Darda Advisors LLP

DA TAX ALERT- INDIRECT TAX

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

INDIRECT TAX ALERT – October 2020

Issue: 05

Contents

GST Compliance Calendar - October 2020

Return	Person responsible	Period	Due date	Notification
GSTR 1	Normal Taxpayer(Monthly)	Sep 2020	11 Oct 2020	-
	Normal Taxpayer(Quarterly)	July to Sep 2020	31 Oct 2020	-
GSTR 3B	Normal Taxpayer [> 5 Cr. Turnover (TO)]	Sep 2020	20 Oct 2020	-
	Normal Taxpayers < 5 Cr. TO)	Aug 2020	1/3 Oct 2020	54/2020-CT
	Normal Taxpayers (< 5 Cr. TO)	Sep 2020	22/24 Oct 2020	-
GSTR 4	Composition taxpayers	FY 19-20	31 Oct 2020	64/2020-CT
CMP 08	Composition taxpayers	July to Sep 2020	18 Oct 2020	-
GSTR 9	Normal Taxpayers (> 2 Cr. TO)	FY 2018-19	31 Oct 2020	69/2020-CT
GSTR 9A	Composition taxpayers			
GSTR 9C	Normal Taxpayers (> 2 Cr. TO)			

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Refund of input service under IDS – Over to Supreme Court

- The inverted duty structure (IDS) is commonly referred to the cases where the rate of tax on inputs is higher than the rate of tax on output supplies.

- During our monthly tax alert for the month of August 2020, we discussed in detail with regard to the judgment of the Honorable Gujarat High Court in the case of VKC Footsteps India Pvt Ltd. Vs UOI & Ors [TS-585-HC-2020(GUJ)-NT] which relied upon the expression "any unutilized input tax credit" appearing in Section 54(3) of the CGST Act, 2017 (CGST Act) and referring to the definitions of terms "input tax", "input" and "input services" as defined in Section 2 of the CGST Act held that Section 54(3)(ii) of the CGST Act permits refund of unutilised credit of tax paid on "inputs" and "input services" both. The Honorable Gujarat High Court after considering the overall objective and provisions of the GST Acts, its scope and applicability, held that Rule 89(5) of the CGST Rules, 2017 (CGST Rules) restrict the entitlement to refund only to that of the "inputs" is ultra-vires to Section 54(3)(ii) of the CGST Act

- Recently, during the month of September 2020, the Honorable Madras High Court in the case of TVL Transtonnelstroy Afcons Joint Venture & Ors Vs UOI & Ors has given contrary opinion and did not subscribe to the judgment and conclusions of the Honorable Gujarat High Court and independently examined the provisions of Section 54(3)(ii) of CGST Act and held that Rule 89(5) of the CGST Rules is intra-vires to both Section 54(3) of the CGST Act and the general rule making powers of the Government. The Honorable Madras High Court repealed the challenge to the validity of Section 54(3)(ii) of the CGST Act and held that:

  - Section 54(3)(ii) of CGST Act does not infringe Article 14 of the Constitution of India

  - Refund is a statutory right and the extension of the benefit of refund only to the unutilised credit that accumulates on account of the rate of tax on input goods being higher than the rate of tax on output supplies by excluding unutilised input tax credit that accumulated on account of input services is a valid classification and a valid exercise of legislative power

  - There is no necessity to adopt the interpretive device of reading down so as to save the constitutionality of Section 54(3)(ii) of CGST Act. It qualifies

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- and curtails not only the class of registered persons who are entitled to refund but also the imposes a source-based restriction on refund entitlement and, consequently, the quantum thereof

- Rule 89(5) of the CGST Rules as amended, is in conformity with Section 54(3)(ii) of CGST Act. Consequently, it is not necessary to interpret Rule 89(5) of CGST Rules and, in particular, the definition of Net ITC therein so as to include the words input services

- The section 54(3)(ii) of the CGST Act read with the 1st proviso refers to the refund of unutilised input tax credit is allowed only in two cases i.e. zero rated supply and inverted duty structure and refund in the case of inverted rate of tax is subject to the condition that the said accumulation is due to higher rate of tax on inputs. This expression is used in contradiction to accumulation of credit on account of higher rate of tax on input services. The 1st proviso of section 54(3)(ii) of CGST Act does not seem to restrict the refund only to unutilised credit of tax paid on inputs but it restricts only the eligibility in the said two cases. Both these cases are further qualified with conditions precedent attached thereto. Zero rated supplies are subject to pre-condition that it must be supplied without payment of tax. Similarly, the credit must be accumulated on account of higher rate of tax on inputs than output supplies in the case of inverted duty structure.

- The registered persons in the State of Gujarat will be justified in claiming the refund of input services and the assesses in the State of Tamil Nadu will be denied for the same under section 54(3)(ii) of CGST Act read with Rules 89(5) of CGST Rules. In other States, the refunds are likely to be restricted to the credit of tax paid on inputs following the opinion of the Hon'ble Madras High Court, till such time the Hon'ble Apex Court gives its final judgment

DA's Comments: Both the judgments of the Honorable High Courts of Gujarat and Madras are detailed, exhaustive and well-reasoned and well-explained; however, with due respect, the opinion and interpretation of the Honorable Gujarat High Court appears to be more reasonable and deserves acceptance by the Honorable Apex Court. No one would want to forgo the refund of unutilized credit of the tax paid on input services but claiming the refund of unutilized credit of the tax paid on services could result in rejection of the claim and prolonging litigation which could

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result in delay in receiving the refund of the unutilized credit of the tax paid on inputs as well.

TVL. Transtonnelstroy Afcons Joint Venture & Ors Vs UOI & Ors – Madras High Court [TS-800-HC-2020(MAD)-NT]

GST Refund Claim filed by SEZ unit is allowed – Gujarat High Court

- The Company situated in Special Economic Zone ('SEZ') filed an application for refund with regard to the credit of IGST distributed by Input Service Distributor ('ISD') which was rejected by adjudicating authority for the reason that SEZ unit is not eligible to file refund claim under section 54 of CGST Act, 2017 (CGST) read with Rule 89 of CGST Rules, 2017 ('CGST Rules') read with Circular No. 17/17/2017-GST) dated 15 November 2017 and Circular No. 24/24/2017-GST dated 21 December 2017.

