

Quick bit | July 2022

Goods and Services Tax

Negative balance in ECL - The question before the Hon'ble Gujarat High Court– Where the balance in Electronic Credit Ledger is Nil, can the tax authorities block the ECL by entering a negative balance?

The Hon'ble Gujarat High Court held the following:

- *The condition precedent is that the input tax credit (ITC) should be available in the electronic credit ledger before the power under Rule 86-A is invoked by the authority. If no ITC was available in the ledger, the blocking of electronic credit ledger under Rule 86-A and insertion of negative balance in the ledger would be wholly without jurisdiction and illegal.*
- *Rule 86A is not the rule which entitled the proper officer to make debit entries in the electronic credit ledger of the registered person. The rule merely allows the proper officer to disallow the registered person from debiting (the amount of credit fraudulently availed) from the electronic credit ledger for the limited period of time and on a provisional basis.*
- *In case debit entries are made by the proper officer, the same will tantamount to permanent recovery of the input tax credit and certainly permanent recovery is governed by the statutory provisions (Section 73 of 74 of CGST Act) and it certainly travels beyond the plain language and underlined intent Rule 86A.*
- *The condition precedent for exercise of power under Rule 86A of the GST Rules is the availability of credit in the electronic credit ledger which is alleged to be ineligible. However, there is no power of negative block for credit to be availed in future.*

Samay Alloys India Pvt. Ltd. vs. State of Gujarat - R/Special Civil Application No. 18059 of 2021, Gujarat High Court; dated 03.02.2022.

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Income Tax

- + Three types of Virtual Digital Assets ('VDA') excluded from the purview of VDAs for income-tax purposes:** A VDA is defined broadly under the Income-tax Act, 1961 ('ITA') and the Central Government ('CG') is empowered to notify exclusions to the said definition. In this backdrop, the following VDAs have now been specifically excluded from the purview of the VDA under the ITA:
- (i) Gift card or vouchers, being a record that may be used to obtain goods or services or a discount on goods or services;
 - (ii) Mileage points, reward points or loyalty card, being a record given without direct monetary consideration under an award, reward, benefit, loyalty, incentive, rebate or promotional program that may be used or redeemed only to obtain goods or services or a discount on goods or services;
 - (iii) Subscription to websites or platforms or application.

The CG has also notified that the definition of a non-fungible token shall not include a token which results in the transfer of ownership of underlying tangible asset and such transfer of ownership is legally enforceable.

Notification No 74 of 2022 & Notification No 75 of 2022 both dated 30th June, 2022

- + Clarifications on tax deduction at source ('TDS') on transactions involving VDAs:** The Finance Act, 2022 provided for TDS at 1% on consideration in relation to VDAs with effect from 1st July, 2022. Considering numerous representations on the application of TDS in instances where the transactions are undertaken through an exchange, the Central Board of Direct Taxes ('CBDT') has issued certain clarificatory guidelines. The CBDT also issued guidance on the application of the TDS on some of the non-exchange transactions. Some of the salient guidelines are as below:
- (i) TDS on VDA will always be deducted under section 194S and not under section 194Q.
 - (ii) TDS on transfer of VDA will be deducted on consideration excluding GST or charges levied by the service provider.
 - (iii) The buyer shall be required to deduct tax on the consideration. In a case where the consideration is not in kind, the buyer will discharge the consideration after the deduction of taxes. However, in a case where the transaction is in kind, the buyer shall release the consideration only after receiving proof of payment of tax from the seller. These statements have to be further reported appropriately in Form 26Q. Where the buyer is a specified person as envisaged in provisions on TDS on goods, he shall be liable to file Form 26QE.

Circular No. 13 of 2022, dated 22nd June, 2022 & Circular No 14 of 2022, dated 28th June, 2022

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- + Clarifications on TDS on transactions involving 'benefit' or 'perquisite':** The Finance Act, 2022 introduced a new compliance effective 01.07.2022 requiring TDS where a benefit or perquisite is provided to a resident arising from the recipient's business or profession. TDS is not required to be deducted in the following cases:
- a. where the value of benefit or perquisite does not exceed Rs.20,000 in the financial year;
 - b. where the provider of benefit/perquisite is an Individual/HUF, the turnover in the preceding financial year does not exceed Rs.1 crore in the case of business or Rs.50 lakhs in the case of profession.

