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EDITORIAL



Friends,

In every law, to safeguard the interests of the revenue, one of the limitations placed by the legislation is the mandate of “pre-deposit” for filing an appeal. Under GST, Section 107(6) of the CGST Act, 2017 imposes an obligation to pay pre deposit of 100% of the Admitted tax, interest, fine, fee and penalty, and 10% of the disputed tax for filing appeal against on dispute arising from the order of the Adjudicating Authority. This pre-deposit ensures that the recovery proceedings in respect of the remaining amount under dispute shall be deemed to be stayed. However, the doubt arises herein is whether the pre-deposit can be paid using electronics credit ledger.

The bare perusal of the Section 49(4) of the CGST Act reflect that electronic credit ledger can be utilized in payment of pre-deposit ONLY IF pre-deposit comes under the ambit of “output tax”. Further, As per the old provision under Section 41 of the CGST Act, the credit could be utilized only for payment of self-assessed output tax as per the return.

However, the newly substituted Section 41 of the Act, the restriction on the availment of the credit has been done away with. In addition to this, there is no other provision under the CGST Act or Rules which restrains an assessee

from making payment of the pre-deposit from the electronic credit ledger.

In light of the stated amendment introduced by the Finance Act, 2022, it is explicit that there is no bar in utilizing the credit available in the Electronic Credit Ledger for making pre-deposit for filing an appeal under the GST Act.

There are various judgments pronounced by the Hon’ble High Courts in this matter. The Orissa High Court held that the credit balance in the electronic credit ledger cannot be used for paying the pre-deposit amount u/s 107(6) of the CGST Act 2017. However, recently the Bombay High Court and the Allahabad High Court have held it otherwise.

While Section 107 of the CGST Act and the *pari-materia* State GST Acts are silent on such bar of payment of pre-deposit by debiting the Electronic Credit Ledger, a timely clarification from the government is required on this point to help the taxpayers. Till such time, the taxpayer will likely have a tough time in explaining this point to their respective authorities and considerable amount of valuable working capital may get locked up in litigation.

Truly Yours

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

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TAX CALENDAR

Due Date	Form/Return/ Challan	Reporting Period	Description
18 th October	CMP-08	Q.E. September 2022	Quarterly challan-cum-statement to be furnished by composition taxpayers.
20 th October	GSTR 5	September 2022	Return form that has to be filed by a non-resident foreign taxpayer who is registered under GST for the period during which they carry out business transactions in India
20 th October	GSTR 5A	September 2022	Summary of outward taxable supplies and tax payable by a person supplying OIDAR services
20 th October	GSTR 3B	September 2022	The due date for GSTR-3B for the taxpayer having an Annual Turnover of more than 5 Crores.
22 nd October	GSTR 3B (Quarterly)	Q.E. September 2022	Summary of outward supplies, ITC claimed, and net tax payable by taxpayers who have opted for the QRMP scheme.

INCOME TAX

NOTIFICATION

CENTRAL GOVERNMENT SPECIFIES THE SOVEREIGN WEALTH FUND, NAMELY, NORGES BANK ON ACCOUNT OF THE GOVERNMENT PENSION FUND GLOBAL

OUR COMMENTS: The Central Board of Direct Taxes, Department of Revenue, Ministry of Finance vide Notification No. 115/2022 dated 14-10-2022 notified in exercise of powers conferred by sub-clause (vi) of clause (b) of the Explanation 1 to clause (23FE) of section 10 of the Income-tax Act, 1961 (43 of 1961) (hereinafter referred to as the "Act"), the Central Government hereby specifies the sovereign wealth fund, namely, Norges Bank On Account Of The Government Pension Fund Global (PAN: AACCN1454E), (hereinafter referred to as "the assessee") as the specified person for the purposes of the said clause in respect of the investment made by it in India on or after the date of publication of this notification in the Official Gazette but on or before the 31st day of March, 2024 (hereinafter referred to as "the said investments") subject to the fulfilment of the following conditions, namely:-

(i) the assessee shall file return of income, for all the relevant previous years falling within the period beginning from the date on which the said investment has been made and ending on the date on which such investment is liquidated, on or before the due date specified for furnishing the return of income under sub-section (1) of section 139 of the Act;

(ii) the assessee shall get its books of account audited for the previous years referred to in clause (i) by an accountant specified in the Explanation below sub-section (2) of section 288 of the Act and furnish the Audit Report in the format annexed as Annexure to this notification herewith at least one month prior to the due date specified for furnishing the return of income under sub-section (1) of section 139 of the Act;

