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# GST Compendium

## A monthly guide

August 2021

# Editor’s note

As a part of the economic relief measures, the Finance Ministry has announced an extension of the Production Linked Incentive (PLI) scheme for large-scale electronics manufacturing by another year (i.e., up to 2025-26). This will help companies fulfil the condition of incremental sales due to the pandemic-related lockdowns, restrictions on movement of personnel and other related factors.

Recently, the Union Cabinet has also approved a PLI scheme for specialty steel. The duration of the scheme is five years and is expected to boost production of high-grade specialty steel in the country.

On the judicial front, the Madras High Court observed that the loss of inputs due to consumption in the process of manufacture is inherent to such process and is not due to any external factors. Therefore, it held that the input tax credit availed of the GST paid on inputs, which are lost during the manufacturing process, is not required to be reversed. The ruling should provide required relief to the manufacturing sector and will set a precedence in similar matters.

Besides, the Customs, Excise and Service Tax Appellate Tribunal (CESTAT), Bangalore, has upheld the levy of service tax on expenses incurred by venture capital funds as performance fee, carried interest and other fund expenses. The ruling is likely to have a major impact on the tax positions adopted by the industry, at large, both under erstwhile as well as the GST regime.

In this edition, we have analysed the implications of the GST law on supplies by duty-free shops.

On the direct tax front, the Central Board of Direct Taxes (CBDT) has extended the time limit for manual filing of Form 15CA/15CB, considering the difficulties faced by taxpayers in electronic filing of these forms on the new income tax portal. Further, the CBDT has also issued a guidance note in respect of withholding tax provisions on the purchase of goods.

Hope you will find this edition insightful.

**Vikas Vasal**

National Managing Partner, Tax

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# 01 Important amendments/updates

## Recent changes notified by CBIC

Pursuant to the recommendations of the GST council, the Central Board of Indirect Taxes and Customs (CBIC) has notified the following changes with effect from 1 August 2021[1]:

- Exemption has been provided to registered person whose aggregate turnover in the financial year 2020-21 is up to INR 2 crore, from filing annual return for the said financial year.
- Form GSTR 9 and 9C for FY 2020-21 has been notified
- Exemption from filing Form GSTR-9C has been provided to taxpayers having AATO up to INR 5 crore. Taxpayers having annual turnover (AATO) above INR 5 crore can now file self-certified reconciliation statement in Form GSTR-9C.

## DGFT instructs to upload pending e-BRCs RoSCTL scrips by 15 September 2021

The Directorate General of Foreign Trade Policy (DGFT) noticed that there are significant number of cases where corresponding Electronic Bank Realisation Certificate (e-BRCs) for Rebate of State and Central Levies and Taxes (RoSCTL) scrips with shipping bills with Let Export Order (LEO) up to 31 March 2020, have not been uploaded in the online DGFT's e-BRC repository as a proof of export.

In this regard, it has requested to get the related e-BRCs uploaded in DGFT portal by respective authorised banks, latest **by 15 September 2021.** It has further informed that failure to upload e-BRCs on DGFT portal will attract initiation of recovery mechanism by DGFT Regional Authorities (RAs)[2].

1. Notification No. 29 to 31-Central Tax dated 31 July 2021

2. Trade Notice No. 13/2021-22 dated 4 August 2021

## E-Way Bill (EWB) generation facility to resume after 15 August 2021

The Goods and Services Tax Network (GSTN) has informed that the facility for the generation of e-way bill on the EWB portal shall resume from 15 August 2021 for all the taxpayers[3].

The system will check the status of returns filed in Form GSTR-3B or the statements filed in Form GST CMP-08 and restrict the generation of EWB in case of the following:

- Non-filing of two or more returns in Form GSTR-3B for the months up to June 2021 and
- Non-filing of two or more statements in Form GST CMP-08 for the quarters up to April to June 2021

It has advised the taxpayers to file their pending returns in Form GSTR 3B/CMP-08 statement immediately to avail the continuous EWB generation facility on EWB Portal.

## CBIC launches Compliance Information Portal

CBIC has launched the Indian Customs Compliance Information Portal (CIP) for providing free access to information on all customs procedures and regulatory compliance for nearly 12,000 Customs Tariff Items. The portal can be accessed at **www.cip.icegate.gov.in/CIP**[4].

For using the CIP, the Customs Tariff Heading (CTH) or the description of the goods, needs to be entered to get information regarding the procedures, regulatory compliances requirements (such as licence, certificates, etc.) This includes import and export through posts and courier, import of samples, reimport and reexport of goods, self-sealing facility for exporters and project imports.

## CBIC issues clarification regarding extension of limitation under GST law in terms of Supreme Court order

The Supreme Court (SC) vide its order dated 27 April 2021 had directed that the period of limitation, as prescribed under any general or special laws, in respect of all judicial or quasi-judicial proceedings, whether condonable or not, shall stand extended till further orders.

Earlier the CBIC had extended the time limit for completion of various actions by any authority under the GST (Goods and Services Tax) law up to a specific date. Pursuant to the above SC order, various representations were received by the CBIC, seeking clarification regarding the applicability of the extension granted by SC to the aforementioned time limit under the GST law. In this regard, the CBIC has clarified that the extension of timelines granted by the SC is not applicable to any other proceedings under GST laws. In addition, it has provided certain clarifications as under[5]:

### Proceedings to be initiated or compliances required to be done by taxpayers

These actions would continue to be governed only by the statutory mechanism and time limit provided/extensions granted under the statute itself. The SC orders would not apply to the said proceedings/compliances on part of the taxpayers.

### Quasi-judicial proceedings by tax authorities

Disposal of application for refund, application for revocation of cancellation of registration, adjudication proceedings of demand notices, appeals, etc., shall continue to be heard and disposed off by the tax authorities, performing the functions as quasi-judicial authority. These will be governed by extensions of time granted by the statutes or notifications, if any.

### Appeals by taxpayers/tax authorities against any quasi-judicial order

The time limit would stand extended as per the SC's order for filing any appeal before the Joint/Additional Commissioner (Appeals), Commissioner (Appeals), Appellate Authority for Advance Ruling, Tribunal and various courts against any quasi-judicial order or where a proceeding for revision, or rectification of any order is required to be undertaken.

3. GSTN advisory dated 4 August 2021
4. Press release dated 4 August 2021
5. Circular No. 157/13/2021-GST dated 20 July 2021

## CBIC issues measures for expediting customs faceless assessment and clearance processes

Pursuant to the roll out of faceless assessment (FA) PAN-India, some of the key measures taken by the CBIC to further streamline the customs faceless assessment and clearance processes are as under[6]:

- Enhancement in facilitation levels across all customs stations to 90% relating to RMD (Release on Minimum Documentation), effective from 15 July 2021
- Uniformity in working hours of all Faceless Assessment Group (FAGs), which shall be 10 am to 8 pm on any working day
- Monitoring whether the first decision on the Bill of Entry is communicated within three working hours after its allocation by FAGs
- Restriction of the total number of queries, which can be raised by an Appraising Officer in respect of a Bill of Entry to three
- Facility of Direct Port Delivery (DPD) to all advance Bills of Entry which are fully facilitated (which do not require assessment and/or examination)
- Introduction of Risk Management System (RMS) generated uniform examination orders at all customs stations across the country
- Operationalisation of an Anonymised Escalation Mechanism (AEM) on ICEGATE (Indian Customs EDI Gateway), which would empower importers/customs brokers to directly register the requirement of expeditious clearance of a delayed Bill of Entry, which may be pending for assessment or examination.

## Implementation of RMS for processing of duty drawback claims

The CBIC has decided to initiate implementation of Risk Management System (RMS) for processing of shipping bills related to duty drawback claims, with effect from 26 July 2021. The procedure for implementation shall be as under[7]:

- The RMS will process the shipping bill data after the Export General Manifest (EGM) is filed electronically and will provide required output to Indian Customs EDI System (ICES) for selection of shipping bills for risk-based processing of duty drawback claims
- The shipping bills with claim for duty drawback will be routed on the basis of risk evaluation through appropriate selection criteria
- Subsequent to RMS treatment, ICES will be informed for each shipping bill, whether for the processing of the drawback claim, a particular shipping bill will be facilitated without intervention or will be routed to the proper officer (i.e. Superintendent/Appraising Officer or Assistant/Deputy Commissioner) for further action
- For shipping bills routed to the said customs officers for drawback processing, all necessary checks shall continue to be undertaken by the customs officers, as before
- Certain documents that may be required to accompany the drawback claim can be attached to the shipping bill electronically on e-Sanchit with the required e-Sanchit documents codes

In addition to above, the RMS also envisages a post clearance audit (PCA) of the duty drawback shipping bills. The development of an electronic module for PCA is underway. Till such time, the current instructions for audit, as stipulated in the manual for Customs Post Clearance Audit, 2018, shall continue to be followed.

