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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, 2020 Examination
ADVANCED TAX LAWS

(PART I- INDIRECT TAXES)

MODULE 1

PAPER 2

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SUPPLEMENT

PROFESSIONAL PROGRAMME

(NEW SYLLABUS)

ADVANCE TAX LAWS

(PART I – INDIRECT TAXES)

(Relevant for Students appearing in December, 2020 Examination)

MODULE 1

PAPER 2

Students appearing in December, 2020 Examination shall note the following:

1. For Direct taxes, Finance Act, 2019 is applicable.
2. Applicable Assessment year is 2020-21 (Previous Year 2019-20).
3. For Indirect Taxes: Goods and Services Tax 'GST' & Customs Law is applicable for Professional Programme (New Syllabus)

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.

Note: The latest updated Study Material is available at ICSI website weblink:
<https://www.icsi.edu/study-material-professional-programme-new-syllabus-2017/>

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Lesson 2

Supply

Judicial Pronouncements

1. In re Carnation Hotels Private Limited (2019) – GST AAR Karnataka

Accommodation services provided to SEZ units are to be treated as zero rated supplies

The applicant registered office in New Delhi proposed to operate hotels and rent out the rooms to the employees of SEZ units sought advance ruling whether such accommodation services rendered by the applicant to SEZ units can be treated as ‘zero rated supplies’ under GST.

Under GST, Supply of goods/services or both to a SEZ Developer/Unit are treated as ‘Zero Rated Supplies’. Supply to SEZ developer/units shall be treated as such only if those are used towards authorized operations by SEZ.

GST AAR Karnataka held that if the hotel or accommodation services received by SEZ developer/unit for authorized operations, as endorsed by the specified officer of the zone, the benefit of zero rated supply shall be available to the supplier. Therefore, accommodation services supplied by the applicant to SEZ units are to be treated as ‘zero rated supplies’.

2. In Re Sadguru Seva Paridhan Pvt. Ltd (2020) – GST A.A.R. West Bengal

Fusible interlining cloth is not a woven fabric, 12% GST applicable

The product manufactured by the appellant is fusible interlining cloth. Before 1989, the item used to be classified under Chapters 52 to 55, as clarified under Circular No. 5/89 dated 15/06/1989. In the Union Budget of 1989-90, a new chapter note 2(c) was introduced in Chapter 59 of the Tariff, which led to inclusion of textile fabrics, partially or discretely coated with plastic by dot printing process under heading 5903. Subsequently, in the Union Budget of 1995, the said chapter note 2(c) was omitted with effect from 16/03/1995. It is the claim of the appellant that after removal of the said chapter note, the item cannot be classified under Heading 5903.

The Appellate Authority of Advance Ruling (AAR), West Bengal ruled that fusible interlining cloth is not a woven fabric and falls under HSN 5903, so 12% Goods and Service Tax (GST) is applicable.

3. In re Jay Jalaram Enterprises (2020) – GST A.A.R. Gujarat

GST Rate on Popcorn

The applicant claimed that its products fell under ‘Entry 50, tariff item 1005 of Schedule 1 of Notification 1/2017’. To translate it into GST classification terms: ‘It was maize (corn) put up in a unit container and bearing a registered brand name’. Thus, the GST should be 5%, it stated. It submitted to the AAR that the Supreme Court, in another judgment, had held ‘Atukulu’, or parched rice, to be the same as ‘Muramaralu’, or puffed rice. The same logic should also extend to its product — which was nothing but puffed corn.

However, given the process of manufacture involved, which entailed heating of corn kernels, and later addition of oil and seasonings, the AAR held that the product “does not remain grain”.

The Gujarat Authority of Advance Ruling (AAR) ruled that product namely J.J.’s Popcorn of M/s Jay Jalaram Enterprises manufactured from raw corn/maize grains, by heating turn into puffed corns/popcorns. Further other ingredients like salt and turmeric powder along with oil added to make them palatable. There is no separate heading is given for puffed popcorn but puffed popcorn fits in the description of ‘Prepared foods obtained by the roasting of cereal’. Hence the said product falls under entry at Sr. No. 15 of Schedule III of Notification No.1/2017 CENTRAL TAX (Rate) Dated 28-6-2017 and attracts 9% CGST and 9% SGST or 18% IGST.

4. In re ID Fresh Food (India) Pvt. Ltd. (2020) – GST A.A.R. Karnataka

Frozen parota is not roti, will be taxed 18% GST

ID Fresh Food, a manufacturer of ready-to-cook food products, had demanded a ruling on whether its products such as Malabar parathas and whole-wheat parathas fall under the same category as roti, which draws a GST rate of 5 per cent.

The company supplies the two products - which have a shelf life of 3-7 days - to distributors, retailers and other operators in the food services segment within the country as well as overseas. It contends that its products should be treated in the same way as khakhra, plain chapati or roti under the law.

The Authority for Advance Rulings (Karnataka bench) has said that parathas must attract 18% GST, while roti is taxed at the concessional GST tax slab rate of 5%.The Karnataka government has ruled differentiating paratha or parota from roti, which are essentially two types of Indian breads, and has clarified that paratha must be taxed at more than triple the GST tax rate on roti.

5. Assistant Commissioner of State Tax vs N. Rai Delights LLP (2020) – NAA

Anti-profiteering provisions to apply in cases where commensurate benefits are not passed in respect of each supply at invoice level

Where a supplier has not passed on the benefit of tax rate reduction by way of a commensurate reduction in prices on each of his supplies at the level of each invoice, anti-profiteering provisions will apply. Increase or decrease in cost of supplier due to royalty, advertisement costs etc. has no relevance in so far as the provisions of anti-profiteering are concerned.

National Anti-Profiteering Authority (NAA) found ‘subway Franchisee’ guilty of Profiteering for Non-Passing of GST Rate Reduction Benefit and Hiking Food Price. Confirming the penalty on the restaurant, the NAA held that “It has been revealed from the DGAP’s Report that the Input Tax Credit (ITC) which was available to the Respondent during the period July 2017 to October 2017 is 6.32% of the net taxable turnover of restaurant services supplied during the same period. With effect from 15.11.2017, when the GST rate on restaurant service was reduced from 18% to 5%, the ITC was not available to the Respondent. It has been found that the Respondent had increased the base prices of different items by more than 6.32% i.e. by more than what was required to offset the impact of denial of ITC, supplied as a part of restaurant services to make up for the denial of ITC post-GST rate reduction and on comparison of pre and post GST rate reduction prices of the items sold in respect of items sold.”

6. State of officer vs. Bonne Sante (2020) – NAA

Benefit of Tax Reduction includes both Base Price and Tax amount.

The Respondent has further contended that the Directorate General of Anti-profiteering (DGAP), while calculating the profiteered amount, was wrongly added a 5% notional amount without explaining any reasons and hence, the profiteered amount be reduced appropriately.

NAA held that Benefit of Tax Reduction includes both Base Price and Tax amount. Section 171(1) of CGST Act, 2017 “Any reduction in rate of tax on any supply of goods or services or the benefit of ITC shall be passed on to the recipient by way of commensurate reduction in prices.” Thus, the legal requirement as per the above provisions was abundantly clear that in the event of a benefit of ITC or reduction in the rate of tax, there must be a commensurate reduction in the prices of the goods or services being supplied by a registered person and the final price being charged for each supply had to be reduced commensurately with the extent of the benefit and there was no other legally tenable mode of passing on such benefit of rate reduction or ITC to the recipients/consumers.

Lesson 3

Input Tax Credit and Computation of GST Liability

Judicial Pronouncement

1. **In re: Wework India Management Pvt. Ltd. 2020 (37) G.S.T.L. 136 (App. A.A.R. - GST - Kar.)**

Facts: Assessee in business of supplying shared workspace/office space for various companies and individuals. Detachable glass partitions fixed to ground with help of nuts and bolts to create office space.

Ruling Sought:

- (a) Whether input GST credit can be availed by the applicant on the detachable 14 mm Engineered Wood with Oak top Wooden Flooring which is movable in nature and capitalized as “furniture and fixture”, and is not capitalized as “immovable property”?
- (b) Whether input GST credit can be availed by the applicant on the detachable sliding and stacking glass partition which is movable in nature and capitalized as “furniture and fixture”, and is not capitalizes as an immovable property?

Held: Addition of glass partitions qualifies as ‘construction’ under Explanation to Section 17(5) of Central Goods and Services Tax Act, 2017. Such construction done by assessee on his own account. Glass partitions not permanent and not embedded to earth. Partitions can be dismantled and moved according to requirements of clients. Even though fixed to earth with nuts and bolts, partitions can be dismantled without demolishing civil structure. Detachable sliding and stackable glass partitions do not qualify as immovable property. Such glass partitions accounted in books of account as fixed assets under head “furniture and fixtures” and not capitalized as immovable property but rather as movable assets. Thus, Input tax credit can be availed by assessee on detachable sliding and stackable glass partitions which are movable in nature.

2. **In Re : Moksh Agarbatti Co. 2020 (36) G.S.T.L. 135 (A.A.R. - GST - Guj.)**

Question	Ruling Sought	Answer as per Section
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1.	The taxpayer offers one unit of Dhoop with a pack of Agarbatti (consisting of 10 pieces of Agarbatti). Can the taxpayer claim credit of taxes paid on (a) inputs used for manufacture of Dhoop? (b) Purchase of dhoop from a third party vendor?	Not available
2.	As part of the Sales Promotion campaign, the taxpayer offers their distributors target based monetary and non-monetary incentives. Can they avail credit on the non-monetary incentives like say Pressure Cooker on purchase of 100,000 Agarbatti Packets? Can this qualify as supply of goods to the distributor?	Not available
3.	The taxpayer offers one unit of Agarbatti free on purchase of 1 Carton Box full of Agarbatti. Can credit of the Agarbatti given free of cost be availed as credit by the taxpayer?	Not available

3. The South Indian Bank Limited vs Union Of India (2019) – Kerala High Court

Enable assessee to file rectified Form GST TRAN-1

On a consideration of the facts and circumstances of the case as also the submissions made across, it was found that it is not in dispute that the input tax credit accumulated in the account of the South Indian Bank Limited was validly taken during the pre-GST period. The returns filed during the relevant period have all been accepted by the revenue authorities and, in the absence of a requirement to migrate to the GST regime, South Indian Bank Limited would have been able to distribute the credit to its various branches through the input service distribution mechanism that was in place prior to the introduction of the GST Act.

