S&S Tax Snippets

41st Ed.

Regulatory Updates

GST Updates:

Filing of Appeals to Appellate Authority in cases involving nil demand enabled

In view of the restrictions in the GST portal, the assessees were not allowed to file appeal in cases where dispute regarding the liability existed, but the demand amount was reflected as nil. The said validation restrictions are now removed from the GST portal and accordingly the taxpayers can now file an Appeal in Form GST APL-01 against the demand Orders reflecting NIL or zero demand amount.

GSTN Update dated 07.09.2026

DGFT Updates:

DGFT introduces Open API facility for Certificate of Origin through Trade Connect e-Platform

The Directorate General of Foreign Trade ("DGFT"), vide Trade Notice No. 25/2026-27 dated 07.09.2026, has introduced an Open Application Programming Interface ("API") facility on the Trade Connect e-Platform for issuance of Certificates of Origin ("CoO"). An API is a software interface that enables two systems to communicate and exchange information electronically. Accordingly, the facility enables eligible exporters to integrate their Enterprise Resource Planning ("ERP"), accounting or other software systems with the DGFT's CoO system, allowing CoO-related information maintained in the exporter's system to be electronically transmitted to the CoO portal without requiring manual re-entry of the information.

The API framework provides for authentication and generation of access tokens, submission of CoO applications through the CoO File API and verification of issued certificates through the Certificate Verification API. The integration requires exporters to comply with prescribed technical requirements, including Internet Protocol whitelisting and digital signing of requests and responses.

The facility supports both Preferential and Non-Preferential CoOs and is intended to reduce manual data entry, duplication and errors while facilitating a more efficient CoO application and verification process.

FTP Trade Notice No. 25/2026-27 dated 07.07.2026

Customs:

CBIC launches National Assessment Centre (NAC) Portal for uniformity in assessments

CBIC has announced the launch of the National Assessment Centre (NAC) Portal. The portal is intended to expand the faceless assessment framework introduced in 2020 and provide stakeholders with a common, transparent repository of assessment-related information.

The NAC Portal allows keyword-based access to information including audit objections, CAAR rulings, legal decisions, classification and valuation matters, NAC advisories, alerts, circulars and relevant CCFC/PTFC information.

Circular No.41/2026-Cus dated 03.09.2026

S&S Case Roundup

Cases Handled by us

Radar components used in tanks classifiable as Parts of Armoured Fighting Vehicles

The Appellant, a PSU, imported Radar Antenna, Radar Processor and Radar Cables for upgrading weapon systems mounted on tanks. The Appellant classified the goods under CTH 87100000, covering tanks, armoured fighting vehicles and parts thereof, attracting Nil duty. The Department reclassified the goods under CTH 85299090/85442090, which cover parts of radar apparatus and co-axial cables and other insulated electric conductors, and demanded differential duty with interest and imposed penalty under Section 114A of the Customs Act, 1962.

It was submitted on behalf of the Appellant that the imported parts were custom-built and used exclusively for upgrading the tanks and became inseparable components of the tank's systems. Reliance was placed on the decision of the Hon'ble Supreme Court in the case of *Westinghouse Saxby Farmer Ltd.,* to argue that the "sole or principal use" test must determine classification and the extended period and penalty were not sustainable as the dispute was one of classification and involved no suppression or misdeclaration.

The Department argued that the goods were components of a radar system classifiable under CTH 85299090 and 85442090. It further argued that incorrect classification under CTH 87100000 amounted to deliberate misdeclaration to avail an undue duty exemption, especially since the Appellant had earlier classified the goods as parts of radar apparatus to avail Notification benefits.

The Tribunal held that the goods were designed for use solely and principally in the tanks and were correctly classifiable under CTH 87100000. The Tribunal applied the "sole or principal use" test and held that earlier classification does not determine classification as there is no estoppel in taxation.

BEL Ltd. v. Commr. of Customs, Customs Appeal No. 20134 of 2020, CESTAT, Bangalore

Delay in payment of tax cannot be equated to non-payment thereby attracting penalty

The Appellant was an Airline Company carrying on the business of transporting passengers between various locations in India and abroad with licence to operate flights to and from India. The present issue revolves around the imposition of penalty under Section 38(3) of the Finance Act, 1979 for delayed payment of Foreign Travel Tax (FTT) into the Government treasury. In terms of the said Section, every carrier or other person who fails to pay FTT to the credit of the Central Government shall in addition to the payment of such tax and interest, be liable to pay penalty.

