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Goods & Services Tax (GST)

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Notifications and Circulars

54th Meeting of GST Council – Highlights of important recommendations

The GST Council has on 9 September 2024 in its 54th Meeting recommended several changes in rates of GST for various goods and services, while also suggesting various measures for facilitation of trade and for streamlining compliances in GST. A few important measures and changes are highlighted here. It may be noted that these changes highlighted in the news item will come into force only after a suitable notification(s) and circular(s) are issued by the CBIC for the purpose.

Dates for amendments by the Finance (No.2) Act, 2024 in CGST Act and IGST Act notified

The Ministry of Finance has notified the dates in respect of changes by the Finance (No.2) Act, 2024 in the Central Goods and Services Tax Act, 2017, the Integrated Goods and Services Tax Act, 2017, the Union Territory Goods and Services Tax Act, 2017 and the Goods and Services Tax (Compensation to States) Act, 2017. Notification No. 17/2024-Central Tax, dated 27 September 2024 has been issued for the purpose.

Accordingly, while changes by Sections 118, 142, 148 and 150 of the Finance (No.2) Act in Sections 16, 109 and 171 of the CGST Act is effective from 27 September 2024, the changes by Sections 114 to 117, 119 to 141, 143 to 147 and 149 of the later Act in Sections 9, 10, 13, 17, 21, 30, 31, 35, 39, 49, 50, 51, 54, 61, 62, 63, 64, 65, 66, 70, 73, 74, 75, 104, 107, 112, 122, 127, 140 and Schedule III, and insertion of Sections 11A, 74A, 128A in the CGST Act will be effective from 1 November 2024.

Similarly, amendments by Sections 151 to 157 of the Finance (No.2) Act in Sections 5, 6, 16 and 20 of the IGST Act; Sections 7 and 8 of the Union Territory Goods and Services Tax Act, 2017; and insertion of Section 8A in the Goods and Services Tax (Compensation to States) Act, 2017 will be effective from 1 November 2024. *A detailed analysis of all the changes as done at the time of presentation of the Finance (No.2) Bill, 2024 on 23 July, including relevant comments from the LKS Indirect Tax Team, is available here.*

Sunset clause for Anti-profiteering – No request for examination to be accepted from 1 April 2025

Consequent to the coming into force of the changes in Section 171 of the Central Goods and Services Tax Act, 2017 by Section

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148 of the Finance (No.2) Act, 2024, with effect from 27 September 2024, the Ministry of Finance has notified 1 April 2025 as the date from which the National Anti-Profiteering Authority shall not accept any request for examination as to whether input tax credits (ITC) availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him. Notification No. 19/2024-Central Tax, dated 30 September 2024 has been issued for the purpose.

IGST refund on exports do not contravene Rule 96(10) if IGST and compensation cess, along with interest, is paid on imported inputs later

The CBIC has clarified that refund of IGST is available in a case where the inputs were initially imported without payment of IGST and compensation cess by availing benefits under Notifications No. 78/2017-Cus. or 79/2017-Cus., if IGST and compensation cess on such imported inputs are paid at a later date, along with interest, and the Bill of Entry regarding import of said inputs is got reassessed through the jurisdictional Customs authorities. Circular No. 233/27/2024-GST, dated 10 September 2024 in this regard relies upon the Explanation inserted in Rule 96(10) of the CGST Rules retrospectively with effect from 23 October 2017.

Demo vehicles – Input Tax Credit is available, subject to conditions

The CBIC has clarified that input tax credit in respect of demo vehicles is not blocked under clause (a) of Section 17(5) of the CGST Act, as it is excluded from such blockage in terms of sub-clause (A) of the said clause. Circular No. 231/25/2024-GST, dated 10 September 2024 in this regard notes that as demo vehicles promote sale of similar type of motor vehicles, they can be considered to be used by the dealer for making 'further supply of such motor vehicles'. The dispute pertained to ITC on motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons. It may be noted that the Circular however states that ITC would not be available if the authorized dealer merely acts as an agent or service provider to the vehicle manufacturer for providing marketing service, including providing facility of vehicle test drive to the potential customers of the vehicle.

The Circular also clarifies that ITC is not affected by way of capitalization of such vehicles in the books of account of the authorized dealers unless depreciation on the tax component of

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the cost of such vehicle is claimed under the Income Tax Act. It is also stated that if such capitalized demo vehicle is sold the authorized dealer is required to pay an amount/tax as per Section 18(6) of CGST Act read with Rule 44(6) of the CGST Rules, 2017.

Advertisement services provided by an advertising agency in India to foreign company under a comprehensive agreement for one-stop solution is export of services, subject to conditions

Pursuant to the 54th GST Council Meeting, the Central Board of Indirect Taxes and Customs (CBIC) has clarified that in a case involving provision of advertisement services by an advertising company/agency in India to a foreign company under a comprehensive agreement for one-stop solution, the criteria of 'intermediary' under Section 2(13) of the Integrated GST Act, 2017 is not fulfilled as there are two distinct principal-to-principal supplies – one between foreign company and Indian agency and another between the agency and media company. Circular No. 230/24/2024-GST, dated 10 September 2024 issued for the purpose also clarifies that the recipient of such advertising services is the foreign client and not the Indian representative of the foreign client based in India or the target audience of the advertisements, as per Section 2(93) of the CGST Act, 2017. The Circular also clarifies that the place of supply of advertising services in such cases can neither be determined as per Section 13(3)(a) [as no goods involved] nor as per Section 13(3)(b) [as services do not require physical presence of the recipient] of the IGST Act. The services were clarified to be covered as export of services under Section 13(2) of IGST Act.

