

INDIRECT TAX

Weekly Digest

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GOODS & SERVICES TAX

LEGISLATIVE UPDATES

PRESS RELEASE

Recommendations of GST council 43rd Meeting

IGST Exemption/rationalisation of GST rates on COVID 19 related imports/supplies

- COVID-19 treatment related goods such as Medical oxygen, Oxygen concentrators and other Oxygen storage and Transportation equipment, certain Diagnostic markers test kits and COVID-19 vaccines, etc., have been recommended for full exemption from IGST, even if imported on payment basis, for donating to the government or on recommendation of state authority to any relief agency. Hitherto, IGST exemption was applicable only when these goods were imported “free of cost” for free distribution. The above exemption from IGST has also been proposed to be extended to Amphotericin B used as black fungus drug, upon which Basic Customs Duty is already exempted. The exemption from IGST for the above-mentioned goods would be available up to 31 August 2021.
- Further it has been decided that a Group of Ministers (GoM) will be formed to discuss and decide on the reduction in GST on covid related items. GoM will submit its report by 8 June 2021.

Other Reliefs on Goods

The Council also decided to reduce GST from 12% to 5% on Diethylcarbamazine tablet, used in a WHO programme for lymphatic filariasis elimination.

Clarifications/Clarification amendments- recommended in relation to GST rates

- Leviability of IGST on repair value of goods re-imported after repairs;
- GST rate of 12% to apply on parts of sprinklers/drip irrigation systems falling under tariff heading 8424 (nozzle/laterals) to apply even if these goods are sold separately.

Rationalisation of GST rate on specified services

- Exemption of GST on food (including any mid-day meals scheme sponsored by Government), served to an educational institution including Anganwadi (which provide pre-school education also), irrespective of funding from government grants or corporate donations for such supplies;
- Services provided by way of examination including entrance examination, where fee is charged for such examinations, by National Board of Examination (NBE), or similar Central or State Educational Boards, and input services relating thereto are exempt from GST;
- Appropriate changes decided to be made to clarify that landowner promoters can utilise credit of GST charged on them by developers with respect of apartments that are subsequently sold by the land promoter and on which GST is paid. The developer-promotor shall be allowed to pay GST relating to such apartments any time before or at the time of issuance of completion certificate;

- The rates on Maintenance, Repair and Operations (MRO) of ships and vessels be reduced to 5% from the existing 18%. The point of sale for the B2B supply of these MRO services for ships and vessels would be considered as the location of recipient of service;
- Any milling services of wheat, rice or paddy provided to governments for distribution of flour or rice under the Public Distribution Scheme (PDS) would be exempt from GST, if the value of goods in composite supply does not exceed 25%. Otherwise, such services would attract GST at the rate of 5% if supplied to any person registered in GST, including a person registered for payment of TDS;
- GST will be levied on annuity payments that are received as deferred payment for the construction of roads. The benefit of the exemption is for such annuities which are paid for the service by way of access to a road or a bridge;
- GST rate of 18% to be levied on construction of ropeway to a Government Entity;
- GST is exempt on services by way of guarantee provided by the Government to its undertaking/PSU on loans taken by such entity from banks and financial institutions.

Trade Facilitation

- Amnesty Scheme to provide relief to taxpayers by rationalising late fee for pending returns for period from July 2017 to April 2021, if furnished between 01 June 2021 to 31 August 2021, as under:
 - Late fee capped to a maximum of INR 500/- (INR 250/- each for CGST & SGST) per return for taxpayers, who did not have any tax liability for period from July 2017 to April 2021;
 - Late fee capped to a maximum of INR 1,000/- (INR 500/- each for CGST & SGST) per return for other taxpayers.
 - The late fee for delay in furnishing of FORM GSTR-3B and FORM GSTR-1 to be capped, per return, as below:
 - For taxpayers having nil tax liability in GSTR-3B or nil outward supplies in GSTR-1, the late fee to be capped at INR 500 (INR 250 each for CGST & SGST);
 - For taxpayers having Annual Aggregate Turnover (AATO) in preceding year up to INR 15 Mn., late fee to be capped at maximum of INR 2,000 (INR 1,000 each for CGST & SGST);
 - For taxpayers having AATO in preceding year between INR 15 Mn. to INR 50 Mn., late fee to be capped at maximum of INR 5,000 (INR 2,500 each for CGST & SGST);
 - For taxpayers having AATO in preceding year above INR 50 Mn., late fee to be capped at maximum of INR 10,000 (INR 5,000 each for CGST & SGST).
 - Further, late fee for delay in furnishing of FORM GSTR-4 by composition taxpayers to be capped at INR 500 (INR 250 each for CGST & SGST) per return, if tax liability is 'nil' in the return, and INR 2,000 (INR 1,000 each for CGST & SGST) per return for others;
 - Also, late fee payable for delayed furnishing of FORM GSTR-7 to be reduced to INR 50/- per day (INR 25 each for CGST & SGST) and to be capped at maximum of INR 2,000/- (INR 1,000 each for CGST & SGST) per return.
- *All the above proposals are to be made applicable for respective tax periods.

