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Articles

Budget 2026: AEO privileges rise, obligations deepen, and risks trail behind

Legislative amendments on discount schemes and credit notes – Time to revisit the promotional schemes?

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Leather and Textile sector: Navigating the statutory convergence of Budget 2026–27 and India's new FTA regime

Budget 2026: AEO privileges rise, obligations deepen, and risks trail behind

By Nupur Maheshwari and Siddhant Indrajit

One of the biggest beneficiaries of the Budget 2026 changes are those operating in the Authorized Economic Operation ('AEO') ecosystem. The authors here discuss the re-characterization of 'penalty' as a 'charge' in voluntary-compliance closures, extension of the deferred payment window to 30 days, automation measures such as Auto Goods Registration and Auto Out-of-Charge on import, cross-agency recognition of AEO by Participating Government Agencies (PGAs), and export-side proposed all India rollout of Auto Registration/Auto Let Export Order (LEO). According to the authors, while Budget 2026 aims at making an 'AEO status' even more lucrative, AEOs must remain vigilant about the accuracy of their declarations, maintain proper documentation and overall compliance metrics to safeguard themselves from potential repercussions during post-clearance audits.

Read more

Legislative amendments on discount schemes and credit notes – Time to revisit the promotional schemes?

By Shivam Mehta and Tanya Garg

Budget 2026 has enacted the 56th GST Council's changes by substituting Section 15(3)(b), effective upon Gazette notification. The article examines the substance and impact of this amendment, the uncertainty it has generated, and why it serves as a wake-up call for businesses to recalibrate their discount schemes. The authors in this article raise various

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pertinent questions including that whether the change applied to self-invoice cases. According to the authors, this is an opportune moment for industry players to re-evaluate their discount schemes to ensure they are aligned with updated provisions and are compliant with the law.

Read more

Customs Duty on clearance of electricity from SEZ to DTA: Resolution of the parity battle by Supreme Court in *Adani Power* and the role of Union Budget 2026-27

By Ratan Jain and Shruti Khanna

The controversy surrounding the levy of customs duty on electrical energy supplied from Special Economic Zones ('**SEZ**') to the Domestic Tariff Area ('**DTA**') has resulted in more than a decade of litigation. This article discusses the recent decision of the Supreme Court and the changes made in Budget 2026 on this.

Read more

Impetus to the Advance Rulings under Budget 2026-27

By Dhruv Matta and Akshay Mohan Gupta

The Finance Bill, 2026 seeks to introduce an amendment, by extending the validity of a Ruling issued by the Authority under Section 28-J (2) of the Customs Act, from three (3) years to five (5) years. The article notes that the proposed extension

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marks a progressive step toward aligning Indian customs procedures with best practices across the globe. According to the authors, by offering a longer period of certainty, the amendment strengthens the trust of the trade community, reduces administrative burden, and enhances the ease of doing business.

Read more

Closing Customs disputes *sans* 'stigma': Understanding amendment to Customs Section 28(6)

By Anjali Singh, Kruti Parashar and Jyoti Pal

Amongst the reforms proposed in the Finance Bill, 2026, proposal for amendment to Section 28(6) of the Customs Act, 1962 is a notable change. Discussing the overview of Section 28, the stigmatic connotation associated with penalty and the proposed changes, the authors state that an express clarification in the provision stating that closure under Section 28(6) should not imply any admission of guilt would promote and encourage genuine self-correction. They also note that The SCNs issued to assessees under Section 117 or 124 of the Customs Act continue to carry the stigma of 'penalty'. According to them, the reform will promote voluntary compliance and improve ease of doing business, particularly for assessees operating under AEO, MOOWR, etc.

Read more

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Navigating India's strategic response to the global trade disruption: A shift towards self-reliance

By Santhana Gopalan and Kaushal Jaisalmeria

The article touches upon few proposals in the Union Budget 2026 which aim to insulate India's economy from global shocks caused by tariffs and trade disruptions. Discussing various initiatives like FTAs, reimagination of industrial capabilities, targeting orange economy, developing infrastructure, the authors believe that 2026-27 Budget reasserts the '*Aatmanirbhar Bharat*' initiative as a shield against today's global trade volatility.

Read more

Leather and Textile sector: Navigating the statutory convergence of Budget 2026–27 and India's new FTA regime

By Disha Bhandari, Aditi Singh and Prety Priya

The article highlights key fiscal amendments in the leather and textile segment under the Budget 2026 and examines whether the harmonization of fiscal statutes and FTAs entered by India creates a streamlined pathway for export, or a labyrinth of compliance risks. According to the authors, given the divergence in the criteria of rules of origin, a 'one-size-fits-all' export strategy would be legally perilous even in the short term.

