

# INDIRECT TAX

## Weekly Digest

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## GOODS & SERVICES TAX

### LEGISLATIVE UPDATES

#### CIRCULARS

#### CBIC issues guidelines for filing or revising Form GST TRAN-1 / Form GST TRAN-2 (Transition Forms) in accordance with the Supreme Court order

- The Apex Court, vide orders dated 22 July 2022 and 2 September 2022 (in the case of Union of India vs. Filco Trade Centre Pvt. Ltd. and Anr.) had inter alia directed as follows
  - The Goods and Services Tax Network (GSTN) to open the common portal for filing the Transitional Forms for a period of two months i.e. from 1 October 2022 to 30 November 2022
  - During such period, an aggrieved assessee could file or revise the Transitional Forms, irrespective of whether such assessee had filed a writ petition filed before the High Court or whether the case was decided by the Information Technology Grievance Redressal Committee
  - The GSTN has to ensure that there are no technical glitches during the aforesaid period
  - Pursuant to the filing of the Transitional Forms, the concerned tax authorities are given a period of 90 days to verify the claim and pass appropriate orders on merits after granting a reasonable opportunity to the parties concerned
  - Pursuant to such verification, the transition credit will be reflected in the Electronic Credit Ledger (ECL)
- In this regard, CBIC has issued the following guidelines for filing or revising the Transitional Forms
  - The applicant may file or revise duly signed or verified (through electronic verification code) Transitional Forms on the common portal. A facility for downloading the Transitional Forms already furnished will be made available in order to facilitate revision of the same
  - While filing or revising, the applicant shall also upload the PDF copy of a declaration in the format as given in Annexure 'A' of this circular. The applicant claiming credit in table 7A of Form GST TRAN-1 on the basis of the Credit Transfer Document (CTD) shall also upload the PDF copy of Form GST TRAN-3, containing the details in terms of the notification no:21/2017-CE(NT) dated 30 June 2017
  - No claim for transitional credit shall be filed in table 5(b) and 5(c) of Form GST TRAN-1 in respect of such C-Forms, F-forms and H/I-Forms which have been issued after the due date prescribed for submitting the declaration in Form GST TRAN-1 i.e. after 27 December 2017
  - Where the applicant files a claim in Form GST TRAN-2, he shall file the entire claim in one consolidated TRAN-2, instead of filing the claim tax-period-wise as referred to in rule 117(4)(b)(iii) of the CGST Rules 2017. In such cases, in the column 'Tax Period' of Form GST TRAN-2, the applicant shall mention the last month of the consolidated period for which the claim is being made

- The applicant shall download a copy of the TRAN-1/TRAN-2 filed and submit a self-certified copy of the same, along with declaration in Annexure 'A' and a copy of TRANS-3 (if applicable) to the jurisdictional tax officer within 7 days of filing of declaration in TRAN-1/TRAN-2 on the common portal. The applicant shall keep all the requisite documents/records/returns/invoices, in support of his claim of transitional credit, ready for making the same available to the concerned tax officers for verification
- This is a one-time opportunity for the applicant to either file or revise the forms. Hence it is required to take utmost care while filing or revising the Transitional Forms
- The applicant is allowed to modify/edit, add or delete any record in any of the tables of the said forms before clicking the 'Submit' button. Once submitted, the form gets frozen, and no further editing of details is allowed. Such frozen form would then be required to be filed on the portal using the 'File' button, with a Digital signature certificate (DSC) or an EVC. Thus, the correctness of all the details in the Transitional Forms must be ensured before submitting the said forms GSTN will issue a detailed advisory in this regard and the applicant may consider the same while filing
- Once, the applicant files or revises the Transitional Forms, no further opportunity to again file or revise, will be allowed either during this period or subsequently
- Registered persons who had successfully filed the Transitional Forms earlier, and who do not wish to make any revision are not required to file or revise the Transitional Forms
- In cases where the credit availed by the registered person on the basis of the Transitional Forms filed earlier, has either wholly or partly been rejected by the proper officer, the appropriate remedy is to prefer an appeal against the said order or to pursue alternative remedies available as per law. Where the adjudication proceeding in such cases is pending, the appropriate course would be to pursue the said adjudication. In such cases, filing a fresh Transitional Form would not be an appropriate remedy
- The declaration in the Transitional Forms, filed/revise by the applicant will be subjected to necessary verification by the concerned tax officers. The applicant may be required to produce the requisite documents/records/returns/invoices in support of their claim of transitional credit before the concerned tax officers for verification of their claim. After the verification of the claim, the jurisdictional tax officer will pass an appropriate order, after granting an appropriate reasonable opportunity of being heard by the applicant. The transitional credit allowed as per the order passed by the jurisdictional tax officer will be reflected in the ECL of the applicant

#### BDO Comments

The Circular has laid down the process for claiming the transition credit which must be adhered to by the taxpayers. Unlike the erstwhile mechanism, the jurisdiction officer would first scrutinise the claim of transitional credits and subsequently, pass an order allowing the amount of eligible transition credit which would be reflected in the ECL of the

taxpayer. Hence, taxpayers would need to substantiate their claim of transitional credits by way of corroborative evidence so as to facilitate the verification of such credits by the jurisdictional tax officer. Further, the powers under which the order allowing or rejecting the credit would be issued, provisions of appeal against such order, etc. would also need to be clarified.

*[Circular no:180/12/2022-GST dated 9 September 2022]*

#### LEGISLATIVE UPDATES

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

##### Supply of Services to 'Government Authority' or 'Government Entity' will attract 18% GST w.e.f. 1 January 2022

##### Facts of the case

- The Indian Hume Pipe Company Limited (Taxpayer) undertakes contract for the construction of head works, sumps, pump rooms, laying, jointing of pipelines and commissioning and maintenance of the entire work for Water Supply Projects/Sewerage Projects/Facilities and their major customers include Government Bodies/Entities/Authorities/Local Bodies/Municipalities
- The taxpayer has been awarded a contract by M/s Bangalore Water Supply and Sewerage Board (BWSSB), an autonomous body formed by the State Legislature under Bangalore Water Supply and Sewerage Act (BWSS Act) to execute the work of rehabilitation/re-modelling/replacement of 400-1000 mm sewer line in V-Valley

##### Questions before the AAR

- Whether the services supplied by the Taxpayer to BWSSB is covered by notification no:15/2021-CT(R), dated 18 November 2021 r/w notification no:22/2021-CT(R) dated 31 December 2021 (relevant notifications)?
- What is the applicable GST rate for such supplies?

