


Commercial's

P. Veera Reddy on
How to Handle
Customs Problems



10th EDITION 2023

SC Jain, (Managing Partner), RSA Legal Solutions
Shweta Jain, (Partner) RSA Legal Solutions

Key Highlights

- Updated by Union Budget, 2023
- Updated with CBIC Customs Manual 2023
- Book in the form of FAQ for easily tracing the problem
- Supported by legal provisions and judicial precedents
- Based on Notifications, Circulars, Instructions, Guidebooks issued by CBIC
- Exhaustive coverage on all minute aspects of customs
- Procedural clarity
- Appropriate for industry, CHAs, students and professionals

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Commercial's

FOREIGN TRADE POLICY AND HANDBOOK OF PROCEDURES 2023


with Incentives & Exemptions

S.C. Jain • Shweta Jain • Abhishek Jain

COVERING

- Text of Foreign Trade Policy, 2023
- Text of Handbook of Procedures, 2023
- Updated Appendices as per FTP 2023
- Updated Aayat Niryaat Forms as per FTP 2023
- Foreign Trade (Development & Regulation) Act, 1992 and Rules, 1993
- Topic-wise Notifications, Trade Notices, Public Notices & Circulars
- FAQs
- Key Judicial Precedents on FTP by various Judicial Forums including High Courts and Supreme Court
- Key decisions by DGFT and RA/SEZs
- Key Decisions by various Committees
 - PRC Decisions
 - EPCG Committee Decisions
- Allied Laws

APRIL 2023 EDITION



Commercial Law Publishers (India) Pvt. Ltd.

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.



TABLE OF CONTENTS

UNDERSTANDING QCOS ISSUED BY BIS	4
ARTICLES BY TEAM RSA LEGAL.....	6
REGULATORY UPDATES	9
GST	9
NOTIFICATIONS	9
CIRCULARS	12
CUSTOMS.....	14
NOTIFICATIONS	14
CIRCULARS	15
FOREIGN TRADE POLICY.....	16
NOTIFICATIONS	16
PUBLIC NOTICE	17
POLICY CIRCULAR.....	17
TRADE NOTICE	18
RATIO DECIDENDI	18
ERSTWHILE LAW	18
GST LAW.....	19
CUSTOMS/FOREIGN TRADE POLICY	20
NEWS NUGGETS	21
ABOUT THE FIRM	22

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UNDERSTANDING QCOS ISSUED BY BIS

FAQS for Stakeholders on Quality Control Orders



Ques 1: As a stakeholder, why should I be concerned about QCOS?

Ans: QCOS ensure the products you deal with meet specific quality, safety, and reliability standards. Complying with them safeguards the public interest, protects the environment, and prevents unfair trade practices.

Ques 2: How will I know when a QCO commences?

Ans: The commencement date of each QCO is clearly emphasized in the Order itself. It's crucial to stay updated with official announcements to ensure timely compliance.

Ques 3: I import products. Does QCOS apply to me?

Ans: Yes. The regulations that apply to domestically produced goods also apply to imported goods, unless there's a specific exemption. Ensure your imported products comply with Indian Standards.

Ques 4: What if I manufacture products abroad for the Indian Market?

Ans: You must obtain a Licence or CoC from BIS under the Foreign Manufacturers Certification Scheme (FMCS) of BIS to ensure your products comply with the necessary Indian Standards.

Ques 5: What happens if I don't comply with a QCO?

Ans: Non-compliance can lead to penalties under the BIS Act, 2016. This may include imprisonment, fines, or both.



Ques 6: I deal with a product that has undergone a standard revision. How do I transition?

Ans: BIS provides a concurrent period for both the existing and revised versions of the standard. You should transition to the revised version within the timelines specified by BIS.

Ques 7: Can I request exemptions for specific products under QCOS?

Ans: Exemptions are decided by the Line Ministry (Regulator) issuing the QCO. If you believe your product should be exempt, it would be best to approach the respective ministry.

Ques 8: Where can I find the latest information on QCOS relevant to my products?

Ans: Stay updated by regularly checking the BIS website and official notifications. They provide detailed information on QCOs and any related updates.

Ques 9: I have specific concerns about a QCO. Whom should I approach?

Ans: For concerns related to the applicability or implementation of a QCO, reach out to the concerned Line Ministry/Department of the Central Government. For queries about product coverage under an Indian Standard in a QCO, BIS is your point of contact.

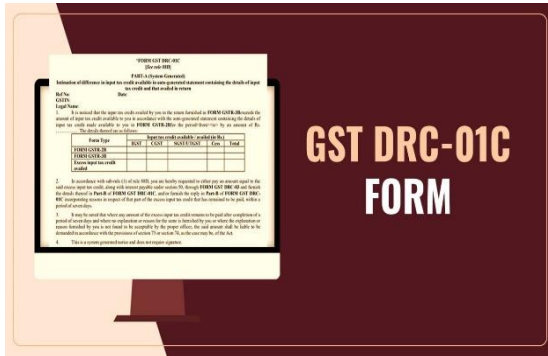
Ques 10: How can I ensure continuous compliance with QCOS and avoid disruptions in my operations?

Ans: Engage in stakeholder consultations, liaise with BIS for technical inputs, and stay abreast of official announcements. Regular internal reviews and audits can also ensure continuous compliance.



ARTICLES BY TEAM RSA LEGAL

❖ Article on “Understanding the New Compliance: FORM DRC-01C In GST Filings” penned down by Anshul Mittal (Partner)



In the dynamic world of taxation, the Indian government continues to introduce reforms aimed at enhancing the transparency and efficiency of the Goods and Services Tax (GST) system. One such reform is the introduction of Form DRC-01C, which is designed to address discrepancies in Input Tax Credit (ITC) claims made by taxpayers. Here’s a comprehensive understanding of this new compliance measure and its implications.

