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DA TAX ALERT - INDIRECT TAX

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

INDIRECT TAX ALERT – January 2021

Issue: 08

Contents

Changes effective from 1 January 2021

S.No.	Aspect	Details	Notification no.
1	ITC limit	Maximum permissible limit for ITC over and above GSTR 2A amount is reduced from 10% to 5% under Rule 36(4) of CGST Rules	Notification 94/2020-CT
2	GSTR 1 Filing	Mere uploading of invoice in GSTR-1 will not suffice; GSTR1 has to be mandatorily Filed by supplier	Notification 94/2020-CT
		GSTR 1 cannot be filed if GSTR 3B is not filed for preceding 2 months/one tax period (under QRMP scheme)	Notification No. 01/2021 – CT
3	Cash Payment	Persons with Taxable Turnover > 50 lakhs per Month / tax period shall pay at least 1% of tax through cash ledger compulsorily even though balance is available in credit ledger. (New Rule 86B inserted – subject to exemptions)	Notification 94/2020-CT
4	RoDTEP Scheme	RoDTEP scheme has been made effective from 1 Jan 2021	-

GST Compliance Calendar - January 2021

Return	Person responsible	Period	Due date	Notification
GSTR 1	Normal Taxpayer (Monthly) [> 1.5 Cr. Turnover (TO)]	Dec 2020	11 Jan 2021	
	Normal Taxpayer (Quarterly) [< 1.5 Cr. Turnover (TO)]	Oct-Dec 2020	31 Jan 2021	
GSTR 3B	Normal Taxpayer [> 5 Cr. Turnover (TO)]	Dec 2020	20 Jan 2021	
	Normal Taxpayers (< 5 Cr. TO)	Dec 2020	22/24 Jan 2021	
GSTR 5	Non-Resident Taxable Person	Dec 2020	20 Jan 2021	-
GSTR 5A	OIDAR Service Provider	Dec 2020	20 Jan 2021	-
GSTR-6	Input Service Distributor	Dec 2020	13 Jan 2021	-
GSTR-7	TDS Deductor	Dec 2020	10 Jan 2021	-
GSTR-8	TCS Deductor	Dec 2020	10 Jan 2021	-
CMP-08	Composition Taxpayers	Oct- Dec 2020	18 Jan 2021	

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ITC can/cannot be availed on distribution of promotional products free of cost as a promotional activity

The Company is engaged in manufacture, distribution and marketing of Knitted and Woven Garments under the brand name of "Jockey", Swimwears and Swimming Equipment's under the brand name of "SPEEDO" and further gets the said garments manufactured from their job workers. The company sought advance ruling on whether in the facts and circumstances of the case, the promotional products / Materials and Marketing Items used by the Applicant in promoting their brand and marketing their products can be considered as "inputs" as defined under section 2(59) of the CGST Act, 2017 and GST paid on the same can be availed as input tax credit in terms of section 16 of the CGST Act, 2017. The AAR held that:

Aspect	Distributable Goods	Non distributable goods
Nature	Material which are delivered free of cost to the distributors, franchisees and retailers to be distributed to their employees and customers	Materials which are delivered to the distributors, franchisees and retailers but the ownership lies with the applicant, but the same are used in their premises
Eligibility for ITC	Since this transfer is not for consideration, the next step is to examine if the transaction is falling under the First Schedule of CGST Act, 2017. With regard to the first category i.e., the Franchisees of the applicant are associated in the business of one another and hence are related persons. It is an admitted fact that the applicant disposes the distributable goods by way of gifts and free supplies to promote business and hence are to be treated as supplies in terms of para 2 of Schedule I to the CGST Act 2017. Thus the company need to discharge applicable GST on such supplies and thereby is entitled to avail input tax credit on the said supply of goods. The second category is that of all brands stores and they do not fall under the related persons. Further, the Circular No. 92/11/2019-GST dated 07.03.2019 also addresses applicant's contention that items supplied for promotion of the brand is as per contractual obligation & hence can't be called as gifts. The Circular makes it abundantly clear that these items would be called "gifts".	The company uses these goods till the goods are usable for the promotion of his business and claim the depreciation on the same and on the day of their disposal, the said goods are destroyed. Taxes paid by the applicant on the supply of goods or services, or both, qualify as input tax credit. Since the applicant has used or intended to use the goods and services procured in the course or furtherance of business, the company is entitled to take input tax credit, subject to other provisions of the Act and there is no blockage attributable to section 17(1) as the company has used the goods in the course or furtherance of business. The "non-distributable" goods are used by the applicant for the purpose of their business and at the time of such writing off or loss or destruction, the input tax credit claimed on such goods are to be reversed.

Aspect	Distributable Goods	Non distributable Goods
	Hence in this case, since the persons to whom the "distributable goods" are given are not related parties and are distinct persons and are not employees of the applicant, the transaction is not coming under the scope of "supply" and hence the applicant is not eligible to claim input tax credit on the same.	
Conclusion	Related party – Eligible for ITC Unrelated party – not eligible for ITC	Eligible as capital goods for ITC

DA Comments: The ITC scope except negative list is wider as the words used 'in the course of furtherance of business' and sales promotion is part and parcel of 'Business' and such limited interpretation would lead of further litigation.

