



INDIRECT TAX NEWSLETTER

October, 2022 (updated till 30.09.2022)



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AWARDS/ACHIEVEMENTS

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REGULATORY UPDATES

GST LAW

NOTIFICATION

❖ **Notification No. 18/2022 – CT, dated 28.09.2022.**

The CBIC has notified the provisions of sections 100 to 114, except clause (c) of section 110 and section 111 of the Finance Act, 2022 (hereinafter referred to as “**the Finance Act**”). The same has been effectuated w.e.f. 01.10.2022.

Section 110 amends Section 49 of the CGST Act, 2017 (hereinafter referred to as “**the CGST Act**”) to allow the transfer of amount available in the electronic cash ledger under the CGST Act of a registered person to the electronic cash ledger under the said Act or the IGST Act of a distinct person. Further, Section 111 of



the Finance Act, 2022 substitutes section 50(3) of the CGST Act which states that the levy of interest on wrongly availed ITC will arise only when the said ITC is utilized. Both the above amendments, are notified vide Notification No. 9/2022-C.T. dated 05.07.2022., and shall be effectuated retrospectively 01.07.2017. Therefore, vide Notification No. 18/2022-CT dated 28.09.2022, the remaining amendments have now been brought into force from 01.10.2022 as introduced in the aforesaid Finance Act. Relevant amendments have been encapsulated below for your ready reference:

- ✓ Section 100 of the Finance Act amends Section 16 of the CGST Act which provides certain conditions or eligibility criteria to avail of the input tax credit
 - ✚ A new clause (ba) has been inserted in sub-section (2) which provides that input tax credit with respect to a supply can be availed only if such credit has not been restricted in the details communicated to the taxpayer under section 38 of the said act.
 - ✚ Sub-section (4) has been amended to provide for an extended time for availing of input tax credit by a registered person in respect of any invoice or debit note pertaining to a financial year up to the 30th of November of the following financial year.
- ✓ Section 101 of the Finance Act amends Section 29 of the CGST Act (Cancellation or suspension of registration):
 - ✚ Clause (b) of sub-section (2) has been amended which states that the registration of the Composition Taxpayer, who fails to furnish the return for a financial year beyond three months from the due date of furnishing of the said return, shall be liable for cancellation.
 - ✚ Clause (c) of sub-section (2) has been amended which provides that the registration of a person is liable for cancellation, other than composition taxpayer, who has not furnished the returns for such continuous tax period as may be prescribed.
- ✓ Section 102 of the Finance Act, 2022 has made an amendment in sub-section (2) of section 34 of the CGST Act (Credit and debit notes) to provide for an extended time period for the issuance of credit notes in respect of any supply made in a financial year up to 30th November of the following financial year.
- ✓ Section 103 of the Finance Act, 2022 amends section 37 of the CGST Act (Furnishing of details of outward supplies)
 - ✚ Earlier restriction which is applicable for not being allowed to furnish the details of outward supplies from the 11th day to the 15th day of the month succeeding the tax period has been eradicated.
 - ✚ The two-way communication process which provided for acceptance or rejection of the details communicated has been eradicated.
 - ✚ Sub-section (1) has been amended which delineated the certain conditions and restrictions for furnishing the details of outward supply and for communication of such details to the concerned recipients.
 - ✚ Further, the last date for rectification of an error in respect of outward supplies can be made till 30th November following the end of the FY.
- ✓ Section 104 of the Finance Act has substituted section 38 of the CGST Act (Communication of details of inward supplies and input tax credit):
 - ✚ Where the goods or services have been received from newly registered person(supplier);
 - ✚ Where the registered person (supplier) has not made paid the tax and continued the same for a prescribed time;



