

# TAX CONNECT

## Knowledge Partner:



**FEMA. FDI. INCOME TAX. GST. LAND. LABOUR**

## TAX CONNECT

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## EDITORIAL



### Friends,

The Employers should be moral policemen also while passing the bills and income tax exemption claims of the employees. It seems that this is the verdict of the Hon'ble Apex Court in the case of STATE BANK OF INDIA Vs ASSISTANT COMMISSIONER OF INCOME TAX [2022-VIL-26-SC-DT]. This judgement will have wide ramifications in as far as deductions of TDS by employers are concerned, especially because it was passed in the matter of a Govt. Of India Concern itself. Hence a precedent has been set in The Government's own case. Private players should thus beware!

The issue is whether a claim of LTC u/s 10(5) be allowed in case the travel is between two points within India but between the two points incase travel is made to a foreign country as well, thus taking a circuitous route for the destination which involves a foreign place. It was held that this exemption cannot be claimed by an employee for travel outside India which has been done in this case and therefore the assessee employer defaulted in not deducting tax at source from this amount claimed by its employees as LTC. There were two violations of the LTC Rules, pointed out – That the employee did not travel only to a domestic destination but to a foreign country as well and that the employees had admittedly not taken the shortest possible route

between the two destinations. Thus, the Applicant was held to be an assessee in default by the Assessing Officer. It was held that LTC claim for a travel to Port Blair cannot be allowed if made via Malaysia, Singapore or Bangkok or any foreign country... The contention that is no specific bar under Section 10(5) for a foreign travel and therefore a foreign journey and the exemption can be availed as long as the starting and destination points remain within India was held to be without merits. Even incase the payment is made to employees for the shortest route of their actual travel was rejected and the employer was held as an assessee in default the moment employees had undertaken travel with a foreign leg which was considered as not a travel within India and hence not covered under the provisions of Section 10(5) of the Act.

It was held that a foreign travel also frustrates the basic purpose of LTC. The intent of the LTC scheme was to familiarize a civil servant or a government employee to gain some perspective of Indian culture by traveling in this vast country. It is for this reason that the 6th Pay Commission rejected the demand of paying cash compensation in lieu of LTC and also rejected the demand of foreign travel.

**Truly Yours**

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

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# SYNOPSIS

S.NO.	TOPICS	PAGE NO.
1]	TAX CALENDER	4
2]	INCOME TAX	5-6
CIRCULAR	FINANCE ACT, 2022 - EXPLANATORY NOTES TO THE PROVISIONS OF THE FINANCE ACT, 2022	
3]	GST	7-11
CIRCULAR	GUIDELINES FOR VERIFYING THE TRANSITIONAL CREDIT IN LIGHT OF THE ORDER OF THE HON'BLE SUPREME COURT IN THE UNION OF INDIA VS. FILCO TRADE CENTRE PVT. LTD., SLP(C) NO. 32709- 32710/2018, ORDER DATED 22.07.2022 & 02.09.2022	
CIRCULAR	CIRCULAR FOR CLARIFICATION ON REFUND RELATED ISSUES	
4]	FEMA	12
CASE LAW	REASONABLE STEPS TO BE TAKEN FOR SECURING THE SALE PROCEEDS OF EXPORTS	
5]	CUSTOMS	13-14
NOTIFICATION	FIXATION OF TARIFF VALUE OF EDIBLE OILS, BRASS SCRAP, ARECA NUT, GOLD AND SILVER	
6]	DGFT	15-17
NOTIFICATION	AMENDMENTS UNDER THE FOREIGN TRADE POLICY IN SYNC WITH RBI A.P.(DIR SERIES) CIRCULAR NO.10 DATED 11TH JULY 2022	
NOTIFICATION	AMENDMENT IN EXPORT POLICY OF BROKEN RICE UNDER HS CODE 1006 40 00	
NOTIFICATION	AMENDMENT IN POLICY CONDITION NO. 7(II) OF CHAPTER 27 OF ITC (HS), 2022, SCHEDULE – I (IMPORT POLICY) – IMPLEMENTATION OF COAL IMPORT MONITORING SYSTEM (CIMS).	
7]	HANDBOOK ON GST 2022	18
8]	HOW TO HANDLE GST LITIGATION: ASSESSMENT, SCRUTINY, AUDIT & APPEAL	19
9]	GST PLEADING AND PRACTICE: WITH SECTION-WISE GST CASES & GST NOTICES AND THEIR REPLIES	20
10]	LET'S DISCUSS FURTHER	21

# TAX CALENDAR

Due Date	Form/Return/Challan	Reporting Period	Description
13 <sup>th</sup> November	GSTR 1 (IFF)	October 2022	GST return for the taxpayers who opted for QRMP scheme (Optional)
13 <sup>th</sup> November	GSTR 6	October 2022	Details of ITC received and distributed by an ISD
13 <sup>th</sup> November	GSTR 5	October 2022	Summary of outward taxable supplies and tax payable by a non-resident taxable person
14 <sup>th</sup> November	TDS Certificate	September 2022	Due date for issue of TDS Certificate for tax deducted under Section 194IA, 194IB, 194M, 194S in the month of September, 2022
15 <sup>th</sup> November	Form 24G by Government officer	October 2022	Due date for furnishing of Form 24G by an office of the Government where TDS/TCS for the month of October 2022 has been paid without the production of a challan
15 <sup>th</sup> November	Form No. 3BB	October 2022	Due date for furnishing statement in Form no. 3BB by a stock exchange in respect of transactions in which client codes been modified after registering in the system for the month of October, 2022
15 <sup>th</sup> November	TDS Certificate	July to September 2022	Quarterly TDS certificate (in respect of tax deducted for payments other than salary) for the quarter ending September 30, 2022