- Further, it was stated by the adjudicating authority that for the supply received from outside SEZ, SEZ unit is not supposed to pay any tax whether under forward charge or reverse charge mechanism and for the supply received from another unit within SEZ, any and all such supplies have no tax treatment and therefore there is no question of forward charge or reverse charge tax payment. SEZ unit is not supposed to pay any tax and thus there would be no question of ITC and accordingly refund. Accordingly, the writ filed to Honourable High Court.

- Key submission by the applicant:

  - Refund being inclusive in nature, the same is also required to be granted with regard to unutilized input tax credit under section 54 of the CGST Act.

  - In the recent case M/s. Amit Cotton Industries v. PCC (SCA No.20126/2018 on 27 June, 2019), wherein in similar facts, this Court allowed the claim made by the petitioner for refund of the IGST in case of an export unit. [Related to Rule 96 of CGST Rules]

- The Honourable High Court Ruled that:

  - Credit of service tax is distributed to all the units by the ISD and therefore, the claim of refund made by the SEZ unit of the petitioner is required to be granted.

  - In facts of the case, it is not possible for a supplier of goods

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- and services to file a refund application to claim the refund of the input tax credit distributed by ISD. Therefore, The stance of the department that the company is not entitled to seek the refund of the ITC paid in connection with goods or services supplied to SEZ unit is not tenable

- We are of the opinion that in view of the aforesaid decision in case of M/s. Amit Cotton Industries(supra),the company is entitled to claim refund of the IGST lying in the Electronic Credit Ledger as there is no specific supplier who can claim the refund under the provisions of the CGST Act and the CGST Rules as input tax credit is distributed by the input service distributor.

DA's Comments: Mostly, SEZ developer/units are not claiming eligible ITC and refund in the cases where vendor is charging the tax without considering the supply as 'Zero rated supply'. After this judgment, even the refund of taxes charged by ISD is allowed; such developer and units can determine the eligibility of such accumulated ITC and explore to file the refund claim within the time limit

M/s Britannia Industries Limited Vs UoI [Honourable High Court of Gujarat [R/Special Civil Application No. 15473 Of 2019]

Natural justice principle to be followed

- The adjudicating authority passed three assessment orders under GST law without giving an effective opportunity, as urged, which does not appear to have been extended to the company insofar as personal hearing notice was issued on 13 February 2020 listing the matter for hearing on 14 February 2020, the very next day and the impugned orders have been passed on the same day. Accordingly, the company filed the writ application to the Honorable Madras High Court.

- The Honorable Madras High Court relied on the judgment of single Judge of this Court in Velu Palandar vs DCTO (29 STC 151) to the effect that the Assessing Officer, in all fairness, should wait till the end of the working day when personal hearing was fixed, before finalizing the assessment. Finalization of assessment on the same day when the matter was listed for hearing would militate against the requirement of natural justice.

- Accordingly, the Honorable Madras High Court has set aside the impugned orders and asked adjudicating authority to issue

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afresh notices to the company to enable them to appear and make its submissions in accordance with law

DA's Comments: There may be instances where the adjudicating authority may not be in a position to take up the case on that date due to official pressure or otherwise. If an opportunity is given to a party to explain itself or submit its objections, such an opportunity must be realistic and not notional.

Urbanclap Technologies India Pvt. Ltd. Vs. State Tax Officer (Madras High Court) [2020-TIOL-1506-HC-MAD-GST]

Nominal recovery from employee is not liable to GST

- The company has engaged service providers to provide transportation facility to its employees in non-air conditioned buses having seating capacity of more than 13 persons. Further, the company is recovering the nominal cost from employees on monthly basis by issuing pass to their employees, so that the transportation facility can be used by such employees. Following questions are raised to Authority of Advance Ruling (AAR) by the company
  - Whether they are entitled to avail ITC of the GST paid to such service providers
  - Whether GST is applicable on nominal amount recovered by the company from their employees for usage of employee bus transportation facility in non-air conditioned bus
  - If ITC is available to them, whether it will be restricted to the extent of cost borne by the Applicant
- For the first query, the AAR held that since the applicant has specifically submitted and as agreed by the jurisdictional officer, that they are using motor vehicles having approved seating capacity of more than thirteen persons (including the driver), the company shall be eligible for ITC in this case
- With regard to taxability of the cost recovery, the AAR held that the company is not providing transportation facility to its employees; in fact the company is a receiver of such services in the instant case. The company contention is that they are eligible for exemption from GST under si. no. 15(b) of Notification No. 12/2017-Central fax (Rate) dated 28 June 2017 in respect of nominal amounts of recoveries made from their employees towards bus transportation

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service, is not correct. The exemption under the said notification is available only when the supply is taxable in the first place. In the subject case, the transaction between the company & their employees, due to "Employer-Employee" relation as stated by the applicant in their submissions, is not a supply under GST Act. As per clause 1 of Schedule III to the CGST Act, the services by an employee to the employer in the course of or in relation to his employment shall be treated neither as a supply of goods nor a supply of services. In view of Schedule III of CGST Act, we are of the opinion that GST is not applicable on the nominal amounts recovered by company from their employees.

- Further, the AAR also held that ITC would be available to an extent of cost borne by the company

DA's Comments: The AAR has given ruling based on clause 1 of schedule III of CGST Act which exempts the services by employee to the employer and not on reverse side. Being the GST law has put anomaly and there is contrary view by various State AARs on such issue, the Government needs to issue detailed clarification so that industry can decide on its taxability and accordingly comply with the same.

