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Semi-Annual Indirect Tax Case Law Compendium 2025

January – June 2025

Semi-Annual Indirect Tax Case Law Compendium 2025

This Compendium consolidates all the key decisions passed by the Hon'ble Supreme Court of India ("**Supreme Court**"), different High Courts, Customs, Excise and Service Tax Appellate Tribunal ("**CESTAT**") and the Gujarat Authority for Advance Ruling regarding indirect tax laws in India, which were circulated as JSA Newsletters during the calendar period from January 2025 till June 2025.

Judgments/Orders by the Supreme Court

Input tax credit cannot be denied on account of bona fide errors/clerical errors

In the matter of ***Central Board of Indirect Taxes and Customs vs. Aberdare Technologies Private Limited.***[1], the Supreme Court upheld the judgement of the Bombay High Court ("**Bombay HC**") in the case of *Aberdare Technologies Private Limited vs. Central Board of Indirect Taxes and Customs and Ors.*[2], wherein the Bombay HC had directed Central Board of Indirect Taxes and Customs ("**CBIC**") to open the Goods and Services Tax ("**GST**") portal to enable Aberdare Technologies Private Limited ("**Respondent**") to amend/rectify Form GSTR-1 and GSTR-3B. In the facts of the case, the Respondent had filed statutory monthly GST returns within the prescribed time but after some time in December 2023, realised that there were certain errors, which would not harm the interest of the revenue authorities. Against the judgement of the Bombay HC (in favour of the Respondent), the CBIC filed a Special Leave Petition ("**SLP**") before the Supreme Court.

The Supreme Court held that the judgement of the Bombay HC was just and fair as there is no loss of revenue. Further, the Supreme Court observed that Input Tax Credit ("**ITC**") was sought to be denied to the Respondent on account of clerical error which led to double payment. Human errors and mistakes are normal, and errors are also made by the revenue authorities. Right to correct mistakes in the nature of clerical or arithmetical error is a right that flows from right to do business and should not be denied unless there is a good justification and reason to deny benefit

[1] TS-172-SC-2025-GST

[2] 2024 (8) TMI 142

of correction. Therefore, the Supreme Court dismissed the SLP and ruled in favour of the Respondent.

Flavoured milk classifiable under harmonised system of nomenclature 0402 attracting GST at the rate of 5%

In the case of ***Assistant Commissioner of Central Tax and Anr. vs. Sri Vijaya Milk Producers Company Limited and Anr.***[3], Supreme Court dismissed the SLP, thereby affirming the judgment of Hon'ble High Court of Andhra Pradesh ("**Andhra Pradesh HC**"), which held that flavoured milk is classifiable under Harmonised System of Nomenclature ("**HSN**") 0402 attracting GST at the rate of 5%.

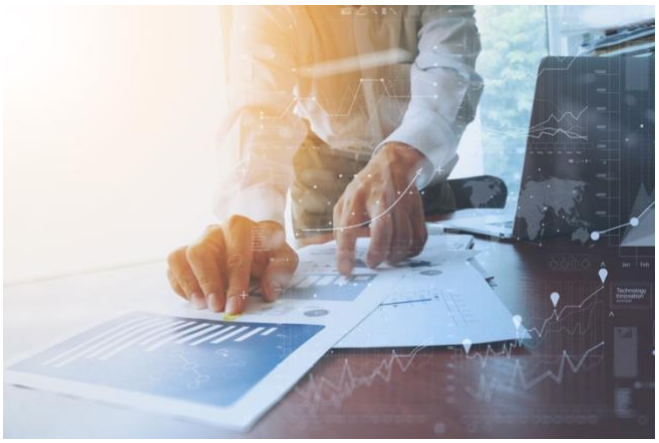
Sri Vijaya Milk Producers Company Limited ("**Respondent**") classified the product under HSN 0402[4], whereas the Revenue Authorities ("**Petitioner**") contended that the concerned product should be classified under HSN 2202[5].

The Petitioner argued that the addition of flavour transforms 'flavoured milk' into a 'special drink', thereby excluding it from HSN 0402 and instead classifying it under HSN 2202 as a 'beverage'. Reliance was placed on Rule 3(a) of the General Rules for Interpretation ("**GRI**") prescribed under the Customs Tariff Act, 1975 ("**Customs Tariff Act**"), arguing that HSN 2202 is more specific and covers 'flavoured milk' as it constitutes a beverage.

The Respondent countered the arguments of the Petitioner by contending that 'flavoured milk' falls within the ambit of 'Milk' under HSN 0402, as it comprises of approximately 90.5% milk, 9% sugar, and 0.5% flavourings and colour. The Respondent asserted that HSN 0402 being a specific entry, it prevails over the general entry.

Andhra Pradesh HC observed that HSN 0402 encompasses milk and milk products, including milk containing sugar or other sweetening matter, and a mere 0.5% addition of flavour does not alter flavoured milk's classification under HSN 0402. Further, applying the principle of *Noscitur a Sociis*, the Andhra Pradesh HC observed that other entries within Chapter Heading 22 primarily describe water-based beverages. Therefore, the Andhra Pradesh HC held that 'Beverages containing milk' under HSN 22029930 would pertain to beverages that contain both milk and water, which was affirmed by the Supreme Court.

This conclusion was also reinforced by the Hon'ble Madras High Court's judgment in *Parle Agro Private Limited vs. Union of India*[6], which similarly classified 'flavoured milk' under HSN 0402.



Pre-deposit payment can be made utilising amount available in the Electronic Credit Ledger

In ***Union of India and Anr. vs. Yasho Industries Limited***[7], the Supreme Court dismissed the SLP filed by the Revenue Authorities seeking interference from the Supreme Court in relation to the Order[8] passed by Hon'ble Gujarat High Court ("**Gujarat HC**") whereby it was held that pre-deposit paid by the assessee-company under Section 107(6) of the Central Goods and Services Tax Act, 2017 ("**CGST Act**") utilising the amount available in its Electronic Credit Ledger ("**ECL**") is valid.

