

# **INDIRECT TAX Newsletter**

**January 2021**

# INDIA REGULATORY & TRADE HIGHLIGHTS

## FOREIGN TRADE

a. Revision of import policy, subject to specified conditions:

Items	Change in import Policy	Notification No. and date
Medical Goggles and Nitrile/NBR Gloves	'Restricted to free'	Notification No. 47/2015-2020 dated December 21, 2020
Anthracite Coal, Bituminous Coal, Coking Coal, Steam Coal, Other Coal	'Free' to 'Free subject to compulsory registration under Coal Import Monitoring systems (CIMS)'	Notification No. 49/2015-2020 dated December 22, 2020

- b. Applicability of export policy condition for regarding requirement of Certificate of Inspection from Export Inspection Council/Export Inspection Agency for export of non-Basmati Rice and Basmati Rice (dehusked brown, semi milled, milled both in either par-boiled or raw condition) to European countries extended to July 1, 2021. [Notification No. 51/2015-2020 dated December 29, 2020]
- c. Procedure revised for modification of Import-Export Code (IEC). [Public Notice No. 34/2020 dated December 24, 2020]
- d. Exim codes specified for wall fans, open cell for television set, solar cells not assembled and solar cells, assembled in modules or made up into panels. [Notification No. 48/2015-2020 dated December 22, 2020]
- e. Procedure revised for import under the Tariff Rate Quota (TRQ) scheme. [Public Notice No. 32/2015-2020 December 16, 2020]

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

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

Product	Country of export	Notification No. and date
Flat rolled products of stainless steel	China PR, Korea RP, EU, Japan, Taiwan, Indonesia, USA, Thailand, South Africa, UAE, Hong Kong, Singapore, Mexico, Vietnam and Malaysia	Notification No. 6/12/2019-DGTR dated December 23, 2020
Faced Glass wool in rolls	China PR	Notification No. 6/23/2019-DGTR dated December 22, 2020
Caustic Soda	Japan, Iran, Qatar and Oman	Notification No. 6/36/2020-DGTR dated December 17, 2020
Phenol	EU and Singapore	Notification No. 7/41/2020-DGTR dated December 31, 2020

b. Countervailing Duty/Anti-subsidy Duty investigations initiated on import of:

Product	Country of export	Notification No. and date
Aluminum Primary Foundry Alloy Ingot	Malaysia	Notification No. 6/43/2020-DGTR dated December 24, 2020

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

Product	Country of export	Notification No. and date
Polyethylene Terephthalate (PET Resin)	China PR	Notification No. 6/24/2019-DGTR dated December 28, 2020
Viscose Spun Yarn	China PR, Indonesia and Vietnam	Notification No. 6/41/2019-DGTR dated December 30, 2020

d. Final findings issued in Countervailing Duty/Anti-subsidy Duty investigation on import of:

Product	Country of export	Notification No. and date
Textured Tempered Glass whether Coated or Uncoated	Malaysia	Notification No. 6/13/2019-DGTR dated December 11,2020
Clear Float Glass	Malaysia	Notification No. 6/14/2019-DGTR dated December 29, 2020

e. Final findings issued in Mid-Term review for levy of Anti-Dumping Duty on import of:

Product	Country of export	Notification No. and date
Polytetrafluoroethylene (PTFE)	Russia	Notification No. 7/10/2020- DGTR dated December 18, 2020

f. Final findings issued in Sunset Review investigations of Anti-Dumping Duty on import of:

Product	Country of export	Notification No. and date
Front Axle Beam and Steering Knuckles meant for heavy and medium commercial vehicles	China PR	Notification No. 7/26/2020- DGTR dated December 24, 2020
Phenol	South Africa	Notification No. 7/25/2019- DGTR dated December 22, 2020
Carbon Black used in Rubber Applications	China PR and Russia	Notification No. 7/15/2020- DGTR dated December 22, 2020

g. Final findings issued in Anti-Circumvention investigation concerning import of:

Product	Country of export	Notification No. and date
Cold Rolled Flat Products of Stainless Steel	China PR, Korea RP, EU, South Africa, Taiwan, Thailand and USA	Notification No. F.No.14/01/2014-DGAD dated December 28, 2020

## MINISTRY OF FINANCE

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

Product	Country of export	Notification No. and date
D i c h l o r o m e t h a n e (Methylene Chloride)	China PR	Notification No. 42/2020-Cus (ADD) dated December 1, 2020
Toluene Di-Isocyanate (TDI) having Isomer content in the ratio of 80:20	EU, Saudi Arabia, Chinese Taipei & UAE	Notification No. 43/2020-Cus (ADD) dated December 2, 2020
Cold-rolled Flat products of stainless steel of width 600 mm to 1250 mm and above 1250 mm of non- bondage usage	China PR, Republic of Korea, EU, Saudi Africa, Taiwan, Thailand & USA	Notification No. 44/2020-Cus (ADD) dated December 3, 2020
Float Glass of thickness 2 mm to 12 mm (both thickness inclusive) of clear as well as tinted variety (other than green glass) but not including reflective glass, processed glass meant for decorative, industrial or automotive purposes	China PR	Notification No. 46/2020-Cus (ADD) dated December 7, 2020

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

Product	Country of export	Notification No. and date
Nylon Tyre Cord Fabric	China PR	Notification No. 45/2020-Cus (ADD) dated December 3, 2020

## INDIA CUSTOMS HIGHLIGHTS

- a. Rate of Duty revised on import of Phthalic Anhydride originating from Korea RP under the India-Korea Comprehensive Economic Partnership Agreement. [Notification No. 44/2020-Cus dated December 18, 2020]
- b. Relaxation provided to micro, small and medium enterprises (MSME) from strict compliance requirements for applying Authorized Economic Operator (AEO) accreditation. [Circular No. 54/2020-Cus dated December 15, 2020]
- c. Guidelines/instructions issued to smoothen process of faceless assessments. [Circular No. 55/2020-Cus dated December 17, 2020]
- d. Certificate of Origin (CoO) along with third party commercial invoice to be accepted in case of claim of preferential tariff treatment under Duty Free Tariff Preference (DFTP) scheme for least developed countries (LDC) in relation to wholly obtained goods. [Circular No. 53/2020-Cus dated December 8, 2020]
- e. Instruction issued for customs officers to be judicious in verification of preferential CoO in terms of the Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 (CAROTAR). [Instruction No. 53/2020-Cus dated December 17, 2020]
- f. Instruction issued for departmental officers to process refund of Duty Drawbacks claims on time. [Instruction No. 21/2020-Cus dated December 16, 2020]
- g. The Courier Imports and Exports (Electronic Declaration and Processing) Amendment Regulations, 2020 notified. [Notification No. 115/2020-Cus (NT) dated December 30, 2020]

## INDIA GOODS AND SERVICES TAX (GST) HIGHLIGHTS

- a. Due date of filing of annual return in Form GSTR-9 and reconciliation statement in Form GSTR-9C for financial year (FY) 2019-20 extended from December 31, 2020 to February 28, 2021. [Notification No. 95/2020-CT dated December 30, 2020]
- b. Time limit for completion of any compliances by Anti-Profiteering authorities during the period March 20, 2020 to March 30, 2021 extended till March 31, 2021. [Notification No.

91/2020-CT dated December 14, 2020]

- c. Waiver of late fees for delay in furnishing of returns in Form GSTR-4 (Composition Dealer return) for FY 2019-2020 from November 01 to December 31, 2020 for registered persons having principal place of business in UT of Ladakh. [Notification No. 93/2020-CT dated December 22, 2020]
- d. Specific provisions of the Finance Act, 2020 made effective from January 01, 2021. [Notification No. 92/2020-CT dated December 22, 2020]
- e. Various amendments made in the Central Goods and Services Tax Rules, 2017 (the CGST Rules), details of which are enumerated as under:

Amended provision in the CGST Rules	Amendment
Sub Rule 4A to Rule 8 (date to be notified)	Biometric-based authentication required for taking registration.
Sub Rule 1, 2 & 5 to Rule 9	Time limit for verification of application and approval of registration in case of Aadhar based authentication increased from 3 to 7 days.  In case of physical verification of place of business or non-authentication of Aadhar, time limit for verification of application and approval of registration increased from 7 to 30 days.
Rule 21	Proper officer to proceed for cancellation of registration in the following cases: Availment of Input Tax Credit (ITC) in violation of Section 16 of the CGST Act. Outward supplies declared in Form GSTR-3B is less than outward supplies declared in Form GSTR-1. Non-compliance of restriction on use of amount available in electronic credit ledger.
Sub Rule 2 to Rule 21A	Proper officer to proceed for suspension of registration without providing any opportunity of being heard in case such officer has reasons to believe that the registration is liable to be cancelled.

Sub Rule 2A inserted to Rule 21A	In case of discrepancies between details submitted in Form GSTR-3B with Form GSTR-1, proper officer to suspend registration. Further registered person to explain reasons as to why registration should not be cancelled within 30 days from date of service of notice.
Sub Rule 3A inserted to Rule 21A	Refund cannot be claimed during the period of suspension of registration.
Proviso to Sub Rule 4 to Rule 21A	Proper officer to revoke suspension of registration anytime during proceedings for cancellation.
Sub Rule 4 to Rule 36 (w.e.f. January 1, 2021)	Restriction for availing ITC in respect of invoices not appearing in Form GSTR-2A reduced from 10% to 5%.
Sub Rule 5 inserted to Rule 59	Restriction on filing of Form GSTR-1 for registered persons who has not filed Form GSTR-3B for preceding two months.
Sub Rule 86B inserted (w.e.f. January 1, 2021)	Restriction on use of amount available in electronic ledger - Registered person not eligible to use amount available in electronic credit ledger to discharge output tax liability in excess of 99% in case value of taxable supply (excluding exempt and zero-rated supply) in a month exceeds INR 5 million. Such restriction not applicable to the following: Registered person having paid income tax exceeding INR 1 lakh in each of preceding two FYs. Registered person has received refund of unutilised ITC exceeding INR 1 lakh rupees. Registered person has paid amount in excess of 1% of output Tax liability in cash, cumulatively, upto said month in current FY. Registered person is Government department, Public Sector Undertaking, local body or statutory body.
Sub Rule 10 to Rule 138 (w.e.f. January 1, 2021)	Validity of E-way bill narrowed by increasing distance from 100 km to 200 km per day.

Form GST REG-31 (Intimation for suspension and notice for cancellation of registration) inserted.

[Notification No. 94/2020-CT dated December 22, 2020]

- f. Waiver from recording of Unique Identification Number (UIN) on invoices issued by retailers/suppliers, pertaining to refund claims from April 2020 to March 2021, subject to condi-



tion that copies of invoices duly attested by the authorized representative of UIN entity to be submitted to the jurisdictional officer. [Circular No. 144/14/2020-GST dated December 15, 2020]

## IMPORTANT CASE LAWS

### GST

- A. The Applicant offered computer-based test-administrative solutions (Tests) on behalf of its clients to individual candidates across the world including candidates from India who are not registered under GST. The Test is a mix of multiple-choice questions and essay-based questions. The Applicant provides software to enable the candidates to take the online Test; appoint or establish test centers from where the candidates will take online Test; provide for the candidate's test registration validation at the test centre; provide for online and offline proctoring during the test-taking process, provide software for scoring the tests and deliver the test results electronically to the candidate. However, the essay-based questions are sent to a human-evaluator for assessment and final scoring.

The Applicant sought advance ruling on whether Tests conducted would qualify as Online Information and Database Retrieval (OIDAR) service?

The Hon'ble Authority of Advance Ruling (the AAR) held that Tests conducted by the Applicant require more minimal human intervention and therefore, would not be qualified as OIDAR service.

