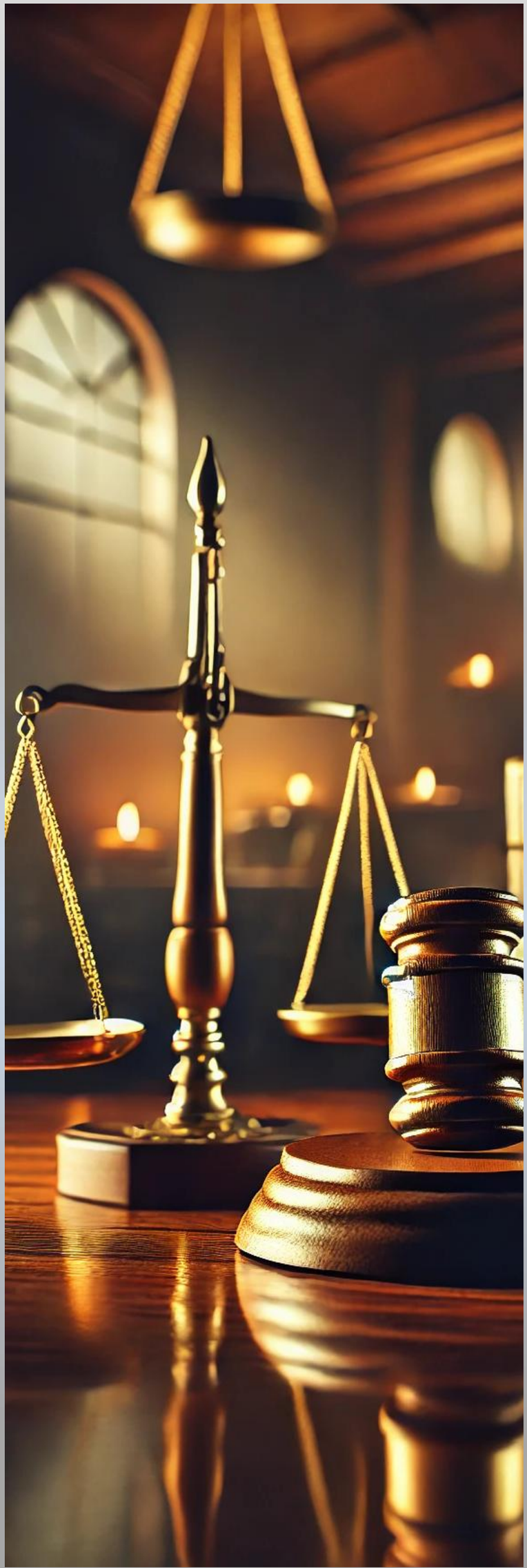
S&S Tax Snippets

19th Ed.



Regulatory Updates

GST Updates:

Circular No. 212/6/2024-GST is withdrawn

In line with the recommendations of the 56th GST Council meeting for amendments to Section 15(3) of the CGST Act with respect to post sale discount, Circular No. 212/6/2024-GST dated 26.06.2024 which provided clarifications in relation to mechanism for providing evidence in compliance of conditions of Section 15(3)(b)(ii) of the CGST Act, has been withdrawn. The procedure prescribed under the said Circular is not required to be complied with henceforth.

Circular No. 253/10/2025 dated 01.10.2025

Manner of processing the refund applications under amended Rule 91(2) of the CGST Act

In order to streamline the process of refund claims, instructions are issued by the Board with respect to the same. In terms of the instructions, the refund applications shall be processed as per the existing guidelines till the issuance of Form RFD-02. The categorization of refund applications as "low risk" on the basis of risk score provided by the system, will be taken on account for sanctioning 90% refund on provisional basis and once RFD-02 is issued, scrutiny is not required to be done for low-risk refund applications.

Further, in terms of the said instruction, provisional refund may not be sanctioned where, in respect of any previous refund applications filed, the issue is pending before an Appellate forum or a SCN is issued or where an order has been passed.

Additionally, in terms of the recommendations of the 56th GST Council meeting, the above procedure and sanction of 90% refund amount refund on provisional basis shall also be applicable for the refund applications on account of Inverted Duty Structure filed on or after 01.10.2025.

Instruction No. 06/2025-GST dated 03.10.2025

Customs Updates:

Clarification with respect to issuance of End-User Certificate (EUC) for restricted imports

In exercise of powers under Paragraphs 1.03 and 2.04 of the Foreign Trade Policy, 2023, as amended, it is clarified that Regional Authorities (RAs) of DGFT shall issue End-User Certificates (EUCs) for both freely importable and restricted items, where a foreign Government insists on EUCs prior to export from their country. For restricted items, the EUC shall be issued only in cases where a restricted authorisation has been granted by the DGFT. The quantity and value in the EUC must be limited to those specified in the restricted authorisation.

