



**THE WEEK THAT WENT BY**

INDIRECT TAX NEWSLETTER BY NOVELLO ADVISORS

Week Ending 10.07.2022



Novello Advisors LLP

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## **EXECUTIVE SUMMARY**

### **Notifications:**

#### **Goods and Service Tax**

- 1) No. 10/2022 – Central Tax dated 05.07.2022

Exemption of registered person whose annual turnover in the financial year 2021-22 is up to two crore rupees from filing annual return for the said financial year.

- 2) No. 11/2022 – Central Tax dated 05.07.2022

In respect of Composition dealers - Amendment to notification number No. 21/2019-Central Tax, dated the 23rd April, 2019 by insertion of the following proviso in the second paragraph, after the fourth proviso: "Provided also that the said persons shall furnish a statement, containing the details of payment of self-assessed tax in FORM GST CMP-08 of the Central Goods and Services Tax Rules, 2017 for the quarter ending 30th June, 2022 till the 31st day of July, 2022."

- 3) No. 12/2022 – Central Tax dated 05.07.2022

In respect of Composition dealers - Substitution of the date from 30th June 2022 to 28th July 2022 in Notification No. 07/2022 – Central Tax which was seeking to amend principle Notification No. No. 73/2017–Central Tax, dated the 29th December, 2017 seeking to waive off late fee for delay in furnishing Form GSTR-4 for the Financial Year 2021-22.

- 4) No. 13/2022 – Central Tax dated 05.07.2022

The timeline for issuing orders under the Section 73 - 'Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any willful-misstatement or suppression of facts' till 30th day of September, 2023

Exclusion of the period from 1st March 2020 to 28th February 2022 for computation of period of limitation under sub-section (10) of section 73 of the said Act for issuance of order under subsection (9) of section 73 of the said Act, for recovery of erroneous refund.

Exclusion of the period from 1st March 2020 to 28th February 2022 for computation of period of limitation for filing refund application under section 54 or section 55 of the said Act"

- 5) No. 14/2022 – Central Tax dated 05.07.2022

Multiple recommendations of 47th GST Council Meeting is brought into force



- i. A GST Registration suspended due to non-filing of GST Returns would be restored upon furnishing all pending returns. However, this is applicable only if the officer has not cancelled the registration. Therefore, if any such situation arises, it is advised to immediately file the respective returns to avoid cancellation.
- ii. The value of supply of Duty Credit Scripts are excluded from 'exempt supply' under Rule 42 and 43. Therefore no ITC reversal would be required in respect of any Duty Scrip Sale made.
- iii. In case of Suppliers having aggregate turnover exceeding the prescribed limit under the e-invoicing provisions but are not required to comply with E-Invoicing are mandated to add a specific declaration to their Tax Invoice.
- iv. New form is prescribed for re-crediting ITC in cases where the erroneous refund is paid back by the taxpayer
- v. The deposit of cash can now be made through UPI and IMPS
- vi. Taxpayers can now transfer the balance in Electronic Cash Ledger in one GSTIN to another GSTIN under same PAN, instead of opting for refund.
- vii. "With effect from 1st July 2017, the following changes are being made:
  1. In case of delayed filing of GSTR-3B (filed voluntarily), interest would be payable only on the portion of liability adjusted against cash.
  2. In case of delayed filing of GSTR-3B (filed pursuant to proceedings), interest would be payable on the whole of amount due to be paid.
  3. Interest is payable for excess availment and utilisation of ITC. Where the wrongly availed ITC is deemed to be utilised if the balance in Electronic Credit Ledger balance falls below the ITC wrongly availed at any point of time. The manner of determining the date of utilisation has been set out."
- viii. Changes are made to Rule 89 to specify the documents to be submitted by exporters of Electricity to claim refund.
- ix. "The value of goods exported out of India for the purpose of refund equation in Rule 89(4) shall be lesser of:
  - (i) the Free on Board (FOB) value declared in the Shipping Bill or Bill of Export form, as the case may be, as per the Shipping Bill and Bill of Export (Forms) Regulations, 2017; or (ii) the value declared in tax invoice or bill of supply. This was earlier prescribed under the Circular issued in respect of Refund."
- x. "Additional condition of matching the shipping bills with GSTR-1 has been incorporated for considering the shipping bills as an application for refund.



