



INDIRECT TAX NEWSLETTER

February, 2021 (updated till 01.02.2021)



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ARTICLE BY RSA LEGAL:

DGFT: Appeal v Review v SCN:

Chaos created by DGFT authored by

Abhishek Jain (Partner) co-authored

by Anushka Jain (Associate)

<https://taxguru.in/dgft/appeal-review-scn-chaos-created-dgft.html>

GST: Refund of IGST paid on export

of services: Blunder of GSTN system

co-authored by Anshul Mittal

(Partner)

<https://taxguru.in/goods-and-service-tax/refund-igst-paid-export-services-blunder-gstn-system.html>

INFORMATIVE SESSIONS:

DGFT: Implementation of Scheme

For Remission of Duties and Taxes

on Exported Products(RoDTEP)

<https://www.youtube.com/watch?v=J11bxg2Z6ZA>

Budget Analysis 2021- Changes in

Direct and Indirect Tax.

<https://www.youtube.com/watch?v=SGEdyMv0fsg>

***For complete articles and videos kindly click on the link.**

UNION BUDGET 2021

On 01.02.2021, the “Never Before Budget” was presented by the Hon’ble Finance Minister, Smt. Nirmala Sitharaman. Several changes in indirect taxes were proposed by the Finance Bill. The major highlights of the same are enlisted below.

GOODS & SERVICES TAX LAW

- ❖ Amendment is proposed to provide availment input tax credit only when the details of invoice/debit note have been furnished by the supplier in the statement of outward supplies.
- ❖ Proposal is made remove the mandatory requirement of getting the annual accounts audited and reconciliation statement submitted by specified professional.
- ❖ It is proposed to charge interest on the net cash liability retrospectively from 01.07.2017.
- ❖ Proposal is made to delink the proceedings under provision relating to detention, seizure and release of goods and conveyance in transit from the proceedings under the provision relating to confiscation of goods or conveyance and levy of penalty.
- ❖ It is proposed to allow the Government the power to notify the class of taxpayers who may take zero rated supplies upon payment of tax and avail refund of the same.

CUSTOMS

- ❖ Unless extended, all existing conditional exemption notifications will expire on 31st March, 2023. All future conditional exemption notifications will expire on 31st March falling immediately two years after the date of such exemption notification (or any subsequent variation), unless extended.
- ❖ It is proposed to provide a two-year time-period provided for completion of all investigation / inquiry initiated for issuance of show cause notice.
- ❖ It is proposed to set up a Common Customs Electronic portal for electronic registration, filing of bills of entry, shipping bills, other documents and forms prescribed under the Customs Law, payment of customs duty and for other notified purposes.
- ❖ It was proposed to impose the Agriculture Infrastructure and Development Cess (AIDC) on certain specified goods with effect from February 2, 2021. The cess will be in addition to the other chargeable duties of customs.



REGULATORY UPDATES

GOODS & SERVICES TAX LAW

Notifications

❖ **Notification No. 01/2021 – CT, dated 01.01.2021**

A registered person will not be allowed to furnish the details of outward supplies of goods or services or both in GSTR-1 who fails to file GSTR-3B for the preceding two months. Earlier non-filing of GSTR-3B led to the blocking of E-way Bill facility but from now it will also lead to the blocking of GSTR-1 of the taxpayer.

CUSTOMS

Notifications

❖ **Notification No. 11/2021 – Cus dated 01.02.2021**

The CBIC has prescribed the effective rate of AIDC for specified goods mainly falling under Chapter Heading 0713, 2204, 2205, 2206, 2008, 31 etc. AIDC is NIL on the goods falling under any chapter availing the exemption from Basic Customs Duty and allowed under the Advance Authorization.

❖ **Notification No. 13/2021-Cus dated 01.02.2021**

The CBIC has exempted the Social Welfare Surcharge leviable on Agriculture Infrastructure and Development Cess on Gold and Silver.

