INDIRECT TAX E-BULLETIN

VOL 5 | ISSUE 1
July 2021

- GOODS AND SERVICES TAX
- LEGACY TAXES
- CUSTOMS
- TRADE PROTECTION MEASURES
- FOREIGN TRADE POLICY & SPECIAL ECONOMIC ZONES
- OTHER REGULATORY MEASURES

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IN THIS ISSUE

01.
GOODS AND SERVICES TAX

NOTIFICATIONS AND CIRCULARS

– Key GST Notifications pursuant to 44th GST Council Meeting

– Clarification on limitations pursuant to Supreme Court's order

CASE LAWS | SUPREME COURT & HIGH COURTS

– Anticipatory Bail in relation to investigation conducted by DGGI

– SC issued notice in Transitional Credit matter pertaining to Cesses

– Attachment proceedings

– Refund of IGST paid on Ocean Freight

– Cancellation of GST registration

CASE LAWS | AAR / AAAR

– Inter-state movement of pallets, crates & containers on lease to branch, constitutes 'supply of service'

– Date of handing over flat possession by Builder to land-owner supplying developmental rights construable as 'Point of taxation'

02.
LEGACY TAXES (CENTRAL EXCISE / SERVICE TAX / VAT / CST)

CASE LAWS | SUPREME COURT & HIGH COURTS

– Pre-Show Cause Notice Consultation is a mandatory requirement and not a mere formality

– Alternate remedy to be exercised before preferring a Writ Petition unless there is an imminent threat or gross injustice warranting urgent relief

CASE LAWS | CESTAT

– Assessee eligible to claim Cenvat Credit of service tax paid under reverse charge even though he was not liable to pay service tax

– Jurisdiction of the Joint Commissioner to adjudicate matters involving demand in excess of two crores

– Venture Capital Funds liable to pay service tax on expenditure incurred in administration of fund and carried interest.

– Surrender charge exacted on premature exit from Unit Linked Insurance Policy is not a service

– Amount received as refund, albeit by way of credit notes, due to deficiency in service is not liable to service tax

– Liquidated damages recovered as per the contract not liable to service tax

– Services used for setting up of plants eligible for cenvat credit even post 01 April 2011

03.
CUSTOMS

NOTIFICATIONS & CIRCULARS

– Customs Duty exempted on Amphotericin B, Covid Test Kits' Raw Materials GST on Oxygen Concentrators for personal use

– Exemption to re-import of goods exported under duty drawback, rebate of duty or under bond before or after the 30 June 2017

– Agreements or Arrangements on Cooperation and Mutual Administrative Assistance (CMAA)

– Sea Cargo Manifest and Transhipment (Sixth Amendment) Regulations, 2021

– Improvements in Faceless Assessment

– Implementation of Risk Management System (RMS) for processing of Duty Drawback claims

– Amendment in AEO Programme

CASE LAWS | SUPREME COURT & HIGH COURTS

– Brand Promotion expenses is not includible in assessable value of imported sports goods

– Customs cannot reject provisional release of imported agriculture produce on request of Adjudicating Authority stating prohibition of import policy conditions

– Detention Certificate does not entitle Importer to seek refund from Cargo service-provider

– Pendency of proceedings before Adjudicating Authority no bar in allowing provisional release

– Sea Cargo Manifest and Transhipment (Fifth Amendment) Regulations, 2021

04.
TRADE PROTECTION MEASURES

NOTIFICATIONS FOR LEVY OR EXTENTION OF EXISTING LEVY

– Anti-dumping / Countervailing duty

BY INDIA – INITIATION, PROVISIONAL, FINAL INCLUDING REVIEW

– Initiation

– Recommendation by Designated Authority

– Sunset Review

– Conclusion of Investigation

– Against India – Initiation, provisional, final including review

05.
FOREIGN TRADE POLICY AND SPECIAL ECONOMIC ZONES

NOTIFICATIONS / CIRCULARS / PUBLIC NOTICES PERTAINING TO CURRENT FTP

– Requirement to furnish Certificate of Inspection for export of Basmati and Non-Basmati rice pushed back

– Requirement to furnish returns upon import of currency paper removed

– Requirement to furnish returns to EPC removed

– Extension of time limit for filing claims under the TMA Scheme

– Tweaks to Duty Exemption Schemes

– Additions in MEIS Schedule

– Acceptance, processing and issuance of claims under MEIS, SEIS, ROSL, ROSCTL put on hold

– Requirement to file online Non-Preferential Certificate of Origin pushed back

– Online module for filing applications for export Authorisation for SCOMET Items

06.
OTHER REGULATORY LAWS

FOOD SAFETY AND STANDARDS

– FSSAI vide Notification dated 26 July 2021 has issued the Food Safety and Standards (Food Products Standards and Food Additives) Third Amendment Regulations, 2021

– Appointment of persons as food analysts

– Clearance of imported consignments of pulses and edible oil

– feeds/feed materials intended for meat and milk producing animals

DRUGS AND COSMETICS

– Classification of medical devices under provisions of Medical Devices Rules, 2017

– Invitation for public comments to regulate Skin Patches used as cosmetics

BUREAU OF INDIAN STANDARDS

– Articles under compulsory standard marks by Bureau of Indian Standards (BIS)

01.