(iii) the assessee shall furnish a quarterly statement within one month from the end of each quarter electronically in Form II as annexed to Circular No 15 of 2020, dated the 22nd July, 2020 with F. No. 370142/26/2020-TPL, issued by the Ministry of Finance, Department of Revenue, Central Board of Direct Taxes (Tax Policy and Legislation Division), in respect of each investment made by it during the said quarter;

(iv) the assessee shall maintain a segmented account of income and expenditure in respect of such investment which qualifies for exemption under clause (23FE) of section 10 of the Act;

(v) the assessee shall continue to be owned and controlled, directly or indirectly, by the Government of Norway, and at no point of time should any other person have any ownership or control, directly or indirectly, in the assessee;

(vi) the assessee shall continue to be regulated under the laws of the Government of Norway;

(vii) the earnings of the assessee shall be credited either to the account of the Government of Norway or to any other account designated by that Government so that no portion of the earnings inures any benefit to any private person, barring any payment made to creditors or depositors for loan taken or borrowing [as defined in sub-clause (a) of clause (ii) of Explanation 2 to clause (23FE) of section 10 of the Act] made for purposes other than for making investment in India;

(viii) the assessee shall not have any loan or borrowing [as defined in sub-clause (a) of clause (ii) of Explanation 2 to clause (23FE) of section 10 of the Act], directly or indirectly, for the purposes of making investment in India;

(ix) the asset of the assessee shall vest in the Government of Norway upon dissolution, barring any payment made to creditors or depositors for loan taken or borrowing for purposes other than for making investment in India; and

(x) the assessee shall not participate in the day-to-day operations of investee (as defined in clause (i) of Explanation 2 to clause (23FE) of section 10 of the Act), but any monitoring mechanism to protect the investment with the investee, including the right to appoint directors or executive director, shall not be considered as participation in the day-to-day operations of the investee.

2. Violation of any of the conditions as stipulated in clause (23FE) of section 10 of the Act and this notification shall render the assessee ineligible for the tax exemption.

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

[For further details please refer the Notification]

INCOME TAX

NOTIFICATION

CENTRAL GOVERNMENT SPECIFIES THE PENSION FUND, NAMELY, 2589555 ONTARIO LIMITED

OUR COMMENTS: The Central Board of Direct Taxes, Department of Revenue, Ministry of Finance vide Notification No. 114/2022 dated 13-10-2022 notified In exercise of powers conferred by sub-clause (iv) of clause (c) of the Explanation 1 to clause (23FE) of section 10 of the Income-tax Act, 1961 (43 of 1961) (hereinafter referred to as the “Act”), the Central Government hereby specifies the pension fund, namely, 2589555 Ontario Limited (PAN: AABCZ1393D), (hereinafter referred to as “the assessee”) as the specified person for the purposes of the said clause in respect of the eligible investment made by it in India on or after the date of publication of this notification in the Official Gazette but on or before the 31st day of March, 2024 (hereinafter referred to as the “the said investments”) subject to the fulfillment of the following conditions, namely:-

(i) the assessee shall file return of income, for all the relevant previous years falling within the period beginning from the date in which the said investment has been made and ending on the date on which such investment is liquidated, on or before the due date specified for furnishing the return of income under sub-section (1) of section 139 of the Act;

(ii) the assessee shall furnish along with such return a certificate in Form No. 10BBC in respect of compliance to the provisions of clause (23FE) of section 10 of the Act, during the financial year, from an accountant as defined in the Explanation below sub-section (2) of section 288 of the Act, as per the provisions of clause (vi) of rule 2DB of the Income –tax Rules, 1962;

(iii) the assessee shall intimate the details in respect of each investment made by it in India during the quarter within one month from the end of the quarter in Form No. 10BBB, as per the provisions of clause (v) of rule 2DB of the Income-tax Rules, 1962;

(iv) the assessee shall maintain a segmented account of income and expenditure in respect of such investment which qualifies for exemption under clause (23FE) of section 10 of the Act;

(v) the assessee shall continue to be regulated under the law of the Government of Ontario, Canada;

(vi) the assessee shall be responsible for administering or investing the assets for meeting the statutory obligations and defined contributions of one or more funds or plans established for providing retirement, social security, employment, disability, death benefits or any similar compensation to the participants or beneficiaries of such funds or plans, as the case may be;