Tata Motors Ltd [Maharashtra AAR 2020-TIOL-245-AAR-GST]

Naturopathy services with accommodation is taxable composite supply

- The company provides different types of wellness facilities at Nimba such as Naturopathy, Ayurveda, Yoga and meditation, Physiotherapy and Special therapy with the help of highly qualified professionals' doctors in the field of naturopathy, researchers, and support staff along with accommodation and other facilities being its medium and long term duration therapies. The company is not registered under Clinical Establishment Act, 2010 and still of the view that their services are exempt under notification No.11/2017-Central Tax (Rate) dated 28 June 2017 under GST law. Accordingly, the company raised the query before AAR that whether they are eligible to get the benefit of entry No.74 of exemption Notification No.12/2017-Central Tax(Rate) dated 28 June 2017

- The AAR analysed the facts and stated that the packages offered by the applicant, as evident from their website www.nimba.in, indicates that the therapy offered by them is strictly on a residence basis. The same is evident from

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from the fact that the consideration is solely dependent on the type of room opted by the customer and observe that the element of accommodation becomes the primary activity in the entire package. Further, the fact that the package is strictly a residence package is fortified by the schedule of the programme which is shown in the sub-menu 'Dincharya' of the website.

- Further, it is observed by AAR that the entire package consists of the above 3 components and the packages would not be possible without any one of the 3 components. In other words, the packages offered by the company are naturally bundled and would be aptly covered under the definition of Composite Supply. Further, the principal supply would be the accommodation services since the therapy can in no way be administered without accommodation. In fact, there is no option available for the customer to avail the wellness package without opting for the accommodation. Thus, we find that the accommodation service attains the nature of the principal supply and the other two components attain the nature of ancillary services. Therefore, AAR concluded that the exemption available under the said exemption notification is not applicable to the company.

DA's Comments: The principle supply to be determined based that an essential part of the supply, for which reason the recipient is availing the said supply. By this ruling, the interpretation of principal supply has not been done as per definition under GST law and could impact the taxability in the case of high end hospitals which have various price range based on nature of rooms taken by the patient and also in other cases.

M/s Oswal Industries ltd.(M/s. Nimba Nature Cure Village) (GST AAR Gujarat) [2020-TIOL-251-AAR-GST]

Franchisee needs to register under GST irrespective of turnover below threshold limit

- The applicant submitted that "PATRATOR" is a partnership firm, unregistered under the GST law as the turnover is below threshold limit and they are one of the franchisees for "ALOHA" a business brand which is operated by Explore Knowledge Resources LLP and charges royalty from its franchisees for using its brand name and sells its product under its brand through its franchisees. The applicant submitted the agreement copy and raised the query before AAR whether they are liable to register under GST law when their turnover is below threshold limit.

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- AAR observed that the applicant is required to fulfill the requirements of infrastructure and manpower before commencement of operations of the Centre as per the instructions of the Company and will continue to possess it during the whole tenure and its renewal of this contract. Thus, it is crystal clear that the applicant is only authorized to supply the goods and service under the brand name of "ALOHA" and cannot supply the other goods and service. Hence the applicant is supplying the goods and service on behalf of the taxable person i.e. principal-agent relationship and thus liable for taking registration irrespective of turnover below threshold limit.

DA's Comments: AAR did not consider the key components of Principal-Agent relationship i.e. transfer of ownership of goods or service, privity of the contract, supply of goods or services being done by franchisee using the brand of franchisee and not on behalf of the franchisee, non existence of agency agreement between franchisor and franchisee and concluded that the registration for the applicant is required as agent of franchisor.

Patrator (GST AAR Gujarat) [2020-TIOL-256-AAR-GST]

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E-Invoicing related

Following aspects have been notified or clarified under various notifications and press release issued in relation to e-invoice implementation for the registered person having aggregate turnover exceeding INR 500 crores:

1. **B2B (Business to Business) related:**

- **E-invoice is implemented with effect from 1 October 2020.** However, for the relevant taxpayers who have not yet implemented have been given grace period of 30 days to issue valid e-invoice. The invoice issued as non e-invoice for the period of 30 days shall be deemed to be valid and the penalty leviable for such non-adherence to provisions, shall stand waived off if the invoice reference number (IRN) for such invoices is obtained from the designated portal within 30 days of the date of invoice

- Earlier E-Invoice was required for goods or services or both to a registered person only, but now it is also required for **export transactions**

- E-invoice will be mandatory for those registered persons whose aggregate turnover in any preceding financial year from 2017-18 onwards exceeds Rs. 500 Crores as against aggregate turnover in a financial year as mentioned in the earlier notification

2. **B2C (Business to Consumer) related:**

- B2C e-invoices to unregistered persons shall have Dynamic Quick Response (QR) code from 1 December 2020 instead from 1 October 2020

- Such issuance is mandatory for registered persons having aggregate turnover in any preceding financial year from 2017-18 onwards exceeds Rs. 500 Crores

3. E-invoice having QR code with an embedded Invoice Reference Number (IRN) may be produced electronically, for verification by the proper officer in lieu of the physical copy as an document during conveyance by a person-in-charge.

4. Commissioner have been given discretionary power to exempt a person or a class of registered persons from issuance of e-invoice for a specified period, subject to such conditions and restrictions as may be specified in the notification issued, as recommended by GST Council

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5. QR code definition included in the CGST Rules

Notification No. 70/2020 – Central Tax dated 30 September 2020

Notification No. 71/2020 – Central Tax dated 30 September 2020

Notification No. 72/2020 – Central Tax dated 30 September 2020

Press Release dated 30 September 2020-CBIC

Notification No. 73/2020 – Central Tax dated 1 October 2020

Exemption on ocean/air freight extended till 31 March 2020

- CBIC extends exemptions on:
  - Supply services by way of transportation of goods by an aircraft from customs station of clearance in India to a place outside India and
  - Services by way of transportation of goods by a vessel from customs station of clearance in India to a place outside India

  under CGST Act till 30 September, 2021

Notification No. 04/2020 – Central Tax (Rate) dated 30th September, 2020 with effect from 1 October 2020

Blocking of credits under Rule 86A of CGST Rules, 2017 - Procedure issued

- Rule 86A of CGST Rules authorize the commissioner or authorised officer to block credit when they have reasons to believe that credit of input tax available in the electronic credit ledger has been fraudulently availed or is ineligible for discharge of liability under Section 49 of CGST Act or for claim of any refund of any unutilised amount. The procedure is issued for following aspects in addition to the circular 3/2020 earlier issued:
- **NIL or Zero balance in all heads of tax in credit ledger:** If the taxpayer is functional, the blocking of amount equivalent to such credit can be resorted to as and when credit accumulates in his electronic credit ledger and this can be done only if the TP is monitored continuously. If the taxpayer is not functional

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and with no credit balance, it is impossible to block future accumulated credits too. But other actions as narrated in Para No.5 below may be taken.

