



ECONOMIC  
LAWS  
PRACTICE  
ADVOCATES & SOLICITORS

# TAX NEWSLETTER

August 2021

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## DIRECT TAXATION

### RECENT CASE LAWS



#### Long-term capital loss on sale of shares purchased at premium held to be genuine

*Swiss Reinsurance Company Ltd (ITA no. 6531/Mum/2017) (Mumbai ITAT)*

- The taxpayer, a Swiss company had acquired certain shares of an Indian company at a high premium in the previous years. During the year under consideration, the taxpayer sold these shares to another Indian company. The consideration for the share sale was below the cost of acquisition and resultantly, the taxpayer had incurred heavy capital losses to be carried forward to subsequent years.
- The Tax Officer (TO) questioned the capital loss incurred by the taxpayer citing that the shares were acquired at a significant premium. In the TO's view, the taxpayer failed the commercial/business purpose test and the entire disinvestment transaction was a colorable device for creating artificial loss. Thus, the taxpayer has artificially created loss for set-off against future gain. Aggrieved, the taxpayer challenged the TO order before Ld. Dispute Resolution Panel (DRP) and consequently, before the Mumbai Bench of Income Tax Appellate Tribunal (ITAT).
- **The ITAT concluded** that the contentions raised by the TO were presumptive, irrelevant and without any basis. The ITAT holds the long-term capital loss as genuine and not artificial in view of the following:
  - Valuation under Rule 11UA of the Income-tax Rules, 1962 (**the IT Rule**) cannot be invoked for valuation of unlisted equity shares for any purpose other than those prescribed under Section 56(2) of the Income-tax Act, 1961 (**IT Act**)
  - The purchase/sale of shares is within the legal framework and in compliance with the Foreign Exchange Management Act, 1999 and Insurance Regulatory and Development Authority regulations.
  - The TO has no justification to substantiate that the entire transaction had been arranged to create artificial loss.
  - At the time of purchase of shares (FY 2007, FY 2008 and FY 2009) and sale thereof (AY 2014-15), the taxpayer could not have foreseen or anticipated the future event of capital gain.

#### ELP Comments:

The ITAT has emphasized on the rationale that a loss cannot be envisaged with a view to be set off against a capital gain which cannot be foreseen. This principle would definitely dissuade revenue authorities from causing hardships to genuine taxpayers in the absence of any basis for presuming a sham transaction. Further, the aforesaid principle can be relied on by the taxpayers to defend their case wherever the revenue authorities have wrongly invoked General Anti-avoidance Rules (**GAAR**).



### Interconnected services provided under a unified agreement constitute PE in India

*Telenor ASA (ITA No. 1307/Del/2015)(Delhi ITAT)*

- The taxpayer, a Norwegian tax resident, entered into a Business Service Agreement with an Indian entity to provide services under different Service Order Form (SOF) which included activities such as sourcing, marketing, IT/IS, HR and other contracts. For AY 2010-11, income being in the nature of 'fees for technical services', taxpayer offered the same to tax @10% on gross basis as per Article 12 of the India-Norway DTAA.
- The TO contended that the employees of the taxpayer cumulatively stayed in India for a period of 260 days and the services provided under the SOF are interconnected under a unified agreement. Consequently, the TO had passed a draft assessment order and held that the taxpayer has a PE in India in terms of Article 5(2)(1) of the DTAA and attributed 100% of the receipts to the PE by allowing 40% expenses. Aggrieved, the taxpayer challenged the TO order before Ld. DRP and consequently, before the Delhi bench of ITAT.
- ITAT evaluated the services provided by the taxpayer in light of the Organization for Economic Co-operation and Development's commentary on Article 5 of the 'Model Tax Convention on Income and Capital' wherein the term 'enterprise' and 'connected projects' are explained elaborately. In view of the following, the ITAT held services provided by the taxpayer are inter-connected, interlaced and sequential thereby resulting in a PE in India:
  - The taxpayer had raised consolidated bills for all services on a quarterly basis, irrespective of the SOFs under which services were rendered purporting that all services were provided under a single contract
  - None of the services provided by the taxpayer could stand in isolation to each other
  - No single activity could give rise to performance and achieving the purpose of the recipient.
- Further, the ITAT **also held** that revenues raised out of the services rendered from Norway cannot be attributed to taxpayer's PE in India and the issue of determination of profits was remanded back to the TO.

#### ELP Comments:

ITAT elucidated the view that, in order to compute the total duration of provision of services as prescribed under Article 5 of the DTAA, services pertaining to 'same' as well as 'connected' projects should be taken into account, irrespective of the fact whether such services are similar in nature or not. The ruling also obliquely upholds the principle of 'substance over form' since ITAT evaluated the essence and inter-relation of different activities performed by the taxpayer rather than merely relying on the SOFs. This may lead to a potential service PE risk for taxpayers rendering multiple services pertaining to a single project under fragmented contractual agreements.



### Payments for online advertising and marketing not taxable as 'Royalty'

*Urban Ladder Home Décor Solutions Pvt. Ltd.(ITA No. 615 to 620/Bang/2020)(Bangalore ITAT)*

- The taxpayer, a resident company, is engaged in the business of selling home décor products mainly through online marketing. To facilitate its sale, the taxpayer availed services from following non-resident companies without deducting any tax at source:
  - Bulk e-mail facility by Mailchimp for sending advertisement/marketing content to customers
  - Computing services/information technology infrastructure on rental basis by AWS

- Advertisement hosting on Facebook Portal offered by Facebook
- The TO had assessed the payments made to non-resident companies as ‘Royalty’ in view of the facts that the payments were for use or right to use of patented software processes imbibed in the marketing technologies used by automation tools or the provision of cloud computing services. On account of failure to deduct tax at source, TO raised demanded tax from the taxpayer for AY 2015-16, AY 2016-17 and AY 2017-18. The taxpayer preferred an appeal before the Ld. Commissioner of Income Tax (Appeals) (**CIT(A)**) and subsequently before the Bangalore bench of ITAT.
- The ITAT observed that non-resident companies are allowing the taxpayer to use the facilities provided in their sites, which includes, inter alia, software facilities (that target specific audience using algorithms) in order to create an environment of ease in creating the “advertisement content” to suit the platforms of Facebook or Mailchimp. However, the taxpayer received the right to use those facilities only on entering into an agreement with the non-resident companies for hosting his advertisement or for sending bulk mails. The inference is that the use of facilities is intertwined with the activity of placing advertisements in web portal of Facebook or sending bulk mails.
- Further, in order to determine the taxability of web hosting charges paid to AWS, ITAT relied upon the ruling of Pune bench of ITAT in the case of **EPRSS Prepaid Recharge Services India P Ltd (ITA No.828/Pun/2016)** where a reference was made to the Madras High Court ruling in the case of **Skycell Communications (251 ITR 53)** wherein it was held that mere usage of a facility does not give rise to provision of any technical service.
- ITAT relied upon the principle laid down by the SC in the case of **Engineering Analysis (CA. No. 8733-8734/2018)** further highlighting the view that payments made for usage of facilities for further placing advertisement on the portal does not give any specific license for use or right to any of the facilities, including the software embedded in such facilities. Thus, **ITAT concluded** that payments made to the aforementioned non-resident companies do not give rise to any income chargeable in India, and thus there was no requirement to deduct tax at source by the taxpayer.

