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TAXATION UPDATE

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DIRECT TAXATION

RECENT CASE LAWS

Aberdeen Asia Pacific Including Japan Equity Fund (WRIT PETITION NOS. 2796, 2803 AND 3525 OF 2019)

Losses of US based sub-trusts allowed to be carried forward inspite of conversion of trust into LLC

FACTS OF THE CASE

- The taxpayers were sub-funds of Aberdeen Delaware Business Trust, a business trust incorporated as per the laws of Delaware, USA. Given the popularity of the LLC regime across industry, Aberdeen Delaware Business Trust was converted from a business trust into Aberdeen Institutional Commingled Funds, LLC (**AICFL**), a limited liability company (**LLC**).
- As per the prevailing laws of the state of Delaware, on such a conversion, LLC is deemed to be the same entity as the business trust. Therefore, such conversion would not constitute creation of a new entity. The conversion did not lead to any taxable event in USA for Aberdeen Delaware Business Trust, AICFL or taxpayers.
- As a result of this conversion of Aberdeen Delaware Business Trust into AICFL, taxpayers were treated as sub-funds of AICFL instead of sub-trusts. The interest of investors in sub-trust automatically got converted into interest in sub-fund of AICFL and therefore, there was no change in the beneficiaries of the taxpayer. All rights, privileges, powers, property sub-trusts vested in the corresponding sub-fund. The conversion of business trust into LLC was noted by SEBI and SEBI did not treat the taxpayers as new entities in India.
- AICFL filed an application before AAR seeking clarity on the impact of conversion on carry forward of losses incurred by taxpayers. The AAR ruled that AICFL was not an assessable entity and it had never filed any income-tax returns in India. Therefore, the AICFL would not be entitled to carry forward loss incurred by Aberdeen Delaware Business Trust as there are no provisions of IT Act provide for allowing one assessee to carry forward and set off losses incurred by some other assessee.
- Thereafter, AO issued notices under Section 148 of the IT Act for re-assessment upon the taxpayers and disallowed the capital losses in the hands of the taxpayers. Aggrieved taxpayers filed a writ petition before the Bombay High Court challenging the re-opening of assessment and seeking clarity on the issue of admissibility of capital losses in their hands after the conversion of business trust into AICFL.

JUDGEMENT

- The Hon'ble Bombay High Court relied on the decision of Supreme Court in the case of *Technip SA v. SMS Holding (P) Ltd., [2005] (5 SCC 465*) wherein it was held that questions as to the status of a corporation are to be decided according to the laws of its domicile or incorporation. Because a corporation is a purely artificial body created by law and it can act only in accordance with the law of its creation. Therefore, if it is a corporation, it can be so only by virtue of the law by which it was incorporated and all questions concerning the creation and dissolution of the corporate status are referred to law of domicile, unless it is contrary to public policy.
- The Bombay High Court observed that gain and loss incurred by AICFL in its earlier avatar cannot be denied merely because of change in status from business trust to LLC. In this regard, the Court specifically noted that AICFL's claim for loss before the AAR was not rejected on the ground of change in status but on the ground that AICFL was not an assessee in India and had not filed any return of income. The Court also further noted that SEBI as the regulatory authority has allowed the taxpayers to continue with their earlier registration even after change of name.
- In relation to the objections raised by the AO on pursuing alternate remedies, the High Court held that if the AO did not have jurisdiction to initiate the reassessment proceeding, mere fact that subsequent orders have been passed would not render the challenge to jurisdiction infructuous. The High Court observed that where the very basis for reopening assessment does not survive, orders on such re-opening would not survive as well. Hence, the notice for the re-opening of the assessment cannot be sustained and were set aside and quashed.

- In view of the above, the Court dismissed AO's reliance on the AAR ruling for initiating the re-assessment and denying carry forward of losses to the taxpayers, if they are otherwise entitled under the law. Hence, the notice for the re-opening of the assessment cannot be sustained and were set aside and quashed.

ELP Comments:

The above decision of the Bombay High Court is a landmark ruling for investment funds operating as FIIs and FPIs in India who wish to consider conversion from one form of entity to another as per the law of domicile. This ruling will serve as a guiding principle for determining tax status of offshore funds and their treatment on conversions in the country of domicile.

HCL Comnet Systems and Services Ltd (ITA No. 5555/DEL/2014) Delhi ITAT

ITAT directs AO to consider the claim of foreign tax credit in respect of income exempt under Section 10A of IT Act

FACTS OF THE CASE

- The taxpayer, an Indian company constituted a PE in USA. The taxpayer paid taxes on income attributable to such PE in USA.
- While computing its total income in India, the taxpayer claimed deduction under Section 10A of the IT Act against the income derived from its PE in USA and did not claim any foreign tax credit (**FTC**) in respect of taxes paid in USA. The taxpayer's case was assessed by the AO and adjudicated by the CIT(A). Subsequently, both the taxpayer and the AO were both in appeal before the ITAT for dispute on certain issues.
- During pendency of appeal before ITAT, the Hon'ble Karnataka High Court on similar facts in the case of *Wipro Limited(382 ITR 179)*, clarified on law in relation to the claim of FTC in respect of income against which deduction under Section 10A of the IT Act was claimed. The court held that according to the conditions mandated in the DTAA- if any 'income is derived' and tax is paid in USA on such income, then the tax relief/credit shall be granted in India on such tax paid in USA in conformity with Section 90 read with Article 25 (2) (a) of India-USA DTAA.
- In view of the above ruling of Hon'ble Karnataka High Court, the taxpayer filed an additional ground of appeal before the ITAT for seeking direction from the ITAT for allowing FTC in respect of taxes paid in USA.

JUDGEMENT

- *Interalia*, following were the questions of law before the ITAT –
  - Admissibility of the additional ground for claim of FTC considering that no such claim was made by the taxpayer in its return of income filed by it or during the course of proceedings before the AO/CIT(A)
  - Allowance of FTC of taxes paid in USA basis the decision of Karnataka High Court in the case of Wipro Limited
- In respect of the first issue, relying on the decision of Hon'ble Supreme Court in case of *NTPC Limited (229 ITR 383)* and the decision of Delhi ITAT in case of *Maruti Suzuki (ITA no. 961/Del/2015)*, the ITAT ruled in favor of the taxpayer and admitted the additional ground.
- On the second issue, the ITAT relied on the decision of Hon'ble Karnataka High Court in the case of *Wipro Limited* in respect of its claim of FTC in relation to income under Section 10A of the IT Act. The High Court in the case of Wipro Limited had ruled that payment of tax in India is not a pre-requisite for claiming foreign tax credit under Section 90 of the IT Act read with Article 25 of India-USA DTAA.
- The Karnataka High Court while providing relief under Section 90 of the IT Act observed that income under Section 10A of the IT Act is chargeable to tax under Section 4 of the IT Act and is includible in the total income under Section 5 of the IT Act, but no tax is charged on such income because of exemptions given under Section 10A of the IT Act. Such exemption under Section 10A is available to the taxpayer only for a period of 10 years whereas the income remains chargeable to tax under Section 4 of IT Act throughout.