Additional restriction is brought to withhold the refund, if based on data analysis and risk parameters the verification of credentials of the exporter, including the availment of ITC by the exporter, is considered essential before grant of refund, in order to safeguard the interest of revenue".

- xi. In sub-rule (5), for the words "tax payable on such inverted rated supply of goods and services", the brackets, words and letters "{tax payable on such inverted rated supply of goods and services x (Net ITC' ITC availed on inputs and input services)}." shall be substituted.
- xii. In respect of Outlets at airports - rule 95A shall be deemed to have been omitted with effect from the 1st July, 2019.
- xiii. "Changes to FORM 3B  
Additional columns are added to disclose supplies liable to reverse charge under 9(5) by E-com operator (either as supplier or as e-com operator)".
- xiv. The Table 4 of GSTR-3B has been revised to being consistency.
- xv. Relaxations provided to earlier years in respect of Consolidated disclosure of Nil Rated/Exempted supplies, Consolidated disclosure of RCM supplies from URD and RD etc. is extended to FY 2021-22.

#### Customs, FTP and SEZ

- 1) Notification No. 38/2022- Customs dated 04.07.2022:

The exemption provided to BCD and AIDC on raw cotton provided till 30.09.2022 has been extended till 21.10.2022

- 2) Notification No. 58/2022 – Customs (N.T) dated 07.07.2022:

The Exchange rate of INR in respect of foreign currency in respect of goods imported and exported has been revised w.e.f. 08.07.2022.

- 3) Notification No. 17/2015-2020 dated 04.07.2022:

Relaxation provided to import of Potatoes under ITC(HS) Code 0701 9000 allowed from Bhutan without Import Licence has been extended from 30.06.2022 to 30.06.2023.

- 4) Notification No. 18/2015-2020 dated 06.07.2022:

Export Policy of Wheat Flour (Atta) under ITC (HS) Code 1101 has been amended with the objective of maintaining quality of wheat flours exported from India. Export of Wheat Flour (Atta) shall be subjected to recommendation of Inter-Ministerial Committee (IMC) on export of wheat from 12.06.2022. Necessary modalities relating to quality of wheat flour are to be notified



separately. The provisions as under Para 1.05 of the Foreign Trade Policy, 2015-2020 regarding transitional arrangement shall not be applicable.

5) Notification No. 19/2015-2020 dated 07.07.2022:

The requirement of advance registration of minimum 15 days of the expected date of arrival of import consignment under Steel Importing Monitoring System (SIMS) has been abolished.

6) Notification No. 20/2015-2020 dated 07.07.2022:

ITC(HS) 2022 Schedule-1 Import Policy is amended in sync with Finance Act, 2022 with immediate effect.

Novello Advisors LLP



## Circulars:

### Goods and Service Tax

1. Circular 170/02/2022-GST dated 06.07.2022

The Table 4 of GSTR-3B has been revised to being consistency. The Table 4 of GSTR-3B has been revised and additional instructions on how disclosures should be made has been set out in the circular. The intention of the revenue being , to ensure consistency and making it easier to identify wrong availment unlike the present situation where it becomes necessary to receive the taxpayers explanation to understand whether actual wrong availment exists.

2. Circular 171/02/2022-GST dated 06.07.2022

In case of invoices raised without underlying supply, the revenue has issued circular clarifying the impact on the supplier of such invoices as well as the recipient of these invoices who avails ITC on them.

Both the above parties would Penal action, while the party availing ITC would be subjected to ITC recovery provisions. Care should be taken to ensure that ITC on inward supplies is not taken before actual receipt to avoid such circumstances."

