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SHAPING A VIBRANT INDIA

GST Compendium

A monthly guide

July 2021

Editor’s note

The National Anti-Profiteering Authority (NAA) has recently issued a memorandum instructing the authorities to give utmost priority to the complaints filed by consumers and to take all possible steps envisaged under the anti-profiteering provisions to ensure compliance. The authorities have been further directed to utilise the powers conferred on them to collect evidence that may be required to take action against errant suppliers of various goods and services. Therefore, it is advisable that companies review their records to ensure full compliance and avoid any penalties and litigation.

On the judicial front, the Apex Court has admitted the plea filed by the Revenue challenging the decision of the Gujarat High Court quashing levy of Integrated Goods and Services Tax (IGST) on ocean freight under reverse charge. The levy of IGST on ocean freight has been a matter of litigation since inception. The final verdict from the Apex Court is awaited which would put this issue to rest.

In another issue on taxability of intermediary services, the Bombay High Court has given a split verdict on constitutionality of the GST provisions pertaining to intermediary. In view of the difference in opinion, the Registry has decided to place the matters before the Chief Justice to finally decide the matter.

In this edition, we have shared our view on the challenges faced by the media and entertainment industry with respect to the taxability of copyrights.

On the direct tax front, the Central Board of Direct Taxes has granted relief to employees for the amount received by them for COVID-19 treatment and ex-gratia amount received by family members of deceased employees. The due dates of several income tax compliances been further extended in view of the ongoing COVID-19 pandemic. A new facility has been introduced to verify return filing status by tax deductor/collector, to help assess if higher rate of TDS (tax deduction at source)/TCS (tax collection at source) is to be applied in case of a specified person.

Hope you will find this edition to be an interesting read.

Vikas Vasal

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01 Important amendments/updates

44th GST council meeting: Key recommendations/decisions

The GST Council in its 44th meeting held through video conferencing on 12 June 2021 took decision regarding reduction in GST rates on goods being used in COVID-19 relief and management as under:

Exemption from GST

Exemption to medicines such as Tocilizumab and Amphotericin B.

Reduction in GST rate to 5%

GST rate applicable in case of any other drug recommended by Ministry of Health and Family Welfare (MoHFW) and Department of Pharma (DoP) for COVID-19 treatment reduced to 5%.

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Reduction in GST rate from 12% to 5%:

Category	Product
Medicines	Anti-coagulants like Heparin
	Remdesivir
Oxygen, oxygen generation equipment and related medical devices	Medical grade oxygen
	Oxygen concentrator/generator, including personal imports thereof
	Ventilators
	Ventilator masks/canula/helmet
	BiPAP machine
	High-flow nasal canula (HFNC) device
Testing kits and machines	COVID-19 testing kits
	Specified inflammatory diagnostic kits, namely D-Dimer, IL-6, Ferritin and LDH
Others	Pulse oximeters, including personal imports thereof

Reduction in GST rates from 18% to 5%

Reduction in GST rate from 18% to 5% for hand sanitiser, temperature check equipment, gas/electric/other furnaces for crematorium, including their installation, etc.

Reduction in GST rates from 28% to 12%

GST rate applicable in case of ambulance reduced from 28% to 12%.

The above recommendations have been given effect vide notification dated 14 June 2021 and shall remain in force up to **30 September 2021[1].**

Penalty for non-compliance of QR code for B2C transactions waived till 30 September 2021

Based on the recommendations of the GST Council, the CBIC (Central Board of Indirect Taxes and Customs) had earlier waived the penalty payable for businesses with turnover exceeding INR 500 crore on non-implementation of dynamic quick response (QR) code till 30 June 2021. The said waiver was subject to the condition that the person complies with the aforesaid provisions from 1 July 2021.

The CBIC has now further waived the penalty for non-compliance of the provisions in B2C invoices till **30 September 2021[2]**.

CBIC issues clarification on applicability of dynamic quick response code

Based on the recommendations of the GST Council, the CBIC had earlier waived the penalty payable for businesses with turnover exceeding INR 500 crore on non-implementation of dynamic quick response (QR) code till 30 June 2021 subject to the condition that the said person complies with the provisions effective 1 July 2021.

In this regard, the CBIC has now issued certain clarifications to address the queries and issues raised by the trade and industry in respect of applicability of QR code[3].

1. Notification Nos. 04/2021 and 05/2021- Central Tax (Rate) dated 14 June 2021
2. Notification No. No. 28/2021 – Central Tax dated 30 June 2021
3. Circular no. 156/12/2021-GST dated 21 June 2021

Key aspects clarified

Particulars	Guidelines/clarifications
QR Code on invoice issued to person with UIN	Any invoice issued to person having a Unique Identity Number (UIN), shall be considered as invoice issued for a B2C supply and shall be required to comply with the requirement of a dynamic QR Code.
No requirement to provide details of bank account	As UPI ID is linked to the bank account of the payee/person collecting money, separate details of bank account and IFSC may not be provided in the dynamic OR code.
Collection of payment by authorised person	In cases where the payment is collected by some person other than the supplier (ECO or any other person authorised by the supplier on his/ her behalf), the UPI ID of such person may be provided in the dynamic QR code, instead of UPI ID of the supplier.
QR code not required on supply of services to recipient outside India	Wherever an invoice is issued to a recipient located outside India, for supply of services, for which the place of supply is in India, and the payment is received by the supplier in foreign currency, such invoice may be issued without having a dynamic QR code.
Over the counter sales	In cases where the invoice number is not available at the time of digital display of dynamic QR code in case of over-the-counter sales and the invoice number and invoices are generated after receipt of payment, the unique order ID, which is uniquely linked to the invoice issued for the said transaction, may be provided in the dynamic QR code for digital display.
Part payment received in advance	When the part-payment for any supply has already been received from the customer/recipient, in form of either advance or adjustment through voucher/discount coupon etc., then the dynamic QR code may provide only the remaining amount payable by the customer/recipient against invoice value.

Amendment in export policy of Remdesivir injection and Remdesivir API

The export of Remdesivir injection and Remdesivir API falling under the ITC(HS) Code Ex 293499 and Ex 300490 has been put under the Restricted category[4] with immediate effect.

The export of Remdesivir injection and Remdesivir API against the advance authorisations issued under Chapter 4 of the Foreign Trade Policy shall not require a separate export authorisation or permission.

4. Notification No. 08/2015-2020 dated 14 June 2021

COVID-19: Last date for filing QPRs/APRs by SEZ/EOUs/Developers further extended till 31 December 2021

To ensure ease of doing business due to the ongoing pandemic, the government has further extended the due date for filing Quarterly Progress Report (QPR) and Annual Performance Report (APR) by SEZ Units/Developers/EOUs up to **31 December 2021**[5].

National Pharmaceutical Pricing Authority (NPPA) instructs manufacturers to revise MRP of drugs in line with reduced GST rates

The National Pharmaceutical Pricing Authority (NPPA) has issued certain guidelines in order to reflect the downward change in MRP of drugs and to pass on the benefit of reduced GST rates to consumers[6].

It has instructed that all the manufacturers and marketing companies are required to revise the MRP of drugs/formulations taking into effect the revised rates of GST. Further, clarified that recalling or re-stickering on the label of container or pack of released stocks in the market is not mandatory if price compliance can be ensured at the retailer level through issuance of a revised price list.

NAA issues instructions pursuant to recent GST rate reductions on certain goods and services

The National Anti-Profiteering Authority (NAA) has issued an office memorandum[7] directing the authorities to take all possible steps envisaged under the anti-profiteering provisions to ensure compliance. Further, it has directed that wherever required the officers need to utilise the powers conferred on them for collection of evidence which may be required to take action against errant suppliers of various goods and services.

In addition, it has also instructed that the complaints filed by common consumers should be kept on priority and forwarded to the anti-profiteering apparatus i.e., State-level Screening Committees and Standing Committee on Anti-Profiteering.

GSTN provides functionality to register complaint on misuse of PAN in GST Registration

The Goods and Services Tax Network (GSTN) has introduced a functionality to register complaints related to the misuse of PAN for obtaining GST registration on the GST portal. The functionality will check the misuses, control the frauds and help officers in enquiry and cancellation of such registration.

