

S&S Tax Snippets

28th Ed.



Customs Updates:

Special Economic Zone

Amendment to Special Economic Zone Rules, 2006 (SEZ Rules)

Notification No. G.S.R. 114(E) dated 03.02.2026 has been issued inserting Rule 19(1A), in terms of which the Administrator, IFSCA is required to issue a letter of approval in Form GA for setting up of unit in an International Financial Services Centre. In this regard, Form GA i.e., letter of approval has also been introduced vide the said amendment.

Notification No. G.S.R. 114(E) dated 03.02.2026

Revision of user charges for SEZ online services

Department of Commerce SEZ Division, Ministry of Commerce and Industry, pursuant to the representation from National Securities Depository Limited, has revised the user charges for SEZ-online services w.e.f. 01.01.2026 vide Circular dated 12.02.2026, superseding the earlier Department's letter no. K43014(22)/32/2020-SEZ dated 02.12.2021. Under the revised framework, service charges have been introduced for Procurement of services by SEZ Units from DTA on per invoice basis and several other existing charges have been increased. The rate revision aims to address revenue impact arising after migration of import-export transactions for goods from SEZ online to ICEGATE and to ensure management and administration of the SEZ-Online system.

Circular No.K-43014(22)/32/2020-SEZ dated 12.02.2026

Karnataka High Court stays Notice issued proposing to reclassify Interactive Flat Panel Displays under CTH 8528 59 00

The industry leading importers of Interactive Flat Panel Display (IFPD) approached the Hon'ble High Court of Karnataka challenging Notification No. 05/2025-Customs dated 01.02.2025 issued under Section 25 of the Customs Act, 1962 wherein in terms of Sl. No. 515C, the IFPDs is purported to be classified under CTH 8528 59 00 which reads as "other monitors". It was submitted before the Hon'ble High Court that the IFPDs which are All-in-One units are classifiable under CTH 8471 41 90 attracting NIL rate of duty on import and the same has been confirmed by the decisions of the various Tribunals upheld by the Supreme Court and the Authority for Advance Ruling. However, the present Notification is issued under Section 25 of the Customs Act, 1962 classifying the IFPDs under CTH 8528 59 00 and imposing a rate of duty at 20% when the Section only provides for the power to grant exemption on payment of duty. The amendment to the principal Customs Tariff Act can only be done by exercising powers conferred under Section 11A of the Customs Tariff Act. It is further submitted that the proceedings have been initiated pursuant to the issuance of the Notification for the prior period whereas the notification issued under Section 25 can only be applied prospectively.

The Hon'ble High Court of Karnataka upon hearing the submissions made on behalf of the Petitioners granted an interim order, staying the proceedings initiated against the Petitioners with respect to classification of IFPDs.

WP No. 5027/2026, Karnataka High Court

The Department passed an Order confirming the recovery of the refund granted to the Petitioner on the ground that the services provided by the Petitioner to its foreign entity failed to qualify as export of services, since the place of supply for such services is in India in terms of Section 13(3)(a) of the IGST Act. It was concluded in the Order that the foreign entity had made the goods available to the Petitioner for providing such services and, therefore, sought to recover the refund already granted to the Petitioner.

In a Writ Petition filed challenging the said Order, it was argued that the principal supply provided by the Petitioner is the design and development of the SoC design and that the service of testing of the developed software by the Petitioner, which requires goods to be made available, is only ancillary to the main supply. Therefore, the place of supply must be determined with reference to the principal supply, which does not require goods to be made available. Hence, the place of supply for the services undertaken by the Petitioner is outside India and qualifies as export of services. Further, reliance was placed on Circular No. 118/37/2019-GST dated 11.10.2019, which clarifies the above position.

The Hon'ble High Court, considering the submissions made, granted a stay on the initiation of recovery proceedings pursuant to the Order challenged therein.

WP No. 5483/2026 Telangana High Court

Classification of “Sharbat Rooh Afza” under UPVAT

The appeals arose from a judgment of the Allahabad High Court affirming the decision of the Commercial Tax Tribunal that “Sharbat Rooh Afza,” manufactured by the Appellant was taxable at 12.5% under the residuary entry (Schedule V) of the UPVAT Act. For the assessment years 01.01.2008 to 31.03.2012, the Assessee had classified the product under Entry 103 of Schedule II Part A as a “fruit drink” taxable at 4%. The product contained 10% fruit juice along with 80% invert sugar syrup and herbal distillates. The Assessing Authority, relying on Food Products Order (FPO) norms and FSSAI clarifications classified the good as an unclassified item taxable at the higher rate. This view was affirmed by the High Court.

