



Indirect Tax

June, 2024

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01

Advance Rulings & Judgements

Hon'ble High Court of Rajasthan held that GST is payable on RCM basis on services received outside India by Registered Person.

Brief Facts

- In the given case, the petitioner was dealing with jewelry and participated in an exhibition held outside India and hence he concluded that the services received outside India i.e., Place of Supply being outside India as per the provisions of Section 13(5) of Integrated Goods and Service Tax Act, 2017 ('IGST Act') should not be subjected to Integrated Goods and Services Tax (IGST) in India on RCM basis.
- However, the GST Authorities was of the view that the petitioner is liable to pay IGST as per Section 13 of the IGST Act which includes services received outside India, such as fairs and exhibitions. They referred to Notification 10/2017 – Integrated Tax (Rate) dated 28.06.2017 issued by the Government of India under Section 5(3) of the IGST Act, specifying that services supplied by a person in a non-taxable territory to a recipient in the taxable territory are subject to IGST on RCM basis.

Observations

- Whether IGST is payable on RCM basis by the petitioner on the exhibition services received from a person located in non-taxable territory i.e., Outside India as per Notification 10/2017 – Integrated Tax (Rate) dated 28.06.2017?

Decision

- The high court of Rajasthan examined the relevant provisions, particularly section 13 of the IGST act, which determines the place of supply of services when the location of the supplier or recipient is outside India. Section 13(5) of IGST act specifically includes the place of supply for events like fairs and exhibitions and the place of supply in such case will be the place where the event is held.
- The high court of Rajasthan noted that the government, under section 5(3) of the IGST act, has the authority to specify categories of supply of goods or services on which tax shall be paid on a reverse charge basis by the recipient. Notification 10/2017 – integrated tax (rate) dated 28.06.2017 under this provision specifies that the recipient of services located in the taxable territory is liable to pay tax.
- The Rajasthan high court upheld the tax imposition on exhibition services received by the petitioner from a person located in a non-taxable territory and the same is liable to IGST under RCM basis as per the relevant provisions of the IGST act.
- We are of the opinion that since the place of supply is outside India, the service recipient located in India is not liable to pay IGST under RCM basis from a person located in a non-taxable territory.

[Savio Jewellery vs Commissioner CGST (D.B. Writ Petition No. 1910 of 2024 – Rajasthan HC) dated 02 May 2024]

Punjab & Haryana High Court stays proceedings related to taxability of Corporate Guarantee by a person on behalf of another related person, or by holding company for sanction of credit facilities to its subsidiary company, to bank/ financial institutions and asks CBIC to respond on same.

Brief Facts

- The primary confusion that persists is whether it constitutes a supply of service when a corporate guarantee is provided by a related party against a loan facility. In this regard, Circular No. 204/16/2023-GST (“Circular 204”) was issued which clarified that a corporate guarantee provided by a company for credit facilities availed by another company, where both the companies are related, is to be treated as supply of services.
- However, writ petition has been filed before the Hon’ble Delhi High Court in the case of M/s Sterlite Power Transmission Limited v. Union of India and interim protection has been granted to the petitioner against any coercive steps in case any demand is created on the supply of corporate guarantee.

Observations

- The Petitioner submitted that clarification item No.2 in Circular 204 regarding taxability of 'corporate guarantee by a person on behalf of another related person, or by holding company for sanction of credit facilities to its subsidiary company, to bank/ financial institution' directly impinges upon powers of Appellate Authority by clarifying provisions in nature of adjudication and very purpose of filing of appeal stands negated.

Decision

- The High Court of Punjab & Haryana held that Effect and operation of Circular No. 204/16/2023-GST, dated 27-10-2023 relating to Item No. 2 shall remain stayed and Appellate Authority shall be free to decide case of petitioner without being influenced by clarification given in said Circular.
- The stay order issued by High Court of Punjab & Haryana serves to maintain the status quo until further clarity is obtained from CBIC.

[Acme Cleantech Solution Private Limited vs Union of India (C.W.P. No. 10249 of 2024) dated 03 May 2024]



Hon'ble High Court of Allahabad held that the GST Department can recover ITC of non-existent and bogus firms.

