

INDIRECT TAX DIGEST

19 January 2024

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GOODS & SERVICES TAX



LEGISLATIVE UPDATES

NOTIFICATIONS

01/2024 - Central Tax (Rate) ¹	Notification no:01/2017 - Central Tax (Rate) dated 28 June 2017 is amended to provide that Liquefied Petroleum Gas (LPG) falling under HSN Code 2711 19 10 (earlier HSN Code 2711 19 00) would be leviable to GST @ 5%. ²
01/2024 - Central Tax ³	The due date for furnishing Form GSTR-3B for November 2023 for registered persons having principal place of business in the districts of Tirunelveli, Tenkasi, Kanyakumari, Thoothukudi and Virudhunagar in the State of Tamil Nadu is extended till 10 January 2024.
02/2024 - Central Tax ⁴	The due date of furnishing Annual Return (Form GSTR-9) and self-certified Reconciliation Statement (Form GSTR-9C) for FY 2022-23 by registered persons having principal place of business in the districts of Chennai, Tiruvallur, Chengalpattu, Kancheepuram, Tirunelveli, Tenkasi, Kanyakumari, Thoothukudi and Virudhunagar in the State of Tamil Nadu is extended till 10 January 2024.
03/2024 - Central Tax & 04/2024 - Central Tax ⁵	<p>Notification no:30/2023 - Central Tax dated 31 July 2023, which had notified a special procedure to be followed by registered persons engaged in the manufacture of specified goods (viz., pan masala and tobacco products), is rescinded and a new special procedure has been notified that will be effective from 1 April 2024 (as against the earlier effective date of 1 January 2024) with the following changes:</p> <ul style="list-style-type: none"> ▪ The requirement for maintaining the Inputs Register and Production Register has been done away with. ▪ A new requirement is introduced for uploading a Chartered Engineer certificate in respect of machines declared by a manufacturer in Form GST SRM-I.
F.IV-12(1)-TAX/2023 (Tripura) ⁶	The existing GST Enforcement Wings in the State of Tripura have been restructured with headquarters situated at Agartala, Churaibari, Udaipur and Ambassa in the state of Tripura.

¹ Dated 3 January 2024

² Similar amendments have been made to Notification no:01/2017 - Integrated Tax (Rate) and 01/2017 - Union Territory Tax (Rate) dated 28 June 2017 vide Notification no:01/2024 - Integrated Tax (Rate) and 01/2024 - Union Territory Tax (Rate) dated 3 January 2024 (read with Corrigendum dated 5 January 2024) respectively.

³ Dated 5 January 2024

⁴ Dated 5 January 2024

⁵ Dated 5 January 2024

⁶ Dated 5 January 2024

CIRCULAR

<p>Memo no: FIN-CT1-TAX-0048-2023-33418 (Odisha)⁷</p>	<p>It is clarified that renting any motor vehicle designed to carry passengers with an operator falls under HSN Code 9966 and is leviable to GST as under:</p> <ul style="list-style-type: none"> ▪ Where the cost of fuel is included in the consideration: <ul style="list-style-type: none"> – Option I: GST is leviable @ 5% with a condition that Input Tax Credit (ITC) is not available on goods/services used in supplying such service other than ITC on input service in the same line of business. – Option II: GST is leviable @ 12% with the scope to avail full ITC subject to the conditions/restrictions provided under the Central Goods and Services Tax Act, 2017 (CGST Act) and Central Goods and Services Tax Rules, 2017 (CGST Rules). ▪ Where the cost of fuel is not included in the consideration, GST would be leviable @ 18%.
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ADVISORY

