



INDIRECT TAX

Newsletter

November 2020



FROM THE DESK OF



Manoj K. Singh
Founding Partner

Dear Friends,

It gives me immense pleasure to launch Issue III of the S&A - Indirect Tax Newsletter.

Introduction of the Goods and Services Tax (GST) has benefited the economy in terms of reduction in the overall tax burden on goods and services and also made Indian products competitive in the domestic and international markets. The one tax system in place of number of taxes also helps in reducing the compliance burden.

In this regard, compliance for second year of GST will be completed once the Annual Return (Form GSTR-9/9A) and reconciliation statement in Form GSTR-9C for financial year 2018-19 is filed by the taxpayers. In view of the national pandemic and need of the hour, the Government has extended the due date for filing of Form GSTR-9, Form GSTR-9A and Form GSTR-9C till December 31, 2020.

Another noteworthy development under GST is judgement of Division Bench of Hon'ble Madras High Court in the case of Sutherland Global Services Private Limited wherein transition of credit of Cesses under GST has been disallowed. The Hon'ble Court has reversed the decision of the Single Judge. This is yet another example of ambiguity in interpretation of GST laws and adds to the woe of the assessee.

Newsworthy developments in the arena of indirect tax, customs and foreign trade is being presented before you through our dedicated monthly Newsletter. I hope this newsletter serves you well as a knowledge repository for the latest and most important developments in this field.

Thank you.

FROM THE DESK OF



Smita Singh
Practice Lead -
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Dear Friends,

Through this newsletter, we aim to share recent newsworthy developments and pertinent information allied to regulatory reforms and updates from the Indirect Tax, Customs and Trade laws. All information shared herein is based on information collated through research and appraisal of applicable statutory provisions.

Due to current economic scenario and as part of the Government's endeavour to ease out compliance burden on the assessee, due dates for filing Form GSTR-1 and Form GSTR-3B for the period October 2020 to March 2021 has been extended. Further, due date for filing annual return in Form GSTR-9/ GSTR-9A and reconciliation statement in Form GSTR-9C for financial year 2018-19 has been extended to December 31, 2020.

The Customs Authority of Advance Ruling has been made operational in the States of Delhi & Maharashtra. The other important development is ban on import of AC which covers Split System with Refrigerants.

In addition to the above highlights, the newsletter also contains other updates from GST, Customs and Trade & Regulatory Laws 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 or smita@singhassociates.in

Thank you.

INDIA REGULATORY & TRADE HIGHLIGHTS

FOREIGN TRADE

a. Revision of export policy for the following, subject to specified conditions:

Items	Change in Export Policy	Notification No. and date
Alcohol based Hand Sanitizers	'Prohibited' to 'Free'	Notification No. 40/2015-2020 dated October 15, 2020
N-95/FFP-2 masks or its equivalent	'Restricted' to 'Free'	Notification No. 36/2015-2020 dated October 6, 2020
Nitrile/NBR Gloves	'Prohibited' to 'Restricted'	Notification No. 42/2015-2020 dated October 22, 2020
Onion Seeds	'Restricted' to 'Prohibited'	Notification No. 43/2015-2020 dated October 29, 2020

- b. Ban on import of air conditioners (AC) with refrigerants covering both split system and other kinds. [Notification No. 41/2015-2020 dated October 15, 2020]
- c. Benefit of Duty Free Import Authorisation (DFIA) scheme on import of tyres not allowed. [Notification No. 38/2015-2020 dated October 06, 2020]
- d. Due date for submission of documents for fulfilment of export obligation under advance authorizations expiring between February 01 to October 31, 2020 extended till December 31, 2020. [Public Notice No. 26/2015-2020 dated October 16, 2020]
- e. Steel manufactures allowed to claim Duty Drawback extended on supply of steel through service centers/distributors/dealers/Stock yards. [Notification No. 35/2015-2020 dated October 1, 2020]
- f. Procedure and criteria prescribed for submission and approval of applications for export of diagnostic kits. [Trade Notice No. 29/2020-21 dated October 13, 2020]
- g. Procedure and criteria for submission and approval of applications for export of Nitrile/NBR gloves. [Trade Notice No. 31/2020-21 dated October 27, 2020]
- h. Facility of electronic filing and issuance of preferential Certificate of Origin (CoO) extended to exports made under the Generalized System of Preferences (GSP), the Global System of Trade Preferences (GSTP), the India Malaysia Comprehensive Economic Cooperation Agreement (IMCECA) and the India Singapore Comprehensive Economic Cooperation Agreement