Although South Indian Bank Limited has since obtained a registration as an input service distributor under the GST Act, the non-availability of the details of the purchase invoices, on the strength of which the input credit was availed, virtually prevents from pursuing the Form GST TRAN -1 already filed by it before the Principal Nodal Officer, Joint Commissioner (Tech).

Held, if South Indian Bank Limited is permitted to file individual Form GST TRAN-1 in respect of each of the recipient branches, then the accumulated credit could be distributed to its various branches without having to furnish details of the invoices, on the strength of which the credit was taken during the relevant

time before the introduction of GST. In effect, this procedure would facilitate the transfer of credit in a situation where the accumulation of credit as also the entitlement of South Indian Bank Limited to distribute the credit to its various branches is not in dispute.

Further, taking note of the decision of the Delhi High Court in *Blue Bird Pure Pvt. Ltd. V. Union of India and Others* [(2019) 68 GSTR 340(Delhi)], where, it was observed that the Department should either open the online portal so as to enable the assessee to file rectified TRAN -1 Form electronically or accept manually filed TRAN- 1 Form with correction before a specified date so as to render justice to the assessees.

In the instant case, the availment of credit by South Indian Bank Limited, and its entitlement to distribute the credit to its various branches was not disputed. The Principal Nodal Officer, Joint Commissioner (Tech), should either permit South Indian Bank Limited to file a rectified TRAN-1 Form electronically in favour of each of its branches in the country, or accept manually filed TRAN -1 Form with the appropriate corrections.

4. Jay Bee Industries vs. Union of India (2019) – Himachal Pradesh High Court

Input Tax Credit (ITC) cannot be denied on procedural grounds

The Appellant was unable to upload Form TRANS-I due to technical glitches. They were unable to get the benefits of transitional Input Tax Credit (ITC). The GST Laws contemplate seamless flow of tax credits on all eligible inputs on every sale and purchase occasion and resulting in a progressive system of taxation at every occasion. Input tax credits (ITC) in TRAN-1 are the credits legitimately accrued in the GST transition. Due date contemplated under the laws to claim the transitional credit is procedural in nature.

2. Himachal Pradesh High Court held that the Union of India are directed to provisionally allow the petitioner to upload the Trans-I return by opening a window by whatever mode – it is clarified that the return filed, if any, shall be subject to the outcome of the present petition.

5. Sri Hanumanthappa Pathrera Lakshmana vs. State of Karnataka – Karnataka High Court

Appellant filed writ petition for seeking grant of anticipatory bail for wrongful availment of ITC

The High Court of Karnataka granted the anticipatory bail to the petitioner alleged to have involved in fraudulent availment of Input Tax Credit (ITC) on the basis of invoices without actual supply of goods in contravention of Section 16 of the CGST Act and caused loss to the exchequer for Rs.9.05 crore approximately.

The Appellant filed the petition under Section 438 of the Code of Criminal Procedure, 1973 for granting anticipatory bail. The petitioner is the proprietor of M/s. Sri Om Traders, registered dealer under the provisions of the CGST Act and the SGST at Shivamogga, dealing in both ferrous and non-ferrous scrap. During his regular course of business, he had purchased goods from various registered and unregistered dealers and issued tax invoices as per law. He had collected the taxes and remitted to the Government as per the CGST and the SGST Act.

State of Karnataka (Respondent) had issued a summon to appear before an Officer and prior to that on the same day, the respondent has conducted an inspection of the business premises and drawn a mahazar. Another notice issued by the respondent to appear before K. Venumadhava Reddy. The petitioner was ready to appear before the respondent and co-operate with the investigation. However, the respondent had already collected all the documents and completed their investigation and the petitioner had apprehended his arrest in the hands of the respondent for the offense punishable under Section 132(5) of the CGST Act.

Lesson 4

Procedural Compliance under GST

Notification to extend the one-time amnesty scheme to file all FORM GSTR-1 from July 2017 to November, 2019 till 17th January, 2020

Notification No. 4/2020 –Central Tax, dated 10th January, 2020

The Central Government hereby makes the following further amendment in the notification of the Government of India in the Ministry of Finance, Department of Revenue No. 4/2018– Central Tax, dated the 23rd January, 2018, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 53(E), dated the 23rd January, 2018, namely:–

In the said notification, in the third proviso for the figures, letters and word “10th January 2020”, the figures, letters and word “17th January, 2020” shall be substituted.

Notification to extend the last date for furnishing of annual return/reconciliation statement in FORM GSTR-9/FORM GSTR-9C for the period from 01.07.2017 to 31.03.2018

Notification No. 6/2020 –Central Tax, dated 3rd February, 2020

In exercise of the powers conferred by sub-section (1) of section 44 of the Central Goods and Services Tax Act, 2017 (12 of 2017), read with rule 80 of the Central Goods and Services Tax Rules, 2017, the Commissioner, hereby extends the time limit for furnishing of the annual return specified under section 44 of the said Act read with rule 80 of the said rules, electronically through the common portal, in respect of the period from the 1st July, 2017 to the 31st March, 2018, for the class of registered persons.

For further details please visit : <https://www.cbic.gov.in/resources/htdocs-cbec/gst/notfctn-06-central-tax-english-2020.pdf>

Notification issued to prescribe due dates for filing of return in FORM GSTR-3B in a staggered manner

Notification No. 7/2020 –Central Tax, dated 3rd February, 2020

The Commissioner hereby makes the following further amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.44/2019 – Central Tax, dated the 09th October, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R.767(E), dated the 09th October, 2019, namely:–

In the said notification, after the third proviso, the following provisos shall be inserted, namely:–

“Provided also that the return in FORM GSTR-3B of the said rules for the months of January, 2020, February, 2020 and March, 2020 for taxpayers having an aggregate turnover of up to rupees five crore (Rs. 5 crore) in the previous financial year, whose principal place of business is in the States of Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana or Andhra Pradesh or the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands and Lakshadweep shall be furnished electronically through the common portal, on or before the 22nd February, 2020, 22nd March, 2020, and 22nd April, 2020, respectively.

Provided also that the return in FORM GSTR-3B of the said rules for the months of January, 2020, February, 2020 and March, 2020 for taxpayers having an aggregate turnover of up to rupees five Crore in the previous financial year, whose principal place of business is in the States of Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha or the Union territories of Jammu and Kashmir, Ladakh, Chandigarh and Delhi shall be furnished electronically through the common portal, on or before the 24th February, 2020, 24th March, 2020 and 24th April, 2020, respectively.”

Notification to exempt foreign airlines from furnishing reconciliation Statement in FORM GSTR-9C

Notification No. 9/2020 –Central Tax, dated 16th March, 2020

The foreign company which is an airlines company shall not be required to furnish reconciliation statement in FORM GSTR-9C to the Central Goods and Services Tax Rules, 2017 under subsection (2) of section 44 of the said Act read with sub-rule (3) of rule 80 of the said rules.

Provided that a statement of receipts and payments for the financial year in respect of its Indian Business operations, duly authenticated by a practicing Chartered Accountant in India or a firm or a Limited Liability Partnership (LLP) of practicing Chartered Accountants in India is submitted for each GSTIN by the 30th September of the year succeeding the financial year.

For further details please visit: <https://www.cbic.gov.in/resources/htdocs-cbec/gst/notfctn-09- central-tax-english-2020.pdf>

Notification to provide special procedure for corporate debtors undergoing the corporate insolvency resolution process under the Insolvency and Bankruptcy Code, 2016

Notification No. 11/2020 – Central Tax, dated 21st March, 2020

The Government notified that those registered persons, who are corporate debtors under the provisions of the Insolvency and Bankruptcy Code, 2016, undergoing the corporate insolvency resolution process and the management of whose affairs are being undertaken by Interim Resolution Professionals (IRP) or Resolution Professionals (RP), as the class of persons who shall follow the following special procedure, from the date of the appointment of the IRP/RP till the period they undergo the corporate Insolvency Resolution Process, as mentioned below.

Registration- The said class of persons shall, with effect from the date of appointment of IRP/RP, be treated as a distinct person of the corporate debtor, and shall be liable to take a new registration (hereinafter referred to as the new registration) in each of the States or Union territories where the corporate debtor was registered earlier, within thirty days of the appointment of the IRP/RP:

Provided that in cases where the IRP/RP has been appointed prior to the date of this notification, he shall take registration within thirty days from the commencement of this notification, with effect from date of his appointment as IRP/RP.

Return- The said class of persons shall, after obtaining registration file the first return under section 40 of the said Act, from the date on which he becomes liable to registration till the date on which registration has been granted.

Input Tax Credit- The said class of persons shall, in his first return, be eligible to avail input tax credit on invoices covering the supplies of goods or services or both, received since his appointment as IRP/RP but bearing the GSTIN of the erstwhile registered person, subject to the conditions of Chapter V of the said Act and the rules made there under, except the provisions of sub-section (4) of section 16 of the said Act and sub-rule (4) of rule 36 of the Central Goods and Service Tax Rules, 2017 (hereinafter referred to as the said rules).