GOODS AND SERVICES TAX

NOTIFICATIONS AND CIRCULARS

Key GST Notifications pursuant to 44th GST Council Meeting

Notification No. and date	Particulars
Notification No. 29/2021-CT dated 30 July 2021	1 August 2021 has been appointed as the day from which following amendments in CGST Act would become effective: a) Requirement of submitting audited annual accounts done away with. b) Self-certified annual return and the supporting documents.
Notification No. 30/2021-CT dated 30 July 2021	Submission of reconciliation statement required only for persons exceeding aggregate turnover beyond INR 5 crores. The rules also make certain changes in the concerned forms for filing of returns among others.
Notification No. 31/2021-CT dated 30 July 2021	Exempts registered persons having annual turnover of up to INR 2 crores in FY 2020-21 from filing annual return for the said year.

Clarification on limitations pursuant to Supreme Court's order

CBIC has issued various clarifications with respect to Order dated 27 April 2021 issued by Supreme Court extending period(s) of limitation under any general or special laws in respect of all judicial or quasi-judicial proceedings. The Circular clarified as under:

- The Order of the Supreme Court would not apply on proceedings / compliances of the taxpayer
- The order would not apply on quasi-judicial proceeding such as refunds, application for revocation of cancellation of registration, adjudication proceedings of demand notices, etc.
- Appeals against quasi-judicial order would stand extended as per Supreme Court order.

[Circular No. 157/13/2021 – GST dated 20 July 2021]

CASE LAWS | SUPREME COURT & HIGH COURTS

Anticipatory Bail in relation to investigation conducted by DGGI

Supreme Court rejected DGGI's appeal against the order of Delhi High Court allowing the assessee to seek anticipatory bail in lieu of a personal bond in an alleged case of fake invoices. Supreme Court upheld the High Court order holding that custodial interrogation is not required as the applicant was called upon only after conducting investigation for 1 year and the same was challenged by the Applicant. In case of an arrest the applicant shall be released upon furnishing a personal bond.

[Lupita Saluja vs. DGGI in Special Leave Petition No (Crl.) No(s).4328-4329/2021]

SC issued notice in Transitional Credit matter pertaining to Cesses

Notice has been issued in SLP filed by *Sutherland Global Pvt. Ltd.,* against the ruling given by the Madras High Court order on transition of Education Cess, Secondary and Higher Education Cess and Krishi Kalyan Cess into GST regime. Division Bench of Madras High Court disallowed entitlement to transitional credits of the cesses into GST.

[Sutherland Global Services Pvt. Ltd. Vs. Assistant Commissioner of CGST and Central Excise and Ors. In Special Leave to Petition (C) No. 7780/2021]

Attachment proceedings

The Madras High Court while allowing writ petition challenging attachment order under Section 83 of the CGST Act, held that attachment proceedings cannot be at the cost of rights protected under

Article 19(1)(g) of the Constitution to practise any profession, or to carry on any occupation, trade or business. Court considered that petitioner discharged 27% of the proposed tax dues and a mechanism is available under Sections 73 and 74 of the Act for proper determination and adjudication of liability. Court held that there is no need to attach bank accounts of the petitioner and directed DGGI to complete the investigation / adjudication expeditiously.

[Sri Marg Human Resources Pvt Ltd vs The Principal Additional Director General, DGGI, Chennai Zonal Unit – WP No 11284 of 2021 and WMP No 11936 of 2021]

Cancellation of GST registration

Rajasthan High Court held that Petitioner should be allowed sufficient time for submissions against cancellation of GST registration as per timeframe mandated Rule 22(2) of CGST Rules. Respondent department issued a notice to Petitioner seeking reply within 7 days from the date of receipt of the notice. The respondent went ahead and suspended the GST registration pending the cancellation proceedings as the Petitioner did not file the response within 7-day period. Rule 22(2) mandates 30 days for filing reply to such notice. It was held that suspension has consequences on the petitioner's business even worse than cancellation because it affects the day-to-day business. High court held that the respondent ought to have passed an order in cancellation proceedings within the 30-day period from the date of receipt of reply as per Rule 22(3) of the Rajasthan goods and service tax rules. The petitioner having filed the reply for justifying reasons of cancellation with the period as per Rule 22(2), the respondent ought to have passed an order to that effect. The matter is remanded for consideration of reply on merits and the High Court has not ruled upon the same. Going a step forward, the High Court has also directed the Respondent to grant a personal hearing to the Petitioner in light of the principles of natural justice.

[Avon Udyog Vs. State of Rajasthan and Ors. S.B. Civil Writ Petition No. 7463/2021]

Refund of IGST paid on Ocean Freight

The Rajasthan High Court allowed the Writ Petition on the issue of levying IGST on Ocean Freight. The High Court followed the decision in case of Mohit Minerals and COMSOL Energy rendered by the Gujarat High Court. It is a settled position that Notification No. 08/2017 -IT(Rate) in so far as it levies IGST on service provided in transportation of goods from a place outside India to the customs station wherein both the entities are foreign is ultra vires to the provisions of IGST Act. The High Court allowed refund of IGST by following a position that 'importer' cannot be a service recipient in terms of the provisions of GST regulations. The High Court observed that revenue ought to have considered the decision of Gujarat High Court (supra) wherein even Notification No. 10/2017 – (IT) Rate has been held unconstitutional to an extent it seeks to include an importer with the ambit of 'recipient' of a service.

