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EDITORIAL

G



Friends,

The GST department has started issuing notices to taxpayers (i.e. recipient) seeking reconciliation of the credit availed by them and demanding tax (either in cash or by way of reversal of credit) if the said credit pertains to GST which was not paid by the supplier to the government. With no options available, in order to avoid penal consequences, due to the default of the supplier, the buyers have knocked the doors of the Courts with high hopes, and they haven't been disappointed. The Madras High Court, in a recent case held that if the seller has collected tax from the buyer and not paid to the kitty of the Government, then the tax department should take strict action against the seller. The court didn't appreciate the Department's action, where the recovery proceedings were initiated against the buyer and no action was taken against the seller. Protecting the innocent buyer, the High Court remanded the matter for fresh inquiry directing the tax department to initiate recovery proceedings against the seller.

In another matter, the tax department issued a recovery notice against a company denying credit on the grounds that credit availed in Form GSTR-3B did not match with the details furnished by suppliers in Form GSTR-2A – such mismatch occurred as seller may not have filed his tax returns on time. Left with no other option, the buyer challenged the recovery action before the Chhattisgarh

High Court and as expected, the High Court protected the innocent by staying the recovery action and seeking reply from the department on the said matter.

In one of the case, The High Court of Karnataka held that the “bonafide purchaser cannot be put at jeopardy, when he has done all that the law expects him to comply”. Though the above ruling of Karnataka High Court relates to erstwhile VAT regime, it is important to note that the buyers were facing hardships even under the erstwhile era, where they were penalised for the fault of the supplier. Ruling similar to the above was pronounced by the Delhi High Court, wherein it was held that in the event of the selling dealer failing to deposit the tax collected by him from the buyer, the Department should proceed to take action against the defaulting seller to recover such tax and not penalise the buyer by denying him the credit.

This is one of the major area that requires immediate attention of government is to build an ecosystem for seamless flow of the input tax credit and to sort out various challenges faced by the taxpayers related to the same.

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	Reporting Period	Description
15 th November 2021	Form No. 16A	JUNE- DECEMBER 2021	Quarterly TDS certificate (in respect of tax deducted for payments other than salary) for the quarter ending September 30, 2021.
20 th November 2021	GSTR-5	OCTOBER 2021	Return by non-resident taxable person
20 th November 2021	GSTR-5A	OCTOBER 2021	Details of supplies of online information and database access or retrieval (OIDAR) services by a person located outside India made to non-taxable persons in India
20 th November 2021	GSTR-3B	OCTOBER 2021	For Taxpayer with Annual Turnover More than Rs 5 crore & For Taxpayer who is not opted for QRMP Scheme having Turnover up to 5 crores.

INCOME TAX

NOTIFICATION

CENTRAL GOVERNMENT NOTIFIED 'ASSAM BUILDING AND OTHER CONSTRUCTION WORKERS WELFARE BOARD' IN RESPECT OF THE SPECIFIED INCOME ARISING TO THAT BOARD U/S 10(46) OF IT ACT 1961.

OUR COMMENTS: The Central Government vide Notification No. 131/2021, dated 10.11.2021, notified for the purposes of the said clause, 'Assam Building and Other Construction Workers Welfare Board' (PAN AAAJA2255M), a Board constituted by the State Government of Assam, in respect of the following specified income arising to that Board, namely:-

- (a) Labour cess received;
- (b) Beneficiaries registration fees;
- (c) Members contribution;
- (d) Capital gain on sale/redemption of investments;
and
- (e) Interest income earned on (a) to (b) above.

2. This notification shall be effective subject to the conditions that Assam Building and Other Construction Workers Welfare Board, -

- (a) shall not engage in any commercial activity;
- (b) activities and the nature of the specified income shall remain unchanged throughout the financial years; and
- (c) shall file return of income in accordance with the provision of clause (g) of sub-section (4C) of section 139 of the Income-tax Act, 1961.

