

# INDIRECT TAX

## Weekly Digest

28 September 2021  
[www.bdo.in](http://www.bdo.in)



## GOODS & SERVICES TAX

### LEGISLATIVE UPDATES

#### NOTIFICATION

##### Requirement of Aadhar authentication

- The registered person, other than a person notified under section 25(6D) (as stated in the below notification no:36/2021-Central Tax dated 24 September 2021), who has been issued a certificate of registration under rule 10 shall, undergo authentication of the Aadhaar number of the proprietor, in the case of proprietorship firm, or of any partner, in the case of a partnership firm, or of the karta, in the case of a Hindu undivided family, or of the managing director or any whole time director, in the case of a company, or of any of the members of the managing committee of an association of persons or body of individuals or a society, or of the trustee in the Board of trustees, in the case of a trust and of the authorized signatory, in order to be eligible for the purposes as specified below:
  - For filing of application for revocation of cancellation of registration in FORM GST REG-21 under Rule 23;
  - For filing of refund application in FORM RFD-01 under rule 89;
  - For refund under rule 96 of the integrated tax paid on goods exported out of India.
- Provided that if Aadhaar number has not been assigned to the person required to undergo authentication of the Aadhaar number, such person shall furnish the following identification documents, namely:

- her/his Aadhaar Enrolment ID slip; and
  - Bank passbook with photograph; or
  - Voter identity card issued by the Election Commission of India; or
  - Passport; or
  - Driving license issued by the Licensing Authority under the Motor Vehicles Act, 1988 (59 of 1988):

Provided further that such person shall undergo the authentication of Aadhaar number within a period of 30 days of the allotment of the Aadhaar number.;

*The above changes will come to effect from the date as may be notified*

##### Time limit to file ITC-04

- Taxpayers whose annual aggregate turnover in preceding financial year is,
  - above INR 50 Mn. shall furnish ITC-04 once in 6 months, w.e.f. 1 October 2021;
  - up to INR 50 Mn. shall furnish ITC-04 annually, w.e.f. 1 October 2021;

##### Implication of non-furnishing of GSTR 3B

- A registered person shall not be allowed to furnish FORM GSTR-1 if he has not furnished the return in FORM GSTR-3B for the preceding month, w.e.f. 1 January 2022.

### Requirement of PAN and linking to bank account

- With effect from the date as may be notified, for the purposes of grant of provisional refund, order sanctioning refund & order sanctioning interest on delayed refunds, “bank account” shall mean such bank account of the applicant which is in the name of applicant and obtained on his Permanent Account Number.

In case of a proprietorship concern, the Permanent Account Number of the proprietor shall also be linked with the Aadhaar number of the proprietor.

[Notification no:35/2021-Central Tax dated 24 September 2021]

### No proof of possession of Aadhaar number required in case of certain entities

As a part of GST registration process, every registered person shall undergo authentication, or furnish proof of possession of Aadhaar number, in such form and manner and within such time as may be prescribed. However, there is no such requirement in case of a person who is:

- not a citizen of India; or
- a Department or establishment of the Central Government or State Government; or
- a local authority; or
- a statutory body; or
- a Public Sector Undertaking; or
- a person applying for registration under the provisions of sub-section (9) of section 25 of the said Act.

[Notification no:36/2021-Central Tax dated 24 September 2021]

## CIRCULARS

### Scope of ‘intermediary’ services

This has been an area of raging controversy. The circular issued to clarify scope of ‘intermediary’ services helps resolve divergent interpretations adopted by tax authorities and taxpayer. It provides a sigh of relief to taxpayers.

#### Key requirements for considering services as ‘intermediary’ services

- Minimum 3 parties should be involved in the transaction, namely the ‘Main Supplier’, the ‘Recipient’ of Main Supply and the ‘Intermediary’, who facilitates/arranges the ‘Main supply’ between ‘Main supplier’ and ‘Recipient’. ‘Intermediary’ does not provide the main supply himself.
- Two distinct supplies should be involved, namely ‘Main supply’ between two persons on ‘Principal to Principal’ basis and the ‘Ancillary supply’ by the ‘intermediary’ who facilitates the ‘Main Supply’ between principals.
- Intermediary service provider shall have the character of an agent, broker, or any other similar person. The role of the intermediary is only supportive.
- The intermediary will not include a person who supplies the goods or services or both or securities on his own account. When a person supplies the main supply, either fully or partly, on principal-to-principal basis, the said supply will not get covered under ‘Intermediary’.

- Sub-contracting/Outsourcing (and not merely arranging or facilitating) of service (fully or in part) is not intermediary.
- The provisions pertaining to intermediary shall be invoked only when either the location of supplier of intermediary services or location of the recipient of intermediary services is outside India.

#### Illustrations given in the Circular:

- The below illustrations are for reference only and each transaction/contract shall be examined
- in detail to understand the applicability of intermediary services.

