



Indirect Tax Newsletter

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Nangia Andersen LLP

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Relevant Judgements

Supreme Court held that sales between subsidiaries of foreign-entity are not related party transactions

Brief Facts

- Bilag Industries Private Limited ('Appellant') is engaged in manufacturing of pesticides, insecticides etc. It sold goods to Aventis CropScience (India) Ltd. ('ACS') who sold the same to end customers;
- AgrEvo SA held 51% of the share capital in Appellant and 100% shares in ACS & accordingly both Appellant and ACS were subsidiaries of AgrEvo SA during the impugned period;
- Revenue rejected the price charged by Appellant from ACS for sale of goods. Revenue contended that the assessable value should be the price ultimately charged by ACS from the end customers and argued that the sale by Appellant to ACS was to a related person. CESTAT passed the order in favour of Revenue;
- Aggrieved by the order, Appellant filed an appeal before Supreme Court.

Observation

- Hon'ble Supreme Court referred the definition of 'related persons' & relied on the following rulings:
 - Union of India Vs. Atic Industries Ltd;
 - Union of India Vs. Hind Lamp Ltd;

- Commissioner of Central Excise, Hyderabad Vs. M/s. Detergents India Limited;
- Commissioner of Central Excise, Aurangabad Vs. Goodyear South Asia Tyres Pvt. Ltd; and
- Commissioner of Central Excise, Chandigarh Vs. Kwality Ice Cream Co.
- Hon'ble Supreme Court observed that even though AgrEvo SA holds shareholding in both entities, it does not demonstrate that Appellant has any business interest in the affairs of ACS or vice-versa.
- Hon'ble Supreme Court further observed that there is no finding that the price charged by Appellant from ACS was lower than the market price. Accordingly, revenue's decision in rejecting the value at which the goods were sold by Appellant to ACS, by treating related party transaction, was erroneous.

Decision

Impugned order is set aside & appeal allowed.

[Bilag Industries Private Limited [TS-121-SC-2023-EXC], Dated 24 March 2023]

Delhi High Court allows IGST refund, Considering E&Y not an 'intermediary' in providing professional consultancy services to its overseas entities.

Brief Facts

- M/s. Ernst & Young Limited ('E&Y Limited') has filed petition against the order ('impugned order') passed by the Appellate Authority for the denial of its refund applications for Input tax credit in respect of export of services rendered to its overseas entities (period from December 2017 to March 2020) on the premise that the petitioner is an 'intermediary' and thus, the place of services is located in India, where the petitioner's place of business is located and not where recipient of services is located;
- E&Y Limited has entered into service agreements for providing professional consultancy service to various entities of Ernst & Young group on arm's length basis. The invoices raised described the nature of services for the invoiced amount as "Professional Fees for Services and had received the invoiced consideration from EY Entities, in foreign convertible exchange;
- The Adjudicating Authority proceeded on the basis that the Services provided by the petitioner were intermediary services and since the petitioner was located in India, the place of supply of the Services was not the location of the recipients of the Services but the petitioner's location in India;
- Further, Appellate Authority upheld the decision of the Adjudicating Authority that the services rendered by the petitioner were intermediary services. The Appellate Authority reasoned that the services provided were at the instance of foreign

based entities but the same were not provided in their respective foreign territories. Therefore, it could be construed that the subject services were provided in India.

Observation

- The High Court mentioned that the Adjudicating Authority had also accepted that the petitioner has provided the Services. The Adjudicating Authority had reasoned that since the petitioner provides services on behalf of E&Y Overseas Entities (petitioner's head office), it was an intermediary. This reasoning is fundamentally flawed. It reasoned that since the professional services were rendered on behalf of its head office, the same were not on the petitioner's 'own account', therefore, the petitioner is an intermediary;
- The High Court pointed that prior to the GST regime, services rendered by the petitioner to EY Entities to be considered as 'export of services'. The petitioner prevailed before the concerned service tax authorities in establishing that the professional services rendered by it cannot be considered as services as an 'intermediary';
- It is also material to note that the petitioner's application for refund of ITC for the period after March 2020 has also been accepted by the Adjudicating Authority. Thus, the petitioner has been denied ITC only for the period from December 2017 to March 2020; it has been allowed CENVAT

credit for the period covered under the service tax regime as well as ITC for the period after March 2020;

- High Court held the Services rendered by the petitioner are not intermediary services as it does not fall under the purview of Section 13(8) of the IGST Act. The place of supply of the Services rendered by the petitioner to overseas entities is required to be determined on basis of the location of the recipient of the services. Since the recipient of the Services is outside India, the professional services rendered by the petitioner would fall within the scope of definition of 'export of services' as defined under Section 2(6) of the IGST Act.

