



INDIRECT TAX NEWSLETTER

August, 2022 (updated till 31.07.2022)



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REGULATORY UPDATES

GST LAW

NOTIFICATION

❖ **Notification No. 03/2022-CT (Rate) dated 13.07.2022**

The CBIC has amended/ revised the following rates w.r.t. the transportation of goods and passenger and the same shall be effectuated w.e.f. 18.07.2022. The revised rate has been reproduced below for your ready reference:

- ✓ GST rate on Transport of passengers, with or without accompanied belongings, by ropeways has been reduced to 5% from 18% subject to the condition that the ITC on goods used in supplying of such services has not been taken.
- ✓ GST rate on Transport of goods by ropeways has been reduced to 5% from 18% subject to the condition that the ITC on goods used in supplying of such services has not been taken.
- ✓ GST rate on Renting of goods carriage where the cost of fuel is included in the consideration charged from the service recipient has been reduced to 12% from 18%.
- ✓ GST rate on Supporting services in transport (other than GTA) reduced to 12% from 18%.
- ✓ GST rate on Goods Transport Agency (GTA), GTA may pay GST @ 5% in forward charge mechanism subject to the condition that the ITC in respect of goods and services used in supplying such services has not been taken. The GTA will have to opt to pay the GST on the services and shall be required to make a declaration is in Annexure V (as prescribed in the aforementioned notification) on or before 15th March of preceding FY.

❖ **Notification No. 04/2022-CT (Rate) dated 13.07.2022**

The CBIC has amended the GST rate on the following services, and the same shall be effectuated w.e.f. 18.07.2022. Relevant rates have been reproduced below:

- ✓ GST @ 5% will be payable on room rent above Rs. 5,000 per day, provided by clinical establishments (other than ICU, CCU, ICCU, NICU).
- ✓ Exemption of transport of passengers by air from and to North-East states and Bagdogra (WB), restricted to economy class only.

❖ **Notification No. 05/2022-CT (Rate) dated 13.07.2022**

The CBIC, by inserting new entry 5AA in Notification No. 13/2017-CT (Rate) dated 28.06.2017, has notified that the renting of residential property to a registered person will attract GST @ 18% under RCM.

❖ **Notification No. 07/2022-CT (Rate) dated 13.07.2022**

The CBIC has amended the GST implication on various commodities to “Pre-packed and Labelled” from “Branded or Unbranded”. It has come into force w.e.f. 18.07.2022. Now, the GST has been made applicable on supply of such “pre-packaged and labelled” commodities attracting the provisions of Legal Metrology Act.

For example, items like pulses, cereals like rice, wheat, and flour (aata), etc., earlier attracted GST at the rate of 5% when branded and packed in the unit container (as mentioned above). With effect from 18.07.2022, these items would attract GST when “prepackaged and labelled”. Additionally, certain other



items such as Curd, Lassi, puffed rice etc. when “prepackaged and labelled” would attract GST at the rate of 5%.

Further, it is clarified that a single package of these items [cereals, pulses, flour etc.] containing a quantity of more than 25 Kg/25 litre would not fall in the category of pre-packaged and labelled commodity for the purposes of GST and would therefore not attract GST.

ADVISORY/UPDATE

- ❖ The GSTN has issued the advisory/update in relation to Upcoming Changes in GSTR-3B:
 - ✓ The Government vide Notification No. 14/2022 – CT dated 05.07.2022 has notified few changes in Table 4 of Form GSTR-3B requiring taxpayers to report information on ITC correctly availed, reversal thereof and declaring ineligible ITC in Table 4 of GSTR-3B.
 - ✓ The notified changes in Table 4 of GSTR-3B are being implemented on the GST Portal and will be available shortly. Until these changes are implemented on the GST Portal, taxpayers are advised to continue to report their ITC availment, reversal of ITC and ineligible ITC as per the current practice.
 - ✓ The taxpayers will be duly informed once these changes are made available on the GST Portal.

CUSTOMS

NOTIFICATIONS

- ❖ **Notification No. 42/2022-Cus dated 13.07.2022**

The CBIC has withdrawn the exemption from the payment of Integrated Tax and Compensation Cess on import of research equipment by public-funded and non-commercial research institutions and I.I.T. etc.

INSTRUCTIONS

- ❖ **Instruction No. 16/2022-Cus dated 21.07.2022**

The CBIC has provided the compendium of order/ circulars/ guidelines issued from the Wireless Planning and Coordination (WPC) Wing, Department of Telecommunication with regard to the Import licensing requirement from the WPC wing for the import of wireless equipment.

FOREIGN TRADE POLICY

TRADE NOTICE

- ❖ **Trade Notice No. 14/2022-23 dated 18.07.2022**

The DGFT has delineated the procedure for submission of request for seeking Inter-Ministerial Committee’s (IMC) approval for export of Wheat Flour (Atta). It is imperative note that the export of Maida, Samolina (Rava/Sirgi), however, remains free without any condition.

