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GST Compendium

A monthly guide

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Editor’s note

The long-awaited rates for claiming benefit under the Services Exports from India Scheme (SEIS) for the Financial Year 2019-20 have been finally notified. There is an overall reduction in duty entitlement by 2% in comparison with the previous year. Moreover, benefits for certain important services such as management consulting services and testing services have also been withdrawn.

Pursuant to the recommendation of the recently held 45th GST Council meeting, the Central Board of Indirect Taxes and Customs (CBIC) has issued clarifications on one of the most litigated issues on the taxability of ‘intermediary services’. However, the clarification does not cover all the scenarios/business models. Though a welcome move, litigation on some aspects is likely to continue, in absence of complete clarity.

The Apex court has affirmed the judgment of the Madras HC that provisions restricting the refund of accumulated input tax credit (ITC) for input services under the inverted duty structure are intra vires and does not need to be read down.

In this edition, we have also discussed the key aspects of the recently notified guidelines and rates under the Remission of Duties and Taxes on Exported Products scheme.

On the direct tax front, the Central Board of Direct Taxes (CBDT) has extended the timelines for filing income-tax returns, furnishing of tax audit and transfer pricing reports, and other compliances, such as linking of Permanent Account Number and Aadhaar card.

Hope you will find this edition an interesting reading.

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01 Important amendments/updates

Validity of Foreign Trade Policy 2015-2020 further extended up to 31 March 2022

In view of the unprecedented situation arising out of COVID-19, the Government of India had earlier extended the existing Foreign Trade Policy (FTP) 2015-2020 up to 30 September 2021. Similar extension was also made in the related procedures by extending validity of the handbook of procedures up to 30 September 2021.

The government has now further extended the validity of the existing FTP and the handbook of procedures up to **31 March 2022[1].**

Government notifies the list of eligible services and rates under SEIS for services rendered in FY 2019-20

The Government has notified the list of eligible services and rates for claiming benefit under the SEIS for services rendered in financial year (FY) 2019-20[2].

1. Notification No. 33/2015-2020 dated 28 September 2021 and Public Notice No. 25/2015-2020 dated 28 September 2021
2. Notification No. 29/2015-2020 dated 23 September 2021

Key changes notified

- **Maximum entitlement:** Service providers of eligible services shall be entitled to duty credit scrip at notified rates on net foreign exchange earned with the total entitlement capped at INR 5 crore per Import Export Code (IEC) for FY 2019-20.
- **Last date for filing application:** The last date for filing online application for SEIS claim for FY 2019-20 shall be 31 December 2021.
- **Late cut:** Provision of late cut shall not apply for SEIS applications for FY 2019-20 and such applications shall get time barred after 31 December 2021.
- **Payments in Indian rupees:** Facility to claim benefits under SEIS on payments in Indian rupees shall not be available for services rendered in FY 2019-20.

Our comments

After various representations, the long-awaited rates for SEIS for FY 2019-20 have finally been announced. However, the duty entitlement under the recently notified list has been reduced from 7% to 5% and from 5% to 3%.

Further, the benefit under the SEIS has been withdrawn for certain important services such as management consulting and related services, technical testing and analysis service, cargo handling services, etc., which were earlier claiming benefits at 7% or 5%.

Given the hardship and working capital issues due to COVID-19 pandemic faced by the businesses currently, such reduction/withdrawal of benefits will likely cause immense pressure on businesses.

Government notifies last date for submitting applications under scrip-based schemes

The government has notified the last date for submitting online applications for scrip-based schemes under the Foreign Trade Policy 2015-20 as **31 December 2021**. Further, the revised late cut provisions for the applications submitted up to 31 December 2021 have also been notified as follows[3]:

Scheme	Coverage	Late cut applicable as % of entitlement under the scheme	
Merchandise Exports from India Scheme (MEIS)	Goods export made in period from 1 July 2018 to 31 December 2020	FY 2018-19 (1 July 2018 to 31 March 2019)	10%
		FY 2019-20 and FY 2020-21 up to 31 December 2020	Nil
Services Exported from India Scheme (SEIS)	Service exports rendered in FY 2018-19 and 2019-20	FY 2018-19	5%
		FY 2019-20	Nil
Rebate of State and Central Taxes and Levies (RoSCTL) scheme	Exports made from 7 March 2019 to 31 December 2020	7 March 2019 to 31 December 2020	Nil
Rebate of State Levies on Export of Garments (RoSL) scheme	Exports made up to 6 March 2019 for which claims have not been disbursed under scrip mechanism	Up to 6 March 2019	Nil
2% additional adhoc incentive	Exports made in the period 1 January 2020 to 31 March 2020		NA

Further, no applications shall be allowed to be submitted after 31 December 2021. Applications submitted after the last date would become time-barred and late-cut provisions shall also not be available.

In addition, the government has notified that the validity period of aforesaid scrips, to be issued on or after 16 September 2021, shall be 12 months from the date of issue.

3. Notification No. 26/2015-20 dated 16 September 2021

Government notifies facility to avail extension in export obligation period under AA and EPCG authorisations till 31 December 2021

The government has notified an option to avail extension in export obligation (EO) period under the advance authorisation (AA) and Export Promotion Capital Goods (EPCG) authorisations without paying composition fees as under[4]:

Scheme	Original or extended EO period coverage	Extended EO period	Condition
AA	1 August 2020 to 31 July 2021	31 December 2021	5% additional export obligation in value terms (in free foreign exchange) on the balance export obligation on the date of expiry of export obligation period
EPCG	1 August 2020 to 31 July 2021	31 December 2021	5% additional export obligation in value terms (in free foreign exchange) on the balance export obligation on the date of expiry of export obligation period

Further, export obligation extension facility upon payment of composition fees in case of AA and EPCG would remain available for authorisations as per the eligibility. Refund of composition fees shall not be permitted in case AA holders and EPCG holders have already obtained export obligation extension upon payment of composition fees.

CBIC notifies Electronic Duty Credit Ledger Regulations, 2021 for issuance of duty credit scrips

The CBIC has notified the Electronic Duty Credit Ledger Regulations, 2021 for issuance of duty credit scrips under the Remission of Duties and Taxes on Exported Products (RoDTEP) and the Rebate of State and Central Taxes and Levies (RoSCTL) Schemes[5].

Key aspects for consideration

- **Issuance of Duty Credit in the scroll**: A shipping bill or a bill of export having a claim of duty credit, presented on or after 1 January 2021 shall be processed in the customs automated system and the claim shall be allowed after filing of the export report. After the claim is allowed, a scroll for duty credit will be generated and the scroll details shall be visible in the customs automated system.
- **Creation of e-scrip:** An option has been given to exporters to combine the duty credits of a particular scheme and carry forward the said credits to create an e-scrip for that scheme within a period of one year from the date of generation of scroll in the system. In case the exporter does not exercise the option within a period of one year, duty credit in each scroll will be combined and a single e-scrip will automatically be created.
- **Registration of e-scrip:** The e-scrips will be automatically registered. Each scrip shall have a unique identification number
- **Use and validity of e-scrip:** The duty credit available in the e-scrip in the ledger shall be used for payment of basic customs duty. The e-scrip will be valid for a period of one year from the date of its creation and the unutilised duty credit at the end of such period will lapse and shall not be regenerated.
- **Transfer of Duty:** The duty credit available can be transferred in full to the ledger of another person holding importer-exporter code number. Transfer of duty credit in part is not permitted and the validity of e-scrip would not change on account of transfer.
- **Suspension or cancellation of duty credit:** In case a person contravenes any provisions, the duty credit or e-scrip shall stand suspended or cancelled in the ledger.

4. Notification No. 28/2015-2020 dated 23 September 2021
5. Notification No. 75/2021-Customs (NT) dated 23 September 2021

Cabinet approves Production Linked Incentive scheme for textiles

The Union Cabinet has approved a Production Linked Incentive (PLI) scheme for textiles for Man-Made Fabrics (MMF) apparel, MMF fabrics and 10 segments/products of technical textiles.[6]

The scheme will promote production of high-value MMF fabrics, garments and technical textiles in the country. This will give a major push to the growing, high-value MMF segment, which will complement the efforts of cotton and other natural fibre-based textiles industry in generating new opportunities for employment and trade, resultantly helping India regain its historical dominant status in global textiles trade.

The government has also launched a National Technical Textiles Mission in the past for promoting research and development efforts in this sector. PLI scheme will further help in attracting investment in this segment.