It is however noted that when advertising company located in India merely acts as an agent of the foreign client in engaging with the media owner, with a direct agreement between media owner and the foreign client, the services of advertising agency in India will be covered under 'intermediary'.

Data hosting services provided by service providers in India to cloud computing service providers located outside India is export of services, subject to conditions

The CBIC has clarified that supply of data hosting services provided by a data hosting service provider located in India to an overseas cloud computing entity can be considered as export of services, subject to the fulfilment of the other conditions

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mentioned in Section 2(6) of the IGST Act, 2017. As per Circular No. 232/26/2024-GST, dated 10 September 2024, the said service provider in India will not qualify as 'Intermediary' between the cloud computing service provider and their end customers. It is also stated that said services are not provided in relation to goods 'made available' by recipient of services to service provider (even if some hardware is made available by the foreign cloud computing service provider), and that the said services are not provided directly in relation to 'immovable property'.

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Ratio Decidendi

Free electricity to States is prima facie not 'consideration' – Himachal Pradesh HC grants interim relief on GST demand, observing that service tax demand dropped earlier

The Himachal Pradesh High Court has granted interim relief to the assessee in a case where the Revenue department had alleged that the supply of free electricity/power @12% to the States was nothing but 'consideration' towards licensing services rendered by the State governments. The assessee had submitted that free power was provided as compensation to the respective States where distress was caused by setting up of the hydro power projects and was in accordance with the power sharing letter by the Department of Power, Ministry of Energy and also as per the Hydropower Policy, 1988.

The High Court in this regard found *prima facie* considerable force in the submission of the assessee that the Department had dropped its earlier demand in respect of service tax on the same issue [though a decision on challenge to such decision was pending with Committee of Commissioners], wherein it was held that the free power was akin to compensation because of distress and cannot be treated as royalty. The assessee had contended that since the GST department is also under the Ministry of Finance like the erstwhile central excise department which dealt with service tax, a different stand cannot be taken when it comes to GST. The High Court compared the situation to the case where a decision by a coordinate Bench is binding on all other Benches of the Court.

Granting interim stay of all further proceedings, the Court also noted that there was serious doubt as to whether the supply of free electricity was in the nature of 'consideration' or was a 'compensation' for the distress caused. ***The assessee was represented by Lakshmikumaran & Sridharan here.*** [*NHPC Ltd.* v. *Principal Commissioner* – Order dated 20 September 2024 in CWP No. 10471 of 2024, Himachal Pradesh High Court]

Refund of accumulated ITC when input tax paid in excess at higher rate

The Division Bench of the Madras High Court has upheld the decision of the Single Bench holding that when the input tax paid is higher than what has been paid by way of tax for the output, then the assessee is entitled to refund of the excess amount by way of ITC under Section 54(3)(ii) of the CGST Act,

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2017. The supplier of services to the assessee had paid tax @ 18% instead of 5% and assessee had taken ITC of such tax paid while paying output tax @ 5%. The Revenue department's submission that since ITC itself was only 5%, voluntary excess payment cannot *ipso facto* be an advantage to the assessee to claim refund by invoking the provisions of Section 54, was thus rejected by the Court. The High Court in this regard observed that very intention of the legislature is to provide a refund only when an excess amount of tax is collected by way of input tax. ***The assessee was represented by Lakshmikumaran & Sridharan Attorneys here.*** [*Commercial Tax Officer* v. *Suzlon Energy Ltd.* – 2024 VIL 957 MAD]

1) GST Council's recommendation is mandatory if Central/State Act stipulates an act to be done on such recommendation

2) Adjudication – Notification No. 56/2023-CT, extending time-limit for issuing orders for FYs 2018-19 and 2019-20, is ultra vires to Section 168A

The Gauhati High Court has held that the recommendations to be made by the GST Council, if required as per the provisions of the Central Act or the State Act, have to be construed to be *sine qua non* for exercise of power by the Union or the State Government. According to the Court, wherever the provisions of the Central Act or the State Act stipulates that an act is required to be done on the recommendation of the GST Council, the act can be done only when there is a recommendation. Supreme Court's decision in the case of *V.M. Kurian* on the meaning of the word 'recommend', was relied upon by the High Court here.

Revenue department's submission that all recommendations of the GST Council are not binding and as such even without the recommendation, the Government could exercise the powers under Section 168A, was held to be misconceived. According to the Court, fact that the recommendation is not binding cannot be construed to mean that the Government can act without a recommendation if the Central/State Act so stipulates. The High Court in this regard also observed that the Supreme Court decision in the case of *Mohit Minerals* does not lay down the proposition that as some of the recommendations are not binding, there is no requirement of a recommendation by the GST Council to exercise the power.

