



INDIRECT TAX

Newsletter

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FROM THE DESK OF



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Dear Friends,

We are pleased to present Issue II 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.

The Ministry of Commerce & Industry has capped benefit under the Merchant Export from India Scheme ('MEIS') at INR 20 Million per exporter for the period 1st September to 31st December 2020 causing dis-pleasure to manufacturers in India. This cap has been imposed since MEIS has failed its objective of promoting export and did not yield the desired growth in exports from India.

An important development has taken place under the Customs Laws wherein mechanism and requirements have been prescribed for administration of existing Rules of Origin under Trade Agreements i.e. the CAROTAR 2020. In furtherance, the CBIC has directed officers to levy 100% differential duty as security, in case of provisional assessment due to pending enquiry or verification under the CAROTAR, 2020.

The other important development is in the GST regime wherein E-invoicing has been made applicable for taxpayers having turnover more than INR 5 Billion from FY 2017-18 onwards and E-invoicing is applicable for exports as well.

In addition to the above highlights, the newsletter also contains other updates from Trade & Regulatory, Customs and GST along with 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

Thank you.

INDIA REGULATORY & TRADE HIGHLIGHTS

FOREIGN TRADE

- a. MEIS scheme to be discontinued on exports made w.e.f. January 01, 2021. Further claim under MEIS on exports of goods made during September 1 to December 31, 2020 to be limited to INR 20 Million only. The person who has obtained Import Export Code (IEC) on or after September 1, 2020 and where no exports made during September 01, 2019 to December 31, 2020 to be ineligible for MEIS incentive. [Notification No. 30/2015-2020 dated September 1, 2020]
- b. Guidelines issued for standard Unique Quantity Code (UQC) in EDI system and ICEGATE for export/import of goods. [Trade Notice No. 27/2020-21 dated September 14,2020]
- c. Track and Trace System for export of pharmaceuticals and drugs consignments to be implemented from April 1, 2021 instead of October 1, 2020. [Public Notice No. 16/2015-2020 dated September 22, 2020]
- d. Policy condition in Chapter 85 and 86 of ITC (HS) amended to enable import of LED products and control gear for LED products notified under the Electronic and Information Technology Goods (Requirement of Compulsory Registration) Order, 2012. [Notification No. 32/2015-2020 dated September 17, 2020]
- e. Compulsory registration required under the Steel Import Monitoring System (SIMS) for import of goods classified under Chapter 72 (Iron and Steel), Chapter 73 (Articles of iron and steel) and Chapter 86 (Tools, implements, cutlery, spoons and forks, of base metal, parts thereof of base metal) of ITC (HS). [Notification No. 33/2015-2020 dated September 28, 2020]

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

- a. Safeguard Duty investigation initiated concerning import of PVC Suspension Grade Resin originating in or exported from Japan under India-Japan Comprehensive Economic Partnership Agreement (Bilateral Safeguard Measures) Rules, 2017. [Notification 20/6/2020-DGTR dated September 8, 2020]
- b. Final Findings issued in safeguard Duty investigation concerning import of Phthalic Anhydride into India from Korea under the India-Korea Comprehensive Economic Partnership Agreement (Bilateral Safeguard Measures) Rules, 2017. [Notification No. 22/8/2019-DGTR dated September 28, 2020]

c. Anti-Dumping Duty investigations initiated concerning import of:

Product	Country of export	Notification No. and date
Vitamin C	China PR	F.No. 6/32/2020-DGTR dated September 4, 2020
Sodium Hydrosulphite	China PR and Korea	F.No. 6/35/2020-DGTR dated September 16, 2020
Certain Flat Rolled Products of Aluminium	China PR	F.No. 6/27/2020-DGTR dated September 8, 2020
Untreated Fumed Silica	China PR and Korea	F.No. 6/40/2020-DGTR dated September 22, 2020
Ceftriaxone Sodium Sterile	China PR	F.No. 6/46/2020-DGTR dated September 24, 2020
Calcined Gypsum Powder	Iran, Oman, Saudi Arabia	F.No. 6/45/2020-DGTR dated September 29, 2020
Silicone Sealants	China PR	F.No. 6/31/2020-DGTR dated September 28, 2020
Hydrofluorocarbons (HFC) component R-32	China PR	F.No. 6/33/2020-DGTR dated September 28, 2020

d. Anti-circumvention investigations initiated concerning import of:

Product	Country of export	Notification No. and date
Axle for Trailers	China PR	F.No.4/11/2020-DGTR dated September 15, 2020
Measuring tapes	China PR	F. No. 07/36/2020-DGTR dated September 21, 2020
Ceramic Tableware and Kitchenware, excluding knives and toilet items	China PR	F. No. 07/33/2020-DGTR dated September 25, 2020
Persulphates	China PR and USA	F. No. 06/25/2020-DGTR dated September 28, 2020

e. Countervailing Duty investigation initiated concerning import of:

Product	Country of export	Notification No. and date
Copper Tubes and Pipes	Malaysia, Thailand and Vietnam	F.No. 04/10/2020-DGTR dated September 25, 2020

f. Sunset Review investigation initiated concerning import of:

Product	Country of export	Notification No. and date
Glass Fibre and articles	China PR	F.No. 7/34/2020-DGTR dated September 25, 2020

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

Product	Country of export	Notification No. and date
Toluene Dilsocyanate	EU, Saudi Arabia, Chinese Taipei and UAE	F. No. 6/43/2019-DGTR dated September 4, 2020

h. Final findings issued recommending levy of Anti-Dumping on import of:

Product	Country of export	Notification No. and date
Acrylic Fibre	Belarus, Ukraine, EU and Peru	F. No. 6/25/2019-DGTR dated September 1, 2020
Flexible Slabstock Polyol	Saudi Arabia and UAE	F. No. 6/20/2019-DGTR Dated September 1, 2020
Diketopyrrolo Pyrrole Pigment Red 254 DPP Red 254	China PR	F. No. 7/27/2019-DGTR dated September 8, 2020
Non-Woven Fabric	Malaysia, Indonesia, Thailand, Saudi Arabia and China PR	F. No.14/23/2015-DGAD dated September 15, 2020
Hot Rolled Flat Products of Stainless Steel - 304 grade	China PR, Malaysia and Korea RP	F.No. 7/16/2019-DGTR dated September 29, 2020

MINISTRY OF FINANCE

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

Product	Country of export	Notification No. and date
Ciprofloxacin Hydrochloride	China PR	Notification No. 28/2020-Cus (ADD) dated September 2, 2020
Float Glass	China PR	Notification No. 29/2020-Cus (ADD) dated September 2, 2020

INDIA CUSTOMS HIGHLIGHTS

- a. Exemption from Duty on Paper Based Taggant, including M-feature. [Notification No. 33/2020-Cus dated September 7, 2020]
- b. The Bill of Entry (Forms) (Amendment) Regulations, 2020 notified. [Notification No. 90/2020-Customs (NT) dated September 17, 2020]
- c. Roll out of Faceless Assessment at PAN India level in all ports of import for all imported goods in phased manner by October 31, 2020. [Circular No. 40/2020-Cus dated September 4, 2020]
- d. Facility of Auto Let Export order under Express Cargo Clearance System allowed for couriers. [Circular No. 41/2020-Cus dated September 7, 2020]
- e. Importers required to furnish 100% of differential Duty as security in case provisional assessment upon initiation of enquiry or verification in terms of the Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020. [Circular No. 42/2020-Cus dated September 29, 2020]
- f. Levy of Duty @5% on import of open cell for LED/LCD TV panels w.e.f. October 1, 2020. [Notification No. 35/2020-Cus dated September 30, 2020]

INDIA GOODS AND SERVICES TAX (GST) HIGHLIGHTS

CENTRAL GOODS AND SERVICES TAX

NOTIFICATIONS

- a. Time limit extended till October 31, 2020 for completion of any compliances which falls during the period March 20 to October 30, 2020, with respect to goods sent or taken out of India on approval basis for sale or return. [Notification No. 66/2020-CT dated September 21, 2020]
- b. Waiver of full amount of late fees for nil return filers and late fees exceeding INR 500 (CGST+SGST) for others, in case of non-filing of returns in Form GSTR-4 (Return for composition taxpayers) for the quarters July 2017 to March 2019 subject to filing of such returns during the period September 22 to October 31, 2020. [Notification No. 67/2020-CT dated September 21, 2020]

