S&S Tax Snippets

17th Ed.

Regulatory Updates

GST Updates:

Clarification with respect to post sale discounts

In line with earlier Circular No. 92/11/2019-GST dated 07.03.2019, it is clarified that the recipient is not required to reverse the ITC attributable to the discount provided basis the Commercial Credit Note since there is no reduction of original transaction value.

Further, there can be post-sale discount by a manufacturer to its dealer/distributor with respect to supply of goods to the end customers by the latter. In this regard, it is clarified that post-sale discount offered by manufacturer to its dealer has to be included in consideration as monetary value for inducement of further supply of goods only in cases where there exists an agreement between the Manufacturer and the end customer for supply of such goods at a discounted price. In case where there is no agreement between the manufacturer and the end customer, there are two independent transactions and transaction between the manufacturer, and the dealer operates on a principal-to-principal basis. In such cases, these post-sale discounts are merely given to reduce the sale price of the goods and are not linked to any independent activity rendered to the manufacturer. Therefore, such discount cannot be included in consideration as the monetary value of the inducement of further supply of goods.

Additionally, it is also clarified that post sale discount offered by manufacturers to dealers engaged in promotional activities to boost sales shall not be treated as consideration for a separate transaction of supply of services where such discount is not linked to any independent service provided to manufacturer. However, GST is leviable in cases where the dealer undertakes specific sales promotion activities such as advertising campaigns, co-branding, customization services, etc., only when such services are explicitly stated in the agreement for a consideration payable for such a supply.

Circular No. 251/08/2025-GST dated 12.09.2025

FAQs on decisions of the 56th GST Council Meeting

The 56th GST Council meeting has introduced a series of reforms. The recommendations of the Council and our views on the same including the industry vide changes and impact was published by us on 04.09.2025. Click here to read the same.

In view of the recommendations, the following clarifications has been provided:

- In cases where there is a reduction of rate for inward supplies, and tax has been duly charged on it, at a rate which is in consonance with the rate prevailing at the time of such supply, the registered person is entitled to the credit of such tax paid.
- In cases where outward supply is exempt under the new rate, and if ITC of the GST paid is in the ledger, the same can be utilized to discharge outward liability made till 21st September 2025. Post such date, when the rate change is effected, ITC will have to be reversed as per the provisions of CGST Act.
- With regard to existing stock, since the GST is leviable on supply, goods supplied on or after the revised GST rates are notified,

Press release dated 03.09.2025

S&S Case Roundup

Cases Handled by us

Karnataka High Court Holds R&D Services as Export of Services; Quashes Refund Rejection and SCNs

The High Court in the instant case dealt with the issue of classification of R&D and engineering services provided by the Petitioner to its overseas affiliates. The assessee classified these services as “export of services” under Section 2(6) of the IGST Act, while the Department contended that the services were rendered domestically, treating the foreign affiliates as establishments of the same person, thereby rejecting refund

claims and initiating for recovery.

It was submitted that the services were performed under a collaboration agreement with group companies located in the USA, involving software development, design enhancements, testing, and integration. The assessee received consideration in convertible foreign exchange, and the services satisfied all five statutory conditions of export of services. Reliance was placed on CBIC Circulars clarifying that such R&D services, though executed in India, qualify as export when consumed abroad. It was further contended that the Department had earlier sanctioned refunds on identical facts.

The assessee produced substantial evidence, including agreements, invoices, and payment receipts proving that the services were for and consumed by the foreign affiliates. The Court noted that all statutory conditions under Section 2(6) were satisfied, the place of supply was outside India, and the assessee and its foreign counterpart were distinct entities.

The High Court, held that the services were indeed exports, and that denial of refund and issuance of notices were arbitrary and without jurisdiction. The impugned orders and notices were quashed, and the Department was directed to grant refund of accumulated ITC along with applicable interest.

Wipro GE Healthcare Pvt. Ltd. v. Assistant Commissioner of Commercial Tax, W.P. No. 7317/2023 c/w W.P. No. 3689/2024 & W.P. No. 21146/2024, Karnataka High Court, Order dated 27.03.2025.

