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Company Secretaries of India

भारतीय कम्पनी सचिव संस्थान

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(Under the jurisdiction of Ministry of Corporate Affairs)

SUPPLEMENT PROFESSIONAL PROGRAMME (NEW SYLLABUS)

for

December, 2021 Examination

ADVANCED TAX LAWS

(PART I - INDIRECT TAXES)

MODULE 1

PAPER 2

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Students appearing in December, 2021 Examination shall note the following:

1. For Direct taxes, Finance Act, 2020 is applicable.
2. Applicable Assessment year is 2021-22 (Previous Year 2020-21).
3. For Indirect Taxes:
 - i) Goods and Services Tax 'GST' is applicable for Executive Programme (Old Syllabus)
 - ii) Goods and Services Tax 'GST' & Customs Law is applicable for Executive Programme (New Syllabus)
 - iii) Goods and Services Tax 'GST' & Customs Law is applicable for Professional Programme (Old Syllabus)
 - iv) Goods and Services Tax 'GST' & Customs Law is applicable for Professional Programme (New Syllabus)
4. Students are also required to update themselves on all the relevant Rules, Notifications, Circulars, Clarifications, etc. issued by the CBDT, CBIC & Central Government, on or before six months prior to the date of the examination.

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Lesson 4

Procedural Compliance under GST

1. Notification to make amendment (2021) to CGST Rules, 2017

Notification No. 01/2021 – Central Tax, dated January 01, 2021

The Central Government, on the recommendations of the Council, hereby makes the following rules further to amend the Central Goods and Services Tax Rules, 2017, namely: -

1. Short title and commencement. - (1) These rules may be called the Central Goods and Services Tax (Amendment) Rules, 2021.

(2) These rules shall come into force on the date of their publication in the Official Gazette.

2. In the Central Goods and Services Tax Rules, 2017 (hereafter in this notification referred to as the said rules), in rule 59, after sub-rule (5), the following sub-rule shall be inserted namely:-

“(6) Notwithstanding anything contained in this rule, -

(a) a registered person shall not be allowed to furnish the details of outward supplies of goods or services or both under section 37 in **FORM GSTR-1**, if he has not furnished the return in **FORM GSTR-3B** for preceding two months;

(b) a registered person, required to furnish return for every quarter under the proviso to sub-section (1) of section 39, shall not be allowed to furnish the details of outward supplies of goods or services or both under section 37 in **FORM GSTR-1** or using the invoice furnishing facility, if he has not furnished the return in **FORM GSTR-3B** for preceding tax period;

(c) a registered person, who is restricted from using the amount available in electronic credit ledger to discharge his liability towards tax in excess of ninety-nine per cent. of such tax liability under rule 86B, shall not be allowed to furnish the details of outward supplies of goods or services or both under section 37 in **FORM GSTR-1** or using the invoice furnishing facility, if he has not furnished the return in **FORM GSTR-3B** for preceding tax period.”.

Brief Analysis

A new sub-rule 6 is inserted to rule 59 of the CGST Rules, 2017, restricting or blocking the filing of GSTR-1;

(a) a registered person shall not be allowed to furnish the details of outward supplies of goods or services or both under section 37 in FORM GSTR-1, if he has not furnished the return in FORM GSTR-3B for preceding two months;

(b) a registered person, required to furnish return for every quarter under the proviso of section 39 (1), shall not be allowed to furnish the details of outward supplies of goods or services or both under

section 37 in FORM GSTR-1 or using the invoice furnishing facility, if he has not furnished the return in FORM GSTR-3B for preceding tax period;

(c) a registered person, who is restricted from using the amount available in electronic credit ledger to discharge his liability towards tax in excess of 99% of such tax liability under rule 86B, shall not be allowed to furnish the details of outward supplies of goods or services or both under section 37 in FORM GSTR-1 or using the invoice furnishing facility, if he has not furnished the return in FORM GSTR-3B for preceding tax period.

For further details please visit: <https://www.cbic.gov.in/resources/htdocs-cbec/gst/notfctn-01-central-tax-english-2021.pdf>

2. Standard Operating Procedure (SOP) for implementation of the provision of suspension of registrations

Circular No. 145/01/2021 – Central Tax, dated February 11, 2021

As per notification No. 94/2020- Central Tax, dated 22.12.2020, sub-rule (2A) has been inserted to rule 21A of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the CGST Rules). The said provision provides for immediate suspension of registration of a person, as a measure to safeguard the interest of revenue, on observance of such discrepancies /anomalies which indicate violation of the provisions of Act and rules made thereunder; and that continuation of such registration poses immediate threat to revenue.

2.1 Sub-rule (2A) of rule 21A is reproduced hereunder:

“(2A) Where, a comparison of the returns furnished by a registered person under section 39 with

(a) the details of outward supplies furnished in **FORM GSTR-1**; or

(b) the details of inward supplies derived based on the details of outward supplies furnished by his suppliers in their **FORM GSTR-1**,

or such other analysis, as may be carried out on the recommendations of the Council, show that there are significant differences or anomalies indicating contravention of the provisions of the Act or the rules made thereunder, leading to cancellation of registration of the said person, his registration shall be suspended and the said person shall be intimated in **FORM GST REG-31**, electronically, on the common portal, or by sending a communication to his e-mail address provided at the time of registration or as amended from time to time, highlighting the said Sub-rule (2A) of rule 21A of the CGST Rules, 2017 provides for immediate suspension of registration of a person, as a measure to safeguard the interest of revenue, on observance of such discrepancies /anomalies which indicate violation of the provisions of Act and rules made thereunder; and that continuation of such registration poses immediate threat to revenue.

