

INDIRECT TAX DIGEST

30 August 2024

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GOODS & SERVICES TAX



LEGISLATIVE UPDATES

ADVISORY

GST Advisory ¹	For the tax periods starting from August 2024 onwards, a taxpayer will not be able to furnish Form GSTR-1/ Invoice Furnishing Facility (IFF), as the case may be, without furnishing the details of a valid Bank Account in their registration details on the GST portal.
GST Advisory ²	For the tax period August 2024 (for monthly return filers) and July to September 2024 (for quarterly return filers), a new statement called the “ <i>RCM Liability / ITC Statement</i> ” has been introduced to assist the taxpayers in correctly reporting the reverse charge mechanism (RCM) transactions. Further, the opening balance of RCM ITC statement disclosing the details of GST paid under RCM in respect of which input tax credit (ITC) has not been claimed by the taxpayer till July 2024 can be declared till 31 October 2024.
GSTN Advisory ³	GSTN has issued an advisory for the implementation of biometric-based Aadhaar authentication and document verification for GST registration applicants of Chandigarh, Dadra, Nagar Haveli, and Daman and Diu from 24 August 2024.

NOTIFICATION

F.12(4)FD/Tax /2018-Pt-I-90 ⁴	The qualification criteria for appointment as a Technical Member (State) in the State Benches of the GST Appellate Tribunal in Rajasthan has been relaxed to ‘15 years of service in Group A, or equivalent’ (earlier 25 years). The relaxation would be valid for a period of 10 years.
3/2024 ⁵ -State Tax (Kerala)	Where the taxpayer has already filed an appeal in Form GST APL-01, the tax authorities are unable to file the appeal online in Form GST APL-03 against the same Form GST DRC-07. In such a scenario, a manual appeal can be filed by the tax authorities.

CIRCULARS

Trade Circular No. 21T of 2024 (Maharashtra) ⁶	The Maharashtra Goods and Services Tax Department has released a Circular stating that until the GST Appellate Tribunal is set up, taxpayers who previously submitted Annexure-I (as per Trade Circular No. 9T of 2020) must now make a pre-deposit under Section 112(8) of the Central Goods and Services Tax Act, 2017 (CGST Act) and a copy of Annexure-II (attached to the Circular) must be filed within 2 months. Once these requirements are complied with, the recovery of the remaining GST amounts will be stayed.
12/2024-Kerala SGST (Kerala) ⁷	The Kerala Goods and Services Tax Department has issued a Circular prescribing the manner of computation of penalty in terms of the fourth proviso to Section 20 of the Integrated Goods and Services Tax Act, 2017 (IGST Act).

¹ Dated 23 August 2024

⁴ Dated 13 August 2024

⁷ Dated 13 August 2024

² Dated 23 August 2024

⁵ Dated 13 August 2024

³ Dated 24 August 2024

⁶ Dated 13 August 2024

INSTRUCTION

03/2024-GST ⁸	<p>Further to Instruction No. 01/2023-GST (Inv.) dated 30 March 2024⁹, it is clarified that the Zonal (Pr.) Chief Commissioner is required to make a self-contained reference to the relevant policy wing of the CBIC i.e., the GST Policy or the TRU under the following circumstances:</p> <ul style="list-style-type: none"> ▪ Wherever the (Pr.) CGST Audit Commissioner comes across a scenario pertaining to non-payment or short payment of GST; and ▪ Where such non-payment / short payment is attributable to the taxpayer(s) following a prevalent trade practice based on a particular interpretation of that issue in the sector/ industry.
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CUSTOMS



LEGISLATIVE UPDATES

NOTIFICATION

55/2024-Customs (NT) ¹⁰	<p>The applicable All Industry Drawback rates (under Section 75 of the Customs Act, 1962) for the following goods have been modified:</p> <ul style="list-style-type: none"> ▪ Articles of jewellery and parts thereof, made of gold (HSN Code 7113 01) ▪ Articles of jewellery and parts thereof, made of silver (HSN Code 7113 02) ▪ Articles of silver (HSN Code 7114 01)
15/2024-Customs-ADD ¹¹	<p>Anti-dumping Duty has been imposed on the import of '<i>Chlorinated Polyvinyl Chloride Resin (CPVC) - whether or not further processed into compound</i>' (under heading 3904), originating in or exported from China PR and Korea RP.</p>

