

# INDIRECT TAX DIGEST

01 March 2024

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## GOODS & SERVICES TAX



### LEGISLATIVE UPDATES

#### GSTN ADVISORY

GSTN Advisory <sup>1</sup>	GSTN has introduced new features to the E-Invoice Master Information Portal such as PAN-based search, automatic E-Invoice exemption list, global search bar, local search capabilities, etc.
GSTN Advisory <sup>2</sup>	Rule 9 of the Central Goods and Services Tax Rules, 2017 inter alia provides that where a person has undergone Aadhaar authentication but has been identified by the GSTN for detailed verification based on the risk profile, the application for registration would be processed within 30 days from the submission of application. In this regard, necessary changes would be made to reflect the same in the online tracking module vis-à-vis the processing of registration applications.

#### NOTIFICATION

06/2024-Central Tax <sup>3</sup>	Public Tech Platform for Frictionless Credit has been notified under Section 158A of the Central Goods and Services Tax Act, 2017 (CGST Act) as a system with which the information may be shared by the GST portal based on consents received under Section 158A(2) of the CGST Act.
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### JUDICIAL UPDATES

#### [Prahita Constructions Pvt. Ltd. Vs. Union of India and Ors. \[TS-60-HC\(TEL\)-2024-GST\]](#)

##### Issue

- Whether the transfer of development rights by the landowner to the Taxpayer by way of a Joint Development Agreement (JDA) would be treated as a transfer of immovable property (under entry 5 to Schedule III to the CGST Act) or would be treated as supply of services?

##### Ratio

- It is only by way of a separate conveyance deed, that too, after the completion of the development activity, the undivided share of land (to the extent of the Taxpayer's entitlement) can be transferred and not solely by virtue of the JDA.
- Under no circumstances can the execution of the JDA or mere transfer of development rights indicate an automatic transfer of ownership or title over any portion of the land belonging to the landowner in favour of the Taxpayer.
- Thus, JDA between the landowner and the Taxpayer would not result in the transfer of ownership and hence, cannot be construed as the sale of land. The transfer of development rights is a service supplied by the landowner for consideration and the same cannot be treated as an outright sale of immovable property (land).
- In view of the above, the transfer of development rights is leviable to GST and cannot be brought under the purview of entry 5 to Schedule III to the CGST Act.

<sup>1</sup> Dated 21 February 2024

<sup>2</sup> Dated 28 February 2024

<sup>3</sup> Dated 22 February 2024

### Fomento Resorts and Hotels Ltd. Vs. Union of India and Ors. [TS-72-HC(BOM)-2024-GST]

#### Issue

- Are Circular Nos 3/3/2017-GST dated 5 July 2017, 31/05/2018-GST dated 9 February 2018 and 169/01/2022-GST dated 12 March 2022 (Impugned Circulars) valid, in as much as they assign functions of the 'proper officer' upon the Central Tax officers for issuing an audit report (under Section 65(6) of the CGST Act) or show cause notices (under Sections 73 or 74 read with Section 65(7) of the CGST Act)?
- If the answer to the above is negative, whether the show cause notices issued by such officers (Impugned SCNs) are valid?

#### Ratio

- In *Cannon India Pvt. Ltd.*<sup>4</sup> and *Sayed Ali*<sup>5</sup>, the reliance placed by the Customs Authorities on the definition clause under Section 2(34) of the Customs Act, 1962 (Customs Act) to contend the Board can assign functions of the 'proper officer' on the officers of the Directorate of Revenue Intelligence was rejected. The above rulings are not applicable to the present case as it is undisputed that the officers of the Audit Commissionerate are 'officers of Central Tax'. Accordingly, the assignment of functions by the Board to the Central Tax officers *vide* the Impugned Circulars cannot be faulted.
- Vide* Notification no: 02/2017-Central Tax dated 19 June 2017, the Central Government, in the exercise of powers conferred by Section 3 read with Section 5 of the CGST Act had constituted a Commissioner of Central Tax (Audit) and officers subordinate to him as the Central Tax officers. Further, *vide* Circular dated 5 July 2017, the Board had *inter alia* assigned the Deputy / Assistant Commissioner of Central Tax to function as 'proper officer' in relation to the CGST Act (for discharging various functions including those specified under Section 65(6)(v) of the CGST Act). Similarly, the other two Impugned Circulars have assigned functions under Section 74 to the subordinate officers of Central Tax by specifying the monetary limits.
- The Impugned Circulars clearly assign power to issue notices under Sections 73 and 74 of the CGST Act. Hence, these circulars cannot be said to be legally invalid on the grounds contended by the Taxpayer. Thus, no case is made out to either strike down the Impugned Circulars or the Impugned SCNs, on the ground that they were not issued by the 'proper officer' as defined under Section 2(91) of the CGST Act.

