



# **INDIRECT TAX**

## **Newsletter**

**September 2020**



## FROM THE DESK OF



**Manoj K. Singh**  
Founding Partner

Dear Friends,

It gives me immense pleasure to announce the launch of S&A Indirect Tax Newsletter - our latest offering in our knowledge sharing series.

All commercial transactions have taxation aspects and the onus of identifying and fulfilling the tax liabilities lies on businesses. At Singh & Associates, it is our constant endeavour to help businesses successfully navigate this maze of responsibilities, regulations and duties.

Indirect taxation, *inter alia* covering GST, Customs and Trade Remedies, is a specialized area and demands its professional practitioners to be updated on current information regarding new rules, regulations, notifications, tariff advise, trade notices, circulars and other administrative guidelines released by the government from time-to-time. These changes and new rulings impact businesses and consequently tax liabilities.

Singh & Associates' highly qualified Indirect Tax Practice team which works with Indian and International businesses closely monitors the new rulings and developments and constantly evaluates their individual /collective impacts.

Forthwith, we shall compile the newsworthy developments in the arena of indirect tax, customs and foreign trade and share with you through our dedicated monthly newsletter. I hope this newsletter will serve you well as a knowledge repository for the latest and most important developments in this field. Humbly, I present to you the introductory volume of S&A Indirect Tax Newsletter - September 2020.

Thank you.

## FROM THE DESK OF



*Smita Singh*  
*Practice Lead -*  
*Indirect Tax*

Dear Friends,

We are pleased to present this Vol. I Issue I of the S&A - Indirect Tax Newsletter. Through this newsletter, we aim to share recent newsworthy developments and pertinent information allied to regulatory reforms and updates from the Indirect Taxation sector in India. All information shared herein is based on information collated through research and appraisal of applicable statutory provisions.

With the Covid-19 pandemic continuing unabated around the globe, the requirement for protective gear is high. As per the latest changes in the Export Policy, items like ventilators and PPE/masks have been changed from the 'prohibited' category to 'free' category. For businesses engaged in export of ventilators and PPE/masks, this is a cause for cheer.

The other important development is in the GST regime. Aadhaar authentication has been mandated for quick registration under GST. This will facilitate new businesses to get their GST registration with just three working days.

In addition to GST highlights, the newsletter also contains updates from Trade & Regulatory and Customs and the bird's eye view on some important case laws.

Trust you will enjoy reading this issue. Please feel free to send your valuable inputs / comments at [newsletter@singhassociates.in](mailto:newsletter@singhassociates.in)

Thank you.

## INDIA REGULATORY & TRADE HIGHLIGHTS

### FOREIGN TRADE

- a. Revision of export policy, subject to specified conditions

Items	Change in Export Policy	Notification No. & date
All ventilators including any artificial respiratory apparatus or oxygen therapy apparatus or any other breathing/device.	'Prohibited' to 'Free'	Notification No. 23/2015-2020 dated August 04, 2020
Non-woven fabrics of any GSM	'Prohibited' to 'Free'	Notification No. 28/2015-2020 dated August 04, 2020
Medical Coveralls of all Classes/Categories and all masks including 2/3 Ply Surgical Masks and medical coveralls for protection from Covid-19 except N95/FFP2 masks or its equivalent	'Prohibited' to 'Free'	Notification No. 29/2015-2020 dated August 25, 2020
N 95/FFP2 masks or its equivalent	'Prohibited' to 'Restricted'	

- b. Policy condition for import of specified chemicals amended. [Notification No. 26/2015-2020 dated August 11,2020]
- c. Advance Authorisation not to be issued in case of export of Gold Medallions and Coins or Gold jewellery/articles manufactured by fully mechanised process. [Notification No. 25/2015-2020 dated August 10, 2020]

### THE DIRECTORATE GENERAL OF TRADE REMEDIES, MINISTRY OF COMMERCE & INDUSTRY

- a. Anti-Subsidy investigation initiated concerning import of Front Axle Beam and Steering Knuckles meant for heavy and medium commercial vehicles originating in or exported from China PR. [F. No. 7/26/2020-DGTR dated August 18, 2020]

b. Anti-Dumping Duty investigations initiated on import of:

