INDIRECT TAX WEEKLY DIGEST

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GOODS & SERVICES TAX

LEGISLATIVE UPDATES

GSTN ADVISORY

TEMPORARY HALT IN AUTO-POPULATION OF THE E-INVOICE DATE TO FORM GSTR-1

GSTN has recently issued an advisory stipulating that the auto-population of e-Invoice in Form GSTR-1 will be temporarily unavailable between 26 September 2023 and 29 September 2023 on all six Invoice Registration Portals.

The details of e-invoice generated during the aforesaid period will be auto-populated to Form GSTR-1 on 30 September 2023 and hence, the same will not impact Form GSTR-1 fillings. Accordingly, the Taxpayers have been advised to avoid manually adding the details of invoices generated during the aforesaid period since the halt in auto-population is merely temporary.

[GSTN dated 27 September 2023]

NOTIFICATIONS

THE EFFECTIVE DATE OF A SPECIAL PROCEDURE FOR REGISTERED PERSONS ENGAGED IN MANUFACTURING PAN MASALA AND TOBACCO PRODUCTS

Notification no:30/2023-Central Tax dated 31 July 2023[1], inter alia, stipulated a special procedure to be followed by registered persons engaged in the manufacture of specified goods (viz., pan masala and tobacco products). The said procedure will be made effective from 1 January 2024.

[Notification no: 47/2023-Central Tax dated 25 September 2023]

GST ON SERVICES BY WAY OF TRANSPORTATION OF GOODS BY VESSEL FROM A PLACE OUTSIDE INDIA UP TO THE CUSTOMS STATION OF CLEARANCE IN INDIA

Amendments have also been made in Notifications nos: 8,9&10/2017-Integrated Tax (Rate) dated 28 June 2017[2] as under:

- Notification no:10/2017 – Integrated Tax (Rate) dated 28 June 2017, inter alia providing for the services on which IGST is liable to be paid under the reverse charge mechanism has been amended. Till 30 September 2023, 'Services supplied by a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India upto the customs station of clearance in India' was leviable to GST and the 'importer' was liable to discharge GST under the reverse charge mechanism (though the Supreme Court in case of Mohit Minerals had struck off this levy). Effective 1 October 2023, the aforesaid entry is deleted.
- Notification no: 9/2017 – Integrated Tax (Rate) dated 28 June 2017 inter alia providing for exemption from IGST for specified services provided by a person in non-taxable territory to a person in non-taxable territory has been amended. Effective 1 October 2023, the exemption has now been extended in respect of services received from a provider of service located in non-taxable territory by a person located in a non-taxable territory in respect of services by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India.
- Notification no: 8/2017 – Integrated Tax (Rate) dated 28 June 2017 inter alia provides the applicable rate of IGST on

[1] Our summary of the notification can be accessed here.

[2] Amendments have been made vide Notification nos:11,12&13/2023 – Integrated Tax (Rate) dated 26 September 2023.

services. In the aforesaid notification, the entry about the transportation of goods in a vessel has been amended whereby the express inclusion of 'services provided or agreed to be provided by a person located in non-taxable territory to a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India' has been omitted.

[Notification no: 11,12&13/2023 – Integrated Tax (Rate) dated 26 September 2023]

JUDICIAL UPDATES

REFUND CANNOT BE DENIED MERELY BECAUSE 2 REFUND APPLICATIONS WERE FILED FOR THE SAME TAX PERIOD

Legislative Background concerning refund of unutilised Input Tax Credit (ITC) on account of Inverted Duty Structure (IDS)

