

INDIRECT TAX DIGEST

08 December 2023

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GOODS & SERVICES TAX



LEGISLATIVE UPDATES

GSTN ADVISORY

GSTN Advisory ¹	GSTN has issued an advisory stipulating the procedures and provisions relating to the amnesty scheme for the taxpayers who had missed filing an appeal within the statutory timelines in respect of orders passed on or before 31 March 2023.
GSTN Advisory ²	Effective 1 December 2023, GSTN had introduced two-factor authentication (2FA) on a pilot basis for Haryana. The same will now rolled out to all the States/Union Territories in two phases. In the first phase, 2FA will be rolled out in Punjab, Chandigarh, Uttarakhand, Rajasthan, and Delhi. Subsequently, in the second phase, it will be rolled out in all other States/Union Territories.
GSTN Advisory ³	The functionality for biometric-based Aadhaar Authentication is to be rolled out on a pilot basis in Andhra Pradesh from 4 December 2023. The procedure for document verification and appointment booking is prescribed in the Advisory.

NOTIFICATIONS

S.R.O. No:1284/2023 ⁴	Kerala Flood Cess Rules, 2019 (KFC Rules) is amended to provide the mechanism, procedures, and restrictions for claiming a refund of Kerala Flood Cess paid by the supplier in respect of cases covered under Rule 3(6) of the KFC Rules.
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CIRCULARS / INSTRUCTIONS

6(4)/GST/Policy/2022/1122-23 ⁵	A Circular has been issued by the Delhi Goods and Services Tax Department stipulating that generation and quoting of Document Identification Number/Reference Number shall be mandatory in specified instances.
04/2023-GST ⁶	Non-issuance of the summary of show cause notices (in Form GST DRC-01) or orders (in Form GST DRC-07) electronically on the GST portal is in violation of the provisions of the Central Goods and Services Tax Rules, 2017. Accordingly, the Central Board of Indirect Taxes and Customs has directed the proper officers to ensure that the summary of such notices/orders (as the case may be) is served/uploaded electronically on the GST portal.
SGST/973/2023-LEGAL ⁷	The State Nodal Officer for the Kerala Goods and Services Tax Department has been notified to receive information about the initiation of the insolvency resolution process and disseminate it to the field formations. Further, the Standard Operating Procedure in view of the State Nodal Officer and District Nodal Officers has been prescribed.

¹Dated 28 November 2023

²Dated 1 December 2023

³Dated 1 December 2023

⁴Dated 28 November 2023

⁵Dated 29 November 2023

⁶Dated 23 November 2023

⁷Dated 21 November 2023

JUDICIAL UPDATES

[Association of Technical Textiles Manufacturers and Processors & Anr. Vs. Union of India & Ors. \[TS-581-HC\(DEL\)-2023-GST\]](#) Issue

- Whether Circular no: 80/54/2018-GST dated 31 December 2018 (Circular) issued by the Tax Research Unit of the Department of Revenue (TRU) is valid in as much as it clarifies the classification of goods i.e., polypropylene woven and non-woven bags including those laminated with Biaxially Oriented Polypropylene (Polypropylene Bags)?

Ratio

- The Circular is liable to be set aside on account of the following reasons:
 - Under the GST law, no authority has been vested in the TRU to issue clarification with respect to the classification of goods and articles.
 - TRU has neither examined Section XI of the First Schedule to the Customs Tariff Act, 1975 nor has it referred to the provisions of Chapter 56 thereof.
 - The Circular fails to examine the advert to the Notes placed in Chapter 39, which in unambiguous terms exclude textiles from its ambit.

[Lenovo \(India\) Pvt. Ltd. Vs. The Joint Commissioner of GST \[TS-591-HC\(MAD\)-2023-GST\]](#) Issue

- Whether refund can be denied on goods supplied to SEZ for failure to obtain endorsements or obtaining inappropriate endorsements from the Authorised Officer (AO)?
- Whether the time limit for filing a refund application under Section 54 of the Central Goods and Services Tax Act, 2017 (CGST Act) is mandatory or directory?

Ratio

- **Failure to obtain endorsement or obtaining inappropriate endorsements:**
 - Refund cannot be denied for failure in obtaining endorsement or obtaining inappropriate endorsements for the following reasons:
 - Failure to obtain endorsement within the stipulated period of 45 days:
 - › If the goods are supplied without payment of tax, the Tax Authorities can demand tax from the supplier which can be refunded if the Taxpayer obtains such endorsement from the AO.
 - › If the goods are supplied on payment of tax, the same would not prejudice the Government exchequer. Hence, any delay in obtaining endorsement from the AO would not entitle the Tax Authorities to deny a refund to the Taxpayer.
 - SEZ law does not mandate the AO to make endorsements in any particular manner. As a result, taxpayers cannot be penalised for the defaults of the AO.
- **Time limit for filing refund applications:**
 - The time limit for filing refund applications provided under Section 54(1) of the CGST Act is directory in nature and not mandatory. Therefore, even if the application is filed beyond the prescribed period of two years, a legitimate claim of refund cannot be denied.

[Naga Ltd. Vs. Puducherry Authority for Advance Ruling \[TS-609-HC\(MAD\)-2023-GST\]](#) Issue

- Whether the Taxpayer (being a recipient) is entitled to challenge the Advance Ruling obtained by its supplier under the Writ jurisdiction before the Hon'ble High Court?
- Whether the services of loading, unloading, packing, etc. rendered in relation to the imported wheat are available in terms of Sl. no. 54(e) of Notification no: 12/2017-Central Tax dated 28 June 2017 (Exemption Notification)?

