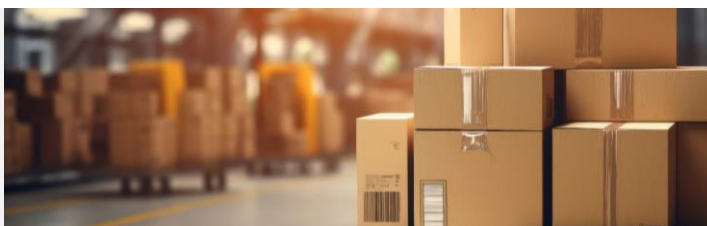


INDIRECT TAX DIGEST

24 November 2023

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GOODS & SERVICES TAX



LEGISLATIVE UPDATES

GSTN ADVISORY

GSTN Advisory ¹	GSTN has developed an online functionality to generate automated intimation in Form DRC-01C for differences in Input Tax Credit (ITC) available in Form GSTR-2B and ITC claimed in Form GSTR-3B (and consequently enable the taxpayer to explain the reasons for such differences). Failure to respond to the intimation would disable the taxpayers from filing Form GSTR-1/Invoice Furnishing Facility for the subsequent period.
GSTN Advisory ²	GSTN has issued an email communication to the registered email ID of the taxpayers intimating the amount of ITC which is required to be reversed under Rule 37A of the Central Goods and Service Tax Rules, 2017 (CGST Rules) for the FY 2022-23.
National Information Centre Advisory ³	It has been advised to use the API 'Get TRANSIN Details' along with the 'Get GSTIN details' API to verify the Transporter ID of the enrolled and common enrolled transporters.
Advisory ⁴	To enhance the security of the e-Way Bill/e-Invoice System, NIC has introduced 2-factor authentication for logging in to the e-Way Bill/e-Invoice system. Accordingly, in addition to the username and password, OTP will also be authenticated for login.
GSTN Advisory ⁵	A comprehensive guide and Instructions for Direct API Integration with any of the 6 Invoice Registration Portal for E-Invoice Reporting has been notified. ⁶

NOTIFICATION

No:54/2023 - Central Tax ⁷	The applicability of biometric Aadhaar authentication during the process of GST registration under Form GST REG-01 has been extended to the state of Andhra Pradesh.
No:02/2023-C.T./GST ⁸	Effective 1 December 2023, e-way bill is required to be generated in the following two cases if the consignment value exceeds INR0.05 Mn: <ul style="list-style-type: none"> ▪ Movement of goods originating and terminating within the state of West Bengal ▪ Intra-state movement of goods where goods are sent to a job worker or from one job worker to another or are returned to the principal after job work.

¹Dated 14 November 2023

²Dated 14 November 2023

³Dated 10 November 2023

⁴Dated 6 November 2023

⁵Dated 17 November 2023

⁶The comprehensive guide can be accessed [here](#)

⁷Dated 17 November 2023

⁸Dated 10 November 2023

JUDICIAL UPDATES

Parle Agro Pvt. Ltd. Vs. Union of India & Ors. [TS-577-HC(MAD)-2023-GST]

Issue

- In *Amrit Food*⁹ it was held that ‘milkshake mix’ was classifiable under Chapter Heading 0404.90. Whether the aforesaid principle would apply in determining the classification of ‘flavoured milk’ under the GST regime?
- Whether ‘flavoured milk’ merits classification under CTH 0402 or 2202 under the GST regime?
- Whether the GST Council is empowered to determine the classification of ‘flavoured milk’?