## DGFT notifies measures for reduction in regulatory compliance burden

The DGFT has recently notified certain changes to reduce the regulatory compliance burden of exporters. The DGFT has done away with the mandatory requirements of furnishing certain documents by the exporters, as under[8]:

- Quarterly return/details of exports of different commodities to concerned registering authority
- Quarterly returns to Federation of Indian Export Organisation (FIEO) in specified format by status holders
- Monthly returns of exports, including Nil returns, to the registering authority by the 15th of the month following the quarter

The revised format of Form ANF-2C (application form for registration cum membership certificate) has also been notified.

Further, the requirement of furnishing Registration Cum Membership Certificate (RCMC) details and declaration/undertaking has also been removed and revised formats for Form ANF-2H (application for free sale and commerce certificate) and ANF-2I (application for free sale and commerce certificate for items other than medical devices/instruments) have also been notified[9].

6. Circular No.14 /2021-Customs dated 7 July 2021
7. Circular No. 15/2021-Customs dated 15 July 2021
8. Public Notice No. 12/2015-2020 dated 12 July 2021
9. Public Notice No. 13/2015-2020 dated 12 July 2021

## Acceptance, processing and issuance of claims under MEIS, SEIS, RoSL, RoSCTL schemes on hold for temporary period

The DGFT has kept the issuance of benefits/scrips under the Merchandise Exports from India Scheme (MEIS), Services Export from India Scheme (SEIS), Rebate of State Levies (RoSL) and Rebate of State and Central Levies and Taxes (RoSCTL) schemes on hold for a temporary period due to changes in the allocation procedure[10].

It has further informed that during this period, no fresh applications would be allowed to be submitted on the online IT module of DGFT for these schemes.

## ROSTCL on export of apparel/garments and made-ups extended till 31 March 2024 at existing rates

The Union Cabinet has approved the continuation of RoSCTL till **31 March 2024.** The scheme shall continue with the same rates[11] on exports of apparel/garments (Chapters-61 and 62) and made-ups (Chapter-63) in exclusion from Remission of Duties and Taxes on Exported Products (RoDTEP) scheme for these chapters.

The other textiles products (excluding Chapters-61, 62 & 63), which are not covered under the RoSCTL, shall be eligible to avail the benefits, under the RoDTEP, along with other products as finalised by the Department of Commerce from the dates which shall be notified in this regard[12].

## PLI scheme for large-scale electronics manufacturing extended till 2025-26

Considering that the companies have been unable to achieve incremental sales condition due to the pandemic related lockdowns, restrictions on movement of personnel and other related factors, the Finance Ministry, as a part of economic relief measures, has announced extension in tenure of the PLI scheme for large-scale electronics manufacturing by one year (i.e. till 2025-26)[13].

The scheme provides for incentive of 6% to 4% on incremental sales of goods under target segments manufactured in India, for a period of five years, which shall be applicable from 1 August 2020, taking base year as 2019-20, while participating companies will get an option of choosing any five years for meeting their production targets under the scheme.

10. Trade Notice No. 08/2021-22 dated 8 July 2021
11. As notified by Ministry of Textiles vide Notification dated 8 March 2019
12. Press release dated 14 July 2021
13. Press release dated 28 June 2021

## Cabinet approves PLI scheme for specialty steel

The Union Cabinet has approved the PLI scheme for specialty steel. The benefit of the scheme will accrue to both integrated and secondary steel players.

Specialty steel is value-added steel, wherein normal finished steel is worked upon by way of coating, plating, heat treatment, etc., to convert it into high value-added steel. Such steel can be used in various strategic applications like defence, space, power, apart from automobile sector, specialised capital goods, etc.[14]

**Key features of the scheme:**

- **Categories of specialty steel eligible for the scheme:** The categories of specialty steel, which have been chosen in the PLI scheme, are:
  - Coated/plated steel products
  - High strength/wear resistant steel
  - Specialty rails
  - Alloy steel products and steel wires
  - Electrical steel
- **Duration:** The duration of the scheme will be five years i.e., from 2023-24 to 2027-28.
- **Additional investment:** With a budgetary outlay of INR 6,322 crore, the scheme is expected to bring in investment of approximately INR 40,000 crore and capacity addition of 25 million ton for specialty steel.
- **Employment generation:** The scheme will give employment to about 5,25,000 people, of which 68,000 will have direct employment.
- **Project output:** Specialty steel production will be 42 million ton by the end of 2026-27. This will ensure that approximately INR 2.5 lakh crore worth of specialty steel will be produced and consumed in the country, which, otherwise, would have been imported. Similarly, the export of specialty steel will become around 5.5 million ton, as against the current 1.7 million ton of specialty steel, getting foreign exchange (FOREX) of INR 33,000 crore.
- **Incentive structure:** There are three slabs of incentives under the scheme, from 4% (lowest) to 12% (highest), which have been provided for electrical steel (Cold Rolled Grain Oriented).

## CBIC abolishes renewals of licences/registrations by customs brokers and authorised carriers

To reduce the compliance burden cast on trade, the CBIC has abolished the requirement of periodic renewals of licences/registration issued to customs brokers and authorised carriers, effective from 23 July 2021[15].

Accordingly, the CBIC has notified certain changes in the Customs Brokers Licensing Regulations, 2021, and Sea Cargo Manifest and Transhipment Regulations, 2018, as under:

- Lifetime validity of the licences/registrations
- Provision for making the licences/registrations invalid in case the licencee/registration holder is inactive for the period exceeding one year at a time
- Empower Principal Commissioner or Commissioner of Customs to renew licence/registration, which has been invalidated due to inactivity
- Voluntary surrender of licence/registration

The above changes will be reviewed after six months (i.e., January 2022) by the Board for its impact and changes will be made, if necessary.

## Online filing of AEO T2 and T3 applications

The Authorised Economic Operators (AEO) application processing for AEO T1 on the web-based portal has been functional since December 2018. To take this endeavor for digitisation forward, in line with the government's Digital India initiative, the CBIC has launched a new version (V2.0) for on-boarding of AEO T2 and AEO T3 applicants. The AEO web application is accessible at URL: www.aeoindia.gov.in from 7 July 2021. The new version (V 2.0) of the web application is designed to ensure continuous real-time and digital monitoring of physically filed AEO T2 and AEO T3 applications for timely intervention and expedience[16].

Applicants who are already registered (existing T1 status holder applying for T2) are not required to register again; the existing login credentials can be used for uploading the T2 or T3 application annexures, if eligible.

Further, to ensure smooth roll out, it has been decided that the AEO T2 and T3 applicants would be allowed to physically file AEO application without registering on the AEO portal till 31 July 2021, as a transition measure. However, from 1 August 2021, it will be mandatory for AEO T2 and T3 applicants to register on the portal for AEO certification.

