

MONTHLY INDIRECT TAX NEWSLETTER

AUGUST 2024

Dear Readers,

We bring you a concise analysis of important developments, recent publications and judgements and noteworthy regulatory amendments in the corporate and financial sectors on a monthly basis.

Our newsletter will cover updates from Trade & Indirect Taxes and Customs.

Perceiving the significance of these updates and the need to keep track of the same, we have prepared this newsletter providing a concise overview of the various changes brought in by our proactive regulatory authorities and the Courts!

Feedback and suggestions from our readers would be appreciated. Please feel free to write to us at mail@lexport.in.

Regards,

Team Lexport



ABOUT US

Lexport is a full-service Indian law firm offering consulting, litigation and representation services to a range of clients.

The core competencies of our firm's practice *inter alia* are Trade Laws (Customs, GST & Foreign Trade Policy), Corporate and Commercial Laws and Intellectual Property Rights.

The firm also provides Transaction, Regulatory and Compliance Services. Our detailed profile can be seen at our website www.lexport.in.

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PART A: CASE LAWS

1. **[Mineral Area Development Authority v. SAIL 2024 SCC Online SC 1796](#)**

The Supreme Court's nine-judge bench decision in **Mineral Area Development Authority v. SAIL** addresses critical issues concerning the distribution of legislative powers between the Union and the States regarding the taxation of mineral rights, and the nature of royalties applicable to minerals.

This 9-Judge Bench decision resolves a dispute that has persisted for decades, the core issue was whether royalties are classified as taxes. If so, State legislatures would lack competence to levy taxes on mineral rights, as such matters fall under Entry 54, List I, VII Schedule, granting exclusive competence to the Union. Conversely, if royalties are not considered taxes, States could legislate under Entry 49, List II, Schedule VII.

The Court determined that royalty is not a tax, but a contractual consideration paid by the mining lessee to the lessor for the enjoyment of mineral rights. This arises from the contractual conditions of the mining lease, and payments made to the government as royalty cannot be deemed as a tax merely due to statutory recovery provisions.

Regarding the scope of Entry 50, List II, and limitations, the Court found that the legislative power to tax mineral rights lies with State legislatures, and Parliament lacks the competence to tax mineral rights under Entry 54, List I. The Mines and Minerals (Development and Regulation) Amendment Act does not impose limitations as envisaged in Entry 50, List II.

2. **[Acme Cleantech Solutions Private Limited vs. Union of India and Ors 2024 \(5\) TMI 467](#)**

“Circular clarifying taxability of corporate guarantees stayed”

Acme Cleantech Solutions Private Limited challenged the Circular No. 204/16/2023-GST dated October 27, 2023 [“**Circular**”], issued by the Central Board of Indirect Taxes and Customs [“**CBIC**”], which clarified that corporate guarantees provided by a company (including holding company) to banks/ financial institutions for providing credit facilities to the other related company (including subsidiary company) is a supply of service between the said related parties under Schedule I of the CGST Act, even if made without any consideration. The value of such supply will be determined basis Rule 28(2) of CGST Rules, i.e., 1% of amount of guarantee offered or actual consideration, whichever is higher. In this regard, Company relied upon the judgement passed by the Supreme Court in the matter of Union of India Vs. Karvy Stock Broking Limited and contended that the Circular seeks to take away the adjudicatory powers of the assessing authority as well as the Appellate Authority by clarifying provisions in the nature of adjudication. Considering the above, the Hon’ble High Court of Punjab and Haryana stayed the effect and operation of the Circular

to the above extent and directed the appellate authority to decide the case of the Company without being influenced by the Circular.

3. [**Piramal Enterprises Limited Vs. the State Of Maharashtra, The Joint Commissioner of State Tax, LTU Mumbai 2024 \(6\) TMI 489**](#)

“Business Transfer Agreements must be interpreted as a whole”

In a significant ruling, the Hon'ble Bombay High Court in the case of *Piramal Enterprises Ltd. vs. The State of Maharashtra*, the Joint Commissioner of State Tax, set aside the Revenue Department's demand, which dissected a Business Transfer Agreement (BTA) to impose VAT. Piramal Enterprises Ltd. had entered into a BTA with Abbott Healthcare Pvt. Ltd. to transfer its pharmaceutical business as a going concern on a slump sale basis. The Revenue Department initially exempted the transaction from VAT but later issued a show cause notice arguing that the allocation of cash consideration for tangible and intangible assets should be included in the turnover. The court held that the BTA must be understood in its entirety, as intended by the parties, and criticized the Revenue's selective interpretation. The court reaffirmed that intangible assets were integral to the business transfer and not subject to separate taxation, thus ruling in Favor of Piramal Enterprises Ltd. and setting aside the Revenue's demand.

