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Lakshmikumaran Sridharan attorneys

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exceeding expectations

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# Intermediary services: Exporters relief from artificial deeming provisions

*By* Asish Philip and Apeksha Bansal

One of the trade facilitation measures proposed by the GST Council in its recent meeting is an amendment in the specific place of supply provisions for intermediary services under Section 13(8)(b) of the Integrated Goods and Servies Tax Act, 2017, deeming place of supply as the location of supplier i.e., India. The first article in this issue of Indirect Tax Amicus deliberates the impact of this amendment on past and current litigation. According to the authors, the move will provide level playing field to the Indian exporters while the importers should examine their business model and evaluate the impact of GST liability.

**Read more**

# Taxability of post sale discounts: Recent changes – Certainty, confusion and calls for reform

*By* Shivam Mehta and Tanya Garg

As a part of GST 2.0 reforms, certain amendments have been proposed in the legislature governing discounts. Moreover, certain clarifications have been provided *vide* Circular No. 251/08/2025-GST dated 12 September 2025. According to the authors, on a comprehensive reading of the Circular and the proposed legislative amendments, it seems that though these clarifications have garnered a sigh of relief for taxpayers, several issues still remain open, and demand for a re-look at the discount schemes floated by the companies. Industry players hence need to revisit their discount schemes to ensure they are aligned with the new clarifications and are compliant with the law.

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## Customs Tariff classification v. Origin compliance – Does one prevail over the other to avail FTA Benefits?

*By* Anjali Hirawat and Shruti Khanna

The article covers a recent Supreme Court decision holding that even if the classification of the particular goods is disputed by the customs authorities, FTA benefits cannot be denied if the goods meet the requisite origin criteria and the same is also supported by a valid Certificate of Origin submitted by the importer, provided that the competing tariff heading/entry is also covered for the purposes of FTA benefit. According to the authors, the judgment is a welcome relief for the industry and furthers the Government's intention to promote trade with the help of the FTAs.

**Read more**

## Self-Assessed or Self-Trapped? The reach of Section 75(12)

*By* Shubham Vijay and Aanchal Gupta

Section 75(12) of the CGST Act encompasses a recovery mechanism by permitting the Department to bypass the adjudication process where the assessee has already self-assessed the tax liability but has failed to discharge the corresponding liability. Discussing various situations where the Department has been raising demands under said provisions, the authors point out that Section 75(12) does not include circumstances where tax payment is done pursuance of audit/investigation and in no manner render interest payable in every circumstance of self-assessed tax or otherwise.

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Observing that there is a need for balance between recovery and natural justice, the authors believe that the Government should issue a comprehensive clarification delineating the limited circumstances in which the said provision can be invoked.

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## From Soil to Solar: GST reforms to boost fertiliser industry and renewable energy sector

*By* Shweta Walecha, Divya Bhardwaj and Aashna Sehgal

This article discusses the key GST rate changes in the fertiliser industry as well as in the renewable energy sector, while pointing out the implication for the industry. The authors also elaborately discuss the pending challenges, including issues relating to subsidy-linked ITC blockage, uneven rate rationalisation (e.g., pesticides), and refund delays, which require continued policy attention.

**Read more**

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# Goods & Services Tax (GST)

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# Notifications and Circulars

## Filing of appeals before GST Appellate Tribunal is to be in staggered manner

Observing that large number of appeals are likely to be filed before the GSTAT and there is a probability that the portal may face capacity and concurrency issues, the President of the GSTAT has, on 24 September 2025, issued an Order to direct for filing of appeals in a staggered manner. It may be noted that the staggering is done on the basis of date of APL-01/ APL-03 or RVN-01 uploaded on GST portal. For example, if Appeals (APL-01/ APL-03) filed on the GST Portal by assessee or Department or Revisions (RVN-01) issued on the GST portal on or before 31 January 2022, the appeal before the GSTAT can be filed from 24 September 2025 to 31 October 2025. Similar batches have been provided for filing appeals pertaining to different periods. It may however be noted that even though an end date for filing has been provided for each batch, the last date of filing appeal for APL-01/ APL-03 or RVN-01 uploaded on GST portal up to 31 March 2026 continues to be 30 June 2026.

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# Ratio Decidendi

## Export refund – Omission of Rules 89(4B) and 96(10) – Pending proceedings to lapse

The Bombay High Court has upheld the contention of the assessee that in absence of any saving clause in the omission of Rules 89(4B) and 96(10) of the Central Goods and Service Tax Rules, 2017, all pending proceedings, in respect of non-compliance with the conditions prescribed in the said Rules, would stand lapsed.

