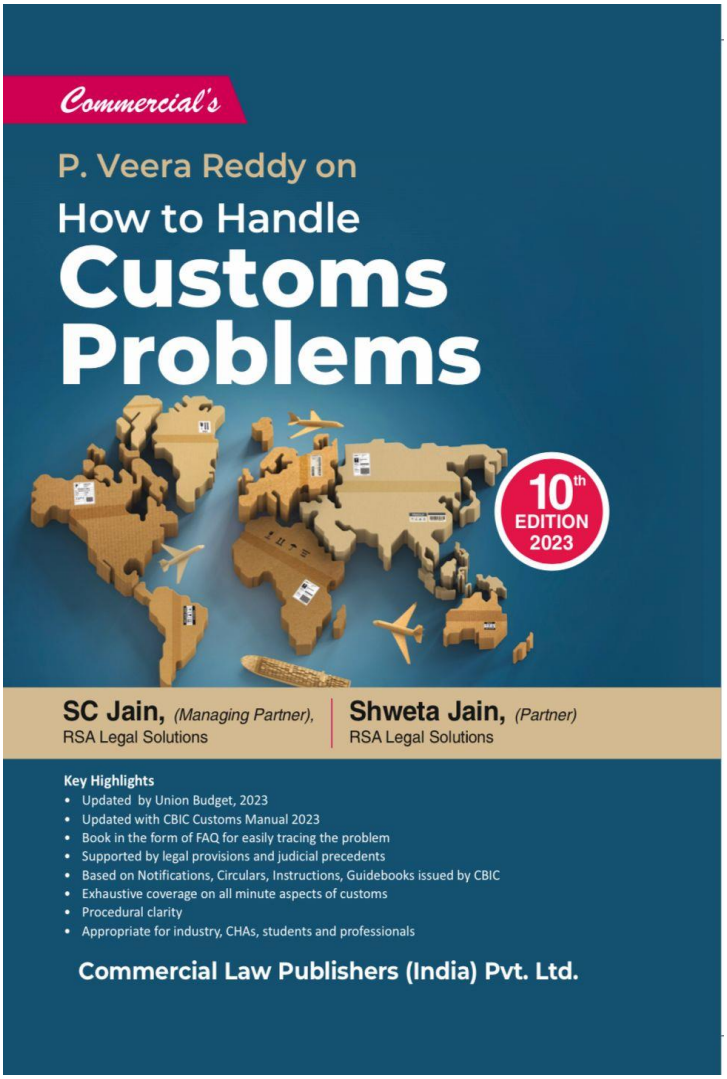
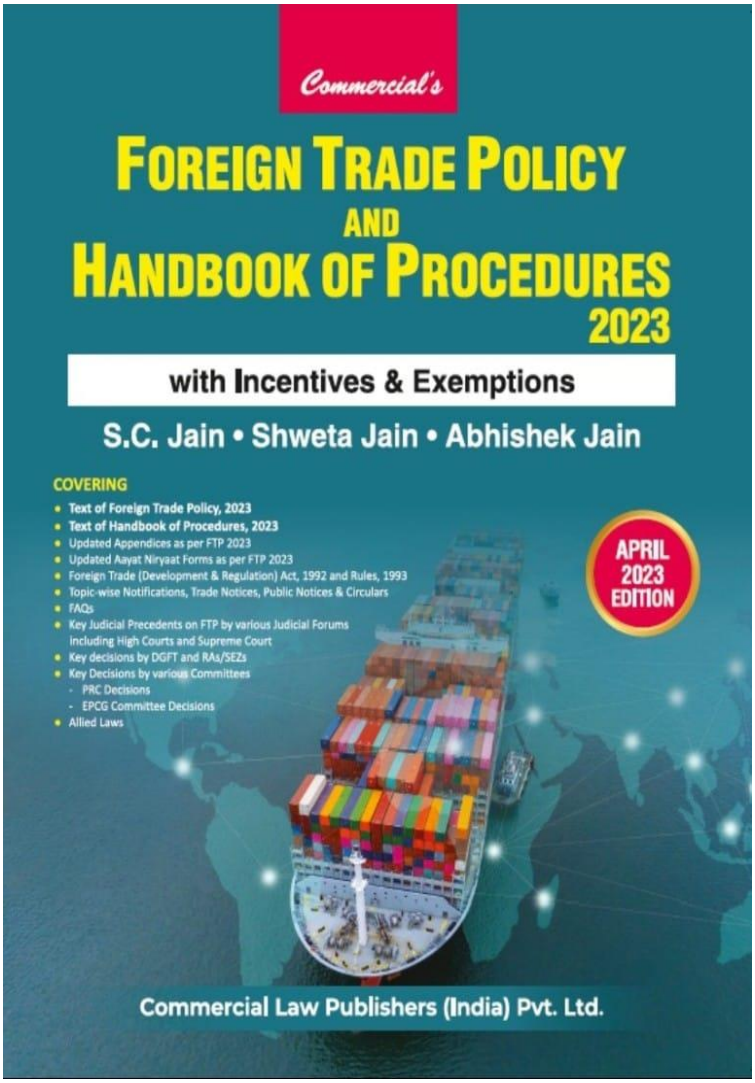
INDIRECT TAX NEWSLETTER
August, 2023 (updated till 31.07.2023)





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.

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

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

It gives us immense pleasure to announce the launch of our new book titled **"Foreign Trade Policy and Handbook of Procedures, 2023"** published by Commercial Law Publishers and authored by SC Jain (Managing Partner), Shweta Jain (Partner) and Abhishek Jain (Partner) at RSA Legal Solutions. Key highlights of the book are:

- Foreign Trade Policy, 2023
- Handbook of Procedures, 2023
- Updated Appendices as per FTP, 2023
- Updated Aayat Niryaat Forms as per FTP, 2023
- Foreign Trade (Development and Regulation) Act, 1992 and Rules 1993
- Topic wise Notifications, Trade Notices, Public Notices and Circulars
- FAQs
- Key Judicial Precedents by High Courts and Supreme Court
- Key decisions by DGFT, RAs and various committees

The link to purchase the book is: https://commerciallawpublishers.com/home/product_view/1141/Foreign-Trade-Policy-and-Handbook-of-Procedures-2023

SEMINAR FOR DGFT

We had been invited by Directorate General of Foreign Trade (DGFT) under Ministry of Commerce to present a seminar on the Adjudication procedure in terms of Foreign Trade (Development and Regulation) Act, 1992. It was a very interactive session with the officials of DGFT including very senior dignitaries of DGFT. Delhi DGFT office was physically present while the other RAs of DGFT at various locations in the country were present through live streaming with them. The interaction involved discussion over various case laws as decided by High Courts and Supreme Court, view point of DGFT on each aspect, industry issues being faced, challenges being faced by DGFT and industry in various matters etc. We are grateful to DGFT, Ministry of Commerce for having provided us this opportunity.

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ARTICLES BY TEAM RSA LEGAL

❖ Article on "Navigating the Ambiguity: Blocked Credit on Motor Vehicle for R&D Purposes" penned down by Anshul Mittal (Partner)

Introduction

The Goods and Services Tax (GST) regime has brought about significant changes in the way businesses operate and claim tax credits. However, amidst the multitude of benefits it offers, there are certain scenarios where the availability of Input Tax Credit (ITC) becomes ambiguous. One such area of contention is the eligibility to claim ITC on motor vehicles imported for Research and Development (R&D) purposes. While the law provides certain restrictions under Section 17(5) of the CGST Act, 2017, it inadvertently creates confusion for businesses engaged in R&D, where the imported vehicles are not intended for regular use on Indian roads. This article delves into the issue and seeks to shed light on the challenges faced by companies that import goods for R&D while aiming to use them solely for business purposes.

Understanding the Relevant Provisions

1. **Section 16 of the CGST Act, 2017** outlines the eligibility and conditions for taking input tax credit. It states that a registered person is entitled to take credit of input tax paid on any supply of goods and/or services used in the course or furtherance of business. However, this provision is subject to certain conditions, which include possessing valid tax invoices, receipt of goods or services, payment of applicable tax to the government, and filing the relevant returns.

