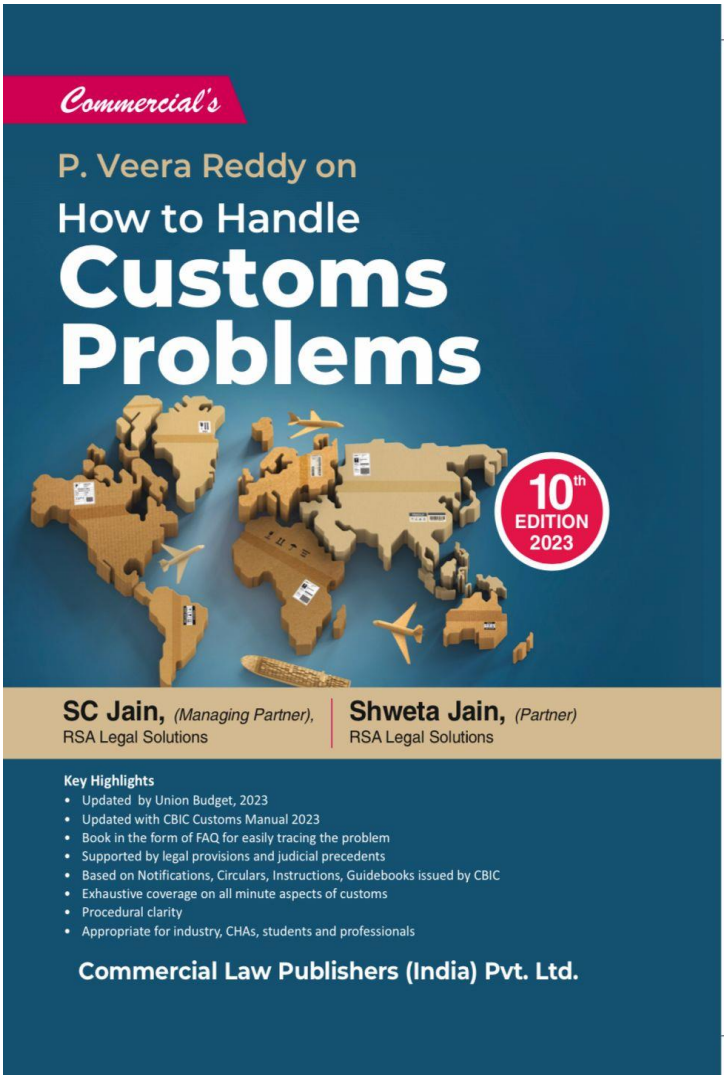
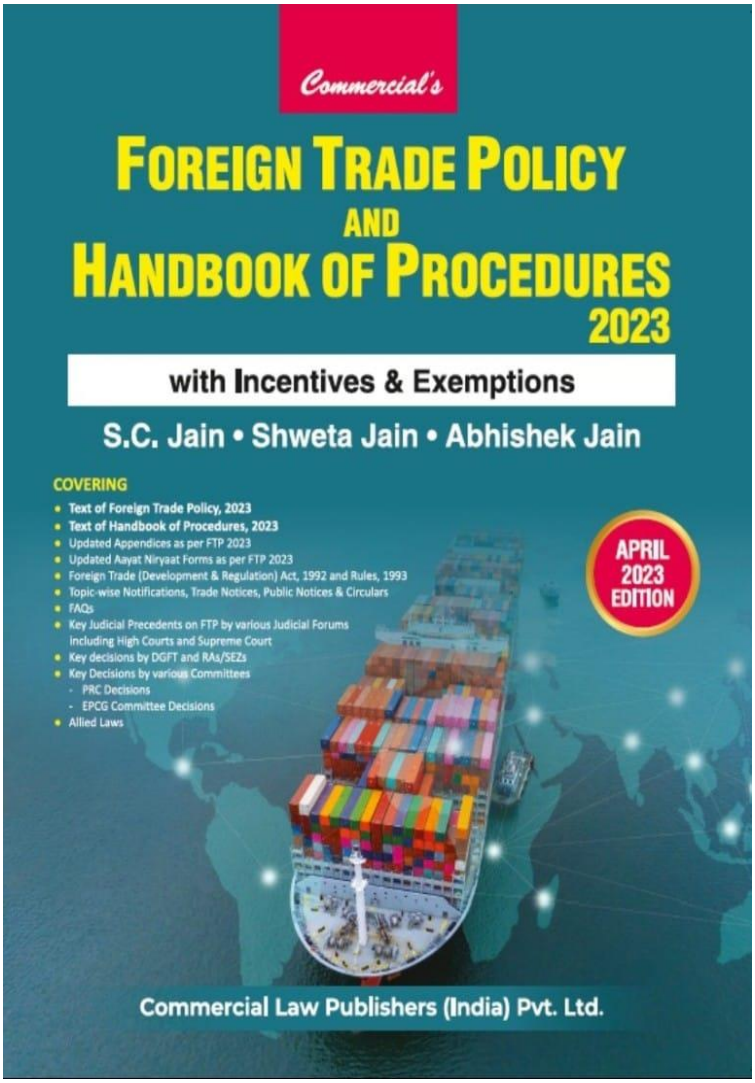
INDIRECT TAX NEWSLETTER
October, 2023 (updated till 30.09.2023)





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

Key highlights of the book are:

- Updated by Union Budget, 2023
- Updated by CBIC Customs Manual, 2023
- Supported by legal provisions and judicial precedents
- Procedural clarity
- Appropriate for CHAs, industry, students and professionals

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

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

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

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

SEMINAR FOR DGFT

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

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ARTICLES BY TEAM RSA LEGAL

❖ Article on "Anomalies in Notification No. 52/2003- Cus dated 31.03.2003 pertaining to EOUs" penned down by S.C. Jain (Managing Partner)

1. The EOU Scheme is an Export Promotion Scheme enshrined under Chapter 6 of the Foreign Trade Policy. The Scheme enables an EOU to import the inputs, capital goods, packing materials and consumables etc. without payment of Customs duties. **Notification No. 52/2003-Cus dated 31.3.2003** (hereinafter referred as "said Notification"), as amended from time to time, has been issued by the Central Government which permits the imports of the said goods without payment of customs duty subject to the various terms and conditions specified therein.

