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EDITORIAL

Friends,

In 2015, the Central Board of Direct Taxes (CBDT) had provided for the constitution of 'local committees to deal with taxpayer grievances from high-pitched scrutiny assessment' in each principal Commissionerate region. Considering the implementation of faceless assessment regime, the CBDT has now issued a revised instruction regarding constitution and functioning of these committees.

In line with CBDT's policy and commitment towards providing enhanced taxpayers' services and reduce taxpayers' grievances, CBDT has issued revised Instruction for constitution and functioning of Local Committees to deal with taxpayers' grievances arising out of high-pitched Scrutiny Assessment through F.No.225/101/2021-ITA-II, dated 23rd April, 2022.

This instruction also provides for initiation of suitable administrative action against the officer concerned, in cases where assessments are found by the Local Committee to be high-pitched or where there is non-observance of principles of natural justice, non-application of mind or gross negligence of Assessing Officer/ Assessment Unit.

The local committees to deal with taxpayer grievances from high-pitched scrutiny assessment shall consist of 3 members of principal commissioner rank. The other members may be selected from the pool of officers posted as principal commissioner I-T, principal CIT (Central) or Judicial or audit of the respective region.

Grievances under faceless assessment regime would be received by email and the local committee would examine to ascertain whether there is a prima-facie case of high-pitched assessment, non-observance of principles of natural justice, non-application of mind or gross negligence of assessing officer/assessment unit.

The committee would ascertain whether the additions made in assessment order is/are not backed by any sound reason or logic, the provision of law have grossly been misinterpreted or obvious and well-established facts on records have outrightly been ignored, the instruction said.

The local committee shall endeavor to dispose of each grievance petition within two months..

Just to reiterate that we remain available over telecom or e-mail.

Truly Yours

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SYNOPSIS

TAX CALENDAR

Due Date	Form/Return/ Challan	Reporting Period	Description
20th June	GSTR 5	May 2022	A document/statement that has to be filed by every registered non-resident taxable person for the period during which they carry out businesses transactions in India and contains details about outward supplies and inward supplies by Non Resident Taxable Person.
20th June	GSTR 5A	May 2022	Return to be filed by Non-Resident Online Information and Database Access or Retrieval (OIDAR) Service Providers for the services that are provided from a place out of India to a person residing in India other than a registered person.
20th June	GSTR-3B	May 2022	The due date for GSTR-3B having an Annual Turnover of more than 5 Crores

INCOME TAX

NOTIFICATION

NO TDS ON PAYMENT IN THE NATURE OF LEASE RENT OR SUPPLEMENTAL LEASE RENT TO THE IFSC FOR LEASE OF AN AIRCRAFT

OUR COMMENTS: The Central Board of Direct Taxes (CBDT) vide Notification No. 65/2022 dated 16.6.2022 specifies that no deduction of tax shall be made under section 194-I of the Income-tax Act on payment in the nature of lease rent or supplemental lease rent, as the case may be, made by a person (hereafter referred as 'lessee') to a person being a Unit located in International Financial Services Center (hereinafter the 'lessor') for lease of an aircraft subject to the following-

(a) The lessor shall, -

(i) furnish a statement-cum-declaration in Form No. 1 to the lessee giving details of previous years relevant to the ten consecutive assessment years for which the lessor opts for claiming deduction under sub-section (1A) read with section (2) of the section 80LA of the Income-tax Act; and

(ii) such statement-cum-declaration shall be furnished and verified in the manner specified in Form No.1, for each previous year relevant to the ten consecutive assessment years for which the lessor opts for claiming deduction under sub-section (1A) read with section (2) of the section 80LA of the Income-tax Act.

(b) The lessee shall, -

(i) not deduct tax on payment made or credited to lessor after the date of receipt of copy of statement-cum-declaration in Form No. 1 from the lessor; and

(ii) furnish the particulars of all the payments made to lessor on which tax has not been deducted in view of this notification in the statement of deduction of tax referred to in sub-section (3) of section 200 of the Income-tax Act read with rule 31A of the Income-tax Rules, 1962.

2. The above relaxation shall be available to the lessor during the said previous years relevant to the ten consecutive assessment years as declared by the lessor in Form No. 1 for which deduction under section 80LA is being opted. The lessee shall be liable to deduct tax on payment of lease rent for any other year.

3. The Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems), as the case may be, shall lay down procedures, formats and standards for ensuring secure capture and transmission of data and uploading of documents and the Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems) shall also be responsible for evolving and implementing appropriate security, archival and retrieval policies.

Explanation.- for the purpose of this notification,-

(a) 'aircraft' shall have the same meaning assigned to it in the Explanation to clause (4F) of section 10 of the Income-tax Act;

(b) 'International Financial Services Centre' shall have the same meaning as assigned to it in clause (q) of section 2 of the Special Economic Zones Act, 2005 (28 of 2005); and

(c) 'Unit' shall have the same meaning as assigned to it in clause (zc) of section 2 of the Special Economic Zones Act, 2005 (28 of 2005).

Form No. 1: To be furnished by a unit engaged in the business of leasing of aircraft located in International Financial Services Centre to the Lessee has also been provided in the notification

4. This notification shall come into force from 01.07.2022.

[For further details please refer the Notification]

NOTIFICATION

ADDITIONAL CONDITIONS REQUIRED TO BE FULFILLED BY A SPECIFIED FUND FOR AVAILING EXEMPTION U/S 10(4D)

OUR COMMENTS: The Central Board of Direct Taxes (CBDT) vide Notification No. 64/2022 dated 16.6.2022 made the following rules further to amend the Income-tax Rules,1962, namely:–

1. Short title and commencement.-

(1) These rules may be called the Income-tax (Seventeenth Amendment), Rules, 2022.

(2) They shall come into force from the date of their publication in the Official Gazette.

2. In the Income-tax Rules, 1962 (hereafter referred to as the principal rules),-

(i) in rule 21AI, after sub-rule rule (2), the following sub-rule shall be inserted, namely:-

"(2A) The income attributable to units held by non-resident (not being the permanent establishment of a nonresident in India) in a specified fund shall not be exempt under clause (4D) of section 10 of the Act unless the specified fund complies with sub-rule (2).";

(ii) after rule 21AI, the following rule shall be inserted, namely:-

"21AIA. Other conditions required to be fulfilled by a specified fund referred to in clause (4D) of section 10 of the Act.-(1) For the purposes of the proviso to item (III) of sub-clause (i) of clause (c) of the Explanation to clause (4D) of section 10 of the Act, the "other conditions" required to be fulfilled by a specified fund shall be that -

(a) the unit holder of the specified fund, other than the sponsor or manager of such fund, who becomes a resident under clause (1) or clause (1A) of section 6 of the Act during any previous year subsequent to the previous year in which such unit or units were issued, shall cease to be a unit holder of such specified fund within a period of three months from the end of the previous year in which he becomes a resident;

(b) for the purposes of clause (a), the specified fund shall maintain the following documents in respect of its unit holders,-

i. name of the unit holder;

ii. tax identification number of the unit holder in the country of residence at the time the units were issued;

iii. permanent account number, if available;

iv. total number of units held;

v. total value of units held;

vi. whether unit holder is a sponsor or a manager;

vii. the previous year in which the unit holder became resident and;

viii. date of exit from specified fund.

(2) The specified fund shall certify that it has fulfilled the conditions under sub-rule (1) and furnish information in respect of units held by residents in the annual statement of exempt income in Form No. 10-IG.