Compliance relief measures for taxpayers, on account of COVID 19

This is in addition to the relief measures already provided to the taxpayers vide the notifications issued on 01 May 2021:

For small taxpayers (aggregate turnover up to INR 50 Mn.)

March & April 2021 tax periods

- Nil rate of interest for first 15 days from the due date of furnishing the return in FORM GSTR-3B or filing of PMT-06 Challan, reduced rate of 9% thereafter for further 45 days and 30 days for March 2021 and April 2021, respectively;
- Waiver of late fee for delay in furnishing return in FORM GSTR-3B for the tax periods March / QE March 2021 and April 2021 for 60 days and 45 days respectively, from the due date of furnishing FORM GSTR-3B;
- Nil rate of interest for first 15 days from the due date of furnishing the statement in CMP-08 by composition dealers for QE March 2021, and reduced rate of 9% thereafter for further 45 days.

May 2021 tax period

- Nil rate of interest for first 15 days from the due date of furnishing the return in FORM GSTR-3B or filing of PMT-06 Challan, and reduced rate of 9% thereafter for further 15 days;
- Waiver of late fee for delay in furnishing returns in FORM GSTR-3B for taxpayers filing monthly returns for 30 days from the due date of furnishing FORM GSTR-3B.

For large taxpayers (aggregate turnover above INR 50 Mn.)

- A lower rate of interest @ 9% for first 15 days after the due date of filing return in FORM GSTR-3B for the tax period May 2021;
- Waiver of late fee for delay in furnishing returns in FORM GSTR-3B for the tax period May 2021 for 15 days from the due date of furnishing FORM GSTR-3B.
- Certain other COVID-19 related relaxations to be provided, such as:
 - Extension of due date of filing GSTR-1/ IFF for the month of May 2021 by 15 days;
 - Extension of due date of filing GSTR-4 for FY 2020-21 to 31 July 2021;
 - Extension of due date of filing ITC-04 for QE March 2021 to 30 June 2021;
 - Cumulative application of rule 36(4) for availing ITC for tax periods April, May, and June 2021 in the return for the period June 2021;
 - Allows filing of returns by companies using Electronic Verification Code (EVC), instead of Digital Signature Certificate (DSC) till 31 August 2021.
- Relaxations under section 168A of the CGST Act: Time limit for completion of various actions, by any authority or by any person, under the GST Act, which falls during the period from 15th April 2021 to 29th June 2021, to be extended up to 30 June 2021, subject to some exceptions.

Simplification of Annual Return

- Taxpayers would be able to self-certify FORM GSTR-9C, the reconciliation statement for FY 2020-21, instead of getting it certified by chartered accountants.
- The filing of annual return in FORM GSTR-9 / 9A for FY 2020-21 to be optional for taxpayers having aggregate annual turnover up to INR 20 Mn.

- The reconciliation statement in FORM GSTR-9C for the FY 2020-21 will be required to be filed by taxpayers with annual aggregate turnover above INR 50 Mn.

Other Measures

- Retrospective amendment in section 50 of the CGST Act with effect from 01 July 2017, providing for payment of interest on net cash basis, to be notified at the earliest.
- GST Council recommended amendments in certain provisions of the Act to make the present system of GSTR-1/3B return filing as the default return filing system in GST.

