TAX amicus

February 2023 / Issue – 140

An e-newsletter from
Lakshmikumaran & Sridharan, India

Lakshmikumaran & Sridharan attorneys

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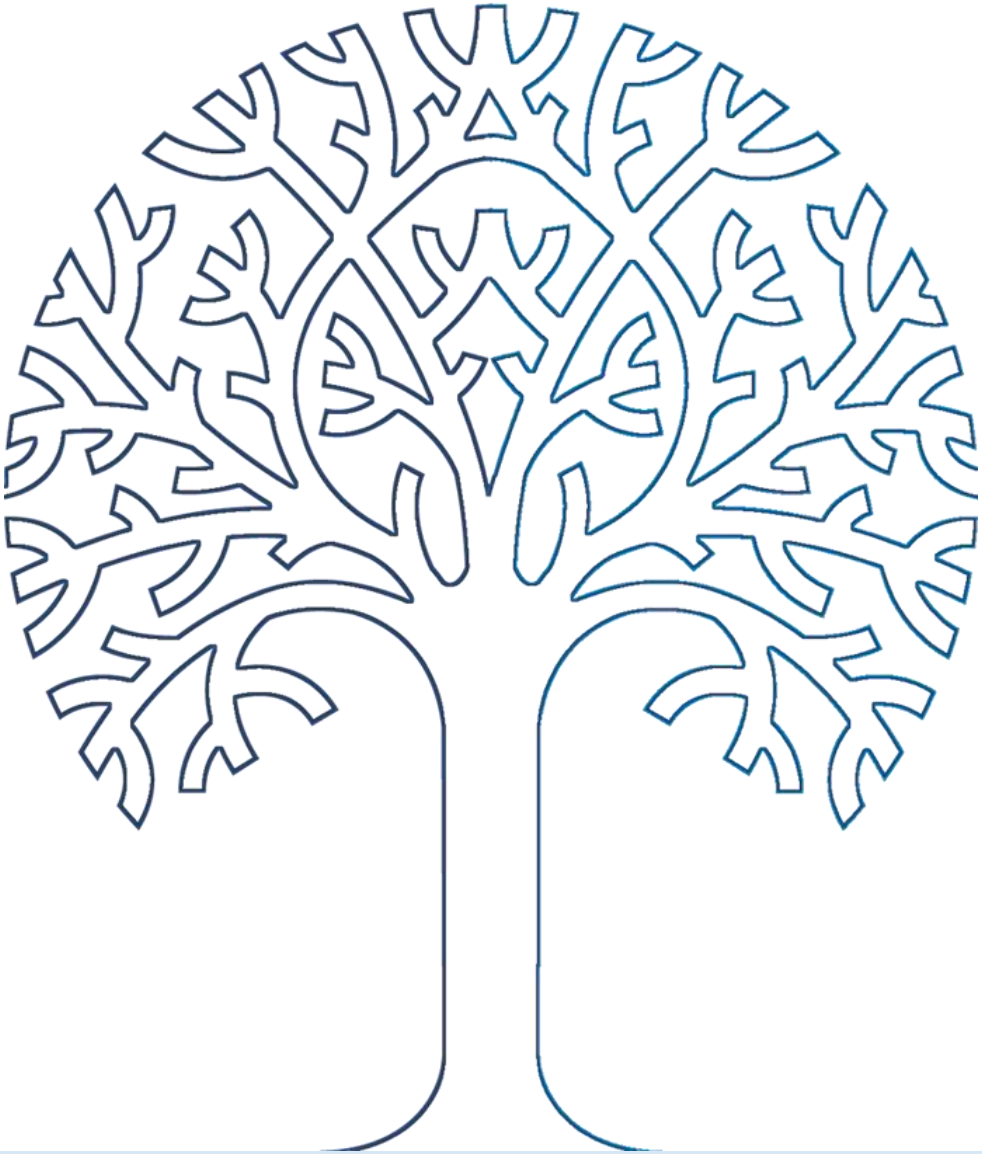

Article

Classification of indigenous 'Rab' prepared from sugar cane: The final decision

By Brijesh Kothary, Rohan Karia and Shradha Pandey

The issue of classification of the product 'Rab' (semi-solid sugarcane juice) and applicable rate of tax on its supply has been a subject matter of dispute for a long time. The article in this issue of Tax Amicus intends to highlight the divergent practices followed by the industry and analyse if the CBIC Circular No. 189/01/2023-GST, dated 13 January 2023 has resolved the issue in entirety. Elaborately analysing the issues and concerns with the existing (prior to the Circular) classification, the article also discusses the recommendations of the recent 49th GST Council Meeting on rate of tax of the said commodity. It also notes that the GST Council has decided to regularize the payment of GST on 'Rab' during the past period on 'as is basis'. According to the authors, it would be interesting to look out for the additional clarifications regarding the applicability of exemptions to 'Rab' and the benefits for the industry.