- As per Section 54 of the Central Goods and Services Tax Act, 2017 (CGST Act), a taxpayer can claim a refund of unutilised ITC on account of IDS where the rate of tax on inputs is higher than the rate of tax on output supplies.
- Such refund is determined as per the formula provided under Rule 89 of the Central Goods and Services Tax Rules, 2017 (CGST Rules). One of the key factors in determining the refund amount is 'Net ITC' which means ITC availed on inputs during the relevant period which is computed based on Form GSTR-3B filed by a taxpayer.
- Notification no: 5/2017-Central Tax (Rate) dated 28 June 2017 (Notification) restricts the claim of refund of accumulated ITC on account of IDS on specified goods, inter alia including woven fabrics and knitted fabrics.
- The Notification was amended by Notification no:20/2018-Central Tax (Rate) dated 26 July 2018 (Amending Notification) inter *alia* stipulating that –
  - Refund of unutilised ITC, on inward supplies received on or after 1 August 2018, on account of IDS on woven fabrics and knitted fabrics can be claimed.
  - However, the unutilised ITC remaining accumulated after making payment of tax for and up to July 2018 on inward supplies received up to 31 July 2018 shall lapse.
- Subsequently, vide Circular no: 56/30/2018-GST dated 24 August 2018 (Circular dated 24 August 2018), CBIC had clarified that since the Notification does not put any restriction in respect of ITC availed on input services and capital goods, the proviso inserted by the Amending Notification would not affect ITC availed on input services and capital goods.
- Further, Circular no: 94/13/2019 dated 28 March 2019 (Circular dated 28 March 2019) was issued to clarify that refund of accumulated ITC due to IDS, for a tax period where there is a reversal of ITC, shall be claimed under the category 'Any Other' instead of 'Refund of unutilised ITC on account of accumulation due to inverted tax structure' as a one-time measure.

Facts of the present case

- M/s. Pee Gee Fabrics Pvt. Ltd. (Taxpayer) is *inter alia* engaged in the manufacture of fabrics from raw yarn for its onward supply.
- The fabrics are leviable to GST @ 5% whereas the raw materials i.e., inputs (such as yarn, colour and chemical, stores and consumables, Power and Fuel) are leviable to GST at a higher rate ranging from 12% to 28%. Thus, the fabrics manufactured by the Taxpayer suffer from IDS.
- Pursuant to the issuance of the Amending Notification, effective 1 August 2018, the Taxpayer was entitled to claim a refund of accumulated ITC on account of IDS under Section 54 of the CGST Act.
- While filing Form GSTR-3B for August 2018, the Taxpayer observed that during FY 2017-18, it had wrongly availed ITC on capital goods, on which, it had claimed depreciation under the Income Tax Act, 1961 on the entire purchase price (including GST thereon). Accordingly, the Taxpayer reversed the wrongly availed ITC of INR 1.12 Mn while filing Form GSTR-3B for August 2018 instead of reversing the ITC through Form GST DRC-03.
- The Taxpayer filed a refund application (first application) for August 2018 to claim a refund of accumulated ITC on account of IDS. However, due to the reversal of wrongly availed ITC on capital goods, the aforesaid refund claim was proportionately reduced by INR 0.81 Mn. The first application was allowed, and the refund was sanctioned to the Taxpayer.
- As regards the shortfall in claiming a refund in the first application, the Taxpayer raised an email query with the CBIC Mitra Helpdesk. Pending a response to such query, the Taxpayer filed another refund application (second application) seeking a refund of INR 0.81 Mn under the 'Any Other' category.
- Pursuant to the above, the Taxpayer received a Show Cause Notice (SCN) proposing to deny the refund claim *inter alia* on the ground that the Circular dated 28 March 2019 does not allow the filing of a second refund application for the same tax period and that the reversal of wrongly availed ITC was not sought by the Tax Authorities and was *suo motu* reversed by the Taxpayer. The aforesaid SCN was confirmed vide the Order-in-Original.
- Against this, the Taxpayer filed an appeal before the First Appellate Authority. Pending such appeal, the email query raised by the Taxpayer was responded to by the CBIC Mitra Helpdesk which affirmed the procedure adopted by the Taxpayer by directing it to file a refund application under the 'Any Other' category.
- However, the First Appellate Authority affirmed the Order-in-Original and dismissed the appeal filed by the Taxpayer.
- Aggrieved by the above, the Taxpayer filed a Writ Petition before the Hon'ble Gujarat High Court.

Contentions by the Taxpayer

- It is undisputed that the Taxpayer is entitled to a refund of unutilised ITC as per the Notification (as amended by the Amending Notification) read with the Circular dated 24 August 2018. Accordingly, the Taxpayer is entitled to claim a refund of the differential amount of INR 0.81 Mn which was proportionately reduced on account of reversal of wrongly availed ITC.
- The Tax Authorities cannot reject the second application on the grounds that a refund cannot be claimed by filing another application under the 'Any Other' category as per the Circular dated 28 March 2019.
- The observations of the Tax Authorities and the First Appellate Authority that reversal of wrongly availed ITC in Form GSTR-3B is binding on the Taxpayer, and hence, cannot be claimed as refund is contrary to the facts by misreading the aforesaid Notifications and Circulars.