- In view of the above, the ITAT directed the AO to consider the claim of FTC as per the directions of the Hon'ble Karnataka High Court in the case of Wipro Limited and directed the taxpayer to furnish necessary evidences before the AO for allowing such claim of FTC.

ELP Comments:

The issue regarding claim of FTC in respect of exempt income has been a subject-matter of judicial scrutiny for a very long time. The decision of Karnataka High Court in case of Wipro Limited has been has been distinguished by the Bombay High Court in case of Reliance Infrastructure Limited (FTC denied on profits on which export incentives were claimed) and Pune ITAT in case of iGate Global (wherein FTC was allowed only in respect of doubly taxed income). Also, a Special Leave Petition (**SLP**) filed by the tax authorities against the Karnataka High Court decision (SLP (C) No. 15932 of 2016) is pending before the Supreme Court.

In 2016, CBDT notified FTC Rules to provide for relief from double taxation of foreign income in India. As per the FTC Rules, proportionate tax credit method is to be followed for claiming relief of foreign taxes paid. However, the FTC rules do not specify if the taxpayer is required to compute the tax payable in India before or after considering the impact of any tax incentives/exemptions/deductions enjoyed by it in India. Against this ambiguity, taxpayers rely on Court decisions such as those in the cases of HCL and Wipro Limited while claiming FTC of taxes paid outside India on exempt foreign income. However, it is also pertinent to evaluate the FTC clause of relevant DTAA before applying the above principles.

Sh. Rohit Kapur (ITA No.9016/Del/2019) (Delhi ITAT)

Loss from hotel units held in USA treated as loss from other sources and allowed to be set-off against salary

FACTS OF THE CASE

- The taxpayer, an individual was the Whole-time Managing Director of Selan Exploration Technology Ltd, a company incorporated and operating in India.
- During the AY 2016-17, apart from salary from the whole-time directorship of this company, the taxpayer earned income from other sources within and outside India in the nature of interest, rent (loss) and transactions in financial securities.
- The taxpayer reported certain loss under the head 'Income from other sources' and claimed set-off of such loss against its salary income earned as a Whole-time Director in India. The above loss arose on account of following –
    - Loss incurred from 1 unit (out of 160 units) of Trump Hotel USA owned by the taxpayer; and
    - Share of loss on account of investment in two LLCs in USA (South Broad Investors and 10-Greens Onus)
- While determining the total income of the taxpayer, the AO treated the above losses incurred by the taxpayer as business loss instead of loss under the head 'income from other sources' as claimed by the taxpayer and thereby denied the set-off of such losses against the salary income.
- The aggrieved taxpayer filed an appeal before the CIT(A) and subsequently before the Delhi ITAT.

JUDGEMENT

Loss incurred from one unit of Trump Hotel USA owned by the taxpayer

- ITAT observed that the taxpayer's conduct did not indicate any intentions of running a business from just one unit in Trump Hotel, USA. Rather, such unit was purchased by the taxpayer earlier, when he resided in USA and was employed with an Oil Exploration Company in USA. Even at that point in time, the taxpayer had given this unit for

being run under the 'Hotel Operations and Maintenance Agreement' by the managing company. Thus, the taxpayer was never engaged in running the Hotel Unit on his own.

- Additionally, the said issue was considered and adjudicated in favor of the taxpayer by the AO in the previous years. In this regard, the taxpayer relied on the decision of Supreme Court in case of *Radha Soami Satsang (193 ITR 32)* wherein it was held that the tax authorities cannot alter/disturb the settled positions from the earlier years.
- Thus, relying on the decision of *Sultan Brothers (Pvt.) Ltd. (51 ITR 353),* the ITAT concluded that the unit under consideration cannot be considered to be a business undertaking of the taxpayer and set-aside the AO's order treating such loss as business loss instead of loss under the head 'Income from other sources'.

Share of loss on account of investment in two LLCs in USA

- The ITAT observed that given the whole-time directorship of the taxpayer with the oil exploration company, the taxpayer could not have made capital outlay in two LLCs for business and apparently, the purpose could be investment only.
- The ITAT pointed out that the AO seems to have overlooked the above facts and has failed to evaluate the intention behind the investment. Accordingly, the AO was directed to treat the loss from LLCs as income from other sources and not business income.

Ganapathy Haridaass (Writ petition nos. 5767 & 5775 OF 2020)

Application for stay of demand couldn't be rejected without considering plea of financial hardship

FACTS OF THE CASE

- The taxpayer, an Individual was assessed under Section 144 of the IT Act for AY 2017-18. The AO passed the assessment order and issued a demand notice for INR 96,46,082 to the taxpayer.
- The taxpayer filed an appeal before the CIT(A) against the assessment order and simultaneously, filed an application before the AO for stay of demand on the grounds of financial hardship.
- The AO disposed the stay application filed by the taxpayer by way of a cryptic non-speaking order and directed the taxpayer to mandatorily pay 20% of the outstanding tax demand.
- Against the above, the taxpayer filed a writ-petition before the Madras High Court for setting aside of the AO's order, disposing the stay application filed by the taxpayer without dealing with aspects of prima facie case, financial stringency and balance of convenience.

JUDGEMENT

- The Hon'ble High Court accepted the taxpayer's plea and set-aside the AO's order disposing the stay application by relying on its own decision in case of *Mrs. Kannammal [2019] (413 ITR 390)* wherein it was categorically observed by the Hon'ble Court that it is incumbent upon the AO to examine the existence of a prima facie case and call upon the taxpayer to demonstrate financial stringency, if any, and arrive at a decision before disposing the stay application.
- The Hon'ble High Court directed the AO to lift the attachment and reconsider the stay application filed by the taxpayer by considering reasons of financial hardship and the pending rectification applications under Section 154 of the IT Act. Till such time, no further recovery proceedings should be initiated.

ELP Comments:

Generally, there is huge pressure for revenue collection on the tax authorities. As a result, tax authorities have been rejecting the stay applications filed by the taxpayers against disputed tax demands relating to appeal filed by the taxpayers before CIT(A). Practically, the tax authorities have been pressing for payment of 20% of the disputed tax

demand. Resultantly, the situation of taxpayers facing genuine financial hardships has only worsened in the wake of the ongoing worldwide pandemic. In such cases, the above ruling will serve as a strong support for the taxpayers in making an application for stay of demand on the grounds of financial hardships, especially in case of high-pitched assessments.

Recently, the Kerala High Court in the case of *Equity Intelligence India (P.) Ltd.(WP(C).NO.10002 OF 2020(A)* quashed the AO's order disposing stay application and mandating the taxpayer to pay 20% of the tax demand without giving opportunity of being heard.