2. The objective is that all goods manufactured by an EOU (for short Unit) are to be exported outside India. In order to provide flexibility in the operations and other practical situations, provisions have been made in the Foreign Trade Policy and also in the above referred the custom notification to clear the goods in domestic tariff area (DTA).

3. On perusal of the said terms and conditions, it has been observed that there are several inbuilt anomalies in the said Notification which leads to unnecessary correspondence and litigation with the Department. In case these anomalies are removed, then unnecessary litigation and correspondence can be avoided. The anomalies in the Notification are detailed in the succeeding paragraphs.

Conflict between Paragraph 3(d)(ii) and Paragraph 3(d)(iii)

4. There is an apparent conflict between Para 3(d)(ii) and Para 3(d)(iii) of Notification No.52/2003-Cus dated 31.03.2003. For ease of reference, the said paragraphs are extracted below: –

"(3) The unit executes a bond in such form and for such sums and with such authority, as may be specified by such Officer, binding himself, –

…….

…….

"(d) to pay on demand –

"(i) an amount equal to duty leviable on the goods and interest at a rate as specified in the notification of the Government of India in the Ministry of Finance (Department of Revenue) issued under section 28AB of the said Customs Act on the said duty from the date of duty-free import of the said goods till the date of payment of such duty, if-

…….

…….

"(ii) In the case of goods other than the capital goods, such goods as are not proved to the satisfaction of the said officer to have been used in connection with the production or packaging of goods for export out of India or cleared for home consumption ***within the period of validity period of the Letter of Permission (LOP);***

……

"(iii) in case of,-

(a) goods produced or packaged, such goods have not been exported out of India, and

> ***(b) unused goods*** *(including empty cones, bobbins or containers, if any, suitable for repeated use) as have not been exported or cleared for home consumption,*
> ***within a period of one year from the date of import*** *or procurement of such goods or within such extended period as the said officer, as the case may be, on being satisfied that there is sufficient cause for not using them as above within the said period, allow;"*

5. From a perusal of the aforesaid provisions, it can be seen that the Paragraph 3(d)(ii) provides that all goods other than the capital goods have to be used within the validity period of the LOP. This means that if the LOP is valid for a period of five years, and the inputs are imported in the first year of the LOP, then there would be no contravention even if the said inputs have been used in another four years or more till the validity of the LOP. On the other hand, Para 3(d)(iii) provides that if the goods are not used or cleared for home consumption within a period of **one year from the date of import**, then he will be liable to pay Customs duty on such goods. Thus, there is an apparent conflict between the two provisions. This is creating unnecessary problems for the units causing unnecessary correspondence and litigation.

6. It is pertinent to note here that initially in the said Notification, provision was to use the inputs within a period of one year from the date of import but later on looking into the difficulties faced by the trade and industry and to provide flexibility in this regard, the provision was amended by **Notification No.34/2015-Cus dated 25.05.2015** whereby it was provided that the inputs can be used within the validity period of the LOP. **In the process, the later portion of the provision i.e. 3(d)(iii) was not amended, which created this anomaly**. Obviously, the Department in the majority of cases takes the pro-revenue approach where the inputs are not used within the period of one year from the date of import and issues the demand notices. **This litigation and correspondence can be avoided if a suitable clarification or amendment is done on this aspect**.

De-bonding in Advance Authorization/ EPCG Scheme

7. Para 4 of the Notification provides that an EOU can de-bond its inputs under the Advance Authorization Scheme and the capital goods under the prevailing EPCG Scheme. However, there is absolutely no mechanism to effectuate the same. Needless to say that in the era of EDI System where the licenses are issued online by the DGFT and transmitted online to the Online portal of Customs, **it becomes impossible** to get the inputs under the Advance Authorization and the capital goods under the EPCG Scheme. It is pertinent to note here that a person obtains the Advance Authorizations and the EPCG from the licensing authority which will be transmitted electronically to the EDI portal of the Customs. The application for making the duty payment in respect of the goods lying in stock or for getting them de-bonded under Advance Authorization/ EPCG Scheme, is to be made before the jurisdictional Officer/s of the **Customs Preventive**. It is to be noted that after 2017, all EOUs have been brought under the supervision and administrative control of the Customs Preventive. These officers of Customs Preventive find no way to make the debit in the Advance Authorizations or EPCG Authorizations obtained by the unit as they have no means to do that. Therefore, though this provision is finding place in the Foreign Trade Policy and in the Customs Notification, it is not being effectuated in the absence of the procedure in this regard. Hence a suitable mechanism has to be devised at the end of the Customs in this regard so that this substantive provision of law can be followed/ observed.

Payment of customs duty on inputs used in goods cleared in DTA

8. Para 3 of the Notification provides that if any manufactured goods are sold in DTA, then the Unit will pay the Customs duty foregone on the inputs used in the manufacture of such goods. Firstly, it is not clear as to how the Customs duty foregone on the inputs used in the manufacture of the finished goods will be calculated. Practically, the units follow FIFO method in this regard to work out the duty element which has been forgone on the said inputs. But it needs clarification by way of Circular or Instruction clarifying the method that is to be adopted in working out the duty on the inputs in such a situation. Secondly, it is not clear as to when the said Customs duty has to be paid. In other words, where the Customs duty foregone has to be paid in advance before the clearance of the goods in DTA or is it possible to pay even after the clearance of the goods. It is also not clear whether the duty has to be paid for each consignment separately or a unit can make a bundle of the clearances and can make the payment of duty in one instance to avoid the repeated payment of customs duty. Furthermore, there is no mechanism to pay the duty online through the EDI portal in this type of situation. Rather it has to be paid manually through TR-6 Challans in the bank.

