

#### **About The GST Bulletin**

The GST Bulletin is a Fortnightly Newsletter from Team CGA Legal, a leading Indirect Tax Consultancy firm . The Newsletter is intending to keep its readers updated with all important changes in Goods & Services Tax including latest Notifications, Circular and Technical updates if any. The Newsletter also has a special column of GST Compliance Calendar for the Month. Along with it, CGA Legal also sends various legal recommendations which have immense implications in improving the compliance of GST in your business.

All editions of our newsletters can be referred from below link below; <a href="https://www.cgalegal.co.in/home/newsletters.php">https://www.cgalegal.co.in/home/newsletters.php</a>

## Other Offerings from Team CGA Legal

- CGA Legal Judicial Precedent: A Fortnightly Publication of various important judgments which can have huge impact on your business decisions.
- CGA Legal GST Compliance Calendar: Our Monthly Calendar detailing all GST related compliances for the month so that you never miss of any of the compliances.
- CGA Legal Meet: Our Monthly Webinar series discussing various trending GST legal and compliance issues

All the previous editions can be accessed on our website <a href="https://www.cgalegal.co.in">www.cgalegal.co.in</a>

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#### Highlights of the 45th GST Council Meeting

Date: 17-09-2021

#### ☐ Recommendations relating to GST law and procedure

In order to reduce the hardships faced by the taxpayers and promote the ease of doing business, the GST Council (GSTC) has bring out the following proposals:

#### i. Relaxations in the requirement of filing FORM GST ITC-04:

Requirement of filing FORM GST ITC-04 under rule 45 (3) of the CGST Rules has been relaxed as under:

Taxpayer having	Time Period for filing ITC-04
Aggregate Turnover in preceding FY > 5 Crore	Six Months
Aggregate Turnover in preceding FY < 5 Crore	Annually

#### ii. No Interest on Input Tax Credit availed but not utilized

- Section 50(3) of CGST Act, 2017 to be amended retrospectively w.e.f. 01.07.2017 to provide that interest is to be paid by a taxpayer on "ineligible ITC availed and utilized" and not on "ineligible ITC availed"
- In such cases, interest would be levied @ 18% of ineligible ITC availed and utilized w.e.f. 01.07.2017.

#### iii. Transfer of unutilized Cash Ledger Balance

• Unutilized balance in CGST and IGST cash ledger may be allowed to be transferred between distinct persons (entities having same PAN but registered in different states), without going through the refund procedure, subject to certain safeguards. <u>However</u>, this is not applicable in unutilized <u>balance</u> in electronic credit ledger.

#### iv. Procedure and time limit for filing refund of tax paid under wrong head

Provision to be incorporated in CGST Rules, 2017 for removing ambiguity regarding procedure and time limit for filing refund of tax wrongfully paid under wrong head as specified in section 77(1) of the CGST/SGST Act and section 19(1) of the IGST Act i.e. CGST + SGST is paid instead of IGST or vice versa. Earlier, there was no specific refund procedure for the same.

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- v. Issuance of the following circulars in order to remove ambiguity and legal disputes on various issues, thus benefiting taxpayers at large
  - Clarification on Scope of Intermediary Services:

GSTC has proposed for the issue of fresh Circular explaining the scope of intermediary services. Earlier issued Circular No. 107/26/2019 dated 18.07.2019 issued in relation with supply of IT related services and intermediaries was withdrawn.

 Clarification relating to interpretation of the term "merely establishment of distinct person" in condition (v) of the Section 2 (6) of the IGST Act 2017 for export of services:

Section2(6) of IGST Act defines export of services. As per this section, services do not qualify as export if <u>"supplier and recipient are merely establishments of distinct persons"</u>.

GSTC has proposed for the issue of Circular to clarify that a person incorporated in India under Companies Act, 2013 and person incorporated under the laws of any other country are to be treated as separate legal entities. Hence, the restraint under Section 2(6) is not applicable in such scenarios.

Extended time limit to claim ITC on Debit Notes

W.e.f. 01.01.2021, GSTC has proposed for the issue of Circular to clarify that the date of debit note, and not the date of underlying invoice would be considered for the purpose of determining the period of limitation prescribed under Section 16(4) of the CGST Act.