Considering numerous representations on the application of TDS in specific instances, the CBDT has issued certain clarificatory guidelines. Some of the salient guidelines are as below:

- (ii) The nature of income accruing to the recipient of the benefit or perquisite is not relevant for the purposes of deduction of tax. Hence, tax must be deducted even if the benefit or perquisite is in a capital asset.
- (iii) The benefit or perquisite may be in cash or kind.
- (iv) Sales discounts, cash discounts and rebates are by nature, benefits or perquisites. However, it is clarified that tax need not be deducted on these transactions.
- (v) TDS applies to free samples.
- (vi) The benefits or perquisites shall be valued at their fair market value except in the following cases:
 - a. If the benefit / perquisite provider has purchased the benefit / perquisite before providing it to the recipient, the purchase price shall be the value for such benefit / perquisite.
 - b. If the benefit / perquisite provider manufactures such items given as benefit / perquisite, then the price that it charges to its customers for such items shall be the value for such benefit / perquisite.
- (vii) *Products received by a social media influencer:* If such products are given for the purpose of rendering the service and returned to the company after the rendering of service, then such products will not be liable to TDS. If the influencer retains the products, then such transaction will be subjected to TDS.
- (viii) *Reimbursement of out-of-pocket expenses incurred by the service provider by service recipient exclusively for rendering the services to the recipient of service:* Only in a case where the invoice for the reimbursement is in the name of the service recipient, the reimbursement shall not be liable to TDS under section 194R. In all other cases, the reimbursement shall be subjected to TDS under section 194R by the service recipient.

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- (ix) Where benefit/perquisite is in kind or partly in cash and partly in kind, the provider of the benefit is required to ensure that the tax is paid. Such provider shall receive the proof of payment of tax from the recipient of perquisite before extending the perquisite. As an alternative, the provider may deduct the tax by grossing up the value of benefit or perquisite and paying the tax by considering such tax paid as a perquisite.

Circular No 12 of 2022, dated 16th June 2022

- + New forms for compliances with TDS provisions on VDAs:** As mentioned previously, the Finance Act, 2022 required TDS on VDA transactions. In this regard, the CBDT has notified:

- (i) New challan-cum-statement in Form 26QE that needs to be filed by a specified person not dealing through an exchange within 30 days from the end of the month in which such tax was deducted.
- (ii) A certificate for tax deducted in Form 16E has also been notified which shall be issued within 15 days from the due date of filing the Form 26QE.
- (iii) Also, where an exchange has agreed to pay tax in relation to transfer of VDAs in accordance with the guidelines issued by the CBDT in this regard, such exchanges shall be required to file Form 26QF.

Notification No. 67 of 2022 & Notification No.73 of 2022 both dated 21st June, 2022

- + Tolerance band for the purposes of Arm's length pricing (ALP) of International and specified domestic transactions (SDT) for AY 2022-23 notified:** It is provided that for international transactions and SDTs, a transfer pricing adjustment shall not be made if the difference between transaction value and arm's length price ('ALP', as determined in accordance with the ITA) does not exceed 3% of such value at which the transaction is actually undertaken. Where the transaction as envisaged above pertains to wholesale trading, the margin of would be 1%.

Wholesale trading for an international transaction / SDT means a transaction which fulfills the following conditions:

- i) Purchase cost of finished goods is 80% or more of the total cost pertaining to such trading activities; and
- ii) Average monthly closing inventory of such goods is 10% or less of sales pertaining to such trading activities.

Notification number 70 of 2022, dated 28th June, 2022

- + Cost Inflation Index ('CII') for FY 2022-23 notified:** The CII for computation of capital gains for FY 2022-23 has been notified as 331.