Vodafone Idea Limited (WP-LD-VC NO. 81 OF 2020) (Bom HC)

Admitted refunds cannot be withheld on account of possible future tax dues that have not even been adjudicated

FACTS OF THE CASE

- Taxpayer is a Company incorporated in India. The taxpayer's case for AY 2014-15 was assessed under Section 143(3) r.w.s 144C of IT Act and a refund of INR 733 crore was determined. However, such refund was not issued to the taxpayer and the rectification applications filed by the taxpayer were also pending for disposal.
- Aggrieved taxpayer filed a Writ Petition before the Jurisdictional Delhi High Court and subsequently urged before the Supreme Court for non-grant of admitted refund. The Supreme Court held that the assessment order passed under Section 143 of IT Act indicated that the assessee was entitled for refund of INR 733 crores and the taxpayer is entitled to receive the said refund. The Supreme Court directed the AO to refund the amount of INR 733 crores to the taxpayer within four weeks from the date of the Supreme Court order.
- In the meanwhile, the AO passed an order under Section 154 of the IT Act against the pending rectification application and revised the amount of refund for AY 2014-15 to INR 1,009 crore. Thereafter, by adjusting aggregate demand of INR 176 crore pertaining to previous years, the net amount of refund was determined and admitted as INR 833 crore. However, despite several reminders and letters filed by the taxpayer such admitted refund of INR 833 crore was not released by the AO citing likelihood of demands in subsequent years.
- Aggrieved, the taxpayer filed a writ petition before the Bombay High Court seeking payment of admitted refund of INR 833 crores.

JUDGEMENT

- The Hon'ble Bombay High Court ruled that once the AO has already invoked their powers under Section 245 of the IT Act, it cannot withhold the admitted refundable amount on the grounds of likelihood of future demand on account of pending assessment proceedings. The High Court further noted that there is no such power vested in the AO to adjust the admitted refund against the tax dues which have not even been adjudicated and may arise only in future as contemplated/visualized by the AO.
- The High Court noted that as on the date of the refund order there was no outstanding tax liability for any other assessment year which can be adjusted against the admitted refund of INR 833 crores.
- Amongst the other reasons, the High Court held that the AO cannot be allowed to invoke Section 241-A of the IT Act for the first time in the affidavit in reply to the writ petition filed by the taxpayer - and in any case Section 241-A is inapplicable for AY 2014-15.
- In view of the above and distinguishing revenue's reliance on *Maruti Suzuki India Ltd (347 ITR 43)* on facts, the Hon'ble High Court directed the AO to refund a net amount of INR 833 crores to the taxpayer within two weeks from the date of uploading of the High Court order.

ELP Comments:

In several instances, it has been seen that the reasons stated by the department for withholding admitted refunds lacked substance and proper rationale leading to genuine hardships for taxpayers. Especially in cases where the refund amount is sizable and has disrupted the working capital cycle of the taxpayers. In such a scenario, the above ruling would enable the taxpayers to press their requests for release of admitted refunds, especially those pertaining to the AYs before AY 2017-18 i.e., prior to introduction of Section 241A of the IT Act.

Finance Act, 2017 introduced the provisions of Section 241A to provide that where refund of any amount becomes due for AY 2017-18 and onwards and the Assessing authority is of the opinion that grant of refund may adversely affect the recovery of revenue, he may, for the reasons recorded in writing and with the previous approval of the Principal Commissioner or Commissioner, withhold the refund up to the date on which the assessment is made.

Paul Xavier Antony Samy (IT APPEAL NO. 2233 (CHNY.) OF 2018) (Chennai ITAT)

Salary earned by a non-resident in Australia cannot be taxed in India merely because it was received in an Indian bank account

FACTS OF THE CASE

- The taxpayer was an individual employed with General Electric International Inc. (**GEII**) in India. During the year under consideration, the taxpayer was seconded to M/s. General Electric International Inc, Australia (**GEII Australia**) for an overseas assignment.
- The taxpayer left India on August 30, 2014 and during the year under consideration, his stay in India was 151 days. Thus, the taxpayer was a non-resident in India for the purpose of tax under Section 6 of the IT Act. For employment service rendered by the taxpayer to GEII in Australia, GEII Australia paid salary to the taxpayer in his Indian bank account.
- The taxpayer filed return of income in Australia and paid taxes in Australia on the salary income. It obtained a tax residency certificate from the Australian tax authorities and its return of income in India by claiming the Australian salary as non-taxable in India. However, the AO treated such salary income as taxable in India under Section 5(2)(a) of the IT Act on the ground that payment by GEII Australia was made in taxpayer's bank account in India.
- The aggrieved taxpayer filed an appeal the CIT(A) and subsequently, before the Chennai Bench of ITAT

JUDGEMENT

- The ITAT observed that the applicability of Section 5(2) is subject to the provisions of the IT Act. Thus, the applicability of Section 5(2) of the IT Act in the present case would be subject to the provisions of Section 15 of the IT Act which deal with tax on salary income. As per provisions of the said Section, salary income is taxable on an accrual basis.
- Further, the ITAT noted that Section 9(1)(ii) read with Explanation to clause(a) to such Section of the IT Act which deals with income deemed to accrue or arise in India, where the salary income could be deemed to accrue or arise in India, only if it is earned in India in respect of services rendered in India.
- It was also noted that as per Article 15 of the India- Australia DTAA which relates to dependent personal services, salary income of a resident of Australia was taxable only in Australia. In this regard, the ITAT noted that it was an undisputed fact that during year under consideration the taxpayer was a tax resident of Australia and non-resident in India. Hence, in view of Article 1 of India-Australia DTAA, the taxpayer was entitled to claim benefit of India-Australia DTAA under Article 15 of the treaty.
- In view of the above, ITAT held that the salary earned by a taxpayer in respect of services rendered in Australia was taxable only in Australia and it could not be taxed in India merely because the remittance of salary was made to the taxpayer's bank account in India.

NEWS

Central Board of Direct tax (CBDT) circular/notification

CBDT prescribes rules granting relief under Section 50CA and Section 56(2)(x) for transfer of shares below fair market value (FMV)

- As per the deeming provisions of Section 50CA read with Section 56(2)(x) of the IT Act, in case the sale consideration for transfer of shares is less than the FMV of such shares, the following consequences apply -
  - The FMV of such shares shall be deemed to be the full value of consideration for such transfer in the hands of the transferor
  - The excess of FMV over the sale consideration shall be liable to tax as 'Income from other sources' in the hands of the transferee
- Pursuant to the powers granted by Finance (No. 2) Act, 2019 for prescribing class of persons to which the above provisions would not apply, CBDT vide Notification 40/2020 amended rule 11UAC and vide Notification 42/2020 introduced Rule 11UAC in the Income-tax Rules, 1962 (**the IT Rules**).
- Provisions laid by the aforementioned notifications (applicable retrospectively from April 1, 2019) are as under -
  - The deeming provisions of Section 50CA and Section 56(2)(x) of the IT Act will not apply in case of transfer of any movable property, being unquoted shares, of a company and its subsidiary and the subsidiary of such subsidiary received, where -
    - Where the National Company Law Tribunal (**NCLT**) has suspended the Board of Directors of such company and has appointed new directors nominated by the Central Government under Section 241 and 242 of the Companies Act, 2013 dealing with Oppression and Mismanagement; and
    - Share of such company and its subsidiary and the subsidiary of such subsidiary has been transferred pursuant to a resolution plan approved by the NCLT under Section 242 of the Companies Act, 2013 after affording a reasonable opportunity of being heard to the jurisdictional Principal Commissioner or Commissioner.
  - The deeming provisions of Section 56(2)(x) of the IT Act not to apply in case of transfer of any movable property, being equity shares, of the reconstructed bank, received by the investor or the investor bank, as the case may be, where the said share has been allotted by the reconstructed bank under the scheme at a price specified in sub-paragraph (3) of paragraph 3 of the Yes Bank Limited Reconstruction Scheme, 2020.

