

INDIRECT TAX DIGEST

24 May 2024

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GOODS & SERVICES TAX



LEGISLATIVE UPDATES

NOTIFICATION

GSTN Advisory ¹	The Government <i>vide</i> Notification No. 04/2024 - Central Tax dated 5 January 2024 ² had notified the procedure to be followed by registered persons engaged in the manufacture of specified goods (viz., pan masala and tobacco products). In this connection, the facility for registering the machines by such manufacturers in Form GST SRM-I has been made available on the GST Portal.
No. CT-8-0004-2024-Sec-1-V-(CT) (11). (Madhya Pradesh) ³	Effective 1 June 2024, the application for obtaining GST registration (Form GST REG-01) will be amended to enable an applicant to furnish details pertaining to the Electricity Bill including uploading of electricity bill as the proof of principal place of business.

JUDICIAL UPDATES

[Prasanna Karunakar Shetty vs. State of Maharashtra \[TS-212-HC\(BOM\)-2024-GST\]](#)

[Recovery proceedings cannot be initiated against a former director](#)

Issue

- Whether recovery proceedings under Sections 79 or 89 of the Central Goods and Services Tax Act, 2017 (CGST Act) can be initiated against a former director (Petitioner-Director) of a private limited company for the period during which he was not acting as a director?

Ratio

- As per Section 79 of the CGST Act, the principal liability is not on the Petitioner-Director as he is not a registered person under Section 79(1) of the CGST Act.
- Section 89 of the CGST Act provides that before taking any recovery action against the director(s) of a company, a prior subjective satisfaction is required to be achieved by the tax authorities in regard to whether a person against whom recovery is sought to be made was a director of the company during the concerned period.
- In the present case, it is undisputed that for the period in question, the Petitioner-Director never acted as a director of the company. Further, the Petitioner-Director was neither issued a Show Cause Notice (SCN) nor was he heard before the Impugned Order was passed.
- The basis on which the tax authorities sought to attach the property of the Petitioner-Director is not known as no reasons are provided by the tax authorities.
- In view of the above, the Impugned Attachment Order has been issued in breach of the rights guaranteed under Article 14 read with Article 300A of the Constitution of India (Constitution), and hence, set aside.

¹ Dated 16 May 2024

² The original Notification covered in Indirect Tax Digest dated 19 January 2024 can be accessed by clicking [here](#)

³ Dated 13 May 2024

Rajshi Processors Raebareli Vs. State of U.P. [TS-295-HC(ALL)-2024-GST]

Recovery proceedings can be initiated against a Taxpayer who has wrongly availed input tax credit on procurements made from a non-existent and bogus supplier

Issue

- Whether recovery proceedings be initiated against a Taxpayer (being a recipient) who has wrongly availed input tax credit (ITC) on procurements made from the non-existent and bogus supplier?

Ratio

- Although the registration of the firms existed when the Taxpayer had availed ITC on procurements, the investigation by the tax authorities revealed that the supplier was non-existent, and the GST registration was obtained in the name of such a non-existent firm. This amounts to committing fraud against the tax authorities and the public exchequer. As a result, the Taxpayer could not have received any actual supplies from the supplier.
- Merely because the supplier was registered on the date of transaction, it cannot be said that the tax authorities are bound to allow ITC benefit to the Taxpayer, even in cases where it was observed that the supplier was non-existent, and it could not have made any supplies to the Taxpayer.
- It is settled law that fraud vitiates even the most solemn proceedings and the mere fact that the ITC benefit had earlier been granted to the Taxpayer merely because the firms were registered, would not create any estoppel against the tax authority for taking appropriate action for denying the benefit wrongly availed by the Taxpayer.
- The contention that no supplies had been received from the non-existent firms also finds support from the fact that the goods receipts issued by M/s Goyal Goods Carry Corporation were in different formats. The GSTIN mentioned in transport Bilties was found to be invalid. Further, the phone number mentioned in the Bilties was also not of any transport company and it was being used by an individual situated at Kasganj.
- In view of the above, there does not appear any illegality in the Impugned Orders seeking denial of ITC. Accordingly, the Writ Petition lacks merit and hence, the same is dismissed.

M/s Hiremath Paints, Hardware and Electrical Vs. The Assistant Commissioner of Commercial Taxes, (Enforcement), Gangavathi & Ors. [2024:KHC-D:6596]

Upholds the constitutional validity of Section 16(4) of the CGST Act read with Rule 61(5) of the Central Goods and Services Tax Rules, 2017

Issue

- Whether Section 16(4) of the CGST Act read with Rule 61(5) of the Central Goods and Services Tax Rules, 2017 (CGST Rules) are ultra vires Articles 14, 19, 265 and 300A of the Constitution?