(ISCECA) w.e.f. October 15, 2020. [Trade Notice No. 30/2020-21 dated October 13, 2020]

- i. Procedure prescribed for linking/registration of Import Export Code (IEC) to new DGFT on-line platform. [Trade Notice No. 33/2020-21 dated October 28, 2020]

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

- a. Final findings issued in Safeguard Duty investigation concerning import of Polybutadiene Rubber from Korea RP under the India-Korea Comprehensive Economic Partnership Agreement (Bilateral Safeguard measures) Rules, 2017. [Notification No. 22/7/2019-DGTR dated October 22, 2020]
- b. Anti-Dumping Duty investigations initiated concerning import of:

Product	Country of export	Notification No. and date
Low Density Polyethylene (LDPE)	Qatar, Saudi Arabia, Singapore, Thailand, UAE and USA	F.No. 6/30/2020-DGTR dated October 23, 2020

- c. Final findings in midterm review investigations for levy of Anti-Dumping Duty on import of:

Product	Country of export	Notification No. and date
Glass Fibre and articles	China PR	F.No. 07/17/2019 dated October 03, 2020

MINISTRY OF FINANCE

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

Product	Country of export	Notification No. and date
Plain Medium Density Fibre Board of thickness 6mm and above	China PR, Malaysia, Sri Lanka and Thailand	Notification No. 30/2020-Cus (ADD) dated October 13, 2020
Front Axle Beam and Steering Knuckles meant for heavy and medium commercial vehicles	China PR	Notification No. 31/2020-Cus (ADD) dated October 16, 2020
Fully Drawn or Fully Oriented Yarn/Spin Draw Yarn/Flat Yarn of Polyester	China PR & Thailand	Notification No. 32/2020-Cus (ADD) dated October 19, 2020
Fluoroelastomers (FKM)	China PR	Notification No. 33/2020-Cus (ADD) dated October 27, 2020

b. Levy of Countervailing Duty on import of:

Product	Country of export	Notification No. and date
Flat Products of Stainless Steel	Indonesia	Notification No. 2/2020-Cus (CVD) dated October 9, 2020

INDIA CUSTOMS HIGHLIGHTS

- a. Exemption from payment of Duty on import of goods against Duty Credit Scrip under Rebate of State and Central Taxes and Levies Scheme (RoSCTL Scheme) extended to March 31, 2021 or until RoSCTL Scheme is merged with the RoDTEP Scheme, whichever is earlier. [Notification No. 36/2020-Cus dated October 5, 2020]
- b. Rate of Duty revised on import of Polybutadiene Rubber originating from Korea RP under the India-Korea Comprehensive Economic Partnership Agreement. [Notification No. 37/2020-Cus dated October 20, 2020]
- c. Procedure prescribed for inspection of Inland Container Depots (ICDs), Container Freight Stations (CFCs) and Air Freight Stations (AFSs). [Circular No. 44/2020-Cus dated October 8, 2020]
- d. Measures for faceless assessment prescribed relating to streamlining attendance of bill of entry during holidays, raising of queries, ordering First Check, re-assessment and submission of CoO. [Circular No. 45/2020-Cus dated October 12, 2020]
- e. Contactless delivery of international consignments allowed through generation and validation of One Time Password (OTP). [Circular No. 47/2020-Cus dated October 20, 2020]
- f. Operationalisation of the Customs Authority of Advance Rulings in the states of Delhi & Maharashtra. [Notification No. 102/2020-Cus (NT) dated October 23, 2020]
- g. Clarification issued in relation to manufacturing and other operations undertaken in bonded warehouses under Section 65 of the Customs Act, 1962 [Circular No. 48/2020-Cus dated October 27, 2020]