<p>GSTN Advisory⁸</p>	<p>GSTN has issued an advisory in connection with the new Table 14 and Table 15 in Form GSTR-1 / Invoice Furnishing Facility inter alia providing the details of information that must be furnished in these tables. Further, the advisory stipulates that a new table ECO-Documents (E-Commerce Operator Documents) would appear in Form GSTR-2B from the month of January 2024.</p>
<p>e-Waybill Advisory⁹</p>	<p>Effective 1 February 2024, the E-Way Bill system would implement a check to ensure that the taxpayers generating E-Way Bill through web and API systems mandatorily provide 4-digit HSN code (for taxpayers having Annual Aggregate Turnover of less than INR 50mn) and 6-digit HSN code (for other taxpayers).</p>
<p>e-Waybill Advisory¹⁰</p>	<p>Effective 1 March 2024, the e-Waybill system had proposed to block the generation of E-Way bills without E-Invoice / Invoice Reference Number (IRN) details in respect of various e-Waybill categories viz., Supply, Exports, SKD, CKD and Lots. However, the aforesaid advisory has been withdrawn by a subsequent update dated 10 January 2024.</p>

JUDICIAL UPDATES

Tecnimont Pvt. Ltd. [TS-05-AAR(GUJ)-2024-GST]

Issue

- In respect of a turnkey contract for execution of EPC work involving the supply of imported goods on a High Seas Sale (HSS) basis as well as the supply of works contract service, the Taxpayer has filed an application for Advance Ruling for the following:
 - Whether supply of imported goods on an HSS basis is covered under the purview of Entry 8(b) of Schedule III to the CGST Act?
 - Whether the value of the goods supplied on an HSS basis would be excluded from the value of works contract service for charging GST?

Ratio

- **GST implications on the supply of goods on an HSS basis:**
 - In terms of Section 7(2) read with Entry 8(b) of Schedule III to the CGST Act, the supply of imported goods on an HSS basis is treated neither as a supply of goods nor as a supply of services. Accordingly, the question of levy of GST on such supply does not arise.
- **Value of works contract service:**
 - In the present case, the turnkey contract entailing the supply of imported goods and supply of works contract services cannot be treated as a divisible contract.
 - Relying on Shree Jeet Transport Vs. Union of India and Ors.¹¹ Section 15 of the CGST Act, it was held that the value of imported goods would form part of the transaction value for computing the value of works contract services.
 - Thus, the value of imported goods supplied on an HSS basis cannot be excluded under the guise of free supply.

⁷ Dated 7 December 2023⁸ Dated 15 January 2024⁹ Dated 5 January 2024¹⁰ Dated 5 January 2024 and 10 January 2024¹¹ 2023 (11) TMI 206 (Chhattisgarh High Court)

R.C. Infra Digital Solutions Vs. Union of India & Ors. [TS-02-HC(ALL)-2024-GST]

Issue

- Whether officers of the Directorate General of Goods and Services Tax Intelligence (DGGI) are proper officers under the CGST Act and empowered to issue summons?
- Whether assignment of functions to the DGGI officers by way of a Circular instead of a Notification is valid in terms of Section 167 of the CGST Act?
- Whether two parallel proceedings by the GST Anti-evasion Department and DGGI officers in connection with the same issue are overlapping and unsustainable?
- Whether the payment made by the Taxpayer to the DGGI officer under coercion and not voluntarily refundable?

