HELPING CLIENTS KEEP MORE OF WHAT THEY EARN

GST CUSTOMS & DGFT Updates

As on 02.07.2022

Updates covering all the important Judgements

GSTiDEA
Knowledge Portal on Goods & Services Tax

Compiled by BT Associates

GST

Expeditious disposal of Refund & change in refund calculation

Calculation of refund of unutilized Input Tax Credit on account of inverted rated structure

- Change in formula for calculation of refund under rule 89(5) to take into account utilization of ITC on account of inputs and input services for payment of output tax on inverted rated supplies in the same ratio in which ITC has been availed on inputs and input services during the said tax period. This would help those taxpayers who are availing ITC on input services also.

Handling of pending IGST Refund claims:

- In some cases where the exporter is identified as risky exporter requiring verification by GST officers, or where there is a violation of provisions of Customs Act, the refund claims in respect of export of goods are suspended/withheld.

- CBIC has been recommended to provide for transmission of such IGST refund claims on the portal in a system generated FORM GST RFD-01 to the jurisdictional GST authorities for processing. This would result in expeditious disposal of such IGST refund claims, after due verification by GST officers, thus benefitting such exporters.

1. Change proposed in 47th Council Meeting yet to be implemented

Increase in GST rate to remove inverted duty structure refund

GST Rate Change in Goods:

Description of Goods	From (%)	To (%)
Power driven pumps designed for handling water such as tube-well turbine pump, Bicycle pumps, etc.	12	18
Drawing & Marketing Instruments	12	18
LED Lamps, lights and fixture, their metal printed circuits board, Knives with cutting blades, Paper knives, Pencil sharpeners and blades therefor, Spoons, forks, ladles, skimmers, cake-servers etc	12	18
Petroleum/Coal Bed Methane	5	12
Machine used for milling Industry, Atta Chakki, Wet grinder or machines for cleaning, sorting or grading.	5	18
Solar Water Heater System	5	12
Prepared or Finished Leathers, Composition Leathers	5	12

1. Change proposed in 47th Council Meeting yet to be implemented

Increase in GST rate to remove inverted duty structure refund

GST Rate Change in Services:

Description of Services	From (%)	To (%)
Works contract for roads, bridges, railways, metro, effluent treatment plant, crematorium etc.	12	18
Works contract supplied to central and state governments, local authorities for historical monuments, canals, dams, pipelines, plants for water supply, educational institutions, hospitals etc. & sub-contractor thereof	12	18
Works contract supplied to central and state governments, union territories & local authorities involving predominantly earthwork and sub-contracts thereof	5	12
Job work in relation to processing of hides, skins and leather, manufacture of leather goods and footwear, manufacture of clay bricks	5	12
Services supplied by foreman to chit fund	12	18
Renting of truck/goods carriage where cost of fuel is included	18	12

1. Change proposed in 47th Council Meeting yet to be implemented

Recovery of refund erroneous granted & miscellaneous update

Introduction of Form PMT-03A Re-credit of amount in electronic credit ledger

- Where erroneous refund amount sanctioned to a taxpayer on account of accumulated ITC or on account of IGST paid on zero rated supply of goods or services. A new FORM GST PMT-03A is introduced for the same.

- This will enable the taxpayers to get re-credit of the amount of erroneous refund, paid back by them, in their electronic credit ledger.

Others suggestions for Amendment:

- Retrospective amendment with effect from 01.07.2017, to provide that interest will be payable on the wrongly availed ITC only when the same is utilized.

- Transfer of balance in electronic cash ledger of a registered person to electronic cash ledger of CGST and IGST of a distinct person.

- Electric vehicles whether or not fitted with a battery pack, are eligible for the concessional GST rate of 5%.

- Renting of vehicle with operator for transportation of goods on time basis is classifiable under Heading 9966 (rental services of transport vehicles with operators) and attracts GST at 18%.GST on such renting where cost of fuel is included in the consideration charged is being prescribed at 12%.

