



NAVIGATING GST 2.0

- THOUGHT LEADERSHIP
- STATE INDUSTRIAL POLICIES – KEY INCENTIVES
- FROM THE BENCH - KEY JUDICIAL PRONOUNCEMENTS
- EXPERT SPEAKS
- LEGISLATION AT WORK - RECENT AMENDMENTS
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Industrial Policies can be termed as the cornerstone for the bloom of Indian Economy which has also aided in amplification of productivity and efficiency. The state Industrial policies categorize geographical regions into different blocks and incentives available to units may vary on account of investment made in the respective blocks. Thus, a wide array of incentives is made available to the companies setting up new units/ expansion of units by the State.	
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INTRODUCTION

Note From Editor:

Online Gaming Industry has boomed unprecedentedly in India and so has Revenue's approach to tax it. The GST law does not define online gaming which has led to a debate as to what constitutes 'game of chance' vis-a-vis 'game of skill' before the GST Council. While the GST Council proposes to impose a rate of 28% GST on such transactions, the resultant stance would rupture the economy of the burgeoning gaming industry.

We are delighted to present the 15th Edition of our GST Newsletter which emphasizes on the state of affairs of indirect taxation. Be it the proliferation of GST with across services, modification of policies or the landmark verdicts, the Newsletter covers it all. In the **Thought Leadership** chapter, ELP Partner **Nishant Shah** reflects on the taxability of transactions in respect of online gaming industry as well as virtual digital assets and opines that the prevailing times warrant regulatory guidelines for online transactions.

Industrial Policies incentives have acted as a catalyst for Indian economy over the years. In the chapter titled **State Industrial Policies – Key Incentives**, the authors take us through the trajectory of India's industrial development by discussing the state industrial policies introduced for augmenting economic growth by giving an impetus to local manufacturing, domestic employment etc.

The Chapter **From the Bench – Key Judicial Pronouncements** focuses on the significant verdicts of the Hon'ble Supreme Court and High Courts apart from the rulings of various quasi-judicial bodies. The **Expert Speak** module contains the excerpts from the interview of **Mr. Nilesh Kambli (Chief Financial Officer, Star Health and Allied Insurance Co. Ltd.)** who highlights how the orientation of tax authorities has undergone a major change with the introduction of GST and also discusses the problems faced due to the manner in which GST has been implemented.

In the segment **Legislature at Work – Recent Amendments**, the Newsletter encompasses all the amendments, updates, clarifications and modifications to the indirect tax laws. The **Allied Laws** chapter covers significant Notifications while **Legal Classics** emphasizes on a noteworthy verdicts in the erstwhile IDT regime that are exemplary for the current GST regime. We enclose the Newsletter with some interesting quotes from GST experts.

We hope you have a good time reading the 15th issue of 'Navigating GST'.

Happy Reading!





THOUGHT LEADERSHIP

The following chapter has been authored by Nishant Shah (Partner) - ELP

TECHNOLOGY v/s GST CONUNDRUM

It is a known fact now that tax laws need to be regularly amended to adapt to the evolution in technology. There have been innumerable instances of tax disputes/issues arising due to technological innovations which have enabled activities not earlier carried out in the normal course. This in turn has resulted in the lack of sufficient analysis as to the tax treatment to be meted out vis-à-vis such activities. Recent instances of such complications can be noticed in the taxability of transactions relating to:

- i. Online Gaming Activity ("**OGA**")
- ii. Transactions in Cryptos/Virtual Digital Assets ("**TC**")

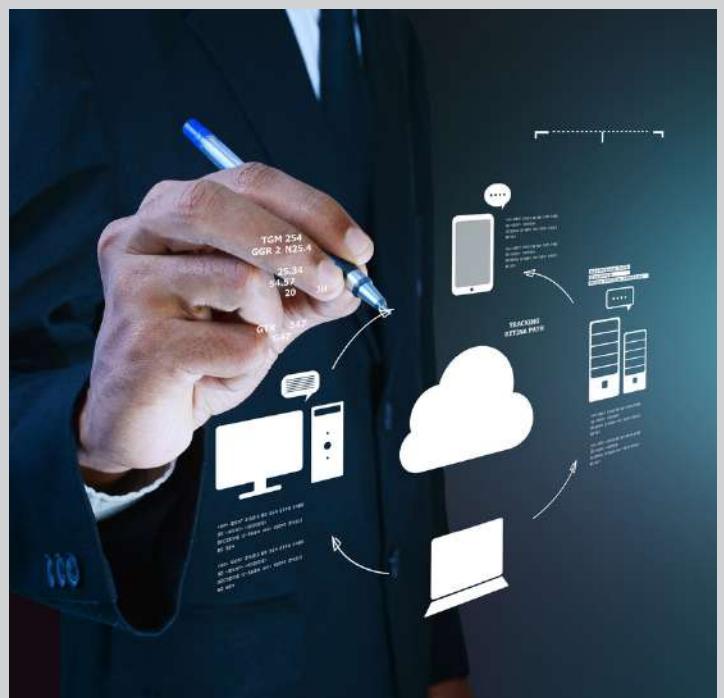
The introduction of Goods and Services Tax ("**GST**") has blurred the distinction between transactions of goods and services by introducing the concept of "Supply". Along with the introduction of the concept of supply we have seen the introduction of transaction value which now co-relates to the consideration paid for such supply. This combination of taxability of supply at the value determined on the basis of such consideration has caused several concerns while evaluating the taxability of transactions of the nature stated above. Such complication arises mainly on account of one or more factors under the GST law which while taxing transactions of goods and services has carved out an exception in relation to the transaction of "actionable claims". In this Thought Leadership piece, we deliberate the nuances arising due to transactions in nature of OGA and TC, tax issues relating thereto and the possible solutions to mitigate these issues.

Before we go to deliberate the transactions in the nature of OGA and TC, it is important we understand the meaning and concept of the term "actionable claim". The definition of the term actionable claim for the purpose of GST law has been adopted from the Transfer of Property Act, 1882¹

While the definition is wide, such payments are also conditioned by the affirmation of certain factual requirements for it to be considered as "actionable claim". Entry 6 of Schedule III to the Central Goods and Services Tax Act, 2017 ("**CGST Act**") which lists out transactions that shall be treated neither as supply of goods nor services, includes therein "Actionable claims, other than lottery, betting and gambling". At this point, it is important to also understand the legal provisions comprised in Rule 31A of the Central Goods and Services Tax Rules, 2017 ("**CGST Rules**").

Actionable claims in the nature lottery, betting and gambling will be treated as transactions of supply and value thereof for the purpose of levy of GST shall be determined in the manner set out in Rule 31A of CGST Rules.

In light of this understanding of certain basic provisions of GST law, let us now evaluate the concerns arising vis-à-vis transactions of OGA and TC, to understand the nature of term issues and mitigation thereto.



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ONLINE GAMING ACTIVITIES

In relation to OGA, there has been a lot of deliberation on whether some of these games are in the nature of "games of skill" or "games of chance". This bifurcation is important to understand if the game is one to be considered as game of chance, which then is akin to betting or gambling and thereby subject to GST on the value as determined under Rule 31A of CGST Rules. One such game which has recently gained significant popularity is that of fantasy sports, wherein different players carry out activities of creating their own fantasy teams and gaining points based on the performance of the players in such team. In a recent judgement of the Hon'ble Bombay High Court, it has been held that since the earning of the players is not dependent upon the winning or losing of particular team in a real-world match on any given day, such earnings cannot be considered as amounting to gambling, betting or wagering. The judgement thereafter proceeds to classify such nature of games to be games of skills. Similar is the situation in case of gaming apps that enable its players to play rummy or poker among themselves. While the issue of nature of the game has been settled, there still hovers and remains open the aspect as to the value of such gaming activity.

This issue arises on account of the modus operandi adopted on these gaming apps. A player on these gaming apps is first required to deposit a certain amount which is his contribution to the total pool of prize money to be distributed among winners. The app owning entity charges a certain amount as platform usage fees from each player that is deducted from his pool in proportion of the amount contributed by the player to the prize pool. The issue, therefore, now is as to whether, (even if the game were not to be considered as one of betting or gambling) the amount contributed by the players or the amount charged by the app owning entity (as platform charge) is the consideration for the supply and subject to GST. While well-established legal principles require the existence of a supplier and a recipient for any transaction to constitute a supply,

transactions of OGA raise complications on this count. Ambiguities causes significant operational hazards for entrepreneurs and businesses owning and operating such gaming apps.

A structured solution for such concerns based on past experience in case of mobile telephony, internet-based services etc. has been the introduction of a clear definition for such activities by regulatory authorities responsible for administering and monitoring the conduct of such activity by businesses on a commercial basis. Here again, the solution lies in the regulatory authority coming out with specific regulations for not only monitoring and standardizing OGA but also clearly defining the nature of the two payments i.e. contribution by



player in the pool and platform charges charged by the platform owning entity. This in turn could then be adopted by the tax authorities in determining the tax implications on the OGA.

An attempt in this direction has already been initiated by a Group of Ministers (**GoM**) constituted under the Chairmanship of the Chief Minister of Meghalaya. The GoM has been tasked to come up with an analysis on nature of these payments and thereby the tax implications under the GST law. However, there still exists a lack of consensus among the GoM in arriving at a decision in this

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regard. The final report of GoM is expected to be released after consultations with the industry and seeking a legal opinion.

ACTIVITIES IN CRYPTOCURRENCY/VDA

Similar to OGA, issues also arise in case of transactions in cryptos/VDA. In fact, a detailed understanding of crypto operations reveal that three types of transactions get executed in purchase and sale of cryptocurrencies by users on the digital platforms owned by the crypto exchanges. In case of activities relating to purchase and sale of crypto, the following transactions are carried out:

- i. Placing of order by the user for the purchase/sale of a fixed quantity of a specific crypto currency and making payment in relation thereto;
- ii. Transaction Fee/ Brokerage charged by the crypto exchanges for enabling/facilitating such purchase and sale of crypto;



- iii. Margin earned by crypto exchanges (difference in the value of purchase and sale price of crypto) for certain specified transactions, where the requirement by user is for purchase /sale of such crypto's, which requires facilitation by the crypto exchange through execution of such transactions on third party crypto exchanges/wallet service providers.