##### The contention by the Taxpayer

- The Taxpayer submitted that the construction services of head works, sumps, pump rooms, laying, jointing of pipeline and commissioning and maintenance of the entire work for Water Supply Projects/Sewerage Projects/Facilities will be covered by the relevant notifications which read as follows
  - (iii) composite supply of works contract as defined in clause (119) of Section 2 of the Central Goods and Services Tax Act, 2017, supplied to Central Government, State Government, Union Territory, or a local authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of -
    - a. ...
    - b. ...
    - c. pipeline conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal
 The services covered under the aforesaid entry are taxable at the rate of 12%
- The Taxpayer further stated that BWSSB is a Local Authority and hence, the services supplied by the Taxpayer are leviable to GST at the rate of 12%

##### Observations and Ruling by the AAR

- The AAR has observed that to avail benefit of the concessional rate of GST under entry no:3(iii) of

notification no:11/2017-CT(R) dated 28 June 2017 (rate notification), the taxpayer shall satisfy two conditions namely

- Services are covered under the supply of services mentioned in the notification
- The recipient of services shall be the person covered under the notification
- BWSSB is a board set up by the BWSS Act and hence, the same cannot be considered a State Government
- Section 2(69) of the Central Goods and Services Tax Act, 2017 (CGST Act) defines 'local authority' as
  - A 'Panchayat' is defined in clause (d) of article 243 of the Constitution
  - A 'Municipality' as defined in clause (e) of article 243P of the Constitution
  - A Municipal Committee, a Zilla Parishad, a District Board, and any other authority legally entitled to or entrusted by the Central Government or any State Government with the control or management of a municipal or local fund
  - A Cantonment Board as defined in Section 3 of the Cantonments Act, 2006 (41 of 2006)
  - A Regional Council or a District Council is constituted under the Sixth Schedule to the Constitution
  - A Development Board constituted under article 371 7[and article 371J] of the Constitution or
  - A Regional Council is constituted under article 371A of the Constitution
- 'Panchayat' means an institution (by whatever name called) of self-government constituted under Article 243B of the Constitution of India, for the rural areas and 'Municipality' is an institution of self-government constituted under Article 243Q of the Constitution of India and Article 243Q of the Constitution of India reads as 'There shall be constituted in every State, (a) a Nagar Panchayat (by whatever name called) for a transitional area, an area in transition from a rural area to an urban area (b) a Municipal Council for a smaller urban area (c) a Municipal Corporation for a larger urban area'
- From the aforesaid definitions, it can be concluded that Panchayat and Municipality are institutions of self-government, whose members are elected by the local people. However, the members of BWSSB are appointed by the State Government. Hence, it was concluded that BWSSB is not a local authority
- The notification also clarified the meaning of the term Governmental Authority and Government Entity to mean as under
  - 'Governmental Authority' means an authority or a board or any other body i) set up by an Act of Parliament or a State Legislature or ii) established by any Government, with 90 percent or more participation by way of equity or control, to carry out any function entrusted to a Municipality under article 243W of the Constitution or to a panchayat under article 243G of the Constitution
  - 'Government Entity' means an authority or a board or any other body including a society, trust, corporation, i) set up by an Act of Parliament or State Legislature or ii) established by any Government, with 90 percent, or more participation by way of equity or control, to carry out a function entrusted by the Central Government, State Government, Union Territory or local authority

- BWSSB was set up by BWSS Act to supply water in the Bangalore Metropolitan area and to make adequate provisions for the sewerage and disposal of sewage in the Bangalore Metropolitan area These duties performed by BWSSB are covered under the functions entrusted to a Municipality under Article 243W of the Constitution of India that is 5th and 6th entry of 12th Schedule of the Constitution of India. Hence, it can be concluded that BWSSB is a 'Government Authority' and it will be covered under entry no: iii of the rate notification and the applicable GST rate will be 12%
- Further, as per the relevant notification, the services mentioned in entry no:3(iii) of the rate notification are subjected to GST at 12% only if those services are supplied to Central Government, State Government, Union territory or local authority. Hence, pursuant to the amendment, effective 1 January 2022, the benefit of concessional rate of GST is not applicable to services supplied to 'Government Authority' and 'Government Entity'
- In view of the above, AAR held that supply of services such as the construction of head works, sumps, pump rooms, laying, jointing of pipelines and commissioning and maintenance of the entire work for water supply projects/sewerage projects/facilities to BWSSB will be covered under entry no:3 (xii) of the rate notification as amended vide further notifications and is taxable to GST at 18% (w.e.f. 1 January 2022)

*[AAR-Karnataka, M/s. The Indian Hume Pipe Company Limited. Ruling no:KAR ADRG 23/2022, dated 12 August 2022]*

### Construction of roads along with other allied services are not composite supplies

#### Facts of the case

- M/s. Iron Triangle Limited has entered into a joint venture with M/s. Krishna Corporation Private Limited ('Taxpayer') and is engaged in the design and construction of roads and utility services on an Engineering, Procurement and Construction ('EPC') basis
- A taxpayer has received a contract from a local authority to carry out the design and construction of roads and to provide other allied services. In this regard, the Taxpayer intends to know whether the supply will be considered a composite supply under GST laws and the applicable GST rate

#### Questions before the AAR

- Whether supply of design and construction of roads and utility services to be construed as a composite supply of works contract in terms of Section 2(119) of CGST Act
- If yes, whether principal supply will be the 'construction of roads' and would attract a GST rate of 12% as per the rate notification

