

# INDIRECT TAX

## Weekly Digest

14 September 2021  
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## GOODS & SERVICES TAX

### LEGISLATIVE UPDATES

#### CIRCULARS

#### Clarification on extension of time limit to apply for revocation of cancellation of GST Registration

- The Central Board of Indirect Taxes and Customs (CBIC) issued clarification regarding extension of time limit to apply for revocation of cancellation of registration;
- The date for filing application for revocation of cancellation of registration in all cases, where registration has been cancelled under section 29(2)(b) or section 29(2)(c) of CGST Act, 2017 and where the due date of filing of application for revocation of cancellation of registration falls between 1 March 2020 to 31 August 2021, is extended to 30 September 2021, irrespective of the status of such applications;
- The clarifications are summarised below:

Sl. No	Situation	Clarifications
1	Application for revocation of cancellation of registration has not been filed by the taxpayer.	The applications for revocation can be filed up to the extended timelines.

2	Application for revocation of cancellation of registration has already been filed and which are pending with the proper officer.	The officer shall process the application for revocation considering the extended timelines.
3	Application for revocation of cancellation of registration was filed but was rejected by the proper officer and taxpayer has not filed any appeal against the rejection.	Taxpayer may file a fresh application for revocation and the officer shall process the application for revocation considering the extended timelines.

4	Application for revocation of cancellation of registration was filed, the proper officer rejected the application and appeal against the rejection order is pending before appellate authority.	Appellate authorities shall take the cognizance of the said notification for extension of timelines while deciding the appeal.
5	Application for revocation of cancellation of registration was filed, the proper officer rejected the application and the appeal has been decided against the taxpayer, he may file a fresh application for revocation.	Taxpayer may file a fresh application for revocation and the officer shall process the application for revocation considering the extended timelines.

- Also, with effect from 1 January 2021, proviso to section 30(1) of the CGST Act, 2017 has been inserted which provides for extension of time for filing application for revocation of cancellation of registration by 30 days by Additional/ Joint Commissioner and by another 30 days by the Commissioner. Doubts have been raised whether the said notification has extended the due date in respect of initial period of 30 days for filing the application (in cases where registration has been cancelled under section 29(2)(b) or section 29(2)(c) of CGST Act, 2017) under section 30(1) of the CGST Act, 2017 or whether the due date of filing applications for revocation of registration can be extended further for the period of 60 days (30 + 30) by the Joint Commissioner/ Additional Commissioner/ Commissioner, as the case may be, beyond the extended date of 30 September 2021;
- It was clarified as follows;

Sl. No	Situation	Clarifications
1	Where the 30 days' time limit falls between 1 March 2020 to 31 December 2020, there is no provision available to extend the said time period of 30 days under section 30 of the CGST Act, 2017.	For such cases the time limit to apply for revocation of cancellation of registration stands extended up to 30 September 2021 only.

2	Where the time period of 30 days since cancellation of registration has not lapsed as on 1 January 2021 or where the registration has been cancelled on or after 1 January 2021, the time limit for applying for revocation of cancellation of registration shall stand extended.	The time period of 90 days (initial 30 days and extension of 30 + 30 days), since cancellation of registration has elapsed by 31 August 2021, the time limit to apply for revocation of cancellation of registration stands extended up to 30 September 2021.
3	Where the time period of 60 days (and not 90 days) since cancellation of registration has elapsed by 31 August 2021.	The time limit to apply for revocation of cancellation of registration stands extended up to 30 September 2021, with the extension of timelines by another 30 days beyond 30 September 2021 by the Commissioner.
4	Where the time period of 30 days (and not 60 days or 90 days) since cancellation of registration has elapsed by 31 August 2021.	The time limit to apply for revocation of cancellation of registration stands extended up to 30 September 2021, with the extension of timelines by another 30 days beyond 30 September 2021 by the Joint/Additional Commissioner and another 30 days by the Commissioner.

