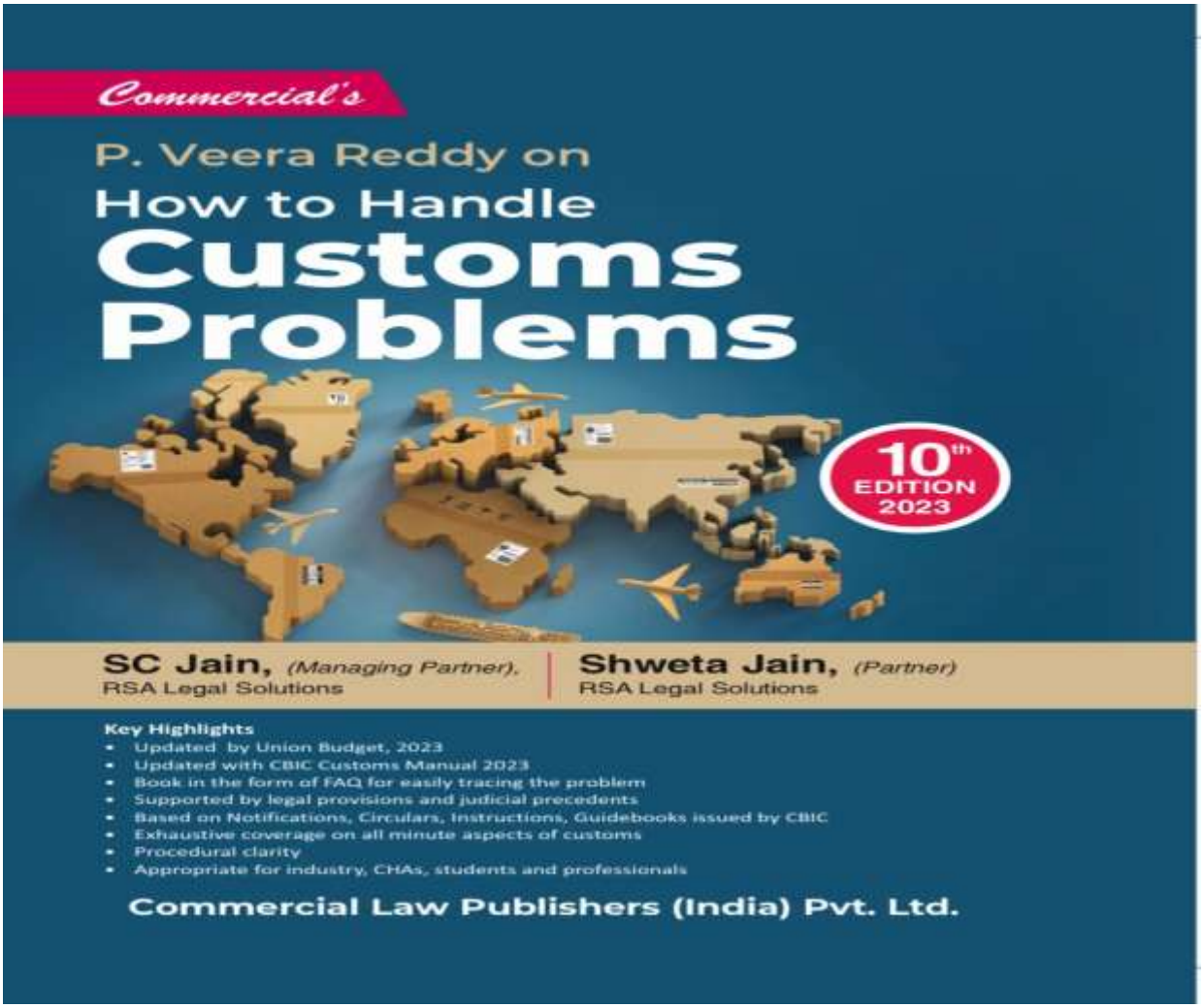
INDIRECT TAX NEWSLETTER

March, 2023 (updated till 28.02.2023)



We are proud to announce the launch of our new book **"How to Handle Customs Problems"** published by Commercial Law Publisher and authored by SC Jain (Managing Partner) and Shweta Jain (Partner) RSA Legal Solutions. The book is in FAQ form based on the various legal provisions, circulars, notifications, guidebooks etc. issued by CBIC and case laws decided by judicial forums from time to time. It is a detailed book covering various types of issues being addressed by various authorities and judicial precedents.

The link to purchase the book is https://commerciallawpublishers.com/home/product_view/1110/How-to-Handle-Customs-Problems

Key highlights of the book are:

- Updated by Union Budget, 2023
- Updated by CBIC Customs Manual, 2023
- Supported by legal provisions and judicial precedents
- Procedural clarity
- Appropriate for CHAs, industry, students and professionals

We shall constantly endeavour to strive for excellence.

