Bharat @100
An ASSOCHAM initiative

ASSOCHAM
Ideate · Innovate · Impact

pwc

TAX NEWSLETTER

July - September 2024 Issue - 11

What's Inside

PART I – DIRECT TAX

- **Judgements**
  - Permanent Establishment's activities to be independently evaluated and ascertained for the purposes of attributing profits – Delhi High Court Full Bench
  - Taxpayer cannot raise objections against time-barred issuance of notice post completion of assessment or reassessment proceedings – Madras High Court
  - FTC claimed in modified return allowed as substantial justice takes precedence over procedural errors – Delhi bench of the Tribunal
  - US LLC qualifies as a 'person' and is eligible for DTAA benefits – Delhi bench of the Tribunal
  - Beneficial DTAA rates for dividend income cannot be extended to a domestic company paying dividend distribution tax on dividend distribution to a non-resident shareholder – Pune bench of the Tribunal

PART II – INDIRECT TAX

I. Amendment to CGST Rules inter alia in respect of valuation of corporate guarantee, ISD, appeals to GSTAT, introduction of Form GSTR 1A, clarifications through circulars in furtherance of the recommendations made in the 53rd GST Council meeting

II. Union Budget 2024-25 proposals

III. 54th GST Council meeting

IV. CBIC issued Circulars pursuant to recommendations made during the 54th Meeting of the GST Council

V. Advisory for introduction of IMS on GST Portal

VI. Judicial Updates

VII. Customs and Foreign Trade Policy

VIII. Judicial Updates

THE ASSOCIATED CHAMBERS OF COMMERCE AND INDUSTRY OF INDIA

taxation@assocham.com

www.assocham.org

Part I – Direct Tax

Judgements

Permanent Establishment's activities to be independently evaluated and ascertained for the purposes of attributing profits – Delhi High Court Full Bench

In *Hyatt International-Southwest Asia Ltd v. ADIT and Ors*[1], the taxpayer was a company incorporated in the United Arab Emirates and had a permanent establishment ('PE') in India.

The taxpayer incurred loss in the relevant assessment year at the global level. It contended that since it had loss at global level no taxable income could be attributed to the PE in India.

High Court's observation

The court held that a PE has to be treated as an independent taxable entity. A PE's activities should be independently evaluated and ascertained for the purposes of attributing profits, irrespective of profit or loss at a global level for the taxpayer.

For reaching to the above conclusion, the High Court noted various decisions of the Supreme Court and, mainly, observed as follows:

- The usage of the phrase '... the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to the permanent establishment.' in Article 7 of DTAA is a clear indicator of the PE being liable to be viewed as an independent centre of revenue.
- Under Article 7 of the DTAA, a PE is treated as if it is an independent profit centre de hors the head office and its profits are determined based on the profits expected to be derived by an independent enterprise under similar circumstances.
- The source state's right to tax does not extend to profits which are not allocable to the PE.
- Income arising from operations in various jurisdiction would have territorial nexus with each jurisdiction on actual basis. For the profits earned by the taxpayer in the source state, a distinction must be made between those profits which result from the PE's activities and those made without any interposition of the PE.
- There is a difference between a PE's taxability regarding the income earned by it in India which is in accordance with the Act and that has nothing to do with the taxpayer's taxability at the global level. Therefore, even if the taxpayer incurs a loss globally, the PE's profits in India are taxable.
- As per paragraph 1 of Article 7 of DTAA, the profits that are attributable to a PE are determined in accordance with the provisions of paragraph 2 of Article 7 of DTAA. Paragraph 2 does not seek to allocate the taxpayer's overall profits to the PE and its other parts; instead, it requires that the profits attributable to a PE be determined as if it's a separate enterprise. Therefore, profits may be attributed to a PE although the enterprise as a whole has never made profits.
- If the taxpayer's submission was accepted, the Revenue would have the power to tax even in a situation where the taxpayer as a whole has earned profits whereas the PE may have incurred a loss. This is not the import of Article 7 of the DTAA.

Taxpayer cannot raise objections against time-barred issuance of notice post completion of assessment or reassessment proceedings – Madras High Court

In *K.P.S.Enterprises v. PCIT*[2], the taxpayer, in a writ petition, raised the ground of time-barred notice issued under section 143(2) of the Act. The taxpayer did not raise this issue at any earlier stage.

1 [2024] 464 ITR 508 (Delhi)

2 W.P.(MD) No. 10161 of 2021 and W.M.P.(MD) Nos. 7881 & 7882 of 2021 (Madras)

The High Court dismissed the writ petition filed by the taxpayer and held that any notice would be deemed to be valid, despite legal infirmities, if the taxpayer had participated in the proceedings.

The Madras High Court upheld the applicability of section 292BB of the Income-tax Act, 1961 (the Act) to the relevant fact pattern. The court held that the taxpayer cannot later contest the validity of the issued notice post completion of the assessment proceedings. Relying on the Supreme Court decision in the case of CIT v. Laxman Das Khandelwal [2019] 417 ITR 325 (SC) and the Explanatory Note to the Finance Act, 2008, the court affirmed that the legal fiction in section 292BB of the Act will not apply where the taxpayer had raised such objection before the completion of the assessment or reassessment.

FTC claimed in modified return allowed as substantial justice takes precedence over procedural errors – Delhi bench of the Tribunal

In *Ericsson India Global Services Pvt. Ltd. v. Addl. CIT*[3], during the pendency of appeal before the Commissioner of Income-tax (Appeals) [CIT(A)], the taxpayer entered into an Advance Pricing Agreement (APA) with the Government of India. Consequently, the taxpayer filed a modified return under section 92CD(1) of the Act, wherein it had revised the claim of foreign tax credit (FTC) based on additional FTC certificates received.

The Assessing Officer (AO) and the CIT(A), both did not allow the claim of additional FTC in the modified return.

On further appeal, the Pune Bench of the Tribunal held that if a taxpayer was otherwise eligible for FTC and had claimed the same in the modified return of income, it should not be denied merely on the grounds of procedural error. The Tribunal followed the earlier decision of Pune Bench of Tribunal in the case of Dar Al Handasah Consultants (Shair & partners) India Private Limited v. DCIT [ITA No. 1413/Pun/2019] where the Tribunal concluded that if a taxpayer was otherwise eligible for deduction under section 10A or any other provision of the Act, the same should be allowed even if the claim was made in the modified return.

The Tribunal held that the state cannot deny benefit owing to procedural errors and usurp a taxpayer's rights if they are entitled to the credit. The Tribunal also concluded that substantial justice takes precedence over procedural errors which may lead to manifest injustice, violation of benefit or vitiates eligible legal gains.

3 ITA Nos. 2367 & 2368/Del/2019

Permanent Establishment's activities to be independently evaluated and ascertained for the purposes of attributing profits – Delhi High Court Full Bench

US LLC qualifies as a 'person' and is eligible for DTAA benefits – Delhi bench of the Tribunal

In *General Motors Company USA v. ACIT*,[4] the taxpayer was a limited liability company (LLC) incorporated in Delaware, United States of America (US). It had opted to be classified as a disregarded entity, i.e., not regarded to be separate from its owner for US tax purposes.