It is pertinent to note that the decision in case of Mohit Minerals has been appealed against, and the same pending before the Apex Court. However, operation of the judgement has not been stayed.

[Shree Mahesh Oil Products vs Union of India - D.B. Civil Writ Petition No. 14177/2019]

CASE LAWS | ADVANCE AUTHORITY RULINGS

Inter-state movement of pallets, crates & containers on lease to branch, constitutes 'supply of service'

As per the AAR dated 23 July 2021, the Authority held that transfer of pallets, crates, and containers on lease by the Applicant to its own branch constitutes as taxable supply. Each branch of the Applicant in different states has a separate registration. The Applicant facilitates transfer of such movable property from one branch office to another based on a lease agreement. The authority held that the transfer is between two entities of the same company and shall be considered as 'deemed supplies' between distinct persons. It is essentially supply of services in form of a lease transaction.

[Chep India Private Limited - TS-359-AAR(KAR)-2021-GST]

Date of handing over flat possession by Builder to land-owner supplying developmental rights construable as 'Point of taxation'

AAR dated 22 July 2021 sought to determine the point of taxability in case of an agreement for sharing of constructed flats between the landowner and developer. The Applicant entered into a supplementary agreement with the landowner for allocation of flats. The AAR opined that, the time of supply and liability to pay tax

arises on the date of transfer of possession of the constructed flats or a right in such constructed building to the land owner supplying the development rights.

[Vajra Infracorp India Pvt. Ltd. TS-354-AAR(TEL)-2021-GST]

02.

LEGACY TAXES (CENTRAL EXCISE / SERVICE TAX / VAT / CST)

CASE LAWS | SUPREME COURT & HIGH COURT

Pre-Show Cause Notice consultation a mandatory requirement and not a mere formality

The Petitioner was called for Pre-Show Cause Notice consultation with a notice of two hours before the hearing. The Petitioner requested for time to be provided for an effective consultation, which was denied by the department. Moreover, to prevent the Show Cause Notice from being time-barred, department issued the Show Cause Notice on the same day itself without conducting any Pre-Show Cause Notice consultation.

The Hon'ble High Court observed that the Petitioner was not provided with an adequate opportunity for a pre-Show Cause Notice consultation as required in terms of Circular dated 10 March 2017 and therefore, set aside the show cause notice after imposing costs upon the department. The department was directed to provide an opportunity to the Petitioner for a pre-Show Cause Notice consultation and issue a fresh Show Cause Notice post such consultation. However, the Hon'ble High Court directed the Petitioner not to raise the issue of limitation in respect of the demand.

[Dharamshil Agencies vs Union of India – 2021 TIOL 1563 HC]

Alternate remedy to be exercised before preferring a Writ Petition unless there is an imminent threat or gross injustice warranting urgent relief

The Petitioner, being aggrieved with the orders passed by the Adjudicating Authority, instead of preferring statutory appeals before the Commissioner (Appeals), filed Writ Petitions before the Hon'ble Madras High Court under Article 226 of the Constitution of India.

The Hon'ble High Court observed that adjudication of facts by appellate authorities based on original records and evidence is vital and is an exercise that cannot be undertaken by the High Court while exercising writ jurisdiction. It was further held that only if there is an imminent threat or gross injustice warranting urgent relief, the High Court may intervene while exercising its writ jurisdiction under Article 226 of the Constitution of India.

[M. Ravichandran, N. Selvarasu, S. Sivakumar vs The Assistant Commissioner of Central Excise, The Chief General Manager (Finance) (Madras High Court)]

CASE LAWS | CESTAT

Assessee eligible to claim Cenvat Credit of service tax paid under reverse charge even though he was not liable to pay service tax

The Appellant paid service tax on reverse charge basis on the freight component in relation to transport of goods from non-taxable territory to India and availed cenvat credit of the same. It was the case of the Revenue that the said service was exempt from service tax under Section 66D of the Finance Act, 1994 and therefore the Appellant has irregularly availed cenvat credit.

By placing reliance upon the decision of Hon'ble Madras High Court in the case of CCEST vs Tamil Nadu Petroproducts Ltd, the Hon'ble Tribunal held that the Appellant is not required to reverse the cenvat credit availed on service tax paid under reverse charge mechanism when the payment of tax is not in dispute.

[Petro Carbon & Chemicals Private Limited vs Commissioner of CGST & CX 2021-VIL-304-CESTAT-KOL-ST]

Jurisdiction of the Joint Commissioner to adjudicate

matters involving demand in excess of two crores

Revenue filed an appeal against the Order of Commissioner (Appeals) wherein the matter was remanded on the ground of wrong adjudication by the Joint Commissioner as the demand involved was more than INR 2 crores.

By placing reliance upon the decision of Hon'ble High Court in the assesses own case, the Hon'ble Tribunal held that merely on the basis of Board's Circular dated 29 September 2016, it cannot be said that the Joint Commissioner had no jurisdiction to issue Show Cause Notice since he is also a central excise officer in terms of Section 2(b) of Central Excise Act, 1944.

Further, the Hon'ble Tribunal also held that it a settled principle of law that the observation of High Court would prevail over the Circular issued by the Board.

