

INDIRECT TAX NEWSLETTER

February, 2023 (updated till 31.01.2023)



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WEBINAR ON “THROUGH INSIGHTS INTO THE UNION BUDGET 2023”

The updates on the proposed changes in the Finance Bill, 2023 are provided in the Union Budget 2023 update with respect to both Direct and Indirect Tax. The Link to the recorded webinar can be accessed by clicking the link below.

Recorded Webinar Link: <https://youtu.be/Ix0uF8ktFFY>

The detailed Update on the Union Budget has been separately sent earlier and hence has not been made part of this newsletter.



REGULATORY UPDATES

GST LAW

CIRCULARS

❖ **Circular No. 189/01/2023-GST dated 13.01.2023**

The CBIC has provided the clarification regarding GST Rates and classification of certain goods. The circular provides clarification in the following scenarios:

- ✚ The product 'Rab' is to be classified under Tariff Heading 1702 attracting GST Rate of 18%.
- ✚ The Carbonated Beverages of Fruit Drink' or 'Carbonated Beverages with Fruit Juice' to be classified under Tariff Heading 2202 99 at the GST Rate of 28% cess at the rate of 12%.
- ✚ The snack pellets such as 'fryums' to be classified under 1905 90 30 at the GST Rate 18%.
- ✚ It is clarified that Compensation Cess at the rate of 22% is applicable on Motor vehicles, falling under heading 8703, which satisfy all four specifications, namely: -these are popularly known as SUVs; the engine capacity exceeds 1,500 cc; the length exceeds 4,000 mm; and the ground clearance is 170 mm and above.
- ✚ It is clarified that on goods specified in the list annexed to the notification No. 3/2017-Integrated Tax (Rate), dated the 28th June, 2017, which are eligible for IGST rate of 12% under the said notification and are also eligible for the benefit of lower rate under Schedule I of the notification No. 1/2017-Integrated Tax (Rate), dated the 28th June, 2017 or any other IGST rate notification, the importer can claim the benefit of the lower rate.

❖ **Circular No. 190/02/2023-GST dated 13.01.2023**

The CBIC has provided Clarification regarding applicability of GST on certain services. The circular provides clarification in the following scenarios:

- ✚ It is hereby clarified that accommodation services provided by Air Force Mess and other similar messes, such as, Army mess, Navy mess, Paramilitary and Police forces mess to their personnel or any person other than a business entity qualify to be considered as services supplied by Central Government, State Government, Union Territory or local authority.
- ✚ It is clarified that incentives paid by MeitY to acquiring banks under the Incentive scheme for promotion of RuPay Debit Cards and low value BHIM-UPI transactions are in the nature of subsidy and thus not taxable.



CUSTOMS

NOTIFICATIONS

❖ **Notification No 01/2023-Cus (Tariff) dated 13.01.2023**

CBIC has notified exemption on custom duty leviable on COVID-19 vaccine till 31st March 2023.

❖ **Notification No 03/2023-Cus (NT) dated 11.01.2023**

CBIC has notified Customs (Assistance in Value Declaration of Identified Imported Goods) Rules, 2023. These Rules prescribes the manner and procedure with regard to constitution of the Screening and Evaluation Committee, procedure for specification of identified goods, sources for examining cases for identified goods, preliminary and detailed examination by Screening/ Evaluation Committee, confirmation of report with recommendations by screening committee, CBIC to issue Order after considering recommendations, mid-term review, and so on, effective February 11, 2023. However, it will not be applicable in respect of certain goods.

CIRCULARS

❖ **Circular No. 01/2023-Cus dated 11.01.2023**

The CBIC has provided the clarification on Customs (Assistance in Value Declaration of Identified Imported Goods) Rules, 2023(CAVR, 2023). It was clarified that the aspects in the rules are hereunder:

- ✚ The processes to be followed before the Board may specify a class of imported goods, for which there is a reason to believe that the value may not be declared truthfully or accurately but below it, as identified goods.
- ✚ The procedures for an importer of identified goods, once the relevant class of goods have been specified as identified goods by the Board. These include declaring certain aspects while filing the bill of entry. Further, if required by the Customs Automated System, such importer shall also fulfil the specified additional obligations, and specified checks shall be performed so as to enable and assist the importer to demonstrate the truthfulness and accuracy of the declared value.
- ✚ The specification that where the proper officer still has reasonable doubt about the truth or accuracy of the value declared in relation to the identified goods, the further proceedings shall betake in accordance with rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (CVR, 2007) only.

