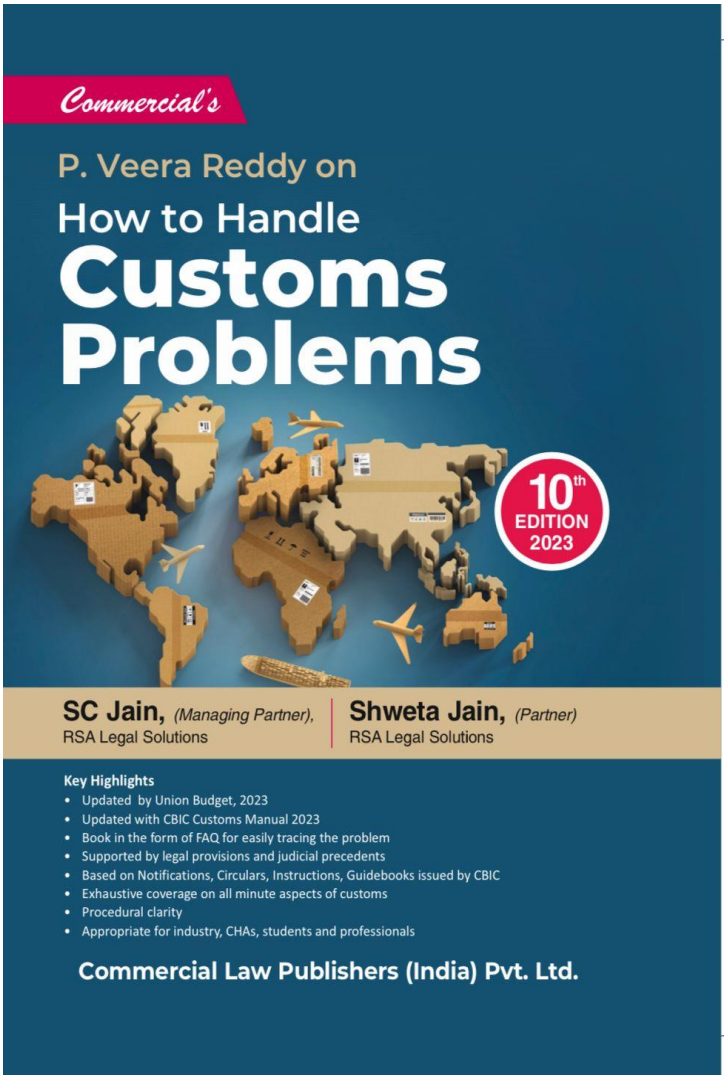
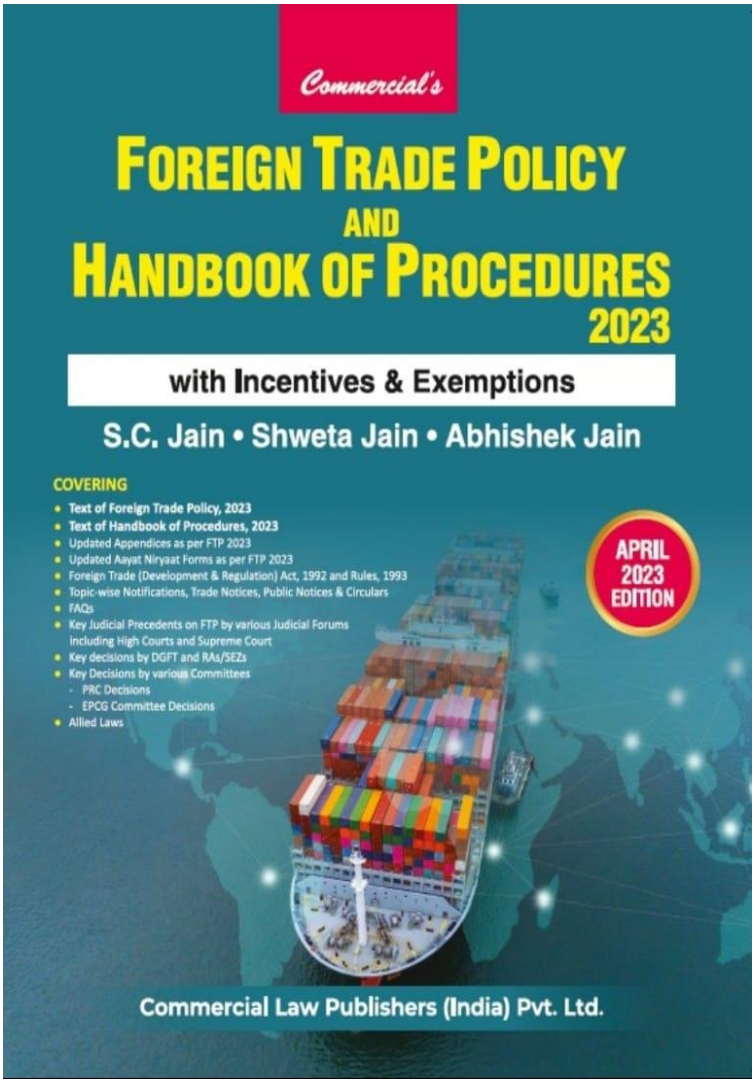
INDIRECT TAX NEWSLETTER
July, 2023 (updated till 30.06.2023)





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 "Mayhem of "Alert" in Customs" penned down by SC Jain (Managing Partner)

1. All of us are aware that the Customs Department often places an "Alert" in the EDI System relating to the import of goods or export of goods. The said "Alert" is placed in the System sometimes by the Officers of the DRI or Risk Management Centre of CBIC or any Customs Commissioner. Many times, even the importers or the exporters are not aware that their entity has been placed under "Alert" in the Customs EDI System. They are often taken by utter shock and surprise when they learn about having been placed under the said "Alert" in the EDI system. Sometimes, the export or import consignments are held up at the port on the ground that there is an "Alert" inserted in the System and the consignments are not released unless and until the "Alert" is removed by the authority who has placed it.

