ECONOMIC
LAWS
PRACTICE
ADVOCATES & SOLICITORS

RECENT DEVELOPMENTS IN DIRECT & INDIRECT TAX

Contents

DIRECT TAX - RECENT CASE LAWS 3

Delhi HC holds that liaison office engaged on preparatory and auxiliary business activities does not constitute PE in India. 3

Delhi Tribunal holds that PE loss is permissible to be set-off against fees for technical services taxable on gross basis 4

Mumbai Tribunal holds that STCG arising from sale of equity and debt Mutual Funds are exempt under article 13(5) of the India-Singapore DTAA 5

INDIRECT TAX – RECENT CASE LAWS 7

Payment of pre-deposit for litigation under the GST law using Electronic Credit Ledger is valid and sufficient compliance 7

Rejection of a Private Warehouse License solely on the existence of ongoing litigation is not sustainable; a clear distinction is to be drawn between an 'offence' and a 'contravention' 8

CESTAT empowered to award compensatory interest on excess duty retained owing to inordinate delays spanning over a decade in the adjudication process. 9

High Court rules on difference between intermediary and principal-to-principal relationship 10

Refund of Compensation Cess paid on the inputs used in manufacturing is eligible when the resultant goods are exported on payment of Integrated Goods and Service Tax, but do not attract Compensation cess 11

NOTIFICATIONS ISSUED BY THE DIRECTORATE GENERAL OF FOREIGN TRADE 12

DGFT Notification No. 06/2025-26 dated 02.05.2025, Customs Instruction No. 07/2025 dated 03.05.2025 and Customs Instruction No. 08/2025 dated 05.05.2025 – Prohibition on imports from Pakistan 12

DGFT Notification No. 07/2025-26 dated 17.05.2025 and Customs Instruction No. 11/2025 dated 17.05.2025 – Restrictions on imports from Bangladesh 12

DGFT Notification No. 11/2025-26 dated 26.05.2025 – Restoration of RoDTEP benefit for AA holders, SEZs and EOUs from 01.06.2025 12

DGFT Public Notice No. 04/2025-26 dated 06.05.2025 – Expansion of scope of Stock and Sale policy for export of SCOMET items 12

DIRECT TAX - RECENT CASE LAWS

Delhi HC[1] holds that liaison office engaged on preparatory and auxiliary business activities does not constitute PE in India.

FACTS OF THE CASE

- Western Union Financial Services Inc (**"Assessee"**), a non-resident company registered in USA, was engaged in providing international money transfer services. The business model of the assessee was as under:
  - Clients from USA desirous to transfer money to India, would transfer the specified amount at one of the assessee's branches or outlets located outside India in USD along with prescribed charges.
  - Assessee then generates a unique code referred as Money Transfer Control Number (**"MTCN"**).
  - The remittee approaches respective agent and on presenting MTCN, it is verified on the software and once details match, money is transferred to remittee in INR.
- For the purpose of facilitating its business in India, the assessee entered into agreements with various local agents, including the Department of Post, commercial banks, non-banking financial companies, etc and consideration was paid in the form of commission. Further, it also applied to RBI for grant of permission to carry out business activities and installed software at Agents offices.
- Basis permission, the assessee set up a Liaison office which was permitted to carry out the following activities:
  - Distribute promotional materials, maintain liaison with government authorities, and foster mutual understanding between Western Union and Indian stakeholders.
  - Assess legal, commercial, and regulatory feasibility for partnerships, gather market data, and explore business opportunities.
    - Facilitate communication with customers, support visiting personnel from Western Union and maintain awareness of economic developments.
    - The Liaison Office shall not engage in any consultancy, commercial, trading, or industrial activities, sign commercial agreements (except for basic operational needs), or have the authority to bind Western Union in commercial matters.
    - It cannot receive commissions, fees, or any form of remuneration for commercial activities. It cannot lend/borrow money to/from any person in India without prior permission.
- For AY 2001-02, the assessee paid commissions to its agents in India but filed its Income Tax Return without considering the commission. During the assessment proceedings, the Assessing Officer (AO) determined that the assessee had fixed place of business with software been installed constituting Fixed Place Permanent Establishment in India and activities of LO constituted it as a Dependent Agent Permanent Establishment (DAPE). CIT(A) affirmed view of the AO.
- On further appeal, the Tribunal held that the activities of the LO were preparatory and auxiliary, insufficient to create a fixed place PE. Also held that the software merely provided agents with access to communicate with mainframe computers and servers located outside India which would not constitute a (PE).
- Aggrieved, revenue appealed to the HC.