1. Change proposed in 47th Council Meeting yet to be implemented

Miscellaneous Update

- CBIC extend the waiver of late fee for delay in filing FORM GSTR-4 for FY 2021-22 by approximately four more weeks, i.e. till 28.07.2022. Further due date of filing of FORM GST CMP-08 for the 1st quarter of FY 2022-23 from 18.07.2022 to 31.07.2022.

- Exemption from filing annual return in FORM GSTR-9/9A for FY 2021-22 to be provided to taxpayers having AATO upto Rs. 2 crores.

- UPI & IMPS to be provided as an additional mode for payment of Goods and Services Tax to taxpayers.

- Time period from 01.03.2020 to 28.02.2022 to be excluded from calculation of the limitation period for filing refund claim by an applicant as well as for issuance of demand/order (by proper officer) in respect of erroneous refunds.

- Further, limitation for FY 2017-18 for issuance of order in respect of other demands linked with due date of annual return, to be extended till 30th September, 2023.

- Refund of accumulated ITC not to be allowed on Edible oils & Coal.

1. Change proposed in 47th Council Meeting yet to be implemented

Madhya Pradesh High Court Judgement

Appeal cannot be rejected if there is no proof of when the order has been received

- **Facts:-**

- Department has passed an order for cancelling the registration of petitioner. Being aggrieved by the action of the department, petitioner filed appeal before the appellate authority.
- The appeal was rejected by the authority as the appeal was filed by petitioner after 2 years and 7 months and the same is time barred.
- Being aggrieved by the action of department, writ application was filed by the petitioner.

- **Held:-**

- Hon'ble High Court held that as there was no material available on record that the order passed by the department has been communicated to the petitioner.
- Hon'ble High Court remanded back the matter for reconsideration and to decision the case afresh.

Denial of ITC on account of non submission of supporting documents

❑ **Facts:-**

- Department has issued Show Cause notice in relation to mismatch of input tax credit between supplier and the petitioner thereafter Department passed the order confirming the demand.

- Being aggrieved by the action of department, writ application was filed by the petitioner on the ground that intimation of mismatch was not given to petitioner as required in accordance with section of the Act.

❑ **Petitioner Contention:-**

- Petitioner submits that Department fails to communicate the discrepancy to both supplier and the dealer.

❑ **Held:-**

- Hon'ble High Court held that intimation of show cause shall be treated as communication of discrepancy to the petitioner as per the provision of the Act.

- Hon'ble High Court held that if petitioner wants to rectify the mismatch then petitioner should have procured and submitted the supporting documents to substantial that the output tax has been paid by the supplier.

Department cannot initiate recovery of additional tax on account of clerical mistake in E-way bill

❑ Facts:-

- The petitioner is a private company engaged in the business of steel and HT wires and entered into an agreement with M/s Rewa Engineering Pvt. Ltd. for supply of certain goods to factory at Rewa.
- A tax invoice was generated reflecting the destination and registration number of the vehicle, however while generating the E-way bill the address, instead of Rewa was mentioned as the registered office of the consignee, at Jabalpur.
- The revenue authorities initiated proceedings under Section 129 and passed an order levying additional tax as well as penalty.
- Being aggrieved by the action of department, an appeal against the aforesaid order was filed, which was also dismissed bt the appellate authority.

❑ Petitioner Submissions:-

- It was human error and inadvertent mistake while generating the E-way bill.
- There was no intention to evade tax liability as the vehicle number transporting the goods is same as shown in the E-way bill.

Madhya Pradesh High Court Judgement

- CBIC vide circular stated that petitioner is liable to pay only minor penalty on account of clerical mistake and additional tax cannot be demanded.

❑ **Held:-**

- Hon'ble High Court held that considering the mistake in the present case being bonafide, High Court quashed the impugned orders.

- Hon'ble High Court with the above findings allowed the writ petition with a liberty to a respondents to consider the case for minor penalty, treating it to be a clerical mistake.

Merely on the ground of limitation refund cannot be rejected.