Brief Analysis

Sub-rule (2A) of rule 21A of the CGST Rules, 2017 provides for immediate suspension of registration of a person, as a measure to safeguard the interest of revenue, on observance of such discrepancies /anomalies which indicate violation of the provisions of Act and rules made thereunder; and that continuation of such registration poses immediate threat to revenue.

The taxpayers, whose registrations are suspended under the above provisions, would be required to furnish reply to the jurisdictional tax officer within thirty days from the receipt of such notice / intimation, explaining the discrepancies/anomalies, if any, and shall furnish the details of compliances made or/and the reasons as to why their registration shouldn't be cancelled.

For further details please visit: https://www.cbic.gov.in/resources/htdocs-cbec/gst/Circular_Refund_145_12_2020.pdf

3. Clarification in respect of applicability of Dynamic Quick Response (QR) Code on B2C invoices

Circular No. 146/02/2021 – Central Tax, dated February 23, 2021

Notification No. 14/2020-Central Tax, dated 21st March 2020 had been issued which requires Dynamic QR Code on B2C invoice issued by taxpayers having aggregate turnover more than 500 crore rupees, w.e.f. 01.12.2020. Further, vide Notification No. 89/2020- Central Tax, dated 29th November 2020, penalty has been waived for non-compliance of the provisions of Notification No.14/2020 – Central Tax for the period from 01st December, 2020 to 31st March, 2021, subject to the condition that the said person complies with the provisions of the said Notification from 01st April, 2021.

Sl. No.	Issues	Clarification
1.	To which invoice is Notification No 14/2020-Central Tax dated 21st March, 2020 applicable? Would this requirement be applicable on invoices issued for supplies made for Exports?	<p>This notification is applicable to a tax invoice issued to an unregistered person by a registered person (B2C invoice) whose annual aggregate turnover exceeds 500 Cr rupees in any of the financial years from 2017-18 onwards. However, the said notification is not applicable to an invoice issued in following cases:</p> <ol style="list-style-type: none">i. Where the supplier of taxable service is:<ol style="list-style-type: none">a) an insurer or a banking company or a financial institution, including a non-banking financial company;b) a goods transport agency supplying services in relation to transportation of goods by road in a goods carriage;c) supplying passenger transportation service;d) supplying services by way of admission to exhibition of cinematograph in films in multiplex screens

		<p>ii. OIDAR supplies made by any registered person, who has obtained registration under section 14 of the IGST Act 2017, to an unregistered person.</p> <p>As regards the supplies made for exports, though such supplies are made by a registered person to an unregistered person, however, as e-invoices are required to be issued in respect of supplies for exports, in terms of Notification no. 13/2020-Central Tax, dated 21st March, 2020 treating them as Business to Business (B2B) supplies, Notification no. 14/2020- Central Tax, dated 21st March, 2020 will not be applicable to them.</p>
2.	What parameters/ details are required to be captured in the Quick Response (QR) Code?	<p>Dynamic QR Code, in terms of Notification No. 14/2020-Central Tax, dated 21st March, 2020 is required, inter-alia, to contain the following information: -</p> <p>i. Supplier GSTIN number ii. Supplier UPI ID iii. Payee's Bank A/C number and IFSC iv. Invoice number & invoice date, v. Total Invoice Value and vi. GST amount along with breakup i.e. CGST, SGST, IGST, CESS, etc.</p> <p>Further, Dynamic QR Code should be such that it can be scanned to make a digital payment.</p>
3.	If a supplier provides/ displays Dynamic QR Code, but the customer opts to make payment without using Dynamic QR Code, then will the cross reference of such payment, made without use of Dynamic QR Code, on the invoice, be considered as compliance of Dynamic QR Code on the invoice?	<p>If the supplier has issued invoice having Dynamic QR Code for payment, the said invoice shall be deemed to have complied with Dynamic QR Code requirements. In cases where the supplier, has digitally displayed the Dynamic QR Code and the customer pays for the invoice: -</p> <p>i. Using any mode like UPI, credit/ debit card or online banking or cash or combination of various modes of payment, with or without using Dynamic QR Code, and the supplier provides a cross reference of the payment (transaction id along with date, time and amount of payment, mode of payment like UPI, Credit card, Debit card, online banking etc.) on the invoice ; or</p> <p>ii. In cash, without using Dynamic QR Code and the supplier provides a cross reference of the amount paid in cash , along with date of such payment on the invoice;</p> <p>The said invoice shall be deemed to have complied with the requirement of having Dynamic QR Code.</p>
4.	If the supplier makes available to customers an electronic mode of payment	<p>In such cases, if the cross reference of the payment made using such electronic modes of payment is made on the</p>

