

S&S Tax Snippets

15th Ed.



Regulatory Updates

GST

Updates:

Appointment of members of the Tribunal

The Appointment Committee of the Cabinet (ACC) considering the proposals of the Department of Revenue has approved the appointment of Central technical and judicial members for Principal and State Benches of the GST Appellate Tribunal.

Notification No. 18/20/2025-EO (SM.II) dt.

04.08.2025

S&S Case Roundup

Cases Handled by us

Delhi High Court allows Writ Petitions challenging Orders passed pursuant to SCN placed in

Additional Notices tab

A Writ Petition was filed challenging Orders passed pursuant to SCN uploaded to the Additional Notices Tab in the GST portal on the ground that the same is not properly served and that the Order is passed in violation of principles of natural justice. Additionally, it was also contended that the SCN was issued using extended limitation provided by Notification 9/2023-CT dt. 31.03.2023 and that the said Notification is *ultra vires* Section 168A of the CGST Act since it was issued in the absence of *force majeure*, which is an essential condition prescribed under the Section.

The Hon'ble High Court considering the facts of the case and judgment in case of **Neelgiri Machinery v. Commissioner Delhi GST, WP (C) No. 13727/2024**, allowed the Writ Petition by way of remand the matter to SCN stage.

Dharmshilla Cancer Foundation &

Research Centre v. Asst. Commr. of

Sales Tax, W.P. (C) No. 7229/2025,

Delhi High Court

Kerala High Court stays adjudication against a banking company for alleged availment of double benefit of ITC and depreciation on Capital Goods

ie Section 17(4) and Section 3) of the CGST Act.

The DGGI issued an SCN against a major banking company and its branches, alleging that the bank has availed ineligible ITC on capital goods while simultaneously claiming depreciation under the Income Tax Act, 1962. It was contended that as a banking company, the Petitioner an option to avail 50% of the eligible ITC on capital goods, and with the remaining ITC lapsing as per Section 17(4) of the CGST Act. The Petitioner adds the said 50% of the reversed ITC to the cost of capital goods in their books of accounts. It was submitted that the ITC availed was in compliance with Sections 17(4) and 16 of the CGST Act and thus cannot be denied on grounds of wrongful availment. Further, it was also brought to the notice before the court that the term "shall lapse" under Section 17(4) is only limited to the GST framework and does not preclude capitalization of the lapsed credit. The Court on consideration of these submissions stayed adjudication proceedings pursuant to the SCN.

W.P.(C) No. 29087/2025, High Court of Kerala



High Court stays multiple SCN issued by the department, consolidating multiple

The Petitioners challenged two SCN's issued by the Department which consolidated multiple assessment years into a single notice under Section 74 of the CGST Act. It was argued that the SCN was issued in contravention of the provisions of CGST Act, specifically Section 74(10) of the CGST Act, which expressly states that each assessment year has a separate limitation period that begins independently. Therefore, each assessment year should be considered and taxed independently. Consequently, the Department's issuance of a single SCN covering multiple tax periods is contrary to the provisions of law. Considering these submissions, the Hon'ble High Court stayed the effect of the SCN.

Karnataka AAR exempts GST on training services under NSDC's "Market-led Fee-based Services Scheme"

The Applicant was engaged in online education and was approved as a training partner by the National Skill Development Corporation (NSDC). It approached the Authority for Advance Ruling (AAR) seeking clarity on the applicability of GST and the eligibility to avail exemption under Entry 69 of Notification No. 12/2017-CT(Rate). It was contended that the Applicant provided skill enhancement training in various IT domains under the "Market-led Fee-based Services" scheme implemented by the NSDC, and that such services, when rendered by an NSDC approved training partner, are exempt from GST.

The Applicant relied upon the express language of Entry 69, which exempted services of this nature. Upon a detailed examination of the NSDC approval certificate, the governing agreement, and the scheme particulars, the Authority concluded that the Applicant satisfied both qualifying conditions, thereby holding that the services were fully exempt, with the applicable GST rate determined as Nil.

In re: Intellipaat, Advance Ruling No.