(vii) the earnings and assets of the assessee should be used only for meeting statutory obligations and defined contributions for participants or beneficiaries of funds or plans referred to in clause (vi) and no portion of the earnings or assets of the pension fund inures any benefit to any other private person; barring any payment made to creditors or depositors for loan or borrowing [as defined in sub-clause (b) of clause (ii) of Explanation 2 to clause (23FE) of section 10 of the Act] taken for the purposes other than for making investment in India;

(viii) the assessee shall not have any loans or borrowings [as defined in sub-clause (b) of clause (ii) of Explanation 2 to clause (23FE) of section 10 of the Act], directly or indirectly, for the purposes of making investment in India; and

(ix) the assessee shall not participate in the day to day operations of investee [as defined in clause (i) of Explanation 2 to clause (23FE) of section 10 of the Act] but the monitoring mechanism to protect the investment with the investee including the right to appoint directors or executive director shall not be considered as participation in the day to day operations of the investee.

2. Violation of any of the conditions as stipulated in the said clause (23FE) of section 10 of the Act and this

INCOME TAX

notification shall render the assessee ineligible for the tax exemption.

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

[For further details please refer the Notification]

functions in respect of appeals arising under section 246A and 248 of the Act, filed in cases of classes of cases specified in column (5) of the Schedule and falling within the jurisdiction of the Income-tax authorities specified in column (4) of the Schedule.

[For further details please refer the Notification]

NOTIFICATION

JURISDICTION OF INCOME TAX AUTHORITIES FACELESS APPEAL

OUR COMMENTS: The Central Board of Direct Taxes, Department of Revenue, Ministry of Finance vide Notification No. 113/2022 dated 13-10-2022 notified In exercise of the powers conferred by sub-sections (1) and (2) of section 120 of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes authorized Principal Chief Commissioners of Income-tax specified in column (2) of Schedule to the notification number S.O. 2907(E) dated the 13th November, 2014, to issue orders in writing for the exercise of the powers and performance of the functions by all or any of the income-tax authorities specified in column (4) of the Schedule annexed to the said notification.

2. Whereas, the Principal Chief Commissioners of Income-tax authorized under the said notification issued orders to the respective Commissioners of Income-tax (Appeals) under their respective jurisdiction.

3. Whereas, the Faceless Appeal Scheme, 2021 came into force from 28th December, 2021, which necessitated designation of Commissioners of Income-tax (Appeals) to deal with the appeals arising under section 246A and 248 of the Act falling under the Faceless Appeal Scheme, 2021.

4. Now, in exercise of the powers conferred by sub-section (1) read with sub-section (3) of section 120 of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes hereby directs that the Commissioner of Income-tax (Appeal) specified in column (2) of the Schedule annexed in the notification, having their headquarters at the places specified in corresponding entries in column (3) of the Schedule, shall exercise the powers and perform the

GST

CASE LAW

PURCHASE OF SHOPS IN THE RESPONDENT'S PROJECT - BENEFIT OF INPUT TAX CREDIT (ITC) NOT PASSED ON BY WAY OF COMMENSURATE REDUCTION IN PRICES AFTER IMPLEMENTATION OF GST W.E.F. 01.07.2017 - CONTRAVENTION OF SECTION 171 OF CGST ACT : NATIONAL ANTI-PROFITEERING AUTHORITY

OUR COMMENTS: It is clear from the plain reading of Section 171 (1) that it deals with two situations:- one relating to the passing on the benefit of reduction in the rate of tax and the second pertaining to the passing on the benefit of the ITC. On the issue of reduction in the tax rate, it is apparent from the DGAP's Report that there has been no reduction in the rate of tax in the post-GST period; hence the only issue to be examined is whether there was any net benefit of ITC with the introduction of GST. It is observed from the Report that the ITC, as a percentage of the turnover, that was available to the Respondent during the pre-GST period (April 2016 to June 2017) was 0.80%, whereas, during the GST period (July 2017 to October 2020), it was 7.78% for the project 'JKG Palm Court'. This confirms that during the GST period, the Respondent has benefited from additional ITC to the tune of 6.98% (7.78% - 0.80%) of his turnover for the project JKG Palm Court' and the same was required to be passed on to the customers/flat buyers/recipients.

