INDIRECT TAX E-BULLETIN

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- LEGACY TAXES
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- TRADE PROTECTION MEASURES
- FOREIGN TRADE POLICY & SPECIAL ECONOMIC ZONES
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KHAITAN &CO

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01.

GOODS AND SERVICES TAX

NOTIFICATIONS AND CIRCULARS

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Notification No. and date	Particulars
G.S.R. 553 (E) dated 11 August 2021	Ministry of Civil Aviation notified routes and commencement dates to avail the exemption of GST on Viability Gap Funding to selected Airline Operators under the Regional Connectivity Scheme.
32/2021-CT dated 29 August 2021	Notifies the Goods and Service Tax (Seventh Amendment) Rules 2021 to provide for the following amendments: ▪ Companies registered under the Companies Act 2013 permitted to file returns (GSTR 3B and GSTR 1) using Electronic Verification Code (EVC) up to 31 October 2021. ▪ The restriction on furnishing Part A of Form GST EWB – 01 not to apply between 1 May 2021 and 18 August 2021, when GSTR-3B or GSTR-1 or GST CMP-08, has not been furnished for the period between March 2021 to May 2021.
33/2021-CT dated 29 August 2021	Waiver of late filing fee to registered persons who have not furnished their returns under GSTR 3B for months / quarter of July 2017 to April 2021. The waiver applies so long as the returns are furnished during the period 1 June 2021 to 30 November 2021 and only for amount in excess of INR 500.
34/2021-CT dated 29 August 2021	Time limit for making an application of revocation of cancellation of registration under Section 30(1) of the CGST Act extended.
Notification No. 35/2021 – CT dated 24 September 2021	The notification has brought in to effect the CGST (8th Amendment) Rules 2021. The amendment rules bring out the following changes: 1. Amendment to Rule 10A - Details of the bank account only in the name of the registered person and obtained on the PAN of such registered person will be accepted. - A proviso has been added to clarify that for a proprietorship concern, PAN of the proprietor shall be linked to the Aadhaar number of the proprietor. 2. Insertion of Rule 10B - This mandates authentication of Aadhaar number of the registered person who has been issued with the certificate of registration for the following purposes: - Filing of RFD – 01 under Rule 89. Corresponding amendment has been made to Rule 89. - Refund of IGST paid on export of goods under Rule 96. Corresponding amendment has been made to Rule 96. - Filing of GST REG – 21 under Rule 23 (Revocation of cancellation of registration). Corresponding amendment has been made to Rule 23 to this effect. 3. Amendment to Rule 45 - The amendment replaces the quarterly requirement of furnishing job worker related challans in Form GST ITC – 04. As per the amendment the specified period for furnishing such details is now 6 consecutive months commencing on 1st April and 1st October. - Deadline of 25th day of the month succeeding the specified period for furnishing details in GST ITC – 04 remains. 4. Amendment to Rule 59(6) - Sub-Rule 6(a) prohibited assessee to furnish GSTR-1 in case GSTR-3B for preceding 2 months were not furnished. - The prohibition is now confined to non-filing of GSTR 3B in preceding one month. - Correspondingly, clause (c) to Rule 59 has been eliminated which previously imposed such condition for persons who were restricted to pay 90% of tax liability through ITC.

	5. Insertion of Sub-Rule 1(A) to Rule 89 - Allows for filing of GST RFD – 01 for refund of tax paid intra-state supply that is subsequently inter – state supply. - Time limit for claiming such refund is 2 years from the date of payment of tax on the inter-state supply. 6. Insertion of Rule 96C - For the purposes of rule 91(3), rule 92(4) and rule 94, bank account to mean such bank account of the applicant which is in the name of applicant and obtained on his Permanent Account Number.
Notification No. 12/2021-CT dated 30 September 2021	The said notification specifies effective rate of GST on various COVID-19 related medicines/drugs and provides for concessional rate of duty till 31 December 2021.
Notification No. 11/2021-CT dated 30 September 2021	Amends Notification No. 39/2017-CT dated 18 October 2017 which specified the central tax rate of 2.5% on intra-state supply of goods described thereunder: - The principal notification allowed concessional rate of central tax on food preparations for distribution amongst economically weaker sections under a central/state approved scheme. This concession is now removed and replaced by allowing the concessional rate of duty on supply of Fortified Rice Kernel to ICDS or other similar scheme as approved by Central/State government. - The Notification is to be in effect from 1 October 2021.
Notification No. 9/2021-CT dated 30 September 2021	Amends Notification No. 2/2017-CT dated 28 June 2017 providing exemption for specified goods in course of intra-supply. The said notification amends the entry at Sl. No. 86 that provides for exemption to seeds, fruits and pores of a kind used for sowing. The amendment by way of an explanation clarifies that exemption will only be extended to seeds not meant for any other use apart from sowing.
Notification No. 8/2021-CT dated 30 September 2021	Amends Notification No. 1/2017-CT dated 28 June 2017 providing rate of central GST on goods in accordance with their place in respective schedules. The said Notification inserts and omits various entries in the parent notification with a view of rationalising GST rates on products mentioned thereunder.
Notification No. 7/2021-CT dated 30 September 2021	Amends Notification No. 12/2017-CT dated 28 June 2017 that provides exemption to specified service in course of intra-state supply. The exemption is however, subject to corresponding conditions. The Amendment is in view of the 45th GST Council meeting and to give effect to the recommendations. The Notification shall be effective from 1 October 2021. Key amendments are as follows: - Services by an entity registered under Section 12AB of Income Tax Act, 1961 by of charitable activities is now exempt. - Inserts Sl. No. 9 AB to provide exemption to services rendered to or by Asian Football Confederation or its subsidiaries for events pertaining to Asia Women's Cup to be hosted in India In 2022. - Services by way of transportation of goods by an aircraft/vessel from customs clearance station in India to a place outside India are now exempt till 30 September 2022. - Entry No. 43 pertaining to services of leasing assets by Indian Railways Finance Corporation to Indian Railways has been omitted. - Inserts Sl. No. 61A exempting services by way of granting National Permit to a goods

	carriage to operate through-out India / contiguous States. - Amended Sl. No. 72 now provides exemption to services provided to central/state government or union territory under a training programme for which 75% or more of expenditure is borne by the corresponding government. - Inserts Sl. No. 82B granting exemption to Services by way of right to admission to the events organised under AFC Women's Asia Cup 2022.
Notification No. 6/2021-CT dated 30 September 2021	Amends Notification No. 11/2017-CT dated 28 June 2017, specifying central tax on intra-state supply of services as described thereunder. The notification shall be effective from 1 October 2021 and is in pursuance of the recommendation of 45th GST Council Meeting. - Amendment to Sl. 17 omits services in form of temporary or permanent transfer of IP for goods other than Information Technology Software. - Correspondingly, Sl No. 17(ii) has been amended to provide exemption to services in form of temporary or permanent transfer or permitting the use or enjoyment of all Intellectual Property (IP) rights. As a result of this amendment, services pertaining to licensing of IPRs (other than IT related licenses) which were previously taxed at 12%, will now be taxed at 18%. GST Councils approval on the same are yet to be published. Residual entry 17 (iii) may subject certain transfers at 12% and must be examined. - By amending Sl. No. 26, services by way of job work in relation to manufacture of alcoholic liquor for human consumption have been placed at the 18% bracket. This amendment puts to rest the debate whether these
	services were to be treated as job-work on "food products". - Omits Sl. No. 27(i) providing benefit of notification to Services by way of printing of all goods falling under Chapter 48 or 49. Amends SL. No. 27(ii) to fix 9% of central tax on other manufacturing services including publishing, printing and other reproductions services. Services offered by printers receiving inputs from publishers were earlier under lower rates. - By amending Sl. No. 34, the notification fixes a central tax of 14% for services by way of admission to race clubs or casinos including places that have such facilities and also to sporting events like Indian Premier League. Amusement parks with Casinos (optional entry) will now have to charge GST at 28% instead of 18%. - The amendment notification inserts two new entries 'Annexure: Scheme of Classification of Services'. Sl. No. 118a and 118b now cover service description of multimodal transport of goods from a place in India to another place in India. This will facilitate e-way bill compliance for goods moving through multimodal transports.
Circular No. 159/15/2021-GST dated 20 September 2021	In view of the recommendation of 45th GST Council Meeting the circular classifies the scope of 'intermediary services'. The Circular elaborates upon primary requirements of intermediary services in form of guiding principles to arrive at a legitimate conclusion. The circular emphasises on presence of three parties with two distinct supplies and mentions that the intermediary service provider to have a character of agent/broker. The circular excludes a person providing goods/services or both or securities on his own account. The circular also clarifies that as per Section 13,

	the place of supply of intermediary service shall only be invoked when either the place of supplier or recipient is outside India. The circular by way of illustrations also specifies that sub-contracting for a service is not intermediary service. Challenge to constitutionality of deeming provisions on intermediaries under place of supply provision, is presently pending before a third judge of Bombay High Court after one of the judges of division bench struck down the provision as ***ultra vires*** and unconstitutional in a petition argued by Khaitan & Co.
Circular No. 160/16/2021-GST dated 20 September 2021	Provides clarifications with respect to certain GST related issues as recommended in the 45th GST Council Meeting. The circular: - Clarifies that intent of amendment ***vide*** Finance Bill 2020 to Section 16(4) of the CGST act is to delink date of issuance of debit notes from the date of issuance of underlying invoice for the purpose of availing ITC. - Clarifies that with effect from 1 January 2021, the date of issuance of debit notes will be relevant for determining financial year for the purpose of Section 16(4) of the CGST Act. The amendment effecting such delinking does not carry retrospective application. - Clarifies that there is no need to carry the physical copy of tax invoice in cases where invoice has been generated by the supplier in the manner prescribed under Rule 48(4) of the CGST Rules. Invoice embedded in RFID device also suffices for verification of proper officer. - Clarifies that restriction under Section 54(3) of CGST Act, only applies to goods that are actually subjected to export duty at the time of export.

