



# **INDIRECT TAX**

## **Newsletter**

**AUGUST 2021**

# India Regulatory & Trade Highlights

## Foreign Trade



- a. Export of Rice (basmati & non-basmati) to EU member states and other European countries namely Iceland, Liechtenstein, Norway and Switzerland only require Certification of Inspection from EIA/EIC. Export to remaining European countries requires Certification of Inspection by Export Inspection Council/ Export Inspection Agency w.e.f. January 1, 2022. [Notification No. 12/2015-2020 dated July 1, 2021]
- b. Revised process of online refund of user charges, penalty, other application fees notified. [Public Notice No. 19/2015-2020 dated July 30, 2021]
- c. Formats of ANF-2H (Application for free sale & Commerce certificate) and ANF-2I (Application for free sale & Commerce certificate for items other than medical devices/ instrument) revised in order to remove compliances in relation to mandatory declaration of RCMC details and declaration. [Public Notice No. 13/2015-2020 dated July 12, 2021]
- d. Para 2.96b of the Hand Book Procedures, 2015-20 (HBP 2015-20) and S. No. 9(d) of ANF-2C of the Foreign Trade Policy, 2015-20 (FTP 2015-20) deleted to forego requirement of quarterly return filing by exporter before FIEO. [Public Notice No. 12/2015-2020 dated July 12, 2021]
- e. The Oriental Chamber of Commerce and Industry authorized to issue Certificate of Origin (Non-Preferential) under para 2.04 of the FTP 2015-20. [Public Notice No. 11/2015-2020 dated July 1, 2021]
- f. New form ANF-20(d) for revalidation of SCOMET export authorization with immediate effect. [Public Notice No. 17/2015-20 dated July 27, 2021]
- g. New ITC HS codes 30036000 and 30046000 inserted in Appendix 3B of the FTP 2015-20 with eligible rate of MEIS 3% on export made during January 1, 2017 to December 12, 2020. [Public Notice No. 18/2015-20 dated July 27, 2021]
- h. Online module launched for the purpose of filing of electronic, paperless applications for export authorization of SCOMET items w.e.f. August 05, 2021 and all existing/pending application will also be migrated on the DGFT portal. [Trade Notice No. 11/2021-2022 dated July 28, 2021]

# India Regulatory & Trade Highlights

## Foreign Trade



- i. Online module launched for the purpose of filing of online application in respect of refund of Terminal Excise Duty, Grant of Duty Drawback, Fixation of brand rate for Duty Drawback on the DGFT portal. [Trade Notice No. 12/2021-2022 dated July 28, 2021]
- J. Extension to granted for submission and issuance of CoO (Non-Preferential) by the issuing agencies through their paper-based systems till September 30, 2021 which was earlier introduced on mandatory basis vide trade Notice 48/2020-2021 dated March 25, 2021. [Trade Notice No. 10/2021-2022 dated July 19, 2021]
- k. Date for submission of suggestions for new Foreign Trade Policy (2021-26) extended till September 30, 2021. [Trade Notice No. 09/2021-2022 dated July 16, 2021]

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

a. Anti-Dumping Duty investigation initiated against import of:

<b>Product</b>	<b>Country of export</b>
Clear Float Glass	Bangladesh and Thailand
Electrogalvanized Steel	Korea RP, Japan and Singapore

b. Sunset Review investigation initiated for review of levy of Anti-Dumping Duty against import of:

<b>Product</b>	<b>Country of export</b>
Elastomeric Filament Yarn	China PR, South Korea, Taiwan and Vietnam
Colour Coated Pre painted Flat Products alloy non alloy steel	China PR & EU
Wire Rod of Alloy or Non Alloy Steel	China PR

c. Final Findings in Sunset Review investigation issued concerning on import of:

<b>Product</b>	<b>Country of export</b>
Barium Carbonate	China PR

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

<b>Product</b>	<b>Country of export</b>
Rubber Chemical PX-13	China PR, Korea RP and USA