For the years under appeal, the taxpayer had earned income in the nature of 'Fees for Technical Services' or 'Fees for Included Services' from India. The taxpayer offered this income to tax in India at the rate of 15% under Article 12 of the India-US DTAA.

The taxpayer had furnished a tax residency certificate (TRC) issued by the US tax authorities along with Form 10F to meet the requirements for availing the benefits under India-US DTAA.

The AO passed an order denying the India-US DTAA benefits to the taxpayer on the ground that it was a fiscally transparent entity and not subject to tax in the US. Accordingly, the AO levied a tax rate of 25% under section 115A of the Act.

On appeal, the Tribunal observed the reliance placed by the taxpayer on Publication No. 3402 of the Department of Treasury, IRS. It provided that an LLC with a single member is classified as a disregarded entity and its income is reported in the owner's income-tax return. Hence, the Tribunal held that the income earned by such a US LLC is liable to tax in the US.

The Tribunal stated that the LLC's ability to elect itself to be taxed as a corporation or disregarded entity also supports the contention that the LLC is 'liable to tax' in the US. In case of a disregarded entity, the LLC is 'liable to

4 [2024] 166 taxmann.com 170 (Delhi - Trib.)

tax'; however, the income is attributed to its owner, and such tax is imposed and paid by its respective owner.

The Tribunal took a considered view that the TRC received from the IRS justifies that the taxpayer qualified as a US resident under Article 4 of the India-US DTAA as it was liable to tax in the US given that its income was clubbed in the owner's hands, who discharged the tax that was assessable in the case of the LLC.

The Tribunal held that the India-US DTAA's intent must be given precedence wherein the concept of a fiscally transparent entity is the accepted way of recognising the phrase 'liable to tax'. The provision under Article 4(1)(b) of the India-US DTAA excludes such income of the partnership which is not 'subject to tax' in the US (either in the hands of the partnership or partners). Thus, an exclusion provision can only exclude something if it was included at the outset. Hence, fiscally transparent entities were already regarded as 'liable to tax' for the purposes of the India-US DTAA.

The Tribunal hence held that the disregarded US LLC should be eligible to claim the DTAA benefits under India-US DTAA, as it was a person liable to tax in the US, and hence, qualified as a person resident in the US.

Beneficial DTAA rates for dividend income cannot be extended to a domestic company paying dividend distribution tax on dividend distribution to a non-resident shareholder – Pune bench of the Tribunal

In *Piaggio Vehicles Private Limited v. ACIT*,[5] the taxpayer, a domestic company, distributed dividend to its shareholder (non-resident) during assessment year (AY) 2016–17.

The taxpayer paid dividend distribution tax (DDT) at 20.36% (grossed up) on the dividend distributed to the non-resident shareholder in Italy under section 115-O[6] of the Act. However, it claimed during the appeal stage, by way of an additional claim that DDT should be at the rate of 15% as prescribed in Article 11 of the India-Italy DTAA, which was rejected by the CIT(A).

Before the ITAT, the taxpayer presented a detailed and specific rebuttal to the observations of the Special Bench of the Tribunal in the case of DCIT v. Total Oil India (P.) Ltd. [2023] 104 ITR(T) 1 (SB). The Special Bench had concluded that the DDT is an additional tax levied on the company and not the shareholder. Accordingly, benefit of a lower tax rate as per the DTAA is not available unless such protection is specifically given under the DTAA.

Taxpayer's contentions

- The Special Bench inadvertently noted that the Supreme Court in the case of UOI v. Tata Tea Co. Limited [2017] 85 taxmann.com 346 (SC) did not deal with the nature of DDT. In fact, the Supreme Court, while dealing with the challenge of constitutional validity of section 115-O of the Act, decided on an identical question regarding the characterisation of DDT. The court had succinctly opined that DDT is a tax on 'dividend income' (and hence covered by Entry 82 of the Constitution) and not on the income or profits of the company declaring dividend.
- Reliance placed by the Special Bench in the Bombay High Court's decision in the case of Godrej & Boyce Mfg. Co. Limited v. DCIT [2010] 234 CTR 1 (Bom) [affirmed by the decision of the Supreme Court in the case of Godrej & Boyce Mfg. Co. Limited v. DCIT [2017] 81 taxmann.com 111 (SC)] is misplaced. The decision merely laid down the principle that 'DDT is a tax on domestic company'; it cannot be regarded as concluding that 'DDT is not a tax on dividend'. Moreover, the issue involved therein was concerning disallowance under section 14A of the Act on dividend income and, therefore, operates in a different field while the Tata Tea decision (supra) is a binding precedent.
- The provisions of section 90 of the Act read with the DTAA provisions nowhere prohibit or exclude a resident from claiming the benefit of the DTAA. Moreover, the language of Article 11 of the India-Italy DTAA only provides that the tax levied should be a tax 'on dividends'; nowhere does it limit its applicability to taxes levied on shareholders.
- An express clause in a particular DTAA (e.g. the India-Hungary DTAA extends the DTAA protection to DDT) cannot be construed as leading to its automatic exclusion in other DTAAs.

Tribunal's ruling

The Tribunal, following the decision of the Special Bench of the Tribunal in the case of Total Oil India (P.) Limited (supra), concluded that the DDT paid by the taxpayer is not eligible for the beneficial rate provided under DTAA.

5 [2024] 208 ITD 299 (Pune)

6 As per the erstwhile provisions under section 115-O of the Act, a domestic company was required to pay additional income-tax on any amount declared, distributed or paid as dividend at the prescribed rate.

Part II – Indirect Tax

I. Amendment to CGST Rules inter alia in respect of valuation of corporate guarantee, ISD, appeals to GSTAT, introduction of Form GSTR 1A, clarifications through circulars in furtherance of the recommendations made in the 53rd GST Council meeting

Changes to Rule 28 of the CGST Rules regarding valuation of corporate guarantee along with clarification on various issues pertaining to taxability and valuation[7]

- Sub-rule (2) of rule 28 of the Central Goods and Services Tax Rules, 2017 (CGST Rules) provided for the valuation mechanism of corporate guarantee provided by a supplier to any banking company or financial institution on behalf of the related party recipient for the purpose of levy of GST irrespective of whether the full input tax credit (ITC) is available to the recipient of services.[8]
- The phrase 'who is a related person located in India' has now been inserted in the sub-rule, thereby narrowing its scope to guarantees provided to related parties situated within India.
- It provides the valuation norms for GST purpose to 'one percent of the guarantee offered per annum'. The guarantee amount on an annualised basis will be the base for calculating the valuation on a yearly basis to levy GST.
- A proviso has now been inserted stating that the value in the invoice will be deemed to be the value of the said supply, when the ITC is eligible.

Important clarifications

- The valuation of the corporate guarantee service has to be done based on the amount guaranteed, not on the actual loan disbursed. ITC will be available irrespective of the loan disbursement status.
- When multiple entities provide a guarantee, the valuation thereof is based on the actual consideration or 1% of the guaranteed amount, whichever is higher. Each co-guarantor's GST liability is proportionate to their share of the guarantee.
- In terms of the amended rule 28(2) of the CGST Rules, GST is to be computed based on 1% of the guarantee offered per annum or the actual consideration, whichever is higher.
  - o **Guarantees extending over multiple years (at the time of issue itself):** GST is payable upfront on the valuation arrived at, by multiplying 1% of guaranteed amount to the number of years it extends to or the actual consideration, whichever is higher.
  - o **Guarantees are renewed annually:** GST is payable annually at 1% of the guaranteed offer per annum or the actual consideration, whichever is higher.
  - o **Guarantees issued for periods shorter than a year:** GST is calculated proportionately for the part of the year.