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We have already circulated the Detailed Union Budget, 2023 updates. Therefore, the same are not being repeated for the sake of brevity.

ARTICLES BY TEAM RSA LEGAL

❖ Article on "E-Waste (Management) Rules, 2022" penned down by Anshul Mittal (Partner at RSA)

THE E-Waste (Management) Rules, 2022, will be enacted from 1st April 2023 to regulate the disposal, recycling, and management of e-waste. These rules will apply to every manufacturer, producer, refurbisher, dismantler, and recycler involved in the production, sale, transfer, purchase, refurbishment, dismantling, recycling, and processing of e-waste, including components, consumables, parts, and spares that make the product operational. The rules do not apply to waste batteries covered under the Battery Waste Management Rules, packaging plastics covered under the Plastic Waste Management Rules, micro-enterprises defined in the Micro, Small and Medium Enterprises Development Act, 2006, and radioactive wastes covered under the Atomic Energy Act, 1962.

The rules define various terms, including bulk consumer, business, component, consumables, dismantler, disposal and treatment, end-of-life, environmentally sound management of e-waste, electrical and electronic equipment, e-retailer, e-waste, extended producer responsibility, facility, historical e-waste, manufacturer, orphaned products, part, portal, and producer. These definitions provide clarity on the scope and applicability of the rules and ensure that all stakeholders follow the same interpretation.

One of the key provisions of the rules is the extended producer responsibility, which makes it mandatory for every producer of electrical or electronic equipment listed in Schedule-I to meet recycling targets specified in Schedule-III and Schedule-IV through registered recyclers of e waste. The rules aim to ensure that e-waste is managed in an environmentally sound manner, protecting health and the environment from adverse effects resulting from e-waste.

The rules also specify the responsibilities of bulk consumers, who are required to ensure that their e-waste is collected and disposed of through authorized mechanisms. The rules mandate producers to file an annual report on e-waste generated, collected, and recycled through the portal. Producers are also required to maintain records of e-waste generated and recycled for three years and submit the same to the State Pollution Control Board (SPCB) or Pollution Control Committee (PCC).

EPR FRAMEWORK

The Extended Producer Responsibility (EPR) Framework is a set of rules and guidelines for managing electronic waste in India. It requires all entities involved in the production, sale, or disposal of electronic equipment to register on a central portal and fulfil specific responsibilities.

The categories for registration include manufacturers, producers, refurbishers, and recyclers. Any entity that falls under more than one category must register separately for each. Registered entities cannot do business with unregistered ones. The Central Pollution Control Board (CPCB) may revoke the registration of any entity that provides false information or violates any rules.

CATEGORIES FOR REGISTRATION AND RESPONSIBILITIES OF THE STAKEHOLDERS

- Manufacturers must register on the portal, collect e-waste generated during the manufacture of any electrical or electronic equipment, and ensure its recycling or disposal. They must also file annual and quarterly returns in the prescribed format.

- Producers of electronic equipment listed in Schedule I must register on the portal, obtain and implement extended producer responsibility targets as per Schedule III and IV, create awareness about e-waste management, and file annual and quarterly returns.

- Refurbishers must register on the portal, collect e-waste generated during the process of refurbishing, and ensure that the refurbished equipment complies with the standards laid down by the Ministry of Electronics and Information Technology and Bureau of Indian Standards. They must also file annual and quarterly returns.

- Bulk consumers of electronic equipment listed in Schedule I must ensure that e-waste generated by them is handed over only to registered producers, refurbishers, or recyclers.

- Recyclers must register on the portal, ensure that their facilities and recycling processes comply with the standards laid down by the CPCB, ensure that non-recyclable e-waste is disposed of in an authorized treatment storage disposal facility, maintain records of e-waste collected, dismantled, recycled and sent to registered recyclers, and file annual and quarterly returns. They must also create awareness about e-waste management and accept waste electronic equipment or components not listed in Schedule I for recycling, provided they do not contain any radioactive material. Recyclers must account for and upload information about any non-recyclable e-waste or any quantity that is not recycled and disposed of. Recyclers can also take help of dismantlers for recycling purposes

- State governments or Union territories must earmark or allocate industrial space or sheds for e-waste dismantling and recycling in existing and upcoming industrial parks, estates, and industrial clusters. They must also enforce the rules and guidelines and act against entities that violate them.

ELECTRONIC WASTE (E-WASTE) AND SOLAR PHOTO-VOLTAIC (PV) MODULES, PANELS, OR CELLS

The proper management of electronic waste (e-waste) and solar photo-voltaic (PV) modules, panels, or cells is critical in promoting sustainable development and reducing the adverse impact of electronic waste on the environment.