❑ **Facts:-**

- The petitioner is engaged in the manufacture of Woven Fabrics of Syn, Staple-fiber falling under Tariff heading No. 52.12 of Central Excise Tariff Act, 1985 and they export their goods.
- The petitioner has filled the refund claims of accumulated credit during the period April 2008 to March 2009 in respect of service tax paid on commission agent's service.
- The refund were rejected by the department on the grounds of time bar.
- Being aggrieved by the action of the department, an appeal was filed before the Commissioner.

❑ **Petitioner Submissions :-**

- The refund claim is required to be filled within six months from the end of quarter during which the goods were exported.
- The service tax was paid by the petitioner on 31.03.2010 and 21.04.2010, refund were filled for such service tax . The denial of the petitioner refund claims on the ground of time bare is not justifiable as refund claim filed on 31.05.2010 for the amount of service tax paid as tax on 31.03.2010 were not barred by limitation.

CESTAT Ahmedabad Judgement

❑ **Held:-**

- It was held that refund claim filed within six months which is within the time limit and consequential benefit cannot be denied if refund is filed in accordance with the law.
- CESTAT dismissed the order of the authority and held that petitioner is liable to get the benefit.

Customs & DGFT

Miscellaneous Update from DGFT and CBIC

Amendment in guidelines for applying EODC in case of deemed exports in ANF-4F with effect from 07.06.2022 –

- **For Deemed Exports** - the followings documents shall be required to be furnished along with ANF-4F -

  - A copy of the invoice or a statement of invoices duly signed by the unit receiving the material certifying the item of supply, its quantity, value and date of such supply.

  - In case of non excisable items or supply of excisable items to a unit producing non excisable product(s), a project authority certificate (PAC) certifying quantity, value and date of supply would be acceptable in lieu of excise/GST certification.

  - In respect of supplies to EOU/EHTP/ STP/ BTP, a copy of CT -3/ ARE-3 duly signed by the jurisdictional excise/GST authorities certifying the item of supply, its quantity, value and date of such supply can be furnished in lieu of the excise/GST attested invoice (s) or statement of invoices as given above.

  - In case of supply of the product by the Intermediate supplier to the port directly for export by the ultimate exporter (holder of Advance Authorization or DFIA), copy of the shipping bill with the name of domestic supplier as Intermediate supplier endorsed on it along with the file No. Authorization No. of the ultimate exporter and the intermediate supplier shall be required to be furnished.

1. Public Notice No. 11/2015-20 dated 07/06/2022.

Miscellaneous Update from DGFT and CBIC

Relaxation in provision of submission of 'Bill of Export' as an evidence of export obligation discharge for supplies made to SEZ units in case of Advance Authorisation for all supplies made prior to 01.04.2015.

- For the purpose of discharge of export obligation under Advance Authorisations, in case of supplies made to SEZ units prior to 01.04.2015, the exporters can submit corroborative evidence in lieu of 'Bill of Exports' such as:

  a) ARE-t form duly attested by jurisdictional Central Excise/GST Authorities of AA holder.
  b) Evidence of receipt of the supplies by the recipient in the SEZ
  c) Evidence of payment made by the SEZ unit to the AA holder.

Global Authorization for Intra-Company Transfer (GAICT“) of SCOMET items/ software/ technology –

- Pre-export authorization will not be required, for export and/or re-export of SCOMET items including software and technology under SCOMET subject to the fulfilment of prescribed conditions.

Extension in deadlines for submission of applications under MEIS for exports made in the 4 months period, Sept 2020 to Dec 2020 –

- The last date for submission of online applications under MEIS for exports made in the period 01.09.2020 to 31.12.2020 and applicable late cut will be NIL as in Para 9.02 of HBP would be 31.08.2022.

1. **Circular No.** 39 dated 07/06/2022
2. Public Notice No. 14/2015-20 dated 13/06/2022.
3. **Notification No. 15/2015-2020 dated 1st July, 2022**

Miscellaneous Update from DGFT and CBIC

Migration of e-BRC Portal/Website to new IT platform –

- The existing e-BRC platform (http://dgftebrc.nic.in/) is being managed by NIC-DGFT from 2012 onwards and has enabled us to capture details of realisation of export proceeds from the Banks directly through secured electronic mode and facilitated implementation of various export promotion schemes in an IT environment.

