



# INDIA TRADE AND TAX SCAN

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contd.

## WELCOME TO OUR TRADE AND TAX NEWSLETTER

We are pleased to present the very first edition of our Trade and Taxation Newsletter. Each month, we will share important updates, key developments, and practical insights on trade and taxation, all tailored to help you stay ahead in an ever-changing regulatory environment.

We hope you find this newsletter useful and informative, and we look forward to your continued engagement.

### *Less is More – Lessons in Advocacy*



#### ***The Hon'ble Supreme Court in Safari Retreats observed:***

*The submissions made by the learned counsel for the assesseees and the intervenors are repetitive. There are a large number of decisions relied upon, whether relevant or irrelevant. Brevity is the hallmark of good advocacy. The Judges and lawyers are humans.*

TAX TRIVIA



### Safari Retreat Judgement

Reena Asthana Khair (Senior Partner)  
interviewed by Shiv Sapra (Partner)



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## CUSTOMS

### Action against Customs Brokers only under Regulations

The Board has clarified that Customs Brokers should not be routinely implicated in notices or offenses arising under the Customs Act, 1962, particularly in matters related to demands for customs duty, interest, or penalties. The Instructions clarify that any action for lapses by Customs Brokers should be initiated under the Customs Brokers Licensing Regulations, 2018. Furthermore, a Customs Broker should not be made a party to matters involving the interpretation of statutes under the Customs Act unless 'abetment' by the broker is established. [Refer Instruction No. 20/2024 dated September 3, 2024].

### Extension of RoDTEP Scheme

Validity of scheme for DTA units extended till September 30, 2025, and for SEZ, EOUs, Advance Authorisation holders extended till December 31, 2024. Revisions and deletions of export items, updated rates, per unit value caps, and other measures have been made to ensure outgo remains within the allocated budget. [Refer DGFT Notification No. 32/2024-25 dated September 30, 2024]

### SCOMET list revised

India's export control list (SCOMET) has been updated, to incorporate the recent changes in the control lists of the multilateral export control regimes, and certain policy amendments in our national system, on the basis of inputs from relevant Government organizations and stakeholders. Amendments made in Appendix 3 (SCOMET items) to Schedule - 2 of ITC (HS) Classification of Export and Import Items, 2018. [Refer Notification No. 25/2024 dated September 2, 2024].

### Global Authorization for Intra-Company Transfer (GAICT) expanded

DGFT amended Appendix 10M of the Handbook of Procedures to include more items such as types of software and technology under the purview of Global Authorization for Intra-Company



Transfer (GAICT) policy for export of items to facilitate intra company transfer of SCOMET items to specified countries. [Refer Public Notice No. 26/2024-25 dated October 7, 2024]

### **Benefit of export promotion schemes extended to courier**

Customs regulations for Courier imports / exports have been amended to allow processing through the EDI system (ICES) thereby extending benefit of Duty Drawback, RoDTEP, RoSCTL and other export promotion schemes. [Refer Customs Notification No. 60/2024 - Cus (NT) dated September 12, 2024]

### **Access to Common Portal for EOUs**

Procedural requirements under IGCR can be complied through ICEGATE Portal. EOUs can now obtain an IGCR Identification Number (IIN) via the ICEGATE portal and register their IGCR bond to file a bill of entry. This facility had been under development for over a year. [Refer Notification No. 07/2022 dated February 1, 2022, read with Circular No. 11/2024 dated August 25, 2024, and Circular 16/2024 dated September 17, 2024]

### **Warehouse Module introduced**

To facilitate ease of doing business, CBIC has introduced the Warehouse Module on ICEGATE for online filing of application for obtaining a warehouse licence, online submission and processing requests for transfer of warehoused goods. [Refer Customs Circular No. 19/2024 dated September 30, 2024]

## **GOODS AND SERVICES TAX**

### **Delayed ITC claims for 2017 to 2021 regularised**

The delayed claims of ITC pertaining to FY 2017-18 to 2020-21, have been regularised for returns filed on or before November 30, 2021. Section 16(5) of the CGST Act has been retrospectively amended, with effect from July 1, 2017, to address the challenges faced by taxpayers during the initial implementation of GST. The procedure has also been notified. [Refer Notification 17/2024-CT dated September 27, 2024, read with Notification No. 22 & 23/2024-CT dated October 8, 2024]

### **Amnesty Scheme announced for July 2017 to March 2020**

Section 128A has been inserted in CGST Act to provide for waiver of full interest and penalty under the Act if taxpayer pays the full amount of tax demanded for this period under Section 73. GST Council has recommended March 31, 2025, as the cut-off date for taxpayers to make full payment and avail benefit of Section 128A. [Refer Notification 17/2024-CT dated September 27, 2024]

### **Common time limit introduced for Notices under New Section 74A from November 01, 2024**

A common limitation of 42 months [three and half years] from due date of furnishing annual returns or claiming erroneous refund, has been provided for issuance of demand notices. This change removes the distinction between cases involving fraud or misstatement and those with full disclosures.