The Gujarat HC had relied upon its own decision[9] (that had relied upon Hon'ble Bombay HC decision[10]) whereby *inter alia* the provision of Section 107(6) of the CGST Act was interpreted to mean that the said

[3] SLP (Civil) Diary No. 18877/2025 (order dated May 5, 2025)
[4] Milk and cream, concentrated or containing added sugar or other sweetening matter, including skimmed milk powder, milk food for babies (other than condensed milk)
[5] Waters, including mineral waters and aerated waters, containing added sugar or other sweetening matter or flavoured, and other non-alcoholic beverages, not including fruit, nut or vegetable juice of heading 2009
[6] W.P. No. 16608 and 16613 of 2020 (order dated October 31, 2023)
[7] Special Leave Petition (Civil) Diary No. 17547/ 2025 (order dated May 19, 2025)
[8] R/Special Civil Application No. 10504 of 2023 (order dated October 17, 2024)
[9] Special Civil Application No. 22979 of 2022 (order dated November 30, 2023)
[10] *Oasis Realty vs. Union of India & Ors.,* Writ Petition (ST) No. 23507 of 2022 (order dated September 16, 2022)

provision mandates payment of 10% tax as pre-deposit while filing an appeal. The amount of ITC available in the ECL can be utilised towards payment of Integrated Tax or Central Tax or State Tax or Union Territory Tax. Therefore, an assessee required to pay 10% pre-deposit can utilise the amount of ITC available in the ECL.

Further, the Bombay HC in its decision had relied upon Circular[11] issued by the CBIC whereby it was clarified that any amount towards output tax liability, as a consequence of any proceeding instituted under the provisions of GST laws, can be paid by utilisation of the amount available in the ECL.

In light of the above, Hon'ble Gujarat HC had held that pre-deposit paid by the assessee-company under Section 107(6) of the CGST Act utilising the amount available in its ECL is valid. The position now stands settled in light of Supreme Court's dismissal of the extant SLP.

Negative-blocking of ECL under Rule 86A of the Central Goods and Services Tax Rules, 2017 impermissible

The Supreme Court in ***Commissioner of Central Tax And GST, Delhi North and Ors. vs Raghav Agarwal***[12] dismissed the SLP filed by the revenue authorities seeking interference in relation to the Delhi High Court's ("**Delhi HC**") order[13] whereby it was held that ITC cannot be blocked in excess of ITC available in ECL, thereby creating an artificial negative balance.

The issue before Delhi HC was that orders were issued under Rule 86A of the Central Goods and Services Tax Rules, 2017 ("**CGST Rules**") purporting to block ITC in ECL in excess of the ITC available in the ECL. Resultantly, till the negative balance in the ECL of the respective assessee-company was not extinguished by further addition of ITC in the ECL, the assessee-company was disabled to utilise the ITC availed by them for payment of their dues. The Delhi HC observed that:

1. Rule 86A of the CGST Rules is not a provision for recovery of tax or other dues and it only enables the concerned authority to take temporary measures for protection of Revenue's interests. The said rule also does not impose a condition for the taxpayer to satisfy to be able to avail ITC, as the same already stands credited in the ECL;
2. Rule 86A of the CGST Rules is required to be interpreted bearing in mind that: utilisation of ITC is a vested right albeit in respect of ITC that has been validly accrued; the power under Rule 86A of the CGST Rules is a drastic power and the same may have serious consequences for the taxpayer; and Rule 86A of the CGST Rules concerns the power of the Commissioner, under defined circumstances, to interdict the taxpayer from accessing its valuable resource for discharging its dues or in given cases seeking a refund;
3. Section 49 of the CGST Act expressly provides that the amount available in the ECL 'may be used' for making payments towards tax, interest, penalty or any other amount. It is that amount that can be used or utilised by the taxpayer for payment of his dues; and
4. CBIC's Circular[14] supports the literal construct of Rule 86A of the CGST Rules by clarifying that the amount of debit to be disallowed from the ECL should not be more than the amount of ITC available in the ECL, which is believed to have been fraudulently availed or is ineligible.

In light of the above, it was observed that there is no ambiguity in the language of Rule 86A of the CGST Rules and the literal construction of the said rule does not lead to any absurdity. Therefore, it was held that ITC cannot be blocked in excess of the ITC available in the ECL, leading to an artificial negative balance.

[11] F. No.CBIC-20001/2/2022- GST dated July 6, 2022
[12] [TS-362-SC-2025-GST], SLP (Civil) Diary No. 21913/2025 (order dated May 9, 2025)
[13] [TS-603-HC(DEL)-2024-GST], W.P. (C) 15380/2023 CM Appl. 61699/2023 (order dated September 24, 2024)
[14] Circular No. 20/16/05/2021-GST dated November 2, 2021.

Judgments/Orders by the High Courts

No GST applicable on transfer/assignment of leasehold rights in industrial land

In the matter of ***Gujarat Chambers of Commerce and Industry and Ors vs. Union of India and Ors***[15], the petitioner had acquired industrial land on lease from Gujarat Industrial Development Corporation ("**GIDC**") for 99 (ninety-nine) years under a licensing agreement. The petitioner (original lessee) assigned its rights and interests in the industrial plot and building constructed thereon to a third party for a lumpsum consideration after obtaining approval from GIDC. Considering assignment of leasehold rights as a 'supply of service' under the GST laws, the revenue authorities sought to recover GST on the said assignment from the petitioner.

The petitioner contested the levy of GST on the ground that the assignment of leasehold rights, which is an absolute transfer of rights and interest arising out of land, amounts to transfer/sale of immovable property itself (which is outside the scope of GST as sale of land and building is neither supply of goods nor services in terms of Clause 5 of Schedule-III of the CGST Act). Therefore, it cannot be said to be a supply of service under GST laws, nor can such transfer of rights and interests be said to be in the course or furtherance of business. It was further argued that imposition of GST on such assignment leads to double taxation, as stamp duty was already paid on the assignment of leasehold rights.

The Hon'ble Gujarat HC observed the below:

1. There are 2 (two) transactions *viz.*: when GIDC allots industrial plot along with right to occupy, right to construct, right to possess on long term lease basis and; when original lessee sells and transfers its leasehold rights in favour of the third-party. The first transaction is a supply of service as right of ownership of land allotted by GIDC remains with GIDC which will revert on expiry of lease period and is covered under Clause 5(a) of Schedule II of the CGST Act. However, it is an exempt under entry at serial no. 41 of the Exemption Notification[16]. The second transaction is subject matter of the present petition.
2. With regard to the second transaction, the Gujarat HC observed that what is assigned by the petitioner in not only the land allotted by GIDC on lease but the entire land along with building thereon. The entire land and building are transferred along with leasehold rights and interest in land, which is a capital asset in the form of immovable property.
3. Gujarat HC further observed that immovable property constitutes a bundle of rights, with the right to lease being one such right. The transfer of possession or occupation by GIDC to the petitioner remains a provision of service, and this nature does not alter, even if the lessee transfers the leasehold interest absolutely to an assignee, thereby relinquishing all rights to the land and building.
4. Gujarat HC observed that in addition to right of ownership, immovable property includes an aggregate of rights that are guaranteed and protected by further agreement or contract between the owner and the lessee. By way of assignment of leasehold rights, the petitioner has divested all its absolute rights in the property in favour of the third-party. Therefore, interest in the immovable property in form of leasehold rights cannot be said to be different than the immovable property itself.
5. Even under the Gujarat Stamp Act, 1958, a lease exceeding 98 (ninety-eight) years is treated as equivalent to a conveyance for the sale of immovable property for stamp duty purposes.

