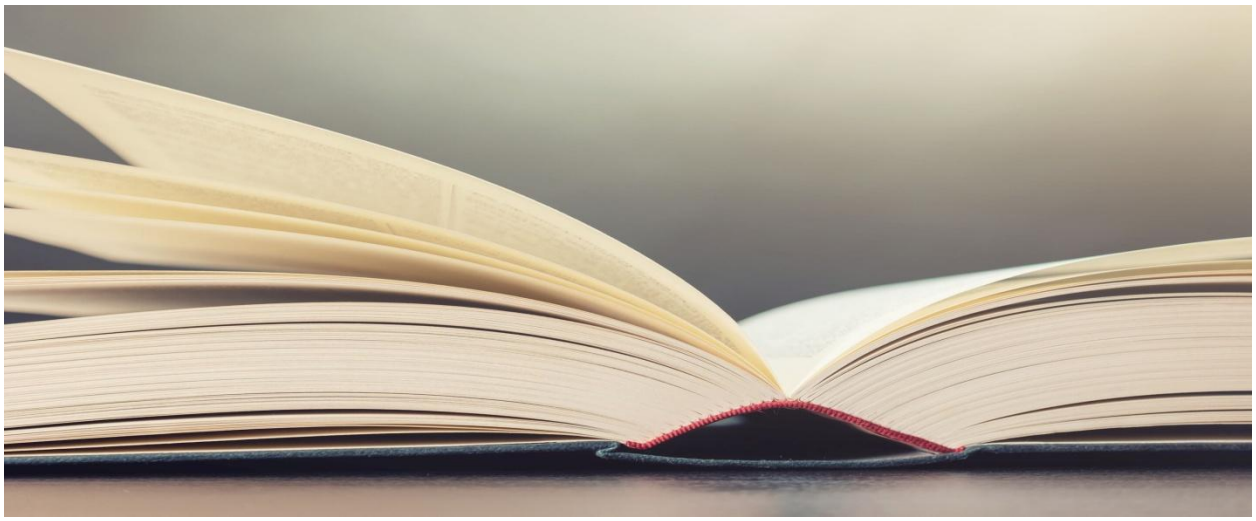
DA TAX ALERT- INDIRECT TAX

An e-Tax alert from **Darda Advisors LLP**

INDIRECT TAX UPDATE – August 2020

Issue: 03



Contents

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GST Compliance Calendar - August 2020

Return	Person responsible	Period	Due date	Notification
GSTR 1	Normal Taxpayer	June 2020	5 Aug 2020	54/2020-CT
	Normal Taxpayer	July 2020	11 Aug 2020	-
	Quarterly taxpayer	Apr-Jun 2020	3 Aug 2020	54/2020-CT
GSTR 3B	Normal Taxpayer (> 5 Cr. Turnover)	July 2020	20 Aug 2020	-
GSTR 4	Composition taxpayers' Annual return	FY 19-20	31 Aug 2020	59/2020-CT
GSTR 5	Non Resident Taxable person	March to July 2020	31 Aug 2020	55/2020-CT
GSTR 6	Input Service Distributor			
GSTR 7	TDS deductor			
GSTR 8	TCS Collector			

Input Service refund under Inverted Duty Structure is allowed

- There are number of writ petitions filed at various Honorable High Courts challenging the explanation (a) to Rule 89(5) of CGST Rules, 2017 (CGST Rules) being ultra vires to the provision of section 54(3) of CGST Act, 2017 (CGST Act) which denies the refund of "unutilized input tax" paid on "input services" as part of "input tax credit" (ITC) accumulated on account of inverted duty structure. Recently, a two-judge bench of the Honorable Gujarat High Court has categorically held that the said explanation is ultra vires the provision of the Act. The Honorable High Court also further noted that the net ITC formula used for GST refund under the inverted tax structure can cover input services as well..

- Section 54(3) of the CGST Act allows refund of any unutilized input tax credit at the end of any tax period due to an inverted tax structure and there is no specific mention of goods (inputs) or services (input services) alone. Thus, the provision covers both services and goods. However, Rule 89(5) of CGST Rules defines a formula for calculating the amount of ITC refund due to the inverted tax structure. The maximum refund {(Turnover of inverted rated supply of goods and services) x Net ITC ÷ Adjusted Total Turnover } – tax payable on such an inverted rated supply of goods and services

- However, the net ITC in this formula is defined as input tax credit availed on inputs during the relevant tax period. It does not see a mention of input services. However, the components of the above formula, turnover and output tax refers to services as well.

