

INDIRECT TAX DIGEST

02 August 2024

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GOODS & SERVICES TAX



LEGISLATIVE UPDATES

NOTIFICATION

GSTN Update ¹	Pursuant to Circular No. 227/21/2024-GST ² , GSTN has developed an online functionality to enable Canteen Stores Department to file refund applications in Form GST RFD-10A in the GST portal. The process for filing the said refund application is also prescribed.
GSTN Advisory ³	GSTN has issued an advisory stipulating the salient features of Form GSTR-1A which is to be made available from August 2024 onwards.
GSTN Advisory ⁴	GSTN has issued an advisory for Biometric-based Aadhaar Authentication and Document Verification for GST Registration Applicants of Uttarakhand which is rolled out on 28 July 2024.
SO 3048(E) ⁵	In suppression of the earlier notifications, a notification has been issued stipulating that the GST Appellate Tribunal (GSTAT) will be constituted with effect from 1 September 2023 with its Principal Bench at New Delhi. Further, the number of State Benches of the GSTAT along with its location have been notified.
No. 25/05/2020-41B1 (Haryana) ⁶	Haryana Government has notified the “ <i>Net SGST Reimbursement Scheme</i> ” for startups registered under the Haryana State Startup Policy, 2022 to <i>inter alia</i> provide financial support by way of reimbursing 50% of the Net SGST paid through Electronic Cash Ledger against the output SGST liability on sale of eligible products and services, for a period of 7 years with a cap of 100% Fixed Capital Investments. The scheme is also subject to various other conditions and restrictions.

¹ Dated 22 July 2024

² The synopsis of the Circular covered in our Indirect Tax Alert dated 13 July 2024 can be accessed by clicking [here](#)

³ Dated 26 July 2024

⁴ Dated 28 July 2024

⁵ Dated 31 July 2024

⁶ Dated 23 July 2024

INSTRUCTION/ CIRCULAR/ ORDER

Circular No. 13/2024 (Kerala) ⁷	<p>The Kerala Goods and Services Tax (KGST) Department has <i>inter alia</i> issued clarifications on the following aspects pertaining to scrutiny of returns and their further processing:</p> <ul style="list-style-type: none"> ▪ Scrutiny notices in Form GST ASMT-10 issued by Assistant Commissioners / State Tax Officers before the restructuring of the KGST Department will now be processed by Deputy State Tax Officers (DSTO) / Assistant State Tax Officers (ASTO). ▪ The monetary limits for issuing notices / adjudication orders as specified in Circular No. 06/2023 dated 8 January 2023 will not apply to scrutiny of returns or for issuance of Form GST ASMT-10 / Form GST ASMT-12. ▪ The appropriate authority for issuance of SCN and adjudication under Section 73 or 74 will be decided based on the basis of amount of tax involved as prescribed in the above Circular.
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JUDICIAL UPDATES

Section 7(1)(aa) of the CGST Act is not ultra vires but cannot be applied retrospectively

Indian Medical Association Vs. UOI [TS-433-HC(KER)-2024-GST]

Brief Background

- Section 108 of Finance Act, 2021 (FA 2021) had carried out the following amendments to Section 7 of the Central Goods and Services Tax Act, 2017 (CGST Act) **with retrospective effect from 1 July 2017**:
 - Clause (aa) was inserted to Section 7(1) of the CGST Act to include “*activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration*” within the purview of the term ‘supply’.
 - Further, an Explanation was inserted to provide that notwithstanding anything contained in any other law or any judgment, decree or order of any Court, tribunal or authority, the person and its members or constituents **shall be deemed to be two separate persons and the supply of activities or transactions *inter se* shall be deemed to take place from one such person to another.**

Issue

- Whether the aforesaid retrospective amendment is beyond the legislative competence or violates the fundamental rights guaranteed under Part III of the Constitution of India (Constitution)?
- Whether the Taxpayer can be asked to pay tax with retrospective effect from 1 July 2017 when the principle of mutuality was in vogue and the GST authorities never issued a notice to the Taxpayer seeking payment of GST?

