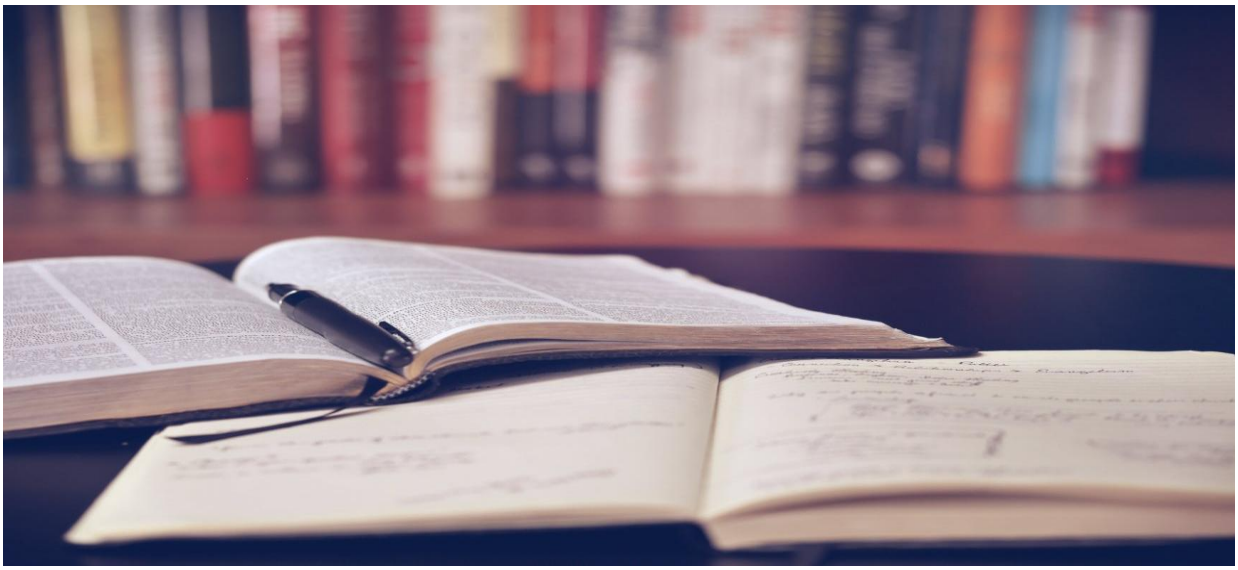
Darda Advisors LLP

DA TAX ALERT- INDIRECT TAX

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

INDIRECT TAX ALERT – September 2020

Issue: 04



Contents

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GST Compliance Calendar - September 2020

Return	Person responsible	Period	Due date	Notification
GSTR 1	Normal Taxpayer	Aug 2020	11 Sep 2020	-
GSTR 3B	Normal Taxpayer (> 5 Cr. Turnover)	Aug 2020	20 Sep 2020	-
	Normal Taxpayers [< 5 Cr. Turnover (TO)]	May 2020	12/15 Sep 2020	51/2020-CT
		June 2020	23/25 Sep 2020	
		July 2020	27/29 Sep 2020	
GSTR 5A	Non Resident OIDAR Service Provider	August 2020	20 Sep 2020	-
GSTR 9	Normal Taxpayers (> 2 Cr. TO)	FY 2018-19	30 Sep 2020	41/2020-CT
GSTR 9A	Composition taxpayers			
GSTR 9C	Taxpayers (> 2 Cr. TO)			

Interest on Net cash liability instead of Gross liability - Proviso to section 50 of CGST Act notified

- The Government has notified that interest on delayed GST will be payable on net basis, by accounting for input tax credits and refunds, prospectively with effect from 1 September 2020.

- Based on Budget 2019, various earlier media coverage and the GST Council's decision in the meeting held in the March, the interest is to be levied on net basis and not gross basis retrospectively with effect from 1 July 2017. To clarify the same, additionally, on 26 August 2020, the CBIC has clarified through press release instead of circular that this amendment is issued prospectively due to technical limitations and it has been assured that no recoveries shall be made for the past period in accordance with the decision taken in the 39th meeting of GST Council which will ensure full relief to the tax payers. CBIC has not clarified the technical limitation which stopped them from issuing notification from retrospective effect.

- The notification has been questioned by Trade and Industry on why the decision of the GST Council has not been implemented and further, it will lead to litigation for large taxpayers and harassment for small and medium enterprises considering that press release does not have legal sanctity till revised notification and adequate circular/instructions are issued.

- It is important to note that the interest on net cash liability provision is not applicable for late filing of return when the returns under section 39 of the CGST Act are furnished post the proceedings initiated under:

  - Non reporting of the supplies and accordingly short tax payment of taxes,

  - Rates charged on the supplies incorrectly reported, then suo moto the tax was paid,

  - Section 73 (Determination of Tax Short Paid / Not paid or refund erroneously refunded for any reason other than Fraud),

  - Section 74 (Determination of Tax Short Paid / Not paid or refund erroneously refunded for any reason of Fraud), and

  - Short payment of tax in the GST return already furnished

Notification no. 63/2020-CT dated 25 August 2020

Press Release Posted On: 26 AUG 2020 5:34PM by PIB Delhi

Deficiency in GST refund application cannot be raised at belated stage

- In the said case, the refund application filed by the company was not processed and further any acknowledgment in Form GST RFD-02 has not been issued nor has any deficiency memo been issued in RFD-03 within time line of fifteen days.

- In accordance with Section 54(6) of Delhi Goods and Service Tax Act, 2017 ('DGST Act') read with Rule 91(2) of Delhi Goods and Services Tax Rules, 2017 ('DGST Rules'), the proper officer is required to refund at least 90% per cent of the refund claimed on account of zero-rated supply of goods or services or both made by registered persons within a period of seven days from the date of acknowledgment issued under Rule 90(1), 90(2) of DGST Rules.

- The Honourable High Court held that to allow the adjudicating authority to issue a deficiency memo now would amount to enabling them to process the refund application beyond the statutory timelines as provided under Rule 90 of the CGST Rules and this could then also be construed as rejection of the company's initial application for refund as the petitioner would thereafter have to file a fresh refund application after rectifying the alleged deficiencies. *This would not only delay the company's right to seek refund, but also impair it's right to claim interest from the relevant date of filing of the original application for refund as provided under the Rules*. Further, the adjudicating authority's prayer to raise a deficiency memo is a hyper-technical plea as admittedly, all the relevant documents have been annexed with the present writ petition and the adjudicating authority is satisfied about their authenticity. *Accordingly, the adjudicating authority has lost the right to point out any deficiency, in the company's refund application, at this belated stage*

DA's Comments: There are number of cases where the timeline prescribed under CGST Rules for processing the refund application are not complied by the adjudicating authority and simply the deficiency memo in Form GST-RFD-03 is issued which leads to loosing the claim of interest and also in certain cases getting time barred. With this decision, any delay on processing would be accountable and answerable by the adjudicating authority.