The High Court observed the following for this purpose.

- Rules 89(4B) and 96(10) are not purely procedural but have impact on substantive rights of the parties, therefore, their repeal would essentially erase these Rules from existence as if they had never been enacted or passed. It was held that hence the Rules should be regarded as provisions that never existed, except in relation to 'transactions past and closed'.
- Department never contended that the SCNs or the orders challenged in the Petitions were covered by the expression 'transactions past and closed'.
- Show cause notices could not have proceeded any further post the repeal or omission of the impugned Rules i.e. beyond 8 October 2024. Even challenge to orders made by adjudicating authorities before 8 October 2024 was pending either before the Appellate Authorities or this Court.
- Section 6 of the General Clauses Act, 1897, is not applicable and does not save the pending proceedings. Notification dated 8 October 2024 by which the said Rules stood omitted or repealed is neither the General Clauses Act nor any Central Act as defined under Section 3(7) of the General Clauses Act, and is also not 'regulation' as defined under Section 3(50) *ibid*. Also, 'Rules' cannot be elevated to the status of a Central Act merely because they may have been enacted by exercising the powers under the Central Act.
- Section 174(3) cannot be regarded as a savings clause to protect the pending proceedings under the impugned Rules.
- Clause 1(2) of the CGST (Second Amendment) Rules, 2024 only states that the Rules [omissions] would come into effect from 8 October 2024, and does not prevent the

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lapsing of inconclusive proceedings or even orders that have not attained finality.

- Department's argument based on Section 166 of the CGST Act, regarding laying of the notification before Parliament, was also rejected.
- Not including a savings clause in the Notification dated 8 October 2024 was not an accident but a conscious choice, made to benefit export, import, and trade.

***Number of petitioners were here represented by Mr. V. Sridharan, Senior Advocate, Bombay High Court and Co-founder Lakshmikumaran & Sridharan Attorneys, along with Team LKS***. [*Hikal Limited and Ors.* v. *Union of India and Ors.* – Judgement dated 11 September 2025 in Writ Petition No. 78 of 2025 and Others, Bombay High Court]

## Exports – Refund of unutilized ITC of compensation cess under Section 16(3)(a) when IGST refund also availed under Section 16(3)(b)

The Bombay High Court has allowed refund of unutilized input tax credit of compensation cess under Section 16(3)(a) of the IGST Act, 2017 in case of exports where the assessee had also availed the benefit of refund of IGST paid on zero-rated exports under Section 16(3)(b) *ibid*. The Department had denied the refund observing that Section 16(3) allowed the taxpayer to claim refund only through one of the two modes, either under clause (a) or under clause (b). The Court, however, noted that the component of input tax credit availed under CGST/IGST is different from that by way of compensation cess, and that mechanism prescribed under Section 16 is restricted to the CGST and IGST as evident from the definition of the term 'input tax credit' under the CGST Act, as it does not include compensation cess.

The Court for this purpose also noted that the assessee could not adopt the mechanism provided under clause (b) as there was no compensation cess on the final product. Similarly, fact that the exports were not made under Bond or Letter of Undertaking was found not material by the Court here. It was noted that the assessee had exported the final product as was evident from the fact that he was allowed refund of IGST. [*Sukraft Recycling Private Limited* v. *Union of India* – 2025 VIL 911 Bom]

## Refund of unutilized ITC on zero-rated supply – Relevant date for limitation

The Gujarat High Court has allowed refund of unutilized ITC in case of supplies to SEZ unit in July 2017 in a case where the

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Department had earlier denied refund on the grounds of limitation, as the refund claim was filed on 18 March 2020, i.e. after 2 years. Allowing the petition, the Court noted that the case of the assessee fell in Clause (i) of the proviso to Section 54(3) of CGST Act, 2017 [zero rated supplies made without payment of tax]. It was hence of the view that the 'relevant date' would be the end of the Financial Year and not the date of the filing of the return. Therefore, the Court held that the refund application filed by the assessee would be within the period of two years from the relevant date which is to be computed as per Clause (e) [of Explanation to Section 54] prior to the amendment made by the CGST (Amendment) Act, 2019. According to the Court, the amended Clause (e) would be applicable only in respect of refund of unutilised ITC under Clause (ii) of the first proviso to Section 54(3) [inverted duty structure]. ***The assessee was represented by Lakshmikumaran and Sridharan Attorneys here.*** [*Supernova Engineers Limited* v. *Joint Commissioner* – 2025 VIL 963 GUJ]

## Service of order – Uploading in the portal is not 'communicating' to the assessee

The Madras High Court has held that mere uploading in the portal will not by any stretch of imagination satisfy the requirement of 'communicating' to the assessee. The Court for this purpose noted that the statute [Section 107 of the CGST Act] obliges the authority to communicate to the assessee and that there is no obligation cast on the assessee to access the portal. It was observed that the element of reaching out is implied in communication and service will become communication if the authority reaches out to the assessee.

