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DA TAX ALERT
INDIRECT TAX

AN E-TAX ALERT FROM

Darda Advisors LLP

March 2021
Issue: 10

GST COMPLIANCE CALENDER

GOODS AND SERVICE TAX

CUSTOMS AND OTHER

DA NEWS

PREFACE

Greetings from Darda Advisors!

We are pleased to present to you the tenth edition of DA Tax Alert, our monthly update on recent developments in the field of Indirect tax laws. This issue covers updates for the month of February 2021.

During the month of February 2021, Union Budget 2021 brought multiple changes under Customs, Central Sales Tax, Goods and Service Tax on tax rates, the provision related to the input tax credit, penalties, availability of rebate on zero-rated supply to specified taxpayers, and others. We issued our Union Budget update and also conducted a webinar which you can view in our Blog on www.dardaadvisors.com.

In the tenth edition of our DA Tax Alert-Indirect Tax, we look at the tumultuous and dynamic aspects under indirect tax laws and analyze the multiple changes in the indirect tax regime introduced during the month of February 2021.

The endeavor is to collate and share relevant amendments, updates, articles, and case laws under indirect tax laws with all the Corporate stakeholders.

We hope you will find it interesting, informative, and insightful. Please help us grow and learn by sharing your valuable feedback and comments for improvement.

We trust this edition of our monthly publication would be an interesting read.

Regards
D.Vineet Suman
Co-founder and Managing Partner

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GST COMPLIANCE CALENDAR

MARCH 2021

10
GSTR-7
TDS DEDUCTOR

10
GSTR-8
TCS DEDUCTOR

11
GSTR 1
NORMAL TAXPAYER (MONTHLY)
[> 1.5 CR. TURNOVER (TO)]

13
GSTR 6
INPUT SERVICE DISTRIBUTOR

20
GSTR-3B
NORMAL TAXPAYER [> 5 CR. TURNOVER (TO)]

20
GSTR 5
NON-RESIDENT TAXABLE PERSON

20
GSTR 5A
OIDAR SERVICE PROVIDER

25
PMT-06
QRMP SCHEME

31
GSTR-9
NORMAL TAXPAYERS

31
GSTR-9C
NORMAL TAXPAYERS

1. Power services not liable to GST – Rajasthan High Court set aside the circular
2. Liaison Office not to be registered under GST law when involved in Self-Supply to HO
3. No ITC on demo vehicles – AAR
4. Constitution of GST Appellate Tribunal by April 2021 – Allahabad High Court
5. Capital Subsidy to be included in Transaction Value – AAR
6. Guidelines on recoveries on the spot during search proceedings – Gujarat High Court
7. SOPs for implementation of the provision of suspension of registrations
8. CBIC Guidelines for Search Operations
9. Aadhaar Authentication exempted for certain persons
10. Due date of GSTR 9 & 9C extended to 31 March 2021
11. Clarification in respect of applicability of Dynamic Quick Response (QR) Code on B2C invoices

Union Budget 2021 Update

We have covered our analysis from indirect tax perspective in our update on Union Budget 2021. You can read the same on below link

https://dardaadvisors.com/indirect-tax-alert/da-update-union-budget-2021-key-tax-proposals/

We have also done webinar on Union Budget 2021 with Sailotech and below is the link of the recorded webinar

https://www.youtube.com/watch?v=dFF192PkDcY

Power services not liable to GST – Rajasthan High Court set aside the circular

Jodhpur Vidyut Vitran Nigam, a public sector undertaking engaged in distribution and supply of electricity in various districts of Rajasthan — challenged the circular No. 34/8/2018-GST dated 1 March 2018 and impugned order issued basis the circular imposing the GST on various power services such as application fee for releasing electricity connection, rental charges against metering equipment, testing fee for meters, capacitors, and duplicate bill charges.

The counsel argued that the circular carving out an exception and excluding some of the services, which are essential and integral to the main function of supply and distribution of electricity, is arbitrary. He further argued that once the parent notification exempts the very supply and distribution of electricity from GST, the CBIC or even the GST Council cannot exclude certain services by way of a clarificatory circular. He said all services mentioned in the circular are nothing but a part of the complete package/bundle of services, namely supply and distribution of electricity.

The Honorable High Court restrained the Union government from raising any demand and taking coercive measures to recover any tax on the basis of an impugned order and held that:

Paragraph 4 (1) of the impugned circular No. 34/8/2018-GST dated 1.3.2018 to the extent the same reads as under is hereby struck down as being ultra vires the provisions of section 8 of the Central Goods and Services Tax Act, 2017 as well as Notification No. 12/2017- CT (R) : MANU/GSCT/0013/2017 serial No. 25

DA Comments:

The judgment is well-reasoned that has rightly looked into the substance of the transaction, which in the instant case was supply of electricity and thus, held that ancillary charges like meter rental, testing fees, duplicate bill charges, etc, cannot be carved out and made taxable.

Jodhpur Vidyut Vitran Nigam vs UOI and others [D.B. Civil Writ Petition No. 9397/2018 – Rajasthan High Court]

Liaison Office not to be registered under GST law when involved in Self-Supply to HO

The Company is an organisation incorporated in Germany and is engaged in promoting applied research and development for the benefit of industry and society and established a Liaison Office (also referred to as LO or Head Office or HO) which is an extended arm of the Head Office to carry out activities as permitted by the Reserve Bank of India.

The Company sought ruling from AAR on whether the activities of a LO amount to supply of service & whether the LO is required to be registered and the AAR held that the Liaison activities being undertaken by the LO in line with the conditions specified by RBI amounted to supply in terms of s.7(1)(c) of the CGST Act, 2017 and thus required to be registered under the Act and is liable to pay GST. The same is set aside by AAAR and held that:

The liaison office is not recognised as a separate legal entity in India. Under the Companies Act, 2013, every foreign entity establishing its place of business in India by way of a liaison office shall be treated as a foreign company as defined under Section 2(42) of the Companies Act, 2013. The liaison office is registered with the Registrar of Companies in the same name as the parent foreign company. It does not have a separate legal existence in law. The liaison office can at best be a geographical extension of the parent Company in Germany having the same legal identity as the parent company. When the liaison office is not a 'person' recognised as per law, the question of being a related person to the parent company does not arise.