Mechanism for distribution of credit by ISD[9]

- Rule 39 of the CGST Rules is substituted to provide for a mechanism for distribution of credit by an ISD.
- An additional sub-rule is inserted in rule 39 of the CGST Rules to provide for the transfer of credit, regarding the taxes paid under reverse charge by the head office, to the ISD for which an invoice as prescribed under rule 54(1A) of the CGST Rules needs to be raised.

Manner of calculating interest on delayed payment of tax[10]

7 Notification No.12/2024 – Central Tax, Circular No. 225/19/2024-GST dated 11 July 2024
8 Inserted vide Notification No. 52/2023 Central Tax dated 26 October 2023
9 Notification No. 12/2024 – Central Tax dated 10 July 2024
10 Notification No. 12/2024 – Central Tax dated 10 July 2024 (Clause 15)

- Proviso is inserted in rule 88B(1) of the CGST Rules to provide that the amount credited in the electronic cash ledger (ECL) on or before the due date of filing return but debited from ECL after the due date will not be considered for calculating the interest if the said amount is lying in the said ledger from the due date till the date of its debit at the time of filing the return.

Changes to rules 89 and 96 of the CGST Rules regarding refund of additional IGST paid on account of upward price revision of the goods subsequent to export along with clarification on mechanism to apply for refund[11]

- Amendment to rules 89 and 96 of CGST Rules introduce an explicit provision allowing the refund of additional Integrated Goods and Service Tax (IGST) paid on account of the upward revision in the price of goods subsequent to exports, and on which the refund of IGST paid at the time of their export has already been sanctioned as per rule 96 of the CGST Rules. An application should be filed via Form GST RFD-01 before the expiry of two years from relevant date as per Explanation (2)(a) of section 54 of the CGST Act.
- Where such time limit has already lapsed, the refund application is to be filed before the expiry of two years from 10 July 2024.
- Insertion of a provision to produce additional documentary evidence to claim refund.

Important clarifications

- The circular clarifies that the GST Network is developing a new category in Form GST RFD-01 for refund applications related to additional IGST paid. Until this feature is available, exporters can claim refunds by filing Form GST RFD-01 under the category 'Any other' with the remark 'Refund of additional IGST paid on account of increase in price subsequent to export of goods'.
- The circular also clarifies that the proper officer will verify adequate disclosures in Forms GSTR-1 and GSTR-3B while processing the refund. The proper officer will scrutinise the application with respect to its completeness and eligibility and proceed to issue a refund sanction order in Form GST RFD-06 and payment order in Form GST RFD-05. The proper officer will also upload a detailed speaking order along with a refund sanction order in Form GST RFD-06.
- With respect to cases of downward revision in the price of goods subsequent to exports when the export has been made with the payment of IGST, the circular notes that the exporter is required to deposit the IGST refund received in proportion to the reduction in the price of the exported goods, along with the applicable interest. Importantly, while granting refund of additional IGST paid on account of upward revision of price of goods subsequent to exports, the proper officer will also verify whether the exporter has deposited the excess refund amount in case of downward revision in price of goods subsequent to exports, during the relevant tax period.

Reduction in rate of Tax Collected at Source (TCS) for supplies being made through electronic commerce operator (ECOs)[12]

- Notifications providing rate of TCS amended to reduce the rate of TCS from present 1% [CGST + State GST (SGST) or IGST or Union Territory GST (UTGST)] to 0.5% (CGST + SGST or IGST or UTGST).

Insertion of FEMA timelines for receipt of consideration in case of export of services made under bond or LUT[13]

- Amendment to rule 96A(1)(b) of the CGST Rules to include the period as allowed under the Foreign Exchange Management Act, 1999 (FEMA) including any extension of such period as permitted by the Reserve Bank of India (RBI) for the determination of receipt of consideration in case of exports made under a bond or letter of undertaking (LUT).

Other Amendments

- The existing rule 110 of the CGST Rules governing procedure for appeals to Appellate Tribunal is substituted with the following provisions –
  - Appeals will be filed electronically in Form GST APL-05 along with relevant documents, with an acknowledgment issued immediately.
  - Appeals can also be filed manually if allowed by the registrar, who will issue an acknowledgment.

11 Notification No. 12/2024 – Central Tax (clauses 17 and 19), Circular No. 226/20/2024-GST dated 11 July 2024

12 Notification No. 15/2024-Central Tax, No. 01/2024- Integrated Tax, No. 01/2024- Union Territory Tax all dated 10 July 2024

13 Notification No. 12/2024 – Central Tax dated 10 July 2024 (Clause 20)

- Memorandum of cross-objections will be filed electronically in Form GST APL-06, with similar provisions for manual filing if allowed.
- Appeals and memorandums must be signed as per rule 26 of the CGST Rules.
- Acknowledgment of the appeal, with an appeal number, will be considered as the filing date.
- Fee for filing an appeal is INR1,000 for every INR100,000 of disputed tax, subject to a minimum of INR5,000 and a maximum of INR25,000.
- Fee of INR5,000 for filing of appeals with no disputed tax.
- No fee is required for applications for rectification of mistakes.

- The existing rule 111 of the CGST Rules governing the procedure for applications to Appellate Tribunal or departmental appeals is substituted with the following provisions –
  - Applications will be filed electronically in Form GST APL-07 with relevant documents, and an acknowledgment will be issued immediately.
  - Similar provisions for manual filing if allowed by the registrar.
  - Memorandum of cross-objections will be filed electronically in Form GST APL-06, with similar provisions for manual filing if allowed.
  - Appeals and memorandums must be signed as per rule 26 of the CGST Rules.
  - Acknowledgment of the appeal, with an appeal number, will be considered as the filing date.
  - Specified fees apply to the filing of appeals as mentioned under rule 110 of the CGST Rules above.

- Rule 113A of the CGST Rules is inserted with the following provisions –
  - Any appeal filed in Form GST APL-05 or application in Form GST APL-07 can be withdrawn electronically at any time before the issuance of the order.
  - Once acknowledgment in Form GST APL-02 is issued, withdrawal requires approval from the Appellate Tribunal, with a decision to be made within fifteen days.

  - Following withdrawal, any new appeal or application must be filed within the time limits prescribed in sections 112(1) or 112(3) of the CGST Act.

- The registered person whose aggregate turnover in the financial year (FY) 2023-24 is up to 20m is exempted from filing an annual return for the said FY.[14]

- Suitable amendments have been made to insert Form GSTR-1A along with Form GSTR-1 to align with the rules in Forms GSTR-2A, 2B, 4A and 9.

