

INDIRECT TAX DIGEST

17 January 2025

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GOODS & SERVICES TAX (GST)



LEGISLATIVE UPDATES

NOTIFICATION

S.O. 95(E) ¹	<ul style="list-style-type: none"> Section 14A(3) of the Integrated Goods and Services Tax Act, 2017 (IGST Act) provides that in case of failure to comply with Section 14A(1) or 14A(2) of IGST Act by the supplier of online money gaming services or his representative or both, any information generated, transmitted, received or hosted in any computer resource used for supply of online money gaming services by such supplier shall be liable to be blocked for access by public in such manner prescribed by the Information Technology Act, 2000 (IT Act). In this regard, the Central Government has designated the Additional/ Joint Director (Intelligence) of Directorate General of GST Intelligence (DGGI) as the nodal officer for the purpose of Section 14A(3) of IGST Act. 																												
01 to 06/ 2025 - Central Tax ² & GSTN Advisory ³	<p>On account of a technical glitch, CBIC extended the due date for filing periodical GST returns for month/ quarter ending 31 December 2024 by two days as under:</p> <table border="1"> <thead> <tr> <th>Return</th> <th>Periodicity</th> <th>Revised Due Date</th> </tr> </thead> <tbody> <tr> <td rowspan="2">Form GSTR-1 (Details of outward supplies of goods or services)</td> <td>Monthly</td> <td>13 January 2025</td> </tr> <tr> <td>Quarterly</td> <td>15 January 2025</td> </tr> <tr> <td rowspan="2">Form GSTR-3B (Details of outward supplies and inward supplies)</td> <td>Monthly</td> <td>22 January 2025</td> </tr> <tr> <td>Quarterly return (Category 1 States)</td> <td>24 January 2025</td> </tr> <tr> <td></td> <td>Quarterly return (Category 2 States)</td> <td>15 January 2025</td> </tr> <tr> <td>Form GSTR-5 (Return for Non-resident taxable person)</td> <td>Monthly</td> <td>15 January 2025</td> </tr> <tr> <td>Form GSTR-6 (Return for Input Service Distributor)</td> <td>Monthly</td> <td>15 January 2025</td> </tr> <tr> <td>Form GSTR-7 (Return for Tax Deducted at Source)</td> <td>Monthly</td> <td>12 January 2025</td> </tr> <tr> <td>Form GSTR-8 (Statement for Tax Collection at Source)</td> <td>Monthly</td> <td>12 January 2025</td> </tr> </tbody> </table> <p>As a result, draft GSTR-2B for the month/ quarter ending 31 December 2024 will be generated on 16 January 2025 (earlier 14 January 2025) and the same can be recomputed if any action is taken in Invoice Management System on or after 16 January 2025.</p>	Return	Periodicity	Revised Due Date	Form GSTR-1 (Details of outward supplies of goods or services)	Monthly	13 January 2025	Quarterly	15 January 2025	Form GSTR-3B (Details of outward supplies and inward supplies)	Monthly	22 January 2025	Quarterly return (Category 1 States)	24 January 2025		Quarterly return (Category 2 States)	15 January 2025	Form GSTR-5 (Return for Non-resident taxable person)	Monthly	15 January 2025	Form GSTR-6 (Return for Input Service Distributor)	Monthly	15 January 2025	Form GSTR-7 (Return for Tax Deducted at Source)	Monthly	12 January 2025	Form GSTR-8 (Statement for Tax Collection at Source)	Monthly	12 January 2025
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¹Dated 6 January 2025

²Dated 10 January 2025

³Dated 10 and 14 January 2025

⁴Dated 13 January 2025

⁵Dated 17 August 2022, our alert on the same can be accessed by clicking here.