Others

- CBDT notifies National Pension Scheme Tier II – Tax Saver Scheme, 2020 as tax-saving investment options under Section 80C of IT Act for Central Government Employees.
- CBDT vide Notification 44/2020 broadens the scope of the term 'infrastructure' for the purpose of Section 10(23FE) of the IT Act introduced by Finance Act, 2020 providing exemption for certain incomes of sovereign wealth funds/ pension funds. The widened scope is in alignment with the harmonized master list of infrastructures notified by Department of Economic Affairs in August 2018.
- CBDT granted one-time relaxation to verify income-tax returns filed for the AY 2015-16 to AY 2019-20, pending e-verification/submission of valid ITR-V form at CPC. The returns can now be verified by sending signed copy of physical ITR-V form or through prescribed EVC/OTP modes by September 30, 2020.

INDIRECT TAXATION

RECENT CASE LAWS

M/s Sotheby's Art Services (India) Pvt. Ltd Vs. Union of India and Others [2020-VIL-295-Bombay High Court]

Direction sought to carry forward accumulated CENVAT credit into GST regime & acceptance of Form GST TRAN-1

FACTS OF THE CASE

- The petitioner was duly registered under the erstwhile Finance Act, 1994 for providing taxable services under business auxiliary services in terms of the provisions of the said Act.
- The provisions of the Finance Act were superseded with the Goods and Services Act (**GST**) regime w.e.f. July 1, 2017. Therefore, the petitioner migrated & got registered under the GST regime. The petitioner had CENVAT credit balance of INR 47,96,627 as on June 30, 2017.
- The statutory time limit to file Form GST TRAN-1 was fixed as December 27, 2017 vide order dated November 15, 2017. Having filed the Service tax returns and crystallized the amount of eligible CENVAT credit, the petitioner attempted to file Form GST TRAN-1, although belatedly but along with late fees, in order to carry forward and transition its balance CENVAT credit into the GST regime. However, the petitioner was unable to file Form GST TRAN-1 on the GST portal. Therefore, according to the petitioner, it was unjustly precluded from filing Form GST TRAN-1 under the GST regime though it fulfilled the conditions prescribed by the proviso to Section 140(1) read with Rule 117(1) of the CGST Act.

JUDGEMENT

- The Hon'ble High Court observed the arguments of the petitioner whereby reliance was placed on several case laws that it is settled law that there cannot be a time limit for transition of eligible CENVAT credit into the GST regime. It was submitted that the right to transition of CENVAT credit into the GST regime is an indefeasible right which cannot be curtailed by providing a time limit in terms of Rule 117(1) of the CGST Rules.
- In view of the legal provisions, the Court observed that on a conjoint reading of Section 140(1) read with Rule 117(1), prima facie, it appears that a person is allowed to carry forward CENVAT credit from the erstwhile regime to the GST regime by fling of Form GST TRAN-1. In the present case, the petitioner has attempted to file Form GST TRAN-1, although belatedly, but along with the applicable late fees in compliance of the erstwhile service tax laws as also the provisions of the CGST Act and MGST Act.
- The Hon'ble High Court has held that a direction must be issued to the appropriate authority to consider the application filed by the petitioner for seeking to carry forward the accumulated CENVAT credit into the GST regime and acceptance of the petitioner's Form GST TRAN-1 in accordance with law. In doing so, the appropriate authority shall give a hearing to the petitioner and thereafter pass a speaking order on the aforesaid application.

ELP Comments:

In a similar petition filed prior to June 30, 2020, the Hon'ble Delhi High Court in ***Rehau Polymers Private Limited [Order dated June 30, 2020 in WP(C) No. 3824/2020]*** refrained from issuing any directions to the Department and noted that their decision in Brand Equity Treaties Limited (allowing filing of GST TRAN-1 till June 30, 2020) has been stayed by the Hon'ble Supreme Court. The Hon'ble Delhi High Court however observed that if the said decision is upheld later, the Hon'ble High Court would not be powerless to direct the Department to accept the Form GST TRAN-I at such later point of time.

M/s Mahavir Enterprise Vs. Assistant Commissioner of State Tax [2020-VIL-288-Gujarat High Court]

Challenge to constitutional validity of Rule 142(1)(a) of CGST Rules, 2017 in so far as it travels beyond provisions of the CGST Act

FACTS OF THE CASE

- The Petitioner/Writ Applicant challenged the legality and validity of the summary notice (in Form GST DRC-01) dated November 30, 2019 issued by the GST Department under Section 122(1) of the CGST Act, 2017, calling upon the writ applicant to show cause why an amount of INR 6,87,68,821 should not be recovered for the alleged contravention of the provisions of the Act and the Rules.
- Prima facie, it was the case of the department that the writ applicant is involved in bogus billing transactions without any physical movement of the goods.
- The Petitioner also challenged the vires of Rule 142(1)(a) of the CGST Rules on the ground that the same travels beyond the provisions of the Act and is a result of excessive delegation of powers. The petitioner contended that Rule 142(1)(a) of the CGST Rules contemplates for issuance of summary notice electronically along with the notice issued under Section 52 or Section 73 or Section 74 or Section 76 or Section 122 or Section 123 or Section 124 or Section 125 or Section 127 or Section 129 or Section 130 of the CGST Act. It was argued that since Section 122 of the CGST Act does not contemplate issuance of any show cause notice, the Rule 142(1)(a) of the CGST Rules travels beyond the provisions of the CGST Act.

JUDGEMENT

- The Hon'ble High Court stated that it did not propose to enter into the merits of the allegations levelled against the writ applicant regarding bogus billing transactions as the matter is at the stage of a SCN. It only proposed to consider validity of Rule 142(1)(a) of the CGST Rules and whether the impugned SCN could be termed as per se without jurisdiction.
- The Hon'ble Court reiterated that a rule under delegated legislation can be held to be ultra vires the statutory provisions of the Act if it is shown: (i) that it is beyond the scope of or in excess of the rule-making power of the delegate conferred under the Act, or (ii) that it is in conflict with or repugnant to any enactment in the Act. After noting that whether any particular legislation suffers from excessive delegation, has to be decided having regard to the subject matter, the scheme, the provisions of the Statutes including its preamble and the facts and circumstances in the background of which the Statute is enacted, the Hon'ble Court ruled that where a specific power is conferred without prejudice to the generality of the power already specified, the particular power is only illustrative and it did not in any way restrict the general power.
- After perusing various relevant provisions, the Hon'ble Court observed that Rule 142 of the CGST Rules (with respect to "notice and order for demand of amounts payable under the Act") provides that the proper officer shall serve, along with the notice under relevant provision of the CGST Act, a summary thereof electronically in Form GST DRC-01. Upon referring to Section 164 of the CGST Act, the Hon'ble Court noted that the Central Government has the power to make rules generally to carry out all or any of the purposes of the Act, and hence Rule 142(1)(a) of the CGST Rules is valid and is no manner conflict with any of the provisions of the Act.
- As regards validity of the SCN, it was held that the High Court can interfere under Article 226 of the Constitution of India against a show cause notice where the same is issued by an authority in exercise of the power which is

absent; the facts does not lead to commission of any offence; the show cause notice is otherwise without jurisdiction; it suffers from incurable infirmity; against the settled judicial decisions or the decisions of the Tribunal and bereft of material particulars justifying commission of offence. The Hon'ble High Court thus held that the challenge to the legality and validity of the SCN should fail (having regard to the scope of judicial review) and the challenge to the validity of Rule 142(1)(a) of the Rules should also fail.

