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DA TAX ALERT
INDIRECT TAX

AN E-TAX ALERT FROM

Darda Advisors LLP

May 2021
Issue: 12

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 twelfth 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 April 2021.

During the month of April 2021, there were certain changes under Goods and Service Tax, Customs and other; specifically giving extensions/ relaxations/ exemptions due to Covid-19 second wave, Honorable Supreme Court's ruling that provisional attachment of property should not be in haste, ruling by the Honorable High Court that instruction cannot restrict the benefit allowed under FTP and others.

We are happy to share that our DA Tax alert journey completed one year with this alert. In the twelfth 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 April 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.

Stay Well and Safe!

D.Vineet Suman
Co-founder and Managing Partner

Darda

GST COMPLIANCE CALENDAR

MAY 2021

10 GSTR-7
TDS Deductor

10 GSTR-8
TCS Deductor

11 GSTR 1
Normal Taxpayer
(Monthly)

13 gstr-6
Input Service Distributor

20 GSTR 5A
OIDAR Service Provider

20 GSTR-3b
Normal Taxpayer

20 GSTR 5
Non-Resident Taxable Pe

31 GSTR 4
Composition Dealers

31 ITC-04
Registered principals

03

- Orders issued to the buyers quashed as no proceedings were initiated against the sellers for non-payment of tax – Section 16(4) of CGST Act - Madras High Court
- Drawback or Refund allowed under GST – Circular cannot override Statutory scheme – Madras High Court
- Refund of input service under IDS – Supreme Court to hear all matters pending at High Courts
- Amount paid during investigation is refundable – Section 74 (5) of CGST Act, 2017
- ITC not available basis Debit Note issued beyond time limit prescribed in Section 16(4) of CGST Act, 2017
- Provisional Attachment of Property is draconian in nature and should not be in haste – Supreme Court
- Interest paid for delayed payment to exporter liable to GST under RCM
- Companies can use EVC facility to file GSTR 3B and GSTR-1/ IFF for period upto 31 May 2021
- Extension/Relaxation in filing GST returns
- Cumulative adjustment of ITC under Rule 36(4)

Orders issued to the buyers quashed as no proceedings were initiated against the sellers for non-payment of tax – Section 16(4) of CGST Act - Madras High Court

Multiple petitions are filed against the orders issued for reversal of credit for non-payment of tax by the supplier as per section 16(4) of CGST Act, 2017. All the petitioners are traders in Raw Rubber Sheets and they had purchased goods from a supplier for which substantial portion of the sale consideration was paid only through banking channels including the tax component also. Based on the returns filed by the supplier, the petitioners herein availed input tax credit. Later, during inspection by the respondent herein, it came to light that suppliers, did not pay any tax to the Government which necessitated initiation of the impugned proceedings. The replies were filed against the notices and requested that those supplier will have to be necessarily confronted during enquiry and without considering the request, the impugned orders passed levying the entire liability. The Honorable High Court observed and held that:

- The press release issued by the Central Board of GST council on 4 May 2018 which mentioned that there shall not be any automatic reversal of input tax credit from the buyer on non- payment of tax by the seller. In case of default in payment of tax by the seller, recovery shall be made from the seller. However, reversal of credit from buyer shall also be an option available with the revenue authorities to address exceptional situations like missing dealer, closure of business by the supplier or the supplier not having adequate assets etc.
- According to the respondent, there was no movement of the goods. Hence, examination of supplier has become all the more necessary and imperative. When the petitioners have insisted on this, the court do not understand as to why the respondent did not ensure the presence of supplier, in the enquiry.
- Thus, the impugned order suffers from certain fundamental flaws. It has to be quashed for more than one reasons i.e., Non-examination of Charles in the enquiry and Non-initiation of recovery action against Charles in the first place.
- Therefore, the impugned orders are quashed and the matters are remitted back to the file of the respondent. The stage up to the reception of reply from the petitioners herein will hold good. Enquiry alone will have to be held afresh.

Orders issued to the buyers quashed as no proceedings were initiated against the sellers for non-payment of tax – Section 16(4) of CGST Act - Madras High Court

DA Comments:

The judgment has been given in line to previous TNVAT regime too where it was held in the case law of Sri Vinayaga Agencies Vs. The Assistant Commissioner, CT Vadapalani [2013 60 VST page page 283] that the authority does not have the jurisdiction to reverse the input tax credit already already availed by the assesses on the ground that that the selling dealer has not paid the tax. However unfortunately this benefit would not be straight away given to all assessee's but would be available for only those who filed a separate writ against such notices. A must representation by each trade/commerce body to CBIC and GST Council.

M/s DY Beathel Enterprises and others Vs State Tax Officer. [WP (MD) No.2127 of 2021]

Drawback or Refund allowed under GST – Circular cannot override Statutory scheme – Madras High Court

The writ petitions is filed the appellant against the rejection of the refunds for July to September 2017 by adjudication authority taking note of paragraph 2.5 of Board's Circular No. 37/18-Customs dated 09 October 2018, on the ground that there has been an excess claim of duty draw back by the petitioner, as per which, they have renounced their claim for Input Tax Credit (ITC). The Honorable High Court observed and held that:

- It is clear from a reading of Section 54(3) that the petitioner is entitled to one or the other of two benefits, i) duty draw back or ii) Input Tax Credit. Thus, an option has been extended to an assessee engaged in zero rated sale to either claim the benefit of duty drawback or the benefit of refund of ITC.
- On a plain reading of Section 54 (3) I find the claim of refund to be in order. The orders of the appellate authority are set aside and the authority is directed to refund the sanctioned amounts within a period of six (6) weeks from today. In doing so, the contents of paragraph 2.5 of the Circular will not stand in the way since a circular cannot stand in the way of a benefit offered under a statutory scheme. Paragraph 2.5 of the circular, insofar as it is contrary to the statutory provisions of Section 54(3) is bad in law.

DA Comments:

All judgments are setting aside instruction/Rules which override the statutory provisions under the Act. There is expectation for similar issue pending at Honorable Supreme Court for refund of input services under Inverted duty structure under section 54(3) of CGST Act, 2017.

M/s Chaizup Beverages LLP vs AC and others [2021-TIOL-953-HC-MAD-GST]

Refund of input service under IDS – Supreme Court to hear all matters pending at High Courts

The Honorable High Court of Gujarat in the case of VKC Footsteps Pvt. Ltd set aside the explanation (a) to Rules 89(5) of CGST Rules, 2017 which is ultra vires to the section 54(3) of CGST Act, 2017. However, in case of M/s Transtroy Ltd, the Honorable Madras High Court has taken contrary view. Revenue is in appeal against the Gujarat High Court judgment.

Since a large number of petitions are pending in the High Courts on the same issue, it is appropriate that Bench lists the present batch of cases at an early date by posting the cases for final hearing on 28 April 2021. However, due to current epidemic situation, the hearing did not happen as Tax matters have been said to not be urgent.

DA Comments:

The said judgment will decide the future of number of pending or rejected refund claims for input services under IDS.