- **Insufficient balance in the relevant heads of credit ledger to cover the entire amount to be blocked:** The first step would be to block the amount available as on the date of blocking and the balance amount has to be blocked as and when the credits start to accumulate in the credit ledger of the taxpayer. Further, other actions as narrated in Para No.5 below may be taken.

- **Nil or insufficient balance in the head to be blocked but sufficient balance in other head:** On the same analogy as above, blocking of amount equivalent to such credit lying in one tax head in lieu of another (to which such credit actually pertains to) may be resorted to. However, it is to be noted that blocking in heads in the credit ledger other than the heads for which such blocking is to be done, is subject to limitations imposed by the cross-utilisation of ITC.

- **When certain invoices are not reflected in GSTR-2A, but available in E-way bill system, etc., whether ITC has to be blocked for these cases, as it would appear that the dealer may not have taken the credit:** As per Para 7 of the circular no. 3/2020 read with the provisions of Rule 86A of CGST Rules, it can be seen that the officer authorized to block credit is sufficiently empowered to form his belief based on reasons as to whether the credits get covered under the categories mentioned under the rule provisions or not. Therefore, if in the opinion of the authorized officer, any credit is not malafide, etc., he is free to decide not to block the credit; however, it is his sole responsibility to do so based on the material evidences to believe the contra and not on any surmise that absence of invoice details in GSTR-2A could mean that the dealer has not availed credit, etc.

- **Whether Section 73 / Section 74 of CGST Act action is to be initiated in case of Nil balance / insufficient balance in credit ledger:** It is clarified that blocking of credit under Rule 86A of CGST Rules is an emergency measure to prevent the taxpayer from using fraudulent or wrong credits taken under the circumstances enlisted under the provision. However, this does not preclude or impede any other action that may be taken under other provisions of GST laws including provisional attachment of property, demand and recovery, etc. It is once again emphasised that any issues arising during the task of blocking do not have any connection with any other action under the GST Law.

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Interest on net cash liability retrospectively – Administrative Instruction issued

- The provision of section 50 of CGST Act was amended vide section 100 of the Finance (No. 2) Act, 2019 to provide for charging interest on the net cash tax liability. The said amendment was to be made effective from a date to be notified by the Government. Accordingly, the said provision was made effective vide notification No. 63/2020-CT dated 25 August 2020 w.e.f. 01 September 2020. Based on the GST Council recommendation, it should have been retrospectively implemented i.e. w.e.f 1 July 2017.

- Post issuance of the said notification, there were apprehensions raised by taxpayers that the said notification is issued contrary to the GST Council's recommendation to charge interest on net cash liability w.e.f. 01.07.2017. Consequently, a press release, dated 26 August 2020 was issued to clarify the position. Further, in order to implement the decision of the Council in its true spirit, and at the same time working within the present legal framework, it has been decided to address the issue through administrative arrangements, as under:

  - For the period 01 July 2017 to 31 August 2020, field formations in your jurisdiction may be instructed to recover interest only on the net cash tax liability (i.e. that portion of the tax that has been paid by debiting the electronic cash ledger or is payable through cash ledger); and

  - Wherever SCNs have been issued on gross tax payable, the same may be kept in Call Book till the retrospective amendment in section 50 of the CGST Act is carried out

Circular no. F. No. CBEC-20/01/08/2019-GST dated 18 September 2020

Extension of due date for compliances under Anti profiteering

- Due date for issue of notice, approval order, sanction order, filing of appeal, furnishing of return, statements, applications, reports, any other documents, time limit for any compliance under Section 171 of GST Act, 2017 where the time limit is expiring between 20 March 2020 to 29 November 2020 is further extended to 30 November 2020

Notification 65/2020-Central Tax dated 1 September 2020

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Extension of time limit for compliance under sale on approval of goods

- According to section 31(7) of CGST Act, 2017 where the goods being sent or taken on approval for sale or return, the invoice shall be issued before or at the time of supply or six months from the date of removal, whichever is earlier. If the due date for complying the said section falls between 20 March 2020 to the 30 October 2020 for goods taken out of India, then the time limit for completion or compliance of such action, shall stand extended upto the 31 October 2020

Notification No. 66/2020 – Central Tax dated 21 September 2020

Late fee waiver for GSTR 4 for FY 2017-18, 2018-19 and 2019-20

- Late fee shall be waived off in excess of two hundred and fifty rupees and shall stand fully waived where the total amount of tax payable in the said return is nil, for the taxpayers who failed to furnish the return in FORM GSTR-4 for the quarters from July 2017 to March 2020 by the due date but furnishes the said return between the period from 22 September 2020 to 31 October 2020

Notification No 67/2020 – Central Tax dated 21 September 2020

Late fee waiver for GSTR 10

- GSTR 10 (Final Return) is to filed by those registered persons whose registration has been cancelled and they shall file a final return within three months of the date of cancellation or date of order of cancellation, whichever is later. Late fee in excess of two hundred and fifty rupees, for the registered persons who fail to furnish the return in FORM GSTR-10 by the due date but furnishes the said return between the periods from 22 September 2020 to 31 December 2020 is waived off.

