

MONTHLY INDIRECT TAX NEWSLETTER

MARCH 2024

Dear Readers,

We bring you a concise analysis of important developments, recent publications and judgements and noteworthy regulatory amendments in the corporate and financial sectors on a monthly basis.

Our newsletter will cover updates from Trade & Indirect Taxes and Customs.

Perceiving the significance of these updates and the need to keep track of the same, we have prepared this newsletter providing a concise overview of the various changes brought in by our proactive regulatory authorities and the Courts!

Feedback and suggestions from our readers would be appreciated. Please feel free to write to us at mail@lexport.in.

Regards,
Team Lexport



ABOUT US

Lexport is a full-service Indian law firm offering consulting, litigation and representation services to a range of clients.

The core competencies of our firm's practice *inter alia* are Trade Laws (Customs, GST & Foreign Trade Policy), Corporate and Commercial Laws and Intellectual Property Rights.

The firm also provides Transaction, Regulatory and Compliance Services. Our detailed profile can be seen at our website www.lexport.in.

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ADVANCE RULING AND JUDGEMENTS (GST)

S. No.	Particulars
1.	<p>Clear Float Glass” without coating of an absorbent, with reflecting or nonreflecting layer would fall under Heading 7005 29</p> <p>Brief Facts:</p> <p>M/s Float Glass Centre interpreted that the product ‘Clear Float Glass’ having an absorbent layer (Tin) on one side merits classification under CTH 7005 10 90.</p> <p>Issue(s) Involved:</p> <p>Appropriate classification of the product ‘Clear Float Glass’</p> <p>Ruling:</p> <p>Appropriate classification of imported "Clear Float Glass", traded by the Applicant, which has not undergone any coating process for presence of an absorbent, with reflecting or non-reflecting layer, not to be classified under sub heading 7005 10, appropriate classification under tariff sub heading 7005 29 as "Others", at eight digit level, if it was "tinted", classifiable under CTH 7005 2910 and if "non-tinted," under CTH 7005 2990.</p> <p>[Tamil Nadu Advance Ruling No. 115/AAR/2023, decided on 22-11-2023]</p>
2.	<p>Penalty not justified for mere technical error in e-way bill if no intention to evade tax is establishes</p> <p>Brief Facts:</p>

S. No.	Particulars
	<p>Assessee, due to unavailability of initially designated vehicle, utilized alternative vehicle for transportation, resulting in discrepancy in e-way bill generated. When vehicle loaded with goods was stopped for verification by Revenue, it was found that vehicle number did not match with the one mentioned in the e-way bill, leading to detention of goods.</p> <p>Observation:</p> <p>Since goods were intercepted shortly after leaving SEZ unit, and customs duty and IGST had been duly paid, indicates no intention to evade tax.</p> <p>Decision:</p> <p>Where there exists clerical or typographical error in documents such as e-way bill, initial burden of proof lies on the Revenue/Department to demonstrate intention to evade tax; penalties should be imposed only in cases of intentional tax evasion, not on inadvertent errors.</p> <p>[InDeutsch Industries Pvt. Ltd. Versus State of U.P., Writ Tax No. 1314 Of 2019, Decided On 19-2-2024 - AHC]</p>
3.	<p>Date of filing appeal through online mode to be considered as actual date of filing if physical copy was also filed</p> <p>Brief Facts:</p> <p>Petitioner filed appeal before Appellate Authority against order in original dated 4-5-2023 through online process on 2-9-2023 . Appeal was dismissed vide impugned order holding that same was barred by limitation.</p> <p>Observation:</p> <p>Impugned order recorded that appeal was actually filed on 25-9-2023 after a delay of more than one month and delay up to one month only could be condoned if sufficient cause was shown.</p> <p>Decision:</p> <p>Appeal filed by Assessee through an online process within one month from the last date of filing appeal was rejected, by considering the date of filing physical copy as the filing date. Held that Commissioner (Appeals) had erroneously not considered the online filing date and also the application seeking condonation of delay, thus order rejecting appeal was to be set aside and matter was to be remitted to consider application seeking</p>