Brief Facts

- During a survey, it was found that the petitioner, engaged in manufacturing and selling aluminum casting and machinery parts, claimed ITC for supplies from three non-existent firms.
- The petitioner had fraudulently claimed ITC benefit without any actual supply of goods, on the basis of the fake invoice issued by the aforesaid three non-existent bogus firms. In support of its claim of actual receipt of inward supplies, the petitioner had submitted invoices, copies of GR (goods receipts), e-way bill, laser and bank statements of the firms, evidence of transaction of amounts through RTGS and evidence of physical receipts of goods. The inward supplies received by the petitioner have been entered in the stock register.
- The adjudicating authority did not accept the explanation of the petitioner because the aforesaid three firms, were found to be non-existent and bogus and that the tax invoices had been issued without any actual supply of goods upon which the petitioner had fraudulently taken benefit of ITC. The adjudicating authority declined the benefit of ITC to the petitioner and imposed penalty on the petitioner and fixed the liability of interest also.

Observations

- Allahabad High Court observed that though firms had valid registration when supplies were made, they didn't exist physically at given addresses and no goods could have been supplied. Documentary evidence produced by petitioner found dubious and unworthy of credence. The condition of 'actual receipt of goods' under Section 16(2)(b) of Central Goods and Service Tax Act, 2017 ('CGST Act') is not met.

Decision

- Allahabad High Court dismissed the writ petition upholding the denial of ITC to the Petitioner due to fraudulent claims involving non-existent firms and accordingly held that no estoppel against authorities taking appropriate action to re-claim ITC wrongly availed.

[Rajshi Processors Raebareli Vs State of UP [Writ Tax No. 128 of 2024 – Allahabad HC, dated 14 May 2024]

Authority for Advance Ruling (AAR) of Telangana held that services directly linked to Transportation fall under purview of Goods Transport Agency (GTA) services.

Brief Facts

- The Applicant M/s. DRS Dilip Roadlines Limited operates as a Goods Transport Agency, primarily engaged in the transportation of goods by road. Alongside transportation services, the company offers ancillary services such as packing, loading, unloading, and unpacking. These services are often bundled together, especially during the shifting of household goods.
- The Applicant had opted for Forward Charge Mechanism for payment of GST liability on its outward supplies of such services provided by them.

Issue Involved

- Whether ancillary services such as packing, loading, unloading, and unpacking provided along with GTA service are naturally bundled and shall be treated as composite supply under Section 2(30) of CGST Act?

Decision

- AAR referred to entry no. 9(iii) in the notification no 11/ 2017 – Central Tax (Rate) which enumerates 'Services in relation' to transport of goods by road. Thus, all services rendered in relation to transportation of goods including packing, loading, unloading & unpacking fall under this entry provided that such services have a direct and immediate link with the covenant/agreement for transport of goods i.e., the contract shall be for transport, packing, loading, unloading and unpacking of the same goods. Hence, if service of transport, packing, unpacking, loading & unloading are in relation to same goods, then such services of packing, loading, unloading, and unpacking shall be classified as GTA services.
- AAR further held that if service of transport and other services are in relation to different goods, then such services of packing, loading, unloading, and unpacking shall not be classified as GTA services.

[TSAAR Order No. 07/2024 in A.R. Com/03/2024, dated 26 April 2024]

Telangana AAR held that the taxpayer providing services of Marketing/Recruitment/Referral Consultant do not qualify as 'intermediary' and such services provided to the foreign universities shall qualify as Export of Services provided payments are received in terms of Convertible Foreign Currency.

Brief Facts

- The Applicant M/s. Center for International Admission and Visas (CIAV) had entered into an agreement with foreign universities to provide referral services. The Applicant provided referrals of the aspirants who wished to apply and study at the universities located outside India. The universities retain full discretion to accept or reject students for enrolment.
- The Applicant worked as an independent contractor providing its own service of 'marketing/ recruitment/ referral' to foreign colleges and universities.
- The Applicant received referral income or commission from the foreign universities on the basis of the number of successful admissions out of the referrals made by it and does not get any income or commission from the prospective students for the execution of its agreement with a foreign university.