The Form DRC-01C

The Central Tax Notification No. 38/2023, dated 4th August 2023, heralded the insertion of Rule 88D in the CGST Rule 2017. This rule is centered on rectifying differences in the ITC as reflected in GSTR-2B and the claimed ITC in GSTR-3B.

Now, what does this mean for taxpayers?

When you file your GST returns, the portal automatically assesses the ITC available in GSTR-2B against the ITC you claim in GSTR-3B for each return period. If the portal detects a variance that exceeds a set threshold, you’ll receive a prompt via Form DRC-01C.

Responding to the Prompt

Receiving Form DRC-01C means action is needed on your part. Taxpayers must furnish a response using Form DRC-01C Part B. You’re presented with two main routes here:

- 1. Settlement:** Offset the ITC difference by making an appropriate payment through Form DRC-03.
- 2. Clarification:** Offer a valid explanation for the observed discrepancy.

Neglecting to respond has its repercussions. Without addressing the issue, taxpayers will face a roadblock they won’t be permitted to file their subsequent GSTR-1/IFF.

Keeping Informed

To ensure you’re always in the loop, the GST portal sends out notifications via email and SMS. If you’re ever unsure about any intimation, the GST portal serves as a reliable resource. By navigating to the relevant sections, you can view the intimations and take necessary actions.

Form DRC-01C Filing Frequency and Issues

Form DRC-01C Part B’s filing frequency aligns with your GSTR-3B submission, be it monthly or quarterly. It’s designed to be straightforward, but if you encounter any glitches, such as issues with the Application Reference Number (ARN), ensure that your ARN matches the necessary criteria. Additionally, if you decide to modify the reasons or details you’ve previously submitted, remember to erase the prior details to avoid system errors.



Conclusion

The integration of Form DRC-01C into the GST framework exemplifies the government's dedication to fortifying the tax infrastructure, promoting accuracy, and instilling a sense of responsibility among taxpayers. It's not just about compliance; it's about fostering a culture of transparency and precision. As taxpayers navigate this evolving terrain, adapting to these changes and understanding their implications will be paramount. By doing so, they not only uphold their fiscal responsibilities but also contribute to a more streamlined and efficient taxation ecosystem.

❖ **Article on "Practical Issues faced in DGFT, RA New Delhi: A Closer Look" penned down by our DGFT practice team**



Introduction

Dealing with government regulatory authorities can often prove to be a complex and frustrating experience, particularly for businesses and professionals striving to adhere to diverse regulations and secure licenses. Lately, concerns have arisen regarding the Directorate General of Foreign Trade (DGFT), Regional Authority (RA) in New Delhi. This authority has become embroiled in some

controversial practices that are adversely affecting consultants and industries alike.

In this article, we will examine the challenges and issues surrounding DGFT, RA New Delhi, and examine the impact these issues have on businesses.

Unreasonable Condition: The EODC Dilemma

One of the most pressing concerns revolves around the DGFT's requirement that all licenses with Export Obligation Discharge Certificate (EODC) issued must be updated on their BO portal. Failure to comply leads to the refusal of issuing Advance Authorization (AA) or Export Promotion Capital Goods (EPCG) licenses. This practice seems unjustified and contradicts the documents outlined in FTP/HBP and ANF-4A/ANF-5A guidelines. It pertains neither to the issuance of fresh AA/EPCG authorizations nor is it constructive; instead, it amounts to harassment. However, DGFT is withholding the issuance of fresh AA/EPCG authorizations unless EODC records from previous AA/EPCG licenses are uploaded on the portal.

This requirement poses practical challenges for companies with an extensive operational history. Businesses established many years ago may find it nearly impossible to retrieve records dating back to their inception. Moreover, frequent changes in management and personnel further complicate the task of tracking and updating licenses.

Moreover, according to the Foreign Trade Policy (FTP), after obtaining EODCs, companies are only required to maintain records for 2 years. Therefore, it is unreasonable to demand that a company established in 2002, whose license was closed in 2006, update its records on the DGFT portal when it no longer possesses such records.



Potential Resolution

A potential solution could involve allowing DGFT officers, who have access to these records, to carry out the necessary updates on behalf of the companies. This would ease the burden on businesses and professionals, expediting the licensing process and preventing unnecessary disruptions to business operations.

Since DGFT already possesses electronic records, requesting companies to update these records themselves seems unjustified. DGFT should take responsibility for updating the records, as all the necessary information is available in their software. Demanding records dating back 10 or 15 years from companies is unreasonable when such records no longer exist.

Issues with Deficiency Memos

The practice of issuing multiple deficiency memos for a single file poses a significant concern. This leads to unnecessary delays in the processing of applications. Even when timely responses are provided to deficiencies, officers continue to raise the same issues, contributing to a backlog and negatively affecting industries.

For example, if an AA/EPCG file is submitted, the first deficiency is issued by one department, followed by another from FTDO, then another from JTDGFT, and so on. This practice of repeatedly issuing deficiencies for minor matters related to obtaining AA/EPCG licenses should be addressed internally within DGFT, RA, and New Delhi, to streamline the process. In many cases, normal requests for AA/EPCG issuance are taking longer than 1-2 months.

Trade Notice and Communication Challenges

Limited Officer Meetings: The DGFT, RA, and New Delhi, in conjunction with some other RAs, issued a trade notice that restricts consultants and industries from meeting with officers. Although the notice suggests that meetings are allowed in exceptional circumstances, the reality paints a different picture. Many requests for appointments remain unanswered, and it appears that the authorities are not effectively facilitating communication. Despite our efforts to communicate with ADGFT and other DGFT officers via email, we have received no response. This communication gap leads to misunderstandings between the industry and the department. DGFT has its own basis for understanding cases, which results in the delayed processing of files. The lack of communication with consultants or industries leads to pending files, impeding business operations, as various licenses issued by DGFT are crucial for daily industry functioning.