INDIA GOODS AND SERVICES TAX (GST) HIGHLIGHTS

a. Due date for filing Form GSTR-1 extended

Particulars	Period	Extended date	Notification
Registered persons having aggregate turnover of up to INR 15 million in the preceding financial year (FY) or the current FY	October to December, 2020	January 13, 2021	Notification No. 74/2020-CT dated October 15, 2020
	January to March 2021	April 13, 2021	
Registered persons having aggregate turnover of more than INR 15 million in the preceding FY or the current FY	October 2020 to March 2021	11 th of succeeding month	Notification No. 75/2020-CT dated October 15, 2020

b. Due date for filing Form GSTR-3B extended

Particulars	Period	Extended date	Notification
Registered persons having aggregate turnover of more than INR 50 million in the preceding FY or the current FY	October 2020 to March 2021	20 th day of succeeding month	Notification No. 76/2020-CT dated October 15, 2020
Registered persons having aggregate turnover of upto INR 50 million in the preceding FY and having principal place of business in Category A States and Union Territories (UTs)*		22 nd month of succeeding month	
Registered persons having aggregate turnover of upto INR 50 million in the preceding FY and having principal place of business in Category B States and UTs**		24 th day of succeeding month	

*Category A States and UTs: Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh, the UTs of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman & Nicobar Islands and Lakshadweep.

****Category B States and UTs:** Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha, UTs of Jammu and Kashmir, Ladakh, Chandigarh and Delhi.

- c. Option of filing Form GSTR-9/9A (Annual Return) for registered persons having turnover of up to INR 20 million for FY 2019-2020. [Notification No. 77/2020-CT dated October 15, 2020]
- d. Number of digits of Harmonized System of Nomenclature (HSN) Code to be mentioned in tax invoice revised w.e.f. April 1, 2021 for specified persons

Particulars	Number of digits of HSN	Notification
Registered persons having aggregate turnover of up to INR 50 million in the preceding FY	4	Notification No. 78/2020-CT & Notification 06/2020-IT, both dated Octobers 15, 2020
Registered persons having aggregate turnover of more than INR 50 million in the preceding FY	6	
Registered persons having aggregate turnover of up to INR 50 million in the preceding FY making supplies to unregistered persons	Not mandatory	

- e. Exemption from payment of Tax on Satellite Launch Services supplied by the Indian Space Research Organizations, Antrix Corporation Limited or New Space India Limited. [Notification No. 05/2020-CT(R), IT(R) & UT(R), all dated October 16, 2020]
- f. Various amendments made in the Central Goods and Services Rules, 2017 (the CGST Rules), as enumerated below:

Amended provision in the CGST Rules	Amendment
Proviso to Rule 46	The Central Board of Indirect Taxes and Customs (CBIC) empowered to issue notification specifying class of supply of goods or services for which specified number of digits of HSN code to be mentioned on tax invoice.
Rule 67A	Extends facility of furnishing nil statement through short message service (SMS) to Form GST CMP-08 (in relation to composition dealers).

Proviso to Rule 80(3)	Registered persons having aggregate turnover of more than INR 50 Million for the FY 2019-2020 only required to file Form GSTR-9C (Reconciliation Statement and Certification).
Fourth Proviso to Rule 138E (w.e.f. March 20, 2020)	Taxpayers who have not furnished GST returns from March 20 to October 15, 2020 for consecutive period of two months can generate E-waybill.
Sub rule 1(A) of Rule 142	Proper officer provided option to communicate liability before issuance of show cause notice under Section 73 and Section 74 of the Central Goods and Services Tax Act, 2017 (the CGST Act).

Further, various forms amended. [Notification No. 79/2020-CT dated October 15, 2020]

- g. Relaxation from implementation of E-invoice in the month of October 2020 subject to obtaining of Invoice Reference Number (IRN) from the Invoice Reference Portal (IRP) within 30 days of date of issue of invoice. [Notification No. 73/2020-CT dated October 1, 2020]
- h. Due date for filing annual return in Form GSTR-9 and reconciliation statement in Form GSTR-9C for financial year 2018-19 extended to December 31, 2020. [Notification No. 80/2020 dated October 28, 2020]
- i. Reconciliation of Input Tax Credit (ITC) availed in Form GSTR-3B with Form GSTR-2A to be done cumulatively for the period February to August 2020 and excess ITC claimed if any to be reversed in the Table 4(B)(2) of Form GSTR- 3B for the month of September 2020. Reconciliation of ITC for the month of September 2020 to be done independently. [Circular No. 142/12/2020-GST dated October 9, 2020]

IMPORTANT CASE LAWS

GST

- A. The Hon'ble Authority of Advance Ruling (the AAR) decided on the question regarding restriction of ITC on (i) medicines supplied to patients admitted in hospitals (ii) medicines supplied to patients treated as outpatients (iii) medicines supplied to other than inpatients and outpatients (iv) supply of food and beverages to patients admitted in hospital?