RULING OF DELHI HC

[1] Western Union Financial Services Inc [TS-920-HC-2024(DEL)]

- The High Court heard contentions and arguments of both parties and held that LO of assessee did not constitute a PE in India, based on the following:
  - **Scope of LO's License** - The LO's license from RBI explicitly prohibited it from engaging in any consultancy, commercial, trading, industrial activities or sign commercial agreements activities or enter into contracts in its own name. The core business of the assessee i.e., transfer of money was fully executed outside India.
  - **Nature of LO's Activities and formation of PE** - As enlisted in facts above, the LO's activities were limited to marketing, networking, liaising with government authorities, training personnel and performing other ancillary functions. A thorough analysis of the nature of these activities reveal that they may fall within the scope of meaning of preparatory and auxiliary activities. Further, para 3(e) of Article 5 on Permanent Establishment provides that 'maintenance of fixed place of business solely for activities of preparatory or auxiliary character' does not constitute a fixed place PE. There was also no fixed place of business at the disposal of assessee in India and therefore 'disposal test' for creation of fixed place PE is not met.
  - **Independent Agent Status** - The LO had no authority to carry business and conclude contracts in its own name. The local agents, Department of Post, NBFCs, etc were independent parties carrying on substantial business and earning revenue on their own and not dependent on the agency agreements. Hence, they could not be said to constitute Agency PE in India.
  - **Software and Fixed Place Test** - The software installed was only a tool to facilitate verification of details and communicate the same with mainframe computers situated outside India. It is clearly not a place of management, branch office, factory or workshop. Software, an intangible property, lacks physical attributes which is an integral part of formation of PE. Article 5(1) or 5(2) does not contemplate any intangible property constituting fixed place PE. Servers are installed outside India which fails to fulfil the "disposal test" necessary for a fixed place PE.

ELP Comments

The ruling underscores the principle that activities such as marketing, networking, and liaising are merely preparatory or auxiliary in nature. It also reinforces that the absence of a physical location at the disposal of the assessee precludes the existence of a Fixed Place PE. Moreover, the mere installation of software, without physical infrastructure, control, or server presence in India, does not give rise to a Fixed Place PE.

Delhi Tribunal[2] holds that PE loss is permissible to be set-off against fees for technical services taxable on gross basis

FACTS OF THE CASE

- The assessee, a resident of South Korea, had a Permanent Establishment (PE) in India.
- During assessment proceedings, the AO observed that the assessee had set off business losses arising from its Indian PE against income classified under the head 'Income from Other Sources', which included Fees for Technical Services (FTS) taxable at a gross rate of 10% under the applicable tax treaty.
- The AO disallowed the set-off, contending that the FTS income was not attributable to the PE, and in the absence of an explicit treaty provision allowing such set-off, the adjustment was not permissible.
- The AO further held that the PE and the Head Office (HO) constitute effectively two separate entities for tax computation purposes. The PE income, according to him, was governed by business income provisions, whereas the FTS income (earned by the HO) was subject to gross taxation, and hence, inter-head set-off was not allowable.

[2] Hyosung Corporation v. ACIT (ITA No. 2943/Del/2013)

RULING OF THE TRIBUNAL

- The Tribunal held that, under the provisions of the Income-tax Act, the computation of income across all heads along with permissible set-offs of losses must be undertaken prior to the application of tax rates under the relevant treaty or special provisions.
- It observed that the PE and the HO constitute a single taxable entity under Indian tax law and cannot be treated as distinct or separate persons for the purpose of computing total income.
- The Tribunal noted that while the treaty classifies PE income and FTS income under different articles, both income streams shall classify as business income for the assessee
- It was further held that the treaty governs taxability and applicable rates, but the method of computation of total income including inter-head or intra-head set-offs is governed by the Income tax Act, unless the treaty explicitly provides otherwise.
- The Tribunal emphasized that Section 115A, which provides for gross taxation of FTS, does not contain any express prohibition against the set-off of business losses.
- In light of the absence of a specific restriction in the treaty or the Act, the Tribunal concluded that the taxpayer was entitled to claim the set-off of PE losses against FTS income, in accordance with the more beneficial provisions of the Income tax Act.

