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INDIRECT TAX UPDATES

JANUARY 2026

An E - Newsletter

Tripura High Court: Sahil Enterprises v. Union of India & Ors: WP(C) No. 688 of 2022

[ITC cannot be denied to genuine buyers for Supplier's Tax default]

Background: The petitioner, a trader in rubber products, had purchased goods from a registered supplier and paid GST during 2017-19. The petitioner availed Input Tax Credit (ITC) on the basis of valid tax invoices. Subsequently, the department found that the supplier had not deposited the GST with the Government, though outward supplies were reflected in GSTR-1. Proceedings were initiated against the petitioner under Section 73 of the CGST Act, and ITC was denied under Section 16(2)(c) on the ground that the tax had not been “actually paid” to the Government. A demand order confirming reversal of ITC with interest and penalty was passed. The petitioner challenged both the constitutional validity of Section 16(2)(c) and the demand order before the High Court.

Decision: The court upheld the constitutional validity of Section 16(2)(c). The Court held that the provision cannot be applied mechanically to deny ITC to a bona fide purchaser. It observed that a purchasing dealer who has paid GST to a registered supplier, received goods, and possessed valid tax invoices cannot be expected to ensure that the supplier deposits the tax with the Government. The law cannot compel a person to perform an impossible act. The Court noted that proceedings had been initiated under Section 73 and not under Section 74, and there was no allegation of fraud, collusion, or wilful misstatement on the part of the petitioner. The Court held that in such circumstances, denying ITC would amount to penalising the purchaser for the default of the supplier. Accordingly, the demand order was set aside and the department was directed to restore the ITC to the petitioner.

Calcutta High Court: Duakem Pharma Pvt. Ltd. and Anr. v. DC and Ors. WP(C) NO. 9951 of 2025

[Adjudication beyond Show Cause Notice is impermissible under Section 75(7) of CGST, Act]

Background: The writ petition was directed against an adjudication order, whereby the Proper Officer held that petitioner's supply of Dicalcium Phosphate did not qualify as exempt supply under HSN 2309 and consequently fastened tax liability along with interest. Originally, the show cause notice had alleged discrepancy only with respect to reversal of ITC proportionate to exempt supply under Section 17(2). Petitioner in its reply stated that no ITC reversal was warranted since exempt turnover was correctly disclosed and goods purchased were sold as exempt supplies. However, the authority held that the product itself did not fall under the exempted category, thereby making the outward supply taxable and directing reversal of ITC on that premise.

Decision: The Court held that authorities had clearly travelled beyond the show cause notice. The issue whether DCP qualified as exempt supply was never put to the petitioner in the notice and therefore the petitioner had no opportunity to respond to such a ground.

The Court reiterated the settled principle that a show cause notice must clearly state all the allegations and grounds that the noticee is required to meet. Since the final order was founded on a ground not mentioned in the notice, it was held to be in violation of Section 75(7).

Accordingly, the adjudication was set aside. However, the Court granted liberty to the department to initiate fresh proceedings in accordance with law.

Gujarat High Court: Aquaeva Chemtech Private Limited v. State of Gujarat & Ors. No.- R/Special Civil Application No. 621 of 2026

[Transfer of leasehold rights in land does not attract GST and directed expeditious grant of refund]

Background: Petitioner had purchased a plot from M/s. Dayaram Pharma Chem after the latter obtained a Final Transfer Order from GIDC. GST was paid on the transfer of leasehold rights. Subsequently, relying on the earlier decision of the High Court in *Gujarat Chamber of Commerce and Industry v. Union of India*, the petitioner claimed that assignment of leasehold rights amounts to transfer of immovable property and does not qualify as “supply” under Section 7(1)(a) of the CGST Act.

On that basis, the petitioner applied for refund under Section 54 of the CGST Act. However, the department issued Deficiency Memos in Form RFD-03 stating that documents were not legible and that no notification/circular existed for refund of GST paid on lease transactions. Aggrieved by repeated deficiency memos, the petitioner approached the High Court.

Decision: The Hon'ble High Court held that the issue was no longer *res integra* in view of Coordinate Bench rulings, particularly Patanjali Foods Ltd., and ruled that paragraph 2(2) of Circular No. 181/13/2022-GST, to the extent it sought retrospective application to earlier periods, was ultra vires Section 54 of the GST Act and violative of Article 14. Consequently, the rejection and appellate orders were quashed, and the matter was remanded with directions to process the refund claims in accordance with law, without rejecting them on limitation grounds.

Key Highlights of the January 2026 GST:

Notification No. 03/2026-Customs (N.T.) (Dated 15.01.2026)

The Ministry of Finance (Department of Revenue), vide Notification No. 03/2026–Customs (N.T.) dated 15 January 2026, has notified the Customs and Central Excise Duties Drawback (Amendment) Rules, 2026, amending the Customs and Central Excise Duties Drawback Rules, 2017.

The amendments came into force on 15 January 2026.

- **Amendment in Rule 8:** Drawback claim has been expanded to include an entry made under Section 84 of the Customs Act, 1962 for exports by post, in addition to a shipping bill or bill of export.
- **Amendment in Rule 12:** Clarifies that the provisions shall also apply to manual entries made under Section 84 for exports by post.
- **Amendment in Rule 13:** Replaces references to “by post” with “exports under Rule 12” and expressly includes Section 84 postal export entries for processing of drawback claims.
- **Amendment in Rule 14:** Insertion of sub-rule (1A) providing that:
 - * An electronic entry filed under Section 84 for exports by post shall be deemed to be a drawback claim; and
 - *The date of receipt in the EDI system shall be treated as the date of filing of the drawback claim, subject to clearance by the proper officer.