Steps to be followed for the registration of a complaint:

- Any person aggrieved of having his PAN misused may search the GSTIN based on PAN using the search functionality: **Search taxpayer > Search by PAN**.
- The registration(s) which are not taken by the person, may be selected, and reported to the jurisdictional officer.
- While registering the complaint, the complainant must provide the e-mail ID and mobile number for validation and the other information such as date of birth, address, etc.
- On submission of request, ARN will be generated. In case multiple GSTNs are selected for such complaints, ARN for each GSTIN shall be generated separately and will be assigned to their respective jurisdictional officers on their dashboard for further necessary action.
- The complaints so registered shall be made available to the competent authorities at their dashboard under – 'Application for Reporting Fake GSTIN's' for further necessary action.
- The complainant can further track the status of his/her application through **'Track ARN'** at GST Portal pre-login.

5. Notification No. K-43022/7/2020-SEZ dated 29 June 2021
6. Office Memorandum dated 15 June 2021
7. Office Memorandum dated 22 June 2021

CBIC issues clarification on applicability of Central Excise exemption on Ethanol/Methanol blended Petrol and high-speed diesel

The CBIC had received various requests seeking clarification on applicability of exemption from Basic Excise duty and other cesses, under different notifications, in case the blending of motor spirit (commonly known as petrol) and ethanol or methand, is done within the refinery.

In this regard the CBIC has issued certain clarifications as under[8]:

Exemption on ethanol/methanol blended petrol:

The exemption has been granted to the ethanol/methanol blended petrol provided that the central excise duty (including applicable cesses) is paid on motor spirit (petrol) and GST is paid on ethanol/methanol, used in producing the blended fuel.

Exemption on blended fuel:

The exemption from central excise on blended fuel, shall also be available in case the blending is done within the factory premises, provided that the assessee pays the required central excise duty on motor spirit (commonly known as petrol) by the due date (based on removal of the Ethanol/ Methanol blended fuel from the factory).

Proper records to be maintained:

Proper account of such blending and details of the tax paid on motor spirit (petrol) and Ethanol/Methanol, used for the purpose of blending be maintained by the assessee, for any verification, including in audit.

High speed diesel oil:

The above clarification will also be applicable for high-speed diesel oil blended with alkyl esters of long chain fatty acids obtained from vegetable oils, commonly known as biodiesel.

8. Circular No. 1078/02/2021 – CX dated 22 June 2021

2a Key judicial pronouncements

SC admits plea by revenue challenging decision of HC quashing levy of IGST on ocean freight under reverse charge

Facts of the case

- The petitioner[9] had filed a writ petition before the Gujarat High Court (HC) challenging the legality and validity of the relevant provisions under the GST law requiring to pay Integrated Goods and Services Tax (IGST) under reverse charge mechanism on the value of goods imported including ocean freight.
- The HC had quashed the levy of IGST on ocean freight paid on imported goods. The HC further declared the relevant notifications issued by the government in this regard to be 'ultra vires' the GST law due to lack of legislative competency.
- The Revenue had filed a Special Leave Petition (SLP) before the Supreme Court (SC) to contest the findings of the Gujarat HC that IGST is not leviable on the ocean freight for the services provided by a person located in a non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India.
- The SC had admitted the SLP filed by the revenue and had issued notice to the parties.

9. Mohit Minerals Pvt. Ltd.

SC's interim order

The SC has now listed the SLP for final hearing on **12 August 2021**.

Our comments

The levy of IGST on ocean freight has been a matter of extensive litigation since inception. The Gujarat HC had quashed the levy of IGST on ocean freight paid on imported goods. The HC had further declared relevant notifications issued by the government in this regard to be ultra vires the GST law for lack of legislative competency. The judgment was in line with the HC's earlier decision, where the court had struck down the notification imposing service tax under reverse charge mechanism on ocean freight. It will be interesting to see the SC's final verdict in this regard.

Spilt verdict by Bombay HC on constitutionality of GST provisions pertaining to 'intermediary services'

Background

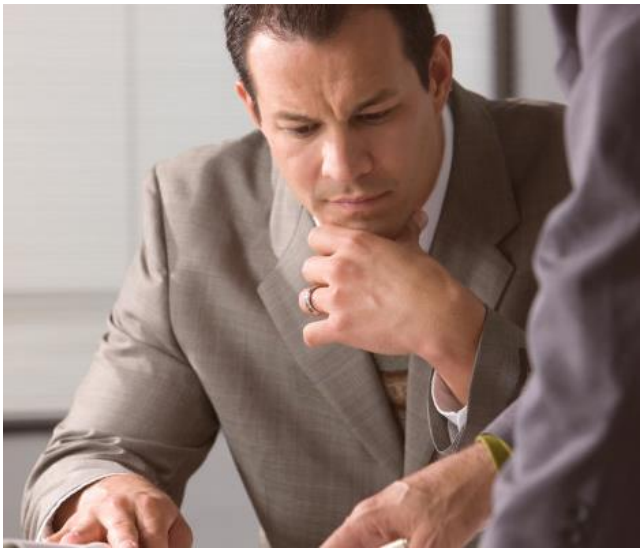
Taxability of intermediary services under the GST regime has been a matter of extensive litigation since inception. By virtue of Section 13(8)(b) read with Section 8(2) of the Integrated Goods and Services Tax Act, 2017 (IGST Act), the place of supply in case of an intermediary has been declared to be the location of the service provider. Therefore, various writs have been filed before the Bombay HC challenging the constitutionality of Section 13(8)(b) and Section 8(2) of the IGST Act, 2017.

Bombay HC key observations[10]

First judge (Justice Ujjal Bhuyan):

- The justice stated that he is unable to accept the views of the Gujarat High Court in the case of Material Recycling Association of India wherein it had held that Section 13(8)(b) of the IGST Act cannot be said to be ultra vires or unconstitutional in any manner. Further, by no amount of stretching of the doctrine of stare decisis, can judgments of one High Court be given the status of a binding precedent as far as the other high courts or courts or tribunals outside the territorial jurisdiction of that high court are concerned.
- Further, it is evident that Section 13(8)(b) of the IGST Act not only falls foul of the overall scheme of the GST law but also offends the Articles 245, 246A, 269A and 286(1) (b) of the Constitution. The extra-territorial effect given by way of this provisions has no real connection or nexus with the taxing regime in India introduced by the GST system.
- Therefore, Section 13(8)(b) of the Integrated Goods and Services Tax Act, 2017 is ultra vires the said Act besides being unconstitutional and allowed the writ accordingly.

However, the other member of the Division Bench of the Bombay HC had a difference of opinion and observed the following:



10. In the case of Dharmendra M. Jani and A.T.E. Enterprises Pvt. Ltd.

Second judge (Justice Abhay Ahuja):

- The second judge opined that when there is a specific provision defining intermediary as in Section 2(13) of the IGST Act and intermediary services are specifically dealt with in Section 13(8)(b) of the IGST Act, the question of application of general provision of Section 2(6) of export of services would not arise.
- Agreeing with conclusion of Gujarat HC in Material Recycling Association of India, he expressed that a position of law regarding legitimacy of Section 13(8)(b) or Section 8(2) cannot be doubted. When the Constitution has empowered the Parliament to formulate principles determining the place of supply, in my view, Section 13(8)(b) cannot be said to be ultra vires the charging section as Section 13(8)(b) does not violate the levy on the supply made by the intermediary, particularly in view of Section 7, which designates such supplies to be inter-state supplies.
- Therefore, it was held that neither Section 13(8)(b) nor Section 8 (2) of the IGST Act are unconstitutional nor are ultra vires the IGST Act and thus are constitutionally valid and operative for all purposes.

Status as on date:

In view of such difference in opinion, the registry has decided to place the matters before the Chief Justice on the administrative side for doing the needful.

Interest on delayed refund becomes obligatory once there is a delay beyond prescribed period – Bombay HC

Summary

The Bombay High Court (HC) observed that the liability of the Revenue to pay interest on the delayed refund commences once there is a delay in payment of refund within three months from the date of receipt of application. Non-granting of interest would amount to failure to discharge statutory duty/obligation by the refund sanctioning authority. Therefore, the HC held that the petitioner would be entitled to interest and allowed the writ petition.