In light of foregoing observations, the Gujarat HC held that GST is not leviable on the assignment of leasehold rights as the transaction is covered under Clause 5 of Schedule III of the CGST Act. Similarly, in the matter of *Panacea Biotec Limited vs. Union of India and Ors*[17], the Hon'ble High Court of Bombay ("**Bombay HC**")

[15] TS-03-HC(GUJ)-2025-GST

[16] Notification No. 12/2017 – Central Tax (Rate) dated June 28, 2017, provides nil rate of GST on one time upfront amount leviable in respect of service by way of granting long term lease (30 (thirty) years or more) of industrial plots by the State Government Industrial Development Corporations or undertakings to industrial units

[17] TS-22-HC(BOM)-2025-GST

quashes the adjudication order seeking to levy GST on assignment of leasehold rights and has remanded the matter for reconsideration to be based on the judgement passed by Gujarat HC above.

Solar power generating system is not an immovable property and the same is taxable as a composite supply

In the matter of ***Sterling and Wilson Private Limited vs. Joint Commissioner and Ors***[18], the petitioner was engaged in the business of setting up of Solar Power Generating System ("**SPGS**"). Considering the supply as a 'composite supply', the petitioner paid GST at 5% thereupon and claimed refund of inverted taxes and duties. However, considering SPGS as 'immovable property', the revenue authorities treated the transaction as supply of 'works contract' services and sought to recover GST at a higher rate of 18%.

While analysing the issue, the Andhra Pradesh HC observed that every 'works contract' is a 'composite supply', however, every 'composite supply' is not a 'works contract'. The distinction between the two is dependent upon the nature of the end product. If the end product is 'movable', the supply is a 'composite supply' and if it is 'immovable', it is a 'works contract. Bearing the same in mind, the Andhra Pradesh HC further delved upon the nature of SPGS (end product in present case) as 'movable' or 'immovable' property.

Based on the meaning of the term 'movable' and 'immovable' property in other statues and past judicial precedents, the Andhra Pradesh HC highlighted that for anything to be an 'immovable' property, it must be attached to the earth or permanently fastened to anything attached to the earth. Essentially, the following conditions must be satisfied:

1. Rooted in earth, as for trees and shrubs; or,
2. Imbedded in earth, as for walls or buildings; or,
3. Attached to what is imbedded for the permanent beneficial enjoyment of that to which it is attached.

It was highlighted that the property, which is attached to a structure embedded in the earth, would also become immovable property only when such attachment is for the permanent beneficial enjoyment of the structure, which is embedded in the earth.

In its finding, the Andhra Pradesh HC noted that SPGS was attached to the civil foundation with an intent to provide stability to the working of SPGS and prevent vibration/wobble free operation. It was not attached to the civil foundation for the purpose of permanent beneficial enjoyment of the civil foundation.

Accordingly, it was held that SGPS was not an 'immovable property' and hence, the supply thereof was a 'composite supply'. It would not amount to supply of 'works contract' services.

Levy of GST on license fees collected by the Electricity Regulatory Commission quashed

In the matter of ***Central Electricity Regulatory Commission vs Union of India and Ors***[19], the petitioner was engaged in granting licenses to transmission or distribution companies to transmit or distribute electricity, regulating electricity tariff, etc. For grant of license, the petitioner used to recover license fee from the licensee. Considering the activity of granting license as a statutory function, the petitioner treated the same as exempt from the levy of GST. However, the revenue authorities contended to the contrary and sought payment of GST on the license fee collected by the petitioner.

The Delhi HC, observed and highlighted the below:

1. The grant of license to transmit or distribute electricity and power to regulate tariff stand statutorily vested in the petitioner. The said activities cannot be considered as an activity akin to trade, commerce, manufacture, profession, vacation, adventure, voyager as defined under the meaning of the term 'business' under Section 2(17) of the CGST Act. The petitioner is further neither Central / State Government nor local authority as defined under CGST Act. Therefore, the petitioner

[18] 2025 (1) TMI 663 – Andhra Pradesh HC

[19] TS-11-HC(DEL)-2025-GST

cannot be said to undertake the said activity in the course or furtherance of 'business'.

2. A supply would necessarily have to be of goods or services not only for consideration but more importantly in the course or furtherance of 'business'. Thus, even if the license fee were to be assumed as being consideration received, it was clearly not one obtained in the course or furtherance of 'business'.

In light of the above, the Delhi HC quashed the Show Cause Notice ("**SCN**") seeking to levy GST on licensee fee collected by the petitioner.

Karnataka High Court holds that set top boxes provided to subscribers/consumers would constitute 'transfer of right to use' set top boxes and thereby sale

The Hon'ble Karnataka High Court ("**Karnataka HC**") dismissed the batch of revision applications in the matter of ***Tata Play Limited and Ors***[20], filed against the order of the Karnataka Appellate Tribunal, Bangalore, *inter alia*, holding that the assessee have transferred to its subscribers the right to use Set Top Boxes ("**STBs**") for consideration and therefore the same amounts to sale within the definition of 2(29)(d) of the Karnataka Value Added Tax Act, 2003 ("**Karnataka VAT Act**").

The assessee in the instant matter was a group of direct to home service provider/cable operators. For the provision of such services, STBs were installed at the premises of the subscriber/consumer. Subscribers/consumers paid subscription fees for such services which were subjected to service tax. The case of the Value Added Tax ("**VAT**") Authorities before the Karnataka HC was that the STBs were given to the consumer would constitute 'transfer of right to use' STBs for consideration and therefore qualifies 'sale' 'within the definition of 2(29)(d) of the Karnataka VAT Act.