The Authority finds that, neither the Applicant no.1 nor the Respondent has contested the said Report in spite of several opportunities being given to them. They, also, did not attend the personal hearing on the scheduled date - The Authority finds no reason to differ from the above-detailed computation of profiteering in the DGAP's Report.

Interest - HELD THAT:- The Authority finds that the Respondent has profited by an amount of Rs. 5,14,06,920/- during the period of investigation i.e. 01.07.2017 to 31.10.2020. The Authority determines an amount of Rs. 5,14,06,920/- (including 12% GST) under section 133 (1) as the amount profited by the Respondent from his home buyers/shop buyers/customers/recipients of supply in the impugned Project (as per Annexure-A to this Order), including

Applicant No. 1, which shall be refunded by him along with interest @18% thereon, as prescribed, from the date when the above amount was profited by him till the date of such payment, as per the provisions of Rule 133 (3) (b) of the CGST Rules 2017. The amount profited is Rs. 1,99,182/- in respect of Applicant No.1 - Respondent is also liable to pay interest as applicable on the entire amount profited, i.e. Rs. 5,14,06,920/-, for the project JKG Palm Court'. Hence the Respondent is directed to also pass on interest @18% to the customers/ flat buyers/ recipients of supply, on the entire amount profited, starting from the date from which the above amount was profited till the date of passing on/ payment, as per provisions of Rule 133 (3) (b) of the CGST Rules, 2017.

Penalty - HELD THAT:- It has also been found that the Respondent has denied the benefit of additional ITC to his customers/buyers/recipients of supply in contravention of the provisions of Section 171 (1) of the CGST Act, 2017 and resorted to profiteering and hence, committed an offence under section 171 (3A) of the CGST Act, 2017. As the said provision was inserted only with effect from 1.01.2020, therefore, the Respondent is liable for the imposition of penalty for the period from 01.01.2020 onwards under the provisions of the said Section.

Application disposed off.

FEMA

CASE LAW

LEGALITY AND VALIDITY OF THE SEIZURE ORDERS: TELANGANA HIGH COURT

OUR COMMENTS: The WRIT before the Hon'ble Court has been filed, being aggrieved by the action initiated by the DIRECTORATE OF ENFORCEMENT under the Foreign Exchange Management Act, 1999, has preferred the writ petition challenging the legality and validity of the seizure orders dated 26.08.2021, 30.09.2021 and 15.12.2021, by which a sum of ₹ 270.00 crores has been seized.

The facts of the case reveal that before the learned Single Judge, though a prayer for quashment of seizure orders dated 26.08.2021, 30.09.2021 and 15.12.2021 was made, an interlocutory application was preferred for release of ₹ 15,35,45,317/- and the learned Single Judge has allowed the application. The writ petition itself has been disposed of by the impugned order dated 11.02.2022.

In the considered opinion of this Court, once the seizure orders were not set aside and no statutory provision was brought to the notice of the learned Single Judge for release of such amount and the seizure orders have been affirmed by the competent authority under Section 37A(2) of the Act, no such provisional release could have been ordered by disposing of the writ petition itself.

Learned counsel for the Union of India has also brought to the notice of this Court the press release issued by the Reserve Bank of India dated 24.02.2022 and the same reflects that even the banking licence of the respondent No.1/writ petitioner has been cancelled.

However, as this Court is not dealing with the cancellation of licence, no comment has been offered in respect of such cancellation. Learned counsel for the respondent No.1/writ petitioner has stated that he does not have a copy of the aforesaid order and he is not aware of the same.

Section 37A of the Act provides for a remedy of appeal and therefore, as now an order dated

04.02.2022 is in existence, the respondent No.1/writ petitioner shall certainly be free to prefer an appeal or to avail the other remedies available under the law. Resultantly, the order passed by the learned Single Judge is set aside and the writ appeal stands allowed.

It is needless to mention that this Court has not expressed any opinion on the merits of the case and all the rights and contentions of the parties are left open.