Decision

- The High Court ruled that there is no dispute that the recipient of Services i.e., EY Entities are located outside India. Thus, indisputably, the Services provided by the petitioner would fall within the scope of the definition of the term 'export of service' under Section 2(6) of the IGST Act;
- The Adjudicating Authority is directed to process the petitioner's refund application as expeditiously as possible.

[W .P.(C) 8600/2022]





02 GST Updates

Amendment in Amnesty Scheme regarding reduction/waiver in late fees of GSTR-4

- Government waived the late fees for GSTR4 in excess of INR 500 for the quarters from July 2017 to March 2019 and for Financial Years from 2019-20 to 2021-22, if GSTR- 4 for the said period is furnished between the period from 01 April 2023 to 30 June 2023;
- Full late fees have been waived for Nil GSTR-4.

[Notification No. 02/2023 - Central Tax, dated 31 March 2023]

Certain provisions with regard to revocation of cancellation of registration

- Registered person whose registration has been cancelled on or before 31 December 2022 and who have failed to apply for revocation with prescribed time limits including those person whose appeal against the order of cancellation of registration or the order rejecting the application for revocation of cancellation of registration has been rejected on the ground of failure to adhere to the prescribed time limits can apply for revocation of cancellation of registration up to 30 June 2023;
- Application for revocation of cancellation shall be filed only after furnishing the returns due up to effective date of cancellation of registration and after payment of any amount due as tax along with interest, penalty and late fees in respect of such returns;
- Time limit for filing application of revocation of cancellation will not be further extended.

[Notification No. 03/2023- Central Tax, dated 31st March 2023]

Addition is made in provision with regard to Aadhar Authentication while filing application for registration

Government has added a proviso that every application made for registration by a person other than a person notified under sub section (6D) of section 25 where Aadhar authentication has been opted and is identified on the common portal, based on data analysis and risk parameters, shall be followed by biometric-based Aadhaar authentication and taking photograph of the applicant where the applicant is an individual or of such individuals in relation to the applicant as notified under sub-section (6C) of section 25 where the applicant is not an individual, along with the verification of the original copy of the documents uploaded with the application in FORM GST REG-01 at one of the Facilitation Centres notified by the Commissioner and the application shall be deemed to be complete only after completion of the above said process

[Notification No. 04/2023- Central Tax, dated 31st March 2023]

Special provision in case of assessment of non-filers of return

- Assessment order under section 62 shall be deemed to have been withdrawn in case of registered person who has failed to furnish a valid return within a period of thirty days from the service of assessment order issued on or before the 28th day of February 2023 if said registered person furnish the returns on or before 30 June 2023 along with applicable interest and late fees;
- Abovesaid provision is applicable irrespective of whether or not an appeal had been file against such assessment order or whether or not the appeal, if any against the said assessment order has been decided.

[Notification No. 06/2023- Central Tax, dated 31st March 2023]

Changes in late fees for GSTR9 for Financial Year 2022-23 onwards

S. No	Class of Registered Persons	Amount
1	Registered persons having an aggregate turnover of up to five crore rupees in the relevant Financial Year.	INR 50 per day, subject to a maximum of an amount calculated at 0.04 percent of turnover in the state or union territory.
2	Registered persons having an aggregate turnover of more than five crore rupees and up to twenty crore rupees in the relevant Financial Year.	INR 100 rupees per day, subject to a maximum of an amount calculated at 0.04 percent of turnover in the state or union territory.

Registered Person who has not furnished GSTR9 for the Financial Years 2017-18 till 2021-22 before the due dates but furnishes the said return between 1 April 2023 to 30 June 2023, the total amount of late fess in excess of INR 20,000 shall stand waived off.