While deciding the issue, the Karnataka HC answered the following questions as under:

Sr. No.	Questions	The Karnataka HC answered in
1.	Whether STBs are goods within the meaning of section 2(15) of the Karnataka VAT Act?	*Affirmative*
2.	Whether the STBs are capable of being exclusively used by the subscriber?	*Affirmative*
3.	Whether right to use the STBs is transferred to the subscriber?	*Affirmative*
4.	Whether such a transfer is for a valuable consideration?	*Affirmative*

Further, the Karnataka HC negated the argument of service tax and VAT being mutually exclusive, by placing reliance on the observations made in *Imagic Creative Private Limited*[21] which held that payment of service tax and remittance of VAT are mutually exclusive, the nature of levies being different. However, different aspects of a single transaction can be taxed under different statutes.

Fruit pulp, juice-based carbonated drinks classifiable under HSN 22029920

In the matter of ***X'SS Beverage Co. vs. The State of Assam***[22], the High Court of Gauhati ("**Gauhati HC**") evaluated the classification fruit pulp or fruit juice-based drinks or carbonated drinks. X'SS Beverage ("**Petitioner**") was *inter alia* engaged in the manufacture and supply of carbonated fruit drinks and ready to serve fruit drinks and classified the same under HSN 2202 9920, which were subject to GST at 12% till September 30, 2021. However, the revenue authorities contended that the drinks should be classified under HSN 2202 1090, leviable to GST at 28% along with compensation cess of 12%, given that

[20] TS-112-HC-2025(KAR)-VAT
[21] (2008) 2 SCC 614
[22] TS-128-HC(GAUH)-2025-GST

it contained carbonated water as an ingredient. Accordingly, the revenue authorities sought to recover GST at a higher rate. Aggrieved by action of the revenue authorities, the Petitioner filed a writ petition before the Gauhati HC.

Before the Gauhati HC, the Petitioner contended that the products under question were fruit juice-based/ pulp-based drinks, wherein fruit juice/ pulp lends the essential character and accordingly were classifiable under HSN 2202 9920. It was further contended that HSN 2202 contains 2 (two) parts, i.e., 2202 10 meant for waters, including mineral waters and aerated waters containing added sugar or other sweetening matter or flavours; whereas 2202 99 dealt with drinks other than those classifiable under 2202 10. In the present case apple juice concentrate/orange juice concentrate/lemon concentrates were added as base components and not merely as a flavouring agent.

Considering the arguments advanced by the Petitioner, the Gauhati HC observed that Chapter 22 does not specifically define the items manufactured and sold by the Petitioner. Therefore, under the rules of interpretation provided under the 1st schedule to the Customs Tariff Act, these items need to be classified under the headings appropriate to the goods to which they are most akin. Further, since GST law does not prescribe the tariff heads and classification, a reference needs to be made to the Customs Tariff Act to determine the product classification. A reference to the Tariff schedule makes it clear that Sub-heading 2202 10 is primarily 'Water' and it also includes mineral waters/aerated waters/water containing added sugar or sweetening matter or flavour whereas sub-heading 2202 99 includes 'Others' which are further described under the said subheading. The Tariff heading 2202 9920 is seen to be for fruit pulp or fruit juice-based drinks. Accordingly, these products must necessarily contain water/carbonated or aerated water and should be classified under HSN 22029920.

JSA Comment: It is relevant to highlight here that the decision has been rendered for a period prior to October 1, 2021, wherein there was no specific entry for classifying the abovementioned products. However, w.e.f. October 1, 2021, a specific amendment was made in Notification No. 1/2017-Central Tax (Rate) dated June 28, 2017, whereunder Entry No. 12B was inserted to Schedule IV thereunder to prescribe an effective rate of 40% (including GST rate of 28% along with compensation cess of 12%) on products in the nature of 'Carbonated Beverages of Fruit Drink or Carbonated Beverages with Fruit Juice'.

Mere uploading notices/orders on the common portal not an effective mode of service

The Madras High Court ("**Madras HC**") has dealt with the issue of effective mode of service in the case of ***Tvl. Sri Balaji Traders vs. The Deputy Commercial Tax Officer***[23]. Tvl. Sri Balaji Traders ("**Petitioner**") was issued a notice by way of uploading the same on the common portal under the tab 'View Additional Notices/Order', which went unnoticed by the Petitioner. Following multiple reminders uploaded under the same tab, an order was passed confirming the demand. Recovery proceedings were initiated, and the bank accounts of the Petitioner was attached. The Petitioner challenged the said order before the Madras HC on the grounds that the Petitioner was not granted sufficient opportunity to be heard as the notice/order was not served physically and the order was passed *ex-parte*.

Dealing with the said contentions, the Madras HC referred to Section 169 of the CGST Act and observed that service of notice should be first by way of initial modes, viz., by giving/tendering it directly or by a messenger including a courier; by registered post or speed post or courier; and by sending a communication to assessee's e-mail address and thereafter, by making it available on the common portal. Though Clause (d) of Section 169 of CGST Act prescribes mode of service *via* common portal, the very same Section under the CGST Act also prescribes many other modes of service. Thus, when revenue authorities realises that notices/orders effected *via* common portal do not fetch

[23] W.P. No. 5539 of 2025

any reply, instead of sticking on to the similar mode of service by sending notices/reminders incessantly, they should change mode of service and it was suggested that notice through post would be the best mode of service. The Department firstly should ensure as to whether mode of service adopted by them would be an effective service in reaping the expected result, since it is ultimate goal of the revenue authorities to prevent any revenue loss being caused to the Government's exchequer.For the aforesaid reasons, the matter was remanded back to the adjudicating authority for reconsideration.

JSA Comment: It is relevant to state here that while the Madras HC has held that the valid mode of service through the GST portal is not an effective mode, conflicting views have been rendered by the Madhya Pradesh High Court which has held that service through the GST portal is the effective mode of service. Given that there are conflicting views on the subject, the dispute is likely to continue until the Supreme Court rules on the same.

Furnishing of notice through common portal is a valid mode of service

In the case of ***Poomika Infra Developers vs. State Tax Officer***[24] (batch of writ petitions), the petitioners had challenged notices issued to them on the ground that the same were only uploaded on the common portal and never served to them physically, and therefore, cannot be considered as a valid mode of service. The Madras HC in a series of earlier judgements has held that merely uploading the notices on the common portal is not a valid mode of service and it is the responsibility of the officers to ensure effective servicing of notices. However, the Madras HC in the present case, differed from its earlier view by placing reliance on the language of Section 169 of the CGST Act.