Further, taking note of the practical difficulties being faced by the assessees, the Court also reproduced the written submission containing certain suggestions of the petitioner, like re-engineering the GST portal with certain features such as prominent notification window, mandatory acknowledgement via OTP, alternative service in cancelled registration cases, etc. [*Sharp Tanks and Structurals Private Limited* v. *Deputy Commissioner* – 2025 VIL 981 MAD]

## Service of order – Expression 'communicated to such person' has its own significance – Uploading order on common portal when not enough

Observing that the expression 'communication to such person' used under Section 107(1) of the CGST Act, 2017, has its own significance, the Rajasthan High Court has held that passing of the order and uploading the same on the common portal cannot be read literally. According to the Court, a purposive

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interpretation needs to be given to a provision, when it relates to valuable statutory right of an assessee, more particularly, when upper cap of only 30 days for condonation of delay has been provided under Section 107(4).

On the facts of the case, the Court was of the view that the period of limitation cannot be reckoned from any date prior to 17 March 2025, when the assessee's request for change of mobile number and e-mail ID was accepted and the assessee was able to access the common portal. [*Sahil Steels* v. *State of Rajasthan* – 2025 VIL 913 RAJ]

## Show cause notice to legal representative is mandatory in case of tax demand after death of the taxpayer

The Allahabad High Court has held that in case of liability of a legal representative on account of death of the proprietor of the firm, it is *sine qua non* that the legal representative is issued a show cause notice and after seeking response from the legal representative, the determination should take place. Determination made against the dead person without issuing notice to the legal representative was thus held as not sustainable. The High Court here was of the view that Section 93 of the CGST Act, 2017, cannot and does not authorise the determination to be made against a dead person and recovery thereof from the legal representative. [*Venus Trading Co.* v. *State of Uttar Pradesh* – 2025 VIL 919 ALH]

## Not issuing separate e-way bills for each invoice is a technical error – No liability of seizure or penalty

The Allahabad High Court has held that non-issuance of independent e-way bill for each invoice is not fatal. In a case where the assessee had issued one e-way bill for some 4 invoices, the Court was of the view that once e-way bill was accompanying the goods, intend to evade payment of tax cannot be attributed to the assessee. According to the Court, the error was apparently a technical error for which the assessee should not be penalised until and unless there is cogent material to show that the assessee had an intention to evade payment of tax. [*Kent Cables Pvt. Ltd.* v. *State of U.P.* – 2025 VIL 982 ALH]

## Non updating of vehicle number in the e-way bill by the transporter when is not fatal

The Allahabad High Court has held that no intention to evade payment of tax can be attributed on the part of the assessee

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merely because vehicle number was not updated by the transporter in the e-way bill, in a case where there was no difference in the serial numbers of the items mentioned in the accompanying tax invoices. The Court in this regard noted that the change of vehicle was duly mentioned by the assessee in its reply from day one to which no weightage was given by the Department. According to the Court, once the goods mentioned in the tax invoices along with the serial numbers were not disputed, merely on the technical breach of not updating the e-way bill no adverse inference can be drawn. [*Rakesh Plastic Furniture and Crockery Emporium* v. *State of U.P.* – 2025 VIL 935 ALH]

## Non-filing of returns under Section 39 – Best judgement under Section 62 – No embargo on Officer to wait for completion of 5 years

The Division Bench of the Madras High Court has not agreed with the finding of the Single Bench that the period of 5 years from the date of furnishing of annual return would be available to a non-filer of return and that the 30 days provided under Section 62 of the CGST Act would stand triggered only after the expiry of the 5 year period as aforesaid. According to the Division Bench, it is open to an assessing officer to pass an assessment order at any time within a period of 5 years from the dates specified under Section 44 and Section 62(1) prescribes only the upper limit for passing the assessment order. *The ratio of the Single Bench decision was reported in January 2024 issue of LKS Indirect Tax Amicus as available **here**.* [*Assistant Commissioner* v. *Comfort Shoe Components* – 2025 VIL 943 MAD]