Issue Involved

- Whether the activity of providing services of 'Marketing/Recruitment/Referral Consultant' by the Applicant to foreign universities/colleges on principal-to-principal basis would qualify as 'intermediary' as defined under section 2(13) of the IGST Act, 2017 or whether the same would be considered as an independent service of 'Marketing/Recruitment/Referral Consultant' by the Applicant to foreign universities/colleges?
- Whether the activity of the Applicant would be liable to levy of GST or would qualify as 'export of services' in terms of Section 2(6) of the IGST Act, 2017?

Decision

- The AAR observed that the taxpayer enjoys privity of contract only with the foreign universities and functions as an independent contractor for them. Further, in terms of the agreements with foreign universities, the taxpayer is prohibited from having any contractual relation with the students. The taxpayer only receives payments from the foreign universities and no payments were received from the students.
- AAR opined that the term 'intermediary' refers to agent who represents the principal before any third party. Where supplier renders the main supply to recipient on principal-to-principal basis, it will not qualify as intermediary. In terms of Circular No. 159/15/2021-GST dated September 20, 2021 and various judicial precedents [i.e., Genpact India (P) Limited. v. UOI, 2023, Ernst & Young Limited v. AC CGST and SNQS International Socks (P) Limited v. CST (Appeal)], concept of intermediary requires existence of three parties and two supplies, namely, the principal supply and the supply of agency service by the intermediary.
- AAR observed that in the given case, since there is no contractual relation between applicant and students and no consideration flowing from students to the taxpayer, the existence of three parties is negated.
- AAR further held that the taxpayer was providing marketing and referral services to its recipient, i.e. the foreign universities, in lieu of a consideration. This supply is independent of the transactions between the foreign universities and the students.
- AAR also held that the activity undertaken by taxpayer qualifies as export in as much as taxpayer is located in India whereas the recipient is located outside India and the consideration is received in foreign exchange.

[TSAAR Order No. 09/2024 in in A.R. Com/11/2024, dated 09 May 2024]

02

Judgements and Rulings (Customs)

CESTAT: Appeal for a cash refund of unclaimed/accumulated CENVAT credit dismissed

Facts of the Case

- The appellants engaged in manufacturing pharmaceutical products availed Cenvat Credit for inputs and services under the Central Excise regime. With the introduction of the GST, they encountered issues transitioning the Cenvat Credit amount and filed for a cash refund of INR 49,14,215 which they couldn't carry forward in Form TRAN-1 under Section 140 of the CGST Act, 2017.
- The adjudicating authority rejected the Central Excise component stating no provision for such refunds and the amount was not transferred via TRAN-1. However, the Commissioner (Appeals) allowed a cash refund for the Service Tax component of ₹34,73,588 to the appellant.
- Accordingly, the appellant filed the appeal before the CESTAT against the Order-in-Appeal rejecting their refund claim of INR 14,40,627/-

Observations

- CESTAT observed that since there is no provision under the Cenvat Credit Rules, 2004 or in Central Excise Act to allow cash refund for unclaimed/accumulated credit, Section 142(3) of the Act alone cannot make such refunds eligible simply because the appellant failed to file the revised return or use the TRAN-1 route within the specified time. The CESTAT found no error in the Commissioner (Appeals) order and dismissed the appeal.

[Aragen Life Sciences Ltd (TS-197-CESTAT-2024-EXC)]

CESTAT: Exclusion of Royalty and License Fees from Transaction Value of Imported Parts/Components

Factual of the Case

- M/s Humboldt Wedag India Pvt. Ltd., a subsidiary of M/s Humboldt Wedag GmbH, Germany, engaged in engineering and equipment supply for cement plants, imports parts from its parent company under two License Agreements. An Order-in-Original ('OIO') was passed for inclusion of the Royalty and Lump Sum Fees in the value of imported goods.
- Further, the Commissioner (Appeals) ruled these fees were unrelated to the imported goods and not a pre-condition for their sale and accordingly set aside the OIO.
- Being aggrieved against the impugned order passed by the Commissioner (Appeals), Revenue filed appeal before the CESTAT.

Observations

- The CESTAT observed that the payments in question are not a condition of sale, as the agreements do not stipulate that the supplier would refuse to sell goods if the royalty is unpaid. The importer is free to source components from non-related parties, and there is no requirement to exclusively use the supplier's technology.
- Referring to the Interpretative Notes to Rule 10(3) of the Customs Valuation Rules, 2007, CESTAT determined that royalties are not includible in the transaction value of imported components when mixed with domestic ingredients or part of special financial arrangements.
- CESTAT held that Royalty and License Fees are not includable in the transaction value of the imported parts and components and dismissed revenue's appeal.

