



HELPING CLIENTS KEEP MORE OF WHAT THEY EARN

# GST Customs & DGFT Updates

**From 01.07.2021 to 30.07.2021**

**Updates covering all the important Judgements**



**GSTiDEA**

Knowledge Portal on Goods & Services Tax

**Compiled by BT Associates**

# GST

# Clarification regarding extension of limitation under GST Law



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## Clarification regarding extension of limitation under GST Law in terms of Hon'ble Supreme Court's Order.

- Supreme Court vide its order dated 27.04.2021, extended the time line for all compliance falling under legal provisions of all the law. However, there was a confusion on the applicability of such extension on the GST Law.
- In this regard a clarification was issued by CBIC that extension of timelines granted by Hon'ble Supreme Court is applicable to GST law only in respect of any appeal which is required to be filed before any concerned authority and shall not apply to any other proceedings under GST Laws.

### **Non-Applicability of Supreme Court Judgment on the following aspect:**

- In respect of proceedings that need to be initiated or compliances that need to be done by the taxpayers.
- In respect to quasi-Judicial proceedings relating to disposal of refund application, application for revocation of cancellation of registration, adjudication proceedings of demand notices.

### **Applicability of Supreme Court Judgment on the following aspect: -**

- Appeals by taxpayers/ tax authorities against any quasi- judicial order i.e. appeal to be filed before Joint/ Additional Commissioner (Appeals), Commissioner (Appeals), Appellate Authority for Advance Ruling, Tribunal and various courts.

## New functionality on Annual Aggregate Turnover deployed on GST Portal for taxpayers.

### GSTN has implemented a new functionality on taxpayers' dashboards with the following features:

- The taxpayers can now see the exact Annual Aggregate Turnover (AATO) for the **previous FY**, instead of just the two slabs of Above or Up to Rs. 5 Cr.
- The taxpayers can also see the Aggregate Turnover of the **current FY** based on the returns filed till date.
- The taxpayers have also now been provided with the **facility of turnover update** in case taxpayers feel that the system calculated turnover displayed on their dashboard varies from the turnover as per their records.
- This facility of turnover update shall be provided to all the GSTINs registered on a common PAN. All the **changes by any of the GSTINs in their turnover shall be summed** up for computation of **Annual Aggregate Turnover** for each of the GSTINs
- The taxpayer **can amend the turnover twice within a period of one month** from the date of roll out of this functionality.
- Thereafter, the figures will be sent for review of the Jurisdictional Tax Officer who then can amend the values furnished by the taxpayer.

## **Taxpayer having aggregate turnover upto Rs 2crore is exempted from filing GSTR-9 for the financial year 2020-2021 <sup>1</sup>**

- Government on the recommendation of the council exempts the registered person whose aggregate turnover in the financial year 2020-2021 is upto 2 crore from filing annual return for the said financial year.

## **Requirement of getting books audited under GST removed –**

- The aforesaid amendment proposed in budget under Section 33(5) of CGST Act is effective from 1<sup>st</sup> August 2021.

## **Self-Certified reconciliation of Annual Return with Audited Financial Statements <sup>2</sup>**

- Mandatory requirement of furnishing a reconciliation statement duly audited by specified professional was removed and filing of the annual return and reconciliation statement was required to be done on self-certification basis. The aforesaid amendment proposed in budget under Section 44 of CGST Act is effective from 1<sup>st</sup> August 2021.

## **Simplification of form GSTR-9C for FY 2020-2021 in a similar manner as mentioned for FY 2018-19 & 2019-2020 <sup>3</sup>**

- Form GSTR-9C for FY 2020-2021 was modified in a similar way as it was done for FY 2018-2019.

1. Notification No. 31/2021-CT dated 30.07.2021  
2. Notification No. 29/2021-CT dated 30.07.2021  
3. Notification No. 30/2021-CT dated 30.07.2021

## **Extension of applicability of B2C dynamic QR Code:**

- Government on the recommendation of the council extend the timeline for the dynamic QR code for B2C supply.
- The B2C dynamic QR code shall be applicable from 30<sup>th</sup> September 2021 instead of from 1<sup>st</sup> July 2021. Further penalty for non-compliance of earlier notification is waived off.

