

Recent Rulings by Courts and Authorities

High Court Rulings

List of services eligible for SEIS¹ cannot be amended by way of a circular / instruction

In the case of *Ericsson India Global Services Private Limited vs. Union of India and Others [TS- 159-HC-2021 (Del)-FTP]*, the petitioner challenged the exclusion of engineering or management consulting services provided to telecom service providers under SEIS, through an instruction issued by the DGFT². The petitioner was engaged in providing network engineering and management consulting services to telecom companies. The claim of the petitioner for availing SEIS benefit under the FTP³ was rejected by the DGFT basis an instruction⁴, which clarified that engineering or management consulting services rendered to the telecom sector are ineligible for the benefits of SEIS.

The High Court observed that the FTP provides for categories of ineligible services for claiming SEIS benefits, which *inter-alia* includes the category of ‘service providers in telecom sector’. While interpreting the scope of the said category, the High Court observed that the category means and includes telecom service providers and not those service providers which render services to such companies. There is no ambiguity in the FTP regarding the scope of exclusion of services for the benefit of SEIS.

The High Court held that the instruction issued by the DGFT seeking to impose restrictions on eligible service providers for benefit under SEIS, amounts to an amendment in the FTP and is therefore *ultra vires*.

CESTAT⁵ Rulings

Job-worker eligible to claim CENVAT credit distributed by principal manufacturer through ISD⁶ mechanism

In the case of *Krishna Food Products vs. Additional Commissioner of CGST & Central Excise [TS-207-CESTAT-2021(DEL)-EXC]*, the appellant was an authorized contract manufacturer⁷ of Parle Biscuits Private Limited (“Parle”). For undertaking the said activity, the appellant was authorized by Parle to comply with all

¹ Service Exports from India Scheme

² Directorate General of Foreign Trade

³ Foreign Trade Policy 2015-2020

⁴ Instruction dated May 22, 2019

⁵ Customs Excise and Service Tax Appellate Tribunal

⁶ Input Service Distributor

⁷ While the ruling has used the term ‘contract manufacturer’, it is understood from the facts and provisions referred to in the judgement that the appellant was a job-worker

procedures prescribed under the Excise Act⁸ and to furnish information relating to the price at which Parle would sell the biscuits to the end customers⁹. The inputs used for manufacture of biscuits were supplied free of cost to the appellant. While these inputs were reflected in the books of accounts of Parle, credit in respect of the same was availed and utilized by the appellant. The manufactured biscuits were also reflected in the books of accounts of Parle as goods manufactured on behalf of Parle and sold and marketed by Parle. The appellant sold biscuits and paid duty on behalf of Parle at maximum retail price fixed by Parle¹⁰, which included all costs of input services, including advertisement, etc. Considering that biscuits were manufactured, not only in the factories of Parle but in factories of other contract manufacturers, credit in respect of Service Tax paid on common input services of advertisement, market research, etc. availed by Parle was distributed to the appellant on pro-rata basis following the ISD mechanism.

The revenue authorities denied such distributed credit to the appellant considering that the contract manufacturer and the manufacturer are two separate legal entities. Contract manufacturer cannot be said to be branch/ unit of the manufacturer to which ISD distribution of credits could take place. Further, that the input services for which credit was distributed had nothing to do with the manufacturing operations of the appellant.

The CESTAT however, observed from the letter of authorization issued by Parle to the appellant, that the appellant was acting on behalf of the manufacturer. Raw materials and finished goods always remained the property of Parle. The appellant sold biscuits and paid duty on behalf of Parle at maximum retail price declared by Parle, which included all costs of input services, including advertisement, etc. Accordingly, the appellant had effectively stepped into the shoes of Parle for undertaking the said manufacturing and selling biscuits.

In view of the above, the CESTAT highlighted that a narrow interpretation of the phrase ‘manufacturing units’ should be avoided to distribute credits through ISD mechanism, as this would be against the intention of the CENVAT Credit Rules¹¹, more particularly when the provisions contained under the Excise Act provides for such authorization for manufacture of goods on behalf of the principal manufacturer.

Therefore, the CESTAT allowed distribution of common credits by Parle to the appellant through ISD mechanism.