Read more

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Goods & Services Tax (GST)

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Ratio decidendi

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- Refund of pre-deposit – Section 107(6) and not Section 54 applicable – *Supreme Court*
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- R&D services for pharmaceutical sector – Place of supply – Notification No. 4/2019-IT is retrospectively applicable – *Karnataka High Court*
- Demand – Extended period not invocable when there is confusion in the industry – *Madras High Court*
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- Time-limit for distribution of ITC – CGST Rule 39(1)(a) declared ultra vires Section 20 (as prior to 1 April 2025) and struck down – *Telangana High Court*
- Demand – Time gap of three (3) months is mandatory between SCN and adjudication order – *Bombay High Court*
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- Transfer of ITC in case of transfer of business – Scope of 'change in constitution of registered person' – *Andhra Pradesh High Court*
- Transfer of ITC in case of amalgamation – Entire ITC (and not part of it) to be transferred – *Gujarat High Court*
- Amalgamation – Refund of unutilized ITC on zero-rated supplies by transferor when not available to transferee – *Gujarat High Court*

Notifications and Circulars

Budget 2026-27 – Changes proposed in CGST and IGST Acts

The Union Budget for the Financial Year 2026-27 was pronounced in the Parliament on 1 February 2026. Among other changes, the Finance Ministry has also proposed few changes in the GST regime, i.e., in the Central Goods and Services Tax Act, 2017 and in the Integrated Goods and Services Tax Act, 2017. The major proposed changes include amendment to Sections 15 and 34 of the CGST Act with respect to post-supply discount, amendment to Section 54(6) of the CGST Act to provide for sanction of 90% of the refund claimed on a provisional basis in cases of refund arising out of inverted duty structure, and amendment in place of supply provisions for intermediary services under Section 13(8) of the IGST Act. ***These and other changes along with the relevant comments from the LKS GST Team, have been discussed in detail here.***

Ratio Decidendi

Service through GST portal is proper service – Supreme Court maintains Kerala HC decision

The Supreme Court has dismissed a Special Leave Petition filed against the Kerala High Court decision wherein the Division Bench of the High Court had refused to interfere with the judgment of the Single Judge, who had in-turn followed the another DB decision in *Sunil Kumar K.*, wherein, it was held that the service of notice by making it available on the portal would be sufficient. [*T K Navas* v. *Commissioner* – TS 35 SC 2026 GST]

Refund of pre-deposit – Section 107(6) and not Section 54 applicable

The Supreme Court has held that refund of statutory pre-deposit made for maintaining the appeal, in which the assessee later succeeds, is related to Section 107(6) read with Section 115 of the Jharkhand Goods and Services Tax Act, 2017, and not under Section 54 thereof. The Apex Court, in this regard, also

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observed that the exercise undertaken by the High Court with regard to Section 54 was thus unnecessary. [*State of Jharkhand* v. *BLA Infrastructure Private Limited* – 2026 VIL 04 SC]

Salary payment to foreign national employees when does not attract IGST

The Karnataka High Court has overruled the Revenue Department's contention that the assessee (a multi-national company) was liable to pay IGST under reverse charge mechanism based on the remuneration paid to the foreign national employees for the period 2018-19 to 2022-23 as the same tantamount to import of Manpower Recruitment and Supply Services.

Allowing assessee's petition, the Court quashed the show cause notice while it observed that there was no secondment of employees from other entities in the group and there existed a direct employer-employee relationship between the assessee and the foreign nationals. It was thus held that entire transaction was outside the ambit of GST as was covered under Entry 1 of the Schedule III of the CGST Act, 2017, excluding services provided by an employee to the employer. The Court for this purpose took note of the following:

- Presence of employment contract stipulating fixed period of employment, reporting authority, working hours, cost to company and other terms and conditions of employment.
- Employees were on the pay-rolls of the assessee and salaries along with annual performance bonus, house rent allowance, provident fund, etc., were paid to the foreign nationals in their Indian bank accounts.
- Income Tax was deducted by the assessee while making payment of salaries and IT returns were also filed by expats being employees of the assessee in India.
- Foreign nationals were treated at par with the Indian employees of the assessee, in terms of salary, social security benefit, etc.

The High Court also consented with the submission of the assessee that foreign national employees were residents of India and thus cannot be considered as non-resident taxable persons under Section 2(77) of the CGST Act. It was noted that the expats were not making any supplies to the assessee (as excluded under Schedule III) and qualified as 'residents' (as were residing in India for majority of years during the disputed period). Also, it was observed that since foreign nationals were

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in India, the location of alleged supplier was in India and hence the transaction was not of import as per Section 2(11) of the IGST Act, 2017.

