

April 2023



Key Case laws

Notifications

Amnesty provided for non-filing of annual return (GSTR 4) under composition levy

Central Board of Indirect Taxes and Customs (“CBIC”) has issued Notification No. 2/2023-Central Tax dated 31 March 2023 to provide waiver from payment of late fee (capped at maximum of INR 250) on non-filing of annual returns by taxpayers availing benefit under composition levy. However, the relief has been provided subject to the condition that such returns are to be furnished on or before 30 June 2022.

Application of revocation of cancellation of GST registration may be applied up to 30 June 2023

Notification No. 3/2023-Central Tax dated 31 March 2023 has been issued to extend the statutory limitation to apply for revocation of cancellation of Goods and Services Tax (“GST”) registration given under Section 30 of the Central Goods and Services Tax Act (“CGST”). The notification provides that the registered person whose registration has been cancelled prior to 31 December 2022 may apply for revocation of cancellation of GST registration on or before 30 June 2023. However, such application has to be made post payment of any amount due as tax, interest, penalty or late fee on furnishing of requisite return.

Aadhar Authentication mandated for

granting of GST Registration

Notification No. 4/2023-Central Tax dated 31 March 2023 has been notified to mandate Aadhar based authentication while applying for GST registration. In case the system flags the Aadhar authentication based on data analysis and risk parameters, it shall be followed by biometric-based Aadhar authentication by taking photograph of the applicant, along with the verification of the original copy of the documents uploaded (with the application for registration in FORM GST REG-01) at one of the Facilitation Centres notified by the government.

Amnesty provided to comply with assessment orders passed for non-filing of returns

Notification No. 6/2023-Central Tax dated 31 March 2023 has been notified to provide relief to the registered persons who have failed to furnish returns within statutory limitation of three months of passing of assessment order on non-filing of returns. The notification has effectively stated that the registered persons who have failed to comply with such orders issued on or before 28 February 2023, may furnish returns along with applicable interest on or before 30 June 2023 to fulfil such compliance.

Amnesty provided for non-filing of annual returns (GSTR 9)

Notification No. 07/2023-Central Tax dated 31 March 2023 has been issued to provide

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rationalised late fee for delayed filing of GSTR 9 for the Financial Year (FY) 2023 and onward as follows:

- For registered person having turnover below five crores: Twenty-five rupees per day, subject to a maximum of an amount calculated at 0.02 percent of turnover in the State or Union territory.
- For registered person having turnover more than five crores: Fifty rupees per day, subject to a maximum of an amount calculated at 0.02 percent of turnover in the State or Union territory.

The notification further provides relief to registered persons who have failed to furnish GSTR 9 for FY 2017-18, 2018-19, 2019-20, 2020-21 and 2021-22 and furnishes such return before 30 June 2023, by capping the late fee at maximum of ten thousand rupees.

Amnesty provided for non-filing of GSTR 10 to be furnished on cancellation of GST Registration

CBIC has issued Notification No. 8/2023-Central Tax dated 31 March 2023 to provide waiver from payment of late fee (capped at maximum of INR 500) on non-filing of returns to be furnished on cancellation of GST Registration. However, the relief has been provided subject to the condition that such returns are to be furnished on or before 30 June 2022.

Exemption on import of specified textile machineries, machineries for oil exploration, medicines etc.

CBIC vide Notification No. 16-17/2023-Customs dated 3 March 2023 seeks to amend notification 50/2017-Customs dated 30 June 2017 to continue/provide Basic Custom Duty ("BCD") exemption on import of specified:

- Textile machineries and parts;
- "Tur (other than Tur Whole)"
- Raw materials for manufacture of goods to be supplied in connection with the purposes of off-shore oil exploration or exploitation;
- Medicines of rare diseases and;

- Goods for use in the manufacture of X-ray machines.

Import/Export consignments of value up to 10 lakhs may be cleared through courier/postal services

Notification No. 22/2023-Customs(N.T.) dated 31 March 2023 and Notification No. 23/2022-Customs(N.T.) dated 31 March 2023 have been issued to amend Courier Imports and Exports (Clearance) Regulations, 1998 and Courier Imports and Exports (Electronic Declaration and Processing) Regulations, 2010 respectively to extend the coverage of import/export of consignments of value up to 10 lakh.