2. The practice of placing or issuing "Alert" is being followed by the Customs Department to alert the customs officers about the possible undervaluation, misclassification, undue export incentives, import of contraband etc. by the concerned importer or exporter. With the advent of computerization, the system of "Alert" is being placed in the server of the concerned software. Earlier, the "Alert" was being issued by way of "Alert Circulars". It is not uncommon that various agencies of Customs, including the DRI, issue the "Alert" about duty evasion or contravention of any other provision of customs law, advising the officers to take precautionary steps when dealing with the imports or exports or conferring any benefits to the person against whom the said alert has been placed.

3. The common dictionary meaning of the expression "Alert" is to be vigilant/attentive/careful etc. The Customs department places the Alerts so that the officers become vigilant while dealing with the consignment of the person against whom the alert has been placed. It is purely an administrative measure to make the customs officer aware about the consignment of the persons against whom the alert has been issued. There seems absolutely nothing wrong in this practice as the Customs Department must be assured that the customs law is followed in all aspects by each person in letter and spirit. It is a quite normal, acceptable and logical administrative measure if an "Alert" is placed against a suspect person.

4. However, this does not mean that the Customs Officers are entitled to withhold or detain the consignments unnecessarily in the name of "Alert" or withhold the export benefits claimed by the exporter indefinitely without following the proper procedures (like issuing of show cause notice etc.) laid down in the law or directing the person that his consignment would be cleared or the export incentives would be given only when the Alert is removed by the agency who has placed such Alert. Placing a person in Alert only means that his consignment or documents are required to be examined/scrutinized in depth by the officers. This has to be done as quickly as possible so that the of the importer or exporter does not suffer. The Officers are not entitled to withhold the consignments or withhold the benefits for a long period of time, as there are well laid down procedures under the law to deal with serious violations of the Act, Rules, or Regulations.

5. But very often it is seen that the exporters who export their goods regularly suddenly find that the Duty Drawback or the RoDTEP or IGST refund is not being credited to their account. On query, it is found that there is an "Alert". In a similar way, when the importer files the Bill of Entry and wants to pay the duty by utilizing

the MEIS/SEIS/RoDTEP scrips, the said facility is denied on the ground that there is an "Alert". The same type of problem exists with Advance Authorizations, EPCG Authorizations, etc.

6. In other words, the "Alert" placed by the DRI or any other Customs formations brings to halt the normal import and export activities, many a times without the knowledge of the concerned importer or exporter. Consequently, he has to face mayhem at the hands of Customs besides the losses being inflicted on him due to the disruption of his business. He is made to run from pillar to post to get the consignments cleared or to get his export incentives. This is happening in a scenario where our Government continuously boasts of "Ease of Doing Business" or "Facilitation of Business" or "Citizen's Charter" etc.

7. Thus, the importer or the exporter has to face endless trauma when their name is placed in the "Alert" of the EDI System of the Customs without informing them and the consignments or export incentives are held up without any legal basis.

Legal Position

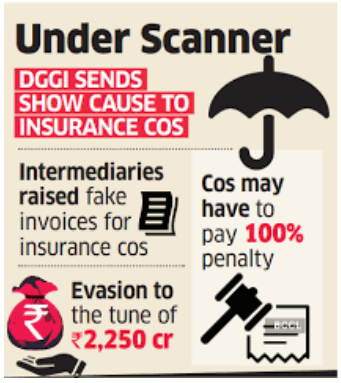
8. Interestingly and surprisingly, there is not even a single word in the Customs Act or the Rules and Regulations made thereunder which empowers the DRI or any of the Customs formations to place the "Alert" in the System and prevent the import or export in an arbitrary manner. Although there are some Circulars which describe "Alerts" as administrative in nature and advise the Customs officers to be careful while dealing with the consignment of the person against whom an alert has been placed. but the said advise is not being followed by the field formation in letter and spirit. There are no clear-cut guidelines/ instructions issued by the CBIC in this regard as to when an importer/ exporter has to be placed under "Alert"; by whom it has to be placed and; when the said "Alert" has to be removed. The absence of clear guidelines creates mayhem for such people against whom the Alert has been placed. The entire practice is being followed in an arbitrary manner without the authority of law and without any guidelines.

9. In view of the above factual and legal backdrop, it is advisable that the practice of placing an importer/ exporter in the "Alert", should be given a legal shape by way of making suitable regulations in this regard or at least controlling it by way of clear guidelines if we really want the idea of "Ease of Doing Business" to be successfully implemented in India. Needless to say, the said regulations or guidelines must also specify as to how the said "Alert" has to be removed. Ideally with the guidelines also, the authority placing the "Alert" in the System should not be lower than the Chief Commissioner of Customs. If these steps are taken, it would truly benefit the trade and the industry in a big way and this will help in "Ease of Doing Business" and removing the mayhem at the hands of the Customs authorities.

❖ Article on "Why Insurance Companies are receiving notices from GST Department" Penned down by Anshul Mittal (Partner)

1. **Introduction**

In recent times, the GST Department's Director General of GST Intelligence (DGGI) has issued notices to various insurance companies. These notices, sent to companies like HDFC Life and ICICI Prudential, raise concerns about the availing of GST input tax credit on specific input services. This article aims to explore the dispute surrounding these notices and shed light on the challenges faced by insurance companies.



2. Understanding the Notices Issued by the GST Department

2.1 The Dispute and Investigation by DGGI

The DGGI has initiated investigations against various insurance companies, alleging that they have availed GST input tax credit on specific input services related to marketing and sales promotion, which were provided by insurance intermediaries. These intermediaries include both individual agents and corporate agents.

2.2 Availing GST Input Tax Credit on Marketing and Sales Promotion Services

Insurance companies pay commissions to insurance intermediaries for their services, and there are predetermined amounts or percentages specified for these commissions based on the insurance policy being offered in the market. These intermediaries can be individual agents or corporate agents. While individual agents fall under the Reverse Charge Mechanism (RCM) liability, corporate agents are considered insurance intermediaries.

