

INDIRECT TAX NEWSLETTER

January, 2023 (updated till 31.12.2022)



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KNOWLEDGE VIDEOS

A short video on the as a quick wrap up of the provisions/benefits of India Australia Economic Co-operation and Trade Agreement which was implemented from 29th Dec 2022, has been made our Partner Shweta Jain Gupta. The link to the video can be accessed at

<https://www.youtube.com/watch?v=qMePLo9NnAw>

REGULATORY UPDATES

GST LAW

NOTIFICATIONS

❖ Notification No. 26/2022-CT dated 26.12.2022

By the virtue of the notification, CBIC has issued Central Goods and Services Tax (Fifth Amendment) Rules, 2022. The key highlights from the same are briefed hereunder:

- ✚ PAN is to be verified through separate one-time password sent to the mobile number and email address linked to the PAN.
- ✚ Verification process for GST Registration Application Completion via Biometric-Based Aadhar Authentication and Photograph but has been only restricted to Gujarat.
- ✚ Rule 37A has been notified to prescribe the procedure for reversal of input tax credit in the case of non-payment of tax by the supplier and re-availment.
- ✚ Rule 88C has been notified to prescribe the manner of dealing the differences in liability reported in a statement of outward supplies and that reported in return.
- ✚ Rule 108 has been amended with respect to submission of certified copy of the order against which the appeal is being filed. Final Acknowledgment will be received by the registered applicant on the online submission of the copy of the order. Further, in case the order is not submitted on common portal then in that case the applicant would be required to submit the copy before the authority within 7 days of submission of the appeal on common portal.

CIRCULARS

❖ Circular No. 183/15/2022-GST dated 27.12.2022

The CBIC has provided the clarification to deal with difference in Input Tax Credit (ITC) availed in FORM GSTR-3B as compared to that detailed in FORM GSTR-2A for FY 2017-18 and 2018-19. The circular provides clarification in the following scenarios:

- ✚ Supplier failed to file FORM GSTR-1 for a tax period but filed the return FORM GSTR-3B.
- ✚ Supplier has filed FORM GSTR-1 as well as return in FORM GSTR-3B but has failed to report a particular supply in FORM GSTR-1.
- ✚ Supplies were made to a registered person and invoice is issued but supplier has wrongly reported the said supply as B2C supply, instead of B2B supply, in his FORM GSTR-1.
- ✚ Supplier has filed FORM GSTR-1 as well as return in FORM GSTR-3B but he has declared the supply with wrong GSTIN of the recipient in FORM GSTR-1.



❖ **Circular No. 184/16/2022-GST dated 27.12.2022.**

Section 12(8) of the IGST Act, 2017 provides for the place of supply of services by way of transportation of goods, including by mail or courier, where location of the supplier as well as the recipient of services is in India. As per clause (a) of the aforesaid sub-section, the place of supply of services by way of transportation of goods, including by mail or courier, to a registered person shall be the location of such registered person. Further, it provides that where the transportation of goods is to a place outside India, the place of supply of the said service shall be the place of destination of such goods

Since certain **doubts were raised in case** of supply of services by way of transportation of goods, including by mail or courier, where the **transportation of goods is to a place outside India**, and where the **supplier and recipient of the said supply of services are located in India**, the circular has clarified the following:

- Where the transportation of goods is to a place outside India, the **place of supply shall be the place of destination of such goods**
- Aforesaid supply of services would be **considered as inter-State supply**
- **Input tax credit is available to the recipient** located in India subject to Sections 16 and 17 of the CGST Act
- The **supplier of service shall report place of supply selecting State code as '96- Foreign Country'** from the list of codes in the drop-down menu available on the portal in FORM GSTR-1 where the transportation of goods is to a place outside India.

❖ **Circular No. 185/17/2022-GST dated 27.12.2022.**

The CBIC has provided Clarification with regard to applicability of provisions of section 75(2) of Central Goods and Services Tax Act, 2017 and its effect on limitation. The circular has provided clarification on the following two situations:

- ✚ The time period to be taken by proper officer for re-determination of the tax, interest and penalty payable by the noticee.
- ✚ The method to be adopted by the proper officer in order to re-compute the amount payable by the noticee, deeming the notice to have been issued under sub-section (1) of section 73.

