



THE TAX POST

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world of Indirect Taxes

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PREFACE

“Human felicity is produced not so much by great pieces of good fortune that seldom happen, as by little advantages that occur every day.”

-Benjamin Franklin

The principles of natural justice are not defined in any statute; yet, they find roots in the Constitution of India. Additionally, the provisions of the GST law also incorporate the principles of natural justice. However, it has been observed that the tax authorities pass orders in violation of these principles. The ‘Cover Story’ of this Tax Post examines the various principles of natural justice and its applicability in respect of the proceedings under the indirect tax laws (including the GST law) while also observing the consequent impact on the proceedings initiated /concluded in contravention to these principles.

The ‘Expert Speak’ segment explores the GST investigation process and the triggering events culminating in the initiation of such investigations. It also highlights the corresponding impact of such investigation on the Taxpayers while also outlining the steps that can be taken by the Taxpayers to mitigate risks arising out of such investigations.

The ‘In Tales’ section of this edition of ‘The Tax Post’ dissects the real estate sector, highlighting the global outlook and India’s position in the sector. The section also highlights the various challenges and issues faced by the industry at large, including those from the indirect tax perspective.

The ‘Decoded’ segment dissects a vital judgement of the Customs, Excise and Service Tax Tribunal, Kolkata, distinguishing the Bombay High Court ruling in **Mahindra & Mahindra Ltd.**¹. The Tribunal has held that interest is leviable on the delayed payment of additional duties of customs (which are levied under Section 3 of the Customs Tariff Act, 1975).

We continue to bring the latest news on indirect taxes from across the globe in our feature ‘Global Trends’.

We wish our readers a happy reading!



GUNJAN PRABHAKARAN

Partner & Leader
Indirect Tax

¹ Mahindra and Mahindra Ltd. Vs. Union of India and Ors. [2022-TIOL-1319-HC-MUM-CUS]. Our alert on this ruling can be accessed by clicking [here](#).

COVER STORY

PRINCIPLES OF NATURAL JUSTICE

INTRODUCTION

The principles of natural justice are not defined in any statute, but they find roots in various Articles of the Constitution of India (Constitution). The Supreme Court, in *Maneka Gandhi*², laid emphasis on the principles of natural justice to *inter alia* hold that the life and liberty of a person cannot be restricted by 'any procedure that is established by law' but only by a procedure that is **just, fair, and reasonable**.

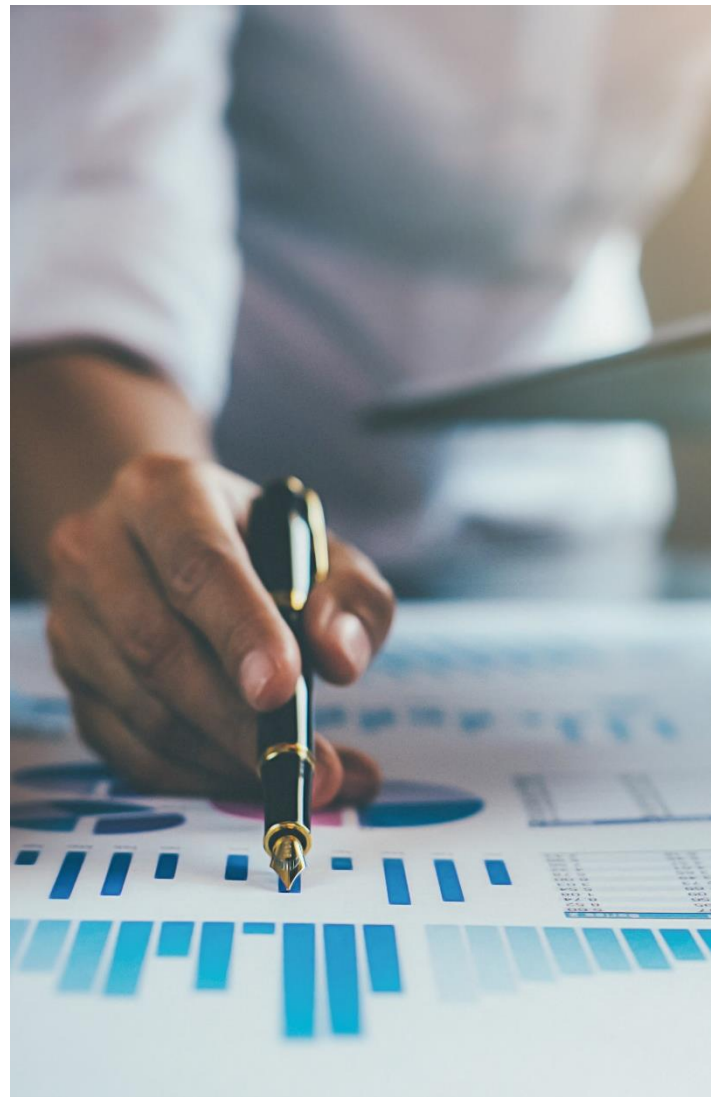
Over the years, by a process of judicial interpretation, various rules have evolved representing the principles of natural justice in the judicial process (including the quasi-judicial and administrative process). These rules constitute the basic elements of a fair hearing, having roots in the innate sense of man for fair play and justice which is not the preserve of any particular race or country but is shared in common by all men. One such rule is the principle of '*audi alteram partem*' or '*audietur at altera pars*', which means 'let the other party be heard'.

In *Uma Nath Pandey*³, the Supreme Court while emphasising the principles of natural justice applied the Latin maxim '*qui aliquid statuerit parte inaudita alteram actquam licet dixerit, haud acquum facerit*' which means that 'he, who shall decide anything without the other side having been heard, although he may have said what is right, will not have been what is right'. Thus, it led to the principle that 'justice should not only be done but should manifestly be seen to be done'.

PRINCIPLES OF NATURAL JUSTICE: PURPOSE AND CONTENT⁴

As per the law laid down by the Supreme Court, the principles of natural justice were read into the law and the conduct of the judicial and administrative proceedings with a view to secure fairness by intending to realise the following purposes:

- **Fair outcome:** Procedural rules are established to prevent bias and unfairness in the decision-making process. A decision that is reached after following the procedural rules is expected to be fair. An outcome that is reached through a fair process is reliable and accurate.
- **Inherent value in fair procedure:** Fair procedure is not only a means to the end of achieving a fair outcome but is an end in itself. Fair procedure induces equality in the proceedings. The proceedings 'seem' to be and are seen to be fair.



Legitimacy of the decision and the decision-making authority: When a decision is formed following the principles of natural justice, there is a perception that the decision is accurate and just. It preserves the integrity of the system as the decisions, in addition to being fair, also 'appear' to be fair. This perception is important in building public confidence in institutions, which aid in securing the legitimacy of the courts and other decision-making bodies.

APPLICATION OF THE PRINCIPLES OF NATURAL JUSTICE UNDER THE INDIRECT TAX LAWS (INCLUDING THE GST LAW)

The principles of natural justice are also applicable to the

²Maneka Gandhi Vs. Union of India [1978 (1) SCC 248]

³Uma Nath Pandey Vs. State of UP [2009 (237) ELT 241 (SC)]

⁴Madhyam Broadcasting Ltd. Vs. Union of India and Ors. [Civil Appeal No. 8129 of 2022], dated 5 April 2023

adjudicating/ appellate proceedings under the GST law. In various cases, the courts have applied the principles of natural justice in the adjudication/ appellate proceedings and concluded that any order in contravention of the said principles is unsustainable in law. Some of these instances are summarised hereunder:

▪ **Non-mention of the grounds for issuance of the Show Cause Notice (SCN)/ non-issuance of the detailed SCN:**

- It is well settled⁵ that the purpose of the SCN proceeding is to provide the person proceeded against, an opportunity to make their objection against the alleged/ proposed charges and that the principles of natural justice can only be met if:
 - SCN contains the material/ ground which, according to the tax authorities, necessitates an action; and
 - The particular penalty/ action which is proposed to be taken is communicated to the Taxpayer. Even if it is not specifically mentioned in the SCN, it can be clearly and safely discerned from the reading of the SCN thereof that would be sufficient to meet this requirement
- The aforesaid principles have also been applied by various courts under the GST law to *inter alia* stipulate that:
 - A summary SCN (in Form DRC-01) cannot substitute a proper SCN and such substitution would entail a violation of the principles of natural justice⁶.
 - If the foundation of the proceeding suffers from material irregularity, it does not fulfil the ingredients of a proper SCN, and hence, the same is unsustainable being violative of the principles of natural justice. Moreover, even the subsequent proceedings/ reasoned orders cannot sanctify the irregular SCN⁷.