Facts of the case

- The petitioner[11] is engaged in the business of providing support services primarily to its foreign affiliates. To provide such services, it receives certain input services and avails credit for service tax paid thereon.
- As the services provided by it qualify as export, it filed refund claim of unutilised CENVAT credit of service tax paid on input services.[12]
- The refund amounts were sanctioned beyond three months from the date of filing of refund applications. Therefore, the petitioner claimed that it was entitled to interest on delayed payment of refund. However, it did not receive any communication from the office of the respondent. Therefore, it filed a writ petition[13] seeking relief.

11. Qualcomm India Private Limited
12. Rule 5 of the CENVAT Credit Rules, 2004
13. Writ Petition No. 1775 of 2020

Bombay High Court observations and ruling[14]

- **Interest payable on expiry of three months:** The interest becomes payable if, on expiry of a period of three months from the date of receipt of the application for refund, the amount claimed is still not refunded. Further, the liability of revenue to pay interest commences from the date of expiry of three months from the date of application for refund and not on the expiry of three months from the date on which the order of refund is made[15].
- **No distinction between intentional or unintentional delay:** The relevant provision[16] does not distinguish between delay which is intentional and delay which is unintentional. Once there is a delay in payment of refund within three months from the date of receipt of application, payment of interest on the delayed refund becomes obligatory.
- **Interest on delayed refund is automatic:** The liability to pay interest is automatic, as a matter of law being a mandate of the statue.
- **Failure to discharge statutory obligation:** Non-granting of interest shall amount to failure to discharge statutory duty/obligation by the refund sanctioning authority for which the aggrieved claimant can seek a writ of mandamus from the writ court[17].
- **Petitioner entitled to interest:** Therefore, the HC allowed the writ and held that the petitioner is entitled to interest on delayed refunds.

Our comments

The present ruling is in line with the Apex Court ruling[18] wherein it was held that the liability of the Revenue to pay interest commences from the date of expiry of three months from the date of receipt of the application for refund and not from the date on which order of refund is made. It was also pointed out by the Apex court that it is a well-settled proposition of law that a fiscal legislation has to be construed strictly; one has to look merely at what is said in the relevant provision. There is nothing to be read in; nothing to be implied and there is no room for intendment.

The Apex Court[19], in another case, had held that it is obligatory on the part of the revenue to conclude the adjudication process within three months, failing which the statutory consequences mandated by the law[20] would come in to play.

This is a welcome decision by the Bombay HC and it will set a precedence in similar cases. Further, an analogy can also be drawn under the GST regime since similar provisions exists even under the GST law.

14. Order dated 21 May 2021
15. SC ruling in case of Ranbaxy Laboratories Limited
16. Section 11BB of Central Excise Act,1944
17. under Article 226 of the Constitution of India
18. Ranbaxy Laboratories Ltd.
19. M/s Hamdard (Waqf) Laboratories
20. Section 11BB

Entertaining a writ petition in presence of an appellate remedy is not preferable - Madras HC

Summary

The Madras HC held that a writ petition cannot be entertained in a routine manner without exhausting the alternate remedies available under the statute. It further stated that in normal (other than exceptional) circumstances, all the aggrieved persons from and out of the order passed by the original authority are bound to approach the appellate authority. The appellate authorities are competent to grant the interim orders and consider the appeal on merits by affording opportunity to all the parties.

Facts of the case

- The petitioner[21] filed writ petition[22] challenging the Order-in-Original passed by the Deputy Commissioner of Customs.
- The petitioner contended that no show cause notice was issued, and the principals of natural justice have been violated.
- The impugned order has been passed based on the unilateral decision taken by the authorities and thus, preferring an appeal may not be necessary.

Madras HC ruling and observations[23]

- **Statutory appellate remedy is a valuable right:** The statutory appellate remedy provided under the law is a valuable right conferred on a litigant. Thus, such a right cannot be dispensed with in a routine manner, even by the High Court[24].
- **Appeal remedy to be exhausted:** The appellate remedy contemplated under the statute cannot be dispensed with in a routine manner in a writ proceeding. In all such cases, the appeal remedy is to be exhausted by the aggrieved person by following the procedures as contemplated[25].
- **Petitioners are at liberty to approach the Appellate Authority:** The petitioners are at liberty to approach the appellate authority and file an appeal within a period of 60 days and in the event of filing of appeal(s) by the writ petitioners all such appeals are directed to be entertained without reference to the period of limitation.
- **Writ dismissed:** Therefore, the HC held that entertaining a writ petition in the presence of an appellate remedy is not preferable and dismissed the writ filed by the petitioner.

Our comments

The Madras HC, in another case,[26] had observed that to avoid the pre-deposit, the practice of filing writ petitions is prevailing in the HC. However, the HC cannot encourage such practice and the appellate remedy contemplated under the law is to be exhausted in all circumstances.

In a similar case[27] the HC had held that if the intention of the legislature is to prescribe an appellate remedy, then such right cannot be denied nor be dispensed with by the high court[28]. In another case[29] the HC had held that when the issues raised in the writ petition are not purely questions of law, such questions cannot be decided by a Writ Court and the appellant should avail the alternate remedy available under the law.

Considering the above, it is imperative that due caution is exercised by the businesses before approaching the writ courts to avoid unnecessary litigation and consequent delay in attaining finality on the matter.

Mere issuance of notification would not make it enforceable unless made available to public - Karnataka HC

Summary

The Karnataka HC observed that when the notification is sought for publication in the Official Gazette, it must also be made available to the public on the date of its issue. In other words, mere issuance of a notification per se would not make it enforceable. Hence, the court held that as the impugned notification was not made available to public on the date of its issue, it cannot be applied to the imported goods in question. Thus, the HC upheld the order of single Judge and held that enhanced rate of customs duty as stipulated in the said notification cannot be applied to the imported goods.

Facts of the case

- The respondent[30] had sought a declaration that the reassessment of the goods imported by it and demanding the higher rate of duty of 12.5% for clearance of the subject goods was illegal.
- The learned Single Judge had accepted the contentions of the respondent and held that the respondent was liable to pay duty only at 7.5%[31].
- The present appeal[32] is filed by the Deputy Commissioner of Customs being aggrieved by the order of the single Judge[33].

21. M/s Vishnu Clothing Company
22. WP No.12489 of 2021 and WMP Nos.13265 & 13266 of 2021
23. Order dated 9 June 2021
24. Under Article 226 of the Constitution of India
25. Either under Section 128 or Section 129 of the Customs Act, 1962
26. M/s Sri Sathya Jewellery
27. M/s Fuso Glass India Pvt. Ltd.
28. By exercising powers under Article 226 of the Constitution of India
29. M/s Fourceess Diamond Pvt Ltd.
30. M/s Ruchi Soya Industries Ltd
31. Based on Notification No. 12/2012-Cus. dated 17.03.2012
32. Writ Appeal No. 2575/2018 (T-Tar)
33. Dated 06.03.2018 passed in writ petition No. 41394/2015

Karnataka HC ruling and observations[34]

- **Notification not made available to public on date of issuance:** The bone of contention between the parties is, whether, in the instant case, notification dated 17 September 2015, which was published on the same day in the Official Gazette was not made available to the respondent, since it was not made available to public on the date of its issuance i.e., on 17 September 2015 itself. Hence, the enhanced rate of customs duty as stipulated in the said Notification, cannot be applied to the imported goods.
- **Notification made available to public on 21 September 2015:** As per the reply to RTI query, the notification was made available to the public on 21 September 2015. Therefore, it becomes crystal clear that the notification dated 17 September 2015 was not made available on the said date and therefore it could have been made applicable only with effect from 21 September 2015 and not with effect from 17 September 2015.
- **Notification comes into force on date of its issue:** The law[35] provides that unless otherwise provided, a notification would come into force on the date of its issue by the Central Government for publication in the Official Gazette. Thus, the date of the notification, coming into force is, when the same is issued by the Central Government and sent for publication in the Official Gazette.
- **Mere issuance of a notification per se would not make it enforceable:** When the notification is sought for publication in the Official Gazette, it must also be published and made available to public on the date of its issue. In other words, mere issuance of a notification per se would not make it enforceable[36].
- **Appeal dismissed:** Therefore, dismissing the appeal, the HC held that the learned Single Judge was justified in holding that notification dated 17 September 2015 could not have been made applicable to the imported goods in question and the demand for payment of differential amount of duty was rightly quashed.

