

INDIRECT TAX NEWSLETTER

February 2020 (updated till 31st January 2020)



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NEWS CORNER

- ❖ The CBIC has blocked Rs.40,000 crore due to mismatch in returns.
- ❖ Due dates to file GST returns re-jigged in order to obviate the pressure from IT systems.
- ❖ Fake invoicing under GST a non-bailable offense: Union Budget 2020.
- ❖ Energy firms cry foul over hike in customs duty on solar equipment.
- ❖ Strict provisions across Customs rules to tighten the screws on imports.
- ❖ The Govt summons Infosys to explain glitches in GST return filing.
- ❖ A simplified return format for GST is being introduced from April 2020: Finance Minister.
- ❖ The Oil Ministry has pitched for the inclusion of natural gas in the ambit of the GST.
- ❖ Only 1 out of 4 assesses has submitted the GST audit conciliation report so far for FY18.

REGULATORY UPDATES

GOODS & SERVICES TAX (GST) LAW

- ❖ The CBIC vide **Notification No. 01/2020-CT, dated 01.01.2020** has notified provisions of the Finance Act, 2019 for carrying out amendment in CGST Act, 2017 except the following:
 - Section 39 (1) & (2) of the CGST Act w.r.t. furnishing of returns;
 - First Proviso to Section 50 – levy of interest by debiting electronic cash ledger;
 - Section 54(8A) – disbursement of state tax by the Government; and
 - Provisions pertaining to National Appellate Authority for Advance Rulings).
- ❖ The CBIC vide **Notification No. 02/2020-CT, dated 01.01.2020** has made amendments in the CGST Rules wherein they have extended the date for submitting the declaration electronically in FORM GST TRAN-1 and FORM GST TRAN-2 up to 31st March, 2020 and 30th April, 2020 respectively only for the registered persons who could not submit the said declaration by the due date on account of technical difficulties on the common portal.
- ❖ The CBIC vide **Notification No. 05/2020-CT, dated 13.01.2020** has appointed the Revisional Authority under CGST Act, 2017.

All other provisions shall come into force w.e.f. 1st January, 2020.

- ❖ The CBIC vide **Circular No. 131/2020-GST**, dated **23.01.2020** has provided the clarification with respect to the Standard Operating Procedure (SOP) which should be followed by the exporters whose scrolls

pertains to refund have been kept in abeyance for verification would require to furnish the relevant information/details in “Annexure-A” as stipulated in the said circular.

CUSTOMS LAW

- ❖ The CBIC vide **Circular No. 02/2020-Cus**, dated **10.01.2020** has elucidated w.r.t. the Levy and Collection of Social Welfare Surcharge (SWS) on imports under various schemes such as Merchandise Exports from India Scheme (MEIS), Services Exports from India Scheme (SEIS), etc. The said circular stipulates that the SWS shall not be charged from duty credit scrips and therefore, the same has to be paid in cash by the importer.

- ❖ The CBIC vide **Circular No. 05/2020 – Cus** dated **27.01.2020** has decided to implement the facility of automated clearance in the ICES w.e.f. 06.02.2020 on a pilot bases at Chennai Customs and JNCH, Raigad.

- ❖ The CBIC vide **Circular No. 06/2020-Cus**, dated **30.01.2020** has delineated the salient features of the revised rate of Duty Drawback which will come into force w.e.f. 04.02.2020.

FOREIGN TRADE POLICY

- ❖ The DGFT vide **Notification No. 42/2015-20**, dated **10.01.2020** has amended the Para 6.01(k) of Foreign Trade Policy 2015-20 by delegating the authority to Development Commissioner/Designated Officer concerned for approving proposals for consolidation of goods related to manufactured articles.

- ❖ The DGFT vide **Public Notice No. 55/2015-20**, dated **03.01.2020** has provided a one-time condonation under the EPCG scheme. The time period to receive the requests in RAs for the block-wise extension, extension in export obligation period and submission of installation certificate is further extended up to 31.03.2020.

- ❖ The DGFT vide **Public Notice No. 56/2015-20**, dated **14.01.2020** has suspended Standard

Input Output Norms (SION) for Stainless Steel Washers appearing under C-888.

- ❖ The DGFT vide **Public Notice No. 58/2015-20**, dated **29.01.2020** has withdrawn the MEIS for items in the Apparel and Made-ups sector covering under chapters 61, 62 and 63 of ITC HS 2017 w.e.f. 07.03.2019 and delineated the mechanism for implementation of RoSTCL scheme.