3. This notification shall apply with respect to the financial years 2021-2022 to 2025-2026.

[For further details please refer the notification]

GST

CASELAW

SEPARATE GST REGISTRATION NEED NOT BE OBTAINED AT THE PLACE OF IMPORTATION

BRIEF: Recently, an applicant sought Advance Ruling on whether Tax Invoice from Registered Place of Business in Karnataka can be raised for sale of imported goods directly from Chennai Customs Sea Port or a separate registration is to be obtained at the place of importation.

In the matter, the Applicant is engaged in importing and trading of imported goods. Applicant clears the said goods from Sea Port and wishes to supply the same to various States directly from the Customs Sea Port. Applicant sought Advance Ruling on whether Tax Invoice from Registered Place of Business in Karnataka can be raised for sale of imported goods directly from Chennai Customs Sea Port or a separate registration is to be obtained at the place of importation.

As per the provisions of place of supply of goods under section 11(a) of IGST Act, the place of supply of goods imported into India shall be the location of the importer - In case of the applicant, location of the importer is the State of Karnataka where the applicant has obtained the GST registration.

Therefore, the applicant though imports the goods to the port of Chennai, imported goods are deemed to have been supplied to the location of the importer i.e., Karnataka and then further supplied to customer - imported goods supplied directly from the port of import to the customer located in other States or UTs other than State of Karnataka shall be treated as a supply of goods in the course of inter-State trade or commerce in terms of section 7(1) of the IGST Act and

applicant is liable to issue IGST tax invoice in terms of section 20 of the IGST Act read with section 31 of the CGST Act - if the applicant supplies the goods to customers within the State of Karnataka, such transaction shall be treated as intra-State supply in terms of section 8(1) of the IGST Act and liable to issue the CGST and SGST tax invoice as per section 31 of the CGST Act.

Hence, the Advance Ruling Authority (AAR) held that the applicant is not required to take any separate registration at the place of importation. Further, in case of issuance of e-way bill, the applicant can mention the GSTIN of Karnataka and the place of dispatch as Chennai Sea port.

FEMA

DISCUSSION

THINGS FOREIGN ENTITY CAN DO TO ENTER INDIAN MARKET

OUR COMMENTS: A foreign individual or a corporate entity is eligible to invest and start a business in India when they are in accordance with the Foreign Direct Investment policy. There are two ways through which a foreign individual or an entity can invest in India one is Automatic Route other is Government Route.

Liaison office in India:

The term 'liaison' means communication and co-operation. The liaison office is the office that is used for communication with head office of the company. It is commonly referred as the representative office of the company but it cannot undertake any trading, commercial or industrial activity, it also keeps itself all sorts of inward remittances.

The foreign entity needs to have good profit making track record in the home country and should also have a minimum net worth of \$ 50,000.

Permitted Activities:

- Importing / Exporting from/ to India.
- Acting as a channel of communication between parent and Indian companies.
- Promoting / representing the parent company in India.
- Promoting technical and financial collaboration between parent/group of companies and Indian Companies.

Approval validity:

The permission to set up such office is granted by the Reserve Bank of India initially for a period of 3 years. The extension of this approval is also done on expiry by the RBI if the applicant fulfills the criteria of conditions.

Branch Office in India:

Companies which are incorporated outside India and are involved in manufacturing and trading activities are allowed to establish Branch office in India with special permission of the RBI. The branch office should be concerned in doing the same activities in which the parent company is involved.

Eligibility:

A good profit-making track record of immediate preceding five financial years and a net worth of at least \$100,000.

Permitted Activities

- Rendering professional and consultancy services.
- Import and Export of Goods.
- Carrying out research work only in the activities in which the parent company is involved.
- Foreign airline and shipping.
- Representing the parent company and acting as an agent in business.
- Rendering services in information technology and software development in India.