The Importance of Meetings: Meetings play a crucial role in resolving complex issues, especially concerning advance, EPCG, and other matters. Consultants often need to clarify the intricacies of their cases, but the lack of access to officers makes it increasingly difficult to find solutions.

Daily VC Meetings

The introduction of daily video conferencing (VC) meetings from 10:30 AM to 11:30 AM is a positive step for obtaining updates regarding the applications one has submitted. However, in most cases, senior-level officers are absent, with only their names appearing in the meetings. Junior-level staff often lack information about the matter and only take file numbers, promising to share concerns with the respective



team. Unfortunately, this frequently results in no action being taken, causing significant losses for industries due to the inaction of officers within DGFT.

Impact on Industries

The challenges highlighted above exert a significant impact on industries. The delayed approvals and bureaucratic hurdles result in disruptions to their operations, causing a ripple effect throughout their supply chains and financial stability. These issues hinder the ease of doing business and stifle the growth potential of industries.

Conclusion

The issues outlined in this article shed light on the challenges faced by consultants and industries when dealing with DGFT, RA, and New Delhi. There is a need for increased accountability among top-ranking officers at DGFT to address the unnecessary issuance of deficiencies and streamline the application process. These issues have a profound impact on industries and necessitate a more efficient and responsive approach from the authorities. These issues not only affect businesses but also hinder the government's commitment to improving the ease of doing business, as promised by Hon'ble Minister Mr. Piyush Goyal, who pledged to streamline the issuance of AA and EPCG licenses within one day.

REGULATORY UPDATES

GST

NOTIFICATIONS

❖ **Notification No. 12/2023- Central Tax (Rate) dated 19.10.2023**

Through this notification, the CBIC has made the following amendments in Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 which provides the rate of tax applicable on inter-state supply of services, w.e.f. 20.10.2023:

- ✚ The notification has inserted a new tax rate condition for subjecting the service of transport of passengers and rental services of transport vehicles to CGST @ 2.5%. It has been provided that where the service provider charges its service recipient central tax at the rate of 2.5% for such services, he shall be entitled to take ITC on input service received from its input service provider, engaged in the same line of business, only to the extent of tax paid or payable at the rate of 2.5%. For example: 'A' engages 'B' for transport from New Delhi to Jaipur in a motor cab for Rs. 1000. 'B', for supplying the said service, hires a motor cab with the operator from 'C' for Rs. 800. 'C' charges 'B' central tax at the rate of 6% (Rs. 48). If 'B' charges 'A' central tax at the rate of 2.5%, he shall be entitled to take an input tax credit on the input service in the same line of business supplied by 'C' only to the extent of Rs. 20 (2.5% of Rs. 800) and not Rs. 48.
- ✚ Further, now the service by a race club by way of only licensing a Bookmaker is taxable at @28%.
- ✚ Gambling which was taxable @ 28% under the SAC 9996 on 'Recreational, cultural and sporting services' has been omitted.

Similar amendments have been introduced for Integrated Tax and Union Territory Tax.



❖ **Notification No. 13/2023- Central Tax (Rate) dated 19.10.2023**

Through this notification, supply of services such as water supply, public health, sanitation conservancy, solid waste management, and slum improvement and upgradation provided to Governmental Authorities have been exempted from taxation to promote and support these crucial public services. Additionally, the supply of service by the Central Government, State Government, Union Territory, or local authority excluding the services by the Ministry of Railways has been made subject to a nil rate of taxation. The aforesaid amendment will come into effect from 20.10.2023. Similar amendments have been introduced for Integrated Tax and Union Territory Tax.

❖ **Notification No. 14/2023- Central Tax (Rate) dated 19.10.2023**

Through this notification, the CBIC has notified the supply of the following services by the Indian Railways to be taxable under Forward Charge Mechanism (FCM), to enable the Indian Railways to avail ITC which would accordingly reduce their cost of operation:

✚ Any service to a business entity located in the taxable territory

✚ Service of renting of immovable property to any registered person under the CGST Act, 2017

The said notification will come into force from 20.10.2023. Similar amendments have been introduced for Integrated Tax and Union Territory Tax.

❖ **Notification No. 15/2023- Central Tax (Rate) dated 19.10.2023**

This notification expands the tax implications for the construction and real estate sector and specifically to supply of service of “construction of a complex, building or a part thereof, intended for sale to a buyer”. In accordance with this notification, no refund of unutilized ITC is to be allowed in case of supply of such services particularly when the value of land is included in the transaction, unless the entire consideration is received after the issuance of a completion certificate or after the first occupation, whichever is earlier. This notification will come into force from 20.10.2023. Similar amendments have been introduced for Integrated Tax and Union Territory Tax.

❖ **Notification No. 16/2023- Central Tax (Rate) dated 19.10.2023**

Through this notification, the CBIC has provided that w.e.f. 20.10.2023, for the inter-state supply of service of transportation of passengers by an omnibus, the burden to pay tax is on the electronic commerce operator. However, where the person supplying such service through the electronic commerce operator is a company, the liability to pay GST will not be on such an e-commerce operator. Similar amendments have been introduced for Integrated Tax and Union Territory Tax.

❖ **Notification No. 17/2023- Central Tax (Rate) dated 19.10.2023**

This notification has made the following amendments in Notification No. 1/2017-Central Tax (Rate) which prescribes the rate of tax leviable on intra-state supplies of goods, w.e.f. 20.10.2023:

✚ The rate of GST on Molasses has been reduced from 28% to 5%

✚ The GST rate of 5% has been imposed on food preparations made from millet flour, particularly those in powder form, and containing at least 70% millets if sold in pre-packaged and labeled form

✚ A separate tariff HS Code 2207 1012 has been inserted in the Customs Tariff Act, 1975 to cover spirits for industrial use, which will be subject to GST rate @18%.