CUSTOMS

NOTIFICATION

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

OUR COMMENTS: The Ministry of Finance (Department of Revenue) vide Notification No. 89/2022 -Customs (N.T.) dated 14.10.2022 notified In exercise of the powers conferred by sub-section (2) of section 14 of the Customs Act, 1962 (52 of 1962), the Central Board of Indirect Taxes & Customs, being satisfied that it is necessary and expedient to do so, hereby 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	858
2	1511 90 10	RBD Palm Oil	905
3	1511 90 90	Others – Palm Oil	882
4	1511 10 00	Crude Palmolein	931
5	1511 90 20	RBD Palmolein	934
6	1511 90 90	Others – Palmolein	933
7	1507 10 00	Crude Soya bean Oil	1274
8	7404 00 22	Brass Scrap (all grades)	4500

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	531 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	629 per kilogram
3.	71	<p>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;</p> <p>ii. Medallions and silver coins having silver content not below 99.9% or semi-manufactured forms of silver falling under sub-heading 7106 92, other than imports of such goods through post, courier or baggage.</p> <p>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.</p>	629 per kilogram
4.	71	<p>(i) Gold bars, other than tola bars, bearing manufacturer's or refiner's engraved serial number and weight expressed in metric units;</p> <p>(ii) Gold coins having</p>	531 per 10 grams

CUSTOMS

		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.	

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	7333"

2. This notification shall come into force with effect from the 15th day of October, 2022.

[For further details please refer the notification]

NOTIFICATION

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

OUR COMMENTS: The Ministry of Finance (Department of Revenue) vide Notification No. 88/2022 -Customs (N.T.) dated 10.10.2022 notified In exercise of the powers conferred by sub-section (2) of section 14 of the Customs Act, 1962 (52 of 1962), the Central Board of Indirect Taxes & Customs, being satisfied that it is necessary and expedient to do so, hereby 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	937 (i.e., no change)
2	1511 90 10	RBD Palm Oil	982 (i.e., no change)
3	1511 90 90	Others – Palm Oil	960 (i.e., no change)
4	1511 10 00	Crude Palmolein	995 (i.e., no change)
5	1511 90 20	RBD Palmolein	998 (i.e., no change)
6	1511 90 90	Others – Palmolein	997 (i.e., no change)
7	1507 10 00	Crude Soya bean Oil	1257 (i.e., no change)
8	7404 00 22	Brass Scrap (all grades)	4555 (i.e., no change)

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	533 per 10 grams (i.e., no change)
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	675 per kilogram

CUSTOMS

3.	71	<p>(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;</p> <p>(ii) Medallions and silver coins having silver content not below 99.9% or semi-manufactured forms of silver falling under sub-heading 7106 92, other than imports of such goods through post, courier or baggage.</p> <p>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.</p>	675 per kilogram
4.	71	<p>(i) Gold bars, other than tola bars, bearing manufacturer's or refiner's engraved serial number and weight expressed in metric units;</p> <p>(ii) Gold coins having gold content not below 99.5% and gold findings, other than imports of such goods through post, courier or baggage.</p> <p>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.</p>	533 per 10 grams (i.e., no change)

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	6853 (i.e., no change)"

2. This notification shall come into force with effect from the 11st day of October, 2022.

[For further details please refer the notification]

ORDER

REQUIREMENT OF HEALTH CERTIFICATE TO BE ACCOMPANIED WITH THE IMPORT OF CERTAIN FOOD CONSIGNMENTS

OUR COMMENTS: The Ministry of Finance (Department of Revenue) vide Instruction No 26/2022-Customs dated 6.10.2022 instructed Reference is drawn to Boards Instruction No 18/2022-Customs dated 12.08.2022 relating to the requirement of Health Certificate to be accompanied with the import of certain food consignments, based on a reference from FSSAI.

2. In this regard, FSSAI has further clarified vide its order dated 26.09.2022, that an integrated/single certificate, incorporating food safety related requirements/attestations is also accepted by FSSAI at the time of import clearance. It may be ensured that integrated certificate shall incorporate all the information as per format notified vide FSSAI's earlier order dated 03.08.2022, enclosed with Board's instruction dated 12.08.2022.

3. The difficulties, if any, in the implementation of this Instruction may please be brought to the notice of the Board.

4. Hindi version follows.

[For further details please refer the order]

DGFT

NOTIFICATION

EXPORT QUOTA OF ONLY BROKEN RICE (HS CODE 1006 40 00) FOR THE YEAR 2022-23

OUR COMMENTS: Ministry of Commerce and Industry vide Notification no. 38/2015-2020 dated 12.10.2022 notified in exercise of powers conferred by Section 3 read with section 5 of the Foreign Trade (Development & Regulation) Act, 1992 (No. 22 of 1992), as amended, read with Para 1.02 and 2.01 of the Foreign Trade Policy, 2015-20, the Central Government hereby notifies quota of 3,97,267 MT for export of only broken rice under HS Code 1006 40 00 of Chapter 10 of ITC (HS), 2018, Schedule-II (Export Policy), for the period up to 31st March, 2023, for the year 2022-23, the export policy of which is 'Prohibited'.