This places an unfair burden on honest taxpayers, leading to increased interest costs and the inability to recover tax differential from customers. [Refer Notification 17/2024-CT dated September 27, 2024]

### **Taxpayer eligible for ITC on reinstatement of registration**

Section 16(6) of CGST Act, introduced through the Finance Act, 2024, has been made retrospectively applicable to allow a taxpayer whose registration was cancelled but later reinstated by an order to claim ITC on eligible invoices or debit notes as of the cancellation date. This credit can be claimed either by filing the return by November 30 of the following financial year or within 30 days of the order of revocation, whichever is later. [Refer Notification 17/2024-CT dated September 27, 2024]

### **Anti-profiteering cases to be taken up by GSTAT from October 1, 2024**

Appellate Tribunals now empowered to take up anti-profiteering cases. [Refer Notification 18/2024-CT dated September 30, 2024]

### **Place of Supply clarified for Data Hosting Services**

A clarification has been issued that the place of supply of data hosting services provided by Indian data hosting service providers to overseas cloud computing service recipients, will be the location of the service recipient as per Section 13(2) of the IGST Act. This clarification has come basis a view taken by some field formations that place of supply has to be determined on basis of following:

- Data hosting service providers qualify as 'intermediary';
- Data hosting services are provided in relation to goods made available by service recipient to service provider;
- Data hosting services are provided in relation to immovable property.

This is a beneficial move for the industry as it enables exporters to claim refund of tax. [Circular No. 232/26/2024-GST dated September 10, 2024]

### **Advertisement services provided to foreign clients are exports**

For end-to-end advertisement services provided by an advertisement company/ agency to a foreign client, it has been clarified that the place of supply is outside India, and such services will qualify as exports.

The exception to this would be where the advertisement agency acts merely as an agent for the foreign company, in engaging with the media owner to provide media space to client and does not provide advertisement services on principal-to-principal basis. In such cases, the advertisement agency will be considered as an 'intermediary' and place of supply of such services will be in India.

This clarification aims to put to rest various disputes on taxability of advertisement services provided to foreign clients and is beneficial for the industry. [Refer Circular No. 230/24/2024-GST dated September 10, 2024]



### **Export refund allowed for payments on re-assessment of Bill of Entry**

The facility of refund has been extended to cases of re-assessment. If a registered person initially imported inputs without paying integrated tax availing benefit under the Notifications but has paid the same at a later date along with interest and have had their Bill of Entry reassessed through jurisdictional Customs authorities, then the IGST paid on exports will be eligible for refund. Rules 96(10), 89(4A), and 89(4B) of CGST Rules proposed to be amended accordingly. [Refer Circular No. 233/27/2024-GST dated September 10, 2024]

### **Invoice Management System (IMS) introduced effective October 01, 2024, to streamline invoicing process under GST**

IMS is a facility in GST system, where the invoices filed by the supplier in their returns for outward supplies, can be accepted, rejected or kept pending by recipients in order to correctly avail ITC. All the original invoices and their amendments by suppliers through their GSTR will be available to the recipient for taking actions in IMS. The facility will be available to the taxpayers for taking actions from 14th October 2024 onwards.

Taxpayers registered as normal taxpayers (including SEZ unit/Developer) and casual taxpayers will be able to access IMS functionality. GSTR-2B will continue to be generated on 14th of every month with the same logic as current GSTR-2B which will now be considered as draft GSTR 2B. This draft will consist of all the accepted/deemed accepted records and rejected records. Here, rejected records are for view only and will not flow in GSTR-3B.

## **SPOTLIGHT ON JUDICIAL PRONOUNCEMENTS**

### **Review petitions in Canon India case heard**

On September 19, 2024, a three-judge bench comprising CJI DY Chandrachud, Justice J.B. Pardiwala, and Justice Manoj Misra heard extensive arguments and reserved its verdict on a review petition filed by the Customs Department, challenging the 2021 Canon India ruling. In that decision, the Court held that only the “proper officer” who assessed the bills of entry could re-open or recover duties under Section 28(4) of the Customs Act, 1962. The Court had set aside the Show Cause Notice issued by DRI officers, ruling that they lacked jurisdiction for re-assessment.

