

# S&S Tax Snippets

42<sup>nd</sup> Ed.



# Regulatory Updates

## Customs:

**CBIC clarifies when Customs authorities can adjudicate proceedings under Section 28AAA without waiting for cancellation of scrip by DGFT**

The CBIC, clarified the manner of adjudication of proceedings under Section 28AAA of the Customs Act, 1962, where cancellation of the instrument/scrip by DGFT is pending.

Where the allegation relates to misdeclaration in the Shipping Bill, Customs shall first adjudicate the matter and, wherever warranted, amend the Shipping Bill before referring the matter to DGFT for consequential action. Where the issue relates to policy interpretation, eligibility or entitlement, the matter shall first be referred to DGFT, whose decision on such issues shall be followed by Customs Authority. Where DGFT is unable to cancel the scrip on technical or legal grounds, Customs shall proceed to adjudicate the SCN on merits without awaiting cancellation. In other cases, adjudication shall take place only after cancellation of the scrip by DGFT.

***Instruction No. 17/2026-Cus. dated 21.09.2026***

**Application of Section 28DA of the Customs Act, 1962 and CAROTAR, 2020 consistent with the Rules of Origin under Trade Agreements**

The CBIC, vide Circular No. 43/2026-Customs dated 24.09.2026, has clarified that the application of Section 28DA of the Customs Act, 1962 and the Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 ('CAROTAR'), is in alignment with the Rules of Origin under their respective trade agreements. It was clarified that in case of any conflict, the Rules of Origin under the relevant trade agreement shall prevail over CAROTAR.

For preferential tariff claims under the India-UK Comprehensive Economic and Trade Agreement ('CETA'), a valid Origin Declaration issued by the UK

exporter or producer is sufficient proof of origin, and Form-I is not required to be furnished with the Bill of Entry or as a precondition for claiming preferential treatment. Form-I information may be sought under Section 28DA of the Customs Act, 1962 where the Bill of Entry is flagged for origin-related checks and the proper officer has reason to believe that the origin criteria have not been met. The Circular further clarifies that an earlier denial of preferential treatment cannot automatically be extended to subsequent imports merely because the goods have similar description, classification or technical characteristics. The importers must be given an opportunity to furnish additional information relating to subsequent import consignments.

***Circular No. 43/2026-Cus dated 24.09.2026***

## DGFT:

**De-minimis exemption from registration-cum-membership certificate requirements for low-value-exports**

Amendment has been made to paragraph 2.57 of the Foreign Trade Policy, 2023 and sub-para (b) is inserted to provide exemption from requirement of registration-cum-membership certificate or certificate of registration for an export consignment where Free-on-Board value of the consignment does not exceed Rs. 3,00,000/-.

***Notification No. 36/2026-27 dated 15.09.2026***

**Revision in Timeline for issuance of PSIC and one-time relaxation for issuance of backlog PSICs**

In order to implement the revised Pre-Shipment Inspection Agency (PSIA)/ Pre-Shipment Inspection Certificate (PSIC) process explained in Trade Notice No. 22/2026-27 dated 25.08.2026, relaxations have been provided. Firstly, one time relaxation of 7 days from the date of issuance of the present trade notice is provided to recognize PSIAs for clearing the backlog PSICs pertaining to inspection conducted prior to 25.08.2026, where such certificates could

not be issued due to system restrictions introduced pursuant to trade notice dated 25.08.2026.

Secondly, trade notice dated 25.08.2026 was substituted to indicate that the PSIC shall be generated and issued within 2 days from the date of inspection and that the system shall permit generation and issuance of the PSIC only within the prescribed timeline.

*Trade No. 28/2026-27 dated 16.09.2026*

# S&S Case Roundup

Cases Handled by us

## Supreme Court issues notice on service tax liability arising from secondment of expatriate employees

The Appellant, engaged in commercial training and business auxiliary services, had expatriate employees seconded to them by its foreign Associated Enterprises. The expatriates entered into direct employment agreements with the Appellant, worked exclusively under their supervision and control, and expatriates' salaries were subject to deduction of tax under Section 192 of the Income-tax Act. The foreign AEs initially disbursed certain salary amounts in the employees' home countries and subsequently recovered the corresponding costs from the Appellant on a cost-to-cost basis without any mark-up.

The Department treated the amounts reimbursed to the foreign AEs as consideration for Manpower Recruitment or Supply Agency Service and raised Service Tax demands for the period April 2011 to March 2014. The CESTAT, while setting aside the demand for the extended period and the penalties, upheld the Service Tax demand for the normal period, relying upon the Supreme Court's decision in *Northern Operating Systems Pvt. Ltd, (2022)*.

