

# DA TAX ALERT INDIRECT TAX

AN E-TAX ALERT FROM  
**Darda Advisors LLP**

April 2021  
Issue: 11

**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 eleventh 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 March 2021.

During the month of March 2021, there were certain changes under Goods and Service Tax, Customs and other; on e-invoice applicability, FAQs on e-invoice and refund issued, Supreme Court debarring DRI to issue notice, FTP extension till 30 September 2021 and others..

In the eleventh 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 March 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

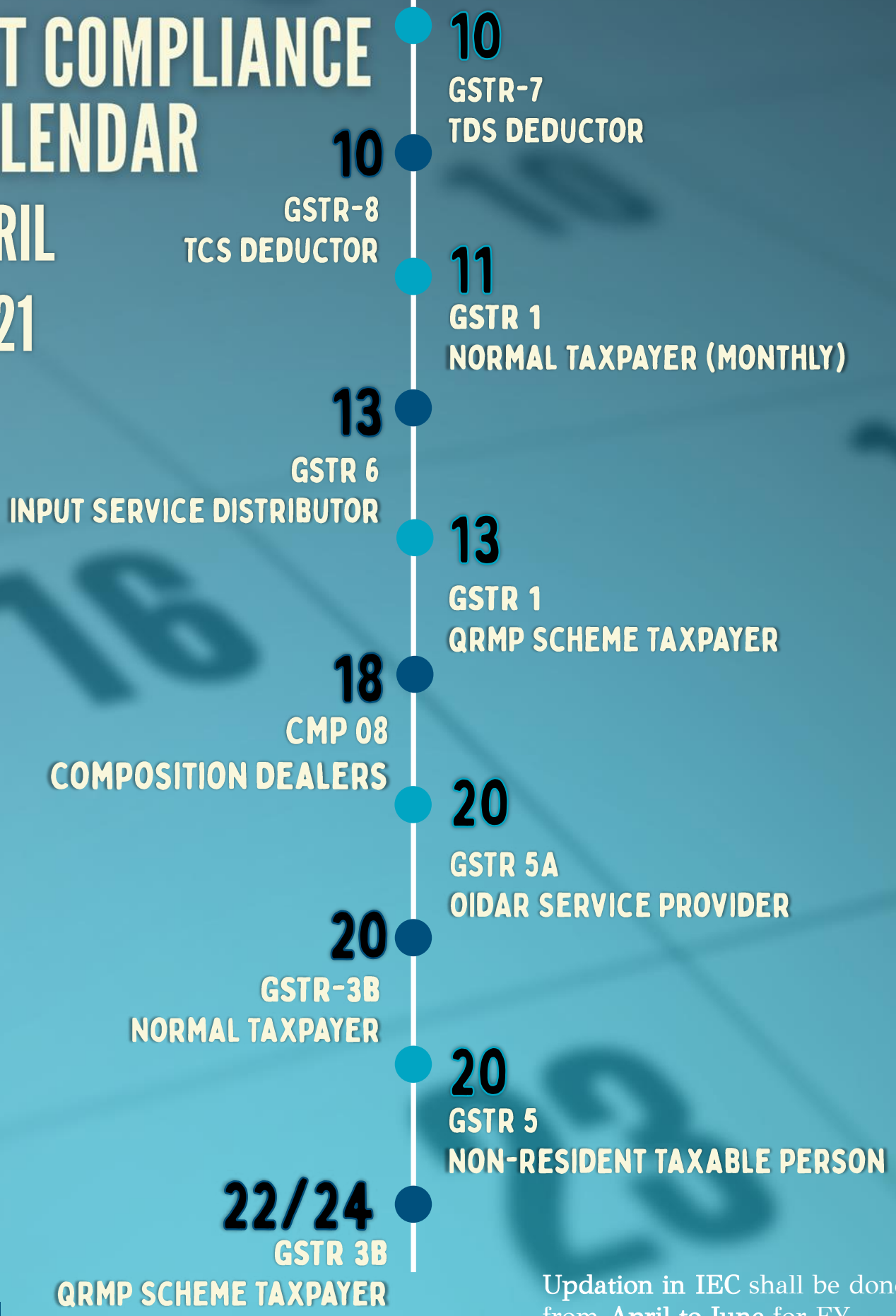
# Changes w.e.f 1 April 2021

## Goods & Service Tax (GST)

- **Fresh Invoice/Document Series-** New/unique series of invoices to be raised for FY 2021-22 as per Rule 46(b) of the CGST Rules
- **Change in HSN requirement** - W.e.f. 1st April 2021 it is mandatory to put 4 digit HSN code in case turnover is less than Rs 5 Crore for B2B invoices and 6 digit in case turnover is more than Rs 5 Crore in all invoice i.e. B2B and B2C
- **Applicability of E-invoice** - e-Invoicing will be applicable from 1st April 2021 for businesses with a turnover more than Rs.50 crores (in any financial year from FY 2017-18 onwards)

# GST COMPLIANCE CALENDAR

## APRIL 2021



Updation in IEC shall be done from April to June for FY



- Parking fee recovered from employee liable to GST
- Rectification of GSTR 3B allowed – Ahmedabad High Court
- Rejection of refund without personal hearing is against the proviso to rule 92(3) of the CGST Rules and in violation of the principles of natural justice
- Interest can be levied only on net tax liability
- Transaction cannot fall under the category of ‘undisclosed turnover’, merely because ‘certain discrepancies existed’
- E-Invoicing for taxpayers having turnover more than Rs. 50 Cr from 1 Apr 2021
- Waiver of penalty for non compliance of having Dynamic QR Code on B2C invoice
- E-Invoice FAQs released
- Clarification on refund related issues

# Parking fee recovered from employee liable to GST

The company entered into a rent agreement building authority for renting of office premises including certain number of free car parking spaces and certain number of parking spaces on payment of agreed rent per car parking space per month. The company bears part of the lease charges and the balance amount is equally recovered from all the employees using the parking spaces depending on whether the employee uses the parking space for four-wheeler parking or for two-wheeler parking and further ITC of the lease charges paid to the building authority is not claimed. The Company filed advance ruling which is rejected based on insufficient documents filed and accordingly the appeal filed to AAAR on following queries:

- Whether amount recovered from the employees towards car parking charges payable to building authorities, would be deemed as "Supply of service" by the applicant to its employees?
- If the first question is answered in affirmative, whether the value of aforesaid supply would be NIL, being provided in the capacity of a "Pure Agent"? If valuation is not accepted as NIL, what would be the value of such supply?