Circular No. 161/17/2021-GST dated 20 September 2021	The said circular clarifies that supply of services made by a branch or an agency or representational office of a foreign company, not incorporated in India, to any establishment of the said foreign company outside India, shall be treated as supply between establishments of distinct persons and shall not be considered as 'export of services' in view of condition (v) of sub-section (6) of Section 2 of IGST Act. Resultantly, a company incorporated in India and a body corporate incorporated outside India i.e., a foreign company under Companies Act, are separate persons under CGST Act, and thus are separate legal entities. Hence, these two separate persons would not be considered as 'merely establishments of a distinct person in accordance with Explanation 1 in section 8'. Accordingly, such supplies would be considered as export of services.
Circular No. 162/18/2021-GST dated 25 September 2019	The said circular clarifies the provisions of refund of tax under Section 71(1) of CGST Act and Section 19(1) of IGST Act. - The circular clarifies that refund under the said section covers both inter-State or intra-State supply made by a taxpayer, is either subsequently found by taxpayer himself as intra-State or inter-State respectively or where the inter-State or intra-State supply made by a taxpayer is subsequently found/ held as intra-State or inter-State respectively by the tax officer in any proceeding. - The circular clarifies that that the refund under Section 77 of CGST Act/ Section 19 of IGST Act, 2017 can be claimed before the expiry of two years from the date of payment of tax under the correct head.

CASE LAWS | SUPREME COURT & HIGH COURTS

Franchisor deleted as a Respondent from NAA order confirming profiteering allegation against Franchisee, consequential proceedings against Franchisor dropped

Pursuant to the direction of Delhi High Court, National Antiprofiteering Authority ("**NAA**") dropped the name of the franchisor as a co-respondent in order confirming profiteering allegations against franchisee. Subsequent proceedings initiated for recovery of profiteered amount from the franchisor were also dropped. High Court noted that adding franchisor as a party to the NAA order and drawing up proceedings for recovery of profiteered amount from franchisor was unwarranted, as the franchisor has no locus standi to the proceedings. Accordingly, the franchisor was directed to be deleted as a Respondent and consequential proceedings against Franchisor were dropped.

The Petition was argued by Khaitan & Co. before Delhi High Court.

[Subway Systems India Pvt Ltd. vs UOI and Ors. [WP (C) 8060 /2021]

Arrest for an offence as specified under Section 69 read with Rule 132 of the CGST Rules, is not arbitrary when Principal Commissioner applies his mind to facts and issues a notification authorizing the proper officer to carry out such arrest

The Guwahati High Court held that a combined reading of Section 69 with Section 132 allows the Commissioner to form an opinion as to commission of an offence as laid down under Section 132 and subsequently authorise an officer of the department to effectuate arrest. This can be done prior to adjudication/assessment determining exact tax and penal liability. The judgment highlights the powers under Section 69 hat can be exercised when there is material record to suggest an existing tax evasion in accordance with the procedure established therein. The authority for arrest was given to the proper officer and the prior assessment is not relevant for issuing arrest warrant.

Subhash Kumar Singh vs. State of Assam and Anr. [2021-VIL-573-GAU]

Department cannot demand reversal of ITC, pending determination of liability and investigation

While allowing the Writ Petition, the High Court of Telangana held that the department does not have power to issue 'advises' by way of letter seeking reversal of Input Tax Credit (ITC) pending investigation and without there being any determination of liability. The department issued a letter to the Petitioner seeking reversal of ITC pending enquiry and prior to issuance of SCN under Section 74(5) of CGST Act. The High Court has held that, the said section gives an option to the assessee to pay the payment, if any, but does not confer any power on the department to make any demand during the course of investigation.

[Deem Distributors Pvt. Ltd. Vs Union of India, 2021-VIL-572-TEL]

The proper officer should independently assess the situation prior to cancellation of registration

The Kerela High Court allowed the Writ Petition wherein the Petitioner assailed the cancellation of registration on the ground that proper officer has issued SCN with non-application of mind and no independent investigation. Based on the report of an Intelligence officer, the proper officer proceeded to cancel the registration of Petitioner as the principal place of business was only partially constructed and no business was carried on. The department presumed fraud on this account. The High Court has held that it is on the proper officer to invoke Rule 25 of the CGST rules to carry physical verification. In this instant case, the proper officer did not initiate any independent enquiry on his own. Further, in absence of any prima facie allegation as to fraud or suppression of facts, cancellation of license is not warranted. Even so when the Petitioner has regularly filed its returns and other forms under CGST Act.

[FR Trade Links vs. State Tax Officer and Ors. 2021-VIL-576-KER]

Tripura High Court issues notice to Attorney General in a Writ challenging vires Section 16(2)(c) of CGST Act, 2017

The petitioner challenged Section 16(2)(c) of CGST Act in so far as it provides that a registered dealer can claim ITC only when the tax charged in respect of such supply is deposited to the state / central government by the respective vendors. As this is a challenge to the legislation of the parliament, therefore, the High Court has issued notice to the Attorney General of India.

[Sahil Enterprise vs. Union of India, through Secretary – 2021-VIL-583-TRI]

The order attaching bank account of the Petitioner is void-ab-initio in absence of any proceedings under Section 83 of CGST Act

Bombay High Court has held that passing an order of attachment of bank account under Section 73 of CGST Act is without jurisdiction in absence of fulfilling any of the condition precedents under Section 83 of the CGST Act. The Respondent passed the order under Section 73 on 1 December 2020. Thereafter a Demand notice was issued for recovery of fraudulently claimed refund to tune of INR 5,20,13,134 and the same was confirmed *vide* Order dated 12 February 2021. The Petitioner filed an interim application for quashing of order of attachment pending the appellate proceedings against the Order dated 12 February 2021. The High Court while allowing the prayer opined that order dated 1 December 2020 suffers from an error of jurisdictional fact. The attachment order was passed in anticipation of proceedings under Section 73 which had been formulated by issuance of SCN only after a period of 45 days. In such situation, Section 83 is not applicable as no proceedings have been initiated against the Petitioner.

[Fine Exim Pvt. Ltd. vs. Union of India and Ors. – 2021 VIL 585 BOM]

Rejection of Anticipatory Bail on account of lack of merit as Petitioners failed to appear before the adjudicating authorities

The Petitioners had made an application seeking anticipatory bail in response to Notices issued as per Section 74 of the CGST Act. As per the Petitioners, with demand amount being more than INR 5 crores, the department can potentially arrest the Petitioners as per Section 69 of the CGST Act. Further, as Section 69 of CGST Act is under challenge, the arrest of Petitioners maybe stayed. The High Court by relying upon judgement in case of *Rakesh Arora vs. State of Punjab – 2021-VIL-63-P&H* reiterated that under a pan India chain of purchasers and sellers issuing invoices and claiming credit on inward supplies any ingenuine or bogus chain will lead to committing fraud against the State. The Petitioners also failed to appear before the authority issuing the notice for being involved in activities of generating fake invoices of suspicious firms to claim wrongful ITC.

[Hemant Garg and Arpit Garg vs. State of Haryana – 2021 VIL 590 P&H]

Bail rejected as on apprehension of tampering with investigation of an economic offence

The High Court of Guwahati rejected the Petitioner's bail application for complaint filed by the department as per Section 132 of the CGST Act. As per the department, Petitioner is involved in tax evasion of over INR 20 crores by generating fake invoices and claiming fraudulent ITC without any actual supply of goods or services. The High Court opined that as the complaint is of an economic offence it requires a thorough investigation and bail is likely to tamper with the evidence since the case involves examination of large number of documents at different stages and places.

[Amit Kumar vs. Union of India, 2021-VIL-617-Gau]

When the entire tax liability has been deducted, an appeal cannot be rejected for non-payment of pre-deposit

The Petitioner has filed an appeal against the summary of tax liability served with condonation of delay application. Subsequently, they were in receipt of SCN requiring payment of 10% pre-deposit in terms of Section 107(6)(b) of CGST Act. The Petitioner filed a reply to this SCN on the same day. However, an order was passed rejecting the Petitioner's original appeal for non-payment of pre-deposit. It has been held by the High Court, that, as the entire amount of tax liability is deducted from the Petitioner's Electronic Cash Ledger, it would amount to payment of pre-deposit under Section 107(6)(b) and the appeal of the Petitioner ought to be heard on merits if the delay is condoned.

[NSPR PLR Joint Venture vs. Commissioner of Chhattisgarh State Tax and Ors. 2021 VIL 619 CHG]

The power to block ITC under Rule 86A of the CGST Rules must be used sparingly and with subjective grounds and reasons

The revisional authority ("**RA**") as per Section 10 of SGST Act on its own motion passed an order invoking Rule 86A to block the ITC of the Petitioner, pending inquiry and investigation into the fraudulent practice of generation of fake invoices. The jurisdiction under Section 108 of SGST Act can be exercised if the decision or order of the officer subordinate to Commissioner of Central Tax is prejudicial to the interests of the revenue. The RA under Section 108 can modify and annul the order to rectify such error or stay the operation by allowing an opportunity of personal hearing to concerned person. However, the RA failed to grant any personal hearing and same is in violation of principles of natural justice. The RA only proceeded based on a letter received by Additional Commissioner and without examining the record of the appeal filed by the Petitioner against the order of the Appellate Authority. The High Court of Allahabad as held that, power under Rule 86A read with Section 108 should be based on detailed reasons and cannot be exercised on the ground that an enquiry has been initiated on a suspicion of sham transactions. No apparent error had been brought on record and any harm to the interest of the revenue is also not highlighted in the noting forward to the RA. The High Court opined that the RA did not choose to give detailed reasons for blocking the ITC and failed to consider that claiming ITC and utilizing the same are two different things while allowing the appeal of the Petitioners.

[North End Food Marketing Pvt. Ltd. vs. State of UP and Ors. 2021 VIL 261 ALH]

The High Court could not have entertained the writ in view of an alternate remedy under Section 107 of the CGST Act, as the assessment of facts would have to be carried out by the Appellate Authority.

The Supreme Court while dismissing a Civil Appeal arising out of judgement of the Division Bench of High Court of Telangana, held that the Respondent (proprietorship concern) had a stator remedy at disposal and hence High Court ought not to have exercised its jurisdiction under Article 226 of the Constitution. The Respondents challenged the detention order 12 December 2010 and notice issued under Section 20 of IGST Act. The department detained the goods under a suspicion of intra-state sale in disguise of an inter-state sale. The Hon'ble High court allowed the Writ Petition held that a mere possibility of local sale cannot indicate an attempt of tax evasion on the part of the assessee. However, the Supreme Court while setting side the order of High Court, held that assessment of facts has to be carried by the Appellate Authorities. In presence of a statutory remedy High Court has erred in entertaining the Writ and ordering refund of tax and penalty deposited by the Respondent.

[Assistant Commissioner of State Tax and Others vs. Commercial Steel Limited, 2020-VIL-20-SC]

Supreme Court upheld the constitutional validity of Rule 89(5) of CGST Rules

Vide order dated 13 September 2021, the Division Bench of Supreme Court decided against the Respondent by upholding the validity of Rule 89(5) of CGST Act, disallowing the refund of input services under the inverted duty structure. Supreme Court affirmed that granting of limited refund from unutilised ITC is not against the spirit of the act and formula for the same is neither ambiguous nor unworkable.

