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EDITORIAL

**Friends,**

The GST Council, which comprises the Union finance minister and her state counterparts, in its 45th meeting, decided on Friday to continue keeping petrol and diesel out of the GST purview as subsuming the current excise duty and VAT into one national rate would impact revenues. The GST Council decided that food aggregator apps, such as Swiggy and Zomato which will be collecting the tax at the final point of delivery, will pay the GST on restaurant services. Here are the latest updates from the GST Council meeting yesterday:

- Interest is to be paid by a taxpayer on “ineligible ITC availed and utilized” @18% w.e.f. 01-07-2017 and not on “ineligible ITC availed”.
- Unutilized balance in CGST and IGST cash ledger may be allowed to be transferred between distinct persons (entities having same PAN but registered in different states), without going through the refund procedure, subject to certain safeguards.
- A company incorporated in India and a person incorporated under the laws of any other country are to be treated as separate legal entities and supply of service among the same will be considered export of services;
- W.e.f. 01.01.2021, the date of issuance of debit note (and not the date of underlying invoice) shall determine the relevant financial year for the purpose of section 16(4) of CGST Act, 2017;
- There is no need to carry the physical copy of tax invoice in cases where E-invoice has been generated by the supplier.

- Only those goods which are actually subjected to export duty will be covered under the restriction imposed under section 54(3) of CGST Act, 2017 from availment of refund of accumulated ITC.
- Aadhaar authentication of registration to be made mandatory for being eligible for filing refund claim and application for revocation of cancellation of registration.
- Late fee for delayed filing of FORM GSTR-1 to be auto-populated and collected in next open return in FORM GSTR-3B.
- Refund to be disbursed in the bank account, which is linked with same PAN on which registration has been obtained under GST.
- A registered person shall not be allowed to furnish FORM GSTR-1, if he has not furnished the return in FORM GSTR-3B for the preceding month.
- Taxpayers whose annual aggregate turnover in preceding financial year is above ₹ 5 crores shall furnish ITC-04 once in six months and others need to file ITC 04 annually.
- Validity of GST exemption on transport of goods by vessel and air from India to outside India is extended upto 30.9.2022.
- Services by way of grant of National Permit to goods carriages on payment of fee is exempted.
- Skill Training for which Government bears 75% or more of the expenditure is now exempted.
- E Commerce Operators are being made liable to pay tax on the services provided through them in the nature of transport of passengers or restaurant services.
- Coaching services to students provided by coaching institutions and NGOs under the central sector scheme of ‘Scholarships for students with Disabilities’ is exempt from GST.
- Services by cloud kitchens/central kitchens are covered under ‘restaurant service’, and attract 5% GST [without ITC].
- Ice cream parlor sells already manufactured ice-cream is liable to GST@18%.

EDITORIAL

- Overloading charges at toll plaza are exempt from GST being akin to toll.
- The renting of vehicle by State Transport Undertakings and Local Authorities is covered by expression 'giving on hire' for the purposes of GST exemption.
- The services by way of grant of mineral exploration and mining rights attracted GST rate of 18% w.e.f.01.07.2017.
- Admission to amusement parks having rides etc. attracts GST rate of 18%.
- Alcoholic liquor for human consumption is not food and food products for the purpose of the entry prescribing 5% GST rate on job work services in relation to food and food products.
- Extension of existing concessional GST rates on certain COVID-19 treatment drugs upto 31st December 2021.
- GST rates on 7 other medicines recommended by Department of Pharmaceuticals reduced from 12% to 5% till 31st December 2021.
- GST rate on Keytruda medicine for treatment of cancer reduced from 12% to 5%.
- Supply of mentha oil from unregistered person has been brought under reverse charge. Exports of Mentha oil should be allowed only against LUT and consequential refund of input tax credit.
- Brick kilns would be brought under special composition scheme with threshold limit of ₹ 20 lakhs, w.e.f. 1.4.2022. Bricks would attract GST at the rate of 6% without ITC under the scheme. GST rate of 12% with ITC would otherwise apply to bricks.
- GST rate changes in order to correct inverted duty structure, in footwear and textiles sector will be implemented with effect from 01.01.2022.
- In terms of the recent directions of the Hon'ble High Court of Kerala, the issue of whether specified petroleum products should be brought within the ambit of GST was placed for consideration before the Council. After due deliberation, the Council was of the view that it is not appropriate to do so at this stage.

