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EDITORIAL



Friends,

GST at the rate of 18 per cent is imposed on royalty given to the state governments for mining rights. Recently, the Hon'ble Supreme Court has stayed the imposition of GST on royalty paid mining rights given to a petitioner.

While the rate schedule was earlier amended to impose GST on this royalty from January 1, 2019, the tax research unit of the Central Board of Indirect Taxes and Customs (CBIC) recently clarified that the tax would also be applied from July 1, 2017 and December 31, 2018.

Any order by the Supreme Court on the issue would also have ramifications on other sectors such as casino and telecom, where GST is imposed on the license fee.

Royalty paid to the state government for mining rights is a statutory levy and accordingly the question of applicability of GST is subject to judicial review as there is no quid pro quo for the payment.

STATE CANNOT IMPOSE TAX ON SALES OF ENA:

Further, the hon'ble Allahabad high court held recently that the State lost its legislative competence to enact laws, to impose tax on sales of Extra Neutral

Alcohol (ENA), upon the enactment of the 101st Constitution Amendment. Consequently, and upon considering Section 174(1)(i) of UPGST Act, 2017, the impugned Notification dated 17.12.2019, insofar as it seeks to impose UPVAT on ENA, Rectified Spirit and Special Denatured Spirit (SDS), is ultra vires, both on account of lack of (i) legislative competence and (ii) valid delegation. It is therefore quashed. Consequentially, all assessment Orders/Notices issued to the petitioner, impugned in these writ petitions, holding otherwise are also quashed.

It is further directed, subject to applicability of the rule against unjust enrichment, any amount that may have been deposited by the petitioners (except petitioners claiming under this order, in Writ Tax 355 of 2020), by way of UPVAT on ENA on or after 01.07.2017, may be refunded to them, within a period of one month from the date of order.

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
20 th October 2021	GSTR-3B	September 2021	Return form for the tax period September 2021 by Taxpayer with Annual Turnover More than Rs 5 crore & for Taxpayer who has not opted for QRMP Scheme having Turnover up to 5 crores.
22 nd October 2021	GSTR-3B	September 2021	Return form for the tax period September 2021 by Taxpayer with Annual Turnover Up-to Rs 5 crore – Category – 1
24 th October 2021	GSTR-3B	September 2021	Return form for the tax period September 2021 by Taxpayer with Annual Turnover Up-to Rs 5 crore – Category – 2
18 th October 2021	CMP 08	July- September 2021	Details or summary of self-assessed tax which is payable for a given quarter by taxpayers who are registered as composition taxable person or taxpayer who have opted for composition levy.
20 th October 2021	GSTR 5	September 2021	Return to be filed by Non-Resident taxable person
20 th October 2021	GSTR 5A	September 2021	Return to be filed by to be filed by the OIDAR.

INCOME TAX

NOTIFICATION

EXEMPTION TO SPECIFIED PERSONS FROM REQUIREMENT OF FURNISHING A RETURN OF INCOME FOR ASSESSMENT YEAR 2021-2022

OUR COMMENTS: Department of Revenue, Ministry of Finance, Central Board of Direct Taxes, notified Exemption to specified persons from requirement of furnishing a return of income under section 139(1) for assessment year 2021-2022 vide Notification No. 119/2021 Dated: 11th October, 2021.

TABLE

Sl. No.	class of Persons	Conditions
(1)	(2)	(3)
1.	(i) a non-resident, not being a company; or (ii) a foreign company.	(i) The said class of persons does not earn any income in India, during the previous year, other than the income from investment in the specified fund referred to in sub-clause (i) of clause (c) of Explanation to clause (4D) of section 10 of the said Act; and (ii) The provisions of section 139A of the said Act are not applicable to the said class of persons subject to fulfillment of the conditions mentioned in sub-rule (1) of rule 114AAB of the Income-tax Rules, 1962 (hereinafter referred to as 'said rules').
2	a non-resident, being an eligible foreign investor.	(i) The said class of persons, during the previous year, has made transaction only in capital asset referred to in clause (viiab) of section 47 of the said Act, which are listed on a recognised stock exchange located in any International Financial Services Centre and the consideration on transfer of such capital asset is paid or payable in foreign currency;

(ii) The said class of persons does not earn any income in India, during the previous year, other than the income from transfer of capital asset referred to in clause (viiab) of section 47 of the said Act; and

(iii) The provisions of section 139A of the said Act are not applicable to the said class of persons subject to fulfillment of the conditions mentioned in sub-rule (2A) of rule 114AAB of the said rules.