2. However, the availability of ITC under **Section 16 is curtailed by Section 17(5) of the CGST Act, 2017**. This provision restricts the ITC in specific cases, and one of them is motor vehicles used for transportation of persons, having an approved seating capacity of not more than thirteen individuals. But herein lies the crux of the ambiguity: Are motor vehicles imported for R&D purposes and not intended for regular passenger transportation considered under this restriction?

The Conundrum of R&D Vehicles

1. Businesses engaged in R&D often import motor vehicles to facilitate research, innovation, and product development. These vehicles are primarily intended for technical analysis, testing, and evaluation, and are not meant for regular use on Indian roads due to specific restrictions and regulations. Consequently, they fail to meet the criteria outlined in **Section 17(5)(a) of the CGST Act, 2017**, which restricts ITC on motor vehicles used for passenger transportation.

2. Importantly, the legislative intent behind blocking ITC on certain motor vehicles seems to be preventing misuse and unwarranted claims. However, this restriction may not have been envisioned for motor vehicles imported solely for R&D activities, which directly contribute to business operations.

Analyzing Legislative Intent

1. To better understand the legislative intent, it is essential to delve into the scope and interpretation of the relevant provisions. **Section 17(5)(a) of the CGST Act restricts ITC on motor vehicles used for transportation of passengers with approved seating capacity of not more than thirteen persons**. The key terms here are "motor vehicles," "for transportation of passengers," and "approved seating capacity."

2. The definition of "motor vehicle" as per the Motor Vehicles Act, 1988, includes vehicles intended for use on roads. However, R&D vehicles imported for testing purposes lack compliance with road-use regulations, making them ineligible for transportation of passengers.

3. Furthermore, the intention behind importing these vehicles is critical. Since they are not meant for passenger transportation, but rather exclusively for R&D purposes, they should not fall within the purview of **Section 17(5)(a) restrictions**. Legislative intent often emphasizes preventing misuse, but not at the cost of hindering genuine business endeavors like R&D.

4. The Regional Transport Office (RTO) does not allow driving these vehicles on Indian roads due to their left-hand drive orientation. **RTO approval is necessary for any vehicle intended for passenger transportation on Indian roads**. However, R&D vehicles, which are imported solely for technical evaluation and testing, do not receive such approvals. Consequently, they remain ineligible for transporting passengers and should not be categorized under the blocked credit list.

5. The law mandates an **"approved seating capacity" for blocking ITC on certain motor vehicles**. This refers to the maximum number of passengers that a vehicle is authorized or permitted to accommodate, as determined and specified by the relevant regulatory authorities or governing bodies. It represents the officially sanctioned or approved number of seats available for occupants in a vehicle, taking into account safety considerations, space limitations, and other relevant factors.

6. However, R&D vehicles imported for technical analysis may not fall under this category, as they are not intended for passenger transportation on Indian roads. **The absence of RTO approvals further solidifies the fact that these vehicles are not meant for transportation of passengers**, thereby excluding them from the scope of restriction under **Section 17(5)(a) of the CGST Act, 2017**.

Clarification Needed for Business Certainty

1. Clarity on the treatment of motor vehicles imported for R&D is essential to provide businesses with a stable and predictable tax environment.

2. Currently, the ambiguity in the law restricts companies from availing legitimate credits on expenses incurred for R&D, creating an unintended financial burden.

The Way Forward

To address this issue and promote ease of doing business, the government could consider the following steps:

1. **Clear Definitions:** The government can define "R&D vehicles" under GST laws and clearly distinguish them from vehicles intended for regular passenger transportation. This would eliminate the confusion surrounding the applicability of restrictions.

2. **Exemptions or Refunds**: Providing exemptions or facilitating refunds for specific R&D vehicles can help businesses claim legitimate ITC without administrative hurdles.

3. **Advance Rulings**: Encouraging businesses to seek advance rulings on the eligibility of ITC for R&D vehicles can bring clarity and reduce disputes.

4. **Industry Consultations**: Engaging with stakeholders and industry experts to understand their needs and challenges can lead to targeted policy amendments.

Conclusion

The ambiguity surrounding the availability of ITC on motor vehicles imported for R&D purposes poses challenges for businesses and hinders the growth of innovation. The government should consider providing clarity and exemptions to facilitate genuine R&D activities and ensure that companies can rightfully claim ITC on expenses related to research and development. By addressing this issue, the government can foster a conducive environment for R&D-driven growth and innovation in the country.

❖ Article on "Navigating the Recently Notified Amendment to Zero Rated Supplies to SEZ Units and Developers under the GST Law" Penned down by Rajat Dosi (Partner)

Introduction

The transition to the Goods and Services Tax (GST) regime in the year 2017 brought many sea changes in the manner in which different-different transactions are subjected to indirect taxes in India. One such crucial change was the treatment of supplies made to Special Economic Zone (SEZ) units or developers, which were recognized as 'Zero rated supplies' under Section 16 of the Integrated Goods and Services Tax (IGST) Act, 2017. This meant that suppliers could either make such supplies without paying IGST under a Letter of Undertaking (LUT) or pay the applicable IGST and claim a refund later. However, this provision was recently amended through the Finance Act, 2021 (Section 123) to restrict the benefits of zero-rated supplies to only those supplies which are meant for 'authorized operations' by the SEZ units or developers. As of July 31, 2023, this amendment has been notified by the Government, indicating that only supplies intended for 'authorized operations' will continue to be treated as zero-rated supplies, while others will require payment of applicable IGST.

Recent Notification on Zero Rated Supplies

For some time after the amendment, the Government did not notify the change, leading to uncertainty in the industry. However, on July 31, 2023, the Government finally issued Notification No. 27/2023-Central Tax, which officially notified the amendment, effective from October 1, 2023. This notification means that going forward, only supplies utilized for 'authorized operations' by SEZ units or developers under the SEZ

law will be considered as 'zero-rated supplies'. For supplies not meant for 'authorized operations', the option of not paying IGST upfront or claiming a refund later will no longer be available.

Understanding 'Authorized Operations' under the SEZ Law

To determine what qualifies as 'authorized operations', we must refer to the relevant provisions of the SEZ Act, 2005. Section 2(c) of the SEZ Act defines 'authorized operations' as operations that may be authorized under sub-section (2) of section 4 and sub-section (9) of section 15. In furtherance of this, Section 4(4) and Section 15(9) specify that operations authorized for SEZ developers or units will be listed in the Letter of Approval issued to them.

Challenges for Non-SEZ or DTA Suppliers

For suppliers operating outside the SEZ or in the Domestic Tariff Area (DTA), it becomes challenging to ascertain whether the supplies made to SEZ units or developers are indeed meant for 'authorized operations'. This is because SEZ entities may not readily share their Letter of Approval with all their suppliers, making it difficult for the latter to determine the nature of their supplies.

Ensuring Compliance for Zero Rated Supplies – Way Forward

To avoid potential issues with GST authorities regarding the nature of supplies made to SEZ units or developers, non-SEZ or DTA suppliers need to take certain precautionary measures from October 01, 2023:

1. Endorsement on Tax Invoice: Suppliers should obtain an endorsement from the recipient SEZ unit or developer on the tax invoice stating that the supplies will be used for 'authorized operations' as per the SEZ law.

2. Obtaining Endorsement from SEZ Officer: Alternatively, suppliers can request the recipient SEZ unit or developer to obtain an endorsement from the specified officer* within the SEZ area, confirming that the goods are indeed meant for 'authorized operations'. Such an endorsement aligns with the existing condition for obtaining IGST refund under Rule 89 of the CGST Rules for supplies made to SEZ units or developers.

By adhering to these precautions, non-SEZ or DTA suppliers can ensure that their supplies qualify as zero-rated supplies under the GST law and avoid any potential disputes with GST authorities in the future.

Conclusion

The recent amendment to the GST law regarding zero-rated supplies to SEZ units or developers brings greater clarity and streamlines the process of taxation for such transactions. With the amendment now officially notified by the Government, it is essential for suppliers to take proactive steps to ensure compliance. By obtaining necessary endorsements from the SEZ entities or specified officer, non-SEZ or DTA suppliers can continue to avail the benefits of zero-rated supplies without facing challenges from GST authorities regarding the 'authorized operations' status of the recipient SEZ unit or developer. These measures will contribute to a smoother GST implementation and promote ease of doing business for all stakeholders involved.