Sl. No	Nature of Transaction	Whether Intermediary or Not and reason
1	<ul style="list-style-type: none"> <li>‘A’ supplies a machine to ‘B’ - the Main Supply</li> <li>‘C’ helps ‘A’ in identifying ‘B’ and assists in finalizing the contract between ‘A’ and ‘B’</li> <li>‘C’ charges ‘A’ for identifying customer ‘B’ and facilitating supply of machine between ‘A’ and ‘B’.</li> </ul>	‘C’ is an ‘intermediary’ as it involves facilitation of supply between ‘A’ and ‘B’
2	<ul style="list-style-type: none"> <li>‘A’ is involved in development of software as per requirements of client ‘B’. ‘A’ outsources the task of design and development of a particular module of the software to ‘C’.</li> <li>‘C’ may interact with ‘B’ for rendition of software development activity</li> </ul>	‘C’ makes main supply of software design and development activity to ‘A’, hence services rendered ‘C’ will not qualify as ‘intermediary’ services
3	<ul style="list-style-type: none"> <li>‘P’ is an Insurance Company located outside India, who approaches, ‘Q’ for identifying service providers, who would perform the Insurance claim processing services.</li> <li>‘Q’ contacts ‘R’, who is in the business of providing insurance claim processing. ‘Q’ arranges for contract between ‘P’ and R’ and receives commission.</li> </ul>	‘P’ and ‘R’ are involved in the Main supply on Principal-to-Principal. ‘Q’ merely facilitates Main supply between ‘P’ and ‘R’; thus, services rendered by ‘Q’ would qualify as ‘intermediary’ Services.

4	<ul style="list-style-type: none"> <li>▪ 'A' supplies computer to customers all over the world and as part of it, 'A' is required to provide customer care services to its customers.</li> <li>▪ 'A' outsources customer care services to a BPO firm 'B', where 'B' provides customer care services to 'A' by interacting with the customers of 'A'.</li> </ul>	Services rendered by 'B' to 'A' is 'Main Supply' in the nature of 'Customer care services'. Hence, services rendered by 'B' will not qualify as 'intermediary' Services.
---	---	--

#### Our Comments

The circular provides significant relief to several organizations, specifically entities operating in IT & ITES space. Even though the circular has clarified the intermediary implications on 'BPO services', 'sub-contracting', and services provided under 'principal to principal' contract, the following actions and reviews needs to be undertaken by entities having similar operations -

- Take decision on applicability of 'intermediary' services when the entity is purely involved in 'Market Research Services'/'Marketing services' of identifying customers does not facilitate the 'Main supply' between principal supplier and principal recipient. The current clarification does not clearly clarify this issue.
- Several Advance Rulings in the past have held that services would qualify as 'intermediary' services and the illustrations provided in the circular may not directly address findings contained in those advance rulings. This would require revalidation of the tax positions adopted in the past drawing inferences from the latest clarification.
- Further, entities who had adopted conservative tax approach of levying GST on their services, need to re-examine the positions in the backdrop of the circular to explore refunds.
- Additionally, the circular has not addressed one of the key issues faced by the IT & ITES sector, wherein the 'Main supply' and recipient is located outside India and the facilitation services (intermediary) is rendered by an entity located in India. Also, doubts on the 'place of supply', to ascertain whether it is 'inter' or 'intra' state supply too stands unaddressed.

[Circular no:159/15/2021-GST dated 20 September 2021]

#### Clarification on time limit for availment of ITC on debit note

Section 16 (4) of CGST Act, 2017, amended w.e.f. 01 January 2021, provides that registered person shall not be entitled to take ITC in respect of any Invoice or Debit Note after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier. Prior to this amendment, ITC cannot be availed on Debit Note, if it is issued after the time limit for availing ITC on the original invoice related to such debit note. CBIC has issued clarifications on the following in relation to the availment of ITC on debit note:

Sl. No	Issues	Clarifications
a.	There was a doubt regarding the Financial Year (FY) for the availment of ITC on debit note for the purpose of section 16(4).	After the amendment to section 16(4), the words 'invoice relating to such' is omitted. The availment of ITC on Debit Notes in respect of amended provision shall be applicable from 01 January 2021. Whereas any ITC availed prior to 01 January 2021, in respect of Debit Notes, shall be governed under the provisions of section 16(4), as it existed before the said amendment w.e.f. 01 January 2021.
b.	Whether date of issuance of Debit Note, or date of issuance of underlying invoice is relevant to determine the 'FY' after the amendment of section 16(4) of the CGST Act w.e.f. 01 January 2021 and also whether the amended provision will be applicable only in respect of the Debit Notes issued after 01 January 2021?	It is clarified that w.e.f. 01 January 2021, the date of issuance of Debit Note (and not the date of underlying invoice) shall determine the relevant FY.
c.	FY for issuance of debit note for section 16(4) in case of Debit Note issued prior to 01 January 2021, however ITC availed after 01 January 2021.	Debit Note date would be relevant to determine the relevant FY. <b>Illustration 1.</b> A debit note dated 07 July 2021 is issued in respect of the original invoice dated 16 March 2021. As the invoice pertains to F.Y. 2020- 21, the relevant financial year for availment of ITC in respect of the said invoice in terms of section 16(4) of the CGST shall be 2020-21. However, as the debit note has been issued in FY 2021-22, the relevant financial year for availment of ITC in respect of the said debit note shall be 2021-22 in terms of amended provision of section 16(4) of the CGST Act.

**Illustration 2.** A debit note has been issued on 10 November 2020 in respect an invoice dated 15 July 2019. As per amended provision of section 16(4), the relevant financial year for availment of input tax credit on the said debit note, on or after 01 January 2021, will be FY 2020-21 and accordingly, the registered person can avail ITC on the same till due date of furnishing of FORM GSTR-3B for the month of September 2021 or furnishing of the annual return for FY 2020-21, whichever is earlier.

