INDIRECT TAX WEEKLY DIGEST

27 September 2023

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GOODS & SERVICES TAX

LEGISLATIVE UPDATES

ADVISORY

GEOCODING FUNCTIONALITY FOR THE ADDITIONAL PLACE OF BUSINESS

GSTN had implemented the functionality for geocoding which converts an address or description of a location into geographic coordinates to ensure the accuracy of address details and streamline the address location and verification process of the principal place of business for all States and Union territories.[1] The aforesaid functionality has now been extended with respect to additional places of business. The gist of the functionality is as under:

- Navigate to Services ▫ Registration ▫ Geocoding Business Addresses tab on the Ministry Corporate Affairs' FO Portal;
- System-generated geocoded address will be displayed, which can be accepted or modified. If a geocoded address is unavailable, taxpayers can directly update the geocoded address.
- Saved geocoded address can be viewed by navigating to My Profile ▫ Geocoded Places of Businesses.
- Once submitted, no revisions in the address will be allowed. Taxpayers who have already geocoded their address through new registration or core amendment are not required to do this again as their address will be shown as geocoded on the GST Portal. However, the address appearing on the registration certificate can be changed through the core amendment process. The geocoding functionality would not impact the previously saved record.
- The functionality is available for normal composition, SEZ units, SEZ developers, Input Service Distributors (ISD), and casual taxpayers who are active, cancelled, or suspended.

[GSTN Advisory dated 19 September 2023]

JUDICIAL UPDATES

UPHOLD'S VALIDITY OF SECTION 16(4) OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 (CGST ACT) AND HOLDS THAT INPUT TAX CREDIT (ITC) IS UNAVAILABLE IN RESPECT OF RETURNS AFTER THE TIME-LIMIT PRESCRIBED UNDER SECTION 16(4) OF THE CGST ACT

Facts of the case

- Various taxpayers have *inter alia* challenged the constitutional validity of Section 16(4) of the CGST Act. Since these matters involve identical facts and submissions, the facts in respect of one of these taxpayers viz., M/s. Gobinda Construction (Taxpayer) have been considered by the Court.
- During FY 2018-19, the Taxpayer had duly filed a return of outward supplies in Form GSTR-1. However, Form GSTR-3B for February and March 2019 (specified period) was filed on 23 October 2019 and 7 November 2019 respectively.
- Accordingly, the Tax Authorities issued a Show Cause Notice (SCN) proposing to disallow ITC for the specified period on the ground that the ITC was availed by the Taxpayer beyond the time limit provided under Section 16(4) of the CGST Act (relevant date).
- The Taxpayer replied to the SCN stating that the disallowance of ITC under Section 16(4) of the CGST Act is unjustified as the Taxpayer had filed returns in Form GSTR-3B and had duly reported details of inward and outward supplies.
- However, the Tax Authorities, *vide* the Order-in-Original, confirmed the SCN and held that ITC in respect of the specified period was unavailable as the same was availed after the relevant date.

[1] Our summary of the GSTN Advisory can be accessed here.

- Against this, the Taxpayer filed an appeal before the First Appellate Authority which was dismissed *vide* the Impugned Order on the ground that the ITC availed by the Taxpayer during the specified period was inadmissible since the same was availed after the relevant date.
- Aggrieved by the above, the Taxpayer filed a Writ Petition before the Hon'ble Patna High Court *inter alia* challenging the constitutional validity of Section 16(4) of the CGST Act.