Ratio

- **Constitutional validity of the aforesaid amendment:**
 - The Supreme Court, in *State of Madras Vs. Gannon Dunkerly [AIR 1958 SC 560]* *inter alia* held that the legislature had the power to levy tax only on “sale of goods”. Although the term sale of goods was not defined in the Constitution, the definition under the Sale of Goods Act, of 1930 ought to be adopted. Accordingly, the sale of goods would take place only if there is a transfer of title in movable property for consideration under a contract. However, the aforesaid ruling does not lay down the principle that the Constitution will be required to be amended to bring every transaction involved in the supply of goods and services.
 - Article 246A of the Constitution empowers the Parliament and the State Legislature to enact law(s) with respect to the goods and services tax whether the supply of goods or services or both takes place. The powers so conferred is a plenary power without any limitation for making laws on the supply of goods and services. Further, Article 366(12A) of the Constitution defines goods and services tax to mean any tax on the supply of goods or services or both except taxes on the supply of alcoholic liquor for human consumption.
 - Neither Article 246A nor Article 366(12A) of the Constitution lays any reference to the term ‘person’. The tax is on the activities i.e., supply of goods and services or both. Further, the Constitution does not put any restriction or limitation from defining a person(s) for the purpose of levy of GST.
 - As a result, the Parliament and the State Legislature is empowered to impose tax on the supply of goods and services, irrespective of the person/ individual involved.
 - **Principle of mutuality:**
 - The Supreme Court in *State of West Bengal Vs. Calcutta Club [TS-779-SC-2019-VAT]* had held that the transaction between the club and its members was by one to oneself and there was no service. Hence, the club was not liable to discharge service tax on the services provided to its members.

⁷ Dated 19 July 2024

- In this regard, Article 366(29A) of the Constitution *inter alia* provides that the tax on the sale or purchase of goods includes a tax on the supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration. However, the same does not provide for a tax on incorporated associations.
- Even otherwise, if it is held that the principle of mutuality is involved in the supply of goods or services by a club/ association to its members, the basis of the judgement can be altered or removed by making necessary amendments to the legislature.
- In view thereof, the Parliament / State Legislature had amended Section 7 of the CGST Act by inserting clause (aa) and Explanation to Section 7(1) of the CGST Act. Hence, the principle of mutuality will not come in the way of the Parliament/ State Legislature to enact laws for levying tax on the supply of goods and services.
- Thus, the aforesaid amendment is neither beyond the legislative competence nor offends any of the fundamental rights guaranteed under Part III of the Constitution nor is manifestly arbitrary or capricious.
- **Retrospective applicability of the aforesaid amendment:**
 - Before the aforesaid amendment, the principle of mutuality was an established principle in the tax legislation levying tax on the supply of goods or services by clubs/ associations to its members. Consequently, as understood by the Taxpayer and the tax authorities, the Taxpayer did not collect GST on the services provided to its members.
 - Pursuant to the aforesaid amendment, the Taxpayer has become liable to pay GST on the supply of goods and services to its members. Consequently, the aforesaid amendment inserting clause (aa) along with Explanation to Section 7(1) of the CGST Act should not be given retrospective operation from 1 July 2017 but should be given effect from the date when the said amendment was notified i.e., from 1 January 2022.
 - Having held the above, without examining whether the activity performed by the Taxpayer can be treated as a supply of goods or services or both, the matter was remanded to the tax authorities for evaluating each activity independently to arrive at a conclusion as to whether such activity involves the supply of goods and services attracting the levy of GST (if any).
- Having held the above, without examining whether the activity performed by the Taxpayer can be treated as a supply of goods or services or both, the matter was remanded to the tax authorities for evaluating each activity independently to arrive at a conclusion as to whether such activity involves the supply of goods and services attracting the levy of GST (if any).

Circular No.9 of 2019 dated 24 May 2019 inter alia authorising/assigning proper officers with power of adjudication is valid

M/s. A. J. Steels Vs. The State Tax Officer & Ors. [2024-VIL-729-MAD]

Issue

- Circular No.9 of 2019 dated 24 May 2019 *inter alia* provides the powers and functions of the Intelligence Wing (including the Central Intelligence Wing and the Intelligence Division) of the Tamil Nadu Goods and Services Tax Department. The Circular *inter alia* assigns adjudication powers to such officers with effect from 1 June 2019.
- Whether Circular No. 9 of 2019 dated 24 May 2019 is *ultra vires* the provisions of the CGST Act?

Ratio

- The Taxpayer's contention that the authorisation to delegate the power of adjudication ought to have been made only by way of a Notification as contemplated under Section 167 of the CGST Act is misplaced in as much as the Circular is traceable to Section 2(91) of the CGST Act and not Section 167 of the CGST Act. Hence, issuance of a notification may not be necessary for authorising/ assigning proper officers with the power of adjudication. A similar view was upheld by the Gujarat High Court in *Yasho Industries Ltd. Vs. Union of India [TS-288-HC(GUJ)-2021-GST]*.
- As regards the Taxpayer's contention that the tax authorities, having carried out inspection, cannot undertake the adjudication as the same would then be vitiated by bias lacks merit. Reliance in this regard was placed on a similar issue that had arisen for consideration before the Madras High Court under the Tamil Nadu General Sales Tax Act, 1959 wherein it was held that merely because a person during inspection or a raid was able to get at and collect some material warranting or justifying reassessment, he would not become disqualified on the ground of bias to exercise the powers of reassessment.
- As regards the challenge to the assessment order, the High Court was not inclined to entertain the Writ Petition since the issue involved disputed questions of fact, the adjudication of which falls outside the scope of Article 226 of the Constitution of India.
- In view of the above, the writ petition challenging the validity of Circular No. 9 of 2019 and the consequent assessment orders are set aside.