- ✚ Where the supplier has paid the less amount of tax in FORM GSTR-3B in contrast with the outward tax liability showcased in FORM GSTR-1;
- ✚ Where the supplier has made defaulted in making the payment of tax in respect of the inward supply and claims more ITC;
- ✚ Where the supplier has defaulted in discharging output tax liability through the electronic credit ledger beyond the maximum limit as prescribed.
- ✓ Section 105 of the Finance Act amends section 39 of the CGST Act (Furnishing of returns)
 - ✚ Nonresident/ Casual Taxpayers shall now require to furnish their return in the prescribed form by the 13th of the following month. Earlier, the due date for the same was 20th of the subsequent month.
 - ✚ It is the discretion of the taxpayers who have opted for the QRMP Scheme to pay the tax either after self-assessing the liability or as per the prescribed rules.
 - ✚ Registered person now may make corrections and rectifications in returns up to 30th November of the subsequent year. Earlier, the same is permissible up to 30th September of the subsequent year.
 - ✚ Additional restriction/condition has been inserted wherein the registered person, who fails to furnish the details of the outward supplies in FORM GSTR-1 for any of the previous tax periods, shall not be permissible to file GSTR-3B.
- ✓ Section 106 of the Finance Act has substituted Section 41 of the CGST (Availment of ITC)
The amendment has put concept of the availing input tax credit on a “provisional” basis” to an end. Going forward, ITC availment shall be restricted to the conditions provided under section 16 of the CGST Act read with Section 38.
- ✓ Section 107 of the Finance Act has omitted sections 42, 43 and 43A. Vide the omission of the said section, the process of the two-way communication process in return filing has been eradicated. Further, sections 42 and 43 have been omitted from rule 85(2)(c).
- ✓ Section 108 of the Finance Act has amended Section 47 of the CGST Act vide which late fee will be leviable for delayed filing of return under Section 52 (TCS return GSTR-8) and Section 38 has been obviated in wake of the amendments described above.
- ✓ Section 109 of the Finance Act has amended Section 49 of the CGST vide which restriction is imposed apart from the conditions which are mentioned in Section 16 of the CGST Act read with Section 38 of the CGST Act. Further, it is noteworthy that the maximum proportion of output tax liability which may be discharged through the electronic credit ledger is yet specified by the Government.
- ✓ Section 110 of the Finance Act has amended Section 49 of the CGST Act (Payment of tax, interest, penalty and other amounts) vide which Sub-section (4) has been amended to impose the prescribed restriction for utilizing the amount available in the electronic credit ledger.
- ✓ Section 112 of the Finance Act has been amended in Section 52(6) of the CGST Act (Collection of tax at source) vide which an extended time up to 30th November of the following financial year for rectification of errors identified in the statement required to be furnished under this section has been provided.
- ✓ Section 113 of the Finance Act has amended Section 54 of the CGST Act (Refund of tax):
 - ✚ Vide the aforesaid amendment, the registered person may file the refund claim in the prescribed format w.r.t. the balance available in the E-cash ledger. Therefore, the restriction of claiming or utilizing such an amount in payment of tax payable under FORM GSTR-3B has been eradicated.



- ✚ The time limit for claiming a refund of tax paid on inward supplies of goods or services or both under section 55 has been changed to two years from the last day of the quarter in which the said supply was received as against six months provided earlier.
- ✚ The extent of withholding the refund of tax has been extended by removing the reference to refund in case of unutilized input tax credit in sub-section (3).
- ✚ Clarification has been provided regarding the relevant date for filing a refund claim in respect of supplies made tan an SEZ unit or developer which shall be the due date of furnishing of return under section 39 in respect of such supplies.

❖ **Notification No. 19/2022 – CT, dated 28.09.2022**

In pursuance to the amendments made in CGST Act vide Finance Act, the aforesaid notification has been issued to make the necessary changes in the CGST Rules, 2017. The amendment in the rules shall come into force w.e.f. 01.10.2022.

- ✓ New clause under Rule 21 (Registration to be cancelled in certain cases)
 - ✚ Where a registered person who is required to file a return under section 39(1) for each month or part thereof, has not furnished returns for a continuous period of six months
 - ✚ Where a registered person who is required to file a return under section 39(1) for each quarter or part thereof, has not filed returns for a continuous period of two tax periods.
- ✓ Amendment in rule 36 (Documentary requirements and conditions for claiming input tax credit)

In pursuant to the amendment in Section 38 of the CGST Act, Rule 36 has been amended to eradicate the reference to Form GSTR-2B.
- ✓ Amendment in rule 37 (Reversal of input tax credit in case of non-payment of consideration)

Sub-rules (1) and (2) of rule 37 have been substituted as under:

 - 1 A registered person, who has availed of the input tax credit on any inward supply of goods or services or both, other than the supplies on which tax is payable on a reverse charge basis, but fails to pay to the supplier thereof, the amount towards the value of such supply along with the tax payable thereon, within the time limit specified in the second proviso to sub-section (2) of section 16, shall pay an amount equal to the input tax credit availed in respect of such supply along with interest payable thereon under section 50, while furnishing the return in Form GSTR-3B for the tax period immediately following the period of one hundred and eighty days from the date of the issue of the invoice.

Provided that the value of supplies made without consideration as specified in Schedule I of the said Act shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of section 16:

Provided further that the value of supplies on account of any amount added in accordance with the provisions of clause (b) of sub-section (2) of section 15 shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of section 16.
 - 2 Where the said registered person subsequently makes the payment of the amount towards the value of such supply along with tax payable thereon to the supplier thereof, he shall be entitled to re-avail the input tax credit referred to in sub-rule (1).
 - 3 Sub-rule (3) providing for payment of interest has been omitted since the same has now been incorporated in sub-rule (1).