Circular No. 02/2026-Customs (Dated 01.02.2026)

The Ministry of Finance (Department of Revenue), Tax Research Unit (TRU), has issued a clarification regarding the term “RPA (Remote Pilot Aircraft) for military use” under Notification No. 45/2025–Customs dated 24 October 2025.

Key Highlights:

- **Meaning of RPA clarified:** RPA includes Drones, UAVs, UAS, or any remotely piloted aircraft, by whatever name called.
- **Exemption Scope:** Exemption from BCD and IGST is available only when imported by Ministry of Defence, Defence Forces, Defence PSUs, other PSUs, or any entity for Defence Forces.
- **Condition:** The importer must furnish a certificate from an officer not below the rank of Joint Secretary, Ministry of Defence.

Supreme Court: Viraj Impex Pvt. Ltd. v. UOI and Anr. SLP (C) No. 1979/2019

Issue: Whether a trade restriction notification becomes effective from the date of uploading (05.02.2016) or from the date of publication in the Official Gazette (11.02.2016).

Ruling: Delegated legislation becomes enforceable only upon publication in the Official Gazette, as mandated under Section 3 of the FTDR Act.

Background: The case concerned Notification No. 38/2015-2020 imposing Minimum Import Price (MIP) on certain steel products. Though dated and uploaded on 05.02.2016, it was published in the Official Gazette only on 11.02.2016. The appellants had opened irrevocable Letters of Credit on 05.02.2016 and claimed transitional protection under Para 1.05(b) of the FTP. The High Court denied protection to LCs not opened prior to 05.02.2016.

Decision of the High Court: The Delhi High Court held that the Notification operated from 11.02.2016; however, it denied transitional protection to importers who had not opened LCs prior to 05.02.2016 (the date of uploading), treating website publication as sufficient notice.

Department Contention: The Union argued that while enforceable from 11.02.2016, the “date of this Notification” should be read as 05.02.2016, and that website uploading constituted sufficient notice. It was further contended that the Notification would prevail over the FTP.

Decision of the Court: The Supreme Court set aside the High Court judgment and held that delegated legislation becomes enforceable only upon publication in the Official Gazette. Accordingly, the “date of this Notification” meant 11.02.2016. Since the appellants opened LCs prior to that date, they were entitled to transitional protection.

Editor's Comments: This judgment goes beyond a technical insistence on Gazette publication. In trade and fiscal matters, commercial actors structure transactions, pricing, and financing on the basis of existing legal conditions. By rejecting the theory that mere website uploading or internal executive action can trigger adverse consequences, the Court has reaffirmed that legal burdens must arise only through constitutionally recognized modes of promulgation.

The ruling protects legitimate commercial expectations, curbs retrospective imposition of trade restrictions through informal means, and reinforces the principle that certainty - not administrative convenience - governs fiscal regulation.



EDITOR'S COMMENTS

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- The ruling protects legitimate commercial expectations, curbs retrospective imposition of trade restrictions through informal means, and reinforces the principle that certainty - not administrative convenience - governs fiscal regulation.

Madras HC: Tvl Sri Jeyamurugan Building v. The Commissioner of Commercial Taxes:

W.P. (MD) No. 2142 of 2026

Background: The assessment order dated 31.01.2024 was challenged on the ground that the Show Cause Notice was merely uploaded on the GST portal and no personal hearing was granted before passing the ex parte order.

Held: The Court held that although portal uploading is a recognised mode of service under Section 169(1) of the GST Act, it must constitute effective service. Where there is no response from the taxpayer, the officer should resort to alternative statutory modes (preferably RPAD) instead of mechanically proceeding ex parte.

Result: The order was set aside and remanded, subject to deposit of 25% of the disputed tax, filing of objections, and grant of 14 days' clear notice for personal hearing.

Significance: The judgment reiterates that digital service cannot replace the requirement of meaningful opportunity and adherence to principles of natural justice.

CESTAT Bangalore: M/s. Toyota Kirloskar Auto Parts Pvt. Ltd. v. Commissioner Central Excise Appeal No. 20372 of 2017 | Final Order No. 20064/2026 (28.01.2026)

Background: Goods cleared for export were damaged in transit before reaching the port and brought back to the factory under Rule 16 of the Central Excise Rules. As the goods were irreparable, they were destroyed under departmental supervision and duty was paid on the scrap value. The Department, however, demanded duty on the full value of the goods.

Held: Relying on the Larger Bench decision in Honest Bio-Vet Pvt. Ltd., the Tribunal held that in export cases, the port is the “place of removal”, not the factory gate. Since the goods were destroyed before export due to an unavoidable accident, they were to be treated as destroyed before removal.

Result: The demand of duty on the full value was set aside and the appeal was allowed.

Significance: The ruling clarifies that where export goods are destroyed before reaching the port, duty cannot be demanded on transaction value; liability, if any, is confined to scrap generated.

Gross GST revenue saw 6.2% annualized growth to over ₹1.93 lakh cr in Jan 2026- Hindustan Times

India to slash tariffs on cars to 40% in trade deal with EU- Reuters