(3) The income attributable to units held by non-resident (not being the permanent establishment of a nonresident in India) in a specified fund shall not be exempt under clause (4D) of section 10 unless the specified fund complies with sub-rule (2).

Explanation.-For the purpose of this rule, "specified fund" shall have the same meaning as assigned to it in sub-clause (i) of clause (c) of the Explanation to clause (4D) of section 10 of the Act.";

(iii) in rule 21AJ, after sub-rule rule (3), the following sub-rule shall be inserted, namely:-

"(3A) The income of a specified fund referred to in clause (a) and clause (b) of sub-section (1) of section 115AD, attributable to the units held by a non-resident (not being the permanent establishment of a non-resident in India), shall not be eligible for tax rates specified in section 115AD unless it furnishes the annual statement of income eligible for concessional taxation in Form No. 10-IH in accordance with the provision of sub- rule (3).";

(iv) in rule 21AJA, after sub-rule rule (3), the following sub-rule shall be inserted, namely:-

"(3A) The income of a specified fund attributable to an eligible investment division shall not be exempt under clause (4D) of section 10 unless it furnishes the annual statement of exempt income in Form No. 10-IK and the report of audit in Form 10-IL in accordance with the provisions of sub-rule (2).";

(v) in rule 21AJAA, after sub-rule (2) , the following sub-rule shall be inserted, namely:-

"(2A) The income of an eligible investment division referred to in clause (a) and clause (b) of sub-section (1) of section 115AD shall not be eligible for tax rates specified under section 115AD unless the eligible investment division

furnishes an annual statement of income, eligible for taxation under sub-section (1B) of section 115AD of the Act, in Form No. 10-IK in accordance with sub-rule (2).".

3. In the principal rules, in the APPENDIX for Form No. 10-IG, the Form provided in the notification shall be substituted.

[For further details please refer the Notification]

NOTIFICATION

CENTRAL GOVERNMENT NOTIFIES TRANSFER OF CAPITAL ASSET FROM NTPC LIMITED

OUR COMMENTS: The Central Board of Direct Taxes (CBDT) vide Notification No. 63/2022 dated 15.6.2022 notified the transfer of capital asset from NTPC Limited (PAN: AAACN0255D), being transferor public sector company, to NTPC Green Energy Limited (PAN: AAICN1737G), being transferee public sector company, under the plan approved by the Central Government on 21st day of March, 2022, for the purposes of the clause (viiaf) of section 47 of the Income-tax Act, 1961 (43 of 1961),.

2. This notification shall come into force from the date of its publication in the Official Gazette.

[For further details please refer the Notification]

NOTIFICATION

COST INFLATION INDEX FOR THE FINANCIAL YEAR 2022-23 NOTIFIED

OUR COMMENTS: The Central Board Of Direct Taxes (CBDT) vide Notification No. 62/2022 dated 14.6.2022 made the following further amendments in the notification of the Government of India, Ministry of Finance (Department of Revenue), Central Board of Direct Taxes, published in the Gazette of India, Extraordinary, vide number S.O. 1790(E), dated the 5th June, 2017, namely and notified cost inflation index for the financial year 2022-23:-

2. In the said notification, in the Table, after serial number 21, the following serial number and entries relating thereto, shall be inserted, namely:-

TABLE

Sl. No.	Financial Year	Cost Inflation Index
(1)	(2)	(3)
"22	2022-23	331"

3. This notification shall come into force with effect from 1st day of April, 2023 and shall accordingly apply to the Assessment Year 2023-24 and subsequent years.

[For further details please refer the Notification]

NOTIFICATION

JURISDICTION OF INCOME TAX AUTHORITIES TO EXERCISE OF POWER OF ASSESSING OFFICER (AO) - JURISDICTION TO CONDUCT OF FACELESS ASSESSMENT PROCEEDINGS

OUR COMMENTS: The Central Board of Direct Taxes (CBDT) vide Notification No. 61/2022 dated 10.6.2022 directs that the Income-tax Authorities of Units specified in Column (2) of the Schedule specified in the notification, having their headquarters at the places mentioned in Column (3) of the said Schedule, shall exercise the powers and functions of Assessing Officers concurrently, to facilitate the conduct of Faceless Assessment proceedings under section 144B of the said Act, in respect of all persons or class of persons, or incomes or class of incomes, or cases or class of cases in the territory of India, excluding the persons or class of persons, or incomes or class of incomes, or cases or class of cases covered by the Notification No. 57/2014 bearing S.O. 2814(E) dated the 3rd November, 2014 published in the Gazette of India, Extraordinary, Part II, Section 3, sub-section (ii) or by the Notification No. 70/2014 bearing S.O. 2915(E) dated the 13th November, 2014 published in the Gazette of India, Extraordinary, Part II, Section 3, sub-section (ii):

2. This Notification shall be deemed to have come into force from the 6th day of June, 2022.

[For further details please refer the Notification]

NOTIFICATION

HIERARCHY OF INCOME-TAX AUTHORITIES

OUR COMMENTS: The Central Board of Direct Taxes (CBDT) vide Notification No. 60/2022 dated 10.6.2022 directs that:

(a) Chief Commissioners of Income-tax as specified in Column (3) of the Schedule below (hereinafter referred to as the said Schedule) shall be subordinate to the Principal Chief Commissioners of Income-tax as specified in Column (2) of the said Schedule;

(b) Principal Commissioners of Income-tax as specified in Column (4) of the said Schedule shall be subordinate to the Chief Commissioners of Income-tax as specified in Column (3) of the said Schedule;

(c) Income-tax Authorities of Units as specified in Column (5) of the said Schedule shall be subordinate to the Principal Commissioners of Income-tax as specified in Column (4) of the said Schedule; and

(d) Principal Commissioners of Income-tax as specified in Column (4) at Sr. No. 15 of the said Schedule shall be subordinate to the Principal Chief Commissioner of Income-tax (National Faceless Assessment Centre), Delhi.

A detailed schedule has been provided in the notification.

This Notification shall be deemed to have come into force from the 6th day of June, 2022.

[For further details please refer the Notification]

CIRCULAR

GUIDELINES FOR REMOVAL OF DIFFICULTIES UNDER SUB-SECTION (2) OF SECTION 194R OF THE INCOME-TAX ACT, 1961

OUR COMMENTS: The Central Board of Direct Taxes (CBDT) vide Circular No. 12 of 2022 dated 16.6.2022 issued Guidelines for removal of difficulties under sub-section (2) of section 194R of the Income-tax Act, 1961 as under:

Finance Act 2022 inserted a new section 194R in the Income-tax Act, 1961 (hereinafter referred to as "the Act") with effect from 1st July 2022.

The new section mandates a person, who is responsible for providing any benefit or perquisite to a resident, to deduct tax at source @10% of the value or aggregate of value of such benefit or perquisite, before providing such benefit or perquisite. The benefit or perquisite may or may not be convertible into money but should arise either from carrying out of business, or from exercising a profession, by such resident.

This deduction is not required to be made, if the value or aggregate of value of the benefit or perquisite provided or likely to be provided to the resident during the financial year does not exceed twenty thousand rupees.

The responsibility of tax deduction also does not apply to a person, being an Individual/Hindu undivided family (HUF) deductor, whose total sales / gross receipts / gross turnover from business does not exceed one crore rupees, or from profession does not exceed fifty lakh rupees, during the financial year immediately preceding the financial year in which such benefit or perquisite is provided by him.

