Darda Advisors LLP

DA TAX ALERT- INDIRECT TAX

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

INDIRECT TAX ALERT – November 2020

Issue: 06

Contents

GST Due dates extension - November 2020

Return	Person responsible	Period	Previous due date	Current due date	Notification
GSTR 9	Normal Taxpayers (> 2 Cr. TO)	FY 2018-19	31 Oct 2020	31 Dec 2020	80/2020-CT
GSTR 9A	Composition taxpayers				
GSTR 9C	Normal Taxpayers (> 2 Cr. TO)				

GST Compliance Calendar - November 2020

Return	Person responsible	Period	Due date	Notification
GSTR 1	Normal Taxpayer(Monthly) [> 1.5 Cr. Turnover (TO)]	Oct 2020	11 Nov 2020	-
GSTR 3B	Normal Taxpayer [> 5 Cr. Turnover (TO)]	Oct 2020	20 Nov 2020	-
	Normal Taxpayers (< 5 Cr. TO)	Oct 2020	22/24 Nov 2020	-
GSTR 5	Non-Resident Taxable Person	Oct 2020	20 Nov 2020	
GSTR 5A	OIDAR Service Provider	Oct 2020	20 Nov 2020	-
GSTR-6	Input Service Distributor	Oct 2020	13 Nov 2020	
GSTR-7	TDS Deductor	Oct 2020	10 Nov 2020	
GSTR-8	TCS Deductor	Oct 2020	10 Nov 2020	

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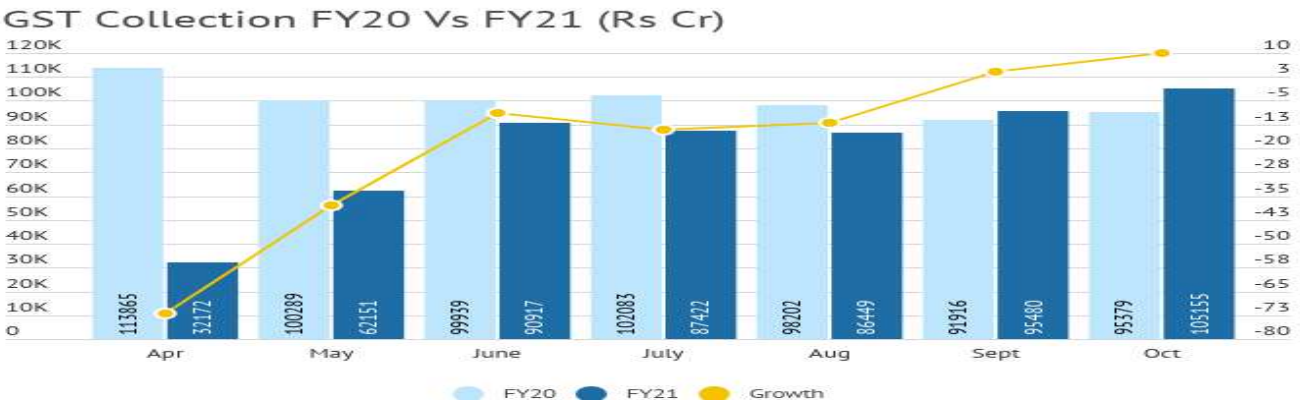

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Madras HC disallows transition of cesses into GST

- The issue whether transition of credit of Education Cess (EC), Secondary and Higher Education Cess (SHE Cess) and Krishi Kalyan Cess (KKC) can be done or not was decided in favour and disfavor based on various judgments of Honorable High Courts. Recently, in the case of Sutherland Global case, the larger bench reversed the judgment of single judge's order and disallowed transition of the said cess into GST regime through the TRAN-1 declaration. The earlier order, pronounced on 5 September 2019, had allowed the company, to utilise and set off the accumulated unutilised amount of the said cess against the output GST tax liability.

- Section 140 of the CGST Act, 2017 which specifies some duty/taxes in the pre-GST regime as 'Eligible Duties' to be used for calculating tax credit to be carried forward. There are three lists which are called as Explanation 1, 2 and 3. The larger bench held that only the seven specified duties as 'Eligible Duties' in respect of inputs held in stocks and inputs contained in semi-finished goods held in stock on the appointed date, i.e. 01 July 2017 will be eligible to be carried forward and adjusted against GST Output Tax Liability and further the larger bench said while adding that three cesses are not listed as 'Eligible Duties' which mean these cannot be included in tax credit to be carried forward. The bench did take note of the fact that though National Calamity Contingent Duty is actually a cess but since it continued beyond July 1, 2017, which is why set-off is allowed.

- Further, the bench specifically mentioned that three cesses did not operate beyond 1 July 1 2017. Also, the exclusion of three cesses are to carry forward and set off under Section 140 of GST law is provided explicitly under Explanation 3.

DA's Comments: This ruling hold significance for the GST Department as it will have implication on collection. However, this judgement will have an adverse impact on taxpayers who have transitioned cess credit that such credit is allowed to be transitioned. The matter now can be put to rest only post receipt of blessings from the Honorable Supreme Court.

In the case of Sutherland Global Services Private Limited (Writ Appeal No.53 of 2020 (Honorable Madras High Court)

Denial of refund of IGST to AA holders valid – Rule 96(10) of CGST Rules – Gujarat High Court

- Rule 96(10) of the CGST Rules was amended by Notification No. 39/2018- Central Tax dated 4 September 2018 with retrospective effect from October 23, 2017, providing that rebate on exports cannot be availed, if the inputs procured by the company have enjoyed AA (Advance Authorisation) benefits or Deemed Export benefits under the said notification. In the current case, the company was unable to utilize the benefit of duty-free imports under AA Licenses and take the benefit of rebate on exports. Thereafter, by Notification No. 53/2018--Central Tax dated 9 October 2018, sub-clause (a) and (b) of Rule 96(10) of the CGST Rules were merged. Thereafter, vide Notification No. 54/2018--Central Tax dated October 9, 2018, Rule 96(10) of the CGST Rules was again de-merged and "with effect from October 23, 2017". The Company challenged the validity of sub-rule (10) of Rule 96 of CGST Rules substituted vide Notification No. 54/2018--Central Tax dated October 9, 2018 denying the option to claim rebate for importing goods under AA licenses.
- The Honorable Gujarat High Court held that:
- Rule 96 (10) as it originally existed, when the Rules came into force provided that the persons claiming refund of IGST paid on export of goods or services should not have received supplies on which the supplier has availed the benefit from Government of India, Ministry of Finance.
- On conjoint readings of the provision of Section 16 of the IGST Act, Section 54 of CGST Act and Rule 96(10) of CGST Rules, which is substituted by impugned Notification, it is apparent that the person who has availed the benefits of Notification No. 48/2017- Central Tax dated October 18, 2017 and other Notifications as stated in Section 96(10) ibid shall not have the benefit of claiming refund of integrated tax paid on exports of goods or services. The company has availed benefits under Advance Authorization License scheme as per the Notification No. 18/2015- Customs dated 1 April 2015 which was amended by Notification No. 79/2017- Customs dated 13 October 2017 and paid integrated tax on the goods procured by the company for the export purpose.