Key features of the scheme

- **Budgetary outlay:** Incentives worth INR 10,683 crore will be provided to the industry over five years.
- **Eligibility:**

Eligibility	Minimum investment
First part	Firm/company willing to invest a minimum of INR 300 crore in plant, machinery, equipment and civil works (excluding land and administrative building cost) to produce products of notified lines (MMF fabrics, garments) and products of technical textiles
Second part	Firm/company willing to invest a minimum of INR 100 crore

- **Fresh investment:** The PLI scheme for textiles will lead to fresh investment of more than INR 19,000 crore; cumulative turnover of over INR 3 lakh crore will be achieved under this scheme.
- **Additional employment:** The scheme will create additional employment opportunities of more than 7.5 lakh jobs in this sector and several lakhs more for supporting activities.
- **Positive impact:** Priority will be given for investment in aspirational districts, Tier 3, Tier 4 towns and rural areas. This scheme will positively impact states such as Gujarat, UP, Maharashtra, Tamil Nadu, Punjab, AP, Telangana and Odisha.

Government notifies Production Linked Incentive scheme along with guidelines for the auto industry

The Union Cabinet had approved a Production Linked Incentive (PLI) scheme for the automobile industry to overcome the cost disabilities to the industry for manufacture of advanced automotive technology products in India[7]. The scheme for the auto sector will incentivise high-value advanced automotive technology vehicles and products. It is open to existing automotive companies as well as new investors who are currently not in automobile or auto-component manufacturing business.

The scheme will lead to fresh investment of over INR 42,500 crore and incremental production of over INR 2.3 lakh crore. The scheme will create additional employment opportunities of more than 7.5 lakh jobs.

The government has notified the **scheme effective from 23 September 2021**. Further, detailed guidelines for the scheme have also been notified[8].

Key aspects for consideration

- **Incentive slabs for champion OEM and new non-automotive (OEM) investor company:**

Sales value (in INR crore)	Incentive
Up to 2000	13%
Up to 3000	14%
Up to 4000	15%
More than 4000	16%
Cumulative 10,000 crore over 5 years	Additional 2%

- **Incentive slab for component champion and new non-automotive (Component) investor company:**

Sales value (in INR crore)	Incentive
Up to 250	8%*
Up to 500	9%*
Up to 750	10%*
More than 750	11%*
Cumulative 1,250 crore over 5 years	Additional 2%
Battery electric vehicles and Hydrogen fuel cell vehicles components	Additional 5%

6. As per press release dated 8 September 2021
7. As per press release dated 15 September 2021
8. Notification No. S.O. 3946(E). dated 23 September 2021

*Multiplied by a factor of 0.9 in the fifth year for eligible sales relating to Internal Combustion Engine (ICE) vehicle components

45th GST Council meeting: Key recommendations/decisions

Summary

The GST Council in its 45th meeting held on 17 September 2021 made various significant recommendations regarding reliefs due to COVID-19, trade facilitation, issuance of clarifications on various issues, rationalisation in relation to rates of duty and scope of exemption, etc. These recommendations shall be given effect through notifications and/or circulars except where the effective dates have already been provided[9].

Key recommendations/decisions

- **Rate concessions:** The existing concessional rates on certain COVID-19 treatment drugs namely Amphotericin B and Tocilizumab (Nil) and Remdesivir and Anti-coagulants, such as Heparin (5%) shall be applicable **until 31 December 2021.** In addition, GST rate shall be reduced to 5% **till 31 December 2021** for certain drugs, namely Itolizumab, Posaconazole, Infliximab, Favipiravir, Casirivimab & Imdevimab, 2-Deoxy-D-Glucose and Bamlanivimab and Etesevimab.

- **GST rate reduction on certain goods and services:** GST rate applicable on certain goods and services shall be changed **effective from 1 October 2021,** unless otherwise stated.

Goods	Existing rate	Revised rate
Retro fitment kits for vehicles used by the disabled	Appl. Rate	5%
Fortified rice kernels for schemes such as ICDS	18%	5%
Medicine Keytruda for treatment of cancer	12%	5%
Biodiesel supplied to OMCs for blending with diesel	12%	5%
Ores and concentrates of metals such as iron, copper, aluminium, zinc and few others	5%	18%
Specified Renewable Energy Devices and parts	5%	12%
Cartons, boxes, bags, packing containers of paper etc.	12%/18%	18%
Waste and scrap of polyurethanes and other plastics	5%	18%
All kinds of pens	12%/18%	18%
Railway parts, locomotives and other goods in Chapter 86	12%	18%
Miscellaneous goods of paper like cards, catalogue, printed material (Chapter 49 of tariff)	12%	18%
IGST on import of medicines for personal use, namely Zolgensma for Spinal Muscular Atrophy, Viltepso for Duchenne Muscular Dystrophy and other medicines used in the treatment of muscular atrophy	12%	Nil
IGST exemption on goods supplied at Indo-Bangladesh Border haats	Appl. rate	Nil
Unintended waste generated during the production of fish meal except for Fish Oil	Nil (for the period 1 Jul 2017 30 Sept 2019)	

Services	Existing rate	Revised rate
Services by way of grant of national permit to goods carriages on payment of fee	18%	Nil
Skill training for which the government bears 75% or more of the expenditure [presently exemption applies only if Govt funds 100%]	18%	Nil
Skill training for which the government bears 75% or more of the expenditure [presently exemption applies only if Govt funds 100%]	18%	Nil
Licensing services/the right to broadcast and show original films, sound recordings, radio and television programmes [to bring parity between distribution and licencing services]	12%	18%
Printing and reproduction services of recorded media where content is supplied by the publisher [to bring it on parity with colour printing of images from film or digital media]	12%	18%

9. As per Press Release dated 17 September 2021

- **Correction in inverted duty structure:** GST rate changes in order to correct inverted duty structure, in footwear and textiles sector, will be implemented with effect **from 1 January 2022.**
- **Other rate changes/clarifications in relation to goods:**
  - Supply of mentha oil from unregistered person has been brought under reverse charge. Further, Council has also recommended that exports of Mentha oil should be allowed only against LUT and consequential refund of input tax credit.
  - Brick kilns would be brought under special composition scheme with threshold limit of INR 20 lakh, with effect from 1.4.2022. Bricks would attract GST at the rate of 6% without ITC under the scheme. GST rate of 12% with ITC would otherwise apply to bricks.
  - External batteries sold along with UPS Systems/Inverter attract GST rate applicable to batteries [28% for batteries other than lithium-ion battery] while UPS/inverter would attract 18%.
  - GST on specified renewable energy projects can be paid in terms of the 70:30 ratio for goods and services, respectively, during the period from 1.7.2017 to 31.12.2018
  - All pharmaceutical goods falling under heading 3006 attract GST at the rate of 12% [not 18%]
- **Key changes/clarifications in relation to services:**
  - Validity of GST exemption on transport of goods by vessel and air from India to outside India is extended up to **30 September 2022**
  - E-commerce operators are being made liable to pay tax on the following services provided through them effective from **1 January 2022**:
    - transport of passengers by any type of motor vehicles through it
    - restaurant services provided through it with some exceptions
  - Certain relaxations have been made in conditions relating to IGST exemption relating to import of goods on lease, where GST is paid on the lease amount.
  - Services by cloud kitchens/central kitchens are covered under 'restaurant service' and shall attract 5% GST [without ITC].
  - Admission to amusement parks having rides etc. attracts GST rate of 18%. The GST rate of 28% applies only to admission to such facilities that have casinos etc.
  - Alcoholic liquor for human consumption is not food and food products for the purpose of the entry prescribing 5% GST rate on job work services in relation to food and food products.
- **Other measures:**
  - **Relaxation in filing form GST ITC-04**: The requirement of filing form GST ITC-04 has been relaxed as under:

Category of taxpayers	Filing requirement
AATO* in preceding year up to INR 5 crore	Annually
AATO* in preceding year above INR 5 crore	Once in six months

*AATO - Annual Aggregate Turnover

  - Interest @18% can be recovered on ineligible ITC availed and utilised and not on "ineligible ITC availed" effective from 1 July 2017.
  - Transfer of unutilised balance of CGST and IGST cash ledger may be allowed between distinct persons without following refund procedure, subject to certain safeguards.
  - Procedure and time limit for filing refund of tax wrongfully paid under GST shall be incorporated.
  - Aadhaar authentication of registration to be made mandatory for being eligible for filing refund claim and application for revocation of cancellation of registration.
  - Late fee for delayed filing of FORM GSTR-1 shall be auto-populated and collected in next FORM GSTR-3B.
  - Refund shall be disbursed in the bank account linked with PAN used to obtain GST registration.
  - With effect from 1 January 2022, a registered person shall not be allowed to furnish FORM GSTR-1, if he has not furnished the return in FORM GSTR-3B for the preceding month.
  - Rule 36(4) of the CGST Rules, 2017 shall be amended to restrict availment of ITC in respect of invoices/debit notes, to the extent the details of such invoices/debit notes are furnished by the supplier in FORM GSTR-1/ IFF and are communicated to the registered person in FORM GSTR-2B.

