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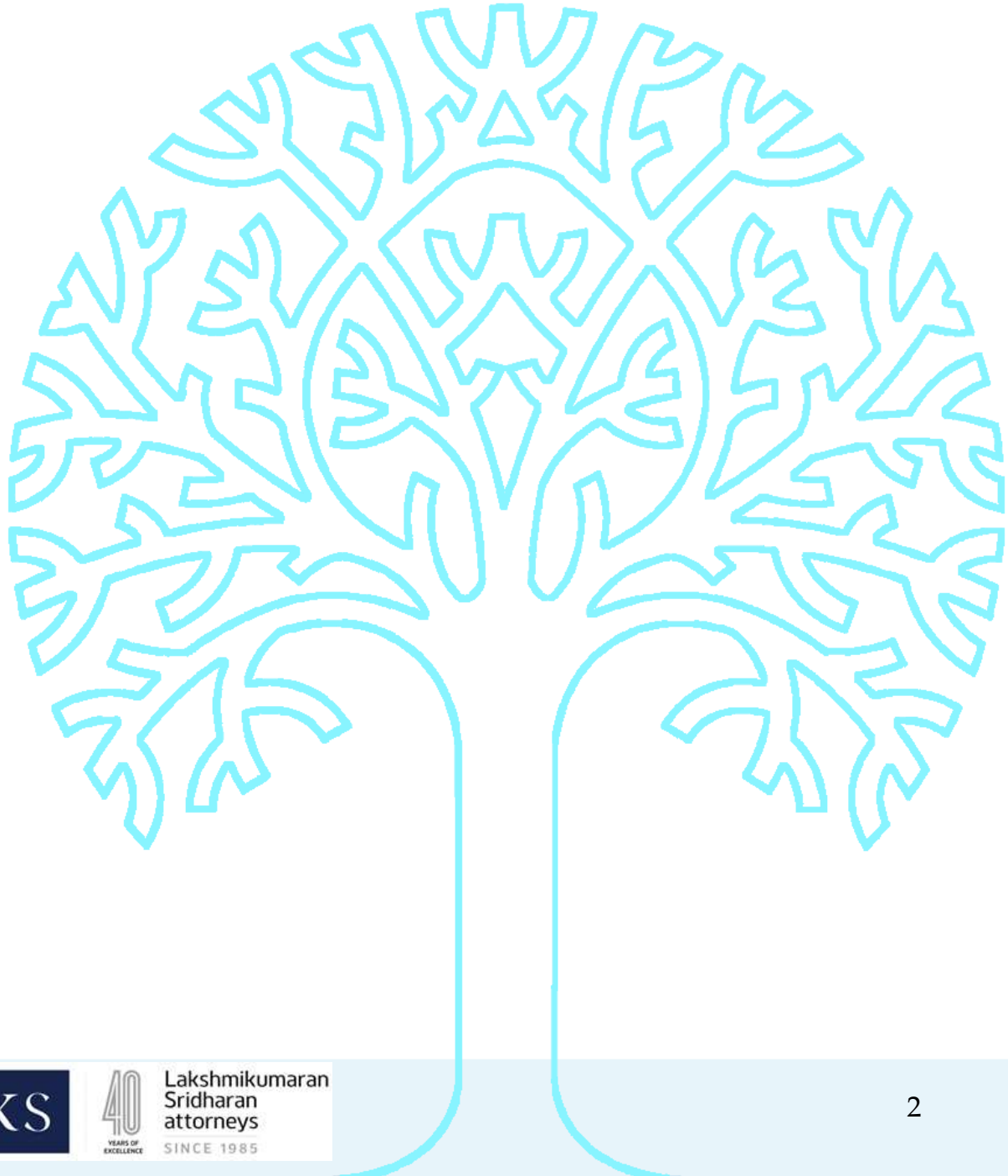

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Article

Realisation of export proceeds through a mode other than Irrevocable Letter of Credit – Chhattisgarh HC clarifies on export duty exemption

By **Ratan Jain and Madhur Azad**

In case of rice export, exemption from export duty has been provided subject to fulfilment of conditions namely, (i) goods meant for export shall have entered the customs station for the purpose of export before 25 August 2023, and an order permitting clearance has not been issued by the proper officer and (ii) goods meant for export are backed by irrevocable Letter of Credit. The article in this issue of Indirect Tax Amicus covers a recent decision of the High Court of Chhattisgarh which examines the true scope and meaning of the requirement relating to 'irrevocable Letter of Credit'. The High Court has held that export through irrevocable letter of credit is neither compulsory nor statutorily mandated. According to the authors, the instant decision is a welcoming move and offers significant relief to exporters facing denial of exemption solely on the ground of not operating through an irrevocable Letter of Credit.