ELP Comments

This ruling affirms that set-off of PE losses against FTS income taxable on a gross basis is permissible under Income tax Act.

Mumbai Tribunal[3] holds that STCG arising from sale of equity and debt Mutual Funds are exempt under article 13(5) of the India-Singapore DTAA.

FACTS OF THE CASE

- The assessee, a tax resident of Singapore and a non-resident Indian sold units of mutual funds and earned short term capital gains of INR 13.6mn during AY 2022-23. While filing Income Tax Return for the period, she claimed benefit of Article of 13(5) which states that anything not covered under para 1 to 4 would fall in para 5 and taxability would arise in the country where transferor of such assets is resident.
- During assessment proceedings, the assessing officer ("AO") disallowed the claim of assessee and proposed addition of entire amount of short term capital gains earned. DRP upheld the order of the AO.
- Aggrieved, the assessee appealed to the Tribunal against such order.

RULING OF THE TRIBUNAL

- The issue under consideration was whether capital gains earned on sale of units mutual funds was taxable transfer in India.
- Article 13 of the India-Singapore DTAA provides for Capital Gains. Para 1 to 4 relates to gains derived from alienation of immovable property, movable property, ships or aircrafts and shares and para 5 relates to gains derived from alienation of any property other than para 1 to 4.
- The assessee relied on the following decisions and contended that unit of mutual funds would fall within the

[3] Anushka Sanjay Shah [TS-393-ITAT-2025]

residual para 5 and therefore not taxable in India-

- **Mumbai Tribunal in case of Satish Beharilal Raheja [2013] 37 taxmann.com 296** – the issue related to sale of mutual funds by non-resident in Switzerland. The Tribunal relied on the Apex Court decision of Apollo Tyres to hold that mutual funds are not shares and hence as per article 13(6) of Indo-Swiss DTAA would be applicable and gains would not be taxable in India.
- **Cochin Tribunal in case of K.E. Faizal (2019) 178 ITD 383** – The Tribunal held that article 13(4) of India-UAE DTAA covers shares and it could not be applied to mutual funds and hence the case was governed by Article 13(5).
- **Delhi Tribunal in case of Sanket Kanoi (2024) 168 taxman.com 418** – The Tribunal held that mutual funds are not shares and therefore sale of mutual funds is governed by 13(5) of India-UAE DTAA.

- In light of the above, the Tribunal relied on the decisions referred by the assessee and held that the assessee was entitled to deduction of short term capital gains under India-Singapore DTAA.

ELP Comments

This Tribunal re-emphasized that units of mutual funds are different from shares and hence gains on sale of mutual funds would be considered as 'any other property' and fall within the scope of residual para.

INDIRECT TAX – RECENT CASE LAWS

Payment of pre-deposit for litigation under the GST law using Electronic Credit Ledger is valid and sufficient compliance [4]

FACTS OF THE CASE

- Pursuant to issuance of adjudicating order confirming demand of tax due to non-compliance of Rule 96(10) of the Central Goods and Services Tax Rules, 2017, the Petitioner filed an appeal before the Commissioner (Appeal) and paid the mandatory pre-deposit in terms of Section 107(6) of the Central Goods and Services Tax Act, 2017 ('CGST Act') utilising the amounts available in the Electronic Credit Ledger. The appellate authority issued a letter directing the Petitioner to pay the pre-deposit amount through Electronic Cash Ledger.
- In its order issued in the matter, the Gujarat High Court upheld validity of pre-deposit paid using amounts available in the Electronic Credit Ledger. Aggrieved by this, the Department filed Special Leave Petition (SLP) before the Supreme Court.

ISSUE

- The issue pertains to eligibility to make payment of pre-deposit under Section 107(6) of the CGST Act using amounts in the Electronic Credit Ledger.

