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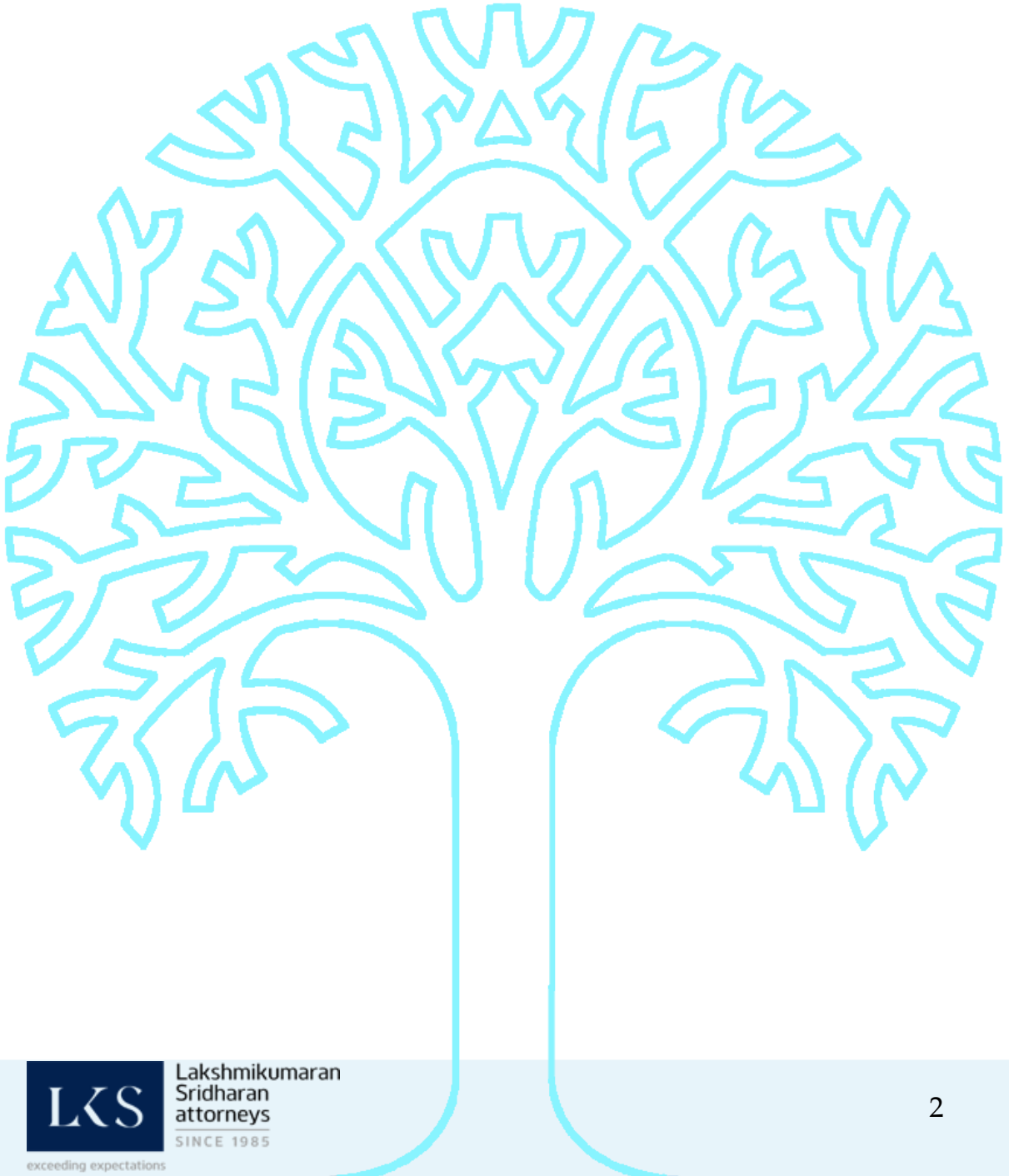

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Article

Hard-locking GSTR-3B: A new compliance milestone and its pitfalls

By **Sahana Rajkumar and Derlene Joshna**

GSTN has recently announced that, beginning with the July 2025 tax period, outward liability in GSTR-3B—auto-populated from GSTR-1/IFF—will be non-editable. The article in this issue of Indirect Tax Amicus analyses the legal and operational challenges posed by the proposed hard-locking of GSTR-3B data, while highlighting the lack of clarity surrounding its extent. The authors raise a question as to whether GSTN advisories are evolving into a legislative instrument, introducing a new class of 'portal-enforced compliance' without statutory authority. They also note that the change will significantly constrain a taxpayer's ability to rectify inadvertent errors prior to filing GSTR-3B and would result in a surge of litigation relating to revision of returns. According to them, for hard-locking to work well, it needs proper changes in the law, smooth portal experience, and clear rules.

Hard-locking GSTR-3B: A new compliance milestone and its pitfalls

By Sahana Rajkumar and Derlene Joshna

Introduction

Since its inception, the GST framework has envisaged a system-based matching mechanism, where self-assessed returns are pre-filled using data from other statutory filings made by taxpayers. The original return formats—GSTR-1, GSTR-2, and GSTR-3—were designed to operationalize this approach. However, due to limitations in the GST portal, these forms were never fully implemented.

In their place, Form GSTR-3B was introduced as a simplified interim return. Over time, several technological initiatives—such as e-invoicing, the Invoice Furnishing Facility (IFF), Form GSTR-2B, Form GSTR-1A, and the Invoice Management System (IMS)—have been rolled out to move closer to the originally envisioned system-driven compliance model.

In line with this progression, the idea of hard-locking auto-populated data in GSTR-3B has recently gained traction. Most notably, the GSTN advisory dated 7 June 2025 announced that, beginning with the July 2025 tax period, outward liability in GSTR-3B—auto-populated from GSTR-1/IFF—will be non-editable. Any corrections must be routed through GSTR-1A before filing.

This article analyses the legal and operational challenges posed by the proposed hard-locking of GSTR-3B data. This article also highlights the lack of clarity surrounding the extent of hard-locking contemplated from the July 2025 tax period.

The hard-locking proposal

Pursuant to the recommendations of the GST Council, the GSTN has issued a series of advisories outlining a phased approach to implementing hard-locking of auto-populated data in Form GSTR-3B. These advisories mark a significant shift toward a system-driven compliance framework, wherein outward liability and input tax credit—auto-populated from GSTR-1/IFF and GSTR-2B, respectively—will become non-editable. Any corrections to these figures will be permitted only through Form GSTR-1A or appropriate amendments in subsequent periods. A summary of these advisories is provided below:

GST Advisory Summary Table (As of June 2025)

Aspect	GSTN Advisory dated	Advisory Summary	Current Position (as of June 2025)
Outward Liability (GSTR-3B)	17 Oct 2024	Hard-locking of outward liability in GSTR-3B from Jan 2025; corrections via GSTR-1A only.	Initially proposed from Jan 2025.
Outward Liability (GSTR-3B)	27 Jan 2025	Hard-locking deferred due to trade feedback.	
Outward Liability (GSTR-3B)	7 Jun 2025	Confirmed implementation of hard-locking from July 2025 (returns filed in Aug).	Will be non-editable from July 2025 tax period onwards.
Table 3.2 (Inter-state Supplies)	11 Apr 2025	Auto-populated values in Table 3.2 will be non-editable from April 2025; corrections via GSTR-1A.	Hard-locking announced.
Table 3.2 (Inter-state Supplies)	16 May 2025	Table 3.2 remains editable; proposed locking deferred based on taxpayer representations.	Editable until further notice.
ITC (GSTR-2B Auto-population)	17 Oct 2024	Locking of ITC from GSTR-2B based on IMS to be implemented later	Future implementation planned; date TBD.

The summary reveals that three parallel hard-locking proposals are under consideration: for output tax liability, ITC data, and Table 3.2 of GSTR-3B. While the GSTN advisory dated 7 June 2025 confirms that output liability fields in GSTR-

3B will be hard-locked from the July 2025 tax period, it makes no mention of the earlier advisories which addressed hard-locking of Table 3.2 of GSTR-3B. This omission creates ambiguity regarding the exact scope of hard-locking contemplated from the tax period of July 2025.

Another key concern is the automatic addition of output tax liability to a supplier's return when a recipient rejects a credit note via the Invoice Management System (IMS). This mechanism currently lacks statutory backing, as the relevant amendments to Section 34(2) and Section 38 of the Central Goods and Services Tax Act, 2017 ('CGST Act'), introduced through the Finance Act, 2025, are yet to be notified.[1] Under the existing regime, taxpayers could manually delete such auto-populated liability in GSTR-3B. However, with hard-locking proposed from the July 2025 tax period, this flexibility may no longer be available, potentially resulting in involuntary tax liability without express legal sanction.

