INDIRECT TAX E-BULLETIN

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01.

GOODS AND SERVICES TAX

NOTIFICATIONS AND CIRCULARS

Notification No. and date	Particulars
Notification No. 37/2021 – CT dated 1 December 2021 (**Amendment to CGST Rules 2017**)	The Notification brings in CGST (Ninth Amendment) Rules 2021 for the following amendments to CGST Rules 2017: (a) The tenure of National Anti-Profiteering Authority ('NAA') as per Rule 137 of the CGST Rules have been extended to 5 years from the date of Chairman of the NAA enters his office. (b) Form GST DRC – 03 that allows intimation to department of voluntary payment made in lieu of any tax liability has been amended. The ambit of cause of payment has been populated with specific instances of mismatch between GSTR 3B and GSTR 2A/GSTR 1. Further, tax ascertained and communicated through Form GST DRC – 01A has also been included in the drop down for cause of payment. (c) The table under Sl. No. 7 of Form GST DRC–03 now also includes columns to specify payment pertaining to fee or for any other reasons.
Notification No. 17/2021 dated 18 November 2021	Brings an amendment to No. 17/2017- Central Tax (Rate), dated 28 June 2017. The said Notification enlists categories of services, for which ecommerce operators are liable to pay tax intra-state supplies. (a) Transportation of passengers by an ecommerce operator through motorcycle, omni bus or any other motor vehicle. (b) Clause (iv) has been inserted to treat supply of restaurant services as intra-state for payment of GST. By virtue of an explanation, the clause excludes supply by restaurant located in premises providing hotel accommodation having declared tariff above INR 7,500 per unit of accommodation. The Notification is to come into force from 1 January 2022.
Notification No. 37/2021 – CT dated 1 December 2021	Amends Notification No 12/2017 dated 30 June 2017 that gave out exemption to specified intra-state services. (a) Exemption to pure services and composite supply (goods value < 25%) is now restricted to supply provided to the Central Government, State Government or Union territory or local authority. The words 'Governmental authority or a Government Entity' have been omitted. (b) Exemption on supply of service of transport of passengers with or without belongings will not be applicable when the same is provided through an ecommerce operator. (c) Supply of service of transportation of passengers by way of metered cabs or auto rickshaws will not be applicable when the same is provided through an ecommerce operator.
Circular No. CBEC-20/16/05/2021-GST/1552 dated 2 November 2021	Provides guidelines for disallowing debit of electronic credit ledger under Rule 86A of the CGST Rules, 2017. Important guidelines are follows: (a) Reasons to believe that ITC in electronic credit ledger is ineligible or availed fraudulently must be based on the grounds listed thereunder. (b) The Commissioner or an authorised officer shall form an opinion only after proper application of mind as to the nature of fraudulently availed or ineligible ITC based on the grounds specified in Rule 86A. (c) The Commissioner (including Principal Commissioner) is the proper officer for the purpose of exercising

	powers under Rule 86A. However, Commissioner/ Principal Commissioner can also authorize any officer subordinate to him, not below the rank of Assistant Commissioner, to be the proper officer for exercising such power. (d) Additional Director General /Principal Additional Director General of DGGI can also exercise the powers assigned to the Commissioner under rule 86A, subject to monetary limits. (e) The Commissioner or the authorised officer also has the power to allow debit of ITC initially considered ineligible or fraudulently availed if proved otherwise.
Circular No. 166/22/2021-GST dated 17 November 2021	This circular provides clarifications on various refund related issues: (a) Time limit as per Section 54(1) would not be applicable in cases of refund of excess balance in electronic cash ledger. (b) Furnishing of CA certificate for not passing the incidence of tax to any other person is not required in cases of refund of excess balance in electronic cash ledger as unjust enrichment clause is not applicable in such cases. (c) It is not mandatory for the registered person to utilise the TDS/TCS amount credited to electronic cash ledger only for the purpose for discharging tax liability. (d) the relevant date for purpose of filing of refund claim for refund of tax paid on supplies regarded as deemed exports would be the date of filing of return, related to such supplies, by the supplier.