- In the present case, VKC Footwear India Pvt. Ltd. (VKC Footwear or the Company) is engaged in the business of manufacture and supply of footwear which attracts GST at the rate of 5%. The Company procures input services for use in the course of business and avails input tax credit of the GST paid thereon. The majority of the inputs and input services attract GST at the rate of 12% or 18%. Therefore, in spite of the utilization of credit for payment of GST on outward supply, there is an accumulation of unutilized credit

- The judgment was passed on VKC Footwear where other matters were also clubbed. Following were the key points of submission:

  - It is well settled law that Rule made by executive cannot curtail or whittle down the provisions of the Act

- The explanation (a) to the Rule 89(5) of CGST Rules cannot be sustained even under general rule making power conferred by Section 164(1) of CGST Act

- Granting of refund of input tax credit on inputs and denying refund in respect of input service is also violative of Article 14 of the Constitution of India and hence bad in law

- The amended Rule 89(5) of CGST Rules results in perpetual retention / appropriation of unutilised input tax credit on services by the Government contrary to the intention of the legislature as evidenced from the object and scheme of the Act which would therefore amount to indirect levy of tax without authority of law under Article 265 of the Constitution of India

- The amended Rule 89(5) of CGST Rules is also discriminatory since refund for zero rated is allowed even for input services.

- No intelligible differentia which has a rational nexus to the object sought to the achieved is perceptible.

- The Honorable High Court considered the submission with its own analysis and held that

  - The intent of the Government by framing the Rule restricting the statutory provision cannot be the intent of law as interpreted in the Circular No.79/53/2018-GST dated 31 December 2018 to deny the registered person refund of tax paid on “input services’ as part of refund of unutilised input tax credit

  - Explanation (a) to Rule 89(5) of CGST Rules which denies the refund of “unutilised input tax” paid on “input services” as part of “input tax credit” accumulated on account of inverted duty structure is ultra vires the provision of Section 54(3) of the CGST Act

  - The said explanation (a) of Rule 89(5) of the CGST Rules is held to be contrary to the provisions of Section 54(3) of the CGST Act. In fact the Net ITC should mean “input tax credit” availed on “inputs” and “input services” as defined under the Act.

  - The respondents are therefore, directed to allow the claim of the refund.

DA's Comments: The decision has given major and significant relief to various industries such as textiles, railway locomotives & parts, handlooms, solar modules, e-commerce, steel utensils, mobiles, etc. as now a taxpayer operating in an inverted tax structure environment can get a higher refund of unutilized ITC covering inputs and input services. Being it's going to have major impact on exchequer revenue, we need to look whether the Government files appeal to Honorable Supreme Court or consider the option of amendment in CGST Act retrospectively to counter the judgment. There are number of aspects which the Company needs to evaluate into their respective inverted duty structure claims before applying the said judgment.

VKC Footsteps India Pvt Ltd Vs Union of India and 2 Other(S) [2020-TIOL-1273-HC-AHM-GST]

Vehicle Body Chassis's fabrication is a supply of services

- The company is engaged in the various businesses including manufacturing of Chassis, Trucks & Buses, Engines, Bus body, and automotive components. The applicant has different manufacturing units/manufacturing verticals in the state of Madhya Pradesh registered separately under the GST law
- The Company relied on the circular no. 52/26/2018 dated 9 August 2018 read with notification no. 20/2019- CT (Rate) dated 30 September 2019 to determine the applicable rate
- The ruling is sought on the issue whether the supply towards the provision of services in respect of activity of mounting fabrication of bodies on chassis provided by customer should be treated as supply of bus or provision of services in respect of activity of mounting/fabrication of bus body on the chassis wherein the said activity of mounting/fabrication is outsourced to the company by owner/provider of chassis in two scenarios:
  - The chassis is originally manufactured by one of the units of the applicant registered separately as a distinct person under the GST Act and sold to the provider of chassis receiving the chassis for the fabrication of the body
  - The chassis is originally manufactured by some other OEM (Original Equipment Manufacturer) and sold to the provider of chassis before receiving the chassis for the fabrication of the body.
- The AAR held that the supply

towards the provision of services in respect of activity of mounting/ fabrication of bodies on chassis provided by Customer should be treated as supply of bus or provision of services services in respect of activity of mounting/fabrication of bus body on the chassis wherein the said activity of mounting/fabrication is outsourced to the company by owner/provider of chassis, in no case, the ownership of the chassis belongs to the company. Thus, in both the scenarios mentioned in the question will be taxable under SAC 998881 'Motor vehicle and trailer manufacturing services' and under entry no. 26(iv) as 'Manufacturing services' on physical inputs (goods) owned by others and it is taxable at the rate of 18%.

DA's Comments : There are number of representations filed by Bus Body Builders Associations on various issues including classification and rate applicability. The Government has already issued the circular and number of advance rulings has also been issued. However, there are still certain aspects and transactions needs more clarification.