Restrictions

Any sort of retail trading activities are not allowed for branch offices in India. Branch offices are also not allowed to carry out manufacturing or processing activities both directly or indirectly. The profit earned from the branch office is easily remittable from India.

Note: The branch of foreign banks does not require any separate approval under FEMA, but it requires special approval under the Banking Resolution Act, 1949 from the Department of Banking Resolution.

CUSTOMS

NOTIFICATION

RATE OF EXCHANGE OF FOREIGN CURRENCY EQUIVALENT TO INDIAN RUPEES

OUR COMMENTS: The Central Board of Indirect Taxes and Customs vide notification 90/2021 dated 3.11.2021 hereby determines that the rate of exchange of conversion of each of the foreign currencies specified in column (2) of each of Schedule I and Schedule II annexed hereto, into Indian currency or vice versa, shall, with effect from 4th November, 2021, be the rate mentioned against it in the corresponding entry in column (3) thereof, for the purpose of the said section, relating to imported and export goods.

SCHEDULE-I

Sl. No.	Foreign Currency	Rate of exchange of one unit of foreign currency equivalent to Indian rupees	
(1)	(2)	(3)	
		(a)	(b)
		For Imported Goods	For Exported Goods
1.	Australian Dollar	56.80	54.40
2.	Bahraini Dinar	204.55	192.00
3.	Canadian Dollar	61.25	59.05
4.	Chinese Yuan	11.85	11.50
5.	Danish Kroner	11.85	11.40
6.	EURO	88.10	84.95
7.	Hong Kong Dollar	9.75	9.40
8.	Kuwaiti Dinar	255.85	239.60
9.	New Zealand Dollar	54.55	52.20
10.	Norwegian Kroner	8.90	8.60
11.	Pound Sterling	103.60	100.10
12.	Qatari Riyal	21.20	19.90
13.	Saudi Arabian Riyal	20.55	19.30
14.	Singapore Dollar	56.35	54.45

15.	South African Rand	5.00	4.70
16.	Swedish Kroner	8.85	8.55
17.	Swiss Franc	83.40	80.15
18.	Turkish Lira	8.00	7.55
19.	UAE Dirham	21.00	19.70
20.	US Dollar	75.55	73.85

SCHEDULE-II

Sl. No.	Foreign Currency	Rate of exchange of one unit of foreign currency equivalent to Indian rupees	
(1)	(2)	(3)	
		(a)	(b)
		For Imported Goods	For Exported Goods
1.	Japanese Yen	66.85	64.45
2.	Korean Won	6.55	6.15

[For further details please refer the Notification]

DGFT

NOTIFICATION

AMENDMENT IN PARA 4.42(3) OF FOREIGN TRADE POLICY 2015-20.

OUR COMMENTS: The Foreign Trade Policy, 2015-20, as amended from time to time, the Central Government hereby makes following amendments in Foreign Trade Policy 2015-20 vide Notification No. 42/2015-2020 dated 08 November 2021.

The current Para 4.42(3) of the Foreign Trade Policy reads as under:

(3) International Institute of Diamond Grading & Research India Pvt. Ltd., Surat, Gujarat, India.

The amended Para 4.42(3) of the Foreign Trade Policy is as under:

(3) De Beers India Private Ltd, Surat, Gujarat, India.

Effect of the Notification: Para 4.42(3) of FTP 2015-20 stands amended to modify the name of the agency permitted to import diamonds to its laboratory for the purpose of certification/grading & re-exports.

[For further details please refer the Notification]

NOTIFICATION

AMENDMENT IN EXPORT POLICY OF ANIMAL BY-PRODUCTS

OUR COMMENTS: The Central Government hereby makes the following amendment vide Notification No. 41/2015-2020 dated 08 November, 2021 in Notification No. 34/2015-20 dated 13.01.2017 for amending the Export Policy of Animal By-Products for the item description at Serial Number 173 of Chapter 35 of Schedule 2 of ITC (HS) Classification of Export & Import Items, with immediate effect:

The existing 'item description against Serial Number 173 in Chapter 35 shall be amended as follows:

Sl. No.	Tariff Item HS Code	Unit	Existing Item description	Revised item description
173	35040010	Kg	Peptones; Others	Peptones including Collagen Peptides of marine or bovine or Poultry origin (also referred to as Collagen, Collagen Hydrolysate, Hydrolysed Collagen or Hydrolysed Gelatin) and Fish Protein.