CASE LAWS | SUPREME COURT & HIGH COURTS

Opportunity of Hearing in terms of Section 75(4) of the CGST Act can either be in form of oral submission or written submission

The Hon'ble High Court of Calcutta dismissed a writ petition challenging an order of the adjudicating authority on the ground that the Petitioner had not been afforded with the opportunity of personal hearing. The High Court opined that, Petitioner had nowhere in their reply sought for a personal hearing. Further, Section 75(4) only mentions the word 'hearing' and not 'personal hearing'. In absence of any relevant provision mandating personal hearing in the concerned statute question of violation of principles of natural justice does not arise.

[Ram Prasad, Ganga Prasad and Ors. vs Assistant Commissioner of State Tax - 2021-VIL-890-CAL]

CASE LAWS | ADVANCE RULINGS

Sourcing and Supply of E – vouchers is supply of goods in terms of Section 7 of the CGST Act

The Appellant is involved in the business of providing marketing services in the area of sourcing and supply of E-Vouchers. Appellant enters into agreement with merchants for purchase of vouchers which are then supplied to their client who can redeem it at a pre-defined value. The AAAR held that vouchers cannot be considered money in the hands of the Appellant. Vouchers have both value and ownership and ownership gets transferred from person who first purchases voucher from issuer to ultimate beneficiary who redeems it. As the Appellant purely trades in vouchers, it takes the form of goods and since the Appellant is not the issuer of it, time of supply will be governed by provisions of Section 12(5) of the CGST Act.

[***Premier Sale Promotion Pvt. Ltd. - 2021-VIL-74-AAAR***]

Electricity and water charges recovered as reimbursement at actuals, form part of the consideration of taxable value of supply

The Applicant is involved in business of leasing immovable property. As per the leave and license agreement, the Applicant is entitled to recover water and electricity supply charges paid to the

distributor at actuals from the licensee. The Applicant contended that it solely acts in capacity of 'pure agent' as defined under Rule 33 of the CGST Rules. The AAR opined that provision of essential services is mandatory on the landlord and it is not merely facilitating the payment of such charges. Without the provision of such utility services, the licensee cannot run its business and therefore, amounts towards such electricity/water charges by the Applicant is a part of 'consideration' received in relation to renting of immovable property by the Licensor. Hence, the same is includible in the taxable value of supply on account of such charges being in nature of incidental expenses.

[*Indiana Engineering Works Pvt. Ltd. NO.GST-ARA-120/2019-20/B-114*]

Two supplies of setting up of FGD plant and its O&M are separate supplies, not naturally bundled and not supplied in conjunction with each other but one after the other

The Applicant has entered into a contract of setting up a Wet Limestone FGD plant and operation & maintenance (O&M). The Applicant contended that setting up of FGD plant and its O&M constitute a composite supply with principal supply being that of setting of the plant. When interpreting the nature of this contract, the AAR opined that interpreting the nature of a contract, the form of the agreement is not important, it is rather the substance which has to be seen. The AAR took the view that though a single agreement is in place for setting up of plant and its O&M services, the clear demarcation as to the price of each supply and the time of such supply wherein one follows the other, does not give it the nature of composite supply.

[Shapoorji Pallonji and Company Pvt. Ltd. - 2021-VIL-477-AAR]

Renting of Motor Vehicles for transportation of passengers to Navi Mumbai Transport Undertaking (NMMT) is a taxable activity under CGST Act

The Applicant entered into a contract with NMMT for supply of air-conditioned electric buses to be plied on routes as decided by NMMT. The Applicant will essentially supply, operate and maintain electric air-conditioned buses wherein the ownership of such buses remain vested in the Applicant. The AAR opined that there is transfer of right to use the buses wherein effective control and possession is given to NMMT. Hence, the subject activity, amounts to 'renting of motor vehicle' and shall qualify as a taxable activity under the GST provisions falling under Tariff Heading 9966.