M/s UOI vs Quarry Owners Association and others [2021-TIOL-166-SC-GST]

Amount paid during investigation is refundable – Section 74 (5) of CGST Act, 2017

The issue came before the Honorable High Court is whether the petitioner is entitled to the refund of the amounts paid during investigation and further when the revenue relies upon the provisions of Section 74(5) of the Act. The High Court observed and held that:

- Remittance under Section 74(5) of CGST Act is in terms of Rule 142 of CGST Rules and has to be made in Form GST DRC-03. With the inception of Section 74(5), it is the case of the revenue that the collection of amounts in advance has attained statutory sanction, provided the same are voluntary in Form GST-DR03. Thus, according to the revenue, the remittances made by the petitioner during investigation in terms of Section 74(5) amount to 'self-ascertainment'.
- However, the Bench is not in agreement with the submission that Section 74(5) is a statutory sanction for advance tax payment, pending final determination in assessment; that this is contrary to the scheme of assessment set out under Section 74.
- Merely because an assessee has, under the stress of investigation, signed a statement admitting tax liability and has also made a few payments as per the statement, cannot lead to self-assessment or self-ascertainment. The ascertainment contemplated under Section 74(5) is of the nature of self-assessment and amounts to a determination by it which is unconditional, and not one that is retracted as in the present case.
- In this case, enquiry and investigation are on-going, personal hearings have been afforded and both the parties are fully geared towards issuing/receiving a show cause notice and taking matters forward. Thus, the understanding and application of Section 74(5) in this case, is, wholly misconceived
- The amount collected needs to be refunded to the assessee.

DA Comments:

In most of the investigation cases, the officer force the assessee to deposit the adhoc amount and based on section 74(5) of CGST Act and as reiterated in this judgment, the same cannot attain finality based on self-ascertainment/self-assessment

M/s Shri Nandhi Dhall Mills India Pvt Ltd vs DGGST and others [2021-TIOL-828-HC-MAD-GST]

Interest cannot be recovered without adjudication

The Company applied for two rebate claims which were initially denied but on appeal before the Commissioner (Appeals), the rebate claims were sanctioned. Instead of giving the said amount, the revenue adjusted the same and a letter was issued to pay interest for the period September 2017 for GST paid lately by invoking the provision of Section 11A of the Central Excise Act, 1944 read with Section 79 of the CGST Act, 2017 . The Company made her submission that to invoke the provision of Section 11A, a show cause notice is required which was not given to the company. Accordingly, the appeal filed before the CESTAT which observed and held that:

- With regard to recovery by invoking the provision of Section 79 of CGST Act, 2017, the issue has been settled by the Hon'ble Bombay High Court in the case of M/s New India Civil Erectors Pvt. Ltd. vs. UOI 2020 (10) TMI 59 and the Jharkhand High Court in the case of Mahadeo Construction Co. Vs. UOI - 2020 (4) TMI 666 wherein it has been held that if assessee dispute the amount of interest payable then the amount of interest is required to be adjudicated and without adjudication of the amount of interest, recovery cannot be made.
- Admittedly, in the case in hand, the appellant has disputed the interest liability and the same has not been adjudicated, in that circumstances, the recovery of interest from the appellant is not in terms of law and the said recovery cannot be made as held by the Hon'ble High Court hereinabove. Therefore, I do not find any merit in the impugned orders, the same are set-aside.

DA Comments:

The interest liability under Section 50 of the CGST Act is not automatic, but the said amount of interest is required to be calculated and intimated to an assessee. If an assessee disputes the liability of interest i.e. either disputes its calculation or even the leviability of interest, then the only option left for the assessing officer is to initiate proceedings either under Section 73 or 74 of the Act for adjudication of the liability of interest.

CMI LTD vs CCEST [2021-TIOL-235-CESTAT-CHD]

ITC not available basis Debit Note issued beyond time limit prescribed in Section 16(4) of CGST Act, 2017

The company raised two queries before AAR specifically, one related to classification of goods and other on whether ITC can be claimed for GST charged on debit note issued by the supplier in current financial year i.e. 2020 21, even though the original transaction took place in 2018-19. The AAR on second query observed and held that:

- As regards the claim of ITC, AAR noted that the phraseology "such invoice or invoice relating to such debit note pertains" will now read as "such invoice or debit note pertains" post the amendment. However, no drastic or far reaching change has been affected by Finance Bill, 2020 as interpreted by the taxpayer, and, irrespective of the fact as to whether the words "invoice relating to such" is connected to "debit note" or omitted, the fact remains that a DN is always connected to the invoice and issued in relation to change in value of an invoice;
- The AAR added that, the intention of the legislature is to omit the words "invoice relating to such" in the said sub section, was not to disconnect DN from the original invoice so as to give an independent existence to DN and to allow taxpayer claim of ITC of GST charged separately in DN issued in FY 2020 21, relating to the transaction of FY 2018 19
- The very purpose of incorporating details of original invoice issued by supplier is to restrict ITC
- The AAR concluded that taxpayer shall be entitled to ITC only in respect of DN issued by the supplier within the time limit specified under section 16(4) of CGST Act.

DA Comments:

The impact of such ruling would be on all taxpayers including transactions related to RCM, since the amendment in section 16 of the CGST Act, 2017 vide the Finance Act, 2020 was seen as beneficial to the industry, as it is a standard practice to issue debit note for price variations as and when applicable

M/s. I-tech Plast India Pvt.Ltd. [Gujarat AAR - GUJ/GAAR/R/10/2021]

Nexus required to avail ITC related to other products – AAR

The company is involved into bullion trading and castor oil seeds trading. The Input Tax Credit (ITC) is accumulated in relation to bullion trading and no ITC is available in the castor oil seeds trading as supply from agriculturist is not liable to GST. Being both transactions are in single GST registration, the company sought an advance ruling from AAR whether the ITC related to bullion trading can be used to discharge the liability of GST on castor oil seeds. The AAR held that:

- Further, ongoing through the provisions of the Section-16 as mentioned above, we find that sub-section(1) specifically mentions that the registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business.
- This means that, for the applicant, to be eligible to take input tax credit on any supply of goods or services, the same has to be used or should be intended to be used in the course or furtherance of his business i.e., the nexus/connection between the inputs and the final products manufactured from these inputs is required to be proved.
- Even otherwise, on a plain comparison of the provisions of Section 16(1) of the CGST Act, 2017 with the issue in hand, it can very easily be derived that there is no nexus/connection whatsoever, of the inputs i.e., gold dores or silver dores with the business of supply of Castor oil seeds by the applicant. It can therefore, be seen that the even the basic conditions envisaged in the provisions of Section 16(1) have not been fulfilled in the instant case and we can therefore, undoubtedly conclude that the aforementioned inputs are not used or intended to be used in the course or furtherance of the business of supply of Castor oil seeds.

M/s Aristo Bullion Pvt Ltd [Gujarat AAR - 2021-TIOL-118-AAR-GST]

DA Comments:

The interpretation of requirement of nexus/one to one correlation for availment of ITC as per section 16(1) of CGST Act, 2017 by AAR is beyond imagination and such cases needs to be centrally handled by National Appellate Authority which is yet to be set up to avoid hardship to the applicant and other industry players.

Services to foreign customer at Custom bonded warehouse considered as 'export of services'

The applicant provides following services at Custom bonded warehouse in relation to the cargo (goods temporarily imported) which will go directly from vessel to custom bonded warehouses and never crosses customs barrier and mix up with indigenous goods and same are ultimately for export purpose and are temporarily coming to India for warehousing and jobbing purpose:

- Proper discharge of cargo from vessel
- Proper storing of cargo at the custom bonded warehouse.
- Bagging as per requirement of the client.
- Dispatch cargo as per requirement within 2/3 months from discharge.
- Act as agent for the client and follow instructions for negotiations of freight of containers, purchase of empty bags locally or purchase of any other product, if the client so desires.