CBIC issues clarifications pursuant to recommendations of 45th GST Council meeting

In order to remove ambiguity and mitigate legal disputes revolving around various issues such as the scope of 'intermediary services', interpretation of the term 'mere establishment of distinct entities' etc., the GST council in its recently held meeting had recommended issuance of due clarifications on the subject matter.

Pursuant to the said recommendation from GST council, the CBIC has now issued three circulars clarifying various important aspects in relation thereto.

Key clarifications

A. Clarification in relation of scope of intermediary services[10]: The concept of intermediary services, requires some basic prerequisites, which are as under:

Prerequisites	Clarification
Minimum three parties	The arrangement requires a minimum of three parties, two of them transacting in the supply of goods or services or securities (the main supply) and one arranging or facilitating (the ancillary supply) the said main supply. An activity between only two parties can, therefore, cannot be considered as an intermediary service. An intermediary essentially "arranges or facilitates" another supply (the "main supply") between two or more other persons and, does not himself provide the main supply.
Two distinct supplies	There are two distinct supplies in case of provision of intermediary services. • **Main supply**: Between the two principals, which can be a supply of goods or services or securities. • **Ancillary supply**: The service of facilitating or arranging the main supply between the two principals. This ancillary supply is supply of intermediary service and is clearly identifiable and distinguished from the main supply. A person involved in supply of main supply on principal-to-principal basis to another person cannot be considered as supplier of intermediary service.
Character of an agent, broker or any other similar person	The use of the expression 'arranges or facilitates' in the definition of "intermediary" suggests a subsidiary role for the intermediary. It must arrange or facilitate some other supply, which is the main supply, and does not himself provides the main supply. Thus, the role of intermediary is only "supportive".
Supplies on own account excluded:	In cases wherein the person supplies the main supply, either fully or partly, on principal-to-principal basis, the said supply cannot be covered under the scope of "intermediary".
Subcontracting is not intermediary service	An important exclusion from intermediary is sub-contracting. The supplier of main service may decide to outsource the supply of the main service, either fully or partly, to one or more sub-contractors. Such sub-contractor provides the main supply, either fully or a part thereof, and does not merely arrange or facilitate the main supply between the principal supplier and his customers, and therefore, clearly is not an intermediary.
Place of supply only invokable when either of the party is outside India	The specific provision of place of supply of 'intermediary services'[11] shall be invoked only when either the location of supplier of intermediary services or location of the recipient of intermediary services is outside India.

10. Circular No. 159/15/2021-GST dated 21 September 2021
11. u/s 13 of the IGST Act, 2017

B. Clarification relating to establishment of distinct person[12]:

Prerequisites	Clarification
Indian entity and foreign entity are two separate persons	A Company incorporated in India and a body corporate incorporated by or under the laws of a country outside India, which is also referred to as foreign company under Companies Act, are separate persons under CGST Act, and, thus, are separate legal entities. Accordingly, these two separate persons would not be considered as 'merely establishments of a distinct person in accordance with Explanation 1 in Section 8'.
Supply of services by a subsidiary/sister concern/group concern, etc., of a foreign entity shall not be treated as supply between mere establishments of distinct persons	Such entity which is incorporated in India under the Companies Act, 2013 (and thus qualifies as a 'company' in India as per Companies Act), to the establishments of the said foreign company located outside India (incorporated outside India), would not be barred by the condition (v) of the sub-section (6) of the Section 2 of the IGST Act 2017 for being considered as export of services, as it would not be treated as supply between merely establishments of distinct persons under Explanation 1 of Section 8 of IGST Act 2017 .
Supply from an Indian entity to its related establishments outside India shall qualify as export	The supply from a company incorporated in India to its related establishments outside India, which are incorporated under the laws outside India, would not be treated as supply to merely establishments of distinct person under Explanation 1 of Section 8 of IGST Act 2017. Such supplies, therefore, would qualify as 'export of services', subject to fulfilment of other conditions as provided under sub-section (6) of Section 2 of IGST Act.

C. Clarification in relation to other issues under GST[13]:

Prerequisites	Clarification
Relevant dates to determine the 'financial year' for the purpose of section 16(4)	The words "invoice relating to such" were omitted w.e.f. 1 January 2021. Effective from 1 January 2021, in case of debit notes, the date of issuance of debit note (not the date of underlying invoice) shall determine the relevant financial year for the purpose of Section 16(4) of the CGST Act.
Governing provisions for any availment of ITC, on or after 01.01.2021, in respect of debit notes issued either prior to or after 01.01.2021	The availment of ITC on debit notes in respect of amended provision shall be applicable from 1 January 2021. Accordingly, for availment of ITC on or after 1 January 2021, in respect of debit notes issued either prior to or after 1 January 2021, the eligibility for availment of ITC will be governed by the amended provision of Section 16(4). Any ITC availed prior to 1 January 2021, in respect of debit notes, shall be governed under the provisions of Section 16(4), as it existed before the said amendment on 1 January 2021.
No requirement to carry physical copy of invoice during movement of goods in cases where suppliers have issued e-invoices	There is no need to carry the physical copy of tax invoice in cases where invoice has been generated by the supplier in the manner prescribed under Rule 48(4) of the CGST Rules and production of the Quick Response (QR) code having an embedded Invoice Reference Number (IRN) electronically, for verification by the proper officer, would suffice.
Applicability of first proviso to section 54(3) of CGST / SGST Act, prohibiting refund of unutilized ITC in case of exports of goods which are having NIL rate of export duty.	Only those goods which are subjected to export duty i.e., on which some export duty has to be paid at the time of export, will be covered under the restriction imposed under Section 54(3) from availment of refund of accumulated ITC. Goods, which are not subject to any export duty and in respect of which either NIL rate is specified in Second Schedule to the Customs Tariff Act, 1975 or which are fully-exempted from payment of export duty by virtue of any customs notification or which are not covered under Second Schedule to the Customs Tariff Act, 1975, would not be covered by the restriction imposed under the first proviso to Section 54(3) of the CGST Act for the purpose of availment of refund of accumulated ITC.

12. Circular No. 161/17/2021-GST dated 20 September 2021
13. Circular No. 160/16/2021-GST dated 20 September 2021

Our comments

The taxability of 'intermediary services' has always been a matter of extensive litigation. The contradictory advance rulings under the GST regime on the issue had created additional confusion amongst the businesses. Further, the tax authorities had also started issuing notices to various companies undertaking back-office operations/business process outsourcing for overseas entities treating the same as 'intermediary services'.

In order to mitigate these ambiguities/litigations and pursuant to the recommendation from GST Council, the CBIC has now issued required clarification which addresses various key aspects on the taxability of 'intermediary services'. The clarification will largely help BPOs who are primarily engaged in providing back-office operation services as the same may not be regarded as "intermediary services" based on this clarification.

However, the clarification does not give exhaustive definition for the term 'intermediary' neither it covers all the scenarios/business models to determine the 'intermediary services'. Further, taxability of pre-marketing activities still remains a litigative area. In our view, though the litigations may reduce to some extent, but the ambiguity still persists.

Besides, the CBIC has clarified that the supply from an Indian entity to its related establishments outside India shall qualify as export and would not be treated as supply to merely establishments of distinct person. Accordingly, the supply of services by a subsidiary/ sister concern/group concern, etc. of a foreign entity shall not be treated as supply between mere establishments of distinct persons. This is a welcome and much-awaited clarification and shall, hopefully, put an end to long-drawn litigations on the issue.

CBIC notifies mandatory Aadhaar authentication for claiming GST refund and issues clarification on refund of tax wrongly paid

The CBIC has amended the GST rules in order to provide for mandatory Aadhaar authentication of registration for being eligible for filing refund claim and application for revocation of cancellation of registration. Further, it has also notified restriction in filing GSTR-1 for defaulters of GSTR-3B and issued clarifications for claiming refund of tax wrongfully paid.