- Amendment to Rule 59 of the CGST Rules to reduce the threshold for reporting invoice wise details in Form GSTR-1 for business to consumer (B2C) interstate supplies has been reduced from INR250,000 to INR100,000. Consequently, amendments are made in Table 5 and 7 of Form GSTR-1.[15]

- Insertion of a Proviso to rule 59(1) of the CGST Rules to introduce Form GSTR-1A stating that after furnishing the details of outward supplies in Form GSTR-1 for a tax period but before the filing of return in Form GSTR-3B for the said tax period, a registered person may at their own option, amend or furnish additional details of outward supplies in Form GSTR-1A for the said tax period.[16]

- Substitution made under sub-rule (2) of rule 142 of the CGST Rules to provide that the proper officer

14 Notification No. 14/2024 – Central Tax dated 10 July 2024
15 Notification No. 12/2024 – Central Tax dated 10 July 2024 (Clause 11)
16 Notification No. 12/2024 – Central Tax dated 10 July 2024 (Clauses 3, 4, 6, 7, 9, 10, 11, 12, 14, 16, 19, 20, 26 and 29

will issue an acknowledgement electronically on the common portal in Form GST-04 accepting that payment has been made by the said person in Form GST DRC-03.

Sub-rule (2B) of the CGST Rules has been inserted to provide that where the amount of tax, interest and penalty or any other amount is payable by a person under sections 52, 73,74, 76, 77, 122, 123,124, 125,127,129 and 130 of the CGST Act has been paid through intimation in Form DRC-03, the said payments made via Form GST DRC-03 can be credited to the electronic liability register unless an order in Form GST DRC-05 has concluded the proceedings.

- Guidelines for recovery of outstanding dues, until the GST Appellate Tribunal becomes operational, where the first appeal has been disposed of
  - The Central Government has established the Goods and Services Tax Appellate Tribunal (GSTAT), effective from 1 September 2024.[17] Further, the said notification constitutes the Principal Bench of the GSTAT at New Delhi and several State Benches.

II. Union Budget 2024-25 proposals

- Insertion of section 74A in the CGST Act. Several sections have been amended to include references to section 74A.
- Amendment to section 9 of the CGST Act, section 5 IGST Act and section 7 of the UTGST Act to exclude un-denatured extra neutral alcohol (UEN) and rectified spirit from the levy of GST when it is used in any manufacturing process of alcoholic liquor for human consumption.
- Insertion of proviso to section 30(2) of the CGST Act to provide for power to prescribe conditions and restrictions for revocation of cancellation of registration.
- Amendment made to Section 122(1B) to make it applicable only to e-commerce operator liable to collect tax at source under Section 52.

Amendments in Section 13(3) of the CGST Act

- Amendment has been made to clause (b) of Section 13(3) of the CGST Act to make it applicable only in cases where invoice is required to be issued by the supplier i.e. where the supplier is registered.
- Additionally, a new clause (c) has been inserted to link the time of supply to the date of issue of invoice by the recipient, in cases where invoice is to be issued by the recipient i.e. where the supplier is unregistered.

Amendments in Section 31(3) of the CGST Act

- Section 31(3)(f) requires issuance of self invoice where supplier is unregistered. Amendment has been made in the said Section to provide powers to prescribe the time period in which an invoice is required to be issued under the said Section.
- Additionally, an Explanation has been added to Section 31(3) to provide that for the purposes of Section 31(3)(f), unregistered supplier shall include supplier who is registered solely for the purpose of deduction of tax under Section 51.

Amendments in Section 17(5) of the CGST Act

- Previously, Section 17(5)(i) restricted ITC on any tax paid in accordance with the provisions of Sections 74, 129 and 130. It is now being amended to remove the reference of tax paid in accordance with provisions of Section 129 and 130 and limiting its applicability on any tax paid in accordance with the provisions of Section 74 in respect of any period upto FY 2023-24.

Amendments in Sections 16 and 54 of the CGST Act

- Earlier 2nd Proviso to Section 54 restricted refund of unutilised ITC in cases where goods exported out of India are subject to export duty.
- With introduction of Section 54(15) of the CGST Act and Section 16(5) of the IGST Act, refund of unutilised ITC as well as IGST paid on zero rated supply of goods, both is restricted where such zero rated supply of goods is subject to export duty.
- Section 16(4) of the IGST Act has been amended to link it with provisions of Section 54 for claiming refund and widening the scope of Section 16(4)(ii) to cover zero rated supplies (earlier the restriction was only in case of exports.)

Amendment in Section 39 of the CGST Act

- Proviso inserted in Section 39(3) to make it mandatory for taxpayer deducting tax under Section 51 to file the monthly return irrespective

17 Notification S.O. No. 3048(E) dated July 31, 2024

of whether or not there is any deduction required under the said section.

- Section 39(3) substituted to do away with the time within which returns are required to be filed in Form GSTR 7.
- The time limit to file return within 10 days has been done away with.

Amendment in Section 70 of the CGST Act

- Section 70 of the CGST Act provides the power of the proper office to summon any person to give evidence or to produce documents in the process of inquiry.
- Sub section (1A) seeks to state that the summon can be responded by the officials either in person or via authorized representative to satisfy the summon.

Amendment in Sections 171 and 109 of the CGST Act

- Section 171(2) of the CGST Act, has been amended to empower the government to issue notification on the recommendation of the GST Council to specify the date from which anti-profiteering authority will stop accepting new applications.
- Section 109(1) of the CGST Act has been amendment to take over matters of pending anti profiteering cases to the principal bench of the Appellate Tribunal.
- Section 109 (5) of the CGST Act is proposed to be amended to specify that only the principal bench of the Appellate tribunal can handle anti- profiteering matters.

III. 54th GST Council meeting

The 54th GST Council meeting was held on 9 September 2024.[18] Key clarifications and trade facilitation initiatives proposed in this meeting have been summarized below-

Procedure and conditions for waiver of interest or penalty or both under the CGST Act for FYs 2017–18 to 2019–20

- Section 128A of the Central Goods and Services Tax Act, 2017 (CGST Act), will come into effect from 1 November 2024.31 March 2025 to be notified as the due date for making tax payments to avail the benefits of the waiver.
- Rule 164 to be inserted in the CGST Rules along with specific forms to outline the procedure and conditions for availing the waiver.

Taxability of affiliation services by educational boards

- To clarify that affiliation services –
  - o provided by educational boards such as the Central Board of Secondary Education are taxable – for the period from 1 July 2017 to 17 June 2021, the issue will be regularised on an 'as is where is' basis.
  - o provided by universities to their constituent colleges are not covered within the ambit of exemptions provided to educational institutions and are taxable at the rate of 18%.
- Affiliation services provided by state or central educational boards, educational councils and similar bodies to government schools to be exempted prospectively.

Exemption of incidental or ancillary services in electricity supply[19]

- To clarify that the supply of various services such as application fees for electricity connections, rental charges for electricity meters, testing fees for meters or transformers or capacitors, labour charges for shifting meters or service lines and charges for duplicate bills will be exempt from GST when provided as a composite supply.[20]

18 PIB Press Release dated 9 September 2024
19 These services, including GST for earlier periods, will be regularised on an 'as is where is' basis.
20 SLP(C) Diary (Civil) No. 019431/2019 (Diary No. 24733 of 2019) filed by the Department is pending before the Supreme Court

Import of service by branch office[21]

- To provide exemption to import of services by an establishment of a foreign airline company from a related person or any of its establishments outside India made without consideration.