Contentions by the Tax Authorities

- The Taxpayer cannot file another refund application for the same tax period i.e., August 2018 as the refund in respect of the first application was duly sanctioned and paid.
- The second application filed by the Taxpayer under the 'Any Other' category is without any calculation and contrary to Rule 89(5) of the CGST Rules. Hence, the Tax Authorities have rightly rejected the second application.
- The Taxpayer had suo motu reversed the wrongly availed ITC in August 2018 and the same is binding on the Taxpayer. Thus, the reversal of ITC on capital goods cannot be claimed as a refund due to IDS under Section 54 of the CGST Act.

Observations and Ruling of the Hon'ble High Court

- As per the formula provided under Rule 89(5) of the CGST Rules and the Notification (as amended by the Amending Notification), the Taxpayer is entitled to claim a full refund. However, the same was reduced by INR 0.81 Mn on account of reversal of wrongly availed ITC.
- The Tax Authorities have failed to consider that the Taxpayer has not filed a second refund application for the same tax period but filed the said application to claim the balance amount of refund which was not granted though the Taxpayer was eligible for the same. The Taxpayer had no other option but to file a second application under the 'Any Other' category in view of the Circular dated 28 March 2019.
- The grounds on which the second application was rejected are incorrect because as per the calculation made under the said Rule, the Taxpayer is entitled to a refund of INR 2.28 Mn which is undisputed and cannot be disputed by the Tax Authorities.
- It is also undisputed that the aforesaid claim of refund was restricted by the GST Portal in view of the reversal of wrongly availed ITC. Thus, the Tax Authorities ought to have considered that the Taxpayer was eligible to claim a refund of the balance amount of INR 0.81 Mn which cannot be denied on hyper-technical grounds.
- The observations of the Tax Authorities that the reversal of wrongly availed ITC is binding on the Taxpayer and hence, the Taxpayer is ineligible for claiming refund as per the Circular dated 28 March 2019 is untenable.
- The Tax Authorities and the First Appellate Authority could not have rejected the legitimate claim of the Taxpayer for a refund of the balance amount of INR 0.81 Mn by adopting such a pedantic approach.
- In view of the above, the Petition is allowed, and the orders passed by the Tax Authorities and the First Appellate Authority are set aside and the Tax Authorities are directed to sanction the refund of INR 0.81 Mn along with the applicable interest within 6 weeks.

  [M/s. Pee Gee Fabrics Pvt. Ltd. Vs. Union of India & Ors., [TS-458-HC(GUJ)-2023-GST], dated 15 September 2023]

ORDERS BY THE AUTHORITY FOR ADVANCE RULING (AAR)

SUBSIDIES RECEIVED FROM THE CENTRAL/ STATE GOVERNMENT CANNOT BE EXCLUDED FROM THE VALUE OF SUPPLY IF SUCH SUBSIDY DOES NOT AFFECT THE VALUE OF SUPPLY

Facts of the case

- M/s. Hitze Boilers Pvt. Ltd. (Taxpayer) is inter alia engaged in manufacturing machinery/industrial boilers for its onward supply.
- The Taxpayer intends to supply plants and machinery to M/s. Chinnapuri Silks (Recipient). The said supply is covered under the purview of Silk Samagra Scheme (Subsidy Scheme) under which 90% of the cost of plant and machinery would be received by the Taxpayer from the Central Government and the State Government.
- The salient features of the Subsidy Scheme are as under:
  - Under this scheme, the government undertakes various activities *inter alia* including empaneling suppliers, e-procurement of machinery, opening an ESCROW account and directing the bank to release the amount to the supplier.
  - The beneficiary of the subsidy under this scheme (i.e., the Recipient) has no role in initiating the scheme and the early-stage transactions are solely between the Government and the empaneled suppliers.
  - To ensure that the subsidy reaches the designated suppliers, the Government mandates the opening of an ESCROW account through a Letter of Credit (LC). The subsidy amount cannot be used for any other purpose except for the intended purpose.
  - Further, the beneficiary can account for the aforesaid expenditure in its books of accounts only to the tune of 10% of the amount which is borne by the beneficiary.
- The aforesaid subsidy would be paid through an ESCROW account opened in a nationalised bank by opening an LC. The Taxpayer will realise the amounts based on the government's instructions to the bank.