Since the parent company in Germany and the company in India cannot be treated as separate persons but as one legal entity, the liaison activity performed by the company for the parent company is in the nature of a service rendered to self. A service rendered to oneself does not come within the purview of 'supply' under GST. Therefore, we hold that the activities of the Appellant as a liaison office does not amount to a supply of service. Hence, there is no taxable supply and there is no requirement for obtaining a GST registration or payment of GST. When the liaison office is not required to be registered under GST, the question of whether they are a distinct person or establishment of distinct person is irrelevant.

DA Comments:

The judgment is well-reasoned that has rightly looked into the substance of the transaction, which in the instant case was supply of electricity and thus, held that ancillary charges like meter rental, testing fees, duplicate bill charges, etc, cannot be carved out and made taxable.

Fraunhofer Gesellschaft Zur Forderung Der Angewwandten Forschung Ev [Advance Ruling]2021-TIOL-10-AAAR-GST – Karnataka AAAR]

No ITC on demo vehicles – AAR

The applicant is authorised dealer of Kia motors and sought advance ruling on whether ITC can be claimed on demo vehicles as per section 17(5)(a) of CGST Act, 2017 capitalised in the books of account except tax component and used for imparting training about the features of the car, training on driving such vehicles to the prospective buyer and used for test drive after which sales can be generated easily. The AAR observed and held that:

- As per Section 17(5)(a) of the CGST Act, ITC shall be available in respect of motor vehicles which are further supplied as such, used for transportation of passengers or which are used for imparting training of driving of such vehicles.
- It cannot be said that the demo vehicles is for further supply by subsequent sale of demo vehicle after one or two years. The sale of demo vehicle in the subsequent year on which depreciation has been charged is to be treated as a sale of used second-hand vehicle and not sale of a new vehicle.
- Found that, demo vehicles used for demo and trial to the customers are not covered in the exception of Section 17(5)(a) of the CGST Act.
- Hence, though the Demo vehicles are for furtherance of business of the Applicant but they are not eligible for ITC in view of provisions of Section 17(5)(a) of CGST Act.

DA Comments:

We are of the view that demo vehicles or goods certainly used in the course or furtherance of business and credit is eligible to the suppliers of goods but, such divergent rulings are only creating hurdles and confusion when tax provisions for the same are plain and unambiguous

M/s. Khatwani Sales and Services LLP [Order No. 13/2020 dated July 23, 2020 – AAR Madhya Pradesh]

Constitution of GST Appellate Tribunal by April 2021 – Allahabad High Court

The substantial questions before the Honorable High Court is to set up the GST appellate tribunal and quash the impugned orders and circular dated 6 February 2017 to the extent it directs that Rule 138 of UPGST Rules under which Notification No.1014 dated 21 July 2017 was issued prescribing e-way bill 01, gets automatically revived on rescinding of Notification no.138 dated 30 January 2018. The Honorable High Court observed and held that:

The appellant have been left remediless inasmuch as Appellate Tribunal under the Act is not available in the State of Uttar Pradesh for preferring appeals under Section 112 of the CGST Act/ U.P. GST Act.

The Appellate Tribunal being the last fact-finding authority and it's not availability in the State of Uttar Pradesh, is causing serious prejudice to the rights of aggrieved persons for statutory appeal which is continuing since the enactment of the CGST Act/ U.P. GST Act.

The GST Council shall forward its recommendation of agenda no. 6 of the 39th Meeting held on 14 March 2020 to the Central Government within 2 weeks and set up State Bench which is functional from 1 April 2021

Till the expire of limitation period for filing appeal and setting up of GST appellate tribunal, no coercive action shall be taken against the petitioners herein pursuant to the impugned orders passed by the first authority or the first appellate authority.

DA Comments:

GST is going to complete 4 years by 1 July 2021 and still not having GST Appellate Tribunal is impacting the assessee and leading multiple petitions at Honorable High Courts.

M/s Torque Pharmaceuticals Pvt Ltd and others vs UOI and others [2021-TIOL-322-HC-ALL-GST]

Capital Subsidy to be included in Transaction Value – AAR

Under the Agreement, the applicant undertakes to supply and install equipment such as LED Luminaire, feeder panels, and others with holding arrangement for overhead supply cables and entitled to receive a consideration, in the form of Capital Subsidy, being 90% of the total capital expenditure incurred by the applicant in supplying, installing and commissioning of the equipment. The balance 10% of the total capital expenditure along-with O&M fees is receivable as 'Annuity fees', and is recovered by the applicant by raising quarterly invoices. The ruling sought from AAR on the capital subsidy received/ receivable by the applicant for the subject transaction is liable whether to be included in the Transaction Value for the purpose of calculation of GST payable in terms of Section 15 of the CGST Act, 2017 for which AAR held that:

- On perusal of the agreement/contract, it is seen that the capital subsidy received/receivable by the applicant in the instant case is the actual cost incurred by the project SPV (the applicant in the instant case) in the project as approved by the Authority & ULBs.
- It is not a subsidy which generally means grant/grant-in-aid or a benefit given to an individual, business or institution, usually by the government. It is also not a subsidy which is typically given to remove some type of burden and to promote a social good or an economic policy for overall interest of the public –
- The so called 'capital subsidy' cannot be a 'subsidy' by any stretch of the imagination, rather the same is a consideration as defined in Section 2(31) of the CGST Act in relation to the supply of goods and, therefore, the said 'capital subsidy' shall certainly be liable to be included in the Transaction Value for the purpose of calculation of GST.

DA Comments:

Under GST law, the section 15 of CGST Act itself provides to include all subsidy in connection with the price except Central/State Government subsidies, and AAR rightly held to include the subsidy provided by State Government as the same is part of the agreement price.

M/s Nexustar Lighting Project Pvt Ltd [2021-TIOL-63-AAR-GST Odisha AAR]

Recoveries on the spot during search proceedings – Guidelines instructed by Gujarat High Court

The Honourable High Court directly CBIC and as well as the Chief Commissioner of Central/State Tax of the State of Gujarat to issue the following guidelines by way of suitable circular/instructions:

No recovery in any mode by cheque, cash, e-payment or adjustment of input tax credit should be made at the time of search/inspection proceedings under Section 67 of the Central/Gujarat Goods and Services Tax Act, 2017 under any circumstances.