4. [**Manappuram Finance Ltd Vs. Union of India and Ors. \[TS-451-HC\(KER\)-2024-GST\]**](#)

Kerala High Court has held that GST is not payable under reverse charge basis on supply of services (i) by Managing Director (MD) of Mannappuram Finance Ltd. (company) by way of providing personal guarantee on loans taken by the company and (ii) by way of extending loans by company to its subsidiary company.

5. [**Indian Medical Association Vs. UOI \[TS-433-HC\(KER\)-2024-GST\]**](#)

Kerala HC (Ernakulam) upholds the constitutional validity of amendment that levies GST on activities / transactions of association with its members, however, denies applicability retrospectively w.e.f. July 1, 2017, while clarifying same “*should be given effect from the date when it was notified i.e., 01.01.2022.*”

6. [**Shobikaa Impex Pvt Ltd vs. Union of India & ors.\[TS-425-HC\(MAD\)-2024-GST\]**](#)

“Procedural irregularity cannot bar legitimate export incentives; Quashes IGST refund-denial”

Madras High Court, upon observing that, refund of IGST paid on exports was availed by Assessee claimed under Rule 96(10) instead of Rule 89, holds that, “*procedural irregularity*” committed by the Assessee shouldn't come in “*the legitimate way of grant of export incentives*” as admittedly exports were made and refund claims were itself based on the shipping bills.

7. [**Sunil Kumar K vs. The State Tax Officer \[TS-422-HC\(KER\)-2024-GST\]**](#)

“Common portal is for ‘all’ actions including communication of notices, orders”

Kerala High Court (Division Bench) upholds order of the Single Judge relegating assessee to alternative appeal remedy by holding that “*.... common portal...can also be for all functions provided under CGST Rules*”.

8. [**Fins Engineering and Contractors Vs. Superintendent \[TS-389-HC\(KER\)-2024-GST\]**](#)

“Rules on transition of un-adjusted TDS via TRAN-01 as unutilized ITC”

Kerala High Court modifies the order of Single Judge while upholding disallowance of transition of un-adjusted Tax Deducted at Source (TDS) amounts as input tax credit (ITC) to the extent of direction to assessee for reversal of amount utilized as ITC.

PART B: RATE NOTIFICATIONS AND CIRCULARS ISSUED BY THE CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS ('CBIC')

1. **[Circular No. 207/1/2024-GST dated 26.06.24](#)**

Subject: Revision of Fixing Monetary Limits for Filing Appeals or Applications by the Department before GSTAT, High Courts, and Supreme Court.

The CBIC has revised the monetary limits for filing appeals, as follows:

- **Rs 20 lakhs for GSTAT**
- **Rs 1 crore for High Court**
- **Rs 2 crore for Supreme Court**

These monetary limits are to be applied to the disputed amount of tax/interest/penalty/late fee/erroneous refund in respect of which the appeal or application is contemplated to be filed.

In the case of a composite order which disposes of more than one appeal/demand notice, the monetary limits shall be applicable to the total amount of tax/interest/penalty/late fee, and not on the amount involved in individual appeal or demand notice.

2. **[Circular No. 209/3/2024-GST 26.06.24](#)**

Subject: Clarification on Place of Supply to Unregistered Persons when billing and delivery address differs.

CBIC has issued a clarification regarding the 'place of supply' in the context of supply of goods to unregistered persons through e-commerce platforms.

Clarification:

- The 'place of supply' for goods delivered to unregistered persons, where the billing and delivery addresses differ, shall be the address of the delivery of goods as recorded in the invoice.

This clarification is issued in regard to Section 10(1), Clause (ca) of the IGST Act, 2017.

3. **[Circular No. 210/4/2024-GST dated 26.06.24](#)**

Subject: Clarification on Value of Related Party International Transaction in Terms of Second Proviso to Rule 28(1) of CGST Rules, 2017.