M/s Page Industries Ltd [Karnataka AAR 2020-TIOL-300-AAR-GST]

IGST Refund cannot be denied even when claiming Duty Drawback

The writ is filed as the authorities have illegally withhold the refund of the IGST under Section-54 of the CGST Act read with Section16 of the IGST Act read with ule 96 of CGST Rules on the ground that the company claimed higher duty drawback. The Honorable High Court held that:

- The case is squarely covered in the case of Amit Cotton Industries vs. PCS [2019-TIOL-1443-HC-AHM-GST.]
- The rates of higher and lower duty drawback remains the same i.e., two percent and no occasion would arise to refund the differential amount. The Circular No.37/2018-Customs dated 09 October 2018 referred to above by the Competent Authority would apply only to the cases, where the exporters have availed the option to take drawback at the higher rate in place of the IGST refund out of their own volition. In the instant case, the company had never availed the option to take drawback at higher rate in place of the IGST refund. In such circumstances, the circular is not applicable to the facts of the present case.
- The authority is directed to immediately sanction the refund towards the IGST paid in respect to the goods exported and to pay interest @ 9% if not sanctioned within 6 weeks

DA Comments: Under GST, drawbacks rates remain same and already clarified by CBIC that the exporter's claim of refund cannot be denied even when they are claiming duty drawback.

Awadkrupa Plastomech Pvt Ltd vs UOI [2020-TIOL-2238-HC-AHM-GST]

Complex computation not required under Anti profiteering mechanism and scope of enquiry can be expanded across all GSTIN even complain is for single outlet

The number of individuals had filed complaints alleging that though the rate of GST on Restaurant services had been reduced from 18% to 5% w.e.f 15 November 2017, the company [who is operating quick service restaurants under the brand name McDonald's had increased the prices of the products that were being sold and had maintained the same prices before the above reduction and accordingly indulged in profiteering in contravention of the provisions of section 171 of the CGST Act and hence appropriate action should be taken. NAA held that:

- The company is trying to deliberately mislead by claiming that they required to carry out highly complex and exhaustive mathematical computations for passing on the benefit of tax reduction which they could not do in the absence of the methodology framed by the Authority as section171 provides clear cut methodology and procedure to compute the benefit of tax reduction and profiteered amount.
- The Company had not only forced his customers to pay extra base price but had also compelled them to pay additional GST on the above additional price and hence denied the benefit of tax reduction or in other words had profiteered by increasing his prices.
- There is also no connection of profit with passing on of the benefit of tax reduction which is legally required to be passed on irrespective of the fact whether the company is in loss or in profit as not paying it from their own pocket.
- The company is fully free to fix his prices and margins of profit but under the pretext of Article19(1)(g) of the COI, they cannot deny the benefit of tax reduction to the customers and enrich himself at their expense as it would be against the provisions of section171 of the CGST Act as well as Article 14 of the COI.
- In absence of a Judicial Member does not render the constitution of this Authority unconstitutional or legally invalid. It would also be pertinent to mention that this Authority does not function under the control of the company and hence it is not liable to furnish any explanation to the company.
- Benefit is required to be computed on every product and not at the level of restaurant service as the respondent is to reduce prices on the products and not on the service

The company is asked to reduce the price across all products at all GSTIN and deposit the amount in Consumer welfare fund with interest.

DA Comments: Being the case is pending at Honorable Delhi High Court on constitutional validity of anti-profiteering mechanism and authority, further recourse and actions needs to be looked into.

Mr. Ravi Chiraya and others vs M/s Hardcastle Restaurants Pvt Ltd [2020-TIOL-79-NAA-GST]

Status Quo- GSTR 3B rectification - HC order stayed by SC

In the month of June 2020, in our first monthly alert, we discussed on the Honorable Delhi High Court judgment in the case of Bharti Airtel case which allows rectification of GSTR-3B return.

Now Hon'ble Supreme Court has stayed Delhi High Court Order in the case of Bharti Airtel Limited Vs UOI & Ors. by which High Court allowed Form GSTR-3B rectification.

Matter will list in the first week of March, 2021 for final disposal.

DA Comments: Now being the judgment is stayed, we need to wait till Honorable Supreme Court laid down his judgment and accordingly if any changes are made under GST law for revision for return.

UOI Vs Bharti Airtel Ltd And Ors (2020-Tiol-179-Sc-Gst-Lb)

Confiscation on mere non availability and maintenance of statutory accounts and register/records is arbitrary and illegal

The adjudicating authority issued SCN alleging that the company had violated Section 35(1) of the CGST Act 2017 as they were not maintaining the records/accounts related to input tax credit, production, inward and outward supply or goods, output tax payable and paid etc, which are mandatorily to be maintained at their principal place of business/additional place of business; that there was a huge stock of raw materials, work in progress and finished goods in the factory premises and as the party could not produce any mandatory accounts and other records, the officers had all reasons to believe that the said goods have been stored by the party only to clear them without payment of applicable GST and accordingly order issued for confiscation of goods with the option to release on payment of redemption fine under section 130 (2) and section 122 (1) (xvi) & (xvii) of the CGST Act. Accordingly, the writ is filed by the company and the Honorable High Court of Allahabad held that:

- In terms of the show cause notice, it was presumed that the goods which are stored would be cleared in future without payment of GST, which is applicable
- A perusal of Section 73 and 74 of CGST Act makes it clear that a show cause notice is bound to be served prior to determination of the tax leviable on the 'deemed supply' whereas in the present case no such notice is available on record and it is common ground that apart from the said proceedings, no other proceedings have been initiated and concluded under Section 73 or 74 of the CGST Act.
- In the present case, even if it is admitted, for the sake of arguments, that the documents were not maintained at the registered office or the other place of business, there is no finding to the effect that any supply was made with an intent "to evade payment of tax" as is required under clause (i) of Section 130 (1) of CGST Act

- There is nothing on record to the effect that any supplies were made without having applied for registration (as required to attract Section 130 (1)(iii) of CGST Act). It has not been established that there was any contravention of any provision or any Rules with an "intent to evade payment of tax" (as required to attract Section 130 (1)(iv) of CGST Act). There is no averment of using any conveyance (as required to attract Section 130 (1)(v) of CGST Act). Thus, none of the ingredients which are required for confiscation existed in the present case and thus, the confiscation itself was wholly arbitrary and illegal. Writ petition partly allowed.