Key changes notified[14]

- **Mandatory Aadhaar authentication for claiming refund:** A registered person[15] who has been issued a certificate of registration shall undergo authentication of the Aadhaar number in order to be eligible for the following:
  - filing of application for revocation of cancellation of registration in FORM GST REG-21 under Rule 23
  - filing of refund application in FORM RFD-01 under Rule 89
  - refund under Rule 96 of the IGST paid on goods exported out of India

  If Aadhaar number is not assigned, such person shall furnish Aadhaar enrolment ID slip, bank passbook, Voter ID, Passport, driving license, etc. Further, such person shall undergo the authentication of Aadhaar number within a period of thirty days of the allotment of the Aadhaar number.
- **Non-filing of Form GSTR-3B for the preceding month: Effective from 1 January 2022,** a registered person shall not be allowed to furnish the details of outward supplies of goods or services or both in FORM GSTR-1, if he has not furnished the return in FORM GSTR-3B for preceding month.
- **Disbursal of GST refund in PAN-linked bank accounts:** GST refunds shall be credited to bank account which is in the name of the registered person and obtained on Permanent Account Number of the registered person.
- **Changes in job work provisions**: **Effective from 1 October 2021,** the time limit for furnishing details of challans in respect of goods dispatched to a job worker or received from a job worker has been substituted from a quarter to a specified period. Further, the specified period has been defined to mean the period of six consecutive months commencing on the 1st day of April and the 1st day of October in respect of a principal whose aggregate turnover during the immediately preceding financial year exceeds five crore rupees and a financial year in any other case.

14. Notification No. 35/2021 and 36/2021– Central Tax dated 24 September 2021
15. other than a person notified under sub-section (6D) of section 25

Key clarifications issued[16]

Clarification in relation to refund of tax wrongfully paid:

Prerequisites	Clarification
Interpretation of the term 'subsequently held[17]'	The term 'subsequently held' covers both the cases where the inter-state or intra-state supply made by a taxpayer, is either subsequently found by taxpayer himself as intra-state or inter-state, respectively, or where the inter-state or intra-state supply made by a taxpayer is subsequently found/held as intra-state or inter-state respectively by the tax officer in any proceeding. Accordingly, the refund claim under the said sections can be claimed by the taxpayer in both the abovementioned situations, provided the taxpayer pays the required amount of tax in the correct head.
Relevant date for claiming refund under[18]	In cases, where the taxpayer has made the payment in the correct head before the date of issuance of notification No.35/2021-Central Tax dated 24 September 2021, the refund application under Section 77 of the CGST Act/Section 19 of the IGST Act can be filed before the expiry of two years from the date of issuance of the said notification. i.e., from 24 September 2021.
Refund not available in cases where tax adjustment has been made through credit notes	Refund under Section 77 of the CGST Act/Section 19 of the IGST Act would not be available where the taxpayer has made tax adjustment through issuance of credit note[19] in respect of the said transaction.
Refund applications pending or disposed-off before issuance of the relevant notification	Such applications would also be dealt in accordance with the provisions of Rule 89 (1A) of the CGST Rules, 2017

Our comments

As a measure to check anti-evasion and gaps, the CBIC has made Aadhaar authentication mandatory for the purposes of registration and claiming of refund. It has further notified that GST refunds shall be disbursed only in bank accounts which have been linked with the same PAN on which GST registration has been obtained. The changes have been made to ensure reduction in cases of fraudulent refunds and disbursal of refunds to verified taxpayers. Besides, various long-awaited clarifications relating to refund has also been issued by the government to bring more clarity and reduce litigations.

Formation of GoM to rationalise GST rates, review GST exemption list and identify evasion sources

The GST Council in its 45th meeting had recommended to form Group of Ministers (GoM) to consider GST rate rationalization, including correction of inverted duty structure, reduce classification related disputes and review the current level of IT system.

- **GoM on Rate Rationalization[20]:** Accordingly, a GoM on Rate Rationalisation has been constituted comprising of seven members. The GoM shall submit its report within two months on following aspects:
  - Review exemptions with an objective to expand the tax base and eliminate breaking of ITC chain
  - Review inverted duty structure other than where council has already taken a decision
  - Recommend suitable rates to eliminate inverted duty structure to minimise instances of refund
  - Review the current rate slabs including special rates and recommend rationalisation measures, including merger of tax rate slabs, required for a simpler rate structure in GST

16. Circular No. 162/18/2021-GST dated 25 September 2021
17. In section 77 of the CGST Act, 2017 or under section 19 of IGST Act, 2017
18. u/s 77 of the CGST Act/ Section 19 of the IGST Act, 2017
19. u/s 34 of the CGST Act, 2017
20. Office Memorandum dated 24 September 2021

- **GoM on GST system reforms**[21]: A GoM on GST System Reforms is constituted subsuming the earlier GoMs on IT challenges and revenue mobilisation comprising of eight members. The GoM on GST system reforms shall undertake following aspects:
  - Review the IT Tools and interface available with tax officers
  - Suggest measures to make the system more effective and efficient, including changes in business processes
  - Identify potential evasions
  - Suggest changes in business processes and IT systems to plug revenue leakage
  - Identify possible use of data analysis towards better compliance and revenue augmentation
  - Identify mechanism for better coordination between central and state tax administration

  Office Memorandum dated 24 September 2021

SC issues directions in relation to extension of period of limitation under all central and state Acts

Considering the challenges faced by litigants due to the COVID-19 pandemic across the country in filing their petitions/applications/suits/appeals/all other proceedings within the period of limitation prescribed under the general law of limitation or under Special Laws (both central and/or state), the Supreme Court (SC) had extended the period of limitation till further orders.

In this regard, the SC in a miscellaneous application seeking extension of limitation period, has directed as under[22]:

- While computing period of limitation for any suit, appeal, application or proceeding, period from 15 March 2020 to 2 October 2021 shall stand excluded. The balance period remaining as on 15 March 2021 if any shall become available effective from 3 October 2021.
- If the limitation expires between 15 March 2020 to 2 October 2021, all persons will have a limitation period of 90 days from 3 October 2021 or the actual balance period of limitation remaining whichever is greater.
- The period from 15 March 2020 to 2 October 2021 shall also be excluded while computing periods prescribed under several laws that prescribe periods of limitation for instituting proceedings, outer limits and termination of proceedings.[23]

Deactivation of non-updated IECs effective from 6 October 2021

The Import-Export Code (IEC) holders are required to ensure updation of their IEC details electronically every year, during April-June period. In this regard, the Directorate General of Foreign Trade (DGFT) had extended the last date till 31 August 2021 for making necessary updation. In cases where there are no changes in IEC details, the same also needs to be confirmed online.

In this regard, the DGFT has now informed that IECs which are not yet updated shall now be de-activated. This de-activation activity is being initiated in a phased manner. All IECs which have not been updated after 1 January 2005 shall be de-activated with effect from 6 October 2021. The list of such IECs is available at https://www.dgft.gov.in/CP/?opt=dgft-ra [24].

The concerned IEC holders are provided one final opportunity to update their IEC in this interim period till 5 October 2021, failing which the given IECs shall be de-activated from 6 October 2021. Any IEC so de-activated, would have the opportunity for automatic re-activation on the DGFT website without any manual intervention or a physical visit to the DGFT RA.

21. Office Memorandum dated 24 September 2021
22. Miscellaneous Application No.665/2021 in SMW(C) No.3/2020
23. under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws
24. Trade Notice 18/2021-2022 dated 20 September 2021

2a Key judicial pronouncements

Refund of accumulated ITC in respect of services under inverted duty structure unavailable – SC

Summary

The Supreme Court (SC) has affirmed the judgment of the Madras HC holding that the relevant provisions restricting the refund of accumulated ITC of input services under the inverted duty structure are intra vires and does not need to be read down. The SC further stated that reading down of the formula by prescribing an order of utilisation would take this Court down the path of recrafting the formula and walk into the shoes of the executive or the legislature, which is impermissible. However, observing certain anomalies pointed out by the assessees, the SC has directed the GST Council to reconsider the formula and take a policy decision regarding the same.

Facts of the case

- The Gujarat HC[25] had earlier allowed refund of ITC in respect of input services under the inverted duty structure under the GST law. It had held that the relevant provisions[26] under the GST law are contrary and ultra vires and need to be read down to the extent it denies refund of ITC on input services. The Revenue had filed a SLP against the Gujarat HC order before the Supreme Court.
- In another case[27], the Madras HC had rejected the petitioner's contentions upholding the constitutional validity and held that the relevant provisions are in conformity with the parent statute. The petitioner had filed an SLP challenging the said order of the Madras HC before the Supreme Court. The SC had accepted the SLP filed by the petitioner and issued notice to the revenue. Further directed that no coercive steps shall be taken.

