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- + Relaxation on levy of additional fees in filling of e-forms AOC-4, AOC-4 Non-XBRL and MGT-7/MGT-7A for the financial year ended on 31.03.2021 under the Companies Act, 2013
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### Quick bits

#### *Direct Tax*

*GRI RENEWABLE INDUSTRIES S.L. vs. ASST. CIT (Pune Income-tax Appellate Tribunal (ITAT) in ITA 202 / Pune / 2021 dated 15.02.2022)*

*Circular No. 3 of 2022 dated 3rd February, 2022 (summarized infra) was the subject matter of discussion before the Pune ITAT recently. In the said ruling, the facts were that the taxpayer was a Spanish entity and received royalty and fees for technical services from India and considering a tax rate of 10% by relying on the combined reading of Article 13 of the DTAA between India and Spain, the MFN clause of the protocol to the DTAA and Article 12 of the DTAA between India and Portugal. The tax officer had applied the rate of 10% plus surcharge and cess as per Section 115A denying the beneficial provisions as per the DTAA.*

*The Pune ITAT affirmed the taxpayer's approach. On the matter of the Circular above, it held that in the taxpayer's facts, the first three conditions were satisfied. On the fourth condition, the ITAT opined that the mandate of issuing of a notification for importing the beneficial treatment overlooks the plain language of the section when juxtaposed with the language of the protocol since the protocol treats the MFN clause as an integral part of the agreement. On notifying of the main DTAA, all its integral parts, get automatically notified. As such, there is no need to again notify the individual limbs of the agreement so as to make them operational one by one. Further, it is trite law that a circular issued by the CBDT is binding on the AO and not on the taxpayer or the Tribunal or other appellate authorities. Hence, inter alia, the circular cannot be invoked for the requirement of a separate notification for implementing the MFN Clause.*

### INCOME TAX

- + **Clarification regarding the Most-Favoured-Nation (MFN) clause in the Protocol to India's DTAA's with certain countries:** India has entered into Double Taxation Avoidance Agreements ('DTAAs') with numerous countries around the world. Protocols have also been entered into for those DTAA's with countries such as Switzerland, France and Netherlands which, inter alia, contain, what is termed as the 'Most Favoured Nation' ('MFN') clause. This clause provides that if India enters into a DTAA with a third country which is a member of Organization of Economic Co-operation and Development ('OECD') and such DTAA provides for a "taxation at lower rate" or "scope that is more restricted", such beneficial provisions shall be imported into the DTAA's of the above countries.

The DTAA's between India and the countries of Lithuania, Colombia and Slovenia contained provisions beneficial as compared to the other DTAA's with OECD members. These countries became OECD members after India notified the respective DTAA's. Considering the above, the countries of Switzerland, France and Netherlands passed unilateral decrees adopting beneficial provisions of the MFN clause in the DTAA's entered by India with Lithuania, Colombia and Slovenia respectively after them becoming members of OECD. The Circular provides that these decrees were passed without a shared understanding with the Central Board of Direct Taxes ('CBDT') / Government of India ('GoI'). Further, the clauses also came into force when the countries were not member nations of OECD. Therefore, the CBDT vide Circular No. 3/2022, has clarified that such beneficial provisions cannot be imported into the MFN clause with the countries. The Circular sets the following conditions to import the beneficial provisions of the MFN clause.

- a. The second treaty (with the third State) is entered into after the signature/ Entry into Force (depending upon the language of the MFN clause) of the treaty between India and the first State;
- b. The second treaty is entered into between India and a State which is a member of the OECD at the time of signing the treaty with it;
- c. India limits its taxing rights in the second treaty in relation to rate or scope of taxation in respect of the relevant items of income; and
- d. A separate notification has been issued by India, importing the benefits of the second treaty into the treaty with the first State, as required by the Act.

*Circular No. 3 of 2022 dated 3rd February, 2022*

### GOODS AND SERVICES TAX (GST)

- + **Effective 01.04.2022, e-Invoicing mandatory if turnover crosses Rs. 20 Crores:** The CBIC has further reduced the threshold limit of ‘aggregate turnover’ for the applicability of e-invoicing provisions from Rs. 50 crores to Rs. 20 crores effective 01.04.2022.