❖ **Circular No. 02/2023-Cus dated 11.01.2023**

The CBIC has provided the clarification on Faceless Assessment – Standard Examination Orders through RMS - Phased implementation of Standardized Examination Orders through RMS. The circular provides the groups decided by board to implement SEOs through the Risk Management System across other assessment groups, National Assessment Centre (NAC) wise.

INSTRUCTIONS

❖ **Instruction No. 01/2023-Cus dated 07.01.2023.**

The CBIC has provided the instructions in relation to implementation of E-waste (Management) Rules, 2022 in supersession of E-waste (Management) Rules, 2016. As per the instructions, it has been stated Port and Custom Authorities have to take necessary action inter-alia to verify the import or export with respect to Extended Producer Responsibility.



❖ **Instruction No. 02/2023-Cus dated 07.01.2023.**

The CBIC has provided the instructions in relation to Health Warning on both sides of the tobacco product packages covering 85% of display area.

❖ **Instruction No. 04/2023-Cus dated 27.01.2023.**

The CBIC has provided the instructions regarding the extension of requirement of Health Certificate accompanied with import of food consignments.

ANTI-DUMPING DUTY

NOTIFICATIONS

❖ **Notification No 01/2023-Cus (ADD) dated 06.01.2023**

CBIC by the virtue of the notification has notified that it seeks to extend levy of ADD on Fishing Net originating in or exported from China PR.

❖ **Notification No 02/2023-Cus (ADD) dated 25.01.2023**

CBIC by the virtue of the notification has notified that it seeks to amend notification No. 43/2021-Customs (ADD) regarding levy of anti-dumping duty on Phthalic anhydride to amend the name of the producer from "Aekyung Petrochemical Co. Ltd." to "Aekyung Chemical Co., Ltd.".





FOREIGN TRADE POLICY

NOTIFICATION

❖ **Notification No. 53/2015-2020 dated 09.01.2023**

The DGFT has notified the revised Appendix 4R, after incorporating changes recommended by the RoDTEP Committee in relation to apparent errors and anomalies in 432 HS Codes in the earlier notified RoDTEP rates/caps, is being notified and will be applicable for exports made from 16.01.2023 to 30.09.2023.

❖ **Notification No. 54/2015-2020 dated 24.01.2023**

The DGFT has amended the Import Policy Condition of Urea [Exim Code 31021000] in the ITC HS 2022, Schedule-I (Import Policy).

PUBLIC NOTICE

❖ **Public Notice No. 48/2015-20 dated 05.01.2023.**

The DGFT has amended the Para 2.56 of the Hand Book of Procedures (HBP) 2015-20 and addition of agencies to Appendix 2G. As per the amendment, it is required to capture the photo of Inspector with the empty container in the background with the container name clearly readable. Photo of instrument used to be also captured.

❖ **Public Notice No. 49/2015-20 dated 09.01.2023.**

The DGFT has amended the Appendix 2T (List of Export Promotion Councils/Commodity Board/Export Development Authorities) of Appendices and ANFs of FTP 2015-20.

❖ **Public Notice No. 52/2015-20 dated 18.01.2023.**

The DGFT has amended the Para. 4.42 of the Handbook of Procedures 2015-20. The amendment is in order to provide the composition fees to be levied on the basis of CIF Value of Advance Authorization Licenses.

❖ **Public Notice No. 53/2015-20 dated 20.01.2023.**

The DGFT has amended the Chapter 5 of the Handbook of Procedures 2015-20. Further, it has provided one-time relaxation from maintaining Average Export Obligation period for specified EPCG Authorization on account of Covid-19.

❖ **Public Notice No. 54/2015-20 dated 31.01.2023.**

The DGFT has amended the conditions of SION at E-136 for export of wheat flour (Atta) and amendment in Para 4.05 (iii) under Handbook of Procedures 2015-20.

POLICY CIRCULAR

❖ **Policy Circular No. 45/2015-20 dated 23.01.2023**

The DGFT has provided the clarification on Implementation of Paper Importing Monitoring System (PMS).