## Amnesty scheme – Withdrawal of appeal before the cut-off date when not fatal

In a case where the assessee had not withdrawn the appeal on or before the cut-off date i.e., on 31 March 2025, the Madras High Court has held that when there is substantial compliance with the scheme under Section 128A of the CGST Act/TNGST Act read with Notification No.21/2024-Central Tax and the corresponding State notification, the delay in withdrawing the appeal should not be put against the assessee. The High Court was of the view that the scheme has to construed liberally keeping the object for which Section 128A was inserted. The Court for this purpose noted that assessee had given a letter to the Appellate Authority on the same day of filing the application under Section 128A(1), i.e., on 30 June 2025, undertaking to withdraw the appeal pending before the Commissioner of GST. According to the Court, the benefit of the Amnesty scheme is to be allowed to the assessee as it had taken steps to withdraw the

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appeal. [*Sun Tamil Nadu Security Management Services Private Limited* v. *Commissioner* – 2025 VIL 980 MAD]

## Unsigned notice/order does not remain invalid once assessee responds to such defective proceedings

The Andhra Pradesh High Court has held that where an assessee, after the receipt of defective notices or proceedings [one without physical or digital signature], responds to such notices or proceedings, the assessee cannot then afterwards contend that such notices or proceedings were invalid or deficient. The Court was of the view that the assessee, having acted upon such proceedings or notices, cannot turn around and claim later that the said notices and consequential proceedings are to be set aside on the technical plea of absence of signatures. [*Sahiti Agencies* v. *Assistant Commissioner* – 2025 VIL 1008 AP]

## Amount deposited under protest and not quantified for any demand can be used towards pre-deposit for filing appeal

The Allahabad High Court has held that once the amount being deposited by the assessee under the protest had not been quantified for any of the demand, the assessee can take advantage of the said amount towards the mandatory pre-deposit for entertaining the appeal under Section 107(6) of the CGST Act, 2017. The Court in this regard also took note of CBIC Circular dated 6 July 2022 providing for utilization of the amount for electronic credit ledger by the registered person for payment of pre-deposit. Apex Court's decision under Maharashtra VAT Act and few other decisions of the Gujarat High Court and the present Court were relied upon. [*R M Dairy Products LLP* v. *State of U.P.* – 2025 VIL 1017 ALH]

## Interest payable when refund delayed due to technical glitch in system – Section 56 is a mandatory provision

In a case involving a technical glitch in the ICES system which had resulted into delayed payment of refund of IGST on exports, the Gujarat High Court has allowed payment of interest on delayed grant of refund. Allowing the petition, the Court noted that the Department failed to show how the assessee had not accurately filed the GST return in the Shipping Bills which had led to non-processing of the refund claim. The reason for not granting the refund by the system was that the GSTN Integration status report of ICES System was showing the response code as SB000 and no window was provided to

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rectify the error code at the Port. The refund was then ultimately processed manually.

The High Court here also noted that Section 56 of the CGST Act is a mandatory provision and that the interest which is required to be paid thereunder was compensatory in nature for delayed payment of refund which otherwise was not in dispute. Apex Court decision in the case of *Ranbaxy Laboratories Ltd.* on Section 11BB of the Central Excise Act, 1944 which was *pari materia* to Section 56, was relied upon. [*Vineet Polyfab Pvt. Ltd. & Anr.* v. *Union of India and Ors.* – 2025 VIL 1029 GUJ]

## Refund of unutilized ITC due to closure of unit is not permissible

The Division Bench of the Sikkim High Court has held that the opinion that there is no express prohibition in Section 49(6) read with Section 54 and 54(3) of the CGST Act, 2017 for claiming a refund on closure of unit is not correct. The Court, for this purpose, observed that Section 54(3) is in fact a restriction to the refund on account of closure of unit as it does not fall on either of its two clauses – refund to zero-rated supply and due to inverted duty structure.