#### Requirement to carry physical copy of 'Tax invoice' if e-invoice with QR code is available

There is no need to carry physical copy of Tax invoice in cases where invoice has been generated by the supplier in the manner prescribed for generation of e-invoice and production of the Quick Response (QR) code having an embedded Invoice Reference Number (IRN) electronically, for verification by the proper officer, would suffice.

#### Refund of unutilized ITC on goods, exported out of India, which are not 'subjected to export duty'

It is clarified that only those goods which are actually subjected to export duty will be covered under the restriction imposed under section 54(3) from claim of refund of accumulated ITC. Thus, goods which are not subject to any export duty or NIL rated or exempted fully would not be covered by the restriction imposed under the first proviso to section 54(3) of the CGST Act for the purpose of availment of refund of accumulated ITC. The said clarification would unsettle the decision of AAR in the case of Chowgule & Co (P.) Ltd., In re [2019] 107 taxmann.com 294, where in it was held that 'Nil' rate is also a rate of tax and thus, these goods would be considered as subjected to export duty.

[Circular no:160/16/2021-GST dated 20 September 2021]

#### Export of services between group companies

The tax authorities have been denying GST refunds on service exports by a subsidiary/sister concern/group concern, etc. of foreign company incorporated in India, to foreign company incorporated under laws of an overseas jurisdiction, on the assumption that these entities would qualify as establishments of 'distinct persons'.

CBIC vide this circular has clarified that -

- The company incorporated in India and Foreign Company are separate persons under CGST Act, and they are separate legal entities;
- These two separate persons would not be considered as merely establishments of a 'distinct person';

- Thus, supply of services by a subsidiary/sister concern/group concern, etc. of a foreign company, incorporated in India under Companies Act, 2013 to the establishments of the said foreign company located outside India would not be barred by the condition (v) of the section 2(6) of the IGST Act, 2017 for being considered as export of services.

[Circular no:161/17/2021-GST dated 20 September 2021]

#### Clarification in respect of refund of tax specified in section 77(1) of the CGST Act and section 19(1) of the IGST Act

- Doubts have been raised regarding the interpretation of the term "subsequently held" in section 77 of CGST Act, 2017 or under section 19 of IGST Act, 2017, and whether refund claim under the said sections is available only if supply made by a taxpayer as inter-state or intra-state, is subsequently held by tax officers as intra-state and inter-state respectively, either on scrutiny/ assessment/ audit/ investigation, or as a result of any adjudication, appellate or any other proceeding or whether the refund under the said sections is also available when the inter-state or intra-state supply made by a taxpayer, is subsequently found by taxpayer himself as intra-state and inter-state respectively;
- In this regard, it is clarified that the term "subsequently held" in section 77 of CGST Act, 2017 or under section 19 of IGST Act, 2017 covers both the cases where the inter-state or intra-state supply made by a taxpayer, is either subsequently found by taxpayer himself as intra-state or inter-state respectively or where the inter-state or intra-state supply made by a taxpayer is subsequently found/ held as intra-state or inter-state respectively by the tax officer in any proceeding. Accordingly, refund claim under the said sections can be claimed by the taxpayer in both the above mentioned situations, provided the taxpayer pays the required amount of tax in the correct head;

#### The relevant date for claiming refund under section 77 of the CGST Act/ section 19 of the IGST Act, 2017

- In case a supply earlier considered by a taxpayer as intra-state or inter-state, is subsequently held as inter-state or intra-state respectively, the amount of central and state tax paid or integrated tax paid, as the case may be, on such supply shall be refunded in such manner and subject to such conditions as may be prescribed. In order to prescribe the manner and conditions for refund under section 77 of the CGST Act and section 19 of the IGST Act, sub-rule (1A) has been inserted after sub-rule (1) of rule 89 of the Central Goods and Services Tax Rules, 2017 vide notification no:35/2021-Central Tax dated 24 September 2021. The said sub-rule (1A) of rule 89 of CGST Rules, 2017 reads as follows:  
 "(1A) Any person, claiming refund under section 77 of the Act of any tax paid by him, in respect of a transaction considered by him to be an intra-State supply, which is subsequently held to be an inter-State supply, may, before the expiry of a period of two years from the date of payment of the tax on the inter-State supply, file an application electronically in FORM GST RFD-01 through the common portal, either directly or through a Facilitation Centre notified by the Commissioner:  
 Provided that the said application may, as regard to any payment of tax on inter-State supply before coming into force of this sub-rule, be filed before the expiry of a period of two years from the date on which this sub-rule comes into force."