Hard-locking lacks legal sanction

The current legal framework under the GST law does not provide statutory backing for the proposed hard-locking of GSTR-3B data based on GSTR-1 or GSTR-2B. Unless suitable legislative amendments are made, such hard-locking risks being seen as a practice rooted in portal-based functionality rather than in law, effectively creating a regime governed by 'GST portal law' rather than the statute itself.

Key legal observations include:

- Section 39 of the CGST Act, which mandates the furnishing of returns, does not distinguish between editable and non-editable tax periods for GSTR-3B. No amendment has been made to restrict a taxpayer's right to revise or correct data before filing.
- Section 39(9) of the CGST Act allows rectification of errors or omissions in GSTR-3B for earlier tax periods until November of the following financial year. Hard-locking removes the practical ability to make corrections at the time of filing, effectively curtailing a statutory right provided by Section 39(9).

[1] As per the 55th GST Council Meeting recommendations to provide legal framework for IMS, the amendments to Section 34(2) and Section 38 of the CGST Act have been introduced vide Section 126 and Section 127 of the Finance Act, 2025. However, the amendments are yet to come into force.

- The scheme of GST law after 1 October 2022 relating to availment of ITC only on those invoices reflecting in Form GSTR-2B inherently recognises the option to edit auto-populated figures in GSTR-3B. In the absence of any further changes to the law, a question arises as to how the hard-locking feature can be justified in the context of ITC. It also remains to be seen on how the feature would function from a credit perspective when the law requires a taxpayer to undertake different kinds of reversals.
- The **Invoice Management System (IMS)**, essential to the contemplated hard-locking, **lacks legal foundation** pending amendments to the CGST Act and CGST Rules. The GST Council has only recently begun considering such amendments (e.g., through amendments to Section 38 of the CGST Act, introduced through the Finance Act, 2025 to provide a legal framework in respect of generation of GSTR-2B based on action taken on IMS).[2]
- Section Rules 88C and 88D of the Central Goods and Services Tax Rules, 2017 ('**CGST Rules**'), which deal with mismatches between GSTR-1 vs. GSTR-3B and GSTR-2B vs. GSTR-3B respectively, may become redundant under a hard-locked regime, since no mismatch would be possible if editing is not permitted. Their continued existence raises a valid question—is hard-locking truly a statutory mandate, or merely a portal-level constraint inconsistent with the law?

With recent advisories treating hard-locking as the norm, a deeper concern is—are GSTN advisories evolving into a legislative instrument? If so, this represents a departure from established legislative hierarchy, introducing a new class of 'portal-enforced compliance' without statutory authority. Such measures, absent legal sanction, may be open to constitutional and judicial challenge.

Operational challenges

While the GSTN infrastructure has significantly matured over the past eight years, enabling the vision of a seamless, system-based return filing regime, the proposed shift to hard-locked, auto-populated GSTR-3B is not without operational and technical hurdles.

[2] Para C.7 of the 55th GST Council Meeting recommendations available here.

A major challenge lies in the incomplete or erroneous population of GSTR-2B, especially with respect to inward supplies and import transactions. Many taxpayers continue to face issues in getting invoices and Bills of Entry (BOEs) to reflect correctly in GSTR-2B. Acknowledging these glitches, GSTN had introduced a self-service BOE retrieval tool[3], yet many users still find themselves compelled to raise grievance tickets due to persistent non-population and data sync failures. This issue has led to ongoing litigation over mismatches between GSTR-2B and GSTR-3B, particularly where eligible ITC on imports is missed out from the system-generated statements.

The proposed hard-locking of GSTR-3B based on GSTR-1 would significantly constrain a taxpayer's ability to rectify inadvertent errors prior to filing GSTR-3B once the taxpayer has missed the option to make the correction in GSTR-1A for said tax period. Mistakes such as tax paid under the wrong head often arise due to clerical oversight or incorrect POS selection in GSTR-1. If these errors are not promptly corrected through GSTR-1A or amendments, the taxpayer may face cash flow issues and delayed refunds with no immediate recourse for correction.

A related complexity also arises in the context where taxpayers discharged liabilities *via* Form DRC-03 or the electronic liability ledger, while continuing to raise tax invoices or debit notes (e.g., to pass on ITC to recipients) and report them in GSTR-1. Since the tax was already paid through DRC-03, such transactions were typically excluded from GSTR-3B, avoiding double tax accounting. Under a hard-locked regime, this practice becomes infeasible—any tax reported in GSTR-1 would compulsorily reflect as liability in GSTR-3B, preventing the taxpayer from passing on ITC unless the liability is paid again through the return.

These examples highlight that technical capability and legal flexibility must be addressed before hard-locking can be effectively implemented across the GST framework.

Conclusion

The move to hard-lock GSTR-3B aims to improve accuracy and bring consistency in return filing. However, without clear legal backing and a fully reliable system, it raises concerns. Taxpayers still face technical glitches, and the law does not yet support locking return data.

[3] GSTN Advisory dated Sep 17th, 2021 available here.

Courts have consistently prioritized substantive justice over procedural rigidity, allowing taxpayers to correct genuine and inadvertent errors in GSTR-1 and GSTR-3B—especially when the errors cause no loss to revenue and stem from technical glitches or clerical oversight.[4] Proceeding with implementation of hard-locking would result in a surge of litigation relating to revision of returns.

For hard-locking to work well, it needs proper changes in the law, a smooth portal experience, and clear rules. Until then, enforcing it may cause more confusion than compliance.

[The authors are Associate Partner and Principal Associate, respectively, in GST practice at Lakshmikumaran & Sridharan Attorneys, Chennai]

[4] *CBIC* v. *Aberdare Technologies Private Limited & Ors*., 2025 (4) TMI 101 - SC ORDER [The Supreme Court upheld the Bombay High Court's decision allowing revision of both GSTR-1 and GSTR-3B beyond the statutory deadline, provided there is no loss of government revenue. The Court emphasized that software limitations cannot justify denial of these corrections, affirming taxpayers' right to amend bona fide clerical mistakes]; *Orient Traders* v. *Deputy Commissioner of Commercial Taxes*, 2023 (1) TMI 838 - Karnataka High Court [The Karnataka HC allowed correction of GSTR-3B for July 2017 and March 2018—specifically to rectify the misclassification of IGST as CGST/SGST. It held this would not prejudice revenue and granted permission to amend the returns online].

Article

Classification of goods – Recent WCO Rulings, Opinions, and HSN Explanatory Notes changes

By **Srinidhi Ganesha and Neha Agrawal**

The second article in this issue of the newsletter summarises the 75th Session of the World Customs Organisation's ('WCO') Harmonized System Committee which was held in March 2025. The Rulings, opinions, changes suggested therein have been recently released by the WCO. The Update covers WCO Rulings on some 20 products, WCO Opinions on 11 products and some 8 changes in the HSN Explanatory Notes.

Classification of goods – Recent WCO Rulings, Opinions, and HSN Explanatory Notes changes

By Srinidhi Ganesha and Neha Agrawal

World Customs Organisation's Harmonized System Committee ('**HSC**') meets regularly and issues various Rulings, Opinions regarding classification of various products. At times changes are also made to the HSN Explanatory Notes. The WCO Rulings and Opinions so issued have been consistently applied by Courts in India (*Manisha Pharma Plasto Pvt. Ltd.* v. *Union of India* [1999 (112) ELT 22 (Del.)]). The CBIC too considers these rulings with high regard and has often issued Circulars explicitly applying the Rulings. Thus, these Rulings and Opinions are of great significance to importers and exporters in India. Further, as the Customs Tariff Schedule has been borrowed for GST purposes as well, the WCO Rulings and Opinions are also significant for domestic transactions within India.

The 75th Session of the HSC was held in March 2025. The Rulings, opinions, changes suggested therein have been recently released by the WCO. The same are summarised below.

WCO Rulings:

- ***Crisp snacks***: made using rice flour, chickpea flour, beans, green peas etc. Product is extruded and then cooked/popped on exposure to heat. Classified under Heading 2005 (as other preserved/prepared vegetables) and not under Heading 1905 as bakers' wares.
- ***Lab grown meat***: Classified as a food preparation, under Heading 2106 and not under Headings 0410 (Insects and other edible products of animal origin) or 3002 (products manufactured artificially through cell culture).
- ***Fruit Juice compounds***: consisting of fruit juice concentrates with vitamins, flavour, water etc. Classified as a food preparation, under Heading 2106 (Food preparations not elsewhere specified or included) and not under Heading 2009 (Fruit and Nut juices).