The assessee had filed for refund of unutilized ITC under Section 49(6) which allows for refund of balance in the electronic cash ledger or electronic credit ledger after payment of tax, interest, penalty, fee or any other amount, in accordance with Section 54. The Court noted that words 'in accordance with the provisions of Section 54' clearly indicate that the permissibility to refund must be in accordance with Section 54. The High Court also observed that as per the Supreme Court decision in the case of *VKC Footsteps*, refund can be granted only in the manner contemplated under Section 54 and in no other manner. It was also noted that perceived hardship or inequality cannot permit interpreting taxing statute beyond well-settled parameters laid down by the Apex Court. [*Union of India* v. *SICPA India Private Limited* – Judgement dated 5 September 2025 in W.A. No. 02 of 2025, Sikkim High Court]

## ITC reversal is not required for goods issued for demonstration by product specialists

The Kerala AAR has answered negatively the question as to whether products issued for demonstration by product specialist for marketing is to be treated at par with 'Physicians Sample-Not for Sale', for the purpose of procedural compliance of GST law and procedures. The Authority here was also of the view that thus no reversal of Input Tax Credit is to be made for such items issued for the purpose of demonstration.

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The AAR for this purpose noted that the demo products issued to Product Specialists are not permanently transferred or gifted but are provided solely for demonstration purposes. It was noted that the ownership remains with the applicant-assessee, and the products are eventually scrapped on payment of applicable GST. According to the Authority, since there is no disposal or transfer of title at the time of issuance such demo goods cannot be equated with physician samples, and hence provisions of Section 17(5)(h) of the CGST Act [blocked credit] are not applicable here. [In RE: *Dynamic Techno Medicals Private Limited* – 2025 VIL 152 AAR]

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# Customs and FTP

## Notifications and Circulars

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# Notifications and Circulars

## RoDTEP scheme extended till 31 March 2026 – Grace period for filing Annual Return extended till 30 November 2025

The Ministry of Commerce & Industry has extended the Remission of Duties and Taxes on Exported Products (‘**RoDTEP**’) Scheme beyond 30 September 2025 till 31 March 2026, *vide* Notification No. 35/2025 dated 30 September 2025. The extended benefits will cover eligible exports from domestic tariff area units, Advance Authorisation (AA) holders, Export Oriented Units (EOUs), and Special Economic Zone (SEZ) entities. The rates under the scheme range from 0.3% to 3.9% and the same will remain in force for all qualifying export products. It may be noted that the DGFT has issued Public Notice No. 24/2025-26, dated 3 October 2025 to extend the grace period for filing the Annual RoDTEP Return. The Return can now be filed till 30 November 2025 after payment of Composition fee of INR 10,000.

Launched in January 2021, under the RoDTEP scheme exporters receive reimbursement for various embedded duties, taxes, and charges incurred during manufacturing and distribution that are not otherwise refunded by central, state, or local mechanisms. The scheme has been viewed as a tool to enhance competitiveness by neutralising the impact of non-creditable levies.

## India-EFTA Trade and Economic Partnership Agreement come into effect from 1 October 2025

The Ministry of Finance has issued notifications to bring into effect the first tranche of tariff concessions for imports from Switzerland, Iceland and Norway under the Trade and Economic Partnership Agreement signed between India and the European Free Trade Association (EFTA). The notifications provide for reduced BCD, AIDC and Health Cess on goods falling under more than 10,000 tariff lines and imported from Switzerland, Iceland and Norway. Additionally, it may be noted that certain specified wine from Switzerland have been granted the benefit of nil BCD and reduced AIDC. The notifications are effective from 1 October 2025.

It may be noted that the benefit will be available only if the importer proves to the satisfaction of the Deputy/Assistant Commissioner of Customs that the goods are of the origin of

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these three countries, in terms of the Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 and the Customs Tariff (Determination of Origin of Goods under the Trade and Economic Partnership Agreement between India and the EFTA States) Rules, 2025. Notifications Nos. 41 to 43/2025-Cus. and 59/2025-Cus. (N.T.) have been issued for the purpose.

## Project imports – Exemptions to various projects extended till 30 September 2027

The Ministry of Finance has extended the project import benefit to certain projects from 30 September 2025 to 30 September 2027. The projects for which the benefit of reduced BCD has been extended cover power generation projects including gas turbine power projects (excluding certain captive power plants), goods required for setting up of any Mega Power Project specified in List 31, all goods covered under Heading 9801, goods required for setting up of any Nuclear Power Project, and certain water supply projects. Notification No. 40/2025-Cus., dated 25 September 2025, as effective from 30 September 2025, has amended Notification No. 50/2017-Cus for this purpose.