Here again, for transactions under (i) above, the amount paid/received by the user is towards the

value of crypto purchased or sold. From a GST perspective, a concern arises whether such value should be considered as a value for consideration for supply of goods or services. The position in this regard is dependent upon the classification of such transactions as "goods" or "services" under GST. At present, transactions of purchase or sale of crypto is not subject to GST, since there remains non-clarity on classification of cryptos i.e. whether "goods" or "services" or "security".

As regards the transaction under (ii) above, this clearly can be termed as a transaction for the supply of service by the crypto exchanges to the users for enabling the purchase / sale of crypto currency. However, in its purest sense if this is the nature of supply, it could very effectively be classified as the supply of "intermediary" services and therefore subject to tax accordingly. Services in the nature of "intermediary" are taxed based on the location of the service provider. Such transactions will be executed through the digital platforms of crypto exchanges which are based on a server. Such server may be located in India/ outside India, and thus, one may wonder whether tax complications could arise to determine the applicable place of supply for facilitation of such services, where the crypto exchange/server is located outside India. Guidance from the definition of location of service provider and the provisions relating to determination of place of supply would clearly facilitate in identifying the taxing jurisdiction of such services.

As regards the transaction under (iii) above, a controversy arises due to the divergent position adopted by various investing agencies and crypto exchanges (based on their accounting treatment). This is because the crypto exchanges consider such earnings as "profit"/ "margin" derived by trading carried out on their own account rather than a "service fee" earned from the user. The investigating agencies on the other hand believe that such earning has arisen to the crypto exchanges only because of the users placing an order by using the digital platform of the crypto exchange. This of course is subject to specific regulations if any,

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being implemented restricting crypto exchanges from earning margins on transactions executed on behalf of their users.

Even in case of crypto/VDA transactions there is a need for issuance of regulations that stipulate guidelines for the manner and permissibility of transactions, provide clear definitions to various technical terms and to put to rest any speculation/ambiguity for treatment of crypto transactions under other statutes including those concerning taxation and foreign exchange regulations of these transaction. In this regard, several nations through their regulatory bodies have been proactively issuing guidelines to regulate transactions in cryptos. The U.S. Securities and Exchange Commission (SEC) is one example which is strictly overseeing the activities of crypto exchanges and if such exchanges do not cooperate with the SEC, they are considered to be operating outside the law with the risk of enforcement action against them. Similarly, the German Federal Tax Office has set out strict guidelines on how cryptocurrency buying, trading and mining is taxed, specifically clarifying that no income tax would be levied on sale of crypto assets after holding them for one year.

Further, based on the recent Concept Note on Central Bank Digital Currency (CBDC) issued by the FinTech Department of RBI, next in line could be the issuance of CBDCs and therefore, transactions relating thereto, and taxability thereof would be facilitated if regulations in this regard are issued well in time to avoid any ambiguity.

NEED OF THE HOUR

The affirmation to the transactions is merely a reflection of what is expected in the future. Deliberation ensuing the issues relating

thereto and the mitigation to these issues clearly requires for the Government to be proactive in not just understanding but also taking charge of and coming up with regulations on an expeditious basis relating to such innovative activities/transaction. As one imagines, one contemplates one or more of the following to also become true in the coming future:

- i. Creation of virtual existence in the nature of Metaverse;
- ii. Activities encompassing artificial intelligence; and
- iii. Activities relating to communications once vertical take-off of automobiles is enabled.





STATE INDUSTRIAL POLICIES – KEY INCENTIVES

The following chapter has been authored by Sweta Rajan (Partner), Varun Parmar (Associate Partner), Atharva Javalekar (Associate) - ELP

STATE INDUSTRIAL POLICIES – KEY INCENTIVES

Background

After achieving independence in 1947, there was a sharp decline in the economic growth of India. India was in a combined situation of growing unemployment and rampant inflation. One of the objectives was to accelerate the pace of industrial development at the time when the Constitution of India was still a work in progress. To combat these problems, majority of the states/ union territories introduced industrial policies. These policies were intended to augment economic and industrial development by encouraging Indian manufacturing, providing employment to locals in their respective states and accelerating exports to compete with international products.

Different states have their own independent policies but the object of all the policies can be categorised as follows:

- Active government intervention to help create entrepreneurs in a handful of high-productivity sectors, thus creating positive spill-overs for the entire economy.
- “Horizontal” policies to provide additional support to these sectors through provision of infrastructure, access to finance or subsidised credit, skills’ training to workers and creation of specialised export promotion zones.
- Lastly, to protect nascent industries from foreign competition with the aim to develop such industries over a period of time and capture dynamic efficiency gains from future trade.

Since 1991, a number of economic reforms have been implemented, which paved the way for de-regulation of industrial controls. An elaborate trade and industrial policy focused on liberalisation of the country’s borders,

reduction of import tariffs leading to higher foreign direct investment, integration of Indian firms into global supply chains, and expansion of the share of the private sector in Indian manufacturing were implemented. However, over the last three decades, economic growth has been led largely by the services sector, with the share of manufacturing in India’s GDP averaging at around 16 per cent between 1990 and 2015. In this context, the union government implemented the National Manufacturing Policy in 2011 to boost the share of manufacturing in GDP to 25 per cent and create 100 million jobs by 2022 (Department of Industrial Policy & Promotion (DIPP), 2011). The policy further regarded State Governments, in the spirit of competitive federalism, as being instrumental in carrying out reforms to achieve this target.

The Industrial Policy, 1991 and the National Manufacturing Policy, 2011 at the central levels have been supplemented by numerous state-level industrial policies implemented at various points in time. These policies range from targeting specific sectors to reforming various other sectors by providing adequate infrastructure and tax incentives to spur growth. While the importance



STATE INDUSTRIAL POLICIES – KEY INCENTIVES

of an industrial policy and its effectiveness in its potential for job creation and formalisation of enterprises has been widely debated, there is a need for empirical assessment of the correlations between implementation of these policies and resulting output and employment levels at the state-level. This article highlights the incentives offered by different State Governments through their state industrial policies.

Industrial Policies in India

Industrial policies aim for manufacturing / service sector enterprises to set up their operations within the territorial boundary of the state/ union territory by providing incentives and ease of doing business one window clearance systems for attaining approvals required for setting up of the industry.

Different states in India have adopted industrial policies which provide for incentives for new and existing units after taking into consideration the



resources available in the particular state and the development which the unit will bring in the state. The Industrial Policies are effective for a period of 5 years with an option to renew the same for a further period. These incentives are available to new units (i.e., those units which commence their commercial production after the policy comes into effect) or existing units undertaking substantial expansion (i.e., units which have commenced their commercial production before the commencement of the policy and have undertaken more than 25% - 50% investment in plant and machinery).

Type of unit and quantum of incentives

Industrial Policies provide for an overall capping of the incentives. This overall capping is based on total capital investment made by the unit. The State Industrial policies categorise geographical regions into different blocks. Incentives available to units may vary on account of investment made in the respective blocks. Already developed industrial areas of the state may receive less incentives as compared to the less developed areas in the state. Incentives may also vary on account of the quantum of investment made by the unit in the respective state. Units are classified under different categories such as MSME's, Large Units, Mega Units and Ultra Mega Units (by whatever name called). Units are classified based on account of investment made in plant and machinery and the employment generated by the unit. The quantum of incentives available to units vary under each of the state industrial policies, however, the types of incentives are typically similar. If any unit is covered under the category of ultra-mega (by whatever name called) the unit can send a detailed project report and apply for a customised set of incentives.

Incentives available to units falling under different categories are of two types-

- a) Direct exemption from payment of any duty levied by the state
- b) Reimbursement of the payments (expenses/ interest/ tax) paid by the unit

Following are the key incentives available to units under state industrial policies. It is important to note that though the industrial policy provides for an overall capping, incentive-wise capping per annum is also provided under each incentive.

- **SGST Reimbursement** – One of the most important incentives available under an Industrial policy is the reimbursement of net SGST. Net SGST means the portion of SGST which has been paid in cash after utilising Input Tax Credit. Reimbursement of net SGST is the major component of the incentive (in the form of reimbursement) available to the units. Some states provide for

STATE INDUSTRIAL POLICIES – KEY INCENTIVES

a condition that the end use of the product has to be in the same state where the product has been manufactured. In this case the units can maximise their reimbursement of net SGST by adequate planning so as to fulfil the end use condition. The capping under this incentive is from 80% -100% of the net SGST paid during the year depending upon the category and block under which the unit is situated. This incentive is available over a period of 10-12 years depending state to state.

- **Capital Subsidy** – Under this incentive the unit is reimbursed a certain percentage of the investment in capital assets. This incentive may be fixed or flexible. Fixed capital subsidy is where the percentage of reimbursement is fixed over a



period of time and flexible is where the amount of subsidy fluctuates over the subsidy period. This subsidy is available over all capital assets purchased whereas many states have put forth a condition that value of land may not be included while calculating the incentive under this subsidy. _

- **Capital Interest Subsidy** – Interest on loans availed by the units from public/ private financial institutions for procuring any plant and machinery is reimbursed. Reimbursement in form of incentive is available from 5% -7%

p.a. depending state to state. This incentive is available for a period of 6-10 years.

- **Stamp Duty Exemption** - Various states have provided for 50% - 100% of exemption from payment of stamp duty depending on the geographical area where the unit is situated, and employment proposed to be generated by the unit. The exemption is available only once at the time of purchase of land for setting up the industrial unit.
- **Electricity Duty Exemption** – Electricity duty is exempted to all new industrial units set up in the state for the prescribed tenure (8-10 years) including for captive power plants for self-use.
- **Reimbursement of ITC Disallowed** – Some states also provide for reimbursement of disallowed ITC commonly known as blocked credit. SGST paid on building material and other capital goods during construction and commissioning period, in respect of which input tax credit is disallowed under GST regime to the industries is reimbursed.
- **Payroll Assistance** - Industrial units providing employment to differently abled workers or workers from backward class categories are provided with payroll/ employment/ training assistance of Rs. 500-2000 per month for each such worker.
- **EPF Reimbursement** – Many states have provided for reimbursement of employer's contribution in provident fund as an incentive. This reimbursement is based on a certain percentage of the number of employees (skilled or unskilled) and for a period of 5-10 years.
- **Reimbursement of expenses incurred for obtaining Patent Registration/ Quality Certification** – certain identified percentage of cost incurred for obtaining patent registration or quality certification is also reimbursed by way of incentive.