- In respect of the aforesaid transaction, the Recipient was insisting that instead of charging GST on the total value of consideration, the Taxpayer should charge GST on the value computed after excluding the amount of subsidy received from the Government, i.e., to levy GST on 10% of the agreed value of supply.
- In light of the aforesaid background, the Taxpayer filed an application before the AAR, Karnataka to determine whether the subsidy received from the Central Government and State Government would be excluded from the value of supply for levying GST.

Contentions by the Taxpayer

- As per Section 2(31) of the CGST Act, 'consideration' should exclude any subsidy given by the Central Government or a State Government. Further, Section 15(2)(e) of the CGST Act stipulates that the value of supply for the levy of GST shall exclude subsidies provided by the Central Government/State Government.
- In view of the above, the subsidy amount (90% of the total cost) must be excluded from the value of the supply in line with Sections 2(31) and 15(2)(e) of the CGST Act 2017.
- Reliance in this regard is placed on the following rulings:
  - ***M/s. Rashmi Hospitality Services [TS(DB)-GST-AAR(KAR)-2019-685], dated 20 September 2019];*** and
  - ***M/s. Megha Agrotech Pvt. Ltd. [TS(DB)-GST-AAR(KAR)-2020-671], dated 23 March 2020]***

Contentions by the Tax Authorities

- As per the definition of 'consideration' under Section 2(31) of the CGST Act, it is clear that 'consideration' shall not include any subsidy given by the Central Government or a State Government. Thus, the amount paid by the Government is not to be treated as 'consideration'.
- Further, as per Section 15(2) of the CGST Act, the value of supply specifically excludes subsidies provided by the Central Government or State Governments.
- On perusal of Section 2(93)(a) of the CGST Act which defines the term 'recipient of supply of goods or services or both', it is evident that the recipient of supply of goods is the person who is liable to pay consideration. In the present case, the Central Government and the State Government will pay 90% of the consideration and the Recipient will pay only to the extent of 10% of the agreed consideration. Accordingly, the Central Government and the State Government must be treated as the recipient of the goods (instead of the Recipient) in respect of 90% of the cost which is incurred by the Central Government and the State Government.
- The rulings relied upon by the Taxpayer are squarely applicable to the present case.
- In view of the above, the 90% subsidy provided by the Central Government and the State Government should not be considered as part of the 'value of supply', and only 10% of the amount as paid by the Recipient should be included in the 'value of supply', leviable to GST.

Observations and Ruling of the AAR

- Section 9 of the CGST Act stipulates that there shall be levied a tax called CGST on all intra-state supply of goods or services or both, on the value determined under Section 15 of the CGST Act at such rates notified and the same shall be paid by the taxable person.
- For determining the value of taxable supply, Sections 15(1) and 15(2) of the CGST Act must be read in conjunction.
  - Section 15(1) of the CGST Act provides that the value of the supply of goods or services or both shall be the transaction value i.e., the price paid or payable for the supply, where the supplier and recipient of the supply are not related, and the price is the sole consideration. In the present case, the Taxpayer and the Recipient are not related and the price is the sole consideration for the supply. As a result, the transaction value becomes the value of supply.
  - Section 15(2)(e) of the CGST Act specifically stipulates that the value of supply shall include subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments. Thus, Section 15(2)(e) of the CGST Act seeks to expand the value of supply to include subsidies which are directly linked to the price with a condition that subsidies provided by the Central Government and State Government are to be excluded.
  - Thus, the phrase providing for the exclusion of subsidies by the Central Government and State Government will apply only when both the following conditions are satisfied:
    - Subsidies are to be added to the transaction value; &
    - Such subsidies are directly linked to the price or affect the price of supply.
  - In the present case, the aforesaid conditions are not satisfied on account of the following:
    - The contract for the supply of machinery is between the Taxpayer and the Recipient where the Taxpayer raises an invoice for the full contract price. Even if the Recipient was not entitled to claim a subsidy, the entire contract price would still be recoverable from the Recipient. Hence, the subsidies, in the present case, do not impact the value of supply.
    - The subsidies from the Central Government and State Government are part of the price payable by the recipient and are not separately added to the value of supply. Only the subsidies provided by the Central Government and State Government which are directly linked to the price and affect the price of supply are not a part of the value of supply.
- In view of the above, it was held that the subsidy received from the Central Government and the State Government cannot be excluded from the value of supply as the same does not affect the price of supply.

