

# INDIRECT TAX WEEKLY DIGEST

16 May 2023  
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## GOODS & SERVICES TAX

### LEGISLATIVE UPDATES

#### NOTIFICATION

##### TIME LIMIT FOR EXERCISING THE OPTION TO PAY GST UNDER FORWARD CHARGE BY A REGISTERED GOODS TRANSPORT AGENCY (GTA)

Sl. No. 9(iii)(b) of Notification no:11/2017-Central Tax (Rate) dated 28 June 2017 which enables GTA to discharge GST under the forward charge mechanism is amended as follows:

- The last date for exercising the option to pay GST under Forward Charge for FY 2023-24 which was 15 March 2023 earlier, shall now be 31 May 2023.
- A GTA who commences new business or crosses the threshold for GST registration during a Financial Year would be entitled to exercise the aforesaid option within -
  - 45 days from the date of application for obtaining GST Registration
  - One month from the date of obtaining GST registration, whichever is later.

Similar amendments are made to Notification no:08/2017-Integrated Tax (Rate) dated 28 June 2017 and Notification no:11/2017-Union Territory Tax (Rate) dated 28 June 2017.

[Notification no:05/2023-Central Tax (Rate), 05/2023-Integrated Tax (Rate) & 05/2023-Union Territory Tax (Rate) dated 9 May 2023]

### CIRCULAR & INSTRUCTIONS

#### INSTRUCTIONS

##### GUIDELINES FOR SPECIAL ALL-INDIA DRIVE AGAINST FAKE REGISTRATIONS

- In the National Co-ordination Meeting on 24 April 2023, it was agreed that a nationwide effort would be launched to detect suspicious/ fake GST registrations to tackle the problem of fake registration and fake input tax credit.

- Accordingly, the following directions are issued directing the Tax Authorities for taking requisite action on fake dealers / fake billers under the Special All-India Drive (Special Drive):
  - **Period of Special Drive:**
    - Special Drive may be launched by the Tax Authorities between 16 May 2023 and 15 July 2023 to detect suspicious/ fake GSTINs and conduct requisite verification.
  - **Identification of fake GSTINs:**
    - GSTN will identify fraudulent GSTINs and share the details of such GSTINs with the Central / State Tax Authorities.
  - **Information sharing mechanism:**
    - A nodal officer shall be appointed by each CGST Zone/ State to ensure a seamless flow of data and for coordination with GSTN/ DGARM and other Tax Administrations.
  - **Action to be taken by field formations:**
    - On receipt of data from GSTN/DGARM through the nodal officer, the Tax Authorities will verify the suspicious GSTINs in a time-bound manner.
    - If the taxpayer is found to be non-existent/ fictitious, suitable action may be initiated for suspension and cancellation of the said taxpayer's GST registration.
    - Further, the matter may also be examined for blocking input tax credits in Electronic Credit Ledgers.
    - Additionally, suitable actions may be initiated against the recipients to whom input tax credit has been passed by such non-existing taxpayers.

- Suitable action may also be initiated to identify masterminds and beneficiaries behind fake GSTINs, for further action including the recovery of Government dues or provisional attachment of property/bank accounts, etc.
  - Similar actions may also be initiated against linked suspicious GSTINs identified during the investigation/verification.
- **Feedback and reporting mechanism:**
- Each State and CGST Zone will provide a report on the actions taken to the GST Council Secretariat weekly.
- **National Coordination Committee (NCC):**
- NCC will be constituted to monitor the progress of the Special Drive.

