ECONOMIC
LAWS
PRACTICE
ADVOCATES & SOLICITORS

TAX NEWSLETTER

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TABLE OF CONTENTS

DIRECT TAX

PAGES 3 - 9 RECENT CASE LAWS

- Commercial expediency, a must in interest-free loan to subsidiary in different line of business
- Possibility of filing appeal against assessment order sufficient for eligibility under VsV
- No interest liability on non-resident payee, if payer has not deducted tax at source
- Assessment order passed in the name of the dissolved company is non est and void ab initio
- Addition under Section 68 of the IT Act with regards to receipt of share application money routed via multiple layers of transactions
- Loss on share-sale held eligible for set off post evaluation of taxpayer's tax planning
- Receipts for allotment of shares not a taxable receipt, if subsequently treated as a gift
- Loss allowed to be set off under Section 79 of the IT Act as there is no effective change in voting rights

PAGE 10 NOTIFICATIONS/CIRCULARS

- Recent notifications from Central Board of Direct Taxes

PAGE 11 NEWS

INDIRECT TAX

PAGES 12 - 18 RECENT CASE LAWS

- Input tax credit availed on input services is not eligible for refund under inverted duty structure
- Refund of accumulated input tax credit for trading of goods under inverted duty structure
- Whether an amount refundable under one Act be adjusted against the admitted interest liability under a separate Act
- Excess Customs duty paid by utilization of MEIS scrips is eligible to be refunded in cash
- Cash refund of CVD is allowed to an Advance License holder post GST who was unable to fulfill Export Obligation
- MEIS benefit cannot be denied to the assessee due to an inadvertent error in the reward column while filing the Shipping Bill

PAGES 19 - 22 RECENT ADVANCE RULINGS

- Input tax credit is required to be reversed where vendor pays tax belatedly
- Subsequent transfer of SIPCOT allotted land is supply and liable to GST
- Construction services and other charges cannot be considered as composite supply
- Input tax credit in CSR activities is hit by restriction under Section 16 of the CGST Act
- Goods supplied at nominal price under promotional scheme is an independent supply
- Aluminum Composite Panel/Sheet not classifiable as structures

PAGES 23 - 28 NOTIFICATIONS/CIRCULARS

- GST | FTP| Customs |CVD |Anti-Dumping

DIRECT TAXATION

RECENT CASE LAWS

Commercial expediency, a must in interest-free loan to subsidiary in different line of business

Davanam Constructions Private Limited [ITA No. 314/Bang/2019]

- The Taxpayer had given interest-free advance to its subsidiary. The proportionate financial costs on such interest free advances were disallowed by the Tax Officer (**TO**) under Section 36(1)(iii) read with Section 37 of the Income-tax Act, 1961 (**IT Act**).
- The TO noted that the subsidiary is in the hospitality business and there is no connection whatsoever between the taxpayer's business of 'land development and construction' and hospitality business done by the subsidiary and accordingly, made the disallowance.
- The CIT(A) on perusal of the balance sheet, found that there was an increase in loans and fixed assets and therefore surmised that the taxpayer did not have sufficient interest free funds available with it. Accordingly, the order of the TO was upheld.
- The Bangalore Bench of the Income Tax Appellate Tribunal (**ITAT**) based on the balance sheet of the subsidiary, observed that the amount of loan received by the subsidiary from the taxpayer was not used for business purposes and was in fact advanced to related parties without any interest.
- The ITAT also took note of the principle of commercial expediency enunciated by the Hon'ble Supreme Court in the case of ***S.A. Builders v. CIT (288 ITR 1 [SC])*** and held that the taxpayer has not been able to establish any commercial expediency for advancing interest free loan to its subsidiary and both the companies are in different lines of business (being land development & construction and hospitality). Accordingly, the ITAT held that the CIT(A) was justified in sustaining the addition made by the TO by invoking the provisions of Section 36(1)(iii) of the IT Act.

Possibility of filing appeal against assessment order sufficient for eligibility under VsV

Dongfang Electric Corporation Ltd [Writ Petition No.15743 of 2021]

- The taxpayer was engaged in the business of power equipment manufacturing for worldwide power projects including thermal, hydro, nuclear, wind, gas turbine and combined cycle power plants.
- The TO had issued a draft order under Section 147 read with Section 144C to which the taxpayer was required to file objections before the Dispute Resolution Panel (**DRP**) within 30 days. The taxpayer chose not to file objections to the TO and the final order was passed. The taxpayer also did not prefer an appeal before the CIT(A). In the interim, the Vivad se Vishwas (**VsV**) Scheme was introduced with the object of settling disputes arising before the specified date (stated as January 31, 2020).
- The taxpayer made an application under the VsV Act which was rejected by the TO. The TO held that since the taxpayer did not prefer an appeal against the final order before CIT(A), it implied that taxpayer was not waiting on the specified date for the final order so as to file an appeal. Being aggrieved, the taxpayer filed a writ petition

before the Hon'ble High Court of Telangana against the order rejecting the application.

- The taxpayer placed its reliance on the FAQ No. 16 in the CBDT Circular No. 9/2020. Here it has been clarified that where an order is issued under Section 147 before the 'specified date' and no objections are filed before the DRP and taxpayer is waiting for final order to be passed by the TO, in such cases, the taxpayer would be considered as 'appellant' and would be eligible to settle his dispute under the VsV Act.
- The TO contended that since the taxpayer did not choose to file objections to the order, it was presumed that the proposals made in the order were accepted. The taxpayer, therefore, could not be considered as an 'appellant' since no dispute was existing on the specified date.
- The Court observed that VsV Act was intended to give quietus to vexatious litigation. The CBDT had expanded the scope of 'appellant' by construing the provisions liberally as stated in FAQ No.16 of Circular No. 9/2020.
- The Court noted that if a taxpayer has any apprehension that objections filed by it would not receive due consideration, it can choose not to file objections. It can then allow the authority to pass a final order, against which it can file an appeal and canvass the grounds advantageously. Accordingly, the High Court held that VsV Act recognizes such a right conferred on a taxpayer and relied on the wordings used by the CBDT in the second part of FAQ No. 16 which used the words 'against which ***he can file appeal*** before the CIT(A)'.
- In view of the above the Court held that the language used makes it clear that in the event of passing of final order by the TO against which a taxpayer ***'can'*** file an appeal with the CIT(A), the taxpayer is eligible to avail the benefit of the Scheme.
- The Court also remarked that extending a benefit to a taxpayer who has filed objections to the Draft order and denying it to one who chooses not to file such objections for various reasons, would be discrimination.
- In view of the above, the Hon'ble High Court held that *"considered from any angle and in view of the conclusions arrived at as above, the petitioner is entitled to succeed in this Writ Petition".*

ELP Comments:

The decision of the Hon'ble High Court is a welcome ruling which underscores the beneficial intent of the VsV Act. Tax authorities should take a liberal interpretation of the scheme rather than a literal interpretation, as it would then render the entire scheme of VsV inoperable and against the purpose for

No interest liability on non-resident payee, if payer has not deducted tax at source

Mitsubishi Corporation (Civil Appeal No. 1262 of 2016) (Supreme Court)

- The Taxpayer, a non-resident company incorporated in Japan was engaged in trading activities through its liaison office in India and was subjected to assessment for Assessment Years (**AYs**) 1998-99 to 2004-05. During the assessment proceedings, the TO held that certain portion of the taxpayer's income was liable to tax in India along with interest under Section 234B of the IT Act. The taxpayer filed an appeal before CIT(A) against the levy of interest under Section 234B.
- The taxpayer's appeal before CIT(A) was dismissed. The Mumbai bench of ITAT and Hon'ble Bombay High Court however allowed the taxpayer's appeal by relying on various decisions.
- The TO filed an appeal before the Hon'ble Supreme Court and submitted that the phrase 'deductible or collectible at source' under Section 209(1)(d) of the IT Act would not take into its fold the tax which was not

deducted within the statutory time limit and was, in fact, paid to the taxpayer without deduction. Further, it also submitted that Section 234B is a standalone provision and the words used in Section 209(1)(d) cannot be imported into Section 234B regardless of the remedy available with the Revenue against the defaulting payee.

