



INDIRECT TAX NEWSLETTER

February 2022 (updated till 31.01.2022)



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REGULATORY UPDATES

GST LAW

ADVISORY/INSTRUCTION

INFORMATIVE SESSION BY RSA LEGAL SOLUTIONS:

Deciphering the proposals and amendments introduced in the Union Budget 2022 pertaining to Direct and Indirect Taxes

https://www.youtube.com/watch?v=-yPm_CGcSN8

The same can be accessed by clicking on the link mentioned above

❖ Deployment of Interest Calculator in GSTR-3B

- ✓ The new functionality of interest calculator in GSTR-3B is now live on the GST Portal.
- ✓ This functionality will facilitate & assist the taxpayers in doing self-assessment. This functionality will arrive at the system computed interest on the basis of the tax liability values declared by the taxpayers, along with the details about the period to which it pertains. The interest applicable, if any, will be computed after the filing of the said GSTR-3B and will be auto-populated in the Table-5.1 of the GSTR-3B of the next tax-period. The facility would be similar to the collection of Late fees for GSTR-3B, filed after the Due date, posted in the next period's GSTR-3B.
- ✓ This functionality will inform the taxpayers about the manner of system computed interest for each tax-head and hence will assist the taxpayers in doing correct computation of interest for the tax liability of any past period declared in the GSTR-3B for the current tax period.
- ✓ This functionality will further improve ease of filing return under GST and is, therefore, in the direction of further reducing the compliance burden for taxpayers.

CUSTOMS

NOTIFICATIONS

❖ Notification No. 07/2022-Customs (N.T.) dated 01.02.2022

The CBIC, vide above-captioned notification, has amended Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 in order to simplify and automate the procedures; the same shall come into force **w.e.f. 01.03.2022**.

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CIRCULARS/INSTRUCTIONS

❖ **Circular No. 03/2022-Customs dated 01.02.2022**

The CBIC has elucidated that the Social Welfare Surcharge (SWS) payable on the imported goods would be 'Nil' where the aggregate of basic or other duties/cesses (which form the base for computation of SWS) is zero even though SWS has not been exempted.

❖ **Instruction No. 01/2022-Customs dated 05.01.2022**

The CBIC has issued the instruction in relation to the divergent practices arisen in assessment of "automobile parts" under Customs Tariff, after the Hon'ble Supreme Court judgement delivered in the case of M/s Westinghouse Saxby Farmer Ltd. Vs. Commissioner of Central Excise, Kolkata, reg. The CBIC has advised that the classification of various parts of Section XVII is to be decided taking into account all facts, details of individual cases, all the decisions on the subject, and arrive at the appropriate classification. It is also informed that taking cognisance of inter-alia the above aspects, including those related to various Supreme Court's judgements in case of parts and accessories and on the grounds of interpretation of Section Notes and the HS Explanatory Notes, the department has filed the review petition against the judgment.

FOREIGN TRADE POLICY

NOTIFICATIONS

❖ **Notification No. 53/2015-2020 dated 01.02.2022.**

The DGFT has extended the due date from 31.01.2022 to 28.02.2022 for submitting the applications pertaining to the following scrip-based schemes:

S. No.	Scheme	Period of Exports (LEO date in the period)/ Services rendered in the period	Late Cut (as %age of Entitlement under the Scheme)
1.	MEIS	FY 2018-19 (01.07.2018 to 31.03.2019)	10%
2.	MEIS	FY 2019-20 and FY 2020-21 (up to 31.12.2020)	Nil
3.	SEIS	FY 2018-19	5%
4.	SEIS	FY 2019-20	Nil
5.	ROSTCL	07.03.2019 to 31.12.2020	Nil
6.	ROSL	Up to 06.03.2019	Nil

It is pertinent to note that any application filed post the aforesaid date, will be considered as time barred.

PUBLIC NOTICE

❖ **Public Notice No. 45/2021-22 dated 13.01.2022**

The DGFT has inserted the new paragraph 2.79G of HBP of FTP 2015-2020, to delineate the procedure for general authorization for export of Chemical and related equipment.

