

CUSTOMS AND GST ALERT



NEWS UPDATE

As per reports, the Directorate General of GST Intelligence has been instructed to not issue demand notices in interpretation or classification matters, without approval of the policy wing of Central Board of Indirect Taxes and Customs (CBIC).

CASE LAW UPDATES

TVL. SHIVAM STEELS v. ASSISTANT COMMISSIONER (ST) (FAC), HOSUR

2024 (6) TMI 1381

Madras High Court holds that receipt of a post-sale discount could not be considered as a service provided by the recipient of discount (customer) to the supplier; quashes order and remands matter for re-adjudication.

ATR MALLEABLE CASTING PRIVATE LIMITED AND ORS v. INSPECTOR OF CENTRAL TAXES, HEADQUARTERS, ANTI-EVASION UNIT, HALDIA CGST AND CX COMMISSIONERATE AND ORS

2024 (6) TMI 1258

Calcutta High Court holds that tax payment made during search proceedings, without ascertainment of tax liability by tax authorities or issuance of acknowledgement in Form GST DRC-04, could not be treated as a “voluntary payment”; directs refund of amounts paid.

M/S BHAVANI OXIDES AND OTHERS v. STATE OF TELANGANA AND ORS

WP No 10390 of 2024

Telangana High Court holds following principles of natural justice to be mandatory before blocking input tax credit (ITC) available in an assessee's Electronic Credit Ledger (ECrL), despite the relevant provision *i.e.* rule 86A of Central Goods and Services Tax Rules, 2017 (CGST Rules) being silent about such an obligation.

FINS ENGINEERS AND CONTRACTORS (P) LTD v. SUPERINTENDENT, CENTRAL TAX AND CENTRAL EXCISE

[2024] 163 taxmann.com 661

Kerala High Court holds that transition of unadjusted Tax Deducted at Source (TDS) amount into the GST regime as ITC was impermissible; permits assessee to seek refund of such TDS, except amounts already utilised for discharging output GST liabilities.

TRELLEBORG INDIA PRIVATE LIMITED v. STATE OF KARNATAKA AND ORS

WP No 15620 of 2024

Karnataka High Court set aside show cause notices issued upon an amalgamating entity which had ceased to exist post amalgamation; holds that proceedings in respect of a non-existent entity could not continue.

SANJEEV SURESH DESAI v. UNION OF INDIA AND ORS

2024 (6) TMI 1167

Bombay High Court holds writ petition filed beyond expiry of statutory period prescribed for filing of appeal to be maintainable in view of unreasoned orders passed without application of mind; remands matter for re-adjudication.

RE: M/S TRANSMISSION CORPORATION OF ANDHRA PRADESH LIMITED

2024 (7) TMI 155

Authority for Advance Ruling, Andhra Pradesh holds that liquidated damages recovered for non-performance or breach of contract were to be treated as *consideration for tolerating of an*

act or a situation under an agreement, thereby constituting a supply of services liable to GST; holds Circular No 178/10/2022-GST issued by CBIC in this regard as not universal or absolute.

REGULATORY UPDATES

CIRCULAR NO 224/18/2024-GST

Central Government has directed assessee desirous of filing appeal before the (presently non-operational) GST Appellate Tribunal to pay a pre-deposit equal to 20% of demand and file an undertaking / declaration with the jurisdictional tax authority stating that they shall file an appeal within the prescribed period upon the tribunal becoming operational, so as to secure a stay on the balance outstanding demand. It has also been stated that failure to abide by the above directions may result in recovery proceedings being initiated. Assessee have also been advised to file Form GST DRC-03A (once the same becomes operational on the online portal) to enable adjustment of amounts paid *vide* Form GST DRC-03 against pre-deposits, as above. Till such time, assessee have been advised to intimate their jurisdictional tax authority of payments made *vide* Form GST DRC-03.