#### The contention by the Taxpayer

- The taxpayer contended that the whole contract shall be classified as a composite supply of works contract as per Section 2(119) of CGST Act, wherein the construction of roads will be the principal supply and hence shall attract GST rate applicable to principal supply i.e. 12%
- The taxpayer also contended that since services are provided to a local authority, accordingly concessional GST rate of 12% should be applied to the supply as per rate notification



### Observations and ruling by the AAR

- AAR observed that the construction of roads and provision of other utility services are not naturally bundled and can be supplied independently. Therefore, the supply cannot be construed as composite supply in terms of Section 2(30) of the CGST Act
- In view of the limited information provided by the Taxpayer, the AAR observed that the customer of the Taxpayer is not a local authority in terms of Section 2(69) of the CGST Act. Accordingly, the benefit of the concessional rate is not applicable in the instant case
- Further, other allied services provided by Taxpayers would be taxable at the rate of 18%

[AAR-Gujarat, M/s ITL-KCPL JV, Authority for Advance Ruling, AAR no:GUJ/GAAR/R/2022/37, dated 10th August 2022]

## CUSTOMS

### NOTIFICATION

#### Customs (Import of Goods at Concessional Rate of Duty or for Specified End Use) Rules, 2022

CBIC has issued Customs (Import of Goods at Concessional Rate of Duty or for Specified End Use) Rules, 2022 superseded by the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017. Some of the Key changes are

- Provision for Supply to end use recipients has been introduced in these new rules
- 'Specified end use' means dealing with the goods imported in a manner specified in the notification and includes supply to the intended person and the term 'end use recipient' shall be construed accordingly
- Expanded the scope of the Import of Goods at Concessional Rate (IGCR) procedure applicable to specified end use mentioned in Customs notifications, i.e. apart from those pertaining to manufacturing and in respect of those for providing output services. In case of end use, supply to the end use recipient and the nature of the supply is to be captured in the IGCR automated module:
  - Where the import is undertaken for specified end use and no differential duty is involved, the value of the bond shall be equal to the assessable value of the goods
  - In cases where the intended purpose of the import is a supply of the goods to an end-user recipient, the importer shall supply these goods under an invoice or wherever applicable, through an e-way bill, as mentioned in the CGST Act. The description and quantity of such goods shall be clearly mentioned by the importer
  - The importer shall maintain a record of all such goods supplied in a month and provide the details in the monthly statement
  - The restrictions on job work are only related to the case where it is undertaken on the goods belonging to an importer and do not apply to the end-user recipient who receives the goods on the supply and deals with them as stipulated in the notification
- Changes in the forms to capture the details where the intended purpose is the export of goods using the goods imported

- Changes in the forms to capture the different intended purposes (manufacturing, import for specified end use, export of goods using goods imported, supply to end use recipient or for provision of output service) and additional details such as Sl. No. of the notification, etc.
- A proviso under Rule 10 has been introduced wherein the jurisdictional commissioner can further extend the period of six months for re-export or clearance of unutilised or defective goods by another three months, in case of sufficient reason is shown, that the causes for not conforming to the time period were beyond the importer's control
- A new form IGCR-3A has been notified for confirmation of consumption for the intended purpose at the common portal at any point in time for immediate re-credit of the bond by the jurisdictional AC/DC, without waiting for the filing of the monthly statement on the 10th of every month
- The details filed in form IGCR-3A shall get auto-populated in the monthly statement of the subsequent month, which has to be only confirmed by the importer
- In view of the changes introduced to the procedures, the bank guarantee/cash security/surety shall be taken as per the following norms for the purpose of extending the benefit under the Customs (Import of Goods at Concessional Rate of Duty or for Specified End Use) Rules, 2022. It is also clarified that the circular no:48/2017-cus(Clarification on Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017) and the circular no:27/2016-cus (Procedure to be followed by nominated agencies importing gold/silver/platinum under the scheme for 'Export Against Supply by Nominated Agencies') stands modified to this extent

Sl No.	Category of importer	Quantum of Bank Guarantee/Cash security/Surety
1	All importer (s) who are either a department of Central Government or a State Government or a Union Territory or a Public Sector Undertaking, or an autonomous institute under the said governments	Bank Guarantee/Cash Security- Nil Surety-Not required. (Excluding cases in sl.no. 4)
2	All importers who are Authorised Economic Operators	
3	All importers who have nominated agencies for the import of gold under the India UAE CEPA	

4	Designated banks nominated by RBI as well as public sector undertakings importing under notification no:56/2000-customs, dated 05 May 2000 or notification no:57/2000-customs, dated 08 May 2000	<p>Bank Guarantee/Cash Security- Nil Surety- Not required Provided-</p> <ul style="list-style-type: none"> <li>▪ they have not defaulted in following the procedure and conditions specified by DGFT.</li> <li>▪ they have not defaulted in payment of duty within the specified period in cases where there was a default in the export of jewellery by an exporter to whom the gold/silver/platinum had been supplied</li> <li>▪ they have not been involved in violations involving fraud or collusion or wilful misstatement or suppression of acts under relevant provisions of the Customs Act, 1962, the Central Excise Act, 1944, the Finance Act, 1994, the Foreign Trade (Development &amp; Regulation) Act, 1992, the Foreign Exchange Management Act, 1999 and the rules made thereunder during the last three years</li> </ul>
5	All importers who are manufacturers or service providers registered under GST and have been filing prescribed GST returns without fail and whose annual turnover in the preceding year is above INR 10mn	Importers shall give surety for the amount of duty foregone. However, where the importer is not able to provide the surety, a bank guarantee/cash security equivalent to not more than 5% of bond debit value* shall be furnished. (Excluding cases in sl.no. 4)
6	Importers not covered under sl.no 1,2,3,4 or 5 above	Bank guarantee/cash security- not more than 25% of the bond debt value*

\*Bond debit value - Duty foregone in case of concessional rate and assessable value of the goods in other cases.