CBIC has issued a clarification regarding the value of supply in cases where a foreign affiliate is providing certain services to a related domestic entity, and full Input Tax Credit (ITC) is available.

Clarification:

- **If an invoice is issued:** The declared invoice value is considered the open market value.
- **If an invoice is not issued:** The value of the service will be deemed as NIL, which will be considered the open market value.

4. [Circular No. 213/07/2024-GST dated 26.06.24](#)

Subject: CBIC has issued a clarification regarding the taxability of Employee Stock Option Plans (ESOP), Employee Stock Purchase Plans (ESPP), and Restricted Stock Units (RSU) provided by a foreign holding company to employees of a domestic subsidiary.

Clarification:

- There will be **no supply of service** between the foreign holding company and the domestic subsidiary company when:
 - The foreign holding company issues ESOP / ESPP / RSU to the employees of the domestic subsidiary company.
 - The domestic subsidiary company reimburses the cost of such securities/shares to the foreign holding company on a cost-to-cost basis.
- However, GST shall be levied by the domestic subsidiary on any additional cost charged over and above the cost of securities/shares under the Reverse Charge Mechanism (RCM).

5. [Circular No. 219/13/2024-GST dated 26.06.24](#)

Subject: Clarification on ITC availment on Ducts and Manholes Used in Network of Optical Fiber Cables (OFCs)

Summary:

This Circular address concerns raised by the Cellular Operators Association of India (COAI) regarding the denial of ITC by some tax authorities on ducts and manholes, citing them as immovable property ineligible for credit under Section 17(5) of the CGST Act, 2017. The key clarifications provided are as follows:

- **Ducts and Manholes in OFC Network:**
 - Ducts and manholes used in the OFC network are essential components for providing telecommunication services. They facilitate the laying, maintenance, and connectivity of optical fiber cables (OFCs).
- **Definition of "Plant and Machinery":**
 - According to the Explanation in Section 17 of the CGST Act, "plant and machinery" includes equipment and apparatus fixed to the earth by foundation or structural support, used for making outward supplies of goods or services. This definition excludes land, buildings, civil structures, telecommunication towers, and pipelines outside factory premises.
- **Status of Ducts and Manholes:**
 - Ducts and manholes used in the OFC network are integral parts of the "plant and machinery" definition, as they support the transmission of telecommunication signals from one point to another. They are neither categorized as land, buildings, civil structures, nor telecommunication towers or pipelines outside factory premises.
- **ITC Eligibility:**
 - Therefore, ITC on ducts and manholes used in the network of optical fiber cables (OFCs) is not restricted under clauses (c) or (d) of sub-section (5) of Section 17 of the CGST Act, 2017.

6. [Circular No. 218/12/2024-GST dated 26.06.24](#)

Subject: Clarification on Taxability of Loan by Overseas Affiliate to its Indian Affiliate.

Summary:

This Circular provides clarification on the taxability of loans provided by an overseas affiliate to its Indian affiliate. Key points of the said Circular are as follows:

- **Loan Provision Without Consideration:**

- When an overseas company provides a loan to its Indian affiliate without any consideration other than interest or discount, such provision will not be considered as a supply. Consequently, no GST is leviable on such transactions.

- **Fees and Charges:**

- If there are any additional fees, such as processing fees, administrative charges, service fees, or loan granting charges, beyond the interest or discount on the loan amount, these fees may be considered as the consideration for the services of processing, facilitating, or administering the loan.

- **GST on Additional Fees:**

- These additional fees will be subject to GST as they represent the supply of services by the lender to the related person availing the loan.

7. [Circular No. 216/10/2024-GST dated 26.06.24](#)

Subject: Clarification in Respect of GST Liability and ITC availability in Cases Involving Warranty/Extended Warranty

Summary:

- **Warranty Replacement:**

- Circular No. 195/07/2023-GST dated 17.07.2023 applies to scenarios where goods (as opposed to just parts) are replaced under warranty.
- When a distributor replaces parts or goods under warranty from their own stock on behalf of the manufacturer and later receives replenishment from the manufacturer, no GST is payable, and no reversal of ITC is required.

- **Extended Warranty:**

- Extended warranty provided after the original supply of goods is considered a distinct supply of services.
- The supplier of the extended warranty must discharge the GST liability applicable to this supply of services.