Even if the assessee comes forward to make voluntary payment by filing Form DRC03, the assessee should be asked/ advised to file such Form DRC03 on the next day after the end of search proceedings and after the officers of the visiting team have left the premises of the assessee.

Facility of filing complaint/ grievance after the end of search proceedings should be made available to the assessee if the assessee was forced to make payment in any mode during the pendency of the search proceedings.

If complaint/ grievance is filed by assessee and officer is found to have acted in defiance of the aforestated directions, then strict disciplinary action should be initiated against the concerned officer.

DA Comments:

CBIC need to provide such guidelines to all officers based on Honorable High Court judgment to have consistency in the search proceedings.

M/S Bhumi Associate vs UOI [SCP 3196 of 2021/2426/2515/2618 of 2021]

SOPs for implementation of the provision of suspension of registrations

CBIC has issued Standard Operating Procedure (SOP) for implementation of the provision of suspension of registrations under sub-rule (2A) of rule 21A of CGST Rules, 2017.

- Vide notification No. 94/2020- CT, dated 22.12.2020, sub-rule (2A) was inserted to rule 21A of the CGST Rules, 2017 which provides for immediate suspension of registration of a person, as a measure to safeguard the interest of revenue, on observance of such discrepancies /anomalies which indicate violation of the provisions of Act / Rules, and that continuation of such registration poses immediate threat to revenue.
- Till the time an independent functionality for FORM REG-31 is developed on the portal, in order to ensure uniformity in the implementation of the provisions of rule 21A(2A), the Board has provided guidelines for implementation of the provision of suspension of registrations.
- If the proper officer considers it appropriate to drop a proceeding any time after the issuance of FORM GST REG-31, he may advise the said person to furnish his reply on the common portal in FORM GST REG-18.
- In case the proper officer is prima-facie satisfied with the reply of the said person, he may revoke the suspension by passing an order in FORM GST REG-20.
- Post such revocation, if needed, the proper officer can continue with the detailed verification of the documents and recovery of short payment of tax, if any. Further, in such cases, after detailed verification or otherwise, if the proper officer finds that the registration of the said person is liable for cancellation, he can again initiate the proceeding of cancellation of registration by issuing notice in FORM GST REG-17.

DA Comments:

Under GST law, the section 15 of CGST Act itself provides to include all subsidy in connection with the price except Central/State Government subsidies, and AAR rightly held to include the subsidy provided by State Government as the same is part of the agreement price.

Circular No. 145/01/2021-GST dated 11 February 2021

CBIC Guidelines for Search Operations

CBIC have issued guidelines procedure to be followed during search operations u/s 67 of the CGST Act, 2017. It inter alia, covers the following:

- The officer issuing authorization for search should have valid and justifiable reasons for authorizing a search, which shall be duly recorded in the file
- The premises of a person cannot be searched on the authority of a search warrant issued for the premises of some other person.
- In case of search of a residence, a lady officer shall necessarily be part of the search team.
- The officer authorized to search the premises must sign each page of the Panchnama and annexures. A copy of the Panchnama along with all its annexures should be given to the person in-charge of the premises being searched and acknowledgement in this regard may be taken.
- These guidelines ought to be followed while carrying search proceedings.
- The search shall be made in the presence of two or more independent witnesses who would preferably be respectable inhabitants of the locality. The witnesses should be informed about
- the purpose of the search and their duties.
- The search authorization shall be executed before the start of the search and the same shall be shown to the person in charge of the premises to be searched and his/her signature with date and time shall be obtained on the body of the search authorization.
- While conducting search, the officers must be sensitive towards the assessee/party. Social and religious sentiments of the person(s) under search and of all the person(s) present, shall be respected at all times. Special care/ attention should be given to elderly, women and children present in the premises under search. Children should be allowed to go to school, after examining of their bags. A woman occupying any premises, to be searched, has the right to withdraw before the search party enters, if according to the customs she does not appear in public. If a person in the premises is not well, a medical practitioner may be called.

Instruction No. 01/2020-21 (GST Investigation), F.No. GST/INV/ DGOV Reference/20-21 dated 2 February 2021

Aadhaar Authentication exempted for certain persons

Government, on the recommendations of GST Council, exempted following persons from Aadhaar Authentication for GST Registration.

(a) not a citizen of India; or

(b) a Department or establishment of the Central Government or State Government; or

(c) a local authority; or

(d) a statutory body; or

(e) a Public Sector Undertaking; or

(f) a person applying for registration under the provisions of sub-section (9) of section 25 of the said Act.

Notification No. 3/2021- Central Tax, dated 23 February 2021

Due date of GSTR 9 & 9C extended to 31 March 2021

Government, after considering various representations, has extended the due date of GSTR 9 and GSTR 9C till 31 March 2021 of the financial year 2019-20

Notification No. 4/2021- Central Tax, dated 28 February 2021

Clarification in respect of applicability of Dynamic Quick Response (QR) Code on B2C invoices

S. No.	Issues	Clarifications
1	Would this requirement be applicable on invoices issued for supplies made for Exports?	As e-invoices are required to be issued in respect of supplies for exports, treating them as Business to Business (B2B) supplies. Dynamic Quick Response (QR) Code will not be applicable to them.
2	What parameters/ details are required to be captured in the Quick Response (QR) Code?	1) Supplier GSTIN number 2) Supplier UPI ID 3) Payee's Bank A/C number and IFSC 4) Invoice number & invoice date 5) Total Invoice Value and 6) GST amount along with breakup i.e. CGST, SGST, IGST, CESS, etc. Further, Dynamic QR Code should be such that it can be scanned to make a digital payment.