- ***Preparation used in animal feeding***: composed of coccidiostat (drug to treat disease coccidiosis in animals) along with varying combinations of corn, wheat, extraction meal, , processing aids bran, oil etc. Classified under Heading 2309 (Preparations of a kind used in animal feeding) and not under Chapter 30 as pharmaceutical products.
- However, ***Preparation for the prevention of the clinical signs of coccidiosis*** in lambs and calves, made from coccidiostat, water and other excipients was classified under Chapter 30 and not under Heading 2309.
- ***Mineral concentrate***: containing mainly galena (lead (II) sulphide) and argentite (silver sulphide), used for extraction of lead and silver. Classified under Heading 2607 (Lead ores and concentrates) and not under Heading 2616 (Precious metal ores and concentrates).
- ***Lithium bis(fluorosulfonyl)imide***: a promising new electrolyte additive for manufacturing lithium-ion batteries. Classified under sub-heading 2853.90 (Other organic compounds) and not under Heading 2826 (Fluorides; fluorosilicates, fluoroaluminates and other complex fluorine salts).
- ***Pegmispotide, an erythropoietic agent***: a functional analog of erythropoietin, for treatment of anemia associated with chronic kidney disease in adult patients on dialysis. Classified under sub-heading 3907.29 (Other polyethers).
- ***Unedged boards***: roughly machined, sawn on both sides, not edged (with traces of bark), not planed, not sanded. Classified under Heading 4407 (Wood sawn, whether or not planed, sanded or end-jointed) and not under Heading 4403 (Wood in the rough, whether or not stripped of bark or sapwood).
- ***Product called '2 x 2 fabrics'***: a fabric construction in which two yarns of the warp, of 100% cotton, alternately pass over and under two successive yarns of the weft. Classified under 5208 (Woven fabrics of cotton, containing 85% or more by weight of cotton).
- ***Bracelet***: essentially consisting of two smooth and one braided leather straps and an attached double clasp made of base metal. One of the bands has a decorative element also made of base metal. Classified under sub-heading 7116.20 (Articles of

precious or semi-precious stones) and not under Heading 7117 (Imitation jewellery).

- ***A silver-coloured wire mesh***: composed of rigid galvanised steel wires, used for dynamic rock or compressed terrain support in mining and construction industries. Classified under sub-heading 7314.41 (Cloth or iron or steel wire, plated or coated with zinc) and not under sub-heading 7314.14 (Other woven cloth, of stainless steel**)**.
- ***Bird cage of iron***: consisting of metal sides and a plastic base, with a plastic dirt tray and plastic feeding container. Classified under sub-heading 7326.20 (Articles of iron or steel wire) and not under Heading 7323 (Other household articles, of iron or steel).
- ***Propeller-type wind turbine blade blank***: consisting of two supporting aerodynamic surfaces made of carbon fibre and fibreglass, with a metal tip at the end to protect against lightning. Classified under sub-heading 8412.90 (Parts of other engines/motors).
- ***Hard capsules filling machines***: designed to automatically or semi-automatically fill ingestible empty hard capsules with ingredients for pharmaceutical or dietary supplement products. Classified under sub-heading 8422.30 (Machinery for filling, bottles, cans, boxes, bags or other containers) and not under Heading 8479 (Machines having individual functions, not specified elsewhere).
- ***Electronic cigarette pod, 'replacement pods'***: designed for an electronic cigarette kit. Classified under sub-heading 8543.40 (Electronic cigarettes and similar personal electric vaporising devices)
- ***Empty cartridge (coil not included)***: designed for an electronic cigarette kit. Classified under sub-heading 8543.90 (Parts of electrical machines, having individual functions, not specified or included elsewhere)
- ***Self-propelled concrete mixer with self-loading function***: consisting of a cabin and a motor vehicle chassis. Classified under sub-heading 8705.40 (Concrete-mixer lorries) and not under Heading 8474 (Machinery for sorting, screening, separating, washing, crushing etc, earth, stone, ores or other mineral substances).
- ***A 27 tons semi-trailer***: specifically adapted for use as a mobile cinema and can be transformed into a cinema at the location where films are to be screened.

Classified under sub-heading 8716.40 (trailers and semi-trailers) and not under Headings 9406 (Prefabricated buildings) or 9508 (Travelling theatres).

- ***Airsoft gun powered by gas or compressed air***: made of aluminium and steel, designed for use in airsoft activities. Classified under Heading 9304 (Other arms, example, spring, air or gas gun and pistols)

WCO opinions:

- ***Powdered cooked chicken***: made from chicken meat that has been ground, cooked and spray dried. Classified under Heading 0210 (Edible flours and meals of meat or meat offal)
- ***Sugar spheres***: consisting of a minimum of 80% sugar, a minimum of 8.5 % corn starch and a maximum of 1.5% purified water, intended to be used by pharmaceutical companies as a carrier for active substances. Classified under Heading 1701 (Cane or beet sugar and chemically pure sucrose in sold form)
- ***Heat-treated shelled mung beans***: produced by peeling and oven-baking raw mung beans at a temperature of 160 to 180 °C. Classified under sub-heading 2005.51 (Shelled beans)
- ***De-sensitising spray for men***: containing lidocaine (9.6 % by weight) as the active ingredient as well as isopropyl myristate, solvent, stearic acid and fragrance. Classified under sub-heading 3824.99 (Other chemical products and preparations of chemical or allied industries, not elsewhere specified or included)
- ***Marker for mineral oils***: in the form of a coloured liquid, essentially comprising invisible forensic markers (not colouring matters), hydrocarbon fractions (mineral oil) and a trace amount of a dye. Classified under sub-heading 3824.99 (Other chemical products and preparations of chemical or allied industries, not elsewhere specified or included)
- ***Air cooler***: comprising of an independent closed circuit in which a propylene glycol water solution circulates as a working medium. It has no refrigeration equipment in the circuit but can generate heat. Classified under sub-heading 8415.90 (Parts of Air conditioning machines, not incorporating a refrigerating unit)

- ***Central Processing Unit (CPU) cooling system***: consisting of a fan, a heatsink, fan fixing brackets, fasteners with screws for installation on CPU sockets, a universal plate with plastic fasteners and metal segments/holes for screws, screws and thermal paste. Classified under sub-heading 8473.30 (Parts and accessories of the machines of Heading 8471 i.e., Automatic data processing machines and units)
- ***Asphalt material transfer vehicle***: a self-propelled machine, mainly consisting of a receiving hopper, an intermediate hopper with a three-way mixing auger, and conveyors. It is designed to prevent the thermal and material segregation of a ready-made asphalt mixture during transfer from a tipping lorry to an asphalt paver during continuous laying of asphalt. Classified under sub-heading 8479.10 (Machinery for public works, building or the like)
- ***Light therapy device***: designed for use at home and in beauty or healthcare facilities. It is equipped with a halogen light source in conjunction with an optical unit to deliver therapeutic polarised light. Classified under sub-heading 8543.70 (Other electrical machines and apparatus having individual functions, not specified or included elsewhere)
- ***Air spring***: consisting of a fabric-reinforced rubber bellow (vulcanised rubber), steel plates, and a plastic piston, to be used as a component in the suspension system of semi-trailers. It is designed to absorb shocks and bumps and to act as a vibration isolator and chassis height adjustment actuator. Classified under sub-heading 8716.90 (Parts of trailers and semi-trailers, other vehicles not mechanically propelled)
- ***Electronic blood pressure monitor***: for automatic blood pressure and pulse measurement, designed for home use, consisting of a wrist cuff and a pump for its inflation, a blood pressure measuring sensor, a display showing the measurement readings, the time and the date, and other electronic components: Classified under Heading 9018 (Instruments and appliances used in medical sciences).