[PIB - Press releases dated 28 May 2021]

JUDICIAL UPDATES

ORDERS BY AUTHORITY FOR ADVANCE RULING (AAR)

Facilitation of supply of goods/ services would be 'Intermediary' services, exigible to GST

Facts of the Case

- Dubai Chamber of Commerce and Industry ("DCCI UAE") is a non-profit organisation engaged in promotion of business activities for Dubai as an international business hub. DCCI UAE has set-up Dubai Chamber of Commerce and Industry - liaison office ("Taxpayer") in India for liaisoning between DCCI UAE and Indian office; and
- Basis the agreed services, the taxpayer is only entitled to recover expenditure incurred on behalf of DCCI UAE on actuals.

Questions before the AAR

- Whether activities undertaken by the taxpayer shall be construed as 'Supply' under GST laws and thereby leviable to GST?
- Whether the taxpayer is required to registration under the Central Goods and Services Tax Act, 2017 ("CGST Act")?

Contention of the Taxpayer

- The taxpayer submitted that it receives surplus funds from DCCI UAE basis expenditure forecast for a quarter. In case of excess funds, the same are adjusted against expenses for subsequent periods. Thus, no profit/consideration is earned by the taxpayer;
- The taxpayer contended that services rendered to DCCI UAE will not get covered under the definition of 'supply' as provided in section 7 of CGST Act, 2017 since consideration is not received. Further, the said services will also not fall under Schedule I of the CGST Act, 2017 which requires services to be carried-out in the course of furtherance of business. Whereas the taxpayer is engaged in providing liaison activities only; and
- Given the aforesaid, services rendered by the taxpayer does not amount to supply and thereby levy of GST. Accordingly, the taxpayer is not required to get registered under the GST laws.

Contention of the Tax Authority

- The tax authority in cognizance of section 2(31) as well as section 15(2)(c) of the CGST Act, 2017 stated that the funds received by the taxpayer from DCCI UAE will be construed as amount charged by the supplier in respect of services performed. Also, on perusal of financial statements of the taxpayer, it is observed that surplus

funds left with the taxpayer are not shown under the head of liabilities, rather gets recorded as profits. Thus, such remittances by DCCI UAE will be treated as consideration; and

- Further, basis the facts of the case, the taxpayer does not satisfy the conditions of being a 'Pure Agent' of DCCI UAE in terms of rule 33 of the CGST Rules, 2017. On the contrary, even if it is assumed that no consideration is being received by the taxpayer, it will get covered under the definition of 'Supplier' as per section 2(105) of the CGST Act, 2017 being an agent of DCCI UAE. Consequently, supply made by them without consideration will fall under the purview of GST laws.

Observation and ruling by the AAR

- AAR held that the taxpayer will be considered as 'Intermediary' of DCCI UAE in terms of section 2(13) of the IGST Act, 2017 on the following grounds:
 - An 'intermediary' can be referred to by any name including liaison office;
 - The taxpayer is engaged in facilitating business connections between India and Dubai, and
 - The taxpayer is not providing any service on its own account
- Further, AAR concluded that the term 'business' as defined under section 2(17) of the CGST Act, 2017 is an inclusive definition and will include activities carried-out by the taxpayer under the said term;
- Furthermore, AAR agreed with the submissions of the tax authority with regard to assertions made in financial records by the taxpayer and concluded that the surplus funds will amount to consideration being charged; and
- In light of the above, AAR concluded that services provided by the taxpayer will be treated as supply under GST laws. Accordingly, the taxpayer is liable to obtain registration in order to discharge GST liabilities.

[AAR-Maharashtra, Dubai Chamber of Commerce And Industry, Ruling no:GST AAR-35/2019-20/B-14 dated 24 May 2021]

ORDERS BY APPELLATE AUTHORITY FOR ADVANCE RULING (AAAR)

Supply of printing of content provided by recipient on PVC materials is a composite supply, where service of 'printing' is principal supply

Facts of the case

- Macro Media Digital Imaging Pvt. Ltd. ('Taxpayer') is registered under GST. The taxpayer is dealing in supply of billboards, building wraps, fleet graphics, window graphics, trade show graphics, and various other trade advertisements. The printing of trade advertisements is carried-out on Poly Vinyl Chloride ('PVC') material;
- The taxpayer was of the view that the supply of PVC material along with the print of trade advertisement shall be treated as supply of 'goods'. In this regard, the taxpayer approached the AAR with the below mentioned questions;
- The AAR held that the said activity is a supply of 'service' classifiable under SAC 998912. Aggrieved by the unsatisfactory ruling by the AAR, the taxpayer filed an appeal to the AAAR, Tamil Nadu.