The AAAR observed and held that:

- As regard to the word "easement" we observe that in common parlance the

word easement is defined as "a right to cross or otherwise use someone else's land for a specified purpose". Here we observe that the appellant is providing right to its employee's to use parking facility on the parking space provided by the building authority and for this work they are collecting certain amount from their employee. Accordingly we are of the view that the activity in question, provided by the appellant, is squarely falls under the Schedule II i.e. "Activities to be treated as Supply of Goods or supply of Service" of the CGST Act, 2017.

- Further, we observe that the Authority of Advance Ruling, Maharashtra, in the case of M/s DRS Marine Services Pvt. Ltd., has observed that, "Applicant will be acting as a pure agent of RMS in as much as the entire amount received by them as Crews' Salary will be disbursed to the Crew and no amounts from the said receipt will be used by the Applicant for his own interest". In the instant case also, we observe that the appellant has contended that they are transferring the entire amount collected, from their employees towards parking charges, to the Building Authorities. Accordingly, in view of aforesaid discussion we observe that

# Parking fee recovered from employee liable to GST

*the value of the services in the present case will be NIL, as the appellant is providing the same in the capacity of a Pure Agent, subject to the fulfillment of the conditions prescribed for "Pure Agent".*

## DA Comments:

There is immediate clarification on recovery of employees is required from CBIC and GST Council as any recovery including under recovery is liable to GST as per current provisions and all such rulings are creating more confusion than clarity.

*M/s Ion Trading India Pvt Ltd [2021-TIOL-11-AAAR-GST – UP AAAR]*

# Rectification of GSTR 3B allowed – Ahmedabad High Court

The assessee had submitted the return of his business in the month of May 2019 through the Online process, i.e, the GST Online Portal and inadvertently, in the course of making entries in the GSTR-3B for the month of May, 2019, wrongly uploaded the entries of other firm instead of relevant firm. The Honorable High Court admitted the petition and further observed and held that:

- The aforesaid issue is no longer res-integra in view of the decision of the Delhi High Court in the case of Bharti Airtel Limited vs. Union of India & Ors., Writ Petition (Civil) No.6345 of 2018, decided on 05.05.2020 = 2020-TIOL-901-HC-DEL-GST.
- As the writ applicant has been dragged into unnecessary litigation only on account of the technicalities raised by the respondents, the writ applicant shall not be saddled with the liability of payment of late fees.
- We hope and trust that the writ applicant may not have to come back

to this Court on any further technicalities that the Department is in the habit of raising, and thereby giving result to unnecessary litigation.

## DA Comments:

Even the case of Bharti Airtel for the above issue is pending at Honorable Supreme Court, the Ahmedabad High Court considered and relied upon the Honorable Delhi High Court judgment.

[M/s Deepak Print vs UOI \[2021-TIOL-591-HC-AHM-GST\]](#)



# Rejection of refund without personal hearing is against the proviso to rule 92(3) of the CGST Rules and in violation of the principles of natural justice

The applicant filed writ petition against refund rejection orders by adjudicating authority which were issued without giving an opportunity of being heard for which the Honorable High Court observed and held that:

- The expression 'opportunity of being heard' is not an expression of empty formality. It is a part of the well-recognized principle of *audi alteram partem* which forms the fulcrum of natural justice and is central to fair procedure. The principle is that no one should be condemned unheard. It is not necessary to delve deep into the expression save and except to say that by way of judicial pronouncements the said expression has been made central to the decision making process, breach of which would be construed to be violation of the principles of natural justice thus adversely affecting the decision making process; a ground for invoking the power of judicial review.
- When the law requires that no application for refund shall be rejected without giving an applicant an opportunity of being heard, the same cannot be substituted by telephonic conversations and exchange of e-mails.

This is more so in the case of a claim for refund where no time limit is fixed vis-a-vis rejection of claim. Under subsection (7) of section 54, a time-limit of 60 days is prescribed for making of an order allowing claim of refund; but that period of 60 days would commence from the date of receipt of the application complete in all respects (emphasis is ours) without there being a corresponding provision for rejection of application not complete in all respects.

- Since respondent No.4 has already taken a view on merit by disclosing her mind which is adverse to the petitioner, it would be in the interest of justice and fairness if another competent officer is assigned the task of deciding the refund applications of the petitioner de novo on remand.

## DA Comments:

The importance of principle of natural justice is well laid down in the said judgment.

[M/s Deepak Print vs UOI \[2021-TIOL-591-HC-AHM-GST\]](#)

# Interest can be levied only on net tax liability

The adjudicating authority issued SCN in Form DRC-01 under section 50 of CGST Act, 2017 to levy interest on gross tax liability even when the amendment under said section is made retrospectively w.e.f 1 July 2017 to levy interest on net tax liability under Finance Act, 2021. Accordingly, the writ petition is filed for which the Honorable High Court held that:

- The interest under Section 50 of the CGST Act, 2017 can only be levied on the net tax liability and not on the gross tax liability. In such circumstances, the demand raised by the respondent is not in accordance with law.
  - We do not find reference of any notice under Section 50 so far as Rule 142(1)(a) of the CGST Rules is concerned. In such circumstances, DRC 01 could not have been issued for the purpose of recovery of the amount towards interest on delayed payment of tax.
  - From the aforesaid, we have reached to the conclusion that the notice should have been issued in Form GST DRC 07. The Notice should specify the amount of tax, interest and penalty payable by the person chargeable with tax.
- The impugned order issued in GST DRC 01 is hereby ordered to be quashed and set aside. We reserve the liberty for the respondents to initiate fresh proceedings against the writ applicant in accordance with law.