2.3 Difference Between Individual Agents and Corporate Agents

Individual agents are subject to RCM liability, and the commission paid to them falls within the specified amount prescribed by insurance companies. On the other hand, corporate agents receive commissions for their services, and the contention lies in whether the commissions paid to them exceed the stipulated amount. The GST Department alleges that insurance companies have made excess payments for marketing, sales promotion, and other business auxiliary services, as per the invoices raised by these intermediaries.

3. Contention of the GST Department

3.1 Excess Commission Payments and Marketing Expenses

The primary contention of the GST Department is that the excess amount paid by insurance companies to corporate agents for marketing, sales promotion, and business auxiliary services is not permissible. According to their interpretation, the credit for these excess payments is not available to insurance companies.

3.2 Disputing the Availability of Credit

The GST Department argues that insurance companies have not received the input services mentioned in the invoices raised by intermediaries. Since input services are intangible, proving their receipt becomes a crucial factor in satisfying the conditions under Section 16(2) of the GST Act. This dispute raises the question of whether insurance companies can avail services beyond the selling of insurance policies, such as marketing and sales promotion activities.

4. The Significance of GST Input Tax Credit

4.1 Litigation and Complexity Surrounding Input Tax Credit

The availability of GST input tax credit has become one of the most litigated issues in the GST landscape. While the government aims for a seamless flow of credit for businesses, various conditions and restrictions have created complexities. It is essential to carefully examine the interpretation and implementation of GST laws.

4.2 Seamless Flow of Credit in GST

The underlying objective of GST is to ensure a seamless flow of credit for businesses. However, with the presence of conditions under Section 16(2) and various restrictions under Section 38, the seamless flow of credit

becomes a matter of debate and interpretation. Balancing government revenue protection with facilitating ease of doing business becomes crucial.

5. Interpreting Input Services and Capital Goods

5.1 The Wide Definitions of Input Services and Capital Goods

The definitions of input services and capital goods in the GST Act are broad, encompassing any goods or services used or intended to be used in the course of business. Insurance intermediaries argue that the excess commission payments made to them are for input services related to marketing, sales promotion, and business auxiliary activities. They contend that there is no violation, as these services are used in the course of their business.

5.2 Insurance Intermediaries' Defense

Insurance intermediaries have a strong defense, stating that the excess payments made to them are not for selling insurance policies but for marketing and sales promotion services. Since input services are not explicitly limited to the selling of insurance policies, the contention lies in whether insurance companies can avail other services beyond the specified limits.

6. Conditions for Availing Input Tax Credit

6.1 Section 16(2) Conditions for Buyers

To avail input tax credit, buyers must fulfill certain conditions under Section 16(2). These conditions include having tax invoices, proving the receipt of goods or services, ensuring the supplier has paid taxes, filing GST returns regularly, and having the credit auto-populated in GSTR-2B.

6.2 The Challenge of Proving Receipt of Intangible Services

Proving the receipt of intangible services becomes challenging for buyers, especially in cases where services are provided by insurance intermediaries. The GST Act requires tangible evidence for goods received, but the receipt of services poses difficulties. This aspect further contributes to the ongoing dispute and litigation.

6.3 Restrictions Under Section 38

Section 38 imposes restrictions that can potentially deny credit to buyers. These restrictions include instances where the supplier has taken new registrations for a specified period, defaulted in tax payments, discrepancies between GSTR-1 and GSTR-3B, differences between GSTR-2B and GSTR-3B, non-compliance with Rule 86B, and cases where the government notifies restrictions for specified classes of persons.

7. Pandora's Box: Future Litigations in GST

7.1 Term Supply as a Litigative Point

Similar to the term "manufacture" in the Central Excise Act, the term "supply" in GST has the potential to become a litigative point. The ambiguity surrounding what constitutes a supply and its implications will likely result in a significant number of litigations.

7.2 GST Input Tax Credit as a Debated Issue

GST input tax credit is emerging as a debated issue, given the conditions and restrictions imposed by the government. While the objective of seamless credit flow is clear, the practical implementation and interpretation of these conditions and restrictions have given rise to debates and litigation.

8. Conclusion

In conclusion, the recent issuance of notices by the Directorate General of GST Intelligence to several insurance companies highlights the ongoing dispute regarding the availing of GST input tax credit. The contention revolves around insurance companies paying excess commission amounts to intermediaries for marketing, sales promotion, and business auxiliary services. The dispute lies in whether these services qualify as input services under the GST Act. This issue raises questions about the interpretation of input services and capital goods, the conditions for availing input tax credit, and the broader objectives of GST. As litigation increases and complexities arise, it is crucial for businesses, including insurance companies, to navigate the GST landscape carefully, ensuring compliance and efficient credit utilization.

❖ Article on "GST Implications for Electric Vehicle (EV) Charging Stations in India: Need for Clarity" Penned down by Shweta Jain (Partner)

The Indian government is actively promoting the adoption of electric vehicles (EVs) as part of its sustainable transportation initiatives. While efforts are being made to expand the EV charging infrastructure, the taxability aspects of charging services remain unclear. This article examines the GST implications for EV charging stations and highlights the need for clarity.

The government is working on the forefront to promote the E-vehicles (EVs) into the country. EV have been gaining significant attention and traction in India as the country strives to promote sustainable and eco-friendly transportation. The Indian government has been actively promoting EV adoption through various policies and initiatives. The government, along with private players, is working on expanding the charging infrastructure network across the country. This includes setting up public charging stations and promoting home charging solutions. But has the government realised the taxability aspects of getting a battery charged from the EV stations? It appears that the thought process is still lacking which might have huge repercussions in terms of GST demands and making the EV charging costlier which might not be the intention of the Government.

When conducting a GST impact analysis for Electric Vehicle (EV) charging stations, the first step is to understand the nature of the 'supply' provided by these stations. An EV charging station serves as essential infrastructure where users can access charging modules and connect their vehicles' operating systems for charging. Users pay for the electricity consumed during the charging process. The billing is done per unit basis.

The key question is whether the activities and facilities offered by an EV charging station qualify as a supply of 'goods' or a supply of 'services' under GST. It's important to note that electricity is considered a 'good' based on various Supreme Court judgments till now under the tax laws.