Jain International Vs Commissioner of Delhi Goods (Honorable Delhi High Court) [WP (C) No. 4205/2020]

Refund of Education and other cess under erstwhile regime if not transitioned to GST

- The company is engaged in the manufacture of Electrical and Mechanical Equipment, besides transmission, utilization, conservation and generation of power and as such is supplying equipment for generation at and transmission of electrical energy ex-Thermal, Hydro, and Nuclear Power Stations. The CENVAT credit of indigenous inputs and inputs services has been admissible to them even in respect of their clearances to Mega/Ultra Mega Power Project, SEZ and Physical Export, no duty of Central Excise or Cess was payable by them on bulk of their supplies, there by resulting in huge amount of un-utilizable accumulated credit being carried over the past several years and the company did not go for refund of unutilized Cenvat credit in terms of Rule 5 of the Cenvat Credit Rules, 2004 on the expectation that they would be able to use the credits available with them on domestic clearances on the basis of their past clearances

- The Company did not able to transition credit of education cess, secondary and higher education cess and Krishi Kalyan Cess through TRAN-1 under CGST Act and accordingly filed refund claim which was rejected by adjudicating authority and Commissioner (A) and accordingly appeal filed to CESTAT and held that:

- *"There is no dispute that on 01/07/2017, the cesses credit validly stood in the accounts of the assessee and very much utilizable under the existing provisions. The appellants could not carry over the same under the GST regime. Thus the appellants were in a position where they could not utilize the same. We agree with learned Counsel of the appellant that the credits earned were a vested right in terms of the Hon'ble Apex Court judgment in Eicher Motors case and will not extinguish with the change of law unless there was a specific provision which would debar such refund. It is also not rebutted by the revenue that the appellants had earned these credits and could not utilize the same due to substantial physical or deemed exports where no Central Excise duty was payable and under the existing provisions, had the appellants chosen to do so they could have availed refunds/ rebates under the existing provisions. There is no provision in*

the newly enacted law that such credits would lapse. Thus merely by change of legislation suddenly the appellants could not be put in a position to lose this valuable right. (para 4) (emphasis supplied)

DA's Comments: The CGST Act is retrospectively amended to not allow any such cess claim transitioned from erstwhile law to GST to counter multiple High Court decisions. Now by the said CESTAT order, the refund of cess is allowed under erstwhile regime, we can expect number of refund claims going to be filed by assessee whose cess claim transition is declined or not allowed.

M/S BHEL vs. CCGST, CCE (CESTAT, New Delhi)[Excise Appeal No. 50081 of 2019]

Land's lease/rental premium charges for business purpose not eligible for GST ITC

- *The company is engaged in providing Pharmaceutical Research & Development services and taken the land on lease for which the company is required to pay one-time lease premium at the beginning of the lease and also annual lease rentals at the end of every year to the Lessor for 33 year and applicable maintenance changes. The Company sought an advance ruling to determine whether the ITC can be availed on* GST paid on one time lease premium and annual lease rentals and maintenance charges. The AAR held that it clearly emerges that all the referred services are received by company for construction of immovable property (other than plant & machinery) on their own account. The exclusion clause of 17(5)(d) of CGST Act shows that the exclusion is applicable including when such services are used in the course or furtherance of business which is the claim of the applicant. Thus, the referred services in the instant case and in the given facts, squarely fall under the exclusion and hence ineligible to ITC.

DA's Comments : In AAR, the denial of ITC is given for all three types of charges. The earlier judgment of Orissa High Court in the case of Safari Retreats Private Limited held that ITC is allowed on goods and services used for construction of immovable property and used in the course or furtherance of business.

M/s Daicel Chiral Technologies (India) Pvt Ltd [2020-TIOL-211-AAR-GST]

Mere renting of space cannot be said to be service for storage or warehousing of goods

- M/s Karnataka Food & Civil Supplies Corporation ('the Corporation') has entered into an agreement with Central Warehousing Corporation (CWC) [created under the Warehousing Corporation Act, 1962] for use of storage space for storage of Public Distribution System commodities belonging to the Corporation.

- Being a service recipient, the query raised whether the services provided by CWC are fully or partially exempted or not as the same are in relation to agriculture by way of renting or leasing of vacant land, with or without a structure which is exempted under the notification no. 12/2017-CT dated 30 June 2017.

- The Karnataka Authority for Advance Ruling ('AAR') vide ruling No KAR ADRG NO 112/2019 dated 30 September 2019 held that the services provided by the CWC to the applicant are covered under renting of commercial space in immovable property and not storage service of goods. Aggrieved by the said ruling, the Corporation has filed the appeal to Appellate AAR ('AAAR').

- The Corporation contended that since the nature of their activity as was prevalent during the Service Tax regime has not changed even after the GST was implemented, the services of storage of food commodities for public distribution system are exempt from the levy of GST under Sl.No 54 and alternatively Sr.No 24 of Notification No 12/2017 CT (R) dated 28 June 2017.

- The AAAR upheld the AAR decision and held that the supply made by CWC is merely a renting of space and further observed that there is difference between 'storage or warehousing' service and 'renting of storage premises' service. The 'storage and warehousing service' provider normally makes arrangement for space to keep the goods, loading, unloading and stacking of goods in the storage area, keeps inventory of goods, makes security arrangements and provides insurance cover etc. In a case where a person only rents the storage premises, he does not provide any service such as loading / unloading, stacking, security etc. Mere renting of space cannot be said to be in the nature of service provided for storage or warehousing of goods.

DA's Comments : The entry in exemption notification covers renting of vacant land with or without

structure incidental to its use and also storage or warehousing along with loading, unloading and packaging in relation to agriculture produce. In the ruling, the same was not considered by AAAR and the appellant may prefer appeal to Honourable High Court. Further, the AR can be filed by any person who supplies or going to supply such goods/services and not being a recipient of service which was also noted by AAAR.

M/s Karnataka Food & Civil Supplies Corporation (GST AAAR Karnataka) [Order No. KAR/AAAR-14-I/2019-20]

Warranty services with distribution of buses is composite supplies

- The company is in the business of selling Volvo branded trucks and thereafter providing after sales support services, including warranty services for Volvo branded trucks and buses in India. In terms of the arrangement with M/s Volvo Sweden, the company undertakes the distribution and aftermarket support of Volvo products in India.