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Goods and Services Tax (GST)

- + **Waiver of interest for specified electronic commerce operators:** The CBIC has waived the interest for certain electronic commerce operators (applicable to GSTINs specified in the notification) for specified tax periods (mentioned in the notification) who have failed to furnish the statement in FORM GSTR-8 (i.e. Statement for Collection of TCS under Section 52(1) of the CGST Act, 2017) within the due date. The list of GSTINs and the tax periods can be viewed by clicking the below hyperlink.

[Notification No. 08/2022 – Central Tax dated 07.06.2022](#)

- + **Instructions issued to streamline procedures relating to sanction, post-audit and review of refund claims:** To ensure uniformity in procedure and effective monitoring of sanction of refund claims, the CBIC has issued the following instructions:

a) **Sanction of Refund:**

- A detailed speaking refund order to be passed along with Form GST RFD-06 (Refund Sanction Order) for sanction / rejection of refund.
- Speaking order issued along with Form GST RFD-06 should contain details such as period for which refund is filed, date of filing, category of refund, details of deficiency memo, details of documents uploaded, whether Show Cause Notice was issued etc. Comprehensive list of requirements can be viewed by [clicking the link](#).
- Additional details have to be specified in the refund sanction order for refund claimed on account of zero-rated supplies, inverted duty structure, IGST paid on account of Zero-rated supply, deemed export, excess balance in cash ledger and other category of refund.

b) **Post Audit and Review:**

- Commissioner are instructed to review all refund orders for examining the legality and propriety of the same and to determine whether an appeal before the appellate authority is required to be filed within 6 months of the date of communication of the order.
- In view of the large volume of refund claims, the post audits of refund orders are to be conducted only for refund claims amounting to Rs. 1 lakh or more;
- All refund orders passed should be immediately transmitted online to the review module after issuance of refund order in Form GST RFD-06. The review and post-audit officers shall have access to all these documents/statements.

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- A **"Post-Audit Cell"** consisting of Deputy/Assistant Commissioner along with one/two superintendents and inspectors may be created in the Commissionerate Headquarters and must be concluded within 3 months from the date of issue of refund order in Form GST RFD-06.
- Review of refund order to be completed at least 30 days before the expiry of the time period allowed for filing appeal under Section 107 (2) of the CGST Act, 2017 i.e. 3 months from the date of communication of order
- Till the time the functionality for conducting post-audit online is developed on ACES-GST portal, post-audit of refund orders to be conducted in offline mode.
- Refund orders and relevant documents to be provided to the **"Post-Audit Cell"** by the concerned division through e-office within 7 days of issuance of refund sanction order in Form GST RFD-06.
- Thereafter, report of post-audit to be furnished by the **"Post-Audit Cell"** to the **"Review Cell"** through e-office within 3 months from date of issuance of Form RFD-06.

Instruction No. 03/2022-GST dated 14.06.2022

- + **Extension of levy of Compensation Cess upto March 31, 2026:** The Central Government has extended the time for levy of compensation Cess till March 31, 2026. Hitherto, the levy of compensation Cess was to end by June 30, 2022.

Notification No. 1/2022- Compensation Cess dated 24.06.2022

Customs

- + **Exemption from IGST and GST Compensation Cess on imports under Advance Authorization / EPCG/ EOU Schemes extended:** The exemption from levy of Integrated Tax (IGST) and GST Compensation Cess on goods imported into India by holder of Advance Authorization (AA) Scheme, Export Promotion Capital Goods (EPCG) Scheme, 100% Export Oriented Units (EOUs), Software Technology Park (STP) units and Electronic Hardware Technology Park (EHTPs) units, has been extended. Hitherto, such an exemption was available on imports made upto 30.06.2022

While the notification for extension is issued, it is pertinent to take note that there is no sunset clause or timelines, upto which such an exemption would continue to apply in the hands of above category of importers. However, as the provisions of Foreign Trade Policy (FTP) 2015-2020 read with procedures to the said policy, is extended only upto 30.09.2022, it can be said that such extension is implicitly applicable for imports made only upto 30.09.2022 only (unless and otherwise any further extensions are announced).