TRADE NOTICE

❖ **Trade Notice No. 24/2022-23 dated 12.01.2023**

The DGFT withdraws EODC Online Monitoring System for Advance/EPCG Authorization.

❖ **Trade Notice No. 24/2022-23 dated 12.01.2023**

The DGFT provides the guidelines to streamline Halal Certification Process for Meat and Meat Products. The certificate to be issued by National Accreditation Board for Certification Bodies, Quality Council of



India under India Conformity Assessment Scheme (i-CAS)-Halal. The certificate bodies to follow procedure laid down by (i-CAS)-Halal.

RATIO DECIDENDI

GST LAW

❖ **M/S. Snehador Social and Health Care Support LLP [Authority for Advance Ruling, West Bengal]**

Applicant, a start-up LLP, provides services to its members under three packages namely 'Sneha', 'Snehalata' and 'Snehadhara' for which member(s) (either as single or couple) are required to pay annual registration fee, quarterly fee along with a refundable security deposit - Services of regular medical monitoring along with other logistic support provided by the applicant to senior citizens at their door step does not qualify for exemption and the same is liable to tax @ 18% vide serial number 31 Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 - Supply by way of healthcare services qualifies for exemption under serial number 74 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 only if the same is provided by a clinical establishment, an authorised medical practitioner or para-medics - Admittedly, the applicant doesn't fall under any of the aforesaid categories of suppliers and the services provided by the applicant, therefore, fail to qualify as exempted service.

❖ **Jayesh Popat [Authority of Advance Ruling, West Bengal]**

Applicant is carrying on business as a proprietor of M/s. Vasant Jewellers and is registered under the GST Act. The applicant carries another business under the same trade name as a partner and the said partnership firm is also registered under the GST Act. It is submitted that the applicant proposes to merge with the partnership firm as a going concern with all assets and liabilities to be transferred to the partnership firm and such transfer of business shall take place without any consideration. Applicant seeks a ruling as to Whether the transaction of transfer of business by way of merger of two registration/distinct person would constitute supply under GST Law; Whether the transaction would be covered under Entry No. 2 of the Notification No. 12/2017- Central Tax (Rate) ; whether GST is leviable on the transfer of existing stock (closing stock) assets, others etc. from proprietorship concern to the Partnership concern.

To qualify as a 'going concern', the business must not have 'intention or necessity of liquidation or of curtailing materially the scale of the operations'. Applicant has furnished a copy of 'Audit report under section 44AB of the Income-tax Act, 1961' related to the period from 01.04.2020 to 31.03.2021. However, Authority does not find any comments from the auditor in respect of the 'entity's ability to continue in operation for the foreseeable future'. Authority is, therefore, unable to conclude that the applicant has neither the intention nor the necessity of liquidation or of curtailing materially the scale of the operations. Therefore, the transaction of transfer of business of the applicant involved in the instant case shall be treated as a supply of "services". The transaction would be covered under Serial No. 2 of the Notification No. 12/2017-Central Tax (Rate) subject to fulfilment of the conditions to qualify as a going concern.

❖ **Purple Distributors Pvt. Ltd. [Authority for Advance Ruling, West Bengal]**

Work being undertaken by the applicant as a sub-contractor for conversion of Short Welded Rails ("SWR") to Long Welded Rails ("LWR") by Flash Butt Welding process on the railway tracks along with supply of labour services shall be treated as composite supply of services falling under Tariff 995429 and shall be taxable @ 18% vide serial number 3(xii) of Notification No. 11/2017-Central Tax (Rate)

❖ **M/s Premier Sales Promotion Pvt Ltd Vs The Union of India [Writ Petition No. 5569 of 2022 (T-RES) dated January 16, 2023]**