Our comments

The Apex Court in the case of Param Industries Ltd. had observed that to make the notification applicable on its date of issue, it should be duly published in the official gazette, and should also be made available to the public.

In another case, the Apex Court[37] had held that notification or an order would not become operative until it is made known to the public. Therefore, it is necessary that such notification, which is issued by the Department, is also made available to public in addition to publication.

This is a welcome ruling by the Karnataka High Court and is in line with the Apex Court rulings on the subject matter.

34. Order dated 27 May 2021
35. Section 25(4)(a) of the Act
36. Section 25(4)(b) of the Act
37. Harla vs. State of Rajasthan

Genuine and bonafide cases should not be denied the benefit of concessional duty – Madras HC

Summary

The Madras HC, in a recent case, has held that any benefit of concessional rate of duty accruing to the petitioner cannot be denied through a non-speaking order that has not adverted to the justification put forth by the petitioner. Further, the opportunity must be provided to the petitioner for proving the factum of export.

Facts of the case

- The petitioner[38] is engaged in supply of components of cars/automobiles. The petitioner had obtained licences under the EPCG Scheme[39]. The said authorisation entitled the petitioner to import the goods at a concessional rate of duty with a condition and obligation to export eight times of the duty saved under each license.
- The export obligation was not complied with and the petitioner sought an extension against which an extension of two years was granted.
- Since, the FTP provisions allow petitioner to export either on his own or through third party exports, petitioner mentioned that it effected the supplies to the third party[40] who, in turn, made the required exports.
- The EPCG authorisation number[41] and date shall be endorsed on shipping bills which are proposed to be presented towards discharge of export obligation. However, EPCG authorisation number of the petitioner was not mentioned by the third party in the shipping bills. In this regard, the petitioner mentioned that it was not viable for the third party, who was making export of supplies received from multiple vendors under the same consignment, to mention the EPCG authorisation numbers of all the vendors in the same shipping bill.
- Therefore, the petitioner filed an application before the Commissioner of Customs to seek amendment in the shipping bill with a further justification that the licences have been obtained on the basis of anticipated order from automobile dealers and the petitioner effected supply through third party dealer who assembles the component as Completely Knocked Down (CKD) and export the goods.
- Assessing authority rejected the request of petitioner for concessional duty. Aggrieved by the order of the authority, petitioner filed writ petition before the Madras HC to seek relief.

Madras HC observations and ruling[42]

- **Opportunity must be granted:** Though the requirement of stating EPCG licence number on the shipping bill is mandatory but if the requirements are capable of being satisfied constructively, non-mentioning of the same is not fatal to the claim of concessional rate of duty. Hence an opportunity must be granted to the petitioner to prove the factum of export through the third party by way of contemporaneous records.
- **Benefit not to be denied to genuine cases:** The HC further stated that genuine and bonafide cases should not be denied the benefit of concessional duty. The HC mentioned that the impugned order passed by the Commissioner of Customs denying the benefit of concessional rate of duty is a non-speaking order and has not adverted to the justification put forth by the petitioner and is therefore set aside.
- **Matter remanded back:** The HC remanded back the matter and the petitioner was further directed to appear before the Commissioner of Customs who shall, after hearing the petitioner and considering any material furnished by the petitioner in support of its stand, pass a speaking order on the application filed within four weeks. Also, it has been ordered that the bank guarantee should not be invoked till the time decision is taken by the Commissioner of Customs.

Our comments

This is a welcome judgement which may provide relief in similar other cases wherein benefit of concessional duty may have not been granted to the importers on account of bonafide practical errors/ lapses. The judgement laid down the burden on supporting manufacturer to prove the transaction however, it specifically mentioned that even the mandatory requirements are capable of being satisfied constructively by any number of methods, including confirmations, correspondences, and other documents/records.

38. M/s YSI Automotive India Pvt. Ltd. Vs Commissioner of Customs & others
39. in terms of Foreign Trade Policy 2009-14 (FTP)
40. M/s.Glovis India Ltd.
41. As per para 5.7.1 of EPCG Scheme
42. 2021-TIOL-1043-HC-MAD-CUS

Refund of unutilised CENVAT credit of cesses allowed - CESTAT

Summary

The Customs, Excise and Service Tax Appellate Tribunal (CESTAT) Chandigarh observed that the appellant could not transfer the CENVAT credit of Education Cess (EC), Secondary and Higher Education Cess (SHEC) and Krishi Kalyan Cess (KKC) to Goods and Services Tax (GST) account due to retrospective amendment in GST law. Therefore, as they were lying unutilised in their CENVAT credit account on 30 June 2017, it held that the appellant is entitled to file refund claim of such unutilised CENVAT credit account.

Facts of the case

- The appellant[43] is engaged in providing various services. The credit of EC, SHEC and KKC were lying unutilised in their CENVAT credit account on 30 June 2017.
- With the GST regime coming into force the appellant took the unutilised credit to its GST account. However, due to an amendment[44] which disallowed the carry forward of CENVAT credit in GST account with retrospective effect, the appellant had to reverse the credit. Thereafter, it filed a refund claim of such CENVAT credit.
- The matter was adjudicated and refund claim was rejected on the ground that the appellant is not entitled to carry forward the CENVAT credit to GST regime and therefore the refund claim is barred by limitation and has lapsed.
- Aggrieved thereby the appellant filed present appeal before the CESTAT.

Chandigarh CESTAT observations[45]

- **No bar to carry forward CENVAT credit:** The new regime of GST came into force on 1 July 2017 and on that date there existed no bar on carry forward of the CENVAT credit to GST regime. Therefore, the appellant has taken the CENVAT credit under the GST law.
- **Retrospective amendment in GST law:** The relevant provision[46] under the GST law was amended retrospectively on 30 August 2018 which provided that, the assessee cannot carry forward the credit lying in their CENVAT credit account of EC, SHEC and KKC. Therefore, the appellant reversed the credit and filed refund claim on 30 August 2019.
- **Contention that it is GST credit not acceptable:** As the appellant has reversed the said amount in their GST account, the said amount shall remain lying unutilised in their CENVAT credit account as good as on 1 July 2017. Therefore, the contention of the respondent that it is a GST credit, is not acceptable when the provision of law is very much clear that the said credit cannot be transferred to GST Regime.
- **Refund claim is not barred by limitation:** The amendment came after one year of the enforcement of GST and thus it becomes practically impossible to file refund claim during the year as no provision of law existed for the same. Thus, the relevant date of filing the refund claim shall be 30 August 2018 and within one year of the said date the refund claim has been filed. Therefore, the claim is not barred by limitation.
- **Appellant entitled to refund:** The Tribunal observed that in another ruling, the Delhi Tribunal had held that there is no provision in the GST law that such credits would lapse and therefore the assessee is eligible for the cash refund of the Cesses lying as CENVAT credit balance. Applying the same ratio, the Chandigarh CESTAT held that the appellant is entitled to refund and set aside the impugned order.

Our comments

As the GST law restricts transition of accumulated credit of cesses, the eligibility to claim refund of Cess balances has been a subject matter of dispute and extensive litigation.

The Delhi Tribunal[47] had held that there is no provision in the GST law that such credits would lapse and merely by change of legislation suddenly the appellants could not be put in a position to lose this valuable right. Therefore, the assessee is eligible for the cash refund of the Cesses lying as CENVAT credit balance. In another ruling pronounced by the Karnataka High Court[48], it was observed that there is no express prohibition under the erstwhile law[49]. As there was closure of the factory the assessee was coming out of the MODVAT scheme and allowing refund was fully justified. Contrary to this, the Hyderabad Tribunal[50] had observed that there is no provision in the erstwhile laws[51] mandating refund of the impugned Cesses. Therefore, the transitional provisions under GST law are not meant to cover refund of the CENVAT credit, which is not eligible for transition into GST regime.