Notifications

Amendment to CGST Act in relation to interest payable on net tax liability notified

Notification No. 16/2021 – Central Tax dated June 1, 2021

Retrospective amendment to Section 50 of the CGST Act providing for payment of interest on net cash basis has been notified and will be effective from July 1, 2017.

Due dates for filing returns extended

Notification No. 17/2021 – Central Tax, Notification No. 25/2021 - Central Tax and Notification No. 26/2021 - Central Tax dated June 1, 2021

⁸ Central Excise Act, 1944

⁹ In compliance with clause (1)(ii) of Notification No. 36/2001 dated June 26, 2001

¹⁰ Rule 10A of the Central Excise (Valuation) Rules, 2000

¹¹ CENVAT Credit Rules, 2004, as amended from time to time

Return Type	Period	Actual due date	Extended due date
Form GSTR-1/ IFF ¹²	May 2021	June 11, 2021	June 26, 2021
Form GSTR-4	FY 2020-2021	May 31, 2021	July 31, 2021
Form GST ITC-04	January - March 2021	May 31, 2021	June 30, 2021

Reduced rate of interest and waiver of late fee for delayed filing of Form GSTR-3B and payment of tax

Notification No. 18/2021-Central Tax dated June 01, 2021, Notification No. 02/2021 – Integrated Tax dated June 01, 2021 and Notification No. 02/2021 - Union Territory tax dated June 01, 2021

Particulars	Period	Revised rate of interest	Waiver of late fee
Taxpayers having annual aggregate turnover more than INR 5cr.	March, April and May 2021	First 15 days ¹³ – 9%	For delay of 15 days
Taxpayers having annual aggregate turnover of up to INR 5cr.	March & April 2021	First 15 days – Nil Next 45 days and 30 days for March and April respectively - 9%	For delay of 60 and 45 days for March and April 2021 respectively
	May 2021	First 15 days - Nil Next 15 days- 9%	For delay of 30 days
Composition taxpayers	Quarter ending March 2021	First 15 days - Nil Next 45 days - 9%	NA

Waiver / capping of late fee for filing returns

Notification No. 19, 20, 21 and 22/2021 - Central Tax dated June 01, 2021

- Amnesty scheme regarding reduction/ waiver of late fee per Form GSTR-3B, pending to be filed for period July 2017 to April 2021:
 - Late fee capped to INR 500 : For Nil returns
 - Late fee capped to INR 1,000 : For others

The above relief will be available if Form GSTR-3B for the aforesaid tax periods are furnished between June 1, 2021 to August 31, 2021.
- Capping of late fee per Form GSTR-3B and/ or Form GSTR-1 for tax period June 2021 onwards or quarter ending June 2021 onwards:

¹² Invoice Furnishing Facility

¹³ To be counted from due date of furnishing Form GSTR-3B

Sr. No.	Late fees	Turnover
(a)	INR 500	For Nil returns
(b)	INR 2,000	For taxpayers having annual aggregate turnover of upto INR 1.5cr.
(c)	INR 5,000	For taxpayers having annual aggregate turnover between INR 1.5cr. to INR 5cr.

1. Capping of late fee per Form GSTR-4 and Form GSTR-7:

Form GSTR-4 (for FY¹⁴ 2020-21 onwards)

- a) Late fee capped to INR 500 : For Nil returns
- b) Late fee capped to INR 2,000 : For others

Form GSTR-7 (for June 2021 onwards)

- a) Late fee capped to INR 2,000

Exemption from the requirement of issuance of e-invoice¹⁵

Notification No. 23/2021-Central Tax dated June 1, 2021

Government departments and local authorities have been exempted from the requirement to issue e-invoice in respect of supplies made by them.

Extension of time limit to complete actions

Notification No. 24/2021-Central Tax dated June 1, 2021

Time limit for completion of various activities by any authority or by any person (such as completion of proceedings, filing of appeal, reply, etc.) under the GST laws, which falls during the period April 15, 2021 to June 29, 2021, is extended up to June 30, 2021.