# INCOME TAX

## CIRCULAR

### FINANCE ACT, 2022 - EXPLANATORY NOTES TO THE PROVISIONS OF THE FINANCE ACT, 2022

**OUR COMMENTS:** The Central Board of Direct Taxes, Department of Revenue, Ministry of Finance vide Circular No. 23/2022 dated 03-11-2022 circulated :-

### Finance Act, 2022 - Explanatory Notes to the Provisions of the Finance Act, 2022

#### AMENDMENTS AT A GLANCE

Section of Income-tax Act, 1961	Particulars
2	Definitions
10	Incomes not included in total income
11	Income from property held for charitable or religious purposes.
12A	Conditions for applicability of sections 11 and 12
12AB	Procedure for fresh registration
13	Section 11 not to apply in certain cases
14A	Expenditure incurred in relation to income not includible in total income
17	"Salary", "perquisite" and "profits in lieu of salary" defined
35	Expenditure on scientific research
37	General
40	Amounts not deductible
43B	Certain deductions to be only on actual payment
50	Special provision for cost of acquisition in case of depreciable asset
56	Income from other sources
68	Cash credits
79	Carry forward and set off of losses in case of certain companies
79A	No set off of losses consequent to search, requisition and survey
80CCD	Deduction in respect of contribution to pension scheme of Central Government
80DD	Deduction in respect of maintenance including medical treatment of a dependent who is a person with disability
80-IAC	Special provision in respect of specified

	business
80LA	Deductions in respect of certain incomes of Offshore Banking Units and International Financial Services Centre
92CA	Reference to Transfer Pricing Officer
94	Avoidance of tax by certain transactions in securities
115BAB	Tax on income of new manufacturing domestic companies
115BBD	Tax on certain dividends received from foreign companies
115BBH	Tax on Income from virtual digital asset
115BBI	Specified income of certain institutions
115JC	Special provisions for payment of tax by certain persons other than a company
115JF	Interpretation in this Chapter (Chapter XII-BA)
115TD	Tax on accreted income
115TE	Interest payable for non-payment of tax by trust or institution
115TF	When trust or institution is deemed to be assessee in default
119	Instructions to subordinate authorities
132	Search and seizure
132B	Application of seized or requisitioned assets
133A	Power of survey
139	Return of income
140B	Tax on updated return
143	Assessment
144	Best judgment assessment
144B	Faceless Assessment
144C	Reference to dispute resolution panel
148	Issue of notice where income has escaped assessment
148A	Conducting inquiry, providing opportunity before issue of notice under section 148
148B	Prior approval for assessment, reassessment or re-computation in certain cases.
149	Time limit for notice
153	Time limit for completion of assessment, reassessment and re-computation
153B	Time limit for completion of assessment under section 153A
155	Other amendments
156A	Modification and revision of notice in certain cases.

## INCOME TAX

158AA	Procedure when in an appeal by revenue an identical question of law is pending before Supreme Court
158AB	Procedure where an identical question of law is pending before High Courts or Supreme Court
170	Succession to business otherwise than on death
170A	Effect of order of tribunal of court in respect of business re-organisation
179	Liability of directors of private company
194-IA	Payment on transfer of certain immovable property other than agricultural land
194-IB	Payment of rent by certain individuals or Hindu undivided family
194R	Deduction of tax on benefit or perquisite in respect of business or profession
194S	Payment on transfer of virtual digital asset
201	Consequences of failure to deduct or pay
206AB	Special provision for deduction of tax at source for non-filers of income-tax return
206C	Profits and gains from the business of trading in alcoholic liquor, forest produce, scrap, etc.
206CCA	Special provision for collection of tax at source for non-filers of income-tax return
234A	Interest for defaults in furnishing return of income
234B	Interest for defaults in payment of advance tax
239A	Refund for denying liability to deduct tax in certain cases
245MA	Dispute Resolution Committee
246A	Appealable orders before Commissioner (Appeals)
248	Appeal by a person denying liability to deduct tax in certain cases
253	Appeals to the Appellate Tribunal
255	Procedure of Appellate Tribunal
263	Revision of orders prejudicial to revenue
271AAB	Penalty where search has been initiated
271AAC	Penalty in respect of certain income
271AAD	Penalty for false entry, etc., in books of account
271AAE	Benefits to related persons.
271C	Penalty for failure to deduct tax at source
272A	Penalty for failure to answer questions, sign

	statements, furnish information, returns or statements, allow inspections, etc.
276AB	Failure to comply with the provisions of sections 269UC, 269UE and 269UL
276B	Failure to pay tax to the credit of Central Government under Chapter XII-D or XVII-B
276CC	Failure to furnish returns of income
278A	Punishment for second and subsequent offences
278AA	Punishment not to be imposed in certain cases
285B	Submission of statements by producers of cinematograph films or persons engaged in specified activity