- If the contents of an SCN are lacking in material particulars or are vague in regard to any of the entries contained therein then such SCN becomes vulnerable to judicial review⁸.

▪ **Inadequate time provided for responding to the SCN:**

- It is also well-settled that the tax authorities, after issuing the SCN, must allow a reasonable period for the assessee to respond to or refute the allegation levelled against them in the SCN, failing which, the principles of natural justice can be considered as being vitiated, resulting in the SCN being unsustainable in law.
- In a case, where the Order-in-Original (OIO) issued within nine days from the date of issuance of SCN falls short of the minimum period of 30 days to afford a reasonable opportunity to Noticee to respond was set aside being contrary to Section 73(8) of the CGST Act⁹.

▪ **Requirement as regards obtaining copies of 'Relied-upon Documents' (RUDs) / cross-examination of witness:**

- Reliance placed by the tax authorities on RUDs which were not furnished to the assessee is a gross violation of the principles of natural justice. Accordingly, an order, issued on the basis of such RUDs which were not supplied, was set aside¹⁰.
- Additionally, the Calcutta High Court¹¹ had held that the Taxpayer not having been allowed to cross-examine the witness of the prosecution in the adjudication proceedings vitiates the entire proceedings and hence, the impugned order deserves to be set aside.

▪ **Three hearings scheduled in a single notice:**

- Section 75(5) of the CGST Act provides that the tax authorities shall, if sufficient cause is shown by the assessee chargeable with tax, grant time to the said person and adjourn the hearing after recording



⁵Abhay Traders Vs. Commissioner of Commercial Tax [2023 (9) Centax 416 (All.)], CCE Vs. Brindavan Beverages (P) Ltd. [2007 (5) SCC 388], Khem Chand Vs. Union of India [AIR 1958 SC 300] and Oryx Fisheries (P) Ltd. Vs. Union of India [2010 (13) SCC 427]

⁶Vishkarma Industries Vs. State of Jharkhand [2023 (73) GSTL 468 (Jhar.)]

⁷Siddhi Vinayak Enterprises Vs. State of Jharkhand [2023 (4) Centax 398 (Jhar.)]

⁸Raymond Ltd. Vs. Union of India [2023 (13) Centax 317 (M.P.)]

⁹Raymond Ltd. Vs. Union of India [2023 (13) Centax 317 (M.P.)]

¹⁰Maruthi Detective & Security Agency Vs. Commissioner of C. Ex., Belgaum [2006 (3) STR 521 (Tri.-Bang.)]

¹¹Ajay Saraogi Vs. Union of India [2023 (386) ELT 333 (Cal.)]

reasons in writing. However, no such adjournment shall be granted more than three times to a person during the proceedings¹². This embargo is provided to reduce the number of adjournments and thereby, prevent delays in adjudication proceedings.

- It has been observed that often the tax authorities provide three different dates in a single hearing notice. The issue which arises for consideration is whether the adjournment in respect of such a hearing notice could be construed as taking three adjournments.
 - In *IPC Packaging Company Pvt. Ltd.*¹³, the Karnataka High Court had observed that the tax authorities were not justified in fixing three consecutive dates for personal hearing and then closing the opportunity for the assessee to defend its case by passing an *ex-parte* order. It was also held that the ends of justice cannot be met merely because an order raising a demand of tax/ duty is passed but such orders have to not only show that adequate opportunity was given to the assessee but also the existence of due and reasonable application of mind on the part of the tax authorities.
 - Similarly, it was also held that if a choice of three dates for a personal hearing is provided in one letter and the assessee seeks adjournment by one month, the same would not amount to granting of adjournments three times¹⁴.
- **Issuance of the Order-in-Original (OIO) based on grounds which are beyond the scope of the SCN:**
 - In terms of the settled principles, it is incumbent upon the tax authorities to clearly outline the specific allegations or concerns against the assessee. The tax authorities cannot be allowed to traverse beyond the confines of the SCN, since the same will trample upon the assessee's right to defend itself. Any attempt to expand the scope of inquiry or introduce new allegations beyond those articulated in the SCN would constitute a violation of the principles of natural justice. Such actions would not only undermine the assessee's right to a fair hearing but also erode trust in the integrity and impartiality of the adjudicatory process. Any action taken beyond the confines of the SCN is *void ab initio* and cannot be sustained¹⁵.
 - Thus, an assessee must be accorded a fair chance to put up their case before the tax authorities, and hence, while adjudicating the SCN, the Tax Authorities cannot go beyond the scope of the SCN.
 - In addition to the above, it is also well-settled that an order relying on evidence which was collected after the completion of a personal hearing is in violation of principles of natural justice and such an order cannot be sustained. Similarly, it is also well-settled that no evidence could be collected after the personal hearing is completed¹⁶.

CONCLUSION

Upholding the principles of natural justice is fundamental to ensuring fair and equitable treatment within the framework of the GST law. By adhering to these principles, the assesseees are safeguarded from the arbitrary decisions of the tax authorities, which fosters transparency and protects assesseees from undue financial hardships. Crucially, provisions within the GST Act mandate these principles, and any failure to comply can lead to decisions being challenged and potentially overturned in courts. Therefore, it is imperative for the tax authorities to adhere to the principles of natural justice within the GST law and thereby ensuring a just and accountable tax administration system.



¹²Similar provisions have also been provided under Section 107 and 113 of the CGST Act.

¹³*IPC Packaging Company Pvt. Vs. Addl. CC, ICD, Bangalore* [2017 (6) GSTL 256 (Kar.)]

¹⁴*Afloat Textiles Pvt. Ltd. v. Commissioner* [2007 (215) ELT 198 (Tribunal)]

¹⁵*Samsung India Electronics India Pvt. Ltd. Vs. State of UP and Ors.* [Writ Tax No. 777 of 2022], dated 12 March 2024

¹⁶*Nu-Trend Business Machines (P) Ltd. Vs. CCE, Chennai* [2002 (141) ELT 119 (Tri.-Chennai)] and *Girnar Spinning Ltd. Vs. CCE, Chandigarh* [1998 (104) ELT 720 (Tribunal)]

THE EXPERT SPEAK

FROM SUSPICIONS TO SOLUTIONS: NAVIGATING THROUGH THE GST INVESTIGATION PROCESS



VIKRAM KULKARNI
Partner
Indirect Tax

OVERVIEW

There has been a significant surge in the investigations/ enquiries by tax authorities in recent times. Businesses are being subjected to frequent visits and summons from the Directorate General of GST Intelligence (DGGI), which is an apex intelligence organisation that undertakes investigations under the GST law.

Other agencies, including the Anti-evasion wing of Local CGST/SGST Commissionerates, are also conducting investigations within their jurisdiction. Such investigations focus on identifying certain unusual/ typical issues on which GST is short-paid/ not paid, or an incorrect/ excess claim of ITC/ refunds (as the case may be) is made.

During the course of the investigations, DGGI and other field formations of the Central Board of Indirect Taxes and Customs (CBIC) have unearthed numerous instances and various *modus operandi* in tax evasion.

The following data is an indicator of the quantum of evasion detected by DGGI since the introduction of GST.

(INR in bn)

Year	Detection	Total GST collection	Percentage of GST evasion detected Vs. collection
2017-18	78.79	5,402.37	1.46
2018-19	193.19	8,767.47	2.20
2019-20	217.39	9,444.07	2.30
2020-21	319.08	8,650.60	3.69
2021-22	503.25	10,975.45	4.59
2022-23	1,013.54	13,249.85	7.65
2023-24 (up to Sept. 23)	1,360.00	7,450.71	18.25

Source- DGGI Annual Report 2022-23, www.gst.gov.in, PIB

The data clearly demonstrates a marked jump in the detection of tax evasion by DGGI over the years. While most Taxpayers seek to duly comply with the tax regulations, instances of tax evasion have always been prevalent. With the use of various technological tools and software, the ability of the tax authorities to detect such evasion has radically improved over the years and is likely to enhance further going forward.

