

Summary of Notifications, Circulars from 16th October, 2016 to 15th November, 2016

SERVICE TAX

1. Amendments regarding levy of Service Tax on "online information and database access or retrieval services" (OIDAR) w.e.f 1st December 2016

a) Amendment in Place of Provision of Service Rules, 2012

Central Government vide *Notification No. 46/2016-ST., Dated: November 09 2016* has amended Place of Provision of Service Rules to provide that in case of online information and database access or retrieval services the place of provision of service would be location of the service receiver. Accordingly, proviso to Rule 3 has been amended and Point 'b' of Rule 9 has been deleted to this effect.

b) Amendment in Mega Exemption Notification

Entry 34 of Mega Exemption Notification provides exemption to services provided by a person in non-taxable territory to Government, a local authority, a governmental authority or an individual in relation to any purpose other than commerce, industry or any other business or profession, located in taxable territory

Central Government vide *Notification No. 47/2016-ST., Dated: November 09 2016* has amended entry 34 of the Mega Exemption *Notification No. 25/2012 -ST, dated 20.06.2012* to provide that the exemption shall not apply to online information and database access or retrieval services received by persons specified above.

c) Amendment in Service Tax Rules, 1994

Central Government vide *Notification No. 48/2016-Service Tax dt. 09-11-2016* has amended Service Tax Rules, 1994 to prescribe that the person located in non-taxable territory providing OIDAR services to 'non-assesse online recipient', as defined therein, is liable to pay service tax.

Further, following definitions have been provided:

- i) "non-assesse online recipient" means Government, a local authority, a governmental authority or an individual receiving OIDAR services in relation to any purpose other than commerce, industry or any other business or profession, located in taxable territory
- ii) "online information and database access or retrieval (OIDAR) services" means services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply essentially automated and involving minimal human intervention, and impossible to ensure in the absence of information technology and includes electronic services such as:

- advertising on the internet;
- providing cloud services;
- provision of e-books, movie, music, software and other intangibles via telecommunication networks or internet;
- providing data or information, retrievable or otherwise, to any person, in electronic form through a computer network;
- online supplies of digital content (movies, television shows, music, etc.);
- digital data storage; and

- online gaming;

iii) Proviso(s) added in the definition of **Person Liable for Paying Service Tax**

- When an intermediary located in the non-taxable territory including an electronic platform, arranges or facilitates provision of cross border B2C OIDAR service but does not provide the main service on his account, the intermediary shall be deemed to be receiving such services from the service provider in non-taxable territory and providing such services to the non-assesse online recipient except when such intermediary satisfies all the specified conditions.
 - When the service provider in non-taxable territory is represented for any purpose in taxable territory by a person, then such person is deemed to be the person liable for paying Service tax.
 - If the service provider in non-taxable territory does not have a physical presence or does not have a representative for any purpose in the taxable territory, the service provider may appoint a person in the taxable territory for the purpose of paying Service tax and such person shall be liable for paying Service tax.
 - A person receiving OIDAR services shall be deemed to be a non-assesse online recipient, if such person does not have Service tax registration under the Service Tax Rules
- iv) New proviso inserted in Rule 4(1) of the Service Tax Rules prescribing registration requirement/procedure of person located in non-taxable territory liable for paying Service tax in the case of OIDAR services.
- v) New proviso inserted in Rule 4A(1) of the Service Tax Rules prescribing invoicing details in case of OIDAR services provided or agreed to be provided in taxable territory by a person located in the non-taxable territory.
- vi) Amendment in Rule 7(1): Return form ST-3C has been inserted.
- vii) An application for registration in form ST-1A is to be made by a person located in non-taxable territory providing OIDAR services within a period of thirty days from the date on which the service tax is levied or the person located in non-taxable territory has commenced supply of taxable services in the taxable territory in India and the registration shall be deemed to be granted in form ST-2A from the date of receipt of the application.

d) Amendment in Reverse Charge Notification

Central Government vide *Notification No. 49/2016-Service Tax dt. 09-11-2016* has amended Reverse Charge *Notification No. 30/2012- ST, dated the 20th June, 2016* to put compliance liability of service tax payment and procedure on to the service provider located in the non-taxable territory with respect to online information and database access or retrieval services provided in the taxable territory to ‘non-assesse online recipient’.