[Instruction no:01/2023- GST dated 4 May 2023]

#### GENERATION AND QUOTING OF DOCUMENT REFERENCE NUMBER (RFN) ON SEARCH AND INSPECTION DOCUMENTS/COMMUNICATION ISSUED BY THE OFFICERS OF THE STATE GOODS AND SERVICES TAX DEPARTMENT

- Pursuant to the decision of the Hon'ble Supreme Court in **Pradeep Goyal Vs. Union of India [WP (Civil) 320 of 2022]**, the GSTN has developed a facility for the electronic generation of RFN facility, under which the Tax Authorities can generate a unique RFN for communication/ documents to be sent to the taxpayers or other concerned persons.
- RFN would enable the Taxpayers or concerned person to verify the authenticity of the document.
- Maharashtra State Government has issued a Circular provided that the Tax Authorities have been directed that communications to be made / documents to be sent to taxpayers and other concerned persons namely search authorisations (INS-01) and inspection notices in the course of enquiry/ investigation proceedings shall use RFN.
- It has also been provided that if a taxpayer notices or has faced an action of inspection and search based on search authorisation/ inspection notices without a valid RFN, then he/she may bring the same to the notice of the State Tax Department.

[Trade Circular no:10T of 2023 dated 3 May 2023]

## JUDICIAL UPDATES

### WRIT PETITION

#### DEEMING FICTION OF 70:30 IS NOT APPLICABLE IN ALL PROPERTY DEVELOPMENT CASES

##### Facts of the Case

- M/s. Avigna Properties Pvt. Ltd. (Taxpayer) inter alia supplies construction services and works contract services relating to immovable property.
- The Taxpayer was issued a Show Cause Notice (SCN) inter alia alleging the following short payment of GST on construction services:

- As per Notification no:11/2017-Central Tax dated 28 June 2017 (Notification 11/2017), in case of a supply of construction service involving the transfer of property in land or undivided interest in land, the value of supply shall be the total amount charged less the value of land or undivided share of land and the value of the land shall be deemed to be one-third of the total amount charged.
- However, the Taxpayer discharged GST at a lower value determined by reducing the actual sale value of land from the total amount charged without considering the aforesaid valuation mechanism.
- In response, the Taxpayer inter alia submitted as under:
  - The Taxpayer has discharged applicable Stamp Duty under the Stamp Duty Act and the guidelines of the registration department on the sales value of the land. Accordingly, the Taxpayer had claimed a deduction of such value from the total amount charged.
  - The imposition of GST in the ratio of 70:30 is unlawfully given that the Taxpayer has mentioned the actual sale consideration of land and paid applicable Stamp Duty.
  - Imposition of GST as per the 70:30 ratio would result in double taxation viz., Stamp Duty and GST which is in violation of the GST law.
  - In this regard, the Taxpayer has furnished copies of sample sale and construction agreements with the Tax Authorities.
- The SCN was confirmed by the Tax Authorities by concluding that
  - Notification 11/2017 does not permit distinguishing of sale of land and supply of construction services and in the case of a composite construction service, the 70:30 formula is liable to be adopted.
  - The aforesaid mechanism may sometimes be less than the cost of construction service and sometimes more. However, the same does not provide any leeway in such determination.
- Aggrieved by the above, the Taxpayer filed a Writ Petition before the Hon'ble Madras High Court.

##### Observations and Ruling by the Hon'ble High Court

- Notification 11/2017 would apply only in cases where the Taxpayer is unable to provide bifurcation of the construction as relatable to the construction service or sale of land. The deeming fiction would not apply in cases where the assessee is in a position to supply the actual amount of consideration received towards construction services and land cost.
- The Tax Authorities could have sought the particulars of the sale value of land and the consideration for construction services. Instead, the Tax Authorities proceeded on the basis that Notification 11/2017 would apply in all cases of property development.

- Where the Tax Authorities are not satisfied with the evidence furnished by the Taxpayer, the Tax Authorities are entitled to obtain additional information or to apply the deeming fiction as per the aforesaid notification. However, the Tax Authorities cannot proceed on the basis that the formula as per the deeming fiction is the only method of assessment.
- Accordingly, the Writ Petitions were allowed and assessment orders issued by the Tax Authorities were set aside. The Taxpayer was directed to submit all records in support of its turnover, post which, the Tax Authorities after hearing the Taxpayer and considering materials submitted by the Taxpayer (if any) were to issue a de novo assessment order within 4 weeks.  
*[M/s. Avigna Properties Pvt. Ltd. Vs. State Tax Officer [TS-178-HC(MAD)-2023-GST], dated 9 May 2023]*

## CUSTOMS

### LEGISLATIVE UPDATES

#### NOTIFICATION

#### IMPOSITION OF COUNTERVAILING DUTY (CVD) ON IMPORT OF SATURATED FATTY ALCOHOLS ORIGINATING IN OR EXPORTED FROM INDONESIA, MALAYSIA, AND THAILAND

The government has imposed CVD on the import of Saturated Fatty Alcohols having Carbon Chain length of C10 to C18 and its blends, imported under HSN 2905 17, 2905 19 and 3823 70 for 5 years from the date of this notification i.e., 4 May 2023.