[Circular no:158/14/2021-GST dated 06 September 2021]

## JUDICIAL UPDATES

### ORDERS BY AUTHORITY FOR ADVANCE RULING (AAR)

#### Vocational courses recognised by National or State council of vocational training are GST exempt

##### Facts of the Case

- M/s. The Leprosy Mission Trust India (“Taxpayer”) is a non-government organization, engaged in imparting vocational skills to specific individuals, who are affected with leprosy and other disabilities;
- The taxpayer intends to know the applicability of notification no:12/2017 CT(R) dated 28 June 2017 (“exemption notification”) to the vocational courses conducted by it.

##### Question before the AAR

Whether services provided by way of vocational training courses recognized by National Council for Vocational Training (“NCVT”) or State Council of Vocational Training (“SCVT”) are exempt vide entry no:66 of the exemption notification.

##### Contentions of the Taxpayer

- The taxpayer contended that definition of the term ‘Educational Institution’ provided in the exemption notification includes an institution providing education as a part of an ‘Approved Vocational Education Course’. Further, another term ‘Approved Vocational Education Course’ means a course run by a training centre affiliated to NCVT or SCVT;
- In addition, the taxpayer stated that it possesses permanent affiliation with NCVT. Accordingly, taxpayer is of the view that all courses provided by it get covered under aforesaid entry of exemption notification.

##### Observation and Ruling by the AAR

- The AAR gave due consideration to the fact that upon completion of vocational courses offered by the taxpayer, certificates are issued to candidates by NCVT / SCVT. The stated fact substantiates the affiliation between the taxpayer and NCVT / SCVT;
- In light of above, the AAR agreed with the contentions of the taxpayer and concluded the following:
  - Courses recognized by NCVT are exempt from GST under entry no:66 of the said exemption notification; and
  - Courses recognized by SCVT are also exempt on the same grounds subject to re-affiliation between the Taxpayer and SCVT.

*[AAR-Tamil Nadu, M/s. The Leprosy Mission Trust India, Advance ruling no:30/ARA/2021 dated 10 August 2021]*

#### ITC on inputs used in manufacture of cakes & pastries require reversal upon disposal on expiry

##### Facts of the Case

- M/s. Kanayalal Pahilajrai Balwani (‘Sidharth Foods’ ‘Taxpayer’) is engaged in the business of manufacture & distribution of cakes and pastries;

- The taxpayer sends cakes and pastries to distributors to display to attract consumer;
- The cakes and pastries are perishable and cannot be preserved for long period; after long time in display, they have to be compulsorily replaced on expiry dates;
- Taxpayer submitted that display helps in achieving the objective of continued business of manufacture and sales in future also.

##### Question before the AAR

Whether they are required to reverse ITC on raw material used in manufacture of expired cakes & pastries that were kept in display, having been used them in course or furtherance of business?

##### Contentions of the Taxpayer

- The taxpayer submitted that there is no free/sample supply of extra cakes and pastries to distributors;
- Such extra cakes and pastries are supplied with tax invoice, which means that supply of goods is taxable supply. When expired cakes and pastries are returned back to the taxpayer, assessee issues credit note;
- Hence, there is no free/sample supply of goods by the taxpayer as stipulated in section 17(5)(h) of the CGST Act, 2017.

##### Observation and Ruling by the AAR

- The AAR noted that cakes and pastry have limited shelf life and after expiry these bakery items are prohibited from sale;
- Section 7 of Prevention of Food and Alteration Act, 1954 prohibiting the sale of expired goods as such are not fit for consumption. Further section 273 of Indian Penal Code criminalizes the act of sale of harmful perishable food products;
- The AAR observed that the act of throwing away expired cakes and pastries is akin to destroying the expired food products;
- The AAR referred to section 17(5) of the CGST Act, 2017 and noted that, the non-obstante sub-section overrides the operation of section 16 and section 18 of CGST Act, 2017 provisions contrary to this sub-section and thereby blocks ITC admissibility contrary to the said sub section;
- Further, Government circular no:72/46/2018-GST dated 26 October 2018 issued vide F. no:CBEC/20/16/ 04/2018-GST has clarified the procedure in respect of return of time expired drugs or medicines;
- The circular discusses the scenarios in relation to return of goods on account of expiry of the same. It may be applicable to such other scenarios where the goods are returned on account of reasons other than the one detailed in the relevant para of the circular;
- The AAR held that matter is covered under section 17(5)(h) of CGST Act, 2017 and thereby ITC on inputs used in manufacturing expired cakes & pastries is not admissible and required to be reversed.