[Union of India and Ors. vs. VKC Footsteps India Pvt. Ltd, 2021-VIL-81-SC]

A mistake in data collection by the GST Network is a mistake apparent on the face of record and the onus of rectification is on the GST authorities.

The Petitioner was disallowed ITC on the ground that incorrect credentials are recorded on the GST Portal. The Petitioner had duly furnished the required information and documents on the portal however, on account of technical error, the portal recorded incorrect PAN number in the GSTIN. The Petitioner subsequently applied for a fresh registration and was granted the same. Petitioner disputed disallowance of transitional credits and ITC for the period for a month after implementation of GST. The High Court held that GST authorities are required to rectify the error as demonstrated within a period of one month. The court also clarified that invoices issued by the petitioner bearing the wrong provisional GSTIN and all declarations, returns etc. filed by the petitioner disclosing that number would be deemed to stand corrected.

[Jha Industries vs. State of UP and Ors, 2021-VIL-681-ALH]

Blocking of credits available in electronic credit ledger under Rule 86(4) can only be done for circumstances enumerated therein and reasons as to fraudulent activity are recorded in writing

The High Court of Madras held that power to block credits under Rule 86A should only be exercised under reasonable belief of fraudulent activity or finding of ineligible credit. Assessing officer must record reasons in writing the assessee and reasons / basis of blocking credits needs to be informed to the Assessee. The High Court remanded the matter and directed for time bound consideration of Petitioner's representation against invoking Rule 86A along with giving liberty to the Petitioner to challenge the order in a manner as per prescribed statutory remedy.

[HEC India LLP vs. Commissioner of GST and Central Excise and Ors, 2021-VIL-687-MAD]

Adherence to Rule 142 of the CGST rules is mandatory in situations where non-compliance results in trampling of rights of the Petitioner

The Petitioner challenged the order of the lower authority passed under Section 73 of the CGST Act as it did not follow the procedure prescribed under Rule 142 wherein an order is to be preceded by Form GST DRC-01 and GST DRC-01A. The Petitioner also contended that the lower authority failed to grant a personal hearing. However, the same was doused on account of Respondent's submission as to the personal hearing being granted and duly recorded. The High Court of Madras, held that issuance of Form GST DRC-01 and GST DRC-01A have been statutorily engrained and is not just a procedural requirement. A conjoint reading of Section 73 and Rule 142 makes it clear that nonadherence to Rule 142 had caused prejudice to the writ petitioner qua impugned order. Hence, the rule has to be followed to eliminate prejudice. The High Court set aside the order of the lower authority by granting liberty to initiate fresh proceedings in accordance with the law, albeit in a time bound manner.

[Shri Tyres vs. State Tax Officer, Chennai, 2021-VIL-693 MAD]

CASE LAWS | ADVANCE AUTHORITY RULINGS

Supply of Non-AC buses for transportation of staff Services falls under the ambit of Non-AC Contract Carriage Service

The applicant filed an application for an advance ruling to gauge applicability of GST on contract of supply of non-AC buses to be deployed for transportation of staff of *Rata India Power Limited* ("**RIPL**"). The applicants also sought for application of availability of exemption under Notification No. 12/2017 dated 28 June 2017 (Entry at Sl. No. 15). The Authority held that the effective control of the buses rests with RIPL and will work as per the schedule and requirements of thereof. The Authority highlighted the difference between service of 'transportation of passengers' and 'renting a motor vehicle'. In the former, services recipient is the passenger, whereas in the latter, it is the person hiring such service for benefit of others. In this case the service recipient is RIPL. Further, the Authority held that the applicant does not fulfil the conditions of contract carriage as laid out under the Motor Vehicles Act. Service of renting a motor vehicle is a taxable activity under GST Laws. The nature of agreement between the applicants and RIPL is that of a 'hire' and the same is excluded from the ambit of aforementioned notification.

[Pooja Vaishnavi School Bus Service, 2021-VIL-340-AAR]

GST is applicable on charges other than for constructions services as provided in the agreement, cannot be treated as naturally bundled composite supply

The applicant is involved in business of sale of residential apartments and discharges GST liability on supply of construction services. The applicant also collects various other charges for electric meter installation, club house maintenance, legal fees etc., under the agreement for supply of construction services. Such charges are categorised under distinct heads within the agreement. The issue before the authority is whether such charges are be considered as consideration for supply of construction services and classifiable alongside main residential construction services or such charges are to be treated as coming from an independent service. The AAR held that consideration for providing

construction services and consideration for other charges stem from two independent services. The nature of supply for other charges, correspond to a separate service as covered under Notification No. 11/2017 dated 28 June 2017 and hence liable for GST at 18%.

[In Re: Puranik Builders Ltd, VIL 2021 342 AAR]

Leadership and Managerial Services rendered by corporate office to its group companies is 'supply of services' as per Section 7 of the CGST Act and liable to be taxed at appropriate rate

B.G. Shirke Construction Technology Pvt. Ltd ("**Applicants**"), sought an AAR on taxability of services provided by registered/corporate office to its group companies. The Maharashtra AAR opined that managerial and leadership services provided by the Applicant to group companies for a lump sum is a supply of service as per Section 7. The authority reasoned that group companies are independently registered under GST and the site offices also have their own registrations. Hence, the site offices and group companies cannot be considered as employees. The applicant will not be entitled to benefit under Entry No. 1 to Schedule III. The supply of services by the applicant falls under Entry No. 2 to Schedule I. The said entry states that supply of services between distinct/related persons in course of furtherance of business qualifies as supply even if made without consideration. Considering the ambit of said entry, the applicant will be liable to discharge GST on the lump sum amount received in lieu of supply of services. ITC is allowed wherever applicable.

[B.G. Shirke Construction Technology Company Pvt. Ltd., 2021-VIL-363-AAR]

Treated water in form of purified sewage water is not eligible for exemption from tax under Notification No. 2/2017 – CT(Rate) dated 28 June 2017

The Applicant sought for an AAR on the issue of applicability of exemption provided as per Sl. No. 99 of Notification No. 2/2017 – CT (Rate) to treated water supplied to BPCL. The said Sl. No. allows exemption to 'water' other than aerated, mineral, purified, distilled, medicinal, ionic, battery, de-mineralized and water sold in sealed container. The Maharashtra authority opined that the said exemption only covers natural type of water. The treated water is obtained from Sewage Treatment Plant and is thus purified to an extent of its industrial use. The supply of 'treated water', is classified under the Heading 2201 and taxable at 18% as per Entry 24.

[Rashtriya Chemicals and Fertilizers Limited, 2021-VIL-364-AAR]

Royalty paid by the Applicant to Nagpur Municipal Corporation ("NMC") for supplying tertiary treated water to a third party is taxable at applicable rate of GST

The Applicant, Nagpur Waste Water Management Pvt Ltd. received a special license from NMC to sell tertiary treated water to any person subject to payment of royalty to NMC. The Maharashtra AAR held that royalty is a taxable service covered under Heading 9973 and is liable to GST at applicable rate. The AAR further opined that the applicant is liable to discharge the GST implication under RCM as the service is being supplied to a local authority under the state government. The Applicant is entitled to claim ITC as per relevant provisions for such supply of tertiary treated water as consideration is also received from the recipient.

[Nagpur Waste Water Management Private Limited, 2021-VIL-367-AAR]

Crumb rubbers/granules are squarely covered under the Heading 44.04 of the GST Tariff

The Applicant, applied for this AAR to determine the classification of crumb rubber/granules. The Applicant is in the business of manufacture of such crumb rubber from used tyres. The Maharashtra AAR held that such product is in form of granules and is different from plates, strips or synthetic rubber derived from oils as covered under the Heading 40.02. As per notes to Heading 40.04, it covers granules obtained from goods of rubber including used tyres that are not usable due to cutting up, wear and tear or any other reason.

[Green Rubber Crumb Pvt. Ltd. 2021-VIL-365-AAR]

02.

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

CASE LAWS | SUPREME COURT & HIGH COURTS

Set-off of Entry tax paid on purchase of Coal allowed as the same is necessary raw material for manufacture of cement

The Petitioner had claimed set-off of Entry Tax paid on purchase of coal, which was used as a raw material for manufacture of cement in terms of Section 26(1) of the Orissa Entry Tax Act 1999 read with Rule 19(5) of the Orissa Entry Tax Rules, 1999. The Sales Tax Officer rejected the Petitioner's claim by holding that the ingredient in the manufacture of cement is actually 'coal ash' and not 'coal'.

The Hon'ble High Court, while relying upon the decision of the Hon'ble Supreme Court in the case of *CCE v. Ballarpur Industries Ltd. [(1990) 77 STC 282]* held that coal is not merely used as a fuel but when the coal is burnt in the process of preparation of clinker, it produces coal ash which gets absorbed by the clinker. Since, clinker cannot be produced without coal and cement cannot be produced without clinker, coal is a necessary raw material for manufacture of cement. Therefore, it was held that coal used in the manufacture of cement is an input within the meaning of Section 2(25) of the Orissa Entry Tax Act, 1999 and would be eligible for credit.

[M/s Associated Cement Companies Ltd vs. State of Orissa - 2021 (8) TMI 1011 – Orissa High Court]

Settlement Commission cannot itself take the role of an Adjudicator

The Petitioner, being a non-profit organisation, was offering educational courses across the country. The Revenue had treated the activities of the Petitioner as 'Commercial Training or Coaching Services' and had accordingly demanded service tax. Around 2010, two courses, *inter alia*, being offered by the Petitioner were approved by AICTE and exempted from service tax.

The Petitioner approached the Settlement Commission, however, the Commission refused to entertain the application of the Petitioner on the ground that disputes existed between the Petitioner and the Revenue and therefore, the jurisdiction of the Commission was ousted. Only if there is a consensus with reference to the issues placed for settlement, the Commission is empowered to arrive a settlement between the parties, but not otherwise.

The Revenue contended that there was no scope of settlement as the Petitioner had failed to disclose the entire set of facts. After considering the submissions, the Hon'ble High Court held that the Commission had rightly refused the application of the Petitioner in light of the failure of the Petitioner to make appropriate disclosures. The Hon'ble High Court held that a party willing to settle any issue statutorily ought to approach the Commission with true and full disclosure of facts and extend necessary cooperation. It was further held that in the event of doubt in respect of genuinity or veracity of facts, the Commission cannot settle issues by adjudicating such issues on merits.