Subhash Joshi & Another Vs. Director General of GST Intelligence (DGGI) & Ors. [2020-VIL-293-Madhya Pradesh High Court]

Direction sought to be issued under Section 67 of CGST Act, 2017 for carrying out search in presence of an Advocate

FACTS OF THE CASE

- The petitioner challenged notice dated June 20, 2020 whereby the premises of the petitioner (that has been taken on lease from Shri Kishore Wadhwani) was sealed under the provisions of CGST Act.
- The petitioner contended that though action relating to search & seizure has been initiated under Section 67 of the CGST Act, requisite procedure has not been followed. The Petitioner apprehended that the search and seizure may not be carried out in a fair manner and the confession of the petitioner may be recorded under pressure, therefore, a direction be issued by the Hon'ble Court for carrying out the search in the present of an Advocate.

JUDGEMENT

- The Hon'ble High Court held that in terms of Section 67(10) of CGST Act, presence of two or more independent and respectable inhabitants of the locality is necessary as witness to the search.
- The Hon'ble Court relied on the judgments in *Poolpandi and others vs. Superintendent, Central Excise & Ors. [(1992) 3 SCC 259] and Sudhir Kumar Aggarwal vs. Directorate General of GST Intelligence [2019 SCC Online Del 11101]* wherein it has been held that presence of a lawyer cannot be allowed to the assessee at the time of questioning or examination by the officers of the department. Further, the petitioner failed to point out any statutory provision or any legal right in favor of the petitioner that the search should be carried out in the presence of the Advocate. In view of the same, the contention of the petitioner was rejected, and the petition was accordingly dismissed.
- The Department's counsel assured the Hon'ble Court that the provisions of Section 67 of the CGST Act will be duly complied with.

RECENT ADVANCE RULINGS

In re: Core Project Engineers & Consultants Private Limited [2020-VIL-185-AAR-Maharashtra]

Analysis of pure labor services & applicability of Exemption Notification

FACTS OF THE CASE

- The Applicant was providing Mapping Services to various Municipal Corporation & Councils. Mapping services enables in identification of unpermitted construction areas and helps the Government or local authority to do Town Planning, Urban Planning & Control the Land use by the general public, etc.
- Applicant's activities included identifying properties & customizing the Property Survey, conducting of Tax Assessment & Property Document Management, Preparation of Property Tax Management Information and Maintaining of Document Management System for all Properties.
- The issue for consideration before the authority was as follows:
  - Whether the services supplied by the Applicant would be covered under Clause 1 & 2 of Twelfth Schedule of Article 243W, and thus exempt under Entry No. 3 of Notification no. 12/2017-Central Tax (Rate) dated June 28, 2018?

JUDGEMENT

- AAR observed the functions entrusted to a municipality under Article 243W of the Constitution and the matters listed under Twelfth Schedule to Article 243W. It observed that the following activities are covered under Twelfth Schedule to Article 243W:
  - Urban planning including town planning;
  - Planning of land-use and construction of buildings;
  - Provision of urban amenities and facilities such as parts, gardens, playgrounds;
  - Promotion of cultural, educational and aesthetic aspects.
- AAR further observed that from a reading of Sl. No. 3 of Notification No. 12/2017- Central Tax (Rate) dated June 28, 2017, exemption is extended to *"Pure services ………provided to ……………or local authority ……… by way of any activity in relation to any function entrusted to a …………………. Municipality under article 243W of the Constitution".*
- The applicant is rendering pure services to various Municipal Corporation & Councils and the said pure services are rendered in relation to the functions entrusted to the said Municipal Corporation & Councils under Article 243W of the Constitution.
- Accordingly, AAR held that the applicant is providing pure services (without the supply of goods), to various Municipal Corporation & Councils. The said services are in relation to any functions entrusted to a Municipality under article 243W of the Constitution and thus the applicant is entitled to exemption benefit as prescribed under Notification No. 12/2007-CT (Rate) dated June 28, 2017.

In re: Isprava Hospitality Private Limited [2020-VIL-187-AAR-Maharashtra]

Analysis & Interpretation of the term "Per Unit" in relation to villas on rent

FACTS OF THE CASE

- The Applicant was engaged in the activity of giving luxurious villas on rent to its clients in the state of Goa and Tamil Nadu. The Applicant was intending to initiate the same business in Maharashtra.
- Each villa consists of two to six rooms and the Applicant charges rent for the entire villa and not as per room basis. Further, only one customer will be entitled to take the entire villa on lease.
- Rent was proposed to be offered to clients on a per day basis for the entire villa. Two different clients will not be able to book the same villa and there will be no option of booking an individual room of a particular villa.
- The applicant was proposing to give out entire luxurious villas, consisting of multiple rooms, on rent to various customers in the State of Maharashtra and thus the issue for consideration before the authority was as follows:
  - Whether the entire villa will be treated as 'per unit' or the individual rooms inside the villas will be treated as 'per unit'? What is the meaning of 'per unit' as specified under Chapter, Section or Heading-9963 under entry no. 7 of the Notification No. 11/2017-Central Tax (Rate) dated June 28, 2017?

JUDGEMENT

- The AAR observed that the applicant has no intention of individually renting out the rooms inside the villa, and therefore the question of individual rooms being treated as 'per unit' as per the above said notification does not arise.
- The authority further observed that the 'pattern of renting' in relation to usage of the property provides the 'context' or 'perspective' in determination of unit of accommodation. In a hotel, a room constitutes 'a unit' whereas in a hostel, a bed may constitute 'a unit', as tariff is also declared accordingly.
- Thus, villa per say is an 'indivisible unit' in the applicant's business parlance, and the declared tariff is only for the villa as a whole. Hence, the expression 'per unit' in the present case will be the entire villa.
- Accordingly, AAR held that the entire Villa will be treated as 'per unit' as specified under Entry no. 7 of the Notification No. 11/2017-C.T. (Rate) dated June 28, 2017.

In re: Apsara Co-operative Housing Society Limited [2020-VIL-184-AAR-Maharashtra]

Analysis of 'Mutuality' Principle w.r.t supply by Co-operative Housing Society to its members

FACTS OF THE CASE

- The Applicant was a co-operative housing society, registered under the Maharashtra State Co-operative Societies Act, 1960 and formed by its members who are the shareholders. The Applicant society used its funds, raised by collecting contributions from the society members, only for the specified purposes as enumerated in the bye laws, i.e. property taxes, water charges etc.
- The issue for consideration before the authority was as follows:
  - Whether the activities carried out by the applicant (i.e. society) for their members qualify as supply as defined under Section 7(1) of the CGST Act, 2017?

