

CUSTOMS AND GST ALERT



CASE LAW UPDATES

[DAMCO INDIA PRIVATE LIMITED v. UNION OF INDIA AND ORS](#)

[2024 \(6\) TMI 1097](#)

Bombay High Court holds that no limitation is applicable for requesting extension of time under proviso to section 140(5) of the Central Goods and Services Tax Act, 2017 (CGST Act) for recording pre-GST invoices received on or after 01.07.2017 in books of account, for transitioning input tax credit (ITC) into the GST regime.

[ARYA COTTON INDUSTRIES AND ANR v. UNION OF INDIA AND ANR](#)

[R/SCA NO 8871/2022](#)

Gujarat High Court holds that interest cannot be demanded for the period commencing from the date of depositing GST in electronic cash ledger (ECL) till the date of filing Form GSTR-3B return; holds that actual GST liability stands discharged once amount is credited to ECL (as an advance tax) and the debit entry in ECL upon filing Form GSTR-3B return is only for accounting purposes.

[EXCELLENTVISION TECHNICAL ACADEMY \(P\) LTD v. STATE OF U P](#)

[\[2024\] 163 taxmann.com 555](#)

Allahabad High Court holds that not recording “reasons to believe” before initiating search proceedings makes such proceedings illegal; quashes subsequent proceedings of seizure, issuance of notice and order holding them to have originated from an illegal search.

REGULATORY UPDATES

CIRCULAR NO 207/1/2024-GST

Central Government has fixed the following monetary limits for filing appeals, applications or special leave petitions before appellate forums: GST Appellate Tribunal – INR 20 Lakhs, High Court – INR 1 crore, and Supreme Court – INR 2 crore. The limits shall apply only to the principal tax or refund component (where tax / refund, interest and penalty are all in dispute). Certain exceptions have also been notified and it has been clarified that non-filing of appeals due to monetary limits shall have no precedent-value and not be interpreted as acceptance of any adverse decision.

CIRCULAR NO 208/2/2024-GST

Central Government has clarified the following issues pertaining to the special procedure / compliance notified for manufacturers of pan masala and tobacco products: (i) specifying make / model number of machine to be optional; (ii) year of purchase and machine number to be mandatory; (iii) electricity consumption to be certified by Chartered Engineer; (iv) sale price (instead of MRP) to be specified for export products; (v) procedure not to apply to Special Economic Zone (SEZ) units and manually operated machines; (vi) details of only final packing machines (and not intermediary machines) to be provided; and (vii) procedure to equally apply to GST-registered job worker / contract manufacturer.

CIRCULAR NO 209/3/2024-GST

Central Government has clarified that the place of supply of goods sold through an e-commerce platform to an unregistered buyer where the billing address and delivery address are in different states, shall be the delivery address recorded on the invoice.

CIRCULAR NO 210/4/2024-GST

Central Government has clarified that where a foreign affiliate provides services to its related domestic entity (including cases where no consideration is involved) and where full ITC is available to such domestic entity, any value of supply declared in the self-invoice raised by the

domestic entity shall be accepted for GST purposes. If no self-invoice is issued, the value of services shall be deemed as Nil.

CIRCULAR NO 211/5/2024-GST

Central Government has clarified that in case of supplies received from unregistered suppliers on which GST is required to be paid under reverse charge mechanism (RCM) by the recipient and a self-invoice is required to be issued, the time limit for availing ITC for the purposes of section 16(4) of CGST Act shall commence in the financial year in which the self-invoice is issued. In case the self-invoice is issued after the “time of supply” of the particular transaction, interest would additionally be required to be paid.

CIRCULAR NO 212/6/2024-GST

Central Government has clarified that for the purposes of evidencing reversal of ITC by the recipient pursuant to issuance of credit note by the supplier, certificate from a Chartered Accountant or Cost Accountant may be procured by the supplier from the recipient if the tax involved is more than INR 5 lakhs. In case the tax involved is lesser, an undertaking / certificate from the recipient certifying reversal of ITC shall suffice.