3. Circular 172/02/2022-GST dated 06.07.2022

- i. The Blocked credits under section 17(5)(b) shall be available where the same is obligatory to be provided by the employer to the employee under any law for the time being in force. There were ambiguity earlier as to whether the same was only applicable for ' travel benefits extended to employees on vacation such as leave or home travel concession' in clause (iii) or entire sub-section (b) which includes food & beverages, outdoor catering, plastic surgery, life insurance, health insurance etc.
- ii. Certain clarifications have been provided in respect of utilisation of Electronic Cash Ledger and Electronic Credit Ledger balances.
- iii. It is clarified that prerequisites provided by Employer to Employee shall not be subjected to GST when the same is included in the contract.

4. Circular 173/02/2022-GST dated 06.07.2022

Clarification on issue of claiming refund under inverted duty structure where the supplier is supplying goods under some concessional notification.

It was clarified that refund on account of inverted duty structure would not be admissible in cases where the input and output supply are same.

5. Circular 174/02/2022-GST dated 06.07.2022



The new FORM GST PMT-03A allows proper officer to re-credit the amount in the electronic credit ledger once taxpayer deposit the erroneous refund along with interest and penalty.

### **Customs, FTP and SEZ**

1) Policy Circular No. 41/2015-2020, dated 05.07.2022:

This circular has been issued with a view to clarify the applicability of Paper Import Monitoring System (PIMS) at the time of import into SEZ/FTWZ/EOU and further import into DTA.

PIMS is required at the time of importation of goods by the unit in SEZ/FTWZ/EOU of the items covered in PIMS.

Clearance of such goods from SEZ/FTWZ/EOU to DTA will not be required if the paper, registered under PIMS, has not undergone any change in 8 digit HSN.





## Instructions:

### Customs, FTP and SEZ

1) Instruction No.11/2022-Customs dated 03.07.2022:

The DGFT by virtue of notification 14/2015-2020 dated 30.06.2020 has revised the export policy on different forms of motor gasoline, gas oil, automotive diesel fuel and high-speed diesel fuel.

The instruction intends to sensitize officers regarding the amendment in Export Policy of motor gasoline and gas oil.

2) Instruction No.12/2022-Customs dated 07.07.2022:

The Standard Operating Procedure (Version 1.0) issued by Department of Telecommunications on 29.05.2015 for 'Implementation of Central Government notification prohibiting import of mobile phones with duplicate, fake and non-genuine International Mobile Equipment Identity' has been modified due to operationalisation of Indian Counterfeited Device Restriction (ICDR) system w.e.f. 28.01.2020 with Version 1.1.

The instruction has been issued to sensitize officers regarding the aforementioned change.

3) Instruction No.12/2022-Customs dated 07.07.2022:

In respect of solar power generating units who has been operating under Manufacture and Other Operations in Warehouse (no.2) Regulations, 2019 (MOOWR 2019), it has been conveyed that since electricity exports cannot comply with the requirements of MOOWR such as one time lock. Further, it was pointed out that no exemption from conditions have been provided to these units under Regulation 20. Permissions provided to such units are to be reviewed and necessary action taken.



## **SUPREME COURT AND HIGH COURT JUDGEMENTS**

### **Goods and Service Tax**

#### **High Court**

- 1) Peetee Coach Builders Pvt Ltd Vs Union Of India

The petitioner has challenged the impugned show cause notice on the ground that the impugned notice is contrary to the circular No.52/26/2018-GST, dated 09.08.2018.

#### **Erstwhile Taxes**

- 1) M/S Bellatrix Consultancy Vs The Commissioner Of Central Tax

The assessee was providing support services to real estate property buyers in the USA and was paying service tax regularly. Later, the appellant assessee learnt that it was not liable to pay service tax on export of services.

The Assistant Commissioner allowed refund of part of the amount and rejected the claim for remaining amount on the ground that it was beyond the period of limitation of one year. The assessee contested the same.



## **NOTIFICATIONS**

### **GOODS AND SERVICE TAX**

#### **1) Notification No. 10/2022 – Central Tax dated 05.07.2022**

##### **Summary:**

Exemption of registered person whose annual turnover in the financial year 2021-22 is up to two crore rupees from filing annual return for the said financial year.