As can be seen from above, a wide array of incentives is made available to the companies setting up new units/ expansion of units. It would be prudent to evaluate such policies to garner optimum benefits. State incentives pave the way for India to become a preferred investment destination.



FROM THE BENCH - KEY JUDICIAL PRONOUNCEMENTS

The following chapter has been authored by **Ginita Bodani (Associate Partner), Swati Agrawal (Senior Associate) - ELP**

Spotlight Case Law

CESTAT, Ahmedabad Larger Bench in VRL Logistics Ltd. vs. Commissioner of Customs, Ahmedabad [TS-343-CESTAT-2022-CUST]

Other Cases

1. Telangana Appellate Authority for Advance Ruling in Medha Servo Drives Pvt. Ltd. [TS-377-AAAR(TEL)-2022-GST]
2. Bombay High Court in Vodafone Idea Limited vs The Union of India and ANR [TS-359-HC(BOM) 2022-GST]
3. Supreme Court in Union of India vs Filco Trade Center Private Limited [TS-369-SC-2022-GST]
4. Andhra Pradesh High Court in Sembcorp Energy India Ltd vs. State of Andhra Pradesh [TS-468-HC(AP)-2022-GST]

VRL Logistics Ltd. vs. Commissioner of Customs, Ahmedabad [TS-343-CESTAT-2022-CUST]

Facts: -

- The Appellant is engaged in providing 'non-scheduled air transport (passenger service). The Appellant imported the aircraft and claimed, in respect of the said aircraft, exemption from customs duty under the exemption Notification No. 61/2017 dated 03.05.2007.
- The exemption Notification No. 61/2017 dated 03.05.2007 grants 'nil' rate of duty on import of aircraft for providing non-scheduled (passenger) services as well as non-scheduled (charter) services subject to Condition No. 104 which is required to be fulfilled by an importer of the aircraft for availing the benefit of the exemption notification. The conditions include (i) the assessee at the stage of import should have an approval from the competent

authority in the Ministry of Civil Aviation to import aircraft for providing non-scheduled (passenger services) or non-scheduled (charter) services; (ii) submission of an undertaking that aircraft shall be used only for providing non-scheduled (passenger) services or non-scheduled (charter) services, (iii) assessee to undertake to pay an amount equal to the applicable duty payable on the import of aircraft if the importer fails to use the aircraft for the said specified purpose.

- In the instant case, aircrafts imported by the Appellant were operating under Non-Scheduled Operator (Passenger) Service permit issued by the Director General of Civil Aviation ('DGCA') and such permits were renewed from time to time.
- The Customs Authorities sought to deny the benefit of exemption *inter alia* on the ground that the aircraft was used for private use/charter services in complete violation of DGCA permits.
- Owing to conflicting views expressed by the Hon'ble Tribunals in the case of Commissioner of Customs, New Delhi vs. Sameer Gehlot reported at 2011 (263) E.L.T. 129 (Tri-Del.) and in King Rotors & Air Charter P. Ltd. vs. C.C. (ACC & Import), Mumbai reported at 2011 (269) E.L.T. 343 (Tri-Mumbai), several questions were referred to the Larger Bench for determination.



FROM THE BENCH - KEY JUDICIAL PRONOUNCEMENTS

Issue:

Availability of exemption from payment of Custom Duty under Notification No. 61/2007 dated 03.05.2007 to the importer of an aircraft which had been granted permit by the DGCA for operating non-scheduled (passenger) services.

Judgement: -

- The benefit of exemption Notification No. 61/2007 dated 03.05.2007 can be availed for aircraft imported for operating non-scheduled (passenger) services as well as non-scheduled (charter) services;
- The Custom Authorities cannot examine the validity of permission granted by the DGCA, in the absence of cancellation of the permit by the DGCA.



- It is not mandatory for the importer to issue air tickets for providing non-scheduled (passenger) services.
- Civil Aviation Requirement (CAR) 2010 merely amalgamates CAR 1999 and CAR 2000 to provide a uniform code for operation of non-scheduled air transport services. It has restated and codified the position stated earlier by the DGCA through various clarifications and is explanatory in nature.
- The decision of the Division Bench in King Motors case¹ was not correct in holding that the decision of the Tribunal in Sameer Gehlot case² was rendered per incuriam.

ELP Comments

This decision is in line with the earlier decisions of the Supreme Court in *Zuari Industries Ltd. vs. Commissioner of C. Ex. & Customs*³, *Titan Medical Systems Pvt. Ltd. vs. Collector of Customs, New Delhi*⁴ and *Vadilal Chemicals Ltd. vs. State of Andhra Pradesh*⁵ wherein it was held that whenever a fiscal benefit is granted on the basis of a certificate issued by another statutory authority, it is only that such statutory authority which is empowered to monitor compliance of the conditions of the certificate and to initiate action, in case of non-compliance.

Medha Servo Drives Pvt. Ltd. [TS-377-AAAR(TEL)-2022-GST]

Facts:

- The Applicant is a manufacturer of electronic equipment for locomotives and coaches for Indian Railways and Metro Railways. The Applicant is involved in the supply of design, development, manufacture, supply, testing and commissioning of 152 sets of 25 KV AC micro-processor controlled IGT based 3 phase propulsion system and equipment to RDSO specification.
- In terms of the purchase order, each set consists of supply of multiple items including both goods and services which are made in conjunction with each other for a single price of Rs.4,77,82,716-00 per set [inclusive of 28% of Integrated Goods & Services Tax].
- Some of the items are Main traction converter, TCMS /Multiplexing system, Pneumatic system comprising of main air compressor along with mounting frame, set of MCBs, contactors, relays, inter vehicle couplers, supervision of installation, training of personnel etc.
- As per the payment terms, all payments are to be released for complete rake sets and not for part supplies and after inspection and receipt of material as per agreed delivery schedule of sets.

¹ Supra

² Supra

³ 2007 (210) ELT 648 (S.C.)

⁴ 2003 (151) ELT 254 (S.C.)

⁵ 2005 (192) ELT 33 (S.C.)

FROM THE BENCH - KEY JUDICIAL PRONOUNCEMENTS

- The Applicant contended that the supply made to Integral Coach Factory is not a mixed supply as the goods and services are supplied at individual price separately but not for a single price.

Issue:

Whether multiple supplies made to Integrated coach factory for a single price constitutes composite supply or mixed supply.

Judgement:

- For a supply to be termed as mixed supply, the determining factors are:
 - a) there should be two or more individual supplies,
 - b) the supplies should be made in conjunction with each other,
 - c) the supply should be made for a single price by a taxable person and
 - d) such supply does not constitute a composite supply.
- When the purchase order is seen as a whole, the Applicant is obligated to design, develop, manufacture, supply, testing and commissioning of each set. The price agreed upon by the Applicant and their client includes the cost of design, development, manufacture, supply, testing and commissioning of each set. Thus, though item wise pricing is adopted in their annexures, but the price still remains for the whole gamut of supply of goods and supply of services entrusted to the Applicant.
- Price break-up does not necessarily imply that the items are being supplied separately for separate prices.
- The essential concomitant of the present agreement is that they should be **supplied in conjunction with each other to function as one complete rake set**. The

schedule of delivery mentions that the entire set is to be delivered at once but not the individual items separately. Even as per terms of payment, payment is done for the entire set and not individual items, implying the supply is being made for single price per unit.

- Supplies involved are not naturally bundled, and no one supply can be identified as the principal supply, therefore, it cannot be said to be composite supply. Thereby, the supply satisfies all the pre-requisites to be termed as a "Mixed Supply".

Vodafone Idea Limited vs The Union of India and ANR [TS-359-HC(BOM) 2022-GST]

Facts:

- The Petitioner inter alia provides services in the nature of international Inbound Roaming Services (IIR) and International Long distance (ILD) services to Foreign Telecom Operators (FTOs). By virtue of the said arrangement, any customer of a FTO traveling to India from his



usual place of residence (where he is a regular subscriber of a telecom service provider) is able

FROM THE BENCH - KEY JUDICIAL PRONOUNCEMENTS

to use telecom services from the same service provider with the same contact number.

- The Petitioner treated the services so provided to the FTO as export of services and filed application for refund of the Integrated Goods & Services Tax (IGST) paid on IIR and ILD services to the FTO during the period April to September 2019.
- The refund claim was rejected on the ground that services were supplied to the customer of FTO and thereby the place of supply of services, as determinable under Section 13(3)(b) of IGST, was the State of Maharashtra and therefore, would not constitute "Export of services".
- In appeal filed before the Joint Commissioner (Appeals), the refund claim was allowed, and thus, being aggrieved, the Department filed the instant petition challenging the order passed by the Appellate order.

Issue:

Whether the IIR and ILD services supplied by the Petitioner constitute "export of service" under Section 2(6) of the IGST Act.

Judgement:

- The Petitioner is contractually obligated to provide services to FTOs and payment is received from FTO. The Petitioner neither enters into any agreement nor receives any payment from the customer of FTO, therefore, FTO constitutes "recipient of service" under Section 2(93) of the Central Goods & Services Tax Act, 2017 [CGST Act].
- Section 13(2) of IGST refers to the place of supply of services as the location of the recipient of services except in cases of Sub-section (3) to (13) of Section 13. Section 13(3) of IGST identifies the place of supply of services as the location where the services are actually performed. The provision of Section 13(3)(b) of IGST is applicable in the case where services are supplied to an individual as Section 13(3)(b) starts with the words "service supplied to an individual". Given that the recipient in the instant case is FTO and

not the customers of FTO, place of supply ought to be determined in terms of Section 13(2) of the IGST Act.

- Agreed with the law pronounced in the case of Vodafone Essar Cellular Ltd.⁶ CST vs. Bayer Material Science⁷), ABS India Ltd. vs. CST⁸ that customer's customer cannot be your customer to hold that the Petitioner has provided services to FTOs and not to the individual subscribers of FTOs.

ELP Comments

This decision clarifies the concept of recipient of service under GST and recognizes the views of Tribunals expressed in the erstwhile regime mentioned supra as correct.