[Humboldt Wedag India Pvt Ltd (TS-173-CESTAT-2024-CUST)]

03

Customs
Updates

Notifications

Non-Tariff

Notification issued for updating the Customs tariff value of Crude palm oil, Gold, Silver and Areca nuts etc.

The Government of India has revised the tariff values for various commodities, including edible oils, brass scrap, areca nuts, gold, and silver etc. of certain specifications.

[Notification No. 35/2024-Customs (N.T.) dated 15th May 2024 and 37/2024-Customs (N.T.) dated 21 May 2024]

Anti-Dumping Duty

Imposition of Anti-Dumping Duty ('ADD') on import of 'Pentaerythritol' from China PR, Saudi Arabia, and Taiwan

Based on the findings of the designated authority, the Government of India has imposed ADD on the import of 'Pentaerythritol' from China PR, Saudi Arabia, and Taiwan subject to further conditions.

[Notification No. 08/2024- Customs (ADD), dated 16 May 2024]

Countervailing Duty

Extension of Countervailing Duty ('CVD') on Saccharin imports from China.

The Central Board of Indirect Taxes and Customs has amended Notification No. 2/2019-Customs (CVD) dated 30th August 2019 to extend the levy of CVD on Saccharin in all its form imported from China PR upto and inclusive of 28th February, 2025.

[Notification No. 02/2024- Customs (CVD), dated 28 May 2024]

Circulars

Amendments to All Industry Rates (AIRs) of Duty Drawbacks effective from 3rd May 2024

The Central Board of Indirect Taxes and Customs (Drawback Division) has announced amendments to the All Industry Rates of Duty Drawback effective from 3rd May 2024 wherein AIRs/caps of Duty Drawback have been enhanced for the certain items *inter alia*:

- Certain goods bags, hand bags, trunks, suit-cases and others;
- Articles of bed linen, table linen, to ilet linen and kitchen linen;
- Radar apparatus, radio navigational aid apparatus and radio remote control apparatus and others.

[Circular No. 04/2024- Customs dated 7 May 2024]

Instructions

Clarification Regarding Acceptance of Electronic Certificate of Origin ('e-CoO') under India-Korea Comprehensive Economic Partnership Agreement ('CEPA').

In pursuance of the implementation of EODES, a system has been designed in ICES to verify the e-CoO particulars against the data received electronically from the Customs of the exporting country, including wrt multiple use of single COO. The system automatically debits e-CoO quantity from the COO certificate ledger. Therefore, physics defacement of the printed copy of e-CoO shall no longer be required wrt India-Korea CEPA.

[Instruction No. 10/2024- Customs dated 1 May 2024]

Verification of Authenticity and genuineness of Certificate of Origin ('CoO') issued by United Arab Emirates ('UAE') Authority.

The Central Board of Indirect Taxes and Customs has issued latest Instruction in relation to verification process of CoO issued by UAE. The UAE Authorities has introduced a new security measure to enhance the verification process for CoO issued under the India-UAE Comprehensive Economic Partnership Agreement ('CEPA').

[Instruction No. 11/2024- Customs dated 1 May 2024]

Instruction on review of requirement of G-Card holders at a Customs Station and conduct of G-Card examination in terms of Regulation 13 of CBLR, 2018.

The Central Board of Indirect Taxes and Customs has issued an Instruction stating that the Principal Chief Commissioner or Chief Commissioner of Customs shall conduct an annual review of the requirement of G-Card holders at every Customs station under their jurisdiction.

The review shall be carried out in Customs Clearance Facilitation Committee ('CCFC') meetings with stakeholders and to be discussed in Customs Consultative Group ('CCG') meetings. This will facilitate planning of conduct of G-Card examination and lead to sufficient availability of trained manpower for swift clearance of the EXIM consignments in their respective jurisdiction.

[Instruction No. 12/2024- Customs dated 1 May 2024]

Undertaking from the producers (who includes the importer) of the base oil or lubrications oil for clearance of consignment

The Government of India, via latest instruction has mandated that producers (including importers) involved in the import of base oil or lubrication oil must obtain registration from the Central Pollution Control Board ('CPCB') through an online portal.