M/s V E Commercials Vehicles Ltd. [AAR Madhya Pradesh 09/2020 dated 9 June 2020]

Alcohol based sanitizers are not essential commodity and liable at higher rate

- The Company filed AR to Goa AAR with two queries:
  - First, the classification of hand sanitizer;
  - Secondly, whether a hand sanitizer as an essential commodity, will be exempted from GST?
- The AAR has ruled out that Alcohol-based hand-sanitizers attract a GST rate of 18% and merely classifying any goods as an essential commodity will not be criteria for exempting such GST.
- The Bureau of Central Intelligence had cautioned alerted the GST authorities regarding such alcohol-based sanitizers manufacturers who are levying 12% GST on such products by making wrong classifications categorizing them erroneously as "medicaments" under tariff heading 3004 rather than as "disinfectants" under tariff heading 3008 which would have caused them to pay GST at the rate of 18%. In a letter dated 10 June 2020 having reference No. F. No.562/INT/DOGI/HQ/2018/17025 to 17045 to principal commissioners, the director-general of GST Intelligence has

alleged that this has led to "substantial evasion" of tax. Further, the authorities have analyzed data for 62 manufacturers and have asked field to verify if other producers, including distillers and sugar mills and, have "miss-classified" the product that is being used across households and offices

- Further, the Finance Ministry clarified that *"Various chemicals, packing materials and input services etc. used for the manufacture of hand sanitizers also attract a GST rate of 18%. Reducing the GST rate on sanitizers and other similar items would lead to an inverted duty structure and put the domestic manufacturers at a disadvantage vis-a-vis the importers of hand sanitizers"*. The Government also maintained that consumers would also eventually not benefit from the lower GST rate if domestic manufacturing suffers on account of inverted duty structure..

DA's Comments : The reasoning in AAR and clarification by Finance Ministry should be on the basis of GST law and any factual and other reasoning should not be the basis to decide on the rate applicability

M/s Springfields (India) Distilleries [Goa AAR GOA/GAAR/1 of 2020-21/530 dated 29 June 2020]

GST applicability on the transactions between TANGEDCO & TANTRANSCO

- M/s. Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO) is engaged in the generation and distribution of electricity and an Electricity Distribution utility under Electricity Act, 2003. Tamil Nadu Transmission Corporation Limited (TANTRANSCO) is in the service of generating and distributing (sale of) Electricity in the state of Tamil Nadu.

- TANGEDCO & TANTRANSCO are two subsidiary companies of TNEB Ltd. (Holding company), and both are registered utilities for distribution and transmission of electricity respectively under the Electricity Act, 2003. TANGEDCO and TANTRANSCO enter into transactions between them in the course of generation, transmission, and distribution of electricity in Tamil Nadu. For related company and other transactions, following queries have been raised before AAR by TANGEDCO:

  - GST applicability on the transactions between TANGEDCO & TANTRANSCO

- Applicability of GST on Deposit Contribution Works
- Whether TANGEDCO can be considered a “Government Entity”
- Applicability of GST on Transmission Charges for Natural Gas

- The AAR held that:
  - GST is applicable on the following as the same are ‘supply of goods’ to TANTRANSCO:-
    - Supply of Operation and maintenance materials used in the regular day to day functioning; and
    - Transfer of capital Assets
  - GST is applicable on the deployment of employees to TANTRANSCO as the same is supply of Service
  - GST is not applicable on the following as the same are transaction in money:-.
    - Transactions of physical fund flow between the companies by the way of repayment of existing loan, availment of fresh loans, etc. on actual basis without any interest component on such fund flow.
    - Income such as transmission charges, Scheduling and Systems Operating charges, Reactive Energy Charges, etc. received from open access consumers by the applicant and adjusted through payable to TANTRANSCO.
  - The exemption under Sr.No. 25 of Notification No. 12/2017-C.T.(Rate) dated 28 June 2017 as amended is not applicable to the below stated transactions between TANGEDCO Ltd and TANTRANSCO, namely-
    - Supply of Operation and maintenance materials used in the regular day to day functioning as the same is ‘Supply of Goods’;
    - Transfer of capital Assets as the same is declared as ‘Supply of Goods’;

- Deployment of Employee under their role and related fund flow T-not a service involving distribution of electricity exempted in the said entry;

- On the non-payment of long term open access transmission charges payable to TANTRASCO, no ruling is offered as the applicant is not the person supplying the service and Advance Ruling is a decision in relation to the supply undertaken by the applicant as per Section 95(a) of CGST/TNGST Act 2017.