Explanation. -For the purposes of this Notification. -

(a) "**eligible foreign investor**" means a non-resident who operates in accordance with the Securities and Exchange Board of India, circular IMD/HO/FPIC/CIR/P/2017/003 dated 04th January, 2017;

(b) "**International Financial Services Centre**" shall have the same meaning as assigned to it in clause (q) of section 2 of the Special Economic Zones Act, 2005 (28 of 2005);

(c) "**recognised stock exchange**" shall have the meaning as assigned to it in clause (ii) of Explanation 1 to sub-section (5) of section 43 of the said Act.

The above exemption from the requirement of furnishing a return of income shall not be available to the class of persons mentioned in the column (2) of the said Table where a notice under sub-section (1) of section 142 or section 148 or section 153A or section 153C of the said Act has been issued for filing a return of income for the assessment year specified therein.

[For further details please refer the Notification]

GST

CIRCULAR

CLARIFICATION ON THE ISSUES IN RESPECT OF REFUND OF TAX WRONGFULLY PAID

OUR COMMENTS: The GST Policy Wing, Central Board of Indirect Taxes and Customs, Department of Revenue, Ministry of Finance, Government of India, vide Circular No. 162/18/2021-GST and F. No. CBIC-20001/8/2021-GST dated 25.09.2021, issued Clarification on the issues in respect of refund of tax wrongfully paid as specified in section 77(1) of the CGST Act, 2017 and section 19(1) of the IGST Act, 2017.

It is clarified through the circular that the term “subsequently held” in section 77 of CGST Act, 2017 or under section 19 of IGST Act, 2017 covers both the cases where the inter-State or intra-State supply made by a taxpayer, is either subsequently found by taxpayer himself as intra-State or inter-State respectively or where the inter-State or intra-State supply made by a taxpayer is subsequently found/ held as intra-State or inter-State respectively by the tax officer in any proceeding.

Accordingly, refund claim under the said sections can be claimed by the taxpayer in both the above mentioned situations, provided the taxpayer pays the required amount of tax in the correct head.

It is clarified through the circular that the refund under section 77 of CGST Act/ Section 19 of IGST Act, 2017 can be claimed before the expiry of two years from the date of payment of tax under the correct head, i.e. integrated tax paid in respect of subsequently held inter-State supply, or central and state tax in respect of subsequently held intra-State supply, as the case may be. However, in cases, where the taxpayer has made the payment in the correct head before the date of issuance of notification No.35/2021-Central Tax dated 24.09.2021, the refund application under section 77 of the CGST Act/ section 19 of the IGST Act can be filed before the expiry of two years from the date of issuance of the said notification. i.e. from 24.09.2021.

Rule 89 (1A) of the CGST Rules would be applicable for section 19 of the IGST Act also, where the taxpayer has initially paid IGST on a specific transaction which later on is held as intra-State supply and the taxpayer accordingly pays

CGST and SGST on the said transaction. It is also clarified that any refund applications filed, whether pending or disposed off, before issuance of notification No.35/2021-Central Tax, dated 24.09.2021, would also be dealt in accordance with the provisions of rule 89 (1A) of the CGST Rules, 2017.

It is further clarified that Refund under section 77 of the CGST Act / section 19 of the IGST Act would not be available where the taxpayer has made tax adjustment through issuance of credit note under section 34 of the CGST Act in respect of the said transaction.

[For further details please refer the circular]

FEMA

NOTIFICATION

FOREIGN EXCHANGE MANAGEMENT (NON-DEBT INSTRUMENTS) (FOURTH AMENDMENT) RULES, 2021 NOTIFIED

OUR COMMENTS: The Department of Economic Affairs, Ministry of Finance made the following rules further to amend the Foreign Exchange Management (Non-debt Instruments) Rules, 2019, vide Notification No. S.O. 4242(E) - dated 12th October 2021.

In the Foreign Exchange Management (Non-debt Instruments) Rules, 2019, in Schedule I, in the Table, -

(i) against Sl. No. 14.1, -

(a) in column (2), under the heading "Sector/Activity", for the entry, the following entry shall be substituted, namely:-

"All telecom services including Telecom Infrastructure Providers Category-I, viz. Basic, Cellular, Unified Access Services, Unified license (Access services), Unified License, National/International Long Distance, Commercial V-Sat, Public Mobile Radio Trunked Services (PMRTS), Global Mobile Personal Communications Services (GMPCS), all types of ISP licenses, Voice Mail/Audiotex/UMS, Resale of IPLC, Mobile Number Portability services, Infrastructure Provider Category-I (providing dark fibre, right of way, duct space, tower), Other Service Providers and such other services as may be permitted by the Department of Telecommunications (DoT).";

(b) in column (4), under the heading "Entry Route", for the entry, the following entry shall be substituted, namely: -

"Automatic";

(ii) against Sl. No. 14.2, in column (2), under the sub-heading "Other conditions", for the entry, the following entry shall be substituted, namely: -

"The licensing, security and any other terms and conditions as notified by Department of Telecommunications (DoT) from time to time, shall be observed by licensee/entities providing services as referred in serial number 14.1 above as well as investors."