The Appellant contended that Entry 103 is inclusive and does not prescribe any minimum fruit content requirement. It was argued that regulatory standards cannot control classification without express incorporation/adoption. It argued that the fruit content imparted the essential character, while sugar syrup functioned merely as a carrier and preservative. It was further submitted that when a specific entry reasonably covers a product, the residuary entry cannot be invoked, relying on decision of *Dunlop India Ltd v. Union of India*, among others.

The Revenue argued that Entry 103 does not specifically mention “sharbat”, that the product was primarily sugar syrup (around 80%), and that FPO norms label it as a “non-fruit syrup.” It was contended that consumers treat it as a “sharbat” and not as fruit juice or fruit drink, and therefore it could not fall within Entry 103.

The Hon'ble Supreme Court held that regulatory definitions do not govern fiscal entries unless expressly adopted by the statute. In the absence of a definition, the common parlance test must apply. Entry 103 was broad and inclusive, with no threshold of fruit content. The Court held that the fruit constituents imparted the identity, while sugar served as a carrier. Since classification under Entry 103 was reasonably possible, recourse to the residuary entry is not tenable.

Hamdard (Wakf) Laboratories v. Commr., Commercial Tax, U.P., Civil Appeal No. 2557/2026, Supreme Court of India

Supreme Court holds that CBIC circular on low tax effect applies to pending appeals

Appeals were filed by the Commissioner of Commercial Tax challenging the judgment of the Full Bench of the Madhya Pradesh High Court, where reassessment proceedings initiated under Section 19(1) of the Madhya Pradesh General Sales Tax Act, 1958 were quashed as barred by limitation.

The Respondent-Assessee had originally been assessed for AY 1987-1988. An additional demand was raised in 1991, which was set aside in appeal on the ground of violation of natural justice and remanded for fresh assessment. A fresh assessment order was passed in 1994. Thereafter in 1997, a notice for reassessment under Section 19(1) was issued, culminating in an order creating a demand of Rs. 25 lakhs in 1998. The Assessee's appeal and revision were dismissed. However, a three-judge bench of the Bombay High Court held that the reassessment notice was time-barred since the original assessment had not completely merged with the remand order, which was limited in scope.

Revenue contended that by virtue of the repealing provision under Section 174(2)(f) of the CGST Act, pending appeals under the old Act would survive and the monetary limits prescribed under the Circular dated 26.06.2024 (Rs. 2 Crore for pursuing appeals before the Supreme Court) issued by the CBIC would not apply to already-filed appeals. It was argued that the circular applied prospectively and not to pending matters.

The Supreme Court held that the expression "appeal should not be pursued" covered pending appeals. Paragraph 3(i) of the Circular clarified that the aggregate amount of tax in dispute alone would determine applicability of the threshold. Since the undisputed tax effect in the present case was below Rs. 2 crore, the litigation was barred.

Hence, the Supreme Court dismissed the appeals solely on the ground of the monetary limit prescribed in the Circular, without discussing limitation or merits.

Commr. of Commercial Tax v. Vikram Cements, Civil Appeal No. 710/2012, Supreme Court of India

Personal Penalty under Section 122(1A) of the CGST Act cannot be imposed on company Executives

The Hon'ble High Court of Bombay quashed and set-aside an Order imposing personal penalties on the Petitioner who are the CFO, CEO and Joint Managing Director of M/s. Shemaroo Entertainment Ltd. ("**Company**") under Section 122(1A) of the CGST Act, 2017.

The Petitioners were issued an SCN and an Order for FY 2017-18 to 2021-22 imposing penalties equivalent to the alleged incorrect availment and utilisation of ITC by the company under Section 122(1A) of the CGST Act. The

primary issue considered in the present case was whether Section 122(1A) could be invoked against employees of a company and whether the authorities had jurisdiction to impose such personal penalties.

The Hon'ble High Court held that Section 122(1A) of the CGST Act must be read in conjunction with Section 122(1) of the CGST Act and hence would apply specifically to a 'taxable person' as defined under Section 2(107) of the CGST Act i.e., persons who are liable to be registered in terms of Section 22 and 24 of the CGST Act. The provision requires fulfilment two-fold condition i.e., (i) the person must retain the benefit of transactions covered under clauses (i), (ii), (vii) or (ix) of Section 122(1); and (ii) such transactions must have been conducted at that person's instance. Both conditions are required to be met, for the proper officer to invoke the said provision. Since, the Petitioners are employees of the company, they cannot be considered as 'taxable persons' under the CGST Act and relying of the decision *Shantanu Sanjay Hundekari vs. Union of India 2024 (89) G.S.T.L. 62 (Bom.)* as affirmed by the Supreme Court, the provisions of Section 122(1A) cannot be invoked against the petitioners to impose personal penalties.

The Hon'ble Court further held that the provisions of Section 122(1A) of the CGST Act was introduced w.e.f. 01.01.2021 and penalising a person under a provision which was not in force for the period in which such alleged acts are stated to have been committed, are in violation of Article 20(1) of the Constitution. Hence, Section 122(1A) of the CGST would not be applied retrospectively.