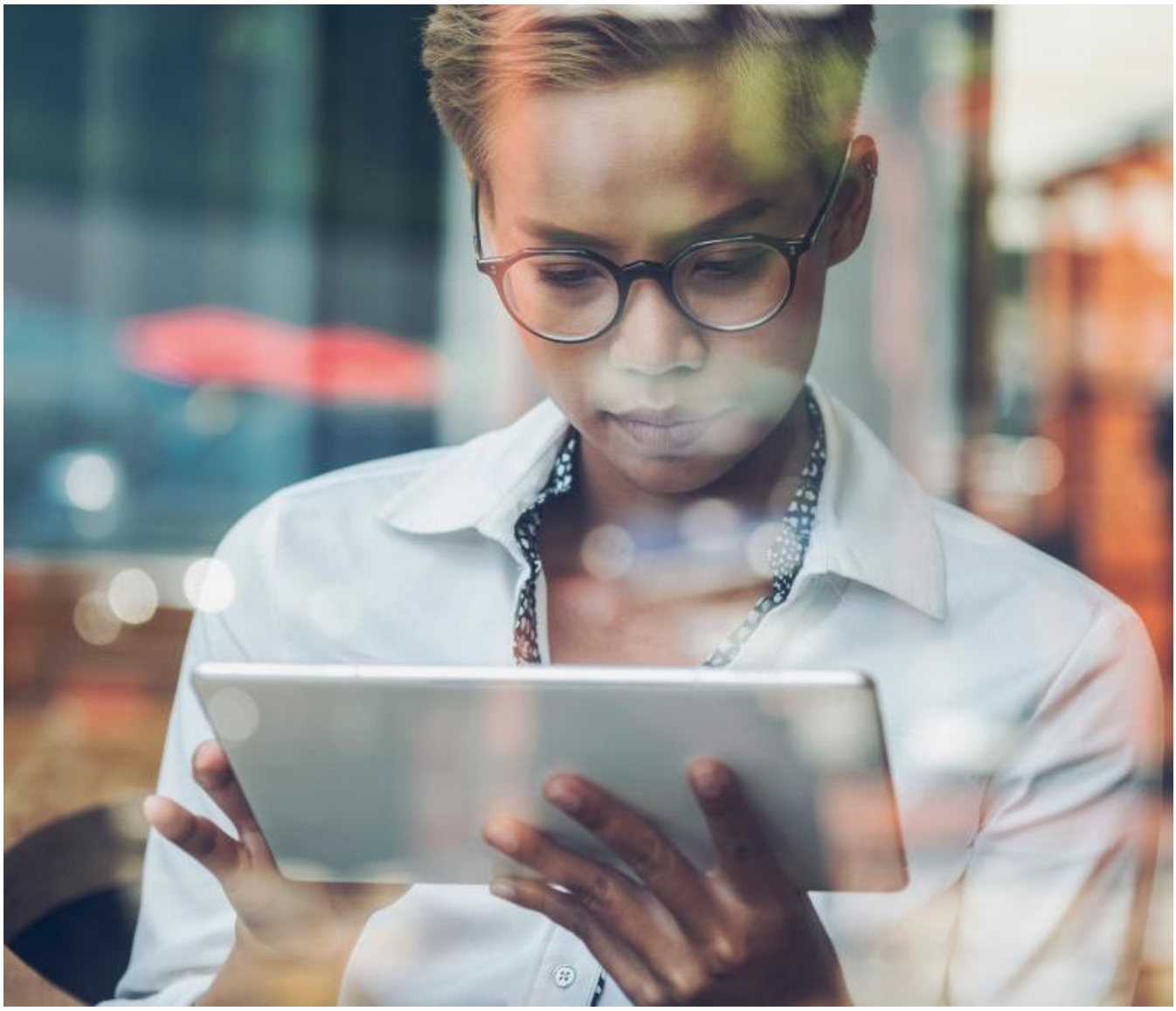
14. Press release dated 22 July 2021
15. Circular No. 17/2021-Customs dated 23 July 2021
16. Circular No. 13/2021-Customs dated 1 July 2021

## Extension of certain timelines under the Karnataka Karasamadhana scheme, 2021

The government of Karnataka, to complete the pre-GST legacy audit and clear tax arrears expeditiously, had introduced a scheme called the Karasamadhana Scheme, 2021 (Scheme), for waiver of penalty and interest under the erstwhile laws.

In view of the representations made due to inconvenience faced by the taxpayers during lockdown, the government of Karnataka has provided certain relaxations under the scheme as mentioned below[17]:

| Particulars | Existing date | Revised date |
|---|---|---|
| Completion of assessment/reassessment/rectification and withdrawal of appeal | 31 July 2021 | 31 August 2021 |
| Full payment of arrears under the scheme | 31 October 2021 | 31 December 2021 |
| Payment on receipt of information from the Assessing Authority/Recovery Officers/Prescribed Authority | 15 November 2021 | 15 January 2022 |



17. Karnataka Government order dated 17 July 2021

# 2a Key judicial pronouncements

## No reversal of input tax credit on inherent loss during manufacturing process: Madras HC

### Summary

The Madras High Court observed that under the GST law, goods lost, stolen, destroyed, written off or disposed by way of gifts or free samples indicate loss of goods that are quantifiable and involve external factors or compulsions. The loss that is occasioned by the process of manufacture cannot be equated to any of the instances. Therefore, it held that the reversal of the input tax credit (ITC), sought by the Revenue, is misconceived as loss during the process of manufacture and is not contemplated or covered by the situations adumbrated under the GST law restricting ITC. Thus, the orders seeking reversal of ITC claimed were set aside.

### Facts of the case

- The petitioners[18] are engaged in the manufacture of MS Billets and Ingots. In the manufacturing of these finished products, there is a loss of a small portion of the inputs.
- The impugned orders sought reversal of a portion of the ITC claimed by the petitioners, proportionate to the loss of input as per the relevant provisions[19].
- Therefore, the petitioner filed the present writ[20] praying to quash the impugned order as being without authority of law, contrary to the settled law and violative of principles of natural justice.

18. M/s ARS Steels & Alloy International Pvt Ltd
19. Section 17 (5)(h) of the CGST Act, 2021
20. W.P. Nos.2885 of 2020 etc. batch

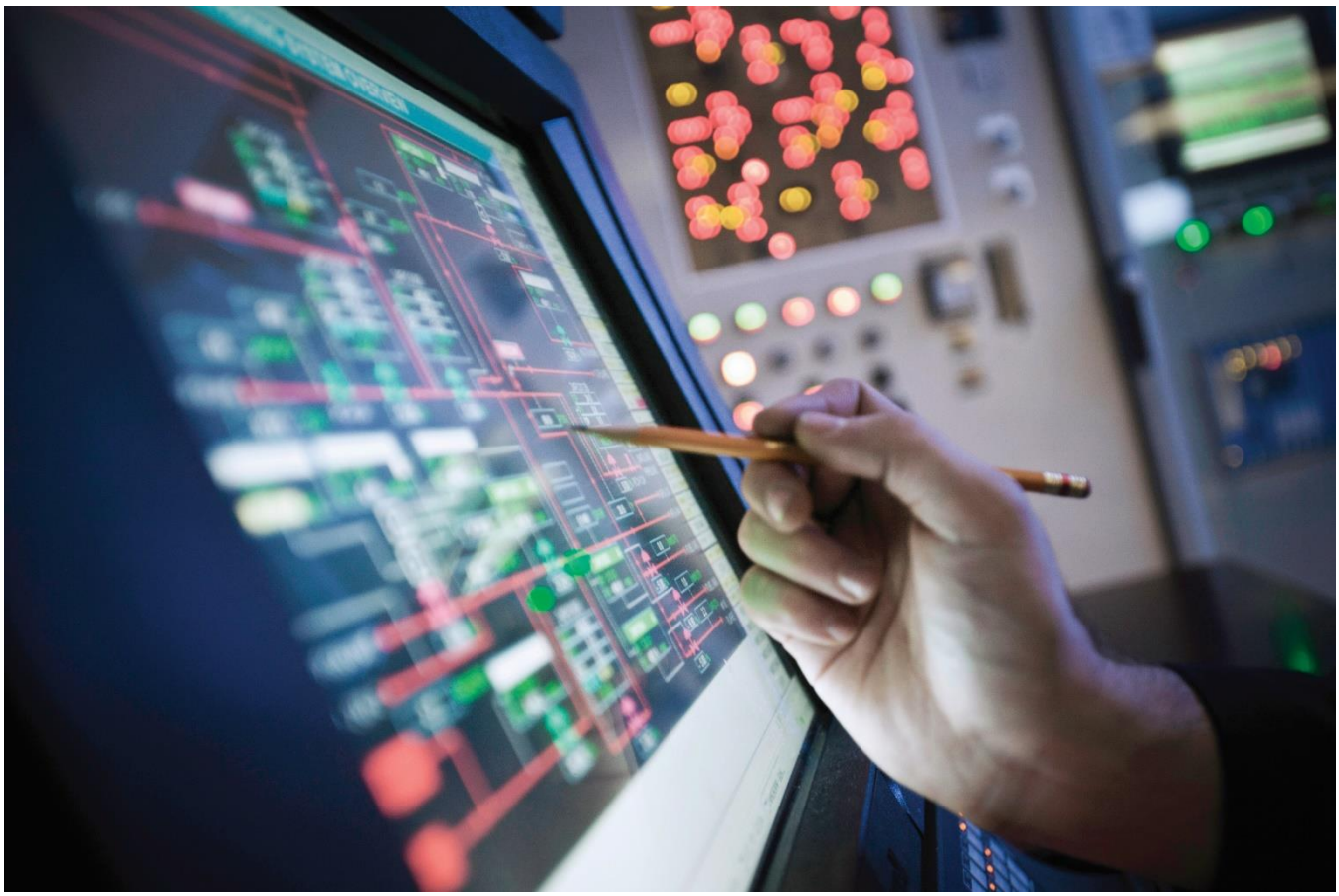
### Madras HC observations and ruling[21]:

- **Situations wherein ITC claimed shall be restricted:** Under the GST law, goods lost, stolen, destroyed, written off or disposed by way of gift or free samples indicate loss of goods that are quantifiable and involve external factors or compulsions. The loss that is occasioned by the process of manufacture cannot be equated to any of the instances.
- **Credit shall be granted on original inputs used:** The HC observed that CENVAT credit should be granted on the original amount of input used, notwithstanding that the entire amount of input would not figure in the finished product[22].
- **Loss during manufacturing cannot be equated to loss by external factors:** The loss that is occasioned by consumption in the process of manufacture is one which is inherent to the process of manufacture itself. Such loss is not contemplated or covered by the situations adumbrated under the GST law[23].
- **Provisions of reversal of ITC misconceived:** The HC held that that the revenue has misconceived the provisions restricting ITC under the GST law. Thus, the writ was allowed and the impugned orders seeking reversal of ITC claimed on loss by consumption of inputs was set aside.

### Our comments

The apex court, under the erstwhile regime, had held that an exact mathematical equation between the quantity of raw material used and the raw material found in the finished product is not possible and, therefore, credit, in respect of lost inputs, cannot be denied.

This is a welcome ruling by the Madras HC and should provide required relief to the manufacturing sector and will set precedence in similar matters.



21. Madras HC Order dated 24 June 2021
22. In case of Rupa & Co. Ltd.
23. U/s 17(5)(h) of the CGST Act, 2021

## Performance fee, carried interest and other fund expenses liable to service tax - CESTAT

### Summary

The CESTAT, Bangalore, observed that the fund registered as a trust is rendering a service in the nature of portfolio management or asset management. The consideration for such services was in the form of withholding the dividends/profits distributable to such subscribers/contributors/investors. Therefore, the CESTAT held that the service tax has been rightly demanded on such amounts, shown as performance fee, carried interest and other expenses.

### Facts of the case

- The appellant[24] is a Venture Capital Funds (VCF) established as a Trust[25]. The appellants' properties (i.e., money contributed by investors) are held in trust by the Trustee for the benefit of beneficiaries, who are contributors to the funds (contributors/beneficiaries). The trustee appoints an investment manager or an asset manager to manage the assets of the appellants.
- Pursuant to an investigation by the service tax department, demand of service tax, interest and penalty was confirmed on the following, as sought to be characterised as service income earned by the trusts[26]:
  - expenses incurred by the appellant
  - disbursement of carry income or carried interest to Class C unit holders in the trust
  - provision for losses and impairment of investment debited to financials.
- The appellant contended as under:
  - expenses retained by the fund have already suffered service tax at the hands of the underlying service providers and hence, the exercise is, in any case, revenue neutral
  - carry income is nothing but a return on investment that is taxable as income in the hands of the underlying investors (and, therefore, not taxable in the hands of the appellant-funds)
  - provision for losses being mere provisional accounting entries are not liable to service tax.
- Therefore, the appellant filed present appeal against before the CESTAT.

24. M/s ICICI ECONET INTERNET AND TECHNOLOGY FUND
25. under the Indian Trusts Act, 1882, and registered with the Securities and Exchange Board of India (SEBI)
26. Section 76, 77 and 78 of the Finance Act, 1991

### CESTAT Bangalore observations and ruling[27]

- **Violation of principles of mutuality:** The impugned trusts have violated the principles of mutuality by concerning themselves in commercial activities and by using the discretionary powers to benefit a certain class of investors or nominees, or employees, or subsidiaries. The funds have been paying huge amounts to the asset management companies ( AMCs) in the form of performance fee and carry interest to the AMCs or their nominees. As far as the distribution of dividends/profit is concerned, the trusts made provisions to act in a manner which is beyond the interest of the subscribers/investors/contributors.
- **Appellant engaged in commercial activity:** The trust is managing the funds of the contributors and, thereby, are rendering a service to the contributors. The said service squarely falls under asset management, as applicable under banking and other financial services.
- **Consideration is in the form of retained profits:** The remuneration is not charged to the contributors but is retained from the amounts that are duly distributable to subscribers/contributors/investors. The funds are rendering the service of portfolio management or asset management under BOFS to the subscribers/contributors/investors and the consideration is in the form of withholding the dividends/profits distributable to subscribers/contributors/investors.
- **Circular clarifying non applicability of service tax not applicable in present case:** The payments made by the appellant are not in the nature of entry and exit expenses. These are huge amounts retained and distributed to the AMCs or their nominees, subject to achieving certain levels of performance. Thus, it is a variable expenditure and cannot be equated to entry or exit load. Moreover, the appellant's trusts are managing VCF and not the mutual funds, therefore, the relevant circular[28] clarifying non-applicability of service tax is not applicable in present case.
- **Service tax demand upheld:** The appellants have devised the structure of the fund in such a manner that the AMC and/or their nominees would get huge sums of money in the guise of performance fee, carried interest, with the twin motive of benefitting the AMC and/or their nominees at the expense of the subscribers and avoiding taxes. Thus, the HC held that service tax has been rightly demanded on the amounts shown as performance fee, carried interest and other expenses.
- **Extension of limitation period upheld:** It cannot be argued that suppression cannot be alleged as the information is in the public domain. It is only after the investigation has been initiated, that the necessary documents were submitted. Thus, the information available in the public domain is of no avail. Therefore, the department was in its right to invoke the extended period for the issue of the show cause notice (SCN).

### Our comments

The decision is likely to have a major impact on the tax positions adopted by the industry at large, both under erstwhile as well as GST regime.

Besides, the CESTAT mentioned that the authorities were right in invoking the extended period for issuance of SCN, as the documents were submitted only after the investigation was initiated. The argument that the required information was already available in the public domain was not accepted by the court. The moot question which arises is whether invoking extended period is justifiable, where the documents/information was already available in the public domain and in cases involving interpretational issues.

27. CESTAT Bangalore Order dated 1 July 2021
28. Circular No. 94/5/2007-Service Tax dated 15.05.2007 and Circular No. 96/7/2007-ST dated 23.08.2007

## Service tax cannot be levied on convenience fee for booking online tickets under OIDAR service – CESTAT

### Summary

The CESTAT, Delhi, observed that the essential characteristic of the arrangement under consideration in these appeals is availing the facility of online booking of ticket and not accessing/retrieving any data/information. Therefore, it held that service tax under the category of OIDAR, therefore, cannot be levied upon a user merely because he receives a code for getting a printout of the ticket from the cinema hall.

### Facts of the case

- The appellant[29] is engaged in the business of exhibition of movies through various cinema halls located all over India.
- The appellant sells tickets for movies from the cinema ticket windows and through its website which is accessible through computer and mobiles phones.
- The appellant received a show cause notice alleging that the convenience fee charged by the appellant on its customers for booking the tickets online through the website is exigible to service tax under the online information and database access retrieval services (OIDAR).
- The appellant filed a reply contending that the convenience fees is charged for the convenience provided to the customers for booking the tickets online rather than physically standing in the queue. Such fee is charged only to recover the cost of infrastructure and bank charges.
- However, the demand of service tax, interest and penalty on convenience fee under the taxable service of OIDAR was confirmed.
- Aggrieved thereby the appellant filed the present appeal.