<b>Product</b>	<b>Country of export</b>	<b>Notification No. &amp; date</b>
Glass Fibre and articles thereof	Bahrain Egypt	F. No. 6/24/2020-DGTR dated August 04, 2020
Aceto Acetyl Derivatives also known as Arylides	China PR	F. No. 6/28/2020-DGTR dated August 21, 2020

Preliminary findings issued, recommending provision levy of Anti-Dumping Duty on import of:

<b>Product</b>	<b>Country of export</b>	<b>Notification No. &amp; date</b>
Phenol	Thailand USA	F. No. 6/15/2019-DGTR dated August 20, 2020
Dimethyl Formamide (DMF)	China PR Saudi Arabia	F. No. 6/37/2019-DGTR dated August 18, 2020
Polyethylene Terephthalate (PET Resin)	China PR	F. No. 6/24/2019-DGTR dated August 05, 2020
Soda Ash	Turkey USA	F. No. 6/39/2019-DGTR dated August 21, 2020

c. Final findings of Anti-Dumping investigation issued on import of:

<b>Product</b>	<b>Country of export</b>	<b>Notification No. &amp; date</b>
Clear Float Glass	Malaysia	F. No. 6/15/2019-DGTR dated August 20, 2020
Choline Chloride in all forms	China PR Malaysia Vietnam	F. No. 6/18/2019-DGTR dated August 25, 2020

d. Preliminary findings issued in Anti-Subsidy investigation concerning import of Flat Products of Stainless Steel from Indonesia, recommending imposition of provisional Anti-Subsidy Duty. [F. No. 6/16/2019-DGTR dated August 07, 2020]

- e. Final findings issued in Safeguard investigation concerning import of Single Mode Optical fibre into India, recommending imposition of Safeguard Duty. [F. No. 22/5/2019-DGTR dated August 21, 2020]
- f. Final findings issued in Sunset Review Investigation of Anti-Dumping investigation concerning import of Phosphoric acid of all grades and all concentrations (excluding Agriculture/Fertilizer Grade) originating in or exported from Korea RP, recommending imposition of Anti-Dumping Duty. [F. No. 7/28/2019-DGTR dated August 6, 2020]
- g. Final findings of Sunset Review of Anti-Dumping investigation concerning import of Woven Fabric (having more than 50% Flax content) commonly known as Flax Fabric originating in or exported from China PR and Hong Kong, recommending imposition of Anti-Dumping Duty. [F. No. 7/26/2019-DGTR dated August 17, 2020]

## MINISTRY OF FINANCE

- a. Levy of Anti-Dumping Duty on import of:

Product	Country of export	Notification No. & date
Acrylonitrile Butadiene Rubber	Korea RP	Notification No. 27/2020 (ADD) dated August 21, 2020
Phosphoric Acid of all grades and concentrations (excluding Agriculture or Fertilizer grade)	Korea RP	Notification No. 26/2020 (ADD) dated August 21, 2020
Caustic Soda	China PR Korea RP	Notification No. 25/2020 (ADD) dated August 17, 2020
Diketopyrrolo Pyrrole Pigment Red 254 (DPP Red 254)	China PR	Notification No. 24 /2020 (ADD) dated August 14, 2020
Flax fabrics	China Hong Kong	Notification No. 23/2020 dated August 11, 2020
Black Toner in powder form	China PR Malaysia Chinese Taipei	Notification No. 22/2020 dated August 10, 2020

## INDIA CUSTOMS HIGHLIGHTS

- a. The Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 (the Customs Rules of Origin Rules) notified. [Notification No. 81/2020-Cus (N.T.) dated August 21, 2020]
- b. Procedure prescribed for manufacturing or other operations undertaken in special warehouse under Section 65 of the Customs Act, 1962 (the Customs Act). [Circular No. 36/2020-Cus dated August 17, 2020]
- c. Guidelines issued regarding implementation of Section 28D of the Customs Act and the Customs Rules of Origin Rules. [Circular No. 38/2020-Cus dated August 21, 2020]
- d. Facility of deferred payment of Duty extended for authorized public undertakings. [Notification No. 78/2020-Cus (N.T.) dated August 19, 2020]
- e. The Manufacture and Other Operations in Special Warehouse Regulations, 2020 notified. [Notification No. 75/2020-Cus (N.T.) dated August 17, 2020]
- f. The Special Warehouse (Custody and Handling of Goods) Amendment Regulations, 2020 notified. [Notification No. 77/2020-Cus (N.T.) dated August 17, 2020]