Karnataka High Court remands an OIA to the Original Authority on the ground of lack of authority under Section 107(11) for remanding a matter by the Appellate Authority.

The Petitioner challenged the OIA, which had alleged a short declaration of tax liability in July 2017, the first month of GST implementation. The authorities claimed that the company failed to properly declare reverse charge liability and excess ITC in its GSTR-3B. A show cause notice was issued in 2022 for FY 2017–18, leading to an Order-in-Original in 2023 and the Impugned OIA in 2025.

The Petitioner argued that errors occurred due to teething troubles in the newly introduced GST system, where forms were cumbersome and lacked an edit facility. They submitted all relevant documents before the Appellate Authority, which acknowledged them but declined relief, citing its limited powers under Section 107(11) of the CGST Act, which permits dismissal or allowance of appeals but not remand to the original authority.

The High Court observed that since the Appellate Authority had no power to remand, the matter required judicial intervention. Recognizing genuine difficulties in the initial GST rollout, the Court quashed both the appellate and original orders and remitted the case to the adjudicating authority.

Wipro GE Healthcare Pvt. Ltd. v. Joint Commissioner of Commercial Tax and Anr, W.P. No. 26345/2025, Karnataka High Court, Order dated 11.09.2025.

CESTAT Rules that Dhatri Fairness Face Pack is an Ayurvedic Medicament and not a Cosmetic product.

The Tribunal in the instant case deals with the classification of the product

"Dhatri Brand Fairness Face Pack". The assessee classified it under Heading 3004 90 11 of the Central Excise Tariff Act, 1985, as an Ayurvedic medicament, while the Department classified the same under the Heading of 3304 99 90 as a cosmetic/skin-care product, thereby demanding differential duty.

It was submitted before the tribunal that the product is manufactured using Ayurvedic ingredients listed in authoritative texts, following the Ayurvedic process. The product was licensed as an Ayurvedic medicine under the Drugs and Cosmetics Act, 1940, and prescribed by Ayurvedic practitioners for treating pimples and blemishes. It was further contended that the product satisfied the "twin tests" laid down by the Supreme Court in the case of ***CCE vs. Richardson Hindustan Ltd,*** namely, that it is recognized in common parlance as an Ayurvedic medicine and that its ingredients are mentioned in authoritative Ayurvedic texts.

The Tribunal observed that the Revenue had not provided evidence to prove cosmetic use, while the assessee produced substantial evidence showing therapeutic use. The tribunal, in line with the same, held that the product's primary function was curative, not cosmetic, and therefore classifiable as an Ayurvedic medicament, and the appeals were allowed.

Warrier's Hospital & Panchakarma Centre vs. Commissioner of Central Excise & Customs, Final Order Nos. 21401–21405/2025, CESTAT Bangalore.

Karnataka Appellate Tribunal grants a stay on the Order passed by the Appellate Authority beyond the scope of remand

An Order was passed against a Company involved in providing works contract services wherein the entire tax liability was re-determined pursuant to the remand Order passed by the Karnataka Appellate Tribunal on a completely different ground stating that the Company has claimed ITC towards the payment made to the sub-contractors and therefore not eligible for deduction claimed towards the payment made to sub-contracts in terms of Section 11(c) of the KVAT Act and also not eligible for the deduction claimed towards the labour and like charges.

Hon'ble Tribunal, considering the facts of the present case and the pre-deposit made during the earlier round of litigation before the Tribunal, admitted the appeal and also granted stay on the demand.

STA 10/2025, Karnataka Appellate Tribunal

Courtroom Updates

Mismatch in stock identified during search cannot lead to proceedings under Section 130 of the CGST Act

The Hon'ble Supreme Court rejected the Department's SLP against an order of the Allahabad High Court which relied on a series of its own judgments to hold that mismatches in stock identified during search does not trigger Section 130 of the CGST Act.

The Petitioner was engaged in trading hosiery goods. Pursuant to an inspection by the Department, mismatch in stock was identified and proceedings under Section 130 of the CGST Act were initiated, which culminated in an Order imposing tax and penalty.