Amendments to HSN Explanatory Notes:

- ***Heading 2202*** covers 'Waters, including mineral water, aerated water, and other non-alcoholic beverages'. The Explanatory Notes to Heading 2202 has been amended to limit the maximum fruit or nut

juice content of the beverages of this group to 25% by volume of the finished product

- ***Heading 2937*** covers 'Hormones, prostaglandins, thromboxanes and derivatives and structural analogues thereof'. Part (V), item (b) of Explanatory Notes to Heading 2937 has been amended to expand the manner of altering the analogues of steroid hormones
- ***Heading 2941*** covers 'Antibiotics'. The Explanatory Notes to Heading 2941 has been amended to expand the scope of antibiotics covered. Further, Quinolinecarboxylic acid derivatives, nitrofurans, sulphonamides and other chemically defined organic compounds of earlier headings of Chapter 29 have been excluded from the scope of Heading 2941
- The ***sub-heading 2941.40*** has been amended to include 'sirpefenicol'
- The ***Explanatory Notes to Chapter 29*** provides a list of narcotic drugs and psychotropic substances. It has been prepared by the International Narcotics Control Board to assist Governments in completing the annual statistical reports on narcotic drugs along with the estimates of annual requirements for narcotic drugs. The list has been amended to include certain Psychotropic substances like Bromazolam, Phenobarbital propylhexedrine, etc.
- ***Heading 3003*** covers 'Medicaments for therapeutic or prophylactic uses, not put up in measured doses or in forms or packings for retail sale'. The Explanatory Notes to Heading 3003 has been amended to exclude foodstuffs, beverages and preparations of a kind used in animal feeding containing medicinal substances, if those substances are added solely to ensure a better dietetic balance, to increase the energy-giving or nutritional value of the product or to improve its flavour. A similar change has also been made in Heading 3004, which covers 'Medicaments for therapeutic or prophylactic uses, put up in measured doses or in forms or packings for retail sale'.
- ***Heading 9505*** covers 'Festive, carnival or other entertainment articles'. The Explanatory Notes to Heading 9505 has been amended to expand the inclusions and exclusions thereunder.

[The authors are Partner and Senior Associate, respectively, in Customs practice at Lakshmikumaran & Sridharan Attorneys, Mumbai]

Goods & Services Tax (GST)

Notifications and Circulars

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Notifications and Circulars

Quoting of DIN on communications with RFN is not mandatory

The Central Board of Indirect Taxes and Customs has clarified that quoting of DIN is not mandatory for communications issued through the GST common portal with a verifiable reference number. Observing that quoting DIN on such communications results in two different electronically generated verifiable unique numbers on the same communication, which renders quoting of DIN unnecessary, the Circular No. 249/06/2025-GST, dated 9 June 2026 states that communication bearing RFN is to be treated as a valid communication. Earlier Circulars, namely, Circular No. 122/41/2019-GST, dated 5 November 2019 and 128/47/2019-GST, dated 23 December 2019, have been thus modified to this extent. *See Gujarat High Court decision under Ratio Decidendi, stating that Order issued by a State Tax Officer without a DIN is valid as CBIC Circulars are not binding on State officers.*

Ratio Decidendi

Refund of IGST on exports – Rule 96(10) stands omitted prospectively but is not applicable to pending proceedings/cases

The Gujarat High Court has held that Rule 96(10) of the Central Goods and Services Tax Act, 2017 would stand omitted prospectively but would not be applicable to pending proceedings/cases where final adjudication has not taken place. The Court for this purpose opined that Notification No.20/2024-Central Tax, dated 8 October 2024, which omitted the said Rule, would be applicable to all the pending proceedings/cases. The assessees were, therefore, held entitled to maintain refund claims for IGST paid for the export of goods as per Rule 96 in accordance with law, as while challenging the *vires* of Rule 96(10), they had also challenged the SCNs and orders rejecting refunds invoking the said Rule.

The High Court in this regard observed that the 'omission' would be included in the interpretation of word 'repeal' and hence omission of Rule 96(10) with effect from 8 October 2024, would amount to repeal without any saving clause. Relying on the provisions of the General Clauses Act, 1897, the Court thus held that 'repeal' without any saving clause would destroy any proceeding whether or not yet begun or whether pending at the time of enactment of the repealing Act and not already prosecuted to a final judgment so as to create a vested right. ***Number of assessees were represented by Lakshmikumaran & Sridharan Attorneys here.*** [*Messrs Addwrap Packaging Pvt. Ltd. & Anr.* v. *Union of India & Ors.* – 2025 VIL 587 GUJ]

Refund – Relevant date for limitation is date of communication of conciliation agreement which is equivalent to decree of Civil Court

The Delhi High Court has held that the conciliation agreement is like an arbitral award, which is in effect, equivalent to a decree of the Civil Court as per Section 36 of the Arbitration and Conciliation Act. Thus, according to the Court, the date of finalisation of the settlement agreement shall be the deemed date of communication of the judgment/decree under Explanation 2(d) of Section 54 of the Central Goods and Services Tax Act, 2017. The Court thus allowed the refund of excess-paid GST to be processed in the case which involved subsequent reduction of the tax liability of the assessee due to a conciliation agreement with the lessee. The Department had

rejected the refund claim on the grounds of limitation, holding that the relevant date for limitation would be the date of payment of tax under Explanation 2(h) of Section 54. Setting aside the impugned order, the Court noted that the conciliation agreement conclusively determined the contractual value and enabled crystallisation of the quantum of excess tax paid to the Department. [*Delhi Metro Rail Corporation Ltd.* v. *Commissioner* – 2025 (5) TMI 2084-Delhi High Court]

Circulars issued by CBIC are not binding on State Tax Officers – Order issued by State officer without DIN is valid

The Gujarat High Court has disagreed with the contention that as the Central Goods and Services Tax and the State Goods and Services Tax Acts are replicas, the Circulars issued by the CBIC are also binding upon the State Tax Officers. On the facts of the case, the Court thus rejected the assessee's contention that since DIN was not mentioned on the summons and the provisional attachment order, as mandated by CBIC Circular No. 37/2019, dated 5 November 2019, such summons and order issued by the State GST Officers were not valid. The Court in this regard noted that the Circular was not addressed to any of the Commissioners of any of the State Tax who are the authorized persons. Also, the Court observed that CGST and SGST provisions are operating by separate Acts, notification and circulars issued by the Central Government and the State Government separately, and though, as and when any notification is issued by the Central Government/CBIC, similar notification is also issued by the State Authorities, no circular similar to Circular No. 37/2019 was issued by the State Tax Authority. The High Court also noted that there was no mechanism of issuance of DIN on any of the communication issued by the State Tax Authorities. [*NRM Metals (India) Private Limited* v. *Union of India* – 2025 VIL 563 Guj]

Service of notices, orders, etc. – Department directed to create SOP for uploading on the portal and sending by email

The Delhi High Court has directed the GST Department to create a proper SOP for following a consistent practice of uploading all notices, orders and communications on the portal, and secondly, by sending all such communications, notices and orders through email on the registered email address. The High Court further stated that the correspondence could ultimately be sent via speed post. . It may be noted that

the Court also directed the GST Department to make an endeavour to ensure that the order is uploaded on the same date on which it is passed.. [*Khaleeque Ahmed Prop M/s Mark Ad Grafix* v. *Superintendent* – 2025 VIL 517 DEL]

Service of notice – Department should explore possibilities of sending notices through other modes if assessee not responding by one mode

The Madras High Court has observed that when there is no response from the tax payer to the notice sent through a particular mode, the Officer who is issuing notices should strictly explore the possibilities of sending notices through some other mode as prescribed in Section 169(1) of the CGST Act, preferably by way of RPAD, which would ultimately achieve the objective of the GST law.

The show cause notice was, in the present case, uploaded on the GST Portal tab and the assessee had denied being aware of the issuance of the said show cause notice. The assessment order passed subsequent to the said SCN was thus set aside by the Court observing that the order was passed without affording any opportunity of personal hearing to the assessee. The Court in this regard observed that while sending notice by uploading in portal is a sufficient mode of service, the Officer who is sending the reminders should have applied his/her mind and explored the possibility of sending the notices by other modes prescribed in Section 169. [*Kay Arr Engineering Agency* v. *State Tax Officer* – 2025 VIL 554 MAD]

Service of notice/order can be affected by any of the modes provided for in clauses (a) to (f) of Section 169(1) – Service through portal is valid

The Calcutta High Court has rejected the contention that unless the State complies with and exhausts the mode of communication as provided under Section 169(1) clauses (a) to (c) [in-person, registered post, e-mail] at the first instance, it cannot be permitted to rely on the mode of communication provided for in clause 169(1)(d) [upload on portal], to establish service of the order. Holding that service of the notice can be affected by any of the modes provided for in clauses (a) to (f) of Section 169(1) of the CGST Act, 2017, the Court noted that the mode of service provided in the said clauses are all in the alternative, as is amplified by use of the word 'or' after each clause. The Court also noted that the exception is only present in case of clause (f), according to which, only if the manner of service as contemplated in clauses (a) to (e) is not practicable, the mode of service through clause (f) is permissible. Madras

High Court's decision in *P. N. Traders* v. *Deputy State Tax Officer* [(2025) 27 Centax 383 (Mad.)] was disagreed with. [*Carry Co, Prop: Kajal Kumar Garai* v. *Union of India* – 2025 VIL 585 CAL]