## India Custom Highlights

- a. Re-import of goods sent abroad for repair to attract IGST on a value equal to the repair value, insurance and freight instead of entire value of goods. [Notification 36/2021-Cus, 37/2021-Cus and Circular No. 16/2021-Cus all dated July 19, 2021]
- b. The Sea Cargo Manifest and Transshipment (Fifth Amendment) Regulations, 2021 notified. [Notification No.61/2021- Cus [NT] dated July 23, 2021]
- c. The Customs Brokers Licensing (Amendment) Regulations, 2021 notified. [Notification No.62/2021- Cus [NT] dated July 23, 2021]
- d. Agreements or Arrangements between India and other countries on Cooperation and Mutual Administrative Assistance (CMAA) in Customs matters notified. [Notification No.58/2021- Cus [NT] dated July 1, 2021]
- e. Various improvements made in faceless assessment and clearance process such as Anonymized Escalation Mechanism, Automated generation of examination orders etc. to expedite customs clearance process. [Circular No. 14/2021-Cus dated July 7, 2021]
- f. Implementation of second phase of risk management system wherein the shipping bill with claim for duty drawback would be routed on basis of risk evaluation through appropriate selection criteria by the system. [Circular No. 15/2021-Cus dated July 15, 2021]
- g. Renewals of License/Registration requirement in Customs Brokers Licensing Regulations, 2021 and Sea Cargo Manifest and Transshipment Regulations, 2018 abolished. [Circular No. 17/2021-Cus dated July 23, 2021].

## India GST Highlights

a. Clarification issued in relation to extension of limitation period under GST laws in terms of the Hon'ble Supreme Court's Order dated April 27, 2021

- The Supreme Court, in suo moto proceedings, in SMW(C) No. 3/2020, Miscellaneous Application No. 665/2021 extended limitation period for instituting/terminating proceedings from March 15, 2020 till further orders applicable to quasi-judicial and judicial proceedings.
- CBIC has further clarified that Order dated April 27, 2021 not applicable to:
  - i. compliances to be undertaken under the law
  - ii. proceedings to be initiated under the law and hearing and disposal of proceedings by tax authorities of matters such as disposal of refund application
  - iii. revocation of cancellation of registration
  - iv. adjudication proceedings of demand notices.
  - v. hearing of appeals already filed.

[Circular No. 157/13/2021-GST dated July 20, 2021]

b. Registered person whose aggregate turnover in the financial year (FY) 2020-21 is upto INR 20 million exempted from filing annual return.

[Notification No. 31/2021-CT dated July 30, 2021]

c. Amendments made in the Central Goods and Services Tax Rules, 2017 (the CGST Rules), details of which are as under:

Amended provision in the CGST Rules	Amendment
Rule 80	Registered person whose aggregate turnover exceeds 50 million during FY required to furnish self-certified reconciliation statement in Form GSTR-9C along with annual return in Form GSTR-9 on or before 31 <sup>st</sup> December following the end of such FY.

Further, instructions in Form GSTR-9 (Annual Return) and Form GSTR-9C (Reconciliation Statement and Certification) amended.

[Notification No. 30/2021-CT dated July 30, 2021]

## India GST Highlights

d. Section 110 and Section 111 of the Finance Act, 2021 to be effective from August 1, 2021 wherein registered person required to file annual return along with self-certified reconciliation statement, reconciling the value of supplies declared in the return furnished for FY. Further, no requirement for getting accounts audited by chartered accountant (CA)/ cost accountant for the purpose of filing reconciliation statement and certification in Form GSTR-9C.

[Notification No. 29/2021-CT dated July 30, 2021]

# Important Case Laws

## GST

- a. The Petitioner is engaged in manufacture of MS Billets and Ingots. In the manufacturing process, a small portion of input gets lost. The Petitioner received an assessment order seeking reversal of Input Tax Credit (ITC) in proportion to the loss of input under Section 17(5)(h) of the Central Goods & Services Tax Act, 2017 (CGST Act).

The Petitioner approached the Hon'ble High Court (HC) on the legal issue whether reversal of ITC is contemplated in relation to loss arising from manufacturing process under Section 17(5)(h) of the CGST Act.