Sub-section (2) of section 194R of the Act authorises the Board to issue guidelines, for removal of difficulties, with the approval of the Central Government. These guidelines are required to be laid before each House of Parliament and are binding on the income-tax authorities and the person providing the benefit or perquisite.

Accordingly, in exercise of the power conferred by sub-section (2) of section 194R of the Act, the Board, with the prior approval of the Central Government, hereby issues the following guidelines:-

Question 1. Is it necessary that the person providing benefit or perquisite needs to check if the amount is taxable under clause (iv) of section 28 of the Act, before deducting tax under section 194R of the Act?

No. The deductor is not required to check whether the amount of benefit or perquisite that he is providing would be taxable in the hands of the recipient under clause (iv) of section 28 of the Act. The amount could be taxable under any other section like section 41(1) etc. Section 194R of the Act casts an obligation on the person responsible for providing any benefit or perquisite to a resident, to deduct tax at source @10%. There is no further requirement to check whether the amount is taxable in the hands of the recipient or under which section it is taxable.

Question 2. Is it necessary that the benefit or perquisite must be in kind for section 194R of the Act to operate?

The intent of legislature that there could also be situations where benefit or perquisite is in cash or the benefit or perquisite is in kind or partly in cash and partly in kind. Thus, section 194R of the Act clearly brings in its scope the situation where the benefit or perquisite is in cash or in kind or partly in cash or partly in kind.

Question 3. Is there any requirement to deduct tax under section 194R of the Act, when the benefit or perquisite is in the form of capital asset?

There is no requirement to check whether the perquisite or benefit is taxable in the hands of the recipient and the section under which it is taxable. Further, courts have held many benefits or perquisites to be taxable even though one can argue that they are in the nature of capital asset. Thus, it can be seen that the asset given as benefit or perquisite may be capital asset in general sense of the term like car, land etc. but in the hands of the recipient it is benefit or perquisite and has accordingly been held to be taxable. In any case, as stated earlier, the deductor is not required to check if the benefit or perquisite is taxable in the hands of recipient. Thus, the deductor is required to deduct tax under section 194R of the Act in all cases where benefit or perquisite (of whatever nature) is provided.

Question 4: Whether sales discount, cash discount and rebates are benefit or perquisite?

No tax is required to be deducted under section 194R of the Act on sales discount, cash discount and rebates allowed to customers. The relaxation provided from non-deduction of tax for sales discount and rebate is only on those items and should not be extended to others. It is further clarified that these benefits/perquisites may be used by owner/director/employee of the recipient entity or their relatives who in their individual capacity may not be carrying on business or exercising a profession. However, the tax is required to be deducted by the person in the name of recipient entity since the usage by owner/director/employee/relative is by virtue of their relation with the recipient entity and in substance the benefit/perquisite has been provided by the person to the recipient entity. It is further clarified that the threshold of twenty thousand rupees in the second proviso to sub-section (1) of section 194R of the Act is also required to be seen with respect to the recipient entity. As an alternative, the original benefit or perquisite provider may directly deduct tax under section 194R of the Act in the case of the consultant as a recipient. The provision of section 194R of the Act shall not apply if the benefit or perquisite is being provided to a Government entity, like Government hospital, not carrying on business or profession.

Question 5. How is the valuation of benefit/perquisite required to be carried out?

The valuation would be based on fair market value of the benefit or perquisite except in following cases:-

(i) The benefit/perquisite provider has purchased the benefit/perquisite before providing it to the recipient. In that case the purchase price shall be the value for such benefit/perquisite.

(ii) The benefit/perquisite provider manufactures such items given as benefit/perquisite, then the price that it charges to its customers for such items shall be the value for such benefit/perquisite.

It is further clarified that GST will not be included for the purposes of valuation of benefit/perquisite for TDS under section 194R of the Act.

Question 6: Many a times, a social media influencer is given a product of a manufacturing company so that he can use that product and make audio/video to speak about that product in social media. Is this product given to such influencer a benefit or perquisite?

Whether this is benefit or perquisite will depend upon the facts of the case. In case of benefit or perquisite being a product like car, mobile, outfit, cosmetics etc and if the product is returned to the manufacturing company after using for the purpose of rendering service, then it will not be treated as a benefit/perquisite for the purposes of section 194R of the Act. However, if the product is retained then it will be in the nature of benefit/perquisite and tax is required to be deducted accordingly under section 194R of the Act.

Question 7: Whether reimbursement of out of pocket expense incurred by service provider in the course of rendering service is benefit/perquisite?

Any expenditure which is the liability of a person carrying out business or profession, if met by the other person is in effect benefit/perquisite provided by the second person to the first person in the course of business/profession.

Question 8: If there is a dealer conference to educate the dealers about the products of the company - Is it benefit/perquisite?

The expenditure pertaining to dealer/business conference would not be considered as benefit/perquisite for the purposes of section 194R of the Act in a case where dealer/business conference is held with the prime object to educate dealers/customers about any of the following or similar aspects:

(i) new product being launched

(ii) discussion as to how the product is better than others

(iii) obtaining orders from dealers/customers

(iv) teaching sales techniques to dealers/customers

(v) addressing queries of the dealers/customers

(vi) reconciliation of accounts with dealers/customers

However, such conference must not be in the nature of incentives/benefits to select dealers/customers who have achieved particular targets.

Further, in the following cases the expenditure would be considered as benefit or perquisite for the purposes of section 194R of the Act:-

(i) Expense attributable to leisure trip or leisure component, even if it is incidental to the dealer/business conference.

(ii) Expenditure incurred for family members accompanying the person attending dealer/business conference

(iii) Expenditure on participants of dealer/business conference for days which are on account of prior stay or overstay beyond the dates of such conference.

Question 9: Section 194R provides that if the benefit/perquisite is in kind or partly in kind (and cash is not sufficient to meet TDS) then the person responsible for providing such benefit or perquisite is required to ensure that tax required to be deducted has been paid in respect of the benefit or perquisite, before releasing the benefit or perquisite. How can such person be satisfied that tax has been deposited?

The requirement of law is that if a person is providing benefit in kind to a recipient and tax is required to be deducted under section 194R of the Act, the person is required to ensure that tax required to be deducted has been paid by the recipient. Such recipient would pay tax in the form of advance tax. The tax deductor may rely on a declaration along with a copy of the advance tax payment challan provided by the recipient confirming that the tax required to be deducted on the benefit/perquisite has been deposited. This would be then required to be reported in TDS return along with challan number. This year Form 26Q has included provisions for reporting such transactions.

In the alternative, as an option to remove difficulty if any, the benefit provider may deduct the tax under section 194R of the Act and pay to the Government. The tax should be deducted after taking into account the fact the tax paid by him as TDS is also a benefit under section 194R of the Act. In the Form 26Q he will need to show it as tax deducted on benefit provided.

Question 10. Section 194R would come into effect from the 1st July 2022. Second proviso to sub-section (1) of section 194R of the Act provides that the provision of this section does not apply where the value or aggregate of value of the benefit or perquisite provided or likely to be provided to a resident during the financial year does not exceed twenty thousand rupees. It is not clear how this limit of twenty thousand is to be computed for the Financial Year 2022-23?

It is hereby clarified that:

(i) Since the threshold of twenty thousand rupees is with respect to the financial year, calculation of value or aggregate of value of the benefit or perquisite triggering deduction under section 194R of the Act shall be counted from 1 April, 2022. Hence, if the value or aggregate value of the benefit or perquisite provided or likely to be provided to a resident exceeds twenty thousand rupees during the financial year 2022-23 (including the period up to 30th June 2022), the provision of section 194R shall apply on any benefit or perquisite provided on or after 1st July 2022.