**[For further details please refer the circular]**

# GST

## CIRCULAR

### GUIDELINES FOR VERIFYING THE TRANSITIONAL CREDIT IN LIGHT OF THE ORDER OF THE HON'BLE SUPREME COURT IN THE UNION OF INDIA VS. FILCO TRADE CENTRE PVT. LTD., SLP(C) NO. 32709- 32710/2018, ORDER DATED 22.07.2022 & 02.09.2022

**OUR COMMENTS:** The Central Board of Indirect taxes and Customs vide circular no. 182/14/2022-GST dated 10.11.2022 circulated that the directions issued by the Hon'ble Supreme Court vide order dated 22.07.2022 in the matter of Union of India vs. Filco Trade Centre Pvt. Ltd., SLP(C) No. 32709- 32710/2018 = **2022 (7) TMI 1232 - SC ORDER**. The operative portion of the judgment is as follows:

*"1. Goods and Service Tax Network (GSTN) is directed to open common portal for filing concerned forms for availing Transitional Credit through TRAN-1 and TRAN-2 for two months i.e. w.e.f. 01.09.2022 to 31.10.2022.*

*2. Considering the judgments of the High Courts on the then prevailing peculiar circumstances, any aggrieved registered assessee is directed to file the relevant form or revise the already filed form irrespective of whether the taxpayer has filed writ petition before the High Court or whether the case of the taxpayer has been decided by Information Technology Grievance Redressal Committee (ITGRC).*

*3. GSTN has to ensure that there are no technical glitch during the said time.*

*4. The concerned officers are **given 90 days thereafter** to verify the veracity of the claim/transitional credit and pass appropriate orders thereon on merits after granting appropriate reasonable opportunity to the parties concerned.*

*5. Thereafter, the allowed Transitional credit is to be reflected in the Electronic Credit Ledger.*

*6. If required GST Council may also issue appropriate guidelines to the field formations in scrutinizing the claims. The Special Leave Petitions are disposed of accordingly. Pending applications, if any, also stand disposed of."*

1.2. Subsequently in Miscellaneous Application No. 1545-1546/2022 in SLP(C) No. 32709- 32710/2018 = **2022 (9)**

**TMI 514 - SC ORDER**, Hon'ble Supreme Court vide order dated 2nd September, 2022 has inter-alia ordered as follows:

*"The time for opening the GST Common Portal is extended for a further period of four weeks from today.*

*It is clarified that all questions of law decided by the respective High Courts concerning Section 140 of the Central Goods and Service Tax Act, 2017 read with the corresponding Rule/Notification or direction are kept open."*

2. As is clear from the above, the Hon'ble Court has directed that the common portal be opened for filing prescribed forms for availing Transitional Credit through TRAN-1 and TRAN-2 for two months from 01.10.2022 to 30.11.2022 for the aggrieved registered assessee (henceforth, referred as 'applicant'). The Transitional Credit claimed by the applicant shall be credited in his electronic credit ledger to the extent allowed by the jurisdictional tax officer through an order after carrying out necessary verifications. As per the Hon'ble Court's order, the said verification has to be carried out within 90 days after completion of the above window of two months, i.e. within 90 days from 01.12.2022 i.e. up to 28.02.2023.

2.1 It is to be noted that while allowing the applicant to file/revise TRAN-1/TRAN-2 during this window of 2 months, Hon'ble Supreme Court has kept all questions of law open.

2.2 It may be mentioned that Hon'ble Supreme Court has only allowed filing of TRAN-1/TRAN-2 or revising the TRAN-1/TRAN-2 already filed by the applicant and has not allowed the applicant to file revised returns under the existing laws.

3. Reference is also invited to the Board's Circular No. 180/12/2022 dated 09.09.2022 vide which guidelines have been issued for the applicants for filing new TRAN-1/TRAN-2 or revising the already filed TRAN-1/TRAN-2 on the common portal.

4. To ensure uniformity in the implementation of the directions of the Hon'ble Supreme Court across field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), hereby issues the following guidelines for verifying the Transitional Credit:

## GST

### 5. Verification of the Transitional Credit

5.1 The jurisdictional tax officers can access the TRAN-1/TRAN-2 filed/revise by the applicant on their back office systems (which is the CBIC-AIO portal for the central tax officers, the respective State portal for MODEL-1 States and BO portal for MODEL 2 States). Further, a self-certified downloaded copy of TRAN-1/TRAN-2 filed/revise by the applicant shall also be made available to the jurisdictional tax officer by the said applicant as mentioned in Para 4.5 of Circular 180/12/2022 dated 09.09.2022.

5.2 The verification of the transitional credit shall be conducted by the jurisdictional tax officer who will pass an appropriate order regarding the veracity of the claim filed by the applicant, based on all the facts and the provisions of the law. In respect of TRAN-1/TRAN-2 filed/revise by the applicant under the administrative control of the central tax authorities, such verification and issuance of order shall be done by the jurisdictional officer of central tax, whereas in respect of TRAN-1/TRAN-2 filed/revise by the applicant under the administrative control of the state tax authorities, the same shall be done by the jurisdictional officer of state tax. The jurisdictional tax officer shall start the verification process immediately on availability of TRAN-1/TRAN-2 filed/revise by the applicant on the back office system or on receipt of self-certified downloaded copy of the same from the applicant, whichever is earlier. It is needless to mention that principles of natural justice shall be followed in the process of passing the order relating to allowance or disallowance of the Transitional Credit.

