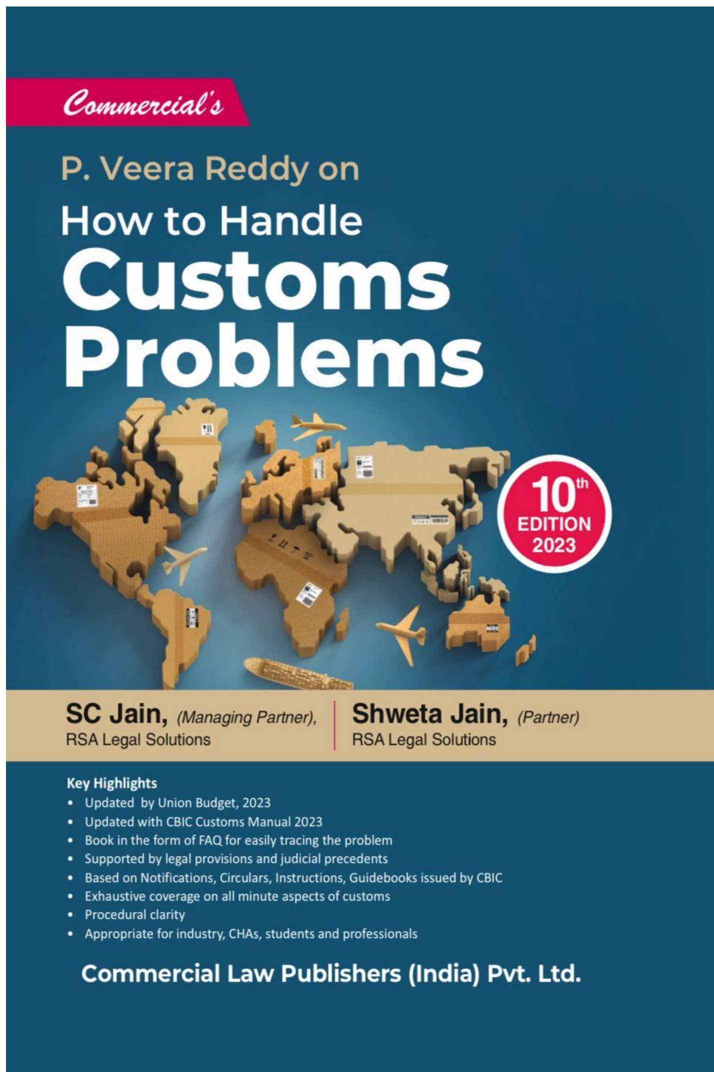

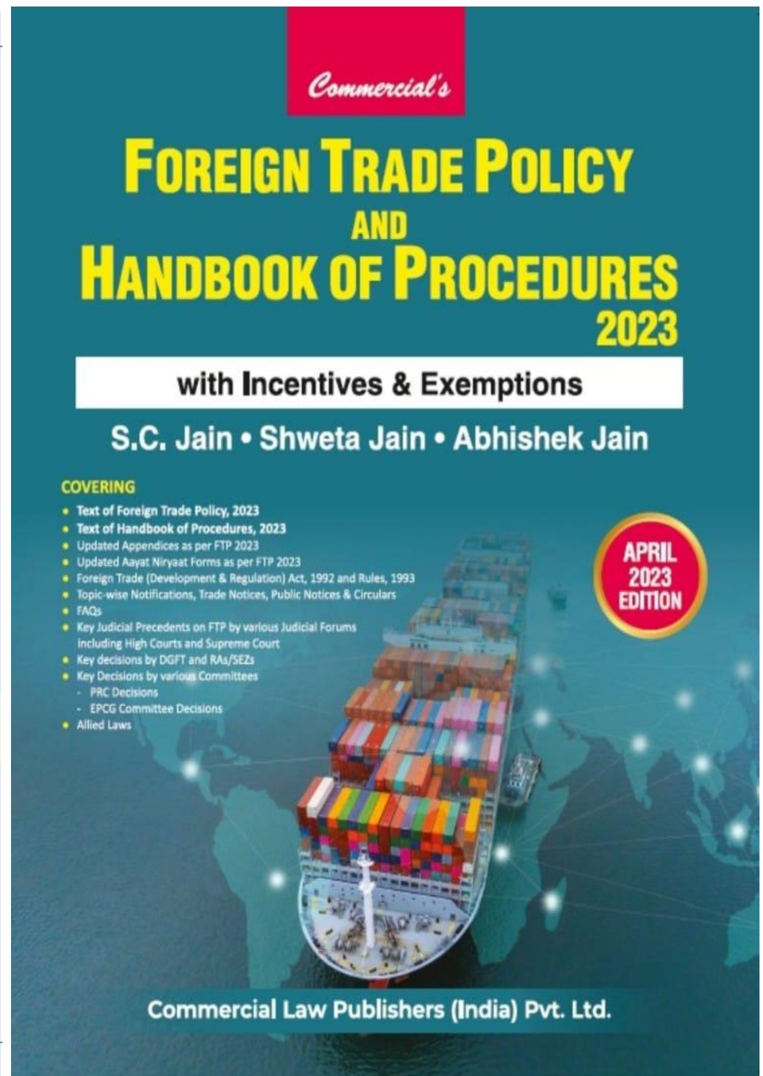

We are proud to announce the launch of our new book **"How to Handle Customs Problems"** published by Commercial Law Publisher and authored by SC Jain (Managing Partner) and Shweta Jain (Partner) RSA Legal Solutions.