The High Court for this purpose also relied upon CBIC Circular No. 210/4/2024-GST, dated 26 June 2024 and held that even if such secondment arrangement is assumed to be a supply, the deeming fiction under the Circular neutralises any scope for further tax liability. Earlier decisions in *Alstom Transport India Limited* and *Metal One Corporation* were also relied upon. ***The assessee was represented by Lakshmikumaran & Sridharan Attorneys here.*** [*Huawei Technologies India Private Limited* v. *State of Karnataka* – Judgement dated 5 December 2025 in Writ Petition No. 2848 of 2024 (T-RES), Karnataka High Court]

Refund under inverted duty structure – Amendment in Section 54(1) on 1 February 2019, relating to change of 'relevant date', is prospective

The Jammu and Kashmir High Court has allowed assessee's appeal in a case where the refund claims under Section 54(3)(ii) pertaining to the periods July 2017 to January 2018, corresponding to Financial Years 2017-18 and 2018-19 respectively, were denied as time-barred due to the change in definition of 'relevant date' by Amendment Act No. 31 of 2018, which came into force with effect from 1 February 2019. The assessee had filed the refund application on 2 February 2021. The amendment had substituted the definition of 'relevant date' to mean '*the due date for furnishing the return under Section 39 for the period in which the claim for refund arises*', instead of '*the end of the financial year in which such claim for refund arises*'.

According to the Department, all refund claims filed on or after the said date were to be governed by the amended provisions of Section 54, even if such claims pertain to periods prior to 1 February 2019. The High Court, however, observed that amendment to Section 54 which changed the definition of relevant date w.e.f. 1 February 2019 cannot be applied retrospectively to the period prior to the amendment to curtail the assessee's vested right to refund within the originally stipulated time. [*Bharat Oil Traders* v. *Assistant Commissioner* – 2026 VIL 08 J&K]

R&D services for pharmaceutical sector – Place of supply – Notification No. 4/2019-IT is retrospectively applicable

The Karnataka High Court has held that Notification No. 4/2019-Integrated Tax dated 30 September 2019 would operate retrospectively for the period prior to the said date and would

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be applicable for the period in dispute, which was April 2018 to March 2019. The Court noted that the notification was issued pursuant to the decision taken in the 37th GST Council Meeting, which at Sl.No.11 of the said minutes of the meeting at Item No.5 specifically refers to clinical trials conducted by the assessee.

Allowing the petition, the Court observed that all amendments which are beneficial in nature, which are elucidatory and clarificatory would operate retrospectively when they seek to clarify and elucidate certain existing facts and situations. [*IProcess Clinical Marketing Pvt Ltd.* v. *Assistant Commissioner* – 2026 VIL 09 KAR]

1) **Demand – Extended period not invocable when there is confusion in the industry**
2) **Input Tax Credit – Section 39(9) is not applicable when intention to pay tax dues communicated prior to investigation though payment made later**

In this case where the assessee had voluntarily come forward and stated that the supply of Tyres, Tubes and Flaps, wrapped together, was a 'composite supply' and accordingly, paid the entire tax dues along with interest to buy peace, the Madras High Court has held that the Department cannot attribute any bad intention, such as, fraud, willful misstatement or suppression of material facts. According to the Court, at the worst, same could be considered as tax not paid or short paid due to confusion in the entire industry as the assessee paid the tax once the doubts had been cleared. The Court in this regard also noted that the assessee had expressed his intention to pay the tax dues, *vide* communication dated 12 January 2019, which was much prior to the date of investigation, even though tax amount was remitted subsequent to the DGGI investigation. It was also held that Section 39(9) of the CGST Act, 2017, to deprive the assessee from availing of input tax credit, would not be applicable. [*Apollo Tyres Limited* v. *Union of India* – 2026 VIL 10 MAD]

Input Tax Credit when supplier does not deposit tax – Section 16(2)(c) read down to apply only in cases of fraud, etc.

The Tripura High Court has held that Section 16(2)(c) of the CGST Act, 2017 ought not to be interpreted to deny Input Tax Credit to purchasers in a *bona fide* transaction and should be read down and applied only where the transaction is found to be not *bona fide* or when there is a collusive transaction or fraudulent transaction to defraud the Revenue department.

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Section 16(2)(c) denies ITC if tax charged in respect of the supply has not been paid to the Government.

Differing with the views of various other High Court which have upheld the constitutionality of the said provisions without reading it down, the present High Court observed that none of the previous High Courts looked at the practical impossibility for a purchaser to ensure that the seller pays the GST to the Government, particularly when the assessee has no means of checking the said fact. The Court in this regard also noted that two earlier decisions of the Delhi High Court, dealing with similar provisions under the Delhi VAT, and which were also approved by the Supreme Court, were not noticed by these High Courts.