Notification No 68/2020 – Central Tax dated 21 September 2020

Due date extended till 31 October 2020 for GSTR 9, 9A and 9C

- CBIC extended the due dates for GSTR 9 and 9C after receiving various representations from various industry bodies. Notification 41/2020-Central Tax dated the 5 May 2020 has been amended to substitute 30 September 2020 to 31st October 2020

Notification No. 69/2020 – Central Tax dated 30 September 2020

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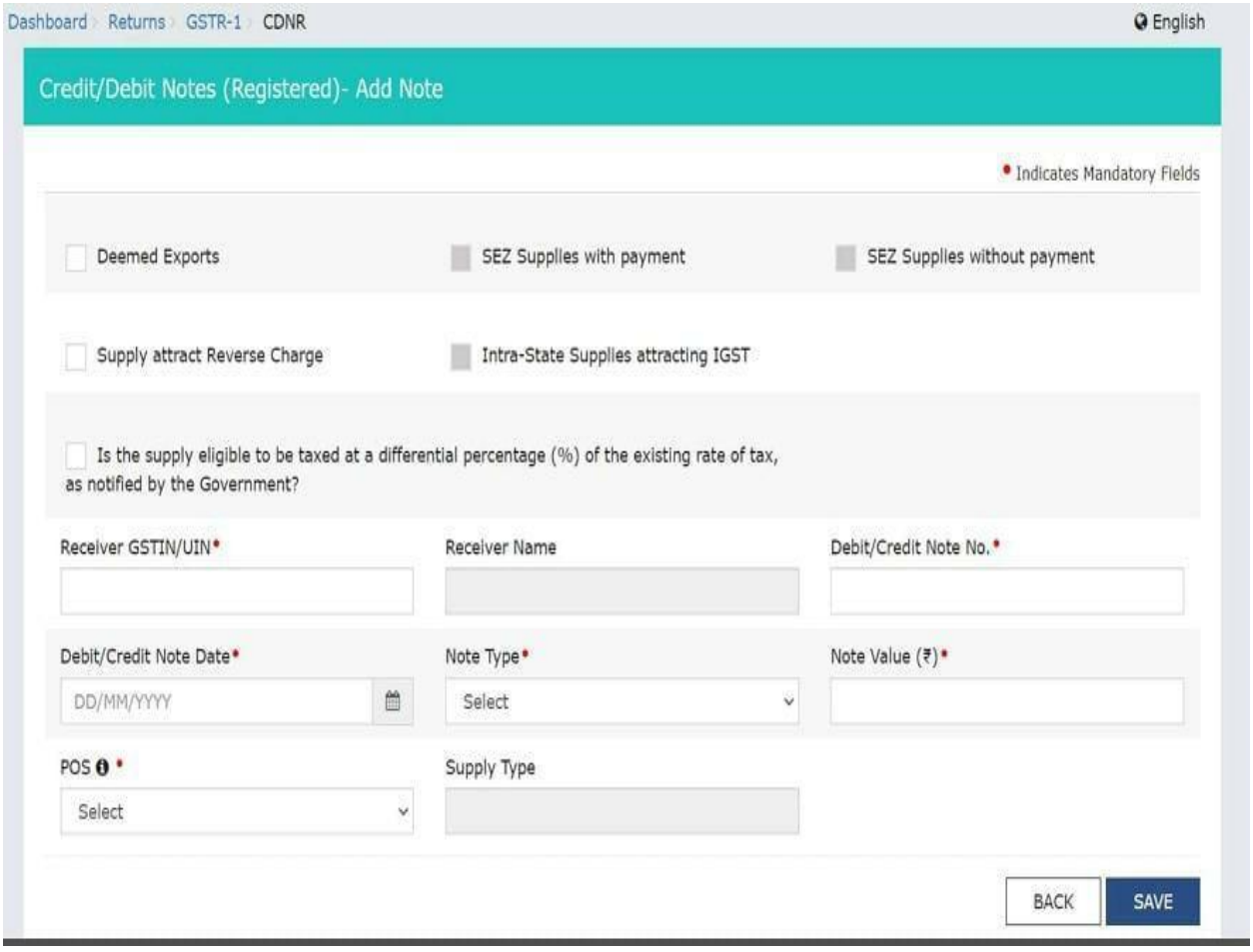
Changes implemented in GSTN Portal

De-linking of Credit Note/Debit Note from invoice, while reporting them in Form GSTR 1/GSTR 6 or filing Refund

- The much awaited de-linking of original invoices and credit and debit notes is incorporated on GSTN portal.
- The same was amended vide CGST amendment Act,2018 wef 01 Feb 2020.
- However, the same is incorporated today on the portal.
- The taxpayers have now been provided with a facility on the GST Portal to report in their Form GSTR-1 or in Form GSTR-6, single credit note or debit note issued in respect of multiple invoices
- Corresponding changes have also been made in refund module



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SVLDRS is allowed for the cases involving confiscation / redemption fine

- The question involved in this case is as to, whether the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 (SVLDRS or Scheme) would also be applicable to cases involving confiscation and redemption fine as the declaration was rejected by the Designated Committee formed under SVLDRS on the ground that the cases of the applicants involving confiscation and redemption fine are not covered under the Scheme, and therefore, the declarations filed by the applicants cannot be accepted and no relief can be granted to the applicants under the Scheme.

- Following are key aspects of submission:

  - In view of the provisions of the Scheme r/w. flyers, FAQs and press note issued by the Board, the intent and purpose of the Scheme appears to reduce litigation by giving a window to the taxpayers to pay the tax and end the litigation. The object of the Scheme was to provide one time measure for putting an end to past disputes of central excise and service tax and to provide the opportunity of voluntary disclosure to non complying taxpayers.

  - Section 121(c) of the Scheme defines the 'amount in arrears' which means the amount of duty which is recoverable as arrears of duty under the indirect tax enactment, on account of adjudication by the competent authority or on account of admitted tax liability but not paid.

  - Section 125 of the Scheme provides for 'declaration under scheme' and excludes certain categories of persons who are not eligible to make a declaration under the Scheme as per clauses-(a) to (h). On perusal of the clauses-(a) to (h) of sub-section 1 of Section 125 does not include the case involving confiscation / redemption fine. Thus, the show cause notice issued with regard to the confiscation / redemption fine under Section 34 of the Central Excise Act, 1944 would make such person eligible to file a declaration under the Scheme. Such persons cannot be considered as ineligible under clauses (a) to (h) of sub-section 1 of Section 125 of the Scheme.

  - Clause (a) of sub-section 1 of Section 129 of the Scheme provides that the declarant shall not be liable to pay any further duty, interest, or penalty, it does not expressly provide that the

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declarant shall not be liable to pay fine / redemption fine, and, therefore, the controversy has arisen, as in the present proceedings, as to whether the Scheme is applicable to the cases involving confiscation / redemption fine or not.

