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Articles

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India's critical minerals strategy: Wider exemption from customs duty needed to fulfil the Government's mission

By Srinidhi Ganeshan and Shambhavi Mishra

The first article in this issue of Indirect Tax Amicus talks about India's critical minerals strategy. It, in this regard, discusses some of the key components of the National Critical Minerals Mission, from customs perspective and notes that concessional rates of duty have not been provided for all the minerals enlisted as critical in the Mines and Minerals (Development and Regulation) Act, 1957 or the mineral list from the Ministry of

Mines. According to the authors, there is a need to harmonize the list of critical minerals to maintain uniformity, and to modify the already existing exemptions to ensure that the intended purpose is achieved.

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The 'Value Addition' conundrum in GST budgetary support refunds

By Priyanka Kalwani, Devanshi Sharma and Aanchal Kesari

The second article in this issue of the newsletter is about the Scheme of Budgetary Support in the GST regime, which is relevant for eligible manufacturing units in Jammu & Kashmir, Uttarakhand, Himachal Pradesh, and the Northeastern States. The article discusses the recent decision of the Jammu & Kashmir & Ladakh High Court which has opened pandora's

box regarding the value addition to be adopted for computation of the refund amount under the BSS. The authors raise a pertinent question - whether there is any contravention of the conditions of the Scheme where refund was granted on higher value addition rates, after due verification.

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Internal Compliance Programs for export of dual-use items: Key insights from DGFT's draft framework

By Srinidhi Ganeshan and Shambhavi Mishra

This article discusses the Internal Compliance Programs (ICPs) under SCOMET law dealing with export of dual-use items. It highlights the key considerations for entities while drafting their ICPs in line with the draft Management System Requirements. According to the authors, mere documentation

is not sufficient, the entity must ensure everyone is adequately made aware of the requirements and trained in the law, to comply with the law to the fullest.

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Navigating RoDTEP compliances – Filing of Annual RoDTEP Return

By Srinidhi Ganeshan and Madhur Azad

It is now mandatory for all concerned exporters (expecting a RoDTEP benefit of more than INR 1 crore in the given financial year) to file annual return (ARR), for exports made from the period FY 2023-2024. The authors believe that the requirement of filing ARR might have been introduced to ensure that transparency is maintained to show that RoDTEP is only offsetting the duties/taxes suffered on the export goods.

Questioning the high threshold of INR 1 crore, the authors also advise exporters (irrespective of their volume of exports and RoDTEP claim) to maintain clear data with supporting documents.

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Goods & Services Tax (GST)

Ratio decidendi

- Detention of goods during transit – Final order under Section 129(3) of the CGST Act is mandatory even when tax and penalty paid within stipulated time – *Supreme Court*
- Blocking of ITC under Rule 86A – SC issues notice on question of negative blocking – *Supreme Court*
- Review of decision when a plea raised in memorandum of petition but not adumbrated and elaborated during submissions, was not considered – *Supreme Court*
- Secondment of expats from overseas group entities when is not liable to GST – *Karnataka High Court*
- Time limit for SCN and adjudication under Section 73 – Notifications Nos. 9 and 56/2023-Central Tax are illegal – *Madras High Court*
- Inter-State transfer of unutilized ITC in case of amalgamation/merger – GST Council and GSTN asked to develop mechanism to facilitate such transfer – *Bombay High Court*
- Providing opportunity of personal hearing along with SCN, without waiting for the reply, is not wrong – *Calcutta High Court*
- Additional evidence is admissible at appellate stage when assessee is not asked to produce said evidence in adjudication – *Gujarat High Court*
- Service of order – Mandatory to comply with minimum two modes mentioned in Section 169 – *Patna High Court*
- Rectification application under Section 161 can be dismissed without affording an opportunity of personal hearing – *Madras High Court*
- Penalty for absence of e-way bill – Mens rea to evade tax is sine qua non for imposing penalty – *Himachal High Court*
- Penalty for expiry of e-way bill in case of export goods cannot exceed INR 25,000 – *Gujarat High Court*
- Withdrawal of Assessment order – Period of 30 days under Section 62(2) commences from the date of uploading of Form GST DRC-07 – *Kerala High Court*
- Show-cause notice under Section 73, when another SCN under Section 74 was issued and order passed thereunder, is valid – *Calcutta High Court*
- Demand – Dropping of proceedings under Section 61(3) is no impediment to initiate proceedings under Section 74 – *Calcutta High Court*

Ratio Decidendi

Detention of goods during transit – Final order under Section 129(3) of the CGST Act is mandatory even when tax and penalty paid within stipulated time

The Supreme Court has held that the deeming fiction under Section 129(5), calling for deemed conclusion of proceedings upon payment of tax and penalty, cannot be interpreted to imply that the assessee has agreed to waive or abandon the right to challenge the levy – a right that is protected by the very enactment itself. The Court was of the view that the word ‘conclusion’ does not absolve the responsibility of the proper officer to pass an order concluding the proceedings. Noting that the payment was made under protest and the assessee had filed its objections, the Apex Court was of the view that adjudication was not optional. It was noted that the use of the words ‘and thereafter’ in Section 129(3) reinforces the mandatory nature of passing a reasoned order, regardless of payment, particularly where protest or dispute is raised. According to the Court, the adjudicating authority is required to render a reasoned, speaking order which is not a mere procedural formality, but a

substantive safeguard ensuring fairness in quasi-judicial proceedings.