*Specified Officer means Joint or Assistant or Deputy Commissioner of Customs posted in the SEZ – Rule 2(zd) of the SEZ Rules.

❖ Article on "Understanding the Impact of Circular No. 199: ISD vs. Cross Charge with Valuation in GST" Penned down by Anshul Mittal (Partner)

Introduction: The Goods and Services Tax (GST) system has revolutionized the indirect taxation landscape in India. However, navigating the complexities of GST can be challenging for businesses, especially when it comes to concepts like Input Service Distributor (ISD) and Cross Charge. These two concepts play a vital role in the seamless functioning of a business within the GST framework. Proper understanding of ISD and Cross Charge is crucial to ensure compliance and efficient operations.

1. What is ISD (Input Service Distributor)?

Defining ISD and its Role in the GST Framework: An Input Service Distributor (ISD) is an entity that acts as a focal point for distributing Input Tax Credit (ITC) among different branches or units of a business. When an organization has multiple branches or units with separate GST registrations, the ISD receives ITC on common input services and allocates it to the respective recipients based on a predefined formula. This mechanism simplifies the process of distributing ITC, ensuring that each unit receives the appropriate share of credit for the input services used.

Mechanism of ITC Distribution through ISD: The ISD follows a systematic approach in distributing ITC to various units within an organization. It receives invoices for input services used by different units and consolidates them. The ITC available to the ISD is then allocated among the recipient units using the formula prescribed under the GST law. This mechanism streamlines the distribution process and prevents duplication of ITC claims.

Common Input Services and their Allocation through ISD: Common input services are those services utilized by multiple units or branches of a business. These services can include administrative expenses, security services, IT services, and more. The ISD ensures that the ITC on such common input services is appropriately distributed among the units based on their individual usage and proportionate share.

2. What is Cross Charge in GST?

Understanding Cross Charge and its Relevance in GST: Cross Charge refers to the supply of goods or services between distinct persons or related persons within the same organization. Distinct persons are entities that have separate GST registrations or units located in different states having the same PAN. Such supplies between these distinct or related persons are deemed as transactions under GST, even if they are conducted without consideration.

Identifying Distinct Persons under GST: To determine whether two entities are distinct persons under GST, certain criteria are considered. Entities with separate GST registrations or units located in different states are deemed to be distinct persons for the purpose of GST if they are related persons or have the same PAN. It is crucial to recognize such distinct persons as they are subject to specific tax implications.

Allocating Commonly Attributable Input Services through Cross Charge: In the case of Cross Charge, the challenge lies in determining the value of supplies, especially when the recipient is entitled to full ITC. The

second provision of Rule 28 under GST adds to the complexity. However, Circular No. 199 issued on 17th July 2023 has brought much-needed clarity to this aspect.

3. Circular No. 199: Relevant Clarity for Related Party Transactions

Overview of Circular and its Purpose: Circular No. 199 issued by the GST authorities aims to provide clarity on various aspects of related party transactions, ISD, Cross Charge, and valuation methods. The circular addresses the concerns of business entities with head offices and branch offices located in different states.

Distinguishing Internally Generated Services from Common Input Services: One significant aspect clarified by Circular is the differentiation between internally generated services and common input services. Internally generated services are those provided by the head office to the branch offices without involving any third-party service provider.

4. ISD vs. Cross Charge

Debates and Confusions Common Confusions Surrounding ISD and Cross Charge: Businesses often find it challenging to differentiate between ISD and Cross Charge, leading to various confusions and debates. Understanding the distinctions between the two is essential to ensure accurate tax compliance.

Challenges in Differentiating Between ISD and Cross Charge: The complexities arise from the fact that both ISD and Cross Charge involve the distribution of goods or services within the same organization. However, they have different implications under the GST law, and proper understanding is crucial to avoid any compliance issues.

Past Disputes and Litigations Resulting from Ambiguities: The lack of clarity regarding the valuation of supplies and the applicability of ISD and Cross Charge has resulted in disputes and litigations between taxpayers and tax authorities. The Circular seeks to address and resolve such past disputes.

5. Clarification on ISD Registration and Credit Distribution

Understanding the Mandatory or Optional Nature of ISD Registration: The circular brings much-needed clarity to the issue of whether ISD registration is mandatory or optional for businesses. While ISD registration is beneficial for the streamlined distribution of ITC, the circular clarifies that it is not mandatory for certain transactions.

Raising Tax Invoices without ISD Registration for Common Input Services: The circular also addresses the situation where an organization procures common input services without obtaining ISD registration. It states that the organization can still raise tax invoices to the concerned branch offices for the services provided, and the recipient branch offices can claim ITC based on such invoices.

Efficiently Distributing ITC for Common Input Services: In cases where common input services are procured by the organization as a whole, the circular clarifies that the organization can distribute ITC to the respective branch offices through the ISD mechanism. This ensures a fair distribution of ITC among the units using the common services.

6. Clarification on Cross Charge

Valuation with Full ITC Understanding the Second Provision of Rule 28: The circular provides much-needed clarity on the second provision of Rule 28, which deals with the valuation of supplies when the recipient is entitled to full ITC. This rule had been a subject of debate and confusion among taxpayers and tax authorities.

Deemed Open Market Value for Recipients with Full ITC: According to the circular, when the recipient is entitled to full ITC, businesses can choose any value for the supply, and that value will be deemed as the open market value. This provides a significant advantage for businesses as it prevents disputes and ensures smooth operations.

Application of Rule 32 Sub-rule 7 for Special Cases: The circular also addresses the situation where a recipient has not received a tax invoice from the supplier in the past for cross charges, but the recipient was entitled to full ITC. In such cases, the value of the service can be declared as nil, as per Rule 32 Sub-rule 7.

7. Cross Charge for Exempted Sectors and Salary Costs

Cross Charge Valuation for Exempted Sectors: The circular clarifies that when the recipient is not entitled to full ITC, salary costs need not be included in the overall value of supplies for raising the cross-charge invoice. This is particularly beneficial for businesses operating in exempted sectors.

The Role of Salary Costs in Cross Charge Valuation: The inclusion of salary costs in cross charge valuation has been a subject of dispute. The circular unequivocally states that salary costs need not be included in the valuation when they are internally generated services provided by the head office to the branch offices.

Clarifications on Salary Cost Inclusion in Valuation: The clarification on salary cost inclusion brings much needed relief to businesses in determining the correct valuation for cross charges, especially when the recipient is not entitled to full ITC. It ensures transparency and minimizes disputes with tax authorities.

8. Other Related Party Transactions and GST Implications

Examining the Impact of Corporate Guarantees on GST: The circular does not specifically address the GST implications of corporate guarantees provided by holding companies or directors. However, understanding related party transactions is essential for businesses to ensure compliance.

GST Implications on Transactions Between Related Persons: Apart from ISD and Cross Charge, other transactions between related persons may have GST implications. Businesses must carefully evaluate such transactions to determine their tax treatment and avoid any non-compliance.

9. Advantages of Circular No. 199 Clarifications

Retroactive Applicability of Circular for Past Disputes: One of the most significant advantages of Circular is its retroactive applicability. The clarifications provided in the circular can be applied retrospectively to resolve past disputes and litigations, providing relief to many taxpayers.

Eliminating Ambiguity and Litigation through Clear Guidelines: The circular brings much-needed clarity to several aspects of ISD, Cross Charge, and valuation methods. Clear guidelines help in eliminating ambiguity and reducing disputes between taxpayers and tax authorities.

Practical Considerations for Businesses in Light of the Circular: Businesses should carefully analyze the Circular to understand how it impacts their operations. Adherence to the guidelines and clarifications provided will ensure compliance and a smooth functioning of the organization within the GST framework.

10. Conclusion

In conclusion, understanding the nuances of ISD (Input Service Distributor) and Cross Charge with valuation is essential for businesses operating under the GST regime. Circular No. 199 issued by the GST authorities brings much-needed clarity to several aspects of related party transactions, ISD, and Cross Charge. The circular provides valuable insights into the allocation of common input services, the optional nature of ISD registration, and the valuation methods for supplies with full ITC.