Ratio

- **Whether DGGI Officers are proper officers under the CGST Act and empowered to issue summons?**
 - Section 5(1) of the CGST Act stipulates that CBIC is conferred with powers to impose such conditions and limitations on an officer of Central Tax for exercising powers and duties under the CGST Act. Further, Section 5(3) of the CGST Act empowers the Commissioner to delegate his powers to any other officer subordinate to him. Since CBIC is subservient to the Government under the CGST Act, one may construe that when the power is invested with CBIC, the Government can also exercise such powers.
 - A conjoint reading Notification no:14/2017 - Central Tax dated 1 July 2017 and Circular no:3/3/2017 - GST dated 5 July 2017 (Circular dated 5 July 2017) leads to the conclusion that the Senior Intelligence Officer of DGGI is invested with the powers as are exercisable by the Central Tax officers of the rank of 'Superintendent'.
 - In view of the above, the Tax Authorities (being the officers of DGGI) are proper officers in relation to the function performed under the CGST Act, and as such, were entitled to issue summons under Section 70 of the CGST Act.
- **Validity of assignment of functions to the DGGI officers by way of Circular:**
 - In the present case, the CBIC vide Circular dated 5 July 2017 has assigned the officers certain functions as that of proper officers under various provisions of the CGST Act basis which, the Superintendent was assigned the function to issue summons. Since the Commissioner has not delegated its powers, the provisions of Section 167 of the CGST Act are not attracted.
 - Consequently, the requirement for issuance of notification under Section 167 for assignment of functions would not arise.
- **Parallel proceedings by GST Anti-evasion Department and DGGI officer:**
 - The proceedings conducted by the GST Anti-evasion Department are at the stage of limited inquiry and not of show cause. Moreover, the two proceedings do not appear to be overlapping.
 - Considering that the proceedings of issuing summons are of a Judicial nature, the Taxpayer is bound to respect the same and cooperate with the inquiry. Further, no prejudice would be caused if the statement is tendered or the documents are produced.
 - Accordingly, the parallel proceedings by the GST Anti-evasion Department and the DGGI officer were upheld.
- **Payments made under coercion to the DGGI officer:**
 - Form GST DRC-03 has no mention of the words 'under protest', 'without prejudice' etc., and hence, it cannot be prima facie concluded that the payment was made under coercion. Further, the cause of payment was reported as 'voluntary' and under Section 74(5) of the CGST Act.
 - Further, no complaint was filed by the Taxpayer before the grievance cell or any authority of the DGGI that the aforesaid payment was made under coercion and not voluntarily.
 - Therefore, the payments so made must be dealt with or adjusted in accordance with the provisions of the CGST Act.

CUSTOMS



LEGISLATIVE UPDATES

NOTIFICATION

01/2024 - Customs ¹²	Effective 18 January 2024, the Second Schedule to the Customs Tariff Act, 1975 is amended to impose an Export Duty of 50% on 'Molasses resulting from the extraction or refining of sugar' falling under HSN Code 1703.
02/2024 - Customs ¹³	The exemption / concessional rate of Basic Customs Duty and Agriculture, Infrastructure and Development Cess on imports of specified edible oils which was available till 31 March 2024 is now extended till 31 March 2025.
01/2024 - Customs (ADD) ¹⁴	Effective 15 January 2024, an Anti-Dumping Duty has been imposed on the import of 'Meta Phenylene Diamine' falling under HSN Code 2921 5120 or 2921 5190 originating in or exported from the People's Republic of China for a period of five years.

INSTRUCTION

01/2024 - Customs ¹⁵	<p>It is clarified that in case of export of Milk and Milk products, the Customs officers shall verify:</p> <ul style="list-style-type: none"> ▪ Letter of approval issued by the Export Inspection Council for the plant and the consequential certificate for Export issued by the approved establishment; ▪ Certificate of Inspection issued by Export Inspection Agency declaring that such consignment is export-worthy.
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JUDICIAL UPDATES

[Samsung India Electronics Pvt. Ltd. Vs. Principal Commissioner of Customs \[2023-VIL-1341-CESTAT-DEL-CU\]](#)

Issue

- Whether front cover, middle cover, and back cover of cellular mobile phones (Subject Goods) are classifiable under Tariff Heading 8517 7090 or 3920 9999?
- Whether an exemption notification can determine the classification of goods?
- Whether a scheme notified by the Ministry of Electronics and Information Technology (MeITY) can determine the classification of goods?
- On account of an incorrect classification adopted by the Taxpayer, whether the imported goods are liable for confiscation under Section 111(m) of the Customs Act, 1962 (Customs Act) and consequently, liable for imposition of penalty under Section 112 of the Customs Act?

