

INDIRECT TAX DIGEST

05 July 2024

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GOODS & SERVICES TAX



LEGISLATIVE UPDATES

ORDINANCE

<p>Gujarat Laws (Amendment of Provisions) Ordinance, 2024¹</p>	<p>Effective 1 July 2024, Bharatiya Nyay Sanhita, 2023; Bharatiya Nagarik Sanhita, 2023 and Bharatiya Sakshya Adhinyam, 2023 have repealed the Indian Penal Code, 1860; Code of Criminal Procedure, 1973 and Indian Evidence Act, 1872 respectively. Accordingly, the Ordinance is issued by the Governor replacing references to the provisions of repealed Acts in various laws (inter alia including Gujarat Goods and Services Tax Act, 2017, Gujarat Motor Spirit Cess Act, 2001 and Gujarat Value Added Tax Act, 2003) by the provisions and the names of the new Acts.</p>
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NOTIFICATION

<p>G.S.R 340(E)²</p>	<p>The Goods and Services Tax Appellate Tribunal (Recruitment, Salary and other Terms and Conditions of Service of Group “C” Employees) Rules, 2024 has been notified for regulating the method of recruitment to the Group “C” posts in the Goods and Services Tax Appellate Tribunal (GSTAT).</p>
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INSTRUCTION/ CIRCULAR/ ORDER

<p>Press Release³</p>	<p>The 53rd GST Council meeting was held on 22 June 2024 in New Delhi. The GST Council recommended various trade facilitation measures, apart from recommending some changes in rates and legal provisions, and also approved the clarifications on various issues⁴.</p>
<p>CBIC Circular nos. 207/1/2024-GST to 222/16/2024-GST⁵</p>	<p>In furtherance to the recommendations made by the GST Council in its 53rd meeting, the Central Board of Indirect Taxes and Customs (CBIC) has issued the following Circulars⁶:</p> <ul style="list-style-type: none"> ▪ 207/1/2024-GST: Fixing monetary limits for filing appeals/ applications by the Department before GSTAT, High Courts and the Supreme Court ▪ 208/2/2024-GST: Clarification on various issues pertaining to the special procedure to be followed by the manufacturer of specified commodities (pan masala, tobacco, etc.) ▪ 209/3/2024-GST: Determination of place of supply of goods to unregistered persons where the billing address is different from the delivery address ▪ 210/4/2024-GST: Determination of value of supply in case of services imported by a related person where the recipient is eligible to claim full input tax credit (ITC) ▪ 211/5/2024-GST: Time limit to claim ITC under Section 16(4) of the Central Goods and Services Tax Act, 2017 (CGST Act) in respect of procurements from unregistered persons attracting GST liability under the reverse charge mechanism ▪ 212/6/2024-GST: Mechanism to substantiate compliance of the condition under Section 15(3)(b)(ii) of the CGST Act (i.e., in case of post-sale discount)

¹ Dated 1 July 2024

⁴ Our Alert on the recommendations made by the GST Council in its 53rd meeting can be accessed by clicking [here](#)

² Dated 21 June 2024

⁵ Dated 26 June 2024

³ Dated 22 June 2024

⁶ Our Alert on the Circulars issued pursuant to recommendations made by the GST Council in its 53rd meeting can be accessed by clicking [here](#)

	<ul style="list-style-type: none"> ▪ 213/7/2024-GST: Taxability of Employee Stock Option Plan (ESOP), Employee Stock Purchase Plan (ESPP) and Restricted Stock Unit (RSU) provided by a company to its employees through its overseas holding company ▪ 214/8/2024-GST: Requirement for reversal of ITC in respect of the portion of the premium for life insurance policies which is not included in the taxable value ▪ 215/9/2024-GST: Taxability of salvage/ wreck earmarked in the claim assessment of the damage caused to motor vehicle ▪ 216/10/2024-GST: GST liability and ITC eligibility in respect of warranty/ extended warranty ▪ 217/11/2024-GST: ITC eligibility on expenses incurred by insurance companies for motor vehicle repairs in case of reimbursement mode of insurance claim settlement ▪ 218/12/2024-GST: Taxability of the transaction of providing loan by an overseas affiliate to its Indian affiliate or by a person to a related person ▪ 219/13/2024-GST: ITC eligibility on ducts and manholes used in network of Optical Fiber Cables ▪ 220/14/2024-GST: Place of supply of custodial services provided by Indian banks to Foreign Portfolio Investors ▪ 221/15/2024-GST: Time of supply in respect of services by way of construction, operation and maintenance of roads in case of Hybrid Annuity Model (HAM) Projects ▪ 222/16/2024-GST: Time of supply of services of spectrum usage and other similar services
Internal Circular No. 4A of 2024 ⁷	An Internal Circular is issued by the Maharashtra Goods and Services Tax Department to prescribe the GST Audit Framework for conducting a comprehensive audit. The framework <i>inter alia</i> includes case selection criteria, case allocation, use of a comprehensive form of audit notice, GST Audit Plan and Sample Questionnaire/ Interview during an Audit visit (including sector-specific questions for Banking and Non-Banking Financial Companies (NBFCs), Logistics and Textile Industry).