No need of physical invoice when e-invoice is generated

GSTC has proposed for the issue of Circular to clarify that there is no need to carry the physical copy of tax invoice in cases where invoice has been generated by the supplier in the manner prescribed under rule 48(4) of the CGST Rules, 2017 i.e. e-invoice.

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 Restriction on claim of refund on Goods which are actually subjected to export duty

GSTC has proposed for the issue of Circular to clarify that only if goods are actually subjected to export duty i.e., on which some export duty has to be paid at the time of export will be covered under the restriction imposed under section 54(3) of CGST Act, 2017 from availment of refund of accumulated ITC.

#### ☐ Recommendations relating to streamlining compliance under GST

In order to streamlining the compliance under GST, GSTC has bring out the following proposals:

Particular	Proposal
Mandatory Aadhaar Authentication	<ul> <li>Aadhaar authentication of registration to be made mandatory for following:</li> <li>Being eligible for filing refund claim;</li> <li>Application for revocation of cancellation of registration.</li> </ul>
Auto population of late fee in filing GSTR-1	Late fee for delayed filing of FORM GSTR-1 to be autopopulated and collected in next open return in FORM GSTR-3B.
Disbursal of Refund in Bank Account	Refund to be disbursed in the bank account, which is linked with same PAN on which registration has been obtained under GST.
What if GSTR-3B is not filed for a preceding tax period	Registered person shall not be allowed to furnish FORM GSTR-1 for the next tax period. Such amendment is proposed from 01.01.2022.
Once the proposed clause (aa) of Section 16(2) of CGST Act, 2017 is notified	Rule 36(4) of CGST Rules, 2017 to be amended to restrict availment of ITC in respect of invoices/ debit notes, to the extent the details of such invoices/ debit notes are furnished by the supplier in FORM GSTR-1/ IFF and are communicated to the registered person in FORM GSTR-2B.

## Highlights of the 45th GST Council Meeting

Date: 17-09-2021

#### ☐ Clarification in relation to GST rate on services

GSTC has proposed the following clarifications in relation to GST rates on Services provided by various sectors:

Services relating to	Proposal
Coaching to students with disability eligible for scholarship	Coaching services to students provided by coaching institutions and NGOs under the central sector scheme of 'Scholarships for students with Disabilities" is exempt from GST
Cloud kitchens/ Central kitchens	Services by cloud kitchens/central kitchens are covered under 'restaurant service', and attract 5% GST [without ITC].
	<b>CGA Comment:</b> A cloud kitchen is a concept of delivery-only restaurant with no physical space, no dine-in space, or takeaway counter. Under this customers can place their orders online through the online food aggregator apps or the restaurant app.
	As per the proposal, the services of cloud kitchen is akin to restaurant services attracting GST @ 5% without ITC.
Ice Cream parlor	Ice cream parlor sells already manufactured ice- cream. Such supply of ice cream by parlors would attract GST at the rate of 18%.
	CGA Comment: Now ice cream parlors e.g. Baskin Robbins is liable to pay GST @ 18%. Many such parlors are currently paying GST @ 5% treating their services as restaurant services. However, the clarification may lead to confusion as many such parlors also prepare items like falooda, milk shakes with ice cream etc. to offer its customers at their premises and with that they may qualify as restaurant service providers.
Toll Plaza	Overloading charges at toll plaza are exempt from GST as such charges are akin to toll tax only.
Renting of Motor Vehicle	The renting of vehicle by State Transport Undertakings and Local Authorities is covered by expression 'giving on hire' for the purposes of GST exemption.

## Highlights of the 45th GST Council Meeting

Date: 17-09-2021

Services relating to	Proposal
Grant of mineral exploration and mining rights	The services by way of grant of mineral exploration and mining rights attracted GST rate of 18% w.e.f. 01.07.2017.
Admission to amusement parks	Admission to amusement parks having rides etc. attracts GST rate of 18%. The GST rate of 28% applies only to admission to such facilities that have casinos etc.
Job work of food and food products	Alcoholic liquor for human consumption is not food and food products for the purpose of the entry prescribing 5% GST rate on job work services in relation to food and food products.
	<b>CGA Comment:</b> Now, the services relating to job work services in relation to food and food products is taxable @ 5% under Heading 9988. This has been clarified that Alcoholic liquor for human consumption is not food and food products for the purpose of this entry.

