

Nangia Andersen LLP

Indirect Tax Newsletter

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Advance Rulings & Judgements

01

Hon'ble High Court of Madras held that the date of credit of GST in Electronic Cash Ledger is the date of payment of tax to the Government, no interest would be applicable if GSTR 3B is filed post prescribed due date.

Brief Facts

- In the given case, the petitioner is a public limited company and a renowned manufacturer of mid-sized motorcycles led by the iconic brand 'Royal Enfield'.
- Owing to want of system readiness and technical glitches in GST common portal, the CBIC kept on extending the time limit for filing of FORM GST TRAN – 1 for transferring the transitional credit and hence the petitioner filed its FORM GST TRAN – 1 at a later date. Accordingly, such transitional Credit amounting to Rs. 33.87 crores was not reflected in the Electronic Credit Ledger of the petitioner, so the petitioner could not file its GSTR 3B for the month of July 2017 within the prescribed due date. Such non – filing of GSTR 3B of July 2017 had a domino effect and the petitioner could not file GSTR 3B of subsequent periods from August 2017 to December 2017.
- Though the petitioner was disabled from filing the returns, the petitioner had ensured that the tax dues are fully paid within the due dates without any delay and accordingly, the petitioner had discharged GST liability for the period from July, 2017 to December, 2017 by depositing the tax amounts in the Electronic Cash Ledger under the appropriate heads as CGST, SGST, IGST into the Government account within the due date for each month. Of late, the petitioner filed its GSTR 3B for the period July 2017 to December 2017.
- After 6 years, payment of interest was demanded for alleged belated payment of GST on ground that deposit of tax in Electronic Cash Ledger would not amount to payment of tax and would tantamount to failure to remit GST in time, for which interest liability would be attracted.

Observation

- Whether the petitioner is liable to pay interest under Section 50 of Central Goods and Service Tax Act, 2017 ('CGST Act') for late filing of the GSTR-3B return, even though they deposited the GST amount on time in the Electronic Cash Ledger?

Decision

- The High Court of Madras ruled that the petitioner is not liable to pay interest on delayed filing of GSTR 3B as the amount deposited in Electronic Cash Ledger equals to credit to the exchequer.
- That once the amount is paid by generating PMT – 06, the said amount will be initially credited to Government account immediately upon deposit, at which point, the tax liability will be discharged to the extent of deposit made to the Government.
- That, no interest will be payable if the amount is credited to Electronic Cash Ledger within the prescribed time limit even if there is delay in filing of GSTR 3B by the taxpayer.

[M/s Eicher Motors Limited vs The Superintendent of GST and Central Excise (WP No. 16866 & 22013 of 2023 and WMP No. 32200 of 2023 – Madra HC dated 23 January 2024)]

Hon'ble High Court of Madras held that if the petitioner is unable to participate in proceedings before Adjudicating Authority due to unawareness of show cause notice, impugned order was to be set aside and Adjudicating Authority was directed to grant petitioner sufficient opportunity of personal hearing in accordance with law.

Brief Facts

- The Petitioner is engaged in the business of manufacturing and supplying bags. A GST consultant was engaged by the petitioner for GST compliances.
- The GST Department issued a notice in FORM ASMT – 10/FORM DRC 01 to the Petitioner for discrepancies between returns in FORM GSTR 1 and GSTR 3B. However, the petitioner relied on the GST consultant and did not file a response to such notices.
- The Adjudicating Authority hence passed the order imposing tax liability along with interest and penalty on the petitioner on ex-parte basis.

Observation

- Whether the Adjudicating Authority can pass the order without giving proper opportunity of being heard to petitioner, since he was unaware of the fact that show cause notice has been issued and no suitable response has been submitted by the GST consultant hired by him?

Decision

- The High Court of Madras held that the explanations given by the petitioner are not fully convincing, but it also considered the fact that a registered person carrying on a small business did not have opportunity to respond to claim made by tax department with regard to discrepancy between returns in Form GSTR 1 and Form GSTR 3B.
- That the impugned order passed by the Adjudicating Authority to be set aside and the matter is to be remanded for re-consideration of such case.
- It is made clear that the petitioner will not have an opportunity to respond to the show cause notice and the opportunity would be limited to participation in the proceedings before the assessing officer and making any submissions in relation thereto. Any such submission shall be made by the petitioner within a maximum period of two weeks from the date of receipt of a copy of this order. The assessing officer is directed to complete the re-assessment within a maximum period of two months from the date of receipt of a copy of this order by issuing a reasoned decision.