- c. Waiver of late fees in excess of INR 500 (CGST+SGST) for non-filing of returns in Form GSTR-10 (Final Return to be filed after cancellation of registration) subject to the condition that the same are filed during September 22 to December 31, 2020. [Notification No. 68/2020-CT dated September 21, 2020]
- d. Due date of filing Form GSTR-9 (Annual Return) along with Form GSTR-9C (Reconciliation Statement and Certification) for the financial year 2018-2019 extended till October 31, 2020. [Notification No. 69/2020-CT dated September 30, 2020]
- e. E-Invoicing made applicable for taxpayers having turnover more than INR 5 Billion from financial year (FY) 2017-18 onwards. Further, E-invoice is also applicable for exports. [Notification No. 70/2020-CT dated September 30, 2020]
- f. Dynamic Quick Response (QR) code on B2C invoices made applicable for taxpayers having turnover more than INR 5 Billion from FY 2017-18 onwards from December 1, 2020. [Notification No. 71/2020-CT dated June 30, 2020]
- g. Exemption on services by way of transportation of goods by aircraft/vessel from customs station of clearance in India to a place outside India extended till September 30, 2021. [Notification No. 04/2020-CT(R) dated September 30, 2020]
- h. Various amendments made in the Central Goods and Services Tax Rules, 2017 (the CGST Rules) in relation to E-invoicing and QR code. [Notification No. 72/2020-CT dated September 30, 2020]

INSTRUCTIONS

- a. Interest on late payment of Tax to be recovered only on net cash liability. Further, Show Cause Notices already issued to persons for payment of interest on gross tax payable would be kept in call book till retrospective amendment in Section 50 of the Central Goods and Services Tax Act, 2017 (the CGST Act). [F.No. CBEC-20/01/08/2019-GST dated September 18, 2020]

IMPORTANT CASE LAWS

GST

- A. The Authority of Advance Rulings (the AAR) decided on questions (i) whether Input Tax Credit (ITC) is available on GST charged by service providers on hiring of bus/motor vehicle having seating capacity of more than thirteen person for transportation of employees to & from workplace, (ii) GST payable on nominal amount recovered by Applicant from employees for usage of bus transportation facility in non-air conditioned bus and (iii) whether ITC

is restricted to cost borne by the Applicant.

The Hon'ble AAR held that no ITC is available on motor vehicles or conveyances used in transport of passenger's transportation facility to its employees, in non-air-conditioned buses having seating capacity of more than 13 persons till February 1, 2019. However, ITC is available on leasing, renting, or hiring of motor vehicles for transportation of persons, having approved seating capacity of more than thirteen persons (including driver) w.e.f. February 1, 2019.

Further, the AAR held that the Applicant is not providing transportation facility to its employees and therefore, not eligible for exemption from GST under Serial No. 15(b) of Notification No. 12/2017-CT (R) dated June 28, 2017 (Notification 12/2017) in relation of nominal amount of recoveries made from employees towards bus transportation services. Accordingly, such transaction between the Applicant and employees is not a supply in terms of serial No. 1 of Schedule III of the CGST Act and therefore, Applicant is not liable to pay GST.

The AAR further held that ITC is required to be restricted to extent of cost borne by Applicant and not the cost borne by employees.

Takeaway: ITC available on transportation facility provided to employees.

[M/s Tata Motors Limited 2020-TIOL-245-AAR-GST]

- B. The department rejected refund of unutilized ITC filed by the Petitioner which is operating as a Special Economic Zone (SEZ) unit. Department contended that Rule 89 of the CGST Rules allows refund of ITC only to supplier of goods or services for supplies made to SEZ unit, however the Petitioner is not supplier of goods or services to SEZ unit but SEZ unit itself, thus, not eligible to claim refund of ITC under Section 54 of the CGST Act. Department further contended that the Petitioner received ITC on services from Input Service Distributor (ISD) which is not supplier of services.

The Hon'ble High Court observed that outward supplies made by SEZ unit is zero rated supply and there is no statutory provision barring refund of accumulated ITC to SEZ unit relating to zero rated supplies. Accordingly, it has been held that the Petitioner is entitled to claim refund of ITC of GST distributed by ISD and there is no specific supplier who can claim refund under GST laws.