Accordingly, Notification No.56/2023-Central Tax, extending the period to pass the order under Section 73(9) of the CGST

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Act, 2017 for the Financial Year 2018-2019 up to the 30 April 2024 and for the Financial Year 2019-2020 up to 31 August 2024, was thus held as a colourable legislation. The Court in this regard noted that the notification mentioned that it was issued on the recommendations of the GST Council while there was no such recommendation.

Quashing the notification, the Court also noted that GST Council had no occasion to consider existence of any *force majeure* inasmuch as the same was never placed before the GST Council before issuance. The notification was thus held to have been issued without the *force majeure* condition being considered in accordance with the law. The Court also in this regard noted that the State of Assam had not issued any *pari materia* notification for the purpose. [*Barkataki Print And Media Services* v. *Union of India* – Judgement dated 19 September 2024 in WP(C)/3585/2024 and others, Gauhati High Court]

Non-uploading of the notice on the Portal is not fatal if same served through e-mail

The Calcutta High Court has rejected the contention of the assessee that service of notice through an e-mail communication does not have the sanction of law, if the same was uploaded in the portal. The Court in this regard took note of Section 169 of the CGST Act, 2017 to observe that one of the recognized manner and mode of service of summons / notice is by registered post or speed post or courier with acknowledgment due to the person to whom it is intended, *inter alia*, including the communication to his email address. [*Delta Goods Private Limited* v. *Union of India* – 2024 VIL 913 CAL]

Demand proceedings – Transfer from the State authorities to DGGI is wrong

The Punjab and Haryana High Court has held that merely because the DGGI has information relating to similar fraudulent availment of ITC by other firms who may be related to the firm against which the proceedings have been initiated under Section 74 of the CGST Act by the State authority, it itself would not be a sufficient ground to presume that the State GST authority would not be able to conduct the proceedings. The Department's submission that DGGI, having larger pan-India jurisdiction to investigate, would be more competent authority to examine such issues, was thus rejected by the Court while it also observed that the proceedings were in the nature of judicial proceedings and thus cannot be transferred by administrative

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actions. The Court in this regard also noted that the scheme of the Central Goods and Services Tax Act, 2017 or the Haryana Goods and Services Tax Act, 2017 nowhere provides for transferring the proceedings from one proper officer to another.

Further, clarifying on CBIC Circular dated 5 October 2018 and quashing the transfer of proceedings to DGGI, the Court was of the view that when an inquiry is conducted by a State proper officer and investigation is required to be done by the Central Tax Officer, the Central Tax Officer would exercise the said power for the purpose of investigation only and the proceedings being conducted by the State Tax Officer would not be transferred to the Central Tax Officer.

It may be noted that the High Court also noted that the word 'subject matter' used in Section 6(2)(b) of the CGST Act would mean 'the nature of proceedings' and thus if the State has already initiated proceedings by issuing notice under Section 74 for the period up to 22 July 2019 for fraudulent availment of ITC, the DGGI cannot be allowed to initiate proceedings for the same matter for the period from 28 July 2019 to 20 January 2022. [*Stalwart Alloys India Private Limited* v. *Union of India* – 2024 VIL 920 P&H]. It may also be noted that recently the Himachal Pradesh High Court has also held similarly in *Kundlas Loh Udyog* v. *State of H.P.* – 2024 VIL 1005 HP.

Demand – Jurisdiction of a State Authority to issue SCN for dealings of a company in other States

Relying upon its decision in the case of *Stalwart Alloys India Pvt. Ltd.* v. *Union of India* [*as summarized above*], the Punjab & Haryana High Court has also held that the authority at Chandigarh would have the power to issue notice under Section 74 of the CGST Act even with regard to dealings of the company in other States, and therefore, there is no jurisdiction error. Taking note of Sections 4, 5 and 6(2)(b), the Court observed that once notice has been issued to the assessee under Section 74(1) by the State GST Officer of Punjab, no other officer from any other State would be authorized to initiate proceedings and the question regarding evading of tax or availing of wrongful input tax credit or other issues in terms of Section 74 will be examined by the same officer alone. [*Ethos Limited* v. *Additional Commissioner* – 2024 VIL 1025 P&H]

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No provision for adjudication of submissions made under Rule 142(2A) against communication before service of notice

The Rajasthan High Court has dismissed the writ petition filed by the assessee seeking directions to the Department to consider the reply filed by the petitioner under Rule 142(2A) of the CGST Rules and then issue notice under Rule 142(1)(a). The Court in this regard noted that as per plain reading of Rules 142(1A) and 142(2A), it is discretionary for the proper officer to issue communication, and that there is no provision for adjudication regarding submissions made by the person referred to in sub-rule (1A) of Rule 142. The Court also noted that the Rules do not provide for giving an opportunity of hearing and for deciding the submissions made against the proposed liability. Differing with the Calcutta High Court decisions, the Court held that opportunity of hearing is required after issuance of show cause notice but, affording opportunity of hearing at different stages was not contemplated by the legislature. [*Shri Sharma Steeltech India Pvt. Ltd.* v. *State of Rajasthan* – 2024 VIL 928 RAJ]

Prosecution cannot be launched invoking IPC provisions only without considering GST provisions

