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# IMPORTANT JUDGEMENTS / RULINGS:

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## **1. Unnikrishnan R. Vs Union of India (In the High Court of Judicature at Madras dated 12.06.2024)**

**Subject Matter:** The case involves a legal challenge against an order passed by the GST authorities, which was issued in the name of a deceased person, Mr. Radhakrishnan Pillai, who was a registered dealer under GST.

**Background and Facts of the Case:** Mr. Radhakrishnan Pillai was running a business under the name 'M/s. Chothi Enterprises.' He passed away on October 11, 2017. However, the GST authorities issued a show cause notice to him on December 29, 2023, under Section 73(1) of the Tamil Nadu Goods and Services Tax (TNGST) Act, 2017. The petitioner, who is the son of the deceased and one of his legal heirs, challenged this notice and the subsequent order, arguing that it was nonest in law since it was issued to a dead person. The petitioner also stated that neither he nor the other legal heirs were carrying on the business of the deceased.

**Discussions and Findings:** The court found that the order issued against the deceased person was indeed nonest in law. The court noted that if the petitioner was carrying on the business of the deceased, the department could proceed against him under Section 93 of the TNGST Act, 2017

However, as the petitioner claimed not to be carrying on the business, the court quashed the impugned order and directed the GST authorities to issue a new notice to the petitioner representing the other legal heirs, and to proceed in accordance with the law. The writ petition was disposed of with this direction, and no costs were awarded.

## **2. Indian Medical Association Vs Union of India (In the High Court of Kerala dated 23.07.2024)**

**Subject Matter:** The case revolves around the constitutional validity of Section 7(1)(aa) of

the Central Goods and Services Tax (CGST) Act, 2017, and its corresponding provisions in the Kerala State Goods and Services Tax (KSGST) Act, 2017. Specifically, it addresses the liability of associations or clubs to pay GST on the supply of goods and services to their members.

**Background and Facts of the Case:** The case was brought before the High Court of Kerala by the Indian Medical Association, challenging the constitutional validity of the amendment introduced by the Finance Act, 2021, which inserted Section 7(1)(aa) into the CGST Act. The amendment clarified that the supply of goods and services by an association or club to its members would be considered as a "supply" under the GST laws, thereby making it liable to tax. The petitioners contended that the amendment was unconstitutional, as it violated their fundamental rights under Part III of the Constitution of India. They argued that the amendment was beyond the legislative competence of the Union Government and that it infringed upon the principle of mutuality, which traditionally exempted such transactions from taxation.

**Discussions and Findings:** The Court examined the constitutional validity of Section 7(1)(aa) of the CGST Act and its corresponding provisions in the KSGST Act. After considering the arguments presented, the Court found that the amendment was neither beyond the legislative competence of the Union Government nor did it violate any fundamental rights guaranteed under Part III of the Constitution.

The Court held that the principle of mutuality does not exclude the applicability of GST on transactions between an association and its members. The amendment was seen as a clarification rather than an introduction of a new tax liability, aimed at addressing ambiguities in the law.

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However, the Court noted that the provisions of Section 7(1)(aa) would have prospective operation, with effect from January 1, 2022. This meant that the GST liability on the supply of goods and services by associations or clubs to their members would apply only from that date onwards.

In conclusion, the Court upheld the constitutional validity of Section 7(1)(aa) but limited its application to a prospective date, ensuring that the amendment did not have retrospective effect.

### **3. Shiva Chemicals Vs Assistant Commissioner of Revenue, State Tax Jorasanko and Jorabagan Charge (In The High Court of Calcutta dated 18.07.2024)**

**Subject Matter:** The case concerns the denial of Input Tax Credit (ITC) under the Central Goods and Services Tax (CGST) Act, 2017, and the West Bengal Goods and Services Tax (WBGST) Act, 2017. The primary issue is whether the appellate authority properly applied its mind when evaluating the evidence presented by the assessee, Shiva Chemicals, regarding the movement of goods and the eligibility for ITC.