- Though, there is no express provision in the Scheme with regard to providing immunity from payment of fine, the respondent authorities have specifically stated in FAQs, press notes and flyers that the Scheme provides for full waiver of interest, fine and penalty. In the facts of the case, there is no other fine which is envisaged under the indirect tax enactment.

- The Honorable High Court held that:

  - Therefore, the test which is required to be applied to ascertain what is the amount in arrears as per the Scheme; it would include both the amount of duty as well as amount of redemption fine which is required to be recovered from the taxpayers. The amount of redemption fine cannot be treated separately than the amount of the duty under the Scheme. Therefore, the interpretation made by the Board in the communication dated 20 December 2019 that in order to consider the declaration made by the declarant, the payment of redemption fine is prerequisite, is not tenable in law, because as per Section 125 of the Scheme a declarant cannot be made ineligible to file a declaration for nonpayment of redemption fine. Moreover, the declarant is required to include redemption fine as part of the duty demanded, so as to calculate the amount in arrears as per Section 121 (c) of the Scheme.

  - The declaration filed by the petitioners and other similarly situated persons are required to be considered by the Designated Committee without payment of redemption fine by the declarant.

  - The impugned orders passed by the designated committee are, therefore, quashed and set aside.

DA's Comments: Even though SVLDRS is closed, the cases where the declaration itself is declined, the said case can be followed

M/s Synpol Products Pvt Ltd [2020-TIOL-1493-HC-AHM-CX] – Gujarat High Court

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Refund of disputed cenvat credit in cash along with interest as per transitory provisions under CGST Act

- The company is registered under erstwhile Central Excise law and engaged in the manufacturing of excisable products and was issued a SCN alleging that they had fraudulently availed Cenvat credit on the strength of certain invoices issued by their input supplier. It was further alleged that input supplier had not purchased raw materials from their suppliers and therefore they could not have manufactured any finished goods in the absence of procurement of raw materials with the sole intent to facilitate undue Cenvat credit to their buyers. Further, the goods were properly received accompanying proper documents subject to onway checks at Toll/check posts, the goods were duly entered in the records, the finished goods were cleared on payment of duty, complete details of bill/check post entry, copy of bilty, ledger, bank statement, RG-23-A Part-I Register were duly provided. However, the adjudicating authority issued impugned orders which was further upheld by Commissioner (A) and accordingly appeal filed to CESTAT

- CESTAT observed that the company has led evidence that they have received the inputs along with duty paying documents. Further, the appellants have made payments for receipt of inputs by cheque, manufactured finished products from the inputs and cleared the same on payment of duty, which is an admitted fact. Further, Revenue has not identified any alternate source of receipt of raw materials clandestinely. Further, the division Bench of this Tribunal in the appeal of Abhay Chemicals along with Neeru Enterprises [2019-TIOL-3071-CESTAT-CHD] has held that Abhay Chemicals as well as other units are genuine units engaged in manufacture. Accordingly, CESTAT directed the adjudicating authority to grant the refund of disputed cenvat credit in cash along with interest as per transitory provisions under CGST Act.

DA's Comments : The above ruling is relevant in the current scenario where any favorable judgment on CENVAT related under erstwhile law cannot be availed as ITC under GST law. In cases, where the CENVAT has been reversed during the adjudication/appeals, the refund application could be made considering the transition provision under GST.

M/s Kaizen Organics Pvt Ltd vs CCE [2020-TIOL-1417-CESTAT-DEL]

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ITC cannot be denied on mere non-payment of tax by the vendor

- The adjudicating authority passed the assessment orders disallowing input tax credit for which writ is filed by the company in following cases:

  a) Prior sufferance of Taxes – Vendor did not pay taxes to Government

  b) ITC on reversal on wastage; and

  c) Ineligible claim of ITC on goods

- The Honorable High Court relied the case of AC (CT) vs. Infiniti Wholesale Ltd [2017] 99 VST 341 (Mad)], wherein it has been held that ITC cannot be disallowed on the ground that the seller has not paid tax to the Government, when the purchaser is able to prove that the seller has collected tax and issued invoices to the purchaser. As such, restriction of the amount of ITC on this ground, cannot be sustained and requires re-consideration. Accordingly the issued is remanded back. With regard to last two issues, the Honorable High Court asked adjudicating authority to issue SCN.

DA's Comments: The provision under CGST Act on matching used to also prevail in limited way under erstwhile TNVAT Act, 2006. This decision could be referred under the GST law against all the notice and demands for the mismatch between GSTR-2A and GSTR-3B

Sri Ranganathar Valves Pvt Ltd Vs AC (CT) (FAC) [2020-TIOL-1611-HC-MAD-VAT]

Substantive right should not be denied on account of procedural irregularities

- The company initially exported Phycocyanin and a part quantity of the same was rejected for quality reasons which was re-imported by him without payment of duty in terms of Notification No. 158/95-Cus dated 14 November 1995 on executing Bond with Bank Guarantee.

- After payment of the duty along with interest as demanded by the department, the company sought suitable amendment to the re-exported shipping documents (i.e. conversion of free shipping bills into drawback shipping bills on the ground of non-fulfillment of conditions of relevant notification) to enable the company to claim drawback in terms of Section 74 of the Customs Act, 1962 but the same was not considered and their request was rejected without affording an opportunity of hearing which is in violation of the

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principles of natural justice and accordingly further appeal filed to CESTAT.

- Accordingly, the CESTAT held that it is substantive right of the exporter to claim drawback and it has been consistently held by various High Courts that substantive right should not be denied on account of procedural irregularities. Further, the company has admitted that free shipping bills can be converted into drawback shipping bills subject to certain conditions, therefore, keeping in view the various decisions and the Circular 1063/2/2018-CX dated 16 February 2018, CESTAT sets aside the order dated 12 March 2019 and remands the matter back to the Commissioner.

DA's Comments: There are multiple judgments which allow substantial right that cannot be denied on account of procedural irregularities and thus the amendment of shipping bills can be requested if it's an procedural/clerical/permissible error.