The Hon'ble HC held that the situations set out in Section 17(5)(h) of the CGST Act relates to goods lost, stolen, destroyed, written off or disposed by way of gift or free samples. This indicates loss of inputs that are quantifiable and involve external factors or compulsions. Thus, a loss which is occasioned by consumption in the process of manufacture is inherent in manufacturing process itself and not contemplated or covered under situations adumbrated under Section 17(5)(h) of the CGST Act. Thus, the Petitioner is not liable to reverse the ITC.

**Takeaway: No reversal of ITC in respect of loss of input, which is inherent to manufacturing process**

[M/s ARS Steels and Alloy International Pvt. Ltd. V. The State Tax Officer, Chennai WP No. 2885, 2888, 2890, 3930, 3936 and 3933 of 2020 dated June 24, 2021 (Madras High Court)]



## Important Case Laws

- b. The Petitioner, a registered dealer under the Kerala Value Added Tax Act, had failed to obtain registration under GST due to technical glitches in the GST portal. The Petitioner filed Writ Petition ('WP') whereby an interim order was passed permitting the Petitioner to apply for fresh registration. Accordingly, the Petitioner was granted fresh registration with effect from March 09, 2018. Further, WP was later disposed of directing the Respondents to make appropriate changes in the portal so as to enable the Petitioner to comply with the statutory requirements for the period prior to March 09, 2018.

Despite such directions, no change enabling the Petitioner to comply with the statutory requirements, was brought about by the Respondents and as a result, the Petitioner was unable to upload the returns for the period from July 01, 2017 to March 09, 2018, and remit Tax. This disabled the Petitioner's customers from claiming ITC and many of them stopped business with the Petitioner. The Petitioner, therefore, made a representation before the Respondents, requesting to make arrangements to rectify the technical issues and to provide opportunity for filing monthly returns for the period prior to March 09, 2018.

The Petitioner approached the Hon'ble HC on account of non-consideration of such a representation.

The Hon'ble HC noted that it is technically impossible to make changes in the GST portal for providing opportunity for an individual assessee to comply with the statutory requirements from a date prior to its registration, Thus, the Hon'ble HC directed the Petitioner to pay Tax for the period covered by provisional registration from July 01, 2017 to March 09, 2018 along with applicable interest under Form GST DRC-03 dealing with intimation of payment made voluntarily or made against the show cause notice or statement. On making such payment, the recipients of the Petitioner shall not be denied ITC only on the ground that the transaction is not reflected in GSTR 2A. It will be open for the GST functionaries to verify the genuineness of the Tax remitted and ITC taken.

**Takeaway: Assessee to pay Tax along with interest in Form GST DRC-03 to comply with the statutory requirements from a date prior to its registration**

[St Joseph Tea Company Ltd. V. The State Tax Officer, Kottayam WP(C) No. 17235 of 2020 dated June 17, 2021 (Kerala High Court)]

# Important Case Laws

## Service Tax

- c. The appellant is engaged in the business of operating cinema halls across the country and charges "convenience fee" for online booking of tickets from its customers.

Department alleged that the fees so collected should be classified under 'Online Information and Database Access Retrieval system (OIDAR) under Section 65(105) (zh) of Chapter V of the Finance Act, 1994 (the Finance Act). Thus, service tax demand was raised for the period April 1, 2007 to December 31, 2011.

The Tribunal held that a service could be classified under 'OIDAR' only if some amount was charged for providing information about movie, show timings, etc. However, in the given case, no charges are payable for gaining access to the information provided. It is only when a ticket is booked online that convenience fee is required to be paid by the user. The substance of the transaction was to book tickets online conveniently. It cannot, therefore, be said that convenience fee is charged for any access/retrieval of information or database as contemplated under OIDAR service. Further, merely because the customer receives a code for getting a printout of the ticket from the cinema hall does not mean that the activity qualifies under OIDAR.

**Takeaway: Services provided in lieu of convenience fees by cinema halls do not classify under Online Information and Database Access Retrieval service**

[M/s PVR Ltd Versus Commissioner of Service Tax, 2021-TIOL-368-CESTAT-DEL dated July 5, 2021]

## Important Case Laws

d. The appellant is a Venture capital fund (VCFs) established as Trusts under the Indian Trusts Act, 1882 and registered with SEBI as a VCF. The appellants held properties in the form of monies contributed by the investors which are held in trust by the Trustees for the benefit of the beneficiaries i.e. the contributories. The issue pertains to whether services provided by the Trust to the contributors of fund was liable to Service Tax.