[Great Lakes Institute of Management Ltd vs. Cus, CE and ST Settlement Commission, Chennai - 2021 (8) TMI 668 – Madras High Court]

Area Based Exemption under the North Eastern Industrial Policy – Application for request for fixation of special rate for the value addition on the manufactured goods

The Petitioner was manufacturing mosquito coils and had set up a unit to avail the benefit of the North Eastern Industrial Policy dated 24 December 1997 ("**Policy**") by way of exemption to excise duty to certain extent. The Policy was modified in 2008 by way of notifications to curtail certain exemptions. The said modifications were assailed by the Petitioner being contrary to the Doctrine of Promissory Estoppel. The Hon'ble High Court set aside the modifications being non sustainable under law. On appeal, the Hon'ble Supreme Court directed that the order passed by the Hon'ble High Court would be stayed subject to the Revenue releasing 50% of the amount due to the Petitioner.

Accordingly, 50% of the amount due to the Petitioner was released by the Revenue. In the meanwhile, the Hon'ble Supreme Court held that the modifications were legal and directed the Petitioner to refund the 50% amount so released by the Revenue.

The Petitioner contended that it had the option to not avail the rates specified under the notifications and could apply to the concerned Commissioner for fixation of special rates. It was

further contended that the opportunity for making a request for fixation of special rates had arisen only after the decision of the Hon'ble Supreme Court and therefore, the requirement under the said notifications of making such request within 30 September of the given financial year could not have been complied with.

The Hon'ble High Court held that even if there would have been a determination of a special rate prior to the decision of the Hon'ble Supreme Court, such determination would have remained ineffective till the issue was finally decided. Therefore, the Petitioner was not barred from making the request for fixation of special rates by virtue of the condition under the notifications, as the occasion to make such request arose only after the issue was decided by the Hon'ble Supreme Court. It was further observed that the requirement of making the request within 30th September of the given financial year was to streamline the procedure of making requests and to avoid such procedure from becoming unending.

[*Jyothy Labs Ltd vs. Union of India & Ors. – 2021 (8) TMI 726 – Gauhati High Court*]

Letter of Assistant Commissioner is not an Order and assessee cannot take undue benefit of such letter

The Appellant was a Domestic Tariff Area Unit until 1999 and thereafter, obtained a license as a 100% EOU. The Appellant imported capital goods and had also procured indigenously manufactured goods without payment of duty. Joint Director General of Foreign Trade issued the necessary certificate for issuance of EPCG license in favour of the Appellant subject to the condition that the license would be utilised as per Notification No. 97/2004-Cus dated 17 September 2004.

Assistant Commissioner of Central Excise, Dindigul, issued a letter dated 18 May 2006 wherein he stated that no duty was pending on the part of the Appellant. Basis this letter, the Development Commissioner proceeded to permit the Appellant to exit from EOU.

The Revenue issued a Show Cause Notice to the Appellant stating that the Appellant had failed to pay the necessary excise duties on the depreciated value of the indigenously procured goods. The matter went up to the Tribunal which passed an Order against the Appellant.

The Hon'ble High Court observed that the entire case of the Appellant was based on the letter addressed by the Assistant Commissioner. Further, the Appellant had not contested the dutiability of the indigenously procured capital goods on merits or on quantum. The Hon'ble Court further observed that the Appellant had failed to produce any challan or order passed by an assessing officer to establish that the necessary duties had been paid. In absence of any such evidences, the Appellant could not take benefit of a mere letter addressed by the Assistant Commissioner to absolve its liability to pay necessary duties. Accordingly, the Hon'ble Court upheld the order passed by the Tribunal and rejected the appeal.

[Sudhan Spinning Mills P. Ltd. v. CCE, Madurai - 2021 (9) TMI 1106 – Madras High Court]

Inter-state sale beyond the jurisdiction of the local VAT authority

The Petitioner challenged the order passed by the Superintendent of Taxes under the Tripura Value Added Tax Act, 2004 ("**TVAT Act**"), which was confirmed by the revisional authority. The Petitioner had undertaken a contract for installation and commissioning of elevators for the Airport Authority and the Government.

The elevators were procured from the Petitioner's branch offices in Maharashtra and West Bengal. As per the Petitioner, the procurement of such elevators would invite payment of Central Sales Tax, as the sale would be in the nature of an inter-state sale. Further, the Petitioner would procure peripheral machinery and utilise further manpower for installation of the elevators, on which it would discharge VAT. The Revenue was of the opinion that the Petitioner ought to pay local taxes on the cost of the elevators as well.

The Hon'ble Court observed that the Revenue had erred in demanding VAT from the Petitioner on the sale and supply of elevators to its contractees. When the Petitioner undertook the installation of the machinery, the Petitioner could have been charged only on the incremental value where the local sale took place. The Hon'ble Court further observed that the place where the title in the goods passed to the buyer would ascertain whether the sale would amount to an intrastate sale or an inter-state sale.

It was held that the sale in the present case being an inter-state sale was beyond the jurisdiction of the local VAT authority and in any event, the applicable Central Sales Tax had already been paid by the Petitioner.

[*Thyssenkrupp Elevator (India) Pvt. Ltd. vs The Commissioner of Taxes & Excise and Anr. – 2021 (9) TMI 827 – Tripura High Court*]

Benefit granted cannot be withdrawn by the Department on the basis of a subsequent development

In this case, the Petitioner was carrying on business of providing accommodation and manufacture and sale of food, drinks, etc. The Petitioner was registered under the Orissa Sales Tax Act, 1947 and as a small-scale industry by the District Industries Centre, Cuttack ("**DIC**"). The Petitioner claims to have been eligible for sales tax exemption under the Industrial Policy Resolution 1989 ("**IPR**"). Accordingly, the Industry Department had issued a Registration Certificate in favour of the Petitioner. As per a notification issued by the Government of Odisha, finished products would be exempted subject to the installed capacity. The DIC issued a certificate in favour of the Petitioner stating that the Petitioner was eligible for sales tax exemption on sale of its finished products for a period of seven years.

The Sales Tax Officer disallowed the exemption on the ground that the Petitioner had produced no evidence to indicate that the Petitioner's unit had been set up in terms of the prevailing policy. Therefore, the Petitioner's unit did not qualify as a continuing unit under the 1980 Policy and the IPR did not provide for sales tax incentives to hotels making fixed capital investment prior to the operational period of IPR.

The Petitioner challenged the assessment order before the Assistant Commissioner of Sales Tax, wherein it was held that the Petitioner was entitled to exemption under Sl. No. 30-FFFF of the tax-free schedule as a continuing unit of IPR. It was further held that in respect of the sale of soft drinks, IMFL and cigarettes, which were not manufactured or processed by the Petitioner, it was entitled to sales tax incentive.

The Full Bench of the Orissa Sales Tax Tribunal held that the soft drinks were purchased from unregistered dealers and it could not be presumed that the goods had suffered tax at the first point of sale. It was also held that since the Petitioner had failed to produce any document in respect of it being a continuing unit, the Petitioner was not eligible for the tax exemption.

The Hon'ble High Court held that the certificate issued by DIC should have dispelled any doubt with respect to the Petitioner's eligibility to avail sales tax exemption. It was further held that the Petitioner was not the first seller in respect of soft drinks while the Petitioner was the first seller in respect of IMFL.

[*Akbari Continental Pvt. Ltd. vs State of Odisha – 2021 (9) TMI 477 – Orissa High Court*]

Refund under one statute cannot be adjusted against liability against another statute in the absence of any statutory provision

The Petitioner had challenged the action of the Deputy Commissioner of Sales Tax ("**DCST**") wherein the DCST had adjusted the refundable amount owed to the Petitioner against an admitted liability payable by the Petitioner towards interest levied under the Orissa Entry Tax Act ("**OET Act**").

The Petitioner contended that the action of DCST in seeking to adjust the refund due to the Petitioner under the Central Sales Tax Act against the interest payable under the OET Act is completely without jurisdiction and without any legal basis.

The Hon'ble Court held that even though the same authority exercises power under different statutes, the functions performed under each statute are different and distinguishable from the functions performed under another statute. It was further held that there is no provision under the statute that permitted such an adjustment sought to be made by the DCST. Accordingly, the Hon'ble Court directed the Department to refund the amount due to the Petitioner and recover the amount due from the Petitioner in accordance with law.

[*Birla Tyres v. Commissioner of Sales Tax CT and GST, Odisha & Anr. – 2021 (9) TMI 1153 – Orissa High Court*]

CASE LAWS | CESTAT

Refund sanctioned by relying upon the judicial legal precedents holding the field as well as the clarifications issued by the Board, cannot be considered "erroneous"

The Revenue in the instant case after scrutinizing the Books of Accounts of the Appellant had alleged that the Appellant had overvalued its products by including freight charges and issued the Show Cause Notices ("**SCN**") to recover the excess refund which were availed by the Appellants.

The Hon'ble CESTAT observed that the Appellant's case fell within the purview of exception to Rule 5 and referred to Rule 7 read

with Rule 11 of Central Excise (Valuation) Rules, 2000 ("**the Valuation Rules**") which mentions that the Assessable Value would be the price charged along with the additional charges upto the place of sale including freight.

It was also observed that the transportation costs of the Appellant would be included by relying on Circular dated 3 March 2003 and Circular dated 20 October 2014 because the terms and conditions of the sale unambiguously stipulates that the act of sale would be completed upon on-door delivery which in the case of the Appellant was the buyer's premises.

Further, the Hon'ble CESTAT placed reliance on the judgment of the Hon'ble Gauhati High Court in the case of *Topcem India vs. UOI [2021 (376) ELT 573]* and held that the refund already sanctioned cannot be termed as "erroneous refund" more so in view of the fact that refund has been duly sanctioned by the Department as per the laws prevailing then and duly supported by the clarifications issued by CBEC at the relevant point of time.

[*RNB Carbides vs CCE, Shillong – 2021 (9) TMI 29*]

No NCCD leviable on 'gas-condensate' for not being marketable

The issue relates to demand of National Calamity Contingent Duty ("**NCCD**") on 'heavier hydrocarbons' manufactured by the assessee as an intermediate product in manufacture of Mixed Fuel Oil/Naphtha. The Revenue alleged that the mixture manufactured by the assessee is Natural Gas Liquid ("**NGL**"), whereas the assessee contended that the subject product is gas condensate on which NCCD should not be levied.

The Hon'ble CESTAT referring to an earlier decision in the assessee' own case as affirmed by the Hon'ble Supreme Court, decided that 'gas condensate' is classifiable under Heading 2709 of Central Excise Tariff Act, 1985. It was observed by the Hon'ble Tribunal held in earlier proceedings, the Revenue had sought to classify the subject goods under Tariff Item No. 2710 and therefore, they cannot be permitted to take a different stand now.