In the opinion of the Court, the Parliament had not intended to punish a taxpayer by denying him ITC if the transaction entered by him with a seller/supplier is *bona fide*. [*Sahil Enterprises* v. *Union of India* – 2026 VIL 15 TRI]

Time-limit for distribution of ITC – CGST Rule 39(1)(a) declared ultra vires Section 20 (as prior to 1 April 2025) and struck down

The Telangana High Court has declared *ultra vires* Rule 39(1)(a) of the CGST Rules, 2017 to the extent it mandates that Input Tax Credit available for distribution in a month should be distributed in the same month. Declaring the provision as *ultra vires* Section 20 of the CGST Act, 2017 (as it existed prior to 1 April 2025), the Court also struck it down. The Court for this purpose noted that the said Rule traveled beyond the scope of the parent provision by introducing a mandatory time-limit for distribution. It was noted that the parent Section 20 was conspicuously silent about the timeline for distribution of credit before 1 April 2025.

Also, according to the Court, by mandating distribution of credit within the same month, Rule 39(1)(a) imposes an inflexible condition which has the effect of denying or forfeiting legitimately accrued ITC, thereby defeating the fundamental objective of the GST regime, namely, the elimination of cascading of taxes. [*Birlanu Ltd.* v. *Union of India* – 2026 VIL 26 TEL]

Demand – Time gap of three (3) months is mandatory between SCN and adjudication order

The Bombay High Court has held that it is mandatory to keep gap of three months between issuance of notice and passing final order under sub-section (2) read with sub-section (10) of Section 73 of the CGST Act, 2017. The contention that time gap

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of three months is applicable only in context with the outer date of issuance of notice and not for notices issued well within time, was thus rejected.

According to the Court, the rationale behind three-month time is to afford meaningful opportunity of hearing to the assessees. The Court was of the view that if this time is shortened, the requirement of the provisions which provide for service of a statement upon the noticee, giving all the details of the demand proposed to be raised and option to the assessee by paying tax by doing a self-assessment and to pay the amount, will not be achieved. Quashing the SCN and the final order, the Court also noted that otherwise the facility of obtaining at least three adjournments for personal hearing etc. will be rendered otiose. [*A. M. Marketplaces Pvt. Ltd.* v. *Union of India* – 2026 VIL 54 BOM]

IGST on ocean freight – SC decision in Mohit Minerals is applicable retrospectively

The Calcutta High Court has rejected the contention of the Revenue department that since the amendment in Notification No. 10/2017-IT (Entry No. 10) took effect from 1 October 2023, the transactions pertaining to any period prior to the amendment would attract IGST on ocean freight for imports notwithstanding the Supreme Court judgment in the case of *Mohit Minerals (P.) Ltd.* Holding the Department's view as fundamentally wrong, the Court noted that a judgment of a Constitutional Court declaring a law applies retrospectively unless it is expressly made prospective. Setting aside the order-in-original, the High Court also observed that the notification in question cannot be seen as enacting a law overriding the statutory provisions. [*Sunrise Timply Company Pvt. Ltd.* v. *Union of India* – 2026 VIL 62 CAL]

Recovery – Section 75(12) is not applicable in cases involving alleged mis-utilisation of ITC

The Andhra Pradesh High Court has held that provisions of Section 75(12) of the CGST Act, 2017 cannot be pressed into service where the assessee had allegedly mis-utilized the input tax credit available with it and had cleared its liability under the reverse charge mechanism by using input tax credit rather than paying the said amounts, by way of cash deposits. The Court noted that the said provision would be available only where the registered person has clearly disclosed a tax liability in the returns and such liability has not been cleared. According to the Court, wrong usage of ITC or otherwise would only entitle the respondent authorities to initiate proceedings under Sections 73 & 74 of the GST Act and the coercive process under

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Section 75(12) of the GST Act, cannot be used in such situations. [*Sona Enterprises* v. *Assistant Commissioner* – 2026 VIL 70 AP]

Transfer of ITC in case of transfer of business – Scope of 'change in constitution of registered person'

In a case involving transfer of R&D business as a going concern from one unit of the company in one State to another unit in a different State, the Andhra Pradesh High Court has set aside the contention of the Department that transfer of ITC would not be available as there was no change in the constitution of the registered person under Section 18(3) of the CGST Act, 2017. According to the Court, understanding that there must be an internal change in the registered person, would deny the benefit in forms of transfer such as sales, merger, lease of business etc. It was held that accordingly the asset of ITC would be available for transfer. It may be noted that the Court also rejected the contention that the transfer in the present case was not to 'another person'. It was observed that though both the units were of the same company, they were registered separately and were treated as separate persons. [*Shilpa Medicare Limited* v. *Union of India* – 2026 VIL 108 AP]

1) Transfer of ITC in case of amalgamation – Entire ITC (and not part of it) to be transferred

