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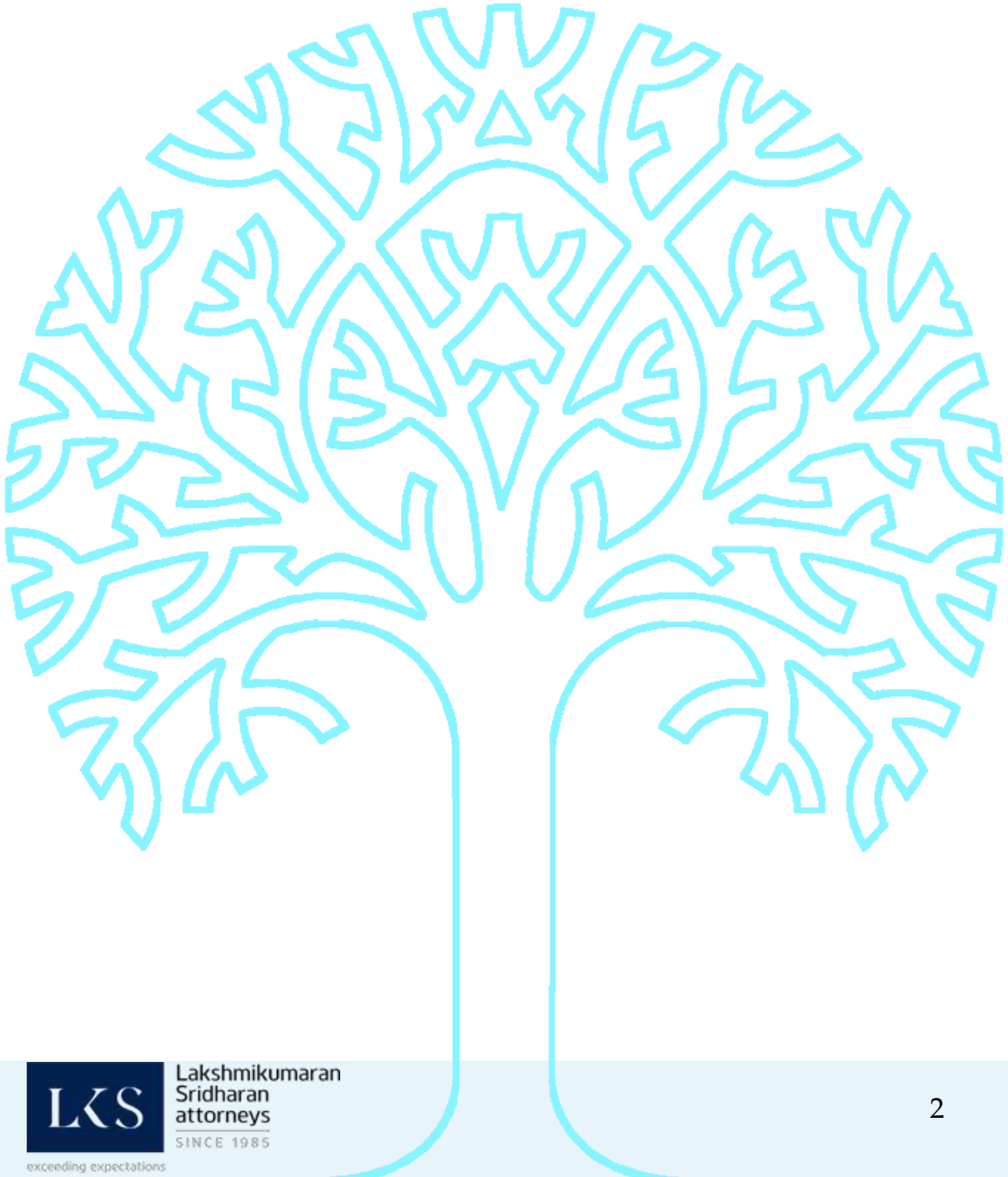

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Articles

The jurisdictional tussle between GST and Customs authorities

By **Sahana Rajkumar, Derlene Joshna and Prabal Karthikheyan**

Jurisdictional issues stemming from the intersection of Customs Act, 1962 and Integrated Goods and Services Tax Act, 2017 are galore. With different High Courts giving diverging views, the lingering question which begs answer is as to whether the officer of Customs Department or the GST Department would be the 'proper officer' in respect of recovery proceedings relating to short payment of IGST on import of goods or erroneous refund of IGST paid on export of goods, and other related issues. The article in this issue of Indirect Tax Amicus, for this purpose, explores various situations if IGST on import of goods is deemed a Customs levy or IGST levy. Observing that a resolution of the jurisdictional conflicts between the customs and the GST authorities is urgently required, the authors state that it is also imperative that taxpayers take adequate grounds on jurisdiction in their litigation on these issues.

The jurisdictional tussle between GST and Customs authorities

By Sahana Rajkumar, Derlene Joshna and Prabal Karthikheyan

Introduction

Jurisdictional issues stemming from the intersection of Customs Act (**'CA'**) and Integrated Goods and Services Tax Act, 2017 (**'IGST Act'**) are galore. Recently, the Hon'ble Bombay High Court, when faced with the question of whether customs appellate authorities would be appropriate authorities to adjudicate the issue of interest on delayed refund of integrated tax (**'IGST'**) paid on export, allowed the petitioner to file an appeal before the GST appellate authorities.[1] In a similar dispute, the Hon'ble Delhi High Court, when faced with the issue of whether Customs Department could initiate recovery proceedings in respect of the IGST refund allowed earlier, directed the Customs Department and the CGST Department to file a joint affidavit to clarify who would be the 'proper officer'.[2]

The above judgments bring an important point to the limelight: Whether the officers of Customs Department or the GST Department would be the 'proper officer' in respect of recovery proceedings relating to short payment of IGST on import of goods or erroneous refund of IGST paid on export of goods, and other related issues? Proviso to Section 5(1) of the IGST Act provides that IGST on import of goods, except goods notified by the Government, shall be levied and collected in accordance with Section 3 of the Customs Tariff Act, 1975 (**'CTA'**), whereas, Section 3(7) of the CTA provides that imported goods shall, in addition, be liable to IGST as is leviable under Section 5 of the IGST Act.

At this juncture, the issue arises as to whether IGST on import of goods is a levy under CTA or IGST Act. At the outset, it is clarified that this article does not seek to examine the widely contested issue of whether IGST on import of goods is a levy under the CTA or the IGST Act. Rather, this article seeks to examine the question as to whether Customs or GST Department has jurisdiction and to what extent, if IGST is declared to be a levy under the CTA or the IGST Act, respectively.

[1] *Gulabdas International Trading LLP* v. *Union of India* [2025-VIL-1290-BOM].