The Department’s submission of oral withdrawal of objections was rejected by the Court while it observed that the assessee, even by election, cannot be treated to have waived his right against the illegality committed by the proper officer or acquiesced to the demand and that between a written reply and an oral submission contrary to such written reply, the written reply would prevail. Allowing the appeal, the Supreme Court also observed that the absence of a mechanism to record protest in the GST portal should not operate to the detriment of the assessee. [*ASP Traders v. State of Uttar Pradesh* – 2025 VIL 52 SC]

Blocking of ITC under Rule 86A – SC issues notice on question of negative blocking

The Supreme Court of India has on 8 July 2025 issued notice, returnable in six weeks, in a dispute involving blocking of Input Tax Credit under Rule 86A beyond the amount of ITC available in the credit ledger. The Apex Court for this purpose noted that there was a conflict between the decision of the Delhi High Court in *Best Crop Science Pvt. Ltd. v. Principal*

Commissioner [Refer summary as reported in October 2024 issue of LKS Indirect Tax Amicus, as available [here](#)] and that of the Madras High Court in *TVL Skanthaguru Innovations Pvt. Ltd. v. Commercial Tax Officer* [Refer summary as reported in December 2024 issue of LKS Indirect Tax Amicus, as available [here](#)]. [*Union of India v. Anand Traders* – Order dated 8 July 2025 in Special Leave Petition (Civil) Diary No(S). 28945/2025, Supreme Court]

Review of decision when a plea raised in memorandum of petition but not adumbrated and elaborated during submissions, was not considered

The Supreme Court of India has requested the High Court to permit the assessee to take pleas which though were raised in the memorandum of the writ petition before the High Court, were not adumbrated and elaborated during the course of submissions before the High Court.

The High Court had earlier rejected the Review Application filed by the assessee, where the assessee had contended that the imposition of 100% penalty was not correct as fraud or wilful concealment was not proved by the Department under Section

74 – the plea was raised in the memorandum of writ but was not elaborated during the course of submissions when the petition was heard. The Apex Court in this regard observed that the assessee was entitled to raise the contention regarding the imposition of 100% penalty in the review application as it was a ground raised in the memorandum of writ petition. [*Godway Funicrafts v. State of Andhra Pradesh* – 2025 VIL 51 SC]

Secondment of expats from overseas group entities when is not liable to GST

The Karnataka High Court has allowed the writ petition against the demand of IGST in the case involving secondment of expats by the assessee from the overseas group entities. The Department had alleged that the activity amounted to receipt of manpower and recruitment services from abroad and was thus liable to IGST under reverse charge.

The High Court observed that there was existence of a genuine employer-employee relationship between the assessee and the seconded personnel, falling squarely within the exclusion under Schedule III of the CGST Act, 2017 and thereby not constituting a taxable supply. It, for this purpose, noted that throughout the period of secondment, the seconded employees

were under the exclusive administrative and functional control of the Indian company/assessee, were integrated into its organizational framework, and adhered to its internal policies, code of conduct, and disciplinary rules. The Court also noted that the salaries were paid directly by the assessee and subjected to Indian income tax, and that the seconded employees were extended statutory employment benefits under Indian labour laws.

Allowing the petition, the High Court also noted CBIC Circular No. 210/4/2024-GST, dated 26 June 2024 according to which if the related domestic entity does not raise an invoice in respect of services received from its foreign affiliate, the value of such services may be deemed to be 'Nil' and such 'Nil' value shall be treated as the open market value in terms of the second proviso to Rule 28(1) of the CGST Rules, 2017. The Court observed that invoices were not raised by the assessee in respect of the services allegedly rendered by the foreign affiliate through seconded employees. The High Court was hence of the view that even if such secondment arrangement is assumed to be a supply, the deeming fiction under the said Circular neutralises any scope for further tax liability.

It may be noted that the Court also noted that the second proviso to Rule 28 cannot be invoked to displace the legal effect of a 'Nil' value where the legislative framework itself permits such a deeming fiction, especially when full ITC is available. *The assessee was represented by Lakshmikumaran & Sridharan Attorneys here.* [Alstom Transport India Limited v. Commissioner – Decision dated 15 July 2025 in Writ Petition No.1779 of 2025 (T-RES), Karnataka High Court]

Time limit for SCN and adjudication under Section 73 – Notifications Nos. 9 and 56/2023-Central Tax are illegal

The Madras High Court has held that Notifications Nos. 9 and 56/2023-Central Tax, issued for the purpose of increasing the time limits for issuance of SCN and adjudication under Section 73 of the CGST Act, 2017 are illegal and are vitiated for the following reasons.

- Notifications curtail the limitation available as per Supreme Court decision under Article 142 of Constitution (excluding period from 15 March 2020 to 28 February 2022) and are thus contrary to Section 168A.

- Notifications extinguish the vested right of action with the authorities under CGST Act by diminishing the limitation, thus suffering from the vice of arbitrariness.
- Notifications were issued without examining the relevant material – Office Memorandum of the Ministry of Personnel, D.O.No.40-3/2020-DM-1(A) of the Home Secretary, Government of India (iii) CAG Report No.5 of 2022, and (iv) CAG Report dated 21 June 2024.
- Notification No.56/2023 was issued even prior to the recommendations of the GST Council and thus was illegal as failed to comply with the statutory mandate. Recommendations of GIC cannot be a substitute for GST Council.