Contentions by the Taxpayer

- The conditions prescribed under Section 16(4) are merely procedural in nature and cannot override the substantive conditions in Sections 16(1) and 16(2) of the CGST Act.
- Section 16(4) of the CGST Act is *ultra vires* the Constitution of India (Constitution) on account of the following:
  - Section 16(4) of the CGST Act creates distinction among equals resulting in discrimination, and hence, violates Article 14 of the Constitution.
  - Section 16(4) is confiscatory in nature, in as much as, denial of ITC is implied confiscation of property in the shape of financial benefit belonging to a registered person and hence, violative of Articles 13 and 14 of the Constitution as it imposes unreasonable restriction on holding of property. Reliance was placed on ***K.T. Moopil Nair Vs. State of Kerala [AIR 1961 SC 552]***, to contend that the right to claim an input tax credit is indefeasible.
  - There is no rationale behind the fixation of the relevant date for availing ITC. Thus, Section 16(4) of the CGST Act imposes an unreasonable and disproportionate restriction on the right to freedom of trade and profession guaranteed under Article 19(1)(g) of the Constitution.
  - Disallowing ITC in terms of Section 16(4) of the CGST Act amounts to double taxation and is violative of Article 265 of the Constitution.
  - Denial of ITC availed after the relevant date is confiscatory in nature. ITC is a vested right under Article 300A of the Constitution and such protected and vested right cannot be taken away due to delayed filing of returns.
- Alternatively, it was also contended that the restriction under Section 16(4) of the CGST Act may be read down and it can be held that the embargo in the aforesaid provision would apply only to restrict the claim of ITC in respect of invoices/debit notes received after the relevant date and that such restriction should not apply to claims made in the belated returns filed after the relevant date.

Contentions by the Tax Authorities

- ITC is a benefit/concession extended to a registered person which can be availed only as per the scheme of the CGST Act.
- The statutory scheme under Section 16 of the CGST Act inter alia restricts Section 16(4) of the CGST Act which has uniform application and cannot be said to be arbitrary or violative of any rights extended under Article 19(1)(g) of the Constitution.
- Reliance was placed on ***ALD Automotive Pvt. Ltd. Vs. Commercial Tax Officer & Ors. [(2019) 13 SCC 225]*** to contend that the requirement under Section 16(4) of the CGST Act is a mandatory condition for availing ITC under Section 16 of the CGST Act.
- The payment of input tax by the Taxpayer at the time of procurement remains in his books until the Taxpayer discloses such transaction by filling Form GSTR-3B. ITC is credited to the Taxpayer's Electronic Credit Ledger and reaches the Government Treasury only on filing of Form GSTR-3B by the Taxpayer. As a result, the Legislature has made a specific provision under Section 16(4) of the CGST Act restricting the claim of ITC after the relevant date.
- As a result, Section 16(4) of the CGST Act is mandatory in nature and a condition precedent for a registered person to avail ITC. Further, the provisions of Section 16 of the CGST Act are substantive in nature and are not in conflict with Sections 39, 47 or 49(2) of the CGST Act

Observations and Ruling of the High Court

- The elementary principle of statutory interpretation is to ascertain the Legislature's intention, which is gathered from the language of the enactment. If the words are clear and unambiguous, the Court cannot modify the statutory provisions.
- Further, the Doctrine of Reading Down is applicable only when the general words in a statute should be construed in a particular manner to save its constitutionality. Thus, there is no reason/necessity to 'read down' Section 16(4) of the CGST Act.
- The entitlement of ITC under Section 16(1) of the CGST Act is subject to – (a) such conditions and restrictions as may be prescribed; and (b) in the manner specified under Section 49 of the CGST Act.
- Section 16(2) of the CGST Act is a non-obstante clause which clearly states that a registered person cannot claim ITC unless they satisfy the requirements prescribed in clauses (a) to (d) of Section 16(2) of the CGST Act.
- Section 16(4) of the CGST Act unambiguously stipulates that a registered person shall not be entitled to claim ITC in respect of any invoice/debit note for supply of goods or services or both after the due date for filing Form GSTR-3B for September (before amendment)/30 November (post amendment) following the end of the financial year to which such invoice/debit note pertains or furnishing of the relevant annual return, whichever is earlier.
- ITC is not unconditional, and a registered person is entitled to avail ITC only if the requisite conditions inter *alia* stipulated under Section 16(4) of the CGST Act are satisfied.
- To invoke Article 300A of the Constitution, two circumstances must jointly exist:
  - Deprivation of property of a person; and
  - Absence of sanction of law.
- Section 16(4) of the CGST Act is one of the conditions which entitles a registered person to claim ITC, and the same, by no means can be said to be violative of Article 300A of the Constitution.