- The Hon'ble Supreme Court in its decision observed that for all assessment years prior to 2012-13, advance tax had to be computed after reducing income-tax which is deductible or collectible during the financial year. Further, the Court held that Section 234B cannot be read in isolation. While the definition of "assessed tax" under Section 234B pertains to tax deducted or collected at source, the pre-conditions for applicability of Section 234B (viz. liability to pay advance tax and non- payment or short payment of such tax, have to be satisfied), after which interest can be levied taking into account the assessed tax. Therefore, Section 209 of the IT Act which relates to the computation of advance tax payable by the assessee cannot be ignored while construing the contents of Section 234B. Accordingly, the Court held that the payee would not be liable to pay interest under Section 234B for sums on which tax was deductible at source but was not deducted by the payer.

Assessment order passed in the name of the dissolved company i.e., the amalgamating company is non est and void ab initio

Infosys BPM Limited (formerly known as Infosys BPO Limited, Successor to PAN Financial Shared Services India Private Limited) (ITA no. 2372/Bang/2019) (Bangalore ITAT)

- PAN Financial Shared Services India P Ltd. (**PFSS**) merged with Infosys BPM under a scheme of amalgamation approved by the Hon'ble Madras and Karnataka High Court, effective from April 1, 2008. PFSS filed the return of income for AY 2008-09 with a loss which was assessed under Section 143(3) and the TO passed the Assessment Order in the name of PFSS. The taxpayer preferred an appeal before CIT(A) challenging the Assessment Order on the grounds that it was passed on the dissolved company and was thus, without jurisdiction.
- During the pendency of proceedings, a letter was filed with CIT(A) informing it about the merger of PFSS and also that all communications and correspondence in future be issued and served on Infosys BPO at its registered office. The CIT(A) rejected the taxpayer's claim on the grounds that that the merged entity did not inform the TO about the fact that it ceased to exist.
- The Bangalore Bench of ITAT, relied on the decision of the Supreme Court in the matter of ***PCIT vs. Maruti Suzuki India Ltd (2019) (107 taxmann.com375)***. It held that on examination of provisions relating to amalgamation, assessment made, and the order passed on the amalgamating company - when the said company is dissolved/not in existence - is a nullity, and the impugned assessment order is *non est*, *void ab initio* and annulled.

Addition under Section 68 of the IT Act with regards to receipt of share application money routed via 6 layers of transactions and complex web of companies

Leena Power Tech Engineers Pvt Ltd (ITA No. 1313/Mum/20) (Mumbai ITAT)

- The Taxpayer is an investment company. Reassessment proceedings were initiated on the taxpayer on account of certain information received from the investigation wing indicating that the taxpayer was in receipt of share application money. The taxpayer was asked to prove the identity and creditworthiness of the investor company

and genuineness of the transaction.

- The money was routed through several layers, and ultimately reached the taxpayer. Based on this fact, the TO made an addition of INR 8.13 Cr as unexplained credit under Section 68 of the IT Act for AY 2011-12. On appeal, CIT(A) deleted the addition and hence TO filed an appeal before the Mumbai ITAT.
- The Mumbai Bench of ITAT referred to the rulings of Hon'ble Delhi High Court in the matter of ***PCIT vs. Youth Construction Pvt Ltd (357 ITR 197)*** and Hon'ble Calcutta High Court in the matter of ***CIT vs Precision Finance (P.) Ltd (208 ITR 465)*** and held that the onus is on the taxpayer to prove the identity of the creditors, their creditworthiness, and the genuineness of the transaction. Further relying on the decision of Hon'ble Supreme Court in the case of ***CIT vs Durga Prasad More (82 ITR 540)***, the ITAT stated that as the final fact-finding authority, it cannot be superficial in determining the genuineness of a transaction, and the call has to be taken in light of documents submitted as well as the surrounding circumstances, including preponderance of human probabilities and ground realities.
- The ITAT found from the facts and material on record that the investor company acted as a conduit company, where it raised funds and followed a similar pattern of investment by subscribing to the shares at a high premium, without having any independent business activities of its own. Also, valuation under DCF method was found to be incorrect and fallacious, and the valuation report furnished did not inspire any faith and the assumptions therein were unrealistic.
- Based on the above, ITAT allowed TO's appeal.

Loss on share-sale held eligible for set off post evaluation of taxpayer's tax planning and commercial prudence

Michael E Desa (ITA No. 4286/Mum/17) (Mumbai ITAT)

- The taxpayer, a non-resident Indian, claimed set off of long-term capital losses, incurred on the sale of shares in a company (**Target**), against the long-term capital gains earned on sale of property during the AY 2010-11.
- The TO was of the view that long-term capital loss appears to be prima facie fictitious and accordingly, the taxpayer is not entitled to adjust any loss against the taxable income. Such a view was adopted based on the following:
  - Taxpayer knew the purchaser of equity shares for over 10 years and had close business connections with him;
  - Net worth of the Target was fully eroded with no future profit earning capacity or any future business prospects.
  - No business was carried on by the Target after the sale of shares which showed that the purchaser did not purchase the shares 'with an intention to continue or carry on the business of the Target company' or 'any other business activity of the Target company'.
- Based on the above, the TO primarily questioned the 'timing' of booking capital loss so as to set-off taxable gains against such loss.
- TO further noted that the contract for sale of shares was vitiated in law under Section 23 & 24 of the Indian Contract Act, 1872. Consequently, the TO rejected long-term capital loss incurred by the taxpayer stating that the transfer of shares is a device to generate artificial and incorrect long term capital loss. This was upheld by the CIT(A). The taxpayer being aggrieved by such a decision, filed an appeal before the Mumbai Bench of ITAT.

- The ITAT observed that since the Target company was wiped out by losses, there was clearly a loss to the taxpayer. However, it is for the taxpayer to decide when he intends to book such loss and accordingly find a buyer willing to buy these shares. When the taxpayer actually sells the shares in question, and the said transaction is given factual and legal effect, the loss will crystallize. That is what probably leaves a window for planning affairs, as long as the taxpayer can actually dispose of these shares, so as to minimize the tax liability in respect of long-term capital gains(if any). This is because such a loss can only be set off against the long-term capital gains.
- ITAT placed reliance on the case of ***Vodafone International Holdings BV [(2012) 341 ITR 1 (SC)]***, wherein it was held that every taxpayer is entitled to "*arrange its affairs so that the tax payable shall be as low as possible and that he is not bound to choose that pattern which will replenish the treasury*". Further, there is nothing to substantiate TO's suspicion that even after the sale of shares, taxpayer continued to remain owner and beneficiary of these shares. Also, no contract can be void under the Indian Contract Act, 1872, as long as it is for legitimate tax planning and without using colorable devices. Thus, ITAT allowed the taxpayer to set-off long-term capital loss against the long-term capital gains.