  [AAR-Karnataka, M/s Hitze Boilers Pvt. Ltd., [TS-471-AAR(KAR)-2023-GST], dated 26 September 2023]

ITC AVAILED ON GOODS DESTROYED BY FIRE IS REQUIRED TO BE REVERSED EVEN IF THE DESTROYED GOODS ARE SOLD AS SCRAP

Facts of the case

- M/s. Geekay Wires Ltd. (Taxpayer) is inter alia engaged in the manufacture of steel nails (Finished Goods) which require various inputs viz., Steel Wire Rod, Polypropylene, copper wire, paper tape and packaging materials (Raw Materials).
- The Raw Materials are procured by the Taxpayer from various suppliers on payment of consideration (including GST thereon). The Taxpayer duly avails ITC in respect of Raw Materials used for manufacturing Finished Goods.
- A fire broke out in the Taxpayer's factory premises and hence, major quantities of Raw Materials and Finished Goods were destroyed (Destroyed Goods) in a fire.
- Given that the Taxpayer had duly availed ITC in respect of the Destroyed Goods, the Taxpayer has filed an application before the Authority for Advance Ruling, Telangana (AAR) to determine whether the Taxpayer is liable to reverse ITC in respect of the following goods under Section 17(5)(h) of the CGST Act:
  - 'Raw Materials' used in the manufacture of 'Finished Goods' in cases where such 'Finished Goods' are destroyed in fire;
  - 'Raw Materials' which are destroyed in a fire before their use in the manufacture of 'Finished Goods';
  - 'Raw Materials' used in the manufacture of 'Finished Goods' in cases where such 'Finished Goods' are partially destroyed in the fire and can be sold as Scrap in the open market on payment of applicable GST.

Contentions by the Taxpayer

- As per Section 16(1) of the CGST Act, a registered person can avail ITC on goods used or intended to be used in the course or furtherance of business. In the present case, the 'Raw Materials' procured by the Taxpayer have been already used in the manufacturing process and a new commercial commodity has emerged which is distinct from the Raw Materials.
- The 'Raw Materials' cannot be treated as being destroyed in fire because by the time the fire occurred in the factory, the 'Raw Materials' were already used in the manufacturing process and hence, had lost their identity, and had become a business expenditure.
- The Destroyed Goods in the present case are 'Finished Goods' which are not procured by the Taxpayer from any supplier and hence, the question of restricting ITC in respect of such goods would not arise.
- The phrase used in Section 17(5)(h) of the CGST Act which restricts the claim of ITC on destroyed goods is 'in respect of'. The phrase 'in respect of' can be interpreted as under:
  - The Hon'ble Supreme Court in ***State of Madras Vs. Swastik Tobacco Factory [AIR 1966 SC 1000]*** had held that the phrase 'in respect of' can only mean goods 'on' which Excise duty was paid and not on raw materials attributable to the final product.
  - While the aforesaid decision does not pertain to the destruction of finished goods, a similar interpretation can be adopted for interpreting Section 17(5)(h) of the CGST Act. Accordingly, ITC under Section 17(5)(h) of the CGST Act can only be restricted 'on' inputs/goods which are lost, stolen, destroyed etc.
  - Thus, there must be a matching of the identity of the goods on which ITC was availed and on which ITC is restricted and while applying Section 17(5)(h) of the CGST Act, the 'identity test' of the goods must be considered. Applying the same, Raw Materials used in Finished Goods lose their identity and hence, the restriction of ITC under Section 17(5)(h) of the CGST Act does not apply to such Raw Materials used in manufacturing 'Finished Goods'.
- Reliance was placed on ***General Manager Ordnance Factory Bhandara [TS-961-AAR-2018-NT]*** wherein a similar interpretation was adopted, and it was contended that when inputs are properly used in manufacturing Finished Goods, the former ceases to exist and thus, ITC availed is not required to be reversed in the event of destruction of Finished Goods in fire.
- Further, in cases where the 'Destroyed Goods' can be sold as Scrap on payment of applicable GST, ITC can be availed and would not be restricted under Section 17(5)(h) of the CGST Act based on the aforesaid contentions.

