

# S&S Tax Snippets

10<sup>th</sup> Ed.



# Regulatory Updates

## GST

### Round-up Reporting of values in Table 3.2 of GSTR-3B

In advisory dated 11.04.2025, it has been indicated that the inter-state supplies made to unregistered persons, composition taxpayers and UIN holders auto-populated in Table 3.2 would be made non-editable from the April 2025 tax period. However, considering representations from taxpayers, it is now decided that Table 3.2 shall remain editable for the time being. The taxpayers are advised to report or amend the auto populated entries, if required, and furnish their returns accurately to ensure correctness of information.

## Customs

### Round-up Advisory dt. 16.05.2025 Tariff Value fixed for several goods

In terms of the powers conferred under Section 14(2) of the Customs Act, 1962, an amendment has been made to Notification No. 36/2001-Customs (N.T) dated 03.08.2001 to indicate the revised Tariff value for **crude** palm oil, RBD palm oil, gold, silver and Areca nuts by substituting Tables 1, 2 and 3 in the said Notification.

### Manner of adjudication of notices in relation to Notification No. 34/2025-Cus (N.T) dt. 100% EOUs 15.05.2025

The CBIC has notified manner of adjudication of the notices where any notice having demand of both customs duty and central excise duty were originally adjudicated by the Central Excise officer in terms of Rule 3 of the Central Excise Rules, 2002 and has been remanded back and are pending for de-novo adjudication in relation to 100% EOUs.

Accordingly, the notice involving the aggregate duty up to Rs. 5 lakhs will be adjudicated by Dy. Commissioner of Customs or Asst. Commissioner of Customs; up to Rs. 50 lakhs by the Addl. Commissioner of Customs or Joint Commissioner of Customs, and in cases where the aggregate duty is above 50 lakhs.



the same would be adjudicated by Addl. Commissioner of Customs or the Commissioner of Customs.

### Notification No. 35/2025-Cus (N.T) dt. 16.05.2025 Port restriction on import of certain goods from Bangladesh to India

A new paragraph 19 under 'General Notes Regarding Import Policy' under ITC (HS) Schedule I (Import policy) has been inserted with immediate effect to regulate the import of certain goods from Bangladesh to India. Specifically, import of readymade garments shall not be allowed from any land port, but is specifically allowed through Nhava Seva and Kolkata seaports. Additionally, the import of fruit/fruit flavored and carbonated drinks, processed food items, cotton and cotton yarn waste, wood furniture, plastic and PVC finished goods from Bangladesh is not allowed through LCSs/ICPs in Assam, Meghalaya, Tripura and Mizoram; and LCS Changrabandha and Fulbari, in West Bengal.

## Courtroom Updates

### 11/2025 Customs dated 17.05.2025 Concurrent Levy of Entertainment Tax and Service Tax on DTH and Cable Services permissible

The Supreme Court upheld the constitutionality of levy of entertainment tax on cable and DTH services by the state government. The issue was whether the assessee is liable to pay both entertainment tax to States under Entry 62 List-II of 7th Schedule of the Constitution, and service tax, which is a Central tax on the same amount of subscription be collected by the operator.

The Court examined the aspect theory and held that there is no double taxation as the two taxes are different aspects of same activity. Hence, two different legislatures may impose tax under distinct taxation entries in Lists-I and II.

Broadcasting services are taxable under the provisions of the Finance Act, 1994 and the State legislatures could levy entertainment tax on the entertainment provided by such service provided to recipients.

**State of Kerala v. Asianet Satellite Communications Ltd., C.A. No. 9301/2015, Supreme Court**  
**Pre-deposit payment made vide Electronic Credit Ledger is valid**

The Supreme Court dismissed an SLP filed by the Revenue against an order passed by the Gujarat High Court which held that the payment of pre-deposit under Section 107 of the CGST Act, 2017 can be made using the Electronic Credit Ledger. The Supreme Court found no reason to interfere with the order as it made reference to the Department's own Circular No. CBIC-20001/2/2022-GST dt. 06.07.2022 which clarified that payment of pre-deposit under Section 107 of the CGST Act can be made using the Electronic Credit Ledger.