[Basheer Bags vs Deputy State Tax Officer – 2 (WP No. 1227 of 2024 and WMP No. 1269 of 2024) dated 22 January 2024]

Hon'ble High Court of Karnataka held that pre – deposit for filing an appeal is only 10% of “tax amount” and the same should not be extended to penalties, fees and interest demanded in the order against which the appeal is filed.

Brief Facts

- In the given case, the Appellate Authority had declined the appeal filed by the petitioner on the grounds that the petitioner failed to comply the mandate of pre-deposit required for filing an appeal under the provisions of Section 107 of CGST Act.
- The Appellate Authority was of the opinion that 10% pre – deposit payable for filing an appeal will be calculated on total demand imposed in the order i.e., Tax + Interest + Penalties and accordingly declined to admit the appeal.

Observation

- Whether the pre – deposit amount for filing shall be 10% of tax amount only or total demand imposed in the order?

Decision

- Karnataka High Court opined that the legislative intent as construed from Section 107(6)(b) of the CGST Act is that aggrieved party has to pre-deposit 10% of the tax liability and it does not extend to penalties, fees or interest when the petitioner has contested the entire demand imposed in the order.
- Karnataka High Court disposed the petition with the direction to the appellate authority to admit the appeal as the petitioner has already deposited the 10% tax liability imposed in the impugned order.

[M/s Tejas Arecanut Traders Vs Joint Commissioner of Commercial Taxes & Others [W.P. No. 103652 of 2023 – Karnataka HC, dated 20 December 2023]

Amounts paid for early termination of lease as per the contract terms as agreed by both the parties, constitute as consideration for supply of leasing facility and hence such damages received by the taxpayer is in the nature of tolerating breach of lease agreement & the same is liable to GST @ 18%.

Brief Facts

- The Applicant M/s Enzyme Business Centre is engaged in the business of subletting commercial property on a rental basis.
- The Applicant states that they have entered into lease agreement with two different landlords and has obtained two premises for lease & has sublet both the premises to its client. However, its client approached them stating their inability to continue with the above-mentioned agreement & agreed to pay damages for such early termination of the contract.
- The Applicant submitted that they received the amount towards damages by way of forfeiting the interest free security deposit and its client also paid further lumpsum amount towards damages for foreclosure as one time settlement.

Issue Involved

- Whether damages received by the applicant towards the termination of sub lease before the agreed upon lock-in period as per the contract will be considered as supply under Section 7 of CGST Act?
- What is the applicable rate of GST & appropriate classification for the payment of GST?

Decision

- AAR held that the client of the Applicant was aware about the terms and conditions of the contract, that in case of breach of agreement i.e., in the event of early termination of contract, they shall be liable to pay the rental till the lock in period as a settlement for exit from the contract. Hence, the Applicant has received the money on account of non-fulfillment of conditions as stipulated in the lease agreement.
- AAR referred to clause 5(e) of Schedule II to Section 7 of CGST Act and contended that the Applicant agrees to refrain or tolerate or do an act as per the terms of contract. In case obligation/conditions of the contract is not fulfilled, then such act is squarely treated as supply in terms of Section 7(1) of CGST Act.
- AAR further referred to Para 7.1.6 of Circular No. 178/10/2022 which states that amounts paid for early termination of lease as contemplated by the contract as part of commercial terms agreed to by the parties, constitute consideration for supply of facility, namely, early termination of lease agreement.
- Based on the above parameters, AAR concluded that the amount received by the applicant are ancillary to the principal supply and liable to GST @ 18% under HSN code 9972 – Real Estate services.

[Karnataka Advance Ruling No. KAR ADRG 33/2023, dated 16 November 2023]



GST Updates

02



CBIC has further extended the due date for filing of GSTR 3B for the month of November 2023 in certain districts of Tamil Nadu.

- CBIC has further extended the due date for furnishing the return in Form GSTR-3B for the month of November-2023 till 10 January 2024 for registered persons whose principal place of business is in the districts of Chennai, Tiruvallur, Chengalpattu and Kancheepuram in the state of Tamil Nadu and are required to furnish return under sub section (1) of section 39 read with clause (i) of sub-rule (1) of rule 61 of the Central Goods and Services Tax Rules, 2017 ('CGST Rules').
- Earlier, the due date for filing GSTR-3B for the month of November 2023 was extended till 27 December 2023.