ELP Comments:

While deciding the issue in favour of taxpayer, ITAT placed emphasis on the rationale that a transaction cannot be doubted merely because it results in a tax advantage to the taxpayer. Further, Revenue Authorities cannot deprecate and disapprove genuine tax planning within the framework of law under the guise of excessive caution. This judgement would dissuade revenue authorities from causing hardships to genuine taxpayers who have not indulged in sham transactions.

Receipts for allotment of shares not a taxable receipt, if subsequently treated as a gift

Crescent Payments Pvt. Ltd (ITA no. 559/Mum/2017) (Mumbai ITAT)

- The taxpayer is engaged in the business of Information Technology Enabled Services (**ITES**). During assessment proceedings, the TO observed that an amount was shown as remittance from a foreign company, which was treated as a gift received.
- The TO questioned why receipt credited to reserves and surplus not be treated as income of the taxpayer company in terms of Section 28(iv) read with Section 2(24)(ix) of the IT Act. The taxpayer claimed that such amount was not utilized for revenue purposes and there was no business connection with the foreign company. However, the TO alleged that the purpose of receipt will not alter the character of the same and there was a holding subsidiary relationship between the parties. After the CIT(A) upheld the TO's contentions, the taxpayer preferred an appeal before the Mumbai Bench of ITAT.
- ITAT held that the aforementioned receipt would not be taxable under the IT Act based on the following grounds:
  - The taxpayer failed to comply with Foreign Exchange Management Act, 1999 (**FEMA**) regulations by not allotting shares within 6 months from the date of receipt of money towards share capital. On the advice of a FEMA consultant, it chose to retain the amount as gift from the foreign company.
  - Such decision was approved by a Board resolution of the foreign company, which contained a specific direction to treat the amount as gift.

- The TO's observation was incorrect as at the time of receipt of money, the foreign company was not the holding company, and the shares were acquired subsequent to treating the receipt as a gift. The lower authorities took advantage of the fact that taxpayer admitted to violating FEMA regulations.
- The receipts were not in the ordinary course of business. The condition in Section 28(iv) of the IT Act, that such benefit must be revenue in character was thus not fulfilled. The amounts received are not covered by Section 56(2)(vii) of the IT Act. Since the taxpayer had only received monies, Section 56(2)(via) was not applicable. Further, the provisions of Section 56(2)(viib) of the IT Act are applicable only for consideration for issue of shares received by a company from any person who is a resident.
- It relied on the ruling of the Hon'ble Supreme Court in ***G.S. Homes & Hotels [TS-5111-SC-2016-O]*** wherein it was held that the amount received on account of share capital ought not to be treated as business income. It has also relied on the Hon'ble Bombay High Court ruling in case of ***Nerka Chemicals [TS-174-HC-2014(BOM)-O]*** and held that receipt of funds cannot be taxed as income of the recipient.

- Thus, in view of the above observations, ITAT held that provisions of Section 56(2) (viib) of the IT Act are also not applicable.

Loss allowed to be set off under Section 79 of the IT Act as there is no effective change in voting rights

Loss allowed to be set off under Section 79 of the IT Act as there is no effective change in voting rights

- The taxpayer is engaged in the business of investment advisory services as well as development of real estate and infrastructure projects. Tata Realty & Infrastructure Ltd. (**TRIL**) held 65% of shares in the taxpayer company before the merger, 24% directly and 41% indirectly (78.85% of 52%) through TRIL Highway Project Limited (**THPL**).
- During the year, THPL merged with TRIL and the shares held by THPL in taxpayer-company were transferred to TRIL. Further, the taxpayer had set-off brought forward losses from previous assessment years. On being questioned by the TO as to why the set-off of losses should not be denied under Section 79 of the IT Act on account of change in shareholding, the taxpayer contended that TRIL held 65% of the shares in the company before merger and 100% after merger. Therefore, there is no change in control and management of the taxpayer in either of the years.
- However, TO rejected taxpayer's contention that TRIL held more than 51% shares before merger as 41% shares were held indirectly and thus, disallowed the set off of losses. However, CIT(A) overruled the order of the TO and allowed the set off of such loss. Aggrieved by the Order of CIT(A), TO appealed before Mumbai Bench of ITAT, as the CIT(A) ignored the decision of the Hon'ble Delhi High Court in the case of ***Yum Restaurants India Pvt. Ltd. (ITA No. 349/2015***).
- ITAT was in agreement with the view of CIT(A) and allowed the set off of losses on the following basis:
  - There was no change post-merger as far as the voting rights and beneficial ownership in the taxpayer company was concerned. The shareholding of TRIL in the taxpayer company had effectively increased from 24% to 76% post-merger.
- In the case of ***Yum Restaurants India Pvt. Ltd***, there was no arrangement or agreement between the holding company and subsidiary companies, and these companies existed in different international jurisdictions. The new company Yum India was formed as a distinct and independent company. However, TRIL and the taxpayer

company belong to the same group of companies and the shares were invested by the shareholders within the group companies. The share pattern clearly indicates that the holding company controls the whole business. Therefore, the reliance placed by TO is distinguishable.

- Thus, ITAT allowed the taxpayer to set off of losses.

ELP Comments:

ITAT clearly enunciated the rationale that Section 79 of IT Act focuses on total shareholding, whether direct or indirect. Thus, indirect shareholding cannot be disregarded while evaluating the applicability of Section 79 of the IT Act.

NOTIFICATION/CIRCULARS

S.No.	Reference	Particulars
1.	**Notification No. 95 of 2021**	CBDT inserts Rule 9D, that comes into effect from April 1, 2022, for calculation of taxable interest on contribution in a provident fund or recognized provident fund under Section 10, exceeding specified limit.
2.	**Notification No. 96 of 2021**	CBDT in exercise of powers under Section 245-OB(1) notifies 3 Boards for Advance Ruling, 2 in Delhi and 1 in Mumbai. These Boards will be effective from September 1, 2021.
3.	**Notification No. 99 of 2021**	CBDT inserts Rule 26D for furnishing of declaration and evidence of claims by specified senior citizen under Section 194P. Rule prescribes Form 12BBA for making declaration and amends Form 16. Further, as per the Rule, the "specified bank" responsible for TDS under Section 194P shall furnish evidence produced by the "specified senior citizen" for claiming deduction under Chapter VI-A to the Pr. DGIT (Systems) or DGIT (Systems) or to any other authorized person as and when required.
4.	**Notification No. 105 of 2021**	CBDT notifies Income-tax (28th Amendment) Rules, 2021 and amends Rule 11UAC [which prescribes the class of persons that are not covered by Section 56(2)(x)] to include person receiving equity shares of a public sector company from Central Government or any State Government under strategic disinvestment. The amendment is effective from April 1, 2022 and shall be applicable for the AY 2022-23 onwards.
5.	**Notification No. 91 of 2021**	CBDT notifies establishment of 7 Interim Boards of Settlement (3 in Delhi, 1 in Kolkata, 2 in Mumbai and 1 in Chennai) in exercise of powers under Section 245AA(1) of the IT Act.