The Hon'ble Supreme Court on interpretation of Section 38(3) of the Finance Act, 1979 observed that the expression 'fails to pay foreign travel tax' used in the said provision would mean that there is failure to pay FTT. Further, 'failure to pay' would mean 'non-payment' and the same cannot be equated to 'delay in making payment'. That the legislature has carefully used the expression 'fails to pay FTT' to imply nonpayment of FTT and if the legislature intent was to cover delayed payment of tax, then the legislature would have used a different expression. The Court further noted that the expression 'fails to pay the FTT' is used in conjunction with the expression 'the amount of tax not so paid' clearly indicates the legislative intent and hence the court concluded that non-payment of FTT cannot be equated with delayed payment of FTT.

M/s. Saudi Arabian Airlines v. Union of India, Civil Appeal No. 1052/2013, Supreme Court of India

Bombay High Court holds that refund of pre-deposit cannot be denied where the corresponding demand has been dropped, merely because the assessee proposes to challenge the remaining demand

The Petitioner's appeal against an adjudication order was partly allowed by the First Appellate Authority, with 64% of the demand being dropped. The Petitioner sought refund of the pre-deposit attributable to the demand so dropped. The refund was rejected on the ground that the Petitioner intended to challenge the remaining demand before the GST Appellate Tribunal and, therefore, the appellate proceedings had not attained finality.

Considering the submissions made, the Hon'ble High Court of Bombay held that the appellate proceedings had attained finality to the extent of the demand dropped by the First Appellate Authority, notwithstanding the Petitioner's intention to challenge the portion of the order adverse to it. The Court held that the reasoning that the entire proceedings had not attained finality merely because the Petitioner proposed to appeal against the remaining demand was fallacious ground to reject the refund. The Court further held that once the demand stood set aside, a statutory right accrued in favour of the Petitioner to receive refund of the corresponding pre-deposit and the continued retention of such amount was unauthorized and offended Article 265 of the Constitution. Accordingly, the impugned order was quashed, and the Department was directed to process and refund the pre-deposit expeditiously.

IBM India Pvt. Ltd. v. Union of India & Ors., W.P. (L) No. 38052 of 2025, Bombay High Court

Initiation of penalty proceedings after inordinate delay is fatal and the principle of reasonable time must be read into such proceedings

The Appellant was engaged in running a hotel where cooked food was prepared and served to customers. The present issue revolves around the initiation of penalty proceedings under Section 4B (5) of the U.P. Trade Tax Act, 1948 for the alleged misuse of Form 3-B in purchasing ice-cream at a concessional rate during the assessment year 1987-88. The Revenue alleged that the ice-cream was sold in the same form, whereas the Appellant asserted that it was used as an ingredient in preparing various desserts served to customers. The penalty proceedings were initiated, and the penalty order was passed after a lapse of more than 15 years from the relevant assessment year by holding that there is no specific limitation period being prescribed under the Act.

The Hon'ble High Court of Allahabad observed that even where no specific period of limitation is prescribed by statute, the principle of a "reasonable time" must necessarily be read into such proceedings. The Court held that the expiry of a reasonable period operates as a bar to the remedy available to the Revenue, even if it does not extinguish the substantive right itself. Further, since determining the factual charge of misuse required a proper inquiry and evidence from both parties, an inordinate delay of over 15 years deprives the assessee of a fair opportunity to defend itself. The Hon'ble High Court quashed the penalty orders and answered the question of law in favour of the assessee, holding that failure to initiate the proceedings within a reasonable period of time would be fatal to the action taken by the Revenue, as the lapse of such reasonable period would bar the Revenue from pursuing the remedy.