If the EV charging station's services are categorized as a 'supply of goods,' then they are exempt from GST meaning thereby that the station would be deemed to be selling the electricity and accordingly no GST would be charged. All the GST incurred on the inward side would become cost which will typically be borne by the station operator. But the story does not end here and have bigger issues.

In 2018, the Power Ministry vide Letter No. 23/08-R&R dated 13.04.2018, has clarified that charging of EVs should be treated as service. In fact, that was in a different context because where the electricity is sold as goods, the regulatory requirements of Electricity laws and compliances specified by Ministry of Power will have to be complied with which are quite cumbersome. Power Ministry termed it as a 'service' in order to promote EV charging stations so that they don't have to follow the cumbersome process of obtaining the licenses and other compliances. Declaring it as a 'service' was a much easier task for the Ministry of Power without paying attention to the fact that it might have some other graver consequences under other laws.

With all this in place, the conclusion is that activity of charging the batteries of EVs are being categorised as services by the Ministry of Power which is the regulating authority. Simultaneously, one cannot disown the fact that time and again, Supreme Court has held that 'electricity' is goods. Thus, it would be quite difficult to conclude whether the EV charging stations are providing services or selling electricity. How are they different from the diesel and petrol selling stations? There might be a fine blurring line of distinction or may be none.

In all this fiasco, going by the Ministry of power, if they are to be classified as 'services', then there is no exemption from GST and the service providers should charge the GST while billing the customer for the electricity units. In the industry, there may be quite a possibility that some EV charging stations may be charging GST and some may not.

Way Forward

The government should clarify its stance on such scenario either by declaring such services as exempt in GST (in case their intention is to promote EV and keep is as pocket friendly as it can) or by clearly coming out that such activities would be treated as service in line with the Ministry of Power and hence taxable under the GST law so that the assessees are not taken to task unnecessarily. Also, if the government brings out the exemption, then that should even be retrospective else the none of the so called service providers would be spared by the GST authorities who would even demand long due interest and may be penalties also which would be an extremely harsh action on the assessee. In such a scenario, it would not be wrong to say that "assessee is paying not for his own faults but for the law makers faults."

Conclusion

The taxability of EV charging stations under GST requires urgent attention from the government. Clear guidelines and classification are essential to provide a consistent and predictable framework for service providers. Whether EV charging services should be exempt or taxable, retrospective application of any changes is necessary to ensure fairness and avoid unnecessary hardships for businesses.

REGULATORY UPDATES

GST

INSTRUCTIONS

- **Instruction No. 03/2023-GST dated 14.06.2023**

  It was recognized that several taxpayers were obtaining fake registration under GST with the intention of defrauding the government by issuing invoices to pass on input tax credit without any supply of goods or

services. Therefore, to counter this problem, Instruction No. 01/2023-GST dated 04.05.2023 was issued, providing the guidelines for conducting a Special All-India Drive against such fake registrations. The CBIC vide this instruction, has provided guidelines to be followed at the end of the tax officers, in order to strengthen the process of verification of applications for registration, which are:

- On receipt of the application for registration, the proper officer shall initiate the process of scrutiny and verification of details filled by the applicant in the application for registration in Form GST REG-01.
- Proper officer must check the risk rating assigned to an application while verifying and processing it, paying special attention to cases with "High" risk rating.
- Further, in cases where the officer deems it necessary, physical verification of the principal or additional place of business may be conducted.
- During the verification process, if the officer identifies any discrepancies or requires additional information or documents, they should issue a notice to the applicant electronically in Form GST REG-03. The proper officer must carefully examine the clarification, information or documents furnished by the applicant in Form GST REG-04, in response to the said notice. Approval for registration will be given only if the proper officer is satisfied with the reply furnished by the applicant in Form GST REG-04. However, where no satisfactory response is submitted, the proper officer for reasons to be recorded in writing, reject such application and inform the applicant electronically in Form GST REG-05.
- While processing the applications for registration, it must be ensured by the proper officer that the application is either rejected or accepted or relevant query is raised within the prescribed time limit and strict action may be taken where any gross negligence is observed on the part of the concerned officer in this regard.

Further, the said instruction also directs the Principal Chief Commissioner/ Chief Commissioner of the CGST Zones to closely supervise the status of processing of the applications of registration, including physical verifications, within their zones.

CUSTOMS

NOTIFICATIONS

❖ **Notification No. 39/2023-Customs dated 14.06.2023**

By virtue of this Notification, the CBIC has amended Notification No. 48/2021-Customs dated 13.10.2021, to reduce the Basic Customs Duty on refined soya bean oil and refined sunflower oil from 17.5 % to 12.5%, w.e.f. 15.06.2023.

❖ **Notification No. 40/2023-Customs dated 30.06.2023**

By virtue of this Notification, the CBIC has increased the import duty leviable on Liquified Petroleum Gas falling under tariff items 27111910, 27111920, and 27111990 of the First Schedule to the Customs Tariff Act, 1975 to 15%, w.e.f. 01.07.2023.

❖ **Notification No. 41/2023-Customs dated 30.06.2023**

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. 155A in the table thereof, which prescribes the basic customs duty rate of

Liquified Petroleum Gas (LPG), falling under tariff items 27111910, 27111920, and 27111990 of the Customs Tariff Act, 1975, to be 5%, w.e.f. 01.07.2023.

- **Notification No. 42/2023-Customs dated 30.06.2023**

  By virtue of this Notification, the CBIC has made amendments in the Notification No. 11/2021-Customs dated 01.02.2021 to insert Sr. No. 10B in the table thereof, which prescribes the AIDC rate of all goods falling under tariff items 27111910, 27111920, and 27111990 of the Customs Tariff Act, 1975, to be 15%, w.e.f. 01.07.2023.