CIRCULARS



❖ Circular No. 180/12/2022-GST dated 09.09.2022

The CBIC has delineated the procedure for filing/revising TRAN-1/TRAN-2 in terms of order dated 22.07.2022 & 02.09.2022 of Hon'ble Supreme Court in the case of Union of India vs. Filco Trade Centre Pvt. Ltd

- ✓ Taxpayers may file/revise previously filed TRAN-1 / 2 from 01.10.2022 to 30.11.2022.
- ✓ In case of a revised filing facility, the downloading of earlier furnished TRAN- 1 and 2 will be available on the common portal.
- ✓ PDF copy of the declaration in Format as per ANNEXURE 'A' of this circular, to be uploaded.
- ✓ PDF copy of TRANS-3, containing details of Notification No.. 21/2017-CE(NT) dated 30.06.2017, to be uploaded if the applicant is claiming credit in TABLE 7A of TRAN-1 on the basis of the Credit Transfer Document.
- ✓ No claim shall be filed in Table 5(b) & 5(c) of TRAN-1 in respect of such C-Forms, F-Forms, H-Forms, and H/I-Forms which have been issued after 27.12.2017 i.e., after the earlier due date of filing TRAN-1.
- ✓ Claim in Form GST TRANS-2, to be filed in One Consolidated Form instead of period-wise.
- ✓ Information is to be submitted to the Jurisdictional Tax Officer within 7 days of Filing TRAN-1/2: –
- ✓ The option for filing TRAN-1/2 from 01.10.022 to 30.11.2022 is strictly a ONE-TIME OPPORTUNITY.
- ✓ The Applicant is provided with the option of edit/modify/add/delete etc. at the time of submission.
- ✓ Once TRAN1/2 is filed. No further opportunity to file or revise during the window period will be given.
- ✓ Dealers who have filed correctly and who do not want to revise TRAN-1/2 earlier filed are not required to file.
- ✓ If credit availed by filing TRAN-1/2 earlier has been wholly or partly REJECTED by the officer, then the remedy in such cases is to prefer an appeal/pursue the pending adjudication or to pursue alternative remedies as per law. In such case filing a fresh Tran-1/2 is NOT an APPROPRIATE COURSE OF ACTION.
- ✓ After the claim verification, the jurisdictional tax officer will pass the order thereon on merits after granting an appropriate reasonable opportunity to be heard to the applicant. Credit allowed as per order would get reflected in Electronic Credit Ledger.

INSTRUCTION

❖ Instruction No. 04/2022-23 dated 01.09.2022

The CBIC has issued the guidelines for commencing the prosecution under the Central Goods & Services Tax Act, 2017:

- ✓ CBIC acknowledged that prosecution should have serious repercussions for the accused.
- ✓ Case has to be established beyond a reasonable doubt. The Standard of proof required in a criminal prosecution should be higher.
- ✓ Evidence collected against the person should be adequate to establish that the person had a guilty mind or fraudulent intention for committing the offence.
- ✓ Prosecution should not be launched in cases of technical nature, or where the additional claim of tax is based on a difference of opinion regarding the interpretation of the law.
- ✓ In the case of public limited companies, the prosecution should not be launched indiscriminately against all the Directors of the company.



- ✓ It should be restricted to only persons who oversaw day-to-day operations of the company and have taken an active part in committing the tax evasion etc. or had connived at it.
- ✓ The CBIC continues to maintain its stand that a decision in adjudication proceedings is not necessary before initiating criminal prosecution. Adjudication proceedings and criminal proceedings can be launched simultaneously.
- ✓ Prosecution should normally be launched where the amount of tax evaded is more than Rs. 5crore. However, in cases of habitual evaders or in cases where arrests have been made during the course of the investigation, the prosecution could be initiated irrespective of monetary limit.

CUSTOMS

NOTIFICATIONS

❖ **Notification No. 74/2022-Cus (N.T) dated 09.09.2022.**

The CBIC has notified the new set of Import of Goods at Concessional Rate of Duty or for Specified End Use (IGCR) Rules, 2022 were issued in suppression of the earlier rules namely IGCR Rules, 2017.