#### ☐ GST changes in relation to rates and scope of exemption on Services

GSTC has proposed the following changes in relation to rates and scope of exemption on Services to effect from 01.10.2021, unless otherwise stated:

Description of services	From	То
Validity of GST exemption on transport of goods by vessel and air from India to outside India is extended upto 30.9.2022. [S. No. 19A and 19B of Notification 12/2017-CT(Rate) dated 28.06.2017	-	-
Services by way of grant of National Permit to goods carriages on payment of fee	18%	Nil
Skill Training for which Government bears 75% or more of the expenditure [presently exemption applies only if Govt funds 100%].	18%	Nil
Services related to AFC Women's Asia Cup 2022.	18%	Nil

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Description of services	From	То
Licensing services/ the right to broadcast and show original films, sound recordings, Radio and Television programmes [proposal for change to bring parity between distribution and licencing services at entry number 17(i) of Notification No. 11/2017-CT(Rate) dated 28.06.2017]	12%	18%
Printing and reproduction services of recorded media where content is supplied by the publisher [proposal for change to bring it on parity with Colour printing of images from film or digital media at entry number 26(ia) of Notification No. 11/2017-CT(Rate) dated 28.06.2017]	12%	18%

#### ☐ Withdrawal of exemption on leasing of rolling stock by IRFC to Indian Railways

GSTC has proposed to withdraw the exemption at entry number 43 of Notification No. 12/2017-CT(Rate) dated 28.06.2017 in relation with the services of leasing of rolling stock by Indian Railways Finance Corporation to Indian Railways

#### ☐ Levy of GST on E-Commerce Operators

GSTC has proposed to widen the tax base for the services provided by E-commerce operators e.g. Swiggy, Zomato, Ola, Uber etc.

E-commerce Operators are being made liable to pay tax on following services provided through them:

■ Transport of passengers, by any type of motor vehicles [with effect from 01.01.2022]

Earlier, only services of transportation of passengers provided by a **radio-taxi**, **motorcab**, **maxicab** and **motor cycle** were covered under Section 9(5) wherein the person liable to pay taxes was the e-commerce operator.

Now, services of transport of passengers, by any type of motor vehicles through e-commerce platform would be covered under Section 9(5) and the person liable to pay tax would be such e-commerce operator

## Highlights of the 45th GST Council Meeting

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#### Restaurant services with some exceptions [with effect from 01.01.2022]

With a few exceptions, GST would be leviable on E-commerce food delivery operators like Zomato, Swiggy etc. and not the restaurant delivering through them.

#### □ COVID-19 relief measure in form of GST rate concessions

GSTC has proposed the extension of existing concessional GST rates (currently valid till 30th September, 2021) on following Covid-19 treatment drugs, up to 31st December, 2021, namely:-

Goods	Rate
Amphotericin B	Nil
Remdesivir	5%
Tocilizumab	Nil
Anti-coagulants like Heparin	5%

Moreover, GSTC has proposed the Reduction of GST rate to 5% on more Covid-19 treatment drugs, up to 31st December, 2021, namely:

Drugs
Itolizumab
Posaconazole
Infliximab
Favipiravir
Casirivimab & Imdevimab
2-Deoxy-D-Glucose
Bamlanivimab & Etesevimab

## Highlights of the 45th GST Council Meeting

Date: 17-09-2021

#### ☐ Recommendations on change in rates on Goods

GSTC has proposed the following changes w.r.t the rates on the following goods (w.e.f. 01.10.2021 unless otherwise stated):