#### **2) Notification No. 11/2022 – Central Tax dated 05.07.2022**

##### **Summary:**

In respect of Composition dealers - Amendment to notification number No. 21/2019-Central Tax, dated the 23<sup>rd</sup> April, 2019 by insertion of the following proviso in the second paragraph, after the fourth proviso: "Provided also that the said persons shall furnish a statement, containing the details of payment of self-assessed tax in FORM GST CMP-08 of the Central Goods and Services Tax Rules, 2017 for the quarter ending 30th June, 2022 till the 31st day of July, 2022."

#### **3) No. 12/2022 – Central Tax dated 05.07.2022**

##### **Summary:**

In respect of Composition dealers - Substitution of the date from 30th June 2022 to 28th July 2022 in Notification No. 07/2022 – Central Tax which was seeking to amend principle Notification No. No. 73/2017–Central Tax, dated the 29th December, 2017 seeking to waive off late fee for delay in furnishing Form GSTR-4 for the Financial Year 2021-22.

#### **4) No. 13/2022 – Central Tax dated 05.07.2022**

##### **Summary:**

The timeline for issuing orders under the Section 73 - 'Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any wilful-misstatement or suppression of facts' till 30<sup>th</sup> day of September, 2023

Exclusion of the period from 1st March 2020 to 28th February 2022 for computation of period of limitation under sub-section (10) of section 73 of the said Act for issuance of order under subsection (9) of section 73 of the said Act, for recovery of erroneous refund.



Exclusion of the period from 1st March 2020 to 28th February 2022 for computation of period of limitation for filing refund application under section 54 or section 55 of the said Act

### **Novello Comments**

In case refund claim had not been filed for the earlier periods due to time limit, the same may be admissible by virtue of exclusion of the period from 1st March 2020 to 28th February 2022 for computation of period of limitation

## **5) No. 14/2022 – Central Tax dated 05.07.2022**

### **Summary**

Multiple recommendations of 47th GST Council Meeting is brought into force

- i. A GST Registration suspended due to non-filing of GST Returns would be restored upon furnishing all pending returns. However, this is applicable only if the officer has not cancelled the registration.

### **Novello Comments**

Therefore, if any such situation arises, it is advised to immediately file the respective returns to avoid cancellation.

- ii. The value of supply of Duty Credit Scripts are excluded from 'exempt supply' under Rule 42 and 43. Therefore no ITC reversal would be required in respect of any Duty Scrip Sale made.

### **Novello Comments**

Going forward, taxpayers having sale of Duty Credit Scripts will no longer be required to reverse credit on it.

- iii. In case of Suppliers having aggregate turnover exceeding the prescribed limit under the e-invoicing provisions but are not required to comply with E-Invoicing are mandated to add a specific declaration to their Tax Invoice.

### **Novello Comments**

This is a welcome change that is likely to reduce unnecessary notices from the department on the fact that the invoices from the vendors are not following E-invoicing provisions.

- iv. New form is prescribed for re-crediting ITC in cases where the erroneous refund is paid back by the taxpayer. Where a registered person deposits the amount of erroneous refund sanctioned to him, –
  - (a) under sub-section (3) of section 54 of the Act, or
  - (b) under sub-rule (3) of rule 96, in contravention of sub-rule (10) of rule 96,



along with interest and penalty, wherever applicable, through FORM GST DRC-03, by debiting the electronic cash ledger, on his own or on being pointed out, an amount equivalent to the amount of erroneous refund deposited by the registered person shall be re-credited to the electronic credit ledger by the proper officer by an order made in FORM GST PMT-03A.

#### **Novello Comments**

It is a welcome change since this ensures that the taxpayers do not need to struggle without clarity on what happens to their ITC in such circumstances.

- v. The deposit of cash can now be made through UPI and IMPS
- vi. Taxpayers can now transfer the balance in Electronic Cash Ledger in one GSTIN to another GSTIN under same PAN, instead of opting for refund.