Ancillary intermediate services provided by GTA

- To clarify that when a Goods Transport Agency (GTA) provides ancillary or intermediate services such as loading, unloading, unpacking, transshipment and temporary warehousing in the course of transporting goods by road and issues a fresh consignment note, then these services are to be considered part of a composite supply.
- However, if these services are not provided during the transportation of goods and are invoiced separately, they are not to be treated as part of a composite supply of the transport of goods.

Amendments in rules 89 and 96 of the CGST Rules and clarification on IGST refund under rule 96(10) of the CGST Rules

- To clarify that if Integrated Goods and Services Tax (IGST) and compensation cess are subsequently paid on inputs imported without paying these under Notification Nos. 78/2017-Customs and 79/2017-Customs, both dated 13 October2017, with applicable interest, and the Bill of Entry is reassessed by the jurisdictional Customs authorities, the IGST paid on exports and refunded to the exporter will not be considered a violation of sub-rule (10) of rule 96 of the CGST Rules.
- To alleviate difficulties faced by exporters due to restrictions on refunds imposed by rules 96(10), 89(4A) and 89(4B) of the CGST Rules, these rules are to be omitted prospectively.

21 To regularise past demands on 'as is where is' basis.

Treatment of PLC charges and tax on commercial property

- Preferential Location Charges (PLC) paid with consideration for construction services of residential, commercial or industrial complexes before the issuance of the completion certificate to be treated as composite supply and tax rate of main supply to be applicable (i.e. construction service).
- Renting of commercial property by an unregistered person to a registered person to be brought under the Reverse Charge Mechanism (RCM) to prevent revenue leakage.

Implementation mechanism for new sub-sections in section 16 of the CGST Act

- The following are to be notified –
  - Sections 16(5) and 16(6) of the CGST Act are to be notified soon retrospectively with effect from 1 July 2017.
  - Special procedure under section 148 of the CGST Act for rectifying orders issued u/s 73, 74, 107 or 108 of the CGST Act were demand has been issued for wrong availment of ITC on contravention of section 16(4) of the CGST Act, but are now eligible for ITC under sections 16(5) and 16(6) of the CGST Act.
- To issue a circular to clarify the procedure and various issues related to the implementation of sections 16(5) and 16(6) of the CGST Act.

Enhancements to GST return architecture and introduction of new ledgers

- Enhancements are proposed to the existing GST return system, which include the introduction of three new components-
  - RCM ledger
  - ITC reclaim ledger
  - Invoice Management System (IMS)
- Taxpayers are to be allowed to declare their opening balances for these ledgers by 31 October 2024.
- The IMS will enable taxpayers to accept, reject or keep invoices pending for the purpose of availing ITC.

Recommendations related to GST rate

- To notify GST on the transport of passengers by helicopters on seat share basis at the rate of 5%. To exempt supply of research and development services by a government entity or a research association, university, college, etc. using government or private grants.[22]
- GST rate on extruded or expanded savoury or salted products (excluding un-fried or uncooked snack pellets) under HS 1905 90 30 to be prospectively reduced to12% (currently 18%), aligning with rates for similar edible preparations. The 5% GST rate for un-fried or uncooked snack pellets to remain unchanged.
- GST rate on cancer drugs, namely, Trastuzumab Deruxtecan, Osimertinib and Durvalumab to be reduced to 5% (currently 12%).
- RCM to be introduced on metal scrap supplied by unregistered persons to registered persons, provided that the supplier will take registration when it crosses the threshold limit. The recipient under the RCM, will pay tax even if the supplier is under the threshold.
- 2% tax deducted at source applicable on B2B supply of metal scrap.
- 28% GST rate on Roof Mounted Package Units' air conditioning machines for railways under HSN 8415.
- Classification of car seats to be under HSN 9401 and to attract GST at the rate of 18%.
- To increase the GST rate on car seats classifiable under HSN 9401 to 28% prospectively.

Recommendations related to other administrative changes

- To regularise the GST liability for the past period prior to 1 October 2021 on an 'as is where is' basis where the film distributor or sub-distributor acts on a principal basis to acquire and distribute films. To regularise the past, ideally, a notification under section 11A of the CGST Act should be issued.
- Pilot program for B2C e-invoicing to be initiated. This will allow retail customers to verify the reporting of invoices in GST returns. It will be voluntary and will be introduced in selected sectors and states.
- A Group of Ministers (GoM) to be formed to address issues on life and health insurance with a report due by October 2024. They will also examine the negative balance of IGST and retrieval of funds from states and decide the future of compensation cess post March 2026 and the usage of any excess collected by that time.

22 Past demands to be regularised on an 'as is where is' basis.

IV. CBIC issued Circulars pursuant to recommendations made during the 54th Meeting of the GST Council

4 circulars have been issued under the CGST Act on multiple issues to usher in ease of doing business and reduce unwarranted litigation in furtherance of the recommendations made in the 54th GST Council meeting. Clarifications have been summarized below-

Sl. No.	Circular No. and date	Clarification
1	Circular No. 230/24/2024-GST dated 10 September 2024	**POS and export status** Subject to the exceptions provided below, the POS, where comprehensive advertising services are provided to foreign clients, is determined as per section 13(2) of the Integrated Goods and Services Tax Act, 2017 (IGST Act), which states the location of the recipient of services as the POS. Since the recipient is located outside India, the POS is outside India. Consequently, these services can be considered as export of services, subject to fulfilling the conditions in section 2(6) of the IGST Act. The circular discusses the applicability of intermediary provisions and the POS in relation to the above services, and the clarifications issued in this regard are as follows: **Indian advertising company – Intermediary status** Indian advertising companies or agencies which provide comprehensive advertising services, starting from designing the advertisement to its display in the media, to foreign clients are not considered as intermediaries under section 2(13) of the IGST Act for the following reasons: • Indian advertising companies or agencies enter into principal-to-principal agreements with foreign clients for the provision of end-to-end advertising services and with Indian media companies for the implementation of the media plan. • The media companies and foreign clients have not entered into an agreement for the supply of services; Indian advertising companies or agencies provide services on their own account. **Recipient of advertising services – Foreign client (or) representative of foreign client (or) targeted audience?** • The foreign client has been clarified to be the recipient of the advertising services, as the person liable for the payment of consideration is 'the foreign client'. • The above applies even in cases where the representative of the foreign client is interacting with the advertising company on behalf of the foreign client and where the target audience of the advertisement is in India. **Advertising services – Not a performance-based service** The advertising services provided to foreign clients are not covered under performance-based services as per section 13(3) of the IGST Act, as the services neither require the physical presence of the recipient or a person acting on behalf of the agent nor do they involve goods that need to be made physically available to the supplier by the recipient. Thus, the services in the instant case can be considered as export of services, subject to fulfilling the conditions in section 2(6) of the IGST Act.