According to the rules, every manufacturer, producer, refurbisher, and recycler can store the e-waste for a maximum of 180 days and maintain a record of its storage. The storage of e-waste must be done according to the applicable rules or guidelines. However, in certain cases where the e-waste needs to be stored for developing a recycling or reuse process, the CPCB can extend the storage period up to 365 days.

The management of solar PV modules, panels, or cells is covered under Chapter V of the e-waste management rules. The rules mandate every manufacturer and producer of solar PV modules, panels, or cells to register

themselves on the portal and ensure the proper storage of the waste generated up to the year 2034-2035 as per the guidelines laid down by the CPCB. They must file annual returns in the prescribed format on the portal and maintain an inventory of solar PV modules, panels, or cells distinctly on the portal. The recyclers of solar PV modules, panels, or cells must recover the materials as per the guidelines laid down by the CPCB.The management of e-waste and solar PV modules, panels, or cells is critical to reduce the environmental impact and promote sustainable development.

EXTENDED PRODUCER RESPONSIBILITY (EPR)

All producers are responsible for fulfilling their extended producer responsibility obligation as per Schedule III and Schedule IV. They can seek assistance from third-party organizations such as producer responsibility organizations, collection centers, and dealers. However, the responsibility for extended producer responsibility lies entirely on the producer.

The extended producer responsibility certificate is generated through the portal in favour of a registered recycler by the CPCB. The certificate's validity is two years from the end of the financial year in which it was generated. Each certificate has a unique number containing the year of generation, code of end product, recycler code, and a unique code. The certificates come in denominations of 100, 200, 500, and 1000 kg or other denominations approved by the CPCB.

A producer may purchase extended producer responsibility certificates limited to its extended producer responsibility liability of the current year plus any leftover liability of preceding years plus 5% of the current year liability. The obligation must be fulfilled by purchasing extended producer responsibility certificates on a quarterly basis. The purchased certificates are automatically adjusted against the producer's liability, and the priority in adjustment is given to the earlier liability. Producers must record and submit all transactions under these rules on the portal at the time of filing quarterly returns.

REDUCED USE OF HAZARDOUS SUBSTANCES

These rules also have provisions so as to reduce the use of hazardous substances in the manufacture of electrical and electronic equipment, as well as their components, consumables, parts, and spares. Producers of these products listed in Schedule I are required to ensure that new products do not contain lead, mercury, cadmium, hexavalent chromium, polybrominated biphenyls, and polybrominated diphenyl ethers beyond a maximum concentration of 0.1% by weight in homogenous materials for most substances and 0.01% by weight in homogenous materials for cadmium.

Only new electrical and electronic equipment that is compliant with the provisions may be imported or placed in the market. Producers are required to provide detailed information on the equipment and their components, as well as a declaration of conformance to the reduction of hazardous substances provisions in the product user documentation.

Manufacturers are required to use technology or methods to make the end product recyclable and ensure that components or parts made by different manufacturers are compatible with each other to reduce the quantity of e-waste. The CPCB will conduct random sampling of electrical and electronic equipment to verify compliance with these provisions, and the cost of sample and testing will be borne by the producer. The Board will also lay

down the methods for sampling and analysis of hazardous substances as listed in rules and enlist labs for the said purpose.

If a product does not comply with the hazardous substance reduction provisions, the producer is obligated to take corrective measures to bring the product into compliance and withdraw or recall the product from the market within a reasonable period, as per the guidelines laid down by the CPCB.

EXCEPTIONS

Components or parts or spares required for electrical and electronic equipment that were placed in the market prior to May 1, 2014, may be exempted from the provision related to reduce use of hazardous substance if compliant parts and spares are not available.

Certain type of applications listed in Schedule II are exempted from abovesaid requirement, but producers of these applications must comply with the hazardous substance limits listed therein.

Manufacturers of electrical and electronic equipment used for defense and other strategic applications are excluded from the abovesaid requirement.

TRANSPORTATION

Transportation of e-waste generated from manufacturing or recycling for final disposal must follow the provisions under the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016. In the event of an accident during the processing or transportation of e-waste, the relevant parties must immediately inform the SPCB.

AUTHORITIES' COMPLIANCE

Authorities responsible for e-waste management under the new e-waste management rules are required to follow the duties specified in Schedule-V. The CPCB is required to submit an annual report on the status of e-waste management rules and provide qualitative and quantitative analysis along with recommendations to the Ministry of Environment, Forest, and Climate Change within a month of the financial year-end.