Ratio

- **Taxpayer's eligibility to challenge Advance Ruling before the Hon'ble High Court:**
 - Since the Tamil Nadu Authority for Advance Ruling ruled that the supplier would not be entitled to claim exemption, the supplier would be compelled to charge applicable GST which would ultimately be borne by the Taxpayer.
 - The Advance Ruling resulting in taxpayers suffering adverse civil consequences gives them the locus to challenge the aforesaid ruling and hence, the Writ Petition filed before the Hon'ble High Court is maintainable.
- **Eligibility to claim exemption:**
 - The Advance Ruling had denied exemption on the premise that the imported wheat is not meant for the primary market as such but is intended to be converted into maida, atta, sooji, etc.
 - Merely on the aforesaid ground, the exemption in relation to services of loading, unloading, packing, etc. in relation to the imported wheat cannot be denied.
 - However, eligibility to claim exemption would require examination of individual imports by the appropriate authority.

CUSTOMS



LEGISLATIVE UPDATES

NOTIFICATION

12/2023-Customs (ADD) ⁸	Imposition of Anti-Dumping Duty on imports of 'Synthetic Grade Zeolite 4A (Detergent Grade)' falling under specified Tariff headings originating in or exported from the People's Republic of China for a period of five years.
13/2023-Customs (ADD) ⁹	Notification no: 47/2021-Customs (ADD) dated 26 August 2021, inter alia, impose Anti-Dumping Duty on the import of 'Natural Mica based Pearl Industrial Pigments excluding cosmetic grade' originating in or exported from the People's Republic of China. The aforesaid notification has been amended to notify new producers and the amount of ADD per unit.
87 & 88/ 2023-Customs (NT) ¹⁰	Notification no: 18/2023-Customs (NT) dated 30 March 2023 ¹¹ which exempts certain classes of deposits from the applicability of Section 51A of the Customs Act, 1962 (Customs Act) stands extended till 19 January 2024 (earlier 30 November 2023). Similarly, Notification no: 19/2022-Customs (NT) dated 30 March 2023 ¹² exempts certain classes of deposits from the applicability of Section 51A of the Customs Act. The said notification will now come into effect from 20 January 2024 (earlier, the same was to be notified from 1 December 2023).
63/2023-Customs ¹³	A new tariff item '2207 10 12' has the description 'Spirits for industrial Use' imported from the United Arab Emirates to attract Basic Customs Duty @ 95%, subject to specified conditions.

FOREIGN TRADE POLICY



LEGISLATIVE UPDATES

NOTIFICATION

44/2023 ¹⁴	Valid India-UAE Tariff Rate Quota (TRQ) holders notified by the International Financial Services Centres Authority (IFSCA) can import Gold (HSN code 7108 1200) through International Bullion Exchange against the TRQ and can obtain physical delivery of the same through IFSCA registered vaults located in SEZs as per the guidelines prescribed by the IFSCA.
45/2023 ¹⁵	Export Policy for the export of 'Onions' is amended to 'Free' subject to specified conditions inter alia including the Minimum Export Price of USD 800 (F.O.B. per Metric Tonne) till 31 December 2023.
46/2023 ¹⁶	Export quantities for export of wheat grain, wheat flour (atta), Maida/Semolina and Broken rice to Bhutan, Mali, Senegal, Gambia and Indonesia through National Cooperative Exports Limited have been notified.

⁸Dated 21 November 2023

⁹Dated 22 November 2023

¹⁰Dated 29 November 2023

¹¹Our summary of the notification can be accessed [here](#)

¹²Our summary of the notification can be accessed [here](#)

¹³Dated 30 November 2023

¹⁴Dated 20 November 2023

¹⁵Dated 23 November 2023

¹⁶Dated 30 November 2023

TRADE NOTICE

35/2023-24 ¹⁷	The last date for submitting applications for closure of cases for default in Export Obligation under the Amnesty Scheme (for Advance Authorisation and EPCG Schemes) is 31 December 2023 and the same will not be extended. The pendency of any application for relaxation/clarification would not form a ground for relief/extension of the permissible period for filing of applications under the Amnesty Scheme.
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CENTRAL EXCISE / SERVICE TAX / VALUE ADDED TAX



LEGISLATIVE UPDATES

40/2023- Central Excise ¹⁸	Effective 1 December 2023, the rate of Special Additional Excise Duty on Petroleum Crude is reduced from INR 6,300 per tonne to INR 5,000 per tonne.
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INDIRECT TAX NEWS FLASH



The Hindu Businessline (29 November 2023)	<ul style="list-style-type: none"> ▪ Mechanism to file appeals under GST amnesty scheme now available on GST portal
Money Control (29 November 2023)	<ul style="list-style-type: none"> ▪ Government looking at simplified GST processes for e-commerce, travel industries to ease compliance
Financial Express (30 November 2023, 1 & 5 December 2023)	<ul style="list-style-type: none"> ▪ Higher interest rate by NBFCs in co-lending with banks not subject to GST: FIDC urges CBIC for clarification ▪ GST collections up 15% to Rs 1.68 lakh crore in November; economists credit late festive season to growth, says mirrors resilient GDP expansion
The Telegraph Online (5 December 2023)	<ul style="list-style-type: none"> ▪ Insurers battle GST demands over unpaid tax, show cause notices worth Rs 7,000 crore served

¹⁷Dated 5 December 2023
¹⁸Dated 30 November 2023

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