*[AAR- Gujarat, M/s. Kanayalal Pahilajrai Balwani, Advance ruling no:GUJ/GAAR/R/16/2021 dated 30 June 2021]*

## ITC availed only on invoices furnished in a valid return, before due date of furnishing of return for the month of September following the financial year

### Facts of the case

- M/s. Eastern Coalfields Ltd. ('Taxpayer') is a producer and supplier of coal. The taxpayer received services from M/s. Gayatri Projects Ltd. and has availed of ITC for the tax periods January to March 2020 against three invoices issued by the said supplier of services;
- However, M/s Gayatri Projects Ltd has furnished FORM GSTR-1 and FORM GSTR-3B for the aforesaid tax periods in the month of November 2020 which has restricted ITC in respect of above invoices in the auto-drafted FORM GSTR-2B of the taxpayer for the month of November 2020 with the remark 'Return Filed Post Annual Cut-off'.

### Questions before the AAR

- Whether the taxpayer is entitled to ITC claimed on the invoices raised by M/s Gayatri Projects Ltd. pertaining to the period January to March 2020 for which the supplier has actually paid tax in cash or through ITC?
- Whether the taxpayer is required to reverse the said ITC availed by him where the supplier has actually paid the tax, though belatedly?

### Contention of the Taxpayer

- The taxpayer submitted that as per notification no:82/2020-CT dated 10 November 2020, which substituted rule 59 & 60 of the CGST Rules, 2017, the relevant provisions of FORM GSTR-2B was implemented with effect from 01 January 2021;
- The remarks "Return Filed Post Annual Cut-off" mentioned in the FORM GSTR-2B was generated on trial run basis pertaining to the tax period November 2020 which was prior to 01 January 2021, and it did not have any statutory force during November 2020, being effective from the above-mentioned date;
- The taxpayer further submitted that, FORM GSTR-2B had no existence at all during the period in dispute. Also, the taxpayer brought to light that prior to substitution of rule 59 & rule 60, in the present form, the earlier rule 59 & rule 60 were in existence till 31 December 2020, did not prohibit, in any manner, avilment of ITC claimed;
- The taxpayer had furnished the returns under section 39 in compliance of section 16(2)(d) of the GST Act, 2017 in support of their claim.

### Tax authority's submissions

- The tax authority submitted that the taxpayer has fulfilled the conditions as specified under section 16(2)(a) and section 16(2)(b) of the GST Act, 2017 as by taking the credit of ITC for invoices mentioned above;
- Further, the taxpayer has also fulfilled the condition specified under section 16(4) of the CGST Act as credit of ITC has been taken during January to March 2020 on the impugned invoices which is before the due date of furnishing of their GST return under section 39 for the month of September following the end of financial year to which such invoices pertain;

- M/s. Gayatri Projects Ltd has paid the GST on impugned invoices issued during the said period in November 2020 which is beyond the due date of furnishing of FORM GSTR-3B under section 39 of the CGST Act, 2017 for the month of September 2020 and the same appears to be in contravention of section 42(7) of the GST Act, 2017;
- Further, the tax authority submitted that the details of the impugned invoices should have been shown in the valid return before due date for furnishing of return for the month of September 2020 following the end of the financial year as specified in section 39(9) of the CGST Act, 2017.