(ii) The benefit or perquisite which has been provided on or before 30th June 2022, would not be subjected to tax deduction under section 194R of the Act.

[For further details please refer the Circular]

INSTRUCTION

PROCEDURE RELATING TO SANCTION, POST-AUDIT AND REVIEW OF REFUND CLAIMS

OUR COMMENTS: Vide Instruction No. 03/2022 dated 14th June, 2022, attention is invited to sub-section (2) of section 107 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act") which provides instructions/guidelines that the Commissioner may review any decision or order, including an order of refund, with respect to its legality or propriety and he may direct any officer subordinate to him to file an appeal against the said decision or order within 6 months of the date of communication of the said decision or order. Reference is further drawn to entry against the subject pre-audit in table under para 3.3 of the Circular 17/17/2017-GST dated 15.11.2017 wherein it has been stated that pre-audit of refund orders is not required to be carried out but the post-audit of the refund orders may, however, continue on the basis of extant guidelines.

2. Subsequently, Board has been receiving reports of different practices being followed by the field formations regarding sanction, review and post-audit of refund claims. In certain Commissionerates, speaking order is being issued in respect of all refund claims, whereas in others, speaking orders are not being issued if the refund is sanctioned in full. Similarly, in case of review and post-audit, different practices are being followed by the field formations. The matter has been examined with the twin purpose of ensuring uniformity in procedure and enabling effective monitoring of sanction of refund claims in order to safeguard interest of revenue. Accordingly, the Board hereby issues the following instructions/guidelines for sanction, post-audit and review of refunds:

2.1 Sanction of Refund

2.1.1 Detailed guidelines for processing of refund claims in GST have been issued by the Board vide Circular No. 17/17/2017 -GST dated 15.11.2017 (for manual processing of refunds) and Circular No. 125/44/2019-GST dated 18.11.2019 (for electronic filing and online processing of refunds) to ensure uniformity in processing of refund claims. In both of these Circulars, it has been mentioned that the proper officer shall follow the principle of natural justice before taking the final decision with regard to refund claim. Principle of natural justice inter-alia provides that a detailed speaking order needs to be issued providing a basis for sanction/rejection of refund. Therefore, while passing the refund sanction order in FORM GST RFD-06, the proper officer should also upload a detailed speaking order along with refund sanction order in FORM GST RFD-06. In order to ensure uniformity in issuance of such speaking order, it is clarified that such speaking order should inter alia contain the following details:

A. Details for all category of refund claims:

a) The period for which refund claim has been filed, date of filing & the category in which refund has been claimed.

b) Whether it has been checked that refund claim for the same period has not been filed in the same category including any claim filed under 'Any Other' Category.

c) Details of Deficiency Memo, if any, in FORM GST RFD-03 issued in respect of the said refund claim previously.

d) Whether the refund claim has been filed within limitation of time, as provided under CGST Act and Rules thereof, including in the cases, where Deficiency Memo in FORM GST RFD-03 had been issued previously.

e) Details of the documents/ statements uploaded along with the refund claim. Whether all the necessary documents have been uploaded with the refund claim in terms of rule 89(2) of the CGST Rules. Details of document furnished by the applicant via e-mail/ in soft copy/ in hard copy, if any, may also be provided.

f) Whether all the due returns have been filed by the applicant or not, whether any dues are pending recovery from the applicant, and whether refund is required to be withheld/ any amount is required to be deducted as per provisions of section 54(10) of CGST Act on account of

non-filing of returns or dues being pending for recovery from the applicant.

g) Whether any SCN was issued to the applicant. Details of reply of the applicant and PH details.

h) Discussion and findings in respect of applicant submission. Details of case laws relied upon in deciding the matter, if any.

i) Whether provisions of unjust enrichment are applicable or not in terms of the provisions of section 54(8) of the CGST Act. If unjust enrichment is applicable in the refund, whether the applicant has furnished due documents/ certificates, in terms of clause (b) of section 54(4) of CGST Act, certifying/ establishing not passing burden of tax, in respect of which refund is being claimed, on any other person.

B. Additional details in case of the refund of accumulated ITC (on account of zero-rated supplies/ inverted rated structure) and refund of IGST paid on account of zero-rated supplies:

a) Whether the refund amount claimed has been debited from the electronic credit ledger, in terms of sub-rule (3) of rule 89 of CGST Rules.

b) In case of refund of IGST paid on account of zero-rated supplies, whether the amount of IGST has been paid through GSTR-3B return.

c) Whether the calculation given by the applicant of export/ zero-rated turnover, adjusted aggregate turnover, turnover of inverted duty supplies, as applicable, is correct as per the relevant provisions.

d) Whether calculation of Net ITC, where ever applicable, is correct as per the relevant provisions. Also, whether the verification of admissibility of ITC as per the provisions of GST Law has been done or not and the findings thereof

e) Whether it has been verified that ITC on capital goods has not been included in calculation of Net ITC for refund of ITC in zero rated supplies.

f) Whether it has been verified that ITC in respect of input services as well as capital goods is not included in calculation of Net ITC in case of inverted tax structure refund.

g) Whether refund has been restricted to the ITC as per those invoices, details of which are uploaded by the supplier in FORM GSTR-1 and are reflected in FORM GSTR-2A of the applicant in terms of Circular No. 135/05/2020-GST dated 31.03.2020.

h) Whether the refund is barred under the provisions of 2nd and 3rd proviso to section 54(3) of the CGST Act, 2017.

i) Details of computation of refund claim amount as per the relevant provisions/prescribed formula in the Act/ Rules and verification whether the refund amount claimed is correct or not.

j) In case of refund on account of inversion, whether the supply qualifies for refund of unutilised ITC under clause (ii) of 1st proviso to section 54(3) of the CGST Act, 2017.

k) In case of refund on account of export of goods, whether the details of shipping bill/ bill of exports, where ever applicable, have been verified from the ICEGATE portal.

l) In case of refund on account of export of services, whether the claimant has furnished the BRC/FIRC/ other relevant documents evidencing receipt of export remittances in respect of zero-rated services for which refund is being claimed.

m) In case of refund on account of zero-rated supply by DTA to SEZ, whether the said supply is meant for authorized operations on the basis of Letter of Authorisation (LoA). Further, whether the details of

supply by the applicant to the SEZ have been cross checked from the SEZ Online portal.

n) Whether the documents pertaining to zero-rated supply to SEZ have been endorsed by the specified/authorized officer of the zone.

o) Whether the DTA supplier has received the payment from the SEZ recipient in case of supply of services to SEZ.

C. Additional details in case of refund of tax paid on supplies regarded as deemed export:

a) Whether necessary procedure was followed while making procurement/supplying of goods regarded as deemed exports.

b) Whether the ITC claimed against the tax paid on such deemed export supplies has been debited from the electronic credit ledger by the recipient for filing application of refund.

c) Whether it has been verified that no ITC has been claimed by the recipient when refund is claimed by supplier.

D. Additional details in case of refund of excess balance in cash ledger:

a) Whether the amount claimed has been debited from the electronic cash ledger.

b) Whether the amount to be refunded has been calculated in accordance with the provisions of section 49(6) of CGST Act.

E. Additional details in case of refund filed under the other categories of refund except those mentioned above:

a) Whether the documents furnished/uploaded along with the refund claim have been verified for their correctness from the source like FORM GSTR-1, FORM GSTR-3B, ICEGATE portal etc., where ever required.

b) Details of the verification conducted and reasoning for grant/ rejection of refund.

c) In case of refund ITC filed under "Any Other" category, whether the amount claimed has been debited from the electronic credit ledger, wherever required.