The Madhya Pradesh High Court has held that GST Authorities cannot be permitted to bypass the procedure for launching prosecution under GST provisions and invoke provisions of Indian Penal Code only without pressing into service penal provisions from GST. The Court in this regard also noted that sanction from the Commissioner under Section 132(6) of GST Act was also required for prosecution especially when the alleged actions squarely fall within the precincts of offence as enumerated under the GST provisions. According to the Court, letting GST Authorities to also bypass procedural safeguards as provided under Section 132(6) would amount to abuse of process of law. FIR registered under various provisions of IPC and consequential proceedings therefrom were thus quashed. [*Deepak Singhal* v. *Union of India* – 2024 VIL 937 MP]

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Blocking of electronic credit ledger – Principles of natural justice need to be read into Rule 86A – Post-decisional hearing is no substitute

The Karnataka High Court has held that adherence to principles of natural justice would necessarily have to be read into Rule 86A of the CGST Rules, 2017 and complied with while invoking the said provision, even though said rule does not expressly/specifically provide for such adherence. The Court was of the view that blocking of credit ledger results in serious civil consequences for the assessee warranting compliance with the principles of natural justice and providing an opportunity of hearing.

Further, holding that a post-decisional hearing is not a substitute for a hearing before taking the decision, the Court also noted that it was not physically possible for the assessee to immediately/forthwith encash/withdraw the Input Tax Credit available in its ECL so as to warrant emergent/urgent blocking of the ECL without providing a pre-decisional hearing. The Court in this regard also noted the absence of extraordinary reasons or exceptional circumstances obtained from the available material which would obviate or dispense with the requirement of pre-decisional hearing. Setting aside the Single Bench decision, the Division Bench also observed that the Revenue department could supervise/monitor the proceedings including the ECL of the assessee and if circumstances so warrant, was entitled to block the ECL even before completion of pre-decisional hearing. [*K-9-Enterprises* v. *State of Karnataka* – 2024 VIL 994 KAR]

Blocking of electronic credit ledger – Reason to believe – Department must arrive at satisfaction based on own inquiry and some objective material

In a case involving blocking of electronic credit ledger by the Department, the Karnataka High Court has held that expression ‘reason to believe’ in Rule 86A of the CGST Rules, 2017 would necessarily mean that the Department must arrive at a satisfaction based on their own independent inquiry and not upon a borrowed inquiry. The Court observed that the ECL of the assessee was blocked without verifying the genuineness of the transaction in the present case. It also noted that a *bona fide* purchaser cannot be denied ITC on account of a supplier’s default and the recipient cannot be made to suffer denial of ITC

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for the wrong doings of the supplier. Further, relying upon CBIC Circular dated 2 November 2021, the Court observed that Rule 86A requires arriving at a subjective satisfaction as is evident from the use of words, 'must have reasons to believe'. It was hence of the view that satisfaction must be reached on the basis of some objective material available before the authority and cannot be made on the flights of one's fancies or whims or caprices. [*K-9-Enterprises* v. *State of Karnataka* – 2024 VIL 994 KAR]

Refund of IGST on exports – Notification No. 54/2018-Central Tax substituting Rule 96(10) is prospective – Gujarat HC reviews its earlier decision in *Cosmo Films*

The Gujarat High Court has rectified its earlier decision in the case of *Cosmo Films Ltd.* v. *Union of India.* Correcting its earlier decision dated 20 October 2020, the Court has now held that Notification No. 54/2018-Central Tax, dated 9 October 2018 substituting Rule 96(10) of the Central Goods and Services Tax Rules, 2017 is only prospective, i.e. effective from 9 October 2018 and not from 23 October 2017 as earlier held by the Court. The issue involved refund of IGST in case of exports when the assessee had taken benefit of Notification No. 79/2017-Cus, relating to Advance Authorisation. [*Cosmo Films Ltd.* v. *Union of India* – 2024 VIL 1035 GUJ]

Classification of unfried or un-cooked snack pellets – Exemption claimed till 27 July 2023 not deniable – Gujarat HC interprets "'as is' basis" in CBIC Circular

The Gujarat High Court has observed that the phrase "'as is' basis" used in the CBIC Circular No. 200/12/2023-GST, regarding classification and rate of GST on uncooked/unfried snack pellets manufactured through extrusion process, would mean that whatever situation was prevailing with regard to the status of payment of GST by the assessee shall continue to prevail up to 27 July 2023. Rejecting Department's submission that 18% GST would be payable on the specified goods, as prevalent before the abovementioned circular, the Court noted that the assessee had claimed their product to be exempt from GST, and therefore, it cannot be subjected to levy of GST in order to regularise their returns which have been filed at nil rate of GST.