## **Functionality to check and update bank account details for New Registration**

- Earlier the functionality to check status of bank account details for new taxpayers was not implemented on the portal although introduced, in view of Rule 10A of the CGST Rules 2017.
- As per the Rule taxpayers was required to update their Bank Account Details within 45 days of the first login.
- Now the facility has been provided on the portal and the taxpayers may login and update Bank Account details through Non-core amendment.
- Further if the taxpayer has not updated the bank account details within 45 days of their first login henceforth, the system will prompt and force them to comply with the requirements.

# Writ Petition: Chhattisgarh High Court Judgement

## ITC cannot be denied due to mismatch in GSTR-2A & GSTR-3B :-

### ❑ Facts-

- Petitioner has claimed Input Tax Credit in GSTR-3B on the basis of invoices available with him. However, the details were not uploaded by Supplier in GSTR-1 return. Due to which the credit was not reflected in GSTR-2A.
- Department denied the amount of input tax credit availed by the petitioner in the return on the grounds of non –reflection in GSTR-2A.

### ❑ Provision:-

- As per **Section 16** every registered person can avail ITC subject to following conditions :
  - If supply of goods or services or both used or intended to be used in the course or furtherance of business.
  - He is in possession of a tax invoice or debit note issued by supplier.
  - He has received the goods or services or both.
  - He has furnished the return

# Writ Petition: Chhattisgarh High Court Judgement

## ITC cannot be denied due to mismatch in GSTR-2A & GSTR-3B :-

### ❑ Held:-

- As argued by the petitioner that there is no provision in CGST Act, that empower department to denied the ITC on basis of mismatch of GSTR-2A with GSTR-3B filed.
- Hon'ble High Court relying on the judgement of Madras HC<sup>1</sup> in which court held that credit of recipient cannot be denied on the default of the supplier, grant stay on recovery.
- The matter is listed on 2<sup>nd</sup> August for next hearing;

### ❑ Our Comment:

- The above stay order can be used in respect of all the matter wherein demand has been raised by department on account of mismatch in input tax credit.
- Hence it shall give an interim relieve to the pending matter.

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1. Bharat Aluminium Company Ltd. Vs. UOI  
2. DY. Beathel Enterprise.



# Writ Petition: Rajasthan High Court Judgement

## Refund allowed on IGST paid on ocean freight :-

### ❑ Facts-

- The writ was filed for claiming refund of IGST paid on the ocean freight which was disallowed by the department.
- The petitioner in regard stated that no tax should be levied on ocean freight for the services provided by a person located in a 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.

### ❑ Petitioner Contention:

- It was contended that the notification<sup>1</sup> issued earlier with regard to payment of tax on the ocean freight is unconstitutional & ultra-vires the provision of IGST Act.
- In regard to this argument petitioner submit the decision of Gujarat High Court in which it was held that the taxpayer is entitled for refund of IGST paid by him on Ocean Freight.

### ❑ Held:-

- In the given case Hon'ble High Court relied on the judgement as submitted by the petitioner and allowed the refund of IGST paid on the ocean freight along with interest.

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1. Notification No. 8/2017 dated 28.07.2017  
2. Mahesh oil Products. Vs. UOI  
3. Mohit Minerals Private Ltd. Vs UOI & Ors.

## **ITC reversal is not required on loss of input arise during manufacturing process:**

### **□ Facts:-**

- The petitioner is engaged in the manufacture of Billets and Ingots. MS scrap is an input in the manufacture of MS Billets and the latter, in turn, constitutes an input for manufacture of TMT/CTD Bars.
- During the manufacturing process there is loss of some portion of inputs on which ITC was already claimed. A impugned order issued by the department related to reversal of ITC claimed by the petitioner proportionate to the loss of input. Aggrieved by the order the present writ is filed by the petitioner

### **□ Department Contention:-**

- Department contested that the loss of input is considered to be blocked credit as per the provision of Section 17(5)(h) and therefore petitioner liable to reverse the amount of credit avail.

