S&S Tax Snippets

40th Ed.

Regulatory Updates

GST:

Coordination of GST authorities with State mining authority for information sharing

The GST investigation wing has issued an instruction regarding coordination with State mining authorities for sharing information relating to illegal mining and transportation of minerals.

Referring to a draft CAG report, the GST investigation wing is of the view that illegal mining, illegal transportation of minerals, seizure of minerals and vehicles, cancellation/suspension of mining leases, excess extraction of minerals, and other violations under the mining laws, which are detected/handled by State mining authorities, also carry GST implications as it may indicate suppression of taxable supplies, non-registration, undervaluation, non-payment or short payment of tax or other forms of GST evasion.

The Principal Chief Commissioners / Chief Commissioners of CGST zones are directed to appoint nodal officers to coordinate with the State mining authorities, and hold periodical reviews, so that information collected by the mining authorities may be analysed, and appropriate action may be taken against taxpayers under GST, if the situation warrants.

Instruction No. 01/2026-GST dated 03.08.2026

DGFT

DGFT attempts to digitalise grant of extension of Export Obligation under Advance Authorisation/EPCG Authorisation

The Directorate General of Foreign Trade (DGFT) has launched an automated facility for granting Export Obligation (EO) extensions under Advance Authorisation/EPCG Authorisation. The Exporter apply for extension to the PRC/EPCG committee. Once the Committee approves an extension, the system automatically generates a fee payment letter, processes the payment, and creates/approves the EO extension file, issuing the Extension Letter automatically. This eliminates the requirement for manual re-application and verification by the Regional Authority and the revised EO expiry dates gets auto-updated in the system and shared with ICEGATE portal.

Trade Notice No. 15/2026-27 dated 05.08.2026

DGFT strengthens PSIA/PSIC process through enhanced digital controls

DGFT has introduced several enhancements to the Pre-Shipment Inspection Agency (PSIA)/Pre-Shipment Inspection Certificate (PSIC) module on the DGFT portal. The changes aim to strengthen compliance, reduce manual intervention and enhance transparency. Under the revised process, PSICs can only be generated and issued on the actual date of inspection, with the inspection date standardised in DD/MM/YYYY format. Authorised PSIA users can upload inspectors' signatures and official stamps, which will be automatically embedded in PSICs. Inspector details will also be system-populated through a drop-down selection. Further, the permissible number of inspection photographs has been increased from 5 to 10, while the maximum video attachment size has been enhanced from 10 MB to 50 MB. Country-specific registered instruments will also be auto-fetched by the system, reducing manual errors.

Central Excise

Change in rate of Special Additional Excise Duty and Additional Excise Duty for certain products

In exercise of the powers conferred under Section 5A of the Central Excise Act, 1944, Central Government has exempted the levy of Special Additional Excise Duty on Motor Sprit commonly known as Petrol. Further, exempted the Additional duty of excise on High-Speed Diesel.

Additionally, the Central Government has also reduced the Additional duty of excise on Aviation Turbine Fuel from Rs. 22 per litre to 19.5 per litre.

Notification No. 27/2026-27, Dated 05.08.2026

S&S Case Roundup

Cases Handled by us

High Court admits Revision Petitions challenging levy of VAT on alleged transfer of right to use trademarks

The Petitioner is a dealer who was registered under VAT and is engaged in the business of manufacture and sale of alcoholic beverages. The Petitioner entered into a license agreement with a distillery who is a similarly placed manufacturer and trader of alcoholic beverages. Under the said agreement, the Petitioner granted license to the distillery to use the Petitioner's trademark to manufacture, bottle, and sell alcoholic beverages across India, in exchange for royalty.

The Department completed assessment and treated the transaction as a transfer of right to use goods (trademarks) in terms of Section 2(28) of the Telangana VAT Act, 2005. The said assessment was challenged, and was ultimately dismissed by the Telangana VAT Appellate Tribunal, leading to the Revision Petitions filed before the Hon'ble Telangana High Court.