Fixed mark-up does not make an independent service provider an agent of foreign recipient

The Bombay High Court has observed that merely because consideration is fixed and the assessee receives a fixed mark-up, the same does not become commission paid to the assessee as an agent. Rejecting the Department's contention that the assessee in India was providing services to the foreign recipient (which was a group company) as its agent or that the recipient was carrying business in India through the assessee, the Court noted that the service agreement provided that the assessee was an independent contractor and that neither the assessee nor its officers, directors, employees or sub-contractor were servants, agents or employees of the foreign recipient of services. Allowing refund of unutilized ITC in respect of design and engineering services provided by the assessee to the foreign entity, the Court also held that the clause for inspection of books of account to facilitate the verification of the actual costs, does not necessarily make the Indian entity (incorporated under Indian laws) as the agent of their counterpart located outside India. Further, the Court in this regard also noted that the agreement must be read as a whole and the intention of parties to an agreement is of paramount importance. It was of the view that in absence of a specific agreement/ arrangement, 'agency' cannot be created. CBIC Circular No. 161/17/2021-GST, dated 29 September 2021, was also relied upon. [*Sundyne Pumps and Compressors India Pvt. Ltd.* v. *Union of India* – 2025 VIL 593 BOM]

Refund of ITC is available on closure of business – No express prohibition in Section 49(6) read with Section 54(3)

The Sikkim High Court has allowed a refund of Input Tax Credit (ITC) in the case of closure of business. The Court in this regard noted that there is no express prohibition in Section 49(6) read with Sections 54 and 54(3) of the CGST Act, 2017, for claiming a refund of ITC on closure of unit. The High Court noted that though Section 54(3) deals only with two circumstances where refunds can be made, the statute also does not provide for retention of tax without the authority of law. Karnataka High Court's decision in the case of *Union of India* v. *Slovak India Trading Company Private Limited* [MANU/KA/0709/2006] was relied upon by the Sikkim High Court here. [*SICPA India Private Limited* v. *Union of India* – 2025 VIL 570 SIK]

Power of rectification can be invoked suo motu by GST officer if an error is brought to its notice or becomes apparent on the face of the record

The Kerala High Court has held that when an error is brought to the notice of the officer concerned or otherwise the officer becomes aware of such an error which is apparent on the face of record, the officer concerned can *suo motu* initiate the proceeding of rectification under Section 161 of the CGST Act, 2017. The Court was of the view that invocation of the powers under Section 161 is not confined to a situation where the aggrieved party approaches the authority with an application for rectification. The case involved two mutually conflicting orders passed on the same alleged discrepancy during a particular financial year, by the Officers of the same Department. According to the Court, when such a serious error was clearly pointed out before the competent authority, within the statutory period contemplated under Section 161 for rectification, such authority could not have refrained from invoking the powers of rectification. [*Winter Wood Designers & Contractors India Pvt Ltd.* v. *State Tax Officer* – 2025 VIL 597 KER]

Inadvertent error in GST DRC 03 can be permitted to be corrected – Non mention of FY in the form while reversing ITC, is not fatal

The Calcutta High Court has reiterated that an inadvertent error in Form GST DRC 03 can be permitted to be corrected. The assessee in the case while reversing the ITC wrongly availed had not indicated in the DRC 03 forms that the reversal was in respect of a particular financial year. The Department had denied the benefit observing that the consolidation of the reversal of ITC for many financial years in a single financial year cannot be accepted. Observing that *prima facie*, this was not a case of tax evasion but a case of wrongful availment of ITC, the Court was of the view that reversal of the entire ITC cannot be overlooked. The High Court, consequently, also quashed the recovery notice, while it observed that the adjudicating and appellate authorities had though acknowledged reversal of ITC, the benefit was not extended citing technical grounds. [*Kamdhenu Udyog P. Ltd.* v. *Deputy Commissioner* – 2025 VIL 599 CAL]

E-Way Bill – Clerical error in description of goods – Burden of proof of intention to evade is on tax authorities

The Karnataka High Court has set aside the tax demand, penalty levied, and fine for the alleged mismatch of goods in the e-way bills – the invoice mentioned Copra while the e-way bill stated the goods as dry grapes. Allowing the writ petition, the Court observed that the mistake was merely a clerical error, and there was no intention to evade tax. The assessee had presented supporting documents, including the tax invoice, packing list, and bill of entry, which indicated that all necessary duties and taxes had been paid. The High Court also observed that while the burden of proof lies on the assessee-petitioner in certain cases, but when the error is a typographical or clerical one, the initial burden of proof is on the tax authorities to demonstrate an intention to evade tax. [*Mataji Industries* v. *Joint Commissioner* – 2025 VIL 607 KAR]

Vehicle is not to be detained when there is no movement of goods – Possession of invoice and e-way bill is not material

The Madras High Court has held that provisions of Section 129(1) of the CGST Act, 2017 will kick in only when there is transportation of goods in contravention of the statutory provisions. Observing that it is a *sine qua non*, the Court held that when there is no movement of goods, Section 129(1) cannot be invoked for detaining the vehicle. Holding detention of the vehicle as without jurisdiction, the Court observed that on the strength of a mere recovery of an e-way bill, which appeared to have been raised without any movement of the goods, from the driver of the vehicle, the vehicle could not have been impounded. The Department had earlier concluded that the invoice and the e-way bill were raised without any movement of goods, which constituted an offence under the CGST Act. [*Om Logistics Ltd.* v. *Deputy State Tax Officer* – (2025) 31 Centax 142 (Mad.)]

1) Penalty – Abatement of proceedings under Section 74 does not abate independent proceedings under Section 122

2) Penalty – Proceedings under Section 122 to be adjudicated by proper officer and not by criminal courts

The Allahabad High Court has held that abatement of proceedings under Section 74 of the CGST Act [*determination of tax not pair/short paid…*] does not *ipso facto* abate the proceedings

under Section 122 [*penalty for certain offences*] which are for completely different offences. Rejecting the plea of abatement of proceedings under Section 122, the Court held that when a show cause notice is issued against the main person under Section 73/74 and also against the main person under Section 122, dropping of proceedings under Section 73/74 would not automatically result in dropping of proceedings under Section 122 against the main person as the proceedings are with respect to contravention of two different offences. The Court explained with the help of an illustration that there may be scenarios where a proceeding under Section 73/74 may get concluded against the main person but the proceedings under Section 122 for issue of fake invoices by the main person may stand independent of the proceedings under Section 74, and therefore, those proceedings under Section 122 would not abate.

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It may be noted that the High Court in this case also held that the proceedings under Section 122 are to be adjudicated by the adjudicating officer and are not required to undergo prosecution. The assessee had in respect of this plea submitted that a penalty for offences under Section 122 would have to be imposed by the criminal courts and cannot be adjudicated by the proper officer. Dismissing the petition, the Court also rejected the argument that one would have to be first taxed under Sections 73/74 and only thereafter penalty can be imposed. The High Court was also of the view that Section 4(2) of CrPC would not be applicable here as a separate provision has been envisaged for the offences under Section 122 by way of imposition of a penalty. It was also noted that if one were to give a plain meaning to the word 'penalty', it normally refers to a civil liability and not a criminal liability. [*Patanjali Ayurved Ltd.* v. *Union of India* – 2025 (6) TMI 115 - *Allahabad High Court*]

Customs and FTP

Notifications and Circulars

- Export examination now not requires any paper documents – ICETAB extended to exports from 19 June 2025
- Alcoholic beverages bottled in origin and in bulk – NOC under FSS (Import) Regulations to have validity of 1 year
- Colloidal precious metals, and compounds and amalgams of precious metals – Imports restricted
- Palladium, Rhodium and Iridium alloys consisting of gold more than 1% by weight – Imports restricted
- Sugar – Export of pharma grade sugar permitted under Restricted Export Authorisation

Ratio decidendi

- Valuation – Rejection of transaction value under Rule 12 is pre-requisite for determining value under any other rule – *CESTAT New Delhi*
- No confiscation under Section 111(m) simply if classification and exemption entries in BE do not correspond to Revenue department's views – *CESTAT New Delhi*
- 'Foreign going vessel' – Scope – No necessary requirement of active participation and continuous presence outside territorial waters – *Kerala High Court*
- Software Technology Parks – Imports prior to the date of final approval for setting up STP when not wrong – *Madras High Court*
- Blower, Filter, Water Valve Assembly, Control Panel, Module JCBHP and Thermostat are not classifiable as parts of air-conditioner – Note 2(a) and not Note 2(b) to Section XVI is applicable – *CESTAT New Delhi*
- Refund – Amendment under Section 149 by itself cannot lead to refund, original assessment is to be reversed – *CESTAT Kolkata*
- Packing material is not the foolproof criteria to decide the country of origin of goods – *CESTAT Mumbai*
- Re-assessment of shipping bills once the goods have already been exported is not permissible – *CESTAT New Delhi*
- Confiscation of exports – DRI's, Audit's or Preventive department's subsequent view on classification do not make the goods liable to confiscation – *CESTAT New Delhi*
- SAFTA imports – Non-indication of value addition figures in Country-of-Origin certificates is not fatal – *CESTAT Kolkata*
- Removal of goods without Out-of-Charge order when not liable for penalty – *CESTAT Kolkata*

Notifications and Circulars

Export examination now not requires any paper documents – ICETAB extended to exports from 19 June 2025

The CBIC has decided to extend the use of ICETABs in export examination and clearance also from 19 June 2025. Examining Officer will now be able to seamlessly view the details of shipping bill including the examination order, RMS instructions, supporting documents, etc., on ICETAB. Circular No. 17/2025-Cus., dated 19 June 2025 issued for the purpose, also states that accordingly, there will be no requirement for any paper documents for the purpose of carrying out export examination.