The Hon'ble AAR held that healthcare services supplied by hospital is exempted supply under GST and therefore, ITC is restricted on medicines used in supply of healthcare services provided to inpatients/outpatients. Further, cases where medicines are supplied independent of health care services to outpatients/customers and GST is discharged on such supply, the Applicant is eligible to claim ITC on said medicines.

It has been further held that ITC is restricted on supply of food and beverages by hospitals to inpatients as same is part of health care services.

Takeaway: ITC is not available when outward supplies is 'health care services'.

[M/s Ambara KAR ADRG 51/2020 dated October 8, 2020]

- B. The AAR decided on the question whether services provided by the Applicant to Bihar School Educational Board (BSEB) by way of conducting of examination and post examination process such as scanning of OMR Flying slip, OMR Marks Foil, OMR attendance sheet, OMR absentee sheet along with data extraction and finalisation of data (the Services) is exempted from GST in terms of Serial No. 66 of Notification No. 12/2017-CT(R) dated June 28, 2017 [Notification 12/2017]?

The Hon'ble AAR observed that the process of conducting examination is not limited to a test center but will also include scanning of answer sheets and quantifying marks which is also an essential part of the examination process. In view of the above it has been held that work awarded by BSEB to the Applicant qualifies as conduct of examination, therefore, the Services provided by the Applicant is covered under "other educational support services" falling under heading 999299 of the scheme of classification of services and exempted from payment of GST in terms of Serial No. 66 of Notification 12/2017.

Takeaway: Services provided by way of scanning of answer sheets and quantifying the marks qualify as conducting examination and thus, exempted under GST.

[M/s Datacon Technologies KAR ADRG 47/2020 dated September 11, 2020]

- C. The Applicant's Head Office (HO) is incorporated in Germany and engaged in the business of promoting applied research. HO has established its Liaison Office (LO) in India which is acting as an extended arm to carry out activities permitted by the Reserve Bank of India. The Hon'ble AAR decided on questions whether (i) activities of LO amount to supply of services (ii) the Applicant is required to be registered under GST as it accounts for no income (iii) In case answer to (i) is yes, then whether LO is liable to pay GST?

The Hon'ble AAR held that the activities performed by LO in India are covered under definition of 'business' under Section 2(17) of the CGST Act, thus, services provided by LO qualifies as supply of services. The Hon'ble AAR further held that HO and LO are related parties and distinct persons as the Applicant has an establishment in India (LO) and outside India (HO), thus, services performed by LO cannot be said to be export of services.

The Hon'ble AAR further observed that LO has facilitated supply of services between HO and its Indian customers and does not make any supply of services on its own. Hence, activities carried out by the Applicant would qualify as 'intermediary services' in terms of Section 2(13) of the IGST Act and place of supply shall be in India. Accordingly, the exemption under Entry 10 of Notification 9/2017 - Integrated Tax (R) dated June 28, 2017 is not available to LO. The Hon'ble AAR also held that LO has provided inter-state supply of services to HO, therefore, required to take compulsory registration in terms of Section 24 of the IGST Act and pay applicable GST.

Takeaway: HO and LO is treated as establishments of distinct persons.

[M/s Fraunhofer-Gesellschaft Zur Forderung der angewandten Forschung KAR ADRG 50/2020 dated October 8, 2020]

- D. The Division bench of the Hon'ble High Court of Madras held that Cenvat credit or ITC under GST regime is in nature of 'concessions' and 'facility' and not a 'vested right'. Further, the Hon'ble High Court held that transition of unutilized ITC is allowed only in respect of taxes and duties which were subsumed in new GST laws. Since the Education Cess, Secondary and Higher Education Cess and Krishi Kalyan Cess (the Cesses) have not been subsumed under new GST laws either by the parliament or by the States, question of transitioning into GST regime and giving ITC against output tax liability does not arise. Further it has been held that the object of GST law would be defeated by allowing ITC on Cesses. Hence, taxpayer is not entitled to carry forward and set off the unutilized Cesses against output tax liability in terms of Section 140 of the CGST Act.

The Hon'ble bench has reversed the Single Member judgment which has earlier allowed carry forward of unutilized Cenvat credit into GST regime.

Takeaway: Taxpayer not eligible to carry forward unutilized Cenvat credit of the Cesses from previous regime into GST.

