

DA TAX ALERT- INDIRECT TAX

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

INDIRECT TAX UPDATE – June 2020

Issue: 01



Contents

- [Atmanirbhar Bharat Abhiyan](#)
- [GST Compliance Calendar](#)
- [Goods and Service Tax](#)
- [Customs and Others](#)

Atmanirbhar Bharat Abhiyan

Atmanirbhar means self-dependent. Covid-19 pandemic and the nationwide lock down has resulted in a severe blow to the Country's economy. In a bid to revive it, Indian Government announced a stimulus package of ₹20 lakh Crores.



Overview of Atmanirbhar Bharat Stimulus Package

S.No	Item	INR Crs.	INR Crs.
A	Announcements between 13 May to 17 May 2020		
1	Business including MSMEs	594,550	
2	Migrants, street vendors, NABARD, MUDRA	310,000	
3	Agriculture	150,000	
4	Viability gap funding and MGNREGA allocation	48,100	1,102,650
B	Earlier Measures		
1	Revenue lost due to tax concession	7,800	
2	Pradhan Mantri Garib Kalyan Package	170,000	
3	Health Sector	15,000	192,800
C	RBI Measures	801,603	801,603
	Grand Total		2,097,053

Atmanirbhar Bharat- Relief Measures for Sectors

Sectors	Relief Measures
NBFCs/MFIs/HFCs	<ul style="list-style-type: none"> • Special Liquidity Scheme • Partial Credit Guarantee Scheme 2.0
DISCOMs	Power Finance Corporation and Rural Electrification Corporation infusion of Rs. 90,000 Cr.
Real Estate Projects	<ul style="list-style-type: none"> • Covid-19 shall be treated as Force Majeure event under RERA • Statutory compliances extended under RERA
Power Sectors	Tariff policy reforms and Privatization of distribution
Housing sector	Credit Linked Subsidy Scheme for Middle Income Group extended upto March 2021 which create significant jobs under housing sector
Atomic energy	Linking of India's robust start-up ecosystem to nuclear sector
Space sector	Boosting private participation in Space activities
Social Infrastructure	Boosting Private Sector Investment
Coal Mining sector	<ul style="list-style-type: none"> • Introduction of commercial mining in coal sector • Liberalized scheme in coal sector
Mineral sector	<ul style="list-style-type: none"> • Enhancing private investments in mineral sector • Policy reforms -Rationalization of stamp duty payable at the time of award of mining leases
Defence sector	<ul style="list-style-type: none"> • Enhancing self-reliance in defence production - Make in India • Policy reforms in defence production - Increasing the FDI limit under automatic route from 49% to 74%

Atmanirbhar Bharat - Tax & Other Relief Measures

Relief Measure	Particulars
Direct Tax	
TDS/TCS reduced	<ul style="list-style-type: none"> • Reduced by 25% • Non-salaried payments made to residents • Applicable from 14 May 2020 to 31 March 2021 • NA if PAN/Aadhar not furnished
Relaxation of Residency Rules	<p>An individual who visits India before 22 March 2020 but</p> <ul style="list-style-type: none"> • could not leave India • was quarantined in India due to Covid-19 <p>his period of stay shall not be taken into account</p>
Vivad se Vishwas Scheme	Period extended till 31 Dec 2020 to make payment without additional amount
Extension of assessments	<ul style="list-style-type: none"> • 31 Dec 2020 as against 30 Sep 2020 • 30 Sep 2021 as against 31 March 2021
Income tax returns (FY2019-20)	Extended to 30 Nov 2020 as against 30 July 2020 & 30 October 2020
Tax Audit	Extended to 31 Oct 2020 as against 30 Sep 2020
Employees' Provident Fund (EPF) & ESIC	
Statutory PF (Provident Fund) Contribution	<ul style="list-style-type: none"> • Reduced from 12% to 10% for both employer and employee • For all establishments covered by EPFO • For 3 months.- May, June and July 2020 • But, Central and State PSUs to contribute 12% as employer contribution
Extension of ESIC coverage	All establishments employing 10 or more employees from all districts as against those in notified districts/areas only
Gratuity payment	
Gratuity for Fixed Term Employment	Provision of gratuity on completion of one year service as against 5 years