	like UPI Collect, UPI Intent or similar other modes of payment, through mobile applications or computer based applications, where though Dynamic QR Code is not displayed, but the details of merchant as well as transaction are displayed/ captured otherwise, how can the requirement of Dynamic QR Code as per this notification be complied with?	invoice, the invoice shall be deemed to comply with the requirement of Dynamic QR Code. However, if payment is made after generation / issuance of invoice, the supplier shall provide Dynamic QR Code on the invoice.
5.	Is generation/ printing of Dynamic QR Code on B2C invoices mandatory for pre-paid invoices i.e. where payment has been made before issuance of the invoice?	If cross reference of the payment received either through electronic mode or through cash or combination thereof is made on the invoice, then the invoice would be deemed to have complied with the requirement of Dynamic QR Code. In cases other than pre-paid supply i.e. where payment is made after generation / issuance of invoice, the supplier shall provide Dynamic QR Code on the invoice.
6.	Once the E-commerce operator (ECO) or the online application has complied with the Dynamic QR Code requirements, will the suppliers using such e-commerce portal or application for supplies still be required to comply with the requirement of Dynamic QR Code?	The provisions of the notification shall apply to each supplier/registered person separately, if such person is liable to issue invoices with Dynamic QR Code for B2C supplies as per the said notification. In case, the supplier is making supply through the Ecommerce portal or application, and the said supplier gives cross references of the payment received in respect of the said supply on the invoice, then such invoices would be deemed to have complied with the requirements of Dynamic QR Code. In cases other than pre-paid supply i.e. where payment is made after generation / issuance of invoice, the supplier shall provide Dynamic QR Code on the invoice.

Brief Analysis

Dynamic QR Code on B2C invoice issued by taxpayers having aggregate turnover more than Rs. 500 crores is mandatory w.e.f. December 01, 2020. This notification is applicable to a tax invoice issued to an unregistered person by a registered person (B2C invoice) whose annual aggregate turnover exceeds Rs. 500 Crores in any of the financial years from 2017-18 onwards. The provisions of the notification shall apply to each supplier/registered person separately, if such person is liable to issue invoices with Dynamic QR Code for B2C supplies as per the said notification.

For further details please visit: https://www.cbic.gov.in/resources/htdocs-cbec/gst/Circular_Refund_146.pdf

4. CBIC specifies Class of persons exempt from Aadhaar Authentication

Notification No. 03/2021 – Central Tax, dated February 23, 2021

This notification seeks to notify persons to whom provisions of sub-section (6B) or sub-section (6C) of section 25 of CGST Act will not apply. This section shall not apply to a person who is

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

For further details please visit: <https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-03-central-tax-english-2021.pdf>

5. Notification to implement e-invoicing for the taxpayers having aggregate turnover exceeding Rs. 50 Crores from 01st April 2021

Notification No. 05/2021 – Central Tax, dated March 08, 2021

The Government, on the recommendations of the Council, hereby makes the following further amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 13/2020 – Central Tax, dated the 21st March, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 196(E), dated 21st March, 2020, namely:-

In the said notification, in the first paragraph, with effect from the 1st day of April, 2021, for the words “one hundred crore rupees”, the words “fifty crore rupees” shall be substituted.

Brief Analysis

Aggregate Turnover limit for e-invoicing is reduced from Rs. 100 crores to Rs. 50 crores w.e.f. April 01, 2021.

For further details please visit: <https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-05-central-tax-english-2021.pdf>

6. Clarification on Refund related issues

Circular No. 147/02/2021 – Central Tax, dated March 12, 2021

Clarification in respect of refund claim by recipient of Deemed Export Supply

Para 41 of Circular No. 125/44/2019 – GST dated 18/11/2019 has placed a condition that the recipient of deemed export supplies for obtaining the refund of tax paid on such supplies shall submit an undertaking that he has not availed ITC on invoices for which refund has been claimed. Thus, in terms of the above circular, the recipient of deemed export supplies cannot avail ITC on such supplies but when they proceed to file refund on the portal, the system requires them to debit the amount so claimed from their electronic credit ledger.

The 3rd proviso to Rule 89(1) of CGST Rules, 2017 allows for refund of tax paid in case of a **deemed export supply to the recipient or the supplier** of deemed export supplies. The said proviso is reproduced as under:

“Provided also that in respect of supplies regarded as deemed exports, the application may be filed by, -

(a) the recipient of deemed export supplies; or

(b) the supplier of deemed export supplies in cases where the recipient does not avail of input tax credit on such supplies and furnishes an undertaking to the effect that the supplier may claim the refund”

From the above, it can be seen that there is no restriction on recipient of deemed export supplies in availing ITC of the tax paid on such supplies when the recipient files for refund claim. The said restriction has been placed by the Circular No. 125/44/2019-GST dated 18.11.2019.

In this regard, it is submitted that in order to ensure that there is no dual benefit to the claimant, the portal allows refund of only Input Tax Credit (ITC) to the recipients which is required to be debited by the claimant while filing application for refund claim. Therefore, whenever the recipient of deemed export supplies files an application for refund, the portal requires debit of the equivalent amount from the electronic credit ledger of the claimant.

Brief Analysis

The Board while issuing clarification in respect of refund claim by recipient of Deemed Export Supply said that previous circular of 2019 has placed a condition that the recipient of deemed export supplies for obtaining the refund of tax paid on such supplies shall submit an undertaking that he has not availed ITC on invoices for which refund has been claimed. Thus, in terms of the above circular, the recipient of deemed export supplies cannot avail ITC on such supplies but when they proceed to file a refund on the portal, the system requires them to debit the amount so claimed from their electronic credit ledger. There is no restriction under 3rd proviso to Rule 89(1) of CGST Rules, 2017 on recipient of deemed export supply, claiming refund of tax paid on such deemed export supply, on availing of ITC on the tax paid on such supply. Therefore, the para 41 of Circular No. 125/44/2019- GST dated November

18, 2019 is modified to remove the restriction of non-availment of ITC by the recipient of deemed export supplies on the invoices, for which refund has been claimed by such recipient.