[*MH Ecolife E-mobility Pvt. Ltd.- 2021-VIL-484-AAR*]

Processed Turmeric suitable for sale directly to consumers do not fall under the definition of 'Agricultural Produce'

The Applicant acts as a 'commissioner agent' between farmers and traders in terms of the APMC rules. The farmers put up polished turmeric up for auction which is facilitated by the Applicant. The AAR opined that drying and polishing of the Turmeric makes it sustainable and marketable. No evidence has been produced by the Applicant that such processes are carried out by the farmers. The processes carried out by the applicant, adds to the marketability and value of Turmeric, and make them suitable for sale directly to the consumer. Thus, such processed Turmeric does not fall under the definition of an 'agricultural produce' as defined in Notification No. 11/2017-C.T. (Rate) and 12/2017-C.T. (Rate), both dated 28-6-2017. Resultantly, services of the applicant as a 'commission agent' is not exempt under the provisions of Notification No. 11/2017-C.T. (Rate) and 12/2017-C.T. (Rate), accordingly, the applicant is required to get registered under the provisions of the CGST Act.

[*Nitin Babusaheb Patil - 2021-VIL-485-AAR*]

02.

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

CASE LAWS | SUPREME COURT & HIGH COURTS

By-product produced using duty paid inputs cannot be treated as non-duty paid items

The assessee was engaged in the manufacture of Biaxially Oriented Polypropylene Films (BOPP) and had availed Modvat credit on Polypropylene granules but had cleared waste and scrap of plastic produced during the process of manufacture without payment of Excise duty.

It was the case of the Revenue that the assessee had availed Modvat credit on Polypropylene and

cleared waste and scrap of plastics arising from processing of such inputs without payment of duty. It was further contended that as per Rule 57F(4)(a) of the Central Excise Rules, 1944 any waste material produced during the process of manufacture in respect of which credit has been taken may be removed on payment of duty, as if such waste was manufactured in the factory.

The Hon'ble High Court held that plastic waste and scrap produced during the manufacture of BOPP cannot be considered as a final product but only a by-product. The said by-product produced during the process of manufacture utilising inputs which were duty paid cannot be treated as non-duty paid items and therefore, the assessee had rightly availed credit in respect thereof.

[Commissioner of Central Excise, Bolpur v. XPRO India Limited – Order dated 15 November 2021 in CEXA/11/2021 – Calcutta High Court]

CENVAT credit of inputs used in the fabrication of capital goods

The assessee was engaged in the manufacture of sponge iron and its derivative products. The assessee installed four 100TPD sponge iron plant and availed Cenvat credit in respect of various inputs, including construction material, during the period from May to August 2004.

The issue before the Hon'ble High Court was whether the assessee was correct in availing Cenvat credit in respect of the inputs used for supporting structures of capital goods. Applying the user test and by placing reliance upon the decision of Hon'ble Supreme Court in the case of Rajasthan Spinning & Weaving Mills Ltd., the Hon'ble High Court held that since the iron and steel items were in fact used in the fabrication of identifiable capital goods which were in turn used for manufacture of excisable goods, the assessee had rightly availed Cenvat credit in respect thereof.

[Commr., GST & CE, Rourkela and Commr., GST & CE, Bhubaneswar v. M/s SPS Steels Ltd. and Power Ltd., M/s OCL India Ltd. [2021 (12) TMI 75] – Orissa High Court]

CASE LAWS | CESTAT

Refund of credit availed in respect of E-cess and SHE cess cannot be denied

The issue before the Hon'ble CESTAT was whether the Commissioner (Appeals) was correct in rejecting the application for refund of the Education Cess ('E-cess') and Higher Secondary Education Cess ('SHE Cess') amount available with the assessee as on 30 June 2017.

On behalf of the assessee, it was contended that since the cesses were no more leviable, the credit in respect thereof stood merged with the basic Cenvat credit to be utilised for payment of basic excise duty. It was further contended that the Revenue had incorrectly interpreted Notification No. 12/2015 dated 30 April 2015 in the facts and circumstances of the case.

On behalf of the Revenue, it was contended that since the cesses were no more leviable, the credit availed in respect thereof stood lapsed and therefore, the question of refund did not arise.