Furthermore, the Hon'ble CESTAT, while upholding the Order in Original noted that the mixture of hydrocarbons, termed as NGL by the Revenue, is neither produced in the oil field nor supplied to the refineries by the assessee and there is no evidence produced by the Revenue to provide that the product is marketable. Therefore, NCCD is not payable on hydrocarbons as it is not marketable.

[CCE & ST, New Delhi v. Gas Authority of India - 2021 (8) TMI 114]

No service tax on TDS deducted under Income Tax Act

The Appellant was discharging service tax under reverse charge mechanism on Technical Consultancy Services and Project Consultancy Services availed from various service providers located outside India. While paying service tax, the Appellant did not include the tax deducted at source ("**TDS**") for determining the taxable value.

The issues raised before the Hon'ble CESTAT was whether the Appellant was liable to pay Service Tax on the TDS portion deducted while paying the consideration to the service provider.

The Hon'ble CESTAT held that TDS is deposited to the Government out of a statutory liability and the amount so deducted cannot be taken as consideration for services rendered. Further, the amount of tax deducted depends upon the rate in force and it wholly depends upon the law prevailing in the direct tax regime. The Hon'ble CESTAT relied on the decision in the case of *Hindustan Oil Exploration Co. Ltd. vs Commissioner of GST & Central Excise [2019 (2) TMI 1248]* wherein it was categorically held that when the TDS amount has been borne by the assessee and only the consideration for the services as agreed upon by the parties has been paid to the service provider, the TDS amount cannot be included in the taxable value for determining the Service Tax liability.

[TVS Motor Company Limited vs CCE 2021 (9) TMI 81]

In case of exports, CENVAT Credit admissible on services received upto the point when the goods are loaded on the ship or the depot from where the goods are finally sold

The Appellant had claimed Cenvat Credit of the Service Tax paid on input services which included clearing charges to the Customs House Agent for the export of goods, commission on export sale, material handling charges, Terminal handling charges, Bank commission charges, Aviation charges and Courier charges. The Revenue was of the view that cenvat credit in respect of aforesaid services are not allowed as they are not covered by the definition of "input services" as per Rule 2 (l) of the Cenvat Credit Rules, 2004.

The Hon'ble CESTAT held that the place of removal in case of exports, would be upto the point when goods are loaded on the ship or the depot from where the goods are finally sold, and all the services that are received for exporting the

goods till that point shall be covered by the definition of "input services" as per Rule 2(l) of the CCR. Hence, Cenvat Credit on services of the Customs House Agent (clearing charges), Material handling charges, Terminal handling charges, commission on sales promotion paid to foreign commission agent, Bank Commission Charges, Courier services were held to be admissible to the Appellant. However, Cenvat credit in respect of aviation charges was denied.

[JSW Steel Ltd vs. Commissioner of Central Excise, Thane-I – 2021 (8) TMI 1029]

Liability to pay service tax on ocean freight under CIF contract

The Appellant had imported goods on CIF basis and had discharged service tax on ocean freight in view of Notification Nos 15/2017-ST and 16/2017-ST dated 13 April 2017. The Appellant contended that the service tax amount so paid was available as CENVAT credit to the Appellant, however, due to the introduction of GST wef 01 July 2017, the Appellant could not avail such CENVAT credit.

The case of the Revenue was that the said payment of service tax was made after the introduction of GST and on the Appellant's own volition. Therefore, eligibility for availing Cenvat credit in respect of duties paid on the assessee's own volition must be viewed differently than eligibility for availing credit accrued pursuant to any legal proceeding. The Revenue further contended that the Appellant had failed to pay the said service tax on ocean freight and indicate the same in its ST3 returns within the stipulated time period. It was further contended that in case of Indian importers receiving goods on the land mass of the country under a CIF contract, such importers indirectly receive sea transportation service also and therefore, the obligation to pay service tax ought to be shifted to such importers.

The Hon'ble CESTAT observed that in a CIF contract, delivery is satisfied by delivery of documents and not by actual physical delivery of goods. Further, the importers in India receive goods and not service. It was further observed that liability to pay tax cannot be fastened on a person when the charging section explicitly does not provide for the same and merely because an indirect benefit has accrued to such person. It was further observed that in the event service tax is required to be recovered from Indian importers, there is no provision for valuation of such service. Further, the actual value of sea transportation service is not available with the importers under a CIF contract and therefore, no service tax can be assessed and charged from them.

The Hon'ble CESTAT also observed that the notifications under which the service tax was charged, have been held to be unconstitutional by the Hon'ble Gujarat High Court in the case of *Mohit Minerals Pvt. Ltd. v. Union of India [2020 (33) GSTL 321 (Guj.)]* and therefore, retention of any amount charged under such notifications would unjustly enrich the Revenue. Accordingly, it was held that the Appellant is entitled to refund of the service tax paid.

[Panasonic Energy India Co Ltd vs. Commr of Customs, Central Excise & Central GST, Indore – 2021 (8) TMI 630]

Outward freight is an eligible input under FOR destination basis contracts

The Appellant is engaged in the manufacture of HDPE/PP Woven fabrics and sacks. The Appellant was clearing goods after receiving purchase orders specifically stating the sales to be made on FOR destination basis. The Appellant was discharging service tax on reverse charge basis on GTA and other services. The Revenue was of the view that the Appellant had wrongly availed the CENVAT Credit on service tax paid on outward freight during the period from April 2015 to June 2017 in contravention of Rule 2(l) and Rule 3 of Cenvat Credit Rules, 2004.

The Hon'ble Tribunal held that since the title remained with the seller till the goods reached the buyer's place, the GTA service recipient shall be the seller and not the buyer as contrary to contracts on FOB origin basis / CIF basis where property gets delivered to buyer even before the physical delivery thereof. In such circumstances, the place of buyer is any other place where the excisable goods are sold after their clearance from the factory. It was further observed that until the possession and title of goods are transferred to the buyer, sale cannot be said to have taken place. In the instant case, since the buyer had the right to reject the goods after receiving them at his place and the buyer was supposed to make payment after inspection, the control and possession of property in the goods remained with the Appellant till they reached the place of the buyer. Thus, the outward freight is held to be eligible input for availing the credit in terms of Rule 3 of Cenvat Credit Rules. Further, the benefit of Circular No. 988/12/2014 CX dated 20 October 2014 and Circular No. 97/8/2007 CX dated 23 August 2007 cannot be withdrawn retrospectively.

[Chittor Polyfab Ltd. v. Commissioner of Central Excise, Central Goods and Service Tax, Udaipur Rajasthan – 2021 (8) TMI 1116]

Renting theatres to film distributors for screening films does not fall under "renting of immovable property service"

The Appellant being the owner of multiplexes had entered into agreements with film distributors whereby theatrical exhibition rights for exhibition of the film were transferred to the Appellant either temporarily or in perpetuity. In lieu of such rights, the Appellant shared a specific percentage of the net box office collection with the distributors.

It was the case of the Revenue that the Appellant was providing various interconnected services to the distributors, such as renting/letting/leasing of theatre for exhibition of films; manpower to manage the theatre operations, provision of projector and other related equipment to screen the films; arranging of power supply and providing arrangements to collect the box office collections. The essential character of the bundle of services provided was in the nature of 'renting of immovable property' service defined under Section 65(90a) of the Finance Act 1994. The understanding of the Revenue was that the copyrights of the movies / films were not transferred / sold by the film distributors to the Appellant and therefore, the Appellant was only letting out its premises for exhibition of films.

Placing reliance on the judgement of the Hon'ble CESTAT in *Moti Talkies v. Commissioner of Service Tax, Delhi [2020 (6) TMI 87 – CESTAT New Delhi]*, the Hon'ble CESTAT held that that the demand of service tax under 'renting of immovable property' service was not justified for the reason that the Appellant had not provided any service to the distributor, nor such distributor had made any payment to the Appellant as a consideration for the alleged service. Further, the Hon'ble CESTAT also held that although the demand of service tax had been made under the category of 'renting of immovable property' service, the said demand had been confirmed under the category of 'support services of business' and in doing so, the adjudicating authority had gone beyond the scope of the show cause notice. The demand of service tax was, therefore, set aside.

[Satyam Cineplexes Ltd. Vs. Principal Commissioner of Service Tax, Delhi-I – 2021 (8) TMI 1222]

Service Tax under RCM can't be levied for acquiring Broadcasting Rights of Cricket Matches played Foreign Countries

The Appellants acquired 'Media / Broadcasting rights' of various sporting events, for broadcasting cricket matches between Bangladesh and Zimbabwe (to be played outside India), in Bangladesh on payment of rights fee/license fee, and further sold/sub-licensed to other parties for broadcasting in Bangladesh only, against consideration in the name of rights/license fee.

The Department raised a demand that the appellant was liable to pay service tax under 'Reverse Charge Mechanism' ("**RCM**") for acquiring such rights from persons located outside India as recipients of services under the category of 'Commercial Exploitation of Rights of Sports Events' up to June 2012 falls under the definition of Services, not included in the negative list wef 1 July 2012.

The Hon'ble CESTAT observed that Rule 6 of the Place of Provision of Services Rules 2012 ("**POPS Rules**"), provides and clarifies that in case of any cultural or sporting event and/or services related to such event, shall be the 'place' where the event is actually held. Admittedly the event was held outside India (Bangladesh), and this service has not been received in India, rather it was meant for Bangladesh, for which territory, the telecasting rights were purchased and resold by the appellants. Only for the reason that the appellant provider or trader of telecasting right is located in India, it cannot be assumed or presumed by any stretch of the imagination, that the service under dispute has been received in India.

[Sporty Solutionz vs Comm of CGST, Noida-2021(10) TMI 97]

Premium paid on employee compensation insurance service should be considered as input service

The issue under consideration is denial of Cenvat benefit in respect of service tax paid on employee compensation insurance service.

The Hon'ble CESTAT relying upon the judgement of Larger Bench of Tribunal in case of *Dharti Dredging and Infrastructure Limited* has held that the intention of insurance policy is to protect the employees who work at the site and not primarily for personal use or consumption of employee and thus, the premium paid by employer on such service should be considered as input service.

[Aurangabad Electricals Ltd Vs CCE & ST - 2021-TIOL-615-CESTAT-MUM]

Relation between Appellants and group companies to which their employees have been

deputed is not one of an agency and client

The Appellants deputed their employees for the business contingencies arising in their own group companies, payments for which were made by debit notes or book adjustments. They have not raised any invoice as such and did not collect the service tax.