CIRCULAR

❖ **Circular No. 38/2015-20 dated 19.01.2022**



The DGFT has elucidated that reimport of steel for packaging purposes will not be covered under SIMS. Further, it is clarified that export or import by DTA from/to SEZ with or without value addition, should not requires SIMS registration.

RATIO DECIDENDI

GST LAW

❖ **In re Syngenta India Limited, Advance Ruling No. GST-ARA-25/2020-21/B-05 – AAR Maharashtra**

The applicant sought for the Advance Ruling Authority w.r.t. the applicability of GST on 50% recoveries from the employees towards providing parental insurance and the notice pay recoveries on account of not serving the full notice period. The Hon'ble Authority held that the recovery of Parents Health Insurance expenses from employee does not amount to supply of service under the GST Laws. Therefore, GST would not be payable on recoveries made from the employees towards providing parental insurance. Further, recovery of notice pay from dues of employee / payment of notice pay by the employee who could not serve the notice for the period as per contractual agreement / appointment letter does not amount to supply and therefore as per Section 7(1A) of the CGST Act, 2017, the provisions of Schedule II does not come into play. Thus, GST would not be payable on the notice pay recoveries made from the employees on account of not serving the full notice period.

❖ **Colgate Global Business Services Pvt. Ltd. Vs Union of India, Writ Petition No. 802 of 2021 – Bombay High Court**

In the instant matter, Colgate Global Business Services Pvt. Ltd., the petitioner, has filed the present writ petition on account of rejection of the refund application by the respondent without asserting any reason to buttress their decision for rejection. In this regard, the Hon'ble High Court of Bombay held that the Respondent has rejected the application for a refund without recording any reasons, which is mandatory under Rule 92(3) of the CGST Rules, 2017. The order passed by the Respondent is in breach of the provisions of Rule 92(3) and deserves to be set aside. Application for a refund made by the petitioner is restored to file before the Respondent.

❖ **Ambika Creation Vs Commissioner, Govt. of Gujarat, R/Special Civil Application No. 17564 of 2021–Gujarat High Court**

In the instant writ petition, the applicant seeking direction to the respondent to unblock the Electronic Credit Ledger when the period of one year as prescribed under sub-rule 3 of Rule 86A of the CGST Rules has elapsed from the date of order of blocking of the Electronic Credit Ledger. The Hon'ble High Court held that Rule 86A itself has provided that the Electronic Credit Ledger can be blocked for a period of one year. On the expiry of a period of one year, it would automatically get unblocked. Additionally, it is observed that once the statutory period comes to an end, the authority has no further discretion in the matter, unless a fresh order is passed. In the case on hand, even though the period of one year elapsed, the authority did not permit the writ-applicant to avail the credit available in his ledger. However, the Hon'ble Bench vehemently mentioned that if next time they come across such a case, then the concerned authority would be held personally liable for the loss that the assessee might have suffered during the interregnum period.



❖ **R. K. Copper and Alloy LLP Vs UOI, Writ Petition (L) No. 30843 Of 2021 Bombay High Court**

In the instant matter, the petitioner assailed withholding of refund of IGST and duty drawback on ground of ongoing investigation. The Hon'ble High Court of Bombay held that there is no response received by the petitioner to those letters/applications for seeking refund of IGST as well as duty drawback till date. In view of the fact that the applications for refund of IGST and duty drawback are still pending, the Respondent shall decide the applications for refund of IGST and duty drawback within a period of four weeks without fail and shall pass the order for a provisional refund within the time prescribed in terms of Section 54(6) of the CGST Act.