- The existing e-BRC module is now being upgraded to a new IT platform and it is proposed to discontinue the earlier version from end of July 2022.

- Existing users of the e-BRC module i.e. the AD Banks will need to migrate to the new environment (https:/dgfigov.in) on an urgent basis so that services to the exporting community do not get impacted.

Amendments in Export Promotion Capital Goods Scheme to reduce 'Compliance Burden' and enhance 'Ease of doing Business'

- Authorisation holder shall submit to RA concerned by 30th April of every year, report on fulfilment of export obligation by secured electronic filing using digital signatures/ or hard copy thereof.

- The above time limit to file returns for the year 2022-23 is extended till 30.9.2022. Late fees of Rs. 5000/- is applicable for the returns due to be filed from the year 2022-23 onwards.

1. Trade Notice No. 13/2022-23 dated 30/06/2022
2. Public Notice No.13/2015-20 dated 09/06/2022

Guidelines on Violation of SIMS/NFMIMS-Registration:

- The importer needs to get himself registered under SIMS/NFMIMS under the timeline prescribed by the DGFT i.e. not earlier than 60 days in case of both registration and not later than 15th day before the arrival of vehicle in case of SIMS registration and 5th day before the arrival of vehicle in case of NFMIMS registration for import of Steel, Cooper and Aluminium respectively. However, earlier there were no penal provisions were imposed in case of any such violation while applying for SIMS/NFMIMS. Hence, to ensure the uniformity, the penal provisions have been prescribed in the following 2 cases in case of such violations:

In case importer having registration but not within the prescribed timeline:

- When registration in SIMS/NFIMS is available and presented at the time of import but such registration has not been received within the timeline prescribed- penalty u/s 117 of Customs Act, 1962 would be imposable i.e. penalty not exceeding four lakh rupees. Further, the goods are not liable to be confiscated, as the registration is available at the time of Importation.

In case importer does have any such registration:

- Where such registration is not available at the time of importation- the goods are liable to confiscation. Thus the BOE and other related documents would be forwarded to the Assessment group for the Adjudication proceeding. Moreover, such goods cannot be released until the registration under SIMS/NFIMS is actually taken by the importer.

1. Notification No. S/26-Misc-40/2022-23/Gr IV dated 13.05.2022

Writ Petition: Bombay High Court Judgement

Any person who may not be an Importer or Exporter, can file an application for settlement of cases under this Act, if he is served with a SCN charging him with duty:

- **Facts:-**

- In the given case, the Settlement Commission has rejected the application of settlement filed by the petitioner not on the basis of merits but on eligibility of petitioner to file the application, since on the BoE, the name of the importer is someone else who is not the petitioner.

- On being aggrieved by the decision, the petitioner has challenged the decision in this petition.

- **Finding:**

- On the plain reading of the section 127B of the act, the term "any other person" appearing in the said section would mean any person to whom show-cause notice has been issued changing him with the duty. Further, on a literal interpretation of the provision it state that a bill of entry must be filed in a case, not necessary by the person who approaches the settlement commissioner.

- Further, the relationship between the importer and the Petitioner was purely contractual. In addition to the same, a show-cause notice has been issued to all the person engaged in the contract due to some wrongly availed exemption i.e. clearance of goods without payment of duty. However, the Petitioner has approached to settle the case but the same settlement application has been rejected on the basis that the petitioner is not the importer who has filed the BoEs.

1. HALLIBURTON OFFSHORE SERVICES INC Vs Union of India-Writ Petition No. 2778 of 2001
- Section 127B- application for settlement of cases

Writ Petition: Bombay High Court Judgement

❑ **Finding-Cont.:**

- In relation to the same, the petitioner has stated the provisions of section 127B. Further, any person to whom a show-cause notice has been issued can file application.

❑ **Held:-**

- Hon'ble High Court held that it is not necessary that the application must be filed by that person only who has filed the Bill of entries. Those person who has been served a show-cause notice can approach to file the application u/s 127B.

