India) is exempted and AMI is allowed to re-export crude oil, from their Commercial Stockpile at Mangalore Strategic Petroleum Reserve (SPR), at their own cost.
81/2023 ²⁵	The prohibition on export of onions under ITC HS 0803 1019 which was valid till 31 March 2024 has been extended until further orders.
82/2023 read with Public Notice Nos. 52 & 53/2023 ²⁶	The policy for obtaining general authorisations (including the detailed procedure to be followed for obtaining such authorisations) for the export of the below-mentioned products has been notified: <ul style="list-style-type: none"> Export of Telecommunication-related items under SCOMET Category 8A5 Part 1 (GAET); and Export of Information Security items under SCOMET Category 8A5 Part 2 (GAEIS).

PUBLIC NOTICE/ TRADE NOTICE

Public Notice 51/2023 ²⁷	Para 4.06 and Para 4.14 of the Handbook of Procedures, 2023 (HBP) have been amended to streamline and automate the process of fixation of Norms and Notification of new SIONs under the Advance Authorisation Scheme, for ease of doing business and trade facilitation.
Trade Notice No. 39/2023-24 ²⁸	Effective 1 January 2024, in order to claim the benefit of a concessional rate of import duty in the United Kingdom (UK), Indian exporters are required to adhere to the new rules under the UK Developing Countries Trading Scheme. Accordingly, the origin criteria necessary for satisfying the Rules of Origin to avail tariff concessions must be filled in through self-certification.
Trade Notice No. 40/2023-24 ²⁹	Pursuant to the extension of the Interest Equalisation Scheme by the RBI till 30 June 2024, the DGFT has prescribed a cap of INR 25mn per IEC.

SPECIAL ECONOMIC ZONE



LEGISLATIVE UPDATES

NOTIFICATION

G.S.R. 194(E) ³⁰	Rule 21B of the Special Economic Zones Rules, 2006 has been amended to authorise a unit in an International Financial Services Centre to undertake ship leasing activities.
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²¹Dated 16 March 2024

²²Dated 16 March 2024

²³Dated 18 March 2024

²⁴Dated 22 March 2024

²⁵Dated 22 March 2024

²⁶Dated 27 March 2024

²⁷Dated 14 March 2024

²⁸Dated 18 March 2024

²⁹Dated 20 March 2024

³⁰Dated 14 March 2024

CENTRAL EXCISE/ SERVICE TAX/ VALUE ADDED TAX



LEGISLATIVE UPDATES

NOTIFICATION

10/2024-Central Excise ³¹	Effective 16 March 2024, the applicable rate of Special Additional Excise duty on production of Petroleum Crude has been increased from INR 4,600 to INR 4,900 per tonne.
Bihar Act 04, 2024 ³² read with S.O. 67 and 68 (Bihar) ³³	Effective 15 March 2024, the Bihar Settlement of Taxation Disputes Act, 2024 has been notified, providing an amnesty scheme for the settlement of disputes (subject to certain conditions and restrictions) arising from proceedings under the Bihar Finance Act, 1981, Bihar Value Added Tax Act, 2005, Bihar Tax on Entry of goods into Local Areas for consumption, use or Sale Therein Act, 1993, Bihar Taxation on Luxuries in Hotels Act, 1988, Bihar Entertainment Tax Act, 1948, Bihar Tax on Advertisement Act, 2007, Bihar Electricity Duty Act, 1948, Bihar Electricity Duty Act, 2018 and the Central Sales Tax Act, 1956 (CST Act).
No.CT/4/2/000 1/2023-Sec-1-05(CT)(07) (Madhya Pradesh) ³⁴	The time limit for disposal of appeals which were pending before the Appellate Authorities under the erstwhile Madhya Pradesh Value Added Tax Act, 2002 (MP VAT Act), CST Act, Madhya Pradesh Sthaniya Kshetra Me Mal Ke Pravesh Par Kar Adhinyam, 1976, the Madhya Pradesh Vilasita, Manoranjan, Amod Avam Vigyapan Kar Adhinyam, 2011, and were required to be disposed of by 28 February 2025, can now be disposed of till 31 March 2025.
No. CT-4-0002-2022-Sec-1-05 (CT) (10) (Madhya Pradesh) ³⁵	The time limit for undertaking assessment and reassessment proceedings under the MP VAT Act, CST Act, the Madhya Pradesh High-Speed Diesel Cess Act, 2018 and the Madhya Pradesh Motor Spirit Cess Act, 2018 has been extended to 31 August 2024 (earlier 30 April 2024).
CCT/12-2/2023-24/4441 (Goa) ³⁶	The time limit for completion of the assessment (for FY 2020-21) under the third proviso to Section 29(3) of the Goa Value Added Tax Act, 2005 has been extended till 30 June 2024 (earlier, 31 March 2024)

INDIRECT TAX NEWS FLASH



The Hindu-BusinessLine (14 and 25 March 2024)	<ul style="list-style-type: none"> ▪ E-way bill generation in Feb new second all time high, collection to get boost ▪ GST: Boost for businesses
Times of India (24 March 2024)	<ul style="list-style-type: none"> ▪ Exercise caution & probe deeper before arrests in GST fraud cases
Economic Times (16 and 21 March 2024)	<ul style="list-style-type: none"> ▪ Deadline for opting GST Composition Scheme for FY 2024-25 is March 31, 2024; file CMP-02 form if eligible ▪ Online gaming continues to grow, but GST change to “moderate” monetisation: Report
Money Control (16 and 27 March 2024)	<ul style="list-style-type: none"> ▪ Zomato receives Rs 8.6 cr GST penalty notice from Gujarat's Deputy Commissioner of State Tax ▪ LIC gets GST demand notice of Rs 178 crore

³¹Dated 15 March 2024

³²Dated 14 March 2024

³³Dated 15 March 2024

³⁴Dated 13 March 2024

³⁵Dated 13 March 2024

³⁶Dated 22 March 2024

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