Sub-rule (4) of Rule 89 prescribes the formula for computing the refund of unutilised ITC payable on account of zero-rated supplies made without payment of tax. The formula prescribed under Rule 89 (4) is reproduced below, as under:

“Refund Amount = (Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services) x Net ITC ÷ Adjusted Total Turnover”

“Adjusted Total Turnover” means the sum total of the value of-

(a) the turnover in a State or a Union territory, as defined under clause (112) of section 2, excluding the turnover of services; and

(b) the turnover of zero-rated supply of services determined in terms of clause (D) above and non-zero-rated supply of services, excluding-

- (i) the value of exempt supplies other than zero-rated supplies; and
- (ii) the turnover of supplies in respect of which refund is claimed under sub-rule (4A) or sub-rule (4B) or both, if any, during the relevant period.

For further details please visit: https://www.cbic.gov.in/resources/htdocs-cbec/gst/Circular_Refund_147.pdf

7. Notification to make second amendment (2021) to CGST Rules, 2017

Notification No. 07/2021 – Central Tax, dated April 27, 2021

The Government, on the recommendations of the Council, hereby makes the following rules further to amend the Central Goods and Services Tax Rules, 2017, namely: -

1. (1) These rules may be called the Central Goods and Services Tax (Second Amendment) Rules, 2021.

(2) These rules shall come into force on the date of their publication in the Official Gazette.

2. In the Central Goods and Services Tax Rules, 2017, in rule 26 in sub-rule (1), after the third proviso, the following proviso shall be inserted, namely:-

“Provided also that a registered person registered under the provisions of the Companies Act, 2013 (18 of 2013) shall, during the period from the 27th day of April, 2021 to the 31st day of May, 2021, also be allowed to furnish the return under section 39 in FORM GSTR-3B and the details of outward supplies under section 37 in FORM GSTR-1 or using invoice furnishing facility, verified through electronic verification code (EVC).”

Brief Analysis

The government notified the Central Goods and Services Tax (Second Amendment) Rules, 2021 which seeks to amend CGST Rules, 2017. A registered person registered under the provisions of the Companies Act, 2013, during the period from April 27, 2021 to May 31, 2021, will be allowed to furnish the return under section 39 in FORM GSTR-3B and the details of outward supplies under section 37 in FORM GSTR-1 or using invoice furnishing facility, verified through Electronic Verification Code (EVC).

For further details please visit: <https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-07-central-tax-english-2021.pdf;jsessionid=F8529724DE902DF70C78DF9FCEADE89B>

8. Notification to make third amendment (2021) to CGST Rules, 2017

Notification No. 13/2021 – Central Tax, dated May 01, 2021

The Government, on the recommendations of the Council, hereby makes the following rules further to amend the Central Goods and Services Tax Rules, 2017, namely: -

1. **Short title and commencement.** - (1) These rules may be called the Central Goods and Services Tax (Third Amendment) Rules, 2021.

(2) These rules shall come into force on the date of their publication in the Official Gazette.

2. In the Central Goods and Services Tax Rules, 2017,----

(i) in sub-rule (4) of rule 36, after the first proviso, the following proviso shall be inserted, namely:-

“Provided further that such condition shall apply cumulatively for the period April and May, 2021 and the return in **FORM GSTR-3B** for the tax period May, 2021 shall be furnished with the cumulative adjustment of input tax credit for the said months in accordance with the condition above.”;

(ii) in sub-rule (2) of rule 59, the following proviso shall be inserted, namely:-

“Provided that a registered person may furnish such details, for the month of April, 2021, using IFF from the 1st day of May, 2021 till the 28th day of May, 2021.”.

Brief Analysis

A proviso has been entered in sub-rule (4) of rule 36 of the CGST Rules which is to be checked cumulatively for the tax period April 2021 and May 2021. Any adjustment for the said periods shall be made in Return in Form GSTR 3B to be furnished for the month of May 2021. A registered person may furnish details, for the month of April, 2021, using IFF from May 01, 2021 till May 28, 2021.

For further details please visit: <https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-13->

9. Notification to make fourth amendment (2021) to CGST Rules, 2017

Notification No. 15/2021 – Central Tax, dated May 18, 2021

The Central Government, on the recommendations of the Council, hereby makes the following rules further to amend the Central Goods and Services Tax Rules, 2017, namely: -

1. Short title and commencement. - (1) These rules may be called the Central Goods and Services Tax (Fourth Amendment) Rules, 2021.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Central Goods and Services Tax Rules, 2017, -

(i) in rule 23, in sub-rule (1), after the words “date of the service of the order of cancellation of registration”, the words and figures “or within such time period as extended by the Additional Commissioner or the Joint Commissioner or the Commissioner, as the case may be, in exercise of the powers provided under the proviso to sub-section (1) of section 30,” shall be inserted;

(ii) in rule 90, -

(a) in sub-rule (3), the following proviso shall be inserted, -

“Provided that the time period, from the date of filing of the refund claim in **FORM GST RFD-01** till the date of communication of the deficiencies in **FORM GST RFD-03** by the proper officer, shall be excluded from the period of two years as specified under sub-section (1) of Section 54, in respect of any such fresh refund claim filed by the applicant after rectification of the deficiencies.”;

(b) after sub-rule (4), the following sub-rules shall be inserted, namely: -

“(5) The applicant may, at any time before issuance of provisional refund sanction order in **FORM GST RFD-04** or final refund sanction order in **FORM GST RFD-06** or payment order in **FORM GST RFD-05** or refund withhold order in **FORM GST RFD-07** or notice in **FORM GST RFD-08**, in respect of any refund application filed in **FORM GST RFD-01**, withdraw the said application for refund by filing an application in **FORM GST RFD-01W**.