**Background and Facts of the Case:** Shiva Chemicals, the petitioner, challenged the order of the appellate authority, which denied their claim for ITC on the grounds of insufficient documentation. The appellate authority upheld the adjudicating authority's decision, which found that the assessee was not eligible for ITC due to the absence of transport documents and other supporting evidence. The petitioner had submitted e-way bills, tax invoices, bank statements, and Form GSTR-2A, which demonstrated that the supplier had filed its returns during the relevant period, thus supporting the genuineness of the transactions.

Despite this, the appellate authority, without properly examining these documents, concluded that the ITC claim was invalid. The petitioner argued that the order was a verbatim reproduction of the adjudicating authority's findings and lacked independent reasoning.

**Discussions and Findings:** The High Court of Calcutta found that the appellate authority's order suffered from non-application of mind and was perverse. The Court noted that the appellate authority had merely repeated the observations of the adjudicating authority without independently assessing the documents submitted by the assessee. This included e-way bills, tax invoices, bank statements, and party ledgers, all of which were relevant to proving the movement of goods and the eligibility for ITC. The Court emphasized that the initial burden of proof for claiming ITC was discharged by the assessee through the submission of these documents. The Court ruled that ITC could not be denied merely due to the absence of documents like loading expenses, transportation expenses, unloading expenses, and vouchers unless the Revenue could impeach the validity of the documents provided by the assessee. Consequently, the Court remanded the matter back to the appellate authority with directions to reconsider the issue. The appellate authority was instructed to test whether the e-way bills, tax invoices, bank statements, and party ledger submitted by the assessee matched with the actual transactions. The Court held that the appellate authority's failure to apply its mind and independently assess the evidence constituted a significant procedural lapse, warranting a fresh examination of the case.

The decision was in favor of the assessee, with the matter being remanded for reconsideration.

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# GST NOTIFICATIONS

## GST Notifications (Rate)

### 4. GST Rate changes on Taxable Goods (Notification No. 02/2024 – Central Tax (Rate) Dated 12.07.2024) applicable w.e.f. 15.07.2024.

S. No.	HSN Code	Description	Old Rate	New Rate
1.	4819 10, 4819 20	Cartons, boxes and cases of, – (a) corrugated paper or paper board; or (b) non-corrugated paper or paper board;	9%	6%
2.	7310, 7323, 7612, or 7615	Milk cans made of Iron, Steel, or Aluminium;	9%	6%
3.	7321 or 8516	Solar cookers;	9%	6%

### 5. Changes in Exemption Notification on Goods [Notification No. 03/2024 – Central Tax (Rate) Dated 12.07.2024] applicable w.e.f. 15.07.2024.

Earlier, GST was made applicable on food items when it is "pre-packaged and labelled". The definition of "pre-packaged and labelled" referred to the Legal Metrology Act (LMA) and Rules made thereunder, to be "where, the package in which the commodity is pre-packed or a label securely affixed thereto is required to bear the declarations under the provisions of the Legal Metrology Act, 2009 (1 of 2010) and the rules made thereunder."

As per LMA, provides exemption from above declaration if packages of commodities containing quantity of more than 25 kilogram or 25 litres. With this exceptions, it was seen that some manufacturers to start packing at goods such as rice, wheat etc., at 26 kgs to avoid declarations and to claim GST exemptions which are still meant to retail market.

Hence, LMA was amended to cover all packed commodities sold in bags in retail under the requirement of declarations. Consequently, GST was automatically made applicable to all the goods irrespective its package.

A 'proviso' was inserted under Explanation in clause (ii) of Notification No.2/2017-Central Tax (Rate) as amended from time to time. Proviso reads as "Provided that notwithstanding anything contained in the Legal Metrology Act,2009 (1 of 2010) and the rules made thereunder, as amended from time to time, the supply of agricultural farm produce in package(s) of commodities containing quantity of more than 25 kgs or 25 litres shall not be considered as a supply made within the scope of expression 'pre-packaged and labelled'.