Classification of indigenous 'Rab' prepared from sugar cane: The final decision

Introduction

The issue of classification of the product 'Rab' and applicable rate of tax on its supply has been a subject matter of dispute for a long time. In simple terms, 'Rab' is a semi-solid state of sugarcane juice. It occurs midway during the process of dehydrating the sugarcane juice and converting it into jaggery. The process for obtaining 'Rab' starts from the extraction of the cane juice from the Sugar Cane which is sent further for sulphation to remove the impurities. After the removal of impurities, the cane juice is heated up to 100°C, and the impurities are allowed to settle leaving a clear juice on top. This clear juice is later concentrated into 'Rab'. It is essential that the juice remains in a semi-solid state.

The industry has been classifying the product 'Rab' under Chapter Headings 1701, 1702 or 1703 and were discharging GST accordingly. In this background, the Government vide Circular No. 189/01/2023-GST dated 13 January 2023 had issued clarification with respect to applicable GST rates on the supply of 'Rab'. In this article, we intend to highlight the divergent practices followed by the industry and analyse if the above Circular has resolved the issue in entirety.

Issues and concerns with the existing classification

Prior to the clarifications issued by the Government, there was a confusion prevalent in the industry regarding the correct classification of 'Rab' and applicable rate of tax thereon. The industry generally classified the 'Rab' under the following Chapter Headings viz. 1701, 1702 or 1703. It was thus unclear as to whether 'Rab' is subject to tax at the rate of 28% or 18% or 5% or Nil. The relevant entries in the Rate Notification pertaining to supply of 'Rab' is tabulated hereunder:

Notification	Entry No.	CTH	Description of goods	Rate of tax
NN. 1/2017-CT(R), Sch. IV	1	1703	Molasses	14%
NN. 1/2017-CT(R), Sch. III	11	1702	Other sugars, including chemically pure lactose, maltose, glucose and fructose, in solid form; sugar syrups not containing added flavouring or	9%

Notification	Entry No.	CTH	Description of goods	Rate of tax
			colouring matter; artificial honey, whether or not mixed with natural honey; caramel [other than palmyra sugar and Palmyra jaggery]	
NN. 1/2017-CT(R), Sch. I	92	1702 or 1704	Palmyra sugar	2.5%
NN. 1/2017-CT(R), Sch. I NN. 2/2017-CT(R)	91 94	1701 1701 or 1702	Beet sugar, cane sugar Jaggery of all types including Cane Jaggery (gur), Palmyra Jaggery; Khandsari Sugar	2.5% Nil

At this juncture, it is pertinent to note that the Uttar Pradesh Rab (Movement Control Order), 1967 defines 'Rab' as 'massecuite prepared by concentrating sugarcane juice on open pan furnaces, and includes Rab Galawat and Rab Salawat, but does not include khandsari molasses or lauta gur.' It would also be pertinent to note that the Supreme Court in the Krishi Utpadan Mandi Samiti v. Shankar Industries, 1993 SCR (1) 1037 has clarified that the classification of Rab would be under CTH 1702 (Other sugars) as opposed to CTH 1703 (Molasses). The Krishi Utpadan case also clarified that the distinction between Molasses and Rab is such that Molasses is the residue of the 'khandsari' (brown sugar) made out of Rab.

Clarifications issued after the 48th Council Meeting vide Circular No. 189/01/2023-GST dated 13 January 2023

In accordance with the recommendations made by the 48th GST Council Meeting, the Central Government vide Circular No. 189/01/2023-GST dated 13 January 2023 issued the clarifications with respect to applicable GST rates on the supply of 'Rab' and categorized it under HSN Code 1702 with 18% GST. The circular also relied on the 'Krishi Utpadan Mandi Samiti' case and stated as follows 'In *Krishi Utpadan Mandi Samiti* v. *Shankar Industries*, 1993 SCR (1) 1037, the Supreme Court has distinguished between the molasses and Rab. Accordingly, the Rab cannot be classified under CTH 1703.' The state of the concentrate was used to determine the classification as CTH 1702.

The Circular has clarified that 'Rab' is distinct from Molasses on the basis of the *Krishi Utpadan Samithi* case and that it would also be distinguishable from Sl. No. 91 in Schedule-I of Notification No. 1/2017-Central Tax (Rate), under CTH 1701 which includes 'Beet sugar, cane sugar'. Since the concentration of 'Rab' is in semi-solid state, it would be appropriate to classify the same under CTH 1702. Therefore, as there was ambiguity in the classification of the product and also the applicability of GST, the liability for payment of differential tax for the past period should not be fastened on the taxpayer who had claimed exemption or paid GST at lower rate

based on the industry practice or upon their *bona fide* belief. However, it is pertinent to note that, while the aforementioned Uttar Pradesh Rab (Movement Control Order) tries to cover both Rab Galawat and Rab Salawat within its ambit, the circular creates a distinction between them leading to an incongruency in the interpretation of the Movement Control Order and the Circular.

The necessary clarification issued by the Board has highlighted the lack of appropriate classification for the indigenous products as they are derivatives of agricultural produce and are exclusively used in certain regions of India. Further clarity is also necessary regarding the classification at eight-digit level to understand the exact classification of 'Rab'. This clarification should also be able to shed light on the source of the product as the classification of goods under Chapter 17 depends on the sucrose content by weight in the dry state. Furthermore, the applicability of exemptions under Notification No. 2/2017-Central Tax (Rate), dated 28.06.2017 and classification under Sl No. 92 of Schedule-I of Notification No.1/2017-Central Tax (Rate) also need to be considered to claim the benefits.