- Clarification has been issued in relation to GST rate on other specified Goods and services.
- External batteries sold along with UPS Systems/ Inverter attract GST rate applicable to batteries [28% for batteries other than lithium-ion battery] while UPS/inverter would attract 18%.
- GST on specified Renewable Energy Projects can be paid in terms of the 70:30 ratio for goods and services, respectively, during the period from 1.7.2017 to 31.12.2018, in the same manner as has been prescribed for the period on or after 1st January 2019.
- A uniform GST rate of 18% would apply to all paper and paperboard containers, whether corrugated or non-corrugated.
- Distinction between fresh and dried fruits and nuts is being clarified for application of GST rate of "nil" and 5%/12% respectively;
- Pharmaceutical goods falling under heading 3006 attract GST at the rate of 12% [not 18%].
- Essentiality certificate issued by Directorate General of Hydrocarbons on imports would suffice; no need for taking a certificate every time on inter-state stock transfer.

We do hope that this bulletin adds value to your professional sphere.

Just to reiterate that we remain available over telecom or e-mail.

Truly Yours

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TAX CALENDAR

Due date	Form/Return/ Challan	Reportin g Period	Description
20 th September 2021	GSTR-5A	August 2021	OIDAR - Details of supplies of online information and database access or retrieval services by a person located outside India made to non-taxable persons in India
20 th September 2021	GSTR-5	August 2021	Return by non-resident taxable person
20 th September 2021	GSTR 3B	August 2021	The due date for GSTR-3B having an Annual Turnover of more than 5 Crores

INCOME TAX

CIRCULAR

CBDT EXTENDS TIME LIMITS FOR TAX/TP AUDIT/ITR FILING – AY 2021-22

OUR COMMENTS: The Finance Ministry vide Circular no. 17/2021 dated 09 September, 2021 announced extensions to the deadline for the filing of the Income-tax Returns, as well as some other allied compliances for the Assessment Year 2021-22:

Particulars	Original Due Date	Extended to vide earlier Circular no.9/2021	Now Extended to vide Latest Circular no. 17/2021
Furnishing of the Return of Income u/s 139(1) of the Act	31 July 2021	30 September 2021	31 December 2021
Furnishing of the Tax Audit report u/s 44AB of the Act	30 September 2021	31 October 2021	15 January 2022
Furnishing of the Transfer Pricing Report in Form No. 3CEB u/s 92E of the Act	31 October 2021	30 November 2021	31 January 2022
Furnishing of the Return of Income u/s 139(1) of the Act – For Taxpayers to whom tax audit u/s 44AB is applicable	31 October 2021	30 November 2021	15 February 2022
Furnishing of the Return of Income u/s 139(1) of the Act –	30 November 2021	31 December 2021	28 February 2022

For Taxpayers to whom Transfer Pricing Report u/s Section 92E applies			
Furnishing of the Belated or Revised return of income u/s 139(4) and (5) of the Act	1 December 2021	31 January 2022	31 March 2022
Furnishing of the information and document relating to the Master File in Form No. 3CEAA u/s 92D(4) r.w. Rule 10DA(2) of the Rules	30 November 2021	31 December 2021	28 February 2022
Furnishing of the Intimation to the Master File in Form No. 3CEAB under u/s 92D(4) r.w. Rule 10DA(4) of the Rules	31 October 2021	1 December 2021	28 January 2022

Notes:

- Interest u/s 234A would be applicable without the benefit of the extended due dates, if the net tax liability exceeds INR One Lakh.
- However, the provisions of Section 234A as mentioned in Note no. 1 would not be applicable for resident individuals aged 60 years or more with no chargeable income under the head of **Profits and Gains of Business or Profession**.

[For further details please refer the Notification]

GST

CASELAW

REFUND FOR UNUTILISED INPUT TAX CREDIT CAN'T BE CLAIMED ON ACCOUNT OF INPUT SERVICES: SUPREME COURT UPHOLDS VALIDITY OF SECTION 54(3) CGST ACT

OUR COMMENTS: The Supreme Court on Monday upheld the validity of a rule of the Central Goods and Service Tax, which prescribes a formula excluding the refund of unutilised input tax paid on input services as part of input tax credit (ITC).