DA Comments: The Honorable High Court questioned on confiscation itself and listed out type of contravention which should have been looked into before confiscating or seizing the goods of registered tax payer.

M/s Metenere Ltd vs UOI and others [2020-TIOL-2194-HC-ALL-GST]

Absence of GST's HSN code in bidding documents leads to unfair trade practices

Diesel Locomotive Works, Varanasi (DLW) published a notice inviting e-tender for procurement of Turbo Wheel Impeller Balance Assembly. The Company who is the only local manufacturer of the procurement product has been unfairly and unjustly prevented from availing the benefit and the preference under the Make in India policy as DLW did not mention the HSN Code for the procurement product so that all tenderers/bidders would have quoted a uniform GST rate and the ranking of bidders was done on the total price (all-inclusive price), which was arrived at by adding base price and GST rate (GST value) and accordingly the writ filed. The Honorable High Court of Allahabad held that:

- *The Court cannot examine the details of the terms of the contract which has been entered into by the public bodies or the State. The Courts have inherent limitations on the scope of any such enquiry.* If the contract has been entered into without ignoring the procedure which can be said to be basic in nature and after an objective consideration of different options available taking into account the interest of the State and the public, then the Court, cannot act as an appellate Court by substituting its opinion in respect of selection made for entering into such contract.

- But, *at the same time, the Courts can certainly examine whether "decision making process" was reasonable, rational, not arbitrary and violative of Article 14 of the Constitution of India*.
- On analysis of the facts and circumstances of the instant case, one of the points which arises for consideration is *whether the classification of HSN Code is integral to the tendering process*, i.e., whether it has an impact on the selection of tenderers or the choice of tenderers while ranking them after opening the financial bids. *Thus, the mentioning of HSN Code in the tender document itself shall resolve all disputes relating to fairness and transparency in the process of selection of bidder*, by providing 'level playing field' to all bidders/tenderers in the true spirit of Article 19(1)(g) of the CoI.
- For any issue relating to the applicability of correct HSN Code or GST rate, it would then be the duty of LMW and others to seek clarification from the GST authorities. They

cannot get away by saying that they are not required to mention the GST rate or HSN Code in the tender document, as it is integral to the process of selection of tenderer, more so, in view of the admission of the LMW in the counter affidavit that the offers have to be evaluated based on the GST rates as quoted by each bidder and same will be used to determine the inter se ranking. LMW would be required to clarify the issue, if any, with the GST authorities relating to the applicability of correct HSN Code of the procurement product and mention the same in the NIT (Notice inviting tender) tender/bid document, so as to ensure uniform bidding from all participants and to provide all tenderers/bidders a 'Level Playing Field'.

DA Comments: The rate dispute already prevail under GST law and by this judgment, now the Government/PSU needs to specify the correct HSN so that quotation of GST rate does not impact bidding process.

Bharat Forge Ltd Vs Principal Chief Materials Manager Diesel Locomotive Works And 7 Others [2020-TIOL-2209-HC-ALL-GST]

Financial assistance is liable to GST – AAR

The company is engaged in supply of electric transformers, static converters, electric wires/ cables for transmission of electricity, equipment for spark ignition, installation and commissioning services and its holding company, desires to join the ' develoPPP.de programme' run by the German Federal Ministry for Economic Cooperation and Development for which holding company desires to provide financial assistance to the company under the said program for carrying out the following activities viz construction of training rooms, implementing measures, vocational training and others. The Company raised the question on taxability of such supply, taxable category and whether export benefits can be claimed.

The AAR held that the said agreement is for provision of services even when the company is terming these amounts as financial assistance whereas it is very clear from the agreement that the said amounts must be treated as consideration since they are being given to the applicant in lieu of certain supply of services to be effected by the applicant on the directions of the holding company. Further, as per Section 13 (5) of the IGST Act, the place of supply of services supplied by way of admission to, or organisation of a cultural, artistic, sporting, scientific, educational or entertainment event, or a celebration, conference, fair, exhibition or similar events, and of services ancillary to such admission or organisation, shall be the place where the event is actually held and thus will be performed in India and, therefore, place of supply is in India therefore, the said transaction cannot be considered as Export of Services under the GST Laws.

DA Comments: The 'Place of supply' aspect does not fall under the purview of Advance Ruling jurisdiction.

M/s Prettl Automotive India Pvt Ltd – Karnataka AAR [2020-TIOL-295-AAR-GST]

'Inadmissible' Advance Ruling cannot be appealed before AAAR

An advance ruling pronounced by the Authority under section 98(4) of CGST Act may be appealed against to the appellate authority. A reading of the above provisions makes it clear that an appeal can be filed before the appellate authority only against an advance ruling pronounced in terms of section 98(4) of the CGST Act.

In this case, there is no ruling given by the lower Authority on the question raised in the application i.e. such an order rejecting the application for advance ruling as 'inadmissible' is not an order appealable before the appellate authority.