**ELP Comments:**

ITAT aptly underlines the fact that in cases where taxability of payments made for usage of advertisement facility for further placing advertisement on the portal is in question, non-resident recipients already stand on a better footing than those in the case of Engineering Analysis (supra). This is so because no specific license for use or right to use any of the facilities is provided to the user, instead the facilities are merely used as a medium to place advertisements on the portal. In today’s digitalized economy, the ruling would prove beneficial for numerous taxpayers availing advertisement and other information technology facilities from internet giants such as Facebook and Amazon, in turn, curtailing the issue at lower courts itself.



**The essence behind application of qualitative & quantitative filters for determining Arm’s Length Price (ALP)**

*Citicorp Services India Ltd (ITA No.4609/Mum/2017 & ITA No.7336/Mum/2019) (Mumbai ITAT)*

- The taxpayer had rendered various support services (IT enabled services) to various AEs. The taxpayer also rendered other shared support services such as providing assistance in employee administration, assistance in the employee database administration, employee helpdesk support, etc.
- The taxpayer had adopted the Transactional Net Margin Method (**TNMM**) as the Most Appropriate Method (**MAM**) to determine the ALP for the aforesaid transactions. These services were benchmarked using companies engaged in Information Technology Enabled services (**ITES**) and it was concluded that the international

transactions were compliant with the arm's length standard.

- The TO had applied various filters for the purpose of benchmarking of international transactions and rejected the ALP computed by the taxpayer. The CIT(A) rejected the following filters adopted by the TO:
  - Companies having export sales less than 75% of its total revenue;
  - Companies where related party transactions are more than 25% of operating revenues; and
  - Companies which are persistently loss making
- Aggrieved by the rejection of the above filters of benchmarking by CIT(A), the TO had filed an appeal before the ITAT.
- The ITAT **directed the TO** to recompute the ALP in the light of following observations:
  - With respect to the first filter (i.e., export sales less than 75% of revenue), the ITAT noted that the taxpayer is a captive service provider and that taxpayer's ITES is mainly catering to the export market. Accordingly, it held that there is absolutely no harm in applying the filter and thereby rejecting companies having export sales less than 75% of its total sales.
  - With respect to the second filter (i.e., where related party transactions are more than 25% of operating revenues), the ITAT negated the contention of the taxpayer that such filter more than 25% would be advantageous in price negotiated between related parties for the purpose of determination of ALP and accordingly, rendered its application as a valid filter.
  - Lastly with respect to application of filter of persistently loss-making companies, the ITAT noted that the current year is taxpayer's first year of operation and that taxpayer is bound to incur losses and therefore, it is justified in comparing companies which had incurred losses during the year under consideration. The ITAT held that loss-making companies per se cannot be eliminated for the purpose of comparability and accordingly, it may not be a valid filter which was rightly rejected by the CIT(A) for the benchmarking.



#### SLP granted on the issue of charge of interest under Section 234B in case of a non-residents

*SMS Mavac Ltd (SLP (Civil) Diary no(S). 45598 OF 2019)*

- **SLP granted by the Hon'ble Supreme Court of India** against the order of the High Court wherein it was held that in case of a non-resident taxpayer, entire tax was to be deducted at source by the payer while making the payments and therefore, interest under Section 234B cannot be levied for delayed payment of advance tax.
- The High Court had dismissed the appeal of the Revenue by relying on the decision of ***DIT (IT) v. GE Packaged Power Inc. [2015] 56 taxmann.com 190/230 Taxman 653/373 ITR 65 (Delhi)***. In the said decision, it was held that no interest is leviable on the taxpayer under Section 234B of the IT Act, even though they filed returns declaring NIL income at the stage of reassessment. Payers were obliged to determine whether the taxpayer were liable to tax under Section 195(1) and the failure of the payers to do so does not leave the revenue without remedy. The payer may be regarded an assessee-in-default under Section 201 and the consequences delineated in that provision shall visit the payer.



**Margin as per MAP in accordance with Article 27 of India – US DTAA can be applied to transactions with non-US based AEs**

*Dell International Services India Pvt Ltd (IT/TP)A No. 637/BANG/2016) (BANGALORE ITAT)*

- The taxpayer was a wholly owned subsidiary of Dell International Inc and was primarily engaged in the business of providing Software Development Services (**SWD**) and ITES to its US and non-US based AEs'. During the year under consideration, the TO had passed a draft assessment order incorporating TP adjustment made by TPO.
- With respect to SWD segment, the TPO had rejected 10 companies out of the 12 and furthermore added 9 other companies as comparable that resulted into adjusted arithmetic mean of 25.01%. For ITES segment, the TPO accepted only 1 company as comparable and rejected the rest. Further, 9 other companies were added by the TPO as comparable which resulted into 27.03% of adjusted Net Margin.
- Aggrieved by the said assessment order, the taxpayer filed objections before DRP which, vide its directions and granted partial relief to the taxpayer. Pursuant to the directions of the DRP, the TO had passed the final assessment order. Consequently, the taxpayer filed an appeal with the Bangalore Bench of ITAT.
- During the pendency of the above appeals, the taxpayer had filed an application under Article 27 of India-US DTAA for initiation of mutual agreement procedure (**MAP**) with respect to ITES services provided to its US based AEs'. The taxpayer had accepted the terms of MAP and accordingly grounds on TP adjustment with respect to ITES services provided to its US based AEs' was withdrawn. Pursuant thereto, the taxpayer had raised an additional ground with Bangalore Bench of ITAT stating that the arm's length mark-up cost arrived under MAP resolution as per Article 27 of India-US DTAA must be applied for transactions with non-US based AE's for ITES segment.
- **The ITAT held** that the taxpayer nor the TPO have made any distinction between the US and Non-US based AE transactions. In such circumstances, the margin accepted in MAP in respect of US AE transaction has to be regarded as Arm's Length mark-up cost for the non-US AE transaction in the ITES segment and accordingly the ground was accepted.



**Tax treaty benefits cannot be denied on account of re-domiciliation of entity**

*Asia Today Ltd (ITA no. 4628&4629/Mum/2006 and 1877/Mum/08) (Mumbai ITAT)*

- The taxpayer was a company incorporated in British Virgin Islands (**BVI**) in 1991 under the name 'Signpost International Limited' was subsequently renamed to 'Asia Today Limited' on 24th May 1992. Taxpayer further re-domiciled to Mauritius on 29th June 1998 and was issued a 'certificate of incorporation by continuation' which was effective from the date of deregistration in the BVI i.e., 30th June 1998. Thus, originally incorporated in the BVI, the company was "re-domiciled" to Mauritius.
- With respect to AY 2001-02, taxpayer was denied treaty benefits under India-Mauritius Double Taxation Avoidance Agreement (**DTAA**) due to such re-domiciliation from the BVI to Mauritius. Aggrieved, taxpayer filed cross-objection appeal before the Mumbai bench of ITAT.
- In this regard, ITAT remarked that corporate re-domiciliation, i.e., 'Continuation', is a process by which a company moves its 'domicile' (or place of incorporation) from one jurisdiction to another by changing the country under whose laws it is registered but maintaining the same legal identity. Further, ITAT also stated that business and legal positions are constantly evolving concepts and due to situations wherein the offshore entities face a

situation where the rules and regulations then prevailing in the current 'domicile' are no longer fit for the company's purpose, or the laws therein, restrict the business prospects, re-domiciliation is the preferred option.

- On an academic note, ITAT observed that the attachment with the jurisdiction of incorporation appears to be as transient as required by the exigencies of treaty shopping. Also, the concept of re-domiciliation also appears to be an antithesis of the very justification of the situs of incorporation of a company being linked with the treaty entitlements.
- However, the **ITAT clearly concluded** that raising a purely academic issue regarding treaty benefit entitlement, for the first time after almost two decades from the relevant financial period is incorrect. Resultantly, the TO cannot revisit the issue. ITAT held that re-domiciliation could merely trigger detailed examination regarding the genuineness of re-domiciliation and cannot curtail rightful treaty benefits.