For more details please visit : <https://www.cbic.gov.in/resources/htdocs-cbec/gst/notfctn-11-central-tax-english-2020.pdf?jsessionid=5F5EAD4C0161648F74159C2463955E6A>

Notification to make third amendment (2020) to CGST Rules

Notification No. 16/2020 – Central Tax, dated 23rd March, 2020

The Central Government 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 (Third Amendment) Rules, 2020.
- (2) Save as otherwise provided in these rules, 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 (hereinafter referred to as the said rules), in rule 8, after sub-rule (4), the following sub-rule shall be inserted, namely:-

“(4A) The applicant shall, while submitting an application under sub-rule (4), with effect from 01.04.2020, undergo authentication of Aadhaar number for grant of registration.”.

3. In the said rules, in rule 9, in sub-rule (1), with effect from 01.04.2020, the following subrule shall be inserted, namely:-

“Provided that where a person, other than those notified under sub-section (6D) of section 25, fails to undergo authentication of Aadhaar number as specified in sub-rule (4A) of rule 8, then the registration shall be granted only after physical verification of the principle place of business in the presence of the said person, not later than sixty days from the date of application, in the manner provided under rule 25 and the provisions of sub-rule (5) shall not be applicable in such cases.”.

For more details please visit : <https://www.cbic.gov.in/resources/htdocs-cbec/gst/notfctn-16-central-tax-english-2020.pdf>

Notification to specify the class of persons who shall be exempted from aadhaar authentication

Notification No. 17/2020 – Central Tax, dated 23rd March, 2020

The Central Government, on the recommendations of the Council, hereby notifies that the provisions of sub-section (6B) or subsection (6C) of the said Act shall not apply to a person who is not a citizen of India or to a class of persons other than the following class of persons, namely:-

- (a) Individual;
- (b) authorised signatory of all types;
- (c) Managing and Authorised partner; and
- (d) Karta of a Hindu Undivided Family(HUF).

Circular on Clarification on refund related issues

Circular No. 135/2/2020 –CGST, dated 31st March, 2020

The applicant, at his option, may file a refund claim for a tax period or by clubbing successive tax

periods. The period for which refund claim has been filed, however, cannot spread across different financial years. Registered persons having aggregate turnover of up to Rs.1.5 crore in the preceding financial year or the current financial year opting to file FORM GSTR-1 on quarterly basis, can only apply for refund on a quarterly basis or clubbing successive quarters as aforesaid. However, refund claims under categories listed at (a), (c) and (e) in para 3 above must be filed by the applicant chronologically. This means that an applicant, after submitting a refund application under any of these categories for a certain period, shall not be subsequently allowed to file a refund claim under the same category for any previous period. This principle / limitation, however, shall not apply in cases where a fresh application is being filed pursuant to a deficiency memo having been issued earlier.

It has been decided to remove the restriction on clubbing of tax periods across Financial Years. Accordingly, circular No. 125/44/2019-GST dated 18.11.2019 stands modified to that extent i.e. the restriction on bunching of refund claims across financial years shall not apply

For more details please visit: https://www.cbic.gov.in/resources/htdocs-cbec/gst/Circular_Refund_135_5_2020.pdf;jsessionid=C6FFA7350834970CB5BE787BEC8791C1

Notification to give effect to the provisions of rule 87 (13) and FORM GST PMT-09 of the CGST Rules, 2017

Notification No. 37/2020 – Central Tax, dated 28th April, 2020

In exercise of the powers conferred by section 164 of the Central Goods and Services Tax Act, 2017 (12 of 2017) read with clause (c) of rule 9 and rule 25 of the Central Goods and Services Tax (Fourth Amendment) Rules, 2019 (hereinafter referred to as the rules), made vide notification No. 31/2019 – Central Tax, dated the 28th June, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 457(E), dated the 28th June, 2019, the Government, hereby appoints the 21st day of April, 2020, as the date from which the said provisions of the rules, shall come into force.

Notification to make fifth amendment (2020) to CGST Rules

Notification No. 38/2020 – Central Tax, dated 5th May, 2020

The Central Government, 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 (Fifth Amendment) Rules, 2020.
- (2) Save as otherwise provided, 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 (hereinafter referred to as the said rules), with effect from the 21st April, 2020, in rule 26 in sub-rule (1), after the proviso, following proviso shall be inserted, namely: -

“Provided further that a registered person registered under the provisions of the Companies Act, 2013 (18 of 2013) shall, during the period from the 21st day of April, 2020 to the 30th day of June, 2020, also be allowed to furnish the return under section 39 in **FORM GSTR3B** verified through electronic verification code (EVC).”.

For more details please visit: <https://www.cbic.gov.in/resources/htdocs-cbec/gst/notfctn-38-central-tax-english-2020.pdf;jsessionid=5573A2DBB4031A82705734141A3706C1>

Notification to make amendments to special procedure for corporate debtors undergoing the corporate insolvency resolution process under the Insolvency and Bankruptcy Code, 2016

Notification No. 39/2020 – Central Tax, dated 5th May, 2020

The Government, hereby makes the following amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.11/2020- 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. 194(E), dated the 21st March, 2020, namely:-

In the said notification

(i) in the first paragraph, the following proviso shall be inserted, namely: - “Provided that the said class of persons shall not include those corporate debtors who have furnished the statements under section 37 and the returns under section 39 of the said Act for all the tax periods prior to the appointment of IRP/RP.”;

(ii) for the paragraph 2, with effect from the 21st March, 2020, the following paragraph shall be substituted, namely: -

“2. Registration.- The said class of persons shall, with effect from the date of appointment of IRP / RP, be treated as a distinct person of the corporate debtor, and shall be liable to take a new registration (hereinafter referred to as the new registration) in each of the States or Union territories where the corporate debtor was registered earlier, within thirty days of the appointment of the IRP/RP or by 30th June, 2020, whichever is later.”.

Notification to bring into force Section 128 of Finance Act, 2020 in order to bring amendment

in Section 140 of CGST Act w.e.f. 01.07.2017

Notification No. 43/2020 - Central Tax, dated 16th May, 2020

The Central Government has appointed the 18th day of May, 2020, as the date on which the provisions of section 128 of the said Act, shall come into force.

For more details please visit: <https://www.cbic.gov.in/resources/htdocs-cbec/gst/notfctn-43-central-tax-english-2020.pdf;jsessionid=90CD25E17F2F8C67EDDF6385EEF8949E>

Notification to give effect to the provisions of Rule 67A for furnishing a nil return in FORM GSTR-3B by SMS

Notification No. 44/2020 - Central Tax, dated 8th June, 2020

In exercise of the powers conferred by section 164 of the Central Goods and Services Tax Act, 2017 (12 of 2017) read with rule 3 of the Central Goods and Services Tax (Fifth Amendment) Rules, 2020 (hereinafter referred to as the rules), made vide notification No. 38/2020 – Central Tax, dated the 5th May, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 272(E), dated the 5th May, 2020, the Government, hereby appoints the 8th day of June, 2020, as the date from which the said provisions of the rules, shall come into force

Circular on Clarification on refund related issues

Circular No. 139/09/2020 –CGST, dated 10th June, 2020

The issue relating to refund of accumulated ITC in respect of invoices whose details are not reflected in the FORM GSTR-2A of the applicant has been clarified by the Government. In order to clarify Refund related issues and to ensure uniformity in the implementation of the provisions of law in this regard across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017, hereby clarifies the issues detailed hereunder:

Circular No.135/05/2020 – GST dated the 31st March, 2020 states that:

“5. Guidelines for refunds of Input Tax Credit under Section 54(3)

5.1 In terms of para 36 of circular No. 125/44/2019-GST dated 18.11.2019, the refund of ITC availed in respect of invoices not reflected in FORM GSTR-2A was also admissible and copies of such invoices were required to be uploaded. However, in wake of insertion of sub-rule (4) to rule 36 of the CGST Rules, 2017 vide notification No. 49/2019-GST dated 09.10.2019, various references have been received from the field formations regarding admissibility of refund of the ITC availed on the invoices which are not reflecting in the FORM GSTR-2A of the applicant.

5.2 The matter has been examined and it has been decided that the refund of accumulated ITC shall

be restricted to the ITC as per those invoices, the details of which are uploaded by the supplier in FORM GSTR-1 and are reflected in the FORM GSTR-2A of the applicant. Accordingly, para 36 of the circular No. 125/44/2019-GST, dated 18.11.2019 stands modified to that extent.”

For more details please visit: https://www.cbic.gov.in/resources/htdocs-cbec/gst/Circular_Refund_139_9_2020.pdf;jsessionid=8179FA92B7B4115F0230D1A3CCFE0748

Circular on Clarification in respect of levy of GST on Director's Remuneration

Circular No. 140/09/2020 –CGST, dated 10th June, 2020

Doubts have been raised as to whether the remuneration paid by companies to their directors falls under the ambit of entry in Schedule III of the Central Goods and Services Tax Act, 2017 i.e. “services by an employee to the employer in the course of or in relation to his employment” or whether the same are liable to be taxed in terms of notification No. 13/2017 – Central Tax (Rate) dated 28.06.2017 (entry no.6).

The issue of remuneration to directors has been examined under following two different categories:

- (i) leviability of GST on remuneration paid by companies to the independent directors defined in terms of section 149(6) of the Companies Act, 2013 or those directors who are not the employees of the said company; and
- (ii) leviability of GST on remuneration paid by companies to the whole-time directors including managing director who are employees of the said company.

In order to ensure uniformity in the implementation of the provisions of the law across the field formations, the Board, in exercise of its powers conferred under section 168(1) of the CGST Act hereby clarifies the issue as below:

Leviability of GST on remuneration paid by companies to the independent directors or those directors who are not the employee of the said company

The primary issue to be decided is whether or not a ‘Director’ is an employee of the company. In this regard, from the perusal of the relevant provisions of the Companies Act, 2013, it can be inferred that:

- a the definition of a whole time-director under section 2(94) of the Companies Act, 2013 is an inclusive definition, and thus he **may be a person who is not an employee** of the company.
- b the definition of ‘ independent directors’ under section 149(6) of the Companies Act, 2013, read with Rule 12 of Companies (Share Capital and Debentures) Rules, 2014 makes it amply clear that **such director should not have been an employee** or proprietor or a partner of the said company, in any of

the three financial years immediately preceding the financial year in which he is proposed to be appointed in the said company.

