S&S Tax Snippets

16th Ed.

Regulatory Updates

Customs Updates:

Validation of BIS registration at the time of clearance

Customs field formations have been directed to mandatorily validate the BIS registration number at the time of clearance of goods notified under the Compulsory Registration Order (CRO). It has been observed that clearance is presently being allowed merely on the basis of the registration number declared in the Bill of Entry, without verifying its validity or status, resulting in imports of CCTVs and other items even with "Deferred" or "cancelled" registrations. Accordingly, officers must verify the BIS registration details on the BIS-CRS portal and ensure that only goods with valid registrations are cleared. The manufacturer name, model number and manufacturing location as reflected in the registration must also be cross-checked. This procedure applies not only to CCTVs but to all items requiring BIS registration under CRO.

CBIC Instruction No. 27/2025-Customs dt. 26.08.2025

Amendment in Para 2.03(A)(i)(g) of FTP, 2023 relating to QCO imports

The Government has amended Para 2.03(A)(i)(g) of the Foreign Trade Policy, 2023, regarding Advance Authorisation holders, EOUs and SEZs importing inputs covered under mandatory Quality Control Orders (QCOs). Earlier, the Export Obligation (EO) period was restricted to 180 days from the date of clearance of such imports in respect of QCO exemptions for chemical products notified by Department of Chemicals and Petrochemicals.

As per the revised provision, the EO period for such authorisations shall now be as per Para 4.40 of the Handbook of Procedures. Consequently, the EO period against imports of products subjected to mandatory QCOs under Advance Authorisation has been extended from 6 months to 18 months. Henceforth, all Advance Authorisation holders will follow the EO period as per Para 4.40 of the Handbook of Procedures.

DGFT Notification No. 28/2025-26 dt. 28.08.2025

S&S Case Roundup

Cases Handled by us

High Court stays order demanding tax on a transaction amounting to 'export of services' relying on Section 12 of the IGST Act

A Writ Petition was filed challenging the Order-in-Appeal demanding tax on a supply of Market research and other support services to the foreign entity on the ground that the said services are provided to the customers of the foreign entity in India and therefore the place of supply is in India in terms of Section 12 of the IGST Act and hence the same does not qualify as export of services.

It was argued before the Court that Section 13 of the IGST Act is applicable for determining the place of supply for the services provided to the foreign entity, as the recipient of the supply is outside India. Additionally, it was also argued that the place of supply for such a service is the location of recipient of services in terms of Section 13(2), i.e. the location of the foreign entity, and Petitioner and the foreign entity are not mere establishment of distinct person and therefore the said transaction qualify as export of services in terms of Section 2(6) of the IGST Act. Considering the submissions made, the Hon'ble High Court granted stay on the Order.

W.P. No. 24528/2025, Karnataka High Court

High Court admits the petition challenging refund rejection due to portal limitations in respect of refund applications filed by a merged entity

A taxpayer (entity prior to merger) had filed applications for refund of unutilized ITC pertaining to export transactions. These applications were rejected.

However, on appeal, the authority allowed the taxpayer's appeals and directed the officer to verify compliance with Circular No. 183/15/2022 dt. 27.12.2022, which provides for the mechanism to verify documents in cases where invoices are not reflecting in Form GSTR-2A.

During the pendency of these proceedings, the taxpayer had merged into the Petitioner.

The Petitioner filed a second refund application on the portal as there was no communication from the Department after the order of the Appellate Authority.

The Petitioner filed a fresh application under the category "any other specify" for claiming the aforesaid refund.

Due to portal restriction, only one month could be selected as the relevant period for claiming refunds, leading to their rejection as the original refund application filed was for 3 month period without considering the directions or order of the Appellate Authority.

The High Court was pleased to admit the writ petition.

W.P. No. 23921 & 23932/2025, Karnataka High Court

Courtroom Updates

Provisional attachment order cannot be extended beyond one year

Assessees filed an appeal against an order of the Gujarat High Court, which had held that there is no embargo on issuing a second provisional attachment post the lapse of the first provisional attachment issued under Section 83 of the CGST Act, 2017. The assessee challenged the provisional attachment orders, arguing that earlier attachment orders from October 2023 had already lapsed after one year as per Section 83(2) of the CGST Act.