Similar amendments have been introduced for Integrated Tax and Union Territory Tax.



❖ **Notification No. 18/2023- Central Tax (Rate) dated 19.10.2023**

This notification provides that w.e.f. 20.10.2023, a nil rate of GST will be imposed on food preparations made from millet flour, particularly those in powder form, and containing at least 70% millets, if sold in other than pre-packaged and labelled form. Similar amendments have been introduced for Integrated Tax and Union Territory Tax.

❖ **Notification No. 19/2023- Central Tax (Rate) dated 19.10.2023**

By virtue of this notification, any supply of used vehicles, seized and confiscated goods, old and used goods, waste, and scrap by the Ministry of Railways (Indian Railways) to any registered person will not be taxable on a reverse charge basis. This notification has been made effective from 20.10.2023. Similar amendments have been introduced for Integrated Tax and Union Territory Tax.

❖ **Notification No. 20/2023- Central Tax (Rate) dated 19.10.2023**

Vide this notification, the CBIC has made amendments in Notification No. 05/2017-Central Tax (Rate) dated 28.06.2017 to provide that refund of unutilized ITC shall be allowed where the credit has accumulated on account of the rate of tax on inputs being higher than the rate of tax on the output only on polyester film/plastic film used in the manufacturing of imitation zari thread or yarn. The said amendment will come into effect from 20.10.2023. Similar amendments have been introduced for Integrated Tax and Union Territory Tax.

❖ **Notification No. 52/2023- Central Tax dated 26.10.2023**

Through this notification, the CBIC has made amendments to CGST Rules, 2017, some of which are:

- ✚ Sub-rule (2) has been inserted in Rule 28 of the CGST Rules, 2017 to provide the value of supply of corporate guarantee to any banking company or financial institution by the supplier on behalf of the recipient (the supplier and the recipient being related persons) to be higher of (i) 1% of the amount of such guarantee offered or (ii) actual consideration.
- ✚ Rule 142(3) has been amended to provide that the proper officer is to issue an intimation in Form GST DRC-05 upon receiving the intimation in Form GST DRC-03 from a person making voluntary payment of tax, interest, penalty under Sections 73 or 74 of the CGST Act, 2017. Earlier the proper officer was required to issue an order in Form GST DRC-05.
- ✚ Rule 159(2) has been amended to provide that the order for provisional attachment in Form GST DRC-22 shall not be valid after the expiry of one year from the date of the said order. This will facilitate the release of provisionally attached properties after the expiry of one year, without the need for a separate specific written order from the Commissioner. Simultaneous amendment has been made in Form GST DRC-22 to give such effect.
- ✚ Form GST REG-01 has been amended to provide that One Person Company can now apply for GST registration using the said form.
- ✚ Form GST REG-08 has been replaced with a new format for cancellation of registration orders as a tax deductor at source or tax collector at source. The revised format includes different scenarios for cancellation, along with its grounds and effective dates.

❖ **Notification No. 05/2023- Integrated Tax dated 26.10.2023**

Through this notification, the CBIC has allowed all suppliers making the supply of goods or services (except the commodities like pan masala, tobacco, gutkha, etc. mentioned in Notification No. 1/2023-



Integrated Tax dated 31.07.2023) to Special Economic Zone Developer or Unit undertaking authorized operations on payment of integrated tax, to claim the refund of the tax so paid.

CIRCULARS

❖ **Circular No. 202/14/2023- GST dated 27.10.2023**

Among the five conditions for a supply of service to qualify as an export of service, one of them is that the payment must be received by the supplier of service in convertible foreign exchange or Indian rupees wherever permitted by the Reserve Bank of India. In this regard, to simplify the process and promote the ease of doing business for the exporter, the CBIC has clarified that when Indian exporters of services receive payments in INR through designated Special Rupee Vostro Accounts, they fulfill the aforementioned condition for qualifying as export of services.

❖ **Circular No. 203/15/2023- GST dated 27.10.2023**

Through this circular, the CBIC has offered valuable insights into the determination of the place of supply in the case of the following services:

- ✚ **Place of supply in case of supply of service of transportation of goods including through mail and courier** – It has been clarified that in case of supply of service of transportation of goods including through mail and courier, where location of supplier of services or location of recipient of service is outside India, it will be determined by Section 13(2) of the IGST Act, 2017 wherein the place of supply of such service shall be the location of recipient of services and in cases where the location of recipient of service is not available in the ordinary course of business, the place of supply shall be the location of supplier of services.
- ✚ **Place of supply in case of the supply of services in respect of advertising services procuring space on hoardings or billboards for their clients in various states** – Where there is a sale of space or rights to use space on immovable property (hoarding/structure) for displaying advertisements, the place of supply will be the location of that hoarding or structure and it will be governed by Section 12(3)(a) of the IGST Act which provides the place of supply of space on an immovable property or grant of rights to use an immovable property. Further, in cases where the advertising company merely avails services from the vendor without the sale of space, it will fall under advertisements services, and the place of supply will be determined according to Section 12(2) of the IGST Act, 2017 which defines the place of supply of services to a registered person to be the location of such person otherwise the location of the recipient or the location of supplies in case of supply of services made to a person other than registered person.
- ✚ **Place of supply for co-location services involving renting space for servers and IT infrastructure** – In the case of Co-location services, it has been clarified that these services are like “Hosting and Information Technology (IT) infrastructure provisioning services” and not “renting of immovable property service”. Hence, the place of supply shall be the location of the recipient of the service. However, if the agreement restricts services to basic space and infrastructure without IT-related components, it falls under the category of renting of immovable property and the place of supply of such service will be determined by Section 12(3)(a) of IGST Act, 2017 wherein the place of supply will be the location of immovable property.

❖ **Circular No. 204/16/2023- GST dated 27.10.2023**

Through this circular, the CBIC has provided the following clarification on issues about the taxability and valuation of the activity of personal and corporate guarantees provided by the directors to banks in GST.