For more details please visit: https://www.cbic.gov.in/resources/htdocs-cbec/gst/Circular_Refund_140_10_2020.pdf;jsessionid=2DF7A1B0A1663CF0373C5B2D3E36665_4

Notification to make sixth amendment (2020) to CGST Rules

Notification No. 48/2020 - Central Tax, dated 19th June, 2020

A registered person registered under the provisions of the Companies Act, 2013 shall, during the period from the 21st day of April, 2020 to the 30th day of September, 2020, be allowed to furnish the return under section 39 in FORM GSTR-3B verified through electronic verification code (EVC).

For more details please visit: <https://www.cbic.gov.in/resources/htdocs-cbec/gst/notfctn-48-central-tax-english-2020.pdf;jsessionid=9C7F85B5A002A4363DB2470E3DA1090C>

Notification to make seventh amendment (2020) to CGST Rules

Notification No. 50/2020 - Central Tax, dated 24th June, 2020

In the Central Goods and Services Tax Rules, 2017, in rule 7, for the Table, the following Table shall be substituted, namely:-

Table

Sl. No.	Section under which composition levy is opted	Category of registered persons	Rate of tax
(1)	(1A)	(2)	(3)
1.	Sub-sections (1) and (2) of section 10	Manufacturers, other than manufacturers of such goods as may be notified by the Government	half per cent. of the turnover in the State or Union territory
2.	Sub-sections (1) and (2) of section 10	Suppliers making supplies referred to in clause (b) of paragraph 6 of Schedule II	two and a half per cent. of the turnover in the State or Union territory

3.	Sub-sections (1) and (2) of section 10	Any other supplier eligible for composition levy under sub-sections (1) and (2) of section 10	half per cent. of the turnover of taxable supplies of goods and services in the State or Union territory
4.	Sub-section (2A) of section 10	Registered persons not eligible under the composition levy under subsections (1) and (2), but eligible to opt to pay tax under sub-section (2A), of section 10	three per cent. of the turnover of taxable supplies of goods and services in the State or Union territory.’’.

For more details please visit: <https://www.cbic.gov.in/resources/htdocs-cbec/gst/notfctn-50-central-tax-english-2020.pdf>

Judicial Pronouncements

1. Authority for Advance Rulings, Kolkata, Joint Plant Committee, In re. CASE NO. 02 OF 2018, March 21, 2018, it was opined that an applicant engaged exclusively in supplying goods and services that are wholly exempt from tax is not required to be registered under GST Act if he is not otherwise liable to pay tax under reverse charge under section 9(3) of GST Act or section 5(3) of IGST Act.

2. In Re : Habufa Meubelen B.V. 2018 (14) G.S.T.L. 596 (A.A.R. - GST), (A)

Facts- M/s. Habufa Meubelen B.V. (hereby referred to as HO), is a company originally incorporated in Netherlands. The applicant is the Indian Office of M/s. Habufa Meubelen B.V. (HO) which is established as a Liaison Office at C-36, Raghu Marg, Main Hanuman Nagar, Vaishali Nagar, Jaipur (Raj.) w.e.f. 18-12-2007, with the prior permission of RBI subject to various conditions. The liaison office does not have any independent revenue or clients. The office has been established for the purpose of liasoning with the suppliers with regard to quality control of goods. The purchase order or contracts are entered with the clients with the HO and liaison office does not enter into any contract with the clients. Payments for the supplies are made by HO directly to the account of supplier and all the expenses incurred by liaison office is claimed from HO as per clear instructions of RBI. There is no amount charged by liaison office

from HO for any services. It seeks only reimbursement of salary and expenses incurred by it from HO. HO is also responsible for payment of gratuity and other benefits of employees, etc.

3. In the matter of ***Modern Pipe Industries v. State of U.P.*** WRIT TA X NO. 583 OF 2017, September 6, 2017, the High Court of Allahabad opined that where assessee, a firm, inspite of GST ID/password provided by department was not able to access registration certificate of firm, revenue was asked to inform if any arrangement had been made to resolve such kind of problems.

4. In the case of ***Rajeevan V.N. v. Central Tax Officer. - 1 Circle, Cochin***, the Petitioner's application for registration under Act was rejected by competent authority for reason that petitioner did not submit explanation sought regarding discrepancies in documents submitted by him with said application. The Respondent Central Tax Officer submitted that if petitioner submits a fresh application with requisite documents, competent authority would certainly consider same. The High Court of Kerala, vide its order dated 1st February, 2018, opined that petitioner was free to prefer fresh application for registration with requisite documents and if petitioner prefers a fresh application, same would be considered, and, appropriate decision would be taken thereon.

5. In Re : Anil Kumar Agrawal, 2020 (36) G.S.T.L. 596 (A.A.R. - GST - Kar.)

Facts: The Applicant is an unregistered person and is in receipt of various types of income/revenue, mentioned

as under :

- (a) Partner's salary as partner from my partnership firm,
- (b) Salary as director from Private Limited company
- (c) Interest income on partners fixed capital credited to partner's capital account
- (d) Interest income on partners variable capital credited to partner's capital account
- (e) Interest received on loan given,
- (f) Interest received on advance given
- (g) Interest accumulated along with deposit/fixed deposit
- (h) Interest income received on deposit/fixed deposit
- (i) Interest received on Debentures
- (j) Interest accumulated on debentures
- (k) Interest on Post office deposits
- (l) Interest income on National Savings certificate (NSCs)

- (m) Interest income credited on PF account
- (n) Accumulated Interest (along with principal) received on closure of PF account.
- (o) Interest income on PPF
- (p) Interest income on National Pension Scheme (NPS)
- (q) Receipt of maturity proceeds of life insurance policies
- (r) Dividend on shares
- (s) Rent on Commercial Property
- (t) Residential Rent
- (u) Capital gain/loss on sale of shares.

6. In the case of *Rajan Joseph vs. Assistant State Tax Officer, Kollam*, W.P. (C) NO. 19045 of 2018, the assessee filed writ petition seeking release of goods detained by Competent Authority under section 129 of Central Goods and Services Tax Act as also Kerala State Goods and Services Tax Act. The High Court of Kerala, vide its order dated June 11, 2018, opined that where Competent Authority had detained goods of assessee under section 129 of Central Goods and Services Tax Act as also Kerala State Goods and Services Tax Act, said authority was directed to complete adjudication provided for under section 129 within a week and release goods, if assessee complies with rule 140(1) of Kerala State Goods and Services Tax Rules.

7. In the case of *Vardh Paper Products (P.) Ltd. vs. Commissioner of Commercial Tax/GST*, Special Civil Appeal No. 13483 OF 2018, MAY 21, 2018, the High Court by impugned order held that where assessee sought release of goods seized during transport from Delhi to Siliguri, however, there were sufficient reasons with Assistant Commissioner to pass order of seizure and reasons had been given in seizure order, said order could not have been interfered with. The Supreme Court opined that the SLP against said impugned order was to be dismissed.

8. *Vkc Footsteps India Pvt. Ltd. Vs Union Of India & 2 Others 2020-VIL-340-GUJ*

Issue - The petitioner challenged the validity of amended Rule 89(5) of the CGST Rule, 2017 to the extent it denies refund of input tax credit relatable to input services. The case of the petitioner is that amended Rule 89 of the CGST Rules is ultra vires Section 54(5) inasmuch as Section 54(3) provides for refund of ‘any unutilized input tax credit accumulated on account of inverted duty structure thereby covering credit of both ‘inputs’ and ‘input services’. The grievance of the petitioner is that only the “inputs” is referred to in explanation (a) to Rule 89(5) of CGST Rules 2017 and therefore, “input tax

credit” on “input services” are not eligible for calculation of the amount of refund by applying Rule 89(5), which results in violation of provision of sub-section 3 of Section 54 of the CGST Act, 2017, which entitles any registered person to claim refund of “any” unutilised input tax credit.

HELD – The Hon’ble Gujarat High Court held that by prescribing the formula in Sub-rule 5 of Rule 89 of the CGST Rules, 2017 to exclude refund of tax paid on “input service” as part of the refund of unutilised input tax credit is contrary to the provisions of Sub-section 3 of Section 54 of the CGST Act, 2017 which provides for claim of refund of “any unutilised input tax credit” - ‘input’ and ‘input service’ are both part of the ‘input tax’ and ‘input tax credit’. Therefore, as per provision of sub-section 3 of Section 54 of the CGST Act, 2017, the legislature has provided that registered person may claim refund of “any unutilised input tax”, therefore, by way of Rule 89(5) of the CGST Rules, 2017, such claim of the refund cannot be restricted only to “input” excluding the “input services” from the purview of “Input tax credit”. Moreover, clause (ii) of proviso to Sub-section 3 of Section 54 also refers to both supply of goods or services and not only supply of goods as per amended Rule 89(5) of the CGST, Rules 2017 - In view of the provisions of the Act and Rules keeping in mind scheme and object of the CGST Act, the intent of the Government by framing the Rule restricting the statutory provision cannot be the intent of law as interpreted in the Circular No.79/53/2018-GST dated 31.12.2018 to deny the refund of tax paid on “input services” as part of refund of unutilised input tax credit. Explanation (a) to Rule 89(5) which denies the refund of unutilised input tax paid on input services as part of input tax credit accumulated on account of inverted duty structure is ultra vires the provision of Section 54(3) of the CGST Act, 2017 – The respondents are therefore, directed to allow the claim of the refund made by the petitioners considering the unutilised input tax credit of “input services” as part of the “net input tax credit” for the purpose of calculation of the refund of the claim as per Rule 89(5) of the CGST Rules, 2017 for claiming refund under sub-section 3 of Section 54 CGST Act, 2017- the petitions are allowed.