JUDICIAL UPDATES

[Benefit of late fee waiver/ relaxation \(amnesty scheme\) for delayed filing of Form GSTR-9C to apply to returns filed prior to the introduction of the amnesty scheme](#)

[Anishia Chandrakanth Vs. The Superintendent, Central Tax & Central Excise \[TS-310-HC\(KER\)-2024-GST\]](#)

Issue

- Whether late fee can be collected for delayed filing of Form GSTR-9C (Reconciliation Statement)?

Ratio

- The GST Council in its 49th meeting had recommended rationalization of late fees payable for delayed submission of Form GSTR-9 (Annual Return) as well as amnesty scheme for non-filers of Annual Return.
- Based on such recommendations, Notification Nos. 7/2023-Central Tax dated 31 March 2023 and 25/2023-Central Tax dated 17 July 2023 were issued *inter alia* providing the following reliefs:
 - Reduction in the late fee payable per day and the maximum amount of late fees that would be payable for delayed filing of Annual Return for persons having turnover of up to INR 0.20bn.
 - One-time amnesty scheme was provided wherein if the Taxpayer furnishes Annual Return (pertaining to the period between FY 2017-18 to FY 2021-22) within the prescribed period, the late fee payable by such Taxpayer in excess of INR 10,000 shall stand waived.
- When the Government itself has waived late fee in excess of INR 10,000 in case of non-filers, there appears to be no justification in continuing with the notices for non-payment of late fee for belated filing of Reconciliation Statement that **too when the returns are filed by the Taxpayers before the commencement of the Amnesty Scheme i.e., before 1 April 2023.**

⁷ Dated 24 May 2024

- In view of the above, the notices are unjust and unsustainable to the extent they seek to collect late fees for delay in filing Reconciliation Statement. However, the Taxpayer will not be entitled to claim a refund of the late fee already paid by them over and above INR 10,000.

Letter issued without affixing Document Identification Number is not valid

[Sai Manikanta Electrical Contractors Vs. The Deputy Commissioner, Special Circle, Vishakhapatnam-II & Ors. \[2024 \(6\) TMI 1158\]](#)

Issue

- Whether the issuance of a letter without affixing Document Identification Number (DIN) is valid?

Ratio

- It is undisputed that the impugned letter does not contain DIN. CBIC *vide* Circular No. 122/41/2019-GST dated 5 November 2019 had *inter alia* clarified that a document issued without generating DIN would have no legs to stand in the eyes of the law. Similar clarification was issued by the Andhra Pradesh Government in Circular No. 2 of 2022 dated 1 August 2022.
- In view of the above, the impugned letter issued by the tax authorities is set aside. However, the tax authority is at liberty to proceed in accordance with law, and the Taxpayer shall co-operate with the tax authority in all respects.

CUSTOMS



LEGISLATIVE UPDATES

NOTIFICATION

26/2024-Customs ⁸	<i>Vide</i> Notification No. 19/2019-Customs dated 6 July 2019, exemption from payment of customs duties on import of specified products by the Ministry of Defence or the Defence forces or the Defence Public Sector Units or other Public Sector Units or any other entity, for the Defence forces was granted till 30 June 2024 (subject to certain conditions and restrictions). This exemption has now been extended till 30 June 2029.
10/2024-Customs (ADD) ⁹	Effective 27 June 2024, Anti-dumping Duty (ADD) is imposed on the import of 'Sodium Cyanide' falling under HSN Code 2837, originating in, or exported from China PR, European Union, Japan and Korea RP, subject to certain conditions.
11/2024-Customs (ADD) ¹⁰	Effective 27 June 2024, ADD is imposed on the import of 'alloy steel chisel/ tool and hydraulic rock breaker in fully assembled condition' falling under HSN Codes 8431 4930 and 8431 4990, originating in, or exported from China PR and Korea RP, subject to certain conditions.
12/2024-Customs (ADD) ¹¹	Effective 27 June 2024, ADD is imposed on the import of 'Easy open ends of tin plate, including electrolytic tin plate (ETP), measuring 401 Diameter (99MM) and 300 Diameter (73MM) in dimension' falling under HSN Code 8309 9090, originating in, or exported from China PR, subject to certain conditions.
13/2024-Customs (ADD) ¹²	Effective 27 June 2024, ADD is imposed on the import of 'Telescopic Channel Drawer Slider' falling under HSN Codes 8302 4110, 8302 4190, 8302 4200 and 8302 4900, originating in, or exported from China PR, subject to certain conditions.