- **Notification No. 43/2023-Customs (N.T.) dated 15.06.2023**

  By the said Notification, the CBIC in amending the Courier Imports and Exports (Electronic Declaration and Processing) Regulations, 2010, has notified the Courier Imports and Exports (Electronic Declaration and Processing) (Second Amendment) Regulations, 2023, which will become effective upon their publication in the Official Gazette. The said regulation seeks to make a specific amendment under Heading D, column (A) of Form HA wherein the existing question concerning the presence of jewellery falling under Customs Tariff Heading (CTH) 7117 or CTH 7113 in the export consignment will be replaced with the question whether export consignment containing such jewellery is intended to utilize the facility of re-import.

- **Notification No. 49/2023-Customs (N.T.) dated 30.06.2023**

  By virtue of this notification, the CBIC has exempted the following deposits from all the provisions of Section 51A of the Customs Act, 1962 till 30.09.2023:

  - deposits with respect to goods imported or exported in customs stations where the Customs Automated System is not in place.
  - deposits with respect to accompanied baggage.
  - deposits with respect to goods imported or exported in International Courier Terminals.
  - deposits other than those used for making electronic payment of any duty of customs; integrated tax; goods and service tax compensation cess; etc.

CIRCULARS

- **Circular No. 14/2023-Customs dated 03.06.2023**

  Electronic Repairs Services Outsourcing (ERSO) is a collaborative effort between the Government of India, including MeitY, MOEF&CC, DGFT, CBIC, and the industry represented by the Manufacturers Association of Information Technology (MAIT). The objective of ERSO is to import defective or damaged electronic goods, have them repaired by the designated service entities in India, and then have them re-exported. This initiative aligns with India's commitment to environmental sustainability by extending the lifespan of electronic goods. By virtue of this Circular, the CBIC has informed about the initiation of the ESRO at ACC Bengaluru and highlighted some aspects of the procedure put forward by the Commissioner of Customs Airport and Air Cargo, Bengaluru for import and re-export via the Customs Station at Air Cargo Complex, Bengaluru to create an ecosystem conducive to quick and efficient processing. These include filing bills of entry or shipping bills in advance, ensuring error-free filing, uploading necessary documents in e-Sanchit, using an appropriate continuity/running re-export bond, appointing a nodal officer and a core team to coordinate ERSO matters and fast-tracking every stage post the filing of import/export declaration, opting for first check examination, involving a chartered engineer in the examination process, and provisioning of

designated areas for examination in controlled environment. Further, the National Assessment Centre, handling electronic goods/ICT products must ensure that assessments are conducted in an expediated fashion and in a standardized manner. Further, the said Circular also makes the Bengaluru Customs Zone responsible to implement ERSO, coordinate with the Bengaluru CGST Zone, resolve all issues coming during the implementation, and provide progress reports weekly during the pilot phase of first three months.

- **Circular No. 15/2023-Customs dated 07.06.2023**

  In furtherance of Circular No. 55/2020-Customs dated 17.12.2020, which encouraged importers to voluntarily provide comprehensive product descriptions and additional parameters for imported goods, to minimize queries and optimize assessment, the CBIC has introduced this circular to provide mandatory additional qualifiers in import/export declarations for certain products w.e.f. 01.07.2023. For imports, the additional qualifiers include the declaration of the International Union of Pure and Applied Chemistry (IUPAC) name and Chemical Abstracts Service (CAS) number of constituent chemicals for import under chapters 28,29,32,38, and 39 of the Customs Tariff Act, 1975. On the other hand, for export, qualifiers include the declaration of the name of the medicinal plant for exports of plant parts under chapter 12, the name of the formulation for export of medicinal formulations under chapter 30, and the surface material that comes into contact with the chemical for exports of various products under chapter 84. The CBIC has further clarified that the aforesaid changes are mandatory for all bills of entry or shipping bills filed on or after 01.07.2023.

- **Circular No. 16/2023-Customs dated 07.06.2023**

  The Hon'ble Supreme Court in the case of *Union of India vs. Cosmo Films Limited*, for the limited period between 13.10.2017 to 09.01.2019, upheld the requirement to fulfil the pre-import condition in order to claim exemption from payment IGST and GST Compensation cess on imports made under Advance Authorisation. Further, vide the said case, the apex court ordered the Department to allow the refund or input credit of the IGST and Compensation Cess paid for not fulfilling this pre-import condition and further directed the Board to prescribe the procedure in this regard. Therefore, in compliance with this Order of the Supreme Court, the CBIC issued this Circular, prescribing the procedure for importers to pay IGST and Compensation Cess for imports not meeting the pre-import condition which include the cancellation of the out-of-charge by the assessment group, reassessment of the bill of entry and payment of tax and cess against the electronic challan generated in the Customs EDI System.

- **Circular No. 17/2023-Customs dated 15.06.2023**

  By virtue of this Circular, the CBIC has simplified the regulatory framework for e-commerce exports of jewelry through courier mode. Exporters who do not opt to avail the facility of re-import of the exported jewelry and make a declaration to this effect in the Courier Shipping Bill (CSB-V) at the time of export, will not be required to upload the following documents on the ECCS system as prescribed under Para 3(I)(v) of Circular No. 09/2022-Customs dated 30.06.2022:

  - photos of the export item;
  - photos of the product package/outer covering and;
  - image of the product listing on the e-commerce platform

  Further, Notification No. 43/2023-Customs (N.T.) dated 15.06.2023 was issued for amending Form HA (CSB-V) to incorporate the aforesaid declaration by the exporter. The CBIC has further clarified that such a

declaration will also relieve the exporter from filing out certain additional fields concerning item-level specifications of the jewelry in the Form HA.

- **Circular No. 18/2023-Customs dated 30.06.2023**

  Due to representations received from several trade associations, the CBIC, by virtue of this Circular, has extended the due date for mandatory declaration of additional qualifiers in import/export declarations from 01.07.2023 to 01.10.2023.

FOREIGN TRADE POLICY

NOTIFICATIONS

- **Notification No. 10/2023 dated 02.06.2023**

  By virtue of this Notification, the DGFT has amended the import policy condition No. 6 of Chapter 27 of Schedule-I (Import Policy) of ITC (HS) 2022, to allow import of Needle Pet Coke for making graphite anode material for Li-Ion battery as feedstock/raw material, and Low Sulphur Pet Coke by integrated steel plants only for blending with the coking coal in recovery type coke ovens equipped with desulphurisation plant.