Ratio

- **Classification of subject goods:**
 - Applying the first Rule of Interpretation, the Subject Goods cannot be classified under CTH 3920 since the vapour deposition (lamination) takes it out of the description of CTH 3920 and thermoforming and CNC milling, being processes beyond printing and surface working, take them out of the scope of Chapter Note 2(s).
 - In addition to the above, the CBIC had issued a Circular supporting the classification adopted by the Taxpayer and hence, the same is binding on the Tax Authorities.
 - In view of the above, the Subject Goods would be classifiable under CTH 8517 7090.

¹² Dated 15 January 2024

¹³ Dated 15 January 2024

¹⁴ Dated 15 January 2024

¹⁵ Dated 10 January 2024

- **Whether an exemption notification can determine the classification of goods?**
 - The Rules of Interpretation do not provide that the classification of goods would be either based on any exemption notification or based on any heading mentioned in any policy of any Ministry of the Government.
 - The exemption notification merely exempts goods and does not determine classification. The exemption is available only if the description of the goods and also the tariff heading matches the notification. An exemption notification cannot determine the classification, instead, it must be applied after classifying the goods.
- **Whether MeITY can determine the classification of goods?**
 - MeITY policy, being in the nature of an executive decision cannot determine the classification of goods on account of the following:
 - MeITY is not empowered to assess under Section 17 of the Customs Act.
 - Unlike the classification of goods which is a part of the assessment, MeITY policy is not a quasi-judicial, appealable decision but is a policy decision.
- **Whether an incorrect classification can result in confiscation of Subject Goods, and consequently, imposition of penalty?**
 - Classification of goods in the Bill of Entry by the importer is a part of self-assessment under Section 17 of the Customs Act, which, even if found incorrect, does not attract confiscation of goods under Section 111(m) of the Customs Act and consequently, penalty under Section 112 of the Customs Act.

FOREIGN TRADE POLICY



LEGISLATIVE UPDATES

NOTIFICATION

57/2023 ¹⁶	Import of 'Semi-Manufactured Silver Paste, Sheets, Plates, Strips, Tubes, Electrodes, Wires, Silver Brazing Alloys (in any form)' by Electrical, Electronics and Engineering industries including Glass and Solar Industries as input for own manufacturing process on 'Actual User' basis shall be 'Free'. Import of the aforesaid items for R&D purposes by Government or Government Recognised Institutions shall also be 'Free'. Import for any other purposes shall be through specified agencies as per the earlier provisions.
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POLICY CIRCULAR

09/2023-24 ¹⁷	It is clarified that only import of Laptops, Tablets, All-in-one Personal Computers, ultra-small form factor computers and servers falling under HSN 8471 is 'Restricted' under Notification no:23/2023 dated 3 August 2023 read with Notification no:26/2023 dated 4 August 2023 and 38/2023 dated 19 October 2023 and import for the aforesaid 5 categories shall be allowed against a valid import authorisation. The aforesaid restriction does not apply to any other goods falling under HSN 8471.
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PUBLIC NOTICE

36/2023 ²⁰	The quantity of 8606 MTRV raw cane sugar to be exported to the USA under the Tariff Rate Quota Scheme from 1 October 2023 to 30 September 2024 has been notified.
37/2023 ²¹	The validity of the Pre-Shipment Inspection Agency listed in Appendix 2G of Appendices and Aayat Niryat Forms has been extended to 31 March 2024 (from 27 December 2023).

¹⁶ Dated 15 January 2024

¹⁷ Dated 12 January 2024

¹⁸ Our alert of the Notification can be accessed [here](#).

¹⁹ Our alert of the Notification can be accessed [here](#).