### **Supreme Court Dismisses Departmental appeals on monetary limits**

In a significant move following the CBIC Circular dated August 6, 2024, which raised the monetary threshold for departmental appeals in the Supreme Court from ₹5 crore to ₹2 crore, the Supreme Court disposed off over 600 tax appeals in a single day.

### **Landmark decision in Safari Retreats Pronounced**

In this case, the Petitioner was involved in constructing shopping malls to lease them to multiple tenants. The Petitioner made bulk purchases of materials like cement, steel, sand, and aluminium, and also availed services such as consultancy, architectural, and legal services, all of which were taxable.



Consequently, the Petitioner accumulated input tax credit (ITC) on these purchases and applied to avail the credit. However, under Section 17(5)(d) of the CGST Act, the Revenue authorities argued that ITC was not available for goods and services used in the construction of immovable property, even if used for business purposes, and denied the credit.

In 2019, the Orissa High Court ruled in favour of the Petitioner, stating that ITC on goods and services used for constructing the mall could not be denied since the mall was built to generate GST revenue through rental income, not for the petitioner's personal use. The court noted that a narrow interpretation of Section 17(5)(d) would defeat the GST Act's purpose by allowing tax cascading. This decision was challenged by the Revenue authorities and brought before the Supreme Court, which delivered its verdict on October 3, 2024.

The key takeaways of the judgement are:

- **Functionality Test Introduction:** Since "plant" is not explicitly defined in the CGST Act, the Supreme Court applied the functionality test to assess whether a building qualifies as a "plant." The test determines the building's role in business operations, relying on previous judgments, such as CIT vs. Taj Mahal Hotel and Solid and Correct Engineering Works.
- **Classification of Buildings as Plants:** The court held that if a building serves a core business function, such as a mall or warehouse used for renting, it may be classified as a "plant." This classification makes the building eligible for ITC under Section 17(5)(d).

- **Role in Business Operations:** The test evaluates whether the building is integral to carrying out the core activity of the business, like renting or leasing. If the building functions in a manner similar to "plant or machinery" essential for business, it qualifies for ITC. Each case must be examined based on its facts.

- **Distinct Legislative Choice:** The court clarified that the phrase "plant or machinery" in Section 17(5)(d) is intentional and differs from "plant and machinery." Equating the two would undermine the legislative intent.

- **Case-by-Case Analysis:** The court emphasized that the classification of a building as a "plant" depends on a case-by-case analysis, considering the business's specific needs and the building's role in generating taxable output.

The ruling brings hope to the real estate and rental industries by offering a more flexible interpretation of Section 17(5)(d). It has the potential to reduce tax burdens by allowing ITC on buildings if they meet the functionality test. The case has been remanded to the Orissa High Court to determine whether the Safari shopping mall qualifies as a "plant" under the functionality test.

### Single notice for multiple tax periods quashed

In the case of Veremax Technologie Services Ltd vs. The Assistant Commissioner of Central Tax, the petitioner challenged a single Show Cause Notice (SCN) issued under Section 73 of the CGST Act, covering multiple tax periods from 2017-18 to 2020-21.



The petitioner argued before the Karnataka High Court that the adjudicating authority could not issue a consolidated SCN for different tax periods.

The Karnataka High Court ruled that Section 73(10) of the CGST Act specifies a time limit based on the due date for filing the annual return for each financial year. Legal actions must be completed within the respective year, adhering to the provisions of the law. In this context, the Court relied on the Supreme Court's decision in *State of Jammu and Kashmir vs. Caltex (India) Ltd.*, which held that assessments for different years must be treated independently.

Consequently, the Karnataka High Court held that the issuance of a single, consolidated notice for multiple years violated both the CGST Act and established legal precedents, leading the Court to quash the notice.

This judgment may offer temporary relief to taxpayers, as the Department could re-issue the notices. However, some of these notices may become time barred. Given the wide implications of this judgement, the possibility that the Department could challenge it further cannot be ruled out.

#### **Notification extending time limit for passing orders under Section 73 quashed**

The Hon'ble Guwahati High Court in the case of *Shree Shyam Steel Vs. Union of India* has quashed the Notification No. 56/2023-CE which extended the time limit for passing of order under Section 73(9) of CGST Act for the FY 2018-19 up to April 30, 2024, and for FY 2019-20 up to August 31, 2024.

The Notification was issued in furtherance of the original Notification No. 9/2023-CT dated March 31, 2023, which extended the deadline for passing orders under Section 73 for three financial years: December 31, 2023, for FY 2017-18, March 31, 2024, for FY 2018-19, and June 30, 2024, for FY 2019-20. However, since the time limit for issuing notices for FY 2018-19 was expiring on December 31, 2023, and no GST Council meeting was scheduled, the government issued the impugned Notification on December 28, 2023, extending the timeline further without any council recommendation to the effect.