Effective 01.04.2022, any Registered Persons whose aggregate turnover (under same PAN computed on all India basis) in *any preceding financial year from 2017-18 onwards* exceeds Rs. 20 Crores, is required to comply with the e-invoicing provisions for B2B transactions and exports. It is relevant to note that an invoice issued in non-compliance of the e-invoicing provisions will not be treated as a valid tax invoice.

*Effective date 01.04.2022 (Notification No. 01/2022 dated 24.02.2022)*

### CUSTOMS

- + **Automation of procedures under Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017:** With an aim to simplify process and focusing on automation of procedures prescribed under Customs (Import of Goods at Concessional Rate of Duty - ICGR) Rules, 2017, by way of amendment to said rules through Customs (Import of Goods at Concessional Rate of Duty - ICGR) Amendment Rules, 2022. Amended rules (including transition measures) provide for automation process as tabulated below:

Particulars	Procedure prescribed in amended Rules
Mode / Effective Date	<ul style="list-style-type: none"> <li>With introduction of amended rules, 2022. Prescribed mode for compliance relating to import of goods at concessional rate of duty, is fully automated. The said module can be accessed at URL: <a href="http://www.icegate.gov.in">www.icegate.gov.in</a></li> <li><b>Effective Date: 01.03.2022</b></li> </ul>
Prior Intimation by importer	<ul style="list-style-type: none"> <li>Transaction based permission and intimations are done away with.</li> <li>Importer to give one-time prior intimation of prescribed details in Form IGCR-1 (on common portal), who intends or is already importing goods at concessional rate of duty under ICGR, 2017.</li> <li><i>However, module for EOUs (who are required to submit prior intimation against every import) is under development and will be implemented in due course. Till such time, existing procedure of submitting manual intimation would continue to apply.</i></li> </ul>
Acceptance of Information	<ul style="list-style-type: none"> <li>Upon acceptance of information submitted in Form ICGR-1, unique IGCR Identification Number (IIN) will be generated and used for all future correspondences.</li> </ul>

Particulars	Procedure prescribed in amended Rules
	<ul style="list-style-type: none"> <li>▪ Information submitted through the portal will be available at the disposal of jurisdictional customs officer (in short 'PO') and all such port of imports, at which importer has shown his intent to import.</li> <li>▪ Importer, in case of change in details already furnished can be updated through common portal.</li> </ul>
<p>Submission of Continuity Bond and Bank Guarantee</p>	<ul style="list-style-type: none"> <li>▪ Importer, availing benefits of ICGR, 2017 will have to furnish on the common portal one time continuity bond in Annexure-I and details thereof will have to be updated in Part B of Form IGCR-1 on the common portal.</li> <li>▪ Physical copy of bond and bank guarantee (if any) to be submitted to PO. Upon acceptance, PO shall approve the bond request on Customs Automated System (CAS).</li> <li>▪ Importer will have an option of topping up the amount of the bond (to the existing bond) and also will be allowed to add details additional bank guarantee (as addendum to bond) in Annexure-II.</li> <li>▪ <i>Wherever, bond and bank guarantee are already furnished before the PO, prior to the amendments to ICGR Rules, no fresh bond and bank guarantee will have to be submitted. However, PO will have to add details of existing bond and bank guarantee in CAS and generate bond number.</i></li> </ul>
<p>Procedure to be followed – Imports under ICGR, 2017</p>	<ul style="list-style-type: none"> <li>▪ Importer to mention IIN, continuity bond number and other prescribed details, while filling Bill of Entry (BoE) at the port of import.</li> <li>▪ Basis this, Deputy Commissioner/ Assistant Commissioner (DC/AC) of customs to allow benefit of exemption notification.</li> <li>▪ Upon BoE is cleared for home consumption, auto-debit to bond takes place through the CAS.</li> </ul>
<p>Maintenance of records by importer and compliances under ICGR, 2017</p>	<ul style="list-style-type: none"> <li>▪ Importer to maintain records of details such as: (a)quantity and value of goods; (b)date of receipt of goods; (c)details of consumption; (d)details of goods sent to /received back from job worker; (e)details of goods sent as inter-unit transfer (f)details of goods re-exported; and (g)details of goods in stock remaining unutilized.</li> </ul> <p><u>Details of existing stock can also be added by linking respective BOE, invoice no and item imported by importer under IGCR, 2017.</u></p>