25. in the case of M/s VKC Footsteps India Private Limited (Civil Appeal No 4810 of 2021)
26. Section 54(3) of the CGST Act, 2017 read with Rule 89(5) of the CGST Rules, 2017
27. Tvl. Transtonnelstroy Afcons Joint Venture

SC's observation and ruling[28]

- **Use of formula not ultra vires:** Under the said rule, the formula is used for the purpose of attribution in a post assimilated scenario. The use of such formulae is a familiar terrain in fiscal legislation including delegated legislation under parent norms and is neither untoward nor ultra vires.
- **Purpose of the formula:** The purpose of the formula in said Rule is to give effect to Section 54(3)(ii) of the CGST Act which makes a distinction between input goods and input services for grant of refund. Once the principle behind Section 54(3)(ii) of the CGST Act is upheld, the formula cannot be struck down merely for giving effect to the same.
- **Court should not become a one-time arbiter:** We are affirmatively of the view that this Court should not in the exercise of the power of judicial review allow itself to become a one-time arbiter of any and every anomaly of a fiscal regime despite its meeting the jurisdictional framework for the validity of the legislation, including delegated legislation.
- **Formula not ambiguous or unworkable:** The formula is not ambiguous in nature or unworkable, nor is it opposed to the intent of the legislature in granting limited refund on accumulation of unutilised ITC. It is merely the case that the practical effect of the formula might result in certain inequities.
- **Reading down of formula impermissible:** The reading down of the formula by prescribing an order of utilisation would take this Court down the path of recrafting the formula and walk into the shoes of the executive or the legislature, which is impermissible.
- **Urge to GST council:** Accordingly, the SC refrained from replacing the wisdom of the legislature or its delegate with our own in such a case. However, given the anomalies pointed out by the assessees, the SC urged that the GST Council shall reconsider the formula and take a policy decision regarding the same.
- **SLP filed by Revenue upheld:** The SC allowed the SLP filed by Revenue against the judgement of Gujarat HC and dismissed the SLP filed challenging the verdict of the Madras HC.

Our comments

There have been contradictory rulings on the availability of refund of accumulated ITC in respect of services under the inverted duty structure. The Gujarat HC had earlier held that the relevant provisions pertaining to refund in case of inverted duty structure under the GST law are ultra vires and need to be read down to the extent it denies refund of ITC on input services. Contrary to this, the Madras HC had held that the relevant provisions are intra vires and do not need to be read down.

The SC has now affirmed the judgment of the Madras HC and allowed the appeals filed by the Revenue against the judgment of the Gujarat HC. Thus, it seems that the intention of the Government is to not allow the benefit of refund of accumulated ITC on services. However, observing certain anomalies pointed out by the assessees, the SC has directed the GST Council to reconsider the formula and take a policy decision regarding the same.

TDS amount cannot be included in taxable value for levying service tax - CESTAT

Summary

The Central Excise and Services Tax Appellate Tribunal (CESTAT) Chennai observed that to comply with the income tax provisions, as per the accounting practice, the appellant has grossed up the TDS amount with the actual consideration. The TDS is paid / deposited to Government by the appellant out of a statutory liability. Such activity of deducting the tax at source is a legal obligation and the amount so deducted cannot be taken as consideration for services rendered.

Thus, the CESTAT held that TDS amount cannot be included in the taxable value and set aside the demand.

Facts of the case

- The appellant[29] is engaged in manufacture of motor vehicles and IC engines.
- It had received Technical Consultancy Services and Project Consultancy Services from various service providers who were not having their offices in India. Therefore, it had paid service tax under reverse charge mechanism on value excluding the tax deducted at source (TDS).
- The Department was of the view that the TDS portion has also to be included in the taxable value for discharging service tax. Thereafter, the demand for differential service tax along with interest and penalty was confirmed[30]. Aggrieved the appellant filed an appeal before the CESTAT[31].

28. Vide its order dated 13 September 2021
29. M/s. T.V.S. Motor Company Limited
30. Order-in-Original No.03/2013 dated 30.01.2013
31. Appeal No. 41077 of 2013

CESTAT's observation and ruling[32]

- **TDS to be borne by service recipient**: Based on the conditions mentioned in the agreement, it is agreed by the parties that TDS has to be borne by the appellant who is the service recipient.
- **TDS amount grossed up with actual consideration:** To comply with the income tax provisions, as per the accounting practice, the appellant has grossed up the TDS amount with the actual consideration[33].
- **Deducting TDS is a legal obligation**: The TDS is paid / deposited to Government by the appellant out of a statutory liability. Such activity of deducting the tax at source is a legal obligation and the amount so deducted cannot be taken as consideration for services rendered.
- **Amount agreed by parties shall be consideration:** The amount on which the parties have reached a consensus ad idem can only be the consideration for the services. Further, the amount of tax deducted varies and depends upon the rate in force. There is no agreement by the parties with regard to the amount of TDS that has to be deducted.
- **Compliance with statutory provisions cannot be considered as rendering of service**: There is no consent from the foreign counterpart to reduce his consideration by deducting the income tax liability from the agreed consideration. The appellants have thus grossed up the TDS and complied with the statutory obligation.
- **TDS amount not includable in taxable value:** The activity of deducting tax at source is an obligation under the statute. When the TDS is grossed up and borne by the assessee and the service provider receives only the actual consideration agreed between parties, in our view, the TDS amount cannot be included in the taxable value.
- **Demand set aside:** There is no liability to pay the differential tax, the issue of cum-tax benefit has no relevance and the demand confirmed cannot sustain and requires to be set aside.

Our comments

Similar judgements were pronounced earlier by the Chennai and Mumbai Benches of the CESTAT wherein it has been categorically held that when the TDS amount has been borne by the assessee and only the consideration for the services as agreed upon by the parties has been paid to the service provider, the same cannot be included in the taxable value for determining the Service Tax liability.

Under the GST law, the value of taxable supply has been defined to include any taxes, duties, cesses, fees and charges levied under any law for the time being in force. Thus, it would be interesting to see whether the criteria laid down by the CESTAT would hold good even under the GST regime.

Credit admissible under erstwhile laws available as refund under GST regime - CESTAT

Summary

The Customs, Excise and Service Tax Appellate Tribunal (CESTAT) observed that in GST regime, the appellant had paid the Countervailing Duty (CVD) and Special Additional Duty (SAD) and it was eligible to avail credit of such under the erstwhile laws. Further, the CESTAT observed that the GST law provides that refund claim filed before on or after the introduction of GST law for any amount paid under the existing law, shall be disposed in accordance with the existing law and any amount eventually accruing shall be paid in cash. In light of the said provision, the CESTAT held that denying the said entitlement, on the ground that the letter of DGFT cannot be considered as the assessment order is not appropriate. Accordingly, the CESTAT set aside the order rejecting the sanction of refund of creditable duties (CVD and SAD) duty paid by the appellant.

Facts of the case

- The appellant[34] is engaged in the manufacture of excisable goods. It was granted advance license for duty free imports.
- As certain conditions of the license were not fulfilled by the appellant, it had approached the appropriate authority for redemption of Export Obligation (EO) under Export Obligation Period (EOP) of the said license.
- The appellant was directed to pay applicable custom duties (BCD+CVD+SAD, etc.), which were foregone due to the advance license, along with interest and penalty.
- The appellant was eligible to take the credit of CVD and SAD paid on the said imports[35]. However, GST law was introduced by that time and the appellant couldn't avail credit of the duty paid[36]. Therefore, it filed an application seeking refund of the duty paid which has been made permissible even under new GST Regime[37].
- The appellant was granted refund against which the Department had filed an appeal before the first appellate authority. The said appeal of the department was allowed. Being aggrieved the appellant filed present appeal before the CESTAT.