		Exceptions to the above – Indian advertising company acting as agent If an Indian advertising company merely acts as an agent facilitating the provision of media space between a foreign client and a media owner, then it is considered an intermediary. Typically, the agreement structure in such a scenario is as follows – • The agreement for providing the media space and advertisement broadcast is directly between the media owner and the foreign client. • The media owner directly invoices the foreign client, and payment is remitted to the media owner directly by the foreign client. • The advertising company invoices the foreign client for the facilitation services provided by it. In such cases, the POS is determined as per section 13(8)(b) of the IGST Act, i.e. the location of the supplier, namely, the advertising company in India.
2.	Circular No. 231/27/2024-GST dated 10 September 2024	The circular clarifies that demo vehicles used by authorised dealers for test drives and for demonstrating the features of the vehicle to potential buyers help potential buyers make a decision to purchase a particular type of motor vehicle. Therefore, as demo vehicles promote the sale of similar types of motor vehicles, they can be considered to be used by the dealer for making 'further supply of such motor vehicles'. Accordingly, ITC in respect of demo vehicles is not blocked under clause (a) of section17(5) of the CGST Act, as it is excluded from such blockage in terms of sub-clause (A) of the said clause. Moreover, it has also been clarified that the availability of ITC on demo vehicles is not affected by way of capitalisation of such vehicles in the books of accounts of the authorised dealers, subject to other provisions of the CGST Act. If the vehicle is sold later, the dealer must pay the tax as per section 18(6) of the CGST Act and rule 44(6) of the CGST Rules. **Exceptions to the above** If demo vehicles are used for purposes other than the above (further supply), such as for transportation of staff or management, then ITC would be blocked. If the dealer acts merely as an agent or service provider for the vehicle manufacturer and is not directly involved in the purchase and sale of vehicles, ITC on demo vehicles would not be available.
3.	Circular No. 232/26/2024-GST dated 10 Sptember 2024	**POS and export status** The POS for data hosting services provided by Indian service providers to overseas cloud computing service providers is determined according to the default provision as per section 13(2) of the IGST Act, i.e. the location of the recipient of the service. Since the recipient is located outside India, the POS is outside India. Consequently, these services can be considered as export of services, subject to fulfilling the conditions in section 2(6) of the IGST Act. The circulars discuss the applicability of intermediary provisions and the POS in relation to the above services. The clarifications issued in this regard are as follows:

		Intermediary status Data hosting service providers in India are not considered as intermediaries when providing services to overseas cloud computing service providers for the below reasons: • Data hosting service providers neither deal with nor have any contact with the end users or consumers of cloud computing services. • They operate on a principal-to-principal basis. • They do not facilitate supply between cloud computing service providers and their end users. **POS – Not performance-based** The service provider is an independent entity providing data hosting services through the premises, hardware and personnel. These not only comprise hardware but also other essential infrastructure (such as ventilation, cooling system, software, network, connectivity and security). The overseas cloud computing service providers cannot be considered to own the said infrastructure and make the same physically available to the data hosting service provider for the supply of the said services. Thus, the said services are not provided in relation to goods 'made available by the recipient (cloud computing service provider) to the service provider (data hosting service provider). The service provider independently handles all aspects of the data centre. Interestingly, the circular highlights that the above clarification remains applicable even in cases where some of the hardware required for the data hosting service is provided by the recipient of the service as the services being provided by the data hosting service provider have a much greater scope. The circular further clarifies that data hosting services are not passive supplies directly related to immovable property. They involve comprehensive services related to data hosting, including infrastructure management, power supply, network connectivity and security; thus, they cannot be considered as services provided directly in relation to immovable property.
4.	Circular No. 233/27/2024- GST dated 10 September 2024	This clarification is in line with the recommendations of the 54th GST Council Meeting. If inputs were initially imported without paying IGST and compensation cess but if these taxes are paid later with interest, the benefits of the exemption notifications are deemed as not availed for the purpose of sub-rule (10) of rule 96 of the CGST Rules. In such cases, the refund of IGST on exports is not considered to be in contravention of sub-rule (10) of rule 96 of the CGST Rules. The Bill of Entry (BoE) must be reassessed by jurisdictional Customs authorities to reflect the payment of IGST and compensation cess.

V. Advisory for introduction of IMS on GST Portal

- The GST network has issued an advisory on 3 September 2024 to introduce a new functionality, an IMS, on the GST portal from 1 October 2024 onwards.
- It would enable taxpayers to efficiently address invoice corrections or amendments with their suppliers and allow the recipients to either accept or reject an invoice or to keep it pending in the system through the portal.

VI. Judicial Updates

i. The Allahabad High Court[23] held that the burden to prove eligibility of input tax credit (ITC) lies on the taxpayer. While doing so, the High Court relied on the Supreme Court judgement under the Karnataka Value Added Tax Act, 2003 (KVAT Act), in the case of Ecom Gill Coffee Trading Private Limited. In this case, the Supreme Court had held that to claim ITC, the transactions' genuineness and goods' actual physical movement are sine qua non; the burden of proving the same lies on the purchasing dealer who is claiming such ITC, and it cannot be shifted on the Revenue. The High Court decision provides evidence that the aforesaid principles established under the KVAT Act are also applicable under the GST law.

ii. The Gauhati High Court[24] addressed the validity of Notification No. 56/2023-CT dated 28 December 2023 (notification) issued under section 168A of the CGST Act. The High Court held that the notification extending the time limits prescribed under section 73(10) of the CGST Act for passing orders under section 73(9) of the CGST Act was ultra vires in the absence of a force majeure, which was a pre-requisite under section 168A of the Act and also in the absence of recommendation by the GST Council.

iii. The nine-judge bench of the Supreme Court[25] held that royalty or dead rent payable for obtainng mining lease is not a tax and neither a levy of tax on land. The court held that 'royalty is a consideration paid by a mining lessee to the lessor for enjoyment of mineral rights and to compensate for the loss of value of minerals suffered by the owner of the minerals'. Thus, the Supreme Court overruled the decision of the seven-judge bench in the case of the taxpayer which had held that royalty is in the nature of tax. It further upheld the states power to levy tax on mineral-bearing lands, highlighting the distinction between the nature of royalty and tax obligations.

23 M/s Shiv Trading v. state of U.P. (Writ Tax No.1421/2022)
24 Writ Petition (C) 3585/2024
25 Civil Appeal Nos. 4056-4064 of 1999

VII. Customs and Foreign Trade Policy

i. Extension of RoDTEP scheme for exports made from DTA, AA, EOU, and SEZ Units[26]

The RoDTEP scheme, launched in 2021, initially excluded exports from Advance Authorisation Scheme (AAS), Export-Oriented Units (EOUs), and Special Economic Zones (SEZs). In 2024, these categories were included, with validity extended as follows:

- Domestic Units: Extended to 30 September 2025.
- AAS, EOUs, SEZs: Extended to 31 December 2024.