- The company sells its products with a standard warranty of 1 to 2 years, the cost of which is included in the cost of sale of products and responsible for the servicing of warranty claims of its customers and the onus to reimburse such expenses incurred for discharging the warranty obligation lies with M/s Volvo Sweden. In pursuance to agreement, the company is discharging the warranty claims of customers, in India as and when raised and invoices to Volvo Sweden for claiming the amount spent on discharging such warranty obligations.

- The company sought for an advance ruling before the AAR and AAR vide its order No KAR ADRG 32/2019 dated 12 September 2019 held as follows:

a. Whether the supplies made by the Appellant to M/s Volvo Sweden are a supply of services?

A. AAR: The Company is providing composite supply of goods and services to the customers wherein the principal supply is that of goods or services depending on the nature of individual case.

b. Whether the supplies by the Appellant amounts to export of services to M/s Volvo Sweden and hence zero rated under GST law?

A. AAR: The transaction is an intra-State or inter-State transaction (but not export transaction) depending on the place of supply. Since this transaction is not an export of services, the transaction is not a “Zero-rated Supply” under the IGST Act.

- Aggrieved by the said ruling of the AAR, the appeal has been filed. The AAAR set aside the AR and held that:
  - The activities performed by the appellant with regard to repair and servicing of Volvo vehicles for Indian customers during the warranty period is an activity amounting to a composite supply of goods and service for Volvo Sweden with the principle supply being a supply of service. The recipient of the supply of service is Volvo Sweden.
  - As the 'place of supply' is not covered by Section 97(2) of the Acts, we refrain from answering this question of the Appellant with regard to 'export of service' on the grounds of lack of jurisdiction.

DA's Comments: AAAR considered the submission of the appellant and reversed the order of AAR and further, the proposed plan to set up Centralised AAAR will strengthen the appellate process in AR and consistency in the ARs.

Volvo-Eicher Commercial Vehicles Ltd. (GST AAAR Karnataka) [Order No. KAR/AAAR-14-B/2019-20]

Services for facilitating supply of products without supply on own account is intermediary services

- The applicant is an individual stated to be an employee of an overseas company engaged in business of manufacturing and selling various categories of transformer components and accessories and appointed as Regional Sales Manager for the Middle East and Indian markets by H-J Family of Companies having its office in the United States. The employee is paid lump-sum compensation monthly for the aforementioned services and does not raise any invoice to the Company for the said services.
- The Karnataka AAR vide ruling No KAR ADRG NO 64/2019 dated 20 September 2019 held that the services provided by the applicant to M/s H-J Family of Companies would result in the supply of services and classifiable under the description "Other professional, technical and business services". The applicant was aggrieved by the ruling given and has filed the appeal to AAAR
- The applicant in their additional submissions submitted that the AAR has erred in the finding of the appellant as an "intermediary" and not an employee within the meaning of Section 2(13) of the

Integrated Goods and Services Tax Act, 2017('IGST Act') read with Section 2(120) of the CGST Act. Further, the Appellant in his grounds of appeal has relied on the ruling given by the AAR under the Service Tax provisions in the case of GoDaddy India Web Services (P) Ltd Ruling No AAR/ST/08/2016 wherein the AAR has ruled that pure marketing and promotion services would not be intermediary services

- The 'intermediary' is defined under Section 2(13) of the IGST Act as means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account.

- AAAR upheld the decision of AAR and held that such services are liable to GST as intermediary services.

DA's Comments: The question raised by the appellant whether the activity performed by him are taxable services under GST even being an employee of the overseas firm and further the AAAR held its as an intermediary services goes beyond the understanding and would lead to further litigation for other industry players for similar arrangement

Rajendran Santhosh (GST AAAR Karnataka) [Order No. KAR/AAR-14-G/2019-20]

Canteen services provided to the Hospitals are taxable

- The applicant is engaged in the supply of food to MNG Cancer Hospital Hyderabad (Autonomous Body) on outsourcing basis to patients of MNG Cancer Hospital. It was also mentioned by the applicant that the Hospital authorities are refusing to repay the GST on Supply of food to Hospital as per the circular no. No.32/06/2018-GST dated 12 February 2018. The applicant sought the advance ruling on whether the services provided to hospital are taxable under GST and if yes, applicable tax rate.

- The AAR inferred under AR that exemption is available as per the relevant entry of the exemption notification only when the clinical establishment itself provides this service (supply of food) as a part of health care services to the in-patients and the same is not available, when such supply of food and beverages is made by a person other than clinical establishment based on a contractual arrangement with such establishment

Therefore AAR hold that GST is payable on supply of the services by the applicant to Hospitals and no exemption is provided in respect of the same. With regard to the rate, being there are multiple changes, AAR referred the said changes and accordingly held period wise rate applicability on the said services.

DA's Comments : Outdoor catering services provided in the hospital by third party are taxable in the hands of hospital and already clarified by the circular issued by CBIC. Being Hospitals' major services are exempted, the same leads to escalation of cost to end customers.

M/s Navneeth Kumar Talla (Telangana AAR)[2020-TIOL-210-AAR-GST]

Coaching classes not exempt under GST

- The entry number 66 in the notification 12/2017-CT dated 28 June 2017 provides an exemption to certain institutions, if these are provided by an educational institution, subject to certain conditions. The conditions are as follows

a. The service provided is related to education

b. The education is provided as a part of a curriculum

c. Education is provided for obtaining a qualification recognized by any law for the time being in force

- In the current case, the applicant, Master Minds, is a proprietary firm and a leading educational institution providing coaching to students for chartered Accountancy certificate ('CA'); Cost and Works Accountancy Certificate ('ICWA) and Intermediate Certificate. The coaching provided by the applicant enables the students to appear for the examinations.

- The applicant submitted that the demands in respect of the coaching provided for obtaining certificates of CA-Final, CA-Inter (IPCC) and ICWA Final are not sustainable since the coaching provided for these courses lead to a grant of any certificates issued by statutory bodies duly recognized under the law enacted by the Parliament.

- However, the AAR held that the coaching class are not eligible for the exemption provided by the GST notification. The coaching class will have to levy GST at 18 per cent. Also, in addition, if the coaching is providing accommodation or catering

services to the students, in that case, students would not get the benefit of any GST exemption.

DA's Comments : Earlier, a similar ruling had been given by the Maharashtra AAR and Kerala AAR and such position was also adopted in erstwhile Service Tax regime. Looking to the current pandemic situation, all schools and colleges are rendering online teaching and there is need of the time that the Government should bring clarity on all such issues related to Education sector.