2.1.2 It is mentioned that ACES-GST portal provides the facility for uploading a document in pdf format along with the FORM GST RFD-06 order. The same may be utilized by proper officer for uploading the speaking order along with refund sanction order in FORM GST RFD-06 so that the same is made available to the refund applicant as well as Post-audit/Reviewing Authority online.

2.2 Post-Audit and Review:

2.2.1 Sub-section (2) of section 107 of the CGST Act provides that the Commissioner may examine any decision or order, including an order of refund, with respect to its legality or propriety and he may direct any officer subordinate to him to file an appeal against the said decision or order **within 6 months** of the date of communication of the said decision or order. The said sub-section is reproduced below:

*(2) The Commissioner may, on his own motion, or upon request from the Commissioner of State tax or the Commissioner of Union territory tax, call for and examine the record of any proceedings in which an adjudicating authority has passed any decision or order under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, for the purpose of satisfying himself as to the legality or propriety of the said decision or order and may, by order, direct any officer subordinate to him to apply to the Appellate Authority **within six months** from the date of communication of the said decision or order for the determination of such points arising out of the said decision or order as may be specified by the Commissioner in his order.*

2.2.2 Accordingly, **as per extant practice, all refund orders are required to be reviewed for examination of**

legality and propriety of the refund order and for taking a view whether an appeal to the appellate authority under provisions of sub-section (2) of section 107 of the CGST Act is required to be filed against the said refund order.

2.2.3 As already mentioned in Circular No. 17/17/2017-GST dated 15.11.2017, refund claims shall not be subjected to pre-audit. However, the post-audit of refund claims may continue. Considering the large number of refund claims filed in GST, it has been decided that **post-audit may henceforth be conducted only for refund claims amounting to Rs. 1 Lakh or more till further instructions.**

2.2.4 The post-audit and review of the refund claims shall be conducted as per the following guidelines:

(a) All the refund orders passed should be immediately transmitted online to the review module after issuance of refund order in FORM GST RFD-06. The review and post-audit officers shall have access to all documents/ statements on ACES-GST portal pertaining to the said refund claims.

(b) For the purpose of post-audit of refund order, a **Post-Audit Cell** under a Deputy/Assistant Commissioner along with one/ two Superintendents and Inspectors as required, may be created in Commissionerate Headquarters.

(c) The **post-audit should be concluded within 3 months** from the date of issue of FORM GST RFD-06 order. The findings of the post-audit shall be communicated to the review branch within the said time period of 3 months.

(d) The **review of refund order shall be completed at least 30 days before the expiry of the time period allowed for filing appeal** under Section 107(2) of the CGST Act.

2.2.5 Till the time the functionality for conducting post-audit online is developed on ACES-GST portal, post-audit of refund orders may be conducted in offline mode. For the said purpose, the refund orders covered under para **2.2.3** above and the relevant documents may be provided to the post-audit cell by the concerned Division through e-Office **within 7 days** of issuance of refund sanction order in FORM GST RFD-06. The report of the post audit may be furnished by the Post-Audit Cell to the Review Cell through e-Office as per the time-limit specified in para **2.2.4(c)** above.

3. Difficulty, if any, in the implementation of these instructions/guidelines may be brought to the notice of the Board.

[For further details please refer the Instruction]

CASE LAW

NON-REALIZATION OF PAYMENT TOWARDS EXPORTED GOODS - "REASONABLE STEPS" TO BE TAKEN FOR SECURING THE SALE PROCEEDS OF EXPORTS OR NOT?- HON'BLE DELHI HIGH COURT

Our Comments: Concerned buyer in France became bankrupt and therefore, some of the export proceeds against the said consignments could not be realized. It has been held by hon'ble High Court that any person effecting an export of goods is also responsible, rather duty bound, to also effect the securing of proceeds from such export/sale. The only exception, as per the language of the provision, is permission from the RBI, which if obtained may lead to granting of the leverage of not securing the proceeds within the stipulated and prescribed period. Further, sub-section 3 makes a presumption against the person who has not been able to secure the proceeds from exports that he/she has not taken all reasonable steps so as to recover the amount to be realized from the proceeds of sale. The purpose behind these provisions becomes clearer when seen from the standpoint of the legislature and its intention and purpose of bringing into the Act into existence.

It is evident from the objective, as specified in the preamble of the Act, that the need at the time of enactment of the Act was to accommodate trade deficit with the aim to also conserve foreign exchange resources in the Country. The purpose behind the Act was to ease out the foreign exchange crunch that the Country was going through. The objective, therefore, was to make such enabling provisions to facilitate due, proper and timely realization of the amount that is accrued by foreign buyer towards goods exported and to also facilitate regularized foreign exchange.

Whether the steps taken by the appellant were 'reasonable steps' as have been stipulated under Section 18(3) of the FERA? - There are no established principles or guidelines laid down by law to the question as to what amounts to reasonable steps under Section 18(3) of the FERA, and therefore, the same has to be established in light of the facts and circumstances of each case. In the instant matter, the appellant upon non-realization of payment towards exported goods made attempts to communicate with the buyer in France. The following communications were made by the appellant, as have been enlisted in her reply dated 26th March, 2004, to the Show Cause Notice by the respondent no. 2/ED. As it is found that the appellant undertook the basic and primary measures of contacting and communicating with the foreign buyers and approaching the RBI after the lapse of the stipulated time period, however, these fundamental steps in themselves were not sincere, serious and sufficient attempts to effectively cause the recovery of the proceeds of sale. Another relevant factor to be considered is that the Appellate Tribunal reduced the penalty imposed upon the appellant by about 60 percent, that is from Rs. 25,00,000/- to Rs. 15,00,000/-, which in itself is a relief granted to the appellant despite having been found guilty of contravening the provisions of the FERA.

In light of the facts and circumstances, contentions raised, arguments advanced and judgments cited, it is found that there is no error in the impugned order dated 30th August, 2016 passed by the Appellate Tribunal in Appeal No. 138/2007. The Tribunal has rightly imposed the penalty upon the appellant and this Court does not find any substantial ground or cogent reason to invoke its extraordinary jurisdiction and interfere with the said order. Accordingly, the instant Criminal Appeal is dismissed.

[For further details please refer the Case Law]

CUSTOMS

NOTIFICATION

RATE OF EXCHANGE OF ONE UNIT OF FOREIGN CURRENCY EQUIVALENT TO INDIAN RUPEES

Our Comments: Vide Notification 51/2022-Customs (NT) dated 16.6.2022, in supersession of the Notification No.49/2022-Customs(N.T.), dated 02nd June, 2022 except as respects things done or omitted to be done before such supersession, the Central Board of Indirect Taxes and Customs hereby determines that the rate of exchange of conversion of each of the foreign currencies specified in column (2) of each of Schedule I and Schedule II annexed hereto, into Indian currency or vice versa, shall, with effect from 17th June, 2022, be the rate mentioned against it in the corresponding entry in column (3) thereof, for the purpose of the said section, relating to imported and export goods.