This is a welcome ruling by the Chandigarh CESTAT and will help provide relief to businesses at large which were unable to carry forward unutilised CENVAT credit of cesses levied under the erstwhile indirect tax regime.

43. Schlumberger Asia Services Ltd.
44. Made on 30 August 2018 in Section 140 of CGST Act, 2017
45. Order No. 60844/2021 dated 24 May 2021
46. Section 140 of the CGST Act, 2017
47. M/s Bharat Heavy Electricals Ltd.
48. Slovak India Trading Co. Pvt. Ltd.
49. In terms of Rule 5 of CENVAT Credit Rules, 2002
50. M/s Mylan Laboratories Ltd.
51. CENVAT Credit Rules, 2004 or Section 11B of the Central Excise Act, 1944,

2b Decoding advance rulings

Placement of non-transferable medical instruments in hospitals without consideration, a 'supply of service' - Kerala AAR

Summary

The Kerala Authority for Advance Ruling (AAR) observed that the applicant is engaged in placement of specified medical instruments at premises of unrelated customers, such as hospitals and labs, for their use without transfer of ownership and consideration for a specified period. Further, such placement is against an agreement between the applicant and the hospitals for an obligation of minimum purchase of certain products from the applicant. Therefore, the AAR held that such placement constitutes a ‘supply of services’ and not ‘movement of goods otherwise than by way of supply’. Therefore, such transaction shall be taxable under the Goods and Services Tax (GST).

Facts of the case

- The applicant[52] is engaged in sale of pharmaceutical products, diagnostic kits, diagnostic instruments, etc.
- The applicant has adopted the business model of placing their own medical instruments at premises of unrelated hospitals or laboratories without any consideration. To execute the placement of instruments, the applicant enters into Reagent Supply and Instrument use Agreement. As per the said arrangement, the recipient must purchase minimum quantity of purchase products like reagents, calibrators, disposables, etc.
- The applicant sought an advance ruling to determine whether the provision of specified medical instruments by the applicant to unrelated parties for use without any consideration, constitutes a 'supply' or whether it constitutes 'movement of goods otherwise than by way of supply'.
- Earlier in 2018, the Kerala AAR had held that this supply would constitute a 'composite supply' and the Appellate Authority for Advance Ruling (AAAR) upheld the ruling of AAR as legally correct and proper.
- However, in year 2020, the Hon'ble Kerala High Court quashed the ruling of the AAR as well as the AAAR and rejected the finding that placement of medical instruments to hospitals, laboratories etc., for use without any consideration constitutes a 'composite supply'. The court remitted the case back to AAR for fresh decision based on the observation made by the Hon'ble High Court in the order.

Kerala AAR observations and ruling[53]

- **Ingredients of supply:** The Kerala AAR observed that the activity to qualify as 'supply'[54] must satisfy the three essential ingredients of 'supply' i.e., the activity -
  I. involves goods or services,
  II. is in the course or furtherance of business, and
  III. is made for a consideration.
- **Involves goods or services:** The AAR observed that the instrument or machine installed at the premises of hospital/labs by the applicant clearly fall within the definition of goods. Further, the right granted to use the machine squarely gets covered in the scope of term 'transfer'[55].
- **In the course or furtherance of business:** The AAR observed that the definition of business in GST law is inclusive and wide in scope. Considering the same, the activity of applicant is undoubtedly in the course or furtherance of business.
- **Made for a consideration:** The AAR held that the agreement to purchase agreed value of reagents, calibrators, and disposables for use in instrument exclusively from the applicant and obligation to pay in case of deficit purchase constitute a valid consideration[56].
- **Transaction qualifies as supply:** Thus, the AAR concluded that placement transaction is a 'supply'. Additionally, the AAR observed that the grant of non-transferable right to use the goods for a specified period without transferring title of the goods qualifies to be 'supply of services'[57].

Our comments

This has been one of the controversial issues in GST regime for the healthcare and pharmaceutical industry. Most of the businesses were considering it to be 'movement of goods otherwise than by way of supply' and were not discharging GST liability.
This ruling seems to have made it clear that such transaction would qualify as 'supply of service' and not a 'composite supply' as held in earlier ruling of Kerala AAR.
Considering the above, it is recommended for entities in this industry to re-visit their GST positions in this regard. Additionally, it is also imperative to note that the rate of GST would now have to be determined considering this as a separate supply and not composite supply.

52. M/s Abbott Healthcare Private Limited.
53. Advance Ruling No. KER/97/2021 dated 7 May 2021
54. Section 7 of the CGST Act, 2017
55. Section 7(1)(a) of the CGST Act, 20175 Section 2(31) of the CGST Act, 2017
56. Section 7(1A) of the CGST Act, 2017
57. Section 2(31) of the CGST Act, 2017

03 Experts column

The journey of taxability of copyrights of cinematographic films

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The World Intellectual Property Organisation (WIPO), the apex institution governing the intellectual property rights, has described it as “Intellectual property refers to creations of the mind: inventions; literary and artistic works; and symbols, names and images used in commerce.” Black's Law Dictionary has defined the same as “The term intellectual property refers to a category of intangible rights protecting commercially valuable products of human intellect comprising primarily trademark, copyright and patent right, as also trade secret rights, publicity rights, moral rights and rights against unfair competition.”

One of the biggest challenges that persist in the media and entertainment industry is the loss of revenue due to piracy. Such ownership interests by an individual or entity in creations of the human mind needs protection from unethical copy or reproduction. Thereby, music, television shows, movies and most forms of entertainment have protection by way of a copyright.

From an indirect tax perspective, there have been several cases during the pre-GST regime on taxability of Intellectual Property Rights (IPR), including copyrights and are still being discussed and litigated. Execution of transactions for such copyrights, in respect of cinematographic films by the producer for further distribution or for exhibition, has instigated the need to evaluate and correctly determine the tax position and liability.

Copyright transaction - Deemed sale or a service?

One of the key issues has been whether a copyright transaction should be considered as a transfer of right to use the goods, which is a deemed sale in terms of Article 366(29A) or a service of temporary transfer or permission to use/enjoy such copyright.

Article 366(12) of the Constitution defines goods to include all materials, commodities and articles. The Apex Court, in the case of Tata Consultancy Services vs. State of Andhra Pradesh, had held that the expression 'all materials, commodities and articles' is very wide and would include both tangible and intangible property. Further, it had also held that properties which are capable of being abstracted, consumed, and used and/or transmitted, transferred, delivered, stored or possessed, etc. are 'goods' for the purposes of levy of VAT/Sales Tax. In the case of Associated Cement Companies Ltd vs. Commissioner of Customs, it was held that intellectual property would acquire the character of goods the moment they are kept on media like paper, diskette, or anything. Based on this, it may be said that intellectual property in itself is a good.

Later, with the intention to broaden the tax base by removing the restrictive meaning of the term ‘sale’, the Constitution (Forty-sixth Amendment) Act, 1982 introduced the concept of ‘deemed sale’ through insertion of Article 366 (29A) whereby the state government was empowered to levy tax on the transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration.

The journey of taxation of IPR under Service Tax commenced when the service of temporary transfer or permitting the use or enjoyment of IPR was brought under the ambit of levy of service tax in 2004. Initially, copyright was specifically excluded from the definition of IPR for the purpose of levy of service tax, mainly to encourage the artists. But, the Finance Act, 2010 levied service tax on transferring temporarily or permitting the use of or enjoyment of any Copyright except original literary, dramatic, musical, and artistic works. Additionally, via the mega exemption notification issued in 2012, service of copyright in relation to cinematographic film was also exempted. Later, in 2013, such notification was amended in relation to cinematographic films to restrict the exemption of services of copyright for exhibition in a cinema hall/theatre.

Accordingly, notices were issued to several producers for the levy of service tax on temporary transfer or permitting the use or enjoyment of copyright, which ultimately resulted in triggering litigation whereby several petitioners contented that the temporary transfer or permitting the use or enjoyment of copyright provided under the Finance Act, 1994 is covered under Entry 54 of List II and it amounts to transgression by Parliament into the exclusive domain of the State Legislature.