❖ **Circular No. 186/18/2022-GST dated 27.12.2022.**

The CBIC has provided Clarification with various issues pertaining to the GST. The issues clarified are enlisted hereunder:

Taxability of No Claim Bonus offered by Insurance Companies – It is, clarified that there is no supply provided by the insured to the insurance company in form of agreeing to the obligation to refrain from the act of lodging insurance claim during the previous year(s) and **No Claim Bonus cannot be considered as a consideration for any supply provided by the insured to the insurance company.**

- ✚ It is, therefore, clarified that No Claim Bonus (NCB) is a permissible deduction under clause (a) of sub-section (3) of section 15 of the CGST Act for the purpose of calculation of value of supply of the insurance services provided by the insurance company to the insured. **Accordingly, where the deduction on account of No claim bonus is provided in the invoice issued by the insurer to the insured, GST shall be leviable on actual insurance premium amount, payable by the policy holders to the insurer, after deduction of No Claim Bonus mentioned on the invoice.**

Clarification on applicability of E-invoicing w.r.t. an entity – In terms of Notification No. 13/2020-Central Tax dated 21st March, 2020, as amended, certain entities/sectors have been exempted from



mandatory generation of e-invoices as per sub-rule (4) of rule 48 of CGST Rules, 2017. It is hereby clarified that the said exemption from generation of e-invoices is for the entity as a whole and is not restricted by the nature of supply being made by the said entity.

- ✚ Illustration: A Banking Company providing banking services, may also be involved in making supply of some goods, including bullion. The said banking company is exempted from mandatory issuance of e-invoice in terms of Notification No. 13/2020-Central Tax, dated March 21, 2020, as amended, for all supplies of goods and services and thus, will not be required to issue e-invoice with respect to any supply made by it.

❖ **Circular No. 187/19/2022-GST dated 27.12.2022.**

The CBIC has provided Clarification regarding the treatment of statutory dues under GST law in respect of the taxpayers for whom the proceedings have been finalised under Insolvency and Bankruptcy Code, 2016.

The clarification is read as under

“As per Section 84 of CGST Act, if the government dues against any person under CGST Act are reduced as a result of any appeal, revision or other proceedings in respect of such government dues, then an intimation for such reduction of government dues has to be given by the Commissioner to such person and to the appropriate authority with whom the recovery proceedings are pending. Further, recovery proceedings can be continued in relation to such reduced amount of government dues.”

Therefore, it has been clarified that the proceedings conducted under IBC also adjudicate the government dues pending under the CGST Act or under existing laws against the corporate debtor, the same appear to be covered under the term ‘other proceedings’ in Section 84 of CGST Act.

❖ **Circular No. 188/20/2022-GST dated 27.12.2022.**

The CBIC has prescribed the manner of filing an application for refund by unregistered person, who had entered into an agreement/ contract with a builder for supply of services of construction of flats/ building, etc. and had paid the amount towards consideration for such service, either fully or partially, along with applicable tax, had to get the said contract/ agreement cancelled subsequently due to non-completion or delay in construction activity in time or any other reasons.

CUSTOMS

NOTIFICATIONS

❖ **Notification No 103/2022-Cus (NT) and Notification No. 104/2022 both dated 09.12.2022**

CBIC by the virtue of the notification has notified the Postal Export (Electronic Declaration and Processing) Regulations, 2022. CBIC has also notified the format of FORM Postal Bill of Export to be submitted by exporter of goods through E-commerce.

❖ **Notification No 112/2022-Cus (NT) dated 22.12.2022**

CBIC by the virtue of the notification has notified Customs Tariff (Determination of Origin of Goods under the India-Australia Economic Cooperation and Trade Agreement) Rules, 2022. The ECTA has become enforceable from 29th December 2022 onwards.

CIRCULARS

❖ **Circular No. 25/2022-Cus dated 09.12.2022**



The CBIC has provided the guidelines on Postal Export (Electronic Declaration and Processing) Regulations, 2022.

INSTRUCTIONS

❖ **Instruction No. 33/2022-Cus dated 12.12.2022.**

The CBIC has provided the instructions in relation to Sugar Policy and Sugar Mill wise export quantity of sugar for export in sugar season 2022-23. The instructions are provided on the modalities for undertaking sugar export.

❖ **Instruction No. 34/2022-Cus both dated 30.12.2022**

The CBIC has provided the instructions regarding Consolidated list of animal feed additives/premix/supplements for Import into India. As per the instructions, the import of the said items will be made as per the instructions provided therein. Further instruction on applying the final label is also been provided.

FOREIGN TRADE POLICY

NOTIFICATION

❖ **Notification No. 48/2015-2020 dated 08.12.2022**

The DGFT has amended the Import Policy Condition for de-notifying MMTC as a STE for import of Copra under Chapter 12 of ITC (HS), 2022, Schedule-I (Import-Policy).

PUBLIC NOTICE

❖ **Public Notice No. 41/2015-20 dated 08.12.2022.**

The DGFT has amended the Para 2.61 of the Hand Book of Procedures (HBP) 2015-20. The para is amended with to provide the listing of eligible entities for the purpose of allocation of quota.

❖ **Public Notice No. 44/2015-20 dated 22.12.2022.**

The DGFT has amended the Appendix 2B of Foreign Trade Policy 2015-20. The appendix enlists the list of agencies to issue certificate of origin. The amendment has given effect to the recent Foreign Trade Agreement signed between Australia and India.