**Union of India v. Yasho Industries Ltd., SLP(C) No. 14841/2025, Supreme Court**  
**Doctrine of unjust enrichment not applicable in case of bank guarantees furnished as security**

In 2002, the Appellant provided bank guarantees for differential duty in compliance with a High Court interim order. The Department encashed them in 2013 after the Appellants case was dismissed by the High Court. In 2015, the Supreme Court had held that the higher tariff notification was invalid at the time of import.

When the Appellant sought a refund, the Department cited Section 27 of the Customs Act which requires proof that the tax burden was not passed on (unjust enrichment). The Supreme Court held that this would not be applicable in case of bank guarantees which were tendered as security, and not for the purpose of payment of duty.

It further held that the guarantees were encashed arbitrarily and without authority of law and directed immediate refund with interest.

**Patanjali Foods Ltd. v. Union Of India, C.A. Nos. 3833/2025, Supreme Court**  
**Safari Retreats review petition dismissed**

The Hon'ble Supreme Court dismissed a review petition filed by the Revenue against the judgment dated 03.10.2024 by observing that there is no error apparent on the record. The Court had decided in favour of the taxpayers by upholding the decision of the Orissa High Court which had observed that the term 'plant or machinery' used in Section 17(5)(d) of the CGST Act cannot be read to mean 'plant and machinery'. Consequently, ITC will be available in respect of buildings, which may be treated as plants under different enactments. The dispute has been settled by way of an amendment to the Section with retrospective effect from 01.07.2017 brought by the Finance Act, 2025.

**Circular No. 35/2010-Cus dt. 17.09.2010**  
**Chief Commr. of CGST v. Safari Retreats Pvt. Ltd., R.P in C.A. No. 2948/2023, Supreme Court**  
**clarifying the claim of custom duty drawbacks for merchant exporters to have retrospective effect**

The Appellant was an exporter engaged in the export of Soyabean Meal, who had been availing the All Industry Rate (AIR) duty drawback till the period of 2008 after which it was denied by the Department on the ground that the Appellant was availing the benefit of Rule 18 or Rule 19(2) of the Central Excise Rules, 2002. Circular No. 35/2010-Cus dt. 17.09.2010 clarified that exporters can simultaneously avail the benefit of AIR duty drawback and excise duty benefits under the Rules.

The Department contented that Circular has a prospective applicability. The Court held that the Circular is clarificatory in nature and hence can be applied retrospectively and the Circular did not create any new rights or benefits but merely explained the scope of existing exemptions without undue burden on the Department.

**Suraj Impex (India) Pvt Ltd., v. Union of India, C.A No. 7089/2025, Supreme Court**

## Product support service covered under Customs

### Valuation Rules

The Appellant had imported spare parts for a machinery. The terms of the purchase order provided that an Indian agent of the foreign supplier would provide product support services (engineering and technical support) in exchange for consideration being 8% of the FOB value of the imported goods. The Department was of the view that this consideration is includable in the assessable value of the imported goods under Rule 9(1)(a) and Rule 9(1)(e) of the Customs Valuation Rules, 1988.

The Supreme Court observed that in the case of *Commr. of Customs v. J.K. Corpn. Ltd.*, 2007 INSC 98, assessable value of imports was held to be the payment required as a condition of sale. In the present case, the Court observed that the services rendered by the Indian agent are not post-importation activities but were rather directly related to the imported goods and hence value of the same is includable in the import value for the purpose of discharging Customs Duty. The appeal **ITC refund allowed despite principal input and**

**output having same GST rate**

**Coal India Ltd. v. Commr. of Customs, C.A. No. 8028/2010, Supreme Court** of unutilised ITC under Section 54(3)(ii) of the CGST Act cannot be denied solely because the principal input (bulk LPG) and output (bottled LPG) are taxed at the same rate of 5%.