Goods	From	То
Retro fitment kits for vehicles used by the disabled	Applicable Rate	5%
Fortified Rice Kernels for schemes like ICDS etc.	18%	5%
Medicine Keytruda for treatment of cancer	12%	5%
Biodiesel supplied to OMCs for blending with Diesel	12%	5%
Ores and concentrates of metals such as iron, copper, aluminum, zinc and few others	5%	18%
Specified Renewable Energy Devices and parts	5%	12%
Cartons, boxes, bags, packing containers of paper etc.	12%/ 18%	18%
Waste and scrap of polyurethanes and other plastics	5%	18%
All kinds of pens	12%/ 18%	18%
Railway parts, locomotives & other goods in Chapter 86	12%	18%
Miscellaneous goods of paper like cards, catalogue, printed material (Chapter 49 of tariff)	12%	18%
<ul> <li>IGST on import of medicines for personal use, namely</li> <li>i. Zolgensma for Spinal Muscular Atrophy</li> <li>ii. Viltepso for Duchenne Muscular Dystrophy</li> <li>iii. Other medicines used in treatment of muscular atrophy recommended by Ministry of Health and Family Welfare and Department of Pharmaceuticals.</li> </ul>	12%	Nil
IGST exemption on goods supplied at Indo-Bangladesh Border haats	Applicable Rate	Nil
Unintended waste generated during the production of fish meal except for Fish Oil	Nil (for the period 1.7.2017 to 30.9.2019)	

### Highlights of the 45th GST Council Meeting

Date: 17-09-2021

#### ☐ Clarification in relation to GST rate on Goods

GSTC has proposed the following clarifications in relation to GST rate on various goods belonging to various Industries or Sectors:

#### Beverages Industry

- ➤ GST Council has put an end to the incessant dispute in carbonated beverage industry by classifying "Carbonated fruit beverages of fruit drink" and "Carbonated beverages with fruit juice" under higher GST rate of 28% plus Compensation Cess @ 12%.
- ➤ With this change, if a drink is carbonated and contains any percentage of fruit juice or fruit pulp content, it may get be classified under higher rate of GST@28% and compensation cess @12%.

#### Electronics Sector

- ➤ External batteries sold along with UPS System/Inverter will attract the GST rate applicable on batteries i.e. 28%.
- ➤ However, UPS/inverter sold independently will attract 18% GST.

#### Energy Sector

➤ GST on specified Renewable Energy Projects to be paid on 70:30 ratio for on goods and services, respectively, for the period between 1 July 2017 and 31 December 2018, in a similar manner as was prescribed for the period on or after 1st January, 2019.

#### Edibles Sector

- ➤ 'Scented/Flavored Supari or illaichi' under HSN 2106 to attract 18%.
- ➤ 'Tamarind seeds' under HSN 1209 to attract 5% GST rate, when used other than sowing. Tamarind Seeds used for sowing will continue to be exempted from GST.
- ➤ Distinction between fresh and dried fruits and nuts is being clarified for application of GST rate of "nil" and 5%/12% respectively.

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#### Oil and Gas Sector

- ➤ It is proposed to be clarified that requirement to take essentiality certificate issued by Directorate General of Hydrocarbons has been eradicated for interstock transfer each time.
- ➤ Essentiality certificate issued by Directorate General of Hydrocarbons on imports would be sufficient.

#### Miscellaneous

- ➤ Pure Henna powder and paste (without additives) to attract 5% rate Chapter 14.
- ➤ Brewers' Spent Grain (BSG), Dried Distillers' Grains with Soluble (DDGS) to attract 5% rate under HSN 2303.
- ➤ Laboratory reagents and goods falling under HSN 3822 to attract 12%.
- ➤ Due to ambiguity in the applicable rate of GST on Fibre Drums, the supplies made at 12% GST in the past have been regularized. Henceforth, Uniform rate of 18% to be attracted on all papers and paper containers, whether corrugated or non-corrugated.

#### ☐ Other changes relating to change in rates on Goods

- **Reverse charge:** Supply of mentha oil from unregistered person has been brought under reverse charge.
- Export of mentha oil only through LUT: Further, Council has also recommended that exports of Mentha oil should be allowed only against LUT and consequential refund of input tax credit.
- Composition: Brick kilns would be brought under special composition scheme with threshold limit of Rs. 20 lakhs, with effect from 1.4.2022. Bricks would attract GST at the rate of 6% without ITC under the scheme. GST rate of 12% with ITC would otherwise apply to bricks.

## Highlights of the 45th GST Council Meeting

Date: 17-09-2021

#### ☐ Proposal of changes kept for future GST Council Meetings

- Inverted duty structure in footwear and textiles sector will be implemented with effect from 01.01.2022.
- In terms of the recent directions of the Hon'ble High Court of Kerala, the issue of whether specified petroleum products should be brought within the ambit of GST was placed for consideration before the Council. After due deliberation, the Council was of the view that it is not appropriate to do so at this stage.