The queries raised before AAR are whether above described services (in brief facts) considered to be export of service or not and if yes, whether they are eligible for 'zero rated supply' under section 16 of the IGST Act, 2017. The AAR observed and held that:

The AAR observed that as per the terms of the agreement, the parties will pay the taxpayer in USD/per metric tons (the rate varies from client to client)

- The place of supply of services will be in India as per section 13(3)(a) of the IGST Act, 2017 since the second proviso to section 13(3)(a) is not applicable to the taxpayer due to amendment in second proviso to section 13(3) of the IGST Act, 2017 w.e.f. 01 February 2019. vide notification no:01/2019 IGST dated 29 January 2019
- The other conditions as envisaged in section 2(6) of the IGST Act, 2017 is analyzed and held that the services mentioned above is not considered as 'export of service' for the period prior to 01st February 2019 but will be considered as 'export of service' w.e.f. 01 February 2019 onwards
- As regards the eligibility of the taxpayer for 'zero rated supply' under section 16 of the IGST Act, 2017, they observed that taxpayer shall not be eligible for 'zero rated supply' as per the provisions of the said section up to 31 January 2019. However, they will be eligible for 'zero rated supply' as per the provisions of section 16(1)(a) of the IGST Act, 2017 w.e.f. 01 January 2019 due to amendment in in second proviso to section 13(3) of the IGST Act, 2017 w.e.f. 01 February 2019. vide notification no:01/2019 IGST dated 29 January 2019.

Services to foreign customer at Custom bonded warehouse considered as 'export of services'

DA Comments:

The AAR analyzed all relevant relevant conditions of export of of services before giving an ruling and specifically on amendment W.e.f 1 February 2019 in relation to place of supply.

M/s. Manoj Bhagwan Mansukhani (M/s. Rishi Shipping) [Gujarat AAR - GUJ/GAAR/R/12/2021]

Provisional Attachment of Property is draconian in nature and should not be in haste – Supreme Court

This appeal arises from a HP High Court judgment dismissing the writ petition instituted under Article 226 of the Constitution challenging orders of provisional attachment on the ground that an alternate remedy is available. The issue in this case is whether the orders of provisional attachment issued by the third respondent are in consonance with the conditions stipulated in Section 83 of the HPGST Act. The Honorable Supreme Court observed that:

Maintainability of writ petition before the Court - Certain exceptions to this "rule of remedy" include where, the statutory authority has not acted in accordance with the provisions of the law or acted in defiance of the fundamental principles of judicial procedure; or has resorted to invoke provisions, which are repealed; or where an order has been passed in violation of the principles of natural justice.

Provisional attachment -

- Section 83 provides for "provisional attachment to protect revenue in certain cases". The first point to note is that the attachment is provisional – provisional in the sense that it is in aid of something else. The second point to note is that the purpose is to protect the revenue. The third point is the expression "in certain cases" which shows that in order to effect a provisional attachment, the conditions which have been spelt out in the statute must be fulfilled. Marginal notes, it is well-settled, do not control a statutory provision but provide some guidance in regard to content. An interpretation which effectuates the purpose must be preferred particularly when it is supported by the plain meaning of the words used.
- The Commissioner's understanding that an opportunity of being heard was at the discretion of the Commissioner is therefore flawed and contrary to the provisions of Rule 159(5). There has, hence, been a fundamental breach of the principles of natural justice.
- This interpretation would be an expansion of a draconian power such as that contained in Section 83, which must necessarily be interpreted restrictively. Given that there were no pending proceedings against the appellant, the mere fact that proceedings under Section 74 had concluded against GM Powertech, would not satisfy the requirements of Section 83. Thus, the order of provisional attachment was ultra vires Section 83 of the Act.

Provisional Attachment of Property is draconian in nature and should not be in haste – Supreme Court

- Unless there was a change in the circumstances, it was not open for the Joint Commissioner to pass another order of provisional attachment, after the earlier order of provisional attachment was withdrawn after considering the representations made by the petitioner. This is an additional ground to set aside the subsequent order of provisional attachment.

And held that:

- The Joint Commissioner while ordering a provisional attachment under section 83 was acting as a delegate of the Commissioner in pursuance of the delegation effected under Section 5(3) and an appeal against the order of provisional attachment was not available under Section 107 (1);
- The writ petition before the High Court under Article 226 of the Constitution challenging the order of provisional attachment was maintainable
- The power to order a provisional attachment of the property of the taxable person including a bank account is draconian in nature and the conditions which are prescribed by the statute for a valid exercise of the power must be strictly fulfilled
- Before ordering a provisional attachment the Commissioner must form an opinion on the basis of tangible material that the assessee is likely to defeat the demand, if any, and that therefore, it is necessary so to do for the purpose of protecting the interest of the government revenue.
- In the facts of the present case, there was a clear non-application of mind by the Joint Commissioner to the provisions of Section 83, rendering the provisional attachment illegal;
- There has been a breach of the mandatory requirement of Rule 159(5) and the Commissioner was clearly misconceived in law in coming into conclusion that he had a discretion on whether or not to grant an opportunity of being heard
- The Commissioner is duty bound to deal with the objections to the attachment by passing a reasoned order which must be communicated to the taxable person whose property is attached

DA Comments:

The said case has given detailed analysis and point to point judgment on provisional attachment which creates base for any such proceedings by GST officers in any such cases.

M/s Radhakrishna Industries vs State of HP and others [Civil Appeal no. 1155 of 2021]

Trading of pre developed software license considered as supply of goods

The Company is a trader engaged in importing of software license and further reselling it to domestic customers by providing a link to the customer over the internet in order to download the software together with a CD containing the software, without making any modifications.

The Company sought advance ruling on whether the benefit of reduced rate for supply of specified goods to public funded research institutions as provided under Notification No. 45/2017 Central Tax (Rate) dated 14 November 2017 would also cover the supply of license to use the software. The AAR observed and held that:

- The FAQs in terms the Schedule, pointed out that the software amounts to supply of good since it is a pre developed or pre designed software made available through the use of encryption keys.
- As per the Explanatory Notes to the scheme of classification of services, HSN 997331 precisely excludes the limited end user license as part of packaged software. Accordingly, the supply of software amounts to supply of goods and not supply of services and the said supply will be covered under HSN 8523.
- Further, the goods supplied can be used only with the aid of a computer, hence covered under "Computer Software" as mentioned in the rate notification.
- Thus, the benefit of reduced rate of GST as mentioned in the rate notification will be applicable to the software supplied to public funded research institutions.

DA Comments:

The issue solely on classification for which AAR given the ruling separately based on nature of product and further basis to whom the same is supplied.

M/s SPSS South Asia Private Limited [AAR Karnataka, KAR ADRG 15/2021]

GST not applicable on transactions between Club and its members

The Club filed an advance ruling on applicability of GST on contribution of members by way of subscription fees and infrastructure development fund which is used for the purposes of provision of services and goods and a reading room, library, chambers for accommodating family and guests, a bar and sports facilities.

In addition, the applicant outsources catering services who supply foods and beverages and run a super market within the premise of the applicant. These facilities are only available for use by the members. These outsourced agencies charge GST on their supplies of food, beverages and sale of goods to members. The applicant bears the cost of such goods and services from the subscription fees paid by the members. The AAR observed and held that:

Finance Act, 2021 has overruled what the Courts have held till now and has countered the Principle of Mutuality by way of Explanation which states that the members or constituents of the club and the club are two separate entities and persons for the purpose of Section 7 of CGST Act, 2017 which defines Supply.

The same will only come into effect on the date when Central Govt notifies the same and then the same will be notified with the corresponding amendments passed by the respective States and Union territories in respective SGST/ UTGST Act.

The AAR held that unless the amended Section 7 of CGST Act, 2017 is notified, the applicant is not liable to pay GST on subscription fees and Infrastructure development fund collected from the members as per the Supreme Court judgment in the case of M/s. Calcutta Club Ltd.