5.3 The jurisdictional tax officer shall, on the basis of declaration made by the applicant in the format specified in **Annexure A** to Circular no. 180/12/2022 dated 09.09.2022, and on the basis of data available on the back office system, shall check whether the applicant had earlier filed TRAN-1/TRAN-2 or not. In cases where TRAN-1/TRAN-2 had already been filed by the applicant earlier, the tax officer shall check whether there is any change from the earlier filed TRAN-1/TRAN-2 or not. In case, there is no change from the earlier filed TRAN-1/TRAN-2, then such claim of transitional credit is liable for rejection by the tax officer, through a reasoned order, after providing due reasonable opportunity to the applicant.

5.3.1 In other cases, the jurisdictional tax officer shall proceed for verification of claim of transitional credit made by the applicant in FORM TRAN-1/TRAN-2. In this regard, in

respect of transitional credit pertaining to central tax, he may refer to the guidelines detailed in **Annexure I** to this circular. In respect of verification of transitional credit pertaining to the State Tax/Union territory Tax, the tax officer may refer to the guidelines issued by the relevant state/UT, if any.

5.3.2 There may be cases where the transitional credit claim filed/revise by the applicant may have components of both central tax and state/UT tax. In such cases, where the applicant is under the jurisdiction of central tax officer and where the transitional credit claimed has component of state/Union Territory tax also, the jurisdictional central tax officer shall refer the said claim for verification of component of state/UT tax to his counterpart state/UT tax officer. For this purpose, he shall share the list of GSTINs/ARNs with the counterpart officer, in respect of which verification report is needed from him, on a weekly basis, along with an intimation of the same to the nodal officer of central tax as well as state/UT tax referred in **Para 6.1 below** through his official email ID or physically. Similar action, as above, shall also be taken by the jurisdictional state/UT tax officers in cases where the applicant is under the jurisdiction of state/UT tax officer and where the transitional credit claimed has component of central tax also.

5.3.3 The jurisdictional tax officer shall, in parallel, continue the verification of the remaining portion of the transitional credit at his end.

5.3.4 The jurisdictional tax officer and the counterpart tax officer shall verify the transitional credit claimed under the CGST or the SGST head, as the case may be, by referring to the guidelines detailed in **Annexure I** to this circular for transitional credit pertaining to central tax and the guidelines issued by the relevant state/UT for verification of transitional credit pertaining to the State Tax/Union territory Tax, as applicable. While conducting the verification, the officer must also check whether any adjudication or appeal proceedings in TRAN-1/TRAN-2 related matter are pending/ concluded against the applicant. In such cases, where any adjudication or appellate proceedings have been initiated against the applicant in respect of TRAN-1/TRAN-2, the officer should take a note of the relevant facts in the notice/ order, and the grounds/reasons for inadmissibility of transitional credit, if any, in the said notice/ order.

## GST

5.3.5 In respect of verification done by the counterpart officer, after verification, he will prepare a verification report, in the format detailed in **Annexure-II** of this circular, specifying the amount of transitional credit which may be allowed to be credited to the electronic credit ledger of the applicant and the amount which is liable for rejection, along with detailed reasons/ grounds on which the said amount is liable to be rejected. Such duly signed verification report shall be sent by the counterpart officer to the jurisdictional tax officer at the earliest, though generally not later than ten days from the date of receipt of the request from the jurisdictional officer. In case, where the adjudication or appeal proceedings in respect of TRAN-1/TRAN-2 related matter are pending/ concluded against the applicant, the counterpart officer shall categorically bring out the relevant facts in his/her verification report along with his detailed findings, admissibility/ inadmissibility, reasons of inadmissibility thereof and the copy of the relevant notice and/or orders.

5.3.6 For the purpose of verification of the claim of the transitional credit, the jurisdictional tax officer as well as the counterpart tax officer, if required, may call for relevant records including requisite documents/returns/invoices, as the case may be, from the applicant.

5.3.7 After receiving the verification report from the counterpart officer, the jurisdictional tax officer shall decide upon the admissibility of the credit claimed by the applicant. In case the jurisdictional tax officer finds that the transitional credit claimed by the applicant is partly or wholly inadmissible as per the provisions of the Act and the rules thereof, then a notice shall be issued by the jurisdictional tax officer to the applicant preferably within a period of seven days from the receipt of report from the counterpart officer, seeking explanation of the applicant as to why the said credit claimed by him should not be denied wholly/partly, as the case may be. The applicant shall also be provided an opportunity of personal hearing by the jurisdictional tax officer in such cases. If required, the jurisdictional tax officer may seek comments of the counterpart officer on the submissions made by the applicant in so far as the said submission relates to the tax (central or State) being administered by such counterpart officer.