Union of India vs Filco Trade Center Private Limited [TS-369-SC-2022-GST]

Facts:

- At the time of transition from erstwhile regime to GST regime, several assessees were unable to carry forward their unutilised input tax credit to the GST regime as provided under Section 140 of the CGST Act owing to technical glitches on the GST portal. Being aggrieved, such assessees filed petitions before their jurisdictional High Courts *inter alia* praying that once credit was rightly availed, the same becomes an indefeasible vested right and cannot be denied due to procedural infractions. Divergent views were expressed by the High Courts on the said



⁶ (2013) 31 STR 738 (Tri-Mum)

⁷ (2015) 38 STR 1206 (Tri-Mumbai)

⁸ (2009) 13 STR 65 (Tri-Bang)

FROM THE BENCH - KEY JUDICIAL PRONOUNCEMENTS

issue which is finally put to rest by the Hon'ble Supreme Court vide this decision read with the extension of 4 weeks granted in Miscellaneous Application Nos.1545-1546/2022.

Judgement:

- Goods and Service Tax Network (GSTN) is directed to open a common portal for filing concerned forms for availing Transitional Credit through TRAN-1 and TRAN-2 for two months w.e.f. 01.10.2022 to 30.11.2022.
- Any aggrieved registered assessee may file the concerned forms or revise the already filed form, irrespective of whether the taxpayer has filed a writ petition before the High Court or whether the case of the taxpayer has been decided by Information Technology Grievance Redressal Committee (ITGRC).
- GSTN has to ensure that there is no technical glitch during the said time.
- The concerned officer's ought to verify the veracity of the claim/transitional credit and pass appropriate orders thereon on merits after granting appropriate reasonable opportunity to the parties concerned in a timely manner.



- Pursuant to such verification, the allowed Transitional credit is to be reflected in the Electronic Credit Ledger.

ELP Comments

This is a welcome decision in as much as the Hon'ble Supreme Court has as a last opportunity allowed transition of unutilised credit to the GST regime. This further strengthens the settled view that once credit is availed, it becomes an indefeasible vested right which cannot be varied especially on account of procedural lapses. In this regard, Circular No. 180/12/2022-GST dated 09.09.2022 has been issued by CBIC inter alia which prescribes the procedure for filing / revising of Forms TRAN-1 and TRAN-2 by the assesseees and verification thereof by the concerned officers.

Accordingly, various High Courts like High Court of Gujarat in Unique Infra Space Pvt. Ltd. vs. Union of India, Madhya Pradesh High Court in Sapna Traders vs. Central Board of Indirect Taxes and Customs & Ors. including Bombay High Court in the case of Ess Infraproject Pvt. Ltd. vs. Union of India have disposed of the Writ Petition in line with the Apex Court's decision to avail the benefit of the order.

It is therefore advisable that the assesseees file their TRAN-1 & TRAN-2 forms during the period of 1.10.2022 to 30.11.2022 as this is a last opportunity to claim the transitional credit.

Sembcorp Energy India Ltd vs. State of Andhra Pradesh [TS-468-HC(AP)-2022-GST]

Facts:

- The Petitioner entered into a Power Purchase Agreement with Bangladesh Power Development Board for supplying electricity/ electrical energy. A Regional Energy Account (REA) report is issued on monthly basis by a unit of Central Electricity Authority of Govt. of India indicating therein the number of units of electricity transmitted by each supplier of electricity to a particular recipient. The report also identifies the destination to which electricity is supplied by the Petitioner.
- A refund claim was filed by the Petitioner for refund of unutilised Input Tax Credit used in export of the said electricity along with REA report and all other requisite documents except the statement containing the number and date of shipping bills. The Petitioner inter alia submitted stating that shipping bill is not available as there

FROM THE BENCH - KEY JUDICIAL PRONOUNCEMENTS

is no requirement under the Customs Law, for filing of shipping bill or any similar documents showing export of electrical energy as required for physical export of tangible goods.

- However, the Department rejected the refund claim on the ground that the Petitioner failed to submit shipping bill as required under Rule 89(2) (b) of Central Goods and Service Tax Rules, 2017 and failed to evidence export of electricity in Bangladesh.

Issue:

- Whether an application for refund of unutilized ITC can be rejected on the ground of non-furnishing of Shipping Bill and Export General Manifest [EGM] in terms of Rule 89(2) of Central Goods and Services Tax Rules, 2017 [CGST Rules] evidencing delivery of electricity from Bohrompur station, India to Bheramara substation, Bangladesh to qualify as an "export of goods" under Section 16 of the Integrated Goods and Services Tax Act, 2017.



Judgement:

- Production of shipping bills as proof of export cannot be made applicable to electricity, as it is impossible to produce shipping bill for export of electricity, since the Custom Law does not refer to electricity and shipping bill is a Customs document.
- Pursuant to repeated representations before the Government, Rule 89 of CGST Rules was modified vide Notification No. 14/2022- Central Tax (Rate) dated 05.07.2022 and the said amended rule inter alia provides that the quantity of electricity transmitted can be proved basis the statement

of scheduled energy for export of electricity issued by Regional Power Committee [RPC] Secretariat, as a part of Regional Energy Account [REA] which includes various details including the number and date of the export invoices, details of energy exported, tariff per unit of export as per the agreement.

- Relying on the maxim 'Lex Non Cogit ad impossibilia', inter alia held that the Petitioner was justified in not producing shipping bills to prove the quantity of energy units transmitted and REA reports could be the basis to deal with refund claim.
- Held that amended Rule 89(2) of CGST Rules came to be amended only to clarify the anomaly that was existing with regard to production of the material evidencing export of a thing which is intangible in nature. Thus, the amendment cannot be said to be declaratory in nature, but it can only be a one, which would be curing the defect by issuing necessary clarification as to how transmission of electrical energy can be proved and therefore, such amendment is clarificatory in nature.
- The amendment will have a retrospective operation basis the well settled principle that a proviso, which remedies unintended consequences, or supplies an obvious omission is required to be treated as retrospective in operation.
- It also held that any benefit that gets accrued by way of legislation cannot be denied/curtailed, more so, when it is clarificatory in nature like the present one and as such it has to be made retrospective in operation.

ELP Comments

This decision re-emphasized the settled law that no statute, except the statute dealing with procedure, shall be construed to have a retrospective operation unless specifically provided for. The Hon'ble Court also pointed out the said provision cannot be applied retrospectively with the objective of reviving a barred right or taking away the accrued vested right in cases where the right of suit is barred under the law of limitation in force before the new provision came into operation and a vested right has accrued to another.



EXPERT SPEAKS

Mr. Nilesh Kamblu - Chief Financial Officer at Star Health and Allied Insurance Co. Ltd

Interview conducted by Stella Joseph (Partner) - ELP

1. It has been 5 years since the introduction of GST. How has your organisation dealt with the transition from the erstwhile Central Excise / VAT regime to GST regime.

GST was introduced in the year 2017 with the objective of One Nation One Tax system. GST has resulted in culmination of multiple taxes viz excise duty, service tax, VAT, luxury tax etc. into a single tax across the country. The transitioning from erstwhile service tax to GST has been very challenging and a great experience.

- The company had to make major changes in its IT systems comprising of core policy issuance software's and ERP applications to cater to the GST requirements.
- The policy schedules had to be modified / redesigned to incorporate mandatory disclosures under GST Act like GST rate, amount, HSN No, recipients GST No, Issuance office / state name etc.
- The employees working in accounts, tax, and operations has to be trained under the new GST Act.
- Keeping pace with the GST law has become challenging on account of frequent changes being made in the GST Act through issuance of notifications, circulars, clarifications, FAQs etc.

Compliance

- The compliance has increased manifold under the GST. In the previous service tax regime, the company had a centralized registration for all its office across the country. Whereas under the GST the company had to take separate registration in each state / union territory where it is operating.

- In the service tax period, the company use to file two half yearly returns and assessment use to happen in the state from where registration has been taken. Now under the GST law the company has to file two returns every month (GSTR 1 and GSTR3B) for each state. Star health insurance has 29 GST registrations and company files 58 returns and one return under ISD registration each month.
- The Tax department has been strengthened with additional manpower to ensure that



- Monthly returns across all 29 states are filed on time,
- notices received from each state GST department are replied, and
- assessments /audits are handled

Input tax credit

The company is able to fully take the input tax credit of the GST paid on inputs / services barring a few items.

EXPERT SPEAKS

2. How much weightage do you give to tax and more so GST considerations while undertaking business decisions?

The company gives significant weightage to taxation and to GST while making business decisions. The company's foremost objective is to ensure that all its business processes / practices pertaining to Sales, Procurements, customer servicing etc are fully aligned with the tax laws including GST. The compliance with the law is done in letter and spirit.

3. In your view, has the orientation of tax authorities undergone a change with the introduction of GST regime.

Yes.

The orientation of tax authorities has undergone a major change with the introduction of GST. The GST is managed by the State governments and by the Central government simultaneously. The Tax authorities have started to use the automated systems to analyse the data furnished through the monthly / annual returns and they are sending letters/notices to tax payers seeking

clarifications. The GST department has established an Intelligence wing to plug the loopholes in the law, reduce revenue leakage, detect frauds and to increase tax revenue. The tax authorities are collating information from multiple sources like Banks, Income tax, stock exchanges, tax payers etc and analysing them.

4. What are the key pain-points which are being faced by the manner in which GST has been implemented in India. What is your wish-list from the GST Council (other than specific exemptions).