TRADE NOTICE

❖ **Trade Notice No. 22/2022-23 dated 19.12.2022**

The DGFT has provided the guidelines on Import of Pet Animals. The guidelines have provided the steps to obtain the authorization to obtain the permission of import of the pet animals such as Cats and Dogs. The guidelines are also provided for the pet owners traveling to India.

RATIO DECIDENDI

GST LAW

❖ **M/s. Sodexo India Services Private Ltd. v. The Union of India and Ors., High Court of Bombay**

A Division Bench of the Bombay High Court directed the CBIC to issue guidelines in regard to pre-deposit through Form GST DRC-03 for Service Tax/Excise matters for the lack of provision in law.



In the present matter Petitioner is challenging the impugned orders dated 13th April 2022 and had as required under Section 85 of the Finance Act, 1994 read with Section 35F of the Central Excise Act, 1944, made a pre-deposit in cash through Form GST DRC-03. After the appeals were accepted and registered and appeal numbers were allotted, the petitioner was called for personal hearing. All the appeals came to be dismissed under the impugned orders without going into the merits and only on the ground that the pre-deposit made by petitioner while filing the appeal was improper. According to the department, petitioners could not have made the deposit in the manner they made, therefore aggrieved by the same, the present appeal was filed. In the matter, it was held that it is matter that is required to be resolved by the CBIC since there seems to be a confusion because of absence of no proper legal provision to accept payment of pre-deposit under Section 35F of the Central Excise Act, 1944 through DRC-03.

❖ **Asia (Chennai) Engineering Company Private Limited Vs Assistant Commissioner, High Court of Madras.**

In the present matter it was held by the Hon'ble Madras High Court, that mandatory filing of the reply to SCN is not mandatory in the Form GST DRC-03. A show cause notice was issued to the petitioner for revoking the erroneous refund claim. To this, the reply was sent by the petitioner in the hard copy, however the petitioner obtained an order stating that no one has appeared in the concerned matter. Aggrieved by the same, the petitioner filed an appeal on the same and therefore it was held that electronic filing of reply to SCN is not mandatory and submission made in hard copy should also be accepted.

❖ **Seema Gupta vs Union of India Ors, High Court of Delhi.**

In the present matter it was held that GST is not leviable on the portion of rent received by a Proprietor of a registered proprietorship firm when such renting is done in his /her own personal capacity for use as his/her own residence as well as not for use in the course or furtherance of business of his/her proprietorship firm.

CUSTOMS/ FOREIGN TRADE POLICY

❖ **M/s. Shimla Fruit Agency Vs Commissioner of Customs, High Court of Madras**

In the present matter it was held that the application for provisional release of goods under section 110-A of the Customs Act should be considered even during pendency of any proceedings initiated by the department.

Petitioner firm is engaged in the business of import and local sale of food products, fruits, condiments, spices etc. The Petitioner Firm entered into a contract with one M/s PTV.J and J International Kota Medan, Indonesia for supply of betel nut product popularly known as "supari unflavored". Pursuant to such contract, the Petitioner made payments to the said supplier. The supplier raised an invoice for supply of goods. After procurement, the goods were packed and were shipped from Belawan Port, Indonesia to Tuticorin Seaport in three containers. The Petitioner Firm filed Bill of Entry for clearance of the said goods. However, the goods were not cleared on the ground of certain investigation being undertaken by the respondent but detained and not allowed for assessment/ clearance. The Respondent directed not to permit clearance, pending drawal of samples from the consignment to ascertain the nature of the goods. In view of the enquiry by the Respondent,



the Petitioner sought for provisional release of the subject goods and it was submitted that the declaration adopted by the petitioner with respect to the subject goods were on the basis of the import documents of the Government Authorities of Indonesia.

It was held that the seizure of the imported products namely unprocessed betel nuts at the instance of the investigation is not justified having regard to the Advance Ruling obtained by the said assessee.

NEWS NUGGETS

- ❖ GST revenues rose by 15% in December 2022 to over ₹1.49 lakh crore.
- ❖ Reserve Bank of India (RBI) has lifted restrictions on the recovery of loans through third-party agents.
- ❖ The India-Australia ECTA (Economic Cooperation and Trade Agreement) that becomes effective on December 29 will boost exports of gem and jewelry, engineering goods and plastic goods
- ❖ PHD Chamber of Commerce or Industry (PHDCCI) has provided number of measures around exports, loan repayment and loan restructuring, and credit to support MSMEs for Finance Budget 2023.
- ❖ GST council most likely to provide relief to steel companies on metal Scraps in next meeting.



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 is 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. RSA has partners from top law firms and Big 4s.

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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