- Hence, the person who may not be an Importer or Exporter can still file such application u/s 127B before the Settlement Commission . Hence, the order impugned in this petition is set aside by the court and they have also directed to examine the application of the petitioner on merits and dispose the application within 12weeks.

1. HALLIBURTON OFFSHORE SERVICES INC Vs Union of India-Writ Petition No. 2778 of 2001

Appeal: CESTAT Regional branch, Chennai

Once Duty and Interest collected by Revenue, there is nothing improper about import, Hence levy of provision relating to the confiscation and penalty will be irrelevant:

- **Facts:-**

- In the given case, penalty under section 112(a) of Customs Act, 1962 had been levied by Adjudication Authority on the basis of allegation that CHA(appellant) has violated the regulation of CBLR regulation(Customs broker Licensing regulations).

- On being aggrieved by such order, the Appellant(CHA) ha s filed an appeal before CESTAT on the basis that failure to comply with regulation of CBLR which is a self –contained code, which does not lead to any improper importation of goods.

- **Finding:**

- A show-cause notice has been issued to the importer and two CHA. In the same notice, the CHA(appellant) has been penalised u/s 112a for failing to comply with regulations of CDLR. Further, in the said notice it was also inter alia proposed for the appropriation of the amount paid voluntarily toward the differential duty and interest.

- The Bench has find that the goods must be improperly imported due to any act or omission which ultimately resulted into the confiscation. Hence in the given case, the Revenue has collected all the duty along with interest, then there remain nothing 'improper' about import.

1. M/s Maruvur Arasi Logistics Pvt Ltd vs The Commissioner of Custosm, Chennai
2. Section 111 & section 112 of Customs Act, 1962

Appeal: CESTAT Regional branch, Chennai

❑ **Held:-**

- The Tribunal in the given case held that there is no improper import of goods as the Revenue has collected all the duty along with interest, accordingly the import itself becomes a proper import. Hence, both section 111 & section 112 have no role, since there is no improper import, then there remaining nothing to confiscate.

- Further, they have held that section 112 does not contemplated penal action for violation of provisions or regulations under any other law. Further ,the act or omission should result in improper import of goods and consequently, confiscation of such goods, which is not the case of the Revenue here in the given case.

- Hence, on the basis of the above finding it was held that the penalty levied is not in accordance with Law and consequently, the impugned order is set aside.

1. M/s Overseas Warehousing Pvt ltd vs Commissioner of Customs , Ludhiyana

Appeal: CESTAT Regional branch, Chennai

Refund cannot be rejected on the basis of time-bar when the same is applied before the wrong forum but within the statutory time and the said refund transferred to the corrected forum after the statutory time limit:

- **Facts:-**

- In the given case, The Authority has rejected the refund application of the Appellant on the basis that the ground of being time-barred without issuing any show-cause notice.

- On being aggrieved by such order, the Appellant has appealed before the CESTAT on the basis that the application has been filed within the statutory time limit but in front of a wrong forum. Later the same refund application has been transferred to the correct form but the said transfer of refund application took place after the statutory time limit.

- **Finding:**

- The Appellant has filed the refund application within the statutory time limit within i.e. 12 month from the date of payment of duty. However, the same application is required to be filed before the Air cargo Unit of Chennai, Customs whereas the same has been applied before Refund(Sea), Chennai Customs by the Appellant inadvertently.

- Further, on realizing the mistake, they have requested in front of Refund(Sea), Chennai Customs to transfer the refund application to Air cargo Unit of Chennai. However, the same has been transfer after the statutory time limit.

Appeal: CESTAT Regional branch, Chennai

❑ **Held:-**

- On the basis of the fact and the findings from the records, the Tribunal finds this clear that the refund application has been filed within the statutory time-limit, however, the same has been inadvertently claimed before the wrong forum/authority.

- Further, they have also held that the date on which the claim was originally filed has to be taken as the date of filing of refund application. Hence the time limit for refund will be considered well as per law. Further, they have set aside the impugned rejection order for refund and directed to process the refund claim on merits.

1. M/s Overseas Warehousing Pvt ltd vs Commissioner of Customs , Ludhiyana


THANK
YOU