9. It has been clarified in the Explanation in the said notification that on payment of customs duty it would be deemed as if no exemption was availed at the time of import. A doubt arises as to whether the said duty has to be paid without interest or it has to be paid along with interest. If the inputs were imported eight months back without payment of duty in the manufacture of goods sold now in DTA, then the question is whether the duty is also liable to be paid with interest for the eight months or it may be inferred that no interest is to be paid in such a situation because the duty itself has become liable at the time of clearance of the goods in DTA. In any case, clarification is needed to dispel the doubt and stop the divergent practice in the field formations in this regard.

In Nutshell: These are some of the glaring anomalies in the Customs **Notification No.52/2003-Cus dated 31.03.2003** which needs to be clarified by the CBEC for the benefit of trade /industry and in order to avoid the unnecessary correspondence and litigation.

❖ Article on "Challenges in Paying Duties, Taxes and More: Importer/Exporter Woes" penned down by S.C. Jain (Managing Partner)

Immense difficulties being faced by Importers/ Exporters and Other Persons in making payment of duties, taxes, interest, penalty, fee etc.

1. Over the period of last few years, it could be seen that all activities pertaining to the assessment, paying of duties/ taxes, filing of the replies to queries, uploading of documents etc has been done through Online Portal of EDI system of Customs. Apparently, the obvious intention behind the same is to facilitate the 'Ease of Doing Business' so that the unnecessary wastage of time/energy/money in visiting the Government authorities can be minimized. The intention is also to avoid or to minimize the meetings with the Government authorities to curb the menace of corruption. However, it has been seen that despite the clear objective and intention, there are a number of situations where the said facilities are inadequate or are totally missing resulting in multiple difficulties that are being faced by the exporter/ importer/other concerned persons. In today's article, we will discuss and highlight the various problems being faced in making the payment of

customs duties, excise duties, service tax, penalties, interest, fee, pre-deposits etc. through Online portal or through the designated banks.

2. The payment of customs duties and Interest in case of failure to fulfill the export obligation under the Advance Authorization, EPCG, EOU Schemes etc is a case in point. It is well known that the exporters are required to pay the applicable customs duties along with interest in case of their failure to fulfil the export obligation under the Advance Authorization or EPCG or EOU Scheme. Only after the payment of the said duty and interest, the case can be closed by the licensing authority working under the aegis of the DGFT.

3. However, when a person visits the portal for paying the customs duty and interest, he does not find any TABs to pay the same Online on EDI system in such situation. Consequently, the said duty and interest have to be deposited manually through TR-6 Challan in the designated branches of the authorized banks. But when a person goes to the bank, the bank invariably asks such person to get the certification thereof from the customs authorities. The Customs Officers, of course, take their own sweet time in certifying the same. Needless to say, this results in multiple visits to the Customs office resulting in wastage of time and money. Needless to say, that the certification from the Customs authorities invariably involves the element of corruption.

4. Interestingly, in Para 4.50 of the Handbook of Procedure-2023, it has been clearly provided that duty and interest are to be paid Online through the EDI system alone. It further provides that the said duty and interest can be paid suo moto as per own calculation. This means that no verification or certification is needed at the time of making the payment. It seems that the provisions of the Handbook of Procedure vis-à-vis the EDI System are not in sync with each other. This problem can be easily avoided by creating a facility online in the EDI System so that an exporter can pay the duty and interest suo moto as warranted under the Handbook of Procedures. But the practice for making the payment of duty and interest with customs is contrary to the mandate of Handbook resulting in harassment and contravention of Handbook mandate.

5. Similar problems are faced in depositing the amount of duty against the show cause notice or confirmed duty demand against the adjudication order or appellate order. Likewise, many a times, penalties are imposed on the individuals or firms on account of contravention of the provisions of the Customs Act, 1962. Such persons may be having an IEC or may not be having an IEC. Identical problem as stated above is being faced by such persons in depositing the penalty with the Customs Department.

6. As per Section 129DD of the Customs Act, 1962, if any appeal has to be filed before the Revisionary Authority, Government of India, the appeal has to be accompanied with a fee of Rs.1000/-. Nowadays, the banks clearly refuse to accept the payment of Rs.1000/- in the absence of certification by the Customs Authorities. In the process, he spends lot of amounts towards commutation charges and other charges for making the payment of just Rs.1,000/-. Nobody can understand the logic in the absence of clear provision for making the payment in this type of situation.

7. Another situation relates to making the pre-deposit of 7.5%/10% while filing the appeal before the appellate authorities. Again, there is no mechanism to pay the same Online through the ICEGATE portal.

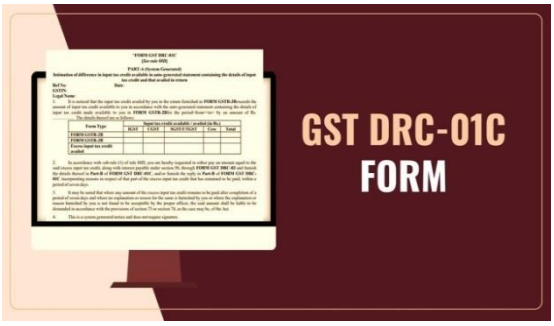
If one chooses to pay manually through TR-6 Challan in the bank, the problem of certification from the Customs authorities is there in such situation also.

8. Interestingly, there is no written provision in the Customs Act or the Rules or Regulations or Circulars which warrants that the payments have to be made only after the same are certified by the Customs authorities. This is happening as a convenient practice for facilitation of the Customs officers irrespective of immense difficulties faced by such persons who intends to payment the payment to exchequer.

9. Last but not the least, in case a person wants to pay excise duty/service tax payment or the interest or the penalty under said laws in respect of the past period and he chooses to pay the same online through the ACES portal, then it requires the old login ID and password of the such excise or service tax assessee. In case, it is not readily available with the assessee, then one has to follow up again with the Excise/ Service Tax authorities to get the same again regenerated. It is unimaginable as to why such a complex procedure is devised even for making the payments to Government that a person has to run from pillar to post.