Particulars	Procedure prescribed in amended Rules
	<ul style="list-style-type: none"> <li>▪ In case of non-receipt/short receipt of imported goods, importer to intimate immediately, against IIN generated and issued on him on common portal in Form IGCR-2, providing for details at BOE wise, invoice wise and item wise.</li> <li>▪ Importer to submit monthly statement by 10<sup>th</sup> of following month, on common portal, in Form IGCR-3 providing for details as referred supra. <u>Hitherto, compliances were to be done on quarterly basis (except for EOUs, who were required to furnish monthly statements in Form 'A').</u></li> </ul>
<p>Procedure for allowing imported goods for job work / for unit transfer</p>	<ul style="list-style-type: none"> <li>▪ Importer to send goods for job work / transfer imported goods to another unit of importer (unit transfer), under cover of invoice or e-way bill specifying description and quantity of goods.</li> <li>▪ Goods sent for job work to be received back within six months from date of sending such goods for job work – <u>The timelines referred herein does not match timelines prescribed under GST laws i.e., one year for inputs and three years for capital goods.</u> Hence, importer under ICGR, 2017 to keep timelines prescribed herein in mind.</li> <li>▪ Job-worker is also required to maintain accounts of receipt of goods, manufacturing process undertaken, and waste generated during the process. Hitherto, this requirement was not part of ICGR, 2017.</li> </ul>
<p>Re-export or clearance of unused/defective goods</p>	<ul style="list-style-type: none"> <li>▪ For unused or defective goods imported, Importer has an option to either re-export such goods or clear such goods for home consumption within 6 months from date of import.</li> <li>▪ If importer opts to re-export such goods, importer shall record details of export documents against the respective bill of entry, invoice and item details of goods imported. <u>Further, value of goods re-exported cannot be less than the value of said goods at the time of export.</u></li> <li>▪ If importer opts to clear such goods (unused/defective) for home consumption, importer is required to remit duty (equivalent to difference between duty leviable on good but for exemption availed and the duty already paid), with applicable interest from the date of import to date of actual duty payment.</li> </ul> <p><u>Importer to disclose details of goods re-exported / cleared for home consumption in in monthly statement to be furnished in Form ICGR-3.</u></p>

Particulars	Procedure prescribed in amended Rules
	<ul style="list-style-type: none"> <li>▪ In case importer opts to clear capital goods imported, importer is required to remit duty and interest at depreciated value (at specified rates under SLM).</li> </ul>

(Notification No. 07/2022 – Customs (N.T) dated 01.02.2022) and (Circular No. 04/2022 – Customs dated 27.02.2022)

**+ Introduction of Shipping Bill (Post export conversion in relation to instrument based scheme)**

**Regulation 2022:** With an intent to ensure exporters are not deprived of instrument-based benefits, in relation to exports made by them, merely on account of incorrect or inadvertent disclosure in shipping bills against which such eligible goods are exported out of India, Board has introduced Shipping Bill (Post export conversion in relation to instrument based scheme) Regulation 2022, detailing:

- (a) The manner of submitting an application (including limitation period), for amendment of declaration in shipping bills, from one instrument-based scheme to any other one or more instrument-based scheme;
- (b) Conditions precedent for making such application/s.