CBIC authorizes 122 Post Offices to accept export consignments

Circular No. 06/2023-Customs Dated 1st March 2023 has provided clarification on regulations for electronic declaration and processing of postal exports given under Postal Export (Electronic Declaration and Processing) Regulations, 2022, which authorises 122 post offices to accept export consignments and correspond with listed foreign post offices. The URL of the Customs Portal login page for accessing Dak Ghar Niryat Kendra (online services for facilitating postal exports) has been updated.

'Rab' (Liquid Jaggery) subjected to Nil to 5% GST

CBIC vide Circular No. 191/03/2023-GST Dated 27th March 2023 has issued a clarification regarding GST rate and classification of 'Rab' based on the recommendation of the GST Council in its 49th meeting held on 18 February 2023. It has been clarified with effect from the 01 March 2023, 'Rab' will be subjected to GST rate of 5%, when sold in pre-packaged and labelled, and Nil GST, when sold in other than pre-packaged and labelled.

Electronic Cash Ledger to be maintained in ICEGATE starting from 1 April 2023

CBIC Circular No. 09/2023-Customs Dated 30th March 2023 has been issued to provide instructions on phase wise implementation

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of Electronic Cash Ledger (ECL) facility on Custom Portal (ICEGATE). Custom laws requires importers, exporters, or anyone who owes duty or fees to make a deposit with the government for payment of such dues. This is called the Electronic Cash Ledger (ECL) and is a non-interest-bearing deposit. The Customs (Electronic Cash Ledger) Regulations, 2022 govern how ECL works. Currently, all deposit classes are exempted until 31 March 2023. However, on the basis of the current development and integration status, CBIC has decided for phase wise implementation of ECL starting from 01 April 2023. The facility can now be availed online on Custom (ICEGATE) Portal.

Amnesty scheme introduced for one time settlement of default in Export Obligation (EO) by Advance Authorization and Export Promotion Capital Goods (EPCG) Scheme holders

Directorate General of Foreign Trade (DGFT) has issued Public Notice No. 2/2023 dated 01 April 2023 to introduce amnesty scheme for taxpayers who have defaulted in meeting EO under EPCG Scheme and Advance Authorisation Scheme under:

- Foreign Trade Policy, 2009-14 till 31 March 2015 and;
- Foreign Trade Policy, 2004-2009 and before, whose EO Period was valid beyond 12 August 2013

The scheme will cover all pending cases (including cases which have already been adjudicated or pending adjudication either originally or in appeal) of the default in meeting EO and can be regularised by the authorisation holder on payment of all customs duties that were exempted in proportion to unfulfilled EO along with interest (capped at 100% of duty) of such duties exempted. However, no interest is payable on the portion of Additional Customs Duty and Special Additional Customs Duty. Any authorisation holder choosing to avail this benefit must complete the process of registration as on or before 30 June 2023 and payment of customs duty plus interest with the

Jurisdictional Customs Authorities concerned shall be completed by 30 September 2023. However, following restriction have been put forward for availment of scheme:

- Cases under investigation or cases adjudicated for/involving fraud, misdeclaration or unauthorised diversion of material and/or capital goods will be excluded from the coverage.
- The cases where duty along with applicable interest has already been deposited in full will be excluded from the coverage.
- Neither CENVAT Credit nor refund, under any provision of law, of any amount shall be allowed on duties paid under this scheme.

DGFT has eased export of bio-fuels from Special Economic Zone ("SEZ") and Export-Oriented Units ("EOU")

Notification No. 62 DGFT Dated 14 March 2023 has made a significant policy change related to the export of biofuels produced in SEZ and EOU. Previously, the export of certain biofuels was restricted to non-fuel purposes only. However, under the new notification issued by the DGFT, the export of all biofuels from SEZs/EOUs is now permitted without any restrictions on the use, be it for fuel or non-fuel purposes, as long as they are produced using only imported feedstock.

DGFT relaxed Standard Input Output Norms (SION) to allow export of Multigrain Atta or Fortified Whole-wheat Atta containing 80% flour sourced from India

Public Notice No. 62/2015-2020 Dated 23 March 2023 has allowed the export of Multi Grain Atta or Fortified Whole Wheat Atta through Advance Authorisation Scheme. However, these types of flour must contain at least 80% flour sourced from India. Additionally, to regulate the amount of Whole-wheat flour being imported for these exports, it has been mandated that for every 1 kilogram of Whole-wheat flour in the exported product, 1.07 kilograms of Whole-wheat flour can be imported. The shipping description of the exported product must clearly indicate

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the percentage of whole wheat flour and other ingredients used in the product.