NEWS

- September 6, 2021: CBDT vide an order under Section 119 of the IT Act has excluded assessment orders - in cases where pendency could not be created on the Income Tax Business Application (**ITBA**) because of technical reasons or cases not having a PAN - from the ambit of faceless assessment regime with immediate effect from September 6, 2021.
- September 6, 2021: The CBDT vide an order dated September 6, 2021 has notified procedure for handling assessment by the jurisdictional assessing officer in respect of assessments/penalties transferred out of faceless assessment regime under Section 144B(8)/clause 5(2) of Faceless Penalty Scheme, 2021. The Procedure provides that a personal hearing be generally granted through video conferencing with the approval of Range Head after taxpayer has furnished written submissions. Further, the procedure directs mandatory involvement of the Range Head in finalization of assessments.
- September 7, 2021: In order to provide relief to the taxpayers that were eligible for filing application before the Income-tax Settlement Commission (**ITSC**) on January 31, 2021 but could not do so as the ITSC ceased to exist from February 1, 2021, CBDT issued a Press Release dated September 7, 2021. This grants an opportunity to such taxpayers to file an application before the Interim Board for Settlement by September 30, 2021 subject to fulfilment of conditions specified therein.
- September 9, 2021: On consideration of difficulties reported by the taxpayers and other stakeholders while accessing the income tax portal, CBDT extended due dates for filing of Income Tax Returns as well as various reports of audit for the Assessment Year 2021-22 vide Press Release dated September 9, 2021.
- September 10, 2021: In order to facilitate proposed divestment of Air India Assets Holding Limited, CBDT notifies several tax concessions vide series of notifications dated September 10, 2021, viz concessions under - TDS provisions, Section 56(2)(x), Section 194Q, Section 206C, Section 197-IA & Section 47 of the IT Act.
- September 17, 2021: Due to continuing hardship on account of COVID-19, CBDT, vide notification dated September 17, 2021 extended: (i) Time limit for intimation of PAN-Aadhaar linkage from September 30, 2021 to March 31, 2022 (ii) Due date for completion of penalty proceedings from September 30, 2021 to March 31, 2022 and (iii) Time limit for issuance of notice and passing of order by the Adjudicating Authority under the Prohibition of Benami Property Transactions Act, 1988 to March 31, 2022.

INDIRECT TAXATION

RECENT CASE LAWS

Input tax credit availed on input services is not eligible for refund under inverted duty structure

UOI v. VKC Footsteps Pvt. Ltd. (Civil Appeal No. 4810/2021) (Supreme Court)

INTRODUCTION

- A batch of appeals were filed before the Hon'ble Supreme Court for deciding the validity of Rule 89(5) of the CGST Rules on the ground that it is *ultra vires* Section 54(3)(ii) of the CGST Act (**Act**) in view of the divergent views of the Gujarat High Court in the case of ***VKC Footsteps India Pvt. Ltd. v. Union of India [TS-585-HC-2020(GUJ)-NT]*** and the Madras High Court in the case of ***Tvl. Transtonnelstroy Afcons Joint Venture v. Union of India [TS-800-HC-2020(MAD)-NT].***
- **The Hon'ble Supreme Court upheld the exclusion of input services while calculating inverted duty refund under Rule 89(5) of CGST Rules and held that the challenge to Rule 89(5) lacks substance.**

KEY FINDINGS

- The impact of the first proviso to Section 54(3) of the Act is that a refund of unutilized Input Tax Credit (**ITC**) shall be allowed only in cases falling under (i) and (ii) of that Section. The expression 'only' is not a judicial addition to statutory language. It follows plainly from the expressions "no refund" of unutilized ITC shall be allowed "in cases other than".
- The expression "in cases other than" is a clear indicator that clauses (i) and (ii) of the first proviso are restrictive and not conditions of eligibility.
- The legislative draftsperson has made a clear distinction between clause (i) and clause (ii) of the first proviso and it was in this context that the opening words of Section 54(3) of the Act have used the expression "may claim refund of any unutilized ITC".
- Explanation 1 to Section 54 of the Act is a clear indicator that in respect of domestic supplies - it is only unutilized credit - which has accumulated on the rate of tax on input goods being higher than the rate of output supplies of which a refund can be allowed.
- Imposing a restriction of the kind given in clause (ii) of the proviso lies within the realm of policy.
- While it is true that the plural expression 'inputs' has not been specifically defined, there is no reason why the ordinary principle of construing the plural in the same plane as the singular should not be applied. Further, to construe 'inputs' to include both input goods and input services would do violence to the provisions of Section 54(3) and would run contrary to the terms of Explanation-I which have been noted earlier.
- The intent of Parliament is evident by the use of a double-negative format by employing the expression "no refund" as well as the expression "in cases other than". In other words, a refund is contemplated in the situations provided in clauses (i) and (ii) and no other.
- Clause (ii) of the proviso, when it refers to "on account of" clearly intends the meaning which can ordinarily be said to imply 'because of or due to'. When proviso (ii) refers to "rate of tax", it indicates a clear intent that a

refund would be allowed where and only if the inverted duty structure has arisen due to the rate of tax on input being higher than the rate of tax on output supplies.

- A statutory provision may not visualize every eventuality which may arise in implementing the provisions of the Act. Hence, it is open to the rule making authority to frame rules, so long as they are consistent with the provisions of the parent enactment. Thus, the absence of the words "as may be prescribed" in Section 54(3) does not deprive the rule making authority to make rules for carrying out the provisions of the Act.
- The Court observed that the formula prescribed in Rule 89(5) of the CGST Rules seeks to deduct the total output tax from only one component of the ITC, namely ITC on input goods. It noted that such a position is at odds with reality, where the ITC on both input goods and input services is accumulated in the electronic ledger and is then utilized for the payment of output tax. On noticing the anomalies of the formula, the Court held that an anomaly per se cannot result in the invalidation of a fiscal rule which has been framed in exercise of the power of the delegated legislation.
- Given the anomalies pointed out by the assessees, the Court strongly urged the GST Council to reconsider the formula and take a policy decision regarding the same.

ELP Comments:

The decision will adversely impact many taxpayers who are grappling with the issue of accumulation of credit on account of inverted duty structure qua input services. More particularly, industry sectors such as Textile, Mining, Pharmaceuticals, Government contractors, Tractor manufacturers and Railways suppliers would face the heat in the form of reduced cash inflows.

The only relief they can expect is if the GST Council, based on the recommendations of Hon'ble Supreme Court, tilts the formula under Rule 89(5) of the CGST Rules in favour of such taxpayers. There is also a likelihood that some of the sectors may witness an increase in the rate of output tax.

Refund of accumulated input tax credit for trading of goods under inverted duty structure

BMG Informatics PvtLtd vs. UOI [TS-487-HC(GAUH)-2021-GST]

FACTS OF THE CASE

- The Appellant is engaged in supply of information and technology products which is procured on payment of applicable Goods and Services Tax (**GST**) at higher rates.
- The products are then supplied to a Government department or PSU or a Research and Education institute within the North East region, after claiming partial exemption (GST at 5% is payable against such supply) under GST Notification No. 45/2017-CT (Rate) dated November 14, 2017. In other words, the Appellant procured such products at a higher rate, which were subsequently supplied (on as is basis) at lower GST rate (5%) resulting into accumulation of input tax credit
- It is noteworthy that the output supplies made by the Appellant are liable to GST at 5% and it is neither a case of full rate nor a case of full exemption.
- The Appellant filed a claim for refund under inverted duty structure. This claim was denied on the premise that since the input supply and the output supply are same, the Appellant is not entitled to refund.