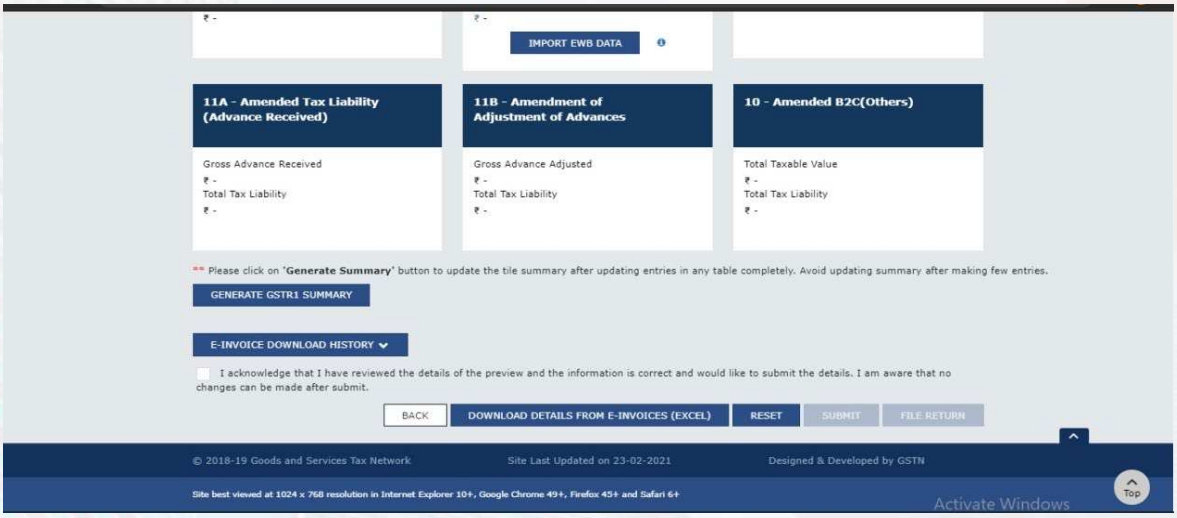
S. No.	Issues	Clarifications
3	If a supplier provides/displays Dynamic QR Code, but the customer opts to make payment without using Dynamic QR Code, then will the cross reference of such payment, made without use of Dynamic QR Code, on the invoice, be considered as compliance of Dynamic QR Code on the invoice?	If the supplier has issued invoice having Dynamic QR Code for payment, the said invoice shall be deemed to have complied with Dynamic QR Code requirements. In cases where the supplier, has digitally displayed the Dynamic QR Code and the customer pays for the invoice: – 1) Using any mode like UPI, credit/ debit card or online banking or cash or combination of various modes of payment, with or without using Dynamic QR Code, and the supplier provides a cross reference of the payment (transaction id along with date, time and amount of payment, mode of payment like UPI, Credit card, Debit card, online banking etc.) on the invoice; or 2) In cash, without using Dynamic QR Code and the supplier provides a cross reference of the amount paid in cash, along with date of such payment on the invoice; The said invoice shall be deemed to have complied with the requirement of having Dynamic QR Code.

S. No.	Issues	Clarifications
4	If the supplier makes available to customers an electronic mode of payment like UPI Collect, UPI Intent or similar other modes of payment, through mobile applications or computer-based applications, where though Dynamic QR Code is not displayed, but the details of merchant as well as transaction are displayed/ captured otherwise, how can the requirement of Dynamic QR Code as per this notification be complied with?	In such cases, if the cross reference of the payment made using such electronic modes of payment is made on the invoice, the invoice shall be deemed to comply with the requirement of Dynamic QR Code. However, if payment is made after generation / issuance of invoice, the supplier shall provide Dynamic QR Code on the invoice
5	Is generation/ printing of Dynamic QR Code on B2C invoices mandatory for pre-paid invoices i.e. where payment has been made before issuance of the invoice?	If cross reference of the payment received either through electronic mode or through cash or combination thereof is made on the invoice, then the invoice would be deemed to have complied with the requirement of Dynamic QR Code. In cases other than pre-paid supply i.e. where payment is made after generation / issuance of invoice, the supplier shall provide Dynamic QR Code on the invoice.

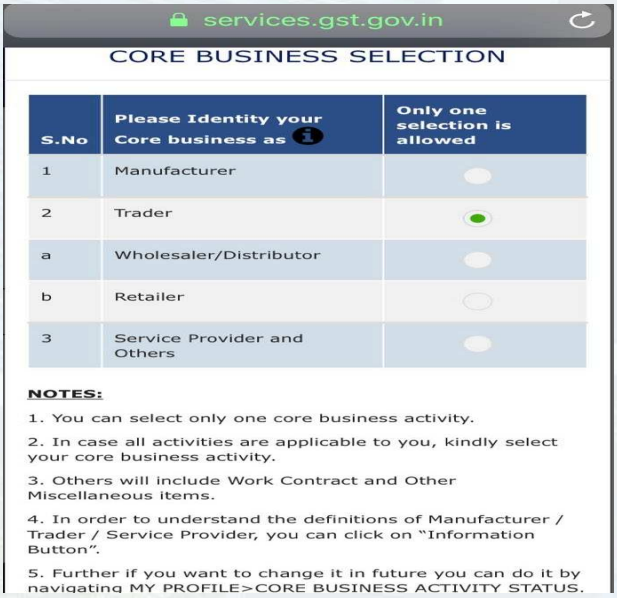
S. No.	Issues	Clarifications
6	Once the E-commerce operator (ECO) or the online application has complied with the Dynamic QR Code requirements, will the suppliers using such e-commerce portal or application for supplies still be required to comply with the requirement of Dynamic QR Code?	The provisions of the notification shall apply to each supplier/registered person separately, if such person is liable to issue invoices with Dynamic QR Code for B2C supplies as per the said notification. In case, the supplier is making supply through the E-commerce portal or application, and the said supplier gives cross references of the payment received in respect of the said supply on the invoice, then such invoices would be deemed to have complied with the requirements of Dynamic QR Code. In cases other than pre-paid supply i.e. where payment is made after generation / issuance of invoice, the supplier shall provide Dynamic QR Code on the invoice.