CIRCULAR

10/2024-Customs ¹²	<p>CBIC has released a Customs Ease of Doing Business Compendium 2024 which outlines the recent trade facilitation initiatives of CBIC¹³. In view of the objective of trade facilitation, transparency and efficiency in Customs processes, CBIC has decided to use ICETAB for speedy examination of import consignments. ICETAB is a mobile tablet device for use by Customs Officers to facilitate quick upload of the examination report on the go on a real-time basis and make the examination process transparent and faster.</p>
11/2024-Customs ¹⁴	<p>Effective 1 September 2024, the automation in the Customs (Import of Goods at Concessional Rate of Duty or for Specified End Use) Rules, 2022 (IGCR Rules) will be implemented in respect of Export Oriented Units (EOUs). Accordingly, all EOUs may obtain an IGCR Identification Number at the ICEGATE portal and register their IGCR bond for filing a bill of entry with IGCR benefit.</p>

⁸ Dated 14 August 2024⁹ Our update on the Instruction can be accessed by clicking [here](#).¹⁰ Dated 23 August 2024¹¹ Dated 23 August 2024¹² Dated 20 August 2024¹³ The copy of the compendium can be accessed by clicking [here](#).¹⁴ Dated 25 August 2024

Interest, fine and penalty are not leviable for non-payment / short payment of IGST

Chiripal Poly Films Ltd Vs. Commissioner of Customs, Ahmedabad [TS-310-CESTAT-2024-CUST]

Issue

- Whether the interest, fine and penalty in connection with non-payment of duty under Sections 3(7) or 3(12) of the Customs Tariff Act, 1975 (CT Act) can be imposed on the Taxpayer?
- Whether the extended period of limitation can be invoked for the alleged violation of the “*Pre-import condition*”?

Ratio

- Levy of interest, fine and penalty under Section 3(7) or 3(12) of the CT Act:**
 - Sections 3(7) or 3(12) of the CT Act have not incorporated provisions for recovery of interest, fine and penalty. It is a settled law¹⁵ that interest, fine and penalty are separate/ independent levies and hence, a charging provision must be there in a statute to levy the same.
 - Since the tax authorities have not been able to demonstrate the charging provision for the levy and collection of “*interest, fine and penalty*” for late payment of IGST, the Impugned Order proposing to recover interest, fine and penalty are without the authority of law and hence, unsustainable.
 - In the present case, the Taxpayer has paid interest on the delayed payment of IGST in terms of Para 5.2(c) of Circular No. 16/2023-Cus. Dated 7 June 2023. The said Circular is ex facie contrary to the provision for charging “*interest*” under Section 3(7) of the CT Act. It is well settled that a circular contrary to the statutory provisions has no existence in law.
 - Similarly, there is no substantive provision in the CT Act for the confiscation of goods or for imposing a redemption fine. Further, there is no justification for confiscation of goods or imposing a redemption fine where the goods in question were released on Final Assessment and not available for release. Hence, the orders for confiscation of goods and imposing redemption fines are not sustainable¹⁶.
- Invocation of an extended period of limitation:**
 - In the present case, there is no suppression by the Taxpayer. Further, since the case was made out on the basis of the alleged violation of the “*pre-import condition*” in imports under the Advance Authorisation Scheme, the tax authorities were aware of the said pre-import condition inserted by Notification dated 13 October 2017. Accordingly, the tax authorities could have taken action within the normal period.
 - It is also well settled that the tax authorities cannot invoke a larger period of limitation for duty demands in cases involving interpretation and resolution of issues by higher courts (up to the level of the Supreme Court) and in a revenue-neutral situation. Further, there is no evidence or justification to invoke the extended period under Section 28(4) of the Customs Act, 1962.
 - In view of the above, since the entire demand is beyond the normal period, the Impugned Order confirming duty along with interest, fine and penalty are unsustainable as being time-barred.

