

May 2024



## Notifications

### Implementation of Form GST SRM 1 for registered persons engaged in manufacturing of Tobacco, Pan-Masala, Gutuka etc. extended to 15 May 2024

**Notification Number 8/2024-Central Tax dated 10 April 2024** has been issued to extend the date of implementation of FORM GST SRM-I to 15 May 2024. FORM GST SRM-I is monthly return form used for reporting details of packing machines [and related information] being used by Tobacco industries for filling and packing of packages.

### Duty rates revised to promote import of Desi Chana and Yellow Peas, and discourage export of Onions

**Notification No 24/2024-Customs dated 3 May 2024** has amended specified tariff notifications to following effect:

- To exempt applicable import duty on imports of *Desi Chana* upto 31 March 2025;
- To exempt applicable import duty on import of *Yellow Peas* with bill of lading issued on or before 30 June 2024
- To impose export duty of 40% on exports of Onions;

## Caselaws

### Punjab And Haryana High Court stays Circular concerning taxability of Corporate Guarantees

The Punjab and Haryana High Court has stayed the Circular dated 27 October 2023 issued by the Central Board of Indirect Taxes and Customs (“CBIC”) concerning the taxability of corporate guarantees. The Circular clarifies that the provision of corporate guarantee (“CG”) between related persons, even when made without any consideration, is to be treated as a supply of service between related parties as per the provisions of Schedule I of the Central Goods and Services Tax (“CGST”) Act, 2017. The petitioner filed a writ petition to challenge the Circular and contended that a circular cannot seek to take away the adjudicatory powers by

clarifying provisions in the nature of adjudication. The Honourable High Court noted that the petitioner has preferred an appeal against the demand and subsequently, CBIC issued a clarification vide item No. 2 in the impugned Circular. The Court therefore noted that the impugned Circular directly impinges upon the powers of Appellate Authority and the very purpose of filing of appeal thus stands negated. Therefore, the Court, granting stay on the operation of the impugned Circular, held that the Appellate Authority shall be free to decide the case of the petitioner without being influenced by the impugned clarification.

*[M/S Acme Cleantech Solutions Pvt Ltd V/S Union Of India And Others - CWP-10249-2024]*

### Payment of Pre- Deposit can be made by utilizing the electronic credit ledger

The Gujarat High Court has reiterated that the Electronic Credit Ledger (“ECL”) can be utilized for making pre-deposits in appeals under the GST regime. The question that fell for the consideration of the Court was ‘*whether the appellant, to comply with the requirement of sub-section (6) of Section 107 of the CGST Act of paying a sum equal to 10% of the amount of tax in dispute arising out of the impugned order, can pay the amount utilizing the credit available in the Electronic Credit Ledger?*’ The Court opined that the aforesaid question was no more res integra, and placing reliance on the ratio laid down by the Hon’ble Bombay High Court in the case of *Oasis Realty vs. The Union of India and others (Writ Petition No.23507 of 2022 decided on 16th September 2022)* as well as the *Circular dated 6th July 2022 issued by the CBIC*, it was held that the payment of pre- deposit can be made by utilizing the ECL. *[Shiv Crackers Vs Chief Commissioner of CGST & C.E. & Anr. - 2024 Livelaw (Guj) 45]*

### Bombay High Court quashes show cause notice demanding GST on ocean freight on transportation of goods from outside India [CIF and FOB]

The Bombay High Court has quashed the show cause notice



demanding GST on ocean freight on transportation of goods from outside India. The bench relied on the decision of the Supreme Court in the case of *Union of India & Anr. v. M/s Mohit Minerals Pvt. Ltd.* [Civil Appeal No. 1390 of 2022 dated May 19, 2022] and observed that the verdict applies to both free on board (FOB) and sum of cost, insurance, and freight (CIF) contracts. The Court found that once the notification itself has been declared as ultra vires and the same has been upheld by the Supreme Court, in our opinion, following the mandate of the settled principle of law, the notification is not available to the state authorities to be applied as it would amount to applying an illegal notification.

[*M/s. Agarwal Coal Corporation Pvt. Ltd. v. Assist. Commissioner of State Tax - Writ Petition No. 15227 Of 2023*]

### Retrospective GST registration cancellation cannot be a consequence of non-filing of returns

The Delhi High Court has held that simply because a taxpayer has not filed the returns for some period does not mean that the taxpayer's registration is required to be cancelled with a retrospective date. The Court in this case observed that in terms of Section 29(2) of the Act, the proper officer may cancel the GST registration of a person from such date including any retrospective date, as he may deem fit if the circumstances set out in the said sub-section are satisfied. Registration cannot be cancelled with retrospective effect mechanically. It can be cancelled only if the

proper officer deems it fit to do so. Such satisfaction cannot be subjective but must be based on some objective criteria. Merely, because a taxpayer has not filed the returns for some period does not mean that the taxpayer's registration is required to be cancelled with retrospective date also covering the period when the returns were filed and the taxpayer was compliant.

[*Good Life Zip India v. Commissioner of Delhi Goods And Service Tax & Anr. - W.P.(C) 3931/2024 & CM APPL. 16203/2024*]

### Malabar 'Parota' is akin to 'Bread', exigible to 5% GST

The Kerala High Court has held that Malabar 'Parota' is akin to 'bread' and is exigible at the rate of 5% GST and not 18% GST held by the Advance Ruling Authority and Advance Ruling Appellate Authority. The Court noted that the Petitioner's products are akin to or similar to the products mentioned in HSN Code 1905 with the heading *Preparations of cereals, flour, starch, or milk, pastrycooks' products*, as the ingredients used and processes applied in their preparations are somewhat similar to the products mentioned in Chapter heading HSN Code 1905, as detailed in Explanatory Note of HSN 1905. The court held the Malabar 'Parota' and Whole Wheat Malabar Parota are liable to be taxed under the GST Acts and rules made under GST at the rate of 5% on their supply.

[*Modern Food Enterprises Private Limited Versus Union Of India - WP(C) NO. 13935 OF 2021*]

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