CIRCULAR NO 213/7/2024-GST

Central Government has provided the following clarifications regarding taxability of Employee Stock Option (ESOP) / Employee Stock Purchase Plan (ESPP) / Restricted Stock Unit (RSU) provided by a domestic company to its employees through its foreign holding company: (i) sale / purchase / issuance / transfer of shares does not attract GST; (ii) compensation paid to employee by domestic company, involving transfer of shares of foreign holding company through ESOP / ESPP / RSU, does not attract GST; (iii) reimbursement by domestic company to foreign holding company, of cost of shares transferred as ESOP / ESPP / RSU, would not attract GST if it is made without any mark-up; (iv) if mark-up or commission is charged by foreign holding company to domestic company, such additional amount shall attract GST under RCM.

CIRCULAR NO 214/8/2024-GST

Central Government has clarified that the amount of premium for taxable life insurance policies which is not included in the taxable value under rule 32(4) of Central Goods and Services Tax Rules, 2017 cannot be considered as pertaining to a non-taxable or exempt supply, and there is no requirement of reversal of ITC in respect of such amount.

CIRCULAR NO 215/9/2024-GST

Central Government has clarified that deduction by insurance companies of salvage value of motor vehicle from the claim amount of the insured does not result in the salvage becoming property of the insurance company and as such, no GST liability arises on such deduction of salvage value. However, where the insurance claim is settled in full (without deduction of salvage value), the salvage becomes the property of the insurance company and onward supply of such salvage shall attract GST.

CIRCULAR NO 216/10/2024-GST

Central Government has provided the following additional clarifications regarding GST liability and ITC availability in warranty / extended warranty transactions: (i) replacement of goods without consideration during warranty period by manufacturer / distributor does not attract GST, while replacement with consideration attracts GST; (ii) reversal of ITC is not required for replacement of goods without consideration; (iii) replacement of goods by distributor from own inventory / third party and charging consideration from manufacturer attracts GST; (iv) replacement of goods by distributor from own inventory / third party and obtaining a credit note from manufacturer shall attract ITC reversal at distributor's end and GST adjustment at manufacturer's end; (v) replacement of goods by distributor after procuring them from the manufacturer neither attracts GST nor reversal of ITC; (vi) replacement of goods by distributor from own inventory / third party and thereafter procuring them from the manufacturer neither attracts GST nor reversal of ITC; (vii) supply of extended warranty along with goods by the same supplier results in the transaction becoming a composite supply and attracts GST rate of goods (being the principal supply); and (viii) supply of extended warranty (a) by supplier of goods, but

after original supply has taken place; (b) by any third party, whether at the time of or after the original supply, shall be regarded as a supply of services, distinct from the original supply.

CIRCULAR NO 217/11/2024-GST

Central Government has provided the following clarifications regarding entitlement of ITC by insurance companies on expenses incurred for repair of motor vehicles: (i) insurance companies are eligible to avail ITC on invoices issued in their name by garages towards repair expenses under the “reimbursement” mode of claim settlement (despite the charges being initially paid by the insured and subsequently reimbursed by the insurance company); (ii) in the same case, if a lesser amount is reimbursed to the insured, ITC must be availed only to the extent of reimbursement; and (iii) insurance company shall not be eligible to avail ITC if the invoice raised by the garage is not in its name.

CIRCULAR NO 218/12/2024-GST

Central Government has clarified that in the context of inter-corporate loan / credit facility availed by a domestic entity from its foreign related entity, no GST shall be attracted so long as consideration apart from interest or discount is not charged. However, if any additional consideration such as processing fee / administrative charges / service fee / loan granting charges, etc. is charged, the same shall attract GST under RCM.

CIRCULAR NO 219/13/2024-GST

Central Government has clarified that ITC on purchase of ducts and manholes used in network of optical fibre cables shall be available.