[Notification No. 01/2024 - Central Tax dated 5 January 2024]

CBIC further extended due date for filing of GSTR 9 & 9C for FY 2022-23 in certain districts of Tamil Nadu.

CBIC vide notification 02/2024 - Central Tax has extended the due date for furnishing the return in Form GSTR 9 & GSTR 9C for FY 2022-23 till 10 January, 2024 for registered persons whose principal place of business is in the districts of Chennai, Tiruvallur, Chengalpattu and Kancheepuram in the state of Tamil Nadu.

[Notification No. 02/2024 - Central Tax dated 5 January 2024]

CBIC revokes Special Procedure for Certain Goods invoked vide Notification No. 30/2023 dated 31 July 2023.

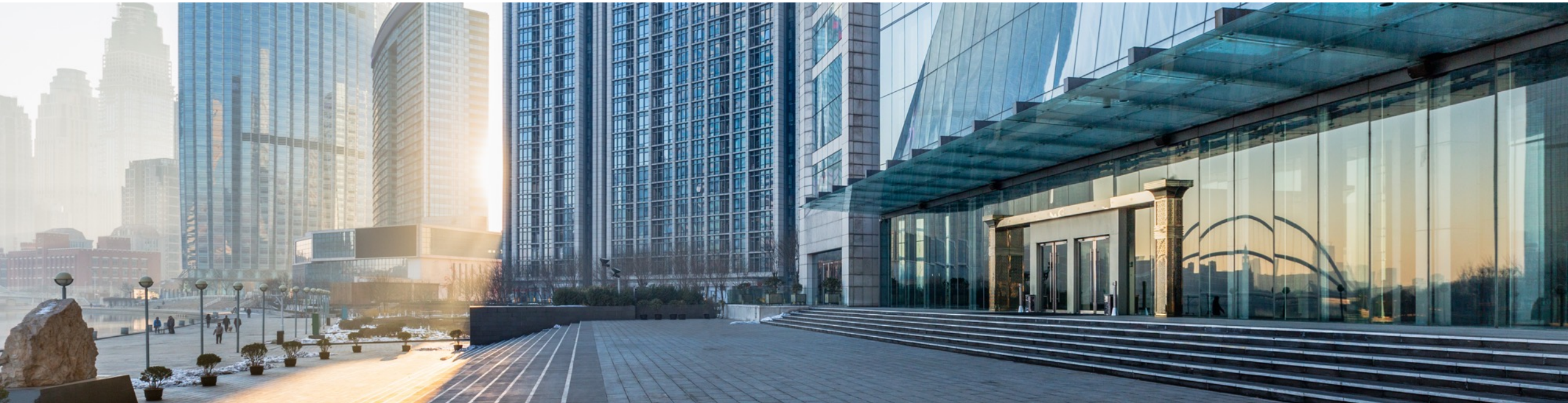
CBIC has revoked the outline requirements related to packing machines, records maintenance, and monthly statements applicable to manufacturers engaged in the production of Pan masala and Guthka/Tobacco and other related products which were invoked vide Notification No. 30/2023– Central Tax, dated 31 July 2023.

[Notification No. 03/2024 - Central Tax dated 5 January 2024]

CBIC introduces Special Procedure for Tobacco & Pan Masala Manufacturers.

- CBIC has notified special procedure for manufacturers engaged in the production of Pan masala and Guthka/Tobacco and other related products.
- This notification outlines requirements related to packing machines, records maintenance, and monthly statements.

[Notification No. 04/2024 - Central Tax dated 5 January 2024]





Judgements and Rulings (Customs)

03

Madras HC - SCN issued by DRI exclusive of cancellation of SEIS-Scrips by DGFT “without jurisdiction”.

Facts of the case

In this case, The DGFT granted a license under Section 9 of the Foreign Trade Development and Regulation Act, 1992 and thereby issued SEIS Scrips to the petitioner. The said Scrips bestowed by the DGFT serve dual purposes i.e. payment of import duty on eligible goods or services and potential sale by the petitioner to third parties and the third parties can use the Scrips for the purpose of payment of import duty at the time of import of goods.

The respondent alleged that the SEIS scrips were obtained by the petitioner from DGFT by wilful misstatement and suppression of facts for availing duty exemption under the Notification 25/2015-Customs dated 08-04-2015 and such Scrips were being utilized for payment of customs duty by other persons on their imports.

