



INDIRECT TAX

Newsletter

March 2021

INDIA REGULATORY & TRADE HIGHLIGHTS

FOREIGN TRADE

- a. Standard operating procedures prescribed for verification of self-certified Certificate of Origin (CoO) under Generalized System of Preferences (GSP) benefit system. [Public Notice No. 39/2015-2020 dated February 15, 2021]
- b. CoO to be mandatorily issued online w.e.f. April 1, 2021. [Trade Notice No. 42/2020-21 dated February 19, 2021]
- c. Electronic filing and Issuance of Preferential CoO for India's Exports under India-Mercosur Preferential Trade Agreement (PTA) and India - Thailand Early Harvest Scheme (EHS) made applicable w.e.f. February 25, 2021. [Trade Notice No. 43/2020-21 dated February 23, 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
Plastic Processing Machines	China PR	Notification No. 6/54/2020-DGTR dated February 17, 2021
N,N'-Dicyclohexyl Carbodiimide (DCC)	China PR	Notification No. 6/53/2020-DGTR dated February 25, 2021
Melamine	EU, Japan, Qatar and UAE	Notification No. 6/1/2021-DGTR dated February 26, 2021

- b. Initiation of Mid-term Review of Countervailing Duty on import of:

Product	Country of export	Notification No. and date
Welded Stainless steel Pipes and Tubes	China PR & Vietnam	Notification No.7/45/2020-DG-TR dated February 11, 2021

c. Initiation of Sunset Review of Anti-Dumping Duty on import of:

Product	Country of export	Notification No. and date
1,1,1,2-Tetrafluoroethane or R-134a	China PR & Japan	Notification No.7/01/2021-DGTR dated February 19,2021
Seamless tubes pipe and hollow profiles of iron alloy or non-alloy steel other than cast iron	China PR	Notification No. 7/43/2020-DGTR dated February 19,2021
Polytetrafluoroethylene	Russia	Notification No. 7/47/2020-DGTR dated February 12,2021

MINISTRY OF FINANCE

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

Product	Country of export	Notification No. and date
Aniline	China PR	Notification No. 8/2021-Cus (ADD) dated February 19, 2021
Glazed/Unglazed Porcelain/ Vitrified tiles in polished or unpolished finish with less than 3% water absorption	China PR	Notification No. 09/2021-Cus (ADD) dated February 19, 2021
Melamine	China PR	Notification No. 10/2021-Cus (ADD) dated February 25, 2021

b. Levy of Anti-Dumping Duty revoked from February 2, 2021 to September 30, 2021 on import of:

Product	Country of export	Notification No. and date
Straight Length Bars and Rods of Alloy Steel	China PR	Notification No. 5/2021-Cus (ADD) dated February 1, 2021
High-Speed Steel of Non-Cobalt Grade	Brazil, China PR & Germany	Notification No. 6/2021-Cus (ADD) dated February 1, 2021
Flat rolled product of steel, plated or coated with alloy of Aluminium and Zinc	Vietnam, China PR & Korea	Notification No. 7/2021-Cus (ADD) dated February 1, 2021

- c. Levy of Countervailing Duty revoked from February 2, 2021 to September 30, 2021 on import of:

Product	Country of export	Notification No. and date
Certain Hot Rolled and Cold Rolled Stainless Steel Flat Products	China PR	Notification No. 2/2021-Cus (CVD) dated February 1, 2021