The new rates, based on the RoDTEP committee's recommendations, are in effect from 10 October 2024, with exports from 1–9 October 2024 receiving benefits at existing rates. Adjustments to export items, rates, and value caps will ensure budgetary integrity.

ii. DGFT simplifies EPCG compliance[27]

To reduce compliance burden and enhance ease of doing business, the DGFT has introduced amendments related to installation certificates, export obligation

26 Notification No. 32/2024-25 dated 30 September 2024
27 Public Notice No. 15/2024-25 dated 25 July 2024

monitoring, and timeline extensions, along with a revision of the composition fee.

iii. Reporting requirement of export obligation fulfilment under the modified EPCG scheme.[28]

Under the Export Promotion Capital Goods (EPCG) scheme, exporters were previously required to report their export obligation status by 30 June each year. Due to frequent delays, new guidelines have been introduced. Now, exporters must report at the end of the first 4-year block and annually thereafter, with certification from a Chartered Accountant, Cost Accountant, or Company Secretary, along with supporting documents.

iv. Changes in import policy for computers, laptops and tablets[29]

In 2023, imports of laptops, computers, and tablets under HSN 8471 were subject to compulsory licensing. After consultations, a transition period was provided, with licenses originally valid until 30 September 2024. This validity has now been extended to 31 December 2024. Starting 1 January 2025, importers must apply for new licenses under revised guidelines, which will be announced soon

v. Draft modalities notified for the pilot Launch of ECEH[30]

As part of the 2023 Foreign Trade Policy (FTP), a framework for E-Commerce Export Hubs (ECEH) was introduced to boost cross-border digital trade. The DGFT has now issued draft guidelines for the pilot launch of ECEHs and is inviting proposals for their establishment. Based on these proposals, further operational details, including software requirements for efficient export clearances, will be finalized.

vi. CBIC aligns specified customs duty exemption with the recommendations of the GST Council[31]

The Central Board of Indirect Taxes and Customs (CBIC) has amended Notification No. 50/2017-Customs to align customs duty rates with the GST Council's recommendations, effective from 15 July 2024. Key changes include:

- A 5% concession on Integrated GST (IGST) for importing parts and components listed in technical manuals (e.g. Aircraft Maintenance Manual, Component Maintenance Manual) for servicing and maintenance.
- Nil IGST on importing equipment for the RAMA programme, exempt from customs duty with prescribed conditions, valid until 31 July 2026.

vii. Exemption from compensation cess on imports by SEZ units or developers for authorised operations[32]

On the recommendation of the GST Council, compensation cess is exempted on imports by special economic zone (SEZ) units or developers engaged in authorised operations.

viii. Amendment notified regarding scope and coverage of laboratory chemicals imported under Heading 9802[33]

The CBIC has clarified that laboratory chemicals imported under Heading 9802 with a concessional BCD rate are limited to those for the importer's own use, subject to packing and specification restrictions. Chemicals intended for trading or resale are excluded from this heading and should be classified under the relevant tariff heading. Additionally, chemicals with packaging exceeding 500g or 500ml will also be classified under the appropriate chapter or heading in the Customs Tariff.

28 Public Notice No. 24/2024-25 dated 20 September 2024
29 Policy Circular No. 07/2024-25 dated 24 September 2024
30 Trade Notice No. 14/2024-25 dated 22 August 2024
31 Notification No. 28/2024-Customs dated 12 July 2024
32 Notification No. 27/2024-Customs dated 12 July 2024
33 Notification No. 62/2024-Customs (N.T.) dated 19 September 2024 & Circular No. 18/2024-Customs dated 23 September 2024

ix. Operationalisation of IGCR for specified end use module for EOUs[34]

Effective 1 September 2024, CBIC has notified the automation of Import of Goods at Concessional Rate of Duty (IGCR) module for EOUs on the Indian Customs Electronic Gateway (ICEGATE) for the generation of Issuer Identification Number (IIN) and registration of bonds for import clearances with duty benefits. The module to be used for clearances from SEZs to EOUs.

However, due to implementation difficulties faced by the EOUs, the operationalisation was deferred till 25 September 2024. However, thereafter, EOUs are to comply with the requirements for their clearances.

x. Digitisation of customs bonded warehouse approval, procedure and compliances[35]

The CBIC has launched a new warehouse module on ICEGATE to streamline the approval processes for establishing bonded warehouses (public, private and special) and related compliance activities. The key features include –

- Online Warehousing License Approval: Applicants can now submit online applications with the required documents, which will be processed by the relevant Customs authority. Upon approval, a warehouse code is generated, and the license will be issued.
- Goods Transfer Procedures: The module supports various transfer scenarios, including transfers within a warehouse and changes in ownership. It automates workflows for seller and buyer details, bond requirements, and Customs officer approvals, while maintaining records of goods under the in-bond bill of entry (BOE).
- Monthly Returns Filing: Monthly returns covering receipt, storage and removal of goods must be submitted online. Scanned copies need to be uploaded for verification. A phase II update will introduce online forms for these returns.
- Miscellaneous Guidelines: The physical submission of security and bonds remains necessary at the import port. Transfer applications are now visible to buyers on their dashboards. Specific bonds and certificates are required for certain transfers.

The detailed guidelines are provided in the ICEGATE, including email addresses for support and guidance of trade and department.

xi. Draft BOE (Post Importation Amendment) Regulations notified – CBIC[36]

CBIC has notified the draft Bill of Entry (BOE) (Post Importation Amendment) Regulations for dealing with the amendment request under section 149 of the Customs Act, 1962 (Customs Act).

The key features of the proposed regulation are described below.

- Written request seeking an amendment should be filed within one year from the date of clearance of the BOE (Home consumption or ex-bond). This is further extendable twice by another six months on the approval of Commissioner of Customs and Chief Commissioner of Customs.
- The application needs to meet the condition of section 149 of the Customs Act, in terms of eligibility and will be subject to the payment of fee as prescribed.
- The application to be considered and closed within 30 days from the date of filing.

VIII. Judicial Updates

i. Appeal against self-assessed Bill of Entry being an assessment order is maintainable[37]

The appellant self-assessed goods (Glivec 400 mg tablets) under the wrong Customs Tariff Item (CTI) 3004 2099, while the correct classification was CTI 30049049,

34 Circular Nos. 13/2024 & 16/2024-Customs dated 4 September and 17 September 2024, respectively
35 Circular No. 19/2024-Customs dated 30 September 2024
36 F. No. 450/78/2024-Cus IV dated 13 August 2024
37 2024 (7) TMI 765 - CESTAT Mumbai

which qualifies for a customs duty exemption under Notification No. 21/2002-Customs. Upon realizing the error, the appellant filed an appeal for re-assessment, but the Commissioner (Appeals) rejected it, stating no adversarial action had been taken by customs.

The appellant appealed to the Mumbai Bench of the CESTAT, arguing that the self-assessed Bill of Entry constitutes an appealable order, referencing the Supreme Court judgement in the case of ITC Limited.[38] The CESTAT agreed with the appellant, ruling that the appeal process under section 128 of the Customs Act is distinct from the amendment provisions under section 149. The matter was remanded for a merits-based review without requiring amendments under section 149.

ii. Royalty payments for technology transfer and use of intellectual property, not conditioned on sale of imported materials, excluded from assessable value of imported goods[39]

The Chennai Bench of the CESTAT addressed whether royalty payments made under a License and Technical Assistance Agreement with a Japanese company should be added to the transaction value of imported goods. The agreement required royalty based on the net sales value of products, excluding costs like imported components and statutory levies.

The dispute centered on whether such royalty payments should be included in the transaction value under Rule 10(1)(c) of the Customs Valuation Rules, 2007. The SVB order initially supported inclusion, citing imported components, but the Commissioner (Appeals) reversed this decision, finding the condition of sale was not met, and distinguished it from the Matsushita judgement (2007).[40]

The department appealed, arguing that the agreement's terms required royalty inclusion. However, the CESTAT, referencing the agreement and past rulings, concluded that these royalty payments were for technology transfer and intellectual property rights, not tied to the sale of imported goods. Therefore, they were excluded from the assessable value of imports for the period 2012-2015.