PENAL PROVISIONS

Any person providing false or incorrect information, using or causing to be used false or forged certificates, failing to comply with regulations or cooperate with verification or audit proceedings, may be prosecuted under section 15 of the Act, 1986, and punished under Rule 22. The Steering Committee, under the Chairmanship of the CPCB, will oversee the implementation of these rules, with representatives from other ministries.

APPEAL AGAINST AN ORDER

Aggrieved parties may appeal within 30 days of receiving an order from the CPCB to the Additional Secretary or Joint Secretary of the Ministry of Environment, Forest, and Climate Change. Environmental compensation may be imposed and collected for violations of these rules and must not absolve the producer from extended producer responsibility. The funds collected as environmental compensation must be kept in a separate Escrow account by the CPCB and used for waste management projects, research and development, incentivising recyclers, and other approved expenses.

CONCLUDING REMARK

In conclusion, the E-Waste (Management) Rules, 2022, are a significant step towards managing e-waste in an environmentally sound manner. These rules aim to ensure that e-waste is recycled and the resources used in the production of electrical and electronic equipment are conserved. These rules provide clarity on the roles and responsibilities of stakeholders and mandate producers to take responsibility for the ewaste generated by their products. The implementation of these rules will go a long way in mitigating the adverse effects of e-waste on health and the environment.

❖ Article on "Claim Refund, if excess tax paid on Royalty" Penned down by Anshul Mittal (Partner at RSA)

With the advent of Globalization, the interaction among general masses has become possible at one touch, so is carrying out businesses & professions by using advance technologies even from the distant nations.

One of such arrangements is sharing of technical know-how, patents, trademark, franchisees etc. and are compensated to the owners via payment of royalties, fees for technical know-how, for using the trademarks and franchises, for using Intellectual property rights of other Business house, professionals etc. These arrangements have to pass through the taxing statutes of the different nations differently.

Such kind of arrangements are very technical, and the interpretation of agreements requires knowledge of law as well as knowledge of such businesses. It is a quite common and old practice that the foreign companies allow the Indian companies to use their technical know-how for the production of goods and in return charges a license fee in the name of royalties' etc. These royalties are paid for using the intellectual property created by those foreign companies, as they would have carried out various R&D activities to invent that knowledge.

License is a permission given to a person to do or enjoy something that otherwise he does not have the legal right to do or enjoy. Therefore, a licensor does not transfer any proprietary interest to the licensee but he is only allowed to use IPR. The same is considered as service and payment is made in terms of the royalties.

Import of service: As per Section 2(11) of IGST Act, import of service means supply of service, where, a) Supplier of service is located outside India b) Recipient of Service is located in India c) The place of supply of service is in India.

Place of Supply in case of Import of Service: In case of import of service the place of supply shall be the location of the recipient of service except the case where the nature of service falls under the one specified under Section 13(3) to 13(13) of IGST Act. Hence, IGST is to be discharged under RCM when recipient is in India.

In the concerned situation, the service will be qualified as import of service and therefore, GST on the same is payable under reverse charge mechanism as per the Notification no.10/2017-IT(R) dtd 28.06.2017. In the said notification one of the notified categories on which GST is applicable under RCM is "any service supplied by any person who is located in a non-taxable territory to any person other than non-taxable online recipient".

It is not a new concept that would need further deliberation. Such transfer of IP rights has to be classified as per the SAC provided under the classification of scheme for Services published by CBIC.

Group 99733		**Licensing services for the right to use intellectual property and similar products**
	997331	Licensing services for the right to use computer software and databases.
	997332	Licensing services for the right to broadcast and show original films, sound recordings, radio and television programme etc.
	997333	Licensing services for the right to reproduce original art works
	997334	Licensing services for the right to reprint and copy manuscripts, books, journals and periodicals.
	997335	**Licensing services for the right to use R&D products**
	997336	Licensing services for the right to use trademarks and franchises
	997337	Licensing services for the right to use minerals including its exploration and evaluation
	997338	Licensing services for right to use other natural resources including telecommunication spectrum
	997339	Licensing services for the right to use other intellectual property products and other resources n.e.c

During the course of various departmental GST audits, this is being observed that the officials are unnecessary misclassifying these services as technical services and stressing on classifying the same under 9983 which provides for "Other professional, technical and business services". This is due to the reason that the GST rate under the correct classification i.e. 997335 was 12% till Oct 2021 and on the other heading i.e. 9983 it has always been 18%. The reliance is being place on the Advance ruling laid by Gujarat Authority for Advance Ruling in the matter of **Tea Post Pvt. Ltd., Inre [2021] 123 taxmann.com 281/86 GST 726 (AAR Guj.)**. Basis the stand taken by the department the companies under disguise are paying the differential tax of 6% along with interest and sometimes penalties as well. The tax under RCM is being paid in cash and the scope for taking ITC related to the old period i.e. before Oct, 2021 is meagre. These payments of tax, interest and penalties are therefore, converting into a huge cost for the company for which they had never provisioned, and which actually are wrongly being deposited on the mis-understanding of the departmental officials. Let's analyze with the help of explanatory notes and some court rulings issued in the previous regime.

