



Monthly Newsletter – November 2020

Notifications

Prohibition on import of air conditioners with refrigerant

The Directorate General of Foreign Trade vide **Notification No. 41/2015-2020 dated 15 October 2020** has prohibited the import of air conditioners with refrigerants.

ITC HS Code	Item Description	Present Policy	Revised Policy	Revised Policy Condition
84151010	Split System	Free	Prohibited	Only import of <u>Air Conditioners with refrigerants</u> is 'Prohibited'
84151090	Other	Free	Prohibited	Only import of <u>Air Conditioners with refrigerants</u> is 'Prohibited'

In terms of the prohibition, import of air conditioners containing refrigerants have been prohibited. This appears to be in line with the Government's emphasis on boosting the domestic manufacturing sector in line with the vision of indigenous self-sufficiency. However, since the aforesaid notification only prohibits import of air conditioners with refrigerants, importers of air conditioners may consider alternate structures for importing air conditioners which comply with the notification as well as align with their commercial requirements.

Extension in dates for filing GST Annual Return and Reconciliation Statement for 2018-19

The Government has acceded to the request of the industry for extending the deadlines for filing the annual return (Form GSTR-9) and the reconciliation statement (Form GSTR-9C) for the financial year 2018-19 as a relief measure on account of the Covid-19 related restrictions and lockdowns. The revised due date for such return and statement is **31 December 2020** (Notification No.80/2020 – Central Tax dated 28 October 2020).

It is relevant to note that filing of the annual return is now optional for taxpayers with aggregate turnover less than INR 2 crore (**Notification No.77/2020 – Central Tax dated 15 October 2020**).

Central Board of Excise and Customs (CBIC) appoints Customs Authority for Advance Ruling

The CBIC vide **Notification No. 102/2020 dated 23 October 2020** has appointed the Customs Authority for Advance Ruling in Delhi and Bombay. The CBIC has appointed a Commissioner in both cities who will function as the Customs Authority for Advance Rulings from a date to be notified in due course.

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Case Laws

- Vimal Yashwantgiri Goswami V State of Gujarat: [2020-TIOL-1803-HC-AHM-GST]
- In re ICU Medical India LLP: [2020-TIOL-273-AAR-GST]
- Ravindra Singh Chaudhary vs. UOI & Others: Rajasthan High Court: [TS-883-HC-2020(RAJ)-NT]
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Case Laws

Vimal Yashwantgiri Goswami V State of Gujarat: [2020-TIOL-1803-HC-AHM-GST]

The Gujarat High Court has held that the power to arrest under Section 69 read with Section 132 of the Central Goods and Service tax (CGST) Act can be invoked by the jurisdictional Commissioner if he has reason to believe that the accused person has committed offences as provided under Section 132 of the CGST Act, which are punishable under the CGST Act, **without there being any adjudication for the assessment** as provided under the provisions of the Chapter VIII of the CGST Act

The power under Section 69 of the CGST Act should neither be used as a tool to harass the assessee nor be used in a manner which may have an irreversible detrimental effect on the business of the assessee. The Court has held that a person is not liable to be arrested merely on the suspicion of complicity in an offence. A reasonable justification must be recorded by the Commissioner under a “*reason to believe*” and incorporate prima-facie material against the accused showing his complicity in the alleged offence.

In re ICU Medical India LLP: [2020-TIOL-273-AAR-GST]

The question before the Tamil Nadu AAR was whether the Applicant is liable to pay GST on the reimbursement of expenses from the Indian subsidiary to its holding company, located outside India, on a reverse charge basis. The overseas holding company, ICU Medical Inc. provided a credit card to the Indian employees and cross charged the credit card expenses that it paid to the issuing bank from the Applicant. The Applicant paid the credit card dues to the holding company in the form of reimbursement of expenses at actuals. These expenses were booked in the Applicant’s books as an intercompany transaction, debiting the expenses and crediting the inter-company payable. It was the contention of the applicant that the overseas holding company was functioning as an intermediary and accordingly the place of supply was outside India.

The AAR held that since the agreement for card issuance was between ICU Medical Inc. (the foreign holding company) and the issuing bank and ICU Inc. was separately billed by the issuing bank for credit card expenses, the charging of reimbursements by ICU Inc. to the Applicant was a separate service transaction liable to GST under reverse charge. The AAR held that ICU Inc. was actually providing the service of extending credit services for furtherance of business [SAC 997113] to the Applicant on its own account, as the contract of card issuance was between ICU Inc. and the issuing bank, and there was no contract between the bank and the Applicant. Hence, ICU Inc. was not an intermediary for the purpose of GST laws.

The Applicant was hence liable to pay GST on reverse charge for the import of services under SAC 997113 on the reimbursements paid to the holding company.

Ravindra Singh Chaudhary vs. UOI & Others: Rajasthan High Court: [TS-883-HC-2020(RAJ)-NT]

The Rajasthan High Court has held that since the result of the fantasy cricket games offered by Dream 11 depend on a participant’s skill and not sheer chance, and winning or losing of the virtual team created by the participant is independent of outcome of the game in the real world, the format of online fantasy games, offered by Dream 11, are games of mere skill and do not tantamount to betting or gambling. The Rajasthan High Court relied on the Bombay High Court judgment in **Gurdeep Singh Sachar** affirming the view that fantasy cricket is a game of mere skill, as distinguished from a game of chance.

Sun Dye Chem vs. The Assistant Commissioner – [2020-TIOL-1858-HC-MAD-GST]

The Madras High Court permitted the correction of Form GSTR-1 for the period August 2017 to December 2017 and held that “*it is nobody’s case that the error was deliberate and intended to gain any benefit.*” The Hon’ble High Court held that assessee should not be prejudiced from availing

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credit that they are otherwise legitimately entitled to in the absence of an enabling provision for rectification of error and rejected the Revenue contention that there was no provision to grant amendment to Form -GSTR 1 Forms.

The judgement is important in the context of the many challenges pending before various High Court in the country to open GSTR Forms for previous periods, to rectify errors, as filing GSTR forms in the relevant periods were plagued by system errors and there was no verification mechanism available to the assessee to correctly ascertain whether the Form filed was correct in all respects.

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