Realisation of export proceeds through a mode other than Irrevocable Letter of Credit – Chhattisgarh HC clarifies on export duty exemption

By Ratan Jain and Madhur Azad

Background

It is a known factor that unlike import duties, which are widely applied across product categories, export duties are imposed only on a small set of commodities. These could be typically raw materials, minerals, or essential food products whose unrestricted export could distort domestic availability or prices. The government uses export duty as a targeted tool for market stabilization, food security, or price control during specific economic circumstances. Rice is one of the most prominent examples where export duties have been selectively imposed to ensure domestic food security and price stability. Levy of export duty on such goods flow from Second Schedule of the Customs Tariff Act, 1975 ('**Export Tariff**').

Generally, any duty including export duty is levied prospectively and not retrospectively. Government through Notification can provide certain relaxation and exemptions subject to fulfilment of prescribed conditions even for future exports. In case of rice export, exemption from export duty has been provided subject to fulfilment of conditions namely, (i) goods meant for export shall have entered the customs station for the purpose of export before 25 August 2023, and an order permitting clearance has not been issued by the proper officer **and** (ii) goods meant for export are backed by irrevocable Letter of Credit.

Hon'ble High Court of Chhattisgarh, in *Eastman International* v. *UOI* [2025 (12) TMI 1087] has examined the true scope and meaning of the requirement relating to 'irrevocable Letter of Credit'.

Emergence of dispute

Notification 55/2022-Cus. dated 31 October 2022 ('**Parent Notification**') provided export duty exemption to specified varieties of rice subject to condition mentioned in the said Notification. However, with effect from 25 August 2023, the Central Government *vide* Notification 49/2023-Cus. dated 25 August 2023 ('**NN 49/2023**') levied export duty @ 20% on

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parboiled rice falling under Tariff Item 1006 30 10 of the Customs Tariff Act, 1975.

Vide Notification No. 50/2023-Cus. dated 25 August 2023 exemption from payment of export duty on parboiled rice was extended by amending the Parent Notification i.e., Notification No. 55/2022-Cus dated 31 October 2022 through insertion of Sr. No. 2A and Sr. No. 2B which reads as under:

Sr No.	***Chapter or heading or sub-heading or tariff item***	***Description of goods***	***Rate of Duty***	***Condition number(s)***
2A	*1006 30 10*	*Rice, parboiled*	*Nil*	*5*
2B	*1006 30 10*	*Rice, parboiled*	*Nil*	*6*

Condition 5 reads as rate of duty shall come into force on the 16th day of October, 2023.

Condition 6 provides that the said exemption was subject to following conditions:

(i) Goods meant for export shall have entered the customs station for the purpose of exportation before 25 August 2023, and an order permitting clearance has not been issued by the proper officer; ***and***

(ii) Goods meant for export shall be backed by irrevocable Letter(s) of Credit, wherein the said letter(s) of credit has been opened before the 25 August 2023, and the message exchange date between the Indian and Foreign bank/swift date should be before the 25 August 2023, and such Letter(s) of Credit should have been authenticated by the Recipient Bank.

The above exemption was for a limited period i.e., 25 August 2023 to 15 October 2023. With effect from 16 October 2023, the Parboiled rice became subject to nil rate of duty in terms of Sr. 2A read with Condition 5.

In the instant case, the Petitioner /Assessee engaged in the trade of rice had exported consignments of parboiled rice which entered the customs station of ICD CONCOR Naya Raipur between 14 August 2023 to 25 August 2023. No Let Export Order was issued by the proper officer, and the exports proceeds were realised by the methods of 'cash upon delivery'.

Seeking exemption from export duty under Notification No. 50/2023-Cus. dated 25 August 2023, the Petitioner/Assessee approached customs for export of rice without payment of duty. However, the exemption was denied on grounds that Condition 6 is required to be fulfilled concurrently. Mainly the controversy arose from the

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interpretation of 2nd limb i.e., whether fulfilment of requirement of irrevocable Letter of Credit was also mandatory even where export proceeds were realised through different lawful modes such as cash upon delivery.

Findings of Hon'ble Chhattisgarh High Court

Court held that export through irrevocable letter of credit is neither compulsory nor statutorily mandated. Export transactions may lawfully be undertaken through various recognised modes including open account, documentary collection, advance remittance, wire transfer and cash-upon-delivery.

The High Court observed that Clause (ii) of Condition No. 6 is clearly premised on the existence of an irrevocable Letter of Credit. Where no LoC exists at all, the question of compliance with such a condition does not arise. Consequently, the department's contention that the word '**and**' in Condition 6 must be read conjunctively was rejected as legally untenable as an exporter who does not transact through LoC cannot be compelled, retrospectively, to have opened one prior to 25 August 2023. According to the Court, such an interpretation would render the exemption illusory and untenable. It was hence held that the interpretation of the Department was violative of Article 14 and Article19(1)(g) of the Constitution.

The Court further held that clause (ii) of Condition No. 6 is applicable only to those exporters whose exports are backed by irrevocable Letters of Credit and is inapplicable to exporters who do not transact through such mechanism. The petitioner having fulfilled Clause (i) and having realised the export proceeds, was held entitled to the benefit of exemption under Notification No. 50/2023-Cus. Accordingly, the Hon'ble Chhattisgarh High Court directed Department to refund the amount of INR 2,01,28,295/- deposited by the petitioner towards export duty, along with interest in accordance with law.

