

GST HAMAARA
Updates From July
2025

**For CAs and Finance
Professionals**



From: CA Srikantha Rao T

GST Related Cases

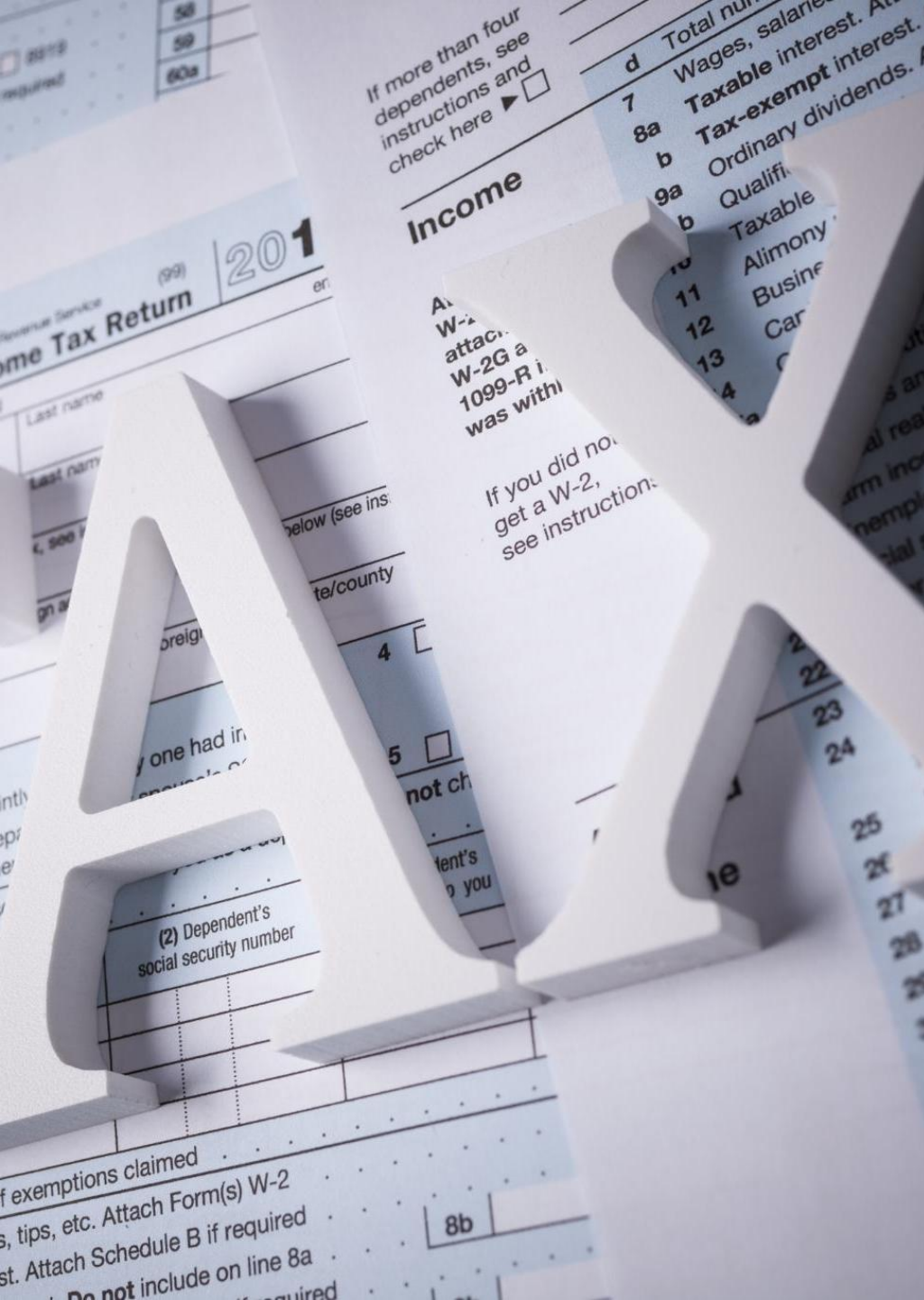


Secured Creditors To Have Priority Over GST

Dept. For Recovery

- The ***Calcutta High Court in CFM Asset Reconstruction Pvt Ltd Vs Asst. Commissioner of CGST & CE Durgapur I & Ors. (WPA 3564 of 2025 with WPA 26115 of 2024 decided on 02.07.2025)*** has relied on Section 26E of SARFAESI Act introduced with effect from 24.01.2020 with a non-obstante clause, to hold the view that GST Authorities have to wait for recovery of dues by secured creditors before recovering tax dues.
- Section 26E was introduced subsequent to GST introduction and would give priority to dues towards secured creditors especially where accounts of borrowers have turned NPA and the concerned banks/creditors who have taken over accounts, have to recover dues.
- CGST Authority was directed to hand over possession of secured asset to secured creditor and the latter asked to share details of recoveries with the former.