[UOI vs Sutherland Global Services Private Limited Writ Appeal No. 53 of 2020 dated October 16, 2020]

SERVICE TAX

- E. The Appellant received services for collating and uploading details/information of employees in database and call detailed processing service of employees (Administrative Services) from service providers. Further, the Appellant used global telecommunication channel set-up by its overseas group entities for making calls, mails, messaging, internet etc. (Networking Services). Also, the Appellant has entered into employment contract with employees (the Employees) of overseas entities in terms of which the Employees would be on payroll of the Appellant and required to work under control/supervision of the Appellant on secondment.

The Hon'ble Customs Excise Service Tax Appellate Tribunal (the CESTAT) decided on issues whether (i) Administrative Services received by the Appellant is classified under 'Business Support Services' (ii) Networking Services received by the Appellant is classifiable under 'Online Information Database Access and Retrieval Services' (OIDAR) (iii) the Appellant has received manpower recruitment and supply agency service for hiring employees of overseas group entities on secondment?

The Hon'ble CESTAT held that Administrative Services received by the Appellant was included in taxable category of 'business support services' w.e.f. May 1, 2011 and therefore, not classifiable under 'business support services' prior to May 1, 2011. Further, the Hon'ble CESTAT held that overseas group entities has created a network of computers and provided connectivity between different group entities so that information and data can be exchanged. The information flows both ways from the Appellant to other global entities and vice versa and thus, the Appellant becomes both service provider and service receiver at times. Further, the amount paid by the Appellant against information received from the overseas group entities is also not substantiating the fact that it would fall under taxable category of 'OIDAR'. Thus, Networking Services received by the Appellant is not classifiable under taxable category of 'OIDAR'.

The Hon'ble CESTAT further held that activity of hiring employees of overseas group entities

on secondment would not be classifiable under taxable category of ‘manpower recruitment or supply agency’s services’ as there exists an employer-employee relationship between the Appellant and the seconded employees.

Takeaway: Information and data exchanged between different group entities not classifiable under OIDAR and activity of hiring employees of overseas group entities on secondment would not be classifiable under taxable category of ‘manpower recruitment or supply agency’s services’.

[M/s. Goldman Sachs Services vs. CCT Final Order No. 20734-20735/2020 dated October 1, 2020]

CENTRAL EXCISE

- F. The Appellant was engaged in the manufacture of Zinc / Lead / Bulk Concentrate Sulphuric Acid, Zinc Cathode (the Goods) and availed various services such as Cost & Freight (C&F), Testing, Sampling, etc. (the Services) at port as the Services were necessary for export of goods. Accordingly, the Appellant availed Cenvat credit of Services used for exporting the Goods. The department disallowed Cenvat Credit on same and contended that the Services were availed beyond place of removal, therefore, would not qualify as input services in terms of Rule 2(l) of the Cenvat Credit Rules, 2004 (the Cenvat Credit Rules).

The Hon’ble CESTAT held that the place of removal is the place where sale takes place i.e. place where property in goods passes from seller to the buyer and in the instant case the property in the Goods is passed to buyer only at the port when shipping bill is filed and LeT export order is obtained. Therefore, the Services were used by the Appellant prior to obtaining LeT export order and hence, qualify as ‘input services’ in terms of Rule 2(l) of the Cenvat Credit Rules. Thus, the Appellant is entitled to avail the Cenvat credit on Tax paid on Services used for exports of the Goods.

Takeaway: Place of removal in case of export of goods would be the place where shipping bill is filed and LeT export order is obtained.

[M/s Hindustan Zinc Ltd v. CCE Final Order No. 50852/2020 dated October 8, 2020]

CUSTOMS

- G. The Hon’ble High Court decided the issue in relation to release of onions for export where shipping bill was generated before issuance of Notification No. 31/2015-2020 dated September 14, 2020 (Notification 31/2015-2020) issued by DGFT prohibiting export of all varieties of onions.

The Hon'ble High Court held that shipping bill was generated before Notification 31/2015-2020 was uploaded in e-gazette. Therefore, export of onions to be allowed in respect of shipping bill generated prior to issuance of Notification 31/2015-2020 in e-gazette.

Takeaway: Applicability of notification would come in effect from time it is published in e-gazette.

[Horticulture Produce Exporters Association Vs UOI Writ Petition (ST) No. 93074 of 2020 dated October 20, 2020]

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