



INDIRECT TAX

Newsletter

May 2021

India Regulatory & Trade Highlights

Foreign Trade



- Export Policy revised from 'free to prohibited' for Injection Remdesivir and Remdesivir (API) falling under 293499 and 300490 respectively. [Notification No. 01/2015-2020 dated April 11, 2021]
- Import policy revised for the following, subject to specified conditions

Tariff heading/ item and description	Change in Import Policy	Notification No. and date
85167920 and 85167990- Electrical or electronic devices for repelling insects	'Free to Restricted' if CIF value is below INR 121/- per racket	Notification No. 02/2015-2020 dated April 26, 2021
12077090- Melon Seeds- Other	'Free to Restricted'	Notification No. 03/2015-2020 dated April 26, 2021

- Online facility on Certificate of Origin (CoO) e-platform (<https://coo.dgft.gov.in>) made operational for issuance of Preferential CoO for exports to Mauritius under the India Mauritius Comprehensive Economic Cooperation and Partnership Agreement (CECPA) w.e.f. April 01, 2021. [Trade Notice No. 01/2021-2022 dated April 1, 2021]

The Directorate General of Trade Remedies, Ministry of Commerce & Industry

a. Final findings issued in Anti-Dumping Duty investigation concerning import of-

Product	Country of origin/export
Plain medium density fiber board having thickness less than 6mm	Vietnam, Malaysia, Thailand and Indonesia.
Copper & Copper alloy flat rolled products	China PR, Korea RP, Malaysia, Nepal, Sri Lanka and Thailand.

Ministry of Finance

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

Product	Country of origin/export
Flexible Slabstock Polyol of molecular weight 3000-4000	Saudi Arabia and UAE
Normal Butanol or N-Butyl Alcohol	EU, Malaysia, Singapore, South Africa and USA
Barium Carbonate (extension upto 20.10.2021)	China PR
Nylon Filament Yarn (multifilament)	EU and Vietnam
Polytetrafluoroethylene (PTFE)	Korea RP
Polytetrafluoroethylene (PTFE) Products	China PR
1-phenyl-3-methyl-5-pyrazolone	China PR
Toluene Di-Isocyanate (TDI) having isomer content in the ratio of 80:20	EU, Saudi Arabia, Chinese Taipei and UAE

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

Product	Country of origin/export
Dichloromethane (Methylene Chloride)	China PR

India Custom Highlights

- Exemption from payment of Duty on import of Remdesivir API, Beta Cyclodextrin (SBEB CD) used in manufacture of Remdesivir and Injection Remdesivir. [Notification No.27/2021-Cus dated April 20, 2021]
- Exemption from payment of Duty on import of Oxygen Concentrator, Medical Oxygen, Oxygen related equipment, goods used in the manufacture of equipment related to production, transportation, distribution or storage of oxygen, ventilators, masks for ICU ventilators and COVID-19 vaccine etc. [Notification No.28/2021-Cus dated April 24, 2021]
- Exemption from payment of Duty on import of Inflammatory Diagnostic (marker) kits, namely- IL6, D-Dimer, CRP (C-Reactive Protein), LDH (Lactate De-Hydrogenase), Ferritin, Pro Calcitonin (PCT) and blood gas reagents. [Notification No.29/2021-Cus dated April 30, 2021]
- The Customs (Verification of Identity and Compliance) Regulations, 2021 notified. [Notification No.41/2021- Cus (NT) dated April 5, 2021]
- The Sea Cargo Manifest and Transshipment (Second Amendment) Regulations, 2021 notified. [Notification No.44/2021- Cus (NT) dated April 15, 2021]
- Instructions issued for priority custom clearance of goods imported in relation to COVID-19 pandemic, including oxygen related equipment etc. [Instruction No.07/2021- Cus dated April 24, 2021]