[2] *Talbros Sealing Material Pvt. Ltd.* v. *Addl. Commr. of Customs Export and Anr*. [2025-VIL-1217-DEL].

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Jurisdiction if IGST on import of goods is deemed a CTA levy

If IGST paid on import of goods is concluded to be a levy under the CTA and not under the IGST Act, the jurisdiction of GST officers to demand any short-paid GST on such import would be highly disputed.

In this regard, Circular No. 238/32/2024-GST dated 15 August 2024 issued in the context of amnesty scheme noted that waiver of interest and penalty is not available in respect of IGST paid on import of goods as recovery proceedings are not initiated under Section 73 of the CGST Act, but as per the provisions of the CA.

Further, the jurisdiction of the Customs authorities to determine IGST exemption was upheld by the Hon'ble Kerala High Court.[3]

Section 28 of the CA provides for recovery of short-paid duty. Said recovery provision is borrowed for levies under the CTA *vide* Section 3(12) of the CTA. If IGST provided under Section 3(7) is concluded to be a Customs levy, Section 3(12) enables borrowing Section 28 of CA for customs authorities to recover IGST. Only customs officers are empowered to act as 'proper officers' for the purposes of recovery of levies under CTA and CA.[4] There is no notification empowering GST officers to be proper officer for initiating action under Section 28 of the CTA.

If IGST is eventually concluded to be a CTA levy, any GST demand raised under Section 73/74 of the CGST Act on import of goods during GST audits, investigations, intelligence proceedings, scrutiny proceedings, etc., would be without jurisdiction. The implications would not be restricted only to import of goods where a bill of entry has been filed. Even in case of intangibles (e.g., permanent transfer of intellectual property by way of import), the taxpayers may argue that the same is an import of goods liable to IGST under the CTA as opposed to import of services. For these transactions, any GST demand raised under Section 73/74 of the CGST Act can be contested as demands raised without jurisdiction.

Further, if a GST officer issues a notice invoking Section 28 of the CA, the proceedings can be disputed on the ground that the GST officer is not empowered to act as a proper officer under the CA/CTA.

[3] *Ajwa Dry Fruit Impex* v. *Union of India* [[2023] 156 taxmann.com 448 (Kerala)].

[4] Section 2(34) r.w. Section 5(1A) of the Customs Act and Notification No. 26/2022-Cus. (N.T.) dated 31 March 2022.

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Jurisdiction if IGST on import of goods is deemed a IGST Act levy

If IGST paid on import of goods is seen as a levy under the IGST Act with only collection being made under the CTA, the jurisdiction of customs/GST authorities becomes complex. The question of whether collection also entails powers of recovery arises.

If both customs and GST authorities have simultaneous powers of recovery in respect of short-paid IGST on import of goods, the risk of parallel proceedings cannot be ruled out. While Section 6(2) of the CGST Act provides for express instructions regarding parallel proceedings in cases where both State and Central GST authorities initiate proceedings, the law is silent on parallel proceedings by GST and customs authorities.

Under customs law, Section 2(2) of the CA defines 'assessment' broadly as the determination of dutiability of goods and the amount of *inter alia* tax leviable under any other law for the time being in force. The bill of entry filed at the time of import results in a self-assessment in terms of Section 17(1) of the CA. Further, Section 17(4) provides that where it is found that the self-assessment is not done correctly, the proper officer may re-assess the duty leviable on such goods, and if the re-assessment is contrary to the self-assessment, the proper officer shall pass a speaking order on the re-assessment within 15 days from the date of re-assessment.

From a conjoint reading of Section 2(2) and Section 17 of the CA, it could be said that the jurisdiction of the proper officer under Customs law extends to making an assessment, not only of duty which is leviable under CA, but also to any tax, cess, or any other sum payable under any other act, including IGST leviable under IGST Act.

In contradistinction, Section 28 of the CA read with Section 3(12) of the CTA, provides for the recovery proceedings by the proper officer for short payment of duty, tax and cess chargeable under CA & CTA. In this regard, the Hon'ble Supreme Court held that the proceedings under Section 17 and Section 28 are independent and there is no statutory linkage between the two.[5] At this juncture, if IGST is concluded to be a levy under the IGST Act, it remains to be seen whether Section 3(12) be invoked by the customs authorities to recover IGST as per Section 28 of the CA.

[5] *Commr. of Customs* v. *Canon India Pvt. Ltd*. [2024 INSC 854].

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Prior to 16 August 2024, recovery of interest and penalty on CTA levies was held to be not permissible by a combined reading of Section 3(12) of the CTA and Section 28 of CA due to the lack of explicit mention of interest and penalty in Section 3(12) of the CTA.[6] Section 3(12) was amended w.e.f. 16 August 2024[7] to specifically provide for recovery of interest and penalty. At this juncture, if the charging provision for IGST on import of goods is held to be traceable to Section 5 of the IGST Act and not Section 3(7) of the CTA, in the absence of any specific mention of IGST in Section 3(12), it remains to be seen whether said provision provides scope for the customs authorities to recover IGST on import of goods and interest and penalty thereon.

Under the notifications issued for notifying the proper officer under GST law, the customs authorities have not been notified as proper officers empowered to initiate recovery proceedings under Section 73/74/74A of the CGST Act. The impact of this also merits to be seen.

Even in the erstwhile regime, the jurisdiction of excise authorities or customs authorities was examined by various tribunals in the context of failure to meet conditions of bond and improper import of goods.[8] Proceedings initiated by excise authorities were held to be without jurisdiction and it was held that only customs officers who have assessed the bill of entry had the power of re-assessment and power to initiate recovery under Section 28 of CA.

Jurisdiction of Customs/IGST Authorities pertaining to issues relating to refund on export of goods

In respect of export of goods, IGST paid thereon is no doubt a GST levy pursuant to Section 5 of the IGST Act. The Government has decided to treat the shipping bill filed by exporters for export of goods as an automatic application for refund of IGST paid on export of goods. This refund is processed by the customs authorities in terms of Rule 96 of the CGST Rules.

Rule 96(4) provides for few situations when the IGST refund on export of goods can be withheld by customs authorities. If refund is withheld, Rule 96(5A) requires the

[6] *A.R. Sulphonates Pvt. Ltd.* v. *Union of India & Ors.* [2025 (4) TMI 578 – Bombay High Court], read with *Mahindra & Mahindra Ltd. (Automotive Sector)* v. *Union of India & Ors.* [2022 (10) TMI 212 – Bombay High Court], affirmed by the Hon'ble Supreme Court in *Union of India* v. *Mahindra and Mahindra Ltd.* [2023 (386) E.L.T. 11 (S.C.)] and *Union of India & Ors.* v. *Mahindra and Mahindra Ltd.* [2025 (392) E.L.T. 675 (S.C.)].