49th GST Council Meeting and the way forward

The 49th GST Council Meeting held on 18.02.2023 has put forth certain recommendations relating to the applicable rate of GST on supply of 'Rab'. The Council has recommended that a change be brought in the existing rate of 18% to 5% if it is sold pre-packaged and labelled or at 'Nil' rate if sold in any other form.

A harmonious reading of the 49th GST Council recommendation and the Circular No. 189/01/2023-GST dated 13 January 2023 concludes that the product 'Rab' which is currently taxable at 18% under Entry No. 11 of Schedule-III of the Rate Notification, would be taxable at 5% or at Nil rate from the notified date. As per the Press Release dated 18.02.2023, the recommendations of the Council also stated that it has been decided to regularize the payment of GST on 'Rab' during the past period on 'as is basis' on account of genuine doubts over its classification and applicable GST rate. Therefore, the suppliers who were classifying the 'Rab' under Chapter Heading 1701 and claiming exemption under entry 94 of Notification No. 2/2017-Central Tax (Rate), dated 28.06.2017 or discharging GST at 5% under Entry No. 91 of Schedule-I to the Rate Notification may not be required to pay any differential tax. It would be interesting to look out for the additional clarifications regarding the applicability of exemptions to 'Rab' and availment of the benefits for the industry.

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Goods & Services Tax (GST)

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Notifications and Circulars

GST Council's 49th Meeting – Highlights

The 49th meeting of the GST Council was held on 18 February 2023. Given below are the important recommendations of the Council.

- ***GST Compensation to States*** – Government of India has decided to clear the entire pending balance GST compensation of INR 16982 crore for June 2022.
- ***GST Appellate Tribunal*** – Recommendations of Group of Ministers ('GoM') on setting up of GST Appellate Tribunal have been accepted with certain amendments.
- ***Revocation of cancellation of registration*** – The time limit for making an application for revocation of cancellation of registration is to be increased from 30 days to 90 days, further extendable for the period of up to 180 days. Also, an amnesty may be provided in the past cases, where registration has been cancelled on account of non-filing of the returns.
- ***Late fee for Annual Return rationalised*** – The Council has recommended to reduce the late fees for delayed filing of the annual return in Form GSTR-9 for FY 2022-23 onwards for registered persons having aggregate turnover in a financial year upto INR 20 crore. Late fees for assessees having turnover upto INR 5 crore will be INR 50/day, while those having turnover from INR 5 crore to INR 20 crore would require to pay late fees of INR 100 per day. The maximum late fees would however be 0.04% of the turnover in the State or Union Territory.
- ***Amnesty in respect of Form GSTR-4, Form GSTR-9 and Form GSTR-10*** – The Council has recommended amnesty schemes in respect of pending returns in Form GSTR-4, Form GSTR-9 and Form GSTR-10 by way of conditional waiver/ reduction of late fee.
- ***Assessment of non-filers – Time period for best judgement to be increased*** – The Council has recommended to amend Section 62 of the CGST Act, 2017 so as to increase the time period for filing of return for enabling deemed withdrawal of best judgment assessment order, from the present 30 days to 60 days, extendable by another 60 days, subject to conditions. An amnesty scheme for conditional deemed withdrawal of assessment orders in past cases has also been recommended.
- ***Pan masala, gutka, etc.*** – Recommendations of GoM have been approved by the Council in order to improve revenue collection from commodities like pan masala, gutkha, and chewing tobacco.
    - The capacity-based levy will not be prescribed.

  - Exports will be permitted only against LUT with consequential refund of accumulated ITC.
  - Compensation cess to be changed from *ad valorem* to specific tax-based levy
- ***GST rates reduced for 'Rab' and 'pencil sharpeners'*** – Rate of tax has been recommended to be reduced from present 18% to 5% (if sold prepackaged and labelled; nil if sold otherwise) in case of Rab and to 12% on pencil sharpeners.
- No separate IGST recommended to be levied on tag-tracking device or data logger as already affixed on durable containers.
- Place of supply of services of transportation of goods, in cases where location of supplier of services or location of recipient of services is outside India, recommended to be the location of the recipient of services. Section 13(9) of the IGST Act, 2017 has been recommended to be omitted.
- Exemption recommended for National Testing Agency, authority, board for conduct of entrance examination for admission to educational institutions
- GST on the supply of specified services by Courts and Tribunals shall be payable by the specified recipients under reverse charge.