The Department contended these were "renewals" of previous orders to protect government revenue. The Court ruled that no provision exists under the CGST Act which permits renewal or re-issuance of provisional attachment orders after their expiry.

The Court emphasized that Section 83 confers powers requiring strict statutory compliance, and allowing renewals would render the time limit meaningless. Unlike the Customs Act and Central Excise Act, which explicitly provide for extensions, the CGST Act contains no such provision. The Court allowed the appeal and directed the lifting of the attachment of bank accounts while permitting investigation to continue under other statutory provisions.

Kesari Nandan Mobile v. O/o the Asst. Commr. of State Tax, Civil Appeal No. 9543/2025, Supreme Court of India

The expression 'initiation of proceedings' in Section 6(2)(b) of the CGST Act refers to formal commencement of adjudicatory proceedings by way of issuance of SCN

The Hon'ble Apex Court while examining Section 6(2)(b) of the CGST Act has held that the legislative intent to prevent the subjugation of a taxpayer to parallel proceedings and to avoid contradictory orders, can only be realized only when the department is clear about the subject matter it seeks to pursue, a certainty that arises only at the stage of issuance of the SCN and not by issuing summons or conducting inquiry.

Further, the Court also laid down twin test to determine the term 'subject matter', firstly, the subject matter will be considered the same if an authority has already proceeded on an identical liability of tax or alleged offence by the assessee on the same facts; and secondly, if the demand or relief sought is identical. It was also observed that where the proceedings concern distinct infractions, the same would not constitute a "same subject matter" even if the tax liability, deficiency, or obligation is same or similar, and the bar under Section 6(2)(b) would not be attracted.

Armour Security (India) Ltd. v. Commr., CGST, S.L.P. (C.) No. 6092/2025, Supreme Court of India

Petition challenging the constitutional validity of the Notification which has brought in security services under the purview of RCM dismissed

The Petitioner challenged the constitutional validity of Sections 17(2) and 17(3) of the CGST Act, 2017, and Notification No. 29/2018-CT (Rate) dt. 31.12.2018, which brought in security services under the purview of RCM.

The Petitioner, engaged in providing security services, challenged provisions that brought security services under RCM when supplied by non-corporate entities to registered persons. The Petitioner contended that by bringing the said service under the ambit of RCM, the service recipient pays tax instead of the supplier, treating such supplies as "exempt" in the supplier's hands, thereby denying ITC to non-corporate suppliers while allowing corporate suppliers to claim ITC under forward charge.

The Court dismissed the petition, holding that the classification between corporate and non-corporate entities constitutes a valid differentiation based on intelligible criteria. The Court held that taxation statutes have wide legislative discretion in classification, and mere economic hardship or reduced competitiveness does not violate Article 19(1)(g) of the Constitution of India. Further, the Court has also held that the ITC was a statutory concession and not a fundamental right. The Court also rejected arguments regarding cascading effects, noting that the overall GST objective remains fulfilled as recipients under RCM can claim credit, maintaining credit flow.

Eagle Security & Personnel Services v. UOI, W.P. No. 1687/2024, Bombay High Court

Pre-deposit payment through credit ledger allowed

The Petitioner challenged the rejection of its appeal on the grounds that pre-deposit payment required for maintenance of the appeal was paid electronically and not otherwise by way of cash.

The Petitioner argued that an identical matter was decided in favour of the Petitioner by the Gujarat High Court in ***Yasho Industries Ltd. v. UOI, (2025) 143 GSTR 553 (Guj),*** wherein the Court had followed precents that held that Section 107(6)(b) of the CGST Act, 2017 only relates to payment and not depositing of a sum, which is a percentage of tax. Since credit can be used to pay tax, the same may be used to pay the pre-deposit sum. The Hon'ble Court noted that the Supreme Court had decided not to interfere with the decision ***Yasho Industries (supra)*** and had hence attained finality. Hence, the Petitioner's appeal must be restored on the file of the Appellate Authority.