**ELP Comments:**

ITAT clearly highlighted the stance that DTAA benefits are available on the basis of existence of legal entity and not as a result of situs of incorporation. ITAT starkly pointed out that re-naming, re-structuring and even re-domiciliation of offshore companies are facts and foundational aspects of life which cannot be suddenly questioned and re-visited by revenue authorities after the lapse of a reasonable period of time. Thus, the ruling reflects the commercial soundness of Indian judicial authorities with the changing business scenarios.



**NOTIFICATION/CIRCULARS**

S.No.	Reference	Particulars
1.	<b>Notification No. 82 of 2021</b>	CBDT amended Rule 12 of IT Rules, 1962 that expand the coverage of "Return of income" to include the income tax return furnished under Section 148, in entirety as against inclusion of only Section 148(1) earlier.
2.	<b>Notification No. 93 of 2021</b>	<i>CBDT notified Rule 12AA for the purpose of Section 140 (c) and Section 140 (cd) (verification of return) and Rule 51B for the purpose of Section 288(2)(viii) (appearance on behalf of the Assessee). For the said Rules, "any other person" shall be the person appointed by the Adjudicating Authority for discharging the duties and functions of: (i) an interim resolution professional, (ii) a resolution professional, (iii) or a liquidator, under the Insolvency and Bankruptcy Code, 2016 and the rules and regulations made thereunder.</i>
3.	<b>Notification No. 92 of 2021</b>	CBDT notified the Income-tax (23rd Amendment) Rules, 2021, to insert Rule 10RB for computation of relief in MAT payable by a taxpayer due to operation Section 115JB(2D) which provided that the taxpayer can make application to the TO requesting for re-computation of book profit under section 115JB of the past year(s) in certain cases. The said Rule 10RB provided a formula-based approach for computation of relief in MAT liability. It also notified that Form No. 3CEEA should be filed electronically for claiming such relief.
4.	<b>Notification No. 90 of 2021</b>	CBDT notified Income-tax (22nd Amendment) Rules, 2021 to insert Rule 21A1 which provided a formula for computation of income attributable to units held by non-resident in a specified fund for the purpose of Section 10(4D) and also for determination income of a specified fund in the nature of short-term or long-term capital gains referred to in Section 115AD(1)(b).
5.	<b>Notification No. 96 of 2021</b>	CBDT vide said notification, in exercise of powers u/s 245-OB(1) notified 3 Boards for Advance Rulings, 2 in Delhi and 1 in Mumbai which are effective from September 01, 2021.
6.	<b>Notification No. 97 of 2021</b>	CBDT notified September 01, 2021 as the date for the purposes of: (i) second proviso to Section 245-O(1), (ii) Section 245P(2), (iii) Section 245Q(4), Section 245R(8), (iv) Section 245S(3), (v) Section 245T, (vi) Section 245U(3) and (vii) proviso to Section 245V.

**NEWS**

- The ITD issued refund of INR 43,991 crores to more than 21.03 lakh taxpayers between April 1, 2021 to July 26, 2021.
- MoS Finance Shri Pankaj Chaudhary affirmatively responds to the questions on global minimum tax. The questions and responses being as below:

i. Whether it is true that around 130 countries have recently backed a global minimum tax as part of a worldwide effort to keep multinational firms from dodging taxes by shifting their profits to countries with low rates as announced by the Organization for Economic Cooperation and Development,	130 out of 139 members of OECD/G20 Inclusive Framework on BEPS including India adopted the high-level statement which includes continuing work for an agreement on global minimum tax with rate of at least 15% on country-by-country basis.
ii. if so, the details thereof,	It is intended to ensure that large and profitable multi-national enterprises pay global minimum tax on their income. It is targeted to curb unhealthy tax competition, profit shifting and treaty abuse.
iii. whether India has joined and backed the said move as signed by 130 countries; and	India is actively participating in carrying out further work to reach an agreement on a minimum corporate tax regime
iv. if so, the details thereof and if not, the reasons therefor;	

- National Faceless Assessment Centre (**NaFAC**) laid down Standard Operating Procedure for Faceless Penalty Scheme, 2021(**FPS**). In continuation with the CBDT's order 20 January 2021, the NaFAC and Regional Faceless Assessment Centre (**ReFAC**) are to act as National Faceless Penalty Centre/Regional Faceless Penalty Centres (**NFPC/RFPC**) respectively. Thus, for conducting the penalty proceedings covered within the scope of FPS, a Standard Operating Procedure (**SOP**) was prescribed.

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## INDIRECT TAXATION

### RECENT CASE LAWS



A Bill of Entry can also be amended/modified under Section 149 of the Customs Act thus enabling an assessee to file refund

*Sony India Pvt. Ltd. (W.P. 4793/2021) (Telangana High Court)*

#### FACTS OF THE CASE

- In 2014-2015, the Petitioner imported mobile phones for trading purposes for which a concessional rate of Countervailing duty (under Exemption Notification No. 12/2012-CE dated March 17, 2012) could not be availed. This was due to – (i) The Department disputed on the availability of the concessional rate as it was alleged that the condition of non-availment of CENVAT Credit on inputs was not fulfilled; and (ii) the EDI system did not permit availment of concessional rate as per the Exemption Notification.
- Subsequently, the Hon'ble Apex Court in the case of *SRF Ltd. v. Commissioner of Customs*<sup>1</sup> clarified that where a lower rate of Excise duty has been provided with condition of non-availment of CENVAT Credit, the Countervailing duty (CVD) shall also be applicable at a lower rate. Since the importer - trader cannot avail CENVAT Credit in any case, the condition attached to the lower rate is deemed to be fulfilled.
- The Apex Court in the case of *ITC Ltd. v. Commissioner of Central Excise*<sup>2</sup> was ruled that refund under Section 27 of the Customs Act is only permissible upon - (i) modification of Bill of Entry (BOE) by way of filing an appeal under Section 128 of the Customs Act; or (ii) modification under any other provisions of the Customs Act. Basis the SRF & ITC rulings, the Petitioner requested the Customs authorities to amend the BOE under Section 149 (Amendment of Documents) of the Customs Act and subsequently re-assess them as per the benefit available under the Exemption Notification. However, the Customs authorities denied such request which led to filing of the present petition.

#### JUDGEMENT

- In this regard, the High Court **allowed** the writ petition and *inter alia* held that a BOE can be modified under Section 149 of the Customs Act. This is subject to the condition that such modification is sought on the basis of documentary evidence which was in existence at the time the goods were cleared. In context of the present case, there was documentary evidence (Exemption Notification) in existence at the time when goods were cleared. Accordingly, the Court directed the Customs authorities to amend/modify the Bill of Entry to reflect the lower rate of tax. While doing so, the Court deprecated the argument of the Customs authorities that decision in *SRF Ltd. (supra)* was not in existence at the time of clearance of goods. Further, some key observations made by the Court are set out hereunder:
  - The Apex Court in *ITC Ltd. (supra)* does not restrict an assessee to seek amendment to BOE under Section 149 of the Customs Act.
  - Section 149 is an additional remedy to the one provided under Section 128 of the Customs Act.