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In the dispute, the GST Council had in its 48th Meeting held the goods to be classifiable under TI 1905 90 30 and to be liable to GST @18%. The goods were however held to be liable to 5% GST in the 50th Meeting of the Council and Circular was issued to state that "*the issue for past period upto 27 July 2023 is hereby regularized on 'as is' basis.*" The assessee had however claimed exemption for the period up to 27 July 2023 based on the binding decision of the Gujarat Appellate AAR. [*J. K. Papad Industries* v. *Union of India* – 2024 VIL 987 GUJ]

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Customs

Notifications and Circulars

- RoDTEP scheme extended beyond 30 September 2024 for exports from DTA units and for Advance Authorisation holders, EOUs and units in SEZs
- EPCG Scheme – Report on fulfilment of Export Obligation streamlined and compliance reduced
- E-commerce – Specified export promotion schemes now available for courier exports
- Customs brokers as co-noticee to be avoided in interpretation disputes unless abetment established
- Rice – Prohibition removed for export of non-basmati white rice
- 'Laboratory chemicals' redefined for Tariff Heading 9802
- Works of art and antiquities imported for public exhibition in museum or art gallery – Exemption from BCD and IGST rescinded
- Authorisations for import of specified IT hardware to be valid till 31 December 2024 only

Ratio decidendi

- DTA sale by EOU – Copper strips and coin blanks are similar goods for benefit under Para 6.8(a) of Foreign Trade Policy, 2009-14 – *CESTAT Chandigarh*
- Compressors used in car air-conditioners are classifiable under TI 8414 80 11 and not under TI 8415 90 00 – SC decision in Westinghouse Saxby distinguished – *CESTAT Chennai*
- Electrical components of air-conditioner remote control and parts are not classifiable as 'parts of air-conditioner' – *CESTAT Ahmedabad*
- FTA imports – Detention order not recording reasons or following verification of Certificate of Origin as laid down under various statutory provisions is incorrect – *Delhi High Court*
- Valuation – NIDB data prevailing at the time of into-bound clearance is not relevant – *CESTAT Ahmedabad*

Notifications and Circulars

RoDTEP scheme extended beyond 30 September 2024 for exports from DTA units and for Advance Authorisation holders, EOUs and units in SEZs

The Ministry of Commerce has extended the Remission of Duties and Taxes on Exported Products (RoDTEP) scheme beyond 30 September 2024. In case of exports from DTA units, the benefits of the scheme will be available till 30 September 2025. However, it may be noted that in case of exports by Advance Authorisation holders and units availing benefit of EOU or SEZ schemes, the RoDTEP benefit will be available till 31 December 2024 only. Further, as per Ministry of Commerce Notification No. 32/2024-25, dated 30 September 2024 issued for the purpose, new RoDTEP rates based on the recommendations of the Committee have also been notified but will come into effect only from 10 October 2024. The existing rates will continue to apply for exports till 9 October.

EPCG Scheme – Report on fulfilment of Export Obligation streamlined and compliance reduced

Para 5.14 of the FTP Handbook of Procedures 2023 has been amended to reduce the compliance burden in respect of filing of report for Export Obligation fulfilment. As per the new para substituted by Public Notice No. 24/2024-25, dated 20 September 2024, the report now has to be submitted online after expiry of first block period of four years and continuously till the expiry of valid EO period. It may be noted that this report was earlier to be filed annually by 30th of June.

E-commerce – Specified export promotion schemes now available for courier exports

The Courier Imports and Exports (Electronic Declaration and Processing) Regulations, 2010 have been amended to allow benefit under duty drawback, RoDTEP and RoCTL as covered under Chapter 4, and EOU and similar schemes under Chapter 6, of the Foreign Trade Policy. It may be noted that for other export promotion schemes, benefit has not been extended to courier exports. Notification No. 60/2024-Cus. (N.T.) dated 12 September 2024 has been issued for the purpose. Export related benefits extended to exports made through courier. Further, it may be noted that the CBIC has by Circular No. 15/2024-Cus., dated 12 September 2024 also clarified on certain modalities in this regard.

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Customs brokers as co-noticee to be avoided in interpretation disputes unless abetment established

The CBIC has instructed that the Customs Brokers should not be made co-noticee in routine manner in matters involving interpretation of statue, unless element of abetment is established by the investigating authority. Such elements of abetment must be clearly elaborated in the notice for the offences under the Customs Act of 1962. Instruction No. 20/2024-Cus., dated 3 September 2024 also notes that for suspension of licences of Customs brokers, Instruction No. 24/2023, dated 18 July 2023 shall continue to be followed.

Rice – Prohibition for export of non-basmati white rice removed

The Ministry of Commerce has removed export prohibitions in respect of export of non-basmati white rice falling under ITC (HS) Code 1006 30 90 (semi-milled or wholly milled rice, whether or not polished or glazed: other). The export of said product is now 'free'. However, it may be noted that as per Notification No. 31/2024-25, dated 28 September 2024, export will be subject to Minimum Export Price of USD 490/tonne.

Further, export duty on this variety of rice (other than parboiled rice and basmati rice) has been prescribed as 'nil'. However, export duty @ 10% has been imposed on rice in the husk (paddy or rough) falling under TI 1006 10 90; husked (brown) rice covered under TI 1006 20 00; and rice parboiled falling under TI 1006 30 10 of the Customs Tariff Act, 1975. This is as per Notification No. 44/2025-Cus., dated 27 September 2024 amending Notification No. 27/2011-Cus.

'Laboratory chemicals' redefined for Tariff Heading 9802

Parameters and conditions for falling within the scope of 'laboratory chemicals' under Heading 9802 of the Customs Tariff Act, 1975 have been revised. Note 3 to Chapter 98 of the First Schedule to the Customs Tariff Act has been substituted by Notification No. 62/2024-Cus. (N.T.), dated 19 September 2024 for this purpose. Broadly, the earlier Chapter Note used the words '*imported in packings not exceeding 500 gms or 500 millilitres*', while the new provisions state '*imported and intended only for own use (i.e. other than purposes like trading, further sale etc.) in packings not exceeding 500 gms or 500 millilitres*'.