Notification No. 37/2022 – Customs (T) dated 30.06.2022

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Foreign Trade Policy (FTP)

- + **Extension of time-limit for reporting fulfilment of export obligation under Export Promotion Capital Goods (EPCG) Scheme:** In order to reduce 'Compliance Burden' and enhance 'Ease of doing Business', the DGFT has extended time limit to file annual returns, which acts as a reporting tool for fulfilment of export obligation under EPCG scheme, for the year 2022-23 till 30.09.2022 (appears to be an error in mentioning the year as 2022-23 instead of 2021-21 in the public notice). Further, late fees of Rs. 5,000/- is applicable for the returns due to be filed from the year 2022-23 onwards. Hitherto, the due date to file annual returns for FY 2021-22 was 30th June 2022.

[Public notice no.13/2015-20 dated 09.06.2022](#)

- + **Introduction of procedure on Global Authorisation for Intra-Company Transfers (GAICT) of SCOMET Items/Software/Technology:** The DGFT has brought about amendments in issuance of global authorisation for SCOMET items/Software/Technology under Handbook of Procedures of 2015-20. Such amendments, in a nutshell, has been tabulated as follows:

Head	Procedure in brief
Scope and Eligibility	Pre-export authorization will not be required, for export and/or re-export of SCOMET items including software and technology under SCOMET Category 8 (except items listed in Annexure-I), subject to the conditions specified therein, which can be referred in the said public notice.
Procedure for grant of Global Authorization for Intra-Company Transfers (GAICT)	Procedure on filing and assessment of application has been detailed out.
Post reporting for re-export of items/ software/ technology under GAICT	Reporting procedures have been laid out stating specific reporting forms. Further, failure to comply the same would result in imposition of penalty and / or suspension/revocation of GAICT.
Record keeping	The exporter will be required to keep records of all the export documents, in manual or electronic form, for a period of 5 years from the date of GAICT issued by DGFT.
General conditions	The prohibition of GAICT for specific items/countries; Amendments of items; Powers of IMWG for denial of issuance of such authorisation, have been specified.

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Head	Procedure in brief
Re-exports / re-transfer of the items including software and technology (processed or incorporated)	Further re-exports / re-transfers of the items including software and technology (processed or incorporated) from the foreign subsidiary company or foreign parent company / another subsidiary of foreign parent company to end users in other countries would be subject to the export control regulations of the country of the foreign subsidiary of Indian company or foreign parent company / another subsidiary of foreign parent company.
Validity	GAICT will be valid until 3 years from the date of issue of GAICT and cannot be revalidated.
Suspension / Revocation	Scenarios of suspension and revocation has been detailed out.

Public notice no.14/2015-20 dated 13.06.2022

- + **Migration of e-BRC Portal/Website to new IT platform:** The existing e-BRC platform (<http://dgftebrc.nic.in/>) which enables to capture details of realisation of export proceeds from the Banks directly through secured electronic mode and facilitated implementation of various export promotion schemes in an IT environment, has been upgraded to new IT platform from end of July 2022. In this backdrop, it is informed that the existing users of the e-BRC platform i.e., AD Banks are required to discontinue the existing platform and migrate to the new IT platform, on priority, in order to ensure smooth rendering of services. The related FAQs and Help Manual has been made available on the new portal after login.

Trade notice no.13/2022-23 dated 30.06.2022

- + **Relaxation in the procedures in relation to supplies to SEZ units under Advance authorisation:** The DGFT has relaxed procedure in relation to documentary requirements with respect to supplies made to SEZ units in case of export obligation discharge under Advance authorization which has been tabulated as follows:

Existing procedure	Relaxed procedure
There exists requirement of submission of 'Bill of Export' by the exporters as an evidence of export obligation discharge.	<p><u>Prior to 01.04.2015</u></p> <p>Exporters are not required to submit 'Bill of Export' as an evidence of export obligation discharge.</p> <p><u>On or after 01.04.2015</u></p> <p>Exporters required to submit corroborative evidences in lieu of 'Bill of Exports' such as:</p>