10. These are just a few difficulties which we have observed over the last few years that are being faced in making the payment through online systems. There can be some other situations which we have not confronted so far. All these types of difficulties which are currently being faced can be eliminated just by creating one more TAB in the EDI System for making the "Miscellaneous Payments", whether they pertain to customs duty or interest or penalties or pre-deposits or any other amount etc. Likewise, a TAB can be created in the ACES System to facilitate the payments of Excise Duty, Service Tax, Penalty or Interest in respect of the past period so that the said payments are done and matters are closed. If this is done, it will result in saving lot of time, money and energy of the person intending to pay the same and also it will reduce work pressure on the Government Officers which unnecessarily has to be done currently. Proactive steps are required to be taken by the Government in this regard. If this is done, it would be another step in facilitating the 'Ease of Doing Business' as per the motto of our Government.

❖ 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 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 "GST Compliance after Amalgamation: A Legal Overview" penned down by Anshul Mittal (Partner)

In an evolving business landscape, mergers and acquisitions are common phenomena. One integral aspect that often requires meticulous attention during these processes is the management of Goods and Services Tax (GST) obligations. The amalgamation of two entities presents unique challenges and considerations in the realm of GST, particularly in terms of return filing, registration, and the transfer of Input Tax Credit (ITC).

1. GST Registration Post-Amalgamation: When an amalgamation occurs, the legal existence of the transferor company ceases. Consequently, its GST registration needs to be relinquished. As per the CGST Act's Section 29(1), in events like amalgamation or demerger, the GST registration linked to the business should be cancelled. An application for this cancellation must be filed within a stipulated timeframe post the event.

However, it's paramount that all pending transactions or open issues related to the transferor company are addressed prior to this. There may be a transition period during which the company must maintain its GST registration to ensure compliance.

2. Transitioning Smoothly: Steps and Considerations: To ensure a smooth transition:

- The premises of the transferor should be added as an additional place of business under the transferee's GST registration.
- All suppliers of the transferor company should be instructed to issue invoices using the GST registration number of the transferee.
- Both suppliers and customers should be informed of the amalgamation and the consequent change in the GST registration number.

It's beneficial to maintain a communication log, which could act as proof of compliance during any future audits or evaluations.

3. Filing Returns During the Active Registration Period: Until the GST registration is surrendered, the transferor company should continue to file all requisite GST returns. This includes the annual return and reconciliation statement for the pertinent financial year, encompassing the details of both involved companies.

Annual Return (Form GSTR 9) and the reconciliation statement (GSTR-9C) need to be filed, but future requirements will hinge on turnover and any exemptions issued.

4. Transferring Input Tax Credit (ITC): A significant facet of amalgamation is the transfer of unutilized ITC from the transferor to the transferee. The CGST Act and CGST Rules lay down specific procedures for this. Key steps include:

- The transferor filing Form ITC-02 detailing the merger and the transfer of ITC.
- Submitting a CA certificate validating that all assets and liabilities have been transferred.
- The transferee then needs to accept the transferred ITC on the GST portal.

5. The Final GST Return: Once amalgamation is complete and all related obligations are fulfilled, the transferor company's registration is typically cancelled. Following this, the final GST return, Form GSTR-10, should be filed. This is mandatory within a specific timeframe after the registration cancellation.

6. Clearing Misconceptions:

- The dissolution of a company due to amalgamation doesn't negate its obligation to file requisite GST returns for the relevant financial year.
- Companies should continue with GST compliance, including filing monthly returns, till the GST registration is officially surrendered and cancelled.

7. Scope and Limitations: It's crucial to understand that any legal advice or opinion in the context of GST compliance is founded on the specific facts and the prevailing legal scenario. Laws evolve, and businesses must stay updated with the most recent legal provisions and interpretations.

Conclusion: The amalgamation process is intricate, with multiple legal, financial, and operational aspects intertwined. GST compliance remains a critical component to ensure a smooth transition without legal repercussions. Companies are encouraged to seek expert counsel and meticulously plan their GST strategy during amalgamation to mitigate risks and ensure seamless integration.

REGULATORY UPDATES

GST

NOTIFICATIONS

❖ **Notification No. 45/2023-Central Tax dated 06.09.2023**

By virtue of this notification, the CBIC has amended the CGST Rules, 2017 to introduce the following new rules for determining the value of supply under GST for Online Gaming and Casino Gaming:

- Rule 31B stipulates that for online gaming transactions, the value of supply is to be determined by the sum paid or payable to or deposited with the online gaming platform, whether in cash or any other quantifiable form of currency, including virtual digital assets. Furthermore, any amount deposited by the player becomes a constituent of the value of supply, regardless of whether the player has utilized it in gameplay.
- Rule 31C provides that when dealing with casino gaming, the value of supply will be determined by the sum paid for the purchase of tokens, coins or similar items for use in the casino, or any fees paid for entry into such events. Furthermore, any amount refunded by the casino to the player on return of token, coins, chips, as the case may be shall not be deductible from the value of the supply.

Additionally, the said notification offers further clarification that if there is a gain in an online game, event, or similar scenario, any profit received and subsequently used for participating in another event without withdrawing the funds will not be deemed as a payment to the supplier.

❖ **Notification No. 48/2023-Central Tax dated 29.09.2023**

By virtue of this notification, CBIC has appointed 01.10.2023 as the date on which the provisions of the CGST (Amendment) Act, 2023 shall come into force.

❖ **Notification No. 49/2023-Central Tax dated 29.09.2023**

Section 15(5) of the CGST Act, 2017 empowers the Central Government to make valuation rules in respect of such supplies as may be notified and the valuation rules prescribed from Section 15(1) to Section 15(4) shall not apply to such supplies. By virtue of the power provided under Section 15(4), the CBIC vide this notification has notified the following supplies under the said sub-section which will be effective from 01.10.2023:

- Supply of online money gaming;

- Supply of online gaming, other than online money gaming;
- Supply of actionable claims in casinos.