- ❖ The DGFT vide **Circular No. 30/2015-20**, dated **08.01.2020** has provided the clarification in relation to the Steel Import Mechanism System (SIMS) registration for SEZ/DTA units stating that if the goods are imported under SIMS to SEZ/FTWZ are supplied to DTA unit without processing, DTA unit would not require to get any registration under SIMS.

JUDICIAL UPDATES

GST LAW

- ❖ **GST** – The petitioner had challenged the levy of the IGST on the estimated component of the Ocean Freight which was paid for the transportation of the goods by the foreign seller. On such service, IGST @5% was sought to be levied and collected from the importer (as a recipient of service) in accordance with the Not. No. 08/2017-IT(Rate), dtd. 28.06.2017 and Not. No. 10/2017-IT(Rate), dtd. 28.06.2017 (hereinafter referred to as “impugned notifications”) **Held:** No tax is leviable under the IGST Act on the ocean freight for the services provided by a person located in a non-taxable territory, by way of transportation of goods, by a vessel from a place outside India upto the customs station of clearance in India and the levy & collection of such tax under the impugned notification is not permissible in law: **Gujarat High Court [Mohit Minerals Pvt Ltd Vs Union Of India & 1 Other(s), R/Special Civil Application No. 726 of 2018]**
- ❖ **GST** – Applicant were using every model of each car for demonstration purposes which were used for limited period viz, two years or 40,000 km (whichever is earlier) thereafter, the same was sold after paying applicable taxes on the sale value. Also, there is no time limit prescribed in the GST Act for making such supplies. The Hon’ble Authority opined that the applicant was eligible to avail ITC as the same was used for demonstration purpose in the course of business of Supply of Motor Vehicle: **AAR [Chowgule Industries Pvt Ltd, 2020-TIOL-05-AAR-GST]**
- ❖ **GST** – The Petitioner assailed the SCN wherein the department demanded tax with interest and penalty. The petitioner alleged that the SCN was vague and did not contain any specific allegation or proper reason/ground for the demand. The petitioner’s registration under the GST Act was cancelled and consequently issued the notice. The Learned counsel for the respondent submitted that they would issue fresh SCN with specific particulars and grounds. Therefore, the said SCN stands withdrawn with liberty to issue a fresh one: **Delhi High Court [Teneron Ltd Vs STO, 2020-TIOL-181-HC-DEL-GST]**
- ❖ **GST** – The Appellant was exporting the cotton on payment of applicable GST and wrongly availed the higher duty drawback. Later, the appellant had rectified the same by making repayment of the same with interest and then sought a refund of the IGST paid. The Revenue rejects the refund claim relied upon the Circular No. Circular No.37/2018-Custom. The Hon’ble High Court opined that the Circulars cannot prevail over the statute. Therefore, the Revenue was directed to refund the amount of IGST: **Madras High Court [Precot Meridian Ltd Vs CC, 2020-TIOL-29-HC-MAD-GST]**
- ❖ **GST** – The Petitioner filed the writ petition w.r.t. refund of ITC under the category ‘others’ either through online portal or manually and also claimed benefit under Circular No. 94/2019-GST dated 28.03.2019. The Hon’ble High Court is of the view that the applications filed before 26.09.2019 shall continue to be processed manually as prior to the deployment of the new system. Hence the authorities concerned are directed to consider the petitioner's application for refund of ITC as per the circular: **Karnataka High Court [Samsung R & D Institute India Bangalore Pvt Ltd Vs CBIC, 2020-TIOL-03-HC-KAR-GST]**

CUSTOMS LAW

- ❖ **Cus** – The petitioner was importing the goods on payment of applicable customs duties. The petitioner offset such Customs Duties (includes basic customs duty and social welfare surcharge) by procuring the scrips under the MEIS and SEIS and utilizing such scrips which he had procured from various exporters who had obtained the same under Chapter 3 of FTP. The Madras High Court opined that the petitioner is liable to pay appropriate social welfare surcharge and held that the recovery of SWS cannot be done by making debit from the value of the scrips produced by the petitioner: **Madras High Court [Gemini Edible and Fats India Pvt. Ltd. vs UoI, W.P. Nos. 24490 of 2019]**
- ❖ **Cus** – The writ petition has been filed seeking quashing of adjudication proceeding on the ground that the adjudication proceeding had become barred by limitation in view of the limitation period of one year for adjudication from the date of SCN. The petitioner relies on Circular No. 732/48/2003-CX directing that after the conclusion of personal hearing, it is necessary to communicate the decision immediately or at least one month from the date of the personal hearing. The High Court opined that the SCN to be quashed where it was possible on behalf of the adjudicating authority to adjudicate within the period of limitation: **Delhi High Court [Sunder System Pvt Ltd vs UoI, W.P.(C)8675/2017]**



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