<sup>1</sup> 2015 (318) E.L.T. 603

<sup>2</sup> (2019) 17 SCC 46

- No time limit has been provided under Section 149 for seeking amendment in a BOE.
- It is the duty and responsibility of the assessing officer to correctly determine the duty leviable in accordance with law before clearing the goods for home consumption.
- Law declared by the Apex Court, unless made prospective in operation in the judgement, is always deemed to be the law of the land under Article 141 of the Constitution.

**ELP Comments:**

The ruling has rightly appreciated the ratio laid by the Apex Court in *ITC Ltd. (supra)* that an amendment/modification in a BOE is not only restricted to Section 128 of the Customs Act. Similar views have been adopted by Bombay High Court in *Dimension Data India Pvt. Ltd, W.P. (L) No. 249/2020* and Madras High Court in *Hindustan Unilever Ltd., 2021 (4) TMI 265*.



**Refund of unutilized Education Cess and Secondary & Higher Education Cess under the Central Excise Act**

*Kirloskar Toyota Textile Machinery Pvt. Ltd. v. Commissioner of Central Tax, Bengaluru South GST Commissionerate [TS-355-CESTAT-2021-EXC, Bangalore]*

**FACTS OF THE CASE**

- The Appellant is engaged in the manufacture of parts and accessories of textile machinery including commissioning and installation services thereof. Under the erstwhile CENVAT Credit Rules, 2004, the Appellant was exporting services without payment of tax under Letter of Undertaking. Due to this, an unutilized balance of Education Cess (EC) and Secondary and Higher Education Cess (SHEC), amounting to INR 36. 53 lacs was accumulated in its books.
- On introduction of Goods and Services Tax (GST), the above balance of EC and SHEC could not be transitioned into GST as it was restricted by virtue of Section 140(1) of the CGST Act. Accordingly, within one year of the introduction of GST, the Appellant filed a refund claim under Section 11B of the Central Excise Act. Both the Original authority and the Appellate authority rejected the refund application on account of restriction on transfer of cess under GST.

**JUDGEMENT**

- The **Tribunal observed** that with the introduction of GST, there is a restriction on transition of cesses into GST, and therefore the Appellant did not transfer the said credit of cesses into GST and preferred to file the refund claim under Excise to avoid lapsing of credit.
- The **Tribunal observed** that the issue is covered by the decision of Hon'ble High Court of Karnataka in the case of *UOI Vs. Slovak India Trading Co. Pvt. Ltd.*<sup>3</sup>, wherein the Court held that the assessee is entitled to refund of unutilized credit of Education Cess and Higher Education Cess after the introduction of GST. The Court further observed that when the assessee has moved out of MODVAT/CENVAT scheme, a portion of unutilized credit should be allowed as a refund. This decision of Karnataka High Court was also relied and followed by the Division Bench of CESTAT, New Delhi in the case of *Bharat Heavy Electricals Ltd. v. Commissioner of CGST*<sup>4</sup> while allowing

<sup>3</sup> [2006 (201) E.L.T. 559 (Kar.)]

<sup>4</sup> [TS-704-CESTAT-2020-VAT]

refund of cesses in pre-GST regime.

- While relying upon the aforesaid rulings, the Tribunal by referring to the decision of Larger Bench of CESTAT Bangalore in the case of **J.K. Tyre & Industries Ltd. v. Asst. Commissioner of Central Excise**<sup>5</sup> observed that the ruling of the jurisdictional High Court is binding upon them as opposed to rulings of the other High Courts.
- The two decisions of CESTAT, Hyderabad, in the case of **Bharat Heavy Electricals Ltd. v. Commissioner of C.T., Hyderabad**<sup>6</sup> and **M/s. Mylan Laboratories Ltd. v. Commissioner of Central Tax & Customs**<sup>7</sup>, disallowing cash refund of EC under GST were distinguished by the Tribunal in the present case, on account of being rendered by a Single Member. The Tribunal further explained that the decision of the Hon'ble Madras High Court in the case of **Sutherland Global Services Pvt. Ltd.**<sup>8</sup> was not applicable in the present case as the said decision was on a different issue *qua* transitioning of cess balance into GST
- In light of the above, the **Tribunal allowed** the refund of EC and SHEC which could not be transitioned into GST.

**ELP Comments:**

The ruling has reaffirmed that cash refund of accumulated and unutilized credit of Education Cess and Secondary and Higher Education Cess is available in view of the savings clause mentioned in Section 174(2)(c) of the CGST Act. Further, the present ruling may stir up a debate on whether the CESTAT, being a National Tribunal, is bound by the decision of jurisdictional High Court, on which few contrary decisions have already been passed.



**Contractual charges (viz. ground rent etc.) between Container Freight Stations/Inland Container Depots and Importers are not regulated under the Customs Act and Regulations thereunder**

*Polytech Trade Foundation (W.P. 3079/2020) (Delhi High Court)*

**FACTS OF THE CASE**

- Consequent to the COVID-19 pandemic, the Central Government announced a nationwide lockdown in March 2020. The same caused considerable disruption in the movement of goods. Services provided by a Container Freight Station (CFS) were declared as an essential service by the Central Government during the Lockdown. Various instructions, advisories and circulars were issued by Ministry of Shipping (MoS), Directorate General of Shipping (DGS) and Central Board of Indirect Taxes and Customs (CBIC), respectively wherein CFSs, ICDs and Shipping lines were directed/advised to waive the penal detention charges and ground rent, for the period of lockdown imposed due to COVID-19.
- Various petitions were filed pan India seeking implementation of circulars issued by the MOS/DGS and CBIC and directions against the CFSs, ICDs and Shipping lines to not charge any ground rent or detention charges. The matter was ultimately heard by the Supreme Court and all petitions pending pan India were transferred to Delhi High Court for final hearing.
- The primary issue posed before the Court was whether the Petitioners, were entitled for waiver of penal

<sup>5</sup> 2016 (340) E.L.T. 193 (Tri.-LB)

<sup>6</sup> [2020 (41) G.S.T.L. 465 (Tri.-Hyd.)]

<sup>7</sup> [2020 (3) TMI 837 – CESTAT]

<sup>8</sup> [TS-878-HC-2020(MAD)-NT]

demurrage charges and detention charges which were due as per the contract between the parties viz. Petitioners and CFSS, ICDs, Shipping lines as the case may be, by virtue of instructions, contained in Office Orders and Circulars issued by MOS, DGS and CBIC.

### JUDGEMENT

- The High Court dismissed the writ petitions and *inter alia* held that waiver of penal charges cannot be granted by virtue of instructions contained in Circulars issued by MoS, DGD and CBIC. In this regard, some key findings are summarized herein below:

- Neither the Customs Act nor the Regulations framed thereunder empowers CBIC/Customs authorities to regulate contractual charges agreed between Petitioners and CFSS/ICDs as CFSS/ICDs are not creatures of the Customs Act and are notified as “customs areas”, and as “extensions” of the Port, for a specific purpose, viz., to permit unloading and loading of goods.

Neither does the Board of Trustees, nor does the Tariff Authority for Major Ports (**TAMP**), possess the power or authority to regulate, or interdict, the collection of charges by ICDs, CFSS or shipping lines, against storage of goods or failure to return the goods within the free period.

- Section 111 of the Major Port Trusts Act empowers the Central Government to issue directives to the Board or to the TAMP but the same cannot be invoked to issue directions to CFSS, ICDs or shipping lines.
- Placing reliance on law laid down by the Apex Court in case of ***Small Scale Industrial Manufacturers Association [2021 SCC Online SC 246]*** and ***Indian School [2021 SCC Online SC 359]***, it was held that provisions of Disaster Management Act, 2005 cannot be invoked in respect of economic aspects of private contracts with which the State has no direct causal relationship, especially when the determination of compensation/cost is the prerogative of the supplier or manufacturer of the goods or provider of services.

