

Monthly Tax Updates



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LEGALYST ADVOCATES



GST

Notifications

- **Notification No. 19/2024 - Dated: 30-9-2024 – CGST:** Central Government, on the recommendations of the Goods and Services Tax Council, will terminate the acceptance of requests by the Competition Commission of India (CCI) or Appellate Tribunal regarding Input Tax Credit and Pricing Impact effective April 1, 2025. (Notification under Section 171 of CGST Act to provide for the sunset date).
- **Notification No. 18/2024 - Dated: 30-9-2024 – CGST:** Central Government, on the recommendations of the Goods and Services Tax Council, empowers the Principal Bench of the Appellate Tribunal to assess Impact of Input Tax Credits and Tax Rate Reductions on Pricing. (Notify Principal Bench of GST Appellate Tribunal to hear cases of anti-profiteering).
- **Notification No. 17/2024 - Dated: 27-9-2024 – CGST:** Seeks to bring in force provision of various sections of Finance (No. 2) Act, 2024
 - provisions of sections 118, 142, 148 and 150 of the Finance (No. 2) Act, 2024 shall come into force **27-9-2024**.
 - provisions of sections 114 to 117, 119 to 141, 143 to 147, 149 and 151 to 157 shall come into force w.e.f. 01-11-2024.

IMPORTANT DECISIONS UNDER GST

- **Withdrawal of Negative Blocking of ITC in Electronic Credit Ledger:** The court ruled that the blocking of Input Tax Credit (ITC) in the Electronic Credit Ledger under Rule 86A of the CGST Rules, 2017, is permitted only if there is sufficient balance in the respective tax head, and cross-utilization between CGST and SGST is not allowed. Since no sufficient balance existed, the negative blocking of Rs. 2,44,05,567/- was deemed improper. The respondents were directed to withdraw the block, and the remaining balance in the ledger cannot be utilized by the petitioner until a show cause notice is issued under Sections 73 or 74 of the GST Act.

PMW Metal and Alloys Pvt. Ltd. Vs. UOI, Gujarat High Court, Order dated 20.9.2024 in R/Special Civil Application No. 5541 Of 2024.

- **GST Classification and Rate on Fly Ash Blocks:** The court clarified that Fly Ash Blocks are subject to a 5% GST rate under Entry No. 225B of Schedule-I, as per Notification No. 04/2018-Central Tax (Rate) dated 31.12.2018. The condition of 90% or more fly ash content applies only to Fly Ash Aggregate and not to Fly Ash Bricks or Blocks, as confirmed by Circular No. 179/11/2022-GST dated 03.08.2022. Therefore, the Advance Ruling Authority and Appellate Authority's orders were set aside, and the petition was allowed.

Shree Mahalaxmi Cement Products Vs. State of Gujarat, Gujarat High Court, Order dated 25.9.2024 in R/Special Civil Application No. 7987 Of 2021.

- **Rejection of Refund Claim and Levy of IGST on Ocean Freight:** The court ruled that IGST is leviable on the value of imported goods, including freight, cost, and insurance, as per section 5(1) of the IGST Act and the Customs Act. It clarified that this applies equally to imports made on CIF or FOB basis. Referring to the Supreme Court's decision in Mohit Minerals and the Bombay High Court's ruling in Agarwal Coal Corporation, the court held that once the notification regarding the levy of IGST on ocean freight is struck down, authorities cannot insist on its levy for FOB-based transactions.

Bla Coke Pvt. Ltd. Vs. UOI, Gujarat High Court, Order dated 19.9.2024 in R/Special Civil Application No. 19481 Of 2023.

- **Valuation for GST - Inclusion of Free Fuel in Freight Consideration:** The court held that free fuel provided by the service recipient to the transporter (GTA service provider) under contractual terms cannot be included in the value of the freight for GST purposes. Citing Supreme Court rulings in Bhayana Builders and Intercontinental Consultants, the court reaffirmed that free supplies, such as diesel, are not part of the "gross amount charged" by the service provider, and thus, should not be considered for GST valuation. The value of free diesel supplied by the service recipient cannot be added to the taxable value of the GTA service under Sections 15(1) and 15(2)(b) of the CGST Act, 2017. The ruling by the Appellate Authority was set aside, and the petition was allowed.

New Jai Hind Transport Service Versus Union Of India And Others, Uttarakhand High Court, Order dated 27.9.2024 in Writ Petition (M/S) No. 646 Of 2023.

Summary of Hon'ble Supreme Court decision dated 03.10.2024 in M/s Safari Retreats Private Ltd. & Ors., Civil Appeal No. 2948 of 2023

Key Issues:

1. Constitutional validity of clauses (c) and (d) of Section 17(5) of the CGST Act, 2017: Examining whether these provisions excluding Input Tax Credit (ITC) for certain works contracts and immovable properties violate constitutional principles.
2. Interpretation of the expression "plant or machinery" under Section 17(5)(d): Whether the term "plant or machinery" used in this section should have the same meaning as "plant and machinery" as defined in the explanation to Section 17.