Thus, the tax authorities have leveraged technology by using Artificial Intelligence (AI) tools and data mining techniques to identify gaps in the details disclosed by taxpayers under the statutory filings. The Directorate General of Analytics and Risk Management (DGARM) has been set up under CBIC to utilise internal and external data sources for detailed data mining and analysis to generate output for focused and targeted action by field formations and investigation wings of CBIC. CBIC has also introduced an advanced analytics tool, ADVAIT (Advance Analytics in Indirect Taxes). It uses AI and big data analytics to detect outliers and anomalies. It mines the data obtained from various sources and triggers red flags. These are then shared with the field formations who initiate investigations against the concerned taxpayers.

Some of the common triggers for initiation of GST investigation are as follows:

- Discrepancies/ mismatch in GST filings
- Mismatch in information furnished with other government/ regulatory bodies
- Industry-specific issues identified by the tax authorities at various levels
- Information shared between various agencies of the government
- Specific intelligence/ information
- Non-compliance with statutory filing requirements
- Large/ frequent refund claims
- Unusual business activities leading to the possibility of tax evasion
- Cross-verification originating out of some other investigations.

WHAT TO EXPECT DURING AN INVESTIGATION

Initiation of investigations usually comes as a surprise. Most of the time, it starts in the form of a search of the office premises by the tax officials. It is important to understand that a detailed analysis and research is carried out before the issuance of a search authorisation. The tax authorities armed with specific inputs seek to verify and corroborate the same from the records available at the premises. At times, this causes some inconvenience to the businesses as during the initial phase of the search, there are restrictions in movements, communication and other activities. The search culminates after drawing a 'Panchnama' (i.e., a record of search proceedings) wherein the officers document the search proceedings and also about the seizure of the records/ goods which appear to be relevant for further investigations.

However, the investigation does not end here. An in-depth scrutiny of the seized records is carried out by the investigating officers. They typically record statements of concerned officials of the company during the search and after the search, based on the data analysis made by them. Finally, in respect of the unpaid/ short-paid GST liability as identified during the course of the investigation, the tax authorities may issue a Show Cause Notice. In many cases, the investigations do not necessitate carrying out a search and the authorities can also collect the requisite information and data by issuing the summons and recording the statements of the company.

CONSEQUENCES OF THE INVESTIGATION

GST investigations could lead to significant and wide-ranging consequences impacting business operations and stakeholders, such as:

- Demand of additional taxes with applicable interest and penalties
- Fines on individuals
- Suspension or cancellation of GST registration
- Seizure of assets, including bank accounts, properties and other assets

- Commencement of investigations by other agencies.

HOW TO TACKLE AN ONGOING INVESTIGATION

It has been observed that the tax authorities usually go after the tax evaders. However, it is also a fact that as the GST legislation is only in its seventh year, there are many issues still open to interpretation. While some of them have been clarified by the CBIC over time, there are many still open or being litigated at judicial forums. Thus, at times, such interpretational issues may trigger a red flag which may result in a full-fledged investigation. Therefore, it is important for the Taxpayer to focus on the early conclusion of the investigation to minimise the disruption to business and stakeholders. Some of the practical ways to effectively navigate through investigations are discussed hereunder:

- Complete clarity about the issue
- Instituting a plan of action
- Complete cooperation with investigating authorities
- Expeditious collation of information and submission thereof
- Validation of facts and figures before submission to the investigating agency to avoid errors
- Timely response to summons
- Skilling of team members tasked with the responsibility of handling investigations
- Periodic training of tax teams to handle such situations
- Involvement of tax advisors to evaluate the stand taken by the company, where required, and also for assistance in coordination with the tax authorities/ drafting replies and submissions where required
- Focus on early completion of the investigation
- Proactive collation of data used for tax compliance and proper reconciliation between various data points.



A STITCH IN TIME SAVES NINE!

Considering that there have been a number of clarifications, amendments and changes under GST since its inception, it is very likely that some of the statutory provisions applicable to the company may have changed. Some of these changes may have been missed or misinterpreted. It would therefore be prudent to take a step back and revisit the records and historical GST positions from a fresh perspective. As the GST Law in India is still evolving, it becomes necessary to have a re-look at the tax positions adopted from time to time to avoid any unwelcome surprises during audits and investigations, which may translate into huge cash outgo in the form of taxes, interests and penalties. It is thus imperative for companies to identify the areas requiring corrective action to eliminate tax risks by getting a GST health check done.

GST health check is an in-depth review of the business operations to optimise tax efficiency, reduce potential exposure and improve tax compliance. The perspective gained from the GST health check can further lead to establishing a well-defined procedure to handle such investigations.

CONCLUSION

To sum up, with the enhancement in the technology and development of tools used for detecting tax evasion, an uptick in GST investigations is inevitable and may become a new normal for companies. It has now become necessary for the companies to stay vigilant and prepared to handle investigations by GST authorities and also address other queries from their end. A more proactive approach, by investing in the extensive review of processes and positions adopted, along with timely training of the tax teams, would go a long way to avoid any potential surprises that may spring up in future.



IN-TALES

BUILDING BLOCKS: UNDERSTANDING THE IMPACT OF GST ON THE REAL ESTATE SECTOR

INTRODUCTION

Real estate is one of the most globally recognised sectors. The growth of this sector is well complemented by the growth in the corporate environment and the demand for office space as well as urban and semi-urban accommodation. The construction industry ranks third among the fourteen major sectors in terms of direct, indirect and induced effects in all sectors of the economy¹⁷.

GLOBAL OUTLOOK

The Global Real Estate market is expected to reach a staggering value of USD 637.80tn by 2024. Among the various segments, Residential Real Estate dominates the market with a projected market volume of USD 518.90tn in 2024. Between 2024 and 2028, the real estate sector is anticipated to grow at a CAGR of 3.41%, resulting in a projected market volume of USD 729.40tn by 2028¹⁸.

INDIAN OUTLOOK¹⁹

As per a report issued by the India Brand Equity Foundation (IBEF) in December 2023, the market size of the real estate sector in India in 2022 was USD 477bn and the same is forecasted to grow to USD 650bn in 2025 (representing 13% of India's GDP) and USD 1tn in 2030. After agriculture, the real estate sector is the second largest employment-generating sector. In terms of FDI inflow, construction is the third-largest sector. India's Global Real Estate Transparency Index improved to 36th rank in 2022 (against 39th rank in 2014).

This growth is driven by a surge in Private Equity Investments of USD 4.2bn in 2023 as well as an increase in the sale of luxury homes in India, which grew by 130% in the first half of 2023 on a year-on-year basis.

KEY SEGMENTS OF THE REAL ESTATE SECTOR²⁰

- **Residential space:** In FY23, India's residential property market witnessed an all-time high volume with the sales value reaching ~USD 42bn, marking a 48% year-on-year increase. The volume of units sold also exhibited a strong growth trajectory with a 36% rise, to 379,095 units.
- **Commercial space:** Foreign investments in the commercial real estate sector were at USD 10.3bn between 2017 and 2021. The transactions of commercial real estate doubled and reached 1.5 million sq. ft. during the period of January to March 2023 on a year-on-year basis.
- **Retail space:** FDI in multi-brand retail has led to growth in the retail sector leasing. The retail real estate segment attracted institutional investments of USD 492mn in 2022.
- **Hospitality space:** India's hotel occupancies are likely



to see a spurt and the number of hotel rooms is expected to grow at a CAGR of 3.3% by 2025.

- **SEZs:** Presently, 100% FDI is permitted for developing townships within SEZs with residential areas, markets, playgrounds, clubs, recreation centres, etc. Industry players, including realtors and property analysts, are rooting for the creation of 'Special Residential Zones' (SRZs) like the SEZs.