The modes of services prescribed in Section 169 of the CGST Act are mutually exclusive and the language of the provision does not envisage a scenario where if service in person (through post or *via* mail) is not practicable, only then can the notice be said to be served if uploaded on the common portal. The language of Section 169 is unambiguous, and the role of the court is limited to interpret the law made by the legislature. Addition of words or supplying omission through a process of interpretation would amount to judicial legislation which ought to be avoided.

Relying upon decision of Division Bench of the Madras HC in the case of *A Sanjeevi Naidu vs. The Deputy Commercial Tax Officer Kanchipuram and others*[25] pertaining to erstwhile law the Madras HC held that the modes of services prescribed under Section 169 of the CGST Act are mutually exclusive and hence it is not open to the petitioners to contend that the notice was not physically served before uploading the same on the common portal. Following the aforesaid decision, the Madras HC also dismissed another batch of writ petitions in *Axiom Gen NXT India Private Limited vs. Commercial State Tax Officer*[26].

JSA Comment: In light of the various judicial precedents, it can be said that the settled law is that notice uploaded on the common portal can be said to be a valid service of the notice.

GST Notices to be served *via* alternate modes if the assessee is unresponsive on portal

In the case of ***Namasivaya Auto Parts vs. Deputy State Tax Officer***[27], the Madras HC set aside an ex-parte assessment order passed under the CGST Act for AY 2017–18, on the ground that the department failed to ensure effective service of the SCN beyond uploading it on the common portal.

It was submitted that notices issued in Form DRC-01A and Form DRC-01 were uploaded on the 'Additional Notices and Orders' tab of the GST portal, but no physical or alternative delivery was attempted, leaving the petitioner unaware of the proceedings. The Madras HC agreed, holding that while portal-based service is

[24] W.P. No. 33562 of 2025
[25] 1972 SCC OnLine Mad 347
[26] TS-296-HC(MAD)-2025-GST
[27] [TS-493-HC(MAD)-2025-GST]

legally valid, in cases where the assessee fails to respond, the officer is duty-bound to explore alternate modes of service under Section 169(1) of the CGST Act particularly via 'registered post acknowledgement due' to achieve the substantive object of the CGST Act.

The Madras HC observed that a mere procedural compliance through digital upload, without ensuring actual notice, would render the process ineffective and lead to multiplicity of litigation. Emphasising judicial economy and fairness, the Madras HC quashed the assessment order and remanded the matter to the adjudicating authority with directions to allow the petitioner to file a reply and be granted a personal hearing, subject to a deposit of 25% of the disputed tax.

A detailed SCN is not required, where a well spelt audit report is issued – no violation of principles of natural justice

In the matter of ***Saluja Motors Pvt. Ltd. vs. State of H.P and others***[28], audit proceedings were initiated against the petitioner for irregular availment of ITC and a final audit report was issued. Subsequently, a summary SCN was issued in Form GST DRC – 01, followed by an order confirming the demand.

The order was challenged before the High Court at Himachal Pradesh ("**Himachal HC**") wherein the petitioner contested that the action of the authorities was absolutely illegal in terms of Sections 73(1) and 74(1) of the CGST Act read with Rule 142(1) of the CGST Rules, whereby a detailed SCN is to be issued along with the summary notice in Form GST DRC – 01. In the present case, only a summary notice was issued (without the detailed SCN), which is in violation to the provisions of the statute, thereby being unsustainable.

The Himachal HC taking note of the fact that a detailed final audit report wherein the case was made out against the petitioner was issued by the authorities, it can be concluded that the petitioner was fully aware of the case made out against it and therefore, the petitioner cannot argue violation of principles of natural justice. It is to be established that non-furnishing of the notice caused prejudice to the petitioner and prevented the petitioner from effectively defending its case. Where the procedure and substantive provisions of law embody the principles of natural justice, the infraction *per se* does not lead to invalidity of the order passed. The petitioner was well aware of the case and the issues raised against it by virtue of the audit report, and therefore, no prejudice was caused by non-issuance of the SCN.

ITC can be claimed on 'deemed receipt', physical delivery not mandatory

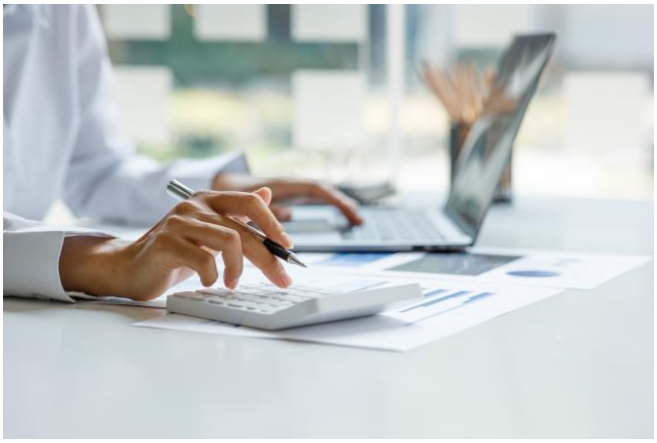
In the matter of ***Sane Retails Limited vs. The State of Bihar and Ors.***[29], the Patna High Court ("**Patna HC**") has interpreted Section 16(2)(b) of the CGST Act to examine whether physical delivery of goods is envisaged as a condition to avail ITC under the said Section. In the preset case, the goods were directly delivered to the end customer as per the petitioner's instructions. The petitioner had made 100% payment of tax by way of utilisation of ITC and the same was under scrutiny wherein it was pointed out that the petitioner had not 'received' the goods and therefore, not entitled to ITC. Accordingly, ITC was disallowed and payment of tax to that extent was demanded. Aggrieved by the same, the petitioner approached the Patna HC.

Referring to the explanation to Section 16(2)(b) of CGST Act, the Patna HC observed that the goods are deemed to be received by the registered person where goods are delivered by the supplier to a recipient or to any other person on the direction of such registered person, whether acting as an agent or otherwise, such direction may be given before or during movement of goods and the goods may be delivered either by way of transfer of document of title to goods or otherwise. The said explanation expands the interpretation of 'received' to include specific situations where registered person may not have physical possession of the goods. This explanation ensures that physical possession is not the sole criteria for deeming goods

[28] CWP No. 2293 of 2024

[29] TS-249-HC(PAT)-2025-GST

'received'. CGST Act does not mandate that goods must be physically received at a specific location for eligibility of ITC. ITC can be claimed on deemed receipt basis, even if the goods are physically received at a later stage or at a different location. Therefore, subject to compliance of other conditions under Section 16 of the CGST Act, the petitioner was allowed to claim ITC of goods on deemed receipt of the same.