DGFT issued Foreign Trade Policy 2023

Foreign Trade Policy (“FTP”) 2023 has brought following changes:

Chapter I: Legal Framework and Trade Facilitation

- e-BRC (Electronic Bank Realisation Certificate) has enabled Directorate General of Foreign Trade (“DGFT”) to capture details of realisation of export proceeds directly from the Banks through secured electronic mode.
- RBI has also developed a comprehensive IT-based system called Export Data Processing and Monitoring System (EDPMS) for monitoring of export of goods and software and facilitating AD banks to report various returns through a single platform.
- DGFT has created a common digital platform for issue of Preferential and Non-Preferential Certificate of Origin.
- DGFT has undertaken several IT Initiatives to enable a paperless, contactless and transparent environment for availing benefits under the export promotion schemes with a view to improve the ease of doing business.

Chapter II: General Provisions Regarding Imports and Exports

- Relaxed provisions for import/export through post/courier have been omitted.

Chapter III: Developing Districts as Export Hubs

- In order to promote district led exports, each District willing to export their goods and services, shall constitute a District Export Promotion Committee (DEPC) chaired by Collector/DM/DC of the district and co-chaired by designated DGFT Regional Authority with various other stakeholders as its members.
- The primary function of DEPC will be to implement District Export Action Plans (DEAP) to facilitate increased exports of their goods and services.

- DEAP may include clear identification of products (goods and services) with export potential in the district, institutional/other responsibilities, specifics of policy, regulatory and operational reform, and infrastructure/utilities/logistics interventions required across the entire chain from producer/farm to the export destination, to cover aspects like production, productivity/competitiveness, improvements required in design, tie up of producers with exporters, aggregation, sorting, testing, certification, packaging, transportation through cold chain or otherwise, import export regulatory formalities, fulfilment of destination countries standards etc.
- The plan may also include the support required by the local industry in boosting their manufacturing and exports with impetus on supporting the industry from the production stage to the exporting stage.

Chapter V: Export Promotion Capital Goods (EPCG) Scheme

- Clause 5.12 has been inserted to exempt EPCG Scheme holders from maintaining average export obligation for export of following goods:
- (i) Handicrafts, (ii) Handlooms, (iii) Industries covered under Khadi and Village Industries Commission (KVIC) (iv) Agriculture (v) Aquaculture (including Fisheries), Pisciculture, (vi) Animal husbandry and Dairying, (vii) Floriculture & Horticulture, (viii) Poultry, (ix) Viticulture, (x) Sericulture, (xi) Carpets, (xii) Coir, and (xiii) Jute
- The above referred goods shall not be allowed to be transferred for a period of five years from date of imports even in cases where export obligation has been fulfilled.
- Transitional provisions have been inserted to state that Authorisations issued during various policy periods viz., 2002-07, 2004-09, 2009-14, 2015-20 shall be governed by corresponding Foreign Trade Policy provisions.

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Chapter VII: Export Oriented Units (EOUs), Electronics Hardware Technology Parks (EHTPs), Software Technology Parks (STPs) and Bio-Technology Parks (BTPs)

- Steel manufacturers supplying steel against Advance Authorization, through their Service Centers/ Distributors/ Dealers/ Stock yards, shall also be eligible to claim duty drawback provided such supplies are made in accordance with Ministry of Steel O.M. No. S-21016/3/2020-TRADE-TAX-Part(1) dated 27 May 2020.
- Stricter procedures to be followed against complaint registered against the goods (not meeting the standards, manufacturing/ design defects, etc.). Initial efforts will be made to resolve the issue amicably, however, in case matter is not settled:
 - For Indian Entities: Action may be taken against the erring Indian entity in terms of the Foreign Trade (Development & Regulation) Act, 1992.
 - For Foreign Entity: Complaints against foreign entities would be taken up for settlement by the respective 'Foreign Trade Division' in the Department of Commerce, Vanijya Bhavan, New Delhi through Indian Missions abroad.

Chapter IX: Promoting Cross Border Trade in Digital Economy

- Chapter 9 has been inserted to provide a framework for cross-border trade of goods and services from India in the digital economy and the promotion of e-commerce and other emerging channels of exports from India.
- The chapter dedicated to e-commerce has defined 'E-Commerce Exports of Goods', 'E-Commerce Exports of Services', E-Commerce Platform, E-Commerce Export Logistic Provider and has provided provisions of import/export of goods traded on e-commerce through courier/post.
- Niryat Bandhu Scheme will be made component for the promotion of e-commerce by providing workshops, capacity building events, skill development activities etc.