*[Notification no:01/2023-Customs (CVD) dated 4 May 2023]*

### JUDICIAL UPDATES

#### WRIT PETITION

#### DUTY DRAWBACK TO BE RECOVERED IN CASE OF WRITE-OFF OF UNREALISED EXPORT PROCEEDS

##### Facts of the Case

- M/s. Rangoli International Pvt. Ltd. (Taxpayer) had exported goods to Dubai and received Duty Drawback for the same under Section 75 of the Customs Act, 1962 (Customs Act). However, in respect of certain exports, the Taxpayer did not receive inward foreign exchange remittance.
- Accordingly, the Tax Authorities issued 4 Show Cause Notices (SCNs) alleging incorrect availment of duty drawback and thereby seeking to recover the duty drawback received by the Taxpayer under Section 75 along with interest. Additionally, a penalty was imposed under Section 114 of the Customs Act.
- Subsequently, the Taxpayer filed a letter indicating that it had not received the copy of the aforesaid SCN and that the Taxpayer had not received export proceeds in some cases due to disputes with the foreign buyers. In some cases, the aforesaid disputes were settled after negotiations and it was anticipated that the Taxpayer would receive the proceeds shortly. Further, the Taxpayer had furnished Bank Remittance Certificates (BRCs) in certain instances and the Taxpayer sought additional time to submit the remaining BRCs.
- Despite the above, the Tax Authorities confirmed the demand as per the SCNs by issuing the order seeking to recover the drawback received by the Taxpayer along with interest and penalty.
- Against this, the Taxpayer filed an appeal before the Appellate Authority which was rejected. Further, the Taxpayer also filed a revision application against the aforesaid order before the Revisional Authority, which was dismissed by the ex-parte Order.
- Aggrieved by the above, the Taxpayer filed a Writ Petition before the Hon'ble Delhi High Court.

##### Contentions by the Taxpayer

- The Order of the Revisional Authority has violated the principles of natural justice since the Taxpayer was not given an opportunity to be heard.
- The Taxpayer had written off unrealised bills in terms of RBI AP (DIR Series) Circular no.88 dated 12 March 2013 (RBI Circular). While the RBI Circular enabled the Taxpayer to write off unrealised export bills to the extent of 10% of export proceeds realised during the previous calendar year, the Taxpayer had written off unrealised exports only to the tune of 5.2% of unrealised bills.
- There is no requirement to refund duty drawback as per the RBI Circular since duty drawback is not an export incentive.
- The Taxpayer is not obliged to refund the duty drawback under Rule 16A(5) of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 (Drawback Rules).

##### Observations and Ruling by the Hon'ble High Court

- As regards the Taxpayer's contention that the Impugned Order was passed in violation of the principles of natural justice, it was observed that the same is devoid of merits,