The regulations are applicable for shipping bills furnished effective 22.02.2022. Regulations prescribed in this regard are summarized as below:

Particulars	Relevant Regulation
Definition of “instrument”	<p>“Instrument” for these regulations would mean, “instrument” as referred in Explanation 1 to Sec. 28AAA of Customs Act, 1962, and includes:</p> <ul style="list-style-type: none"> <li>• Any scrip or authorization or license or certificate or such other document, issued under Foreign Trade (Development &amp; Regulation) Act, 1992; OR</li> <li>• Duty Credit issued through ledger for duty credit u/s 51B of Customs Act, 1962; issued with respect to:               <ol style="list-style-type: none"> <li>(a) Reward or incentive Scheme; (b) Duty exemption scheme; (c) Duty remission scheme; (d) Any other scheme with financial or fiscal benefits – Includes schemes such as RoDTEP, RoSCTL etc.,</li> </ol> </li> </ul>
Manner of Application	Application seeking amendment for post export amendment of shipping bills will have to be furnished in writing in terms of Sec. 149 of Customs Act, 1962.
Limitation period for making application	<ul style="list-style-type: none"> <li>• Application for amendment of shipping bill, post export of goods can be made anytime, before expiry of 1(one) year from date of clearance of goods for exportation or export of warehoused goods – <u>Further extension of time limit is permissible provided:</u> <ol style="list-style-type: none"> <li>(a) Extension by 6 (six) months, provided Jurisdictional Commissioner of Customs, is appraised of facts for prevention from applying within 1 year, and reason recorded in writing;</li> </ol> </li> </ul>

Particulars	Relevant Regulation
	(b) Extend by further 6 (six) months, if Jurisdictional Chief Commissioner of Customs, is appraised of facts for prevention from applying, within prescribed time (including extended timeline). <i>Note: Stay period by order of court or tribunal, excluded to compute above limitation period.</i>
Application Fee	Fee applicable if fixed at Rs. 1,000/- for amendment of every shipping bill.
Conditions precedent	<ul style="list-style-type: none"> <li>• Fulfilment of all conditions of the subject instrument-based scheme, to which conversion is sought;</li> <li>• Exporter should not have availed benefit under instrument-based scheme from which conversion is sought (i.e., scheme referred originally in shipping bill).</li> <li>• Exporter to ensure that all condition, relating to presentation of shipping bill or bill of export has been duly complied.</li> <li>• No contravention is noticed or investigation initiated against exporter, in respect to export of such exports;</li> <li>• Shipping bill against which amendment (conversion) is sought is one, which was actually filed to claim benefit under one of the instrument-based scheme/s.</li> </ul>

*(Notification No. 11/2022 – Customs (N.T) dated 22.02.2022)*

- + Levy of Social Welfare Surcharge (SWS) on import of goods exempted from basic and other custom duties/ cesses:** References were received from trade bodies seeking clarification on the issue of applicability of Social Welfare Surcharge (SWS) on import of goods that are exempted from basic and other custom duties and cesses, (to be computed on notional value of customs duty as per applicable tariff rate).

In this backdrop, Board has clarified that SWS will be applicable only where duties of customs i.e., BCD, Customs Agriculture Infrastructure Development Cess (AIDC), Customs Health Cess, Excise AIDC is actually payable by importer, on goods imported by them and wherever such duties of customs is “NIL” or “Zero”, value of SWS payable thereon would also be “NIL”.

*(Circular No. 03/2022 – Customs dated 01.02.2022)*

## **FOREIGN TRADE POLICY (FTP)**

- + Mandatory filing/issuance of Registration Cum Membership Certificate (RCMC)/ Registration Certificate (RC) through the DGFT common digital platform from 01.04.2022:** In the backdrop of implementation of electronic platform to facilitate electronic issuance/renewal/amendment of Registration Cum Membership Certificate (RCMC)/ Registration Certificate (RC), the following are to be noted:



- (a) Exporters are mandated to file Registration Cum Membership Certificate (RCMC)/ Registration Certificate (RC) applications (for issue/renewal/amendment) through the common digital portal of e-RCMC Platform w.e.f. 01.04.2022.
- (b) The existing procedure of submitting applications directly to the designated Registering Authorities will continue only till 31.03.2022.
- (c) All Registering Authorities as notified under Appendix-2T to be on-boarded on e-RCMC portal before 31st March 2022 and formally adopt the e-RCMC portal thereafter. Further, the Registering authorities have been advised to reach out and encourage the members/exporters to use e-RCMC platform within timelines by issuing suitable advisories.
- (d) The navigation process for submission of application has been mentioned in this trade notice.