2. The export quota of 3,97,267 MT will be distributed amongst the applicants whose LCs are opened before the Notification No.31/2015-2020 dated 8th September, 2022 and the message exchange date between the Indian and foreign bank / swift date has been prior to 8th September, 2022, as per procedure to be notified separately by Directorate General of Foreign Trade.

3. Effect of the Notification:

Quota of 3,97,267 MT of only broken rice under HS Code 1006 40 00, applicable only to LCs opened before the Notification No.31/2015-2020 dated 8th September, 2022 and the message exchange date between the Indian and foreign bank / swift date also prior to 8th September, 2022, to be exported during year 2022-23, is notified.

[For further details please refer the Notification]

PUBLIC NOTICE

AMENDMENT IN AND SUSPENSION OF STANDARD INPUT OUTPUT NORMS (SION) OF 'CHEMICAL & ALLIED PRODUCT'

OUR COMMENTS: The Ministry of Commerce and Industry vide public notice no. 31/2015-2020 dated 14.10.2022 notified in exercise of the powers conferred under Paragraph 1.03 of the Foreign Trade Policy (FTP) 2015-20, the Director General of Foreign Trade (DGFT) hereby makes amendment to Handbook of Procedures (HBP) of FTP 2015-

20 for inclusion of new entry at Paragraph 2.79C (D) with immediate effect.

2. After Sub Para 2.79C (C) of the HBP of FTP 2015-2020, a new entry shall be inserted as under:

"D. Authorization for export of same imported SCOMET items to same entity abroad under General Authorization for Export after Repair in India (GAER)"

A. Export of imported SCOMET items to the same entity abroad after repair in India will be allowed on the basis of a onetime General authorization for Export after Repair in India (GAER) subject to post reporting on quarterly basis issued by DGFT, subject to the following conditions:

- The SCOMET items were imported to a designated/authorized repair facility in India for the purpose of repair under a contract agreement/Master Service agreement (MSA): or Imported under a contract agreement between Indian exporter. entities of repair facility (if different from exporter) and entity abroad defining 'Statement of Work (SOW)'/ 'Scope of Work' including conditions for undertaking repair in India;
- The items are to be exported to the same entity and location abroad from which the item(s) has/have been imported;
- The exporter is required to register and obtain General authorization for export after repair only once during the validity period. Subsequent export/re-export is subject to post reporting;
- The exporter is required to provide Bill of Entry for the imported item while applying for GAER for the first shipment.
- General authorization for export after repair shall be valid for a period of one year from the date of issue of General authorization subject to subsequent post reporting(s) within 30 days from the date of such export;
- Subsequent export would be allowed to the same entity and location to which the license has originally been issued. Note: Same entity would imply that (a) foreign buyer (b) consignee or intermediaries, if any (c) the end user are exactly the same for which authorisation has been issued to the applicant exporter.
- There has been no change to the original characteristics/specifications of the SCOMET item(s) after repair and no value addition has been done during the repair work;
- No Export Authorisation would be granted when the initial export authorisation has been suspended, modified or revoked by country of import:

DGFT

- i. No Export authorisation would be granted for UNSC sanctioned destinations or countries/entities of high risk, as assessed by the IMWG, from time to time;
- j. No details of 'End Use' and 'End Use Certificate' would be;
- k. GAER issued for specific item and specific entity (buyer/end user) shall not be applicable in case the re-export is of a different imported item or to a different entity or Authorised OEM. In such cases, either a new GAER authorization may be applied or application may be filed under Para 2.79 C (C) of HBP.

B. Documents Required for GAER

1. Proof of import of the item(s):

- a. Export License (if applicable) issued by the foreign country for original import of the items to India;
- b. Documentary proof and/or self declaration that the item exempted from license requirement or place under no license requirement for India.
- c. Bill of Entry (first time)

2. Proof of obligation for repair of defective/damaged items:

Contract agreement and/or 'Statement of Work (SOW)'/ Master Service agreement (MSA) between Indian exporter and with the entity abroad (from which the goods were imported initially) defining conditions for undertaking repair in India.