CUSTOMS

❖ **National Steel and Agro Industries Ltd Vs Commissioner of Customs (Import) Mumbai, 2022-TIOL-95-CESTAT-MUM CESTAT Mumbai**

The appellant, in the instant appeal, has assailed the rejection of refund of Special Additional Duty (SAD) on account of disparity between the description of goods as mentioned in the bill of entry and in subsequent sale invoices, through which Sales Tax/VAT payment were acknowledged. Appellant submitted that mere mismatch in description or cutting or selling of product would not disentitle the product to benefit of Notification No. 102/2007- Customs. In this regard, the Hon'ble CESTAT relied upon decision rendered by High Court of Madras in case of *Johnson Lifts Pvt. Ltd.* has clearly stipulated that the department is bound to accept description of goods in import documents as well as sale invoice to be one and the same, on the strength of certificate/correlation statement issued by Statutory Auditor (Chartered Accountant). Therefore, the appellant is entitled to get a refund with applicable interest and issued the direction to the department to pay the same within a period of 3 months.

❖ **Ashwini Ashish Dighe Vs UoI , 2022-TIOL-121-HC-MUM-CUS Bombay High Court**

Petitioner has challenged the order passed by the DGFT by which the Petitioner's applications for issuance of Duty Credit Scrips under the MEIS have been rejected owing to lack of documentary evidence which would substantiate the foreign exchange earnings. In this regard, the Hon'ble High Court upheld the order passed by the DGFT and awarded one more final opportunity to approach the Respondents by filing a fresh application for seeking MEIS benefit along with the entire documentary evidence pertaining to the Petitioner's transaction with their overseas buyer, located in Dubai, UAE; the fresh application should be filed within two weeks and the same shall be considered strictly in accordance with law by the Competent Authority / Respondents. Accordingly, an opportunity of personal hearing shall be granted to the petitioner and a speaking order shall be passed.

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NEWS NUGGETS

- ❖ No Petroleum Product under GST ¹
- ❖ Finance Minister to discuss aviation fuel's inclusion in GST regime with States ²
- ❖ The CBIC to scale up the departmental audits to boost GST Compliance³
- ❖ No clarity on levying of GST on crypto: Sushil Modi in Parliament⁴
- ❖ 'Indians need to pay GST on commission paid for crypto trade done on exchanges abroad' ⁵
- ❖ Piyush Goyal suggests 5-point reform agenda for FCI.⁶
- ❖ Govt. will back IT cos to boost exports: Piyush Goyal⁷
- ❖ Exports target of \$650 billion within this fiscal achievable: Piyush Goyal.⁸
- ❖ Phased manufacturing programme for wearables ' will help Make in India'⁹
- ❖ Smartwatches, headphones to get dearer as Budget hikes customs duty to boost local manufacturing.¹⁰

¹ <https://economictimes.indiatimes.com/industry/energy/oil-gas/no-petroleum-product-under-gst/articleshow/89438075.cms>

² <https://www.thehindu.com/business/Economy/finance-minister-to-discuss-aviation-fuels-inclusion-in-gst-regime-with-states/article38388806.ece>

³ <https://www.livemint.com/news/india/cbic-to-scale-up-departmental-audits-to-boost-gst-compliance-11644261411468.html>

⁴ <https://indianexpress.com/article/india/no-clarity-on-levying-of-gst-on-crypto-sushil-modi-7763005/>

⁵ <https://www.thehindubusinessline.com/money-and-banking/cryptocurrency/indians-need-to-pay-gst-on-commission-paid-for-crypto-trade-done-on-exchanges-abroad/article64965481.ece>

⁶ <https://indianexpress.com/article/india/piyush-goyal-suggests-5-point-reform-agenda-for-fci-7723961/>

⁷ <https://www.livemint.com/news/india/government-to-offer-it-firms-all-support-needed-to-boost-exports-piyush-goyal-11642337625512.html>

⁸ <https://timesofindia.indiatimes.com/business/india-business/exports-target-of-650-billion-within-this-fiscal-achievable-piyush-goyal/articleshow/88958348.cms>

⁹ <https://indianexpress.com/article/india/no-clarity-on-levying-of-gst-on-crypto-sushil-modi-7763005/>

¹⁰ <https://timesofindia.indiatimes.com/business/india-business/smartwatches-headphones-to-get-dearer-as-budget-hikes-customs-duty-to-boost-local-manufacturing/articleshow/89278854.cms>



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.

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