After considering the submissions, the Hon'ble CESTAT held that E-cess and SHE Cess were Cenvat-able and credit thereof was allowed even for inputs and capital goods which were received after 01 March 2015. The unutilised amount of credit as on 30 June 2017 is the assessee's money and ought to be refunded since it can now not be utilised under the GST regime. The Hon'ble CESTAT relied upon the judgment of the Hon'ble Supreme Court in the case of Eicher Motors Ltd. v. Union of India [1999 (106) ELT 3 (SC)] wherein it was held that once credit has been taken during the period when the same was permitted to be taken, the Revenue cannot subsequently deny such credit. It was further held that the right to credit becomes vested and duly crystallised in favour of the assessee the moment input goods/services are received and by virtue of assessee paying the duty thereon by reimbursing the said amount to the supplier of the goods.

[Atul Limited v. CCE & ST, Vadodara-II – 2021 (11) TMI 423 – CESTAT Ahmedabad]

Payments to contractors on the basis of volume/quantum of work and not on the basis of man-hours/manpower deployed cannot qualify as manpower supply service

The assessee had undertaken the activity of manufacturing plastic jars and containers in the factory of the service recipient with the help of their manpower. The issue that arose for the Hon'ble CESTAT's consideration was whether the activity fell under 'supply of manpower and recruitment service' or 'job work manufacturing'.

The Hon'ble CESTAT held that since in the present case, the contract entered between the parties was for manufacturing plastic jars and containers and the charges for the job was on per-container basis and not fixed wages or salaries for supply of manpower, the service so provided cannot be

called as supply of manpower and recruitment service.

[Jayesh C Patel and Jimmy Enterprise v. CCE & ST, Ahmedabad-II – 2021 (12) TMI 4 – CESTAT Ahmedabad]

Obligations under Rule 6 of CCR are not in form of a charging section but are obligations to avail CENVAT credit

The assessee was engaged in the manufacture of Ferro-Manganese and Silico-Manganese and discharged excise duty applicable thereon. The assessee had a captive power plant and part of the electricity generated was used in the manufacture of the final products and part was wheeled out.

The assessee reversed proportionate amount of Cenvat credit attributable to the inputs/input services with respect to the electricity that was wheeled out. While calculating such proportionate amount, the credit on the input services mentioned under Rule 6(5) of the Cenvat Credit Rules, 2004 ('CCR') was not taken into account and no proportionate reversal was done on such input services.

Show Cause Notice was issued proposing demand of an amount equal to 8%/10% of the value of electricity that was wheeled out under Rule 6(3A) of CCR. The Adjudicating Authority accepted the proportionate reversal made by the assessee. However, while calculating the amount to be reversed, the input services under Rule 6(5) were not excluded and therefore, the confirmed amount was higher than the amount ascertained by the assessee.

The assessee contended that the inputs and input services had been used in the production of electricity only part of which was wheeled out and reversal of proportionate credit was as good as not taking credit at all and therefore, met the requirement under Rule 6(1). Further, proportionate reversal also met the requirement of maintenance of separate accounts under Rule 6(2).

The Hon'ble CESTAT held that the reversal of proportionate amount of credit was sustainable under Rule 6(3A) and that such reversal met the obligations under Rule 6(1) and Rule 6(2). In respect of the Revenue's contention that the assessee had filed declaration with the jurisdictional Deputy Commissioner instead of the Commissioner, the Hon'ble CESTAT held that the assessee could not be deprived of a substantive benefit on account of such hyper-technical lapse.

It was further held that the contention of the Revenue that Rule 6 would not apply cannot be sustained because if Rule 6 would not apply to the assessee's case, then nothing in the said Rule including the demand in the Show Cause Notice would survive as everything was based on the premise that Rule 6 applied to the assessee.

It was further observed that the obligations under Rule 6 are not in the form of a charging section demanding duty but are obligations to avail Cenvat credit. No assessee can be compelled to maintain separate accounts under Rule 6(2) and similarly, no assessee can be compelled to pay an amount under Rule 6(3). There is no mechanism to enforce any of the options on the assessee. If the assessee does not choose any of the options and still avails Cenvat credit, such irregularity in respect of the credit so availed can be recovered under Rule 14 of CCR. Accordingly, the Hon'ble CESTAT allowed the appeal.