- Applicability of GST on Deposit Contribution Works - Depository Contribution Works is classifiable under SAC 99873 and the applicable rate of tax is CGST at the rate of 9% as per SI.No. 25 of Notification No. 11/2017-C.T. (Rate) dated 28 June 2017 and SGST at the rate of 9% as per SI.No. 25 of Notification No. II (2)/ CTR/ 532(d-14)/2017 vide G.O. (Ms) No. 72 dated 29 June 2017 as amended and the same is not exempted.b. Transfer of capital Assets

- Whether TANGEDCO ltd can be considered a "Government Entity"- TANGEDCO is a 'Government Entity' as defined under Notification No. 11/2017-C.T. (Rate) dated 28 June 2017 as amended and 12/2017-C.T.(Rate) dated 28 June 2017 as amended by Notification No. 31/2017-Central Tax (Rate) dated 13 October 2017 and Notification No. 32/2017-C.T.(Rate) dated 13 October 2017 effective from 13 October 2017

- Applicability of GST on Transmission Charges for Natural Gas.- The applicability of GST on the Transmission Charges billed by GAIL is not answered as not admitted, under sub-section (2) of section 98 of the CGST Act, 2017 and the TNGST Act, 2017 read with Section 95(a) of the CGST Act, 2017.

DA's Comments: Even though the ruling is for queries between two Government companies. The transactions in relation to power supply and transmission and other related transaction can be considered by other industry players.

M/s Tamil Nadu Generation and Distribution Corporation Limited [Tamil Nadu AAR TN/14/AAR/2020 dated 20 April 2020]

Non applicability of GST on Pure Services to Government

- The company is providing Project Management Consultancy Services to APPRED (Andhra Pradesh Panchayat Raj Engineering Department) for Andhra Pradesh Rural Road Project (APRRP) Project which is for connectivity of all unconnected habitats of 250+ population in the state of Andhra Pradesh. The Roads are to be constructed under the APRRP Project for providing connectivity to these villages. The company has employed appropriate technology and safe and effective equipment, machinery and methodology to perform the services in accordance with the Generally accepted Professional standards and practices. Following are key components of services:
  - Review & verification of the Project DPRs
  - Project Management (execution) and Monitoring, and
  - Construction Supervision and Contract Management, including QAC
  - Ensuring that the ESMPs are properly prepared and implemented
- The company sought an advance ruling to determine whether the Project Management Consultancy services provided to APPRED for APRRP Road Construction Project can be termed as 'Pure Services' as referred in Si. No. 3 – (Chapter 99) of Table mentioned in Notification No. 12/2017 Central lax (Rate) Dated 28 June 2017 and accordingly eligible for exemption from GST. The AAR has given ruling covering following aspects:
- Whether the services rendered by the applicant are pure services.

  There is no component of supply of goods in any invoices. Hence, they are classifiable as pure services, excluding the possibilities of works contract service and other composite supplies involving supply of any goods
- Whether the service recipient i.e., APPRED is qualified for either of the following, namely., Central Government, State Government or Union territory or local authority or a Governmental authority

  APPRED, functions directly under the Ministry of Panchayat Raj & Rural Development and thus qualifies to be a Technical Wing of the Department of PR& RD of the AP State Government.

- Whether the functions carried out by applicant are in relation to any function entrusted to a Panchayat under article 243G or to a municipality under article 243W of the Constitution.

  The relevant function under which the services of the applicant as extended to the APPRED fall under ias follows,

  13. Roads, culverts, bridges, ferries, waterways and other means of communication.

- Thus, the final condition is also satisfied. Accordingly, AAR ruled that the services provided by the Applicant are exempted.

DA's Comments: To avail the exemption for providing goods/services to Government or Government authority, each and every condition needs to be satisfied.

M/s Consulting Engineers Group Limited [AP AAR AAR No.17/AP/GST/2020 dated: 13 May 2020]

Reimbursement for damage beyond repair of equipment /tools is classifiable as 'Supply of Goods'

- The company is a global service provider, engaged in providing various oilfield services to exploration and production companies across the globe. Presently, the company has contracted for supply of bundled oilfield services to support the various oil and gas related operations in KG Offshore, East Coast of Indian Offshore waters

- While performing the aforesaid services, at certain instances the equipment / tools used by the company for supplying oilfield sendees get stuck / lost / damaged due to uncontrollable or unforeseen down hole environmental situations in the oil and gas well and might not be retrievable. In such cases, the company receives reimbursement from the Customer towards such LIH equipment in terms of Clause 31 of the Contract entered by the Applicant with ONGC.