FOREIGN TRADE POLICY

Trade Notice

❖ **Trade Notice No. 37/2021-21, dated 08.01.2021**

The DGFT has added the United Kingdom as a Country of Export on the e-COO Platform under Generalized Scheme of Preferences (GSP).

❖ **Trade Notice No. 38/2021-21, dated 15.01.2021**

The DGFT has introduced the new online e-PRC System for the applicant who seeks for policy/procedure relaxation.

JUDICIAL UPDATES

GOODS & SERVICES TAX LAW

❖ **Universal Dyechem Private Limited Vs UoI; Special Civil Application No. 1654 of 2021:–**

In the instant matter, the petitioner had filed the petition w.r.t. to the seizure of the various documents like stock register, sale and purchase invoices, bills, books of accounts, ledger accounts etc. during the seizure proceedings. Further, the SCN had been issued in this regard. It had been more than ten months that such documents were not being returned. Neither photocopies of the same were being provided. The Hon'ble High Court opined that once



the SCN is issued to the party concerned, the documents/records, which have not been relied upon, should be returned to the party: **Gujarat High Court**

❖ **M/s. Radheshyam Spinning Pvt Ltd Versus Union Of India; Special Application No. 20759 of 2018: –**

In the instant matter, the issue pertains to the utilization of ITC availed on the account of IGST for the payment of CGST and SGST. The writ application was filed on 18th December, 2020. Section 49 of the CGST came to be amended w.e.f. 01.02.2019 and new Section 49A and Section 9B were inserted in the said Act. By virtue of power under Section 49B, Rule 88A was inserted w.e.f. 29.03.2019 in the CGST Rules vide Notification No. 16/2019–CT, dated 29.03.2019. In such circumstances, w.e.f. 01.02.2019, the ITC available on account of **IGST has to be first utilized for the payment of IGST or CGST or SGST**. This provision was amended w.e.f. 01.02.2019, but the GST portal started functioning as per the amended provisions w.e.f. 01.06.2019. Therefore, w.e.f. 01.06.2019, the accumulated ITC of IGST of Rs. 3,37,79,196/- (Additional Customs duty paid by the writ applicants, EPCG holder) started getting utilized automatically during the pendency of the petition. In such circumstances, the balance of CGST and SGST got artificially inflated as a result of the appropriation of IGST credit. The Hon'ble High Court directed the respondent to sanction and pay the refund of Rs. 3,37,79,196/- after first reversing the entries of the utilization of the subject credit and debiting the said amount from the credit ledger consequently available to the writ applicant: **Gujarat High Court**.

❖ **M/s. Pinnacles Lighting Project Pvt. Ltd.; 2021-TIOL-62-AAR-GST: –**

The applicant is engaged in the business of executing street lighting project. The applicant agreed to provide design, supply, installation, operation, maintenance and transfer of the energy-efficient street lighting system. The applicant sought for the advance ruling whether the contract would be treated as a contract for the composite supply of works contract involving a supply of goods and services. The Hon'ble Advance Ruling Authority opined that the goods that are supplied are used by the applicant to provide services like installation, commissioning and maintenance etc. Without these goods, the services cannot be supplied by the applicant and, therefore, the goods and services are supplied as a combination and in the course of their business where the principal supply is the supply of goods. Therefore, the instant supply squarely falls under the definition of "composite supply" and not a Works Contract Service: **Authority for Advance Ruling Odisha**

❖ **UoI Vs Mohit Minerals Pvt Ltd.; 2021-TIOL-21-SC-GST-LB: –**

In the instant case, the Union of India has filed the SLP to contest findings of the High Court that no tax is leviable under the IGST Act, 2017 on the ocean freight for the services provided by a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India. The High Court declared Notification No.8/2017. IT(R) and the Entry 10 of the Notification No.10/2017. IT(R) both dated 28th June 2017 as ultra vires the IGST Act, 2017 and unconstitutional as they lack legislative competency. The Hon'ble High Court also declined the request of the Revenue Counsel to stay the operation, implementation and execution of the judgment. The Hon'ble Supreme Court issued the notice to the parties. Counter affidavits shall be filed within six weeks from this day: **Supreme Court**.