²⁰ Dated 3 January 2024

²¹ Dated 12 January 2024

CENTRAL EXCISE / SERVICE TAX / VALUE ADDED TAX



LEGISLATIVE UPDATES

NOTIFICATION

03/2024 - Central Excise ²²	Effective 16 January 2024, the rate of Special Additional Excise Duty on Petroleum Crude has been reduced from INR 2,300 per tonne to INR 1,700 per tonne.
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JUDICIAL UPDATES

[K.P. Mozika Vs. Oil and Natural Gas Corporation Ltd. & Ors. \[TS-5-SC-2024-VAT\]](#)

Issue

- Whether the supply of cranes, trucks, buses etc., by the Taxpayer to Oil and Natural Gas Corporation Ltd. (ONGC) / Indian Oil Corporation Ltd. (IOCL) under a contract on hire basis is a deemed sale in terms of Article 366(29A)(d) of the Constitution of India (Constitution) and hence, leviable to Sales tax / Value Added Tax (VAT)?

Ratio

- To constitute a transaction as a transfer of the right to use goods (and hence, a deemed sale under Article 366(29A)(d) of the Constitution), all the following tests as have been laid down by the Supreme Court in *Bharat Sanchar Nigam Ltd.*²³ must be satisfied:
 - There must be goods available for delivery;
 - There must be *consensus ad idem* as to the identity of the goods;
 - The transferee should have a legal right to use the goods and hence, all legal consequences of such use should be available to the transferee;
 - For the period in which such legal right subsists, the same should be to the exclusion of the transferor. Thus, such transfer should not merely be a licence to use the goods.
 - Having transferred such right, the owner cannot again transfer the same rights to others.
- On a perusal of the contract in respect of one of the appeals involving the supply of cranes to ONGC, it was observed that the aforesaid tests were not fulfilled on account of the following:
 - The Taxpayer has an option to replace cranes if one of the cranes is not working properly.
 - The Taxpayer is liable for the legal consequences arising from the use of cranes.
 - The Taxpayer must maintain the cranes and also pay for its consumables like fuel, oil, etc.
 - The cranes must be moved and operated by the crew members appointed by the Taxpayer.
 - In case of any mishap or accident in connection with the cranes (including its use), the entire liability will be of the Taxpayer.
- Considering the above, it can be construed that the use of cranes provided by the Taxpayer to ONGC will be by way of only a permissive use and the entire control over the cranes is retained by the Taxpayer. Hence, the contract is for providing the service of cranes to ONGC.
- Considering the identical facts in other appeals, the Hon'ble Supreme Court, after examining the relevant contracts, observed that in all the cases before it, the tests laid down in *BSNL (supra)* were not satisfied.
- In view of the above, it was concluded that the contracts in the present case do not contemplate the transfer of right to use goods and hence, would not be leviable to Sales Tax / VAT. Instead, the transaction would be leviable to Service tax in terms of Section 65(105)(zzzj) of the Finance Act, 1994.

²² Dated 15 January 2024

²³ *Bharat Sanchar Nigam Ltd. & Anr. Vs. Union of India & Ors.* [2006 (3) SCC 1]

INDIRECT TAX NEWS FLASH



Hindu Business Line (12 January 2024)	<ul style="list-style-type: none">▪ GST on health insurance is too high
Financial Express (15 January 2024)	<ul style="list-style-type: none">▪ As the online gaming industry complies with the 28% GST decision, time for the government to support growth
MoneyControl (16 January 2024)	<ul style="list-style-type: none">▪ Budget Snapshot Indirect taxes push up India's tax-to-GDP ratio
Live Mint (11 & 12 January 2024)	<ul style="list-style-type: none">▪ Budget 2024: Coworking sector seeks lower GST, infra boost, tax incentives from Finance Minister▪ Budget 2024: Green energy sector pitches for GST cut, easier FDI norms. Here is the wishlist
Business Standard (15 & 16 January 2024)	<ul style="list-style-type: none">▪ Restaurants' body seeks restoration of ITC, higher GST rate of 12%▪ Helmet makers demand cut in GST as 2W accidents claim good lives in India

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