5.3.8 After considering the facts of the case, including verification report received from the counterpart officer, submissions made by the applicant and the comments, if any, of the counterpart officer on the same, the

jurisdictional tax officer shall proceed to pass a reasoned order, preferably within a period of fifteen days from the date of personal hearing, specifying the amount of transitional credit allowed to be transferred to the electronic credit ledger of the applicant and upload a pdf copy of the said order, on the common portal for crediting the amount of allowed transitional credit to the electronic credit ledger of the applicant. In any case, such order shall be passed within a period of 90 days from 01.12.2022 i.e. up to 28.02.2023.

5.3.9 Where the amount credited to the electronic credit ledger pursuant to the originally filed TRAN-1/TRAN-2 exceeds the amount of credit admissible in terms of the revised TRAN-1/TRAN-2 filed by the applicant, such excess credit is liable to be demanded and recovered from the applicant, along with interest and penalty, in accordance with the provisions of Chapter XV of the Act and the rules made thereunder.

5.3.10 GSTN will also issue a separate advisory for entering the details on the portal by the tax officers.

5.3.11 It may be noted that consequent to reorganization of the state of Jammu & Kashmir and merger of the Union territories of Dadra and Nagar Haveli & Daman and Diu, the taxpayers of UT of Ladakh and the earlier UT of Daman and Diu have been allotted new GSTINs. Accordingly, the taxpayers of Ladakh and Daman and Diu can file/ revise TRAN-1/TRAN-2 only through their newly allotted GSTINs. It is, therefore, advised that the concerned jurisdictional tax officers should take into consideration transitional credit, if any, claimed by such taxpayers under their previous GSTINs.

### **6. Modalities of coordination between central tax authorities and state tax authorities**

6.1 It is to be noted that all the Zonal Principal Chief Commissioner/ Chief Commissioners (PCCs/CCs) of Central Tax and Chief Commissioners/ Commissioners of Commercial Taxes (CCCTs/CCTs) of various states/UTs shall appoint nodal officer(s) in their respective formations immediately for proper co-ordination between central and state/UT authorities for verification of transitional credit claims and shall make available the details of the said nodal officers, along with their phone numbers and email IDs, to the counterpart tax authority. The nodal officers shall ensure that the verification reports/comments sought by

# GST

the jurisdictional tax officers are being sent in a timely manner by the counterpart officers in their formations.

6.2 It is the responsibility of the Zonal Principal Chief Commissioner/ Chief Commissioners (PCCs/CCs) of Central Tax and Chief Commissioners/ Commissioners of Commercial Taxes (CCCTs/CCTs) of various states/UTs to regularly monitor the progress made in this regard so that the timelines mentioned in the Hon'ble Supreme Court's order dated 22.07.2022 and 02.09.2022 are strictly adhered to by the field formations.

7. Where any communication is required to be made by the central tax officer with the applicant for the purpose of verification of TRAN-1/TRAN-2, through a mode other than through the portal, the same should be made with the use of DIN, as per the guidelines mentioned in the CBIC Circular No. 122/41/2019-GST dated 5th November 2019.

8. Difficulties, if any, in implementation of these instructions may be informed to the Board (gst-cbec@gov.in). Hindi version shall follow.

**[For further details please refer the circular]**

## CIRCULAR

### CIRCULAR FOR CLARIFICATION ON REFUND RELATED ISSUES

**OUR COMMENTS:** : The Central Board of Indirect taxes and Customs vide circular no. 181/13/2022-GST dated 10.11.2022 circulated that the refund of unutilized input tax credit in cases where credit is accumulated on account of rate of tax of inputs being higher than the rate of tax on output supplies i.e. on account of inverted duty structure. Sub-rule (5) of rule 89 of CGST Rules, 2017 prescribes the formula for grant of refund in cases of inverted duty structure. Vide Notification No. 14/2022-Central Tax dated 05.07.2022, amendment has been made in the formula prescribed under sub-rule (5) of rule 89 of the CGST Rules, 2017. Further, vide Notification No. 09/2022-Central Tax (Rate) dated 13.07.2022, which has been made effective from 18.07.2022, the restriction has been placed on refund of unutilised input tax credit on account of inverted duty structure in case of supply of certain goods falling under chapter 15 and 27.

2. Representations have been received from the trade and the field formations seeking clarification on various issues pertaining to the implementation of the above notifications. In order to clarify the issues and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), hereby clarifies the issues as under:

S. No.	Issue	Clarification
1.	Whether the formula prescribed under sub-rule (5) of rule 89 of the CGST Rules, 2017 for calculation of refund of unutilised input tax credit on account of inverted duty structure, as amended vide Notification No. 14/2022-Central Tax dated 05.07.2022, will apply only to the refund applications filed on or after 05.07.2022, or whether the same will also apply in respect of the refund applications filed before 05.07.2022 and pending with the proper officer as on 05.07.2022?	Vide Notification No. 14/2022-Central Tax dated 05.07.2022, amendment has been made in sub-rule (5) of rule 89 of CGST Rules, 2017, modifying the formula prescribed therein. The said amendment is not clarificatory in nature and is applicable prospectively with effect from 05.07.2022. Accordingly, it is clarified that the said amended formula under sub-rule (5) of rule 89 of the CGST Rules, 2017 for calculation of refund of input tax credit on account of inverted duty structure would be applicable in respect of refund applications filed on or after 05.07.2022. The refund applications filed before 05.07.2022 will be dealt as per the formula as it existed before the amendment made vide Notification No. 14/2022-Central Tax dated 05.07.2022.
2.	Whether the restriction placed	Vide Notification No.