With this amendment in GST, supply of agricultural farm produce in package(s) of commodities containing quantity of more than 25 kilogram or 25 litre shall not be considered as a supply made within the scope of expression 'pre-packaged and labelled' and therefore, no GST would be applicable on the same (though requirement of declaration under LMA would still apply)

### 6. Changes in Exemption Notification on Services [Notification No. 04/2024 – Central Tax (Rate) dated 12.07.2024] applicable w.e.f. 15.07.2024.

New entries have been inserted in exemption notification no.12/2017-CT (Rate) dt 28.06.2017

# GST NOTIFICATIONS

S. N	SAC	Description	Rate	Condition
1.	Chapter 99	Services provided by Ministry of Railways (Indian Railways) to individuals by way of – (a) sale of platform tickets; (b) facility of retiring rooms/waiting rooms; (c) cloak room services; (d) battery operated car services	Nil	Nil
2.	Chapter 99	Services provided by one zone/division under Ministry of Railways (Indian Railways) to another zone(s)/division(s) under Ministry of Railways (Indian Railways).	Nil	Nil
3.	Chapter 99	Services provided by Special Purpose Vehicles (SPVs) to Ministry of Railways (Indian Railways) by way of allowing Ministry of Railways (Indian Railways) to use the infrastructure built and owned by them during the concession period against consideration and services of maintenance supplied by Ministry of Railways (Indian Railways) to SPVs in relation to the said infrastructure built and owned by the SPVs during the concession period against consideration.	Nil	Nil
4.	Heading 9963	Supply of accommodation services having value of supply less than or equal to Rs.20,000 per person per month provided that the accommodation service is supplied for a minimum continuous period of 90 days.	Nil	Nil

b. Further, Explanation was inserted in entry 12 of the Notification No. 12/2017 – Central Tax (Rate) Dated 28.06.2017 vide Notification No. 04/2024 – Central Tax (Rate) dated 12.07.2024, to provide that the exemption to services by way of renting of residential dwelling for use as residence is not applicable to –

- Accommodation services for students in

student residences;

- Accommodation services provided by Hostels, Camps, Paying Guest accommodations and the like.

Remarks: Amendment intended to counter recent judgement in the case of Thai Mookambika Hostels of the Madras High Court and Taghar Vasudeva Ambrish's 2022 case

# GST CIRCULARS

## **7. Clarifications regarding the applicability of GST on certain services [Circular No 228/22/2024 dated 15.07.2024]**

**GST Exemption for Indian Railways:** all supplies of goods and services made by Indian Railways were brought under Forward Charge Mechanism and consequently exemptions that were available to Indian Railways were withdrawn w.e.f. 20.10.2023. Now, the Exemptions are provided for services like platform ticket sales, retiring rooms, and inter-divisional services within Indian Railways w.e.f. 15.07.2024. GST liability on the above said services, is hereby regularized on 'as is where is' basis for the intervening period i.e. from 20.10.2023 to 14.07.2024

**Special Purpose Vehicles (SPVs) and Railways:** Services provided by SPVs to Indian Railways during the concession period are exempt from GST w.e.f. 15.07.2024. GST on the said services, is hereby regularized on 'as is where is' basis for the concession period i.e. from 20.07.2017 to 14.07.2024.

**Statutory collections by Real Estate Regulatory Authority (RERA):** RERA is a 'governmental authority' and its services are covered under the scope of entry at SI. No. 4 of notification No. 12/2017-CT(R) dated 28.06.2017 thereby, statutory collections by RERA are clarified as exempt from GST.