Ratio Decidendi

No provision to 'resume' assets – High Court directs return of cash taken, and not seized, from assessee

Observing that there is no provision in the GST Act that could support an action of forcibly taking over possession of currency from the premises of any person, without effecting the same, the Delhi High Court has directed the Revenue department to return the cash alleged to be only 'resumed' by the department. It noted that the Department was unable to point out any provision in the GST Act that entitled any officer of GST to merely 'resume' assets. It also noted that the petitioners had not handed over the cash to the concerned officers voluntarily and that undisputedly, the action taken by the officers was a coercive action. Further, noting that the GST officers had dispossessed the petitioners of the currency found in their premises during search operations conducted under Section 67(2) of the CGST Act but had not seized the currency under the said provision, the High Court held that such action was without authority of law. it may be noted that the Court also observed that *prima facie* cash does not fall within the definition of goods and cannot be termed as a 'thing' useful or relevant for proceedings, as in Section 67(2). [*Arvind Goyal CA* v. *Union of India* – 2023 TIOL 124 HC DEL GST]

Vouchers are neither goods nor services, and are not liable to GST

Observing that issuance of vouchers (Pre-paid Payment Instruments of Gift Vouchers, Cash Back Vouchers and E-Vouchers) is similar to pre-deposit and not supply of goods or services, the Karnataka High Court has held that vouchers are neither goods nor services and therefore cannot be taxed under the GST regime. It noted that the transaction between the assessee and his clients was procurement of printed forms and their delivery, and that the printed forms were like currency. Observing that the value printed on the form could be transacted only at the time of redemption of the voucher and not at the time of delivery to client, the Court was of the view that the issuance of vouchers was similar to pre-deposit. The Court also noted that as vouchers are considered as instruments, they would fall under the definition of 'money', defined under CGST Act, and that the CGST Act excludes 'money' from the definition of goods and services. [*Premier Sales Promotion Pvt. Limited* v. *Union of India* – 2023 VIL 67 KAR]

Show cause notice issued in a format without striking out irrelevant particulars violates natural justice

The Jharkhand High Court has held that the show cause notice issued in a format without striking out irrelevant particulars does not fulfil the ingredients of a proper show cause notice and thus amounts to violation of principles of natural justice. The High Court was thus of the view that the foundation of the proceeding in the instant case suffered from material irregularity and hence not sustainable being contrary to Section 73(1) of the Jharkhand GST Act. It held that the subsequent proceedings/impugned orders issued under DRC-07, thus, cannot sanctify the same and were liable to be quashed and set aside. [*Chitra Automobile* v. *State of Jharkhand* – 2023 VIL 61 JHR]

Extension in deadline for filing of ITC-01 permissible even in case of individual taxpayer

The Jharkhand High Court has rejected the contention of the Revenue department that proviso to Rule 40(1)(b) of Jharkhand GST Rules, 2017 (or CGST Rules, 2017), conferring the power upon the Commissioner of State Tax to extend the time limit for filing ITC-01, is applicable only in a class of cases in general and not confined to the individual taxpayer. According to the Court, no such restriction is apparently made out in the enabling provisions. The Petitioner-assessee had attempted to submit Form GST ITC-01 within the prescribed time limit but the GSTN portal did not accept it due to technical errors. The Nodal Officer had contended that since there were no technical glitches on the GSTN portal, power under Rule 40(1)(b) to extend the due date, cannot be exercised in individual case of the petitioner. [*Deepsons Auto Centre* v. *Union of India* – 2023 VIL 47 JHR]

Budgetary scheme – Area-based exemption notification 'availed' when duty paid under protest before 1 July 2017

In a case involving denial of the benefit of Budgetary Scheme, the Delhi High Court has held that the condition that the unit must

have been availing of the benefit of specified notifications (area-based exemption notifications) immediately prior to 1 July 2017, cannot be read to exclude entities that had asserted their claim for such exemption even if the same had flowed to them subsequently only in view of the Revenue contesting the same. Observing that the petitioner-assessee had prevailed before the Commissioner (Appeals) prior to the roll out of GST, the Court held that the fact that the Revenue department had carried the matter to CESTAT and in the meantime had insisted on collecting the central excise duty, which was paid by the assessee under protest, cannot be construed to hold that the assessee had not availed of the benefits immediately prior to 1 July 2017. Further, noting that the assessee had also secured an order sanctioning refund of duty paid under protest, the High Court held that the petitioner had availed of the benefit under the notification. [*Special Cables Pvt. Ltd.* v. *CBIC* – 2023 VIL 70 DEL]

Detention of goods during transit – 'Intention to evade' not required for imposing penalty under Section 129

In a case where Part B of the e-way bill was not filled The Punjab & Haryana High Court has held that for the purpose of Section 129 of the CGST Act, 2017 there is no requirement that there should be intention to evade tax. It was hence of the view that the authorities are not required to establish intention to evade payment of tax. According to the Court, if the goods are intercepted during transit and the documents accompanying the goods are not in compliance with the provisions of the Act, authorities are within their power to detain the goods and demand payment of tax and 100% penalty under the provisions. The assessee had submitted that there was no intention on part of the petitioner to evade tax and thus penalty ought not have been levied. [*Sterile India Pvt. Ltd.* v. *Union of India* – 2023 VIL 104 P&H]

Personal hearing mandatory even if 'No' selected by assessee against the option for personal hearing