Thereafter on appeal, the Hon'ble Appellate Authority for Advance Ruling (the AAAR) observed that the Tests is conducted by the Applicant over internet using a computer system. Also, the process of tests registration, conduct of Tests and communication of results of such Tests are automated. Further, such Tests would not be possible in absence of information technology. The Hon'ble AAAR further held that when computer-based test is viewed as a whole, the scoring done by human scorer is to be regarded as being within the realm of 'minimum human intervention' as no direct human interaction between the evaluator and the candidate takes place. Thus, services provided by the Applicant is rightly classifiable under OIDAR service.

**Takeaway: Online tests with minimum human intervention is classifiable as OIDAR service.**

[M/s NCS Pearson Inc Order No. KAR/AAAR/07/2020-21 dated November 13, 2020 (Karnataka AAAR)]

- B. The Applicant sought advance ruling on whether services provided by Bharathiyar University (the University) to its affiliated colleges by way of affiliation fee, application fees, inspection fees, processing fees, penal fees is exempt vide Serial No. 66 (services provided to an educational institution by way of services relating to admission to, or conduct of examination by such institution) of Notification No. 12/2017-CT(R) dated June 28, 2017 (Notification 12/2017)?

The Hon'ble AAR observed that 'affiliation' is an activity to recognize an institution to the privileges of the University to which institution is affiliated. The AAR held that affiliation services provided by the University enables institutions to conduct the course/programme and is not related to admission of students to such course/programme in the institution or conduct of examination for such admission in the institution. Further, it has been held that exemption of services for conducting of examination is related to admission to such institution and not to examination based on which degree/title etc are conferred to students. Therefore, composite supply consisting of sale of application, registration of course, inspection etc., with principal supply of 'affiliation' provided by the University to its affiliated colleges is not exempt under Notification 12/2017.

**Takeaway: Services provided to affiliated colleges not exempt from payment of Tax**

[Bharathiyar University Order No. 37/ARA/2020 dated November 19, 2020 (Tamil Nadu AAR)]

- C. The Petitioner is an authorized agent for sale of lotteries organized by the State of Punjab and challenged constitutional validity of GST on sale of lotteries under Section 2(52) of the Central Goods and Services Tax Act, 2017 (the CGST Act).

The Hon'ble Supreme Court held that definition of goods under Section 2(52) of the CGST Act does not conflict with Article 366 (12) of the Constitution of India as definition of goods thereunder is an inclusive definition. Further, the Hon'ble Supreme Court held that lottery, betting and gambling are well known concepts and have been in practice in the country since independence and were regulated and taxed by different legislations. It has been further held that when the CGST Act defines goods to include actionable claims and included only three categories of actionable claims i.e. lottery, betting and gambling for purposes of levy of GST, it cannot be said that there was no rationale or reason for including such actionable claims for Tax purposes.

Further, the Hon'ble Supreme Court has held that there are specific statutory provisions enumerating what should be included in the value of the supply and what should not be

included in value of supply and therefore, submission of the Petitioner that prize money is required to be abated for determining the value of taxable supply is not acceptable. What is the value of taxable supply is subject to the statutory provision which clearly regulates, which provision has to be given its full effect and something which is not required to be excluded in value of supply cannot be added by judicial interpretation. Thus, the prize money is not required to be excluded from taxable value for the purpose of levy of GST. Hence, the Petitioner is not entitled to any relief as claimed.

**Takeaway: Levy of GST on Lotteries is constitutional**

[Skill Lotto Solutions Limited Vs UOI WP (Civil) No. 961 of 2018 dated December 3, 2020 (SC)]

- D. The Petitioner filed WP before the Hon'ble High Court seeking relief against cancellation of registration by department after filing of GST returns.

The Hon'ble High Court observed that the Petitioner has filed a statement before department that all GST returns have been filed and all dues have been cleared. The Petitioner argued that revocation of cancellation of registration has already been filed on ground that GST returns along with Taxes have been paid. Accordingly, it has been held that department failed to verify facts of the matter from their own records and instead issued show cause notice which reflects callous manner of department. Since the Petitioner is unnecessarily harassed, WP has been allowed with cost of INR 10,000/- to be paid to the Petitioner within 30 days from Respondent's own salary.