Master Minds (GST AAR Andhra Pradesh) [AAR No. 08/AP/GST/2020]

GST Registration – Aadhaar authentication and Physical inspection related

CGST (Central Goods and Service Tax) Rules, 2017 (CGST Rules) has been amended in relation to GST registration related:

- Rule 8(4A) of CGST Rules, 2017 substituted – With effect from 1 April 2020
- Proviso of Rule 9(1) of CGST Rules, 2017 substituted - With effect from 21 August 2020
- Proviso inserted before Explanation of Rule 9(2) of CGST Rules, 2017 - With effect from 21 August 2020
- Rule 9(4) and 9(5) of CGST Rules, 2017 substituted – With effect from 21 August 2020
- Rule 25 of CGST Rules, 2017 – With effect from 21 August 2020

Following changes are made:

- Date of submission of the application in cases of Aadhaar authentication shall be the date of authentication of the Aadhaar number, or 15 days from the submission of the application in Form GST REG-01, whichever is earlier
- Physical verification of the place of business or verification of documents, where a person, fails to undergo authentication of Aadhaar number or does not opt for authentication of Aadhaar number, for grant of registration
- Deemed approval in case officer fails to take action:
  - 3 working days within the submission of application
  - 7 working days in case where person fails to undergo Aadhaar authentication
  - 21 working days in case where person does not opt for Aadhaar authentication
  - 7 working days from the date of receipt of the clarification, information or documents, where application is found to be deficient or clarification is required

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Notification No. 62/2020–Central Tax Dated: 20th August, 2020

Quote DIN on all communication with tax payers- Kerala GST

- Generation of DIN (Document Identification Number) is meant for digitalizing the offline communications sent from the department to taxpayers/other concerned persons. It ensures transparency and accountability in tax administration. The DIN details shall be attached to all the communications sent from the offices. The taxpayers can verify the authenticity and genuineness of the document received by searching DIN in the departmental website.

- Further, as per section 168 of KGST (Kerala State Goods and Service Tax) Act, 2017, no search authorization, summons, arrest memo, inspection notices and letters issued in the course of any enquiry shall be issued by any officer or by any persons employed in the implementation of the Act without a computer-generated DIN being duly quoted prominently in the body of such communication. Whereas DIN is a mandatory requirement, in exceptional circumstances communications may be issued without an auto generated DIN

Circular No. 8/2020 dated 04 August 2020 (KGST)

Revised guidelines for conduct of personal hearings in virtual mode

- Earlier, CBIC (Central Board of Indirect Taxes) had issued the instruction dated 27 April 2020 for conduct of personal hearings in virtual mode by all adjudicators and appellate authorities in regard to proceedings under the Customs Act, 1962, Central Excise Act, 1944 and Chapter V of Finance Act, 1994.

- Considering the feedback and suggestions received from the Trade and Industry, the said facility has also been extended mandatorily to proceedings under the CGST Act, 2017 and the IGST Act, 2017 and the earlier Instruction dated 27.04.2020 is hereby superseded by this Instruction.. It covers in respect of any proceeding:

  - Commissioner (Appeals),
  - Original adjudicating authorities and
  - Compounding Authority

- While the conduct of personal hearing through video conferencing is being made mandatory, there may be rare and accentuating circumstances on the part of the assessee or his authorized representative on account of which

this cannot be done. Each such request shall be approved by the adjudicating /appellate authority and the reasons for the same recorded in writing.

- Detailed procedure and guidelines to be followed is given in the said instruction

Instruction vide no. F.No. 390/Misc/3/2019-JC dated 21 August 2020

Due date of GSTR 4 extended

- The due date for GSTR 4 is extended from 31 August 2020 to 31 October 2020

Notification 64/2020-Central Tax dated 31 August 2020

Changes implemented in GSTN Portal

For making filing of GST returns to make GST compliance easier, the GSTN portal has implemented few changes such as

- GSTR 2B introduced as an part of change in existing return system
  - GSTR-2B is an auto-drafted ITC statement
  - GSTR-2B is a static statement and will be made available on the 12th day of the succeeding month
  - GSTR-2B also contains information on import of goods from the ICEGATE system including inward supplies of goods received from SEZ units/developers.
  - It does not contain statement of reverse charge credit on import of services

FORM GSTR-2B

Auto-drafted ITC Statement

(From FORM GSTR-1, GSTR-5, GSTR-6 and Import data received from ICEGATE)

Financial Year	2020-21
Month	July

1.GSTIN	
2(a).Legal name of the registered person	
2(b).Trade name, if any	
2(c).Date of generation	28/08/2020

3. ITC Available Summary

(Amount in ₹ for all tables)

S.no.	Heading	GSTR-3B table	Integrated Tax (₹)	Central Tax (₹)	State/UT Tax (₹)	Cess (₹)	Advisory
Credit which may be availed under FORM GSTR-3B							
Part A	ITC Available - Credit may be claimed in relevant headings in GSTR-3B						
I	All other ITC - Supplies from registered persons other than reverse charge	4(A)(5)	0.00	0.00	0.00	0.00	If this is **positive**, credit may be availed under Table 4(A)(5) of FORM GSTR-3B. If this is **negative**, credit shall be reversed under Table 4(B)(2) of FORM GSTR-3B.
Details	B2B - Invoices		0.00	0.00	0.00	0.00	
	B2B - Debit Notes		0.00	0.00	0.00	0.00	
	B2B - Invoices (Amendment)		0.00	0.00	0.00	0.00	
	B2B - Debit Notes (Amendment)		0.00	0.00	0.00	0.00	
II	Inward Supplies from ISD	4(A)(4)	0.00	0.00	0.00	0.00	If this is **positive**, credit may be availed under Table 4(A)(4) of FORM GSTR-3B. If this is **negative**, credit shall be reversed under Table 4(B)(2) of FORM GSTR-3B.