[For further details please refer the notification]

CUSTOMS

NOTIFICATION

BCD ON CRUDE AND REFINED SOYA, SUNFLOWER AND PALM OILS REDUCED TILL 31.03.2022

OUR COMMENTS: The Department of Revenue, Ministry of Finance, Government of India Vide Notification No. 48/2021-Customs dated 13th October 2021 notified reduction in BCD on crude and refined soya, sunflower and palm oils till 31.03.2022.

Through the notification, it is hereby exempts the goods of the description specified in column (3) of the Table below, falling within the Chapter, heading, sub-heading or tariff item of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) specified in column (2) of the said Table, when imported into India, from so much of the duty of customs leviable thereon under the said First Schedule to the Customs Tariff Act, 1975 (51 of 1975), as is in excess of the amount calculated at the standard rate specified in the corresponding entry in column (4) of the said Table, namely –

Table

S. No.	Chapter or Heading or sub-heading or tariff item	Description of goods	Standard rate
(1)	(2)	(3)	(4)
1.	1507 10 00	Crude Soya-bean oil, whether or not degummed	Nil
2.	1507 90 10	Soya-bean oil, edible grade	17.5%
3.	1511 10 00	Crude Palm Oil	Nil
4.	1511 90	Refined bleached deodorized(RBD) palm oil, RBD palmolein, RBD palm stearin and any palm oil other than crude palm oil	17.5%
5.	1512 11 10	Crude Sunflower seed oil	Nil
6.	1512 19 10	Sunflower oil, edible grade	17.5%

This notification shall come into effect on the 14th October, 2021, and will remain in force up to and inclusive of the 31st March, 2022.

NOTIFICATION

AGRICULTURE INFRASTRUCTURE AND DEVELOPMENT CESS (AIDC) ON CRUDE SOYA, SUNFLOWER AND PALM OILS REDUCED TILL 31.03.2022

OUR COMMENTS: The Department of Revenue, Ministry of Finance, Government of India Vide Notification No. 49/2021-Customs dated 13th October 2021 notified reduction in AIDC on crude soya, sunflower and palm oils till 31.03.2022.

Through the notification, it is hereby exempts goods of the description specified in column (3) of the Table below and falling within the Chapter, heading or sub-heading or tariff item of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) as specified in column (2) of the said Table, from so much of the Agriculture Infrastructure and Development Cess leviable thereon under the said section of the Finance Act, 2021 (13 of 2021), as is in excess of the amount calculated at the rate specified in column (4) of the said Table, namely: -

Table

S. No.	Chapter or Heading or sub-heading or tariff item of the First Schedule	Description of goods	Rate
(1)	(2)	(3)	(4)
1.	1507 10 00	Crude Soya-bean oil, whether or not degummed	5%
2.	1511 10 00	Crude Palm Oil	7.5%
3.	1512 11 10	Crude Sunflower seed oil	5%

2. This notification shall come into effect on the 14th October, 2021, and will remain in force up to and inclusive of the 31st March, 2022.

[For further details please refer the Notifications]

DGFT

NOTIFICATION

RELAXATION IN EXPORT POLICY OF RED SANDERS WOOD

OUR COMMENTS: The Directorate General of Foreign Trade, Department of Commerce, Ministry of Commerce and Industry, Government of India Vide Notification No. 35/2015-2020 dated 7th October 2021, notified amendment in the S.No.188, Schedule - 2 of ITC (HS) Export Policy, 2018 for providing relaxation in Export Policy of Red Sanders Wood.

The export policy as stipulated in Column 5 against S.No. 188 of Chapter 44 of Schedule - 2 of ITC (HS) Export Policy, 2018 shall be relaxed to allow export of 810.1894 MT of red Sanders Wood in the form of log fallen due to cyclone from Paralakhemundi Forest Division in the state of Odisha".