- Centralized registration
- Facility To file Revised Return
- Reduce in GST rates on services including health insurance
- Allow ability of GST input credit on health insurance premiums to all tax payers
- Simplified process for avilment of input tax
- Consistency- no frequent changes in Act





LEGISLATION AT WORK - RECENT AMENDMENTS

The following chapter has been authored by Stella Joseph (Partner), Yash Desai (Senior Associate), Anushree Kothari (Associate) - ELP



LEGISLATIVE UPDATES		
Sr. No.	Particular	Summary
1	GST Collections (June 2022, July 2022 & August 2022)	<ul style="list-style-type: none"> ▪ The GST collections in June 2022 were INR 1.44 lakh crore, which were 56% higher than the GST revenues in the same month last year. ▪ The GST collections in July 2022 were INR 1.48 crore, which is the second highest ever and 28% higher than the revenues in the same month last year. ▪ The GST collections in August 2022 were INR 1.43 lakh crore, which is 28% higher than the revenues in the same month last year.
2	Office Memorandum dated 6th July 2022	<ul style="list-style-type: none"> ▪ The Government in consultation with 47th GST Council Meet, forms a Group of Ministers ("GoM"), with Deputy Chief Minister of Haryana serving as Convenor, to recommend the necessary amendments to the statute for the establishment of the GST Appellate Tribunal (GSTAT). ▪ The recommendation is required to confirm with following legislative requirements: <ul style="list-style-type: none"> (a) maintain the right federal balance, (b) are in line with the overall objective of uniform taxation within the country, (c) are in line with the principles outlined in judgements of courts in relation to various aspects of Tribunals and are legally sustainable..
3	Notification No. 10/2022-Central Tax dated July 5, 2022	<ul style="list-style-type: none"> ▪ CBIC exempts taxpayers having aggregate turnover of up to INR 2 crore from filing annual return in Form GSTR-9/9A for the FY 2021-22. ▪ This will provide relief to small, registered persons having an aggregate turnover up to INR 2 crores. The said relaxation was also provided for the FY 2017-18, 2018-19, 2019-20 and 2020-21.
4	Notification No. 13/2022-Central Tax dated July 5, 2022	<ul style="list-style-type: none"> ▪ The time limit for issuance of order under Section 73(10) of the CGST Act towards recovery of tax not paid or short paid or Input tax credit wrongly availed or utilized, in respect of the FY2017-18 has been extended till September 30, 2023. ▪ For the purposes of computing the time limit for issuance of order under Section 73(10) of the CGST Act towards recovery of erroneous refund, the period from March 01, 2020, to February 28, 2022 to be excluded. ▪ The time period from March 01, 2020, to February 28, 2020, to be excluded for computation of the limitation period for filing application of refund under Section 54 or Section 55 of CGST Act.

LEGISLATION AT WORK - RECENT AMENDMENTS

<p>5</p>	<p>Notification No. 14/2022-Central Tax dated July 5, 2022</p>	<ul style="list-style-type: none"> ▪ For reversal of common credit under Rule 42 and Rule 43 of CGST Rules, the value of duty credit scrips shall be excluded in computation of aggregate value of exempt supplies. Therefore, credit of common services is available, and not that of input services that are directly used. ▪ Taxpayers having aggregate turnover exceeding INR 20 crores in any of the FY from 2017-18 and onwards, but not mandated to generate e-invoice/IRN shall be required to provide a declaration to that effect in the invoices issued by them. ▪ The format of Form GSTR 3B has been revised to include reporting of supply of services through aggregators/e-commerce operators, the tax on which is paid by such operators. ▪ For deposits made in electronic cash ledger, Unified Payment Interface (UPI) from any bank or Immediate Payment Services (IMPS) from any bank has been added as other modes of payment. With UPI emerging as the preferred payment mode for a large segment in India, allowing of GST payment through the said mechanism is another step closer to the leitmotif 'Digital India'. ▪ Rule 88B has been inserted in the CGST Rules to provide for the manner of calculating interest leviable under Section 50 of the CGST Act. <ul style="list-style-type: none"> a. For late filing of return, interest shall be calculated on the net tax liability paid by debiting electronic cash ledger for the period of delay in filing in the return b. For reasons other than above, interest shall be calculated on the total amount of tax which remains unpaid, for the period starting from the due of payment of tax till the actual date of payment. c. For ITC wrongly availed and utilized, interest shall be calculated on such ITC for the period starting from the due of payment of tax till the actual date of payment. (Wrongly availed ITC shall be deemed to be utilized when the balance in the electronic credit ledger falls below the said amount of ITC and to the extent by which the balance in electronic credit ledger falls below the amount of ITC wrongly availed) ▪ Amendment to the formula under Rule 89(5) of CGST Rules for grant of refund under the Inverted duty structure: <p>“Maximum Refund Amount = {(Turnover of inverted rated supply of goods and services) x Net ITC ÷ Adjusted Total Turnover} - {tax payable on such inverted rated supply of goods and services x (Net ITC ÷ ITC availed on inputs and input services)}”</p>
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LEGISLATION AT WORK - RECENT AMENDMENTS

<p>6</p>	<p>Circular No. 172/05/2022-GST dated July 6, 2022</p>	<ul style="list-style-type: none"> ▪ ITC is allowed on supplies mentioned in Section 17(5)(b) of CGST Act if they are obligatorily provided by an employer to its employee under any law for the time being in force. With this clarification, all services including food, life insurance, rent-a-cab etc. if provided by employers against mandatory requirement under any law would be allowed as ITC. ▪ Scope of leasing services referred in section 17(5)(b)(i) of CGST Act applicable only to leasing of motor vehicles, vessels and aircrafts and not all other goods. This clarification brings to rest a potential ambiguity on leasing being read as a standalone term in Section 17(5)(b) of the CGST Act and restrictions in reference to motor vehicles, vessels or aircraft only being read in the context of renting or hiring. ▪ Perquisites provided by the employer to the employee in terms of contractual agreement entered into between the employer and the employee, will not be subjected to GST. While the above clarification should help bring certainty to businesses, the scope of contractual arrangement remains an open area; with certain perquisites being granted without an explicitly agreed arrangement on the same. ▪ Amount in Electronic Credit Ledger (ECL) can be used for any payment towards output tax, whether self-assessed or paid as a consequence of any proceeding, except for tax liability under RCM. Further, ECL cannot be used for payment of interest, penalty, fees or other amounts (except output tax) payable under the GST laws and payment of refunds wrongly sanctioned when the original refund was sanctioned in cash
<p>7</p>	<p>Notification No. 17/2022-Central Tax (Rate) dated August 1, 2022</p>	<ul style="list-style-type: none"> ▪ Government, in pursuance of recommendations by GST Council, made e-invoicing mandatory for taxpayers having an aggregate turnover of INR 10 crore or more with effect from October 1, 2022.
<p>8</p>	<p>Circular No. 178/10/2022-GST dated 3rd August, 2022</p>	<ul style="list-style-type: none"> ▪ CBIC clarifies applicability of GST on (i) payments in the nature of liquidated damage, compensation, penalty, cancellation charges, late payment surcharge etc. arising out of breach of contract or otherwise; and (ii) scope of the entry at para 5 (e) of Schedule II of CGST Act. ▪ Agreeing to the obligation to refrain from an act- includes situations of non-compete agreements, where one party agrees not to compete with the other party in a product/service against a consideration. ▪ Agreeing to the obligation to tolerate an act or a situation – Example would include activities of a shopkeeper allowing a hawker to operate from the common pavement in front of his shop against a monthly payment, or tolerating an act against payment of an agreed sum ▪ Agreeing to the obligation to do an act- Example would include where an industrial unit agrees to install equipment for zero emission/ discharge at the behest of a neighbouring residential complex against a consideration paid by such complex, even though the emission/ discharge from the industrial unit was within permissible limits and there was no legal obligation upon the individual unit to do so.

LEGISLATION AT WORK - RECENT AMENDMENTS

		<ul style="list-style-type: none"> ▪ Service of agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act is nothing but a contractual agreement. ▪ Therefore, the above three must be under an “agreement” or a “contract” (whether express or implied) to fall within the ambit of entry 5(e). ▪ Based on the above, it is clarified that liquidated damages, compensation, cheque dishonor/ penalty, forfeiture of salary in the event an employee leaving before minimum agreed period, cancellation charges, late payment surcharge, do not have an express or implied agreement/contract to refrain from or tolerate an act, and therefore are not taxable.
<p>9</p>	<p>Circular No. 180/12/2022-GST dated 9th September, 2022</p>	<ul style="list-style-type: none"> ▪ CBIC following the direction of Hon'ble Supreme Court in Union of India vs Filco Trade Center Pvt Ltd [SLP(C) No. 32709-32710] dated 22.07.2022 reopened the filing of Form GST TRANS-1/TRANS-2 from 01.10.2022 to 30.11.2022.





ALLIED LAWS

The following chapter has been authored by Niraj Hande (Principal Associate), Milan Soni (Associate), Ishabh Verma (Associate) - ELP

Customs Tariff Notification

[Notification no. 38/2022-Customs dt. 04.07.2022 - Seeks to amend notification No. 21/2022- Customs dated 13th April 2022](#)

Central Board of Indirect Taxes and Customs ('CBIC' or 'Board') has issued Notification No. 38/2022 – Customs dated 04.07.2022 vide which implementation date of notification no. 21/2022- Customs dt. 13.04.2022 was changed to 31st October, 2022. This notification shall come into force with immediate effect.

[Notification no. 39/2022-Customs dt. 12.07.2022 - Seeks to amend notification No. 50/2017- Customs dated 30th June 2017](#)

CBIC has issued Notification No. 39/2022 – Customs dated 12.07.2022 vide which under sr. no. 515A of the table, CTH 8529 has been substituted by 8524 in respect of notification no. 50/2017- Customs dt. 30.06.2017. This notification shall come into force with immediate effect.

[Notification no. 40/2022-Customs dt. 13.07.2022 - Seeks to amend notification No. 50/2017- Customs dated 30th June 2017](#)

CBIC has issued Notification No. 40/2022 – Customs dated 13.07.2022 vide which Diethylcarbamazine (DEC) tablets was inserted in the tariff table along with condition no. 113 in the annexure in respect of DEC tablets. This notification shall come into force with effect from the 18.07.2022.

[Notification no. 41/2022-Customs dt. 13.07.2022 - Seeks to amend notification No. 19/2019- Customs dated 6th July 2019 to allow other units to avail benefit of the said notification](#)

CBIC has issued Notification No. 41/2022 – Customs dated 13.07.2022 vide which 'other entities' in addition to the Ministry of Defense, Defense Forces, Defense Public Sector Units, Other Public Sector Units can avail benefit of the notification no. 19/2019 dt. 06.07.2019. This notification shall come into force with effect from the 18.07.2022.

[Notification no. 42/2022-Customs dt. 13.07.2022 - Seeks to amend notification No. 51/96- Customs dated 23rd July 1996](#)

CBIC has issued Notification No. 42/2022 – Customs dated 13.07.2022 vide which integrated tax leviable under sub-section (7) of section 3 of the said Customs Tariff Act shall not be exempted under notification no. 51/96- Customs dt. 23.07.1996. This notification shall come into force with effect from the 18.07.2022.