CHALLENGES FACED BY THE INDIAN REAL ESTATE SECTOR

The real estate sector has been a major contributor to India's economic growth, providing employment opportunities and attracting investments. Despite the same, the real estate sector suffers from the following key challenges²¹:

- **Increased cost of construction:** For a real estate developer, construction materials make up a significant portion of the overall cost. The costs of these materials have remained volatile. Further, the rising fuel costs have surged the logistical costs, pushing up the overall cost of raw materials, and consequently, the cost of construction.
- **Higher dependency on physical workforce:** Another

¹⁷<https://www.ibef.org/industry/real-estate-india>

¹⁸<https://www.statista.com/outlook/fmo/real-estate/worldwide#value>

¹⁹https://www.ibef.org/download/1707291163_Real-Estate-December-2023.pdf

²⁰https://www.ibef.org/download/1707291163_Real-Estate-December-2023.pdf

²¹<https://www.clicbrics.com/blog/challenges-in-real-estate-industry>

challenge which is faced by the real estate sector is heavy dependence on the physical workforce. The COVID-19 pandemic led to a halt in the construction of several ongoing projects due to labourers returning to their hometowns in many instances. These projects being labour-intensive, a sudden shortage in manpower supply led to delays in numerous projects.

- **Non-availability of land:** One of the major concerns of the real estate sector (especially in urban areas) is the acute shortage of land availability on account of various reasons such as the difficult process of acquiring land, high land prices and increase in population.
- **Difficulty in obtaining credit:** Even though real estate is the second biggest employment generator in India, contributing ~7% to the GDP, it still does not have an industry status. Due to this, it is difficult for developers to get credit and the institutional funding cost makes a lot of projects in-viable. Top banks and financial institutions have reduced their exposure to the real estate sector, making it difficult for medium-scale developers to raise funds for their projects²².

Additionally, while the post-COVID- property demand has resulted in the reduction in unsold inventory with various developers, various other factors/ challenges faced by the real estate sector such as regulatory hurdles, legal complexities (concerning property rights, environmental regulations, etc.), changing consumer preferences etc. remain for the sector to deal with.



IMPACT OF GST ON THE REAL ESTATE SECTOR

Replacing India's complex web of indirect taxes levied by the Central and the State Governments, GST stands as the nation's biggest tax reform since independence. This new system simplifies tax administration by bringing all indirect taxes under a single, nationwide structure, eliminating the cascading effect of taxes. Before the GST regime, the real estate sector was subjected to the levy of VAT and Service tax on the sale of under-construction flats/ units. Even after the introduction of the GST law, effective 1 April 2019, the real estate sector witnessed a drastic change in the applicable GST rate on the sale of under-construction flats/ units. The gist of the applicable GST rates (along with the ITC eligibility) as applicable to the real estate sector which prevailing before and with effect from 1 April 2019 are tabulated hereunder:

Project Type	Till 31 March 2019		Effective 1 April 2019	
	GST rate*	ITC eligibility	GST rate*	ITC eligibility
Residential Apartments				
▪ Affordable	8%	Available	1%	Not Available
▪ Other than affordable	12%	Available	5%	Not Available
Commercial Properties				
▪ In Residential Real Estate Projects (RREP)	12%	Available	12%	Available
▪ Other than in RREP			5%	Not available
Sale of constructed units where consideration is fully received after obtaining completion certificate/ first occupancy	Nil	Not available	Nil	Not available
Development of plots	18%	Available	18%	Available

* Effective rate after reducing one-third for the value of land

²²<https://www.thehindu.com/real-estate/property-builders-house-construction-real-estate/article67255709.ece>

The aforementioned change in GST rates has resulted in a scenario where a developer is required to maintain separate records for each project and claim input tax credit (ITC) based on its ITC eligibility as highlighted above. In addition to the above, at the time of obtaining the completion certificate/ first occupancy, a developer is also required to reverse proportionate ITC under Rule 42/43 of the CGST Rules for each project in proportion to unsold inventory, and other parameters.

The aforesaid rate structure demonstrates the complexity involved in discharging GST liabilities by the real estate sector. Besides the above, various other indirect tax issues are also being faced by the real estate sector, some of which are outlined hereunder

▪ **Supply of services by the parent company to the Special Purpose Vehicles (SPVs):**

- **Use of brand name, trademark, logo, etc.:**
 - Generally, the real estate sector sets up a separate legal entity (SPV) for each of the projects intended to be executed by the developers. However, these SPVs use the Intellectual Property (such as brand name, trademark, logo, etc.) owned by the parent company.
 - However, in the majority of instances, no consideration is charged by such parent company from the SPVs.
- **Corporate Guarantees by parent company:**
 - The parent company may also provide corporate guarantees to various banks and financial institutions for loans/ borrowings by the SPV, for which, no consideration is usually charged from the SPVs.
 - While the issue concerning the valuation of corporate guarantees has attained finality with the introduction of Rule 28(2) of the CGST Rules (with effect from 26 October 2023), the position prevailing till 25 October 2023 is the subject matter of dispute with the GST authorities.
- Given that the SPVs are usually not eligible for full ITC of GST paid on procurements (owing to the sale of units after receiving the completion certificate/ occupancy certificate or due to specific restrictions to claim ITC as per the GST rate notification²³), the 'Nil' value cannot be considered as the Open Market Value (OMV) of the supplies made by the parent companies. Accordingly, the parent companies must determine the OMV of the supplies made to SPV and discharge the applicable GST thereof.
- It may be noted that the Directorate General of GST Intelligence has issued notices to various real estate companies alleging non-payment of GST on the aforesaid supplies made to the SPVs²⁴. In this regard, the real estate sector has filed a representation with the GST Council seeking clarifications on various issues, the same is likely to be deliberated upon in the future GST Council meeting²⁵.

▪ **Validity of 'abatement' towards the value of land:**

- The GST rate notification *inter alia* provides that

in case of supply of construction services involving transfer of property in land or undivided share of land, the value of supply shall be equivalent to the total amount charged for such supply as reduced by the value of land or undivided share of land. Further, the value of such land/ undivided share of land shall be deemed to be one-third of the total amount charged for such supply.

- Thus, irrespective of the actual value of land involved in the supply, the GST rate notification provides a deeming fiction to stipulate that the value of land/ undivided share of land shall be one-third of the total value of supply. This was challenged by various Taxpayers before the Gujarat and Madras High Court wherein it was held as under:
 - In *Munjaal Manishbhai Bhatt*²⁶, it was held that the deemed value of land provided under the GST rate notification is not sustainable where the value of land is clearly ascertainable or where the value of construction service can be derived with the aid of the Central Goods and Services Tax Rules, 2017 (CGST Rules). However, it was held that the deduction for the deemed value of land can be permitted at the option of the taxable person, particularly where the value of land or undivided share of land is not unascertainable²⁷.
 - In *Avigna Properties Pvt. Ltd.*²⁸, the Madras High Court held that the deemed value of land would not apply in cases where the assessee is in a position to supply the actual amount of the consideration received towards construction services and the land cost. However, where the tax authorities are of the view that the attribution adopted by the assessee is unsupported by documentary evidence, they are always at liberty to seek more particulars to apply the deeming fiction as per the GST rate notification. However, the tax authorities cannot proceed on the basis that the deeming fiction is the only method of assessment in such cases.
 - The matter is currently pending before the Supreme Court and remains an open issue for the real estate sector.
- **GST rate on ancillary charges such as Preferential Location Charges (PLC), Car Parking charges, etc:**
- Along with the consideration for the sale of real estate property, the developer also recovers other charges *inter alia* including charges towards PLC (including Floor Rise), car parking, water connection, electricity meter installation, development charges, legal fees, etc. The issue which has arisen is:
 - Whether such charges can be construed as being naturally bundled and supplied in conjunction with the principal supply, i.e., supply of under-construction flats or would be treated as a standalone supply.
 - If they are to be treated as bundled supply, whether these charges would be entitled for abatement basis the deemed value of land (i.e., one-third of the total consideration charged to the buyers).

²³ <https://economictimes.indiatimes.com/industry/services/property/-/construction/real-estate-cos-approach-finmin-over-gst-notices/articleshow/108246090.cms?from=mdr>

²⁴ Notification no.: 11/2017-Central Tax (Rate) dated 28 June 2017

²⁵ <https://economictimes.indiatimes.com/industry/services/property/-/construction/real-estate-cos-approach-finmin-over-gst-notices/articleshow/108246090.cms?from=mdr>

²⁶ *Munjaal Manishbhai Bhatt Vs. Union of India* [2022 (62) GSTL 262 (Guj.)]

