THE INDIRECT EDGE

Indirect Tax Fortnightly Newsletter

(Issue 1: 3rd November 2025)

JUDICIAL PRONOUNCEMENTS

GOODS AND SERVICES TAX

Entitlement to interest on refund of GST collected without proper authority.

In the case of ***West India Continental Oils Fats Pvt. Ltd. v. Union of India***[1], the issue before the Bombay HC was whether interest was payable on tax amounts wrongly collected by the Government even when the refund was granted within 60 days from the date of refund application.

The Court held that the provisions relating to refund u/s. 54 of the CGST Act applied only to situations where tax was legally collected in terms of the GST law. They do not extend to amounts collected without authority of law. Since the Government had no right to collect the amount in the first place, such collection could not be treated as "tax" under GST. The Court further observed that retention of amounts collected without legal sanction violates Article 265 of the Constitution.

Accordingly, it was held that the taxpayer was **entitled to interest from the date of payment of amount until the date of refund**, based on the principles of fairness and unjust enrichment, notwithstanding that the refund was processed within 60 days.

ITC cannot be claimed on IGST paid vide TR-6 Challan.

In **M/s. Becton Dickinson India Pvt. Ltd.**, the Tamil Nadu AAAR upheld the decision of the AAR and held that TR-6 challan cannot be considered as a valid document for availing ITC under GST laws.

GST treatment on construction of service apartment as commercial buildings and not residential purposes.

The issue before the West Bengal AAR in ***M/s. Sripsk Developers LLP***[2] was whether the construction of a service apartment would qualify as "construction services of residential buildings" or "construction services of commercial buildings". The project comprised fully furnished apartments providing hotel like amenities (such as housekeeping, laundry, concierge etc.) and could be offered for both short-term and long-term stays.

As per the sanction plan of the concerned municipality, the project was categorised as a "Service Apartment" whereas the registration under WBRERA categorized it as a "Residential Apartment". The AAR observed that Service Apartments, unlike residential apartments, can be rented for both short-term and long-term stays and are akin to hotel accommodation which is commercial in nature. Further, the land was approved only for commercial use by the concerned municipality who was also the competent authority under RERA Act. Accordingly, the AAR held that the project should treated as **construction of a commercial building**, and applicable GST rates should apply.

[1] (2025 (10) TMI 1027 – Bombay High Court.

[2] 2025-VIL-163-AAR.

CUSTOMS

Customs department has no authority to restrict GST on auctioned goods.

In ***M/s. National Association of Container Freight Stations & Ors.*** **v.** ***Joint Commissioner of Customs (CH-IV) & Ors.***[3]**,** the Madras HC held that Customs authorities have no jurisdiction to issue directions under GST. The Madras HC struck down a 2021 public notice issued by the Chennai Customs that sought to regulate the GST treatment on auctioned cargo.

The public notice had directed that no GST should be charged on sale of uncleared cargo auctioned u/s. 48 of the Customs Act since IGST would be paid on import and any further levy would amount to "double taxation." However, the Court disagreed and held that even if IGST was paid at the time of import, any subsequent sale by the container freight station at the time of auction would constitute a distinct supply under GST on which GST was payable.

NOTIFICATIONS

CUSTOMS

Seeks to supersede 31 customs exemption and concessional rate notifications and prescribes effective rates of customs duty, IGST and compensation cess for specified imported goods.

The CBIC with a view to simplify and consolidate the exemptions and concessional rate provided in various notifications has issued **Notification No. 45/2025–Customs dt. 24.10.2025**, effective from 1st November 2025. This notification effectively retains all the existing benefits, duty exemption and con available and supersedes 31 earlier notifications. It applies prospectively, while saving actions already taken under the earlier notifications.

[3] 2025 (10) TMI 983 – Madras High Court.

Increase in duty drawback rates on article of Gold and Silver.

The Central Government vide **Notification No. 67/2025-Customs (N.T.) dt. 27.10.2025,** has increased the rates of duty drawback for articles and jewelleries made of gold and silver. It seems that the said change has been made to enhance export competitiveness.

CIRCULARS

GOODS AND SERVICES TAX

Assigning proper officer under S. 74A, 75(2), 122 of the CGST Act and the rules made thereunder.

The CBIC vide **Circular No. 254/11/2025-GST dt. 27.10.2025** has assigned designated Central Tax officers as proper officer under S. 74A, 75(2), 122 of the CGST Act and Rule 142(1A) of the CGST Rules specifying the hierarchical monetary limits for issuing how-cause notices and passing orders by Superintendent, Deputy/Assistant Commissioner, and Additional/Joint Commissioner of Central Tax. Until this circular was issued, no officers had been specifically assigned to act as proper officers under these provisions.

NEWS UPDATES

- **SC stayed GST demand on a transfer of 'Development Rights' in a real estate project under a JDA-** The SC has stayed GST demand on transfer of 'development rights' in a real estate project.
- **FADA moved to SC upon loss of compensation cess-** The Federation of Automobile Dealers Association (FADA) has filed a writ petition before the SC challenging the lapsing of Compensation Cess credits and seeking relief automobile dealers across the country. The industry is estimated to be facing losses of over ₹2,500 crore due to the lapse of accumulated

credits following the roll-out of the new GST 2.0 regime.

- **Delhi Development Authority's SOP challenged before Delhi HC for retroactively imposing GST on conversion of leasehold properties into freehold-** A writ petition has been filed before the Delhi HC challenging the retroactive levy of GST on conversion of leasehold property to freehold property. According to petitioners, the levy is without jurisdiction as provisions under the CGST Act expressly exclude sale or transfer of land from the ambit of "supply".

- **No further GST levy on tobacco, tax incidence to be kept same with introduction of additional central levy:** The Government is planning to not levy additional GST on tobacco products after the once the compensation cess is removed and is instead proposing an additional central levy outside the GST framework which will keep the overall tax incidence unchanged.

- **India to launch simplified GST registration under GST 2.0 from November 1 2025**- Union Finance Minister Nirmala Sitaraman has announced a simplified GST registration system starting 1st November for low-risk applicants. It is expected that the applicants whose monthly output liability is under ₹2.5 lakh will receive automatic approval within three working days.

ABBREVATIONS

- Following abbreviations are used throughout this newsletter for ease of reference:

Abbreviations	Term
AAAR	Appellate Authority for Advance Ruling
AAR	Authority for Advance Ruling
CBIC	Central Board of Indirect Taxes and Customs
CSGT Act	Central Goods & Service Tax, 2017
CSGT Rules	Central Goods & Service Rules, 2017
Dt.	Dated
FOB	Free on Board
GST	Goods & Service Tax
HC	High Court
IGST	Integrated Goods & Service Tax
IMS	Invoice Management System
ITC	Input Tax Credit
JDA	Joint Development Agreemnet
S.	Section
RERA	Real Estate Regulatory Authority
RERA Act	Real Estate (Regulation and Development) Act, 2016
SC	Supreme Court
U/S.	Under section
UoI	Union of India