Conclusion

Authors feel that the instant decision is a welcoming move and offers significant relief to exporters facing denial of exemption solely on the ground of not operating through an irrevocable Letter of Credit. Further, it also holds good on true interpretation of the word '**and**' attached to the notification. The decision is likely to settle a long-standing dispute by clarifying that the exporters are entitled to the exemption irrespective of the mode of realisation of export proceeds,

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provided clause (i) of Condition No. 6 is satisfied. Consequently, eligible exporters who have paid export duty under protest may explore the option of seeking refund of duty paid in accordance with law.

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Goods & Services Tax (GST)

Ratio decidendi

- ITC not deniable under Section 17(5)(d) to assessee only engaged in sub-plotting and sub-leasing of plots – *Gujarat High Court*
- Refund – Limitation under Section 54 is not applicable when tax mistakenly paid twice, once through ITC and second time by cash – *Orissa High Court*
- Penalty under Section 122(1A) on employees – Words 'any person' in said provision are required to be understood in context of 'taxable person' – *Bombay High Court*
- General penalty under Section 125 is not imposable over and above Late Fees imposed under Section 47(2) for delayed filing of returns – *Madras High Court*
- Consolidated SCN for multiple financial years/tax periods is not correct – Supreme Court's dismissal of SLP, against Delhi HC decision holding contrary view, was not on merits – *Bombay High Court*
- Affiliation charges collected by university whether liable to GST – Contrary decisions of two Division Benches of different High Courts – *Madras and Rajasthan High Courts*
- Confiscation – Section 130(2) not allows provisional release of goods during pendency of adjudication – *Kerala High Court*
- GSTAT has jurisdiction to pass interim orders staying recovery proceedings – *Bombay High Court*

Ratio Decidendi

ITC not deniable under Section 17(5)(d) to assessee only engaged in sub-plotting and sub-leasing of plots

The Gujarat High Court has quashed the notice denying Input Tax Credit under Section 17(5)(d) of the CGST Act, 2017, to the assessee in a case where the assessee had acquired leasehold rights in industrial plots and was engaged in sub-plotting and subsequently transferring the leasehold rights of such sub-plots to various buyers. The Court in this regard noted that as per the plain and simple reading of provision of Section 17(5)(d), the apportionment of credit and blocked credit relates to the goods or services or both by a taxable person for the purpose of construction of any immovable property.

According to the High Court, the bar on credit is applicable exclusively to construction-related expenditure. It was noted that the Department had not established that the assessee had undertaken any construction activity whatsoever and apart from transferring the leasehold rights in GIDC Plot, was also undertaking construction activities. [*Niket Bipinbhai Patel* v. *Assistant Commissioner* – TS 96 HC GUJ 2026 GST]

Refund – Limitation under Section 54 is not applicable when tax mistakenly paid twice, once through ITC and second time by cash

The Orissa High Court has observed that the nature of refund claim in a case where tax was mistakenly paid twice, once by utilizing credit ledger and second time though cash, falls within the fold of Article 265 of the Constitution of India, and not under Section 54 of the CGST Act, 2017. According to the Court, thus, the rejection of application for refund on the anvil of sub-section (1) of Section 54 read with Clause (h) of Paragraph (2) of Explanation appended thereto (limitation of 2 years) is inapplicable. It was held that refund claimed in respect of tax paid erroneously or under mistaken notion cannot be denied solely on the ground of limitation stipulated in Section 54.

The High Court in this regard also noted that Order passed by the Joint Commissioner of State Tax in consideration of application for refund in Form GST RFD-01, would not be comprehended within the expression '*as a consequence of judgment, decree, order or direction of the Appellate Authority, Appellate Tribunal or any* Court'. [*Rajendra Narayan Mohanty* v. *Joint Commissioner* – TS 95 HC (ORI) 2026 GST]

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Penalty under Section 122(1A) on employees – Words 'any person' in said provision are required to be understood in context of 'taxable person'

The Bombay High Court has allowed the petition filed by the Chief Financial Officer, Chief Executive Officer and Director and Joint Managing Director of a taxpayer/company in a case where personal penalty was imposed on them under Section 122(1A) of the CGST Act, 2017. The company had allegedly wrongfully availed and passed the ITC.

The Court for this purpose noted that sub-section (1A) is applicable in the circumstances falling in clauses (i), (ii), (vii) or clause (ix) of Section 122(1), i.e., the violations which are purely attributable to a taxable person. The High Court hence found substance in the contentions, as to how in the absence of the petitioners being taxable persons, *qua* the business of the company, the petitioners can be held liable for any penalty under the provisions of sub-section (1A). Accordingly, it was observed that the opening words of sub-section (1A) when it uses the words 'any person', would be required to be understood in the context of a 'taxable person' as sub-section (1) itself applies to a taxable person. Court's earlier decision in the case of *Shantanu Sanjay Hundekari* v. *Union of India* was relied upon.