The Supreme Court in the decision of B.S.N.L. Vs. Union of India has held that to constitute a transaction for the transfer of the right to use, the goods must be available for delivery, there should be consensus as regards identity of goods, transferee should have a legal right to use the goods, and such legal right has to be to the exclusion of the transfer or/and having transferred the right to use, during the period the owner cannot again transfer the same rights to others. While undertaking such evaluation, the landmark decision of the Supreme Court in State of Andhra Pradesh vs. Rashtriya Ispat Nigam may also be considered as it has been clearly held that the necessary criteria to levy VAT is transfer of effective control to the exclusion of others. One has to look out for presence of such attributes in an agreement for exhibition of films between the producer and the distributor and the distributor and sub-distributor or exhibitor / theatre owner.

The Madras HC’s order in case of AGS Entertainment Private Limited and others vs Union of India mentions that there are two separate aspects, namely the transfer of the right to use the copyright and the permission to use or enjoy such copyright, operating in different fields. Merely because there is an overlapping on certain aspects, it would not lose the distinctiveness of each of the aspects. Thereby, if as per the terms of the agreement, the film in use by the distributor/exhibitor remains under the effective control of the producer, then the absolute right do not get transferred from the producer to distributor. Thereby, the distributor may not be free to make use of the same for other works like satellite rights, TV Channels, exploitation of song or audio/video, etc. Accordingly, in such a scenario, there may only be a temporary transfer or permission to use or enjoy the rights for a consideration, the tax levy on which is not covered by Entry 54 of List II but by Entry 97 of List I.

Assignment of specific copyright for perpetuity – permanent or temporary?

In the regular course of business, the producers enter into various agreements with distributors, exhibitors and television channels assigning to them exclusive rights for broadcast and exhibition of various cinematograph films, both produced as well as purchased by them. The rights include satellite television broadcast, direct-to-home broadcast, direct satellite service, terrestrial television broadcast and all other rights connected therewith including exhibition of the film by means of wireless diffusion and by wire for communication to the public through television broadcast.

With this, another area of litigation emerged when the service tax authorities issued notices to some producers/purchasers of cinematograph films for assignment of some part of their copyright in the cinematograph films to television channels. In most of these agreements, the producers had perpetually assigned for a period of 99 years, specific copyrights, while retaining other copyrights in the same cinematograph film with themselves. In case of Vendhar Movies Vs. The Joint Commissioner, the Revenue argued that it is only if the film was transferred, in entirety, that the transfer would amount to a 'perpetual' transfer; the transfer of any part of the copyright relating to a specific aspect of the cinematographic film would only be temporary in nature. Further, it was also contended that the use of the word 'perpetual' in the agreement was only a sham, designed to camouflage the true intent of the producer which was to enter into a temporary transaction.

Taxability of copyright service must be within the contours and prescription of the Finance Act, read in tandem with the relevant provisions of the Copyright Act, 1957. As per the Copyright Act (Section 18 and Section 26), the following points may be noted:

- In the case of a cinematograph film, copyright shall subsist until sixty years from the beginning of the calendar year next following the year in which the film is published.
- The owner of the copyright may assign the copyright to any person, either wholly or partially, and either generally or subject to limitations and either for the whole term of the copyright or any part thereof.
- Further, where the assignee of a copyright becomes entitled to any right comprised in the copyright, the assignee as respects the rights so assigned, and the assignor as respects the rights not assigned, shall be treated as the owner of copyright.

Hence, it may be said that the term 'copyright' denotes a specific and special right bestowed by statute. It may relate to one of several kinds of creative inputs, the sum total of which/portions of which, may constitute different assets, each holding a different underlying copyright.

In the aforementioned case, the Madras HC held that the cinematograph film holds a copyright in its own right, as a whole. However, the film, as an asset, comprises of various smaller but equally important components, such as the script, screenplay, background score, song lyrics, melody, instrumentation, orchestration, the use of light and camera work, to name a few. While the sum total of these inputs results in a film, the copyright of which will be held by the producer, each component thereof carries an independent and distinct copyright. This has given rise to the expression, 'bundle of rights', as per which the film holds a copyright by itself and also comprises of small, but equally distinct rights within itself. The department tends to ignore the fact that the taxable service under Service Tax Law is of 'any copyright' denoting all rights, that which vests in film as a whole, or any of the smaller but equally important rights comprised in the making of the film itself. The impugned notice and order-in-original, to the extent to which they do not indicate appreciation as well as application of the aforesaid, are erroneous in law and are liable to be quashed.

Most of these assignment agreements used the term 'perpetual transfer' or transferred the copyright specifically for a period of 99 years, both in excess of the period of 60 years as set out under the provisions of the Copyright Act, 1957. Such assignment may be seen as permanent/perpetual and not as temporary. Similar stand was taken in case of Vendhar Movies Vs. The Joint Commissioner.

Further, basis the circular issued by CBEC in 2004, a permanent transfer of intellectual property right does not amount to rendering of service. On such transfer, the person selling these rights no longer remains a ‘holder of intellectual property right’ so as to come under the purview of taxable service. Thus, there would not be any service tax on permanent transfer of IPRs.

Taxability of IPR under Goods and Service Tax (GST) regime – A macro view

Schedule II to the GST Act specifies the activities or transactions to be treated as supply of goods or supply of services.

As per para 5 (c) and (f), respectively, of the said Schedule, temporary transfer or permitting the use or enjoyment of any intellectual property right and that the transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration shall be treated as service.

Further, Heading 9973 of Notification No. 11/2017 (Central Tax Rate) notifies the rate of tax on leasing or rental services, without operator, as follows:

Service description	GST Rate
Temporary or permanent transfer or permitting the use or enjoyment of IPR in respect of goods other than Information Technology software	12%
Temporary or permanent transfer or permitting the use or enjoyment of IPR in respect of Information Technology software	18%

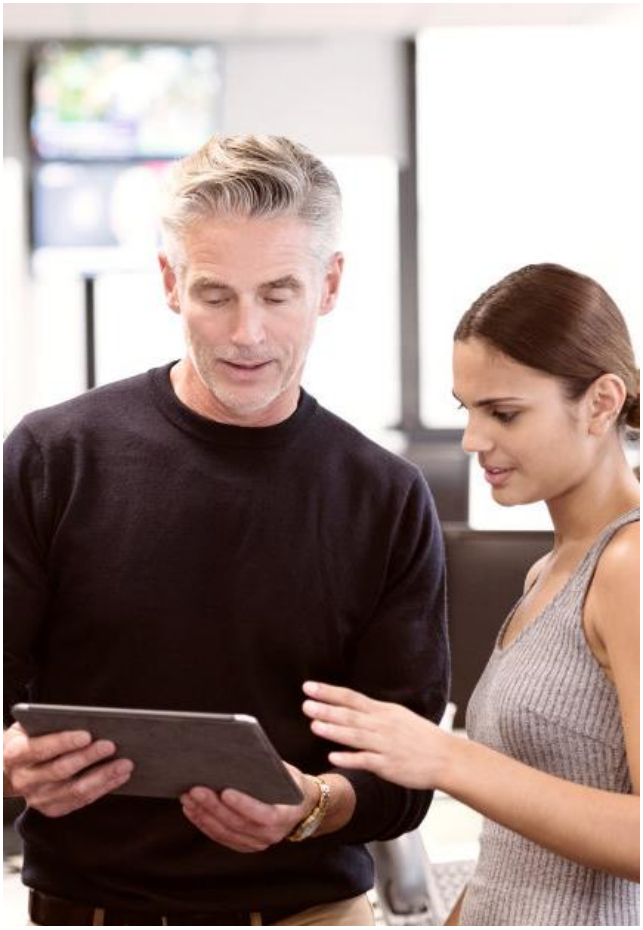
Notification No. 41/2017 (Central Tax Rate) notifies the rate of tax on goods as follows:

Description of goods	GST Rate
Permanent transfer of Intellectual Property (IP) right in respect of Information Technology software	12%
Permanent transfer of Intellectual Property (IP) right in respect of Information Technology software	18%

Conclusion

Determination of whether a transfer of copyright is permanent or temporary, thereby its classification into goods or service and the consequent dual taxation at different rates are still matters of concern for media companies as far as the erstwhile regime is concerned. This sector may need a landmark judgement from the Apex Court to put at rest such open issues.