Ratio

- **Applicability of the principles laid down by the Hon’ble Supreme Court in *Amrit Food (supra)*:**
 - The aforesaid ruling was rendered in the context of the tariff entry as it stood before the amendment of tariff in 2005 (with effect from 28 February 2005). After the amendment, all the headings in the chapters underwent a sea change.
 - Thus, the aforesaid ruling cannot be imported for determining the classification of ‘flavoured milk’ after the amendment to the tariff i.e., with effect from 28 February 2005.
- **Classification of ‘flavoured milk’:**
 - As per the Rate Notification¹⁰, Rules of Interpretation of the First Schedule to the Customs Tariff Act, 1975 (CT Act), Section Notes, Chapter Notes and the General Explanatory Notes will aid in interpreting the Rate Notification.
 - Chapter 4 of the First Schedule to the CT Act (Chapter 4) deals with dairy products whereas tariff item 2202 99 30 covers ‘Beverages containing milk’ (which is under sub-heading 2202 99 covering ‘Other Non-Alcoholic Beverages’). The term ‘Non-Alcoholic Beverages’ is defined to mean beverages of an alcoholic strength by volume not exceeding 0.5% volume (Note 3 to Chapter 22). Thus, ‘Beverage Containing Milk’ can be identified only as a type of ‘Other Non-Alcoholic Beverages’, and hence, must contain alcohol of specified strength.
 - As per the Food Safety & Standards (Food Products Standards & Food Additives) Regulations, 2011, ‘milk’ *inter alia* means the normal mammary secretion derived from the complete milking of healthy milch animal. Further, ‘flavoured milk’ *inter alia* means the product prepared from milk or other products derived from milk or both.
 - Since all dairy products are to be grouped and classified together unless otherwise specified, the expression ‘milk’ under tariff item 2202 99 30 cannot include milk secreted from the mammary glands of milch animals, dairy animals such as cow, goats, buffalo, etc. ‘Beverage Containing Milk’ would only include plant/seed based ‘milk’.
 - In view of the above, ‘flavoured milk’ made out of cattle or dairy milk (milch cattle) is not classifiable under Chapter 22 and instead, would be classifiable in heading 0402.
- **Powers of the GST Council to determine classification:**
 - GST Council is not empowered to determine the classification and hence, GST Council cannot impose a wrong classification of ‘flavoured milk’ as ‘Beverage containing milk’.
 - The power of the GST Council is merely recommendatory, and it is for the Government to fix appropriate rates on the goods that are classifiable under the CT Act. Further, the classification must be strictly determined as per the classification under the CT Act.
 - However, it is left open for the Government to issue a fresh notification for amending the Rate Notification to tweak the rate of tax, recognising the settled principle that in taxing matters, latitude can be given to the tax authorities while fixing the rate of tax.
 - The Central Government can either tweak the rate on the recommendations of the GST Council or by itself.

Nahasshukoor & Anr. Vs. Assistant Commissioner of SGST & Ors. [2023-VIL-793-KER]

Issue

- Whether the taxpayer is eligible to claim ITC without discharging its burden of proof?
- Whether Section 16(2)(c) of the Central Goods and Services Tax Act, 2017 (CGST Act) and Rule 36(4) of the CGST Rules are violative of Article 14 of the Constitution of India (Constitution)?

Ratio

- **Eligibility to claim ITC without discharging burden of proof:**
 - One of the pre-conditions to claim ITC is that the recipient must produce the tax invoice issued by the supplier (Section 16 of the CGST Act). Further, Section 155 of the CGST Act stipulates that the burden of proof is on the recipient to substantiate its claim of ITC.
 - In the present case, since the taxpayer failed to produce the tax invoices to substantiate its claim of ITC, there does not exist any illegality or impropriety in the Impugned orders.

⁹Commissioner of C. Ex. Vs. Amrit Food [2015 (324) ELT 418 (SC)]

¹⁰Notification no:1/2017 - Central Tax (Rate) dated 28 June 2017 (Rate Notification)

▪ **Constitutional Validity of Section 16(2)(c) of the CGST Act and Rule 36(4) of the CGST Rules:**

- In the present case, the vires of Section 16(2)(c) of the CGST Act and Rule 36(4) of the CGST Rules were not under challenge on the grounds of legislative incompetence. Instead, the constitutional validity of the aforesaid provisions was challenged, being violative of Article 14 of the Constitution.
- It is well settled that judicial restraint must be shown to interfere with fiscal legislation unless the same is proved to be manifestly unjust or glaringly unconstitutional. However, there is nothing in the aforesaid provisions to indicate that they discriminate between the recipients and the suppliers.
- Since the aforesaid provisions prescribe certain conditions for the purchasing dealers for claiming ITC, prescriptions of the said conditions cannot be considered discriminatory to contravene Article 14 of the Constitution.
- In view of the above, the aforesaid provisions cannot be treated as being unconstitutional

CUSTOMS



LEGISLATIVE UPDATES

NOTIFICATION

No: 11/2023- Customs (ADD) ¹¹	Imposition of Anti-Dumping Duty on specified import of 'toughened glass for home appliances having a thickness between 1.8 MM to 8 MM and area of 0.4 SqM or less' (subject to certain exclusions) originating in or exported from the People's Republic of China.
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CIRCULAR

No: 28/2023 ¹²	An advance assessment of Courier Shipping Bills will be provided on the Express Cargo Clearance System to be provided.
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CAVR ORDER