Takeaway: Refund of accumulated ITC received from ISD to SEZ unit in relation to zero rated supplies cannot be barred.

[M/s Britannia Industries Vs UOI 2020-TIOL-1495-HC-AHM-GST]

- C. The AAR decided on the question whether different types of wellness packages (the Packages) such as Naturopathy, Ayurveda, Yoga and meditation, Physiotherapy and special therapy (the Therapies) is exempted on account of health care services provided by a clinical establishment in terms of Entry No. 74 of Notification 12/2017.

The Hon'ble AAR observed that the Packages offered by the Applicant for the Therapies is strictly on residence basis and same is evident from the fact that consideration is solely dependent on the type of room opted by customer. Thus, accommodation becomes primary activity in the entire package.

Consequently, it has been held that services provided by the Applicant is composite supply of services, accommodation service, being principal supply falling under Heading 9963. Further it has been held that exemption has been provided to services by way of healthcare services by a clinical establishment services classifiable under Heading 9993 falling under Entry No. 74 of the Notification 12/2017. Thus, benefit of the exemption under the Notification has been denied to the Applicant.

Takeaway: Therapies offered on residential basis by Naturopathy Centres taxable under GST.

[M/s Oswal Industries Limited 2020-TIOL-251-AAR-GST]

- D. The AAR decided on question (i) whether selling of residential flats after date of completion certificate of commercial shops or after first occupancy in building is exempt supply (ii) manner of reversal of ITC on expenses incurred up to date of completion certificate shops (iii) manner of claiming ITC on expenses incurred after date of completion certificate of commercial shops.

The Hon'ble AAR held that since the Applicant has received part building used permission for the commercial shops of ground and first floor and not for residential flat, sale of residential flats in such cases shall be treated as supply of service in terms of Section 5(b) of Schedule-II of the CGST Act.

The Hon'ble AAR further held that manner of reversal of ITC on expenses incurred up to date of completion certificate of commercial shops is provided in Rule 42 and Rule 43 of the CGST Rules. Further it has been held that manner of claiming ITC on expenses incurred

after date of completion certificate of commercial shops is specified under Section 16 and Section 17 of the CGST Act read with Notification No. 16/2019-CT dated March 29, 2019.

Takeaway: GST exempted only to that portion of the building for which completion certificate has been received.

[M/s V2 Realty 2020-TIOL-252-AAR-GST]

- E. The Petitioner challenged the constitutional validity of Section 54(3)(ii) of the CGST Act and Rule 89(5) of the CGST Rules which denies refund of unutilised ITC of 'input services' accumulated on account of inverted duty structure.

The Hon'ble High Court has held that Section 54(3)(ii) of the CGST Act does not infringe Article 14 of the Constitution of India. It was further held that exclusion of unutilised accumulated ITC of input services for claiming refund under inverted duty structure is a valid classification and exercise of legislative power. Thus, the Hon'ble High Court has held that 'Net ITC' defined in Rule 89(5) of the CGST Rules which provides only for refund of accumulated unutilised ITC on account of input goods is in conformity with Section 54(3) (ii) of the CGST Act.

Takeaway: Section 54(3) (ii) of the CGST Act held to be constitutional. It may be noted that the Gujarat High Court in case of VKC Footsteps India Private Limited has held contrary judgement wherein it was held that refund of ITC was allowed on input services in conformity with Section 54(3) of the CGST Act.

[M/s Tvl. Transtonnelstroy Afcons Joint venture Vs UOI 2020-TIOL-1599-HC-MAD-GST]

- F. The Petitioner challenged validity of Orders passed by the department wherein refund of ITC was rejected pursuant to sale of Duty-Free goods from Duty Free Shops (DFS) at the departure area of airport.

The Hon'ble High Court held that goods and services provided in DFS situated at international airports is considered to be outside India i.e. beyond customs frontier of India and considered as zero-rated supply under Section 16 of the Integrated Goods and Services Tax Act, 2017. Thus, the Petitioner was held to be eligible to claim refund of ITC under Section 54(3) of the CGST Act.