## DA Comments:

The long pending issue of interest on gross or net tax liability is settled post amendment made by Finance Act, 2021. The reference to correct form for demanding interest is also covered under the said judgment

# Transaction cannot fall under the category of ‘undisclosed turnover’, merely because ‘certain discrepancies existed’

The assessee has been held liable to tax on the concealed turnover and accordingly, tax and penalty has been sustained by the appeal authority against which the writ petition is filed, and the Honorable High Court observed and held that:

- Since the GST Tribunal has yet not been constituted, the present writ petition was entertained
- Respondent revenue-authority has not denied the issuance of the invoice and the e-way bills, as claimed by the petitioner – Thus for the purposes of this writ petition, it has to be assumed as correct that the invoice and the e-way bills appended with the writ petition, had been issued.
- Once the revenue authority admits that the invoice and the e-way bills relied upon by it had been issued in regular course, it is difficult to imagine how the appeal authority could have reached a conclusion that the goods sold or purchased against those invoices were unaccounted for.
- To hold that there was discrepancy in the account is different and lighter charge than to hold that the assessee

had not disclosed or concealed part of its turnover - Merely because there may have been existed certain discrepancies, the transaction cannot be said to be one falling under the category of undisclosed turnover - present petition succeeds and is allowed.

## DA Comments:

The factual submission needs to be considered appropriately before putting the allegation by the adjudicating authority is rightly laid under the said judgment

*M/s Jai Maa Jwalamukhi Iron Scrap Supplier vs State of UP and 3 others [2021-TIOL-719-HC-ALL-GST]*

# E-Invoicing for taxpayers having turnover more than Rs. 50 Cr from 1 Apr 2021

Notification No. 05/2021 –Central Tax dated 8 March 2021 has been notified to implement e-invoice for taxpayers having aggregate turnover more than Rs. 50 Cr. in any of preceding three financial years starting from 2017-18 w.e.f 1 April 2021.

[Notification No. 05/2021 –Central Tax dated 8 March 2021](#)

# Waiver of penalty for non compliance of having Dynamic QR Code on B2C invoice

CBIC vide notification No. 06/2021 has extended the waiver of penalty for non compliance of having Dynamic QR Code on B2C invoice from 31 March 2021 to 30 June 2021 subject to the condition that the registered taxpayer shall comply the same from 1 July 2021

[Notification No. 06/2021 –Central Tax dated 8 March 2021](#)

# E-Invoice FAQs released

GSTN has released FAQs version 1.4 dated 30 March 2021 on E-Invoice. Read more in the following link

[E-Invoicing FAQs \(version 1.4\) dated 30 March 2021](#)

# Clarification on refund related issues

CBIC has issued a clarification on refund related issues through Circular No. 147/03//2021-GST on below issues

S. No.	Issues	Clarifications
1	Debit from Electronic Credit Ledger while filing refund claim by recipient of Deemed Export Supply and also restriction on claiming ITC on invoices	<p>Restriction of claiming ITC of deemed export supply invoices has been removed.</p> <p>Similarly, in case the refund is filed by the recipient of deemed export supplies, an undertaking shall have to be furnished by him stating that refund has been claimed only for those invoices which have been detailed in statement 5B for the tax period for which refund is being claimed and the amount does not exceed the amount of input tax credit availed in the valid return filed for the said tax period. The recipient shall also be required to declare that the supplier has not claimed refund with respect to the said supplies.</p>
2	Extension of relaxation for filing refund claim in cases where zero-rated supplies has been wrongly declared in Table 3.1(a)	<p>Since the clarification issued vide Circular No. 125/44/2019-GST was valid only from 1 July 2017 to 30 June 2019, taxpayers who committed these errors in subsequent periods were not able to file the refund applications in FORM GST RFD-01A/ FORM GST RFD-01, hence the relaxation for extended till 31 March 2021</p>