The Supreme Court held that Section 54(3) of the Central Goods and Services Act excludes unutilized input tax credit that accumulated on account of input services. When there is neither a constitutional guarantee nor a statutory entitlement to refund, the submission that goods and services must necessarily be treated at par on a matter of a refund of unutilized ITC cannot be accepted, the court observed while rejecting the challenge against Section 54(3) on the ground that it violates equality doctrine under Article 14 of the Constitution.

The apex court Bench led, by Justice D.Y. Chandrachud, passed the judgment in the face of two contradicting judgments of Gujarat and Madras High Courts on the validity of Rule 89(5) of the Central Goods and Service Tax Rules, 2017.

Rule 89(5) provides a formula for the refund of ITC, in “a case of refund on account of inverted duty structure”.

The Gujarat High Court, in its judgment in the VKC Footsteps case, had held that by prescribing a formula in sub-Rule (5) of Rule 89 of the CGST Rules to execute refund of unutilised ITC accumulated on account of input services, the delegate of the legislature had acted contrary to the provisions of sub-Section (3) of Section 54 of the CGST Act which provides for a claim of refund of any unutilised ITC.

Section 54 embodies a provision for refund of unutilised input tax credit² in cases involving zero rated supplies made without payment of tax and credit accumulation “on account of rate of tax on inputs being higher than rate of tax on output supplies”.

The Madras High Court, while delivering its judgment in Tvl. Transtonnelstory Afcons Joint Venture case declined to follow the view of the Gujarat High Court. It noted that the proviso to Section 54(3) and, more significantly, its implications do not appear to have been taken into consideration in VKC Footsteps case except for a brief reference.

“Section 54(3)(ii) does not infringe Article 14 (right to equality). Refund is a statutory right and the extension of the benefit of refund only to the unutilised credit that accumulates on account of the rate of tax on input goods being higher than the rate of tax on output supplies by excluding unutilised input tax credit that accumulated on account of input services is a valid classification and a valid exercise of legislative power,” the Madras High Court had noted.

However, the Bench said though the formula suffers from “inequities”, it did not deserve to be struck down.

“We strongly urge the GST Council to reconsider the formula and take a policy decision regarding the same,” the court said.

[For further details please refer the Case Law]

FEMA

NOTIFICATION

FOREIGN EXCHANGE MANAGEMENT (EXPORT OF GOODS AND SERVICES) (AMENDMENT) REGULATIONS, 2021.

OUR COMMENTS: The Foreign Exchange Management Act, 1999 (42 of 1999), the Reserve Bank of India makes the following amendments in the Foreign Exchange Management (Export of Goods and Services) Regulations, 2015 [Notification No. FEMA 23(R)/2015- RB dated January 12, 2016] (hereinafter referred to as 'the Principal Regulations'), namely:

1. Short title and commencement: -

i. These Regulations may be called the Foreign Exchange Management (Export of Goods and Services) (Amendment) Regulations, 2021.

ii. They shall come into force from the date of their publication in the Official Gazette.

2. In the Principal Regulations, in Regulation 15, in sub-regulation 1, for clause (ii), the following shall be substituted, namely: -

“ii) the rate of interest, if any, payable on the advance payment shall not exceed 100 basis points above the London Inter-Bank Offered Rate (LIBOR) or other applicable benchmark as may be directed by the Reserve Bank, as the case may be; and”.

[For further details please refer the Notification]

DISCUSSION

IMPORTANCE OF FC-GPR (FC-GPR (FOREIGN CURRENCY-GROSS PROVISIONAL RETURN) FILING

OUR COMMENTS: The Reserve Bank has recently introduced an online application i.e., FIRMS (Foreign Investment Reporting and Management System), which provides the reporting of 9 forms for foreign investment including FC-GPR, FC-TRS, LLP-I, LLP-II, CN, DRR, ESOP, DI and InVi in single form i.e., SMF (Single Master Form). The same can be accessed on FIRMS website i.e. <https://firms.rbi.org.in>.

In this article, we shall study about the basic provisions, filing procedure and frequently asked questions (FAQs) relating to FC-GPR.

REASON FOR FILING -FORM FC-GPR

In Form FC-GPR, the transaction being reported is for issue of capital instruments by an Indian Company to a person resident outside India i.e., allotment of Equity shares/Compulsorily Convertible Preference Shares/Compulsorily Convertible Debentures, whether at the time of incorporation or post incorporation of the Company.