Alcoholic beverages bottled in origin and in bulk – NOC under FSS (Import) Regulations to have validity of 1 year

The Food Safety and Standards Authority of India has stated that NOC issued under the FSS (Import) Regulations, 2017 for imported consignments of alcoholic beverages bottled in origin & in bulk, containing more than 10 percent alcohol, which does not have an expiry date, shall have a validity of 365 days. CBIC Instruction No. 19/2025-Cus., dated 20 June 2025 which shares the FSSAI Order dated 13 June 2025, also states that visual examination may be carried out for re-validation for consignments lying in ports/customs area beyond 365 days. Visual inspection fees, however, is required to be paid for this purpose.

Colloidal precious metals, and compounds and amalgams of precious metals – Imports restricted

The Ministry of Commerce has placed under 'restricted' category imports of colloidal precious metals, inorganic or organic compounds of precious metals and amalgams of precious metals falling under Heading 2843 of the ITC(HS). Notification No. 19/2025-26, dated 17 June 2025 has been issued for this purpose. CBIC has also issued Instruction No. 18/2025-Cus., dated 20 June 2025 for this.

Palladium, Rhodium and Iridium alloys consisting of gold more than 1% by weight – Imports restricted

The Ministry of Commerce has restricted imports of Palladium, Rhodium and Iridium alloys consisting of gold by more than 1% by weight. The ITC (HS) codes for the now restricted imports are 7110 21 00, 7110 29 00, 7110 31 00, 7110 39 00, 7110 41 00 and 7110 49 00. Notification No. 18/2025-26, dated 18 June 2025 amends Chapter 71 of Schedule I to the ITC(HS) Classifications for this purpose. CBIC has also issued Instruction 17/2025-Cus., dated 19 June 2025 for this purpose.

Sugar – Export of pharma grade sugar permitted under Restricted Export Authorisation

The Ministry of Commerce has permitted export of pharma grade sugar under the Restricted Export Authorisation subject to conditions. Accordingly, export of such product up to 25,000 MTs per financial year has been permitted to bona fide pharma exporters. Notification No. 17/2025-26, dated 17 June 2025 issued for the purpose also requires mandatory submission of valid drug manufacturing licence and submission of requisite test reports and certification from NABL accredited laboratory confirming compliance with pharma grade sugar specifications. It may be noted that DGFT has also issued Trade Notice No. 6/2025-26, dated 18 June 2025 for the purpose of allocation of quota for exports.

Ratio Decidendi

Valuation – Rejection of transaction value under Rule 12 is pre-requisite for determining value under any other rule

The CESTAT New Delhi has held that rejection of the transaction value under Rule 12 of the Customs (Determination of value of imported goods) Rules, 2007 (or Rule 10A of the 1988 Rules) is the pre-requisite for determining the value under any of the other valuation Rules. It was observed that unless the proper officer rejects the transaction value under Rule 12, the valuation must be based on transaction value as per Rule 3 with some additions, if necessary, as per Rule 10. The Tribunal also observed that while the officer can, in the first place, call for information and evidence if he has 'reason to doubt', at the second stage, he should have a 'reasonable doubt' to reject the transaction value.

Allowing assessee's appeal in a case involving rejection of transaction value of Quick Recovery Compact Disc (CD) imported by the assessee, the Tribunal noted that neither the SCN issued by the DRI nor the impugned order issued by the Commissioner recorded any reasons to doubt the truth and accuracy of the transaction value. It was also noted that the SCN and the impugned decision had also not recorded that any additional information was sought from the importer because of the doubt and that either no information was provided or after considering the information provided, the proper officer still had reasonable doubt about the truth and accuracy of the transaction value.

The Department had sought for including the value of the Operating Software contained in the CDs, in the value of the CDs. The assessee had contended that the software was owned by them and thus the payment of duty only on the cost of blank CD along with the cost of copying the software, was correct. ***The assessee was represented by Lakshmikumaran & Sridharan Attorneys here.*** [*Hewlett Packard Sales Pvt. Limited* v. *Principal Commissioner* – Final Order No. 50860-50863/2025, dated 6 June 2025, CESTAT New Delhi]

No confiscation under Section 111(m) simply if classification and exemption entries in BE do not correspond to Revenue department's views

The CESTAT New Delhi has held that goods will not become liable to confiscation under Section 111(m) of the Customs Act, 1962 simply because of entries in the Bills of Entry such as the

classification and exemption notification, which are matters of opinion, do not correspond to the views taken by the proper officer during re-assessment or by an adjudicating authority or an appellate authority in the proceedings. The Tribunal noted that it is impossible for the importer to anticipate if the proper officer or the DRI would later reject the transaction value and if so, what would be that value, and then file a Bill of Entry indicating that anticipated value. According to the Tribunal, if the transaction value is not indicated correctly, the goods will be liable for confiscation under Section 111(m) and NOT if the value declared in the Bill of Entry do not match with some value determined later by the proper officer during re-assessment or in any investigation or adjudication proceedings. ***The assessee was represented by Lakshmikumaran & Sridharan Attorneys here.*** [*Hewlett Packard Sales Pvt. Limited* v. *Principal Commissioner* – Final Order No. 50860-50863/2025, dated 6 June 2025, CESTAT New Delhi]

'Foreign going vessel' – Scope – No necessary requirement of active participation and continuous presence outside territorial waters

The Kerala High Court has upheld the CESTAT decision allowing the benefit of Section 87 of the Customs Act, 1962 to a vessel engaged in cable repair work, in respect of exemption to ship stores, while considering it as a 'foreign going vessel'. The Department had denied the benefit observing that during the period between 11 July 2007 and 24 April 2012, the vessel was berthed at the port for almost 1750 days and was on voyage for approximately 301 days only. The Department's contention that the vessel lost its status as a foreign going vessel, as was committed to berth at the port for a specified number of days in a calendar year and remained within the territorial waters of India for a good part of the year, was thus rejected. The High Court also observed that as per the time-charter agreement, the vessel had to be in a ready state to fulfil the obligations under the contract. According to the Court, merely because the vessel was not actually engaged in repair activities on number of days during the time charter, it could not be said that the vessel was not engaged in the activities contemplated under the agreement. The scope of the phrase 'engaged in' in the definition of 'foreign going vessel' under Section 2(21) of the Customs Act was clarified by the Court here. [*Commissioner* v. *Asean Cableship Pvt. Ltd.* – 2025 VIL 562 KER CU]

Software Technology Parks – Imports prior to the date of final approval for setting up STP when not wrong

The Madras High Court has held that ex-post facto approval for setting up of a Software Technology Park under the EOU scheme is adequate compliance of the provisions. The importer had imported the capital goods prior to the approval by Chennai Metropolitan Development Authority ('CDMA') though after the approval by the Inter-Ministerial Standing Committee ('IMSC'). The Department had thus denied the benefit of Notification No. 153/93-Cus.

The High Court in this regard noted that the letter informing the importer that IMSC had approved the application for setting up the infrastructural facility for STP unit, did not mandate/require a prior approval/permission. According to the Court, in the absence of requirement of prior permission, *ex-post facto* permission accorded by CMDA would be adequate compliance.

Further, allowing the writ appeal, the Court also observed that there was no reason to deny the benefit as the delay in grant of approval was not attributable to the importer. Noting that there was a delay of more than 10 months in granting approval by CMDA, the Court was of the view that it cannot be a reason to deny the benefit of exemption under Notification No. 153/93-Cus. It was observed that delay due to inter-departmental issues cannot result in denial of exemption.