Questions before the AAAR

- Whether the transaction of printing of content provided by the customer on PVC banners and supply of such printed trade advertisement is supply of 'goods'?
- What is the classification of such trade advertisement material, if the transaction is a supply of goods?
- What is the classification and applicable rate of GST on the supply of such trade advertisement material, if the transaction is that of a supply of 'services'?

Contention of the Taxpayer

- The taxpayer submitted that supply of printed trade advertising materials is a supply of goods as the property is movable in nature as per the definition of goods under section 2(52) of the CGST Act, 2017 and section 7 of the CGST Act, 2017 read with entry no:1(a) of schedule II;
- The taxpayer further submitted that the supply of trade advertisement involves multiple supplies and hence amounts to 'composite supply', however where the principal supply is the supply of 'goods' in terms of section 8 of the CGST Act, 2017. Therefore, the taxpayer classifies the supply under the head 4911 - 'trade advertising material' and basis such submission, concluded the rate of GST to be 12%;
- In order to support the above contention, the taxpayer relied on the following decisions:-
 - Commissioner of Sales Tax, M.P. Vs. Purshottam Premji 1970 (26) STC 38 SC dated 13 April 1970.
 - OIO No.HYD-EXCUS-003-com-020-14-15 dated 18 July 2014
 - OIO No. 42/43/JC/CGST & CX/North/Kol/2017-18 dated 23 February 2018
 - A.P. State Electricity Board Vs Collector of C.Ex., Hyderabad 1194 (70) E.L.T.3 (S.C)
 - CCE-IV vs Fitrite Packers - 2015 (324) E.L.T. 625 (S.C.) dated 07 October 2015
 - J.J Enterprises vs CCE, Meerut 2013 (295) E.L.T.324 (Tri-Del)
 - Forbes & Company Ltd v CCE, Mumbai-11-2018 (3) TMI 60-CESTAT Mumbai
 - Venus Albums Co Pvt Ltd v CCE, Chandigarh-2019 (22) GSTL 386 (Tri-Chan)
- The taxpayer, in addition to the above, contended that the AAR has failed to understand and appreciate the true nature and substance of the contract entered into by the taxpayer with its customers and the consequent underlying deliverable/ supply being made;
- Also, the taxpayer concluded by highlighting that the AAR has failed to substantiate the issue with proper reasoning and justification relating to the para 4 of the circular no:11/11/2017 dated 20 November 2017 and submitted that the decision by the AAR based on the above circular is not tenable. The taxpayer claimed that the supply of goods is the principal supply as per para 5 of the impugned circular.

Observations & Ruling by the AAAR

- The AAAR examined sample purchase orders and invoice along with the decisions submitted by the taxpayer which stated the difference between a contract for work or service and a contract of sale. Basis such examination, the AAAR recorded that, the printing contract as mentioned in

purchase order along with the transfer of the property held by the taxpayer as 'trade advertisement material' - as a contract for work or service only and not a contract of sale of goods;

- The AAAR further observed that once the activity is held as a contract for work or service, wherein there is also a transfer of property incidentally then it is a composite supply as per section 8 of the CGST Act, 2017, wherein the activity of 'printing of the content' is the principal supply;
 - The AAAR held as follows:
 - The printing of content provided by the recipient on the PVC materials of the taxpayer and supply of printed trade advertising material to the recipient is a composite supply, and 'supply of service of printing' is the principal supply;
 - The classification of the service is SAC 998912 and the applicable tax rate is 18% as per entry no:27/27 (ii) of notification no:11/2017-CT(R) dated 28 June 2017 & G.O. (Ms) no:72 dated 29 June 2017 no:II(2)/CTR/532(d-14)/2017 for the period 01 July 2017 to 13 October 2017 and thereupon the applicable rate is 12% as per entry no:27(i) of notification no:11/2017-CT(R) dated 28 June 2017 as amended & G.O.(Ms) No.72 dated 29 June 2017 no:II(2)/CTR/532(d-14)/2017 as amended.
- [AAAR-Tamil Nadu, M/s. Macro Media Digital Imaging Pvt Ltd, Ruling no:AAAR/02/2021, dated 02 February 2021]

CUSTOMS

INSTRUCTIONS

Relaxations provided under Gas Cylinders Rules, 2016, so as to fast track approvals for imported cylinders and pressure vessels for storage and transportation of medical oxygen