India GST Highlights

- Companies allowed to file Form GSTR-3B and details of outward supplies in Form GSTR-1 or using invoice furnishing facility (IFF) through electronic verification code (EVC) during the period from April 27 to May 31, 2021. [Notification No. 7/2021-CT dated April 27, 2021]
- Functionality of Form PMT-03 implemented for re-crediting of Input Tax Credit (ITC) sanctioned as refund in relation to tax wrongly paid or paid in excess by debiting the credit ledger. [Advisory No. 08/2021-Refunds dated April 20, 2021]
- The following clarification issued in relation to reporting of 4-digit/6-digit Harmonized System of Nomenclature (HSN):
 - In case 6- HSN digits required to be reported in invoice, then 6-digit/8-digits HSN under the Customs Tariff Act, 1975 (the Custom Tariff) to be mentioned on invoice.
 - In case 4-HSN digits required to be reported in invoice, then 4-digit/6-digit/8-digit HSN under the Customs Tariff to be mentioned on invoice.
 - In case 4/6 Digit HSN Codes not provided in the Customs Tariff along with specific description, unit and rate, HSN not allowed to be mentioned on invoice.[GST portal update dated April 12, 2021]
- New features of auto-generation of Form GSTR-2B and auto- population of ITC in Form GSTR-3B available for taxpayers opted for Quarterly Return Filing and Monthly Payment of Taxes (QRMP) Scheme. [GST portal update dated April 13, 2021]
- Matching offline tool updated for taxpayers opted for QRMP Scheme wherein system generated Form GSTR-2B JSON file can be downloaded for matching details with purchase register. [GST portal update dated April 13, 2021]

Important Case Laws

GST

The Applicant, a private limited company, proposes to operate a mobile based taxi aggregation service on PAN India basis. The Applicant offers a platform which links the drivers to the passengers. The Applicant sought advance ruling on the following:

- Whether providing online platform and insurance coverage to the passenger qualify as composite supply?
- Whether the passenger convenience charges collected from passengers is chargeable to GST @5%?
- Whether the amount received from drivers/owners towards bidding (which allowed drivers to display fare to customers) is taxable @5% or 18%?
- Whether service charge on the amount voluntarily paid by passenger to the driver (Goodwill Bonus) attracts GST and at what rate?
- Whether charges for cancelling the trip attracts GST?

The Hon'ble Authority for Advance Ruling (AAR) ruled that provision of insurance coverage to the passenger is optional and is neither related to nor ancillary to the service of transportation of passengers. Since, both the supplies are not naturally bundled and not in conjunction with each other, in the ordinary course of business. Therefore, the activities performed by the Applicant do not qualify as composite supply.

It was further ruled that pick-up service is incidental to the main service of transportation of passengers. Further, the Applicant is liable to pay Tax in respect of services provided through e-commerce platform by way of transportation of passengers by a radio-taxi in terms of Section 9(5) of the Central Goods and Services Tax Act, 2017 (the CGST Act) read with Notification No. 17/2017-CT(R) dated June 28, 2017. Therefore, passenger convenience charges being part of the service of transportation of passengers, is liable to pay GST @5%.

Furthermore the Hon'ble AAR held that Bidding charges are not related to the service provided by the owner/driver to the passenger/customer through the e-commerce operator. Therefore, the same is covered under heading 998599 (other support services) to the scheme of classification of services and taxable @18%. The service charges collected on the Goodwill Bonus for facilitating the said payment to drivers has been held to be consideration in terms of Section 2(31) of CGST Act. Therefore, said charges are liable to Tax @18% under heading 9985 (other support services) to the scheme of classification of services. Lastly, the Hon'ble AAR held that the activity of tolerating the act of cancellation of trip for a consideration is supply of service in terms of clause (e) of paragraph 5 of Schedule II of CGST Act and attracts Tax @18%.

Takeaway: Providing online platform service along with insurance coverage by an online taxi aggregator does not qualify as composite supply

[M/s Kou-Chan Technologies Pvt. Ltd. Advance Ruling No. KAR ADRG 22/2021, Order dated April 07, 2021 (Karnataka AAR)]

Important Case Laws

The Applicant is engaged in the business of manufacturing and supply of toys made of plastics or rubber wherein essentially plastic is the main component. The Applicant sought advance ruling on (i) classification and rate of Tax on supply of plastic toys, and (ii) whether ITC can be claimed on debit note issued by supplier in financial year (FY) 2020-21, towards transaction pertaining to FY 2018-19?