²⁷ The Tax Authorities have challenged the Gujarat High Court ruling before the Supreme Court (SLP(C) 21703 of 2022). The matter is currently Pending (for Admission) is likely to be listed 22 March 2024.

²⁸ *Avigna Properties Pvt. Ltd. Vs. Union of India* [2023 (7) Centax 203 (Mad.)]

- The key rulings issued by the Authority for Advance Rulings (AAR) and/ or Appellate Authority for Advance Rulings (AAAR) in the context of the applicable GST rate on the aforesaid ancillary charges are set out hereunder:

Nature of charges	Case law	Ratio
Advance maintenance charges	Joyville Shapoorji Housing Pvt. Ltd. ²⁹	Not treated as a composite supply of services. To be treated as an independent supply attracting GST @ 18%.
	Puranik Builders ³⁰	
Club house development charges	Joyville Shapoorji Housing Pvt. Ltd. (supra)	To be treated as a part of the composite supply of services of sale of under-construction property. Further, the developer is eligible to claim deduction of the deemed value of land as per the GST rate notification.
Connection charges, electric meter installation charges and deposit for meter, development charges and legal fees	Joyville Shapoorji Housing Pvt. Ltd. (supra)	To be treated as a composite supply of services. Leviable to GST @ 12% and also eligible to claim deduction of the deemed value of land as per the GST rate notification.
	Puranik Builders (supra)	
Car Parking	Eden Real Estates Pvt. Ltd. ³¹	Not treated as a composite supply of services. To be treated as an independent supply attracting GST at the applicable rate.
PLC and Floor rise	Bengal Peerless Housing Development Company Ltd. ³²	Not treated as a composite supply of services. To be treated as an independent supply attracting GST at the applicable rate.

- From the aforesaid table, it is evident that the AAR/ AAARs have provided contrary advance rulings in respect of various ancillary charges. Considering these contrary rulings, the GST implications on the aforesaid charges is an issue that requires clarification from the tax authorities/ GST Council.
- Denial of ITC to suppliers engaged in construction of building for onward renting:**
 - The Orissa High Court in Safari Retreats Pvt. Ltd.³³ had *inter alia* read down the provisions of Section 17(5)(d) of the CGST Act and extended ITC on inputs/ input services used for construction of shopping malls meant for letting out to tenants for commercial purposes (attracting GST @ 18%).
 - The tax authorities had challenged the aforesaid order before the Supreme Court (Civil Appeal No. 2948/2023). After the marathon hearings, the arguments were concluded by both sides and the judgement was reserved (Order dated 12 October 2023).
 - While the matter is currently *sub judice*, the tax authorities seek to deny ITC in respect of procurements that are used for the construction of immovable property, even in cases where such property is directly used for making a taxable supply.
- Miscellaneous issues:** In addition to the above, the real estate sector faces various issues *inter alia* including the following:
 - Denial of ITC due to mismatches (between eligible ITC as per Form GSTR-3B vis-à-vis Form GSTR-2B) and other defaults by the supplier (such as non-filing of return, non-payment of tax, cancellation of GST registration, etc.).
 - Reversal of proportionate ITC as per Rules 42 and 43 of the CGST Rules.
 - Whether the transfer of benefits arising out of land (such as transfer of development rights) can be treated at par with the transfer of immovable property.

CONCLUSION

The Indian real estate market is on a growth path. As the industry keeps evolving to meet new customer demands, we can expect exciting developments in the years ahead. Despite the challenges highlighted above, the Indian real estate market offers opportunities for growth and innovation by prioritising building communities, using technology, and creating spaces that reflect India's evolving aspirations, not just constructing buildings.

By adapting to evolving trends and addressing key challenges including the challenges from the GST perspective, the real estate sector can solidify its position as a vital driver of economic prosperity.

²⁹In Re: Joyville Shapoorji Housing Pvt. Ltd. [2020 (33) Centax 306 (AAR - GST - Mah.)]

³⁰In Re: Puranik Builders Ltd. [2023 (5) Centax 76 (App. AAR - GST Mah.)]

³¹In Re: Eden Real Estates Pvt. Ltd. [2023 (2) Centax 287 (AAR - GST - WB)] (affirmed by the West Bengal Appellate Authority for Advance Ruling [2023 (74) GSTL 451 (AAAR - West Bengal)])

³²In Re: Eden Real Estates Pvt. Ltd. [2023 (2) Centax 287 (AAR - GST - WB)] (affirmed by the West Bengal Appellate Authority for Advance Ruling [2023 (74) GSTL 451 (AAAR - West Bengal)])

³³Safari Retreats Pvt. Ltd. Vs. Union of India [TS-350-HC(OR)-2019-NT]

DECODED

INTEREST ON DUTIES LEVIED UNDER SECTION 3 OF THE CUSTOMS TARIFF ACT, 1975

INTRODUCTION

Section 12 of the Customs Act, 1962 (Customs Act) is the charging provision for imposition of Basic Customs Duty which *inter alia* provides that the duties of customs shall be levied at such rates as may be specified under the Customs Tariff Act, 1975 (CT Act). In this regard, Section 2 of the CT Act provides that the rate at which duties of customs shall be levied under the Customs Act are specified in the First and the Second Schedule to the CT Act.

In addition to the above, the import of goods also attracts additional duties/imposts *inter alia* including the Additional Duty of Customs/Countervailing Duty (CVD), Special Additional Duty (SAD) and IGST (levied under Section 3 of the CT Act), anti-dumping duty (levied under Section 9A of the CT Act), safeguard duty (levied under Section 8B of the CT Act), etc. While the charging provision of these levies is provided under the CT Act, certain provisions of the Customs Act were specifically made applicable in the context of the aforementioned levies:

Provision	Applicability of relevant provisions of the Customs Act
Section 3(12) of the CT Act	<i>The provisions of the Customs Act, 1962 (52 of 1962) and the rules and regulations made thereunder, including those relating to drawbacks, refunds and exemption from duties shall, so far as may be, apply to the duty or tax or cess, as the case may be, chargeable under this section as they apply in relation to the duties leviable under that Act³⁴.</i>
Section 8B(9) of the CT Act	<i>The provisions of the Customs Act, 1962 (52 of 1962) and the rules and regulations made thereunder, including those relating to the date for determination of rate of duty, assessment, non-levy, short-levy, refunds, interest, appeals, offences and penalties shall, as far as may be, apply to the duty chargeable under this section as they apply in relation to duties leviable under that Act.</i>
Section 9A(8) of the CT Act	<i>The provisions of the Customs Act, 1962 (52 of 1962) and the rules and regulations made thereunder, including those relating to the date for determination of rate of duty, assessment, non-levy, short levy, refunds, interest, appeals, offences and penalties shall, as far as may be, apply to the duty chargeable under this section as they apply in relation to duties leviable under that Act.</i>

On a plain reading of these provisions, it appears that while Sections 8B and 9A of the CT Act specifically incorporate the provisions relating to interest and penalty under the Customs Act to the levies under the respective provisions, there is no express indication for incorporation of such provisions to the duties/ tax/ cess levied under Section 3 of the CT Act.

Accordingly, a question had arisen as to whether the provisions relating to interest and penalty under the Customs Act can be said to have been incorporated by reference in respect of duties levied under Section 3 of the CT Act.

HISTORICAL BACKGROUND

In this backdrop, the Bombay High Court, in *Mahindra & Mahindra Ltd.*³⁵ (Bombay High Court ruling) had *inter alia* held as under:

- Section 9A (8) of the CT Act which borrowed various provisions from the Customs Act, did not borrow provisions relating to interest and penalty and later on, such provisions were specifically incorporated by reference in the said section.
- In the absence of a specific provision relating to the levy of interest and/or penalty under Section 3 of the CT Act, interest and/or penalty cannot be recovered by taking recourse to the machinery provision relating to the recovery of duty.
- Consequently, imposition of interest and/or penalty on the portion of the demand pertaining to surcharge or additional duty of customs or special additional duty of customs is incorrect and without jurisdiction.