The Hon'ble CESTAT relied on the Judgement of the Hon'ble High Court of Gujarat in the case of *CST vs Arvind Mills Ltd. – 2014 (35) STR 496 (Guj.)* wherein it was held that

"*The definition though provides that Manpower Recruitment Supply Agency means any commercial concern engaged in providing any services directly or indirectly in any manner for recruitment or supply of manpower temporarily or otherwise to a client in the present case, the respondent cannot be said to be a commercial concern engaged in providing such specified services to a client. It is true that the definition is wide and would include any such activity where it is carried out either directly or indirectly supplying recruitment or manpower temporarily or otherwise. the relation between the appellants and the group companies to which their employees have been deputed is not one of an agency and the client.*" Since, the issue is no longer *res integra* and stands unequivocally decided in favour of the appellant.

[ABI Showatech India Ltd Vs Commr Of GST & Central Excise- 2021-TIOL-612-CESTAT-MAD]

03.

CUSTOMS

CASE LAWS | SUPREME COURT & HIGH COURTS

Section 149 is additional remedy available to the petitioner to seek amendment of the Bills of Entry, Reassessment not restricted to Appeal under Section 128

Writ Petition was filed under Article 226 of the Constitution of India challenging the order of the Office of the Assistant / Deputy Commissioner of Customs, rejecting petitioner's request / application for amendment in the Bills of Entry under Section 149 of the Customs Act. The Hon'ble High Court held that Section 149 is an additional remedy available to the petitioner to seek amendment of the Bills of Entry subject to the condition that such amendment is sought on the basis of documentary evidence which was in existence at the time the goods were cleared, deposited or exported as the case may be.

The decision of the Supreme Court in *ITC Ltd. vs Commissioner of Central Excise* holding that the refund cannot be granted by way of a refund application under Section 27 of the Act until and unless an assessment order is modified and a fresh order of assessment is passed and duty re-determined, nowhere is it said that such amendment or modification of an assessment order can only be done in an Appeal under Section 128. Thus, the only condition required to be fulfilled for seeking amendment of documents such as a Bill of Entry ("**BoE**") under Section 149 is that such amendment should be sought on the basis of documentary evidence which was in existence at the time the goods were cleared, deposited or exported, as the case may be. Further, the Assessing Authority had failed to consider the fact that Section 149 of the Act does not prescribe any time limit for amending the BoE filed and assessed. It must be seen that the petitioner is compelled to seek amendment of BoE under Section 149 of the Act since there has been incorrect determination of duty initially. Thus, the importer / petitioner cannot be penalized for what the authorities ought to have done correctly by themselves and Section 149 is liable to be permitted.

[Sony India Pvt. Ltd. vs. Union of India and Another. 2021 (8) TMI 622]

Writ remedy denied where factual aspects in issue and appeal are appropriate

The petitioners being aggrieved by the Order in Original chose to file a writ petition on several grounds, instead of preferring an appeal for the redressal of their grievances. Pertinently, the grounds raised by the petitioners were of the nature to be adjudicated based upon certain facts and on verification of documents and evidences in original. The Hon'ble High Court held in its finding that even in cases where mixed question of fact and law is raised, the appellate authority, is competent to adjudicate both factual and legal grounds and it passed orders stating that and the High Court is the final fact finding authority. Thus, the importance attached to the appellate remedy is at no circumstances to be undermined by dispensing with an appeal in a routine manner as the valuable right of appeal offered to an aggrieved person under the statute need not be taken away unnecessarily. In the present case, the petitioners stated that there are certain violations and factual aspects either not considered or mistakenly considered. The Hon'ble High Court held that, since all the aspects raised by the petitioners could be adjudicated before the appellate authority, the same ought to be pursued in an appeal and dismissed the writ petition.

[Subbu Diamonds LLP vs. The Assistant / Deputy Commissioner Of Customs – 2021 (8) TMI 552]

CFS, ICDs and Shipping Lines liable to charge penal charges for delays by importers and exporters during lockdown period

Petitioners, being importers and exporters, sought amnesty from paying penal charges to Container Freight Stations ("**CFSs**"), Inland Container Depots ("**ICDs**") and Shipping lines, during the entire period of lockdown enforced by the Government consequent to the COVID-19 pandemic on the ground of their inability to move or transport their export / import goods, during the said period. It was held by the Hon'ble Court that premises of any Major Port are not regulated by Section 48 of the Major Port Trusts Act and the Circulars of the Ministry of Shipping, insofar as they direct the Ports to ensure that CFSs, ICDs and Shipping lines do not charge penal charges from importers and exporters, is clearly in excess of the jurisdiction vested in the Ministry Of Shipping and no such direction can be issued by Section 111 of the Major Port Trusts Act 1963. Since an order passed in excess of jurisdiction is a nullity *ab initio*, no mandamus can be issued for enforcement of such an order, irrespective of whether the order itself has been challenged or not. The Hon'ble High Court held that the amounts charged by the ICDs, CFSs or Shipping lines from the importers / exporters was in the nature of recompense for storage of goods (in the case of ICDs and CFSs) and the tangible or intangible losses suffered as a result of delay in return of empty containers (in the case of Shipping lines) were matters between the ICDs / CFSs, and Shipping lines, and the concerned importers / exporters. Therefore, the exercise of the powers vested by the Disaster Management Act 2005, to interfere with this prerogative was clearly and unequivocally disapproved. Thus, even under the Disaster Management Act 2005, the directions contained in paras 3(iii) and 10 of the Circular / Order dated 21 April 2020, issued by the Ministry of Shipping, could neither be sustained nor enforced by issue of a mandamus and no directive, restraining shipping lines from charging penal detention charges from their customers for failing to return containers in time, could have been issued by any authority. Further, merely because, for limited purpose, the CFSs and ICDs are to be treated as customs areas and notional extensions of the Port, they would not, ipso facto, be mandatorily subject to every executive direction issued by the CBIC(please define this) which the Hon'ble Court opined to be the rationale for the CBIC to not issue any mandatory directive, on its own accord, to CFSs or ICDs, not to charge penal charges from importers or exporters against storage of containers in their premises beyond the "free period".

[Polytech Trade Foundation vs Union of India and Ors. 2021-VIL-581-DEL-CU]

04.

TRADE PROTECTION MEASURES

NOTIFICATIONS FOR LEVY OR EXTENTION OF EXISTING LEVY

Anti-dumping duty

Products	Country of origin / Country of export	Period / Notification
Phthalic Anhydride	Korea RP, China PR, Indonesia, Thailand	Levies Anti-Dumping Duty *Notification No. 43 / 2021-Customs (ADD) dated 9 August 2021* levies Anti-Dumping on the subject product for a period of five years.
Axle for Trailers	People's Republic of China	Extended up to 28 January 2022 *Notification No. 46 / 2021-Customs (ADD) dated 25 August 2021* extends *Notification No. 54 / 2016-Customs (ADD) dated 29 November 2016*
Natural Mica based pearl Industrial Pigments excluding cosmetic grade	China PR and any country other than China PR	Levies Anti-Dumping Duty *Notification No. 47 / 2021-Customs (ADD) dated 26 August 2021* levies Anti-Dumping on the subject product for a period of five years.
Uncoated Copier Paper	Indonesia & Singapore	Extended up to 28 February 2022 *Notification No. 48 / 2021-Customs (ADD) dated 27*

		August 2021 extends *Notification No. 56 / 2018-Customs (ADD) dated 4 December 2018*
Glass Fibre and Articles thereof	People's Republic of China	Extended up to 31 October 2021 *Notification No. 49 / 2021-Customs (ADD) dated 31 August 2021* extends *Notification No. 48 / 2016-Customs (ADD) dated 1 September 2016*

NOTIFICATIONS FOR REMOVING LEVY OF ANTI-DUMPING DUTY

Anti-dumping duty

Products	**Country of origin / Country of export**	**Period / Notification**
Viscose Staple Fibre excluding Bamboo fibre	People's Republic of China & Indonesia	Removes Anti-Dumping Duty *Notification No. 44 / 2021-Customs (ADD) dated 12 August 2021* rescinds Notification No. 43 / 2016 (ADD) dated 8 August 2016 which imposed Anti-Dumping on the subject product.
Barium Carbonate	People's Republic of China	Removes Anti-Dumping Duty *Notification No. 45 / 2021-Customs (ADD) dated 24 August 2021* rescinds Notification No. 14 / 2016 (ADD) dated 21 April 2016 which imposed Anti-Dumping on the subject product.
Aluminium Foil	China PR, Thailand, Malaysia	Levies Anti-Dumping Duty *Notification No. 51 / 2021-Customs (ADD) dated 16 September 2021* levies Anti-Dumping on the subject product for a period of five years.
Aluminium Foil	China PR, Thailand, Malaysia	Levies Anti-Dumping Duty *Notification No. 51 / 2021-Customs (ADD) dated 16 September 2021* levies Anti-Dumping on the subject product for a period of five years.
Aluminium Foil	China PR, Thailand, Malaysia	Levies Anti-Dumping Duty *Notification No. 51 / 2021-Customs (ADD) dated 16 September 2021* levies Anti-Dumping on the subject product for a period of five years.
Aluminium Foil	China PR, Thailand, Malaysia	Levies Anti-Dumping Duty *Notification No. 51 / 2021-Customs (ADD) dated 16 September 2021* levies Anti-Dumping on the subject product for a period of five years.
Aluminium Foil	China PR, Thailand, Malaysia	Levies Anti-Dumping Duty *Notification No. 51 / 2021-Customs (ADD) dated 16 September 2021* levies Anti-Dumping on the

		subject product for a period of five years.
Aluminium Foil	China PR, Thailand, Malaysia	Levies Anti-Dumping Duty *Notification No. 51 / 2021-Customs (ADD) dated 16 September 2021* levies Anti-Dumping on the subject product for a period of five years.
Aluminium Foil	China PR, Thailand, Malaysia	Levies Anti-Dumping Duty *Notification No. 51 / 2021-Customs (ADD) dated 16 September 2021* levies Anti-Dumping on the subject product for a period of five years.
Aluminium Foil	China PR, Thailand, Malaysia	Levies Anti-Dumping Duty *Notification No. 51 / 2021-Customs (ADD) dated 16 September 2021* levies Anti-Dumping on the subject product for a period of five years.
Aluminium Foil	China PR, Thailand, Malaysia	Levies Anti-Dumping Duty *Notification No. 51 / 2021-Customs (ADD) dated 16 September 2021* levies Anti-Dumping on the subject product for a period of five years.
Aluminium Foil	China PR, Thailand, Malaysia	Levies Anti-Dumping Duty *Notification No. 51 / 2021-Customs (ADD) dated 16 September 2021* levies Anti-

		Dumping on the subject product for a period of five years.
Aluminium Foil	China PR, Thailand, Malaysia	Levies Anti-Dumping Duty *Notification No. 51 / 2021-Customs (ADD) dated 16 September 2021* levies Anti-Dumping on the subject product for a period of five years.