Hon'ble Supreme Court's Findings:

- **Plain and natural meaning of clause (c) of Section 17(5):**
 - The court held that the expression "plant and machinery" must be interpreted as per its plain meaning, as defined in the explanation to Section 17.
 - ITC is a creation of the legislature, which has the authority to exclude specific categories of goods or services from ITC.
 - Excluding works contracts under clause (c) does not defeat the objective of the CGST Act.
- **Difference between "plant and machinery" and "plant or machinery":**
 - The court found that the legislature deliberately used "plant or machinery" in Section 17(5)(d), indicating that this phrase should not be equated with "plant and machinery" as defined elsewhere.
 - The distinction between the two terms was intentional and giving them the same meaning would violate the legislative intent.
- **Definition of "plant or machinery":**
 - The court emphasized that "plant or machinery" refers to goods or services received for constructing immovable property on one's own account.
 - Interpreting this phrase the same way as "plant and machinery" would distort the meaning of the statute.
- **Meaning of "plant or machinery" for businesses:**
 - If the building (e.g., mall, warehouse) is integral to the business (such as leasing, renting, or other property-related services under Schedule II of the CGST Act), it could be classified as a "plant."
 - Determining whether a structure qualifies as "plant or machinery" depends on the specific facts of the case and the business role of the building.

Conclusion:

- If the building in which the premises are situated qualifies for the definition of plant, ITC can be allowed on goods and services used in setting up the immovable property, which is a plant.
- The court upheld the constitutionality of clauses (c) and (d) of Section 17(5) and provided an interpretation of "plant or machinery" that aligns with the CGST Act.
- The writ petitions were dismissed, but the interpretation of Section 17(5)(d) was clarified to reflect the distinction between "plant or machinery" and "plant and machinery."

GST- Cont.

Circulars

- **Circular No. 233/27/2024-GST - 10-9-2024:** Clarification regarding regularization of refund of IGST availed in contravention of rule 96(10) of CGST Rules, 2017, in cases where the exporters had imported certain inputs without payment of integrated taxes and compensation cess.
- **Circular No. 232/26/2024-GST - 10-9-2024:** Clarification on place of supply of data hosting services provided by service providers located in India to cloud computing service providers located outside India.
- **Circular No. 231/25/2024-GST - 10-9-2024:** Clarification on availability of input tax credit in respect of demo vehicles.
 - Availability of input tax credit on demo vehicles, which are motor vehicles for transportation of passengers having approved seating capacity of not more than 13 persons (including the driver), in terms of clause(a) of section 17(5) of CGST Act, 2017.
 - Availability of input tax credit on demo vehicles in cases where such vehicles are capitalized in the books of account by the authorized dealers.
- **Circular No. 230/24/2024-GST - 10-9-2024:** Clarification in respect of advertising services provided to foreign clients.

IMPORTANT AARs UNDER GST

- **Classification of Goods: Tobacco Pre-Mixed with Lime:** The product "tobacco pre-mixed with lime" is classified as manufactured chewing tobacco under HSN 24039910. As per relevant court and tribunal rulings, the process of mixing lime and other ingredients with raw tobacco results in a new, marketable product. The applicable GST rate is 28% with an additional Compensation Cess of 160%, as per Notification No. 1/2017.

In Re: M/S. Dindayal Colloids Private Limited, Authority for Advance Ruling, Rajasthan, AAR No.- RAJ/AAR/2023-24/09, dated June 26, 2024.

- **Levy of GST on Corporate Guarantees Under Reverse Charge Mechanism:** When a corporate guarantee is issued by a foreign group company for an Indian subsidiary without consideration, it qualifies as an import of service. Under the reverse charge mechanism (RCM), GST liability is payable by the Indian recipient at the time of supply, which is the date of entry in the books. For guarantees issued post-26.10.2023, GST is calculated at 1% of the deemed total loan value, payable one-time at the contract's execution as per Rule 28(2) of CGST Rules, 2017.

In Re: M/S. Green Infra Wind Farm Assets Limited, Authority for Advance Ruling, Rajasthan, AAR No.- RAJ/AAR/2024-25/10, dated June 28, 2024.

- **GST on Mining Lease Payments and Royalty under Reverse Charge Mechanism:** The applicant is liable to pay GST on mining lease payments, including royalty, to the Government of Rajasthan under the Reverse Charge Mechanism (RCM), as per Section 9(3) of the CGST Act, 2017. The applicable GST rate is 18% (9% CGST and 9% SGST). GST is not applicable on upfront payments made before the issuance of the Letter of Intent (LOI) and before entering the lease agreement, as they are not considered advance payments for services. The applicant can avail Input Tax Credit (ITC) on GST paid under RCM, provided conditions under Section 16 of the CGST Act, 2017, are met.

In Re: M/S. Deccan Cements Limited, Authority for Advance Ruling, Rajasthan, AAR No.- RAJ/AAR/2024-25/08, dated June 26, 2024.