[Notification no. 43/2022-Customs dt. 20.07.2022 - Seeks to amend notification No. 22/2022- Customs dated 30th April 2022](#)

CBIC has issued Notification No. 43/2022 – Customs dated 20.07.2022 vide which condition no. 2 as specified in notification no. 22/2022- Customs dt. 30.04.2022 has been amended. As per the notification, the IEC to be mentioned in TRQ authorization as per condition no. 1 shall be mean the IEC of the nominated agency by RBI/IFSCA/ DGFT. Further, the TRQ authorization is required to specify GSTIN of the jewellery manufacturer to whom the TRQ is assigned. This notification is in respect of India-UAE Comprehensive Economic Partnership Agreement ("CEPA").

ALLIED LAWS

[Notification no. 44/2022-Customs dt. 23.07.2022 and Notification no. 46/2022- Customs dt. 31.08.2022- Seeks to amend notification No. 49/2021- Customs dated 13th October 2021](#)

CBIC has issued Notification No. 44/2022 – Customs dated 23.07.2022 which when read with subsequent notification no. 46/2022- Customs dated 31.08.2022 has specified that notification no. 49/2021 dt. 13.10.2021 which exempted specified goods from Agriculture Infrastructure and Development Cess in excess from the specified rate shall be applicable till (and inclusive of) 31st March 2023.



[Notification no. 45/2022-Customs dt. 31.08.2022 Seeks to amend notification No. 130/2010- Customs dated 23rd December 2010](#)

CBIC has issued Notification No. 45/2022 – Customs dated 31.08.2022 vide which various changes were carried out in notification no. 130/2010- Customs dt. 23.12.2010 which stated that specified goods when imported into India via specified airlines shall be exempted from Customs duty. The said notification omitted various airlines and inserted United Airlines under Sr. No. 9. This notification shall come into force with immediate effect.

[Notification no. 46/2022-Customs dt. 31.08.2022 Seeks to amend notification No. 48/2021- Customs dated 13th October 2021](#)

CBIC has issued Notification No. 46/2022 – Customs dated 31.08.2022 vide which validity of notification no. 48/2021- Customs dt. 13.10.2021 was extended till 31st March 2023. This notification shall come into force with immediate effect.

[Notification no. 47/2022-Customs dt. 07.09.2022 Seeks to amend notification No. 56/2000- Customs dated 5th May 2000](#)

CBIC has issued Notification No. 47/2022 – Customs dated 07.09.2022 vide which importers and exporters who are receiving supply for the intended purpose under notification no. 56/2000-Customs dt. 05.05.2000 shall now follow applicable procedure as specified under in the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017. This notification shall come into force with immediate effect.

[Notification no. 48/2022-Customs dt. 07.09.2022 Seeks to amend notification No. 57/2000- Customs dated 8th May 2000](#)

CBIC has issued Notification No. 48/2022 – Customs dated 07.09.2022 amending notification no. 57/2000- Customs dt. 08.05.2000 vide which silver, gold and platinum (i.e. under headings 7106, 7108 and 7110) imported into India under various specified schemes is required to comply with applicable procedure under Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017. Further, the said notification also prescribed that that the nominated agency is required to follow applicable procedure under Policy Circular No. 39 (RE-2010)/2009-14, dt. 19.08.2011, para 4.41 of the Foreign Trade Policy (2015-20) and para 4.94 of the Hand Book of Procedures (2015-20). This notification shall come into force with immediate effect.

[Notification no. 49/2022-Customs dt. 08.09.2022 Seeks to the Second Schedule of the Customs Tariff Act, 1975](#)

CBIC has issued Notification No. 49/2022 – Customs dated 08.09.2022 vide which the below mentioned entries were inserted in the Second Schedule of the Customs Tariff Act, 1975. This notification shall come into force on 09.09.2022.

(1)	(2)	(3)	(4)
6A	1006 10	Rice in the husk (paddy or rough)	20%
6B	1006 20	Husked (brown) rice	20%
7A	1006 30 90	Semi-milled or wholly-milled rice, whether or not polished or glazed (other than Parboiled rice and Basmati rice)	20%

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Customs Anti-Dumping Notifications

Initiation of levy of Anti-dumping Duty on various imports:

The Central Government has initiated levy of Anti-Dumping Duty on imports of:

- 'Saturated Fatty Alcohols' originating in, or exported from Indonesia, Malaysia and Thailand at rate as specified per unit and currency in the notification thus amending notification no. 28/2018- Customs (ADD) dated 25.05.2018. However, the time period in respect of notification 28/2018- Customs (ADD) has not been changed **[Notification no. 23/2022- Customs (ADD) dated 12.07.2022]**.
- 'Opal Glassware' originating or exported from the country as specified in the table and at a rate as specified in the table below for a period of years. **[Notification no. 24/2022 - Customs (ADD) dated 03.08.2022]**

Sl. No.	Tariff Heading	Description of Goods	Country of Origin	Country of Export	Producer	Rate of Duty (%)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1.	7013	Opal Glassware	People's Republic of China	Any country including People's Republic of China	Any	30.64
2.	7013	Opal Glassware	Any country other than People's Republic of China and United Arab Emirates	People's Republic of China	Any	30.64
3.	7013	Opal Glassware	United Arab Emirates	Any country including United Arab Emirates	Any	4.38
4.	7013	Opal Glassware	People's Republic of China and United Arab Emirates	United Arab Emirates	Any	4.48

- Goods under Chapter 29 originating from China PR or Korea RP and exported out of China PR and Korea RP a provisional anti-dumping duty at a rate equal to the difference between the landed value and amount specified in the notification. The said anti-dumping duty is effective for a period of six months **[Notification**

no. 25/2022-Customs (ADD) dated 18.08.2022].

- Toluene di-isocyanate under CTH 29291020 originating from China PR or Korea RP and exported out of China PR and Korea RP a provisional anti-dumping duty at a rate equal to the difference between the landed value and amount specified in the notification. **[Notification no. 28/2022- Customs (ADD) dated 21.09.2022]**

Extension of levy of Anti-dumping Duty on various imports

The Central Government has extended levy of Anti-Dumping Duty on imports of:

- 'Jute Products' falling under Tariff Headings 5307, 5310, 5607 or 6305 originating or exported from Bangladesh or Nepal amending notification no. 01/2017- Customs (ADD) dated 05.01.2017 till 31.12.2022 **[Notification no. 26/2022 - Customs (ADD) dated 31.08.2022]**.

Customs Non-Tariff Notifications

[Notification No. 59/2022 - Customs \(N.T.\) dated 12.07.2022: Controlled Delivery Regulations](#)

Notification no. 59/2022 – Customs (N.T.) has notified Controlled Delivery (Customs) Regulation which specifies the process and other ancillary

ALLIED LAWS

requirements in respect of controlled delivery under Section 109A of the Customs Act.

[Notification No. 61/2022 - Customs \(N.T.\) dated 14.07.2022 – Notification of proper officer under Section 109A](#)

Notification no. 61/2022 – Customs (N.T.) dated 14.07.2022 has notified that the Deputy Director of Revenue Intelligence or Assistant Director of Revenue Intelligence shall be the proper officer under Section 109A of the Customs Act.

[Notification No. 63/2022 - Customs \(N.T.\) dated 20.07.2022 – Amendment of Authority for Advance Rulings](#)

Notification no. 63/2022 – Customs (N.T.) dated 20.07.2022 has notified the Customs Authority for Advance Rulings (Amendment) Regulations, 2022. The said amendment regulations have amended, omitted and inserted various new regulations and sub-regulations in the Customs Authority for Advance Rulings Regulations, 2021.

[Notification No. 67/2022 - Customs \(N.T.\) dated 08.08.2022 – Passenger Name Record Information Regulations](#)

Notification no. 67/2022 – Customs (N.T.) dated 08.08.2022 has notified Passenger Name Record Information Regulations, 2022 in respect of management of data and other ancillary activities in connection to passenger travelling via aircrafts.

[Notification No. 69/2022 - Customs \(N.T.\) dated 22.08.2022 – Amendment of Compounding of Offences](#)

Notification no. 69/2022 – Customs (N.T.) dated 22.07.2022 has notified penalties in respect of offences specified under Section 135AA of the Customs Act. Further, the amendment notification has also made changes to Rule 6 and 7 of the Customs (Compounding of Offences) Rules, 2005.

[Notification No. 74/2022 - Customs \(N.T.\) dated 09.09.2022 – Customs \(Import of Goods at Concessional Rate of Duty or for Specified End Use\) Rules, 2022](#)

Notification no. 74/2022 – Customs (N.T.) dated 09.09.2022 has notified Customs (Import of Goods

at Concessional Rate of Duty or for Specified End Use) Rules, 2022 which prescribes the procedure and other ancillary requirements to be followed when importing goods at a concessional rate for specified use under a notification.

[Notification No. 75/2022 - Customs \(N.T.\) dated 14.09.2022 – Amendment Notification](#)

Notification no. 75/2022 – Customs (N.T.) dated 14.09.2022 has amended GSR - 655(E) dated 23.09.2021 whereby sub-clause (2) of clause 4, sub-clause (5) of clause 5 and the words “or the transferee” have been omitted.



[Notification No. 76/2022 - Customs \(N.T.\) dated 14.09.2022 – Amendment Notification](#)

Notification no. 76/2022 – Customs (N.T.) dated 14.09.2022 has amended GSR - 663(E) dated 24.09.2021 whereby sub-clause (2) of clause 4, sub-clause (5) of clause 5 and the words “or the transferee” have been omitted.

[Notification No. 79/2022 - Customs \(N.T.\) dated 15.09.2022 – Amendment Notification](#)

Notification no. 79/2022 – Customs (N.T.) dated 15.09.2022 has notified Electronic Duty Credit Ledger (Amendment) Regulations, 2021 whereby time period under sub-regulation (2) of Regulation 6 and sub-regulation (3) of Regulation 7 has been increased to a period of two years from one year.

[Notification No. 78/2022 - Customs \(N.T.\) dated 15.09.2022: Exchange Rates](#)

Notification no. 78/2022 – Customs (N.T.) has determined the rate of exchange of conversion for specified foreign currencies specified into Indian currency or vice versa, with effect from 16th September, 2022, for exports and imports

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[Notification No. 77/2022 - Customs \(N.T.\) dated 15.09.2022 - Revision of Tariff Values](#)

Notification no. 77/2022 – Customs (N.T.) dated 15.09.2022 has notified Tariff values in respect of various goods falling under Chapter 08, 15, 74 and 98. Revisions in respect of Chapter 71 are reproduced herein below:

The said notifications came in force on 16.09.2022.