32. Final order no. 42277-42278/2021 dated 31 August 2021
33. Section 195 of the Income Tax Act, 1961
34. Flexi Caps and Polymers Pvt Ltd
35. as per erstwhile CENVAT Credit Rules, 2004
36. In terms of Section 11B of Central Excise Act, 1944
37. Section 142(8)(b) of CGST Act, 2017

CESTAT Delhi observations and ruling[38]:

- **Entire duty was paid by the appellant:** The entire customs duty with respect to the inputs imported by the appellant stands fully-deposited by the appellant not only along with interest but also with the penalty as was directed to be paid while seeking the said redemption.
- **Appellant was entitled to avail credits:** These admitted facts are sufficient to hold that the appellant became entitled to avail CENVAT credit of the CVD/SAD paid on the imported inputs[39].
- **Admissible credit to be refunded:** The credit of duty paid by the appellant could not be availed due to the erstwhile law i.e. Central Excise Act, 1944 being taken over by the new GST law. Further, the GST law provides that the refund claim filed before on or after the introduction of GST law for any amount paid under the existing law**,** shall be disposed in accordance with the existing law and any amount eventually accruing shall be paid in cash[40].
- **Denying entitlement not appropriate:** In view of the provisions, denying the said entitlement, on the ground that the letter of DGFT cannot be considered as the assessment order is not appropriate. As the requisite duty stands paid in full by the appellant, it entitles the appellant to have credit thereof though in the form of cash in terms of the provisions of the new law.
- **Rejection of refund is beyond intention of legislature:** The view formed by Commissioner (Appeals) while rejecting the refund is not appropriate and is beyond the intention of the Legislature. Further, the appeal before Commissioner (Appeals) was not maintainable under GST Act for a refund application which was filed under the erstwhile law. The appeal as such was not maintainable therefore, the order under challenge cannot sustain and needs to be set aside.

Our comments

The Apex Court in the case of Eicher Motors had held that credits earned by the appellant were a vested right and will not extinguish with the change of law unless there was a specific provision which would debar such refund. Further, on similar issue in the case of M/s Bharat Heavy Electricals Ltd, the Delhi bench of CESTAT had held that there is no provision in the GST law that such credits would lapse and, therefore, a taxpayer is eligible for the cash refund of the cesses lying as CENVAT credit balance.

This is a welcome ruling by the CESTAT and will help provide relief to businesses at large, which are proceeding to redeem their licenses upon payment of duty. Further, the judgment is also likely to set precedence in similar matters.

38. Final order No. 51825/2021 dated 15 September 2021
39. in terms of Rule 3 of CENVAT Credit Rules, 2004
40. Section 142(3) of the CGST Act, 2017

2b Decoding advance rulings

Managerial and leadership services provided to site offices/group entities is a supply of service - Maharashtra AAR

Summary

The Maharashtra Authority for Advance Ruling (AAR) observed that the site offices and group companies cannot be treated as persons employed by the applicant. The site offices and the group companies are separately registered under the GST laws. Since both the site offices and group companies cannot be treated as employees, the supply of managerial and leadership services by the applicant to its site offices and group entities shall be taxable under the GST law. Therefore, the applicant will have to pay GST on the lumpsum amount charged by it to their group entities.

Facts of the case

- The applicant[41] is in the business of civil construction, structural engineering, fabrication and erection of transmission tower material, etc. It has its registered/corporate office in Pune and construction sites (distinct persons) in different states. It has group companies (related persons) engaged in various activities. Further, the applicant is also holding ISD registration in Pune.
- The registered/corporate office supplies managerial and leadership services to its site offices and group companies and for which it charges fixed monthly charges on a lump-sum basis.
- The applicant sought an advance ruling before the Maharashtra AAR to understand whether provision of such services by the registered/corporate office to the site offices and group entities would be treated as supply of services liable to GST.

41. M/s B.G. Shirke Construction Technology Pvt Ltd

Maharashtra AAR observations and ruling[42]:

- **Sites offices and group entities cannot be treated as employees:** The site offices and group companies cannot be treated as persons employed by the applicant. The site offices and the group companies are separately registered under the GST laws. Therefore, both the site offices and group entities cannot be employees.
- **Services by applicant shall be taxable:** Since both the site offices and group entities cannot be treated as employees, the services provided by the applicant shall be treated as a supply between related persons or between distinct persons made in the course or furtherance of business[43] and therefore taxable under GST law.
- **Supply of Service:** Under the GST law supply of goods or services or both between related persons or distinct persons when made in the course or furtherance of business would be treated as supply even if without consideration. Therefore, the provision managerial and legal services by the applicant to the site offices and group entities will constitute as a supply of service.
- **Applicant liable to pay GST:** The applicant shall be liable to pay GST on lump sum charges received from the site offices and group entities. The applicant may resort to valuation under the GST laws[44] in respect of transactions with related/distinct persons who are eligible for full input tax credit.

Our comments

The ruling will have substantial bearing on all the multinational companies with presence in various states and litigation relating to valuations can be anticipated.

On a similar issue, earlier, the Karnataka Appellate Authority for Advance Ruling (AAAR)[45] had held that the corporate office is providing service to its other distinct units by way of carrying out activities, such as accounting and administration work with the use of the services of the employees working in the corporate office. The outcome of such activity shall benefit all the other units. Therefore, such activity shall be treated as a taxable supply.

It is pertinent to mention here that AAR's decision is applicable only to the applicant, however, there is possibility that department may apply this ruling to issue demand notices in other cases as well.

Transfer of business excluding employees and liabilities does not amount to 'transfer of going concern'- Andhra Pradesh AAR

Summary

The Andhra Pradesh Authority for Advance Ruling (AAR), in a recent case, observed that the transfer of a business as a 'going concern' which means the transfer of a running business which is capable of being carried on by the purchaser as an independent business. Such transfer of business as a whole will comprise comprehensive transfer of immovable property, goods and transfer of unexecuted orders, employees, goodwill, etc. The AAR further stated that if the business is sold off as a 'going concern' then the liabilities too are transferred along with the assets of the company. Accordingly, the AAR held that the transfer of business by the applicant does not fit into the definition of 'going concern' in the context of exclusion of liabilities.

Facts of the case

The applicant[46] is a Multi-System Operator (MSO) engaged in cable operation business. It purchases digital signals from broadcasters like E-TV, Star TV Sun TV etc. These signals are transmitted through satellite to receiving stations owned by MSOs. MSOs further transmit these signals through cables to the Local Cable Operators (LCO) who own their last-mile network to individual homes and customer premises.

It has entered into a Business Transfer Agreement (BTA) with another entity who is also engaged in provision of similar services.

In terms of the BTA, the purchaser has agreed to purchase entire cable operation business of the applicant. All rights, title and interest in the business, assets, subscribers/ customers, linked LCOs will get transferred from applicant to the purchases as a going concern. However, the liabilities have presently arisen or will arise for the past business relationship/earlier period and the employees shall not be transferred under the BTA.

The applicant sought an advance ruling before the Andhra Pradesh AAR to understand whether the exemption provided under the GST[47] for 'services by way of transfer of a going concern as a whole or an independent part thereof' is applicable on the business transfer undertaken by the applicant.

42. GST-ARA-42/2019-20/21-22/B-56
43. Entry No. 2 to Schedule I
44. Rule 28 of the CGST Rules, 2017
45. in the case of M/s Columbia Asia Hospitals Pvt. Ltd.
46. M/s. SCV Sky Vision
47. Vide Sr.No.2 of the Notification No. 12/2017-Central Tax (Rate) dated June 28th, 2017

Andhra Pradesh AAR observations and ruling[48]:

- **Business sold in running state:** The applicant's business as MSO sought to be sold is in functioning state. The transaction by virtue of the BTA contemplates the sale of business to the purchaser, except any of the employees or liabilities and the purchaser intends to continue the same business.
- **Meaning of transfer of a going concern:** The transfer of a going concern means transfer of a running business which is capable of being carried on by the purchaser as an independent business. Such transfer of business as a whole will comprise comprehensive transfer of immovable property, goods and transfer of unexecuted orders, employees, goodwill, etc.
- **Does not fit as 'going concern':** It is evident that the transaction of transfer business in the present case does not fit in the definition of going concern in the context of exclusion of liabilities. Hence, the aforesaid exemption shall not be applicable in the present case.

Our comments

On a similar issue, the Karnataka AAR[49] had held that since the entire business is proposed to be transferred where all the assets and liabilities will be transferred to the new owner and business would have continuity, regularity, and permanency such transfer shall amount to transfer of a going concern and will get covered under entry 2 of the exemption notification.

In the present case, since the liabilities and employees are not being transferred, the Andhra Pradesh AAR has held that it does not amount to transfer of a going concern. Thus, the businesses might have to evaluate their transfer agreements in line with the criteria / observations by the authorities in order to avoid undue litigation.

48. AAR No. 04/AP/GST/2021 dated 12 January 2021
49. Rajashri Foods Pvt. Ltd.

03 Experts' column

RoDTEP guidelines and rates notified

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Introduction

In a landmark move aiming to bolster exports and offering a sigh of relief to exporters, the Government notified the much-awaited export scheme, the Remission of Duties and Taxes on Exported Products (RoDTEP). This scheme aims to make Indian exports cost competitive and create a level playing field for exporters in international market. The scheme, which was previously running only based on circulars and press releases, has been notified vide Notification No. 19/2015-20 dated August 17, 2021, which has been made applicable from 1 January 2021. This scheme is a part of Chapter 4 of the foreign trade policy which covers duty remission schemes. Rates for different chapters have been notified under appendix 4R of the handbook of procedures.