Public Notice: No. 23/2025-26 dated 01.10.2025

S&S Case Roundup

Cases Handled by us

High Court stays anti-profiteering proceedings by GSTAT against the Petitioner

The Petitioner, engaged in the manufacture and sale of medicines and cosmetics, was alleged to have engaged in anti-profiteering pursuant to rate changes in October and November 2017 *vide* a complaint. Despite several rounds of investigation reports and hearings, no final order had been passed since the initiation of the investigation in 2018.

It was submitted before the Hon'ble High Court of Karnataka that Section 171 of the CGST Act read with Rule 129 and 133, contemplate that the entire anti-profiteering proceedings, from the date of the complaint till the date of a final order by an Authority under Rule 133(1) of the CGST Rules, must be completed within a period of 21 months. It was further submitted that the purpose of such time limit provided under the law is to ensure timely determination of the profiteered amount and compensate the complainant, or identify recipients who are entitled to

receive the same. Even considering the Hon'ble Supreme Court's Suo Motu extension order due to the COVID-19 pandemic, no order had been passed despite a lapse of over 4 years from the DGAP Report. Hence, it was submitted that the GSTAT must be prohibited from continuing with the proceedings against the Petitioner.

In light of the above, the Hon'ble Court was pleased to grant an interim order of stay, preventing the GSTAT from proceeding further in the case against the Petitioner.

W.P. No. 30475/2025, Karnataka High Court

High Court stays Order revising the Audit Report as without jurisdiction

The Petitioner challenged the Revision Order passed by the department in a Writ Petition before the Hon'ble High Court revising the audit report without initiating any proceedings under Section 73/74 of the CGST Act.

It was argued before the Court that Section 108 of the CGST Act authorises an officer to revise a 'decision' or 'order'. Further, in terms of Section 108(6)(ii) of the CGST Act, the term 'decision' includes an 'intimation' which can only be interpreted as intimation given under Form GST DRC-01A issued in terms of Section 73(5) of the CGST Act. Therefore, revisional powers invoked in the present case to revise an audit report issued in Form ADT-02 under Section 108 of the CGST Act is without jurisdiction.

Considering the same, the Hon'ble Court granted an interim order of stay on the Revision Order.

W.P. No. 26955/2025, Karnataka High Court

High Court stays SCN proposing recovery of erroneous refund

The Petitioner being the head office in India, had entered into agreements with overseas customers for rendering ITeS services. Off-shore services were performed by head office in India and on-site services were performed by the overseas branches. The department sought to recover the refund granted to the extent of on-site services stating that the supplier of service i.e., the foreign branch is not located in India and therefore, the same does not amount to export.

The Petitioner challenged the said SCN before the Hon'ble High Court, wherein relying on Circular No. 78/52/2018-GST dated 31.12.2018, it was argued that in case of export of services, even if the portion of the said services are performed by service providers abroad, the total contract value is to be treated as 'value of the export'. In the present case, on-site services being rendered by the overseas branches of the Petitioner would be included in the value of export. Additionally, it was also submitted that the payment for the entire contract value is made to the Petitioner located in India.

Considering the same, the Hon'ble Court granted an interim order of stay on the SCN and further proceedings.

W.P. No. 29342/2025, Karnataka High Court

Courtroom Updates

Refund of accumulated ITC for exports can be claimed by SEZ unit

The Supreme Court dismissed an SLP filed by the Department, challenging a High Court order which, by relying on its own order in ***Britannia Industries Limited vs. Union of India, 2020 (42) G.S.T.L. 3 (Guj),*** had held that an SEZ unit is entitled to claim the refund of unutilised ITC accumulated under Rule 89 of CGST Rules on the ground that exports are made without payment of tax under LUT.

The Department contended that only the supplier could have preferred the application claiming a refund of the unutilised ITC accumulated under Rule 89 of the CGST Rules, 2017 and not the SEZ Unit.

The Hon'ble Supreme Court stated that it is not inclined to interfere with the impugned order but kept the question of law open.

UOI v. Meghmani Organochem Ltd., SLP (C) No.1239/2025, Supreme Court

Purchasing dealer eligible to ITC for bona fide transactions where the seller has not deposited tax

The purchasing dealers (Respondents) had availed input tax credit (ITC) on payments made to registered selling dealers in terms of invoices raised against them. However, after the transaction, the registration of the selling dealer was cancelled, and they defaulted in depositing the tax collected with the Government.