Details	ISD - Invoices		0.00	0.00	0.00	0.00	
	ISD - Invoices (Amendment)		0.00	0.00	0.00	0.00	
III	**Inward Supplies liable for reverse charge**	**3.1(d) 4(A)(3)**	0.00	0.00	0.00	0.00	These supplies shall be **declared** in Table 3.1(d) of FORM GSTR-3B for payment of tax. Credit may be **availed** under Table 4A(3) of FORM GSTR-3B on payment of tax.
Details	B2B - Invoices		0.00	0.00	0.00	0.00	
	B2B - Debit Notes		0.00	0.00	0.00	0.00	
	B2B - Invoices (Amendment)		0.00	0.00	0.00	0.00	
	B2B - Debit Notes (Amendment)		0.00	0.00	0.00	0.00	
IV	**Import of Goods**	**4(A)(1)**	0.00	0.00	0.00	0.00	If this is **positive,** credit may be availed under Table 4(A)(1) of FORM GSTR-3B. If this is **negative,** credit shall be reversed under Table 4(B)(2) of FORM GSTR-3B.
Details	IMPG - Import of goods from overseas		0.00	0.00	0.00	0.00	
	IMPG (Amendment)		0.00	0.00	0.00	0.00	
	IMPGSEZ - Import of goods from SEZ		0.00	0.00	0.00	0.00	
	IMPGSEZ (Amendment)		0.00	0.00	0.00	0.00	
Part B	**ITC Reversal - Credit should be reversed in relevant headings in GSTR-3B**						
I	**Others**	**4(B)(2)**	0.00	0.00	0.00	0.00	If this is **positive,** Credit shall be reversed under Table 4(B)(2) of FORM GSTR-3B. If this is **negative,** then credit may be reclaimed subject to reversal of the same on an earlier instance.
Details	B2B - Credit Notes		0.00	0.00	0.00	0.00	
	B2B - Credit Notes (Amendment)		0.00	0.00	0.00	0.00	
	B2B - Credit notes (Reverse charge)		0.00	0.00	0.00	0.00	
	B2B - Credit notes (Reverse charge) (Amendment)		0.00	0.00	0.00	0.00	
	ISD - Credit notes		0.00	0.00	0.00	0.00	
	ISD - Credit Notes (Amendment)		0.00	0.00	0.00	0.00	

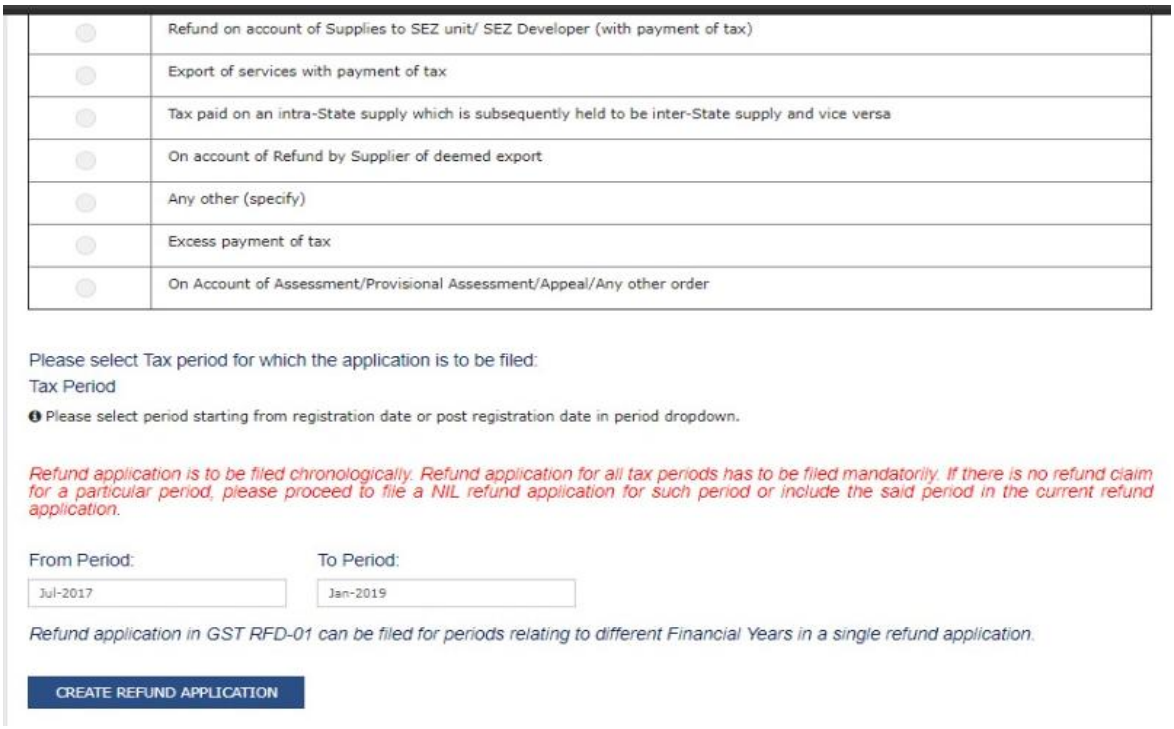
4. ITC Not Available Summary

(Amount in ₹ for all tables)

S.no.	Heading	GSTR-3B table	Integrated Tax (₹)	Central Tax (₹)	State/UT Tax (₹)	Cess (₹)	Advisory
Credit which may not be availed under FORM GSTR-3B							
Part A	**ITC Not Available**						
I	**All other ITC - Supplies from registered persons other than reverse charge**	**NA**	0.00	0.00	0.00	0.00	Such credit shall not be taken in FORM GSTR-3B
Details	B2B - Invoices		0.00	0.00	0.00	0.00	
	B2B - Debit Notes		0.00	0.00	0.00	0.00	
	B2B - Invoices (Amendment)		0.00	0.00	0.00	0.00	
	B2B - Debit Notes (Amendment)		0.00	0.00	0.00	0.00	
II	**Inward Supplies from ISD**	**NA**	0.00	0.00	0.00	0.00	Such credit shall not be taken in FORM GSTR-3B
Details	ISD - Invoices		0.00	0.00	0.00	0.00	
	ISD - Invoices (Amendment)		0.00	0.00	0.00	0.00	
III	**Inward Supplies liable for reverse charge**	**3.1(d)**	0.00	0.00	0.00	0.00	These supplies shall be declared in Table 3.1(d) of FORM GSTR-3B for payment of tax. However, credit will not be available on the same.
Details	B2B - Invoices		0.00	0.00	0.00	0.00	
	B2B - Debit Notes		0.00	0.00	0.00	0.00	
	B2B - Invoices (Amendment)		0.00	0.00	0.00	0.00	
	B2B - Debit Notes (Amendment)		0.00	0.00	0.00	0.00	
Part B	**ITC Reversal**						
I	**Others**	**4(B)(2)**	0.00	0.00	0.00	0.00	Credit shall be **reversed** under Table 4(B)(2) of FORM GSTR-3B.

- Facility to check Bill of Entry information in respect of GST paid at the time of "Import of goods' from Overseas and SEZ units/developers in "GSTR-2A

- Option to file GST Refund application for multiple years has been enabled in the GST Portal in accordance with Circular No. 135/2020 dated 31.03.2020



Extension of deferred payment of customs duty to Authorised Public Undertakings

- Deferred Payment of Import Duty Rules, 2016 has been amended permitting 'Authorised Public Undertakings' (APU) to avail the facility of deferred payment of Customs import duty under proviso to section 47(1) of the Customs Act, 1962. APU means Authorised Public Undertaking, approved by the Directorate of International Customs under the Central Board of Indirect Taxes and Customs

- This facility shall be made available to eligible APUs w.e.f. 19 August 2020. The said facility is currently available to Authorised Economic Operator (AEO). It is expected that the extension of this facility to the APUs shall expedite the Customs clearance of their imported goods at the Ports/Airports/ICDs.