### M/s. Sri Shanmuga Hardware Electricals Vs. The State Tax Officer [W.P. Nos. 3804, 3808 and 3813 of 2014 (Madras High Court)]

#### Issue

- Whether the Taxpayer is eligible to claim Input Tax Credit (ITC) in Form GSTR-9 (which is also reflected in Form GSTR-2A) without availing the same in the corresponding Form GSTR-3B?

#### Ratio

- Where the Taxpayer contends that he is eligible to claim ITC (which appears in Form GSTR-2A) in Form GSTR-9, the Tax authorities must examine whether the said claim is valid by verifying all the relevant documents.
- The Impugned Order issued by the Tax Authorities denying ITC merely on the ground that the same was not reflected in Form GSTR-3B is unsustainable and hence, set aside.

### M/s. Engineering Tools Corporation Vs. The Assistant Commissioner (ST) [2024 (15) Centax 388 (Mad.)]

#### Issue

- Whether the claim of ITC on procurements made from a supplier whose GST registration was cancelled with retrospective effect, after the procurements were made, is valid?

#### Ratio

- The contentions put forth by the Taxpayer to substantiate its claim of ITC were rejected by the Tax Authorities merely on the ground that the Taxpayer should have proved the existence of the supplier. However, the Taxpayer at the maximum may be called upon to prove the existence of the supplier at the relevant time (i.e., at the time of making the procurements).
- For this, the Taxpayer may be called upon to prove that the transaction was genuine by providing relevant documents such as tax invoices, e-way bills, lorry receipts, delivery challans, proof of payment and the like. While these documents were furnished by the Taxpayer, the same was not considered and hence, the Impugned Order is unsustainable in law.
- The matter was remanded for reconsideration with a direction to the Tax Authorities that the claim of ITC should not be rejected solely on the ground that the supplier's GST registration was cancelled with retrospective effect.

### Afortune Trading Research Lab LLP Vs. Additional Commissioner & Ors. [TS-80-HC(MAD)-2024-GST]

#### Issue

- The Taxpayer was engaged in undertaking the export of services during various tax periods. In this regard, the following refund applications were filed by the Taxpayer, for **separate tax periods**:

<sup>4</sup> Cannon India Pvt. Ltd. Vs. Commissioner of Customs [TS-75-SC-2021-CUST]

<sup>5</sup> Commissioner of Customs Vs. Sayed Ali and Anr. [2011 (3) SCC 537]

- Refund of IGST paid on export of services;
- Refund of accumulated ITC in respect of input services used for undertaking export of services.
- Whether the Taxpayer is entitled to claim refunds in respect of services exported to overseas customers in cases where the payment for the outward supply is received through an intermediary in terms of the Foreign Exchange Management (Manner of Receipt and Payment) Regulations, 2016 (FEMA Regulations)?

#### Ratio

- It is undisputed that the Taxpayer has supplied services to its customers through its online portal for which payments are routed through an Intermediary (i.e., PayPal) as under:
  - Payments made by the customer received in convertible foreign exchange and credited to PayPal's account with Citi Bank.
  - From the aforesaid account, PayPal transfers funds to the Taxpayer's account with HDFC Bank in Indian Rupees in accordance with FEMA Regulations.
- In the present case, PayPal merely acts as an intermediary that receives remittances in freely convertible foreign exchange and is required to comply with FEMA regulations.
- Merely because the receipts are routed through the intermediary and received in Indian currency ipso facto would not mean that the Taxpayer has not exported services within the meaning of Section 2(6) of the Integrated Goods and Services Tax Act, 2017 (IGST Act). Receipt of payment by an intermediary for and on behalf of its client like the Taxpayer will qualify as payment received by the client.
- In view of the above, the Taxpayer is entitled to claim a refund and the Impugned Order denying the refund to the Taxpayer is set aside.