S. No.	Particulars
	<p>condonation of delay in filing the physical copy in the circumstances when the online filing was done in time.</p> <p>[White Mountain Trading Pvt. Ltd. Versus Additional Commissioner, CGST Appeals-II, W.P.(C) No. 2752 of 2024, decided on 23-2-2024 -DHC]</p>
4.	<p>Physically challenged person can't be summoned for interrogation on day-to-day basis</p> <p>Brief facts:</p> <p>Petitioner, an accountant, challenged summons issued by GST authorities for investigation into alleged fraudulent availing and passing on of input tax credit by multiple companies. Petitioner claimed physical disability and inconvenience due to frequent summons.</p> <p>Observation:</p> <p>From the documents it appears that the petitioner is a physically challenged person. Therefore, it would not be justified in the said circumstances to expect the petitioner to be subjected to interrogation on day-to-day basis which may cause great inconvenience and hardship to him.</p> <p>Decision:</p> <p>Physically challenged accountant challenged the frequent issuance of summons to him during GST investigation. High court upheld the necessity of summons, but reduced the frequency for interrogation due to his limitation, directing such person to fully cooperate.</p> <p>[Vemula Yougander Versus Union of India Writ Petition No. 34106 of 2023, Decided On 19-12-2023 -THC]</p>
5.	<p>Supply of enamelled winding wire of copper would fall under HSN 85441110 and taxable at 18% under GST</p> <p>Brief Facts:</p> <p>Petitioner-assessee was engaged in manufacturing enamelled copper wire.</p> <p>Issue(s) involved:</p> <p>Classification of "Enamelled Copper Wire"</p>

S. No.	Particulars
	<p>Decision:</p> <p>Supply of enamelled winding wire of copper which operated as insulated electric conductor merits classification under heading number 85441110 and attracts GST at rate 18 percent.</p> <p>[Tamil Nadu Advance Ruling No. 120/Aar/2023, Decided On 18-12-2023]</p>
7.	<p>Issuance of summons under Section 70 is not hit by Section 6(2)(b) of CGST Act, 2017</p> <p>Brief Facts:</p> <p>Assessee contended that State Authorities had initiated proceedings and as per section 6(2)(b), if a proper officer under State Goods and Services Tax Act or Union Territory Goods and Services Tax Act had initiated any proceedings on a subject matter, no parallel proceedings shall be initiated by proper Officer under CGST Act on same subject matter.</p> <p>Observation:</p> <p>The scope of Section 6(2)(b) and Section 70 of the CGST Act is different and distinct, as the former deals with any proceedings on a subject matter, whereas the latter deals with power to issue summon in an inquiry and therefore, the words "proceedings" and "inquiry" cannot be mixed up.</p> <p>Decision:</p> <p>Where State Authorities had initiated proceedings against assessee, Summons issued by DGGI under section 70 cannot be said to be initiation of proceedings on same subject matter under CGST Act and thus, was not hit by section 6(2)(b).</p> <p>[Rais Khan Versus Add. Commissioner, Enforcement Wing-II, Rajasthan D.B. Civil Writ Petition No. 3087 Of 2024, Decided On 14-3-2024 - Rajasthan High Court]</p>

ADVANCE RULING AND JUDGEMENTS (CUSTOMS)

S. No.	Particulars
1.	Ground glass used for toothpaste manufacturing is classifiable under CTH 3207 4000

	<p>Brief facts:</p> <p>The Appellant is engaged in the manufacture of tooth paste. During such manufacturing process, the Appellant had regularly imported 'BIOMIN F-Ground Glass (Fluoro Calcium Phospho-Silicate)' and 'BIOMIN C-Glass (Chloro Calcium Phospho-Silicate)' which are used in the manufacture of toothpaste.</p> <p>Importer claimed classification under CTH 3207 4000 which specifically covers glass fruit and other glass, in form of powder, granules or flakes. Department proposed classification under CTH 3824 9990 as 'other' under residual entry 'other chemical products and preparations of chemical or allied industries', not elsewhere specified or included.</p> <p>Decision:</p> <p>Ground glass used for toothpaste manufacture was classifiable more specifically under CTH 3207 4000 and not under CTH 3824 9990 as it was not related to chemical or allied industry; packing material could not be separately classified as there was no document or details that they were durable containers and for repetitive use.</p> <p>[Group Pharmaceuticals Ltd. Versus Commissioner of Customs (Import) Final Order No. A/85267 of 2024-Wzb, Decided on 6-3-2024 – CESTAT Mumbai]</p>
2.	<p>Iron ore lumps which were merely “crushed” and “screened” & having more than 65% Fe would fall under CTH 2601 1119</p> <p>Brief Facts:</p> <p>The Appellant, a manufacturer of 'sponge iron', 'mild steel (MS) billets' and 'TMT bars', imported 'iron ore lump' from Khumani mine in South Africa claiming exemption from additional duty of customs under notification no. 12/2012-CE dated 17th March 2012. The customs authorities contested the same by arguing that, having undergone a process for removal of 'foreign matter' rendering those to be 'concentrate', the same was not covered by the exemption.</p> <p>Observation:</p> <p>Department could not conclude that goods were other than "ores" if importer was unable to, or does not, establish that these were not "concentrates". Chapter 26 of HSN makes it clear that "iron ores" and "iron ore concentrates" cannot be distinguished, except where the national policy declared such distinction in its Tariff. In distinguishing between "ores" and "concentrates", emphasis is not on just "process" but "special process" without attending explanation. Absence of an objective criteria for differentiating "ores" and "concentrates" cannot weigh against the importer, merely to further the revenue advantage.</p>