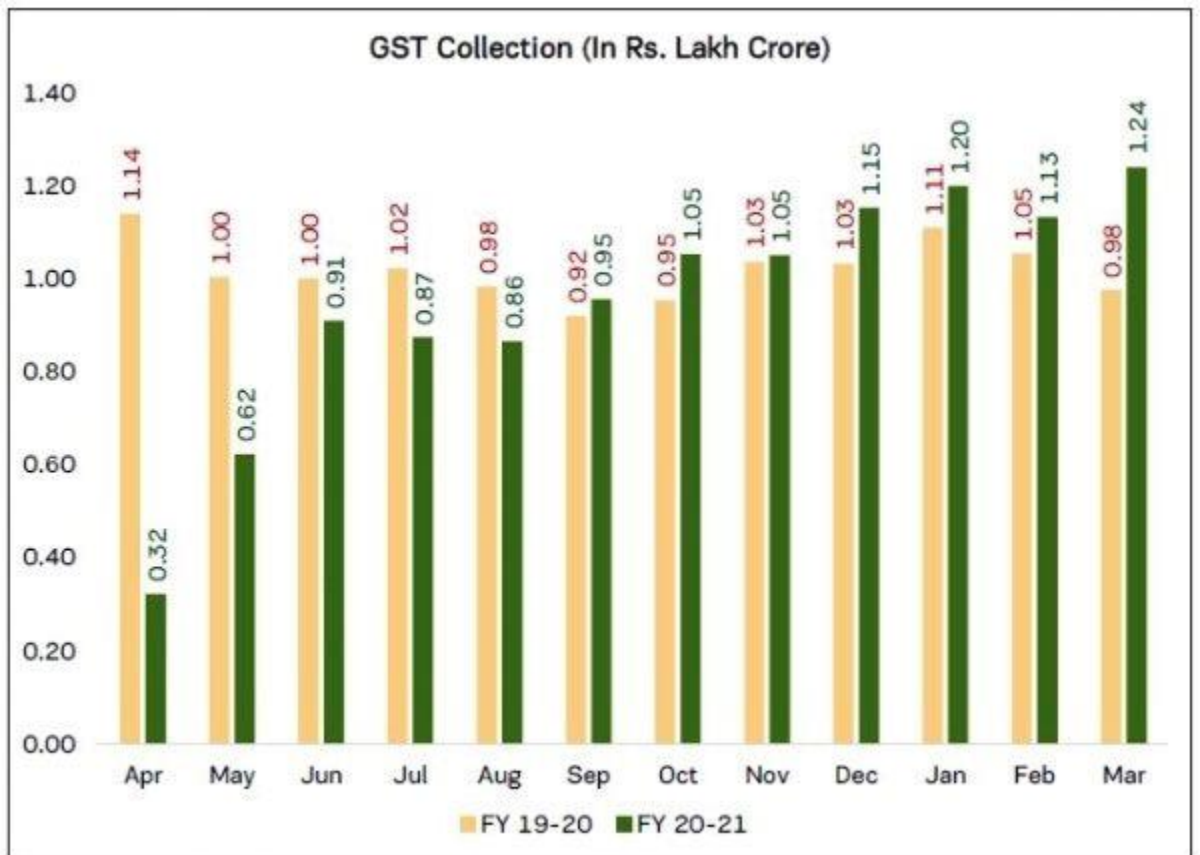
# Clarification on refund related issues

S. No.	Issues	Clarifications
3	Whether restriction of 1.5 times the value of like goods domestically supplied imposed by amendment in definition of turnover of zero rated supply of goods would apply for computation of Adjusted Total Turnover	<p>For the purpose of Rule 89(4), the value of export/ zero rated supply of goods to be included while calculating “adjusted total turnover” will be same</p> <p>as being determined as per the amended definition of “Turnover of zero-rated supply of goods” in the said sub-rule since Adjusted Total Turnover includes “Turnover in a State or a Union territory” which includes the value of zero rated supply of goods</p>

[Circular No. 147/03//2021-GST dated 12 March 2021](#)

# GST Revenue Collection in March 2021-Rs.1.23 lakh Cr.

## TRENDS IN GST COLLECTION IN RS. CRORE



Source: Ministry of Finance, PIB



- SION cannot be a sole basis for giving a cause of action for issuing the SCN
- DRI officers not empowered to issue SCN – Supreme Court & CBIC debarred DRI officers to issue SCNs
- Production of "installation" certificate under the "Project Import Regulations, 1986" is only directory and not mandatory
- Concessional inter-state purchase of HSD is allowed even for captive consumption
- Public notice/circular inserting additional conditions to curtail the rights / benefits are ultra vires the FTP
- ITC cannot be denied when exemption is not availed – Erstwhile VAT regime
- Order by adjudicating authority not sustainable if based solely on the report of Enforcement Wing officers
- Limitation Act cannot be applied for Service tax matters
- Verification of identity and compliance under customs for importer, exporter and broker
- Foreign trade policy and Handbook of Procedures 2015-20 extended till 30 September 2021
- ICEGATE as common customs electronic portal



# SION cannot be a sole basis for giving a cause of action for issuing the SCN

The Honorable High Court of Madras has admitted the petition on substantial question of law and specifically given its judgment on whether the reason for issuance of the SCN by reference to the standard input-output norms (SION) fixed in respect of the concerned industrial activity is adequate and correct or not. The assessee argued that:

- The input-output norms were in the nature of guidelines and not a fixed formula. This aspect was considered and the Court held that the mere fact that the wastage was in excess of the input-output norms, without anything more, would not be sufficient for the Assistant Collector to arrive at the satisfaction that the imported fabric had not been used for the manufacture of the articles for export.

The Honorable High Court upheld and observed that:

- In our view, the standard input-output norms can be treated as an indicator and that may not be a sole reason for initiation of proceedings.
- This aspect was considered by the High Court of Gujarat in the case of

Goodluck Garments Pvt. Ltd. Vs. Commissioner of Central Excise & Customs, Surat-II reported in [2019 (365) E.L.T 893]

## DA Comments:

The judgment has reemphasized to consider the facts along with SION even when SCN is issued.

*[M/s IOCEE EXPORTS LTD vs CCE \[2021-TIOL-558-HC-MAD-CUS\]](#)*

# DRI officers not empowered to issue SCN – Supreme Court & CBIC debarred DRI officers to issue SCNs

The issue for which appeal filed to the Honorable Supreme Court by the company is whether after clearance of the cameras on the basis that they were exempted from levy of BCD under Notification No.15/2012, the proceedings initiated by the Directorate of Revenue Intelligence (DRI) for recovery of duty not paid under Section 28(4) of the Customs Act, 1962 are valid in law. The Honorable Supreme Court observed and held that:

- The intention behind the term, ‘the proper officer’, used in section 28(4) of the Customs Act, is to grant the power to recover customs duties not on ‘any proper officer’ but only on ‘the proper officer’, who had assessed the goods at the time of clearance. Unlike words ‘A’ and ‘An’, the word ‘the’ refers to a particular person or thing.
- When the language of a statute directs the way in which a particular thing should be done, it must be construed in that manner alone.
- The nature of power assigned to the proper officer under section 28(4) of the Customs Act is in the form of a review of the earlier decision of assessment. Such power should be construed to have been conferred only on the same officer who assessed the imported goods, or his successor or any other officer who has been assigned the function of assessment.
- Where the statute confers the same power to perform an act to different officers, officers belonging to different departments cannot exercise their powers in the same matter.
- The Additional Director General of the DRI has been appointed as an officer of customs under Notification No. 17/ 2002 dated 7 March 2002.
- Notification No. 40/ 2012 dated 2 May 2012, which extends the functions of a proper officer under section 28 of the Customs Act to DRI officers has been issued under section 2(34) of the Customs Act. This section is part of the definition clause of the Customs Act and does not confer any powers on any authority to entrust any functions to officers.