- ✚ **Taxability of Personal Guarantee by Directors:** According to the CGST Act, 2017, directors and companies are considered related persons. Therefore, the personal guarantee provided by the director of a company is to be considered as a supply of service, even when made without consideration, and to determine the taxable value, Rule 28 of the CGST Rules, 2017 is to be invoked. However, the circular has clarified that if the RBI mandates that no consideration, including commission or fees, can be paid to directors for providing personal guarantees, the open market value is effectively zero. Therefore, no GST is payable on such supplies when no consideration can be paid. Moreover, only in exceptional cases where directors or guarantors are paid remuneration, the taxable value of the supply of service is the remuneration or consideration provided by the company, directly or indirectly.
- ✚ **Taxability of Corporate Guarantee:** When a company provides a corporate guarantee to a bank or financial institution to secure credit facilities for another related company, even without any consideration, this action is considered a supply of service between related parties. The value of such supplies will be determined based on new sub-rule 28(2) of the CGST Rules, 2017, irrespective of whether full ITC is available to the recipient of services or not.

❖ **Circular No. 205/17/2023- GST dated 31.10.2023**

CBIC has clarified that GST @ 5% will apply to imitation zari thread or yarn, made from metalized polyester film/ plastic film. Further, no refund will be allowed on polyester film (metalized)/ plastic film on account of the inversion of the tax rate.

❖ **Circular No. 206/18/2023- GST dated 31.10.2023**

Through this circular, the CBIC has clarified regarding the levy of GST on the following issues:

- ✚ **Whether 'same line of business' in case of passenger transport service and renting of motor vehicles includes leasing of motor vehicles without operators** – Suppliers opting to pay GST @5% on passenger transport services by motor vehicle (SAC 9964) or rental services of motor vehicles with operator (SAC 9966) cannot claim input tax credit (ITC) on inward supply of leasing of motor vehicles without operator (SAC 9973). Accordingly, leasing motor vehicles without operators does not fall in the same line of business as transporting passengers and renting motor vehicles.
- ✚ **Whether GST is applicable on reimbursement of electricity charges received by real estate companies, malls, airport operators, etc. from their lessees/occupants** – Electricity when being supplied bundled with renting of immovable property and/ or maintenance of premises, forms a part of the composite supply. The principal supply is the renting of immovable property and/or maintenance of the premise and the supply of electricity is an ancillary supply. Moreover, even if the electricity is billed separately, the supplies will constitute a composite supply, and the rate of principal supply, i.e. GST rate on renting of immovable property and/or maintenance of premise would be applicable.
- ✚ **Whether job work for processing of barley into malted barley attracts GST @5% or 18%** – Malt is a food product that can be directly consumed as part of food preparations or can be used as an ingredient in food products and also used for the manufacture of beer and alcoholic liquor for human consumption. However, irrespective of end-use, the conversion of barley into malt amounts to job work with food products. Accordingly, the job work services concerning the manufacture of malt are covered by Sr. No. 26(i)(f) of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 which covers "job work relation to all food and food products" and will attract GST @ 5%.



- ✚ **Whether District Minerals Foundation Trusts (DMFTs) set up by the State Governments are Governmental Authorities** – DMFTs work for the interest and benefit of persons and provide services related to drinking water supply, environment protection, health care facilities, education, welfare of women and children, supply of medical equipment, etc. These activities are enlisted in the Eleventh Schedule and Twelfth Schedule of the Constitution of India. Accordingly, DMFTs set up by the State Governments are Governmental Authorities and thus eligible for the same exemptions under GST as that available to other Governmental Authority.
- ✚ **Whether supply of pure services and composite supplies by way of horticulture/ horticulture works made to CPWD are eligible for exemption from GST** – Public parks in governmental residential colonies, government offices, and other public areas are developed and maintained by CPWD. These functions are entrusted to Panchayats and Municipalities under Articles 243G and 243W of the Indian Constitution. Accordingly, the supply of pure services and composite supplies by way of horticulture/horticulture works (where the value of goods constitutes not more than 25% of the total value of supply) made to CPWD are eligible for exemption from GST under Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017.

CUSTOMS

NOTIFICATIONS

❖ **Notification No. 58/2023 – Customs dated 09.10.2023**

The Bilateral Safeguard investigation conducted by the Directorate General of Trade Remedies revealed that the increased import of “Ferro Molybdenum”, from Korea RP has caused serious injury to the domestic industry and accordingly recommended to increase in the rate of customs duty on the said goods. Therefore, to protect and strengthen the domestic industry, the CBIC, by virtue of this notification has imposed the following customs duty on Ferro Molybdenum, w.e.f. 10.10.2023, originating in the Republic of Korea and imported into India:

- ✚ Import duty of 5% that shall apply up till and inclusive of 09.10.2024 and
- ✚ Import duty of 3.75% which shall be applicable from 10.10.2024 up to 09.10.2025.

❖ **Notification No. 59/2023 - Customs dated 13.10.2023**

By virtue of this notification, the CBIC has extended the current applicable export duty of 20% on parboiled rice up to 31.03.2024.

❖ **Notification No. 60/2023 - Customs dated 19.10.2023**

Through this notification, the CBIC has inserted an additional condition that foreign-going vessels when converted to coastal run subject to its reconversion to foreign-going vessels in six months shall be exempted. The term “Foreign going vessel” shall have the same meaning as assigned under section 2(21) of the Customs Act, 1962, and “Conversion to the coastal vessel” shall include the vessel granted the necessary license under the Merchant Shipping Act, 1958. Further, through this notification, the CBIC has provided exemption from customs duty on the import of Gold Silver, or both by a new list of banks provided in List 34A.