	<p>Decision:</p> <p>Iron ore lumps, which as the foreign supplier certified was merely "crushed" and "screened" before shipment, was classifiable under CTH 2601 1119 as it had "65% Fe and above" and exempt under Sr. No 56 of Notification No. 12/2012-CE dated 17-3-2012. Attempt of the revenue to classify the imported product under CTH 2601 1150 and denial of exemption on the ground that "ores" and "concentrates" were distinguishable, rejected.</p> <p>[Apple Sponge & Power Ltd. Versus Commissioner of Customs& Central Excise Final Order Nos. 85078-85079 Of 2024, Decided On 13-2-2024 - CESTAT Mumbai]</p>
<p>3.</p>	<p>Goods imported for display in clinic can be re-exported if same were restricted requiring prior clearance</p> <p>Brief Facts:</p> <p>The Appellant is a general Dentist and is practicing Dentistry in Mumbai. He imported a RCRCM Typhoon glider from Belgium for the purpose of static display at his clinic. Before import, Appellant had not taken any licence and pre-import clearance from Directorate General of Civil Aviation.</p> <p>Decision:</p> <p>The Hon'ble Supreme Court of India upheld the order of CESTAT, Chennai.</p> <p>[Commissioner of Customs (Port) Versus Ceratizit India Pvt. Ltd. Civil Appeal Diary No. 20532 Of 2021, Decided On 9-4-2024 - Supreme Court]</p>
<p>4.</p>	<p>Colour Doppler and Ultrasound Scanners imported in SKD condition are classifiable under CTH 9018 19 90 of Customs Tariff</p> <p>Brief Fact:</p> <p>CESTAT, Chennai had held that said scanner imported in form of parts and accessories (SKD condition) such as LCD Display Units/Transducers/Hard Disc Drives, Power Supply Units, Cable fixtures, Boots for cable, Software's, Memory cards, Rubber caps, PCB units etc., was classifiable under Tariff Item 9018 19 90 of Customs Tariff Act, 1975 and eligible to CVD exemption under Notification Nos. 12/2012-C.E. and 6/2006-C.E.</p> <p>Decision:</p>

	<p>The Supreme Court upheld the order of CESTAT Chennai and was not inclined to interfere with the judgement of the Tribunal. Therefore, Colour Doppler and Ultrasound Scanners imported in SKD condition classifiable under Tariff Item 9018 19 90 of Customs Tariff and eligible for exemption from CVD.</p> <p>[Commissioner of Customs-Imports Versus Aloka Trivitron Medical Technologies Pvt. Ltd. Civil Appeal Nos. 1545-1546 Of 2021, Decided On 15-3-2024 – Supreme Court]</p>
5.	<p>Goods lying outside warehouse but within factory premises can't be treated as cleared from warehouse</p> <p>Brief Facts:</p> <p>Appellant unloaded 264 cases of imported goods outside notified area but within factory premises due to heavy rain and also because of paucity of space within notified open area and kept under a shed, on obtaining permission from the Superintendent which permission was neither cancelled nor revoked. Duty was demanded in respect of 27 cases not found in the warehouse and penalty imposed on the Appellant under section 112 of the Customs Act.</p> <p>Decision:</p> <p>The Hon'ble Supreme Court of India held that Goods found outside the warehouse but within factory premises of importer were not improperly or unauthorisedly removed from notified public bonded warehouse, as permission was taken from Superintendent and, therefore, Section 15(1)(c) of Customs Act, 1962 is applicable; Demand qua 264 cases including levy of customs duty, penalty and interest held to be not sustainable.</p> <p>[Bisco Ltd. Versus Commissioner Of Customs And Central Excise Civil Appeal No. 4663 Of 2009, Decided On 20-3-2024 - Supreme Court]</p>