[CCE&ST vs Palak Designer Diamond Jeweller 2021 (7) TMI 951 - CESTAT AHMEDABAD]

Venture Capital Funds Liable to Pay Service Tax on Expenditure Incurred in Administration of Fund and Carried Interest

The Appellant as a Venture Capital Fund was held to be responsible for capital appreciation of the contributors' investments and providing other financial assistance. The amounts retained by the Appellant for incurring its own expenses and the Carried Interest ("CI") paid to Class B/C unitholders were together held to represent consideration towards the services. In particular, the CI paid to Class B/C unitholders (which included the AMC and its nominees) was deemed to be a "Performance Fee" and not a return on investment.

The Hon'ble Tribunal held that the Appellant could not be treated as a "trust" for the purposes of service tax law, since it was involved in commercial activity pertaining to investment and capital appreciation, thereby vitiating doctrine of mutuality. The Hon'ble Tribunal termed the concept of a trust in the present case, as merely a façade. The Appellant disbursed profits/dividends upon redemption to Class A unit holders, net of expenses incurred while managing the fund. These expenses formed a consideration for services rendered by the Appellant. The Appellant, on the other hand, disbursed an additional amount to Class B/C unitholders (i.e. the AMC and its nominees) as CI even without redemption.

Distribution of an amount by terming it as CI was not a return on investment for the AMC, but an extra amount received based on realizations made by exiting portfolio investments. Resultantly, the Hon'ble Tribunal termed CI to be a Performance Fee and included it in the taxable value (consideration) for determination of value of taxable services. Based on disproportionate amounts paid to Class B/C unit holders, the Hon'ble Tribunal concluded that such amounts could not be termed as return on their investments.

Finally, observing that the settlors of the funds, trustees and AMCs were all ICICI group entities, the Hon'ble Tribunal also held that the structure of the fund was devised to enable the AMC and its nominees to earn huge sums in the nature of Performance Fee, but disguised as CI. The Hon'ble Tribunal thus rejected the appeal of the Appellant and upheld the Order passed by the tax department. The matters were remanded to the adjudicating authority for quantification of demand based on factors such as admissibility of CENVAT credit, cum-duty benefit and exclusion of notional expenses.

[ICICI Econet Internet and Technology Fund vs CCT 021-TIOL-359-CESTAT-BANG]

Surrender charge exacted on premature exit from Unit Linked Insurance Policy is not a service

The issue involved in the case was whether the 'surrender charge' exacted from the unit holders of 'unit linked insurance policy' at the time of premature exit is consideration for a service so as to attract the levy of service tax.

The Hon'ble Tribunal while holding that surrender charge would not be subject to service tax, relied upon the decision of Tribunal in the case of Shriram Life Insurance Company wherein it was held that the transaction in question is not a service at all but a transaction in actionable claim and hence could not have been by any stretch of imagination covered under any of the specified taxable heads of service.

[Bharti-Axa Life Insurance Company Ltd vs CST 2021 (7) TMI 735 - CESTAT MUMBAI]

Amount received as refund, albeit by way of credit notes, due to deficiency in service is not liable to service tax

The Appellant had set up a project for generating electricity using wind energy. Pursuant to the agreement entered between the Appellant and the provider/manufacturer of the wind turbine generator, credit notes were issued to the Appellant in respect of the claims raised by the Appellant towards break down in the machinery. Revenue sought to levy service tax on the amounts received, through credit notes, as being a declared service (agreeing to the obligation to

tolerate the act) under Section 66E of the Finance Act, 1994

The Hon'ble Tribunal held that the amount received by the Appellant in terms of the agreement from the service provider with reference to maintenance of wind turbine generator due to shortcoming in said service is merely an amount to safeguard the loss of Appellant. The said amount cannot be called as consideration for the tolerance of service provided and neither does it makes the appellant the service provider. In fact, once the Appellant receives compensation for the downfall in service quality, it is because he is not inclined to tolerate the loss as he may suffer on account of said downfall.

[Ruchi Soya Industries Ltd. vs CC, CGST & CE 2021 (7) TMI 415 - CESTAT NEW DELHI]

Liquidated damages recovered as per the contract not liable to service tax

The case made out by the Revenue was that the Appellant had agreed to tolerate breach of timelines stipulated in the contract and therefore, the amounts recovered as liquidated damages were consideration for the act of tolerating contractual defaults which qualify as declared service under Section 66E(e) of the Finance Act, 1994.

The Hon'ble Tribunal, while relying upon its earlier decision in the case of M/s South Eastern Coalfields Ltd. vs Commissioner of CX & ST, Raipur, held that the purpose of penal clauses in an agreement is to safeguard the commercial interests of an assessee and it cannot be stated that such assessee is recovering any sum of money by invoking such penal clauses or that invocation of such penal clauses is the intention behind execution of a contract for an agreed consideration. The recovery of liquidated damages from another party cannot be said to be towards provision of any service, as neither the assessee is carrying out any activity to receive compensation nor can there be any intention of such other party to breach the terms of the contract and suffer a loss.

In view thereof, the Hon'ble Tribunal held that service tax could not be levied on the liquidated damages so recovered by the Appellant.

[M/s Steel Authority of India Ltd., Salem vs Commissioner of GST & CX 2021 (7) TMI 1092 - CESTAT CHENNAI]

Services used for setting up of plants eligible for cenvat credit even post 01 April 2011

The Appellant had entered into a lease agreement to set up a manufacturing plant. The lessor paid service tax on the amounts charged by it for leasing the land to the Appellant and on the amounts charged as development service. Further, the Appellant also availed services of various consultants to set up the plant, service tax on which was paid by such consultants. The Appellant had availed Cenvat credit of the service tax paid by the service providers which was denied by the revenue on the alleged ground that the services used for setting up of plant was not covered in the definition of 'input service' after 01 April 2011.