### **□ Petitioner Contention:**

- It was stated that clause (h) of section 17(5) indicate loss of inputs that are quantifiable and involve external factors or compulsions. A loss that is occasioned by consumption in the process of manufacture is one which is inherent to the process of manufacture itself. So, the order is not feasible.

# Writ Petition: Madras High Court Judgment



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## **ITC reversal is not required on loss of input arise during manufacturing process:**

### ❑ **Held:-**

- The Hon'ble High Court relied on the judgement of the Madras High Court in **Rupa & Co. Ltd<sup>1</sup>**.
- In which court held that A loss that is occasioned by consumption in the process of manufacture is one which is inherent to the process of manufacture itself.
- In view of the above judgement Court finds that credit is allowed on the original amount of input used notwithstanding that the entire amount of input wouldn't figure out in the finished goods.
- ITC reversal on loss of input under Section 17(5)(h) is not sustainable. Hence the impugned order are set aside and the petition is allowed.

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1. Rupa & Co. Ltd. Vs Cestat Chennai 2015-TIOL-2125-HC-MAD-CX  
2. M/s ARS Steels and Alloy International Pvt Ltd. Vs The State Tax Officer 2021-TIOL-1393-HC-MAD-GST

# Writ Petition: Gujarat High Court Judgment



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## **Parallel proceedings by DRRI and DGGI is sustainable with respect to different matter:**

### **□ Facts:-**

- The Petitioner filed the present writ on the proceedings taken by both the DGGI and DRRI.
- Petitioner made the submission and challenge the order passed by the officer and stated that both the department is not able to take proceedings on the same time.

### **□ Held:-**

- Department submitted that as per the notification proper officer was entitled to issue summon as per the provision of the CGST Act in connection with the enquiry initiated against the petitioner.
- DRI proceeding was in relation to the inquiry in connection with the incorrect availment of double benefits i.e. exemption of IGST on the input material imported under Advance Authorization/EOU Scheme and refund of IGST paid of goods imported.
- whereas the DGGI has issued summons to the petitioner in relation to the inquiry in connection with the refund of ITC under the CGST Act. Both the matters are different hence the above petition is disposed.

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## Criteria for being considered as Governmental Authority is different under Section 51 for TDS and under exemption notification providing concessional rate of 12%.

- For the purpose of deducting TDS under Section 51, it has been mentioned that: -
- Governmental authority, means an authority or a board or any other body which has been set up by Act of Parliament or a State Legislature or by a government, **with 51% equity or control owned by the Government.**
- However, for **availing concessional rate of 12%** it has been mentioned that **governmental authority**" means an authority or a board or any other body
  - (i) set up by an Act of Parliament or a State Legislature; or
  - (ii) established by Government, **with 90% or more participation by way of equity or control**, to carry out any function entrusted to a municipality under article 243W of the Constitution
- Hence it can be said that both are different since in case of TDS 51% equity control is compulsorily required however the same is not required while obtaining concessional rate.
- Further the point is clearly evident from Advance Ruling given by Gujarat Authority of Advance ruling<sup>1</sup> where the criteria for being considered as a Governmental authority was discussed along with TDS implication under GST.
- In the ruling it was mentioned that National Institute of Design will qualify as a Governmental Authority and will have to register as a Tax Deductor since it was holding more than 51% equity or control owned by the Government.

# Customs & DGFT

# Customs Update

## 1. RMS Implementation for Duty Drawback<sup>1</sup>

- CBIC issued Circular for Implementation of Risk Management System (RMS) for processing of Duty Drawback Claims as per earlier issued Circular No. 23/2013 dated 24.06.2013. Now For Duty Drawback Claim RMS will extract the data for Duty Drawback in 2 phase.
- In Phase 1 RMS will provide export examination data and will share it with ICES on the basis of Risk. In the 2nd Phase RMS will process the data after EGM is being filed and provide output to ICES for clearing duty drawback.
- This manner will be introduced from 26.07.2021. As per Customs this practice is more rational and will consume less time than the present framework and do fast drawback disbursement.
- It is also informed that ICEGATE have developed various systems for Audit of export data on the basis of Risk and if any documents will require for clearance of drawback the same can be uploaded with the help of e-Sanchit system.