RoDTEP has replaced existing Merchandise Export from India Scheme (MEIS) and Rebate of State and Central Taxes and Levies (RoSCTL) except for some specified goods which would be continued under RoSCTL. RoDTEP solves the contentions raised at WTO against export performance-based rebates provided by India by way of MEIS. Hence, it is compliant to WTO's measures. The rates notified are subject to a budgetary allocation, which is around Rs 13,000 crore for the current fiscal year.

What is the RoDTEP scheme?

RoDTEP is an export remission scheme which aims to provide refund of duties/taxes/levies at central, state and local level borne on exported goods like mandi tax, VAT, coal cess, central excise duty on fuel, etc. However, such rebate will not be available for duties and taxes which are already exempted or remitted.

Key highlights of the scheme have been enumerated below-

- Ceiling rates under the scheme will be determined by a committee in the Department of Revenue/Drawback division with suitable representations of DGFT, ministries and experts, considering all the relevant factors.
- Currently, the highest RoDTEP notified under Appendix 4R is 4.3% and lowest is 0.01%.
- The rebate would be given to eligible exporter which would be-
  - As a percentage of the Freight on Board (FOB) value of exports or
  - A specific amount per unit

  However, the rebate for certain products would be subject to value cap per unit of the exported product.
- The rebate allowed is subject to the receipt of sale proceeds within time allowed under the Foreign Exchange Management (FEMA) Act, 1999, failing which such rebate shall be deemed never to have been allowed. The rebate would not be dependent on the realisation of export proceeds at the time of issue of rebate.
- Safeguards to avoid any misuse on account of non-realisation of exports proceeds and other systematic improvements as in operations under Drawback Scheme, IGST and other GST refunds relating to exports would also be applicable for claims made under the RoDTEP scheme.
- Scheme would be implemented through end-to-end digitisation of issuance of rebate amount in the form of a transferable duty credit/electronic scrip (e-scrip), which will be maintained in an electronic ledger by CBIC.
- Necessary rules regarding grant of claims, implementation issues, export documentation, recording keeping, penalties for frauds, recovery of rebate on account of non-compliance of procedures, etc., would be notified by the CBIC.

Who is eligible to claim benefits under the RoDTEP scheme?

Exporters exporting items covered under Appendix 4R will be eligible to avail benefit of RoDTEP scheme, subject to fulfilment of conditions mentioned under notification 19/2015-20. Declaration of intent to avail RoDTEP (Y/N) must be mandatorily mentioned in the export shipping bills, to avail the benefit of RoDTEP.

The erstwhile MEIS scheme covered 7910 products which were proposed to be carried forward to RoDTEP. However, under RoDTEP scheme, 8555 products have been covered. Chapter wise summary has been highlighted in a tabular form below.

Chapters	Description	Range of RoDTEP incentive
01 and 02	Live animals, meat, and meal offal	Not available
03 to 23	Fish, diary, eggs, animal skins, roots, plants, vegetables, fruits, fruit extract, tea, coffee, millets, flour, gum, animal fats, oil, cocoa items, juices, essence, concentration, beverages, and other food preparations	0.5% - 4%
24 to 31	Tobacco, mineral products, products of the chemical orallied industries (from Chapters 28 to 31)	Not available
32 to 49	Products of the chemical or allied industries (fromChapters 32 to 38), plastics and articles thereof, raw hide and skins, wood and its articles, wood pulp	0.5% - 2.4%
50 to 60	Textiles and textile articles (other than Chapters 61 to 63)	0.5% - 4.3%
61 to 63	Textiles and textile articles (Chapters 61 to 63)	Not available (RoSCTLavailable)
64 to 67	Footwears, headgears, umbrellas, artificial flowers andarticles of human hair	0.5% - 1.5%
68 to 70	Articles of stone, plaster, cement	0.5% - 2.3%
71	Natural or cultural pearls	0.01% - 0.5%
72 and 73	Iron, steel, and its items	Not available
74 to 81	Base metals and its articles (other than Chapter 82 and83)	0.3% - 2.3%
82 to 85	Base metals and its articles (Chapter 82 and 83) andmachinery and mechanical appliances	0.3% - 2.2%
86 to 89	Vehicles, aircraft, vessels and transport equipment	0.5% - 2%
90 to 98	Medical and photographic instruments, clocks and watches, arms and ammunitions, furniture items, toys and games	0.01% - 3%

Ineligible category of exports/Exporters under the RoDTEP scheme

(a) Export of imported goods covered under Paragraph 2.46 of the FTP 2015-20 (i.e., export of imported product in same or substantially the same condition)

(b) Export through trans-shipment

(c) Export subject to minimum export price or export duty

(d) Exports which are restricted or prohibited under Schedule 2 of export policy in ITC(HS).

(e) Deemed export and supply by DTA to SEZ/FTWZ

(f) Products which are manufactured in EHTP/BTP or a warehouse operating under Section 65 of the Customs Act

(g) Goods taken into use after manufacture

(h) Exports from non-EDI ports

(i) Products manufactured or exported availing the benefit of the Notification No. 32/1997-Customs dated 1st April, 1997

(j) Products manufactured or exported by any of the units situated in Free Trade Zones or Export Processing Zones or Special Economic Zones.

(k) Products manufactured or exported by a unit licensed as 100% Export Oriented Unit (EOU) in terms of the provisions of the Foreign Trade Policy.

(l) Products manufactured or exported in discharge of export obligation against an Advance Authorisation or Duty-Free Import Authorisation or Special Advance Authorisation issued under a duty exemption scheme of relevant foreign trade policy.

For exports made by categories (j), (k) and (l) as mentioned above, the implementation date will be decided later and RoDTEP rates for export items under such categories would be decided based on recommendations of the RoDTEP committee.

Process for claiming e-scrips

ICEGATE advisory note no 1/2021 dated January 1, 2021 mentions the step-by-step procedure for implementation of RoDTEP on ICEGATE system, which has been mentioned in brief as follows:

Step 1: Creation of RoDTEP ledger – Exporters can select the scheme name from drop-down as E- scrip and create ledger account

Step 2: Declaration in shipping bills for availment of RoDTEP is mandatory to claim the scrips; if the same has not been done, no benefit would accrue to the exporter

Step 3: Processing of claims and generation of the scroll

Step 4: Claiming of credits, generation and utilisation of scrips

These e-scrips can be further transferred to another user, only if recipient has created a valid credit ledger account under RoDTEP scheme.

Epilogue

RoDTEP scheme will enhance India's competitiveness in the global market as reimbursement of un-refunded duties and taxes will make products more attractive.

The RoDTEP scheme has brought a relief for exporters since it will provide aid to them in reviving their businesses in the wake of the pandemic. While the government has covered majority of sectors under this scheme, some sectors such as iron & steel, chemicals and pharmaceuticals industry are not covered under this scheme as the government is of the view that these sectors are doing well without the incentives in place.

(*Yashaswi Oberoi, Assistant Manager, Tax also contributed to the article*)

04 Issues on your mind

How e-way bill may be generated if movement of some goods is also involved along with the principal supply of service?

E-way bill may be generated by entering the details of HSN code of the goods, along with SAC (Service Accounting Code) of services involved. Such situations may arise in cases of supply of services, such as printing services, works contract services, catering services and pandal or shamiana services[50].

Is it possible to have more than one QR code on an invoice?

Apart from the QR code relating to IRN, the supplier is free to place any other QR code, which is required as per business needs or otherwise mandated by any other statutory requirement. In such cases, the QR codes need to be marked clearly so that they can be distinguished easily.

How to fetch missing records of Bill of Entry from ICEGATE portal through GST system?

A self-service functionality has been made available on the GST Portal that can be used to search bill of entry records in GST System and fetch the missing records from ICEGATE. Bill of Entry details shall get updated on GST Portal from ICEGATE usually after two days (after reference date). The reference date would be either out of charge date, duty payment date, or amendment date- whichever is later. This functionality should be used only in case data is not available after this period.

Steps to fetch the requisite details:

I. Login to GST Portal

II. Navigate to Services > User Services > Search BoE

III. Enter the Port Code, Bill of Entry Number, Bill of Entry Date and Reference Date and click the 'Search' button.

IV. If the BoE details do not appear in the search results, click on the 'Query ICEGATE' button at the bottom of the screen to trigger a query to ICEGATE.