⁸ Dated 27 June 2024

¹¹ Dated 27 June 2024

⁹ Dated 27 June 2024

¹² Dated 27 June 2024

¹⁰ Dated 27 June 2024

CIRCULAR / INSTRUCTION / PUBLIC NOTICE

Circular No. 07/2024-Customs ¹³	The automated system of ascertaining and publishing of exchange rates shall come into effect from 4 July 2024, upon which the existing system of notifying exchange rates through a notification would be dispensed with. Further, a link shall be provided on the CBIC website which will take the user to the ICEGATE website, where the published rates will be available for viewing.
Instruction No. 16/2024-Customs ¹⁴	It is <i>inter alia</i> clarified that the transfer of resultant goods from a Section 65 unit to another warehouse/ Section 65 unit is permitted, subject to due compliance of the conditions prescribed under the Manufacturing and Other Operations in Warehouse (No. 2) Regulations, 2019 read with the warehousing provisions under Chapter IX of the Customs Act, 1962.
Public Notice No. 55/2024 ¹⁵	The Commissioner of Customs (Nhava Sheva III), Mumbai has revised guidelines for verification of the Country of Origin (COO) Certificates issued under various Preferential Trade Agreements (FTA) to address certain issues pertaining to verification and defacing of FTA-COO in case of third country invoicing.

FOREIGN TRADE POLICY



LEGISLATIVE UPDATES

TRADE NOTICE / CIRCULAR / PUBLIC NOTICE

Trade Notice No. 07/2024-25 ¹⁶	The Interest Equalization Scheme for Pre and Post Shipment Rupee Export Credit for MSME exporters has now been extended up to 31 August 2024 (earlier 30 June 2024), subject to certain conditions.
Public Notice No. 12/2024-25 ¹⁷	Additional areas of operation have been allowed to 19 existing Pre-Shipment Inspection Agencies.
Public Notice No. 13/2024-25 ¹⁸	The procedure and the eligibility under the Tariff Rate Quota Scheme (Para 2.57 and 2.58 of the Handbook of Procedures, 2023) are amended.

SPECIAL ECONOMIC ZONE



NOTIFICATION

G.S.R. 338(E) ¹⁹	Effective 20 June 2024, Rule 18(4)(d) of the Special Economic Zone Rules, 2006 is amended to enable the Approval Committee to consider the proposal for selling non-hazardous metal and metal-alloy wastes in metallic, non-dispersible form having no contaminants enlisted against Basel No. B1010 in Part D of Schedule III of the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016 generated from the reconditioning, repair or reengineering, to the Domestic Tariff Area on payment of applicable customs duty, subject to certain conditions and restrictions.
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¹⁴ Dated 25 June 2024 ¹⁷ Dated 26 June 2024
¹⁵ Dated 24 June 2024 ¹⁸ Dated 26 June 2024
¹⁶ Dated 28 June 2024 ¹⁹ Dated 20 June 2024

INSTRUCTION / CIRCULAR

Instruction No. 116 ²⁰	The Development Commissioners are requested to consider the request received from Export Promotion Council for EOUs & SEZs and SEZ developers for installation of Solar Power Panels as Capital goods in SEZs for Solar Power Generation for captive use to provide power supply in common areas of SEZ.
J.16/3/2007-SEZ Vol V ²¹	Effective 1 July 2024, the Customs Automated System at SEZ locations is implemented and hence, documents for import and export of all non-IT/ ITES SEZs and FTWZs is to be filed on the ICEGATE portal. In this regard, the Zonal Development Commissioners are directed to issue Public Notice.
No. K-43014(16)/9/2 021-SEZ ²²	Vide Instruction No. 115 dated 9 April 2024 ²³ , guidelines were provided for allowing set-up of non-SEZ IT/ITES units in IT/ITES SEZ. In this regard, the Board of Approval has decided that the Specified Officer and the Development Commissioner shall provide a certificate regarding refund of duty (in prescribed format), while forwarding the proposal under Rule 11B of the Special Economic Zones Rules, 2006 for consideration of the Board of Approval.