The Hon'ble Tribunal held that post the amendment of definition of input service, the services used for setting up a plant/factory are neither in the inclusive part of the definition nor in the exclusive part of the definition and therefore, such services were neither specifically included nor excluded.

The Hon'ble Tribunal further held that the meaning of the term 'manufacture' is very wide. and it includes anything incidental or ancillary to manufacture. In view thereof, it was held that although setting up a plant/factory is not manufacture in itself, it is an activity directly in relation to manufacture and therefore, the services availed in respect thereof would get covered in the definition of 'input service'. The mere fact that such services are not mentioned in the inclusive part of the definition makes no difference. Once it is covered in the main part of the definition of input service, the appellant would be entitled to cenvat credit.

[Pepsico India Holdings (Pvt.) Ltd. vs Commissioner of Central Tax, Tirupati 2021 (7) TMI 1094 - CESTAT HYDERABAD]

Assessee entitled to refund of Cenvat credit lying in the Cenvat credit account on closure of business

The Appellant had filed for refund of the unutilised Cenvat credit lying in their Cenvat credit account as per Notification No. 27/2012-CE(NT) dated 18 June 2012. The Adjudicating Authority was of the view that there was no provision under the Central Excise Act, 1944 and the rules made thereunder to sanction refund in cash of the unutilised Cenvat credit on closure of the unit and accordingly, rejected the refund claim of the Appellant.

The Hon'ble Tribunal observed that the issue had already been decided by the Hon'ble Karnataka High Court in the case of Union of India vs Slovak India Trading Company Pvt. Ltd., wherein it was held that refund claim of unutilised Cenvat credit was admissible in cash on closure of the unit. The view of the Hon'ble High Court had been upheld by the Hon'ble Supreme Court.

Accordingly, the Hon'ble Tribunal held that the Appellant was entitled to refund of the amount of Cenvat credit lying in their Cenvat credit account

on closure of unit along with interest in terms of Section 11BB of the Central Excise Act.

[Nichiplast India Pvt. Ltd. vs Principal Commissioner CGST, New Delhi 2021 (7) TMI 953 - CESTAT NEW DELHI]

03.
CUSTOMS

NOTIFICATIONS & CIRCULARS

Customs Duty exempted on Amphotericin B, Covid Test Kits' Raw Materials

Goods like – 1) DMPC, DMPG, HSPC, DSPG, Egg Lecithin, Cholesterol HP; and 2) raw materials for manufacturing COVID test kits are exempted from payment of customs duty up to 31 August 2021 and 30 September 2021, respectively, if the importer follows the procedure given in Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017.

[Notification No 35/2021 – Customs dated 12 July 2021]

Exemption to re-import of goods exported under duty drawback, rebate of duty or under bond before or after the 30 June 2017

Goods exported for repairs other than under duty drawback, rebate of duty or under bond and cut, polished precious and semi-precious stones exported for treatment abroad, before or after 30 June 2017 are liable to IGST and Cess on the value equal to the repair value, insurance and freight besides the customs duty. Further, the exemption is only in respect of the tax, cess and duty over and above the amount so calculated.

[Notification No 36/2021 – Customs and Notification No 37/2021 – Customs dated 19 July 2021]

Agreements or Arrangements on Cooperation and Mutual Administrative Assistance (CMAA)

CBIC clarifies the applicability of sub-section (2) of Section 151B of the Customs Act, 1962 to CMAA in customs matters with 32 countries including the USA, UK, Israel, and UAE.

[Notification No 58/2021 – Customs (NT) dated 1 July 2021]

Sea Cargo Manifest and Transhipment (Fifth Amendment) Regulations, 2021

CBIC has modified Rule 3 relating to the registration of the authorised carrier and its revocation. Consequently, Rule 3A has been introduced and addresses the following: (i) the surrender of registrations; (ii) new applications to renew registrations (Form-1A); and (iii) invalidity of registrations in the event the authorised carrier is found to be inactive for 1 (one) year; however, the modified provision also provides that the registration can be renewed at the discretion of Jurisdictional Commissioner.

[Notification No 61/2021 – Customs (NT) dated 23 July 2021]

Online filing of AEO T2 and AEO T3 applications

CBIC has launched a web application for the online filing of T2 and T3 applications which is mandatory from 1 August 2021.

[Circular No 13/2021 – Customs dated 1 July 2021]

Improvements in Faceless Assessment

CBIC has implemented certain measures to improve the Customs Faceless Assessment and clearance processes such as enhancement of facilitation levels, expediting assessment processes, re-organisation of Faceless Assessment Groups for specialisation and optimisation of workload, enhancing Direct Port Delivery (DPD), automated generation of examination orders and anonymised escalation.

[Circular No 14/2021 – Customs dated 7 July 2021]

Implementation of Risk Management System (RMS) for processing of Duty Drawback claims

In its second phase, RMS has been implemented for processing the shipping bill data. This is to be carried out after the Export General Manifest (EGM) is filed electronically and will provide required output to ICES for selection of shipping bills for risk-based processing of duty drawback

claims along with envisaging post clearance audit (PCA) of the duty drawback shipping bills, with effect from 26 July 2021.