Amit Manilal Haria and Ors. v. The Joint Commissioner, CGST & Central Excise and Anr, WP No. 5001/2025, Bombay High Court

Amendment to Rule 89(5) of CGST Rules is applicable retrospectively for refunding of accumulated ITC on account of inverted duty structures

The Hon'ble High Court of Andhra Pradesh allowed writ petitions filed by an edible oil importing Company seeking refund of accumulated ITC on account of inverted duty structure. The refund applications filed by the Petitioner were rejected by the adjudicating authority in terms of Rule 89(5) of the Central Goods and Services Tax Rules, 2017 (Rules), and the same was upheld by the Appellate Authority.

In this regard, it was contended on behalf of the Petitioner that the GST Council, pursuant to the Supreme Court's decision in *Union of India vs. VKC Footsteps India Pvt. Ltd. (2022) 2 SCC 603*, acknowledged anomalies in the formula for refund prescribed under Rule 89(5) of the Rules and recommended the Law Committee to amend the same. The Petitioner in terms of the decision of the Hon'ble High Court of Gujarat in *Tirth Agro Technology Pvt. Ltd. vs. Union of India 2025 VIL 16 GUJ* contended that the amendment to the formula was clarificatory in nature and hence have to be applied retrospectively. However, the Department contended that the amendment to the formula would only be applicable prospectively w.e.f. 05.07.2022 in terms of Circular No. 181/13/2022-GST dated 10.11.2022.



On the basis of the submission made the Petitioner, the Hon'ble High Court held that the amendment to the formula in Rule 89(5) of the Rules are clarificatory in nature and would apply retrospectively. Accordingly, in the present case, though the orders of rejection as well as the appellate order were passed prior to the amendment, the refund rejection orders were set aside and the matter was remanded to the primary authority to fresh consideration in light of the amended formula.

M/s. AWL Agri Business Limited v. The Joint Commissioner, (Gst Appeals) Commissioner of Central Tax and Customs (Appeals), Guntur, WP No. 28622/2025, Andhra Pradesh High Court

Revenue sharing with diagnostic labs not taxable as business support services

The Appellant hospital entered into agreements with Diagnostic Service Providers (DSPs) for providing pathology and diagnostic services within its premises. The hospital provided space and basic amenities, while DSPs installed and operated their equipment. The hospital billed patients and shared revenues with DSPs in agreed ratios, including for referrals outside the premises.

The department alleged that the retained portion constituted consideration for "Business Support Services" (BSS) and raised a demand of service tax.

The Appellant argued that the arrangement was a principal-to-principal revenue-sharing model, not a service rendered to DSPs. It relied on prior Tribunal and appellate orders in its own case and sister concerns, where identical demands were set aside and not further appealed by the department.

Citing the decision of the Hon'ble Supreme Court in *CCE Pune II v. S S Engineers, Civil Appeal No. 5700/2019*, the Appellant contended that the department cannot take a contrary stand on the same issue. It was further submitted that diagnostic services formed part of exempt healthcare services and that no separate consideration was paid for infrastructural support.

The Tribunal held that the issue was no longer res integra. The agreements indicated revenue sharing without consideration for BSS. DSPs provided services as part of the hospital's healthcare delivery, and the arrangement did not amount to taxable support services.

OP Jindal Institute of Cancer & Research v. CCE, Rohtak, Service Tax Appeal No. 60974/2018, CESTAT Chandigarh

Ice cream prepared in retail outlet and supplied to dine-in qualifies as 'restaurant services'

The Applicant proposed to establish a multi-product food business with preparation and sale of diverse range of freshly made food and beverages. The Applicant had own retail outlets located across the city and all food and beverages including milkshakes, ice cream, etc., were to be freshly prepared at the Applicant's premises or manufacturing unit. Specifically, ice creams will either be sold through Applicant's own outlets to customers or utilized as a key ingredient in other foods and beverages such as juice, milkshakes etc, which are freshly prepared and served. Applicant sought for an Advance Ruling on the GST applicability on such supply of ice cream.

The Authority for Advance Ruling held that ice creams which are not prepared in the Applicant's retail outlets when sold over the counter qualifies as supply of goods and not services since there is no processing being undertaken. On the other hand, ice cream supplied along with food or used in milkshakes, juices, etc., would qualify as 'restaurant services'. Further, ice cream prepared in retail outlets and supplied to dine-in, or retail customers will qualify as restaurant services. Additionally, it was also held that ice cream manufactured as a part of a B-to-B transaction, whether manufactured at retail outlet or brought to retail outlet, shall be treated as supply of goods.

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THANK YOU

For further queries/information please get in touch
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