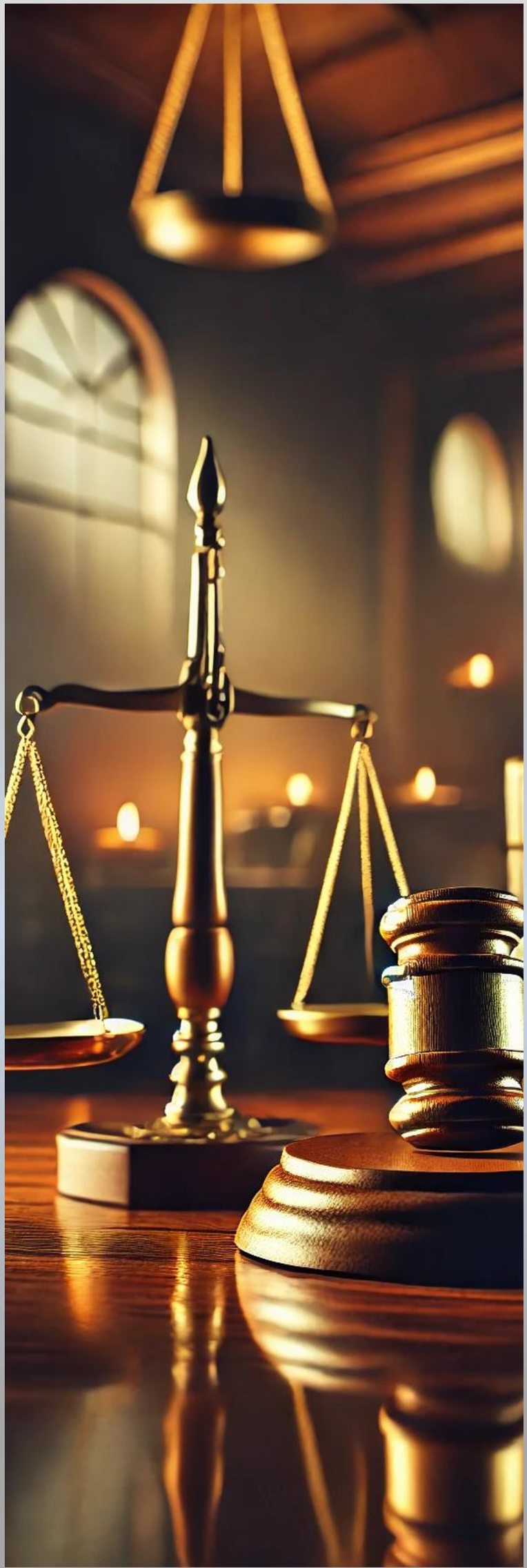
S&S Tax Snippets

25th Ed.



Regulatory Updates

GST Updates:

Tobacco and Tobacco products declared as Notified supplies under Section 15(5) of the CGST Act and MRP is prescribed to be basis for Valuation

The Government in view of the powers conferred under Section 15(5) of the CGST Act on recommendation of the Council has amended Notification No. 49/2023-Central Tax dated 29.09.2023 has notified Pan Masala, Tobacco and Tobacco products on which retail sale price is declared as Notified supplies for which valuation can be prescribed by the government. The explanation to the said clause also defines the 'retail sale price' as Maximum price declared on goods at which such goods in package form may be sold to the ultimate customer and the same includes taxes, duties, surcharge or cess.

Further, Notification No. 20/2025-Central Tax dated 31.12.2025 is issued in terms of which the new Rule 31D is inserted to Central Goods and Services Tax Rules, 2017. As per newly inserted Rule 31D, tobacco and tobacco products and Pan Masala will be subject to levy of GST on the value of MRP after deducting applicable tax in terms of GST Laws. Further, the restriction provided under Rule 86B with respect to utilisation of Input Tax Credit on payment of outward liability is also not applicable to the registered person discharging GST on the goods specified under Rule 31D.

Notification No. 19/2025-Central Tax dated 31.12.2025 and Notification No. 20/2025-Central Tax dated 31.12.2025

Advisory on Filing Opt-In Declaration for Specified Premises, 2025

The Declarations for filing Opt-In for Specified premises by the suppliers supplying hotel accommodation services issued vide Notification No. 05/2025-Central Tax (Rate) dated 16.01.2025 is made available in in the GST portal and can now be filed electronically. Suppliers who are regular taxpayers as well as new GST registration applicants can Opt-In for the same. Annexure-VII has been prescribed for existing registered taxpayers and Annexure-VIII is the Declaration applicable for persons applying for new registration. Further, Declaration in Annexure-VII can be filed for subsequent financial year during 1st January to 31st March of the preceding financial year. On the other hand, Annexure-VIII can be filed within 15 days from the date of generation of ARN of the registration application.

