



INDIRECT TAX

Newsletter

February 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
Specified items in Chapter 41 (Raw hides, skins and leather) and Chapter 43 (Furskins and artificial fur, manufactures) of ITC HS	'Prohibited to free'	Notification No. 55/2015-2020 dated January 7, 2021

- b. Policy condition in Chapter 33 (Essential Oils and Resinoids, Perfumery, Cosmetic or Toilet preparations) of ITC (HS) amended. [Notification No. 54/2015-2020 dated January 1, 2021]
- c. Coal Import Monitoring System (CIMS) to be made mandatory on bill of entry filed from April 1, 2021 and online registration to be available from February 15, 2021. [Notification No. 56/2015-2020 dated January 28, 2021]
- d. Procedure prescribed for electronic issuance of preferential certificate of origin (CoO) for export to UK under generalized scheme of preferences. [Trade Notice No. 37/2020-2021 dated January 11, 2021]
- e. Procedure prescribed for export of Diagnostic Kits and Components/Laboratory Reagents. [Trade Notice No. 39/2020-2021 dated January 19, 2021]

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
Glazed/Unglazed Porcelain/Vitrified tiles in polished or unpolished finish with less than 3% water absorption.	China PR	Notification No. 7/39/2020-DGTR dated January 22, 2021

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

Product	Country of export	Notification No. and date
Ciprofloxacin Hydrochloride	China PR	Notification No. F. No.6/36/2019 - DGTR dated January 7, 2021
Dimethyl Formamide (DNIF)	China PR and Saudi Arabia	Notification No. F. No.6/37/2019 - DGTR dated January 11, 2021
Newsprint in rolls or sheets, excluding glazed newsprint	Australia, Canada, EU, Hong Kong, Russia, Singapore and UAE	Notification No. F. No.6/40/2019 - DGTR dated January 19, 2021
Soda Ash	Turkey and USA	Notification No. F. No.6/39/2019 - DGTR dated January 19, 2021
Aniline	China PR	Notification No. F. No.6/42/2019 - DGTR dated January 20, 2021
1-Phenyl-3-Methyl-5-Pyrazolone	China PR	Notification No. 6/32/2019-DGTR dated January 28, 2021
Toluene Dilsocyanate	EU, Saudi Arabia, Chinese Taipei and UAE	Notification No. 6/43/2019-DGTR dated January 28, 2021
Phenol	Thailand and USA	Notification F.No. 6/3/2020-DGTR dated January 28, 2021
Black Toner in powder form	China PR, Malaysia and Taiwan	Notification F.No. 6/6/2020-DGTR dated January 28, 2021

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

Product	Country of export	Notification No. and date
Flat Products of Stainless Steel	Indonesia	Notification No. F.No. 6/16/2019 - DGTR dated January 15, 2021

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

Product	Country of export	Notification No. and date
Nylon Filament Yarn	EU and Vietnam	Notification No. F.No. 7/30/2019 - DGTR dated January 22, 2021

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

Product	Country of export	Notification No. and date
Phthalic Anhydride	Japan and Russia	Notification No. F. No.7/11/2020-DGTR dated January 5, 2021
Nonyl Phenol	Chinese Taipei	Notification No. F. No.7/20/2018-DGTR dated January 7, 2021
Plain Medium Density Fibre Board Having Thickness of 6MM or more	China PR, Malaysia, Thailand and Sri lanka	Notification No. F. No.7/6/2020-DGTR dated January 8, 2021
Methylene Chloride	China PR	Notification No. F. No.7/19/2020-DGTR dated January 20, 2021
Cold Rolled Flat Products of Stainless Steel width 600 mm to 1250 mm	China PR, EU, South Africa, Taiwan, Thailand, USA and Korea	Notification No. F. No.7/18/2020-DGTR dated January 20, 2021

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

Product	Country of export	Notification No. and date
Polytetrafluoroethylene (PTFE)	China PR	Notification No. F.No. 07/22/2020 - DGTR dated January 27, 2021

MINISTRY OF FINANCE

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

Product	Country of export	Notification No. and date
Melamine	China PR	Notification No. 01/2021-Cus (ADD) dated January 6, 2021