❖ **Notification No. 74/2023- Customs (N.T.) dated 06.10.2023**

By virtue of this notification, the CBIC has appointed air freight stations at Village Khajod, Taluka Majura, District Surat in Gujarat for unloading imported goods and loading export goods. The term “goods” at this location encompasses diamonds, precious and semi-precious stones, pearls, gold or other precious metal jewelry, industrial diamonds (both natural and synthetic), and synthetic stones.

❖ **Notification No. 77/2023- Customs (N.T.) dated 20.10.2023**

Through this notification, the CBIC revised all industry rates of duty drawback which will be in effect from 30.10.2023. Please check this notification to see the rates applicable on your products.

❖ **Notification No. 10/2023- Customs (ADD) dated 12.10.2023**

The Directorate General of Trade Remedies concluded that there is a likelihood of continuation or recurrence of dumping and injury to the domestic industry in case the anti-dumping duty on imports of “flax yarn of below 70 lea count” is ceased. Accordingly, through this notification, the CBIC imposed an anti-dumping duty on the imports of the said goods, originating in or exported from China PR. However, the anti-dumping duty so imposed will be levied for five years and shall only be payable in Indian currency.

CIRCULARS

❖ **Circular No. 25/2023- Customs dated 25.10.2023**

Through this circular, the CBIC has included Surat in the list of jurisdictions where the scheme for setting up private/public bonded warehouses in SEZ/DTA for import and re-export of cut and polished diamonds, cut and polished colored gemstones, uncut and unset precious and semi-precious stones will be applicable.

❖ **Circular No. 26/2023- Customs dated 26.10.2023**

Through this circular, the CBIC has announced the silent features of the revised All Industry Rates (AIRs) of Duty Drawback which will have far-reaching implications on trade and exports, some of which are:

- ✚ **Identification of Tariff Items:** The revised rates specify AIRs for each tariff item and to claim these AIRs, the relevant tariff item should be suffixed with the letter ‘B’.
- ✚ **Special Advance Authorization Scheme:** The circular also specifies AIRs for goods covered under Chapters 61 and 62 related to apparel and clothing accessories, made under the Special Advance Authorization Scheme. To claim these AIRs, the relevant tariff item should be suffixed with the letter ‘D’.
- ✚ **Increased Rates:** Certain items, such as chemicals, finished and lining leather, textiles, carpets, glassware, and gold/silver jewelry, have seen an increase in AIRs. These increases are attributed to changes in duties, import input prices, export values, and import intensity.
- ✚ **Clarification on Singular and Plural Terms:** The circular clarifies that terms in singular or plural, according to the General Clauses Act, 1897, include both.
- ✚ **Rationalized Rates:** Rates have been rationalized for various items, including textiles made of nylon, due to factors such as changes in the rate of Basic Customs Duty, import input prices, export values, and import intensity.
- ✚ **Caps on Duty Drawback Amount:** Appropriate caps have been provided where necessary to set an upper limit on the Duty Drawback.



FOREIGN TRADE POLICY

NOTIFICATIONS

- ❖ **Notification No. 34/2023 dated 04.10.2023**
DGFT has revised the period for applying the registration under the Coal Import Monitoring System (CIMS). With the new amendment, the importer can apply for registration not earlier than the 60th day and till the arrival date (zero-day) of import consignment at the gateway port.
- ❖ **Notification No. 35/2023 dated 11.10.2023**
DGFT has notified qualified jewelers as notified by the International Financial Services Centres Authority (IFSCA), to import silver through India International Bullion Exchange IFSC Ltd.
- ❖ **Notification No. 36/2023 dated 18.10.2023**
Through this notification, DGFT has extended the date of restriction on the export of sugar (raw sugar, white sugar, refined sugar, and organic sugar) beyond 31.10.2023 till further orders. However, this restriction does not apply to sugar being exported to the EU and USA and CXL and TRQ quota.
- ❖ **Notification No. 37/2023 dated 18.10.2023**
DGFT has permitted the export of Non-Basmati White Rice (under HS code 1006 30 90) to Nepal, Cameroon, Cote d' Ivore, Republic of Guinea, Malaysia, Philippines, and Seychelles through National Cooperative Exports Limited (NCEL).
- ❖ **Notification No. 38/2023 dated 19.10.2023**
DGFT has provided that the import of IT Hardware which is manufactured in SEZ may be imported into Domestic Tariff Area (DTA) without an Import Authorization. Further, import by private entities on behalf of Central and state Government Entities, for Defence & Security purposes, shall be exempted from an import authorization. Moreover, the exemption from import authorization is provided for import for repair and/or return and/or replacement of IT Hardware sold earlier as well as re-import of items repaired abroad on a self-certification basis.
- ❖ **Notification No. 39/2023 dated 23.10.2023**
DGFT has provided that the import of Human embryos and human Gametes is Prohibited by the ART (Regulation) Act, 2021, and the Surrogacy (Regulation) Act, 2021.
- ❖ **Notification No. 40/2023 dated 26.10.2023**
DGFT updated the import policy conditions concerning FSSAI Regulations. All the vegetable oils/ refined vegetable oils/ solvent-extracted oils mentioned in and conforming to the standards specified in the Food Safety and Standards (Food Products Standards and Food Additives) Regulation, 2011 (made under the Food Safety & Standards Act, 2006) are freely importable. Further, the import of coconut/ copra oil is permitted through State Trading Enterprises.
- ❖ **Notification No. 41/2023 dated 27.10.2023**
DGFT has extended the period for the accreditation of Halal Certification Bodies and the registration of export units up to 05.04.2024



❖ **Notification No. 42/2023 dated 28.10.2023**

The DGFT vide this notification has declared that onion exports are 'Free' with a minimum export price of US \$ 800 F.O.B. per Metric Ton imposed until 31.12.2023. However, the consignment of onions will be allowed to be exported without MEP where the consignment has entered the Customs station for exportation before this notification and is registered in the electronic systems of the Custodian of the Customs Station with verifiable evidence. Such export duty is not refundable if paid before issuance of this notification. The said notification shall come into force w.e.f. 29.10.2023.