CUSTOMS LAW

❖ **Shri Amman Dhall Mill Vs Commissioner of Customs; Cus. Appeal.No.13 of 2020: –**

In the instant matter, the importer has imported restricted item i.e. "Green Peas" before the grant of the actual authorization and filed the bills of entry for the clearance of the goods. The issue raised in this case was whether the order of Tribunal under appeal directing the release of subject goods on payment of redemption fine conforms to the scheme of Sections 2(33), 111(d) and 135 of Customs Act, 1962, section 3 of FTDR Act, 1992. The Hon'ble



High Court opined that Appellate Tribunal committed a serious error in law by ordering the release of Canadian Green Peas under Section 125 on payment of redemption fine as, by holding that release of goods was the only option to Customs Commissioner in the case on hand, the language of Section 125 of Customs Act was fully liberalized which was against the relevant notifications, the mandate of FTDR Act and Customs Act 1962: **Kerala High Court.**

NEWSFLASH

- ❖ GST needs fundamental restructuring, says Finance Commission Chairman.¹
- ❖ Traders call Bharat bandh on 26th against GST.²
- ❖ 15th FC report: Annual GST losses hit Rs 4 trillion on lower rates.³
- ❖ Budget 2021 | Will take steps to further smoothen GST structure: Finance Minister.⁴
- ❖ Exports rise 5.37% in January; the trade deficit narrows to \$14.75 billion.⁵
- ❖ Gold prices plunge as customs duty cut in Budget 2021.⁶
- ❖ 'For UK, deeper trade ties with India are an absolute priority'.⁷

¹<https://www.cnbctv18.com/videos/economy/gst-needs-fundamental-restructuring-says-finance-commission-chairman-8246871.htm>

² <https://timesofindia.indiatimes.com/city/nagpur/traders-call-bharat-bandh-on-26th-against-gst/articleshow/80755373.cms/>

³ https://www.business-standard.com/article/economy-policy/15th-fc-report-annual-gst%E2%80%88losses-hit-rs-4-trillion-on-lower-rates-121020200063_1.html

⁴ <https://www.thehindu.com/business/Budget/budget-2021-will-take-steps-to-further-smoothen-gst-structure-finance-minister/article33715753.ece>

⁵ <https://timesofindia.indiatimes.com/business/india-business/exports-rise-5-37-in-january-trade-deficit-narrows-to-14-75-billion/articleshow/80650074.cms>

⁶ <https://www.livemint.com/budget/news/gold-silver-could-get-cheaper-as-customs-duty-cut-in-budget-2021-11612164101620.html>

⁷ <https://www.livemint.com/news/india/for-uk-deeper-trade-ties-with-india-are-an-absolute-priority-11612748908316.html>



RSA Legal Solutions

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About the Firm

RSA Legal Solutions is a top-tier Tax Law firm committed to providing world-class advisory, litigation, and compliance services to businesses, and singularly focused on serving the needs of business clients. The firm specializes in GST, Customs, Foreign Trade Policy, SEZ laws, FEMA, Income Tax, Corporate laws and other allied laws.

Key Persons



**Mr. S.C. Jain (Managing Partner)**
Email :scjain@rsalegalsolutions.com
Mob:+91-8588007302

**Ms. Shweta Jain (Partner)**
Email: shweta@rsalegalsolutions.com
Mob: +91-9891122735

**Mr. Rajat Dosi (Partner)**
Email: rajat@rsalegalsolutions.com
Mob: +91-8800560580

**Mr. Abhishek Jain (Partner)**
Email: abhishek@rsalegalsolutions.com
Mob: +91-9873859616

**Ms. Anshul Mittal (Partner)**
Email: anshul@rsalegalsolutions.com
Mob: +91-8800813451

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