While holding so, the Court observed the following:

- Discretion under Section 168A is delegated legislation and not conditional legislation.
- Referring to meaning of 'due to' and 'cannot' in Section 168A, it was observed that that '*force majeure*', must be the cause for the authorities being unable to complete action to be taken under the Act, within the prescribed time limit. Mere casual connection between

force majeure and inability to complete actions may not be adequate for exercise of power under Section 168A.

- Authorities were not able to comply with issuance of notice or pass orders under Section 73(2) or (10) more in view of systemic deficiencies and for are causes that were self-inflicted/created. The same cannot be attributed to Covid-19. Also, expression 'otherwise' in Section 168A is used as an alternate to the cause of force majeure, i.e., *force majeure* may be caused by nature or *force majeure* caused otherwise than by nature.
- Recommendation of GST Council for issuance of notification under Section 168A is mandatory but not binding on the government for issuance of notifications.
- Recommendation by GIC Council ratified by GST Council after issuance of Notification No.56/2023 would not constitute compliance with the mandate on recommendation.

One of the assesseees was represented by Lakshmikumar & Sridharan Attorneys here. [Tata Play Limited v. Union of India – 2025 (7) TMI 772 - Madras High Court]

Inter-State transfer of unutilized ITC in case of amalgamation/merger – GST Council and GSTN asked to develop mechanism to facilitate such transfer

In a case involving amalgamation/merger, the Bombay High Court has permitted the transfer of the IGST and CGST amounts lying in the electronic credit ledger of the transferor company to the petitioner-transferee company in another State through manual mode. The GST Council and GSTN were also requested to develop a mechanism to facilitate inter-State transfers of ITC in such cases of amalgamation, merger, etc. The transfer of ITC was earlier declined to the assessee by displaying a message, 'Transferee and Transferor should be of the same State/Union Territory'. The Court however noted that sub-section (3) of Section 18 of CGST Act, 2017, which permit transfer of the ITC, and Rule 41 of the CGST Rules, 2017 which sets out the manner in which the ITC is permitted to be transferred, do not impose any such restriction while permitting the transfer of un-utilized ITC in the electronic ledger of the new entity to which the business was sold, with which it was merged, amalgamated or transferred. Madras

High Court's decision in *MMD Heavy Machinery* was distinguished. It may be noted that the assessee here gave up his claim of transfer of ITC related to SGST. [*Umicore Autocat India Private Limited v. Union of India* – 2025 VIL 746 BOM]

Providing opportunity of personal hearing along with SCN, without waiting for the reply, is not wrong

The Calcutta High Court has held that simply because the proper officer in the show-cause had notified the assessee with the date for opportunity of personal hearing, prior to the receipt of the reply, the same neither renders the show cause bad, nor can it be concluded that the proper officer had made up his mind in the matter. According to the Court, there was no irregularity on the part of the proper officer in providing an opportunity of hearing to the assessee by notifying the same while issuing the show cause especially when the hearing opportunity was afforded subsequent to the date of furnishing of the response to the show cause. [*Naina Gupta v. Assistant Commissioner* – 2025 VIL 622 CAL]

Additional evidence is admissible at appellate stage when assessee is not asked to produce said evidence in adjudication

The Gujarat High Court has set aside the order of the Appellate Authority rejecting admission of additional evidence (EPCG certificate here) when the same was not produced before the Adjudicating authority. Allowing the petition and while remanding the matter, the Court noted that clauses (a) to (d) of Rule 112 of the CGST Rules were not applicable in the present case as the assessee-petitioner was not called upon to provide the EPCG certificate for claiming no violation of Rule 96(10) of the CGST Rules, before the adjudicating authority. [*Maxwell Engineering Solutions Private Limited v. Assistant Commissioner* – 2025 VIL 698 GUJ]

Service of order – Mandatory to comply with minimum two modes mentioned in Section 169

The Patna High Court has held that merely uploading the proceedings in the Portal would not suffice. Observing that a Registered Company cannot peruse the Portal every day as to whether the Department has uploaded certain material information or not, the Court held that it is mandatory on the part of the official respondents to comply minimum two modes

mentioned in Section 169 of the CGST Act, 2017. [*Shree Shyam Trading Co. v. Union of India* – 2025 VIL 723 PAT]

Rectification application under Section 161 can be dismissed without affording an opportunity of personal hearing

The Division Bench of the Madras High Court has rejected the submission that the rectification application cannot be dismissed without affording an opportunity of personal hearing. The question before the High Court was whether the third proviso to Section 161 of CGST/TNGST Act, 2017 requires complying with the principles of natural justice even for dismissing a rectification petition. Observing that the third proviso will kick in only when there is rectification and the said rectification affects any person, the Court was of the view that when the rectification application is dismissed as such without there being anything more, the original order stands as such and in that event, there is no rectification at all. Thus, it was held that when there is no rectification, there is no question of invoking the principles of natural justice. According to the Court, a plain reading of the said proviso does not yield any conclusion that formation of an adverse view while disposing

of the application would require complying with the principles of natural justice. It was also observed that 'Refusal to rectify' cannot be read into the expression 'such rectification' in the said proviso. [*Eminent Textiles Mills Private Limited v. State Tax Officer* – 2025 VIL 730 MAD]

Penalty for absence of e-way bill – Mens rea to evade tax is sine qua non for imposing penalty