On the recommendation of Ministry of Environment, forest and Climate Change vide O.M. E.F. No.5-10/2019-SU (Pt.) dated 06.8.2021 and dated 21.09.2021, Forest, Environment & Climate Change Department, Government of Odisha is hereby permitted to export 810.1894 MT Red Sanders Wood in log form.

Forest, Environment & Climate Change Department, Government of Odisha shall finalize the modalities for export of the respective quantity within 12 months from the date of issuance of the notification.

Effect of this Notification:

Prohibition on export of Red Sanders wood in log form has been relaxed for export of 810.1894 MT of Red Sanders wood in log form by Forest, Environment & Climate Change Department, Government of Odisha.

[For further details please refer the Notification]

NOTIFICATION

AMENDMENT IN EXPORT POLICY OF MELT BLOWN FABRIC

OUR COMMENTS: The Directorate General of Foreign Trade, Department of Commerce, Ministry of Commerce and Industry, Government of India Vide Notification No. 36/2015-2020 dated 14th October 2021, notified amendment in Notification No. 28/2015-20 dated 18.08.2020 for Amendment in Export Policy of Melt Blown Fabric.

S.No	ITCHS Codes	Description	Existing Policy	Revised Policy
207 C	560312 560392 560311 569313 560314 560391 560393 560394	Melt Blown Fabric of any GSM	Prohibited	Free

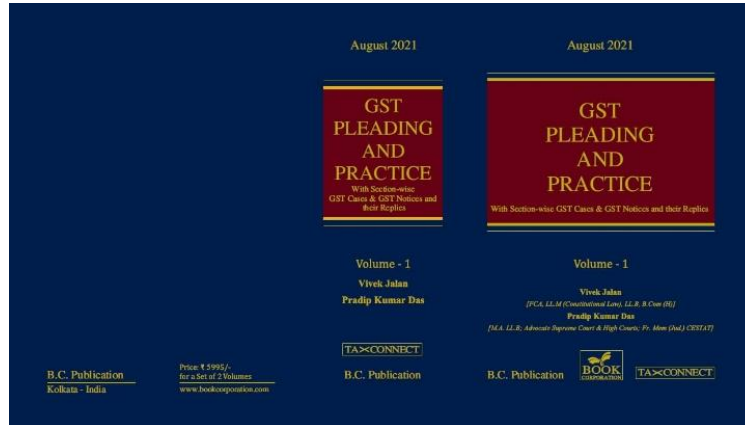
Effect of this Notification:

The Melt Blown Fabric of any GSM has been made freely exportable with immediate effect.

[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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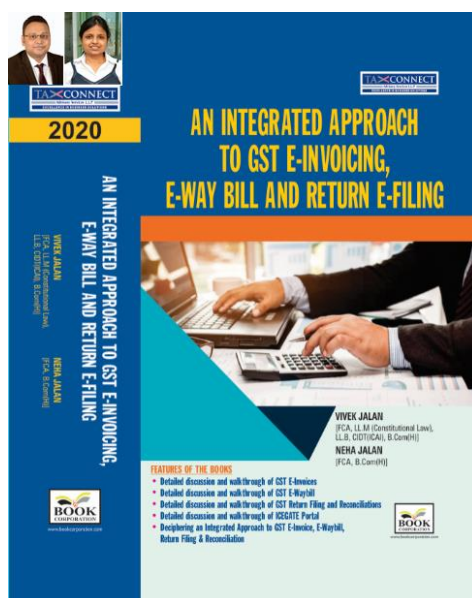
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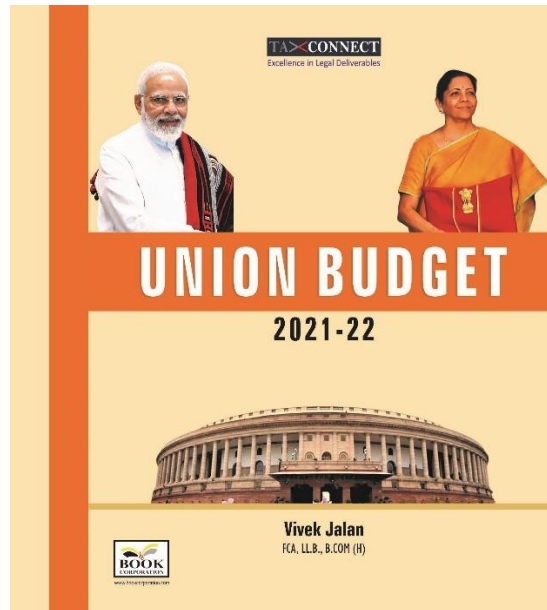
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