While the rates notified for supply (goods or services) of copyright (other than IT software) are uniform under GST unlike the previous regime, however the issue with respect to classification is still open. Various attributes and aspects of an agreement need to be looked at on a case-to-case basis to substantiate if the transfer is permanent or temporary. Companies need to draft/redraft their agreements with the distributors/TV channels, etc. keeping in mind the past experience with the tax/judicial authorities and the orders/judgements issued so far in order to avoid litigation.



04 Issues on your mind

What is Authorised Economic Operator (AEO) programme? What is the eligibility and advantages of the programme?

The AEO programme enables customs administration to identify the safe and compliant business entity to provide them a higher degree of assured facilitation. This segmentation approach enables customs resources to focus on less or non-compliant or risky businesses for control. Thus, the aim of AEO programme is to secure the international supply chain by granting recognition to reliable operators and encouraging best practices at all levels in the international supply chain. Through this programme, the customs shares its responsibility with the businesses, while at the same time rewarding them with several additional benefits.

Key benefits of the programme:

- Self-declaration of SION[58] for AEO exporters in cases where SION is not notified.
- Inclusion of Direct Port Delivery of imports to ensure just-in-time inventory management by manufacturers – clearance from wharf to warehouse for AEO T1, T2 and T3.
- Inclusion of Direct Port Entry for factory stuffed containers meant for export by AEOs for AEO T1, T2 AND T3.
- Provision of Deferred Payment of duties – delinking duty payment and customs clearance for AEO T2 and AEO T3.
- Benefits of Mutual Recognition Agreements with other Customs Administrations for AEO T2 and AEO T3.
- Fast tracking of adjudications and refunds including IGST refunds and disbursal of drawback.

58. under Para 4.07A of FTP 2015-20

Eligibility:

Eligibility criteria for an entity:

- Handled 25 documents (s/B and Bills of Entry) in the last financial year.
- Should undertake customs-related work.
- Be a part of international supply chain.
- AEO can only be given to legal entity and not group company.
- Have had business activity for three financial years (can be waived in deserving cases).

Whether any facility provided by government for expedited customs clearance for related items?

The Central Board of Indirect Taxes and Customs (CBIC) has provided a facility to submit pre-intimation/details to provide expedited customs clearance to any COVID-19 related medicaments or equipment. The link for submitting the pre-intimation/details is provided below for ready perusal:

Pre-Intimation for Prompt Clearance of COVID-19 related items (Click here)

What is the recourse for unavailable HSN codes?

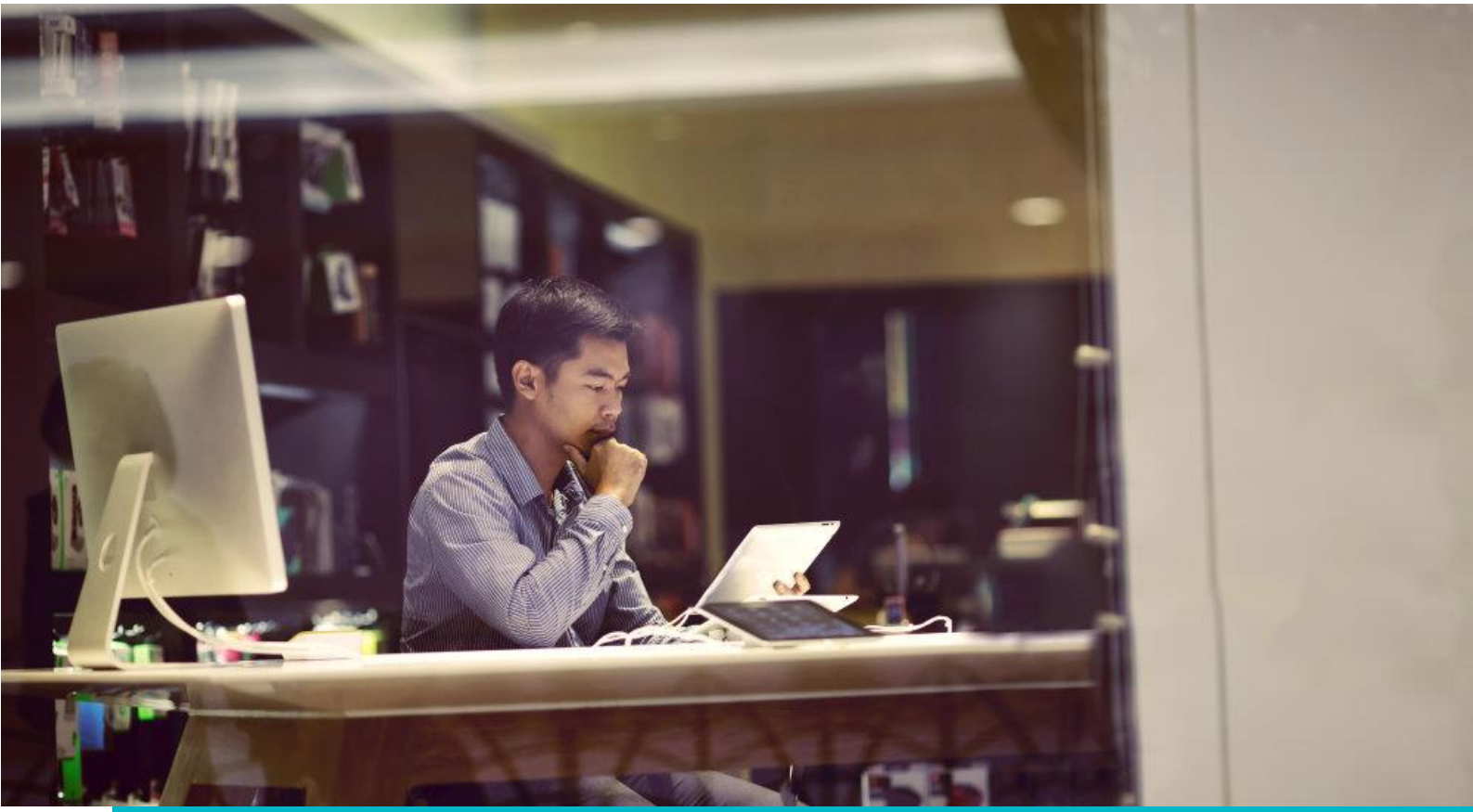
The Goods and Services Tax Network (GSTN) has released the updated HSN codes. It has further advised that, if the HSN is otherwise valid but not accepted, the taxpayers can raise a ticket on

GST Self-Service Portal (Click here)

Can an IRN/invoice reported to IRP be cancelled?

The cancellation request can be triggered through 'Cancel API' within 24 hours from the time of reporting invoice to IRP. However, if the connected e-way bill is active or verified by officer during transit, cancellation of IRN will not be permitted. In case of cancellation of IRN, GSTR-1 also will be updated with such 'cancelled' status.

05 Important developments in direct taxes



ITAT[59] releases FAQs and list of documents required for e-filling

ITAT has launched an e-filing module[60]. The facility of e-filing is not mandatory but optional and will not substitute the existing practice of presenting appeals, cross objections, stay applications and miscellaneous applications in paper form.

ITAT has also released FAQs[61], practice note, SOPs[62], checklist and guidance[63] on list of documents (both mandatory and optional) that are required for e-filing of various income tax appeals, wealth tax appeals, black money appeals, cross-objections, miscellaneous application etc.

CBDT [64] relaxes requirement for e-filing Forms 15CA/15CB up to 15 July 2021[65]

Currently, taxpayers upload Form 15CA along with Chartered Accountant's certificate in Form 15CB, wherever applicable on the e-filing portal before submitting the copy to the authorised dealer for any foreign remittance. In view of the difficulties being faced by taxpayers in electronic filing of Forms 15CA/15CB on the new portal[66], the CBDT has announced that taxpayers can submit the aforesaid forms in manual format to the authorized dealers till 15 July 2021 and has advised authorised dealers to accept such forms for the purpose of foreign remittances.

Further, 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.