For more details, [click here](#)

GST Compliance Calendar - June 2020

Return	Person responsible	Period	Due date	Notification
GSTR 1	Normal taxpayer	May 2020	30 June 2020	33/2020-CT
GSTR3B (Turnover >Rs.5Cr.)	Normal taxpayer	May 2020	27 June 2020	36/2020-CT
GSTR 5	Non resident taxpayers	May 2020	30 June 2020	35/2020-CT
GSTR 5A	Non-Resident OIDAR Service Providers	May 2020	30 June 2020	35/2020-CT
GSTR 6	Input Service Distributor	May 2020	30 June 2020	35/2020-CT
GSTR 7	TDS deductor	May 2020	30 June 2020	35/2020-CT
GSTR 8	E-commerce operators who deduct TCS	May 2020	30 June 2020	35/2020-CT
Form CMP-02	Intimation to opt for Composition scheme	FY 20-21	30 June 2020	30/2020-CT

Rectification of GSTR 3B is manually allowed - Honorable Delhi High Court order in the case of Bharti Airtel Ltd

- The Petitioner preferred the petition to allow amendment of GSTR 3B manually for the period July to September 2017 and questioning relevant part of circular 26/26/2017-GST dated 29 December 2017, Rule 61(5) of CGST Rules, 2017 and Form GSTR 3B as ultra vires to CGST Act, 2017 and contrary to Article 14, 19, 265 of Constitution of India.
- Honorable Delhi High Court held that the failure of the Government to operationalise the statutory returns, GSTR 2, 2A and 3 prescribed under the CGST Act, cannot prejudice the assessee. The GSTR 3B which was merely a summary return as an alternative did not have the statutory features of the returns prescribed under the Act.
- Therefore, if there were errors in capturing ITC on account of which cash was paid for discharging GST liability instead of utilizing ITC which could not be captured correctly at that time, the return should be allowed to be rectified in the very month in which the ITC was not recorded and the cash paid should be available as refund. The High Court read down the

circular which did not permit such rectification as being contrary to the scheme of the CGST Act.

DA's comments: The monthly return (GSTR-1, GSTR-2, GSTR-3) as prescribed under the Act is not implemented completely and any circular restricting rectification of return other than statutory return i.e. GSTR 3B is not in consonance with the provisions of the Act. This is a welcome decision and could lead to multiple similar petitions till Government amends law retrospectively to provide relief.

*Bharti Airtel Ltd. vs..
UOI-[TS-257-HC-2020(DEL)-NT]*

GST is not applicable on whole time director's salary

- During the last two months, there has been confusion among the trade created by the decision of Advance Ruling Authority for Rajasthan in the case of M/s Clay Craft India Pvt. Ltd. (AAR No. RAJ/AAR/2019-20/33) wherein it was held that remuneration paid to full time Directors is liable for GST under Reverse Charge Mechanism under section 9(3) of CGST Act, 2017 read with Notification No.13/2017-CT dated 28 June 2017. Now AAR, Karnataka, in a similar case, has given ruling which is contrary to AAR, Rajasthan. The AAR held that:

- The remuneration received by the applicant as Executive Director is not includable in the aggregate turnover, as it is the value of the services supplied by the applicant being an employee.
- Further if the applicant receives the remuneration as a Non-Executive Director, such remuneration is liable to tax under reverse charge mechanism under section 9 (13) of the CGST Act 2017, in the hands of the company, under entry no 6 of Notification No. 13/2017-Central Tax (Rate) dated 28 June 2017.

DA's comments : Whole time director is considered as an employee under the Companies Act, 2013 and hence such transactions between employee and employer are outside the purview of GST. All such transactions with executive and non executive director should be evaluated in detail before deciding its taxability under GST law. Authorities are collating the data considering Rajasthan AAR.

AAR, Karnataka in the case of Shri. Anil Kumar Agarwal, a whole time Director of a company (AR No. KAR ADRG 30/2020, dated 04.05.2020).