It was argued on behalf of the Petitioner that the dispute on transfer of right to use goods is squarely covered by the decision of the Hon'ble Supreme Court in ***BSNL v. UOI (2006)***, wherein it has been held that wherein it has been held that the transfer must be to the exclusion of the transferor, which is not the case in the present dispute. It was further submitted that the situs of the agreement was outside the State of Telangana as the agreement was executed in the different State, as per the holding of the Hon'ble Supreme Court in ***20th Century Finance Corpn. Ltd. v. State of Maharashtra, (2000).***

In light of the submissions, the Hon'ble Court was pleased to admit the Revision Petitions on the substantial question of law pointed out.

MTREVC Nos. 9 & 10 of 2024, Telangana High Court

High Court stays SCN and Order in cases where the Certificate of Origin was disputed by the Department without following required procedure

The Petitioners, both engaged in the business of trading in gold jewellery, imported gold jewellery from Indonesia. The Department issued Show Cause Notices questioning the validity of the Certificate of Origin furnished at the time of import. The Indonesian authorities had already reiterated that the gold was mined, and the jewellery was manufactured within Indonesia.

It was argued on behalf of the Petitioners that the SCN (and Order) could not have been issued without the authorities having first exhausted the procedure under the ASEAN-India Free Trade Area [AIFTA] Control agreement signed by the Indonesian Government which contemplates a verification process that includes physical inspection.

It was also argued that the extended period of limitation could not be invoked in either cases, since the Certificate of Origin had been furnished by the Petitioners, and the Indonesian authorities had reiterated the stance taken regarding the origin of the goods.

In light of the above submissions, the Hon'ble Court was pleased to issue notice and grant an interim order of stay in both cases.

W.P. No. 24673/2026 & W.P. No. 26537/2026, Karnataka High Court

Courtroom Updates

Madras High Court grants stay on Show Cause Notices alleging ITC availment under both Section 17(2) and 17(4) of the CGST Act

A Writ Petition was filed challenging 2 SCNs issued by the department including multiple financial years under Section 74 of the CGST Act mainly alleging that the same corporate entity cannot avail credit under both Section 17(2) and 17(4) of the CGST Act.

It was argued before the Court that the Petitioners were vertical units of the bank and were not engaged in supply of 'Financial and Related Services and is therefore not covered under Section 17(4) of the CGST Act, rather was engaged in development, licencing, implementation, maintenance and supply of software products and information technology solutions for data processing machines and printing machinery and other professional technical and business services. The mere fact that the software products are supplied to banks does not alter the nature and classification of the supplies effected by branch. Accordingly, when the particular branch is not performing banking functions, Section 17(2) of the CGST Act will govern input tax credit apportionment, and the said branch is entitled to 100% ITC attributable to taxable supplies and 50% restriction under Section 17(4) of the CGST Act is not applicable.

Additionally, it was also contended that in the absence of the suppression of facts by the Petitioner, proceedings invoked under Section 74 of the CGST Act is not justified in law. Further, it was also contended that the consolidated SCN issued is bad in law for bunching multiple financial years in one SCN.

Considering the submissions made on behalf of the Petitioner, the Hon'ble Court directed the Petitioner to file replies to the SCNs but at the same time refrained the department from issuing orders of adjudication.

WP No. 27550/2026, Madras High Court

Section 74 allegation must specifically establish fraud or suppression

A show cause notice was issued under Section 74 of the CGST Act, 2017 for FY 2018-19. The assessee challenged the notice as time-barred under Section 73 and contended that the SCN did not contain specific allegations establishing fraud, wilful misstatement or suppression.

The assessee argued that invocation of Section 74 of the Act requires the SCN itself to set out the facts and circumstances demonstrating fraud, wilful misstatement or suppression. Since the SCN only contained a vague reference to "fraud or concealment of facts", it could not invoke the extended limitation under Section 74 of the Act. The assessee further contended that the Section 73 limitation had expired.

The Department argued that its counter-affidavit filed before the Court elaborated upon the alleged fraud and suppression and referred to the assessee's non-cooperation during the investigation.