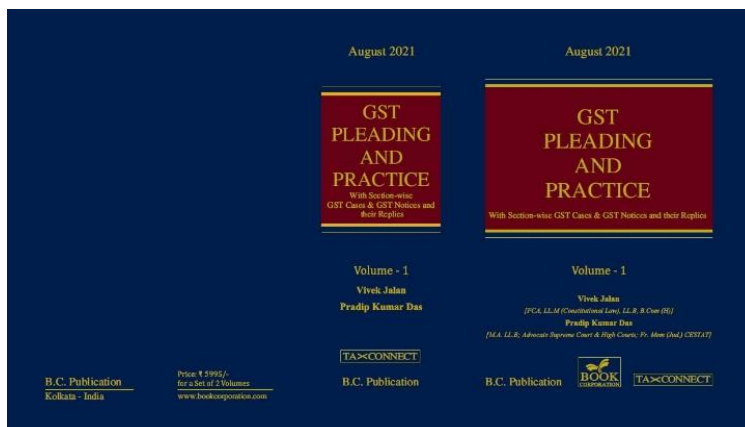
3. Effect of this Notification:

Item description of ITC HS Code 35040010 at Serial No. 173 in the Notification No. 34/2015-20 dated 13.01.2017 has been amended to include Collagen Peptides of marine or bovine or Poultry origin.

[For further details please refer the Notification]

:IN STANDS

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



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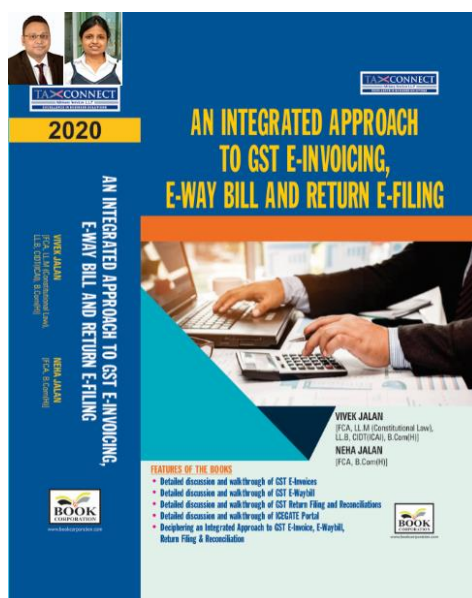
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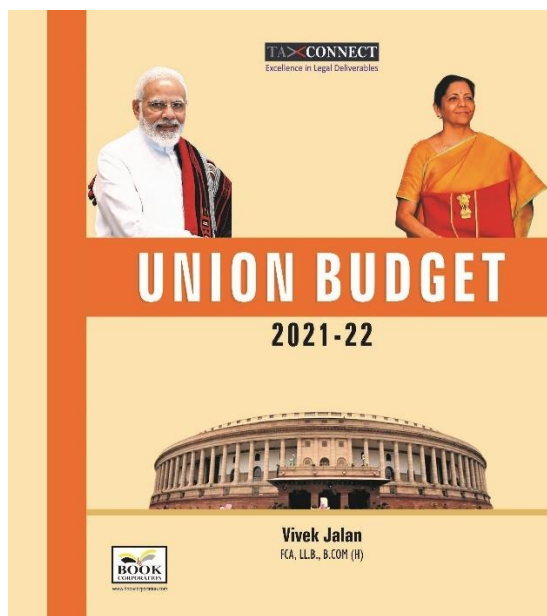
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