**Digital Payment Ecosystem:** incentives paid by MeitY to acquiring banks under the under the notified Incentive Scheme for promotion of RuPay Debit Cards and low value BHIM-UPI transactions, are in the nature of subsidy and thus, not taxable. MeitY pays the incentive to the acquiring bank and it is further shared by the acquiring bank with the issuer bank, issuer bank further shares the incentive with the Payer Payment Service Provider (PSP), which are

typically banks, and the UPI app as decided by the NPCI in consultation with participating banks. It is clarified that further 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 NPCI, is in the nature of a subsidy and is thus, not taxable.

**GST liability on reinsurance of Insurance Schemes:** Certain insurance services are exempt under GST as per entry No. 35 & 36 of Notification No.12/2017-CT (Rate) reinsurance of the aforesaid exempted insurance schemes has also been exempted w.e.f. 25.01.2018. It is now clarified that GST liability on the services by way of reinsurance is regularized for the period from 01.07.2017 to 24.01.2018 on 'as is where is' basis. Further, it is clarified reinsurance includes retrocession services.

**Accommodation Services:** Exemption for accommodation services is extended to hostels, Camps, Paying Guest accommodation for students having value of supply less than or equal to 20,000/- per person per month w.e.f. 15.07.2024 provided that the accommodation service is supplied for a minimum continuous period of 90 days. It is clarified that GST liability on the said accommodation services is regularized on 'as is where is' basis for the period from 01.07.2017 to 14.07.2024.

## **8. Clarification regarding GST rates & classification (goods) [Circular No 229/22/2024 dated 15.07.2024]**

- **Solar Cookers:** Dual-energy solar cookers (solar + grid electricity) are classified under heading 8516, with a 12% GST rate.
- **Fire Water Sprinklers:** All types of sprinklers, including fire water sprinklers, attract a 12% GST rate.

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# GST CIRCULARS

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- Poultry-Keeping Machinery Parts: Poultry-keeping machinery are taxable a 12% GST rate as per entry SI. No. 199 of Schedule II of notification No. 1/2017-Central Tax (Rate). The relevant entry has been amended to include 'parts' of machinery w.e.f. 15.07.2024. The issues for the past period are regularized on "as is where is basis.
- Pre-Packaged Agricultural Produce: A 'proviso' was inserted w.e.f 15.07.2024, under Explanation in clause (ii) of Notification No.2/2017-Central Tax (Rate) to exempt the supply of agricultural farm produce in package(s) of commodities containing quantity of more than 25 kilogram or 25 litres under GST by excluding it from the scope of expression 'pre-packaged and labelled'. With this amendment, supply of agricultural farm produce in package(s) of commodities containing quantity of more than 25 kilogram or 25 litre shall not be considered as a supply made within the scope of expression 'pre-packaged and labelled' and therefore, no GST would be applicable on the same. The issues for the past period are hereby regularized on "as is where is" basis.
- Supplies by/for Government Agencies: Supplies of pulses and cereals made to/by government agencies for distribution under approved schemes (by the Central Government or any State Government intended to distribute such goods at free of cost or at subsidized rate to the eligible beneficiaries like economically weaker sections of the society), are regularized on "as is where is" basis for the past period from 01.07.2017 to 17.07.2022, with conditions on certification and Input Tax Credit (ITC) reversal.

## **9. Instructions No.02/2024, dt.12-08-2024 - Guidelines for Second special All-India Drive against fake registrations**

A Second special All-India drive against fake GST registrations will be conducted from August 16 to October 15, 2024, by Central and State tax authorities to detect suspicious GSTINs and safeguard government revenue.

Guidelines issued on August 12, 2024, outline that suspicious GSTINs will be identified using data analytics by GSTN and DGARM. A time-bound verification will be conducted, with actions taken against masterminds and beneficiaries, including recovery of dues, provisional attachment, and input tax credit blocking.