29. M/s PVR Limited

### CESTAT Delhi observations and ruling[30]

- **Dominant intention is to provide booking facility:** The dominant intention of a user is to book a movie ticket using the online booking facility. A convenience fee is charged because such facility saves time and effort of a user of standing que at the window to procure the ticket.
- **Substance of the transaction:** Any person who visits the website of the appellant to seek information about the show timings or like information does not have to make any payment and it is only when a ticket is booked online that convenience fee is required to be paid by the user. The substance of the transaction is to book a ticket online. It cannot, therefore, be said that convenience fee is charged for any access/retrieval of information or database as contemplated under OIDAR service.
- **Clarification by the Board:** The Board[31] also clarified that e-commerce transactions do not fall within the ambit of OIDAR service. It also clarified that when information is supplied free of charge by the website, no service tax is payable and if such website charges a fee for providing information, only then such a website will be liable to tax under OIDAR.
- **Terms of the arrangement/contract:** An arrangement for OIDAR would contain a term that on payment of fee, the user shall have limited or unlimited rights to retrieve or access data/information. As against this, the terms and conditions of the contract in present case relating to online booking arrangement makes no such averments or declarations and instead are restricted to the grant of online booking facility.
- **Service tax not leviable under OIDAR:** Convenience fee is not charged by the appellant for any access/retrieval of information or data base. Therefore, service tax under OIDAR cannot be levied upon the appellant for the period prior to 1 July 2012.
- **Wrong invocation of the extended period of limitation:** Even when an assessee has suppressed facts, the extended period of limitation can be invoked only when "suppression" is shown to be wilful with intent to evade the payment of service tax. Even suppression of facts must be wilful, and, in any case, suppression has also to be with an intent to evade the payment of service tax. There is no finding by the Commissioner as to whether suppression of facts was wilful. Therefore, the demand for the period April 2007 to March 2011 is beyond prescribed period and deserves to be set aside.

### Our comments

This is a welcome ruling by the Delhi Tribunal and shall provide required relief to the cinema industry and will set precedence in similar matters.

Further, it is imperative to note that, the Tribunal has held that even when an assessee has suppressed facts, the extended period of limitation can be invoked only when suppression is shown to be wilful with intent to evade the payment of service tax. As the adjudicating authority had not established the intention to evade the payment of tax the Tribunal has set aside the invocation of extended period of limitation.

The above ruling is in line with the Apex Court's ruling in the case of Pushpam Pharmaceuticals Company wherein it had observed that since suppression of facts has been used in the company of strong words such as fraud, collusion, or wilful default, suppression of facts must be deliberate and with an intent to escape payment of duty.

30. CESTAT Delhi Order dated 5 July 2021
31. Circular dated 9 July 2001

# 2b Decoding advance rulings

## Overseas head office and its Indian branch are distinct legal entities under GST law – Kerala AAR

### Summary

The Kerala Authority for Advance Ruling (AAR) observed that even though the applicant and its overseas head office (HO) cannot be treated as distinct persons under the law of contracts or in commercial or accounting parlance, they are separate legal persons/distinct persons as far as the applicability of GST law is concerned. Therefore, it held that the recipient of services shall be the overseas HO and thus the service does not qualify to be export of service.

### Facts of the case

- The applicant[32] (a branch of Head Office located in USA) engaged in the business of providing information technology enabled services such as mortgage orientation and related services.
- The applicant has entered into an Inter-Company Agreement with HO for providing services to the customers located outside India. The HO located at USA requires the following services performed on behalf of its customers who are located outside India: Mortgage Orientation, Primary Servicing, Special Servicing, Cash Management and Analytics and Reporting.
- The HO reimburses the applicant for the costs incurred to perform the services at cost plus 10% mark up. The applicant issues commercial invoice to HO and receives the payment in convertible foreign currency.
- The applicant sought an advance ruling before the Kerala AAR to understand whether the supply of services by it to the customers located outside India shall be liable to GST.

### Kerala AAR observations and ruling[33]

- **Legal fiction under GST law:** Under the GST law a legal fiction has been created that the establishment of a person in India and any other establishment of the same person outside India are two separate legal persons for the purpose of GST law[34].
- **Separate legal entity under GST law:** Even though the applicant and the HO cannot be treated as distinct persons under the law of contracts or in commercial or accounting parlance, they are separate legal persons/distinct persons as far as the applicability of GST law is concerned.
- **Recipient of services is HO:** The contract entered by the customers with HO at USA and the payment made by them cannot be considered as contract executed or payment made to the applicant. Even if it is assumed that the services are provided directly to the customers of HO by the applicant, the applicant can only be considered as providing the services on behalf of HO to the overseas customers. Therefore, the recipient of the services rendered by the applicant as per the agreement is the HO of the applicant.
- **Service does not qualify as export:** The condition that the supplier of service and the recipient of service are not merely establishments of a distinct person is not satisfied[35]. Accordingly, the service provided by the applicant do not constitute export of service and consequently the applicant is liable to pay IGST.
- **Specific exemption:** Specific exemption has been provided to services supplied by an establishment of a person in India to any establishment of that person outside India, which are treated as establishments of distinct persons. Therefore, the services provided by the applicant is exempted from IGST from 27 July 2018 onwards.

### Our comments

The GST law specifically provides that where a person has an establishment in India and any other establishment outside India then such establishments shall be treated as establishments of distinct persons. Further, a person carrying on a business through a branch or an agency or a representational office in any territory shall be treated as having an establishment in that territory.

The Kerala AAR has also held that under GST law, the HO located USA and its Indian branch shall be treated as a separate legal persons/distinct persons.

Even though the advance ruling is applicable only to the applicant, the same acts as a guiding tool for other taxpayers with similar issues.

32. M/s Sutherland Mortgage Services Inc
33. Kerala AAR order no. KER/96/2021 dated 7 May 2021
34. As per explanation to Section 8 of IGST Act, 2017
35. Section 2(6)(v) of the IGST Act, 2017

# 03 Experts' column

## GST on supplies by duty-free shops: An analysis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International airports often have duty-free shops (DFS) at the departure and arrival areas. There is a lot of craze among people for these shops, as the goods sold are comparatively cheaper than the general market price. Such shops offer a wide variety of imported and indigenous goods, such as liquors, branded watches, eatable items, etc., to outbound and inbound passengers. As the name suggests, the supply of goods from DFS appears to be free from any kind of taxes/levies.

To operate such DFS, one must obtain a licence from the airport authorities, for which the airport operator charges a certain amount in the form of concession/licence fees, airport service charges, marketing fees and utility charges.

Under Customs laws, these shops are granted a special bonded warehouse licence under Section 58A of the Customs Act, 1962. Upon obtaining such licence, the warehouse is recognised as a special bonded warehouse, wherein the imported dutiable goods can be stored without the payment of duty. Movement of goods from such special warehouses to the DFS is carried out under the strict supervision of the customs authorities.

Taxability of inward and outward supplies of DFS has always been a debatable issue and under the erstwhile indirect tax regime, the apex court[36] observed that the duty-free shops are located beyond the customs frontiers of India and expressed a view that sales made from the DFS to the international passengers at the international airport are constitutionally exempt from tax under Article 286 of the Constitution of India (sales being in the course of export out of India within the meaning of Section 5(1) of the CST Act).

Further, in a refund matter, it was held[37] that duty free areas qualify as non-taxable territories because these shops are located beyond the customs frontiers. Therefore, the levy of service tax on services provided by airport authorities to such DFS and other services, for which place of provision of services falls in the duty-free area, is without the authority of law and would be entitled to a refund.

## Duty-free shops and GST

GST law has not provided any specific exemption/relaxation concerning DFS and has unsettled the decided tax positions. However, it has defined the terms 'import', 'export', and 'customs frontiers' identical to the definitions provided under the Customs Act, 1962.

As per the definitions provided, the term 'import of goods' means bringing the goods into India from a place outside India and, on the other hand, the term 'export' has been defined to mean taking goods out of India to a place outside India.

In addition, Section 7(2) of the IGST Act states that, "Supply of goods imported into the territory of India, till they cross the customs frontiers of India, shall be treated to be a supply of goods in the course of inter-state trade or commerce".