INSTRUCTION

01/2025-GST ⁴	Further to the Delhi High Court ruling in <i>Kshitij Ghildiyal Vs. DGGI, Delhi [2024 (12) TMI 1001 - Delhi High Court]</i> , Para 4.2.1 of Instruction 02/2022-23 GST (Investigation) <i>inter alia</i> prescribing the guidelines for arrest and bail for offences committed under the Central Goods and Services Tax Act, 2017 (CGST Act) is amended to mandate that the tax authorities must furnish the 'grounds of arrest' (being different from the 'reasons for arrest' ⁶) in writing to the arrested person as an Annexure to the Arrest Memo and acknowledgement thereof should be taken at the time of service of Arrest Memo.
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GSTN ADVISORY

GSTN Advisory ⁷	Notification No. 22/2024-Central Tax ⁸ <i>inter alia</i> provided that a taxpayer can file an application for rectification of an order in cases where Input Tax Credit (ITC) that was previously wrongly availed is now available as per Sections 16(5) and 16(6) of CGST Act. In this regard, the functionality for filing the above rectification application has been made available on the GST Portal. Further, a detailed step-by-step guide is also issued. ⁹
GSTN Advisory ¹⁰	Biometric-based Aadhaar Authentication and Document Verification for the GST registration applicants in Rajasthan was rolled out on 7 January 2025.
GSTN Advisory ¹¹	From January 2025 onwards, the manual entry of HSN has been replaced by selecting correct HSNs from the given Drop Down. Further, Table 12 of Form GSTR-1 and Form GSTR-1A is bifurcated into two tabs viz., B2B and B2C, to report these supplies separately. Further, validation checks regarding value of supplies and tax thereof is also introduced for both these tabs. However, in the initial phase, these validations are kept in a warning mode only and hence, failure to meet this check will not impact the filing of Form GSTR-1 and GSTR-1A. A detailed advisory has been issued in this regard. ¹²
GSTN Advisory ¹³	<p>The facility for filing application for the Amnesty Scheme notified under Section 128A of CGST Act (in Forms GST SPL-01 and GST SPL-02) is available on the GST portal. Since withdrawal of appeal is one of the eligibility conditions for opting for the Amnesty Scheme, the following procedure has been prescribed for withdrawal of appeals (before First Appellate Authority):</p> <ul style="list-style-type: none"> ▪ For appeals filed on or after 21 March 2023, the facility for withdrawal of appeal is available on the GST portal. ▪ In other cases, the taxpayers are advised to submit a request for withdrawal of appeals to the concerned Appellate Authority who will then forward such requests to GSTN through State Nodal Officer from backend.

JUDICIAL UPDATES

Solar Power Generating System is not an immovable property

Sterling and Wilson Pvt. Ltd. vs. the Joint Commissioner & Ors. [2025 (1) TMI 663 - Andhra Pradesh High Court]

Issue

- Whether supply of solar module and Solar Power Generating System (SPGS) can be treated as a composite supply or whether the same would be treated as a Works Contract service?

Ratio

- **Distinction between a 'composite supply' and 'works contract':** According to the definition of 'composite supply' and 'works contract' under Sections 2(30) and 2(119) of the CGST Act, a composite supply of goods and services that results in construction, etc. of an immovable property is a works contract. Thus, the distinction between these terms would depend on whether the end-product handed over to the contractee is moveable or immovable property.
- **Whether supply of solar modules and SPGS is an immovable property?**
 - Relying on the principle laid down in *Commissioner of Central Excise, Ahmedabad vs. Solid and Correct Engineering Works [2010 (4) TMI 15 (SC)]* it was held that the property which is attached to a structure embedded in the earth would become an immovable property only when such attachment is for the permanent beneficial enjoyment of the structure embedded in earth.
 - In the present case, the solar modules and SPGS are not attached to the civil structure for better enjoyment or beneficial enjoyment of the civil foundation. Instead, the civil foundation is embedded to the earth for better permanent and beneficial enjoyment of SPGS.

⁴As per the principle laid down in *Prabir Purkayastha s. State (NCT of Delhi) [Criminal Appeal (D. No.]*¹¹Dated 9 January 2025
42896/2023]

⁷Dated 7 January 2025

⁸Dated 8 October 2024. Our alert on the notification can be accessed by clicking [here](#).