Direct shipment of goods from the port of import to the customer's premises without having GST registration in the same location

- In the advance ruling filed by M/s Kardex India Storage Solutions Private Limited, following questions were raised
- The moot questions for determination before the AAR were:
 - Can the importer supply imported goods to customer's premises directly from the port of import without physically bringing the same to its own registered premises which is located in the different state?
 - Whether the importer is entitled to claim input tax credit (ITC) of the Integrated Goods and Services Tax (IGST) paid at the time of import when the goods are not received by him which is one of the essential conditions for availment of ITC under section 16(2) of the Central Goods and Services (CGST) Act.
- The AAR examined the provisions related to 'registration under GST' and 'place of supply for imported goods' and 'Input Tax Credit' under the CGST Act

- For the first question, the AAR in the impugned matter has held that an importer can supply the imported goods to customer's premises directly from the port of import without physically bringing the same to its own registered premises. The place of supply of such goods will be his registered place in the other state. Hence, the importer is not required to seek registration in the state where the goods are cleared from the customs port..
- For the second question, the AAR analyzed the ITC provisions under section 16 of the CGST Act, which provides for mandatory conditions for availment of ITC. The AAR has concluded that this deeming fiction is also applicable in the import transaction and as such the imported goods shall be deemed to have been received by the importer at his registered premises

DA's comments: Two transactions i.e. import of goods and then supply of goods within India are involved and only for first transaction, such position can be adopted. Similar view also has been held in the case of Sonkamal Enterprises Private Limited [2018-TIOL-301-AAR-GST by Maharashtra AAR].

Karnataka AAR for M/s Kardex India Storage Solutions Private Limited [TS-203-AAR-2020-NT]

Anti-Profitteering – Benefit not transferred to customer on reduction of prices

- For the product of Raymond's 'After Shave Lotion Park Avenue Good Morning 50 ml' the rate of GST was reduced from 28 to 18% w.e.f 15 November 2017. Based on the complain to National Anti-Profitteering Authority (APA) and report of Directorate General of Anti-Profitteering (DGAP), the show cause notices issued to Raymonds Ltd (Group Company) and its distributors for not transferring commensurate reduction to modern traders and finally to ultimate customers
- NAPA alleged that the adequate evidence was not provided to show that the benefit in the form of discount to the distributors are given on the account of passing on the benefit of tax reduction and hence its arbitrary and unjustified offer on discount cannot be construed as passing on the benefit of tax reduction. The above discount is nothing but usual ploy to increase the sales which is routinely done by the respondents in the course of his business. The strategy of first increasing the base prices and then to give discounts is incomprehensible and amounts to unethical and illegal business practice. Moreover, the benefit of tax reduction can be passed only

through commensurate reduction in the prices as per the provision of section 171(1) of CGST Act, 2017 and it cannot be passed through arbitrary discounts.

- Accordingly, it was held that the profiteering has been made by both the parties and directed to reduce the prices of the impacted products as per the provisions of Rule 133(3)(a) of CGST Rules, 2017, keeping in view of the reduction in rate of tax so that the benefit of tax reduction is passed on to the recipients and also directed to deposit the amount along with interest in the Consumer Welfare Fund (CWF) being the customers are not identifiable. Further, the respective state authority would issue show cause notice for imposing the penalty under section 171(3A) of CGST Act, 2017 read with Rule 133(3)(d) of CGST Rules, 2017.

DA's comments : Considering the constitutional validity of NAPA is being challenged and number of end consumer cases are being disposed of, the Government needs to provide more clarity on such provision which are non implementable practically, even Globally and impacting the business operations.