NOTIFICATIONS AND CIRCULARS AND OTHER RECENT UPDATES

S. No.	Particulars
1.	Instructions issued for rectification of orders to correct mistake apparent on face of record by Delhi Government

	<p>The Delhi Government has received several representations to allow rectification of demand orders and therefore instructions are issued for rectification of demand order pertaining to FY 2017-18 which have apparent errors including arithmetical errors or clerical mistakes.</p> <p>[INSTRUCTION-F.NO. 3 (543)/GST/POLICY/2024/1312-18]</p>
2.	<p>5% Customs Duty shall be levied on import of frozen meat and edible offal of ducks</p> <p>CBIC has issued notification to provide that Customs Duty at the rate of 5% shall be levied on import of frozen meat and edible offal of ducks subject to certain conditions.</p> <p>[NOTIFICATION NO. 13/2024-CUSTOMS [G.S.R. 158(E)/F. NO. CBIC-190354/166/2023-TO(TRU-I)]</p>
3.	<p>15% Customs Duty shall be levied on import of X-ray tubes</p> <p>The CBIC has issued notification to provide that Customs Duty at the rate of 15% shall be levied on import of X-ray tubes instead of 10%. This notification shall come into force w.e.f. 1st April, 2024.</p> <p>[NOTIFICATION NO. 15/2024-CUSTOMS [G.S.R. 182(E)/F.NO. CBIC-190354/15/2023-TRU SECTION-CBEC]</p>
4.	<p>No Customs Duty and AIDC on import of gold falling under Customs Tariff Heading 7108</p> <p>The CBIC has issued notification to exempt gold falling under Customs Tariff Heading 7108 from the whole of the duty of Customs and Agriculture Infrastructure and Development Cess.</p> <p>[NOTIFICATION NO. 14/2024-CUSTOMS [G.S.R. 180(E)/F. NO. CBIC-190354/79/2023-TO(TRU-I)]</p>
5.	<p>Customs Duty of 10% to be levied on import of smart rings, shoulder bands, neck bands or ankle bands</p> <p>The CBIC has issued notification to provide that Customs Duty at the rate of 15% shall be levied on Electrically operated vehicles with a minimum CIF value of USD35,000 imported in terms of provisions of the ‘Scheme to promote manufacturing of electric passenger cars in India’ notified vide S.O. No. 1363 (E) dated 15th March, 2024, by the Ministry of Heavy Industries.</p> <p>[NOTIFICATION NO. 19/2024-CUSTOMS [G.S.R. 206(E)/F.NO. CBIC-190354/42/2024-TRU SECTION-CBEC]</p>
6.	<p>15% Customs Duty on import of EVs under ‘Scheme to promote manufacturing of electric passenger cars in India</p>

	<p>The DGFT has issued a notification to amend para 2.39 of FTP, 2023 and permitted Merchanting Trade carried out within one specific foreign country subject to compliance with RBI guidelines.</p> <p>[NOTIFICATION NO. 62/2023 [F. NO. 1/93/180/40/AM-20/PC-II (B)/E-23463]</p>
7.	<p>Merchanting Trade carried out within one specific foreign country is permitted</p> <p>The DGFT has issued a notification to amend para 2.39 of FTP, 2023 and permitted Merchanting Trade carried out within one specific foreign country subject to compliance with RBI guidelines.</p> <p>[NOTIFICATION NO. 62/2023 [F. NO. 1/93/180/40/AM-20/PC-II (B)/E-23463]</p>
8.	<p>Export of 50000 MT onions to Bangladesh through NCEL is notified</p> <p>DGFT has issued notification to permit export of 50000 MT of onions to Bangladesh through National Cooperative Exports Limited.</p> <p>[NOTIFICATION NO. 63/2023 [F. NO. 01/91/191/060/AM-24/EC/E-38291]</p>
9.	<p>DGFT issues notification to amend import policy condition for Duck Meat</p> <p>The DGFT has issued notification to amend import policy condition for Duck Meat and import of premium Duck Meat for supply to Hotels and Restaurants shall be 'Restricted'.</p> <p>[NOTIFICATION NO. 66/2023 [F. NO. 1/89/180/200/AM-02/PC-2(A)/PART-I/E-31445]</p>

END OF THE NEWSLETTER

Contributed by the Indirect Tax team

You can reach out to our team for any queries



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