- It is clarified that the refund under section 77 of CGST Act/ section 19 of IGST Act, 2017 can be claimed before the expiry of 2 years from the date of payment of tax under the correct head, i.e. integrated tax paid in respect of subsequently held inter-state supply, or central and state tax in respect of subsequently held intra-state supply, as the case may be;
- However, in cases, where the taxpayer has made the payment in the correct head before the date of issuance of notification no:35/2021-CT dated 24 September 2021, the refund application under section 77 of the CGST Act/ section 19 of the IGST Act, 2017 can be filed before the expiry of 2 years from the date of issuance of the said notification. i.e. from 24 September 2021;  
A taxpayer "A" has issued the invoice dated 10 March 2018 charging CGST and SGST on a transaction and accordingly paid the applicable tax (CGST and SGST) in the return for March 2018 tax period. The following scenarios are explained hereunder:

Sl.No	Scenario	Last date for filing the refund claim
1	Having realized on his own that the said transaction is an inter-state supply, "A" paid IGST in respect of the said transaction on 10 May 2021.	Since "A" has paid the tax in the correct head before issuance of notification no: 35/2021-CT, dated 24 September 2021, the last date for filing refund application in FORM GST RFD-01 would be 23 September 2023 (two years from date of notification)
2	Having realized on his own that the said transaction is an inter-state supply, "A" paid IGST in respect of the said transaction on 10 November 2021 i.e. after issuance of notification no:35/2021-CT dated 24 September 2021.	Since "A" has paid the correct tax on 10 November 2021, in terms of rule 89(1A) of the CGST Rules, the last date for filing refund application in FORM GST RFD-01 would be 09 November 2023 (two years from the date of payment of tax under the correct head, i.e. integrated tax).

3	Proper officer or adjudication authority or appellate authority of "A" has held the transaction as an inter-state supply and accordingly, "A" has paid the IGST in respect of the said transaction on 10 May 2019.	Since "A" has paid the tax in the correct head before issuance of notification no:35/2021-CT, dated 24 September 2021, the last date for filing refund application in FORM GST RFD-01 would be 23 September 2023 (two years from date of notification).
4	Proper officer or adjudication authority or appellate authority of "A" has held the transaction as an inter-state supply and accordingly, "A" has paid the IGST in respect of the said transaction on 10 November 2022 i.e. after issuance of notification no:35/2021-CT dated 24 September 2021.	Since "A" has paid the correct tax on 10 November 2022, in terms of rule 89 (1A) of the CGST Rules, the last date for filing refund application in FORM GST RFD-01 would be 09 November 2024 (two years from the date of payment of tax under the correct head, i.e. integrated tax)

- The examples above are only indicative one and not an exhaustive list. Rule 89 (1A) of the CGST Rules would be applicable for section 19 of the IGST Act also, where the taxpayer has initially paid IGST on a specific transaction which later on is held as intra-state supply and the taxpayer accordingly pays CGST and SGST on the said transaction;
- It is also clarified that any refund applications filed, whether pending or disposed-off, before issuance of notification no:35/2021-CT, dated 24 September 2021, would also be dealt in accordance with the provisions of rule 89 (1A) of the CGST Rules, 2017;
- Refund under section 77 of the CGST Act / section 19 of the IGST Act would not be available where the taxpayer has made tax adjustment through issuance of credit note under section 34 of the CGST Act in respect of the said transaction.

[Circular no:162/18/2021-GST dated 25 September 2021]

## JUDICIAL UPDATES

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

#### Supply of batteries for use in warships such as submarines of the Indian Navy is taxable at the rate of 5%

##### Facts of the Case

- M/s. Exide Industries Limited (“Taxpayer”) has been awarded orders by the Ministry of Defence to supply specific types of batteries for use in warships, specifically submarines and supply of spares and services of inspection and testing ancillary to the principal supply of batteries;
- In this regard, the taxpayer intends to know applicable tax rate on supply of batteries to Indian Navy for use in submarines.

##### Questions Before the AAR

Whether supply of batteries for use in warships such as submarines of the Indian Navy falls under entry no:252 of schedule 1 to notification no:01/2017-IGST(R) dated 28 June 2017 (“rate notification”) and thus being taxable at the rate of 5%?

##### Contention of the Taxpayer

- The taxpayer submitted that all goods irrespective of their individual classification would be covered under the aforementioned entry, if such goods are used as parts of the goods covered under tariff heading 8906. Submarines, being a warship, would be covered under the tariff heading 8906;
- In this regard, the taxpayer also submitted that the Indian Navy has certified that such batteries and spares are ‘intended for bonafide use towards warship applications of Indian Navy’;
- The taxpayer placed reliance on various judicial pronouncements and submitted that such batteries are specifically designed/ manufactured for use only in warships and essential for its functioning. Accordingly, such batteries qualify as ‘Parts of goods of headings 8906’.

##### Observations & ruling by the AAR

- The AAR while examining the definition of ‘part/ parts’ placed reliance on a decision of Hon’ble Supreme Court and concluded that batteries are essential components/parts, integral to the functioning of the submarines and classifiable under heading 85;
- Further, the AAR stated that since such batteries are meant for used in manufacture of submarines, they can be considered as ‘parts’ of submarines and thus, squarely covered under entry 252 of schedule I of rate notification;
- Thus, aforementioned supply of batteries for use in submarines of the Indian Navy would be taxable @ 5%.

*[AAR-Maharashtra, M/s. Exide Industries Limited., Ruling no:GST-ARA- 39/2020-21/B-58 dated 09 September 2021]*

#### GST applicable on supply of managerial and leadership services to the distinct and related persons by the registered office

##### Facts of the case

- M/s. B.G. Shirke Construction Technology Pvt Ltd (‘Taxpayer’) has its corporate office at Mundhwa, Pune. The “Shirke Group” is engaged in the business of civil construction, structural engineering, fabrication &

erection of transmission tower materials, manufacturing of post-harvest equipment, ship and aviation chartering etc.;

- The taxpayer has construction sites in different states & holds separate GST registrations (distinct persons) in various states. It also has GST registered group companies (related persons) engaged in various activities. Further, the taxpayer is also holding ISD registration at Pune (Maharashtra);
- The registered office of the taxpayer supplies managerial and leadership services to the distinct and related persons (‘group company’) for which consideration is in the form of fixed monthly charges paid on lump sum basis. Also, the charges are at the discretion of the office and there is no specific valuation method followed under section 15 of the CGST Act, 2017 read with the GST valuation rules;
- During the course of the business, the taxpayer filed an application before the AAR for determining whether the above said service results in supply of goods or service, time and value of the said supply.