Further, it may be noted that as per CBIC Circular No. 18/2024-Cus., dated 23 September 2024, for purpose of Heading 9802 the goods have to be imported and intended only for own use. Laboratory chemicals imported for trading, further sale, etc. are

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out of scope of Heading 9802. Chemicals will also be out of the purview of Heading 9802 in case of packings exceeding 500 gms or 500 mililitres.

Works of art and antiquities imported for public exhibition in museum or art gallery – Exemption from BCD and IGST rescinded

The Notification No. 26/2011-Cus., dated 6 September 2024 which exempted from BCD and IGST goods imported as 'works of art' including statuary, pictures, memorials, etc., subject to specified conditions, has now been rescinded. This shall not affect the things done or omitted to be done before such recission. Notification No. 42/2024-Cus., dated 6 September 2024, which is effective from 7 September 2024, has been issued for the purpose.

Authorisations for import of specified IT hardware to be valid only till 31 December 2024

The Directorate General of Foreign Trade has clarified that the existing Import Authorisations, in respect of import of certain IT hardware which were placed under 'restricted' category in 2023, issued till 30 September 2024 will continue to be valid up to 31 December 2024. The Policy Circular No. 7/2024-25, dated 24 September 2024 also states that the importers are allowed to apply for Import Authorisations which will be valid up to 31 December 2024. It is also stated that importers would be required to apply for fresh authorisations for the period from 1 January 2025, subject to detailed guidance which will be provided shortly.

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Ratio Decidendi

DTA sale by EOU – Copper strips and coin blanks are similar goods for benefit under Para 6.8(a) of Foreign Trade Policy, 2009-14

The CESTAT Chandigarh has held that copper strips and coin blanks constitute similar goods in order to avail benefit under Para 6.8(a) of Foreign Trade Policy, 2009-14. The Tribunal was of the view that though for the purpose of classification under the Tariff, coin blanks and copper strips have been classified separately, they do not cease to be similar goods for the purpose of Para 6.8 of the Foreign Trade Policy. The Department had contended that the items being not similar and commercially interchangeable, the eligibility of sale on concessional rate of duty, in DTA, cannot be decided together. As per para 6.8(a) of the FTP 2009-14, when an EOU manufactures two or more products, it can sell into DTA, any single product up to 75% of FOB value of specified products subject to the condition that the total DTA sale does not exceed the 50% of FOB value. ***The assessee was represented by Lakshmikumaran & Sridharan Attorneys here.*** [*Consolidated Coin Company Pvt. Ltd.* v. *Commissioner* – 2024 VIL 1076 CESTAT CHD CE]

Compressors used in car air-conditioners are classifiable under TI 8414 80 11 and not under TI 8415 90 00 – SC decision in Westinghouse Saxby distinguished

The CESTAT Bench at Chennai has held that air compressors for use in car air-conditioners are classifiable under Tariff Item 8414 80 11 of the Customs Tariff Act, 1975 wherein Heading 8414 covers '*Air or vacuum pumps, air or other gas compressors and fans; ventilating or recycling hoods incorporating a fan, whether or not fitted with filters*'. Revenue Department contention of classification under TI 8415 90 00 *ibid.*, having a specific entry for '*parts of air-conditioning machines for use in motor vehicles*', was thus rejected. The Tribunal in this regard noted that the Department was not able to show that Heading 8414 was limited to goods of industrial use. It was also of the view that a specific part of an air conditioner can always be classified separately (hence out of Heading 8415) as provided in the Section / Chapter Notes. HSN Explanatory Notes to Section XVI of the Customs Tariff Act was relied by the Tribunal for the purpose.

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Further, it may be noted that the Tribunal also held that the 'predominant use' or 'sole or principal' use test stated in *Westinghouse Saxby Farmers* decision of the Supreme Court was not applicable to the present case. Assessee's argument that the Apex Court dealt with the interpretation of Section Notes to Section XVII of the Central Excise Tariff Act, whereas the present case was with respect to the interpretation of Section Notes to Section XVI of the Customs Tariff Act, wherein the Notes are not *pari materia*, was agreed by the Tribunal. ***The assessee was represented by Lakshmikumaran & Sridharan Attorneys here.*** [*Ford India Pvt. Ltd.* v. *Commissioner* – 2024 VIL 1115 CESTAT CHE CU]

Electrical components of air-conditioner remote control and parts are not classifiable as 'parts of air-conditioner'

The dispute before the Hon'ble Tribunal was on the classification of electrical components as 'parts of air conditioner' under Tariff Item 8415 90 00 or under respective Headings of Chapter 85 of the Customs Tariff Act, 1975. The Tribunal in this regard followed the principle that specific Chapter Notes and Section Notes are to be preferred over General Interpretative Rules while classifying a product, which was endorsed by the Supreme Court earlier.