(Trade notice no.35/2021-22 dated 24.02.2022)

### CORPORATE LAW

- + **Filing of Report on Corporate Social Responsibility with Registrar:** Ministry of Corporate Affairs (MCA), in its notification dated 11.02.2022 requires every company covered under the provisions of sub-section (1) to section 135 to furnish a report on Corporate Social Responsibility in Form CSR-2 to the Registrar for the preceding financial year 2020-2021 and onwards as an addendum to Form AOC-4 or AOC-4 XBRL or AOC-4 NBFC (Ind AS), as the case may be. The form shall be filed for financial year 2020-21 before 31 March 2022.

Notification dated 11.02.2022

- + **Relaxation on levy of additional fees in filing of e-forms AOC-4, AOC-4 Non-XBRL and MGT-7/MGT-7A for the financial year ended on 31.03.2021 under the Companies Act, 2013:** MCA has provided relaxations on levy of additional fees for filing of various e-forms for the Financial Year ended 31.03.2021 as given below:

Sr	Particulars	Extended due date without additional fees
1	Forms- AOC-4, AOC-4 CFS, AOC-4 XBRL, AOC-4 Non-XBRL	15.03.2022
2	Forms- MGT-7/7A	31.03.2022

General Circular No. 01/2022

- + **No Objection Certificate (NOC) for a scheme/s of arrangement by listed entities:** Securities Exchange Board of India (SEBI) vide circular dated 01.02.2022 has made amendments to the circular issued in 16.11.2021, requiring an NOC from the lending scheduled commercial banks/financial institutions/debenture trustees for scheme/s of arrangement by listed entities. The NOC is required from not less than 75% of the secured creditors in value. This Circular shall be applicable for all the scheme/s filed with the stock exchanges after 16.11.2021.

*Circular dated 01.02.2022 ; Circular dated 16.11.2021*

- + **Ind AS applicability for Asset Management Companies (AMC) of Mutual Funds:** SEBI vide circular on 04.02.2022 amended SEBI (Mutual Funds) Regulations, 1996 (MF Regulations) and mandated that the AMCs shall prepare the Financial Statements and Accounts of the Mutual Fund schemes in accordance with Ind AS with effect from 01.04.2023. Accordingly, the following requirements are specified:
  - Mutual Fund schemes shall prepare the opening balance sheet as on date of transition and the comparatives as per the requirements of Ind AS.
  - Mutual Fund schemes may not be mandatorily required to restate the previous years published perspective historical per unit statistics as per requirement of Ind AS for the first two years from first time adoption of Ind AS.
  - The format for preparation of financial statements for Mutual funds was provided.

*Circular dated 04.02.2022*

- + **Audit Committee for Asset Management Companies (AMC) of Mutual Funds:** SEBI has issued a circular on 09.02.2022 on Audit Committee of AMCs. The circular mandates the constitution of Audit Committee for AMCs of Mutual Funds from 01.08.2022. The circular provides the role, responsibility, membership and other features of the Audit Committee of AMC.

*Circular dated 09.02.2022*

- + **Disclosures in abridged prospectus and front page of the offer document:** SEBI has issued a circular on 04.02.2022 prescribing the disclosures to be made in the abridged prospectus and front cover page of the offer document. In order to provide greater clarity and consistency in the disclosures across various documents and to provide additional but critical information in the abridged prospectus, SEBI has revised the format of disclosures.

The revised format of the abridged prospectus includes, amongst others, the following:

- brief details related to the top 5 material outstanding litigations against the company and the amount involved;

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- b. any disciplinary action taken by SEBI or stock exchanges against the promoters/group companies in the last 5 years (including any outstanding action); and
- c. details of outstanding criminal proceedings against promoters.

Further, SEBI has issued an updated format for disclosure on front cover page of the offer document.

*Circular dated 04.02.2022*

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