[Circular No 15/2021 – Customs dated 15 July 2021]

Amendment in AEO Programme

AEO programme has been amended to the extent that AEO T1 (including MSME AEO T1) status will be now auto-renewed subject to the annual declaration being filed as compared to the earlier requirement of the renewal application having to be made 30 (thirty) days in advance.

[Circular No 18/2021 – Customs dated 31 July 2021]

CASE LAWS | SUPREME COURT & HIGH COURTS

Brand Promotion expenses are not includible in the assessable value of imported sports goods

The assessee entered into a distribution agreement with M/s Sunlight Sports Private Limited for the distribution of goods within India (except Tamil Nadu, Andhra Pradesh and Kerala) and imported 'Li Ning' brand sports goods.

The gravamen of the contentions on the part of the Revenue was that the marketing, advertising, sponsorship and promotional expenses / payments made to promote the brand was a condition of sale and consequently such amount was liable to be included in the value of the imported goods in terms of Rule 10(1)(e) of the Customs (Determination of Value of Imported Goods) Rules, 2007 (CV Rules). Revenue raised the demand of duty and the goods imported during the disputed period were held liable to be confiscated.

The CESTAT held that there was nothing in the agreement that a fixed amount or fixed percentage of the invoice value of the imported goods, is obliged to be spent by the appellant as a condition of sale / import. The appellant is obliged to or responsible for sales and distribution in its territory of distribution and further to make such expenditure in consultation with the seller, does not attract the provisions of Rule 10(1)(e) of CV Rules. It further held that there was a total absence of the prescribed condition precedent as the appellant is not obliged to incur any particular amount or percentage of invoice value towards sales promotion/ advertisement. The activity of advertisement and sales promotion was a post import activity incurred by the appellant on its account and not for discharge for any obligation of the seller under the terms of sale and that the assessee is not obliged to give any account of the expenditure incurred by them unless such expenditure is incurred at the instance of the seller under the stipulation of reimbursement.

Therefore, the order confirming duty demand was set aside and entitled the assessee to consequential benefits, including a refund of the amount deposited during the investigation along with interest. The SLP filed by the Revenue was dismissed by the Supreme Court as it finds no merits in the appeal.

[The Commissioner of Customs vs Indo Rubber and Plastic Works Civil Appeal No(s) 3685/2020 – Supreme Court]

Customs cannot reject provisional release of imported agriculture produce on request of Adjudicating Authority stating prohibition of import policy conditions

The Petitioner imported a variety of black pepper (the goods) from a specific region of Sri Lanka. The Notification No 21/2015-20 dated 25 July 2018 permits entry of the goods falling under Entry No 0904 11 30 only if the CIF value of the import was INR 500 per kg or above and imports of value less than INR 500 per kg is prohibited. The import value of the goods was apprehended to be overvalued by the Directorate of Revenue Intelligence (DRI) to render them into the freely importable category and was not released.

The single bench of the Hon'ble Madras High Court held that the DRI who is investigating the matter has expressed no objections to the release of goods. No details of incriminating material have been furnished that would substantiate the conclusion that the goods have been inflated in value. Further, the balance of the consideration remaining to be paid to the overseas supplier is a matter of negotiation between the supplier and the Petitioner and would not concern the statutory authorities in the matter of valuation of the goods. Also, the commodity in question is agricultural produce, an important ingredient in the making of spices used in Indian cuisine, with a short shelf life.

Therefore, it was directed to the Deputy Commissioner of Customs to quantify the duty and bond amounts and communicate the same to the petitioner forthwith and release the goods within a week of such remittance by the assessee.

[Global Metro vs The Commissioner of Customs & Ors
2021 TIOL 1517 HC MAD CUS]

Pendency of proceedings before Adjudicating Authority no bar in allowing the provisional release

The Petitioner submits that during the pendency of proceedings under Section 124 of the Customs Act, 1962 (the Act), nothing precludes consideration of an application for provisional release of goods under Section 110A of the Act.

The Hon'ble Bombay High Court (the Court) held that Section 110(1) of the Act empowers a proper officer to seize goods if he has reason to believe that the same is liable to confiscation under the Act. Further, Section 110(2) of the Act ordains that if no notice under clause (a) of section 124 of the Act is issued within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized while the second proviso to sub-section (2) lays down that should there be an order of provisional release of seized goods under Section 110A, the specified period of six months shall not apply.

The Court further enumerates that the legislative intent in Section 110A of the Act, introduced by way of an amendment, is clear that even during the pendency of proceedings before the adjudicating authority, such authority is conferred the discretionary power to allow provisional release. Therefore, in conclusion, the adjudicating authority ought to consider the prayers for provisional release of the seized goods made by the petitioners by representations.

[Minal Gems vs UOI 2021 (7) TMI 425]

Detention Certificate does not entitle Importer to seek the refund from Cargo service-provider

The Hon'ble Madras High Court dismissed the writ petition seeking a direction to the Commissioner of Customs to cause a refund of approximately INR 39 lakhs collected by Customs Cargo Service Provider (CCSP) by dishonouring the Detention Certificate (DC) issued by Deputy Commissioner in terms of Regulation 6(1)(l) of Handling of Cargo in Customs Areas Regulations, 2009.