[7] Finance Act, 2024, §106.

[8] *Shilpi Cables Technologies Ltd.* v. *Commr. Of C. Ex., Alwar* [2018 (363) E.L.T. 938 (Tri. - Del.)]; *S. Balasubramanian, Dir. (Operations), Surana Telecom & Power Ltd.* v. *C,C.E., C. & S.T., Hyderabad-III* [2019 (370) ELT 1412 (Tri. - Hyd)].

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refund claim to be transmitted to the proper officer of Central tax, State tax or Union territory tax, as the case may be on the common portal and the intimation of such transmission shall also be sent to the exporter electronically.

Rule 96B provides for recovery of refund of unutilised input tax credit or integrated tax paid on export of goods where export proceeds are not realised. Such recovery shall be in accordance with the provisions of Section 73 or Section 74 or Section 74A of the CGST Act. Thus, an inference can be made that GST authorities being those empowered to initiate recovery proceedings under aforesaid sections are the only authorities permitted to recover refund of IGST granted on export of goods when export proceeds are not realised. However, this position cannot be seen as conclusive. If 'proper officer' for the purpose of granting refund is the customs officer, the possibility that the 'proper officer' for recovery of refund granted can also be a customs officer cannot be ruled out.

On a similar note, the question of which authority is liable to pay interest if IGST refund is delayed and against whom such remedies can be pursued are note-worthy questions which await resolution. While Rule 96(5A) provides some guidance on the statute's intention to limit customs authorities' role only to grant of refund, the question requires a deeper scrutiny especially in light of recent cases.

Conclusion

A resolution of the jurisdictional conflicts between the customs and the GST authorities in respect of short payment of IGST on import of goods and refund of IGST paid on export of goods and other related issues is much needed. It is hoped that the above issues are resolved so that unnecessary disputes are avoided and the tax administration is streamlined in the future. It is also imperative that taxpayers take adequate grounds on jurisdiction in their litigation on these issues.

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Goods & Services Tax (GST)

Notifications and Circulars

- Tobacco products – GST regime, including rates, set for overhaul from 1 February

Ratio decidendi

- Sub-leasing of hostel is exempt as 'residential dwelling' under Sl. No. 13 of Notification No. 9/2017-IGST (R) [till 18 July 2022] – *Supreme Court*
- IGST, and not CGST, is payable when goods are handed over to common carriers for transportation to another State – *Karnataka High Court*
- Interest and penalty recovered by foreman from defaulting chit fund subscribers are not liable to GST – *Andhra Pradesh High Court*
- Service provided to foreign parent company when not covered as 'intermediary' and eligible for benefit of exports – *Gujarat High Court*
- Supply of Solar Power Generating Systems – Benefit of Entry No. 234 of Schedule-I in Notification No. 1/2017-CT(R) available irrespective of whether contract was works contract relating to immovable property – *Andhra Pradesh High Court*
- GST authorities can consider documents and material seized during Income-tax search – *Delhi High Court*
- Statements used as evidence in Income-tax proceedings can be starting point for GST investigations – *Delhi High Court*
- Recovery of tax determined when not permissible in excess of amount required for pre-deposit for filing appeals – *Calcutta High Court*
- Input Tax Credit – Section 16(2)(aa) read down to state that purchaser ought to be given an opportunity to prove his bona fides – *Gauhati High Court*
- ITC not to be denied to purchaser on sole ground of retrospective cancellation of supplier's registration – *Calcutta High Court*
- Supply to SEZ – Endorsement by SEZ Commissionerate is not required for period from July 2017 till 20 September 2018 – *Karnataka High Court*
- Confiscation of goods and conveyance intercepted in transit is permissible in case of intention to evade – *Gujarat High Court*
- Appeal to Appellate Authority – Limitation – Date of communication of impugned order to be considered as day zero – *Punjab & Haryana High Court*
- Appeal to Appellate Authority – Exclusion of time during which rectification was pending – Section 14 of Limitation Act is applicable – *Allahabad High Court*
- Appeal – Limitation – Date of communication of impugned order by physical mode to prevail over service through electronic mode – *Allahabad High Court*

Notifications and Circulars

Tobacco products – GST regime, including rates, set for overhaul from 1 February

GST regime for taxation of tobacco products is set to change from 1 February 2026. Further, rates of central excise duty and certain other changes in respect of said duty will also get revised with effect from 1 February 2026. *GST changes are covered in the paragraphs below. Changes in respect of central excise duty are covered in the last section of this newsletter relating to central excise, etc.*

Valuation: Supply of Pan masala; unmanufactured tobacco; tobacco refuse [other than tobacco leaves]; Cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes; Other manufactured tobacco and manufactured tobacco substitutes; 'homogenised' or 'reconstituted' tobacco; tobacco extracts and essences (other than biris); Products containing tobacco or reconstituted tobacco and intended for inhalation without combustion; Products containing tobacco or nicotine substitutes and intended for inhalation without combustion, will be liable to tax based on their retail price.

For this purpose, while these goods have been specified in Notification No. 49/2023-Central Tax, the Central Goods and Services Tax Rules, 2017 have also been amended to insert new Rule 31D providing for the mechanism of computation of value and the applicable tax in respect of these goods on the basis of retail sale price. It may be noted that Rule 86B will also be amended with effect from 1 February 2026 to exempt registered persons, other than manufacturers, from the rigors of said Rule, if the tax is paid on such specified goods on the basis of retail sale price.

Rate of tax: Further, the rate of GST has been revised for these goods (as specified above). Accordingly, all the abovementioned goods will be liable to GST @ 40% instead of earlier 28%. It may be noted that *biris* covered under TI 2403 19 21 or 2403 19 29, however, will be liable to GST @ 18%. Suitable amendments have been made for this purpose in Notification No. 9/2025-Central Tax (Rate) by Notification No. 19/2025-Central Tax (Rate), dated 31 December 2025.

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Ratio Decidendi

Sub-leasing of hostel is exempt as 'residential dwelling' under Sl. No. 13 of Notification No. 9/2017-IGST (R) [till 18 July 2022]

The Supreme Court has upheld the decision of the Karnataka High Court wherein the High Court had held that a premises rented as the hostel for residence would fall within the purview of 'residential dwelling' and hence the assessee would be eligible to claim the benefit of exemption under Entry 13 of Notification No. 9/2017-IGST (Rate). ***See ratio of the Karnataka High Court decision, as covered in LKS Indirect Tax Amicus for February 2022, here.*** The assessee-petitioner had leased out a residential property to lessee and the lessee had further leased it out as hostel for providing long-term accommodation to students and working professionals.