Govt. Department to Reimburse GST Where Applicable

- The ***High Court Jammu & Kashmir & Ladakh in Iqbal Mubarik Vs UT of J&K & Ors. (WP(C) No. 1154/2024 decided on 07.07.2025)*** has ordered the Dept of Home of Govt of J&K to reimburse the GST applicable on renting of hotel rooms by petitioner to Govt. of J&K to accommodate the central security forces.
- The dispute arose as the Govt had refused to reimburse the GST amount holding the same as liability of petitioner and rates had been negotiated prior to GST coming into force at which of point of time, there was no GST levy.
- While the Rent had been fixed by Rent Assessment Committee prior to GST coming into force, the rent at present suffered GST and this had to be reimbursed by Dept of Home and consequently the GST was reimbursable in addition to rent fixed earlier.



CA CERTIFICATE GIVEN BY RECIPIENT NOT TO BE DISREGARDED

- The ***Madras High Court in JIT Auto Comp. Vs Assistant Commissioner (W.P 16474 of 2024 decided on 08.07.2025)*** has confirmed that Section 74 cannot be invoked just because CA certificate from supplier could not be produced by recipient of supply on differences being noticed between Form GSTR 2A and Form GSTR 3B leading to demand for ITC reversal.
- The recipient here had furnished certificate from his CA who had verified fact of supply and receipt of goods along with payment of GST to supplier. This was not considered by Revenue. The supplier post supply, had gone into liquidation.
- The Court set aside the Order and remanded the matter back as one under Section 73 with direction to Authority to consider evidences available.

Element of “mens rea” needed to impose penalty u/s 129(3)

- The *Himachal Pradesh High Court in M/s Kunal Aluminium Company Vs State of H.P & Ors. (CMPMO 40/2025 decided on 26.06.2025)* has confirmed need for presence of “mens rea” for the Department to impose penalty.
- Mere technical errors, without having any potential financial implications, should not have been made the grounds for imposition of penalties. The underlying philosophy is to maintain a fair and just tax system, where penalties are proportionate to the gravity of the offence.
- The goods were under movement from port of import and had suffered customs duty with IGST before they were detained for want of e-way bill.
- Tax evasion is a serious allegation that necessitates a robust evidentiary basis to withstand legal scrutiny. The burden of proof, rests on tax authorities to establish the actual intent to evade tax before imposing penalties on taxpayers.
- No penalty where tax was already paid and no intention to evade tax.



STEM CELL PRESERVATION – HEALTH CARE SERVICE



- The ***Supreme Court in Stemcyte India Therapeutics Pvt Ltd Vs CCE & ST Ahmedabad III (Civil Appeal Nos. 3816-3817 of 2025 decided on 14.07.2025)*** in a case pertaining to service tax for the period 01.07.2012 to 16.02.2014 has confirmed that services of enrolment, collection, processing, and storage of umbilical cord blood stem cells by cord blood banks/clinical establishments qualify for exemption as healthcare services. This was even before Notif. 4/2014 ST could provide specific exemption for the said services by cord blood banks.
- The words “any service” give an expansive scope to definition of “health care service” and cover preventive services as well. The Court also relied on an Office Memorandum of Ministry of Health & Family Welfare which confirmed services of stem cell banks being part of health care services.
- In light of this fact, the Notif. 4/2014 was having clarificatory effect on exemption.
- *Tip: While exemption has been withdrawn under GST under Notif. 12/2017 CT Rate effective from 18.07.2022, on said services, the confirmation of SC here would bring the spotlight on classification as that remains a question of fact.*