APPLICABLE PROVISIONS

The Foreign Investment is subject to Consolidated FDI Policy (relating to sectoral caps and whether entry is through automatic or approval route, pricing guidelines etc.) and;

The securities issued are in accordance with the provisions of Foreign Exchange Management Act, 1999, Companies Act, 2013 and SEBI Regulations and other applicable laws and rules made thereunder.

FDI PROCESS AND DOCUMENTS

Transmission of Moneym By inward remittance through normal banking channels; or By debit to NRE/FCNR account of the person concerned maintained with an authorized dealer.

Preliminary documents required with FDI transactions: –

FIRC copies and KYC report issued by the Authorized dealer bank of the non-resident investor.

In case, if amount is received from NRE account, then instead of FIRC, the Bank shall issue NRE Letter.

DUE DATE FOR FILING

The transaction should be reported by the Investee Company issuing its securities to the non-resident investor within 30 days from the date of allotment.

CUSTOMS

NOTIFICATION

REDUCE AND RATIONALISE THE IMPORT DUTIES ON
PALM, SUNFLOWER AND SOYA-BEAN OILS

OUR COMMENTS: The Central Government vide Notification No - 42/2021 dated 10.9.2021 hereby amends the following notifications no. 50/2021-customs dated 30.06.2017 and notification no. dated 11/2021 dated 01.02.2021 as specified in column (2) of the Table below, to the extent specified in the corresponding entries in column (3) of the said Table, namely:-

Table

S. No.	Notification No. and Date	Notification No. and Date
(1)	(2)	(3)
1.	50/2017-Customs, dated the 30th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 785(E), dated the 30th June, 2017	In the said notification, in the Table- (i) against S. No. 57, in column (4), for the entry, the entry "2.5%" shall be substituted; (ii) against S. No. 61, in column (4), for the entry, the entry "2.5%" shall be substituted; (iii) against S. No. 62, in column (4), for the entry, the entry "32.5%" shall be substituted; (iv) against S. No. 65, in column (4), for the entry, the entry "32.5%" shall be substituted;

		(v) against S. No. 70, in column (4), for the entry, the entry "2.5%" shall be substituted; (vi) against S. No. 71, in column (4), for the entry, the entry "32.5%" shall be substituted;
2.	11/2021-Customs, dated the 1st February, 2021, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 69(E), dated the 1st February, 2021	In the said notification, in the Table- (i) against S. No. 7, in column (3), for the entry, the entry "Crude Palm Oil" shall be substituted; (ii) against S. No. 7, in column (4), for the entry, the entry "20%" shall be substituted;

2. This notification shall come into effect on the 11th September, 2021.

[For further details please refer the Notification]

DGFT

NOTIFICATION

**CLARIFICATION ON LAST DATE OF IMPORT IN
CONTINUATION OF NOTIFICATION NO. 20/2015-20
DATED 24.08.2021.**

OUR COMMENTS: Central Government issued Clarification on last date of import in continuation of Notification No. 20/2015-20 dated 24.08.2021 - 25/2015-2020 - Foreign Trade Policy

Government amends the provision in Para 3 of Notification No. 20/2015-20 dated 24.08.2021 as under:-

The last date of import, 31.10.2021, as mentioned in Para 3 of Notification number 20 dated 24.8.2021, is amended to read as " Last date of shipment or Bill of Lading date (in case of permitted seaports) or Lorry Receipt date (in case of LCS Petrapole)" shall be 31.10.2021 or until further orders, whichever is earlier. Further, import consignments of these items with Bill of Lading/Lorry Receipt issued on or before 31st October, 2021 shall not be allowed by Customs beyond 31st January 2022.

Effect of the Notification: For imports under Notification 20/2015-20 dated 24.08.2021, the last date of shipment or date of issuance of the Bill of Lading or Lorry Receipt date is 31.10.2021. Import consignments of these items with Bill of Lading/Lorry Receipt issued on or before 31st October, 2021 shall not be allowed by Customs beyond 31st January 2022.