- The Respondent relied on Para 3.2 of Circular No.135/05/2020-GST (dated March 31, 2020) which *inter alia* clarified that refund under Section 54(3) would not be admissible where "*the input and the output supplies are the same.*"
- Section 54(3) of the CGST Act allows refund of accumulated input tax credit where "*rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies)*"

JUDGEMENT

- The Hon'ble High Court noted that there is a difference in rate of tax on input supplies and output supplies and Section 54(3) is applicable in the present facts.
- It was further observed that there is a conflict between Para 3.2 of the Circular No. 135/05/2020-GST and provisions of Section 54(3) of the Act. It is a well settled law that whenever there is a conflict between the provisions of a statutory Act and that of a notification or circular issued by an administrative authority, the provisions of the statutory Act would prevail over such conflicting provisions of a notification or a circular of an administrative authority.
- The High Court accordingly held that the Appellant is eligible and entitled to refund of accumulated input tax credit in the present facts and para 3.2 of the said Circular would have to be ignored.

ELP Comments:

The ruling is welcomed by the industry and will enable the taxpayers (traders) to claim refund of accumulated input tax credit in cases where there has been reduction of GST rate/where the GST rate on input supply is higher than the output supply.

Whether an amount refundable under one Act be adjusted against the admitted interest liability under a separate Act

Birla Tyres v. Commissioner of Sales Tax [WP(C) No. 18166 of 2020 (Odisha High Court)

FACTS OF THE CASE

- The Petitioner is a unit of Kesoram Industries and is engaged in the manufacture and sale of tyres, tubes and flaps from its factory located at Balasore, Odisha.
- An assessment was carried out under the Central Sales Tax Act for FY 2006-07. The Petitioner was allowed to claim refund of INR 65,34,213 *vide* Order (dated February 24, 2020) passed under the CST Act.
- The Petitioner was liable to pay INR 79,44,056 towards interest levied under the Odisha Entry Tax Act, which liability was admitted.
- *Vide* Order dated July 16, 2020, the department unilaterally sought to adjust the amount refundable under the CST Act with the interest payable under the Entry Tax Act.
- The Petitioner challenged the said adjustment Order dated July 16, 2020 on the basis that: (1) there is no provision under the Entry Tax Act which permits adjustment of refund under other Acts against any liability under the CST Act, and (2) there is no provision which envisages garnishee proceedings whereby the dues of an assessee could be sought to be recovered from some other amount owed to it in separate proceedings.

JUDGEMENT

- The Hon'ble High Court held that in the absence of any specific provision permitting such adjustment, the order which unilaterally seeks to adjust the refund amount under CST Act with the liability under the Entry Tax Act is unsustainable.
  - The Hon'ble Court directed that the refund amount be granted to the Petitioner within four weeks.

Excess Customs duty paid by utilization of MEIS scrips is eligible to be refunded in cash

Jaideep Ispat and Alloys v. CC [FINAL ORDER No. 51826/2021] (CESTAT New Delhi)

FACTS OF THE CASE

- The Appellant imported heavy and light melting scrap and declared the transaction value as per the sales invoice raised by the supplier. However, the department rejected the transaction value basis NIDB data and reassessed the Bills of Entry. The Appellant paid the differential duty partly by utilization of MEIS scrips and parallelly challenged the re-assessment Order.
- The Tribunal *vide* Order (dated June 28, 2018) rejected the re-assessment done by the Department. The Appellant was therefore eligible to claim refund of excess duty paid at the time of re-assessment.
- However, the said refund claim was partly denied to the extent that such excess duty was paid by utilization of MEIS scrips. The Appellant challenged the said rejection Order.
- The Appellant submitted that it is well settled law that "*the amount which stands credited under the scripts is as good as an amount in cash*" and therefore the Appellant is eligible for refund of such amount credited from MEIS scrips.

JUDGEMENT

- The Customs, Excise and Service Tax Appellate Tribunal (**CESTAT**) allowed refund to the Appellant of the excess duty paid by utilization of MEIS scrips on the premise that:
  - The department cannot retain such excess payment.
  - The CESTAT relied on a plethora of decisions where duty paid in excess by utilization of DEPB scrips was allowed as refund. It was noted that DEPB and MEIS are creditable scrips and hence there is no difference in the two at least for the nature of money lying credited therein and the utilization else refund thereof is concerned.

Cash refund of CVD is allowed to an Advance License holder post GST who was unable to fulfill Export Obligation

Flexi Caps & Polymers Pvt. Ltd. vs. Commissioner, CGST & Central Excise, Indore [TS-416-CESTAT-2021-EXC]

FACTS OF THE CASE

- The Appellants are engaged in the manufacture of excisable goods and were paying Central Excise duty and availing credit on inputs, input services & capital goods. An application was filed by the appellant praying for sanction of refund of the Countervailing Duty (**CVD**) and Special Additional Duty (**SAD**) paid by the appellant on the ground that the appellant though had obtained the advance license for import of duty-free imports but had actually could not fulfill the conditions of the said license.
- Thereafter, the DGFT in view of the appellant's request of redemption of export obligation directed the appellant to pay the requisite Custom Duty along with the interest and penalty. The aforesaid amount was paid by the appellant and hence they became eligible to take credit of CVD and SAD paid on the said imports.
- However, by that time before appellant could utilize said credit, new CGST Law had rolled out being effective from July 1, 2017 and hence the appellant filed an application for refund.
- A Show Cause Notice was issued to the appellant proposing the rejection of the said refund on the ground that since there is no assessment or adjudication order issued in the case and the letter issued by DGFT asking claimant to pay Customs Duty is not an assessment or adjudication. The adjudicating authority however sanctioned the refund claim.
- Aggrieved by the said order, the Department filed an appeal before the Ld. Commissioner (Appeals) under the provisions of the GST Act. The said appeal of the department was allowed against which the appellant filed an appeal before the Hon'ble Tribunal

JUDGEMENT

- The Hon'ble Tribunal, after examining the provisions of Section 142 of the CGST Act, held that denying the refund on the ground that the letter of DGFT cannot be considered as the assessment order is not appropriate due to the fact that the requisite duty stands paid in full by the appellant which entitles the appellant to have credit thereof though in the form of cash in terms of the provisions of the new Act.
- The Hon'ble Tribunal further observed that the appeal before Commissioner (Appeals) was filed by the Department not under the erstwhile law but under the GST Act, 2017. The appeal before Commissioner (Appeals) was not maintainable under GST Act for a refund application which was filed under the erstwhile law. The appeal as such was not maintainable and hence the order under challenge cannot sustain for the said reason as well.
- In view of the above, the order of the Ld. Commissioner (Appeals) was set aside, and refund was allowed to the appellant.

ELP Comments:

Many assessees' are still facing litigation in relation to the GST transition issues whereby the benefit of a valid credit which could not utilized or transitioned into GST for various reasons if being denied. This judgement gives a ray of hope to the assessee to claim the said benefit.

MEIS benefit cannot be denied to the assessee due to an inadvertent error in the reward column while filing the Shipping Bill

Indian Metal and Ferro Alloys Ltd. vs. Director General of Foreign Trade & Ors. [TS-407-HC-2021(ORI)-FTP]

FACTS OF THE CASE

- The Petitioner is engaged in the export of ferro alloys to various countries. The Petitioner holds a valid importer exporter code. The Petitioner exported Ferro Alloys from the Paradip Sea Customs port to South Korea by a shipping bill mentioning the Petitioner's intent to claim MEIS benefit.
- The issue in the present case is that while filing the shipping bill in the Electronic Data Interchange (EDI) system the Petitioner inadvertently ticked "N" in the reward column of the shipping bill, instead of "Y". As a result, the Petitioner was unable to file its claim under the MEIS and the shipping bill in question was not shown under the relevant E COM repository for claiming the benefit under the MEIS.
- The Petitioner wrote to the Deputy DGFT pointing out the above difficulty and enclosing the relevant screen shot of the shipping bill status in the MEIS module. No response was, however, received.
- Pursuant to the above, the Petitioner approached the Policy Relaxation Committee (**PRC**) headed by DGFT and prayed for relaxation of condition in paragraph 3.14 of the HBP which requires the exporters to mark "Y" in the shipping bill to claim the benefit under the MEIS. However, the PRC held that the Petitioner was not eligible to claim the benefit under the MEIS since 'No' was ticked in the shipping bill.
- Aggrieved by the above order of the PRC, the Petitioner filed a Writ Petition before the Hon'ble Orissa High Court.