Additionally, the present advisory provides detailed instructions for filing and downloading the declarations on the GST portal.

Advisory dated 04.01.2026

Central Excise:

Chewing Tobacco, Jarda Scented Tobacco and Gutkha are notified under Section 3A of the Central Excise Act, 1944

Notification No.04/2025-Central Excise (N.T.) is issued under Section 3A (1) of the Central Excise Act, 1944 notifying Chewing Tobacco falling under tariff item 2403 99 10, Jarda Scented Tobacco falling under tariff item 2403 99 30 and Gutkha falling under tariff item 2430 99 90 of Fourth Schedule to Central Excise Act, 1944 for the purpose of levy of Excise Duty on the basis of capacity of production.

Parallelly Notification No.05/2025-Central Excise (N.T.) was issued prescribing the rules for Chewing Tobacco, Jarda Scented Tobacco and Gutkha packaging Machine (Capacity Determination and Collection of Duty) Rules, 2026. Accordingly, it will be deemed that the factory where the packaging machines are installed for manufacture, the goods are manufactured based on the capacity irrespective of whether the machines are used or not or if the machine is in working condition or not. In addition to the above, the Rules also mandates the manufacturer of notified goods operating packing machines to install CCTV surveillance system covering all the areas where packaging machines are placed and preserve the recordings for 48 months. The rate Notification No. 04/2025-Central Excise is also issued which prescribes the rate of Excise Duty to be paid on the goods notified under Section 3A of the Central Excise Act, 1944. The rate

of Excise Duty is fixed based on the MRP declared on the final products i.e., upto Rs.2 per pouch and above Rs. 2 per pouch. The aforesaid Notifications to come into force with effect from 01.02.2026.

Notification No.04/2025-Central Excise (N.T.) dated 31.12.2025, Notification No.05/2025-Central Excise (N.T.) 31.12.2025 and Notification No. 04/2025-Central Excise 31.12.2025

Exemption under Section 5A of the Central Excise Act, 1944

Notification No.03/2025 dated 31.12.2025 is issued under Section 5A of the Central Excise Act, 1944 providing exemption from the payment of Excise Duty which is in excess to the rate specified in Notification on certain goods i.e., tobacco and tobacco products. In terms of this Notification excise duty on the goods specified will be capped at the maximum rate as provided under the Notification.

Notification No. 03/2025 dated 31.12.2025

Health Security se National Security Cess:

Implementation of Health Security se National Security Cess Act, 2025

The Central Government has enacted Health Security se National Security Cess Act, 2025 which will come into force with effect from 01.02.2026 in terms of which the new cess called Health Security se National Security Cess will be levied on the Pan Masala falling under Customs Tariff Item 2106 90 20. This levy is based on the manufacturing capacity i.e., the relevant process, speed and capacity to the machines installed by the manufacturer. Cess is computed based on the capacity of packing machines installed in the premises of the manufacturer i.e., the capacity to produce the number of pouches per minute.

Further, the Notification No. 1/2026-HSNS Cess dated 01.01.2026 is issued under the HSNS Cess Act introduced Health Security se National Security Cess, Rules 2026. The said Rules provides for the procedures to be followed by the manufacturer with respect to registration, declaration, payment of Cess and filing of return, computation of Cess and abatement, and other related aspects in addition to adjudication by the department. In this regard, FAQ dated 02.01.2026 has been issued clarifying various queries raised.

Notification No. 1/2026-HSNS Cess dated 01.01.2026 read with FAQ dated 02.01.2026

DGFT Updates:

DGFT notifies an amendment in Appendix 2U for issuance of Electronic Bank Realisation Certificate (eBRC) under the Handbook of Procedures, 2023

The DGFT in exercise of their powers under Foreign Trade Policy, amended Appendix 2U of the Handbook of Procedures, 2023, which governs the format for issuance of the eBRC. Three new field i.e. GSTIN, GST Invoice No and GST Invoice Date have been added to the existing eBRC format and the address/ GSTIN filed was modified to include only address. The said amendment to eBRC format will be operational from 13.01.2026.