CUSTOMS



LEGISLATIVE UPDATES

NOTIFICATION

50/2024-Customs (N.T.) ⁸	Notification No. 24/2023-Customs (NT) <i>inter alia</i> provides the manner of issuance of duty credit scrips under the Remission of Duties and Taxes on Exported Products scheme (RoDTEP scheme). Considering that the RoDTEP scheme was <i>inter alia</i> extended to Special Economic Zone (SEZ) units, corresponding amendments have been made to the aforesaid notification to stipulate the manner of issuance of duty credit scrips to SEZ units. Further, the duty credit scrips can also be issued in cases where a Shipping Bill or Bill of Export is presented under Section 50 of the Customs Act on or after 1 July 2024.
29/2024-Customs to 39/2024, 51/2024-Customs (N.T.), D.O.F.No. 334/04/2024-TRU ⁹	Changes in the customs duty rates (including the applicable rate of Basic Customs Duty, Agriculture Infrastructure and Development Cess and Health Cess) announced as part of Union Budget 2024 are carried out with effect from 23 July 2024, unless specified otherwise ¹⁰ .
40/2024-Customs ¹¹	Table II of Notification No. 22/2022-Customs <i>inter alia</i> providing the rate of Customs duty and Agriculture Infrastructure and Development Cess (AIDC) on certain products when imported into India from the United Arab Emirates is amended to provide revised rate of Customs duty and AIDC on tariff item 7106 1000, 7106 9110, 7106 9190, 7106 9210, 7106 9220, 7106 9290, 7110 1110, 7110 1120, 7110 1900, 7110 2100, 7110 2900, 7110 4100 and 7110 4900.
03/2024-Customs (CVD) ¹²	<i>Vide</i> Notification No. 1/2019-Customs (CVD) dated 24 June 2019, Countervailing Duty (CVD) was imposed on import of 'New/unused pneumatic radial tyres with or without tubes and/or flap of rubber (including tubeless tyres), having nominal rim diameter code above 16" used in buses and lorries/trucks' falling under HSN Code 4011 2010 and 4011 8000, originating in, or exported from China PR, subject to certain conditions. The levy of CVD on the above product is extended for another period of 5 years.

INSTRUCTION/ CIRCULAR

Instruction No. 19/2024-Customs ¹³	CBIC has issued an instruction <i>inter alia</i> providing the procedure for provisional attachment of bank accounts under Section 110(5) of the Customs Act, 1962. The instruction also states that the Customs authorities may endeavour to complete the investigation and adjudication at the earliest, well within the period of attachment.
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⁸ Dated 19 July 2024

⁹ Dated 23 July 2024

¹⁰ Our alert on proposals made by the Union Budget 2024-25 can be accessed by clicking [here](#)

¹¹ Dated 29 July 2024

¹² Dated 19 July 2024

¹³ Dated 22 July 2024

JUDICIAL UPDATES

License fees for process know-how and supervision of erection and commissioning charges cannot be included in the assessable value of imported goods

Indorama Industries Ltd. Vs. C.C. - Kandla, Gujarat [2024-VIL-794-CESTAT-AHM-CU]

Issue

- Whether license fee for process know-how and supervision of erection and commissioning charges can be included in the assessable value of imported goods as per Rule 10 of the Customs (Determination of Value of Imported Goods) Rules, 2007 (CVR)?

Ratio

- As per the principle laid down in various judicial precedents¹⁴, it is apparent that before any consideration is included in the assessable value of imported goods, it has to be established that such charges are a condition of sale and are not in relation to post-importation activities.
- In the present case, the contract does not indicate that procurement of licenses for process know-how or the activity of the supervision of erection and commissioning plant is in any way a condition for the sale of goods.
- Further, the license fee (relating to the manufacturing process) and the supervision of Erection and Commissioning are post-importation activities and not a condition for sale.
- In view of the above, the consideration paid/payable by the importer cannot form part of the assessable value of imported goods.