- as the Taxpayer was accorded multiple opportunities, but had failed to appear before the Revisional Authority.
- The Taxpayer did not challenge the recovery of duty drawback before the Adjudicating Authority, Appellate Authority and Revisional Authority and the same is sought to be urged in the Writ Petition. However, it was considered apposite to examine these issues.
- The RBI Circular issued under Sections 10(4) and 11(1) of the Foreign Exchange Management Act, 2002 (FEMA) would not affect the obligations under any other enactment(s). Thus, the contention that the write-off of unrealised bills as per the RBI Circular absolves the Taxpayer from refunding the duty drawback availed, is without merit.
- As per the second proviso to Section 75 of the Customs Act, the Taxpayer was liable to pay the amount of duty drawback availed by it in respect of exports for which, the consideration was not received within the time as permitted under FEMA. Thus, the second proviso to Section 75 of the Customs Act would apply in cases where write-off is permissible under FEMA.
- Under Rule 16A(5) of the Drawback Rules, the duty drawback paid to an exporter is not required to be recovered if the following conditions are satisfied:
  - Non-realisation of the sale proceeds is compensated by the Export Credit Guarantee Corporation of India Ltd. (ECGC) under an insurance cover
  - RBI writes off the requirement of realisation of sale proceeds on merits
  - Exporter produces certificates from the concerned Foreign Mission of India about the fact of non-recovery of sale proceeds from the buyer.
- In the present case, the Revision Application filed by the Taxpayer lacks the factual details for claiming benefit under Rule 16A(5) of the Drawback Rules. Hence, the same would not apply to the present case.
- In view of the above, the Impugned Order has been upheld by the Hon'ble High Court.  
*[M/s. Rangoli International Pvt. Ltd. V/s Union of India & Ors., [2023-TIOL-492-HC-DEL-CUS], dated 11 April 2023]*

## FOREIGN TRADE POLICY (FTP)

### NOTIFICATION

#### AMENDMENT TO IMPORT POLICY OF APPLES TO IMPOSE MINIMUM IMPORT PRICE(MIP) CONDITIONS

Import of Apples under ITC (HS) 08081000 is 'Prohibited' wherever the CIF Import Price is less than or equal to INR 50 per kg. MIP conditions shall not be applicable for imports from Bhutan.

*[Public Notice no:8/2023 dated 21 April 2023]*

#### SUPREME COURT UPHOLDS THE VALIDITY OF PRE-IMPORT CONDITION UNDER THE ADVANCE AUTHORISATION SCHEME

##### Historical Background:

- Notification No. 18/2015-Cus. dated 1 April 2015 (Notification No. 18/2015), as it stood prior to the introduction of GST law, provided exemption under Advance Authorisation (AA) Scheme under the Foreign Trade Policy (FTP) from various duties like Basic Customs Duty, Surcharge, Cess, CVD, SAD, Anti-Dumping duty, etc. on the import of inputs subject to the condition that the finished goods are eventually exported out of India.
- Upon introduction of GST law (i.e., from 1 July 2017), no specific amendment exempting IGST and GST Compensation Cess (Cess) payable on imported goods under the AA Scheme was made in the said notification, resulting in the non-availability of exemption from IGST and Cess.
- Subsequently, vide Notification No. 79/2017-Cus. dated 13 October 2017 (Notification No. 79/2017), Notification No. 18/2015 was amended to provide exemption under the AA Scheme on IGST and Cess on imports subject to the fulfilment of 'pre-import condition'.

- **Meaning of 'pre-import condition':** Pre-import condition implies that goods had to be imported first, and then the final products manufactured with such imported goods were to be exported.
- The pre-import condition was challenged by the industry in various cases. The Gujarat High Court had, inter alia, in the case of **Cosmo Films** accepted the contention of the industry and struck down the pre-import condition.
- Aggrieved by the order passed by the Hon'ble Gujarat High Court, the Tax Authorities filed an appeal before the Hon'ble Supreme Court.

##### Observations of the Hon'ble Supreme Court:

- At the time of the introduction of GST law, DGFT, vide Trade Notice 11/2017 dated 30 June 2017 had intimated to the exporters about the relevant changes to the AA Scheme wherein it was forewarned that AAs and their utilisation would not continue in the same manner as the AA scheme was operating hitherto. The Hon'ble Supreme Court observed that the aforesaid notice escaped the attention of the Hon'ble High Court.
- Para 4.27(d) of the Handbook of Procedures (HBP) was inserted to stipulate that duty-free authorisation for inputs subject to 'pre-import condition' shall not be issued.
- The concept of 'pre-import authorisation' was not alien and the same was applicable in respect of certain articles prior to the introduction of GST law. Further, Para 4.13 of the FTP empowered DGFT to impose 'pre-import conditions' for inputs. However, the Hon'ble High Court failed to discuss the aforesaid provision and proceeded based on the assumption that only specified goods were subject to the 'pre-import condition'.