CIRCULAR NO 225/19/2024-GST

Central Government has clarified the following issues pertaining to taxability and valuation of corporate guarantee services provided between related persons:

- Valuation of services provided before 26.10.2023 must be undertaken based on the previously existing valuation rules;
- Valuation of services shall be linked to the amount of guarantee and not the amount of loan actually disbursed, and the borrower shall be entitled to avail ITC of GST paid irrespective of the time or amount of disbursement of loan;
- Assignment of guarantee from one bank to another would have no GST impact unless, a renewal or fresh issuance of guarantee has occurred;
- In case of co-guarantors, GST liability shall be proportionate to their guarantee shares;

- GST liability shall be on forward charge basis if both guarantor and borrower (related entities) are situated in India, and on reverse charge basis if guarantor is situated outside India;
- Value of services shall be 1% *per annum* (payable upfront if the guarantee tenure is pre-determined, else on every renewal) of amount guaranteed or actual consideration, whichever is higher;
- If borrower is entitled to full ITC, any value declared in the invoice shall be deemed to be the taxable value; and
- Provisions regarding taxability and valuation of such services shall not apply if borrower is situated outside India.

CIRCULAR NO 226/20/2024-GST

Central Government has clarified that an application for refund of additional IGST paid on account of upward revision in prices of goods subsequent to their exports shall be e-filed in Form GST RFD-01 under the category “*Any other*” with the prescribed supporting documents (including Chartered / Cost Accountant’s certificate and evidence of interest payment). Such application would need to be filed within two years from the statutorily prescribed “relevant date” and if such “relevant date” fell before 10.07.2024, the application may be filed on or before 10.07.2026. Further, in case of downward revision in prices, assesseees would need to deposit with interest the IGST refund previously claimed, proportionate to the downward reduction.

CIRCULAR NO 228/20/2024-GST

Central Government has provided the following key clarification regarding applicability of GST on certain services:

- Statutory collections made by Real Estate Regulatory Authority (RERA) are not taxable;
- Distribution of incentive received from Ministry of Electronics and Information Technology for promotion of RuPay Debit Cards and low value BHIM-UPI transactions by the acquiring bank with other stakeholders (such as issuer bank, Payer Payment Service Providers and UPI app), only till the point where such distribution is made in the proportion and manner

- decided by National Payments Corporation of India, are not taxable. Onward sharing of such incentive with stakeholders such as Third-Party App Providers shall attract GST;
- GST liability on services by way of reinsurance of notified general and life insurance schemes has been regularized for the period 01.07.2017 to 24.01.2018 on 'as is where is' basis;
 - GST liability on services by way of reinsurance of insurance schemes where total premium was paid by Government has been regularized for the period 01.07.2017 to 26.07.2018 on 'as is where is' basis;
 - Exemption granted to notified reinsurance services shall also apply to retrocession arrangements; and
 - GST liability on accommodation services where monthly consideration was up to INR 20,000/- per person per month and such services were supplied for a minimum continuous period of 90 days, has been regularized for the period 01.07.2017 to 14.07.2024 on 'as is where is' basis.

CIRCULAR NO 229/20/2024-GST

Central Government has provided the following key clarification regarding taxability and classification of goods:

- Solar cookers that work on dual energy of solar energy and grid electricity are classifiable under heading 8516 and attract a GST rate of 12%;
- All types of sprinklers, including fire water sprinklers attract a GST rate of 12%; issues for the past period have been regularized on 'as is where is' basis;
- Issues for the period 01.07.2017 to 17.07.2022 in respect of taxability of supply of pulses and cereals put up in a unit container and bearing a registered brand name and/or bearing a brand name on which an actionable claim or enforceable right in a court of law was available, have been regularized on 'as is where is' basis for supplies made to or by any agency engaged by Union Government or State Government / Union Territory for procurement and sale of such goods under any programme / scheme approved by Central Government or any State Government intended to distribute such goods at free of cost or at subsidized rate to eligible beneficiaries, subject to the following conditions:

- Supplier must furnish a certificate from the Government confirming fulfilment of the aforementioned conditions to the jurisdictional tax authority on or before 11.01.2025; and
- ITC shall not be allowed on such inputs and, if availed, the same must be reversed on or before 11.01.2025.