[Notification no:74/2022 dated 9 September 2022, Circular no:18/2022 dated 10 September 2022]

#### **Amendment of Remission of Duties and Taxes on Exported Products (RoDTEP) and Rebate of State and Central Taxes and Levies (RoSCTL) notifications**

Amendment has been made in notification no:76/2021-Customs dated 23 September 2021 which prescribes the manner to issue duty credit for goods exported under the

scheme for RoDTEP and in notification no:77/2021-Customs, dated 24 September 2021 which prescribes the manner to issue duty credit for goods exported under the continuation of scheme for RoSCTL. In the said notification following amendments are made

- In Clause 4 “Recovery of amount of duty credit”, sub-clause (2) shall be omitted. Earlier it was prescribed that “The duty credit amount that an exporter is so required to repay under sub-clause (1) shall be deemed never to have been allowed, and if the exporter fails to repay the said amount within a period of fifteen days along with interest so demanded, then the proper officer of Customs may, without prejudice to any action against the exporter, proceed for recovery of the said duty credit amount from the transferee in the manner as provided in Section 142 of the said Act”
- In Clause 5 “Recovery of amount of duty credit where export proceeds are not realised”, sub-clause (5) shall be omitted. Earlier it was prescribed that “The proper officer of Customs may, without prejudice to any action against the exporter, proceed for recovery of said duty credit amount from the transferee in the manner as provided in Section 142 of the said Act”
- In Clause 6 the words “or the transferee” shall be omitted. Earlier it was prescribed that “During the pendency of any recovery, as provided in clauses 4 and 5, no further duty credit, on any subsequent exports, shall be allowed to such exporter till the time such recovery is made and any unutilised duty credit with the exporter or the transferee shall be suspended pending such recovery.”

[Notification no:75/2022 dated 14 September 2022, Notification no:76/2022 dated 14 September 2022]

#### **CIRCULARS**

##### **Customs procedure for export of cargo in closed containers from ICDs to Bangladesh using Inland Waterways**

Recently, in the ‘Waterways Conclave 2022’ organised by the Inland Waterways Authority of India (IWAI) in April 2022, several stakeholders evinced interest in using the inland waterways for exports to Bangladesh. It has been suggested that goods cleared at an ICD for export may be transported to the gateway port of Kolkata or Haldia by road or rail, and further from the gateway port to Bangladesh utilising the inland waterways route as agreed under the Protocol on Inland Water Transit and Trade (PIWTT) between India and Bangladesh.

CBIC had issued Circular no:52/2017-Customs dated 22 December 2017. The said circular lays down the procedure for off-border export clearance at an ICD/CFS and subsequent movement of cargo in containers or closed-bodied trucks under the ECTS seal from the said ICD / CFS to Bangladesh, Nepal, or Bhutan through specified Land Customs Stations (LCS). The said Circular also envisages the movement of cargo by road or rail but does not provide for use of inland waterways.

Therefore, to augment the multi-modal connectivity approach and leverage the bilaterally agreed inland waterways routes between India and Bangladesh under the PIWTT (IBP routes), CBIC has now decided to extend the provision of off-border clearance at ICDs for containerised

movement of export cargo under e-seal to Bangladesh using inland waterways, as an additional measure towards trade facilitation. The goods cleared at the ICDs shall be first brought by road or rail to the gateway ports of Kolkata or Haldia, from where the containers shall be loaded on a barge/vessel for a further journey by riverine route to Bangladesh through LCS of Hemnagar.

This essentially entails two legs of the journey

- The first leg involves the movement of customs-cleared export cargo, after a grant of the Let Export Order (LEO) from ICD to the gateway port of Kolkata or Haldia by rail or road
- The second leg involves the unloading of cargo from train/truck and further loading onto a barge/vessel at the gateway port of Kolkata or Haldia for final exit / cross over to Bangladesh through LCS Hemnagar using the IBP route

For ensuring secure movement, e-seals shall be used on the containers throughout the entire journey.

#### **The first leg of the movement from ICD to the gateway port of Kolkata or Haldia by road or rail**

- The exporters shall bring goods meant for export to an ICD and file a Shipping Bill on EDI. For a generation of ETP (Export Transshipment Permit), the details of Kolkata or Haldia Port shall be entered as the gateway port
- The goods shall be stuffed in containers and each container shall be duly sealed with a tamper-proof RFID e-seal. The unique serial number of the RFID e-seal shall be declared in the Shipping Bill (SB)
- The SB shall be assessed, and goods shall be examined as per EDI/RMS procedures. LEO shall be granted when all legal and regulatory requirements are satisfied. The integrity of the RFID e-seals on the containers shall be verified with an RFID e-seal reader by the Customs officer before goods leave the ICD
- The authorised carrier shall be responsible for the safe and secure transportation of the containerised cargo from the ICD till the final exit from LCS Hemnagar. For this purpose, the authorised carrier shall also enter into a trans-shipment bond with the jurisdictional Principal Commissioner of Customs / Commissioner of Customs of the ICD for an amount and in the manner as prescribed by the said Principal Commissioner or Commissioner
- The above steps outlined, and any further procedure prescribed, for the movement of such export cargo from an ICD to the ports of Kolkata or Haldia, shall necessarily also follow the extant procedure prescribed for transshipment of export consignments from ICDs to gateway ports

#### **The second leg of the movement from the gateway port to Bangladesh through LCS using the IBP route**

- At the gateway port, e-Gatepass copy of SB shall be presented by the authorised carrier to the Customs officer;
- Once the containers have been unloaded from the respective carrier (train or truck) for onward loading onto a barge/vessel at the gateway port, the Customs officer at the port shall first verify the RFID e-seals on all containers, for tampering if any, through RFID reader and only if found in order, endorse the same on the e-Gatepass copy of the SB presented by the authorised carrier;