## 2. **GST Levy on Re-import of Repaired Goods as clarified in 43<sup>rd</sup> GST Council Meet**

- It is clarified that when repaired goods re-imported into India it will attract GST and Cess only on a value equal to the repair value, insurance and freight.
- CBIC also clarified that IGST will only be liable to be paid and attracts IGST on a value equal to the repair value, insurance and freight. Further, in the light of the recommendations of the GST Council in its 43<sup>rd</sup> Meeting.

1. Circular No. 15/2021 dated 15.07.2021

2. Circular No. 16/2021 dated 19.07.2021



## Anti-dumping Duty (ADD)

Tariff Head	Subject Goods/Country	Then	Now
4411 13 00 or 44 11 14 00	<b>‘Plain Medium Density Fibre Board (MDF) having thickness of 6mm and above’</b>	Earlier ADD was levied till <b>6<sup>th</sup> June 2021</b> by Notification No. 23/2016-Customs (ADD), dated the 6th June, 2016.	Review in for levy of ADD started on 7 <sup>th</sup> June 2021 Now ADD will be leviable on goods up to 13.3.2022 unless revoked earlier.

### 1. AEO T-1 and T-2 Online Application<sup>1</sup>

AEO T-1 and T-2 application will now be liable to file online in AEO portal after 07.07.2021, once application filed online exporter/importer require to submit all the annexures offline.

### 2. Miscellaneous

CBIC has issued exemption notification for Covid vaccine materials upto 31<sup>st</sup> August 2021 and for some materials up to 30<sup>th</sup> September 2021. Concessional rate may also be available if Customs (IGCR) Rules, 2017.

1. Circular No. 13/2021 dated 01.07.2021  
2. Notification No. 34/2016 - Customs (ADD), dated 14th July 2016

### 3. Miscellaneous

The Board has decided to abolish renewals of Licence/Registration in Customs Brokers Licensing Regulations, 2021 and Sea Cargo Manifest and Transshipment Regulations, 2018 incorporating the following changes in line with the objective of Contactless Customs –

- a. To provide lifetime validity of the licenses/registrations;
- b. To enable provision for making the licenses/registrations invalid in case the licensee/registration holder is inactive for the period exceeding 1 year at a time;c.
- c. To empower Principal Commissioner or Commissioner of Customs to renew a license/registration which has been invalidated due to inactivity; andd.
- d. To provide for voluntary surrender of license/registration.

## ❑ **MEIS, SEIS, ROSL and ROSCTL module temporary suspension**

- DGFT vide Trade notice no. 08/2021-22 has issued a clarification for temporary suspension of IT modules of **MEIS, SEIS, ROSL and ROSCTL** due to changes in the allocation procedure.
- DGFT had not specified any time limits for temporary suspension in its clarification.
- In meantime no fresh application under this schemes will be accepted by DGFT neither any process.

## ❑ **Furnishing of Quarterly returns to FIEO<sup>1</sup>**

- DGFT has amended Handbook of Procedure in which it has decreased a compliance burden of exporters who are members of FIEO.
- Now exporters are not require to submit a quarterly returns wherein it have to submit export turnover details of different commodity in ANF-2C of Foreign Trade Policy.
- Exporters will also don't have to submit monthly export returns to its export authority including NIL return.
- **Steps has been taken to reduce the compliance burden of exporters.**

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1. Public Notice No. 12/2015 dated 12.07.21

## ❑ **Easing Regulatory Compliance**<sup>1</sup>

- DGFT has amended its HBP to reduce compliance burden for Free Sale & Commerce Certificate and for Free Sale & Commerce Certificate for items other than Medical Devices/Instruments.
- DGFT had deleted the provisions of submission of RCMC certificate in form ANF 2H and ANF 2I for the respective certificates.