The Himachal Pradesh High Court has held that for invoking the proceedings under Section 129(3) of the CGST Act, Section 130 is required to be read together, where the intent to evade payment of tax is mandatory while issuing notice or while passing the order of detention, seizure or demand of penalty or tax. Thus, according to the Court, the intention to evade tax (*mens rea*) is *sine qua non* for imposing penalty in such cases. Allowing the petition, the Court noted that the tax (Customs duty and IGST) stood paid at the port. It was also noted that the assessee had generated the e-way bill before the order imposing penalty was passed and that the imposition of penalty was not backed by potent reasoning. [*Kunal Aluminium Company v. State of Himachal Pradesh* – 2025 VIL 645 HP]

Penalty for expiry of e-way bill in case of export goods cannot exceed INR 25,000

Observing that no tax was payable on the zero-rated supply (exports here) though leviable as per the provisions of the IGST Act, the Gujarat High Court has reduced the penalty for expiry of e-way bill to INR 25,000. The Department initially imposed a penalty of 200%. The High Court was of the view that the goods would thus be considered as exempted goods. Court's earlier decision in the case of *Boron Rubber India v. Union of India*, where in the Court had imposed a penalty of INR 25,000 only in a case involving contravention of Section 138 of the CGST Act in case of transfer to job-worker, was relied upon. [*Marcowagon Retail Pvt. Ltd. v. Union of India* – 2025 VIL 663 GUJ]

Withdrawal of Assessment order – Period of 30 days under Section 62(2) commences from the date of uploading of Form GST DRC-07

The Kerala High Court has held that the period of 30 days contemplated under sub-section (2) of Section 62 of the CGST Act, 2017 commences only from the date of uploading of Form GST DRC-07 (and not merely by issuing Form GST ASMT-13), as the assessment order becomes complete only upon

uploading of the same. The Court in this regard noted that Rule 100(1) of CGST Rules specifically provides that an order of assessment shall be issued in Form GST ASMT-13 and by uploading Form GST DRC-07. Thus, according to the Court, the issuance of an assessment order could be treated as complete only upon compliance of both these limbs as contemplated under Rule 100(1). Rule 142(5), which provides for the uploading of Form GST DRC-07 in respect of the assessment orders, was also relied upon by the Court here. It may be noted that the High Court here differed with the view held by the Court in *Hash Constructions v. Deputy Commissioner* where the date to file return was reckoned from the date of uploading of Form GST ASMT-13. [*Sree Sankaracharaya Computer Centre Private Limited v. State Tax Officer* – 2025 VIL 736 KER]

Show-cause notice under Section 73, when another SCN under Section 74 was issued and order passed thereunder, is valid

The Calcutta High Court has rejected the challenge to the validity of the show-cause notice under Section 73 of the CGST Act, 2017 on the ground of a pre-existing Section 74 proceeding. Observing that the very basis for the issuance of notices under these two sections is different, the Court was of the view that

the Revenue department cannot be faulted for having issued two separate notices in respect of the same period. [*Sayan Biswas v. Deputy Commissioner* – 2025 VIL 772 CAL]

Demand – Dropping of proceedings under Section 61(3) is no impediment to initiate proceedings under Section 74

The Calcutta High Court has held that dropping of proceedings under Section 61(3) of the CGST Act, 2017 is not an impediment on the part of the proper officer for initiating proceedings under Section 74 *ibid*, though the same may be an impediment for the proper officer to initiate proceedings under Section 73. Observing that fraud vitiates all conducts, the Court noted that admittedly, in the case, a specific case of fraud was made out against the assessee-petitioner, as the investigation had revealed the fraudulent activities committed by the assessee. Punjab & Haryana High Court decision in *J.S.B Trading Co. v. State of Punjab*, and the Supreme Court decisions in the cases of *Commissioner v. Prince Gutka Ltd.* and *Duncans Industries Ltd. v. Commissioner*, were distinguished here. [*Amit Agarwal v. Assistant Commissioner* – 2025 VIL 773 CAL]

Customs and FTP

Notifications and Circulars

- Steel imports – Mandatory QCO adherence requirement for input steel exempted for certain imports
- DFIA scheme – Correlation of technical characteristics, quality and specification of inputs with exported product required only for inputs specified in Para 4.29 of FTP
- MOOWR – Existing online facility for submission of application under Customs Sections 58 and 65 to continue till 31 October 2025
- No mandatory warehousing for clearance of imported goods under Authorisation issued after the date of shipment

Ratio decidendi

- IGST on re-imports after repairs abroad – Amendment to Notification No. 45/2017-Cus. by Notification No. 36/2021-Cus., dated 19 July 2021 is not retrospective – *Supreme Court*
- Exemption – Condition of specific use after import does not mean ‘actual user’ condition – *Supreme Court*
- Crimp pumps used for dispersal of medicaments is classifiable under Customs Heading 8413 and not under Heading 9616 – *Supreme Court*
- Advance authorization benefit cannot be denied for mis-description of goods – *Kerala High Court*
- Valuation can be done based on invoice retrieved from importer’s e-mail account even if another invoice with different value produced with B/E – *CESTAT Larger Bench*
- No Customs duty is payable when service tax is paid on import of software – *Gujarat High Court*
- Lithium-ion batteries for manufacture of mobile phones are liable to IGST @ 12% from 1 April 2018 till 31 March 2020 – *CESTAT New Delhi*
- PVC Resin suspension grade is classifiable under Customs TI 3904 21 10 – *CESTAT Kolkata*

Notifications and Circulars

Steel imports – Mandatory QCO adherence requirement for input steel exempted for certain imports

The Ministry of Steel has exempted the mandatory QCO adherence requirement for input steel for imports of steel products in specified circumstances. Steel imports with Bill of Lading having shipped on board date on or before 15 July 2025 have been exempted from the mandatory compliance of Steel and Steel Products (Quality Control) Order, 2024 in respect of input steel. Further, as per Ministry of Steel Order dated 15 July 2025, reiterated in CBIC Instruction No. 23/2025-Cus., also dated 15 July 2025, the mandatory adherence requirement of input steel for the final products supplied by Integrated Steel Plants (ISPs) shall be exempted after verification of such licences by BIS.