## Rice exports – Non-basmati rice export contracts to be registered with APEDA

The Export Policy of Non-Basmati Rice has been amended *vide* Notification No. 33 /2025-26 dated 24 September 2025 by incorporating an additional policy condition. Accordingly, export of non-basmati rice covered under the relevant ITC (HS) codes of Chapter 10, Schedule II (Export Policy) of ITC (HS), 2022 shall be permitted only upon registration of contracts with the APEDA.

## Spices import not permissible under Duty Free Import Authorisation

The DGFT has clarified that since all spices fall under Appendix 4J of the Handbook of Procedures and are subject to pre-import conditions, their import under DFIA is not permissible under any circumstances, irrespective of the intended end use. Policy Circular No. 5/2025, dated 22 September 2025 has been issued for the purpose.

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# Ratio Decidendi

## FTA benefit is available if origin conditions are satisfied – Classification is not material if both the tariff entries are eligible

The Supreme Court has allowed the benefit of Notification No. 151/2009-Cus. in respect of import of smart watches from South Korea under the India-South Korea FTA. The Revenue department had earlier denied the benefit as the importer had declared classification of the goods under Tariff Item 9102 19 00 of the Customs Tariff Act, 1975 as wrist watches, while according to the Department the goods were classifiable under TI 8517 62 90 *ibid*, being smart watches having special features like the person using it would be able to receive or transmit data. Allowing the benefit, the Court took note of the Original Certificate of Origin which was not disputed otherwise. The Apex Court also observed that even if the goods fell within TI 8517 62 90, they were exempted by virtue of Notification No.151/2009-Cus. It may be noted that the Court, however, refrained from recording any findings as regards the fine distinction between TI 9102 19 00 *vis-a-vis* TI 8517 62 90. ***The importer was represented by Lakshmikumaran & Sridharan Attorneys here.*** [*L.G. Electronics India Private Limited* v. *Commissioner* – Order dated 10 September 2025 in Civil Appeal Nos.10349-10350/2024, Supreme Court]

## 1) Customs or DRI officers cannot declare DEPB scrips issued by DGFT as void
## 2) Customs or DRI officers cannot hold BRCs issued by Banks as not valid
## 3) Demand of Customs duty under Section 125(2) when not sustainable
## 4) Exported goods are not liable for confiscation even if remittance not received/not correctly received

Observing that nothing in the Customs Act, 1962, Foreign Trade (Development and Regulations) Act, 1992, the Rules made thereunder and the Foreign Trade Policy, gives either the ADG DRI or any Customs Officer the power to declare the DEPB scrips issued by the DGFT null and void, the CESTAT New Delhi has reiterated that even if the DEPB scrips are obtained by fraud or misrepresentation, they are voidable only

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by the DGFT which issued them. Consequently, the SCN issued by the DRI and the subsequent Order by Commissioner of Customs, confirming the demand, were held as issued without authority of law. Further, penalties under Section 112 on the importers were set aside by the Tribunal while it observed that the goods imported under valid DEPB licences were not liable to confiscation under Section 111(d) and (o) of the Customs Act.

The Tribunal in this case also set aside the demand of duty under Section 125(2) of the Customs Act, which provides for imposition of redemption fine. Noting that the importers had cleared the goods by using DEPB scrips and that no goods were seized or seized and provisionally released or confiscated, and since no redemption fine was imposed, the Tribunal held that demand of duty under Section 125(2) was without any authority of law.

Further, the Tribunal was also of the view that ADG, DRI who issued the SCN and the Commissioner who passed the impugned order acted without any authority of law in holding that the Bank Realisation Certificates (BRCs), in respect of receipt of foreign exchange against exports, were not valid or that they were issued on account of fraud or mis-representation. According to the Tribunal, if DRI finds in its investigation that BRCs are wrongly issued by the officials of the bank violating the guidelines/rules issued by RBI, it should refer the matter to the RBI to consider and take appropriate action.

Also, setting aside the penalty under Section 114(i) of the Customs Act on the Bank officials for rendering goods liable to confiscation under Section 113, the Tribunal held that goods will not became liable for confiscation under said section after they have been exported even if the remittance for the goods so exported have not been received or have not been received correctly.

***Number of importers/exporters were represented by Lakshmikumaran & Sridharan Attorneys here.*** [*Pankaj Chordia* v. *Commissioner* – 2025 VIL 1434 CESTAT DEL CU]

## Valuation – Licence fee for use of software when not includible in value of CD imported with the software

Observing that the license fee was not associated with the import of the CD containing the software, as the primary mode of delivery of the software was electronic, and delivery of goods (CD) was not specified in the Agreement, the CESTAT

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New Delhi has held that the license fee was not related to the CD and, therefore, the value of the license fee paid by the Indian customer was not includible in the value of the CD. The Tribunal in this regard noted that the license fee remained payable irrespective of the fact whether CD was obtained physically or not.