Unique patterns identified will be shared with the National Coordination Committee for broader enforcement

## **GST ADVISORY / PORTAL UPDATES**

### **1. Advisory for Form GSTR-1A:**

- a) The Government vide notification No. 12/2024 – Central Tax dated 10.07.2024, has introduced FORM GSTR-1A which is an optional Form/ facility, provided to the taxpayers to add or amend particulars of a supply of the current tax period, which was missed out or was wrongly reported in FORM GSTR-1 of the said tax period, before filing of the GSTR-3B return of the said tax period.
  - b) FORM GSTR-1A was made available to all the taxpayer from August 2024, through which details furnished in FORM GSTR-01 for the month of July 24 can be amended.
  - c) If change is required to be made in GSTIN of a recipient reported in GSTR-1, the same can be rectified through GSTR-1 for the subsequent tax period only but not through GSTR-1A.
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# GST ADVISORY / PORTAL UPDATES

- d) The salient features of FORM GSTR-1A are –
- It is an optional facility. It can be filed only once for each tax period.
  - Changed made in GSTR-1A will be reflected in FORM GSTR-3B of the same tax period
  - ITC for the supplies declared or amended in FORM GSTR-1A will be available to the recipient in FORM GSTR-2B generated for the next tax period.
  - Form is available for filing from the due date of filing of FORM GSTR-1 or the actual date of filing of FORM GSTR-1, whichever is later, till the actual filing of corresponding FORM GSTR-3B.

e) For the QRMP taxpayers, who files FORM GSTR-1 on Quarterly basis –

- GSTR-1A will be available quarterly after actual filing of FORM GSTR-1 (Quarterly) or the due date of filing of FORM GSTR -1 (Quarterly), whichever is later, till the actual filing of FORM GSTR-3B.
- The supplies reported in the GSTR-1 of the current tax period (including those declared in IFF, for the first month and second months, of a quarter, if any) can be amended through corresponding Quarterly GSTR-1A
- The net impact of the particulars declared in GSTR 1A (Quarterly), along with those furnished in FORM GSTR-1 (Quarterly) (or through IFF of first & second Months, if filed), shall be auto-populated in FORM GSTR-3B (Quarterly).
- There is no separate amendment facility to amend the details reported in IFF.

## 2. Form GST-DRC-03A is active on GST Portal

Background: The newly introduced Form GST-DRC-03A, effective July 10, 2024, addresses the issue of taxpayers erroneously using Form GST DRC-03 for payments against demand orders. Previously, such payments were not credited to the Electronic Liability Ledger. Form GST-DRC-03A now allows taxpayers to appropriate these

payments correctly by linking them to the demand order.

Taxpayers can file this form on the GST portal by providing the ARN of DRC-03 and the demand order details. Once submitted, the payments will be credited toward the demand liability, offering significant relief.

The introduction of Form GST-DRC-03A aims to resolve an issue where taxpayers had mistakenly used Form GST DRC-03 to pay GST against demand orders instead of for voluntary tax payments. This led to payments not being credited against their demand liabilities in the Electronic Liability Ledger (FORM GST PMT-01). To correct this, the GST Council introduced Form GST-DRC-03A through Notification No. 12/2024, effective from July 10, 2024. This new form allows taxpayers to appropriately align their payments made via Form GST DRC-03 with the actual demand orders.

Key Steps to File Form GST DRC-03A:

- Open Form GST DRC-03A: Access the form on the GST portal.
- Provide ARN of Form GST DRC-03: Enter the ARN of the DRC-03 form used for the payment.
- Auto-Population of Details: Details from Form GST DRC-03 will auto-populate in the new form.
- Reference Number of Demand Order: Enter the reference number of the relevant demand or appeal order.
- Auto-Population of Demand Details: Demand details will auto-populate.
- Verify Undertaking and Verification: Review and confirm the form's information.
- File with DSC or EVC: Submit the form using a Digital Signature Certificate (DSC) or an Electronic Verification Code (EVC).

Once the form is filed, the payment will be credited toward the demand liability, relieving taxpayers who had made the payments in error.