The Hon'ble Delhi High Court had held that Respondents were bona fide purchasers, who had paid taxes in good faith to registered sellers and therefore, are entitled to ITC after due verification of the invoices

In a similar case in ***On Quest Merchandising India Pvt. Ltd. v. Government of NCT of Delhi, 2018 (10) G.S.T.L. 182 (Del.),*** wherein the Hon'ble Delhi High Court had read down the provisions of Section 9(2)(g) of the Delhi VAT Act, 2004 to hold that, in case of failure to deposit tax in bona fide transactions, the Department cannot deny ITC to the purchasing dealer, and must instead proceed against the selling dealer.

In the present case, since the sellers were registered on the date of the transaction, and neither the transactions, nor invoices were disputed, the order of the Delhi High Court directing grant of ITC after verification was upheld.

Commr. of Trade and Tax, Delhi v. Shanti Kiran India Pvt. Ltd., Civil Appeal Nos. 2042/2015, Supreme Court of India

Supreme Court upholds trade tax on ink and materials used in printing lottery tickets under a works contract

The Supreme Court in the instant case, examined whether a trade tax could be levied under Section 3F of the Uttar Pradesh Trade Tax Act, 1948, on ink and processing materials used in printing lottery tickets. The appellant, engaged in printing on paper supplied by clients, procured ink and chemicals independently. The assessing authority levied tax on the value of these materials, treating them as "goods" involved in a works contract.

The appellant contended that the materials were consumables whose property was not transferred, and that lottery tickets were 'actionable claims', not 'goods'. The Supreme Court however, upheld the High Court's ruling, holding that tax under Section 3F(1)(b) applies to goods involved in the execution of a works contract, not merely to the final product. It clarified that three conditions must be satisfied: existence of a works contract, involvement of goods, and transfer of property in those goods. Since ink and chemicals became an inseparable part of the printed lottery tickets, their property was transferred to the client, making them taxable. The Court dismissed the appeal, upholding the tax levy, and holding that the transformation of goods during printing does not negate the transfer of ownership.

Aristo Printers Pvt. Ltd. v. Commissioner of Trade Tax, Lucknow, U.P., Civil Appeal No. 703/2012, Supreme Court of India

Time spent in rectification proceedings to be excluded from calculating the limitation for appeal

The Petitioner's appeal under Section 107 of the CGST Act was dismissed on the grounds that the appeal was filed beyond the 3-month limitation period.

The Petitioner contended that the interim period was spent pursuing rectification proceedings as it felt that the order suffered errors apparent on the face of the record. Further, the same must be excluded from calculating limitation period for filing the appeal. It was contended that the Petitioner had immediately filed the appeal after the rectification order was passed.

The Department contended that the Petitioner ought to have filed the appeal within limitation, during the pendency of the rectification application.

The Hon'ble High Court noted that if such a course of action were to be adopted by the Petitioner, the same could lead to anomalous results, where the rectification order could merge with the original order, frustrating the appeal proceedings.

In light of the same, the Hon'ble High Court held that the period of time spent pursuing rectification proceedings must be excluded for the purposes of calculating limitation for filing appeal under Section 107 of the CGST Act, 2017.

Aravind Fashion Ltd. v. State of Haryana, C.W.P. No. 16286/2025, Punjab and Haryana High Court

Pre-SCN consultation is mandatory where demand exceeds INR 50 lakhs in service tax

The Hon'ble Bombay High Court considered the question of whether a pre-consultation notice would be mandatory, prior to issuance of SCN under Section 73 of the Finance Act, 1994, read with Circular No. 1053/02/2017-Cx- dated 10 March 2017 [Master Circular] and Circular No. 1076/02/2020-Cx- dated 19 November 2020.

Various decisions of the Delhi High Court, Madras High Court and the Gujarat High Court had answered the question in the affirmative, while some decisions of the Patna and Madras High Courts had answered in the negative.

The Department contended that failure to issue a pre-SCN consultation notice does not invalidate the SCN, as the same was not a mandatory condition. It further submitted that the Hon'ble Supreme Court had issued notice in the matter and hence, the line of decisions hold that the requirement was mandatory, could not be followed.

The High Court observed that the order of the Supreme Court was limited to the question of limitation if the SCN were quashed. With regard to the Madras High Court's decision in ***Brilliant Corporate Services Pvt. Ltd. v. Commr. of GST and Central Excise, Chennai, (2022) 104 G.S.T.R. 296,*** the Court noted that the single judge had not engaged with or relied on binding judgements of the Madras High Court, or the Supreme Court.