59. The Income Tax Appellate Tribunal
60. http://itat.gov.in/itat. The module shall be initially soft-commissioned at Delhi Zone Headquarter with effect from 21 June 2021 and would gradually be rolled out at all other Zonal Headquarters and other subordinate Benches within four weeks thereafter.
61. Frequently Asked Questions
62. Standard Operating Procedures
63. https://www.itat.gov.in/page/content/efiling-guidelines
64. Central Board of Direct Taxes
65. Press release dated 5 July 2021
66. www.incometax.gov.in

CBDT introduces facility[67] to verify return filing status by tax deductor/collector

The Finance Act 2021 introduced new provisions mandating higher rates for tax deduction at source (TDS)[68] and tax collection at source (TCS)[69] in case of specified person. 'Specified person' has been defined to mean a person:

a) who has not filed its income tax returns for the past two years immediately prior to the year in which tax is required to be deducted/collected and the time limit for filing the original income tax return has expired; and

b) in whose case the aggregate of TDS or TCS is INR 50,000 or more in each of those two years.

In order to facilitate tax deductor/collector to conduct due diligence for the purpose of above provisions, CBDT has introduced a compliance check functionality in the Income Tax Department reporting portal. The system would prompt if the deductee/collectee is a 'specified person' or not.

The tax deductor/collector is required to check the Permanent Account Number (PAN) of the deductee/collectee at the beginning of the financial year.

- In case of a non-specified person: The tax deductor/collector is not required to check the list again during that financial year.
- In case of 'specified person': There may be situations wherein a person may move out of the 'specified person' category during the year. Accordingly, the tax deductor/collector is required to re-check the list at the time of TDS/TCS in the case of a 'specified person'.

The tax deductor/collector can feed single PAN (PAN search) or multiple PAN (bulk search) for the purpose of compliance check. Up to 10,000 PANs can be verified at once using bulk search. The CBDT has also released Quick Reference Guide and FAQs with respect to the compliance check functionality.

CBDT provides relief[70] in respect amount received by employees for COVID-19 treatment and ex-gratia payment to family of deceased employee

The CBDT has announced income tax exemption in respect of receipt of following amount in FY 2019-20 and subsequent years:

Particulars	Amount which is exempt from tax (FY 2019-20 and subsequent years)
Financial help received from employers and well-wishers for meeting expenditure incurred for treatment of COVID-19.	Full amount without any limit
Ex-gratia received by family members of an employee from the employer or from any other person on the death of the employee due to COVID-19	• If received from employer - Full amount without any limit • If received from other person - Upto INR 10 lakhs

In this regard, necessary legislative amendments shall be moved in due course.

67. Compliance check for sections 206AB and 206CCA
68. Under section 206AB of the Act
69. Under section 206CCA of the Act
70. Press release dated 25 June 2021

Government further extends timelines for various income tax compliances.

In view of the impact of the COVID-19 pandemic, the CBDT has extended[71] the time limit of the following tax compliances.

Particular	Existing due date	New due date
Last date for filing equalisation levy statement[72] for FY 2020-21	30 June 2021	31 July 2021
Time Limit for processing equalisation levy returns	30 June 2021	30 September 2021
Last date for passing assessment/penalty order	30 June 2021	30 September 2021
Last date for payment of amount (without additional amount) under the Vivad se Vishwas Scheme	30 June 2021	31 August 2021
Last date for payment of amount under the Vivad se Vishwas Scheme (with additional amount)	-	31 October 2021
Last date for linking Aadhaar with PAN	30 June 2021	30 September 2021
Last date for exercise of option to withdraw[73] pending application filed before the erstwhile Income Tax Settlement Commission	27 June 2021	31 July 2021
Uploading of the declarations received from recipients in Form No. 15G/15H during the quarter ending 30 June 2021	15 July 2021	31 August 2021
Quarterly Statement[74] by authorised dealer in respect of remittances made for the quarter ending on 30 June 2021	15 July 2021	31 July 2021
Last date for compliances to be made by taxpayers for claiming capital gain tax exemption[75]	Between 1 April 2021 and 29 September 2021	30 September 2021
Last date for filing application[76] for registration, etc. of trusts/institutions/research associations	30 June 2021	31 August 2021
Filing of objections[77] before the Dispute Resolution Panel and tax officer	1 June 2021	31 August 2021
Last date for issue of TDS certificate[78]	15 July 2021	31 July 2021
Statement of deduction of Tax (for last quarter of financial year 2020-21)	30 June 2021	15 July 2021
Annual Statement by the eligible investment fund to the assessing officer[79] for the FY 2020-21	29 June 2021	31 July 2021
Statement[80] of income distributed by an investment fund to be provided to the unit holder	15 July 2021	31 July 2021
Statement[81] of income paid or credited by investment fund to be provided to the Principal Commissioner or Commissioner of Income Tax	30 June 2021	15 July 2021

71. Notification no. 74 of 2021 dated 25 June 2021; Notification no. 75 of 2021 dated 25 June 2021; Circular no. 12 of 2021 dated 25 June 2021.
72. Form No 1
73. Form 34BB
74. Form No. 15CC
75. Under Section 54 to 54GB of the Act
76. Application under Section 10(23C), 12AB, 35(1)(ii)/(iia)/(iii) and 80G of the Act in Form 10A/10AB
77. Under Section 144C of the Act
78. Form 16
79. Under Section 9A (5) of the Act in Form No. 3CEK
80. Form No. 64C
81. Form No. 64D

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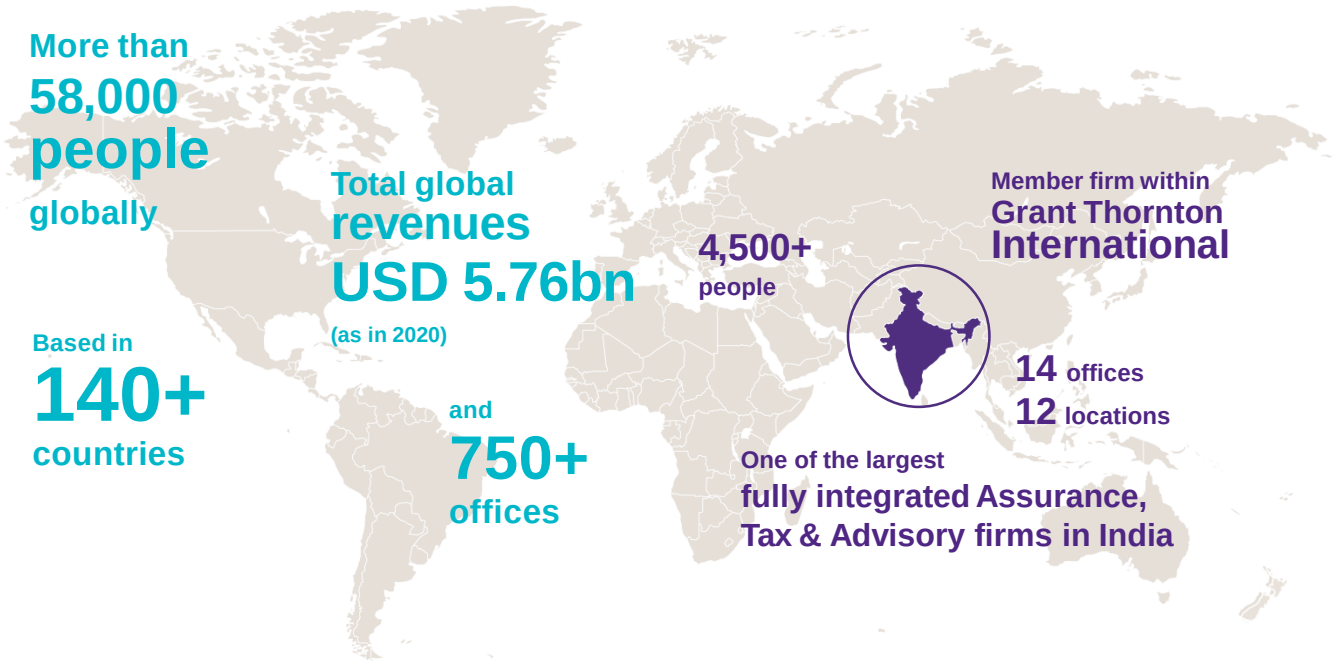

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