Against this, the tax authorities had filed a Special Leave Petition (SLP) which was dismissed by the Supreme Court on the

³⁴*Pari materia* with the erstwhile Section 3(8) of the CT Act (Till 30 June 2017)

³⁵*Mahindra and Mahindra Ltd. Vs. Union of India and Ors.* [2022-TIOL-1319-HC-MUM-CUS]. Our alert on this ruling can be accessed by clicking [here](#).

ground that there were no merits in the SLP³⁶. Against this, the tax authorities filed a Review Petition which was also dismissed by the Supreme Court holding that ‘... *there is no error apparent on the face of record or any merit in the Review Petition warranting reconsideration of the order impugned*’³⁷.

Pursuant to the above, recently, CESTAT Kolkata, in **Texmaco Rail Engineering Ltd.**³⁸ (CESTAT ruling) held that the Bombay High Court ruling shall have no bearing, implication or applicability to the facts before CESTAT *inter alia* based on the following:

- The Bombay High Court ruling is in respect of the ‘Settlement of a case’ (which is a shift from the usual process of adjudication, appeal, etc.).
- The Bombay High Court ruling is to be considered to be applicable to scenarios which were in existence in the said order (of Settlement Commission) which was under challenge. However, the applicability of the said order cannot be extended to normal scenarios.

In this section, we will analyse the CESTAT ruling including the key observations of the CESTAT.

FACTS OF THE CASE

- Texmaco Rail Engineering Ltd. (Taxpayer) is a manufacturer importer *inter alia* engaged in importing coupler sets, graft gear and break equipment classifiable under CTH 8607 3090 and 8607 9990 for manufacturing railway wagons.
- *Vide* notification no:18/2012-Central Excise dated 17 March 2012, the effective rate of Central Excise Duty on the aforesaid goods was revised from 6% to 12% ad valorem. Consequently, the applicable rate of CVD on the import of these goods also became 12%.
- Pursuant to the above, the Taxpayer imported the aforesaid goods. However, the Taxpayer had discharged CVD on the aforesaid imports @ 6% (instead of 12%).
- Consequently, the tax authorities issued a show cause notice (SCN) to the Taxpayer under Section 28 of the Customs Act seeking recovery of differential CVD along with interest (under Section 28AA of the Customs Act).
- After considering the reply furnished by the Taxpayer, the demand under this SCN, including interest, was confirmed by the tax authorities *vide* the Order-in-Original (OIO).
- Aggrieved by the above, the Taxpayer filed an appeal before CESTAT, Kolkata.

ISSUE UNDER CONSIDERATION

- During the course of hearings in the CESTAT, the Taxpayer conceded the issue of differential CVD demand. Consequently, the issue under consideration was restricted to the liability to pay interest on short payment of CVD (and recovery thereof).

CONTENTIONS OF THE TAXPAYER

- Unlike Section 9A of the CT Act, the provisions relating to the levy of interest have not been borrowed under

Sections 3 and 3A of the CT Act. Further, Section 28AA of the Customs Act is applicable only for duties of customs leviable under Section 12 of the Customs Act. Thus, interest cannot be levied on the demand pertaining to CVD (leviable under Section 3 of the CT Act).

- It is well settled³⁹ that penalty or interest, being a statutory liability in addition to tax, there must be a charging provision for levying it. The Supreme Court had also held that mere existence of the machinery provision for assessment, collection and enforcement of tax and penalty in the Bombay Sales Tax Act, 1953 does not automatically mean that the said provision can be considered as one for the Central Sales Tax Act, 1956 as well.
- Merely because there is a machinery for assessment, collection and enforcement of tax and penalty under the Customs Act would not automatically mean that the same is replicated for the levy and payment of interest and penalty under the CT Act. The meaning of penalty or interest under the CT Act cannot be enlarged by utilising the machinery provisions under the Customs Act.
- As held by the Bombay High Court ruling, in the absence of a specific provision for levying interest (or penalty) due on account of delayed payment of tax, the same cannot be levied unless the statute makes a substantive provision for its realisation.
- Sections 3 and 3A of the CT Act merely provide for the application of procedural provisions of the Customs Act. For levy of interest or penalty on CVD or SAD, the same needs to be provided for explicitly. Imposition of penalty or interest on CVD or SAD, not being connected with the basic customs duty is without the authority of law.
- When a statute levies a tax, it does so by inserting a charging section by which a liability is created and then it provides the machinery to make the liability effective. The statute therefore provides the machinery for assessment of the liability fixed by the charging section, and then provides the mode for recovery and collection of tax, including penal provisions meant to deal with defaults (including those imposing interest or penalty for delayed payments).
- It is well settled⁴⁰ that the provision for charging/levying interest on delayed payment of tax has to be construed as substantive law and not adjectival law. Thus, interest can be levied and charged only if the statute that levies and charges the tax makes substantive provisions on this behalf.
- Since the provisions of Section 28AA of the Customs Act have not been borrowed under Section 3 of the CT Act, no interest can be demanded even if it is contended that the Taxpayer had derived financial benefit by not paying the correct duty as due at the relevant time.

OBSERVATIONS AND RULING BY CESTAT, KOLKATA

- It is well settled that the law in taxation matters is to be read as it is and not what it ought to be, in the mind and understanding of the authority concerned.

³⁶Union of India Vs. Mahindra and Mahindra Ltd. [2023 (8) TMI 135 (SC)]

³⁷Union of India and Ors. Vs. Mahindra and Mahindra Ltd. [R.P.(C) Diary No. 41195/2023] dated 9 January 2024

³⁸Texmaco Rail Engineering Ltd. Vs. Commissioner of Customs (Port), Kolkata [2024 (1) TMI 902 - CESTAT Kolkata] dated 12 January 2024

³⁹Khemka and Company (Agencies) Pvt. Ltd. Vs. State of Maharashtra [1975 (2) SCC 22]

⁴⁰J.K. Synthetics Ltd. Vs. Commercial Taxes Officer [1994 (4) SCC 276] and India Carbon Ltd. Vs. State of Assam [1997 (6) SCC 479]