[For further details please refer the Notification]

NOTIFICATION

FIXATION OF TARIFF VALUE OF EDIBLE OILS, BRASS SCRAP, ARECA NUT, GOLD AND SILVER

Our Comments: Vide Notification 50/2022-Customs (N.T.) dated 15.6.2022, makes the following amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 36/2001-Customs (N.T.), dated the 3rd August, 2001, published in the Gazette of India, Extraordinary, Part-II, Section-3, Sub-section (ii), vide number S. O. 748 (E), dated the 3rd August, 2001, namely:-

In the said notification, for TABLE-1, TABLE-2, and TABLE-3 the following Tables shall be substituted, namely: -

TABLE-1

Sl. No.	Chapter/ heading/ sub-heading/tariff item	Description of goods	Tariff value (US $Per Metric Tonne)
(1)	(2)	(3)	(4)
1	1511 10 00	Crude Palm Oil	1620
2	1511 90 10	RBD Palm Oil	1757
3	1511 90 90	Others – Palm Oil	1689
4	1511 10 00	Crude Palmolein	1764
5	1511 90 20	RBD Palmolein	1767
6	1511 90 90	Others – Palmolein	1766
7	1507 10 00	Crude Soya bean Oil	1831
8	7404 00 22	Brass Scrap (all grades)	5574

TABLE-2

Sl. No.	Chapter/ heading/ sub-heading/tariff item	Description of goods	Tariff value (US $)
(1)	(2)	(3)	(4)
1.	71 or 98	Gold, in any form, in respect of which the benefit of entries at serial number 356 of the Notification No. 50/2017-Customs dated 30.06.2017 is availed	585 per 10 grams
2.	71 or 98	Silver, in any form, in respect of which the benefit of entries at serial number 357 of the Notification No. 50/2017-Customs dated 30.06.2017 is availed	695 per kilogram
3.	71	(i) Silver, in any form, other than medallions and silver coins having silver content not below 99.9% or semi-manufactured forms of silver falling under sub-heading 7106 92; (ii) Medallions and silver coins having silver content not below 99.9% or semi-	695 per kilogram

		manufactured forms of silver falling under sub-heading 7106 92, other than imports of such goods through post, courier or baggage. Explanation. - For the purposes of this entry, silver in any form shall not include foreign currency coins, jewellery made of silver or articles made of silver.	
4.	71	(i) Gold bars, other than tola bars, bearing manufacturer's or refiner's engraved serial number and weight expressed in metric units; (ii) Gold coins having gold content not below 99.5% and gold findings, other than imports of such goods through post, courier or baggage. Explanation. - For the purposes of this entry, "gold findings" means a small component such as hook, clasp, clamp, pin, catch, screw back used to hold the whole or a part of a piece of Jewellery in place.	585 per 10 grams

TABLE-3

Sl. No.	Chapter/ heading/ sub-heading/tariff item	Description of goods	Tariff value (US $ Per Metric Tonne)
(1)	(2)	(3)	(4)
1	080280	Areca nuts	7065"

2. This notification shall come into force with effect from the 16th day of June, 2022.

[For further details please refer the Notification]

NOTIFICATION

ANTI-DUMPING DUTY LEVIED ON FLUORO BACKSHEET EXCLUDING TRANSPARENT BACKSHEET ORIGINATING IN OR EXPORTED FROM CHINA PR FOR A PERIOD OF FIVE YEARS.

Our Comments: Vide Notification number 22/2022-Customs (ADD) dated 15th June 2022, in the matter of "Fluoro Backsheet excluding transparent backsheet" (hereinafter referred to as the subject goods), falling under tariff headings 3920 and 3921 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) (hereinafter referred to as the Customs Tariff Act), originating in, or exported from the China PR (hereinafter referred to as the subject country) and imported into India, the Designated Authority in its final findings, vide, notification F. No. 6/3/2021-DGTR, dated the 29th March, 2022, published in the Gazette of India, Extraordinary, Part I, Section 1, dated the 29th March, 2022, has come to the conclusion that-

(i) the product under consideration has been exported to India from the subject country at a price below normal value, thus resulting in dumping;

(ii) the domestic industry has suffered material injury due to dumping in respect of the subject goods; and

(iii) there is causal link between dumping of product under consideration and injury to the domestic industry,

and has recommended imposition of anti-dumping duty on imports of the subject goods, originating in or exported from the subject country and imported into India, in order to remove injury to the domestic industry.

Now, therefore, in exercise of the powers conferred by sub-sections (1) and (5) of section 9A of the Customs Tariff Act, read with rules 18 and 20 of the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, the Central Government, after considering the aforesaid final findings of the designated authority, hereby imposes on the subject goods, the description of which is specified in column (3) of the Table below, falling under

the tariff heading of the First Schedule to the Customs Tariff Act as specified in the corresponding entry in column (2), originating in the country as specified in the corresponding entry in column (4), exported from the countries as specified in the corresponding entry in column (5), produced by the producers as specified in the corresponding entry in column (6), and imported into India, an antidumping duty at the rate equal to the amount as specified in the corresponding entry in column (7), in the currency as specified in the corresponding entry in column (9) and as per unit of measurement as specified in the corresponding entry in column (8) of the said Table, namely :-

TABLE

S.No.	Heading	Description	Country of origin	Country of Export	Producer	Amount	Unit	Currency
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1.	3920, 3921	Fluoro Backsheet excluding transparent backsheet	China PR	Any Country including China PR	Jolywood (Suzhou) Sunwatt Co. Ltd.	762	MT	USD
2.	3920, 3921	Fluoro Backsheet excluding transparent backsheet	China PR	Any Country including China PR	Any producer other than Jolywood (Suzhou) Sunwatt Co. Ltd.	908	MT	USD
3.	3920, 3921	Fluoro Backsheet excluding transparent backsheet	Any country other than China PR	China PR	Any producer	908	MT	USD

2. The anti-dumping duty imposed under this notification shall be levied for a period of five years (unless revoked, superseded or amended earlier) from the date of publication of this notification in the Official Gazette and shall be payable in Indian currency.

Explanation.- For the purposes of this notification, rate of exchange applicable for the purpose of calculation of such anti-dumping duty shall be the rate which is specified in the notification of the Government of India, in the Ministry of Finance (Department of Revenue), issued from time to time, in exercise of the powers conferred by section 14 of the Customs Act, 1962 (52 of 1962), and the relevant date for the determination of the rate of exchange shall be the date of presentation of the bill of entry under section 46 of the said Customs Act.

[For further details please refer the Notification]

DGFT

PUBLIC NOTICE

INCLUSION OF PROVISIONS IN CONTINUATION TO PUBLIC NOTICE NO. 10/2015-20 DATED 24.05.2022 - ADDITIONAL PROVISIONS FOR ALLOCATION OF TARIFF RATE QUOTA (TRQ) OF CRUDE SOYA BEAN OIL AND CRUDE SUNFLOWER OIL FOR FY 2022-23 AND 2023-24

OUR COMMENTS: Vide public notice number 15/2015-20 dated 14th June, 2022 the Director General of Foreign Trade (DGFT) hereby amended Para 2 of Public Notice No. 10/2015-20 dated 24.05.2022 as under:

1. Para 2 (iii) is revised to read as follows:

For each processing unit, applicants shall provide a self-certified copy of documentary proof issued by Central/State Authorities, indicating its processing capacity. The certificate should be dated prior to 24.05.2022. The process capacity for Edible oils should be mentioned in the said certificate.