#### **Novello Comments**

This is a welcome change since the taxpayers have a choice to transfer the amounts to other GSTINs under same pan instead of opting for refund and making payment again in the other GSTIN. It is to be noted that this is applicable only for CGST and IGST.

- vii. "With effect from 1st July 2017, the following changes are being made:
  1. In case of delayed filing of GSTR-3B (filed voluntarily), interest would be payable only on the portion of liability adjusted against cash.
  2. In case of delayed filing of GSTR-3B (filed pursuant to proceedings), interest would be payable on the whole of amount due to be paid.
  3. Interest is payable for excess availment and utilisation of ITC. Where the wrongly availed ITC is deemed to be utilised if the balance in Electronic Credit Ledger balance falls below the ITC wrongly availed at any point of time. The manner of determining the date of utilisation has been set out."

#### **Novello Comments:**

The changes which have been in discussion for a long time on interest under GST is finally finding its place in GST Rules. The taxpayers may need to take care regarding the fact that they have sufficient balance in ECL (credit) in case they have excess availed ITC, since the same may be considered as utilised if the balance of ECL falls below the wrongly availed amount.

- viii. Changes are made to Rule 89 to specify the documents to be submitted by exporters of Electricity to claim refund.



- ix. "The value of goods exported out of India for the purpose of refund equation in Rule 89(4) shall be lesser of:
- (i) the Free on Board (FOB) value declared in the Shipping Bill or Bill of Export form, as the case may be, as per the Shipping Bill and Bill of Export (Forms) Regulations, 2017; or (ii) the value declared in tax invoice or bill of supply. This was earlier prescribed under the Circular issued in respect of Refund."

**Novello Comments**

This was earlier set out in the Circular issued in respect of Refund. They are now being incorporated into the Rules.

- x. "Additional condition of matching the shipping bills with GSTR-1 has been incorporated for considering the shipping bills as an application for refund. Additional restriction is brought to withhold the refund, if based on data analysis and risk parameters the verification of credentials of the exporter, including the availment of ITC by the exporter, is considered essential before grant of refund, in order to safeguard the interest of revenue"
- xi. In sub-rule (5), for the words "tax payable on such inverted rated supply of goods and services", the brackets, words and letters "{tax payable on such inverted rated supply of goods and services x (Net ITC' ITC availed on inputs and input services)}" shall be substituted.
- xii. In respect of Outlets at airports - rule 95A shall be deemed to have been omitted with effect from the 1<sup>st</sup> July, 2019.
- xiii. "Changes to FORM 3B  
Additional columns are added to disclose supplies liable to reverse charge under 9(5) by E-com operator (either as supplier or as e-com operator)"
- xiv. The Table 4 of GSTR-3B has been revised to being consistency.

**Novello Comments:**

With the changes made to the GSTR-3B as well as the circular being issued clarifying how the disclosures should be made going forward, it is expected that unnecessary notices from department are bound to come down since they would be more aware of treatment of ITC done through GSTR-3B by the taxpayer as opposed to the earlier situation where multiple types of disclosures are made by different taxpayers.

- xv. Relaxations provided to earlier years in respect of Consolidated disclosure of Nil Rated/Exempted supplies, Consolidated disclosure of RCM supplies from URD and RD etc. is extended to FY 2021-22.



## **CUSTOMS, FTP AND SEZ**

### **1) Notification No. 38/2022- Customs dated 04.07.2022:**

#### **Summary:**

The exemption provided to BCD and AIDC on raw cotton provided till 30.09.2022 has been extended till 21.10.2022

#### **Novello Comments:**

This notification has brought relief to the importers of raw cotton.

### **2) Notification No. 58/2022 – Customs (N.T) dated 07.07.2022:**

#### **Summary**

The Exchange rate of INR in respect of foreign currency in respect of goods imported and exported has been revised w.e.f. 08.07.2022.

### **3) Notification No. 17/2015-2020 dated 04.07.2022:**

#### **Summary**

Relaxation provided to import of Potatoes under ITC(HS) Code 0701 9000 allowed from Bhutan without Import Licence has been extended from 30.06.2022 to 30.06.2023.