38 ITC Limited v. Commissioner of Central Excise, Kolkata-IV 2019 (9) TMI 802 - Supreme Court
39 2024 (7) TMI 330 - CESTAT Chennai
40 M/s. Matsushita Television & Audio(I) Limited v. Commissioner of Customs 2007 (4) TMI 5 - Supreme Court

iii. Internationally Renewable Energy Certificates (I-RECs) are not tangible goods if imported electronically, are not mandated to be imported physically and are documents of title under Heading 4907 of the Customs Tariff Act, 1975[41]

The Mumbai Bench of the Customs Authority for Advance Rulings (CAAR) addressed whether International Renewable Energy Certificates (I-RECs), imported electronically, are subject to customs duty. The applicant, a producer of alcoholic beverages, sought clarification on whether I-RECs in electronic form are considered tangible goods, whether physical import is required, and their classification under the Customs Tariff Act, 1975.

The CAAR upheld the applicant's view, ruling that:

- I-RECs, when downloaded electronically, are intangible and not subject to customs duty as "goods" under the Customs Act.
- There is no requirement for these certificates to be imported in physical form.
- I-RECs are classified under Heading 4907 of the Customs Tariff Act as documents of title.

iv. Export of aircraft part used for civil uses is not covered under SCOMET provisions[42]

The Delhi High Court ruled on a case involving a company exporting aircraft engines for civil use. The DGFT Export Cell (SCOMET) had invoked restrictions under Para 10.05 of the FTP 2023, requiring a SCOMET authorization for the export. The Customs House Agent was also denied the Let Export Order due to a DRI alert.

The company argued that the parts being exported were not listed under the FTP's restrictions and thus should not be subject to SCOMET or Catch-All provisions. While authorities cited the dual-use potential of aircraft parts (civil and military), the court directed the DRDO to inspect the goods. The DRDO confirmed that the parts were solely for civil use, and the company provided end-user certificates to support this.

Based on the DRDO report, the court quashed the DGFT's order, allowing the company to proceed with the export without needing a SCOMET license.

v. Parts of ACs imported in SKD form under a single invoice and BOE to be considered as an AC, whereas

41 Ruling No. CAAR/MUM/ARC/100/2024
42 2024 (8) TMI 729 – Delhi High Court

SKD form of import of indoor and outdoor units separately to be considered as part of AC[43]

The Mumbai Bench of the Customs Authority for Advance Rulings (CAAR) addressed two issues raised by an applicant importing air conditioners (ACs) in semi-knocked down (SKD) form:

1. Whether all AC components imported together in SKD form under a single invoice and Bill of Entry (BOE) can be classified as a complete AC.
2. Whether indoor (IDUs) and outdoor units (ODUs) imported separately in SKD form under different invoices and BOEs should be classified as parts.

The applicant explained that the SKD parts would be assembled into complete ACs through simple processes and sold as finished units.

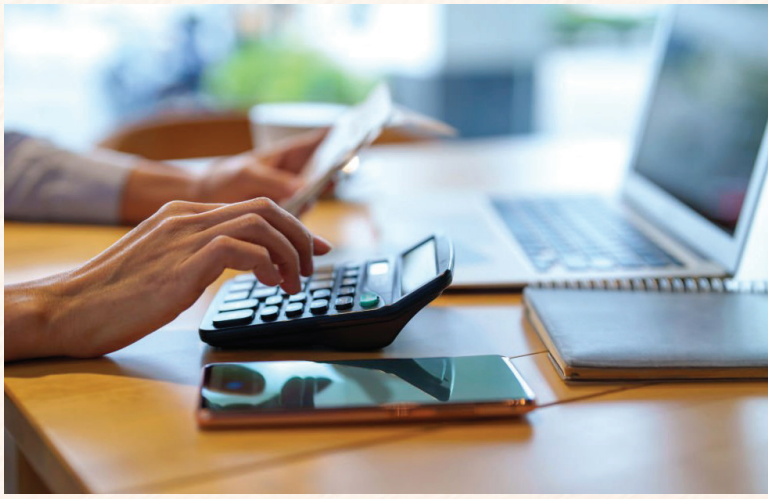
After reviewing the Customs Act, relevant case law (including Mitsubishi Electric India Limited[44] and Procal Electronic India Limited)[45] and the Explanatory Notes to the HSN, the CAAR ruled that:

- All parts imported together in SKD form under a single invoice and BOE, when assembled, should be classified as a complete AC under CTIs 8415 1010, 8415 8310, or 8415 8390.
- Separate imports of IDUs or ODUs in SKD form under different invoices and BOEs should be classified as parts under CTH 8415 9000.

vi. DMF used in vehicle are classifiable under CTI 84835090 and not under CIT 8708[46]

The applicant sought an advance ruling on the classification of a dual mass flywheel (DMF), used in vehicle driveline systems. The DMF, which helps smooth gear shifts, reduces vibrations, and enhances driver comfort, was primarily imported through Chennai Sea Port.

The Mumbai Bench of the Customs Authority for Advance Rulings (CAAR) reviewed the tariff classifications under HSN 8708 (motor vehicle parts) and HSN 8483 (flywheels and pulleys). It concluded:



- DMFs cannot be classified under HSN 8708, as they do not meet the criteria for "Parts and Accessories" of motor vehicles.
- The DMF is excluded from classification under HSN 8708 based on Section Notes and Explanatory Notes.
- As an integral part of the vehicle's engine, the DMF is properly classified under CTI 84835090 ('Other' flywheels and pulleys).

vii. Principle of strict interpretation of exemption notification to be applied while availing exemption benefits[47]

The issue was whether an exemption for imports of specified parts used in manufacturing Base Trans-receiver Stations (BTS) could extend to parts like fans, temperature control modules, or CS lock tongues used in telecom racks, which are then used to make BTS units.

The importer argued that racks are integral to BTS units, citing expert opinions and past rulings. However, the Revenue countered with judicial precedents emphasizing strict interpretation of exemption notifications. The Bangalore bench of the CESTAT agreed with the Revenue, ruling that exemptions apply only to parts directly used in manufacturing BTS equipment, not intermediary goods like racks. The bench also rejected the extended period invocation, as there was no suppression of facts or mis-declaration by the importer.

43 Ruling No. CAAR/MUM/ARC/130/2024
44 Mitsubishi Electric India Limited [2023 (383) E.L.T. 224 (A.A.R. – Cus, Delhi)]
45 Procal Electronic India Limited v. Commissioner (2005) [2005 (185) E.L.T. A58 (SC)]
46 Ruling No. CAAR/MUM/ARC/131/2024
47 2024-VIL-1027-CESTAT-BLR-CU

Corporate Office
ASSOCHAM
4th Floor, YMCA Cultual Center and Library Bulding,
01, Jai Sinch Road, New Delhi-110001
Phone: 46550555(Hunting Line)

Follow us on Social media

- **ASSOCHAM (The Associated Chambers Of Commerce And Industry Of India)**
- **ASSOCHAM4India**
- **ASSOCHAM**
- **ASSOCHAM4Ind**
- **ASSOCHAM India**