[2020 (5) TMI 442-NAPA] NAPA order no. 25/2020 dated 11 May 2020 in the

matter of M/s Local Circles India Pvt. Ltd and DGAP, New Delhi vs. M/s J.K Helene Curtis Ltd. C/o Raymonds Consumer Care Ltd. And M/S Sai Kripa Marketing

Clerical mistake cannot be the basis for detention of goods

- The goods which were detained were duty paid and the reason for detention was that the destination location address was not mentioned on any document including e-way bill. There was processing and clerical error as the new branch detail did not update on GSTN portal and showed as 'processing' and due to inexperience of trainee staff, the address was not captured. Further, the principle of natural justice was not followed
- The Hon'ble High Court held that the goods to be released immediately on furnishing bank guarantee and thereafter the matter will be taken for finalization of adjudication proceedings by affording adequate opportunity of being heard and also to take into consideration the vital contention that the so called error pointed out by the respondent for issuing order, that the address shown in the invoice is different from the address shown in the E Way bill etc. is only a clerical mistake and is not a serious mistake which should

justify the detention and penalty proceedings and also the contentions that they had recently started a branch of the Firm and these goods were to be transported to this branch.

DA's comments : There are number of writ petitions filed only for detention of goods at check post due to certain clerical error or documentation issues. The Government should issue guidelines for the cases where the goods needs to be detained or not

MR Traders vs. Asst. State Tax Officer-[2020-TIOL-248-HC-KERALA-GST]

No exclusion of Government subsidy granted to farmer from transaction value

- Following queries were raised in AAR by the applicant and AAR view:
 - Whether under section 15(2)(e) of CGST Act, for calculating 'value if taxable supply', the subsidy amount granted to the farmer by Horticulture / Agriculture / Sericulture Department of Government of Karnataka under PMKSY scheme or any other Central / State Government approved schemes but disbursed to the supplier to be treated as 'subsidy' in the hands of the supplier and to be excluded while ascertaining the 'transaction value'?

- Ruling: The amount of assistance received by the farmer or on account of the farmer from the Government Department has no bearing on the price and hence on the value of supply made by the applicant to the farmer and is not covered under section 15(2)(e) of the CGST Act, 2017.

- Whether the question of inclusion or exclusion of subsidy amount in the value of taxable supply would arise under Section 15(2) of the CGST Act, when such subsidy is not impacting the transaction value, which is price actually paid or payable for the supply of goods by the customer i.e., farmers and when the subsidy is disbursed by Horticulture / Agriculture / Sericulture Department to the supplier on behalf of recipient of the supply (farmers)?

- Ruling: There is no question of excluding the amount of assistance or subsidy received from the transaction value or value of taxable supply.

DA's comments : All subsidies given by Government in relation to product/services cannot be excluded blanketly from the GST valuation. Case to case basis evaluation needs to be done.

M/s Megha Agrotech Private Limited (AAR Karnataka) [Advance Ruling No. KAR ADRG 16/2020]

GST TRAN-1: Delhi High Court Judgment is nullified by Finance Act, 2020

- Section 140 of the CGST Act, 2017 is amended through Finance Act, 2020 dated 27 March 2020 with retrospective effect from 1 July 2017 and provided that transition credit taken after due date will be disallowed. To facilitate this, the term “within such time” has been inserted among various provisions of Section 140 of the CGST Act, 2017. The same under section 128 of Finance Act, 2020 (12 of 2020) has been notified w.e.f 18 May 2020.
- The large number of taxpayers across the country had approached jurisdictional High Courts challenging the time limit prescribed under Rule 117 of the CGST Rules, 2017 and mostly all cases [except in one case where Honourable High Court of Bombay in NELCO Ltd. vs.. UOI & Ors has upheld the validity of Rule 117 of the CGST Rules, 2017] are decided in favor of the taxpayers, the latest in the line being Judgment in Brand Equity Treaties Ltd Vs, The Union of India & Others in WP[C] No. 196/2019 & CM Appeal No. 965/2019 dated 05 May 2020 in which it is held that *“Accordingly since all the Petitioners have filed or attempted to file Form TRAN-1 within the*

aforsaid period of three years they shall be entitled to avail the Input Tax Credit accruing to them. They are thus, permitted to file relevant TRAN-1 Form on or before 30.06.2020. Respondents are directed to either open the online portal so as to enable the Petitioners to file declaration TRAN-1 electronically or to accept the same manually.”