Under GST, temporary transfer or permitting the use or enjoyment of any IPR has been treated as 'supply of services' in terms of entry 5(c) to Schedule II of Section 7 of the CGST Act and is leviable to GST@ 12% (6% CGST + 6% SGST) provided such IPR is not in respect of Information Technology (IT) Software. The SAC code that is applicable in case of royalty fee payment in relation the IPR products is 99733.

The right to use the Intellectual property and similar products is grouped under SAC 99733. The technical know-how is in itself an R&D product and therefore, classifiable in the specific head provided in this regard, and not under the residuary heading as is being suggested by the officers in various cases during audits.

In fact, the explanatory notes provided at https://cbic-gst.gov.in/ also provides following:

99733 Licensing services for the right to use intellectual property and similar products: This group includes permitting, granting or otherwise authorizing the use of intellectual property products and similar products Note: This covers rights to exploit these products, such as licensing to third parties; reproducing and publishing software, books, etc.; using patented designs in production processes to produce new goods and so on. Limited end user licences, which are sold as part of a product (e.g., packaged software, books) are not included here.

The explanation itself clarifies that the license to other person for right to use intellectual property is grouped under 99733 SAC.

There are several case laws supporting the proposition that royalties paid for allowing the use of technical know-how is an IPR product. In the case of **B.E. Gelb Consultancy Services v. CCE, [2009] 19 STT 61**, the Chennai CESTAT observed the following:

I find that the agreement envisages provision of technical know how to manufacture automotive chains and ancillary equipment for the purpose. In order to effectuate the object of the agreement BEGELB also trained LGB's staff and visited its factory for supervision. Appellant is compensated through royalty payments and payment of technical know how fees. All the various activities BEGELB undertook were to achieve the basic purpose of the contract, namely, manufacture of automotive chains. Therefore, the service provided was "Intellectual Property service" (IP Service).

The similar view was taken in the case of **L.G. Balakrishnan & Brothers Ltd. v. C.C.E. & S.T., [2010] 24 STT 349 (Chennai-CESTAT).**

In the light of above explanation and case laws it should be crystal clear that the services imported are basically IPR related services which is classifiable under SAC 99733.

Further, the rate notification prior to 1st Oct 2021provided two rate for SAC 99733 i.e.:

(i) Temporary or permanent transfer or permitting the use or enjoyment of Intellectual Property (IP) right in respect of goods other than Information Technology software. Rate prescribed: 6% CGST
(ii) Temporary or permanent transfer or permitting the use or enjoyment of Intellectual Property (IP) right in respect of Information Technology software. [Please refer to Explanation no. (v)] Rate prescribed: 9% CGST

So, the rate of GST on royalty payment was 12% (for IPR in respect of goods other than IPR related to software). However, w.e.f. 1st Oct, 2021, vide the Notification No. 06/2021-CGST(R) dated 30.09.2021, the rate of GST has been increased from 12% to 18% for following supplies i.e., royalty payments and both above entries got merged into the one entry i.e.:
"(ii) Temporary or permanent transfer or permitting the use or enjoyment of Intellectual Property (IP) right."

Thus, the applicable IGST rate on royalty payment:
1. For the period prior to 1st Oct, 2021 – 12%; and
2. W.e.f. 1st Oct, 2021 – 18%

However, the reliance of department on the ruling laid by Gujarat Authority for Advance Ruling in the matter of **M/s Tea Post Pvt. Ltd**. is in itself unrelated and ambiguous. The Honorable authority in that ruling rejected

the contention of the Applicant for classifying the fees for Franchise under the Service code 997336 where applicable rate was 12%.

Group 99733		**Licensing services for the right to use intellectual property and similar products**
	997336	Licensing services for the right to use trademarks and franchises

Explanatory note explains the same by defining the scope "This service code includes licensing services for the right to use trademarks and to operate franchises"
Since the SAC 99733 also cover fee for licensing or renting of trademark and franchise, etc., in its scope, the classification done by the AAR under Chapter Heading 9983 as "Other professional, technical and business services" and Service Code (Tariff)- 998396-Trademarks and franchises, attracting GST @ 18% is itself unfound. Due to the specific facts of the matter, it might have been observed so, by the Authority, however, to expect one size to fit all is wrong expectation and applying such interpretation on all the cases of IPRs is also unfounded and shall be reconsidered.