KAR ADRG 28/2025, dt. 28.07.2025,

Courtroom Updates

Department SLP against on ITC eligibility on telecom towers dismissed

Assessees had challenged orders and SCNs before the Delhi High Court in W.P.(C) No. 13211/2024 on the grounds that the Department had denied ITC on inputs used for setting up passive infrastructure on the ground that the same were used in the construction of telecommunication towers, which fall under the ambit of Section 17(5)(d) of the CGST Act.

The High Court observed that telecom towers are moveable as they can be dismantled, and the dispute was settled in light of the decision of the Supreme Court in *Bharti Airtel Ltd. v. CCE, 2024 INSC 880*, wherein it was held that telecom towers are moveable items and were to be treated as capital goods which can be inputs under Rule 2(k) of the CENVAT Credit Rules.

The explanation which omits telecom towers from "plant and machinery" under Section 17 of the CGST Act would be of no consequence as telecom towers would not be considered 'immovable property' in the first instance. The Department's SLP against this decision was dismissed.

Commr. CGST v. Bharti Airtel Ltd., S.L.P. (Civil)

SLP against allowing retrospective refund of ITC under the amended Inverted Duty Structure formula dismissed

The Supreme Court has dismissed an SLP filed by the department challenging a decision of the Gujarat High Court which had allowed the refund of the differential amount of ITC under the amended formula for the Inverted Duty Structure as stipulated in Rule 89(5) of the CGST Rules. In the instant case, the assessee had filed a refund application under the pre-amendment formula of Rule 89(5) for claiming a refund under the Inverted Duty Structure, and the refund was granted. Subsequent to the amendment of Rule 89(5) and the introduction of a new formula, the assessee filed a rectification application seeking the differential amount of ITC refund based on the amended formula. The department rejected this application, leading to an appeal by the assessee before the Gujarat High Court. The High Court ruled in favour of the assessee, permitting the refund of the differential ITC. The High Court's decision was based on the premise that the amendment to Rule 89(5) is curative and clarificatory in nature and thus should be considered to have retrospective application. The Supreme Court dismissed the department's SLP challenging this order, relying on a previous order passed in a similar matter involving

Ascent Meditech Ltd. v. Union of India, S.L.P. Revisionary power cannot be invoked to (Civil) No. 8134/2025, thereby upholding the create a demand beyond the scope of SCN Gujarat High Court's judgment.

During the pendency of a Writ Petition against an ***Union of India & Ors. v. Tirth Agro Technology Pvt. Ltd. in S.L.P. (Civil) Diary No. 31632/2025, Supreme Court of India*** appellate order, which had been admitted, the Department filed an application to revise the appellate order by invoking power under Section

108 of the CGST Act.

The Department argued that the appellate order was erroneous as it does not consider facts

available at the time of passing the order relating to inadmissibility of ITC under Section 16(4) of the Act. It argued that if such facts were considered, a new demand for IGST would arise, and the original CGST/SGST demand would also increase.

The Court held that such a revision would go against Section 75(7) of the Act. The Department cannot do indirectly, what is not permitted to be done directly. The power under Section 108 of the Act does not permit the revisional authority to improve upon the SCN, and is limited to correcting an erroneous order, if the same is prejudicial to the interests of the revenue. Hence, the application was dismissed.

Dinesh Infraprojects Pvt. Ltd. v. State of W.B., Madras High Court issues contradicting CAN 1/2025 in W.P.A. 26060/2023, Calcutta orders consolidated assessment for multiple High Court years

The Principal and Madurai Bench of the Madras High Court issued conflicting rulings regarding the issuance of consolidated assessment orders for multiple FYs under the GST Act. The Madras Bench ruled that issuing a single SCN and a composite assessment order for more than one financial year is not permissible as Sections 73 and 74 of the GST Act specify that an SCN pertains to a period for which a return is filed. The limitation period of 3 or 5 years are also calculated from the date of furnishing return for each FY, treating each year as a distinct unit.

In contrast, the Madurai Bench held that issuing a single SCN covering multiple tax periods is valid due to the absence of an express prohibition. The Madurai Bench drew parallels with practices under the Customs Act, 1962, and noted differing views of various High Courts.