The Allahabad High Court, previously, had held that merely finding excess stock during a GST survey does not justify invoking confiscation and penalty proceedings under Section 130, as the provision applies only when there is clear intent to evade tax, such as fraud, willful misstatement, or suppression of facts. Determination of tax liability arising from discrepancies like excess stock must follow the procedure under Sections 73 or 74, which include safeguards such as issuance of a show-cause notice and proper adjudication. Bypassing these provisions and straightaway imposing tax, penalty, and confiscation under Section 130 was held to be legally unsustainable

Addl. Commr. v. Dayal Product, S.L.P. (Civil) Diary No. 44119/2025, Supreme Court of India

Cash refund of pre-deposit paid in credit permitted

The Hon'ble Karnataka High Court directed the tax department to refund balance pre-deposit of INR 16.11 crore, in cash. The Petitioner had made the payment of pre-deposit through ITC during appeal under the Karnataka VAT Act before the Karnataka Appellate Tribunal (KAT). After KAT allowed the appeal and the Revenue's revision petitions were dismissed, the Petitioner became entitled to a full refund.

While the 30% cash portion of the pre-deposit was refunded, the department refused to release the ITC portion in cash, arguing it could only be re-credited.

The High Court held that under Sections 142(7)(b) and 142(8)(b) of the KGST, all refundable amounts, regardless of whether paid in cash or through ITC, must be refunded in cash. The Court also rejected reliance on Rule 92(1A), holding inapplicable since the ITC deposit was made prior to its insertion in March 2020. Observing that the department had accepted the ITC pre-deposit without objection, the Court ruled that respondents were estopped from denying cash refund.

Flipkart India Pvt. Ltd. v. ACCT, W.P. No. 7277/2025, Karnataka High Court

Rectification cannot be used to recall appellate orders

The Hon'ble Allahabad High Court quashed orders recalling an appellate decision that had set aside penalty under Section 129(3) of the CGST Act.

The petitioner's appeal had been allowed on merits but the order was later recalled on an application under Section 161 of the CGST Act merely because the department had filed an SLP before the Supreme Court. The Court held that Section 161 permits rectification only of an "error apparent on the face of record," which must be patent and self-evident, not something requiring elaborate reasoning.

Relying on the Supreme Court's decision ***in Deva Metal Powders Pvt. Ltd. v. Commissioner of Trade Tax***, the Court clarified that rectification cannot become a mechanism for review or substitution of an order. Since no stay had been granted in the SLP, there was no legal bar on passing the appellate order and recalling it amounted to impermissible review.

The High Court restored the original appellate order allowing the appeal and quashed the rectification orders.

Opasil Pigments and Chemicals Pvt. Ltd. v. State of U.P., Writ Tax No. 613/2020, Allahabad High Court

Unsigned GST orders are invalid

The Petitioner challenged assessment orders in Form GST DRC-07 on the ground that they lacked the assessing officer's signature. This position was conceded by the Department. The High Court considered earlier Division Bench rulings in cases such as ***A.V. Bhanoji Row Vs. The Assistant Commissioner (ST), W.P. No.2830/2023***, wherein it was held that signature is mandatory for a valid assessment order and cannot be cured by Sections 160 or 169 of the CGST Act.

The Court also cited Rule 26(3) of CGST Rules, which deems unsigned orders as not served at all, and noted the Madras High Court's similar view in ***Tvl. Deepa Traders.***

Despite a delay in filing the writ petition, the absence of a validly served order meant limitation did not apply. The Court quashed the assessment orders but granted liberty to the department to issue fresh, duly signed orders after following due process.

RCC Engineering Pvt. Ltd. v. Dy. Asst. Commr., Writ Petition No. 21892/2025, Andhra Pradesh High Court

GST appeals limitation begins from date of communication, not portal upload

The Petitioner's GST registration had been created using tax consultant's email and phone number, with whom there was dispute and was denied login credentials. The Petitioner requested a change of email and mobile on 05.02.2024, which the department accepted only on 17.03.2025.