INDIA CUSTOMS HIGHLIGHTS

- a. Surety required to be furnished by an independent legal entity in relation to B-17 bond executed by export oriented unit (EOU). [Circular No. 3/2021-Cus dated February 03, 2021]
- b. Chartered Accountant (CA) evidencing no discrepancy between refund claimed on Integrated Goods and Services Tax (IGST) and actual IGST paid on export of goods for the period April 2019 to March 2020 and April 2019 to March 2021 required to be furnished till March 31, 2021 and October 30, 2021 respectively. [Circular No. 4/2021-Cus dated February 16, 2021]
- c. Exporters given option to avail facility of correction of invoice mis-match errors with respect to past shipping bills irrespective of its date of filing, subject to payment of fees of INR 1,000. [Circular No. 5/2021-Cus dated February 17, 2021]
- d. Guidelines issued for setting up of Inland Container Depots (ICDs), Container Freight Stations (CFSs) and Air Freight Stations (AFSs). [Circular No. 6/2021-Cus dated February 22, 2021]
- e. Clarification issued regarding payment of Agriculture Infrastructure and Development Cess (AIDC) by EOU. [Circular No. 7/2021-Cus dated February 22, 2021]
- f. The Customs Tariff (Identification and Assessment of Safeguard Duty) Amendment Rules, 2021 notified. [Notification No. 12/2021-Cus (N.T.) dated February 01, 2021]
- g. The Customs Tariff (Identification, Assessment and Collection of Countervailing Duty on Subsidized Articles and for Determination of Injury) Amendment Rules, 2021 notified. [Notification No. 11/2021-Cus (N.T.) dated February 01, 2021]
- h. The Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Amendment Rules, 2021 notified. [Notification No. 10/2021-Cus (N.T.) dated February 01, 2021]

- i. The Customs (Import of Goods at Concessional Rate of Duty) Amendment Rules, 2021 notified. [Notification No. 09/2021-Cus (N.T.) dated February 01, 2021]
- j. Changes in rate of Duty on specified goods proposed in the Union Budget 2021. [Notification No. 02/2021-Cus to Notification No. 15/2021-Cus, all dated February 01, 2021]

INDIA GOODS AND SERVICES TAX (GST) HIGHLIGHTS

- a. Guidelines issued for implementation of provisions of suspension of registrations under GST. [Circular No. 145/01/2021-GST dated February 11, 2021]
- b. Due date of filing annual returns in Form GSTR-9/9A and reconciliation statement and certification in Form GSTR-9C extended to March 31, 2021. [Notification No. 04/2021-CT dated February 28, 2021]
- c. Specified persons exempted from Aadhar authentication for registration under GST. [Notification No. 03/2021 dated February 23, 2021]
- d. Clarification issued in relation to applicability of Dynamic Quick Response (QR) Code on B2C invoices. [Circular No. 146/02/2021-GST dated February 23, 2021]

IMPORTANT CASE LAWS

GST

- A. The Applicant sought advance ruling on (i) whether capital subsidy (90% of Project Capital Expenditure) received from Odisha Government for the construction of green field public street lighting system in terms of supply installation and maintenance agreement and escrow agreement is leviable to Tax (ii) whether the Applicant is eligible for concessional rate of tax in terms of Notification No. 11/2017-Central Tax (R) dated June 28, 2017 (Notification No. 11/2017) for the balance 10% of the amount received as Annuity Fees over a period of seven years?

The Hon'ble Authority for Advance Rulings (the AAR) held that capital subsidy received by the Applicant is the actual cost incurred on the project. It is not a subsidy which generally means grant/grant-in-aid or a benefit given to an individual, business or institution, usually by the Government to remove some type of burden and to promote a social good or an

economic policy for overall interest of the public. Thus, ‘capital subsidy’ cannot be treated as a ‘subsidy’, rather the same is a consideration as defined in Section 2(31) of the Central Goods and Services Tax Act, 2017 (the CGST Act) and liable to be included in the transaction value for the purpose of computation of Tax.

Further since major part of the contract is supply of goods without which services cannot be supplied by the Applicant, hence, such supply squarely falls under the definition of “composite supply” where the principal supply is ‘supply of goods’. Thus, question of applicability of Notification No. 11/2017 does not arise and Tax would be payable on the goods at applicable rate specified under appropriate heading.

Takeaway: Capital Subsidy for public street lightening system included in transaction value for GST.

[M/s Surya Roshni LED Lighting Projects Limited, Order No. 05/ODISHA-AAR/2020-21 dated January 20, 2021 (Odisha AAR)]

- B. The Applicant is engaged in conducting clinical research services for determining safety and effectiveness of medications, devices, diagnostic products and treatment regimens for human use.

The Applicant sought advance ruling on (i) classification of services related to clinical research services (ii) whether services supplied by the Applicant is exempt from payment of Tax (iii) whether the Applicant is eligible to avail Input Tax Credit (ITC) of Tax paid or deemed to be paid?