### **ELP Comments:**

The present decision will have far reaching implications especially in cases where Petition is filed for private dispute basis some government direction/instruction. The said decision will apply to cases where writ petitions are filed seeking reliefs against private parties in guise of seeking mandamus/direction against a government authority.

Further, the decision is in line with the decision of Hon’ble Supreme Court in the case of Indian School (supra) and further reaffirms the proposition that Government, cannot issue directions in respect of economic aspects of legitimate subsisting contracts or transactions between two private individuals with which the State has no direct causal relationship. Especially so, when the determination of compensation/cost is the prerogative of the supplier or manufacturer of the goods or provider of services.



**MEIS Scrips can be availed on export of goods by a DTA unit through a unit in FTWZ providing warehousing facility**

*Jindal Drugs Pvt. Ltd. (W.P. 28777/2019) (Madras High Court)*

**FACTS OF THE CASE**

- The Petitioner is an exporter of methanol and natural essential oil. It sought to avail the benefit under MEIS Scheme and accordingly scrips were issued by ADGFT, Mumbai. Subsequently, a request for registration for scrips was made before the Customs. However, the Customs authorities returned the scrips with an order rejecting the registration on the basis that exports have been made through an entity in Free Trade Warehousing Zone (**FTWZ**) and thus falls under the exclusions specified in Para 3.6 of the Foreign Trade Policy. Hence, the petition was filed for quashing of the said order with consequential relief.
- Thus, the issue for consideration before the High Court was whether benefit of MEIS scrips can be availed on export of goods by a DTA unit through an entity situated in a FTWZ?

**JUDGEMENT**

- **The High Court allowed** the petition and directed the Customs authorities to register the scrip issued by ADGFT, Mumbai. While allowing the said petition, the High Court gave various key findings which are summarized as under:
  - The issuance of the scrip thus pre-supposes due application of mind by ADGFT, Mumbai to all relevant stipulations especially when there is no cancellation of scrips in terms of Section 9 of FTDR Act.
  - *Qua* eligibility, it was observed that supply has been made by the Petitioner to FTWZ for onward shipment at the behest of the purchaser, situated outside India. Thus, the FTWZ, merely offers a facility to the Petitioner to warehouse its consignments that are to be exported at different locations on instructions of the purchaser. Therefore, the present case does not fall under the exclusion clause.

**ELP Comments:**

The ruling provides aid to the exporters (**DTA unit**) seeking MEIS benefit on exports of goods through a unit in FTWZ providing warehousing facility. Further, the ruling made an important observation that issuance of the MEIS scrip pre-supposes due application of mind (including non-applicability of exclusions specified under Para 3.6 of the FTP) by DGFT authorities.



**No service tax on liquidated damages collected from supplier on account of non-adherence to contractual limits**

*M/s. Steel Authority of India Ltd., Salem v. Commissioner of GST & Central Excise, Salem [TS-324-CESTAT-2021-ST]*

**FACTS OF THE CASE**

- The Appellant is a Public Sector Undertaking engaged in the manufacture of carbon steel, carbon steel sheet, coin blanks, coin blanks and alloy steel. The period involved in the appeal was post 01.07.2012. The case set out by the department was that the Appellant had agreed to tolerate breach of timelines stipulated in the contract, for which the amount imposed as liquidated damages is consideration for the act of tolerating contractual default. The said consideration is liable to service tax as declared service of “agreeing to the obligation to refrain from an act, or to

tolerate an act or a situation or to do an act” as contemplated under Section 66E(e) of the Finance Act, 1994.

#### JUDGEMENT

- CESTAT, Chennai allowed the appeal of the Appellant relying upon the decision of CESTAT Delhi in the case of M/s South Eastern Coalfields Ltd. vs. Commissioner of Central Excise and Service Tax, Raipur<sup>9</sup> wherein the CESTAT had observed that the activities contemplated under Section 66E (e), when one party agrees to refrain from an act, or to tolerate an act or a situation, or to do an act, are activities where the agreement specifically refers to such an activity and there is a flow of consideration for this activity.
- **CESTAT, Chennai held** that it is not possible to sustain the view taken by the Commissioner that since the task was not completed within the time schedule, the appellant agreed to tolerate the same for a consideration in the form of liquidated damages, which would be subjected to service tax under Section 66E(e) of the Finance Act.

#### ELP Comments:

The tests laid down in the above judgement may be equally relevant in the GST regime considering the said provision of Section 66E(e) from the Finance Act, 1994 is borrowed as is under the GST law.



#### Law prevalent on the date of import of applicable on conversion of foreign going vessel into coastal run vessel

*Great Eastern Shipping Company Ltd. & Anr. v. Union of India & Ors. [2021-TIOL-1776-HC-ORISSA-CUS]*

#### FACTS OF THE CASE

- Petitioner is a private sector shipping service provider involved in transportation of crude oil, petroleum products, gas and dry bulk commodities. It is a member of the Indian National Ship Owners Association (**INSA**).
- Petitioner, on July 3, 2001 acquired a motor ship, from Panama (**Jag Arnav**) which arrived at Paradeep Port, Orissa on April 30, 2003 for the first time. At that relevant time, the import of a foreign going vessel was exempt from customs duty in terms of Serial No. 352 of Notification No. 21/2002-Cus, dated March 1, 2002 as amended, read with the relevant tariff heading under the Central Excise Act. During the period when 'Jag Arnav' was imported into India by the Petitioner the prevalent practice was for the Customs Authorities not to insist on filing of BOE for clearing of a foreign going vessel.
- This position continued till March 16, 2012 as far as Basic Customs Duty (**BCD**) is concerned. As far as CVD was concerned, the position of 'nil' duty continued under Clause 129 of the Finance Act, 2012 read with Notification No. 6/2006-CE and 38/2011-CE. Therefore, till March 16, 2012 there was no requirement of payment of customs duty on foreign going vessels imported into India.
- Thereafter, a fresh Notification No. 12/2012 dated March 17, 2012 was issued and specific to foreign going vessels, (Serial Nos.461 and 462) of the said notification (corresponding to Serial No. 352 of the earlier Notification No. 21/2002-Cus), exempted them from both BCD and CVD subject to the conditions 81 and 82 respectively.
- On December 31, 2012 the Petitioner sought conversion of "Jag Arnav" from a foreign going to a coastal run vessel at Dharma Port, Balasore, Orissa. The Respondents took a stand that since no BOE was filed with the

<sup>9</sup> 2020 (12) TMI 912 – CESTAT NEW DELHI



Customs Authorities when 'Jag Arnav' entered India at Paradeep, Orissa on 30th April 2003, Petitioner is liable to pay customs duty at the time of conversion of 'Jag Arnav' from a foreign going vessel to a coastal run vessel.

#### JUDGEMENT

- On a careful reading of the Circular No. 16/2012-Cus dated June 13, 2012, **Hon'ble High Court held** that it does not support the contention of Revenue that in the present case where 'Jag Arnav' has been imported into India way back in April 30, 2003, the Revenue can insist on collection of CVD at the time of its conversion from a foreign going vessel into a coastal run vessel.
- Hon'ble High Court observed that circular in fact makes abundantly clear that Notification No.21/2012 was not intended to operate retrospectively. In other words, it was not intended to apply to a vessel already been imported into India long before the date of said exemption notification.
- Thus, the Writ Petition was allowed by the Hon'ble High Court inter alia observing as under:
  - When the vessel was exempt from Customs duty at the time of its first importation in 2003, it cannot be made amenable to duty by virtue of a condition in another exemption notification dated March 17, 2012.
  - Vessels are recharacterized as "conveyances" after their first importation. Such vessels cannot be said to be re-imported into India since they were never "exported" from India. Section 20 of the Customs Act, therefore, has no applicability.
  - The vessels are not exigible to Customs duty on every occasion they enter India as a "conveyance" carrying cargo.