[Notification No. 07/2023- Central Tax, dated 31st March 2023]

Reduction/ waiver in late fees of GSTR-10

Government waived the late fees in excess of INR 1000 for the registered persons who fail to furnish the final return i.e. GSTR 10 within it's due date if the same is furnished between 01 April 2023 to 30 June 2023

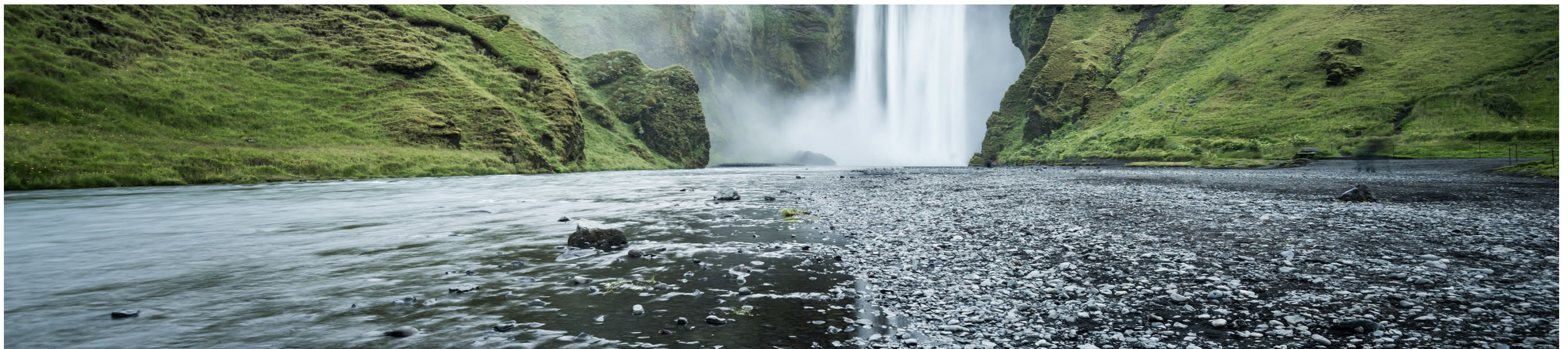
[Notification No. 08/2023- Central Tax, dated 31st March 2023]

Extension of time limit for issuance of order under section 73

Government has extended the time limit for issuance of order under section 73 as:

- For Financial Year 2017-18 - up to 31 December 2023
- For Financial Year 2018-19 - up to 31 December 2024
- For Financial Year 2019-20 - up to 30 June 2024

[Notification No. 09/2023- Central Tax, dated 31st March 2023]





03

Custom Updates

Withdraws exemption of whole Customs Duty and Agriculture Infrastructure and Development Cess (AIDC) on import of Crude Sunflower Seed Oil and Crude Soya-bean Oil ('products')

- CBIC vide notification number 30/2022- Customs dated 24th May, 2022 had exempted whole Customs Duty and AIDC on import of products till quantity imported in a financial year is 2 Million MT. The exemption was granted till 31 March 2024;
- Now, the CBIC has withdrawn the above exemption for FY 2023-24 and exemption is valid until 31 March 2023 only.

[Notification No. 15/2023- Customs, dated 03rd March 2023]

Exempts customs duty on import of Tur Whole w.e.f. 04 March 2023

CBIC has exempted Customs Duty on import of Tur Whole but has maintained customs duty @ 10% on Tur (other than Tur Whole).

[Notification No. 16/2023- Customs, dated 03rd March 2023]

Exempt health cess on import of goods for use in the manufacture of X-ray machines w.e.f. 01 April 2023

CBIC has exempted health cess on import of certain goods for use in the manufacture of X-ray machines provided that the importer follows the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty or for Specified End Use) Rules, 2022

[Notification No. 18/2023- Customs, dated 29th March 2023]

Exempts certain type of deposits in Electronic Cash Ledger w.e.f. 1 April 2023 until 30 April 2023

CBIC has exempted the deposits from all the provisions of Section 51A of the Customs Act 1962 with respect to:

- goods imported or exported in customs stations where customs automated system is not in place;
- goods imported or exported in International Courier Terminals; and
- Accompanied baggage.

-
- However, exemption has not been extended for deposits made for electronic payment of any duty of customs including cesses and surcharges levied as duties of customs, IGST, GST cess and any interest, penalty, fees or any other amount payable under the Customs Act 1962.

