THE INDIRECT EDGE

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BANSI S. MEHTA & CO.

I. JUDICIAL PRONOUNCEMENTS

GOODS AND SERVICES TAX

Supply of clinical trial and R&D services to foreign pharma recipient to be treated as exports, with retrospective effect

The Karnataka High Court, in **M/s Iprocess Clinical Marketing Pvt. Ltd. v. Assistant Commissioner of Commercial Taxes**[1], has held that clinical trial and R&D services provided by an Indian company to a foreign pharma company are treated as supplied at the location of the foreign recipient. This is based on Notification No. 04/2019–IGST dt.07.02.2019, which the Court held to apply retrospectively. As a result, such services provided even before 30.09.2019 qualify as export of services.

The Court further observed that amendments which are beneficial, clarificatory, or explanatory in nature operate retrospectively. Relying on the rationale recorded in the 37th GST Council Meeting for issuing the notification, the Court held that Notification No. 04/2019–IGST was clearly intended to have retrospective effect.

ITC cannot be denied for supplier's default in bona fide transactions

The Tripura HC, in **M/s Sahil Enterprises v. UoI**.[2], has held that ITC cannot be denied to the recipient of supply solely on the ground that supplier has not paid GST to the Government u/s 16(2)(c) of the CGST Act when all other conditions stand satisfied in case recipient is bonafide.

The HC noted that the petitioner had received the goods, paid the applicable GST to the supplier, and duly accounted for the transactions in its books and returns. The High Court also noted that it was practically impossible for the petitioners to ensure that the supplier had paid GST to the Government particularly when the recipient had no means of checking the same. Further, the HC noted that registration of the supplier had already been cancelled and recovery proceedings had already been initiated. The HC also noted that part of the tax dues had also been recovered from the supplier.

Holding the transaction to be bona fide and non-collusive, the HC ruled that the default of the supplier could not be attributed to the purchaser. While upholding the constitutional validity of Section 16(2)(c), the Court read down its application, clarifying that denial of ITC on this ground is justified only in cases involving fraudulent or collusive transactions. Accordingly, the denial of ITC to the petitioner was set aside.

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[1] 2026 (1) TMI 148 - KARNATAKA HIGH COURT

[2] 2026 (1) TMI 385 - TRIPURA HIGH COURT

Customs

Levy of customs duty on electricity supplied from SEZ to DTA held constitutionally invalid

The SC, in **Adani Power Ltd. v. Union of India & Ors.**[3], has held that customs duty cannot be levied on supplies of electricity from a SEZ unit to the DTA in the absence of a valid charging provision.

The Court examined Section 12 of the Customs Act, 1962, which levies customs duty only on "import of goods" into India and Section 30 of the SEZ Act, which provides that goods cleared from an SEZ to the DTA shall be chargeable to customs duty as leviable on such goods when imported. Interpreting these provisions, the Court held that Section 30 of the SEZ Act does not deem that every SEZ to DTA clearance is an "import into India" for all purposes of Section 12 of the Customs Act. The Court held that the provision u/s 30 of the SEZ Act merely creates a parity between imports and transfer from SEZ to DTA but does not itself levy any duty, as it is not a charging section. Accordingly, in the absence of an explicit charging provisions, customs duty cannot be imposed.

The Court further held that Notification No. 25/2010-Cus. dt.27.02.2010, which was issued u/s 25 of the Customs Act which empowers to Government to grant exemptions, cannot be used to impose or create a tax. Levying duty through exemption notifications is beyond the legislative powers, and violative of Article 265 of the Constitution.

Additionally, the Court also held that such levy would amount to double taxation. Imported inputs brought from the DTA into the SEZ would already suffer customs duty to the extent they are used to generate electricity supplied back to the DTA. Imposing customs duty again on the final output in the form of electricity supplied to DTA would amount to impermissible cascading of taxes in the absence of a clear legislative mandate.

This judgement may have far-reaching implications for all transfers of goods from SEZ units to the DTA units, as the judgement effectively holds that there is no charging provision for levy of customs duties when goods move from SEZ to DTA unit.