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

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ARTICLES BY TEAM RSA LEGAL

❖ Article on "AAR Locus Standi: Victory for Applicants or Pandora's Box for Litigation?" penned down by Anshul Mittal (Partner)

The recent legal dispute regarding Anmol Industries Ltd's application for an advance ruling on the applicability of an exemption notification issued under the GST Act, and the subsequent rejection of the application by the West Bengal Authority for Advance Ruling (AAR) due to lack of locus standi, followed by the reversal of the ruling by the Calcutta High Court, underscores the importance of a comprehensive understanding of relevant laws and provisions when interpreting legal disputes.

Brief facts

The applicant had entered into a leasing agreement with Shyama Prasad Mookerjee Port, Kolkata, and had agreed to pay an upfront lease premium, which they believed was exempt from GST under entry No. 41 of Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017. However, the AAR rejected the application on the grounds that the applicant was a recipient of services and therefore did not have the locus standi to file the application for advance ruling.

Applicants' argument

The applicant's representative argued that the definition of the word "applicant" as defined in section 95(c) of the GST Act provides that any person registered or desirous of obtaining registration under the Act can apply for an advance ruling. Therefore, the applicant contended that the provisions nowhere state that the applicant has to be a service provider to seek an advance ruling on the questions as stated above.

AAR Decision

The AAR rejected the applicant's argument and observed that in the subject application, the applicant cannot seek an advance ruling in relation to the supply where they are a recipient of services.

Calcutta High Court

However, in an intra-Court appeal filed by the applicant in The High Court of Calcutta, through writ petition against the order passed by the AAR, the Court observed that under Section 95(c) of the Central Goods and Services Tax Act, 2017, the term "applicant" has been defined to mean any person registered or desirous of obtaining registration under the Act. Since the appellants were registered under the provisions of the Act, they clearly fell within the definition of "applicant". Therefore, the Court held that the AAR should have considered the application on merits rather than rejecting it on the ground of lack of locus standi.

The Court also referred to a previous case where it had held that the definition of "applicant" under Section 95(c) of the Act was wide enough to include any person registered or desirous of obtaining registration under the Act. Therefore, in light of this precedent, the Court allowed the appeal and set aside the order passed in the writ petition. The Court also remanded the matter back to the AAR to decide the application on merits and in accordance with law.

Our Observation

This case underscores the importance of interpreting legal disputes in accordance with the relevant laws' definitions and provisions. It also reinforces the fundamental principle that all parties should be given a fair chance to present their case and have it decided on its merits.

It is crucial to comprehend the scope of definitions such as "applicant" and other relevant provisions in determining who has the right to file an application and seek an advance ruling. The Court's ruling in this case highlights the significance of interpreting such definitions in a manner that does not limit the parties' access to legal remedies. Therefore, it is essential to carefully analyze and understand the provisions of the law while interpreting and deciding legal disputes.

Unintended fall out of the Decision

While the recent court order is a welcoming decision for parties seeking advance ruling, it is likely to open gates for a lot of litigation and result in an increasing number of applications for advance ruling. It is important to note that an advance ruling is only applicable to the party who applies for it, and not to any other parties who may be affected by the ruling.

If a recipient applies for an advance ruling and the ruling is against the practice followed by the supplier, it may be difficult to enforce the ruling on the supplier. In case the advance ruling comes opposite to the correct GST practice, and the supplier changes their practice based on the ruling, it is unclear whether the advance ruling would be able to rescue the supplier who actually did not apply for the ruling and is practicing according to the ruling.

Therefore, while seeking advance ruling is a viable option to avoid any confusion and legal disputes, parties must also consider the potential consequences and ensure that they are following the correct GST practices.

2023-TIOL-26-AAR-GST, Anmol Industries Ltd and Anr v/s The West Bengal Authority for Advance Ruling, Goods And Services Tax and Ors. 2023-TIOL-526-HC-KOL-GST, M/s. Gayatri Projects Limited & anr. vs. The Assistant Commissioner of State Tax, Durgapur Charge & Ors. 2023-TIOL-52-HC-KOL-GST

❖ Article on "EPR under E-waste Management Rules 2022" Penned down by Anshul Mittal (Partner)

Introduction

With the increasing use of electrical and electronic equipment (EEE), the proper management of electronic waste (e-waste) has become a pressing concern. In response to this challenge, the Ministry of Environment, Forest, and Climate Change (MoEF&CC) in India has introduced the E-Waste (Management) Rules, 2022. These rules, which came into effect on April 1, 2023, aim to promote environmentally sound e-waste management and encourage a circular economy through Extended Producer Responsibility (EPR). This article provides an overview of the E-Waste (M) Rules 2022 and highlights the key aspects of the extended producer responsibility framework and the registration process.

Extended Producer Responsibility (EPR) Framework

The E-Waste (M) Rules 2022 establish an EPR framework for the implementation of these rules. The framework includes four types of entities: manufacturers, producers, refurbishers, and recyclers. These entities are required to register on the online portal developed by the Central Pollution Control Board (CPCB) specifically for these rules. Each entity must register under the appropriate category, and conducting business without registration is strictly prohibited. Furthermore, registered entities must not engage with unregistered manufacturers, producers, recyclers, or refurbishers.

Producer's Registration and EPR Obligation

According to Rule 3 (t) of the E-Waste (M) Rules 2022, producers are defined as individuals or entities involved in the manufacturing, selling, or importing of electrical and electronic equipment. Producers can be manufacturers selling their own branded products, entities selling products assembled by other manufacturers or suppliers under their own brand, importers of electrical and electronic equipment, or importers of used electrical and electronic equipment. Producers of the specified electrical and electronic equipment must register themselves on the portal established by the CPCB. They are also required to obtain extended producer responsibility targets through the portal as applicable to them.