❖ **Notification No. 75 and 76/2022-Cus (N.T), both dated 14.09.2022 (RoDTEP and RoSTCL, respectively)**

The CBIC, vide aforesaid notification, have the omitted the word "Transferee" from clause 6, 7 and 8 of the Notification No. 76/2021-Cus (N.T.) dated 23.09.2021 and clauses 4,5, & 6 of Notification No. 77/2021- Cus (N.T.) dated 23.09.2021. The said clause prescribes the scenarios wherein the Proper Officer of Customs may recover the amount of the duty credit scrip allowed along with interest either with the Exporter or Transferee. Vide the aforesaid omission, the proper officer can now only recover from the exporter. This amendment is a sigh of relief for the transferee.

❖ **Notification no. 79/2022-Cus (N.T.) dated 15.09.2022.**

The CBIC vide aforesaid notification has increased the validity period of the e-scrip to Two Years from One Year and the same will not change on account of the transfer of the e-scrip. The same has been effectuated w.e.f. 15.09.2022.

INSTRUCTIONS

❖ **Instruction No. 22/2022-Cus dated 06.09.2022.**

The CBIC has issued the clarification on the Disposal of Seized/Confiscated Gold on Instruction No. 27/2021-Cus dated 03.12.2021. Vide aforesaid instruction, the CBIC clarifies certain issues arise in the implementation of new procedure the for disposal of gold. The same is summarized below for ready reference: -

- ✓ Determination of amount of sale proceeds of gold while refunding the amount in lieu of gold already disposed: There are instances wherein, appellate authorities order for return of the gold seized by setting aside the order of confiscation or otherwise. Normally, if the seized gold is disposed of and not available for return, in lieu of such gold, sale proceeds of such gold is refunded to the owner of the gold, after applicable deductions. In such situations, the field formations find it difficult to determine the actual amount of sale proceeds pertaining to the seized gold, since they are not getting the details of sale proceeds which is credited centrally in a consolidated manner for the standard gold bars delivered to RBI.



- ✓ Expanding the scope of Instruction No.27/2021-Cus dated 03.12.2021 to include gold jewellery /articles/ornaments: Field formations stated that many a time they seize 24 carat gold and such 24-carat gold in jewellery or crude form may not attract buyer if auctioned. Hence, inclusion of such 24-carat gold jewellery / articles/ornaments in the new procedure and transfer to SPMCIL for processing and converting into standard gold bars would help speedy disposal of such gold.
- ✓ Prescribing quarterly cycle for gold disposal:
For the disposal of seized/confiscated gold, following cycle is prescribed for various actions in the Instruction No. 27/2021-Cus dated 03.12.2021.

Actions	Dates by which actions to be completed for every quarter			
	April to June	July to September	October to December	January to March
Inventory Certifications	30 th April	31 st July	31 st October	25 th January
Intimation to SPMCIL	5 th May	5 th August	5 th November	1 st February
Handing over to SPMCIL	20 th May	20 th August	20 th November	10 th February
*Delivery to RBI	20 th June	20 th September	20 th December	10 th March
Realization of amount	25 th June	25 th September	25 th December	15 th March

- ✓ Prescribing Minimum quantity of gold for collection by SPMCIL: Arranging logistics and transport of gold involves cost, time and human resources. Therefore, prescribing minimum quantity for the purpose of handing over to SPMCIL, would optimize such cost and human resources.
- ✓ Capacity Constraints of India Government Mint at Hyderabad and remapping of Zones: Para 3.1 and Annexure II of Instruction No.27/2021-Cus dated 03.12.2021 describes mapping of Zones with Focal Commissionerates and IG Mints. SPMCIL has expressed certain capacity constraints in processing gold at IG Mint Hyderabad and requested for re-mapping of Zones for handing over gold. 3. The Board has examined the matter in consultation with RBI and SPMCIL. Accordingly, the following additional instructions are issued for disposal of gold in terms of Instruction No.27/2021-Cus dated 03.12.2021.

FOREIGN TRADE POLICY

NOTIFICATION

❖ **Notification No. 31/2015-2020 dated 08.09.2022.**

The Export Policy of broken rice under HS code 1006 40 00 is amended from 'Free' to 'Prohibited', the same came into effect on 9th September 2022. Consignments in transit may be allowed in terms of "The Rice Grading and Marketing Rules, 1939". Subject to the approval of the Competent Authority.

❖ **Notification No. 33/2015-20 dated 16.09.2022.**



Insertion of paragraph 2.52(d) in the FTP 2015-20 in sync with the RBI Circular No.10 dated 11th July 2022.

Following are the key points covered under the notification: -

- ✓ Additional arrangements are made for export and import transactions in Indian rupees.
- ✓ With the help of the Vostro account of the partner country, the importer can make payments in INR.
- ✓ Exporters shall be paid INR through their Special account of the partner country.

❖ **Notification No. 37/2015-20 dated 29.09.2022.**

The DGFT has extended the existing FTP (2015-20) from 30th Sep 2022 to 31st March 2023.