- In case the RFID reader indicates the e-seal as tampered with, such a container shall be subject to 100% examination. During the examination, if the goods are found in order, the consignment shall be allowed for further onward movement. However, if the goods are not found as per the details presented in the SB, the matter shall be brought to the notice of the Deputy Commissioner/Assistant Commissioner of the ICD from where the goods had been cleared for exports and further necessary action shall be initiated as per the extant provisions under the Customs Act
- For loading onto the barge/vessel, the Master of Barge / Vessel shall submit the loading/placement plan of the containers to the Customs Officer at the Kolkata or Haldia port, as the case may be, clearly describing the details of placement, container wise and hold wise, along with a schematic diagram showcasing the containers that are placed at each level on the Barge / Vessel
- The Customs officer shall read the RFID e-seal on each container before allowing loading onto the Barge / Vessel, for verifying that each container is properly sealed and that the RFID e-seal corresponds to the details captured on the SB
- The placement of the containers shall be ensured by the Master of Barge/Vessel in such a manner that the sealed side, to the extent possible, is kept accessible for ease of checking at LCS Hemnagar by Customs. The Customs officer at Kolkata/Haldia port shall ensure that the placement plan is tamper-proof and only limited containers (if any) are inaccessible on account of the design/infrastructure limitation of a hold
- Where possible after loading, each holder of the Barge/Vessel shall be covered with heavy-duty tarpaulin secured by rope and sealed with RFID seals, and one Electronic Cargo Tracking System (ECTS) seal shall also be affixed for real-time tracking of the cargo. Where tarpaulin cover on hold is not possible considering the nature of stacking, one container selected randomly by the Customs officer will be additionally sealed with an ECTS seal. The Customs officer at the concerned gateway port (Kolkata / Haldia) shall regularly monitor the movement on the ECTS web portal. The authorised carrier shall be responsible for obtaining e-seals (RFID and ECTS) from approved vendors
- The authorised carrier / Barge or Vessel Operator shall file Export General Manifest (EGM) on EDI as per the prescribed procedure
- Once the Barge/Vessel sails for Hemnagar from Kolkata/Haldia port, the Customs officer at the concerned port shall forward a detailed report consisting of the loading/placement plan of the containers on the Barge / Vessel, RFID and ECTS seal numbers with corresponding container details to the Customs officer at LCS Hemnagar through e-office. A scanned copy of the endorsed e-Gatepass SB shall also be forwarded with this report;
- At LCS Hemnagar, the Customs officer shall verify the integrity of all RFID e-seals as well as the ECTS seal placed on the tarpaulin cover and cross-verify the same with the report received from the officers of Kolkata/Haldia port on e-office. Where tarpaulin cover could not be placed on hold at Kolkata/Haldia port, the Customs officer at Hemnagar shall verify the integrity of RFID e-seals on all such containers that are accessible for checking, and of the ECTS seal

- If everything is found in order, the ECTS seals shall be removed and cross-border movement of the barge for export to Bangladesh shall be allowed at LCS Hemnagar. The Customs Officer at LCS Hemnagar shall record the border crossing report with the sailing date and communicate the same through e-office to the Customs officer at the concerned gateway port (Kolkata/Haldia);
- However, if the seals are found tampered with or the consignment does not conform to the description in any manner, the Customs officer at Hemnagar shall promptly notify the concerned Customs officer at Kolkata or Haldia port of the discrepancy found and thereafter accompany the barge on its return movement to Kolkata or Haldia for further examination. On reaching Kolkata or Haldia port, the containers of the said barge shall be unloaded and examined by the Customs office of the concerned port
- Based on the border crossing report shared by the Customs officer of LCS Hemnagar, the Customs officer at the gateway port (Kolkata/Haldia) shall enter the sailing date in the EDI system for reconciliation of the EGM, upon which the bond for safe movement from ICD till LCS Hemnagar shall be re-credited/discharged at the ICD

The above procedure shall remain applicable till suitable changes are made in ICES by DG Systems, linking LCS Hemnagar with ICDs. Further, on the full implementation of the Sea Cargo Manifest and Transshipment Regulations, 2018 (SCMTR), relevant aspects, if any, prescribed under the said regulations, that have applicability to the movements dealt in the present Circular shall apply, and this procedure may undergo change for that purpose.

*[Circular no:17/2022 dated 9 September 2022]*

#### **Transshipment through India of containerised export cargo of Bangladesh destined for third countries**

- CBIC has issued transshipment rules for Bangladesh Cargo (Containerised) being shipped to third countries to get routed through Indian ports;
- To facilitate the trade and leverage the potential of inland waterways for enhancing trade and transit, it has been decided to allow the transshipment of containerised export goods of Bangladesh through India using riverine and rail routes, entailing two legs of movements as follows:
  - The first leg involves entry of containerised cargo into India through LCS Hemnagar, from where the goods shall be transported to the seaport of Kolkata or Haldia on a barge/vessel using the riverine route agreed under the protocol on the IBP route
  - The second leg involves unloading of containers from the barge/vessel and further loading on a railway train at the seaport of Kolkata or Haldia, from where the goods will travel by rail to the seaport of Nhava Sheva or Mundra for export to third countries
- The transshipment
  - is allowed with respect to FCL containers only
  - is not allowed for cargo having arms, ammunition, explosives, or other cargo considered as constituting a threat to security, safety and integrity of the country or other goods attracting prohibition under Section 11 of the Customs Act
  - is not allowed to any port/destination in respect of which any order or prohibition is in force for the time being
- The authorised carrier undertaking the aforesaid movements covering the complete transshipment shall require registration with the Commissioner of Customs (Prev.), West Bengal. While laying down the form and manner for registration, the Commissioner shall consider the credentials of an authorised carrier registered under the SCMTR
- The authorised carrier shall be responsible for the safe and secure transportation of the containerised cargo through the entire journey, i.e. from entry into LCS Hemnagar till final exit from the seaport of Nhava Sheva or Mundra. For this purpose, the authorised carrier shall also enter into a transshipment bond with the Commissioner of Customs (Prev.), West Bengal in the prescribed form and manner. The bond shall be equivalent to twice the value of goods to be transhipped
- The authorised carrier shall give a written advance intimation to the Commissioner of Customs (Prev.), West Bengal at least 3 working days before the arrival of goods from Bangladesh at LCS Hemnagar. The intimation shall be in form at Annexure-A of the Circular and shall inter alia contain details of Barge/Vessel, goods, containers, One-Time Lock (OTL) put on the containers, and the expected date and time of arrival at LCS Hemnagar. The Commissioner shall keep a record of the intimation and shall also forward it promptly to LCS Hemnagar for making necessary arrangements
- Before arrival in India, the goods shall be stuffed in containers and each container must have been securely sealed with a tamper-proof OTL having a unique serial number. Affixing the OTLs on containers may not be feasible upon arrival of cargo at LCS Hemnagar because some containers may be inaccessible due to their nature of stacking in the hold of the Barge/Vessel
- The authorised carrier shall prepare a loading/placement plan, clearly describing the details of placement, container-wise and hold-wise, along with a schematic diagram showing the containers that are placed at each level on the Barge/Vessel. The loading/placement plan should ensure that the OTL side, to the extent possible, is kept accessible for the purpose of checking the OTLs at LCS Hemnagar by Customs
- Steps at LCS Hemnagar, Kolkata/Haldia Port and Nhava Sheva/Mundra Port are prescribed in the Circular
- For ensuring secure movement and tracking, the e-seals (RFID and ECTS) shall be procured by the authorised carrier at its own cost from vendors/service providers
- The Directorate General of Systems and Data Management shall develop an online module within a specified timeframe to aid this transshipment