Public Notice No.43/2025-26 dated 09.01.2026

S&S Case Roundup

Cases Handled by us

High Court quashes proceedings conforming the demand of recovery of refund by alleging contravention of Rule 96(10) of the CGST Rules

The Hon'ble High Court of Karnataka Petitioner has decided a batch of Writ Petitions challenging the vires of Rule 96(10) of the CGST Rules. The Petitioners therein were either EOU units or Advance Authorization holders. They had undertaken export with payment of tax and claimed refund of IGST. The department initiated proceedings against them proposing to demand and recover IGST refund by citing restrictions under Rule 96(10) of the CGST Rules.

Several Writ Petitions were filed challenging the said proceedings and

and validity of Rule 96(10) of the CGST Rules.

The Hon'ble High Court quashed the proceedings while relying on the decision of the Kerala High Court in case of ***Sance Laboratories Pvt Ltd v. Union of India [WP(C) No. 17447/2023]*** wherein the said Rule was held to create restriction not contemplated under Section 16 of the IGST Act on the right to refund and therefore, the said Rule was held to be ultra vires the provision of the CGST Act.

Further, the Court also relied on series of judgments of various High Courts examining the effect of omission of the said Rule through CGST (Second Amendment) Rules, 2024 wherein it was held that omission of a Rule without a saving clause would erase these rules from the statute book as if they never existed except in relation to 'transactions past and closed'. Therefore, the existing proceedings under Rule 96(10) of the CGST Rules, 2017 will stand obliterated with the omission of Rule 96(10) of the CGST Rules, 2017 without a savings clause.

Hikal Ltd v. UOI & Ors, WP No. 15251/2020 and others, Karnataka High Court

High Court sets aside a Revisional Order on the grounds that unreasonable delay in Suo Motu revision proceedings under KVAT Act vitiates entire proceedings

The High Court of Karnataka, in an appeal filed under Section 66(1) of the Karnataka Value Added Tax Act, 2003, (KVAT Act) examined the validity of suo motu revision proceedings initiated under Section 64 of the KVAT Act by the Department for the assessment year 2011–12 after nearly 10 years of the Order-in-Appeal. The Department issued a notice for revision dated 03.01.2025 and passed a revisional order dated 27.03.2025. In this regard the reassessment order was passed on 05.02.2015 and the Order-in-Appeal which was in favor of the Appellant was passed on 16.05.2015.

The Department contended that the proceedings were within the time limit as records had been called for on 20.01.2018 which is within four-year limitation period prescribed under the Act. However, Appellant contended that the revision notice was issued to the Appellant nearly 10 years after the appellate order, with no explanation for the said delay.

The High Court observed that, there was an unexplained delay of more than eight years between calling for records and issuing the revision notice. No justification was provided by the department counsel either for the delay in receiving the records or for further delay in issuing the revision notice. Accordingly, the Court held that such unexplained delay would render the exercise of suo motu revisional power unreasonable and arbitrary even though technically, the initiation of revisional proceedings falls within the time stipulated under Section 64 of KVAT Act. Consequently, the division bench of Hon'ble High Court of Karnataka allowed the Appeal filed under Section 66(1) of the KVAT Act and setting aside the revisional order dated 27.03.2025 passed under Section 64(1) of the KVAT Act.

M/s. Abharana Jewellers Pvt Ltd v. Joint Commissioner of Commercial Taxes (SMR)-3, STA 18/2025 (KAHC010357112025), Karnataka High Court

Courtroom Updates

Supreme Court holds customs duty on electricity supplied from SEZ to DTA to be without authority of law

A Civil Appeal was filed by an SEZ-based power generator challenging the levy of customs duty on electrical energy generated within a SEZ and supplied to the Domestic Tariff Area (DTA). The challenge in the said proceedings, specifically pertained to the period between 16.09.2010 and 15.02.2016, when a per-unit levy of customs duty under Notification Nos. 91/2010-Cus. and 26/2012-Cus, was in place.

The Department sought to impose customs duty through a series of notifications, including Notification No. 25/2010-Cus (for the period prior up to 15.09.2010) contending that Section 30 of the SEZ Act creates a legal fiction treating such supplies as imports into India.

In earlier proceedings, the Gujarat High Court had struck down the levy, holding inter alia that electricity generated in SEZ and wheeled out into the DTA is not "import into India", and hence, no identifiable charging event occurred to attract customs duty under Section 12 of the Customs Act. It further held that an earlier Notification, i.e. Notification No. 25/2010-Cus was a colourable exercise of delegated authority, it could not be read retrospectively, and that the levy resulted in double taxation (as the benefit of duty-free inputs to generate electricity was clawed back).