The circular's retroactive applicability ensures that businesses can benefit from its clarifications even for past disputes and litigations. By eliminating ambiguity and providing clear guidelines, The Circular facilitates compliance and eases the complexities of GST regulations.

Businesses should take advantage of the circular's clarifications to optimize their tax strategies and ensure smooth operations. Adherence to ISD guidelines and a thorough understanding of cross charge valuation will prevent compliance issues and foster better engagement with tax authorities.

Overall, it is a commendable step towards making GST a more transparent and taxpayer-friendly system. As businesses continue to engage with the GST framework, staying informed about such clarifications and seeking expert advice when needed will contribute to making GST truly good and simple for all stakeholders.

REGULATORY UPDATES

GST

NOTIFICATIONS

- **Notification No. 22/2023-Central Tax dated 17.07.2023**

  By virtue of this notification, the CBIC has introduced amendments in the Notification No. 73/2017-Central Tax dated 29.12.2017 to extend the due date for furnishing the return in FORM GSTR-4 till 31.08.2023.

- **Notification No. 23/2023-Central Tax dated 17.07.2023**

  By virtue of this notification, the CBIC has introduced amendments in the Notification No. 03/2023-Central Tax dated 31.03.2023 to extend the time limit for application for the revocation of cancellation of registration till 31.08.2023.

- **Notification No. 24/2023-Central Tax dated 17.07.2023**

  By virtue of this notification, the CBIC has introduced amendments in the Notification No. 06/2023-Central Tax dated 31.03.2023 by extending amnesty scheme for deemed withdrawal of assessment orders under Section 62 of the CGST Act, 2017 till 31.08.2023.

- **Notification No. 25/2023-Central Tax dated 17.07.2023**

  By virtue of this notification, the CBIC has introduced amendments in the Notification No. 07/2023-Central Tax dated 31.03.2023 to extend the amnesty scheme for non-filers of GSTR-9 till 31.08.2023.

- **Notification No. 26/2023-GST dated 17.07.2023**

  By virtue of this notification, the CBIC has introduced amendments in the Notification No. 08/2023-Central Tax dated 31.03.2023 to extend the amnesty scheme for non-filers of GSTR-10 till 31.08.2023.

- **Notification No. 27/2023-Central Tax dated 31.07.2023**

  By virtue of this notification, the CBIC has appointed 01.10.2023 as the date on which Section 123 of the CGST Act, 2017 on penalty for failure to furnish information return shall come into force.

- **Notification No. 29/2023-Central Tax dated 31.07.2023**

  By virtue of this notification, the CBIC has notified the special procedure to be followed by a registered person or an officer who intends to file an appeal against the order passed by the proper officer in accordance with Circular No. 182/14/2022-GST, dated 10.11.2022. It has been provided that appeal against the order shall be made in duplicate in the Form attached as Annexure-1 to the notification and shall be presented manually before the Appellate Authority. The appellant shall not be required to deposit any amount as a pre-condition for filing an appeal against the said order. Moreover, an appeal filed must be accompanied by relevant documents including a self-certified copy of the order and the said appeal and the relevant documents is to be signed by the person as specified in Rule 26(2) of the CGST Rules, 2017. On receipt of the appeal, the Appellate Authority must issue an acknowledgement, indicating the appeal number, manually in Form GST APL-02 and the appeal shall be treated to be filed only when the said acknowledgement is issued.

- **Notification No. 30/2023-Central Tax dated 31.07.2023**

  By virtue of this notification, the CBIC has provided a special procedure for registered persons involved in manufacturing goods specified in the Schedule. While existing registered manufacturers are required to furnish the details of packing machines being used for filling and packing of pouches or containers in Form SRM-1, within 30 days, new manufacturers who receive registration after the issuance of the notification, need to furnish such details within fifteen days of grant of such registration. Post furnishing such details, a unique ID will be generated for each machine, whose details have been furnished by the registered person on the Common Portal. Additionally, manufacturers are required to keep daily records of inputs, waste generation, electricity and generator meter readings in Form SRM-IIIA and maintain record of machine-wise production, product-wise and brand-wise details of clearance in quantity and value terms in FORM SRM-IIIB in each place of business. Moreover, the said registered person is also required to submit a special statement for each month in Form SRM-IV on the Common Portal on or before the tenth day of the month succeeding such month.

- **Notification No. 31/2023-Central Tax dated 31.07.2023**

  The CBIC vide this notification has provided that only for the State of Gujarat and the State of Puducherry, the Aadhar authentication will be followed by Biometric Based Aadhar Authentication, taking photographs of the Applicant along with verification of the original copy of the documents uploaded with the application of registration, at one of the Facilitation Centres notified by the Commissioner.

- **Notification No. 32/2023-Central Tax dated 31.07.2023**

The CBIC vide this notification has exempted registered persons whose aggregate turnover in the Financial Year 2022-23 is upto two crore rupees from filing annual return for the said financial year.

- **Notification No. 34/2023-Central Tax dated 31.07.2023**

  The CBIC vide this notification has specified the persons making supplies of goods through an electronic commerce operator who is required to collect tax at source under Section 52 of the CGST Act, 2017 and having an aggregate turnover in the preceding financial year and in the current financial year not exceeding the amount of aggregate turnover above which a supplier is liable to be registered in the State or Union Territory in accordance with Section 22(1) of the CGST Act, 2017 as the category of persons exempted from obtaining registration under the said Act.

- **Notification No. 06/2023-Central Tax (Rate) dated 26.07.2023**

  By virtue of this notification, the CBIC has amended the Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017, which provides for rates on intra-State supply of services under the CGST Act, in accordance with the recommendations made by the GST Council at its 50th meeting held on 11.07.2023. The notification by way of amendment has extended the timeline for GTAs to exercise the option to pay GST under forward charge by way of declaration in the amended Annexure-V until March 31 of the preceding Financial Year, instead of March 15. Moreover, such option to pay under FCM, shall be deemed to have been exercised for the next and future financial years unless the GTA files a declaration in the newly introduced Annexure VI to revert under RCM on or after the 1st January of the preceding Financial Year but not later than 31st March of the preceding Financial Year.

- **Notification No. 07/2023-Central Tax (Rate) dated 26.07.2023**

  By virtue of this notification, the CBIC has introduced amendments in the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, which provides for exemptions on intra-State supply of services under the CGST Act, 2017 to substitute "Satellite launch services" against serial number 19C thereof in place of "Satellite launch services supplied by Indian Space Research Organization, Antrix Corporation Limited or New Space India Limited" w.e.f. 27.07.2023, on the recommendations of GST Council in its 50th meeting held on 11.07.2023.

- **Notification No. 08/2023-Central Tax (Rate) dated 26.07.2023**

  By virtue of this notification, the CBIC has introduced amendments in the Notification No. 13/2017-Central Tax (Rate) dated 28.06.2017, which provides for categories of services on which tax will be payable under reverse charge mechanism under CGST Act, to substitute the words and figures "from the Financial Year ____ under forward charge and have not reverted to reverse charge mechanism" in place of "during the Financial Year ____ under forward charge" in the declaration provided in Annexure III w.e.f. 27.07.2023, on the recommendations of GST Council in its 50th meeting held on 11.07.2023.

*Note: For the Central Tax (Rate) notifications summarized above, similar amendments have been made in Integrated Tax (Rate) and Union Territory Tax (Rate) as well.

CIRCULARS

- **Circular No. 192/04/2023-GST dated 17.07.2023**

  The CBIC vide the issuance of this circular has clarified that since the amount of input tax credit available in the electronic credit ledger (ECL) under any of the heads of IGST, CGST or SGST can be utilized for

payment of liability of IGST, therefore in cases where IGST credit has been wrongly availed and subsequently reversed on a certain date, there will not be any interest liability under Section 50(3) of the CGST Act, 2017 if during the time starting from such availment and upto such reversal, the balance of ITC in the said ECL under the heads of IGST, CGST and SGST taken together never fall below the amount of such wrongly availed ITC, even if the available balance of IGST credit in ECL individually falls below the amount of such wrongly availed IGST credit. Further, the said circular has also clarified that since the input tax credit in respect of compensation cess can only be utilised towards payment of compensation cess, the same cannot be taken into account while considering the balance of ECL for the purpose of calculation of interest under Rule 88B(3) of the CGST Rules, 2017.