❖ **Notification No. 50/2023-Central Tax dated 29.09.2023**

The said notification has amended Notification No. 66/2017-CT dated 15.11.2017 which provides for an exemption on advance received in case of supply of goods to state that registered persons making a supply of actionable claim as defined under Section 2(102A) of the CGST Act, 2017 will be liable to pay on advance received by them, w.e.f. 01.10.2023.

❖ **Notification No. 51/2023-Central Tax dated 29.09.2023**

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

- Rule 8(1) of the CGST Rules, 2017 has been amended to include a person supplying online money gaming from a place outside India to a person in India referred to in Section 14A of the IGST Act, 2017 in the list of persons who need not declare information as required in Part A of Form GST REG 01.
- Rule 14 of CGST Rules, 2017 has been amended to provide that a person supplying online money gaming from a place outside India to a person in India shall apply for registration in Form GST REG 10 on the Common Portal.
- Rule 31B of the CGST Rules, 2017 which deals with the valuation of supply in connection with online gaming, including online money gaming and Rule 31C of the CGST Rules, 2017 which deals with the valuation of supply in connection with casinos is to be inserted.
- Proviso to Rule 46(f) has been amended to provide that in cases involving supply of online money gaming to a recipient who is unregistered, irrespective of the value of such supply, a tax invoice issued by the registered person shall contain the name of the state of the recipient and the same shall be deemed to be the address on record of the recipient.
- Second proviso to Rule 87(3) has been amended to provide that a person supplying online money gaming from a place outside India to a person in India as referred to in Section 14A of the IGST Act, may make the deposit under sub-rule (2) through international money transfer through Society for Worldwide Interbank Financial Telecommunication payment network.

❖ **Notification No. 11/2023-Central Tax (Rate) dated 29.09.2023**

By virtue of this notification, CBIC has amended Notification No. 01/2017-Central Tax (Rate) dated 28.06.2017 by inserting Serial No. 227A which shall be applicable to any Chapter and to specified and specified actionable claim. Further, the amendment has omitted entries 228 and 229 provided therein. Similar amendments have been made for Integrated Tax (Rate) and Union Territory Tax (Rate).

❖ **Notification No. 03/2023-Integrated Tax dated 29.09.2023**

By virtue of this notification, CBIC has notified supply of online gaming as goods on import of which IGST shall be levied on the value determined under Section 15 of the CGST Act, 2017. Further the said notification has also provided that provisions of Section 3 of the Customs Tariff Act, 1975 shall not apply to such imports.

❖ **Notification No. 04/2023-Integrated Tax dated 29.09.2023**

By virtue of this notification, CBIC has notified the Principal Commissioner of Central Tax, Bengaluru West and all the officers subordinate to him as the officers empowered to grant registration in case of supply of online money gaming provided or agreed to be provided by a person located in non-taxable territory and received by a person in India.

❖ **Notification No. 12/2023-Integrated Tax (Rate) dated 26.09.2023**

By virtue of this notification, CBIC has amended Notification No. 09/2017-IT (Rate) dated 28.06.2017 to substitute a new proviso in place of the existing one in the table against Sr. No. 10 in column (3). The newly substituted proviso provides that the exemption shall not apply to online information and database access or retrieval services received by persons specified in item(a) or item (b).

❖ **Notification No. 13/2023-Integrated Tax (Rate) dated 26.09.2023**

The Finance Ministry has notified an important amendment to the IGST Act, impacting payments related to 'ocean freight' for imported goods. The notification has exempted the 5% IGST payments made for goods imported through ocean freight with effect from October 1, 2023. These changes, come as a relief to importers who were previously obligated to pay a 5% IGST under the RCM. The amendments align with a significant Supreme Court ruling in the Mohit Minerals case [Civil Appeal No. 1390 of 2022], emphasizing that an additional levy on Indian importers for 'supply of services' by shipping lines would contradict the GST Act.

CUSTOMS

NOTIFICATIONS

❖ **Notification No. 52/2023-Customs dated 05.09.2023**

Through this notification, the CBIC has substituted Sr. No. 460 of Notification No. 50/2017 dated 30.06.2017 to provide customs duty exemption for the following goods for use in the textile industry:

- Shuttleless Rapier Looms (above 650 meters per minute)
- Shuttleless Waterjet Looms (above 800 meters per minute)
- Shuttleless Airjet Looms (above 1000 meters per minute)
- Parts and components for use in the manufacturing of shuttleless looms.

The benefit outlined above will be applicable till 31.03.2025 beyond which the exemption from payment of customs duty will cease to be effective.

❖ **Notification No. 57/2023-Customs dated 29.09.2023**

By virtue of this notification, CBIC has issued amendments in Notification No. 55/2022-Customs dated 31.10.2022, in order to provide export duty exemption on exports of Bangalore Rose Onion on furnishing a certificate from the Horticulture Commissioner, Government of Karnataka, certifying the item and quantity of Bangalore Rose Onion to be exported.

❖ **Notification No. 69/2023-Customs (N.T.) dated 27.09.2023**

By virtue of this notification, CBIC has extended the exemption from deposits into the Electronic Cash Ledger (ECL) under Section 51(4) of the Customs Act till 30.11.2023. This extension of exemption applies to:

- Goods imported or exported in customs stations where customs automated systems are not in place.
- Goods imported or exported in International Courier Terminals.
- Accompanied baggage.
- Deposits other than those used for making electronic payments of:
  - Any duty of customs, including cesses and surcharges levied as duties of customs.