Conclusion

Transfer, by way of licensing the right to use the Intellectual Property, shall be classified under 99733. The department cannot change the classification just to gain some extra tax. Though, the government has increased the GST rate from 12% to 18%, which shows its intention to give no relaxation under GST to such services, still for the impugned period till it was 12%, such misclassification proposed by the departmental authorities is ethically wrong and legally challengeable. In case under the disguise of the departmental officer or otherwise, if any registered person has paid such excess tax of 6%, they are under their right to claim refund of the same.

REGULATORY UPDATES

GST LAW

NOTIFICATIONS

- **Notification No.01/2023-Central Tax (Rate) – 28th Feb 2023**
  By the virtue of this notification, CBIC has exempted levying of GST on Fees for Entrance Examination conducted by educational institutions (Central and state education boards) including any authority, board or body set up by the Central Govt. or State Govt. and National Testing Agency. The same shall be effectuated w.e.f. **01.03.2023**.

- **Notification No. 02/2023-Central Tax (Rate) – 28th Feb 2023**
  By the virtue of this notification, CBIC has extended levying of GST on RCM basis on the services rendered by the State Legislatures, Courts and tribunals which was prior leviable only on the services rendered by State Government and Central Government. The same shall be effectuated w.e.f. **01.03.2023**.

- **Notification No. 03/2023 –Central Tax (Rate)– 28th Feb 2023**
  By the virtue of this notification, CBIC added following new commodities by the nomenclature as follows:
  - "Rab, pre-packaged and labelled"; is inserted in Serial no. 91A making it taxable at the rate of 5%
  - "pencil sharpeners" was inserted with New Serial no. 186A making it taxable at the rate of 12%.

- "other than pencil sharpeners" is inserted in Serial no.302A in Schedule III taxable at the rate of 9%.

The above amendments shall become effective from **01.03.2023**.

❖ **Notification No. 04/2023 –Central Tax (Rate)– 28th Feb 2023**

By the virtue of this notification, CBIC added a new commodity by the nomenclature "(iii) Rab, other than pre-packaged and labelled" is inserted in Serial no.94 making it an exempted item from the levy of GST. This amendment shall become effective from 01.03.2023.

❖ **Notification No.01/2023- Compensation Cess (Rate)- 28th Feb 2023**

By the virtue of this notification in entry No.41A of the compensation cess rate schedule following words are added "as supplied to Coal washeries" as an amendment, earlier which was "supplied by the Coal washeries". Hence, now "Sale and Purchases" of Coal rejects both of coal washeries shall be on Nil Compensation rate subject to the condition that on such sale neither compensation cess has been paid nor ITC has been availed.

CUSTOMS

NOTIFICATIONS

❖ **Notification No.14/2023- Customs, dated 28th Feb. 2023**

The CBIC through this notification has added an explanation to the Notification No. 104/94 – Cus, Dated 16-03-1994 where exemption is available on the containers of durable nature from custom duty & IGST subject to certain conditions, The exemption is related to the containers which were re-exported within specified time as mentioned in the Notification. Now this exemption as per the added explanation is extended to the "device such as tag, tracking device or data logger already affixed on the container" at the time of import.

CIRCULARS

❖ **Circular No. 04/2023-Cus dated 21st Feb.2023**

The CBIC by way of issuance of this circular made amendment in the circular no. 25/2016 – Customs dated 08.06.2016 to include details of Ex-bond Bill of entry/ Shipping Bill in Form A-reg.

INSTRUCTIONS

❖ **Instruction No. 5/2023-Cus and Instruction No. 31/2022-Cus both dated 14.10.2022.**

The CBIC has provided the instructions in relation to import of High-risk food products only through specific ports. The products falling under following categories will be categorized as High-risk food products:

- Milk and Milk products;
- Meat and Meat products including poultry, fish and their products;
- Egg powder;
- Infant food/food for infant nutrition;
- Nutraceuticals, Health supplements, food for dietary uses.
- Probiotic and Prebiotic foods

- Foods for special medical purpose

Furthermore, the list of 79 Customs Ports has been provided vide which import of the aforesaid products shall be permissible. The same shall be effectuated w.e.f. **01.03.2023**.

FOREIGN TRADE POLICY

NOTIFICATION

❖ **Notification No. 58/2015-2020 dated 14.02.2023**

The DGFT has amended the FTP vide which export of Agri residue based biomass and Briquettes/pellets under ITC-HS Heading 1213 is set to "free" from "restricted" category with immediate effect. The same shall be effectuated w.e.f. **14.02.2023**.