- **Notification No. 11/2023 dated 14.06.2023**

  By virtue of this notification, the DGFT has amended the import policy of Copra under ITC (HS) Code 12030000 from 'state trading enterprise' to 'restricted'.

- **Notification No. 12/2023 dated 19.06.2023**

  By virtue of this notification, the DGFT amended Paragraph 10.08(ix) of the Foreign Trade Policy, 2023 to provide reference to Para 10.16 of Handbook of Procedures, 2023 for chemicals covered under General Authorisation for Export of Chemicals and related Equipments (GAEC).

- **Notification No. 13/2023 dated 22.06.2023**

  The DGFT, by virtue of this notification has amended export policy of items under HS Code 2610 related to Chrome Ores and Concentrates to place them under the restricted category.

- **Notification No. 14/2023 dated 23.06.2023**

  By virtue of this Notification, the DGFT has amended Category 5B of the Appendix 3 (SCOMET List) of Schedule 2 of the ITCHS classification of Import and Export Items that controlled the export of all kinds of drones/UAVs, to simplify and liberalize the SCOMET policy for export of Drones/UAVs. The export of Drones/UAVs not covered under the specified categories in the SCOMET list and capable of range equal to or less than 25 km and delivering a payload of not more than 25 kgs (excluding the software and technology of these items) will by virtue of this notification be subject to General Authorization for Export of Drones (GAED). This policy change will not require the Drone Manufacturers/Exporters with GAED Authorization to apply for SCOMET license for every similar export shipment, within the validity period subject to post reporting and other documentary requirements.

- **Notification No. 15/2023 dated 29.06.2023**

  By virtue of this Notification, the DGFT has revised the import policy of Cigarette lighters under ITC (HS) Codes 96131000 and 96132000, to move them from the "free" to the "prohibited" category. However, it has

also been clarified that the import of the said item will be free if the CIF value is Rs. 20/- or above per lighter.

PUBLIC NOTICE

❖ **Public Notice No. 13/2023 dated 08.06.2023**

By this public notice, the DGFT has invited online applications and provided the following guidelines for the issuance of licence for import of watermelon seeds under ITC(HS) 12077090 upto 15.06.2023:

- Those applications, whose date of issuance of IEC is on or after 08.06.2023 is not to be considered.
- Applications to be considered on actual user basis.
- A valid FSSAI Licence indicating the processing capacity and a valid CA Certificate certifying the overall turnover of the applicant is required to be provided.
- The imported quantities to be allocated based on factors such as applicant's past imports, their annual processing capacity and overall turnover. Further, the said allocation to be based on the weightage specified, that is, 30% weightage is to be given to the average import of watermelon seeds by the applicant in 2020-21, 2021-22 and 2022-23 and the remaining 70% weightage is to be given to the applicant's processing capacity.
- In case of any misdeclaration, the applicant shall not be considered for the current allocation and will be disallowed from subsequent such allocation for the next two years.
- Import consignments against the said licence to reach the Indian ports on or before 31.10.2023.

❖ **Public Notice No. 14/2023 dated 14.06.2023**

By this public notice, the DGFT has amended Appendix 2X of the Foreign Trade Policy, 2023 containing the list of countries, import originating from which are exempted from testing for the presence of Azo Dyes in Textiles and Textile Articles.

❖ **Public Notice No. 15/2023 dated 19.06.2023**

By virtue of this public notice, the DGFT has introduced amendments to Paragraph 10.16(A) of the Handbook of Procedures 2023 to include those chemicals specified in the Appendix 10(N) for which the applicant exporter is required to submit an application for the General Authorization for Export of Chemicals and related Equipment (GAEC) through online SCOMET portal and attach information in proforma-ANF 10A. Further, the revised paragraph also specifies that the transfer/export/re-export under GAEC to the countries mentioned in Appendix 10(N) will be allowed only for civilian end use. Additionally, the said public notice also adds two new entries as Para 10.16.A.(II)d and 10.16A.(II)(e), which mandates an exporter to submit two declarations, one on the letterhead, stating that the export will only be done for civilian end use and the other from the Indian exporter, confirming that transfers/exports/re-exports in the entire supply chain will only be made to eligible countries listed in Appendix 10(N).

❖ **Public Notice No. 17/2023 dated 22.06.2023**

By virtue of this public notice, the DGFT has revised the procedure for import of Copper products and Zinc Oxide under TRQ under Para 2.92 of the Handbook of Procedures,2023, which is:

- DGFT will be the designated authority for allocating and monitoring 10,000MT of TRQ of Copper products under Chapter 74 and HS code 8544 of ITC(HS) 2022, Schedule 1 (Import Policy) and 2500MT of Zinc Oxide from Nepal.

- The quota allocated to each manufacturer would be communicated by the designated authority of Nepal to the DGFT.
- The Indian importer must file online application for TRQ certificate on the DGFT Website and must also mandatorily upload/provide reference to the TRQ issued to the Nepalese Exporter by the competent authority in Nepal.
- The TRQ issued must contain the name and address of the importer, Importer-Exporter Code (IEC), Customs notification number, tariff item as applicable, quantity, and validity period of the TRQ.
- Imports against the TRQ will be allowed only upon debiting electronically in the ICES system or on debit as endorsed.
- The TRQ certificate will be valid for a maximum period of 12 months or the end of the financial year, whichever is earlier.

❖ **Public Notice No. 18/2023 dated 23.06.2023**

By virtue of this public notice, the DGFT has made amendments in Appendix 2T (List of Export Promotion Councils/ Commodity Boards/ Export Development Authorities) of Appendices and Aayat Niryat Forms of the FTP, 2023., to add the Export Promotion Council for Medical Devices in the list of export promotion councils/ commodity boards. The aforementioned change will allow the said council to issue a Registration-Cum-Membership Certificate (RCMC) for specific medical devices and related products.