#### **Novello Comments:**

This notification has brought relief to the importers of Potatoes from Bhutan

### **4) Notification No. 18/2015-2020 dated 06.07.2022:**

#### **Summary**

Export Policy of Wheat Flour (Atta) under ITC (HS) Code 1101 has been amended with the objective of maintaining quality of wheat flours exported from India. Export of Wheat Flour (Atta) shall be subjected to recommendation of Inter-Ministerial Committee (IMC) on export of wheat from 12.06.2022. Necessary modalities relating to quality of wheat flour are to be notified separately. The provisions as under Para 1.05 of the Foreign Trade Policy, 2015-2020 regarding transitional arrangement shall not be applicable.

During the period from 6th July, 2022 till 12th July, 2022 the following consignments of wheat flour are allowed to be exported:

- i. where loading of wheat flour on the ship has commenced before this Notification; and
- ii. where wheat flour consignment has been handed over to the Customs before this Notification and is registered in their system.



**Novello Comments:**

The exporters of Wheat Flour (Atta) needs to take care to ensure that the quality of their product is maintained and the modalities relating to quality of wheat flour as notified should be adhered to ensure that their exports do not face any issues.

**5) Notification No. 19/2015-2020 dated 07.07.2022:****Summary:**

The requirement of advance registration of minimum 15 days of the expected date of arrival of import consignment under Steel Importing Monitoring System (SIMS) has been abolished.

**Novello Comments:**

This notification has brought relief to the importers of consignment under Steel Importing Monitoring System (SIMS) since they now have additional time to register their consignment.

**6) Notification No. 20/2015-2020 dated 07.07.2022:****Summary:**

ITC(HS) 2022 Schedule-1 Import Policy is amended in sync with Finance Act, 2022 with immediate effect.





## **CIRCULARS**

### **GOODS AND SERVICE TAX**

#### **1. Circular 170/02/2022-GST dated 06.07.2022**

The Table 4 of GSTR-3B has been revised to being consistency. The Table 4 of GSTR-3B has been revised and additional instructions on how disclosures should be made has been set out in the circular. The intention of the revenue being, to ensure consistency and making it easier to identify wrong availment unlike the present situation where it becomes necessary to receive the taxpayers explanation to understand whether actual wrong availment exists.

It was advised to ensure that disclosure of PoS in respect of supplies to URD is made correctly in GSTR-3B and GSTR-1

Instructions are provided in respect of disclosures in respect of ITC in Table 4 of GSTR-3B as below:

- i. 4C - 'Net ITC' should not include ineligible credits and credit that is reversed.
- ii. ITC reversed, which is absolute in nature and not reclaimable should be in 4(B)(1).
- iii. ITC reversed, which is to be reclaimed later should be in 4(B)(2).
- iv. When the ITC mentioned in 4(b)(2) is reclaimed, the same should be reclaimed through 4(a)(5). The amount should also be disclosed in 4(D)(1) of 3B.
- v. In case of reversal of ITC in respect of ITC excess availed in any earlier months, the same needs to be disclosed in 4(B)(2).

Only disclosure is to be made in respect of ITC which is not available due to:

- i. Limitation of time period u/s 16.
- ii. Where recipient of an intra-State supply is located in a different State / UT than that of place of supply.

#### **2. Circular 171/02/2022-GST dated 06.07.2022**

If tax invoices issued without making underlying supply:

- i. No Tax Liability.
- ii. Liable to Penal Action.

If tax invoices received without underlying supply and ITC on these availed and utilised

- i. Liable to ITC Recovery provisions.



ii. Liable to Penal Action

If tax invoices received without underlying supply and ITC on these availed and utilised against further tax invoices issued without underlying supplies

- i. No liability to pay tax or ITC reversal (both gets adjusted against each other).
- ii. Liable to penal action

**Novello Comments:**

The Circular clarifies the impact on tax liability and eligibility of ITC in a ecosystem where fake invoices (invoices without underlying supply is issued). This provides clarity to taxpayers on the repercussions that would arise at the hands of the parties involved in the scenario.