BY INDIA – INITIATION, PROVISIONAL, FINAL INCLUDING REVIEW

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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*]

Initiation of sunset review investigation on import of '*Polytetrafluorethylene*' originating or exported from China PR.

[*Case No. AD (SSR 19 / 2021)*]

Initiation of sunset review investigation on import of '*Hyrdogenperoxide*' originating or exported from Bangladesh and Thailand.

[*Case No. AD (SSR) 18 / 2021*]

Initiation of mid-term review investigation on import of '*Aluminium Alloy Road Wheels*' from China PR.

[*Case No. MTR 1 /2021*]

Initiation of sunset review investigation on import of '*Amoxycilin / Amoxycillin Trihydrate*' originating or exported from China PR.

[*Case No. AD (SSR) – 24 / 2021*]

Initiation of sunset review investigation on import of '*Opal Glassware*' originating or exported from China PR and UAE.

[*Case No. AD (SSR) 20 / 2021*]

Initiation of sunset review investigation on import of *'Ceramie Tableware and Kitchenware, excluding knives and toilet items'* originating or exported from China PR.

[*Case No. AD (SSR) 17 / 2021*]

Recommendation

The Designated Authority has recommended not to impose any countervailing duty on '*viscose rayon filament yarn above 60* deniers' originating or exported from China PR since no material injury is suffered by the domestic industry.

[Case No. CVD OI – 05 / 2020]

The Designated Authority has recommended imposition of anti-dumping duty on '*aceto acetyl derivatives of aromatic or hetrocylic compounds also known as Arylides*' originating or exported from China PR.

[Case No. ADD (OI) – 23 / 2020]

The Designated Authority has recommended imposition of anti-dumping duty on *'polyester yarn (polyester spun yarn)* originating or exported from China PR, Indonesia, Nepal and Vietnam.

[*Case No. OI – 09/ 2020*]

The Designated Authority has recommended the extension of existing levy of Anti-Dumping Duty on '*Measuring tapes'* originating or exported from China PR.

[*Case No. ADD - AC – 06 / 2020*]

The Designated Authority has reached a conclusion that the dumping margin vis-à-vis '*Elastomeric Filament* Yarn' from Singapore is negative and has terminated the proceedings.

[*Case No. ADD (OI) – 37 / 2020*]

The Designated Authority has recommended imposition of anti-dumping duty on '*Décor Paper*' originating or exported from China PR.

[*Case No. AD (OI) – 33 / 2020*]

The Designated Authority has recommended imposition of anti-dumping duty on '*Calcined Gypsum Powder*' originating or exported from Iran, Oman, Saudi Arabia and UAE.

[*Case No. AD (OI) – 38 / 2020*]

The Designated Authority has recommended imposition of anti-dumping duty on '*Caprolactam*' originating or exported from European Union, Korea RP, Russia and Thailand.

[*Case No. AD.OI 34 / 2020*]

The Designated Authority has recommended imposition of anti-dumping duty on '*Hydrofluorocarbons blend* ' originating or exported from China PR.

[*Case No. AD.OI. 29 / 2020*]

The Designated Authority has recommended imposition of anti-dumping duty under anti-circumvention investigation on '*Axle for Trailers*' originating or exported from China PR.

[*Case No. (AC)07 / 2020*]

The Designated Authority has recommended imposition of anti-dumping duty on '*Peroxosulphates*' originating or exported from China PR and USA.

[*Case No. AD.OI. 21 / 2020*]

The Designated Authority has recommended imposition of anti-dumping duty on '*Hydrofluorocarbon Component R-32*' originating or exported from China PR.

[*Case No. AD.OI. 28 / 2020*]

The Designated Authority has recommended imposition of anti-dumping duty on '*Silicone Sealants*' originating or exported from China PR.

[*Case No. AD.OI. 26 / 2020*]

The Designated Authority has recommended imposition of anti-dumping duty on '*Ceftriaxone Sodium Sterlie'* originating or exported from China PR.

[*Case No. ADD – OI – 39 / 2020*]

The Designated Authority has recommended imposition of anti-dumping duty on '*Untreated Fumed Silica*' originating or exported from China PR and Korea RP.

[*Case No. AD.(OI) – 35 / 2020*]

The Designated Authority has recommended imposition of anti-dumping duty on '*Sodium Hydropsulphite*' originating or exported from China PR and Korea RP.

[*Case No. AD (OI) 29 / 2020*]

The Designated Authority has recommended imposition of anti-dumping duty on '*certain flat rolled products of aluminium*' originating or exported from China PR.

[*Case No. AD-OI / 22 / 2020*]

The Designated Authority has recommended imposition of anti-dumping duty on '*Vitamin C*' originating or exported from China PR.

[*Case No. ADD -OI / 27 / 2020*]

Sunset Review

The Designated Authority has recommended continuation of levy of anti-dumping duty on '*melamine*' originating or exporting from China PR.

[*Case No. AD (SSR) 16 / 2020*]

The Designated Authority has recommended continuation of levy of anti-dumping duty on '*polytetrafluorethylene*' originating or exporting from Russia.

[*Case No. ADD-SSR 28 / 2020*]

The Designated Authority has recommended continuation of levy of anti-dumping duty on '*glass fibre and article thereof*' originating or exporting from China PR.

[*Case No. SSR -17 / 2020*]

The Designated Authority has recommended withdrawal of levy of anti-dumping duty on '*tyre curing presses*' originating or exporting from China PR.

[*Case No. SSR -19 / 2020*]

The Designated Authority has initiated sunset review investigation vis-à-vis levy of anti-dumping duty on '*toulene di-isocyanate (TDI)*' originating or exported from China PR, Japan and Korea RP.

[*Case No. (AD) SSR -20 / 2021*]

The Designated Authority has recommended continuation of levy of anti-dumping duty on '*Hot rolled flat products of alloy or non-alloy steel*' originating or exported from China PR, Japan, Kora RP, Russia, Brazil and Indonesia.

[*Case No. AD (SSR) 05 / 2021*]

The Designated Authority has recommended continuation of levy of anti-dumping duty on '*Cold rolled / cold reduced flat steel products of iron or non-alloy steel or other alloy steel of all width and thickness – not clad, plated or coated*' originating or exported from China PR, Japan, Korea RP and Ukraine.

[*Case No. ADD-SSR 06 / 2021*]

AGAINST INDIA – INITIATION, PROVISIONAL, FINAL INCLUDING REVIEW

Investigation concerning export of raw honey from India to be continued by United States of America.

[Investigation Nos. 731 – TA – 1560 – 1554]

Investigation concerning export of organic soybean meal to be continued by United States of America.

[Investigation Nos. 701 – TA – 667 – and 731 – TA – 1559]

05.

FOREIGN TRADE POLICY AND SPECIAL ECONOMIC ZONES

Principles of restrictions and prohibitions for imports / exports expanded

The broad principles on the basis of which the Directorate General of Foreign Trade ("**DGFT**") may impose a 'prohibition' or 'restriction' on imports / exports have been expanded to include factors such as promotion of a particular industry, protection of domestic industry from sudden increase in imports, safeguarding the country's external financial position, ensuring compliance with the country's obligations under the United Nations Charter for the maintenance of international peace and security, ensuring essential quantities for domestic processing industry, etc.

[Notification No 17/2015-2020 dated 10 August 2021]

Amendment in export policy of COVID-19 Rapid Antigen testing kits

Export of COVID-19 Rapid Antigen testing kits has been put under the 'restricted' category.

[Notification No 18/2015-2020 dated 16 August 2021]

Guidelines for Remission of Duties and Taxes on Exported Products (RoDTEP) Scheme announced

The much-awaited guidelines and remission rates for the RoDTEP scheme have been announced. The RoDTEP scheme, which has been made effective from 1 January 2021, aims to refund those duties, taxes and levies at Central and State levels borne on the production and distribution of export products, which hitherto remained unrefunded. Under the scheme, a rebate would be granted at a notified percentage of the free-on-boardvalue of exported products, by means of transferable duty-credit scrips. These scrips can only be used for payment of Basic Customs Duty.

[Notification No 19/2015-2020 dated 17 August 2021]

Amendment in policy condition in relation to import of aircraft and helicopters

Facility of importing aircraft and helicopters (including used / second-hand aircraft and helicopters) without an import license has been extended to the following entities:

(a) Aircraft leasing entities based in International Financial Services Centre located in GIFT city, Gandhinagar, Gujarat; and

(b) Any person / entity who has been granted a no-objection certificate for import of aircraft and helicopters by the Directorate General of Civil Aviation for undertaking Scheduled / Scheduled Commuter / Non-Scheduled Air Transport Services or Aerial Work operations.

[Notification No 21/2015-2020 dated 31 August 2021]

Online procedure notified for transfer of licenses in case of business transfers

The DGFT has notified an online procedure for transfer of Advance Authorisation and Export Promotion Capital Goods scheme licenses from an earlier entity to a new entity in cases of amalgamation, de-merger, acquisition, or insolvency proceedings. This will also result in transfer of export obligations and contingent liabilities in relation to the said licenses.

[Trade Notice No 14/2021-22 dated 4 August 2021]

Extension of time limits in relation to import / export of precious metals

The DGFT has extended the time limit for export / replenishment / import / drawal of precious metals by six months, in cases where the last date had expired during 1 February 2021 to 30 June 2021. However, relaxation in the period for repatriation / FOREX realisation would be the period as allowed plus six months or as per the guidelines issued by the Reserve Bank of India, whichever is less.

[Public Notice No 20/2015-20 dated 6 August 2021]

Clarification in respect of transfer of goods for quality testing or research purposes

As per Rule 50(3) of the Special Economic Zones Rules 2006, an SEZ unit may transfer goods for quality testing or research and development purposes, to any 'recognized' laboratory or institution, without payment of duty. The Department of Commerce, SEZ division has clarified that a laboratory or institution accredited for Good Manufacturing Practice or Good Laboratory Practice may be accepted as a 'recognised' laboratory or institution for the purposes of the aforesaid rule.