- Following is the criteria for APU to be eligible for deferred payment of customs import duty:

  - Government Company as defined in the Companies Act, 2013 or a statutory Corporation, a department or an autonomous body owned and/or controlled by the Central Government and/or State Government

  - Valid Importer-Exporter Code

  - APU needs to be recommended for availing the said facility by an officer not below the rank of the Deputy Secretary to the Government of India or an officer of equivalent rank in the State Government

  - Undertake to comply with the provisions of the Deferred Payment of Import Duty Rules, 2016

  - Adhere to legal compliance requirements as per Section 3.2 of revised AEO programme as per Circular No.33/2016-Customs, dated 22nd July 2016

  - The eligible Public Undertaking desiring to avail the facility of deferred payment of Customs import duty shall apply to the Principal Commissioner/Commissioner, Directorate of International Customs (DIC), and after careful scrutiny of the application, approval shall be given as an APU eligible for availing the benefit of deferred payment of Customs import duty. The facility shall in the first instance be available for a period of 2 years, extendable for a further period not exceeding 2 years at a time.

DA's Comments : Considering the recent changes and Aatmanirbhar Bharat initiative, the extension of deferred payment of customs import

duty to APU is a welcome move. The Government should extend the said benefits to all imported who satisfies the mentioned criteria whether they are registered as AEO or not.

Notification No. 78/2020-Customs (N.T.) dated 17 August 2020

Circular No.37/2020-Customs (F. No.450/81/2016-Cus IV) dated 19 August 2020

Security deposit for use of gas meter is liable to Service Tax

- The company is in the business of distributing natural gas – Compressed Natural Gas and Piped Natural Gas - to industrial, commercial, and domestic consumers and installs an equipment described as 'SKID' at their customers' sites to regulate the supply of PNG being distributed and records the quantity of PNG consumed by the customer, which is then used for billing purposes. The service tax is paid for the transport of goods through pipeline category of services. During the installation of gas connection, the company collects gas connection charges for supply of pipes, measuring instrument etc. from its customers in the form of an interest-free security deposit and the ownership of the equipment remains with the company and the customer does not have control or any legal rights over the equipment. This deposit is to be returned at the time of discontinuing or terminating the connection and between 25 to 100 per cent of the charges.

- The sales tax/VAT is levied in pursuance of Article 366(29-A)(d) of the Constitution of India (COI) on transactions which resemble a sale in substance as they result in a transfer of the right to use in goods, instead of the transfer of title in goods. The Chapter V of Finance Act, 1994 ('Service Tax law'), deriving authority from the residuary Entry 97 of the Union List, enabled the Central Government to levy tax on services under the taxable category of "Supply of Tangible Goods Services" under 65(105)(zzzzj) of the Service Tax law. In the case of BSNL and another v. UOI and others [2006 (3) SCC (1)], the Court held that the purpose of Article 366(29-A)(d) of COI was to levy tax on those transactions where there was a "transfer of the right to use any goods" to the purchaser, instead of passing the title or ownership of the goods.

- During the course of audit, show cause notice issued for taxability of the said gas connection charges under the taxable category of "supply of tangible goods service" as the goods transferred without transfer of effective control and

possession and also VAT (Value Added Tax) is not paid and finally order issued demanding tax including interest and penalty. The Company filed the appeal before CESTAT and it held that the metering equipment is installed for measuring the amount of gas supplied to the customer for the purpose of billing; hence the use of the equipment is by the company and not by the customer. Against the CESTAT order, the Central Government filed the appeal to Honourable Supreme Court which upheld the decision of adjudicating authority and held that:

- *"It is evident that the percentage of funds refunded varies from customer to customer, while the remaining amount is retained by the respondent. In any case, as regards the domestic customers, no deposit receipts have been provided and instead, the respondent has relied on the tabulation of the refund of deposit to industrial consumers to support their contention. Thus, the argument of the respondent that these gas connection charges collected from industrial, commercial and domestic consumers constitute a refundable security deposit is rejected. (para 37)*

- *Thus construed, we are of the view that the Adjudicating Authority was correct in concluding that the buyer of gas is as interested as the seller in ensuring and verifying the correct quantity of the gas supplied through the instrumentality of the measurement equipment and the pipelines. Additionally, the role of regulating pressure and ensuring the safety of supply of gas performed by the measurement equipment is an essential aspect for the 'use' of the consumer. The SKID equipment fulfils the description in Section 65(105)(zzzzj) of a taxable service: service in relation "tangible goods" where the recipient of the service has use (without possession or effective control) of the goods. (para 38)*

DA's Comments : There is a long list of pending disputes on taxability of security deposit as consideration of taxable services under erstwhile Service tax law. By this decision, there are number of industry/sector who collects security deposits from the customer for equipment use needs to ascertain their liabilities and remit to exchequer along with interest and penalty. Further, being its B2C segment and now transition to GST, it will be additional tax cost to companies without set off from credit. The same will also lead to dispute under GST specifically on taxability of security deposit.

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CSD vs. M/s Adani Gas Ltd. (Honourable Supreme Court of India) [Civil Appeal No. 2633 of 2020]

Amendment of shipping bills is allowed for non declaration of MEIS claim

- The Company has all the exports covered under the bills were either under drawback scheme or EOU Scheme. In all the shipping bills, the respondent had declared their intention to claim Merchandise Export from India Scheme (MEIS) benefits. However, in the column which asks whether the shipping bills need to be transmitted to Director General of Foreign Trade (DGFT), it was inadvertently entered as 'N' instead of 'Y'. The company requested the Customs Department to allow amendment of the shipping bills under section 149 of the Customs Act, 1962 by correcting the endorsement from 'N' to 'Y' but the request was rejected. CESTAT allowed the amendment of shipping bills and customs department filed the appeal to Honourable High Court and held that

- *"In a similar circumstance, where the exporter had indicated their intention for claiming the reward in a specific box provided in the software through which it is uploaded to the web portal of the Central Government, but failed to check the correct box in a further column, the exporter had approached this court and the writ petitions were allowed by a Single Judge holding that it was an inadvertent mistake which is apparent from the perusal of the shipping bill, which shows both the words "we intend to claim reward under MEIS" as also "No" in the box against the query, with regard to intention to claim MEIS benefit; that the Writ appeals filed by Revenue were dismissed by a Division Bench by judgment dated 04.03.2020 - 2020-TIOL-832-HC-KERALA-CUS upholding the findings of the Single Judge - Bench agrees with the aforesaid decisions of the High Court and does not find any reason to interfere with order of the CESTAT - since the appellant does not have any case that the conditions stipulated in Section 149 are not existing, there can be no denial of the permission to amend the shipping bills - Customs Appeal is dismissed: High Court [para 5, 8]"*

DA's Comments : Considering it's common that due to inadvertent error or clerical mistakes, the shipping bills amendment should be allowed as permissible under Customs law so that rightful export benefit can be claimed. The adequate instructions/circular should be issued by CBIC to avoid every applicant to go to High Courts for relief.