DA Comments:

Being the amendment is retrospective and Finance Act, 2021 has already been passed, the question of relevance of such ruling and its impact need to be looked into

M/s Bowring Institute (Kar AAR – KAR ADRG 27/2021 dated 22 April 2021)

Promotional Products/Materials & Marketing items supplied Free of Cost not eligible for ITC

The Company is engaged in the manufacture and distribution of various garments which has a network of franchisees and distributors ("Exclusive Brand Operators" / "EBOs") for distribution of its products. The company procured advertisement services and marketing materials / promotional products on payment of applicable GST, to foster the market of their products. The same was also transferred to its EBOs.

In above regard, the company approached the AAR on which AAR held that display stands / boards, cupboards, hoardings etc. can be treated as capital goods and EBOs are construed as 'related persons' of the taxpayer. Hence, ITC on supply of such items to EBOs can be availed, in terms of para 2 of schedule I to the CGST Act, 2017. Further, it was held by the AAR that free of cost of supply of pens, diaries, calendars etc. embossed with brand name amounts to disposal by way of gifts. Thus, ITC in respect of the same cannot be availed in conformity with section 17(5) of the CGST Act, 2017. Aggrieved by the order passed by the AAR, the company preferred appeal before the AAAR.

- On perusal of agreements entered into between the taxpayer and EBOs, AAAR ruled out the finding by AAR and agreed to contention of the taxpayer that stands, hoardings etc. amounts to revenue expenditure;
- The AAAR stated that supply of the promotional products from taxpayer to EBOs neither gets covered under the definition of 'supply' as per section 7 of the CGST Act, 2017 since it is made without consideration nor the said supply comes under the purview of schedule I to the CGST Act, 2017 as there is no transfer of assets is involved and no related party relationship exists between the concerned entities. Accordingly, the said supply can be termed as non taxable supply in line with section 2(78) of the CGST Act, 2017 which is further covered under the definition 'exempt supply' as per section 2(47) of the CGST Act, 2017;
- The AAAR further stated that as per section 17(2) of the CGST Act, 2017, ITC can be availed with respect of only those goods and services which are used for business purpose or for making a taxable supply. In light of the said provisions, the GST paid on the said supply is not eligible for ITC as the same amounts to non taxable supply;
- Further, supply of pens, diaries etc. gets covered under the definition of gift. Thus, ITC in respect of such supply gets specifically disallowed in terms of section 17(5) of the CGST Act. Additionally, the said supply also amounts to non taxable supply resulting into ineligible ITC in view of reasons discussed above.

Promotional Products/Materials & Marketing items supplied Free of Cost not eligible for ITC

DA Comments:

The issue on availability of credit on promotional items needs to be clarified by CBIC as any promotional activity are are in the furtherance course of business and should be allowed as eligible expenditure expenditure for ITC.

M/s. Page Industries Limited [Karnataka AAR - KAR/AAAR/05/2021]

GST applicability and time of supply to gift voucher/gifts/pre paid instruments

The Company is in the business of manufacturing and trading of Jewellery Products. As a part of sales promotion, the Taxpayer introduced the facility of different types of Pre-Paid Instruments (PPI's) viz., Closed System PPIs, Semi closed System PPIs, Open System PPIs through its retail outlets, third party PPI issuers and online portals to their Customers and these are generally called "Gift Vouchers/Gift Cards" in trade practice. The ruling sought from AAR on various following aspects and being aggrieved by ruling, the appeal filed before AAAR:

- The Own closed PPIs issued by the Taxpayer are 'Vouchers' as defined under CGST/TNGST Act 2017 and are a supply of goods under CGST/TNGST Act 2017.
- The time of supply of such gift vouchers / gift cards by the Taxpayer to the customers shall be the date of issue of vouchers if the vouchers are specific to any particular goods specified against the voucher. If the gift vouchers/gift cards are redeemable against any goods bought, the time of supply is the date of redemption of voucher.
- In the case of paper based gift vouchers classifiable under CTH 4911 the applicable rate is 12%
- In the case of gift cards classifiable under CTH 8523 the applicable rate is 18%

The AAAR observed and held that:

- Vouchers issued by the appellant are of the nature of actionable claims. Actionable claims, though included within the definition of goods under section 2(52), have been included in entry 6 of schedule III and therefore cannot be treated either as supply of goods or supply of services. It follows that vouchers are not subject to levy of tax under the GST act.
- The AAR points out that there is an inherent contradiction with the provision in sub sections (4) of section 12 and 13, that deal with determining the time of supply for goods and services respectively, both use the term 'voucher', and therefore indicate that voucher relate to both goods and services. If vouchers are to be treated as actionable claims, they are only goods and not services.
- Also, the AAAR observed that we are also of the view that vouchers are neither goods nor services, and to that extent, without the need to examine whether voucher is an actionable claim, agree with the appellant, but for different reasons.

GST applicability and time of supply to gift voucher/gifts/pre paid instruments

- The AAAR concluded by examining that when a voucher is issued, though it is just a means of advance payment of consideration for a future supply, sub section (4) of section 12 and 13 determine the time of supply of the of the underlying good(s) or service(s). Voucher per se is neither a goods not a service. It is a means for payment of consideration. Hence, there is no need to determine whether voucher is an actionable claim to arrive at a conclusion that it is neither a goods nor a service.
- Therefore, in the view of the AAAR the gold voucher, representing the underlying future supply of gold Jewellery, would be taxable at the time of issue of the voucher.
- The time of supply of the gift vouchers / gift cards by the Taxpayer to the customers shall be the date of issue of such vouchers and the applicable rate of tax is that applicable to that of the goods.

DA Comments:

The ruling giving time of supply based on the date of issue of voucher can be further challenged by the applicant.

M/s. Kalyan Jewellers India Limited [AAAR Tamil Nadu - 52/ARA/2019]

Interest paid for delayed payment to exporter liable to GST under RCM

The Company is engaged in manufacture and supply transformer components and imports goods from its holding company on CIF basis and pays applicable IGST on assessable value. In case the company makes the payment to the holding company beyond the agreed timelines, Enpay Turkey would charge interest on the said delayed payment. Further, in order to safeguard the payment, the company furnishes bank guarantee and applicable stamp tax is paid by Enpay Turkey for processing of the bank guarantee as a 'pure agent' of the taxpayer. The same is subsequently reimbursed by the taxpayer. The query raised before AAR are:

- Whether interest on delayed payment is liable to GST under RCM. Further, if yes, what will be the rate of tax.
- Whether reimbursement of stamp tax is liable to GST under RCM.

The AAR observed and held that:

- With regard to the first issue raised by the taxpayer, the AAR rules that as Enpay Turkey tolerates an act of receiving payment after agreed timeline, the same gets covered under entry no:5(e) of Schedule II of the CGST Act, 2017. Further, as per section 15(2)(d) of CGST Act, 2017, value of supply includes any interest or penalty of late fee for delayed payment of consideration of any supply;
- With regard to the second question, the AAR rejected the existence of 'pure agent' relationship between the taxpayer and Enpay Turkey on the lawful grounds mentioned below:
  - No bonafide agreement/document evidencing 'pure agent' relationship has been submitted;
  - The payment of stamp tax is recovered by Enpay Turkey by issuance of a separate invoice and not by separately mentioning it on the invoice issued in respect of goods;
  - The bank guarantee is in direct related to the business connection between both the entities and not in addition to the goods sold by Enpay Turkey to the taxpayer;
  - The bank guarantee is used for the interest of Enpay Turkey.