#### **ELP Comments:**

The ruling reaffirms the settled position in law that an exemption notification cannot create a levy outside the charging section.



#### **Rate of duty in force as on the date of submission of Bill of Entry on ICEGATE is applicable**

*Principal Commissioner of Customs v. M. D. Overseas Limited [CUSTOMS APPEAL NO. 51072 OF 2020]*

#### FACTS OF THE CASE

- The Respondent filed four Bills of Entry on July 5, 2019 for import of Gold Dore Bars, out of which, only one Bill of Entry was generated and three were not generated due to a technical glitch in the ICEGATE System.
- In the Budget 2019-20 presentation, the BCD on Gold Dore Bars was increased from 9.35 per cent to 11.85 per cent and this was to take effect from the midnight of July 5/6, 2019.
- The Respondent at the behest of the department was forced to re-file the three Bills of Entry with the new rate of BCD. The Respondent having re-filed the said Bills of Entry, challenged the assessment in appeal before the Commissioner (Appeals) on the ground that the rate of duty applicable shall be 9.35% for assessment of the said Bills of Entry.
- The Ld. Commissioner (Appeals) set aside the assessment of the three Bills of Entry with a direction to re-assess the same at the Basic Customs Duty applicable on July 5, 2019 i.e. 9.35%.

#### JUDGEMENT

- CESTAT after examining the provisions of the Act and the facts of the case noticed that the importer had submitted

the four Bills of Entry with all the supporting documents on July 5, 2019 and it is only because of the technical glitch with the ICEGATE system the numbers for the three Bills of Entry numbers could not be generated on that said date.

- CESTAT upheld the order of the Commissioner (Appeals) holding that the Bills of Entry are to be assessed at the rate of duty as prevalent on July 5, 2019 i.e. the date of presentation of the Bills of Entry.
- CESTAT followed the ratio of the decision of the Hon'ble Madras High Court in the case of **Vijaya Industrial Products (P) Ltd. vs. Union of India**<sup>10</sup> wherein it was held that presentation of the Bill of Entry in the prescribed form would suffice to confer a right on the importer to have the tariff valuation and the rate of duty in force on the date of presentation of such Bill of Entry.

**ELP Comments:** The aforesaid decision of the CESTAT brings in huge relief to the importers as it is commonly seen that imports made on and around the Budget announcement date are subject to litigation in the event of change in rate of duty, the same being effective midnight of the date of Budget presentation.



### DRI not a proper officer under the Customs Act to issue SCN

*Agarwal Metals and Alloys [ TS-382-SC-2021-CUST ]*

#### FACTS OF THE CASE

- Investigation was initiated by Directorate of Revenue Intelligence (**DRI**) officers against various firms based on information that they are indulging in 'Aluminum scrap' undervaluation. The show cause notices to the assessee's were issued by the Additional Director General (**ADG**), DRI and pursuant to adjudication the matter travelled upto CESTAT.
- CESTAT had allowed the appeal inter alia holding that import prices declared by the assessee's are indeed comparable and adoption of insurance value for alleging undervaluation by the department is improper. CESTAT had further observed that the adjudicating authority proceeded to redetermine the value of imported aluminum scrap on the basis of the DGOV circular without considering and overlooking the contemporaneous data available before it on record. Aggrieved by the order of CESTAT, the present Civil Appeal was filed by the Department.

#### JUDGEMENT

- **The Hon'ble Supreme Court** following the ratio of its own decision in the case of Canon India Private Ltd. **held that** these appeals must fail as the show cause notice(s) in the present cases was also issued by ADG, DRI, who is not a proper officer within the meaning of Section 28(4) read with Section 2(34) of the Customs Act, 1962<sup>11</sup>. It was further held that dismissal of these appeals will not come in the way of the competent authority to proceed in the matter in accordance with law.

#### **ELP Comments:**

The judgement in the case of Cannon has already created ripples in the department as a number of show cause notices issued by the DRI are pending adjudication involving huge revenue. The Department has filed a Review Petition against the said decision before the Supreme Court which is pending as on date.

<sup>10</sup> 1995 (76) E.L.T. 531 (Mad.)

<sup>11</sup> TS-75-SC-2021-CUST

**ADVANCE RULING**



**Input Tax credit of the GST charged by the service provider on canteen facility will be admissible to the employer**

*In re: M/s Tata Motors Ltd. [TS-437-AAR (GUJ)-2021-GST, Gujarat]*

**FACTS OF THE CASE**

- The Applicant provides canteen facility to its employees to comply with the Factories Act, 1948. For this, the Applicant has arranged the services of a third-party contractor. As per the arrangement, a part of the canteen charges is borne by the Applicant whereas the remaining part (a nominal subsidised amount) is borne by its employees.
- The second proviso to Section 17(5) which comes after sub-clause (iii) provides that input tax credit on such goods or/and services, shall be admissible, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force.
- In this regard, the Applicant sought an advance ruling with respect to admissibility of input tax credit of GST charged by the third-party service provider on the canteen facility. Also, the ruling was sought on whether GST is to be charged on the amount recovered by the Applicant from its employees.

**ADVANCE RULING**

- The Authority for Advance Ruling (AAR) **observed** that sub-clause (i) of Section 17(5)(b) of the CGST Act which *inter alia* blocks input tax credit on foods and beverages is independent. The said sub-clause of Section 17(5)(b) ends with colon ':' and is followed by a proviso and this proviso ends with a semicolon. Thus, the proviso to sub-clause (iii) of Section 17(5)(b) is not connected to the sub-clause (i) and cannot be read into it.
- Thus, the proviso to sub-clause (iii) of Section 17(5)(b), making exception for employer's obligatory goods/services, is not applicable to GST on food and beverages. Accordingly, the AAR disallowed the input tax credit to the applicant on the canteen facility.
- Further, the AAR held that GST is not leviable on the employee portion of charges, which is collected by the Applicant and paid to the canteen contractor.



**Indian Institute of Management (IIM) is a Government entity and is liable to deduct TDS u/s 51 and discharge liability under RCM on supply of services**

*In re: M/s Indian Institute of Management, Tiruchirappalli [TS-379-AAR(TN)-2021-GST, Tamil Nadu]*

- The Applicant is a renowned educational institution established by enactment of the Indian Institute of Management Act, 2017 by the Government of India. As per the said Act, the Applicant is a body corporate and is under the supervision and control of the Ministry of Human Resources Development of India. In the course of discharging its functions, the Applicant procures certain services such as works contract, security and legal services.
- In this regard, the Applicant has sought an advance ruling on whether the applicant is a Government Entity and if so, whether TDS provisions under Section 51 of the CGST Act are applicable to it. Further, the advance ruling is sought on whether the Applicant is liable to pay GST under reverse charge mechanism on legal and security/manpower services received by it.
- The AAR **observed** that the Applicant has been receiving funds from the Central Government which

substantiates the requirement of more than 90% financial participation from the Central or State Government. Thus, the IIMT satisfies the conditions prescribed to be held as 'Government entity' under the CGST Act.