DFIA scheme – Correlation of technical characteristics, quality and specification of inputs with exported product required only for inputs specified in Para 4.29 of FTP

The Central Board of Indirect Taxes and Customs (CBIC) has clarified that in case of import of inputs under the DFIA scheme of the Foreign Trade Policy, correlation of technical characteristics, quality and specification of inputs with the exported product is required only for inputs specified in Para 4.29 of the FTP. CBIC Circular No. 20/2025-Cus., dated 24 July 2025 also clarifies that in case of inputs mentioned in Paras 4.12 and 4.28(iii) of the FTP, only name of the specific input along with the quantity is required to be declared in the shipping bill/bill of export.

MOOWR – Existing online facility for submission of application under Customs Sections 58 and 65 to continue till 31 October 2025

The CBIC on 18 July issued Circular No. 18/2025-Cus. to state that the online facility for filing applications under Sections 58 and 65 of the Customs Act, 1962 at the Invest India portal will no longer be available. However, the Circular has been withdrawn on 23 July. New Circular No. 19/2025-Cus., dated 23 July 2025 now states that the existing online facility hosted by Invest India shall continue to remain operational up to 31 October 2025.

No mandatory warehousing for clearance of imported goods under Authorisation issued after the date of shipment

The DGFT has clarified goods already imported / shipped / arrived, in advance, but not cleared from Customs may also be cleared for home consumption against an Authorisation issued subsequent to the date of shipment (date of Bill of lading) but before their clearance from Customs, without any mandatory requirement for warehousing. As per DGFT Policy Circular No. 2/2025-26, dated 22 July 2025, any interpretation of Para 2.12 of the Foreign Trade Policy to make warehousing of goods, a mandatory requirement even in cases where Authorisation has been issued before the arrival of the imports or their customs clearance, defeats the purpose intended under the said Para, and only adds to the costs of imports.

Ratio Decidendi

IGST on re-imports after repairs abroad – Amendment to Notification No. 45/2017-Cus. by Notification No. 36/2021-Cus., dated 19 July 2021 is not retrospective

The Supreme Court of India has dismissed the Revenue department's appeal filed against the decision of the CESTAT wherein the Tribunal had held that amendment to Notification No. 45/2017-Cus. by Notification No. 36/2021-Cus., dated 19 July 2021 is not retrospective. According to the Tribunal, mere usage of the words 'for removal of doubts' or 'it is clarified' in the newly inserted Explanation (d) to Notification No. 36/2021-Cus. will not, by itself, make the amendment clarificatory in nature, as it alters the scope of the original notification. The Tribunal had in its earlier decision ruled that the phrase 'duty of customs' in Notification No. 45/2017-Cus. does not include integrated tax but the Department later issued Notification No. 36/2021-Cus amending the earlier notification to clarify that integrated tax is leviable.

After condoning the delay, the Supreme Court here dismissed the Department's appeals while it observed no inclination to

interfere in the matters. *The assessee was represented by Lakshmikumaran & Sridharan Attorneys here.* [Commissioner v. Inter Globe Aviation Limited – Order dated 14 July 2025 in Civil Appeal No(S). /2025 (Diary No(s). 6685/2025), Supreme Court] Please also see summary of Delhi High Court decision as reported in March 2025 issue of LKS Indirect Tax Amicus, available [here](#).

Exemption – Condition of specific use after import does not mean 'actual user' condition

The Supreme Court of India has dismissed Revenue department's appeal filed against the CESTAT decision wherein the Tribunal had held that the condition of specific use after import does not mean 'actual user' condition. The CESTAT [See January 2025 issue of LKS Indirect Tax Amicus [here](#)] had allowed assessee's appeal in a case where the Department had alleged violation of Notification No. 146/94-Cus. which provided exemption to imports by National Sports Federations. The Department had alleged that the import conditions were violated as the assessee-importer had not used the imported arms and ammunition but sold them to the State Rifle Associations and District clubs. After condoning the delay, the

Apex Court here observed that no case was made out for entertaining the appeal. *The assessee-importer was represented by Lakshmikumaran & Sridharan Attorneys here.* [Commissioner v. National Rifle Association of India – Order dated 10 July 2025 in Civil Appeal Diary No(s).33388/2025, Supreme Court]

Crimp pumps used for dispersal of medicaments is classifiable under Customs Heading 8413 and not under Heading 9616

The Supreme Court of India has dismissed the Civil Appeal filed by the Revenue department against the CESTAT decision which had held that Crimp Pumps, one of the components of 'Nasal spray device' which is used for dispersal of medicaments which work on the principle of spray forming mechanism, are classifiable under Heading 8413 of the Customs Tariff Act, 1975 and not under Heading 9616 *ibid.* The summary of the Tribunal's decision was covered in March 2025 issue of LKS Indirect Tax Amicus, as available [here](#). After condoning the delay in filing the appeal by the Department, the Apex Court did not find any reason to interfere with the impugned order passed by the Mumbai Bench of CESTAT. *The assessee was represented by Lakshmikumaran & Sridharan Attorneys here.* [Commissioner v. Glenmark Pharmaceuticals Ltd. – TS 612 SC 2025 CUST]