- The company sought an advance ruling on determination of liability and consequent classification to pay GST on reimbursement received towards Lost in Hole / Damages beyond Repair equipment (collectively referred as 'LIH equipment') by the company under the Contract with the Customer

- The AAR ruled that it is found that the equipment/tools are tangible and movable. The amount of reimbursement of equipment/tools

which are damaged beyond repair or loss is at an agreed depreciated value of the Original FoB (Free on Board) Price of such equipment/tools. Going by the methodology and by nature of the equipment/tools, the activity of reimbursement towards Lost in hole/Damage Beyond repair of equipment /tools is rightly classifiable as 'Supply of Goods' in terms of Section-7 of the CGST Act, 2017, depending upon the nature of actual goods involved in the subject activity, their classification is as per HSN notified for the goods and the classification rules made in this regard. Accordingly, the provisions relating to chargeability and levy of GST under the CGST Act and the Rules made there under as applicable to the supply of goods will apply.

DA's Comments: Liquidated damages cannot be considered as supply and it is also internationally accepted that not liable to GST/VAT. There are number of ruling which held that its liable to GST and leads to continuation of dispute

M/s Halliburton Offshore Services Inc. (LIH) [AP AAR - AAR No.16/AP/GST/2020 dated 13 May 2020]

ITC not available on lift installed in the building

- The company is into the business of hotel and started construction of the Hotel and completed a major part of its work and sought an advance ruling whether Input tax credit on Purchase of Lift would be available to Hotel as it has been used in the course or for the furtherance of business.

- The AAR ruled that he input tax credit of tax paid on lifts procured and installed in hotel building shall not be available to the applicant as the same is blocked in terms of Section 17(5) d) of the CGST Act 2017 and become an integral part of the building.

DA's Comments : Whether ITC available on building for business use is a debatable point. The earlier judgment of Orissa High Court in the case of Safari Retreats Private Limited held that ITC is allowed on goods and services used for construction of immovable property and used in the course or furtherance of business.

M/s Jabalpur Hotels Private Limited [MP AAR MP/AAR/10/2020 dated 08 June 2020]

Composite supply of furniture along with services is not immovable property

- The Company is engaged in supply, installation and fixing of customized furniture as composite supply and got contract for doing the similar activity for Mantralaya, Government of Madhya Pradesh and charging at the rate of 18% applicable to principal supply. The quotation was given item wise for each product. Further, the invoice issued by the company was item-wise and consolidated transaction price was charged. The installation/fixation charge are not separately charged in the invoice, nor these charges are required to be charged item wise

- The question was raised before AAR (Authority of Advance Ruling) whether such supply is composite supply of goods or to be considered as works contract services provided to State Government and accordingly rate applicable.

- As per sr. no. 1 of heading 9954 (Construction services) of notification 11/2017-Central Tax (Rate) dated 28 June 2017, the rate of tax is 12%. The State Government claimed that the said contract is works contract services and the rate applicable is 12%.

- AAR held that the claim by the state Government is not legally tenable. The supply, installation and fixing of furniture customized or not cannot be considered as works contract as the items of furniture are made at the supplier's place which have been only installed or fixed at the place of recipient. Further, it does not result in the immovable property or it is not going to be part of immovable property. Thus, the said transaction is composite supply where principal supply is of furniture and the rate applicable is 18%.

DA's Comments : There are number of advance rulings for determining whether any transaction is composite supply in the nature of supply of goods or services and also different ruling of the similar transactions by various State AARs. CBIC needs to issue circular/clarification to have consistent rulings and classification.

M/s Methodex Systems Pvt. Ltd. [AAR Madhya Pradesh – 08/2020 dated 5 March 2020]

Coal Handling and distribution charges liable at higher rate

- The company is engaged in the business of supply of coal across India and procures coal from domestic as well as international markets. The company submitted that they paid 5% GST for inter-state and intra-state purchase of coal and 5% IGST for the imports and stocked the coal at a designated place on the port and supplied it to the customers from there and numerous services are availed between the procurement and final supply of coal

- The company sought the ruling whether 18% GST will be charged on the coal handling and distributor charges if such supplies are meant to go to the customers directly, or 5% GST just like that in the case of the supply of coal and whether the applicant will be allowed to avail GST for the supply of coal and the supply of coal handling and distributor charges.

- The AAR ruled that coal handling and distributor charges will attract 18% GST for supplies instead of 5% if such supplies are made expressly to the consumer. Further, it was held that input credit availed as per the conditions specified in section 16 of CGST Act, 2017 shall be allowed for discharging the liability towards the supply of coal and supply of coal handling and distribution charges respectively

DA's Comments : The ruling did not clarify on the rate applicability in case of composite supply of coal along with handling and distribution charges. The illustration given under the definition of composite supply covers similar transaction on which rate is determined based on principal supply

M/s Agarwal Coal Corporation Pvt. Ltd. [AAR Madhya Pradesh MP/AAR/11/2020 dated 08 June 2020]

Existing GST return filing system to be improved with additional features/changes

- The Government is planning to improve existing GST return filing system instead of rolling out a new GST Return filing model in the coming months [New return system implementation is planned on or after 1 October 2020]. Information is shared by Mr. Yogendra Garg, Principal Commissioner, GST Policy, CBIC (Central Board of Indirect taxes), during interaction at a forum on e-platform.