Registration Applicability

All producers falling within the scope of the E-Waste (Management) Rules 2022 must register themselves on the designated portal. Even producers who have already obtained EPR authorization under the previous E-Waste (M) Rules 2016, whether through offline or online mode, must re-register on the portal. However, producers who have already applied through the existing portal are exempt from registration and will be issued a registration certificate by the CPCB.

Registration Process for Producers on the Portal

1. The registration process for producers is exclusively online, and physical applications are not be accepted.
2. Producers must submit their applications, along with the required information, data, and documents very carefully to avoid any notices.
3. The registration certificate issued to producers will be valid for five years from the date of issuance.
4. Producers seeking to renew their registration certificate must apply on the portal 120 days before the expiry date.
5. During the registration process, producers must provide their basic information and details of the electrical and electronic equipment placed in the market, categorized by weight and financial year. This information is very crucial in determining the EPR obligations.
6. Producers must also submit self-declarations regarding compliance with the Restriction of Hazardous Substances (RoHS) provisions and the availability of documents as per EN 50581. Additionally, they must provide details of the awareness plan they intend to carry out as per Rule 6(3) of the rules.
7. Upon receipt of the application on the portal, officials from the concerned division of the CPCB will review and verify the information, data, documents, and declarations. If the application is complete, it will be processed and submitted to the Competent Authority, CPCB, for the grant of registration.
8. Once the Competent Authority approves the grant of registration, the Registration Certificate will be issued to the producer through the portal. The certificate will contain the Registration Number and a list of the electrical and electronic equipment along with their corresponding EPR obligations.
9. The Registration Certificate will be communicated to the producer through the portal.

In case of an incomplete application, the producer will be notified of the shortcomings within 25 working days of the application submission. The producer is then required to respond within 7 working days through the portal. Once the reply is received, the application will be processed accordingly.

The registration process consists of two parts: Part A and Part B. Part A involves the submission of basic information and details of the electrical and electronic equipment placed in the market, while Part B focuses on self-declarations, compliance with RoHS provisions, availability of documents, and the awareness plan.

Conclusion

The implementation of the E-Waste (Management) Rules 2022 in India signifies a significant step towards the proper management of e-waste and the promotion of a circular economy. The introduction of the extended producer responsibility framework emphasizes the accountability of manufacturers, producers, refurbishers, and recyclers in managing the life cycle of electrical and electronic equipment. The registration process, carried out through the designated portal, ensures that all relevant entities comply with the rules and actively contribute to sustainable e-waste management practices.

By enforcing these regulations and promoting environmentally sound practices, India is taking a proactive approach to tackle the growing challenge of e-waste. It is essential for all stakeholders, including producers, manufacturers, refurbishers, recyclers, and consumers, to actively participate in the effective implementation of the E-Waste (Management) Rules 2022 to create a sustainable and responsible approach towards e-waste management in the country.

- **Article on "Promoting Domestic IT Hardware Manufacturing: PLI 2.0 Scheme Unveiled" Penned down by Anshul Mittal (Partner)**

Introduction

The Indian government recognizes the crucial role of the electronics industry in the country's economy. To attract investments and promote domestic manufacturing, the government has launched the Production Linked Incentive (PLI) 2.0 Scheme for IT Hardware. This scheme aims to provide financial incentives and create a favorable environment for the production of electronic goods, particularly in the IT hardware sector.

Background behind Launch of PLI 2.0 Scheme for IT Hardware Manufacturing

The demand for electronic goods in India has been steadily rising, with the domestic production increasing from Rs. 3,17,331 crore (USD 49 billion) in 2016-17 to ?6,40,810 crore (USD 87.1 billion) in 2021-22. However, India's share in global electronics manufacturing is still relatively low at 3.75% in FY 2021-22. To reduce the reliance on imports and boost domestic production, the government aims to increase manufacturing capabilities in the IT hardware sector.

Quantum of Benefit under PLI 2.0 Scheme for IT Hardware Manufacturing

Under the scheme, an average incentive of approximately 5% will be offered for the localization of IT hardware items mentioned in Annexure-B. The initial focus will be on localizing Printed Circuit Board Assembly (PCBA) and Assembly, with the requirement to add at least one component or sub-assembly each year from the optional list. Special emphasis has been placed on incentivizing the manufacturing of semiconductors, as they are vital components in most target segments. The incentives offered will gradually decrease over the years as outlined in Annexure-B.

Target Segment

The PLI 2.0 Scheme for IT Hardware covers several target segments, including:

1. Laptops
2. Tablets
3. All-in-One PCs
4. Servers
5. Ultra Small Form Factor (USFF) devices

Beneficiaries of PLI 2.0 Scheme for IT Hardware Manufacturing

The scheme aims to benefit domestic manufacturers, investors, and the overall economy. By incentivizing domestic manufacturing, the government seeks to create employment opportunities, reduce import dependency, and position India as a global hub for IT hardware production.

Eligibility for PLI 2.0 Scheme for IT Hardware Manufacturing

The eligibility criteria for the PLI 2.0 Scheme for IT Hardware are as follows:

- The scheme is open to global and domestic companies manufacturing IT hardware in India.
- Applicants will be ranked based on eligibility criteria in the scheme guidelines.
- Selection will be based on ranking and projected PLI, subject to budget availability.
- Each applicant can submit only one application.
- Existing PLI Scheme applicants can participate as new entrants if they haven't claimed incentives.
- Existing applicants wanting to claim incentives can participate in the next year if selected.
- Eligibility is based on incremental investment and net sales thresholds (refer Annexure-A to the scheme).
- Investment in contract manufacturing facilities counts towards the applicant's investment.
- Incremental investment by component/sub-assembly manufacturers can also be counted.
- Shortfalls in investment result in a proportional reduction in PLI, up to 40%.
- Estimated PLI amounts are based on incremental sales and localization plans.
- Firmware for servers must be sourced from Indian or trusted foreign sources certified by MeitY.
- Eligibility under PLI 2.0 does not affect eligibility under other schemes.