Comparison of selling price with the market price is beyond the scope of scrutiny under Section 61 of the CGST Act/JGST Act[30]

In the case of ***Sri Ram Stone Works vs. State of Jharkhand and Ors.***[31], the issue for determination before the Hon'ble High Court of Jharkhand ("**Jharkhand HC**") was whether Form GST-ASMT-10 issued in terms of Section 61 of the CGST Act/JGST Act, alleging that Sri Ram Stone Works ("**Petitioner**") has quoted lower market price than the actual market price in their returns, was beyond the scope and jurisdiction of Section 61 of the CGST Act/JGST Act.

The Petitioners were issued SCNs alleging that the stone boulders and chips were sold below the prevailing market price. The Petitioners contended that these notices lacked jurisdiction, arguing that Section 61 of the CGST Act/JGST Act empowers the proper officer only to scrutinise returns for discrepancies and not to question the pricing of goods reported in the monthly returns, solely on the basis of such prices being lower than market prices. The Petitioner further submitted that a dealer is entitled to arrange the affairs of its business in the manner best suited to it, and merely selling certain goods at an alleged lower rate (compared to the market price), cannot constitute a cause of action for initiating proceedings under Section 61 of the CGST Act/JGST Act. Reliance in this regard was placed on the decision of Hon'ble Jharkhand HC in *Nirmal Kumar Pradeep Kumar vs. State of Jharkhand and Ors.*[32].

Considering the arguments, the Jharkhand HC held that the SCNs issued on the basis of a comparison between the Petitioners' sale price and the prevailing market price were without jurisdiction and exceeded the scope of Section 61. It was further observed that unless transaction of sale is shown to be a sham/fraudulent transaction, the authorities cannot assess the difference between the market price and the price paid by the purchaser as transaction value.

Refund of unutilised ITC upon business closure held permissible

In the case of ***SICPA India Private Limited and Anr. vs. Union of India and Ors.***[33], the High Court of Sikkim ("**Sikkim HC**") allowed the refund of unutilised ITC upon discontinuance of business.

The petitioners had closed down their manufacturing operations in Sikkim and claimed refund of the accumulated ITC balance amounting to INR 4,37,00,000 (Indian Rupees four crore thirty-seven lakh) lying in their ECL. The refund application was rejected by the Assistant Commissioner and later affirmed by the appellate authority on the ground that refund of ITC is not permissible under Section 54(3) of the CGST Act in cases of business closure, as the said provision is restricted to 2 (two) scenarios zero-rated supplies and inverted duty structure. It was argued that Section 49(6) of the CGST Act independently provides for refund of balance lying in the ECL after payment of tax, and that Section 54 of the CGST Act merely lays down the procedure for such refund.

The Sikkim HC held that there is no express bar in the CGST Act against refund of unutilised ITC in case of business closure, and that tax cannot be retained without authority of law. It was further held that availability of alternative statutory remedy does not bar exercise of writ jurisdiction in such cases involving pure questions of law.

[30] Jharkhand Goods and Services Tax Act, 2017
[31] [TS-384-HC(JHAR)-2025-GST], W.P.(T) No. 5535 of 2024 (order dated May 9, 2025)
[32] W.P. (T) No. 2222 of 2022 (order dated March 21, 2023)
[33] WP(C) No. 54 of 2023

JSA Comment: While the Sikkim HC has allowed the refund under section 54 of the CGST Act, which does not contemplate refund under the scenario of closure of business, the proposition will be tested by other high courts and ultimately by the Supreme Court. It is worth noting that in the earlier regime of central excise, CESTAT and High Courts took divergent views, while (dis)-allowing refund under Rule 5 of CENVAT Credit Rules, 2004 read with section 11B of the Central Excise Act, 1944, which never contemplated refund under the scenario of closure of business.

ITC cannot be allowed when supplier has not deposited tax to the Government

The question of eligibility of recipient to avail ITC in absence of payment of tax by the supplier to the Government was considered by the Allahabad High Court ("**Allahabad HC**") in the case of ***Trendships Online Services Private Limited vs. Commissioner of Commercial Taxes***[34]. In the said case, the assessee procured goods from a dealer whose registration was subsequently cancelled. Assessee claimed ITC of tax paid by them to the supplier and subsequently claimed ITC of the same. An SCN was issued to the Petitioner proposing to recover ITC claimed by the assessee on account of the fact that the supplier had not deposited the tax with the government. Demand was subsequently confirmed and appeal against the said order was dismissed. Hence the order was challenged before the Allahabad HC.

Denying the benefit of ITC to the petitioner, the Allahabad HC observed that Section 16(2) is a *non obstante* clause and the conditions provided therein prescribe that registered dealer will be entitled to the credit of ITC provided: he is in possession of a tax invoice or debit note issued by supplier; he has received goods or services or both and subject to the provisions of Section 41 and 43A of the CGST Act that the tax charged in respect of such supply has been actually paid to the Government. The eligibility and availment of ITC is subject to deposit of tax by the supplier as clearly contemplated under Section 16(2)(c) of the CGST Act. In the present case, the tax charged was never deposited by the supplier and no compliance of Section 16(2)(c) of the CGST Act was made. Once the supplier has not deposited the tax mandated under Section 16(2)(c), the recipient cannot claim the benefit of ITC. The Petitioner apart from the tax invoice could not bring any document before the taxing authorities to demonstrate that the supplier had supplied the goods and had deposited the tax with the Government as mandated under Section 16(2)(c) of the CGST Act. For the said reasons, it was ultimately held that the Petitioner is not entitled to claim ITC of tax paid on goods procured by them.

JSA Comment: In National Plasto Moulding[35], the Hon'ble Gauhati High Court in the batch of writ petitions, challenging the validity of Sections 16(2)(*c*) and 16(2)(*d*) of the Assam Goods and Services Tax Act, 2017 as well as the validity of Sections 16(2)(*c*) and 16(2)(*d*) of the CGST Act, granted relief to the assessee, by placing reliance on the judgement of the Delhi HC in the matter of *Quest Merchandising India (P.) Ltd. vs. Government of NCT of Delhi*[36]. In the said matter, Delhi HC observed that the provisions of Section 9(2)(*g*) of the Delhi Value Added Tax Act, 2004 can be read down and the demand raised against the purchasing dealers, who have entered into *bona fide* transaction, cannot be sustained. SLP filed against the said order was dismissed by the Supreme Court.