❖ **Public Notice No. 19/2023 dated 23.06.2023**

By virtue of this public notice, the DGFT has made amendments in Chapter 10 of the Handbook of Procedures, 2023 by adding a new Para 10.16(A). The said amendment provides the procedure for grant of general Authorization for Export of Drones (GAED) which includes the policy, eligibility criteria, application process, record keeping, general conditions and exclusions, post reporting for export, suspension/revocation, etc.

❖ **Public Notice No. 20/2023 dated 30.06.2023**

Earlier, authorisation holders seeking to avail the amnesty scheme for one time settlement of default in export obligation under the advance authorisation and EPCG Scheme, had to apply for it before 30.06.2023 and make the payment of customs duty and the applicable interest before 30.09.2023. By virtue of this public notice, the DGFT has extended the said dates. Therefore, authorisation holders now have until 31.12.2023 to apply and complete the registration process and 31.03.2024 to make the payment of customs duties along with applicable interest.

POLICY CIRCULAR

❖ **Policy Circular No. 02/2023 dated 23.06.2023**

By virtue of this circular, the DGFT has provided an alternative procedure for applying for the amnesty scheme for one-time settlement of default in export obligation by Advance and EPCG authorization holders, who are encountering difficulties while filing online applications through the EODC module of the DGFT. The aggrieved holders can submit their applications in manual mode by using the website http://www.amnestyscheme.in, in the following circumstances:

- the authorization/licence data is not available in the online database of the EODC module or;
- there are persistent problems in filing online applications for the amnesty scheme

This policy circular also provides the instructions to file the online application in manual mode using the said website.

TRADE NOTICE

❖ **Trade Notice No. 07/2023 dated 08.06.2023**

Through this trade notice, the DGFT has given instructions to the regional authorities to proactively guide the trade and industry regarding the Supreme Court decision in *Union of India vs. Cosmo Films* which made it mandatory to fulfil the pre-import condition for a limited time period and the CBIC Customs Circular No. 16/2023 dated 07.06.2023, which informed that all the imports made under advance authorization scheme on or after 13.10.2017 and upto and including 09.01.2019 which could not meet this pre-import condition, to be regularized by making payments as prescribed in the said Circular.

❖ **Trade Notice No. 08/2023 dated 20.06.2023**

Though the Government of India prohibited the export of rice, however, owing to the requests received from the Government of Senegal, Gambia and Indonesia 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 rice:

- Application is to be submitted online by only those exporters who have exported rice to Senegal, Gambia and Indonesia to Nepal in three years previous to FY in which the item was prohibited.
- Online application to be submitted through the DGFT's ECOM system for Export Authorisations Non-SCOMET Restricted Items from 21.06.2023 to 30.06.2023.
- Export authorization to be valid till 31.12.2023.
- 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:

- Allocation to be made with minimum threshold of 8000MT by sea.
- 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 respectively 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. 09/2023 dated 20.06.2023**

Though the Government of India prohibited the export of wheat, however, owing to the requests received from the Government of Nepal 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 on humanitarian and food security grounds:

- Application is to be submitted online by only those exporters who have exported wheat to Nepal in three years previous to FY in which the item was prohibited.
- Online application to be submitted through the DGFT's ECOM system for Export Authorisations Non-SCOMET Restricted Items from 21.06.2023 to 30.06.2023.
- 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 100MT 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 respectively 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. 10/2023 dated 23.06.2023**

By virtue of the said trade notice, the DGFT has activated the process of Norms Fixation/Review of Norms to electronic mode from physical mode. Therefore, applicants seeking Norms Fixation/Review of Norms from NC-7 may apply online by navigating to the DGFT website.

❖ **Trade Notice No. 11/2023 dated 23.06.2023**

The DGFT has issued this circular in continuation of the earlier circular regarding the online functionality to AA/EPCG authorisation holders to update closure/redemption status on the DGFT website of manually issued EODC in case it is incorrectly reflected on the DGFT portal. The DGFT has clarified that for advance authorisation cases, physical files may be submitted for redemption to the concerned RA and on approval the authorisation holder may submit Closure/EODC Status Update request online to RA for updation. However, for EOP extension of advance authorisation for annual requirement, the DGFT maintains the need for physical submission, which will then be processed manually.

❖ **Trade Notice No. 12/2023 dated 30.06.2023**

By virtue of this trade notice, the DGFT has made the following amendments in the procedure for the allocation of quota for the export of broken rice on humanitarian and food security grounds, based on requests received from Government of other countries:

- reduction in the minimum allocation threshold from 8000 MT to 2000 MT by sea;
- extension of the deadline for online applications from 30.06.2023 to 03.07.2023 and;
- extension of time for submitting the 'Landing Certificate' for exporters who have been allocated the quota of broken rice to 90 days of completion of export of allocated quota of broken rice.

Further, the said trade notice also partially amends the online form for obtaining a license for the export of broken rice to make the submission of importer details optional, as these details are often not known at the time of application.

RATIO DECIDENDI

ERSTWHILE LAW

❖ **M/s Jai Balaji Industries Limited vs. Commissioner of Central Excise, CESTAT Kolkata**

The Appellant pays duty under the Central Excise Act, 1944 on products transferred to its sister units. An SCN was issued to the Appellant demanding interest for the period FY 2006-2007 to FY 2008-2009, which was upheld by the impugned order as well. On appeal, the moot question before the Hon'ble CESTAT

was whether the Appellant is liable to pay interest on the amount of differential duty paid which is available as CENVAT Credit to the Appellant's sister concern. The Hon'ble CESTAT relied upon the case of *CCE vs. Indeo Abs Ltd.*, wherein the Gujarat High Court held that in case the sister concern was eligible for Modvat Credit on the goods cleared, then the whole exercise would be construed to be revenue neutral. Therefore, relying on the aforesaid case, the CESTAT set aside the impugned order and held that where the differential duty paid by the assessee is available as CENVAT credit to the Appellant's sister concern then it is a revenue neutral situation. Thus, as the duty was not payable by the Appellant, the question of payment of interest does not arise in the case of a revenue neutral situation.