[Notification No. 18/2023- Customs (N.T.), dated 30th March 2023]

Amendment in Courier Imports and Exports (Clearance) Regulations, 1988 ('Original Regulations') w.e.f. 1 April 2023

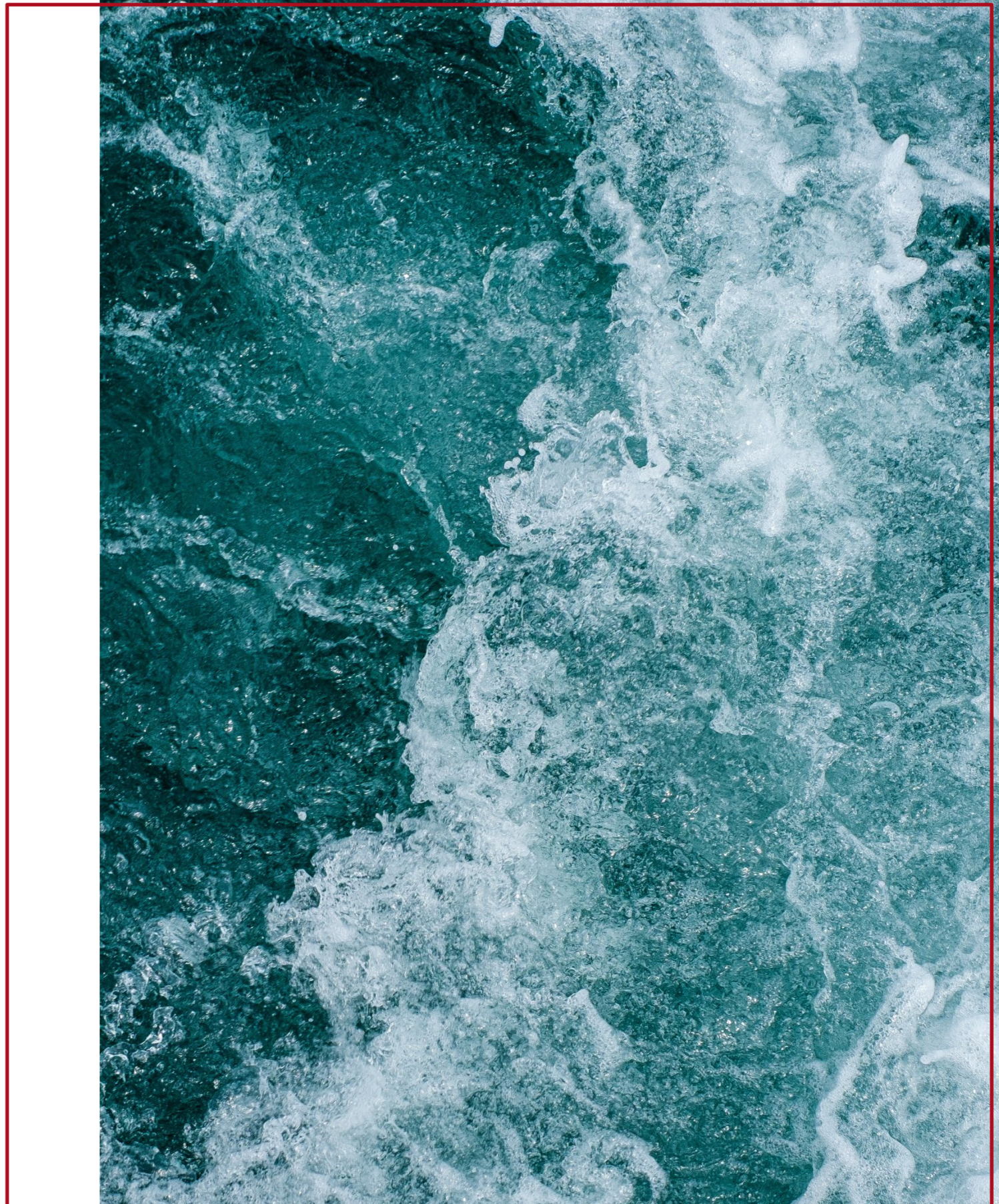
- CBIC has amended the Original Regulations and the same will now be known as Courier Imports and Exports (Clearance) Amendment Regulations, 2023;
- Further, the proviso to sub-clause (iii) of clause (e) of sub-regulation (2) of Regulation (2) in Original Regulations stands deleted and the monetary limit on which such regulations shall not apply has been extended to INR 10 lakhs from INR 5 Lakhs.