JUDGEMENT

- The Hon'ble High Court after examining the issue and the jurisprudence laid down in the matter held that the issue is no longer res integra and various judgements persist on the identical issue allowing the assessee to claim MEIS benefit in case of such inadvertent error in filing the shipping bill.
- The Hon'ble High Court cited the case of ***Anu Cashews and Mangalath Cashews vs. The Commissioner of Customs***[1] passed by the Hon'ble Kerala High Court dealing with an identical situation where in the shipping bill the exporter had inadvertently ticked 'No' while clearly mentioning the intention in the shipping bill. Further, the aforesaid judgement was also affirmed by a Division Bench and hence has attained finality since there is no indication that the appeals have been filed before the Hon'ble Supreme Court.
- To the same effect is the decision of the Madras High Court in ***Pasha International v. The Commissioner of Customs***[2] and ***M/s. K.I. International Ltd. v. The Commissioner of Customs (Appeal-II)***[3]. Further, the decision of the Hon'ble Bombay High Court in the case of ***Portescap India Private Limited v. Union of India***[4] was also relied upon wherein the Hon'ble Bombay High Court followed the dictum in the case of Pasha Internation (supra).
- In view of the above settled jurisprudence on the issue, the Hon'ble Orissa High Court observed that the Petitioner also declared its intent to claim the reward in as many words in the shipping bill in question itself,

[1] 2019 (11) TMI 795

[2] 2019(2) TMI 1187

[3] W.P.(C) No.16328 of 2020

[4] W.P. No.2532 of 2019

and inadvertently ticked 'N' in the reward column in the shipping bill in question and hence there was no reason to deny the relief claimed for by the Petitioner which has been granted by the High Courts in all of the above cases.

- In view thereof, the order of the PRC was set aside and Hon'ble Orissa High Court allowed the benefit of the reward under the MEIS to the Petitioner in respect of the shipping bills in question.

ELP Comments:

While the MEIS scheme has been discontinued many companies are still unable to claim benefit of the same in view of the inadvertent error that had occurred while filing the shipping bills at the time of export. The said judgement re-affirms that the benefit cannot be denied due to an inadvertent error.

ADVANCE RULINGS

Input tax credit is required to be reversed where vendor pays tax belatedly

In re: Eastern Coalfields Ltd. [2021-TIOL-221-AAR-GST, West Bengal]

FACTS OF THE CASE

- The Applicant is engaged in the business of extracting and supplying coal. The Applicant purchased inputs from its vendor between January and March 2020 and availed credit in March 2020. However, the vendor had filed its return for March 2020 in November 2020 only.
- The Applicant sought an advance ruling on whether the ITC on which the vendor has already paid tax although belatedly must be reversed.

ADVANCE RULING

- The Authority for Advance Rulings (**AAR**) observed that as per Section 16 of the Act, a registered person is entitled to ITC subject to certain conditions and restrictions. As per the documentary requirements and conditions for claiming ITC under Rule 36(4) of the CGST Rules - ITC availed by a registered person in respect of invoices/debit notes which have not been uploaded by the supplier shall not exceed 10% of the eligible credit available in respect of invoices or debit notes (the details of which have been uploaded by the suppliers).
- Further, *vide* Circular No. 123/42/2019-GST (dated November 11, 2019) it has been clarified that the balance ITC may be claimed by the taxpayer in any of the succeeding months provided details of requisite invoices are uploaded by the suppliers.
- Basis the above, the AAR held that the Applicant is not entitled to avail ITC in March 2020 for which a return has been filed in November 2020 and therefore, such availed ITC requires reversal.

Subsequent transfer of SIPCOT allotted land is supply and liable to GST

In re: India Pistons Ltd. [2021 TIOL 219 AAR GST, Tamil Nadu]

FACTS OF THE CASE

- The Applicant is a manufacturer to whom certain land was allotted by the State Industrial Promotion Corporation of Tamil Nadu (**SIPCOT**), out of which a portion remained unutilized. As per the long-term lease agreement between SIPCOT and the Applicant, the Applicant did not have the right to sub-let, however, could transfer the leasehold rights of the property, subject to approval of SIPCOT.
- The Applicant entered into an MOU with INOX Air Products (**INOX**) whereby it agreed to transfer the leasehold rights of the unutilized land to INOX.
- The Applicant sought an advance ruling on whether the said transfer will be considered 'supply' and whether the consideration received in this regard will be liable to GST.

ADVANCE RULING

- The AAR observed that the Applicant cannot sub-let the land, however, can transfer leasehold rights subject to SIPCOT's approval. In fact, pursuant to the MOU between the Applicant and INOX, modified lease deeds are

entered into by SIPCOT with the Applicant and INOX separately.

- The activity contemplated is therefore not a transfer of leasehold rights. The MOU between the Applicant and INOX is a transaction whereby the Applicant agrees to part with the leasehold interests that it possesses for the remaining lease period in favor of INOX, with the approval of SIPCOT.
- Accordingly, the AAR ruled that the said transaction - of agreeing to part with the leasehold interests that it possesses for the remaining lease period in favor of INOX - is a 'supply' as per Section 7 of the Act and is taxable classifiable as 'Other Miscellaneous Services', under SAC 9997.

Construction services and other charges cannot be considered as composite supply

In re: Puranik Builders Ltd. [TS-458-AAR(MAH)-2021-GST, Maharashtra]

FACTS OF THE CASE

- The Applicant is engaged in the business of construction and sale of residential apartments and discharges GST on consideration received before receipt of Occupancy/Completion certificate. As per Notification No. 11/2017-CT(R) (dated June 28, 2017), while discharging GST, the Applicant deducts 1/3rd of the total value as deemed value of land thereby effectively paying GST @12%.
- Apart from the above services, the Applicant collects various other charges (electric meter installation and security deposit charges, water connection charges, club house maintenance, etc.) on which GST @18% is discharged. However, it is the Applicant's view that sale of residential apartments and other charges are a composite supply and hence, the 1/3rd value deduction should apply to these charges as well.
- The Applicant sought an advance ruling on whether the said services will be considered as 'composite supply' and whether the consideration received in this regard will be liable to GST @12% (considering the 1/3rd value deduction).

ADVANCE RULING

- The AAR observed that the Applicant on one hand pays stamp duty only on sale of immovable property by excluding the other charges, while on the other hand, for the purpose of GST, it considers other charges to be part and parcel of the main service, eligible for deemed deduction of land value. The Applicant cannot approbate and reprobate on its facts and take inconsistent stands.
- Both the supplies (of construction and other charges) are independent, and merely because the agreement for providing both the services is common, it cannot be said that the services are naturally bundled.
- The other charges being a supply independent from construction services cannot be classified under SAC 9954. The 1/3rd value deduction will, hence, not be applicable, and the other charges will suffer GST @18%.