Updates in GST Portal

Reset option in GSTR 1



Information on core business activity



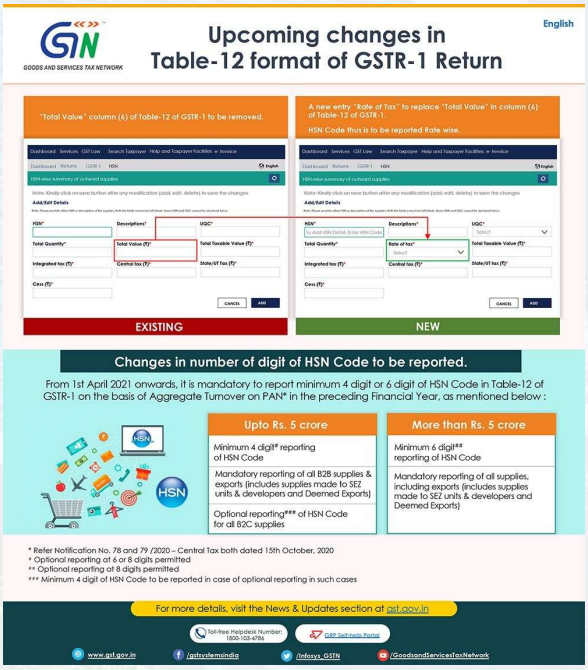
Option to withdraw Nil Refund application

Date Of Application	Status
23/12/2020	**Refund Application filed**

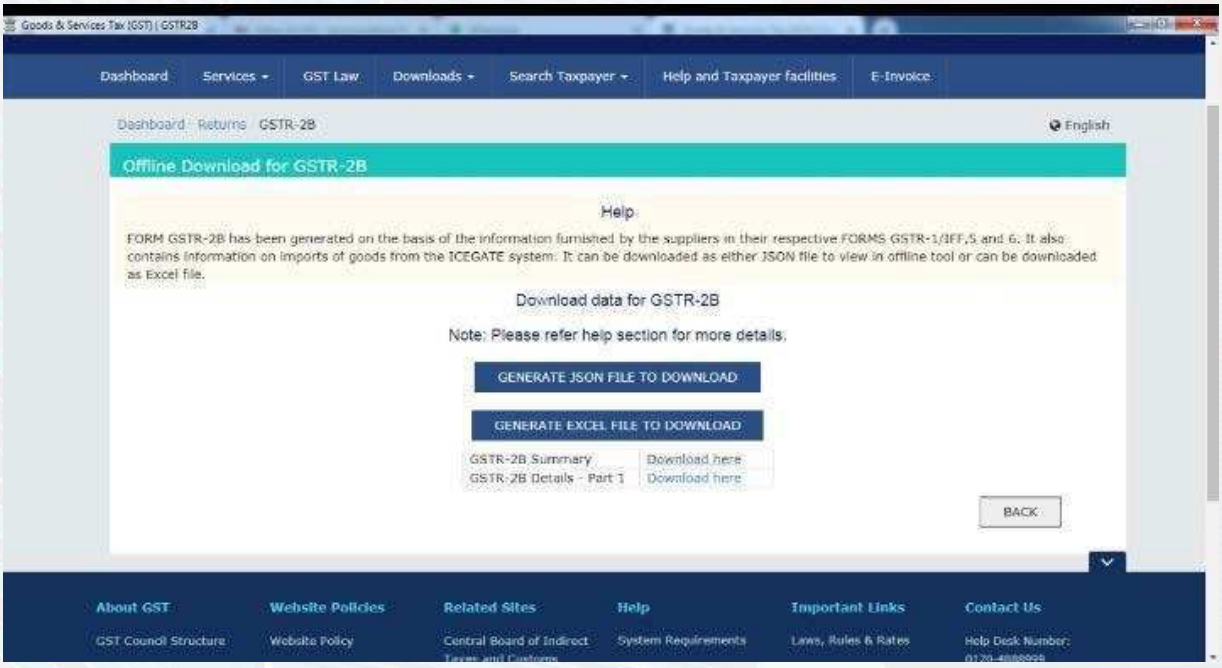
ARN Date	Reason of Refund
23/12/2020	Export of services with payment of tax

Withdraw Refund Application

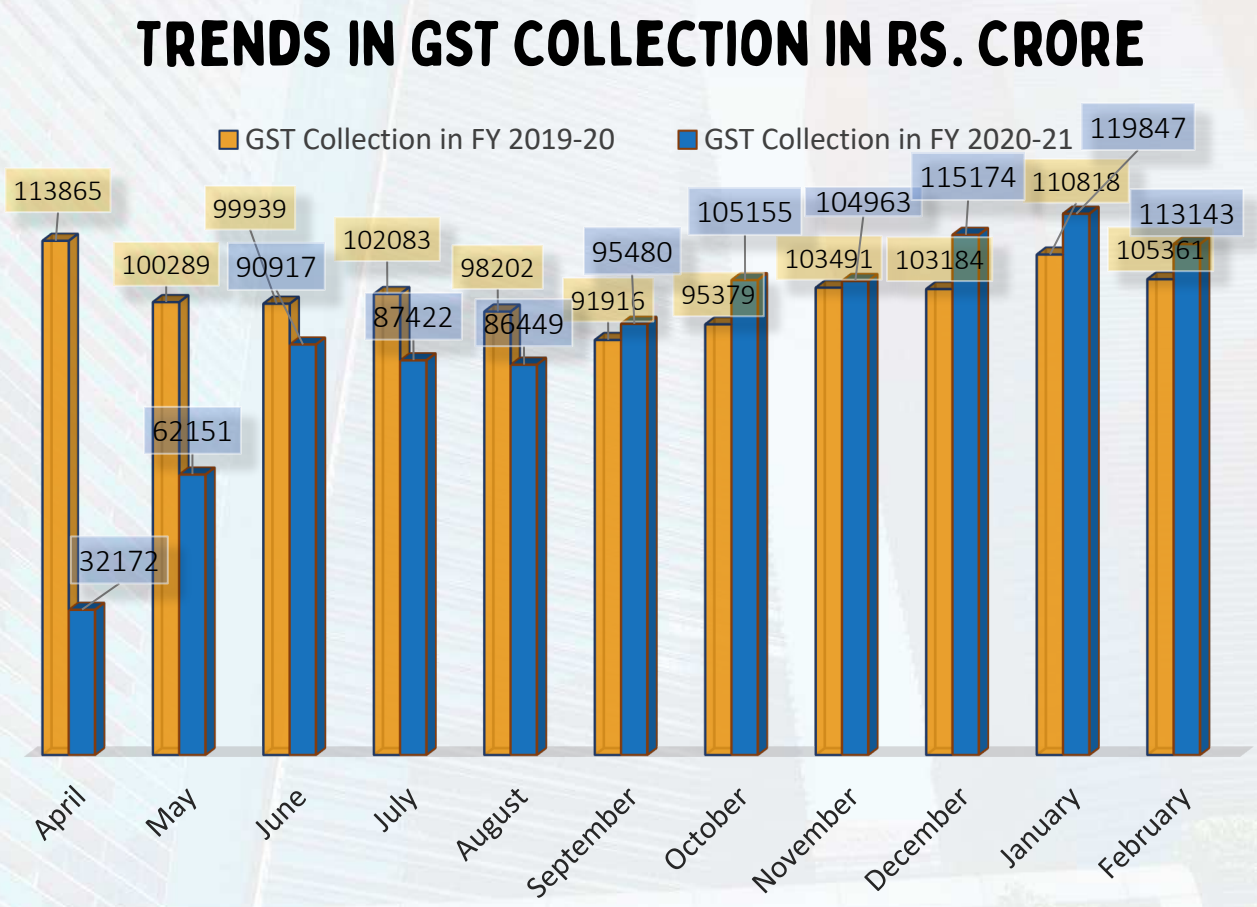
Upcoming changes in Table-12 format of GSTR-1 Return