##### Questions before the AAR

- Whether the managerial and leadership service provided by the taxpayer to its group companies (distinct and related person) considered as “Supply of service”? (Q.1)
- Whether the lump sum amount charged to the group companies would be chargeable to tax under section 8 of the CGST Act, 2017? (Q.2)
- If the aforesaid activities classified as “supply of service” (Q.1) and GST is liable to be charged (Q.2), whether the taxpayer can continue to charge lump sum amount in terms of second proviso to rule 28 of the CGST Rules, 2017 as most of the recipient is eligible for full credit except few who would comply with the provisions of section 17 of the CGST Act? (Q.3)
- If the aforesaid method of charging lump sum amount is not permissible, whether the taxpayer can adopt the valuation under rule 31 of the CGST Rules, 2017 based on the proportion of total expense of corporate office and turnover of each distinct and related person? (Q.4)
- If the aforesaid method of valuation under rule 31 of the CGST Rules is not permissible, whether the taxpayer can value as per rule 30 of the CGST Rules, 2017 (adding 10% margin on the cost of provision of service)? (Q.5)
- If any of the aforesaid valuation method suggested is not acceptable, then what is the feasible workable method of valuation that can be suggested by the AAR considering the nature of industry? (Q.6)
- Whether Input Tax Credit (“ITC”) of GST paid by the taxpayer is admissible to each of the distinct and related person, in a case where the supply of goods or service or both are taxable under GST law? (Q.7)

##### Contention of the Taxpayer

- The taxpayer is of the view that the managerial and leadership services provided to its group companies does not fall under the ambit of “supply” as per section 7 of CGST Act, 2017 stating the reference of schedule III of the CGST Act, where services by an employee to the employer in the course of employment would neither be treated as supply of good or service and hence GST is not payable on the lump sum amount charged;

- Also, the taxpayer submitted that for the purpose of valuation, second proviso of rule 28 of the CGST Rules shall be applicable for recipient who are admissible for full ITC, where the value of the invoice shall be open market value. For other recipient of supply, the taxpayer shall value the same on basis of rule 30 or rule 31 of the CGST Rules, 2017. Also, the taxpayer relied on various case laws in its favor.

#### Contention of the Tax Authority

- The services provided by the taxpayer to its group companies can be considered as supply of service in relation to schedule 1, entry no:2 where 'supply of service' between distinct persons or related persons is treated as 'Supply' even made without any consideration.
- With relation to valuation of supply, the officer compares with the submission made by the taxpayer regarding applicability of second proviso of rule 28 of the CGST Rules 2017 for recipients who are admissible for ITC and rule 30 or rule 31, for other recipients;
- Relating to Q.7, ITC shall be available to the distinct or related persons, subject to the provisions of section 16 & 17 of the CGST Act.

#### Observations and Ruling by AAR

AAR examined the contentions made by both the taxpayer and the tax authority and is of the view that:

- Since the site offices are independent offices and the group companies are separately registered under the GST laws, they cannot be treated as employees in reference to the general dictionary meaning. Therefore, the taxpayer cannot avail the benefit of entry no I of the schedule III. Hence the supply shall be covered under schedule I and therefore becomes taxable supply under GST which collides with taxpayer contention;
- The AAR held that, few case laws submitted by the taxpayer for the purpose of employer-employee relationship does not apply in the present case;
- With regard to Q.2, the AAR observed that the taxpayer is required to pay GST on the entire lump sum amount charged by the group companies;
- As per Q.3 raised by the taxpayer, second proviso to rule 28 of the CGST Rules, 2017 shall be applicable as most of the recipients of such services are eligible for full credit, barring one or two related persons, who would comply with the provisions of section 17 of CGST Act, 2017, at their respective ends;
- Since Q.3 already covers the resort to valuation under Rule 28, Q.4 and Q.5 has not been taken up for discussion;
- Q.6 is asking the AAR for suggestions in the method of valuation to be adopted by the taxpayer. The question does not relate to determination of value of supply of goods or service or both, rather asking to suggest procedures hence not falling under the purview of section 97 of the CGST Act, 2017. Therefore, the same has been ignored;
- Q.7 raised by the taxpayer has not been taken up for discussion as such question shall be raised only by the recipient and not by the taxpayer.