# GST

on refund of unutilised input tax credit on account of inverted duty structure in case of certain goods falling under chapter 15 and 27 vide Notification No. 09/2022-Central Tax (Rate) dated 13.07.2022, which has been made effective from 18.07.2022, would apply to the refund applications pending as on 18.07.2022 also or whether the same will apply only to the refund applications filed on or after 18.07.2022 or whether the same will be applicable only to refunds pertaining to prospective tax periods?

09/2022-Central Tax (Rate) dated 13.07.2022, under the powers conferred by clause (ii) of the first proviso to sub-section (3) of section 54 of the CGST Act, 2017, certain goods falling under chapter 15 and 27 have been specified in respect of which no refund of unutilised input tax credit shall be allowed, where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on the output supplies of such specified goods (other than nil rated or fully exempt supplies). The said notification has come into force with effect from 18.07.2022.

The restriction imposed vide Notification No. 09/2022-Central Tax (Rate) dated 13.07.2022 on refund of unutilised input tax credit on account of inverted duty structure in case of specified goods falling under chapter 15 and 27 would apply prospectively only. Accordingly, it is clarified that the restriction imposed by the said notification would be applicable in respect of all refund applications filed on or after 18.07.2022, and would not apply to the refund

	applications filed before 18.07.2022.
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3. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.
4. Difficulty, if any, in implementation of this Circular may please be brought to the notice of the Board. Hindi version would follow.

**[For further details please refer the circular]**

## FEMA

### CASE LAW

#### REASONABLE STEPS TO BE TAKEN FOR SECURING THE SALE PROCEEDS OF EXPORTS

**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 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.

# 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. 93/2022 -Customs(N.T) dated 10.11.2022 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	952 (i.e., no change)
2	1511 90 10	RBD Palm Oil	962 (i.e., no change)
3	1511 90 90	Others – Palm Oil	957 (i.e., no change)
4	1511 10 00	Crude Palmolein	968 (i.e., no change)
5	1511 90 20	RBD Palmolein	971 (i.e., no change)
6	1511 90 90	Others – Palmolein	970 (i.e., no change)
7	1507 10 00	Crude Soya bean Oil	1345 (i.e., no change)

8	7404 00 22	Brass Scrap (all grades)	4518 (i.e., no change)
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**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 (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	698 per kilogram
3	71	(i) Silver, in any form, other than medallions and silver coins having silver content not below 99.9% or semimanufactured forms of silver falling under sub-heading 7106 92;  (ii) Medallions and silver coins having silver content not below 99.9% or semimanufactured forms of silver falling under sub-heading 7106 92, other	698 per kilogram

# CUSTOMS

**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 (i.e., no change)"

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

**[For further details please refer the notification]**

		<p>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>	
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>	531 per 10 grams (i.e., no change)

# DGFT

## NOTIFICATION

### AMENDMENTS UNDER THE FOREIGN TRADE POLICY IN SYNC WITH RBI A.P.(DIR SERIES) CIRCULAR NO.10 DATED 11TH JULY 2022

**OUR COMMENTS:** The Ministry of Commerce and Industry vide public notice no. 43/2015-2020 dated 09.11.2022 notified in exercise of powers conferred by Section 5 of the Foreign Trade (Development and Regulation) Act, 1992, read with paragraph 1.02 of the Foreign Trade Policy, 2015-2020, as amended from time to time, the Central Government hereby makes the following amendments in the Foreign Trade Policy 2015-20, with immediate effect, in sync with the RBI's A.P. (DIR Series) Circular No.10 dated 11<sup>th</sup> July, 2022:

Sl.	Existing Para	Revised Para
1.	<p><b>2.46 Import for export</b></p> <p>I. (b) Goods, including capital goods (both new and second hand), may be imported for export provided:</p> <p>iii. Export is against freely convertible currency.</p> <p>II. (a) Goods imported against payment in freely convertible currency would be permitted for export only against payment in freely convertible currency, unless otherwise notified by DGFT.</p>	<p><b>2.46 Import for export</b></p> <p>I. (b) Goods, including capital goods (both new and second hand), may be imported for export provided:</p> <p>iii. Export is against freely convertible currency or as per 2.52(d)(ii) of FTP.</p> <p>II. (a) Goods imported against payment in freely convertible currency would be permitted for export only against payment in freely convertible currency, unless otherwise notified by DGFT.</p>

		Goods imported under Para 2.52(d)(i) would be permitted for exports only against payments as per Para 2.52(d)(ii), unless otherwise notified by DGFT.
2.	<p><b>2.53 Export to Iran - Realisations in Indian Rupees to be eligible for FTP benefits / incentives</b></p> <p>Notwithstanding the provisions contained in para 2.52 (a) above, export proceeds realized in Indian Rupees against exports to Iran are permitted to avail exports benefits / incentives under the Foreign Trade Policy (2015-20), at par with export proceeds realized in freely convertible currency.</p>	<p><b>2.53 Applicability of FTP Schemes for Export Realisations in Indian Rupees</b></p> <p>(i) Export proceeds realized in Indian Rupees against exports to Iran are permitted to avail benefits/fulfilment of Export Obligations under the Foreign Trade Policy (2015-20), at par with export proceeds realized in freely convertible currency, subject to compliance of para 2.18 of the FTP.</p> <p>(ii) Export proceeds realized in Indian Rupees as per para 2.52 (d)(ii) are permitted to avail exports benefits/fulfilment of Export Obligations under the Foreign Trade Policy (2015-20).</p>
3.	<p><b>3.20 Status Holder</b></p> <p>(b) All exporters of goods,</p>	<p><b>3.20 Status Holder</b></p> <p>(b) All exporters of goods,</p>