(6) On submission of application for withdrawal of refund in **FORM GST RFD-01W**, any amount debited by the applicant from electronic credit ledger or electronic cash ledger, as the case may be, while filing application for refund in **FORM GST RFD-01**, shall be credited back to the ledger from which such debit was made.”;

(iii) in rule 92, -

(a) in sub-rule (1), the proviso shall be omitted;

(b) in sub-rule (2), -

- (i) for the word and letter “Part B”, the word and letter “Part A” shall be substituted;
- (ii) the following proviso shall be inserted, namely: -

“Provided that where the proper officer or the Commissioner is satisfied that the refund is no longer liable to be withheld, he may pass an order for release of withheld refund in Part B of **FORM GST RFD- 07.**”;

(iv) in rule 96, -

(a) in sub-rule (6), for the word and letter “Part B”, the word and letter “Part A” shall be substituted;

(b) in sub-rule (7), for the words, letters and figures, “after passing an order in **FORM GST RFD-06**”, the words, letters and figures, “by passing an order in **FORM GST RFD-06** after passing an order for release of withheld refund in Part B of **FORM GST RFD-07**” shall be substituted;

(v) in **FORM GST REG-21**, under the sub-heading “Instructions for submission of application for revocation of cancellation of registration”, in the first bullet point “after the words “date of service of the order of cancellation of registration”, the words and figures “or within such time period as extended by the Additional Commissioner or the Joint Commissioner or Commissioner, as the case may be, in exercise of the powers provided under proviso to subsection (1) of section 30,” shall be inserted;

(vi) in rule 138E, for the words “in respect of a registered person, whether as a supplier or a recipient, who, —” the words „in respect of any outward movement of goods of a registered person, who, —” shall be substituted.

Brief Analysis

The Board has notified the Central Goods and Services Tax (Fourth Amendment) Rules, 2021 which seeks to further amend the CGST Rules, 2017. The applicant may, at any time before issuance of provisional refund sanction order in FORM GST RFD-04 or final refund sanction order in FORM GST RFD-06 or payment order in FORM GST RFD-05 or refund withhold order in FORM GST RFD-07 or notice in FORM GST RFD08, in respect of any refund application filed in FORM GST RFD-01, withdraw the said application for refund by filing an application in FORM GST RFD-01W.

For further details please visit: <https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-15-central-tax-english-2021.pdf>

Lesson 12

Basic Concepts of Customs Law

1. Clarification regarding payment of AIDC by EOU under various situations

Circular No. 07/2021 – Customs (N.T.), dated February 22, 2021

Finance Bill, 2021 (15 of 2021) dated 01.02.2021, vide clause 115 has imposed a duty of customs, to be called Agriculture Infrastructure and Development Cess (AIDC), on the import of goods specified in the First Schedule to the Customs Tariff Act, 1975 at the rate not exceeding the rate of customs duty as specified in the said Schedule, for the purposes of financing the agriculture infrastructure and other development expenditure. The said provision of clause 115 of the Bill has been given immediate effect under the Provisional Collection of Taxes Act, 1931.

- 1.1 In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) read with clause 115 of the said bill, Government of India vide Notification No. 11/2021- Customs dated 1st February, 2021 vide Sr. no. 19 read with serial no. 7 of the Annexure to the said notification has fully exempted goods imported by EOUs/EHTP units/STP units (collectively called EOUs) from the AIDC as the goods imported by these units enjoy benefit of exemption from basic customs duty under notification no. 52/2003-Cus dated 31.03.2003.
- 1.2 In case of EOU selling finished goods in DTA, BCD exempted on import of inputs used in such finished goods is to be paid vide Notification No. 59/2017-Customs dated 30.06.2017 [amending by Notification No. 52/2003-Customs dated 31.03.2003]. On payment of such BCD by EOU at the time of clearance of finished goods it is treated as if no exemption of BCD was allowed to the EOU under Notification No. 52/2003-Customs dated 31.03.2003. Once it is deemed that no exemption of BCD on inputs is allowed which were imported under exemption Notification No. 52/2003-Customs dated 31.03.2003, AIDC exemption under Notification no. 11/2021-Customs dated 01.2.2021 also gets denied on such inputs and same is also required to be paid by EOU.
- 1.3 In addition to clearance of goods in DTA there are many situations like clearance of inputs; capital goods; packing material suitable for repeated use such empty cones, bobbins, containers; left over textile fabric or textile material etc. or exit from EOU scheme. In such cases duty/tax of which exemption under Notification No. 52/2003-Customs dated 31.03.2003 was availed at the time of import is required to be paid at the time of clearance. In case of clearance of capital goods, applicable depreciation is allowed for denial of exemption. Unutilized left over textile fabric or textile material is allowed to be cleared into DTA on payment of duty leviable at the time of import but for the exemption on transaction value as if the goods have been manufactured in that unit. Exemption of duty/tax on goods imported under Notification No. 52/2003-Customs dated 31.03.2003 is also denied on account of breach of various conditions of EOU scheme. Once EOU is required to pay back BCD for which exemption was claimed and allowed under Notification No. 52/2003-Customs dated 31.03.2003 at the time of import then exemption of AIDC, if availed, in all such situations shall also be denied. Thus, EOU shall be required to pay AIDC in the manner

of payment of BCD against the goods imported under exemption Notification No. 52/2003-Customs dated 31.03.2003 under various situations.