- **Circular No. 193/05/2023-GST dated 17.07.2023**

The CBIC vide the issuance of this circular has provided clarification to deal with the difference in Input Tax Credit (ITC) availed in FORM GSTR-3B as compared to that detailed in FORM GSTR-2A for the period 01.04.2019 to 31.12.2021. The circular highlights that rule 36(4) of CGST Rules, 2017 allowed additional credit to the tune of 20%, 10% and 5%, during the period from 09.10.2019 to 31.12.2019, 01.01.2020 to 31.12.2020 and 01.01.2021 to 31.12.2021 respectively, in respect of invoices/supplies that were not reported by the concerned suppliers in their Form GSTR-1, leading to discrepancies between the amount of ITC availed by a registered person in their returns in Form GSTR-3B and the amount available in Form GSTR-2A. Further, the said Circular has extended the applicability of the procedure for dealing with differences between ITC claimed in GSTR-3B and as available in GSTR-2A provided in Circular No. 183/15/2022-GST dated 27.12.2022 from 01.04.2019 to 31.12.2021. Moreover, it has also been further clarified that consequent to the insertion of clause (aa) to section 16(2) of the CGST Act and amendment of rule 36(4) of CGST Rules w.e.f. 01.01.2022, ITC can only be availed if reported by suppliers in FORM GSTR-1 or using invoice furnishing facility and communicated through FORM GSTR-2B.

- **Circular No. 194/06/2023-GST dated 17.07.2023**

The CBIC vide the issuance of this circular has provided clarification on Tax Collected at Source (TCS) liability under section 52 of the CGST Act, 2017 in case of multiple E-commerce Operators (ECOs) in one transaction. Therefore, in a situation where multiple ECOs are involved in a single transaction of supply through ECO platform and the supplier-side ECO himself is not the supplier, then the compliances under section 52 of CGST Act, 2017 is to be done by the supplier-side ECO who finally releases the payment to the supplier for a particular supply made by the said supplier through him. On the other hand, if the supplier-side ECO is also the supplier, the buyer-side ECO is responsible for collecting TCS while making payment to the supplier for the particular supply being made through it.

- **Circular No. 195/07/2023-GST dated 17.07.2023**

The CBIC vide the issuance of this circular has provided clarification on availability of ITC in respect of warranty replacement of parts and repair services during warranty period. This circular seeks to settle divergent interpretations by investigative wings and field formations regarding GST liability and ITC reversal requirements, by providing the following clarification:

  - When replacement parts or repair services are offered throughout the warranty term without separately charging any consideration, no additional GST is owed. The expected cost of such replacements or repairs is already factored into the value of the original supply. However, GST is applicable if any additional payment is made. Additionally, these supplies cannot be regarded as exempt supplies, so the manufacturer/distributor who offers the customer replacement parts and/or repair services during

the warranty period is not required to reverse the input tax credit in relation to the aforementioned replacement parts or on the repair services offered.

- Further, when the distributor replaces the parts to the customer under warranty either by using his stock or by purchasing from a third party and charges the consideration for the parts so replaced from the manufacturer by issuance of a tax invoice, then GST would be payable by the distributor and the manufacturer would be entitled to avail ITC on the same. However, if the manufacturer provides the parts to the distributor for replacement to the customer during the warranty period, without separately charging any consideration at the time of such replacement, no GST is payable on such replacement of parts by the manufacturer and accordingly no ITC is required to be reversed.
- Moreover, when a customer signs an extended warranty contract with the manufacturer at the time of the initial supply, the value of the extended warranty becomes a component of the composite supply, with the supply of goods serving as the principal supply, and GST would be payable accordingly. However, if a consumer enters into an agreement for an extended warranty at any point after the initial supply, the agreement is a separate contract, and depending on the nature of the contract (i.e. whether the extended warranty is only for goods or for services or for a composite supply involving goods and services), GST would be payable by the service provider, whether manufacturer, distributor, or any third party.

❖ **Circular No. 196/08/2023-GST dated 17.07.2023**

The CBIC vide the issuance of this circular has provided clarification on taxability of share capital held in the subsidiary company by the parent company. At the outset the said Circular examines the definition of 'securities' under Section 2(h) of the Securities Contracts (Regulation) Act, 1956 which includes 'shares' within its ambit. Moreover, since securities are neither goods nor services in terms of the definition of 'goods' and 'services', the shares held by a holding company in a subsidiary company cannot be classified as either 'goods' or 'services'. Further for a transaction/activity to be treated as supply of services, there must be a supply as defined under Section 7 of the CGST Act, 2017 and just because there is a SAC entry '997171', the same would not be sufficient to classify the service being provided by the holding company to the subsidiary company under the said provision. Therefore, the activity of holding shares of subsidiary company by the holding company per se cannot be treated as a supply of services by a holding company to the said subsidiary company and cannot be taxed under GST.

❖ **Circular No. 197/09/2023-GST dated 17.07.2023**

The CBIC vide the issuance of this circular has provided the following clarifications on GST refund-related issues:

- The circular clarifies that the refund of accumulated input tax credit under Section 54(3) of the CGST Act, 2017 for a tax period shall be restricted to the input tax credit as per those invoices, the details of which are reflected in Form GSTR-2B of the applicant for the said tax period or for any of the previous tax period and on which the input tax credit is available to the applicant.
- Further, the circular removes the references to Section 42 of the CGST Act, 2017, Form GSTR-2 and Form GSTR-3 from the undertaking required to be submitted to the Government when applying for refund in Form GST RFD-01.
- Moreover, the circular also clarifies that consequent to explanation having been inserted in Rule 89(4) of the CGST Rules, 2017, the value of goods exported out of India will be included while calculating the adjusted total turnover.

- Furthermore, the circular addresses the admissibility of refunds when exporters voluntarily pay integrated tax and applicable interest in compliance with Rule 96A(1) of the CGST Rules, 2017 due to goods not being exported or payment for export of services not being received within the prescribed time frame. In this regard, it has been clarified that the exporters would be entitled to claim refund of integrated tax paid earlier, though no refund of interest will be admissible.

❖ **Circular No. 198/10/2023-GST dated 17.07.2023**

The CBIC vide this circular has clarified that entities registered exclusively for the purpose of tax deduction at source under Section 51 of the CGST Act, such as government departments, establishments, agencies, local governments, and PSUs, are liable for compulsory registration under Section 24(vi) of the CGST Act, 2017. Therefore, registered persons whose turnover exceeds the prescribed threshold for e-invoicing must issue e-invoices for supplies made to these entities.

❖ **Circular No. 199/11/2023-GST dated 17.07.2023**

The CBIC vide this circular has clarified that in cases where a business entity has a Head Office (HO) in one state and branch offices (BOs) in other states, certain issues may arise regarding the taxability of services provided between the HO and BOs. Regarding the availability of input tax credit (ITC) for common input services procured by the HO from a third party, the HO has the option to distribute ITC to the BOs using the Input Service Distributor (ISD) mechanism laid down in Section 20 of CGST Act, 2017 read with rule 39 of the CGST Rules, 2017 or issue tax invoices under Section 31 of the said Act directly to the BOs. The circular further adds that in circumstances where the BO is eligible for full input tax credit, the value reported in the invoice by the HO shall be deemed to be the open market value (OMV) of such services in accordance with second proviso to Rule 28 of the CGST Rules, 2017. However, in respect of internally generated services provided by the HO to BOs, the cost of salary of employees of the HO involved in providing the said services to the BOs is not mandatorily required to be included while computing the taxable value of the supply of such services, in cases where full input tax credit is not available to the concerned BO.

CUSTOMS

NOTIFICATIONS

❖ **Notification No. 43/2023-Customs dated 01.07.2023**

By virtue of this notification, the CBIC has increased the import duty leviable on Liquified Propane and Liquified Butane classified under CTH 2711 12 00 and CTS 2711 13 00, respectively, in Chapter 27 of the First Schedule of the Customs Tariff Act, 1975, from 10% to 15%, w.e.f. 01.07.2023.