Amendments to CGST Rules¹⁶

Notification No. 27/2021-Central Tax dated June 1, 2021

- Facility of filing of returns by companies using EVC¹⁷ instead of DSC¹⁸ will be operational for a period up to August 31, 2021.
- Cumulative application of Rule 36(4) of the CGST Rules for availing ITC for tax periods April, May and June 2021 will be provided for while filing Form GSTR-3B for June 2021 or quarter ending June 2021.
- Facility of furnishing Form GSTR- 1 using IFF for the month of May 2021 has been extended from June 1, 2021 till June 28, 2021.

¹⁴ Financial Year

¹⁵ Electronic Invoice

¹⁶ Central Goods and Services Tax Rules, 2017

¹⁷ Electronic Verification Code

¹⁸ Digital Signature Certificate

Circulars/ Instructions/ Press Release

CBIC restores facility of acceptance of undertaking in lieu of bond

Circular No. 09/2021-Customs dated May 08, 2021

With a view to expedite Customs clearance of goods, CBIC has extended the facility to accept undertaking in lieu of bond by Customs authorities for instances such as provisional assessment of customs duty, warehousing of imported goods, or as provided by the Customs authorities. This facility will be operational for the period May 08, 2021 up to June 30, 2021, provided that the importers/ exporters replace the said undertaking by a proper bond by July 15, 2021¹⁹.

Clarifications on the Customs IGCR Amendment Rules²⁰

Circular No. 10/2021-Customs dated May 17, 2021

In order to assist the trade in understanding the improvements introduced *vide* the IGCR Rules²¹, as applicable to importers who intend to avail concessional rate of customs duty and where such concession is dependent upon use of such imported goods, CBIC has clarified the following:

1. Benefit of concessional customs duty on import of goods required for domestic production of goods or providing services has been extended to include situations where the imported goods are sent out for 'job work'. This will help importers who do not have manufacturing facility or MSME²² sector which does not have complete manufacturing capability in-house; and,
2. Capital goods, which are imported after availing concessional customs duty, will now be permitted to be cleared in the domestic market on payment of duty and interest at depreciated value.

Recommendations of 43rd GST Council meeting

Press Release dated May 28, 2021

Some of the key recommendations made by the GST Council in its 43rd meeting include the below:

1. Clarificatory amendments:
 - a) in a joint-development agreement for development of a residential complex, a land-owner is allowed to utilize credit of GST charged by developer. Such credit can be set-off by the land-owner against the GST liability on sale of apartments. The developer will be allowed to discharge its GST liability on transfer of apartments to the land-owner, any time before the issuance of completion certificate;
 - b) deferred annuity payments received for construction of roads will be liable to GST. However, annuities, which are in relation to providing services by way of access to a road or a bridge will be exempt;
 - c) services supplied by Government to its undertaking / public sector undertakings by way of guaranteeing loans to be exempt from GST.

¹⁹ This facility was earlier granted under Circular No. 17/2020-Customs dated April 03, 2020 for period April 03, 2020 to April 30, 2020

²⁰ Customs (Import of Goods at Concessional Rate of Duty) Amendment Rules, 2021 notified *vide* Notification No. 09/2021-Customs (N.T.), dated February 02, 2021

²¹ Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017

²² Micro, Small & Medium Enterprises

2. Similar to amendments made for the aviation sector, rate of GST applicable on MRO²³ services provided for ships and vessels is proposed to be reduced from 18% to 5%.
3. Further, place of supply for MRO services provided in relation to ships/ vessels, by a service provider located in taxable territory to a business located in non-taxable territory (i.e., B2B²⁴ supply) will be the location of recipient of service of such services.
4. Relaxations around Annual Return / Audit Report for FY 2020-21:
 - a) amendments in Section 35 and 44 of the CGST Act made through Finance Act, 2021 to be notified. This amendment will ease the compliance requirement in furnishing reconciliation statement in Form GSTR-9C, as taxpayers would be able to self-certify the reconciliation statement, instead of certification by a chartered accountant;
 - b) Annual Return in Form GSTR-9/ 9A for FY 2020-21 to be made optional for taxpayers having aggregate annual turnover up to INR 2cr.; and,
 - c) Reconciliation statement in Form GSTR-9C for FY 2020-21 will be required to be filed by taxpayers having annual aggregate turnover above INR 5cr.

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²³ Maintenance, Repair and Overhaul

²⁴ Business to Business