- **Section 3 of the CT Act vis-à-vis Sections 8B and 9A of the CT Act:** Under Sections 8B and 9A of the CT Act, there is no mention of the word 'exemption'. However, the provisions relating to Safeguard Duty or Anti-dumping Duty (as the case may be) can be considered to be in the nature of complete code providing for their regulatory mechanism within the framework of the CT Act itself like assessment, appeals, offences, etc.
- **Interpretation of Section 28AA of the Customs Act:**
 - Section 28AA of the Customs Act starts with a non-obstante clause, thereby giving primacy, prevalence and supreme importance to the said provision to hold them as a determinant and a predominant provision in the law. Section 28AA(1) of the Customs Act makes the imposition of interest automatic or as an appendage to a case where a duty liability is fastened.
 - The usage of the words 'shall' and 'in addition to such duty' under Section 28AA(1) emphatically indicates the applicability of interest to a scenario where duty becomes payable. Thus, what has been borrowed for the realisation of interest payable and applicability as an automatic route are the structural elements of Section 28 of the Customs Act (i.e., where there is a liability to pay duty).
 - The language used under Section 3(8) of the CT Act signifies it to be intended by the legislature by way of abundant caution and it would be for the Courts/Tribunal to examine every word of the statute in its context and interpret it in its widest sense.
- **Section 3(8) of the CT Act to be interpreted as being of wide import:**
 - Non-specific mention or inclusion of the term 'assessment' under Section 3(8) of the CT Act would not mean to conclude the failure to undertake the assessment process of the additional duty leviable on such goods. Moreover, the quantum of drawback payable / refund due can only be ascertained after completion of the assessment process.
 - Similarly, non-mention of the term 'appeal' cannot be taken to imply that any dispute, if arises, with reference to the duty leviable under Section 3 of the CT Act is out of the purview of the process of grievance redressal and quasi-judicial proceedings.
 - As per the law laid down by various Courts, the usage of the term 'including' in Section 3(8) of the CT Act indicates the adoption of not only the three specific provisions of drawbacks, refunds and exemptions from duties but all such statutory provisions as are required to deal with the aspect of the levy of Customs Duty under Section 3 of the CT Act.
 - The subject line of Section 3(8) of the CT Act i.e., '*the provisions of the Customs Act and the rules and regulations thereunder*' is equally applicable to the duty leviable under Section 3 of the CT Act and the reference to specific provisions relating to drawbacks, refunds and exemptions from duties is only by way of abundant caution (*ex abundantia cautela*).
- Thus, reference to the words' drawbacks, refunds and exemption from duties are merely illustrative and cannot be deemed to restrict and foreclose the applicability of the rest of the provisions of the Customs Act to the ingredients of the CT Act.
- Considering that various Courts⁴¹ have held that interest provisions apply automatically to cases of delayed refunds (despite the non-inclusion of the term 'interest' under Section 3(8) of the CT Act), it cannot be held otherwise for a case of delayed payment of duty.
- Thus, the Taxpayer is duty bound to pay the interest demanded more so when the demand of duty is as enshrined and in accordance with law and admittedly not disputed by the Taxpayer.
- Section 3 of the CT Act and Section 28AA of the Customs Act are not ambiguous. The mischief, if any ought to be suppressed with the aid of internal tools like the non-obstante phraseology or the text and the head note of the sections, besides giving the words used in law, their ordinary meaning.
- From the title and scope of Section 28AA of the Customs Act, interest is leviable on duty levied under Section 3 of the CT Act as it is held to be a duty of customs under Section 2(15) of the Customs Act and further reinforced by the non-obstante opening of Section 28AA(1) of the Customs Act.
- Thus, interest provisions under Section 28AA of the Customs Act shall equally apply to a case of determination of duty under Section 28 of the Customs Act - whether the said duty is levied under Section 12 of the Customs Act or under Section 3 of the CT Act or under any other provision/law for the time being in force.
- **Distinction between interest and penalty:**
 - While interest is compensatory in nature, the penalty is penal/ punitive in nature. While the liability to pay interest is founded on the doctrine of compensation, the imposition of penalty is dependent on the doctrine of punitive action.
 - If the language of Section 3(8) of the CT Act is held to limit the scope of the provision to the arenas of drawbacks, refunds and exemptions from duties and not to include other measures, the said provision would be rendered as a partially meaningful and largely factual entity and therefore, defeat the statutory intention itself.
 - While the Taxpayer has contended that the interest provisions are inapplicable to the present case, they have failed to demonstrate the machinery adopted to make the realisation of tax feasible by way of an assessment process, in the absence of adoption of the provisions of the Customs Act (except those relating to drawbacks, refunds or exemption from duty).
 - The precedents relied upon by the Taxpayer are inapplicable to the present case on account of the following:
 - The legislature has consciously incorporated interest provision (Section 28AA of the Customs

⁴¹Commissioner of Central Excise, Pune Vs. M/s. SKF India Ltd. [2009-TIOL-82-5C] and MM Enterprises Vs. Commissioner of Customs, Chennai IV [2021 (376) ELT 503 (Mad.)]

Act) which is rendered applicable to the CT Act.

- The judgements relied upon by the Taxpayer are delivered in the context of penal provisions or with reference to the issues concerning the Settlement of a case (which is a deviation from the applicability of the routine structural legal process).
- The Bombay High Court ruling shall have no bearing, implication or applicability to the facts of the present case based on the following:
 - The Bombay High Court ruling is in respect of the 'Settlement of a case' (which is a shift from the usual process of adjudication, appeal, etc.).
 - The Bombay High Court ruling is to be considered to be applicable to scenarios which were in existence in the said order (of Settlement Commission) which was under challenge. However, the applicability of the said order cannot be extended to normal scenarios.
- In view of the above, the appeal filed by the Taxpayer was dismissed and the OIO was upheld by holding that -
 - In terms of Section 3 of the CT Act read with Section 12 of the Customs Act, the additional duty is to be construed as Customs Duty.
 - All the provisions of the Customs Act and rules/regulations made thereunder are squarely applicable to the facts of the present case.

CONCLUSION

Pursuant to the Bombay High Court ruling, taxpayers had been evaluating the possibility of taking a stand that interest is not payable on the duties payable under section 3 of the CT Act. The CESTAT ruling, seeking to distinguish the Bombay High Court ruling is likely to unsettle the law which has been upheld by the Bombay High Court (as affirmed by the Supreme Court). The CESTAT ruling is likely to result in further tax disputes as regards demand of interest/ admissibility of refund *qua* interest already paid, on delayed payment of customs duty (levied under Section 3 of the CT Act). Since the language adopted in section 3 of the CT Act for levy and recovery of CVD and SAD is identical to the language adopted for levy and recovery of IGST and Compensation Cess, the issue would continue in the GST regime as well. The taxpayers would be keen to see if this judgment is appealed before the High Court and if so, the ruling of the High Court in the impugned case, considering the Supreme Court has dismissed the SLP against Bombay High Court judgment.



GLOBAL TRENDS

VAT/GST NEWS:

INTERNATIONAL



Japan: Proposed VAT Reform Targets Cross-Border Digital Transactions

Effective 1 April 2025, Japan has proposed to overhaul its Value Added Tax (VAT) system for targeting cross-border digital transactions via online platforms. Under the proposed reform, an intermediary digital platform operator would be responsible for discharging Japanese VAT on digital content and services supplied to Japanese consumers. This move aims to enhance enforcement and bridge the gap between the domestic and the foreign suppliers. It is estimated that the proposed reform could help eliminate annual Japanese VAT leakage of -USD 154Mn.

(Source:

<https://www.globalvatcompliance.com/globalvatnews/japan-cross-border-digital-transactions/>)



Slovenia: Stricter VAT Enforcement and Penalties for Late Filings

Effective January 2024, the Slovenian Financial Administration has implemented a stricter penalty policy for penalising habitual late filers of VAT returns. Accordingly, failure to submit VAT returns on time or in the prescribed manner would constitute a serious tax offence resulting in the imposition of penalties on legal entities (between EUR 4,000 and EUR 75,000), sole proprietors (between EUR 3,000 and EUR 50,000) and individuals (between EUR 400 and EUR 5,000).

(Source:

<https://www.globalvatcompliance.com/globalvatnews/slovenia-vat-enforcement-penalties/>)



Thailand: Removes crypto trading tax in bid to be digital asset hub

Effective January 2024, Thailand has undergone a transition in crypto-friendly regulations. Previously, crypto and digital token activities were subject to a 7% VAT. The latest development seeks to exempt VAT for crypto transfers to third parties. This move aims to promote digital assets as a new alternative for fundraising and to boost the country's digital economy.

(Source:

<https://www.techinasia.com/thailand-removes-crypto-trading-tax-digital-asset-hub>)

GST NEWS:

INDIA



GST Council may soon clarify tax exemption to RERA

The GST Council is likely to clarify that the Real Estate Regulatory Authority (RERA) will not be required to pay Goods and Services Tax (GST) since it functions as a regulator as well as a facilitator for the real estate sector. Further, it is covered under Article 234G of the Constitution which deals with the powers, authority and responsibilities of Panchayats. This clarification is likely to benefit the real estate sector and lead to reduction of costs for the developers.

(Source:

<https://www.thehindubusinessline.com/news/real-estate/gst-council-may-soon-clarify-tax-exemption-to-rera/article67884590.ece>)

Retrospective GST demands on the online gaming industry: the hanging sword of Damocles

India's online gaming industry faces huge tax demands (INR 1.12tn) under the GST law from July 2017 to September 2023, alleging online gaming to be covered under the purview of 'gambling'. The issue is presently *sub judice* before the Supreme Court. The online gaming industry has approached the GST Council seeking clarity on the value of supply for online games.

(Source:

<https://www.financialexpress.com/business/brandwagon-retrospective-gst-demands-on-the-online-gaming-industry-the-hanging-sword-of-damocles-3415312/>)

Auto LPG trade wants GST cut to 5%

The Indian Auto Liquefied Petroleum Gas (LPG) Coalition has urged the Government to reduce GST on auto LPG from 18% to 5%, aiming to ensure a fair and competitive market environment. Supportive measures for automotive LPG such as reduced GST on conversion kits and the fuel itself, alongside standards in approvals for conversion kits can substantially advance the goal of cleaner mobility.