[Instruction No 107 dated 26 August 2021]

Extension of Foreign Trade Policy and Handbook of Procedures 2015-2020

The validity of Foreign Trade Policy ("**FTP**") and Handbook of Procedures 2015-2020 has been extended to 31 March 2022.

Consequently,

a) Consequently, exemption from Integrated Goods and Services Tax (IGST) and Goods and Services Tax Compensation Cess against (i) imports made under Advance Authorisation ("**AA**") licenses; (ii) capital goods imported under the Export Promotion Capital Goods scheme; and (iii) imports and/ or procurement from bonded warehouse in Domestic Tariff Areaor from international exhibition held in India by an Export Oriented Unit (EOU) or units set up under the Electronics Hardware Technology Park, Software Technology Park or Bio-

Technology Park schemes, shall be allowed up to 31 March 2022.

b) Status certificates issued under the FTP shall be valid for a period of five years from the date on which application for recognition was filed or 31 March 2022, whichever is later.

c) Norms ratified by Norms Committee in respect of any AA license shall be valid up to 31 March 2021 or for a period of three years from the date of ratification, whichever is later.

[*Notification No 33/2015-2020 dated 28 September 2021 and Public Notice No 25/2015-2020 dated 28 September 2021*]

Notification of Revised Transport and Marketing Assistance (TMA) for Specified Agriculture Products Scheme

A "*Revised Transport and Marketing Assistance (TMA) for Specified Agricultural Products Scheme*" has been notified for exports effected on or after 1 April 2021.

This new scheme would be applicable for exports made up to 31 March 2022 and will cover all agriculture products covered in HSN chapter 1 to 24 including marine and plantation products, except a few specified products. The scheme shall offer assistance by way of reimbursement of freight cost incurred and the level of assistance shall depend upon the region of export. Other modalities of the scheme (including ineligible exports) have also been notified.

[*Notification bearing F. No. 17/2/2021-EP (Agri.IV) dated 9 September 2021*]

Extension of import policy provision in respect of Tur and Urad

Import of *Tur* and *Urad* would be placed under the "Free" category until 31 December 2021, subject to the condition that the Bill of Lading should be issued on or before the said date and import consignment should be cleared from Customs on or before 31 January 2022.

Applicants who had applied for restricted import authorizations for FY 2021-22 based on previous notifications would be entitled to apply for refund of their application fess online.

[*Notification bearing S.O. 3707(E) dated 13 September 2021 and Trade Notice 17/2021-22 dated 14 September 2021*]

Amendment in import and export policy of Mercury

Import and export of Mercury have been placed under the "Restricted" category and would be allowed subject to obtaining a "Prior Informed Consent" as per the provisions of the Minamata Convention on Mercury, from the National Focal Point of Minamata Convention in the Ministry of Environment, Forest and Climate Change.

[*Notification No 24/2015-2020 dated 9 September 2021 and Notification No 31/2015-2020 dated 23 September 2021*]

Revisions in modalities of submitting applications for scrip-based schemes

In respect of scrip-based schemes, namely the Merchandise Exports from India Scheme (MEIS), Service Exports from India Scheme (SEIS), Rebate of State and Central Taxes and Levies (RoSCTL) Scheme and Rebate of State Levies (RoSL) Scheme, the following revised provisions have been notified:

a) Last date of submitting the following applications (online) shall be 31 December 2021:

Scheme	**Export periods**
MEIS	FY 2018-19, FY 2019-20 and FY 2020-21 (up to 31 December 2020)
SEIS	FY 2018-19 and FY 2019-20
Ad-hoc incentive*	1 January 2020 to 31 March 2020
RoSCTL	7 March 2019 to 31 December 2020
RoSL	Up to 6 March 2019, for which claims under scrip mechanism have not been disbursed yet

* *For mobile phones*

The DGFT has clarified that no further applications would be allowed to be submitted after 31 December 2021 and applications not submitted before the said date would become time-barred.

b) Late cut provisions for applications submitted on or before 31 December 2021 would be as under:

Scheme	Export periods	Late cut
MEIS	FY 2018-19 (1 July 2018 to 31 March 2019)	10%
MEIS	FY 2019-20 and FY 2020-21 (up to 31 December 2020)	Nil
SEIS	FY 2018-19	5%
SEIS	FY 2019-20	Nil
RoSCTL	7 March 2019 to 31 December 2020	Nil
RoSL	Up to 6 March 2019	Nil

c) Validity period of duty credit scrips issued on or after 16 September 2021 shall be 12 months from the date of issue.

[*Notification No 26/2015-2020 dated 16 September 2021*]

Export obligation period for Advance Authorisation & EPCG Authorisations extended

For authorisations issued under the AA or EPCG schemes, where the export obligation period had expired between 1 August 2020 to 31 July 2021, the said period would be extended until 31 December 2021 without any composition fees. However, this would be subject to fulfilment of 5% additional export obligation in value terms (in free foreign exchange) on the balance export obligation on the date of expiry of the export obligation period. This facility would be automatic (i.e. without the need for making any separate application) and compliance with the export obligation requirement would be verified at the time of closure of the respective authorisations.

Further extensions on payment of composition fees would also be allowed, as per existing provisions.

[*Notification No 28/2015-2020 dated 23 September 2021*]

Service Exports from India Scheme extended to services exported in FY 2019-20

The much-awaited list of eligible services and reward rates under SEIS for services rendered in FY 2019-20 have been notified. However, a limit of INR 5 crores per Importer-Exporter Code (IEC) holder on total entitlement has been imposed, for services exported during FY 2019-20.

Further, the facility to claim SEIS benefits on service charges earned in Indian Rupees shall not be available for services rendered in the FY 2019-20.

Services which could not make it to the list of eligible services for FY 2019-20 include: (i) Management consulting; (ii) Services related to management consulting; (iii) Technical testing and analysis; (iv) Supporting services for maritime transport; and (v) Cargo handling services.

[*Notification No 29/2015-2020 dated 23 September 2021*]

Amendment in Export Policy of Betel Leaves

Export of betel leaves to European Union would now be allowed subject to registration with Shellac and Forest Products Export Promotion Council, being the designated Competent Authority for issuance of health certificate. Previously, registration was required with the Agricultural and Processed Food Products Export Development Authority.

[*Notification No 30/2015-2020 dated 23 September 2021*]

Relief in Average Export Obligation

Taking cognizance of the decline in total exports in certain sectors / product groups during FY 2019-20 and FY 2020-21 compared to their immediately preceding years, the DGFT has notified the percentage decline in the said sectors / product groups for the purpose of proportionately relaxing average export obligation for EPCG authorisation holders belonging to the said sectors / product groups.

[*Policy Circular No 37/2015-2020 dated 10 September 2021*]

Tariff Rate Quota notified for imports under India-Mauritius Comprehensive Economic Cooperation and Partnership Agreement

The DGFT has notified the Tariff Rate Quota quantity, In-Quota Tariff Rate and procedure for applying for import of certain items under the India-Mauritius Comprehensive Economic Cooperation and Partnership Agreement. The applications for grant of import authorization for FY 2021-22 is required to be submitted by 31 October 2021.

[*Public Notice No 23/2015-2020 dated 7 September 2021 and Public Notice No 24/2015-2020 dated 17 September 2021*]

De-activation of non-updated IECs

The DGFT had mandated all IEC holders to ensure that details in their IECs are updated electronically every year. The DGFT has now notified that all IECs which have not been updated after 1 January 2005 shall be de-activated with effect from 6 October 2021.

06.

OTHER REGULATORY LAWS

FOOD SAFETY AND STANDARDS

Method for determination of Niacin in food stuffs

The Scientific Panel on Methods of Sampling and Analysis in its meeting has devised a method for determination of Niacin in Food stuffs. *Vide* Notification dated 31 August 2021, FSSAI has invited comments and suggestions if any in proposed method. The suggestions can be sent within a period of 30 days from the date of the notification or date on which the notification is published on the website.

[Notification in F. No. 1.101-4/0712021-QA [E file 1789) dated 31 August 2021]

Food Safety and Standards (Health Supplements, Nutraceuticals, Food for Special Dietary Use, Food for Special Medical Purpose, Functional Food and Novel Food) first Amendment Regulations, 2021

FSSAI has notified the amendment regulations and the compliance with the same is mandatory from April 2022. The amendment rules deals with specific compliance and processing requirements for the products specified thereunder. The Regulations are not applicable to foods products or infants up to 24 months for which FSS (Food for infant nutrients) Regulations, 2021 is applicable. The compliances on part of food business operators can potentially go up with the application of these regulations considering the product range covered.

[Notification F. No. Stds./03/Notification (Nutra)/FSSAI – 2017 dated 6 September 2021]

Food Safety and Standards (Fortification of Foods) Second Amendment Regulations, 2021

FSSAI *vide* Notification dated 22 September 2021 has notified the amendment regulations pertaining to Fortification of Foods. The amendment essentially mandates a manufacturer of fortified food to ensure that level of micronutrients on the label shall be in the range as specified is schedule – I to the regulations.

[F. No. 1-116/Scientific Committee/Notif.28.6/2010-FSSAI dated 22 September 2021]

ENVIRONMENT LAWS

Plastic Waste Management (Amendment) Rules 2021

The Ministry of Environment Forest and Climate Change, *vide* Notification dated 12 August 2021 has notified the Plastic Waste Management (Amendment) Rules 2021 to come into effect from date of publication in the official gazette. The amended rules defines important terms like, 'non-woven plastic bags', 'plastic waste processing' and 'thermoplastic among others. The said amendment, by way of insertion of new sub-rules elaborates upon various procedural aspects.

[Notification No. GSR 571 (E) dated 12 August 2021]

Environment (Protection) Second Amendment Rules 2021

The Ministry of Environment Forest and Climate Change, *vide* Notification dated 6 August 2021 has notified the Environment (Protection) Second Amendment Rules 2021. The same shall come into force after one year from the date of publication in the official gazette. The rules amend Sl. No. 73 in schedule – I of Environment (Protection) Rules 1986, pertaining to bulk drugs and formulations.

Plastic Waste Management (Second Amendment) Rules, 2021

The Ministry of Environment Forest and Climate Change, *vide* Notification dated 17 September 2021 has notified the Plastic Waste Management (Second Amendment) Rules, 2021 to come into effect from date of publication in the official gazette. The amended rules allows carry bags made out of recycled plastic or products made from recycled plastic to be used for packaging

carrying or disposing ready to eat or drink food stuff. This is subject to a relevant notification under Food Safety and Standards Act, 2006.

[Notification No. G.S.R. 647(E) dated 17 September 2021]

BUREAU OF INDIAN STANDARDS

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

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