The appellate authority, therefore, agrees with the decision taken by the lower Authority that the application for advance ruling is inadmissible in terms of the proviso to s.98(2) of the CGST Act and therefore, not maintainable inasmuch as the impugned order is not an appealable order under section 100 of the CGST Act.

DA Comments: There are certain instances where ruling is pronounced by AAR even when the issue does not fall under their purview.

Tirumala Milk Products Pvt Ltd [Advance Ruling] [2020-TIOL-71-AAAR-GST]

Guidelines for proceedings under Rule 86A of CGST Rules to be issued – Gujarat High Court

The Rule 86A of CGST Rules, 2017 is in respect of the power and procedure for blocking the input tax credit (ITC) in the electronic credit ledger of a registered person and the scope of authority to exercise of power. The Special Civil application filed by the Company against blocking of ITC without issuance of SCN/notice and Honorable High Court held that:

- The invocation of Rule 86A of the CGST Rules for the purpose of blocking the input tax credit may be justified when the subjective satisfaction is based on some credible materials or information and also should be supported by supervening factor.
- It is not any and every material, howsoever vague and indefinite or distant remote or far-fetching, which would warrant the formation of the belief.
- The power conferred upon the authority under Rule 86A of the Rules for blocking the ITC could be termed as a very drastic and far-reaching power. Such power should be used sparingly and only on subjective weighty grounds and reasons.
- The power under Rule 86A of the Rules should neither be used as a tool to harass the assessee nor should it be used in a manner which may have an irreversible detrimental effect on the business of the assessee.
- The aspect of availing the credit and utilization of credit are two different stages. The utilization of credit is a vested right. No vested right accrues before taking credit.
- The Government needs to apply its mind for the purpose of laying down some guidelines or procedure for the purpose of invoking Rule 86A of the CGST Rules. In the absence of the same, Rule 86A of CGST Rules could be misused and may have an irreversible and

detrimental effect on the business of the person concerned. In this regard, the Government needs to act promptly.

M/s S S Industries Vs UOI [2020-TIOL-2228-HC-AHM-GST]

GSTR 1 cannot be furnished if GSTR 3B not furnished

GSTR 1 cannot be filed or cannot be allowed to use Invoice Furnishing Facility (IFF) to furnish the details of outward supplies of goods and services, if GSTR 3B is not filed for preceding two months/one tax period under QRMP scheme.

Notification No. 01/2021 – Central Tax dated 1 January 2021

GSTR 9 & 9C Due date extended to 28 February 2021 for FY 19-20

Due dates of GSTR 9 & 9C is extended till 28 February 2021 from 31 December 2020 for FY 19-20.

Notification No. 95/2020 – Central Tax dated 30 December 2020

GST Registration related changes

- Now, GST registration application shall be followed by biometric-based Aadhaar authentication and taking photograph, if opted for authentication of Aadhaar number or taking biometric information, photograph and verification of such other KYC documents, if he has opted not to get Aadhaar authentication done.

- Officer has now seven as against three working days to approve or seek clarification from the date of submission of registration application.

- Notice in FORM GST REG-03 may be issued not later than thirty days from the date of submission of the application if applicants' Aadhaar authentication fails or does not opt for Aadhaar authentication or proper officer, deems it fit to carry out physical verification of places of business

- Registration shall be granted within thirty days of submission of application, after physical verification of premises if applicants' Aadhaar authentication fails or does not opt for Aadhaar authentication

Notification No. 94 /2020 – Central Tax dated 22 December 2020

Cancellation of registration related changes

- Registration can be now cancelled even if a registered person
  - ✓ avails ITC in violation of section 16 of the Act or the rules made thereunder
  - ✓ mismatch between details furnished in GSTR 1 vs GSTR 3B
  - ✓ violates the provision of rule 86B

- No opportunity of being heard will be provided in case of cancellation of registration in cases stipulated in Rule 21A of CGST rules.

- In case of significant differences between details of GSTR 3B and GSTR 1 indicating contravention of the provisions of the Act or the rules, his registration shall be suspended and the registered person shall be intimated in FORM GST REG-31, electronically and asking him to explain within a period of thirty days, as to why his registration shall not be cancelled.

- Refund shall not be granted for taxpayers whose registration has been suspended during the period of suspension of registration

Notification No. 94 /2020 – Central Tax dated 22 December 2020

Rule 36(4) limit decreased to 5%

Only ITC of 105% of invoices reflecting in GSTR 2A by the filing of GSTR 1 or using IFF, in GSTR 3B as against 110% from 1 January 2021

Notification No. 94 /2020 – Central Tax dated 22 December 2020

Restrictions on use of amount available in electronic credit ledger

Registered person shall not use the amount available in electronic credit ledger to discharge his liability towards output tax in excess of ninety-nine percent of such tax liability, in cases where the value of taxable supply other than exempt supply and zero-rated supply, in a month exceeds fifty lakh rupees. This restriction shall not apply to following persons:

- Applicant or its the managing director or any of its two partners, whole-time Directors, Members of Managing Committee of Associations or Board of Trustees have paid more than one lakh rupees as income tax in each of the last two financial years
- Registered person has received a refund amount of more than one lakh rupees in the preceding financial year on account of unutilised ITC of Zero rated supply without payment of tax

- Registered person has received a refund amount of more than one lakh rupees in the preceding financial year on account of unutilised ITC for inverted duty structure

Goods and Service Tax

- Registered person has discharged his liability towards output tax through the electronic cash ledger for an amount which is in excess of 1% of the total output tax liability, applied cumulatively, upto the said month in the current financial year

- The registered person is –
  i. Government Department;
  ii. a Public Sector Undertaking;
  iii. a local authority;
  iv. a statutory body:

Notification No. 94 /2020 – Central Tax dated 22 December 2020

Travel time of E-way bill reduced & other

Minimum kms. to be covered has been increased from 100 kms/day to 200 kms/day within the same validity period of one day.