The court held that mere issuance of DC would not confer any right to get the refund directly from the service provider, who is a private party. It was held that the contract between the service provider and the importer was to be considered and an adjudication on the factual aspects became imminent, and such an exercise cannot be done in a writ proceeding. Disagreeing with the Petitioner, the court opined that admittedly, the goods were being maintained by the service providers and on confiscation, the Customs authorities take possession. However, the goods were still under the custody of the service provider and the goods were not taken away from the premises of the service provider. Therefore, the grievances of the service provider are also to be looked into and considered, while granting the relief of release of the imported goods or refund of the deposits.

The court elucidated that DC issued under the provisions of Customs Act was a reiteration of legal position, which was binding on CCSP, however, such DC cannot be a sole document for purpose of grant of relief of refund or release of goods without further adjudication with reference to disputes or grievances existing between the service provider, who was a private party and the exporter or importer. Therefore, the relief sought by the Petitioner is not entertainable and the Petitioner is at liberty to initiate appropriate action against CCSP and claim the refund before an appropriate forum.

[RM Trading vs. Principal Commissioner of Customs
2021 (7) TMI 420 - MADRAS HIGH COURT]

04.
TRADE PROTECTION MEASURES

NOTIFICATIONS FOR LEVY OR EXTENTION OF EXISTING LEVY

Anti-dumping duty

Products	Country of origin / Country of export	Period / Notification
Polytetrafluoreth ylene	Russia	Extended up to 30 November 2021 *Notification No. 41 / 2021-Customs (ADD) dated 31 July 2021* extends *Notification No. 32 / 2021 – Customs (ADD) dated 3 June 2021*
Wire Rod of Alloy or Non-Alloy Steel	People's Republic of China	Extended up to 31 January 2022 *Notification No. 42 / 2021-Customs (ADD) dated 1 August 2021* extends *Notification No. 48 / 2017-Customs (ADD) dated 9 October 2017*

BY INDIA – INITIATION, PROVISIONAL, FINAL INCLUDING REVIEW

Initiation

Anti-dumping investigation on imports of *color coated / pre-painted flat products of alloy or non-*

alloy steel, originating in or exported from China PR and European Union, has been initiated.

[*Case No AD-(SSR)-14/2021*]

Anti-dumping investigation on import of *4r-cis-1, 1-Dimethylethyl -6 -cyanomethyl -2, 2 – dimethyl – 1, 3- dioxane -4-acetate also known as ATS-8'*, originating or exported from China PR, has been initiated.

[*Case No. AD – OI -11 / 2021]*

Recommendation

The Designated Authority has recommended continuation of anti-dumping duty on imports of *ceramic tableware and kitchenware, excluding knives and toilet items'*, originating in or exported from China PR which were routed through Malaysia, to circumvent the anti-dumping duty.

[Case No. AD – AC – 05 / 2020]

Sunset Review

Sunset review investigation for continuation of anti-dumping duty on *wire rod of alloy or non alloy steel* originating or exported from China PR has been initiated.

[Case No. AD (SSR) 15 / 2021]

Sunset review investigation for continuation of anti-dumping duty on *textured tempered coated and uncoated glass* originating or exported from China has been initiated.

[Case No SSR -10 / 2021]

The Designated Authority has recommended to continue imposition of anti-dumping duty on import of *phenol* originating in or exported from European Union under sunset review investigation. Further. It has also recommended non-continuance of the same if originating or exported from Singapore

[Case No. (SSR) 22 / 2020]

The Designated Authority has recommended to continue imposition of anti-dumping duty on import of *seamless, pipes and hollow profile of iron, alloy or non-alloy steel* originating or exported from China PR under sunset review investigation.

[Case No. ADD – SSR – 24 / 2020]

The Designated Authority has recommended withdrawal of imposition of anti-dumping duty on import of *viscose staple fibre* originating or exported from China PR and Indonesia.

[Case No. SSR AD – 03 / 2021]

The Designated Authority has recommended ceasing of imposition of anti-dumping duty on *barium carbonate* originating in or exported from China PR.

[Case No. (AD SSR 27 / 2020]

05.

FOREIGN TRADE POLICY AND SPECIAL ECONOMIC ZONES

NOTIFICATIONS / CIRCULARS / PUBLIC NOTICES / TRADE NOTICES PERTAINING TO FTP

Requirement to furnish Certificate of Inspection for export of Basmati and Non-Basmati rice pushed back

Certificate of Inspection for export of rice (Basmati and Non-Basmati) to European countries (except EU member states, Iceland, Liechtenstein, Norway and Switzerland) will now be mandatory from 1 January 2022 (instead of 1 July 2021).

[Notification No 12/2015-2020 dated 1 July 2021]

Requirement to furnish returns upon import of currency paper removed

Requirement of furnishing quarterly returns to the Ministry of Finance upon import of currency paper (water-mark bank note paper) has been removed.

[Notification No 13/2015-2020 dated 12 July 2021]

Requirement to furnish returns to EPC removed

Requirement of furnishing periodic returns of exports to the relevant Export Promotion Council, pursuant to grant of Registration-Cum-Membership Certificate has been removed.

[Public Notice No 12/2015-2020 dated 12 July 2021]

Extension of time limit for filing claims under the TMA Scheme

Time limit for filing applications for assistance under the Transport and Marketing Assistance for Specified Agricultural Products Scheme for quarters ending 31 March 2020 and 30 June 2020 has been extended up to 30 September 2021.