- Further, the AAR **held that** the Applicant being a body set up by an Act of Parliament with more than 51% participation by way of funding, is liable to deduct TDS from their suppliers under Section 51 of the CGST Act *read with* Notification No. 50/2018 dated September 13, 2018.
- As per Sl. No. 2 of Notification No. 13/2017 dated June 28, 2017, GST on legal services is to be paid by a recipient, being any business entity located in the taxable territory, where such legal services are provided by an individual advocate including senior advocate or firm of advocates. Accordingly, it was held that Applicant is liable to discharge GST on legal and security/manpower services under reverse charge mechanism.



### Supply of e-vouchers is taxable under GST?

*In re: M/s Premier Sales Promotion Pvt. Ltd. [TS-384-AAR(KAR)-2021-GST, Karnataka]*

#### FACTS OF THE CASE

- The Applicant is engaged in the business of rendering marketing services. During the course of business, the Applicant purchases vouchers from a third party and supplies it to the customer, who in turn distribute them further. It acts as an intermediary. Vouchers include Gift Vouchers, Cash Back Vouchers and E-Vouchers with multiple redemption options.
- The Applicant sought an advance ruling on whether the activity of providing vouchers is taxable under GST and the time of supply thereof.

#### ADVANCE RULING

- **The AAR observed that** the Applicant is supplying vouchers to various clients who are not settling any obligation and treating this as consideration. It is only at a later stage, some other person, viz. the client of the client (end user) is using them to settle their obligation of payment of consideration, using the said vouchers instead of cash.
- Hence, the vouchers supplied by the Applicant to its clients, cannot be covered under the definition of "money" at the time of supplying them. These vouchers will take the color of money only when it is used for payment of a consideration for the supply of goods or services procured by the end user.
- Further, these instruments do not qualify as 'actionable claim' as they are not debt and expire after a given time frame. Moreover, vouchers printed on paper are undoubtedly goods, as they are tangible.
- Basis the above, **the AAR held** that the transaction amounts to supply of goods under Section 7(1)(a) of CGST Act and attracts GST at the rate of 18%.



### Input Tax credit of GST paid on purchase and installation of Air-Conditioning, Cooling System and Ventilation is admissible

*In re: M/s Wago Private Ltd. [TS-432-AAR(GUJ)-2021-GST], Gujarat]*

#### FACTS OF THE CASE

- The Applicant is in the process of establishing its new factory at Vadodara and is procuring various assets including Air-Conditioning, Cooling System and Ventilation systems. The Applicant has entered into a single

contract for supply, installation and commissioning of these assets.

- In this regard, the Applicant has sought an advance ruling on admissibility of input tax credit on the above procurements, including the service of their installation and commissioning, in terms of the provisions of Section 16 and 17 of the CGST Act.

#### ADVANCE RULING

- The AAR, while evaluating the nature of supply of air-conditioning (**AC**) and cooling system, observed that all the different parts of AC and cooling system after being fitted in the building lose their identity as machines or parts of machines and become a system, namely Air conditioning and cooling system. This AC system is in the nature of a system and not a machine as a whole. It comes into existence only by assembly and connection of various components and parts.
- Further, by applying the 'Test of Permanency', placed reliance on the Apex Court ruling in the case of **Municipal Corporation of Greater Bombay & Ors. v. Indian Oil Corporation Ltd.**<sup>12</sup> and held that an AC system can be shifted only after dismantling the plant. Thus, it cannot be considered as a movable property.
- As regards Ventilation system, the **AAR observed** that the system once installed and commissioned in the building is transferred to the building owner and this involves the element of transfer of property. Hence, it was held that the supply of 'Ventilation system' merits classification as works contract.
- Accordingly, the **AAR ruled** that input tax credit on air-conditioning and cooling systems and ventilation systems is blocked under Section 17(5)(c) of the CGST Act.



#### Sale of bakery products from a bakery/outlet will qualify as supply of restaurant services

*In re: M/s Pioneer Bakers [TS-378-AAAR(OD)-2021-GST, Odisha]*

#### FACTS OF THE CASE

- The Appellant is engaged in the business of baking and selling of bakery products viz. cakes, pastries, pizza, patties, cookies etc. While majority of products are prepared in workshops nearby outlets, customers have an option of customization of products at outlets. The customers have an option to either eat products itself by utilizing the facilities present in outlets or to take away their food.
- The Appellant sought an advance ruling on whether its activity will qualify as 'Restaurant Service'. The AAR held that supply qualifies as composite supply of restaurant service under S. No. 6(b) of Schedule II to the CGST Act as the Appellant was supplying items of food to customers as part of service by allowing eating at outlets.
- Aggrieved by the AAR, the revenue filed an appeal before the Appellate Authority for Advance Ruling (**AAAR**) on the grounds that service provided by the Appellant does not qualify as 'Restaurant Service'. The Appellant should instead charge the GST rate as applicable to individual goods as cakes, chocolates, drinks etc.

#### ADVANCE RULING

- The **AAAR observed that** dictionary meaning of term 'Restaurant' implies a place where meals are prepared and served to a customer. The supplies by the Appellant are in nature of 'take away' as most of the items were not prepared in the outlet. Thus, the Appellant's establishment cannot be considered as 'Restaurant'. In most of the cases, food is not served to the customer's table and is merely sold on the counter.
- Accordingly, the **AAAR reversed the order of the AAR** and held that supply undertaken by the Appellant will not qualify as 'Restaurant Service'. The items will attract GST rate, as individual items, applicable to goods in terms of tariff notification.

<sup>12</sup> [199 Suppl. SCC 18]

**NOTIFICATION/CIRCULARS**

S.No.	Reference	Particulars
<b>GST</b>		
1.	<b>Notifications No. 32/2021 – Central Tax dated August 29, 2021</b>	Filing of Forms GSTR-3B/GSTR -1/Invoice Furnishing Facility (IFF) by Companies using Electronic Verification Code (EVC) instead of Digital Signature Certificate (DSC) has been further enabled till October 31,2021.
2.	<b>Notifications No. 33/2021 – Central Tax dated August 29, 2021</b>	<i>Vide</i> Notifications No. 19/2021 – Central Tax dated June 1, 2021, the late fee was waived/reduced for non-furnishing of Form GSTR 3B for period July 2017 to April 2021 on/before August 31, 2021. This amnesty scheme has now been extended till November 30,2021.
3.	<b>Notifications No. 34/2021 – Central Tax dated August 29, 2021</b>	Extension in filing of application for revocation of cancellation of registration till September 30,2021 where the due date of filing of such application falls between March 1,2020 and August 31,2021. The extension is applicable only in those cases where registrations have been cancelled under Section 29(2)(b) and (c) of the CGST Act <i>viz.</i> on account of non-filing of GST returns.
<b>FTP</b>		
4.	<b>Notification No. 15/2015-2020 August 9, 2021</b>	The facility of online testing of Chip Import Monitoring System without payment of registration fee has been extended by 2 months upto 30.09.2021, and registration will be effective from 01.10.2021.
5.	<b>Notification No. 16/2015-2020 August 9, 2021</b>	Para 2.05(d) of the FTP 2015-20 has been amended to extend the period for modification of IEC without payment of fee. The revised date is 31.08.2021 as oppose to earlier date of 31.07.2021.
6.	<b>Notification No. 17/2015-2020 August 10, 2021</b>	Para 2.07 of the FTP 2015-20 has been amended to empower DGFT to impose 'prohibition' or 'restriction' on additional items (earlier 9 items). The revised list is as under: <ul style="list-style-type: none"> <li>▪ On export of foodstuffs or other essential products for preventing or relieving critical shortages.</li> <li>▪ On imports and exports necessary for the application of standards or regulations for the classification, grading or marketing of commodities in international trade</li> <li>▪ On imports of fisheries product, imported in any form, for enforcement of governmental measures to restrict production of the domestic product or for certain other purposes.</li> <li>▪ On import to safeguard country's external financial position and to ensure a level of reserves.</li> <li>▪ On imports to promote establishment of a particular industry.</li> <li>▪ For preventing sudden increases in imports from causing serious injury to</li> </ul>