The High Court here also observed that the construction to further the objective of promotion of exports ought to be adopted, and the doctrine of substantial compliance was required to be applied here. [*Khivraj Tech Park Pvt. Ltd.* v. *Union of India* – TS 468 HC 2025(MAD) CUST]

Blower, Filter, Water Valve Assembly, Control Panel, Module JCBHP and Thermostat are not classifiable as parts of air-conditioner – Note 2(a) and not Note 2(b) to Section XVI is applicable

The CESTAT New Delhi has held that Blower, Filter, Water Valve Assembly, Control Panel, Module JCBHP and Thermostat are not classifiable as parts of air conditioner under Tariff Item 8415 90 00 of the Customs Tariff Act, 1975 as claimed by the Department, but are classifiable under TI 8414 59 30, TI 8421 39 90, TI 8481 10 90, TI 8538 10 90 and TI 9032 10 10 as claimed by the assessee. Taking support from HSN Explanatory Notes to Heading 8415, the Tribunal observed that even though the goods are parts of air conditioners, they would

continue to be classified under their respective headings in terms of Note 2(a) of Section XVI, as the goods are themselves goods of Chapter 84. It was noted that resorting to Note 2(b) to Section XVI is permissible only when the goods cannot be classified by the application of Note 2(a). It may be noted that the Tribunal also held that even if the goods are classified under the 'other' category of any heading of Chapter 84 or 85, they would still be classifiable under their respective heading. ***The assessee was represented by Lakshmikumaran & Sridharan Attorneys here.*** [*Motherson Bergstorm HVAC Solutions* v. *Principal Commissioner* – 2025 VIL 861 CESTAT DEL CU]

Refund – Amendment under Section 149 by itself cannot lead to refund, original assessment is to be reversed

The CESTAT Kolkata has reiterated that an amendment under Section 149 of the Customs Act, 1962 simplicitor cannot lead to the consequence of demand of duty or a claim for refund, for which the original assessment is required to be reversed by a process known to law. According to the Tribunal, amendment is no substitute to assessment/re-assessment and cannot replace it, as the two terms apply in different context, have distinct overtones and outcomes in law. It was noted that to derive the intended objective, the amended document would be required to be re-assessed in the light of such an amendment which alone can be done once the assessment order is set aside by a direction from the superior authority. Holding the amendment sought as not justified, the Tribunal also noted that the request for an amendment was also made after a prolonged period of several years. The Tribunal was also of the view that absence of any time-limit under Section 149 does not mean that any changes should not be in tandem with the laws laid down for refund or demand. [*Commissioner* v. *Krish Fabrics India Pvt. Ltd.* – 2025 (6) TMI 205 - CESTAT Kolkata]

Packing material is not the foolproof criteria to decide the country of origin of goods

The CESTAT Mumbai has observed that the packing material or the label of the packing material, that too found in part of the consignment, cannot be a reasonable basis to decide the country of origin for the online imported goods. It was also observed in this regard that the packing of the imported goods is not the foolproof criteria to decide the origin of imported goods. The investigation wing of the Department had concluded, only on the basis of label of the packaging material, that the imported dry dates were also of 'Pakistan origin' and not of 'UAE origin'. According to the Tribunal, it is factually incorrect to treat the imported goods as also originating from

that country of origin of packing material. Allowing the appeal, the Tribunal also noted that various documents such as Bill of Lading indicating the port of shipment as UAE, commercial invoice and packing list were produced by the importer showing the country of origin. [*Caliber International* v. *Commissioner* – 2025 VIL 910 CESTAT MUM CU]

1) Re-assessment of shipping bills once the goods have already been exported is not permissible

2) Confiscation of exports – DRI's, Audit's or Preventive department's subsequent view on classification do not make the goods liable to confiscation

The CESTAT New Delhi has held that re-assessment of shipping bills once the goods have already been exported is not sustainable. It was further held that the very proposal to re-determine the classification of the goods in the shipping Bills after the goods have been exported is without authority of any law. It was observed that the Principal Additional Director General of DRI hence did not cite any section under which he proposed the re-assessment. According to the Tribunal, in case of shipping bills which have been assessed, and goods have already been exported, if there is no proposed recovery of export duty, the only remedy available to the Department is to assail the assessment through an appeal to the Commissioner (Appeals) under Section 128 of the Customs Act, 1962.

Further, the Tribunal held that if the goods are exported and DRI or Audit or Preventive or some other officer takes a different view of the classification of the goods, such views do not make the goods liable to confiscation under Section 113(i) of the Customs Act. The Tribunal in this regard was of the view that nobody has an obligation to either anticipate or to conform to the views of DRI in classifying goods in the shipping bills. Similarly, for the same reasons, the Tribunal also set aside the penalties under Sections 114 and 114AA. [*Commissioner* v. *Pelican Quartz Stone* – 2025 VIL 827 CESTAT DEL CU]

1) SAFTA imports – Non-indication of value addition figures in Country-of-Origin certificates is not fatal

2) Removal of goods without Out-of-Charge order when not liable for penalty

The CESTAT Kolkata has rejected the argument of the Revenue department that as the value addition figures were not indicated in the impugned Certificates of Country of Origin, the

same were not acceptable and the goods were not eligible for duty concession under Notification 99/2011-Cus., dated 9 November 2011. The Tribunal in this regard noted that the certificates of Country of Origin read along with the supporting invoices and the cost sheets issued by the foreign supplier, did satisfy the percentage of value addition as required in terms of the Rules of Origin.

Further, the Tribunal refrained from imposing penalties on the importer for removal of goods without the Out-of-Charge order by the Department. The Tribunal noted for this purpose that the importer was the first-time importer, no revenue loss was caused, and that the Department had failed to communicate about the reasons for hold-up of clearance or detention etc. of duty paid goods, for almost two months. According to the Tribunal, not giving out-of-charge for nearly two months and putting the blame on the importer for removal of said goods from the specified area was bizarre and unjustified. [*Neelkanth Mahadev International* v. *Commissioner* – 2025 VIL 852 CESTAT KOL CU]

Central Excise, Service Tax and VAT

Ratio decidendi

- Facilitating booking of hotel rooms through online portal is covered under Tour Operator service – 90% abatement available – *Supreme Court*
- Pendency of show cause notice for long is arbitrary and offending under Article 14 of the Constitution – Madras High Court
- Rebate when eligible on CIF value of exports – *Gujarat High Court*
- Mailing List Compilation and Mailing Service – Mere receiving, segregating and delivering are not covered – *CESTAT Bengaluru*
- No service tax on royalty received for grant of licence to use a trademark for 99 years – *CESTAT New Delhi*
- Renting of immovable property service – Mere use of premises for job works exclusively for a principal, who has right to inspect, not amounts to renting – *CESTAT New Delhi*
- 'Lease' for the purpose of Ind-AS-17 will not be 'lease' under Finance Act, 1994 or Transfer of Property Act – *CESTAT New Delhi*

Ratio Decidendi

Facilitating booking of hotel rooms through online portal is covered under Tour Operator service – 90% abatement available

The Supreme Court has dismissed appeals filed by the Revenue department against a CESTAT decision holding that by facilitating booking of hotel rooms service to the hotel and customers, through the online portal/mobile application, the assessee (online portal) merely acted as a facilitator between the hotel and the customers (person booking hotel room) and thus service was covered as Tour Operator service. The Revenue Department had alleged that the service was covered under 'short-term accommodation' service taxable under Section 65(105)(zzzzw) of the Finance Act, 1994. Observing that no case for interference was made out, the Apex Court concurred with the view taken by the CESTAT. ***The assessee was represented by Lakshmikumaran & Sridharan Attorneys here.*** The Tribunal's decision was reported in January 2024 issue of LKS Indirect Tax Amicus, as available **here**. [*Additional DG* v. *Make My Trip (India) Private Limited* – 2025 VIL 40 SC ST]

Pendency of show cause notice for long is arbitrary and offending under Article 14 of the Constitution

The Madras High Court has reiterated that the delay in the adjudication of show-cause proceedings has to result in the abatement of the aforesaid proceedings. In a case where the show cause notice was issued in 2008 and more than 17 years had lapsed, the High Court held that the continuation of show cause proceedings long after their issuance must be held to be arbitrary and offending under Article 14 of the Constitution of India. The Court though noted that no prejudice was caused to the assessee-petitioner because of the transfer of the case to the Call Book and delay in adjudication, and that equitable considerations are not to be invoked in tax matters, it did not wish to take any contrary view in view of the overwhelming decisions of various Courts holding that the proceedings initiated long before cannot be continued after efflux of time. ***The assessee was represented by Lakshmikumaran & Sridharan Attorneys here.*** [*DXC Technology India Private Limited* v. *Joint Commissioner* – 2025 VIL 596 MAD ST]