R Ashaarajaa v. Senior Intelligence Office, DGGI, W.P. No. 29716/2024; Madras High Court Principal Bench

Balamore Estates Pvt. Ltd. v. Asst. Commr.,

The expression 'three months' in Section 73 of the CGST Act refers to 3 British calendar months

The Petitioner had challenged the validity of the SCN issued on 30.11.2024 for the period 2020-21 and the subsequent Order dated 28.02.2025 on the ground that SCN is not issued at least 3 months prior to due date of passing of the Order, as prescribed under Section 73(10) of the CGST Act and that the said 3 months expired on 28.11.2024.

The Hon'ble High Court held that the SCN issued on 30.11.2024 is not barred by limitation. The Hon'ble High Court while distinguishing the judgment of the Andhra Pradesh High Court in **Cotton Corporation of India v. Assistant Commissioner, W.P. No. 1463/2025**, held that the expression 3 months used in Section 73 refers to 3 British calendar months i.e., full calendar months.

allowing cancellation of self-assessed Bills of Tata Play Ltd v. Sales Tax officer, W.P. (C) No. Entry and holds substitution without 4781/2025, Delhi High Court

relinquishment of title impermissible under Section 46(5) of Customs Act

The Hon'ble Calcutta High Court, in a significant pronouncement, allowed the appeal preferred by the Commissioner of Customs, thereby setting aside the CESTAT's order which had permitted Emami Agrotech Ltd. to annul duly self-assessed Ex-Bond Bills of Entry for home consumption and substitute the same with earlier Into Bond Bills for warehousing of imported crude palm oil.

The assessee had sought such substitution prior to payment of duty, citing diminished sales and the intent to avail the benefit of a subsequent reduction in customs duty rates.

The Court, advertent to Section 46(5) of the Customs Act, held that such substitution is permissible only where the Proper Officer is

satisfied that the revenue's interest will not be adversely affected or there is no element of

fraudulent intent. In the present case, cancellation without relinquishment of title, post-assessment, would result in a substantial revenue loss of approximately ₹22.25 crores; thus, the Tribunal's decision was found untenable in law.

Commissioner of Customs Port, Kolkata v. Emami Agrotech Ltd CUSTA 15/2025, Calcutta High Court rendered impossible due to war, CESTAT grants relief

Appellant had imported a vehicle from Ukraine under ATA carnet for exhibition and availed benefit of Notification No. 157/90-Cus dt. 28.03.1990, which provides that goods can be imported duty free under ATA carnet must be exported within 6 months. Due to the war between Ukraine and Russia, the vehicle could not be re-exported, despite availing extension of time. Hence, the vehicle was confiscated, and the Appellant was allowed to redeem the vehicle on payment of fine under Section 125 of the Customs Act.

The Tribunal observed that re-export was impossible due to the war, and the law cannot compel anyone to do the impossible. It was observed that the Commissioner never considered whether the case was suitable for waiving the default of the Appellant, and the same must have been considered due to impossibility of re-export. Consequently, the confiscation of the vehicle and redemption fines were set aside.

**Info
Cus
No.**



Supplies to SEZ from DTA are exports

The assessee was engaged in manufacture of excisable goods in the nature of Pre-fabricated Steel Buildings and was availing CENVAT credit on inputs. The goods were supplied to an SEZ unit under LUT without payment of duty, and the assessee sought refund of accumulated CENVAT credit.

The Department approached the tribunal against the appellate orders which granted refund to the assessee. The Department contended that the goods were supplied to SEZ as capital goods for construction in SEZ and not as inputs to be used for manufacturing final products for subsequent export.

The Tribunal considered that the dispute has been settled in view of the CBEC Circular No. 1001/8/2015-CX.8 dated 28.04.2015, and judgement of the Gujarat High Court in ***Essar Steel Ltd. v. UOI, 2010 (249) E.L.T. 3 (Guj.)***.

Hence, relying on the above, the Tribunal held that supplies from DTA to SEZ qualify as exports, and the Department appeals were dismissed.

***CCE v. Tiger Steel Engineering India Pvt. Ltd.,
Excise Appeal No. 344/2009, CESTAT Mumbai***

THANK YOU

For further queries/information please get in
touch with us



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