Subsequently, the DRI issued a SCN intending confiscation of goods that were imported by use of SEIS scrips and recovery of the duty exempted under Section 28AAA of the Customs Act against which the Petitioner filed a Writ petition before the Madras High Court.

Submission of Petitioner

Circular No. DOF No. 334/1/2012-TRU (‘Circular’) provides that recovery of duty can be initiated under Section 28AAA of the Customs Act only if DGFT initiates action for cancellation of an instrument. However, the SCN’s issued by the DGFT were subsequently withdrawn and effectively no such proceedings have been initiated for cancellation of scrips by the DGFT, therefore the SCN of the DRI is without jurisdiction.

The SEIS Scrips were issued to the Petitioner after due verification of the application form and supporting documents and there were no valid proceedings by the DGFT, challenging the legality of the SEIS scrips. Thus, the SCN issued by DRI is legally not maintainable.

Submission of Respondent

The respondent submitted that in the impugned case the Petitioner has obtained the SEIS Scrips by wilfully mis-stating the foreign exchange remittances as received against freight transport agency services. Therefore, the respondent can initiate recovery proceedings against the petitioner under Section 28 AAA of the Customs Act, 1962 and Circular No.334/1/2012-TRU dated 01.06.2012 will not apply to the facts of the present case.

Decision of the Court

The Court held that unless otherwise the DGFT initiates any proceedings to cancel the license, the customs authorities cannot assume any jurisdiction to issue notice under Section 28 AAA of the Customs Act, 1962 assuming the jurisdiction of the DGFT. Therefore, the SCN issued by DRI is not in accordance with the Circular read with the provisions of Section 28 AAA of the Act.

Accordingly, the High Court set aside the impugned SCN and allowed the writ petition in favour of the petitioner.

[Jeena & Company vs Union of India (TS-679-HC-2023(MAD)-CUST)]

Based on the sole/principal-use test Chennai CESTAT extended exemption benefit to Acer India

Facts of the case

The appellant M/s Acer India Private Limited filed an appeal against the order passed by the Commissioner of Customs against the classification of product, namely the 'Data projector Model X 122H DLP XGA Projector 270 3D with carrying case'. The appellant categorised the product under Customs Tariff Heading 8528 6100 as projectors of a kind solely or principally used in an automatic data processing system of heading 8471.

The appellant had cleared the consignment on payment of duty under protest as the department objected to classify the goods under CTH 85286900, pursuant to the same, the Assistant Commissioner rejected the submission of appellant. Consequently, on appeal, the Commissioner (Appeals) passed the impugned order upholding the findings in the OIO and denied the benefit of Notification No. 24/2005-Cus dated 01.03.2005 (Sl.No. 17) on the said products to the appellant.

Appellant's contention

Appellant contended before the CESTAT that the classification of the impugned product i.e. the data projectors has already been decided by several forums in favour of the appellant. Further, in the appellant's own case, the Hon'ble CESTAT of Chennai has decided issue in favour of the appellant after taking into consideration the technical specifications such as native aspect ratio, resolution etc.

Revenue's contention

Department highlighted that the product catalogues mention that the projectors are capable of projecting video from any video source viz video player, DVD player etc. It can be operated without being connected to ADP machines by virtue of USB, composite video (RCA), S-video ports and audio-in-ports etc. They are hence not solely or principally for use with ADP machines.

Further, it was also contended that predominance should not be given to the technological test sought to be used by the appellant as the appellants themselves had marketed the projectors of having multiple use, therefore, the impugned order shall be upheld.

Observations of CESTAT:

The CESTAT observed that the 'common parlance test' or the 'commercial usage test' is generally preferable especially while classifying consumer goods but when goods have to be tested for their sole or principal use, technological capabilities cannot be completely discarded.

Accordingly, the CESTAT relied on the reasoning expressed by Coordinate Bench and held that video projectors are classifiable under heading 8528 6100 and the appellant is entitled to exemption under Notification No. 24/2005-Cus. Dated 01.03.2005.

[Acer India Pvt Ltd (TS-17-CESTAT-2024-CUST)]



Customs Updates

04

Notifications, Circulars and Instructions

Tariff:

1. Notification issued with respect to imposition of export duty on molasses derives from sugar extraction or refining

The Central Government has inserted Sr. No. 9B in the Second Schedule to the Customs Tariff Act to impose 50% export duty on molasses derived from sugar extraction or refining. This notification is effective from 18 January 2024.