Observations and Ruling of the AAR

- It is a cardinal rule of interpretation that a statute must be read as a whole in its context. Reliance in this regard was placed on the following judicial precedents:
  - In ***Union of India Vs. Elphinstone Spinning & Weaving Co. Ltd. & Ors. [(2001) 4 SCC 139 (Constitution bench)]*** wherein it was held that when a question arises as to the meaning of a certain provision in a Statute, it is not only legitimate but also proper to read the provision in its context i.e., the Statute as a whole, the previous state of the law, other statutes in *pari materia*, the general scope of the statute and the mischief it intended to remedy.
  - In ***Philips India Ltd. & Ors. Vs. Labour Court & Ors. [(1985) 3 SCC 103]***, it was held that the intention of the legislature must be found by reading the statute as a whole.
  - Reference was also made to the legal principle *'ex visceribus actus'* which means that every part of the statute must be construed within 4 corners of the Act.
- In view of the above, the legislative intent for availing ITC under Section 16 of the CGST Act must be inferred from the conditions under which restrictions to claim such ITC arise under Section 17 of the CGST Act.
- ITC on procurements made in the context of Section 17(2) of the CGST Act must be restricted to the ITC availed for making taxable supplies and the same is further substantiated by the language used in Section 18(4) of the

CGST Act which stipulates that once the output becomes non-taxable for any reason, the ITC already availed pertaining to the corresponding inputs must be reversed or paid back. The reversal under Section 18(4) of the CGST Act would apply to inputs held in stock, inputs contained in semi-finished goods/finished goods held in stock and capital goods.

- Section 17(5)(h) of the CGST Act must be interpreted in the context of the aforesaid statutory provisions (i.e., Section 17(2) and 18(4) of the CGST Act), and its meaning must be applied using the principle of *'ex visceribus actus'*.
- The scheme of the CGST Act becomes clear on a combined reading of the aforesaid provisions that ITC is available only when the Taxpayer makes taxable supplies. Where taxable supplies are not made by the Taxpayer, ITC is unavailable under Section 17(2) and 17(5)(h) of the CGST Act. Further, in cases where ITC is already utilised, the same needs to be repaid as provided under Section 18(4) of the CGST Act.
- In view of the above, ITC to the extent of Finished Goods or Raw Materials destroyed by fire is unavailable to the Taxpayer and the same must be repaid by the Taxpayer. Further, scrap sold by the Taxpayer is nothing but destroyed goods; therefore, in the context of the present case, the sale of scrap, i.e., Destroyed Goods, is not eligible for ITC.
- In view of the above, the Taxpayer is not entitled to avail of ITC under any of the following circumstances:
  - 'Raw Materials' used in the manufacture of 'Finished Goods' in cases where such 'Finished Goods' are completely destroyed in fire;
  - 'Raw Materials' which are destroyed in a fire before their use in the manufacture of 'Finished Goods';
  - 'Raw Materials' used in the manufacture of 'Finished Goods' in cases where such 'Finished Goods' are partially destroyed in the fire and can be sold as Scrap in the open market on payment of applicable GST.

  [AAR- Telangana, M/s. Geekay Wires Ltd., [TS-477-AAR(TEL)-2023-GST], dated 2 September 2023]

CUSTOMS

LEGISLATIVE UPDATES

NOTIFICATIONS

AMENDMENTS IN EXEMPTION FROM THE APPLICABILITY OF SECTION 51A OF THE CUSTOMS ACT, 1962 (CUSTOMS ACT)

- Notification no:18/2023-Customs (NT) dated 30 March 2023[3] inter alia exempts the following class of deposits from the applicability of Section 51A of the Customs Act till 30 November 2023 (earlier, the same was to be introduced effective 30 September 2023):
  - With respect to goods imported or exported in customs stations where a customs automated system is not in place;
  - With respect to goods imported or exported in international courier terminals
  - With respect to accompanied baggage;
  - Other than those used for making electronic payments:
    - Any duty of customs, including cesses and surcharges levied as duties of customs;
    - Integrated tax;
    - Goods and Service Tax Compensation Cess;
    - Interest, penalty, fees, or any other amount payable under the Act, or Customs Tariff Act, 1975 (51 of 1975).
- Notification no:19/2022 dated 30 March 2022 granting exemption in respect of the aforesaid situations, except for goods imported or exported into International Courier Terminals would now come into force on 1 December 2023 (earlier, the same was to be introduced effective 1 October 2023).

  [Notification no: 69&70/2023-Customs (N.T.) dated 27 September 2023]

FOREIGN TRADE POLICY (FTP)

LEGISLATIVE UPDATES

NOTIFICATIONS

EXTENSION OF REMISSION OF DUTIES AND TAXES ON EXPORT PRODUCTS (RODTEP) SCHEME

The RoDTEP scheme, which was applicable in respect of exports made till 30 September 2023, has now been extended to exports made between 1 October 2023 and 30 June 2024, at the same rates.