*[Circular no:19/2022 dated 14 September 2022]*

#### **INSTRUCTIONS**

##### **New procedure for the disposal of gold**

- Video Instruction no:27/2021-Customs dated 3 December 2021 read with corrigendum dated 10 January 2022, a new procedure for disposal of gold was prescribed wherein it was envisaged that the seized/confiscated gold (other than ornament/jewellery/articles) shall be transferred to the Reserve Bank of India (RBI) through Security Printing and Minting Corporation of India Ltd. (SPMCIL)
- While the implementation of the new procedure was by and large satisfactory, certain issues were brought to the notice of the CBIC. The issues are as follows



- **Determination of the amount of sale proceeds of gold while refunding the amount in lieu of gold already disposed of:** There are instances wherein the appellate authorities order for the release of the gold seized by setting aside the confiscation order or otherwise. Normally, if the seized gold is disposed of and not available for return, in lieu of such gold, the sale proceeds of such gold is refunded to the owner of the gold after applicable deductions. In such situations, the field formations find it difficult to determine the actual amount of sale proceeds pertaining to the seized gold, since they are not getting the details of sale proceeds which are credited centrally in a consolidated manner for the standard gold bars delivered to RBI
- **Expanding the scope of Instruction No:27/2021-Customs dated 3 December 2021 to include gold jewellery/articles/ornaments:** Field formations stated that many times 24-carat gold was seized and such gold (in jewellery or crude form) may not attract a buyer if auctioned. Hence, the inclusion of such 24-carat gold jewellery/articles/ornaments in the new procedure and transfer to SPMCIL for processing and converting into standard gold bars would help speedy disposal of such gold
- **Prescribing quarterly cycle for gold disposal:** The Memorandum of Understanding (MoU) signed between CBIC, SPMCIL and RBI mentions, inter alia that the frequency of transfer of gold shall normally be once every quarter of a year. Hence, the entire cycle of gold disposal needs to be on a quarterly basis
- **Prescribing Minimum quantity of gold for collection by SPMCIL:** Arranging logistics and transport of gold involves cost, time, and human resources. Therefore, prescribing minimum quantity for the purpose of handing over to SPMCIL, would optimise such cost and human resources
- **Capacity Constraints of India Government Mint at Hyderabad and remapping of Zones:** Para 3.1 and Annexure-II of Instruction No:27/2021-Customs dated 3 December 2021 describes a mapping of Zones with Focal Commissionerate's and IG Mints. SPMCIL has expressed certain capacity constraints in processing gold at IG Mint Hyderabad and requested for re-mapping of Zones for handing over gold
  - CBIC has examined the matter in consultation with RBI and SPMCIL. Accordingly, the following additional instructions are issued for disposal of gold in terms of instruction no:27/2021-Customs dated 3 December 2021

**Determination of amount of sale proceeds of gold while refunding the amount in lieu of gold already disposed of**

- Henceforth, at the time of seizure, it may be ensured by the seizing Commissionerate/agency, that the seizure report has the details of the purity of gold in terms of a carat. Further, at the time of handing over of gold to SPMCIL in terms of Instruction no:27/2021 dated 3 December 2021, the tariff value, and the average market price per 10gm (based on the closing market price reported in three national economic dailies), shall be entered in the stock register (refer to para 3.4.1 and Form 5 of chapter 3 of Disposal Manual, 2019)
- Whenever seized gold has to be returned on account of any order from a judicial forum and the gold has already been disposed of the amount to be refunded in lieu of such gold shall be calculated as given below

- If the seizure is made in the Customs area, the calculation shall be based on the tariff value of gold on the date of transfer of such seized/confiscated gold to SPMCIL
- If the seizure is made at any place other than the Customs area, the calculation shall be based on the average market price of gold on the date of transfer of such seized/confiscated gold to SPMCIL
  - The average market price shall be approved by the Joint Pricing Committee (JPC)
  - For all the lots that have already been handed over to SPMCIL till date, tariff value or average market price, as the case may be, on the date of handing over of gold to SPMCIL shall be taken as the basis and the average market price shall be approved by the JPC
  - Prescribed a quarterly cycle in the instruction for gold disposal: For the disposal of seized/confiscated gold, a cycle is prescribed for various actions in Instruction no:27/2021 dated 3 December 2021

SPMCIL shall deliver the standard gold bars to the RBI preferably within one month of collection, which may be further extended on the basis of mutual agreement between the parties. Further, SPMCIL may inform RBI, adequately in advance, before delivering standard gold bars.