V.K. Building Services Pvt. Ltd. v. Addl. Commr. of GST, Appeals, W.P. No. 21409/2025, Karnataka High Court

Department cannot take benefit of COVID time limit extension for revising orders

An assessment order was passed against the Petitioner on 29.11.2021 for the period 2017 to 2021. A revision order dated 15.02.2025 was passed under Section 108 of the CGST Act, 2017 confirming the demand of tax, interest and penalty under Section 74 of the CGST Act, 2017.

The Petitioner contended that the limitation for passing orders under Section 108 is three years and the matter was time barred. Revenue contended that the Order of the Hon'ble Supreme Court dated 10.01.2022 in Suo Motu Writ Petition No. 3/2020 had extended the period of limitation for all judicial and quasi-judicial proceedings, by excluding period of limitation between 15.03.2020 to 28.02.2022.

The High Court examined its earlier order dated 21.04.2025 in W.P. No. 12529/2024 wherein it had examined several cases and concluded that the benefit of the extension is only for litigants who wish to approach judicial and quasi-judicial bodies, and the same would not be available for the Department. Hence, the impugned revision order was held to be time-barred and set aside.

Gupthas Construction Company v. Joint Commr., W.P. No. 19273/2025, Andhra Pradesh High Court

LUT valid for exports if filed prior to date of shipping bills

The Petitioner availed several inputs and services for its business to export goods. The exports were made without payment of tax and applied for refund of the unutilized ITC. The said applications were rejected on the grounds that the Petitioner had submitted its LUT after filing of Form GST RFD-01.

The impugned order found that the LUT certificate was filed on 26.08.2021, but the refund claimed pertained to a prior period of July to December 2021.

The Petitioner contended that as per the shipping bills furnished before the officer, the actual exports took place only between September and December of 2021, and hence the LUT was filed prior to the exports taking place. The Court agreed and set aside the impugned refund rejection order and directed that the refund be processed within a period of two weeks.

Alkesh Tacker HUF v. UOI, W.P.(C) No. 2486/2025, Delhi High Court

Refund entitlement under Section 77 of the CGST Act to be computed from the date of rectified tax payment

The Petitioner assailed the refund rejection order of ₹5,08,194/- (CGST + SGST) pertaining to January 2018, which had been declined by the State Tax Authorities on the ground of limitation under Section 54 of the CGST Act, 2017. The Petitioner had discharged tax liability under the wrong head by treating inter-State supplies as intra-State, but upon audit objection, duly rectified the error by remitting IGST through DRC-03 on 04.03.2023, thereafter sought refund of the erroneously paid CGST/SGST.

The Revenue contended that the refund claim filed in January 2024 was barred since limitation is counted from the date of the original payment in 2018. The High Court, however, held that such situations fall squarely within the ambit of Section 77 of the CGST Act read with Rule 89(1A), wherein the relevant period of limitation commences from the date of correct tax payment. Placing reliance on CBIC Circular No. 162/18/2021-GST as well as the ruling of the Jharkhand High Court in ***Gajraj Vahan (P) Ltd.,*** the Court quashed the refund rejection, directed restitution of the amount with interest.

Sai Steel v. State of Bihar, C.W.J.C. No. 13163/2024, Patna High Court

Demurrage income does not fall within the ambit of declared services under the Service Tax regime

The Department sought to levy service tax on the demurrage income earned by the Respondent in line with the agreement entered into between the Respondent and HPCL, from July 2012 to September 2015 by invoking the 'declared service' provision under Section 66E(e) of the

Finance Act, 1994. The instant appeal was filed by the Department challenging the OIO dropping the demand.

The Tribunal dismissed the appeal, holding that demurrage charges are intrinsically linked to 'transportation of goods by sea,' which was exempted from service tax under Section 66D. The Tribunal emphasized that demurrage constitutes a contractual disincentive for delayed vessel retention at ports, forming an integral part of transport operations rather than a standalone service. The Tribunal referred to CBIC Circular No. 214/1/2023-ST dt. 28.02.2023 wherein it was clarified that the 'declared services' under Section 66E(e) should be construed narrowly, applying only to standalone agreements and not contingent liabilities arising as components of other services, whether taxable or exempted. Thus, the Tribunal upheld OIO's finding that demurrage income was not subject to Service Tax.

CCE & ST v. Shipping Corporation of India Ltd., S.T.A. No. 85421/2017, CESTAT Mumbai

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