- Integrated tax.
- Goods and Service Tax Compensation Cess.
- Interest, penalty, fees, or any other amount payable under the Act or Customs Tariff Act, 1975

❖ **Notification No. 72/2023-Customs (N.T.) dated 30.09.2023**

By virtue of this notification, the CBIC has introduced the following amendments in the First Schedule to the Customs Tariff Act, 1975, which are:

- A new sub-heading note has been introduced under Chapter 22, specifically for tariff item 2207 1012 which defines "Spirits for industrial use" as rectified spirits used in the industrial preparation of pharmaceuticals, foods, healthcare products or other non-alcoholic products except for use in preparation of alcoholic liquors for human consumption.
- In Heading 2207, a new tariff item, 2207 1012 has been added for "Spirits for industrial use" with a duty rate of 150%.
- The Chapter heading for Chapter 98 has been updated to include "Project imports; laboratory chemicals; passengers' baggage, personal importations by air or post; ship stores; actionable claims.
- Further, a new note has been inserted under Chapter 98, defining the terms "Online money gaming" and "Specified actionable claim" with reference to the CGST Act, 2017.
- Tariff item 9807 has been introduced covering various types of actionable claims involved in or by way of betting, casinos, gambling, horse racing, lottery, and online money gaming, with a nil duty rate.

❖ **Notification No. 09/2023-Customs (ADD) dated 11.09.2023**

By virtue of this notification, the CBIC has imposed anti-dumping duty on flat base steel wheels of nominal diameter 16"-20", falling under Customs Tariff Heading 8708 70, originating in and exported from China or any other country other than China PR.

CIRCULARS

❖ **Circular No. 22/2023-Customs dated 19.09.2023**

Since, there was no format for ex-bond shipping bill to cover export of warehoused goods, the CBIC has provided a format for ex-bond SB and by virtue of this Circular has provided the design and workflow, which has been enumerated below:

- Exporter needs to declare the warehouse code in the single window table which will depict that it is a re-export case. The said warehouse code is to reflect the warehouse from where the goods are to be exported, which may or may not be the warehouse from where the goods were originally warehoused at the time of import.
- Enter the item-wise details of bill of entry.
- Separate shipping bills required to be filed for export of bonded cargo for more than one warehouse.
- For each item, details of into-bond BE, i.e. BE No. and date, invoice no., SI. No., etc shall be mandatory. Further, for each item, only one into-bond BE can be captured. Hence, SB format will allow export of items imported under more than one into-bond BE under one ex-bond SB to address the requests of the trade that goods imported separately may be cleared under one document.
- After successful verification, system would debit the quantity exported in the ledger from the quantity imported, but in case of cancellation the quantity would be re-credited automatically.

Further, it clarified that this type of shipping bill can only be used for export of warehoused goods and not for other goods or export of goods resulting from manufacturing or other operations under section 65 of the Customs Act, 1962 in a bonded warehouse. Moreover, no incentive such as Drawback, RoDTEP/RoSCTL benefit, advance authorization/EPCG etc. shall be available for such cargo and SB would be a free SB.

❖ **Circular No. 23/2023-Customs dated 30.09.2023**

The CBIC through this Circular has clarified that the commodities imported under Chapters 28, 29, 32, heading 3808 and Chapter 39 are required to give additional details mandatorily at the time of filing import declarations, which are:

Chemical Category	Additional details required
Bulk and Basic Chemicals	CAS number and IUPAC name is mandatory
Formulations and Mixtures	CAS number and IUPAC name of Man/ Active ingredient (atleast one) is mandatory
Proprietary component, R&D or Others	CAS number or IUPAC name of Main/ Active ingredient (atleast one) is mandatory

However, in case of non-availability of information for even one ingredient with the importer for the reason that information is not shared by the supplier due to confidentiality, a self-undertaking is to be provided in the Bill of Entry. Further, the said Circular has also clarified that these additional qualifiers will be mandatory for imports under the said chapter for all bills of entry filed on or after 15.10.2023.

❖ **Circular No. 24/2023-Customs dated 30.09.2023**

The effective date for implementation of Section 16(4) of the IGST Act, 2017 is 01.10.2023. Further, Notification, No. 01/2023-Integrated Tax has specified that all goods or services except those provided in the table therein may be exported on payment of integrated tax. Therefore, in effect, goods mentioned in the said tale may be exported only under LUT. Therefore, to implement the said restrictions imposed on export of goods or services on payment of IGST, the DG Systems has developed a backend functionality to enforce the restrictions on claiming IGST refunds for specific goods as per the notification. These checks have been integrated into the system for filing shipping bills and amendments, especially concerning the commodities listed in the notification. The said Circular also clarified that even if a shipping bill contains one or more invoices for which IGST has been paid, and one of those invoices contains a restricted item under Section 16(4) of the IGST Act, the entire shipping bill will not be allowed for filing. Moreover the said circular calls for the sensitization of concerned officers, especially for manual shipping bills in Non-EDI ports, EDI ports, or for exports through posts/couriers, to not allow export of such goods mentioned in the said notification on payment of IGST so as to ensure that no undue benefits are taken by exporting such notified goods in accordance with the provisions of Section 16(4) of the IGST Act, 2017.

INSTRUCTIONS

❖ **Instruction No. 27/2023 Customs dated 06.09.2023**

By virtue of this instruction, the CBIC has made amendments to Instruction No. 02/2021 Customs dated 16.02.2021, revising the processes and procedures surrounding Customs Post Clearance Audit (PCA), some of which are:

- The entire lot of IECS will be taken up for selecting entities for Premised Based Audit (PBA) as per risk-parameters to be decided by National Customs Targeting Centre (NCTC), Mumbai in consultation

with the committee. The number of entities to be selected for audit during a financial year is to be calculated as per the capacity to conduct audits as informed by the Audit Commissionerates and finally decided by the committee.