M/s Bio Gen Extracts Pvt Ltd [2020-TIOL-1419-CESTAT-Bangalore-Customs]

Refund of penalty paid for late filing of Bill of Entry

- The company imported "Stearic Acid" which was partially exempted till the amendment of tariff from 30 June 2017. Due to clerical error in the revised exemption notification which mentioned old tariff heading, the customs official denied extending the benefit of nil concessional rate on the analogy that the concessional rate is applicable only to sub-heading no. 38231190 as mentioned in the notification and since Stearic Acid now falls under heading no. 38231100 which is not mentioned in the notification, 30% BCD as tariff rate is applicable. The company lodged the protest but the assessing officer did not agree and allowed import only after payment of 30% BCD on stearic Acid without granting the benefit of exemption notification along with the penalty for delay in filing Bill of Entry. Subsequently, the appellant took up the issue with CBEC and on realizing that some inadvertent clerical mistakes and accordingly revised notification was issued and restored the exemption to the specific product.

- Accordingly, the company filed the refund claim for tax and penalty paid which was rejected by the adjudicating authority and further appeal to Comm (A) which allowed the refund of tax paid only and

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accordingly further appeal filed to CESTAT.

- CESTAT observed that the bill of entry has been regulated under Bill of Entry (forms) Regulations, 1976. The regulation 4(2) which was inserted by the Notification no. 27/2017-CUS (N.T) dated 31 March 2017 provides that the penalty for late presentation of bill of entry shall be liable to be paid, if there was no sufficient cause for delay in filing the bill of entry. In the present case, entire event from time of import till the filing of bill of entry is known to the Customs Department that the appellant intended to claim the exemption notification but due to apparent error in the notification, the appellant was not in a position to file the bill of entry on EDI System. Accordingly, CESTAT held that the company has made out a fit case for non-imposition of charges for late presentation of bill of entry and the charges paid for late filing of bill of entry is refundable.

DA's Comments: Being the penalty is imposed subject to having sufficient cause for delay in filing Bill of Entry, the said judgment has clearly explained and clarified

M/s Baerocher India Additives Pvt Ltd Vs Commissioner of Customs [2020-TIOL-1437-CESTAT-DEL]

Right of assessee to receive scrutiny report obtained during the adjudication

- The Company has been issued show cause notice (SCN) by adjudicating authority under Chapter V of Finance Act, 1994 [Service Tax Law] and during the interim reply contended that there are certain basic errors in the SCN and that it would be better, if a verification exercise is carried out. Accordingly, verification exercise carried out by other department and prepared a Scrutiny Report/Verification Report which the company requested to furnish them so that they can submit their final reply and also take part in the personal hearing. However, the personal hearing was fixed without sharing the scrutiny report and the same has been challenged in the Writ Petition to the Honorable Madras High Court.

- The Honorable Madras High Court stated that the contention of the adjudicating authority that the verification exercise undertaken by the other department is an integral part of the adjudication process is not correct and they cannot delegate their adjudicating power to anyone. Further, the demand for supply of relied-on documents was made at the SCN stage itself. The case on hand is having a different flavour. The scrutiny report was prepared after the submission

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of interim reply to the SCN. If the report in question is not furnished to the company and if an adverse order based on the said report is passed, then the adjudication would be set aside on that sole ground. Therefore, by furnishing a copy of the report, the department is not going to suffer any prejudice, on the other hand, it will avoid multiplicity of proceedings.

DA's Comments: When the order is passed considering any internal report, however, the assessee would come to know only after the order is passed and in case there was an error in the report, the appeal is the only remedy which would come with the cost of pre-deposit. It's a welcome judgment and equally can be applied on principle under GST regime.

M/s T V Sundaram Iyengar & Sons Pvt LTD [2020-TIOL-1554-HC-MAD-ST] – Madras High Court

Onus on revenue to prove that CA Certificate is False Statement

- The company filed the writ petitions on two aspects against the CST assessment order passed by the adjudicating authority:
  - The company has claimed that even though they had entered into certain sale transactions, some of them were reversed and they had erroneously shown the same in their sales return
  - The other aspect is regarding the variation in value as set out in the export documents and what was found in their books of account
- For the second aspect, the authority accepted the contention that the variation is obviously due to the fluctuation in the foreign exchange value. With regard to sales return aspect, the Honorable High Court observed that the company has enclosed the certificate issued by the Chartered Accountant who certified that the transactions in question were executed by the company and that they had been reversed in their books of account. In other words, the transactions became unfructified sales
- The Honorable High Court held that when the company itself deny the sales in question, they cannot do anything more. If the assessing authority is of the view that this is a false statement, the onus is on the authority. The company cannot be expected to prove the negative. Accordingly, the orders impugned in this writ petition stand set aside to that extent.

DA's Comments : The relevance of document submission by the assessee with third party certification

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cannot be declined by the adjudicating authority without any reasonable reason and the said decision could also have impact on assessments under GST.

Tvl. Madura Coasts (P) Ltd. Vs Commissioner of Commercial Taxes (Madras High Court)[W.P.(MD) No. 521 of 2020]

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MEIS Claim Restrictions

- MEIS incentive is withdrawn against the exports made from 1 January 2021
- MEIS incentive against exports made between 01 September 2020 and 31 December 2020 is limited to 2 Crores per IEC subject following additional conditions
- No MEIS incentive for exporters registered for IEC after 01 September 2020
- No MEIS incentive for exporters who have not made exports during one year preceding 01 September 2020
- The MEIS incentive may be further subject to downward revision to ensure that incentives does not crosses allocated budget of 5000 Crores

Notification 30/2015-20 dated 1 September 2020

All India Roll out of Faceless Assessment

- CBIC has decided to roll-out the Faceless Assessment at an All India level in all ports of import and for all imported goods by 31 October 2020.

Circular No.40/2020-Customs dated 4 September 2020

Auto Let Export Order under Express Cargo Clearance System (ECCS)

- CSBs (Courier Shipping Bills) filed for clearance of export goods under ECCS are subjected to Risk Management System (RMS).But now, export goods which are covered under CSBs and are fully facilitated by RMS and are cleared by customs X-Ray scanning shall be automatically given LEO (Let Export Order) by the ECCS. This is expected to reduce the dwell time of clearance of export shipments through courier.

