Lexport Interpreting India for commerce
New Delhi: K-1/114, First Floor, Chittaranjan (C.R.) Park, New Delhi – 110019, India
t: +91-11-2651-0505 / 1505
e: mail@lexport.in

# MONTHLY INDIRECT TAX NEWSLETTER

## MAY 2025

**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.

### OUR LEGAL TEAM

Srinivas Kotni
Akshay Kumar
Tanmay Singh

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## A. COURT RULINGS

### 1. Income Tax Act - Supreme Court Clarifies Restriction Under S.80-IA(9) On Claiming Cumulative Deductions Under S.80IA & 80-HHC

**Case Title:** Shital Fibers Limited versus Commissioner of Income Tax

The Supreme Court upheld the constitutional validity of the Kerala luxury tax and allowed Kerala's appeal, affirming the state's power to tax cable TV services under Entry 62 of List II (State List) as “luxury.”

The bench comprising Justices Abhay S Oka, Ahsanuddin Amanullah and AG Masih delivered the verdict while answering a reference after a matter was referred to the larger bench due to split verdict in Assistant Commissioner of Income Tax v. Micro Labs Limited (2015) on the issue of whether deductions claimed under Section 80-IA/80-IB (for industrial profits in certain categories) and Section 80-HHC (for export profits) could be cumulatively allowed.

## 2. Supreme Court Upholds Kerala's Luxury Tax on Cable TV as Constitutionally Valid

**Case Title:** The State Of Kerala And Anr. Versus Asianet Satellite Communications Ltd. And Ors.

The Supreme Court upheld the constitutional validity of the Kerala luxury tax and allowed Kerala's appeal, affirming the state's power to tax cable TV services under Entry 62 of List II (State List) as "luxury."

The Court clarified that the service tax imposed by the Finance Act on broadcasting services under Entry 97 of List I (Union List) does not conflict with state taxes on entertainment, and therefore, no constitutional overlap exists between central and state levies.

## 3. Supreme Court Upholds Dual Taxation on Broadcasting, Says States Can Levy Entertainment Tax Alongside Centre's Service Tax

**Case Title:** THE STATE OF KERALA AND ANR. VERSUS ASIANET SATELLITE COMMUNICATIONS LTD. AND ORS.

While upholding the State's authority to impose entertainment tax on broadcasting services like cable TV, digital streaming, and OTT platforms, the Supreme Court held that both the Centre and the State are empowered to levy service tax and entertainment tax, respectively, on assessees such as cable operators and entertainment service providers.

The bench of Justices BV Nagarathna and N Kotiswar Singh held that broadcasting constitutes a form of communication, while entertainment falls under the category of luxuries as outlined in Entry 62 of List II. Applying the doctrine of pith and substance, it reasoned that entertainment can be delivered through means of communication, making broadcasting merely incidental to it. As such, it does not directly encroach upon matters within the Union List. Consequently, both taxes function within their respective constitutional spheres, allowing the Centre and the State to concurrently impose service tax and entertainment tax on the activities undertaken by an assessee.

## 4. Income Tax Act Doesn't Contemplate Hiatus Between Handing Over & Receipt of Documents By AO Of Non-Searched Entity: Delhi High Court

**Case title** Carol Infrastructure Private Limited v. Assistant Commissioner Of Income Tax, Central Circle 27, Delhi & Anr.

The Delhi High Court made it clear that Section 153C of the Income Tax Act, 1961 "does not contemplate a hiatus" between handing over and receipt of information or documents pertaining to a non-searched entity.

A division bench of Justices Vibhu Bakhru and Tejas Karia observed, "The main body of Section 153C (1) of the Act and the proviso do not contemplate a hiatus between the handing over of the documents by the AO having jurisdiction over such person and receipt of the same by the AO having jurisdiction over person other than the searched person."

## 5. Indo-Swiss DTAA | Period Of Reference Can't Be Excluded From Limitation U/S 153B Income Tax Act If Reference Is Invalid: Delhi High Court

**Case title:** The Pr. Commissioner Of Income Tax -Central -1 v. Sneh Lata Sawhney (and batch)

The Delhi High Court has made it clear that Clause (ix) of the Explanation to Section 153B of the Income Tax Act 1961 cannot be invoked to exclude the period of reference under the Indo-Swiss DTAA, if the reference itself is invalid.

A division bench of Justices Vibhu Bakhru and Tejas Karia observed, "On a plain reading of Clause (ix) of the Explanation to Section 153B of the Act, the exclusion of time taken for obtaining the information (or one year) for completion of the assessment under Section 153A of the Act is applicable only if a reference for exchange of information has to be made as per the Agreement under Section 90/90A of the Act. It is necessary that reference be made in terms of the agreement. In this case, the benefit of exclusion of time by virtue of Explanation (ix) of Section 153B of the Act would, thus, be available only if the reference was made in terms of IndoSwiss DTAA. However, as noted above, the request as made was not in terms of the Indo-Swiss DTAA. It was contrary to the limitations as expressly specified under Article 14 of the Amending Protocol."