Relying upon Section Note 2 of HSN Explanatory Notes to Section XIV of the Customs Tariff and General Notes (a) and (c) of HSN Explanatory Notes of Chapter 84, the electrical components were held to be classified under respective Headings of Chapter 85, even if such components were used as 'parts' of air conditioner remote control and ultimately as accessory to the air-conditioner. Similarly, Zebra/Keypad being item of vulcanised rubber other hard rubber was held to be classifiable under TI 401 69 99, due to the exclusion clause by virtue of Section Note to Chapter XVI and as justified from Note 1A of Section XVI. Also, the spring was held to be correctly classifiable under TI 7320 90 90. [*Elite Electronics* v. *Commissioner* – 2024 VIL 1112 CESTAT AHM CU]

FTA imports – Detention order not recording reasons or following verification of Certificate of Origin as laid down under various statutory provisions is incorrect

The Delhi High Court has held that it is incumbent on the proper officer to specify the infraction, the statutory prescription that stands violated and the reasons for tentative denial of preferential duty treatment in case of imports under a Free Trade Agreement. According to the Court, such reasons

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cannot be left to surmises and conjectures. Thus, setting aside the detention order, the Court noted that the detention was not prefaced by the recording of any reasons by the proper officer of circumstances on the basis of which it came to form the opinion or had reason to believe that the goods sought to be imported did not conform to the Certificate of Origin criteria. The Court also noted that the Department had not initiated any process of reciprocal verification as is envisaged under the Foreign Trade Agreement (India-UAE CEPA) or the CAROTAR or Section 28DA of the Customs Act, 1962.

It may be noted that the High Court in this regard also observed that the need to verify or enquire must necessarily be preceded by the formation of opinion of a justiciable doubt or suspicion being harboured with respect to the validity of the import and the same in turn resting on any one of the stated contingencies which the statute speaks of. [*Ausil Corporation Pvt. Ltd.* v. *Union of India* – 2024 VIL 1003 DEL CU]

Valuation – NIDB data prevailing at the time of into-bound clearance is not relevant

The CESTAT Ahmedabad has held that in case of DTA clearances by a SEZ unit in 2018, the NIDB data of 2017 cannot be applied straightaway. The assessee had in fact filed the warehousing bill of Entry with the SEZ in 2017. Allowing the appeal, the Tribunal noted that there was no evidence of undervaluation or manipulation of invoice by the assessee from the SEZ unit or flow back consideration from the buyer of the goods. Enhancement of the value was thus found to be baseless. [*Macklow International Inc.* v. *Commissioner* – 2024 (9) TMI 945-CESTAT Ahmedabad]

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Central Excise, Service Tax and VAT

Ratio decidendi

- Siapton 10L and Isabion are classifiable as fertilisers – CESTAT Larger Bench clarifies difference between 'fertiliser' and 'plant growth regulator' – *CESTAT Larger Bench*
- Pre-deposit under Excise Section 35F from GST credit ledger – CBIC Circular dated 28 October 2022 prohibiting so, is prospective – *Bombay High Court*
- SSI exemption – Clubbing of clearances – No financial flow-back when price/cost reduction meetings benefitted both the parties – *CESTAT Bengaluru*
- No service tax on grant of exclusive right to use without disturbance/encumbrance which is deemed sale – *CESTAT Prayagraj*
- Cenvat credit on input services if final product subsequently exempted – Rule 6 not applicable – Rule 11(3) not applicable for input services – *CESTAT Kolkata*
- Valuation – Related parties – Determination of value under Excise Valuation Rule 8 – *CESTAT Prayagraj*

Ratio Decidendi

Siapton 10L and Isabion are classifiable as fertilisers – CESTAT Larger Bench clarifies difference between 'fertiliser' and 'plant growth regulator'

The Larger Bench of the CESTAT has held that products Siapton 10L and Isabion merit classification as fertilizers under Excise TI 3101 00 99 and not as a plant growth regulator under Excise TI 3808 93 40. The Tribunal in this regard observed that both the products were bio-stimulants which are fertilizers influencing the growth, yield and quality of plants by providing essential nutrients. It was noted that the Ministry of Agriculture also considers 'bio-stimulants' as 'fertilizer', and hence, requires compliance of the Fertiliser (Inorganic, Organic or Mixed) (Control) Order, 1985, wherein the definition of 'bio-stimulants' excludes plant growth regulator.

It was also held that a plant growth promoter/fertiliser cannot be equated with a plant growth regulator, as the latter inhibits, promotes or otherwise alters the physiological processes in a plant while the former only promotes the growth of the plant and does not inhibit it. The LB in this regard took note of the distinction between fertilizers and plant growth regulators on basis of four aspects – purpose, mode of action, application and effects, and was of the view that fertilizers provide essential nutrients for plant growth, while plant growth regulators control specific aspects of plant growth and development. Division Bench's finding that mode of usage of the product through soil or foliar application is a determinative test for classifying the goods under ETI 3101 00 99 or ETI 3808 93 43 was also rejected by the Larger Bench here. ***The assessee was represented by Lakshmikumaran & Sridharn here.*** [*P.I. Industries Limited* v. *Commissioner* – Interim Order Nos. 25-30/2024, dated 2 September 2024, CESTAT Larger Bench]

Pre-deposit under Excise Section 35F from GST credit ledger – CBIC Circular dated 28 October 2022 prohibiting so, is prospective