9. Optival Health Solutions (P) Ltd. Vs. Union of India (2019) – Calcutta High Court

Law permits a person to rectify or revise the Form, who voluntarily admits to have made a mistake in the form or admits to have submitted detail that is not true. The tax authorities have the right to retain original Form GST TRAN-2 for assessment purpose and they may ask the petitioner to provide proper explanation for such revision/rectification.

Lesson 5

Assessment, Audit, Scrutiny, Demand and Recovery, Advance Ruling, Appeals and Revision

Circular to issue clarification in respect of appeal in regard to non-constitution of Appellate Tribunal

Circular No. 132/2/2020 –CGST, dated 18th March, 2020

The prescribed time limit to make application to appellate tribunal will be counted from the date on which President or the State President enters office. The appellate authority while passing order may mention in the preamble that appeal may be made to the appellate tribunal whenever it is constituted within three months from the President or the State President enters office. Accordingly, it is advised that the appellate authorities may dispose all pending appeals expeditiously without waiting for the constitution of the appellate tribunal.

For further details please visit: <https://www.cbic.gov.in/resources/htdocs-cbec/gst/circular-cgst-132.pdf>

Notification to appoint Revisional Authority under CGST Act, 2017

Notification No. 5/2020 –Central Tax, dated 13th January, 2020

The Central Board of Indirect Taxes and Customs hereby authorises –

- (a) the Principal Commissioner or Commissioner of Central Tax for decisions or orders passed by the Additional or Joint Commissioner of Central Tax; and
- (b) the Additional or Joint Commissioner of Central Tax for decisions or orders passed by the Deputy Commissioner or Assistant Commissioner or Superintendent of Central Tax, as the Revisional Authority under section 108 of the said Act.

Notification to amend the notification No. 62/2019-CT dated 26.11.2019 to amend the transition plan for the UTs of J&K and Ladakh

Notification No. 3/2020 – Central Tax, dated 1st January, 2020

The Government hereby makes the following amendments in the notification of the Government of India in the Ministry of Finance, Department of Revenue No. 62/2019–Central Tax, dated the

26th November, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Subsection (i) vide number G.S.R. 879(E), dated the 26th November, 2019, namely:–

In the said notification,–

(i) in paragraph 2, in clause (iii), for the figures, letters and words “30th day of October, 2019” and “31st day of October”, the figures, letters and words “31st day of December, 2019” and “1st day of January, 2020” shall respectively be substituted;

(ii) in paragraph 3, for the figures, letters and words “31st day of October, 2019”, the figures, letters and words “1st day of January, 2020” shall be substituted.

Judicial Pronouncement

1. Audco India Limited vs. Commercial Tax Officer (2020) – Madras High Court

Best Judgement Assessment on debatable issue by the Assessing Officer

The assessee, Mr. K.A.Parthasarathi was engaged in the export and received the cash incentives from the export. The assessing officer had made a demand and penalty invoking Section 12(3) of the Tamil Nadu General Sales Tax (TNGST) Act, 1959 on the grounds that cash incentives received from the export attracts additional tax and the same was not paid by the assessee.

Consequently, the assessee filed the writ petition and contended that the assessing authority imposed an additional tax on the sales made by the Assessee, which were not supported by the declaration in ‘C’ Forms and secondly on the Cash Incentives received by the Assessee on the Exports made by it was held to be part of taxable turnover, which was not so.

According to the assessee, the imposition of additional tax, however, has not been done as a result of ‘Best Judgement Assessment’ under Section 12(2) of the TNGST Act, upon which only the penalty under Section 12(3) (b) of the Act is attracted.

It was held that the additional tax cannot be imposed on cash incentives on exports and no penalty is applicable under Section 12(2) of the Tamil Nadu General Sales Tax (TNGST) Act, 1959.

The High Court of Madras held that the Assessing Officer cannot pass the best judgment assessment on the ground of best judgment assessment and the penalty under Section 12(3) of the Tamil Nadu General Sales Tax (TNGST) Act, 1959.

2. Anand Nishikawa Co. Ltd. v/s Commissioner of Central Excise, Meerut - Supreme Court

The expression “suppression of facts” has been deliberated by the Hon’ble Supreme Court in the landmark judgement wherein it was held that there must be positive action on the part of the assessee to make

a willful suppression. The relevant text of the said judgment reads as follows, “27. Relying on the aforesaid observations of this Court in the case of Pushpam Pharmaceutical Co. v. Collector of Central Excise, Bombay [1995 Suppl. (3) SCC 462], we find that “suppression of facts” can have only one meaning that the correct information was not disclosed deliberately to evade payment of duty, when facts were known to both the parties, the omission by one to do what he might have done not that he must have done would not render it suppression. It is settled law that mere failure to declare does not amount to willful suppression. There must be some positive act from the side of the assessee to find willful suppression. Therefore, in view of our findings made herein above that there was no deliberate intention on the part of the appellant not to disclose the correct information or to evade payment of duty, it was not open to the Central Excise Officer to proceed to recover duties in the manner indicated in proviso to Section 11A of the Act. We are, therefore, of the firm opinion that where facts were known to both the parties, as in the instant case, it was not open to the CEGAT to come to a conclusion that the appellant was guilty of “suppression of facts”.

3. Sutherland and Mortgage Services INC vs. Principal Commissioner (2020) – Kerala High Court

“Whether supply of services by India Branch of Sutherland Mortgage Services Inc. USA to the customers located outside India shall be liable to GST in the light of the intra-company agreement entered into by the said branch with the principal company incorporated in USA?” The Advance Ruling Authority observed that as per the submissions of the petitioner, it is evident that the question raised is whether the supply made by the petitioner would qualify as “export of service” as defined in Section 2(6) of the IGST, 2017 and that therefore, the question would essentially and substantially involve the determination of place of supply, etc. Thereafter, the Advance Ruling Authority has proceeded to hold that the issue to be determined is one relating to the place of supply of service and then such an aspect may not be subject matter of an Advance Ruling as envisaged in Section 97, for the simple reason on the ground that the issue relating to the “determination of supply of service” as in the instant case, is not covered by any of the provisions contained in Section 97(2) of the CGST Act, 2017.

On appeal before the High Court under writ jurisdiction - High Court Held that hyper technical view taken by AAR not to admit at threshold application seeking advance ruling on subject of export of services on the ground that it involves issue relating to place of supply not enumerated in Section 97(2) of Central Goods and Services Tax Act, 2017 - While it is true that there is no specific mention of term ‘Place of Supply’ in any of clauses from (a) to (g) of Section 97(2) *ibid*, clause (e) of said Section on ‘determination of liability to pay tax on goods or services or both’ is wide enough to cover all aspects relating to levy of GST - Thus, any question as to whether a supply is zero-rated or not would ultimately

mean whether supply is leviable to GST or not - Making clause (e) wider as compared to other pigeon hole clauses of Section 13, legislator's intention is clear and tax authorities have to take correct prospective on issues relating to export of services - In this era of globalization, foreign investors also require certainty and precision on tax liability - In view of above, held that AAR has jurisdiction to address aforesaid issue.

4. *In Re Swayam (2020) – West Bengal AAR*

Charitable trust facilitating Legal Aid, Medical Assistance and Vocational Training to Women and their Children Surviving Violence does not amount to 'Supply' of Service The Applicant M/s Swayam was a Charitable Trust registered under Section 12A of Income Tax Act, 1961. It facilitated Legal Aid, Medical Assistance and Vocational Training to Women Survivors and their Children who had faced violence and hardships in their life.

West Bengal AAR held that M/s Swayam did not charge any consideration for facilitating the legal aid and other assistance. Such activities of M/s Swayam, therefore, does not result in 'supply' of service as defined under section 7 (1) of the GST Act. Hence, They are not liable to pay GST.

5. *In Re Leprosy Mission Trust India (2020) – West Bengal AAR*

Imparting vocational training recognized by Government of India makes an entity eligible for exemption from GST.

The applicant was registered under section 12A of the Income Tax Act 1961. It is a Non-Governmental Organization (NGO), which, among others, administers a Vocational Training Institute at Bankura named Bill Edgar Memorial Vocational Training Centre (BEMVT) primarily for skill development of the underprivileged suffering from leprosy.

Clause h(ii) of the Exemption from **Notification 12/2017 – Central Tax (Rate) dated 28/06/2017** defines an 'approved vocational course' as a modular employable skill course, approved by National Council for Vocational Training (NCVT) and run by a person registered with the Directorate General of Training, Ministry of Skill Development and Entrepreneurship.

BEMVT is registered with DGET and its courses on formal trade skills of diesel mechanic, welder and sewing technology, as mentioned in the Table in para 2.2 above, are approved by NCVT. Imparting education is a part of approved vocational education courses.

The applicant is, therefore, an educational institution in terms of clause 2(y)(iii) of the Exemption Notification, and its supplies to the students, faculty and staff relating to the courses imparting skills of

diesel mechanic, welder and sewing technology are exempt in terms of Entry 66 (a) of the Exemption Notification.

6. In re Portescap India Private Limited (2020) – Maharashtra AAR

This application was filed under Section 97 of the **CGST Act, 2017** and the Maharashtra Goods and Services Tax Act, 2017 by the applicant, seeking an advance ruling in respect of the following question:

- 1. Whether Portescap India Pvt. Ltd. is required to pay tax under reverse charge mechanism on procurement of renting of immovable property services from Seepz Special Economic Zone Authority (Local Authority) in accordance with Notification No. 13/2017 dated 28th June, 2017 read with Notification No. 03/2018 – Central Tax (Rate) dated 25th January 2018?*
- 2. Whether Portescap India Pvt. Ltd. is required to pay tax under reverse charge mechanism on any other services in accordance with **Notification No. 13/2017 dated 28th June, 2017** read with Notification No. 03/2018 – Central Tax (Rate) dated 25th January 2018?*
- 3. If answer to the above point is in the affirmative, then the tax under reverse charge mechanism is required to be paid under which tax head i.e., IGST or CGST and SGST?*

AAR Authority made it clear that the provisions of both the CGST Act, 2017 and the MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the MGST Act. Further to the earlier, henceforth for the purpose of this Advance Ruling, the expression 'GST Act' would mean CGST Act and MGST Act.