- The said amendment has been brought in with retrospective effect so as to nullify the judgments of various High Courts including recently passed by the Honorable High Court of Delhi. In our view, it may give way to further litigation challenging the retrospective amendments and suggests to file GST TRAN-1 afresh within 30th June 2020 being the last opportunity to do so, even though it would be litigative.

Notification no.43/2020-Central Tax dated 16 May 2020 [Section 128 of Finance Act, 2020 (12 of 2020) w.e.f 18 May 2020]

GSTR 9 and 9C Form Due Date Extended for FY 2018-19 (30 September 2020)

- The deadline to file GSTR-9 (Annual Return) and GSTR-9C (GST Audit) for FY 2018-19 has been extended couple of times for various reasons such as complexities in the form and filing

and current pandemic situation. The initial due date was 31 December 2019 which was extended to 31 March 2020 and post Lockdown 1.0, the date was further extended to 30 June 2020 and now looking to modified lockdown, the due date is further extended to 30 September 2020.

Notification no.41/2020-Central Tax dated 5 May 2020

Changes in procedure for corporate debtors under the IBC

- The special procedure for corporate debtors undergoing the corporate insolvency resolution process under the Insolvency and Bankruptcy Code, 2016 (IBC) was issued vide notification no. 11/2020-Central Tax dated 21 March 2020. Following further amendments made in the said procedure

1. The interim resolution professionals (IRP) or resolution professionals (RP) shall not include those corporate debtors who have furnished the statements under section 37 (Furnishing details of outward supplies) and the returns under section 39 (Furnishing of Returns) of the CGST Act for all the tax periods prior to the appointment of IRP/RP. The same has been further clarified by the circular.

2. IRP/RP needs to take registration as distinct person within 30 days or by 30 June, whichever is later [w.e.f 21 March 2020]. The same has been further clarified by the circular.

Notification no.39/2020-Central Tax dated 5 May 2020 and Circular No. 138/08/2020-GST dated 6 May 2020

E-Way bill validity for specific period further extended

- The validity of E-way bills issued on or before 24 March 2020 which expired during the period from 20 March 2020 to 15 April 2020 has been further extended till 31 May 2020 considering the lockdown 3.0 and pandemic situation. Earlier the extension was provided till 30 April 2020.

Notification no.40/2020-Central Tax dated 5 May 2020

Form GST ITC 02A enabled on GST Portal

- Considering the difficulties faced by taxpayers and to help in this pandemic situation, the Government has enabled it on GST Portal.
- Form ITC-02A has to be filed within a period of thirty days from obtaining such separate registrations. ITC-02A is a declaration of utilized ITC transferred for obtaining a separate registration within the same state or UT. (Rule 41A of CGST Rules, 2017 w.e.f 1 February 2019)

Clarification in respect of GST relief measures considering COVID-19

- Following issues are further clarified on 6 May 2020 in addition to earlier circulars issued vide circular No.136/06/2020-GST, dated 3 April 2020 and Circular No.137/07/2020-GST, dated 13 April 2020

Issue	Clarification
<p>IBC – Corporate debtor registration related</p> <p>The present notification has used the terms IRP and RP interchangeably, and in cases where an appointed IRP is not ratified and a separate RP is appointed, whether the same new GSTIN shall be transferred from the IRP to RP or both will need to take fresh registration</p>	<p>i. In cases where the RP is not the same as IRP, or in cases where a different IRP/RP is appointed midway during the insolvency process, the change in the GST system may be carried out by an amendment in the registration form.</p> <p>Changing the authorized signatory is a non- core amendment and does not require approval of tax officer. However, if the previous authorized signatory does not share the credentials with his successor, then the newly appointed person can get his details added through the Jurisdictional authority as Primary authorized signatory.</p> <p>ii. The new registration by IRP/RP shall be required only once, and in case of any change in IRP/RP after initial appointment under IBC, it would be deemed to be change of authorized signatory and it would not be considered as a distinct person on every such change after initial appointment.</p> <p>Accordingly, it is clarified that such a change would need only change of authorized signatory which can be done by the authorized signatory of the Company who can add IRP /RP as new authorized signatory or failing that it can be added by the concerned jurisdictional officer on request by IRP/RP</p>