Takeaway: Supplies made by DFS are considered as zero-rated supplies under GST laws, thus refund of ITC is allowed under GST laws.

[M/s Cial Duty Free and Retail Services Limited Vs. UOI 2020-TIOL-1622-HC-Kerala-GST]

SERVICE TAX

- G. The Appellant is an authorized SEZ unit and received services from outside India and accordingly, paid Service Tax under reverse charge mechanism (RCM) in terms of Section 66A of the Finance Act, 1994 (the Finance Act). The Appellant claimed refund of Service Tax paid by on services received for use in authorised operations in terms of Notification 40/2012-ST dated June 29, 2012 (Notification 40/2012) read with Notification 12/2013-ST dated July, 2013.

The department rejected refund of Service Tax on ground that challans provided by the Appellant is not substantial documentary evidence for payment of Service Tax under RCM and further, services received from associated enterprises located outside India not taxable in terms of Section 66B of the Finance Act.

The Hon'ble Customs, Excise and Service Tax Appellate Tribunal (CESTAT) held that the Appellant can claim exemption by way refund of Service Tax by indicating such amount of Tax in challan in terms of condition no. 3(f)(ii) of Notification 40/2012. Further, CESTAT held that the Appellant has paid the Service Tax under RCM correctly in terms of second proviso to Rule 7 of the Point of Taxation Rules, 2011 and there is no essential condition of payment of amount to the service provider to avail refund of service tax paid under RCM.

Takeaway: Challan is substantial documentary evidence for payment of Tax under RCM.

[M/s Cummins Technologies India Private Limited Vs CST, 2020-TIOL-1404-CESTAT-DEL]

- H. The Appellant provided works contract services to Andhra Pradesh Power Generation Corporation (APGENCO), Andhra Pradesh Tourism Development Corporation (APTDC). Further, the Appellant claimed exemption from payment of Service Tax in terms of Entry 12(a) of Notification No. 25/2012-ST dated June 20, 2012 (Notification 25/2012) relating to works contract services provided to government authority. Further, the Appellant has entered into development agreement with landlords for construction of residential complex and not paid Service Tax on construction of residential complexes allocated to landowner.

The department alleged that the Appellant is not eligible for exemption from Service Tax for providing Services to APGENCO and APTDC and liable to pay Service Tax on construction of residential complex which is allocated to landowner in terms of development agreement entered between the Appellant and landowner.

The Hon'ble CESTAT held that APGENCO and APTDC is established by the Government of Andhra Pradesh under various statutory acts and under control of various ministries of state government. Therefore, works contract services provided by the Appellant to APGENCO and APTDC is exempted in terms of Notification 25/2012.

It was further held development agreement entered between the Appellant with landowner in relation to construction of residential flats is on principal to principal basis with no element of service provided to landowner. Thus, the Appellant is not liable to pay Service Tax on construction of residential flats allocated to landowner.

Takeaway: Service Tax not payable on construction of residential flats allocated to landowner in terms of exemption provided under Notification 25/2012.

[M/s Krishi Constructions Private limited Vs CCT Service Tax Order No. A/30922/2020 dated September 22, 2020]

CUSTOMS

- I. The Hon'ble Supreme Court decided the issue of applicability of 200% Duty on specified goods originating in or exported from Pakistan which had arrived in customs station and bill of entry was presented before issuance of Notification No. 5/2019-Cus dated February 16, 2019 (Notification 5/2019). The customs officer exercised power of re-assessments for bill entry presented on February 16, 2019 in terms of Section 17(4) of the Customs Act, 1962 (the Customs Act) and accordingly, imposed 200% Duty on the importer.

The Hon'ble Supreme Court held that bill of entry was presented before Notification 5/2019 was uploaded on Central Board of Indirect Taxes and Customs website. Notification 5/2019 cannot be used to alter the rate of Duty in respect of bill of entry presented several hours ago. Further, the department cannot exercise power of re-assessment under Section 17(4) of the Customs Act for self-assessments made earlier in the day. Therefore, Duty of 200% is not imposable on the importer.

Takeaway: Increased in rate of Duty on imported goods cannot be levied with retrospective effect.

[UOI and Ors Vs M/s GS Chatha Rice Mills and ANR 2020-TIOL-157-SC-CUS-LB]

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