❖ **Notification No. 59/2015-2020 dated 21.02.2023**

The DGFT has amended the Import Policy of Cashew kernel, Broken falling under ITC HS Code 08013210 and Cashew kernel, whole falling under ITC HS Code 08013220. The amendments is as follows:-

i. Import is free if CIF value is above Rs.680/-per kg (cashew kernel Broken) and Rs 720/-per kg (cashew Kernel whole) otherwise import of these item is prohibited.
ii. Minimum Import Price (MIP) conditions, will not be applicable for imports by 100% EOU and SEZ Units.
iii. EOU and SEZ units will not be allowed to sell the imported Cashew Kernels into DTA.

PUBLIC NOTICE

❖ **Public Notice No. 55/2015-20 dated 28.02.2023.**

The DGFT by virtue of this public notice have included nutraceutical products in the jurisdiction of the shellac and forest products export promotion council (SHEFEXIL) in Appendix 2T of FTP 2015-2020.

❖ **Public Notice No. 57/2015-20 dated 28.02.2023.**

The DGFT by virtue of this public notice notified the procedure for the allocation of quota for import of

(i) Calcined Pet coke for use in aluminium Industry
(ii) Raw Pet Coke for CPC manufacturing industry

❖ **Public Notice No. 58/2015-20 dated 28.02.2023.**

The DGFT by virtue of this public notice granted one time relaxation in submission of additional fees to cover excess duty utilized in EPCG authorisations issued under Foreign trade policy (2009-14) (extended upto 31.03.2015).

❖ **Public Notice No. 59/2015-20 dated 28.02.2023.**

The DGFT has amended the Para 4.42 of HBP 2015-20 vide a new sub-para (j) is added for allowing extension in EOP and/or regularization of exports already made, where the applicable composition fees s will be as under.

CIF Value of Advance Authorization (AA) Licenses issued	Composition fees to be levied (in Rs.)
Upto Rs.2 Crores	25,000
More than Rs.2 Crores to Rs.10 Crores	50,000

Above Rs.10 Crores	1,00,000

It is important to note that there will be no refund of earlier paid composition fees.

CIRCULAR

- **Circular No. 46/2015-20 dated 20.02.2023**

  The DGFT has provided relief for pending applications for processing of MEIS/SEIS pending at RAs by deciding that all such MEIS/SEIS applications, which have been kept pending and are deficient at the RAs under provisions of Para 3.06 of the HBP 2015-20 may be re-opened by the RAs and examined again on merits/ additional documents submitted by the firm as per extant policy and procedural conditions. RAs are also advised to provide an opportunity of personal hearing to the applicants, before rejecting a case.

TRADE NOTICE

- **Trade Notice No. 26/2022-23 dated 08.02.2023**

  The DGFT has provided that members of trade can seek assistance with regard to the filing of application of Advance authorization cases for fixation/finalization of Standard Input Output Norms(SION) through the facility of Video conferencing with RA which is operational on every working day between 10:30 a.m to 11:30a.m. The link for the VC is available on DGFT website. This facility is introduced to ensure completeness of application for faster fixation of SION.

RATIO DECIDENDI

GST LAW

- **M/s. Rohit Enterprises Versus The Commissioner State GST Bhavan (Aurangabad) Writ Petition No. 11833 Of 2022, High Court of Bombay**

  The petitioner/assessee is employed in the fabrication industry. It is registered under the Central Goods and Services Tax Act, 2017 as well as the Maharashtra State Goods and Services Tax Act, 2017. The certificate of registration was issued to his firm. The petitioner contended that since he had undergone angioplasty and the firm suffered a financial setback in the pandemic situation, GST returns from August 2021 could not be filed. The State Tax Officer, Aurangabad, issued a show-cause notice, calling upon the petitioner to furnish his explanation within a period of seven working days. The petitioner replied to the show cause notice on March 3, 2022. Citing the reason for the financial crunch, he requested the revocation of the notice. However, the State Tax Officer canceled the registration with effect from August 21, 2021. Petitioner requested revocation for registration where Officer issued SCN and finally rejected the application. The court, while allowing the appeal, held that even looking at the object of the provisions under the GST Act, it is not in the interest of the government to curtail the rights of the enterpreneurs like petitioner. The petitioner must be allowed to continue business and contribute to the state's revenue. The petitioner has submitted before us that the petitioner is ready and willing to pay all the dues, along with penalty and interest as applicable.