The Hon'ble AAR ruled that the toys made of plastics are not electronic toys and meant for children. Hence, the said toys are classifiable under heading 95030030 (toys like tricycles, scooters, pedal cars etc. (including parts and accessories thereof) [other than electronic toys]) covered under Entry No. 228 of Schedule-II of Notification No. 1/2017-CT(R) dated June 28, 2017 and taxable @12%.

On the second question, the Hon'ble AAR ruled that debit note is to be linked with FY of the invoice for the purpose of availment ITC with respect to time limit provided under Section 16(4) of the CGST Act. The AAR disregarded amendment made to Section 16(4) of the CGST Act and held that debit note is not an independent document and is connected to an invoice as it is issued in pursuance to change in value of an invoice. Therefore, the FY in which the original invoice pertaining to such debit note is issued would be relevant to determine the last date for claiming ITC under Section 16(4) of the CGST Act. Thus, the Applicant cannot claim ITC of GST paid vide debit notes issued by the supplier in FY 2020-21 for the transaction of FY 2018-19.

Takeaway: No ITC can be claimed on debit notes issued post expiry of time limit mentioned in Section 16(4) of the CGST Act. Amendment to Section 16(4) of the CGST Act disregarded.

[M/s I-tech Plast India Pvt. Ltd. Advance Ruling No. GUJ/GAAR/R/10/2021, Order dated January 20, 2021 (Gujarat AAR)]

Important Case Laws

The Petitioner is a dealer in pulses, dhals, flour and manufactures food grains, grain mill products and dhal. The Department carried out investigation at the premises of the Petitioner under an allegation that the Petitioner had not discharged GST on branded products manufactured by it. During the investigation various documents were seized and the Petitioner was forced to pay INR 2 Crores.

The Petitioner approached the Hon'ble High Court seeking a writ of mandamus to restraint the Department from harassing the Petitioner baselessly and for refund of GST so paid.

The Hon'ble High Court held that there was no ascertainment of GST liability in case of the Petitioner by the Department as required under Section 74(5) to 74(7) of the CGST Act. It further, held that merely because an assessee has under the stress of investigation signed a statement admitting Tax liability and made few payments, it cannot lead to self-assessment. Accordingly, the writ petition was allowed.

Takeaway: Ascertainment of tax liability is prerequisite for any voluntary payment of tax under Section 74 of the CGST Act.

[M/s Shri Nandhi Dhall Mills India Pvt. Ltd. V. Senior Intelligence Officer, DGGST & Ors. W.P. No. 5192 of 2020 and WMP No. 6135 of 2020, Order dated April 07, 2021 (Madras High Court)]

Important Case Laws

The Petitioners claimed ITC on goods purchased based on the basis of returns filed by the suppliers. Further, they made payment of goods purchased along with Tax to the suppliers, however, the suppliers had not deposited the tax to the government. Subsequently, without involving the suppliers, the Department passed order levying the entire liability of Tax not paid by the suppliers on the Petitioners.

The Petitioner filed writ petition before the Hon'ble High Court of Madras seeking to quash the said order passed against them.

The Hon'ble High Court held that the Department is required to examine the suppliers and initiate proceedings against the suppliers, in case of non-payment of Tax by them, especially when the Petitioners have already paid Tax to the suppliers. The orders for recovery of tax cannot be passed against the Petitioners without examining the suppliers and it is all the more relevant as the Department is claiming that the goods have not been received by the Petitioners. Further, reliance was placed on Press Release dated May 4, 2018 wherein it has been provided that no automatic ITC reversal is to be done unless there are exceptional situations like missing dealer, closure of business by the supplier or supplier does not have adequate assets, etc.

Basis the above, the Hon'ble High Court quashed the orders passed by the Department and directed to hold fresh enquiry wherein the suppliers are examined. It further directed to initiate recovery proceedings against the suppliers.

Takeaway: Department cannot directly proceed against the recipient for recovery of ITC on account of non-payment of Tax by the supplier.