- Considering the effect of the impugned notification, the contentions raised on behalf of the department that there is no discrimination qua the company is tenable in law, as by the amendment made by Impugned Notification it clearly denied the benefit which is granted to the company by the Notification No. 39/2018- Central Tax dated 4 September 2018 was withdrawn as the same was not made applicable from 23 October 2017.

- Recently, vide Notification No. 16/2020-Central Tax dated 23 March2020 an amendment has been made by inserting explanation to Rule 96(10) of CGST Rules, 2017 as amended (with retrospective effect from October 23, 2017). By virtue of which the option of claiming refund is not restricted to the exporters who only avails BCD exemption and pays IGST on the raw materials thereby exporters who wants to claim refund under second option can switch over now.
- The above amendment was made retrospectively thereby avoiding the anomaly during the intervention period and exporters who already claimed refund under second option need to payback IGST along with interest and avail ITC, in view of which, the grievance of the company was therefore taken care of.

- However, it is also made clear that Impugned Notification is required to be made applicable w.e.f. 23 October 2017 and not prior thereto from the inception of the Rule 96(10) of the CGST Act. Therefore, in effect Notification No. 39/2018- Central Tax dated September 4, 2018 shall remain in force as amended by the Impugned Notification by substituting sub-rule (10) of Rule 96 of CGST Rules, in consonance with sub-section (3) of Section 54 of the CGST Act and Section 16 of the IGST Act.

- The Impugned Notification is therefore held to be effective w.e.f. 23 October 2017

DA's Comments : There are multiple writ petitions pending at various Honorable High Courts challenging the validity of Rule 96(10) of CGST Rules and after the said judgment, we need to see results of pending cases before it reaches to Honorable Supreme Court.

Cosmo Films India Vs UOI & Ors. (Gujarat High Court) [R/Special Civil Application No. 15833 of 2018]

Period for filing appeal against AAR order to be counted from Original Order & not from date of ROM rejection order

- An appeal can be filed before the Appellate Authority only against an advance ruling pronounced in terms of Section 98(4) of CGST Act. In this case, the ruling pronounced in terms of Section 98(4) of CGST Act is the advance ruling order no KAR ADRG 69/2019 dated 21 September 2019. An appeal is maintainable only against the said order dated 21 September 2019 within the statutory period of 30 days from the date of communication of the said order. However, no appeal has been filed before us against the advance ruling dated 21 September 2019. The Appellant contends that the order rejecting the ROM application merges with the original order and hence the appeal filed against the ROM rejection order dated 23 March 2020 is to be considered as an appeal against the original order dated 21 September 2020. This argument is not legally tenable.

- All issues which were part of the original application for advance ruling are being contested in appeal. The AAAR held that assuming for the sake of argument that we consider this appeal as an appeal against the advance ruling dated 21 September 2019, even then we observe that the statutory time limit for filing an appeal against the advance ruling order has long expired. This Appellate Authority being a creature of the statue is empowered to condone a delay of only a period of 30 days after the expiry of the initial time period for filing appeal. We are not empowered to condone any delay beyond what the statute permits us.

In re NMDC Ltd (GST AAAR Karnataka) [Order No. KAR/AAAR/03/2020-21]

Proportionate ITC on procurement of capital goods for power generation business can be claimed

- The Company is engaged in the business of edible oil and now starting a new business vertical which deals in 'Generation and Distribution of Renewable Energy' using the same name and the existing GSTIN. The applicant has sought Advance Ruling on whether proportionate claim of input tax credit for procurement of capital goods can be made for power generation business.

- The AAR held that the company is eligible for proportionate claim of Input Tax Credit as per Section 17(2) of the CGST/TNGST Act

read with Rule 42/Rule 43 of CGST/TNGST Rules 2017 on the Goods/Services used in installation of Renewable Power Generation Plant under the 'REC Scheme'.

In re Kumaran Oil Mill (GST AAR Tamilnadu) [Order No. 33/AAR/2020]

Legal cost imposed on adjudicating authority for unnecessary appeal – Madras High Court

- In the current case, the appeal has been filed by the CGST and four others, against the innocuous order of the learned Single Judge, dated 14 February 2020, allowing the Writ Petition in W.P.No.3328 of 2020, filed by the company, by which the learned Single Judge, following the two judgments of the Punjab and Haryana High Court and Gujarat High Court, referred to in paragraph 7 of the order, merely directed the Authorities of the Department to do the needful forthwith to enable the company to upload the requisite Form Trans 1 in order to avail the unutilized credit under the new GST regime, which was introduced with effect from 1 July 2017.

- The Honorable High Court dismissed the writ appeal of the Revenue authorities and allowed the company to file TRAN-1 manually and further the legal cost is imposed and held that:

- *"The order of the learned Single Judge was a straight, correct and innocuous order. Instead of complying with the same, the Department is seeking to raise all kinds of technical and hyper technical pleas before us in the present intra-court appeal. We strongly deprecate such practices of the Revenue Authorities in wasting the time of the court as well as wasting the resources of the State in filing such frivolous litigation. Therefore, we are inclined to impose cost on all the Appellants herein.*

- *We further direct that the due benefit of input credit of stocks, as on 1.7.2017, shall be given to the Assessee either by accepting the offline copy of Form Tran-1 submitted by the Assessee or by allowing him to resubmit the same on E-portal of the GSTN by providing opportunity to Assessee to do it now.*

- *The present Appeal of Revenue is accordingly dismissed with a token cost of Rs.15,000/- (Rupees Fifteen Thousand only) on the Appellants. The cost should be deposited with the Registrar General of this court, within a period of four weeks from today and the same will be transferred to the Legal Services Authority of the*

State, for being spent in the aid of legal aid of the poor."

DA's Comments: The Honorable High Court has considered the undue hardship to the appellant due to frivolous litigation and non-allowing of basic rights of claiming legible credit.