Aggrieved by the Tribunal's order, the Appellant has approached the Hon'ble Supreme Court contending, inter alia, that the secondment arrangement was distinguishable on facts from *Northern Operating Systems*, particularly in view of the direct employment relationship with the Appellant, the exclusive control and supervision exercised by the Appellant over the expatriates, the absence of any service or mark-up by the foreign AEs, and the cost-to-cost reimbursement arrangement. Reliance was also placed on CBIC Instruction No. 05/2023-GST dated 13.12.2023, which clarifies that the decision in *Northern Operating Systems* is required to be applied having regard to the specific contractual terms and factual matrix of each secondment arrangement and should not be applied mechanically to all cases of secondment. The Hon'ble Supreme Court has issued notice in the Civil Appeal. The matter is presently pending consideration before the Court.

*Civil Appeal Diary No. 33684/2026, Supreme Court of India*

## Karnataka High Court admits appeal against CESTAT order confirming levy of service tax on carried interest earned by an Asset Management Company

The Appellant is a company engaged in the provision of asset management services to various Alternative Investment Funds set up in the form of Trusts. For the services rendered to the Fund, the Appellant earns a fixed management fee, on which the Appellant discharges service tax. The Appellant also invests a small amount in the Funds it manages, and where the Fund receives large returns, the Appellant is entitled to a percentage of the return, termed as carried interest, based on a

pre-agreed waterfall distribution mechanism contained in the agreements entered into between the Appellant, the Funds, and the third-party investors.

The Department had earlier initiated proceedings against the Fund leading to the CESTAT order which found that the amount of carried interest retained by the Fund for subsequent payment to the Appellant was consideration in the nature of performance fees for certain additional services that led to the extraordinary returns being achieved by the Fund. This order was set aside by the Hon'ble Karnataka High Court on appeal, holding that a trust is nothing but a pass-through entity, and is not a legal entity for the levy of service tax, and the Department's SLP against the High Court order came to be dismissed.

The CESTAT in the present case had confirmed the demand against the Appellant-AMC on the ground that the characterization of the carried interest as being performance fees by the CESTAT in the earlier litigation against the Funds, had not merged with the High Court's order, and thus, the Appellant was liable to pay service tax.

It was argued on behalf of the Appellant that the carried interest was nothing but a return of investment and is not in the nature of consideration. It was argued that the entire CESTAT order had been set aside by the Hon'ble Court, and the Tribunal could not import the findings of the earlier order, without application of mind on the merits of the present case, especially when the proceedings are against a different entity.

In light of the submissions and substantial questions of law raised, the Hon'ble Court was pleased to admit the appeal and issued notice to the respondent.

**CEA No. 27/2026, Karnataka High Court**

The Appellant is engaged in the manufacture of the Mining Equipment and imports parts such as Slurry Pumps, Industrial valves, Hydrocyclones, Screens, etc., specifically designed for mining operations. The Company had classified the goods under Chapter 84. However, the Department passed an Order reclassifying the goods under CTH 7318/4016.

In an Appeal before the Tribunal, it was argued that the imported goods are specifically designed for exclusive use with pumps and cannot be independently used/marketed. On application of Note 2(b) to Section XVI of the HSN Explanatory Notes, they are classifiable under Chapter 84. The pins and bolts are custom-engineered for slurry pump operations and are not of 'parts of general use' while the rubber components contain substantial metal and form integral pump components, excluding them from classification under Chapter 40. Reliance was also placed on various decisions of the Hon'ble Apex Court including *Westinghouse Saxby Farmer Ltd. v. Commissioner* wherein it was held that the parts which used solely and principally with the articles are classifiable with the article.

The Hon'ble Tribunal held that the Company has established that the parts imported by them are designed and manufactured using special materials to work only with pumps and cannot be used elsewhere. Following the decision in *Westinghouse Saxby Farmer (supra)*, the Hon'ble Bench upheld the classification adopted by the Company under CTH 8413 as 'parts of pump' and allowed the appeal with consequential relief.

***Weir Minerals (India) Pvt Ltd v. Pr. Commissioner of Customs, Bangalore, Customs Appeal No. 20133/2025, CESTAT Bangalore***

# Courtroom Updates

## Challenge to DGFT Notification prohibiting sugar exports dismissed

The Petitioners, merchant exporters who had executed private contracts and received advance payments from overseas buyers for the sale of sugar, challenged a Notification dated 13.05.2026 issued by the Directorate General of Foreign Trade (DGFT) which amended the export policy for sugar from 'restricted' to 'prohibited' until September 2026 and sought permission to fulfill their export commitments.

The Petitioners argued the policy change was arbitrary, unreasonable, and violative of Articles 14 and 19(1)(g) of the Constitution. Relying on earlier notifications that allocated export quotas, the Petitioner argued that it had a legitimate expectation that the blanket ban should not apply retrospectively to contracts where advance foreign remittances were already received, and export procedures had commenced.

