



Inside this edition

- CBIC exempt the customs duty on imports of Remdesivir and related ingredients
- IGST on import of Oxygen Concentrators for personal use reduced from 28% to 12%

and more...

NOTIFICATIONS



Companies allowed to furnish GSTR-3B and GSTR-1/IFF using EVC instead of DSC from April 27, 2021 to May 31, 2021

The CBIC vide Notification No. 07/2021–Central Tax, dated April 27, 2021, issued the ‘Central Goods and Services Tax (Second Amendment) Rules, 2021’ to further amend Rule 26 of the Central Goods and Services Tax Rules, 2017 (“CGST Rules”) that deals with the method of authentication of documents or application, in a following manner:

Inserted fourth proviso to Rule 26(1) of the CGST Rules for allowing the Companies to furnish FORM GSTR-3B and FORM GSTR-1/ invoice furnishing facility (“IFF”), verified through Electronic Verification Code (“EVC”) instead of DSC, during the period from April 27, 2021 to May 31, 2021.

Source: Notification No. 07/2021–Central Tax, dated April 27, 2021.

JUDGEMENTS AND ADVANCE RULING



Refund of IGST allowed along with interest on export made during July-September, 2017 period

Issue: Whether the Petitioners should be granted refund of IGST along with the interest on account

of delayed remittance of refund.

Judgement: The Hon’ble Delhi High Court in **TMA International Pvt. Ltd. & Ors. v. Union of India & Anr. [W.P.(C) 2694/2019 & CM No. 26556/2020, dated March 26, 2021]** directed to Revenue Authorities to

grant refund claim of Integrated Goods and Services Tax (“IGST”) to the assessee by April 26, 2021 along with interest @ 7% for delayed remittance of refund on account of IGST.

Held that:

- Noted that, none of the Petitioners have availed of CENVAT credit qua central excise and have availed of CENVAT credit qua service tax component except M/s Inter Trade who have availed CENVAT credit qua service tax component of ₹ 1856/- pertaining to the Financial Year 2015-2016. • Further noted that, in order to receive the refund of IGST, M/s Inter Trade will give up the ‘input tax credit’ to the extent of ₹ 1856/- pertaining to the Financial Year 2015-2016.
- Relied on the judgment passed by the Hon’ble Gujarat High Court on the similar facts, in **M/s Amit Cotton Industries v. Principal Commissioner of Customs [R/Special Civil Application No. 20126 of 2018, dated June 27, 2019]** wherein the department had rejected the refund of IGST paid in regard to the goods exported on the ground despite the reversal of excess duty drawback, there is no option available in the system to consider the claim and therefore, the Petitioner is not entitled to the refund of IGST. However, the Court rejected the department’s contention and directed the department to immediately sanction the refund of the IGST paid in regard to the goods exported as the assessee had reversed the difference between higher duty drawback and lower duty drawback. Further, held that Circular No.37/2018- Customs dated October 9, 2018 has no legal force as it runs contrary to Rule 96 of the

Central Goods and Services Tax Rules, 2017 (“CGST Rules”). Furthermore, granted simple interest @ 7% from the date of shipping bills till the date of actual refund.

- Agreed with the principle set forth in M/s Amit Cotton Industries (supra) and held that the Petitioners will be granted refund along with the interest at the rate of 7% simple, from the date when the shipping bills were filed by them, till the date of actual refund.
- Disposed of the writ petition and directed the Respondent to refund IGST to the Petitioners by April 26, 2021 along with interest.

Source: W.P.(C) 2694/2019 & CM No. 26556/2020, dated March 26, 2021

Earthwork for mining development taxable @ 5%, constitutes ‘composite supply of works contract’

Issue: Whether the services provided by the Applicant will be taxable @5% GST under the benefit of Serial No. 3(vii) of the Services Rate Notification as amended by NN 31/2017- CTR.