Allowing the appeal, the Tribunal also noted that the Indian customer was not required to pay the license fee at the time of import of goods and that the license fee was not paid as condition of the sale of goods. It was observed that the payments made by the Indian customer were in relation to the rights obtained for the post-importation activities i.e., to obtain license keycodes for full access of the software. Further, observing that the Indian customer did not acquire the title to the intellectual property in the software, the Tribunal was of the view that the transaction was not of sale of goods. The value of licence fee was thus held as not includible in the value of the CD under Rule 9(1)(c) of the Customs Valuation Rules, 1988. ***The assessee was represented by Lakshmikumaran & Sridharan Attorneys here.*** [*HCL Technologies Ltd.* v. *Commissioner* – 2025 VIL 1623 CESTAT DEL CU]

## Valuation – Commissioner of Customs has no authority to re-determine Retail Sale Price for levying additional duty

The CESTAT Mumbai has held the Commissioner of Customs (Import) does not have the authority to re-determine the 'retail sale price (RSP)' for the purpose of levying Additional duties of Customs. According to the Tribunal, in the absence of specific machinery provisions, akin to the Central Excise (Determination of Retail Sale Price of Excisable Goods) Rules, 2008 under the Central Excise Act, 1944, the Customs authorities cannot re-determine the RSP for the purpose of assessment.

In the case involving import of parts of forklift, the Tribunal was also of the view that the goods in question were not 'pre-packaged commodities' within the meaning of the Legal Metrology (Packaged Commodities) Rules, 2011, and therefore, the authorities could not rely on the said Rules to re-determine the RSP. It was for this purpose noted that the customers of the assessee were using the impugned goods for incorporation in 'forklift trucks' or 'material handling equipment' which were used either in factory of production or for servicing of customers. According to the Tribunal, hence, the customers cannot be excluded from the category of 'institutional

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customers' or 'industrial customers' as set out in Rule 3 of Legal Metrology (Packaged Commodities) Rules. ***The importer was represented by Lakshmikumaran & Sridharan Attorneys here.*** [*Jungheinrich Lift Truck India Pvt. Ltd.* v. *Commissioner* – 2025 VIL 1630 CESTAT MUM CU]

## Valuation – Technical assistance fee paid for post-importation activities is not includible in value of capital goods

The CESTAT Bengaluru has reiterated that Technical Assistance Fees paid by the assessee-importer under the Agreement to the overseas related parties is not to be added to the value of the imported capital goods under Rule10(1)(c) of Customs Valuation Rules, 2007, which are tools and other spares for the machineries meant for installation of the plant and machinery in the factory for trial purpose.

The Revenue department was of the view that capital goods (tools) were imported for setting up of the plant and knowhow was for the production process, planning, technology and data for product development, quality control technology etc. without which the goods cannot be manufactured and properly used. Thus, according to the Department, these were expenses incurred prior to the import and therefore, the same should be added to the value of tools and spares.

The Tribunal, however, noted that Assistance and Service Agreement between the assessee and the overseas entity was in connection with rendering various assistances to setting up the plant and subsequent production and marketing of the goods so manufactured. It was observed that it was nowhere stipulated in the Agreement, nor from a plain reading of the same, it is coming forth that the payment made against the said agreement was a condition of import of capital goods (tools) meant for setting up installation of machineries purchased from unrelated parties. ***The importer was represented by Lakshmikumaran & Sridharan Attorneys here.*** [*Seiren India Pvt. Ltd.* v. *Deputy Commissioner* – 2025 VIL 1526 CESTAT BLR CU]

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# Central Excise, Service Tax and VAT

**Ratio decidendi**

- Airport services – No exclusion from service tax to 'handling of export cargo' – Supreme Court
- Mere uploading of report online will not make the service fall under OIDAR services – CESTAT Hyderabad
- Technical Testing and Analysis service provided to foreign clients eligible for export benefit if report delivered to clients abroad – CESTAT Hyderabad

# Ratio Decidendi

## Airport services – No exclusion from service tax to 'handling of export cargo'

The Supreme Court has upheld the service tax liability in respect of handling of export cargo at airport, which involved number of activities like unloading, carting, X-ray, export packing, etc. These services were rendered from the time the cargo was accepted for shipment and till it was placed on the aircraft.