DA Comments:

The Pure Agent conditions have been relaxed in comparison to erstwhile law and the applicant may file an appeal against the ruling in relation to 'Pure Agent' query before AAAR.

M/s. Enpay Transformer Components India Private Limited [AAR Gujarat - GUJ/GAAR/R/01/2021]

Companies can use EVC facility to file GSTR 3B and GSTR-1/ IFF for period upto 31 May 2021

Companies can during the period from the 27 April 2021 to 31 May 2021 be allowed to furnish the FORM GSTR-3B and FORM GSTR-1 or using invoice furnishing facility, verified through electronic verification code (EVC) instead of Digital Signature Certificate (DSC) which is a mandatory requirement

Notification No. 07/2021–Central Tax dated 27 April 2021

Extension of GST compliances to 31 May 2021

Keeping in view of the spread of pandemic COVID-19 across many parts of India, the Government extends the time limit for completion or compliance of action which falls during the period from the 15 April 2021 to 30 May 2021 upto 31 May 2021. Also time limit falls during the period from the 1 May 2021 to 31 May 2021, it shall be extended to 15 June 2021.

Notification No. 14/2021- Central Tax dated 1 May 2021

Cumulative adjustment of ITC under Rule 36(4)

ITC adjustment under Rule 36(4) shall apply cumulatively for the period April and May, 2021 in the FORM GSTR-3B of the tax period May 2021

Notification No. 13/2021- Central Tax Dated 1 May 2021

Extension/Relaxation in filing GST returns

CBIC considering the COVID pandemic, has relaxed filing of GST returns as depicted below

Return	Period	Existing Due date	Extended Due date	Interest rate waiver	Late fee waiver
GSTR 1	March 2021	11 April 2011	No extension	NA	No waiver
	April 2021	11 May 2021	26 may 2021	NA	No waiver
	Jan-March 2021	13 Apr 2021	No extension	NA	No waiver
IFF (Quarterly taxpayers)	April 2021	13 May 2021	28 May 2021	NA	No waiver
GSTR 3B	March 2021	20 Apr 2021	No extension	If Aggregate turnover > Rs. 5 Cr • 21 April 2021 to 5 May 2021 – 9% • 6 May 2021 onwards - 18% If Aggregate turnover < Rs. 5 Cr • 21 April 2021 to 5 May 2021 – Nil • 6 May 2021 -20 May 2021 – 9% • 21 May 2021 onwards - 18%	If Aggregate turnover > Rs. 5 Cr • 21 April 2021 to 5 May 2021 If Aggregate turnover < Rs. 5 Cr • 21 April 2021 to 20 May 2021
	April 2021	20 May 2021	No extension	If Aggregate turnover > Rs. 5 Cr • 21 May 2021 to 4 June 2021 – 9%	If Aggregate turnover > Rs. 5 Cr • 21 May 2021 to 4 June 2021

Extension/Relaxation in filing GST returns

Return	Period	Existing Due date	Extended Due date	Interest rate waiver	Late fee waiver
GSTR 3B				• 4 June 2021 onwards - 18% If Aggregate turnover < Rs. Rs. 5 Cr • 21 May 2021 to 4 June 2021 – Nil • 5 June 2021 to 19 June 2021 – 9% • 20 June 2021 onwards - 18%	If Aggregate turnover < Rs. 5 Cr • 21 May 2021 to 19 19 June 2021
GSTR 3B	Jan-March 2021	22/24 April April 2021	No Extension	• 23/25 April 2021 to to 7/9 May 2021-Nil	• 23/24 April 2021 2021 to 22/24 May 2021
PMT (Quarterly taxpayers)	Apr 2021	25 May 2021	No Extension	No Waiver	No Waiver
GSTR 4	FY 20-21	30 April 2021	31 May 2021	NA	No waiver
CMP-08	Jan -Mar 2021	18 April 2021	No Extension	• 19 April 2021 to 8 May 2021-Nil • 9 May 2021 to 23 May 2021 – 9% • 24 May 2021 onwards – 18%	No waiver
ITC - 04	Jan -Mar 2021	25 Apr 2021	31 May 2021	NA	No waiver

Extension/Relaxation in filing GST returns

Notification No. 8/2021- Central Tax Dated 1 May 2021

Notification No. 9/2021- Central Tax Dated 1 May 2021

Notification No. 10/2021- Central Tax Dated 1 May 2021

Notification No. 11/2021- Central Tax Dated 1 May 2021

Notification No. 12/2021- Central Tax Dated 1 May 2021

Notification No. 13/2021- Central Tax Dated 1 May 2021

Notification No. 1/2021- Integrated Tax Dated 1 May 2021

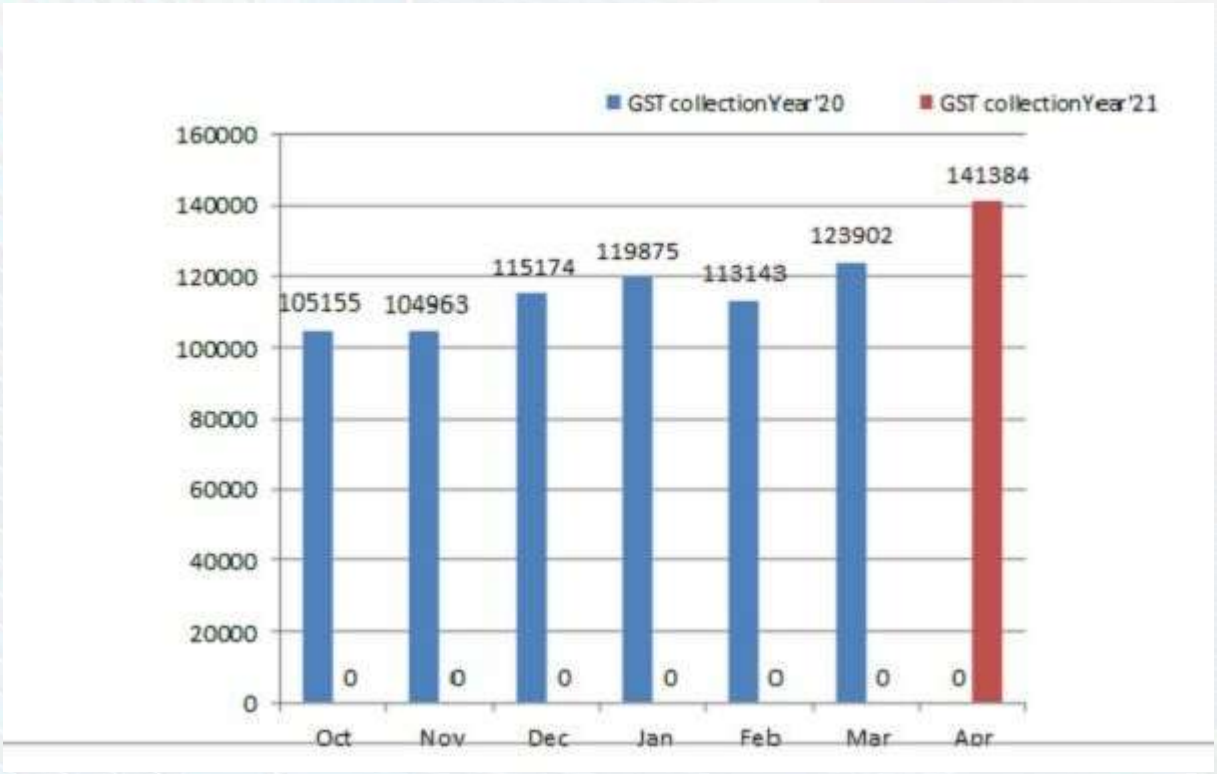
Notification No. 01/2021-Union Territory Tax dated 1 May 2021

GSTN Portal Updates

Filing status of the last 5 months is now displayed in the GST portal

GST Revenue Collection in April 2021-Rs.1.41 lakh Cr.