# DGFT

services and technology having an import-export code (IEC) number shall be eligible for recognition as a status holder. Status recognition will depend on export performance. An applicant shall be categorized as status holder on achieving export performance during the current and previous three financial years (for Gems & Jewellery Sector) the performance during the current and previous two financial years shall be considered for recognition as status holder) as indicated in paragraph 3.21 of Foreign Trade Policy. The export performance will be counted on the basis of FOB of export earning in freely convertible foreign currencies.

realized in freely convertible currency except otherwise specified. Provisions regarding realisation and non-proceeds are given in paragraph 2.52, 2.53 and 2.54 of FTP

realized in freely convertible currency or in Indian Rupees as per para 2.53 of FTP, except otherwise specified. Provisions regarding realisation and non-proceeds are given in paragraph 2.52, 2.53 and 2.54 of FTP.

**Effect of this Notification:** Amendments under FTP are notified, to permit exports benefits / fulfilment of Export Obligations for Invoicing, payment and settlement of exports and imports in INR, as per RBI's A.P. (DIR Series) Circular No. 10 dated 11th July, 2022. This shall come into force with immediate effect.

This issues with the approval of Minister of Commerce & Industry.

**[For further details please refer the public notification]**

## NOTIFICATION

### AMENDMENT IN EXPORT POLICY OF BROKEN RICE UNDER HS CODE 1006 40 00

**OUR COMMENTS:** The Ministry of Commerce and Industry vide notification no. 42/2015-2020 dated 07.11.2022 notified In partial modification of the Notification No. 31/2015-2020 dt. 8<sup>th</sup> September, 2022, the Central Government, 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, hereby amends Condition (iii) of Para-2 of Notification No. 31/2015-2020 dt. 08.09.2022.

4.	<b>4.21 Currency for Realisation of Export Proceeds</b>	<b>4.21 Currency for Realisation of Export Proceeds</b>
	(i) Export proceeds shall be	(i) Export proceeds shall be

# DGFT

2. Original condition (iii) of Para -2 of Notification No. 31/2015-2020 dt. 08.09.2022 is as under:-

iii. where broken rice consignment has been handed over to the Customs before this Notification and is registered in their system.

**Amended condition (iii) of Para-2 of Notification No. 31/2015-2020 dt. 08.09.2022 is as under:-**

iii. where broken rice consignment has been handed over to the Customs before this Notification and is registered in their system / where broken rice consignment has entered the Customs Station for exportation before this Notification and is registered in the electronic systems of the concerned Custodian of the Customs Station with verifiable evidence of date and time stamping of these commodities having entered the Customs Station prior to 8.9.2022. The period of export shall be upto 30th November, 2022.

### 3. Effect of this Notification:

Condition (iii) of Para-2 of Notification No. 31/2015-2020 dt.08.09.2022 has been amended with immediate effect so as to provide clearance to such rice consignments held up in CFS which had been handed over to the Container Freight Station (CFS) before this Notification.

[For further details please refer the notification]

## NOTIFICATION

**AMENDMENT IN POLICY CONDITION NO. 7(II) OF CHAPTER 27 OF ITC (HS), 2022, SCHEDULE – I (IMPORT POLICY) – IMPLEMENTATION OF COAL IMPORT MONITORING SYSTEM (CIMS).**

**OUR COMMENTS:** The Ministry of Commerce and Industry vide notification no. 41/2015-2022 dated 07.11.2022 notified In exercise of powers conferred by Section 3 & 9 of FT (D&R) Act, 1992, read with paragraph 1.02 and 2.01 of the Foreign Trade Policy, 2015-2020, as amended from time to time, the Central Government hereby amends the Policy Condition No.7(ii) of Chapter- 27 of Schedule-I (Import Policy) of ITC (HS), 2022:

Existing Policy Condition	Revised Policy Condition
The importer can apply for registration not earlier than 60th day and not later than 15th day before the expected date of arrival of import consignment. The Automatic Registration Number shall remain valid for a period of 75 days. Importer shall have to enter the Registration Number and expiry date of Registration in the Bill of Entry to enable Customs for clearance of consignment.	<b>The importer can apply for registration not earlier than 60th day and not later than 5 days before the expected date of arrival of import consignment. The Automatic Registration Number shall remain valid for a period of 75 days. Importer shall have to enter the Registration Number and expiry date of Registration in the Bill of Entry to enable Customs for clearance of consignment.</b>