The Government contended the prohibition was a reasoned policy decision taken in public interest. Due to a significant domestic sugar production shortfall and anticipated El-Nino effects, the ban was necessary to ensure domestic availability and price stability. It further argued that the Petitioners did not qualify for any exemptions because they lacked an Irrevocable Commercial Letter of Credit (ICLC) or a "Let Export Order" under the Customs Act prior to the notification date.

The High Court dismissed the petitions, upholding the DGFT notification on the ground that executive policy decisions made in public interest are not subject to judicial interference unless manifestly arbitrary. The Hon'ble Court held that the execution of private commercial contracts and receipt of advance payments do not confer rights that override trade policy.

***Premium Sugars v. UOI, W.P.(L) No. 18701/2026, Bombay High Court***

**Limitation for GST appeal to be reckoned from rectification order where rectification was filed within time**

The Appellants' refund claims were rejected by the adjudicating authority on 03.10.2022. The Appellants filed rectification applications under Section 161 of the CGST Act within the prescribed period, which were subsequently rejected by reasoned orders dated 14.09.2023. The Appellants thereafter filed appeals challenging both the original rejection orders and the rectification orders. The Appellate Authority rejected the appeals as time-barred by computing the limitation period from the original refund rejection orders.

Hon'ble High Court observed that where a rectification application under Section 161 is filed within the prescribed statutory period and is duly considered and disposed of by a reasoned order, the limitation for filing an appeal under Section 107 is required to be reckoned from the date of the rectification order. The Appellate Authority could not reject the appeal by computing limitation from the original adjudication order without considering the intervening rectification proceedings. However, if the appeal were found to be beyond the prescribed period even when computed from the date of the rectification order, the Appellate Authority would be entitled to reject it on limitation.

Accordingly, the High Court set aside the orders rejecting the appeals as time-barred and remanded the matters to the Appellate Authority for consideration on merits.

***Kanan International Pvt. Ltd. v. Union of India, R/Special Civil Application No. 1116 /2025, Gujarat High Court***



**Limitation period for claiming refund being legislative policy cannot be extended by Notification**

The Assessee claimed refund in respect of 4% special additional duty paid by it on import. The said refund claim was rejected by the department as barred by limitation basis the provisions of Section 27 of the Customs Act read with Notification No. 102/2007-Cus dated 14.09.2007.

Section 27 of the Customs Act prescribed a period of 1 year limitation for claiming refund of duty or interest from the date of payment of such duty or interest. By Notification dated 14.09.2007 Central government exempted goods falling within 1st Schedule to Customs Tariff Act from payment of Additional duty of Customs. Further, the said Notification specified that the importer shall file a claim for refund of additional duty of customs paid within 1 year from the date of payment of such Additional Customs Duty.

The Hon'ble High Court, upon perusal of the above provision and Notification opined that when the provision prescribed the limitation for filing the application for refund claim of duty and interest, the same could not be further prescribed by subordinate legislation by way of notification for Special Additional Duty (SAD) which is not covered by Section 27 of the Customs Act. The Court further observed that since Section 27 of the Customs Act would not be applicable for payment of SAD, the same provision could not have been extended to Notification being a legislative policy. The same would result in dealing with a substantive right of period of limitation for claiming of refund. Therefore, the Court concluded that the imposition of period of limitation by way of Notification without statutory amendment is not permissible under the law.

*Commissioner of Customs, Kandla v. Dow Chemical International Pvt Ltd, tax Appeal No. 867/2024, Gujarat High Court*

**Licensing of cinematographic film rights is classifiable under SAC 997332 and not as supply of Information Technology Software**

The Petitioner, a film producer and original copyright holder, licensed cinematographic rights to distributors for limited periods and discharged GST at 12% under SAC 997332. The Department sought to classify the supply as Information Technology Software taxable at 18%, primarily relying on the digital mode of delivery.

Considering the submissions made, the Hon'ble High Court of Bombay held that licensing of cinematographic films is specifically covered under SAC 997332 and cannot be classified as Information Technology Software merely because the content is delivered digitally. The Court held that the mode of delivery cannot determine classification and that the statutory definition of Information Technology Software was not satisfied. The Court further held that the benefit of the CBIC circulars regularising payment of GST at 12% could not be restricted to downstream distributor-exhibitor transactions and was equally applicable to the Petitioner's licensing of rights to distributors. Accordingly, the impugned orders were quashed.

*Dharma Productions Pvt. Ltd. v. State of Maharashtra, W.P. Nos. 2029 & 2184/2025, Bombay High Court.*

**VAT cannot be levied on customised software development and IT services in the absence of transfer of property in goods**

Tata Consultancy Services ('TCS') is engaged in the business of software development and provision of various services in the nature of Business Process Outsourcing ('BPO'), issue of Digital Signature Certificate ('DSC'), data migration, training, software support etc. to its customers. The Revenue levied VAT of around Rs. 52.39 crores on the consideration received, treating the transactions as sale of software and goods under the Telangana Value Added Tax Act, 2005.