Applying purposive interpretation of the said Entry, the Court observed that as the ultimate use of the property as residence remains unchanged, if GST is levied on this transaction between the lessor (respondent here) and the lessee (who sub-leased the premises), the same would ultimately be passed on to the students and working professionals which would defeat the legislative intent behind granting exemption for residential use. Department's submission that since lessee did not use the hostel as a residence but rather sub-leased the same, such transaction does not fall within Entry 13, was rejected. It was also noted that said Entry does not mandate that the lessee must use the residential dwelling as its own residence, and that the exemption is an activity specific exemption and not person specific exemption. Further, observing that any residential accommodation meant for long term stay can be referred to as 'residential dwelling', and that the property was shown as residential in the Municipal Commissions records, the Supreme Court also held that the property was a 'residential dwelling'.

Also, according to the Supreme Court, the Department was through these appeals, in effect, trying to give retrospective application to the amendment made in 2022, which is impermissible. It was noted that exemption is not available to the assessee (lessor here) from 18 July 2022, as he rented to a registered person. [*State of Karnataka & Anr.* v. *Taghar Vasudeva Ambrish & Anr.* – 2025 VIL 94 SC]

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IGST, and not CGST, is payable when goods are handed over to common carriers for transportation to another State

In a case where the assessee handed over the goods to the common carrier for the purpose of delivery to the ultimate destination outside the State of Karnataka, the Karnataka High Court has held that the supply of goods was inter-State supply and not intra-State supply so as to attract CGST/KGST. Relying upon Section 10(1)(a) of the IGST Act, the Court noted that the movement of the goods terminates for handing over delivery to the recipient not when the goods are handed over to the 'common carrier' but only when the goods reach the destination. It was thus held that the liability to pay IGST under Section 10(1)(a) would arise when the movement of the goods terminated for delivery to the recipient at various places outside Karnataka. ***The assessee was represented by Lakshmikumaran & Sridharan Attorneys here.*** [*Toyota Kirloskar Motor Pvt. Ltd.* v. *Union of India* – Order dated 27 November 2025 in Writ Petition No. 6126 of 2024 (T-RES), Karnataka High Court]

Interest and penalty recovered by foreman from defaulting chit fund subscribers are not liable to GST

The Andhra Pradesh High Court has held that the interest and penalty, recovered by a foreman, in relation to default in payment of instalments by the chit fund subscribers would not be exigible to tax under the GST provisions. Observing that Section 21(b) of the Chit Fund Act, 1982 places a cap on the service fees that can be collected by a foreman to 7% of the gross chit amount, the Court was of the view that the right to interest and penalty in Section 21(c) falls outside the purview of commission or remuneration specified in Section 21(b). Further, according to the Court, the cap of 7% set out in Section 21(b) would be a bar to the foreman to recover interest and penalty under Section 21(c). Accordingly, it was held that interest or penalty recovered by a foreman, on account of defaulting payment of instalments, cannot be treated to be a service fee or another charge, mentioned in the definition of 'interest' in Notification No. 12/2017-CT(R).

Allowing the writ petition, the High Court also opined that interest or penalty recovered by a foreman from a defaulting chit subscriber would fall under Entry No.27 of Notification No. 12/2017-Central Tax (Rate) and thus be exempt from GST. The

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High Court for this purpose relied upon a Supreme Court decision in *Oriental Kuries Limited* v. *Lissa & Ors*. [(2019) 19 SCC 732] which had held that the relationship between a chit subscriber and the chit foreman is a contractual obligation, which creates a debt on the day of subscription, and on default taking place, the foreman is entitled to recover the consolidated amount of future subscriptions from the defaulting subscriber in a lump sum. ***The assessee was represented by Lakshmikumaran & Sridharan Attorneys here.*** [*Ushabala Chits Private Limited* v. *Commissioner* – 2025 (12) TMI 868 - Andhra Pradesh High Court]

Service provided to foreign parent company when not covered as 'intermediary' and eligible for benefit of exports

Observing that the assessee-petitioner was an independent company incorporated in India having distinct entity from its foreign parent company, the Gujarat High Court has held that service provided by the assessee to its parent company was in independent capacity and not in the capacity of either agent or broker or any other person. The Court observed that according to the service agreement, the assessee was required to assist the foreign entity in carrying on the business of providing information and consultancy in business of software development and was also to provide advisory services for expansion of business, marketing, advertisement, publicity, and personnel accounting to its parent company. It was also noted that the assessee was also earning a profit of 8% on the cost incurred by it in providing services to its parent company, and that in case of any dispute, the service agreement provided for resolution through India International Economic and Trade Arbitration Commission. Directing the Department to process the refund claim in respect of exports, the Court thus held that it cannot be said that the assessee was not exporting services but was working as an intermediary for its parent company. ***The assessee was represented by Lakshmikumaran & Sridharan Attorneys here.*** [*Infodesk India Pvt. Limited* v. *Union of India* – 2025 VIL 1242 GUJ]

Supply of Solar Power Generating Systems – Benefit of Entry No. 234 of Schedule-I in Notification No. 1/2017-CT(R) available irrespective of whether contract was works contract relating to immovable property

The Andhra Pradesh High Court has held that irrespective of the fact whether the contract is a works contract relating to immoveable property or a composite supply of goods and services, the provision of Entry No. 234 of Schedule-I in Notification No.1/2017-CT(R) would be applicable. The assessee-petitioner

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had submitted that as they were supplying solar modules and parts of solar power generating plants, they were involved in execution of works contracts relating to movable property and such contracts should be treated as composite supply of goods. It was contended that according to the explanation to the said Entry, 70% of the gross consideration received by the petitioner would have to be treated as supply of goods taxable @5% and the remaining 30% of the gross consideration to be treated as supply of services taxable at 18%, which average out to 8.9% of entire consideration. The Department had, however, rejected the contention and held that the assessee was involved in execution of works contracts involving immovable property which is taxable @18%. ***The assessee was represented by Mr. V. Sridharan, Co-founder LKS and Senior Advocate, Bombay High Court, along with LKS Team.*** [*Vikram Solar Limited* v. *Commissioner* – 2025 VIL 1251 AP]

1) GST authorities can consider documents and material seized during Income-tax search

2) Statements used as evidence in Income-tax proceedings can be starting point for GST investigations

The Delhi High Court has held that documents and materials seized during a search under the Income Tax Act, 1961 though neither can lead to any presumptions nor can straightaway constitute evidence under the CGST Act, 2017; however, the GST authorities are not prevented from considering the documents and material seized for investigation under the CGST Act. Rejecting the assessee-petitioner's challenge to SCN as pre-mature, the Court noted that the seized documents and material passed on by the IT Department to the GST Department were scrutinized by the GST Department, *prima facie*, on its own. The High Court also observed that the GST department has merely issued a SCN which can be replied to and rebutted by the assessee, and all grounds and legal objections would be available to the assessee-petitioner. Thus, according to the Court, while the *prima facie* presumption, as existing under the IT Act, would not apply under the CGST Act, the assets and material seized could form the basis of an independent investigation by the GST Department.