## ❑ **Inviting Suggestions on New Foreign Trade Policy (2021-26)**<sup>2</sup>

- DGFT has invited suggestions from Stakeholders including Export Promotion Councils (EPCs), Trade/Industry Bodies/Associations.
- Anyone from above can provide their suggestions for new 5 year Foreign Trade Policy by clicking the given link.
- Link - <https://bit.ly/3khHEI2>

## ❑ **Mandatory electronic filing of Non-Preferential Certificate of Origin (CoO) through the Common Digital Platform**<sup>3</sup>

- This option of submission and issuance of CoO (Non-Preferential) by the issuing agencies through their paper-based systems may continue further up to 30th September 2021 thereafter from 1<sup>st</sup> Oct 2021 it will be filed online mandatorily

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1. Public Notice No. 13/2015 dated 12.07.21  
2. Trade Notice No. 09/2021-22  
3. Trade Notice No. 10/2021-2022

## ❑ **New Module for filing Revalidation of SCOMET Export Authorisation<sup>1</sup>**

- DGFT has amended its FTP to provide only one time revalidation for Advance Authorisation issued on or after 15.08.2020.
- One time revalidation will be provided for 12 months from now instead of two 6 months revalidation.
- Application for such revalidation may be submitted online to the concerned Regional Authority on or after 01.08.2021.
- DGFT has amended FTP to include provisions for uploading the consumption and utilization accounts and records to CA/CE repositories.
- For DFIA authorization holders FTP has been amended for submission of accounts and records for duty free imports consumptions in appendix-4H. Exporters are required to submit it to the concerned RA on request for bond waiver/transferability. These should be filed online only.

## ❑ **New form for revalidation of SCOMET export authorization<sup>2</sup>**

- ANF 2O(d) is amended to provide facilitation to the trade and industry.

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1. Public Notice No. 16/2015 dated 22.07.21

2. Public Notice No. 17/2015 dated 27.07.21

## ❑ Issuance of SCOMET Export Authorisation via online module<sup>1</sup>

- DGFT in its IT Revamp policy has issued a new module for SCOMET items wherein DGFT HQ will be solely dealing with its issuance.
- Now Export Authorisation for SCOMET items will be given by DGFT HQ by DGFT portal in online module only from **5<sup>th</sup> August 2021**.
- All amendment and revalidation process will take place in online module only and DGFT HQ will be only nodal point for these authorisations.
- Following processes will also be made available to the SCOMET Module –
  - Authorisation for site visit by the foreign entity.
  - Type of IEC to check production processes for SCOMET export items.
  - Post reporting of Export of SCOMET items.

## ❑ MEIS Rate Announcement<sup>2</sup>

- DGFT has announced MEIS Rate for HS Code 300 36 000 and 30 46 000 @ 3% for period of 01.01.2017 to 31.12.2020.

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1. Trade Notice No. 11/2015 dated 28.07.21  
2. Public Notice No. 18/2015 dated 27.07.21

## ❑ Deemed Export Online Module<sup>1</sup>

- DGFT in its IT Revamp policy has issued a new module for Deemed Export Application benefits.
  - Exporters now can file deemed export, chapter 7 of FTP benefits application online via its Deemed Export Module.
  - Application can be filed with payment of requisite fees.
  - The module will include following applications –
    - Refund of Terminal Excise Duty.
    - Grant of Duty Drawback as per AIR.
    - Fixation of Brand Rate of Duty Drawback.
  - Exporter after filing of online application under this module have to submit all the required documents as per ANF-7A within 7 days of online application.
  - Concerned officer will issue deficiency in online module and exporter will be able to reply the same via online module.
- ❑ Appendix 2K has been revised to provide all the fee details.

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1. Trade Notice No. 12/2015 dated 28.07.21

## High Court Judgements

### Can goods be provisionally released after seizure and Notice under Section 124?

#### ❑ Facts

- After goods were seized by Customs an application were filed for release of goods by the applicants, however instead of releasing goods Customs has issued Notice under section 124 of Customs Act 1962.
- Applicant being aggrieved by the notices issued for release of goods had filed a writ challenging notices issued for not releasing of goods before Hon'ble Bombay High Court.