No: 02/2023- Customs ¹³	<p>CBIC has notified that during the period 29 November 2023 to 28 November 2024 import of 'Stainless Steel of J3 grade' falling under specific HSN Codes would include the following specifications:</p> <ul style="list-style-type: none"> ▪ Unique Quantity Code of Kilogram shall be necessarily used by the importer to declare the value in Bill of Entry (BoE). ▪ The grade of stainless steel being imported must be mentioned in the BoE. ▪ In addition to the prescribed documents, the importer shall also furnish: <ul style="list-style-type: none"> - Manufacturer's invoice - Mill Test Certificate of the product - Positive Material Identification Test report - Declaration from the manufacturer that the goods are J3 stock lot/ex-stock, where applicable - Purchase order or contract
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¹¹Dated 17 November 2023

¹²Dated 08 November 2023

¹³Dated 15 November 2023

FOREIGN TRADE POLICY



LEGISLATIVE UPDATES

NOTIFICATION

No: 43/2023 ¹⁴	One-time exemption from 'Prohibition' is granted to Patanjali Ayurved Ltd. for the export of 20 MT of non-basmati white rice (semi-milled or wholly milled rice, whether or not polished or glazed: other) falling under HS Code 1006 30 90 as a donation to Nepal for earthquake victims.
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TRADE NOTICE

No: 33/2023-24 ¹⁵	The pilot launch of the upgraded Electronic Bank Realisation Certificate (e BRC) system is proposed to be introduced with effect from 15 November 2023.
No: 34/2023-24 ¹⁶	It is notified that Calcined Petroleum Coke Manufacturing Industries, who wish for allocation of imported Raw Petroleum Coke are directed to provide requisite details in the format appended to the trade notice.

JUDICIAL UPDATES

Indian Flexible Intermediate Bulk Container Association Vs. Directorate General of Foreign Trade [TS-586-HC-2023(DEL)-FTP]

Issue

Vide Public Notice no: 58/2015-20 dated 29 January 2020 (Impugned Notification), DGFT sought to revoke the benefits provided under the Merchandise Exports from India Scheme (MEIS) with retrospective effect from 7 March 2019. Whether the DGFT, *vide* the Impugned Notification can withdraw MEIS benefits with retrospective effect?

Ratio

- In *Kanak Exports*¹⁷, the Hon'ble Supreme Court inter alia held that Section 5 of the Foreign Trade (Development and Regulation) Act, 1992 (FTDR Act) does not empower the Central Government to promulgate rules with a retrospective effect. Further, the authority to 'amend' policy under Section 5 does not imply a *carte blanche* authority to make retrospective changes.
- Even after the amendment to Section 5 of the FTDR Act (in 2010), the aforesaid ruling holds relevance as the amendment has not altered the statute's stance on retrospective amendments.
- The introduction of MEIS was not a mere act of state generosity or a mere incentive and the same was provided to counterbalance infrastructural inefficiencies and the affiliated expenses associated with Indian exports.
- The decision to rescind MEIS originated from deliberations at WTO, and hence, the Rebate of State and Central Taxes and Levies (RoSCTL) Scheme was notified on 7 March 2019. However, the RoSCTL rate for Flexible Intermediate Bulk Container (FIBC) bags was 'nil' which rendered the taxpayer's member units incapable of claiming benefits under the MEIS or RoSCTL scheme.
- While MEIS serves as an incentive, RoSCTL merely rebates State and Centre embedded taxes and levies. They operate under separate governance and hence, equating the two schemes is erroneous. Considering the above, the claims under each scheme are distinct and cannot be juxtaposed or adjusted against each other.
- Therefore, the selective withdrawal of MEIS (qua FIBC bags) with retrospective effect is arbitrary and violates Article 14 of the Constitution of India considering that the FIBC sector was already excluded from the benefit under the RoSCTL Scheme.
- In view of the above, the Impugned Notification issued by DGFT to repeal MEIS with retrospective effect is unsustainable in law and the same shall apply prospectively.