Allowing the petition, the Court also noted absence of any finding regarding retaining of any benefit of the transactions covered under the specified clauses of Section 122(1) by the petitioners. [*Amit Manilal Haria* v. *Joint Commissioner* – 2026 VIL 196 BOM]

General penalty under Section 125 is not imposable over and above Late Fees imposed under Section 47(2) for delayed filing of returns

In a dispute where Late Fees under Section 47(2) of the CGST Act, 2017 and General Penalty under Section 125 were both imposed on the assessee/taxpayer for delayed submission of Annual Returns, the Madras High Court has held that since Late Fee is penal in nature, there cannot be imposition of General Penalty over and above the Late Fee levied at concessional rate under Notification No. 7/2023-Central Tax.

Pondering over the difference and similarities between 'penalty' and 'fees', the Court observed that 'Late Fee' is penal in nature and akin to a 'Penalty' and therefore is a 'Penal Fee', although it may not involve any discretion in the hands of the adjudicator. The Court also noted that even though requirements of *mens rea* may be absent to attract such 'Late Fee', such fees is penal in nature.

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Also, the High Court reiterated that the benefit of said notification was available even to assessees who had filed the Annual Returns late but before the cut-off date prescribed in the abovementioned notification. According to the Court, if the GST Council found mitigating circumstances to give partial waiver from payment of 'Late Fee' to those who had failed to file Annual Returns in time and could file their Returns between 1 April 2023 and 31 August 2023 in terms of the said Notification, there was no reason why the taxpayers who had filed the Returns before the said dates should not be given the benefit of partial waiver. [*Kandan Hardware Mart* v. *Assistant Commissioner* – 2026 VIL 14 MAD]

Consolidated SCN for multiple financial years/tax periods is not correct – Supreme Court's dismissal of SLP, against Delhi HC decision holding contrary view, was not on merits

The Kerala High Court and the Bombay High Court have reiterated that consolidated show cause notices issued for multiple financial years or tax periods are not correct. Both the High Courts in this regard noted that the dismissal of Special Leave Petition against the Delhi High Court decision which had held to the contrary, i.e., had upheld the validity of these SCNs, was not on merits. The High Courts were of the view that the SLP was dismissed *in limine* and thus the Apex Court's decision does not constitute a binding precedent. The consolidated SCNs were thus quashed in both the decisions. [*Dhanlaxmi Bank Limited and Ors.* v. *State of Kerala* – 2026 VIL 170 KER and *Rainbow Greeners Nagpur* v. *State of Maharashtra* – 2026 VIL 173 BOM]

Affiliation charges collected by university whether liable to GST – Contrary decisions of two Division Benches of different High Courts

The Division Bench of the Madras High Court has answered in affirmative the reference before it as to whether affiliation charges collected by an University from the affiliating Institution is amenable to levy of GST. There was difference of opinion on the question with differing decisions by the Single Benches of the Court on the subject. The DB in this regard observed that there is no doubt that universities fall within the definition of Educational Institutions, however, the service of granting affiliation is not part of admission of students or conduct of examination for them. Denying benefit of Notification No. 12/2017-Central Tax (Rate), the Court observed that services relating to admission or conduct of

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examination by the Educational Institutions alone are exempted. According to the Court, therefore, any services prior to admission of candidates or conduct of examination cannot be brought within the scope of expression 'services relating to admission to, or conduct of examination by, such Institution'. [*Bharathidasan University* v. *Joint Commissioner* – 2026 VIL 181 MAD]

Interestingly, Division Bench of the Rajasthan High Court in its decision dated 23 February 2026 has held to the contrary. It has been held there that grant of affiliation does not constitute a 'supply of service'. It was noted that sub-clause (a) of sub-section (1) of Section 7 of the CGST Act [in course or furtherance of business] is not attracted to the function of grant of affiliation on charging of fee by the University. The Court was also of the view that even if the activity is considered as service, affiliation services, being integral to admissions, examinations, and conferment of degrees, are covered by exemption Entry 66 of Notification No. 12/2017-CT (Rate) and exempt from GST. [*Rajasthan Technical University, Kota* v. *Union of India* – 2026 VIL 206 RAJ]

Confiscation – Section 130(2) not allows provisional release of goods during pendency of adjudication

The Kerala High Court has held that Section 130(2) of the CGST Act, 2017, does not intend to allow a provisional release. According to the Court, Section 130(2) allows release of the goods after confiscation when the amounts to be paid are determined by way of final order of confiscation by the authority concerned. The Court noted that nowhere in sub-section (2) of Section 130, any reference regarding the provisional release of the goods is made. Section 130(7), which deals with the time within which the fine in lieu of confiscation has to be paid, which is within three months from the date of issuance of a final order of confiscation, was also relied by the Court for this purpose. It was observed that an interpretation that treats Section 130(2) as the one for provisional release would make Section 130(7) and the time limit contemplated therein, meaningless. The Court, for this purpose, also noted that provisional release was consciously absent in Section 130 even though was specifically provided under Section 67(6). It was also noted that the 'authorization' under Section 130 comes into effect only when final order of confiscation is passed. The

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period involved was after the amendment to Section 130 with effect from 1 January 2022.