Brief Analysis

Finance Bill, 2021 dated February 01, 2021, vide clause 115 has imposed a duty of customs, to be called Agriculture Infrastructure and Development Cess (AIDC), on the import of goods specified in the First Schedule to the Customs Tariff Act, 1975 at the rate not exceeding the rate of customs duty as specified in the said Schedule, for the purposes of financing the agriculture infrastructure and other development expenditure.

For further details please visit: <https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-circulars/cs-circulars-2021/Circular-No-07-2021.pdf>

2. Common Customs Electronic Portal

Notification No. 33/2021 – Customs (N.T.), dated March 29, 2021

In exercise of the powers conferred by section 154C of the Customs Act, 1962 (52 of 1962), read with clause (7B) of section 2 of the said Act, the Central Board of Indirect Taxes and Customs hereby notifies the common portal accessible through uniform resource locator (URL) <https://www.icegate.gov.in> as the Common Customs Electronic Portal for facilitating registration, filing of bills of entry, shipping bills, other documents and forms prescribed under the said Act or under any other law for the time being in force or the rules or regulations made thereunder, payment of duty, functions specified to be carried out through common portal through the said Act or rules made under section 156 of the said Act or regulations made under section 157 of the said Act and for data exchange with other systems within or outside India.

Brief Analysis

CBIC notified the common portal accessible through Uniform Resource Locator (URL) <https://www.icegate.gov.in> as the Common Customs Electronic Portal for facilitating registration, filing of bills of entry, shipping bills, other documents and forms prescribed under the Customs Act, 1962.

For further details please visit: <https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2021/cs-nt2021/csnt33-2021.pdf>

3. Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Amendment Regulations, 2021

Notification No. 34/2021 – Customs (N.T.), dated March 29, 2021

In exercise of the powers conferred by section 157, read with sections 46 and 47 of the Customs Act, 1962 (52 of 1962), the Central Board of Indirect Taxes and Customs hereby makes the following regulations to amend the Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2018, namely: -

1. Short title and commencement. -(1) These regulations may be called the Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Amendment Regulations, 2021.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2018 (hereinafter referred to as said regulations), In regulation 2, in sub-regulation (1), after clause (c), the following clause shall be inserted, namely: -

‘(ca) “Customs Automated System” means the Indian Customs Electronic Data Interchange System;’.

3. In the said regulations, in regulations 3 and 4, for the expressions, “Customs Automated System” and “customs automated system” wherever they occur, the expression “common portal” shall be substituted.

4. In the said regulations, in regulation 4, for sub-regulation (1), the following sub regulation shall be substituted, namely:-

“(1)(a) In case of a customs port (other than inland container depot and air freight station) at which goods are to be cleared for home consumption or warehousing, the authorised person shall file the bill of entry before the end of the day (including holidays) preceding the day on which the vessel carrying the goods arrives at the customs port:

Provided that the authorised person shall file the bill of entry before the end of the day (including holidays) of said arrival of the vessel where the goods are consigned from any of the countries mentioned below:

- (i) Bangladesh ;
- (ii) Maldives ;
- (iii) Myanmar ;
- (iv) Pakistan ;
- (v) Sri Lanka.

(b) In case of a customs airport at which goods are to be cleared for home consumption or warehousing, the authorised person shall file the bill of entry before the end of the day (including holidays) of the arrival of the aircraft carrying the goods at the customs airport.

(c) In case of an inland container depot or air freight station at which goods are to be cleared for home consumption or warehousing, the authorised person shall file the bill of entry before the end of the day (including holidays) preceding the day on which the vehicle (which includes train) carrying the goods arrives at the inland container depot or air freight station.

(d) In case of a land customs station at which goods are to be cleared for home consumption or warehousing, the authorised person shall file the bill of entry before the end of the day (including holidays) of the arrival of the vehicle (which includes train) carrying the goods at the land customs station.”.

Brief Analysis

CBIC made regulations to amend the Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2018. The amended regulations is called the Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Amendment Regulations, 2021.

For further details please visit: <https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2021/cs-nt2021/csnt34-2021.pdf>

4. Bill of Entry (Forms) Amendment Regulations, 2021

Notification No. 35/2021 – Customs (N.T.), dated March 29, 2021

The Central Board of Indirect Taxes and Customs, hereby makes the following regulations further to amend the Bill of Entry (Forms) Regulations, 1976, namely:-

1. Short title and commencement. - (1) These regulations may be called the Bill of Entry (Forms) Amendment Regulations, 2021.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Bill of Entry (Forms) Regulations, 1976, in regulation 4, for sub-regulation (1), the following sub-regulation shall be substituted, namely:-

“(1)(a) In case of a customs port (other than inland container depot and air freight station) at which goods are to be cleared for home consumption or warehousing, the authorised person shall file the bill of entry before the end of the day (including holidays) preceding the day on which the vessel carrying the goods arrives at the customs port:

Provided that the authorised person shall file the bill of entry before the end of the day (including holidays) of said arrival of the vessel where the goods are consigned from any of the countries mentioned below:-

- (i) Bangladesh ;
- (ii) Maldives ;
- (iii) Myanmar ;
- (iv) Pakistan ;
- (v) Sri Lanka.