PUBLIC NOTICE

❖ **Public Notice No. 32/2023 dated 09.10.2023**

DGFT has permitted the Status Holder Certificate to be generated electronically based on export data available in the DGCI&S database. This amendment will further the ease of doing business by doing away with the requirement for the exporter to apply online for getting the recognition of status holder. However, wherever required, exporters may also file an application online for recognition as well as for up-gradation of Status under the Policy in ANF 1B along with a CA certificate.

❖ **Public Notice No. 33/2023 dated 12.10.2023**

DGFT has suspended the Standard Input Output Norm (SION) E-125 for the export of Shea Stearine with immediate effect till a new SION is established based on revised production and consumption data submitted by exporting firms.

❖ **Public Notice No. 34/2023 dated 13.10.2023**

To facilitate ease of doing business and reduce transaction costs, the DGFT has allowed for the utilization of input tax credit on GST paid on duty-free imported or indigenously procedure materials under the advance authorization scheme.

POLICY CIRCULAR

❖ **Circular No. 05/2023-24 dated 16.10.2023**

DGFT has clarified that the re-import of unsold jewellery exported for exhibition abroad may be allowed clearance by customs authorities without the import license.

❖ **Circular No. 06/2023-24 dated 19.10.2023**

DGFT has provided the following clarifications concerning the implementation of Import Management Systems for IT Hardware:

- ✚ SEZ units and EOUs/ETHP/STPI/BTP are not required to obtain a restricted import authorization for import of restricted IT Hardware. The given exemption is only allowed for the captive consumption of concerned importing units.
- ✚ There are no import restrictions on spares, assemblies, sub-assemblies, components, and other inputs necessary for the IT Hardware devices.
- ✚ IT Hardware items such as MRI machines, CNC machines, Unmanned Aerial Vehicles (UAVs), etc. essential for Capital Goods are exempted from licensing requirements.
- ✚ The importers are allowed to apply for multiple authorizations which shall be valid up to 30.09.2024.



TRADE NOTICE

❖ **Trade Notice No. 28/2023-24 dated 09.10.2023**

DGFT has provided the following procedure for the automatic system-based Issuance of Status Holder Certificates (e-SHC) with no requirement of filing any application by the exporter:

- ✚ The individual exporters will be divided into the five status categories based on available merchandise export figures from EDI, non-EDI Ports, and SEZ Ports as per the eligibility criterion in FTP 2023. This will remove the requirement by the exporter to file any kind of application and the e-SHC for a particular status category will be generated automatically by the IT system.
- ✚ The e-SHC will be made available to exporting entities in their registered email and customer dashboard after necessary IT iterations, by 15th August each year.
- ✚ Such exporters who do not receive their e-SHCs within 48 hours of the issue of this Trade Notice will need to make an application for the grant of a Status certificate as per the FTP, 2023 provisions in the existing IT module along with supporting CA certificate.
- ✚ All filed pending/in-process Status Applications under FTP 2023 will be scrutinized by the IT system for auto-issuance of Status Holder certificates, where the applied status category is the same as identified by the system.
- ✚ On the issue of a new e-SHC with a higher/upgraded status category by the DGFT Regional Office, the earlier e-SHC certificate will be automatically cancelled by the IT system.

❖ **Trade Notice No. 29/2023-24 dated 13.10.2023**

DGFT decided to expedite the disposal of pending applications for Export Obligation Discharge Certificate (EODC) for Advance Authorization and EPCG by organizing a 2-week EODC camp w.e.f 13.11.2023 to 24.11.2023.

❖ **Trade Notice No. 31/2023-24 dated 19.10.2023**

To improve the ease of doing business, the DGFT has decided to discontinue the issuance of physical copies of Authorization for restricted imports w.e.f. 19.10.2023. In this regard, the DGFT has suggested the following changes:

- ✚ All authorization for restricted imports issued on or after 19.10.2023 for EDI Ports is to be issued electronically and not on paper. The authorization data shall be transmitted electronically to the Customs Port of Registration.
- ✚ Authorization for restricted imports issued for any non-EDI shall continue to be issued on paper.
- ✚ Amendment or revalidation of any authorization for restricted imports issued before 19.10.2023 shall be processed in the existing manner wherein the paper copy of the amendment letter shall be issued and the amendment letter number shall be duly endorsed on the original jurisdiction.
- ✚ In case of restricted items under EPCG, the authorization for restricted import number and date is required to duly be endorsed in the condition sheet of EPGC authorization.

RATIO DECIDENDI

ERSTWHILE LAW

- ❖ **Commissioner, Customs Central Excise and Service Tax, Patna vs M/s Shapoorji Pallonji and Company Pvt. Ltd., Supreme Court of India**