- **Thakarshi J Likhiya vs. Commissioner of Central Excise & ST, CESTAT Ahmedabad**

  In the instant case the moot question before the Hon'ble CESTAT was whether the appellant is liable to pay the service tax as a sub-contractor when the main contractor discharged the liability on the full contract value and if yes, whether the extended period of limitation can be invoked. The CESTAT observed that there is no revenue loss to the exchequer as on the total contract value, the main contractor had discharged the service tax. Moreover, no question of malafide can arise in the present scenario which warrant the invocation of extended period of limitation as the Appellant had bonafide belief on the basis of various circulars and judgements that being a sub-contractor, it was not entitled to make payment of service tax. Therefore, service tax demand for an extended period of limitation cannot be sustained without adequate evidence of fraud, collusion, misstatement, suppression, or intention to evade tax.

GST LAW

- **Gargo Traders vs. Joint Commissioner, High Court of Calcutta**

  In the instant case, the High Court of Calcutta set aside the impugned order which denied the Petitioner input tax credit for purchasing goods from a supplier whose registration was cancelled retrospectively and held that since at the time of the transaction, the name of the supplier as a registered taxable person was already available in the Government record and the Petitioner had duly discharged its tax liability on the purchases received from the said supplier, input tax credit cannot be denied without verifying and taking into consideration the documents relied upon by the Petitioner in availing such credit.

- **M/s Ultra Steel Ward vs. The State of Madhya Pradesh, High Court of Madhya Pradesh**

  In the instant case, the Petitioner challenged the show cause notice *firstly*, for being vague as it failed to provide relevant reasons and supporting material for the proposed cancellation of registration and *secondly*, for denying the Petitioner a reasonable opportunity to defend themselves and respond to the said SCN, thereby violating the principles of natural justice. At the outset, the court held that in terms of the first proviso to Section 30 of the CGST Act, 2017, affording an opportunity of being heard is a pre-condition for exercising the power of cancellation of registration. In the instant case, the mere statement of registration being obtained by fraud, wilful misstatement, or suppression of facts for proposing the cancellation of registration was not enough and the department should have provided detailed reasons and supporting evidence to substantiate its claims, which in the instant case is conspicuously missing. Further, the said SCN referred to an application dated 11.02.2022, which was actually a reply to the SCN for cancellation of registration, which indicates the palpable carelessness on the part of the department. Moreover, even the impugned order of cancellation of registration is also bereft of any reason whatsoever and thus disables the Petitioner from effectively availing the remedy of statutory appeal under section 107 of the CGST Act, 2017. In view of the aforesaid reasons, the High Court set aside the impugned show cause

notice and the consequential order of cancellation of registration, rejecting the application for revocation of cancellation of registration, for being vague and having been issued in violation of principles of natural justice.

- **M/s Bitumix India LLP vs. Deputy Commissioner of Revenue, High Court of Calcutta**

  In the instant case, the Petitioner filed an writ before the High Court of Calcutta, challenging the order passed by the adjudicating authority and the appellate authority, upholding the penalty of 200% for transporting goods without renewing the e-way bill. The High Court held that though the Petitioner should have renewed the e-way bill, however, the violation is not grave enough to call for imposition of penalty at the rate of 200%, considering that on the date when the vehicle was intercepted, the goods were covered by a valid e-way bill, satisfying the requirements provided under Section 129 of the CGST Act, 2017. Though the impugned orders were set aside, however, the High Court imposed a penalty of Rs. 50,000/- for the mistake committed by the Appellant.

CUSTOMS/ FOREIGN TRADE POLICY

- **Indu Overseas Pvt. Ltd. vs. Commissioner of Central Excise & ST, CESTAT Ahmedabad**

  In the instant case, the Appellant preferred an appeal against a SCN, which alleged that the Appellant had inflated the weight of the consignments in export documents to wrongly fulfil the export obligation, and the impugned order, which confirmed the allegations proposed in the said SCN. The main contention of the Appellant before the Hon'ble CESTAT was that the impugned order deserves to be set aside as the adjudicating authority behaved in an arbitrary manner and had not accepted the demand of cross examination of the witnesses, in gross violation of the principles of natural justice. The appellate authority observed that it is necessary on the part of the adjudicating authority to accord opportunity of cross-examination of witnesses whose statements have been used as an evidence. In view of the said principle, it was held that since the impugned order was passed without providing an opportunity of cross-examination of the witnesses whose statements were recorded and relied upon by the authorities, it is liable to be set aside for being passed in gross violation of the principles of natural justice.

- **Anupam Port Cranes Corporation Ltd vs. Union of India, High Court of Gujarat**

  In the instant case, the Petitioner at the time of filing of the EDI shipping bills, encountered the problem of "YES/NO clicking". Therefore, the shipping bills were not electronically transmitted to the requisite authority for processing the MEIS scrips and accordingly, the Petitioner was not able to claim the said benefit. However, in the shipping bills the Petitioner has specifically stated that "I/We shall claim the reward under MEIS". The High Court referred to the case of *Bombardier Transportation India Pvt. Ltd. vs. Directorate General of Foreign Trade* wherein it has been held that the 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. In view of the aforesaid judgement, the High Court held that the benefit of MEIS cannot be defeated due to procedural infirmity of missing mark/tick "Y" in the rewards column and directed the concerned respondents to bestow the said benefits to the petitioner within a period of six weeks.

NEWS NUGGETS

- 2 Factor Authentication mandatory for e-way bill/e-invoice login for taxpayers with AATO over Rs 100 cr
- GST Portal Update: CBIC Enables Refund Application Withdrawal
- GSTN issued Important advisory on Online Compliance Pertaining to Liability/Difference Appearing in R1-R3B(DRC-01B)
- GSTN Advisory on Enablement Status of Taxpayers for e-invoicing
- GSTN Launches E-Invoice Verifier App

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ABOUT THE FIRM

RSA Legal Solutions is a top-tier Tax Law firm committed to providing world-class advisory, litigation, and compliance services to businesses, and is singularly focused on serving the needs of business clients. The firm specializes in GST, Customs, Foreign Trade Policy, SEZ laws, FEMA, Income Tax, Corporate laws, and other allied laws. RSA has partners from top law firms and Big 4s.

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

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