## INDIA GOODS AND SERVICES TAX (GST) HIGHLIGHTS

### CENTRAL GOODS AND SERVICES TAX

#### Notifications

- a. Amendments made in the Central Goods and Services Tax Rules, 2017 (the CGST Rules) in relation to registration by a person opting for Aadhar authentication. [Notification No. 62/2020-CT dated August 20, 2020]
- b. Taxpayers allowed to pay interest for delay in payment of Tax on net cash tax liability under GST w.e.f. September 01, 2020. [Notification No. 63/2020-CT dated August 25, 2020]

#### Press Release

- a. The Central Board of Indirect Tax and Customs (CBIC) has issued a Press Release in relation to making Form GSTR-2B available on the GST Common Portal on trial basis w.e.f. July 2020. [Press Release dated August 29, 2020]

## IMPORTANT CASE LAWS

### GST

A. The Hon'ble High Court of Gujarat has held Rule 89(5) of the CGST Rules, 2017, to be ultra-vires Section 54 of the CGST Act, 2017, in as much as it restricts the refund to only inputs in case of inverted duty structure.

It has been further held that when Section 54 of the CGST Act, 2017, allows for refund of 'any unutilized input tax credit' which includes both inputs and inputs services, the same cannot be restricted by Rules framed thereunder. Reliance in this regard was placed on Circular No. 79/53/2018-GST dated December 31, 2018. Hence, refund of both inputs and input services would be available in case of inverted duty structure.

**Takeaway:** Rule 89(5) of the CGST Rules, 2017, held to be ultra-vires Section 54 of the CGST Act, 2017.

[VKC Footsteps India Private Limited vs UOI 2020-TIOL-1273-HC-AHM-GST]

B. The Appellate Authority has held that even though the Applicant performs his services in exchange of a lump sum monthly compensation and his activities are performed under control and supervision of the employer, he cannot be said to be an employee as the Applicant has been filing his Income Tax under 'Income from Business and Profession'. Further, the Applicant makes presentation before prospective clients and facilitates supply of goods by its employer (Company) for whom he is providing services. The Appellate Authority held that the Applicant does not supply such goods on his own account. Hence, the Applicant squarely falls under the category of 'intermediary' as per Section 2 (13) of the IGST Act, 2017.

The hon'ble Appellate Authority has further held that services provided by the Applicant results in supply of service within the meaning of 'intermediary', classifiable under HSN 9983 under 'Other professional, technical and business services', thus, the Applicant is required to be registered under GST.

**Takeaway:** The nomenclature used for consideration paid/received cannot help in determining the nature of transaction.

[Mr. Rajendran Santhosh AR No. KAR ADRG 64/2019 dated September 29, 2019]



C. The AAR decided on the question of eligibility of ITC of GST paid on Lease Premium Charges, Annual Lease Rentals & Maintenance Charges paid towards land taken on lease on which building was to be constructed by the Applicant for providing output service.

The hon'ble AAR has held that ITC on the above-mentioned charges is barred under the provisions of clause (d) of Section 17(5) of the CGST Act, 2017, as the same is received for construction of immovable property.

**Takeaway:** ITC on activities in relation to construction of immovable property is ineligible.

[M/s Daicel Chiral technologies (India) Pvt. Ltd. 2020-TIOL-211-AAR-GST]

D. The AAR decided on the question whether GST is payable on 'Transfer Fee' paid on assigning a sub-leased property to a third party on Liquidation of the Applicant Company.

The hon'ble AAR has held that the activity of assignment is in the nature of compensation for agreeing to do the transfer of the Applicant's rights in favour of the assignee (third party) and thus, qualifies as service classifiable under HSN 9997 'Other miscellaneous service' taxable @18%. The AAR further held that Transfer Fee charged by the sub-lessor is the consideration payable to the sub-lessor for providing a service in the course or furtherance of business, more specifically because business includes supply or acquisition of goods or services in connection with the closure of a business in terms of section 2 (17) (d) of the GST Act. The GST to be paid on such transfer fee is, therefore, admissible as ITC.

**Takeaway:** The terms 'Business' includes supply in connection with closure of business.

[M/s Enfield Apparels Ltd. 2020-TIOL-214-AAR-GST]

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