Issue	Clarification
<p>Merchant Exporter related</p> <p>As per notification no. 40/2017-Central Tax (Rate) dated 23.10.2017, a registered supplier is allowed to supply the goods to a registered recipient (merchant exporter) at 0.1% provided, inter-alia that the merchant exporter exports the goods within a period of ninety days from the date of issue of a tax invoice by the registered supplier. Request has been made to clarify the provision vis-à-vis the exemption provided vide notification no. 35/2020-Central Tax dated 03.04.2020</p>	<ul style="list-style-type: none"> i. Vide notification No. 35/2020-Central Tax dated 03.04.2020, time limit for compliance of any action by any person which falls during the period from 20.03.2020 to 29.06.2020 has been extended up to 30.06.2020, where completion or compliance of such action has not been made within such time. ii. Notification no. 40/2017-Central Tax (Rate) dated 23.10.2017 was issued under powers conferred by section 11 of the CGST Act, 2017. The exemption provided in notification No. 35/2020-Central Tax dated 03.04.2020 is applicable for section 11 as well. iii. Accordingly, it is clarified that the said requirement of exporting the goods by the merchant exporter within 90 days from the date of issue of tax invoice by the registered supplier gets extended to 30th June, 2020, provided the completion of such 90 days period falls within 20.03.2020 to 29.06.2020.

Issue	Clarification
<p>Job worker’s GST ITC-4 for Q4 filing date related Sub-rule (3) of that rule 45 of CGST Rules requires furnishing of FORM ITC-4. Time limit for compliance of any action by any person which falls during the period Circular No. 138/08/2020-GST</p> <p>GST ITC-04 in respect of goods dispatched to a job worker or received from a job worker during a quarter on or before the 25th day of the month succeeding that quarter. Accordingly, the due date of filing of FORM GST ITC-04 for the quarter ending March, 2020 falls on 25.04.2020.</p> <p>Clarification has been sought as to whether the extension of time limit as provided in terms of notification No. 35/2020-Central Tax dated 03.04.2020 also covers furnishing of FORM GST ITC-04 for quarter ending March, 2020</p>	<p>Time limit for compliance of any action by any person which falls during the period from 20.03.2020 to 29.06.2020 has been extended up to 30.06.2020 where completion or compliance of such action has not been made within such time.</p> <p>Accordingly, it is clarified that the due date of furnishing of FORM GST ITC-04 for the quarter ending March, 2020 stands extended up to 30.06.2020.</p>

Goods and Service Tax

GSTR 3B filing by the Companies through EVC

- Any assessee registered under the Companies Act, 2013 (18 of 2013) can file GSTR 3B during the period from 21 April 2020 to 30 June 2020 by electronic verification code (EVC). In the GST portal, a person can authenticate the user using an OTP (One Time Password) sent to authorized signatory. The OTP is called the EVC and a person who wants to do the user authentication using an OTP can select this method.
- This option is now enabled on GST Portal

Notification no.38/2020-Central Tax dated 5 May 2020 [2nd proviso to Rule 26(1) of CGST Rules, 2017 w.e.f 21 April 2020]

Nil return filing by SMS

- The assessee who is required to furnish a Nil return under section 39 of CGST Act, 2017 in FORM GSTR-3B for a tax period, can also file through a short messaging service (SMS) using the registered mobile number and the said return shall be verified by a registered mobile number based OTP facility

Notification no.38/2020-Central Tax dated 5 May 2020 [Rule 67A (New Rule) of CGST Rules, 2017 w.e.f to be notified]

Customs and Others

Admissibility of Writ petition even when alternate remedy is available considering current pandemic situation

- In the case of Walchandnagar Industries Limited vs. CTO Andhra Pradesh, the facts of the case was that the assessee did not able to submit detailed reply due to current COVID-19 situation and the authority refused to consider adjournment request and passed order along with the penalty without any personal hearing. The writ is filed with a request to remand the case and heard afresh, with a personal hearing.
- The petitioner submitted that The Hon'ble Supreme Court of India has extended the period of limitation in all matters and therefore, the apprehension of the respondents that unless a consequential order is passed, within three years from the date of original order, the same will not be valid, is not a correct interpretation. Further, the order of the Hon'ble Supreme Court of India will also take care and safeguard the interests of the State.
- The Hon'ble High Court held that the writ in the opinion of this court is maintainable, as this Court opines that there is a failure of the rules of natural justice which entail a 'fair' hearing.