- In view of the COVID pandemic, vide press release dated 15 May 2021, it is stated that, by way of an exemption, Petroleum and Explosives Safety Organization (PESO) shall not carry-out physical inspection of global manufacturers' production facilities before grant of required approval for import of cylinders and pressure vessels for storage and transportation of medical oxygen;
- Now, PESO shall grant such approvals online without any delay on submission of manufacturer's particulars, ISO certificate of manufacturer, list of cylinders their specifications, drawings & batch number, hydro test certificate and third-party inspection certificate;
- Every foreign manufacturer/importer who wants to import oxygen cylinders is required to apply for import permission through PESO online system;
- In this regard, DPIIT has further clarified as follows:
 - In case the importer has applied through online application to PESO and the decision is pending in PESO, the exemption allows them to bring oxygen cylinders on urgency for COVID relief activities in India;
 - In case the importer has not applied through online application to PESO, the exemption allows them to bring cylinders for urgent use for enhancing oxygen distribution logistics in India;
 - It is the responsibility of the consignee to follow the procedure as per relaxed conditions given in the table

of para 3 of the press release, prior to the filling of the medical oxygen in these cylinders at refillers/ filling plants;

- In view of the above, Customs is requested to give necessary clearances without PESO approvals for such items received at the ports/airports for COVID relief works.

[Instruction no:12/2021-Customs 25 May 2021]

JUDICIAL UPDATES

Imposition of IGST on oxygen concentrators imported by individuals is unconstitutional: High Court of Delhi

Facts of the case

- Gurcharan Singh ('Taxpayer') has approached High Court of Delhi against the imposition of IGST on the import of the oxygen concentrator which has been gifted to him by his nephew. The taxpayer, asserts that the imposition of tax is discriminatory, unfair, and unreasonable and that it impinges upon his right to life and health;
- The clearance of the oxygen concentrator from the customs barrier required payment of IGST at the rate of 12%. It is relevant to note that before 01 May 2021, an individual importer would have had to pay IGST at the rate of 28% qua oxygen concentrator gifted to him for personal use. This stood in contrast to oxygen concentrators which were imported for commercial use. The IGST on oxygen concentrator, which was imported for commercial use, was and continues to be leviable at the rate of 12%.

Question before the Hon'ble High Court

- Whether the state's action, of imposing IGST on oxygen concentrators, which were directly imported by individuals, albeit free of cost, without the aid of a canalising agency runs afoul of Article 14 of the Constitution of India?
- Whether Article 21 of the Constitution of India, which includes the right to health and affordable treatment, would require the state to demonstrate that levy and collection of the impugned tax in times of pandemic, war, famine, floods, and such like conditions would subserve public interest?
- Whether Article 21 of the Constitution of India, imposes on the state, a positive obligation to provide adequate resources for protecting and preserving the health and well-being of persons residing within its jurisdiction?
- What relief, if any, can be granted to the taxpayer?

Observations & Ruling by the High Court

- Tax and equity are like two twins who are separated at birth having diametrically opposite attributes. Tax is an exaction. It is a facet of the state's sovereignty;
- Imposition of tax by the state is ordinarily sustained unless it falls foul of legislative competence and/or is violative of and/or ultra vires the Constitution of India;
- Taxing statutes are amenable to judicial review under Article 14 of the Constitution of India;
- From 01 July 2017, Basic Customs Duty (BCD) is levied on imported goods under the Customs Act, 1962 and IGST is leviable under section 3(7) of the Customs Tariff Act, 1975 read with section 5 of the IGST Act, 2017;
- Notification no:4/2015-2020, dated 30 April 2021, issued by the DGFT, exempted oxygen concentrators from

customs duty (BCD and IGST), and via a separate notification no:30/2021 dated 01 May 2021 was reduced from 28% to 12% qua imports made for personal use;