# DRI officers not empowered to issue SCN – Supreme Court & CBIC debarred DRI officers to issue SCNs

- If the intention was to entrust DRI officers with the functions of the custom officers, the Government should have exercised this power under section 6 of the Customs Act, which is the only section that provides for the entrustment of the functions of customs officer on other officers of the Central or State Governments.
- The Court referred to the decision of the Supreme Court in the case of Sayed Ali and Another [(2011) 3 SCC 537] that DRI officers were not empowered to assess/ re-assess duty.

Further, CBIC issued instructions post the judgment of Honorable Supreme Court by which it has barred the DRI from issuing SCN in respect of all customs related cases being investigated by them. The power to issue SCN has been vested with jurisdictional Commissionerate from where imports have taken place.

## DA Comments:

The controversy regarding the assessment by non-jurisdictional officers including DRI and Customs (Preventive) have remained a continuing question before the judiciary. Despite the retrospective amendment in the Customs Act, numerous notifications as well as clarificatory circulars, various courts have taken divergent view on this subject. As per the Honorable Supreme Court judgement –

- (i) Only the adjudicating officer who assessed and cleared the goods can re-assess the goods and not DRI and Customs (Preventive) officers, and
- (ii) Keeping the reassessment function to DRI officers is invalid.

This would be additional strong ground for assessee to contest past proceedings initiated by DRI and Customs (Preventive) officers. Further, by issuance of instructions of CBIC debarring DRI to issue SCNs, the issue for past cases would be stronger.

*[M/s Canon India Pvt Ltd vs CC \[2021-TIOL-123-SC-CUS-LB\]](#)*

# Production of "installation" certificate under the "Project Import Regulations, 1986" is only directory and not mandatory

In the case, original authority and the first appellate authority held that the installation certificate as required under Regulation 7 of the Project Import Regulations, 1986 have not been produced, it goes without saying that the assessee has not installed the machinery and therefore not entitled for any benefits which would accrue to them. However, the Tribunal held that production of "installation" certificate of the goods imported free of duty under the "Project Import Regulations, 1986" is only directory and not mandatory and thus the Revenue is, therefore, in appeal and the Honorable High Court observed and held that:

- Revenue seeks for arguing the factual aspect with a view to impress upon the scope that no installation had taken place - Per contra, there were evidences by way of invoices raised in the name of the Northern Railway produced by the assessee before the Tribunal and as well as before this Court.
- Bench is of the considered view that the Tribunal has taken a decision on appreciation of facts placed before it by way of documents and in this

appeal filed under Section 130 of the Act.

- Bench is required to decide the substantial questions of law and not to reappreciate the factual finding unless it is shown that the finding is utterly perverse. Bench is not inclined to classify the impugned finding as being utterly perverse. Therefore, no grounds have been made by the revenue to interfere with the said finding - Accordingly, the Revenue appeal is dismissed.

## DA Comments:

The requirement of installation certificate under Project Import Regulation as mandatory or clarificatory has been well laid down basis facts of the case and relevant regulations under the said judgment.

*[CC vs M/s Soumag Eletronics Ltd \[2021-TIOL-708-HC-MAD-CUS\]](#)*

# Concessional inter-state purchase of HSD is allowed even for captive consumption

The dealer, filed writ petition expressing difficulty in obtaining 'C' forms under provisions of CST Act in order to avail concessional benefit of tax for purchase of High-Speed Diesel (HSD) from suppliers in other States for which the Honorable High Court observed and held that:

- HC reiterated that if a Dealer had a right to sell goods including the restricted six items under CST Act, their right to purchase those goods at present time under existing Registration Certificates could not be taken away merely because they were not selling those goods.
- Had sale of goods been the only criterion of registration under CST Act, consequent amendments would not have allowed concessional rate of tax for purchase of those six commodities for user in activities like Mining or Telecommunication Networks, where no such resale or use in manufacturing was involved. Thus, such a right was equally available to other industries like Cement Industries.
- Denying it would result in an invidious classification in violation of Article 14 that was neither envisaged nor called for.

- Thus, HC held that assessee was entitled to inclusion of 'High Speed Diesel Oil' as a commodity in registration certificate and the request for issuance of 'C' Forms was thereby allowed.

## DA Comments:

The said judgment has reiterated on various other decisions of various Honorable High Courts with regard to eligibility to issue C form. However, the said benefit is restricted only for resale under Finance Act, 2021.