- The DG Audit is to prepare the list of auditees for PBA in consultation with the DGARM. Committee headed by DG Audit consisting of all Commissioners of Customs (Audit), representative from DRI HQ and Principal ADG/ADG, NCTC, Mumbai shall meet in February every year to finalize the list of auditees for PBA for the next financial year, and thereafter as felt necessary. The final list shall be communicated to the Audit Commissionerates before 31st March. The Audit Commissionerates shall plan PBA for the year in such a way that the number of auditees is evenly spread in all the months and all selected entities are audited. It must be ensured that every entity selected should be subjected to the full audit cycle starting from Desk Review, Audit Plan, Audit Verification and preparation of Audit Report.
- The DG Audit shall convene half yearly meetings of the committee consisting of all the Principal Chief Commissioners/ Chief Commissioners in charge of Customs (Audit) Commissionerates; the Principal ADG/ ADG, NCTC, Mumbai and a representative from DRI HQ (not below the rank of Director). The committee shall meet in January and July to select the themes for ThBA for the first and second halves respectively for each financial year.
- The amendment also introduces new MIS report formats, giving a structured approach to capturing data during audits.

ORDERS

❖ **CAVR Order No. 01/2023 dated 18.09.2023**

Through this order, the CBIC has specified Linear Alkyl Benzene falling under HS Code 38170011 as identified goods under rule 10 of the Customs (Assistance in Value Declaration of Identified Imported Goods) Rules, 2023 with the following further specifications:

- Unique quantity code of Kilogram (KG) shall be necessarily used by the importer to declare the value in bill of entry.
- In addition to the prescribed documents required to be submitted with the bill of entry, the importer shall also produce- (i) Test certificate of the product; (ii) Manufacturer's Invoice; (iii) Purchase Order or Contract; and (iv) Manufacturing process from the manufacturer.
- During the verification of assessment, the proper officer shall also check compliance with the Linear Alkyl Benzene (Quality Control) Order, 2022.

Further, it clarified that this order will come into force on 26.09.2023 and will remain in force till 25.09.2024.

FOREIGN TRADE POLICY

NOTIFICATIONS

❖ **Notification No. 31/2023 dated 11.09.2023**

Through this notification, the DGFT amended the export of food supplements containing botanicals under ITC HS code 1302 and 2106 intended for human or animal consumption to European Union and United Kingdom to provide that their export will require the issuance of Official Certificate by EIC/EIA or

SHEFEXIL. SHEFEXIL is allowed to issue an official certificate for three months from the date of issuance of this notification.

- **Notification No. 32/2023 dated 25.09.2023**

  Through this notification, export of 75,000 MT of Non-Basmati White Rice falling under HS Code 1006 3090 to UAE is permitted through National Cooperative Exports Limited (NCEL).

- **Notification No. 33/2023 dated 26.09.2023**

  By virtue of this notification, the DGFT has extended the RoDTEP scheme for exports made from 01.10.2023, which shall be applicable till 30.06.2024.

PUBLIC NOTICE

- **Public Notice No. 31/2023 dated 20.09.2023**

  Through this public notice, the DGFT notified 29 chambers/agencies who have been de-listed from Appendix 2E of FTP, 2023 and have been prevented to issue Certificate of Origin (Non-Preferential) for failing to comply with the repeated directions of DGFT to on-board on the e-CoO platform of the DGFT for electronic issuance of Certificate of Origin (Non-Preferential).

TRADE NOTICE

- **Trade Notice No. 25/2023 dated 01.09.2023**

  Through this trade notice, the DGFT proposed to introduce monthly workshops on e-commerce exports to increase awareness of e-commerce related rules and processes, actions for capacity building, and skill development for the promotion of e-commerce exports.

- **Trade Notice No. 26/2023 dated 04.09.2023**

  Through this trade notice, DGFT has clarified that the "Master Circular-Rupee / Foreign Currency Export Credit and Customer Service to Exporters" furnishes a comprehensive framework, allowing for access to Pre-shipment and Post-shipment export credit and Packing Credit in Foreign Currency (PCFC) to all eligible exporters which does not preclude E-Commerce Exporters. Therefore, banking and financial institutions concerned are therefore encouraged to extend Pre-shipment and Post-shipment Export Credit and Packing Credit Loan in Foreign Currency (PCFC) to E-Commerce exports based on the extant guidelines issued by RBI.

- **Trade Notice No. 27/2023 dated 25.09.2023**

  Through this trade notice, DGFT has acknowledged the challenges faced in determining the appropriate treatment for specific export-import scenarios concerning Advance Authorizations issued during the period from 13.10.2017 to 09.01.2019. Therefore, to address these challenges, the DGFT has provided the following clarifications:

  - If exports were made under Advance Authorizations between 13.10.2017 and 09.01.2019, and imports occurred on or after 10.01.2019, the pre-import condition will not be considered violated.
  - If Advance Authorizations were issued on or before 09.01.2019, and imports took place on or after 10.01.2019, the pre-import condition will not be applicable.

- If an Advance Authorization involved imports partly made up to and including 09.01.2019, with the remaining imports occurring on or after 10.01.2019, the imports made on or after 10.01.2019 will not be subject to the pre-import condition.
- In cases of imports made under Advance Authorization on payment of IGST and Compensation Cess, the pre-import condition will not apply, regardless of the import date.

RATIO DECIDENDI

ERSTWHILE LAW

❖ **Rangoli Division vs. Commissioner (Appeals), CESTAT New Delhi**

Before proceeding with the facts, it is pertinent to discuss the relevant provision of the Finance Act, 2010 which added an Explanation to Section 65(105) to provide that construction of a complex intended for sale by a builder shall be deemed to be a service provided by the builder to the buyer. In this context the Notification No. 36/2010-ST dated 28.06.2010 was issued providing exemption from payment of service tax on advances received before 01.07.2010 towards the services taxable under Section 65(105) of the Finance Act. In the instant case, the appellant received some amount as advances towards construction of residential complex through cheques from buyers of dates prior to 01.07.2010. However, the cheques were subsequently deposited in the bank and cleared after 30.06.2010 but none of them were dishonoured. Thereafter the records of the appellant were audited, post which a show cause notice was issued proposing to deny the appellant the benefit of the said notification and a demand was made to recover service tax along with interest under the extended period of limitation. The said demand was confirmed by the adjudicating authority and even on appeal by the Commissioner (Appeals). At the outset the Hon'ble CESTAT observed that to invoke extended period of limitation, there must be some form of suppression and the suppression has to be wilful coupled with an intent to evade payment of service tax. In the instant case, the appellant was under a bonafide belief that even though the cheque may have been of a date prior to 01.07.2010 and encashed after 01.07.2010, but the date of the cheque would be the date of payment if the cheque was not dishonoured. It is not the case of the department that the cheque was dishonoured. Such being the position, the appellant may be justified in believing that it was not liable to pay service tax in terms of the Notification. Moreover, there was not even a finding recorded that the appellant has any intention to evade payment of service tax since all that has been recorded in the impugned order by the Commissioner (Appeals) is that the correct facts came to the notice of the department only when the audit was conducted, Therefore, in the absence of a finding that suppression of facts was with intent to evade payment of service tax, which is absolutely necessary, extended period of limitation could not have been invoked. Therefore, the impugned order passed by the Commissioner (Appeals) deserves to be set aside.