However, the High Court in this case also observed that a mere direction in Form MOV-2, restraining the person from taking the goods until further orders, cannot substitute the requirement of passing an order or detention as provided in Section 129(10). It was noted that mere initiation of proceedings under Section 130 by itself is not an authority for the officer concerned to retain the goods in his possession. The petition was thus disposed of directing the Department to release the goods upon the assessee furnishing a simple bond. [*Authentic Metals* v. *Enforcement Officer* – 2026 VIL 187 KER]

GSTAT has jurisdiction to pass interim orders staying recovery proceedings

Considering the nature of the powers conferred under sub-section (1) of Section 113 of the CGST Act, 2017, to the GSTAT, to pass such orders 'as it thinks fit', the Bombay High Court has held that the Tribunal would have jurisdiction to pass appropriate interim orders. According to the Court, the power to grant interim relief, including protection against recovery pending the Appeal, is inherent and incidental to the appellate jurisdiction conferred upon the Tribunal. It was held that a contrary interpretation would render the appellate remedy illusory and defeat the legislative intent, cumulatively and wholesomely gathered from the provisions of Sections 111, 112 and 113 of the CGST Act. Rules 10, 29, 49 and 59 of the Goods and Services Tax Appellate Tribunal (Procedure) Rules, 2025 were also relied on by the Court for this purpose. Supreme Court's decision in the case of *Income Tax Officer, Cannanore* v. *M. K. Mohammed Kunhi*, was also relied upon by the Court here. [*Hongkong and Shanghai Banking Corporation Ltd.* v. *State of Maharashtra* – 2026 VIL 209 BOM]

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Customs and FTP

Notifications and Circulars

- Drawback on export of gold jewellery and silver jewellery/articles revised
- Deferred payment of customs duty facility to Eligible Manufacturer Importer – Guidelines

Ratio decidendi

- Interactive Flat Panels are classifiable under Customs TI 8471 41 90 and not under TI 8528 59 00 – *Supreme Court*
- Classification of goods – Application of common/trade parlance test, and consideration of 'use' – *SC draws principles*
- Thermal printers when classifiable under TI 9018 90 99 and not TI 8443 32 90 – *CESTAT New Delhi*
- Seizure is to be vacated if SCN is not issued within 6 months, waiver of SCN is not material – *CESTAT Ahmedabad*
- Steel imports – NOC restrictions by Ministry of Steel Circular dated 26 October 2023 not correct – *CESTAT Ahmedabad*
- Customs has no authority to confiscate foreign currency and impose penalties under Customs Act – *CESTAT New Delhi*

Notifications and Circulars

Drawback on export of gold jewellery and silver jewellery/articles revised

The Ministry of Finance has revised the All-Industry Rates of Duty Drawback on export of gold jewellery and silver jewellery or articles. The drawback rate of goods falling under Tariff Item 171301 has been revised from '524.27' to '639.59', while for those falling under TI 711302, the new rates will be '9089.33' instead of '6317.22'. For goods covered under Tariff Item 711401, the rates have been revised from '6317.22' to '9089.33'. Notification No. 21/2026-Cus. (N.T.) dated 16 February 2026 amends Notification No. 77/2023-Cus. (N.T.), dated 20 October 2023 for this purpose.

Deferred payment of customs duty facility to Eligible Manufacturer Importer – Guidelines

The Central Board of Indirect Taxes and Customs (CBIC) has issued guidelines for extending the facility of deferred payment of customs duty to Eligible Manufacturer Importers as directed by Notification No. 12/2026-Cus. (N.T.) notified among Union Budget 2026 changes. The facility will be available to these importers from 1 April 2026 till 31 March 2028, who satisfy the various criteria as listed in Circular No. 8/2026-Cus., dated 28 February 2026. The Circular *inter alia* lists that the Eligible Manufacturer Importer must have,

- manufacturer and importer status. If not a manufacturer, the importer must be sending imports to a job worker,
- valid Import Export Code (IEC),
- filed minimum 25 EXIM documents in previous FY. 10 in case of MSME,
- annual turnover exceeding INR 5 crores in last FY,
- business continuity for 2 years,
- filed GSTR-3B returns,
- no instance of collection of GST, central excise or service tax but absence of deposit of same,
- financial solvency, and
- no arrest or conviction, and no pending prosecution proceedings.