The Allahabad High Court has held that once it has been laid down by way of a principle of law that a person/assessee is not required to request for "opportunity of personal hearing" and it remained mandatory upon the Assessing Authority to afford such opportunity before passing an adverse order, the fact that the petitioner may have signified 'No' in the column meant to mark the assessee's choice to avail personal hearing, would bear no legal consequence. The petitioner was denied opportunity of hearing because he had tick marked the option 'No' against the option for personal hearing (in the reply to the show-cause-notice), submitted through online mode. Allowing the writ petition, the Court noted that provision of personal hearing will not only ensure observance of rules of natural of justice but it would allow the authority to pass appropriate and reasoned order as may serve the interest of justice and allow a better appreciation to arise at the next/appeal stage, if required. [*Mohan Agencies* v. *State of UP* – 2023 VIL 114 ALH]

No RCM liability of SEZ unit on service received from SEZ Developer or from a DTA unit

The Maharashtra Appellate AAR has held that a SEZ unit is not required to pay GST under RCM on the services of renting of immovable property services received from SEEPZ SEZ for carrying out the authorised operation in SEZ, subject to furnishing of LUT or bond as a deemed supplier of such services. The AAAR was of the view that provisions of zero-rated supply will cover even the supply of services which are specified under the reverse charge, and that provisions under Section 16(1) of the IGST Act, 2017 will supersede over the notification issued under Section 5(3) of the IGST Act. It also observed that Section 16(1) does not mention any thing about the type of the supplier. That is, whether the supplier supplying the services is located in DTA or in SEZ area. The decision of the AAR that the SEZ unit was liable to pay IGST on the services of renting of immovable property, under RCM, in accordance with the Notification No. 10/2017-I.T. (Rate) as amended by the Notification No. 03/2018-I.T. (Rate), was thus set aside. The AAAR was also of the view that that the SEZ unit was not required to pay GST under RCM on any other services received from the suppliers located in DTA, for carrying out the authorized operation in SEZ. [In RE: *Portescap India Private Limited* – 2023 VIL 09 AAAR]

Tissue culture activity not same as agriculture – GST liable on supply of manpower to horticulture department

The Karnataka AAR has held that supply of manpower (data entry operator, security) for tissue culture production and for handling the process of research on flowers, planting and growing to Horticulture Department, Government of Karnataka is liable to GST @ 18%. The AAR in this regard noted that service was not provided by way of any activity in relation to any function entrusted to a Panchayat under Article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution. It, in this regard, also observed that tissue culture activity is not same as agriculture, and it has no direct nexus to the items mentioned in Eleventh or Twelfth Schedule of the Constitution. [In RE: *Sanjeevini Enterprises* – 2023 VIL 25 AAR]

Catering service to pre-university college is not liable to GST

The Karnataka AAR has held that providing catering services to educational institutions from 1st standard to 2nd Pre-University College is exempt from GST according to Notification No. 12/2017-Central Tax (Rate**)**, under Heading 9992. The Applicant intended to supply ready to eat breakfast, lunch to a Pre-University College. It did not collect any charges from the students but billed to the college which paid the amount. The Authority held that since the recipient of service was an institution providing education up to higher secondary school, it was covered under the definition of 'educational institution' for the

purposes of the Notification. It also noted that the Applicant was providing ready to eat food by way of catering to a Pre-University College, which was covered under Entry No. 66 of the Notification and hence, exempted from GST. [In RE: *Sri Annapurneshwari Enterprises* – 2023 VIL 26 AAR]

Works contract service supplied to Railways – GST liability

The Karnataka AAR has held that works contract services supplied to Indian Railways such as construction of rail under bridge and construction of tunnels even as a sub-contractor to the main contractor were covered under Entry No. 3(xii) of the Notification No. 2/2017-Central Tax (Rate) and is exigible to GST at 18% (SGST @ 9% and CGST @ 9%). Works contract services involving predominantly earth work (that is, constituting more than 75 per cent, of the value of the works contract) were covered under Entry No. 3(vii) of the Notification and is exigible to GST at 12% (SGST @ 6% and CGST @ 6%). Supplying and stacking of ballast at Thokur ballast depot is exigible to GST at 5% (CGST @ 2.5% and SGST @2.5%) (HSN 2517) as per Entry No. 126 of Schedule I of Notification No. 1/2017-Central Tax (Rate). [In RE: *S K Swamy and Company* – 2023 VIL 27 AAR]

Customs

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- Transhipment of Bangladesh export cargo to third countries allowed through Delhi Air Cargo
- High-risk food products can be imported only through specified 79 ports w.e.f. 1 March 2023
- Toys import – Requirement of compliance of BIS standards clarified
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Notifications and Circulars

Transhipment of Bangladesh export cargo to third countries allowed through Delhi Air Cargo

The transhipment of Bangladesh origin export cargo to third countries has been allowed through Delhi Air Cargo as well from 15 February 2023. The facility was earlier available only through Kolkata Air Cargo. Amendment has been made in this regard to CBIC Circular No. 29/2020-Cus., dated 22 June 2020 to allow transhipment of goods by road from LCS Petrapole to Air Cargo Complex, Delhi.