Circular No. 41/2020 dated 7 September 2020

Implementation of the Sea Cargo Manifest and Transshipment Regulations related

- The new Sea Cargo and Manifest Regulations introduced with effect from 1 August 2019 with transitional provisions under Regulation 15 till the 30 September, 2020 to replace previous regulations dealing with the timing and procedures for the delivery and filing of arrival and departure manifests and seek to streamline these processes for vessels carrying imported goods into India, vessels carrying export goods out of India as well as for vessels engaged in coastal carriage. The Regulations also introduce some

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new forms which the carrier is obliged to complete. Sea Cargo Manifest and Transshipment (Third Amendment) Regulations, 2020 shall come into force from 30 September 2020 with following amendments:

- Regulation 3(1A):
  - ✓ Amount of bond and bank guarantee or postal security or National Savings Certificate or fixed deposit - Limit of 10 lacs reduced to 5 lacs
  - ✓ Customs Broker licensed under the Customs Brokers Licensing Regulations, 2018 added along with Authorised Economic Operator and accordingly exempted from the requirement to furnish a fresh bank guarantee or postal security or National Savings Certificate or fixed deposit
- Regulation 15
  - ✓ The date "from 15th May, 2020 till 30th September, 2020" is substituted to "till 1st November, 2020" in regulation 15(1)
  - ✓ The date "till 30th September, 2020" is substituted with "till 31st March, 2021" in regulation 15(2) for transitional provisions

Notification No. 94/2020-Customs (N.T) dated 30 September 2020

Circular No. 43/2020-Customs dated 30 September 2020

Time limit notified under Central Excise, Customs and Services Tax for compliance

- CBIC vide power under section 6 of The Taxation and Other Laws (Relaxation and amendment of Certain Provisions) Act, 2020 (No. 38 of 2020), specifies–
- 30 December, 2020 shall be the end date of the period during which the time limit specified in, or prescribed or notified under
  - Central Excise Act, 1944 (1 of 1944),
  - Customs Act, 1962 (52 of 1962) (except sections 30, 30A, 41, 41A, 46 and 47),
  - Customs Tariff Act, 1975 (51 of 1975) or
  - Chapter V of the Finance Act, 1994 (32 of 1994)

  falls for the completion or compliance of such action as specified under clause (a) or (b) of the said section; and 31 December, 2020 shall be the end date to which the time limit for completion or compliance of such action shall stand extended.

Notification no. G.S.R. 601(E). dated 30 September 2020

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Provisional Assessment under Customs – CAROTAR related - Guidelines issued

- In order to align the Circular no. 38/2016-Customs dated 22 August 2016 with CAROTAR, 2020, the entries at Sl No. 1, 2, 5(a) and 5(c) of Table at paragraph 3 of the said Circular are substituted with the entries as below:

S.No.	Class of Importer	Amount of Bank Guarantee/Cash Deposit to be obtained as 'Security' of differential duty	Remarks
1	Imports by Authorised Economic Operators (A EO – T3)	0% (including cases at Sl. No. 4 to 6b, except 5(a) and 5(c)).	Every import in terms of Circular no.33/2016-Customs dated 22nd July 2016, as amended.
2	Imports by Authorised Economic Operators (AEO – T1 and AEO – T2) (excluding importers mentioned at Sl. No. 3)	(a) 0% (in terms of Sl. No. 5 (b), 6(a) and 6(b) (2) (b) 50% (for AEO-T1) or 25% (for A EO-T2) of the applicable bank guarantee or cash deposit specified at Sl. No. 4, 6(b)(1).	Verification of origin on random basis, importer has sought provisional assessment and where despite best effort differential duty can't be computed in case proper officer deems it necessary for provisional assessment in terms of Circular no.33/2016-Customs dated 22nd July 2016, as amended.

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S.No.	Class of Importer	Amount of Bank Guarantee/Cash Deposit to be obtained as 'Security' of differential duty	Remarks
5(a)	Cases related to determination of origin under FTAs based on the reasonable belief that the matter involves mis-declaration of origin.	100%	In terms of Rule 5 or Rule 6(1)(b) of CAROTAR, 2020 (Notification No. 81/2020-Customs (N.T.) dated 21st August, 2020)
5(c)	Cases related to verification of signatures and seals under FTAs	100%	In terms of Rule 6(1)(a) of CAROTAR, 2020 (Notification No. 81/2020-Customs (N.T.) dated 21st August, 2020)

Circular No. 42/2020-Customs (F.No 465 /01/2016—Cus V) dated 29 September 2020

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News Flash

GST

- Government extends due date for GSTR-9 and GSTR 9C till October 31
- CBIC gives 30-day grace period for those not yet ready for GST e-invoice
- GST collections for Sept may cross Rs 95,000 cr for first time in FY21
- GST Compensation issue turns into 'fiscal cholesterol' - May hurt recovery metabolism of Economy!
- GST collection in August at ₹86,449 crore: Govt
- GST - Breezily e-invoicing amidst COVID-19 - Voicing concerns crawling lately!
- GST returns information to be included in Form 26AS
- Centre violated GST Compensation Cess Act, used funds allocated for states elsewhere: CAG report
- GST Council meeting postponed to October 5: Sources

Customs and others

- Solar Association Asks Government to Defer Basic Customs Duty Imposition by 18 Months
- Govt to impose 5% customs duty on open cell television panel imports from October 1
- Drones, iPhones, gold seized by Customs at Chennai airport
- Customs Dept files case over UAE consulate consignments
- DGFT extends implementation date of track and trace for parent-child packaging to April 1, 2021
- Aatmanirbhar Bharat: Restrictions on steel imports expanded; govt directs traders to register with SIMS
- India engaging with ASEAN to review FTA: Piyush Goyal
- Curbing FTA abuse: Govt to tighten scrutiny of imports from September 21

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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:

- Goods and Service Tax (GST) Services
- 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] – *Litigation and 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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