GST LAW

❖ **Green Polymers vs. Union of India, High Court of Delhi**

In the instant case, the Petitioner had filed a writ petition impugning the show cause notice dated 30.06.2023, proposing to cancel the Petitioner's GST registration for the reason that the registration was obtained by means of fraud, wilful misstatement or suppression of facts. In this regard, the High Court observed that the impugned show cause notice, apart from alleging that the registration was obtained by fraud, wilful misstatement or suppression of facts, does not indicate any specific reasons for proposing to cancel the Petitioner's GST registration. Moreover, the said show cause notice was incapable of eliciting any

meaningful response as it does not indicate as to what is the fraud allegedly perpetuated by the Petitioner or the wilful misstatement allegedly made or the material fact which was suppressed by the Petitioner. Furthermore, it is also not clear whether the Petitioner's GST registration is proposed to be cancelled on account of fraud or wilful misstatement or suppression of facts as all the three reasons are indicated. Therefore, the High Court set aside the said show cause notice for not being informed by reason.

- **Diya Agencies vs. The State Tax Officer, Kerala High Court**

In the instant case, the Appellant filed a writ petition before the Hon'ble High Court of Kerala, challenging the assessment order denying the appellant input tax credit on the ground that the taxpayer is not eligible for ITC that is not reflecting in his GSTR-2A. At the outset, the High Court observed that if the seller has not remitted the tax amount paid by the Petitioner to him, the Petitioner cannot be held responsible for it. The Petitioner only has to discharge the burden of proof regarding the remittance of tax to the seller dealer by giving evidence. Therefore, the High Court held that the impugned order so far as the denial of the ITC to the Petitioner is concerned is not sustainable and the matter is remanded back to the assessing officer to give opportunity to the Petitioner to present evidence for his claim of ITC. If on examination of the evidence submitted, the assessing officer is satisfied that the claim is bonafide and genuine, the Petitioner should be given ITC. However, merely on the ground that in Form GSTR-2A the said tax is not reflected should not be a sufficient ground to deny the assessee the claim of ITC. Therefore, the High Court directed the assessing authority to give an opportunity to the Petitioner to give evidence in respect of his claim for ITC.

CUSTOMS/FOREIGN TRADE POLICY

- **M/s Futan Leathers and Ors. vs. Commissioner of Customs, CESTAT Chennai**

In the instant case, the Appellants had filed the shipping bills for export of item declared as "Goat shoe suede pure finished leather". On examination, it was seen that consignments of two appellants did not conform to the Standards of finished leather for the reason that the processes of dyeing and shaving/snuffing had not been done. The appellants thereafter got provisional release of the goods and after reprocessing, the goods were exported. The department issued a show cause notice alleging attempted export of prohibited goods, to impose redemption fine and penalties. After due process of law, the original authority held that as the goods which were unfinished leather were attempted to be exported as finished leather, the goods were liable for confiscation and accordingly imposed redemption fine and applicable penalties. Aggrieved by the impugned order, the appellants filed the appeal before the Tribunal. The Hon'ble Tribunal observed that since the goods have been provisionally released, re-processed and exported, confiscation of the goods is not warranted and justified. Accordingly, the redemption fine imposed is also to be set aside. Further the Tribunal also observed that the department has not able to show any mens rea on the part of the appellant. Moreover, the appellants have already incurred considerable financial loss on taking back the goods, reprocessing and exporting it. In the light of these facts, the Tribunal held that the penalties imposed are also required to be set aside.

- **Ajay Sagar vs. Principal Commissioner of Customs, High Court of Delhi**

In the instant case, the petitioner preferred a writ petition seeking to invoke the extraordinary jurisdiction conferred upon the High Court under Article 226 of the Constitution to frame directions for waiver of the pre-deposit requirements as placed in terms of section 129E of the Customs Act 1962. Since the aforesaid section no longer incorporates a provision which may be invoked either by the Commissioner (Appeals) Customs and Central Excise or the CESTAT to waive the condition of pre-deposit in case of undue hardship,

the Petitioner was constrained to approach the High Court. At the outset, the High Court using judicial precedents observed that its writ jurisdiction would be liable to be exercised "in rare but compelling and deserving cases, when the cause of justice requires such reduction". The High Court observed that from the material gathered during the course of investigation as well as the statements drawn on record, it is clear that the Petitioner was complicit and actively involved in the evasion of duty and the intent was to mis-declare imports while acting in concert. Thus, the High Court found unable to hold that this case would fall in the category of "rare and exceptional cases", warranting the invocation of the extraordinary power conferred by Article 226 of the Constitution

NEWS NUGGETS

- GSTN issues new advisory w.r.t. temporary suspension of e-invoice auto population into GSTR-1
- GST Policy Wing released a clarification regarding the implementation of e-invoicing for transactions with Government departments or agencies
- GST update on two-factor authentication mandatory for all taxpayers with AATO above Rs. 20 Crore w.e.f. 01.11.2023
- GST issued notices claiming shortfalls in payment of tax for FY18.

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ABOUT THE FIRM

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

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

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