ITC ALLOWED ON SOLAR ROOFTOP FACILITY FOR MALL



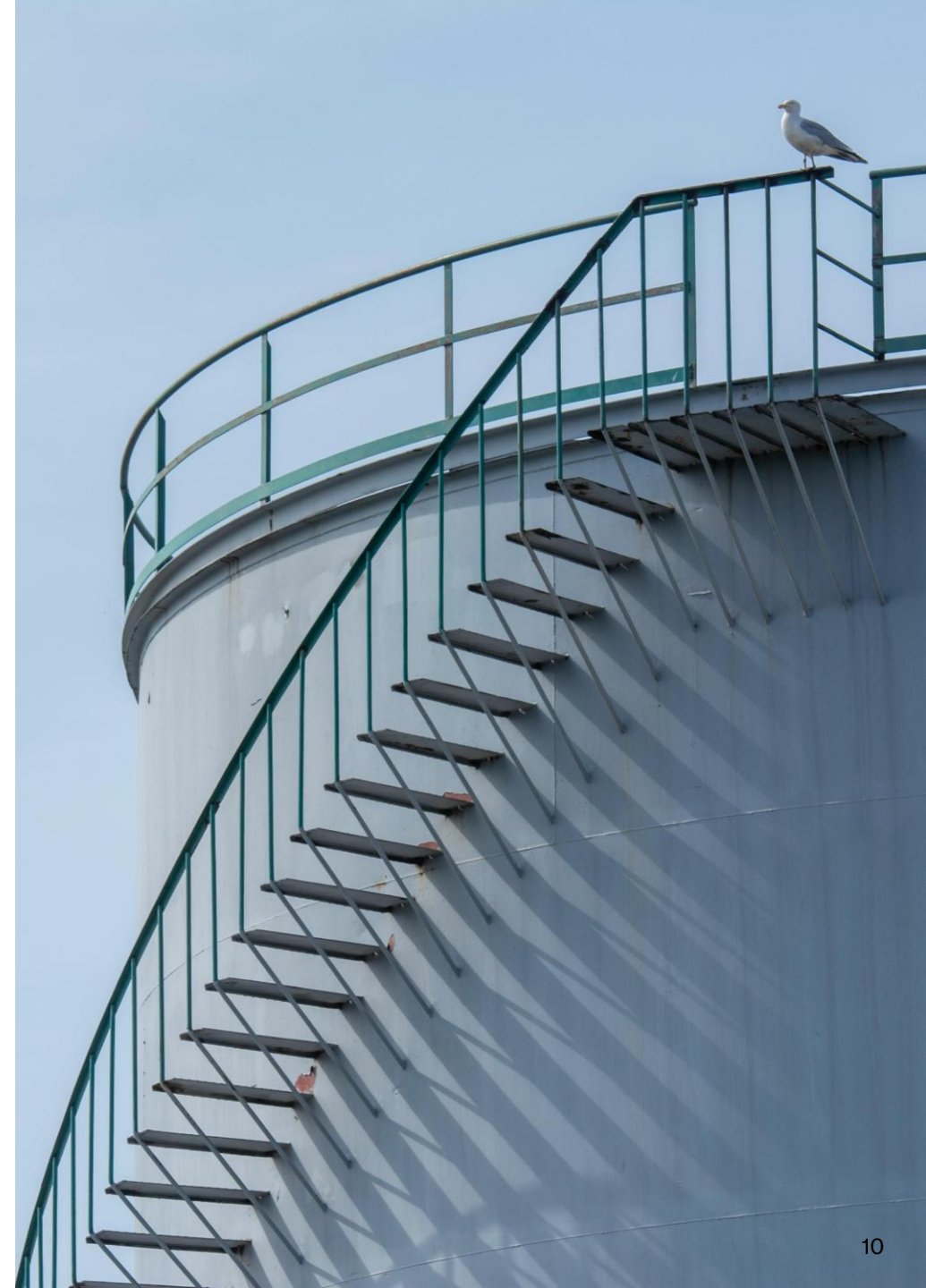
- The *Kerala Advance Ruling Authority for GST in Re: M/s Grand Centre Mall (KER/15/2025 decided on 19.05.2025)* has allowed ITC of GST on procurement and installation of solar rooftop generator for a mall.
- The facility was used to generate electricity for the common areas of the mall and the charges for electricity were recovered every month as part of CAM charges with GST from the tenants/shop operators.
- The facility was only bolted to the roof with no substantial civil work involved for structural support and could be moved away with minimal damage to the facility.
- This was found to qualify as capital goods or plant and machinery and restriction u/s 17(5) was found to be inapplicable.