⁹The detailed step-by-step guide for making an application for rectification can be accessed by clicking [here](#).

¹⁰Dated 8 January 2025

¹²The detailed advisory issued by CBIC can be accessed by clicking [here](#).

¹³Dated 14 January 2025

- In view of the above, SPGS would not be covered under the purview of 'immovable property' and consequently, the transaction would not fall within the meaning of 'works contract' as defined under Section 2(119) of the CGST Act.
- Accordingly, supply of SPGS would be treated as a composite supply attracting at 5%.

SCN/ Order is mandatorily required to be served in person/ by registered post/ E-mail ID

Udumalpet Sarvodaya Sangham & Ors. vs. The Authority [TS-02-HC(MAD)-2025-GST]

Issue

- Whether supply of solar module and Solar Power Generating System (SPGS) can be treated as a composite supply or whether the same would be treated as a Works Contract service?
 - The tax authorities had proceeded to upload the copy of the Show Cause Notices (SCNs) or Orders (as the case may be) on the GST portal.
 - The copy of these SCNs or Orders (as the case may be) was not served to the Taxpayers as per any other modes prescribed under Section 169 of CGST Act.
- Whether the tax authorities are mandatorily required to serve SCN or Orders (as the case may be) in person/ by registered post/ E-mail ID along with its service through electronic mode i.e., on the GST portal?

Ratio

- The contention of the tax authorities that the Taxpayer has an efficacious alternative remedy where the issue pertaining to the service of notice can also be raised is not sustainable because it is not a solitary case of allegation of violation of the principles of natural justice but have been made a day-to-day affair, where such complaints are being made.
- In *Sanjeevi Naidu vs. The Deputy Commercial Tax Officer, Kanchipuram & Ors. [1972 SCC Online Mad 347]*¹⁵, the Madras High Court, while examining Rule 52 of the Tamil Nadu General Sales Tax Rules, 1959 (TNGST Rules) had held that -
 - Rule 52(1)(a) to (c) of TNGST Rules deals with the physical mode of service of any notice/ summons/ order. Rule 52(1)(d) of TNGST Rules provides that if the modes prescribed in clauses (a) to (c) are not practicable, the same may be served by affixing it in some conspicuous place at his last known place of business or residence.
 - The tax authorities are not independently required to comply with the modes of service prescribed in clauses (a) to (c) but are required to comply with any of the three modes in alternative to one another) and if it is found that such service was not effective, then tax authorities must comply with mode of service prescribed in Rule 52(1)(d) of TNGST Rules.
- Considering that Rule 52(1)(d) of TNGST Rules is pari materia with Section 169(1)(f) of CGST Act, the aforesaid ruling would apply to the present case. Accordingly, it can be construed that clauses (a) to (c) are alternative modes of service and if service through such modes is not practicable, then clauses (d) to (f) must be followed. Only such interpretation would effectively comply with the principles of natural justice and also the condition stipulated by Section 169(3) mandating that when such decisions, orders, summons, notices or any communication sent by Registered Post or speed post, it shall be deemed to have been received unless the contrary is proved.
- Moreover, although clause (f) is proceeded with the word 'or' indicating the provisions to be disjunctive/ an alternative mode of services, a reading of clause (f) would indicate that it can be resorted to by the State, if any of the clauses preceding it was not practicable. Further, clause (f) makes it imperative that such affixture shall be in a conspicuous place and the last known business or residence of the assessee.
- As regards the contention of the tax authorities that Rule 149 of CGST Rules only provide for electronic issuance of notices/ summons/ orders, it was held that rules are creature of a statute and cannot circumscribe the mode that had been provided under the statute. When the statute mandates issuance of notice in person/ registered post/ email, etc., the rules cannot be limited to only serving it through electronic modes.
- Thus, Section 169 of CGST Act mandates a notice in person or by registered post or to registered email ID alternatively, and on a failure or impracticality of adopting any of the aforesaid modes, the tax authorities can, in addition, make the publication of such notices/ summons/ orders in the portal/ newspaper through the concerned officials.
- In view of the above, the impugned orders of assessment are set aside.