Input tax credit in CSR activities is hit by restriction under Section 16 of the CGST Act

In re: Adama India Pvt. Ltd. [TS-505-AAR(GUJ)-2021-GST, Gujarat]

FACTS OF THE CASE

- The Applicant undertakes CSR activities as mandated under Section 135 of the Companies Act, 2013. The vendors that supply required goods/services to the Applicant for undertaking the CSR activities charge GST on such supplies.
- The Applicant sought an advance ruling on whether ITC can be availed on the GST charged by such vendors.

ADVANCE RULING

- As per Rule 4(1) read with Rule 2(d) of the Companies (**CSR Policy**) Rules, 2014, that CSR activities shall be undertaken by a Company as per its stated CSR policy excluding activities undertaken in its normal course of business.
- Section 16 of the CGST Act stipulates that a registered person is entitled to take credit of input tax charged on any supply of goods or services or both, which are used or intended to be used in the course or furtherance of his business.
- The AAR held that since Section 16 of the CGST Act restricts availment of ITC in relation to the course or furtherance of business, and CSR activities as defined under the provisions of Companies Act excludes activities in furtherance of the business, the credit on such CSR activities becomes ineligible.

Goods supplied at nominal price under promotional scheme is an independent supply

In re: Kanahiya Realty Pvt. Ltd. [TS-515-AAR(WB)-2021-GST, West Bengal]

FACTS OF THE CASE

- The Applicant manufactures and supplies hosiery goods and intends to offer unconnected goods at a discounted price to their retailers who have bought certain units of hosiery goods. The purchase of these subsidized goods is optional.
- The Applicant sought an advance ruling on whether supply of unconnected goods at nominal prices will be considered as individual supplies taxable at their respective rates, or whether they are composite or mixed supplies. Further, credit of input tax paid on such goods supplied at discounted prices will be available to the Applicant.

ADVANCE RULING

- The AAR observed that the supply of hosiery and unconnected goods will be through separate invoices, since the option for retailers to purchase unconnected goods arises only after they meet certain criteria. Since the supply of hosiery and discounted goods is not for a single price, they cannot be considered a ‘mixed supply’.
- Further, since the supply is not naturally bundled, they cannot be categorized as ‘composite supply’.
- Therefore, the supply of unconnected goods will be construed as an independent supply.
- Further, the AAR held that the Applicant is eligible to avail credit of input tax paid on such goods supplied at discounted prices.

Aluminum Composite Panel/Sheet not classifiable as structures

In re: Aludecor Lamination Pvt. [TS-517-AAR(MAH)-2021-GST, Maharashtra]

FACTS OF THE CASE

- The Applicant manufactures aluminum composite panels/sheets. In some cases, the Applicant uses recycled plastic for manufacturing such panels. Such final products are known as plastic sheets laminated with aluminum sheets, and are used in varied industries like construction of commercial buildings, railway coaches, manufacture of furniture and fixture, etc.
- The Applicant sought an advance ruling on whether the goods manufactured by them will fall under HSN code 3920 (other plates, sheet of plastic supported or similarly combined with other materials), 7606 (aluminum plates, sheets and strip, of thickness exceeding 0.2mm) or 7610 (aluminum structures).

ADVANCE RULING

- The AAR observed that since aluminum panels are not intended to be used as structures, they cannot be classified under 7610.
- Further, the goods in question, i.e., plastic sheet laminated with aluminum sheets, are essentially used and known as aluminum sheets. Hence, they cannot be covered under chapter heading 3920 which pertains to plastic articles and therefore cannot be classified under the said heading.
- The said product is squarely covered by the decision of the Hon'ble Tribunal in ***ICP India Pvt. Ltd. [2018 (7) TMI 546]*** where it was *inter alia* held that a plate is a form of a sheet and therefore, cannot be termed as structures or parts used for construction, and therefore, are classifiable under chapter heading 7606.
- The AAR therefore held that the aluminum panel/sheet is classifiable under chapter heading 7606 and chargeable to GST @18%.

NOTIFICATIONS/CIRCULARS

S.No.	Reference	Particulars
		GST
1.	**Notification No. 35/2021-Central Tax dated September 24, 2021**	Amends CGST Rules including relaxation in requirement of filing Job Work declaration in Form GST ITC-04 and mandating Aadhar authentication in case of proprietorship/partnership firm/HUF/company or any other association of persons.
2.	**Notification No. 36/2021-Central Tax dated September 24, 2021**	Amends Notification No. 03/2021-Central Tax dated February 23, 2021 in relation to exemption from Aadhar Authentication to certain notified class of persons
3.	**Circular No. 158/14/2021-GST dated September 6, 2021**	Clarifies issues in relation to extension of time limit to apply for revocation of cancellation of registration in view of Notification No. 34/2021-Central Tax dated August 29, 2021, stating that: 1. Benefit of Notification is extended to all cases irrespective of the status of such applications; 2. Benefit of Notification would be applicable in those cases also where the application for revocation of cancellation of registration is either pending with or rejected by the proper officer or appellate authority. 3. Clarifies various other points in relation thereto and outlines guidelines for application of time-limit for revocation of cancellation of registration.
4.	**Circular No. 159/14/2021-GST dated September 20, 2021**	Clarifies issues relating to the scope of 'intermediary services' including the following: 1. No change in the scope of intermediary services in the GST regime vis-à-vis the Service Tax regime, except addition of supply of securities under the GST law 2. Lays out primary requirements for intermediary services. 3. States that sub-contracting for a service is excluded from the scope thereof. 4. 'Place of supply' under Section 13 of the IGST Act shall be invoked only when location of supplier or recipient of the intermediary services is outside India.
5.	**Circular No. 160/16/2021-GST and September 20, 2021**	Clarifies various issues, including the following: 1. For availment of ITC on or after January 1, 2021, in respect of debit notes issued either prior to or after January 1, 2021, the eligibility for availment of ITC will be governed by amended Section 16(4), whereas

		any ITC availed prior to January 1, 2021, shall be governed under the earlier Section 16(4) 2. There is no need to carry the physical copy of tax invoice in cases where invoice has been generated by the supplier u/R 48(4) as the QR code have an embedded Invoice Reference Number (IRN) electronically, would suffice. 3. Only those goods which are actually subjected to export duty will be covered under the restriction-imposed u/s 54(3) from availment of refund of accumulated ITC, whereas goods, which are not subject to any export duty would not be covered by the said restriction.
6.	**Circular No. 161/17/2021-GST dated September 20, 2021**	Clarifies in relation to export of services condition in Section 2(6)(v) of the IGST Act on supply of services between different establishments or related entities of the same Company.
7.	**Circular No. 162/18/2021 – GST dated September 25, 2021**	Clarifies in respect of refund of tax wrongfully paid under Section 77(1) of the CGST Act and 19(1) of the IGST Act, stating as follows: 1. Refund can be claimed in both cases, where inter-State or intra-State supply is subsequently found to be intra-State or inter-State respectively, by either the taxpayer or the tax officer, provided the taxpayer pays the amount of tax under the correct head. 2. Illustrations and explanations given as to determination of 'relevant date' for such refunds.
8.	**Instruction No. 02/2021-22 IGST - Investigation**	Instructs regarding issuance of SCNs in time-bound manner, especially in the cases of GST evasion and fraudulent ITC availment.
	FTP	
1.	**Trade Notice 18/2020-22 dated September 20, 2021**	States that IEC holders will be given one final opportunity to update their IEC after which the same will be deactivated. Reactivation can be done on the DGFT website without any manual intervention or physical visit to the DGFT office.
2.	**Notification No. 26/2015-2020 dated September 16, 2021**	Notifies last date for submitting applications under MEIS, SEIS, ROSCTL, ROSL and 2% additional ad hoc incentive under Para 3.25 of the FTP to be December 31, 2021. Further, the validity of any scrip issued from the date of the Notification is notified to be 12 months from date of issue.
3.	**Notification No. 28/ 2015-2020 dated September 23, 2021**	Offers additional option to avail extension in Export Obligation period till December 31, 2021, in case of specified Advance Authorizations and EPCG Authorizations without any composition fees, subject to fulfilment of 5% additional export obligation on balance exports.