CENTRAL EXCISE/ SERVICE TAX/ VALUE ADDED TAX



LEGISLATIVE UPDATES

NOTIFICATION

17/2024-Central Excise ²⁴	Effective 2 July 2024, the applicable rate of Special Additional Excise duty on production of 'Petroleum Crude' (HSN 2709) has been increased from INR 3,250 per tonne to INR 6,000 per tonne.
06/30R/ Rules (Grant)-13/2017 (Volume 1) 730 (Jharkhand) ²⁵	The Jharkhand Government had introduced various schemes such as Jharkhand Industrial and Investment Promotion Policy, 2016; Jharkhand Textile and Footwear Policy, 2016; Jharkhand Auto and Auto Component Policy, 2016; Jharkhand Industrial Policy, 2012 and Jharkhand Industrial and Investment Promotion Policy, 2021. Under these policies, an eligible unit can claim SGST reimbursement based on actual realisation in the State treasury (as against the concept of Net VAT reimbursement prevailing prior to the introduction of the GST regime). Owing to the difficulties faced by the tax authorities in calculating the quantum of actual realisation in the state treasury, the Jharkhand Government has now prescribed a revised mechanism to provide that the eligible unit shall be reimbursed the Net SGST paid by debiting the Electronic Cash Ledger against Intra State supply of goods and services after exhausting all the ITC available in Electronic Credit Ledger and after deducting the refund amount claimed, if any. The revised formula is to be applied from 1 July 2017 onwards.

JUDICIAL UPDATES

Refund of Additional Duties of Customs (CVD) paid on re-import of goods can be claimed under Section 142(3) of the CGST Act

Alcon Biosciences Pvt. Ltd. Vs. Commissioner of CGST & Central Excise [TS-243-CESTAT-2024-EXC]

Issue

- Whether a Taxpayer is eligible to claim a refund of CVD paid on the re-import of goods under Section 142(3) of the CGST Act?

²⁰ Dated 21 June 2024 ²³ The original Instruction covered in Indirect Tax Digest dated 26 April 2024 can be accessed by clicking [here](#)
²¹ Dated 22 June 2024 ²⁴ Dated 1 July 2024
²² Dated 27 June 2024 ²⁵ Dated 19 June 2024

Ratio

- Section 142(3) of the CGST Act covers every claim for a refund filed on or after the appointed day, for refund of any amount of CENVAT Credit, duty, tax, interest, or any other amount paid under the existing law. The issue involved in the present case pertains to CVD paid on re-import on 18 July 2017 i.e., after the appointed day. As a result, the Taxpayer is unable to claim CENVAT credit of CVD paid on such re-import and hence, the Taxpayer is rightly eligible to claim a refund which shall be paid in cash, notwithstanding anything to the contrary under the provisions of the existing law (other than Section 11B(2) of the Central Excise Act, 1944).
- The above issue of refund of duty paid under the existing law during the subsequent period after the appointed day is examined by the Madras High Court in *Ganges International Private Limited [TS-381-HC-2022(MAD)-ST]* wherein the High Court had allowed refund to the assessee. Similar view was also taken in *Datamark Prodapt India BPO LLP [2023 (7) Centax 8 (Mad.)]*.
- On the contrary, the Jharkhand High Court in *Rungta Mines Limited vs. The Commissioner of Central Goods & Services Tax and Ors. [TS-77-HC(JHAR)-2022-GST]* had denied a refund to the assessee. However, the said ruling is distinguishable on facts because in the case before the Jharkhand High Court, service tax for port services was paid in May 2017 (i.e., before the appointed date) wherein the assessee could have availed CENVAT credit or mentioned it in Form GST TRAN-1 whereas, in the present case, the CVD was paid after the appointed day and the Taxpayer could not have availed CENVAT credit of such CVD.
- In view of the above decisions, there are strong grounds to consider a refund of CVD paid on the goods re-imported by the Taxpayer in terms of Section 142(3) of the CGST Act. Accordingly, the Impugned Order is set aside and the appeal is allowed with consequential relief.