Ruling: The Hon’ble AAR Haryana in **M/s. KSC Buildcon Private Limited [Advance Ruling No. HAR/HAAR/R/2019- 20/26 decided on August 28, 2020]** observed that major part of the contract involves earthwork (more than 75%) provided to a Government Entity. Hence, the said work order qualifies for the benefit of Serial No. 3(vii) of the Notification No. 11/2017-Central Tax (Rate), dated June 26, 2017 (“Services Rate Notification”) as amended by Notification No. 31/2017-Central Tax (Rate), dated October 13, 2017 (“NN 31/2017- CTR”) issued under CGST

Act being composite supply of works contract as defined in Section 2(119) of the CGST Act. Therefore, GST @5% will be applicable.

Held that:

- Noted that the term “Earth Work” has not been defined under any GST provisions and referred to various dictionaries to state that bulk earthworks include removal, moving or adding of large quantities of soil or rock from a particular area to another. It is done in order to make an area of suitable height and level for a specific purpose.
- Observed that, the nature of the work awarded to the Applicant is related to mining development and is done on earth surface to excavate stones as per requirement of contract. It can be said that more than 75% of the works involves earth work.
- Further observed that, the Applicant has provided a composition of various inseparable services and goods which are naturally bundled whose consideration has been received through undistributed bills. Hence, the Applicant has provided composite supply of works contract as per Section 2(119) of the CGST Act.
- Furthermore noted that, HSIIDC is Government entity as per the definition described in Services Rate Notification (as amended) by noting that:
 - i. 100% equity of the HSIIDC was held by the State Government of Haryana.
 - ii. HSIIDC is a Government Company under Section 617 of the Companies Act, 1956.

- iii. The work of mining project has been entrusted to HSIIDC by Department of Industries and Commerce, Government of Haryana.
- iv. As per Section 51 of the CGST Act, government entity is entitled to deduct TDS@1% on payments made to the supplier of taxable goods and/or services or both under a contract if it exceeds ₹ 2,50,000. HSIIDC being a government entity and the Applicant being a contractor in terms of work scontract allotted to them, TDS was deducted and deposited by HSIIDC, concluding the nature of payments as contractual services.
- Held that, as per Serial No. 3(vii) of the Services Rate Notification (as amended), work carried by the Applicant is a composite supply of works contract involving pre dominantly earth work provided to a Government Entity. Thus, services provided by the Applicant to HSIIDC will be taxable @5% (2.5% CGST + 2.5% SGST).

Source: Advance Ruling No. HAR/HAAR/R/2019-20/26 decided on August 28, 2020

No GST can be demanded from Buyer for the fault of Seller of non-payment of taxes to the Government.

Issue: Whether the Respondent can levy the entire tax liability on the Petitioner, without involving the Sellers, where the tax has not been remitted to the Government by the Sellers?

Judgement: The Hon'ble Madras High Court in *M/s. D. Y. Beathel Enterprises v. the State Tax Officer [W.P. (MD) Nos. 2127, 2117, 2121, 2152, 2159, 2160, 2168, 2177, 2500, 2530, 2532, 2534, 2538, 2539,*

2540, 2503 & 2504 of 2021 & Ors., dated February 24, 2021] quashed the order passed by the officer levying the entire tax liability on the purchasing dealer without involving the seller, where the payment of tax has been made by the purchasing dealer, but the same has not been remitted to the Government by the Seller. Held that, the omission on the part of the Seller to remit the tax should have been viewed very seriously and strict action ought to have been initiated against the seller.

Held that:

- Analyzed the provision of Section 16 of the Central Goods and Services Tax Act, 2017 (“CGST Act”), and noted that the assessee must have received the goods and the tax charged in respect of its supply, must have been actually paid to the Government either in cash or through utilization of ITC, admissible in respect of the said supply. Therefore, if the tax had not reached the kitty of the Government, then the liability may have to be eventually borne by one party, either the seller or the buyer.
- Observed that, the Respondent has not taken any recovery action against the Seller. When it has come out that the Seller has collected tax from the Petitioner, the omission on the part of the Sellers to remit the tax must have been viewed very seriously and strict action ought to have been initiated against the Sellers.
- Noted that the Respondent took a stand that there was no movement of goods. Held that, if there was no movement of the goods, the examination of Sellers became more necessary and imperative. However, the Respondent did not ensure the

presence of Sellers in the enquiry even when the Petitioners insisted on the same. Hence, the Impugned order suffers from certain fundamental flaws.