High-risk food products can be imported only through specified 79 ports w.e.f. 1 March 2023

The Central Board of Indirect Taxes and Customs (CBIC) has forwarded an FSSAI Order stating that with effect from 1 March 2023, import of high-risk food products – milk and milk products; egg powder; meat and meat products, including fish and poultry; nutrition or infant foods; and nutraceuticals, health supplements, food for dietary uses, probiotic and prebiotic foods, foods for special medical purpose, can be imported only through specified 79 ports. This requirement was to come into effect from 1st of February 2023 earlier. Instruction No. 5/2023-Cus., dated 8 February 2023 has been issued for the purpose.

Toys import – Requirement of compliance of BIS standards clarified

The CBIC has clarified on requirement of compliance of Bureau of Indian Standards (BIS) standard for toys or parts of toys in case of imports. Taking note of the wide definition of toys in the Toys (Quality Control) Order, 2020 dated 25 February 2020, the CBIC Instruction No.06/2023, dated 13 February 2023 states that not only do the toys as per Toys QCO have a wider definition than what is generally perceived in the HSN, but the toys definition applies also to toy parts including in a completely knocked down (CKD) or semi-knocked down (SKD) condition. The Toys QCO defines 'toys' as '*Product or material designed or clearly intended, whether or not exclusively, for use in play by children under 14 years of age or any other product as notified by the Central Government from time to time*'. The Instruction also clarifies that even when toy parts are imported for manufacturing toys under IGCRS, 2022 in terms of exemption Notification No. 50/2017-Customs, there is a requirement to ensure, that the manufacturer possesses valid BIS certificate for such manufacturing.

Paper Import Monitoring System clarified

The DGFT has clarified various issues under the Paper Import Monitory System (PIMS) under which import of products classifiable under Chapter 48 of the ITC (HS) are permitted subject to compulsory registration under PIMS. According to the DGFT Policy Circular No. 45/2015-20, dated 23 January 2023,

- Registration under PIMS is compulsory regardless of mode of transportation, meaning that imports through air mode are not exempt.
- Samples of FOB value of INR 10,000, irrespective of quantity, is exempt from PIMS.
- Registration is mandatory irrespective of purpose of import, i.e., temporary imports also covered.
- Exemption from PIMS can be considered for non-commercial imports under common IECs by individuals and Government Agencies.
- PIMS applicable even for imports under Advance authorisation/IGCR/EOU/SEZ, etc.
- PIMS registration required in case of DTA supplies by EOU/SEZ (after initial imports by EOU/SEZ) if there is processing with change in HS Code at 8-digit level.

Ratio Decidendi

Refund – Limitation – Filing appeal against enhancement of value, while paying duty, is protest payment

The Delhi High Court has dismissed an appeal filed by the Revenue department against the decision of the Tribunal which had held that the duty paid by the assessee was required to be construed as duty paid under protest as the assessee had appealed against the enhancement of the value of the goods and the consequential enhancement in the custom duty payable thereon. The Revenue department had contended that since no formal protest had been lodged while paying the duty, the benefit of second proviso to Section 27(1) of the Customs Act, 1962 is not available to the respondent. The High Court was of the view that the very act of filing an appeal against an order imposing customs duty was a protest against the duty as assessed, as the entire purpose of such an appeal was to seek reduction of the levy. [*Principal Commissioner* v. *CISCO Systems India Pvt. Ltd.* – Decision dated 25 January 2023 in CUSAA 33/2021, Delhi High Court]

MEIS – Non transmission of amended shipping bills to DGFT server – High Court directs customs and DGFT to find solution

The Bombay High Court has granted relief to the assessee in a case where the amended shipping bill could not be transmitted to the DGFT online. The assessee had by mistake marked 'No' for claiming MEIS benefit. The shipping bill was however subsequently amended under Section 149 of the Customs Act, 1962, but could not be transmitted to DGFT server as there was no provision to transmit the amended shipping bill to DGFT. The MEIS benefit was denied to the assessee earlier as DGFT will not receive the hard copies of the modified shipping bills. Observing that even though the law permitted amendment to the shipping bill, it has no functional effectiveness for claiming benefit under MEIS, and hence it would render the power under Section 149 to amend the shipping bills to correct the declaration and reward item field, nugatory, the directed the Respondents (Customs department and the DGFT) to coordinate to find a solution. [*Technocraft Industries (India) Limited* v. *Union of India* – 2023 VIL 73 BOM CU]

SFIS – Benefit of enhanced rate of 10% also available during period 1 April 2009 till 26 August 2009 when revised FTP was announced

The Madras High Court has granted relief in a case where the enhanced rate of benefit under the Served from India Scheme (SFIS) was denied to the assessee for the period between 1 April 2009 and 26 August 2009. The DGFT had denied the benefit contending that the Foreign Trade Policy 2009-14, increasing the benefit from 5% to 10%, was announced and came into effect on 27 August 2009 only. The Court in this regard observed that the interpretation of the policy itself must be in tune with the avowed objectives of the various schemes as formulated under the policy. It, though noted that the FTP 2009-2014 came into effect from 27 August 2009, it was of the view that a financial year *qua* a revenue enactment/policy is always understood to mean 1st of April of the relevant year to 31st March of the following year. Further, the High Court distinguished clause 1.2 of the FTP which dealt with duration of the policy, and stated that all exports and imports upto 26 August 2009 shall be governed only by the terms of the previous policy (prescribing 5% rate). According to the Court, said clause only refers to general exports and imports and not specified exports or imports under a special scheme. [*Adyar Gate Hotels Ltd.* v. *Union of India* – 2023 VIL 94 MAD CU]