Proviso to Section 5(1) of IGST Act states that IGST on goods imported into India shall be levied and collected as per the provisions of Section 3 of the Customs Tariff Act, 1975 on the value as determined under the said Act, at the point when duties of customs are levied on the said goods under the Customs Act, 1962.

A plain reading of the above provisions suggests that the supply of goods, without crossing the customs frontier, is treated as an inter-state supply and the levy would be as per the Customs Act.

Further, with effect from February 2019, the Schedule III of the CGST Act was amended to include the supply of warehoused goods before clearance for home consumptions neither as a supply of goods nor a supply of services.

Taxability under GST would also depend on the area (arrival/departure) from which the goods have been supplied to the passengers. In the subsequent paragraphs, we will analyse the taxability of goods supplied from DFS in various circumstances.

### Goods supplied from DFS located at the departure area to outbound international passengers: Whether qualifies as 'export' under GST

Goods supplied from DFS located at the departure terminal, to the outbound passengers, are not cleared for home consumption and the moot question which arises here is whether the critical test of supplying goods to a place outside India can be fulfilled in such a case or not.

As per the provisions of the Sale of Goods Act, 1930, every invoice issued by DFS must envisage a condition that the passenger will not consume the goods until he/she lands at the final destination outside India. In other words, the passenger shall become the owner of the goods only upon reaching the final destination, which is outside India. Accordingly, the outbound passenger is under an obligation and compulsion to carry the goods out of India as a carrier for export.

In light of the above, since the goods supplied by DFS (located at the departure area) are taken and consumed outside India by the passenger himself, such transactions would qualify as export of goods, as per the IGST Act, and can be treated as zero-rated supply. Additionally, since such supply becomes an export transaction, it would not fall under the ambit of Schedule-III (supra).

A similar view has been taken by various High Courts (HC) across the country in many writ petitions[38]. However, in the matter of Rod Retail Private Limited, Authority for Advance Ruling (AAR), Delhi, has taken a contrary view and has held that supply of goods to the international passengers going abroad, from the shop located in the security hold area of the Indira Gandhi International Airport, is not an export but a taxable supply under GST.

It is pertinent to note here that the advance ruling is binding only to the applicant and the CBIC vide a circular[39] has clarified that the issue before the AAR (supra) was relating to duty-paid shops and not duty-free shops and the dispensation allowed to the duty-free shops is not affected in any manner.

36. India Tour Development Corporation through Hotel Ashoka
37. CESTAT-Commissioner of Service Tax VII, Mumbai vs. Flemingo Duty-Free Pvt. Ltd.
38. Madras HC (2021)- Flemingo Duty-Free Shops Pvt. Ltd vs UOI
Kerala HC (2020)- CIA Duty Free and Retails Pvt. Ltd vs UOI
Bombay HC (2019)- Sandeep Patil vs UOI
Allahabad HC (2019)- Atin Krishna vs UOI
39. F.No:473/5/2018-LC

### Goods supplied from DFS located at the arrival area- Whether a 'taxable supply' under GST

Now, we will discuss the tax implications in respect of goods supplied from the DFS, which are located at the arrival area of the international airport.

- **Position till 31 January 2019:** At the time of importation of goods from a place outside India, DFS files a bill of entry for warehousing and executes the bond. Subsequently, a space certificate is issued to the DFS for physical storage of the goods into a special warehouse (supra) and no liability, under customs laws, gets triggered upon filing of bill of entry for warehousing.

  The duty-free warehouse and DFS are situated within the limits of the customs area and, therefore, the goods lying therein do not cross the customs frontiers. It becomes leviable to custom duty and integrated goods and services tax (IGST) only upon the removal of warehoused goods from the customs area.

  Considering the above, when the goods are supplied by DFS to the arriving passenger, such supply is made before crossing the customs frontiers of India, therefore, on such supply, DFS is liable to pay neither customs duty nor IGST.

- **Whether passengers would be liable to pay taxes on such transactions**: Although a passenger who buys goods from DFS and, subsequently, crosses the customs barriers of India would file an import declaration and would become an importer, but, even then, he is not required to pay any customs duty and IGST on such goods upon crossing the customs frontiers, provided it is within the limit prescribed under baggage rules and related exemptions notifications[40].

- **Position post 1 Feb 2019, after amendment in Schedule III:** The government has subsequently amended Schedule III (supra) to include the supply of warehoused goods before consumptions to be neither as a supply of goods nor a supply of services. Accordingly, it can be interpreted that the supply of goods from arrival from DFS would fall under Schedule III and, therefore, would not be covered under the ambit of taxable supply under GST.

However, in the customs matter of Aarish Altaf Tinwala[41], it was held that supply of goods from arrival DFS is also treated as export and the passenger filing import declarations for such purchases becomes the importer.

### Admissibility and refund of ITC: An area of concern

On the procurement side, the input tax credit (ITC) is also a key area of concern for duty-free shops. In addition to the procurement of indigenous goods, DFS procures various input services from domestic suppliers, such as custom house agents and airport operators who provide licence, maintenance and other legal and professional services. In absence of any upfront exemption, such service providers normally charge all the applicable taxes from DFS.

#### Proportionate credit reversal

As far as ITC reversal is concerned, DFS is not required to reverse any proportionate ITC in respect of the transactions which are covered under Schedule-III of the CGST Act, pursuant to insertion of an explanation in Section 17(3) of the CGST Act.

It may be noted that since the amendment was introduced in February 2019, DFS was required to reverse the credit for the period prior to the amendment (i.e. from July 2017 to January 2019). However, one may take the shelter of Judgment of Aarish Altaf (supra).

#### Refund of taxes paid on inward supplies

With effect from 1 July 2019, certain notifications[42] have been issued, which allow retail outlets established at the departure area of the international airport beyond immigration counters to claim refund of the GST paid on the locally-procured goods, supplied to international outgoing passengers. This is an optional provision applicable only qua the indigenous goods and not applicable to imported/ warehoused goods.

However, for locally procured input services, there is no specific provision that allows refund to the DFS. Since the supply of imported/warehoused goods from DFS qualifies as exports/zero-rated supplies (supra), DFS would be eligible to claim a refund of the accumulated ITC.

It is pertinent to mention that by taking similar views, the refund has been allowed to DFS in various writ petitions (as referred above).

40. Customs Notification No. 43/2017 and IGST Notification No. 2/2017
41. Order dated 31st August 2018- F.No. 371/142/B/2018-RA/ 1391
42. Notification no. 11/2019-Central Tax (Rate) and 10/2019-Integrated Tax (Rate)