- Quashed the Impugned order due to non-examination of Sellers in the enquiry and non-initiation of recovery action against Sellers in the first place and remitted back the matter to the Respondent.
- Directed Respondent to hold the enquiry afresh where Sellers will have to be examined as witnesses and to initiate recovery action against Sellers.

Source: W.P. (MD) Nos. 2127, 2117, 2121, 2152, 2159, 2160, 2168, 2177, 2500, 2530, 2532, 2534, 2538, 2539, 2540, 2503 & 2504 of 2021 & Ors., dated February 24, 2021

CUSTOMS



CBIC exempt the customs duty on imports of Remdesivir and related ingredients

Customs Duty levied on imports of Remdesivir injections, Active Pharma Ingredients used in its manufacture has been withdrawn and a conditional customs duty exemption has been granted for the ingredient Beta Cyclodextrin (SBEBDC) used in the manufacture of Remdesivir, till October 31, 2021.

Source: Notification No. 27/2021–Customs, dated April 20, 2021

CBIC exempted the customs duty on imports of Inflammatory Diagnostic (markers) kits

The CBIC inserted serial no. 4 under NN. 27/2021- Customs in order to exempt customs duty on import of specified Inflammatory Diagnostic (markers) kits, as under:

“4.	3822	Inflammatory Diagnostic (marker) kits, namely- IL6, D-Dimer, CRP (C-Reactive Protein), LDH (Lactate De-Hydrogenase), Ferritin, Pro Calcitonin (PCT) and blood gas reagents.”
-----	------	--

Customs duty on imports of inflammatory diagnostic (marker) kits, namely-IL6, D-Dimer, CRP, LDH, Ferritin, Pro Calcitonin (PCT) and blood gas reagents, has been exempted till October 31, 2021, to supplement testing efforts.

Source: Notification No. 29/2021-Customs, dated April 30, 2021

IGST on import of Oxygen Concentrators for personal use reduced from 28% to 12%

The CBIC reduced the IGST rate on Oxygen Concentrator imported in India for personal use falling under Heading 9804 of the First Schedule to the Customs Tariff Act, 1975 from 28% to 12% to bring IGST rate on such personal imports at par with commercial imports of the same. This Notification shall remain in force upto June 30, 2021.

Source: Notification No. 30/2021- Customs dated May 01, 2021

GST REVENUE COLLECTION

The gross GST revenue collected in the month of April' 2021 is at a record high of Rs. **1,41,384 crore** of which CGST is Rs. **27,837 crore**, SGST is Rs. **35,621**, IGST is Rs **68,481 crore** (including Rs. 29,599 crore collected on import of goods) and Cess is Rs. **9,445 crore** (including Rs. 981 crore collected on import of goods). Despite the second wave of COVID-19 pandemic affecting several parts of the country, Indian businesses have once again shown remarkable resilience by not only complying with the return filing requirements but also paying their GST dues in a timely manner during the month.

During this month the government has settled Rs. 29,185 crore to CGST and Rs. 22,756 crore to SGST from IGST as regular settlement. The total revenue of Centre and the States after regular and ad-hoc settlements in the month of April' 2021 is Rs. 57,022 crore for CGST and Rs. 58,377 crore for the SGST.

Source: pib.gov.in

LET'S TALK

For a deeper discussion of how these issues might affect your business, please contact our Indirect Taxation Team.

VERENDRA KALRA & CO

CHARTERED ACCOUNTANTS

CONTACT DETAILS:

Head Office

75/7 Rajpur Road, Dehradun

T +91.135.2743283, 2747084, 2742026

F +91.135.2740186

E info@vkalra.com

W www.vkalra.com

Branch Office

80/28 Malviya Nagar, New Delhi

E info@vkalra.com

W www.vkalra.com

For any further assistance contact our team at

kmt@vkalra.com

© 2021 Verendra Kalra & Co. All rights reserved.

This publication contains information in summary form and is therefore intended for general guidance only. It is not a substitute for detailed research or the exercise of professional judgment. Neither VKC nor any member can accept any responsibility for loss occasioned to any person acting or refraining from actions as a result of any material in this publication. On any specific matter, reference should be made to the appropriate advisor.