CC vs. M/s N C John And Sons Pvt Ltd [2020-TIOL-1360-HC-KERALA-CUS] (Honourable High Court of Kerala)

Administration of Country of Origin under FTA – Rules and Guidelines issued

- The Government of India recently issued Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 [CAROTAR 2020] read with Chapter VAA and Section 28DA of Customs Act, 1962 for administration of Country of Origin (CoO) compliance under the respective trade agreements (FTA / PTA / CECA / CEPA) and to be applied when the importer makes claim of preferential rate of duty in terms of a trade agreement. The same is effective from 21 September 2020

Importer Obligation - who claims preferential rate under FTA/PTA/CECA/CEPA

Overall

- Declaration in the bill of entry (BoE) that the goods qualify preferential rate treatment
- Indicate the respective tariff notification against each item
- Produce CoO covering each item
- Maintenance of records and sufficient information in Form I for at least 5 years from the date of filing of BoE covering
  - Country of origin criteria
  - Regional value content
  - Product specific criteria, specified in the Rules of Origin, are satisfied
- Retain all supporting documents related to Form I for at least five years from the date of filing of BoE
- Exercise reasonable care to ensure the accuracy and truthfulness of the aforesaid information and documents
- Submit relevant detail including Form I and supporting documents to the proper officer on request

Declaration in Bill of Entry

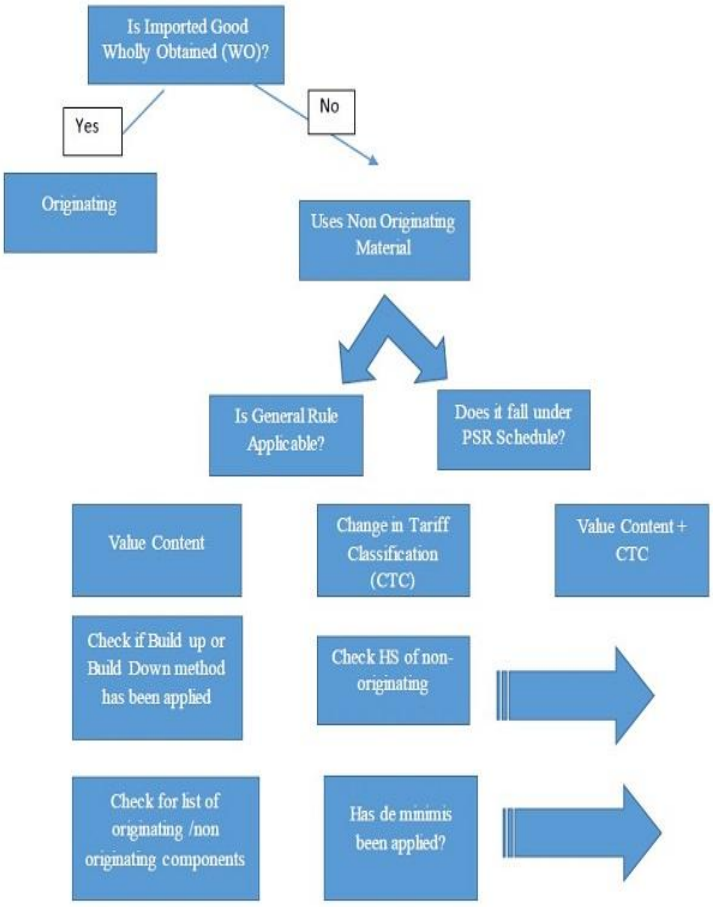
- Certificate of origin reference number
- Date of issuance of certificate of origin
- Originating criteria
- Indicate if accumulation/cumulation is applied (As per multi country FTA/PTA/CECA/CEPA)
- Indicate if the certificate of origin is issued by a third country (back-to-back)
- Indicate if goods have been

- transported directly from country of origin

Note: Customs shall make necessary modifications in the bill of entry format to allow additional declarations.

Form I – Detail to be possessed by Importer

Section I – Guidelines for filing the form (Refer relevant definitions and pictorial presentation)



Section II

- Name of the importer:
- Bill of Entry (B/E)No. and Date:
- Customs Station where B/E was filed:
- Goods on which preferential rate of duty has been claimed

Note: To be filled after filing of Bill of Entry

Section III

Note: This information should be possessed before import of goods

Part A:

- Production process undertaken in the country of origin
- Origin criteria claimed (e.g. wholly obtained or not, regional value content, change in tariff code)

Part B

- Questionnaire for not wholly obtained goods, description of each originating raw materials /components with a confirmation if manufactured by producer or procured locally from third party
- Where procured from third party, if producer has sought conformation and documentary proof of origin

Customs and Others

- Following criteria for each originating material or component used in production of good needs to be maintained:
  - When de minimis rule applied, describe the non-originating material and its percentage value / quantity
  - When accumulation rule applied, describe the manner and extent of accumulation
  - When additional criteria (eg. Indirect / packing materials) applied, describe such criteria with material concerned
  - When value content rule applied, provide value addition % and accounted components (e.g. material, profit, labour, overheads)
  - When tariff jump rule applied, provide HS of non-originating raw material /components used in production
  - When process rule applied, specify such rule
  - When CoO issued retrospectively, provide reasons

Implications on importer for non compliance

- Compulsory verification where:
  - Importer fails to provide requisite information and documents within the prescribed time of 10 days for the bill of entry under verification, or
  - Established that that the importer has failed to exercise reasonable care to ensure accuracy and truthfulness of the information furnished to Customs
  - Identical goods imported from the same exporter or producer may be denied preferential treatment, which may impact all other importers
- Notice to the importer demanding differential duty with interest
- Penalty as applicable
- Confiscation of imported goods and prosecution of the importer under Customs Act

Power of Proper Officer/Customs authority:

- Verify the importer's claim of preferential rate of duty
- Obtain information and supporting documents from importer in terms of

Form I either during customs clearance or thereafter.