Also taxpayer whose registration is suspended cannot generate e way bill

Notification No. 94 /2020 – Central Tax dated 22 December 2020

Due date for compliances extended under Anti profiteering to 31 March 2021

Due date for Anti profiteering compliances extended to 31 March 2021 from 30 November 2020

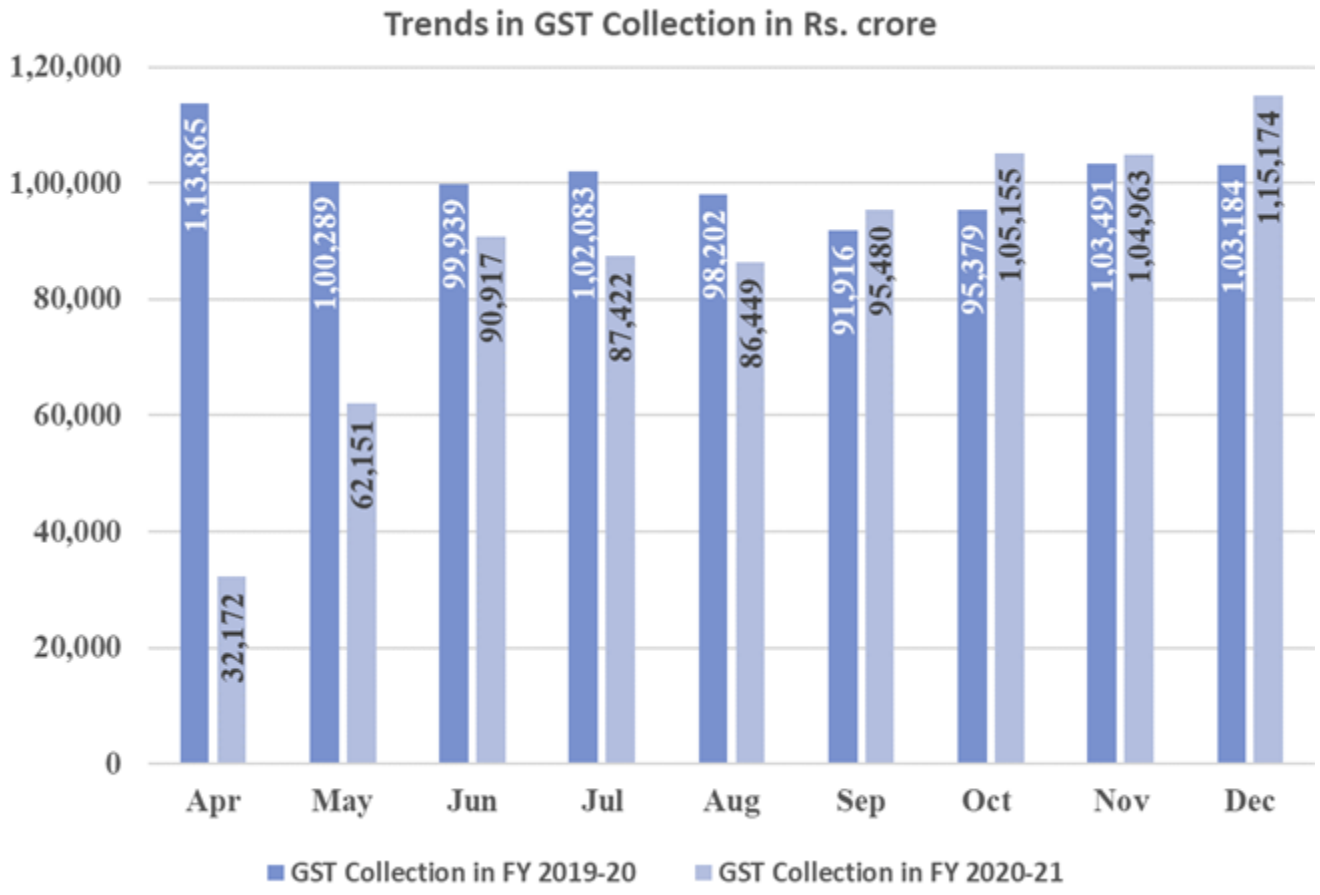
Notification No. 91 /2020 – Central Tax dated 14 December 2020