JUDGEMENT

- The AAR refuted the applicant's submission *re* society and its members being not considered as distinct persons by citing principle of mutuality and held that it "is not tenable in so far as taxability under GST regime is concerned".
- AAR further observed that both the conditions stipulated for 'supply' i.e. to be made by a person for a consideration as well as in course of furtherance of business is satisfied. It agreed with jurisdictional officers submission that as per section 2(84) of the CGST Act, a registered co-operative society is a person within the meaning of the term 'person' and that there are two distinct persons (i) Co-operative Housing Society and (ii) Member. Reliance was also placed on Circular No. 109/28/2019 –GST dated July 22, 2019 which clarifies the intention of the Government to tax housing societies under GST.
- The membership fees collected by the applicant from members would be treated as 'consideration' as per Section 2(31) of CGST Act. The amount was paid for supply of services and the various activities undertaken by the applicant for the benefit of its members will come under the scope of business. Thus, all conditions stipulated for considering activities of applicant as 'supply' were met.
- AAR held that activities of the applicant, a co-operative housing society, of obtaining conveyance from the promoter (Builder), managing, maintaining and administering the property of the society, raising funds for the society, undertaking and providing any social, cultural or recreation activities etc. for its members qualify as 'supply' under Section 7 of CGST Act.

In re: Rajesh Rama Varma [TS-466-AAAR-2020-NT-Tamil Nadu]

Service provided to Principal's foreign client qualifies as provision of domestic service or export of service

FACTS OF THE CASE

- The Appellant was engaged in the business of providing Information Technology (**IT**) software related consulting services in the area of Oracle. Applicant entered into a consultancy agreement with Doyen Systems Private Limited (**Principal**) to provide similar Oracle related services to the Principal's clients.
- Applicant did not have any contact with Principal's foreign clients and did not receive any payment from them. As a proof of providing services to foreign clients, the Applicant provided the time sheet to the Principal.
- Applicant was required to communicate with the foreign clients for ERP support services for Oracle and not on any administrative issues.
- Consideration was agreed to be in the form of 'consultancy fee' to be paid on submission of invoice and was subject to TDS deduction. The consulting fee was to be billed at a fixed rate of USD 33.9 per hour with conversion to INR. Payment was to be received by Applicant in INR.
- The Applicant preferred a ruling to determine the GST liability on the services provided and the same was taken up for consideration.

JUDGEMENT

- The AAR observed that there are two sets of contracts, one between the Principal and Foreign client and the other between the Principal and the Applicant. The Applicant is not a party to the first contract, nor he is privy to it.
- There is a consideration for the services rendered by the Applicant based on the number of hours specified in the time sheet, that he works with the employees of the foreign client, i.e. the Principal's client. The time sheet is not forwarded by the Applicant directly to the foreign clients for their approval but only to the Principal who then verifies the claims with the foreign clients for genuineness and then makes payment for the services rendered.
- As per the contract entered by the Applicant, the Principal is liable to pay the consideration and the foreign client is not obliged to make any payment as consideration to the applicant. In case of any payment default, the applicant can lay a claim only against the company and not against the foreign client. Thus, the Applicant provides services as a 'consultant' engaged by the Principal and hence the receiver of service is the Principal, i.e. Doyen Systems Private Limited.
- The AAR further observed that the applicant does not qualify as an 'agent' of the Principal as the same is not substantiated by any documentary proof stating that the Applicant is the representative of the Principal while dealing with the foreign clients. Merely because the Applicant is in email correspondence with the employees of the foreign clients of the Principal does not mean that he is 'carrying on the business of supply of services' on behalf of the Principal.
- AAR observed that Para 5 of Schedule II of the CGST Act prescribes that *'development, design, programming, customization, adaptation, up gradation, enhancement, implementation of information technology software'* is construed as a supply of service under GST. Thus, as per Para 5 of Schedule II read with Section 7(1A) of the CGST Act, supply of IT software/consultancy services is construed as supply of services and the Applicant is liable to pay GST at appropriate rates on supply of consultancy services to the Principal.
- Further, AAR observed that whether the services qualify as export of services or not is not within the ambit of the authority as per Section 97(2) of the CGST Act.

In re: M/s Hitachi Power Europe GmbH [2020-VIL-167-AAR-Maharashtra]

Applicability of GST on the accounting entry made for the purpose of Indian accounting requirements in the books of accounts of Project office for salary cost of expat employees

FACTS OF THE CASE

- The Hitachi Power Europe GmbH (**Head office**) was a company incorporated in Germany. It was awarded contracts for supply of goods and supervisory services in the States of UP, Maharashtra and West Bengal.
- For this purpose, the head office had set up 3 project offices in India solely engaging itself for this project and deputed Expat employees (employees of Head office) at such project offices.
- With respect to the deputed Expat employees:
  - VISA was issued by the Indian Bureau of Immigration by mentioning the name of Head Office i.e., 'Hitachi Power Europe GmbH' under the column 'Organizational Name' with the address of the Project Office in India.

- Applicant deducted Tax Deducted at Source (**TDS**) under the head 'Income under Salaries' for these employees under the Income-tax Act, 1961 in India.

- Form 16 under the Income-tax Act, 1961 for salary deduction was issued in India for these employees by the Applicant.
- The quantification of the above salary cost and payment of the same to most of these Expat employees were made from the Head Office's bank accounts to the employees' bank account outside India.
- The Applicant obtained Permanent Account Number (**PAN**) and Tax Deduction Account Number (**TAN**) in the name of the Head Office, as the Applicant was only an extension of the office of Hitachi Power Europe GmbH Germany and not an independent entity.
- The Applicant was only an extension of the Head Office and entire fund for meeting its expenses in case of any shortfall was being managed by the Head Office. Thus, the salary for these employees was disbursed by the Head Office directly to the Expat employees, who had their primary bank accounts outside India.

JUDGEMENT

- The AAR observed that PAN and TAN for the Project Office has been issued by the Income Tax department in the name of the Foreign Company i.e., Hitachi Power Europe GmbH. Further, they have obtained registration under the Companies Act, 2013, as a 'Foreign Company' vide Registration Number F04681, by mentioning the name of the Company as 'Hitachi Power Europe GmbH'.
- As per RBI guidelines, the foreign company has opened their project office in India to undertake/complete the contractual obligations. As per FEMA regulations any shortfall of funds for meeting any liability in India will be met by inward remittance from abroad and the project will be funded directly by inward remittance from abroad. This fact is also verified from the fact that in the balance sheet of the Project office, under the shareholder's fund, ‘Head Office balance’ is mentioned, which shows that project office is receiving funds from their head office. Thus, the project office is merely an extension of the Head office.
- Further as per Section 7(2) of the CGST Act, 2017; "notwithstanding anything contained in sub-section (1), (a) activities or transaction specified in Schedule III; or (b) shall be treated neither as supply of goods nor a supply of services." As per Schedule III of the CGST Act, 2017, "the services by an employee to the employer in the course of or in relation to his employment" shall be treated neither as supply of goods nor a supply of service.
- AAR observed that the service provided by the Expat employees to the project office fall under the category of "Services by an employee to the employer in the course of or in relation to his employment". Accordingly, no GST is leviable on the salary paid to the expat employees and reflected in the books of account of the project office.