- In case, information is not submitted by an importer within the prescribed time or the information received is found insufficient to conclude on origin of imported goods, request for further verification by the exporting country's Verification Authority
- Pending verification, Proper Officer/Customs authority may
  - Suspend preferential treatment to the imported goods
  - Permit provisional assessment of goods on importer's request where the importer furnishes appropriate security amount
  - Instead of security, require the importer to deposit differential duty amount in the ledger maintained
- Proper Officer may deny claim of preferential rate of duty without verification where:
  - CoO is incomplete and not in accordance with the format prescribed under the Rules of Origin under the respective trade agreement, or
  - Any alteration not authenticated by the Issuing Authority of the exporting country, or
  - Produced after its validity period has expired, or
  - Issued for an item which is not eligible for preferential tariff treatment
- The Principal Commissioner / Commissioner may also disallow the claim of preferential duty without verification for reasons to be recorded in writing, where –
  - the importer relinquishes the claim of preferential duty, or
  - the information and documents furnished by the importer and available on record provide sufficient evidence to prove that the imported goods do not meet origin criteria

Chapter VAA of Customs Act, 1962

Section 28DA of Customs Act, 1962

CAROTAR 2020

Circular No. 38/2020

In Bond Special Warehousing Regulations Issued

- The Ministry of Finance by CBIC notified new regulations under customs for manufacture and other operations in bonded warehouses which include:

- Manufacture and Other Operations in Special Warehouse Regulations, 2020 (MOOSWR 2020) is applicable to all the units that are being operated under Section 65 or applying for permission to operate under Section 65, with a license for special warehouse under section 58A of Customs Act, 1962

- Manufacture and Other Operations in Warehouse (no. 2) Amendment Regulations, 2020 (MOWR 2020) - for regulation 3, “these regulations shall apply to, (i) the units that operate under section 65 of the Act, or (ii) the units applying for permission to operate under section 65 of the Act, in a warehouse licensed under section 58 of the Act,” shall be substituted.

- Special Warehouse (Custody and Handling of Goods) Amendment Regulations, 2020 (SWCHG 2020) has amended the Special Warehouse (Custody and Handling of goods) Regulations, 2016 to exclude their application for such warehouses operating under section 65 of the Customs Act, 1962. The said regulations will continue to be applicable for special warehouses, not operating under Section 65 of the Customs Act, 1962.

- An application under MOOSWR 2020 shall be made to the Principal Commissioner of Customs or the Commissioner of Customs, along with an undertaking to maintain accounts of receipt and removal of goods in digital form in such format as may be specified and furnish the same to the bond officer on monthly basis digitally and shall provide facilities, equipment and personnel as required in these regulations and execute a bond in such format as may be specified

- The MOOSWR 2020 lays down various aspects including:

  - Eligibility for application for operating under these regulations;

  - Grant of permission;

  - Validity of permission;

  - Facilities, equipment, and personnel; Strong-room; Conditions for the transport of goods;

  - Receipt of goods from customs station;

  - Receipt of goods from another warehouse;

- Receipt of domestically procured goods;
- Transfer of goods from a warehouse;
- Removal of resultant goods for home consumption;
- Removal of resultant goods for export;
- Conditions for due arrival of goods;
- Maintenance of records in relation to warehoused goods; ,
- Audit; Penalty; and Power to exempt

- The CBIC also notifies Form for section 58A licensed warehouse

DA's Comments: Post changes in Bonded Manufacturing scheme for section 58 of Customs Act, 1962 warehouse during last Financial Year, the changes made for section 58A warehouse along with manufacturing permission under section 65 of Customs Act, 1962 is a welcome move and provide better clarity and guidelines.

Notification No. 75/2020-Customs (N.T.) dated 17 August 2020

Notification No. 77/2020-Customs (N.T.) dated 17 August 2020

Notification No. 76/2020-Customs (N.T.) dated 17 August 2020

Circular No. 36 /2020-Customs [F. No: 473/03/2020-LC] dated 17 August 2020

Procedure for E-Hearing of Appeals by CESTAT

- CESTAT (Customs, Excise and Service Tax Appellate Tribunal) decided and directed that appeals to be heard through video conferencing platform and the system of e-hearing of Appeals applies to Mumbai, Bangalore, Ahmedabad, Chandigarh and Hyderabad Benches of the Tribunal.

- Key aspects are
  - Any party desirous of getting an appeal heard by video conferencing may send a request, as prescribed in Annexure II of the circular, to the Registry by e mail.
  - Request forms received from Monday to Thursday will be listed for hearing as per roster in the following week in order of seniority, subject to a maximum of four matters on a day.
  - The appeal for which a request has been made for e hearing should otherwise be due for hearing in its normal turn or early hearing was allowed by separate order or as per direction of higher

courts and, no other application therein is pending.

- The procedures relating to listing, technical requirements, standard operating procedures and the protocols to be observed are described in Annexure I of the circular.

Public Notice No. 2 of 2020 (F. No. 01(05)/Circular/CESTAT/2017) dated 10 August 2020

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News Flash

GST

- GST - Resolution of Compensation brawl now hinges on two OPTIONS to be given to States
- GST - Sec 50 - No recoveries of interest for past period: CBIC
- GST Council urged to raise taxes on tobacco
- GST - Summon senior corporate honchos only if necessary: DGGI
- GST kitty - Revenue collects Rs 87422 Crore in July month
- States' GST revenue shortfall can be bridged by monetizing debt, NSSF: SBI report
- Aadhaar authentication for new GST registration is active from August 21: Official
- Opposition states may approach Supreme Court on GST shortfall
- CBIC asks FISME to make presentation over decriminalization of certain provisions of GST law
- Prime Minister's Office asks finance ministry to explain the GST payout mess

Customs and others

- Delhi, Mumbai Customs to start faceless cargo assessment from August 3
- Govt should postpone basic customs duty on solar by 18 months: Industry association
- Antique idols worth more than Rs 35 crore seized by Indian customs officials in Kolkata
- Ammonium Nitrate: The Beirut incident is a wakeup call for Indian customs
- Customs grills CM's former IT fellow Arun Balachandran for six hours
- DGFT starts issuing licenses to automakers for importing tyres from China
- Govt Lifts Curb On Export Conditions For PPE Medical Coveralls
- A Free Trade Agreement between Quad nations: Vision or reality?

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:

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

Key Professionals

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, ACA] – *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 ☎ 040 2340 6239 vineetdarda@dardaadvisors.com

Our Locations

Hyderabad - 6-3-1086,5th Floor, Vista Grand Towers, Raj Bhavan Road, Somajiguda, Hyderabad – 500082, Telangana
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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