Divergent views across high courts would ultimately be settled by the Supreme Court.

[34] Writ Tax No. 501 of 2023
[35] (2024) 21 Centax 182 (Gau.)
[36] 2018 (10) G.S.T.L. 182 (Del.) /2017 SCC OnLine Del 11286

In absence of municipal legislation, Article 24 of ASEAN-India Free Trade Agreement is not enforceable

In the case of ***Purple Products Private Limited and Kothari Metals Limited vs. Union of India and Ors***.[37], the Bombay HC dismissed the petitions challenging show cause-cum-demand notices issued under Section 28 of the Customs Act, 1962 ("**Customs Act**") in connection with benefits availed under Customs Notification No. 46/2011 dated June 1, 2011, concerning import of Tin Ingots from Malaysia under the ASEAN-India Free Trade Agreement ("**AIFTA**"). It was contended that since the dispute pertained to Rules of Origin, the authorities lacked jurisdiction to proceed without following the special dispute resolution mechanism under Article 24 of AIFTA. It was further argued that once a valid Certificate of Origin ("**COO**") was issued by the Malaysian authorities, Indian Customs authorities were denuded of jurisdiction, unless the treaty-mandated resolution mechanism had been exhausted. It was the case of the petitioner that AIFTA, being a binding treaty, should override domestic procedure and customs authorities could not unilaterally deny the benefits without invoking ASEAN-India protocols.

Rejecting these contentions, the Bombay HC observed that Article 24 of AIFTA had not been transformed into or incorporated under municipal law and therefore was not directly enforceable in Indian courts. The Bombay HCreaffirmed that India follows a dualist-system and a treaty does not automatically form part of domestic law unless implemented through legislation. It also held that Section 28 of the Customs Act independently empowers authorities to investigate instances of fraud or misrepresentation, and the issuance of SCNs in such cases was valid.

JSA Comment: The premise of challenge in instant case was the lack of jurisdiction of proper officer under Section 28 of the Customs Act. In its categorical observation *viz*. "*there is no legal or jurisdictional infirmity in the issue of such show cause notices. The provisions of Article 24 of AIFTA do not deprive the customs authorities of their powers or jurisdiction to issue such show cause notices*", the Bombay HC clarifies that genuineness of COO is subject matter of jurisdiction of the proper officer and that he has sufficient power to investigate into and adjudicate upon violations due to misrepresentation, suppression or fraud.

Customs, Excise and Service Tax Appellate Tribunal

Promotional and marketing support services provided by Airbnb not in nature of intermediary services

The CESTAT, Chandigarh, in the case of ***Airbnb India Private Limited vs. Commissioner of CGST, Gurugram***[38] ruled on the nature of services provided by Airbnb India Private Limited ("**Appellant**") to Airbnb Ireland ("**Airbnb**") under an agreement. The Appellant was engaged in providing promotional and marketing support services to Airbnb. For the period April 2017 to June 2017, the Appellant filed a refund claim of unutilised CENVAT credit, which was rejected by the adjudicating authority on the allegation that services rendered by the appellants were in the nature of intermediary services as the Appellant interacted with the customers of Airbnb. Accordingly, the services provided by the Appellant did not qualify as an export of service. Aggrieved by the rejection of refund claim, the Appellant filed an appeal before CESTAT, Chandigarh.

The Appellant contended that the agreement executed between the Appellant and Airbnb shows that there are only 2 (two) parties to the agreement and the Appellant was providing services to its overseas entity on its own account. Further, the services were provided on a principal to principal basis. Further, the conditions stipulated under Rule 6A of the Service Tax Rules, 1994, evidences that the services provided by the Appellant qualify as an export of service. Accordingly, the Appellant was entitled to receive refund of unutilised CENVAT credit. Further, it was contended that the Appellant had received refund

[37] Order dated June 13, 2025, in Writ Petition (O.S.) 2831 of 2018

[38] 2025 (3) TMI 200

claims in the GST regime on account of the same services provided to Airbnb.

Considering the contentions of the Appellant and relying on the judgement of the Hon'ble Punjab and Haryana High Court in the case of *Genpact India (P.) Ltd. vs. Union of India*[39], the CESTAT, Chandigarh held that the revenue authorities cannot take a different stand for the FY 2017-18, especially when there is no change the definition of intermediary in the service tax regime and the GST regime. Further, if the services under question did not qualify as export of service, the revenue authorities ought to have initiated proceedings against the Appellant for demand service tax in respect of the services. However, by not initiating proceedings, the revenue authorities have allowed the services to qualify as export of services. Therefore, the Appellant be allowed refund of unutilised CENVAT credit claimed by it.

Lemon juice-concentrate classifiable as 'juice of a single citrus pulp' attracting 12% Integrated Goods and Services Tax

In the case of ***Dabur India Limited vs. Commissioner of Customs (Preventive) Commissionerate, Patna***[40], Hon'ble Kolkata Bench of CESTAT held that lemon juice concentrates are rightly classifiable under HSN 20093100 being juice of citrus pulp attracting Integrated Goods and Services Tax ("**IGST**") at the rate of 12%.

Dabur India Limited argued that the said goods are appropriately classifiable under HSN 20093100 attracting IGST at the rate of 12%, whereas the revenue authorities contended that the goods are classifiable under HSN 21069019 as edible preparation/ soft drink concentrate attracting IGST at the rate of 18%.

The said goods are manufactured by blending lemon juice concentrate with water to such extent that the water content is not more than that present in natural lemon juice; thereafter it is subjected to the process of pasteurisation and subsequently, preservatives are added, and is then filled, plugged, capped, labelled and box packed for final sales.

The CESTAT observed that classification under HSN 2009 and/ or 2106 is determined on the basis of the composition of the product and the methodology involved in preparing or extracting the same. The classification is not based on end usage of the products. Further, it was held that the term 'soft drink' is *per se* different from fruit juices *inasmuch as* soft drinks are commonly understood to be aerated beverages/ preparations containing merely essences or flavours with no actual juice content. The CESTAT also relied upon Supplementary Note 5 to Chapter 21 of the First Schedule to the Customs Tariff Act to observe that HSN 2106 covers preparations for lemonades which are primarily flavoured syrups and may contain fruit juices as additional ingredients.