An assessment order dated 25.07.2024 was uploaded on the common portal, but the Petitioner became aware of it only after receiving a bank account attachment order on 05.03.2025. The appeal filed on 25.03.2025 was dismissed as beyond the 90-day limit under Section 107(1) of the RGST Act.

The High Court set aside the Appellate Authority's order rejecting a GST appeal as time barred. The High Court held that "communication" under Section 107(1) must be purposively interpreted to mean actual receipt or access to the order, not merely portal upload, especially where the assessee was unable to access the portal for reasons beyond control. Since the appeal was filed promptly after gaining access, there was no delay attributable to the petitioner. The Court restored the appeal for decision on merits and observed that the department should also serve assessment orders by email to avoid such disputes.

Sahil Steels v. State of Rajasthan, D.B. Civil Writ Petition No. 11326/2025, Rajasthan High Court

Rule 89(4B) and 96(10) of the CGST Rules being omitted without saving clause, would lapse the existing proceedings

The Hon'ble Bombay High Court has quashed multiple SCNs and Orders rejecting the refunds in terms of the restrictions prescribed under the erstwhile Rule 89(4B) and 96(10) of the CGST Act. The Court held that the omission of the said Rule by way of Notification No. 20/2024-CT dated 08.10.2024 would apply to all the proceedings except for the 'transactions past and closed', since the same is omitted without a saving clause. The Court in this regard also relied on ***M/s Sri Sai Vishwas Polymers Vs Union of India and Anr (WP (MB) No. 103/2025, High Court of Uttarakhand)*** and ***M/s Addwrap Packing Pvt Ltd Vs Union of India and Ors (Special Civil Application No. 22519/2019 and others, High Court of Gujarat)***.

Further, it was also observed that Section 6 of the General Clauses Act is not applicable to the present omission since the said omissions neither made by the General Clauses Act, nor by any Central Act or a Regulation and per contra the said omission is done by way of Notification.
Hikal Limited v. UOI & Ors, WP No. 78/2025 & others, Bombay High Court

High Court Quashes Circular No. 181/13/2022-GST, which curtails the ITC refund rights of the assessee.

The Rajasthan High Court, in the instant case, dealt with the issue of refund of unutilised ITC under the inverted duty structure on mustard oil purchases used for manufacturing edible oil. Notification No. 09/2022-CT (Rate) dated 13.07.2022, which was brought into effect from 18.07.2022, placed mustard oil in the negative list for ITC refunds. The petitioner, subsequent to the same, sought for a refund of ITC for inputs purchased before 18.07.2022, which was denied by the department relying on Circular No. 181/13/2022-GST dated 10.11.2022.

The Court held that the petitioner's right to a refund for inputs purchased before 18.07.2022

could not be denied, as ITC is an indefeasible right that accrues when goods are bought. The circular, which restricted refunds only to applications filed before 18.07.2022, was declared arbitrary, violative of Article 14, and contrary to Section 54 of the CGST Act and the notification itself. The Court emphasized that no assessee could be expected to file refund claims immediately on a specified date, especially when the statute allows a two-year limitation, and in line with the same, the court quashed Circular No. 181/13/2022-GST and directed the authorities to process the petitioner's refund applications.

Shree Arihant Oil and General Mills vs. Union of India & Ors. D.B. Civil Writ Petition No. 2932/2023, Rajasthan High Court

Assessees are not eligible to claim a refund of unutilized ITC post the closure of their business

The Division bench of the Sikkim High Court reversed the previous single bench decision, which allowed claiming a refund of unutilised ITC upon business closure. The assessee in the instant case sought a refund under Section 49(6) of the CGST Act for the refund on unutilised ITC post the closure of their business. The Single Judge initially allowed the refund, but the Division Bench reversed this decision.

The court relied heavily on the Supreme Court's VKC Footsteps precedent, which established that ITC refunds are purely statutory rights, not constitutional entitlements. Section 54(3) of the CGST Act permits refunds only in two specific scenarios: zero-rated supplies without tax payment, and inverted duty structure cases where input tax rates exceed output tax rates. The refund of amounts in the credit ledger cannot be granted apart from these situations. The court further emphasized that taxing statutes must be interpreted strictly without judicial expansion beyond clear legislative intent. Since business closure doesn't fall within these enumerated categories, Assessees claim was rejected.