3. An Undertaking from the Indian exporter;

An Undertaking from the applicant exporter (on the letter head of the firm duly signed and stamped by the authorized signatory) stating:

- a. Details of imported items to be exported after repair alongwith their SCOMET Category /Sub-category number(s), quantity, item description and ECCN of foreign country (if available) :
- b. That item(s) are being exported to the same entity from which it was originally imported for repair and return purpose.
- c. That there has been no change to the original characteristics/specifications of the item(s) after import and no value addition has been done during the repair work;
- d. That the repair of defective/damaged items is allowed under the conditions of import or contractual agreement between Indian exporters and entities from which goods were imported.

e. That Shipping Bills and Bill of Entry into destination country of subsequent re-exports and any other information as sought by DGFT shall be submitted to DGFT on quarterly basis.

f. That items would not used for military applications or to develop, acquire, manufacture, possess, transport, transfer or use, chemical, biological, nuclear weapons or for missile capable of delivering such weapons.

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

i. The Indian exporter shall submit post-shipment details of each transfer/consignment of exports of SCOMET items/software/technology under GAER to the SCOMET Division of DGFT (Hqrs), New Delhi, via E-mail (scomet-dgft@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.

ii. The post-shipment details shall include submission of Bill of Entry (wherever available), shipping bill details, valid export license copy within the timelines mentioned above.

iii. Failure to do so may entail imposition of penalty and / or suspension/revocation of GAER and action as per FTDR Act.

D. Validity

a) GAER issued for export of imported SCOMET items after repair shall be valid for a period of 1 year from the date of issue of GAER subject to subsequent post reporting(s) within 30 days from such export;

b) GAER cannot be re-validated in terms of Paragraph 2.80 of HBP of FTP 2015-20.

E. Suspension / Revocation

GAER issued shall be liable to be suspended / revoked by the DGFT 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 with the conditions of this Public Notice.

F. General conditions

i. GAER would not be issued in case of items 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;

DGFT

- ii. GAER would not be issued for countries or entities covered under UNSC embargo/ sanctions or on assessment of proliferation concerns, or national security and foreign policy considerations. etc.;
- iii. DGFT shall reserve the right to deny issuance of GAER or recall GAER without assigning any reason(s).

G. Applications for grant of General authorizations for export to the same entity from goods were imported shall be approved by Chairman IMWG, without any consultation with IMWG members after the first export/shipment. In exceptional cases, consultation with IMWG may be done prior to issuance of GAER, incase required.

H. All such authorizations shall be brought before IMWG in its subsequent meeting for confirmation of approval, on ex-post facto basis.

Effect of this Public Notice:

Paragraph 2.79C (D) has been added in the Handbook of Procedures (HBP) of Foreign Trade Policy (FTP) 2015-20 to lay down the policy and procedure for General Authorization for Export after Repair (GAER).

[For further details please refer the public notice]

PUBLIC NOTICE AMENDMENT IN AND SUSPENSTION OF STANDARD INPUT OUTPUT NORMS (SION) OF 'CHEMICAL & ALLIED PRODUCT'

OUR COMMENTS: The Ministry of Commerce and Industry vide public notice no. 30/2015-2020 dated 12.10.2022 notified In exercise of the powers conferred under Paragraph 1.03 and 2.04 of the Foreign Trade Policy (FTP), 2015-20, as amended from time to time, the Director General of Foreign Trade hereby makes the amendments in the Standard Input Output Norms (SION).

2. The Standard Input Output Norms (SIONs) appearing at the following serial numbers corresponding to the export item are suspended with immediate effect:

SION No.	Export Product
A254	Guanidine Nitrate
A257	Hexahydrothymol/ Menthol BP/USP
A282	Magnesium Glycerophosphate BPC 63
A1939	Terpeneol

A1973	Deltamethrin 2.8% W/W or 2.5% W/VEC (Density 0.89 gm/ML)
A2061	Blend of Aromatic Polyester Polyols, Amino Polyols
A2331	Cefuroxime Axetil Amorphous
A2539	Pure Glyceyl Mono Stearate with max Glycerine 0.5%
A2818	Lamivudine
A3056	Trans-4-Amino-Cyclo Hexanol
A3486	Cineole

3. An exporter desirous of obtaining Advance Authorization for above mentioned export products may apply for it under Para 4.07 of Handbook of Procedures Vol. I (2015-20).

Effect of this Public Notice:

Standard Input Output Norms (SION) appearing at A254, A257, A282, A1939, A1973, A2061, A2331, A2539, A2818, A3056 and **A3486** are suspended with immediate effect.