## CUSTOMS



## LEGISLATIVE UPDATES

### NOTIFICATION

10/2024 <sup>6</sup>	Effective 20 February 2024, Notification no:50/2017-Customs dated 30 June 2017 has been amended resulting in the change in the effective rate of customs duty on various products.
11/2024 <sup>7</sup>	Agriculture Infrastructure and Development Cess (AIDC) on goods of staple length exceeding 32.0 mm falling under HSN code 5201 0025 has been exempted.
12/2024-Customs <sup>8</sup>	<p>Effective 22 February 2024, the following changes in the applicable customs duty rates have been prescribed:</p> <ul style="list-style-type: none"> <li>▪ The entry pertaining to the exemption from the export duty on 'Rice, parboiled' falling under HSN Code 1006 3010 (to be made effective from 1 April 2024) has been deleted.</li> <li>▪ The exemption entry pertaining to customs duty and AIDC on import of Yellow Peas falling under HSN Code 0713 1010 will now be available only in cases where the Bill of Lading is issued on or before 30 April 2024.</li> </ul>

<sup>6</sup> Dated 19 February 2024

<sup>7</sup> Dated 19 February 2024

<sup>8</sup> Dated 21 February 2024

## CIRCULAR / INSTRUCTION / PUBLIC NOTICE

02/2024 <sup>9</sup>	The revised guidelines and the formats for furnishing Arrest Reports and Incident Reports by the Tax Authorities have been prescribed.
03/2024 <sup>10</sup>	Bureau of Indian Standards (Standards for Boric Acid) Order, 2019 was notified by the Ministry of Agriculture & Farmers Welfare by virtue of which, Boric Acid was brought under BIS Standard IS 10116:2015. Accordingly, Customs Authorities are directed to ensure that import consignments of Boric Acid adhere to the aforesaid standard.
13/2024 <sup>11</sup>	The procedure for filing and processing the applications for amendment of Bills of Entry (including the format for filing the application) has been prescribed.

FOREIGN TRADE  
POLICY

## LEGISLATIVE UPDATES

## NOTIFICATION

61/2023 <sup>12</sup>	The Policy for the import of Yellow Peas under ITC(HS) Code 07131010 is 'Free', without the Minimum Import Price condition and Port Restriction subject to prescribed conditions, with immediate effect for all Import Consignments where the Bill of Lading (Shipped on Board) is issued on or before 30 April 2024.
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## TRADE CIRCULAR / PUBLIC NOTICE

Trade Notice 38/2023-24 <sup>13</sup>	It is clarified that Chapters 1-39 of Schedule 2 (Export Policy) of ITC HS notified <i>vide</i> Notification no:60 dated 13 February 2024 does not include any new policy changes or amendments and the policies as applicable before the issuance of the aforesaid notification shall continue. The erstwhile Export Policy was not based on 8-digit ITC HS and the aforesaid notification has mapped the existing policy against each 8-digit ITC HS code.
Public Notice 41 & 42/2023	The procedure for obtaining authorisation for the Restricted Import of Watermelon seeds and Muskmelon seeds (under ITC (HS) 12077090) for the period up to 31 August 2024 has been prescribed. The last date for filing the application for obtaining such authorisation is 22 February 2024.
Public Notice 43/2023	Import of metallic waste and scrap from specified countries/regions without a Pre-Shipment Inspection Certificate is now permitted from 11 designated ports including through Adani Gangavaram Port.
Public Notice 44/2023 <sup>14</sup>	Effective 1 April 2024, DGFT has suspended Standard Input Output Norms (SION) of various products annexed to the Public Notice which have been observed to be inoperative over the last 5 years. For reinstatement of SION for a particular product, representations may be filed latest by 15 March 2024.
10/2023-24 <sup>15</sup>	Regional Authorities have been directed to re-fix the Annual Average Export Obligation for EPCG Authorisations for the year 2022-23 in terms of Para 5.17(a) of the Hand Book of Procedures (HBP) of Foreign Trade Policy, 2023