**Prescribing the Minimum quantity of gold for collection by SPMCIL**

- Field formations may intimate SPMCIL only when they have a minimum of 10 kg gold ripe for handing over
- However, in the January-March quarter irrespective of the quantity, the gold ripe for transfer shall be handed over to SPMCIL at the stipulated deadline
- Moreover, it may also be noted that if the gold ready to be handed over to SPMCIL is more than the minimum prescribed quantity, the field formations may intimate SPMCIL more than once in a quarter also (i.e. if another lot exceeds the minimum quantity accumulates within the same quarter, the formation need not carry it over to the next quarter)
- **Revised mapping of Zones with mints:** To address the issue relating to capacity constraint at the India Government Mint at Hyderabad, the mapping of Zones is revised as below and Annexure II of Instruction no:27/2021-Customs dated 3 December 2021 stands amended to that extent prescribed in the instruction
- Expanding the scope of Instruction no:27/2021-Customs dated 3 December 2021 to include gold ornaments/jewellery/articles
- The guidelines prescribed in Instruction no:27/2021 are now made applicable to seized/confiscated gold in any form of 24-carat purity i.e. including gold ornaments/jewellery/articles of 24-carat purity, and such gold may be disposed of in terms of the said Instruction;
- Other forms of gold may be disposed of by the following procedure at para 11.4 of Disposal Manual, 2019. Change in the procedure, if any, for other forms of gold will be communicated in due course
- Instruction no:27/2021-Customs dated 3 December 2021 read with corrigendum dated 10 January 2022 stands suitably modified to this effect. All the field formations under your Zone may suitably be sensitised in this regard  
[Instruction no:22/2022 dated 6 September 2022]



### Clarification regarding FSSAI's requirement of AGMARK certification in case of imported food products

- CBIC issued an Instruction no:12/2020-Customs dated 10 July 2020 on the above subject, enclosing the advisory of FSSAI issued vide letter no.1-1800/FSSAI/Imports/2019 dated 7 July 2020
- Now, a fresh advisory, dated 18 August 2022 issued by Director (Trade and IC), FSSAI has modified the above-referred advisory of FSSAI issued vide letter no.1-1800/FSSAI/Imports/2019 dated 7 July 2020
- Vide its recent advisory dated 18 August 2022, FSSAI has stated that 'the representation has been received from various stakeholders seeking clarification with respect to the applicability of requirement of AGMARK certification in case of import food products. The matter was taken up with the DMI and it has been informed that foreign country/overseas certification under Agricultural Produce (Grading and Marking) Act 1937 is not being carried out by DMI. Therefore, as decided, it was agreed to keep the requirement of AGMARK certification for imported food consignments in abeyance till further orders'
- The Instruction no:12/2020-Customs dated 10 July 2020 is modified accordingly

[Instruction no:23/2022 dated 9 September 2022]

### Amendment in export policy of broken rice

- CBIC issues notification no:31/2015-2020 dated 8 September 2022 issued vide S. O. No. 4219(E), wherein the Central Government has amended the export policy of broken rice against ITC (HS) code 10064000 from 'Free' to 'Prohibited'
- Vide para 2 of the said notification, it has been provided that the notification will come into effect from 9 September 2022 and that the provisions as under para 1.05 of the FTP 2015-2020 regarding transitional arrangement, shall not be applicable under this notification for export of broken rice under HS code 10064000;
- Further, during the period from 9 September 2022 till 15 September 2022, the following consignments of broken rice will be allowed to be exported
  - where loading of broken rice on the ship has commenced before this notification
  - where the shipping bill is filed, and vessels have already berthed or arrived and anchored in Indian ports and their rotation number has been allocated before this notification
  - The approval of loading in such vessels will be issued only after confirmation by the concerned port authorities regarding anchoring/berthing of the ship for loading of broken rice prior to the notification
  - where broken rice consignment has been handed over to the Customs before this notification and is registered in their system

[Instruction no:24/2022 dated 12 September 2022]

## FOREIGN TRADE POLICY (FTP)

### NOTIFICATION

#### Amendment in import policy condition under chapter 39 of ITC (HS), 2022, Schedule-I

Import of PET flakes under HS Code 39076110-39076930 has been permitted subject to NOC from the Ministry of

Environment, Forest and Climate Change (MoEF&CC) and an authorisation from DGFT.

[Notification no:32/2015-20 dated 14 September 2022]

### PUBLIC NOTICE

#### Provisions for treatment of un-utilised quantities allocated under TRQ for import of crude soya bean & crude sunflower oil

Amendment has been made in para 2 of public notice no:10/2015-20 dated 24 May 2022 read with public notice no:15/2015-20 dated 14 June 2022 as under, whereby the provisions for the treatment of un-utilised quantities allocated under TRQ for import of crude soya bean and crude sunflower oil have been elaborated. In the said public notice the following provisions are inserted

- All TRQ allottees who are yet to effect imports under TRQ allocated shall provide details of imports planned under TRQ. Information and proof of aforesaid purchase/import arrangements, such as details of advance payment along with purchase contract/Letter of Credit along with the SWIFT Output Message Reference date, and other supporting documents shall be sent to the email ids: ddg1import-dgft@gov.in and policy2-dgft@gov.in latest by 20 September 2022
- In case of possible non-utilisation of quantities allocated or partial utilisation, the TRQ allottees shall intimate this directorate for the surrender of specific quantities. Details of the quantities to be surrendered shall be sent vide email to the following email ids: ddg1import-dgft@gov.in / policy2-dgft@gov.in latest by 20 September 2022
- Failure to comply with the above directions shall result in cancellation and reallocation of TRQ to other eligible Importers after 20 September 2022

Para 2(xi) of public notice no:15/2015-20 dated 14 June 2022 is additionally re-iterated for information of all TRQ Allottees - The un-utilised quantities i.e., quantities not imported by the TRQ licensees by the end of the current import period, shall be deducted from the proposed allocations during the next period, i.e., 2023-2024.