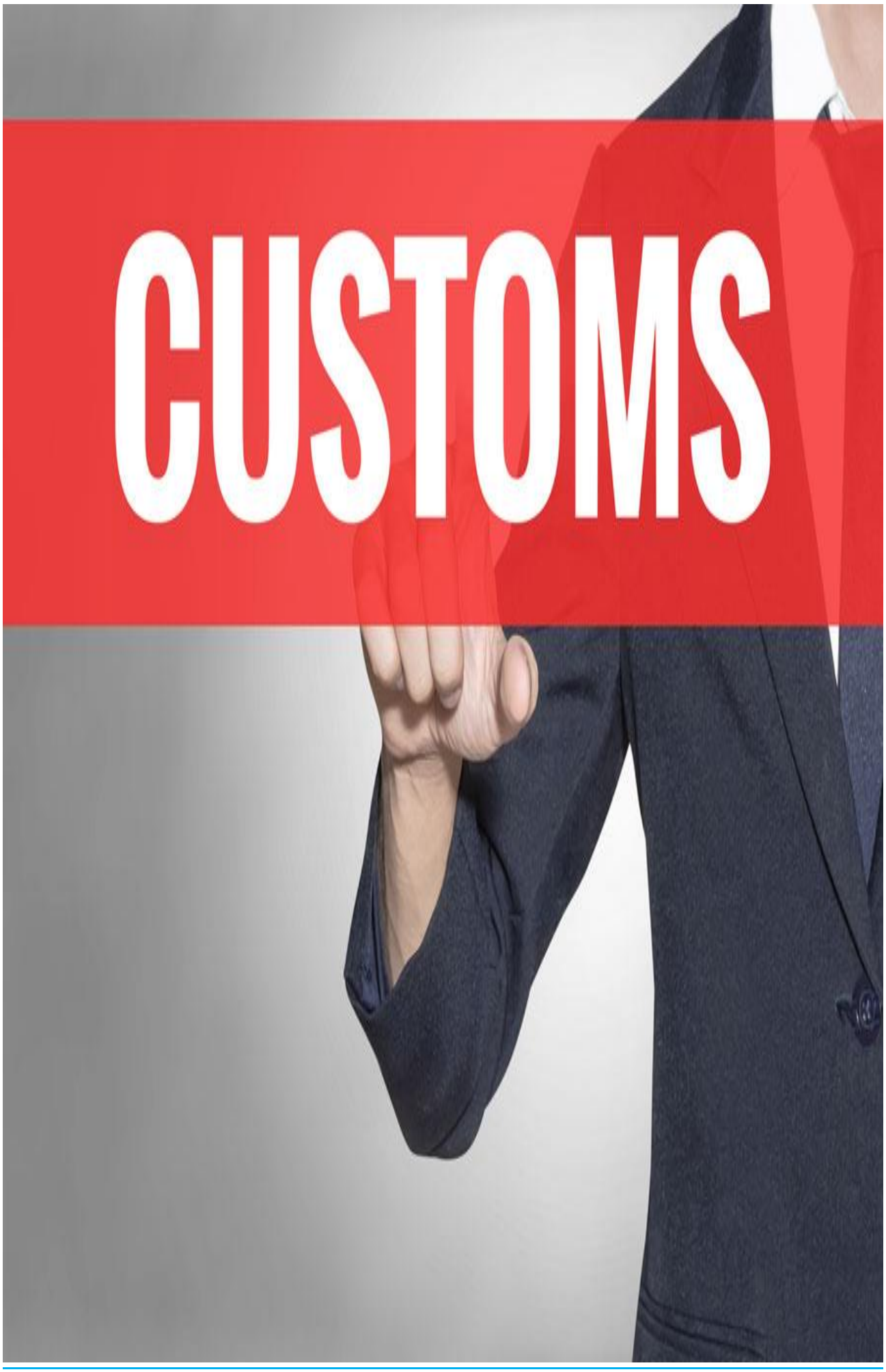
Late fee waiver for Ladakh UT registered persons for GSTR 4

Late fee payable for delay in furnishing of FORM GSTR-4 for the Financial Year 2019-20, from the 1st day of November, 2020 till the 31st day of December, 2020 shall stand waived for the registered person whose principal place of business is in the Union Territory of Ladakh

Notification No. 93 /2020 – Central Tax dated 22 December 2020

GST Revenue Collection in December 2020-Rs.1.15 lakh Cr.





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Customs and Others

Liquidated damages, forfeiture of EMD, penalty not liable to ST

The company is a PSU and engaged in the business of mining and selling of coal. The SCN and further order is issued by single Commissionerate covering all locations imposing ST liability along with interest and penalty as declared services for the period July 2012 to March 2016 on amount collected in the name of:

- **Compensation/penalty** from the buyers of coal on the short-lifted/un-lifted quantity of coal &
- Non-compliance of terms & conditions of coal supply agreements including **forfeiture of EMD/SD**,
- **Liquidated damages** from the material suppliers for breach of terms & conditions of the contracts

under the taxable category of "agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act" under section 66E (e) of Chapter V of Finance Act, 1994. Accordingly, the appeal filed before CESTAT and held that:

- It is trite that **an agreement has to be read as a whole** so as to gather the intention of the parties.
- It is not the intention of the appellant to impose any penalty upon the other party nor is it the intention of the other party to get penalized.
- The **penal clauses are in the nature of providing a safeguard** to the commercial interest of the appellant and it cannot, by any stretch of imagination, be said that recovering any sum by invoking the penalty clauses is the reason behind the execution of the contract for an agreed consideration.
- The recovery of liquidated damages/penalty from other party cannot be said to be towards any service per se, since neither the appellant is carrying on any activity to receive compensation nor can there be any intention of the other party to breach or violate the contract and suffer a loss.
- The purpose of imposing compensation or penalty is to ensure that the defaulting act is not undertaken or repeated and the same cannot be said to be towards toleration of the defaulting party.
- The activities, therefore, that are contemplated under section 66E (e), when one party agrees to refrain from an act, or to tolerate an act or a situation, or to do an act, are activities where the agreement specifically refers to such an activity and there is a flow of consideration for this activity.
- It will be useful to refer to a decision of the Supreme Court in Food Corporation of India vs. Surana Commercial Co. and others12. The Supreme Court pointed out that if a party promises to abstain from doing something, it can be regarded as a consideration, but such abstinence has to be specifically mentioned in the agreement.
- **There is a marked distinction between "conditions to a contract" and "considerations for a contract".**

The order is set aside and appeal allowed.