¹⁴Editor's Note: This ruling pertains to the period prior to 1 January 2019 i.e., prior to the introduction of 70:30 scheme inter alia bifurcating a turnkey contract between the value of supply of goods and the value of supply of works contract services and prescribing GST rates thereof.

¹⁵Similar view was taken in *Singaravelar Spinning Mills Pvt. Ltd. vs. State of Tamil Nadu & Anr. [2010 SCC Online Mad 6454]*

CUSTOMS



LEGISLATIVE UPDATES

PUBLIC NOTICE

01/2025¹⁶

Effective 1 January 2025, an Automated Out of Charge (Auto-OOC) for T2 and T3 Authorised Economic Operators (AEOs) has been rolled out in cases where there is no requirement of Compulsory Compliance Requirement (CCR) verification. The first phase would cover the Bills of Entry (BoEs) filed by AEOs meeting the following criteria:

- BoEs are not selected for examination or scanning or for any PGA-related NOC¹⁷
- The assessment of BoEs is complete;
- The authentication of BoEs by way of OTP is complete for duty deferment.

The facility for Auto-OOC will be allowed on risk basis for the eligible BoEs and in case of any intelligence, the option for "HOLD" is provided in the Customs Systems to override the Auto-OOC, by the concerned Customs officer.

Madras High Court quashes validity of Public Notice no. 88/2019 which restricts reassessment of BoEs unless the order of assessment (including self-assessment) is modified by way of appeal

M/s. Bharti Airtel Ltd. vs. Union of India & Ors. [TS-709-HC-2024(MAD)-CUST]

Issue

- Pursuant to the Supreme Court ruling in ITC Ltd., CBIC had issued Public Notice no. 88/2019 (PN 88/2019) highlighting that the refund procedure for self-assessed BoEs requires reconsideration and it was clarified that -
 - No reassessment shall be allowed unless the order of assessment including self-assessment is duly modified by way of appeal; and
 - Refund claim shall be entertained only based on the final order of assessment/ reassessment.
- Whether PN 88/2019 can be considered as being valid and sustainable in law?

Ratio

- It is a settled law that an importer or a person filing a BoE can amend the BoE by any of the following three methods prescribed under the Customs Act, 1962 (Customs Act) namely, by way of an appeal or by filing an application under Section 149 of Customs Act²⁰ or under Section 154 of Customs Act²¹. Accordingly, relying on the principles laid down by the Madras High Court decision in *M/s. Neyveli Lignite Corporation*²², PN 88/2019 is liable to be quashed.
- In view of the above, the Writ Petition was allowed by directing the tax authorities to re-do the exercise under Section 149 of Customs Act within a period of three months.

FOREIGN TRADE POLICY



LEGISLATIVE UPDATES

¹⁶Dated 2 January 2025

¹⁷Partner Government Agency-related No Objection Certificate

¹⁸ITC Ltd. Vs. Commissioner of Central Excise, Kolkata [2019 (17) SCC 46]

¹⁹Dated 15 October 2019

²⁰Section 149 deals with amendment of various documents, including but not limited to BoEs filed for imported goods before the said goods are cleared for home consumption or are deposited in a warehouse

²¹Section 154 deals with correction of arithmetical or clerical mistakes in any decision / order or errors arising therein from any accidental slip or omission

²²*M/s. Neyveli Lignite Corporation India Ltd. Vs. The Commissioner of Customs, The Assistant Commissioner of Customs (Import) [2022 (4) TMI 1374 - Madras High Court]*