- The exemption from imposition of IGST and Cess in respect of goods imported under AA was granted by Notification No. 79/2017 as well as Notification No. 33/2015-20 dated 13 October 2017 (which had amended Para 4.14 of the FTP). However, the same was subject to the condition that the export obligation should be fulfilled by physical exports only and should also be subject to pre-import conditions. Accordingly, it was concluded that the aforesaid exemption was not absolute and was subject to fulfilment of certain conditions, highlighted above.
- It was also observed that one of the objectives behind the aforesaid Notifications was to ensure that the entire exports made under AAs towards the discharge of export orders were physical exports. Failure to make physical exports would result in denial of exemption under the AA Scheme.
- The Hon'ble Supreme Court noted that since the GST law is dependent on a comprehensive input tax credit (ITC) and refund system, the policymakers were of the opinion that for IGST and Cess, the system of ITC and refund should prevail over the upfront exemption which was provided in respect of other customs duties.
- While the introduction of the 'pre-import condition' may have resulted in hardship for the exporters, the same cannot be ground to hold that the insertion of the 'pre-import condition' was arbitrary, as the High Court had concluded. Reliance in this regard was placed on the case of **Rohitash Kumar & Ors. Vs. Om Prakash Sharma & Ors. [2013 (11) SCC 451]**.
- As regards the exporter's allegations that the pre-import condition is discriminatory, the Hon'ble Supreme Court observed as under:

Exporter's contention	Observations of the Hon'ble Supreme Court
For classification, all exporters who were granted AAs were to be treated alike	<ul style="list-style-type: none"> <li>▪ The indication of a few items being subjected to 'pre-import condition' by virtue of Para 4.13 of the FTP per se never meant that other articles cannot be subjected to 'pre-import condition'.</li> <li>▪ Thus, all AA holders were never treated alike.</li> </ul>
Insisting on 'pre-import condition' in respect of IGST and Cess, while granting exemption in respect of other duties is discriminatory	<ul style="list-style-type: none"> <li>▪ If one keeps in mind that there cannot be a blanket right to claim exemption, and the same is dependent on the assessment of the Tax Authorities, the economy and above all, the mechanism for its administration, the argument of discriminatory treatment of the IGST and Cess on the one hand, and the other duties on the other has to fail.</li> </ul>

- It was also observed that when reform by way of the new legislation is introduced, the doctrine of classification cannot be applied strictly, and some allowance for experimentation to observe the effect of the law is available to the executive or legislature.
- The Hon'ble Supreme Court noted that there is no constitutional compulsion that while framing a new law/policy under the new legislation, particularly when an entirely different set of fiscal norms are created, overhauling the taxation structure, concessions hitherto granted or given should necessarily be continued in the same fashion as they were in the past.
- The introduction of the new law results in the creation of new rights and obligations, with new attendant conditions which is bound to lead to some disruption. However, the same would be insufficient to trump the legislative choice of creating an altogether new fiscal legislation, and insisting on a section of assessee's order their affairs, to be in accordance with the new law.
- The exporter's argument that there is no rationale for differential treatment of BCD and IGST under the AA scheme is without merit on account of the following reasons:
  - BCD is a customs levy at the point of import in respect of which, no ITC is available to the importer
  - IGST is leviable at multiple points (including at the stage of import) in respect of which, ITC gets into the stream till the point of end-user.
 Thus, the aforementioned notifications cannot be faulted for arbitrariness or under classification.
- It was also observed that the Hon'ble High Court was persuaded to hold that the subsequent Notification No. 1/2019-Cus. dated 10 January 2019 (Notification No. 1/2019), withdrawing the 'pre-import condition' would imply that the Tax Authorities recognised its unworkable and unfeasible nature, and hence, the satisfaction of the said condition should not be insisted upon during the period 13 October 2017 to 9 January 2019 is faulty. This is because the Foreign Trade (Development & Regulation) Act, 1992 does not contain any power to frame retrospective provisions. Therefore, to give retrospective effect to the Notification No. 01/2019 through interpretation, would be to achieve what is impermissible in law.
- The Hon'ble Supreme Court also noted that in the process of unification, if a certain section of the business is inconvenienced, and would have to pay taxes and conditions are imposed upon their ability to freely import inputs (for the purpose of export), this alone cannot lead the court to conclude that such a change is unreasonable or arbitrary.