INDIA CUSTOMS HIGHLIGHTS

- a. The Customs Authority for Advance Rulings Regulations, 2021 notified. [Notification No. 01/2021-Cus (N.T.) dated January 04, 2021]
- b. The Customs (Advance Rulings) Rules, 2002 rescinded. [Notification No. 02/2021-Cus (N.T.) dated January 04, 2021]
- c. Exemption from furnishing of Bank Guarantee by carriers for carriage of cargo for trans-shipment through foreign territories of Sri Lanka and Bangladesh subject to specified conditions. [Circular No. 1/2021-Cus dated January 14, 2021]

INDIA GOODS AND SERVICES TAX (GST) HIGHLIGHTS

- a. Rule 59(6) of the Central Goods and Services Tax Rules, 2017 (the CGST Rules) amended to provide for restriction on filing of Form GSTR-1 for registered persons not having Form GSTR-3B of the preceding two months and specified taxpayers who are mandatorily required to discharge 1% of tax liability in cash not allowed to file Form GSTR-1 upon non-filing of Form GSTR-3B for preceding month. [Notification No. 01/2021-CT dated January 01, 2021]

IMPORTANT CASE LAWS

GST

- A. The Applicant sought advance ruling on whether financial assistance received from foreign company qualifies supply of services in terms of Section 7 of the Central Goods and Services Tax Act, 2017 (the CGST Act)?

The Hon'ble Authority for Advance Ruling (the AAR) held that financial assistance received by the Applicant from foreign company qualifies as consideration as the Applicant has agreed to provide certain services on the directions of foreign company for which it will be given some amount. Thus, the Applicant has consented/agreed to do an act which qualifies as Supply in terms of Clause 5 (e) (an agreement to do an act) to Schedule II of Section 7 of the CGST Act classifiable under heading 999792 (agreeing to do an act) to scheme of classification of services. Further, it has been held that such services provided by the Applicant cannot be treated as export of services as entire gamut of supply would be performed in India and accordingly, place of supply would be in India. Thus, such services supplied by the Applicant to foreign company is taxable under GST.

Takeaway: Financial assistance received from foreign company considered as consider-

ation under GST and services performed in India does not qualify as export of services.

[M/s Prettl Automotive India Private Limited, Advance Ruling No. GST -ARA-20/2019-20 dated December 15, 2020 (Maharashtra AAR)]

- B. The Applicant, a foreign company entered into an agreement with Odisha Power Transmission Corporation (OPTCL) for providing Consultancy Services. The Applicant deputed support staff/experts for providing Consultancy Services at site (the Site) of OPTCL in India.

The Applicant sought advance ruling on whether GST registration is required for providing Consultancy Services to OPTCL from the Site.

The AAR held that staff/experts of the Applicant maintain suitable structure and sufficient degree of permanence in terms of human and technical resources at the Site while providing Consultancy Services. Thus, the Site qualifies as 'fixed establishment' for the Applicant in terms of Section 2(7) of the Integrated Goods and Services Tax Act, 2017 (the IGST Act) and hence, location of supplier shall be 'fixed establishment' i.e., India in terms of Section 2(15) of the IGST Act. Therefore, supply of Consultancy Service by the Applicant to OPTCL does not qualify as 'import of service' and the Applicant is required to take registration under GST Law in India.

Takeaway: Staff/employees deputed at project site in India qualifies as 'Fixed Establishment'

[M/s Tokyo Electric Power Company, Order No. 02/ODISHA-AAR/2020-21 dated November 19, 2020 (Odisha AAR)]

- C. The Applicant sought advance ruling on whether benefit of concessional rate of Tax is applicable in relation to Works Contract Services provided to IIT, Bhubaneswar (IIT) under Notification No. 11/2017-CT(R) dated June 28, 2017 (Notification 11/2017) for construction of director's bungalow and construction of staff/faculty quarters (the Services)?

The AAR held that intention of the legislature is to allow concessional rate on works entrusted to a Government entity for public interest in general but extending concessional rate to any or all activities of IIT will not only be unwarranted but also defeat the very purpose of concessional rate of Tax.

Accordingly, the Services fall outside the purview of benefit of concession provided under Notification 11/2017, thus, leviable to Tax @18%. However, construction of 800 seater boys' hostel, 200 seater girls' hostel, construction of 1000 capacity auditorium, student activity centre, dispensary, Central Research & Instrumentation facilities, Central Workshop and playground qualifies for benefit of concessional rate provided under Notification 11/2017

and liable to Tax @12%.