[Notification No. 01/2024-Customs dated 15 January 2024]

2. Notification issued with respect to extension of lower import duty on edible oil until March 2025

Notification No. 48/2021-Customs and 49/2021-Customs, dated 13th October 2021, have been amended by the Central Government to extend the reduced import duty on specified edible oil until 31 March 2025.

[Notification No. 02/2024 – Customs dated 15 January 2024]

3. Amendment in Notification No.50/2017- Customs providing exemptions from additional duties and taxes upon importation into India according to specified rates in the Customs Tariff Act.

Central Government has amended Notification 50/2017 to notify that Serial Number 364A pertaining to Spent catalyst or ash containing precious metals has been replaced with the new entry 10%.

[Notification No. 03/2024- Customs, dated 22 January 2024]

4. Amendment in Notification No. 11/2018-Customs granting exemptions for specific goods from the entire social welfare surcharge levy

The Central Government has amended Notification 11/2018 in respect of Spent catalyst or ash containing precious metals alongwith coins of precious metals to grant exemption from the Social Welfare Surcharge on the said products.

[Notification No. 04/2024- Customs, dated 22 January 2024]

5. Notification issued with respect to extension of the validity of exemptions lapsing on 31 March, 2024 till 30 September, 2024

Central Board of Indirect Taxes *vide* this Notification amends **Notification No. 50/2017-Customs, dated June 30, 2017**, extending the validity of exemptions set to lapse on 31 March, 2024, until 30 September, 2024.

[Notification No. 06/2024-Customs dated 29 January 2024]

6. Notification issued with respect to amendment in various Customs notifications to extend validity of exemptions till 30 September, 2024

The Central Government has *vide* this amended 33 Customs Notifications to extend the validity of exemptions provided in the same which were supposed to get expire on 31 March, 2024 until 30 September, 2024.

[Notification No. 07/2024 – Customs dated 29 January 2024]

7. Amendment in Notification No.50/2017- Customs

The Central Government has amended Notification 50/2017 to substitute Sr. No. 377 regarding metal screws, SIM sockets, or other mechanical items for cellular mobile phones. Additionally, Sr. No. 377B in respect of Screw or SIM socket / other mechanical items (metal) for cellular mobile phone now stands omitted.

[Notification No. 08/2024- Customs, dated 30 January 2024]

8. Amendment in Notification No. 57/2017-Customs dated 30.06.2017 to change the applicable BCD rate on specified parts/sub-parts of cellular mobile phone

The Central Government *vide* this notification has lowered import duty on several parts/sub-parts of mobile phone from 15% to 10%.

Additionally, duties on display assembly parts for LCD panels have been modified to 10% for better alignment.

[Notification No. 09/2024- Customs, dated 30 January 2024]

Non-Tariff:

1. Notification issued amending the Tariff Value of Edible Oils, Brass Scrap, Areca Nuts etc.

The Central Government has notified tariff values for various commodities, including Edible Oils, Brass Scrap, Areca Nut, Gold, and Silver effective from 16 January 2024.

[Notification No. 02/2024-Customs (N.T.) dated 15 January 2024]

2. Clarification issued w.r.t. exemption of custom duty pertaining to wearable / hearable goods

The Central Government by exercising its power provided under section 28A of the Customs Act, 1962, has directed that no customs duty needs to be paid for the import of wearable/ hearable goods imported during the period 1st February 2022 to 27th April 2023 wherein conditions prescribed under Notification 11/2022-Customs and 12/2022 has been satisfied by the importer.

[Notification No. 7/2024-Customs (N.T.), and 8/2024-Customs (N.T.), dated 24 January 2024]

Customs Instruction:

1. **Instruction issued on requirement of quality control or inspection or both, prior to export as per Milk and Milk Products (Quality Control, Inspection and Monitoring) Rules, 2020**

Central Board of Indirect Taxes has issued instruction regarding requirement of quality control or inspection or both, prior to export as per Milk and Milk Products (Quality Control, Inspection and Monitoring) Rules, 2020. This matter has been examined in the Board in consultation with Dept. of Commerce (DoC) and Export Inspection Council (EIC).

[Instruction No. 01/2024 – Customs dated 10 January 2024]





Foreign Trade Policy

05

Notifications

1. Amendment in Import Policy and Policy condition of Screws covered under HS code 7318 of Chapter 73 of Schedule-I (Import Policy) of ITC (HS) 2022.