**3. Circular 172/02/2022-GST dated 06.07.2022**

- i. The Blocked credits under section 17(5)(b) shall be available where the same is obligatory to be provided by the employer to the employee under any law for the time being in force. There were ambiguity earlier as to whether the same was only applicable for ' travel benefits extended to employees on vacation such as leave or home travel concession' in clause (iii) or entire sub-section (b) which includes food & beverages, outdoor catering, plastic surgery, life insurance, health insurance etc.

**Novello Comments:**

This is a much needed clarity especially considering that there are multiple litigations on account of the differing interpretation.

- ii. Certain clarifications have been provided in respect of utilisation of Electronic Cash Ledger and Electronic Credit Ledger balances
- iii. It is clarified that prerequisites provided by Employer to Employee shall not be subjected to GST when the same is included in the contract.

**Novello Comments:**

This is a welcome change since this approach provides clarity to the taxpayers on such transactions. However, whether the contract mentioned in the circular would cover policies of the Employer which may have been referred to in the Employment contract *per se* is not very clear.



#### **4. Circular 173/02/2022-GST dated 06.07.2022**

Clarification on issue of claiming refund under inverted duty structure where the supplier is supplying goods under some concessional notification.

It was clarified that refund on account of inverted duty structure would not be admissible in cases where the input and output supply are same.

#### **5. Circular 174/02/2022-GST dated 06.07.2022**

The new FORM GST PMT-03A allows proper officer to re-credit the amount in the electronic credit ledger once taxpayer deposit the erroneous refund along with interest and penalty.

### **CUSTOMS, FTP AND SEZ**

#### **1) Policy Circular No. 41/2015-2020, dated 05.07.2022:**

This circular has been issued with a view to clarify the applicability of Paper Import Monitoring System (PIMS) at the time of import into SEZ/FTWZ/EOU and further import into DTA.

PIMS is required at the time of importation of goods by the unit in SEZ/FTWZ/EOU of the items covered in PIMS.

Clearance of such goods from SEZ/FTWZ/EOU to DTA will not be required if the paper, registered under PIMS, has not undergone any change in 8 digit HSN.

#### **Novello Comments:**

The circular is a welcome relief to importers of Paper, who are required to register under PIMS.



## **INSTRUCTIONS**

### **CUSTOMS, FTP AND SEZ**

#### **1) Instruction No.11/2022-Customs dated 03.07.2022:**

The DGFT by virtue of notification 14/2015-2020 dated 30.06.2020 has revised the export policy on different forms of motor gasoline, gas oil, automotive diesel fuel and high-speed diesel fuel.

The instruction intends to sensitize officers regarding the amendment in Export Policy of motor gasoline and gas oil.

#### **2) Instruction No.12/2022-Customs dated 07.07.2022:**

The Standard Operating Procedure (Version 1.0) issued by Department of Telecommunications on 29.05.2015 for 'Implementation of Central Government notification prohibiting import of mobile phones with duplicate, fake and non-genuine International Mobile Equipment Identity' has been modified due to operationalisation of Indian Counterfeited Device Restriction (ICDR) system w.e.f. 28.01.2020 with Version 1.1.

The instruction has been issued to sensitize officers regarding the aforementioned change.

#### **3) Instruction No.12/2022-Customs dated 07.07.2022:**

In respect of solar power generating units who has been operating under Manufacture and Other Operations in Warehouse (no.2) Regulations, 2019 (MOOWR 2019), it has been conveyed that since electricity exports cannot comply with the requirements of MOOWR such as one time lock. Further, it was pointed out that no exemption from conditions have been provided to these units under Regulation 20. Permissions provided to such units are to be reviewed and necessary action taken.

#### **Novello Comments**

Solar Power Generating units who has opted for MOOWR or who are considering opting for MOOWR should take note of the instruction which does not allow them to obtain MOOWR permission unless the Govt. exempts the relevant restrictions under MOOWR which cannot be satisfied by exporters of



electricity. Such units already having a MOOWR licence should brace for the cash flow that is likely to arise on account of this.