- Fiscal legislation having uniform application to all registered persons cannot be said to be violative of Article 19(1)(g) of the Constitution. Thus, the Taxpayer's contention that Section 16(4) of the CGST Act imposes an unreasonable and disproportionate restriction on the right to freedom of trade and profession guaranteed under Article 19(1)(g) of the Constitution is without merit and outrightly rejected.
- The Taxpayer's contention that the requirement of Section 16(4) may be held to be a directory and not mandatory, is not at all tenable due to the clear language used in Section 16 of the CGST Act. The concession of ITC provided under Section 16(1) of the CGST Act is dependent on the fulfilment of conditions provided under the various provisions inter alia including Section 16(4) of the CGST Act.
- In view of the above, it was held that Section 16(4) of the CGST Act is constitutionally valid and not violative of the Constitution. The said provision is neither inconsistent with nor in derogation to any of the fundamental rights guaranteed under the Constitution.

  [Gobinda Construction & Ors. Vs. Union of India & Ors., [TS-455-HC(PAT)-2023-GST], dated 15 September 2023]

ITC AVAILED CANNOT BE DENIED BECAUSE SUCH AN AMOUNT DOES NOT REFLECT IN FORM GSTR-2A

Facts of the case

- M/s. Diya Agencies (Taxpayer), a registered person under the GST law, had made procurements from various suppliers, in respect of which, ITC was availed by the Taxpayer in their periodical GST returns. The Taxpayer had paid consideration for such supply along with GST thereon to its suppliers.
- In respect of the aforesaid procurements, the Tax Authorities issued the Assessment Order (Impugned Order) denying the Taxpayer's eligibility to avail ITC in respect of certain procurements not appearing in Form GSTR-2A of the Taxpayer.
- Aggrieved by the above, the Taxpayer filed a Writ Petition before the Hon'ble Kerala High Court.

Contentions by the Taxpayer

- ITC availed cannot be denied merely on the ground that the procurement does not appear in Form GSTR-2A on which, the Taxpayer does not have any control. Instead, the Tax Authorities must examine the claim of ITC irrespective of whether the procurements appear in the Taxpayer's Form GSTR-2A.
- Reliance was placed on ***Suncraft Energy Pvt. Ltd. Vs. Assistant Commissioner, State Tax, Ballygunge Charge [TS-367-HC(CAL)-2023-GST]*** and ***State of Karnataka Vs. Ecom Gill Coffee Trading Pvt. Ltd. [TS-99-SC-2023-VAT]***.

  Although the Taxpayer has fulfilled all the conditions stipulated under Section 16(2) of the CGST Act, the Tax Authorities have sought reversal of ITC availed and directed the Taxpayer to deposit the same. Further, in case the supplier fails to file a return/deposit tax, the Taxpayer cannot be asked to pay the tax again (which was already paid to the supplier).
- Reliance was placed on the Press Release dated 18 October 2018 issued by CBIC and the Hon'ble Supreme Court decision in ***Union of India Vs. Bharti Airtel Ltd. & Ors. [TS(DB)-GST-SC-2021-673]*** to contend that Form GSTR-2A is only a facilitator for taking a confirmed decision while making self-assessment.

Observations and Rulings by the Hon'ble High Court

- On perusal of the Impugned Order, it appears that the Taxpayer's claim of ITC has been denied merely on the ground that the procurements do not appear in the Taxpayer's Form GSTR-2A. In this regard, relying on the judicial precedents relied upon by the Taxpayer, it was observed that if the supplier has not remitted the amount paid by the Taxpayer to the Government, the Taxpayer cannot be held liable for the same.
- However, the Taxpayer must discharge its burden of proof regarding the remittance of tax to the supplier as per the principle laid down by the Hon'ble Supreme Court in ***Ecom Gill Coffee Trading Pvt. Ltd. (supra)***.
- In view of the above, the Impugned Order, to the extent it seeks denial of ITC availed, is unsustainable and the matter is remanded to the Tax Authorities with the following directions:
  - The Taxpayer is to appear before the Tax Authorities within 15 days along with all the evidence which substantiates its claim of ITC.
  - If on examination of the evidence furnished by the Taxpayer, the Tax Authorities are satisfied that the claim of ITC is bonafide, ITC should be allowed to the Taxpayer.
  - After examination of the evidence placed by the Taxpayer, the Tax Authorities to pass a fresh order.