NOTIFICATION NO 12/2024-CT

Key amendments brought about in the Central Goods and Services Tax Rules, 2017 (CGST Rules) *vide* this notification are as follows:

- For new GST registration applicants not opting for Aadhar authentication, capturing of a real-time photograph and verification of original documents at a notified Facilitation Center shall be mandatory (*effective date yet to be notified*);
- GST registration shall be liable to be cancelled again if, pursuant to an earlier revocation of cancellation, pending GST returns are not filed within 30 days;
- Procedure for distribution of ITC by Input Service Distributor has been revised (*effective date yet to be notified*);
- Facility to amend or furnish additional details of outward supplies of goods or services has been provided through Form GSTR-1A which can be filed between the date of filing Form GSTR-1 and the date of filing Form GSTR-3B for the concerned tax period;
- Limit for furnishing invoice-level details of inter-state sales made to unregistered persons has been reduced to INR 1 Lakh in Form GSTR-1 and Form GSTR-5; Consolidated details of inter-state sales made to unregistered persons with invoice value up to INR 1 Lakh would need to be declared in Forms GSTR-1 and 5 (*effective date 01.08.2024*);
- Due date for filing Form GSTR-4 (return for composition taxable persons) from FY 2024-25 onwards has been notified to be 30 June of the subsequent year;
- Interest shall not be applicable on the amounts available in ECrL on or before the due date of filing Form GSTR-3B, subject to such amounts being utilized for payment of output tax liability in Form GSTR-3B filed belatedly;
- Time limit for receipt of export proceeds for services exported without payment of IGST has been linked to the period allowed under the Foreign Exchange Management Act, 1999

including any extension of such period as permitted by the Reserve Bank of India, or any further period allowed by the Commissioner, GST. In case of failure to realize export proceeds with such time limit, IGST shall be payable with interest within a further period of 15 days;

- Procedures for filing / withdrawing appeals / applications before the GST Appellate Tribunal have been revised;
- Procedure for obtaining an enrolment number for generation of e-way bill has been notified for unregistered persons undertaking inter-state transport of handicraft goods (*effective date yet to be notified*);
- Facility for issuance of an electronic acknowledgement in Form GST DRC-04 upon making tax payment through Form GST DRC-03 has been introduced;
- Part C of Form GST DRC-01A has been notified for acceptance by the tax authority of submissions / payments made by the assessee against liability intimated in Form GST DRC-01A;
- Form GST DRC-03A has been introduced to enable an assessee to adjust payments made *vide* Form GST DRC-03 against outstanding tax liabilities appearing in the Electronic Liability Register;
- Relaxations in respect of Forms GSTR-9 (certain fields were made optional) that were applicable for FY 2022-23 have been carried forward to FY 2023-24;
- Formats of / instructions to Form GSTR-2B, Form GSTR-7, Form GSTR-8 and Form GSTR-9, Form GST RFD-01, Form GST APL-01, Form GST DRC-01A, Form GST DRC-03 and Form GST DRC-04 have been tweaked.

NOTIFICATION NO 14/2024-CT

Central Government has exempted assessee having aggregate turnover in FY 2023-24 up to INR 2 crores from filing annual return for the said financial year.

NOTIFICATION NO 15/2024-CT

Central Government has reduced the tax collection at source (TCS) rate applicable to e-commerce operators from 1% to 0.5% of the net value of taxable supplies made through them

by other suppliers where consideration with respect to such supplies is to be collected by such operators.

NOTIFICATION NO 2/2024-CT(R)

Central Government has notified the following rate reductions in respect of goods:

HSN	Description	Old GST rate	New GST rate
4819 10 or 4819 20	Cartons, boxes and cases of – (a) corrugated paper or paper board; or (b) non-corrugated paper or paper board	18%	12%
7310, 7323, 7612 or 7615	Milk cans made of Iron, Steel, or Aluminium	18%	12%
7321 or 8516	Solar cookers	18%	12%
8436	Parts of other agricultural, horticultural, forestry, poultry-keeping or bee-keeping machinery, including germination plant fitted with mechanical or thermal equipment, poultry incubators and brooders <i>(issues for the past period have been regularized on "as is where is" basis)</i>	18%	12%

Further, Central Government has notified that supply of agricultural farm produce in package(s) of commodities containing quantity of more than 25 kgs or 25 ltrs shall not be considered as a supply of *pre-packaged and labelled goods*, thus expanding coverage of lower GST rates to several goods sold in quantities more than those stated above. Further, issues for the past period have been regularized on "as is where is" basis.