V. History of fetched BoE details from ICEGATE, along with status of query, are displayed after 30 minutes from the time of triggering the query.

50. GSTN advisory dated 16 September 2021

How can the taxpayers seek adjournment of dates in a Show Cause Notice (SCN) proceedings and submit an undertaking for not filing of appeal against order of rejection on the GST portal?

To request for extending the due date for filing of reply or for adjourning the personal hearing, after a SCN has been issued by the tax officer in a refund case, the taxpayers can navigate to **Services > User Services > My Applications > Case Detail > Notice/Acknowledgement tab-GST RFD-08**.

To submit an undertaking that they shall not appeal against the order passed by the tax officer, in Form GST RFD-06, rejecting the refund amount claimed, either partly or fully the taxpayers can navigate to **Services > User Services > My Applications > Case Details > Orders tab-GST RFD-06.**

05 Important developments in direct taxes

Important amendments/updates

CBDT prescribes manner of calculation of taxable interest on EPF[51] contributions

The Finance Act, 2021 provided that interest on employee's contribution to EPF in excess of INR 2,50,000 (INR 5,00,000 in case of government employee) would be considered as a taxable income. CBDT[52] has now introduced a new rule[53] prescribing the manner of computation of taxable interest on such excess contribution. This rule will be applicable from 1 April 2021.

The new Rule provides that separate accounts are required to be maintained within the EPF account for non-taxable and taxable contributions made by employees. The interest accrued on account of taxable contributions shall be included in the taxable income for FY[54] 2021-22 and subsequent years.

CBDT notifies constitution of Board for Advance Ruling

The Finance Act, 2021 replaced the AAR[55] with Board for Advance Rulings (Board). CBDT has now been notified [56] that the last date for operation of AAR is 1 September 2021. It has further notified[57] constitution of three Boards headquartered in Delhi and Mumbai for providing advance rulings.

51. Employees' Provident Fund
52. Vide Notification No. 95/2021 dated 31 August 2021
53. Rule 9D in the Income-tax Rules, 1962
54. Financial Year
55. Authority for Advance Rulings
56. Vide Notification No. 97/2021 dated 1 September 2021
57. Vide Notification No. 96/2021 dated 1 September 2021

CBDT extends timelines for Income tax return and various reports

In view of the difficulties faced by the taxpayers in electronic filing of income tax returns and various audit reports under the Act[58], CBDT has extended the timelines for such compliances.

Particulars	Existing due date	New due date
Due dates for filing income tax return for AY[59] 2021-22		
Return of income in case of Transfer Pricing (TP) audit	31 December 2021	28 February 2022[60]
Return of income in case of • Company • Person (other than a company) whose accounts are required to be audited • Partner of a firm whose accounts are required to be audited	30 November 2021	15 February 2022[60]
Tax return in case of any other taxpayer not covered above	30 September 2021	31 December 2021[60]
Belated/Revised tax return	31 January 2022	31 March 2022[60]
Due dates for furnishing various reports for FY 2020-21		
Tax audit report	31 October 2021	15 January 2022[60]
Form 3CEB [61]	30 November 2021	31 January 2022[60]
Due dates for other tax compliances		
Linking of PAN and Aadhaar	30 September 2021	31 March 2022[62]
Completion of penalty proceedings	30 September 2021	31 March 2022[62]

CBDT has further clarified that:

- Interest for delay in furnishing the tax return shall apply if shortfall of tax payable exceeds INR 1,00,000.
- In case of a resident senior citizen (i.e., above 60 years of age) who does not have any business income, any self-assessment tax paid till the original due date shall be treated as 'advance tax' for the purpose of computing interest.

CBDT extends last date of filing application with the Interim Board for settlement

The Finance Act, 2021 had provided that ITSC[63] shall cease to operate from 1 February 2021. Interim Board for Settlement was constituted for applications pending as on 1 February 2021. In order to provide relief to taxpayers who were not able to file application in time, the government has extended[64] the last date for submitting application to **30 September 2021**, subject to the following conditions:

- Taxpayer was eligible to file application on 31 January 2021 for the AYs under consideration; and
- Relevant assessment proceedings are pending as on the date of filing the application.

It has been clarified that applications already filed cannot be withdrawn and applications filed pursuant to a High Court order are not required to be filed again.

CBDT issues various notifications under Faceless Assessment Scheme

- **Easing authentication of electronic record submitted**

  Under the faceless assessment scheme, authentication of electronic records is required using digital signature or under EVC[65]. CBDT has now provided that if an electronic record is submitted[66] through registered account on the Income tax portal, it will be deemed to be authenticated under EVC. It has also been provided[67] that persons who are required to authenticate electronic records through digital signature (such as companies, tax audit cases, etc.) can also authenticate records in this manner.

- **Certain exceptions to faceless assessment scheme have also been provided[68]**

58. Income tax Act, 1961 (the Act)
59. Assessment Year
60. Vide Circular No. 17/2021 dated 9 September 2021
61. Transfer pricing report under section 92E of the Act
62. Vide Notification No. 113/2021 dated 17 September 2021
63. Income-tax Settlement Commission
64. Vide Press Release dated 7 September 2021
65. Electronic Verification Code
66. By a taxpayer or any other person
67. Vide Press Release dated 7 September 2021
68. Vide Order [F No. 187/3/2020-ITA-I] dated 6 September 2021, Circular [F No. 225/97/2021/ITA-II] dated 6 September 2021 and Order [F No. 187/3/2020-ITA-I] dated 22 September 2021

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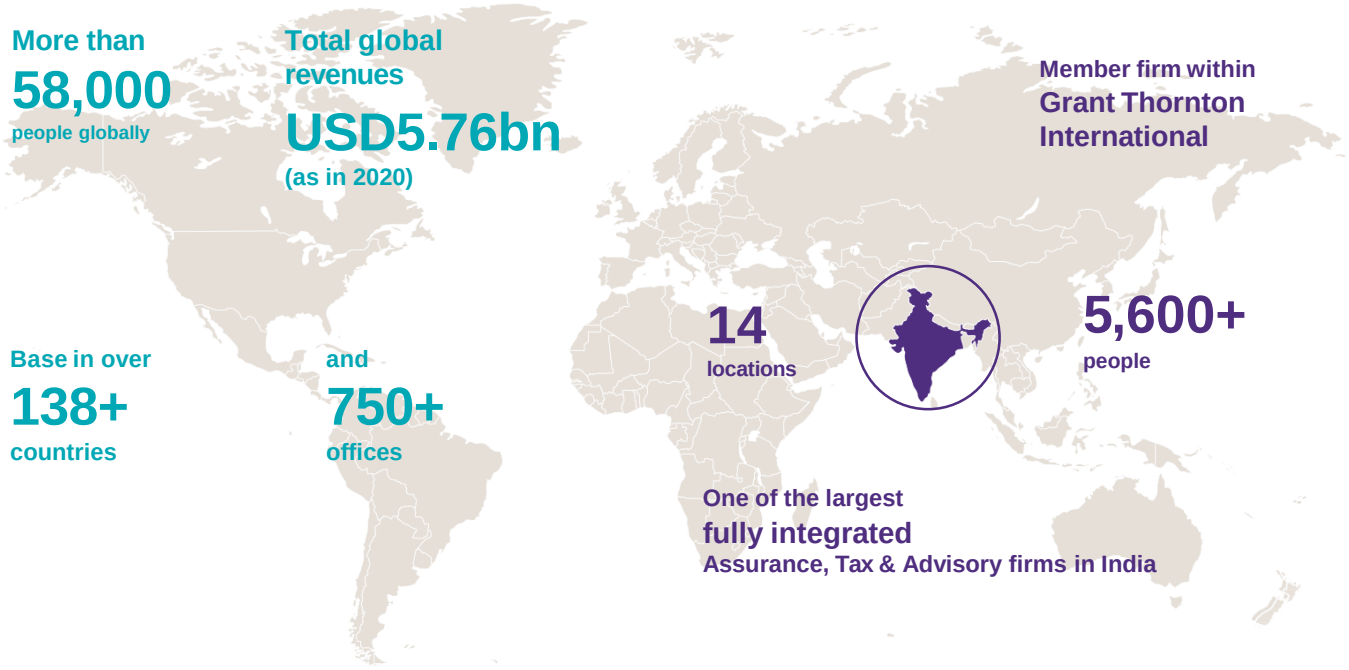

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