  [M/s. Diya Agencies Vs. State Tax Officer (GST Department) & Ors., [TS-461-HC(KER)-2023-GST], dated 12 September 2023]

CENTRAL EXCISE

LEGISLATIVE UPDATES

NOTIFICATIONS

CHANGE IN RATE OF SPECIAL ADDITIONAL EXCISE DUTY (SAED) ON PETROLEUM CRUDE, AVIATION TURBINE FUEL AND HIGH-SPEED DIESEL OIL

Effective 16 September 2023, Notification nos:18/2022 and 04/2022-Central Excise dated 19 July 2022 and 30 June 2022 respectively inter alia stipulating the applicable SAED rates on Petroleum crude, Aviation Turbine Fuel and High-Speed Diesel Oil are amended as under:

CHAPTER OR HEADING OR SUBHEADING OR TARIFF ITEM	DESCRIPTION OF GOODS	EXISTING RATE	PROPOSED RATE
2709	Petroleum Crude	INR 6,700 per tonne	INR 10,000 per tonne
2710	Aviation Turbine Fuel	INR 4 per litre	INR 3.50 per litre
2710	High-Speed Diesel Oil	INR 6 per litre	INR 5.50 per litre

[Notification nos: 30&31/2023-Central Excise dated 15 September 2023]

JUDICIAL UPDATES

REFUND OF UNUTILISED CENVAT CREDIT IS ADMISSIBLE ON ACCOUNT OF THE CLOSURE OF THE FACTORY

Historical Background

- **Judicial development in Slovak Trading Co. Pvt. Ltd. (Slovak):**
  - CESTAT in ***Slovak Vs. CCE, Bangalore [2005-TIOL-1698-CESTAT-Bang.]*** (Tribunal order) had held that the refund claim of the assessee is eligible, and the refund must be made in cash when the assessee goes out of the Modvat Scheme, or its business operations are closed.
  - Against this, the Tax Authorities filed an appeal before the Hon'ble Karnataka High Court which was dismissed by the Hon'ble High Court *vide* its judgment reported in [2006 (201) ELT 559 (Kar.)] (Slovak HC order). The Hon'ble High Court upheld the Tribunal order and held that there is no express prohibition for refund under Rule 5 of the CENVAT Credit Rules, 2004 (Rule 5).
  - Subsequently, the Tax Authorities challenged the Slovak HC order before the Hon'ble Supreme Court in a Special Leave Petition (SLP). The key observations in the order of the Hon'ble Supreme Court ***[2008 (223) ELT A170 (SC)]*** (Slovak SC Order) held as under:
    - The Tribunal order had relied upon various other decisions passed by the Tribunal wherein it was held that the assessee is entitled to claim a refund of the amount deposited if the assessee has gone out of the Modvat scheme or their unit is closed.
    - ASG appearing for the Tax Authorities had conceded that the decisions relied upon in the Tribunal order have not been challenged/appealed by the Tax Authorities.
    - As a result, the SLP filed by the Tax Authorities was dismissed.
- The Larger Bench of the Tribunal had taken a contrary view in ***Steel Strips Vs. CCE, Ludhiana [2011 (269) ELT 257 (Tri.-LB)]*** holding that refund of unutilised credit is permissible only in case of export of goods & for no other reason whatsoever.
- Pursuant to the above, the Larger Bench of the Hon'ble Bombay High Court ***in Gauri Plasticulture P. Ltd. & Ors. Vs. CCE [2019 (7) TMI 1204 – Bombay High Court]*** had relied on the decision in ***Steel Strips (supra)*** and held as under:
  - A cash refund is not permissible in terms of Clause (c) of the Proviso to Section 11B(2) of the Central Excise Act, 1944 (CE Act) where the assessee is unable to utilise credit on inputs.
  - A refund of unutilised CENVAT Credit is not admissible on account of the closure of manufacturing activities.
  - The Slovak SC order cannot be read as a declaration of law under Article 141 of the Constitution.