Advance authorisation – Use of inputs in another unit of the assessee is permissible

In a case where the assessee-importer used the goods imported under Advance Authorisation in its another unit, instead of the one as specified in the authorisation, the Bombay High Court has granted relief to the assessee. The Court observed that the assessee was the 'person' (as per paragraph 3.37 of the EXIM Policy, and both the units were of the same person viz. the assessee-Respondent. It held that if the imported duty-free goods are utilized for his own use in another unit then going by the definition of 'Actual User (Industrial)' in paragraph 3.5 of the

EXIM Policy, the question of transfer to any other person would not arise. The Court in this regard noted that there was no dispute that the assessee had discharged the export obligation. The Revenue department had contended breach of condition (vii) of Notification No. 30/97-Cus. [*Commissioner* v. *Galaxy Surfactants Ltd.* – 2023 TIOL 138 HC MUM CUS]

Reimport of rejected goods which are prohibited for import, when freely importable

Observing that Calcined Petroleum Coke was free for export-import on the day of export, the CESTAT New Delhi has held that the re-import by the assessee-appellant of the rejected goods, must be treated as freely importable under the Foreign Trade Policy. The export in this case was made through shipping bill dated 1 December 2017, which was before the date of restriction imposed. The Tribunal in this regard noted that the identity of the goods was established, and the appellant had genuinely exported the goods to the user buyer abroad. It also noted that the minor variation in weight was normal variation in the weight of the goods, due to normal loss in transit. [*Shri Balaji Ceramic Products* v. *Commissioner* – 2023 VIL 80 CESTAT DEL CU]

Re-assessment under Section 17(5) after clearance for home consumption, is wrong

The CESTAT New Delhi has held that Deputy Commissioner erred in issuing an re-assessment order under Section 17(5) of the Customs Act, 1962 after the goods were already cleared for home consumption. According to the Tribunal, the Deputy Commissioner had no authority to issue such an order because he could assess a bill of entry only if the goods are still 'imported goods' and are 'dutiable goods'. It held that once an order permitting clearance of goods for home consumption is given, the goods cease to be 'imported goods' under Section 2(25) and cease to be 'dutiable goods' under Section 2(14). The Tribunal in this regard also noted that customs EDI system does not permit re-assessment of the bills of entry once an order permitting clearance of goods for home consumption is given for the bill of entry. [*Holy Land Marketing Private Limited* v. *Commissioner* - Final Order No. 50094/2023, decided on 31 January 2023, CESTAT New Delhi]

Power pack capable to generating electricity, storing it, and supplying to various electrical devices is classifiable as accumulator

The CESTAT New Delhi has held that power pack designed for the purpose of performing several complementary or alternative functions *viz*. (a) generation of electricity solar energy; (b) storing the electricity so generated or collected through four other different means; and (c) supplying electricity to the in-built LEDs as well as for charging mobiles and running electrical devices, while also having multiple inputs options for charging, is classifiable under Heading 8507 as accumulator. The Tribunal observed that the heart of the goods was the storage which could be done by five different means, one of which is charging using in-built solar panel. Rejecting the assessee's plea of classification

under Tariff Item 8513 10 10 as torch or under TI 8501 31 20 as DC Generator, the Tribunal noted that the power generated could be used for several purposes and not only for using the LED lamps built into it the goods.

Further, the Tribunal was of the view that simply because there are four other alternative means through which they could be charged, it does not mean that the imported goods were not solar power-based devices. Plea of coverage under Sl. No. 234 of Schedule I of Notification 1/2017-Integrated Tax (Rate) was thus upheld. [*JMK Energy* v. *Commissioner* - Final Order No. 50089/2023, decided on 30 January 2023, CESTAT New Delhi]

Central Excise, Service Tax and VAT

Ratio decidendi

- Sabka Vishwas (LDR) Scheme – Interest deposited can be treated as 'any amount paid' – Bombay High Court
- Sabka Vishwas (LDR) Scheme benefit available when no final hearing done after remand to adjudicating authority – Calcutta High Court
- Refund of service tax on exports available even when shipping bills and bills of lading not in name of assessee – Orissa High Court
- Cenvat credit – Use of higher value product for manufacture of lower value goods, not material – CESTAT Kolkata
- Adjustment of service tax to be made in the 'succeeding' month/quarter – 'Succeeding' means 'next' – CESTAT Mumbai
- No interest when NCCD not deposited in time due to glitch on portal – CESTAT New Delhi

Ratio decidendi

Sabka Vishwas (LDR) Scheme – Interest deposited can be treated as 'any amount paid'