HELD

- The Gujarat High Court order observed that in terms of Section 49(4) of the CGST Act, amounts available in the Electronic Credit Ledger can be used for making any payment towards output tax subject to certain restrictions. Further, the term "output tax" has been defined under Section 2(82) of the CGST Act as the tax chargeable on taxable supply of goods or services.
- It was held by the High Court that any payment towards output tax, whether self-assessed in return or payable as consequence of any proceedings initiated by the authorities, can be made by using amounts available in the Electronic Credit Ledger. Hence, payment of pre-deposit of 10% of disputed tax under Section 107(6) of the CGST Act using amount available in the Electronic Credit Ledger was held valid by the High Court.
- The SLP filed by the Department was rejected by the Hon'ble Supreme Court with the observation that the order of the High Court does not require any interference.

ELP Comments

There have been several contradictory High Court orders on the issue in question. While the High Court of Orissa[5] and High Court of Patna[6] had held that pre-deposit under Section 107(6) of the CGST Act can only be paid using Electronic Cash Ledger, the Bombay High Court[7] had ruled that payment of pre-deposit amount through Electronic Credit Ledger would be considered as valid and sufficient compliance in terms of Section 107(6) of the CGST Act.

It is pertinent to note that Circular no. 172/04/2022-GST dated 06.07.2022 issued by the CBIC clarified that payment towards output tax, whether self-assessed in the return or payable as a consequence of any proceeding instituted under the provisions of GST Laws, can be made by utilization of the amount available in the electronic credit ledger of a registered person.

The position upheld by the Supreme Court in this matter would benefit the industry at large and avoid blockage of cash funds for filing of appeals. While the rejection of the SLP by the Hon'ble Supreme Court in this matter may be

[4] Union of India vs. Yasho Industries – TS-415-SC-2025-GST

[5] Jyoti Construction vs. Deputy Commissioner of CT & GST - 2021-TIOL-2007-HC-ORISSA-GST

[6] Flipkart Internet Pvt. Ltd. Vs The State of Bihar – TS-611-HC(PAT)-2023-GST

[7] Oasis Realty vs. Union of India – 2022-TIOL-1287-HC-MUM-GST

expected to impart finality to the issue, SLPs filed on the similar issue in various cases including the Patna High Court matter referred above are still pending before the Supreme Court.

Rejection of a Private Warehouse License solely on the existence of ongoing litigation is not sustainable; a clear distinction is to be drawn between an 'offence' and a 'contravention' [8]

FACTS OF THE CASE

- The Petitioner in this case had filed an application for obtaining a private bonded warehouse license under section 58 of the Customs Act, 1962 ('Customs Act') along with permission to carry out the manufacturing activities under section 65 of the Customs Act read with Manufacture and other Operations in Warehouse Regulations, 2019.
- The Petitioner had pending litigation under the Customs Act in respect of misclassification of goods, CVD duty liability as well as under the Excise and Service tax laws for non-payment of duty, admissibility of CENVAT Credit etc., for which penalty was imposed in some cases.
- The Assistant Commissioner of Customs rejected the Petitioner's application by resorting to Regulation No. 3(2)(c) of Private Warehouse Licensing Regulations, 2016 ('Warehouse License Regulations') which provides that the Commissioner shall not issue a license to the applicant if he has been penalized for an offence under the Customs Act,1962, Central Excise Act, 1944 or Finance Act,1994 ('Acts'). The Petitioner contended that none of the litigation in their case involved imposition of penalties for offences as envisaged under Regulation 3(2)(c), thus, being aggrieved by the rejection of the application, the Petitioner had approached the High Court.

ISSUE

- Whether penalty proposed/imposed for contravention of general provisions attract Regulation 3(2)(c) of the Warehouse License Regulations so as to deny grant of a warehouse license?