CIRCULAR

- ❖ **Circular No. 42/2015-20 dated 27.07.2022**



The DGFT has provided clarification in relation to the Non-Ferrous Metal Import Monitoring System (NFMIMS). Relevant clarification has been encapsulated below:

- ✓ NFMIMS will not be applicable on air-freighted goods as this mode is used for emergency/small volume high value goods required at short notice.
- ✓ Any number of consignments can be imported by a single NFMIMS registration within the validity of the registration.
- ✓ The information relating to proper QCO description can be treated as optional category in the description filed by importer under NFMIMS.
- ✓ QCO information is optional information therefore, it is not mandatory for the Custom officer to check QCO description under NFMIMS. However, custom officer has to consider the provisions/rules under the other laws of the land at the time of clearing the Bill of Entries.
- ✓ NFMIMS is applicable to imports through Advance Authorization, DFIA and import to SEZs.

❖ **Circular No. 43/2015-20 dated 27.07.2022**

The DGFT has provided the clarification vide which the condition, as prescribed under the Foreign Trade Policy, for submitting 'Bill of Export' for supplies made to SEZ prior to 01.04.2015 in case of EPCG Authorization has been relaxed. The Authorization Holder can submit corroborative evidence in lieu of 'Bill of Exports' such as:

- ✓ ARE-I form duly attested by jurisdictional Central Excise of EPCG Authorization holder.
- ✓ Evidence of receipt of the supplies by the recipient in the SEZ
- ✓ Evidence of payment made by the SEZ unit to the EPCG Authorization holder

RATIO DECIDENDI

GST LAW

❖ **Union of India & Anr. Vs Filco Trade Centre Pvt. Ltd. & Anr., Special Leave to Appeal (C) No(S). 32709-32710/2018 – Supreme Court**

The Revenue, in the present matter, has filed the SLP before the Hon'ble Supreme Court in the wake of various High Court decisions which had allowed writ petitions filed by the registered taxpayers seeking directions to avail Transitional Credit beyond statutory time limit. Considering the same, the Apex Court has issued the following direction for filing of Tran-1:-

- i. GSTN is directed to open the common portal for transitional credit through TRAN-1 and TRAN-2 for 60 days i.e. w.e.f. 01.09.2022 to 31.10.2022.
- ii. This facility will be available for all the assesseees whether they have filed the writ or not.
- iii. GSTN has to ensure that there will be no technical glitch during the aforesaid period.
- iv. The concerned officers are given 90 days thereafter to verify the claim of credit on merits and pass appropriate order.
- v. The allowed transitional credit is to be reflected in the Electronic Credit Ledger.
- vi. The GST Council, if required, may also issue the guidelines to the field formation for scrutinizing the claims.



❖ **Transways India Transport Vs Joint Commissioner of Commercial Taxes, Writ Petition No. 7226 of 2022-Karnataka High Court**

In the instant matter, the Petitioner's lorry was carrying four consignments of different location. The Driver was carrying all relevant information/documents in relation to the delivery of goods. However, the lorry was detained by the Department on sole ground that the driver was supposed to take the left turn toward its delivery location, but he moved straight which led to the different location, thus, the goods were moved without documents. In this regard, the Hon'ble High Court held that there may be chances of diversion that might have taken place due to human error and it cannot be definitely concluded that diversion was deliberate. Therefore, no penalty is imposable in relation to the vehicle of movement in the wrong direction due to human error.

CUSTOMS

❖ **China Steel Corporation India Pvt Ltd Versus C.C.-Ahmedabad, Customs Appeal No. 10164 of 2019-CESTAT Ahmedabad**

In the present matter, the refund of 1% Extra Duty Deposit (EDD), paid on account of the pending SVB investigation, was rejected on the sole ground that the refund claim is time-barred. In this regard, the Hon'ble CESTAT held that the refund of EDD cannot be treated as time-barred. Further, opined that the appellant is not even required to file the refund claim and the same should have been refunded without the filing of the refund claim.

❖ **Leather Sellers Vs Commr. of Customs and Excise, Patparganj, Customs Appeal No. 50001 of 2017-CESTAT Delhi**

In the instant matter, the appellant is a manufacturer-exporter of leather goods. They had re-imported a consignment of goods, which were earlier exported for the purpose of repair etc. and thereafter, re-export. For such re-import, the appellant had filed a bill of entry with an undertaking to re-export within a period of six months as per Notification No. 158/95-Cus and for the said purpose, they have also submitted a re-export bond and also Bank Guarantee for Rs. 3,10,000/-. Accordingly, in terms of the notification, they were given the benefit of re-import without payment of Customs duty. After the re-export, they applied for the release of their bond and Bank Guarantee. Thereafter, without providing any opportunity of hearing to the appellant, the revenue proceeded to encash the Bank Guarantee by issuing an invocation letter. In this regard, the Hon'ble CESTAT held that the amount was lying in the nature of the pre-deposit with the department from the date of encashment of the Bank Guarantee. Accordingly, the appellant is entitled to interest from the date of encashment of Bank Guarantee, under Section 129EE of the Customs Act @ of 12% P.A.

❖ **Chaithanya Projects Private Limited Versus Commissioner of Customs, Chennai, 2022 (7) TMI 931 -CESTAT Chennai**

In the instant matter, the Revenue has invoked Section 114A of the Customs Act and imposed the penalty, therein on the sole ground that the appellant has misclassified the imported goods. The Appellant, aggrieved from the penalty imposed, filed the appeal before the Hon'ble CESTAT wherein it is held that a wrong classification would not amount to collusion or any wilful misstatement or suppression of facts, therefore, the penalty is not imposable.



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