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	<ul style="list-style-type: none"> ▪ ARE- 1 form duly attested by jurisdictional Central Excise/GST Authorities of AA holder. ▪ Evidence of receipt of the supplies by the recipient in the SEZ. ▪ Evidence of payment made by the SEZ unit to the AA holder.
<p>The above procedure has been relaxed in the backdrop of challenges being faced by several exporters on account of the non-availability of provision for the period covered upto FTP 2009-14 coupled with the relief granted to the Advance Authorisation Holders by the Hon'ble High Courts across India, in respect of requirement of submission of 'Bill of Export'.</p>	

Policy Circular No. 39/2015-20 dated 07.06.2022

Corporate Law

- + **Extension of due date for filing of Form 11 for Limited Liability Partnership (LLP) firms:** MCA vide General Circular dated 29.06.2022 has allowed LLPs to file e-Form 11 (Annual Return of LLP) for financial year 2021-22 without paying additional fees from 30.06.2022 to 15.07.2022.

General Circular No.7/2022 dated 29.06.2022

- + **Manner of restoration of names of individual whose name has been removed from databank for Independent Directors:** Ministry of Corporate Affairs ('MCA') has notified the Companies (Appointment and Qualification of Directors) Second Amendment, Rules, 2022 on 10.06.2022. The rules allows any individual whose name has been removed from the databank for Independent Directors to apply for restoration of his/her name on payment of fees of Rs 1000 (Rupees one thousand only). Further, his/her name shall be shown in a separate restored category for a period of one year from the date of restoration within which, he/she shall be required to pass the online proficiency self-assessment test and thereafter his/her name shall be included in the databank, only if he/she passes the said online proficiency self-assessment test. If the individual fails the online proficiency self-assessment test, his/her name shall be removed and he shall be required to apply afresh for the inclusion of his name in the databank.

Notification number G.S.R. 439(E) dated 10.06.2022

- + **Punishment for non-compliance to National Financial Reporting Authority Rules, 2018:** MCA has notified the National Financial Reporting Authority Rules, 2022 on 17.06.2022. It provides that whoever contravenes any of the provisions of these rules, would be punishable with fine not exceeding Rs 5,000 (Rupees five thousand only). In case of the contravention of a continuing nature, a further fine not exceeding Rs 500 (Rupees five hundred only) for every day after during which the contravention continues shall be imposed.

Notification number G.S.R. 456(E) dated 17.06.2022

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- + **Amendment regarding obtaining clearance from Ministry of Home Affairs for a Director who is a national of a country which shares land border with India:** MCA has notified Companies (Appointment and Qualification of Directors) Amendment Rules, 2022 on 01.06.2022. The rules require a person who is a national of a country which shares its land border with India and seeks to get appointed as a Director of a company, to obtain security clearance from the Ministry of Home Affairs (MHA), Government of India. The clearance shall be submitted along with the consent to be appointed as Director. Further, every application for Directors Identification Number (DIN) for such a person shall include the clearance from the MHA. Also, additional declaration has been added in Form DIR-2 with respect to obtaining the clearance by such a person.

Notification number G.S.R. 410(E) dated 01.06.2022

- + **Amendment in process of removal of name of Company from the register of Companies:** MCA has notified Companies (Removal of Names of Companies from the Register of Companies) Rules, 2022 on 09.06.2022. The amended rules allows the Registrar to call for further information if he finds such application or any document annexed is defective or incomplete, on examining the application made in Form STK-2 for removal of name of a Company from the register of companies. Further the applicant should be informed to remove the defects and re-submit the complete form within fifteen days from the date of such information. The form shall be considered as invalid if the applicant fails to do address the defect/s.

Notification number G.S.R. 436(E) dated 09.06.2022

- + **Securities Exchange Board of India ('SEBI') amends format of statement showing shareholding pattern of public shareholder/foreign ownership limits:** SEBI vide its circular dated 30.06.2022 has amended prescribed formats for disclosure of holding of specified securities and shareholding pattern. The amended format requires the following additional disclosures:

- (a) disclosure of public shareholding, names of the shareholders holding 1% or more of shares of the listed entity.
- (b) separate disclosure of names of the shareholders who are persons acting in concert, if available.
- (c) disclosure for foreign ownership limits in the format prescribed.

SEBI Circular dated 30.06.2022

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Document date: 11.07.2022

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