- The GST Network (GSTN), the IT support wing of the GST regime, is working on modifying and improving the current returns in following areas

  - To Introduce new form GSTR 2B, which will be like GSTR 2A and will have details of purchases of the company or business with added information on input tax credits (ITC),

  - Existing GSTR 1 form, which captures sales-related information, to be more detailed,

  - Form GSTR 3B, which gives the tax computation, will be auto-populated,

  - New features including matching tool for comparison of GSTR 2A with purchase register, communication channel between buyer and seller, and an improved comparison table of tax liability and input tax credit (ITC) after incorporating ITC on IGST paid on imports are likely to be added in the new improved version of the existing return system. Following are additional points specific to GSTR 2A:

S.No	Changes proposed in existing return system in GSTR 2A	Detail
1	Delinking related changes in Form GSTR 2A	Details of the original invoice shall get delinked with the credit and debit notes, accordingly similar changes shall be adopted in Form GSTR 2A

S.No	Changes proposed in existing return system in GSTR 2A	Detail
2	Inclusion of GSTR 1 filing date, GSTR 3B filing status, GSTR 1 period, invoice amendment flag, type of change etc. in Form GSTR 2A	Following details shall be made available to the taxpayers: • Identification of flag whether an invoice has been amended or not and • If amended, nature of the change • Date of filing GSTR 1 by the vendor • Status of filing GSTR 3B of the vendor • Period of which a particular invoice pertains to
3	GSTR 2A – Import and SEZ details	The details of import of goods and purchases made from an SEZ unit, shall also be auto populated in Form GSTR 2A

- Table 8A of GSTR 9 is an auto population of ITC as per GSTR 2A. Invoice wise details of Table 8A of Form GSTR 9 shall be made available to taxpayers

- Improving the process of linking GSTR 1 with GSTR 3B and GSTR 2A data with GSTR 3B for flow of input tax credit

- Provisional summary of GST liability payable based on the invoices filed in form GSTR 1 and input tax credit available in form GSTR 2B will be generated on monthly intervals based on which calculation sheet can be prepared by the assessee for filing GSTR 3B

- As Government is ready to implement the new changes for making filing of GST returns to make GST compliance easier, these upcoming changes can be proved to be helpful and fruitful for business as well as professional community. The industry needs to make changes in their ERP accordingly and also to invite the attention of various stakeholders from marketing/sales, logistics, finance, tax and IT systems through the entire business process, in order to be compliant and effective usage of changes

E-Invoicing to be implemented w.e.f 1 October 2020 for business with INR 500 crore turnover

- Based on earlier plan, "E-invoicing or Electronic-Invoicing" for a specified category of taxpayers whose aggregate turnover exceeds INR 100 Crores was to be implemented w.e.f 1 October 2020 [earlier date was 1 April 2020].

- Mr. Yogendra Garg, Principal Commissioner, GST Policy, CBIC during interaction at forum on e-platform and based on media coverage has mentioned that the implementation of e-invoicing is planned in a phased manner w.e.f 1 October 2020 and the following aspects has been notified

    - Phase-1 of e-invoicing which shall be mandatory for assessee having a turnover of INR 500 crores or more (as against INR 100 billion earlier); and

    - SEZ (Special Economic Zone) is not required to issue e-invoice

    - Amended version of e-invoice Form GST INVOICE-01 to be effective from notified date

DA's Comments : Being the Government is not looking to further extend the implementation date for e-invoicing except increasing the turnover limit, every business is required to ensure preparedness and to have the checks and balances on their IT systems, documentations, procedures, processes. New Form GST INVOICE-01 is detailed one and covers multiple line entries and details.

Notification no.60/2020-Central Tax dated 30 July 2020 and Notification no.61/2020-Central Tax dated 30 July 2020

NIL GST returns and outward supplies filing by SMS

- NIL return or NIL details of outward supplies shall mean a return under section 39 of CGST Act, 2017 or details of outward supplies under section 37 of CGST Act, 2017, for a tax period, that has NIL or no entry in all the Tables in FORM GSTR-3B or FORM GSTR-1, as the case may be.