HELD

- The Gujarat High Court examined what constitutes offence under the provisions of the Acts. The Court noted that Chapter 16 of the Customs Act, comprising of Section 132 to 140A, provides for offences and prosecution.
- On perusal of the litigation pending against the Petitioner, the Court observed that the same was in respect of Chapter 16 of the Customs Act referred above or *pari-materia* provisions of the other Acts. It was observed that the penalty imposed/proposed to be imposed was in respect of non-payment of duty/taxes under general provisions of the respective Acts, not involving any "offence" as contemplated under the Regulation 3(2)(c).
- The Court observed that here is a distinction between "contravention" and "offence". Relying on Black Law Dictionary, the Court held that "contravention" is nothing but disputing or denying or opposing the claim or eligibility of the Petitioner under the provisions of various Acts and "offence" is defined in the context of crime or criminal offence being in violation of law.
- In consequence, it was held that merely pendency of litigation for any contravention of the provisions of the Acts same cannot be considered as an offence. Accordingly, the Court directed the Department to issue the license under the provisions of the Warehouse License Regulations if other conditions are fulfilled.

[8] Deepak Fertilisers and Petrochemicals Corporation Limited Vs. Union of India & Ors. [TS-371-HC-2025(Guj)-CUST]

CESTAT empowered to award compensatory interest on excess duty retained owing to inordinate delays spanning over a decade in the adjudication process.[9]

FACTS OF THE CASE

- The Respondent had cleared goods on payment of duty under provisional assessment in terms of Section 18 of the Customs Act. Based on subsequent collation of the relevant documents, the Respondent claimed classification under another category attracting lower duty and requested for finalization of assessment on this basis.
- While the adjudicating authority accepted the applicability of lower duty, there was an unexplained inordinate delay of nearly fourteen (14) years in finalisation of the assessment
- Upon finalisation of the assessment, while refund of the excess duty was granted within three months, refund of interest was not granted. Upon appeal, the CESTAT granted compensatory interest to the Respondent under Section 27A of the Customs Act on the excess duty amount for the period from three months of the request for finalisation assessment of the Respondent to actual date of refund.
- The Department preferred an appeal before the High Court stating that Section 27A of the Customs Act provides for grant of interest only if refund is not made within three months from the date of application for refund or from the date of order by the appellate authority. It was contended that the Tribunal is denuded of power to grant compensatory interest beyond the provisions of Section 27A of the Customs Act.

ISSUE

- The issues before the High Court were determination on whether the CESTAT has the jurisdiction and power to grant compensatory interest under Section 27A of the Customs Act; especially when considered in light of the inordinate delay of around fourteen (14) years in finalization of assessment by the Customs authorities.

HELD

- The Court observed that the hierarchical adjudicatory system under the Customs Act does not restrict CESTAT from considering the delay in finalization of assessment and awarding compensatory interest. The Tribunal can exercise jurisdiction to ensure substantial justice, balancing technical objections against the need to prevent unjust enrichment by the Department retaining excess duty for over a decade.
- The Court held that the Tribunal's power to award interest is not fettered by the Department's technical compliance with statutory timelines for payment once the refund order is passed. The delay in adjudication justifies compensatory interest to prevent unjust enrichment.
- The Court referred to the CBIC Manual of Instructions issued under Section 151A of the Customs Act, which mandates expeditious finalization of provisional assessments, generally within six months. The Court noted that while these instructions are not statutory provisions, they carry statutory flavour and reflect the intent of timely adjudication. The Court held that non-adherence to these instructions cannot be ignored and justifies imposition of interest for delay.
- The High Court also relied on the judgment of Bihar Foundry & Castings Ltd. Vs. Union of India [2024 (3) TMI 371] which considered the claim of interest awarded for considerable delay in adjudicating and determining duty.

ELP Comments

The decision expounds that the authorities cannot justify withholding excess duty for years by merely relying on the provision that interest becomes payable only if the refund is delayed beyond the prescribed period under the statute. The judgment rightly upholds that principles of justice and equity must take precedence over the statutory provisions.

[9] Commissioner of Customs (Preventive) Vs. M/s. Vedanta Ltd. [TS-403-HC-2025(ORI)-CUST]

It is pertinent to note that Section 18 of the Customs Act as amended by the Finance Act, 2025, now prescribes a statutory timeline of two years for finalization of provisional assessments.