In re: M/s Ashish Arvind Hansoti [TS-455-AAR-2020-NT-Maharashtra]

Construction of immovable property and then renting out to various tenants

FACTS OF THE CASE

- The applicant was involved in construction of immovable property for letting out to various tenants on which GST will be charged under the head ‘renting of immovable property’.
- For the purpose of construction, huge quantities of materials and other inputs were purchased by the applicant and certain input services were also availed against which applicant has paid GST and now wants to avail credit of

such GST paid by him, for discharging the output tax liability.

- The issue for consideration before the authority was whether Input tax credit (**ITC**) is eligible on inputs and if the input services used in construction of commercial immovable property was subsequently used for renting?

JUDGEMENT

- The AAR observed that Section 17(5)(d) of the CGST Act provides restriction of ITC on inputs and input services received by a person for construction of an immovable property on his own account even if such inputs and input services are used in the course or furtherance of business.
- The applicant has himself built the immovable property for which he has received various goods or services or both and is using the said property for giving the same on rent to his customers and thus ITC is not available on the same.
- AAR further observed that reliance placed by the Applicant on the judgement rendered by the Hon'ble High Court of Orissa in case of Safari Retreats is not valid. The party had constructed a mall which was given on lease and while court held 17(5) ultravire, ITC was eligible. However, Department had preferred an Appeal before HC order which is pending. Appeal is considered as continuation of suit and a decree becomes executable only when the same is disposed off. As the same has not attained finality and pending before the Hon'ble Supreme Court, AAR did not rely on the judgement of the Hon'ble High Court of Orissa and held that input tax credit is ineligible.

In re: Gourmet Popcornica LLP [TS-491-AAR-2020-NT-Tamil Nadu]

Analysis of classification of 'Pre-Mix Popcorn'

FACTS OF THE CASE

- The Applicant was engaged in processing and packaging of maize corn kernels together with oil, salt and some added flavors 'specifically packed for popcorn vending machines and not for retail sale'. The applicant was classifying pre-mix popcorn packets under HSN 2106 9909 & charging GST @ 18%.
- The issues for consideration before the authority were as follows:
  - What would be the accurate HSN code and consequently, the rate of GST applicable on pre-mix popcorn maize packed with edible oil & salt?
  - Whether the same can be classified under HSN Heading 2008 & shall be chargeable to tax @ 12%?
  - If so, whether the said rate of 12% is applicable retrospectively w.e.f. July 1, 2017?

JUDGEMENT

- AAR observed that the applicant is classifying pre-mix popcorn packets under HSN 2106 9099 and discharging GST at 18%. It peruses Explanatory Notes to Chapter 20 covering vegetables, fruits, nuts and other edible parts of plants prepared and preserved as per processes other than those mentioned in Chapter 7,8 and 11 which include freezing, steaming, boiling, drying, provisionally preserving and milling.
- AAR further observed that as per the explanatory notes even after the processes, as long as the essential characteristic is retained, the edible parts of the plant are classifiable under Heading 20081990.

- AAR deduced that the applicant only cleans and adds flavors to the corn kernels and they do not undergo any processes as per Chapter 7,8 or 11 and even after adding salt, oil and flavors/spices, the essential nature of product still remains as 'corn kernels' i.e. the seeds of maize plant.
- AAR thus held that pre-mix popcorn maize (corn kernels) packed with edible oil and salt supplied by the applicant will be classified under CTH 20081990 attracting GST at the rate of 12%.

NOTIFICATIONS/CIRCULARS

S. No.	Notification	Particulars
1.	**Central Tax Notification No. 57/ 2020 – Central Tax dated June 30, 2020**	▪ The late fees for delay in furnishing returns in FORM GSTR-3B has been reduced or waived off as under, subject to the condition that the payment and filing of returns is undertaken by September 30, 2020: – No tax liability – **NIL** late fee; – Any tax liability – Upper cap of INR 500 per return, which was earlier INR 10,000. ▪ It is important to note that if the return is furnished after September 30, 2020 then, the late fees would be payable as per the regular provisions. ▪ This amendment has been made for the following categories of taxpayers: – Taxpayers having aggregate turnover of up to INR 5 crores, who furnish the return in FORM GSTR-3B for the tax periods from February, 2020 to July, 2020. – Taxpayers having an aggregate turnover of more than INR 5 Crores, who furnish the return in FORM GSTR-3B for the tax periods from May, 2020 to July, 2020. ▪ The amendment is deemed to be effective from June 25, 2020. **Note:** This notification amends the principal Notification No. 76/2018- Central Tax dated December 31, 2018, as was last amended by Notification No. 52/2020-Central Tax dated June 24, 2020.
2.	**Central Tax Notification No. 58/2020-Central Tax dated July 01, 2020**	▪ The tax payer can file a Nil Return in Form GSTR 3B or Nil details of outward supplies in GSTR 1 by SMS (Short Messaging Services) using the registered mobile number. The said returns shall be verified by a registered mobile number based on One Time Password (**OTP**) facility. **Note:** This notification amends Rule 67A of the Central Goods and Services Tax Rules, 2017 w.e.f. July 1, 2020, which earlier only provided for the facility of filing Nil Return in Form GSTR-3B by SMS.
3.	**Notification CBEC-20/06/08/2020-GST G.S.R.**	▪ Section 6 of the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020, provides for certain relaxations in time limits for completion or compliance of the actions as –

<table>
<tr><th>S. No.</th><th>Notification</th><th>Particulars</th></tr>
<tr><td></td><td>418(E) – Central GST (CGST) dated June 27, 2020</td><td>
– Completion of any proceeding or issuance of any order, notice, intimation, notification or sanction or approval, by whatever name called, by any authority, commission, tribunal, by whatever name called; or

– Filing of any appeal, reply or application or furnishing of any report, document, return or statement, by whatever name called.

Specified under the Central Excise Act, 1944, Customs Act, 1962, (except sections 30, 30A, 41, 41A, 46 and 47), Customs Tariff Act, 1975 or Finance Act, 1994, which falls during the period March 20, 2020 to June 29, 2020 to June 30, 2020.

▪ Notification CBEC-20/06/08/2020-GST G.S.R. 418(E) has amended Section 6 stated above and specified the end date of the period as September 29, 2020 instead of June 29, 2020. The last date of undertaking the compliance of the specified actions has also been extended to September 30, 2020 instead of June 30, 2020.

<table>
<tr><th colspan="2">Due dates as per Section 6 (prior to amendment)</th><th colspan="2">Due dates as per Section 6 (post amendment)</th></tr>
<tr><th>Due date falls between</th><th>Due date</th><th>Due date falls between</th><th>Due date</th></tr>
<tr><td>March 20, 2020 to June 29, 2020</td><td>June 30, 2020</td><td>March 20, 2020 to September 29, 2020</td><td>September 30, 2020</td></tr>
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<tr><td>4.</td><td>Notification No. 29/2020-Cutoms dated July 06, 2020</td><td>
▪ The rate of duty of customs on imports of Phthalic Anhydride falling under tariff item 2917 35 00 of the First Schedule to the Customs Tariff Act, 1975 originating in Korea RP and imported under the India-Korea Comprehensive Economic Partnership Agreement has been increased to 7.50%.