Subsequent to the aforesaid decision, the Appellant filed another Writ Petition praying for a declaration that no customs duty was leviable on clearances of electricity from its SEZ unit to the DTA for the subsequent period as well and consequently sought for refund of amounts already deposited under protest. The Hon'ble High Court dismissed the said Writ Petition on the ground that without challenge to validity of Notification Nos. 91/2010-Cus. and 26/2012-Cus before the High Court, the refund prayer could not be considered. Aggrieved by said order of the Gujarat High Court, the Assessee preferred the appeals before the Hon'ble Supreme Court.

The Appellant contended before the Hon'ble Supreme Court that there was no charging event under Section 12 of the Customs Act, as electricity generated in India, though in SEZ and supplied to the DTA, which did not constitute "import into India". It was argued that the legal fiction under Section 30 of the SEZ Act is limited to determining the applicable rate of duty and cannot create a substantive levy. It was argued that parity of treatment must be given with import of electricity energy, which has historically stood at nil rate of customs duty. Reliance was also placed on Article 265 of the Constitution and the binding effect of the Gujarat High Court's 2015 judgment striking down the levy.

The Department argued that successive notifications created an independent and valid levy for later periods and that the earlier High Court judgment was confined to a specific notification and timeframe. It was submitted that unless each subsequent notification was separately challenged, refund could not be granted.

The Supreme Court held that there was no authority of law to levy customs duty on electricity cleared from an SEZ to the DTA. The Court ruled that an SEZ is not foreign territory and the legal fiction in Section 30 of the SEZ Act cannot convert intra-national supply into an import. The Court further held that Section 25 of the Customs Act empowers exemption, not imposition of tax, and the retrospective levy violated Article 265. Emphasising judicial discipline, the Court held that a coordinate bench could not dilute a binding declaration of law and directed refund of duties collected for the relevant period.

Adani Power Ltd. v. UOI, Civil Appeal No. 22/2026, Supreme Court of India

Supreme Court classifies aluminium shelves for mushroom cultivation as aluminium structures

A Civil Appeal was filed by the Revenue challenging a CESTAT order which had classified aluminium shelving imported for mushroom cultivation as "parts of agricultural machinery" under CTH 84369900. The Revenue contended that the shelves were classifiable as "aluminium structures" under CTH 76109010 and were liable to higher customs duty. The dispute arose from a bill of entry where the importer claimed nil or concessional duty applicable to agricultural machinery parts.

The Revenue argued that Chapter Heading 7610 is an 'eo-nomine' entry (describes a commodity by its name rather than by its use) covering all aluminium structures irrespective of end use. It was contended that the shelves had no moving parts, did not perform any mechanical function, and merely served as a supporting structure. Reliance was placed on the principle that classification must be determined based on the condition of goods at the time of import and not on their post-import use.

The Importer contended that the aluminium shelves were specifically designed for mushroom cultivation, were integral to the mushroom-growing apparatus, and were known in trade parlance as mushroom-growing racks. It was argued that Chapter Heading 8436, dealing with agricultural machinery and parts, was more specific and therefore applicable to subject imports under the General Rules for Interpretation.

The Supreme Court held that Chapter Heading 7610 is a pure eo-nomine provision and does not admit a use-based limitation. The Court found that the aluminium shelves satisfied the objective characteristics of "structures" and did not qualify as parts of agricultural machinery, as they neither contributed to the mechanical operation nor were essential for the functioning of any machine. The Court held that mere integration with machinery post-import does not convert a structure into a machine part.

Accordingly, the CESTAT order was set aside, and the goods were held classifiable as aluminium structures under CTI 76109010.

Commr. of Customs (Import) v. Welkin Foods, Civil Appeal No. 5531/2025, Supreme Court of India

Time limit under Rules 39(1)(a) of the CGST Rules requiring distribution of ITC by ISD in the same month was held to be ultra-virus to Section 20 of the CGST Act

The Petitioner had obtained registration as an Input Service Distributor (ISD) under the CGST Act and was distributing accumulated Input Tax Credit (ITC) for the FYs 2017-2019 in the last month instead of distributing the same in the month when it became available. In this regard, the Petitioner was in receipt of a final audit report and a SCN under Section 74 proposing a penalty as the said practice was contrary to Rule 39(1)(a) of the CGST Rules.