Additionally, it was also held that statements which can be used as evidence in proceedings under the Income Tax Act, can be a starting point for investigation under the CGST Act, though they may not directly constitute evidence for proceedings under the CGST Act.

It may be noted that the High Court here also asked the Department to be careful while citing judicial precedent,

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especially if the same has been produced or accessed through Artificial Intelligence software. [*J M Jain* v. *Union of India* – 2025 VIL 1235 DEL]

Recovery of tax determined when not permissible in excess of amount required for pre-deposit for filing appeals

The Calcutta High Court has directed the Revenue department to refund any sum that they may have recovered (from the assessee) in excess of the sum that was required to be deposited by the assessee in terms of Sections 107(6) and 112(8) of the CGST Act, 2017. The GST authorities had recovered the entire tax determined by the adjudicating authority that was affirmed by the Appellate Authority, despite the fact that time to prefer appeal before the Appellate Tribunal was still there. Directing the refund of excess amount, the Court observed that since upon pre-deposits being made in terms of Sections 107(6) and 112(8), recovery proceedings for the balance amount is deemed to have been stayed, the Department could not have proceeded to recover the sum in excess of the cumulative sums required to be deposited by the assessee before the two authorities (Appellate Authority and Tribunal). [*Vidya Trading Co. & Anr.* v. *Senior Joint Commissioner* – 2025 VIL 1257 CAL]

Input Tax Credit – Section 16(2)(aa) read down to state that purchaser ought to be given an opportunity to prove his bona fides

The Gauhati High Court has read down the provisions of Section 16(2)(aa) to the extent that in case of the supplier acting truant, before denying the ITC benefits to a *bona fide* purchaser, the purchaser ought to be given an opportunity to prove his bona fides, which can be verified by the tax invoices and other documents. Section 16(2)(aa) restricts the vested right of claiming ITC of the recipient, due to the default of its supplier to furnish the details of invoices or debit notes of such supply in its GSTR-1 return.

It may be noted that the Court was not inclined to hold the amendment in Section 16 [insertion of clause (aa) in sub-section 16(2)] to be unconstitutional. It, in this regard, observed that the object and purpose of the said amendment was to prevent fraudulent ITC claims and to promote supplier compliance. The Court also asked the CBIC to come up with any practical solution to the problem posed by making the availability of ITC to the *bona fide* purchaser contingent on factors which are totally in the hands of a supplier. [*Mcleod Russel India Limited* v. *Union of India* – 2025 VIL 1262 GAU]

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ITC not to be denied to purchaser on sole ground of retrospective cancellation of supplier's registration

The Calcutta High Court has reiterated that retrospective cancellation of registration of the supplier cannot be the sole ground for denying the Input Tax Credit to the purchaser. The Court for this purpose noted that it was not the Department's case that the registration of the supplier was not valid on the date when the supplies were made to the assessee-purchaser. It was noted that though the effective date of cancellation of the GST registration of the supplier was prior to the date of issuance of the invoices, but the registration was cancelled retrospectively after issuance of the invoice. The High Court also observed that no other ground was mentioned by the Department for denial of ITC. [*Shyamalmay Paul* v. *Assistant Commissioner* – 2025 VIL 1315 CAL]

Supply to SEZ – Endorsement by SEZ Commissionerate is not required for period from July 2017 till 20 September 2018

The Karnataka High Court has held that Rule 30(4) of the SEZ Rules as amended *vide* Notification dated 19 September 2018, which came into force on 21 September 2018, and Circular KASEZ/P&C/20/DSPF/2019-20 dated 12 September 2019, are prospective in nature, and would not apply to the tax period prior to 21 September 2018. The Court was thus of the view that order confirming the demand by placing reliance on the prospective Rule and Circular would be without jurisdiction or authority of law and consequently, mere availability of a remedy by way of an appeal would not be a bar for the Court exercising its jurisdiction under Article 226 of the Constitution of India. Rule 30(4) required for the supply-related documents to be endorsed by the authorised officer of the Special Economic Zone. Department had demanded GST, holding the supply as not zero-rated because the authorization was missing. [*MK Travels* v. *Deputy Commissioner* – 2025 VIL 1259 KAR]

Confiscation of goods and conveyance intercepted in transit is permissible in case of intention to evade

The Gujarat High Court has rejected the contention of the assessee that the GST Department must complete the entire process envisaged under Section 129 of the CGST Act and is precluded from resorting to confiscation under Section 130 midway. The assessee contended that retaining the non-obstante

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clause in Section 129 [after the amendment by Finance Act, 2021], the same becomes a complete code in itself and has overriding effect on Section 130. The Court however was of the view that though the effect of non-obstante clause is that the action of seizure of goods and conveyance is required to be brought to its logical end as per the said provision only, but, the seized goods and conveyance can be confiscated under Section 130, if they involve an element of 'intention to evade payment of tax'.

Also, according to the Court, it would be erroneous to hold that for confiscating the goods and conveyance in transit, the Department has to fall back to Section 67, and only after actual evasion of tax is established after search under and seizure, the goods and conveyance can be confiscated. CBIC Circular dated 13 April 2018 read with Rule 138B were noted for this purpose. Gujarat High Court's earlier decision in the case of *Synergy Fertichem Private Ltd.* was relied upon though it pertained to period prior to said amendment.

Further, on the question of examining evasion of tax, the Court cautioned that since the action of confiscation is the last resort, and invites serious consequences, the same cannot be resorted to only on suspicion, bereft of any concrete material, and on *ipse dixit*. CBIC Circular dated 14 September 2018 was also relied upon for this purpose. Accordingly, it was held that only in case of blatant violation or contravention of provisions of the Act or Rules, which has direct nexus with the intention to evade payment of tax, the confiscation of goods and conveyance, during transit can be resorted. [*Panchhi Traders* v. *State of Gujarat* – 2025 VIL 1269 GUJ]

Appeal to Appellate Authority – Limitation – Date of communication of impugned order to be considered as day zero

The Punjab & Haryana High Court has held that the day on which the order is passed or communicated has to be treated as Day Zero (0) for the purpose of calculating the limitation period for filing appeal. The Order-in-original in the dispute was dated 24 January 2024 and was admittedly communicated on 1 February 2024. The appeal filed on 1 June 2024 was held time-barred (by one day) by the Appellate Authority. Setting aside the order passed by the Appellate Authority, the Court also observed that the assessee was able to indicate sufficient cause for not filing the appeal within the period of three months and the Appellate Authority had also added one additional month in terms of Section 107(4) of the CGST Act, though had dismissed the appeal as was filed with a delay of one day. [*Laxmi Metal and Machines* v. *Union of India* – 2025 VIL 1243 P&H]

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Appeal to Appellate Authority – Exclusion of time during which rectification was pending – Section 14 of Limitation Act is applicable

The Allahabad High Court has held that if before expiry of three months, an application is filed under Section 161 of the CGST Act, 2017, to seek rectification in the order, the running of limitation to file appeal against such order would be put in abeyance from the date of filing of such application up to the date when the rectification application is decided. The Court, for this purpose, observed that the statutory remedy to seek rectification of order being in addition to the statutory remedy to file an appeal, limitation to seek either or both those remedies starts running simultaneously.