[Nava Bharat Ventures Limited v. CCE & ST, Hyderabad – 2021 (11) TMI 426 – CESTAT Hyderabad]

Compensation for coal blocks cancellation pursuant to Supreme Court order not consideration to tolerate an act

The Appellant is engaged in the business of mining and selling coal and were allotted 2 coal blocks by the Ministry of Coal in 2005. However, the Hon'ble Supreme Court cancelled allocation of various coal blocks, subsequent to which compensation amount was paid to the appellant out of proceeds received by Government from new allottees. Thereafter, the Appellant was saddled with Service Tax liability by invoking the provisions of Section 66E(e) on the compensation amount received treating the same towards '*agreeing to tolerate an act*' of cancellation of coal blocks.

The issue raised before the Hon'ble CESTAT was whether the demand of service tax raised on the compensation amount received in pursuance to cancelation of coal blocks was sustainable.

The Hon'ble CESTAT observed that appellant has received the compensation in terms of the statute enacted pursuance to the Hon'ble Supreme Court's order and held that the appellant cannot be said to have tolerated any act inasmuch as the appellant did not have any option or choice whether to tolerate or not and the receipt of compensation is by operation of law and not a case of payment under a contract.

The Hon'ble CESTAT additionally observed that even in cases where any amount is received under

a contract as a compensation or liquidated or unliquidated damages, it cannot be termed 'Consideration'. Therefore, the Hon'ble CESTAT decided the matter in favour of the appellant setting aside the order as well as penalties holding that such activity cannot be called taxable services of tolerating a situation by any stretch of imagination and no service tax can be levied on such amount received by the appellant as compensation.

[MNH Shakti Ltd vs Commissioner, CGST & CX, Rourkela – 2021 (11) TMI 427]

Companies registered independently in respective countries not 'establishments outside India'; export status allowed

The appellant is a joint venture company of Larsen & Tuobro Limited, India and Sargent & Lundy LLC, USA rendering consulting engineering services to M/s Larsen & Toubro Electromech LLC and M/s Sargent & Lundy LLC, both located out of India and was claiming the benefit of export of service without payment of service tax. Audit was conducted by the authorities and it was alleged that that the said service recipients were "other establishments" of the appellant and therefore, the service does not qualify as 'export of service' in accordance with item (b) of Explanation 3 of Section 65B(44) of the Finance Act, 1994 read with Rule 6A of the Service Tax Rules, 1994. It was further alleged that such services were "exempted services" as per Rule 2(e) of CCR and demand was raised for reversal of Cenvat credit.

The Hon'ble CESTAT observed that aforesaid entities and the appellant are independent companies registered in their respective countries and such entities cannot be treated as 'other establishments' of the appellant by relying on the Hon'ble Bombay High Court's decision in the case of M/s Linde Engineering India Private Limited [2020 (8) TMI 181].

The Hon'ble CESTAT held that services provided by appellant to independent companies registered/located outside India are export of services under Rule 6A of Service Tax Rules, 1994 and the same cannot be called 'exempted services' under clause 2(e) of CCR. Further, holds that no demand of reversal of credit can be made under Rule 6 of CCR and no liability can be fixed on the appellant,

[L & T Sargent & Lundy Limited vs C.C.E. & S.T. - Vadodara-I - 2021 (11) TMI 69]

High fee charged for Media Studies cannot be a ground to deny exemption under 'Commercial Coaching Services'

The appellants in affiliation with Punjab Technical University/Mewar University were conducting professional/ vocational training courses and providing certificates to the students to enable students/trainees to undertake self-employment upon completion of the course. Revenue alleged that during the period of dispute April, 2009 to March, 2016, the appellant had evaded service tax payment insofar as they were conducting training courses which were "professional/ technical" attracting high fees, thereby alleged that cannot be included in the category of vocational courses within the scope of Notification No. 24/2004-ST and hence would not be exempted and further alleged that the appellant was providing certificates to the students without the approval of either UGC or AICTE.

The Hon'ble CESTAT observed that the Adjudicating Authority has failed to appreciate that there is no such bar with respect to the quantum of fee in the statute for grant of exemption for highly glamorous film/ TV courses imparted by the appellant attracting high fees. Further, it was emphasized that the list of services, enumerated in Circular No. 59/8/2003, in the nature of vocational courses is by way of example only and the conscious use of word 'etc.' indicates the wide scope of exemption notification and hence, observed that Revenue's interpretation of the term "vocational training and coaching" for taxation purposes was wholly misconceived.