DA Comments: The judgment has given detailed reasoning and very positive for industry as ST/GST is imposed on liquidated damages/penalty even when Globally the said activity is not considered taxable.

Customs and Others

M/s. South Eastern Coalfields Ltd. Vs CCEST [CESTAT Delhi - Service Tax Appeal No. 50567 of 2019]

RoDTEP launched w.e.f 1 January 2021

Refer our last month webinar on captioned subject, the Government has decided to extend the benefit of the Scheme for Remission of Duties and Taxes on Exported Products (RoDTEP) to all export goods with effect from 1 January, 2021. Following steps to be taken by exporter (manufacturer/merchant exporter):

- **Declaration of intent** to claim RoDTEP on each shipping bill along with statement is mandatory [RODTEPY - If RoDTEP is availed; with other details]. It may be noted that if RODTEPY is not specifically claimed in the Shipping Bill, no RoDTEP would accrue to the exporter.
- RoDTEP scrips can be **utilised for the payment of customs duty** [mostly BCD only]
- RoDTEP scrips would be **transferable** as erstwhile MEIS
- RoDTEP **(Credit Ledger) Account Creation** to be done by each exporter at ICEGATE
- RoDTEP rates will be notified as per the **RITC Code** and therefore, there will be no need to declare any separate code or schedule serial number for RoDTEP.
- There are some checks built in the System **to disallow RoDTEP benefit where the benefit of certain other schemes** like Advance Authorization, EOU, Jobbing etc. **has been availed**. [To be clarified further as there is no restriction under erstwhile MEIS]

pending issuance of notification and instructions by DGFT covering:

- Detail of export goods (tariff lines)
- Applicable rate, value, caps
- Excluded category of exports
- Other conditions and restrictions
- Procedure detail for grant of RoDTEP scrips and its utilisation

You can refer our recent webinar on below link:

https://www.youtube.com/DA/Webinar/RoDTEPScheme

Press release dated 31 December 2020 and *internal guidelines dated 1 January 2021*

Confiscation and penalty unwarranted under Customs for patent and inadvertent error

The Company cleared the imported goods by mentioning wrong entry under exemption notification at lower rate and then admitted the error and sought availment of the wrong entry in the exemption notification and accepted the liability for differential duty. Re-assessment was undertaken after the importer waived right to be issued with a show cause notice and to be heard in person. The original authority invoked section 111 of Customs Act, 1962 for confiscating the 'live' consignment and further imposed penalty under section

112 of Customs Act, 1962 which was challenged before the first appellate authority and the rejection of that appeal has led to appeal before CESTAT which held that:

- The eligibility of the impugned goods for concessional rate under notification no. 46/2011-Cus dated 1st June 2011 is not in dispute.
- The specific entry within the said notification appears to have been erroneously claimed and, upon it being pointed out, the importer accepted the error in the bill of entry. That this error is, as claimed by the appellant, inadvertent would appear to be tenable as the possibility of confusion between the numbers corresponding to the claimed entry and the eligible entry cannot be ruled out.
- Furthermore, the declaration of tariff item, as well as description of the goods, would also make it apparent that there has been no misdeclaration within the meaning of section 111 of Customs Act, 1962 and that such a patent error cannot be seen as an attempt at misleading the system.
- Considering the facts and circumstances above, the invoking of section 111 and section 112 of Customs Act, 1962 is not warranted. Appeal is, therefore, allowed by setting aside the confiscation and penalty.

DA Comments: The judgment has well considered the type of error to determine imposition of severe penalty and confiscation.

Lotus Beauty Care Products Pvt Ltd vs CC [2020-TIOL-1664-CESTAT-MUM]

Seizure and Detention are different and detention is not allowed under Customs

The firm aggrieved by the illegal detention of the imported goods and non-examination of the same on the ground of non-appearance of the proprietor filed writ petition seeking the relief as indicated above and primary contention of the firm is that the imported goods were detained for more than six months but without issuing show-cause notice under section 124 of the Customs Act though there is no seizure of the goods under section 110 of the Customs Act; that there is no provision in the Customs Act for detaining imported goods, therefore such detention is illegal and liable to be appropriately interfered with. The Honorable High Court held that:

- There is no provision in the Customs Act authorising detention of goods. Secondly, even if the understanding of the customs department as discussed in Ramnarain Bishwanath vs CC, Calcutta (1988) 34 ELT 202 is accepted, then also detention would be at a stage after seizure. Detention and seizure, therefore, cannot be used interchangeably meaning one and the same thing
- If no show-cause notice under section 124(a) of Customs Act is issued, Customs authorities cannot retain the seized goods for more than six months though the aforesaid period of six months can at best be extended for a further period not exceeding six months.
- Non-clearance seriously affects rights of lawful importer and fair procedure being a constitutional mandate, no authority can plead unlimited power of non-clearance.
- Officers of the Customs department are not immune from accountability against abuse of power by detaining goods for indefinite period
- Court may consider imposition of cost if any instance of misuse of power or such unauthorised and unlawful action is found on adjudication.

Writ is allowed to an extent.