- W.E.F 1 July 2020, any reference to electronic furnishing shall include furnishing through a short messaging service (SMS) which shall be verified by a registered mobile number based One Time Password (OTP) facility to file NIL details in GSTR 1 for outward supplies and NIL return in GSTR 3B

- Meanwhile, as the filing of NIL GSTR-1 form has commenced from the first week of July, the facility to file NIL monthly GSTR-3B return is already in the process since 8 June

2020. The Government has issued guidelines to fill the NIL GSTR-1 form through SMS

- It's an welcome move as the taxpayers have to go through a cumbersome process of logging into their account on the common portal and then file the statement.

Notification no. 58/2020-Central Tax dated July 2020

GSTR-4 due date extended to 31 August 2020 for FY 2019-20

- The GSTR-4 form is required to be filed by all the composition taxpayers, annually for each financial year, with effect from 1 April 2019. The assessee covered under the composition scheme can now file the annual GST returns under GSTR-4 for the financial year 2019-20, by 31 August 2020 which was earlier to be filed by 15 July 2020. GSTR-4 return can be filed online on the GST portal as an option

Notification no. 59/2020-Central Tax dated July 2020

Suggestions for review of existing

Customs Exemption Notifications/Laws and Procedures

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Refund along with interest on closure of factory and penal charges on officer for delaying the refund

- In the case, the Honorable CESTAT allowed the amount of CENVAT credit lying in their account upon closure of the factory, along with interest at the rate of 6% per annum. Accordingly, the Company had approached the jurisdictional adjudicating authority but the refund was rejected on the ground of unjust enrichment and the amount was ordered to be credited to the Consumer Welfare Fund. The only reason for withholding the refund is that the Department has preferred an appeal before the High Court against the order of the Tribunal and that too accompanied by delay condonation application.

- The Honorable High Court held that amount has been withheld by the adjudicating authority for extra legal reasons; that once the Tribunal had clearly held that the Company was entitled to refund of the amount, there was no reason for the adjudicating authority to withhold the said amount by not making the payment of the Company and keeping it under "Consumer Welfare Fund" only on the pretext that the Department may in future file an appeal. No orders can be passed on the basis of apprehension or assumption that something may happen in future and deprive the petitioner which is a private limited company and will be requiring funds

- Accordingly, the Honorable High Court directs that the interest of 6% would be payable up to the date when the amount was credited in the account of the Consumer Welfare Fund and after that date the Company should be entitled to higher rate of interest, say 18%, till the date of actual payment and the excess amount of interest so paid to be recovered from the officers found responsible for not making payment in time after due inquiry by the Department. Further, the Company should be entitled for costs of the petition which could be fixed at Rs.1,00,000/- which amount may also be recovered from the erring officers after due enquiry.

DA's Comments : The said decision is learning for the department to consider the case on merits and does not allow any officer to use its own discretionary power to undue delay the assessment and refunds

M/s Century Copper Rod Pvt. Ltd. Vs AC, CCS [2020-TIOL-1258-HC-AHM-CX]

Notification effective from the date of publication in the Official Gazette

- The Company has challenged the notification issued by the Customs Department dated 1 March 2018 under Section 25 of the Customs Act, 1962 on several grounds that relate to the transaction of import of Crude Vegetable Oils in bulk by the company for manufacture of Soya Food products. It is the contention of the Company that the said notification dated 1 March 2018 was updated on 2 March 2018 and came to be published in the Official Gazette on 6 March 2018. The company has come up with a case that if the notification was published only on 6 March 2018, the same cannot have any application on the transaction of the company carried out prior to the said date, and cannot compel to pay any enhanced rate of duty.

- As per section 25(4) of Customs Act, 1962, every notification issued under subsection (1) or sub-section (2A) shall, unless otherwise provided, come into force on the date of its issue by the Central Government for publication in the Official Gazette. In the case of M.D.Overseas Ltd. v. UOI and others [2019-TIOL-2779-HC-DEL-CUS], it was held that notifications would come into force on their publication in the Official Gazette, i.e. in the present case, with effect from the date and time when they were electronically printed in the Gazette.

- The Honorable High Court relied on similar issue judgment in the case of the company i.e. Ruchi Soya Industries Ltd. v. UOI and others [MANU/AP/0325/2019] which held that sub-section (4) of Section 25 of Customs Act, 1962 created absurdity, confusion and friction. In view of our foregoing discussion, Section 25(4) of the Customs Act, 1962 is declared as arbitrary and contrary to Section 25(1) and (2A) of the Customs Act, 1962 and that the department is liable to repay the amount collected from the company for clearance of imported goods for home consumption beyond the original rate prevailing on the date of prior to date of publication of notification with interest paid by the company from the date of deposit till the date of payment.

DA's Comments : The principle relied upon and laid down on the date of applicability of the notification is relevant for all laws and legislation and needs to be looked into before its application from effective date.