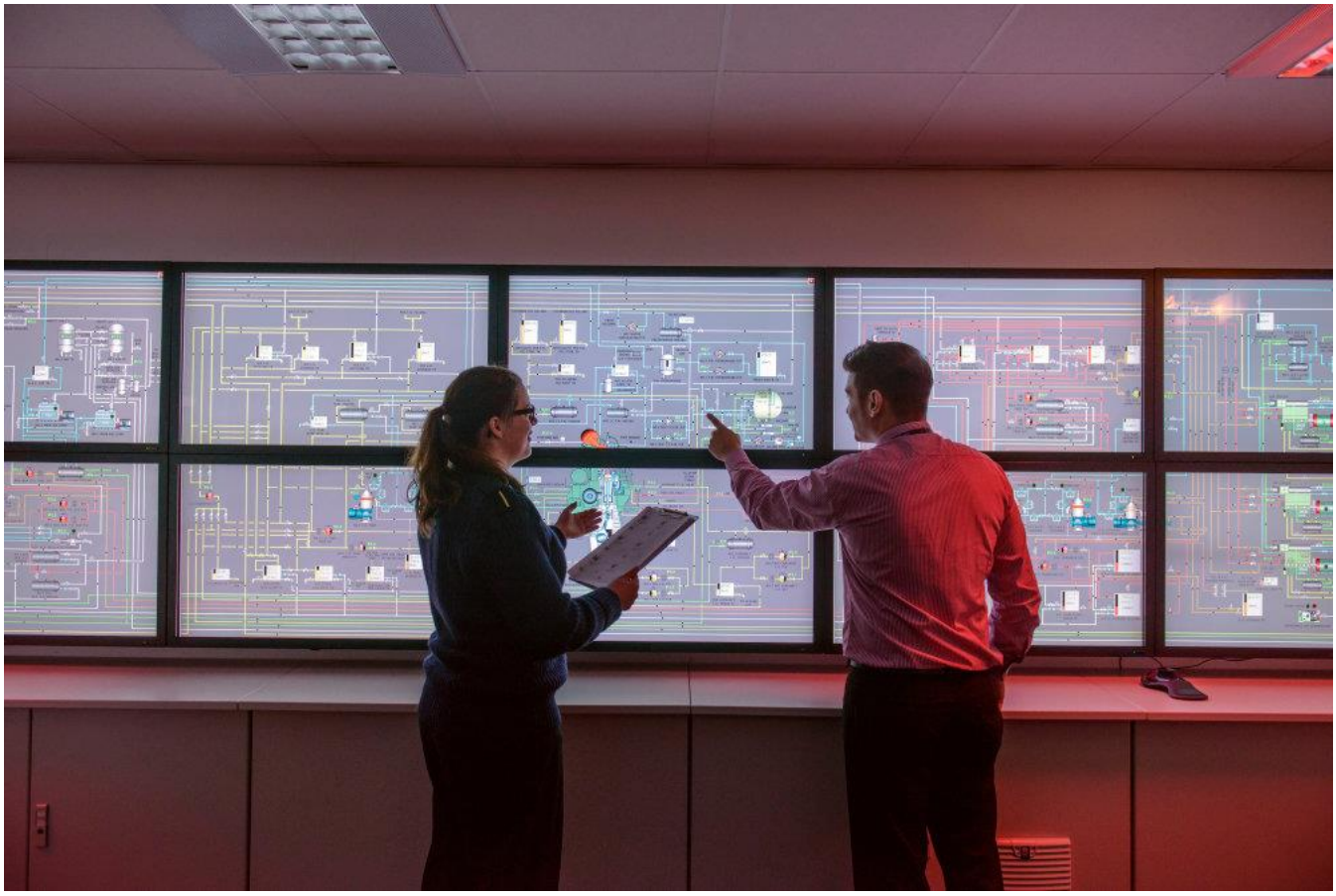
## Conclusion

At this juncture, one may take a view that for the time being, the issue has been settled, with different provisions operating for DFS located at the arrival and departure terminal. However, critical analysis suggests that certain issues are still unsettled and need to be clarified:

- Treating supplies from arrival terminal as exports without analysing the crucial test of sending goods outside India
- Re-claiming the credit already reversed on supplies made from arrival terminal by relying upon the Judgment of Aarish Altaf (supra)
- Treatment of goods supplied by domestic suppliers to the DFS; whether they should be treated as exports
- Admissibility of refund for tax paid on input services procured domestically, as the existing provisions are in respect of goods only

It is expected that the government would bring some clarity on the above-mentioned issues and would simplify the provisions by introducing specific upfront exemption for the procurements made by DFS and by simplifying the procedures for DFS.

*(With inputs from Ravi Goyal, Assistant Manager, Tax)*



# 04 Issues on your mind

### Whether carrying physical copy of an e-invoice is mandatory during transportation of goods?

The Quick Reference (QR) code having an embedded Invoice Reference Number (IRN) in it, may be produced electronically, for verification by the proper officer, in lieu of the physical copy of such tax invoice.

### What is the impact of cancellation of registration of a taxpayer under QRMP Scheme?

In case registration of a taxpayer under the Quarterly Returns Monthly Payment (QRMP) scheme is cancelled, with effective date of cancellation being any date after the 1st day of Month 1 of a quarter, they would be required to file Form GSTR-1 for the complete quarter, as the last applicable return.

However, if the registration is cancelled on a later date during the quarter, the filing will become open on 1st of month, following the month with the cancellation date. For example, if cancellation has taken place on 20 May, Form GSTR-1 for the quarter of April to June can be filed anytime on or after 1 June.

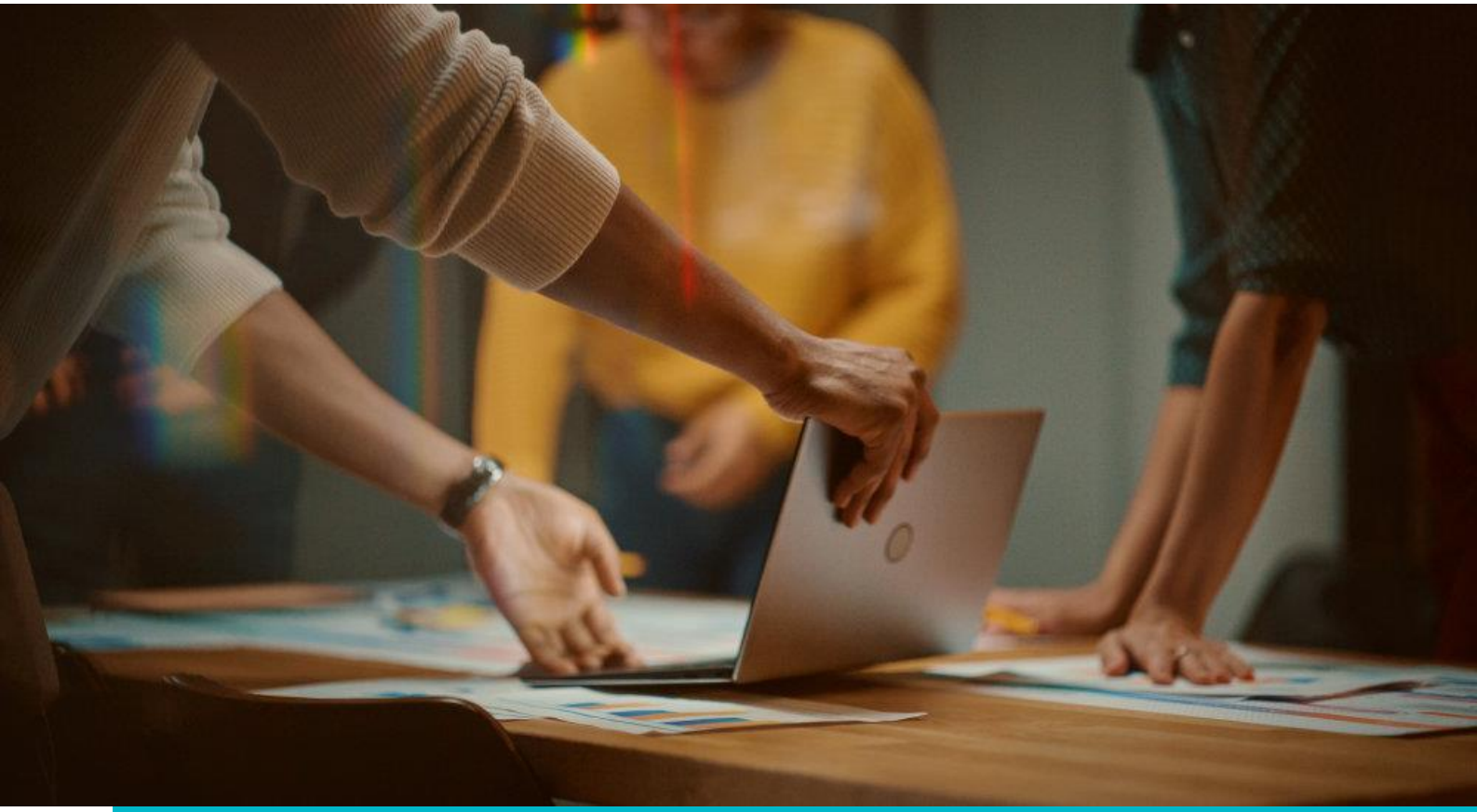
### Can a taxpayer under QRMP scheme file nil returns through SMS?

The facility of filing nil returns in Form GSTR-1 (quarterly) through SMS has been enabled for taxpayers under the QRMP Scheme. They can now file it by sending a message in specified format to 14409. The format of the message is **< NIL > space < Return Type (R1) > space< GSTIN > space < Return Period (mmyyyy) >.**

### What is the timeline for filing application for revocation of cancellation of registration in Form GST REG-21?

Effective from 1 July 2021, the timelines for filing of application for revocation of cancellation (in Form GST REG-21) is 90 days from the date of order of cancellation of registration (in Form GST REG-19).