- e) In all the Notifications issued, the definition of OIDAR services as provided in Service Tax Rules, 1994 would apply *mutatis mutandis*.

f) Clarifications on Issues pertaining OIDAR services

Central Government vide *Circular No. 202/12/2016-ST, dt. 09-11-2016* has provided a list of 46 issues and clarifications thereto in respect of various aspects pertaining to the taxation of OIDAR services. Detailed circular may be viewed at <http://www.idtc.icaai.org/latest-circular.html>

With effect of these Notifications/ Circular cross border B2C OIDAR services provided by a foreign service provider to a person in India will become taxable **from December 1, 2016** onwards, which includes webpage hosting, online maintenance of programmes, remote systems administration, data warehousing, cloud storage and downloading of games, music, distance teaching, and supply of images, text and information and making available of databases, etc.

[Notification Nos. 46/2016, 47/2016, 48/2016 & 49/2016-Service Tax all dt. 09-11-2016 & Circular No. 202/12/2016-ST, dt. 09-11-2016]

CENTRAL EXCISE

2. Annual Return under CE / ST are not required to be filed for FY 2015-16

Central Government vide *Notification No. 8/2016-Central Excise (N.T.) & 13/2016-Central Excise (N.T.), both Dated: March 1, 2016* amended Rule 12 of Central Excise Rules, 2002 and Rule 9A of CENVAT Credit Rules, 2004 to replace existing Central Excise Forms ER-4 to ER-7 with an Annual Return form. Further, *Notification No. 19/2016-ST dated March 1, 2016*, amended Rule 7 of the Service Tax Rules, 1994 to prescribe an Annual Return.

Now, Central Government vide *Circular No. 1050/38/2016-CX dated November 8, 2016* has provided that in view of impending implementation of Goods and Services Tax (GST) the aforesaid Annual Return(s) which were due to be filed for Financial Year 2015-16 by 30th November 2016 are not required to be filed.

It has further been clarified that after implementation of GST, Annual Return for non-GST goods only may be required.

[Circular No. 1050/38/2016-CX dated November 8, 2016]

CUSTOMS

3. All Industry Rates of Duty Drawback revised

Central Government vide *Notification No. 131/2016 - CUSTOMS (N.T.), Dated: October 31, 2016* has revised the All Industry Rates (AIRs) of Drawback with effect from 15.11.2016. These AIRs consider relevant broad average parameters like,

- a. prevailing prices of inputs,
- b. input output norms,
- c. share of imports in input consumption,
- d. the rates of central excise and customs duties,
- e. incidence of service tax paid on taxable services which are used as input services in the manufacturing or processing of export goods,

- f. incidence of duty on HSD/furnace oil,
- g. value of export goods, etc.

Further major changes include:

- i) AIRs have been provided to certain worked articles under chapters 45, 46 and 68;
- ii) Certain products, earlier with all customs AIRs, have been provided composite rates. These include rubber parts (for automobile or other machinery) of chapter 40 and children's picture, drawing/colouring books, etc. of chapter 49;
- iii) Changes in certain tariff items description have been made for dispute prevention or enhancing simplification. These relate, inter-alia, to packaged rice, rubber parts, certain leather items, leggings, frocks, bicycles, protective sports gear, etc;
- iv) For better product differentiation, separate tariff lines have been provided by carving out from (or replacing) certain existing tariff items. These include surimi fish paste (chapter 16), belts (chapter 39), leather woven/braided hand-bag (chapter 42);
- v) In the notes and conditions of the notification, the term article of leather in chapter 42 of the Drawback Schedule has been expanded to include any article wherein 60% or more of the outer and inner surface area taken together is of leather. This is in the light of newer design and commercial practices;
- vi) Residuary rate (customs) provided to items across various chapters has been reduced from 1.9% to 1.5% and from 1.4% to 1.1%.

It has further been provided that for claiming alternative AIRs as specified, the relevant tariff item has to be suffixed with suffix "C" or suffix "D" for the situation when CENVAT facility has not been availed or when CENVAT facility has been availed, respectively, instead of the usual suffixes "A" or suffix "B".

With trade facilitation in view, tenure of the Drawback Committee constituted by the Central Government has been extended to expeditiously consider issues arising from the changes made. Accordingly, exporters of products at revised residuary rates of 1.1% and 1.5% have been requested to immediately come forward with data, if any, for higher than residuary rates.

[Notification No. 131/2016 - CUSTOMS (N.T.), Dated: October 31, 2016 & Circular No. 50/2016-Customs, Dated: October 31, 2016]

4. Customs, Central Excise Duties and Service Tax Drawback Rules amended

Central Government vide *Notification No. 132/2016- Customs (N.T), Dated: October 31, 2016* has amended Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 w.e.f 15th November 2016 by deleting sub-rule (1) of rule 8 which did not allow AIR or Brand Rate drawback to exports (other than postal exports or exports under advance authorization) if the amount of drawback is less than 1% of F.O.B. value of export, except where the amount of drawback per shipment exceeded Rs.500.