The High Court, while holding so, also observed that no implied or necessary exclusion to the general applicability of the underlying principle of Section 14 of the Limitation Act (unlike Section 5 *ibid*.) can be read in the CGST Act, even though the latter Act remains a special Act. The High Court relied on the Supreme Court's decision in the case of *M.P. Steel Corporation* v. *Commissioner* [2015 (319) E.L.T. 373 (S.C.)].

Section 14 of the Limitation Act provides for exclusion of time of proceeding *bona fide* in court without jurisdiction. The High Court noted that the underlying principle of Section 14 recognizes that it applies to persons who may have made a mistake in the nature of lack of jurisdiction or defect of like nature, which is to be construed liberally. It was noted in this regard that it could not be said that the rectification application filed by the assessee-petitioner was so misconceived that it may be readily inferred therefrom that either it was not in 'good faith' or that it was not '*bona fide*'.

Allowing the writ petition, the Court thus held that wherever an application seeking rectification of mistake apparent on the face of record is filed within time, the application of the underlying principle of Section 14 is not to be examined with a microscope, any further. [*Prakash Medical Stores* v. *Union of India* – 2025 VIL 1326 ALH]

Appeal – Limitation – Date of communication of impugned order by physical mode to prevail over service through electronic mode

The Allahabad High Court has observed that to avoid any conflict with respect to start point of limitation, wherever the date of 'communication' may be determined or be claimed through electronic and physical mode, the date of communication through offline/physical mode may prevail

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over service through electronic mode, unless the contrary is proved, by either party.

Earlier, the Court also reiterated that orders uploaded and thus made them available on the Common Portal had not been 'communicated' to the individual assessees, within the meaning of that word used in Section 107 of the State/Central Act. The question before the Court was whether notice or order may be found served or 'deemed served' in terms of Section 169 on such person, upon it being uploaded and thus made available on the Common Portal of the GSTN, or on dispatch of electronic mail at the specified email address.

It may be noted that while allowing the petition, the Court also noted that Section 4 of the Information Technology Act is a provision that only allows for electronic mail or document made available through the Common Portal, to be an equivalent to a physical document. It does not create and does not seek to introduce any element of 'service' or 'communication' of such documents. [*Bambino Agro Industries Ltd.* v. *State of Uttar Pradesh* – 2025 VIL 1353 ALH]

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Customs and FTP

Notifications and Circulars

- FTA imports from Australia, Iceland, Norway and Switzerland – Customs duties further cut
- Diamond Imprest Authorization – Exemption from IGST and Compensation Cess to be available
- Natural honey – Minimum Export Price to remain effective till 31 March 2026

Ratio decidendi

- SEIS benefit not deniable even if foreign exchange received in subsequent financial year – Karnataka High Court
- Foreign Trade Policy benefits cannot be issued or withdrawn retrospectively – Exporters can claim benefit only when valid scheme is in operation – Delhi High Court
- EPCG imports – Non endorsement of vendors, with whom machines installed, in EPCG licences, when is not fatal – CESTAT Chennai
- Drawback – Supplementary claims filed nearly 4 years after the original sanction, when is not time-barred – CESTAT Kolkata
- Reimport benefit available even to goods which were part of bigger consignment of exports in SKD condition – CESTAT Chennai
- Adjudication – Non communication of extension of time-period is not fatal – Delhi High Court

Notifications and Circulars

FTA imports from Australia, Iceland, Norway and Switzerland – Customs duties further cut

The Central Government has further cut the effective rate of customs duty for specified goods imported from Australia, Iceland, Norway and Switzerland under the respective Free Trade Agreements. It may be noted that for goods imported from Australia, this is the fifth tranche of tariff concessions, while for Iceland, Norway and Switzerland, the new duty rates are covered under the second tranche. Notifications Nos. 50, 51, 52 and 53/2025-Cus., all dated 30 December 2025 have been issued for the purpose. The changes have come into force from 1 January 2025.

Diamond Imprest Authorization – Exemption from IGST and Compensation Cess to be available

The DGFT has amended Para 4.63 of the Foreign Trade Policy 2023 by Notification No. 49/2025-26 dated 9 December 2025, to allow for exemption from IGST and Compensation Cess in case of imports under the Diamond Imprest Authorisation (DIA) scheme.

Natural honey – Minimum Export Price to remain effective till 31 March 2026

The Ministry of Commerce has extended the condition of Minimum Export Price for export of natural honey [ITC(HS) Code 0409 00 00] till 31 March 2026. The Policy condition of MEP of USD 1400 FOB per Ton, was earlier effective only till 31 December 2025. Notification No. 52/2025-26, dated 31 December 2025 has been issued for the purpose.

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Ratio Decidendi

SEIS benefit not deniable even if foreign exchange received in subsequent financial year

The Karnataka High Court has held that SEIS benefit cannot be denied to an exporter merely because the exporter had received foreign exchange during the financial year 2017-18, towards export of services for the previous financial year 2016-17. According to the Court, the said circumstance cannot be made the basis to deny SEIS benefit for the earlier financial year, especially when the exporter-petitioner was earning foreign exchange, which is relevant or germane to claim the benefit and not the financial year during which the services were exported. The Court, for this purpose, also noted that Form ANB 3B specifically provided/enabled the exporter to seek benefit under the SEIS claim for foreign exchange earned in a particular financial year for services exported in the previous financial year.