Section 95 of the CGST Act, 2017 allows AAR authority to decide the matter in respect of supply of goods or services or both, *undertaken or proposed to be undertaken by the applicant.*

In this case the applicant has not undertaken the supply in the subject case. The applicant is a recipient of services pertaining to renting of immovable property in the subject case. The impugned transactions are not in relation to the supply of goods or services or both undertaken or proposed to be undertaken by the applicant and therefore, the subject application cannot be admitted as per the provisions of Section 95 of the GST Act. Hence, Recipient of Services cannot apply for Advance Ruling under GST.

Lesson 6

Inspection, Search, Seizure, Offences & Penalties

Judicial Pronouncements

1. Rimjhim Ispat Limited Vs. State of U.P. & Others (2019) – Allahabad High Court

Reasons to believe is required for search and seizure

Section 67 of CGST Act provide for the inspection, search and seizure. But this power can be exercised only when there is a reason to believe. It is also argued that the ‘reasons to believe’ should be based upon tangible material and should not be based upon fanciful consideration as the exercise of powers of search and seizure is an exception to the fundamental right of the petitioner guaranteed under Article 19(1)(g) of the Constitution of India.

The Allahabad High Court has held that the ‘reasons to believe’ are mandatory to conduct search and seizures procedure adopted as per the State GST Acts. The Court held that, “it is essential that the officer authorizing the search should have ‘reasons to believe.’ The principles that are culled out from the catena of decisions referred above is that the ‘reasons to believe’ should exist and should be based on reasonable material and should not be fanciful or arbitrary. It is also established that this Court in exercise of its powers under Article 226 cannot go into the sufficiency of the reasons and should not sit as an appellate court over the reasons recorded. It is also well established that the reasons may or may not be communicated to the assessee but the same should exist on record.”.

2. Paresh Nathalal Chauhan vs. State of Gujarat (2020) – Gujarat High Court

Search and Seizure operations conducted by GST Officials on the residential premises

Pursuant to an authorisation issued under sub-section (2) of Section 67 of the Central Goods and Services Tax Act, 2017/Gujarat Goods and Services Tax Act, 2017, a search came to be conducted at the residential premises of the petitioner herein, which went on from 11-10-2019 to 18-10-2019. The search has taken place, whereby a search for any goods liable to confiscation or any documents or books or things, has literally been converted to a search for the taxable person and the search party has camped in the residential premises of the petitioner for in all eight days, during which period the family members of the petitioner were at the mercy of the authorised officer and were confined to the searched premises and kept under surveillance, interrogated during night hours, checking their mobile phones and were not

permitted to leave the premises without the permission of the authorised officer. Panchnama did not mention what officers, panchas and constable did inside residential premises, where they stayed and slept at night.

Gujarat High Court held that the Action of revenue officers was abhorrent, shocking to conscience of Court and should not be repeated - Assessee's family were literally under house arrest - Action of search party was illegal, invalid and not backed by statute - Even if assessee intentionally avoided authorities, it could not be ground to convert search of premises to search of assessee as there is no power for that - All statutory requirements were thrown to winds - It was offence against revenue officers under Section 348 of Indian Penal Code, 1860 - It was violation of right to privacy of assessee's family and infringed fundamental rights of citizens under Article 21 of Constitution of India.

3. Om Dutt vs. ACST&E-cum-proper officer (2020) – GST Appellate Authority Himachal Pradesh

The assessee being unregistered dealer/transporter engaged his vehicle for transportation of two wheelers/ Aactiva scooter against proper invoice along with E-way Bill. In the way the Vehicle break down and the appellant arranged another vehicle and goods moved in new vehicle to its destination. Due to weak internet connectivity the E-way Bill was not updated and the dealer carry on the goods in new vehicle with the old E-way Bill. During movement the vehicle carrying goods was intercepted and tax and penalty u/s. 129(3) of the CGST Act, 2017, equal to one hundred per cent of the tax payable on the goods were levied wrongly which was deposited by the supplier.

The appellate authority held that the proper officer acted in haste to levy tax/penalty without giving proper opportunity of being heard. Penalty imposed in mechanical manner ignoring corrected and updated E-way Bill produced by assessee. It further held that the mistake was a procedural one and minor penalty imposable. Tax and penalty deposited by assessee ordered to be refunded and penalty of Rs 10,000 imposed.

4. Synergy Fertichem Private Limited vs. State of Gujarat (2019) – Gujarat High Court

Confiscation before seizure can't be ordered on mere suspicion

In the present case a showcause notice had been issued under section 130 of the CGST Act calling upon the petitioner to show cause as to why the goods in question as well as the vehicle should not be confiscated for non-payment of a certain amount. The petitioner said that the showcause notice under section 130 of the CGST Act had been issued without complying with the requirements of section 129 of the CGST Act and the goods in question are perishable in nature.

Gujarat High Court held that for the purpose of issuing a notice of confiscation u/s 130 of the Act, mere suspicion may not be sufficient to invoke Section 130 of the Act straightway. The Court further said that sections 129 and 130 of the Act should be amended to remove certain inconsistencies in the two provisions.

5. P.V. Ramana Reddy vs. Union of India (2019) – Telangana High Court

Landmark judgment on Power of Arrest

The accused was allegedly involved in circular trading with turnover on paper and also in fraudulent claims of Input Tax Credit (IT C) depriving Government of its dues. The High Court said that he was not entitled to any relief against his arrest. His contention that the prosecution for offences under Section 132(1) of CGST Act, 2017 can be launched only after completion of assessment, was held to be not acceptable. Merely because offences under CGST Act, 2017 are compoundable cannot be a ground not to arrest the accused.

The High Court also observed that since the power of Commissioner to order for arrest under Section 69(1) of CGST Act, 2017 is confined only to cognizable and non-bailable offences, it is not known as to how he can pass an order for arrest for offences specified under clauses (f) to (l) of Section 132(1) which are declared non-cognizable and bailable under Section 132(4) of the said Act. It seems that there are some incongruities between Sections 69(1) and 132 of the Act.

The High Court held that though Section 69(1) of CGST Act, 2017 which confers power upon the Commissioner to order arrest of a person for cognizable and non-bailable offence does not contain safeguards incorporated in Sections 41 and 41A of the Code of Criminal Procedure, 1973 in view of provisions of Section 70(1) of the said Act same must be kept in mind before arresting a person. However, Section 41A(3) of the Code of Criminal Procedure does not provide an absolute irrevocable guarantee against arrest.

The High Court further held that the enquiry by GST Commissionerate under Central Goods and Services Tax Act, 2017 is a judicial proceedings and not a criminal proceedings.

It was held that if the reasons to believe that a person committed any offence under clauses (a), (b), (a) or (d) of Section 132(1) of CGST Act, 2017 warranting his arrest though found in the file but not disclosed in the order authorizing the arrest, the same is enough and it is not required to be recorded in order of authorization.

The High Court also held that since no FIR lodged before exercising power of arrest under Section 69(1) of CGST Act, 2017, the accused person cannot invoke Section 438 of Code of Criminal Procedure for anticipatory bail.

Only way open to him is to seek protection against pre-trial/pre-prosecution arrest by invoking writ jurisdiction of the High Court under Article 226 of the Constitution of India.

6. *Union of India vs. LC Infra Projects (P) Ltd. (2019)* – Karnataka High Court

GST Interest Recovery and Attachment of Bank Account can't be done without Notice

Before penalizing the assessee by making him pay interest, the principles of natural justice ought to be complied with before making a demand for interest under sub section (1) of Section 50 of the CGST Act. Consequence of demanding interest and non-payment thereof is very drastic.

The impugned demand has been set aside only on the ground of the breach of the principles of natural justice by granting liberty to the respondents to initiate action in accordance with law obviously for recovery of interest.

Before recovery interest payable in accordance with Section 50 of the CGST Act, a show Cause Notice is required to be issued to the assessee. Hence, no case for interference is made out. The appeal was accordingly dismissed. Interim applications do not survive.

Further, HC make it clear that as far as the main demand for interest has been set aside, the order of attachment, also will have to be set aside.

7. *Govind Enterprises vs. State of U.P (2019)* – Allahabad High Court

FIR under Code of Criminal Procedure for GST Offences

The petitioners set up fake firms for the purpose of evading tax and had been preparing false documents and invoices for that.

The Allahabad High Court upheld the First Information Report (FIR) against GST evaders under the Criminal Procedure Code. The Court held that the contention of the petitioner that no first information report can be lodged against the petitioner under the provisions of the Code of Criminal Procedure for offences punishable under the Indian Penal Code, as proceeding could only be drawn against him under the U.P. Goods and Services Tax Act, 2017, is liable to be rejected.

Lesson 8

Integrated Goods and Services Tax (IGST)

Notification to bring into force certain provisions of the Finance (No. 2) Act, 2019 to amend the IGST Act, 2017

Notification No. 1/2020 –Integrated Tax, dated 1st January, 2020

In exercise of the powers conferred by sub-section (2) of section 1 of the Finance (No. 2) Act, 2019 (23 of 2019), the Central Government hereby appoints the 1st day of January, 2020, as the date on which the provisions of section 114 of the Finance (No. 2) Act, 2019 (23 of 2019) shall come into force.