[For further details please refer the public notice]

PUBLIC NOTICE EXTENSION OF VALIDITY REGARDING EXPORT OF RAW SUGAR TO USA UNDER TARIFF RATE QUOTA (TRQ) FOR THE FISCAL YEAR 2022 FROM 30.09.2022 TO 31.12.2022

OUR COMMENTS: The Ministry of Commerce and Industry vide public notice no. 29/2015-2020 dated 12.10.2022 notified in exercise of the powers conferred under Paragraphs 2.04 of the Foreign Trade Policy 2015-2020, the Director General of Foreign Trade hereby amends Public Notice No. 28/2015-20 dated 14.10.2021 read with Public Notice No. 07/2015-20 dated 06.05.2022 by extending the validity for Export of Raw Sugar to USA under Tariff Rate Quota (TRQ) from 30.09.2022 to 31.12.2022.

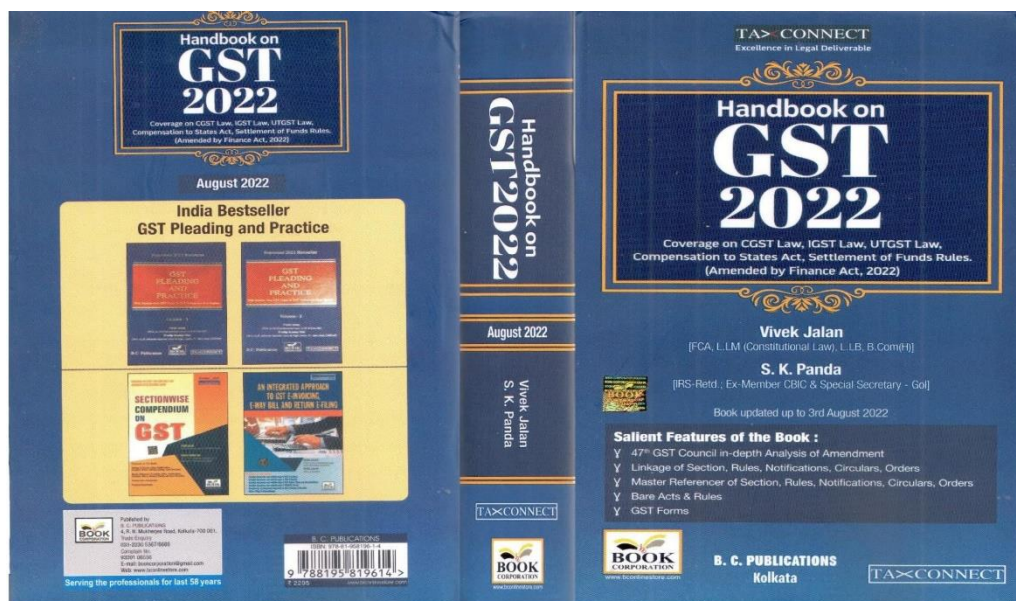
2. There will be no change in other terms and conditions of Public Notice No. 28/2015-20 dated 14.10.2021 read with Public Notice No. 07/2015-20 dated 06.05.2022.

3. **Effect of this Public Notice:** The validity for Export of Raw Sugar to USA under Tariff Rate Quota (TRQ) has been extended from 30.09.2022 to 31.12.2022.

[For further details please refer the public notice]

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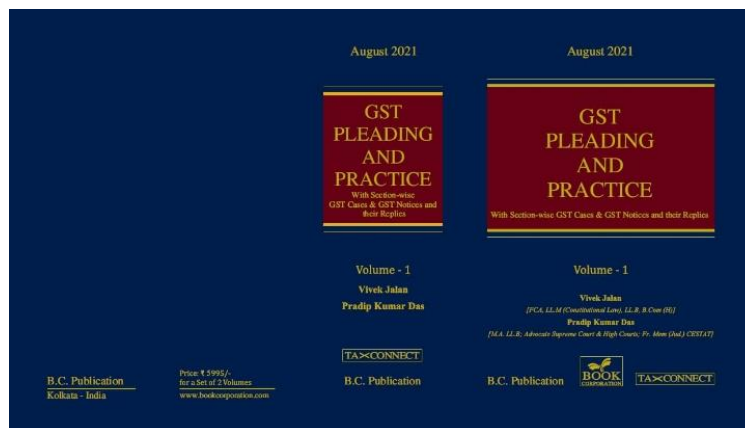
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