❖ **Notification No. 44/2023-Customs dated 01.07.2023**

By virtue of this notification, the CBIC has made amendments in the Notification No. 50/2017-Customs dated 30.06.2017 to insert Sr. No. 153A in the table thereof, to exempt the duty of customs leviable on Liquified Propane and Liquified Butane which is excess of the amount calculated at the standard rate of 2.5%, w.e.f. 01.07.2023.

❖ **Notification No. 45/2023-Customs dated 01.07.2023**

By virtue of this notification, the CBIC has made amendments to the Notification No. 11/2021-Customs dated 01.02.2021 to insert Sr. No. 10AA in the table thereof, which prescribes the Agriculture Infrastructure

and Development Cess rate of Liquified Propane and Liquified Butane falling under tariff items 2711 12 00 and 2711 13 00, respectively, of the Customs Tariff Act, 1975 to be 15%. Additionally, the CBIC by way of inserting the first proviso has limited the scope of Sr. No. 10AA by not extending it to imports of Liquified Propane and Liquified Butane mixture, Liquified Propane and Liquified Butane by the Indian Oil Corporation Limited (IOCL), Hindustan Petroleum Corporation Limited (HPCL) or Bharat Petroleum Corporation Limited (BPCL) for supply to household domestic consumers or to Non-Domestic Exempted Category (NDEC) customers. Moreover, by way of inserting a second proviso to the said entry, the CBIC has provided that Sr. No. 10B is to not apply to the imports of Liquified Petroleum Gas by the IOCL, HPCL or BPCL for supply to household domestic consumers or to NDEC customers.

- **Notification No. 51/2023-Customs (N.T.) dated 11.07.2023**

  By virtue of this notification, the CBIC has made amendments in the Transhipment of Cargo to Nepal under Electronic Cargo Tracking System Regulations, 2019 by notifying the Transhipment of Cargo to Nepal under Electronic Cargo Tracking System (Amendment) Regulations, 2023. The said notified regulations has made amendment in the Regulation 3 to provide that those regulations will also apply to the transhipment of cargo from the ports of Kolkata, Haldia and Vishakhapatnam in India to Biratnagar in Nepal by rail.

INSTRUCTIONS

- **Instruction No. 19/2023-Customs dated 04.07.2023**

  By virtue of this instruction, the CBIC has clarified that when there is use of different versions of HS in Certificate of Origin (CoO) and Bill of Entry (B/E) for the purpose of Customs clearance of imports under India-Japan Comprehensive Economic Partnership Agreement, the HS Code (2007 version) mentioned in CoO issued needs to be corelated with the HS Code (2022 version) mentioned in the B/E, at the time of Customs clearance.

- **Instruction No. 20/2023-Customs dated 05.07.2023**

  By virtue of this instruction, the CBIC has requested to sensitize the officers regarding the notified Authorised Officers (AOs) by the FSSAI at 161 Points of Entries (PoEs) for food, wherein 99 PoEs are to be manned by Customs officials as AOs while 62 PoEs are manned by FSSAI officials.

- **Instruction No. 21/2023-Customs dated 05.07.2023**

  By virtue of this instruction, the CBIC has requested to sensitize the officers regarding Notification No. 15/2023 dated 29.06.2023, which provides for amendment in import policy condition of Cigarette lighters covered under CTH 9613 of Chapter 96 of Schedule – I (Import Policy) of ITC (HS), 2022, by issue of suitable standing order/public notice.

- **Instruction No. 22/2023-Customs dated 07.07.2023**

  By virtue of this instruction, the CBIC has outlined the standard operating procedure (SOP) for preventing election malpractices. The directive places a strong emphasis on the necessity of cooperation between various law enforcement agencies to stop the passage of suspicious cash, illegal commodities, and other restricted things during elections. The CBIC instruction emphasises the issues expressed by the Election Commission of India (ECI) about the use of unlawful items, smuggled commodities, and non-financial inducements to sway voters during the electoral process. The need of the CBIC and other agencies in maintaining watchfulness and preventing the storage and distribution of such commodities is emphasised. The instruction emphasises the value of exchanging information and coordinating efforts to ensure smooth

and fair elections while outlining specific duties for various CBIC field units. Additionally, the instruction stresses the importance of promptly reporting and observing election-related activity. To enable efficient communication and coordination, it creates control rooms and names nodal persons at various levels. The need of the Directorate General of Analytics and Risk Management (DGARM), which conducts analytical studies and disseminates pertinent information to field officers, to increase their alertness is also highlighted in the CBIC directive. The directive also offers instructions for keeping track of the transportation of products relevant to election campaigns, making sure election-related expenses are properly recorded, and stepping up security at airports and international borders to stop the flow of illicit goods. The significance of data analysis and identifying vulnerable industries and people involved in unreported cash transactions are also emphasized.

- **Instruction No. 23/2023-Customs dated 14.07.2023**

  By virtue of this instruction, the CBIC has requested to sensitize the officers regarding the Board Instruction No. 16/2023 dated 17.05.2023 with respect to release of the imported consignments of all the notified 106 EEE items, on submission of undertaking, as an interim arrangement till 30.06.2023, as well as the letter dated 30.06.2023 by which the Central Pollution Control Board informed that the said interim arrangement will be extended till 31.08.2023 and will be applicable to only those producers who have submitted an acknowledgement of their application for registration on the EPR Portal.

- **Instruction No. 24/2023-Customs dated 18.07.2023**

  By virtue of this instruction, the CBIC has brought forward the observation that the frequent action of suspension of Customs Broker licence even in cases which do not merit immediate suspension is disruptive, especially in the case of small enterprises of Custom Brokers. In this regard, the CBIC has clarified that the power of the Commissioner of Customs to suspend the licence of a customs broker under Regulation 16 of Customs Broker Licence Regulations, 2018 is to be exercised in specified circumstances, i.e., the appropriate cases where immediate action is necessary, and not to be visualized for application in a manner routine or mechanical or in every case. Further, the Commissioner is also directed to record the reasons as to why in a particular case immediate action of suspension is necessary.

FOREIGN TRADE POLICY

NOTIFICATIONS

- **Notification No. 16/2023 dated 03.07.2023**

  By virtue of this notification, the DGFT has revised the import policy conditions of Potatoes, fresh or chilled, falling under ITC (HS) Code 07019000 by permitting their import from Bhutan freely without any license, up to 30.06.2024.

- **Notification No. 17/2023 dated 03.07.2023**

  In revising the import policy condition, the DGFT, by virtue of this notification, has permitted the import of 17,000 Metric Tonnes of Fresh (green) Areca Nut, falling under ITC (HS) Code 08028010 without a Minimum Import Price condition from Bhutan through LCS Chamurchi (INCHMB) and has subjected the same to a valid port-specific Registration Certificate issued by DGFT.

- **Notification No. 18/2023 dated 10.07.2023**

By virtue of this notification, the DGFT has revised the General Notes regarding import policy under Schedule 1 (Import Policy) ITC (HS), 2022, to update relevant details regarding Food Import Entry Points, in sync with the relevant FSSAI Notifications. The DGFT has increased the Food Import Entry Points from 150 to 161 and made the food import entry points restrictions applicable for items against 1579 HS Codes as detailed in List B of Appendix V to Schedule-I of ITC (HS), 2022.

- **Notification No. 19/2023 dated 12.07.2023**

By virtue of this notification, the DGFT has revised the import policy and policy condition of Gold falling under ITC (HS) Code 71131911, 71131919 and 71141910 of Chapter 71 of Schedule-I (Import Policy) of ITC (HS), 2022 to move them from the "free" to the "restricted" category. However, it has been also been clarified that the import of Gold under ITC (HS) Code 71131911 will be permitted freely without any import license under a valid India-UAE CEPA TRQ.

- **Notification No. 20/2023 dated 20.07.2023**

By virtue of this notification, the DGFT has revised the export policy of Non-basmati rice against ITC (HS) Code 1006 30 90 by moving them from the "free" to the "prohibited" category. However, consignments of Non-basmati rice will be allowed to be exported, if, before the effect of this notification the –

- the loading of Non-basmati rice on the ship has commenced;
- the shipping bill is filed and vessels have already berthed or arrived and anchored in Indian ports and their rotation number has been allocated;
- consignment has been handed over to the Customs and is registered in their system or consignment has entered the Customs Station for exportation and is registered in the electronic systems of the concerned Custodian of the Customs Station with verifiable evidence of date and time stamping of these commodities having entered prior to 20.07.2023. The period of such export shall be up to 31.08.2023.