Judicial Pronouncements

1. In re Global Reach Education Services (P.) Ltd. (2018) – GST AAR Kolkatta

Overseas Education Advisory Services to Foreign University

Applicant was facilitating recruitment/enrolment of students to foreign Universities. Promotional service were incidental and ancillary to above principal supply and applicant was paid consideration in form of Commission, based on performance in recruiting students, as a percentage of tuition fee collected from students enrolled through applicant. Applicant, therefore, represented University in territory of India and acted as its recruitment agent. Thus, whatever services were provided by applicant were only as a representative of University and not as an independent service provider, therefore, applicant's service to foreign universities did not qualify as 'Export of Services' and were therefore, taxable under GST.

[Relevant Act/ Rule: Section 2(6), read with section 13, of the Integrated Goods and Services Tax Act, 2017]

2. Material Recycling Association of India vs. Union of India (2020) – Gujarat High Court

Constitutional Validity of Section 13(8)(b) of IGST Act on 'Intermediary Services'

By this petition under Article 226 of the Constitution of India, the petitioner had challenged the constitutional validity of Section 13(8)(b) of the Integrated Goods Service Tax Act, 2017 and to hold the same as ultra vires under Articles 14, 19, 265 and 286 of the Constitution of India with a direction to the

respondent to refund of IGST paid on services provided by the members of the petitioner association and to their clients located outside India.

The objective behind introducing Goods and Service Tax in India in the year 2017 was to harmonize the indirect tax structure in the country. For the said purpose, the Constitution is amended by the Constitution (One Hundred First Amendment) Act, 2016 to bring on to introduce Article 246A which provides for special provision with respect to Goods and service Tax. Clause 2 of Article 246A empowers parliament, who has exclusive power to make laws with respect to goods and services tax where the supply of goods or services or both takes place in the course of interstate trade or commerce.

Gujarat High Court said that Parliament has exclusive power under Article 246A to frame laws for the interstate supply of goods or services. The basic underlying change brought in by GST regime is to shift the levy of tax from point of sale to point of supply of goods or services or both. So it cannot be said that the provision of Section 13(8)(b) read with Section 2(13) of the IGST Act, 2017 is ultra vires or unconstitutional in any manner.

3. Shree Nanak Ferro Alloys (P) Ltd. vs. The Union of India (2019) – Jharkhand High Court

Recovery of short paid IGST along with interest when IGST wrongly paid under CGST head

The petitioner Company had discharged their tax liability under the IGST head, but inadvertently or otherwise, the petitioner deposited the amount under the CGST head. It is not the case that the petitioner Company has concealed the transaction or has committed any fraud in discharging its tax liability. It is a plain case in which the tax has been paid by the petitioner to the Central Government, but not under the IGST head, rather under the CGST head.

There is no provision of cross utilization of the fund as in case of ‘electronic credit ledger’. Benefit of the provisions of Section 77 (1) of the CGST Act, read with Section 19(2) of the IGST Act.

HELD THAT:- The contention of the learned counsel for the CGST that these provisions are for the persons acting bona fide, may also be accepted, but there is nothing on the record of this case to show that the petitioner Company had not acted bona fide, particularly in view of the fact that the transaction relates to the early stages in which the GST regime had been implemented, and there might be some confusion prevailing at that initial stage - In that view of the matter, we do not find any plausible reason whatsoever, to deny the petitioner Company the benefit of the provisions of Section 77 (1) of the CGST Act, read with Section 19(2) of the IGST Act.

The petitioner Company is directed to deposit the amount of ₹ 41,98,642/-, under the IGST head within a period of 10 days from today, towards the liability of September, 2017. The petitioner shall not be liable to pay any interest on the said amount. The petitioner shall also be entitled to get the refund of

the amount of ₹ 41,98,644/- deposited by them under the CGST head, or they may get the amount adjusted against their future liabilities, in accordance with law, as they may choose - application allowed.

4. Mohit Minerals (P) Ltd. vs. Union of India (2020) – Gujarat High Court

The Hon'ble Gujarat HC has declared levy of Integrated Goods and Services Tax (“**IGST**”) on ocean freight & corresponding notifications as ultra-vires the IGST Act, 2017 for lacking legislative competence and also declared these notifications as unconstitutional. It is concluded that no IGST is leviable on the ocean freight for the services provided by a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India.

Lesson 9

Union Territory Goods and Service tax (UTGST)

Notification to provide special procedure for taxpayers in Dadra and Nagar Haveli and Daman and Diu consequent to merger of the two UTs

Notification No. 10/2020 – Central Tax, dated 21st March, 2020

The Government, notified those persons whose principal place of business or place of business was in the erstwhile Union territory of Daman and Diu or in the erstwhile Union territory of Dadra and Nagar Haveli till the 26th day of January, 2020; and is in the merged Union territory of Daman and Diu and Dadra and Nagar Haveli from the 27th day of January, 2020 onwards, as the class of persons who shall, except as respects things done or omitted to be done before the notification, follow the following special procedure till the 31st day of May, 2020 as mentioned below.

2. The said registered person shall,-

(i) ascertain the tax period as per sub-clause (106) of section 2 of the said Act for the purposes of any of the provisions of the said Act for the month of January, 2020 and February, 2020 as below:-

(a) January, 2020: 1st January, 2020 to 25th January, 2020;

(b) February, 2020: 26th January, 2020 to 29th February, 2020;

(ii) irrespective of the particulars of tax charged in the invoices, or in other like documents, raised from the 26th January, 2020 till the transition date, pay the appropriate applicable tax in the return under section 39 of the said Act;

For more details please visit : <https://www.cbic.gov.in/resources/htdocs-cbec/gst/notfctn-10-central-tax-english-2020.pdf>

Lesson 11

Industry/ Sector Specific Analysis

Judicial Pronouncement

1. In Re: M/s Kindorama Healthcare Pvt. Ltd, (2019) – AAR Kerala

Supply of medicines, consumables, surgical items, items such as needles, reagents etc are eligible for exemption. The supply of medicines, consumables, surgical items, items such as needles, reagents etc used in laboratory, room rent used in the course of providing health care services to inpatients for diagnosis or treatment is eligible for GST exemption under health care services.

2. In Re: M/s. Medivision Scan and Diagnostic Research Centre Private Ltd., (2019) – AAR kerala

The Kerala Authority for Advance Ruling (AAR) recently held that the services provided by diagnostic centre is a clinical establishment and providing Health Care Service therefore exempted from GST.

The diagnostic centres are organized facilities to provide diagnostic procedures such as radiological investigation supervised by a radiologist and clinical laboratory services by laboratory specialists usually performed through referrals from physicians and other health care facilities.

Clinical/Medical diagnostic laboratory means a laboratory with one or more of the following; where microbiological, serological, chemical, hematological, immune-hematological, immunological, toxicological, cytogenetic, exfoliative cytogenetic, histological, pathological or other examinations are performed on materials or fluids derived from the human body for the purpose of providing information on diagnosis, prognosis, prevention, or treatment of disease. These types of diagnosis or investigations rightly come under the category of health care services and are, therefore, eligible for exemption from GST. As per Section 24, persons who are required to pay tax under reverse charge shall obtain registration. Therefore, as per Section 24 of the State Goods and Services Tax Act, compulsory registration would be for persons exclusively engaged in provision of exempt supplies if they receive supplies liable to reverse charge as per notifications issued under Section 9(3) of the State Goods and Services Tax Act.

Lesson 12

Basic Concepts of Customs Law

Notification to amend notification No. 8/2020-Customs dated 02.02.2020 to make changes consequential to enactment of Finance Act, 2020

Notification No. 19/2020 – Customs, dated 9th April, 2020

The Central Government, on being satisfied that it is necessary in the public interest so to do, hereby makes the following amendments in the notifications of the Government of India in the Ministry of Finance (Department of Revenue), No. 08/2020-Customs, dated the 2nd February, 2020, published in the Gazette of India, Extraordinary, vide number G.S.R. 68 (E), dated the 2nd February, 2020, namely:-
In the said notification, -

- (i) for the words, figures and brackets “clause 139 of the Finance Bill, 2020, which, by virtue of the declaration made in the said Finance Bill under the Provisional Collection of Taxes Act, 1931 (16 of 1931), has the force of law”, the words, figures and brackets, “section 141 of Finance Act, 2020 (12 of 2020)” shall be substituted;
- (ii) for the words “under the said clause of the Finance Bill”, the words “under the said section of the said Finance Act” shall be substituted.

Notification to further amend notification No. 50/2017-Cus dated 30.06.2017 so as to withdraw the concessional rate of 10% available to the import of Bamboo for the manufacture of Agarbattis, and to levy a uniform rate of 25% on import of Bamboos

Notification No. 27/2020 – Customs, dated 9th June, 2020

The Central Government, on being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India, in the Ministry of Finance (Department of Revenue), No. 50/2017- Customs, dated the 30th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 785(E), dated the 30th June, 2017, namely:-

In the said notification, in the Table, for serial number 55 and the entries relating thereto, the following serial number and entries shall be substituted, namely: -

(1)	(2)	(3)	(4)	(5)	(6)
“55	1401 10 00	Bamboos	25%	-	”

For more details please visit: <https://www.cbic.gov.in/resources/htdocs-cbec/customs/cs-act/notifications/notfns-2020/cs-tarr2020/cs27-2020.pdf;jsessionid=4BDF8E8D29ABA9B59B44C2047DEFAF71>

Judicial Pronouncement

1. *Mangalore Refinery & Petrochemicals Ltd v CCus. 2015 (323) ELT 433 (SC):*

The assessee imported crude oil. On account of ocean loss, the quantity of crude oil shown in the bill of lading was higher than the actual quantity received into the shore tanks in India. The assessee paid the customs duty on the actual quantity received into the shore tanks.

The Department contended that the quantity of crude oil mentioned in the various bills of lading should be the basis for payment of duty, and not the quantity actually received into the shore tanks in India.