2) Amalgamation – Refund of unutilized ITC on zero-rated supplies by transferor when not available to transferee

The Gujarat High Court has rejected the contention of the assessee that in a case of amalgamation since the provision of Section 18(3) of the CGST Act, 2017 and Rule 41 of the CGST Rules, 2017, use the words 'transfer' and 'unutilized input tax credit', they provide discretion to transfer part of ITC to the transferee entity. The Court was of the view that when a new entity is formed, and a mechanism is prescribed by the statute for transferring the unutilized ITC *vide* Form GST ITC 02 in the business interest of the new entity, the intention of such enabling provision cannot be used in a manner, which frustrates the transfer of unutilized credit of ITC on amalgamation.

The transferor entity had partially transferred ITC and continued with its GST registration *albeit* its entity existed till the effective date as per Section 87(2) of the CGST Act, 2017. The transferor also subsequently claimed refund of unutilized ITC for zero-rated supplies. The Court was of the view that the

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transferor in this case cannot seek any benefit of refund from the fault of the Jurisdictional Officer when it is equally at fault.

Further, rejecting the transferee's refund claim of the unutilized ITC, the Court held that the transferee-petitioner would have been entitled to claim the entire unutilized ITC of the transferor and also encash it, only if it had been transferred by following the statute, as the transferee had never exported the goods. The

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High Court in this regard noted that on amalgamation and formation of the petitioner, the only and exclusive manner to transfer the unutilized ITC was through Form GST ITC-02, which was resorted to, but only in part. [*Alstom Transport India Limited* v. *Additional Commissioner* – 2026 VIL 78 GUJ]

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Customs and FTP

Notifications and Circulars

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- Budget 2026-27 – Customs legislative and other changes
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Ratio decidendi

- 'Date of this notification' – Expression to mean date of publication of notification in official gazette – *Supreme Court*
- DTA clearance of electricity from SEZ – Supreme Court's observations on delegated legislation, etc.
- Focus Product Scheme benefit to woven fabrics of synthetic filament yarn – Division Bench upholds quashing of DGFT Policy Circular No. 42(RE-2010)/2009-14 – *Delhi High Court*
- Commissioner cannot cancel a private bonded warehouse licence in absence of any contravention of law or of conditions of licence – *CESTAT New Delhi*
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- Temporary movement of goods to another country for execution of service contract does not constitute 'supply' under GST – Re-imports eligible for IGST exemption under Sl. No. 5 of Notification No. 45/2017-Cus. – *CESTAT Chennai*
- Oxygen concentrators covered under description 'artificial respiration or other therapeutic respiration apparatus (ventilators)' – *CESTAT New Delhi*
- Classification of goods – 'Essential character' under GIR Rule 2(a) must be assessed with reference to functionality, and not merely physical appearance – *CESTAT Chennai*

Notifications and Circulars

Budget 2026-27 – Customs duty rate changes – Chapter-wise analysis

The Union Budget was pronounced by the Finance Minister in the Lower House of the Indian Parliament on 1 February 2026. The full Chapter-wise details of the changes made and also proposed, as analysed by **LKS Customs Team**, is available **here**.

Budget 2026-27 – Customs legislative and other changes

Clauses 129 to 135 of the Finance Bill, 2026 also propose certain changes in the Customs Act, 1962. Also, few notifications have also been issued in respect of other changes. The changes include those relating to promotion of fisheries, closure of cases under Section 28, extension of advance ruling validity, digitalisation of customs warehousing, amendment in Deferred Payment of Import Duty Rules, and introduction of Baggage Rules, 2026 & Customs Baggage (Declaration & Processing) Regulations, 2026. ***See analysis by LKS Customs Team here***.

Annual RoDTEP Returns can be filed till 31 March 2026 with composition fee

The Directorate General of Foreign Trade has extended the period for filing Annual RoDTEP Returns for the Financial Year 2023-24 till 31 March 2026. However, the extension would be available with payment of composition fee of INR 15000. The last date was 30 November 2025 for FY 2023-24 earlier. Public Notice No. 46/2025-26, dated 5 February 2026 issued for this purpose also notes that in case of non-filing by the extended date, measures will be taken in accordance with para 4.94 of the Handbook of Procedures, including denial of RoDTEP benefits and scroll-out of scrips.

Postal exports – Export benefits now available electronically

The CBIC has amended the Postal Export (Electronic Declaration and Processing) Regulations, 2022 by Notification No. 7/2026-Cus. (N.T.), dated 15 January 2026 to facilitate the processing of postal exports by automating the entire procedure and connecting the DNK portal of Department of

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Posts with ICES for automation of export benefits. Exporters claiming drawback electronically will file the PBE lll or lV on the DNK portal. Claiming benefits of RoDTEP and RoSCTL are also now enabled to exporters using the postal route, in electronic mode. CBIC Circular No. 1/2026-Cus., dated 15 January 2026 has also been issued for this purpose and amends earlier Circular No. 25/2022-Cus., dated 9 December 2022.