Facts of the present case

- M/s. ATV Projects India Ltd. (Taxpayer), a manufacturer of excisable goods, had shut down its factory in 1998 but had continued to file statutory returns and continued its Central Excise registration till June 2017, which was subsequently surrendered.
- Subsequently, the Taxpayer applied for a refund of unutilised CENVAT Credit under Rule 5. However, the same was rejected by the Tax Authorities.
- Against this, the Taxpayer filed an appeal before the First Appellate Authority which, vide the Order-in-Appeal dated 26 April 2019 (Impugned Order), dismissed the appeal by relying on the decision of ***Gauri Plasticulture Pvt. Ltd. (supra)*** and holding that refund of CENVAT Credit cannot be granted on closure of the factory.
- Aggrieved by the above, the Taxpayer filed the present appeal before CESTAT. During the hearing, the Judicial and the Technical members of the CESTAT differed in their views and referred the matter to the third member. The gist of the findings of Judicial & Technical members as well as the issue to be addressed by the third member is summarised below:

ISSUE	JUDICIAL MEMBER	TECHNICAL MEMBER
Is the Slovak HC order (as affirmed by the Slovak SC order) applicable to the present case and binding under Article 141 of the Constitution?	▪ Yes. The Slovak HC order (as affirmed by the Slovak SC order) is applicable to the present case. ▪ The Slovak SC order is binding in terms of Article 141 of the Constitution.	▪ No. The Slovak HC order and the Slovak SC order is distinguishable and inapplicable to the present case. ▪ The Tribunal decisions which have allowed refund of CENVAT Credit based on Slovak orders are per incuriam. ▪ The CESTAT is bound by the precedents in ***Steel Strips (supra)*** and ***Gauri Plasticulture Pvt. Ltd. (supra)***.
Whether the refund application is barred by limitation?	▪ The refund claim is not barred by limitation.	▪ The refund claim is barred by limitation.

Observations and Ruling by the CESTAT in the final order by the third Judicial Member

- **Whether the Slovak HC order (as affirmed by the Slovak SC order) is applicable to the present case and hence, binding under Article 141 of the Constitution:**
  - On perusal of the Slovak SC order, it transpires that the ASG had made the concession or consent owing to the reason that in the absence of non-filing of appeals against the decisions referred in the Tribunal order, the issue had attained finality and cannot be re-opened for adjudication in a different matter.
  - It is well settled that once the Tax Authorities have accepted the principles decided in earlier cases, in preferring for non-filing of appeals, then the issue cannot be raised subsequently for deciding such settled issue differently.
  - Relying on the Hon'ble Supreme Court decision in ***CCE, Hyderabad Vs. Novopan Industries Ltd. [2007 (209) ELT 161 (SC)]***, it was held that it cannot be said that the Slovak SC order was issued without assigning reasons therein.
  - Relying on the Hon'ble Supreme Court decisions in ***Gangadhara Palo Vs. Revenue Divisional Officer [2012 (25) STR 273 (SC)]*** and ***Kunhayammed Vs. State of Kerala [2001 (129) ELT 11]***, it can be construed that –
    - Even if the SLP is dismissed with reasons, however meagre (one sentence), there is a merger of orders and hence, the same becomes a declaration of law. Thereafter, the decision which is merged with the decision of the Hon'ble Supreme Court becomes non-existent and hence, cannot be reviewed.
    - However, when a SLP is dismissed without assigning any reason, it cannot be inferred that the judgement of the Hon'ble High Court has merged with the judgement of the Hon'ble Supreme Court.

      Thus, even if the SLP is dismissed on account of a sparse reason, it still becomes a declaration of law under Article 141 of the Constitution.
  - The decision of Gangadhara Palo (supra) was not placed before the Hon'ble Bombay High Court in Gauri Plasticulture Pvt. Ltd. (supra), and thus, the aforesaid ratio was not considered by the Hon'ble Bombay High Court while deciding on the matter.
  - Hence, it cannot be conclusively said that the decision in the Slovak HC order (as affirmed by the Slovak SC order) lacks value as a precedent and the contextual facts must be examined.
  - In view of the above, the ratio of the Slovak SC order has a binding effect on all the Courts, Tribunals, etc. as mandated by Article 141 of the Constitution.