CIRCULAR NO 220/14/2024-GST

Central Government has clarified that custodial services provided by banks or financial institutions to Foreign Portfolio Investors do not constitute services provided to “account holders” and therefore, the place of supply of such services shall be determined based on the default rule *i.e.* location of recipient, and if such location is not available, then location of supplier.

CIRCULAR NO 221/15/2024-GST

Central Government has clarified that GST liability on a concessionaire under the Hybrid Annuity Model contract entered with National Highways Authority of India (NHAI) for construction of road and maintenance thereof, shall arise at the time of issuance of invoice or receipt of payments, whichever is earlier, if the invoice is issued on or before the specified date or the date of completion of the event specified in the contract, as applicable. If invoice is not issued as aforesaid, GST liability shall arise on the date of provision of service (*i.e.* the due date of payment as per the contract) or date of receipt of the payment, whichever is earlier. It has also been clarified that interest component included in instalments / annuity payable by NHAI to the concessionaire shall also be included in the taxable value.

CIRCULAR NO 222/16/2024-GST

Central Government has clarified that if full upfront payment is made by a telecom operator for spectrum allocation services, GST shall be payable when such payment is made or due, whichever is earlier, whereas if payment is made by the telecom operator in instalments, GST shall be payable as and when the payments are made or due, whichever is earlier. It has also been clarified that the aforesaid clarification regarding time of supply may equally apply in cases where any natural resources are allocated by the government to the successful bidder for right to use the said natural resources over a period of time (constituting continuous supply of services), with the option of making upfront payment or in deferred periodic instalments.

INSTRUCTION NO 16/2024-CUSTOMS

Central Government has clarified that transfer of goods resulting out of manufacturing activities undertaken in a warehouse / unit approved under section 65 of Customs Act, 1962 to another approved warehouse / unit is permitted subject to maintenance of proper records, sending intimation to bond officer and compliance with other conditions set out in section 65 read with the Manufacture and Other Operations in Warehouse (No.2) Regulations, 2019.

NOTIFICATION NO 18/2024-25-FTP

Directorate General of Foreign Trade has permitted export of *Non-Basmati White Rice* (HSN 1006 30 90) to Malawi and Zimbabwe (up to 1,000 MT individually) through National Cooperative Exports Limited.

TRADE NOTICE NO 06/2024-25-FTP

Directorate General of Foreign Trade has sought comments on amendments proposed in Appendix 4J of Handbook of Procedures 2023 (which specifies export obligation periods with pre-import condition under Advance Authorisations). Interested stakeholders may email their comments to policy4-dgft@gov.in till 03.07.2024.

POLICY CIRCULAR NO 05/2024-25-FTP

Directorate General of Foreign Trade has clarified that the recently introduced restriction on import of *gold jewellery and parts thereof* introduced was inapplicable to re-import of unsold jewellery exported for the purpose of exhibition abroad and such imports were permitted without import licenses.

POLICY CIRCULAR NO 06/2024-25-FTP

Directorate General of Foreign Trade has clarified that the recently introduced restriction on import of *gold jewellery and parts thereof* was inapplicable to imports made by SEZ units, other than Free Trade and Warehousing Zone units.

For any clarifications, please write to:

Mr. Shammi Kapoor
Senior Partner
shammi@vaishlaw.com

Mr. Arnab Roy
Associate Partner
arnab@vaishlaw.com



Corporate, Tax and Business Advisory Law Firm

DELHI

1st, 9th, 11th Floor,
Mohan Dev Building, 13, Tolstoy Marg,
New Delhi, 110001 (India)
+91-11-42492525
delhi@vaishlaw.com

MUMBAI

106, Peninsula Centre,
Dr. S.S. Rao Road, Parel,
Mumbai, 400012 (India)
+91 22 42134101
mumbai@vaishlaw.com

BENGALURU

105 -106, Raheja Chambers,
#12, Museum Road,
Bengaluru, 560001 (India)
+91 80 40903588/89
bangalore@vaishlaw.com

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