#### **GST Updates – CBIC Circular**

# Clarification regarding extension of time limit to apply for revocation of cancellation of registration

Date: 06-09-2021

Notification No.14/2021-Central Tax, dated 1st May, 2021, as amended, had, inter-alia, extended the date of filing of application for revocation of cancellation of registration till 30th June, 2021, where the due date of filing of application was falling between 15th April, 2021 to 29th June, 2021. Government has now issued notification No. 34/2021-Central Tax dated 29th August, 2021 (hereinafter referred to as "the said notification") to extend the timelines for filing of application for revocation of cancellation of registration to 30th September, 2021, where the due date of filing of application for revocation of cancellation of registration falls between 1st March, 2020 to 31st August, 2021.

In order to ensure uniformity in the implementation of the said notification CBIC has clarifies as follows:

#### • Applications covered under the scope of the said notification

It is clarified that the benefit of said notification is extended to all the cases where cancellation of registration has been done under clause (b) or clause (c) of subsection (2) of section 29 of the CGST Ac, 2017 and where the due date of filing of application for revocation of cancellation of registration falls between 1st March, 2020 to 31st August, 2021. It is further clarified that the benefit of notification would be applicable in those cases also where the application for revocation of cancellation of registration is either pending with the proper officer or has already been rejected by the proper officer. It is further clarified that the benefit of notification would also be available in those cases which are pending with the appellate authority or which have been rejected by the appellate authority. In other words, the date for filing application for revocation of cancellation of registration in all cases, where registration has been cancelled under clause (b) or clause (c) of subsection (2) of section 29 of CGST Act, 2017 and where the due date of filing of application for revocation of cancellation of registration falls between 1st March, 2020 to 31st August, 2021, is extended to 30th September, 2021, irrespective of the status of such applications. As explained in this para, the said notification would be applicable in the following manner:

#### **GST Updates – CBIC Circular**

Clarification regarding extension of time limit to apply for revocation of cancellation of registration

Date: 06-09-2021

- i. application for revocation of cancellation of registration has not been filed by the taxpayer:
  - In such cases, the applications for revocation can be filed upto the extended timelines as provided vide the said notification. Such cases also cover those instances where an appeal was filed against order of cancellation of registration and the appeal had been rejected.
- ii. application for revocation of cancellation of registration has already been filed and which are pending with the proper officer:
  - In such cases, the officer shall process the application for revocation considering the extended timelines as provided vide the said notification.
- iii. application for revocation of cancellation of registration was filed, but was rejected by the proper officer and taxpayer has not filed any appeal against the rejection
  - In such cases, taxpayer may file a fresh application for revocation and the officer shall process the application for revocation considering the extended timelines as provided vide the said notification.
- iv. application for revocation of cancellation of registration was filed, the proper officer rejected the application and appeal against the rejection order is pending before appellate authority
  - In such cases, appellate authorities shall take the cognizance of the said notification for extension of timelines while deciding the appeal.
- v. application for revocation of cancellation of registration was filed, the proper officer rejected the application and the appeal has been decided against the taxpayer
  - In such cases, taxpayer may file a fresh application for revocation and the officer shall process the application for revocation considering the extended timelines as provided vide the said notification.

Further, doubts have been raised whether the said notification has extended the due date in respect of initial period of 30 days for filing the application under sub-section (1) of section 30 of the CGST Act or whether the due date of filing applications for revocation of registration can be extended further for the period of 60 days (30 + 30) by the Joint Commissioner/ Additional Commissioner/ Commissioner, as the case may be, beyond the extended date of 30.09.2021. It is clarified that:

## **GST Updates – CBIC Circular**

# Clarification regarding extension of time limit to apply for revocation of cancellation of registration

Date: 06-09-2021

- i. where the thirty days' time limit falls between 1st March, 2020 to 31st December, 2020, there is no provision available to extend the said time period of 30 days under section 30 of the CGST Act. For such cases, pursuant to the said notification, the time limit to apply for revocation of cancellation of registration stands extended up to 30th September, 2021 only; and
- ii. where the time period of thirty days since cancellation of registration has not lapsed as on 1st January, 2021 or where the registration has been cancelled on or after 1st January, 2021, the time limit for applying for revocation of cancellation of registration shall stand extended as follows:
  - a) Where the time period of 90 days (initial 30 days and extension of 30 + 30 days) since cancellation of registration has elapsed by 31.08.2021, the time limit to apply for revocation of cancellation of registration stands extended upto 30<sup>th</sup> September 2021, without any further extension of time by Joint Commissioner/ Additional Commissioner/ Commissioner.
  - b) Where the time period of 60 days (and not 90 days) since cancellation of registration has elapsed by 31.08.2021, the time limit to apply for revocation of cancellation of registration stands extended upto 30th September 2021, with the extension of timelines by another 30 days beyond 30.09.2021 by the Commissioner, on being satisfied, as per proviso to sub-section (1) of section 30 of the CGST Act
  - c) Where the time period of 30 days (and not 60 days or 90 days) since cancellation of registration has elapsed by 31.08.2021, the time limit to apply for revocation of cancellation of registration stands extended upto 30th September 2021, with the extension of timelines by another 30 days beyond 30.09.2021 by the Joint/ Additional Commissioner and another 30 days by the Commissioner, on being satisfied, as per proviso to sub-section (1) of section 30 of the CGST Act.

#### **GST Technical Updates – GSTN**

Advisory for Taxpayers regarding Generation of EWB where the principal supply is Supply of services.

Date: 16-09-2021

- i. Various taxpayers are not able to generate EWB bill for movement of those goods where their principle supply is classifiable as a service, since there is no provision for generating E-way Bill by entering SAC (Service Accounting Code-Chapter 99) alone on the E- way bill portal.
- ii. To overcome this issue, the taxpayers are advised as below:
  - a) Rule 138 of CGST Rules, 2017, inter alia, states "Information to be furnished prior to commencement of movement of goods and generation of e-way bill.-(1) Every registered person who causes movement of goods of consignment value exceeding fifty thousand rupees...." Thus, E way bill is required to be generated for the movement of Goods.
  - b) Therefore, in cases where the principal supply is purely a supply of service and involving no movement of goods, the e-way bill is not required to be generated.
  - c) However, in cases where along with the principal supply of service, movement of some goods is also involved, e-way bill may be generated. Such situations may arise in cases of supply of services like printing services, works contract services, catering services, pandal or shamiana services, etc. In such cases, e-way bill may be generated by entering the details of HSN code of the goods, along with SAC (Service Accounting Code) of services involved.

#### **GST Technical Updates – GSTN**

#### On demand fetching of Bill of Entry details from ICEGATE Portal

Date: 17-09-2021

- i. To help importers of goods, and recipients of supplies from SEZ, search Bill of Entry details, which did not auto-populate in GSTR-2A, a self-service functionality has been made available on the GST Portal that can be used to search such records in GST System, and fetch the missing records from ICEGATE
- ii. It usually takes 2 days (after reference date) for BE details to get updated on GST Portal from ICEGATE. This functionality should, therefore, be used if data is not available after this period.
- iii. Taxpayers can follow the below steps to fetch the requisite details
  - a) Login to GST Portal
  - b) Navigate to Services > User Services > Search BoE
  - c) Enter the Port Code, Bill of Entry Number, Bill of Entry Date and Reference Date and click the SEARCH button.
  - d) If the BoE details do not appear in the Search results, click on the QUERY ICEGATE button, at the bottom of the screen, to trigger a query to ICEGATE
  - e) History of fetched BoE details from ICEGATE along with status of query are displayed after 30 minutes from the time of triggering the query.
- iv. For records of type IMPG (Import of Goods), details of: Period for Form GSTR-2A (system generated Statement of Inward Supplies); Reference Date; Bill of Entry Details like Port Code, BoE Number, BoE Date & Taxable Value; and Amount of Tax would be displayed.
- v. For records of type IMPGSEZ (Import of Goods from SEZ), details of: Period for Form GSTR-2A; Reference Date; GSTIN of Supplier; Trade Name of Supplier; Bill of Entry Details like Port Code, BoE Number, BoE Date & Taxable Value; and Amount of Tax would be displayed.



## **Contact Us**

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