- **Whether the refund application is barred by limitation?**
  - The CENVAT scheme is a beneficial piece of legislation which aims at avoiding the cascading effect of duty on duty, during the manufacture of excisable goods or provision of output services.
  - The only active provision for the granting of refund of CENVAT Credit is Rule 5 which allows refund in case of export of goods/services. However, in terms of the Slovak HC order, the accumulated CENVAT credit balance is available for refund in the absence of any express prohibition under Rule 5. The modality for grant of refund is given under Section 11B of the CE Act.
  - The relevant date for computation of the limitation period has been provided in Explanation (B) to Section 11B of the CE Act which provides various circumstances for determining the relevant date in the course of ongoing activities undertaken by a taxpayer.
  - Since the closure of a factory is not a routine phenomenon and happens on the rarest occasion, the relevant date in the context of limitation for filing a refund application cannot be reckoned by reading Explanation (B) to Section 11B of the CE Act.
  - In the present case, although the Taxpayer's factory was non-operational for quite a long time, the Taxpayer had continued to file periodical returns and finally, had surrendered his registration. Immediately thereafter, the Taxpayer filed the refund application. As a result, the refund application cannot be said to be barred by limitation.
  - Availment of CENVAT Credit is an indefeasible right of the Taxpayer which has been conferred under the Statute and cannot be taken away on the ground of limitation.
  - Rule 5 does not stipulate any time limit for the grant of a refund. Even if the time limit under Section 11B of the CE Act is applied, it should be effective from the date of surrender of the registration.
  - In view of the above, the aspect of limitation is inapplicable to the facts of the present case.
- In view of the above, the appeal is allowed, and the Impugned Order is set aside.

  [M/s. ATV Projects India Ltd. Vs. CCE & ST, Raigad, [2023-VIL-876-CESTAT-MUM-CE], dated 6 September 2023]

SALES TAX/VAT

LEGISLATIVE UPDATES

NOTIFICATIONS

THE CHHATTISGARH SETTLEMENT OF ARREARS OF TAX, INTEREST AND PENALTY RULES, 2023

- The Chhattisgarh Settlement of Arrears of Tax, Interest, and Penalty Act, 2023 (Amnesty Act) inter alia provides for the settlement of arrears of tax, interest, and penalty levied, payable and imposed under the specified legislations, subject to certain conditions and restrictions[2].
- To implement the Amnesty Act, the Chhattisgarh Settlement of Arrears of Tax, Interest, and Penalty Rules, 2023 (Amnesty Rules) have been notified by the Chhattisgarh Government. The salient features of the Amnesty Rules are as under:
  - **Constitution of Designated Committee:**
    - The Commissioner will constitute such several Designated Committees as he may deem fit. The composition of the Designated Committee would depend on the number of arrears.
  - **Procedure:**
    - The application would be filed by the taxpayer (applicant) with the Commercial Tax Officer (CTO) during the period starting from 15 September 2023 to 31 January 2024.
    - Within 15 days from the date of receipt of the aforesaid application, the CTO to transfer the same to the appropriate Designated Committee.
    - **Procedure (where discrepancies are identified by the Designated Committee):**
      - Within 45 days from the receipt of the aforesaid application, the Designated Committee shall issue a notice (in respect of discrepancies, if any) to the applicant and also provide an opportunity for a hearing.
      - The applicant may file a reply to the aforesaid notice within seven days from the receipt of such a notice.
      - After examining the reply received from the applicant, if the Designated Committee finds that the reply is appropriate, it shall issue the Settlement Order within 90 days from the date of receipt of such application. In other cases, the Designated Committee shall dismiss the case within a period of 90 days from the date of receipt of such an application.
    - **Procedure (where no discrepancies are identified by the Designated Committee):**
      - Designated Committee to verify the application and issue a Settlement Order within 90 days from the date of receipt of the application. However, if the Designated Committee finds that the case is ineligible, the application shall be dismissed within the aforesaid period of 90 days from the date of receipt of the application.
- **Appeal:**
  - An appeal against the order of the Designated Committee can be filed before the Commissioner, Commercial Tax, within 30 days of receipt of such settlement order.