[AAR-Maharashtra, M/s. B.G. Shirke Construction Technology Pvt. Ltd, ruling no:GST-ARA- 42/2019-20/21-22/B-56 dated 9 September 2021]

## CUSTOMS

### NOTIFICATION

#### Electronic Duty Credit Ledger for Remission of Duties and Taxes on Exported Products ("RoDTEP")

- CBIC has notified Electronic Duty Credit Ledger Regulations, 2021 and the manner to issue duty credit for goods exported under RoDTEP, respectively.
- The customs automated system will process the claim of RoDTEP according to the shipping bill and bill of export filed by the exporters. The exporters may combine the duty credit allowed in one or more shipping bills and bills of exports for creation of e-scrips in the ledger. The customs station of export shall be the customs station of registration for an e-scrip. The e-scrip shall be transferable and have validity of one year from the date of its creation in the ledger;
- It also provides that the e-scrip can be cancelled in case of contravention of any of the provisions of the Customs Act or any other law for the time being in force. Further, in case an amount of duty credit has been allowed in excess of what the exporter is entitled to, then such excess amount can be recovered along with applicable interest;
- It has also been specified that the sale proceeds in respect of exports for which RoDTEP has been claimed is required to be realised and in case of non-realisation of export proceeds, the amount of duty credit shall be recovered from exporters.

[Notification no:75 & 76/2021-Customs (N.T.) dated 23 September 2021]

#### Manner of issue of duty credit for goods exported under the Scheme for Rebate of State and Central Taxes and Levies (RoSCTL)

- The Central Government has notified the manner of issue of duty credit for goods exported under the Scheme for Rebate of State and Central Taxes and Levies ("Scheme"), subject to such conditions and restrictions as specified herein, in accordance with Government of India, Ministry of Textiles' notification no:12015/11/2020-TTP dated the 13 August 2021;
- Such duty credit shall be subject to the following conditions:
  - The duty credit is issued against exports of garments and made-ups (said goods) and their respective rate and cap as listed in schedules 1, 2, 3 and 4 to the notification of Government of India, Ministry of Textiles' notification no:14/26/2016-IT (Vol.II), dated the 8 March 2019 for the scheme Provided that the value of the said goods for calculation of duty credit to be allowed under the scheme shall be the declared export Free on Board (FOB) value of the said goods or up to 1.5 times the market price of the said goods, whichever is less.
  - The duty credit is issued against claim of duty credit under the scheme made by an exporter by providing

the appropriate declaration at the item level in the shipping bill or bill of export in the customs automated system;

- The duty credit is issued against the shipping bill or bill of export, presented under section 50 of the Customs Act on or after the 1 January 2021, and where the order permitting clearance and loading of goods for exportation under section 51 of the Customs Act has been made;
- The duty credit is issued after the claim is allowed by customs upon necessary checks, including on the basis of risk evaluation through appropriate selection criteria, and after filing of export manifest or export report;
- The duty credit is issued in accordance with any rules or regulations issued in relation to duty credit, e-scrip or electronic duty credit ledger;
- Such duty credit shall be used for payment of the duty of customs leviable under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) on goods when imported into India;
- The export categories or sectors listed in Table-1 annexed in the notification shall not be eligible for duty credit under the scheme;
- The duty credit allowed under the scheme, against export of goods notified vide notification no:14/26/2016-IT (Vol.II), dated the 8 March 2019 for the scheme, shall be subject to realisation of sale proceeds in respect of such goods in India within the period allowed under the Foreign Exchange Management Act, 1999 (42 of 1999), failing which such duty credit shall be deemed to be ineligible;
- The imports and exports are undertaken through the seaports, airports or through the inland container depots or through the land customs stations which allow the bill of entry and shipping bill or bill of export to be presented and processed electronically on the customs automated system;
- The exporter has realised the sale proceeds against export of goods made earlier by the said exporter where the period allowed for realisation, including any extension of the said period by the Reserve Bank of India, has expired: Provided that duty credit shall be issued by Customs in excess of the ineligible amount of duty credit pertaining to the unrealised portion of sale proceeds against export of goods made earlier: Provided further that if the Principal Commissioner of Customs or Commissioner of Customs has reason to believe, on the basis of risk evaluation or on the basis of enquiry, that the claim of duty credit made by an exporter on export goods may not be bona fide, he may direct, for reasons to be recorded in writing, to allow duty credit after realisation of sale proceeds of such exports;
- Duty credit under the scheme for exports made to Nepal, Bhutan and Myanmar shall be allowed only upon realisation of sale proceeds against irrevocable letters of credit in freely convertible currency established by importers in Nepal, Bhutan and Myanmar in favour of Indian exporters for the value of such goods;

#### Cancellation of duty credit

- Where a person contravenes any of the provisions of the said Act or any other law for the time being in force or the rules or regulations made thereunder in relation to exports to which the duty credit relates, or in relation to the e-scrip, the Principal Commissioner of Customs or Commissioner of Customs having jurisdiction over the customs station of registration of the e-scrip may, after enquiry, pass an order to cancel the said duty credit or e-scrip;
- Where the e-scrip is so cancelled, the duty credit amount in the said e-scrip shall be deemed never to have been allowed and the proper officer of customs shall proceed to recover the duty credit amount used in such e-scrip or transferred from such e-scrip;
- The proper officer of customs may, without prejudice to any other action that may be taken under the Customs Act or any other law for the time being in force, suspend the operation of the said e-scrip or the electronic duty credit ledger of such exporter or any duty credit transferred from such e-scrip, during pendency of the enquiry.

#### Recovery of amount of duty credit

- Where an amount of duty credit has, for any reason, been allowed in excess of what the exporter is entitled to, the exporter shall repay the amount so allowed in excess, himself or on demand by the proper officer, along with interest, at the rate as fixed under section 28AA of the said Act for the purposes of that section, on that portion of duty credit allowed in excess, which has been used or transferred, and where the exporter fails to repay the amount along with interest, as applicable, it shall be recovered;
- The duty credit amount that an exporter is so required to repay shall be deemed never to have been allowed, and if the exporter fails to repay the said amount within a period of 15 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.