Ratio Decidendi

'Date of this notification' – Expression to mean date of publication of notification in official gazette

Observing that the Foreign Trade (Development and Regulation) Act expressly mandates that any order regulating imports or exports shall be made by an order published in the Official Gazette, the Supreme Court has held that Notification 38/2015-20, dated 5 February 2016, which imposed condition of minimum import price on certain iron and steel items, could not have acquired the force of law prior to its publication in the Official Gazette on 11 February 2016. The Apex Court was of the view that once the legislature has prescribed the specified mode of promulgation, the executive cannot introduce an alternative mode and attribute legal consequences to it.

Further, the Court found no force in the submission that para 1.05(b) of the FTP was either not relevant or the same was in conflict with the notification. It was noted that the notification provided that imports/shipments under Letter of Credit already entered into before the date of the notification shall be exempt from MIP condition subject to para 1.05(b) of the FTP.

Also, the Supreme Court was of the view that imposition of fiscal or trade burdens on the basis of an unpublished notification would erode commercial confidence and offend the Rule of Law. The appellant was thus held eligible for the benefit of transitional provisions as its Letter of Credit was opened

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prior to 11 February 2016. [*Viraj Impex Pvt. Ltd.* v. *Union of India & Anr.* – TS 9 SC 2026 FTP]

DTA clearance of electricity from SEZ – Supreme Court's observations on delegated legislation, etc.

The Supreme Court has set at rest the dispute on charge of customs duty on clearance of electric energy from SEZ to DTA. The Apex Court in this regard re-affirmed the Gujarat High Court's earlier decision of 2015 and set aside the High Court's subsequent decision of 2019 while allowing refund of duties paid by the assessee during 16 September 2010 to 15 February 2016. ***An article by LKS Customs Team on the merits of the case is available here.*** Given below are some additional observations by the Supreme Court on delegated legislation, etc.

- The Executive cannot, by subordinate instrument, enlarge the field of taxation under the pretext of tailoring an exemption.
- Where the dominant purpose for which a delegated power is conferred is departed from, and the power is pressed into service to achieve an end for which it was never granted, the exercise is *ultra vires*.
- If the manner of introduction of levy is found to be beyond the scope of delegated authority, then subsequent notifications which continue to demand duty on the same taxable fiction (in absence of any new statutory basis) cannot be insulated merely because they altered the rate or because they framed imposition of duty prospectively.
- Jurisdiction of a constitutional court is remedial in nature and extends to ensuring that what has been declared unlawful is not brought back in another form.
- Machinery provisions and exemption notifications cannot substitute for the absence of a charge.

[*Adani Power Ltd. & Anr.* v. *Union of India & Anr.* – Judgement dated 5 January 2026 in Special Leave Petition (Civil) No.24729/2019, Supreme Court]

Focus Product Scheme benefit to woven fabrics of synthetic filament yarn – Division Bench upholds quashing of DGFT Policy Circular No. 42(RE-2010)/2009-14

The Division Bench ('DB') of the Delhi High Court has upheld the Single Bench ('SB') decision which had quashed the DGFT

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Policy Circular No. 42(RE-2010)/2009-14, dated 21 October 2011, made applicable from 1 April 2011. The Circular had restricted the benefit to Focus Product Scheme only to 'Technical Textiles' while Serial No. 33 of Table 4 in Appendix 37D entitled 'Technical Textiles – Woven Fabrics of Synthetic Filament Yarn', classifiable under ITC (HS) 5407, to the benefit of the FPS. The dispute involved export of 'polyester printed-dyed texturized fabrics' which were covered within the description 'woven fabrics of synthetics filament yarn'.

Agreeing with the SB decision, the DB also observed that DGFT in the garb of clarification could not have restricted the number of items, which were entitled to FPS benefit as per Appendix 37D to the HBP v1. It was also observed that no occasion arose for any clarification from the DGFT, as Serial No. 33 was clear and categorical.