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## **SUPREME COURT AND HIGH COURT JUDGEMENTS**

### **GOODS AND SERVICE TAX**

#### **HIGH COURT:**

#### **1) PEETEE COACH BUILDERS PVT LTD Vs UNION OF INDIA**

(HIGH COURT OF MADRAS)

#### **Issue:**

The petitioner has challenged the impugned show cause notice on the ground that the impugned notice is contrary to the circular No.52/26/2018-GST, dated 09.08.2018 of the Government of India, Ministry of Finance (Department of Revenue), Central Board of Indirect Taxes and Customs, New Delhi.

#### **Facts**

- The petitioner is engaged in job work service and merely carries on the bodybuilding on the chassis and therefore, the petitioner is not liable to pay tax at proportionate rate of 28% as has been proposed in the impugned show cause notice. The impugned show cause notice being contrary to the above circular is thus without jurisdiction and is therefore liable to be quashed.

#### **HC Observations**

- The impugned show cause notice, which has been issued by the 4th respondent under Sections 73 and 74 of the GST Act, 2017 cannot be said to be without jurisdiction merely because on merits there is a clarification of CBIC Circular No.52/26/2018-GST dated 09.08.2018. This circular is binding on the authorities as per the decision of the Hon'ble Supreme Court in the case of Collector of Central Excise, Vadodra Vs Dhiren Chemical Industries reported in (2002) 2 Supreme Court Cases 127 = 2002-TIOL-83-SC-CX-CB. These circulars are however not binding on the Courts as per the decision of the Hon'ble Supreme Court in the case of Commissioner of Central Excise, Bolpur Vs. Ratan Melting and Wire Industries reported in (2008) 13 SCC 1 = 2008-TIOL-194-SC-CX-CB.



## HC Judgement

- Disposed of this writ petition by directing the petitioner to file a reply before The Commissioner of GST & Central Excise to the impugned show cause notice within a period of 60 days from the date of receipt of a copy of this order. The Commissioner of GST & Central Excise shall pass an order independently within a period of 30 days thereafter, after considering the applicability of clarification in Circular No. 52/26/2018-GST, dated 09.08.2018 of the Government of India, Ministry of Finance (Department of Revenue), Central Board of Indirect Taxes and Customs, New Delhi to the facts of the case. It is needless to state that before passing such orders, the petitioner shall also be heard.



## **ERSTWHILE TAXES**

### **HIGH COURT:**

#### **1) M/s BELLATRIX CONSULTANCY Vs THE COMMISSIONER OF CENTRAL TAX**

##### **Issue:**

Appellant had entered into an agreement with a Professional Lien Search LLC, a Company based in the United States of America (USA) and providing support services to real estate property buyers in the USA - Appellant's activity is to verify the information on various types of issues related to the property proposed to be purchased by the prospective purchasers such as Property Tax information, Building Permits, unpaid bills for utilities, Property maintenance, etc.- Appellant had obtained service tax registration and was paying service tax regularly- Later, the appellant assessee learnt that it was not liable to pay service tax on export of services, in terms of Chapter-V of Finance Act, 1994 and, therefore, filed a refund claim - Assistant Commissioner allowed refund of part of the amount and rejected the claim for remaining amount on the ground that it was beyond the period of limitation of one year- Tribunal upheld this order, therefore, the present appeal on the ground that when the appellant was not liable to pay tax at all, the rejection of part of the claim is untenable.

##### **HC Judgement**

- In view of the admitted fact that the services rendered by the assessee satisfy all conditions of Rule 6A of the Service Tax Rules, 1994 and the services provided by it are export services, it is entitled for refund of the tax - In view of authority in the case of Shiv Shanker Dal Mills [ AIR 1980 SC 1037 ], the refund cannot be denied on the ground of limitation - Revenue shall refund the amount with interest as per Section 11B of the Central Excise Act, 1944.