This was stated on the basis that duty was levied on an ad valorem basis and not on a specific rate.

The assessee contended that it makes no difference as to whether the basis for customs duty is at a specific rate or is ad valorem, inasmuch as the quantity of goods at the time of import alone is to be looked at.

Decision:

The Supreme Court held that the quantity of crude oil actually received into a shore tank in a port in India should be the basis for payment of customs duty

2. In case of *Garden Silk Mills v. UOI* Supreme court held that import of goods will commence when the goods cross the territorial limits of water, but continues and is completed when they become part of the mass of goods within the country, the taxable event being reached at the time when the goods reach the customs barriers and bill of entry for home consumption is filed.

3. In case of *Kiran Spinning Mills v. Collector of Customs*, Supreme Court held that in case of warehoused goods the custom barriers would be crossed when the goods are sought to be taken out of customs and brought to the mass of goods in the country.

4. In case of *Apar Pvt. Ltd. v. UOI*, Supreme Court held that in case of warehoused goods, the goods continue to be in customs bond, hence import takes place when goods are cleared from warehouse.

Distinction between clearance for home consumption and clearance for warehousing

Clearance for home consumption implies that, the custom duty on import of the goods has been discharged and the goods are cleared for utilization/home consumption. The goods may instead of being home consumption may be deposited in a warehouse and cleared at a later time. When the goods are deposited in the warehouse the collection of customs duty will be deferred till such goods are cleared for home consumption.

The importer of the goods require to execute a bond for a sum thrice the amount of duty assessed on the goods at the time of import of goods. The importer is also liable to pay interest, rent and charges for storage of goods in warehouse.

5. In *Kasinka Trading v. U.O.I.* 1994 (74) E.L.T. 782, the Supreme Court held that the power to exempt includes the power to modify or withdraw in terms of Section 21 of the General Clauses Act, 1897. It was held that even a time bound exemption notification issued under section 5A of the Central Excise Act, 1944, or section 25 of the Customs Act, 1962 can be modified and revoked if it is in public interest and the doctrine of Promissory Estoppels cannot be invoked since a notification cannot be said to be making a representation or a promise to a party getting benefit thereof.

6. The Supreme Court has held in *Pankaj Jain Agencies v. U.O.I.* 1994 (72) E.L.T. 805 that a Notification is to take effect from the date of the publication in the Official Gazette. In *ITC Ltd. v. CCE* 1996 (86) E.L.T. 477 the Supreme Court reiterated this view and said that non-availability of the Gazette on the date of issue of the notification will not affect the operativeness and enforceability of the notification particularly when there are radio announcements and press releases explaining the changes on the every day.

An exemption notification cannot be withdrawn and duty cannot be demanded with retrospective effect (*Honest Corporation v. State of Tamil Nadu* 1999 STC 113 (HC)).

7. *UoI v. M/s Adani Power Ltd* 2016 (331) ELT A129 (SC) Dated 20.11.2015

When no customs duty is payable on electrical energy imported into India, no duty would be payable on similar goods transferred from SEZ to DTA in view of Section 30 read with Section 51 of the SEZ Act.

8. *Tirupati Udyog Ltd. v UOI* 2011 (272) ELT 209 (AP)

Goods cleared from unit of DTA to Special Economic Zone (SEZ) chargeable to duty under the SEZ Act, 2005 or the Customs Act, 1962:

Decision: Customs duty can be levied only on goods imported into or exported beyond the territorial waters of India, section 12(1) of the Customs Act, 1962 (i.e. charging section) is not attracted for supplies made by a DTA unit to a unit located within the Special Economic Zone.

Lesson 13

Valuation & Assessment of Imported and Export Goods & Procedural Aspects

Notification to exempt specified goods from Health Cess imposed on the medical devices falling under heading 9018 to 9022 in terms of clause 139 of the Finance Bill, 2020

Notification No. 8/2020 –Customs, dated 2nd February, 2020

In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) read with clause 139 of the Finance Bill, 2020, which, by virtue of the declaration made in the said Finance Bill under the Provisional Collection of Taxes Act, 1931 (16 of 1931), has the force of law, the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the goods of the description specified in column (2) of the Table below and falling within the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), from the whole of the Health Cess leviable thereon under the said clause of the Finance Bill:

Provided that in case of goods specified in the said Table, the exemption under this notification shall be subject to the condition, if any, specified under the respective exemption notifications mentioned therein.

Table

Sl No.(1)	Description of goods (2)
1.	All goods falling under heading 9022, other than those for medical, surgical, dental or veterinary uses.

.	<p>All goods on which exemption is claimed and allowed under the following notifications, namely: -</p> <p>(i) Notification No. 74/2005-Customs, dated the 22nd July, 2005, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 499(E), dated the 22nd July, 2005;</p> <p>(ii) Notification No.10/2008-Customs, dated the 15th January, 2008, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 33(E), dated the 15th January, 2008;</p> <p>(iii) Notification No. 152/2009-Customs, dated the 31st December, 2009, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 943(E), dated the 31st December, 2009;</p> <p>(iv) Notification No. 46/2011-Customs, dated the 1st June, 2011, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 423(E), dated the 1st June, 2011;</p> <p>(v) Notification No. 53/2011-Customs, dated the 1st July, 2011, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 499(E), dated the 1st July, 2011; and</p> <p>(vi) Notification No. 69/2011-Customs, dated the 29th July, 2011, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 593(E), dated the 29th July, 2011.</p>
3.	<p>All goods covered under S. Nos. 216, 216A, 561, 562, 564, 565, 566, 567, 568, 570, 571, 573, 574, 578, 578A, 580 and 581 of the Table annexed to the Notification No. 50/2017-Customs, dated the 30th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 785(E), dated the 30th June, 2017.</p>

Notification regarding exemption of duties of Customs against scrips issued under the 2% Additional ad hoc incentive for mobile phones

Notification No. 14/2020 –Customs, dated 14th February, 2020

The Central Government, being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India, Ministry of Finance (Department of Revenue), No. 24/2015- Customs, dated the 8th April, 2015, published in the Gazette of India, Extraordinary, Part II, Section 3, Subsection (i), vide number G.S.R. 269 (E), dated the 8th April, 2015, namely:-

In the said notification,-

(a) in the opening paragraph, after clause (b), the following proviso shall be inserted, namely:-

“Provided that the said scrip, against which goods when imported into India are exempted from duties mentioned in clauses (a) and (b) above, may include duty credit provided under the 2% Additional Ad Hoc Incentive in terms of paragraph 3.25 of the Foreign Trade Policy.”;

(b) in paragraph 2, in condition (1), after clause (b), the following proviso shall be inserted, namely:-

“Provided that the duty credit in the said scrip under the 2% Additional Ad Hoc Incentive shall be issued against export of following goods, namely:-

- (i) Mobile phones, other than push button type; and
- (ii) Mobile phones, push button type,

falling under HS Codes/tariff lines 85171211 and 85171219 respectively of ITC (HS) 2017 with let export order dates from the 1st January 2020 to the 31st March 2020.

Judicial Pronouncement

1. *In case of CC v. East African Traders 2000 (115) E.L.T. 613 (S.C.)*, it was held that Customs authorities and Tribunal can pierce the veil of the respondent company to determine whether or not the buyer and the seller were ‘related persons within the scope of rule 2(2) of the erstwhile Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 [now rule 2(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].

Lesson 14

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

Notification to prescribe the manner and modalities in respect of WTO committed in-quota tariffs on specified items

Notification No. 28/2020 – Customs, dated 23rd June, 2020

The Central Government, so to do, hereby exempts the goods of the description specified in column (3) of the Table below, and falling within the sub-heading or tariff item of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), as are specified in the corresponding entry in column (2) of the said Table in such quantity of total imports of such goods in a financial year, as specified in column (4) below (herein after referred to as the ‘tariff rate quota (TRQ) quantity’), when imported into India, from so much of the duty of customs leviable thereon under the said First Schedule as is in excess of the amount calculated at the rate specified in the corresponding entry in column (5) of the said Table (herein after referred to as the In-quota tariff rate), subject to any of the conditions, specified in the Annexure to this notification, the condition number of which is mentioned in the corresponding entry in column (6) of the said Table; namely: -

Table

S. No.	Sub-heading or tariff item	Description of goods	Tariff rate quota Quantity	In-quota tariff rate	Condition No.
(1)	(2)	(3)	(4)	(5)	(6)
1.	0402 10 or 0402 21 00	Milk and cream in powder, granules or other solid forms, (a) of a fat content by weight not exceeding 1.5%; (b) of a fat content, by weight, exceeding 1.5% - not containing added sugar or other sweetening matter	10000 MT	15 per cent	(i)

For more details please visit: <https://www.cbic.gov.in/resources/htdocs-cbec/customs/cs-act/notifications/notfns-2020/cs-tarr2020/cs28-2020.pdf>

Judicial Pronouncements

1. *Sbec Sugar Ltd. 2011 (S.C.)* – (Warehousing- delayed clearance)

Facts: The importer was to remove goods from warehouse on 25-12-1996. Department issued demand notice under Section 72 of Customs Act for removal. The importer filed B/E on 21st Jan 1998. The duty was nil by exemption notification at the time of submission of B/E (21st Jan 1998.)

Issue: What is the relevant date for rate of duty.

Contentions: The importer argued that relevant date for rate of duty as per Section 15(1) (b) is date of submission of Green Bill of Entry. Since rate of duty applicable on that date is nil by exemption, no duty is payable.

Department: Section 68 and Section 15 are applicable to cases for proper removal of goods. This is a case of improper removal governed by Section 72. Hence, rate of duty applicable shall be the one prevailing at the official due date of removal ie. 25-12- 1996 and not 21st Jan 1998. Hence, duty is payable.

Decision: The contention of the department is correct and the rate applicable on the deemed (due) date of removal shall be taken for assessment.