CGST&CE and others vs M/s Checkpoint Apparel Labeling Solutions India Pvt Ltd [2020-TIOL-1692-HC-MAD-GST]

Mere mis-classification of goods cannot be basis for confiscation of goods

- The company has approached the Honorable Court as aggrieved by Ext.P7 notice of detention served on him under Section 129 of the CGST Act and have detained a consignment of goods being transported at his instance, on the ground that there was a mis-classifications of the goods transported. The company contended that the alleged mis-classification of the goods cannot be a reason for detaining the consignment under Section 129 of the CGST Act.

- The Honorable High Court held that if the department feels that there has been a mis-classification of the goods, then it is for them to prepare a report based on the physical verification done by them after recording objections, if any, to the findings recorded therein, and thereafter forward a copy of the said report to the Assessing Officer of the petitioner, who can consider the said report and objections at the time of finalising the assessment in relation to the company. The detention of the goods in transit cannot be justified for the said reasons and accordingly quashed the notice and asked to release the goods.

DA's Comments – The one of the objectives to implement GST was to mitigate check post aspect and in case, the detention/confiscation of goods continue for such vague reasons at the check post, the assessee have only option to go to the door of Honorable High Courts to obtain relief.

Vague SCN – Response need not be given by assessee – Gujarat High Court

- The adjudicating authority issued show cause notice (SCN) for cancellation of registration. The SCN is as vague as possible and does not refer to any particular facts much less point out so as to enable the noticee to give his reply. Further, without fixing a date for hearing and without waiting for any reply to be filed by the company, the cancellation order was passed on 30 July 2020 whereby registration of the

company with GST department was cancelled. Although the cancellation order refers to a reply submitted by the company and also about personal hearing, but according to the company neither they had submitted any reply nor afforded any opportunity of hearing.

- Accordingly, the Honorable High Court observed and held that "we are not entering into the merits of the impugned order as we are convinced that the SCN itself cannot be sustained for the reasons already recorded. Therefore, the cancellation of registration resulting from the said show-cause notice also cannot be sustained. For the reasons recorded above, the writ petition succeeds and is allowed. The impugned show cause notice dated 20.07.2020 (Annexure-H) and the impugned cancellation order dated 30.07.2020 (Annexure-I) are hereby quashed."

DA's Comments: The decision has well taken the issue of vague SCNs being issued and order are released without giving an opportunity of natural justice and being heard.

M/s Mahadev Trading Company vs UOI [2020-TIOL-1683-HC-AHM-GST]

Penalty cannot be imposed retrospectively - Section 171(3A) of CGST Act -profiteering – NAA

- The authority under the provisions of section 171 of CGST Act read with Rule 133 (1) of the CGST Rules pertaining to the period from 01 July 2017 to 31 December 2018 determined the profiteered amount in respect of flats sold to its customers and further, alleged that they committed an offence under Section 171 (3A) of the CGST Act read with Rule 133(3)(d) of CGST Rules and hence liable for imposition of penalty and accordingly issued notice.

- The Company responded to the notice vide his submissions that the penal provisions under Section 171 (3A) of the CGST Act read with Rule 133(3)(d) of the CGST Rules should not be invoked and penalty should not be imposed on him as the provisions of Section 171 (3A) of CGST Act have come into force from 01 January 2020 vide notification No. 01/2020-Central tax dated 01 January 2020 and the investigation carried out by the DGAP was limited upto 31.12.2018. Further, the company has also stated that in compliance to the Order of this Authority, he has transferred the benefit of ITC to the buyers of the project and accordingly informed the

jurisdictional Commissioner of GST, Haryana.

- The authority held that since no penalty provisions were in existence between the disputed period when the company had violated the provisions of Section 171(1) of the CGST Act, the penalty prescribed under Section 171 (3A) cannot be imposed retrospectively. Accordingly, the notice for imposition of penalty under Section 177 (3A) of the CGST Act is hereby withdrawn and the present penalty proceedings launched against him are accordingly dropped.

DA's Comments: The said ruling has considered the effective date of penalty provision and accordingly set aside the proceedings for retrospective imposition of penalty which helped the company to avoid further litigation.

Shri Abhishek Vs Signature Global Developers Pvt. Ltd. (NAA) [Case No. 63/2020]

Rule 36(4) of CGST Rules, 2017 related - Cumulative reconciliation for Feb-Aug 2020 in Sep 2020 in terms of proviso to Rule 36(4) – Circular issued

- In terms of Rule 36(4) of CGST Rules, 2017 and relaxation provided considering Covid-19 for the period February 2020 to August 2020, there is need to conduct cumulative reconciliation for the said period in the return of September 2020 to be filed in October 2020 and accordingly the clarifications is issued covering following:

- All the taxpayers are required to ascertain the details of invoices uploaded by their suppliers under section 37(1) of the CGST Act for the periods of February, March, April, May, June, July and August, 2020, till the due date of furnishing of the statement in FORM GSTR-1 for the month of September, 2020 as reflected in GSTR-2As.

- Taxpayers shall reconcile the ITC availed in their FORM GSTR-3Bs for the period February, 2020 to August, 2020 with the details of invoices uploaded by their suppliers of the said months, till the due date of furnishing FORM GSTR-1 for the month of September, 2020

- The cumulative amount of ITC availed for the said months in FORM GSTR-3B should not exceed 110% of the cumulative value of the eligible credit available in respect of invoices or debit notes which have been uploaded by the suppliers till the due date of furnishing of the statements in FORM GSTR-1 for the month of September, 2020

- In no case total credit shall exceed the tax amount as reflected in the total invoices for the supplies received by the taxpayer

- Excess ITC availed arising out of reconciliation during this period shall be required to be reversed in GSTR 3B of September 2020

- Failure to reverse such excess availed ITC would be treated as availment of ineligible ITC during the month of September, 2020

Circular no.142/12/2020-GST dated 9 October 2020

GSTR 9 and 9C for FY 2018-19 - reporting related

- Taxpayers are required to report only the values pertaining to FY. 2018-19 and not FY. 2017-18 under the GSTR 9 and 9C for FY 2018-19.

PIB press release dated 09 October 2020

Optional filing of GSTR 9 for FY 2019-20

- For FY 19-20 also, registered person whose aggregate turnover does not exceeds INR 2 Crores have the option to file Form GSTR 9 and not mandatory.