FOREIGN TRADE POLICY



LEGISLATIVE UPDATES

NOTIFICATION

21/2024-25 ¹⁵	Export of 1,000 MT of Non-Basmati White Rice under ITC(HS) code 1006 3090 to Namibia is permitted through National Cooperative Exports Limited.
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TRADE NOTICE/ CIRCULAR/ PUBLIC NOTICE

TN 09/2024-25 ¹⁶	DGFT has issued a trade notice <i>inter alia</i> providing that the provision for verification of authenticity of electronically issued documents is already implemented on the DGFT Website for all stakeholders wherein the complete electronic document shall be available for download.
TN 10/2024-25 ¹⁷	Ministry of Steel has launched an updated version 2.0 of the Steel Import Monitoring System (SIMS) from 25 July 2024 past which the current SIMS 1.0 as hosted on the DGFT website will be discontinued with immediate effect.
PN 15/2024-25 ¹⁸	With a view to enhancing the ease of doing business and reducing the compliance burden, certain provisions of Chapter 5 of the Handbook of Procedures, 2023 relating to the Export Promotion Capital Goods (EPCG) Scheme are amended for EPCG authorisations issued under Foreign Trade Policy, 2023.
PN 16/2024-25 ¹⁹	Public Notice No. 05/2024 dated 27 May 2024 ²⁰ which <i>inter alia</i> revised the wastage permissible and Standard Input Output Norm (SION) under the Handbook of Procedures, 2023 with regard to export of jewellery was kept in abeyance till 31 July 2024 ²¹ vide PN 06/2024 dated 28 May 2024 for reassessment of permissible wastages and SION as per the request of Gem & Jewellery Export Promotion Council (GJEPC). Again, on the request of GJEPC, Public Notice No. 05/2024 dated 27 May 2024 is kept in abeyance for a further period of one month i.e., till 31 August 2024.

¹⁴ Commissioner of Customs, Chennai Vs. Denso Kirloskar Industries Pvt. Ltd. [2015 (324) ELT 431 (SC)], Commissioner of Customs, (Import), Mumbai Vs. Hindalco Industries Ltd. [TS-234-SC-2015-CUST] and Inspiron Engineering P. Ltd. Vs. C.C.(A) JNCH, Nhava Sheva, Mumbai-II [2017 (357) ELT 801 (Tri. - Mumbai)]

¹⁵ Dated 29 July 2024

¹⁶ Dated 23 July 2024

¹⁷ Dated 25 July 2024

¹⁸ Dated 25 July 2024

¹⁹ Dated 29 July 2024

²⁰ The original Public Notice covered in

Indirect Tax Digest dated 7 June 2024

can be accessed by clicking [here](#)

²¹ The original Public Notice covered in

Indirect Tax Digest dated 7 June 2024

can be accessed by clicking [here](#)

CENTRAL EXCISE/ SERVICE TAX/ VALUE ADDED TAX



LEGISLATIVE UPDATES

NOTIFICATION

No. 8/Leg.A2/2024/ Law (Kerala)	Kerala Government has enacted the Kerala Finance Act, 2024 <i>inter alia</i> providing the Kerala Amnesty Scheme, 2024 under various laws <i>inter alia</i> including the Kerala General Sales Tax Act, 1963, Kerala Value Added Tax Act, 2003 and the Central Sales Tax Act, 1956 for settlement of arrears of tax, surcharge, interest or penalty pertaining to assessment years up to 2017-18.
No. 8/Leg.A2/2024/ Law (Kerala) ²²	Kerala Government has enacted the Kerala Finance Act, 2024 <i>inter alia</i> providing the Kerala Amnesty Scheme, 2024 under various laws <i>inter alia</i> including the Kerala General Sales Tax Act, 1963, Kerala Value Added Tax Act, 2003 and the Central Sales Tax Act, 1956 for settlement of arrears of tax, surcharge, interest or penalty pertaining to assessment years up to 2017-18.

INDIRECT TAX NEWS FLASH



The Hindu-BusinessLine (24 July and 26 July 2024)	<ul style="list-style-type: none"> ▪ Share Market Highlights 24 July 2024: LTCG, STCG hike sinks Sensex, Nifty on Budget day; realty drags, FMCG, IT shine ▪ Rice sold in bags above 25 kg may attract GST, retail prices likely to be affected
Times of India (23 July and 25 July 2024)	<ul style="list-style-type: none"> ▪ Budget 2024: Basic customs duty on mobile phones and chargers reduced to 15% ▪ IMA Kerala branch liable to pay GST: HC
Economic Times (24 July and 26 July 2024)	<ul style="list-style-type: none"> ▪ Budget 2024 impact: Will liquor prices fall as Extra Neutral Alcohol to be out of GST's purview? ▪ Budget 2024: No GST demand notice to be issued beyond 42 months from the due date of filing annual return; Know how it will help you
Business Standard (23 July, 23 July and 24 July 2024)	<ul style="list-style-type: none"> ▪ Budget cuts Customs duty on slew of items, assures rationalisation of GST ▪ Union Budget 2024: Sharp import duty cut to burnish gold and silver ▪ Budget 2024: Customs duty hike to increase costs for 4G, 5G network rollout
Moneycontrol (29 July 2024)	<ul style="list-style-type: none"> ▪ Fake ITC claims detection by central GST officers up 51% at Rs 36,374 cr in FY24
India Today (25 July 2024)	<ul style="list-style-type: none"> ▪ NEET aspirants disappointed over 18% GST on coaching fees in Budget 2024

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