High Court rules on difference between intermediary and principal-to-principal relationship[10]

FACTS OF THE CASE

- The Petitioner had entered into "Buying Support Services Agreement" with Columbia Sportswear Company, USA for provision of services in the nature of market surveys, identification of factories for purchase of goods, shipment tracking etc.
- The Petitioner treated the services pursuant to this agreement as export and filed a claim for refund of input tax credit ('ITC'). However, the claim was rejected on the ground that the services provided are classifiable as "intermediary services" as per Section 2(13) of the Integrated Goods and Services Tax Act, 2017 ('IGST Act') and hence do not qualify as "export of services".
- The Petitioner contended that it does not qualify as an "intermediary" within the meaning of Section 2(13) of IGST Act and the services provided by it qualify as export of services under Section 2(6) of the IGST Act.

ISSUE

- Whether the services provided by the Petitioner constituted "intermediary services" under Section 2(13) of the IGST Act, thereby disentitling it from claiming refund of ITC?

HELD

- The Karnataka High Court examined the legal position regarding what would constitute intermediary services vis-à-vis a principal-to-principal relationship. The Court laid down the following essential conditions for qualifying as intermediary, relying on CBIC circular No.159/15/2021-GST and various other judicial precedents:
  - If a person acts as an intermediary, apart from him, at least two other persons should be involved, and the intermediary should facilitate supply between two or more of them. There should be a minimum of three parties and two distinct supplies. The absence of three parties would straightaway rule out intermediary services.
  - The principal will supply the goods or services to a third party as one supply and such a transaction should be facilitated or arranged by the intermediary rendering the second supply to the principal i.e., the intermediary should not provide the services on his own account.
  - The agreement should clearly indicate that the intermediary is acting as facilitator between two or more persons.
- The High Court observed that there is fine distinction between an "intermediary" (defined under Section 2(13) of the IGST Act) and an "agent" (defined under Section 2(5) of the CGST Act). It was observed that the definition of intermediary calls him an agent who only does facilitation or arrangement and therefore, while he is an agent and acts for another, his job is to only facilitate or arrange supplies between his principal and a third party.
- Based on the above, the High Court held that the services provided by the Petitioner under the Agreement do not qualify as "intermediary services" for the following reasons:
  - Only two persons were involved in the subject Agreement.
  - Services were rendered by the Petitioner on its own account and it did not enable supply between the foreign recipient and the third parties.
  - The acts of the Petitioner are that of an independent contractor and it does not represent or bind Columbia

[10] M/s Columbia Sportswear India Sourcing Pvt Ltd. Vs. Union of India [TS-421-HC (KAR)-2025-GST]

Sportswear Company, USA, in the course of executing its services i.e., the latter is free to choose from whom he would procure and the Petitioner's recommendations are not final and binding.

- Remuneration is based on a cost-plus mark-up basis and not based on percentage of success, etc. which is common in agency agreements.

Refund of Compensation Cess paid on the inputs used in manufacturing is eligible when the resultant goods are exported on payment of Integrated Goods and Service Tax, but do not attract Compensation cess [11]

FACTS OF THE CASE

- The Petitioner procured coal for use in its manufacturing process discharging applicable Compensation cess on the same and availed ITC of such cess. The finished goods manufactured by the Petitioner were exported on payment of Integrated Goods & Services Tax ('IGST'). Such finished goods were not subjected to Compensation cess. The outward supplies made by the Petitioner being zero rated supply, the Petitioner applied for the refund of unutilised ITC of Compensation cess in terms of Section 16 of the IGST Act read with Section 54 of the CGST Act.
- Such refunds were initially granted to the Company. Subsequently, notices were issued proposing to recover the refunds already sanctioned and subsequent applications filed by the Petitioner were rejected. The GST authorities supported these actions relying upon Circular No. 125/44/2019 dated 18.11.2019 read with Para 5 of Circular No. 45/19/2018 dated 30.05.2018 and interpreting the same to the effect that refund of unutilised ITC of Compensation cess is available only if the underlying exports are made without payment of tax.

ISSUE

- The issue for consideration before the Gujarat High Court was eligibility of refund of Compensation cess paid on import of coal, when the resultant finished goods were exported on payment of IGST but did not attract Compensation cess.