The Bombay High Court has held that interest component deposited by the Petitioner can be treated to be 'any amount paid' under Section 124(2) of the Finance (No. 2) Act, 2019. The Court was of the view that once the provision speaks of 'any amount paid' without distinguishing between the heads of tax or between tax, interest or penalty, the provision mandates the deduction of the amounts deposited prior to issuance of the show cause notice. The High Court also observed that the Petitioner cannot be deprived of the benefits of the scheme just because the amount of interest was deposited under Accounting Code 00441481 (Other Receipts (interest)) and not under 00441480 in respect of tax receipts which change of Accounting Code was pending with the Authorities at the time of filing of Form SVLDRS-1 by the Petitioner-assessee. [*National Centre for the Performing Arts* v. *Union of India* – 2023 TIOL 140 HC MUM ST]

Sabka Vishwas (LDR) Scheme benefit available when no final hearing done after remand to adjudicating authority

The Calcutta High Court has held that the assessee-petitioner would be eligible to the benefit of Sabka Vishwas (LDR) Scheme in a case where there was no final hearing before 30th of June 2019, after setting aside of the order-in-original and remanding the matter back by the CESTAT to adjudicating authority for de-novo adjudication. The Court also noted that duty was due and payable by the assessee and the tax dues were relatable to show cause cum demand notices where were pending adjudication on 30th of June 2019, as per Section 124(1)(a) of the Finance (No.2) Act, 2019. It also held that dismissal, by the High Court, of earlier writ filed against the interim order of CESTAT wherein the CESTAT had in turn dismissed the appeal for non-compliance of condition of pre-deposit, will not have any impact on the pending show cause notice. [*GE Power India Ltd.* v. *Union of India* – 2023 VIL 96 CAL CE]

Refund of service tax on exports available even when shipping bills and bills of lading not in name of assessee

The Orissa High Court has allowed the assessee's appeal in a case where the Revenue department had denied the refund of service tax in case of exports when the shipping bills and the bills of lading were not in the name of the assessee. Department's contention that the assessee was not the exporter of iron ore fines and hence was not entitled to refund, was rejected by the Tribunal

while it observed that as per definition of 'exporter' under Section 2(20) of the Customs Act, 1962, the term 'exporter' would include any owner or any person holding himself out to be the exporter. According to the Tribunal, the definition could well include an entity like the present assessee which in fact entered into the agreement pursuant to which the export took place. It noted that the assessee ran the risk of penalties if the goods were not exported or if there was delay in export or the goods were below the specifications. It also noted that the LC was opened with the Bank by the assessee, the invoices of sale of goods were raised by the assessee on the buyers and it was the assessee which had remittances in its own name pursuant to the exports made. [*Auroglobal Comtrade* v. *CBIC* – 2023 VIL 63 ORI ST]

Cenvat credit – Use of higher value product for manufacture of lower value goods, not material

The CESTAT Kolkata has rejected the contention of the Revenue department that TMT bars cannot be treated as any input for manufacture of MS Ingot. Allowing Cenvat credit on TMT bars used in manufacture of ingots, the CESTAT observed that there is no restriction in the Cenvat Credit Rules that the assessee should not use the prime quality materials for the manufacture of final products. According to it, if there is no dispute regarding the receipt and consumption of the inputs, duty-paid character thereof, the benefit of the Cenvat credit cannot be denied to the assessee. The show cause notice had stated that no prudent manufacturer can take into use a product of higher value to manufacture a lower valued product. [*Shakambari Overseas Traders Private Limited* v. *Commissioner* – 2023 VIL 63 CESTAT KOL CE]

Adjustment to be made in the 'succeeding' month/quarter – 'Succeeding' means 'next'

Observing that dictionary meaning of succeeding means 'immediately following', the CESTAT Mumbai has held that the term 'succeeding month' used in Rule 6(4A) of the Service Tax Rules, 1994 denotes the month which succeeds the current month, i.e., next month. Assessee's submission that since the word 'succeeding month' is not accompanied by the word 'immediate', hence it does not necessarily mean that adjustment is required to be made in the month immediately succeeding the month in which excess tax is paid, was hence rejected. The Tribunal in this regard also noted that clause (4A) did not use the word 'any' before the words 'succeeding month or quarter'. The assessee had paid the excess tax in the month of June 2012 and adjusted it later for the months of April-June 2014. The Tribunal also noted that although the word 'immediate' has not been used, but that doesn't mean that it's endless. [*Mckinsey & Co. INC.* v. *Commissioner* – 2023 VIL 126 CESTAT MUM ST]

No interest when NCCD not deposited in time due to glitch on portal

In a case where the assessee could not deposit National Calamity Contingent Duty (NCCD) on time due to technical glitches on the

Government portal, the CESTAT New Delhi has held that the Revenue department cannot take advantage of its wrong doing, by levy of interest. The Tribunal also observed that, in the present case, neither there was any determination of duty liability of NCCD under Section 11A of the Central Excise Act, 1944, nor there was voluntary default in deposit of the amount of NCCD, and hence in absence of the condition precedent in Section 11AA, no interest could be demanded from the appellant-assessee. [*AFT Tobacco Pvt. Ltd.* v. *Commissioner* – 2023 VIL 94 CESTAT DEL CE]

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