[Notification No. 22/2023- Customs (N.T.), dated 31th March 2023]

Amendment in Courier Imports and Exports (Electronic Declaration and Processing) Regulations, 2010 ('Original Regulations') w.e.f. 1 April 2023

- CBIC has amended the Original Regulations and the same will now be known as Courier Imports and Exports (Electronic Declaration and Processing) Amendment Regulations, 2023;
- Further, the proviso to clause (b) of sub-regulation (2) of Regulation (2) in Original Regulations stands deleted and the monetary limit on which such regulations shall not apply has been extended to INR 10 lakhs from INR 5 Lakhs.

[Notification No. 23/2023- Customs (N.T.), dated 31th March 2023]



04

Foreign Trade Policy Updates

Foreign Trade Policy, 2023

Central government has notified the Foreign Trade Policy ('FTP') 2023 effective from 1 April 2023.

[Notification No. 01/2023 dated 31st March 2023]

The major highlights of New FTP, 2023 are as follows:

a. Online approvals without physical interface

- Automatic approval of various permissions under FTP based on process simplification and technology implementation;
- Reduction in processing time and immediate approval of application under automatic route for exporters i.e automatic route processing reduced to 1 day.

b. Acceptance of Rupee Payments under FTP schemes

- Effective step towards internationalisation of Rupee;
- FTP benefits extended for rupee rationalisation through special vostro accounts setup as per RBI circular issued on 11 July 2022.

c. Town of Export Excellence

Four new towns of export excellence have been declared.

d. Facilitation for E-Commerce exports

- FTP Benefits to be extended to E-commerce exports ;
- Necessary enablement of IT systems in Department of Commerce, Post, CBIC to be undertaken in six months.

e. E- Commerce export hubs

- Designated hubs with warehousing facility to be notified, to help e-commerce aggregators for easy stocking, customs clearance and returns processing;
- Processing facility to be allowed for last mile activities such as labelling, testing, repackaging etc.

f. Steps have been taken to Boost manufacturing.

- Prime minister mega Prime Minister Mega Integrated Textile Region and Apparel Parks (PM MITRA) scheme has been added as an additional scheme eligible to claim benefits under CSP(Common Service Provider) Scheme of Export Promotion capital Goods Scheme(EPCG);
- Battery Electric Vehicles (BEV) of all types, Vertical Farming equipment, wastewater treatment and recycling, rainwater harvesting system and rainwater filters, and green hydrogen are added to Green technology products – will now be eligible for reduced Export Obligation requirement under EPCG scheme;
- Special Advance Authorisation Scheme extended to export of Apparel and Clothing sector under para 4.07 of HBP on self-declaration basis to facilitate prompt execution of export orders – Norms would be fixed within fixed time-frame.

g. Introduction of Amnesty Scheme under New FTP 2023

- The scheme is intended to provide relief to exporters who have been unable to meet their export obligations;
- This scheme will come into effect from 1 April 2023;
- The scheme will provide one time settlement of default in export obligation by Advance Authorization and EPCG authorization holders;
- The pending cases of default in Export Obligation (EO) of authorizations mentioned can be regularized by the authorization holder on payment of all customs duties exempted in proportion to unfulfilled Export Obligation and maximum interest is capped at 100% of such duties exempted. However, no interest is payable on the portion of Additional Customs Duty and Special Additional Customs Duty;
- This scheme is available for a limited period, upto 30 September 2023;
- Cases under investigation for fraud and diversion are not eligible under this scheme.

The New FTP 2023 aims to achieve the goal of a one trillion-dollar merchandise exports by 2030 and will also work towards making Indian Rupees a global currency.

It will also facilitate International Trade settlement.