HELD

- The High Court observed that in terms of Section 11 of the Compensation Cess Act, 2017 ('Compensation Cess Act') the provisions of CGST Act and IGST Act are *mutatis mutandis* applicable in relation to the levy of the Compensation cess. Considering the same and referring to Section 54(3) of the CGST Act and Section 16 of the IGST Act, the Petitioner is entitled to claim refund of utilised ITC of Compensation cess paid on the inputs used in manufacturing of the goods exported.
- It was held that since no Compensation cess was payable at the time of export of goods and ITC of Compensation cess cannot be utilised for payment of IGST on export in terms of proviso to Section 11(2) of the Compensation Cess Act, the Petitioner was eligible to claim refund of unutilised ITC of the Compensation cess paid on inputs used in manufacturing of the goods which are exported. The High Court also observed that the reliance placed by the Department on the Circular No. 125/44/2019 dated 18.11.2019 was misplaced.

[11] Patson Papers Private Limited vs Union of India & Ors. [TS-439-HC(GUJ)-2025-GST]

NOTIFICATIONS ISSUED BY THE DIRECTORATE GENERAL OF FOREIGN TRADE

DGFT Notification No. 06/2025-26 dated 02.05.2025, Customs Instruction No. 07/2025 dated 03.05.2025 and Customs Instruction No. 08/2025 dated 05.05.2025 – Prohibition on imports from Pakistan

Vide the above referred Notification and corresponding instruction, any direct or indirect import of all the goods originating in or exported from Pakistan has been prohibited, in the interest of national security due to bordering tensions with Pakistan.

Further, the CBIC has instructed the Customs authorities to follow the order issued by the Ministry of Home Affairs for closure of the Integrated Check Post, Attari for all movements of passengers/goods except for prescribed exclusion.

DGFT Notification No. 07/2025-26 dated 17.05.2025 and Customs Instruction No. 11/2025 dated 17.05.2025 – Restrictions on imports from Bangladesh

Vide this Notification and corresponding instruction, the import of specified goods such as garments, food items, etc. from Bangladesh through all or specified land ports / land Customs stations other than the specified seaports has been restricted. This has been issued as a part of retaliatory measures following Bangladesh's restrictions on Indian exports.

DGFT Notification No. 11/2025-26 dated 26.05.2025 – Restoration of RoDTEP benefit for AA holders, SEZs and EOUs from 01.06.2025

Vide the notification, the benefit under Remission of Duties and Taxes on Exported Products (RoDTEP) scheme has been restored for exports made by Advance Authorization (AA) holders, EOU and units operating in Special Economic Zones (SEZ) on eligible exports made w.e.f. 01.06.2025.

ELP Comments

The benefit under RoDTEP to AA holders, EOU and SEZ was earlier extended and made available till 05.02.2025. Upon various representations made by the export bodies, the benefit of RoDTEP has now been restored for AA holders, EOU and SEZ w.e.f. 01.06.2025. Given that the extension has been granted only from 01.06.2025, several stakeholders have made representations for restoration of the benefit for the intervening period.

DGFT Public Notice No. 04/2025-26 dated 06.05.2025 – Expansion of scope of Stock and Sale policy for export of SCOMET items

The Stock and Sale policy as per Para 10.10 of the Handbook of Procedure 2023 allows export of Special Chemicals, Organisms, Materials, Equipment and Technologies (SCOMET items) to overseas subsidiary/parent company acting as Stockist for further sale by such entity within the same or other countries. Vide the public notice, the scope of this policy has been expanded to allow export of SCOMET items to (i) affiliate of Indian exporter or (ii) Indian or Foreign Original Equipment Manufacturer (OEM) or (iii) Electronic Manufacturing Services provider (EMS) or (iv) Contract Manufacturer (CM), in addition to subsidiary company or parent company of the Indian exporter. Further, the additional documentary requirement has been prescribed in case the exports are to be made to OEM/EMS/CM.

ELP Comments

These amendments in the Stock and Sale policy are significantly expanding the scope of the said policy. Extension of the Stock and Sale Policy for export of SCOMET items to affiliates, OEM, CM or EMS would enable the Indian exporters to efficiently handle export of SCOMET items to these third parties. Various other compliances and conditions concerning the Stock and Sale Policy remain largely unchanged.

We trust you will find this an interesting read. For any queries or comments on this update, please feel free to contact us at insights@elp-in.com or write to our authors:

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