- Government to take initiatives to establish designated areas as E-Commerce Export Hubs ("ECEH"), which would act as a centre for favourable business infrastructure and facilities for cross border e-commerce activities.
- ECEH may be provided financial assistance for e-commerce export promotion projects for marketing, capacity building and technological services such as imaging, cataloguing, product video creation of e-Commerce Goods.
- ECEH to be privatised or may be developed in Public-Private-Partnership mode to provide:
 - Storage (including cold storage facilities), packaging, labelling, certification & testing and other common facilities for the purposes of export.
 - Dedicated logistics infrastructure for connecting to and leveraging the services of the nearest Logistics hub(s).
 - All goods (including SCOMET and restricted goods), except prohibited goods may be handled by ECEH.
- Dak Ghar Niryat Kendras shall be operationalised throughout the country to work in a hub-and-spoke model with foreign post offices to facilitate cross-border e-commerce and to enable artisans, weavers, craftsmen, MSMEs in the hinterland and land-locked regions to reach international markets.

Chapter X: SCOMET: Special Chemicals, Organisms, Materials, Equipment and Technologies

- This Chapter has been inserted for governing the export of dual use items, munitions and nuclear related items, including software and technology viz. SCOMET.
- SCOMET is an acronym for Special Chemicals, Organisms, Materials, Equipment and Technologies. The SCOMET List has been notified under Appendix 3 to Schedule 2 of ITC (HS) Classification of Export and Import Items, which is available on the website of DGFT.

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- In consonance with the guidelines and control lists of these international conventions and obligations as well as multilateral export control regimes, India has regulated the exports of dual use items, nuclear related items, including software and technology.
- Export of specified SCOMET items will be allowed under this scheme subject to authorisation from relevant authorities.
- Types of Authorisations granted for SCOMET items are as follows:
 - Direct export/re-export to ultimate end user: Export to the ultimate end users abroad after due verification process;
 - Export for Stock and Sale purpose: Export of items initially to the stockist abroad and then from the stockist to the ultimate end users in the same country or approved countries;
 - Export of spare parts under SCOMET under Stock and Sale: Export of spare parts along with main item/ equipment under stock and sale;
 - Export for/after repair / replacement of defective SCOMET items: Export authorizations for repair/ replacement of imported items on being found defective and export authorization after repair of indigenous/third party items imported for repair;
 - Temporary export of SCOMET items: Export authorization for demo/ display/exhibition/tenders/ RFP/ RFQ/NIT abroad or for return in India;
 - Export of imported items to the same foreign entity or to its OEM: Export of imported items to its foreign supplier or its OEM on obsolescence of technology, dead on arrival, cancellation of order, calibration, testing, etc.
 - Global Authorization for Intra-Company Transfers (GAICT) of SCOMET Items including Software/ Technology: One time authorization valid for three years will be required for export/re-export of specified SCOMET items, based on a Master Service Agreement

between Indian and Foreign company for carrying out certain services but not limited to design, encryption, research, development, delivery, validation, calibration, testing, related services, etc. in specified countries.

- General Authorization for export of Chemicals and Related Equipments(GAEC) except software and technology : Export of specified chemicals will be allowed on the basis of a onetime GAEC issued by DGFT with one time validity of 5 years.
- General Authorization for export after repair in India(GAER): Export of imported SCOMET items to the same entity abroad after repair in India will be allowed on the basis of a one-time General authorization for Export after Repair in India (GAER) issued by DGFT.
- Export authorisation will not be required for supply of SCOMET items from DTA to SEZ /EOU within the country.
- Self-disclosure by taxpayer encouraged in case of failure to comply with requirements under law. Strict actions under Foreign Trade (Development and Regulation) Act, 1992 will be taken if non-compliance is discovered otherwise and not through voluntary disclosure.