The Hon’ble AAR held that the services provided by the Applicant is not in connection with diagnosis or treatment or care for illness covered under heading 9993 (healthcare services) but related to support services for research covered under heading 998599 (Other Support Services). Thus, such services not being covered under healthcare services are not exempt in terms of entry 74 of Notification No. 12/2017-CT (R) dated June 28, 2017. Accordingly, the Applicant is eligible to claim ITC of tax paid in terms of Section 16 of the CGST Act.

Takeaway: Activities in relation to conducting and facilitating clinical research services covered under ‘Other Support Services’ and not ‘Healthcare Services’.

[M/s Vevan Ventures Advance Ruling No. KAR ADRG 05/2021, Order dated January 29, 2021 (Karnataka AAR)]

- C. The Applicant is providing two types of services - (1) consultancy services in diagnosis and treatment of illness to the Hospitals, Laboratories and Biobank companies (Consultancy Services) and (2) Business Promotion Services by way of organising collaborative projects, histopathological consulting and business development (Business Promotion Services) between the foreign company and the clinical centres located in India.

The Applicant sought advance ruling on whether Tax is applicable on Consultancy Services and Business Promotion Services?

The Hon'ble AAR held that Consultancy services provided by the Applicant is exempt in terms of entry No. 74(a) (Healthcare services) of Notification No. 12/2017-CT (R) dated June 30, 2017.

Further, with respect to business promotion services, the Hon'ble AAR observed that the Applicant is facilitating services in relation to clinical centres in India on behalf of the foreign company as its agent and not providing any services on its own account. Therefore, the services are squarely covered under intermediary services and liable to Tax @18% under heading 9983 (other professional, technical and business services).

Takeaway: Service provided in relation to facilitating establishment of clinical centres in India on behalf of a foreign company covered under 'intermediary services'.

[Dr. H. B. Govardhan, Advance Ruling No. KAR ADRG 04/2020 dated January 29, 2021 (Karnataka AAR)]

SERVICE TAX

- D. The Appellant availed Cenvat credit on Service Tax paid on Rent a Cab service under reverse charge mechanism and claimed refund on account of unutilized amount in the Cenvat credit account.

The Department alleged that Cenvat credit availed on Rent-a-Cab service by the Appellant is not input service in terms of Rule 2(l) of the Cenvat Credit Rules, 2004 since vehicles taken on rent by the Appellant is not registered in the name of service provider. Therefore, Department denied the amount of refund claim for the unutilized amount in the Cenvat credit account.

The Hon'ble CESTAT held that it is not in dispute that the Appellant is not entitled to Cenvat credit on such Rent-a-Cab services at the time of availment of the Cenvat credit. Therefore, Department cannot deny refund claim and raise the issue of admissibility of the

Cenvat credit.

Takeaway: Admissibility of the Cenvat credit cannot be raised while deciding on refund claim.

[M/S CNS Comnet Solution Pvt Ltd Vs CST Final Order nos. 60489-60491/2021 dated February 3, 2021]

- E. The Appellant availed Cenvat credit for Service Tax paid on construction of pipelines used in business of transporting gas through pipeline for its customers.

The Department alleged that the Cenvat credit taken by the Appellant is in relation to services rendered by EPC contractors to construct the pipeline system which remains permanently embedded under earth over a long distance and constitutes ‘immovable property, which is neither ‘goods’ nor ‘service’ and therefore, not eligible to avail Cenvat credit thereon.

The Hon’ble CESTAT held that the Appellant is engaged in the business of transporting gas through pipelines for which laying of pipelines between their different station is essential. Service Tax paid by the Appellant was not on the pipeline system but on the services provided for constructing such system. Hence, it cannot be said that the service for construction of pipeline is not used for providing output service. Thus, the Appellant is entitled to Cenvat credit in respect of service of laying of pipeline received directly from their contractors.

Takeaway: CENVAT credit allowed on services for construction of pipelines used for transportation of gases.

[Gujarat State Petronet Ltd Vs CST Final Order No. A/10348/2021 dated February 2, 2021]

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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