Option to download 2B summary & 2B in detail are separately available on Portal now



GST Revenue Collection in January 2021-Rs.1.19 lakh Cr.



- Free of cost supplies not to be included in consideration – Service tax law
- Refund under Customs cannot be processed till self-assessment is completed
- Tribunal cannot uphold judgment on any aspect beyond ground of appeals – Madras High Court
- Brand equity services indirectly used in manufacture of goods and thus eligible for CENVAT credit
- Dual payment cannot be described as excess payment and eligible for refund beyond limitation
- Subsidy committed under Industrial Policy cannot be terminated retrospectively – Chhatisgarh High Court
- The word 'or' cannot be interpreted as 'and' – Section 114A of Customs law
- Sanction of pending IGST refund due to GSTR-I and GSTR- 3B mismatch error – Clarification issued
- Rs. 1000.00 fees for handling of mismatch between Shipping Bill and GST returns in Customs Automated System
- Yearly updation of IEC or face deactivation
- Measures for Streamlining of Customs Post Clearance Audit work
- Guidelines for setting up of ICDs, CFSs & AFSs

Free of cost supplies not to be included in consideration – Service tax law

The company is engaged in providing mining services to its customer and the agreements provided that the customer shall provide certain items on free of cost basis to the company and the issue involved is as to whether the value of items supplied free of cost by service recipient to the company have to be included in value of mining services provided. The CESTAT held that:

- This precise issue came up for consideration before Supreme Court in Bhayana Builders 2018-TIOL-66-SC-ST wherein the Supreme Court observed that a plain reading of expression 'the gross amount charged by the service provider for such service provided or to be provided by him' would lead to the conclusion that the value of goods/material that is provided by the service recipient free of charge is not to be included while arriving at the 'gross amount' for the reason that no price is charged by the appellant/ service provider from the service recipient in respect of such goods/materials.
- Further, the larger bench of CESTAT in the same case had concluded that the value of goods and materials supplied free of cost by a service recipient to the provider of the taxable construction service, being neither monetary or non-monetary consideration, would be outside the taxable value of the 'gross amount charged' within the meaning of section 67 of Finance Act, 1994.

DA Comments:

It is well settled law under erstwhile service tax regime that free of cost supplies are not liable to service tax.

M/s TCL - MMPL Consortium vs CCE [2021-TIOL-102-CESTAT-DEL]

Refund under Customs cannot be processed till self-assessment is completed

The Company imported mobile handsets including cellular phones and the issue was whether the company could claim refund of the excess duty paid without either challenging the so-called assessment or without reassessment of the bill of entries. The Honorable High Court observed and held that:

- The significant statutory amendments in sections 17 and 27 of the Customs Act by virtue of the Finance Act, 2011 were noticed, analyzed and discussed by Delhi High Court and Single Judge of Madras High Court in case of Micromax Informatics Limited. The Court is in respectful agreement with such analysis, the view expressed by the Courts and the ratio laid down therein; that under the circumstances, the sole objection of the Department (that without having assessment orders set aside, no refund claim would be maintainable) contained in the impugned orders for rejection of the petitioner's refund claims is overruled.
- However, the Honorable Supreme Court by its decision set aside the judgments of the Delhi High Court and Madras High Court and held that a self-assessment would also be an order of assessment; that the provision under section 27 of the Customs Act, 1962 cannot be invoked in the absence of amendment or modification in the bill of entry, on the basis of which self-assessment is made; that order of self- assessment is required to be followed and unless modified, the claim for refund cannot be admitted under section 27 of Customs Act, 1962.
- Accordingly, there shall be stay of the impugned demand cum show cause notice and the consequential order in original and matter to be further listed.

DA Comments:

Under Customs, BoE filing is itself a self-assessment and would be relevant to follow what the Honorable High Court held in the said case.

Micromax Informatics Ltd vs UOI and others [2021-TIOL-460-HC-MUM-CUS]

Tribunal cannot uphold judgment on any aspect beyond ground of appeals – Madras High Court

The issue for consideration is whether the Tribunal had exceed its jurisdiction in making certain observations with regard to the validity of the CENVAT Credit Rules, 2004 qua the provisions of Section 37 of the Act and proceeding to direct the original authority to issue a show cause notice to the appellant/assessee as regards its very entitlement for CENVAT credit. The Honorable High Court observed and held that:

- Firstly, the appeal was filed by the assessee and not the Revenue - The Revenue did not prefer any cross appeal/objection, therefore, the assessee cannot be worse off in its own appeal before the Tribunal
- Further, the Tribunal has not recorded as to who had advanced such submission. In the absence of any such observation, Bench is compelled to observe that it is suo motu exercise by the Tribunal, which is uncalled for and without jurisdiction –
- In other words, the Tribunal cannot sustain the case of the Revenue against an assessee on a ground not raised by the Revenue either in the show cause notice or in the order in original passed by it and the observation made by the Tribunal is wholly without jurisdiction and was beyond the scope of the appeal before it

DA Comments:

It is a welcome decision and equally applies under other jurisdiction including GST law.