*M/s AVS Tech Building Solution India Pvt Ltd vs PCCT and others [2021-TIOL-537-HC-MAD-VAT]*

# Public notice/circular inserting additional conditions to curtail the rights / benefits are ultra vires the FTP

The company filed SEIS claim as shipping agent for eligible services which is rejected for subsequent periods and SCNs issued for SEIS scrips issued earlier based on policy circulars no. 06/2018 dated 22 May 2018 and 08/2018 dated 21 June 2018 issued by DGFT clarifying determination of eligibility of service providers for SEIS to claim benefit to the extent of free foreign exchange earnings (or INR payments as allowed under the scheme) routed through them as receipt of service charges. The writ petition is filed against the validity and legality of Policy Circulars, SCNs issued and SEIS rejection order for which the Honorable High Court observed and held that:

- Policy Circular No. 8/2018 dated 21 June 2018 clearly overrides the authority of the Reserve Bank of India and an attempt is made to introduce a provision for issuance of a certificate by the petitioner enabling the local domestic service provider, such as, ports to deem their INR billing as in foreign exchange. Such overriding policy decisions in our view would require an amendment in the FTP 2015-20 and as mandated under the provisions of section 5 of the FT (D&R) Act would have to be carried out only by the Central Government.
- The two impugned policy circulars clearly curb the right of the petitioner as an independent foreign exchange earner for the purposes of FTP 2015-20 and its consequential SEIS benefits in conformity with para 3.08(d) of the FTP. The designation or description of the petitioner as "aggregator" of services purchased by them is not in conformity with the underlying ethos of the FTP 2015-20 read with the FT (D&R) Act, 1992.
- From a reading of the above, intention of the legislature to restrict the policy in formulating the eligibility and entitlement condition is clearly discernible. It would, therefore, not be possible for the Bench to restrict the benefit of SEIS with reference to the concept of net foreign exchange as canvassed by the respondents as the same would result in an amendment or change in the policy.
- Circular Nos. 06/2018 dated 22 May 2018 and 08/2018 dated 21 June 2018 insofar as they seek to add and amend the provisions of the FTP 2015-20 by inserting additional conditions to curtail the rights / benefits claimed by the petitioner as service provider are ultra vires the Foreign Trade Policy for 2015-20;

# Public notice/circular inserting additional conditions to curtail the rights / benefits are ultra vires the FTP

- Impugned order of refusal and SCNs cannot be sustained and is accordingly quashed and set aside.

## DA Comments:

HoP and public notice/circular cannot override the provisions of FTP which is well laid down with detailed discussion in the said judgment.

*Atlantic Shipping Pvt Ltd vs UOI and others [2021-TIOL-582-HC-MUM-CUS]*

# ITC cannot be denied when exemption is not availed – Erstwhile VAT regime

The dealer under Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act) deals in rice bran oil and adjudicating authority issued SCN that its turnover from sale was less than Rs. 5.00 crores for AY 2011-12, thus attracting exemption in terms of Entry 65/Schedule A of the Act and accordingly the tax collected on the sales, admittedly remitted to the Department, was proposed to be forfeited in terms of Section 40(2)(ii) and the Input Tax Credit (ITC) claimed, proposed to be reversed, along with penalty and further order passed under revisional assessment provisions even when the dealer clarified that the turnover is above exemption limit. Accordingly, the writ petition is filed and the Honorable High Court observed and held that:

- The exemption available under Entry 65/Schedule A is an option that has not been availed by the present petitioner and I see no legal flaw in the choice made. The petitioner will have to sink or sail on the basis of the decision taken by it, qua exemption. In this case, the petitioner has, while eschewing exemption, claimed ITC on purchases. The respondent, while rejecting the claim for ITC has fortified the tax collected in terms of Section 41 of the TNVAT.
- The grant of credit is conditional upon the status of a dealer as 'taxable', and hence a dealer falling outside the ambit

of taxability was not extended the benefit of ITC, which is a concession under the statute, as seen from a reading of the charging section, Section 3, read with Section 19, dealing with Input tax credit.

- The petitioner is admittedly, a dealer whose turnover far exceeds the threshold of taxability. It is only by virtue of the exemption provided under Schedule that it might escape taxability, if it so chooses. Such choice, in my view, must be its. Thus, in this case, there is no bar under the statute for availment of credit, subject to the tax liability being met in full. The bar under Section 19(5)(a) applies only in cases of 'sale of goods exempted under section 15' and not where such exemption is provided but not availed. The purpose of the bar under section 19(5)(a) is to deny a double benefit to an assessee and there has, in this case, been no double claim as admittedly, the tax has been remitted in entirety. The provisions of Section 41(1) refer to a different situation and do not advance the case of the revenue in the facts and circumstances of this case.



# ITC cannot be denied when exemption is not availed – Erstwhile VAT regime

- To deny the petitioner the benefit of ITC by thrusting an exemption not claimed by it, upon it, will, in my view, be contrary to the scheme of the enactment.

## DA Comments:

When the exemption is not claimed and tax remitted at the applicable rate, the ITC availability cannot be denied. The principle can be applied even under GST regime.

*[TCS Trade Links vs STO \[2021-TIOL-680-HC-MAD-VAT\]](#)*

# Order by adjudicating authority not sustainable if based solely on the report of Enforcement Wing officers

The assessment was deemed to be concluded u/s 22(2) of the TNVAT Act subjected to search operations of premises by the Enforcement Wing, whereupon many discrepancies were noticed. Based on the Enforcement Wing report, the Revenue issued pre-revision SCNs for the relevant AYs and accordingly orders were issued against which the writ petition is filed. The Honorable High Court observed and held that:

- The assessing authority chose to overrule all the objections of the petitioner as untenable in a single line. It is obvious that the Revenue has not at all considered the materials from an independent perspective. Of-course, the report of the Enforcement Wing can provide a starting point for reopening the assessment. But the assessing authority must have his own approach. His discretion cannot be governed or bound by the stand taken by the Enforcement Wing Officials.
- The Revenue has merely reproduced the stand of the Enforcement Wing Officials and has not dealt with the issue independently. A Judge of this Court in *Amutha Metals Vs. Commercial Tax Officer, Mannady*

(East), Assessment Circle, Chennai (2007) 9 VST 478 (Mad) held that if the reasoning stated by the Enforcement Officials is taken as correct reason, there is no need for the assessing officer to be there to frame the assessment. The Enforcement Wing Officials themselves would have framed the assessment.