- **M/s Radha Fragrance versus Union of India & Ors. Writ Tax No. - 427 of 2019, High Court of Allahabad.**

  The petitioner, who had received orders for supply of Pan Masala and Chewing Tobacco from two registered dealers of State of Jharkhand. The petitioner agreed to supply Pan Masala and Chewing Tobacco to two registered dealers of State of Jharkhand. However, the goods in transit from the State of Haryana to Jharkhand were intercepted and detained by the Mobile Squad in the State of Uttar Pradesh. The goods were not carrying E-Way Bill under Rule 138 of CGST Rules, 2017, as the value of the goods were claimed

to be below Rs. 50,000. The Mobile Squad, however, concluded that the basic value of the cartoons being transported was over Rs.7,00,000 while the value on the tax invoices was declared. The High Court while concluding that huge amount of Pan Masala and Tobacco were being transported by the petitioner by undervaluing the goods, without downloading mandatory E-Way bill, the Court remarked, *"In the garb of technicalities, no benefit can be given to a dealer who has intentionally undervalued his goods to escape from the eyes of law." "It is only to protect small trade where the value is minimal that the necessity of downloading E-Way bill is dispensed with by the Government. The purpose of dispensing E-Way bill for the goods below Rs.50,000/- does not allow the dealer to undervalue his goods so as to escape it from bringing to the notice of the Government and the Taxing Authorities by uploading the same on the Web-Portal,".*

- **Rochem India Pvt. Ltd. Versus CBIC, Writ Petition No.10883 Of 2019 dated 08.02.2023, Bombay High Court**

  The petitioners have challenged the order passed in appeal by the Appellate Authority under the CGST, 2017. The writ petitions were filed on the grounds that the appellate tribunals are not yet constituted. The High Court held that *"It would be advisable, to avoid further complications, that the Board issues instructions to incorporate Clause 4.2 of the Circular dated 18 March 2020 in each order which is appealable to the Appellate Tribunal constituted under Section 109 of the Act. This would guide the aggrieved parties as to the future course of conduct and reduce needless litigation in the form of filing writ petitions such as the present ones,".*

CUSTOMS/ FOREIGN TRADE POLICY

- **M/s Jindal Exports and Imports Pvt Ltd vs. Director General of Foreign Trade & Ors. 2023 LiveLaw (Del) 157, Delhi High Court**

  In the present matter, the petitioner, is engaged in the manufacturing and export of gold jewelry, medallions and bars, and in trading of gold, silver, platinum and palladium. The petitioner, in June 2019, applied for issuance of an Advance Authorization from the DGFT for import of gold bars in order to enable manufacturing of gold jewelry and medallions. Relying on the public notice dated 26th September 2019, issued by the DGFT, which provided that Advance Authorization would not be issued where the items for export were 'Gold Medallions and Coins' or 'any other jewelry/articles manufactured by a fully mechanized process', the DGFT rejected the petitioner's application.

  Noting that the Division Bench of the Delhi High Court in **M.D. Overseas Limited vs. Union of India (2020)** had quashed and set aside the said public notice (No.35/2015-2020), dated 26th September 2019, the petitioner sought to review the order passed by the DGFT. The DGFT, however, passed an order rejecting the review on the ground that the petitioner was not a party to the said writ petition. The DGFT thus concluded that the petitioner cannot be granted benefits of the High Court's order. In its review order, DGFT further placed reliance on a fresh notification, dated 10th August, 2020, which disallowed the issue of Advance Authorization on the where the items of export were 'Gold Medallions and Coins' or 'Gold jewelry/articles manufactured by fully mechanized process'.

  The Petitioner challenged the order of DGFT before Delhi High Court where the High Court concluded that, *"In view of the above legal position, the benefit of the ld. Division Bench's judgment in W.P.(C) 12197/2019 would enure to the benefit of the Petitioner. The rejection of the Advance Authorization accordingly stands quashed and set aside. The DGFT shall now proceed in accordance with law and give the benefit to the Petitioner within a period of six weeks."* The Court thus allowed the writ petition.

NEWS NUGGETS

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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 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.

Our firm has recently been awarded with the "**Highly Recommended Law Firms, 2022**" by the Leaders Globe Magazine. RSA has successfully found a place in the list of Finalist for **"Tax Law Firm of the Year 2021" by Asian Legal Business (ALB) Awards**. RSA recently featured in the Top **20 recommended lawyers in India** by **Business Connect magazine in 2019-2020**. RSA has been chosen in top 5 finalist in the category of "**Best Start up law firm of the year**" award by the prestigious **IDEX Legal Awards**. Also, the firm was awarded with the "**Top 10 GST Consultants Award"** by the famous **Insight Success Magazine**.

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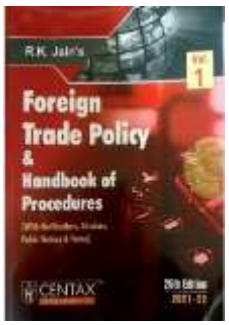

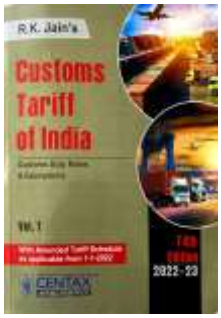

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