- **GST on Charges Paid to Railways on Behalf of Operator:** The applicant is liable to pay GST on charges paid to Indian Railways on behalf of the operator and recovered from the operator, as these payments do not fall under the scope of pure agent services. As per the agreement, the applicant, not the operator, is the recipient of services from Indian Railways. Since the conditions of a pure agent under Rule 33 of CGST Rules, 2017, are not met, the applicant must pay GST on the taxable supply received from Indian Railways. The applicable GST rate is based on the services provided by Railways.

In Re: M/S Rajasthan Tourism Development Corporation Limited., Authority for Advance Ruling, Rajasthan, AAR No.- RAJ/AAR/2024-25/11, dated June 28, 2024.

CUSTOMS

Customs Notifications

- **Notification No. 45/2024 - Dated: 30-9-2024 - Cus:** Seeks to amend the various Customs notifications in order to align the HS Codes of the said notifications with the Finance Act, 2024, w.e.f. 01.10.2024
- **Notification No. 17/2024 - Dated: 27-9-2024 - ADD:** Seeks to impose definitive anti dumping duty on the imports of "Isobutylene-Isoprene Rubber ('IIR') originating in, or exported from People's Republic of China, Russia, Saudi Arabia, Singapore and United States of America and imported into India for a period of five years.
- **Notification No. 16/2024 - Dated: 27-9-2024 - ADD:** Seeks to impose anti-dumping duty on imports of "Anodized Aluminium Frames for Solar Panels/Modules" originating in or exported from China PR.
- **No. 43/0204 - Dated: 13-9-2024 - Cus:** Seeks to extend the specified condition of exemption to imports of Yellow Peas (HS 0713 10 10) to bill of lading issued on or before 31.12.2024. to impose export duty of 20% on exports of Onions (HS 0703 10); to change rates of BCD and AIDC on crude and refined edible oils.
- **Notification No. 60/2024 - Dated: 12-9-2024 - Cus (NT):** Courier Imports and Exports (Electronic Declaration and Processing) Amendment Regulations, 2024.

IMPORTANT DECISIONS UNDER CUSTOMS

- **Classification of Imported Goods and Levy of Anti-Dumping Duty on Aluminum PS Printing Plates:** The issue concerns the correct classification and imposition of anti-dumping duty on imported Aluminum PS Printing Plates. The department argued that the goods should be classified under CTH 3701, subject to anti-dumping duty per Notification No. 25/2014, while the respondent-importer claimed classification under CTH 84425020, exempting them from such duty. The court held that the imported goods are pre-sensitized aluminum plates and, under Notification No. 25/2014, are subject to an anti-dumping duty of 0.22 USD per kg. Additionally, the court rejected the classification under CTH 8442, stating that the plates are more appropriately classified under CTH 3701 as photographic printing plates. The original penalty and demand for anti-dumping duty were reinstated, and the order of the Commissioner (Appeals) was set aside.

Principal Commissioner Of Customs (Icd Tkd), New Delhi Vs. Sun N Sand Exim (I) Pvt. Ltd., CESTAT New Delhi, Order dated 30.9.2024 in Customs Stay Application No. 50290 of 2022 in Customs Appeal No. 51231 of 2022 [DB].

- **Classification of Imported DLP Data Projectors - Eligibility for Exemption Under Notification No. 24/2005-Cus.:** The issue was whether imported DLP data projectors should be classified under CTH 8528 6100, eligible for Basic Customs Duty (BCD) exemption under Notification No. 24/2005-Cus., or under CTH 8528 6900 as "other projectors," thereby denying the exemption. The Tribunal relied on previous rulings, including M/s. Acer India Pvt. Ltd. vs. Commissioner of Customs, Chennai, which held that such data projectors are correctly classified under CTH 8528 6100, thus qualifying for exemption. The additional features, such as Video Port or HDMI, did not alter the classification. Therefore, the appeals filed by the Revenue were dismissed, and the exemption was upheld.

Commissioner of Customs Vs. M/S. Antrax Technologies Pvt. Ltd., M/S. Acer India Pvt. Ltd., CESTAT Bangalore, Order dated 17.9.2024 in Customs Miscellaneous Application No. 20335 of 2024 in Customs Appeal No. 20068 of 2018.

- **Valuation of Imports from Related Suppliers - Inclusion of Royalty in Transaction Value:** The issue was whether royalty should be added to the transaction value of imported goods under Rule 10(1)(c) of the Customs Valuation Rules, 2007. The Supreme Court, in CC vs. M/s Ferodo India Pvt Ltd., held that royalty is includable in the assessable value if it is a pre-condition for the supply of goods. However, in this case, it was proven that the pricing between the related parties was at arm's length, and the relationship did not influence the price. The department had accepted this in past transactions. Therefore, the Commissioner (Appeals) correctly ruled that royalty should not be added, and the appeal by the Revenue was dismissed.

Commissioner Of Customs, A & ACC Commissionerate Vs. Autoliv India Pvt. Ltd., CESTAT Bangalore, Order dated 20.9.2024 in Customs Appeal No. 20974 of 2018.



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