DA's Comments : Considering current pandemic situation and the Hon'ble Supreme Court ruling for extending the period of limitation, the companies should accordingly respond to the authorities

Walchandnagar Industries Limited vs.. CTO Andhra Pradesh [Writ Petition No.8425 and 8451 of 2020]

Acceptance of undertaking in lieu of Bond and submission of bond is extended till 15 June 2020 and 30 June 2020 respectively

- Due to COVID-19 situation, the facility to accept an undertaking in lieu of bond required for customs clearance was available till 15 May 2020 vide circular no. 21/2020 dated 21 April 2020. The same has been further extended till 15 June 2020 and the submission can be made till 30 June 2020. The undertaking from the Importer/Exporter in lieu of Bond may be accepted under
 - Section 18 – Provisional Assessment of Duty
 - Section 25 – Notifications issued under this section which grants exemption from duty
 - Section 59 – Presentation for Bill of Entry for Warehousing
 - Section 143 – Import or Export on execution of Bond in certain cases

- For below categories:
 - Authorized Economic Operators
 - Status Holder
 - Government/Public Sector Undertakings
 - Manufacturer/Actual User Importer
 - Importers availing warehouse facility (Section 59 of Customs Act, 1962)

Circular no. 26/2020-Customs dated 29 May 2020

Inclusion of NCCD for calculation of Brand Rate of duty drawback

- For the calculation of Brand rate of duty drawback, Education Cess, Secondary and Higher Education Cess, Social Welfare Surcharge, Clean Environment Cess (erstwhile Clean Energy Cess) and Stowage Excise Duty levied on inputs used in the manufacture of export goods are considered. However, there was no clarity in relation to inclusion of the incidence of National Calamity Contingent Duty (NCCD) levied on the inputs used in the manufacture of export goods. The Circular has been issued and clarified that
 - The matter has been examined keeping in view the relevant statutory provisions, Customs and Central Excise Duties Drawback Rules, 2017 and

Board's Instruction No. 4/2019-Customs dated 11 October 2019. NCCD is levied under Section 136 of Finance Act, 2001 as a duty of excise and under Section 134 of Finance Act, 2003 as a duty of customs. These legislations respectively inter-alia provide that provisions of Central Excise Act, 1944, Customs Act, 1962 and rules and regulations made there under including those relating to refunds, exemptions etc. shall apply to this levy. Section 75 of the Customs Act, 1962 allows drawback of duties of customs chargeable under the Act. Section 12 of the said Act provides for levy of duties of customs at such rates as may be specified under the Customs Tariff Act, 1975 or any other law for the time being in force. NCCD is also taken into account in the calculation of All Industry Rates of duty drawback by the Drawback Committee.

- It is, therefore, clarified that the incidence of NCCD where applicable, is required to be factored in calculation of Brand Rate of duty drawback.

Instruction no. 5/2020-Customs dated 12 May 2020

Relief in relation to provisional clearance of goods under FTA

- Considering COVID-19 situation, the Circular no. 18/2020-Customs dated 11 April 2020 provided an option to clear goods under preferential tariff claim, in terms of section 18 of the Customs Act, 1962, where a Certificate of Origin (CoO) is not available at the time of filing customs documents
- Certain necessary guidelines vide Circular 38/2016-Customs; dated 22 August 2016 was issued, prescribing the manner and amount of security based upon class of importer and nature of import. The Circular covers FTAs/PTAs imports under three categories at Sr.no 5(a), 5(b) and 5(c).
- In this regard, it is further clarified and informed that where original hard copy of CoO has not been submitted or only digitally signed copy or unsigned copy of CoO is submitted, the same may be treated at par with category as listed at serial no. 5(c) of the Circular 38/2016-Customs, provided that the matter is not covered under 5(a), wherein there is reasonable belief that it involves mis-declaration of origin/value addition.