ITC ALLOWED ON FRESH WATER TANK AND EFFLUENT GUARD POND

- The ***Kerala Advance Ruling Authority for GST in Re: M/s Nitta Gelatin India Limited (KER/19/2025 decided on 27.06.2025)*** has allowed ITC of GST incurred on construction of fresh water tank using cement and effluent guard pond.
- The fresh tank ensured uninterrupted availability of water necessary for the production process (for the Gelatin manufacturer), while the guard pond provided essential effluent storage capacity to meet environmental compliance and enable continuous operation. These structures served dedicated and essential production-related functions. In tax jurisprudence, assets that performed such specific, process-integrated roles were typically treated as “plant” rather than as mere buildings.
- ***Though constructed using civil work elements like concrete and steel, the tanks served as functional apparatus, more akin to large equipment used for fluid storage and waste treatment. Given this characterization, and the fact that they were capitalised in the books as part of plant and machinery, the said structures fell within the definition of “plant and machinery” under the Act.***
- The applicant has capitalized both the Fresh Water Storage Tank and the Guard Pond under “Plant and Machinery” in their books of accounts. ***While accounting treatment alone is not conclusive for legal classification under GST law, it serves as a corroborative factor, particularly when the statutory definition of “plant and machinery” employs similar terminology.***

ITC ALLOWED ON FRESH WATER TANK AND EFFLUENT GUARD POND

- Once the Fresh Water Storage Tank and the Guard Pond are functionally established as “plant and machinery” integral to the manufacturing operations of the applicant, the restrictions under Section 17(5)(c) and (d) of the CGST Act cease to apply.
- The statutory exclusion for immovable property does not extend to apparatus or equipment forming part of the production infrastructure. The applicant’s treatment of the tanks as capital assets forming part of plant and machinery reinforces their functional characterization and supports their eligibility for input tax credit.



ITC TRANSFER ON AMALGAMATION NOT TO BE RESTRICTED WHERE TRANSFeree IS IN ANOTHER STATE

- The ***Bombay High Court in Umicore Autocat India Pvt Ltd Vs UOI & Ors. (W.P 463 of 2024 decided on 10.07.2025)*** has allowed transfer of ITC under CGST and IGST to the transferee entity by the transferor.
- The transferor was in Goa while the transferee-entity was in the State of Maharashtra. Revenue had sought to deny transfer holding inter-state transfer of ITC was not possible on the GST portal. The operations of transferor had ceased in Goa.
- The Court noted that there were no restrictions u/s 18(3) on inter-state transfer and that Courts could not reframe legislation or substitute words in provision while interpreting the same. Courts could not supply something not provided for in the Statute.
- Court directed transfer via physical mode with direction to amend portal to provide for necessary functionality in this regard.

NOTICE OF RETIREMENT OF PARTNER – TO BE FURNISHED



- The *Punjab & Haryana High Court in Harvinder Singh Vs State of Punjab & Ors. (CWP 9172 of 2025 decided on 18.07.2025)* has refused to provide relief from attachment on the property of the Partner where there was a delay in intimating his retirement to the Commissioner GST.
- While the Partner had retired on 20.04.2021, intimation of the same had been sent to GST Dept. only on 28.02.2025. This was after the firm in question was held liable to tax dues and these dues for the year 2022-23 had not been cleared by the firm. Recovery proceedings had to be initiated against firm and its Partners. Revenue had intimated Teshildar to make an entry against property of Petitioner.
- The intimation of retirement had been given only post Revenue action and therefore Petitioner not entitled to any relief in respect of dues for FY 2022-23.

PROPER SERVICE OF NOTICE NEEDED WHEN THERE IS NO REPLY



- The *Madras High Court in TVL. Vels Film International Vs Deputy Commercial Tax Officer (ST) (W.P 20509 of 2025 decided on 10.06.2025)* has confirmed need for alternate methods of serving notices when uploading on portal alone does not result in any reply from the taxpayer. Otherwise, the service of notice will not be deemed to be an effective service, rather, it would only be fulfilling empty formalities.
- Merely passing an ex-parte order by fulfilling the empty formalities will not serve any useful purpose and the same would pave way for multiplicity of litigations, not only wasting the time of the Officer concerned, but also the precious time of the Appellate Authority/Tribunal and Court as well.
- The Officer who is issuing notices should strictly explore the possibilities of sending notices through some other mode as prescribed in Section 169(1) of the CGST Act, preferably by way of RPAD which would ultimately achieve the object of the CGST Act.