- When oxygen concentrators imported by a canalising agency was concerned, complete exemption from IGST was granted, albeit, subject to certain conditions vide notification no:4/2021 dated 03 May 2021;
- Although "exceptional circumstances" provision as adverted to in section 25(2) of the Customs Act, 1962 [i.e., the prevalence of COVID-19 pandemic] is invoked, there is no discernible rationale as to why the exemption from levy of IGST is not extended to oxygen concentrators imported by individuals for personal use;
- A bare perusal of the IGST Act, 2017 would show that the Government can exempt, generally, either absolutely or subject to such condition's goods or services or both from whole or any part of tax leviable thereof with effect from such date provided it is satisfied that it is necessary in the public interest to do so based on a recommendation received from the GST Council in that behalf;
- While the Court cannot issue a writ of mandamus directing the state to issue an exemption notification under section 25 of the Customs Act, 1962 in favour of the taxpayer or persons similarly circumstanced, the Court, is not prevented from judicially reviewing an exemption notification once it is issued by the State;
- The Hon'ble High Court held as follows:
 - Imposition of IGST on oxygen concentrators which are imported by individuals and are received by them as gifts [i.e. free of cost] for personal use, is unconstitutional;
 - Notification no:30/2021-Cus dated 01 May 2021 is quashed;
 - To obviate misuse of the oxygen concentrators, by the taxpayer and/or persons similarly circumstanced, she/he/they would have to furnish a letter of undertaking to the officer designated by the state that the same would not be put to commercial use;
 - The registry is directed to release the money, deposited with it, by the taxpayer, along with interest, if any accrued, at the earliest.

[High Court Of Delhi - Gurcharan Singh Vs Ministry Of Finance (Department Of Revenue) Government Of India - 2021-TIOL-1168-HC-DEL-CUS dated 21 May 2021]

Transfer of funds to cover some or all the loss referred as 'True Up payment' are irrelevant for invoice value

Facts of the case

- M/s. Volvo Auto India Private Limited ('taxpayer') is a subsidiary of M/s Volvo, Sweden (Parent Company) which manufactures Completely Built Units (CBU) of motor vehicles that are imported and sold by the taxpayer. Custom duty is chargeable on ad-valorem basis;
- The value of the goods for the purposes of calculation of Customs duty is the transaction value as per section 14 of the Customs Act, 1962, provided the buyer and seller are not related persons. In accordance with the rule 2(2) of the Customs valuation (Determination of Value of Imported Goods) Rules, 2007 ('Rules'), the taxpayer and the parent company are undisputedly related persons;
- The mechanism set -p to deal with such cases, is to refer the matter to a Special Valuation Branch ('SVB') for

investigation and pending investigation, also for the Bills of Entry (BoE) are assessed provisionally;

- CBIC issued circular no:04/2016-Customs dated 09 February 2016 directing that the SVB should not, henceforth, pass an appealable order but should only furnish an investigation report to the assessing officer, who, would accordingly finalise the assessments. As per the practice during the relevant period of this case, SVB did pass appealable orders;
- Two Orders-in-Original were passed by the Deputy Commissioner, SVB, holding that “the importer and the foreign supplier are related in terms of rules, however, the invoice value of the goods imported by the importer from the foreign supplier are not influenced by their relationship.” and the order was subject to review after 3 years;
- Thereafter, tax authority filed an appeal before the Commissioner (Appeals), who passed the impugned order “setting aside the order in original and allowing the appeal filed by the tax authority”;
- Aggrieved by this order, the taxpayer filed the appeal before Central, Excise and Service tax Appellate Tribunal (‘CESTAT’), New Delhi and challenged the impugned order, inter alia, majorly on the following grounds:
 - The impugned order was passed after an inordinate delay of more than one year after hearing;
 - The True Up payments received by the taxpayers are in the nature of ‘capital receipts’ and not ‘revenue receipts’.

Question before the CESTAT

- Whether the tax authority’s Order-in-Appeal is sustainable?
- Whether True Up payment is includible in the transaction value?

Observation and ruling by the CESTAT

- The CESTAT observed that the impugned order is vitiated as it was passed one year after the hearing was conducted and passing an order after such a lengthy period of time is not a positive outlook. However, no legal provision has been provided to establish that the delay invalidates the impugned order. CESTAT emphasizes that the delay, while unfavourable, does not invalidate the impugned order;
- The CESTAT noted that the True Up is an arrangement between the parent company and the taxpayer. However, on the merits the Court has decided that the True Up payment is made to the taxpayer in order to compensate for the losses;
- CESTAT denied the tax authority’s claim that-
 - The amounts represent transfers of funds from the parent company to the taxpayer and it makes no difference whether they are recorded as capital or revenue receipts;
 - It must be determined how much the taxpayer loses and how much is paid as a True UP payment, as well as whether the difference affects the invoice price.
- CESTAT observed that as rule 10(e), in determining the transaction value, there shall be added to the price actually paid or payable for the imported goods with, all other payments actually made or to be made as a condition of sale of the imported goods, by the buyer to the seller, or by the buyer to a third party to satisfy an obligation of the seller to the extent that such payments are not included in the price actually paid or payable;