The Court observed that even though recommendations of the council are not binding, existence of a recommendation is sine qua non for exercising power under Section 168A. Furthermore, shortage of manpower due to COVID, which is the reason cited in the original notification for extending timeline, cannot be termed as a reason of force majeure, and thus the question of exercising power under Section 168A did not arise.



## INTERNATIONAL TRADE BRIEF

### Retaliatory Customs Duties on EU

India has proposed retaliatory customs duties on certain EU imports after both sides failed to resolve disputes over the EU's extended safeguard measures on 26 steel products, which now last until 2026. India informed the WTO that these safeguard duties caused a cumulative trade loss of USD 4.412 billion from 2018 to 2023, prompting India to suspend concessions and increase tariffs on selected EU-origin products. The retaliatory duties aim to recover USD 1.103 billion in lost revenue.

### Measures for Retroactive Collection of Duties by EU

The European Union has revised its approach to Anti-dumping and Anti-subsidy investigations by requiring the registration of all imports of products under investigation at the start of the process. This registration aims to provide the Commission with detailed and accurate data on import volumes, allowing for the retroactive collection of anti-dumping and countervailing duties if imposed.

### Policy on Pet Coke relaxed

India has revised the Import Policy conditions for Raw Pet Coke and Calcined Pet Coke under Chapter 27 of Schedule-I of the ITC (HS) 2022. The amendment now allows the import of these materials for industries beyond the aluminium sector.

### Duties imposed or extended on import of following products:

| Type of Duty           | Product  | Country/s   | Notification No. & Date  |
|------------------------|--|---|--|
| Anti-Dumping           | Anodized Aluminium Frames for Solar Panels/Modules | China PR  | Notification 16/2024-<br>Customs (ADD) dated<br>September 27, 2024     |
| Anti-Dumping           | Isobutylene-Isoprene Rubber('IIR')                 | China PR,<br>Russia, Saudi<br>Arabia,<br>Singapore and<br>USA | Notification 17/2024-<br>Customs (ADD) dated<br>September 27, 2024     |
| Countervailing<br>Duty | Welded Stainless-<br>Steel Pipes and<br>Tubes      | China PR and<br>Vietnam                                       | Notification 04/2024-<br>Customs (CVD) dated<br>September 10, 2024     |
| Countervailing<br>Duty | Atrazine Technical                                 | China PR  | Notification No. 05/2024-<br>Customs (CVD) dated<br>September 11, 2024 |





**Initiation of Anti-dumping investigations for following products:**

| S. No. | Product  | Subject Country  |
|--------|--|--|
| 1.     | Certain Antioxidants   | China PR and Singapore   |
| 2.     | Acrylonitrile Butadiene Rubber (NBR)                                   | China PR, European Union, Korea RP and Russia                              |
| 3.     | 1,1,1,2-Tetrafluoroethane or R-134a                                    | China PR   |
| 4.     | Cold Rolled Non-Oriented Electrical Steel                              | China PR   |
| 5.     | Resorcinol   | China PR and Japan   |
| 6.     | Black Toner Powder Cartridge   | China PR   |
| 7.     | Polytetrafluoroethylene (PTFE)   | China PR and Russia  |
| 8.     | Copolymer Polyol of hydroxyl value $\geq$ 23.5                         | China PR   |
| 9.     | Mono Ethylene Glycol   | State of Kuwait, the Kingdom of Saudi Arabia and the Republic of Singapore |
| 10.    | Solar Cells whether or not assembled in Modules or made up into Panels | China PR   |
| 11.    | Certain Cranes   | China PR   |
| 12.    | Siloxane Polyoxyalkylene Copolymers having viscosity up to 2500cst     | China PR   |
| 13.    | Para Nitrotoluene (PNT)  | European Union   |
| 14.    | Calcium Carbonate Filler Masterbatch                                   | Vietnam  |
| 15.    | Virgin Multi-layer Paperboard  | Chile and China PR   |

**Initiation of Sunset Review Investigations of Anti-dumping duties**

| S. No. | Product                      | Subject Country |
|--------|------------------------------|-----------------|
| 1.     | Sodium Citrate               | China PR        |
| 2.     | Black Toner - in powder form | China PR        |
| 3.     | Aniline                      | China PR        |

**Our Team**



**Shahid Khan**  
Former member CBDT,  
Senior Partner & Head - Direct Tax  
shahid.khan@kochhar.com



**Reena Asthana Khair**  
Senior Partner - Head Indirect Tax &  
International Trade  
reena.khair@kochhar.com



**Shampa Bhattacharya**  
Partner - Indirect Tax  
shampa.bhattacharya@kochhar.com