Rebate when eligible on CIF value of exports

In a case where the manufacturers of the goods had taken CIF value of the goods as assessable value for paying central excise duty instead of FOB value, the Gujarat High Court has held that the assessee was entitled to the rebate on exports on the basis of the CIF value. Relying on CBEC Circular No. 510/06/2000-CX dated 3 February 2000, the Court upheld the proposition that the adjudicating authority cannot examine the assessment at the time of sanctioning of the rebate claim of the petitioner on the exported goods. The Court distinguished the judgment of the Punjab & Haryana High Court in the case of *Nahar Industrial Enterprises Ltd.* v. *Union of India* [2009 (235) ELT 22 (P & H)] and held that the petitioner-merchant exporter had paid higher duty to the manufacturers, on the CIF value, and the shipping bill disclosed the FOB value, which was lesser than the CIF value. [*Laxmisagar Tradelink Pvt. Ltd.* v. *Union of India* – 2025 VIL 591 GUJ]

Mailing List Compilation and Mailing Service – Mere receiving, segregating and delivering are not covered

The CESTAT Bengaluru has set aside the demand of service tax on the amount received towards distribution of mails received from their group company to the addressees in India. The activities precisely undertaken by the assessee were only to receive the documents from their overseas group company at the port/airport, segregate and deliver the same through their delivery people at various addresses in India as already mentioned in the respective packets. According to the Tribunal, the service would not fall under the taxable category of 'Mailing List Compilation and Mailing Service' as defined under Section 65(63a) of the Finance Act, 1994. The period involved was from 1 April 2005 to 31 March 2010. The Tribunal was of the view that for coverage under the abovementioned service, the service provider, in addition to sending the documents on behalf of the client, would also be required to do a host of activities like stuffing, sealing, etc. ***The assessee was represented by Lakshmikumaran & Sridharan Attorneys here.*** [*Quantium Mail Logistics Solutions (India) Private Limited* v. *Commissioner* – 2025 VIL 923 CESTAT BLR ST]

No service tax on royalty received for grant of licence to use a trademark for 99 years

The CESTAT New Delhi has set aside the demand of service tax on the royalty received by the assessee for grant of licence to use a trademark for the period of 99 years. Allowing the assessee's appeal, the Tribunal noted that in this case, the transferee was allowed the right to use the goods/IPR, with all legal

consequences, for a period of 99 years (the period of a perpetual lease in terms of Sale of Goods Act). It was noted that during the entire period of the agreement, the transferor-assessee was restrained from transferring the same rights to others or manufacturing any goods using the same IPR. According to the Tribunal, the transaction was 'transfer of right to use goods' and was not merely a license to use goods. It was noted that such a transfer of right to use, in light of Article 366 (29A) of the Constitution, was an act of 'Deemed Sale' as different from an act of 'Declared Service' of transferring the use of IPR. ***The assessee was represented by Lakshmikumaran & Sridharan Attorneys here.*** [*Bajaj Resources Limited* v. *Commissioner* – 2025 VIL 874 CESTAT DEL ST]

1) Renting of immovable property service – Mere use of premises for job works exclusively for a principal, who has right to inspect, not amounts to renting

2) 'Lease' for the purpose of Ind-AS-17 will not be 'lease' under Finance Act, 1994 or Transfer of Property Act

The CESTAT New Delhi has held that the components of conversion charges, i.e. 'interest' and 'depreciation' paid by the principal under a job work agreement to the job-worker (assessee here) cannot be treated as amount paid towards taxable service under the category of 'renting of immovable property' under the provisions of the Finance Act, 1994. The transaction involved job work of manufacturing, packaging and sale of goods (biscuits) for and on behalf of the principal. Allowing the appeal, the Tribunal observed that the sole objective of the agreement was to authorise the assessee to manufacture on a job work basis, and that this was not a case where the assessee had entered into any contract or even an understanding with the principal to let out the factory premises on rent. Further, according to the Tribunal, merely because the premises were being used for manufacturing the product exclusively for the principal, who had the right to inspect the premises, does not imply that the premises itself were let out to the principal.

Further, the Department's allegation that the component of 'conversion charges', namely, 'interest', and 'depreciation' were shown towards rental income in the books of accounts by the assessee, and hence the liability of service tax, was rejected by the Tribunal. The Tribunal observed that the activity done without a contractual relationship would not be an activity for consideration, even if it may lead to accrual of gains.

The Tribunal further held that the objective of the account standard is to ensure accurate disclosures in account principles, and it cannot be utilised for classifying it as a transaction of lease for the purpose of transaction. Therefore, the Tribunal agreed with the submission of the assessee that while a transaction that may constitute a lease for the purpose of Ind-AS-17, the same will not be a 'lease' for the purpose of the Finance Act or the Transfer of Property Act. ***The assessee was represented by Lakshmikumaran & Sridharan Attorneys here.*** [*J.B. Mangharam Foods Pvt. Ltd.* v. *Principal Commissioner* – 2025 VIL 815 CESTAT DEL ST]

NEW DELHI
7th Floor, Tower E, World Trade Centre, Nauroji Nagar, Delhi – 110029
Phone : +91-11-41299800, +91-11-46063300
---
5 Link Road, Jangpura Extension, Opp. Jangpura Metro Station, New Delhi 110014
Phone : +91-11-4129 9811

B-6/10, Safdarjung Enclave New Delhi -110 029
Phone : +91-11-4129 9900
E-mail : Lsdel@lakshmisri.com , lprdel@lakshmisri.com

MUMBAI
2nd floor, B&C Wing, Cnergy IT Park, Appa Saheb Marathe Marg,
(Near Century Bazar)Prabhadevi,
Mumbai - 400025
Phone : +91-22-24392500
E-mail : lsbom@lakshmisri.com

CHENNAI
Door No.27, Tank Bund Road, Nungambakkam, Chennai - 600034
Phone : +91-44-2833 4700
E-mail : lsmds@lakshmisri.com

BENGALURU
4th floor, World Trade Center, Brigade Gateway Campus, 26/1, Dr. Rajkumar Road,
Malleswaram West, Bangalore-560 055.
Phone : +91-80-49331800 Fax:+91-80-49331899
E-mail : lsblr@lakshmisri.com

HYDERABAD
'Hastigiri', 5-9-163, Chapel Road, Opp. Methodist Church, Nampally, Hyderabad - 500 001
Phone : +91-40-2323 4924 E-mail :lshyd@lakshmisri.com

AHMEDABAD
B-334, SAKAR-VII, Nehru Bridge Corner, Ashram Road, Ahmedabad - 380 009
Phone : +91-79-4001 4500 E-mail : lsahd@lakshmisri.com

PUNE
607-609, Nucleus, 1 Church Road, Camp, Pune-411 001.
Phone : +91-20-6680 1900 E-mail : lspune@lakshmisri.com

KOLKATA
6A, Middleton Street, Chhabildas Towers, 7th Floor, Kolkata – 700 071
Phone : +91 (33) 4005 5570 E-mail : lskolkata@lakshmisri.com

CHANDIGARH
1st Floor, SCO No. 59, Sector 26, Chandigarh -160026
Phone : +91-172-4921700
E-mail :lschd@lakshmisri.com

GURUGRAM
OS2 & OS3, 5th floor, Corporate Office Tower, Ambience Island, Sector 25-A,
Gurugram-122001
phone: +91-0124 - 477 1300 Email: lsgurgaon@lakshmisri.com

PRAYAGRAJ (ALLAHABAD)
3/1A/3, (opposite Auto Sales), Colvin Road, (Lohia Marg), Allahabad -211001 (U.P.)
Phone : +91-532-2421037, 2420359
E-mail : lsallahabad@lakshmisri.com

KOCHI
First floor, PDR Bhavan, Palliyil Lane, Foreshore Road, Ernakulam Kochi-682016
Phone : +91-484 4869018; 4867852
E-mail : lskochi@laskhmisri.com

JAIPUR
2nd Floor (Front side), Unique Destination, Tonk Road, Near Laxmi Mandir Cinema Crossing, Jaipur - 302 015
Phone : +91-141-456 1200 E-mail : lsjaipur@lakshmisri.com

NAGPUR
First Floor, HRM Design Space, 90-A, Next to Ram Mandir, Ramnagar,
Nagpur - 440033
Phone: +91-712-2959038/2959048 E-mail : lsnagpur@lakshmisri.com

Lakshmikumaran Sridharan attorneys
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