[M/s D.Y. Beathel Enterprises V. The State Tax Officer W.P.(MD) Nos. 2127 of 2021, Order dated February 24, 2021 (Madras High Court)]

Important Case Laws

Service Tax

The Petitioner, a Public Sector Undertaking of the Government of India, is engaged in the business of providing "telecommunication service". Show cause notice issued to the Petitioner on the following issues:

Development Compensation Charges

It was alleged that the Petitioner received a sum of INR 48.12 crores from a Project Development Company for granting rights for development of "Knowledge Park" on its land which was taxable under 'franchisee service' classifiable under 'Section 65(105)(zze) of Chapter V of the Finance Act, 1994.

Cenvat credit on purchase of Towers

The petitioner had availed CENVAT Credit on purchase of towers falling under the Heading 73 and Cenvat credit was denied on the same, as towers were not covered under the definition of Capital Goods under Rule 2(a)A(iv) of the CENVAT Credit Rules, 2004 (the Cenvat Credit Rules).

The Hon'ble Customs Excise & Service Tax Tribunal (CESTAT) on the issue of taxability of Development Compensation charges held that the essence of the Project Agreement was to grant development rights to the Project Development Company and there is nothing in the contract to indicate that the petitioner intends to do business through the developer. Therefore, demand of Service Tax was quashed on the ground that the service was not a franchisee service.

However, with regard to issue of eligibility of Cenvat credit on purchase of Towers, the CESTAT relying on the decision of the Hon'ble Delhi High Court in the case of Vodafone Mobile Services has held that the Towers support in effective transmission of the mobile signals. Therefore, Towers are covered under the definition of 'inputs' as defined under Rule 2(k) of the Cenvat Credit Rules since they are used for rendering output services. Accordingly, Cenvat credit is allowed on purchase of towers.

Takeaway: Service Tax is not levied on development compensation received for providing rights for developing "Knowledge Park" since the same does not qualify as franchisee services.

Further, CENVAT credit is allowed on towers constructed by telecommunication services relying on jurisdictional High Court decision.

[M/S Mahanagar Telephone Nigam Limited vs Commissioner, Central Excise and Service Tax, Final Order No. 51183/2021 dated March 31, 2021 (CESTAT, Delhi)]

Important Case Laws

Customs

The Petitioners filed writ petitions seeking relief against proceeding initiated by issuance of show cause notices by officers of the Directorate of Revenue Intelligence (DRI) who are not a proper officer under Section 28(4) of the Customs Act, 1962 (the Customs Act).

The Petitioners relied on judgement of the Hon'ble Supreme Court of India in the case of M/s. Canon India Private Limited v. Commissioner of Customs [Civil Appeal No. 1827 of 2018, dated March 09, 2021] wherein it was held that Officers of DRI are proper officer under Section 28(4) of the Customs Act.

The Hon'ble High Court of Madras dismissing the writ petitions on the ground of alternate remedy held writ petitions should have been filed after exhausting the appeal remedies. It was also observed that Courts should not provide an unnecessary opportunity to the assessee to approach High Courts without going through the appellate remedy available to them.

Takeaway: Challenge to proceeding initiated by DRI by relying on Canon India negated by High Court on the ground of alternate remedy.

[M/s Sri Sathya Jewellery Vs Principal Commissioner of Customs, W.P. No. 3144 of 2016, Order dated April 15, 2021 (Madras High Court)]

Important Case Laws

Central Excise

The Petitioner had acquired property at an auction held by Debt Recovery Tribunal which was previously owned by a company who had some outstanding excise duty liability. The department raised a demand of Excise Duty on the petitioner in respect of the amount outstanding against the company.

The Hon'ble High Court of Bombay held that the Petitioner had only purchased land in the auction and there was no transfer or disposal of business or trade as envisaged under Section 11 of the Central Excise Act, 1944. The liability in respect of excise duty can be fastened only on the person who had purchased the entire business on a going concern. Further, it has been held that Excise Duty is not secured dues which can be claimed by the Department from the Petitioner. Accordingly, the Hon'ble High Court held that the Petitioner is not liable for the dues of the Excise Department.

Takeaway: Pending excise dues of a business can be demanded only from the person acquiring such business as a going concern and not from the persons acquiring only certain properties of the business.

[M/s Runwal Constructions vs Union of India, W.P. No. 1335 of 2009, Order dated April 22, 2021 (Bombay High Court)]

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