Advance authorization benefit cannot be denied for mis-description of goods

The Kerala High Court has allowed the benefit of Advance Authorisation scheme under Notification No. 96/2009-Cus., in a case involving alleged misdescription of goods - decalcified fish scale for collagen classifiable under TI 0511 91 90 by the Department and 'fish protein' under TI 3504 00 99 by the assessee-importer. Noting that the benefit of advance authorization was available to goods of both Chapters 05 and 35, the Court held that the stand of the Department that the assessee would lose the benefit of the notification in question, was not acceptable. The Court also noted that the authorities entrusted with the administration of the scheme (DGFT) had not viewed the different descriptions to be in breach of the terms and conditions of the advance authorization scheme. Allowing assessee's appeal and rejecting the appeal filed by the Department, the Court also held that there was no justification for demanding differential duty for the later transactions alone when the assessee had been importing the same product during the previous transactions, where the Tribunal had set aside the demand of differential duty. It was also noted that the Department had not contended the goods earlier imported

were different (except for the different description). *The assessee was represented by Shri. V. Sridharan, Senior Advocate and Co-founder, LKS, along with the LKS Team.* [Nitta Gelatin India Ltd. v. Commissioner – 2025 VIL 673 KER CU]

Valuation can be done based on invoice retrieved from importer's e-mail account even if another invoice with different value produced with B/E

The Larger Bench of the CESTAT has held that in a case where the importer produces one invoice with the Bill of Entry while another invoice for the same consignment is found in the private records or e-mail of the importer, showing a different value, the customs duty under Section 14 of the Customs Act, 1962 can be determined on the basis of the invoice retrieved from the importer's e-mail account. The dispute was referred to the Larger Bench as the CESTAT had earlier in another decision of the assessee held that when an invoice is retrieved from e-mail account of the assessee but is not filed with the Department and is in possession of the importer in a private capacity, it cannot substantiate the case of mis-declaration.

According to the Larger Bench, it is not possible to draw such a conclusion from a reading of Sections 14, 17 and 46 of the

Customs Act or the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. The Larger Bench also noted that the proper officer can, for the purpose of verification, require the importer to produce any document or information to ascertain the duty leviable on the imported goods, and that where the proper officer has reason to doubt the truth or accuracy of the value declared, he may ask the importer to furnish further information, including documents or other evidence, etc. It was also noted that the provisions (Customs Act and the Valuation Rules) do not prohibit the proper officer from considering the invoice retrieved from the e-mail account of the importer, which is in relation to the same consignment. [Shivam Marketing v. Common Adjudication Authority – 2025 (6) TMI 1898 – CESTAT Larger Bench]

No Customs duty is payable when service tax is paid on import of software

The Gujarat High Court has held that once the liability to pay service tax is crystalised on the very same transaction of import of software, the same cannot be considered as part of the goods (hardware here) imported by the assessee. The Supreme Court's decision in the case of *Mohit Minerals* was relied upon by the Court here to hold that the very basis of issuance of show

cause notices for levy of customs duty on the alleged suppression of value of software was not sustainable. The Apex Court had in *Mohit Minerals* held that when the Indian importer is liable to pay IGST on the 'composite supply' of goods and services of transportation, insurance, etc., in a CIF contract, a separate levy on the importer for the 'supply of services' by the shipping line would be in violation of Section 8 of the CGST Act. The Gujarat High Court here was of the view that the Supreme Court's decision would apply conversely in facts of the present case. [*J B and Brothers Pvt. Ltd. v. Union of India* – 2025 VIL 704 GUJ CU]

Lithium-ion batteries for manufacture of mobile phones are liable to IGST @ 12% from 1 April 2018 till 31 March 2020

The CESTAT New Delhi has held that lithium-ion batteries imported for manufacture of mobile phones are covered by entry at Serial No. 203 of Schedule II to IGST Rate Notification and would be subjected to IGST @ 12% from 1 April 2018 up to 31 March 2020. The Department's submission of liability @ 28% by taking resort to the entry at Serial No. 139 of Schedule IV up to 26 July 2018 and thereafter @ 18% under Serial No. 376AA of Schedule III to the IGST Rate Notification was held as not

justified. Agendas for the 31st GST Council Meeting held on 22 December 2018 and the 39th Meeting held on 14 March 2020 were perused for this purpose. The Tribunal, in this regard, also upheld the submission of the assessee that as the IGST Rate Notification is not aligned completely with the Customs Tariff, Section Note (2) to Section XVI of the Customs Tariff Act, 1975 would not apply because of the use of the phrase 'so far as may be' in the Explanation to the IGST Notification, which means that the rules may be generally followed to the extent possible. The Department had relied upon the abovementioned Section Note to contend that parts which are independently classifiable under Chapter 85, cannot be classified as parts of mobile phone. *The number of importers were represented by Lakshmikumaran & Sridharan Attorneys here.* [*Samsung India Electronics Pvt. Ltd. v. Principal Commissioner* – TS 541 CESTAT 2025 (DEL) CUST]