Trends in GST Collection in



- Instruction cannot restrict the benefit allowed under FTP – SEIS related
- MEIS claim allowed post amendment of Shipping Bill
- Financing of the manufactured vehicles promotes the sale of vehicles and thus eligible for CENVAT Credit
- Bill of Lading is ownership document and not a Bill of Entry – High Sea Sales related
- SCN issued to demand refund already given based on earlier SC judgment held as 'Per Incuriam' is not sustainable – Central Excise
- Penalty cannot be imposed when duty and interest paid before issuance of SCN – Service Tax
- Late cut for MEIS for FY 2019-20
- Contactless Customs Processing during COVID-19 pandemic
- Instruction by CBIC on issue of SCN considering SC judgment in Canon India
- Instruction to AC/DC - Over-valued export of glass beads under erstwhile DEPB Scheme - Reg.
- Exemptions/Concession on Covid related medicines/products/equipment's

Instruction cannot restrict the benefit allowed under FTP – SEIS related

All the writ petitions filed have challenged the instructions dated 22 May 2019 advising that all services, whether Engineering Services (Network Engineering Services, Management and Operation of Network Services (Managed Services) in Telecom Sector or Management Consulting Services) in Telecom Sector, are ineligible for the benefit under the Service Exports from India Scheme (SEIS) under Foreign Trade Policy 2015-20 (FTP) and further against the order issued for rejection of claims based on said instructions. Key arguments from the petitioners are:

- The Impugned Instructions are contrary to the FTP inasmuch as they seek to create an additional category of ineligible services for availing the benefit of SEIS.
- The phrase "Service Providers in Telecom Sector" relates to the service providers who are in the telecom sector and not those who provide services to the telecom sector. The services provided are distinct from Telecommunication Services and are therefore, eligible for the benefit under the FTP even though they are provided to Telecom Service Providers
- The adjudication being quasi-judicial in nature, cannot be influenced by any instructions or circulars issued by even a superior authority.
- The impugned orders are in violation of the Principles of Natural Justice having been passed without granting an opportunity of hearing.
- Even if this Court was to hold that there was an ambiguity in the FTP, the same has to be interpreted liberally and in favour of the petitioner.

The Honorable High Court observed and held that:

- It is apparent that "Service Providers in Telecom Sector" meant and included only the Telecom Service Providers of services mentioned therein. The ambit and scope of such exclusion was not of Service Providers who render services to such Telecom Service Providers.
- The Foreign Trade Policy is clear and unambiguous inasmuch as it excludes the Telecom Service Providers from the benefit of the SEIS and not the Service Providers who provide services to such Telecom Service Providers. As noted hereinabove, the ambit of the term was clearly spelled out in S.No. 2(C) of Appendix-10 to HBPv1 to FTP 2009-14. No different intention regarding the same is discernible from the FTP 2015-20.

Instruction cannot restrict the benefit allowed under FTP – SEIS related

- A reading of the TRAI Act, 1997 provisions would clearly show that the 'Service Provider' is one who in terms of a license granted under Section 4 of the Indian Telegraph Act, 1885 provides Telecommunication Services as defined under Section 2(k) of the TRAI Act. I see no reasons to interpret 'Service Providers in Telecom Sector' in the FTP differently.
- The Impugned Instructions dated 22 May 2019, therefore, sought to impose fresh restrictions on the eligibility of the service providers entitled to the benefit under SEIS, which amounted to amendment in the policy, and is therefore, ultra vires the Foreign Trade Policy.
- The impugned orders/communications therefore, suffer from the same vice as the Instructions/Circular dated 22 May 2019 and are equally liable to be set aside by this Court.
- It is held that in the facts of the case, where the impugned Instructions/Circular dated 22.05.2019 has been issued under the instructions of the DGFT itself, the remedy of appeal under Section 15 of the Act would clearly be otiose and redundant. As far as the remedy under Section 16 of the Act is concerned, once it is held that the Impugned Orders have been passed on basis of Instructions which are otherwise ultra vires the Act, the petitioner cannot be denied the benefit of an original adjudication on merits and the decision on an appeal under Section 15 of the Act in accordance with law, and be relegated only to a remedy of review.

DA Comments:

The said decision has reiterated on two aspects (i) Writ petitions can be allowed even when alternate remedy is available (ii) Instructions/Rules/Notices/Circular cannot override the Act/legislation's provisions.

Ericsson India Global Services Pvt. Ltd and others vs UOI and others [W.P.(C) 13249/2019 & CM APPL. 53883/2019 and others]

MEIS claim allowed post amendment of Shipping Bill

The MEIS (Merchandise Export of India Scheme) scrip issued during the period April 2015 to May 2015 for the export made from non-EDI port was suspended by DGFT as the declaration as required under para 3.14 of Handbook of Procedures is not made on shipping bills. The company filed writ petition to forthwith revoke the suspension of the MEIS, and return the said Duty Credit Scrips to the petitioner after extending the validity thereof for a period of 18 months from the date of such return. The High Court observed and held that:

- Section 149 of the Customs Act, 1962, specifically permits amendment of the shipping bills even after the export on the basis of the documentary evidence which was in existence at the time the goods were exported.
- Section 149 of the Customs Act, 1962 does not prescribe any time limit. In fact, at the relevant point of time, it did not even provide for the fixation of the time limit by way of rules or regulations. Therefore, no time limit can be read into the said provision nor can it be introduced by way of a circular. It is well-settled that a subordinate legislation cannot travel beyond the parent statute or impose a limitation or restriction not found in the parent statute.
- There is no restriction in the said provision for not allowing the amendment after the goods are exported unless the goods are checked at the time of export. Hence, the authorities cannot to introduce such restrictions de hors the said provision.
- This Court, as well as other High Courts have allowed several petitions where the free shipping bills were allowed to be amended and/or the MEIS benefits were directed to be given despite lack of declaration
- In the present case, the authorities had themselves sought clarification from the DGFT as to whether such declaration was mandatory prior to 1 June 2015 and were awaiting such clarification.
- In the case of the EDI shipping bills, the declaration is by ticking "Y" (for Yes) in the reward column, which was not done by several exporters who had exported through the EDI ports. This was the exporter's mistake as well as the inadvertent omission of declaration on the shipping bill in the case of the non-EDI shipping bills. Therefore, to discriminate between the two would be unreasonable and unfair.

MEIS claim allowed post amendment of Shipping Bill

- This lapse being a technical or a procedural lapse, the writ applicant should not be denied substantive benefits, as held by this Court in the case of Bombardier Transportation India Pvt. Ltd. (2021-TIOL-478-HC-AHM-CUS)
- In light of the aforesaid, it would be extremely unfair and unjust not to extend the benefits of the MEIS to the writ applicant on the ground that it had exported goods from a non-EDI port.
- Application succeeds and is hereby allowed. Reliefs granted.

DA Comments:

It is well settled that Shipping Bills amendment without any time limit is allowed. The same needs to be implemented at ground level by officer would only help exporters to get relief and less burden at various High Courts.