05

Compliance Calendar

Indirect Tax					
S. No.	Compliance Category	Compliance Description	Frequency	Due Date	Due Date falling in April 2023
1	Form GSTR-1 (Details of outward supplies)	Registered person having aggregate turnover more than INR 5 crores and registered person having aggregate turnover up to INR 5 crores who have not opted for Quarterly Returns Monthly Payment ('QRMP') Scheme	Monthly	11 th day of succeeding month	For Tax Period March 2023- 11 th April 2023
2	Form GSTR-3B (Monthly return)	Registered person having aggregate turnover more than INR 5 crores and registered person having aggregate turnover up to INR 5 crores who have not opted for Quarterly Returns Monthly Payment ('QRMP') Scheme	Monthly	20 th day of succeeding month	For Tax Period March 2023- 20 th April 2023
3	QRMP Scheme				
	Invoice furnishing facility ('IFF')	<ul style="list-style-type: none"> Optional facility to furnish the details of outward supplies under QRMP Scheme 	Monthly	1 st day to 13 th day of succeeding month	<ul style="list-style-type: none"> For Tax Period March 2023 - 1 to 13 April 2023
	Form GST PMT-06 (Monthly payment of tax)	<ul style="list-style-type: none"> Payment of tax in each of the first two months of the quarter under QRMP Scheme 	Monthly	25 th of the succeeding month	<ul style="list-style-type: none"> For Tax Period March 2023 - 25 April 2023

	Form GSTR-1 (Details of outward supplies)	<ul style="list-style-type: none"> Registered person having aggregate turnover up to INR 5 crores who have opted for QRMP Scheme 	Quarterly	13 th day of the subsequent month following the end of quarter	<ul style="list-style-type: none"> For the quarter January 2023 to March 2023 - 13th April 2023
	Form GSTR-3B	<ul style="list-style-type: none"> Registered person with aggregate turnover up to INR 5 crore (opted for QRMP Scheme) having place of business in Group 1 states and union territories 	Quarterly	22 nd day of the subsequent month following the end of quarter	<ul style="list-style-type: none"> For the quarter January 2023 to March 2023-22nd April 2023
	Form GSTR-3B	<ul style="list-style-type: none"> Registered person with aggregate turnover up to INR 5 crore (opted for QRMP Scheme) having place of business in Group 2 states and union territories 	Quarterly	24 th day of the subsequent month following the end of quarter	<ul style="list-style-type: none"> For the quarter January 2023 to March 2023- 24th April 2023
4	Form GSTR-6 (Return for Input Service distributor)	<ul style="list-style-type: none"> Return for input service distributor 	Monthly	13 th of the succeeding month	For Tax Period February 2023- 13 April 2023

Checklist of important GST activities for the new financial year

We have provided below a gist of key activities required to be undertaken under GST considering the start of new FY:-

1. Reset of invoice number series

- GST provisions require every taxpayer to issue a tax Invoice, Credit/ Debit note containing a consecutive serial number not exceeding sixteen characters which shall be unique for a financial year.
- Given the specific requirement, Invoice, Credit/ Debit note series should be reset from 1 April 2023 in order to comply with GST provisions.

2. Furnishing of Letter of Undertaking

- Letter of Undertaking ('LUT') has to be filed for each financial year for export of goods/ services without payment of GST. LUT is valid for a financial year.
- Application in Form GST RFD-11 should be for furnishing LUT for FY 2023-24 for export of goods/services or supply to SEZ without payment of GST is required to be filed online on the GST portal.
- Functionality to obtain online LUT for the FY 2023-24 is effective on GST portal.

3. Supply of services between distinct units

- In case where services are provided by a distinct / related person to another distinct / related person, valuation rules would be triggered.
- Value of such supplies would have to be determined in terms of valuation rules prescribed under the CGST Rules 2017 ('CGST Rules').

4. Reconciliation, Reversal or Re-claim of Input Tax Credit

Reconciliation of input tax credit (GSTR-3B vs Books)

- The differences (if any) in Input tax credit ('ITC') availed in the books vis-à-vis claimed in GSTR-3B should be reconciled and take appropriate action (if any).

Reversal of input tax credit in the case of non-payment of consideration

- Taxpayers should also ensure compliance with Rule 37 of the Central Goods and Services Tax, 2017 ('CGST Rules').
- As per the rules of ITC, after issuance of tax invoice if taxpayer does not make the full payment of amount within 180 days, then the credit taken on that invoice should be reversed.
- Once the payment is made, the taxpayer can take the re-claim the ITC amount.

Annual reversal ratio impact

- As per Rule 42, supplier is required to recalculate the eligible ITC for the financial year. The same is required to be computed and reported on or before 30th November following the end of financial year.
- In case, post computation of final reversal of ITC, excess ITC was availed, the same is required to be reversed with interest for the period starting from 1 April till the date of payment / reversal.
- However, if the aggregate amount of ITC availed is lower than the amount eligible to availed, supplier can claim such differential ITC.

