

# CUSTOMS AND GST ALERT

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## NEWS UPDATES

- As a one-time measure, GSTN has re-opened the opening balance field in the “Electronic Credit Reversal and Re-claimed statement” to allow reporting of *opening balance of ITC reversed in Table 4B(2) of Form GSTR-3B but not reclaimed till return period of July 2023, till 31.10.2024. Amendments thereto can be made till 30.11.2024.*
- GSTN has intimated that issuance of notices and orders through the online portal can be done by departmental officers only through digital signature authentication and the authenticity of any document can be ascertained by taxpayers by going to *Services > User Services > Verify RFN.*
- GSTN has advised taxpayers to download and save their GST returns data from the online portal, in view of the upcoming data archival policy which would result in GST returns data being taken down after 7 years.
- GSTN has announced the launch of the *GSTN e-services app*, which would enable taxpayers to verify e-invoices, search GSTINs, view return filing history, etc. The app would soon be available on the Google Play Store and the Apple App Store.

## CASE LAW UPDATES

### Goods and Services Tax

#### CHIEF COMMISSIONER OF CENTRAL GOODS AND SERVICE TAX & ORS. v. M/S SAFARI RETREATS PRIVATE LTD. & ORS.

2024 (10) TMI 286

**Supreme Court** upholds the constitutional validity of clauses (c) and (d) of Section 17(5) of the Central Goods and Services Tax Act, 2017 (CGST Act) rejecting challenge based on Article 14. The Court observed that whether a building, other than a hotel or a cinema theatre, could be classified as a “plant” had to be determined based on the assessee’s business and the purpose of constructing the building; also holds that such functionality test would have to be applied, and eligibility of ITC would have to be determined accordingly. Separately, the Court also upholds the constitutional validity of Section 16(4) of the CGST Act by observing that the time limit for availment of ITC was not arbitrary or discriminatory.

Our detailed analysis of this judgement can be accessed [here](#).

#### BEST CROP SCIENCE PVT. LTD. v. PRINCIPAL COMMISSIONER, CGST COMMISSIONERATE, MEERUT AND ORS

2024 (9) TMI 1543

**Delhi High Court** quashes orders under rule 86A of the Central Goods and Services Tax Rules, 2017 (CGST Rules) which blocked ITC in excess of the balance available in electronic credit ledger (ECrL), leading to an artificial negative balance; holds that rule 86A was not a provision for ‘recovery’ of tax and as such did not contemplate an order requiring an assessee to replenish their ECrL with valid ITC, to the extent of the ITC used in the past which the GST department has disputed, as such order would be in the nature of an order for recovery of tax.

## M/S BARKATAKI PRINT AND MEDIA SERVICES AND ORS v. UNION OF INDIA AND ORS

2024 (9) TMI 1398

**Gauhati High Court** declares Notification 56/2023-CT extending timelines for issuance of demand orders for FY 2018-19 and FY 2019-20 as *ultra vires* the CGST Act since the same was issued without (i) any recommendation of the GST Council; and (ii) consideration of existence of *force majeure*.

## COMMERCIAL TAX OFFICER-GD-III v. M/S SUZLON ENERGY LIMITED

2024 (9) TMI 301

**Madras High Court** holds that even in case an assessee erroneously pays higher tax on inward supplies and their outward supplies are taxable at a lower rate, they would be eligible for refund of unutilised ITC, by observing that the intention of the legislature was to set right excess collection of input tax where the output tax was lesser than such input tax.

### Service Tax

## M/S AIRBNB PAYMENTS INDIA PRIVATE LIMITED v. COMMISSIONER OF CENTRAL EXCISE & SERVICE TAX, GURUGRAM

2024 (9) TMI 1172

**CESTAT, Chandigarh bench** holds that payment processing services involving collection of reservation amounts and payment to hosts for utilisation of their accommodation, provided to foreign related company who was engaged in providing accommodation services to tourists / visitors, did not qualify as "intermediary" services and the same were rendered on a principal-to-principal basis; reasons that the assessee had no relationship with customers booking accommodation, no principal-agent relationship was created, no tri-partite agreement existed, no commission was received, and the assessee was not mediating or facilitating provision of services between the foreign related company and the tourists / visitors.

## **REGULATORY UPDATES**

### **Goods and Services Tax**

#### **NOTIFICATION NO 05/2024-CT(R), 07/2024-CT(R), 08/2024-CT(R) AND 08/2024-IT(R)**

Central Government has notified changes in GST rates and exemptions in respect of various goods and services, all of which shall come into effect from 10.10.2024.