NOTIFICATION NO 3/2024-CT(R)

Central Government has notified that supply of agricultural farm produce in package(s) of commodities containing quantity of more than 25 kgs or 25 ltrs shall not be considered as a

supply of *pre-packaged and labelled* goods, thus expanding the exemption coverage to several goods sold in quantities more than those stated above. Further, issues for the past period have been regularized on "as is where is" basis.

NOTIFICATION NO 4/2024-CT(R)

Central Government has:

- Notified that accommodation services provided to students in student residences, and by hostels, camps, paying guest accommodations, etc. shall be taxable;
- Exempted accommodation services where monthly consideration is up to INR 20,000/- per person per month provided they are supplied for a minimum continuous period of 90 days; and
- Exempted certain services pertaining to railways.

NOTIFICATION NO 27/2024-CUS

Central Government has exempted goods imported by a Special Economic Zone unit or developer for authorised operations from GST Compensation Cess, from 15.07.2024.

NOTIFICATION NO 28/2024-CUS

Central Government has:

- Reduced IGST rate to 5% on import of aircraft parts or components for servicing, repair, maintenance or overhauling, subject to conditions; and
- Exempted IGST on import of research equipment / buoys imported under the *Research Moored Array for African-Asian-Australian Monsoon Analysis and Prediction (RAMA)* program, subject to furnishing of certificate from Ministry of Earth Sciences and an undertaking to re-export within two years.

NOTIFICATION NO 47/2024-CUS (NT) AND CIRCULAR NO 08/2024-CUS

Central Government has deferred introduction of the new procedure for filing cargo declaration under the Sea Cargo Manifest and Transshipment Regulations, 2018 till 31.08.2024. However,

stakeholders have been advised to start filing in the new format on a parallel basis, failing which cargo clearance times for the concerned consignments may be negatively impacted.

CIRCULAR NO 09/2024-CUS

Central Government has permitted transshipment of Bangladesh Export Cargo to third countries through *Air Cargo Complex, Kempegowda International Airport, Bengaluru*, from 15.07.2024 (goods to be transported by road from *LCS Petrapole*).

INSTRUCTION NO 18/2024-CUS

Central Government has provided the following clarifications regarding applicability of Special Chemicals, Organisms, Materials, Equipment and Technologies (SCOMET) policy on *irregular aluminium powder*:

- If aluminium powder is spherical or spheroidal in shape, it shall be covered under SCOMET norms; and
- If aluminium powder (of any size or shape) is in the nature of reactive material (in particular, powder manufactured under vacuum conditions or by use of noble gases), it shall be covered under SCOMET norms.

TRADE NOTICE NOS 07/2024-2025-FTP AND 08/2024-2025-FTP

Directorate General of Foreign Trade has extended the Interest Equalization Scheme (IES) for Pre and Post Shipment Rupee Export Credit till 31.08.2024 for entities satisfying all of the following requirements:

- Entity should be a manufacturer exporter;
- Entity must be categorized as a Micro, Small and Medium Enterprise (MSME); and
- Entity must be eligible for IES benefit of 3%.

It has also been clarified that interest equalisation shall be capped at INR 1.66 crores per Importer-Exporter Code (IEC) for the period 01.07.2024 to 31.08.2024, and applicants shall not be required to generate a revised Unique Identification Number (UIN), if the same has already been generated for FY 2024-25.

NOTIFICATION NO 19/2024-25-FTP

Directorate General of Foreign Trade has notified that export of *rice (basmati and non-basmati)* to European Union member states and other European countries namely, United Kingdom, Iceland, Liechtenstein, Norway and Switzerland only, shall require Certificate of Inspection from Export Inspection Council / Export Inspection Agency. Export to other European countries shall not require such certificate till 05.01.2025.

NOTIFICATION NO 20/2024-25-FTP

Directorate General of Foreign Trade has permitted import of *potatoes* (HSN 0701 90 00) from Bhutan without any license till 30.06.2027.

For any clarifications, please write to:

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