Reversal of ITC on Capital Goods

- Supply of capital goods or plant and machinery, on which ITC has been taken, Calculate and pay an amount equal to ITC availed on the said capital goods or plant and machinery reduced by percentage points (at the rate of five percentage points for every quarter or part thereof from the date of the issue of the invoice for such goods) or the tax on the transaction value of such capital goods or plant and machinery as determined under section 15, whichever is higher
- Taxpayer involved in both taxable and exempt supply, calculate and pay an amount (either by way of debit in the electronic credit ledger or electronic cash ledger), equivalent to ITC availed on capital goods reduced by such percentage points (at the rate of five percentage points for every quarter or part thereof)

5. Outward Supplies

- Check whether all the Invoices raised during the FY 2022-23 has been properly reported in GSTR-1 and taxes have been discharged in GSTR-3B. In case any amendment is required in relation to outward supplies , needs to be done till 30 November 2023 or date of filing of the annual return for FY 2022-23 whichever is earlier;
- Ensure whether the GST paid on advances received in FY 2022-23 towards the supply of services made has been properly adjusted if required , in GSTR-1 and GSTR-3B;
- Please note that credit notes under GST for FY 2022-23 can be issued not later than 30 November 2023 or the date of filing of annual return for FY 2022-23 whichever is earlier.

6. Calculate Aggregate Turnover

- Aggregate Turnover is deciding factor in case of determining applicability of quarterly return filing, number of digits to be used in HSN code, QRMP Scheme and availing option of Composition scheme.
- Aggregate turnover as per GST will be different from turnover derived in the books of accounts since the definition of aggregate turnover shall include income (like stock transfer, cross charge, etc.) which otherwise will not form part of Financials.
- Taxpayers should calculate the aggregate turnover for each state and ensure that there is no difference in the system generated and self-assessed aggregate turnover.

7. Number of digits of HSN Code

The requirement for displaying number of digits of HSN code on tax invoices based on the sales turnover has been tabulated below:

Sr. No	Aggregate Turnover in the preceding Financial Year	Type of transaction	Mandatory/ Optional	Number of Digits
1	More than INR 5 Crores	All Tax invoices (i.e. both B2B and B2C tax invoices)	Mandatory	Six
2	Up to INR 5 Crores	B2B	Mandatory	Four
		B2C	Optional	Four
3	Specified Chemical based Product	All Tax Invoices	Mandatory	Eight

8. Implementing E-invoicing for taxpayer having turnover exceeding INR 10 Crores

- Government has notified vide notification no. 17/2022 to mandate e-invoicing for all the registered taxpayers having turnover exceeding INR 10 Crores with effect from 1 October 2022.
- Registered Persons having Aggregate turnover exceeding INR 10 Crores in any of the preceding FYs (FY 2017-18 onwards) are required to comply with the provisions of E-invoicing for issuance of Tax Invoices.

9. Export Proceeds

- As per Rule 96A, where services are exported without payment of IGST under LUT. Consideration for the export needs to be received in convertible foreign exchange within 1 year from the date of export invoice.
- Taxpayer is required to maintain a track of export proceeds from the date of invoice to avoid any tax liability and interest.

10. Reconciliation

- Taxpayers should reconcile the cash ledger, credit ledger and liability ledger balance as per the GSTN/IRN/E-way-Bill portal with their books of accounts. All the entries should be done before the close of the year. Also debit note, credit note, rate difference, discount, etc. is to be reconciled.
- Reconciliation of Purchase register and GSTR2B should be carried out and adjustments/ reversals/ extra availment of credit should be done. Further follow-ups with the vendor to upload the missing invoices should be done on priority.
- Amendment (if any) required in the invoices already uploaded by vendors in GSTR-1 should be intimated.

11. Validation of reverse charge liability

- Ensure if the liability is being paid in respect of all input supplies notified for reverse charge and all the amendments have been taken care of.
- Check if the tax paid under RCM matches with ITC under RCM. RCM liability should be more than or equal to ITC under RCM.
- Ensure timely payment of RCM liability, interest liability need to be discharged in respect of any delay in tax payment.

12. Arranging Declaration/undertaking from Registered Persons providing Goods Transport Agency ('GTA')

- Arrange the declaration/undertaking from GTA service provider opting to pay under Forward Charge Mechanism ('FCM'), if any.

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