Rejecting the contention of the DGFT that goods exported were not technical textiles, the Court observed that Sl. No. 33 must be read as an entire entry and not merely as 'technical textiles'. It was also noted that 'technical textiles' were not defined in FTP, HOP or ITC(HS). According to the Court, the scope of a broad entry provided in the HOP, with respect to the products covered by an export incentive scheme, cannot be reduced by way of a clarificatory circular and that too with retrospective effect. [*Union of India* v. *Malik Tanning Industries* – TS 6 HC 2026 (DEL) FTP]

1) Commissioner cannot cancel a private bonded warehouse licence in absence of any contravention of law or of conditions of licence

2) Mining of coal qualifies as 'other operations' permitted under Section 65 (MOOWR)

The CESTAT New Delhi has held that if the Commissioner issues a licence under Section 58 of the Customs Act, 1962 and thereafter feels that he had wrongly issued it, he cannot cancel the licence, unless there are contravention of the Act or Rules or conditions of licence by the licensee. The Tribunal in this regard noted that *vide* Finance Act, 2016, the power to cancel a licence with one month's notice was taken away and the licence once issued can be cancelled only in case of violation of Act or Rules or conditions of the licence. Allowing the appeal filed by the assessee, the Tribunal noted that it was not the Department's case that the assessee had violated any provision/condition.

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Further, noting that not only the private bonded warehouse licence but even the permission to carry out Manufacture and other operations under Section 65 shall remain valid without limit unless surrendered or cancelled under Section 58B, the Tribunal also held that it is not open under the Act and the MOOWR Regulations for the Commissioner to review his or his predecessor's decision to grant a private bonded licence or to permit operations under Section 65.

It may be noted that the Tribunal here also held that mining of coal carried out by the assessee qualifies as 'other operations' which can be permitted under Section 65. It was observed in this regard that neither Section 65 nor any other section of the Customs Act defines 'manufacture' or 'operations', and hence these words should be interpreted in their natural sense.

Other than the above, the Tribunal also gave certain findings in this decision which are highlighted below,

- Commissioner has no choice but to grant permission, once he finds that the licencee of the private bonded warehouse has fulfilled the conditions and its operations are covered by 'manufacturing and other operations'.
- There is no restriction on what types of goods can be warehoused in the private bonded warehouse.
- If the imported goods are consumed within the warehouse licenced under Section 58 with permission under MOOWR 2019 and they are not contained in any of the goods which are manufactured and cleared from the warehouse, no duty needs to be paid and there is no export obligation also.

The assessee was represented by Lakshmikumaran & Sridharan Attorneys here. [*JMS Mining Pvt. Ltd.* v. *Principal Commissioner* – 2026 VIL 25 CESTAT DEL CU]

Temporary movement of goods to another country for execution of service contract does not constitute 'supply' under GST – Re-imports eligible for IGST exemption under Sl. No. 5 of Notification No. 45/2017-Cus.

The CESTAT Chennai has answered in negative the question as to whether the temporary movement of goods by the assessee from India to Sri Lanka for its own use in execution of a service contract constitutes 'supply'. Consequently, the Tribunal was also of the view that re-import of such goods is eligible for exemption under Sl.No.5 of Notification No.45/2017-Cus., and thus IGST will not be payable on such re-imports.

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Taking note of the fact that the shipping bill mentioned a Letter of Undertaking (LUT), the Department had contended that the goods were exported without payment of IGST and, therefore, the import of the goods would fall under Sl. No. 1(d) of the Notification. It was thus submitted by the Department that since IGST was not paid at the time of export, it would become payable as customs duty on re-import.

The Tribunal however observed that the existence or mention of 'Letter of Undertaking' could never determine the taxability of a transaction since what is relevant is whether the transaction falls within the charging provisions or not. It was thus of the view that there was no levy of IGST at the time of export, the very foundation for application of Sl. No.1(d) of the notification disappears. Upholding the benefit of exemption under Sl. No. 5 of said notification, the Tribunal observed that said Sl. No. recognizes the category of goods exported otherwise than by way of supply. It also in this regard noted that even by Sl. No.1(d) demanding *inter alia*, BCD, is not correct.

Further, in terms of time-period for re-imports, the Tribunal also held that Circular No. 21/2009-Cus. dated 24 July 2019, to the extent it purports to impose a shorter limitation period than what is provided in the Notification, cannot be applied to deny substantive exemption. [*NTC Logistics India Pvt. Ltd.* v. *Commissioner* – 2026 VIL 89 CESTAT CHE CU]

Oxygen concentrators covered under description 'artificial respiration or other therapeutic respiration apparatus (ventilators)'

The CESTAT New Delhi has upheld the contention of the assessee-importer that Entry 'artificial respiration or other therapeutic respiration apparatus (ventilators)' under Notification No. 20/2020-Cus., is not limited to conventionally known 'ventilators' but encompasses all, and every, apparatus performing the described function, e.g. oxygen concentrators. Observing that a notification must be read holistically and across all the columns, the Tribunal held that any apparatus conforming to the elaborated description merits intended exemption. It was thus held that the lower authorities were in error by holding that the entry would cover only ventilators. According to the Tribunal, both from physiological perspective and from the descriptions in the Customs Tariff, it cannot be averred that source of supply of oxygen determines 'apparatus for artificial respiration or therapeutic respiration'. It, in this regard, also noted that there was no need for the policy formulators to provide a generic description when the specific