- CESTAT added that, in the instant case, if the taxpayer is responsible for certain activities such as customs, taxability, inventory costs, distribution and sales promotions including advertising and marketing for its entire business in India, it cannot be called a payment to their foreign supplier but would be managing affairs related to its own business;
- CESTAT noted that, It would have been a different case, if the taxpayer was required, as per the agreement to promote, at its cost, the sales by the foreign suppliers to other customers in India or make some payment on behalf of the seller to a third party. In such a case, some expense would have been incurred by the taxpayer which could have been examined to see if it formed an additional consideration for the sale of the goods to the taxpayer;
- CESTAT held that the parent company can transfer to the taxpayer to cover some or all of the loss as True Up payment to keep the taxpayer survive, further held that no law requires such True UP payment, nor can it influence the transaction prices, as the losses incurred by the taxpayer have no bearing on the invoice value, regardless of whether the losses were recouped by the parent company in the form of True UP payments or not;
- Lastly, CESTAT holds the tax authority’s Order-in-Appeal to be ambiguous since it discovered multiple errors with the Order-in-Original but neither did it decide on those issues so as to modify the order in original nor did it remand the matter to the original authority for re-adjudication, thus sets side the same as unsustainable.

[CESTAT - New Delhi, Volvo Auto India Private Limited v. Commissioner of Customs (Import & General), Customs Appeal no:52017/2018 dt. 25 May 2021]

FOREIGN TRADE POLICY (FTP)

PUBLIC NOTICE

Fee for Non-Preferential Certificate of Origin (CoO)

DGFT has fixed a fee of INR 200 per certificate for Non-Preferential CoO.

[Public Notice no:5/2015-2020 dated 27 May 2021]

TRADE NOTICE

Mandatory recording of information about transfer of Duty-Free Import Authorization (DFIA) scrips and paperless issuance of DFIA Scrips

- In order to enable electronic, paperless transactions and facilitate trade, it is submitted that the recording of transferability of DFIA is being made online;
- In this regard, a facility has been created on DGFT website to record the information about transfer of DFIA scrips;
- The recording of given information would allow the transferee to apply for ARO/Invalidation against the said DFIA Scrip online;
- The given transfer of DFIA scrips, shall be recorded under the relevant module on the DGFT website (<https://dgft.gov.in>) -- > Services -- > AA/DFIA. Detailed procedure for recording of transfer of DFIA scrips is given in the Annexure to the trade notice;
- Further, the issuance of paper copies of DFIA scrips (for EDI Ports) shall be discontinued with effect from 07 June 2021;

- Security paper copies of DFIA Scrips shall continue to be issued for Non-EDI Ports;
- Any transfer of DFIA Scrips issued on or after this date shall be mandatorily recorded in the online system;
- The record of such transfers shall be mandatory for EDI ports as well as non-EDI Ports;
- Further, the issuance of paper copies of DFIA scrips (for EDI Ports) shall be discontinued with effect from 07 June 2021;
- Security paper copies of DFIA Scrips shall continue to be issued for non-EDI Ports. Any transfer of DFIA scrips issued on or after this date shall be mandatorily recorded in the online system. The record of such transfers shall be mandatory for EDI ports as well as non-EDI Ports;
- For cases where the DFIA scrip was issued prior to 07 June 2021 and an ARO/Invalidation is to be requested against the DFIA Scrip, the details of transfer of the said scrip (if any) would also be required to be recorded in the DGFT online system;
- For cases, where the ARO/invalidation is being requested by the original scrip owner no such record of transfer would be required. For cases where scrips were issued prior to 07.06.2021 and no request for ARO/Invalidation is to be made as on this date or after, the recording of any transfer of the given scrip shall not be mandatory;
- The DFIA scrip owner shall 'transfer' the scrip to another IEC in the same manner as was being done by them earlier i.e. as per the independently negotiated terms & conditions between the buyer and the seller;
- However, the information about the new owner (transferee) has to be recorded on the DGFT website by the original owner (transferor), before the new owner (transferee) can utilize the scrip to obtain any ARO/Invalidation;
- It is mandatory for both transferor and transferee to ensure that information regarding transfer is recorded. After the information is confirmed on the DGFT e-platform, the old owner cannot re-record the transfer, and only the new owner can record and further transfer/retransfer;
- It should be noted that unless recorded on DGFT website, the new owner (transferee) will not be able to utilize the scrip. Therefore, the new owner (transferee) has to ensure that the scrip is recorded in his favour by the old owner (transferor). DGFT/Customs shall not be responsible for any lapse by the old or new owner or any dispute in this regard;
- Applicants shall continue to apply for DFIA as per online procedure and the Regional Authorities will continue to issue the DFIA scrips in online module. The applicant would also continue to apply for ARO/Invalidation as per online procedure. The applicant for ARO/Invalidation shall be the current owner of the scrip as recorded in the DGFT online system.