The High Court also overruled the Department's submission of denial of the duty credit scrip insofar as it was related to travel cost, inspection, R & D, software and re-invoicing etc. It was observed that the said categorization of earnings pertaining to exports were part of the engineering services exported by the petitioner. ***The exporter was represented by Lakshmikumaran & Sridharan Attorneys here.*** [*Alstom Transport India Limited* v. *Director General of Foreign Trade* – Order dated 2 December 2025 in Writ Petition No. 27238 of 2024 (T-RES), Karnataka High Court]

Foreign Trade Policy benefits cannot be issued or withdrawn retrospectively – Exporters can claim benefit only when valid scheme is in operation

The Delhi High Court has partly allowed a writ petition filed by an Association of Chillies Exporters, challenging the foreclosure of the Transport and Marketing Assistance Scheme for Specified Agricultural Products notified by Notification No. 9 September 2021, by Notification dated 25 March 2022. The Court held that while the Central Government lacks statutory power under the Foreign Trade law to issue or withdraw export incentive schemes retrospectively, exporters cannot claim incentives for a period when no valid scheme was in operation.

During the period from 1 April 2021 till 8 September 2021, the TMA Scheme was not in operation. However, *vide* notification

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dated 9 September 2021 the Scheme was made applicable with retrospective date, i.e. 1 April 2021 and was to operate till 31 March 2022. Notification dated 9 September 2021 was however withdrawn by notification dated 25 March 2022 with the objective to foreclose the Scheme to revamp, redesign and refocus it better for better outcomes.

The Delhi High Court thus concluded that no right can be said to have accrued to the chilli exporters during the period from 1 April 2021 to 8 September 2021. It was however held that if any exporter had exported the goods on and after 9 September 2021 till 24 March 2022, such an exporter shall be eligible to claim incentive under the TMA Scheme for this period alone. The objection to foreclosure of the Scheme by notification dated 25 March 2022 was thus partly dismissed. Supreme Court decision in the case of *Kanak Exports* wherein it was held that Section 5 of the Foreign Trade (Development and Regulation) Act does not empower the Central Government to issue any notification with retrospective effect, was relied here. [*Chillies Exporters Association India* v. *Directorate General of Foreign Trade & Anr.* – Judgement dated 10 December 2025 in W.P.(C) 9463/2024, Delhi High Court]

EPCG imports – Non endorsement of vendors, with whom machines installed, in EPCG licences, when is not fatal

The CESTAT Chennai has dismissed Revenue department's appeal in a case where there was non-inclusion/non-endorsement of vendors in the EPCG licences. The question as to whether such violations of conditions of the notification were substantive enough to merit a demand of duties foregone and to attract consequential penal and confiscatory liabilities was thus answered in negative. The Tribunal observed that the adjudicating authority had noted that there was no allegation of non-fulfilment of export obligation, the capital goods remained in assessee's ownership despite being installed in vendor's premises, and names and addresses of the vendors were mentioned in the licences through an amendment sheet after the *post-facto* approval was granted by the EPCG Committee.

The Tribunal in this regard also noted that the EPCG Committee, after evidently considering factors such as the large turnover, investment, export potential and peculiar nature of the automobile industry, despite the request of DRI, had gone on to accord *post facto* approval for inclusion of the supporting manufacturers in the assessee's EPCG licence. ***The assessee was***

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represented by Lakshmikumaran & Sridharan Attorneys here. [*Commissioner* v. *Hyundai Motor India Limited* – 2025 VIL 2149 CESTAT CHE CU]

Drawback – Supplementary claims filed nearly 4 years after the original sanction, when is not time-barred

In a case where the original drawback claim was sanctioned on 31 March 2004 and the assessee filed their supplementary claim on 3 January 2008, the CESTAT Kolkata has held that there was no delay on the part of the assessee in claiming the differential amount of duty drawback. The Tribunal noted in this regard that cause-of-action for the Supplementary Claim of drawback arose only on 5 October 2007 and thus the supplementary claim was well within the period of limitation of three months as provided under Rule 15 of the Customs, Central Excise Duties & Service Tax Drawback Rules, 1995. It was observed that the matter was referred to the Apparel Export Promotion Council by the SEZ authority for proper valuation of the goods and the re-valuation done by AEPC was communicated through a letter which was served on 5 October 2007. [*Promising Exports Limited* v. *Development Commissioner* – 2025 VIL 2188 CESTAT KOL CU]

Reimport benefit available even to goods which were part of bigger consignment of exports in SKD condition

In a case where tractors were exported in SKD condition but only some defective tyres and tubes were sought to be re-imported availing benefit of Notification No. 94/96-Cus., the CESTAT Chennai has allowed assessee's appeal. The Department had denied the benefit, following strict interpretation of the notification, observing that the goods reimported were not the same as the goods exported but only part of the tractors exported.

The Tribunal for this purpose noted that the accompanying invoices and packing list indicated that the tyres were exported along with the tractors, and the marks on the goods indicated that they were made in India and with the inscription relatable as the mark of the supplier of the tyres to the assessee. Accordingly, it was held that it would be opposed to commercial logic to expect the entire shipment of tractor exported in SKD condition to be returned for the benefit of the notification to be extended, if the foreign recipient had raised quality issues only with the tyres and tubes. [*Tractor and Farms Equipment Ltd.* v. *Commissioner* – 2025 VIL 2135 CESTAT CHE CU]

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Adjudication – Non communication of extension of time-period is not fatal

The Delhi High Court has opined that usually the Customs Department ought to intimate any extension granted in respect of time-period for adjudication to the parties concerned but, this would not be a fatal error as the communication of the same is not mandated in the provision, i.e., Section 28 of the Customs Act, 1962. Differing with the view of the Punjab & Haryana High Court in *Shri Ram Agro Chemical Pvt. Ltd.* v. *Union of India* [2019 SCC OnLine P&H 4918], the Court noted that there is a difference between Sections 110 and 28 of the Customs Act, 1962. It noted that while under Section 28(9), an extension can be granted, however, there is no stipulation that the same extension order ought to be communicated, under Section 110(2), the stipulation is that the person from whom the goods were seized has to be informed before the expiry of the period, if a further extension is to be given. [*Pranij Heights India Pvt. Ltd.* v. *Joint Commissioner* – 2025 (12) TMI 1089 - Delhi High Court]

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Central Excise, Service Tax and VAT

Notifications and Circulars

- Tobacco products – Central Excise regime set for change from 1 February 2026
- CESTAT – Appeals to be mandatorily filed online from 1 January 2026 – Old pending appeals to be uploaded by Registry

Ratio decidendi

- Processing by continuous series of operations across two units when amount to 'manufacture' – *Supreme Court*
- Interest for delayed payment of duty is not payable in case of revenue neutrality – *Calcutta High Court*
- No service tax under Design services for import of technical know-how leading to permanent transfer – *CESTAT Mumbai*
- Part of service performed through a foreign subsidiary is not liable to service tax under RCM – *CESTAT Chennai*

Notifications and Circulars

Tobacco products – Central Excise regime set for change from 1 February 2026

In addition to the changes made in the GST regime, as covered in the GST section above, the central excise regime is also set for change from 1 February 2026, as said date has been appointed as the date of implementation of Central Excise (Amendment) Act, 2025.