Hence, the SCNs were quashed, with liberty given to the Department to issue fresh SCN after the pre-consultative notice stage. The Court directed that such period, along with the duration of the Court's stay order, are to be excluded for the purposes of calculating limitation.

Rochem Separation Systems (India) Pvt. Ltd. v. UOI, W.P. No. 822/2021, Bombay High Court

ITC cannot be blocked under Rule 86-A of the CGST Rules when there is no available balance in the credit Ledger

The Department in the instant case issued an order against the Petitioner blocking the ITC in the credit ledger under Rule 86-A of the CGST Rules. The petitioner's electronic credit ledger had a nil balance when the department invoked Rule 86-A to block ITC worth ₹12,84,273. The Court held that such action was without jurisdiction, as the rule applies only to credit "available" in the ledger at the time of blocking.

The High Court further relied on various judgments, such as ***Samay Alloys India Pvt. Ltd. v. State of Gujarat; Special Civil Application No. 18059 of 2021*** passed by the Gujarat High Court, and the Delhi High Court's decision in the case of ***Best Crop Science Pvt Ltd through Authorised Representative v. Principal Commissioner, CGST***

Commissionerate, Meerut & Ors Writ Petition (C) 10980/2024. The Court, placing reliance on the above-mentioned judgments, observed that Rule 86A must be strictly construed, and no blocking of future credits is permissible. Revenue's argument that a broader interpretation was needed to prevent fraud was rejected, as taxing provisions must be interpreted literally and not expanded by implication. The Court further clarified that if ITC is fraudulently availed and utilised, recovery proceedings under Sections 73 or 74 and provisional attachment under Section 83 would be available to the authorities.

Consequently, the impugned order was quashed, and the department was directed to restore the blocked ITC within 15 days.

Rawman Metal & Alloys v. Deputy Commissioner of State Tax, Thane, W.P.(L) No. 10928/2025, Bombay High Court

Educational consultancy services provided to foreign educational institutions qualify as export of services and eligible for refund of GST.

The high court in the instant case dealt with the question of whether an educational consultancy firm qualifies for GST refunds on services provided to foreign educational institutions (FEIs). The Petitioner assists Indian students seeking admission abroad and receives commission payments in foreign exchange when students gain admission through FEIs. The Department denied refunds, arguing that the Petitioner operates as an "intermediary" ineligible for export service benefits.

The Delhi High Court held that the Petitioner is a service provider and not an intermediary, because it supplies services directly to FEIs rather than arranging or facilitating services between parties. The actual service recipient is the FEI paying consideration, not the students. Hence, the services qualify as "export of services" under Section 2(6) of the IGST Act, meeting all requisite conditions such as the supplier being in India, the recipient being located outside India, place of supply being outside India, payment happening in foreign exchange, and an independent principal-to-principal relationship. The court noted that the recent GST Council amendments support this interpretation by removing intermediary services from special place-of-supply provisions, allowing them to claim export benefits like other services. Consequently, the High Court quashed the Writ Petition filed by the department and upheld the impugned order by holding that the Petitioner is eligible to claim GST refund with applicable statutory interest within two months.

Commissioner of GST Delhi, v. Global Opportunities Pvt. Ltd., W.P.(C) 10189/2025, Delhi High Court

An increase in quantity or free samples does not amount to passing on benefits to consumers

The Petitioner, who is a distributor of Hindustan Unilever Limited, deals in Vaseline. The Petitioner challenged the impugned order issued by the National Anti-Profiteering Authority along with Section 171 of the CGST Act and Rule 126 of the CGST Rules. The order held that the Petitioner violated anti-profiteering provisions by not reducing prices of products post the reduction of the rate of tax from 28% to 18%.

The Petitioner submitted that they have increased the quantity of the product sold and have been providing free offerings and thus, have been charging the same MRP.

The Delhi High Court dismissed the petition, holding that Section 171 and Rule 126 are constitutionally valid in line with its own judgment in *Reckitt Benckiser India (P.) Ltd. v. UOI W.P. (C) No. 7743 of 2019*. The court further held that increasing quantity, volume, or offering free schemes cannot substitute the mandatory requirement of price reduction following GST rate cuts. The purpose of GST reduction is to make products cost-effective for consumers and to maintain the same price while increasing quantity defeats this objective and amounts to consumer deception, as it curtails consumer choice.

Sharma Trading Company v. UOI, W.P. (C) No. 13194/2018, Delhi High Court

THANK YOU

For further queries/information please get in touch with us

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