MANDATORY TO ISSUE ORDER U/S 129(3)

- The ***Supreme Court in M/s ASP Traders Vs State of Uttar Pradesh & Ors. (Civil Appeal 9764 of 2025 decided on 24.07.2025)*** has confirmed the need to issue an Order under Section 129(3) even where tax payment is made and Section 129(5) on conclusion of proceedings cannot be seen to result in non issuance of an Order.
- The tax here had been paid due to business exigency by consignor of Arecanut from Karnataka when the goods and conveyance had been detained near Jhansi enroute to consignee in Delhi. While the goods and vehicle had been released on payment, no order was issued by Revenue citing closure of proceedings u/s 129(5).
- The court came up with its verdict highlighting some fundamental points and disagreeing with Revenue view.



MANDATORY TO ISSUE ORDER U/S 129(3)

- It is a well settled principle that every show cause notice must culminate in a final, reasoned order. While Section 129(5) of the CGST Act, 2017 provides that proceedings shall be deemed to be concluded upon payment of tax and penalty, this deeming fiction cannot be interpreted to imply that the assessee has agreed to waive or abandon the right to challenge the levy – a right that is protected by the very enactment itself.
- The term “conclusion” as used in Section 129(5) merely signifies that no further proceedings for prosecution will be initiated. It does not absolve the responsibility of the proper officer to pass an order concluding the proceedings.
- Failure to issue a speaking order in response to a show cause notice creates a legal vacuum. Any consequential action including imposition of tax or penalty, would then be unsupported by authority of law, thereby potentially violating Article 265 of the Constitution of India, which prohibits the levy or collection of tax except by authority of law.

MANDATORY TO ISSUE ORDER U/S 129(3)

- The GST payment portal permits payments only through Form GST DRC-03, which is automatically classified as a voluntary payment, and does not provide any mechanism for an assessee to indicate that the payment is being made under protest. Under such circumstances, the written objections become significant to understand the intention of the assessee/owner or transporter.
- The payment made by the appellant cannot be treated as voluntary, and the absence of a mechanism to record protest should not operate to the detriment of the assessee, **especially when objections were already on record** and the payment was clearly necessitated by business exigences.
- It is clear that there must be much more than an abandonment of a right to plead waiver or acquiescence. The payment, by itself, cannot be treated as a waiver or abandonment, especially when the appellant has clearly objected to the demand and when there is a statutory mandate to pass an order and a corresponding right to appeal.

MANDATORY TO ISSUE ORDER U/S 129(3)

- An appeal can lie only against an 'order', and in the absence of a reasoned order passed under Section 129(3) of the Act, the taxpayer is effectively deprived of the statutory remedy of appeal. Such a deprivation undermines the foundational principles of fairness, due process, and access to justice, rendering the right of appeal illusory or nugatory.
- The principles of natural justice mandate that when a taxpayer submits a response to a show cause notice, the adjudicating authority is required to consider such response and render a reasoned, speaking order. This is not a mere procedural formality, but a substantive safeguard ensuring fairness in quasi-judicial proceedings.
- Even assuming that the payment was made by the appellant, voluntarily or otherwise, the proper officer could not be absolved of the statutory obligation to pass a reasoned order in Form GST MOV-09 and upload the corresponding summary in Form GST DRC-07.

MANDATORY TO ISSUE ORDER U/S 129(3)

- Circular No.41/15/2018-GST dated 13.04.2018 issued by CBIC is binding on the department under Section 168 of the CGST Act, 2017 and it provides detailed instructions to ensure uniformity in implementation of procedures for interception, detention, seizure, and confiscation of goods in transit.
- It mandates that upon payment of tax and penalty under Section 129 (1), the proper officer must issue the release order in Form GST MOV-05. Additionally, the officer is required to pass a formal order of demand in Form GST MOV-09 and upload it on the common portal. A summary of this order must be uploaded in Form GST DRC-07, so that the demand is recorded in the taxpayer's electronic liability register.



Customs Related Cases



CONTRARY EVIDENCE TO BE FURNISHED TO QUESTION CA CERTIFICATE FOR REFUND

- The *Delhi High Court in Principal Commissioner of Customs Vs Nokia India Sales Pvt. Ltd (CUSAA 66/2025, 79/2025 decided on 07.07.2025)* has taken a view that Department has to come out with evidence to the contrary if they are disregarding CA certificate furnished by assessee to prove that there is no unjust enrichment while claiming refund of excess duty paid on imports of mobile phones.
- The assessee had provided a CA certificate with relevant ledgers and documents which were not considered on merits by the Revenue leading to sanctioning of refund but seeking to credit proceeds to Consumer Welfare Fund rather than refunding in cash to claimant.
- Revenue cannot summarily dismiss contention citing lacking of conclusive proof and non discharging of burden by claimant despite submission of CA certificate and relevant documents.