#### Recovery of amount of duty credit where export proceeds are not realized

- Where an amount of duty credit has been allowed to an exporter but the sale proceeds in respect of such export goods have not been realised by the exporter in India within the period allowed under the Foreign Exchange Management Act, 1999 (42 of 1999), the exporter shall, himself or on demand by the proper officer, repay the amount of duty credit, along with interest, at the rate as fixed under section 28AA of the Customs Act for the purposes of that section, within 15 days of expiry of the said period;
- In case any extension of the said period for realisation of sale proceeds has been given by the Reserve Bank of India and the exporter produces evidence of such extension to the proper officer, and if the said sale proceeds are not realised in such extended period, the exporter shall repay the said amount of duty credit along with the said interest, within 15 days of expiry of the said period;
- If a part of the sale proceeds has been realised, the amount of duty credit to be recovered shall be the amount equal to that portion of the amount of duty credit allowed which bears the same proportion as the portion of the sale



proceeds not realised bears to the total amount of sale proceeds;

- Where the exporter fails to repay the duty credit amount within the said period of 15 days, the said duty credit shall be deemed never to have been allowed and it shall be recovered, along with the said interest, in the manner as provided in section 142 of the said Act;
- 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;
- 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:77/2021-Customs (N.T.) dated 24 September 2021]*

### Increased the import duty on Lentils (Mosur) originating in or exported from USA

The Government has increased the import duty on Lentils (Mosur) originating in or exported from United States of America.

*[Notification no:44/2021- Customs dated 17 September 2021]*

## FOREIGN TRADE POLICY (FTP)

### NOTIFICATION

#### Extension in the Export Obligation (EO) period of specified Advance & EPCG Authorisations till 31 December 2021

DGFT has given another option to avail extension in EO period till 31 December 2021 in case of specified Advance Authorisations and EPCG Authorisations is provided without any composition fees subject to 5% additional EO on balance exports to be fulfilled. This is in addition to EO extensions facility (upon payment of the composition fees) already provided in FTP/HBP.

*[Notification no:28/2015-2020 dated 23 September 2021]*

#### Service Exports from India Scheme (SEIS) for services rendered in the F.Y 2019-20

List of eligible services and rates under SEIS for services rendered in the FY 2019-20 is being notified. A limit on total entitlement under SEIS has been imposed for service exports rendered in the period 01 April 2019 to 31 March 2020 and capped at INR 50 Mn per IEC. Further, it has been notified that the facility to claim benefits under SEIS on payments in Indian Rupees shall not be available for services rendered in the FY 2019-20. It is also notified that the deadline for submission of SEIS applications for FY 2019-20 shall be 31 December 2021 and late cut provisions for such applications shall not apply i.e., SEIS applications for FY 2019-20 will become time barred after 31 December 2021.

*[Notification no:29/2015-2020 dated 23 September 2021]*

#### Amendment in export policy of betel leaves

Export of Betel leaves to European Union is now subject to registration with Shellac & Forest Products Export Promotion Council (SHEFEXIL), the designated Competent Authority for

issuance of health certificate instead of Agriculture and processed food production export Development Authority (APEDA).

*[Notification no:30/2015-2020 dated 23 September 2021]*

#### Amendment in export policy of mercury and insertion of policy condition

Export Policy of Mercury has been amended from 'Free' to 'Restricted' with immediate effect. The export will be subject to obtaining Prior Informed Consent (PIC) from MoEF&CC.

*[Notification no:31/2015-2020 dated 23 September 2021]*

### TRADE NOTICE

#### De-Activation of IECs not updated on the DGFT

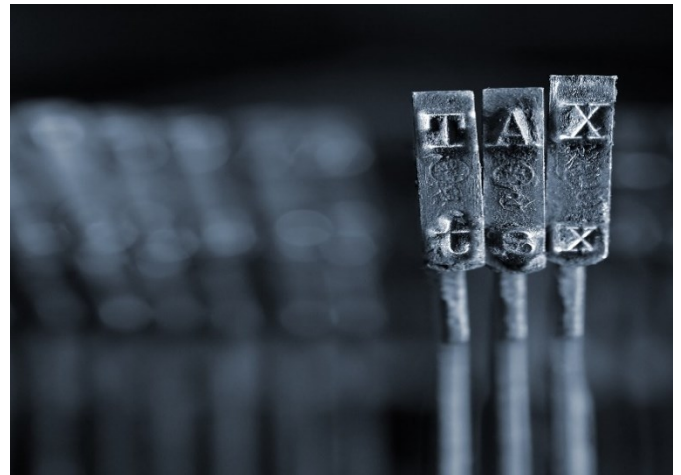
- Vide notification no:58/2015-2020 dated 12 February 2021, 11/2015-2020 dated 01 July 2021 and 16/2015-2020 dated 09 August 2021, it was mandated by DGFT to all IEC holders to ensure that details in their IEC is updated electronically every year during April-June period (for which no user charges will be borne by the IEC holder).
- Based on representations received from the IEC holders who had not updated their IECs, the period of updation was extended upto 31 July 2021 and subsequently to 31 August 2021;
- In continuation to the aforementioned notification and as per para 2.05(e) of the FTP, IECs which are not yet updated shall now be de-activated. This de-activation activity is being initiated in a phased manner;
- All IECs which have not been updated after 01 January 2005 shall be de-activated with effect from 06 October 2021. The concerned IEC holders are provided one final opportunity to update their IEC in this interim period till 05 October 2021, failing which the given IECs shall be de-activated from 06 October 2021. Any IEC where an online updation application has been submitted but are pending with the DGFT RA for approval shall be excluded from the de-activation list;
- It may further be noted that any IEC so de-activated, would have the opportunity for automatic re-activation without any manual intervention or a physical visit to the DGFT RA;
- For IEC re-activation after 06 October 2021, the said IEC holder may navigate to the DGFT website and update their IEC online. Upon successful updation the given IEC shall be activated again and transmitted accordingly to customs system with the updated status.