NOTIFICATION

47/2024-25 ²³ read with Public Notice no. 37/2024-25 ²⁴	Paras 1.07A and 1.07B of Foreign Trade Policy, 2023 (FTP) are inserted to introduce trade facilitation measures with an option available to the Central Government for consultation with relevant stakeholders such as exporters/ importers/ industry experts to seek their views, suggestions, comments or feedback and also providing the mechanism on best endeavour basis, to inform reasons for not accepting views, suggestions, comments or feedback concerning the formulation or amendment of the FTP. Further, the procedure for seeking such views, suggestions, comments, or feedback from the relevant stakeholders under Para 1.07A of FTP 2023 has been specified.
48/2024-25 ²⁵	Export of 2,00,000 metric tonnes of wheat to Nepal is permitted through National Cooperative Exports Limited.
49/2024-25 ²⁶	Import of 'Synthetic Knitted Fabrics' classifiable under HSN codes 6006 3100, 6006 3200, 6006 3300, 6006 3400, 6006 9000, 6001 9200, 6004 1000, 6004 9000, 6005 3600, 6005 3790, 6006 2200 and 6006 4200 is 'Restricted'. However, import is 'Free' if value on CIF basis is USD 3.5 and above per kilogram. Further, inputs imported by Advance Authorisation holders, Export Oriented Units, and Special Economic Zones shall be exempted from Minimum Import Price condition.
50/2024-25 ²⁷	As per Section 111 read with the Fourth Schedule to the Finance (No.2) Act, 2024 ²⁸ (FA 2024), the First Schedule of Customs Tariff Act, 1975 (CT Act) was amended with effect from 1 October 2024 to align India's customs classification with WCO classification and for better identification of goods. Since the Import Policy as per ITC HS (Schedule I - Import Policy) also refers to Customs Tariff, effective 26 November 2024, the DGFT had amended the Import Policy (ITC HS - Schedule I) along with the corresponding Policy Conditions, to align it with amended Customs Tariff ²⁹ . Pursuant to the above, effective 13 January 2025, Schedule-II (Export Policy) of ITC(HS), 2022, in sync with FA 2024 has been notified. Consequent changes have also been made to the General Notes to Export Policy.

TRADE NOTICE/ CIRCULAR/ PUBLIC NOTICE

Public Notice 38/2024-25 ³⁰	<p>Para 6.06 of the Handbook of Procedures, 2023 (HBP 2023) dealing with conditions of import of goods by Export Oriented Unit/ Electronics Hardware Technology Park/ Software Technology Park/ Bio-Technology Parks are amended as under:</p> <ul style="list-style-type: none"> ▪ Paras 6.06(c)(ii): The time limit for fulfilment of export obligation against import of items (covered in Chapter 9 of ITC(HS)) and coconut oil is amended to six months (earlier 90 days). ▪ Para 6.06(c)(iii): The time limit for fulfilment of Export Obligation for spices imported for specified Value Addition purposes is amended to six months (earlier 120 days).
Public Notice 39/2024-25 ³¹	The procedure for export of Certified Organic Products has been notified. This procedure supersedes the earlier Public Notice no. 73 (RE-2013)/2009-2014 ³² and Public Notice No. 10/2015-2020 ³³ .

INDIRECT TAX NEWS FLASH

Livemint (15 January 2025)	<ul style="list-style-type: none"> ▪ India may tweak customs duties, regulations in budget to back local component manufacturing, ease trade Para 6.06(c)(iii): The time limit for fulfilment of Export Obligation for spices imported for specified Value Addition purposes is amended to six month
The Week (13 January 2025)	<ul style="list-style-type: none"> ▪ GST Tribunals may be delayed by 6 months as states yet to appoint officials
Economic Times (13 & 14 January 2025)	<ul style="list-style-type: none"> ▪ DGFT updates export policy for every product to promote ease of doing business ▪ New update on GST Amnesty Scheme waiver of penalty and interest: These taxpayers need to withdraw their appeal and then apply for the scheme
Business Standard (15 January 2025)	<ul style="list-style-type: none"> ▪ GST Tribunals may be delayed by 6 months as states yet to appoint officials

²³Dated 1 January 2025²⁴Dated 2 January 2025²⁵Dated 4 January 2025²⁶Dated 4 January 2025²⁷Dated 13 January 2025²⁸Dated 16 August 2024²⁹Our alert on the same can be accessed by clicking here.³⁰Dated 3 January 2025³¹Dated 5 January 2025³²Dated 18 November 2014³³Dated 5 May 2015

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