- On this sole ground, the orders challenged in these writ petitions are quashed. These Writ Petitions are allowed.

## DA Comments:

The sustainability of adjudicating order issued merely on enforcement wing report has been questioned in the said judgment.

*[M/s Next It World vs ACCT \[2021-TIOL-669-HC-MAD-VAT\]](#)*

# Limitation Act cannot be applied for Service tax matters

The Commissioner (A) under the revision of order power invoked section 18 of the Limitation Act, 1963 and issued order for the period which is beyond the five years limit provided under section 73 of Chapter V of Finance Act, 1994 ('Service tax law') against which the appeal filed to CESTAT which held that:

- The Commissioner (Appeals) has invoked section 18 of the Limitation Act applies to suits, appeals and applications. Section 18 of the Limitation Act refers to acknowledgement of liability in respect of property or right and thus the service tax is neither a property nor a right. It is a tax on the service provided as levied under the Finance Act, 1994. Therefore, the provisions of Limitation Act are not applicable to the facts of this case. Therefore, the impugned order is to be set aside.

## DA Comments:

Such instances invoking other Acts provisions does not sustain in Court of Law.

*[M/s Next It World vs ACCT \[2021-TIOL-669-HC-MAD-VAT\]](#)*

# Verification of identity and compliance under customs for importer, exporter and broker

CBIC vide Notification No. 41/2021-Customs (N.T.) has notified Customs (Verification of Identity and Compliance) Regulations, 2021.

## Applicability of regulations –

- Importer, Exporter and Customs Broker (either new or existing entity)
- These regulations shall not apply to the Central Government, State Governments and Public Sector Undertakings

## Verification of identity & compliance

- Person selected for verification shall furnish the documents or information on the Common Portal within fifteen days of such intimation of selection and new entity shall furnish the same within thirty days.
- Following documents/information are required
  - document of incorporation, Agreement/deed, MoA and AoA as applicable
  - document evidencing appointment of authorized signatories
  - PAN
  - GSTIN
  - document such as bank statement, Income Tax Return etc. evidencing financial standing of the person

- On furnishing of documents or information, authorized signatory of the entity shall undergo authentication of Aadhaar and verification of PAN on the common portal
- If Aadhaar authentication cannot be completed, then the person to be verified shall furnish a notarized copy of valid passport or electoral photo identity card for verification on Common Portal, within an extended further period of five days
- Upon submission of documents, proper officer shall
  - undertake a physical verification of principal place of business as mentioned in IEC certificate not later than forty five days from the date of submission of the documents
  - evaluate the financial standing of the person
- Proper officer may carry out verification of such documents in lieu of physical verification, as he may deem fit
- Verification of identity shall be considered to have succeeded, if the identity is established on the basis of the documents specified in the regulations
- Commissioner of Customs may also cause verification of compliance to the provisions of Customs Act, 1962 or any other law for the time being in force in addition to verification of identity

*[Notification No. 41/2021-Customs \(N.T.\) dated 5 April 2021](#)*

# Verification of identity and compliance under customs for importer, exporter and broker

## Time limit for verification of identity and compliance

- Proper officer shall prepare the verification report on the Customs Automated Systems within thirty days of the submission of the documents and information
- Verification report may be prepared within sixty days of the submission of the documents and information, in case physical verification is required to be undertaken
- Commissioner of Customs shall on the basis of the report of verification submitted by the proper officer, and other evidence as deemed necessary, determine the outcome of the verification within fifteen days and cause its entry on the Customs Automated System and shall be informed to the person concerned within a period of seven days

## Suspension of benefits

- Any or all the benefits mentioned in clause i of section 99B(3) of Customs Act,1962 if he fails to comply with these regulations after giving an opportunity of being heard
- Benefits can be restored if the person complies with the regulations or furnishes correct documents
- Person can appeal to Customs, Central Excise and Service Tax Appellate Tribunal (CESTAT) if aggrieved by the order

- Commissioner of Customs may impose a penalty not exceeding fifty thousand rupees, who contravene the provisions of regulations

*[Notification No. 41/2021-Customs \(N.T.\) dated 5 April 2021](#)*

# Foreign trade policy and Handbook of Procedures 2015-20 extended till 30 September 2021

The existing Foreign Trade Policy read with Handbook of Procedures was to expire on 31 March 2021, however

Ministry of Commerce & Industry extended the same up to 30 September 2021.

[Notification no 60/2015-20 dated 31 March 2021](#)

[Public Notice No. 48/2015-2020, dated 31 March 2021](#)

# IGST and Compensation Cess exemption on goods imported under AA/EPCG

CBIC extended the exemption from Integrated Tax and Compensation Cess upto 31 March 2022 on goods imported

against AA/EPCG authorizations.

[Notification No. 23/2021-Customs dated 31 March 2021](#)

# RoSL claim to be filed till 31 December 2021

In the online module for filing claims under RoSL (Rebate of State Levies), applications containing shipping bills with Let Export Order (LEO) date between 01 October 2017 and 06 March 2019 are required to be submitted separately. Last

date for submitting applications containing shipping bills with LEO date from 01 October 2017 date for filing applications containing shipping bills with LEO date before 01 October 2017 would be 31 December 2021.

[Public Notice No. 43/2015-2020 Dated 17 March 2021](#)

# Manual processing of declaration filed under SVLDRS, 2019 in order to comply with the directions of the Hon'ble High Courts

In respect of Writ Petitions filed before various Hon'ble High Courts against the decision of the concerned Designated Committees taken under Sabka Vishwas (Legacy Dispute Resolution) Scheme (SVLDRS), 2019, the cases in which the Hon'ble High Court has decided in favour of the declarant and remanded the matter back to the concerned Designated Committee for fresh decisions, it is clarified that henceforth all such references for grant of approval of manual processing of the declarations need not be made to

the Board and such cases can be processed manually by the concerned Designated Committees upon fulfilment of the following conditions: –

- The order of the Hon'ble High Court has been accepted by the Concerned Commissionerate.
- The Ld ASG/ Sd. Counsel who had represented the case before the Hon'ble Court has opined to accept the said order of the Hon'ble Court.