The Hon'ble CESTAT further discarded the Revenue's contention that appellant did not have affiliation with the University to issue such certificate /degree/ diploma holding that the contention of Revenue is contrary to the facts as the appellant have demonstrated that the degree/ diploma certificates were issued by the respective Universities.

The Hon'ble CESTAT allowed the appellant's appeals and set aside the impugned orders holding that the appellant is not liable to service tax.

[Asian School of Media Studies vs Commissioner of CGST - 2021 (11) TMI 514]

Amount received towards 'earnest money' forfeiture, compensation for 'non-delivery' of goods, not taxable

The appellant is engaged in the manufacture of MS ingots having a Central Excise registration. During the course of audit of records of the appellant, the authorities found certain miscellaneous income received on account of non-performance of the agreement to sale and non-compliance of the conditions of contract of supplier of goods. Tax demand along with interest and penalty was raised on the appellant alleging that such income was consideration for 'agreeing to the obligation to refrain from any act, or to tolerate an act or a situation, or to do an act' and thus was liable to service tax as a 'declared service'.

The issue for consideration before the Hon'ble CESTAT was whether the appellant is providing 'declared service' as defined under section 66E(e) of the Finance Act, 1994.

The Hon'ble CESTAT observed that what appears from retention of the money in question is the expectation of the appellant that other party should comply with the terms of the contract and such other party shall be burdened if there is any non-compliance on its part and the only purpose for minimum compensation and for forfeiting the earnest money is to ensure that the default act is not undertaken again or repeated. Further, remarked that neither the appellant is carrying on any activity to receive compensation nor can there be any presumption for intention of other party to breach or violate the contract and suffer the losses.

The Hon'ble CESTAT, thereby, set aside the order under challenge holding that retention of such amount cannot be said to be an act of receiving consideration towards toleration of defaulting act of other parties.

[Tirupati Balaji Furnaces Pvt Ltd. vs Commissioner, CGST, Jaipur - 2021 (11) TMI 600]

03.

CUSTOMS

CASE LAWS | SUPREME COURT & HIGH COURTS

Non-adherence to Proceeding sequentially from Rule 4 to Rule 9 after Rejection under Rule 12 leads to remand

The writ Court had specifically noted the steps contemplated in Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules and found that once the value declared by the importer is rejected, the proper Officer will have to determine the value by separate proceedings sequentially in accordance with Rules 4 to 9. The Department failed to do so and therefore, the writ Court had rightly remitted back to the authorities for fresh consideration in accordance with law. However, the Department filed an appeal against the order. The Court held that, having failed to follow the procedure prescribed and the steps to be followed, the case had been remanded for a fresh consideration by the Authorities for which, the authorities cannot have any grievance. Thus, there was no merit in the case of the Department-appellant and the writ appeal is dismissed as devoid of any merits.

[The Commissioner of Customs vs Unik Traders 2021 (11) TMI 802]

DRI cannot restrict assessment by Proper Officer

The Hon'ble Supreme Court in *Canon India Private Limited vs Commissioner of Customs [2021 (3) TMI 384 - SC]* observed that Additional Director General of DRI was not a "Proper Officer" to exercise the power under Section 28(4) of the Customs Act 1962 and the initiation of the recovery proceedings was held without jurisdiction and liable to be set aside. As far as the assessment of imported consignment is concerned, it is the Deputy Commissioner or the Assistant Commissioner of Customs and Central Excise namely, the first and the second respondents and/or the Appraiser of Customs who are competent authority albeit the "Proper Officer" to determine the correct classification. There is a prohibition of goods falling under Heading 0802 of Customs Tariff Act 1975, and it is no part of the duty or function of the DRI respondents and their counterparts in Chennai to stall an assessment proceeding by a "proper officer" designated under the Customs Act and the Notification No.40/2012- Cus(NT) dated 2 May 2012.