PLI 2.0 Scheme Tenure

The PLI 2.0 Scheme will be available for a period of six (6) years. The initial application period will be fortyfive (45) days, with the possibility of extension. The scheme may be reopened for applications at any time during its tenure based on industry response. Applicants who apply after the initial period will be eligible for incentives for the remaining tenure, ending on 31.03.2031.

Base Year

The base year for calculating net incremental sales of manufactured goods is FY 2022-23. Applicants can choose to participate from 1.04.2024 or 1.04.2025, in which case FY 2023-24 or FY 2024-25 will be the base year. FY 2021-22 will be considered for qualification criteria regardless of the participation year.

Incentive Outlay

The expected cumulative incentive outlay for the PLI 2.0 Scheme is as follows:

- Incentives will be applicable for 6 years, starting from July 1, 2023, April 1, 2024, or April 1, 2025, depending on the applicant's choice.
- Incentives per company will be based on net incremental sales, with ceilings of ?4,500 Crore for Global companies, ?2,250 Crore for Hybrid (Global/Domestic) companies, and ?500 Crore for Domestic companies.
- A penalty of 5% or 10% will be imposed on the payable PLI amount if the actual PLI falls short by 25%-50% or more than 50%, respectively, compared to the estimated PLI provided by the applicant.

Computation and Approval

Incremental investment and net sales will be assessed based on applicant-provided details. Applications must be submitted before the due date, and approvals will be issued to eligible applicants based on qualification criteria and budget availability. Incentives will be released to eligible applicants upon meeting eligibility thresholds and fulfilling disbursement requirements

Nodal Agency and Empowered Group of Secretaries (EGoS)

The PLI 2.0 Scheme will be implemented through a Nodal Agency, with specific responsibilities outlined in the scheme guidelines. The Empowered Group of Secretaries will monitor and review the scheme's progress and may make revisions and amendments as necessary during the scheme's tenure.

PLI 2.0 Scheme Guidelines and Amendments

The Ministry of Electronics and Information Technology will issue separate guidelines for the PLI 2.0 Scheme with the approval of the Minister of Electronics and Information Technology. The scheme and guidelines will be periodically reviewed and amended as required with the approval of the Minister of Electronics and Information Technology.

Source: *Ministry of Electronics and Information Technology (IPHW Division) Notification, New Delhi, the 29th May, 2023*

REGULATORY UPDATES

GST

NOTIFICATIONS

- **Notification No. 10/2023-Central Tax dated 10.05.2023**
  By virtue of this Notification the CBIC has made it mandatory for every registered taxpayer with an annual aggregate turnover exceeding Rs 5 crore, in any year from 2017-18 onwards, to generate e-invoices for B2B supplies w.e.f. 01.08.2023.

- **Notification No. 05/2023-Central Tax (Rate) dated 09.05.2023**
  By virtue of this Notification, the CBIC has extended the last date for Goods Transport Agency (GTA) to exercise the option of paying GST under forward charge mechanism for the financial year 2023-2024 from 15.03.2023 to 31.05.2023. Further, the said notification also specifies that if a GTA has taken a new registration under GST or crossed the threshold for GST registration during any financial year, then they can exercise the option of paying the GST themselves on the services supplied by making a declaration in Annexure-V before the expiry of 45 days from the date of applying for GST registration or one month from the date of obtaining registration, whichever is later. Similar amendments have been made under Integrated Tax vide Notification No. 05/2023- Integrated Tax (Rate) dated 09.05.2023 and Union Territory Tax vide Notification No. 05/2023- Union Territory Tax (Rate) dated 09.05.2023.

INSTRUCTIONS

- **Instruction No. 01/2023-GST dated 04.05.2023**

  It was recognized that several taxpayers were misusing the identity of other persons to obtain fake registrations 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 the huge revenue loss to the Government, owing to such fake registrations, the CBIC has issued the following guidelines for conducting a special All-India Drive against such fake registrations from 16.05.2023 to 15.07.2023:

  - Based on detailed data analytics and risk parameters, GSTN will identify such fraudulent GSTINs for State and Central Tax authorities and will share the details of such identified suspicious GSTINs with the concerned State/ Central Tax administration for initiating verification drive.
  - Successful implementation of the Special Drive would require close coordination amongst the State Tax administrations, and between State and Central tax administrations and therefore, a nodal officer is to be appointed by each of the Zonal CGST Zone and State for ensuring seamless flow of data and for coordination with GSTN/ DGARM and other Tax administrations.
  - On receipt of data from GSTN/DGARM through the Nodal Officer, a time-bound exercise of verification of the suspicious GSTINs shall be undertaken by the concerned jurisdictional tax officers.
  - Further, if after detailed verification, it is found that the taxpayer is non-existent and fictitious, then the tax officer may immediately initiate action for suspension and cancellation of the registration of the said taxpayer in accordance with the provisions of section 29 of CGST Act, 2017 read with the rules thereof.
  - Further, the details of the recipients to whom the input tax credit has been passed by such non-existing taxpayer, may be identified through the details furnished in FORM GSTR-1 by the said taxpayer. Thereafter, suitable action may be initiated for demand and recovery of the input tax credit wrongly availed by such recipient on the basis of invoice issued by the said non-existing supplier.