Further, the AAR held that works entrusted to the Applicant by IIT under contract cannot be termed as 'composite supply' as the Applicant has been awarded different types of works with categorical mention of individual works to be carried out with specific remuneration for each such work and hence, it is a supply having distinctly identifiable components with distinct value attributable to each of the components. Therefore, entire work under the contract is not entitled to concessional rate of Tax in terms of Notification 11/2017. Thus, each and every supply under the contract is required to be treated separately for determining the rate of Tax under the CGST Act.

Takeaway: Benefit of concessional rate of Tax for providing works contract services depends upon nature of activities carried out.

[M/s NBCC (India) Limited, Order No. 01/ODISHA-AAR/2020-21 dated November 19, 2020 (Odisha AAR)]

SERVICE TAX

- D. The Appellant is engaged in providing Software Development and Information Technology enabled services (ITeS) and entered into an agreement with its overseas entity (located in USA) for secondment of employees. In terms of the agreement, the Appellant would claim reimbursement from overseas entity for remuneration, incentives and employment benefits paid to the employees.

Department alleged that the Appellant is liable to pay Tax on import of Manpower Recruitment and Supply of Manpower Agency Service from overseas entity for secondment of employees.

The Hon'ble CESTAT held that there exists employer-employee relationship between the Appellant and the employees. It has been further that the method of disbursement of salary cannot determine the nature of the transaction and no consideration has been received by overseas entity for supply of manpower. Hence, persons seconded to the Appellant are working in the capacity of employees and payment of salaries etc is made to such employees by group companies only for disbursement purposes and such an activity is not taxable under Manpower Recruitment or Supply Agency Service.

Takeaway: Expenditure incurred for secondment of employees is not taxable under 'Manpower Recruitment' or 'Supply of Manpower Agency Services'.

[M/s Target Corporation India Private Limited Vs CCE, Final Order No. 20008/2021, Order dated January 19, 2021 (CESTAT, Bangalore)]

CUSTOMS

E. The Appellant is engaged in business of transportation of passengers and goods by air and imports aircrafts for carrying out its business. In case of defects, imported aircrafts including its parts are exported out of India for repairs and maintenance and thereafter, reimported into India by filing bills of entries. The Appellant claimed exemption from payment of Integrated Goods and Services Tax (IGST) on re-import of repaired parts/aircrafts into India in terms of Notification 50/2017-Cus dated June 30, 2017 (Notification 50/2017).

Department alleged that the Appellant was required to pay IGST in addition to Basic Customs Duty on fair cost of repairs, insurance and freight charges in terms of Notification No. 94/96-Cus. dated December 16, 1996 (Notification 94/96).

The Hon'ble CESTAT held that Basic Custom Duty is only payable on fair cost of repairs, insurance and freight charges in terms of Notification 94/96. Further, it has been held that Basic Custom Duty and IGST are separately leviable under Customs laws. Thus, the Appellant is entitled to exemption from payment of IGST on re-import of repaired parts/ aircrafts into India in terms of Notification 50/2017.

Takeaway: Exemption from payment of IGST on re-import of repaired parts/aircrafts into India.

[Spice Jet Limited Vs CC Final Order No. 50132-50192/2021, Order dated January 12, 2021 (CESTAT, Delhi)]

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

This publication does not constitute professional advice. All reasonable precautions have been taken to verify the information contained in this publication. However, the published material is being distributed without warranty of any kind, either expressed or implied. The responsibility for the interpretation and use of the material lies with the reader. In no event shall the author and/or the firm be liable for damages arising from its use. contained in this publication. However, the published material is being distributed without warranty of any kind, either expressed or implied. The responsibility for the interpretation and use of the material lies with the reader. In no event shall the author and/or the firm be liable for damages arising from its use.



Our Locations

NEW DELHI

E-337, East of Kailash
New Delhi - 110065, INDIA

GURUGRAM

S&A Tower, Plot No. 5,6&7
Udyog Vihar, Phase IV
Gurugram, Haryana 122015, INDIA

MUMBAI

Unit No. 101, 10th Floor, Sakhar Bhavan
Plot No. 230, Ramnath Goenka Marg
Nariman Point, Mumbai - 400021, INDIA

BENGALURU

Condor Mirage, 101/1, 3rd Floor
Richmond Road, Richmond Town
Bengaluru - 560025, INDIA

Email: india@singhassociates.in Website: www.singhassociates.in