M/s Chemplast Sanmar Ltd vs CCE and others [2021-TIOL-482-HC-MAD-CX]

Brand equity services indirectly used in manufacture of goods and thus eligible for CENVAT credit

The company entered into a Brand Equity and Business Promotion Agreement ("BEBP") with its holding company for input services in the nature of 'Intellectual Property Services' and paid yearly subscription, which was based on percentage of its annual turnover. The adjudicating authority questioned on availment, distribution and utilisation of credit of brand equity services and accordingly the company filed appeal before CESTAT which observed and held that:

The BEBP (Brand Equity and Business Promotion) agreement allows use of "Tata" brand name, on its products/goods manufactured at its factory in Jamshedpur - Such user of

brand name enhances the marketability of said goods. Hence, the services have been used by the company, the manufacturer, indirectly in relation to the manufacture of final dutiable products in its factory at Jamshedpur. This satisfies the requirement of main part of Rule 2(l) of Cenvat Credit Rules as held by Bombay High Court in Ultratech Cement Ltd. [2010-TIOL-745-HC-MUM-ST].

It is settled proposition of law that divisions and units of a company are not separate legal entities/persons. The TSL as ISD is entitled to distribute the credit of service tax paid in respect of service rendered under BEBP Agreement exclusively to its Jamshedpur Steelworks during the relevant period. Therefore, the cenvat credit amount involved has been correctly availed, distributed and utilised by appellants.

DA Comments:

The word 'indirectly' in CCR has been adequately considered by CESTAT based on judgment in the case of Ultratech Cement.

M/s Tata Steel Ltd vs CCEST [2021-TIOL-86-CESTAT-Kolkata]

Dual payment cannot be described as excess payment and eligible for refund beyond limitation period

The Company made the payment of Light dues two times as online receipt did not generate on web portal to avoid any hardship and when the refund is sought from the adjudicating authority, the same was declined on the ground that the claim was made after the period of six months prescribed under the Lighthouse Act, 1927 and further the appeal at first level was rejected since filed beyond the period of limitation. Accordingly, the writ is filed and the Honorable High Court observed and held that:

The dual payment made by the petitioner in this writ petition cannot be described as excess payment, in the sense contemplated by Section 19 of the Lighthouse Act, 1927. This Court is of the view that Section 19 is not intended to operate in such circumstances. If Section 19 does not apply to the dual payment made by the petitioner, then there is no question of a period of limitation under the Customs Act for making an application for refund of the dual payment.

The State and its authorities are not expected to act in a Shylockian manner and squeeze money from its citizens. Levy of any tax/dues should have the authority of law. Accordingly, the writ petition is allowed.

DA Comments:

Any dual or erroneous payment cannot be considered as excess payment and such principle would equally apply in other legislations too.

M/s Seahorse Ship Agencies Pvt Ltd vs UOI and others [2021-TIOL-332-HC-KERALA-CUS]

Subsidy committed under Industrial Policy cannot be terminated retrospectively – Chhattisgarh High Court

Based upon the benefits enshrined under the Chhattisgarh State Industrial Policy 2004-2009 the company have set up a company with its industrial unit in the State of Chhattisgarh. Under the said Industrial Policy of 2004-2009 fixed capital cost subsidy was
to be provided to those companies to the extent of capital investment made for setting up of the industry. When the company approached the authorities claiming for the said subsidy, the Department did not adjust the same against the payment of VAT/CST and on the contrary demand notices were being raised for recovering the VAT/CST without granting any adjustment to the subsidy. Meanwhile, Government vide notification introduced a cap of Rs. 3 Crores to the subsidy being made available to the companies like that of the assessee. Later on, the State Level Committee in its meeting reviewed its earlier decision granting subsidy and held that the benefit of subsidy shall be applicable to only those establishments where the captive power plant was generating power for its own use and not under any other circumstance. This led to the filing of present petition challenging the said said decision and Honorable High Court observed and held that:

- The course of action pursued by the State in the case of company, curtailing the benefit of Investment Subsidy, which ought to have been extended to them on the strength of the original Industrial Policy 2004-2009 and declared in the Investment Subsidy Rules, 2005 is not correct or proper. It is declared that the company is entitled to have the benefit of Investment Subsidy to an extent of 25% of the infrastructure cost, subject to a ceiling of the Sales Tax / VAT / CST paid in the State for the first 'five' years...."
- The policy thus framed would be a redundant or a policy only for name sake, the benefit of which cannot be availed by any establishment as such.
- As a result in continuation to the order passed by the Division Bench, it is hereby ordered that State Government shall adjust the subsidy payable to the assessee against the tax liability either which is due to be received from the assessee or by adjusting the same from the future taxes that assessee shall have to pay to the State Government.

DA Comments:

The States are obliged to follow Industrial Policy and any changes retrospectively impacting the subsidy would not be sustainable in the Courts of law.