FOREIGN TRADE POLICY



LEGISLATIVE UPDATES

NOTIFICATION

23/2024-25 ¹⁷	Export of de-oiled rice bran (HSN Codes 2302 4000, 2306 9019, 2306 9029 and 2306 9090) is prohibited up to 31 January 2025.
24/2024-25 ¹⁸	Export of 2,00,000 MTs of Non-Basmati White Rice, under ITC (HS) code 1006 3090 to Malaysia is permitted through National Cooperative Exports Limited.

¹⁵ Mahindra & Mahindra Ltd. Vs. Union of India [2023 (3) Centax 261 (Bom.)] (SLP filed by the tax authorities was dismissed by the Supreme Court), J. K. Synthetics Ltd. Vs. Commercial Tax Officer [1994 (4) SCC 276], Khemka and Co. (Agencies) Pvt. Ltd. Vs. State of Maharashtra [1975 (2) SCC 22], CCE, Ahmedabad Vs. Orient Fabrics Pvt. Ltd. [2003 (158) ELT 545 (SC)]

¹⁶ Reliance was placed on CESTAT ruling in Shiv Krupa Ispat Pvt. Ltd. [2009 (235) ELT 623]
¹⁷ Dated 16 August 2024

¹⁸ Dated 19 August 2024

TRADE NOTICE/ CIRCULAR/ PUBLIC NOTICE

TN 12/2024-25 ¹⁹	Effective 20 August 2024, the DGFT has introduced two new functionalities viz., bulk upload facility for generating electronic Bank Realisation Certificates (e-BRCs) and Application Programming Interface (API) Integration to facilitate the self-certification process for e-BRCs.
TN 13/ 2024-25 ²⁰	Effective 28 August 2024, exporters may file Non-Preferential Certificates of Origin through the eCoO system that is hosted on https://www.trade.gov.in
TN 14/2024-25 ²¹	The draft modalities for the operation of E-Commerce Export Hubs (ECEH) have been prescribed. The draft modalities prescribe various operational aspects such as the movement of goods from the supplier's premises to ECEH, pre-screening of goods, process flow for customs clearance once a buyer is found, etc. Based on the draft modalities, the Government would initiate the pilot launch of ECEH.
PN 17/2024-25 ²²	Para 10.06 (III) of Handbook of Procedures, 2023 (HBP) is amended to notify the changes in the delegation of powers for approval of authorisations under SCOMET where comments/views/No Objection Certificates (NOCs) are received from all concerned agencies with no divergence in views.
PN 18/2024 ²³	Para 4.49(g)(i) and Para 4.49(g)(ii) of the HBP have been amended to inter alia allow exports under any shipping bills (earlier free Shipping Bills) in lieu of submission of destruction certificate. Further, a simplified provision for the re-export of unutilised drugs has been prescribed by removing the requirement to re-export the goods to the same supplier .

CENTRAL EXCISE/ SERVICE TAX/ VALUE ADDED TAX



JUDICIAL UPDATES

If the law requires the issuance of a show cause notice before imposing a penalty, the penalty is discretionary

The Additional Commissioner of Commercial Taxes (Zone)-II Vs. Toyota Industries Engine India Pvt. Ltd. [TS-307-SC-2024-VAT]

Legislative Provision

- Section 72(2) of the Karnataka Value Added Tax Act, 2003 (KVAT Act) inter alia for the circumstances in which a penalty equal to 10% of the amount of tax that is under or over-stated can be imposed by the tax authorities. However, the aforesaid penalty would be imposed only after providing an opportunity of being heard to the Taxpayer.

Issue

- Whether the power to impose a penalty under Section 72(2) of the KVAT Act is 'mandatory' or 'discretionary' in nature?