    [Notification no: F 10-40/2022/CT/V(34) dated 15 September 2023 & F 10-42/2022/CT/V(30) dated 17 August 2023]

[2] Our summary of Amnesty Act can be accessed here.

CUSTOMS[3]

LEGISLATIVE UPDATES

NOTIFICATIONS

AMENDMENT IN THE EFFECTIVE RATE OF CUSTOMS DUTY IN RESPECT OF CHARGING CABLE FOR WRIST WEARABLE WATCHES AND PARTS, COMPONENTS AND ACCESSORIES OF HEARABLE DEVICES

- Notification no: 11/2022-Customs dated 1 February 2022, which inter alia provides the effective rate of Customs duty in respect of import of charging cable for wrist wearable devices (commonly known as smart watches) has been amended as under:
  - The entry now would apply to the aforesaid product classifiable under Chapter 85 (as against CTH 8544); and
  - The scope of the aforesaid entry has been expanded by amending the Explanation to the aforesaid entry to now include 'wireless charging cable containing static converter and coil' when exclusively used for charging smart watches within its purview.
- Notification no: 12/2022-Customs dated 1 February 2022, which inter alia stipulates the effective rate of customs duties on specified parts, components, and accessories of hearable devices (as mentioned in the aforesaid notification) have been amended to also cover goods falling under Chapter 39, 40 and 42.

  [Notification no:55/2023 - Customs dated 14 September 2023]

EXEMPTION TO SPECIFIED DEFENCE RELATED PRODUCTS IMPORTED FOR THE DEFENCE FORCES

Notification no: 19/2019-Customs dated 6 July 2019, which inter alia provides an exemption from payment of Customs duty on (a) parts, sub-parts, and inputs for use in the manufacture of AK-203 rifle; and (b) Machinery, Fixtures, Gauges, Tools and Jigs for manufacture of goods mentioned in (a) above, has been amended to extend the benefit of the aforesaid exemption in respect of 'Technical documentation in respect of goods mentioned in (a) and (b) above.'

As a consequential amendment, the scope of the aforesaid exemption entry would now also apply to the goods covered under Chapter 49.

[Notification no: 56/2023- Customs dated 15 September 2023]

CIRCULARS

IMPLEMENTATION OF EX-BOND SHIPPING BILL IN INDIAN CUSTOMS EDI SYSTEM (ICES)

With respect to warehoused goods, unlike the facility to furnish an Ex-Bond Bill of Entry (BoE) for home consumption, the facility to furnish an Ex-Bond Shipping Bill (SB) is not available on ICES. However, the same has now been provided as under:

- While filling Ex-Bond SB, the exporter declares the Warehouse Code in the single window table to depict that the warehoused goods are exported i.e., this is a case of re-export of goods. The Warehouse Code would reflect the warehouse from where the goods are to be exported (which may be different from the warehouse where the goods were originally warehoused at the time of import). Subsequently, the importer would then provide item-wise details of BoE.
- In one SB, only one Warehouse Code can be captured. Thus, separate SBs are required to be filed for the export of bonded goods from more than one warehouse.
- In Ex-Bond SB, for each item, details of Into-Bond BoE i.e., BoE no., BoE date, Invoice no., Sl. no., etc. shall be mandatory. Further, details of only one Into-Bond BoE can be captured for each item.
- Once the SB is filed and after successful verification, the system will debit the quantity exported in the ledger from the quantity imported. Further, in case of cancellation of SB, the quantity will be automatically re-credited to the ledger.
- Additionally, the amendments in the SB quantity have also been linked with the ledger quantity.