Shri Bajrang Power And Ispate Ltd and others vs State of Chhatisgarh [2021-TIOL-403-HC-CHHATTISGARH-VAT]

The word 'or' cannot be interpreted as 'and' – Section 114A of Customs law

The substantial questions before the Honorable High Court are:

- Whether the Tribunal is right in holding that as the amount in interest cannot be quantified and hence penalty equivalent to duty and interest cannot be imposed under Section 114A?;
- Whether the Circular No. 61/2002 issued by CBEC is not binding on the adjudicating authorities working under the CBEC?
- Whether the terms (conjunctions) 'or' used in Section 114A of Customs Act, 1962 has to be read as 'and' for the purpose of imposing penalty under the said Section?
- The Honorable High Court observed and held that:
- From perusal of the relevant extract of Section 114A, it is evident that the language employed by the legislature is plain and unambiguous and the provision contains a positive condition with regard to levy of penalty equal to duty or interest and does not contain any negative condition.
- The expression used is 'or' which is disjunctive between duty or interest and further use of expression "as the case may be" clearly suggest that aforesaid provision refers to two different persons and two different situations viz., one in which a person will be liable to duty and in other he may be liable to pay interest only and provides that in both the situations the person liable to duty would be liable to penalty equal to duty and person liable to interest would be liable to penalty equal to interest. Therefore, in view of law laid down by Constitution bench of Supreme Court [Indore Development Authority Vs. Manohar Lal And Others, AIR 2020 SC 1496], the word 'or' cannot be interpreted as 'and'.
- Clarification issued by Central Board of Excise and Customs [Circular 61] dated cannot be contrary to the plain language of the provision.
- Substantial questions of law framed in this appeal are answered against the appellant and in favour of the respondent.

DA Comments:

The judgment clearly considered the word 'or' 'and' interpretation and further held that clarification cannot go beyond the plain language of provisions under law.

CCST vs M/s Sony Sales Corporation [2021-TIOL-425-HC-KAR-CUS]

Sanction of pending IGST refund due to GSTR-I and GSTR- 3B mismatch error – Clarification issued

CBIC issued clarification on pending IGST refund specially clarifying on following aspects:

- The solution provided in the Circular 12/2018-Customs read with Circular No. 25/2019-Customs would be applicable mutatis mutandis for the Shipping Bills filed during the financial year 2019-20 and 2020-21 (i.e. in respect of all Shipping Bills filed/ to be filed upto 31.03.2021).
- The corresponding CA certificate evidencing that there is no discrepancy between the IGST amount refunded on exports in terms of this Circular and the actual IGST amount paid on exports of goods for the period April 2019 to March 2020 and April, 2020 to March, 2021 shall be furnished by 31st March, 2021 and 30th October 2021, respectively.

Public Notice No. 17/2021 dated 27 February 2021 (F. No. S/12-Gen-Misc-131/20-21/DBK JNCH) and Circular No. 04/2021-Customs dated 16 February 2021

Rs. 1000.00 fees for handling of mismatch between Shipping Bill and GST returns in Customs Automated System

The Levy of Fees (Customs Documents) Amendment Regulations, 2021 is accordingly issued.

Notification No. 17/2021-Customs (N.T.) dated 22 February 2021 and Circular No. 05 /2021-Customs dated 17 February 2021

Yearly updation of IEC or face deactivation

IEC related provisions in Chapter-1 and Chapter-2 of Foreign Trade Policy, 2015-2020 are amended/deleted and new provisions inserted to specify:

- IEC holder has to ensure that details in its IEC is updated electronically every year, during April-June period. In cases where there are no changes in IEC details same also needs to be confirmed online.
- An IEC shall be de-activated, if it is not updated within the prescribed time. IEC so de-activated may be activated, on its successful updation. This would however be without prejudice to any other action taken for violation of any other provisions of the FTP.

Notification No. 58/2015-2020 dated 12 February 2021

Measures for Streamlining of Customs Post Clearance Audit work

CBIC announced measures and initiatives on following types of audits which shall be undertaken in the Audit Commissionerate:

- Transaction Based Audit (TBA) - Liquidation of Pendency (TBA), Half yearly meetings on TBA and TBA in exports.
- Premises Based Audit (PBA): The scope and coverage, selection of Premises and related to visiting premises
- Theme Based Audit (ThBA): Selection of themes, Timelines for ThBA
- MIS Reports
- Post Audit Compliance Cell (PACC)
- Monitoring Committee Meeting (MCM)
- Quarterly Bulletin

Standing Order No.: 05/2021 dated 26 February 2021 and Instruction No. 02/2021- Customs dated 16 February 2021

Payment of AIDC by EOU Under Various Situations and notifications issued for amendment of AIDC notifications

Notification No. 11/2021- Customs dated 1 February, 2021 vide Sr. no. 19 read with serial no. 7 of the Annexure to the said notification has fully exempted goods imported by EOUs/EHTP units/STP units (collectively called EOUs) from the AIDC (Agriculture Infrastructure and Development Cess) as the goods imported by these units enjoy benefit of exemption from basic customs duty under notification no. 52/2003-Cus dated 31 March 2003. Following aspects are clarified:

- In case of EOU selling finished goods in DTA, it is deemed that no exemption of BCD on inputs is allowed which were imported under exemption notification no. 52/2003-Cus dated 31.03.2003., thus AIDC exemption under Notification No. 11/2021- Customs dated 1st February, 2021 also gets denied on such inputs and same is also required to be paid by EOU.
- In addition to clearance of goods in DTA there are many situations like clearance of inputs; capital goods; packing material suitable for repeated use such empty cones, bobbins, containers; left over textile fabric or textile material etc. or exit from EOU scheme. In such cases duty/tax of which exemption under notification no. 52/2003-Cus dated 31.03.2003. was availed at the time of import is required to be paid at the time of clearance. Thus, EOU shall be required to pay AIDC in the manner of payment of BCD against the goods imported under exemption notification no. 52/2003-Cus dated 31.03.2003. under various situations.
- EOU/STP/EHTP are required to maintain and also submit digital copy of Form – A to Circular no. 35/2016-Customs dated 29.07.2016 and the same is amended and revised
- There is amendment in relevant notifications for AIDC levy and exemptions related

Circular No. 07/2021-Customs dated 22 February 2021 and Notification No. 16/2021-Customs dated 5 February 2021

Online Module for Adjudication, Appeal, Review proceedings on DGFT portal

An online module for Adjudication, Appeal, Review proceedings under Foreign Trade (Development & Regulation) Act, 1992, ('the Act') as amended and Foreign Trade (Regulation) Rules, 1993, ("the Rules') as amended has been implemented with effect from 27 February 2021.

Trade Notice No. 44/2015-2020-DGFT dated 1 March 2021

Guidelines for setting up of ICDs, CFSs & AFSs

The guidelines are further amended to include in the Circular No. 50/2020-Customs dated 05 November 2020 for further clarification.

Circular No. 06/2021-Customs dated 22 February 2021

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