



INDIRECT TAX

Newsletter

December 2020

INDIA REGULATORY & TRADE HIGHLIGHTS

FOREIGN TRADE

- a. The Directorate General of Foreign Trade (DGFT) has invited suggestions/inputs from various stakeholders for the new Foreign Trade Policy. [Trade Notice No. 34/2020-21 dated November 12, 2020]

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

- a. Anti-Dumping Duty investigations terminated on import of:

Product	Country of export	Notification No. and date
Isononanol (INA), 2-Propylheptyl Alcohol (2-PH), 2-Ethyl Hexanol (2-EH)	Saudi Arabia and Singapore	F. No. 14/22//2016-DGAD dated November 11, 2020
Mono Ethylene Glycol	Kuwait, Oman, Singapore, and UAE	F. No. 6/29//2019-DGTR dated November 20, 2020

- b. Preliminary findings in Anti-dumping investigation on import of:

Product	Country of export	Notification No. and date
Rubber Chemical PX-13	China PR, Korea RP, and USA	F. No. 6/20/2020-DGTR dated November 11, 2020

- c. Final findings in Sunset Review investigation on import of:

Product	Country of export	Notification No. and date
Nylon Tyre Cord Fabric	China PR	F. No.7/22/2019- DGTR dated October 29, 2020
Caustic Soda	China PR and Korea RP	F. No.7/1/2020- DGTR dated October 29, 2020
All Fully Drawn or Fully Oriented Yarn/ Spin Drawn Yarn/ Flat Yarn of Polyester	China PR and Thailand	F. No.7/9/2020- DGTR dated November 24, 2020

MINISTRY OF FINANCE

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

Product	Country of export	Notification No. and date
Carbon black used in rubber applications	China PR & Russia	Notification No. 34/2020-Cus. (ADD) dated November 9, 2020
Flax or Linen fabric having flax content of more than 50%	China PR & Hong Kong	Notification No. 35/2020-Cus. (ADD) dated November 10, 2020
Clear Float Glass of nominal thicknesses ranging from 4mm to 12mm (both inclusive), the nominal thickness being as per BIS 14900:2000	Malaysia	Notification No. 37/2020-Cus. (ADD) dated November 11, 2020
Phthalic Anhydride	Japan & Russia	Notification No. 38/2020-Cus. (ADD) dated November 19, 2020
All Fully Drawn or Fully Oriented Yarn/Spin Draw Yarn/Flat Yarn of Polyester	China PR & Thailand	Notification No. 39/2020-Cus. (ADD) dated November 26, 2020

b. Revocation of Anti-Dumping Duty on import of:

Product	Country of export	Notification No. and date
Acrylic Fibre	Thailand	Notification No. 36/2020-Cus. (ADD) dated November 11, 2020

INDIA CUSTOMS HIGHLIGHTS

- Rate of basic custom duty increased from Nil to 5% on import of specified parts for manufacture of Open Cell for LED/LCD TV Panels. [Notification No. 42/2020-Cus. dated November 11, 2020]
- Policy and guidelines prescribed for setting up of Inland Container Depots, Container Freight Stations and Air Freight Stations [Circular No. 50/2020-Cus. dated November 5, 2020]
- Custom Officers directed to ensure strict compliance of legal prohibitions with respect to imports/exports from/to North Korea [Instruction No. 19/2020-Cus. dated November 18, 2020]
- Procedure prescribed for claiming exemption on import and re-export of marine containers

which do not conform to the standard marine container dimensions. [Circular No. 51/2020-Cus. dated November 20, 2020]

INDIA GOODS AND SERVICES TAX (GST) HIGHLIGHTS

- a. Section 39 of the Central Goods and Services Tax Act, 2017 (the CGST Act) amended with respect to form, manner and time for furnishing GST returns w.e.f. November 10, 2020. [Notification No. 81/2020-CT dated November 10, 2020]
- b. Various amendments made in the Central Goods and Services Rules, 2017 with respect to time and manner of filing GST returns. [Notification No. 82/2020-CT dated November 10, 2020]
- c. Time limit for filing monthly Form GSTR-1 extended till 11th day of next month and quarterly Form GSTR-1 required to be filed till 13th day of next month succeeding the quarter w.e.f. January 1, 2021. [Notification No. 83/2020-CT dated November 10, 2020]
- d. Registered persons can change default option electronically in relation to periodicity of filing Form GSTR-1 on GST portal during the period December 5, 2020 to January 31, 2021. [Notification No. 84/2020-CT dated November 10, 2020]
- e. Special procedure prescribed for making payment of 35% Tax liability in first two months for taxpayers opting for filing quarterly returns w.e.f. January 1, 2021. [Notification No. 85/2020-CT dated November 10, 2020]
- f. Due dates of filing Form GSTR-3B for period October 2020 to March 2021 for taxpayers having an aggregate turnover of up to INR 50 Million in previous financial year (FY) not applicable with implementation of new scheme for quarterly return filing along with monthly payment of Taxes (QRMP). [Notification No. 86/2020-CT dated November 10, 2020]
- g. E-invoicing made mandatory in cases where aggregate turnover of registered persons exceeds INR 1 billion w.e.f. January 1, 2021. [Notification No. 88/2020-CT dated November 10, 2020]
- h. Penalty waived for non-compliance of provisions of Dynamic Quick Response Code in B2C invoices for default during the period December 01, 2020 to March 31, 2021, subject to condition that such compliance is done till April 01, 2021. [Notification No. 89/2020-CT dated November 29, 2020]
- i. Clarification issued in relation to implementation of QRMP scheme to be effective January 1, 2021, key features of which are summarised below:

- Registered person to opt QRMP scheme for any quarter from first day of second month of preceding quarter to last day of the first month of quarter.
- The Scheme to be opted GSTIN wise.
- The Scheme is applicable for registered person who has aggregate turnover of up to INR 50 Million in preceding FY.
- Form GSTR-1 to be filled quarterly by 13th of the month following the quarter.
- Monthly invoices to be uploaded in Invoice Furnishing Facility so that invoices are reflected in Form GSTR-2A of the recipient.
- Registered person to pay Tax due in each of the first two months of a quarter by depositing due amount in Form GST PMT-06 by 25th of the month succeeding such month.
- As an option, registered person can pay 35% of cash liability paid in last quarter, in each of the first two months.
- Form GSTR-3B to be filed quarterly on or before 22nd or 24th day of the month succeeding such quarter.

[Circular No. 143/13/2020-GST dated November 10, 2020]

IMPORTANT CASE LAWS

GST

- A. Material question raised before the Hon'ble High Court was whether audit/verification contemplated under Rule 5A of the Service Tax Rules, 1994 (the Service Tax Rules) is saved despite repeal of Chapter V of the Finance Act, 1994 (Finance Act)?

The Hon'ble High Court held that Section 174(2)(e) of CGST Act specifically empowers authorities to institute any investigation, inquiry, verification, assessment proceedings, adjudication, etc. including service tax. Therefore, it has been held that Rule 5A of the Service Tax Rules framed under the repealed/omitted Finance Act, is saved.

Takeaway: Service Tax Audit can also be conducted in GST regime.

[Vianaar Homes (P.) Ltd. Vs AC, CGST WP (C) No. 2245 of 2020 & CM Application No. 7832 of 2020 dated November 3, 2020 (Delhi High Court)]

- B. The Petitioner did not file GST TRAN-1 on or before the due date i.e. December 27, 2017 and therefore, applied for manual filing of Form GST TRAN-1 in terms of Circular No. 39/13/2018-GST dated April 3, 2018. The application was rejected on the basis that the Petitioner has not tried to save or submit or file TRAN-1 before the due date.

The Petitioner filed Writ Petition (WP) for allowing filing of Form GST TRAN-1 electronically or physically and carry forward the eligible input tax credit (ITC) in the electronic credit ledger.

The Hon'ble High Court held that mere technicality cannot come in the way of substantial justice. Therefore, denial of ITC merely on technical grounds is not justified when the Petitioner is eligible to claim ITC otherwise. Accordingly, the Petition was allowed.

Takeaway: Transition of ITC cannot be denied merely on technical grounds.

[Heritage Lifestyles and Developers and Pvt. Ltd. vs UOI - WP (ST.) No.3705 of 2020 dated November 5, 2020 (Bombay High Court)]

- C. The Applicant sought advance ruling whether leasing of pathway to an individual's dwelling unit is taxable under GST?

The Hon'ble Authority of Advance Rulings (AAR) observed that the Applicant has given right to use the pathway to the individual so as to access the main road from residential property. Such pathway although is owned by the Applicant but is used by both the Applicant and the individual.

The Hon'ble AAR further observed that this right of use of 'pathway' granted for a fixed period for an amount qualifies the definition of 'Easement' in terms of Section 4 of the Indian Easement Act, 1882. Thus, it is not only a lease of pathway but also grant of easement rights to the individual by the Applicant. Therefore, such services are not covered under heading 9972 (renting or leasing of property).

Accordingly, the Hon'ble AAR held that act of agreeing to grant easement rights is a service of agreeing to tolerate an act and, thus classifiable under heading 999794 (Miscellaneous services/agreeing to tolerate an act) and taxable under GST.

Takeaway: Right to use of pathway to a person granted for a fixed period is taxable @18%

[Chennai Metro Rail Ltd. Order No. 26/ARA/2020 dated May 12, 2020 (Tamil Nadu AAR)]

SERVICE TAX

- D. The Appellant entered into an agreement with a Distributor for grant of theatrical exhibition rights in return for a share in the Net Box Office Collection with the Distributor for the same. Department raised demand of Service Tax classifying the transaction under ‘Renting of Immovable Property’ service.

The Hon’ble CESTAT held that the Appellant had used and occupied the theatre in its own right to screen films and at no point was the theatre used by the Distributor. In addition to this, it is the Appellant who makes payment to the Distributor. Thus, no service tax can be levied on the Appellant.

Takeaway: Service tax not leviable under renting on immovable for exhibition of films in theatres.

[Golcha Properties Pvt. Ltd vs. CST Final Order No. 51572 / 2020 dated November 2, 2020]

Trust you will enjoy reading this issue, please feel free to contact and send your valuable inputs/ comments at newsletter@singhassociates.in/ smita@singhassociates.in

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