(Source:

<https://www.thehindubusinessline.com/economy/auto-lpg-trade-wants-gst-cut-to-5/article67898748.ece>)

CUSTOMS NEWS

INTERNATIONAL



WTO extends e-commerce customs duty moratorium despite opposition from developing countries

At the 13th Ministerial Conference, the World Trade Organization (WTO) member countries once again agreed not to impose customs duties on the trade of digital goods until the 14th Ministerial Conference, scheduled in March 2026. The members have been temporarily extending the moratorium every few years during the WTO Ministerial Conference. While India, South Africa and Indonesia have been voicing uncertainties about the extension/permanent moratorium, the extension is a good move for India because the imposition of customs duty could heavily impact the semiconductor chip design in India.

(Source:

<https://www.forbesindia.com/article/news/wto-extends-e-commerce-customs-duty-moratorium-despite-opposition-from-developing-countries/91933/1>)



India-UK trade pact may be pushed back till after polls in both countries

The conclusion of the India-UK Free Trade Agreement (FTA) could be pushed beyond the general elections in both countries, despite a last-mile dash by top officials from both sides, because differences remain on issues of market access in key areas of goods and services. The trade agreement with the UK will be an important milestone for India. India has signed 13 FTAs so far with individual countries and regional blocks. It all adds up to 21 countries with which India had trade preferential trade terms.

(Source:

<https://www.msn.com/en-in/news/other/india-uk-trade-pact-may-be-pushed-back-till-after-polls-in-both-countries/ar-BB1jvJ6F>)



TEPA: Norway to eliminate customs duties for almost 98 pc of imports from India

Shortly after New Delhi inked a free trade pact with a four-member European bloc, Norway said it would eliminate customs duties for almost 98 per cent of the imports from India under the framework of the pact. The agreement signed between India and the European Free Trade Association (EFTA) comprising Norway, Switzerland, Iceland and Liechtenstein, aims to expand trade across a range of areas including pharmaceuticals, manufacturing, new technologies and machinery.

(Source:

<https://economictimes.indiatimes.com/news/economy/foreign-trade/tepa-norway-to-eliminate-customs-duties-for-almost-98-pc-of-imports-from-india/articleshow/108372805.cms>)



INDIA**Chocolates, watches: Items to get cheaper after India-European bloc trade deal**

Swiss products, including watches, chocolates, wines, biscuits and clocks would enter the Indian market at lower prices as India will phase out customs duties under its Free Trade Agreement with the 4-nation EFTA. Domestic customers will get access to high-quality Swiss products such as watches, chocolates, biscuits and clocks at lower prices as India will phase out customs duties under its trade pact with the EFTA bloc on these goods over a period of time.

(Source: <https://www.indiatoday.in/india/story/wines-chocolates-watches-items-to-get-cheaper-after-india-european-bloc-deal-2513246-2024-03-11>)

Delhi HC: No customs duties on rare disease medicines

The Delhi High Court has clarified in a recent order that custom duties and charges shall not be levied on medicines, drugs and therapies for rare diseases. After hearing a batch of over 100 petitions, it was held that whenever medicines are brought in respect of rare diseases, the Customs Authorities shall ensure that the same are cleared expeditiously and no unnecessary impediments are caused in ensuring that the same reach the concerned hospital.

(Source: <https://economictimes.indiatimes.com/industry/healthcare/biotech/pharmaceuticals/delhi-hc-no-customs-duties-on-rare-disease-medicines/articleshow/108212938.cms>)



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ANTICIPATING CLIENT NEEDS

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agreeing to and meeting our **commitments**: we deliver what we promise, everyday, for every client

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<ul style="list-style-type: none"> Accounting Advisory Services Financial Statement Audit and Attestation Services 	<ul style="list-style-type: none"> Corporate Tax Services Financial Services Tax Global Employer Services International Tax Services Private Client Services Tax Outsourcing Transfer Pricing Customs & International Trade Goods & Services Tax (GST) Indirect Tax Assessment & Litigation Assistance Incentives & ESG Tax Technology 	<ul style="list-style-type: none"> Actuarial and Related Services for Insurance Cyber Security Forensics Government Advisory IT Risk Advisory & Assurance Management Consulting Risk Advisory Services Sustainability & ESG Business Restructuring Corporate Finance and Investment Banking Deal Value Creation Financial Due Diligence M&A Tax and Regulatory Strategy & Commercial Due Diligence Valuations
BUSINESS SERVICES & OUTSOURCING	BDO DIGITAL	
<ul style="list-style-type: none"> Finance and Accounting Outsourcing Global Outsourcing Human Resource Outsourcing Payroll Management and Compliance Services Secretarial Services and Compliance Management Shared Services Centre 	<ul style="list-style-type: none"> Digital Services Technology Products and Solutions 	

CONTACT US

For any content related queries, you may write in to taxadvisory@bdo.in or get in touch with,



GUNJAN PRABHAKARAN
Partner & Leader
Indirect Tax
gunjanprabhakaran@bdo.in



DINESH KUMAR
Partner
Indirect Tax
dineshkumar@bdo.in



KARTIK SOLANKI
Partner
Indirect Tax
kartiksolanki@bdo.in

For any other queries or feedback, kindly write to us at marketing@bdo.in

BDO IN INDIA

Ahmedabad

Westgate Business Bay, Floor 6
Office No 601, Block A, Makarba
Ahmedabad, Gujarat 380051, INDIA

Chandigarh

Plot no. 55, Floor 5,
Industrial & Business Park,
Phase 1, Chandigarh 160002, INDIA

Delhi NCR - Office 1

The Palm Springs Plaza
Office No. 1501-10, Sector-54,
Golf Course Road, Gurugram 122001, INDIA

Hyderabad

1101/B, Manjeera Trinity Corporate
JNTU-Hitech City Road, Kukatpally
Hyderabad 500072, INDIA

Mumbai - Office 1

The Ruby, Level 9, North West Wing
Senapati Bapat Marg,
Dadar (W)
Mumbai 400028, INDIA

Mumbai - Office 4

The Ruby, Level 9, South East Wing
Senapati Bapat Marg, Dadar (W)
Mumbai 400028, INDIA

Bengaluru - Office 1

Prestige Nebula, Floor 3
Infantry Road
Bengaluru 560001, INDIA

Chennai

No. 443 & 445, Floor 5, Main Building
Guna Complex, Mount Road, Teynampet
Chennai 600018, INDIA

Delhi NCR - Office 2

Windsor IT Park, Plot No: A-1
Floor 2, Tower-B, Sector-125
Noida 201301, INDIA

Kochi

XL/215 A, Krishna Kripa
Layam Road, Ernakulam
Kochi 682011, INDIA

Mumbai - Office 2

601, Floor 6, Raheja Titanium, Western
Express Highway, Geetanjali, Railway
Colony, Ram Nagar, Goregaon (E),
Mumbai 400063, INDIA

Pune - Office 1

Floor 6, Building No. 1
Cerebrum IT Park, Kalyani Nagar
Pune 411014, INDIA

Bengaluru - Office 2

SV Tower, No. 27, Floor 4
80 Feet Road, 6th Block, Koramangala
Bengaluru 560095, INDIA

Coimbatore

Pacom Square, Floor 3, 104/1, Sakthi
Main Road, Bharathi Nagar, Ganapathy
Coimbatore, Tamil Nadu - 641006

Goa

701, Kamat Towers
9, EDC Complex, Patto Plaza
Panaji, Goa 403001, INDIA

Kolkata

Floor 4, Duckback House
41, Shakespeare Sarani
Kolkata 700017, INDIA

Mumbai - Office 3

Floor 20, 2001 & 2002 - A Wing, 2001 F
Wing, Lotus Corporate Park, Western
Express Highway, Ram Mandir Fatak Road,
Goregaon (E) Mumbai 400063, INDIA

Pune - Office 2

Floor 2 & 4, Mantri Sterling, Deep Bunglow,
Chowk, Model Colony, Shivaji Nagar
Pune 411016, INDIA

Ahmedabad | Bengaluru | Chandigarh | Chennai | Coimbatore | Delhi | Goa | Hyderabad | Kochi | Kolkata | Mumbai | Pune

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