The aforesaid facility for furnishing Ex-Bond SB can only be used for the export of warehoused goods. The aforesaid facility is unavailable for the export of goods resulting from manufacturing and other operations under Section 65 of the Customs Act, 1962 in a bonded warehouse.

No such exports shall be available without incentives such as Drawback, RoDTEP/RoSCTL benefit, Advance Authorisation/EPCG, etc.

[Circular no: 22/2023- Customs dated 19 September 2023]

ORDER UNDER RULE 5 OF THE CUSTOMS (ASSISTANCE IN VALUE DECLARATION OF IDENTIFIED IMPORTED GOODS) RULES, 2023 (CAVR) FOR LINEAR ALKYL BENZENE

CBIC has issued an order under Rule 5 of CAVR notifying that during the period starting from 26 September 2023 to 25 September 2024, import of 'Linear Alkyl Benzene' falling under HS Code 3817 0011 shall be made with the following specifications:

- Unique Quantity Code of Kilogram (KG) shall be necessarily used by the importer to declare the value in the BoE.
- In addition to the prescribed documents required to be submitted along with the BoE, the importer shall furnish:
  - Test Certificate of the product;
  - Manufacturer's invoice;
  - Purchase Order or Contract; and
  - Manufacturing process from the manufacturer.
- During the verification of the assessment, the proper officer shall also check compliance with the Linear Alkyl Benzene (Quality Control) Order, 2022.

  [CVAR Order no: 01/2023-Customs dated 18 September 2023]

[3] Unless explicitly specified, the Chapter(s), Heading(s) and Tariff Items referred to in this segment of the publication relate to the Chapter(s), Heading(s) and Tariff Items under the First Schedule to the Customs Tariff Act, 1975.

FOREIGN TRADE POLICY (FTP)

LEGISLATIVE UPDATES

PUBLIC NOTICE

DE-LISTING OF AGENCIES AUTHORISED TO ISSUE CERTIFICATE OF ORIGIN (NON-PREFERENTIAL) FROM APPENDIX 2E OF FTP, 2023

- Trade Notice no: 22/2023 dated 16 August 2023[4] inter alia stipulates that the list of Chambers/Agencies notified under Appendix-2E are required to on-board on the electronic platform for Certificate of Origin (e-CoO platform) on or before 31 August 2023.
- However, 29 Chambers/Agencies have failed to on-board on the e-CoO platform and hence, have been de-listed from Appendix-2E with immediate effect. These 29 Chambers/Agencies shall not be authorised to issue Certificate of Origin (Non-preferential).

  [Public Notice no: 31/2023 dated 20 September 2023]

NEWS FLASH

'India's import curbs on laptops, tablets likely called off'

https://economictimes.indiatimes.com/industry/cons-products/electronics/indias-import-curbs-on-laptops-tablets-likely-called-off/articleshow/103878052.cms

[Source: Economic Times, 23 September 2023]

'GST Network new ledger for ITC reversal and reclamation: How it works? Steps that taxpayers need to take'

https://www.livemint.com/money/personal-finance/gst-network-new-ledger-for-itc-reversal-and-reclamation-how-it-works-steps-that-taxpayers-need-to-take-11695262294307.html

[Source: Mint, 21 September 2023]

'Why horse racing needs low GST rate'

https://www.thehindubusinessline.com/opinion/why-horse-racing-needs-low-gst-rate/article67331286.ece

[Source: The Hindu BusinessLine, 21 September 2023]

'Ice cream topping crackle likely to attract 18 per cent GST on AAR ruling'

https://www.business-standard.com/finance/news/ice-cream-topping-crackle-likely-to-attract-18-per-cent-gst-on-aar-ruling-123092000314_1.html

[Source: Business Standard, 22 September 2023]

'Why the gaming industry has its eyes peeled for the outcome of Gameskraft's INR 21,000 crore GST case'

https://economictimes.indiatimes.com/prime/prime-vantage/why-the-gaming-industry-has-its-eyes-peeled-for-the-outcome-of-gameskrafts-inr21000-crore-gst-case/primearticleshow/103841438.cms

[Source: Economic Times, 22 September 2023]

[6] Our summary of the trade notice can be accessed here.

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