M/s Ruchi Soya Industries Ltd vs. UOI and others [2020-TIOL-1263-HC-MAD-CUS]

Expenses incurred as Pure Agent not liable to Service Tax

- The Company is providing clearing and forwarding service and getting paid towards the reimbursable expenses additionally in the nature of depot expenses, weighing of machine charges, empty cartons charges, diesel expenses, housekeeping expenses etc. Accordingly, the Company contended that from the entire demand confirmed by the adjudicating authority under Order-in- Original, the amount needs to be dropped which is purely reimbursable expenses received by it as pure agent from principal companies. Further, the amount related to using its own truck is also a reimbursable expense as principal companies have discharged their service tax liability upon this amount under "Goods Transport Agency service" under reverse charge mechanism.

- The Honorable CESTAT held that the issue pertaining to reimbursement of expenses incurred by the Company on account of service recipient working as pure agent for his principals, the same is not includable in the assessable value for charging service tax. This view has also been expressed by Supreme Court in Union of India vs. Intercontinental Consultants and Technocrats Pvt Ltd. [2018. (10) GSTL 401 (SC)]. Further, it is also held that the law passed today cannot apply to the events of the past. If we do something today, we do it keeping in view the law of today and in force and not tomorrow's backward adjustment of it. This principle of law is known as "lex prospicit non respicit": law looks forward not backward. The issue remanded back to review computation of final tax liability

DA's Comments : Pure agent reimbursement is always being challenged in erstwhile Service Tax regime and the demands have been raised by the adjudicating authority accordingly. The detailed judgment in the case of Inter Continental from the Honorable Supreme Court is mostly relied upon as in the said case also. The concept of pure agent is relaxed under GST law in compare to erstwhile service tax law and need to see in future how adjudicating authority consider such cases.

Service Tax Appeal No. 51349 of 2016 [Awasthi Brothers vs. CCEST Service Tax Appeal No. 51349 of 2016 CESTAT Delhi]

Safeguard duty extended on import of Solar Cells and modules/panels

- The CBIC has extended the safeguard duty on imported solar cells and solar modules by another year as recommended by the Director-General of Trade Remedies (DGTR) earlier this month.

- Safeguard duties can be imposed on items, over and above existing customs duties, if it can be conclusively proved that a steep increase in imports over a period of time resulted in injury and disruption for local businesses. The DGTR under the Ministry of Commerce and Industry carried out an investigation for a possible extension of the safeguard duty based on requests made by the domestic industry. It observed that two years of protection has already helped the domestic industry improve its position, but it still needed some time to adjust. Therefore, a one-year extension of the safeguard duty should be allowed. Based on the DGTR's report, safeguard duties of 25 percent were imposed from 30 July 2018, to 29 July 2019, and at 20 percent from 30 July 2019 to 29 July 2020.

- A safeguard duty rate of 14.90 percent will be imposed on solar cells and modules starting for the first six months starting July 30 (minus anti-dumping duty payable, if any) and 14.50 per cent for the subsequent six months, as per a notification issued by the CBIC. The duties will not apply on any developing country with the exception of China, Thailand and Vietnam

Issuance of Preferential Country of Origin for Thailand under ASEAN-India FTA

- W.E.F. 01 August 2020, the CoO (Country of Origin) applications for exports from India to Thailand under ASEAN-India FTA should be submitted through the e-COO Platform by the exporters to the designated issuing agencies i.e. EIA, MPEDA and Textile Committee

- No physical/manual application for a CoO would need to be submitted from this date. However, manual applications submitted prior to the given date may be processed and CoOs issued by the designated agencies. Earlier trade notice to be referred are trade notice no. 12/2020-2021 dated 22 May 2020 and subsequent Trade Notice No. 15/2020-2021 dated 21 June 2020, regarding issuance of CoO for India's exports under ASEAN-India FTA.


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- Three years on, GST hasn't lived up to its billing
- No more ban on deemed approval for GST registration
- Govt, industry quarrel over GST on hand sanitizers
- Relief likely for auto sector on GST, road tax, cess; move to cut cost of vehicle ownership

Customs and others

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- Customs to accept digital CoO until December 31
- Chennai Customs seizes Rs.70 lakh worth of mobile phones
- Power Minister to bat for under construction solar projects; seeks basic custom duty exemption
- After Chinese apps and contractors, India puts restrictions on colour TV imports
- Fresh trouble for exporters, as govt caps MEIS benefits
- Trying for early solution on MEIS; in dialogue with requisite authorities: Piyush Goyal
- India, UK reiterate resolve for early FTA

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Vineet has over 15 years of consulting experience in leadership role in Indirect tax including GST (around 13 years in Big 4)

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