Brief Analysis

These regulations are called the Bill of Entry (Forms) Amendment Regulations, 2021. They shall come into force on the date of their publication in the Official Gazette. In case of a customs port (other than inland container depot and air freight station) at which goods are to be cleared for home consumption or warehousing, the authorised person shall file the bill of entry before the end of the day (including holidays) preceding the day on which the vessel carrying the goods arrives at the customs port: Provided that the authorised person shall file the bill of entry before the end of the day (including

holidays) of said arrival of the vessel where the goods are consigned from any of the countries mentioned below:-

- (i) Bangladesh ;
- (ii) Maldives ;
- (iii) Myanmar ;
- (iv) Pakistan ;
- (v) Sri Lanka.

For further details please visit: <https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2021/cs-nt2021/csnt35-2021.pdf;jsessionid=9BFCEF6EDF77CA1BB88ACC01F9AE37D6>

Lesson 13

Valuation & Assessment of Imported and Export Goods & Procedural Aspects

1. Systemic improvements regarding modification in the Bond (B-17) Execution process

Circular No. 03/2021 –Customs, dated February 03, 2021

In case of EOU/EHTP/STP, a single all-purpose bond was notified vide notification no. 06/98-C.E.(N.T.), dated 02.03.1998. This bond is called B-17(General Surety/Security). Various instructions through circulars were issued regarding execution of said B-17 bond. Post GST, revised new B-17 bond was notified vide notification no. 01/2018-C.E.(N.T.), dated 05.12.2018. It was also clarified vide circular no. 50/2018-Customs dated 06.12.2018 that all relevant instructions applicable for the old B-17 bond will be applicable, mutatis mutandis, to the new B-17 bond.

2. Circular no. 14/98 – Customs dated 10.03.1998 clarified that although the bond is devised to be executed as surety or security bond, it has also been decided that only surety bond has to be taken from such units. Subsequently, circular no. 42/98-Customs dated 19.06.1998 acknowledging the fact that some units were not able to organise prescribed individual/corporate surety equivalent to the bond amount, allowed such units to execute the bond coupled with a security amount.
3. CBIC vide circular no. 66/98-Customs dated 15.09.1998 further directed that the solvency of sureties may also be certified by a Chartered Accountant or the Bankers of the surety. And, since in the law, a limited company is distinct legal entity and the Members of the Company, including the Directors are distinct from the company, there should be no objection to allow the Directors of the EOU, which are Limited Companies to stand as surety in their personal capacity for the said companies. In addition, other corporate bodies including Limited Companies may also stand as surety for the units.
4. Recently, it has come to notice that the B-17 bond executed by the Proprietor of EOU was issued in violation of the Circular no. 66/98-Customs dated 15.09.1998. The surety was given by the Proprietor himself though the same was required to be given by some independent legal entity other than the EOU firm. This resulted in improper execution of B-17 Bond resulting in loss of Government revenue.
5. Matter has been examined in the Board. “Surety” is a person/individual who undertakes an obligation to pay a sum of money or to perform some duty or promise for another in the event that person (obligor) fails to act. A sole Proprietorship firm is not a legal entity distinct from its proprietor. Hence, question of Proprietor himself standing as surety for his own Proprietorship firm does not arise. Even the clarification vide above referred circular no. 66/98-Customs dated 15.09.1998 clarified this fact that individuals (Directors) standing as surety in their personal capacity are distinct legal entities from the limited companies (EOUs) thereby allowing such Directors of EOU to stand as surety in their personal capacity for said EOU companies. This clarification nowhere recognizes a Proprietor standing as surety for his/her own Proprietorship EOU firm. Therefore, there seems to be no ambiguity with regard to the requirement of surety to be given by some independent legal entity other than EOU itself irrespective of the constitution of

the EOU firm. However, it is hereby clarified that in case of B-17 bond executed by EOU/STP/EHTPs in capacity of Proprietorship or partnership firm, surety cannot be given by Proprietor/ partner himself. Such sureties must be given by an independent legal entity other than the Proprietor/ Partner of the concerned Proprietorship/ Partnership EOU firm.

Brief Analysis

In case of EOU/EHTP/STP, a single all-purpose bond was earlier notified. This bond is called B-17(General Surety/Security).

CBIC directed that the solvency of sureties may also be certified by a Chartered Accountant or the Bankers of the surety. And, since in the law, a limited company is distinct legal entity and the Members of the Company, including the Directors are distinct from the company, there should be no objection to allow the Directors of the EOU, which are Limited Companies to stand as surety in their personal capacity for the said companies.

“Surety” is a person/individual who undertakes an obligation to pay a sum of money or to perform some duty or promise for another in the event that person (obligor) fails to act. A sole Proprietorship firm is not a legal entity distinct from its proprietor. Hence, question of Proprietor himself standing as surety for his own Proprietorship firm does not arise.

For further details please visit: <https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-circulars/cs-circulars-2021/Circular-No-03-2021.pdf;jsessionid=2FB12C0ECBE57D3D97197576979BF3BE>

2. IGST refunds on exports-extension in SB005 alternate mechanism

Circular No. 05/2021–Customs, dated February 17, 2021

The exporter may avail the facility of correction of Invoice mis-match errors (error code SB-005) in respect of all past shipping bills, irrespective of its date of filing, by following the procedure as provided in the above Circulars, subject to payment of Rs. 1,000/- as fee towards such rendering of service by Customs Officers for correlation and verification of the claim. Necessary amendments have been made in the Levy of Fee (Customs Documents) Regulations, 1970.