Notification No. 77/2020 – Central Tax dated 15 October 2020

Taxpayers with Aggregate turnover up to Rs.5 cr. not compulsory to get GST audit done and file GSTR 9C

- The requirements of GST audit and filing GSTR-9C for the FY 2018-19 and 2019-20 is applicable only for those registered persons whose aggregate turnover exceeds five crore rupees. So now the GST audit for the year FY 2018-19 and 2019-20 is not compulsory for registered persons with aggregate turnover of up to INR 5 Crores.

Notification 79/2020-Central Tax Dated 15th October, 2020

Filing of Return through SMS notified

- Now a registered person who is required to furnish a NIL GSTR 1, GSTR-3B and CMP-08 can be filed through Short messaging service (SMS) facility and the same shall be verified by a

registered mobile number based One Time Password facility (OTP)

Notification 79/2020-Central Tax Dated 15 October, 2020

Non filing of return leads to blocking of E-way bill

- If any person failed to file CMP-08 (Quarterly filed by Composite Tax payer within 18th of Succeeding month of the quarter) for a consecutive 2 tax period or failed to file GSTR -1 and GSTR-3B for a consecutive 2 months, such person cannot fill the PART A of E way bill.

- Further, the said restriction shall not apply during the period from the 20 March 2020 till the 15 October 2020 in case where the return in FORM GSTR-3B or the statement of outward supplies in FORM GSTR-1 or the statement in FORM GST CMP-08, as the case may be, has not been furnished for the period February 2020 to August 2020.

Notification 79/2020-Central Tax Dated 15 October, 2020

Satellite launch services exempted from GST

- Based on the recommendation of GST Council in its 42nd meeting held on 05 October 2020, the notification No. 12/2017- Central Tax (Rate) is amended so as to exempt satellite launch services provided by ISRO, Antrix Co. Ltd and NSIL.

Notification No. 05/2020 – Central Tax (Rate) dated 16 October 2020

Due dates for GSTR 1 notified

S.No	Class of registered persons	Period	Due Date
1	**More than 1.5 Crores** Aggregate Turnover	October 2020 to March 2021	**Eleventh** day of the month succeeding such month
2	Aggregate turnover **upto 1.5 Crores**	Quarter October 2020 to December 2020	**13 January** 2021
		Quarter January 2021 to March 2021	**13 April** 2021

Notification No. 75/2020 – Central Tax dated 15 October 2020

HSN code mandatory w.e.f 1 April 2021

With effect from 1 April 2021, CBIC notifies that a dealer registered under GST has to mention HSN (Harmonised System of Nomenclature) code as following:

S.No	Aggregate Turnover in the preceding Financial Year	Number of Digits of HSN code
1	Up to rupees five Crores	4
2	More than rupees five Crores	6 [Not mandatory when tax invoice issued to unregistered person]

Notification No. 78/2020 – Central Tax dated 15 October 2020

Due dates for GSTR 3B notified

S.No	Class of registered persons	Period	Due Date
1	More than 5 Crores Aggregate Turnover	October 2020 to March 2021	Twentieth day of the month succeeding such month
2	Aggregate turnover upto 5 Crores (Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana or Andhra Pradesh or the Union territories of Daman and Diu and Dadra and Nagar Haveli, Pondicherry, Andaman and Nicobar Islands and Lakshadweep - Category 1 states)		Twenty-second day of the month succeeding such month
3	Aggregate turnover upto 5 Crores (Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha or the Union territories of Jammu and Kashmir, Ladakh, Chandigarh and Delhi – Category 2 states)		Twenty-fourth day of the month succeeding such month

Notification No. 76/2020 – Central Tax dated 15 October 2020

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Direct nexus between the input and output services is not required for claiming service tax refund

- The Company is engaged in export of Information Technology Services to its clients located outside India. For the purpose of rendering the said services, the company procures various services from outside and within India and claimed the refund under Rule 5 of the Cenvat Credit Rules, 2004 read with Notification No.27/2012-CX. (N.T.) dated 18 May 2012. The refund applications filed by the appellant were partly allowed at the original stage and at the first appellate stage, learned Commissioner (Appeals) has allowed the refund benefit in some cases and denied the benefit in respect of certain services namely, renting of car parking, cafeteria, travel and medical, hotel services. The refund applications were not favourably considered by the department on the ground that the company did not produce the evidence, establishing the nexus/co-relation between the services received by it and the exportation of output services and other aspects. The period of dispute in the present case is from October 2014 to September 2015.

- The said Rule does not provide any stipulation or embargo that one-to-one co-relation or nexus has to be established between the input and exported output services. Considering the statutory provisions, the CBEC vide circular dated 16 March 2012, has also endorsed the above views. Further, the Tribunal in the various cited cases has also extended the refund benefit, holding that there is no requirement for an assessee to prove a directed nexus between the input and output services for the purpose of claiming the benefit of refund under Rule 5 ibid

- The Tribunal in the judgment has set aside the impugned order and the appeals are allowed in favour of the company, insofar as it has denied the benefit of refund on the ground of non-establishment of nexus between the input and output services.

DA's Comments – It is well settled principle that the correlation between input and output services are not required under CENVAT Rules and the same has also been upheld by CESTAT Mumbai. The same principle holds good under GST regime.

M/S Siemens Technology And Services Pvt Ltd Vs Comnr Of GST [2020-TIOL-1519-CESTAT-MUM]

Exemption cannot be rejected for mere Technicalities – Entry Tax

- The issue under consideration is whether the company is eligible for exemption from payment of entry tax based on certificates granted under Madhya Pradesh Udyog Nivesh Samvardhan Sahayta Yojna.

- The Honorable High Court states that, in the present case, as the exemption certificate has been granted in the year 2017 only, the company was justified in immediately approaching the Authorities for grant of exemption and his request could not have been turned in the manner and method it has been done by the respondents. Further, the assessment orders passed by the Department for four years ie., 2007-08, 2008-09, 2009-10 and 2010-11 deserves to be set aside and are accordingly hereby set aside. *It is nobody's case that the exemption certificate has been withdrawn or was erroneously granted and the respondent State has admitted grant of exemption certificate and, therefore, once exemption certificate was granted, the Department cannot take advantage of technicalities, especially when the certificate itself was granted in the year 2017 with retrospective effect*. Resultantly, the present Writ Petition is allowed.

DA's Comments: The judgment has questioned the action of adjudicating authority who has not considered the exemption certificate issued by their own State Government and issuing negative assessment orders.