#### **NOTIFICATION NO 06/2024-CT(R)**

Central Government has notified that supply of *metal scrap* by an unregistered person to a registered person shall be taxable on reverse charge basis, with effect from 10.10.2024.

#### **NOTIFICATION NO 09/2024-CT(R)**

Central Government has notified that services by way of *renting of any property other than residential dwelling* provided by an unregistered person to a registered person shall be taxable on reverse charge basis, with effect from 10.10.2024.

#### **NOTIFICATION NO 17/2024-CT**

Central Government has appointed 27.09.2024 as the date on which certain sections of the Finance (No 2) Act, 2024 shall come into force (*notably, amendment extending the time limit for availing ITC for FY 2017-18 to FY 2020-21*) and 01.11.2024 as the date on which certain other sections thereof shall come into force (*notably, amendments excluding un-denatured extra neutral alcohol or rectified spirit used for manufacture of alcoholic liquor for human consumption from the ambit of GST, introducing uniform adjudication timelines from FY 2023-24 onwards, introducing waiver of interest and penalty for demands pertaining to FY 2017-18 to FY 2019-20, and excluding activities of apportionment of co-insurance premium and deduction of ceding commission from the ambit of GST*).

#### **NOTIFICATION NO 18/2024-CT**

Central Government has empowered the Principal bench of the Goods and Services Tax Appellate Tribunal (sitting in New Delhi) to decide applications for examination of profiteering from 01.10.2024 onwards.

#### **NOTIFICATION NO 19/2024-CT**

Central Government has notified that fresh applications for examination of profiteering shall not be accepted beyond 01.04.2025.

#### **NOTIFICATION NO 20/2024-CT**

Central Government has amended the CGST Rules *inter alia* notifying the time limit of 30 days for issuing self-invoice for purchases from unregistered suppliers attracting GST on reverse charge basis, due date of filing Form GSTR-7 as 10<sup>th</sup> day of succeeding month, removal of restriction on undertaking export on payment of IGST for Advance Authorisation license holders, Export Oriented Units, and suppliers availing benefits of merchant export / deemed export provisions, and modalities governing the scheme for waiver of interest and penalty for demands pertaining to FY 2017-18 to FY 2019-20.

#### **NOTIFICATION NO 21/2024-CT**

Central Government has notified 31.03.2025 as the date up to which payment of tax can be made by assessee desirous of availing benefit of waiver of interest and penalty for demands pertaining to FY 2017-18 to FY 2019-20. Further, in cases where a fresh adjudication order is required to be issued for the normal period of limitation where an appellate authority / court has concluded that charges of fraud or any wilful-misstatement or suppression of facts to evade tax have not been established, payment of tax can be made within six months from the date of issuance of the fresh order, to avail the aforementioned benefit.

#### **NOTIFICATION NO 22/2024-CT**

Central Government, in order to give effect to the amendment extending time limit for availing ITC for FY 2017-18 to FY 2020-21, has directed assessee who have not filed an appeal against

an order disallowing ITC on the ground of delayed availment, to file a rectification application on or before 08.04.2025, which shall be decided by the adjudicating authority within three months of filing, and benefit of the extended time limit shall be granted, wherever applicable.

#### **NOTIFICATION NO 23/2024-CT**

Central Government has capped the late fee for delayed filing of Form GSTR-7 (TDS return) for June 2021 onwards to INR 25 per day, subject to an overall cap of INR 1,000/- (identical notification is expected to be issued by State Governments, thereby capping the late fee at INR 50 per day, subject to an overall cap of INR 2,000/- at an aggregate level). Further, in cases where the amount of tax deducted at source is Nil, the entire late fee shall stand waived.

#### **NOTIFICATION NO 24/2024-CT**

Central Government has notified that exemption from obtaining GST registration on the ground of exclusive supply of goods or services taxable on reverse charge basis, shall not apply to persons engaged in supply of *metal scrap*.

#### **NOTIFICATION NO 25/2024-CT**

Central Government has notified that registered persons receiving supplies of *metal scrap* from other registered persons shall be required to deduct tax at source (TDS) at the rate of 1% from the payment made to the supplier, where the total value of supply under a contract exceeds INR 2,50,000/- (identical notification is expected to be issued by State Governments, thereby mandating TDS deduction of 2% at an aggregate level).