II. LEGISLATIVE UPDATES & NOTIFICATIONS

GOODS AND SERVICES TAX

Revised Tax rates on tobacco products

The Government, vide Notification No. 19/2025–CT (Rate), has notified that specified goods such as pan masala, tobacco, cigarettes, and nicotine-based products shall be subject to **GST at the rate of 40% on the retail sale price (RSP)**, effective from 01.02.2026. However, the

[3] 2026 (1) TMI 224 - Supreme Court

biris are subject to tax at the rate of 18% only.

For effecting the above changes, Notification No. 20/2025–CT has introduced Rule 31D in the CGST Rules, 2017, prescribing that the value of supply for these products shall be the declared MRP (also RSP) net of applicable GST, along with a specified formula for computation of tax liability. The notification also provides relief to traders dealing in such goods by exempting them from payment of GST where tax has already been discharged by the manufacturer on the MRP.

Further, vide Notification No. 3/2025 – GST Compensation Cess (Rate) dated 31.12.2025, the **levy of Compensation Cess on tobacco-based products has been withdrawn.**

In addition to the above, the Government has **increased the excise duty on specified tobacco products, while the NCCD continues to remain applicable** at the existing rates. Also, the Government has introduced Health Se National Security Cess Act, 2025 under which a new cess has been introduced, initially applicable to pan masala. However, it is clarified that no excise duty is levied on pan masala and biris.

These amendments aim to streamline valuation, prevent under-reporting of retail prices, and strengthen overall tax compliance in respect of the specified goods by aligning GST provisions with excise and cess mechanisms.

III. CIRCULARS

GOODS AND SERVICES TAX

Advisory on ITC Reversal, re-claim and RCM liability

An Electronic Credit Reversal and Re-claimed Statement (Reclaim Ledger) was introduced on the GST portal from August 2023. This ledger tracks ITC temporarily reversed and subsequently reclaimed. A warning message is given to the taxpayers who reclaim excess ITC in GSTR-3B than the available ITC reversal balance in the said ledger but the taxpayer is allowed to file its Form GSTR-3B

Another statement called RCM Liability/ITC Statement was introduced on the GST portal from August 2024 which captured and tracked the RCM liability shown in GSTR-3B. A warning message is given to the taxpayers who claim ITC on account of RCM in excess of the closing balance of the RCM ledger plus the liabilities being reported in Table 3.1(d) of the reporting GSTR-3B. However, the taxpayer is allowed to file its Form GSTR-3B.

Going forward, the GST portal will not allow short, negative values or availment of excess ITC over and above available balance in both the ledgers.

IV. NEWS UPDATES

DGTR's Anti-Dumping Duty Proposal on Chinese Solar Modules Put on Hold

The Jaipur High Court has put on hold DGTR's recommendation to impose anti-dumping duty on solar cells and modules imported from China, citing potential disruption to ongoing solar projects and government schemes. The interim stay keeps any ADD notification in abeyance until the matter is finally decided.

Abbreviations	Term	Abbreviations	Term
CAG	Comptroller and Auditor General	**IGST**	Integrated Goods & Service Tax
CBIC	Central Board of Indirect Taxes and Customs	**IFF**	Invoice Furnishing Facility
CGST Act	Central Goods & Service Tax, 2017	**ITC**	Input Tax Credit
CGST Rules	Central Goods & Service Rules, 2017	**SC**	Supreme Court
ADD	Anti-Dumping Duty	**w.e.f**	With Effect From
dt.	Dated	**CT**	Central Tax
GST	Goods & Service Tax	**u/s.**	Under section
GSTAT	Goods & Services Tax Appellate Tribunal	**UoI**	Union of India
GSTIN	Goods & Services Tax Identification Number	**SEZ**	Special Economic Zone
GSTR	Goods and Services Tax Return	**DTA**	Domestic Tariff Area
HC	High Court	**MRP**	Maximum Retail Price

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