SRF Ltd. Vs State of Madhya Pradesh And Others (Madhya Pradesh High Court) [Writ Petition No. 9628/2020]

Customs Advance Ruling officers appointed

- The Central Board of Indirect Taxes and Customs (CBIC) appointed a Commissioner (Customs Authority for Advance Rulings) in Delhi and Mumbai. The CBIC empowered under section 28EA of the Customs Act, 1962 notified the appointment of Commissioner (Customs Authority for Advance Rulings) to function as Customs Authority for Advance Rulings, at Delhi and Mumbai, respectively.

- The operationalization of the Customs AAR is to be notified soon. Once the Customs AAR is notified, the AAR under Income Tax Laws will no longer entertain any application under Customs Act.

- Currently, it takes average of 12-18 months. By this change, it would also be an alternative to Provisional Assessment.

Notification No. 102/2020-Customs dated 23 October, 2020

IEC - Linking/ Registration of IECs in new revamped DGFT Online

To provide paperless, digital, efficient and transparent services to the exporters and importers, and to further the overall goal of Trade Facilitation and Digital India, theplatform for new or amendment of Import Export Code (IEC) is developed which is available on the existing website: https://dgft.gov.in. Key aspects are:

- All IEC holders are required to create login IDs
- For user ID creation, mobile number/email ids will be a mandatorily required. The same will be authenticated by the process of OTP/email based authentication process.
- Users would be required to link their login Ids to their specific IEC.
- Only the Aadhaar e-sign of the proprietors/directors/partners/Karta etc. as mentioned on their IEC may be used for Aadhaar based authentication.
- For DSC, a Class-II/Class-III Certificate is allowed and may be of either of the 3 types –
  - ✓ Individual DSC of the proprietors/directors/partners/Karta etc.
  - ✓ Organization-based DSC where the firm name matches the name on the IEC. The given DSC type may be issued in the name of any authorized signatory (as per the rules of the Controller of Certifying Authorities).
  - ✓ IEC based DSC wherein IEC is embedded as a parameter in the DSC
- Post linking of the IEC, the IEC holders are requested to complete the IEC autovalidation process by using 'Modify IEC' process after logging in
- IEC holders are further required to update the Profile details using the 'Manage Profile' option
- IEC holders are requested to go through Help manuals & Frequently Asked Questions (FAQs) available on the new DGFT website under the 'Learn' section.

Trade Notice No. 33/2020-21-DGFT dated 28 October 2020

Proceedings to be terminated without issuance of SCN

- The holders of credit cards provided by the HDFC Bank, as issuing bank, procure goods and services from merchant establishments and the expenditure so incurred becomes due for payment by the holder to the appellant at the end of the agreed-upon cycle as indicated in the billing statement. The debt to the merchant establishment is transferred, at pre-determined discount, to an acquiring bank, viz., VISA or Mastercard, which is credited by the issuing bank with the invoiced amount and the said discount is split between them. In cross-border procurements, the inter-bank transaction is agreed to be effected at rates of exchange of the currencies involved that prevail on the date of the transaction and to which the issuing bank adds 'mark-up' while billing the holder of the credit card. It is this additional amount retained by the appellant that is bone of contention between the tax authorities and the HDFC Bank. Further, till the notification of Export of Service Rules, 2005, tax treatment was, by and large, determined upon the territorial aspect of the transaction.

- Further, for relevant period of dispute, the currency of payment was irrelevant and that the activity was not 'credit card service' but 'purchase and sale of foreign exchange including money changing' that was taxable from the appellant only from 16th May 2008 by incorporation in section 65(12)(a)(iv) of Chapter V of Finance Act, 1994.

- The Honorable Tribunal held that *"The complexity of exports and the lack of distinguishment for exports during much of the period of dispute is obvious from our exposition supra and it may not be unnatural for an assessee to resort to superficial interpretation without intention to evade tax. We also find that the show cause notice, and the impugned order, lack convincing evidence of suppression or misrepresentation and, in the circumstances of discharge of tax liability, along with interest, for the period of dispute, it would have been appropriate for the proceedings to have terminated under section 73(3) of Finance Act, 1994 without issue of show cause notice. The imposition of penalty under section 78 of Finance Act, 1994 is not merited. We, therefore, allow the appeal to the extent of setting aside the penalties."*

DA's Comments – The Tribunal considered the legal interpretation aspect for setting aside the penalty till it is specifically covered under the SCN. The same principle holds goods under GST regime.

HDFC BANK LTD vs CCE [2020-TIOL-1503-CESTAT-MUM]

Bonded Manufacturing - FAQs and clarifications issued

- The Central Board of Indirect Taxes and Customs (CBIC) have launched a revamped and streamlined program to attract investments into India and strengthen Make in India and this program is based upon Section 65 of the Customs Act, 1962, which enables conduct of manufacture and other operations in a Customs bonded warehouse. The program has been introduced vide the Manufacture and Other Operations in Warehouse (no. 2) Regulations, 2019, (MOOWR, 2019) and explained through Circular-34/2019-Customs dated 01st October, 2019. Based on industry feedback, CBIC clarified on certain aspects related to job work and others as FAQ in the circular and updated FAQs issued which we summarised below on key aspects clarified and others can be referred in the FAQs issued:

Issue	Clarification
Job work for section 65 unit	**Issue: Movement of inputs from section 65 unit** **Clarification: Only inputs are allowed to be sent out from a Section 65 unit for job work.** **Issue: Movement of capital goods from section 65 unit** **Clarification: The capital goods can be sent outside the Section 65 unit for repair, with the permission of the bond officer.** CBIC clarified that the goods viz moulds, jigs, tools, fixtures, tackles, instruments, hangers, patterns and drawings are allowed to be sent outside and to be sent to the premises of a job worker, subject to due accounting of the goods by the Section 65 unit in the account specified. Such goods will be used by the job worker exclusively for the concerned Section 65 unit. The procedure and timeline will be in line with the GST provisions. Further, the bond to be executed by a Section 65 unit, prescribed through the aforementioned circular, stays in full force notwithstanding the removal of goods for job