Moreover, the export shall be allowed to meet other countries' food security needs upon their request on the basis of permission granted by the Government of India.

- **Notification No. 21/2023 dated 28.07.2023**

By virtue of this notification, the DGFT has revised the export policy conditions of De-Oiled Rice Bran from 'Free' to 'Prohibited' category with immediate effect upto 30.11.2023.

- **Notification No. 22/2023 dated 31.07.2023**

By virtue of this notification, the DGFT has provided that the export of food supplements containing botanicals under ITC HS code 1302 and 2106 intended for human or animal consumption to European Union (EU) and United Kingdom is allowed subject to issuance of the official certificate issued by Export Inspection Council (EIC)/ Export Inspection Agencies (EIAs). Moreover, the official certificate will be issued based on the satisfactory analytical test report from EIC/EIC approved laboratories for the purpose as per the requirement laid down by EU.

PUBLIC NOTICE

- **Public Notice No. 21/2023 dated 10.07.2023**

By virtue of this public notice, the DGFT has introduced amendments under Paragraph 2.92 and Appendix – 2A of the Handbook of Procedure 2023 by providing that the TRQ of cotton of minimum 28 mm staple

length under India-Australia Economic Cooperation and Trade Agreement will only be considered for ITC(HS) codes 52010024 and 52010025.

❖ **Public Notice No. 22/2023 dated 13.07.2023**

With a view to enhance the Ease of Doing Business, the DGFT through this public notice has introduced amendments under Paragraph 2.92 and Appendix– 2A of the Handbook of Procedure 2023, to condone the delay in submission of the installation certificate under the EPCG Scheme by directing the RAs to accept such installation certificates up to 31.12.2023 on payment of late fee of Rs. 10,000/- per authorization, provided the following conditions are fulfilled:

- Authorizations have been issued under FTP 2009-14 and FTP 2015-20.
- Installation certificate was obtained within the prescribed period, but could not be submitted to the RA within time.
- Bonafide reasons for delay in submission has been given.
- Subject EPCG Authorization is not under investigation/adjudicated by RA/Customs authority/any other investigation agency.

POLICY CIRCULAR

❖ **Policy Circular No. 03/2023-24 dated 14.07.2023**

By virtue of this circular, the DGFT has clarified that the import made by SEZ units under the ITC (HS) Codes 71131911, 71131919 and 71141910 does not fall within the purview of the Notification No. 19 dated 12.07.2023, which restricts the import of Gold under the said Codes.

TRADE NOTICE

❖ **Trade Notice No. 13/2023 dated 03.07.2023**

Through this trade notice, the DGFT has extended the last date for submission of application for obtaining licence for export of broken rice to Senegal, Gambia and Indonesia up to 06.07.2023. It has been further clarified that in case of any misdeclaration or failure to export the allocated quota to the respective country within the specified time period, the applicant will be black listed for the next two financial years and action will be taken under FT(D&R) Act, 1992 against such applicant.

❖ **Trade Notice No. 14/2023 dated 12.07.2023**

Through this trade notice, the DGFT has notified a Model Curriculum for the industry-led Skilling and Mentorship initiative for status holders in terms of Paragraph 1.30(b) of FTP, 2023, which provides for the obligation of a model training program of a minimum duration of 6 weeks to be put up in public domain for guidance. The Model Curriculum attached therein provides, for the objectives; general program overview; role of DGFT Regional Authorities; detailed Guidelines and the intended outcomes of said training program.

❖ **Trade Notice No. 15/2023-24 dated 17.07.2023**

Through this trade notice, the DGFT has introduced and implemented a user-friendly and searchable database of Ad-hoc Norms fixed under Paragraph 4.07 of Handbook of Procedure, 2023 (HBP) to enhance efficiency, reduce complexities and eliminate the need for Norms Committee approval. The said database is hosted on the DGFT website and allows for searches based on the following criteria –

- Export/Import Item Description/Technical Characteristic;

- ITC (HS) Code of the Export/Import Item(s)
- Import Item Description/Technical Characteristics
- ITC(HS) code of the Import Item(s)

It has been further clarified that the applicants have the option to apply for an Advance Authorization on the "No-Norm Repeat" basis, not requiring the ratification by the Norms Committee if an ad hoc norm is determined to be appropriate in terms of item description, and specified wastages, and is valid under the HBP provisions.

❖ **Trade Notice No. 16/2023 dated 20.07.2023**

Through this trade notice, the DGFT has partially amended the Trade Notice No. 13/2023 dated 03.07.2023 read with Trade Notice No. 12/2023 dated 30.06.2023 read with Trade Notice No. 08/2023 dated 20.06.2023 to extend the last date for submission of application for obtaining licence for export of broken rice to Senegal, Gambia and Indonesia up to 27.07.2023, in compliance with the Order of the Delhi High Court dated 17.07.2023.

❖ **Trade Notice No. 17/2023 dated 28.07.2023**

Though the Government of India prohibited the export of wheat, however, owing to the requests received from the Government of Bhutan and to maintain objectivity and transparency in allocation of the quota, the DGFT by virtue of this public notice has provided the following procedure for allocation of quota for export of wheat, wheat flour (atta) and Maida/Semolina on humanitarian and food security grounds:

- Online application to be submitted through the DGFT's ECOM system for Export Authorisations Non-SCOMET Restricted Items from 28.07.2023 to 07.08.2023.
- Export authorization to be valid till 31.03.2024.
- Export data for three years previous to FY in which the item was prohibited to be submitted along with the said online application.

However, the mode of allocation is to be decided as under:

- Minimum threshold will be 100 MT by land transport to the neighbouring country and the said online application will only be permitted if the exporter applies for quantity more than the minimum threshold.
- Allocation will be first made on the basis of pro-rata to average export of wheat, wheat flour (atta), maida/semolina to the country concerned in three years previous to FY in which the item was prohibited and the quantity applied for, whichever is less subject to minimum threshold.
- Further, any unutilized quantity will then be reallocated again to the eligible exporters on pro-rata basis as provided above.

❖ **Trade Notice No. 18/2023 dated 28.07.2023**

Though the Government of India prohibited the export of broken rice, however, owing to the requests received from the Government of Mali and Bhutan and to maintain objectivity and transparency in allocation of the quota, the DGFT by virtue of this public notice has provided the following procedure for allocation of quota for export of broken rice on humanitarian and food security grounds:

- Online application to be submitted through the DGFT's ECOM system for Export Authorisations Non-SCOMET Restricted Items from 28.07.2023 to 07.08.2023.
- Export authorization to be valid till 31.03.2024.
- Export data for three years previous to FY in which the item was prohibited to be submitted along with the said online application.

However, the mode of allocation is to be decided as under:

- Minimum threshold will be 2000 MT by sea and 100 MT by land to the neighbouring country and the said online application will only be permitted if the exporter applies for quantity more than the minimum threshold.
- Allocation will be first made on the basis of pro-rata to average export of rice to the country concerned in three years previous to FY in which the item was prohibited and the quantity applied for, whichever is less subject to minimum threshold.
- Further, any unutilized quantity will then be reallocated again to the eligible exporters on pro-rata basis as provided above.

❖ **Trade Notice No. 19/2023 dated 28.07.2023**

Through this trade notice, the DGFT has partially amended the procedure for allocation of quota for export of broken rice on humanitarian and food security grounds based on requests received from Governments of other countries, to extend the last date for submission of application for obtaining licence for export of broken rice to Senegal, Gambia and Indonesia upto 11.08.2023.