#### ▪ Held

- Hon'ble High Court has main question here is whether once goods seized under Section 110 of Customs Act and thereafter a show cause notice has been issued after expiry of 6 months period, in this situation it is right of the importer to take goods back or not.
- Hon'ble High Court has decided that the goods can be release provisionally after fulfilling serving of required securities which Customs feel fulfilling. Hon'ble High Court has also observed that section 110A introduced by way of an amendment, is clear that even during pendency of proceedings before the adjudicating authority, such authority is conferred the discretionary power to allow provisional release.
- It was ordered to the adjudicating authority to pass such order as it deem fit within 3 week form the date of order.



## High Court Judgements

### Detention certificate cannot be the sole document for purpose of refund of service charges?

#### ❑ Facts

- Once the imported goods are confiscated by the Customs authorities, they became in possession of the goods and, therefore, the Service Provider shall not levy any charges for the said confiscated goods. If at all any deposits are collected in this regard, the said deposits are to be refunded.
- The contentions of the petitioners are that once the Statutory provisions contemplate that the goods belong to the Customs Department are confiscation and the Service Provider is not entitled to collect any charges, then they are bound to release the goods and refund the deposit, if any collected.

#### ❑ Held

- Hon'ble Madras High Court has decided that in the event of directly acting upon the Detention certificate, which is nothing but confirmation of the provisions of the Act and the regulations, the Service Provider may suffer any loss or otherwise. The Courts are bound to consider and protect the interest of all the parties to the lies in order to provide complete justice.
- Court is of the considered opinion that a thin distinction is to be drawn in between the detention certificate as well as the release granted by various Courts with reference to the Detention certificate issued by the Customs Department. The in-between agreements, contracts, and disputes are relevant for the purpose of granting the relief and such disputes between the Service Provider and an importer or exporter, cannot be adjudicated in a writ proceedings under Article 226 of the Constitution of India.

## CESTAT Judgements

### SCNs issued by DRI for penalty is Invalid as per Canon India Judgement of Hon'ble Supreme Court

#### ❑ Facts

- The DRI has issued an SCN on the allegation of seizure on Red sanders on seven noticees while the proposal against appellant was as to the levy of penalty under Section 114 of Customs Act, 1962.

#### ❑ Held

- Hon'ble CESTAT, Chennai has held that the penalty levied is invalid, since the Notice issued by DRI is held to be invalid, by Supreme Court in the case of **M/s. Canon India Private Limited**.

## CESTAT Judgements

### Refund of BCD & SAD cannot be rejected on grounds of unjust enrichment

#### ❑ Facts

- Appellant is a manufacturer and exporter of Stainless Steel Washers having manufacturing unit in Special Economic Zone, Sachin. Stainless Steel Scrap was generated during the process of manufacture, which was cleared from SEZ unit to DTA. On payment of customs duty in terms of Section 30 of the SEZ Act 2005.
- Appellant claims to have paid 5% BCD instead of 2.5% BCD in Bills of Entry and claims to have paid excess amount towards Basic Customs duty (BCD) and claims to have paid 4% SAD in excess. Refund claims of excess BCD and SAD were filed, which were rejected by dept. earlier on the grounds that there were no provisions and powers for allowing Refund under SEZ Act/Rules. Hence, Appellant have challenged such Order **sup** to CESTAT twice.

#### ❑ Held

- Hon'ble CESTAT, Ahmedabad has observed that the fact of the case is correct for payment of excess duty and as per Section 27 of Customs Act, 1962 after amendment any refund application for excess payment of duties can be filed within 1 year.
- It was also objected that the refund is not sustainable because of unjust enrichment by the dept. however CESTAT has taken stand with the CA certificate provided with all the required documentation which prove that the tax burden did not pass on.
- It is ordered by the Hon'ble CESTAT that petitioner is eligible for refund with interest.

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