- **Instruction No. 02/2023-GST dated 26.05.2023**

  By virtue of this instruction, the CBIC has amended the standard operating procedure provided vide Instruction No. 02/2022-GST dated 22.03.2022 concerning return scrutiny, to the following degree for the financial years 2019-20 onwards:

  - The Directorate General of Analytics and Risk Management (DGARM) will undertake the selection of return for scrutiny based on various risk parameters identified by them.
  - The Proper officer shall finalize a scrutiny schedule once the details of the GSTINs selected for scrutiny are made available on the scrutiny dashboard of the concerned proper officer of Central Tax on ACES-GST application.
  - Information available with the proper officer on the systems in the form of various returns and statements furnished by the registered tax person and the data made available through various sources may be relied upon for undertaking scrutiny of the return.
  - Thereafter, the proper officer will issue a notice to the registered person in Form GST ASMT-10 through the scrutiny functionality on ACES-GST application, informing him of the discrepancies noticed and seeking his explanation on the same.
  - Further, the registered person may either accept the discrepancy mentioned in the said notice and pay the tax, interest and any other amount arising from such discrepancy and inform about the same or may furnish an explanation for the discrepancy in Form GST ASMT-11, through the common portal to the proper officer within the time period prescribed under Rule 99 of the CGST Rules, 2017.

- If the explanation furnished is found acceptable to the proper officer, he shall conclude the proceedings by informing the registered person in Form GST ASMT-12 through the scrutiny functionality on ACES-GST application. However, if no satisfactory explanation is furnished within a period of thirty days, the proper officer may proceed to determine the tax and other dues under Section 73 or Section 74 of the CGST Act, 2017.
- However, if the proper officer is still of the opinion that the matter needs to be pursued further though audit or investigation, then he may take approval of the jurisdiction Principal Commissioner for referring the matter to the Audit Commissionerate or anti-evasion wing of the Commissionerate.
- Further, the said instruction also provides for the scrutiny of the returns to be conducted in a time bound manner so that the cases may be taken to their logical conclusion, expeditiously.

CUSTOMS

NOTIFICATIONS

- **Notification No. 37/2023-Customs dated 10.05.2023**
  By virtue of this Notification, the CBIC has exempted import of crude soyabean oil and crude sunflower seed oil from customs duty and agriculture infrastructure and development cess, from 11.05.2023 to 30.06.2023, subject to certain specified conditions enumerated therein.

- **Notification No. 38/2023-Customs dated 23.05.2023**
  By the said Notification, the CBIC seeks to amend the existing notification related to the Australia Free Trade Agreement (FTA) by making changes in the tariff preference given to cooking coal and raw cotton, arising out of the Finance Act, 2023.

- **Notification No. 01/2023-Customs (CVD) dated 04.05.2023**
  By virtue of this Notification, the CBIC seeks to impose countervailing duty on imports of Saturated Fatty Alcohols of Carbon Chain length C10 to C18 and their blends originating in or exported from Indonesia, Malaysia and Thailand for a period of 5 Years.

CIRCULARS

- **Circular No. 11/2023-Customs dated 17.05.2023**
  By virtue of this circular, the CBIC has provided further clarifications regarding the amnesty scheme for one-time settlement of default in export obligation (EO), that allowed Advance and Export Promotion Capital Goods (EPCG) authorization holders to pay all customs duties that were exempted in proportion to unfulfilled export obligation and interest at the rate of 100% of such duties exempted on which interest is payable, before 30.09.2023. The CBIC has clarified the following in dealing with the cases falling under the said scheme:
  - cases under any investigation or adjudicated for involving fraud, mis-declaration or un-authorised diversion of material and/or capital goods are not covered in the scheme.
  - the authorization holders are not to claim CENVAT Credit or Refund, under any provision of law, of any amount on duties paid under this scheme.
  - cases of calculation mistakes, are to be dealt on merits, in accordance with the procedure provided vide the Public Notice No. 02/2023 dated 01.04.2023.

- all the Principal Commissioners/ Commissioners are to ensure that the exporters approaching for payment of such duties are registered with the DGFT. Further, the aforesaid authorities have also been asked to put in place a suitable mechanism in place to ensure that the cases under the scheme are monitored and tracked so that there is efficient handling and expeditious closure of the old cases of bona fide EO default, in a seamless manner.

❖ **Circular No. 12/2023-Customs dated 17.05.2023**

By virtue of this Circular, the CBIC has highlighted key aspects of the Foreign Trade Policy, 2023 (FTP) and the Handbook of Procedures (HBP), which are enumerated below:

- The Special Advance Authorization Scheme is for the import of specialized fabrics meant for export production of garments, however, such authorizations may also be issued on the basis of self-declaration with the condition that the norms shall be fixed within 90 days. (Para 4.04A, FTP)
- The eligibility to apply under Self Ratification Scheme for the purpose of advance authorization has been extended to a manufacturer cum actual user who holds a valid 2-Star or above status. (Para 4.06, FTP)
- Minimum value addition of 25% is to be achieved for spices under Advance Authorisation (AA) Scheme. (Para 4.09, FTP)
- All items with a basic customs duty of more than 30% have been included in the list of ineligible categories of import under self-declaration basis. (Para 4.11, FTP)
- Project imports are excluded from the EPCG Scheme.
- Facility of exemption from furnishing bank guarantee will not be available to units which have been issued confirmed demand under GST. Further the facility of exemption from furnishing bank guarantee at the time of import or going for job work in DTA to EOU/EHTP/STP/BTP has been extended to units having AEO certification. (Para 6.11(d), FTP)
- Tax/duty benefits would not be available to EOUs for setting up, operations or maintenance of wind captive power plant and solar captive power plant. (Para 6.04(b)(i), HBP)
- The conversion to EOU from DTA unit, having EPCG licence would be permitted only if the DTA unit has either fulfilled the stipulated export obligation and obtained EODC or has made payment of applicable duties and taxes and compensation cess on capital goods imported under the EPCG Scheme. (Para 6.38(a), HBP)