PVC Resin suspension grade is classifiable under Customs TI 3904 21 10

The CESTAT Kolkata has held that PVC Resin suspension grade is classifiable under TI 3904 21 10 of the Customs Tariff Act, 1975 and not under TI 3904 10 90 as contended by the Revenue department. The period involved was prior to 2017. The Tribunal for this purpose noted that Tariff Item 3904 21 10

was specific for Poly (vinyl chloride) resins, whereas Tariff Item 3904 10 90 covered 'Others', which was a residuary entry. Rule 3(a) of General Rules for the Interpretation of Import Tariff Schedule was relied upon. It was also noted that the Department had not conducted any test to ascertain whether the goods are plasticized or not and had not brought in any

evidence to dispute the importer's claim that the goods contained many impurities. *The importer was represented by Lakshmikumaran & Sridharan Attorneys here.* [Surabhi Enterprises Pvt. Ltd. v. Commissioner – 2025 VIL 1139 CESTAT KOL CU]

Central Excise, Service Tax and VAT

Ratio decidendi

- Enrolment, collection, processing, and storage of umbilical cord blood stem cells is covered under healthcare services – *Supreme Court*
- SVLDR Scheme – Wholesale rejection of applications under the Scheme is not correct – *Bombay High Court*
- Service provided by CRS companies to airlines is not taxable under OIDAR services – *CESTAT Larger Bench*
- Interest on refund of pre-deposit – Proviso to Excise Section 35FF is not applicable to appeals filed after 5 August 2014 even when amount deposited before during investigation – *CESTAT Prayagraj*
- ‘Perk’ is a wafer biscuit, is not covered as ‘communion wafers’ and is classifiable under TI 1905 32 90 – *CESTAT New Delhi*
- Sand Lime Brick is not covered as ‘concrete brick’, and is classifiable under TI 6810 11 90 – *CESTAT Chennai*

Ratio Decidendi

Enrolment, collection, processing, and storage of umbilical cord blood stem cells is covered under healthcare services

The Supreme Court has held that services of enrolment, collection, processing, and storage of umbilical cord blood stem cells, provided by the appellant during the period from 1 July 2012 to 16 February 2014, is covered within the scope of 'Healthcare Services' and thus not liable to service tax. According to the Court, these services are preventive and curative in nature and encompass diagnosis, treatment, and care. The Apex Court for this purpose noted the Office Memorandum dated 22 May 2013 of the Ministry of Health and Family Welfare clarifying that stem cell banking is a part of 'health care services' and qualifies for exemption. Rejecting Department's contention that the services were exempted only from 17 February 2014 under Entry 2A by Notification No. 4/2014-ST, the Supreme Court observed that the insertion of Entry 2A does not curtail the scope of Serial No.2 under the original Notification No. 25/2012-S.T. It was held that the absence of express inclusion of cord blood services in earlier notification does not alter their essential healthcare nature. Recognition under the Drugs and Cosmetics

Act and use the phrase 'any service' in clause 2(t) of Notification No. 25/2012-S.T., defining 'healthcare services', were also noted for this purpose by the Court.

Further, the Supreme Court was also of the view that Notification No. 4/2014-S.T., inserting Sl. No. 2A, was clarificatory though not retrospective. According to the Court, the said notification cannot be applied to cases where assessments have already been done, and service tax has been paid without demur. However, in respect of pending claims, ongoing assessments, and existing disputes that are sub judice, it can be said that the notification dated 17 February 2014 is in the nature of a clarification. [*Stemcyte India Therapeutics Pvt. Ltd. v. Commissioner* – TS 604 SC 2025 ST]

SVLDR Scheme – Wholesale rejection of applications under the Scheme is not correct

The Bombay High Court has allowed a writ petition filed against the Department's rejection of the benefits under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 ('**SVLDR Scheme**'). The Court in this regard observed that the impugned orders, to the extent they rejected wholesale the assessee-petitioner's applications under the Scheme, warrant

interference. It was of the view that while the Department was justified in contending that the benefit of the Scheme cannot be extended to tobacco products and other goods falling under the Fourth Schedule, nothing was shown to the Court based on which it could be said that the applications under the Scheme in respect of goods or credit other than those falling under the Fourth Schedule could have been straightaway rejected without examination on merits. *The assessee was represented by Lakshmikumaran & Sridharan Attorneys here.* [Godfrey Philips India Limited v. Union of India – Judgement dated 30 June 2025 in Writ Petition No. 2017 of 2022, Bombay High Court]

Service provided by CRS companies to airlines is not taxable under OIDAR services

The Larger Bench of the CESTAT has held that service provided by the foreign Computer Reservation System ('CRS') companies to the airlines would not be taxable on a reverse charge basis under the category of 'Online Information and Database Access or Retrieval' (OIDAR) services defined under Section 65(75) of the Finance Act, 1994. The Larger Bench was thus of the view that the decision in *United Telecom Limited v. Commissioner* [2008 (8) TMI 191-CESTAT-Bangalore] laid down the correct position of law.

The Tribunal in this regard observed that the intention of the agreement was to achieve greater outreach and thereby increase the number of bookings of the assessee, and that the agreement was not intended to be limited to the provision of data. Taking note of the fact that consideration clause of the agreement was dependent on the successful bookings made through the CRS, the Tribunal observed that if the intention of the parties was the provision and receipt of data, then service itself would have ended once data/information were shared by the CRS companies and it would not be material whether the travel agents were successful in booking tickets.

The Larger Bench also observed here that the CRS companies do not have any data of their own (data itself belongs to the airlines) which they can provide and that the airlines only intended to use the infrastructure set up by the CRS companies to facilitate a better booking mechanism. It was also noted that the word 'providing data/information' used in Section 65(75) connotes 'to give or provide something which is previously available with the person who is providing and not available with the person who is receiving'.