- The above clarification will provide further relief to importers who are not able to comply with CoO requirement and procedure.
- Rule 7 of SVLDRS Rules – Amount due to be paid by 30 June 2020 (earlier within 30 days from the date of issue of Form SVLDRS-3)

Instruction no. 4/2020-Customs dated 4 May 2020

Notification no. 01/2020-Central Excise (NT) dated 14 May 2020

Extension of dates under Sabka Vishwas Scheme

- Sabka Vishwas (Legal Dispute Resolution) Scheme (Amendment) Rules, 2020 (SVLDRS Rules) issued to provide following relief on compliance and payment dates considering COVID-19 situation:
 - Rule 6(2) of SVLDRS Rules - Form SVLDRS-3 (Issue of estimate Statement) by designated committee to be issued on or before 31 May 2020 (earlier to be issued within 60 days from the date of receipt of the declaration)
 - Rule 6(3) of SVLDRS Rules - Form SVLDRS-2 (Statement where amount payable is more than estimated amount) – by designated committee to be issued on or before 1 May 2020 (earlier to be issued within 30 days of the date of receipt of the declaration)

Procedure for availing TMA

- Following procedure has been additionally inserted for claiming Transport and Marketing Assistance (TMA) under Foreign Trade Policy 2015-20 (FTP) for specified agricultural produce:
- In the case of shipments by air on or after 28 April 2020, claims should be made in the multiple of kilo gram (KG), ignoring any fraction thereof. The undertaking to be given on ANF 7(A)A is accordingly amended

Public notice no. 05/2015-2020 dated 12 May 2020

Extension of interest equalization scheme for pre and post shipment Rupee export credit till 31 March 2021

Notification No.RBI/2019-20/231 dated 13 May 2020 and DGFT Trade Notice No.11/2020-21 dated 14 May 2020

About Darda Advisors

Darda Advisors offers a wide range of services in the tax and regulatory space to clients in India with professionals having extensive consulting experience. Our service offerings are:

- Goods and Service Tax (GST) Services
- Other Indirect Tax Services
- SEZ/EOU Incorporation and Compliance
- Foreign Trade Policy (FTP) Assistance
- Company Secretarial Services
- Due Diligence
- Incentives (Central and State) Assistance
- Valuation Services
- Virtual Tax Head Services
- Corporate Tax and International Tax Services
- Certification and Attestation

Key Professionals

Mitu Surana [B.Com, ACA] – Litigation and Tax Expert

Mitu has experience of over 16 years in Indirect tax including GST (around 10 yrs in Big 4)

D. Vineet Suman [FCA, CS, CMA(I)] – Strategic Management and Tax Expert

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

Contact Us

☎ +91 99529 26239 ☎ 040 2340 6239 ✉ vineetdarda@dardaadvisors.com

Our Locations

Hyderabad - 303, Olbee Centre,6-3-1090/C-4,Raj Bhavan Road, Somajiguda, Hyderabad – 500082

Chennai - 13, T.K. Mudali Street, Choolai, Chennai - 600112

Delhi-NCR - N93,Ground floor, Mayfield garden Sector 51 Gurgaon, Haryana ,122018

Bhilwara - Moti Chambers, 62&63, Sancheti Colony, Lane beside KK Tower, Pur Road. Bhilwara - 311001



Ping 'Hi' for regular updates on **+91 99529 26239**

Disclaimer

For private circulation and internal use only. The information contained herein is of general nature and not intended to address circumstances of the particular individual or entity. The information in this document has been obtained or derived from sources believed by Darda Advisors (DA) to be reliable but DA does not represent that this information is accurate or complete. Readers of this publication are advised to seek their own professional advice before taking any course of action or decision, for which they are entirely responsible, based on the contents of this publication. DA neither accepts or assumes any responsibility or liability to any reader of this publication in respect of the information contained within it or for any decisions readers may take or decide not to or fail to take