Hotel Mugal Sharton, Fatehabad v. Commr., Sales/Trade Tax Revision No. 2921/2004, Allahabad High Court

Refund cannot be withheld merely because Department proposes to appeal

The Petitioner, engaged in renting and leasing prefabricated warehouses, had paid an amount of ITC alleged by the Department to be inadmissible under Section 17(5) of the CGST Act. The adjudicating authority confirmed the demand under Section 74. In appeal, the demand was set aside on the ground that the restriction under Section 17(5)(d) did not apply to construction intended for leasing. The petitioner thereafter sought refund of the amount paid. The refund authority rejected the claim, stating that the appellate order had not attained finality as the Department had reviewed it and proposed to challenge it before the GSTAT.

The petitioner contended that Section 107(16) makes an appellate order binding unless modified, stayed or set aside under the Act and as on date, no such order existed. The refund authority could not disregard the appellate findings or reopen the ITC issue during refund proceedings. If the Department intended to withhold the refund pending further proceedings, it was required to comply with Section 54(11), including the requisite Commissioner's opinion and opportunity of hearing.

The Department argued that refund proceedings under Section 54 are independent and that the Order-in-Appeal did not direct refund. It also contended that the appellate order was proposed to be challenged before the GSTAT and relied upon the petitioner's financial statements and depreciation schedules to question refund eligibility.

The Court held that the Order-in-Appeal remained operative and binding until stayed, modified or set aside. A proposed appeal could not retrospectively suspend its operation. The refund authority could not reopen the appellate findings. The Court further held that any withholding of refund had to comply with Section 54(11). The rejection order was quashed and the refund application was remanded for fresh consideration in accordance with law.

ADV Industrial Services Pvt. Ltd. v. UOI, W.P. No. 3663/2026, Telangana High Court

GSTAT Bengaluru holds that GSTR-3B and GSTR-2A mismatch cannot, without invoice-wise verification, justify denial of ITC; reiterates mandatory personal hearing under Section 75(4) of the CGST Act

The Appellant was denied ITC on account of a mismatch between the ITC claimed in GSTR-3B and the ITC reflected in GSTR-2A for FY 2018-19. The Appellant contended that the difference arose on account of ITC pertaining to FY 2017-18 invoices, which was availed in FY 2018-19 within the time permitted under Section 16(4) of the CGST Act.

Considering the submissions made, the Hon'ble GSTAT, Bengaluru Bench, held that a GSTR-3B and GSTR-2A mismatch cannot, by itself, be treated as inadmissible ITC and that the alleged mismatch required invoice-wise verification, particularly where the difference was attributable to prior-year ITC. The Tribunal further held that GSTR-2A was a facilitation tool during the relevant period and that non-reflection of an invoice in GSTR-2A could not, without verification, establish non-payment of tax by the supplier. It was also held that personal hearing under Section 75(4) is mandatory where an adverse decision is contemplated. Accordingly, the orders were set aside, and the matter was remanded for fresh adjudication after proper verification and grant of personal hearing.

M/S. N. R. Builders v. Commissioner of Commercial Taxes, APL/2/BUR/2026, GSTAT Bengaluru

Eligibility to ITC can be determined under Sections 73/74 of CGST Act and not under Section 54 of the CGST Act

The Appellant, engaged in garment manufacturing, claimed an inverted duty structure refund. The refund was partly rejected, with some credit denied on the ground that the underlying ITC was ineligible.

The assessee argued that the SCN was vague as it merely alleged "wrong ITC claim" without invoice-wise details or specifying the basis of ineligibility. Further, the appellate authority introduced a new ground that the inputs/input services were not used "in the course or furtherance of business", which was not alleged in the SCN. It was argued that ITC eligibility must be determined through proceedings under Sections 73/74 of the CGST Act, 2017 and cannot be adjudicated while processing a refund under Section 54(3) of the Act.

The Revenue argued that the SCN was proper and that the appellate authority was entitled under Section 107(11) of the Act to determine whether the disputed items qualified as "inputs" for computing refund under Rule 89(5).

The GSTAT held that a refund under Section 54(3) of the Act cannot be rejected on the ground that ITC is ineligible unless the ITC has first been determined to be wrongly availed or utilised through proceedings under Sections 73/74. Circular No. 125/44/2019-GST dated 18.11.2019 also requires proceedings to be initiated under Section 73/74 of the Act.

Augustan Textile Colours v. Commr. for State Tax, Appeal No: APL/23/ERN/2026, GSTAT Ernakulam

THANK YOU

For further queries/information please get in touch with us

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