The extension is subject to the budgetary framework provided under Para 4.54 of the Foreign Trade Policy, 2023 to ensure that the remissions made for the current financial year are managed within the approved Budget of the Scheme.

[Notification no: 33/2023 dated 26 September 2023]

EXPORT OF NON-BASMATI WHITE RICE TO UNITED ARAB EMIRATES (UAE) THROUGH NATIONAL COOPERATIVE EXPORTS LIMITED (NCEL)

Vide Notification no: 20/2023 dated 20 July 2023, the Export Policy of Non-Basmati White Rice under HS Code 1006 3090 was amended from 'Free' to 'Prohibited'[4]. The Directorate General of Foreign Trade has now issued a notification stipulating that the export of 75,000 MT of Non-Basmati White Rice to UAE will be permitted through NCEL.

[Notification no: 32/2023 dated 25 September 2023]

[3] Our summary of the notification can be accessed here.
[4] Our summary of the notification can be accessed here.

TRADE NOTICE

CLARIFICATION IN RESPECT OF PRE-IMPORT CONDITIONS UNDER THE ADVANCE AUTHORISATION (AA) SCHEME

After the Hon'ble Supreme Court judgment in the case of Cosmo Films Ltd. [TS-162-SC-2023-GST] upholding the validity of pre-import condition under the AA scheme, Circular no: 16/2023-Customs and Trade Notice no: 07/2023-24 dated 8 June 2023 was issued to provide that all the imports made under the AA scheme on or after 13 October 2017 and up to and including 9 January 2019 which could not meet the pre-import condition may be regularised by making payment of IGST and GST Compensation Cess (Cess) along with the procedure for making payment of IGST and Cess and its consequential claim of input tax credit/refund (as the case may be)[5].

In this regard, DGFT has issued a Trade Notice clarifying the applicability of pre-import conditions on the following import-export scenarios:

SL. NO.	ISSUE	WHETHER THE PRE-IMPORT CONDITION VIOLATED
1.	▪ AAs under which exports have been made between 13 October 2017 and 9 January 2019; and ▪ Import is made on or after 10 January 2019	No.
2.	▪ AAs were issued on or before 9 January 2019; and ▪ Import is made on or after 10 January 2019.	No. Pre-import conditions will not be applicable.
3.	If against an AA, imports were made as under: ▪ Partly up to 9 January 2019; and ▪ Remaining on or after 10 January 2019. Whether the imports made on or after 10 January 2019 will be subject to pre-import conditions	No.
4.	Imports made under AA on payment of IGST and Cess	No (irrespective of the date of import, the pre-import condition will not be applicable).

[Trade Notice no: 27/2023 dated 25 September 2023]

NEWS FLASH

"Dream11 challenges GST notice in Bombay HC"

https://www.financialexpress.com/business/brandwagon-dream11-challenges-gst-notice-in-bombay-hc-3255869/

[Source: Financial Express, 27 September 2023]

"Government exempts IGST on ocean freight from October 1"

https://www.financialexpress.com/policy/economy-government-exempts-igst-on-ocean-freight-from-october-1-3256696/

[Source: Financial Express, 27 September 2023]

"GST from October on imported online services for personal use"

https://www.livemint.com/economy/gst-from-october-on-imported-online-services-for-personal-use-11695834496721.html

[Source: Mint, 27 September 2023]

"India set to implement 28% GST on online gaming from October 1"

https://economictimes.indiatimes.com/news/economy/policy/india-set-to-implement-28-gst-on-online-gaming-from-october-1/articleshow/104019503.cms?from=mdr

[Source: Economic Times, 28 September 2023]

"GST compliance burden to rise for offshore digital service providers"

https://www.financialexpress.com/policy/economy-gst-compliance-burden-to-rise-for-offshore-digital-service-providers-3257791/

[Source: Financial Express, 29 September 2023]

[5] Our summary of the notification can be accessed here.

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BDO is a leading professional services organisation and are global leaders of the mid-tier, with a presence in 160+ countries and over 111,300 people working out of more than 1,800 offices. We endeavor to deliver an exceptional client experience through a tailored solutions approach, while partnering with our employees and clients globally.

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