PUBLIC NOTICE

❖ **Public Notice No. 26/2015-20 dated 29.09.2022.**

The DGFT has extended the existing (HBP) 2015-20 also from 30th Sep 2022 to 31st March 2023.

RATIO DECIDENDI

GST LAW

❖ **Maharaja Cables (C/O Maxwell Logistic Pvt Ltd) Vs Commissioner (GST) State Tax Indore (M.P.), Writ Petition (Civil) No. 6110 of 2020 - Madhya Pradesh High Court**

The issue involved in the present matter is that while preparing an E-way bill, the petitioner mistakenly mentioned the wrong address. Further, the petitioner came to know about the same when revenue authorities-initiated proceedings and imposed tax liability along with a penalty. Thereafter petitioner contested the matter before the Hon'ble Madhya Pradesh High Court.

The petitioner asserted that the error made while creating the E-way bill was an unintentional human error and that there was no attempt to evade paying taxes, especially since the vehicle number that was transporting the goods was the same. Due to the bona fide nature of the mistake in question, this Court, using the parity principle, held that the impugned decisions should be set aside as an inadvertent error in generating an E-way bill cannot lead to proceedings and penalties under section 129 of the CGST Act, 2017

❖ **M/s. D.K. Enterprises Vs. The Assistant /Deputy Commissioner (ST) Adjudication, W.P. No.22646 of 2022. Madras High Court**

In the instant matter, the consignment of the petitioner was seized/detained by the Commercial tax department Chennai. Thereafter, the petitioner contended that no proper procedure was followed by the department officers, as no notice was issued by the department within 7 days from the date of detention as per Section 129(1) & 129(3) of CGST Act, 2017. The department in its defence stated that the limitation of 7 days expires on a holiday, succeeding with a weekend. Hence, there was a delay in issuing the notice. The Hon'ble High Court held that neither the assessee nor the respondents could have the luxury of reference to a holiday to delay or protract the proceedings. The procedure that has been followed by the respondents (Department) in this matter is contrary to statutory requirements. Therefore, it is clear that the GST Department does not recognize the concept of 'working day' and 'holiday' and a Writ petition was allowed.



CUSTOMS/ FOREIGN TRADE POLICY

❖ **Sundaresh Bhatt, Liquidator of ABG Shipyard Vs. Central Board of Indirect Taxes and Customs CIVIL APPEAL No. 7667 of 2021**

In the present matter, there is a dispute between the Central Board of Indirect Taxes and Customs (CBIC) and ABG Shipyard (which owes Rs 22,842 crore). The Hon'ble Supreme Court (SC), has held that liquidation proceedings in the case of a bankrupt firm will take over recoveries of indirect taxes once a moratorium has been imposed under the Insolvency and Bankruptcy Code (IBC). The SC further stated that 'While customs authorities have the powers to assess the quantum of dues, it does not have the powers to initiate the recovery of dues under the Customs Act

❖ **M/s S. J. Enterprises & Anr. Vs Union of India. In The High Court of Bombay at Goa Writ Petition No.39 Of 2022**

In the instant matter, the customs authority passed an order against the petitioner and sought encashment of the Bank Guarantees furnished by the petitioner in order to cover the demands raised by the Customs. In response, the bank transferred the money to customs authorities to cover the raised demand. The petitioner contended before the High Court that the Customs Authorities adopted coercive measures to encash the Bank Guarantee furnished by the petitioner. The Hon'ble High Court reiterated that Customs Authorities cannot encash the Bank Guarantee furnished by the assessee before the expiry of the statutory period available for filing an appeal. Observing that the CBEC circular no. 984/08/2014-CX dated 16.09.2014 (presupposes grant of a reasonable time to the assessee for instituting an appeal against the Order) is binding on the Customs Authorities, the Court directed the Commissioner of Customs to ensure that there is no breach of the CBEC instructions or disobedience of judicial orders in the future.

NEWS NUGGETS

- ❖ [GST officers can launch prosecution in cases of over Rs 5 cr tax evasion](#)
- ❖ [Trade policy may pitch for FTA with the USA over Five years](#)
- ❖ [Food ministry extends concessional import duties on edible oils till March 2023](#)
- ❖ [India raises import duty on platinum to 15.4% from 10.75%](#)
- ❖ [Centre defers launch of new foreign trade policy](#)
- ❖ [ITR update: Over 1.55 lakh updated income tax returns in May-September](#)
- ❖ [Traders want GST exemption extended on export freight](#)
- ❖ [GST on betting and gambling: Tax Structure and liabilities in case of default.](#)

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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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