2. The following provisions are inserted after Sl. No. (vi) under para 2-

vii. Details of turnover for processing of Crude Edible Oils in the last three financial years, i.e., from 2019-20 to 2021-22, are to be submitted. Self-certified GST Returns shall be provided by the applicants.

viii. Imports made under TRQ are for domestic processing and consumption only. No part of the said TRQ Imports can be exported before or after processing.

ix. The TRQs issued for financial year 2022-23 shall be valid for clearance of import for a period of one year or till 30th June, 2023, whichever is earlier. TRQs issued for FY 2023-24 shall be valid for clearance of imports till 31st March, 2024

x. Import consignments landing at Indian Ports after the date of issuance of TRQ licence shall only be considered for clearance under TRQ. Any quantities lying at the Indian ports (under warehousing etc) before the date of issuance of the TRQ license shall not be considered for import clearance under TRQ.

xi. The un-utilized quantities i.e., quantities not imported by the TRQ Licencees by the end of the current import period, shall be deducted from their proposed allocations (in case allocation is considered) during the next TRQ period, i.e., 2023-24.

3. All other conditions as mandated under Public Notice No. 10/2015-20 dated 24.05.2022 remain applicable.

Effect of Public Notice: Changes are made in Public Notice 10/2015-20 dated 24.05.2022 for notifying additional provisions for allocation of Tariff Rate Quota (TRQ) for 20 Lakh MT of Crude Soya bean oil and 20 Lakh MTs of Crude Sunflower oil for FY 2022-23 and 2023-24.

[For further details please refer the Public Notice]

PUBLIC NOTICE

AMENDMENT IN PARAGRAPH 2.79F IN THE HANDBOOK OF PROCEDURES OF THE FOREIGN TRADE POLICY (FTP) 2015-20 TO LAY DOWN THE PROCEDURE FOR GLOBAL AUTHORIZATION FOR INTRA-COMPANY TRANSFER (GAICT) OF SCOMET ITEMS/SOFTWARE/TECHNOLOGY

OUR COMMENTS: Vide public notice number 14/2015-20 dated 13th June, 2022 F.No. 01/91/180/18/AM17/EC(S) (Computer No. 2862).-In exercise of the powers conferred under Paragraph 1.03 of the Foreign Trade Policy (FTP) 2015-20, the Directorate General of Foreign Trade (DGFT) hereby makes amendments in Paragraph 2.79 F to Handbook of Procedures (HBP) of FTP 2015-20 with immediate effect.

2. Existing entry at sub-Para 2.79F of the HBP of FTP 2015-20 shall be substituted as under:

"Para 2.79F - Global Authorisation for Intra-Company Transfers (GAICT) of SCOMET Items/Software/Technology

A. Scope and Eligibility: Pre-export authorization will not be required, for export and/or re-export of SCOMET items including software and technology under SCOMET Category 8 (except items listed in Annexure-I), subject to the following conditions:

i. where the export is an Intra-company transfer from the Indian parent company (applicant exporter) to its foreign subsidiary company or from the Indian subsidiary of foreign company (applicant exporter) to its foreign parent/another subsidiary of foreign parent company and;

Note: In case of third party involvement in the supply chain, the end user has to be a foreign parent / another subsidiary of foreign parent company or a subsidiary company of Indian company.

ii. where the transfer fulfils the conditions mentioned at (a) to (f) below:

a. The items/software/technology to be exported/re-exported is based on a Master Service Agreement / Contract between the Indian parent company/Indian subsidiary of foreign company and foreign subsidiary of Indian company/foreign parent company of Indian subsidiary for carrying out certain services but not limited to design, encryption, research, development, delivery, validation, calibration, testing, related services, etc.;

Note 1: As a result of the service carried out by the Indian exporter in case of re-export, the items/software/technology should not undergo change in classification.

Note 2: The list of services mentioned above is illustrative, not exhaustive. However, the final decision to approve a GAICT authorization lies with the relevant authority.

b. These items including software and technology are to be exported/re-exported to the countries listed in Table 1 below (entire supply chain including any third party should be in the countries listed in Table 1 to this Public Notice);

Table 1

Argentina, Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Japan, Latvia, Lithuania, Luxembourg, Malta, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Republic of Korea, Romania, Russian Federation, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Turkey, Ukraine, United Kingdom, United States.

Note: However, IMWG on a case to case basis may allow countries other than those listed in Table 1 considering description/end use/end user of the item.

c. The applicant exporter declares that the exported items would be used for the purposes for which it is intended by the foreign subsidiary of Indian company / foreign parent company / another subsidiary of foreign parent company, as the case may be;

d. The applicant exporter furnishes either a certified/approved Internal Compliance Programme (ICP) or demonstrates compliance to the ICP of the foreign parent company or ICP certified by the Compliance Manager of the company or certified by any Government agency such as Authorized Economic Operator (AEO) scheme etc.

e. The exporter agrees to allow on-site inspection, if required by the DGFT or authorized representatives of Government of India;

f. No export authorization would be granted for UNSC sanctioned destinations or countries;

g. No export authorization shall be granted to an exporter specified at (i) above if they have come to adverse notice previously;

h. The exporter is granted a Global Authorisation for Intra-Company Transfers (GAICT) as per procedure mentioned in para 2.B below.

B. Procedure for grant of Global Authorization for Intra-Company Transfers (GAICT)

Filing and Assessment of Application

a. In respect of export/re-export of SCOMET items including software and technology ,the applicant exporter shall submit an application for GAICT through online SCOMET portal and attach information in proforma - ANF 2O(b);

b. The application would be assessed for the issue of GAICT by Inter-Ministerial Working Group (IMWG) based on the submission of the application and other supporting documents by the applicant exporter in the prescribed proforma;

i. Documentary proof of the corporate relationship between the Indian parent company (applicant exporter) and its foreign subsidiary company or between the Indian subsidiary of foreign company (applicant exporter) and its foreign parent / another subsidiary of foreign parent company ;

ii. Classification of item including software and technology in SCOMET (indicating SCOMET category and sub-category);

iii. Documentary proof of License Exception /Temporary license from the country of the parent company abroad or from subsidiaries of the parent company abroad, if available (optional)

iv. Detailed description of the item intended to be exported with relevant technical details with specifications, such as model, part number, etc. and in case of software/technology, relevant details like encryption algorithm, key length, encryption functionality, eligibility under cryptography note etc. to be provided (if applicable);

v. In case of third party involvement in the supply chain, a clear contract /service agreement/ Purchase order has to be furnished specifying SCOMET item description.

vi. Certified/approved ICP of the Indian parent company or self-certified copy of the ICP of the foreign parent company being adopted by Indian subsidiary of foreign company along with an undertaking thereon;

vii. Undertaking on the letterhead of the firm duly signed and stamped by the authorised signatory:

a. To allow on-site inspection, if required by the DGFT or authorized representatives of Government of India;

b. The applicant exporter declares that the exported items would be used for the purposes for which it is intended by the foreign subsidiary of Indian company / foreign parent company / another subsidiary of foreign parent company, as the case may be;

c. The applicant exporter declares that subsequent to issue of export authorisation, if the licensee has been notified in writing by DGFT or if they know or has reason to believe that an item may be intended for military end use, the exporter would not be eligible for GAICT for export of that/those item(s) and would apply separately to DGFT for a fresh authorisation in terms of regular policy. [DGFT's PN No. 27 dated 21.09.2017 for catch-all policy may also be referred].

viii. The Company must ensure that:

a. They shall submit original End User Certificate in the prescribed format within 30 days of filing application and in case of subsequent exports, within 30 days of delivery at destination point, after issue of export authorisation;

b. They have Agreement/purchase order, excerpt of contract from entity (consignee) receiving the items which states the export is for a permitted use ;

c. The documents include the name & contact number and email id of the authority signing the EUC.

ix. A precise and clear contract /service agreement/ Purchase order has to be furnished indicating item description in case of third party involvement in the supply chain (if applicable)

x. Additional details, if any, sought by DGFT

C. Post reporting for re-export of items/software/technology under GAICT

a. The Indian exporter shall submit post-shipment details of each transfer/consignment of exports of SCOMET items/software/technology under GAICT to the SCOMET Division of DGFT (Hqrs), New Delhi, via E-mail (scomet-dgft-pr@nic.in) or a procedure as prescribed by DGFT, on quarterly basis (March / June / September / December), by the end of subsequent month of each quarter, in respect of the exports made in the previous quarter;

b. The post-shipment details shall be submitted in proforma ANF 2 O (c) along with a copy of EUC in Appendix 2S (iv) within the timelines mentioned above, from the foreign subsidiary company or foreign parent company / another subsidiary of foreign parent company;

c. Failure to do so may entail imposition of penalty and / or suspension/revocation of GAICT.