Deciding the issue, the Larger Bench of the Tribunal also observed that it is the substance of the contract that will prevail over incidental or ancillary activities to define the character of

the transaction and consequent levy of service tax. *The assessee was represented by Lakshmikumaran & Sridharan Attorneys here.* [Air India Ltd. v. Commissioner – 2025 VIL 971 CESTAT DEL ST]

Interest on refund of pre-deposit – Proviso to Excise Section 35FF is not applicable to appeals filed after 5 August 2014 even when amount deposited before during investigation

Observing that the appeal was filed subsequent to 6 August 2014, the CESTAT Allahabad has held that it cannot be said that the pre-deposit was made under Section 35F of the Central Excise Act, 1944 prior to the commencement of Finance (No.2) Act, 2014. The new Section 35FF *ibid*, as introduced from 6 August 2014, provided for interest on refund of pre-deposit while the proviso to said Section provided that the amount deposited under Section 35F, prior to the commencement of the Finance (No.2) Act, 2014, shall continue to be governed by earlier provisions of Section 35FF. The assessee deposited the amount during investigation before the issuance of Show Cause Notice and the same was appropriated *vide* Order-in-Original dated 25 November 2004. It was also observed that unless an Order, against which an appeal is filed, is passed, the question of

making pre-deposit under Section 35F prior to commencement of Finance (No.2) Act, 2014 does not arise. Thus, according to the Tribunal, where stage of pre-deposit came into effect after 6 August 2014, the deposit is made under new Section 35F only and thus the proviso will not operate.

Further, in respect of relevant date for computation of interest, the Tribunal held that that once the amount is considered as pre-deposit under new Section 35F in terms of para 3.1 and 3.2 of the Circular No.984/8/2014-CX., dated 16 September 2014, the new Section 35FF will come into play with full force and the interest should be paid from the date of deposit of amount. It was noted that the deeming fiction (consideration of date of filing appeal as the date of pre-deposit) in the Circular had no legal backing. *The assessee was represented by Lakshmikumaran & Sridharan Attorneys here.* [L.G. Electronics India Pvt. Ltd. v. Principal Commissioner – Final Order No. 70443/2025, dated 2 July 2025, CESTAT Allahabad]

‘Perk’ is a wafer biscuit, is not covered as ‘communion wafers’ and is classifiable under TI 1905 32 90

The CESTAT New Delhi has held that products Perk, ULTA Perk, Perk Poppers and Wafer Uncoated Reject would fall under

TI 1905 32 90 of the Central Excise Tariff Act, 1985 and would be entitled to reduced rate of excise duty. The Revenue department had contended coverage of the goods under TI 1905 32 11. The issue in the dispute was whether (----) entry at TI 1905 32 11, in which the goods have been described as 'coated with chocolate or containing chocolate' and is preceded by (---) entry in which the goods have been described as 'communion wafers', should be read as sub-classification of (--) entry 'waffles and wafers' at sub-heading 1905 32 or as sub-classification of (---) entry 'communion wafers' which does not have any Tariff Heading.

Agreeing with the submission of the assessee that the (----) entry would have to be treated as sub-classification of (---) and not (--), the Tribunal the products would fall under TI 1905 32 90 which deals with 'waffles and wafers', other than 'communion wafers'. The Tribunal for this purpose also observed that the products in dispute were not 'communion wafers', which have a religious connotation as are used in Eucharist ceremonies. It was also noted that in an earlier case of the assessee itself, the Department had classified 'Perk' under TI 1905 32 90. Allowing benefit of exemption notification, the Tribunal also observed that the products were 'wafer biscuits'.

The Tribunal also accepted the assessee's submission that the products in dispute would not fall under TI 1905 32 11 as the said entry covers products that are 'coated with chocolate' or 'containing chocolate', while the products involved had vegetable oil. It was noted that according to FSSI Regulations and Prevention of Food Adulteration Act, Rules, 1955, chocolate is a product which will not contain vegetable fat. *The assessee was represented by Lakshmikumaran & Sridharan Attorneys here.* [Mondelez India Foods Pvt. Ltd. v. Commissioner – 2025 VIL 978 CESTAT DEL CE]

Sand Lime Brick is not covered as 'concrete brick', and is classifiable under TI 6810 11 90

The CESTAT Chennai has upheld the submission of the assessee that they were manufacturing Sand Lime Bricks and not concrete bricks, which were classifiable under TI 6810 11 90 of the Central Excise Tariff Act, 1985 and not under TI 6810 11 10 *ibid.* Considering the ingredients [Sand (72.6%), Lime (5.8%), apart from Gypsum (2.6%) and Cement (10~13%)], the fact that cement was only added as additive/binder, and the process of manufacture, the Tribunal noted it may be possible that the mixture of Sand & Lime requires classification as 'Sand Lime Brick' under TI 6810 11 90 and hence, the same may stand out of

or would not fit into the classification as 'Cement bricks' as the product was not a mixture of Sand & Cement or Lime & Cement, but rather a mixture of Sand and Lime with Cement as additive. Allowing assessee's appeal, the Tribunal noted that the Department should have got final and conclusive reports from the expert in the field instead of referring to incomplete reports,

and that there was no examination by the Department as to the ingredients of concrete brick *vis-à-vis* SLB. *The assessee was represented by Lakshmikumaran & Sridharan Attorneys here.* [Renaatus Procon (P) Ltd. v. Commissioner – 2025 VIL 1121 CESTAT CHE CE]

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