❖ **Circular No. 13/2023-Customs dated 31.05.2023**

By virtue of this Circular the CBIC has proposed to effect changes in the scheme of Faceless Assessment for Re-organisation of National Assessment Centres (NACs) and Faceless Assessment Groups (FAGs) w.e.f. 15.06.2023. It has been clarified that the number of NACs will be reduced from 11 to 8 and each of these 8 NAcs would be convened by one Principal Chief/Chief Commissioner. Moreover, apart from these changes, the Conveners would be responsible for carrying out all the roles and responsibilities entrusted to Co conveners, that has been provided in Circular No. 40/2020-Customs dated 04.09.2020.

INSTRUCTIONS

❖ **Instruction No. 15/2023-Customs dated 03.05.2023**

The CBIC received various representations stating that the benefit of preferential tariffs in respect of goods eligible for such benefits when imported from Sri Lanka is not being accorded by some of the field formations on the ground that the certificate of origin is produced in an electronic form and not in hard copy form. Therefore, by virtue of this instruction, the CBIC has clarified the following:

- an electronic certificate of origin (e-CoO), issued by the Issuing Authority of Sri Lanka, is a valid document for the purpose of claiming preferential benefit under the India-Sri Lanka FTA, bearing seal and signatures of the authorized signatory of the Issuing Authority and fulfilling all other requirements stated in Notification No. 19/2000-Customs (N.T.) dated 01.03.2000.
- the specimen seals and signatures, circulated in advance, to be used to verify the genuineness of e-CoO and the integrity of the e-CoO can be further verified using the unique QR code printed on the certificate.
- The importer/customs broker is to ensure that the e-CoO is mandatorily uploaded on e-Sanchit by the importer/Customs Broker for claiming preferential benefit and the particulars such as unique reference number and date, originating criteria, etc. are carefully entered while filing the bill of entry.
- for defacement of CoO, a printed copy of e-CoO is to be presented to the Customs officer, who shall cross-check the unique reference number and other particulars entered in the bill of entry with the printed copy of e-CoO.

❖ **Instruction No. 16/2023-Customs dated 17.05.2023**

Difficulties were being faced by the producers in registering under the E-Waste Management Rules, 2022 as the CPCB's ERP Portal is still under upgradation. Therefore, the CBIC has issued instructions to the concerned authorities to sensitize the officers under their jurisdiction that as an interim arrangement till 30.06.2023, the following course of action is to be adopted:

- imported consignments of producers of 85 Electronic and Electrical Equipment (EEEs) items to be released on receiving the submission of the following:
  - undertaking in the prescribed format, whose copy also has to be mailed to CPCB's email-id from the company's authorized email id and;
  - copy of online EPR registration certificate
- imported consignments of producers of 21 EEEs item whose Extended Producers Responsibility Authorization (EPRA) has expired, to be released on receiving the submission of a copy of the EPRA whose validity is over along with an acknowledgement from the CPCB's EPR Portal that an application on the EPR Portal has been filed.

❖ **Instruction No. 17/2023-Customs dated 18.05.2023**

In terms of the Battery Waste Management (BWM) Rules, 2022, all producers including importers who are involved in import of all types of battery, are required to get the registration from CPCB through the online portal. Therefore, in compliance with this, the CBIC has issued instructions to the concerned authorities to sensitize the officers under their jurisdiction to ensure verification of the EPR registration certificate issued by CPCB at the time of clearing the consignment of importers of batteries as well as equipment containing batteries.

FOREIGN TRADE POLICY

NOTIFICATIONS

- **Notification No. 04/2023 dated 01.05.2023**
  Pursuant to the enactment of the Finance Bill, 2023, the DGFT by virtue of this Notification has added 149 tariff lines at 8 digit level and deleted 52 tariff lines at 8 digit level from the RoDTEP Schedule (Appendix 4R) w.e.f. 01.05.2023 to align it with the First Schedule of the Customs Tariff Act.

- **Notification No. 05/2023 dated 08.05.2023**
  By virtue of this notification, the DGFT has made amendments in the import policy condition, by providing that the import of apples falling under ITC (HS) 08081000 is prohibited wherever the CIF Import Price is less than equal to Rs. 50/- per kilogram. Further, the said Notification also clarifies that the minimum import price conditions are not be applicable for imports from Bhutan.

- **Notification No. 06/2023 dated 22.05.2023**
  By virtue of this notification, the DGFT amended the export policy of cough syrup falling under Heading 3004 by providing that w.e.f. 01.06.2023 their export will be permitted subject to the export sample being tested and production of Certificate of Analysis (CoA) being issued by any of the laboratories specified in the said notification.

- **Notification No. 07/2023 dated 24.05.2023**
  The DGFT by virtue of this notification has clarified that the export of broken rice, falling under ITC (HS) Code 1006 4000, will only be allowed on the basis of permission granted by the Government of India to other countries to meet their food security needs and based on the request of their Government.

- **Notification No. 08/2023 dated 29.05.2023**
  By virtue of this Notification, the DGFT has amended the ITC (HS) 2022, (Schedule-I) Import Policy to make it in sync with the Finance Act, 2023 and the Foreign Trade Policy, 2023.