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C.C.E. v. Videocon Industries Limited [TS-133-SC-2023-CUST]

A Civil Appeal was filed by the Revenue challenging the order of the Customs, Excise and Service Tax Appellate Tribunal, Mumbai Bench ('Tribunal') wherein the Tribunal held that the LCD panels imported by M/s Videocon Industries Ltd. ('the Assessee') are classifiable in Chapter Heading ("CH") 9013.8010 of the First Schedule to the Customs Tariff Act, 1975 ('CTA'), as Liquid Crystal Devices- as opposed to the Revenue's stand that they are classifiable under 85.29 as "parts of goods falling under heading 85.28 - television sets falling in heading 85.28". On hearing the submissions, the Hon'ble Supreme Court held as follows:

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- On a reading of the General Interpretive Rules and the Notes to Chapters 85 and 90, it is evident that classification has to be in accord with “the terms of the headings and any relative Section or Chapter Notes”. Further, reference in a heading to “an article” includes “that article incomplete or unfinished” provided, such incomplete or unfinished article has “the essential character of the complete or finished article.”. Lastly, if on an application of Rule 2(a), an article is classifiable in more than one heading “the heading which provides the most specific description shall be preferred to headings providing a more general description.”
- Further, Rule 3 (a) categorically enjoins that in regard to classification, the heading providing for a “more” specific description prevails over the general one.
- Also, Note 1 (m) in Chapter 85 excludes the application of articles falling in Chapter 90.
- It is clear that when goods are excluded from a particular chapter, the “pull in” through a note has to be narrowly construed, as otherwise, the basis of exclusion would be defeated, and the earlier note (of exclusion) rendered redundant.
- Decision of the Hon'ble Court in *Secure Meters v. Commissioner of Customs 2015 (14) SCC 239* is decisive on the question that LCDs are not articles provided “more specifically in other headings”, i.e., other than 90.13. Furthermore, the fact that LCDs could be used for purposes other than television sets or audio sets is also concluded because, in that decision, its use in meters was in issue.

Thus, it was held that the Tribunal's reasoning and conclusions that the LCD sets were classifiable under Chapter 90 - Entry 9013.8010, is sound and unexceptionable.

Tonbo Imaging India P Ltd – Karnataka HC [Writ Petition No. 13185 of 2020 (T-Res) dated 16 February 2023

The Hon'ble Karnataka High Court has declared Rule 89(4)(c) of the CGST Rules,

2017, unconstitutional and ultra vires to Section 54 of the CGST Act and Section 16 of the Integrated Goods and Services Tax (“IGST”) Act. The court found that the rule was arbitrary, unreasonable, and discriminatory as it created two classes of exporters based on whether they were Letter of Undertaking (“LUT”) exporters or exporters paying taxes and claiming rebates.

To recap, sub-rule 89(4)(c) of CGST Rules was introduced to restrict the refund of exports made through LUT to a maximum of 1.5 times the value of like goods domestically supplied by the same or, similarly placed supplier.

The court noted that on a combined reading of Section 54 of the CGST Act and Section 16 of the IGST Act, it can be said that intention of making exports zero-rated is to make the entire supply chain of exports tax-free. However, Rule 89(4)(c) restricts the refund in case of export made through the LUT model to 1.5 times the value of like goods domestically supplied, which is ultra vires in view of the well-settled principle of law that rules cannot override the parent legislation. Further, it held that this amendment has violated the constitutional rights and is illegal, arbitrary, and unjust as it placed LUT exporters and exporters paying taxes and claiming rebates on distinct footing. The court found that the differential treatment was irrational and unreasonable, as it did not consider the actual cost incurred by the exporter in supplying the goods.

M/s Ravi Enterprises – Uttarakhand HC [2023 TAXSCAN (HC) 432

The Uttarakhand High Court was presented with the question of whether it is necessary to issue a DRC-01A and give the taxpayer an opportunity to respond before initiating a demand. The court determined that failing to provide time for a response would violate natural justice and ordered a new hearing. Although the High Court noted that there was a recent amendment to Rule 142 of the Tamil Nadu Goods and Services Tax Rules, 2017 (TNGST Rules) that came into effect on

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October 15, 2020. The amendment changed the language of sub-rule (1A) of Rule 142 of TNGST Rules, replacing the phrase 'proper officer shall' with 'proper officer may'. It was held that DRC 01A procedure was initially welcomed because it allowed taxpayers to assess their liabilities and settle them voluntarily without further litigation. However, the recent decision by the Madras High Court

in the case of *M/s Visaka Exports v Assistant Commissioner [Writ Petition No. 34471 of 2022]* held that the issuance of DRC 01A is not mandatory after the rule was amended in October 2020. As a result, there are conflicting views from different high courts on this issue, and taxpayers must wait and see how it develops.

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