[Notification No. 132/2016- Customs (N.T), Dated: October 31, 2016]

5. Deferred Payment of Import Duty Rules, 2016 notified

Central Government vide *Notification No. 134/2016-Customs (NT), Dated: November 2, 2016* notified Deferred Payment of Import Duty Rules, 2016 to be effective from 16th November 2016. These rules apply to eligible importers i.e. class or classes of importers as specified by Central Government who shall pay such duty electronically.

The due dates for payment of duty by an eligible importer are:

For goods corresponding to Bill of Entry returned for payment from	Duty to be paid by:
1st day to 15th day of any month	17th day of that month
16th day till the last day of any month other than March	2nd day of the following month
16th day till the 29th day of March ¹	31st March
30th day of March to 31st day of March	2nd April

The duty needs to be paid electronically and if there is a default more than once in three consecutive months, this facility of deferred payment will not be allowed unless the duty with interest has been paid in full. Provisions of these rules are not applicable to the goods which have not been assessed or not declared by the importer in the entry made under the Customs Act, 1962.

Further, Central Government vide *Notification No. 135/2016-Customs (NT), Dated: November 2, 2016* has made Importers certified under Authorized Economic Operator programme as AEO (Tier-Two) and AEO (Tier-Three), as eligible importers for the deferred payment of duty scheme.

In addition to above, *Circular No. 52/2016-Cus; Dated: November 15, 2016* has been issued to provide the following:

- a) Every importer certified as AEO-T2/AEO-T3 is required to obtain ICEGATE Login which is essential to avail benefits envisaged in the AEO Programme. Further, to avail the facility of deferred payment, every AEO-T2/AEO-T3 is advised to nominate a nodal person borne on their establishment who would be responsible for authenticating all the customs related transactions on behalf of the AEO. The contact details of AEO nodal person shall also be provided in ICEGATE login to ensure that the information reaches in time at their registered mail for authentication.
- b) An intimation addressed to the AEO Programme Manager with a copy to the Principal Commissioner(s) of Customs or the Commissioner(s) of Customs, having jurisdiction over the port(s) of clearance will be considered as an intimation by an eligible importer. The eligible importer who intends to make deferred payment will indicate the same using flag "D" in the Payment Method column of Bill of Entry filed. To ensure that the facility of deferred payment is availed only by the eligible importer, option has been provided in ICEGATE Login for AEO Nodal person to acknowledge such intent and authenticate using One Time Password (OTP) sent to his registered e-mail address. The Nodal person would be able to authenticate multiple Bills of

Entry at once. Only on such authentication by the eligible AEO importer, customs clearance would be provided for the consignment under deferred payment of duty Rules.

- c) The eligible importer will also have an option to select the challans belonging to the deferred period and pay at anytime, even before the due date at their convenience. Reports regarding availing of deferred payment at each port are made available in ICES.

[Notification No. 134/2016-Customs (NT) & 135/2016-Customs (NT), both Dated: November 2, 2016 and Circular No. 52/2016-Cus; Dated: November 15, 2016]

6. Transferability of goods imported/procured by debiting duty in SFIS scrips

At present, the goods imported/procured under SFIS can be alienated on completion of 3 years from the date of import/procurement as per *Department of Commerce Notification No. 30/2009-2014 dated 1.8.2013*. With regard to transferability of goods imported/procured by debiting duty in SFIS scrips, Central Government vide *Circular No. 49/2016-Customs, Dated: October 27, 2016* has clarified the following:

(a) The goods imported/procured utilizing SFIS Scrip issued in terms of FTP 2009-14 may be sold/transferred on completion of 3 years from the date of clearance of import/ procurement in terms of the Department of Commerce notification no. 30 dated 1.8.2013.

(b) Requests for sale/transfer of goods imported/procured utilizing SFIS scrip issued in terms of FTP 2004-09 shall be considered by DGFT in terms of para 2.5 of FTP 2004-09 on merits keeping in view the spirit of the High Court's order to the effect that transferability of goods that have completed 3 years is not deniable only on the ground that imports were in terms of the FTP 2004-09.

(c) In view of DGFT conveying interpretation under para 2.3 of FTP 2004-09/2009-14 that the provision of transferability after 3 years is not applicable to consumables (including food items and alcoholic beverages) since such consumables are meant to be consumed in the course of day to day business of the applicant, such consumables are non-transferable even after 3 years.

Requests for export sale of goods any time after import/procurement would also be considered by DGFT, subject to such export being without claim for any export incentive, rebate, refund, drawback and/or re-credit of incentive and the bringing back into India being treated as a fresh import.

[Circular No. 49/2016-Customs, Dated: October 27, 2016]