RATIO DECIDENDI

ERSTWHILE LAW

❖ **The Commissioner, Central Excise and Customs vs. M/s Reliance Industries Ltd., Supreme Court of India**

In the instant case, a show cause notice, invoking the extended period of limitation under proviso to Section 11A(1) of the Central Excise Act, 1944 was issued alleging that the respondent has incorrectly determined the assessable value of its finished goods by not including therein the monetary value of the duty benefits that it had obtained from its customers as a result of the transfer of the advance licenses during the period September 2000 to March 2004. Though the allegations were confirmed by the Commissioner, however, the CESTAT differed and held the same to be barred by limitation and therefore, being aggrieved by the same, the Appellant approached the Hon'ble Supreme Court. At the outset, the Hon'ble Supreme Court observed that during the period in dispute the respondent held a bona fide belief that it was correctly discharging its duty liability owing to the judgement of the Hon'ble CESTAT in the case of *M/s IFGL Refractories Ltd*, wherein it has been held that discounts offered to advance licence holders were not additional consideration. Further, the court held that the mere fact that the said judgement of the CESTAT was ultimately reversed by the Supreme Court on 09.09.2005 will not convert the bona fide belief of the assessee to a mala fide belief particularly when such a belief was emanating from the view taken by the CESTAT. Moreover, the issue of valuation involved is one were two plausible views could co-exist and therefore in such cases of dispute of interpretation of legal provisions, it would be totally unjustified in invoking the extended period of limitation by considering the respondent's view to lacking bonafideness. Moreover, the self-assessment procedure did not mandate the submission of all contracts, agreements, and invoices and hence, there is no basis for agreeing with the Commissioner's findings that certain relevant documents were not filed and suppressed from the scrutiny of the revenue officers. The Revenue has failed to demonstrate any provision or rule that necessitated additional disclosures in this case. In view of the aforementioned, the Hon'ble Supreme Court held that the claim of suppression of facts is deemed untenable and therefore the demand raised against the respondent was time barred.

- **M/s. Micky Metals Ltd. vs. Commissioner of Central Excise, Bolpur, CESTAT Kolkata**

  In the instant case on examination of financial records for the financial year 2006-2007, it was alleged that the appellant had engaged in evasion of payment of duty by not mentioning the production and clearance figures correctly in Form ER-1 and accordingly a show cause notice was served. The said matter was adjudicated and demand of duty was confirmed alleging clandestine removal of goods and suppression thereof. Aggrieved by the said order, the Appellant preferred an appeal before the Hon'ble CESTAT. At the outset, the Hon'ble Tribunal observed that clandestine removal is a serious charge against a manufacturer which is required to be discharged by the Revenue by production of sufficient and tangible evidence. Moreover, in the instant case the demand was raised only on the basis of differences in figures in the audit report and ER-1 return and apart from that no investigation was conducted nor any statement was recorded. Therefore, in the absence of any statement or investigation against the appellant with corroborative evidence, the impugned order stands liable to be set aside.

GST LAW

- **M/s Chamundeswari Electricity Supply Corporation Limited, Authority for Advance Ruling Karnataka**

  In the instant case, the applicant is willing to set up various public charging stations (PCS) on its own, for charging electric vehicles (EVs), and, in return would like to issue tax invoices and collect "Electric Vehicle Charging Fee", which include two components – (a) Energy Charges; and (b) Service Charges. In this regard, the applicant has sought clarification on whether the activity of electric vehicle charging amounts to supply of goods or services. At the outset, the AAR held that the consumer of the applicant does not receive electricity which is a moveable property rather they receive chemical energy stored in the battery. Thus, the activity of charging of electric vehicles does not amount to supply of electricity or supply of any moveable property, rather it is a supply of service. Moreover, from the provisions of the Electricity Act, 2003 it can be inferred that it is mandatory to have a licence to supply electricity and the premises of consumer including land, building or structure must be connected for the purpose of receiving electricity. However, in the instant case, the PCS proposed by the applicant do not have licence as required under the said act and the consumer lacks any premises for transmission through a service line or otherwise. Since, the said stations are not involved in transmission, distribution or trading of electricity in terms of the Electricity Act, 2003, the activity does not amount to supply of electricity. Further, since in the instant case, the owner of the Electric Vehicle is being allowed to use the infrastructure provided by the charging station, the said activity amounts to supply of service, for which the applicant collects Electric Vehicle Charging Fee as consideration, in terms of Section 7(1)(a) read with Section 2(102) of the CGST Act, 2017.

- **Shree Renuka Sugars Limited vs. State of Gujarat, High Court of Gujarat**

  In the instant case, the Petitioner filed refund claims of unutilized ITC accumulated on account of undertaking exports, amounting to Rs. 1,10,67,67,172/-. However, due to an inadvertent arithmetical error by one of the employees, the Petitioner mistakenly lodged claims for a lower amount of Rs. 1,00,47,38,439/. Upon realizing the error, the Petitioner lodged supplementary refund claims for the remaining amount, however, the authorities refused to sanction and pay the supplementary refund, claiming that the category under which the claims were lodged was not applicable to the Petitioner. Being aggrieved, the Petitioner filed a writ before the Hon'ble High Court of Ahmedabad. The High Court observed that since the Petitioner had already filed refund application for the same month and the same period, another supplementary application for the refund of the differential amount of refund cannot be filed on the portal and therefore there was no option for the Petitioner to submit the application under the category "any

other". In this regard, the High Court held it is a settled law that benefit which otherwise a person is entitled to once the substantive conditions are satisfied, cannot be denied due to a technical error or lacunae in the electronic system and the present situation is nothing but a technical error and for such technical error the claim of the Petitioner cannot be rejected without examination. Therefore, the High Court held that the refund of the remaining amount cannot be rejected outrightly merely on technicality, that too when the substantive conditions are satisfied. In this regard, directions were issued to the respondent to allow the Petitioner to furnish manually the refund application for the remaining amount.

CUSTOMS/FOREIGN TRADE POLICY

- **Rajeev Khatri vs. Commissioner of Customs (Export), High Court of Delhi**

  The Appellant had filed the Bill of Entry for importing goods, which were later found to be illegally imported. A show cause notice was issued to the importers as well as to the Appellant. The Adjudication authority found that the goods had been mis-declared and the import of such goods was prohibited and thus such goods were liable for confiscation. Apart from directing confiscation, the Adjudicating Authority, *inter alia*, imposed penalties on the Appellant including penalty under section 112(a) of the Customs Act, 1962. Aggrieved by the Impugned order, the Appellant filed a writ before the Hon'ble Delhi High Court. The Hon'ble Delhi High Court observed that the penalty imposed for failure to perform a civil obligation is required to be distinguished from penalty imposed as a punishment for committing a crime and whereas in the latter case it would be necessary to establish that a person committing the crime had the intent or the knowledge of committing such a crime, there is no such requirement in case of penalty for default in compliance imposing a civil obligation, unless the words of that statute indicate otherwise. Further, the High Court held that *mens rea* is a necessary element for imposing penalty under section 112(a) of the Customs Act and since in the instant case the Appellant had no knowledge of the act committed by him, no penalty stands liable to be imposed.

- **The Commissioner of Customs (Import) vs. Air India Limited, High Court of Bombay**

  In the instant case, though the Hon'ble Tribunal confirmed the demand of duty on the ground that the respondent has not been able to satisfy the post-importation condition in respect of the shortages determined, the order of confiscation of the goods and the redemption fine imposed coupled with penalty imposed under Section 112(a) of the Customs Act, 1962 was set aside. Being aggrieved by the order of the Tribunal, the appellant has filed an appeal before the Hon'ble High Court of Bombay. At the outset the High Court observed that the sequitur of not challenging the setting aside order of confiscation of goods proves that thappellant has taken a position that the provisions of Section 111 of the Customs Act, 1962 dealing with confiscation of goods is not applicable to the present case. Therefore, the High Court held that Section 125 of the Customs Act, 1962 which deals with imposition of redemption fine does not arise in the present facts considering that the same is applicable only when goods are confiscated. Thereafter, the court delved into various factual aspects of the case, including the fact that no evidence was produced on record to prove that the said goods were provisionally released on bond or bank guarantee, which shows that there was no basis for imposition of penalty. Moreover, since the confiscation order was set aside, the court held that imposition of penalty under Section 112(a) is not warranted.

NEWS NUGGETS

- GSTN issued Important advisory on e-invoice exemption declaration functionality now available
- GST Portal Update: Consumer Agreement or Electricity Consumer No. Required to get GST Number
- Important Update: GSTN introduces new tab Rule-86B Restricting use of ITC in ECL
- GSTN released the offline utility for GSTR-9 and GSTR-9C for the FY 2022-23

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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.

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PUBLICATIONS BY RSA LEGAL