The Supreme Court held that the validity of a SCN must be assessed from the notice itself and deficiencies therein cannot be cured by a counter-affidavit. For FY 2018-19, the Section 73 limitation, after accounting for the COVID exclusion in Writ Petition (C) No.3/2020, expired on 28.02.2025. The SCN dated 13.06.2025 was therefore time-barred under Section 73 of the Act. The mere mechanical use of the expressions "fraud", "wilful misstatement" or "suppression of facts" is insufficient to invoke Section 74 of the Act and the SCN must disclose the specific circumstances relating to such allegations. The SCN and the High Court's order were hence set aside.

G.R. Infra Projects Ltd. v. State of Madhya Pradesh, Civil Appeal No. 11277/2026, Supreme Court of India

Referral charges obtained from the banks on taking out insurance policies amounts to provision of Business Auxilliary Services

The main issue before the Court was whether the referral charges obtained by the Appellants, who were dealers in automobiles are taxable as Business Auxiliary services. The Cout looking into the agreements entered into with the banks and insurance company held that the referral charges obtained from the banks and insurance company upon the customers of the Assessee taking out insurance policies and availing motor vehicle loans amounts to Business Auxilliary Services.

Additionally, with regard, to the levy of the penalty, the Court noted that the tax liability was deposited by the Appellant therein before the issuance of the show cause notice and in terms of Section 73(3) of the Finance Act, department ought not to have issued the SCN. Further, the Court also set aside the penalty imposed under Section 76 and 78 of the Finance Act.

Commissioner Of Central Excise, Hyderabad-IV Vs M/S Xerox India Ltd. & Ors, Civil Appeal Nos. 5939-5941 of 2010, Supreme Court of India

ITC availment under wrong head does not constitute excess availment.

The Appellant was issued a demand for excess availment of ITC based on difference in ITC reported under different heads. The appellant argued that the discrepancy was due to clerical/reconciliation error and that the underlying purchases and ITC eligibility were undisputed. Since sufficient ITC was available in aggregate across the IGST, CGST and SGST heads, there was no excess availment or revenue loss. The Appellant also placed reliance on the decision of the Kerala High Court in ***Rejimon Padickapparambil Alex v. UOI, W.A. No. 54 of 2024*** and CBIC Circular No. 192/04/2023-GST dated 17.07.2023.

The Department contended that ITC must be availed under the correct tax head and that a shortfall under one head cannot be offset by excess credit under another.

The GSTAT held that the Department had not established any excess availment of ITC in aggregate. Following ***Rejimon Padickapparambil Alex***, it observed that ITC in the electronic credit ledger operates as a unified pool for determining credit availability. Since the discrepancy arose only from reporting under different tax heads and was revenue-neutral, the demand, interest and penalty could not be sustained..

Lucknow Test House v. Sashi Bhushan Singh, Addl. Commr., APL/36/LCK/2026, GSTAT Lucknow

Penalty under Section 129 of the CGST Act, 2017 not leviable for stock transfer merely due to absence of E-way bill

The Appellant transported steel goods under a delivery challan from one of its registered premises to another (both under the same GSTIN). The goods were detained since they were not transported under the cover of an e-way bill, and a penalty was imposed under Section 129 of the CGST Act, 2017.

The appellant contended that the movement was an internal stock transfer and did not constitute a "supply" under Section 7 of the Act, as there was no consideration or recipient. Hence, no tax was payable under Section 9 of the Act and the penalty under Section 129 of the Act could not be imposed.

The Department argued that Rule 138 requires an e-way bill even for movements undertaken for reasons other than supply. It was argued that Section 129 of the Act was a self-contained code applicable for contravention of documentation requirements related to movement, and does not require proof of taxable supply or *mens rea*.

The GSTAT held that Section 129(1) of the Act permits penalty only by reference to the "tax payable" on the goods. Since the stock transfer was not a "supply" under Section 7 of the Act and involved no consideration, Section 9 was not attracted and no tax was payable. Consequently, the penalty could not be levied merely for absence of an e-way bill. The GSTAT observed that while such movement may attract the e-way bill requirement under Rule 138(1)(ii), the consequence cannot be penalty under Section 129 of the Act.