Issue	Clarification
	work from a Section 65 unit. *In case of violation of any of the above provisions, the goods shall be deemed to be cleared for home consumption on the date of clearance of the goods for job work. The applicable duties, interest and penalties shall be reckoned accordingly.* **Conditions and procedure to be followed is given in detail in the circular issued.**
Job work for others by a Section 65 unit	It is clarified that a Section 65 unit being a GST registered unit, *can perform job work operations and shall maintain due accounting of such job work as per the provisions of GST law.* In case any imported inputs which are warehoused are consumed during the job work process, duty shall be paid on such goods (i.e. the warehoused goods) by filing Ex-Bond Bill of Entry, when such job worked goods are returned to the principal/owner. In case the goods after job work are exported from the premises of the Section 65 unit, the import duty on the warehoused goods used for the job work need not be paid as per section 69 of the Customs Act, 1962.
Whether a Section 65 unit can procure goods from FTWZ	*There are no restrictions imposed on sourcing of goods by units operating under Section 65. Moreover, the units are GST registrants, which are also allowed to procure goods from SEZ/FTWZs.* In view of the foregoing, it is clarified that a Section 65 unit may source capital goods or inputs from a SEZ/FTWZ, following the applicable procedures.
Can the license under Section 65 and Section 58 of the Customs Act, 1962, be obtained on bare land with	*The regulations do not mandate that a fully enclosed structure is a pre-requisite for grant of license. What is important is that the site or building is suitable for secure storage of goods and discharge of compliances, such as proper boundary walls, gate(s) with access control and personnel to safeguard the premises. The*

Customs and Others

Issue	Clarification
Identified boundaries or a built structure is imperative for obtaining the said license? (Q6, FAQs)	*Principal Commissioner/Commissioners of Customs will take into consideration the nature of premises, the facilities, equipment and personnel put in place for secure storage of goods, while considering grant of license.*
Can a unit undertaking manufacture and other operations in a bonded warehouse import capital goods without payment of duty? If yes, whether only BCD or both BCD and IGST on imports is covered? For how long is duty deferment available? Is interest payable after some time? (Q8, FAQs)	A unit licensed under Sections 58 and 65 can import capital goods and warehouse them without payment of duty. Manufacture and other operations in a bonded warehouse is a duty deferment scheme. ***Thus both BCD and IGST on imports stand deferred. In the case of capital goods, the import duties (both BCD and IGST) stand deferred till they are cleared from the warehouse for home consumption or are exported. The capital goods can be cleared for home consumption as per Section 68 read with Section 61 of the Customs Act on payment of applicable duty without interest. The capital goods can also be exported after use, without payment of duty as per Section 69 of the Customs Act. The duty deferment is without any time limitation***
If the imported capital goods are cleared for home consumption after use, is depreciation available? (Q15, FAQs)	*No. Depreciation is not available if imported capital goods (on which duty has been deferred) are cleared for home consumption after use in a Section 65 unit.*

Customs and Others

Issue	Clarification
If the imported capital goods are cleared for export after use, is depreciation available? (Q16, FAQs)	The imported capital goods (on which duty has been deferred) after use in a Section 65 unit *can be exported without payment of duty as per Section 69 of the Customs Act. For the purposes of valuation of the export goods, the same will be as per the Section 14 of the Customs Act read with the Customs Valuation (Determination of Value of Export Goods) Rules 2007.*
Can all export benefits under FTP and Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 (IGCR) be taken in Bonded warehouse simultaneously? (Q17, FAQs)	The eligibility to export benefits under FTP or IGCR would depend upon the respective scheme. If the scheme allows, unit operating under Section 65 has no impact on the eligibility. In other words, ***a unit operating under Section 65 can avail any other benefit, if the benefit scheme allows.***
Regulation 7 of MOOWR 2019 requires that a person who has been granted permission under regulation 5 shall appoint a warehouse keeper who has sufficient experience in warehousing operations and customs procedures to discharge functions on his	Yes, a person who has passed the examination referred to in regulation 6 or regulation 13 of the Customs Broker Regulations, 2018 may be appointed as a warehouse keeper. ***There is also no bar in appointing any person who has sufficient experience in warehousing operations and customs procedures.***

Issue	Clarification
behalf. Can a Customs broker be appointed as a warehouse keeper? (Q25, FAQs)	
Can existing AEOs continue to get AEO benefits once they switch over to MOOWR from DTA, EOU units?	***Operating under Section 65 has no effect on AEO status.*** All benefits available as an AEO continue notwithstanding operations under Section 65.
Whether at the time of filing the ex-bond Bill of Entry, the importer can claim exemption from customs duties as may be applicable under various Customs Tariff notifications?	As per Section 15(1)(b) of the Customs Act 1962, the rate of duty in case of goods cleared from a warehouse shall be the rate on the date on which a bill of entry for home consumption is presented. ***Thus, the importer can claim exemption from customs duties under various Customs Tariff notifications as may be applicable on the date on which a Bill of Entry for home consumption is presented.***

Circular No. 48/2020-Customs and F. No. 484/03/2015-LC (Pt)

Frequently Asked Questions on Manufacture and Other Operations in Customs Warehouse dated 27 October 2020

Scrips under RoSL Scheme for Apparel & Made-Ups Sectors – Customs duty and Excise duty exemption and issuance of scrips

- CBIC exempts goods from the duty of excise leviable under Fourth Schedule of the Central Excise Act, 1944 (1of 1944) and customs duty (BCD, additional duty under section 3(1), 3(3) and 3(5) of the Customs Tariff Act, 1975), when imported into India against a duty credit scrip under the Scheme for Rebate of State Levies (RoSL) on export of garments and made-ups in accordance with paragraph 4.01(d) of the Foreign Trade Policy read with paragraphs 4.97 and 4.98 of the Handbook of Procedures with following conditions:

- To be issued against exports of garments and made-ups under the RoSL scheme where the order permitting clearance and loading of goods for exportation under section 51 of the said Act has been made:

  - ✓ On or after the 20 October, 2016 for garments,
  - ✓ On or after the 23 March, 2017 for made-ups, and till 6th March, 2019 for the said goods

- The exporter has not claimed or shall not claim credit or rebate or refund or reimbursement of the State levies rebated under RoSL scheme under any other mechanism

- The rebate under the RoSL scheme shall not be applicable for exports made against the Advance Authorisation Scheme under the Foreign Trade Policy 2015-20

- Registered with the Customs authority at the port of registration

- The said scrip is produced before the proper officer of Customs at the time of clearance for debit of the duties leviable on the goods and the proper officer of Customs after taking into account the debits already made under this exemption and debits made under the said notification

- Goods imported against it shall be freely transferable;

- Where the importer does not claim exemption from the additional duty of customs leviable under sub-sections (1), (3) and (5) of section 3 of the said Customs Tariff Act, he shall be deemed not to have availed the exemption from the said duty

- Importer shall be entitled to avail of the drawback of the duty of customs leviable under the First Schedule to the said Customs Tariff Act against the amount debited in the said scrip