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was the answer to the intent canvassed by the lower authorities. ***The importer was represented by Lakshmikumaran & Sridharan Attorneys here.*** [*Aspen Diagnostics Pvt. Ltd.* v. *Commissioner* – 2026 VIL 117 CESTAT DEL CU]

Classification of goods – 'Essential character' under GIR Rule 2(a) must be assessed with reference to functionality, and not merely physical appearance

The CESTAT Chennai has observed that 'essential character' under Rule 2(a) of the General Interpretative Rules must be assessed with reference to functionality, and not merely physical appearance. The case involved classification of Arm and Blade Assembly imported without the wiper motor assembly. The Department has classified the goods as windscreen wiper. However, the Tribunal held that in the absence of a motor, the imported goods cannot be regarded as complete windscreen wipers. Rule 2(a) was held inapplicable as, according to the Tribunal, absence of the electrical motor, which is the heart of the system, rendered the goods incapable of independent operation. The goods were thus held to be correctly classifiable under Tariff Item 8512 90 00 as parts of windscreen wipers and not under TI 8512 40 00. [*Mitsuba Sical India Pvt. Ltd.* v. *Commissioner* – 2026 VIL 209 CESTAT CHE CU]

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Central Excise, Service Tax and VAT

Ratio decidendi

- Fee paid to speakers, through their booking agents, is not liable to service tax under RCM under Event Management Service – *Supreme Court*
- Demand – Proceedings under Section 73 to abate on death of service provider, an individual – *Orissa High Court*
- Roasting of rava/suji does not results in 'manufacture' under Excise Section 2(f) – *CESTAT Bengaluru*

Ratio Decidendi

Fee paid to speakers, through their booking agents, is not liable to service tax under RCM under Event Management Service

The Supreme Court has held that fee paid by the assessee to the personalities/speakers, through their booking agents, is not liable to service tax under the reverse charge mechanism, more particularly under the taxable category of Event Management Service. Period involved was from October 2009 till March 2012. Observing that the contract of the assessee with the agents was in the nature of booking the speakers for the event to be organized by the assessee and that the contracts were entered into with the agents *qua* each speaker, laying down the modalities of his/her visit and consideration for the same, the Court held that the contract was not for 'management of an event'.

Revenue department's focus on the aspect as to whether a 'principal-agent' relationship was established between the speaker and the booking agent, was rejected by the Court. The Apex Court in this regard also rejected the argument that without the speaker the event would be devoid of any significance and therefore, the service in question is an 'Event Management Service'. The Court observed that the speaker does not plan, promote, organize or present the event and that participation in the event cannot be considered as management of the event.

Further, allowing the assessee's appeal the Court relied upon common parlance test and was of the view that individual contracts for booking of persons required for participation in the event are not commonly understood as 'event management' contracts. [*HT Media Limited* v. *Principal Commissioner* – 2026 VIL 06 SC ST]

Demand – Proceedings under Section 73 to abate on death of service provider, an individual

The Orissa High Court has held that 'legal heir' cannot fall within ken of Section 65(7) of Chapter-V of the Finance Act, 1994 so as to proceed further to determine service tax under Section 73 after the death of the service provider. Thus, according to the Court, on the death of the service provider, in absence of statutory provision empowering the authority to continue further, the proceeding under Section 73 would abate. Also, it

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may be noted that the High Court, while referring to various earlier decisions, was also of the view that the word 'agent' as found in the definition of the term 'assessee' *vide* Section 65(7), it cannot be treated as equal in status of 'legal heir'. It was also held that legal heirs of the deceased service provider in the status of 'individual' can neither be construed as a 'person liable to pay service tax' nor is he/she to be treated as 'his agent'. [*Kanakalata Senapati* v. *Assistant Commissioner* – 2026 VIL 57 ORI ST]

Roasting of rava/suji does not results in 'manufacture' under Excise Section 2(f)

The CESTAT Bengaluru has held that Rava/suji when subjected to the process of roasting does not result in 'manufacture' within the definition of Section 2(f) of Central Excise Act, 1944. It Tribunal, for this purpose, noted that rava/suji itself was a finished product falling under Heading 1103 ready to be used and sold in the market, and that the process of roasting (single of double roasting) neither changed the item itself nor its physical properties/characteristics, while only reducing the moisture content. Supreme Court's decision in the case of *Servo Med Industries Pvt. Ltd.* was relied upon. ***The assessee was represented by Lakshmikumaran & Sridharan Attorneys here.*** [*Sunil Agro Foods Limited* v. *Commissioner* – 2026 VIL 221 CESTAT BLR CE]

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