M. S. Steels v. Commissioner of Kerala State GST, APL/1/TVP/2026, GSTAT Thiruvananthapuram.

GSTAT Hyderabad holds that GST Composition Scheme Lapses Automatically on Crossing Turnover Threshold and Differential Tax is computed on Cum-Tax Valuation.

The Appellant, a brick manufacturer, had opted for and had been availing the benefit of the composition scheme under the CGST Act. Upon audit for the FY 2020-21 and 2021-22, it was contended that the Appellants turnover exceeded the threshold of Rs. 1.5 crores prescribed under Section 10(3) of the CGST Act based on discrepancies between e-way bill turnover and figures declared in FORM GST CMP-08. The audit authorities proposed that the composition scheme was unavailable and demanded differential tax at the regular rate of 5% for the financial years 2020-21 and 2021-22. The same was upheld by the first appellate authority.

The Hon'ble GSTAT tribunal held that the composition scheme option under Section 10(1) of the CGST Act lapses automatically, by force of statute, the moment a registered person's aggregate turnover exceeds the Rs. 1.50 crore threshold prescribed under Section 10(3) and no separate order or intimation is needed to trigger cessation. In this regard, the bench cited the Supreme Court's decision in ***M/s. Unichem Laboratories Limited v. Collector of Central Excise, Bombay***, wherein it was held that authorities must collect tax strictly as due no less and also no more.

The Hon'ble GSTAT Tribunal granted relief to the Appellant on quantification basis in terms of Rule 35 of the CGST Rules. The proper officer was directed to recompute the differential tax liability only on the supplies made on and after the date of lapse of the composition option by treating the declared value as cum-tax and by applying the formula prescribed under Rule 35. The Tribunal held that since a taxpayer discharging tax under composition scheme are barred under Section 10(4) from separately collecting tax, their invoice values must be treated as cum-tax i.e. inclusive of tax. According applies Rule 35, to state that the differential tax must be back-calculated from the gross invoice value rather than added on top of it. Thus, the Bench has extended this benefit to the Appellant. Consequently, the matter was remanded for recomputation of tax, interest, and penalty on a cum-tax basis within two weeks.

Sri Parameshwara Bricks v. State Tax Officer, Peddapalli, APL/126/HYD/2026, GSTAT Hyderabad.

Dry lease of Aircraft is rightly classifiable as supply of tangible goods

The Appellant offered flight training and leased out aircraft on dry lease. In terms of the lease agreement, the aircraft was provided for per-hour charges with a monthly minimum commitment with lessor retaining the right to use aircraft when idle and requiring the lessee to return the aircraft in the same condition after each trip. The question arose as to whether the arrangement between the Appellant and its related concern constituted supply of Tangible goods service or involves transfer of possession and effective control of the aircraft.

The Hon'ble Tribunal relied on the decision of the Apex Court in case of ***Bharat Sanchar Nigam Limited v. Union of India*** which lead down 5-fold test to constitute transfer of right to use of goods viz., the goods be available for delivery, there is consensus on their identity, the transferee have a legal right to use the goods, for the period during which the transferee have a legal right to use the goods to the exclusion of the transferor, and that the transferor be precluded from transferring the same right to another during the currency of the transfer. Applying the principles laid down in the above case, the Hon'ble Tribunal concluded that in the present case, the lessee does not have exclusive custody, and legal possession cannot shift constantly back and forth between parties. Further, observed that in the present case lessor is paying for the operational costs, maintenance and upkeep and thus retain proprietary control over the asset. The Tribunal further opined that charging an amount per flying hour with a monthly minimum commitment resembles a commercial hiring or a service level agreement for supply of the aircraft. Therefore, it was concluded that though the agreement uses terms like 'lease' the actual operational clauses show that the lessor retains effective control and legal possession of aircraft and it is not a transfer of right to use with possession and effective control and hence the activity of the Appellant is classifiable as 'supply of tangible goods'..

M/s. Orient Flight School v. Commissioner of GST & Central Excise, Chennai, STA No. 40800/2017, CESTAT Chennai

THANK YOU

For further queries/information please get in touch with us

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