- Importer shall be entitled to avail drawback or CENVAT credit of additional duty leviable under sub-sections (1), (3) and (5) of section 3 of the said Customs Tariff Act

against the amount debited in the said scrip

- At the time of clearance, the holder of the scrip submits an undertaking addressed to the said Officer that in case of any amount short debited in the said scrip he shall pay on demand an amount equal to the short debit, along with applicable interest

- Office issues duly attested copies of the said endorsed written advice to the scrip holder and the manufacturer, who retain it in support of the clearance under this notification

- Further, a new sub-pan has been inserted in the Foreign Trade Policy, 2015-20 to give effect to the pars 6.3 of the Ministry of Textiles Notification No. 14/2612016-1T (Vol-II) dated 07 March 2019. as amended vide Notification No. 12015/11/2020-TTP dated 09 June 2020 regarding the issue of duty credit scrips under Scheme for RoSL. Further, the new paragraphs 4.97 and 4.98 are notified in the Handbook of Procedures (HBP) covering:

  - Para 4.97 Procedure to apply for scrips under the Scheme for RoSL

  - Para 4.98 Recovery Mechanism

Notification No. 38/2020-Customs dated 21 October 2020

Notification No. 37/12015-2020-DGFT dated 6 October 2020

Public Notice No. 25/2015-2020-DGFT dated 13 October 2020

Notification No. 07/2020–Central Excise dated 21 October 2020

RoSCTL validity extended till 31 March 2021

- CBIC extended the validity of RoSCTL (Rebate of State and Central Levies and Taxes) to 31 March, 2021 or until such date the RoSCTL scheme is merged with the Remission of Duties and Taxes on Exported Products scheme (RoDTEPS), whichever is earlier".

Notification No. 36/2020-Customs dated 5 October, 2020

Extended period of limitation not applicable when periodical department audit conducted

- The company is engaged in the manufacture of excisable goods and avail Cenvat credit of central excise duty paid on inputs and capital goods as well as of service tax paid on input services under the provisions of the CENVAT Credit Rules, 2004. The company is purchasing the spares/accessories etc. for use in the manufacture of

their dutiable final products. However, sometimes the customers (to whom they had supplied the final products in which said spares/accessories were used) asks for the supply of said spares/accessories (for replacement/repair etc.) and accordingly the company is supplying the said spares/accessories on payment of Central Excise duty equal to the CENVAT credit availed on the said spares/accessories on the said spares/accessories in terms of Rule 3(5) of the CCR, 2004 or on payment of appropriate VAT (where the said spares/accessories are purchased without payment of C.Ex. duty).

- During the scrutiny of the records of the company by the department, it was revealed that reversal of credit at the rate of 6%/7% on the trading value is not done for trading goods. However, as per the company, the said transaction is nothing but the transaction in or in relation to their manufacturing business and hence the same cannot be treated as Trading Activity. Accordingly, the SCN was issued for reversal of credit and extended period of limitation is applied by alleging that the company suppressed material facts from the department with intent to evade payment of duty.

- Accordingly, the Honorable Tribunal held that *"According to me, in view of the aforementioned facts it cannot be said that the transactions in question were suppressed by the appellant from the department with malafide intention to evade payment of duty or to take wrong credit. If something or anything wrong was there then it was incumbent on the Department to raise objection at the time of audit itself during all those years but the same was not done. Since on the issue of limitation I am convinced therefore I am not taking up any other issue."*

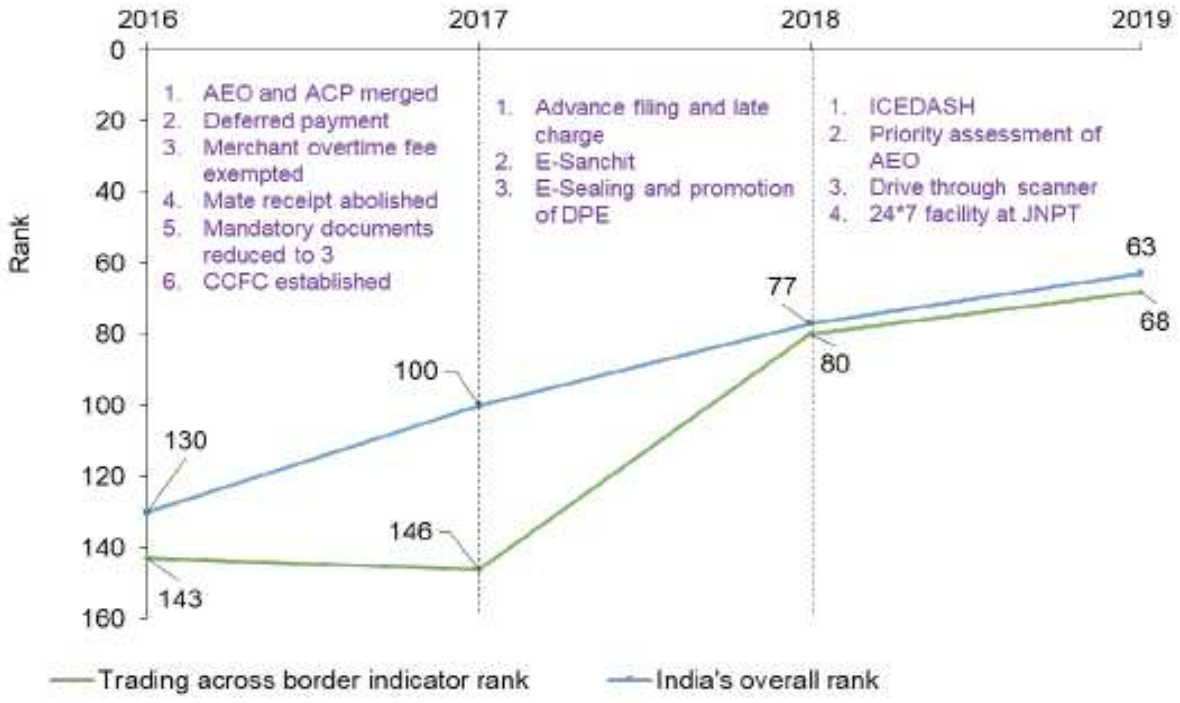
DA's Comments: The extended period of limitation cannot be applied when there is no suppression of facts with malafide intention to evade payment of duty and department audit is conducted and aware about the facts of the case.