Accordingly, treating the lemon juice concentrate as soft drink concentrate is factually as well as legally untenable and thereby, confirming that the subject goods are rightly classifiable under HSN 20093100 attracting IGST at the rate of 12%.

Licensing fee for erection and maintenance of mobile towers cannot be subject to service tax under 'renting of immovable property'

The Kolkata bench of CESTAT in the case of ***M/s. Patna Municipal Corporation vs. Commissioner of Central Excise and Service Tax***[41] examined the applicability of service tax on licensing fees collected by the municipal corporation for erection and maintenance of mobile towers. In the facts of the case, the appellant was issued a SCN wherein demand of service tax was raised *inter-alia* on the licensing fees collected by the Appellant for the purposes of allowing to erect and maintain mobile towers on a specific premise.

[39] 2023 (68) GS.T.L. 3 (P&H)
[40] Customs Appeal No. 75364 of 2025 (order dated May05, 2025)
[41] Service Tax Appeal No. 76223 of 2014

In this regard, the CESTAT observed that the aforesaid activity is in the nature of granting permission to the companies to erect and maintain their mobile towers. Payment for acquiring the permission cannot be considered as 'rent' to fall within the definition of 'renting of immovable property; service as defined under Section 65(105)(zzzz) of the Finance Act, 1994. In the present case what is being collected is a 'licensing fee' for granting permission and not a periodical rent as alleged. Thus, it cannot qualify as renting of immovable property.

Classification of low noise block down converters under Heading 85437099 confirmed, upholding the Central Board of Excise and Customs circular

In the case of ***Dish TV India Limited vs. Commissioner of Customs, Central Excise and GST, Nagpur***[42], CESTAT, Mumbai held that Low Noise Block Down Converters ("**LNB**")merits classifiable under Tariff Heading 85437099, as per Central Board of Excise and Customs ("**CBEC**") Circular No. 13/2013-Customs dated April 5, 2013 ("**Circular**").

The dispute arose regards classification of imported LNBs used by the appellant in the manufacture of set-top-boxes. The appellant relied upon the Circular along with HSN explanatory notes and classified the goods under Heading 8543. However, the Department contended that post-GST notifications, particularly Notification Nos. 01/2017-Integrated Tax (Rate) and 50/2017-Customs (as amended), altered the applicable tariff interpretation and necessitated classification under Heading 8529 as parts of television receivers.

It was held by the CESTAT that the said GST rate notifications did not override the Customs Tariff Schedule or affect classification principles under the Customs Act, as they were not issued under Section 11A of the Customs Tariff Act. It was observed by CESTAT that the Rules of Interpretation of the First Schedule and CBEC circulars remain applicable even after rate changes under GST laws, and the classification guidance issued via the Circular remains binding for uniformity in classification, as per Section 151A of the Customs Act.

It was further held that the proviso to Section 151A of the Customs Act, which protects quasi-judicial discretion in individual assessments, does not prevent the CBEC from issuing clarificatory circulars on classification. CESTAT also distinguished between legitimate binding classification guidance and mechanical direction in assessment, reiterating that the Circular merely aids uniformity and does not interfere with judicial process.

JSA Comment: The instant ruling fortifies the position that notification cannot alter the tariff classification. It is a settled position of law that a notification cannot alter the tariff classification of a particular good, as emphasised by the Supreme Court in *Eskayef Limited*[43], that an exemption notification cannot change classification of goods from one entry to another.

Authority for Advance Ruling

ITC disallowed in respect of inputs, input services, and capital goods utilised for construction of multi-utility building

The Gujarat Authority for Advance Ruling ("**AAR**") in ***HMSU Rollers (India) Pvt. Limited***[44] analysed the issue regarding eligibility of proportionate ITC on inputs, input services and capital goods used in the execution of works contract service when supplied for the construction of an immovable property.

[42] Customs Appeal No. 85246 of 2021
[43] 1990 (49) E.L.T. 649 (S.C.)
[44] Advance Ruling No. GUJ/GAAR/2025/15 dated April 30, 2025 (Application No. Advance Ruling/SGST & CGST/2024/AR/06)

The AAR relied on the decision of Safari Retreats Private Limited[45] and observed that the Supreme Court, while analysing Section 17(5)(c) of the CGST Act, concluded that in the case of works contract, benefit of ITC is not available in respect of services supplied for the construction of immovable property, subject to the following 2 (two) exceptions:

1. when the goods, services, or both, are received for construction of 'plant and machinery'; and
2. where the works contract service supplied for the construction of immovable property is an input service for further supply of the works contract.

It may be noted that as per second explanation to Section 17(5), of the CGST Act, land, building or any other civil structures have been excluded from the definition of plant and machinery.

In light of the above, the AAR held that in terms of Section 17(5)(c) & (d) of the CGST Act, proportionate ITC is not admissible on supply of inputs such as steel, cement, and other consumables etc., input services in the nature of installation and erection services and capital goods used in the execution of works contract service for the construction of immovable property in the form of integrated factory building with gantry beam.

[45] 2024 INSC 756

Tax Practice

JSA offers a broad range of tax services, both direct and indirect, in which it combines insight and innovation with industry knowledge to help businesses remain compliant as well as competitive. The Tax practice offers the entire range of services to multinationals, domestic corporations, and individuals in designing, implementing and defending their overall tax strategy. Direct Tax services include (a) structuring of foreign investment in India, grant of stock options to employees, structuring of domestic and cross-border transactions, advising on off-shore structures for India focused funds and advise on contentious tax issues under domestic tax laws such as succession planning for individuals and family settlements, (b) review of transfer pricing issues in intra-group services and various agreements, risk assessment and mitigation of exposure in existing structures and compliances and review of Advance Pricing Agreements and (c) litigation and representation support before the concerned authorities and before the Income Tax Appellate Tribunal, various High Courts and Supreme Court of India. Under the Indirect tax, JSA provides services such as review of the business model and supply chain, determination of applicable taxes and availability of tax benefits/exemptions, analysis of applicability of schemes in the Foreign Trade Policy. JSA also provides advisory services under the Goods and Services Tax laws and other indirect taxes laws (VAT/ CST/ Excise duty etc.). The team has the experience in handling multitude of assignments in the manufacturing, pharma, FMCG, e-commerce, banking, construction & engineering, and various other sectors and have dealt with issues pertaining to valuation, GST implementation, technology, processes and related functions, litigation, GST, DRI investigations etc. for large corporates.

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