Where there has to be a proper determination as to whether there is prohibition of the imported goods. This exercise can be carried only by a "Proper Officer" and cannot be usurped by the DRI. Merely because the officers of the DRI have powers to investigate by itself means will not mean that they can insist on a "hands off approach" by a competent officer who have been given the powers to assess Bill of Entry filed by an importer. Even if the jurisdictional officer of the DRI from Chennai felt that the import was without proper licence and that there was an attempt to import prohibited goods, it is their duty to merely inform the assessing officers namely the Additional Commissioner of Customs, The Assistant Commissioner of Customs, Superintendent of Central Excise and Customs or the appraiser of customs who are the "assessing officer's " to make proper assessment to safeguard the interest of the Revenue.

If the Proper Officer is of the view that the goods fall under Heading 0802 of the Customs Tariff Act 1975 and there is a misdeclaration by the petitioner by disguising the classification in the respective Bills of Entries under Heading 2106 of the Customs Tariff Act 1975, a quick decision should be taken and proceed in accordance with

law - A "proper officer" can also initiate proceeding under Section 111(d) read with Section 124 of the Customs Act 1962 to confiscate the consignment and impose penalty under Section 112 of the Custom Act 1962.

[Unik Traders vs The Additional Commissioner of Customs, The Assistant Commissioner of Customs, The Principal Additional Director General, The Intelligence Officer – 2021 (12) TMI 198]

04.

TRADE PROTECTION MEASURES

NOTIFICATIONS FOR LEVY OR EXTENTION OF EXISTING LEVY OR REMOVAL OF EXISTING LEVY

Anti-dumping duty

Products	Country of origin / Country of export	Period / Notification
Untreaed fumed silica	China PR and Korea RP	Imposes Anti-Dumping Duty *Notification No. 66 / 2021-Customs (ADD) dated 11 November 2021* imposes anti-dumping duty on the subject goods.
Steel and fibre glass measuring tapes	People's Republic of China	Imposes Anti-Dumping Duty *Notification No. 67 / 2021-Customs (ADD) dated 12 November 2021* imposes anti-dumping duty on the subject goods.
Certain flat rolled products of aluminium	People's Republic of China	Levy of anti-dumping on the subject goods. *Notification No. 68 / 2021-Customs (ADD) dated 6 December 2021* imposes anti-dumping duty on the subject goods.
Axle for trailers	People's Republic of China	Levy of anti-dumping on the subject goods. *Notification No. 69 / 2021-Customs (ADD) dated 13 December 2021* imposes anti-dumping duty on the subject goods

BY INDIA – INITIATION, PROVISIONAL, FINAL INCLUDING REVIEW

Recommendation

The Designated Authority has recommended the imposition of anti-dumping duty on '*glass fibre and article thereof*' originating or exported from Bahrain and Egypt.

[Case No. ADD – OI – 20 / 2020]

Sunset Review

The Designated Authority has recommended continuation of levy of anti-dumping duty on '*uncoated copier* paper' originating or exported from Indonesia and Singapore.

[Case No. (SSR) 08 / 2021]

The Designated Authority has recommended continuation of levy of anti-dumping duty on '*glazed / unglazed porcelain / vitrified tiles in polished or unpolished finish with less than 3% water absorption*' originating or exported from China PR.

[Case No. : 14/14/2014-DGAD]

Office Memorandum

The Central Government has decided not to impose anti-dumping duty on '*glass fibre and articles thereof*' originating from or exported from China PR.

[OM No. 190354 / 108 / 2021 – TO (TRU-I) – CBEC]

The Central Government has decided not to impose definitive anti-dumping duty on '*Vitamin C*' originating from or exported from China PR.

[OM No. 190354 / 221 / 2021 – TO (TRU-I) – CBEC]

05.

FOREIGN TRADE POLICY AND SPECIAL ECONOMIC ZONES

UPDATES PERTAINING TO FTP

Amendment in Import and Export Policy of Rough Diamonds

Import and export of rough diamonds shall not be permitted unless the concerned importer is registered with Gems & Jewellery Export Promotion Council, which is the designated importing and exporting authority of India for Kimberley Process Certification Scheme.

[Notification No 43/2015-2020 dated 22 November 2021]

Amendment in Export Policy of Agar Oil and Agarwood

Export of Agar Oil and Agarwood (including chips and powder) has been placed under the "Restricted" category. Annual export quota of 1,500 kg and 25,000 kg per annum has been notified for Agar Oil and Agarwood respectively. Modalities for obtaining an export license have also been notified.