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Ratio Decidendi

Interactive Flat Panels are classifiable under Customs TI 8471 41 90 and not under TI 8528 59 00

The Supreme Court of India has upheld the decision of the CESTAT wherein the Tribunal had held that that Interactive Flat Panels are correctly classifiable under Tariff Item 8471 41 90 of the Customs Tariff Act, 1975 and not under TI 8528 59 00 *ibid*. The Tribunal had noted that the Panels had all the pre-requisites of storing processing programs, are freely programmed as per the requirements, perform arithmetic computations specified by the user, and execute without human intervention, a processing programme which requires them to modify their execution, by logical decision during the processing run. *The Tribunal decision was reported in August 2025 issue of LKS Indirect Tax Amicus, as available **here**.* According to the Apex Court, there was no good reason to take a view different from the one taken by the Appellate Authority as well as the CESTAT. ***Lakshmikumaran & Sridharan Attorneys represented the assessee/importer here.*** [*Commissioner* v. *BenQ India Pvt. Ltd.* – TS 41 SC 2026 CUST]

Classification of goods – Application of common/trade parlance test, and consideration of 'use' – SC draws principles

The Supreme Court of India has culled out certain governing principles with regard to application of the common or trade parlance test and for consideration of 'use', while dealing with classification disputes under taxation laws. Relying upon various precedents, the Court summarized the following:

Common/trade parlance test:

- The test must be applied restrictively.
- The test can be invoked only when,
    - the governing statute does not provide any explicit definition
    - words used in the heading are not employed in a specialised, technical context
    - the application should not contradict or run counter to the overall statutory framework and the contextual manner
    - there is absence of statutory guidance

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- Overly simplified approaches should be avoided, and the words should be understood within their legal context.
- When a tariff item is general in nature and does not indicate a particular industry or trade circle, the common parlance understanding of that term is appropriate.
- Character and nature of the product cannot be veiled behind a charade of terminology which is used to market the product or refer to it in common or commercial circles.
- For separate commercial identity, it is essential to demonstrate that the goods have undergone a substantial transformation.

Consideration of 'Use':

- 'Use' is relevant factor only when tariff heading allows for consideration of 'use' or 'adaptation', either explicitly or implicitly, including where the Court concludes that the common or commercial meaning of the good includes 'use'/'adaptation' of the good as a defining aspect of its identity.
- Unless statutory intention to the contrary is proven, an importer cannot classify goods based on the actual use to which the goods are put.
- In case of intended use, the use should be inherent in the goods and should be discernible from their objective characteristics and properties.
- If a tariff heading contains both an *eo nomine* component and a use component, both criteria must be satisfied.

On merits of the case, the Apex Court was of the view that goods (aluminium shelves) should not be classified as 'parts' of agricultural machines or mechanical appliances of Chapter 84 under CTI 8436 99 00 but should be classified as aluminium structures of Chapter 76 under CTI 76109010. [*Commissioner* v. *Welkin Foods* – 2026 VIL 02 SC CU]

Thermal printers when classifiable under TI 9018 90 99 and not TI 8443 32 90

The CESTAT New Delhi has Drystar thermal printer for medical diagnostic use in healthcare industry (Medical equipment) is correctly classifiable under Tariff Item 9018 90 99 of the Customs Tariff Act, 1975 and not under TI 8443 32 90 *ibid*. It was, for this purpose, noted that instruments and apparatus which are 'specifically designed' or 'intended for use' or 'meant

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for use' in medical sciences remain classified in Chapter 90, even if they fell under another heading of the Customs Tariff Act by virtue of their general characteristics or construction. It was thus observed that the decisive criterion for classification of goods under CTH 9018 is their specific adaptation, construction, or design for professional medical or surgical use.

Taking note of declarations made by two specialist Doctors and one Chartered Engineer and the white paper issued by the importer, the Tribunal noted that the imported goods were used with medical equipment like MRI Scanners, CT Scanners, Digital X-Ray, Ultra sound scanners and these thermal printers were capable of producing diagnostic quality images on heat sensitive medical film which cannot be printed on a ordinary desktop printer. According to the Tribunal, thermal printers which are specially designed for use in medical science cannot be classified under Heading 8443 merely because it employs thermal print process. It was also noted that the goods were thus outside the scope of Heading 8443 by virtue of Section Note 1(m) to Section XVI of the Customs Tariff. ***The importer was represented by Lakshmikumaran & Sridharan Attorneys here.*** [*Agfa Healthcare India Pvt. Ltd.* v. *Additional Director General (Adjudication)* – 2026 VIL 326 CESTAT DEL CU]

1) Seizure is to be vacated if SCN is not issued within 6 months, waiver of SCN is not material

2) Steel imports – NOC restrictions by Ministry of Steel Circular dated 26 October 2023 not correct

The CESTAT Ahmedabad has reiterated that even when show cause notice is waived, the proceedings are required to be expeditiously concluded, and adjudication cannot be delayed beyond six months. The Tribunal here observed that the waiver of SCN given will not be binding after expiry of the time limit under Section 110 of the Customs Act, 1962.