Oriental Carbon And Chemicals Ltd vs UOI and others [2021-TIOL-786-HC-AHM-CUS]

Financing of the manufactured vehicles promotes the sale of vehicles and thus eligible for CENVAT Credit

The company entered into an agreement with its own finance company to provide finance facilities to customers, who purchase two wheelers manufactured by the company. During the period under consideration, the finance company raised invoices on the respondent/assessee under the head "Business Auxiliary Services" including service tax at appropriate rates and the company availed credit of the service tax paid being input services provided to them. This credit was denied by the Revenue but in appeal, the CESTAT allowed the appeal by concluding that the activity rendered by the finance company is an activity relating to the business of manufacture of the assessee and hence qualifies as 'input service' inasmuch as credit is admissible. Therefore, Revenue is aggrieved and before the High Court wherein it was observed and held that:

- The facts clearly show that there is direct nexus between the activity of the finance company with that of the activity of the assessee. The Revenue has not disputed the factual position that the services rendered by the finance company is exclusively to the assessee.
- The expansive definition requires to be applied in this case and as noted, the Memorandum of Understanding provides for exclusive retail financing of two wheelers manufactured by the assessee, which results in promotion and expansion of sale of two wheelers manufactured by the assessee and payments are received by the finance company from the assessee and as the services are taxable under Business Auxiliary Services,
- Thus, as long as services of TVSFS in relation to financing of the vehicles manufactured by the assessee promotes the sale of vehicles manufactured by the assessee, such service is taxable under Business Auxiliary Services. [para 23]
- Tribunal had rightly allowed the assessee's appeal and granted the relief.

DA Comments:

The number of OEMs did not claim the CENVAT credit on such financing services during erstwhile regime and considering this judgment, the CENVAT credit is allowed as part of the promotion activity leads to loss of credit to them.

CGSTCE vs M/s Tvs Motor Company Ltd [2021-TIOL-771-HC-MAD-CX]

Bill of Lading is ownership document and not a Bill of Entry – High Sea Sales related

The appellant is a dealer in camphor and during the GST/CST assessment, the assessing officer disallowed high sea sales transaction based on the conclusion that there was an interpolation in the Bill of Entry and that the name of the customer had been inserted whereas in the original copy available with the Customs Department, the name of the ultimate buyer/customer was not found. The appellate tribunal disallowed the appellant appeal and thus case filed at Honorable High Court which observed and held that:

- The question would be as to whether the Bill of Entry can be regarded as title to the goods. There can be no quarrel over the legal position that the Bill of Entry is never treated as a document of title under the Customs Act, 1962. Rather, the Bill of Lading is the document of title, which should contain the name of the ultimate buyer. In the instant case, the Revenue did not dispute the fact that the duty was paid by the ultimate buyer and except for the alleged interpolation in the Bill of Entry, there was no other adverse finding rendered either by the Assessing Officer or by the Tribunal against the dealer;
- Section 47 of the Customs Act, 1962 refers to clearance of goods for home consumption, while Section 68 of the Customs Act deals with clearance of warehoused goods for home consumption, that in this case, the goods had been warehoused and the clearance for home consumption was made under Section 68 of the Customs Act, after the title to the goods had been transferred to the buyers and that the duty paid by the buyer would qualify for high sea sales. [State Trading Corporation of India Vs. State of Tamil Nadu [reported in (2002) 149 ELT 3]

DA Comments:

The long debate on whether Bill of Entry or Bill of Lading is an ownership document is well settled in the number of legal precedents and further on the point that other facts cannot be overlooked which establish that the transaction such HSS has been undertaken

M/s Suresh Industries vs STAT and others [2021-TIOL-840-HC-MAD-VAT]

SCN issued to demand refund already given based on earlier SC judgment held as 'Per Incuriam' is not sustainable – Central Excise

In all these writ petitions, the petitioners have challenged the SCNs issued by the Central Excise Authority to recover the amount of Education Cess and Secondary Higher Education Cess which is already refund, under the provisions of Section 11A(i) of the Central Excise Act, 1944 (CE Act) in view of the judgment and order of the Apex Court in M/S Unicorn Industries Vs UOI (2020) 3 SCC 492 whereby an earlier Judgment of the Apex Court, namely, SRD Nutrients Pvt. Ltd. Vs CCE (2018) 1 SCC 105 have been declared to be per incuriam and thus the refunds earlier granted to the petitioners on the strength of the judgment in M/S SRD Nutrients (supra) have become "erroneous refunds" and, therefore, the same are sought to be recovered from the petitioners by way of impugned SCN.

The Apex Court by the Judgment and Order dated 10 November 2017 in "M/S SRD Nutrients (supra)" decided the issue by holding that the appellants were entitled to refund of Education Cess and Secondary and Higher Education Cess which were paid along with excise duty as the excise duty itself was exempted from levy. The Apex Court in Unicorn Industries (supra) held that earlier binding judgments of the Apex Court in M/S Modi Rubber Limited and Rita Textiles Pvt. Ltd. were not placed for consideration and, therefore, decision of the Apex Court rendered in SRD Nutrients and Bajaj Auto Limited were clearly per incuriam. The Honorable High Court observed and held that:

- It is seen that the term "erroneous" any error deviating from law. A change of law subsequently would not make an action taken earlier by Quasi Judicial Authority in terms of law as it stood then, to be held to be erroneous so as to enable the Departmental Officer to invoke powers under Section 11A of the Central Excise Act. The mandate of section requires the departmental Officer to apply its mind and only upon satisfaction of the conditions mentioned under sub- Section (4) of Section 11A can any refund granted earlier be treated to have been erroneously.
- Therefore, the refunds granted earlier cannot be considered "erroneous" to invoke the powers under Section 11A of the Central Excise Act, 1944 only on the premise that the Judgment of the Apex Court in "M/S SRD Nutrients Private Limited" (supra) held to be "per incuriam" by the Apex Court subsequently in "M/S Unicorn Industries Private Limited".

SCN issued to demand refund already given based on earlier SC judgment held as 'Per Incuriam' is not sustainable – Central Excise

- Since, the review filed before the Supreme Court were dismissed and since no further appeal and/or review was passed against the different orders passed by the Gauhati High Court, the lis between the parties, namely, the petitioners and the Department of Central Excise has attained finality in respect of the issues which are now sought to be reopened by way of the demand-cum-show cause notice impugned in the present proceedings. Such a procedure sought to be invoked by the Department is completely alien in law as established by the constitution as well as the law laid down by the Apex Court in a catena of judgments.
- This Court holds that the refund granted/sanctioned earlier in terms of the Judgment of the Apex Court rendered in "M/S SRD Nutrients Private Limited" (supra) as well as in terms of orders passed by this Court directing such refunds of Education Cess and Secondary and Higher Education Cess in terms of "M/S SRD Nutrients Private Limited" (supra), cannot be revoked co-laterally by a Quasi-Judicial Authority of the Department without taking recourse to the statutory and/or judicial remedies available to the Department.
- In view of the circular, it is evident that the Board has instructed the officers to contest matters pending before the Hon'ble Courts by filing statutory appeal, writ appeal or review petition as the case as may be or in the alternative submit a proposal for filing SLP before the Apex Court.
- The show cause notices issued are required to be held to have been issued without any jurisdiction and by wrong interpretation of the powers under Section 11A read with Section 11AA and therefore, the same are required to be set aside. In view of all the decisions above, the impugned show cause notices cannot be sustained, the same are accordingly, set aside and quashed.