[Public notice no:24/2015-20 dated 12 September 2022]

#### Guidelines for applicants under ANF-4F (Application for Redemption/No Bond Certificate against Advance Authorisation)

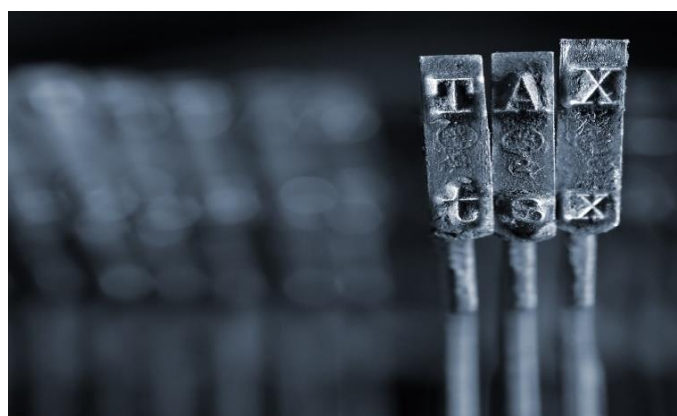
Director General of Foreign Trade (DGFT) hereby partially modifies para 2 (b)(i) of the Guidelines for applicants under ANF-4F (Application for Redemption/No Bond Certificate against Advance Authorisation) of public notice no:11/2015-20 dated 7 June 2022 as follows

- A copy of the invoice or a statement of invoices duly signed by the unit receiving the material certifying the item of supply, its quantity, value, and date of such supply. However, in case of a supply of items that are non-excisable or a supply of excisable items to a unit producing a non-excisable product(s), a project authority certificate (PAC) certifying quantity, value and date of supply would be acceptable in lieu of excise/GST certification
- However, in respect of supplies to EOU/EHTP/ STP/ BTP, the procedure prescribed in circular no:14/14/2017-GST dated 6 November 2017 issued by GST Policy Wing, Central Board of Excise and Customs, Department of Revenue shall be followed. Accordingly, a copy of Form A along with the copy of the Tax invoice duly endorsed by

the recipient shall be considered as proof of deemed export supplies. However, in case of a supply of the product by the intermediate supplier to the port directly for export by the ultimate exporter (holder of Advance Authorisation or DFIA) in terms of paragraph 4.30 of HBP, a copy of the shipping bill with the name of domestic supplier as intermediate supplier endorsed on it along with the file no./authorisation no. of the ultimate exporter and the intermediate supplier shall be required to be furnished

- The provision in respect of the supplies made to EOU/EHTP/STP/BTP remains in line with the public notice no:9 dated 14 May 2018

*[Public Notice dated 12 September 2022]*



## NEWS FLASH

1. “SC seeks Centre's response on pleas seeking setting up of GST Tribunal”  
<https://economictimes.indiatimes.com/news/india/sc-seeks-centres-response-on-pleas-seeking-setting-up-of-gst-tribunal/articleshow/94160172.cms>  
 [Source: Economic Times, 12 September 2022]
2. “Traders vexed as kilns stop brick sales due to high GST”  
<https://timesofindia.indiatimes.com/city/ludhiana/trade-rs-vexed-as-kilns-stop-brick-sales-due-to-high-gst/articleshow/94165241.cms>  
 [Source: Times of India, 13 September 2022]
3. “Centre upbeat on Rs 1.5-trillion GST revenue every month from October”  
[https://www.business-standard.com/article/economy-policy/centre-upbeat-on-rs-1-5-trillion-gst-revenue-every-month-from-october-122091401085\\_1.html](https://www.business-standard.com/article/economy-policy/centre-upbeat-on-rs-1-5-trillion-gst-revenue-every-month-from-october-122091401085_1.html)  
 [Source: Business Standard, 14 September 2022]
4. “GST collection sees incremental growth in FY23 first quarter: Delhi govt”  
[https://www.business-standard.com/article/economy-policy/gst-collection-sees-incremental-growth-in-fy23-first-quarter-delhi-govt-122091400011\\_1.html](https://www.business-standard.com/article/economy-policy/gst-collection-sees-incremental-growth-in-fy23-first-quarter-delhi-govt-122091400011_1.html)  
 [Source: Business Standard, 14 September 2022]
5. “Businesses will be able to claim pre-GST tax credits from October 1: Report”  
[https://www.business-standard.com/article/economy-policy/businesses-will-be-able-to-claim-pre-gst-tax-credits-from-october-1-report-122091200263\\_1.html](https://www.business-standard.com/article/economy-policy/businesses-will-be-able-to-claim-pre-gst-tax-credits-from-october-1-report-122091200263_1.html)  
 [Source: Business Standard, 14 September 2022]

## Contact Us

For any content related queries, you may please write to the service line experts at:  
[taxadvisory@bdo.in](mailto:taxadvisory@bdo.in)

For any other queries, kindly write to:  
[marketing@bdo.in](mailto:marketing@bdo.in)

## BDO Offices

**Ahmedabad**  
The First, Block C - 907  
Behind ITC Narmada, Keshavbaug  
Vastrapur, Ahmedabad 380015, INDIA

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80 Feet Road, 6th Block, Koramangala  
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Plot no 55, 5th Floor,  
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Office No. 1501-10, Sector-54,  
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**Delhi NCR - Office 2**  
Windsor IT Park, Plot No: A-1  
Floor 2, Tower-B, Sector-125  
Noida 201301, INDIA

**Goa**  
701, Kamat Towers  
9, EDC Complex, Patto  
Panaji, Goa 403001, INDIA

**Hyderabad**  
1101/B, Manjeera Trinity Corporate  
JNTU-Hitech City Road, Kukatpally  
Hyderabad 500072, INDIA

**Kochi**  
XL/215 A, Krishna Kripa  
Layam Road, Ernakulam  
Kochi 682011, INDIA

**Kolkata**  
Floor 4, Duckback House  
41, Shakespeare Sarani  
Kolkata 700017, INDIA

**Mumbai - Office 1**  
The Ruby, Level 9, North West Wing  
Senapati Bapat Marg, Dadar (W)  
Mumbai 400028, INDIA

**Mumbai - Office 2**  
601, Floor 6, Raheja Titanium  
Western Express Highway, Geetanjali  
Railway Colony, Ram Nagar, Goregaon (E)  
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**Pune - Office 1**  
Floor 6, Building # 1  
Cerebrum IT Park, Kalyani Nagar  
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**Pune - Office 2**  
Floor 2 & 4, Mantri Sterling, Deep Bungalow  
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