Rejecting the Departmental appeal against the release of goods, the Tribunal also noted that the item *per se* with the description 'Cold Rolled Stainless Steel Coils Grade J2' was not an item under control nor was at that time subjected to BIS standards, and that NOCs for similar kind of goods were being issued by the Ministry of Steel. Regarding NOC restrictions placed by Circular dated 26 October 2023, the Tribunal observed that the circular cannot place any further restrictions on any goods without force of law.

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Observing that the House Bill of Lading was issued on 3 December 2024 while the goods were shipped on 4 January 2025, the Department had suspected that there may have been circumvention of the directives of the Ministry of Steel regarding one time NOC exemption where Bill of Lading has been generated on or before 3 December 2024. ***The assessee was represented by Lakshmikumaran & Sridharan Attorneys here.*** [*Commissioner* v. *Shree Khatu Shyam Steel & Tubes LLP* – 2026 VIL 235 CESTAT AHM CU]

Customs has no authority to confiscate foreign currency and impose penalties under Customs Act

The CESTAT Delhi has held that Customs has no authority to confiscate foreign currency and impose penalties under the Customs Act, 1962. The Tribunal was of the view that confiscation of 'foreign currency' and liability to confiscation of 'foreign currency' embedded in 'travel cards' by recourse to Section 113(d) of Customs Act, and imposition of consequential penalty under Section 114 *ibid.* is extra-legal and egregious exercise of power by the Customs. It was in this regard noted that there is no competence under the Customs Act, 1962 to consider any of the instructions, circulars or orders of the Reserve Bank of India for ascertainment of compliance thereto by the travelling public, and that no prohibition in Foreign Exchange Management Act (FEMA), 1999 has been deemed to have been prohibited under Section 11 of Customs Act, 1962.

The Tribunal, for this purpose, also noted that under the FEMA (unlike in the erstwhile FERA) there is deliberate omission of deeming one or more prohibitions as prohibition under the Customs Act, 1962. The Tribunal was of the view that this was intended to rescind the dual machinery (with the existence of Enforcement Directorate now) in the erstwhile scheme of statutory control, whether it be for inquiring, investigating, adjudicating or prosecuting. [*Salt Experiences & Management Pvt. Ltd.* v. *Commissioner* – 2026 VIL 263 CESTAT DEL CU]

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Central Excise, Service Tax and VAT

Ratio decidendi

- Expression 'Furit drink' cannot be confined solely to ready-to-consume bottled beverages – Sharbat Rooh Afza is a 'fruit drink' considering common parlance and essential character tests – *Supreme Court*
- Incentives/discounts received by the dealer from manufacturer are not liable to service tax even for the period post 1 July 2012 – *CESTAT Hyderabad*
- Valuation (Central Excise) of goods cleared to inter-connected undertakings who are not related under sub-clauses (ii), (iii) or (iv) of Section 4(3)(b) – *CESTAT Hyderabad*
- Intermediary services – Assessee providing data hosting services to foreign company which in turn provided cloud computing services to its Indian clients, is not an intermediary; no liability of service tax as transaction is exports – *CESTAT New Delhi*
- Authorities cannot go beyond the scope of SCN to confirm demand – *CESTAT New Delhi*

Ratio Decidendi

Expression 'Furit drink' cannot be confined solely to ready-to-consume bottled beverages – Sharbat Rooh Afza is a 'fruit drink' considering common parlance and essential character tests

The Supreme Court has held that the expression 'fruit drink' occurring in Entry 103 of Part A of Schedule II of the UPVAT Act, cannot be confined solely to ready-to-consume bottled beverages. According to the Court, in common trade understanding, fruit squashes, concentrates and sharbat preparations intended for dilution are all capable of being understood as fruit drink preparations. It was held that the nomenclature 'sharbat' does not strip the product of its essential character as a fruit-based beverage concentrate, particularly where its composition and intended use align with that understanding.

Further, the Court held that the product cannot be relegated to the residuary entry where classification under a specific entry is reasonably and sustainably possible and merely because it is marketed as a 'sharbat'. It was also held that the nomenclature adopted by the parties, or the description of the product as a 'non-fruit syrup' under the licensing statute, is not determinative for the purposes of classification under a taxing statute. The Apex Court was thus of the view that if on a proper application of the common parlance and essential character tests, the product reasonably answers the description of a 'fruit drink', the same cannot be denied merely on account of its label or regulatory categorization. [*Hamdard (Wakf) Laboratories* v. *Commissioner* – 2026 VIL 20 SC]

Incentives/discounts received by the dealer from manufacturer are not liable to service tax even for the period post 1 July 2012

The CESTAT Hyderabad has held that a motor vehicle dealer receiving target-based incentives and other incentives, *viz*., exchange bonus, loyalty bonus, scheme/additional discounts etc., from the vehicle manufacturer is not liable to pay service tax on such receipts. The Department here was of the view that the dealership agreement contractually bound the dealer/assessee to perform certain activities and certain obligations to be undertaken towards the manufacturer, which, *inter alia*, included effective promotion and sale of the products and to

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professionally do after sales service. According to the Department, thus, for such activities and performances, the manufacturer was paying certain amounts by calling them target-based and non-target based/ other incentives, bonus, etc.