Chewing tobacco [TI 2403 99 10], jarda scented tobacco [TI 2403 99 30] and Gutkha [TI 2403 99 90] manufactured with the aid of packing machines and packed in pouches will be liable to central excise duty in accordance with the provisions of the Section 3A of the Central Excise Act, 1944, i.e., based on the production capacity of the packing machines for these goods. Accordingly, Chewing Tobacco, Jarda Scented Tobacco and Gutkha Packing Machines (Capacity Determination and Collection of Duty) Rules, 2026 have also been notified for capacity determination, abatement, etc. Further, the rates of central excise duty for various goods of Chapter 24, including filter cigarettes, hukkah tobacco, chewing tobacco, snuff, gutka, etc., will also get enhanced substantially from 1 February 2026.

Notifications Nos. 3 and 4/2025-C.E. and 3, 4, 5 and 6/2025-C.E. (N.T.), all dated 31 December 2025 have been issued for the purpose.

CESTAT – Appeals to be mandatorily filed online from 1 January 2026 – Old pending appeals to be uploaded by Registry

The Customs, Excise and Service Tax Appellate Tribunal (CESTAT) has issued a Circular to reiterate that all appeals are to be mandatorily filed in online mode from 1 January 2026. The Circular dated 17 December 2025 also states that the work of uploading old pending appeals numbering about 70,000 has now been shifted to the Registry staff. It may be noted that Notification dated 1 October 2025 of CESTAT had stated that all old pending appeals should be uploaded on the website by the respective parties or the counsel concerned.

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Ratio Decidendi

Processing by continuous series of operations across two units when amount to 'manufacture'

In a case where the grey fabrics were bleached and mercerized at Unit No.1 and then wet fabrics were subjected to squeezing and stentering at Unit No.2, which was an adjoining Unit within the same premises, and then dry fabrics were brought back to Unit No.1 for being bailed and packed, the Supreme Court has held that the process would amount to 'manufacture'. The Apex Court was of the view that the fact that the Units undertaking these processes were exclusive to each other would hardly make any difference and what was to be seen was whether the distinct processes undertaken by the two Units formed part of a continuous chain that culminated into the final product or not. According to the court, if the various processes were so interlinked with each other that the end product in the form of cotton fabrics could not be brought about without undertaking each individual process to which the final product was subjected to, it would be clear that the entire activity of undertaking the various processes amounted to 'manufacture' under Section 2(f) of the Central Excise Act, 1944. CESTAT decision allowing exemption under Notification No. 5/1998-C.E., after observing that power was used in Unit 2 (against whom demand was not confirmed), was thus set aside by the Court here. [*Commissioner* v. *Narsibhai Karamsibhai Gajera & Ors.* – 2025 VIL 95 SC CE]

Interest for delayed payment of duty is not payable in case of revenue neutrality

The Calcutta High Court has upheld the CESTAT decision wherein the Tribunal had held that interest for delayed payment of central excise duty was not payable in a case involving revenue neutrality. The Tribunal had observed that the duty paid by the assessee was available as Cenvat credit to its downstream units and there was no net loss of revenue to the exchequer. Dismissing the Department's appeal, the Court agreed with the Tribunal's view that levy of interest would be unwarranted, and purely compensatory interest cannot be insisted upon when there is, in substance, no pecuniary prejudice to the revenue. The High Court was not satisfied that the Tribunal had committed any jurisdictional error or perversity warranting interference in appeal. ***The assessee was represented by Lakshmikumaran & Sridharan Attorneys here.*** [*Commissioner* v. *Steel Authority of India* – TS 766 HC 2025 (CAL)]

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No service tax under Design services for import of technical know-how leading to permanent transfer

The CESTAT Mumbai has held that technical know-how imported from foreign group companies in the form of engineering designs and drawings is not liable to service tax under reverse charge mechanism as Design services. The Tribunal noted that as per the agreement, the products in question were sold (outright transfer of a design) by the foreign entity to the assessee in India and thus, the relationship between the parties was not that of 'service provider and service receiver'. It was also noted that there was no specific price provided for in the agreement with regard to the design services, and artificial bifurcation of the price towards the design service was not good in absence of any mechanism being provided in the statute. Further, the Tribunal noted that the ownership of the alleged design vested with the group companies and only the right in Indian territory, in the said engineering drawing and design, was transferred to the assessee. It was thus held that the transaction would properly be covered under IPR services but, would not be liable to service tax even there as there was permanent transfer and the IPR in question was not covered under any Indian law in force. ***The assessee was represented by Mr. V. Sridharan, Co-founder LKS and Senior Advocate, Bombay High Court, along with LKS Team.*** [*Suzlon Energy Ltd.* v. *Commissioner* – 2025 VIL 2098 CESTAT MUM ST]

Part of service performed through a foreign subsidiary is not liable to service tax under RCM

The CESTAT Chennai has set aside the demand of service tax in a case where part of the implementation work in respect of certain software licensed to foreign subsidiaries (licensees) of the assessee was performed by the licensees and the assessee was reimbursing the licensees' costs. The Department had treated these reimbursements as consideration for import of manpower/software support services, liable to service tax under RCM.

The Tribunal observed that no 'service' was rendered by the licensees to the assessee. It was noted that the licensee was not obligated to render any service to the assessee; the assessee was not the contracting party for the Agreements between licensees and foreign customers; and that implementation fee was payable to the assessee and if part of the work was undertaken by the licensee, the corresponding cost was merely netted off. On the question of 'consideration', the Tribunal observed that debit notes merely quantified the licensee's cost for the portion of work the assessee did not perform and that such return of cost

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does not represent consideration for any service rendered by the licensee, there being no *quid-pro-quo*. It was thus held that remittances were not 'consideration' but mere settlement of inter-company commercial arrangements. It may be noted that allowing the appeal, the Tribunal also noted that all the implementation activity by licensees was performed at foreign customer sites and thus covered under Rule 4 of the Place of Provision of Services Rules, not liable in India. Further, observing that if tax was payable, the assessee would be immediately entitled to full Cenvat credit, the Tribunal was of the view that the entire exercise was revenue neutral.

Also, the extended period was held as not invocable as the dispute involved interpretation of contractual clauses, the proper characterisation of cost-sharing arrangements, and the application of the Place of Provision of Services Rules, 2012, which, according to the Tribunal, were areas where divergent legal views are not uncommon. ***The assessee was represented by Lakshmikumaran & Sridharan Attorneys here.*** [*Intellect Design Arena Limited* v. *Commissioner* – 2025 VIL 2148 CESTAT CHE ST]

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