4.	**Notification No. 29/ 2015-20 dated September 23, 2021**	Notifies list of sector-wise eligible services and respective rates under Service Exports from India Scheme (**SEIS**) for services rendered in FY 2019-20, further limits total entitlement at Rs. 5 Crore per IEC for service exports rendered in the period April 1, 2019 to March 31, 2020.
5.	**Notification No. 33/ 2015 – 2020 dated September 28, 2021 and Public Notice No. 25/2015 – 2020 dated September 28, 2021**	Notifies extension of Foreign Trade Policy 2015-20 and Handbook of Procedures, 2015-20 from September 30, 2021 to March 31, 2022 with immediate effect.
Customs		
1.	**Notification No. 42/2021-Cus dated September 10, 2021**	Amends Notification No. 50/2017-Customs dated 30.06.2017 and Notification No. 11/2021-Customs dated February 1, 2021 to reduce and rationalize the import duties on palm, sunflower and soya-bean oils.
2.	**Notification No. 43/2021-Cus dated September 10, 2021**	Rescinds Notification No. 34/2021-Customs dated 29.06.2021 which provided rate of customs duty on crude palm oil and other palm oil.
3.	**Notification No. 44/2021-Cus dated September 17, 2021**	Amends rate of basic customs duty on lentils (masur) with CTH 0713 40 00 originating in or exported from USA to 20%.
4.	**Notification No. 45/2021-Cus dated September 29, 2021**	Grants customs duty exemption for import of COVID-19 vaccines till December 12, 2021
5.	**Notification No. 46/2021-Cus dated September 30, 2021**	Implements GST Council recommendation and amends Notification No. 50/2017-Customs dated 30.09.2021 in order to exempt BCD and IGST on import of life-saving medicines for treatment of Spinal Muscular Atrophy or Duchenne Muscular Dystrophy
6.	**Notification No. 71/2021 – Customs (NT) dated September 02, 2021**	Notifies the rate of exchange of conversion of foreign currency for imported and exported goods
7.	**Notification No. 73/2021 – Customs (NT) dated September 15, 2021**	Amends Notification No. 36/2021 – Customs (NT) dated August 03, 2001 in order to fix the tariff value of edible oils, brass scrap, areca nut, gold and silver.

8.	**Notification No. 75/2021 – Customs (NT) dated September 23, 2021**	Notifies the Electronic Duty Credit Ledger Regulations, 2021.
9.	**Notification No. 76/2021 – Customs (NT) dated September 23, 2021**	Notifies the manner of issue of duty credit for goods exported under the Scheme for Remission of Duties and Taxes on Exported Products (**RoDTEP**).
10.	**Notification No. 77/2021 – Customs (NT) dated September 24, 2021**	Notifies the manner of issue of duty credit for goods exported under the continuation of Scheme for Rebate of State and Central Taxes and Levies (**RoSCTL**).
11.	**Notification No. 78/2021 – Customs (NT) dated September 30, 2021**	Amends Sea Cargo Manifest and Transshipment Regulations, 2018 to extend applicability of transitional provision in Regulation 15(2) till December 31, 2021.
12.	**Notification 79/2021 – Customs (NT) dated September 30, 2021**	Fixes tariff value of edible oils, brass scrap, areca nut, gold and silver.
13.	**Circular No. 23/2021-Customs dated September 30, 2021**	Explains various conditions and restrictions regarding scheme for Remission of Duties and Taxes on Exported Products (**RoDTEP**) issued under Section 51B of the Customs Act including : 1. Remission amount may be in form of transferable duty credit maintained in electronic credit ledger 2. The scheme rebates the incidence of duties, taxes and levies which are not exempted, remitted or credited under any other scheme. 3. Remission under RoDTEP is a percentage of Free on Board (FOB) value of eligible export product along with value caps for certain HS Codes 4. E-scrips are freely transferable and valid for a period of one year from date of generation.
14.	**Circular No. 22/2021-Customs dated September 30, 2021**	Provides various clarifications regarding scheme for Rebate on State and Central Taxes and Levies (**RoSCTL**) on export of apparel, garments or made ups. 1. Remission amount may be in form of transferable duty credit maintained in electronic credit ledger 2. Till facility for making claim of RoSCTL on shipping bill/bill of export is operationalized, the scheme will function on the basis of exporter having claimed shipping bill exercising claims for RoDTEP and Duty Drawback.

		3. E-scrips shall be valid for a period of one year from date of generation.
15.	**Instruction No. 20/2021-Customs dated September 10, 2021**	Announces various measures for easing availability of containers for exporters
	Anti-Dumping	
1.	**Notification 53/2021-Customs (ADD) dated September 29, 2021**	Extends levy of anti-dumping duty on 'Color coated/pre-painted flat products of alloy or non-alloy steel' from China PR and EU up to March 31, 2022.
2.	**Notification 54/2021-Customs (ADD) dated September 30, 2021**	Extends levy of anti-dumping duty on "Glazed/Unglazed Porcelain/Vitrified tiles in polished or unpolished finish with less than 3% water absorption" from China PR upto February 28, 2022.
3.	**Notification 55/2021 – Customs (ADD) dated September 30, 2021**	Amends Notification No. 54/2018-Customs (ADD) dated October 18, 2018 pertaining to Anti-dumping Duty on Alloy Steel Bars and Rods in Straight Length from China so as to extend the temporary revocation of the operation of the said notification up to January 31, 2022.
4.	**Notification 56/2021 – Customs (ADD) dated September 30, 2021**	Amends Notification No. 38/2018-Customs (ADD) dated September 25, 2019 pertaining to Anti-dumping Duty on 'Methylene Chloride' from European Union and United State of America so as to extend the temporary revocation of the operation of the said notification up to January 31, 2022.
5.	**Notification 57/2021 – Customs (ADD) dated September 30, 2021**	Amends Notification No. 16/2020 -Customs (ADD) dated June 23, 2020 pertaining to Anti-dumping Duty on flat rolled product of steel, plated or coated with alloy of Aluminum and Zinc from China PR, Vietnam and Korea RP, so as to extend the temporary revocation of the operation of the said notification up to January 31, 2022.
	Countervailing Duty	
1.	**Notification 04/2021-Cus (CVD) dated September 24, 2021**	Imposes Countervailing duty on "Aluminum Wire in coil form/Wire Rod in coil form having diameter ranging from 9 mm to 13 mm" exported from Malaysia for a period of 5 years.
2.	**Notification 05/2021-Cus (CVD) dated September 30, 2021**	Amends Notification No. 01/2017 – Customs (CVD) dated September 7, 2017 pertaining to Countervailing duty on the imports of "Certain Hot Rolled and Cold Rolled Stainless Steel Flat Products" from China PR so as to extend the temporary revocation of the operation of the said notification up to January 31, 2022.

We hope you have found our update useful. For further information please write to us at insights@elp-in.com or connect with our authors:

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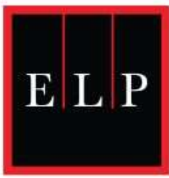

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