Ratio

- Section 72(2) of the KVAT Act indicates that before a decision is taken for imposition of any penalty, show cause notice must be issued to the assessee and after being given a personal hearing opportunity, the decision to impose or not to impose penalty must be taken.
- Although the quantum of penalty is prescribed under Section 72(2) of the KVAT Act since the opportunity to show cause has been prescribed it indicates that the imposition of penalty is not automatic. Accordingly, the imposition of penalty is by way of exercise of discretion given the facts and circumstances of the case.
- The ratio laid down by the Supreme Court in *the State of Gujarat and Anr. Vs. M/s. Saw Pipes Ltd.* [C.A. 3481/2022] was distinguished on the ground that Section 45(5) and 45(6) of the Gujarat Sales Tax Act, 1969 does not contain any provision for providing an opportunity to the assessee to show cause against the imposition of penalty.
- In view of the above, the SLP filed by the tax authorities was dismissed.

¹⁹ Dated 14 August 2024 ²² Dated 14 August 2024
²⁰ Dated 16 August 2024 ²³ Dated 22 August 2024
²¹ Dated 22 August 2024

Search Engine Optimisation and Google Ads / pay-per-click service cannot be classified as OIDAR service

M/s Wildnet Technologies Pvt. Ltd. Vs. Principal Commissioner of CGST, Noida [TS-321-CESTAT-2024-ST]

Issue

- Whether the following services would be classified as ‘online information and database access or retrieval services (OIDAR services) under Rule 2(l) of the Place of Provision of Service Rules, 2012:
 - Search Engine Optimisation (SEO);
 - Google ads service/ Pay-per-click service; and
 - Development of mobile apps and web design and development activities.

Ratio

- **SEO:**
 - SEO is a process whereby the Taxpayer’s client’s website visibility in search engines like Google, Microsoft Bing, etc. is increased. This process is not in relation to providing any information or database for retrieval, but it is a technological change on the client’s website to rank it higher for its prospective customers.
 - The Taxpayer is basically providing a support service to its clients. Relying on settled judicial precedents²⁴, it can be concluded that SEO service would not be classified as OIDAR service.
- **Google ads service / Pay-per-click service:**
 - The Taxpayer’s client purchases space from Google and provides advertisement content to the Taxpayer who in turn sets up the campaign of the client on such space and charges from its client based on the clicks made by the end customers. The Taxpayer only provides digital content on the site of Google which makes a database, and the viewers get access or retrieval only from the database of Google. Further, the Taxpayer does not have any relationship with any viewer i.e., the person who retrieves or accesses data and is simply engaged in setting up the campaign on the Google site hired by its client who uses them for further purposes.
 - OIDAR services are those services which can be accessed by anyone all over the globe. In the present case, the Taxpayer provides service only to a specific person who in turn uses them for viewers of the world. The nature of the services is more akin to Business Support Services and not OIDAR services.
- **Development of mobile apps and web design and development activities:**
 - The mobile application development services are not information and database for retrieval, but it is a software development activity for further operation. Hence, the same cannot be classified as an OIDAR service.
 - Similarly, web development services encompass creating, building and maintaining websites or web applications. The said service is limited only to those clients who order to develop their software/website and hence, the same cannot be classified as OIDAR services.

INDIRECT TAX NEWS FLASH



The Hindu-BusinessLine (20 and 22 August)	<ul style="list-style-type: none"> ▪ GoM to review GST on JDA in real estate sector, Council to meet on September 9 ▪ GST authorities to examine ITC availed before deciding on Infy notices
Times of India (28 August)	<ul style="list-style-type: none"> ▪ States are also cautious on GST rate cuts: Sitharaman
Economic Times (26 and 27 August)	<ul style="list-style-type: none"> ▪ Maruti Suzuki gets INR 3.25 crore show cause notice from customs office ▪ LTIMindtree gets relief on Rs 378 crore GST notice from Karnataka HC
Financial Express (28 August)	<ul style="list-style-type: none"> ▪ What can we expect from the 54th GST meeting on September 9? Insurance premiums, online gaming likely to get attention
Business Standard (24 August)	<ul style="list-style-type: none"> ▪ Foreign shipping companies granted Rs 3,000 crore GST exemption for FY18

²⁴Dewsoft Overseas Pvt. Ltd. Vs. Commissioner of Service Tax, New Delhi [2008 (12) STR 730 (Tri.)] and Philips Electronics India Ltd. Vs. Commissioner of Service Tax, New Delhi [2019 (21) GSTL 450 (Tri.-Chennai)]

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