### Observations Ruling by the AAR

- The AAR referred to the para 3 of the circular no:123/42/2019- GST dated 11 November 2019 issued by CBIC, GST Policy Wing [Corresponding Trade circular no:43/2019 dated 18 November 2019 issued by the Commissioner, State Tax, West Bengal] and clarified that: the conditions and eligibility for the ITC that may be availed by the recipient shall continue to be governed as per the provisions of Chapter V of the CGST Act and the rules made there under. This being a new provision, the restriction is not imposed through the common portal, and it is the responsibility of the taxpayer that credit is availed in terms of the said rule and therefore, the avilment of restricted credit in terms of sub-rule (4) of rule 36 of CGST Rules shall be done on self-assessment basis by the taxpayers";
- The AAR noted that FORM GSTR-2B has been made effective from 01 January 2021 but at the same time, the taxpayer cannot deny that the provisions of rule 36(4) was already in force during the period when the taxpayer has availed of ITC issues of which are dealt with in this case;
- Further, the AAR referred to the insertion of proviso to rule 36(4) vide notification no:30/2020-CT dated 03 April 2020;
- Based on the above observations the AAR held that the taxpayer is not entitled for ITC claimed on the invoices raised by M/s. Gayatri Projects Ltd. pertaining to the period January to March 2020 for which the supplier has furnished FORM GSTR-1 and FORM GSTR-3B in the month of November 2020 and the Taxpayer is, therefore, required to reverse the said ITC.

[AAR-West Bengal, M/s. Eastern Coalfields Ltd, Ruling no:07/WBAAR/2021-22 dated 09 August 2021]

## CUSTOMS

### NOTIFICATION

#### Reduction import duties on Palm, Sunflower and Soya-bean oils

- CBIC issued the notification to slash basic import duty on crude palm oil to 2.5% from 10%, while the duty on crude soya-bean oil and crude sunflower oil has been reduced to 2.5% from 7.5%. The import duty on refined grades of palm oil, soya-bean oil and sunflower oil cut to 32.5% from 37.5%;
- However, the Agriculture Infrastructure and Development Cess on crude palm oil has been increased to 20% from 17.5%;

- CBIC also rescinded the notification no:34/2021- Customs dated 29 August 2021, which reduces the standard import duty on crude palm oil till September 2021 end.

*[Notification no:42/2021- Customs dated 10 September 2021]*

## INSTRUCTION

### Easing availability of containers for exporters

- CBIC has eased the availability of containers for exporters. In order to continue the emphasis on enhancing the availability of containers has decided that the field formations also take the 3 measures;
- Firstly, expeditious disposal of the unclaimed or uncleared or seized or confiscated goods including that are holding up containers following the timelines and procedures prescribed in CBIC circular no:48/2018 dated 03 December 2018. The proforma for the monthly report is in instruction no:20/2021-Customs dated 10 September 2021. It should reach uscus4.dor@gov.in by 5th of the succeeding month;
- Furthermore, field formations follow the spirit of para 5 of CBIC circular no:83/98-customs dated 5 November 1998 and para 3 of CBIC circular no:84/95-customs dated 25 July 1995 thereby taking proactive steps such that containers housing import cargo that is under enquiry are expeditiously released. For this, provision already exists that whenever it becomes necessary to detain the imported cargo, pending completion of enquiry/investigation, such cargo should be removed to a customs warehouse in terms of the provisions of section 49 of the Customs Act, 1962;
- For this purpose, the cargo can also be removed from the container and the container can be released for further use. The field formations should encourage this activity by offering it to the importers. In conclusion, Field formations had reported certain reasons such as court cases, hold by intelligence agencies etc., for non-release of containers;
- A monthly report proforma in annexure-II is prescribed for this purpose. This proforma is designed in a manner to reflect the progress made by field formations in these sub-categories. This too should reach uscus4.dor@gov.in by 5th of the succeeding month. It is guided that proactive steps enabling release of such containers should also be adopted.

*[Instruction no:20/2021-Customs dated 10 September 2021]*

## FOREIGN TRADE POLICY (FTP)

### NOTIFICATION

#### Deferment Certificate Requirement for rice export to European countries

Import policy of mercury has been revised from 'free' to 'restricted' subject to obtaining prior informed consent from ministry of environment forest & climate change.

*[Notification no:24/2015-20 dated 09 September 2021]*

### PUBLIC NOTICE

#### Implementation of MoU for import of pigeon peas from Malawi and import of urad and tur from Myanmar

The Director General of Foreign Trade (DGFT) has issued public notice stating procedure/modalities for import of 50,000 MT of tur (pigeon peas) from Malawi under the MoU are laid down.