¹⁴Dated 11 November 2023

¹⁵Dated 10 November 2023

¹⁶Dated 16 November 2023

¹⁷Directorate General of Foreign Trade Vs. Kanak Exports [2015 SCC Online SC 1123]

CENTRAL EXCISE/ SERVICE TAX/ VALUE ADDED TAX



LEGISLATIVE UPDATES

NOTIFICATION

No: 38 & 39 /2023- Central Excise ¹⁸	Effective 16 November 2023, the rate of Special Additional Excise Duty on petroleum crude and high-speed diesel oil has been reduced to INR 6,300 per tonne and INR 1 per litre, respectively.
No: G.S.R.85/P.A.8/2005/S.29-A/CA.74/1956/S5/PA.8/2002/S.25/P.A.5/2017/S.174Z2 023 ¹⁹	The Punjab One Time Settlement Scheme for Recovery of Outstanding Dues, 2023 has been notified for settlement of specified dues under the Punjab General Sales Tax Act, 1948, Central Sales Tax Act, 1956, Punjab Infrastructure (Development and Regulation) Act, 2002 and Punjab Value Added Tax Act, 2005.

JUDICIAL UPDATES

Modi Naturals Ltd. Vs. The Commissioner of Commercial Tax UP [TS-574-SC-2023-VAT]

Issue

- Whether the term 'goods' referred to in Section 13(1)(f) of the Uttar Pradesh Value Added Tax Act, 2008 (UPVAT Act) be construed to cover only 'taxable goods' or all goods (including exempt goods)?
- The Hon'ble Supreme Court in *M. K. Agro Tech Pvt. Ltd.*²⁰ *inter alia* held that only partial ITC is permitted where the assessee undertakes supply of both taxable and exempted goods. Whether the aforesaid principle would apply to the facts of the present case?

Ratio

- **Interpretation of the term 'goods' under Section 13(1)(f) of the UPVAT Act:**
 - A statute must be construed in accordance with the intention of the Legislature and the Courts should act upon the legislative intent while applying and interpreting the law.
 - The Statement of Objects and Reasons at the time of introduction of Section 13(1)(f) of the UPVAT Act indicates that the legislative intent was never to limit or circumscribe the scope of 'goods' to only 'taxable goods'.
 - Further, Section 13(3)(b) of the UPVAT Act introduces the concept of proportionality to claim ITC by means of a deeming fiction in cases where inputs are used for manufacturing taxable (VAT-goods), exempt and non-VAT goods (except in case of by-product or waste product).
 - Additionally, as per explanation (iii) to Section 13 of the UPVAT Act, it is provided that during the manufacture of taxable goods, if any exempt goods are produced as a by-product or waste product, it shall be deemed that the purchased goods (i.e., inputs) are used for the manufacture of taxable products.
 - The present case is squarely covered by Explanation (iii) and hence, the tax authorities are forbidden from raising any dispute as regards the allowability of ITC in cases where exempted goods are being produced as a by-product or waste product.
- **Applicability of the principle laid down in *M. K. Agro Tech Pvt. Ltd. (supra)*:**
 - The Hon'ble Supreme Court, while passing the aforesaid ruling, was examining the provisions of Section 11(a)(i) of the Karnataka Value Added Tax Act, 2003 (KVAT Act) which stipulated a provision that where a sale of exempt goods takes place, the input tax paid for manufacturing such exempt goods cannot be credited while calculating net tax.
 - However, the UPVAT Act does not provide for any such scheme/provision that aims at achieving the same. In contrast, Explanation (iii) to Section 13 of the UPVAT Act creates a deeming fiction to treat the inputs as being used

¹⁸Dated 15 November 2023

¹⁹ November 2023

²⁰State of Karnataka Vs. M. K. Agro Tech Pvt. Ltd. [2017 (16) SCC 210]

for manufacturing taxable goods, where the exempt goods are produced as a by-product or waste product.

- Thus, the scheme under the UPVAT Act is not the same as the scheme under the KVAT Act. Hence, the aforesaid ruling does not apply to the facts of the present case. Consequently, the aforesaid ruling could not be relied upon to deny full ITC to the taxpayer.

INDIRECT TAX NEWS FLASH



The Times of India (21, 22 November 2023)	<ul style="list-style-type: none"> ▪ Sale, not lease to avoid 18% GST ▪ GST council's role only recommendatory: HC
Business Standard (15 November 2023)	<ul style="list-style-type: none"> ▪ Centre may raise the threshold for GST evasion cases from Rs 2 cr to Rs 3 cr
Financial Express (16, 20 November 2023)	<ul style="list-style-type: none"> ▪ GST on online skill gaming: A case of policy pandemonium ▪ GST net widens for real estate firms
The Economic Times (10, 17 November 2023)	<ul style="list-style-type: none"> ▪ A Barrage of GST Notices - Time to batten down the hatches ▪ It's raining GST notices, are you prepared?

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