Further, the online Extended Producer Responsibility ('EPR') portal is expected to be launched by the CPCB by May 2024.

[Instruction No. 13/2024- Customs dated 17 May 2024]

Release of imported consignments of 106 specified EEE items under the E-waste Management Rules, 2022

The Central Board of Indirect Taxes and Customs has issued an Instruction regarding the release of imported consignments of 106 specified EEE items under the E-waste Management Rules, 2022.

According to a letter from the Central Pollution Control Board ('CPCB') dated 13th May 2024 imported consignments of these EEE items can be released upon submission of an undertaking as per the enclosed format and proof of submission to CPCB via email at ewaste2.cpcb@gov.in, valid until 30th June 2024.

[Instruction No. 14/2024- Customs, dated 17 May 2024]

Disbursal of Drawback amounts into the exporters accounts through PFMS.

The Central Board of Indirect Taxes and Customs (Drawback Division) has issued a latest instruction stating that payment of Drawback amounts into the exporters accounts post scroll out will be facilitated through Public Finance Management System ('PFMS') w.e.f. 5th June 2024.

[Instruction No. 15/2024- Customs dated 29 May 2024]

04

Foreign Trade Policy



Notifications

Amendment in Export Policy of onions

Central Government has amended the export policy of onions (Chapter 07 of Schedule 2 of ITC (HS)) from 'prohibited' to 'free' subject to Minimum Export Price (MEP) of USD 550 per Metric Ton (MT) with immediate effect until further orders.

[Notification No. 10/2024-25 dated 04 May 2024]

Export of food commodities through National Cooperative Exports Limited (NCEL)

Central Government permits export of 14000 MT of Non-Basmati White Rice (HS code 1006 30 90) to Mauritius through NCEL.

[Notification No. 11/2024-25 dated 06 May 2024]

Amendment in Import Policy conditions for Yellow Peas under ITC (HS) code 07131010 of Chapter 07 of ITC(HS), 2022, Schedule-I (Import Policy)

The Central Government has revised the Import Policy conditions for Yellow Peas under ITC (HS) code 07131010. As per the latest notification, the import of yellow peas is now "Free" without any Minimum Import Price ('MIP') condition and port restrictions. This change takes effect immediately for all import consignments with a Bill of Lading (Shipped on Board) issued on or before 31st October 2024 and is subject to registration under the online Import Monitoring System.

[Notification No. 12/2024-25 dated 08 May 2024]

Amendment in para 2.31 Foreign Trade Policy, 2023 and ITC HS 2022 Schedule 1 Import Policy

Para 2.31(1(b)) of the Foreign Trade Policy 2023, along with Para 2(C) of the General Notes on Import Policy, and Policy Condition 2 of Chapter 84, Policy Conditions 5 and 7 of Chapter 85, and Policy Condition 1 of Chapter 94 of the Import Policy (Schedule 1) ITC HS 2022, have all been revised.

The said amendments have been made considering re-notification of the "Electronics and Information Technology Goods (Requirement of Compulsory Registration) Order, 2012," which has now been updated and issued as the "Electronics and Information Technology Goods (Requirement of Compulsory Registration) Order, 2021" under the BIS Act 2016. The updated order continues to enforce mandatory registration and compliance for electronic and IT goods to ensure they meet Indian safety and quality standards.

[Notification No. 13/2024-25 dated 20 May 2024]

Circulars

Clarification on the applicability of 3% amount on account of non-achievement of minimum Value Addition as provided in Para 4.49 of Handbook of Procedures, 2023

The DGFT has issued a clarification stating that the payment of 10% of CIF value and 3% shortfall in FOB value amounts specified in Para 4.49(a)(ii) and 4.49(b) of HBP 2023 apply only to Advance Authorisations ('AAs') issued on or after 1st April 2023. AAs issued before this date will follow the HBP provisions relevant at the time of issuance.

Further, this clarification will not constitute a ground for refund of fees already paid.

[Policy Circular No. 02/2024 dated 03 May 2024]



Public Notice

Suspension of inoperative Standard Input-Output Norms (SIONs)

The DGFT has observed that the SIONs listed in Annexure “A” have been inactive for the past five years and the same shall be suspended with immediate effect.