The Court observed that multiple inputs such as valves, caps, and seals were used in the bottling process which attract higher GST rates, leading to accumulation of ITC. It held that the provision allows refund when any input is taxed higher than the output, without requiring a rate comparison only between principal input and output. The Court rejected the Department's reliance on Circular No. 135/05/2020-GST and affirmed that Circular No. 173/05/2022-GST, being clarificatory, applies retrospectively.

The impugned orders were quashed, and the Department was directed to refund the amount with interest.

**Indian Oil Corporation Ltd. v. ACCT, W.P. No.**

**14414/2024, Karnataka High Court**

**Limitation to be calculated from date of rectification order if merged with OIO**

Petitioner challenged an Order-in-Original (OIO) and rectification order passed by the Department on the ground that the SCN issued to the Petitioner was vague. The Petitioner filed a rectification application pursuant to receipt of the OIO, which was rejected by the Department.

The Court held that the Petitioner can challenge the OIO by way of statutory appeal. It further held that when a rectification order is passed, it merges with the OIO. The limitation period for challenging the OIO would hence commence from the date of the rectification order.

**SPK & Co. v. STO, WP(MD), No. 27787/2024, ITC refund allowed despite principal input and output having same GST rate.**

The Court ruled that refund of unutilised ITC under Section 54(3)(ii) of the CGST Act cannot be denied solely because the principal input (bulk LPG) and output (bottled LPG) are taxed at the same rate of 5%. The Court observed that multiple inputs such as valves, caps, and seals were used in the bottling process which attract higher GST rates, leading to accumulation of ITC.

It held that the provision allows refund when any input is taxed higher than the output, without requiring a rate comparison only between principal input and output. The Court rejected the Department's reliance on Circular No. 135/05/2020-GST and affirmed that Circular No. 173/05/2022-GST, being clarificatory, applies retrospectively. The impugned orders were quashed, and the Department was directed to refund the amount with applicable interest within four weeks.

**Indian Oil Corporation Ltd. v. ACCT, W.P. No.**

## **Constitutional validity of Rule 36(4) of the CGST**

### **Rules, upheld**

The Petitioner challenged the vires of Rule 36(4) of the CGST Rules, 2017 which imposed restrictions on the availment of ITC by the recipient of goods/services by prescribing certain percentage, if the supplier had not uploaded the details of invoices/debit notes under Section 37(1) of the CGST Act, 2017. It was argued that the Rule imposed additional restrictions not found in the Act and that once a registered person satisfies the requirement of Section 16(2) of the CGST Act, ITC cannot be denied merely because the supplier failed to file returns.

The Court held that Rule 36(4) cannot be held ultra vires as availing ITC under Section 16 of the CGST Act is subject to conditions or imposed in the manner specified in Section 49 of the CGST Act. It was held that the restriction under Rule 36(4) aims to protect Revenue interests and also the taxpayers from recovery proceedings. Allowing unrestricted ITC could facilitate ineligible credits being passed on

### **Scope of Intermediary under the IGST Act**

#### **Let Geostructure LLP v. Union of India, WP. No.**

**5978/2020, Madras High Court**  
The Petitioner, who was engaged in export of services, challenged four orders rejecting claim of refund of ITC under "Buying Support Services Agreements" with a foreign company. The Petitioner has entered into the said Agreement with the foreign company to identifying possible sources for procurement for the foreign company.

The Department post rejecting the ITC refund claim of the Petitioner contended that the petitioner acted as an intermediary and was not exporting services.

The Court held that the petitioner is not an 'intermediary' under Section 2(13) of the IGST Act, but rather, an independent service provider. The Court examined agreements and found that the Petitioner renders services on its own account as an

independent contractor, without enabling supply

between a foreign company and a third party

The services would qualify as exports under Section 2(6) of the IGST Act as the Petitioner was not representing the foreign entity. The Court set aside the impugned orders and granted the refund of ITC.

### ***Columbia Sportswear India Sourcing Pvt Ltd., v. Union of India, WP. No. 12116 /2024, Karnataka High Court***

# THANK YOU

**For further queries/information please get in  
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