### 2. Effect of the Notification:

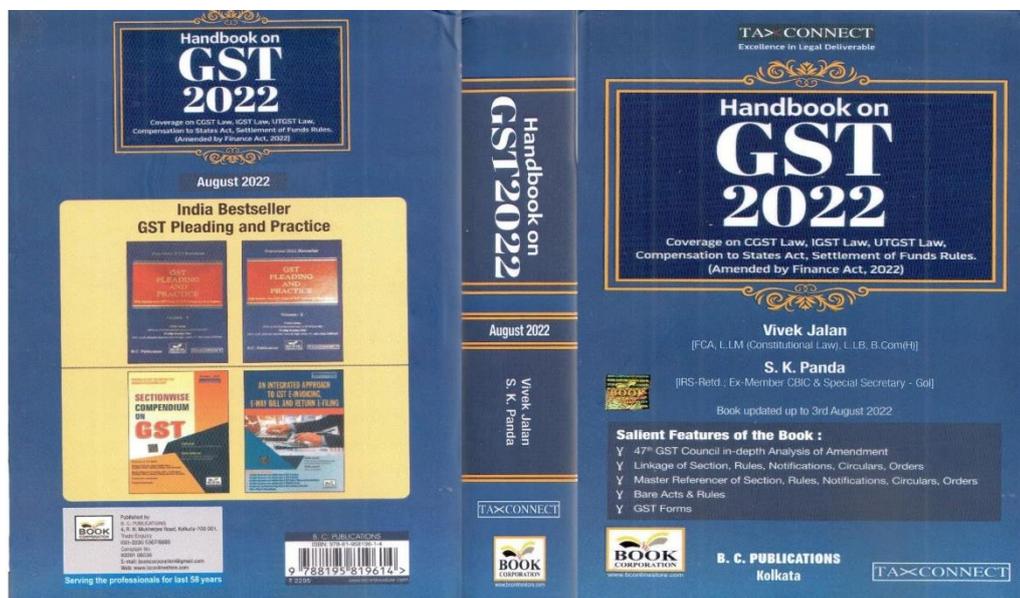
The Policy Condition No. 7(ii) of Chapter- 27 of Schedule-I (Import Policy) of ITC (HS), 2022 has been revised.

This issues with the approval of Minister of Commerce & Industry.

[For further details please refer the notification]

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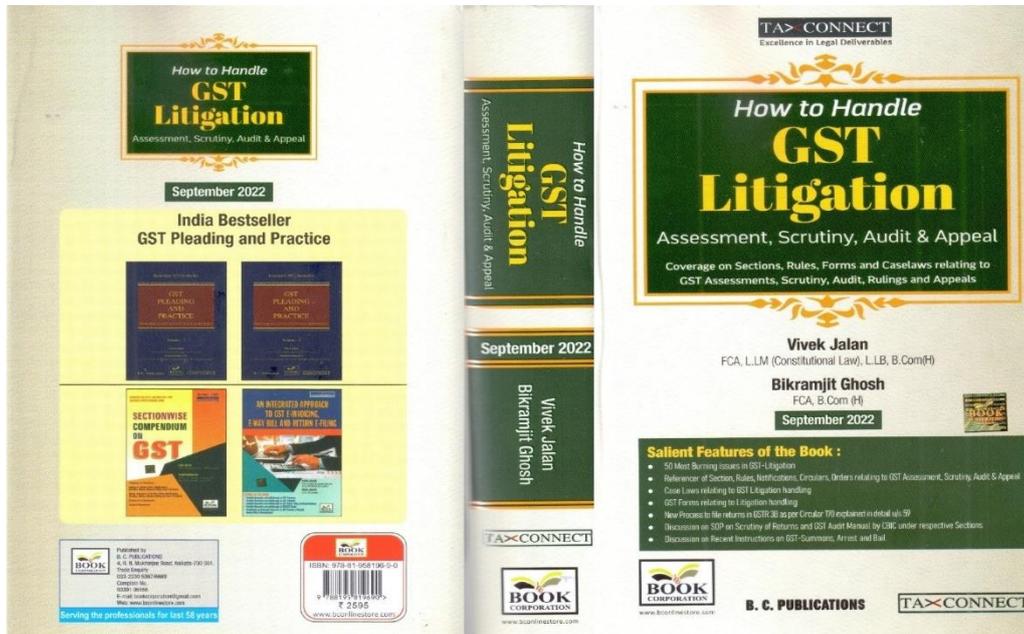
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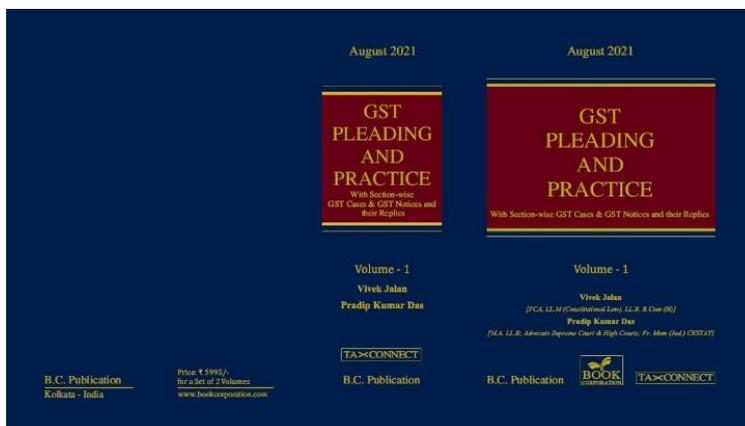
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