The Bombay High Court has upheld the CESTAT decision which had held that pre-deposit under Section 35F of the Central Excise Act, 1944 could be made from the Electronic Credit Ledger maintained under the GST provisions. According to the Court, the CESTAT rightly concluded that the Circular had come into

force only on 28 October 2022 and the appeal was filed much before the circular came into force. The Tribunal had relied upon the Supreme Court decision in *Commissioner* v. *Mysore Electricals Industries Ltd.* [2006 (204) ELT 517 (SC)] to hold that the circular would apply only prospectively. [*Commissioner* v. *Sapphire Cable and Services Pvt. Ltd.* – 2024 VIL 927 BOM CE]

SSI exemption – Clubbing of clearances – No financial flow-back when price/cost reduction meetings benefitted both the parties

In a case involving clubbing of clearances of alleged dummy units, the CESTAT Bengaluru has ruled in favour of the assessee who was alleged to be the actual 'manufacturer' of the goods produced by the other units. The Tribunal in this regard observed that the negotiations on price reduction on the basis of the cost of production of each of the alleged dummy units benefited both the parties (alleged dummy units and the assessee) and the benefits derived were more or less equally shared by both, and hence the same cannot be construed as financial flow-back and be construed that the benefit is derived only by the assessee. Similarly, the Department's case of financial flow back by way of investment in the cost of moulds was also rejected by the Tribunal. Further, relying upon various precedents, the Tribunal also rejected the Department's contention that selecting the raw material suppliers, advising the other units to purchase the raw material and periodical interaction with their personnel in ascertaining the cost of production and determining the price of the machines which resulted in cost benefit to the assessee as well as to the other units be considered as financial flow-back from the other units to the assessee.

The absence of any shareholding, investment in capital and advancing of loans to the other units, common workforce or supervising staff, was also noted by the Tribunal for this purpose. It also observed that if the other units were in existence only on paper, then there was no need to conduct periodical monthly meetings and deliberate on the issues of reduction in cost and contributing to the efficiency in production. Similarly, it was also noted that the goods were allowed to be redeemed by the other units which acknowledged the fact that these units were in existence as separate units and were not dummy units. ***The assessee was represented by Lakshmikumaran & Sridharan Attorneys here.*** [*Sepack India Pvt. Ltd.* v. *Commissioner* – Final Order No. 20706-20727/2024, dated 23 August 2024, CESTAT Bengaluru]

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No service tax on grant of exclusive right to use without disturbance/encumbrance which is deemed sale

Observing that the assessee had granted exclusive right to use without disturbance or encumbrance to their clients, the CESTAT Prayagraj has held that the assessee had rightly paid the Sales Tax/VAT on transfer of right to use the goods to their customers, which is a transaction of deemed sale, and hence service tax was not attracted. The Tribunal in this regard also noted that as per the contract even if the assessee decides to sell or transfer its right, title or interest in the goods during the term, the assessee was to take prior consent from client and further ensure that client's right to use were not disturbed/preserved. ***The assessee was represented by Lakshmikumaran & Sridharan Attorneys here.*** [*Dabur Research Foundation* v. *Commissioner* – Final Order No. 70389/2024, dated 28 June 2024, CESTAT Prayagraj]

Cenvat credit on input services if final product subsequently exempted – Rule 6 not applicable – Rule 11(3) not applicable for input services

The CESTAT Kolkata has noted that Rule 6 of the Cenvat Credit Rules, 2004 is applicable only in cases where the assessee is manufacturing both dutiable as well as exempted products. It observed that the rule is not applicable where the input/ input service is used in the manufacture of final product, which is exempted subsequently. It was hence held that once Cenvat credit on input services is legally taken, it need not be reversed on final product being exempted subsequently.

The Tribunal for this purpose also noted that Rule 11(3) inserted on 1 March 2007 which mandated the assessee to pay an amount equivalent to the Cenvat credit taken on inputs received for use in the manufacture of the final product lying in stock or contained in the final products if the final products become exempted subsequently, was only restricted to inputs and not input services. Karnataka HC decision in the case of *Tafe Ltd.*, which involved only inputs and was for period prior to insertion of Rule 11(3), was held by the Tribunal to be applicable to input services as well post insertion of Rule 11(3). ***The assessee was represented by Lakshmikumaran & Sridharan Attorneys here.*** [*Lux Industries Ltd.* v. *Commissioner* – 2024 VIL 1026 CESTAT KOL CE]

Valuation – Related parties – Determination of value under Excise Valuation Rule 8

The CESTAT Prayagraj has set aside the demand of central excise duty in a case where the Department had determined the

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demand by application of Rule 9 read with Rule 8 of the Central Excise Valuation Rules by adding 10% notional profit to the assessable value determined either on the basis of transaction value or in terms of Section 4A (MRP basis). Failing to understand the logic behind the same, the Tribunal also noted absence of legal provision which supported such manner of determination of assessable value. It was noted that as per the rules, assessable value was to be 110% of the cost of production. ***The assessee was represented by Lakshmikumaran & Sridharan Attorneys here.*** [*Denso India Ltd.* v. *Commissioner* – 2024 VIL 1023 CESTAT ALH CE]

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