Going through the dealership agreement, the Tribunal found force in the submission of the dealer/assessee that a contract (for purchase and resale of vehicles) cannot be vivisected into different sets of activities to make a part of it relatable to service and another to sale. It was also noted that the activities done by the assessee were explicitly for promoting its business (as it was in its own interest) and not for promoting the vehicles of the manufacturer. It was observed that there was no provision in the agreement binding the assessee to perform certain specified activities/services for which there was an agreed consent from both the sides. Certain conditions to the contract were also held as not a consideration for a contract.

It may be noted that according to the Tribunal, judgements for the period before the Negative List regime would also be applicable for the period thereafter, as the factual matrix remains the same. It was observed that the ratio holding that when the manufacturer and dealer are engaged in principal-to-principal transaction, they cannot be brought under the category of BAS, would also be relevant to hold that they are not providing any service of this nature to the client, as the transaction is on principal-to-principal basis. ***The assessee was represented by Lakshmikumaran & Sridharan Attorneys here.*** [*Commissioner* v. *Jasper Industries Pvt. Ltd.* – 2026 VIL 376 CESTAT HYD ST]

Valuation (Central Excise) of goods cleared to inter-connected undertakings who are not related under sub-clauses (ii), (iii) or (iv) of Section 4(3)(b)

The CESTAT Hyderabad has held that in the absence of any clear evidence on record that the assessee (supplier) and its buyer were also related in terms of sub-clauses (ii), (iii) or (iv) of Section 4(3)(b) of the Central Excise Act, 1944, their being merely an interconnected undertaking cannot lead to valuation in accordance with Rule 9 or 10(a) of the Valuation (Determination of Price of Excisable Goods) Rules, 2000, both prior to and post amendment dated 1 December 2013.

Department's submission that even if Rules 9 and 10 were not applicable, the valuation in the case should be under Section 4(1)(b) as there was no sale between the assessee and their interconnected undertaking and it was mere stock transfer, and thus Rule 11 be resorted to, was also rejected by the Tribunal here. The Tribunal in this regard observed that the Department had not proposed invocation of Rule 10 or 11 in the SCN. ***The***

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assessee was represented by Lakshmikumaran & Sridharan Attorneys here. [*Kirby Building Systems India Private Limited* v. *Commissioner* – 2026 VIL 222 CESTAT HYD CE]

Intermediary services – Assessee providing data hosting services to foreign company which in turn provided cloud computing services to its Indian clients, is not an intermediary; no liability of service tax as transaction is exports

In a case where the assessee was engaged in providing data hosting services to a foreign company under the Data Services Agreement, wherein the foreign company was providing cloud computing services globally including to its Indian clients, the CESTAT New Delhi has held that the assessee was not an intermediary for the purpose of levy of service tax.

The Tribunal for this purpose relied upon CBIC Circular No. 232/26/2024-GST dated 10 September 2024 which was issued in context of liability of GST for the same transaction. It was observed that the interpretation given with reference to the definition under the IGST Act in identical circumstances would equally apply in the case of treating one to be an intermediary under the service tax regime, as the definitions of intermediary in service tax regime and the GST regime are identical. The service was held as covered as exports.

Further, taking note of the agreement between the parties, the Tribunal observed the following:

- The assessee was not an agent by any means, also as manner of payment of consideration for the services performed was on cost plus percentage basis and not under sales service fee or commission basis.
- Assessee was not arranging or facilitating any provision of service as its role was altogether for an independent activity which was one of the inputs for provision of services by the foreign company.
- Assessee provided the data hosting service on his own account, on principle-to-principle basis, and was not connected in any manner for rendering the cloud computing services which were in the exclusive domain of the foreign company.

The assessee was represented by Lakshmikumaran & Sridharan Attorneys here. [*Amazon Internet Services Pvt. Ltd.* v. *Commissioner* – 2026 VIL 114 CESTAT DEL ST]

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Authorities cannot go beyond the scope of SCN to confirm demand

The CESTAT New Delhi has held that authorities cannot go beyond the scope of the show cause notice to confirm the demand, contrary to what has been proposed therein. Impugned order upholding the classification contrary to what was proposed in the show cause notice was thus held as not sustainable and was set aside. The Tribunal was of the view that the Commissioner was required to adjudicate within the scope of the show cause notice and if he was of the view that the services in question are not covered under the proposed classification, the proper course was to drop the proceedings. According to the Tribunal, the Commissioner could not have substituted the classification of the service on the basis of an earlier show cause notice. ***The assessee was represented by Lakshmikumaran & Sridharan Attorneys here.*** [*Schlumberger Asia Services Ltd.* v. *Commissioner* – 2026 VIL 134 CESTAT DEL ST]

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