Ratio

- The constitutional validity of the similar provisions under the Tamil Nadu Value Added Tax Act, 2006 was upheld by the Supreme Court in *Jayam and Company Vs. Assistant Commissioner and Anr.* [2016 (15) SCC 125] and in *ALD Automotive Private Limited Vs. Commercial Tax Officer (CT) and others* [2019 (13) SCC 225]. Applying the principles laid down in the aforesaid rulings, the challenge to the constitutional validity of Section 16(4) of the CGST Act is liable to be dismissed.
- In view of the above, without expressing an opinion on the merits, the Writ Petition was dismissed with a liberty to the Taxpayer to take appropriate recourse under the law.

Laxmi Fine Chem vs Assistant Commissioner [TS-269-HC(TEL)-2024-GST]

The balance in the Electronic Credit Ledger cannot be made negative as per Rule 86A of the CGST Rules

Issue

- Whether the tax authorities are empowered to insert a negative balance in the Electronic Credit Ledger (ECrL) under Rule 86A of the CGST Rules?

Ratio

- Since ITC has been blocked without issuing an SCN, the Impugned Order *per se* is bad in law.
- Relying on the ratio laid down in *Samay Alloys India Pvt. Ltd. Vs. State of Gujarat* [TS-55-HC(GUJ)-2022-GST] and *Sri Krishna Enterprises Vs. Superintendent of Central Tax* [2023 (13) Centax 88 (Telangana)], the Impugned Order posting negative credit to the ECrL is contrary to Rule 86A of the CGST Rules.
- In the event, that no ITC was available to the credit ledger, Rule 86A does not provide for the insertion of a negative balance in ECrL and hence, what was permissible was only to block ECrL and under no circumstances could there be an order for the insertion of a negative balance in the ledger. Thus, no power is conferred upon the tax authorities to block ITC to be availed by the Taxpayer in future.
- In view of the above, the Impugned Order is unsustainable and hence, set aside.

CUSTOMS



LEGISLATIVE UPDATES

NOTIFICATION

08/2024- Customs (ADD) ⁴	Anti-dumping Duty has been imposed on the import of Pentaerythritol (under HS Code 2905 4290), originating in or exported from China PR, Saudi Arabia, and Taiwan.
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INSTRUCTION

13/2024- Customs ⁵	Effective 1 April 2024, in terms of Hazardous and Other Waste (Management and Transboundary Movement) Second Amendment Rules, 2023, Producers / Importers involved in the import of Base Oil/Lubrication Oil as well as Other Oils (used as lubricants) are required to obtain registration from Central Pollution Control Board (CPCB) through online Extended Producer Responsibility (EPR) portal from 1 April 2024. Till the launch of the EPR portal (expected in May 2024), the Customs authorities are informed that CPCB has requested to release the consignments after obtaining an undertaking from the respective Producer/Importer in a specified format and submitting the same to CPCB via email.
14/2024- Customs ⁶	Vide letter dated 13 May 2024, CPCB informed that till 30 June 2024, the release of imported consignments of producers of all 106 notified Electronic and Electrical Equipments (EEE) shall be made after obtaining an undertaking as per the specified format along with the proof of submission of the said undertaking to CPCB via email.

FOREIGN TRADE POLICY



LEGISLATIVE UPDATES

NOTIFICATION

13/2024-25 ⁷	Para 2.31(I(b)) of the Foreign Trade Policy, 2023 (FTP), Para 2(C) of the General Notes regarding Import Policy and Policy Condition 2 of Chapter 84, Policy Condition no. 5 and 7 of Chapter 85 and Policy Condition no. 1 of Chapter 94 of Import Policy (Schedule 1) ITC HS 2022 have been amended in light of re-notification of "Electronics and Information Technology Goods (Requirement of Compulsory Registration) Order, 2012 as Electronics and Information Technology goods (Requirement of Compulsory Registration) Order, 2021 under the Bureau of Indian Standards Act, 2016.
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⁴ Dated 16 May 2024

⁵ Dated 17 May 2024

⁶ Dated 17 May 2024

⁷ Dated 20 May 2024

TRADE NOTICE / CIRCULAR / PUBLIC NOTICE

Trade Notice No. 03/2024 ⁸	<p><i>Vide</i> Notification No. 71/2023 dated 11 March 2024⁹, Para 2.03A of the FTP was inserted inter alia stipulating provisions for exempting inputs imported by Advance Authorisation (AA) holders, EOU and SEZ units from the mandatory Quality Control Orders (QCO). In this regard, the following clarifications have been provided by DGFT:</p> <ul style="list-style-type: none"> ▪ The aforesaid notification would not apply retrospectively and hence, AAs issued before 11 March 2024 will be governed by the provision that existed at the time of issuance of AAs. ▪ Facility for an amendment to incorporate QCO exemption on AAs issued before 11 March 2024 is not available. ▪ Facility for clubbing of AAs issued under the aforesaid notification with AAs issued before 11 March 2024 will not be available.
PN 04/2024-25 ¹⁰	Effective 10 May 2024, in pursuance of Notification No. 71/2023 dated 11 March 2024, Ministry of Mines has been added in the list of Ministries/Departments in Appendix 2Y of FTP.