[Instruction No. 01/2021-CX dated: 17 March 2021](#)

## No fee shall be charged on application for updation of IEC

DGFT notifies that no fee shall be charged on application for updation of IEC between April -June of each year.

[Public Notice No. 49/2015-20 dated 31 March 2021](#)

# Online request for redemption of AA, import authorization for restricted items and for Adjudication, Appeal, Review proceedings

All requests related to redemption, surrender, Duty Paid Regularization, Bond Waiver or the Clubbing of Advance Authorizations and import authorization for restricted items and 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 can be availed online on DGFT portal.

[Trade Notice No. 49/2020-21 dated 30 March 2021](#)

[Trade Notice No. 47/2020-21- DGFT dated 23 March 2021](#)

[Trade Notice No. 44/2015-2020-DGFT dated 1 March 2021](#)

# COO Rules issued for CECPA between India and Mauritius and goods notified with applicable concessional rate

CBIC issued Customs Tariff (Determination of Origin of Goods under the Comprehensive Economic Cooperation and Partnership Agreement between the Republic of India and the Republic of

Mauritius) Rules, 2021 detailing key regulations and conditions in relation to COO (Country of Origin) and also issued list of goods eligible for concessional tax rate.

[Notification No. 38/2021-Customs \(N.T.\) dated 31 March 2021](#)

[Notification No. 25/2021-Customs](#)

[Public Notice No. 51/2015-20 dated 31 March 2021](#)

[Trade Notice No. 01/2021-2022 dated 1 April 2021](#)



# Deeper tariff concession under India-Japan CECPA

All requests related to redemption, surrender, Duty Paid Regularization, Bond Waiver or the Clubbing of Advance Authorizations and import authorization for restricted items and 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 can be availed online on DGFT portal.

*[Notification No. 20/2021-Customs Dated: 30 March 2021](#)*

# Exemption from Health cess on specified parts of x-ray machines and imposition of BCD on X-Ray machines and electric vehicles parts

All requests related to redemption, surrender, Duty Paid Regularization, Bond Waiver or the Clubbing of Advance Authorizations and import authorization for restricted items and 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 can be availed online on DGFT portal.

*[Notification No. 22/2021-Customs](#)*

*[Notification No. 21/2021-Customs dated 31 March 2021](#)*

# Filing of Advance Bill of Entry related – Regulations and Clarification issued

Based on amendment of section 46 of Customs Act, 1962 as brought by Finance Act, 2021 in relation to filing of advance Bill of Entry, CBIC issued Bill of Entry (Forms) Regulations, 1976 and Bill of

Entry (Electronic Integrated Declaration and Paperless Processing) Amendment Regulations, 2021 and further clarifications in relation to filing of advance Bill of Entry.

[Notification No. 34/2021-Customs \(N.T.\)](#)

[Notification No. 35/2021-Customs \(N.T.\)](#)

[Circular No. 08/2021-Customs](#)

[Public Notice No. 30/2021-JNCH dated 29 March 2021](#)

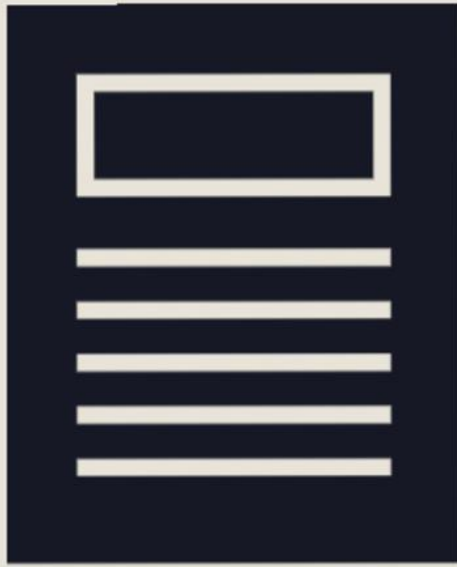
[Instruction No. 05/2021-Customs Dated the 24 March 2021](#)

## ICEGATE as common customs electronic portal

CBIC notified <https://www.icegate.gov.in> for facilitating registration, filing of bills of entry, shipping bills, other documents and forms prescribed under the said Act or under any other law for the time being in

force or the rules or regulations made thereunder, payment of duty, functions specified to be carried out through common portal through the said Act or rules made.

[Notification No. 33/2021-Customs \(N.T.\) dated 29 March 2021](#)



# DA NEWS

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# Goods and Services Tax

- March GST collections at nearly Rs 1.24 trillion, an all-time high
- GST e-invoicing welcome step for midsize firms but might be a challenge for micro, small units: FISME
- Six digit HSN code in GST made mandatory from April 1
- Gujarat Dy CM: Fuel under GST if Centre ensures VAT income of state remains untouched
- GST collection: Nearly half of full-year target achieved; Govt sets eyes on next year revenues
- GST slabs trigger classification woes
- New 'Core Entity' feature in filing GST to curb fake bills menace
- Panel recommends structural changes to boost GST revenues
- Pressure tactics? Pay in 'cash', GST officers tell taxpayers

# Customs and other

- CBIC notifies new system for filing bill of entry for importers
- Mumbai: Jail for 6, including woman, in customs fraud case
- Hike import duty on palm stearin in line with CPO : SEA
- Solar tariff rise due to customs duty would cost to Discoms INR9 billion annually
- India, Mauritius FTA to come into effect from Apr 1
- No trade with India under current circumstances: Pakistan PM Imran Khan
- Draft e-commerce policy considers industry's suggestions to boost exports

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