- In view of the foregoing, the orders passed by the Hon'ble Gujarat High Court were set aside. However, since the exporters were enjoying interim orders, the Tax Authorities were directed to allow the exporters to claim refunds or ITC (as the case may be). Further, the Tax Authorities shall also direct the appropriate procedure to be followed, through a circular.  
[Union of India and Ors. Vs. Cosmo Films Ltd. and Ors. [TS-162-SC-2023-GST], dated 28 April 2023]

## CENTRAL EXCISE & SERVICE TAX

### INSTRUCTIONS

#### PRE-DEPOSIT PAYMENT METHOD FOR CENTRAL EXCISE & SERVICE TAX CASES

- CBIC Instruction no: CBIC-240137/14/2022-Service Tax Section-CBEC dated 28 October 2022 had clarified that payments made through Form GST DRC-03 are not a valid mode of payment for making pre-deposits under Section 35F of the Central Excise Act, 1944 (CEA) and Section 83 of the Finance Act, 1994 read with Section 35F of the CEA.
- Applying the aforesaid Circular, appeals filed under Section 107 of the CGST Act were rejected by some Appellate Authorities on the ground that Forms GST DRC-03 is not a prescribed mode of payment for filing appeals.
- In this regard, it has been clarified that the aforesaid Circular was meant only for appeals under the Central Excise law and Service tax laws and the reference to the GST law was unintentional and for the limited purpose of drawing parallel provisions of the GST law and the Central Excise / Service tax laws.  
[Instruction no: CBIC-240137/14/2022, dated 18 April 2023]

## VALUE ADDED TAX

### ORDER

#### NOTIFICATION OF FORMS UNDER THE MAHARASHTRA SETTLEMENT OF ARREARS OF TAX, INTEREST, PENALTY OR LATE FEE 2023 (AMNESTY ACT)

- The Amnesty Act enables various taxpayers to file applications for settlement of arrears under the various erstwhile legislations prevailing till 30 June 2017.
- In this regard, various Forms have been notified under the Amnesty Act which shall be submitted electronically or physically, as the case may be.  
[Order no: DC(A&R)3/VAT/MMB-2023/1/ADM-8 dated 28 April 2023]

## NEWS FLASH

#### “GST: Automated returns scrutiny set to roll out”

<https://www.financialexpress.com/economy/gst-automated-returns-scrutiny-set-to-roll-out/3080779/>

[Source: Financial Express, 10 May 2023]

#### “RBI to banks: Treat GST-exempted informal units with Udyam Assist certificate as micro units for priority loans”

<https://www.financialexpress.com/industry/sme/msme-fin-rbi-to-banks-treat-gst-exempted-informal-units-with-udyam-assist-certificate-as-micro-units-for-priority-loans/3082930/>

[Source: Financial Express, 11 May 2023]

#### “‘Record’ GST collections mask critical slowdown”

<https://www.deccanherald.com/opinion/record-gst-collections-mask-critical-slowdown-1217114.html>

[Source: Deccan Herald, 9 May 2023]

#### “Gaming, cement GST clarity likely at Council meeting in June”

<https://www.telegraphindia.com/business/gaming-cement-gst-clarity-likely-at-council-meeting-in-june/cid/1935054>

[Source: Telegraph India, 8 May 2023]

#### “GST: FinMin lowers e-invoicing threshold to ₹5 crore from August 1”

<https://www.thehindubusinessline.com/economy/gst-finmin-lowers-e-invoicing-threshold-to-5-crore-from-august-1/article66837529.ece>

[Source: The Hindu Businessline, 11 May 2023]

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