[Public Notice No. 03/2024, dated 03 May 2024]

Amendment in Appendix-2Y: Enabling provisions for import of inputs that are subjected to mandatory Quality Control Orders (QCOs) by AA holders, EOU and SEZ

The DGFT has amended Appendix-2Y of the FTP 2023 to include the Ministry of Mines in the list of Ministries/Departments in pursuance of Notification No. 71/2023 dated 11th March 2024, with immediate effect.

[Public Notice No. 04/2024 dated 10 May 2024]

Amendment in 4.59 of Handbook of Procedures 2023 and modification in Standard Input Output Norms (SION) M-1 to M-7 for export of jewellery

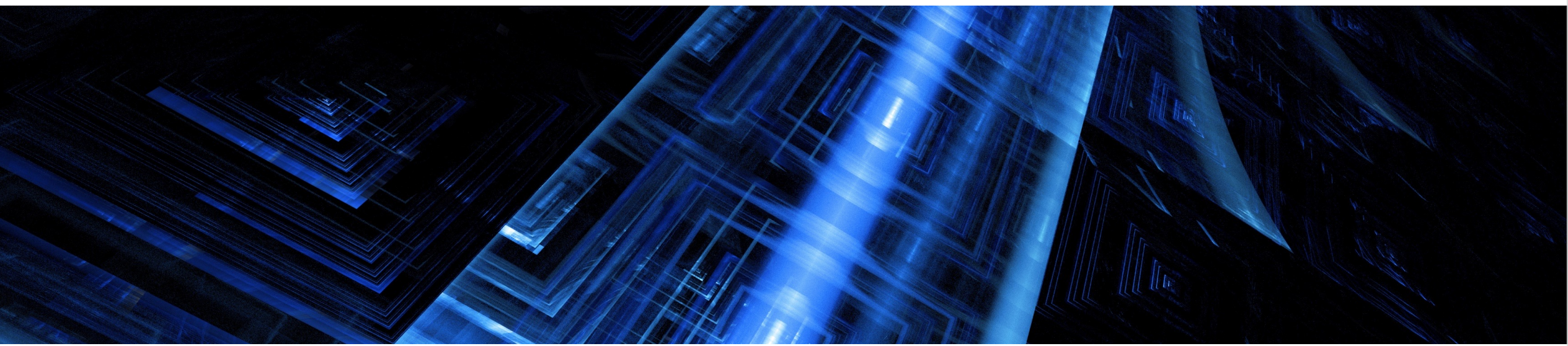
The DGFT has amended the wastage permissible and SION under HBP 2023 in relation to export of jewellery.

[Public Notice No. 05/2024 dated 27 May 2024]

Abeyance of Public Notice No. 05/ 2024 dated 27 May 2024

The DGFT has kept Public Notice No. 05/ 2024 dated 27 May 2024 in abeyance till 31 July 2024 for reassessment of permissible wastage and SIONs as per request received from the Gem and Jewellery Export Promotion Council ('GJEPC')

[Public Notice No. 06/2024, dated 28 May 2024]





Trade Notice

Applicability of Notification No. 71/ 2023 dated 11 May 2024

The DGFT has clarified that Notification No. 71/2023 dated 11 March 2024 is not applicable retrospectively, thus Advance Authorisations (AAs) issued before this date will be governed by the provisions as existed at that time of their issuance.

Additionally, amendments to incorporate QCO exemptions on AAs issued before 11 March 2024 are not available and it is also prohibited to club these AAs with those issued under the new notification.

[Trade Notice No. 03/2024 dated 10 May 2024]

05

Compliance Calendar

S. No.	Compliance Category	Compliance Description	Frequency	Due Date	Due Date falling in June 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 May 2024-11 th June 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 May 2024-20 th June 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 May 2024 – 1 st to 13 th June 2024

3	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 the succeeding month	For Tax Period May 2024 - 25 th June 2024
4	Form GSTR-6 (Return for Input Service distributor)	Return for input service distributor	Monthly	13 th of the succeeding month	For Tax Period May 2024- 13 th June 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 May 2024- 10 th June 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 May 2024- 10 th June 2024

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