[Public Notice No 14/2015-2020 dated 13 July 2021]

Tweaks to Duty Exemption Schemes

Advance Authorisation Scheme has been tweaked to allow one revalidation for twelve months from expiry date for licenses issued on or after 15 August 2020 (instead of two revalidations for six months each).

Duty Free Import Authorisation and Advance Authorisation holders are now required to furnish records of consumption and utilisation of duty free imported or domestically procured goods online (as opposed to manual mode).

[Public Notice No 16/2015-2020 dated 22 July 2021]

Additions in MEIS Schedule

Two ITC HS codes 3003 60 00 and 3004 60 00 (Medicaments containing antimalarial active principles) have been included in the Merchandise Exports from India Scheme (MEIS) schedule and are eligible for benefits at the rate of 3% for exports made between 1 July 2017 to 31 December 2020.

[Public Notice No 18/2015-2020 dated 27 July 2021]

Acceptance, processing and issuance of claims under MEIS, SEIS, ROSL, ROSCTL put on hold

Issuance of benefits / scrips under MEIS, Services Export from India Scheme (SEIS), Rebate of State Levies (RoSL) Scheme and Rebate of State and Central Taxes and Levies (RoSCTL) Scheme has been temporarily put on hold, due to changes in the allocation procedure. During this period, no fresh applications would be allowed to be submitted and already submitted applications would be put on hold.

[Trade Notice No 8/2015-2020 dated 8 July 2021]

Requirement to file online Non-Preferential Certificate of Origin pushed back

Requirement of filing Non-Preferential Certificate of Origin through online mode has been pushed back to 1 October 2021.

[Trade Notice No 10/2015-2020 dated 19 July 2021]

Online module for filing applications for export Authorisation for SCOMET Items

With effect from 5 August 2021, the Directorate General of Foreign Trade (DGFT) has introduced a new module for filing of electronic applications for export authorization for Special Chemicals, Organism, Materials, Equipment and Technologies (SCOMET) items. Existing pending applications would automatically be migrated to the new module. Services / facilities such as application for amendment / revalidation of authorizations, authorizations for site visits, post reporting compliances, etc would be available in the new module.

[Trade Notice No 11/2015-2020 dated 28 July 2021]

Online module for deemed exports application

The DGFT is introducing an online Deemed Exports Module for receiving applications for refund of terminal excise duty, grant of drawback as per All Industry Rate and fixation of Brand Rate for drawback. The new module would enable online filing of applications, issuance of deficiency letters, submission of responses to deficiency letters, uploading of supporting documents, tracking of application, etc.

[Trade Notice No 12/2015-2020 dated 28 July 2021]

06.

OTHER REGULATORY LAWS

FOOD SAFETY AND STANDARDS

FSSAI vide Notification dated 26 July 2021 has issued the Food

Safety and Standards (Food Products Standards and Food Additives) Third Amendment Regulations, 2021

The amendment regulations inter alia highlight those types of oil like groundnut oil, flaxseed oil, linseed oil etc, when obtained through the method of solvent extraction, should only be provided for human consumption, after refining. Further, the amendment also changes the regulations pertaining to the standard for milk and entries relating therewith.

[F. No. 1-116/Scientific Committee/Notif.28.4/2010-FSSAI(1) dated 26 July 2021]

Clearance of imported consignments of pulses and edible oil

Vide order dated 13 July 2021, FSSAI has extended its earlier order dated 13 May 2021 pertaining to priority of import clearances for consignments of pulses and crude oil of edible grade. The importers can still file an advance Bill of Entry in the food import clearance system of FSSAI and authorised officers are required to expedite clearances.

[Order issued in File No. 1-1771/FSSAI/Imports 2018 dated 13 July 2021]

CENTRAL DRUGS STANDARD CONTROL ORGANISATION

Classification of medical devices under provisions of Medical Devices Rules, 2017

The Drugs Controller General of India vide Public Notice dated 26 July 2021 has listed the applicable classification of various medical devices that are intended for physical support. The classification is based on intended use, risk associated, and other parameters specified under the Medical Devices Rules 2017 ("MDR 2017"). The classification under the schedule to MDR 2017 is applicable for both domestic and imported medical devices as listed therein. The comments are to submitted within a period of 30 days from the date of the notice, i.e., by 26 August 2021.

[Public Notice in File No. 29/Misc./03/2020-DC (202) dated 26 July 2021]

Invitation for public comments to regulate Skin Patches used as cosmetics

The Director General of Health Services invites comments from relevant stakeholders for suggestions pertaining to regulation of skin patches registered as cosmetics under the Cosmetic Rules, 2021. It has been observed that customs have been allowing clearance of skin patches without registration/license based on an undertaking from the importers that such products do not require registration from the Central Drugs Standard Control Organisation. Hence, comments are invited for rationalising the process for such products.

[Public Notice in F. NO. COS/MISC – 45/21 dated 26 July 2021]

Articles under compulsory standard marks by Bureau of Indian Standards (BIS)

Click here For Complete list of goods / article under compulsory standard marks by BIS.

We hope the e-Bulletin enables you to assess internal practices and procedures in view of recent legal developments and emerging industry trends in the indirect tax landscape.

For any queries in relation to the E-Bulletin, please email us at idt.bulletin@khaitanco.com.

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