DA Comment: The decision has well explained and differentiated between seizure and detention and also questioned the power of officer for such detention which is not permissible under Customs law

Exim Incorporation vs UOI and others [2020-TIOL-2124-HC-MUM-CUS]

AEO for MSME – Special relaxation

Under AEO (Authorised Economic Operator) scheme, certain relaxation on the complex compliance and security requirements have been given for MSMEs for AEO T1 & T2 application. The procedural modifications/relaxations for AEO accreditation of MSMEs are as under:

- **Customs documentation handling** during last financial year reduced from 25 to 10, subject to handling at least 5 documents in each half-year period of the preceding financial year.
- "**Business activities** for at least 3 financial years preceding the date of application" has been relaxed to 2 financial years.
- The **qualifying period** for legal and financial compliance has been reduced from 'the last 3 financial years' to 'the last 2 financial years.
- For AEO T1 and T2 accreditation, the present annexures i.e., Annexure A, B, C, D, E. I-E.4 have been supplanted with two annexures viz. MSME Annexure 1 and 2. (Similar rationalised annexures 1 and 2 are presently being utilised for AEO T1 accreditation only in accordance with the CBIC circular no:26/2018-Customs dated 10 August 2018.)
- For AEO T2 certification, the present annexures i.e., Annexure E.5.1-E.5.7 for physical verification have been rationalised to a single annexure viz. MSME Annexure 3. The rationalisation has been carried-out to ensure that the security requirements for an MSME are objective and cover the minimum verifiable security criteria.
- The **time limit** for processing of MSME AEO T1 & AEO T2 application has been reduced to 15 working days (presently one month) and three months (presently six months) respectively after the submission of complete documents for priority processing by customs zones.
- The benefit of relaxation in furnishing of **bank guarantee** for AEOs has been further relaxed to 25% from 50% and 10% from 25% of that required to be furnished by an importer/exporter who is not an AEO certificate holder, for MSME AEO T1 and MSME AEO T2 entities respectively.
- The aforesaid relaxations shall apply only to an applicant who has a valid MSME certificate from the line-Ministry. Further, the approved MSME must ensure their continuous MSME status during the validity of its AEO certification, if granted.

Circular no:54/2020-Customs dated 15 December 2020

Customs and Others

AAR for Customs at Delhi and Mumbai w.e.f 4 January 2021

In the month of October 2020, CBIC notified AAR at Delhi and Mumbai for Customs independent from Income Tax' AAR. Now the same has been notified with effect from 4 January 2021.

Notification No. 116/2020-Customs dated 31 December 2020

Faceless Assessment- Clarifications on the Issues raised by Stakeholders

To further smoothen the faceless assessment under Customs, detailed instructions have been issued covering below points:

- Re-assessment in accordance with the Principles of Natural Justice:
- Complete description of imported goods
- Document codes for regular documents to be uploaded in e-Sanchit:
- Enhancement in the monetary limit for assessment by the Appraising Officers:
- Assessments in respect of Liquid Bulk Cargo

Circular No. 55/2020-Customs (F.No.450/26/2019-Cus. IV(Pt)) dated 17 December 2020

Clarification on issued faced by importers under CAROTAR 2020- and third-party invoicing in terms of DFTP for wholly obtained goods

CBIC issued further instructions to field officer for implementation of CAROTAR 2020 covering:

- Request to Board only by email for specific issue
- Enquiry on origin of imported goods is initiated only where there are sufficient grounds to suspect origin of a good, or where same has been identified as a risk by the Risk Management System. They should be suitably supervised to ensure that unnecessary queries are not raised on account of goods origin.
- Specific guidance for acceptance of third party invoicing while claiming preferential tariff treatment in terms of Duty Free Tariff Preference Scheme for Least Developed Countries (DFTP) in respect of "wholly obtained goods" under CAROTAR 2020.

Instruction No. 20/2020-Customs (F.NO. 15021/18/2020 (ICD)) dated 17 December 2020 and Circular No. 53/2020 – Customs (F.No. 21000/11/2013-Director(ICD)) dated 8 December 2020

Provisions for modifying PAN based IEC introduced

In case of change in constitution of a PAN based IEC by way of merger/acquisition/liquidation/inheritance etc.; PAN of the new entity so formed is different from the earlier one, an IEC can be availed against the new PAN, if not existing already. Previous IEC(s) can also be operationally linked to the PAN/IEC of the new entity.

Public Notice No. 34/2015-2020 dated 24 December 2020

GST

- At Rs 1.15 lakh crore, GST mop-up hits record high in December 2020
- 3 reasons why GST collections hit record high of Rs 1.15 lakh crore
- Government crackdown on 7,000 GST evaders, 185 arrested
- Traders urge Finance minister, GST council to modify new GST notification
- Centre releases 10th installment to states to meet GST compensation shortfall
- Quarterly GST returns to ease compliance from January 1
- In-person verification now compulsory for GST registration
- ICEA seeks reduction in GST and import duty for mobiles, PLI for laptops
- Transporters found undervaluing goods to evade GST

Customs and others

- Government extends benefit of RoDTEP scheme to all export goods from January 1st
- Budget: Steel sector seeks relief in customs duty on key raw materials
- Solar module imports to face 40% customs duty, cells 25%
- Gold concealed in baggage trolley, customs arrests man
- Govt allows import/export of COVID-19 vaccine without any value limitation
- Commerce min for extension of anti-dumping duty on carbon black used in rubber industry
- Exports by STPI units in Q3 FY21 estimated at Rs 1.20 lakh crore: DG
- India's services sector set to gain from Brexit agreement
- India, UK talk free trade ahead of Boris Johnson's visit

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 approach is to provide customized and client specific services. We provide well thought out strategies and solutions to complex problems in tax and regulatory matters. The team at Darda Advisors has deep industry experience across virtually all sectors including Automobile & Ancillary, Energy & Resources, Education, Financial Services, IT & ITES, Manufacturing & Real Estate, Pharma, Life Sciences & Healthcare, Transport, Hospitality, Trading. 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 and International Tax Services
- Certification and Attestation

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