*[Trade Notice no:18/2021-2022 dated 20 September 2021]*

## NEWS FLASH

---

1. “Under GST or not, petrol, diesel prices won’t fall. Stop dreaming”  
<https://www.deccanherald.com/opinion/under-gst-or-not-petrol-diesel-prices-won-t-fall-stop-dreaming-1034253.html>  
[Source: Deccan Herald, 26 September 2021]
2. “Now, Aadhaar authentication of taxpayers must for GST refund”  
<https://timesofindia.indiatimes.com/india/now-aadhaar-authentication-of-taxpayers-must-for-gst-refund/articleshow/86522045.cms>  
[Source: The Times of India, 26 September 2021]
3. “Centre notifies restrictions on non-filers of GST returns”  
<https://www.livemint.com/economy/centre-notifies-restrictions-on-non-filers-of-gst-returns-11632582111793.html>  
[Source: Live mint, 25 September 2021]
4. “Nirmala Sitharaman Interview, Part Three: 'GST Rate Rationalisation Is On, Only Timing Is The Issue’”  
<https://swarajyamag.com/economy/nirmala-sitharaman-interview-part-three-gst-rate-rationalisation-is-on-only-timing-is-the-issue>  
[Source: Swarajya, 26 September 2021]



## 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  
Tel: +91 98 2564 0046

Delhi NCR - Office 1  
The Palm Springs Plaza  
Office No. 1501-10, Sector-54  
Golf Course Road  
Gurugram 122001, INDIA  
Tel: +91 124 281 9000

Hyderabad  
1101/B, Manjeera Trinity Corporate  
JNTU-Hitech City Road, Kukatpally  
Hyderabad 500072, INDIA  
Tel: +91 40 6814 2999

Mumbai - Office 1  
The Ruby, Level 9, North West Wing  
Senapati Bapat Marg, Dadar (W)  
Mumbai 400028, INDIA  
Tel: +91 22 6277 1600

Pune - Office 2  
Floor 2 & 4, Mantri Sterling, Deep  
Bungalow Chowk, Model Colony,  
Shivaji Nagar, Pune 411016, INDIA  
Tel: +91 20 6723 3800

Bengaluru  
SV Tower, No. 27, Floor 4  
80 Feet Road, 6<sup>th</sup> Block, Koramangala  
Bengaluru 560095, INDIA  
Tel: +91 80 6811 1600

Delhi NCR - Office 2  
Windsor IT Park  
Plot No: A-1, Floor 2  
Tower-B, Sector-125  
Noida 201301, INDIA  
Tel: +91 120 684 8000

Kochi  
XL/215 A, Krishna Kripa  
Layam Road, Ernakulam  
Kochi 682011, INDIA  
Tel: +91 484 675 1600

Mumbai - Office 2  
601, Floor 6, Raheja Titanium  
Western Express Highway  
Geetanjali Railway Colony, Ram Nagar  
Goregaon (E), Mumbai 400063, INDIA  
+91 22 6831 1600

Chennai  
No. 443 & 445, Floor 5, Main Building  
Guna Complex, Anna Salai, Teynampet  
Chennai 600018, INDIA  
Tel: +91 44 6131 0200

Goa  
701, Kamat Towers  
9, EDC Complex, Patto  
Panaji, Goa 403001, INDIA  
Tel: +91 832 674 1600

Kolkata  
Floor 4, Duckback House  
41, Shakespeare Sarani  
Kolkata 700017, INDIA  
Tel: +91 33 6766 1600

Pune - Office 1  
Floor 6, Building # 1  
Cerebrum IT Park, Kalyani Nagar  
Pune 411014, INDIA  
Tel: +91 20 6763 3400

Note: This publication has been carefully prepared, but it has been written in general terms and should be seen as broad guidance only. The publication cannot be relied upon to cover specific situations and you should not act, or refrain from acting, upon the information contained therein without obtaining specific professional advice. Please contact BDO India LLP to discuss these matters in the context of your particular circumstances. BDO India LLP and each BDO member firm in India, their partners and/or directors, employees and agents do not accept or assume any liability or duty of care for any loss arising from any action taken or not taken by anyone in reliance on the information in this publication or for any decision based on it.

BDO India LLP, a limited liability partnership, is a member of BDO International Limited, a UK company limited by guarantee, and forms part of the international BDO network of independent member firms.

BDO is the brand name for the international BDO network and for each of the BDO Member Firms.  
Copyright ©2021 BDO India LLP. All rights reserved.

Visit us at [www.bdo.in](http://www.bdo.in)