Upholding service tax liability under 'Airport services' for the period from 10 September 2004 till 31 March 2007, the Court noted that exclusion of handling of export cargo from the definition of 'Cargo handling service' was not material here. According to the Court, exclusion from the definition of Cargo handling service by itself would not be sufficient to exclude handling of export cargo from the definition of taxable service under sub-section (105) of Section 65 of the Finance Act, 1994. Referring to sub-clause (zzm) of Section 65(105), the Court observed that the sub-clause was wide enough to cover any kind of service provided to any person by the Airport Authorities in any airport or civil enclave. [*Airports Authority of India* v. *Commissioner* – 2025 VIL 73 SC ST]

## Mere uploading of report online will not make the service fall under OIDAR services

Observing that the nature of the service rendered by the assessee was 'Scientific or Technical Consultancy service', which included providing report in the form of dossiers, the CESTAT Hyderabad has held that merely because the dossiers were not sent in hard copy to the service recipient but were uploaded on server, it cannot be said that the assessee was providing OIDAR services. The assessee had entered into an agreement with a foreign company to develop pharmaceutical products and conduct various tests and provide complete data in the form of dossier to the foreign client for which it was getting paid on cost plus basis.

Allowing the assessee's appeal, the Tribunal noted that the essence of the service was not one of uploading the document to the server, although it was part of the total service and the service concluded with the uploading. According to the Tribunal, the essence of the agreement was one of developing API and pharmaceutical products, testing them and providing the information, which fell under 'Scientific or Technical

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Consultancy service' and not OIDAR service, both before and after 1 July 2012.

The benefit of exports, i.e., exemption from service tax and refund of Cenvat credit were thus allowed to the assessee holding that the place of provision of service was hence the place of the recipient of service abroad and not the place of service provider. ***The assessee was represented by Mr. V. Sridharan, Senior Advocate, Bombay High Court and Co-founder of Lakshmikumaran & Sridharan Attorneys, along with LKS Team.*** [*Mylan Laboratories Ltd.* v. *Commissioner* – 2025 VIL 1557 CESTAT HYD ST]

## Technical Testing and Analysis service provided to foreign clients eligible for export benefit if report delivered to clients abroad

The CESTAT Hyderabad has reiterated that if the test and analysis reports etc., in relation to any activities contracted between overseas buyers and Indian entity, gets concluded only once the customers abroad are in receipt of the material so developed, as well as reports etc., then it has to be concluded that service was part performed outside India. Allowing the benefit of Export of Services, the Tribunal in the facts of the case noted that even though, the lead chemicals and analogues were developed in India from basic chemicals and even the testing and preparation of report was done in India, the service had not concluded till the time it reached in the hands of the customers situated outside India, and therefore the service will qualify as export of service. Tribunal's earlier decisions in the cases of *Gland Pharma Ltd.* and *Bayer Bioscience Pvt Ltd.* were distinguished. Period involved was from April 2007 to September 2011.

The Tribunal also found force in the submission that though the actual delivery was made by the courier company but the assessee was the one who sent the material and reports through courier to the foreign buyer and hence it continued to be service provider.

It may be noted that according to the Tribunal, even for period post 1 April 2011, when Section 65(105)(zzh) of the Finance Act, 1994 was placed in Rule 3(iii) of the Export of Services Rules, since the location of the recipient is outside India, no service tax would be payable.

***The assessee was represented by Lakshmikumaran & Sridharan Attorneys here.*** [*Albany Molecular Research Hyderabad Research Centre (P) Ltd.* v. *Commissioner* – 2025 VIL 1464 CESTAT HYD ST]

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# News Nuggets

## CESTAT – All appeals to be filed online – Manual filing to discontinue from 31 December 2025

The Registrar of Customs, Excise and Service Tax Appellate Tribunal (CESTAT) has on 1 October 2025 issued notification to direct filing of appeals/applications online @ https://efiling.cestat.gov.in/. It may be noted that the notification also directs that all pending appeals earlier filed by assesses/ taxpayers either by themselves or through consultants/advocates should also be uploaded on the portal as part of e-filing drive. It is stated that uploading of all old appeals may be completed at the earliest, but not later than one week before the date of final hearing of appeal or hearing of an application filed therein. While the notification will come into effect from 15 November 2025, it also mentions that physical filing of appeals will be discontinued from 31 December 2025.

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