<sup>9</sup> Dated 14 February 2024  
<sup>10</sup> Dated 19 February 2024  
<sup>11</sup> Dated 23 February 2024

<sup>12</sup> Dated 23 February 2024  
<sup>13</sup> Dated 16 February 2024  
<sup>14</sup> Dated 22 February 2024

<sup>15</sup> Dated 22 February 2024

## CENTRAL EXCISE / SERVICE TAX / VALUE ADDED TAX



### LEGISLATIVE UPDATES

#### NOTIFICATION

06/2024 - Central Excise <sup>16</sup>	Effective 16 February 2024, the applicable rate of Special Additional Excise duty on production of Petroleum Crude has increased from INR 3,200 to INR 3,300 per tonne.
07-2024 - Central Excise <sup>17</sup>	Effective 16 February 2024, the applicable rate of Special Additional Excise duty on the production of High-Speed Diesel oil has been increased from Nil to INR 1.5 per litre.
G.O.Ms. No. 72 (Andhra Pradesh) <sup>18</sup>	A new entry (Natural Gas) is inserted in Schedule IV (Goods leviable to VAT @ 5%) of the Andhra Pradesh Value Added Tax Act, 2005.
G.O. (Ms.) No. 56 (Tamil Nadu) <sup>19</sup>	Notifies 31 March 2024 as the last date for filing an application for the Amnesty Scheme (Tamil Nadu Taxes (Settlement of Arrears) Act, 2023)
4/1/2024- Fin(R&C) /5039 and Circular GVAT 05 of 2023-24 (Goa) <sup>20</sup>	The Notification extends the benefit of the composition scheme to dealers engaged in the business of Bar/Tavern whose annual turnover does not exceed INR 1mn. In this regard, a Trade Circular has been issued to inter alia provide that to opt for the composition scheme, the eligible dealers are required to submit their application in the prescribed form by 15 March 2024.
ERTS (T) 24/2023/19 (Meghalaya) <sup>21</sup>	VAT on 'Diesel oil and other internal combustion oils' would be higher of the following - <ul style="list-style-type: none"> <li>▪ 5%; or</li> <li>▪ INR 8.5 per litre (earlier INR 7 per litre)</li> </ul>

#### CIRCULAR

01 of 2024 (Maharashtra) <sup>22</sup>	The procedure for e-hearing of appeals before the Maharashtra Sales Tax Tribunal has been prescribed.
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<sup>16</sup> Dated 15 February 2024  
<sup>17</sup> Dated 15 February 2024  
<sup>18</sup> Dated 23 February 2024

<sup>19</sup> Dated 15 February 2024  
<sup>20</sup> Dated 14 February 2024  
<sup>21</sup> Dated 9 February 2024

<sup>22</sup> Dated 12 February 2024

## INDIRECT TAX NEWS FLASH



<p>The Hindu-BusinessLine (23 February 2024)</p>	<ul style="list-style-type: none"><li>▪ <a href="#">GST portal's new data sharing mechanism to facilitate seamless credit for assesseees</a></li></ul>
<p>Outlook (21 February 2024)</p>	<ul style="list-style-type: none"><li>▪ <a href="#">Make In India: Several Sectors Fail To Spark Investor Interest Under PLI Scheme In FY24</a></li></ul>
<p>Times of India (23 February 2024)</p>	<ul style="list-style-type: none"><li>▪ <a href="#">GST fraud: Cops attach 12cr property of 4 suspects in Delhi</a></li><li>▪ <a href="#">Hotels demand 5% GST for restaurants operating from within the premium hotel premises</a></li></ul>
<p>Economic Times (10 and 25 February 2024)</p>	<ul style="list-style-type: none"><li>▪ <a href="#">GST Council may soon clarify tax exemption to RERA</a></li><li>▪ <a href="#">Realty redevelopment projects GST ruling likely to hit cost dynamics across markets</a></li></ul>
<p>Money Control (23 February 2024)</p>	<ul style="list-style-type: none"><li>▪ <a href="#">GST Cess Explained: A Comprehensive Overview</a></li></ul>



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