The court further provides that companies discontinuing operations must reverse accumulated ITC under Section 29(5) of the CGST Act, and cancellation procedures rather than seek refunds.

Union of India vs. SICPA India Private Limited, W.A. No. 02/2025, Sikkim High Court

No GST Liability Arises on Signing of JDA; Refund with Interest Directed

The Hon'ble Bombay High Court at Goa ruled that GST liability under a Joint Development Agreement (JDA) does not arise on the date of execution of the agreement.

The Petitioner, a real estate developer, had entered into a JDA with a landowner on 13.10.2017. Pursuant to investigation, the DGGI demanded GST on construction services under the JDA and the Petitioner, under protest, paid ₹7 crores. The Revenue initially claimed that tax was due on the date of the JDA but later admitted that, under Notification No. 4/2018-Central Tax (Rate), liability arises only when possession or rights in the completed structure are transferred through a conveyance deed or allotment letter.

The Court noted that since the landowner had subsequently sold the entire land to the developer, the JDA ceased to have effect, and no GST liability accrued. Accordingly, the Court directed refund of the amount paid under protest along with interest at 6% per annum.

M/s Provident Housing Ltd. v. Union of India & Ors., W.P. No. 5 of 2022, Bombay High Court (Goa Bench), Order dated 21.08.2025

Karnataka High Court Quashes GST on University Fees

The Hon'ble Karnataka High Court held that GST cannot be levied on affiliation, registration, convocation and similar fees collected by statutory universities. The Court observed that universities are statutory bodies discharging regulatory and educational functions, which cannot be equated with "business" under Section 2(17) of the CGST Act. It further noted that such

fees are statutory/regulatory in nature and not "consideration" for a commercial supply. Relying on the Bombay High Court's ruling in ***Goa University v. Joint Commissioner of CGST (2025),*** the Court declared CBIC Circulars dated 17.06.2021 and 11.10.2024, to the extent they imposed GST on affiliation services, as invalid. Consequently, the Show Cause Notices and Orders issued against the Petitioners were quashed, and refunds with consequential reliefs were directed.

Bengaluru North University v. Joint Commissioner of Central Tax & Ors., W.P. No. 4254 of 2024 (C/W W.P. Nos. 26064 & 26067 of 2023)

CESTAT Chennai Allows CENVAT Credit on Steel Billets used for Pallets/Dunnage by JSW Steel

The assessee is engaged in the manufacture of steel products and also avails CENVAT credit on various inputs, capital goods, and input services. The appellant, during the period of February 2014, had availed of 50% CENVAT credit on the AS cast rounds/billets as capital goods. The department raised an issue against the same contenting that these billets were finished goods of the assessee, not removed from the factory, and hence not eligible for credit.

The Tribunal held that dunnage/pallets assist forklifts and heavy machinery in lifting, transporting, and stacking steel billets and similar materials. Since they aid in the effective operation of such machines, they qualify as "accessories" under Rule 2(a)(A)(iii) of CENVAT Credit Rules, 2004. Further, as they are used for handling, transporting, and storing materials integral to the manufacturing process, they also fall within the wide ambit of "inputs" under Rule 2(g) CENVAT Credit Rules, 2004.

The Tribunal in this regard relied on ***CCE Bangalore v. M/s. Anglo French Drugs & Indus. Ltd. Final Order Nos. 1269-1270/2007(Tri.-Bang.), M/s. Tata Engineering and Locomotive Co. Ltd. Civil Appeal No. 2721 of 1996*** holds that the manufacturing process begins with handling and movement of raw materials, and material-handling equipment like pallets is essential "in relation to" manufacture. Thus, in line with the same, it was held that the assessee is eligible for CENVAT credit on the billets used as pallets/dunnage, and the appeal was allowed.

M/s Jew Steel Ltd., vs. Commissioner of GST & Central Excise, Salem; Appeal No. E/40218/2017, CESTAT Chennai Bench

THANK YOU

For further queries/information please get in touch with us

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