M/s Ghatge Patil Industries Ltd vs CCGST [2020-TIOL-1518-CESTAT-MUM]

Customs and Others

Faceless Assessment – New norm! – Clarification issued

- CBIC has implemented next generation reforms through Turant Customs, strongly enabled by technology and stands on the pillars of – Faceless, Contactless and Paperless Customs. A key enabler in Turant Customs is Faceless Assessment which is rolled out to cover the entire country by 31October 2020. This would enable uniform, anonymous Customs assessments and reduce interface between the Trade and Customs officers. Such measures helped India in improvement of ranking on global index such as World Bank's Logistics Performance Index and Doing Business assessment (on the Trading Across Borders indicator) as well as the UN global survey on digital and sustainable trade facilitation.



Customs and Others

Following are key clarifications issued by CBIC on various aspects by issuing Multiple circulars and standing order.

Aspect	Clarification
Key provisions added in **ICES**	1. View of past Bill of Entry 2. Option to send BE to FAG for reassessment 3. New group 3A for Chapter 71 to deal with Gems and Jewellery 4. Dynamic daily target for assessment 5. Enhancements made in the reports available to concerned officers (VAO and VDC) of the FAG
Facilitation Helpdesk	Turant Suvidha Kendra (TSK) at NhavaSheva will act as “Facilitation Helpdesk” for any grievance related to clearances of the B/E filed in the port
Continuous Assessment	• All Saturdays (except second Saturday) as working day for all the faceless assessment groups across the country. Co-Convenors of the NACs must co-ordinate with the NACs for ensuring expedited assessment by the FAGs/PAGs across different zones so there is no delay in assessment and Customs clearance during holidays at all or some locations. • The Port of Import should monitor clearance of time-sensitive/urgent consignments such as lifesaving drugs, security/defence related consignments etc. imported by Government and its agencies/PSUs so that these are not delayed • DG Systems has enabled dashboards for monitoring of pending FAG B/E, their disposal, and other relevant reports. These dashboards are required to be pro-actively utilised by the NAC/PAG and Principal Commissioners/Commissioners in charge of the Port of Import.

Customs and Others

Aspect	Clarification
Raising of Queries by FAG Officers	• Board therefore directs the NACs to get the analysis done in respect of the queries being raised on commodities pertaining to Chapters/Articles under the Customs Tariff Act, 1975 and while weeding out avoidable queries, to the extent possible standardize the queries across Customs formations. • Queries should not be raised in piecemeal manner and to the extent possible multiple and repeat queries are to be avoided. • Trade needs to be sensitised/informed to/of the advantages of providing at the first instance only, the complete details and description of the commodity, brand name, model and any other specifications essential for the assessment. • Some instances have been noticed, where confirmation of compliance to prohibitions and restrictions are being sought during assessment including submission of certain certificates, details etc. leading to delay in the assessment. It is clarified that the verification of statutory compliances is to be checked only during Customs Compliance Verification (CCV) stage at the Port of Import.
Other aspects	Kindly refer detailed procedure in circulars/clarifications issued for below aspects •Resorting to First Checks •Role of RMCC/LRM in Facilitation •**Re-assessment of B/E** •**Certificate of Origin** •**Grievance Redressal**

STANDING ORDER No. – 38/2020-JNCH dated 21 October 2020

STANDING ORDER NO. 39/2020 dated: 26 October 2020

PUBLIC NOTICE NO. 132/2020-JNCH dated 13 October 2020

Circular No. 45/2020-Customs dated 12 October 2020

Electronic filing & Issuance of Preferential COO w.e.f. 15 October 2020 for 4 FTA/PTA/CECA

- The electronic platform for Preferential Certificate of Origin(CoO) is being expanded to add four more FTAs/PTAs to facilitate electronic application of CoOs with effect from 15 October 2020:
- GSP - Generalized System of Preferences
- GSTP - Global System of Trade Preferences
- IMCECA - India Malaysia Comprehensive Economic Cooperation Agreement
- ISCECA- India Singapore Comprehensive Economic Cooperation Agreement
- Detailed procedure is given under the trade notice issued.

Trade Notice No. 30/2020-2021-DGFT dated 13 October 2020

Export obligation under Advance Authorisation – Due date extended

- Due to Covid19, para 4.44 of Handbook of Procedures 2015-20, on monitoring of Export Obligation stands amended to allow extension in the date of submission of documents for ED fulfilment up to 31 December 2020 for all Advance authorisations, wherever Export Obligation period is expiring/has expired between 01 February 2020 and 31 October 2020.

Public Notice No. 26 /2015-2020-DGFT dated 16 October 2020

Darda

News Flash

GST

- Recovery in GST receipts sustainable: finance secy
- Is the upsurge in GST collections likely to continue?
- October GST collection tops Rs 1 lakh crore, 1st time since February
- GST compensation dues: Finance Ministry releases Rs 6,000 crore as second tranche to 16 states and 3 UTs
- GST e-invoices jump threefold within a month of launch, shows data
- GST rate cut sends wrong signal to domestic business: Finance secretary
- GST and the complexity of political negotiations
- Centre borrows ₹6,000 cr. for GST compensation
- GST officials bust fake input tax credit racket in Delhi

Customs and others

- Customs duty: Need judicious use, has to be phased out slowly'
- Sea change in customs clearance as govt addresses complaints over delays
- Delays in customs clearance crippling India's import-export industry
- India Post, US Postal Service sign pact for electronic exchange of customs data
- DGFT's new rules for AC imports: Right move with little impact, say experts
- Govt lifts ban on export of alcohol-based hand sanitizers
- FTA: New Rules of Origin meant to curb duty evasion, but Indian importers will bear onerous compliance burden
- Centre's FTA norms led Samsung to resume local television production

About Darda Advisors LLP

Darda Advisors LLP 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:

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- Other Indirect Tax Services
- SEZ/EOU set up 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

D. Vineet Suman [FCA, CS, CMA(I)] **–** *Strategic Management and Tax Advisor*
Vineet has over 15 years of consulting experience in leadership role in Indirect tax including GST (around 13 years in Big 4)

Mitu Surana [B.Com, FCA] – *Tax Advisor*
Mitu has over 16 years of consulting experience in Indirect tax including GST (around 10 years in Big 4)

Contact Us

+91 99529 26239 da@dardaadvisors.com

Our Locations

Hyderabad - 6-3-1086,5th Floor, Vista Grand Towers, Raj Bhavan Road, Somajiguda, Hyderabad – 500082
Chennai - 13, T.K. Mudali Street, Choolai, Chennai - 600112 , Tamil Nadu
Delhi-NCR - N 93,Ground floor, Mayfield garden, Sector 51, Gurgaon, Haryana - 122018
Bhilwara - Moti Chambers, 62&63, Sancheti Colony, Pur Road. Bhilwara – 311001, Rajasthan

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

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