		<p>domestic producers or to relieve producers who have suffered such injury.</p> <ul style="list-style-type: none"> <li>▪ For protection of public morals or to maintain public order.</li> <li>▪ For protection of human, animal or plant life or health.</li> <li>▪ Relating to the importations or exportations of gold or silver.</li> <li>▪ Necessary to secure compliance with laws and regulations including those relating to the protection of patents, trademarks and copyrights, and the prevention of deceptive practices.</li> <li>▪ Relating to the products of prison labour.</li> <li>▪ For the protection of national treasures of artistic, historic or archaeological value.</li> <li>▪ For the conservation of exhaustible natural resources.</li> <li>▪ For ensuring essential quantities for the domestic processing industry.</li> <li>▪ Essential to the acquisition or distribution of products in general or local short supply.</li> <li>▪ For the protection of country's essential security interests - relating to fissionable materials or the materials from which they are derived; traffic in arms, ammunition and implements of war; and taken in time of war or other emergency in international relations;</li> </ul> <p>In pursuance of country's obligations under the United Nations Charter for the maintenance of international peace and security.</p>
7.	<b>Notification No. 18/2015 - 20 dated August 16, 2021</b>	Export Policy of Covid-19 Rapid Antigen testing kit has been changed from 'free' to 'restricted'. Further, export quota has been fixed for months of July, August and September 2021.
8.	<b>Notification No. 19/2015 - 20 dated August 17, 2021</b>	The rates for Remission of Duties and Taxes on Exported Products ( <b>RoDTEP</b> ) Scheme have been announced. The RoDTEP scheme lists out rates ranging from 0.01% to 4.3% for different HS codes [notified at Appendix 4R] and also sets out eligibilities and conditionalities for availing the benefit. The scheme has been made operational from January 1, 2021.
9.	<b>Trade Notice No. 13/2021-2022 dated August 4, 2021</b>	Exporters who have been issued scrips under RoSCTL (Rebate of State and Central Levies and Taxes) Scheme for shipping bills upto 31.03.2020 are required to upload e-BRC on DGFT portal latest by 15.09.2021, failing which recovery mechanism under Para 4.96 of HBP will be initiated
10.	<b>Trade Notice No. 14/2021-2022 dated August 4, 2021</b>	Online procedure has been notified for transfer of AA/EPCG authorization in case of amalgamation/de-merger/acquisition

Customs		
11.	<b>Notification No. 39/2021-Cus. dated August 19, 2021</b>	Notification No. 57/2000-Customs dated 08.05.2000 has been amended to provide extension of last date of export by six months, for those cases where the last date of export falls between 01.02.2021 and 30.06.2021.
12.	<b>Notification No. 40/2021-Cus. dated August 19, 2021</b>	Rate of BCD has been reduced on Crude Soya Oil [1507 10 00] from 15% to 7.5%; Crude Sunflower Oil [1512 11 10] from 15% to 7.5%; Refined Soya Oil [1507 90 10] from 45% to 37.5%; and Refined Sunflower Oil [1512 19 10] from 45% to 37.5%, from 20.08.2021 till 30.09.2021
13.	<b>Circular No. 18/2021-Customs dated July 31, 2021</b>	<ul style="list-style-type: none"> <li>▪ Circular No. 33/2016- Customs dated July 22, 2016 as amended from time to time by subsequent circulars, state that the validity of AEO-T1, which is 3 years, can be renewed by submitting an application.</li> <li>▪ With the view to reduce the compliance burden, CBIC has allowed the facility of continuous AEO certificate/auto renewal for AEO-T1 entities, subject to submission of annual declaration and review thereof. The annual declaration is required to be filed between October 1 and December 31, every year.</li> </ul> <p>The entities certified on or after April 1, 2019 will stand migrated to the auto renewal process with effect from August 1, 2021.</p>
14.	<b>Circular No. 19/2021-Cus. dated August 16, 2021</b>	The CBIC has amended its earlier Circular No. 38/2016 dated 22.08.2016 to enable Pr. Commissioners/Commissioners of Customs to decide the amount of security required in certain cases of provisional assessments.
15.	<b>Circular No. 20/2021-Cus. dated August 16, 2021</b>	The procedure for de-notification of Inland Container Depots/Container Freight Stations/Air Freight Stations has been notified which stipulates various conditions which are to be adhered by these facilities for de-notification
16.	<b>Instruction No. 17/2021-Customs dated August 11, 2021</b>	Instructions issued to the Customs authorities for implementation of policy condition (license from Ministry of Communication & Information Technology) on import of mobile signal repeater/booster
17.	<b>Instruction No. 18/2021-Cus. dated August 17, 2021</b>	<ul style="list-style-type: none"> <li>▪ Instructions issued to Customs officers for strict compliance of Circular No. 38/2020 – which provides that only representative certificates (for identical items) should be forwarded to the Board for verification in order to enhance the speed of verification.</li> <li>▪ Further, it was specified that if a product of a manufacturer has already been verified, then subsequent consignments of same item from such manufacturer may not be considered for verification. However, verification can be requested in such cases if there is reason to believe that subsequent consignment does not meet origin criteria on account of medication in</li> </ul>



		<p>manufacturing or other origin related conditions.</p> <ul style="list-style-type: none"> <li>Furthermore, a proper officer is required to specify reasons as to why the goods do not meet the origin criteria and also need to mention the specific information to be obtained from the verification authority.</li> </ul>
<b>Anti-Dumping</b>		
18.	<b>Notification No. 42/2021-Cus.(ADD) August 1, 2021</b>	The levy of Anti-Dumping duty has been extended on 'Wire Rod of Alloy or Non-Alloy Steel' originating in or exported from China PR up to and inclusive of 31.01.2022
19.	<b>Notification No. 43/2021-Cus.(ADD) dated August 9, 2021</b>	Anti-Dumping duty has been levied on imports of Phthalic Anhydride ( <b>PAN</b> ) originating in or exported from China PR, Indonesia, Korea RP and Thailand for a period of five years.
20.	<b>Notification No. 44/2021-Cus.(ADD) dated August 12, 2021</b>	Levy of Anti-Dumping duty has been rescinded on Viscose Staple Fibre ( <b>VSF</b> ) originating in or imported from China PR and Indonesia.
21.	<b>Notification No. 45/2021-Cus.(ADD) dated August 24, 2021</b>	Levy of Anti-Dumping duty has been rescinded on Barium Carbonate originating in or imported from China PR.
22.	<b>Notification No. 46/2021-Cus.(ADD) dated August 26, 2021</b>	The levy of Anti-Dumping duty has been extended on imports of 'Axle for Trailers' originating in or exported from People's Republic of China till 28.01.2022.
23.	<b>Notification No. 47/2021-Cus.(ADD) dated August 26, 2021</b>	Anti-Dumping duty has been levied on imports of "Natural Mica based Pearl Industrial Pigments excluding cosmetic grade" originating in or exported from China PR for a period of five years

We hope you have found this update interesting. For further information please write to us at [insights@elp-in.com](mailto:insights@elp-in.com) or connect with our authors:

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