# 05 Important developments in direct taxes



## Important amendments/updates

### Guidelines issued for withholding tax on purchase of goods[43]

CBDT has issued a circular[44] providing clarifications on the applicability of tax deduction at source (TDS) provisions on purchase of goods under section 194Q of the Act. Key highlights of the said circular are as follows:

#### Cases where the provisions will not apply

- A non-resident buyer whose purchase is not effectively connected with the PE[45] of such non-resident in India.
- Transactions in securities and commodities, which are traded through recognised stock exchanges or cleared and settled by the recognised clearing corporation which includes recognised stock exchanges/clearing corporations located in International Financial Service Centre.
- Transactions in electricity, renewable energy certificates and energy saving certificates traded through power exchanges[46].
- On purchase of goods from a person, being a seller, who as a person is exempt from tax[47]. Further, on the same lines, tax collection at source (TCS)[48] shall not be applicable if buyer's income is exempt from tax. However, these clarifications would not apply if only part income of the buyer/seller is exempt.
- Buyer is not required to deduct TDS in the year of incorporation.

43. Under Section 194Q of the Income tax Act, 1961 (the Act)
44. Circular no. 13 of 2021 dated 30 June 2021
45. Permanent establishment. It has been clarified that "permanent establishment" shall mean to include a fixed place of business through which the business of the enterprise is wholly or partly carried on
46. Registered in accordance with Regulation 21 of Central Electricity Regulatory Commission
47. Under the provisions of the Act or any other act passed by the Parliament
48. Under section 206C(1H) of the Act

### Calculation of threshold for Financial Year 2021-22

- **Threshold of INR 5 million:** The threshold with respect to a particular seller will be computed from 1 April 2021. However, TDS will be applicable on payment or credit made on or after 1 July 2021.
- **Turnover threshold of INR 100 million:** Buyer is required to meet turnover threshold of INR 100 million from the business carried on by him, turnover or receipts from non-business activity is not to be considered.

### Other Clarifications

- **Payment or credit before 1 July 2021:** It has been clarified that TDS is not required to be deducted if either of the two i.e. payment or credit has happened before 1 July 2021.
- **Advance payment:** TDS provisions would also apply in case of advance payments made by the buyer.
- **Goods and Service Tax (GST):** If the GST component is indicated separately, tax will be deducted on the amount credited without including such GST. However, if tax is deducted on payment basis, it would be deducted on the whole amount since the GST component would not be separately identifiable.
- **Purchase return:** If seller refunds the money against the purchase return, then the TDS deducted earlier may be adjusted against subsequent purchase from the same seller. However, no adjustment is required if the purchase return is replaced with goods by the seller.

Further, clarifications have also been provided as regards the interplay of the aforesaid section with other TDS[49] and TCS[50] provisions.

## Rules for taxability of transfer of assets by a specified entity[51] on reconstitution/dissolution and related guidelines have been issued

The Finance Act, 2021[52] introduced provisions for taxability of gains on account of transfer of certain assets to a 'specified person'[53] on dissolution or reconstitution of a 'specified entity'.

CBDT has now amended[54] the existing Rules[55] for determining period of holding of capital assets in such cases[56]. Further, a new Rule[57] has been inserted for determining attribution of income in such cases. To remove difficulties, guidelines[58] have been issued wherein certain illustrations have been provided to clarify the methodology.

## Government introduces Rules[59] for computing capital gains and WDV[60] where depreciation on goodwill has been claimed

The Finance Act, 2021 disallowed depreciation of goodwill with effect from 1 April 2021. CBDT has now notified[61] relevant Rules for adjusting the (written-down value) WDV of intangible block of assets and computing short-term capital gains where goodwill (on which depreciation has been claimed by the taxpayer) forms part of the 'block of assets'.

## CBDT relaxes requirement for e-filing Forms 15CA/15CB up to 15 August 2021

In view of the difficulties being faced by taxpayers in electronic filing of Forms 15CA/15CB on the new portal,[62] CBDT has extended[63] the last date for manual submission of aforesaid forms for the purpose of foreign remittances to 15 August 2021 from 15 July 2021. Accordingly, taxpayers can submit these forms in manual format with authorised dealers. It has been reiterated that a facility will be provided on the new e-filing portal to upload these forms at a later date, for the purpose of generation of the Document Identification Number.

49. Section 194-O of the Act
50. Section 206C(1H) of the Act
51. "Specified entity" means a firm or other association of persons or body of individuals (not being a company or a co-operative society)
52. Introduced Section 9B of the Act and substituted existing provisions of section 45(4) of the Act
53. "Specified person" means a person, who is a partner of a firm or member of other association of persons or body of individuals (not being a company or a co-operative society) in any previous year
54. Notification 76 of 2021 dated 2 July 2021
55. Rule 8AA of the Income-tax Rules 1962 (the Rules)
56. Cases referred to in section 45(4) of the Act
57. Rule 8AB of the Rules
58. Circular No. 14 of 2021 dated 2 July 2021
59. Rule 8AC of the Rules
60. Written down value
61. Notification no. 77 of 2021 dated 7 July 2021
62. www.incometax.gov.in
63. Vide Press release dated 20 July 2021

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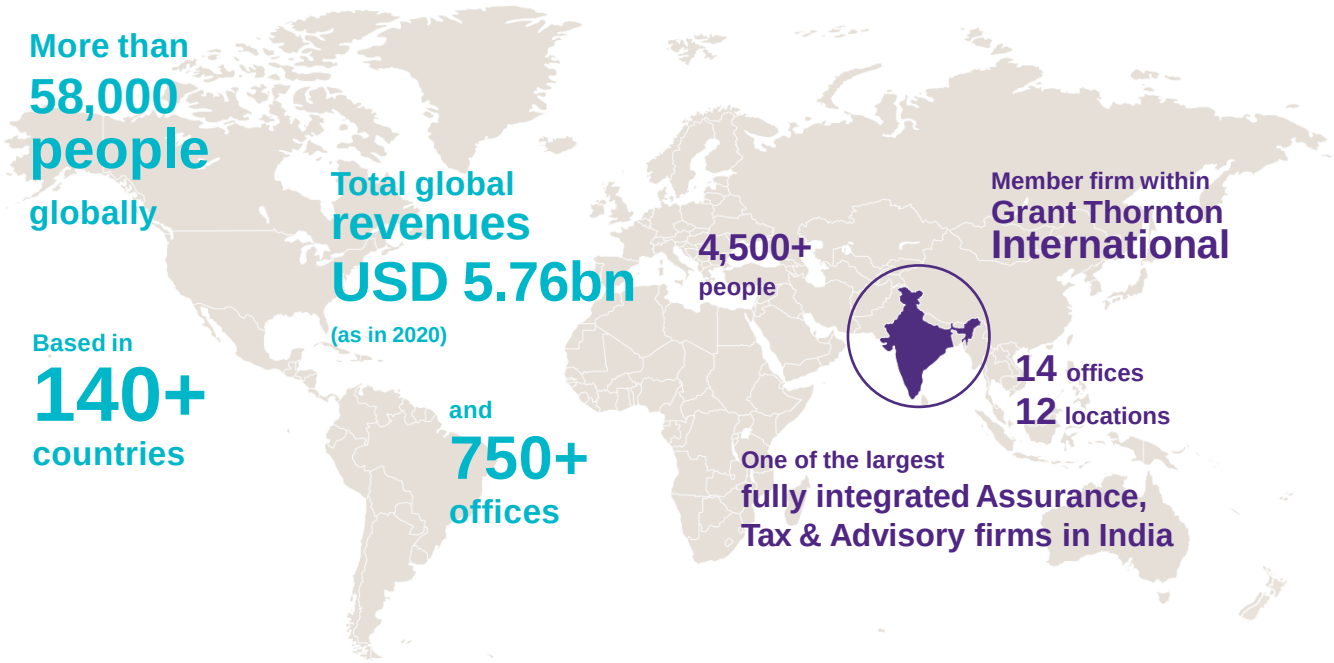


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