The Hon'ble High Court examined the constitutional validity of Rule 39(1)(a) of the CGST Rules. The Court relying on settled principles of delegated legislation held that Rule 39(1)(a) of the CGST Rules is ultra vires Section 20 of the CGST Act as it travels beyond the scope of the parent provision by introducing a mandatory time limit for distribution of ITC, which is not contemplated under Section 20. The said provision, as it stood prior to 01.04.2025, only delegated the powers to prescribe the manner of distribution of credit and was silent on timeline for distribution of credit. Accordingly, the rule making powers under Section 164 of the CGST Act could not be used to introduce substantive conditions or restrictions not envisaged by the legislation.

Consequently, the Hon'ble Court struck down Rule 39(1)(a) of the CGST Rules, to the extent it mandates that ITC available for distribution in a month shall be distributed in the same month as being ultra vires Section 20 of the CGST Act.

Birlanu Ltd v. Union of India, W.P. No. 14564/2024, Telangana High Court

Karnataka High Court sets aside GST adjudication holding clinical trial services to be export of services

A Writ Petition was filed challenging adjudication and appellate orders passed under the CGST and IGST Acts, wherein GST demand was raised on services relating to clinical trials conducted by the Petitioner for foreign clients. The Department considered the services as taxable on the ground that the place of supply was in India under Section 13(3)(a) of the IGST Act, 2017, and held that Notification No. 04/2019–IGST dated 30.09.2019 was prospective.

The Petitioner contended that clinical trial and pharmaceutical R&D services provided to overseas entities constituted export of services, since the service recipients were located outside India. It was submitted that Notification No. 04/2019–IGST was issued pursuant to the 37th GST Council Meeting and was clarificatory in nature, and therefore retrospective. The Petitioner relied on the GST Council's recommendations clarifying that the place of supply for specified pharmaceutical R&D services would be the location of the recipient.

The Department argued that the notification could not apply retrospectively and supported the adjudication and appellate orders, contending that the services were performed in India and were taxable accordingly.

The Court held that the notification was issued to clarify the position relating to export of pharmaceutical R&D services and was rooted in the recommendations of the GST Council. The Court relied on its judgement in ***Lalitha Healthcare Pvt. Ltd. v. Asst. Commr. of Commercial Taxes., W.P. No. 9505/2021***, dated 26.11.2025, and ***Vatika Township*** to hold that the notification is to be read as retrospective and held that the prospective application of the notification in the impugned orders was erroneous. The Court accordingly set aside the adjudication and appellate orders and allowed the Writ Petition.

Iprocess Clinical Marketing Pvt. Ltd. v. Assistant Commr. of Commercial Taxes, W.P. No. 10989/2025, Karnataka High Court

High Court reads down Section 16(2)(c) of the CGST Act to protect bona fide purchasers

The Petitioners challenged the constitutional validity and application of Section 16(2)(c) of the CGST Act, 2017, which states that availment of input tax credit is restricted until actual payment of tax by the supplier to the Government. The Petitioners, who were purchasing dealers, contended that ITC was denied to them despite having paid tax to registered suppliers under valid invoices, solely due to the supplier's failure to remit tax to the exchequer.

The Petitioners argued that such denial results in double taxation and defeats the fundamental objective of the GST regime, which is to avoid cascading of taxes. Reliance was placed on judgments of the Delhi High Court in On Quest Merchandising India Pvt. Ltd. and Shanti Kiran India (P) Ltd., as affirmed by the Supreme Court, where it was held that ITC cannot be denied to a bona fide purchaser if the transaction itself is not doubted.

The Department contended that ITC is a concession and not a vested right, and that Section 16(2)(c) expressly mandates actual payment of tax by the supplier as a precondition.

The Court held that while Section 16(2)(c) is constitutionally valid, it cannot be applied mechanically to penalise bona fide purchasers. The provision was read down to apply only in cases involving collusion, fraud, or non-genuine transactions. The Court emphasised that denial of ITC in bona fide transactions would amount to impermissible double taxation and would undermine the core design of GST. Consequently, impugned proceedings denying ITC were set aside.

Sahil Enterprises v. UOI, W.P.(C) No. 688/2022, Tripura High Court

THANK YOU

For further queries/information please get in touch with us

SHIVADASS & SHIVADASS®
LAW CHAMBERS

Level 3,
No. 4/2, Millers Road,
Bangalore – 560052
admin@sdlaw.co.in | +91 80437 79955