- **Notification No. 09/2023 dated 29.05.2023**
  By virtue of this Notification, the DGFT has amended the existing Notification No. 27/2015-2020 dated 17.08.2022 to the extent that export of rice (basmati and non-basmati) to EU member states and other European Countries namely Iceland, Liechtenstein, Norway, Switzerland and United Kingdom will require Certificate of Inspection from Export Inspection Council/Export Inspection Agency and no such certificate is required for export to remaining European countries for a period of six months from the date of this Notification.

TRADE NOTICE

- **Trade Notice No. 05/2023-24 dated 25.05.2023**
  In response to the RBI Circular No. DOR.STR.REC.93/04.02.001/2021-22 dated 08.03.2022, which extended the Interest Equalisation Scheme upto 31.04.2024, the DGFT in order to rationalize the said scheme, has in this trade notice stated that the annual net subvention amount would be capped at Rs. 10 crore per IEC in a given financial year and all the disbursements made from 01.04.2023 will be counted for an IEC for the current financial year.

- **Trade Notice No. 06/2023-24 dated 31.05.2023**

  By virtue of this trade notice, the DGFT has introduced an online facility which will allow exporters to request for virtual meeting /personal hearing w.e.f. 01.06.2023, through the following steps:

  - Navigate to the DGFT Website (https://dgft.gov.in) → Services → Request for video conference.

  Post this request, the concerned officers at Regional Authorities (Ras) of DGFT are to provide a suitable time as well as link for the virtual hearing through the said online facility.

RATIO DECIDENDI

ERSTWHILE LAW

- **M/s. Bhootpurva Sainik Kalyan Sangh vs. Commissioner of Central Excise & Service Tax, CESTAT Kolkata**

  The Appellant has taken service tax registration for providing security agency service and pays service tax on the service charges received, however, it failed to include wages, EPF, ESI, Bonus, Gratuity, House Rent Allowance, etc., in the taxable value for the purpose of payment of service tax. A show cause notice dated 09.01.2009 was issued demanding service tax as well as interest and penalty under Section 78 of the Finance Act, 1994, for the period from April 2004 to March 2009. Further, the demand raised in the said show cause notice was confirmed by the Adjudicating Authority vide Order-in-Original and thereafter by the Commissioner (Appeals). Being aggrieved by the said orders, the Appellant preferred an appeal before the CESTAT, Kolkata, wherein the main question to be adjudicated was whether the show cause notice issued by the department invoking the extended period of limitation is valid. The CESTAT held that the Appellant was regularly filing service tax returns during the disputed period and intimating the gross value on which they have paid service tax. Therefore, it can be safely concluded that the Appellant has not suppressed any information from the department and declared the taxable value in the ST-3 returns filed by them. Moreover, the Department has not submitted any evidence to substantiate that the Appellant has suppressed the taxable value from the department. Since, *no mens* rea to evade payment of service tax can be established in the said case, the demand of service tax and interest confirmed along with the penalty imposed cannot be upheld due to ground of limitation.

- **M/s Bharat Heavy Electricals Limited vs. The Commissioner of G.S.T. and Central Excise, CESTAT Chennai**

  The Appellant has agreements with vendors for supply of various equipment for the erection, commissioning and installation of plants and projects and these agreements include a clause of payment of liquidated damages by vendors in case of any delay in the said supply. A show cause notice was issued alleging that the Appellant is charging liquidated damages but not discharging service tax on the same. The demand of service tax on the liquidated damages recovered along with interest and penalty was confirmed by the respondent vide the Order-in Original and was further upheld by the Commissioner (Appeals). Being aggrieved by the said orders, the Appellant approached the CESTAT, Chennai, wherein the principal question to be adjudicated was whether the appellant was liable to pay service tax on liquidated damages collected from the vendors. The Hon'ble CESTAT held that recovery of liquidated damages from the defaulting party cannot be said to be towards any service since the purpose of imposing such damages is to ensure that the defaulting act is not undertaken or repeated.

GST LAW

- **Gameskraft Technologies Pvt. Ltd. vs. DGGSTI, High Court of Karnataka**

  The Petitioner is a provider of online platform facilitating players to play games of skill like rummy, online, for which it charges GST at the rate of 18%. The department issued a show cause notice levying demand and penalty amounting to Rs 21,000/- crores on the allegation that the Petitioner evaded taxes as a 28% tax should have been levied, considering that the Petitioner allowed its players to place bets in the form of money stakes on the outcome of card games played online. At the outset, the High Court of Karnataka observed that in terms of Section 2(17) of the CGST Act, 2017, though wagering contracts are included in the term business, however, that in itself would not mean that the terms "*lottery, betting and gambling*" are similar to games of skill. Further, the Court held that in terms of the various decisions of the Hon'ble Supreme Court and High Courts, the said terms are to be construed *nomen juris*, which does not include games of skill and therefore Entry 6 in Schedule III of the CGST Act, 2017 which takes actionable claims out of the purview of supply of goods or services would clearly apply to games of skill and only games of chance such as "*lottery, betting and gambling*" would be taxable. The Court further observed that there is a difference between a 'game of chance' and a 'game of skill' in as much as that while the former involves chance as a predominant element, the latter requires the exercise of skill which has the power to control the element of chance and therefore, in this regard, the Court held that since in rummy a player makes a value judgement on his/her skill, the same whether played online or in physical mode cannot be classified as a game of chance and hence GST will not be levied.

- **Twisha Educational Private Limited vs. Addl. CT & GST Officer, High Court of Orissa**

  On being aggrieved by the assessment order, attaching the bank account of the Petitioner, without proper notice, a writ petition was filed before the High Court of Orissa. The High Court dismissed the writ petition and directed the Petitioner to pursue their remedy through the established appellate process provided under Section 107 of the CGST Act, 2017, rather than seeking the relief through a writ petition.