INDIRECT TAX NEWS FLASH



The Hindu-BusinessLine (23 and 27 June 2024)	<ul style="list-style-type: none"> ▪ CBIC to issue detailed clarification on GST applicability for corporate guarantees, including distribution of liability and valuation rules ▪ No GST on ESOP by MNCs to employees of Indian subsidiary
Times of India (24 and 28 June 2024)	<ul style="list-style-type: none"> ▪ GST Council recommends exemption for hostel services, subject to conditions ▪ 134% rise in active GST payers in 7 years
Economic Times (24 and 26 June 2024)	<ul style="list-style-type: none"> ▪ Taxpayers can amend sales return form before GST payment ▪ GST clarification to make Indian MRO industry competitive
Moneycontrol (24 June 2024)	<ul style="list-style-type: none"> ▪ Smaller companies to be biggest beneficiaries of GST penalty, interest waiver ▪ Amid limited revenue options, states may resist fuel inclusion in GST
Outlook India (24 June 2024)	<ul style="list-style-type: none"> ▪ GST Meet: Railway Platform tickets exempted from GST, Govt Pushes For Biometric Authentication
The new Indian Express (25 June 2024)	<ul style="list-style-type: none"> ▪ Sellers on Flipkart, MakeMyTrip, Amazon to benefit from lower TCS
Financial Express (1 July 2024)	<ul style="list-style-type: none"> ▪ The positive impacts and challenges of GST across sectors
NDTV (1 July 2024)	<ul style="list-style-type: none"> ▪ Seven Years Of GST: Rate Rationalisation, Tribunal Operations Remain Top Picks For 2.0

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CONTACT US

For any content related queries, you may please write to the service line experts at taxadvisory@bdo.in

For any other queries or feedback, kindly write to us at marketing@bdo.in

BDO IN INDIA OFFICES

Ahmedabad

Westgate Business Bay, Floor 6
Office No 601, Block A, Makarba
Ahmedabad, Gujarat 380051, INDIA

Chandigarh

Plot no. 55, Floor 5,
Industrial & Business Park,
Phase 1, Chandigarh 160002, INDIA

Delhi NCR - Office 1

The Palm Springs Plaza
Office No. 1501-10, Sector-54,
Golf Course Road, Gurugram 122001, INDIA

Hyderabad

1101/B, Manjeera Trinity Corporate
JNTU-Hitech City Road, Kukatpally
Hyderabad 500072, INDIA

Mumbai - Office 1

The Ruby, Level 9, North West Wing
Senapati Bapat Marg, Dadar (W)
Mumbai 400028, INDIA

Mumbai - Office 4

The Ruby, Level 9, South East Wing
Senapati Bapat Marg, Dadar (W)
Mumbai 400028, INDIA

Bengaluru - Office 1

Prestige Nebula, 3rd Floor,
Infantry Road,
Bengaluru 560001, INDIA

Chennai

No. 443 & 445, Floor 5, Main Building
Guna Complex, Mount Road, Teynampet
Chennai 600018, INDIA

Delhi NCR - Office 2

Windsor IT Park, Plot No: A-1
Floor 2, Tower-B, Sector-125
Noida 201301, INDIA

Kochi

XL/215 A, Krishna Kripa
Layam Road, Ernakulam
Kochi 682011, INDIA

Mumbai - Office 2

601, Floor 6, Raheja Titanium, Western
Express Highway, Geetanjali, Railway
Colony, Ram Nagar, Goregaon (E),
Mumbai 400063, INDIA

Pune - Office 1

Floor 6, Building No. 1
Cerebrum IT Park, Kalyani Nagar
Pune 411014, INDIA

Bengaluru - Office 2

SV Tower, No. 27, Floor 4
80 Feet Road, 6th Block, Koramangala
Bengaluru 560095, INDIA

Coimbatore

Pacom Square, Floor 3, 104/1, Sakthi
Main Road, Bharathi Nagar, Ganapathy
Coimbatore, Tamil Nadu - 641006

Goa

701, Kamat Towers
9, EDC Complex, Patto Plaza
Panaji, Goa 403001, INDIA

Kolkata

Floor 4, Duckback House
41, Shakespeare Sarani
Kolkata 700017, INDIA

Mumbai - Office 3

Floor 20, 2001 & 2002 - A Wing, 2001 F
Wing, Lotus Corporate Park, Western
Express Highway, Ram Mandir Fatak Road,
Goregaon (E) Mumbai 400063, INDIA

Pune - Office 2

Floor 2 & 4, Mantri Sterling, Deep Bunglow,
Chowk, Model Colony, Shivaji Nagar
Pune 411016, INDIA

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