**Takeaway: Cancellation of registration can be revoked upon filing of GST returns.**

[Ansari Construction Vs AC CGST WP No. 626 of 2020 dated November 24, 2020 (Allahabad High Court)]

## **SERVICE TAX**

- E. The Appellant entered into a deed of assignment (the Deed) with Fosters Australia Limited (Fosters) wherein Fosters was required to transfer trademark to the Appellant. Department alleged that assignment of trademark is leviable to Service Tax under reverse charge mechanism (RCM) and accordingly, demand of service tax was confirmed against the Appellant. Why?

The Hon'ble Customs, Excise and Service Tax Appellate Tribunal (the CESTAT) observed that intention of the parties while executing the Deed is permanent exclusive and irrevocable transfer of trademark in favour of the Appellant. Accordingly, it has been held that assignment of trademark amounts to permanent transfer and therefore, no Service Tax under

RCM is leviable on permanent transfer of trademarks by Fosters to the Appellant.

**Takeaway: Service Tax is not leviable on permanent transfer of Intellectual Property Rights (IPR)**

[Skol Breweries Limited Vs CCE &CST, Final Order No. 20823 dated November 10, 2020]

- F. The Appellant collected amount towards compensation/penalty from buyers of coal against short lifted/un-lifted coal in the name of damages for breach of terms and conditions of the contract. Department raised and confirmed demand of Service Tax against the Appellant holding that the amount received towards penalty, earnest money deposit forfeiture and liquidated damages is consideration “for tolerating an act” on part of buyers of coal/contractors, for which Service Tax is payable under Section 66 E(e) of Chapter V of the Finance Act, 1994 (the Finance Act).

The Hon’ble CESTAT observed that consideration contemplated under agreements was for supply of coal, materials or availing various types of services and intention of the parties certainly was not for violating terms of agreement so that the penal clauses get attracted. Accordingly, it has been held that that penal clauses in the nature of providing a safeguard for commercial interest of the Appellant cannot by any stretch of imagination, reason behind the execution of contract for an agreed consideration. It has been further held that although the agreements may provide penal clauses for breach of the terms of the contract but, distinction is marked between ‘conditions to a contract’ and ‘considerations for a contract’. Thus, amount of penalty, forfeiture of earnest money deposit and liquidated damages received by the Appellant towards “consideration” for “tolerating an act” is not leviable to Service Tax under Section 66E(e) of the Finance Act.

**Takeaway: Amount of penalty, forfeiture of earnest money deposit and liquidated damages received towards consideration for tolerating an act is not leviable to Service Tax.**

[South Eastern Coalfields Ltd Vs CCE & ST Final Order No. 51651/2020 dated December 22, 2020]

## CUSTOMS

- G. Department filed appeal against order passed by the single member bench of the Hon’ble High Court wherein it has been held that Department was not justified in delaying finalization of provisional assessment with respect to bill of entries despite the fact that no Duty is leviable on import of Coal and accordingly, directed Department to grant refund of extra Duty deposit paid by Assessee on bill of entries for import of coal during the year 2004.

The division bench of the Hon'ble High Court held that Department is not justified to be a voluntary litigant in constitutional courts to challenge the orders of the Hon'ble Single member bench judge without any reason. Further, reliance was placed on Circular No. 11/2001 dated February 23, 2001 issued by the Central Board of Excise and Customs (the Board) wherein it has been clarified that no Cess/Duty is leviable on import of Coal. Moreover, no material fact has been provided by Department for not finalizing provisional assessment for 16 years. Therefore, the Assessee is entitled to refund of extra Duty deposit along with interest @6% from date of filing refund application till date of actual refund is granted. In case of delay beyond four weeks from passing of the order, interest @9% will be recovered from the concerned officer.

**Takeaway: Department to pay interest from the date of filing refund application till date of actual refund is granted for not finalizing provisional assessment for 16 years.**

[AC Vs Dalmia Cement Bharat Limited WA No. 1084 of 2020, Order dated December 2, 2020]

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

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