For further details please visit: <https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-circulars/cs-circulars-2021/Circular-No-05-2021.pdf>

3. Changes introduced through the Customs (Import of Goods at Concessional Rate of Duty) Amendment Rules, 2021

Circular No. 10/2021–Customs, dated May 17, 2021

The scope of the job work facility has been extended to an importer who is a manufacturer but without complete manufacturing facility. Also, 100% outsourcing for manufacture of goods on job-work basis has been permitted for importers who do not have any manufacturing facility at all. However, sensitive sectors such as gold, articles of jewellery and other precious metals or stones have been excluded from the facility of job work.

An option has been given to the importers to import capital goods for a specified purpose at a concessional rate of duty and after having put such capital goods to use for the said purpose, clear the same after payment of the differential duty and interest, at a depreciated value, with permission from the jurisdictional Customs Officer.

For further details please visit: <https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-circulars/cs-circulars-2021/Circular-No-10-2021.pdf>

Lesson 14

Arrival or Departure and Clearance of Goods, Warehousing, Duty Drawback, Baggage & Miscellaneous

1. Clarifications on the legislative changes in Section 46 of Customs Act, 1962

Circular No. 08/2021 –Customs, dated March 29, 2021

The amended Section 46 requires an importer to file a BE before the end of the day (including holidays) *preceding* the day of arrival of the vessel/aircraft/vehicle carrying the imported goods at a Customs port/station at which such goods are to be cleared for home consumption or warehousing. However, Board is empowered to prescribe different time limits for such filing in certain cases, but by not later than the end of the day of arrival of the vessel/aircraft/vehicle at the Customs port/station.

Changes in Section 46

2. In this regard, Board has carried out consultations with members of the trade and Customs field formations for the smooth implementation of the changes to the Customs Act, 1962 as above. After examining the relevant issues Board notes that the ground reality is that in case of short haul vessels/flights the importer may at times not get the Master Bill of Lading (MBL)/Master Airway Bill (MAWB) on the preceding day of the arrival of the vessel/aircraft. Further, when goods arrive by vehicle at a LCS, it is invariably the case that the import report is filed only at the time of its arrival. In these situations it would be difficult for the importer to adhere to the new requirement of Section 46, as above. Accordingly, with a view to facilitate the importers, Board has amended the Bill of Entry (Electronic Integrated Declaration) Regulations, 2018 by issue of Notification No.34/2021-Customs(N.T.), dated 29.03.2021 thereby prescribing different time-limits for filing BE in respect of goods imported by various modes of transport. It may be noted that, the existing provision that a BE may be presented upto 30 days prior to the expected arrival of the aircraft or vessel or vehicle carrying the imported goods continues. Thus, with certain exceptions, as notified, the BE can now be filed anytime from 30 days prior to the expected arrival of the aircraft or vessel or vehicle upto the end of day preceding the day of such arrival. Similarly, changes have been carried out in the Bill of Entry (Forms) Regulations, 1976 vide Notification No.35/2021-Customs (N.T.) dated 29.03.2021 in case of manual filing of BEs.

2.1. For clarification of the importers and trade, the changes that have been made effective vide the above stated notification dated 29.03.2021 are as follows :-

S.No. (1)	Customs Station (2)	Bill of Entry is Required to be Filed Latest by End of the Day of Arrival of the Vessel/Aircraft/Vehicle (3)	Bill of Entry is Required to be Filed Latest by the End of Day Preceding the Day of Arrival of the Vessel/Aircraft/Vehicle (4)
1.	Sea Port	Imports consigned from following countries viz. 1. Bangladesh 2. Maldives	Imports consigned from all countries other than those mentioned in column (3)

		3. Myanmar 4. Pakistan 5. Sri Lanka	
2.	Airport	All imports	None
3.	Land Customs Station (LCS)	All imports	None
4.	Inland Container Depot (ICD)	None	All Imports

2.2. The importers are encouraged to file the BE well in advance and definitely by the above-mentioned timelines. In accordance with the said Section 46 read with the said Regulations, a BE that is filed after the above timelines shall attract late charges. Similarly, relevant dates for determining the late charges as clarified earlier by Circular No. 12/2017-Customs, dated 31st March, 2017 for different types of Customs Stations remains unchanged i.e., Entry Inwards for the Seaport and Date of Arrival at the Airport, ICDs/Air Freight Stations and Land Customs Stations.

Brief Analysis

Amendments in Section 46 of the Customs Act, 1962 introduced through the Finance Act, 2021 facilitates pre-arrival processing and assessment of Bills of Entry (BE) by mandating their advance filing thus leading to significant decrease in the Customs clearance time. The amended Section 46 requires an importer to file a BE before the end of the day (including holidays) preceding the day of arrival of the vessel/aircraft/vehicle carrying the imported goods at a Customs port/station at which such goods are to be cleared for home consumption or warehousing. The BE can now be filed anytime from 30 days prior to the expected arrival of the aircraft or vessel or vehicle upto the end of day preceding the day of such arrival.

For further details please visit: <https://www.cbic.gov.in/resources/htdocs-cbec/customs/cs-circulars/cs-circulars-2021/Circular-No-08-2021.pdf>