DA Comments:

The decision of the Honorable High Court has well laid down on on the power of government officer and further any notice issued beyond the jurisdiction and and legislation would not be sustainable

M/s Topcem India and others vs UOI and others [2021-TIOL-857-HC-GUW-ST]

Penalty cannot be imposed when duty and interest paid before issuance of SCN – Service Tax

The SPSU has inadvertently availed the Cenvat credit which on being pointed out by audit reversed the same along with interest and the O-I-O appropriated the amount and the interest paid by appellant. The appeal is filed against the penalty imposed under the O-I-O and CESTAT observed and held that:

- It is a settled position of law that no suppression of material to evade payment of duty can be alleged against the State Government Undertaking.
- The issue has been consistently considered by Tribunal in various decisions and it has been held that once the duty is paid before the issuance of SCN along with interest, the SCN need not be issued and question of imposition of penalty does not arise.
- Further, the Karnataka High Court in case of Vilax Industrial Fabrics 2018-TIOL-1363-HC-KAR-CX has upheld the decision of Tribunal dropping the penalty on the ground that when the duty is paid along with interest before the issue of SCN, then no penalty is imposable. By following the ratio of said decision, the impugned order imposing penalty is not sustainable in law and therefore the same is set aside.

DA Comments:

The said aspect has also been laid down in legislations too i.e., GST to avoid having litigation only for penalty.

Autokast LTD vs CCTCE [2021-TIOL-239-CESTAT-BANG]

Late cut for MEIS for FY 2019-20

MEIS applications for Shipping bills with Let Export date for FY 2019-20 can be submitted without any late cut up to 30 September 2021. However, any such application submitted after 30 September 2021, the last date for submitting applications shall be as per para 3.15 (a) (i) above and late cut applied accordingly.

Public Notice No. 53/2015-2020-DGFT dated 9 April 2021

Contactless Customs Processing during COVID-19 pandemic

During pandemic, all work to be conducted via email/online mode and designated officer names have been nominated with instructions.

Public Notice NO.37/2021- JNCH dated 27 April 2021

Public Notice NO. – 35/2021 dated 20 April 2021

Instruction by CBIC on issue of SCN considering SC judgment in Canon India

In our monthly alert of April 2021, we have covered the Honorable Supreme Court judgment in the case of M/s Canon India Private Limited with regard to power of DRI (Directorate of Revenue Intelligence) for issue of SCN (Show Cause Notice) for Customs matter. Now to streamline the same at ground level, CBIC issued the instructions covering following:

- There is a possibility of multiple interpretations, the matter needs to be examined further in consultation with the Ministry of Law and Justice.
- The SCNs to be issued by Deputy Commissioner/Assistant Commissioner of the concerned port of Import and be made answerable to them.
- Further action in respect of the said SCNs will be governed by Board's Instruction 04/2021- Customs dated 17/3/2021.

Instruction no. F.No. 450/72/2021-Cus IV dated 16 April 2021

Instruction to AC/DC - Over-valued export of glass beads under erstwhile DEPB Scheme - Reg.

The order issued for specific instructions to AC/DC level officer to take note of the following observations of Hon'ble CAT (PB), New Delhi made while disposing matter related to over-valued export of glass beads under erstwhile DEPB Scheme:

- The very purpose of having hierarchy of officers for taking a decision on whatever matter, is to ensure that no lapse occurs at any stage.
- If his function was just to put seal of approval on whatever was done by the Inspector and Superintendent the very exercise becomes redundant."
- To take note the observations for guidance and be diligent and vigilant in discharge of your official duties.

Standing Order No. 08/2021 dated 9 April 2021 (O/o Chief Commissioner Of Customs Mumbai Zone-Ii, Jnch, Nhava Sheva)

Customs (Verification of Identity and Compliance) Regulations, 2021 issued

- The Customs (Verification of Identity and Compliance) Regulations, 2021 have been issued under section 99B of Customs Act, 1962 (Inserted under Finance Act, 2019) and effective date to be notified later . Key aspects are:
- The regulations shall apply to the following class of persons who are newly engaging in import or export activity after the commencement of these regulations:-

  i. Importer;

  ii. Exporter;

  iii. Customs Broker

who may have engaged in:

- Import or export activity or
- Availed or claimed the benefits mentioned in sub-clause (a) to (f) of clause (i) of sub-section (3) of section 99B of the Act or
- Engaged as a Customs Broker in such activity or
- Availing or claiming such benefits prior to the commencement of these regulations and these regulations shall apply to such person.

Customs (Verification of Identity and Compliance) Regulations, 2021 issued

- A person who is newly engaging in import or export activity after the commencement of these regulations shall furnish the said documents not later than thirty days of engaging in import or export activity.
- It's not applicable to Centra/State Governments and PSUs
- The person selected for verification needs to submit various documents on common portal
- Physical verification and evaluation of financial standing would be done by the proper officer
- Suspension of benefit as mentioned under section 99B (3) (i) of Customs Act, 1962 if failed to comply with the requirement or submitted in correct document/information
- Penalty up to INR 50,000 can be imposed
- Opportunity of personal hearing and appeal remedy is available

Notification No. 41/2021-Customs (N.T.) Dated : 5 April, 2021

Exemptions/Concession on Covid related medicines/products/equipment's

- IGST Exemption on imports of COVID19 relief material donated from abroad
- IGST reduced to 12% on oxygen concentrators
- Import duty on specified Inflammatory Diagnostic (markers) kits exempted
- Expediting Customs Clearances for Covid related imports made by Indian Red Cross society
- Covid related vaccines & Oxygen exempted from basic customs duty
- High priority to Customs clearances of goods related to COVID 19 pandemic

Ad hoc Exemption Order No. 4/2021-Customs dated 3 May 2021

Instruction No. 09/2021-Customs dated 3 May 2021

Notification No. 30/2021-Customs dated 1 May 2021

Notification No. 29/2021-Customs dated 30 April 2021

Notification No. 04/2015-2020-DGFT dated 30 April 2021

Instruction No. 08/2021-Customs dated 27 April 2021

Notification No. 28/2021–Customs dated 24 April 2021

Instruction No.07/2021-Customs dated 23 April 2021

Exemptions/Concession on Covid related medicines/products/equipment's

Notification No. 29/2021-Customs dated 30 April 2021

Notification No. 04/2015-2020-DGFT dated 30 April 2021

Instruction No. 08/2021-Customs dated 27 April 2021

Notification No. 28/2021–Customs dated 24 April 2021

Instruction No.07/2021-Customs dated 23 April 2021

DC to consider the request for extension of WFH facility for SEZ units

DCs may consider the requests from the industry and approve the extension of WFH facility for SEZ unit till such time when National Disaster Management Authority or State Government continue to issue orders governing the pandemic management

No. K.43013(12)/1/2021-SEZ Dated : 6 May, 2021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Goods and Services Tax

- At Rs 1.41 trillion, GST collection for April 2021 sets new record
- Centre may call GST meeting this month as states seek rate cuts on essential medical items
- GST collections to drop 20% in May due to state lockdown-like curfews, say experts
- GST officers to soon have real-time data on vehicles moving without e-way
- COVID-19 vaccine, oxygen imports exempted from GST, with caveats
- Law Enforcement Body Recovers ₹ 74.86 Crore From Tobacco Manufacturer For GST Evasion
- System generated returns under GST to accelerate digitization; more GST reforms may boost taxpayer confidence

Customs and other

- No oxygen concentrators are pending Customs clearance, says Centre on reports of stalled foreign aid
- Kerala speaker Sreeramakrishnan in the dock after customs grills him in dollar smuggling case
- India exempts oxygen concentrator imports from customs clearance, testing kits from duty
- Customs Assigns Nodal Officers To Facilitate Covid Related Imports
- India considers reviving FTA talks with Gulf Cooperation Council
- Union Cabinet approves agreement between India and UK on cooperation and assistance in custom matters
- India, EU to Announce Resumption of FTA Talks after 8 Years at Virtual Summit on Saturday

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