The Government of India has amended the Import Policy for Screws under ITC (HS) codes 73181110, 73181190, 73181200, 73181300, 73181400, 73181500, and 73181900 has been changed from 'Free' to 'Prohibited.' However, imports will be allowed 'Free' if the CIF value is INR 129/- or higher per Kg.

[Notification No. 55/2023- FTP, dated 3 January 2024]

2. Amendment in para 2.31 of the Foreign Trade Policy, 2023.

Import policy of used IT assets such as laptops, desktops, monitors, printers) from SEZ to DTA has been notified under Para 2.31 of Foreign Trade Policy.

[Notification No. 56/2023- FTP, dated 1 January 2024]

3. Amendment in policy condition of silver covered under Chapter 71 of Schedule-I (Import Policy) of ITC (HS) 2022

Central Government has amended Chapter 71 of Schedule-I (Import Policy) in ITC (HS) 2022. According to the amendment, the import of semi-manufactured silver items by electrical, electronics, and engineering industries, including glass and solar industries for their own manufacturing process, is now 'Free' on an 'Actual user' basis.

Additionally, the import of these items for research and development (R&D) purposes by the Government or Government Recognized institutions is also exempted. However, for any other purposes, import must be conducted through specified agencies, as per the previous provisions.

[Notification No. 57/2023, dated 15 January 2024]

4. Amendment in import policy condition of Glufosinate Technical covered under HS Code 38089390 of Chapter 38 of Schedule – I (Import Policy) of ITC (HS) ITC.

Central Government has amended the import policy of 'Glufosinate Technical' under ITC (HS) Code 38089390 from "Free" to "Prohibited". However, import shall be free if CIF Value is Rs. 1,289/- or above per kg. with effect from the 25 January 2024.

[Notification No. 58/2023, dated 23 January 2024]

1. Clarification regarding Import Policy Provisions for Laptops, Tablets, All-in-one Personal Computers and Ultra Small Form Factor Computers, Servers under HSN 8471-reg

The DGFT issued a clarification stating that the import of Laptops, Tablets, All-in-one Personal Computers, Ultra small form factor Computers and Servers falling under HSN 8471 is 'Restricted' and import should be allowed against a valid import authorisation only for above five item categories. The given Import Restriction does not apply to any other goods such as Desktop Computers, etc. under tariff head 8471.

[Policy Circular No. 09/2023-24 dated 12 January 2024]

Public Notice

1. 8606 MTRV of raw cane sugar have been allocated to the USA under the TRQ scheme for the US fiscal year 2024.

The Central Government has notified the export quantity of 8606 MTRV of raw cane sugar to the USA under the TRQ scheme from 1st October 2023, to 30th September 2024.

[Public Notice No. 36/2023- FTP, dated 3 January 2024]

2. Extension of validity of Pre-Shipment Inspection Agencies (PSIAs) till 31 March, 2024

The Central Government has issued Public Notice to extend the validity of the Pre-Shipment Inspection Agency (PSIAS) as listed in Appendix 2G of A&ANF from 27th December 2023 to 31st March 2024.

[Public Notice No. 37/2023-24 dated 12 January 2024]



Compliance Calendar

06

S. No.	Compliance Category	Compliance Description	Frequency	Due Date	Due Date falling in January 2024
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 January 2024-11 February 2024
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 January 2024-20 February 2024
3	QRMP Scheme Invoice furnishing facility ('IFF')	Optional facility to furnish the details of outward supplies under QRMP Scheme	Monthly	1 st day to 13 th day of succeeding month	For Tax Period January 2024 – 1 to 13 February 2024

	Form GST PMT-06 (Monthly payment of tax)	Payment of tax in each of the first two months of the quarter under QRMP Scheme	Monthly	25 th of succeeding month	For Tax Period January 2024 – 25 February 2024
4	Form GSTR-6 (Return for Input Service distributor)	Return for input service distributor	Monthly	13 th of succeeding month	For Tax Period January 2024- 13 February 2024
5	Form GSTR-7 (Return for Tax Deducted at Source)	Return filed by individuals who deduct tax at source	Monthly	10 th of the succeeding month	For Tax Period January 2024- 10 February 2024
6	Form GSTR-8 (Statement of Tax collection at source)	Return to be filed by e-commerce operators who are required to collect tax at source under GST	Monthly	10 th of the succeeding month	For Tax Period January 2024- 10 February 2024

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