DGFT has also issued procedure/modalities for import of 2,50,000 MT of urad and 1,00,000 MT of tur from Myanmar under the MoU is laid down.

*[Public Notice no:21 & 22/2015-20 dated 6 September 2021]*

#### Amendment in para 2.107 of Handbook of Procedure 2015-2020

DGFT has issued Public Notice stating TRQ for items as in table 4 of notification no:25/2021-Customs dated the 31 March 2021 on India-Mauritius CECPA and procedure for such imports is notified.

*[Public Notice no:23/2015-20 dated 7 September 2021]*

### PRESS RELEASE

#### Budget for various export schemes including MEIS and SEIS has been announced

- The Government has announced a budget of INR 560.27 Bn. to disburse all pending export incentives due to exporters. This amount includes claims relating to MEIS, SEIS, RoSL, RoSCTL and RoDTEP for exports made in the 4th quarter of FY 2020-2021;
- As per the press release issued in this regard, service exporters, including Travel, Tourism and Hospitality segments will be able to claim SEIS benefits for FY 2019-2020. However, the SEIS for FY 2019-2020 with certain revisions in service categories and rates will be notified. Further, sectors covered under MEIS, such as Pharmaceuticals, Iron and Steel, Engineering, Chemicals, Fisheries, Agriculture, and Allied sectors, Auto and Auto components would be able to claim benefits for exports made in earlier years.

### BDO Comment:

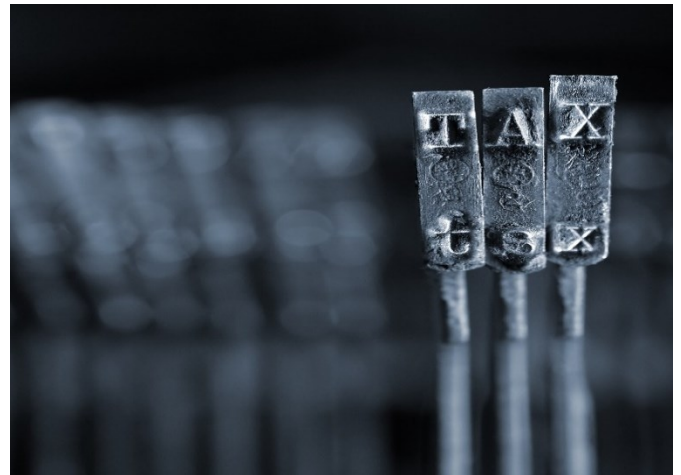
Considering the announcement of revised service categories and rates for SEIS, we may expect some capping for SEIS in line with the capping done for MEIS.

*[PIB Press release dated 09 September 2021]*

## NEWS FLASH

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1. “GST Council may take up proposal for cutting rate on steel scrap to 5%”  
[https://www.business-standard.com/article/economy-policy/gst-council-may-take-up-proposal-for-cutting-rate-on-steel-scrap-to-5-121091100048\\_1.html](https://www.business-standard.com/article/economy-policy/gst-council-may-take-up-proposal-for-cutting-rate-on-steel-scrap-to-5-121091100048_1.html)  
[Source: Business Standard, 11 September 2021]
2. “GST taxpayers ALERT: LAST DATE for different categories! File your GSTR for August by TODAY and TOMORROW - See details here”  
<https://www.zeebiz.com/personal-finance/news-gst-taxpayers-aler-last-date-for-different-categories-file-your-gstr-for-august-by-today-and-tomorrow-see-details-here-164889>  
[Source: Zee Business, 10 September 2021]
3. “Ready-to-cook parathas face 18% GST: AAR”  
<https://timesofindia.indiatimes.com/business/india-business/ready-to-cook-parathas-face-18-gst-aar/articleshow/86053772.cms>  
[Source: Times of India, 9 September 2021]
4. “GST on road construction: NHAI details four scenarios where considerations are received as annuity”  
<https://www.thehindubusinessline.com/economy/policy/gst-on-road-construction-nhai-details-four-scenarios-where-considerations-are-received-as-annuity/article36360361.ece>  
[Source: The Hindu Business Line, 8 September 2021]



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