[Notification No. 81/2022 - Customs \(N.T.\) dated 23.09.2022 – Amendment Notification](#)

Notification no. 81/2022 – Customs (N.T.) dated 23.09.2022 has notified Courier Imports and Exports (Electronic Declaration and Processing) Second

Sr. No.	Chapter/ Heading/Sub- Heading/Tariff Item	Description of Goods	Tariff Value (US \$)
(1)	(2)	(3)	(4)
1.	71 or 98	Gold, in any form, in respect of which the benefit of entries at serial number 356 of the Notification No. 50/2017-Customs dated 30.06.2017 is availed	549 per 10 grams
2.	71 or 98	Silver, in any form, in respect of which the benefit of entries at serial number 357 of the Notification No. 50/2017-Customs dated 30.06.2017 is availed	635 per Kilogram
3.	71	(i) Silver, in any form, other than medallions and silver coins having silver content not below 99.9% or semi-manufactured forms of silver falling under sub-heading 7106 92; (ii) Medallions and silver coins having silver content not below 99.9% or semi-manufactured forms of silver falling under sub-heading 7106 92, other than imports of such goods through post, courier or baggage. Explanation. - For the purposes of this entry, silver in any form shall not include foreign currency coins, jewellery made of silver or articles made of silver.	635 per Kilogram
4.	71	(i) Gold bars, other than tola bars, bearing manufacturer's or refiner's engraved serial number and weight expressed in metric units; (ii) Gold coins having gold content not below 99.5% and gold findings, other than imports of such goods through post, courier or baggage. Explanation. - For the purposes of this entry, "gold findings" means a small component such as hook, clasp, clamp, pin, catch, screw back used to hold the whole or a part of a piece of Jewellery in place.	549 per 10 grams

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Amendment Regulations, 2022 whereby various amendments in respect of E-Commerce imports in the Courier Imports and Exports (Electronic Declaration and Processing) Regulations, 2010 has been notified.

[Notification No. 82/2022 - Customs \(N.T.\) dated 23.09.2022 – Prohibition of Export of Map Data](#)

Notification no. 82/2022 – Customs (N.T.) dated 23.09.2022 has prohibited export of maps and geospatial data of spatial accuracy and value finer than threshold values as prescribed in the notification in the interest and security of India

Customs Circulars

[Circular No. 11/2022-Customs dt. 29.07.2022 - Extension of Customs clearances beyond normal working hours in Inland Container Depot\(s\)](#)

The said circular issued an advisory to all the Pr. Chief / Chief Commissioners, having jurisdictions over Inland Container Depots (ICDs) to extend Customs clearance beyond normal working hours in any of the following ways: (i) On a 24X7 basis in line with Board guidelines for Sea Ports and Air Cargos/Airports, or (ii) Custom clearance may be extended on all working days with specified timings or, (iii) Customs clearance may be extended beyond normal working hours on specified days of the week with specified timings.

Such extension could be for specified imports i.e. goods covered by 'facilitated' Bills of Entry only,



or specified exports viz. reefer containers with perishable/ temperature sensitive export goods sealed in the presence of Customs officials only or goods exported under free Shipping Bills only.

[Circular No. 12/2022-Customs dt. 16.08.2022 and Circular No. 13/2022 dt. 16.08.2022 – Revision of guidelines in respect of Offences under the Customs Act](#)

The said circulars revised guidelines for launching of Prosecution in relation to offences punishable under the Customs Act in addition to revision of guidelines on arrest and bail on offences under the Customs Act Such revision is applicable in respect of baggage and outright smuggling cases, appraising cases / commercial frauds etc.

[Circular No. 16/2022-Customs dt. 29.08.2022 - Standard Examination Orders through RMS](#)

In order to curtail variations in examination orders, the Board has decided to implement system-generated centralized examination orders in a phased manner, in case of risk-based selection for examination after assessment. Accordingly, Phase 1 for the abovementioned program has been initiated.

The standardized examination orders thus generated by RMS will be visible to Assessing Officers during the assessment. While these RMS-generated standardised examination orders will be the new norm, the Assessing officer will have the option of adding any additional examination instruction/order to the pre-populated RMS-generated examination order, if necessary. The said Circular in this regard, specifies the procedure to be followed and guidelines for proper implementation by field officers.

[Circular No. 19/2022-Customs dt. 14.09.2022 – Movement of goods from ICD to Bangladesh](#)

The said Circular specifies detailed procedure that is required to be followed to move sealed containers from ICD to Bangladesh using inland waterways as agreed between India and Bangladesh under the Protocol on Inland Water Transit and Trade (PIWTT). The said circular while

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dividing the journey in two parts, prescribed the procedure and compliances to be followed while transporting such goods.

DGFT Circulars

[Policy Circular No. 41/2015-20 dated 05.07.2022 – Implementation of paper Import Monitoring System \(PIMS\) and Clarification in respect of import at SEZ/FTWZ/EOU and further import](#)

The said Policy circular clarified that PIMS registration is required at the point of import by a unit in SEZ/FTWZ or at the time of import by an EOU of the items covered under PIMS. On import from SEZ/FTWZ/EOU into DTA, PIMS is not mandatory if no change in paper has taken place, however, if a change in CTH has occurred then registration under PIMS is required.

[Policy Circular No. 42/2015-20 dated 27.07.2022 – Clarifications in respect of NFMIMS](#)

The said policy circular clarifies issues in respect of NFMIMS such as applicability when imported under Advance Authorization etc. and other clarifications in respect of QCO.

[Policy Circular No. 43/2015-20 dated 27.07.2022 – Clarifications in EPCG](#)

The said circular clarifies that since requirement for submission of Bill of Entry (BoE) for supplies made to SEZ in respect of Advance Authorization has been relaxed, other corroborative documents such as ARE-I form duly attested by jurisdictional excise authority of EPCG authorization holder etc. may also be furnished.

DGFT Notifications

DGFT Notifications in relation to Amendment in the import policy conditions:

- **Notification No. 17/2015-20 dated 04.07.2022** - Amendment in export policy condition of Potatoes in the ITC (HS) 0701 90 00 of ITC (HS) Schedule - II (Export Policy).
- **Notification No. 18/2015-20 dated 06.07.2022** - Amendment in import policy condition of Wheat Flour (Atta) in the ITC (HS) 1101 of ITC (HS) 2022, Schedule - I (Import Policy).

- **Notification No. 19/2015-20 dated 07.07.2022** - Amendment in policy condition 4(c), 3(c) and 3(c) of Chapter 72, 73 and 86 respectively of ITC (HS) Schedule - I (Import Policy).
- **Notification No. 20/2015-20 dated 07.07.2022** - Various amendments in import policy conditions under ITC (HS) 2022, Schedule - I (Import Policy) to sync the same with the Finance Act, 2022.
- **Notification No. 22/2015-20 dated 20.07.2022** - Amendment in import policy condition of goods under ITC (HS) 0511 99 99 of ITC (HS) 2022, Schedule - I (Import Policy).
- **Notification No. 23/2015-20 dated 01.08.2022** - Amendment in import policy condition of compounds containing pyrimidine rings in the ITC (HS) 29335200 of ITC (HS) 2022, Schedule - I (Import Policy).



- **Notification No. 24/2015-20 dated 04.08.2022** - Amendment in import policy condition of Cyclanes, Cyclenes and Cycloterpenes in the ITC (HS) 29021100 of ITC (HS) 2022, Schedule - I (Import Policy).
- **Notification No. 26/2015-20 dated 10.08.2022** - Amendment in import policy condition no. 3(c) and 1(c) of Chapter 74 and 76 respectively of ITC (HS) 2022, Schedule - I (Import Policy).
- **Notification No. 28/2015-20 dated 25.08.2022** - Amendment in export policy conditions of various forms of rice under ITC (HS) 2022, Schedule - I (Export Policy).

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- **Notification No. 30/2015-20 dated 27.08.2022** - Amendment in export policy condition of Wheat in the ITC (HS) 1101 of ITC (HS) 2018, Schedule - II (Export Policy).
- **Notification No. 31/2015-20 dated 08.09.2022** - Amendment in export policy condition of Broken Rice in the ITC (HS) 1006 40 00 of ITC (HS) 2022, Schedule - II (Export Policy).
- **Notification No. 32/2015-20 dated 14.09.2022** - Amendment in import policy condition of Pet Flake (Chip) in the ITC (HS) 39076110 and 39076930 of ITC (HS) 2022, Schedule - I (Import Policy).

[Notification No. 15/2015-20 dated 01.07.2022 - Extension in deadlines for submission of applications under MEIS for export made in the 4-month period i.e. September to December 2020](#)

The Directorate General of Foreign Trade ('DGFT') vide Notification No. 15/2015-20 dated 01.07.2022



provided relaxations in respect of deadlines for submission of applications under MEIS for export made between September 2022 and December 2022. Effectively, the new deadline for submitting application under MEIS for exports made between September and December 2020 is now 31.08.2022.

[Notification No. 16/2015-20 dated 01.07.2022 - Amendment of FTP, 2015-2020](#)

The Directorate General of Foreign Trade ('DGFT') vide Notification No. 16/2015-20 dated 01.07.2022 has made various amendment in the FTP, 2015-

2020 whereby Integrated Tax and Compensation Cess under Advance Authorization, EPCG and EOU are exempted as per the specified notifications.

[Notification No. 21/2015-20 dated 08.07.2022 - Notification of Board of Trade \(BoT\)](#)

The Directorate General of Foreign Trade ('DGFT') vide Notification No. 21/2015-20 dated 08.07.2022 notified the official and ex-officio members of the Board of Trade.

[Notification No. 33/2015-20 dated 16.09.2022 - Insertion of Para 2.52\(d\) in the FTP](#)

The Directorate General of Foreign Trade ('DGFT') vide Notification No. 33/2015-20 dated 16.09.2022 has inserted Para 2.52(d) in the FTP, 2015-2020 to permit invoicing, payment and settlement of exports and imports in INR in sync with RBI's A.P. (DIR Series) Circular No. 10 dated 11.07.2022.