#### **CIRCULAR NO 234/28/2024**

Central Government has clarified that: (i) affiliation services provided by universities to their constituent colleges are taxable; (ii) affiliation services provided to schools by Central or State educational boards or councils or other similar bodies are taxable; (iii) approved flying training courses conducted by Flying Training Organizations (FTO) approved by the Directorate General of Civil Aviation (DGCA), wherein the DGCA mandates the requirement of a completion certificate, are exempt from GST; (iv) transport of passengers by helicopter on other than seat

share basis i.e., for charter operations, attracts GST @ 18%; (v) ancillary or incidental services provided by Goods Transport Agencies (GTAs) in the course of transportation of goods by road, such as loading / unloading, packing / unpacking, transshipment, temporary warehousing etc. shall be treated as composite supply of transport of goods (thereby attracting GST rate applicable to GTA services). However, if such services are not provided in the course of transportation of goods and are invoiced separately, then they shall not be treated as composite supply of transport of goods; (vi) Preferential Location Charges paid along with the consideration for construction services of residential / commercial / industrial complex forms part of composite supply, and are eligible for same tax treatment as the main supply of construction services; and (vii) payment of GST on the following services has been regularized on 'as is where is' basis:

Service description	Provider	Recipient	Regularization period
Affiliation services	Central or State educational boards or councils, or other similar bodies	Schools	01.07.2017 to 17.06.2021
Transportation of passengers, with or without accompanying baggage, by air, in a helicopter on seat share basis	Helicopter transporter	Passengers	01.07.2017 to 09.10.2024
Import of services made without consideration	Related person or any establishment outside India	Establishment of a foreign airline company	01.07.2017 to 09.10.2024
Providing metering equipment on rent, testing for meters / transformers / capacitors etc.,	Electricity transmission and	Customers	01.07.2017 to 09.10.2024

Service description	Provider	Recipient	Regularization period
releasing electricity connection, shifting of meters / service lines, issuing duplicate bills etc., which are incidental or ancillary to the supply of transmission and distribution of electricity	distribution utilities		
Grant of theatrical rights	Film distributors or sub-distributors	Exhibition centers	01.07.2017 to 30.09.2021

**CIRCULAR NO 235/28/2024**

Central Government has clarified that: (i) GST rate of 12% on extruded or expanded products, savoury or salted (other than un-fried or un-cooked snack pellets, by whatever name called, manufactured through process of extrusion) falling under HSN 1905 90 30 shall apply prospectively from 10.10.2024, and GST rate of 18% shall apply for past periods; (ii) Roof Mounted Package Unit (RMPU) Air Conditioning Machines for Railways are classified under Heading 8415; (iii) Seats for two wheelers are classifiable under Heading 8714 and attract GST rate of 28%, whereas seats for four wheelers are classifiable under Heading 9401 and attract GST rate of 28% with effect from 10.10.2024. GST rate of 18% shall apply to seats for four wheelers, for past periods.

**CIRCULAR NO 235/28/2024**

Central Government has explained the scope of the expressions “as is” or “as is where is basis” used in various Circulars for regularising past practices, where genuine doubts had arisen among the industry due to competing entries with different GST rates, or diverse interpretations. It has been clarified that in case of two competing rates where GST has been paid at lower of the two rates, or at nil rate where one of the competing rates was nil under a notification, by some suppliers, while other suppliers have paid at higher rate, payment at lower rate shall be treated



as tax fully paid for the period that is regularized and no refund shall be made if tax has been paid at the higher rate. However, regularisation benefit would not be granted in a case where the interpretational issue was between two non-zero rates, and a particular supplier has not paid any GST on the transaction.

## Customs

### **CAVR REVIEW ORDER NO 01/2024**

Central Government has extended the requirement of undertaking additional import-related formalities (*furnishing test certificate, purchase order, manufacturing process details, etc*) in respect of *Linear Alkyl Benzene* till 25.09.2025.

### **CIRCULAR NO 16/2024**

Central Government has implemented the automation procedures notified in the Customs (Import of Goods at Concessional Rate of Duty or for Specified End Use) Rules, 2022 in respect of Export Oriented Units (EOUs) from 25.09.2024.

### **CIRCULAR NO 18/2024**

Central Government has clarified that only those laboratory chemicals which are imported in packings not exceeding 500 grams or 500 millilitres and intended for own use shall be classified under heading 9802. Laboratory chemicals imported for purposes like trading, further sale, etc or in packings exceeding the above limits shall be classified under other appropriate headings.

### **CIRCULAR NO 19/2024**

Central Government has introduced a Warehouse Module on ICEGATE to enable online filing of application for obtaining warehouse license, online submission and processing of requests for transfer of warehoused goods to another person / warehouse, and uploading monthly returns for customs bonded warehouse.