- **Sidhivinayak Chemtech Pvt Ltd vs. Principal Commissioner, High Court of Delhi**

  On being aggrieved by the provisional attachment order passed by the Principal Commissioner, the Petitioner filed a writ petition before the High Court of Delhi. At the outset, the High Court referred to Section 83 of the CGST Act, 2017 and observed that the 'Commissioner' who has been given the authority to provisionally attach any property must be a Commissioner who exercises its powers in respect of the 'taxable person'. However, in the present case the Principal Commissioner does not have any authority to pass the said attachment order against the Petitioner as 'the taxable person' considering that the Principal Commissioner does not exercise jurisdiction over the territories where the Petitioner's principal place of business is located. Further, the High Court also observed that the language of Section 83 of the CGST Act, 2017 requires the Commissioner to form an opinion that it is necessary to attach the property of a taxable person and this opinion must be based on relevant facts and not merely on grounds of suspicion. In this regard, the High Court held that mere suspicion that the Petitioner is a dummy company by completely disregarding the corporate documents of the Petitioner would clearly fall foul of the requirement of forming an opinion as it does not meet the standards required for taking an action under Section 83 of the CGST Act. Therefore, the High Court set aside the attachment order.

CUSTOMS/ FOREIGN TRADE POLICY

❖ **Union of India vs. ABP Pvt Ltd, Supreme Court of India**

The Appellant preferred an appeal to the Supreme Court on being aggrieved by the decision of the Calcutta High Court, quashing the amending notification which denied the respondents, an importer of high speed cold set web offset printing machinery from the benefit of concession from payment of customs duty, on the grounds that the withdrawal of the concession could not be said to facilitate indigenous manufacturers considering that the imported machine was neither manufactured in any part of the country at the relevant point of time nor any copy of representation was received from domestic manufacturers questioning the exemption granted to the imported machine. The Supreme Court observed that once it is recognised that it is the executive's exclusive domain in fiscal and economic matters to determine the nature of classification, the extent of levy to be imposed and the factors relevant for either granting, refusing or amending exemptions, the role of the court is confined to decide if its decision is backed by reasons, germane and not irrelevant to the matter. Further, the wisdom or unwisdom, and the soundness of reasons, or their sufficiency, cannot be proper subject matters of judicial review. Further, the Supreme Court held that indigenous angle, i.e. availability of equipment, cannot be characterized as an irrelevant factor or consideration, since grant of exemption to a class of goods, which are similar to those manufactured within the country and its likely adverse impact on such manufactures or producers, is germane and relevant. Therefore, the exercise of the power in amending the exemption notification was in line with the provisions of the Customs Act, 1962.

❖ **MK Wood India Pvt Ltd vs. C.C.-Mundra, CESTAT Ahmedabad**

In the instant case, the Petitioner failed to claim the benefit of Notification No. 21/2012-Cus dated 17.03.2012 at the time of filing the Bill of Entry under the self-assessment procedure and on realising this mistake, filed an appeal before the Commissioner (Appeals), which was rejected on the grounds that the self-assessment is not an appealable order and therefore, no appeal can be filed against it. The Hon'ble CESTAT set aside the impugned order for failure to consider the decision of the Hon'ble Apex Court in the case of ITC Ltd vs. CCE wherein it was held that since the order of self-assessment is nonetheless an assessment order, it would be appealable by 'any person' aggrieved thereby under Section 128 of the Customs Act, 1962.

NEWS NUGGETS

- CBIC rolls out Automated Return Scrutiny Module for GST returns in ACES-GST backend application for Central Tax Officers
- GSTN: Deferment of the Implementation of Time Limit on Reporting Old e-Invoices
- GSTN New Simple Option for Searching GST e-Invoice/IRN
- GST: Delhi Govt notifies clarification on GST Exemption on Conduct of Exams by State and Central Testing Agencies for Admissions to Educational Institutions
- CBIC issued Advisory to all ECL users for PAN merger with ICEGATE ID on ICEGATE

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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**.

KEY PERSONS

S.C. Jain (Managing Partner)
scjain@rsalegalsolutions.com

Shweta Jain (Partner)
shweta@rsalegalsolutions.com

Rajat Dosi (Partner)
rajat@rsalegalsolutions.com

Abhishek Jain (Partner)
abhishek@rsalegalsolutions.com

Anshul Mittal (Partner)
anshul@rsalegalsolutions.com

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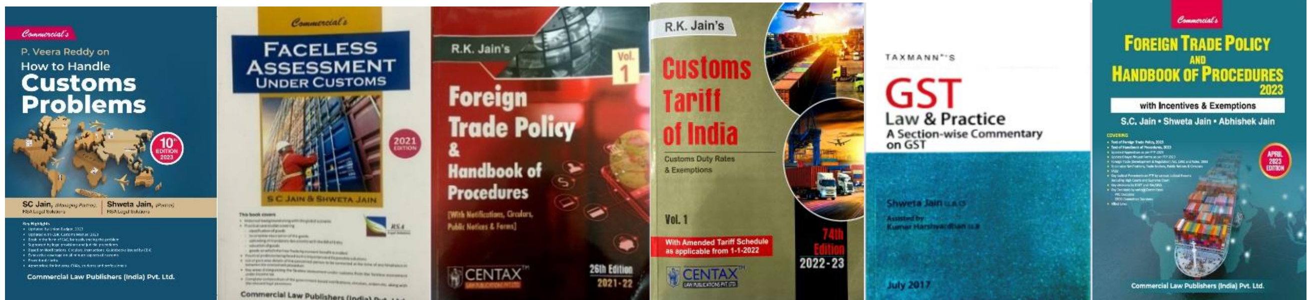

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