Note: Revised ANF (Aryat Niryat Form) - ANF 20(b), ANF 20(c) and End Use Certificate proforma Appendix 2S (iv) enclosed with this Public Notice.

D. Record Keeping

The exporter will be required to keep records of all the export documents, in manual or electronic form, in terms of Para 2.73 (c) of HBP, for a period of 5 years from the date of GAICT issued by DGFT.

E. General conditions

a. GAICT would not be issued in case of items including software and technology to be used to design, develop, acquire, manufacture, possess, transport, transfer and / or used for chemical, biological, nuclear weapons or for missiles capable of delivering weapons of mass destruction and their delivery system;

b. GAICT would not be issued for countries or entities covered under UNSC embargo or sanctions list or to the countries or entities assessed for risk of proliferation concern, based on national security and foreign policy considerations;

c. In case of inclusion or amendment of items (including software and technology) or inclusion of new companies or amendment in existing companies in the supply chain,

the applicant exporter will obtain prior permission of DGFT with relevant details;

d. IMWG shall reserve the right to deny issuance of authorization GAICT for any reason and also relax any provision of the policy, if so required in exceptional cases.

F. Re-exports / re-transfer of the items including software and technology (processed or incorporated)

Further re-exports / re-transfers of the items including software and technology (processed or incorporated) from the foreign subsidiary company or foreign parent company / another subsidiary of foreign parent company to end users in other countries would be subject to the export control regulations of the country of the foreign subsidiary of Indian company or foreign parent company / another subsidiary of foreign parent company.

G. Validity

a) GAICT issued for intra-company transfers of SCOMET items including software and technology shall be valid for a period of three years from the date of issue of GAICT;

b) GAICT cannot be revalidated in terms of Paragraph 2.80 of HBP of FTP 2015-20.

H. Suspension / Revocation

GAICT issued shall be liable to be suspended by the DGFT on receipt of intimation about initiation of any inquiry from the country concerned or from any domestic agency. GAICT shall be revoked on receipt of an adverse report on proliferation concern or for non-submission of mandatory reports/documents within the prescribed timelines or for non-compliance of any of the condition of this Public Notice.

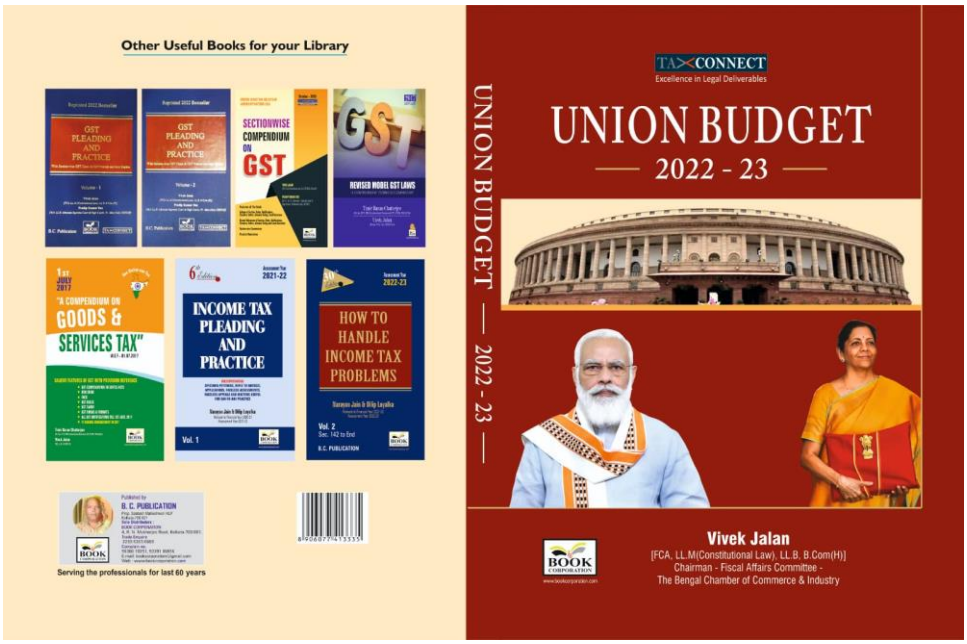
3. Effect of this Public Notice:

Existing entry at Paragraph 2.79F has been substituted in the Handbook of Procedures (HBP) of the Foreign Trade Policy (FTP) 2015-20 to amend the procedure for issue of Global Authorisation for Intra-Company Transfer (GAICT) of SCOMET items including software and technology. Henceforth, GAICT policy would be applicable only for export / re-export of items, including software and technology under SCOMET Category 8 (except items listed in Annexure-I), and to only the countries listed in Table 1 above. Revised ANF (Aayat Niryat Form) - ANF 20(b), ANF 20(c) and End Use Certificate proforma Appendix 2S (iv) for applying for GAICT also notified.

[For further details please refer the Public Notice]

:IN STANDS

UNION BUDGET 2022-23



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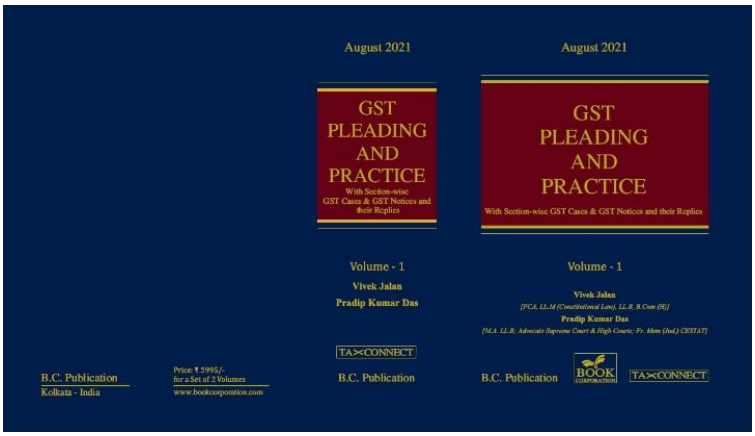
GST PLEADING AND PRACTICE: With Section-wise GST Cases & GST Notices and their Replies



ABOUT THE BOOK: This publication includes:

1. **GST Notices and their Replies**
2. **Orders and Appeals under GST**
3. **Text of provisions under IGST Act 2017 & CGST Act 2017**
4. **CGST & IGST Section-wise Synopsis of Case Laws and Notification/Circulars Gist**
5. **CGST & IGST Section-wise Synopsis of "Question of Law" answered under GST**
6. **Completely Updated Synopsis of Case Laws under GST by Supreme Court, High Court, AAARs & AARs**

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