## Foreign Trade Policy

### **NOTIFICATION NO 31/2024-25**

Directorate General of Foreign Trade has notified that export of *Non-Basmati White Rice (Semi-milled or wholly milled rice, whether or not polished or glazed)* shall be freely allowed subject to a Minimum Export Price of USD 490 / tonne.

### **NOTIFICATION NO 32/2024-25**

Directorate General of Foreign Trade has extended the Remission of Duties and Taxes on Export Products (RoDTEP) scheme (i) for export of products manufactured by Domestic Tariff Area (DTA) units till 30.09.2025; and (ii) for export of products manufactured by Advance Authorization holders (except deemed exports), Export Oriented Units (EOUs) and Special Economic Zone (SEZ) units till 31.12.2024. Revised RoDTEP rates have also been notified for implementation with effect from 10.10.2024.

### **NOTIFICATION NO 33/2024-25**

Directorate General of Foreign Trade has extended the condition of Minimum Import Price (MIP) (Cost, insurance and freight price) of USD 3.5 per kilogram for *free* import of *Synthetic Knitted Fabrics* till 31.12.2024. Further, MIP (CIF) of USD 3.5 per kilogram has additionally been imposed for *free* import of certain other kinds of *Knitted Fabrics* till 31.12.2024.

### **NOTIFICATION NO 34/2024-25**

Directorate General of Foreign Trade has revised the policy conditions for export of specified Halal Meat and Meat Products, which shall be effective from 16.10.2024.

### **POLICY CIRCULAR NO 07/2024-25**

Directorate General of Foreign Trade has permitted importers to apply for a “restricted import authorization” for import of *laptops, tablets, all-in-one personal computers, and ultra small form factor computers and servers* which shall be valid till 31.12.2024, post which a fresh authorization shall be required.

#### **TRADE NOTICE NO 17/2024-25**

Directorate General of Foreign Trade has, in respect of the Interest Equalization Scheme (IES), notified that a cap of INR 10 crores per Importer Exporter Code (IEC) shall be imposed on the annual net subvention amount, a cap of INR 5 crores per IEC shall be imposed for Micro, Small and Medium Enterprise (MSME) manufacturers till 30.09.2024, and the cap for Manufacturer Exporters and Merchant Exporters shall be INR 2.5 crores till 30.06.2024.

#### **TRADE NOTICE NO 18/2024-25**

Directorate General of Foreign Trade has further extended the IES for Pre and Post Shipment Rupee Export Credit for MSME manufacturing exporters till 31.12.2024, with an additional condition that aggregate fiscal benefits for each MSME shall be restricted to INR 50 lakhs for FY 2024-25 (up to December 2024).

#### **TRADE NOTICE NO 19/2024-25**

Directorate General of Foreign Trade has clarified that obtaining a Registration-Cum-Membership Certificate (RCMC) is not required for availing benefits under remission-based schemes such as Duty Drawback scheme, Rebate of State and Central Taxes and Levies (RoSCTL) scheme, and RoDTEP scheme.

#### **TRADE NOTICE NO 20/2024-25**

Directorate General of Foreign Trade has clarified that import / re-import of “Exhibits and Samples” for or pursuant to demo, display, exhibition and participation in fairs in India or abroad shall not require an import authorization or registration under Import Monitoring System.

#### **PUBLIC NOTICE NO 24/2024-25**

Directorate General of Foreign Trade has, in respect of the Export Promotion Capital Goods (EPCG) scheme, notified that the export obligation (EO) fulfilment report shall be required to be submitted only after expiry of first block period of four years and thereafter continuously till the expiry of EO period, and the same shall be certified by a Chartered Accountant / Cost Accountant / Company Secretary.

### **PUBLIC NOTICE NO 25/2024-25**

Directorate General of Foreign Trade has notified a quantity of 5841 MT under Tariff Rate Quota for export of sugar from India to European Union for the period October 2024 to September 2025.

### **PUBLIC NOTICE NO 26/2024-25**

Directorate General of Foreign Trade has expanded the coverage of items for export / re-export under Special Chemicals, Organisms, Materials, Equipment and Technologies (SCOMET) Category 8 (*dealing with Special Materials and Related Equipment, Material Processing, Electronics, Computers, Telecommunications, Information Security, Sensors and Lasers, Navigation and Avionics, Marine, Aerospace and Propulsion*) to facilitate intra-company transfer to notified countries.

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