Imports Under EPCG Scheme – Contrary View of Customs

- The ***Madras High Court in M/s Adyar Gate Hotel Ltd Vs Commissioner of Customs Chennai II (C.M.A. 71 & 131 of 2025 decided on 03.06.2025)*** has confirmed that lights and light fittings imported as capital goods under license issued by DGFT could not be regarded as otherwise by customs department to deny EPCG benefit on imports.
- Customs department has to align with views of DGFT and a divergent view is not possible.
- While statute did not provide for interest on interest the Court also deemed it fit to grant compensation for unreasonable delay in refunding duty paid earlier under protest over and above the statutory interest allowed under law.

Notifications & Circulars

| Reference | Particulars |
|---|---|
| Notif. 22/2025 Customs (ADD) Dated 10.07.2025 | Continues anti dumping duty on import of Clear Float Glass Under HSN 70 from Malaysia or imported from any other country but originating in Malaysia, upto 10.02.2026 |
| Notif. 25/2025 Customs (ADD) Dated 18.07.2025 | Levies fresh anti dumping duty on imports of Aniline (HSN 2921 41) originating in or Exported from China PR for a period of 5 years |
| Notif. 06/2025 Customs (CVD) Dated 03.07.2025 | Levies Counterveiling duty on imports of Continuous Cast Copper Wire Rods falling under HSN 7408 & originating in or exported from Indonesia, Malaysia, Thailand, and Vietnam, for a period of 5 years. |

Notifications & Circulars

| Reference | Particulars |
|--|--|
| Circular 19/2025 Customs Dated 23.07.2025 | Clarifies that the existing digitized application facility on microsite of Invest India will be operational upto 31.10.2025. Applicants desirous of obtaining a license u/s 58 and permission to operate u/s 65 of Customs Act can continue to file on this facility till 31.10.2025. Thereafter, applicants have to submit applications directly to jurisdictional Principal Commissioner/Commissioner of Customs via a separate electronic system under development. |
| Circular 20/2025 Customs Dated 24.07.2025 | Clarifies that only in case of inputs mentioned in Para 4.29 of FTP 2023, correlation of technical characteristics, quality and specification of the inputs with export product is required to be established when imported under DFIA scheme. |

Notifications & Circulars

| Reference | Particulars |
|--|---|
| Circular 20/2025 Customs Dated 24.07.2025 | Clarifies further that in case of inputs mentioned in paragraphs 4.12 and 4.28 (iii) of the FTP 2023, only name of the specific input along with the quantity is required to be declared in the shipping bill/bill of export. |
| Instruction 24/2025 Customs 22.07.2025 | E-CoO issued by the Issuing Authority of Mauritius to be uploaded on e-Sanchit by importer/customs broker to claim preferential tariff benefit. Printed copy also to be given to customs officer. |
| Policy Circular (DGFT) 02/2025-26 Dated 22.07.2025 | Clarifies that Goods already imported / shipped / arrived, in advance, but not cleared from Customs may also be cleared for home consumption against an Authorisation issued subsequent to the date of shipment (date of Bill of lading) but before their clearance from Customs, without any mandatory requirement for warehousing. This facility will be not available to 'Restricted' items or items traded through STEs, unless specifically allowed by DGFT. |

Notifications & Circulars

| Reference | Particulars |
|--|--|
| Policy Circular 01/2025-26 (DGFT) Dated 15.07.2025 | Clarifies that organic textiles do not fall within the ambit of accreditation categories prescribed under NPOP. Therefore, no requirement for a Transaction Certificate from a NAB accredited body in respect thereto. TC to be from certification bodies designated through Textile Exchange, Global Organic Textile Standard or as mandated by buyers at the time of export. |



“Common sense shows that human life is short-lived and that it is best to make of our brief sojourn on this Earth something that is useful to oneself and others.” – His Holiness

The 14th Dalai Lama of Tibet.

Thank you!!

Contact: CA Srikantha Rao T - Mob. 9986406333

Photo Credits: <https://www.pexels.com/>