The Hon'ble Telangana High Court held that

customised software developed on a 'work for hire' basis for specific customers, along with BPO and DSC services, constituted services and does not involve any element of sale of goods. Therefore, in the absence of a transfer of property in goods for consideration, the levy of VAT is unsustainable. Accordingly, the Hon'ble Court quashed the impugned assessment orders and allowed the Writ Petitions.

***Tata Consultancy Services v. Assistant Commissioner (CT) VMU-1, Hyderabad, Writ Petition Nos. 5729/2009, Telangana High Court***

**Refund of accumulated ITC under inverted duty structure cannot be denied merely because the input and output falls under the same HSN classification**

HP Cotton Casuals Private Limited, engaged in the manufacture of readymade garments, claimed a refund of accumulated Input Tax Credit ('ITC') under Section 54(3)(ii) of the CGST Act, 2017, on account of inverted duty structure. The refund claims were rejected by the adjudicating authority on the ground that the input and output goods fell under the same HSN classification. However, the First Appellate Authority allowed the claims, against which the Revenue preferred appeals before the Hon'ble GSTAT, Kolkata Bench.

The Hon'ble GSTAT held that refund eligibility does not depend on whether the taxpayer is a manufacturer or trader, as GST is levied on the supply of goods or services. It further clarified that paragraph 3.2 of CBIC Circular No. 135/05/2020-GST dated 31.03.2020 applies to cases involving a reduction in the GST rate on the same goods and cannot be extended to cases where ITC accumulation arises due to higher tax rates on other inputs, such as chemicals, dyes and packing materials. The Tribunal upheld the applicability of Section 54(3)(ii) of the CGST Act, 2017 read with Rule 89(5) of the CGST Rules, 2017.

***Commissioner of CGST & Central Excise, Kolkata v. HP Cotton Casuals Private Limited, Appeal Nos. APL/43/KLK/2026, GSTAT Kolkata***

**The value of goods returned by the job worker is not includable in e-way bill consignment value.**

The Appellant received goods from a job worker after completion of job work. The Department alleged that the e-way bill reflected only the job work charges and did not include the value of the goods belonging to the principal. The Appellant contended that the return movement involved only the supply of job work services and that the value of the original goods was not required to be included in the consignment value.

The Tribunal observed that, on a conjoint reading of Section 15 of the CGST Act and Rule 138 of the CGST Rules, the supply of returning of goods after completion of job work is the 'job work' service, and the transaction value is therefore restricted to the job work charges and applicable tax. The value of the original goods belonging to the principal, which had merely been subjected to job work, is not includable in the consignment value for the purposes of the e-way bill. Since the job work invoice in the present case reflected a value below the ₹50,000 threshold under Rule 138(1), the Tribunal held that an e-way bill was not mandatory.

***Metalloids India v. Commissioner of State Tax, Appeal No. APL/27/TVP/2026, GSTAT Thiruvananthapuram***

**ITC disallowance set aside where supplier remitted tax under wrong head**

For FY 2017-18, the Appellant faced a GST demand due to discrepancies between ITC claimed in GSTR-3B and reflected in GSTR-2A. Lower authorities confirmed the demand ex parte. A major point of contention was that a supplier had incorrectly reported and paid tax under the IGST head instead of CGST/SGST for an intra-state service (renting of immovable property).

The Appellant argued that the mismatch was merely a reporting error. The Appellant was rightfully entitled to the CGST/SGST ITC, but the supplier mistakenly remitted the tax under IGST. Relying on CBIC Circular No. 183/15/2022-GST, the Appellant

submitted supplier certificates, arguing that because the tax was deposited with the Government, there was no revenue loss and the ITC should not be denied.

The Department contended that any ITC claimed in excess of GSTR-2A is recoverable under Section 73 of the CGST Act, 2017. They further argued that the supplier certificates produced by the Appellant were issued after the First Appellate Authority's order and should thus be barred from consideration at this stage.

The GSTAT set aside the lower orders and remanded the case. It ruled that ITC cannot be disallowed solely on a GSTR-3B/2A mismatch without examining underlying documents. Further, the Tribunal found no revenue loss occurred due to tax payment under the wrong head. Relying on the decision of the Hon'ble Kerala High Court in *Rejimon Padickapparambil Alex v. Union of India*, the Tribunal held that this precedent applies directly to the invoices where tax was paid under IGST instead of CGST/SGST.

*R.R. Infrastructe Projects v. Shashi Bhushan Singh, Addl. Commr., APL/7/LCK/2026, GSTAT Lucknow*

# THANK YOU

For further queries/information please get in touch  
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