8. [Notification No 3/ 2024 - Central Tax \(Rate\) dated July 12, 2024:](#)

A new proviso is inserted in the Notification No. 2/2017 – Central Tax (Rate), dated June 28, 2017 ('Exemption Notification'). Effective from July 15, 2024, packages containing more than 25 kgs or 25 liters of farm produce will not be considered 'pre-packaged and labelled' and will, therefore, be exempt from levy of GST at 5%. A similar proviso is also inserted in the Rate Notification.

9. [Notification No. 04/2024 – Central Tax \(Rate\) dated July 12, 2024:](#)

Hostel accommodation services

Chapter Heading 9963 (on hostel accommodation) has been removed from Sr. No. 12. This exempts services related to renting residential dwellings for use as residence. Henceforth, this entry will be classified exclusively under chapter heading 9972, which pertains to the service of renting or leasing property.

A new explanation has been inserted to Sr. No. 12, which excludes the following from the scope of exemption:

- Accommodation services for students in student residences.
- Accommodation services provided by hostels, camps, paying guest accommodations, and similar establishments.

A new Sr. No. 12A has been inserted, stipulating that no GST will be levied on the supply of accommodation services valued at less than or equal to INR 20,000 per person per month, provided the accommodation is supplied for a minimum continuous period of 90 days. This service falls under Heading 9963. This clarification is also provided in Circular No. 228/22/2024-GST dated July 15, 2024.

[Above GST rate change is effectuated by amending the Notification No. 12/2017 - Central Tax (Rate) dated June 28, 2017 ('Exemption Notification 1')].

10. [Circular No. 228/22/2024-GST dated July 15, 2024](#)

Vide the said Circular, CBIC has clarified the GST applicability on certain issues. Key clarifications are as follows:

1. Real Estate Regulatory Authority ('RERA') is a 'governmental authority' as per the definition in the Exemption Notification 12/2017- CT(R) dated 28.06.2017 and statutory collections made by RERA will be exempt from GST.
2. Sharing of the incentive amount by the acquiring bank with other stakeholders, up to the point where the incentive is distributed in the proportion and manner (as decided by the National Payment Corporation of India in consultation with the participating banks under the notified Incentive Scheme for promotion of RuPay Debit Cards and low value BHIM-UPI transactions) is in the nature of subsidy and thus, will be exempt from GST.
3. GST on reinsurance of the general insurance and life insurance schemes specified under Sr. No. 35 and Sr. No. 36 of the Exemption Notification 12/2017- CT(R) dated 28.06.2017 is regularized for the period July 01, 2017, to January 24, 2018, on 'as is where is' basis.
4. GST on reinsurance of government-sponsored insurance schemes specified under Sr. No. 40 of the Exemption Notification 12/2017- CT(R) dated 28.06.2017 is regularized for the period July 01, 2017, to July 26, 2018, on 'as is where is' basis.
5. The term 'reinsurance' as specified under Sr. No. 36A of the Exemption Notification 1 includes 'retrocession' services.
6. GST exemption is also provided in respect of certain services provided by the Ministry of Railways.

11. **Circular No. 229/23/2024-GST dated July 15, 2024**

Vide the said Circular, the CBIC has provided clarifications regarding the GST applicability on various issues. Key clarifications include:

1. Solar cookers that work on dual energy of solar energy and grid electricity will be classified under chapter heading 8516 and attract 12% GST rate in terms of Sr. No. 201A of Rate Notification.
2. All types of sprinklers, including fire water sprinklers will attract GST at the rate of 12% in terms of Sr. No. 195B of the Rate Notification. Further, it has been clarified that issues for the past period are regularized on 'as is where is basis'.
3. Parts of poultry-keeping machinery will be classified under chapter heading 84369100 and attract 12% GST rate in terms of Sr. No. 199 of the Rate Notification. Further, the said entry is amended to include 'parts' of poultry-keeping machinery. Further, it has been clarified that issues for the past period are regularized on 'as is where is basis'.

PART C: ARTICLES

1. **Legal Implications of Goods and Service Tax on Brand Usage within Group Companies**

In this article, our Managing Partner Ms. Srinivas Kotni has highlighted the increasing scrutiny by GST authorities on brand usage among related parties, using the Mahindra & Mahindra case as an example.

Click on the below link to read the article:

<https://shorturl.at/Ls9wp>

END OF THE NEWSLETTER