[Notification No 45/2015-2020 dated 29 November 2021]

SOP notified for random checking of imported consignments of metal scraps

A Standard Operating Procedure (SOP) has been notified for random checking of imported consignments of metal scrap with respect to radioactive contamination. Some of the key aspects of the SOP are as follows:

a) No container without a certificate issued by a Pre-Shipment Inspection Agency (PSIA), would be allowed to be unloaded;
b) Radiation levels at the location where the container is placed and on the surface of the container should be measured. These levels should not exceed the acceptable range;
c) In case any container is found showing higher radiation levels, it should be subjected to identification of source of radiation with an Isotope Identifier;
d) If the source of radiation is identified as a radionuclide other than a Naturally Occurring Radioactive Material, an intimation should be sent to the Department of Atomic Energy. The container should be relocated to a less occupied area and cordoned off;
e) Necessary steps shall be initiated for repatriation / deportation of the container having contaminated metal scrap by the importer or other notified persons.

[Public Notice No 37/2015-2020 dated 15 November 2021]

Extension of date for submitting applications for allocation of Tariff Rate Quota under India-Mauritius CECPA

The deadline for submission of online applications for allocation of Tariff Rate Quota (TRQ) under the India-Mauritius Comprehensive Economic Cooperation and Partnership Agreement (CECPA) for FY 2021-22 has been extended till 31 January 2022.

[Public Notice No 38/2015-2020 dated 22 November 2021]

Extension of date for mandatory e-filing of Non-Preferential Certificate of Origin

The transition period for mandatory filing of applications for Non-Preferential Certificate of Origin (CoO) through the e-CoO Platform has been extended till 31 January 2022. The existing systems for submitting and processing non-preferential CoO applications in manual / paper mode would be allowed until the aforesaid date.

All agencies authorised to issue Non-Preferential CoO are required to complete their onboarding process to the electronic platform and all exporters are required to register themselves on the said platform, before the aforesaid date.

[Trade Notice No 24/2021-2022 dated 15 November 2021]

De-activation of non-updated IECs

The Directorate General of Foreign Trade (DGFT) had mandated all Importer Exporter Code (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 2014 shall be de-activated from 6 December 2021.

However, an IEC holder would be allowed to re-activate their IEC online upon updating their details, post which the updated IEC would be transmitted to the Customs' system.

[Trade Notice No 25/2021-2022 dated 19 November 2021]

Best practices for ensuring safe and secure online transactions suggested

The DGFT has suggested certain best practices for ensuring safe and secure online transactions. Some of the key suggestions include checking from time to time whether duty credit scrips which have not been transferred or utilised are properly reflected on the online DGFT module and approaching the licensed Certifying Agency / Controller of Certifying Authorities in case an unauthorised issuance of Digital Signature Certificate is suspected.

[Trade Notice No 26/2021-2022 dated 26 November 2021]

Facility for e-filing of RCMC / RC applications enabled

Facility for undertaking processes relating to Registration-Cum-Membership Certificate (RCMC) / Registration Certificate (RC) including submission of fresh / amendment / renewal applications, has been enabled on the online DGFT portal from 6 December 2021. These applications could be filed using DSC or through the Aadhar authentication mode.

E-filing of RCMC / RC applications has not been made mandatory presently and the existing procedure for submitting applications and issuing RCMC / RC directly by the issuing agencies would be allowed to continue until 28 February 2022.

[Trade Notice No 27/2021-2022 dated 30 November 2021]

06.

OTHER REGULATORY LAWS

FOOD SAFETY AND STANDARDS

Registration and inspection of Foreign Food manufacturing facilities

FSSAI proposed to add a new chapter (Chapter XIV) to Food Safety and Standards (Import) Regulations 2017 regarding registration and inspection of foreign food manufacturing facilities. As per the amended regulations, specific risk categories of food products imported into India will be decided for which inspection or audit of foreign food manufacturing facilities producing such categories of foods would be mandatory. The regulations provides procedures for registration, inspection and issuance of certificate in this regard.

[File No. 4067/ MOC- Trade/ Reg- FSSAI/ 2017 dated 3 November 2021]

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

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

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

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

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