Note: This notification amends the principal Notification No. 152/2009-Customs dated December 31, 2009, as was last amended vide Notification No. 36/2019-Customs dated the December 30, 2019, which provided nil rate of duty of customs on imports of the said goods.
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S. No.	Notification	Particulars
5.	**Notification No. 30/2020-Customs dated July 10, 2020**	▪ The **last date** of re-import of cut and polished diamonds has been extended by three months, for those cases where the last date of such re-import falls between February 1, 2020 and July 31, 2020. **Note:** This notification amends the principal Notification No. 09/2012 - Customs dated March 9, 2012, as was last amended vide Notification No. 60/2017-Customs dated the June 30, 2017.
6.	**Notification No. 54/2020-Customs (N.T.) dated June 30, 2020**	▪ New Tariff Values of Edible Oils, Brass Scrap, Poppy Seeds, Areca Nut, Gold and Silver fixed under Section 14(2) of the Customs Act, 1962 have been notified. **Note:** This notification amends the principal Notification No. 36/2001-Customs (N.T.) dated August 03, 2001, as was last amended vide Notification No. 52/2020-Customs (N.T.), dated the June 15, 2020.
7.	**Notification No. 55/2020-Customs (N.T.) dated July 1, 2020**	▪ New Exchange Rates have been notified for conversion of certain foreign currencies to Indian Equivalent rupees for import and export goods in terms of Section 14 of the Customs Act, 1962.
8.	**Notification No. 17/2020-Customs (ADD) dated July 8, 2020**	▪ Anti-dumping duty has been imposed on import of **Steel and Fibre Glass Measuring tapes and their parts and components** [falling under Chapter Heading 9017 8010 or 9017 9000] originating in, or exported from China PR for a period of five years from the date of issuance of the notification.
9.	**Notification No. 18/2020-Customs (ADD) dated July 9, 2020**	▪ Anti-dumping duty on **Phenol** originating in or exported from South Africa has been extended for a further period of 6 months.
10.	**Circular No. 31/2020-Customs dated June 30, 2020**	▪ The validity of all Authorized Economic Operator (**AEO**) certificates, expiring during the period from March 1, 2020 to September 30, 2020, have been extended to September 30, 2020 except for those entities against which a negative report is received during this period. **Note**: Earlier, the extension was granted till June 30, 2020 vide Circular No. 27/2020-Customs dated June 2, 2020.
11.	**Circular No. 32/2020-Customs dated July 06, 2020**	▪ With a view to providing 'Faceless, Contactless and Paperless' Customs administration under the 'Turant Customs Program', the CBIC has decided to take following measures:

S. No.	Notification	Particulars
		– **Turant Suvidha Kendra (TSK) -** In view of implementing Faceless Assessment scheme at Bengaluru and Chennai ports, it was decided to set up TSKs at the said ports vide Circular No. 28/2020-Customs dated June 5, 2020. The TSK is set up for facilitating trade in completing various formalities relating to the Customs procedures at the port in the new regime of Faceless Assessment. Vide the present Circular, it has now been decided to set up TSKs at all Customs stations by July 15, 2020 for pan India roll out of Faceless Assessment. – **Registration/modification of Authorized Dealer Code (AD Code) and Bank Accounts details through ICEGATE** - The exporters are now allowed to make online request on ICEGATE for registration/modification of AD Code & Bank Account details along with online submission of supporting documents. Therefore, the physical interaction with the Customs authorities for such registration/modification has been done away with. It has also been advised in the Circular that the Customs officer should complete the approval process for registration/modification within the same working day of receiving the application request, if all the details/documents are submitted by the exporter. In case, any deficiency is noticed, the same shall be communicated by the Customs officer through Customs automated system and the exporter would then make required rectifications on ICEGATE. – **Automated debit of bond after assessment** – The Circular provides that the Indian Customs EDI System (**ICES**) would now automatically debit the bond and reflect the same in the first copy of the Bill of Entry, provided the details of the bond are provided during the submission of Bill of Entry. This will do away with the requirement to visit the Customs authorities for physical debit of the bond. – **Simplified registration of importers/exporters on ICEGATE** – The importers and exporters are advised to register on ICEGATE to access various functionalities such as management of Bank accounts, ledger view, IGST refund status, etc. The link of the document showing the process for such registration is provided in the Circular.

S. No.	Notification	Particulars
12.	**Instruction No. 12/2020-Customs dated July 11, 2020**	▪ The Instruction has been issued to direct requirement of prior AGMARK certification on import of Blended Edible Vegetable Oils (**BEVO**), without which such imports will not be allowed in India. It also requires that the BEVO shall also comply with the rules and regulations made under Food Safety and Standards Act, 2006.
13.	**DGFT Notification No. 16/2015-20 dated June 29, 2020**	▪ The Export Policy for export of 'PPE Medical Coveralls for COVID 19' has been amended to restrict such exports (earlier the same was prohibited) with monthly export quota of 50 lakh units. Therefore, the exporters exporting such goods would need to apply for export license for exporting such goods. ▪ All other items such as medical goggles, face shield etc. will continue to remain prohibited as per Notification No. 14 dated June 22, 2020.
14.	**DGFT Trade Notice No. 16/2020-21 dated June 25, 2020**	▪ As a part of Digital India Program and for ease of doing business in India, the DGFT has decided to revamp its existing online portal/platform. The new digital platform has been scheduled to go live on July 13, 2020 which can be accessed through existing website i.e. www.dgft.gov.in. ▪ In the first phase, the website will cater to services related to IEC issuance, modification etc. along with Chatbot (virtual assistant) for catering to the user's queries. Other online modules related to Advance Authorization, EPCG etc. will be rolled out subsequently. ▪ For accessing various services on the new platform, user ID would be required to be created on DGFT portal and the same would be required to be linked to the IEC of the entity.
15.	**DGFT Trade Notice No. 17/2020-21 dated June 29, 2020**	▪ In view of the restriction placed on export of 'PPE medical coveralls for COVID 19' (vide Notification No. 16 dated June 29, 2020), the present Trade Notice has been issued prescribing criteria and procedure for applying for export license for export of such goods. Key aspects are as under: – Export of only 50 lakh PPE medical coverall units will be allowed every month; – The applicant should be manufacturer of such goods; – Application for export license needs to be made online on

S. No.	Notification	Particulars
		DGFT portal; – Only applications filed from 1st to 3rd date of each month will be considered for the quota for that month and all approvals will be provided by 10th of every month after examination of the application; – Documents such as testing certificate, Chartered Engineer's certificate are required to be submitted with the application; – Validity of export license will be for 3 months.
16.	**DGFT Public Notice No. 11/2015-2020 dated June 30, 2020**	▪ The validity of recognition of the Pre-Shipment Inspection Agencies (recognized by DGFT), which expires on or before June 30, 2020, is extended upto September 30, 2020.
17.	**DGFT Public Notice No. 12/2015-2020 dated June 30, 2020**	▪ The Public Notice provides for certain additions/amendments in the MEIS Schedule to align/harmonize it with the amendments in the Tariff Schedule of Customs as per the Finance (No.2) Act, 2019 and with the amended import policy under ITC (HS), 2017.

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