M/s Shapoorji Paloonji and Company Pvt. Ltd. was awarded the contract for construction works from NBCC India Ltd. which in turn was appointed as a Project Management consultant by IIT Patna. However, the contract price did not include the service tax and the respondent was to be reimbursed for the tax paid upon providing receipts. However, an audit objection arose, contending that service providers for educational institutions categorized as “governmental authorities” were exempt from service tax, and accordingly, IIT Patna was directed to recover or adjust the service tax paid to the respondent. Apprehensive of the initiation of recovery proceedings for the service tax already paid, the respondent approached the Patna High Court which ruled in favor of the respondent and directed the refund of the service tax collected. However, the Commissioner filed a civil appeal against the judgment passed by the High Court of Patna whereby the writ petition filed by the respondent seeking a refund of service tax was allowed. The Supreme Court observed that a bare perusal of the exemption notification revealed that the scope of the definition of “governmental authority” was very restrictive and accordingly its scope was expanded vide the clarification notification which defined the same as “any authority or a board or any other body; (i) set up by an Act of Parliament or a State Legislature; or (ii) established by Government, with 90% or more participation by way of equity or control, to carry out any function entrusted to a municipality under Article 243W of the Constitution”. Accordingly, the exemption from payment of service tax was available even to an authority or a board or any other body, set up by an Act of Parliament or a State Legislature without the condition of having been established with 90% or more participation by way of equity or control by Government to carry out any function entrusted to a municipality under Article 243W of the Constitution. The conjunction “or” between sub-clauses (i) and (ii) divides the two clauses into parts, wherein the first part is independent of the second part. Moreover, the proviso stating that “90% or more participation by way of equity or control, to carry out any function entrusted to a municipality under Article 243W of the Constitution” would be applicable only with respect to sub-clause (ii), i.e. “Governmental Authority” which is established by Government. Further, IIT Patna is established through an Act enacted under Article 248 of the Constitution, and merely because the statute does not yield the desired results, that cannot be a reason to overstep and cross the Lakshman Rekha by employing tools of interpretation to interpret a provision keeping in mind its outcome. Accordingly, the Apex Court held that service tax is not leviable on services provided to the Governmental Authority.

GST LAW

- ❖ **Mr. Goparaj Gopalakrishnan Pillai vs State Tax Officer & Joint Commissioner, Kerala High Court**
In the instant case, the petitioner filed a writ petition before the Hon’ble High Court of Kerala, challenging the impugned order disallowing the excess ITC claimed by the Petitioner on account of the supplier not remitting the tax collected on the supply. The Hon’ble High Court held that ITC should not be denied on the grounds that GST paid is not reflected in Form GSTR-2A due to non-remittance by the supplier. Therefore, the High Court set aside the impugned order to the extent of denial of ITC and directed the department to examine the evidence placed on record by the Petitioner and pass fresh orders accordingly.
- ❖ **Vijay Sales Enterprises vs Superintendent Range 25, GST Division, Delhi High Court**
In the instant case, the Petitioner approached the High Court of Delhi challenging the show cause notice and the impugned order passed consequentially, cancelling the Petitioner’s GST registration with retrospective effect. The High Court observed that it is *prima facie* clear that the impugned order has been



passed in violation of the principles of natural justice. The show cause notice did not specify the allegations under which the Petitioner's GST registration was proposed to be cancelled. Merely stating that the registration has been obtained by means of fraud, wilful misstatement, and suppression of facts is not sufficient without specifying what the alleged fraud has been committed by the Petitioner or the misstatement allegedly made or the facts allegedly suppressed. Further, the impugned order is also not informed by reason as it merely states that the reply submitted by the Petitioner was unsatisfactory. Since neither the Show Cause Notice nor the impugned order provided any clue as to why the petitioner's GST registration was cancelled, the Hon'ble Court set aside the Show Cause Notice and the impugned order.

CUSTOMS/FOREIGN TRADE POLICY

❖ **M/s Himalaya Tractor Co. vs Commissioner of Customs (Port.), CESTAT Kolkata**

In the instant case, a show cause notice was issued to the Appellant which proposed to re-determine the value of the goods imported based on the value of imports available in the NIDB data and because the goods declared by the Appellant were unbranded which otherwise needs to be treated as branded because of embossing of SORL. The Commissioner of Customs passed the impugned order wherein the value of the imported goods was re-determined as per Rule 4 of the Customs Valuation Rules, 2007. The tribunal observed that the transaction value cannot be rejected only based on the NIDB data because it does not show the import of comparable goods. Moreover, the evidence cited by the Appellant of various instances of import of goods at a lower value than the value declared by them cannot be overlooked. Further, the Appellant is engaged in the business of wholesale import of goods and therefore its value cannot be compared with the goods imported in small quantities which has been done in the present case. Additionally, the tribunal observed that the part number and the embossing of SORL mentioned for identification purposes cannot be considered as the sale of branded goods. Since there is no evidence available on record to reject the transaction value declared by the Appellant, the Tribunal held that the demand of differential duty cannot be sustained and accordingly no penalty stands imposable on this count.

❖ **M/s The Bank of Nova Scotia vs Commissioner of Customs, CESTAT Kolkata**

In the instant case, the appellant, a nominated agency by using exemption notification No. 57/2000 dated 08.05.2000 imported gold/silver/platinum (the goods) without payment of custom duty and supplied the same to various exporters for the manufacture of jewelry and subsequent export. Since the appellant failed to submit the BRC as prescribed in the Circular No. 24/98-Cus. dated, the impugned order was passed against the appellant wherein the customs duty foregone on the goods supplied to the exporters was demanded and a penalty was imposed. The Tribunal observed that the provisions of the said exemption notification nowhere state that the nominated agency should obtain the BRC from the exporters within the prescribed period for availing the benefit of the exemption notification. Such a new condition was only prescribed in Circular 28/2009. Further, it is a settled principle that a new condition that does not form part of the notification cannot be introduced through a circular to restrict the scope of the exemption notification. Accordingly, the demand for customs duty from the appellant is not sustainable. Moreover, since the demand for duty is not sustainable, the question of demanding a redemption fine and imposing a penalty does not arise.



NEWS NUGGETS

- ❖ [GST issues advisory on mandatory registration and returns of persons supplying online money gaming services or OIDAR or both](#)
- ❖ [GSTN introducing enrollment facility for GST unregistered suppliers to supply goods through e-commerce operators](#)
- ❖ [GSTN defers mandatory implementation of 6-digit HSN in e-invoices and e-way bills](#)
- ❖ [GSTN enables Form DRC-01 to deal with discrepancies between GSTR-2B and GSTR-3B](#)
- ❖ [Online gaming companies face Rs. 1 Lakh Crore GST Show Cause Notices](#)
- ❖ [Kerala GST Department issued guidelines for separate notices to taxpayers under sections 73 and 74 of the KGST Act](#)

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