## 6. Admissibility Of Printouts From Seized Electronic Evidence Requires Certificate U/S 36B Of Central Excise Act: CESTAT

**Case Title:** M/s. Composite Impex v. The Principal Commissioner of Customs (Import)

The New Delhi Bench of Customs, Excise, and Service Tax Appellate Tribunal (CESTAT) has stated that admissibility of printouts from seized electronic evidence requires certificate under Section 36B of the Central Excise Act.

The Bench of Justice Dilip Gupta and P.V. Subba Rao has observed that, "that a printout generated from a secondary electronic evidence that has been seized, cannot be admitted in evidence unless the statutory conditions laid down in section 36B of the Central Excise Act are complied with."

## 7. Excise Duty Under Sugar Cess Act Can Be Claimed As CENVAT Credit: Calcutta High Court

**Case Title:** Commissioner of CGST & Central Excise, Kolkata South, GST Bhawan v. M/s Diamond Beverages Pvt. Ltd.

The Calcutta High Court stated that excise duty under sugar tax act can be claimed as CENVAT credit.

The Bench consists of Chief Justice T.S. Sivagnanam and Justice Chaitali Chatterjee (Das) was addressing the issue of whether payment of duty under Sugar Cess Act, 1982 can be claimed as Cenvat Credit when the Cenvat Credit Rules does not provide payment of cess under the Sugar Cess Act, 1982 as not being eligible under Rule 3 of the said Rules.

## 8. Issuance Of Show Cause Notice U/s 74 Of CGST Act Does Not Imply Violation Of Natural Justice: Himachal Pradesh High Court

**Case Title:** M/s Himalaya Wellness Company v/s Union of India & Ors.

Himachal Pradesh High Court held that when a show cause notice is issued under Section 74 Of the Central Goods

and Services Tax Act, the matter is still at a preliminary stage, and objections can't be raised on the ground that it was issued with a preconceived notion or that it violates the principles of natural justice.

Justice Tarlok Singh Chauhan and Justice Sushil Kukreja: "Merely because the petitioner has been served with the show cause notice would not mean that the same has been issued with the pre-conceived mind and in violation of natural justice".

## 9. Disputed Amount Paid Under Protest Much After Clearance Of Goods Is Not Covered Under Unjust Enrichment: CESTAT

**Case Title:** M/s Oiles India Pvt. Ltd. v. Commissioner of Central Excise CGST

The New Delhi Bench of Customs, Excise, and Service Tax Appellate Tribunal (CESTAT) has stated that disputed amount paid under protest much after clearance of goods is not covered by unjust enrichment.

The Bench of Binu Tamta (Judicial Member) has observed that "once the supplies have already been made, any amount paid thereafter, as tax or deposit, the burden of such amount cannot be passed on to the assessee and, therefore, the test of unjust enrichment is not applicable."

## 10. Patna High Court Upholds ₹25 Lakh Service Tax Demand Against Travel Agency Which Failed To Disclose Transactions & Claimed Records Were Lost In Fire

**Case Title:** Siddartha Travels v. Principal Commissioner of CGST and Central Excise & Ors.

The Patna High Court has recently upheld a service tax demand of ₹25.25 lakh against a travel agency, dismissing its defence that crucial business records had been lost in a fire. The Division Bench comprising Justice Rajeev Ranjan Prasad and Justice Ashok Kumar Pandey observed,

"this petitioner having surrendered his service tax registration had not disclosed the transactions in ST-3. The Taxing Authority were not aware of this, they were looking for cooperation on the part of the petitioner, they called for relevant information and records during investigation but the petitioner did not provide those information to the Taxing Authority. In such circumstance, if the Taxing Authority has taken a view that it is a case of suppression and the facts which have surfaced during investigation were not earlier known to them and they would not have come to know it if the investigation would not have taken place, cannot be found fault with."

## 11. Once Input Tax Credit Is Wrongfully Availed Due To Fraud Or Suppression, State Officer Can Issue Notice Even Without Central Action: Patna HC

**Case Title:** CTS Industries Limited vs. Directorate General of GST Intelligence

The Patna High Court has upheld a tax assessment order passed by the State GST Authority, clarifying that once a Proper Officer determines that input tax credit has been wrongfully availed or utilized due to fraud or suppression of facts, they are empowered to issue a notice under Section 74(1) of the CGST/BGST Act, 2017.

A Division Bench comprising Justice Rajeev Ranjan Prasad and Justice Sourendra Pandey held, "According to sub-section (1), wherever it appears to the Proper Officer that there is any wrongful availment of input tax credit or where the input tax credit has been utilized by reason of fraud or any willful statement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made or who has wrongly availed or utilized input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with the interest payable thereon under Section 50 and a penalty equivalent to the tax specified in the notice."

END OF THE NEWSLETTER

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