[For further details please refer the Notification]

NOTIFICATION

EXTENSION OF IMPORT POLICY PROVISION - S.O. 3707(E)

OUR COMMENTS: The Central Government hereby amends Department of Commerce Notification S.O. 1858(E) dated 15.05.2021 as under:

The 'Free' Import Policy of *Tur/Pigeon Peas (Cajanus Cajan)* (ITC(HS) 0713 60 00) and *Urad [Beans of the SPP Vigna Mungo (L.) Hepper]* (ITC(HS) 0713 3110) as was notified under Notification S.O. 1858(E) dated 15.05.2021 shall stand extended up to 31.12.2021

2. For import of the above-mentioned two items, Bill of Lading should be issued on or before 31st December, 2021 and import of such consignment shall need to be cleared from Customs on or before 31st January 2022.

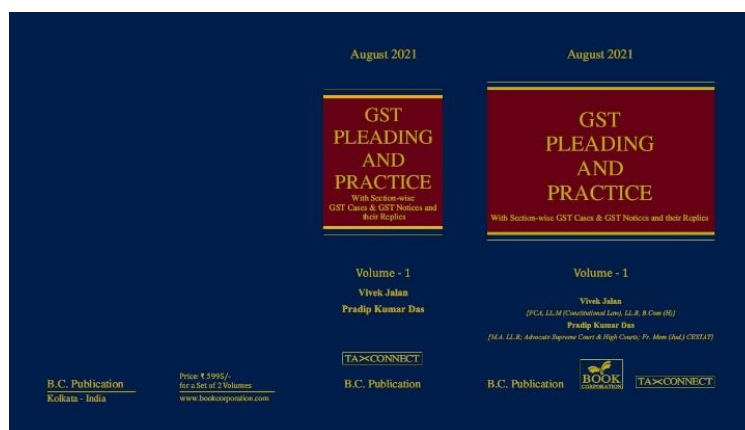
Effect of the Notification: "Free" Import policy for Tur /Pigeon Peas (*Cajanus Cajan*); and Urad [Beans of the SPP Vigna Mungo (L.) Hepper] is extended for the period up to 31st December 2021. Further, import consignments of these items with Bill of Lading issued on or before 31st December, 2021 shall not be allowed by Customs beyond 31st January 2022.

This issues with the approval of Minister of Commerce & Industry.

[For further details please refer the Notification]

:IN STANDS

GST PLEADING AND PRACTICE: With Section-wise GST Cases & GST Notices and their Replies



ABOUT THE BOOK: This publication includes:

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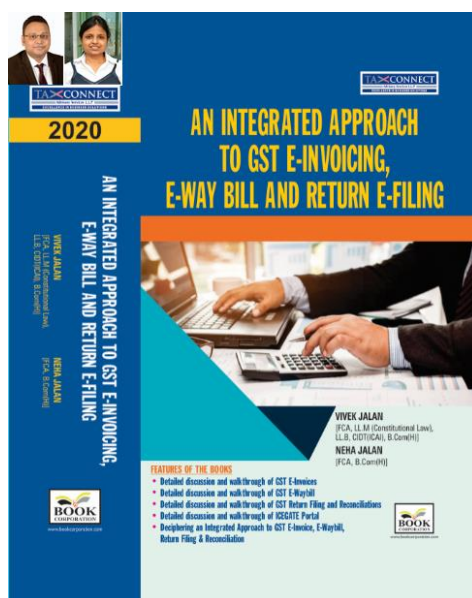
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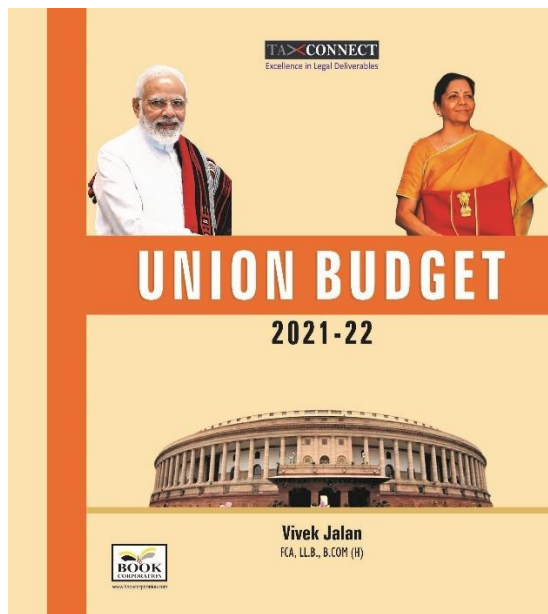
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 - d. GST**
- 5. Finance Bill**
- 6. Notes on Clauses**

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