DGFT Public Notice

[Public Notice No. 18/2015-20 dated 19.07.2022 - Amendment of Appendix 2E of FTP, 2015-20](#)

Public Notice No. 18/2015-20 dated 19.07.2022 has amended Appendix 2E of the FTP, 2015-20 and hence revised names, address and contact details of agencies authorized to issue Certificate of Origin (Non-Preferential).

[Public Notice No. 19/2015-20 dated 27.07.2022 - Amendment Standard Input and Output Norms \(SION\)](#)

Public Notice No. 19/2015-20 dated 27.07.2022 has carried out amendment of serial numbers C594, C791, C792, C793, C794, C795, C796 and C831 of SION.

[Public Notice No. 20/2015-20 dated 01.08.2022 - Establishment of Agency under Appendix 2E of the FTP, 2015-20](#)

Public Notice No. 20/2015-20 dated 01.08.2022 has carried out amendment of Appendix 2E of the FTP, 2015-20 whereby Gem & Jewellery Export Promotion Council (GJEPC) has been authorized as an agency to issue Certificate of Origin (Non-Preferential).

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[Public Notice No. 21/2015-20 dated 05.08.2022 – Extension of validity of Certificates issued in FY 2015-16 and 2016-17 under FTP, 2015-20.](#)

Public Notice No. 21/2015-20 dated 05.08.2022 has carried out an amendment of HBP whereby Para 3.20(a) has been amended to extend validity for 5 years for applications filed till 30th September 2022.

[Public Notice No. 22/2015-20 dated 23.08.2022 – Enlistment of an agency under Appendix 2E of the FTP, 2015-16](#)

Public Notice No. 22/2015-20 dated 23.08.2022 has carried out amendment of Appendix 2E of the FTP, 2015-20 whereby Panipat Exporters Association has been authorized as an agency to issue Certificate of Origin (Non-Preferential).

[Public Notice No. 23/2015-20 dated 29.08.2022 – Amendment of Para 2.107 of HBP](#)

Public Notice No. 23/2015-20 dated 29.08.2022 has carried out amendment of Para 2.107 of the HBP whereby condition (o) in Annexure IV of Appendix 2A has been substituted to be inclusive of jewellers as notified by the IFSCA.

DFGT Trade Notice

[Trade Notice No. 14/2015-20 dated 18.07.2022 – Procedure for Submission of request for seeking IMC's approval for export of Wheat Flour \(Atta\)](#)

Trade Notice No. 14/2015-20 dated 18.07.2022 prescribed the procedure that is required to be followed for submission of requests for seeking IMC's approval for export of wheat flour (atta) and other requirements/compliances that are required to be followed. Further, such approval is valid for a period of 3 months.

[Trade Notice No. 15/2022-23 dated 01.08.2022 – Extension of Date for mandatory electronic filing of non-preferential certificate of origin \(NP CoO\) through common digital platform](#)

Trade Notice No. 15/2022-23 dated 01.08.2022 has extended Date for mandatory electronic filing of non-preferential certificate of origin (NP CoO)



through common digital platform to 31st March 2023.

[Trade Notice No. 16/2022-23 dated 06.09.2022 – Uploading of e-BRC for shipping bills on which RoSCTL scrip has been availed from DGFT](#)

Trade Notice No. 15/2022-23 dated 01.08.2022 has extended Date for Uploading of e-BRC for shipping bills on which RoSCTL scrip has been availed from DGFT till 30th September 2022.



LEGAL CLASSICS

The following chapter has been authored by Jitendra Motwani (Partner), Rinkey Jassuja (Associate Partner) and Alifya Vora (Associate) - ELP

Commissioner of Central Excise, Visakhapatnam V. Sai Sahmita Storages (P) Ltd.- 2011 (270) ELT 22 (AP)

GST regime was ushered in with the promise of seamless flow of input tax credit ("ITC") across the supply chain. However, much like the erstwhile regime, availability of credit remains litigious under the GST regime as well. One such issue is with respect to eligibility of ITC of inputs used for construction of an immovable property when such an immovable property is used for further supply of taxable services.

In the erstwhile regime the said issued was the subject matter of dispute before the Hon'ble Andhra Pradesh High Court in the case of **Commissioner of Central Excise, Visakhapatnam V. Sai Sahmita Storages (P) Ltd.** reported as **2011 (270) ELT 22 (AP)** ("**Sai Sahmita Storages**"). In this case, the moot issue before the Hon'ble Andhra Pradesh High Court was whether an assessee could take CENVAT credit of central excise duty paid on cement, iron bars, expansion bellows and pipes used for construction of warehouses when such warehouses were used to provide "storage and warehousing services". The Hon'ble High Court answered the said question in affirmative and in favour of the assessee.

While dealing with the aforementioned issue, the Hon'ble Andhra Pradesh High Court conclusively held that construction of a premises is a necessary pre-condition for the output services provided by assessee therein and therefore, the credit of the same cannot be restricted.

At this juncture it is pertinent to note that the dispute in the case of Sai Sahmita Storages (Supra) pertained to the period prior to 1.04.2011. The definition of inputs and input services was amended

w.e.f from 01.04.2011 to specifically exclude those inputs which were used for the construction of an immovable property. This position, of exclusion of ITC of inputs used for construction of an immovable property, has been retained under the GST regime as well.



Despite the above change of law, this ratio of the Hon'ble Andhra Pradesh High Court would be relevant under the GST regime to the extent that it conclusively states that credit of any input is available as long as it is used to provide an output service.

Decision in the case of Sai Sahmita Storages

The respondent-assessee in the instant case was a registered provider of "storage and warehousing" services. It had availed CENVAT credit of central excise duty paid on cement, iron bars, expansion bellows and pipes used for construction of storage tanks, reinforcement of storage tanks and for construction of pipelines for transfer of liquid cargo from the tanks to trucks. The said credit was disputed by the revenue and respondent- assessee was directed to reverse the same. Against the said

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decision assessee therein approached the Hon'ble Tribunal. The Hon'ble Tribunal, while disposing off the assessee's appeal, *inter alia* held that the assessee was eligible to claim CENVAT credit of the excise duty paid on inputs used for construction of storage tanks and pipelines. The said decision of the Hon'ble Tribunal was in appeal before the Hon'ble Andhra Pradesh High Court.

The Hon'ble High Court, while upholding the decision of the Hon'ble Tribunal and thereby dismissing revenue's appeal held that it is undisputed that the inputs were used for providing storage facility without which storage and warehousing service could not have been provided by the assessee therein.

Applicability under the GST regime

Section 16 of the Central Goods and Services Act, 2017 ("CGST Act, 2017") *inter alia* provides that a registered person can avail ITC of any supply of goods or services which is used by him in course or furtherance of business. Section 17 of the CGST Act, 2017 provides for circumstances in which ITC will not be available to an assessee. Section 17(5)(d) of the CGST Act, 2017 provides that ITC of tax paid on goods or services received by an assessee for construction of immovable property is not available unless such immovable property is a 'Plant and Machinery'.

The vires of the said provision was challenged before the Hon'ble Orissa High Court in the case of **Safari Retreats Pvt Ltd & Anr. V. Chief Commissioner of Central Goods and Service Tax & Ors.** reported as **[TS-350-HC(ORI)-2019-NT]** The Hon'ble Orissa High Court read down the provision of Section 17(5)(d) of the CGST Act, 2017 on the ground that it was against the scheme of the CGST Act, 2017 and held that ITC of inputs and input services used for construction of an immovable property

when such immovable property was used for further supply was available. A departmental appeal against the said decision is pending before the Hon'ble Apex Court.

Ratio of the decision of the Hon'ble Andhra Pradesh High Court in the case of Sai Sahmita Storages (*supra*), wherein it was held that credit of an input or input service utilized for construction of an immovable property when such an immovable property is used for affecting further taxable supply, thus remains relevant under the GST regime as well. This decision could provide impetus to the argument that Section 17(5)(d) of the CGST Act, 2017 ought to be read down to not apply to such immovable property which is used for further supply.

This decision would fortify the argument that in order to give effect to the scheme of GST which seeks to eliminate cascading effect of taxes, when an input has a direct nexus with the output supply its credit ought not to be restricted. It would be interesting to see how this ratio will be applied by the Hon'ble Apex Court while dealing with the challenge to the vires of the Section 17(5)(d) of the CGST Act, 2017. The observations made by the Supreme Court while deciding the challenge to a provision under the CGST Act will also have an impact on similar proceedings pending in relation to service tax regime at various stages of litigation.





QUOTABLE QUOTES

Compiled by: **Virangana Wadhawan (Principal Associate), Raghav Khandelwal (Associate) - ELP**

Colin Shah, Chairman, Gem and Jewellery Export Promotion Council (GJEPC) said, "We are thankful to Hon'ble Finance Minister for rationalizing the GST rates on cut & Polished diamonds and giving relief with regard to the issue of ITC accumulation for the diamond sector. It is estimated that approximately Rs 600 crores of ITC accumulation is there as on date with the Diamond Industry. The increase in GST rate on cut & polished diamonds will not only stop further accumulation of ITC but release blocked working capital and stimulate industry growth. We would now earnestly urge the government to formalize a mechanism for the traders to receive the refund of the accumulated GST."

Dr Shraavan Subramanyam, President of NATHEALTH, a healthcare federation in India, said the additional 5% on the rates will be a burden on people seeking quality healthcare in non-ICU (intensive care unit) settings. By not allowing input credit, the government is breaking the chain of credit and not allowing any offset for the near 6% embedded GST burden on healthcare sector, which would have allowed quality healthcare footprint to expand," Dr Subramanyam said.

Akshit Bansal, CEO of electric vehicle (EV) charging network provider Statiq, said that the government has declared a clear intention to boost domestic EV adoption and usage by making the industry eligible for a concessional GST rate of 5 per cent.

"This move will encourage the industry to pass on more cost benefits to the users and also lend a necessary push to people who are still looking for incentives to adapt to the EV way-of-life,"



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About Taxsutra

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Taxsutra also runs popular websites on GST (www.taxsutra.com/gst), launched in 2017 with a highly interactive Mobile App as well and portals on indirect taxes (www.idt.taxsutra.com), corporate law (www.lawstreetindia.com) and accounting (www.greentick.taxsutra.com).

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