JUDICIAL UPDATES

[M/s. Embio Limited Vs. Director General of Foreign Trade & Ors. \[TS-179-SC-2024-FTP\]](#)

[A penalty cannot be imposed under Section 11\(2\) of the Foreign Trade \(Development and Regulation\) Act, 1992 for non-fulfilment of export obligation](#)

Issue

- Whether penalty under Section 11(2) of the Foreign Trade (Development and Regulation) Act, 1992 (FTDR Act) be imposed for failure to fulfil the Export Obligation pursuant to obtaining Export Promotion Capital Goods (EPCG) license?

Ratio

- Section 11(2) of the FTDR Act applies when any import or export is made in contravention of the FTDR Act or any Rules or Orders made thereunder or the FTP. In the present case, there is no allegation made by the tax authorities against the Taxpayer's predecessor of making or attempting to make any export or import in contravention of the aforesaid provisions.
- In terms of the EPCG license granted to the Taxpayer's predecessor, there was an obligation to export finished goods by earning foreign exchange within a period of five years. However, the Taxpayer's predecessor failed to achieve the said Export Obligation culminating in the issuance of the Impugned Order imposing penalty under Section 11(2) of the FTDR Act.
- Section 11(2) of the FTDR Act, being a penal provision must be strictly construed. Given that the issue involved in the present case does not pertain to the Taxpayer's predecessor making an export or import in contravention of the export or import policy, the Impugned Order seeking imposition of penalty is set aside.

**CENTRAL EXCISE/ SERVICE TAX/
VALUE ADDED TAX**



LEGISLATIVE UPDATES

NOTIFICATION

14/2024-Central Excise ¹¹	Effective 16 May 2024, the applicable rate of Special Additional Excise duty on production of 'Petroleum Crude' (HSN 2709) has been reduced from INR 8,400 per tonne to INR 5,700 per tonne.
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⁸ Dated 10 May 2024

⁹ The original Notification covered in Indirect Tax Digest dated 15 March 2024 can be accessed by clicking [here](#)

¹⁰ Dated 10 May 2024

¹¹ Dated 15 May 2024

JUDICIAL UPDATES

Z R Enterprise Vs. State of Gujarat [TS-182-HC-2024(GUJ)-ST]

Show Cause Notice alleging non-payment of Service tax cannot be issued merely based on the information from the Income-tax Department without disclosing the nature of services rendered

Issue

- Whether an SCN issued only on the basis of information received from the Income-tax Department in Form 26AS would be a valid SCN?

Ratio

- It is apparent that the SCN was issued only on the basis of details provided by the Income-tax Department, without making any further enquiry. Thus, the SCN alleging that the Taxpayer was liable to pay service tax was issued on the assumption that there was a sale of services without verifying the nature of services provided by the Taxpayer. The Impugned SCN, therefore, fails to disclose the facts pertaining to the nature of services provided by the Taxpayer which were sought to be taxed, which is contrary to the provisions of the Finance Act, 1994.
- Since the Taxpayer had provided Goods Transport Agency service that was leviable to service tax under the Reverse Charge Mechanism, the entire basis of the SCN is frustrated.
- The tax authority had assumed jurisdiction without there being any basis for issuing the SCN as the same could not be issued only on the basis of information retrieved from the Income tax department.
- In view of the above, the Impugned SCN and all the consequent proceedings were quashed and set aside.

INDIRECT TAX NEWS FLASH



The Hindu-BusinessLine (20 May 2024)	<ul style="list-style-type: none"> GST officers working on registration mechanism for 'shared warehouse' for e-commerce suppliers
Times of India (7 May 2024)	<ul style="list-style-type: none"> HC relief for holding companies facing GST notices over corporate guarantees
Economic Times (13 and 15 May 2024)	<ul style="list-style-type: none"> Supreme Court admits petition on imposition of GST on joint development pacts Not necessary to make arrests in all GST cases, says SC
Business Today (14 and 20 May 2024)	<ul style="list-style-type: none"> GST Appellate Tribunals may be functional by year-end, early 2025 GST on online gaming: Full rollback of 28% tax unlikely
CNBC-TV18 (14 May 2024)	<ul style="list-style-type: none"> Pharma sector under DGGI Scanner; about ₹450 crore of GST dues recovered in FY24
The News International (21 May 2024)	<ul style="list-style-type: none"> Medicines prices to skyrocket if GST imposed amid deregulation

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