Assessee is engaged in the transactions of procuring Pre-paid Payment Instruments (PPIs) of Gift Vouchers, Cash Back Vouchers and E-Vouchers from the issuers and supplying them to its clients for specified face



value - Its clients issue such Vouchers to their employees in the form of incentive or to other beneficiaries under promotional schemes for use as consideration for purchase of goods or services or both as specified therein - Petitioner prays for quashing the Order number KAR/AAAR/11/2021-22 dated December 22, 2021, **2021-TIOL-37-AAAR-GST** passed by the Karnataka Appellate Authority for Advance Ruling holding that the supply of vouchers is taxable as 'goods' and the time of supply would be governed by Section 12(5) of the Act, 2017 and the rate of GST would be as per Entry No. 453 of Schedule 3 of Notification No. 1/2017- Central Tax (Rate) dated June 28, 2017. **It is held that** it is not in dispute that the vouchers involved in the instant petition are semi-closed Pre-paid Payment Instruments [PPIs] in which the goods or services to be redeemed are not identified at the time of issuance - Vouchers are distributed to its employees or the customers which can be redeemed by them - These PPIs do not permit cash withdrawal, irrespective of whether they are issued by banks or non-banking Companies and they can be issued only with the prior approval of RBI - In substance, the transaction between the assessee and his clients is procurement of printed forms and their delivery - The printed forms are like currency - The value printed on the form can be transacted only at the time of redemption of the voucher and not at the time of delivery of vouchers to assessee's client, therefore, the issuance of vouchers is similar to pre-deposit and not supply of goods or services - Hence, vouchers are neither goods nor services and, therefore, cannot be taxed - Writ petition is allowed - Orders of AAR & AAAR are quashed holding that vouchers do not fall under the category of goods and services and they are exempted from levy of tax.

CUSTOMS/ FOREIGN TRADE POLICY

❖ **CC Vs Amazon Seller Services Pvt Ltd, High Court of Delhi**

Appeal is filed u/s 28KA by Commissioner of Customs against order dated 08.12.2021 passed by Customs AAR seeking to set aside the said order to a limited extent of conferring notification benefit of Serial No. 20 of Notification No. 57/2017-Customs dated 30.06.2017 to Fire TV sticks - Respondent submits that they have neither availed the benefit of Notification No.57/2017-Customs dated 30.06.2017 (at Serial No.20) in respect of the Fire TV sticks nor intends to avail of such benefits; that notwithstanding the same, the present appeal is barred by limitation and the delay is beyond the period that can be condoned.

It was held that it is apparent from the nature of provisions that an inordinate delay in the advance ruling attaining finality would frustrate the scheme and the object of providing such advance rulings - Thus, keeping in view the express language of the proviso to Section 28KA of the Customs Act as well as the nature and scheme of Chapter V-B of the Customs Act, the jurisdiction of the court to extend the time for filing the appeal, in excess of a period of thirty days over and above the stipulated period of sixty days from the receipt of communication of the ruling or order, is impermissible - It is apparent that even if the appellant's contention is accepted that the date of communication of the impugned ruling is 22.03.2022 and not 09.12.2021, the present appeal is beyond the period of ninety days from the said date - Court has no jurisdiction to entertain an appeal against the ruling of the CAAR as it was filed beyond the further period of thirty days, which can be condoned in case appeal is filed after sixty days of the communication of the said ruling - Revenue Appeal is dismissed as barred by limitation.



NEWS NUGGETS

- ❖ The GST collection in January surged to over Rs 1.55 lakh crore, the second highest-ever mop-up
- ❖ Bank loans to the services sector have surpassed those to the industrial segment
- ❖ L&T Construction wins orders from Madhya Pradesh for its water and effluent treatment business
Now Aadhaar holders can update addresses online with consent of head of family.
- ❖ Income tax refunds of Rs. 2.4 lakh crore issued up till Jan 10, 2023
- ❖ Sale increase in all vehicle segments in January 2023.
- ❖ Economic Survey 2023: The predictions in the economy
- ❖ Adani headache grows: flagship sinks 28%, groups scraps its FPO
- ❖ The Central government has accepted that ₹689 crore is pending to Andhra Pradesh as GST compensation for the period between April and June, 2022

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ABOUT THE FIRM

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RSA Legal has successfully found a place in the list of Finalists for “**Tax Law Firm of the Year 2021**” by the Asian Legal Business (ALB) Awards. RSA was recently featured in the “**Top 20 Recommended Lawyers**” in India by Business Connect magazine in 2019-2020. RSA has been chosen in the top 5 finalists in the category of “**Best Startup law firm of the year**” award by the prestigious IDEX Legal Awards. Also, the firm was awarded the “**Top 10 GST Consultants Award**” by the famous Insight Success Magazine.

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