The Hon'ble Tribunal held that there exists no mutuality of trust between the Trust and the contributors since the trusts violate the principles of mutuality by concerning themselves in commercial activities. The terms of Trust deed clearly accrued certain benefits to persons other than contributors of funds.

It has been further held that the trust, through its trustees were rendering Asset management services to its contributories, which are liable to service tax. These charges were not specifically charged from the contributories but retained out of the funds distributable to them. However, regarding the quantification of exact demand, the matter was remanded back to the lower authorities.

Further, regarding the invocation of extended period of limitation, it has been held that mere availability of information in the public domain cannot be a ground against suppression of fact. The information should be made available to the authorities concerned who need to take a decision based on the circumstances of the case. Accordingly, taxes along with penalty as per Section 77 and 78 of the Finance Act were payable in this case.

**Takeaway: Services provided by Trusts registered as Venture capital Funds to its subscribers are liable to service tax as asset management services**

[M/S ICICI Econet Internet and Technology Fund Versus Commissioner of Central Tax, 2021-TIOL-359-CESTAT-BANG Dated July 1, 2021]

## Important Case Laws

- e. The appellant company was providing sales support and marketing service to its overseas holding company. The appellant had filed a refund claim of unutilized CENVAT credit of service tax availed on input services used for providing output services as export of services in terms of Rule 5 of Cenvat Credit Rules, 2004.

The refund was denied on the ground that the services provided by the appellant do not qualify as export of services since they fall under intermediary service whose place of supply is within India and not outside India.

The Tribunal held that the services rendered by the appellant do not fall under the definition of intermediary. The appellant was solely responsible for creating awareness in the Indian market and promoting the software products. Once the potential customer was identified, the negotiation on pricing, terms of contract and scope and quality of services was the responsibility of the overseas holding company. Further, the appellant was compensated on the basis of cost plus markup basis and not on the basis of sales commission. Thus, the services were provided on a P2P basis and there was no principal-agent relationship.

Accordingly, it has been held that the services do not fall under intermediary service and thus qualify as export of services. Therefore, assessee was entitled to refund of credit.

**Takeaway: Services in the nature of pure Sales and marketing support services provided by a domestic company to an overseas company rendered on a P2P basis do not qualify under intermediary services.**

[CSG Systems International India Pvt Ltd Versus Commissioner Of Central Tax, 2021-TIOL-422-CESTAT-BANG dated March 29, 2021]

# Important Case Laws

## Customs

- f. The Petitioner is an agent of Hyundai Merchant Marine Company Limited, Seoul (Korea) (Principal Company) which carries on business as container owners and carriers at Korea. The Petitioner is entrusted with the obligation to receive and return the containers to Principal Company after the discharge of the cargo. Certain containers were detained by the department, therefore the Petitioner sought directions for release of the containers.

Department alleged that the Petitioner has not provided relevant documents for the purpose of release of containers and therefore, WP is not maintainable

The Hon'ble High Court held that imports and exports are to be done by complying procedures contemplated with mandatory requirements. The WP filed by the Petitioner to direct the department for release and return of the containers, itself is absurd. Such a relief requires adjudication in view of the fact that there are statutory requirements and compliance of the terms and conditions with the Customs Cargo Service Provider and other aspects of the matter. Without adjudicating all those factors, the High Court cannot issue a writ granting the relief in the writ petition filed. When disputed facts are raised between the parties, the same cannot be entertained and the High Court cannot conduct a roving enquiry with reference to the dispute, which is to be resolved with reference to the documents and evidence produced before the competent authorities. Accordingly, the Hon'ble High Court disposed the WP by granting the petitioner liberty to approach the competent authority of the respondents or before the competent forum for the purpose of adjudication of disputes and redressal of grievances.

[M/s Hyundai Merchant Marine India Private Limited Vs UOI [WP No. 33098 and 33104 of 2018, Order dated July 2, 2021 (Madras High Court)]

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