[Trade notice no:06/2021-22 dated 25 May 2021]

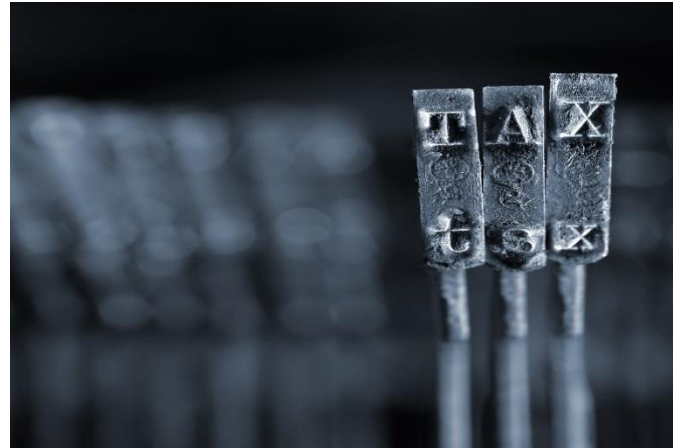
DGFT Import-Exporter Code(IEC) Services affected due to non-availability of PAN Validation Services

- The Central Board of Direct Taxes issued a press release stated that due launch of new e-filing portal of the Income Tax department, the e-filing services will not be available for the period of 01 June 2021 to 06 June 2021;
- It is informed that some DGFT services wherein CBDT PAN validation services are being consumed in the DGFT IT systems will get impacted during this period;
- Following DGFT services will not be available from 1 June 2021 to 6 June 2021:
 - Application for a new IEC;
 - Application for amendments/modification in an IEC;
 - One-time linking of Aadhaar for e-sign purposes.

[Trade notice no:07/2021-22 dated 26 May 2021]

NEWS FLASH

1. “GST Council becoming a ‘ceremonial seal, a rubber-stamp authority’: TN FM PTR”
<https://www.thenewsminute.com/article/gst-council-becoming-ceremonial-seal-rubber-stamp-authority-tn-fm-ptr-149753>
[Source: The News Minute, 29 May 2020]
2. “Late fee relief to non-filers of GST returns to help small biz, add to revenue: Experts”
<https://zeenews.india.com/economy/late-fee-relief-to-non-filers-of-gst-returns-to-help-small-biz-add-to-revenue-experts-2365164.html>
[Source: Zee News, 29 May 2020]
3. “Centre’s FY22 GST compensation amount should be higher than projected Rs 1.58L cr: Opp-ruled states”
<https://www.outlookindia.com/newscroll/centres-fy22-gst-compensation-amount-should-be-higher-than-projected-rs-158l-cr-oppruled-states/2092730>
[Source: Outlook India, 30 May 2020]
4. “GST Council Discussed Tax Relief on COVID Medicines, Essentials: Maharashtra Deputy CM”
<https://www.news18.com/news/business/gst-council-discussed-tax-relief-on-covid-medicines-essentials-maharashtra-deputy-cm-3788714.html>
[Source: News 18 Business, 29 May 2020]
5. “COVID-19: Group of Ministers set up to examine need for GST cut on essentials”
<https://zeenews.india.com/economy/covid-19-group-of-ministers-set-up-to-examine-need-for-gst-cut-on-essentials-2365320.html>
[Source: Zee News, 30 May 2020]



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